

VOLUME ONE

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
James E. Lockemy, Circuit Court Judge

RECEIVED

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MARION BOWMAN,

S.C. Supreme Court
PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213468

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

DAVID ALEXANDER
Appellate Defender

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

S. CREIGHTON WATERS
Assistant Deputy Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General

MICHAEL J. ANZELMO

P. O. Box 11549
Columbia, SC 29211

NELSON MULLINS RILEY &
SCARBOROUGH, LLP
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201
(803) 255-9589

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR PETITIONER

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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ORIGINAL

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

STATE OF SOUTH CAROLINA,) VOLUME I Pages 1 - 18
Plaintiff,) TRANSCRIPT OF RECORD
-versus-) SCHEDULING CONFERENCE
MARION BOWMAN, JR.,) October 18, 2001
Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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

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

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

-and-

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

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

State vs. Bowman Volume I

1 (October 18, 2001.)

2 THE COURT: All right. This is the State
3 vs. Mr. Marion Bowman. Let the record reflect
4 that Mr. Bowman is present in the courtroom with
5 his counsel and that Mr. Bailey likewise is
6 present on behalf of the State of South
7 Carolina.

8 Counsel, I appreciate you coming and
9 all of us being here today to give us an
10 opportunity to begin to set a calendar in this
11 case, if you will.

12 I have received an appointment on
13 exclusive jurisdiction over this case by the
14 Supreme Court, I think I received that order a
15 couple of weeks ago. Did you all receive a copy
16 of it?

17 MR. BAILEY: Yes, ma'am, Your Honor.

18 MR. CUMMINGS: Likewise for the record,
19 Your Honor, Mr. Bowman also received that
20 likewise from our office, ma'am.

21 THE COURT: Very well. And I believe that
22 the place for us to begin is to set our calender
23 for the purposes of, of course, trial and then
24 pretrial matters, motions and the like. So let
25 me hear from you, Mr. Bailey, I'll hear first

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1 from you and then I certainly want to hear from
2 the defense in terms of your time needs. Yes,
3 sir, Mr. Bailey.

4 MR. BAILEY: Your Honor, I had originally
5 wanted to set this case for like December or
6 January time frame. Mr. Cummings and Ms.
7 Hardee-Thomas wanted more time to prepare. In
8 the meantime, I've gotten this Charleston case
9 that starts November 12th, it's going to be
10 fairly extensive and agree with the defense they
11 probably do need more time to get ready.

12 In looking at my calender, I have a
13 death penalty case in Orangeburg starting on
14 April 22nd. And in talking to Mr. Cummings, Ms.
15 Hardee-Thomas before the hearing, what we're
16 trying to do if it meets with Your Honor's
17 approval, was to maybe set the term during a
18 two-week period of time when you are already set
19 for Dorchester County. That would be easier on
20 Motte Tally and everybody else.

21 THE COURT: Interestingly enough,
22 Mr. Bailey, that's why they set those two weeks
23 together, I now understand from Court
24 administration, so I think what you are
25 referring to is a hint from Court

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1 Administration.

2 MR. BAILEY: We were looking at possibly
3 June, June 10th and 17th. That would give me a
4 month or so to get out of the other, finish up
5 the other case. And as far as I know there are
6 no conflicts with the defense on that.

7 MS. HARDEE-THOMAS: There won't be for me,
8 Your Honor.

9 MR. CUMMINGS: Judge, also by way of June,
10 with that, such calendaring time also, Judge,
11 should not pose any problems, plus we'll get an
12 order from Your Honor as you see fit, ma'am,
13 that we'll get protected on any other cases.

14 MS. HARDEE-THOMAS: Protected on other
15 matters.

16 THE COURT: Certainly. Let me discuss that
17 with Court Administration and let us -- let me
18 consider that. The only change that I may do is
19 I may like to move from June the 10th to June
20 the 3rd. Optimally for me June the 3rd and June
21 the 10th would be optimal, and then if there was
22 any carryover then we would be protected in
23 terms of the week of 17th, if that was needed.

24 I'm noticing the week before I have
25 Calhoun general sessions and that could be --

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1 perhaps I can work with Court Administration on
2 that particular week, but I think that you can
3 look forward to a trial date either beginning
4 June the 3rd or June the 10th. And I will
5 certainly notify you all of in writing when I've
6 been able to discuss that with Court
7 Administration. Any problem with June the 3rd
8 that you can see?

9 MR. BAILEY: None whatsoever, Your Honor.

10 MR. CUMMINGS: None from our side of the
11 table, Judge, and we're aware Ms. Thomas will
12 speak for herself.

13 MS. HARDEE-THOMAS: Nothing right now.

14 MR. BOWMAN: Yes, ma'am.

15 THE COURT: All right. Now, with regards
16 to motions and preliminary matters, would it be
17 beneficial to set a couple of dates for those at
18 this point?

19 MR. CUMMINGS: If I may, Judge, I don't
20 mean to jump ahead of my colleague,
21 Mr. Solicitor, but, Your Honor, respectfully, as
22 Your Honor well knows I've signed some ex parte
23 indigent defense funds applications for us for
24 experts and other things. We have not received
25 any funds yet. We understand the state is in

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1 the process of watching their budget.

2 I would ask Your Honor if we could
3 have at least until November to hear back from
4 indigent defense. Most of our experts will not
5 start until they get paid. Some of those
6 motions that we would make would be the normal
7 necessary motions in a death penalty case, but
8 some of them may be as a result of what is
9 learned from an expert or psychiatrist, et
10 cetera, ma'am.

11 So what I would like to do is have at
12 least maybe next term of court. Normally
13 Mr. Bailey and Ms. Thomas and I talk about our
14 filing any motions ahead of time, I know we work
15 very closely together. I know, Your Honor, this
16 is our first one together here, I know your
17 office has always been kind enough to let us
18 call you on the phone find out if we can set a
19 court date or court time.

20 THE COURT: Always. I want you all to know
21 that. That's certainly a courtesy that I
22 certainly want to afford all members of the bar,
23 certainly you all always. So let me ask this:
24 Is it more beneficial to do to -- wait until
25 November and then set some times for some

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1 motions so we set aside half a day or a day as
2 may be beneficial to you, if you need the time;
3 fine, if you don't need the time; fine. Or is
4 it you think better that as you generate motions
5 that we get together at that point, you get with
6 my office and set those motions at that point?
7 What would be better for everyone?

8 MR. CUMMINGS: On behalf of Ms. Thomas and
9 I, I would like to set them as we do them. I
10 don't think Your Honor, respectfully, with all
11 we've done, Mr. Bailey opens up his box to us,
12 we go to his office, we sit down, we even count
13 the pages together, so part of the things we'll
14 do, of course, would be in conjunction with the
15 solicitor, the first stages, and then hopefully
16 get back on our experts as quickly as we could.

17 And, Your Honor, of course I would not
18 impound you with a bunch of motions as we get
19 real close to trial, hopefully.

20 THE COURT: All right. What I would like
21 to do is to set, what I would definitely like to
22 do is I would like to pretrial, have a pretrial,
23 and it may be very -- as formal or as informal
24 as you all need. And I'd like to, for us to
25 have that pretrial the week of April the 8th.

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1 That's a chambers week for us, just give us an
2 opportunity to see where everyone is and how
3 we're proceeding, and then we will probably do
4 another pretrial in May, and I'm sure we'll have
5 other times that we'll be together.

6 MR. CUMMINGS: Yes, ma'am.

7 MS. HARDEE-THOMAS: Are you going to get
8 back to us, Your Honor, regarding the date in
9 May?

10 THE COURT: I would love to do that now
11 because I don't think I have a thing scheduled
12 during those weeks. Actually let me say that
13 our conference is the week of, the week of May
14 the 6th is probably -- we'd need to do that on
15 Monday if we could schedule that on Monday,
16 which would be May the 6th. April the 8th. You
17 can pick the time, the date, whatever suits you
18 all.

19 MR. CUMMINGS: Judge, I do have one
20 housekeeping matter just probably from
21 Mr. Bailey and I's working relationship. Madam
22 court reporter is here for this case, this date,
23 this time. I know our Supreme Court Justice
24 appoints you as the trial judge in this case for
25 every matter. I don't know if there's any way

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1 we can try to have the same court reporter. I'm
2 not trying to indoctrinate her for a two-week
3 death penalty trial or whatever. Keeping the
4 total record has come up greatly in cases that
5 we've had in the past.

6 THE COURT: Surely.

7 MR. CUMMINGS: Again, Judge, we don't have
8 the funds, we normally would ask to get a copy
9 of the transcript right after the proceeding.
10 With her backlog I'm sure it will take some
11 time. I know that Mr. Bailey and I have done
12 that in the past trial trying to keep up with
13 her. I don't know if there's any way to keep up
14 with one court reporter so we can protect the
15 record going through this case and afterwards,
16 if necessary.

17 THE COURT: I understand. I'll be mindful
18 of that, Mr. Cummings.

19 MR. CUMMINGS: Yes, ma'am.

20 THE COURT: And let me tell you what I
21 understand at this point, and maybe that will
22 allay some of your concerns. Ms. Keil is my
23 court reporter, actually, and I have been so
24 very fortunate to have her with me throughout
25 the time that I've been in the First Circuit,

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1 both here and in Orangeburg without exception.
2 And that seems to be, with the travel
3 constraints that seems to be what the norm is
4 going to be. So I think that the realities
5 being what they are, you can look forward to
6 that occurring.

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

8 THE COURT: But I will certainly do all I
9 can to coordinate that so that Ms. Keil does
10 both the motions as well as the trial. I know I
11 would like her to do the trial.

12 MR. CUMMINGS: Thank you, Judge.

13 THE COURT: So I will endeavor to do that
14 and be mindful of that. Thank you. Thank you
15 for that.

16 Now, with regards to the week of April
17 the 8th, why don't we say Tuesday at say eleven
18 o'clock for our pretrial and then on the week of
19 May the 6th why don't we say Monday at eleven
20 o'clock for our pretrial?

21 MR. BAILEY: Your Honor, while we're on the
22 record, could I put something on there? I
23 discussed this with Mr. Cummings and Ms.
24 Hardee-Thomas.

25 THE COURT: Yes.

State vs. Bowman Volume I

1 MR. BAILEY: After the death penalty notice
2 was served on the defendant in this case, I'd
3 extended an offer to allow Mr. Bowman to plead
4 to a life without parole sentence. I gave them
5 a period of time, I don't recall specifically
6 how long it was, they did not accept it. I then
7 withdrew the offer.

8 When we got the evaluation back saying
9 that he was competent and so forth and ready to
10 go to trial, I renewed the offer one more time
11 and he again rejected that. I don't have any
12 idea that they're going to accept that offer
13 now, I'm not going to leave that open
14 indefinitely because we're going to be starting
15 some intensive preparations and I don't like to
16 prepare a case for trial and then plead at the
17 last minute.

18 THE COURT: I understand that, Mr. Bailey.

19 MR. BAILEY: But I am going to go ahead and
20 open that offer up one final time for a two-week
21 period starting today, and the same offer I made
22 previously. If it's not accepted, then I'm
23 going to irretrievably revoke that offer and it
24 will not be made again.

25 THE COURT: All right. Let us all be very

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1 clear of the period. Let's pick a date, shall
2 we do that, Mr. Bailey, so there's no question
3 about the period?

4 MR. BAILEY: All right.

5 THE COURT: I've got a calender here and
6 let me just, let me get -- today is October the
7 18th, two weeks from now will be November the
8 1st.

9 MR. BAILEY: All right.

10 THE COURT: November the 1st.

11 MR. CUMMINGS: On behalf of the State I
12 think that, Mr. Solicitor, Your Honor,
13 respectfully on behalf of my client, Mr. Bowman,
14 Ms. Thomas, Your Honor, just for the record, I
15 was appointed in this case by notice of our
16 Court on June 23rd, pursuant to notice being
17 served on Mr. Bowman. I was not any part of
18 this case for any psychiatric evaluations at the
19 beginning, this was a charge of common law
20 murder brought against Mr. Bowman, he was
21 represented by counsel, Ms. Thomas.

22 Since I've been in the file this is
23 the second time Mr. Solicitor has made that
24 offer to Mr. Bowman that I am personally aware
25 of and learned from my co-counsel the beginning

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1 offer. And I thank him for giving us until
2 November 1st only. And at that point, Judge,
3 Mr. Bowman has heard this out loud and I would
4 just ask Your Honor if you would request of him
5 on the record again with our assistance here to
6 say whether he understood, heard that as of
7 November 1st Mr. Solicitor's withdrawing it.

8 The only reason I say that, Judge, is
9 again protecting the record. On behalf of
10 Mr. Bowman he understands it is not us offering
11 him, telling him anything other than the
12 solicitor referring to him an offer that could
13 potentially save his own life.

14 THE COURT: Shall we say five o'clock
15 November the 1st, Mr. Bailey, so that it's very
16 clear when the period would terminate?

17 MR. BAILEY: That would be fine.

18 THE COURT: Absolutely. Would you -- yes,
19 sir, Mr. Bowman. Thank you, Mr. Bowman.
20 Mr. Bowman, what your lawyers want to be
21 absolutely sure about is that you understand
22 that on the record here today that Mr. Bailey
23 has offered you a plea, if you will to life for
24 this matter, and in exchange for your plea of
25 guilty to this offense and a negotiated plea of

State vs. Bowman Volume I

1 life in prison for this offense, he is willing
2 to withdraw his service of the death penalty on
3 you.

4 What that means is, is that in
5 exchange for his removal of the penalty of a
6 request for the death penalty you would then
7 plead guilty to this murder and the penalty
8 would be life in prison. And true life,
9 day-to-day life, correct?

10 MR. BAILEY: Yes, ma'am.

11 THE COURT: Very well.

12 MR. CUMMINGS: It is absolute life to where
13 you never --

14 THE COURT: Without the possibility of
15 parole. It's day-to-day life as I understand
16 it, Mr. Bowman. But your lawyers can discuss
17 that with you. The only question that I want to
18 ask you at this point, is I know that you need
19 to have discussions for sure with your lawyers
20 and your family members, and the question that I
21 would ask to begin with is do you understand
22 what I've just told you?

23 MR. BOWMAN: Yes, ma'am.

24 THE COURT: You understand the offer?

25 MR. BOWMAN: Yes, ma'am.

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1 THE COURT: All right. Do you also
2 understand that which I understand, and if I am
3 in error you all let me know, that this offer,
4 this plea offer remains open for two weeks from
5 today and would expire, in other words,
6 Mr. Bailey would take that plea offer back if
7 not accepted before five o'clock on November the
8 1st. Five o'clock p.m. on November the 1st.

9 MR. BOWMAN: Yes, ma'am.

10 THE COURT: Which is two weeks from today,
11 it's a Thursday, five o'clock that Thursday.
12 And if you decide that that's not a plea offer
13 that you are -- that you wish, that you want to
14 accept, that then the plea offer would be
15 removed at five o'clock on November the 1st. Do
16 you understand that as well?

17 MR. BOWMAN: Yes, ma'am.

18 THE COURT: All right. And Mr. Bailey is
19 telling us here on the record today that that
20 plea offer would not be extended again. Do you
21 understand that as well?

22 MR. BOWMAN: Yes, ma'am.

23 THE COURT: All right. And I gather what
24 he is saying is that there would be no more
25 offers of a plea and that he would then, as you,

State vs. Bowman Volume I

1 would then simply get ready for trial in this
2 matter.

3 MR. BOWMAN: Yes, ma'am.

4 THE COURT: Very well. I know that, and I
5 urge you, of course, to talk to your lawyers and
6 your family and those that you talk to obviously
7 about important matters, because this is of the
8 utmost import, Mr. Bowman, and I trust that you
9 will do that.

10 MR. BOWMAN: Yes, ma'am.

11 THE COURT: And you understand -- do you
12 have any questions of your lawyers or of me? I
13 would want you to ask your lawyers, I wouldn't
14 want you to ask me directly about this extension
15 of this plea.

16 MR. BOWMAN: Not at the moment.

17 THE COURT: Thank you. Very well. I urge
18 you if you have any questions, you certainly
19 take those up with your lawyers.

20 MR. BOWMAN: Yes, ma'am.

21 THE COURT: Thank you, Mr. Bowman.

22 MR. CUMMINGS: Thank you, Your Honor.

23 MR. BAILEY: Thank you, Your Honor.

24 THE COURT: Any further that you think I
25 need to examine Mr. Bowman, either of you?

State vs. Bowman Volume I

1 MR. CUMMINGS: Not from I, Judge.

2 MS. HARDEE-THOMAS: Not from defense.

3 THE COURT: Very well. Anything further
4 that we can do today?

5 MR. BAILEY: Not from the State, Your
6 Honor.

7 MR. CUMMINGS: Nothing, ma'am. I think we
8 were just limited to this scheduling conference
9 and then I thank Mr. Solicitor for renewing the
10 offer again, ma'am.

11 THE COURT: That's correct. And, Mr.
12 Cummings, what I would like you to do is to find
13 out whether or not I can underscore a sense of
14 urgency with those ex parte orders regarding the
15 funding, and I'm happy to.

16 MR. CUMMINGS: Yes, ma'am.

17 THE COURT: If there's something else that
18 I can do to make that happen, I'm happy to try
19 to make that happen.

20 MR. CUMMINGS: Thank you, Judge.

21 THE COURT: Thank you. We'll be adjourned
22 in this matter.

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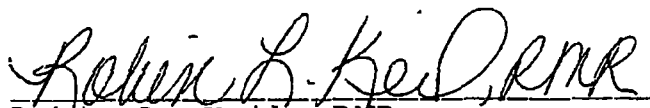
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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 5th day of May 2003.


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

ORIGINAL

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

STATE OF SOUTH CAROLINA,) VOLUME II Pages 19 - 69
Plaintiff,) TRANSCRIPT OF RECORD
-versus-) SCHEDULING CONFERENCE
MARION BOWMAN, JR.,) March 5, 2002
Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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

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

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

-and-

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

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

State vs. Bowman Volume II

1 (March 5, 2002.)

2 THE COURT: We are on the record in State
3 vs. Mr. Marion Bowman. And the purpose of
4 today's hearing really is to status the case.
5 And I wanted to give us all an opportunity to be
6 together, because one of my concerns is I need
7 to hear from you whether or not you think it's
8 going to take two weeks, or three weeks, or
9 shorter, or longer to try this matter. And I
10 wanted to try to get this case scheduled and
11 have everyone look at their calendars.

12 I know we looked earlier at June, I
13 got concerned about there being adequate time in
14 my schedule in June, and we looked at May. I
15 think my law clerk even may have communicated to
16 you all that Court Administration favored
17 May 13th, and because that afforded a full three
18 weeks in my schedule based upon just a week
19 that's changed in the latter part of May.

20 So I really wanted to give us all an
21 opportunity to sit down and have a discussion
22 about when, particularly defense counsel, when
23 you thought you would be ready and when we could
24 get this matter tried, and also how long you
25 think it will take to try.

State vs. Bowman Volume II

1 Let me hear from you, Mr. Bailey,
2 first of all.

3 MR. BAILEY: Your Honor, I agree with you.
4 I think it will take approximately three weeks
5 to try it.

6 THE COURT: Okay.

7 MR. BAILEY: As far as the State's
8 concerned that May 13th trial date I think would
9 be better than June --

10 THE COURT: All right.

11 MR. BAILEY: -- for a couple reasons, one
12 of them being once school is out it's going to
13 be difficult to get jurors and we're going to
14 have vacation schedules and witnesses that are
15 going to have conflicts.

16 THE COURT: I understand.

17 MR. BAILEY: And we would be able to avoid
18 that.

19 THE COURT: When you say -- do you think
20 approximately three weeks -- do you think
21 approximately three weeks, more than three
22 weeks, approximately three weeks, a little,
23 perhaps, less than three weeks?

24 MR. BAILEY: Hopefully less, but I would
25 like to have the three weeks.

State vs. Bowman Volume II

1 THE COURT: Based upon your estimate, you
2 believe the case could be tried within the
3 three-week period?

4 MR. BAILEY: I would hope so, Your Honor,
5 yes.

6 THE COURT: Yes, sir.

7 MR. CUMMINGS: Good afternoon. I'll speak
8 first and Marva. Your Honor, the first thing I
9 would like to do is ask the Court's permission,
10 if I may, basically to start talking now for
11 Mr. Bowman. He's shackled up like the sheriff's
12 department requires, I know we anticipate
13 courtroom procedures when we get into court, he
14 would like to have his hands so he can write
15 notes, write things. I know we have Mr. Smith,
16 who I've known for years, and George behind me
17 and everybody.

18 I know he's their security risk, Your
19 Honor owns this courtroom as far as procedures
20 and the law today. I know Mr. Bowman's asked if
21 he could have at least one hand free to write
22 his notes and write whatever he wants to. He's
23 having difficulty with the handcuffs there and I
24 would like us to start allowing him to write
25 whatever is said in this courtroom, with your

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1 permission.

2 THE COURT: Certainly. Is Mr. Bowman right
3 handed or left handed?

4 MR. CUMMINGS: Mr. Bowman's right handed as
5 far as I see.

6 MR. BOWMAN: Right handed.

7 THE COURT: You're right handed?

8 MR. BOWMAN: Yes, ma'am.

9 THE COURT: All right. I'll allow him to
10 certainly have his right hand free so he is able
11 to write with his right hand, that would be
12 fine.

13 MR. CUMMINGS: As they're doing that, as
14 far as the scheduling goes, Judge, we received a
15 letter from your secretary or law clerk,
16 respectfully, saying somehow the case got moved
17 up from June to May. Obviously the defense
18 would ask for every moment since this young
19 man's life is at stake to, of course, discover,
20 to work on, to comply with the issues. But
21 further, Judge, I understand Court
22 Administration controls the docket.

23 Mr. Bailey and I have done -- you
24 know, it will be our third together against each
25 other in death penalty cases, and I think Walter

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1 is correct, at least three weeks to try this
2 case. Every one we've done so far that has
3 actually gone the trial has been three weeks.

4 As I understand, probably the jury
5 selection is going to take the longest for this
6 case. And I would respectfully say that three
7 weeks is a very conservative, prompt estimate
8 and I would look to co-counsel to see how she
9 feels about that, too.

10 THE COURT: In other words, your best
11 estimate is this case will take longer than
12 three weeks?

13 MR. CUMMINGS: I think three weeks would be
14 a ballpark figure where we would probably end
15 up. I think jury selection will be the week,
16 and then including that week, ma'am, two other
17 weeks for courtroom presentation.

18 Mr. Bailey, we met last Friday even
19 going over the evidence that's physically in the
20 possession of the sheriff's department, but with
21 the witnesses that I believe would be proposed
22 for the State's case, including experts and our
23 experts, it would probably take at least one
24 week each on each side. So that's three weeks
25 that I would anticipate at least.

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1 And then of course, Your Honor, we
2 have our concerns about the statutory issue if
3 the jury does meet the ultimate decision finding
4 him guilty of murder with an aggravating factor
5 and then going into our statutory aggravation
6 case. And, again, I can't speak for the
7 solicitor on that, but I'm sure he would
8 probably put up at least three to four days'
9 testimony on that knowing Mr. Bailey.

10 THE COURT: I understand.

11 MR. CUMMINGS: And I probably would ask for
12 at least two to three days in mitigation of
13 that.

14 THE COURT: Okay.

15 MR. CUMMINGS: So I would ask -- I know
16 Court Administration is trying to work around
17 your schedule, ma'am, but even losing that one
18 month, or three weeks that we would have had
19 normally for June, we would like to have it.

20 And then an additional thing, and this
21 is not to throw up a red flag, Mr. Bowman was
22 arrested approximately 1-1-02 on a burglary case
23 while he was in jail and in a grand larceny
24 case. I have not been court appointed to
25 represent him on that, but at the preliminary

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1 hearing for Mr. Bowman two weeks ago there were
2 some statements allegedly made concerning this
3 case in that presentation at the preliminary
4 hearing.

5 Ms. Thomas, I believe, is going to
6 file a motion asking if I would be appointed on
7 that case, or any other lawyer that Your Honor
8 may deem appropriate for Mr. Bowman in case he
9 doesn't want me. But, again, it's so commingled
10 now, and Mr. Bailey was very adamant about
11 sending us productions of documents when we
12 requested this about new statements that have
13 come out allegedly from the police allegedly
14 made by my client.

15 And Walter wanted to try the burglary
16 case in April and that's going to cut us a month
17 short of defending this man. He's on trial for
18 his life. And the solicitor can call his cases,
19 but I'm trying to concentrate on this thing and
20 then we have a burglary that may be a burglary
21 first that would greatly impact us in our
22 defense case on the death penalty case.

23 I know Walter stood up to speak, and
24 then I would like to.

25 THE COURT: Sure.

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1 MR. BAILEY: I don't want to get into
2 arguments with Mr. Cummings on this issue, but
3 the material that was provided in discovery that
4 went to Ms. Hardee-Thomas on April the 6th, 2000
5 and to Mr. Cummings on August 22nd, 2000
6 contained a paragraph from Detective Alvin Coker
7 that referenced this earlier burglary. There
8 was not enough evidence at that time to make an
9 arrest, but subsequently some of the proceeds of
10 the burglary were found in Orangeburg at the
11 residence of a deceased murder victim and it
12 corroborated some of the other information they
13 had and they -- even though this information was
14 not entirely new, that new information finding
15 the proceeds of the burglary was sufficient to
16 go ahead and make the arrest.

17 But the statement that Mr. Bowman gave
18 to Alvin Coker has been with the defense as part
19 of the discovery in this case. And I have
20 noticed the defense that I wanted to go ahead,
21 try the burglary case prior to the death penalty
22 case and have told them I plan on calling the
23 case the week of April the 15th, which would
24 give them approximately six weeks advance notice
25 on it.

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1 If the case is not tried prior to the
2 death penalty case, it would be my intention to
3 prove the burglary in the penalty phase of this
4 case because it bears on the characteristics of
5 the defendant and I think it's clearly
6 admissible. We're looking at approximately
7 eight witnesses and I would think we would all
8 be better off to dispose of that prior to the
9 death penalty trial, because it would shorten
10 the death penalty trial and it would also
11 eliminate the necessity of me bringing in a lot
12 of details that may not be advantageous to the
13 defense in the penalty phase. In other words, I
14 could just go ahead and assume that he's
15 convicted, introduce the proof of that
16 conviction, enter that instead of calling a
17 string of witnesses.

18 I just want to direct Mr. Cummings the
19 statement they gave to the deputies has been
20 with them since our initial discovery was
21 provided.

22 MR. CUMMINGS: Judge, there was a
23 paragraph, as Mr. Bailey stated, a paragraph
24 about alleged statements, but now he's arrested
25 in January, we just got -- we, Ms. Marva

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1 Hardee-Thomas and I, just got the officer's
2 file. This involves the Orangeburg Public
3 Safety Division which Mr. Bailey did not have in
4 his office, he's an officer of the Court and he
5 would have given that to me early on if there
6 was anything about that, but none of that's been
7 sent.

8 We subpoenaed everything from
9 Orangeburg we can, we're subpoenaing Orangeburg
10 Public Safety Division's records because it is a
11 situation involved here. All these alleged
12 co-defendants' statements that might be the
13 witnesses have never been provided to us back in
14 2000 that I'm aware of. If I'm wrong, I know
15 Mr. Bailey will correct me.

16 But there was a paragraph early on we
17 read in here, but the government didn't bring
18 anything about this case until January of this
19 year, 2002. And here we are ready to go to
20 trial allegedly in June, now May, and the
21 solicitor has elected to call a burglary charge
22 one month before we're ready to gear up.
23 Normally we're protected one month, 30 days'
24 before a death penalty where we can't do
25 anything other than work on this man's case.

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1 I beseech the Court for one reason
2 here, that is timing is of the essence now and
3 it looks like, you know, the old fashion saying,
4 I'm 15 yards piling on, and I'm doing everything
5 I can to defend this man's life.

6 THE COURT: Understanding that, Mr.
7 Cummings. Tell me what, if I may, tell me what
8 you are telling me.

9 MR. CUMMINGS: I think it would be
10 fundamentally unfair to have Ms. Thomas
11 preparing for a burglary case. I'm not even
12 involved in that legally, but I know it's
13 crossing over into this death penalty case.

14 THE COURT: Hold on one second about that.

15 MR. CUMMINGS: Yes, ma'am.

16 THE COURT: Ms. Hardee-Thomas, in that you
17 represent Mr. Bowman regarding the burglary,
18 what are his wishes regarding having Mr.
19 Cummings appointed in that matter?

20 MS. HARDEE-THOMAS: When we told him about
21 it he definitely wanted Mr. Cummings to be a
22 part of that and he didn't understand why he was
23 not.

24 THE COURT: All right.

25 MS. HARDEE-THOMAS: Also he didn't, you

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1 know, understand, I guess, the width of how
2 everything was coming together, you know, going
3 to trial for burglary and grand larceny on one
4 case, and then the next month going to trial for
5 the murder charges.

6 THE COURT: All right. Well, let me at
7 least dispense with that. I will appoint you to
8 the burglary case, Mr. Cummings, so that both of
9 you will be appointed on the burglary case.

10 And, again, the reason that I'm doing that is
11 because based upon the representations of
12 counsel that these cases are temporally related
13 in terms of trial, and because there may be some
14 statements involved in the burglary charge which
15 have some relationship to the capital case, and
16 on that basis I do think it is appropriate and I
17 would certainly do so.

18 Clearly, Mr. Cummings, I know that you
19 would be involved, in any event, in the burglary
20 matter and you should be appointed and I think
21 that's appropriate.

22 MR. CUMMINGS: Thank you. And I did not
23 want that to upset our status conference today,
24 because I know the solicitor and I probably
25 would argue more about any motions for

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1 continuances or anything else and I wasn't
2 really legally able to do that. But I want to
3 point out to the Court that April would normally
4 be the 30 days prior to us going on May 13th.
5 Court Administration has done this, not this
6 office is what I am saying, was not Mr. Bailey.

7 THE COURT: Wasn't Mr. Bailey.

8 MR. CUMMINGS: I was just asking, we didn't
9 request.

10 THE COURT: Nope.

11 MR. CUMMINGS: None of us did.

12 THE COURT: Nope.

13 MR. CUMMINGS: This came from the ivory
14 tower.

15 THE COURT: It came from expressed concerns
16 of mine about what if we need more time, what if
17 we need more time than two weeks, hence the
18 May 13th statement.

19 MR. CUMMINGS: Yes, ma'am. Obviously I
20 couldn't ask for the solicitor to cooperate more
21 with me in meetings and going through things and
22 that's what had happened. And now that the
23 gentleman has chosen, the solicitor has chosen
24 to try the burglary case a month beforehand, I'm
25 just standing up here on behalf of Mr. Bowman

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1 and Ms. Thomas to say, you know, Judge, this is
2 the ultimate penalty the State is seeking, our
3 time, devotion is towards this case and then the
4 burglary charge has now presented itself.

5 And he was just indicted in that and
6 it was just sent to us. And I know the law in
7 our state says four days after indictment they
8 can call a capital case to trial, but I think
9 since that law was written things have changed.
10 And I would like to at least in a status
11 conference set up a time maybe we can argue
12 motions. I know the State's going to push that
13 trial and we would file appropriate times and
14 listen to arguments when Your Honor has more
15 time for legal arguments on that case. I just
16 got appointed today and I would like to have the
17 time to present any arguments for continuances,
18 do whatever I need to do if we need to do that.

19 THE COURT: You're talking about regarding
20 the burglary case?

21 MR. CUMMINGS: Yes, ma'am.

22 THE COURT: As opposed to the --

23 MR. CUMMINGS: Right, the death penalty.

24 THE COURT: -- death penalty case.

25 MR. CUMMINGS: If one supersedes the other,

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1 if the solicitor elects to try the burglary
2 again, I cannot speak for the solicitor and my
3 adversary today, colleague, respectfully if
4 we're going to concentrate on that case I would
5 ask we have the death penalty continued because
6 I can only concentrate on one issue at a time.
7 I don't have the luxury with shutting everything
8 down to do both.

9 THE COURT: What he's about to stand up and
10 tell me is that's fine, I'll just try the
11 burglary within the -- assuming that there is a
12 penalty phase, within the penalty phase. I
13 think that's about what I'm about to hear,
14 Mr. Bailey.

15 MR. BAILEY: Yes, ma'am. I was just going
16 to reiterate that I think there could be a
17 legitimate argument I would be entitled to get
18 into this in the penalty phase. When I served
19 the notice in evidence of aggravation I provided
20 the entire file which included Mr. Bowman's
21 statement where he admitted to the burglary, and
22 then just the boilerplate notice of evidence in
23 aggravation. I advised the defense that any
24 crimes he's committed, whether convicted or not
25 convicted, would be brought out in the penalty

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1 phase.

2 So I don't see how they can allay this
3 past the penalty phase at the latest. And I
4 think they're going to need to meet this thing
5 by that date, anyway, and I don't see any real
6 downside on addressing the burglary first and
7 then the rest of it on May 13th.

8 MR. CUMMINGS: Obviously, Judge, not to be
9 smart, for lack of better words, it absolutely
10 is one of those catch 22's that every defense
11 counsel has to face in these matters. Penalty
12 phase today, everything comes in other than
13 items that Your Honor rules doesn't come in.
14 You know, we just had the recent Supreme Court
15 case about Apprende that you can't enhance
16 punishments on people of things they have not
17 been convicted of, much less -- so, you know,
18 we're going to have some constitutional issues
19 in here.

20 And the law is in flux, our penalty
21 situations, the new case law came out saying
22 Simmons is the law of the land. Mr. Bailey and
23 I know this very well, that one of the issues
24 we're going to have here is can you punish
25 somebody who has not been convicted of another

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1 crime and use that as an enhancement at least
2 for the ultimate penalty.

3 That's why I'm going to say we've got
4 a lot of legal arguments before Your Honor. I
5 know that young lady sitting next to you is
6 going to be doing a lot of legal research as
7 well as the bench and Mr. Bailey and I and
8 Ms. Thomas.

9 But respectfully, Your Honor, I'm at a
10 catch 22. If I concentrate on defending for the
11 burglary case, then I'm just saying I know there
12 is going to be an issue that comes up later on,
13 another day, another time about where my time is
14 devoted to, or Ms. Thomas's time. And then for
15 the death penalty case, obviously if the State
16 tries to box me in and say we can't prepare for
17 that one, I still can't waive the gentleman's
18 rights to argue any defense he can, especially
19 when his life is in jeopardy.

20 So that's why I think the status
21 conference is great today, we're talking here
22 out loud. This isn't something that came up
23 also that I think Mr. Bailey planned or
24 sandbagged back, he doesn't do that. I don't
25 think Mr. Bowman and I or Ms. Thomas did

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1 anything to enhance this issue coming up. And
2 as we talk about the status conference now,
3 obviously we'll have motion hearings, we're
4 going to have suppression hearings for Your
5 Honor to settle up and so timing is going to be
6 important for the next argument about whether
7 the burglary's going to go forward, talking to
8 Mr. Bowman about motions for continuance versus
9 preparing for the death penalty in April
10 completely and exclusively -- excuse me, I want
11 to put that on the record -- and I'll leave that
12 to open argument or open talk right now.

13 MR. BAILEY: Your Honor, I hate to keep
14 popping up.

15 THE COURT: That's okay.

16 MR. BAILEY: I try to wait until Mr.
17 Cummings had finished.

18 THE COURT: That's okay.

19 MR. BAILEY: I'm not trying to be smart,
20 either, but I don't think it's appropriate for
21 Mr. Cummings to come in, to ask to be brought
22 into this burglary case for the sole purpose of
23 moving for continuance because he hasn't got
24 time to handle the case in the time frame that
25 he knew about prior to the time that he was

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1 appointed.

2 So with that in mind, I would ask the
3 Court to consider possibly not appointing Mr.
4 Cummings to the case and probably maybe consider
5 some other member of the bar that might be able
6 to do the burglary case.

7 MR. CUMMINGS: That is the Court's option,
8 absolutely. This gentleman doesn't get to pick
9 and choose his horse in the race. I've been
10 court appointed on the death penalty case. I
11 just showed up at the prelim because through
12 reading all the discovery the solicitor has
13 given us, and through working with their office
14 and all the policeman very closely and working
15 up at the jail, seeing Marion every week, it
16 came out that Mr. Coker, being the gentleman
17 that he was, told us, said, you know, "hey,
18 there's some more stuff happening in Orangeburg,
19 Norb, you need to know about." And the
20 gentleman very forthwith shared a lot of
21 information.

22 And then based on that Ms. Thomas was
23 at the prelim with me and we listened to this.
24 And then the solicitor sent us a letter saying
25 that he did intend to try the burglary first

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1 charge April something beforehand.

2 And, Your Honor, that is the Court's
3 pleasure, that is the Court's right to pick
4 somebody else to do that because technically my
5 focus is on that murder case.

6 THE COURT: Well, irrespective of your
7 participation or not, Ms. Hardee-Thomas
8 certainly would have the same concerns and
9 considerations that you would.

10 MS. HARDEE-THOMAS: Thank you, Your Honor.

11 MR. CUMMINGS: Right.

12 THE COURT: So it wouldn't be unique to
13 you, Mr. Cummings.

14 MR. CUMMINGS: And I did not speak for
15 Ms. Thomas, but normally how the PD system works
16 I understand is somebody fills out the forms,
17 they send it in and our coordinator, somebody
18 appoints either Mr. Dukes or Ms. Thomas.

19 Mr. Dukes is involved with a
20 co-defendant in this case. I think most of the
21 members of the bar have people charged somewhere
22 in this case, so I think the PD's office will be
23 boxed out for taking anything else new on the
24 burglary case. And that puts another dilemma on
25 the bench.

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1 Respectfully, Your Honor, Mr. Bailey
2 is correct. I mean, I state it here absolutely
3 right, I would not want to do anything else
4 other than keep this case moving. Mr. Bowman's
5 been in jail a while and the State has an
6 interest in trying their case.

7 THE COURT: I understand. Let me ask you
8 this question: Assuming that the burglary case
9 tries in April, what kind of time are you
10 talking about, other than as much time as I can
11 get, but that doesn't help me very much.

12 MR. CUMMINGS: It doesn't. And it doesn't
13 help me even to comment about that, but as we
14 all know the burglary case is going to be a
15 precedent for what's going to happen in May.
16 And I say that openly to the Court because some
17 of the same people, some of the new
18 co-defendants will be involved, but Mr. Bowman
19 will be involved. He'll be concentrating on
20 helping with his defense on the burglary case.
21 And no other lawyer would have even touched this
22 file until Your Honor either, A, takes me back
23 off the list now, or puts somebody back on it.

24 And he or she will obviously come into
25 court and say, hey, look, I can't prepare for a

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1 burglary first in whatever time frame. I don't
2 speak for anybody else, but I think that would
3 be the first issue I would state. Because
4 they're going to be chasing Orangeburg Public
5 Safety down to Dorchester County down even with
6 Mr. Bailey doing what he always does, and that's
7 here's the box, here's your file.

8 THE COURT: Okay. So tell me what you're
9 telling me.

10 MR. CUMMINGS: What I'm telling you is I
11 don't think any other lawyer could get geared up
12 in time for April, too. Unless I'm wrong.

13 THE COURT: Oh, I'm satisfied that you --
14 I've appointed you. You're in the case. You're
15 in the burglary case.

16 MR. CUMMINGS: But, again, that would
17 also -- if Marva was up alone....

18 THE COURT: Ms. Hardee-Thomas is in the
19 burglary case. You have the burglary case. So
20 if you are in the burglary case and the burglary
21 case tries in April as the solicitor at least at
22 this moment is his plan, you are telling me that
23 that puts you at great difficulty to prepare for
24 the capital case in May --

25 MR. CUMMINGS: Your Honor, I --

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1 THE COURT: -- because of the time
2 consideration.

3 MR. CUMMINGS: Right.

4 THE COURT: Assuming that I hear what you
5 are saying, then tell me how long you think is
6 appropriate for you then, after the burglary
7 case, to then complete your preparation for the
8 capital case.

9 MR. CUMMINGS: I would say I'd like to have
10 at least an extra month to change hats again.

11 THE COURT: Which puts us back to June.

12 MR. CUMMINGS: Getting back to June. And
13 then, again, with Court Administration, I know
14 they've given Your Honor exclusive jurisdiction
15 on this case, but come July we don't know
16 where -- I haven't seen the next six-month
17 calendar yet, but I haven't --

18 THE COURT: Believe it or not it's even on
19 the internet, Mr. Cummings.

20 MR. CUMMINGS: Okay. Well, I am the oldest
21 dinosaur you will ever get on that. Walter and
22 I made a comment Friday that we still handwrite
23 notes.

24 THE COURT: Good for you.

25 MR. CUMMINGS: Yes, ma'am.

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1 THE COURT: The schedule is out, we're
2 still all home, so....

3 MR. CUMMINGS: All right.

4 THE COURT: Okay.

5 MR. CUMMINGS: I guess for fundamental
6 fairness that's my biggest argument, is that.

7 THE COURT: All right. I hear you, okay.

8 MR. CUMMINGS: And as far as everything
9 else for today I didn't mean to blow the top off
10 this thing, but --

11 THE COURT: Let me ask you this question,
12 because the purpose of this is a status
13 conference. If what you are telling me is that
14 the June date is still a better date and you are
15 concerned about the three weeks.

16 MR. CUMMINGS: Yes, ma'am.

17 THE COURT: Then June the 3rd, of course,
18 is a Monday. The concern -- and I'll share this
19 with you, the concern is that given the
20 budgetary constraints we are, therefore,
21 constrained. And there's a general sessions
22 term that is actually schedule in Calhoun on
23 June the 3rd.

24 And if that can be worked out with the
25 term what says -- what did you tell me about

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1 June the 3rd?

2 MR. CUMMINGS: I had not planned anything,
3 Your Honor, as to prior procedures, the number
4 of the cases I've done in the past, that 30 days
5 before we had scheduled this case in June we can
6 do nothing else but work on this man's case.
7 So, therefore, that time, 30 days beforehand, is
8 at Your Honor's pleasure and also the call of
9 the case.

10 THE COURT: I think that would give you
11 that time, too, wouldn't you?

12 MR. CUMMINGS: Yes, ma'am.

13 THE COURT: Because if you try the case in
14 mid April, then we're looking at June the 3rd.

15 MR. CUMMINGS: Right. It gives us plenty
16 of time after that to go back again. The
17 burglary case is probably going to take the
18 solicitor three or four days to try in that term
19 of court. It's just I don't want to leave
20 anything open for the next round of this case,
21 and God forbid the ultimate penalty is ever
22 granted by any jury on this man.

23 THE COURT: Yes, sir. And I hear your
24 concerns about the jury panel and vacations.

25 MR. BAILEY: Yeah. Just on prior

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1 experience we would have like 350 jurors
2 summoned, probably 40 witnesses. And a
3 substantial number of those people as soon as
4 school is out, they've been waiting to go on
5 vacation, and it's going -- it's created a
6 problem in the past, I think it would in this
7 case also. That's why I was so glad to see it
8 moved up to May.

9 THE COURT: To May 13th.

10 MR. BAILEY: If it came between a choice in
11 deferring, introducing the evidence of this
12 burglary until the penalty phase and doing that
13 in May, or trying the case in April and then the
14 death penalty case in June, I would prefer to
15 just go ahead and go back to the May date and do
16 this in the penalty phase.

17 THE COURT: All right. What about that?

18 MR. CUMMINGS: But I know that this
19 gentleman will understand my legal arguments and
20 as far as constitutionally trying to say that
21 he's not been convicted of it, et cetera, and
22 arguing that, whether or not it comes in in the
23 penalty phase.

24 THE COURT: Sure.

25 MR. CUMMINGS: So we'll just have another

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1 date where we'll argue. And I know the case law
2 is going to be banging me over the head about
3 what can be introduced in the penalty phase.

4 MR. BAILEY: I've got a memorandum on that,
5 if I could hand that up.

6 THE COURT: Oh, yeah. What about just in
7 terms of the time consideration? If the
8 representation of Mr. Bailey is that he would
9 rather keep the May date as it is and go ahead
10 and go forward on May the 13th with the capital
11 case, I guess the question's can you be ready on
12 May the 13th under those circumstances?

13 MR. CUMMINGS: Judge, I was, frankly,
14 caught when we got in the letters from your
15 office about bumping it to May, and you've had
16 some issues. And Mr. Bailey, again, has been
17 very helpful in trying to arrange getting a gun
18 to an expert and we are trying to work on that
19 and getting it going, but I had shot for June,
20 we talked to people about June, the -- talked
21 about that early on and I told Mr. Bowman, you
22 know, June is the date of your life, it's your
23 case.

24 I understand Court Administration has
25 asked us to move it up for whatever, but I would

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1 say I was really hoping to shoot for June. Not
2 trying to mess up any of the schedules, not
3 trying to worry about the teachers getting out
4 on vacation, but, you know, that's where we had
5 earmarked and talked about early on when we had
6 the one meeting up here.

7 But, again, we're all here at the
8 Court's pleasure and time and this gentleman's
9 been in jail for over a year, I've been involved
10 in the case since June 23rd, so whatever pleases
11 the Court to try the case.

12 THE COURT: All right.

13 MR. CUMMINGS: June was our benchmark at
14 one time.

15 THE COURT: It certainly was. And I think
16 it's important that I be very clear that, again,
17 my concern was the need for three weeks.
18 Because there were two weeks scheduled for
19 general sessions in June, and then -- and as I
20 began to inquire about week three, that's when I
21 had a discussion with Court Administration. And
22 they said if you need three weeks, you need to
23 move it to May the 13th. So that's how that
24 occurred.

25 MR. CUMMINGS: Yes, ma'am.

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1 THE COURT: Now, let's talk about your
2 submittal of your evidence -- or submittal of
3 evidence, not your evidence, submittal of
4 evidence to expert, I gather, that you need.

5 MR. CUMMINGS: Mr. Bailey and I had met on
6 Friday again. We have a motion filed and I
7 presented a copy to Mr. Bailey early on about
8 trying to see if my expert could go up to SLED
9 and use their microscopic equipment up there.
10 And SLED, I thought a long time ago, Mr. Bailey
11 double checked for all of us, doesn't like
12 anybody tinkering with their state-funded
13 equipment.

14 Mr. Bailey, again, being the gentleman
15 he is, willing to help and really let everything
16 just come out, has offered to even see if the
17 sheriff will let Mr. Earl Asbell, the keeper of
18 evidence, drive the handgun and the projectiles
19 and shell casings up to Virginia to meet with
20 our expert, Mr. Cleon Mauer. If that can be
21 done, then that motion is pretty much settled.

22 THE COURT: Okay.

23 MR. CUMMINGS: And, again, I'm just
24 waiting. He probably has to clear it with the
25 sheriff and their budget to see if they're

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1 willing to do it, and we just haven't had a
2 chance to follow up until today.

3 THE COURT: I understand.

4 MR. BAILEY: If the sheriff can't do it I
5 can get my investigator to do it if they have no
6 problem with that.

7 MR. CUMMINGS: Absolutely. And also,
8 Judge, we agreed, for the record, not to make
9 any objection as to the chain of custody from
10 the time that we asked for this evidence to go
11 from point A to point B with either the
12 solicitor's investigator, the deputy. And that
13 will be on Your Honor's record today.

14 Mr. Bowman understands that,
15 Mr. Bailey understands there will be no
16 objection to any chains as to from the point it
17 goes from the sheriff's department to our expert
18 and back, not one bit. So that would be
19 graciously appreciated.

20 THE COURT: Okay. So it seems the issue
21 regarding the examination is resolved in one way
22 or the other?

23 MR. CUMMINGS: Yes, ma'am.

24 THE COURT: Very well. And what I am
25 hearing is, understanding that that is done,

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1 then it is then defense counsel -- two things.
2 Understanding that the expert's accessibility to
3 that piece of evidence, to the gun, and
4 projectiles is resolved.

5 MR. CUMMINGS: Correct.

6 THE COURT: And assuming that the burglary
7 case is not set in April, that counsel, that
8 defense counsel believes that they can be ready
9 in May?

10 MR. CUMMINGS: If the burglary case is not
11 presented for a trial?

12 THE COURT: Yes.

13 MR. CUMMINGS: I believe we'll go in May.
14 And the only thing is I know we have a legal
15 argument. I know Mr. Bailey anticipated this,
16 obviously with a good memo, and I think the
17 gentleman, and I'll do anything Marva and I can
18 do.

19 THE COURT: We will argue this at a later
20 time. I will certainly begin my study of it,
21 but I'm not going to have you all argue that
22 now. I'm happy to receive information whenever
23 you all can get it to me.

24 MR. CUMMINGS: Okay.

25 THE COURT: It just helps assisting in our

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1 study.

2 MR. CUMMINGS: Yes, ma'am. Now, the only
3 other thing I think Mr. Bailey and I probably
4 from the years we've done this is a jury
5 questionnaire. Obviously the defense will
6 submit one, I'm sure the prosecutor will look at
7 mine and Mr. Bailey has his own, probably. The
8 bench will probably have her own that she would
9 allow the --

10 THE COURT: Interestingly enough there
11 are -- if it would be of assistance to the two
12 of you, obviously I actually do have a
13 questionnaire that I like a lot, I'm happy to
14 share it with the two of you.

15 MR. CUMMINGS: That was one of our motions,
16 of course, Judge, as you well know.

17 THE COURT: Certainly.

18 MR. CUMMINGS: As Your Honor knows now, I
19 think it even caught our clerk of court a little
20 flatfooted from what -- when we were up here
21 anticipating from general sessions work, and
22 even the clerk's office downstairs has to hustle
23 now to get everything done by May to have all
24 these people come in. I would beseech the Court
25 again that anything that Your Honor wants us to

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1 start -- because I've already drafted some, and
2 Marva and I have a rough draft from our
3 questions from people that we've talked to out
4 here as far as other experts doing other death
5 penalty cases, but I know this is a hot topic
6 right now and I know we want to get a
7 questionnaire that you find appropriate, ma'am.

8 THE COURT: Certainly. Well --

9 MR. CUMMINGS: If the law clerk will make
10 that available to the solicitor and I, then
11 we'll go battle it out like we --

12 THE COURT: Sure. I don't have it with me
13 today, but I can certainly fax it to you all
14 tomorrow and am happy to do that. It happens to
15 be one that was used by Judge Howard a few years
16 ago, it was a questionnaire that actually on a
17 national basis has been met with very favorably,
18 interestingly enough, and it just recently came
19 back to me in that context, so I'm happy to
20 share that one with you. And I know that both
21 of you probably have them as well, but if you
22 all want to review them and if you all can agree
23 on some of it and then we'll get together and
24 resolve the remaining part of it.

25 One of the considerations that I had

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1 with regard to the jury was rather than sending
2 the questionnaire, in the best of all worlds it
3 would be nice to be able to have the jury come
4 in on Friday and just do the general questioning
5 and have them fill out the questionnaire and
6 then give it to you all over the weekend to
7 review as we would begin with the panels, the
8 individual voir dire on Monday. But apparently
9 that's not going to work. That was one of the
10 things as I was looking at the schedule that I
11 would like to have done, and one of the
12 discussions that I had with Court Administration
13 to see if that could work and apparently that's
14 not going to work, so we'll just begin on
15 Monday.

16 MR. CUMMINGS: Yes, ma'am. And any other
17 consideration I know that is very important
18 probably to both the State and us is the
19 question of sequestration of these jurors, and
20 the expense, and the time, and for us trying to
21 do as many motions as possible before we even
22 start doing things. And this is no surprise
23 and, again, with the number of people that know
24 each other in this room, that obviously there
25 will be suppression motions on statements.

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1 THE COURT: Sure.

2 MR. CUMMINGS: We anticipate, Judge,
3 approximately four to five statements allegedly
4 made by my client that Mr. Bailey has great
5 legal interest in, and I do also. And that's
6 even if we just take four to five hours on each
7 statement, and we're talking almost two to three
8 legal days in here. And testimony, of course,
9 and cross.

10 THE COURT: Yes.

11 MR. CUMMINGS: However they're taken. So I
12 wanted to bring that to Your Honor's attention
13 again.

14 THE COURT: Sure. Why don't we try to do
15 that now. Do you have your calendars? Why
16 don't we try to do that now? Why don't we try
17 to see if we can commit some days now to our
18 hearings. We have the 15th at this point.

19 MR. CUMMINGS: Right. Fifteenth, Judge,
20 for some motions. And I think Marva and I and
21 Mr. Bailey's filed some. We got approximately
22 28 or so motions.

23 THE COURT: There were 42 or 43 I think
24 that were filed.

25 MR. CUMMINGS: Some were duplications.

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1 THE COURT: Right.

2 MR. CUMMINGS: I apologize, we're trying to
3 cover each other and sometimes, Judge, Adam and
4 Eve don't get to talk as well as we usually do.

5 THE COURT: If you can consolidate them.
6 And I do think we need to have some indexing
7 procedure.

8 MR. CUMMINGS: Yes, ma'am.

9 THE COURT: So that we are all able to keep
10 up with the motions that have been filed and the
11 ones which have been heard and decided, I think
12 that would be very helpful to do that.

13 At this time March the 15th is
14 scheduled for motions, I believe beginning at
15 ten o'clock and to go all day.

16 MR. CUMMINGS: Yes, ma'am.

17 THE COURT: And the next week is a week of
18 common pleas. Why don't we tentatively schedule
19 motions to begin on March the 22nd at ten
20 o'clock.

21 Now, what I will do is I will stay in
22 contact with both of you because it may be that
23 we are arguing and charging in a case on Friday
24 morning and we can begin as soon as we can
25 conclude that.

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1 MR. CUMMINGS: Yes, ma'am.

2 THE COURT: Why don't we also then, again,
3 ten o'clock on the 29th.

4 MR. CUMMINGS: Judge, as Your Honor knows,
5 and I don't mean this out of disrespect, that's
6 Good Friday.

7 THE COURT: That's Good Friday. Let me
8 just inquire of you, we have a term and the term
9 is to go that Friday, but do you all have any
10 plans to be elsewhere?

11 MR. CUMMINGS: I don't have any religious
12 objections to it, nor legal objections. Marva,
13 I can't speak for you. Counsel just informed
14 me, I'll say it on the record, it's her birthday
15 that day and I promise we won't tell about how
16 old she is. The 29th then, if Your Honor's
17 working that week. Mr. Bailey?

18 MR. BAILEY: That's fine.

19 MR. CUMMINGS: For him.

20 THE COURT: All right. Ms. Hardee-Thomas,
21 we will not go late that day.

22 MS. HARDEE-THOMAS: Thank you, Your Honor.

23 THE COURT: We will not go late. We will
24 have a day April the 1st, that is a common pleas
25 non-jury week, so I'm going to -- let me see if

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1 I cannot get one or two. We will have one day
2 for sure, but most probably two days that week.
3 But let me stay in contact with you on that one.
4 And I've got to find out where Judge Williams
5 has me scheduled, what days where and we'll try
6 to find that out this afternoon and communicate
7 that to you.

8 As you look at your calendars on that
9 week, anything unusual that week that I need to
10 know of?

11 MR. BAILEY: No.

12 MR. CUMMINGS: No, ma'am.

13 THE COURT: Okay. We will try to do
14 motions one or two days --

15 MR. CUMMINGS: Yes, ma'am.

16 THE COURT: -- on that week. And then
17 May 8th is a week of chambers. You have all
18 five days.

19 MR. CUMMINGS: Yes, ma'am.

20 THE COURT: Okay?

21 MR. CUMMINGS: May 8 is actually a
22 Wednesday, but we start the 6th, whatever that
23 week.

24 THE COURT: Are you with me? That's April
25 the 8th.

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1 MR. CUMMINGS: April, I'm sorry. Excuse
2 me.

3 THE COURT: That's April the 8th. So we
4 have scheduled, what is that, five, six, seven,
5 eight, nine, ten days of motions. Do we need to
6 schedule beyond that, or do you think we should
7 see where we are after that period?

8 MR. BAILEY: Hopefully that will do it.
9 Mr. Cummings is correct, I think the Jackson v.
10 Denno would be the most lengthy as far as what I
11 can see now.

12 THE COURT: You may want to take the
13 Jackson v. Denno hearings and do them the week
14 of April 8th. I'm going to give you all the
15 opportunity to schedule what's best for you, but
16 it might be able, since we're going to have such
17 a substantial amount of time during that week,
18 it may make sense for you in terms of getting
19 witnesses to come in, that sort of thing, to do
20 them that week.

21 MR. CUMMINGS: Yes, ma'am.

22 THE COURT: But I'll leave that to you.

23 MR. CUMMINGS: All right.

24 THE COURT: There may be reasons to do it
25 otherwise. We probably need to be about the

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1 questionnaire fairly early.

2 MR. CUMMINGS: Just to let Her Honor know,
3 we really haven't done one, but I thought the
4 bench would be a little more comfortable and I
5 don't mind --

6 THE COURT: Has Mr. Bailey had a chance to
7 review it?

8 MR. CUMMINGS: Not ours. We always do
9 that, we exchange stuff back and forth.

10 THE COURT: Sure. If y'all have one and
11 you both like it, let me see it.

12 MR. CUMMINGS: We've never agreed on that
13 in three, so....

14 MR. BAILEY: I like the two-page ones, Mr.
15 Cummings likes the 22-page ones.

16 MR. CUMMINGS: That's the only difference.
17 And of course with Judge Anderson having done
18 one, he could cut it down to whatever he gave.

19 THE COURT: Absolutely. I'll leave it to
20 you to begin that process and we'll take it from
21 there.

22 MR. CUMMINGS: Thank you, Judge.

23 THE COURT: All right, then. Let me just
24 share this with you if I may, counsel. Because
25 as we schedule this hearing, when we begin the

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1 hearing May 13th, my only concern is June the
2 1st and that is three weeks later. My son is
3 graduating from Summerville High School on June
4 the 1st and I'm going to be there, so I just
5 share that with you.

6 If you do not think that there is a
7 substantial possibility that we can try this
8 case in three weeks, let me know now because --
9 if you are satisfied you would have no objection
10 to us recessing for me to go to my son's
11 graduation -- and there may be jurors that we
12 would have that would have children graduating
13 and they would necessarily need to attend their
14 children's graduation, so....

15 MR. CUMMINGS: This is not to throw a
16 monkey wrench in this thing.

17 THE COURT: Yes.

18 MR. CUMMINGS: You're right, you just
19 pointed something out to us. Mother's Day is
20 the 12th, we start the 13th, so we should be
21 clear. I mean, we should be okay on that.

22 THE COURT: Oh, yes. Everybody would have
23 been out to eat and be fine.

24 MR. CUMMINGS: Yes, ma'am. And that's
25 probably one of the issues about talking about

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1 sequestration versus non, because people are
2 going to want to do some things in June and
3 family functions. And you're right, it's going
4 to affect us all.

5 THE COURT: All right.

6 MR. CUMMINGS: Thank you, Judge.

7 THE COURT: Well, let's handle that issue
8 also early, that would be good as well.

9 All right. Do I understand that with
10 regards to the motions that, and I don't ask you
11 to reprint motions, but if you could give me
12 some sort of index of the motions, of course the
13 same to Mr. Bailey, so that I'll have a
14 document, something that I can review.

15 MR. CUMMINGS: Yes, ma'am. We'll have a
16 corrected index to you.

17 THE COURT: Absolutely.

18 MR. CUMMINGS: Yes, ma'am. I apologize.

19 THE COURT: Don't. You certainly don't
20 need to. If I had that, that would be most
21 helpful.

22 MR. CUMMINGS: Yes, ma'am.

23 THE COURT: All right.

24 MR. BAILEY: Your Honor, just if we could,
25 just a couple other things in regard to

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1 discovery.

2 THE COURT: Yes.

3 MR. BAILEY: There are two motions asking
4 for discovery of DNA material. I discussed that
5 with Mr. Cummings, I've talked to SLED and the
6 expert that the defense is talking to has worked
7 with SLED in the past. He already has all the
8 general stuff that pertains to deficiency
9 testing and that kind of thing of the lab.

10 THE COURT: Yes.

11 MR. BAILEY: And he's in the process of
12 running off the case-specific material this week
13 and I should have that to him next week. So I
14 think that portion of the discovery should be
15 resolved, assuming Mr. Ostrowski is the one.

16 MR. CUMMINGS: Again, the solicitor and I
17 have talked and we thank Your Honor and thank
18 you for pointing that out. It's like everything
19 else, he wants his money and we're assuring him
20 that the Indigent Defense will send out funds as
21 soon as possible. Your Honor has given us in
22 camera whatever legally you believe is correct,
23 and Mr. Ostrowski would be the gentleman we
24 would like to hire on this. And talking with
25 him along with somebody else this afternoon,

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1 again, just to review certain factors.

2 This came up as a result of the Duncan
3 Proctor case. And with our decision that came
4 out on that Mr. Bailey very graciously and
5 quickly got hold of SLED, DNA people, and
6 said -- and Ostrowski does work very closely and
7 that's who I want to get down in particular
8 because I knew the time frame was coming up, but
9 with that Proctor case just coming down, laying
10 out an issue that we need to discover, yes,
11 ma'am, I'm going to ask that, again, if Marva
12 and I present something to you very quickly,
13 again, to move that around.

14 THE COURT: Certainly.

15 MR. CUMMINGS: So, yes. And, again, I'll
16 have that gentleman make sure he works closely
17 with SLED and the solicitor with that.

18 THE COURT: Very well. One of the
19 questions that I would like for you to begin to
20 just discuss with Mr. Bowman, get his feelings
21 about, and I want you to have plenty of time to
22 talk to him about the issue, and that is the
23 issue of bench conferences during trial.

24 And I would like for you to -- the way
25 that I would handle them, and of course he will

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1 need to consider and if it meets with his
2 consent with bench conferences, what I would
3 like to do during the trial is to have you
4 approach, discuss an issue, give you an
5 opportunity to go back to counsel table and
6 communicate with Mr. Bowman before anything
7 occurs and then to shuttle that back and forth.

8 MR. CUMMINGS: Yes, ma'am.

9 THE COURT: So that he is well aware. I
10 just want you to be aware of that. I think that
11 there very well may need to be just his consent
12 to handle it that way. And it may necessitate
13 the jury having to leave less, perhaps.

14 MR. CUMMINGS: Okay.

15 THE COURT: But I wanted you to have an
16 opportunity to discuss those issues with him and
17 get his thoughts about that.

18 MR. CUMMINGS: Yes, ma'am.

19 THE COURT: Okay.

20 MR. BAILEY: I've got no discovery from the
21 defense. I'm not sure if there is any
22 discovery, but if there are any psychiatric
23 reports or IQ test that are due me under Rule 5,
24 I would ask the defense produce that while I
25 still have an opportunity to make some use of

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1 it.

2 THE COURT: Certainly.

3 MR. CUMMINGS: Absolutely, ma'am. Part of
4 the problem was, of course, funding. We do
5 have, and Mr. Bailey probably knows this from
6 experience and us talking, we do have one
7 forensic psychiatrist. There's not been issued
8 a report yet and if I get a report I promise,
9 like I said, as an officer of the Court,
10 Ms. Thomas, we would deliver that immediately.
11 We have had one person look at conducting the IQ
12 testing.

13 Again, I don't have a report, but I
14 anticipate a report as soon as I get it in. It
15 will be well -- with plenty of time for him to
16 talk to his State people. My client, before I
17 was appointed, Judge, was at the state hospital.
18 And they had at that time done their forensic
19 investigation. I believe the State and defense
20 has a copy of that, I've seen it, I understand
21 it. We just hired somebody after the notice was
22 served to go back and investigate some of the
23 issues.

24 So there was not any early on plea for
25 insanity defense. And I say this again as an

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1 officer of the Court, I don't anticipate that.
2 I'm saying that today in a status conference and
3 I have not learned of anything else that would
4 negate what I just said, ma'am.

5 THE COURT: Great.

6 MR. CUMMINGS: I'm trying to be as open,
7 but as protective as I can right now of
8 Mr. Bowman.

9 THE COURT: I understand.

10 MR. CUMMINGS: I do not anticipate an
11 insanity defense. I have not noticed the
12 solicitor of that. I understand my job under
13 the rules that I would have to do that.

14 THE COURT: Great. Stay tuned, Mr. Bailey.
15 All right. Very well. Anything further for
16 today?

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

19 MR. CUMMINGS: No, Judge. We thank you for
20 the time. I know you have a jury out and we
21 thank you very much.

22 THE COURT: All right.

23 MR. CUMMINGS: Just quickly, I'm sorry, I
24 apologize. Judge, at nighttime, and this is
25 basically for the jail, has nothing to do with

State vs. Bowman Volume II

1 Mr. Bailey, I know the sheriff controls his
2 jail, but Marva and I are spending a lot more
3 time at jail at night. And, graciously, if you
4 allow me to prepare an order saying to the
5 sheriff that we have unlimited access to
6 Mr. Bowman within reasonableness as we've always
7 done.

8 THE COURT: Indeed. Absolutely. You all
9 are going to --

10 MR. CUMMINGS: Live there.

11 THE COURT: -- be able to see your client
12 when you need to see your client and without any
13 impediment to that.

14 MR. CUMMINGS: Yes, ma'am.

15 THE COURT: So what I'd ask you to do is
16 I'd ask you to draft an order. I want you to
17 take it by Mr. Barnes and show it to him. And
18 if there is any concern whatsoever you all come
19 to me, all right?

20 MR. CUMMINGS: Thank you, Judge.

21 THE COURT: All right.

22 MR. CUMMINGS: And I understand that.
23 Early on we have some more time on the 15th,
24 Mr. Bowman is whispering in my ear about a
25 particular motion and I would make that, but I

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1 first want to talk to Mr. Bailey first.

2 THE COURT: Sure.

3 MR. CUMMINGS: And the elected sheriff so
4 we don't cause any hard feelings.

5 THE COURT: Very well.

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

7 THE COURT: That will be fine. Okay.

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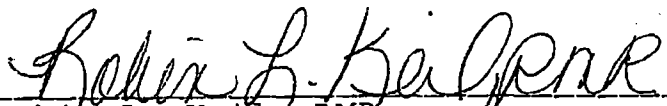
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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 5th day of May 2003.


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

ORIGINAL

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

STATE OF SOUTH CAROLINA,) VOLUME III Pages 70 - 242
)
 Plaintiff,) TRANSCRIPT OF RECORD
)
 -versus-) MOTIONS
)
 MARION BOWMAN, JR.,) March 15, 2002
)
 Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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

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

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

-and-

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

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

State vs. Bowman Volume III

1 (March 15, 2002.)

2 THE COURT: Good morning.

3 MR. CUMMINGS: Good morning.

4 MS. HARDEE-THOMAS: Good morning.

5 MR. BAILEY: Good morning.

6 THE COURT: Let us review, first of all,
7 the motions that I have received to this date.
8 And, in fact, I think I've received from the
9 defense the same motions a couple of times as
10 you all have tried to consolidate, and I
11 certainly appreciate so much those efforts.

12 With regards, first of all, to the
13 State, I have six motions in total at this point
14 from the State. Well, I guess that wouldn't be
15 correct because the first one was the one for
16 consolidation of the motions. But check that
17 for me, Mr. Bailey.

18 MR. BAILEY: Okay.

19 THE COURT: And be sure that that is
20 correct.

21 MR. BAILEY: That's correct, Your Honor.
22 It would be seven in all counting the motion to
23 consolidate.

24 THE COURT: Thank you. And from the
25 defense they came, if you will, in two different

State vs. Bowman Volume III

1 packets. First there's the listing of six
2 motions and then in the second receipt of
3 motions there were 32 motions.

4 MR. CUMMINGS: Correct, Judge.

5 THE COURT: All right. My only concern
6 about that, about receiving them in this regard
7 is it would probably be helpful in terms of the
8 record for us to have a continuing number of
9 motions so that we can keep up with them instead
10 of having one motion one, two motion twos, to be
11 able to renumber the motions so that we have a
12 continuing set, it might be better for the
13 record. Tell me how you feel about that.

14 MR. CUMMINGS: Just a bookkeeping matter.
15 We would be happy and proud to renumber them as
16 we go through.

17 THE COURT: That will be fine. Why don't
18 we just renumber the six. Why don't we do that
19 before we even begin, renumber the six that were
20 enclosed with the letter dated March the 11th.
21 Is everyone there?

22 MR. CUMMINGS: Yes, ma'am.

23 THE COURT: Okay. And let us number those
24 beginning with number one right on down. Number
25 one which is the Motion in Limine Regarding

State vs. Bowman Volume III

1 Evidence would be 33, Motion in Limine to
2 Prohibit Testimony Regarding Alleged Suffering
3 of the Victim would be 34, Motion in Limine to
4 Preclude the State from Calling its Witnesses,
5 Members of the Victim's Family, et cetera, would
6 be 35, Motion in Limine Opening and Closing
7 Arguments by the State would be 36, Motion in
8 Limine Statements by Defendant 37, Motion in
9 Limine Evidence would be 38.

10 Does everyone have that?

11 MR. CUMMINGS: Yes, ma'am.

12 MR. BAILEY: Judge, just to make sure, if I
13 could.

14 THE COURT: Yes.

15 MR. BAILEY: The original motions were
16 dated February the 4th and that was 45 motions.
17 And my understanding was that the list of 23
18 dated February 28th was supposed to consolidate
19 those earlier motions; is that correct?

20 THE COURT: And then they've been
21 reconsolidated. And by motions filed, as I
22 understand it, March the 11th.

23 MR. CUMMINGS: Correct. March the 11th
24 letter is what we're consolidating.

25 MR. BAILEY: Okay.

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1 THE COURT: Do you have that listing?

2 MR. BAILEY: Yeah, I do. And there was
3 also a second letter dated February 28th that
4 had three motions. And I'm not sure if that's
5 consolidated as well in the March one.

6 THE COURT: I'll look for the defense to
7 tell me. As I understand it there are two sets
8 of motions, the ones listed in the letter of
9 March the 11th and the ones listed also in the
10 letter of March the 11th (sic). One of them
11 containing six, the other containing 32. I'll
12 look to you to tell me if there are other
13 motions that we need to be aware of.

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

16 THE COURT: Yes.

17 MR. CUMMINGS: What happened on the 28th,
18 if Your Honor will hold up the 28th letter, I
19 know Mr. Bailey will also, the motions numbered
20 one, two, three actually mirror the March 11th
21 letter, that number one is now number 33 and
22 it's the motion in limine regarding evidence.

23 The second motion on the 28th letter,
24 Motion in Limine to Prohibit Testimony Regarding
25 Alleged Suffering of the Victim, that is our now

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1 34 motion. Number three motion on the 28th
2 letter would be the same as number 35, ma'am.
3 And I understand -- and we apologize for
4 anything, we were just trying to make sure these
5 got done, and between the two offices to make
6 sure we came up with proper motions. We
7 apologize for any confusion.

8 THE COURT: Not a bit. Not a bit. No
9 confusion at all, Mr. Cummings.

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

11 THE COURT: I appreciate your
12 organizational efforts. No, no, it's very
13 helpful, quite frankly, to have them be
14 consolidated, I appreciate you doing that.

15 All right. Now, let us discuss how we
16 will proceed this morning in hearing these
17 motions. We're going to get to them all and we
18 could certainly just begin with number one and
19 move right through them, we could begin either
20 with the defense motions or the State's motions,
21 either way. And I would hear from you if you
22 all have any thoughts about the organization.

23 MR. BAILEY: Your Honor, that's fine to go
24 ahead with the defense first. There are more of
25 those.

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1 THE COURT: Very well.

2 MR. CUMMINGS: Thank you, Judge. Judge,
3 the very first motion we have is a Notice of
4 Motion, Motion to Compel Production pursuant to
5 Rule 5 and the Brady. We have, of course, both
6 Ms. Thomas when she became Court appointed very
7 early on as far as the public defender's office
8 have done her own Rule 5 and Brady motions to
9 the solicitor on her charge of murder.

10 Thereafter, after June 23rd when the
11 State sought to seek the ultimate penalty and
12 served notice of their attempt to seek the death
13 penalty, I also filed a Rule 5 Brady motion I
14 know. Not in an attempt to do duplication to
15 the State or cause unnecessary duplication or
16 delay, but, again, in an overabundance of
17 caution asking the solicitor to compel any and
18 all information he has in his files.

19 He has an open file policy. I have
20 got four notebooks worth of discovery
21 information. We have provided Mr. Bowman,
22 whenever we get a document from the State or a
23 an analysis from somebody we make sure he has
24 it. And one of the issues that's part of our
25 motion here today is to make sure that we have

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1 gotten every bit of information. Mr. Bailey was
2 kind enough this morning to tell me even while I
3 was out a little bit this week, that he sent
4 some other DNA information into our office.

5 So I know it's been an ongoing
6 situation and we have filed the standard motion
7 to compel any and all information. I know
8 Mr. Bailey, as an officer of the Court, would
9 give us an open file. Ms. Thomas and I will
10 absolutely go to the solicitor's office right
11 near trial, and like we've done in the past,
12 we've counted pages, we have open access to
13 everything. I wanted my client to hear it
14 today, Ms. Thomas to hear today that everything
15 the solicitor gets other than his work product
16 will be coming to us as part of the discovery,
17 at least that he believes is discoverable.

18 One of the issues that we have is that
19 there is no other documentation out here, you
20 know, police agency, FBI we're not aware of,
21 Orangeburg Sheriff's Department, Dorchester
22 County Sheriff's Department, Orangeburg Public
23 Safety document concerning the arrest of
24 Mr. Bowman on the murder charge and the charges
25 that also are sought in the indictment and the

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1 aggravating factors.

2 I would just defer to my colleague
3 whether or not if he knows anything else that's
4 not out here, I'm sure he would discover it
5 according to our rules, ma'am.

6 THE COURT: Thank you.

7 MR. BAILEY: That's correct, Your Honor, I
8 do have an open file policy. Mr. Cummings and
9 Ms. Hardee and I have gone over all the evidence
10 in the possession of the sheriff's office and he
11 has everything I've got. If anything comes to
12 light between now and the time of trial, I'll
13 immediately fax both of them a copy of it.

14 As I read their motion number one,
15 it's specifically addressing DNA evidence, and
16 we have discussed that. Previously Matthew
17 Fitts of SLED did the DNA work on this. And my
18 understanding is that they've hired a defense
19 expert that may or may not testify,
20 Mr. Ostrowski, who has already got the SLED
21 protocols as part of a motion to produce. And I
22 mailed -- I recently received from Mr. Fitts the
23 stuff that was case specific as far as DNA and
24 I've mailed that to the defense and they should
25 have this in their offices by today or Monday at

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1 the latest. So I think we've completely
2 complied with number one, which is to compel
3 production of the DNA material.

4 I would point out that this motion
5 appears to require what DNA material would be
6 produced, if they would do an RFLP test. They
7 did PCR now, so the material that -- we just
8 pretended this was asking the PCR material.

9 THE COURT: Let me be sure that's
10 acceptable. Is that acceptable?

11 MR. CUMMINGS: Yes, ma'am. The DNA
12 investigation after the Proctor case came out
13 demanding a database and the other scientific
14 testing, we wanted to go back and cover the
15 former protocol versus the new protocol PCR.
16 And, judge, respectfully to make sure there is
17 no mistakes in database either of the samples
18 collected by the State versus the samples taken
19 by my client allegedly charged in this crime.

20 THE COURT: So as I understand there's a
21 request on behalf of the defense for the
22 information as it regards the PCR protocol and
23 procedure as well as the earlier procedure.

24 MR. CUMMINGS: Yes, ma'am.

25 THE COURT: All right.

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1 MR. CUMMINGS: I think through our expert,
2 ma'am, we already have in the information in the
3 past, what they used to use on the old protocol.

4 THE COURT: And you're satisfied with that?

5 MR. CUMMINGS: I wanted to cover myself to
6 make sure we don't have any mistakes after the
7 Proctor case, ma'am.

8 THE COURT: All right. I understand. So
9 your request is to have that information
10 forwarded to you again. Tell me, it's the F,
11 the acronym again, F...?

12 MR. BAILEY: RFLP.

13 THE COURT: RFLP.

14 MR. BAILEY: That is the test they used to
15 use.

16 THE COURT: Yes.

17 MR. BAILEY: They use PCR now. In this
18 case they used PCR.

19 THE COURT: I understand.

20 MR. BAILEY: And I'm certain that Mr.
21 Ostrowski has whatever generally he needs that
22 isn't case specific and the recent material
23 would satisfy the rest of the request to
24 produce.

25 THE COURT: I don't know that's what I'm

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1 hearing. Is that what I'm hearing from you, Mr.
2 Cummings?

3 MR. CUMMINGS: I'm sorry, I'll make it very
4 specific, Judge. We had asked accordingly for
5 the old scientific stuff which was the basis, at
6 least in my humble opinion, one of the issues
7 dealing with Proctor where they got their
8 database information from. And the State, not
9 Mr. Bailey but SLED, had argued not to produce
10 those items.

11 THE COURT: Right.

12 MR. CUMMINGS: Therefore, Judge, I went
13 back and covered our former base to make sure
14 there was no errors and now we have new
15 protocol, Mr. Ostrowski is now familiar with the
16 former base and I'll be well familiar with the
17 PCR procedures.

18 THE COURT: So insofar as the discovery is
19 concerned, are you asking for -- as I understand
20 it from Mr. Bailey, Mr. Bailey has said that
21 even though in the request there is -- that it
22 requests the RFLP statistics, et cetera, that
23 Mr. Bailey has treated the request as though it
24 has been a request for the PCR procedures.

25 My question to you is, is that

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1 acceptable to you, or in addition are you also
2 looking for the RFLP information from
3 Mr. Bailey, or are you satisfied that your
4 expert has the RFLP information and you are just
5 looking for the production from Mr. Bailey of
6 the PCR information?

7 MR. CUMMINGS: Judge, I'm satisfied now
8 after speaking with Mr. Ostrowski that we have
9 the RFLP and that we do need the PCR. One of
10 the issues I was going to talk about, I have not
11 seen what was produced this week by SLED, it's
12 probably going to save me some time.

13 Again, Mr. Bailey and I, we have been
14 talking about this case, obviously saw that I'm
15 looking for the new, most updated procedures and
16 that has been now complied with. And I thank
17 the gentleman.

18 THE COURT: Now, I think that it's
19 appropriate then that you amend --

20 MR. CUMMINGS: Yes, ma'am.

21 THE COURT: -- your Notice of Motion and
22 Motion to Compel Production to include the PCR,
23 information on the PCR procedures. I'll
24 certainly entertain an oral request to amend
25 that.

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

2 THE COURT: And I gather you'll consent to
3 that?

4 MR. BAILEY: We'll consent, that's correct,
5 Your Honor.

6 THE COURT: Very well. With regards then
7 to the request of the motion to compel the
8 production of the RFLP, it is the position of
9 the defense at this point that the State has
10 satisfied the production regarding the RFLP by
11 virtue of the fact of the information that is
12 already in the possession of your expert.

13 MR. CUMMINGS: Correct, ma'am.

14 THE COURT: Very well.

15 MR. CUMMINGS: Thank you, Judge.

16 THE COURT: You are then looking to the PCR
17 information which Mr. Bailey tells me he has
18 mailed to you and you should be in receipt of.

19 All right. Does that conclude the
20 motion to compel production number one?

21 MR. CUMMINGS: Yes, ma'am. Because
22 everything deals with, as we said earlier, it
23 kind of paramounts the first issue about open
24 file policy.

25 THE COURT: Yes.

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1 MR. CUMMINGS: As soon as Mr. Bailey told
2 me this morning the DNA evidence has been sent
3 out to both attorneys of record here, and then
4 we'll get a copy for our client this week.

5 THE COURT: All right.

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

7 THE COURT: That would be an order for you,
8 Mr. Cummings, Ms. Hardee-Thomas.

9 MS. HARDEE-THOMAS: Thank you.

10 THE COURT: All right. Then motion number
11 two, the Notice of Motion and Motion to Inspect.

12 MR. BAILEY: Your Honor, we would consent
13 to that. I think that's been pretty much
14 complied with already.

15 THE COURT: All right.

16 MR. BAILEY: Your Honor, would it help if I
17 could go through the list and indicate which
18 ones I've reviewed and agreed to?

19 THE COURT: Thank you so much. Yes, it
20 would, Mr. Bailey.

21 MR. BAILEY: And there may be some other
22 ones in addition that I would agree to.

23 THE COURT: Certainly as we have some
24 discussion, I understand.

25 MR. BAILEY: Number two, number seven,

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1 number 10, 13, 14, 16, 17, 18, 20, 29, 30. And
2 on the renumbered ones.

3 THE COURT: Yes.

4 MR. BAILEY: I'll get those numbers.

5 THE COURT: Sure.

6 MR. BAILEY: Thirty-six and 37.

7 THE COURT: All right. What I would ask,
8 and I'll ask for a volunteer on this one, is for
9 an order just setting down those consents.

10 MR. CUMMINGS: Judge, what we'll do is
11 Marva and I will prepare the order and make sure
12 Mr. Bailey signs it. All three lawyers will
13 sign the consent order then.

14 THE COURT: Very well, thank you.

15 MR. CUMMINGS: Yes, ma'am.

16 THE COURT: All right. Then that will take
17 us up to number three. Let me hear from you.

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

20 THE COURT: Yes.

21 MR. CUMMINGS: This is basically,
22 hopefully, a very short, self-explanatory motion
23 here.

24 THE COURT: It is.

25 MR. CUMMINGS: Your Honor, the State in its

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1 infinite power, its infinite ability to have
2 unlimited resources other than the county and
3 the State budget of Mr. Bailey's office, they
4 have computers, they have qualified, trained
5 experts and investigators to go on out and be
6 able to talk to witnesses. Of course as we get
7 witnesses, information by Rule 5 and Brady, and
8 of course as we get information from the State
9 as to who might testify, we would like to have
10 as much information as possible like any defense
11 attorney would like to have about anybody who's
12 going to testify.

13 We know the law enforcement officers.
14 We've always had access to all the law
15 enforcement officers through Mr. Bailey through
16 our sheriff and other town officials, ma'am.
17 But it's the investigators who might live in a
18 housing project, it might be a witness who might
19 live or work out of the area. And in our mobile
20 society today trying to find people is very,
21 very difficult. We have an investigator
22 assigned to the case, one man. We have each
23 other and other than that, Judge, that's it.

24 We are not asking them to do our job
25 for us, we're not asking them to make it easy,

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1 but one of the issues, and we are well put on
2 notice about our Supreme Court rules that say
3 now not to go near jurors, not to go near
4 prospective jurors, but State's witnesses, if
5 there's any way feasible or possible, usually
6 when they do an incident report or take a
7 statement they write their name down and an
8 address. A lot of statements were taken in this
9 case where there's not an address written down
10 for the witnesses.

11 I know the State does not --
12 Mr. Bailey's not out there the first night at
13 the scene, he's not out there telling the
14 officers get a statement from that witness and
15 we need full name, address, Social Security
16 number. We would like to have any prospective
17 list, and I know Mr. Bailey's preparing for
18 trial like we are, of any witnesses that he may
19 deem appropriate to be called, that we try to
20 get their addresses and give the defense an
21 opportunity to try to get us any and all
22 witnesses if that's possible.

23 We understand if they don't want to
24 speak to us, we can't compel them, we can't make
25 them do that, and I know the State has never

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1 told a person not to speak to us. But that's
2 why we have motion number three filed, ma'am, to
3 try to put this in some logical order, like
4 we're trying to do for Her Honor today, to give
5 us access to anybody who might give inculpatory
6 or exculpatory statements for Mr. Bowman.

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

8 MR. BAILEY: Your Honor, the State would
9 oppose that. And if I could be heard briefly on
10 that.

11 THE COURT: Sure.

12 MR. BAILEY: My reading of the motion is
13 if -- they want the names of all State's
14 witnesses, in addition to that they're asking
15 for addresses and telephone numbers of any
16 potential witnesses the State may call.

17 I think we need to start off with the
18 basic rule of discovery, that there is no right
19 of discovery in general sessions court unless
20 there's case law or a rule that requires
21 discovery. To my knowledge, the only rule that
22 addresses discovery in a criminal case is Rule
23 5. There's nothing in Rule 5 that requires the
24 production of the witness list ahead of time.

25 Secondly, Your Honor, Brady and the

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1 cases following Brady would require us to
2 disclose exculpatory information. That does not
3 address lists. So I think when you read those
4 cases together, and I'm going to cite a couple
5 of cases here, the proposition there's no right
6 of discovery in criminal case unless provided
7 for by statute, rule, or case law, and that's
8 State vs. Smart, State vs. Claff and Arnold.
9 And I'd specifically state State vs. Earl
10 Matthews, which was a South Carolina death
11 penalty case, and I'd quote from that case. And
12 I'll wait until the train comes by, if I could.
13 "No right to discovery exists in a criminal case
14 absent statute or court rule." In the other
15 case they quote would be State vs. Gloria
16 Rackley, which is also a South Carolina death
17 penalty case that ended up in a life sentence, I
18 believe, saying pursuant to Rule 17 -- Section
19 17-19-80, person indicted for capital offense is
20 entitled to a true copy of the indictment, but
21 not the names of witnesses, at least three days
22 prior to trial.

23 My concern, Your Honor, is that I
24 notice that the defense is turning over
25 everything they get by way of discovery to their

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1 client, which they should do and they have an
2 obligation to do that if he wants it. But I've
3 got a real problem giving witness telephone
4 numbers to Mr. Bowman.

5 And prior to the selection of the jury
6 I'm going to request that both the State and the
7 defense, pursuant to State vs. Powers, provide
8 the Court with a list of potential witnesses so
9 that any -- so that a jury can be selected
10 that's fair to both sides so they would have it
11 at that stage, but I would object to producing
12 that list at this point.

13 THE COURT: Yes, sir.

14 MR. CUMMINGS: If it please the Court,
15 Judge. I would stipulate, and probably there's
16 nobody more in this room than I that hates
17 telephones, I would stipulate that any
18 information, if we were to get this information
19 from the State, that any and all phone numbers
20 that were provided to us as officers of the
21 Court, Ms. Thomas and I, that nothing would
22 leave our office, we would redact any -- as a
23 matter of fact, the solicitor could actually do
24 this if he wanted to, he could have the phone
25 numbers in his office and keep them there and

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1 just give us the names and addresses of the
2 witnesses. And then if we could not find them
3 by knocking on a door or otherwise, then go back
4 to the solicitor's office and say, may I please
5 have the phone number of witness number 12.

6 And, Judge, he's absolutely correct,
7 this is a state of flux for our nation, this is
8 a death penalty trial, we are very limited. We
9 just now had rules of criminal procedure in our
10 state after centuries. Your Honor, respectfully
11 Rule 5 and Brady at least gives us a chance to
12 get what information we can for our client.

13 You know, if I am looking at the cases
14 under Matthews also, it doesn't say that they
15 can't give it to us, it's just saying they don't
16 have to. And respectfully that's one of the
17 issues we've always had in this county and this
18 bench and bar, is that we do have an open file
19 policy and we usually know who the witnesses
20 are.

21 Your Honor, respectfully we're not
22 asking for anything that's going to place those
23 witnesses in harm's way, and if the phone
24 numbers were an issue we would stipulate or
25 consent, we would not take those phone numbers

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1 unless we needed them.

2 THE COURT: All right. What of that,
3 Mr. Bailey?

4 MR. BAILEY: That would certainly alleviate
5 that one fear I had, but it doesn't get back to
6 the basic problem that there's no statutory --
7 no statute, no case, no rule that provides for
8 that. And our Supreme Court specifically
9 addressed that issue in the Rackley case and
10 said the defense was not entitled to it.

11 THE COURT: I'll read those cases,
12 gentlemen.

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

14 MR. BAILEY: Your Honor, I don't want to
15 preempt Mr. Cummings, but the next one appears
16 to be basically the same thing and I would
17 oppose that and incorporate the same argument I
18 made.

19 THE COURT: All right. Is there any
20 difference in it that I need to be aware of?

21 MR. CUMMINGS: Judge, maybe just a term of
22 art, language to deal with expert witnesses,
23 which the State has always given us access to
24 State expert witnesses. And, again, a lot of
25 these motions come from the Death Penalty

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1 Resource Center, a lot of the motions are coming
2 today from our two well-known people, Mr. Brupt,
3 Mr. Bloom and trying to cover every basis we can
4 for not only this trial, but anything that may
5 occur in the future. We're trying to make sure
6 that we file every legal motion we can without
7 tying up His Honor, or Mr. Bailey's time.

8 THE COURT: I understand that and I
9 certainly have no problem with that whatsoever,
10 and been there myself.

11 MR. CUMMINGS: Yes, ma'am.

12 THE COURT: I understand that, Mr.
13 Cummings, but what I want to be sure and what
14 I'm hearing from Mr. Bailey is that these two
15 motions do appear to be the same. Is there
16 something that's different about the motion
17 number four that ought to be addressed so
18 that -- so that in ruling on one, then I've
19 ruled on the other? Do you see what I'm saying?

20 MR. CUMMINGS: Yes, ma'am. They would be
21 parallel to each other, Your Honor, and I thank
22 Your Honor.

23 THE COURT: All right. Very well. Very
24 well. All right then. With regards to number
25 six, that's the experts.

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1 MR. CUMMINGS: Yes, ma'am.

2 THE COURT: Qualification list of cases.

3 MR. CUMMINGS: Yes, ma'am.

4 THE COURT: Yes, sir, Mr. Bailey, with
5 regards to number six.

6 MR. BAILEY: Your Honor, if I could back up
7 here.

8 THE COURT: Sure.

9 MR. BAILEY: I'm not sure if we addressed
10 number five, is that --

11 THE COURT: I thought number five was --
12 number five or number four?

13 MR. BAILEY: My reading of three, four, and
14 five is they're pretty much all the same, asking
15 for complete witness list.

16 THE COURT: Well, as I understand number
17 six, Motion for Information Concerning Potential
18 State's Witnesses Being Expert Witnesses.

19 MR. BAILEY: Okay.

20 THE COURT: It's a little bit of
21 information beyond the names, the addresses, and
22 the telephone numbers. There is a request with
23 regards to expert witnesses for a list of cases
24 in which the expert has testified, prepared, or
25 prepared material for testimony. It's a little

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1 bit different, but I gather your argument is the
2 same.

3 MR. BAILEY: Okay. I understand. But I
4 didn't realize we said anything about number
5 five. We addressed three and four and then you
6 were getting into six, but I didn't know if
7 there was anything in the record on number five.

8 THE COURT: All right.

9 MR. BAILEY: I apologize if I overlooked
10 it.

11 THE COURT: No. No, I'm with you. All
12 right. Okay. Let me hear from you with regards
13 to number five.

14 MR. CUMMINGS: May it please Court, Judge?

15 THE COURT: Yes.

16 MR. CUMMINGS: They're are not a specific
17 parallel to number five.

18 THE COURT: All right.

19 MR. CUMMINGS: But, Judge, again, we cite
20 under our basic principles that any and all
21 prosecution witnesses that we have notice of
22 them, Judge, to make sure that we know whether
23 or not -- and, again, Judge, this is basically
24 not trying to limit the State, but we anticipate
25 there's probably at least 25 to 50 people the

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1 State may potentially call, from laywitnesses to
2 include experts.

3 And we may be chasing the proverbial
4 tail of the dog trying to find out what
5 witnesses may be called, may not be. Again, I'm
6 not trying to ask Mr. Bailey to do our job for
7 us, but if we could get the list of the
8 prosecution witnesses that he knows he's going
9 to call, that will clearly limit and allow us
10 to --

11 THE COURT: Prepare.

12 MR. CUMMINGS: -- basically undo what we
13 really asked for on the top two motions about
14 trying to chase down who's really going to
15 testify, who's not. Again, I know that plays
16 into the heart of the gentleman's case in chief.
17 I am not trying to limit him in his case in
18 chief, we're just trying to help our defense and
19 our case in chief for our client.

20 THE COURT: Thank you. Yes, sir.

21 MR. CUMMINGS: Yes, ma'am.

22 THE COURT: I would think that your
23 argument would be the same or similar.

24 MR. BAILEY: That's correct, Your Honor. I
25 don't see any real difference in three, four,

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1 and five. They're asking for a witness list.

2 THE COURT: Just if there's a problem with
3 getting it two months in advance, or nearly two
4 months in advance. How about two weeks?

5 MR. BAILEY: Okay.

6 THE COURT: All right. And then we're on
7 to the experts.

8 MR. BAILEY: And, Your Honor, I think Mr.
9 Cummings already argued that the State, again,
10 would oppose that on the same basis. Number
11 one, I don't have that information. I don't
12 routinely ask a potential expert witness for a
13 CV ahead of trial time. I don't think there's
14 anything in Rule 5 or Brady that require that
15 production. It's a form of discovery that
16 there's no statutory, no precedent for it, no
17 basis for it that I'm aware of.

18 Of course as these people testify
19 they're subject to cross-examination, prior
20 cases that they testified, it can be inquired
21 into at that time. But if I had the information
22 I would have provided that already to them. I
23 don't have it, and don't routinely ask those
24 people for it ahead of time.

25 THE COURT: Yes, sir.

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1 MR. CUMMINGS: Judge, we felt this motion
2 was material and important. In particular in
3 light of what happened in the state of Oklahoma
4 where the head chemist had routinely testified
5 to findings that were not scientifically
6 correct. And, Your Honor, respectfully we're
7 not saying that any expert witness that would be
8 called by the State or is granted by the State,
9 such as the state hospital people to include
10 chemists, but if they have their CV, curriculum
11 vitae, or if they have particular expertise in
12 analysis, we may be able to move the case
13 quicker and stipulate to some of their expertise
14 instead of, you know, going through Her Honor's
15 procedures to qualify the expert.

16 And, again, you're the sole judge of
17 the facts, Judge, whether or not they are
18 experts, but it might help us. And if we know
19 they're published, if we know their writings in
20 particular, that it may assist the defense also
21 in helping move the case along. But in
22 particular, Judge, I don't want anybody
23 testifying, I know Mr. Bailey would not ever
24 intentionally do that, have somebody come up
25 here and try to be an expert and they're really

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1 not.

2 We've had other testimony in our cases
3 where policemen tried -- a state solicitor, not
4 our solicitor, tried to put an officer up there
5 and say he was an expert in shoe casts. And
6 that was thrown out. And that's why we like to
7 know any experts, DNA, latents, whoever, if
8 they're coming in here, let us know about them.
9 You know, it's total open disclosure in here.
10 We're not seeking civil discovery where I've got
11 to go take a deposition, just let me know about
12 the person and it may move this thing along
13 quicker.

14 THE COURT: Very well. Thank you very
15 much. That will obviously -- I need to read a
16 little bit about that and consider that and I
17 will do that.

18 With regards to the motion to reveal
19 the deal.

20 MR. CUMMINGS: Thank you, Judge. Your
21 Honor, in this case in particular, and if I may
22 take a little time on this one.

23 THE COURT: Yes, you may.

24 MR. CUMMINGS: There are two named
25 co-defendants, Mr. Gadson in particular, Judge,

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1 who is sitting across the street in the county
2 jail, and there's another young man who is out
3 on bail or bond, Mr. Felder.

4 And as any prosecutor would do, I'm
5 sure, Judge, that witnesses will be called in
6 this case, co-defendant statements. One of the
7 issues that we have always had in court, and, of
8 course, case law and state law does provide that
9 the solicitor would reveal the deal for any
10 testimony because that would be impeaching
11 information against the gentleman or lady taking
12 the stand. We have a number of family members
13 that have been charged in this case against
14 Mr. Bowman. And that limits his outside contact
15 to the real world. His wife has been charged
16 with an offense in this case and is represented
17 by counsel, but Marva and I cannot go and
18 approach, speak to her, counsel has objected to
19 that.

20 But there are two main co-defendants,
21 Mr. Felder, Mr. Gadson. And I know the
22 solicitor, Your Honor, if there has been a deal
23 cut I would ask that that be revealed today. I
24 don't believe there's any news media here. I
25 would ask if there's any deals, so we can have

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1 that way ahead of time to seek impeachment, it
2 goes to the truth and voracity of the witness,
3 it goes to their motive and maybe testifying in
4 this case. And, Your Honor, respectfully I
5 think this is very apropos, or very appropriate
6 for Mr. Bowman to know what these alleged
7 co-defendants are saying against him, Judge.

8 THE COURT: Yes.

9 MR. BAILEY: You Honor, I agree he's
10 entitle to the information and I'll provide that
11 for him now. As far as James Tawain Gadson,
12 he's represented by Gene Dukes. As of now
13 there's no agreement with Mr. Dukes for his
14 testimony.

15 THE COURT: All right.

16 MR. BAILEY: Travis Felder is represented
17 by Charles Williams. Again, no agreement of any
18 type with Mr. Williams. And there's a Darian
19 Williams who's also charged, not with murder but
20 with either misprision or accessory.

21 THE COURT: Who's representing him?

22 MR. BAILEY: I believe Charles Feeley was
23 appointed to represent him, but there may be
24 something in the works to have somebody else
25 represent him, there's nothing there.

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1 Your Honor, Mr. Bowman's wife, Dorothy
2 Bowman, is charged with accessory after the
3 fact. She has agreed to testify if called by
4 the State and will receive a probationary
5 sentence for that. His two sisters, Kendra
6 Bowman and Yolanda Bowman, are both charged with
7 accessory after the fact, they have both agreed
8 to plead for probation and they're expected to
9 be called to testify as to what they know.

10 THE COURT: Is Kendra Bowman and who? Tell
11 me again.

12 MR. BAILEY: Kendra and Yolanda. And I
13 believe that's the extent of it, of anybody else
14 charged. The only three plea agreements that
15 are in existence involve the wife and two
16 sisters. His father is also charged, Marion
17 Bowman, Sr. with accessory after the fact,
18 represented by Glenn Walters. No agreement of
19 any type with Mr. Walters.

20 MR. CUMMINGS: Thank you, Judge. And I
21 don't want to speak while Your Honor is writing,
22 I apologize.

23 THE COURT: Okay. Thank you.

24 MR. CUMMINGS: Thank you, Judge. I'm
25 sorry. I know that our motion is ongoing, just

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1 like Rule 5 and Brady is continuous, as an
2 officer of the Court I know if the solicitor has
3 any offers to any of these people charged with a
4 crime or allegedly facing any possible deals, I
5 know this gentleman would provide Ms. Thomas and
6 I immediately. And that's what we're asking for
7 if this does happen.

8 We've not been able to talk to any of
9 these folks because of counsel and because of
10 facing charges. We now have learned that the
11 wife and two sisters have been offered some deal
12 and we would get that respectfully back from the
13 court reporter in writing. But, Your Honor,
14 respectfully, I know it's an ongoing issue and I
15 know Mr. Bailey would tell us and I'm asking
16 that my motion continue ongoing.

17 THE COURT: This is also closely related to
18 motion number 10, I gather.

19 MR. CUMMINGS: Yes, ma'am.

20 THE COURT: And then we'll move on because
21 I do think there may be some others that are
22 related. Likewise, as I understand it, if --
23 well, let's handle number 10 in just a few
24 minutes because it is a little bit different, so
25 we'll do that in just a minute.

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1 But with regards to number seven, as I
2 understand it there have been no deals, there
3 have been no grants of immunity or plea
4 agreements and the like for Mr. Gadson,
5 Mr. Felder, Mr. Williams, and Mr. Marion Bowman,
6 Sr.

7 MR. BAILEY: That's correct.

8 THE COURT: And with regards to Dorothy
9 Bowman, Kendra Bowman, and Yolanda Bowman, that
10 they intend to and have agreed to plead guilty
11 and to testify if requested.

12 MR. BAILEY: That's correct, Your Honor.

13 THE COURT: Okay. Very well.

14 MR. BAILEY: If any other agreements are
15 consummated we will, of course, provide that
16 information immediately to the defense.

17 THE COURT: All right. And that would be
18 the extent of anyone who the State intends to
19 call as a witness who's been offered any sort
20 of --

21 MR. BAILEY: That's correct. There's
22 nobody outside of the family that's been offered
23 any inducement of any type to testify.

24 MR. CUMMINGS: Mr. Bowman just whispered in
25 my ear and I wanted to make sure that he heard

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1 that correct.

2 THE COURT: Sure.

3 MR. CUMMINGS: That his wife, that she was
4 going to plea to the charge as charged and would
5 receive a probationary sentence at the
6 discretion of the Court?

7 MR. BAILEY: That's correct.

8 MR. CUMMINGS: Kendra --

9 THE COURT: Okay. So the agreement is
10 probation for Dorothy Bowman, Kendra Bowman, and
11 Yolanda Bowman. All right. And she would
12 testify if requested.

13 MR. CUMMINGS: Thank you, Judge.

14 Again, the solicitor has made it clear
15 there have been no immunity deals in our motion
16 number 10.

17 THE COURT: That's as I understand it no
18 immunity.

19 MR. CUMMINGS: Yes, sir. Thank you, Judge.

20 THE COURT: Isn't that right, no immunity,
21 no one has immunity?

22 MR. BAILEY: No one has immunity, that's
23 correct.

24 THE COURT: All right. Number nine.

25 MR. CUMMINGS: I think we skipped number

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1 eight, unless we missed it.

2 THE COURT: I'm reading the wrong place in
3 my notebook, I'm sorry, number eight.

4 MR. CUMMINGS: Our motion number eight is
5 for any impeaching information. Obviously,
6 Judge, I'm sure the solicitor knowing procedures
7 of our office and the solicitor's hard work on
8 the files, I'm sure there's been rap sheets done
9 on witnesses, I'm sure there's been any
10 information that has come through their
11 investigators of their office about any
12 impeaching information, because any good
13 prosecutor would know how their witness may be
14 attacked -- or the State's witness, excuse me,
15 by any defense attorney if they learn of
16 something.

17 We're asking that any and all rap
18 sheets -- and, again, one of the issues that
19 we're evolving, Judge, is whether or not
20 juvenile issues may be discoverable by the
21 defense. And we're asking if the State has any
22 impeaching information against any of their
23 witnesses, and that's why the witness list was
24 important earlier on, Your Honor, would be to
25 try to learn any impeaching or exculpatory

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1 information on behalf of Mr. Bowman, ma'am.

2 I think Your Honor knows the purpose
3 of the motion, I know the solicitor normally, if
4 ordered, will give us copies of rap sheets. And
5 we're asking if we can get copies of people that
6 he is going to call who have a criminal record,
7 or have impeaching information against them,
8 ma'am.

9 THE COURT: Thank you.

10 MR. CUMMINGS: Yes, ma'am.

11 MR. BAILEY: Okay. Your Honor, if I could
12 address the motion as written, because I read it
13 a little bit different than the argument.

14 THE COURT: Sure.

15 MR. BAILEY: There's a little bit of
16 confusion on it.

17 THE COURT: Sure.

18 MR. BAILEY: I agree in general to comply;
19 I do have some reservations. Paragraph one
20 appears to duplicate the previous motions in
21 wanting names of witness lists and so forth. I
22 guess that would be still an issue pending your
23 ruling on motions three, four, and five.

24 I have run, had rap sheets run on some
25 of the witnesses that I suspected might have a

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1 record and those have been provided to the
2 defense. I have not routinely run rap sheets on
3 all potential witnesses because you've got
4 doctors, law enforcement officers, people that
5 you wouldn't expect to have a record. But
6 whatever information I have that would disclose
7 a record, I'll produce that to the defense.

8 Paragraph five requests any and all
9 personnel files for any witness for the State.
10 And I'm not sure Mr. Cummings is really asking
11 for that, because he said he only wanted
12 impeaching information. I would, if he wants
13 personnel files just for the sake of fishing
14 through them and seeing what he can dig up, I
15 would object to that. I think there's a case on
16 point, State vs. Johnny Bennett, South Carolina
17 death penalty case, where it said it was not
18 error to refuse disclosure of personal files for
19 correctional officers in that death penalty
20 case.

21 So I would object to producing
22 personnel files that I -- and I don't have to
23 produce at any rate. Certainly any impeaching
24 information that I have I will provide to the
25 defense.

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1 MR. CUMMINGS: May it please the Court?

2 I'm sorry, Judge.

3 THE COURT: Yes, sir.

4 MR. CUMMINGS: I wanted to give you a
5 moment, Judge. Solicitor's correct, as far as
6 personnel information, one of the things we're
7 very lucky about in our county and the adjoining
8 counties, that if an officer has been fired for
9 cause, or if an officer has been let go, like we
10 got allegedly the trooper up in Orangeburg
11 County right now who has been charged with
12 inappropriate action, we all know about that,
13 Mr. Bailey would bring it to our attention. We
14 have the gentleman in our courtroom here, you
15 know, former major of the sheriff's department,
16 they tell us. I do not want the personnel
17 folders, I talked to Ms. Thomas about that.

18 It is in our standard motions, in the
19 State's motions and Death Penalty Resource
20 Center, but I believe, Judge, if there was a
21 particular issue about an officer either having
22 been discharged from a department and brought
23 over that I would make a specific motion and I
24 would notify the solicitor before trial. If I
25 learn of something that might require a

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1 personnel issue, then I would bring that
2 correctly. Number five is a general part of
3 this motion.

4 THE COURT: All right.

5 MR. CUMMINGS: I apologize, Judge, I'm not
6 asking to impeach anybody's privacy working for
7 a department. That is not something Mr. Bailey
8 normally has in his office, but I did want to
9 specifically reserve if we learn, God forbid, of
10 an officer having an inappropriate sanction,
11 suspension, or whatever, I would bring the
12 appropriate motion.

13 THE COURT: I understand. At this time
14 then that portion of the motion is withdrawn at
15 this time.

16 MR. CUMMINGS: Correct, Judge.

17 THE COURT: Certainly can raise it if it
18 becomes relevant in the future.

19 MR. CUMMINGS: Thank you, ma'am. Also I
20 believe Mr. Bailey stating he would give us rap
21 sheets that are appropriate. If we come across
22 something with information, say, I'm going to
23 pick an adverse name, a Dr. Smith.

24 THE COURT: Yes.

25 MR. CUMMINGS: If we learn that Dr. Smith

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1 might have been defrocked in Minnesota for doing
2 something wrong, that I would bring that to
3 Mr. Bailey's attention. Or if he learns of that
4 I would ask him as an officer of the Court, of
5 illegal conduct, I'm sure he would tell us.

6 MR. BAILEY: I'll be happy to.

7 MR. CUMMINGS: Thank you, Judge.

8 THE COURT: All right. What I am hearing,
9 I'm actually hearing, Mr. Bailey, from you that
10 you certainly -- with regards to rap sheets,
11 with regards to impeachment-type information
12 which I'm hearing both of you talk about rap
13 sheets at this point, that if you have -- the
14 ones that you have run that you're going to
15 share those.

16 MR. BAILEY: That's correct.

17 THE COURT: And what I'm hearing from the
18 defense is that that is acceptable. That if you
19 learn of anything in the future, that you will
20 share that as well. And if Mr. Cummings learns
21 of something and is in need of a rap sheet I
22 gather he'll take that up with you. And if you
23 all do not work that out, then you'll bring it
24 to the Court. It seems as though then that this
25 particular motion, motion number eight, has been

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1 consented to. Am I correct in that, gentlemen?

2 MR. CUMMINGS: With modification, yes,
3 ma'am, of number five.

4 THE COURT: Yes. That continues today, but
5 it may not be so in the future.

6 MR. CUMMINGS: Correct.

7 THE COURT: Very well. Then the next
8 motion is number nine.

9 MR. CUMMINGS: Thank you, Judge.

10 THE COURT: Yes.

11 MR. CUMMINGS: Your Honor, again, this
12 parallels probably number three, four, five, and
13 some of the others. Our motion is to comply
14 with disclosure. Again, Ms. Thomas and I, I
15 know, will be warmly welcomed back in the
16 solicitor's office to review the pages and
17 files. We met a couple weeks ago, went over
18 every piece of evidence that was in the
19 sheriff's department's possession sent back from
20 SLED, or knowingly held by them for whatever
21 reason. We met, we went over things together.

22 I know, at least I've been lucky
23 enough not to have anything ever withheld in any
24 of the previous death penalty trials we tried
25 against each other, but I've done this in order

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1 to protect my client to make sure that we've
2 covered the record, that not only Mr. Bailey,
3 but any law enforcement officers that are
4 involved in this case.

5 THE COURT: Yes.

6 MR. CUMMINGS: And, again, they're not here
7 today. Like the sheriff of this county would
8 not sandbag us with a piece of paper knowing
9 that somebody came in and said that Johnny Smith
10 confessed to the crime, or any law enforcement
11 agency that would normally report to the
12 solicitor.

13 THE COURT: Yes. Mr. Bailey, and I gather
14 as I understand your argument earlier, it is not
15 only your intention to comply with disclosure,
16 but that you think you've done it and you
17 continue to do it sounds like almost on a weekly
18 basis certainly.

19 MR. BAILEY: As I get something I give that
20 to the defense. And when we get Ms. Short I
21 would go ahead and fax it unless it's a large
22 volume of material.

23 Your Honor, the motion is drafted,
24 number nine, as I read it would seek to have me
25 make a copy of everything for the Court or turn

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1 my file over to the Court and have the Court
2 make a copy of my entire file. And I think that
3 Mr. Cummings, since he didn't argue that, I
4 don't want to talk for him, but is potentially
5 abandoning that interpretation of the motion.

6 MR. CUMMINGS: I'm sorry, I thought it was
7 on number nine. And number 11 stands for the
8 motion --

9 THE COURT: Moves the Court to make
10 photostatic copies.

11 MR. CUMMINGS: Right. I'm not abandoning
12 it. I don't want to burn up his copy machine,
13 but one of issues that always comes up on the
14 appellate record is did we get the entire
15 solicitor's file. And that is the very first
16 C?DyP question I'm asked for by appellate defense, God
17 forbid there is an adverse verdict to
18 Mr. Bowman. And, Judge, one of the issues that
19 we have done in the past, we did it with Rocky
20 Anderson, Mr. Bell --

21 THE COURT: This is a grammar quiz,
22 Mr. Bailey. You're reading it that you're
23 moving the Court for Mr. Bailey to make
24 photostatic copies, or for you to make
25 photostatic copies?

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1 MR. CUMMINGS: To Mr. Bailey to take his
2 file and deliver it to Your Honor's office. In
3 other words, goes down to the clerk's office,
4 but it would be here for infinitum for anybody
5 to examine or review later on, God forbid, so
6 that Mr. Bailey has complied with discovery.
7 He's an honorable solicitor, he is -- I say this
8 to everybody, you know, it burns up his --

9 THE COURT: He does want that.

10 MR. CUMMINGS: Yeah. I want it for the
11 record, I want it for the Court's protection.
12 Because one of the issues that also comes up is
13 whether or not we got the entire file, we got
14 every piece of paper against the defendant that
15 he was indigent and, therefore, relies on
16 everybody doing the work for him.

17 THE COURT: And so tell me what you're
18 telling me.

19 MR. CUMMINGS: I hate to say it, when he
20 makes four copies if he'll -- of his file, one
21 for Ms. Thomas, one for me, one for whoever his
22 case investigator may be, whatever he does, and
23 one for his own office, that we have the file
24 delivered to Your Honor, even if it's at the end
25 of the trial, to have it sealed and preserved

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1 down in the clerk's office so that the people
2 who are the academics thereafter can review it
3 and be satisfied that Mr. Bailey, as an officer
4 of the Court and the chief prosecutor in the
5 case, has complied with Rule 5, Rule Brady, the
6 rules of the Court and Her Honor's instructions
7 and the case file's been turned over for
8 everybody thereafter to look after to see if
9 we've missed something, or that we did not get
10 something that might have been inculpatory -- or
11 exculpatory, excuse me, ma'am, to Mr. Bowman.
12 It's really a duplication of everything, but
13 it's really --

14 THE COURT: Let me ask you this question:
15 It sounds to me that this may be, it may be
16 premature. And because what I'm hearing is that
17 at the end of the day that there is a request on
18 behalf of Mr. Bowman that the file, as it will
19 be then the file, that it be preserved.

20 MR. CUMMINGS: Correct, ma'am. But I know
21 if we didn't bring the motion ahead of time
22 Mr. Bailey is going to be up here in trial with
23 us for the two to three weeks that we anticipate
24 here. He's got an office staff, clearly, but,
25 again, not taking for my adversary here, but

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1 it's his case in chief, it's his file. And as
2 an officer of the Court he has a great security
3 reason to have everything delivered to the Court
4 in complying with my motion to make sure
5 Mr. Bowman's protected.

6 THE COURT: That's a little bit different.
7 I think that's a little bit different. In other
8 words, I think that you are seeing this as a
9 part of the discovery process as was I,
10 Mr. Bailey, but I think that what Mr.
11 Cummings -- I think he's satisfied that he is
12 receiving discovery at this point. I think his
13 concern is at the end of the day that there be a
14 copy made and either you keep the copy and seal
15 the original or vice-versa.

16 MR. BAILEY: Your Honor, what I've done in
17 the past that might help resolve the situation.

18 THE COURT: Sure.

19 MR. BAILEY: I intend to do it in this
20 case, too, is whenever I send discovery to the
21 defense I itemize it, I send a cover letter.
22 And I've got that in a separate file and I've
23 been copying that file and asking the Court to
24 make that a Court's Exhibit so that there is a
25 record, a court record of the -- not the

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1 discovery itself, but the cover letter itemizing
2 and describing the discovery. And I would do
3 that again in this case.

4 I do have a problem with copying my
5 entire file even if it's sealed. I mean, at
6 some point it's going to be unsealed. And my
7 open file policy applies to whatever I get from
8 law enforcement or other sources, it doesn't
9 include my private notes and that type thing,
10 impressions I might write down.

11 THE COURT: Sure. Surely. Your work
12 product.

13 MR. BAILEY: I would object -- that's
14 correct, Your Honor. I would object to having
15 my work product sealed up somewhere to be opened
16 up. Could be misinterpreted at some point.

17 THE COURT: Surely.

18 MR. CUMMINGS: That's one of the dilemmas
19 we have, Judge. I can't argue today what's
20 going to happen in the future of one of the
21 issues that we've always been requested by
22 appellate defense and other people that are
23 academics on this issue, is to make sure they
24 get the entire reason -- probably it is more
25 subjective than it is argumentative as to the

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1 State's reason for seeking the death penalty,
2 what they did to go about the trial preparation,
3 what they did to seek the ultimate trial, and
4 therefore the whole file is delivered usually to
5 the Court, it's downstairs, the attorney general
6 can come and visit it, if need be later on
7 appellate defense can come visit it as they deem
8 appropriate.

9 It's only basically because some
10 people have not complied in years past. We
11 don't have that issue here because I know that
12 every piece of paper is going to be given to me
13 by Mr. Bailey. And I'm saying that with my
14 client sitting here looking at me, and that I
15 trust this man that well. And I do for one
16 reason. You've had a closed bench and a closed
17 bar and one of the things is that this man is
18 not going to leave something out that's going to
19 exculpate or inculcate this man because his
20 life's at stake, but, again --

21 THE COURT: All right. This is going to be
22 the order. This is what I'm going to order. I
23 am going to order at the conclusion of this
24 trial that a copy of the file, not the original,
25 not Mr. Bailey's original, but a copy of

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1 Mr. Bailey's file be filed with the Court. I'm
2 happy to seal it if he wishes it to be sealed.

3 I do not want his work product.

4 Mr. Bailey, I do not want your work product in
5 that file. I will, however, order that you
6 keep, and I bet you do already, but would order
7 that you just keep your work product in the
8 event that it is ever, for whatever reason,
9 required. But I'm not going to have you file
10 that even if the file -- if you wish the file to
11 be sealed.

12 But obviously if it is sealed then it
13 must be acceptable, or accessible, in the event
14 of any sort of appellate process if it becomes
15 relevant, or post-conviction relief process, or
16 other posttrial need. But I do think it's
17 appropriate that the file be preserved, but not
18 your work product.

19 MR. CUMMINGS: If it please the Court,
20 Judge, just for the record, ma'am.

21 THE COURT: Sure.

22 MR. CUMMINGS: That you would please note
23 our objection to the record, respectfully.

24 THE COURT: Certainly.

25 MR. CUMMINGS: And the basis of our

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1 objection was to have somebody hereafter to look
2 at the file, a complete look at the file
3 including notes.

4 THE COURT: Certainly.

5 MR. CUMMINGS: But we understand Your
6 Honor's ruling.

7 THE COURT: Sure. It's not going anywhere.
8 It's just a question of whether or not it will
9 be placed -- if it will remain with Mr. Bailey
10 or if his work product will be automatically
11 placed with the Court. And I think that -- and
12 I think it's important that I would put on the
13 record that those are two different kinds of
14 information, one of them is clearly
15 discoverable, the other there ought to be --
16 there ought to be a hearing and Mr. Bailey,
17 quite frankly, afforded an opportunity to object
18 on behalf of the State, and if necessary
19 himself, with regards to that work product.

20 And I am not at this point ruling one
21 way or the other whether or not it's ultimately,
22 if needed, discoverable. What I am determining
23 is that it is premature for the Court at this
24 point to order that work product be made
25 available in the future for whatever purpose we

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1 cannot, do not at this point.

2 But I do think it's appropriate that
3 the file be preserved in its entirety, but that
4 the work product is an issue that ought to be
5 raised with more specificity so that the Court
6 can address specifically those needs at that
7 time. And I certainly do note your objection
8 for the record.

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

10 THE COURT: Very well. All right. You
11 need an order on that? I think, Mr. Bailey, I'm
12 going to ask you to draft an order.

13 MR. BAILEY: All right.

14 THE COURT: And then we're on to number 10,
15 which I have a consent, is consented to.

16 MR. CUMMINGS: Correct, ma'am.

17 THE COURT: All right. And then number 11.

18 MR. CUMMINGS: Basically touched on by
19 motion number nine, Judge.

20 THE COURT: Yes.

21 MR. CUMMINGS: But this one is particular
22 in making prosecutor's file an in-camera
23 inspection for the Court. I think, Your Honor,
24 basically you have pretty much given a
25 preliminary ruling, I just note if you would

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1 mark number 11. Respectfully, Judge, we're
2 asking for the entire file in-camera inspection
3 for the Court.

4 In other words, the file's delivered
5 to you so you see it sealed and then take it
6 downstairs to the clerk's office. I think Your
7 Honor will -- has already ruled respectfully
8 with number nine, number 11 is just an
9 encapsulation to make sure that nine is complied
10 with and it's sealed at the courthouse. But,
11 again, Judge, your ruling is your ruling, ma'am.

12 THE COURT: Well, let me see if I
13 understand it, because I understood this to be
14 something different. I understood that this
15 motion was -- that this investigation, or this
16 inspection, in-camera inspection would occur
17 prior to the trial to be sure that the
18 information, any information that was not
19 provided to the defense was, in fact, work
20 product.

21 I'm hearing something different now,
22 and that is you're talking posttrial, that
23 the -- and then in light of my earlier ruling,
24 that this request would be that information that
25 are the notes and the work product of

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1 Mr. Bailey, that there be an in-camera review to
2 be assured that those were in fact work product.

3 MR. CUMMINGS: Correct.

4 THE COURT: I will do that.

5 MR. CUMMINGS: Yes, ma'am. Also, Judge,
6 one other issue here, respectfully, and that is
7 the evidence be kept also. And we know we keep
8 it, what's introduced. There may be items that
9 are not introduced, whatever along this line,
10 that may be at least seized by the State or held
11 as either (a) contraband, or (b) fruits of the
12 crime, but not put into the evidentiary record.
13 That anything dealing with Mr. Bowman's case,
14 whether it be deemed an evidentiary value by
15 Your Honor or not, by the State be preserved,
16 protected for later on use.

17 THE COURT: I understand.

18 MR. CUMMINGS: And that could include any
19 samples, or whatever might have been made
20 available to the State and they chose not to
21 use.

22 THE COURT: I understand.

23 MR. CUMMINGS: Thank you, judge.

24 MR. BAILEY: I'm a little bit confused and
25 lost here. If I could back up to motion number

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1 nine. My notes indicate that that would be
2 something that I would produce and have filed
3 after the trial.

4 THE COURT: That's what I understood.

5 MR. BAILEY: Number 11, as I read it, is a
6 discovery motion wanting me to produce the file
7 to you so that you can personally inspect it and
8 ensure compliance with discovery, it's two
9 different things.

10 THE COURT: That's what I thought. I agree
11 with you, Mr. Bailey. And the argument is
12 something different.

13 MR. BAILEY: Right.

14 THE COURT: Yes.

15 MR. BAILEY: I would, of course, object to
16 that. And the State vs. Nance addressed that
17 issue.

18 THE COURT: Oh, you have to tell me I
19 object to that. You have to tell me what
20 that -- you're talking about.

21 MR. BAILEY: To producing the file to the
22 Court unless there's some indication that
23 there's some nondisclosure.

24 THE COURT: You're talking about earlier
25 versus later? You talking about pretrial and

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1 not posttrial?

2 MR. BAILEY: Discovery purposes.

3 THE COURT: That's not what I hear that
4 this is.

5 MR. BAILEY: I'm sorry?

6 THE COURT: I'm not hearing that's what
7 this is.

8 MR. BAILEY: Okay. I'm reading the motion
9 and trying, because --

10 THE COURT: I know. Do you see our
11 confusion, Mr. Cummings? Just if you can
12 clarify, kindly. In other words, are we
13 talking -- with regards to number 11, are we
14 talking is this a discovery motion to be dealt
15 with prior to trial, or is this, again, to be
16 dealt with after, posttrial?

17 MR. CUMMINGS: Judge, the initial intent of
18 this is to make sure that at the end of this
19 case the State has complied with Rule 5, Rule
20 Brady. And again, Judge, if we did not have a
21 close working relationship with this office and
22 the open file policy, that I would ask
23 definitely in camera that you look at the
24 State's introduction of evidence as they're
25 giving us in camera to make sure they complied,

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1 this motion is reserved, the entire file, the
2 entire record afterwards and that why we put it
3 in camera is to make sure the Court got a copy
4 delivered to the Court for Your Honor's securing
5 to make sure it goes down to the clerk's office.
6 And, therefore, number 11 would be posttrial.
7 And I'll make sure that's clear and I'll put on
8 record posttrial.

9 THE COURT: Okay.

10 MR. CUMMINGS: But normally it would have
11 been pretrial, it would have been while we're
12 doing these motions. And Mr. Bailey's correct,
13 Judge, we argued this before, that we would
14 always ask that everything that's going to be
15 introduced, anything to be used, to try to use
16 his wording, seek the ultimate penalty against
17 my client, that the Court know that we are
18 trying to get everything we can to help this
19 man.

20 I know Mr. Bailey is telling us that
21 he is going to give us everything he has,
22 statements, exculpatory, inculpatory information
23 by Rule 5 and Brady, therefore please consider
24 this trial -- the motion posttrial to preserve
25 the record.

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1 THE COURT: Okay. Let me ask you this
2 question, because this comes to my mind as a
3 practical matter. It would be impossible for
4 the Court to do an in-camera inspection for the
5 purposes of determining whether or not the
6 information contained in the file is information
7 that was received by the defense, that would be
8 impossible. Because I don't know what you have
9 received and what you have not received, what
10 you have talked about, what you have not talked
11 about.

12 So when I read that, I will certainly
13 do an in-camera review of the work product that
14 is not part of the file to assure that it is, in
15 fact, work product, but tell me, help me
16 understand how I could do an in-camera review
17 of the file to be assured that the Brady
18 information was given to the defense when I have
19 no way of knowing what was given to the defense.
20 Do you see what I'm saying?

21 MR. CUMMINGS: I understand as far as
22 counting documents. What that's for, Your
23 Honor, basically is as we're coming up through
24 the trial, once double jeopardy has attached,
25 once the issue has been raised in this court and

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1 the indictment's been called, that Your Honor is
2 pretty much watching what's coming in here,
3 statements, witnesses.

4 At the end of the case, and, of
5 course, if we have any motions, which I don't
6 think we'll have, saying that we didn't get
7 that, or, Judge, we need time out, we need to
8 look at this document, that that's part of the
9 record that's there for the Court.

10 In other words, the Court's going to
11 assure that what we had will be the same thing
12 the solicitor had as far as exculpatory
13 information or inculpatory information. And
14 what we usually do is go back in chambers and we
15 argue that page number 99 of 2,012 is not what
16 we were given. If Your Honor would allow us to
17 do that in chambers.

18 I've never had it in three times. And
19 I say that openly, never had that as a defense
20 attorney three times with Mr. Bailey personally.
21 But we would all go back in chambers with you
22 and have Your Honor review what we argue about
23 and then mark that in the appellate record.

24 THE COURT: Certainly. I think what is
25 appropriate, Mr. Cummings, at this point is to

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1 tell you that the record will be made a part of
2 the file, a copy of the file will be made a part
3 of the record, that those matters that
4 Mr. Bailey is not -- that are not contained
5 within the file, that those matters are -- will
6 be reviewed in camera to be sure that they are,
7 in fact, work product. And I'll do that. But I
8 think that at this point in this process it is
9 impossible for me to make a determination
10 regarding even whether or not an in-camera
11 review is appropriate.

12 I think this is a premature motion. I
13 find so that it is a premature motion and I urge
14 at the appropriate time for the defense to renew
15 this motion, because at this point I cannot
16 conceive how the Court at the conclusion of this
17 case can know from an in camera -- and in-camera
18 review, as I am envisioning it, is I'm sitting
19 with the file going through the file of the
20 State. And it would be impossible for me to
21 know what was received by the defense and what
22 was not received by the defense.

23 MR. CUMMINGS: Yes, ma'am. Without
24 arguing --

25 THE COURT: This is a request for an in-

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1 camera review, not a request by the defense for
2 the defense to go through, it's to make sure
3 that the defense received everything that is in
4 that file.

5 MR. CUMMINGS: Yes, ma'am.

6 THE COURT: But yet a request for an in-
7 camera review. I find that to be -- at this
8 moment I cannot envision how that can be done
9 appropriately. However, I'm going to determine
10 that I think it is premature at this point and I
11 urge counsel to renew that at the conclusion of
12 the case.

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

14 THE COURT: Now, who's going to draft an
15 order? Mr. Cummings and Ms. Hardee-Thomas, if
16 you all would draft an order on that one.

17 All right. Number 12, I think it's
18 also self-explanatory. 1972.

19 MR. CUMMINGS: Judge, of the most horrible
20 things we talk about is, and unless the
21 Department of Corrections has changed a
22 procedure and I'm not aware of, and I don't
23 think it's something Mr. Bailey, again, I won't
24 speak for this gentleman, would normally go back
25 over and check, but, Your Honor, we are going to

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1 bring in a lot of jurors prospective for this
2 trial. We are going to have to sit here through
3 the clerk calling the roll, the clerk going
4 through things. And there are people employed
5 at Lieber which now houses death row. The
6 executions are done, of course, in Columbia, God
7 forbid.

8 But, Your Honor, respectfully there
9 are people, believe it or not, that apply to do
10 this. And one of the issues we would like to
11 have is we are going to have prospective jurors,
12 and if there are anybody who's applying, in
13 particular a Dorchester County citizen or
14 resident, I'd clearly like to know that to the
15 defense of Mr. Bowman. And I would like to know
16 his family members and, you know, all the other
17 procedures we're allowed to by law for jury
18 selection.

19 But, Your Honor, respectfully, it's
20 one of those kind of morbid issues that we try
21 to present to the Court saying that it's not
22 something Mr. Bailey has in his office, we know
23 that, but if there is any information that the
24 State has, one of the things we'll follow up
25 with the Court is contact the Department of

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1 Corrections legal department. And they'll
2 oppose the motion, they'll oppose any subpoenas
3 that we'll have. And I know we'll have to
4 address that in front of Her Honor, probably.

5 One of the issues, Judge, is that
6 Dorchester County now is the main holding area
7 to most of the gentlemen that work with the
8 Department of Corrections may apply for this
9 job, and we are asking if we could get a list,
10 please, so we can make sure Mr. Bowman gets a
11 fair and impartial jury, ma'am.

12 THE COURT: All right.

13 MR. BAILEY: Your Honor, I don't have any
14 such list. If there are any such people in
15 Dorchester County that applied to be an
16 executioner, I certainly wouldn't know about it.
17 I don't think the Department of Corrections
18 solicits people off the street. These are
19 employees of the Department of Corrections
20 probably in Columbia that perform different
21 functions during the course of an execution.
22 And I would assume they maintain a list there,
23 but I would very seriously doubt if anybody from
24 Dorchester County that has applied for that
25 would end up on this jury.

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1 THE COURT: Sure.

2 MR. BAILEY: And would get through the jury
3 qualification process. We can flush that out.

4 THE COURT: And, again, if that information
5 for any reason came to you, you would share that
6 information.

7 MR. BAILEY: Absolutely.

8 THE COURT: But it's not a piece of
9 information that you have or even -- what I'm
10 hearing, is that you're real sure where that
11 information may exist.

12 MR. BAILEY: That's correct.

13 THE COURT: All right. Insofar as you
14 know, that information would lie with the South
15 Carolina Department of Corrections?

16 MR. BAILEY: Yes, ma'am.

17 THE COURT: Mr. Cummings, in other words,
18 is that acceptable if Mr. Bailey receives that
19 information, then he will provide you that
20 information, but insofar as he knows it lies
21 with the Department of Corrections and if you
22 subpoena that information and they are resistant
23 bring them up here.

24 MR. CUMMINGS: Absolutely, Judge. I just
25 wanted to have it on the record that we have

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1 asked.

2 THE COURT: Surely.

3 MR. CUMMINGS: And I know the solicitor did
4 not have any input in that, but I know we're
5 getting ready to bring in a large pool of
6 jurors.

7 THE COURT: Yes.

8 MR. CUMMINGS: And they've now changed it,
9 Judge. And one of the issues why this came up
10 is death row used to always be in Columbia, now
11 it's in our backyard.

12 THE COURT: I understand the motion very
13 well, Mr. Cummings.

14 MR. CUMMINGS: Thank you, Judge.

15 THE COURT: It just shows you are clearly
16 covering the bases. But I do think that's an
17 issue that ought to be directed to the
18 Department of Corrections.

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

20 THE COURT: All right. And that would
21 be -- I gather that's really turned into a
22 consent, that if you have that information it
23 comes to you.

24 MR. BAILEY: I believe so. And I'll be
25 happy to consent on the record to that.

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1 THE COURT: That you will be forwarding
2 that.

3 Thirteen is consented to.

4 MR. CUMMINGS: Correct.

5 THE COURT: Fourteen is likewise consented
6 to. And then 16 is likewise consented to.
7 Seventeen --

8 MR. BAILEY: Did we skip 15?

9 THE COURT: Did I skip 15? I'm sorry.
10 There we go. All right. Number 15, yes.

11 MR. CUMMINGS: May it please the Court,
12 Judge?

13 THE COURT: Yes.

14 MR. CUMMINGS: Again, this may be something
15 that is maybe not consented to on the record,
16 but we are asking that any and all DNA testing
17 that was done by SLED, and as far as we know as
18 far as the defense today, the only DNA testing
19 that's been done in this case is by the State
20 Law Enforcement Division.

21 I've not heard anything from the FBI
22 or any outside independent agencies. What we
23 are asking, that any and all tests that they
24 have conducted be preserved. We have a DNA
25 expert who is going to review some findings in

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1 the protocol and database, ma'am, but if there's
2 any other independent information or evidence,
3 what I would ask Your Honor to do today is we're
4 going to move probably for an order, that if
5 there's any information of SLED, not just the
6 results, but the testing, the samples, whatever,
7 that they be preserved, at least until the end
8 of this trial and our expert has a chance to
9 review any and all physical evidence that was
10 obtained by SLED.

11 THE COURT: I understand.

12 MR. BAILEY: Your Honor, I agree with that.
13 I think that's essentially the same as motion
14 number one as to the DNA and we are in the
15 process of complying with that, I believe.

16 THE COURT: Thank you. That would be a
17 consent that --

18 MR. BAILEY: Would, of course, preserve any
19 evidence.

20 MR. CUMMINGS: Thank you, Judge.

21 THE COURT: Then we're into 16, which is a
22 consent. Seventeen is a consent and 18 is a
23 consent. Then 19.

24 MR. CUMMINGS: May it please the Court,
25 Judge?

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1 THE COURT: Yes.

2 MR. CUMMINGS: This may take quite a while
3 to argue, and I apologize. Your Honor, there's
4 going to be three stages in this trial that I
5 see. First one, of course, will be by the
6 direct testimony of victims. And, again, that
7 would -- a lot of it may be by objections or
8 motions in limine that have to be repeated and
9 renewed at the time of trial. But one of the
10 issues in this case, going to the second issue
11 now, is there are photographs taken both of the
12 crime scene, which was located on Nursery Road
13 in Dorchester County.

14 Part of the issue that Your Honor will
15 have to review today, and I think Mr. Bailey is
16 going to slowly and surely produce those to Your
17 Honor for review, and I would ask Your Honor
18 today that this is going to be an upsetting
19 time. You're well versed, the number of years
20 you've been on the bench, number of years you
21 did trial work as we are doing, but these
22 photographs, Your Honor, for lack of better
23 words are repulsive.

24 One of the issues that we're going to
25 have to deal with now, and, again, renew at time

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1 of trial for the record, is that photographs
2 clearly, Judge, will inflame any juror. Anybody
3 who's got an ounce of decency in them is going
4 to be reviling or upset by looking at these
5 photographs.

6 The victim, Miss Kandee Martin, was
7 burned somehow in the trunk of a car. At least
8 that's where her corpse was found. I'm not
9 testifying as to facts or evidence, Judge, I'm
10 just doing it from a lawyer reading a case file.
11 But photographs show a very badly decomposed,
12 burned corpse.

13 Your Honor, the State has certain --
14 and there's case law infinitum now, we have the
15 right to look at the body as we find it, we have
16 the right to review what the cause of death was.
17 Autopsy photographs -- again, I'm doing this in
18 stages, the burned photographs of this lady,
19 there's no question of identity of Miss Kandee
20 Martin.

21 The State -- excuse me, the defense
22 will stipulate that that is Miss Kandee Martin
23 who was found in the trunk of a burned vehicle.
24 So, therefore, identity is not needed to be
25 proven by the State. And, again, I would say

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1 that ultimately to stipulate to her identity.

2 So, therefore, Judge, any photographs
3 to try to show either witness or the parents, is
4 this your little girl that's decomposed and
5 burned in the trunk, I would argue, Judge, would
6 not be relevant to the case, would not be
7 necessary, it would only be used for passion,
8 prejudice, or to inflame the jury. Again, I
9 would reserve any rights to argue that later on
10 during the trial as Your Honor well knows.

11 And then, Judge, there's a third set
12 of photographs that's going to be shown and that
13 is of an autopsy probably where -- at least some
14 scientific investigation of an autopsy. And
15 again, Judge, identity is not an issue.

16 Some people don't understand the
17 intrinsic nature of an autopsy. There are some
18 faiths that do not believe in autopsies, there
19 are other faiths that believe that a person has
20 to be buried, you know, within 24 hours. So
21 there's so many issues here dealing with
22 autopsies.

23 And, Your Honor, respectfully, as you
24 look at these photographs today, and I would ask
25 Your Honor to take time, maybe not issue a

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1 ruling today until you've heard arguments today,
2 seen the photographs --

3 THE COURT: Okay.

4 MR. CUMMINGS: -- and give us an
5 opportunity to rebut some of the case law the
6 solicitor is going to say. It boils down,
7 Judge, it's the most horrible thing in the world
8 for a defense attorney. The cases have been
9 coming out saying let the jury see everything,
10 let them have them. And it's up to the bench to
11 make a ruling that it is so vial, or repulsive,
12 or so shocking that it should not be used.

13 If they were not shocking, if they
14 were not prejudicial, the State would not want
15 to use them. And I guess that's the kind of
16 oxymoron that our case law deals with. And
17 there's no other way to argue to you, Your
18 Honor, that unless you see them, it's kind of
19 like I'm standing up here, Don Quixote going at
20 the windmill. As you see the photographs I
21 would like to speak about each one and make sure
22 we have a good record of it, whether or not it's
23 really needed, whether or not it's duplicative,
24 whether or not it's prejudicial.

25 And I know Mr. Bailey's going to argue

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1 our most recent case law that says you get to
2 see the body as it's found. But I think this
3 body, Judge, when you look at the photographs --
4 I'll let Your Honor -- excuse me, I'll let you
5 rule, but I'd ask you to at least give us some
6 time to argue back, Judge.

7 THE COURT: Sure. All right.

8 MR. BAILEY: Your Honor, if I could.

9 THE COURT: Yes, sir.

10 MR. BAILEY: I think we're dealing with two
11 stages. One is the guilt phase, one would be
12 the penalty phase. And, of course, unless
13 something comes up in the guilt phase, the
14 evidence from the defense that I do not
15 anticipate, then I have no intention of trying
16 to introduce any photographs of the decedent's
17 body.

18 The penalty phase, of course, is an
19 entirely different matter and our case law is
20 very clear on that. Unless the body has been
21 altered by some third party or by decomposition,
22 that the jury is entitled to see specifically
23 what that defendant has done.

24 Your Honor, in this case there is no
25 decomposition, the young lady's body was burned

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1 up in a car about four o'clock one morning in
2 the trunk of the car. The fire department was
3 on the scene within 15 to 20 minutes, she was
4 autopsied later on that same day. So all the
5 photographs were taken within a matter of hours
6 of the date of this young woman's death, so
7 there is no decomposition.

8 These photographs are not pleasant to
9 look at, they show a charred body, but they show
10 no more than what the State alleges the
11 defendant did himself. And if we get to that
12 point in time where these pictures become an
13 issue, the jury would have already decided that
14 this defendant beyond a reasonable doubt
15 committed this murder. And shows, again, no
16 more than what that defendant has done to the
17 body.

18 Your Honor, I did not think that we
19 would be getting into this motion to the extent
20 of Your Honor going through all of the
21 photographs of the victim's body and deciding
22 this goes in or this goes out, I think that
23 might be premature. What I do have today, if I
24 could ask Your Honor just to take it and review
25 it, is a short memorandum that discusses our

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1 state's law and what is admissible in the
2 penalty phase.

3 THE COURT: Sure.

4 MR. BAILEY: I've also got some --

5 THE COURT: Mr. Bailey, may I interrupt you
6 for a moment and ask you this question? Because
7 there's an additional issue how the photograph
8 would be used. And one of the concerns that Mr.
9 Cummings would have would be for someone in your
10 office, you most probably, to hand the
11 photograph to a family member and say, "Is this
12 your daughter?"

13 MR. BAILEY: I would not do that.

14 THE COURT: You would not do that in any
15 event, would you, Mr. Bailey?

16 MR. BAILEY: No, ma'am.

17 THE COURT: So that just allows me as we go
18 through this process to narrow them. So that at
19 the end of this argument regarding these
20 photographs you are talking about penalty phase
21 only?

22 MR. BAILEY: That's correct.

23 THE COURT: Unless something arises that
24 you do not anticipate.

25 MR. BAILEY: Unless something totally

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1 unforeseen comes up. I do not want to shut the
2 door to that, but I don't anticipate that
3 happening.

4 THE COURT: I do understand. And you do
5 not intend -- you intend to simply introduce the
6 photograph for being the condition of the body
7 at the time the body was found.

8 MR. BAILEY: That's correct.

9 THE COURT: You do not intend to show these
10 photographs to family members, or use them in
11 any other regard as I understand it?

12 MR. BAILEY: No. That's correct. Received
13 through the pathologist, Dr. Sexton, or through
14 a crime scene person who was present.

15 THE COURT: All right.

16 MR. BAILEY: And, Your Honor, this
17 particular case deals with a charred body. And
18 researching our state's law the only case I
19 found that dealt with charred body was State vs.
20 Luke Williams out of, I believe, Lexington
21 County.

22 MR. CUMMINGS: It was.

23 THE COURT: Yes.

24 MR. BAILEY: And I have, if Your Honor
25 wants to review it, copies of all of the

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1 photographs that were an issue as arisen in
2 South Carolina whether or not they were gruesome
3 or unduly prejudicial or whatever. And I've had
4 a law -- a clerk in my office go to the Supreme
5 Court in some cases in other counties, and with
6 the exception of the pictures of State vs.
7 Kornahrens which were destroyed, I have copies
8 of all those pictures, to give the Court the
9 idea of the extent to which our Supreme Court
10 has allowed the introduction of penalty phase
11 pictures. And none of them are pleasant to look
12 at as Mr. Cummings pointed out, but, again, they
13 show no more or no less than what the defendant
14 in those cases actually did to the body.

15 And I also have a few cases from
16 Texas, Florida, Kentucky which specifically
17 address charred bodies, so if I could hand a
18 copy of those up, Your Honor.

19 THE COURT: All right. Yes.

20 MR. BAILEY: And I'll give Mr. Cummings a
21 copy also.

22 MR. CUMMINGS: Thank you, sir.

23 Judge, I guess that's why I asked --
24 and, again, not to take your time like I always
25 do, I know you've got an able law clerk there,

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1 but I was right with Mr. Bailey going through my
2 motions, but I did not think we would actually
3 get into the heart of evidentiary rulings today,
4 but I wanted to point out to the Court that it
5 would take some time and argument because
6 obviously it's going to be --

7 THE COURT: I understand. And, counsel, if
8 there is some reason that -- let me say this:
9 I've now heard a little bit from both of you
10 like, gosh, I wish this particular motion wasn't
11 right here in this notebook to be heard at this
12 time.

13 Counsel, if you wish, for whatever
14 reason, to postpone this particular hearing,
15 it's -- we have time set aside, and I'm
16 confident we're going to get through the matters
17 that we need to, if there is some reason that
18 each of you wishes to postpone this particular
19 argument for review, it's perfectly fine with me
20 so long as it's done with enough time, headway,
21 to give both of you an opportunity to prepare
22 for whatever the ruling might be.

23 MR. CUMMINGS: I feel comfortable, Judge,
24 we presented this argument to you today, the
25 bench is not going to make a sua sponte ruling,

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1 like, you know, right now like we have had in
2 the past on some issues.

3 THE COURT: Yes.

4 MR. CUMMINGS: I think Mr. Bailey was
5 absolutely correct on case law, and some other
6 argument back from us.

7 THE COURT: Certainly.

8 MR. CUMMINGS: We did learn one thing
9 today, that the gentleman is not going to use
10 these photos in the case in chief in the guilt
11 phase unless something else comes up.

12 THE COURT: That's right.

13 MR. CUMMINGS: And that's something I think
14 Mr. Bowman had to hear today.

15 THE COURT: And the something else comes up
16 would simply mean this: That there would be
17 some reason why these photographs would have
18 relevance.

19 MR. CUMMINGS: Yes, ma'am.

20 THE COURT: Okay. Other than such that the
21 stipulation of identity would not suffice, that
22 there would be some issue that at this time the
23 solicitor does not anticipate.

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

25 THE COURT: And furthermore, that it is not

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1 the intention of the solicitor to even attempt
2 to use these photographs for the purpose of
3 exciting a victim's family member.

4 All right. Very well. Now, Mr.
5 Cummings, you had wanted to -- as I understand
6 it, you had wanted to argue each of these
7 photographs separately?

8 MR. CUMMINGS: Correct, Judge.

9 THE COURT: And the photographs that are in
10 here, are these the photographs that have been
11 retrieved from the Supreme Court, or are these
12 the photographs which are relevant to this case?

13 MR. BAILEY: Those are photographs in other
14 reported cases where the issue of their
15 admissibility is addressed. I did not include
16 any of the photographs from this case.

17 THE COURT: I understand.

18 MR. BAILEY: I do have some of them with me
19 if you wanted to get into it, but I wasn't
20 anticipating it.

21 THE COURT: I'll leave it up to the two of
22 you.

23 MR. CUMMINGS: Could we do that next week,
24 Judge?

25 THE COURT: Sure.

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1 MR. CUMMINGS: Because I would like to see
2 if -- Mr. Bailey's been kind, he's supplied us
3 with five by seven photographs from SLED and the
4 other things, if the gentleman would bring into
5 the courtroom, and, again, I know it's part of
6 the our motion hearing, the exact photographs of
7 how -- whether he's going to have them blown up
8 or whatever, so we could see them. The color
9 differences may come into play.

10 THE COURT: Sure.

11 MR. CUMMINGS: We may argue that black and
12 white would be sufficient, versus what this
13 gentleman's going to show, but I'll leave that
14 to Your Honor's pleasure. But we'll go over to
15 his office next week, sit down after hours,
16 whatever we need to do. And at least count
17 photographs, like number one, number two.

18 THE COURT: Sure. In other words, you all
19 would like to get together to do some
20 preparation for the review of the photographs of
21 this case?

22 MR. CUMMINGS: Yes, ma'am.

23 THE COURT: That's fine. That's certainly
24 fine. That gives you also some time to address
25 a memorandum as you've indicated you wish to do

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1 so.

2 MR. CUMMINGS: Thank you, Judge.

3 THE COURT: That's fine. All right. So as
4 I understand this motion, this motion the
5 argument will be continued. This motion I
6 should say is motion number 19, the argument is
7 to continue in the future.

8 All right. Number 20 has been
9 consented to.

10 MS. HARDEE-THOMAS: Consented to.

11 MR. CUMMINGS: Yep.

12 THE COURT: And then that brings us to 21,
13 which looks a lot like number one to me. I
14 think it's identical, isn't it?

15 MR. CUMMINGS: I was going to say, Judge,
16 it was not -- it may not be originally worded
17 the original way, but it absolutely states the
18 same purpose as number one. And we have Your
19 Honor's ruling and the State's consent to
20 provide --

21 THE COURT: So we'll consolidate this one
22 with number one.

23 MR. CUMMINGS: Yes, ma'am. One and 21
24 should be the same.

25 THE COURT: Very well. Then number 22.

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1 MR. CUMMINGS: Thank you, Judge. Judge,
2 number 22, we have just recently been given
3 copies from WCSC-TV that went out to the crime
4 scene. Just to let Her Honor know that we
5 learned that they were out at the crime scene, I
6 wrote a check out of my own checking account to
7 get the copy of the tape, we've not had a chance
8 to review it.

9 THE COURT: Sure.

10 MR. CUMMINGS: I would ask, if we could,
11 preserve this argument on number 22 until I have
12 had a chance to review that and get any other
13 radio station, TV stations to comply back with
14 subpoenas we've sent out to see if there's
15 any --

16 THE COURT: That's your motion to change
17 venue?

18 MR. CUMMINGS: Number 22, excuse me, Judge.

19 THE COURT: Declare it unconstitutional is
20 what I have.

21 MR. CUMMINGS: Number 22 is our motion. I
22 would ask to continue until I get the other
23 radio stations, TV stations to give us their
24 stuff.

25 THE COURT: Certainly.

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1 MR. CUMMINGS: Mr. Bailey doesn't have
2 those things in his possession that I'm aware of
3 and we didn't learn about it. And, strikingly,
4 we were out revisiting the crime scene, just to
5 say this on the record, and we met a gentleman
6 named Mr. Dukes out there. Not our Gene Dukes,
7 but his handsomer brother. And the gentleman
8 informed us that certain news media were there
9 that went out and did an investigation while
10 they were there. And, again, that's when we
11 learned of the tapes and got them.

12 But there's nothing ever noted in any
13 police reports that WCSC was there, or that they
14 walked around with any officers until we met
15 Mr. Dukes' brother. I would ask if we would
16 have that as an argument and I will give the
17 solicitor the chance to look at it.

18 MR. BAILEY: That's 23?

19 MR. CUMMINGS: I am sorry, 23 is the notice
20 change of venue.

21 THE COURT: I thought so. That's fine.

22 MR. CUMMINGS: Thank you, Judge.

23 THE COURT: We will continue that.

24 MR. BAILEY: You want to continue that?

25 MR. CUMMINGS: Please.

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1 THE COURT: Twenty-two is the Notice of
2 Motion, Notice to Declare Death Penalty
3 Unconstitutional.

4 MR. CUMMINGS: Judge, I can stand here all
5 day long and start quoting prior to 1976 our
6 country ruled it was unconstitutional, 1976
7 Furman vs. Georgia comes back. Since that time
8 we have had more and more and more case law.
9 Thirty-eight states out of the 50 that now have
10 the death penalty in play, we are the only
11 western civilized country in the world that
12 still recognizes the death penalty.

13 Part of the issues that -- why we
14 would ask that you declare unconstitutional,
15 that it would be a violation of Mr. Bowman's
16 Fourth, Fifth, Eighth, and Fourteenth
17 Amendments. In particular the Eighth Amendment,
18 Judge, that it's cruel and unusual punishment to
19 put somebody to death.

20 I know Your Honor as an officer of the
21 Court and ruling over this trial has to sit in
22 judgment of the jury's verdict that it was not
23 reached by passion, prejudice, or arbitrariness,
24 or as a result of something that would be
25 unheard of and that is to not give somebody a

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1 fair trial.

2 But, Your Honor, we're asking for you
3 today to issue a judicial ruling that the death
4 penalty is unconstitutional. And I know Your
5 Honor looks at the situation that we're making
6 this argument, this motion. And in context,
7 Judge, as we go through this trial to have this
8 motion continuing in case there is a change in
9 our case law. We've had a recent issue in North
10 Carolina that -- a moratorium for death penalty
11 because people are retarded. So the country is
12 carving out reasons to not give the death
13 penalty.

14 We're waiting now to find out whether
15 or not a white female in Houston, Texas, may get
16 the death penalty for drowning five children and
17 the verdict was for three children.

18 Your Honor, I would ask that you keep
19 this motion ongoing. I know Your Honor has a
20 right to make a ruling today saying the
21 legislature deems it appropriate, United States
22 Supreme Court has said it's appropriate
23 punishment if all the procedural safeguards are
24 in effect. We're asking that Your Honor as part
25 of your duty, of course, guard this gentleman's

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1 procedural safeguards, rights in here with our
2 assistance, with the State being an officer of
3 the Court also, but, Your Honor, we believe that
4 the death penalty is unconstitutional and in
5 violation of the Fourth, Fifth, Eighth,
6 Fourteenth Amendments in our applicable statutes
7 under our South Carolina Supreme Court, ma'am.

8 THE COURT: Thank you very much. You have
9 already ruled for me, Mr. Cummings, when you say
10 the South Carolina legislature and the South
11 Carolina Supreme Court and the United States
12 Supreme Court have all found that not only the
13 death penalty, but that our specific type of
14 statutory enactment of the death penalty is
15 constitutional. And, therefore, I want to
16 likewise find that our statutory configuration
17 is likewise constitutional.

18 However, if that changes, if the law
19 changes, then I will certainly make it
20 continuing, happy to have you renew this motion
21 at any time.

22 MR. CUMMINGS: Thank you, ma'am. I note
23 just for the record, ma'am, you would note my
24 respectful objection based on our argument,
25 ma'am.

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1 THE COURT: Yes, sir. Note your objection
2 for the record. Very well.

3 All right. And then Motion for Change
4 of Venue is continued. And number 24.

5 MR. CUMMINGS: Judge, during our jury
6 qualification in this state, and I apologize,
7 our state has issued guidelines of how we're
8 going to select a jury. It's really the only
9 time we're allowed to ask questions of
10 prospective jurors that may be qualified in a
11 death penalty case.

12 As Your Honor well knows from your
13 years on the bench and years that we've argued
14 cases before you, that it's hard to not be a
15 potted plant sitting up on the bench, from the
16 famous line of Mr. Brandon Sullivan, that
17 sometimes the Court wants answers, that the
18 lawyers for some reason are not getting to the
19 crux or the heart of it. Or like the old John
20 Hamilton Smith days, you know, he'll ask the
21 question if you can't get it across.

22 But, Your Honor, this is the ultimate
23 case, the ultimate penalty. We know that the
24 bench would never do anything to try to speed
25 things along, or pick a juror to keep the court

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1 moving. But one of the issues that we would
2 have, Judge, is Your Honor has every right in
3 the world to ask any question of a juror that
4 you deem appropriate, but sometimes it's that
5 crux issue that's going to say whether this
6 juror may be death penalty qualified based on
7 their answers.

8 And sometimes jurors can't answer,
9 won't answer, don't want to answer the right
10 way, they just want to try to avoid service if
11 they possibly can, or at least in a death
12 penalty case their point of view is really I'm
13 for it, I'm against it, maybe I'm not sure,
14 which is the best juror in the world who will
15 listen to all the arguments. And one of the
16 things that we both tried to do for our sides as
17 adversaries is get a death penalty juror
18 qualified correctly.

19 Your Honor, I'm not trying to insult
20 the bench or none of my motions are ever trying
21 to be antagonistic, but I know Your Honor is
22 going to guide this courtroom and take care of
23 the jurors. It's one of the first issues when
24 we first bring these people in here, is you make
25 them feel comfortable, invited, and that they're

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1 here for a very serious job.

2 Judge, I know that your questions will
3 be guided the way you deem appropriate, but one
4 of the issues is we're trying to avoid leading
5 questions to get them to say, yeah, I agree that
6 way. I do that with the most humble politeness
7 I can to the bench. And I would sit down and
8 listen to Mr. Bailey now.

9 THE COURT: Okay. Yes.

10 MR. BAILEY: Your Honor, I agree with Mr.
11 Cummings. I think what you run into, and you
12 have clearly qualified jurors that are death
13 qualified, you have clearly unqualified jurors,
14 and then you've got some jurors in the middle.

15 And I would agree with him that -- and
16 I would join with Mr. Cummings in asking the
17 Court not to basically push these people in one
18 direction or another. I mean, it becomes
19 frustrating for some of these people that have
20 not thought about the death penalty previous to
21 coming in here and they read the page about
22 three kind of jurors and think of it for the
23 first time and are trying to formulate their
24 thoughts.

25 And you get jurors that no matter

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1 who's asking them a question, they're going to
2 agree with it. Because they think it's a quiz,
3 or they try and please, or they don't know their
4 own minds. And those jurors can in short order
5 be identified. And I don't think that anybody
6 involved really ought to try to salvage these
7 people that don't know their own minds. And I
8 think that's what he's trying -- the point he's
9 trying to make. And if that's it, I agree with
10 it.

11 MR. CUMMINGS: I just think, Judge, with
12 the robe, and like there's some people that say
13 if a policeman arrests somebody they're guilty.
14 They wouldn't be here if the policeman didn't
15 think they were wrong. And one of the issues
16 that we've seen, I think Your Honor has probably
17 seen them also, when you ask somebody a question
18 it's like, and I don't mean to be struck by
19 lightening, it's like God speaking. And they
20 want to be pleasing to the Court, they want to
21 help, and they want to do whatever they can to
22 get off that stand.

23 THE COURT: So let me see if I'm following
24 you, both of you correctly. What I am hearing
25 from you is this: That a witness is examined --

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1 the juror is examined and the juror says I think
2 they're obviously either a number one or a
3 number five, probably a number one given the
4 configuration. You know, I would always think
5 the death penalty -- I would always give the
6 death penalty in the event of murder, which is
7 what this example says. And they are either
8 or -- or I gather from your prospective,
9 Mr. Bailey, although this is couched and, if you
10 will, it's come from the defense, so this is
11 coming from the defense, therefore it's only one
12 sided, but I gather your side would be I never
13 think that the death penalty is appropriate. So
14 we're really talking about number ones, we're
15 talking about each extreme.

16 MR. BAILEY: Ones and twos.

17 MR. CUMMINGS: Correct.

18 THE COURT: Exactly. And so your concern
19 is that when there is someone who is a one, who
20 are the extremes I would never give the death
21 penalty, I would always give the death penalty,
22 that what you all are requesting is that those
23 folks simply be dismissed for cause rather than
24 trying to, if you will, rehabilitate those
25 folks.

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1 MR. BAILEY: If there's some little bit of
2 ambiguity, I mean, I think that needs to be
3 explored, but you can -- and I've seen it happen
4 before that a judge will spend an hour with one
5 person trying to get the answer they want. And
6 finally they'll say, Do you understand I'm the
7 judge and I advise on the law? Yes, Your Honor.
8 Will you follow the law as I give it to you? Of
9 course they're going to say, yeah and he'll say
10 he's qualified.

11 THE COURT: You know, this is really
12 interesting --

13 MR. BAILEY: I think that's what our
14 concern is.

15 THE COURT: This is interesting that I have
16 this motion and I have the two of you in this
17 colloquy, because, quite frankly, my mind was
18 such that if -- and just the numbers that I've
19 been dealing with have been ones and fives of
20 all things. Being only the numbers that are the
21 extremes, what you're talking about, number one
22 and number two, you're just talking about the
23 extremes, it's fascinating that we are having
24 this discussion. Because I actually wanted to
25 have the discussion if we get that, get those

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1 folks even in the questionnaire, can we just do
2 that as a matter of course, interestingly
3 enough. You all are not that far. And I must
4 tell you I concur with both of you.

5 MR. CUMMINGS: Judge, normally, and again
6 this is one of the reasons why we do have a good
7 close bench and bar, we would not really be
8 comfortable arguing this in most cases. And we
9 may stand up and do our academic arguments, but
10 we know that at least we get a chance to discuss
11 this with you and to give this gentleman the
12 most fair trial that the State can give him.

13 THE COURT: Interestingly enough that is a
14 coming trend that counsel and the court, and it
15 probably is a -- it's a time-saving mechanism
16 that when they are showing up with the ones --
17 whatever the extremes are, that that's happening
18 as a matter of course. And that is --
19 apparently is a nationwide trend, that the
20 courts and counsel are not even spending any
21 time on those folks, that they're moving on the
22 way they ought to, to people who are not clear
23 for their examination, so I concur with both of
24 you.

25 MR. BAILEY: Thank you.

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1 MR. CUMMINGS: Thank you, Judge.

2 THE COURT: All right. Number 25.

3 MR. CUMMINGS: May it please the Court,
4 Judge. I know this is basically dealing with
5 more of a perfunctory issue of getting ready for
6 the trial --

7 THE COURT: Discovery.

8 MR. CUMMINGS: -- and during the trial.
9 We're asking the chain of custody of all
10 exhibits be followed, be maintained, that the
11 solicitor be made, Your Honor's ruling this
12 morning, to produce all chain of custody, save
13 that of the one stipulation that we did have
14 already and that is the firearm that is in the
15 possession of the State that has got to go to
16 our expert.

17 Mr. Bailey and I, again, we talked
18 about it this morning, I got to get that gun up
19 to our expert, Mr. Cleon Mauer, there's an
20 affidavit attached to a motion here about
21 getting that gun up to him in Virginia.

22 Mr. Bailey has acquiesced and is
23 assisting us and we stipulated on the record he
24 would not challenge that chain of custody from
25 the time it leaves the sheriff's department to

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1 Mr. Mauer to any way it gets back here by the
2 State, there would not be one issue raised about
3 that one iota.

4 THE COURT: I'm glad you are bringing that
5 to mind, because one of the matters I failed to
6 raise when we left that status conference was
7 that those agreements that were entered into
8 need to be reduced to a consent order.

9 MR. CUMMINGS: Okay, ma'am.

10 THE COURT: So, Mr. Bailey, I'm going to
11 look to both of you, but I'm especially going to
12 look to you on that, on the chain of custody, to
13 be sure that that's concluded, gentlemen.

14 What of that then, Mr. Bailey, it
15 seems to be a discovery?

16 MR. BAILEY: That's correct as far as the
17 gun, Your Honor. If somebody from the sheriff's
18 office can't take it to Virginia, I would get my
19 investigator to carry it up there. And
20 hopefully that testing, we can arrange that test
21 be conducted while he's there so he can make one
22 trip if we could.

23 THE COURT: Coordinate it. Makes sense to
24 certainly try to coordinate it.

25 MR. CUMMINGS: We have told Mr. Mauer to

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1 expect the cooperation of the State. We'll get
2 a set date today. If we leave here by today
3 we'll fax Mr. Mauer and tell him that. That
4 will give us a particular date to start from a
5 general zero thirty in the morning until
6 whenever you're finished to have him tell
7 Mr. Bailey to try to avoid any expense from the
8 State or whatever, if we have to. If there's
9 going to be an objection by our sheriff, and I
10 don't mean this for Mr. Bailey's sake, or
11 somebody for -- we can't afford to have our man
12 spend a night in a motel room up there while the
13 test is being completed, then I would ask Your
14 Honor to allow us through our side of defense to
15 do a proper motion and order to allow those
16 necessary expenses because we've got to have
17 that firearm tested.

18 MR. BAILEY: I'll take care of that.

19 MR. CUMMINGS: I just didn't know the
20 budget restraints on the county or whatever,
21 Judge, I want to make sure I don't leave this
22 room today without getting that done.

23 THE COURT: Mr. Bailey says not a problem.

24 MR. CUMMINGS: Thank you.

25 THE COURT: Okay. Very well. What about

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1 the rest of the exhibits and the chain of
2 custody?

3 MR. BAILEY: Your Honor, SLED has a
4 computer printout chain of custody, from the
5 time something goes to SLED they track it on the
6 computer and I've provided Mr. Cummings with a
7 copy of that.

8 THE COURT: Okay.

9 MR. BAILEY: He has all the other chain of
10 custody documents and they are not in the same
11 format, they're individual pieces of paper, of
12 course. The SLED is one printout where you can
13 actually track it. He's got not a mapped out
14 chain of custody under like A to B to C to D,
15 but he's got the documentation where he can see
16 what the chain is.

17 THE COURT: Very well.

18 MR. BAILEY: So I'm not agreeing to create
19 a chain, but he has all the documentation where
20 he can see the chain of custody.

21 THE COURT: I understand. Is that
22 acceptable, Mr. Cummings?

23 MR. CUMMINGS: Yes, ma'am. And then, of
24 course, at the time of trial we know the rules
25 for whatever the chain of custody would be.

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1 THE COURT: Very well. Let us take a
2 break. You all have been hard at it, we've all
3 been hard at it now for a couple of hours so I
4 think it's appropriate that we take a break, let
5 us do that.

6 (Recess, from 12:28 p.m. to 12:43 p.m.)

7 THE COURT: All right. Now, we are up to
8 motion number 26.

9 MR. CUMMINGS: May it please the Court,
10 Judge?

11 THE COURT: Yes, sir.

12 MR. CUMMINGS: I'll be as brief as I can on
13 this, because one of the issues is that our
14 State Supreme Court has set out examples to go
15 by for jurors. It basically would be saying
16 that we would like to have almost a bifurcated
17 jury, one for the guilt phase and another for
18 penalty phase. Our legislature does not call
19 for that, nor a statutory law.

20 Your Honor, one of issues on this
21 motion we wanted to try to raise to protect
22 Mr. Bowman was that there are two types of
23 jurors, and we talked about earlier, one that
24 always imposes death penalty, one who could
25 never give that. By virtue of our legislature

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1 and by virtue of case law a person says they
2 have a hard time giving the death penalty, or
3 they would more likely vote not to seek for,
4 give the death penalty, those people are
5 automatically excluded. And call them a scruple
6 juror, if the court will allow me that phrase.

7 Your Honor, we ask they be allowed to
8 be on the jury, I know the State -- and, again,
9 I'm not going to speak for Mr. Bailey -- is
10 going to move that they are unqualified for our
11 state, the statutory law and Your Honor's
12 instructions and ruling of the law from the
13 bench.

14 What we're asking is those jurors be
15 allowed to serve particularly in the guilt
16 phase, has nothing to do with the death penalty.
17 I know I'm making a novel issue or argument of
18 academic law to the bench, but basically, Judge,
19 what we're saying is they are still a juror.

20 Normally if we had an armed robbery
21 case or just a plain old common law murder case
22 they would be allowed to serve. But once we add
23 the additional factor of an aggravating factor
24 and the State seeking the ultimate penalty, they
25 become unqualified jurors, at least

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1 prospectively, at least by argument of the
2 State.

3 Your Honor, we're asking that those
4 jurors be allowed to serve. I know Your Honor
5 will rule from the bench. If Your Honor rules
6 adverse to me by law or by statute, I know you
7 would allow me to respectfully make my objection
8 at the appropriate time.

9 THE COURT: Certainly.

10 Okay. Mr. Bailey, do you wish to be
11 heard?

12 MR. BAILEY: Not unless I need to, Your
13 Honor, because Mr. Cummings has conceded that we
14 don't have any procedure to have two different
15 juries, guilt phase and penalty phase. I've got
16 a memorandum, I don't know if you wanted to get
17 into this area today, but I've got a memorandum
18 on jury qualification if I could hand that up.

19 THE COURT: Sure. Sure. I'm going to
20 respectfully deny your motion in that we do not
21 have a procedure. There is some -- I understand
22 nationwide there is some discussion about that
23 issue as being a novel issue. And just based
24 upon just the discussion and the study that
25 I've, albeit not a lot, but that I've had, I

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1 must say that it seems to me that it's -- it
2 will be interesting to see if it's met with
3 favor in the future. And certainly, I guess, at
4 some point it could be, but insofar as we have
5 no procedure for having the two juries and the
6 problems that that creates with the second, if
7 you will, with the penalty phase, if necessary,
8 the penalty phase, I'm going to respectfully
9 deny your motion and note your objection for the
10 record.

11 MR. CUMMINGS: Thank you, Judge.

12 THE COURT: Very well. I think,
13 Mr. Bailey, I'm going to ask you to do that
14 order.

15 MR. BAILEY: Number 26?

16 THE COURT: On 26.

17 MR. BAILEY: All right.

18 THE COURT: And 27.

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

21 THE COURT: Surely.

22 MR. CUMMINGS: Your Honor, as we know I
23 could talk about it all day, the solicitor is
24 well known, he's an elected official, members of
25 his staff have been out in private practice as

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1 well as for the staff. At one time I worked for
2 Mr. Bailey and at one time I worked for Mr. Joe
3 Mizell.

4 So obviously when we both start
5 speaking about what we've done in the past with
6 jurors, the qualifications, and people knowing
7 us in the community, a couple weeks ago Your
8 Honor had a plea where some people were horribly
9 run over and suffered great amount of damages.
10 And during the plea it came out, Mr. Bailey
11 wasn't present, I was waiting to do my plea that
12 afternoon, the gentleman, victim, had been the
13 foreperson of a jury. And so -- while this case
14 had been pending. And I don't know if that ever
15 came up.

16 One of the questions that's usually
17 asked by defense counsel out here in a trial is
18 do you have any working relationship with the
19 State, with the defense, do you know any of the
20 investigating officers. And somehow that person
21 wound up being the foreperson of a jury. And I
22 don't know if the -- you know, how he got there.

23 But one of the things that comes up
24 periodically is jurors have to be almost asked
25 whether or not they have any reason why they

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1 shouldn't serve. And I know it's the defense
2 attorneys' job, and with the Court's guidance,
3 of course, and leeway, to ask voir dire
4 questions about what relationship they have,
5 whether they have a case pending. One of the
6 issues that's going to be raised probably by us
7 is whether or not they've ever been the victim
8 of a violent crime, whether they've ever been
9 attacked by somebody, or their child's been
10 attacked by somebody. And that's all for voir
11 dire for Your Honor's ruling.

12 One of the issues I wanted to at least
13 raise, and, again, to do it pretrial, is to make
14 sure that with all the law enforcement agencies
15 in this case that these jurors, and, again, I'll
16 send all my voir dire over to the solicitor
17 ahead of time, is to make sure that none of
18 these jurors have any working relationships with
19 the State, or whatever, that could cause them
20 any impartiality, or prejudice, or should I say
21 tamper with impartiality.

22 THE COURT: Let me ask you this question,
23 because as I read this, here's what concerns me.
24 What concerns me is that what is relevant is the
25 juror who knows a member of the solicitor's

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1 office not vice-versa.

2 MR. CUMMINGS: Right. Except I know it
3 will be made mutual. One of the issues, and I
4 know Mr. Bailey, again, I am not speaking for
5 him, but one of the issues he'll have in voir
6 dire is wanting to know members of my staff,
7 Ms. Thomas' staff, and anybody, our
8 investigators, our experts just to make sure
9 that parallels also. And with the large number
10 of people out here, again, I know usually things
11 cut both ways in this courtroom and I anticipate
12 that, so I know I'll be receiving a copy of that
13 motion back to me or his voir dire request back
14 also.

15 But, Judge, again, because of the
16 nature of our county and the offices that the
17 jurors pretty much are going to know us, or at
18 least some of us in here. And one of the issues
19 I wanted to bring out, again, of course, is to
20 get an impartial jury for my client if at all
21 possible.

22 THE COURT: I understand.

23 All right. Yes, sir, Mr. Bailey.

24 MR. BAILEY: In response to that, of course
25 the State and the defense, once we get the jury

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1 list, is going to try to get all the information
2 we can about those jurors to help us select a
3 fair and impartial jury. And I'll be asking
4 people in my office if they knew people that
5 might be in the same neighborhood they live in,
6 go to the same church they go to, or whatever.
7 Mr. Cummings will be doing the same thing.

8 And ordinarily that type of legwork
9 where you're trying to get information on
10 people, the kind of person they are, the
11 character, their habits, that kind of thing, is
12 something both sides are going to do, that they
13 wouldn't share with each other.

14 Now, the other type jury information
15 that I get would, of course, be the rap sheets.
16 We'll run that on all the jurors. I'll, of
17 course, give Mr. Cummings, Ms. Hardee-Thomas a
18 copy of that.

19 But I do have a problem in disclosing,
20 yeah, my secretary goes to First Baptist Church
21 with Juror Number 10, or her aunt lives across
22 the street from this one. I mean, virtually
23 every juror, unless somebody just moved in
24 recently, doesn't communicate with anybody, is
25 going to have some vague tie or contact with the

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1 State and the defense, perhaps both.

2 So I would -- if my closest friend's
3 on there, or a relative or somebody, obviously I
4 would tell Mr. Cummings that. But I think the
5 motion as written goes a little bit too far in
6 requiring that type of information.

7 And, again, I think you're correct
8 that it should be directed to the juror, not to
9 us. If a juror feels that -- if they're in
10 Kiwanis Club with somebody, that, you know, it
11 may or may not make a difference and they can
12 address that, we can't speak for them.

13 THE COURT: This would be the ruling of the
14 Court: I am happy to ask the jurors regarding
15 the staffs in your offices if you wish me to do
16 so, I'm happy to do that. I am reluctant to
17 grant this particular motion. And the reason
18 for that is that I would have concerns that
19 there may be someone in someone's office that
20 knew one of the jurors and honestly the juror
21 didn't know them.

22 You know, it could be, you know, there
23 are people that consulted with me as a lawyer
24 that I may know them and they don't remember me,
25 or vice-versa. And that information, because of

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1 what is relevant in this process, is the people
2 that the juror knows. And then it very well may
3 be that someone in Mr. Bailey's office made a
4 big impact on a juror. The juror had no memory,
5 or the person in your office had no memory of
6 having met them. And then that raises an issue
7 about whether or not your office people have
8 been truthful.

9 And the fact -- and it really is
10 irrelevant that your person wouldn't remember,
11 what's relevant is that the juror will remember.
12 But alternatively the other could happen and
13 could likewise be misconstrued.

14 I am happy to examine and do so fully
15 with regards to your offices of a juror. And
16 there are certainly varying ways to do that,
17 some ways more extensively than others, but I'm
18 certainly willing to ask that.

19 I am reluctant to do the opposite.
20 I'm reluctant to charge each one. And it very
21 well may be that they would know their faces and
22 they don't know their names. When your members
23 of your office, which is the request Mr. Bailey,
24 will be looking at cold names of a piece of
25 paper, rather than a face that maybe, gosh, you

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1 know, every time I go to the bank I deal with
2 this person, but I didn't know their name, you
3 know, we have conversation back and forth and I
4 like this person, but I didn't know their name.

5 I am concerned about that and as a
6 result I'm going to deny the motion only insofar
7 as it asks that the solicitor ascertain all the
8 relationships in his office with the jurors.

9 However, do let me assure you that I
10 would be inclined to -- and if requested,
11 certainly, want to ascertain whether or not this
12 juror know members of your office to include
13 employees and vice-versa if requested. And I
14 think that's the better way to ascertain the
15 relevant meaningful information.

16 MR. CUMMINGS: Thank you, Judge. As Your
17 Honor rules that is the benchmark and I would
18 ask you to please respectfully note my
19 objection.

20 THE COURT: Yes.

21 MR. CUMMINGS: And, Judge, I do want to
22 state this on the record and have Mr. Bowman
23 hear this, I did not want this motion to seem
24 that I have to try to tear the solicitor's
25 office apart trying to find out each and every

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1 person they've ever represented as a victim or
2 go to church with or whatever, but in particular
3 in light when it came across, when Your Honor
4 heard that plea a couple weeks ago, it was a
5 former foreperson of a jury while that case had
6 been pending for two years.

7 THE COURT: And indeed that information was
8 divulged, just so you know.

9 MR. CUMMINGS: Yes, ma'am. I heard that.

10 THE COURT: With the eyes open that juror
11 was -- and I think it was -- it may have even
12 been a criminal matter and it was a conviction.

13 MR. CUMMINGS: One of those kind of things
14 that like you sit here and you hear this as a
15 defense attorney, like you understand that we
16 are in a small community.

17 THE COURT: Absolutely.

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

19 THE COURT: That information I think was
20 noted, as best I recall.

21 All right. Then we have number 28.

22 MR. CUMMINGS: Thank you, Judge. I think
23 Mr. Bailey touched briefly on this, Judge,
24 respectfully, that they do run rap sheets on the
25 juror, that the gentleman will share that with

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1 us. What I ask for particular going down my
2 motions, number one, is any and all arrests,
3 records of arrest, conviction, prior to jury
4 service of potential jurors. That's pretty much
5 the NCIC check of the rap sheet.

6 But one thing that we have asked in
7 here for, and, again, it may be --

8 THE COURT: Prior jury service isn't on a
9 rap sheet, though, is it?

10 MR. CUMMINGS: I'm sorry, ma'am?

11 THE COURT: Prior jury service wouldn't be
12 on a rap sheet, though.

13 MR. CUMMINGS: Absolutely, Judge. But
14 prior jury service, if it's known to the jurors,
15 like -- and, again, I don't want to overstep
16 myself, but whether or not they were excluded
17 because there was a case pending against them in
18 our office, a solicitor's office, or whether
19 there was a case the juror was excluded and then
20 charges were dropped.

21 One of the issues that's coming up
22 today in like DUI's, they're excluded, a lot of
23 times if we have traffic cases, or a serious
24 case most people don't like being charged with
25 DUI's and then later on they're acquitted, and,

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1 of course, an expungement order done. But it's
2 a good practice, it's been a good procedure
3 that, you know, five assistant solicitors come
4 in sitting next to Bailey saying I had this guy,
5 or I didn't have this guy and that's why we go
6 through voir dire.

7 What I'm asking for in my motion is if
8 there's particular jurors that are known to the
9 State that they would not take for a particular
10 reasons or whatever, that's not something
11 normally I would get other than just watching
12 the table. And I'm asking for anything if they
13 know of potential jurors they would see out
14 here, if they have information on them, if they
15 have somethings that is discoverable; in other
16 words, something that would be used by
17 Mr. Bowman in helping pick a fair and impartial,
18 we're asking for that.

19 Rap sheets, of course, Mr. Bailey said
20 he's given it to us, so I know that issue is
21 settled, but what I'm trying to find out is if
22 they heard that Billy Bob was going to be picked
23 up by the Orangeburg sheriff next week, the
24 Orangeburg County sheriff is part of this case
25 in some aspect, I would like to have that. And

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1 only usually either military intelligence or law
2 enforcement intelligence would have information
3 of what is pending or what is going to happen.

4 THE COURT: All right. The information
5 beyond the rap sheet, Mr. Bailey, that I'm
6 hearing is if there is an imminent arrest of a
7 juror, or there has been a nol pros, or a not
8 guilty, or a dismissal. I'm trying to think
9 what other areas.

10 MR. CUMMINGS: There really isn't -- and
11 one of the issues that comes up, Judge, of
12 course is when a record is expunged it's
13 expunged. Sometimes, as you well found out last
14 week, something shows up on a defendant's rap
15 sheet, but the State knew about it. And I know
16 as a gentleman and an officer of the Court he
17 would tell me that, I just want to preserve the
18 record, protect the record that if there is
19 something like that -- like federal charges
20 sometimes, these guys sit on those indictments
21 until the United States attorney finds it
22 appropriate to call them up and say would you
23 mind turning yourself in. And that's something
24 that scares all of us in these cases, that one
25 of these people in this thing may face federal

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1 charges.

2 And I anticipate, in this case I think
3 there is one person sitting across the street
4 waiting to go to federal court. And, of course,
5 Mr. Bailey doesn't control the United States
6 attorney.

7 THE COURT: Okay. What about that,
8 Mr. Bailey?

9 MR. BAILEY: Your Honor, if we have a
10 defendant with an expunged record we have to
11 destroy our records also, so unless I remember
12 him or somebody else that rings a bell with --

13 THE COURT: That's exactly right. That's
14 exactly right. In other words, if you have in
15 your knowledge or if you are working with, the
16 example was the sheriff of Orangeburg County and
17 you know that someone's about to be arrested,
18 that there's an outstanding warrant on someone,
19 absolutely.

20 But I want to be real specific. I
21 don't want it to be -- I don't want you to be
22 loose, Mr. Bailey. In other words, it's got to
23 be -- if the record has been expunged it's got
24 to be that you have actual knowledge, all right?

25 MR. BAILEY: Okay.

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1 MR. CUMMINGS: Yes, ma'am. And I
2 appreciate that. But I know we're not doing a
3 fishing expedition on potential jurors.

4 THE COURT: And I understand your need and
5 I want it in no way to demean your need, I just
6 want Mr. Bailey to know what the requirement is,
7 if you know that there has been a record
8 expunged and someone in your office prosecuted
9 an individual, if you know that there are
10 federal charges that are pending that have not
11 shown up for whatever reason on an NCIC, or
12 state charges that have not shown up on an NCIC.
13 And that information is if someone in your
14 office happens to know that has happened
15 regarding one of the jurors, then I want you to
16 forward that to the defense.

17 MR. BAILEY: Okay.

18 THE COURT: Now, if there's a rumour that,
19 you know, somebody might be getting ready to
20 leave somebody else and you think maybe they're
21 going to be upset because of that, those pieces
22 of information certainly not.

23 MR. BAILEY: I understand.

24 THE COURT: Only because I know that
25 lawyers use that information, but it's pretty

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1 rank speculation. But what I'm looking for are
2 rap sheet kinds of information that you would
3 happen to have actual knowledge of.

4 MR. BAILEY: Thank you. I'll draw an order
5 then.

6 MR. CUMMINGS: Yes, sir.

7 THE COURT: Thank you, Mr. Bailey. And if
8 you can keep up with all the expungements based
9 on all the ones that you sign.

10 MR. CUMMINGS: No. Judge, I would be real
11 careful about that, I --

12 THE COURT: That's why I said actual
13 knowledge.

14 MR. CUMMINGS: One of the issues I would
15 talk to Her Honor about, and this is not in
16 written form, but in the form of an oral basis.

17 THE COURT: Yes.

18 MR. CUMMINGS: A lot of jurors, Judge, when
19 you ask them has anybody ever been convicted of
20 a crime that carries a penalty greater than one
21 year, I know that's for Her Honor and I do not
22 mean to step on Your Honor's toes on this issue.

23 THE COURT: My toes are okay.

24 MR. CUMMINGS: But most people don't
25 understand what that means. And even if you lay

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1 out the foundation over here on the board,
2 federal crimes, state crimes, most people hear a
3 person say if you don't show up for roll call,
4 you know, you're going to forfeit the PR bond
5 and you can face up to five years.

6 So I know when we get the ruling from
7 the bench, we've always done this in here about
8 picking jurors, whether or not somebody's
9 excluded for a DUI or something that might have
10 carried a year or greater, I wanted to make sure
11 I get a ruling on that. And I'll put that in
12 written form.

13 THE COURT: Okay.

14 MR. CUMMINGS: As to what Her Honor is
15 going to say is the detinel (phonetic) for a
16 person being excluded. Because one of the
17 issues that keeps popping up in PCR's is whether
18 or not a juror should have been struck because
19 they were -- their son was murdered in Florida
20 at one time that nobody knew about, or that they
21 had faced an out-of-state conviction that later
22 on, since we revised our codes, is now a crime
23 that carries one year or greater. And I just
24 wanted it pointed that out to Her Honor's
25 attention.

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1 And Mr. Bailey's trying to make sure
2 we cover that issue with these jurors because
3 we're going to have some alternates and they may
4 know him, they may not, they may have a record,
5 they may not. And it's all going to come back
6 down on us whether or not we really ask the
7 right question and got the right ruling from the
8 bench about what is the benchmark for being
9 excluded as a juror for being charged with a
10 crime -- convicted, excuse me.

11 THE COURT: Great. Super.

12 Number 29, Motion Requesting Trial
13 Judge to Make Findings of Fact When the Jurors
14 are Struck for Cause.

15 MR. BAILEY: I agreed on that.

16 THE COURT: Great. Oh, great.

17 MR. CUMMINGS: I think 30 was also
18 consented to, if I'm not mistaken.

19 THE COURT: All right. Thanks for bringing
20 that back to my attention.

21 MR. CUMMINGS: Judge, number 31, I think
22 we're going to set for next Friday, Friday the
23 22nd, we're going to do Jackson v. Denno
24 statements.

25 THE COURT: Yes.

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1 MR. CUMMINGS: So I would ask that number
2 31 be held until next week.

3 THE COURT: Let me ask you this question,
4 since you all have mentioned next Friday. Have
5 you got folks scheduled? Because that time
6 they -- there might be a little bit of
7 flexibility to that time and I wondered if you
8 all wanted to do that during the non-jury week,
9 which is in two weeks, and maybe handle some --
10 let me be a little clearer with you.

11 What I have done is during the
12 non-jury term, which is the first week of April,
13 that Friday is all day, just this matter. Next
14 week, of course, is a common pleas term and it
15 is my hope that we will be finished. We may
16 have a jury deliberating, which wouldn't be a
17 problem for us at all, but there's a chance that
18 we may be arguing and charging Friday morning,
19 which would mean that we would be a little bit
20 delayed starting the Jackson v. Denno hearing.

21 And I simply ask you for scheduling
22 purposes is that the best time to do the Jackson
23 v. Denno, or do you want to put it to a day,
24 which would be the first of April, when you know
25 we have all day?

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1 MR. BAILEY: It doesn't -- I've got them
2 lined up, you know, they're flexible, I can do
3 them later if you think you might have a
4 conflict for Friday.

5 THE COURT: Let's do that. Let's see how
6 far we get today when we finish and let's talk
7 about that.

8 MR. BAILEY: All right.

9 THE COURT: Because as you know we have the
10 chambers week, which is the second week in
11 April, that we have all week. And we have that
12 Friday before when I'm in non-jury, so let's
13 just talk about what makes sense.

14 MR. CUMMINGS: Judge, go back to what
15 Mr. Bailey had said on that. Jackson v. Denno
16 is probably going to take a long time. We've
17 got alleged five statements, we're going to have
18 different law enforcement members. My client, I
19 anticipate, will take the stand in the Jackson
20 v. Denno case.

21 THE COURT: Sure.

22 MR. CUMMINGS: And maybe one or two other
23 witnesses in the Jackson v. Denno. But I know
24 if we just even take the first statement it's
25 going to take an hour or two with questioning

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1 and go through things and law enforcement
2 people.

3 THE COURT: Let's give that some thought,
4 because we may want to take a period where there
5 is a substantial amount of time to do that. And
6 there are some reasons to get that out of the
7 way early as well.

8 MR. CUMMINGS: At that point, Judge, I
9 would -- and, again, it's not in written form
10 yet, I will make sure I put it in writing back,
11 we've been very, very lucky today that there's
12 not a member of the press in the courtroom. And
13 I would ask, Judge, that, again, we continue
14 that. Mr. Bailey's not picked up the phone and
15 called the press, I darn sure haven't, I know
16 Ms. Thomas hasn't done it while we're working.
17 And one of the most important stages of the case
18 is while we're working to set the stages of the
19 trial. We understand the trial is public.

20 What I would be cautionary, Judge, is
21 that we continue this meeting, and maybe not a
22 gag order, per se, but just a gentlemen and
23 ladies' agreement that none of us are going to
24 notify the press or anybody. If they happen to
25 find out on their own, so be it, but that we not

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1 be calling them, so we continue to work.

2 He's out here today in prison garb,
3 not in dress clothes, he's in shackles, it makes
4 it a lot easier for us to know that we've got
5 complete use of this courtroom, complete candor
6 in talking with each other and working, and I
7 find it very refreshing and comforting that we
8 can work like that.

9 I'm not asking for a gag order, per
10 se, but I would like to almost propose out here
11 for a gentlemen's and ladies' agreement if we
12 can, at least during the motions and Jackson v.
13 Denno particularly.

14 THE COURT: You're asking for a motion?

15 MR. CUMMINGS: Yes. I'm turning to my
16 colleague and asking if we can have like a
17 gentlemen's gag order, not a court order.

18 MR. BAILEY: I never call the press. If
19 they call me, I'm not going to lie to them.
20 Because they know there are going to be pretrial
21 hearings and if they ask when they are, then I
22 feel like I need to tell them. So I've got a
23 duty to respond truthfully, I can't just say no
24 comment.

25 So I'm not going to encourage them to

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1 show up, but if they call and ask and we have
2 something scheduled, then I feel like I need to
3 tell them.

4 MR. CUMMINGS: Well, then let me put the
5 burden back on my colleague and say would he be
6 kind enough to call us and let us know that
7 somebody did inquire?

8 MR. BAILEY: Sure.

9 MR. CUMMINGS: So we could be well
10 prepared. Like Your Honor mentioned to the
11 security agents this morning, to make sure that
12 he's not coming out here without being street
13 dressed.

14 THE COURT: And since you've raised that,
15 I'll address that as well.

16 MR. CUMMINGS: Thank you.

17 THE COURT: It is my intention that if the
18 press is present, that Mr. Bowman not be dressed
19 other than in street clothes.

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

21 THE COURT: And the reason for that, and I
22 think the record ought to reflect, the reason
23 for that is if there is press I do not want him
24 to appear in the press in other than street garb
25 just because of the jurors and the impact that

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1 that could have on the jurors, and that's the
2 reason for it.

3 MR. CUMMINGS: Thank you, ma'am. And we
4 thank Her Honor for her ruling on that.

5 THE COURT: Sure.

6 MR. CUMMINGS: I guess I wondered while I
7 was talking to that to at least bring it up.
8 And we've got some guidance now, that maybe we
9 can keep the low profile that this case has
10 right now. Thank you, Judge.

11 As to motion number 32, Your Honor,
12 this is basically a motion that we're asking for
13 out of kindness and professional respect for all
14 of us. And I think Your Honor has been great in
15 your leeway with working with us and I'll try to
16 slow down as I'm speaking.

17 THE COURT: We will not spend a lot of time
18 on that. We are going to have regular
19 courthouse hours.

20 MR. CUMMINGS: Thank you, Judge.

21 THE COURT: We absolutely are going to have
22 regular hours. Having said that, as regular
23 court hours as there can be under the
24 circumstances. It is my practice to try to
25 consult with counsel, see what your needs are.

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1 I know that the trial of a case is
2 given the need for flexibility, I'm certainly
3 aware of that. All the while aware of the needs
4 of our jurors, to keep them content for all of
5 our purposes so that they can do the work that
6 they need to do as well.

7 But to that end you all will have lots
8 of input about that. But it certainly is a
9 beginning point. It's my intention to
10 probably -- we'll talk about that, we'll
11 probably have -- you all will have some input
12 into whether we begin at 9:00 or 9:30, quite
13 frankly. And we'll typically go until 5:30 in
14 the afternoon, 5:00, 5:30 in the afternoon. And
15 understanding that there's got to be some
16 flexibility.

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

18 THE COURT: I certainly don't intend to be
19 going through voir dire at midnight, that's for
20 sure.

21 MS. HARDEE-THOMAS: Thank you.

22 THE COURT: All right. Okay. All right.
23 That brings us up to the State's motions.

24 MR. BAILEY: Aren't there six more defense
25 motions?

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1 THE COURT: I'm sorry, you're right.

2 You're right, exactly right.

3 MR. CUMMINGS: Some of these like 33
4 through 38.

5 THE COURT: Yes.

6 MR. CUMMINGS: I agree we need to keep a
7 parallel order.

8 THE COURT: Yes.

9 MR. CUMMINGS: I'll just make it real --

10 THE COURT: We do need to do that. Number
11 33.

12 MR. CUMMINGS: Yes, ma'am. I'm sorry.

13 THE COURT: When I get them put differently
14 in my notebook, then I think I'll be in a little
15 bit better shape. But you're exactly right, the
16 number 33 which is the motion in limine
17 regarding evidence. Yes.

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

19 Basically, judge, we've touched in this in our
20 previous motions also, and we've got a partial
21 ruling and a consent on the photographs.

22 THE COURT: Yes.

23 MR. CUMMINGS: But, Judge, anything that's
24 of a photographic or physical evidence not
25 needed to establish any material element of the

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1 State's case, if it's such gruesome or
2 prejudicial or objectionable character. I know
3 that I have a burden, and Ms. Thomas, to renew
4 our motions in limine at the time of trial and a
5 specific time when the evidence is going to be
6 introduced.

7 As far as the State's evidence, our
8 motion in limine is to put the Court on notice,
9 Mr. Bailey that -- again, knowing the trial
10 gentleman that I do, he's not going to just rush
11 up there and pass up in front of the bench
12 without giving us a copy first and then allowing
13 any objections or arguments in time, but I
14 protect the record, would move to protect the
15 record, Judge, that before anything of that
16 nature does come into play, is shown on a
17 screen, with the high tech information here, a
18 flick of the switch today can go on before
19 anybody has a chance to stop it, and I know that
20 we've not had any problems with that in the
21 past, or somebody leaving something up on a wall
22 or up on a screen while people are talking, but
23 I know it's our job in the courtroom to be on
24 guard.

25 But I would ask that at least, Judge,

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1 we preserve the record and know that there are
2 going to be motions in limine made as to each
3 and every photograph that's introduced when Her
4 Honor deems it appropriate.

5 THE COURT: Very well. All right.

6 MR. BAILEY: Your Honor, I agree with that.
7 I'm not going to flash any kind of pictures that
8 may be potentially objectionable until the
9 Court's had a chance to rule on that.

10 THE COURT: Thank you. Thank you,
11 Mr. Bailey. Very well. I gather then I'm going
12 to ask -- I think I'm going to ask --
13 Mr. Bailey, I'm going to ask you to draft, to
14 craft an order regarding this motion.

15 MR. BAILEY: Okay.

16 THE COURT: And the reason for that is that
17 the -- it's the written order, or the written
18 motion's crafted a little bit differently, so I
19 think that's appropriate.

20 Number two, which is number 35 -- 34.

21 MR. CUMMINGS: Number 34, right. Judge,
22 again, a lot of it's going to be the testimony
23 of the pathologist, a lot of it's going to be
24 the testimony of any witnesses that Mr. Bailey
25 may use. And it's going to be a two-part issue

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1 here. The first one would be the case in chief
2 of the guilt stage, whether or not the
3 gentleman's guilty of murder or not.

4 THE COURT: Let me stop you right there.
5 Would there be any kind of evidence like this
6 proposed in the guilt phase?

7 MR. BAILEY: In the guilt phase I would
8 anticipate introducing a statement from
9 Mr. Bowman of which he relates what happened to
10 the victim, statements that she made between the
11 first time she was shot and the second time she
12 was shot. And if Tawain Gadson testifies he
13 would be an eyewitness and he would testify as
14 to the victim's -- what he observed prior to the
15 time she was shot, after she was shot. So to
16 that extent the jury could infer fear and
17 suffering in the guilt phase.

18 And I would not in the guilt phase
19 attempt to take it beyond that, that would be
20 just part of the res gestae what had occurred.

21 THE COURT: Yes.

22 MR. BAILEY: And the penalty phase, of
23 course, I think the door gets opened a little
24 bit wider and I would anticipate some people
25 from the pathologist about what a person would

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1 go through. First gunshot wound did not
2 immediately kill her, she was shot a second time
3 in the head. And would anticipate that and I
4 think that is typical, traditional penalty phase
5 testimony, would not be broached in the guilt
6 phase.

7 THE COURT: Yes, sir.

8 MR. CUMMINGS: I know our motion in limine,
9 again, Judge, is not premature, per se, but it
10 is setting the stage for oral argument. And of
11 course any arguments that we need to make prior
12 to introduction of the statements whether or
13 not, again, Mr. Bailey just stated a moment ago,
14 Mr. Gadson testifies. If he doesn't, any
15 statements made would be hearsay. And then we
16 got a co-defendant issue. And then as far as
17 the penalty phase, of course it's going to be up
18 to the experts to battle the cause of death,
19 time of death, or whatever.

20 But I did want to at least put this
21 motion on the record today saying that, again,
22 before the solicitor introduced anything about
23 that to be everybody's on notice that there are
24 going to be objections, or at least hearings
25 requested prior to any statements or evidence

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1 being introduced, ma'am. And, again, the
2 Jackson v. Denno hearing will come into play as
3 to Mr. Bowman's alleged statements, ma'am.

4 THE COURT: I understand. So everyone's on
5 notice it would be impossible for me with the
6 knowledge that I have at this point to rule on
7 this particular motion at this time. I simply
8 fail to have really any information absent
9 outside of your arguments. So, counsel, how
10 shall we leave this one?

11 MR. CUMMINGS: Judge, I think it is not
12 ripe, I've stood and we listed them.

13 THE COURT: Okay.

14 MR. CUMMINGS: I did want to give the
15 Court -- probably all these are going to have to
16 be preserved and argued as we get closer to
17 trial and after evidentiary rulings.

18 THE COURT: Very well. It is not ripe.

19 MR. CUMMINGS: Number 35, ma'am, also as
20 Your Honor well knows, and our procedures today
21 in the penalty phases calling the family of the
22 victim, everybody loves their child and anybody
23 who has lost a child is greatly affected by the
24 loss of said child. Therefore, Judge, our
25 motion as you read through it --

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1 THE COURT: Victim impact testimony.

2 MR. CUMMINGS: Yes, ma'am. And usually
3 that's saved for the penalty phase, God forbid
4 we get there, but in the alternative arguing
5 that is to preface and put the Court on notice
6 that with the case law as in flux right now and
7 our victim's rights versus defendant's right for
8 a fair trial, that we anticipate oral argument
9 and objections to this and ask Your Honor for
10 some guidance as we get ready to --

11 THE COURT: Yeah. As I understand, victim
12 impact testimony at this point, it was
13 disallowed by the United States Supreme Court
14 and then allowed by the United States Supreme
15 Court. And the state of the law at this time is
16 that victim impact evidence testimony is
17 allowed.

18 However, obviously, and for obvious
19 reasons, it's restricted, Mr. Bailey. I know
20 that you know that. Interestingly enough, and I
21 just, I just -- one of the ways of -- that I
22 have thought about presenting victim impact
23 testimony and making sure that it is within the
24 bounds that it ought to be, one of the ways that
25 I have thought about doing that is to do that by

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1 video. Obviously to allow counsel to examine
2 the victim, the cross-examination at that point
3 and thereby keeping there from being any
4 objectionable testimony that could come out.

5 Because there clearly are things,
6 clearly are things that in that circumstance
7 would be very difficult for a victim not to say.
8 Like, ladies and gentlemen, I think he should
9 die for what has happened. Obviously clearly
10 inadmissible.

11 And so it's -- it would be
12 inappropriate to cart blanch exclude victim
13 impact testimony, I'm not going to do that,
14 under the state of the law as it exists at this
15 time. However, it will be restricted. And I
16 think that probably closer to trial we'll need
17 to talk about that, because I have got some
18 concerns about victim impact testimony.

19 MR. CUMMINGS: And I thank Your Honor for
20 allowing me to, please, make this objection
21 respectfully to the bench, I understand Your
22 Honor's ruling. I've written the words down on
23 my motion for my client that the ruling is
24 limited. In other words, that he understands
25 it's not no, the Court has granted my motion and

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1 it cannot come in at all, we do have a change in
2 the law, but that there are limitations to
3 victim impact evidence that will be closely
4 guarded by the bench and by the officers of the
5 Court.

6 THE COURT: That's correct. And the
7 arguments that allow it are certainly reasonable
8 and I certainly see -- I certainly see that, to
9 allow victim impact, but it just has to be
10 appropriate.

11 MR. CUMMINGS: Thank you, Judge.

12 THE COURT: Yeah.

13 MR. BAILEY: Your Honor, while we're in
14 that area.

15 THE COURT: Yes.

16 MR. BAILEY: If I could briefly address my
17 position on that as far as the videotape.

18 THE COURT: Sure.

19 MR. BAILEY: Of course the reason the
20 Supreme Court kind of reversed itself and now
21 allows victim impact statement, is to more or
22 less level the playing field and allow the
23 victim's family to counter some of the type
24 penalty phase testimony that's traditionally
25 been brought up by the defense in which

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1 psychiatrists potentially, or family members
2 talk about good things that the defendant has
3 done as a child, or going to church every
4 Sunday, and that type thing. Put on equal
5 playing field. I would just submit if the
6 victim impact testimony is restricted to
7 videotape, then the defense testimony that the
8 victim impact is intended to counter should be
9 subjected to the same restriction.

10 THE COURT: I understand exactly your
11 point. And I would not require, I'm not going
12 to rule that way at all, Mr. Bailey, I just -- I
13 just give that to you to contemplate because at
14 that point in a trial it would be -- it would be
15 difficult for everyone for there to be some, I'm
16 sure, unintentional slip that would cause a
17 mistrial of the trial at that point, really is
18 the only purpose in my mind.

19 And as you know there is a difference
20 under the law between mitigating factors and the
21 testimony for mitigating factors than it is for
22 victim impact.

23 MR. BAILEY: Yeah.

24 THE COURT: And that's why I was making the
25 comment that I understand the rationale, but you

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1 can't equate the two. It also is important, I
2 think, for the jury to be mindful that this is
3 not the body, but a human being. And I think
4 those arguments are well founded.

5 My only comment about that is that
6 that is a very difficult part of the trial for
7 family members, and very difficult for them
8 to -- it's just a difficult part.

9 MR. BAILEY: I understand.

10 THE COURT: And one that has to be guarded,
11 clearly.

12 All right. I'm trying to think what
13 do we do about an order? Mr. Cummings, why
14 don't you -- because while I'm going to deny
15 your motion.

16 MR. CUMMINGS: Yes, ma'am.

17 THE COURT: It will be -- obviously it has
18 to be appropriately restricted.

19 MR. CUMMINGS: Follow the statute, thank
20 you. And I will do an order with Ms. Thomas to
21 follow that, Your Honor, please noting, again,
22 so the record's clear, our respectful objection
23 to Your Honor's ruling.

24 THE COURT: Indeed.

25 MR. CUMMINGS: Judge, I think 36 and 37

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1 have been consented to.

2 THE COURT: Yes.

3 MR. CUMMINGS: Number 38, Judge, again, is
4 a motion in limine for evidence. I know, Your
5 Honor, that motions will have to be made and
6 duplicated again at the time that any evidence
7 is introduced. Again, this is basically to put
8 everybody on notice that before the solicitor or
9 any State representative under Mr. Bailey's
10 guide would introduce anything, put anything up
11 on a wall, are not needed to establish any
12 elements of any offense, we know what the
13 elements of murder are, we know what the
14 elements of grand larceny are, and therefore,
15 Judge, anything that would not tend to prove
16 those elements would be either irrelevant or
17 likewise have any other objection as to
18 gruesomeness or prejudicial value, my motions
19 would have to be renewed. I know this may look
20 premature, but we made this motion to put
21 everybody on notice.

22 THE COURT: I got it for notice.

23 MR. CUMMINGS: Yes, ma'am.

24 THE COURT: Great. But there's nothing for
25 me to rule on at this point.

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1 MR. CUMMINGS: No, ma'am. So it's kind of
2 premature.

3 THE COURT: Great. Okay. All right. Now,
4 how is everybody doing? It's 1:25, y'all, I'm
5 worried about lunch. You got time. I want to
6 be sure everybody's blood sugar is okay. Check
7 Mr. Bowman now, make sure he's okay.

8 MR. BAILEY: I'm fine.

9 MR. CUMMINGS: I'm okay.

10 THE COURT: Does he feel like you all need
11 a break?

12 MS. HARDEE-THOMAS: Let's keep rolling.

13 THE COURT: He's all right, too? Very
14 well.

15 MR. CUMMINGS: Now we hand off.

16 THE COURT: All right. Now, Mr. Bailey.

17 MR. BAILEY: Your Honor, my motion number
18 one is a motion in limine to prohibit the
19 defense and the State from -- in this case from
20 injecting any religious arguments at the guilt
21 phase or the penalty phase. And that's based on
22 State vs. Patterson, State vs. Shaffer, which
23 would address those two issues.

24 THE COURT: Many other cases.

25 MR. BAILEY: Yes, ma'am. Of course, the

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1 concern is the jury should take the facts from
2 the witnesses, the law from the judge. And one
3 of the big problems with the death penalty case
4 prior to the -- rewriting the statute in 1976 or
5 so, was that there were arbitrary factors that
6 would inject themselves into the proceedings.

7 And we have strict guidelines now to
8 channel the jury's discretion, and if the jury's
9 sitting there listening to an argument between
10 the Old Testament and the New Testament or
11 something, that they're going to get diverted
12 from the law and the facts from the witness
13 stand.

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

15 MR. CUMMINGS: May it please the Court,
16 Judge. This is, again, one of those arguments
17 that I make and find yet our Court is trying to
18 give a defendant the fairest possible trial.
19 Except before any juror can take that stand they
20 have to either give an oath or an affirmation to
21 swear to their God they're going to tell the
22 truth. It kind of sounds oxymoronic. And if
23 the Court will indulge me a little time to
24 orally argue this.

25 I've read State vs. Patterson, I've

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1 read Mr. Bailey's book that he's done with one
2 of our judges on the bench. And, Your Honor,
3 respectfully everything about our nation is a
4 dollar bill, a nation under God, in God we
5 trust. We have the Old Testament, an eye for an
6 eye, a tooth for a tooth. I don't know how the
7 Court in its infinite wisdom, or our Supreme
8 Court, could even say you have to keep religion
9 out of everything in this courtroom.

10 I mean, I stood up in here probably 20
11 times today and said, "God forbid." I don't
12 just use that as a figure of speech, I kind of
13 mean it, that the ultimate penalty is actually
14 given.

15 To get an en bloc black and white
16 ruling from the bench today, and Mr. Bailey's
17 good argument is no religious issue can come
18 into play in this courtroom, I don't think that
19 is the law. I don't have a memo to pass up to
20 the bench, but I darn sure have one on my desk
21 that I've been working on greatly to address
22 this. And I would like to have, at least for
23 purposes of the record, to argue back that we
24 cannot keep every religious argument out of
25 here.

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1 It would be like watching somebody not
2 be able to do the sign of the cross if they
3 believe in Christianity, or not to wear a
4 religious artifact on them. But to stand up in
5 there and forget one of the first ten laws we
6 have, is thou shall not kill. You know, this
7 jury is going to hear some manner in here about
8 religion, some way, somehow.

9 In opening and closing arguments I
10 know we are restricted in opening to stick to a
11 short road map of the facts. All the years
12 we've been doing it I don't think there's ever
13 been one lawyer that stood up, did a short road
14 map of the facts. That's why they're not
15 practicing, if they do that.

16 Then in closing arguments I don't
17 think anybody has deliberately stood up there
18 and tried to preach the Bible. I've heard some
19 of those cases. In Bobby Ross's death, Jerry
20 Screen got up and actually -- I thought he was
21 going to sing part of the old scripture. I've
22 heard I. S. Leevy Johnson in his closing
23 arguments trying to acuate "Lying Down by the
24 Soft Waters by the Pastures," I mean from the
25 old Negro spirituals. I don't know how to keep

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1 religion out of this courtroom at all.

2 If you look around the bench, and
3 today I know what the State is asking for, I
4 don't anticipate and I don't think Ms. Thomas
5 anticipates, I'll let her speak for herself on
6 this, to deliberately put religion into here.
7 Just like we don't try to put race in this
8 courtroom. Judge Jefferson a couple weeks ago,
9 I've got to say is probably the most tired judge
10 in the state right now, trying to keep everybody
11 from keeping that case from going across the
12 black/white lines.

13 But I know today the State is asking
14 as a gentleman, an officer of the Court to say,
15 please, stay away from religious arguments at
16 any stage. I know, Your Honor, I'm asking today
17 not to make a black and white ruling on that, or
18 a bright line test, I know Your Honor will
19 follow the law.

20 THE COURT: I will wait to receive your
21 memo, got a couple of cases for you to pull for
22 me, too --

23 MR. CUMMINGS: Yes, ma'am.

24 THE COURT: -- in your memo. State vs.
25 Cribb.

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1 MR. CUMMINGS: C-r-i-b-b, ma'am?

2 THE COURT: Yeah. 967 S.W.2d 773, People
3 vs. Sandoval, 841 Pacific 2d.

4 MR. CUMMINGS: I am sorry, I could not hear
5 the second part. 841...?

6 THE COURT: Pacific 2d, 862.

7 MR. BAILEY: Sandoval.

8 THE COURT: S-a-n-d-o-v-a-l. Let me give
9 you a couple more, if I may. State vs.
10 Mitchell, 674 Southern Second, 250. And
11 Carruthers, C-a-r-r-u-t-h-e-r-s, Carruthers vs.
12 State, 528 S.E.2d, a little bit easier, 217.

13 MR. CUMMINGS: Yes, ma'am.

14 THE COURT: That's a 2000 case. Look at
15 those references for me. And I'll look to
16 receive your memo and then I'm not -- we
17 probably will argue this again --

18 MR. CUMMINGS: Yes, ma'am.

19 THE COURT: -- once I've received your
20 memo.

21 MR. CUMMINGS: Thank you, Judge. And,
22 again, I'll send it to Mr. Bailey first. Judge
23 Anderson actually wrote an opinion about
24 religious influx into the court, so I didn't
25 want to have to sit there with a dictionary to

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1 do the memo, and I apologize to the Court.

2 THE COURT: Thank you for that.

3 MR. CUMMINGS: Yes, ma'am.

4 THE COURT: All right. Mr. Bailey.

5 MR. BAILEY: Your Honor, the State's next
6 motion is a motion in limine to prohibit the
7 defendant from in any time or any manner during
8 voir dire or during the course of the trial to
9 try to educate the jury as to the legal effect
10 of a divided verdict. And I cited on the first
11 page of my motion five or six South Carolina
12 cases in which that issue had arisen.

13 And obviously, Your Honor, the problem
14 arises where the jury's instructed their verdict
15 must be unanimous. And if they're advised that
16 one person holding out on a death penalty
17 creating a hung jury is going to not result in a
18 mistrial and retrial like you have in any other
19 case, but would result in a specific outcome,
20 it's going to encourage the jury to ignore the
21 instruction that their verdict must be unanimous
22 and encourage them to disagree rather than to
23 agree on a verdict.

24 And I think that the second page
25 memorandum, the United States Supreme Court

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1 addressed that identical issue and I think set
2 out in very clear language the rationale for
3 that. The Eighth Amendment does not require the
4 jury to be instructed as to the consequences of
5 the failure to agree, and that obviously the
6 jury system is to secure unanimity by comparison
7 of using arguments on the jurors not to
8 encourage them to disagree by giving them what
9 amounts to a legal consequence of their failure
10 to agree.

11 So I would ask that they be instructed
12 their verdict in both the guilt and the penalty
13 phase must be unanimous and that neither side do
14 anything to tell the jury anything different
15 than what the Court's instructing them.

16 THE COURT: All right. Thank you. Yes,
17 sir.

18 MR. CUMMINGS: Judge, I'm going to let
19 Ms. Thomas speak for herself and I think we both
20 may argue this point, just for both of us have a
21 right to address the jury. Your Honor,
22 respectfully, what usually happens at closing
23 arguments, we -- you know, we get up there and
24 speak, we get the closing argument in this case,
25 and as we all know, but we try to follow what

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1 the jury charges will be. Your Honor's going to
2 meet with us ahead of time, we're going submit
3 charges, Mr. Bailey's going to submit charges.

4 I think the only thing I've ever done
5 in the ones I've done both prosecuting and on
6 defense now, is to stand up and say a juror has
7 a right to vote their conscience, that somebody
8 cannot be swayed, to vote their conscience. And
9 at the end when we poll the jury we say is this
10 your vote, is this still your vote.

11 So I think we have the legal right to
12 argue that a juror doesn't have to be -- and I
13 don't mean to use bad words here -- like lasso
14 to corral them, like the 12 angry men that we
15 all know about to sit there and try to convince
16 somebody to vote different or vote with the
17 majority.

18 We recently got a new legislature here
19 who's trying to cut the unanimous verdict down
20 in death penalty cases. And we all know that
21 it's the ultimate penalty and it ought to be
22 protected more than any jury issue we've ever
23 had in this country and in this state.

24 But respectfully, ma'am, my argument
25 there would be that I think the Court is guiding

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1 most lawyers in what is proper to address the
2 jury. I think it would be wrong for any officer
3 of the Court to stand here and try to hang a
4 jury up, or try to convince somebody to be the
5 holdout to subterfuge justice.

6 THE COURT: I understand.

7 MR. CUMMINGS: And I know that's not what
8 Mr. Bailey intended to say.

9 THE COURT: What you're saying is you agree
10 with Mr. Bailey, you just want to preserve your
11 right to say to a juror, please understand that
12 it is important that you vote your conscience.

13 MR. CUMMINGS: Right. And I think I would
14 follow the case law and Her Honor's instructions
15 on what you're going to give for closing based
16 on the evidence in the case and what is proper
17 closing arguments both for the State and the
18 defense. But one of the issues that -- and,
19 again, the '99 case in particular that came out
20 of the Supreme Court, they talk about the Eighth
21 Amendment and dealing with cruel and unusual
22 punishment.

23 They don't say that these jurors can't
24 be told that the basic premise in every verdict
25 is a unanimous verdict as long as each juror is

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1 convinced by -- beyond a reasonable doubt of the
2 elements of the offense, and the fact that the
3 gentleman or lady is guilty of that offense.
4 And that clearly we got a right to argue, that
5 the individual juror's got to make sure, putting
6 their collective minds together as Your Honor
7 would -- I think as I understand the basic
8 premise. But everybody understands he's not
9 guilty until and unless the jury votes him
10 guilty beyond a reasonable doubt by a unanimous
11 verdict.

12 I know what the Supreme Court did by
13 the Eighth Amendment. Most lawyers came into
14 court saying, you know, if you don't believe in
15 it, if you don't think it's there, hold out. I
16 think everybody is starting to see that it cuts
17 both ways for us, and it would be wrong for both
18 the defense attorney or the State. The State
19 would have no particular reason to try to shift
20 the vote, but for the defense attorneys to try
21 to pick one juror in the box to vote their way
22 to hang the rest of them up to subterfuge
23 justice.

24 Ms. Thomas, I'll let you speak, but I
25 intend at least, unless Her Honor restricts me

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1 today, to say they need to vote their
2 conscience.

3 THE COURT: Okay.

4 MR. BAILEY: No problem at all with that,
5 Your Honor.

6 THE COURT: Yes.

7 MS. HARDEE-THOMAS: Your Honor, I always
8 use that in regards to use your common sense.
9 And, you know, voting with the facts and what
10 the people have presented in the evidence, but I
11 had no intentions --

12 THE COURT: You can tell them your thought,
13 that's fine.

14 MS. HARDEE-THOMAS: With what the State
15 suggested.

16 THE COURT: Sure. And what Mr. Bailey is
17 talking about, as I understand it what the
18 Supreme Court is talking about, is something
19 more direct, something that says if you don't
20 like it -- it's not jury nullification, it's
21 certainly not that, but it's probably a first
22 cousin to it.

23 Certainly, Mr. Bailey, if you'll
24 prepare an order in this regard. Very well.

25 MR. BAILEY: Your Honor, State's third

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1 motion's made pursuant to State vs. Powers, and
2 that's a request that both sides produce a list
3 of potential witnesses prior to jury selection
4 to eliminate any possibility of ending up with
5 somebody on that jury that knows one of the
6 defense witnesses and wouldn't divulge that
7 information, and they may have been struck or
8 disqualified if that information had been
9 available.

10 THE COURT: Okay.

11 MR. CUMMINGS: I guess that's why we did
12 all the ones in the front, too, trying to get
13 everything we can from the State's witnesses,
14 and, again, with our stipulations earlier, that
15 no numbers other than that. I would be happy to
16 give Mr. Bailey a list of all our expert
17 witnesses and any anticipated witnesses as our
18 rules require so we both can get a fair and
19 impartial trial in here.

20 THE COURT: All right.

21 MR. CUMMINGS: But, again, unless my
22 co-counsel disagrees with this --

23 THE COURT: You don't want to give them
24 unless you get them.

25 MR. CUMMINGS: Yeah. And the other thing

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1 is at the last moment I'll give him a list, and
2 we pretty much know from dealing what experts
3 we'll use, what we won't. But I have no problem
4 with sharing anybody on the list of witnesses
5 back and forth so we can make sure we get a fair
6 and impartial jury.

7 And I would be happy -- I would just
8 ask this gentleman to, please, give me a little
9 bit more leeway, in particular since some of our
10 experts have not agreed to work until they
11 receive check in hand or a Court signed order,
12 which at the last minute promising expeditious
13 shuffling. And, of course, Your Honor's been
14 very gracious and very kind with timing and
15 getting us as we see something pop up, come
16 right to the bench and either pass it to the law
17 clerk, whatever, ex parte, for our funding. But
18 Your Honor well knows that we'll make sure we
19 put it to them as soon as we get it. That's the
20 best way I can say it. And, again, there's no
21 sandbagging on our part.

22 THE COURT: Just be mindful, again, that if
23 that presents itself as a problem and you need
24 an additional order or hearing --

25 MR. CUMMINGS: Yes, ma'am.

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1 THE COURT: -- from indigent defense, let's
2 do that in enough time so it's not a problem,
3 you all are not running around at the end in
4 difficulty.

5 MR. CUMMINGS: Yes, ma'am. Absolutely,
6 Judge. Thank you.

7 MR. BAILEY: Your Honor, State's motion
8 number four is a notice of motion to require the
9 defense experts to preserve their notes. And
10 this would apply to DNA, psychiatrists,
11 psychologists, whatever experts they have. Not
12 necessarily to produce those notes at this time,
13 anyway.

14 And the situation arises where I've
15 got a reciprocal Rule 5 discovery motion
16 outstanding, I've not received anything from the
17 defense. And I found it's often the situation
18 where either on their own volition or for
19 whatever reason, a defense witness may not do
20 any notes or do any -- I'm sorry, may not do a
21 final typed report.

22 THE COURT: Report, yeah.

23 MR. BAILEY: And there will be nothing to
24 cross-examine them on unless they have some
25 notes or something. And I think that in the

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1 spirit of the Rule 705, gives me the right to
2 inquire as to the basis of an expert's opinion
3 is going to be kind of defeated if I've got
4 nothing to cross-examine them on.

5 THE COURT: In other words, what you want
6 them to do -- at this point this motion is
7 simply to request the defense counsel request of
8 their experts to retain them.

9 MR. BAILEY: To retain them. If they come
10 from New York and testify and say, I've got
11 notes, they're back in New York.

12 THE COURT: Absolutely. What about that?

13 MR. CUMMINGS: I think he's right. The
14 only thing, Judge -- and the only thing, Judge,
15 this is why we argue it, the reciprocal back and
16 forth, then as of today we'll say that to you
17 there are no written reports from any experts
18 that have been retained by either defense team.

19 But if they have any notes we'll ask
20 our experts that are paid by us to make sure
21 they preserve them. I would ask, Judge, before
22 anything be turned over of course that we have
23 an evidentiary ruling.

24 THE COURT: Sure.

25 MR. CUMMINGS: We asked for it today

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1 because some of it may be attorney/client work
2 product, if I ask him to do a certain thing,
3 same as Mr. Bailey would have.

4 THE COURT: Mr. Bailey isn't saying at all
5 I want them, he's just saying have them.

6 MR. CUMMINGS: Yes, ma'am. And I would
7 agree, retain them and put our experts on notice
8 that they must retain them.

9 THE COURT: Sure. Very well.

10 MR. BAILEY: Your Honor, while we're still
11 in that area of discovery, that doesn't directly
12 address my motion, but as Mr. Cummings pointed
13 out, I did file reciprocal Rule 5. I have not
14 received anything in writing. I'm not sure
15 whether or not, for example, his expert might
16 administer an IQ test of some type or MRI where
17 you would have a result that I would be entitled
18 to under Rule 5.

19 If that information -- I would like
20 this to be a continuing situation, that if
21 testing's in progress and something comes out, a
22 completed report, or CAT scan, or what x-ray,
23 whatever, that I think I'm entitled to that
24 information and I would request that it be
25 produced. Time is running short, that's why I'm

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1 bringing that out now.

2 THE COURT: Yes. All right.

3 MR. CUMMINGS: Judge, again, Mr. Bailey's
4 correct in one aspect, time is running short.
5 We had anticipated the orders being in place,
6 having the people go up to do whatever we felt
7 was appropriate, we got bumped up one month. I
8 think you've been inundated today with a couple
9 orders to do something for us ex parte.
10 Respectfully, Judge, if I get something,
11 absolutely. If I know it's disclosable under
12 rules back under reciprocal Rule 5 and Brady we
13 will do that.

14 We've already put the State on notice
15 we don't anticipate any insanity defense, we
16 stipulated to that, and if there is an issue
17 that comes up by some expert saying an IQ issue
18 comes up, or any brain damage, or whatever, then
19 I would be more than slack in my job by not
20 telling Mr. Bailey that issue because that would
21 be something that comes up and, of course, it
22 will be a matter heard prior to any jury
23 involvement if we learn of anything of an
24 insanity, or basically medical issue dealing
25 with my gentleman's mental health, ma'am. I

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1 would be happy to make sure as soon as we get
2 something in on that.

3 I think Mr. Bailey knows Dr. Morgan is
4 our psychiatrist, we have not received any
5 information from him that would put us towards
6 anything of an insanity-based defense.

7 THE COURT: Very well.

8 MR. BAILEY: Your Honor, of course, my
9 concern is not only the guilt phase insanity
10 defense, but any potential mitigation evidence
11 that might come up through Dr. Morgan.

12 THE COURT: Sure. Sure.

13 MR. BAILEY: The State's next motion may be
14 pre --

15 THE COURT: Just so we're clear, let me
16 stop you. As I understand what I'm hearing from
17 Mr. Cummings at this point there is nothing to
18 turn over, there are no reports, that at this
19 point, at this point at least there is no
20 information which the defense has received from
21 Dr. Morgan that is relevant either in the guilt
22 phase, visa-vis an insanity defense, or in the
23 penalty phase visa-vis mental retardation.

24 MR. CUMMINGS: That's correct, ma'am. The
25 only CAT scans we're aware of, the only issues

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1 that were done on Mr. Bowman were done by
2 this -- it was a consent order to have him sent
3 up to the state hospital. Dr. Morgan reviewed
4 the state hospitals file, but other than that
5 we've not had any independent CAT scans done.
6 I'm saying that out loud because based on what
7 Dr. Morgan --

8 THE COURT: Doesn't exist at this time, but
9 stay tuned.

10 MR. CUMMINGS: But if there is any change
11 he'll be the first one to know besides me.

12 THE COURT: Okay.

13 MR. BAILEY: Thanks. State's motion number
14 five may be moot, I'm not sure yet.

15 THE COURT: Okay.

16 MR. BAILEY: And what I have in mind is
17 that if, in fact, something is worked out with
18 the co-defendant, Tawain Gadson, who is also
19 charged with the same murder, if there is a plea
20 agreement it will be for something less than the
21 death penalty.

22 If that occurs and he testifies, then
23 my motion is a motion in limine to prohibit the
24 penalty phase argument by the defense comparing
25 sentences. The reason of that being that the

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1 jury in this case is to decide guilt or
2 innocence to the guilt phase. And if we get to
3 the penalty phase they will decide between life
4 without parole, the death penalty, based on the
5 aggravating and mitigating circumstances. And
6 whatever happens to Tawain Gadson is not
7 mitigating to the defense. Basically they're
8 not sitting in judgment on him, they're sitting
9 in judgment on Mr. Bowman.

10 THE COURT: I understand the argument, but
11 at this point it's not an issue.

12 MR. BAILEY: At this point it's not an
13 issue.

14 THE COURT: If it becomes an issue let me
15 know because that -- I'm going to need to look
16 at some things with regard to that.

17 MR. CUMMINGS: Yes, ma'am. Because one of
18 the issues we're going to argue --

19 THE COURT: It's not an issue at this
20 point.

21 MR. CUMMINGS: -- is the fact that the
22 death penalty is supposed to be a -- and, again,
23 this is an academic argument, I'm stepping on my
24 colleague's shoes for a moment, maybe the
25 bench's, that it's supposed to be given without

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1 impartiality, it's supposed to be given based on
2 facts, if that the State in its wisdom and in
3 its power to do so seeks the ultimate penalty
4 because it is an egregious case or an aggravated
5 case and, therefore, you know, we're going to
6 seek the penalty because it's appropriate. And
7 that we don't just pick and choose who we serve
8 it on, who we don't.

9 I'm not saying Mr. Bailey did this,
10 but my argument would be -- and, again, I would
11 want to argue to the jury that, hey, this guy --
12 you know, they want to argue the hand of one is
13 the hand of all, or that everybody ought to go
14 down the same tube for the same thing, why pick
15 and choose one to kill and not everybody.

16 And I don't mean that today to start
17 the argument because it would take a long, long
18 time and legal arguments or case law. Because
19 one of the issues in revealing the deal is to
20 let the jury know whether there's been favorable
21 treatment both for impeaching evidence as well
22 as give them the total picture of the case, why.

23 THE COURT: But at this point doesn't
24 exist.

25 MR. CUMMINGS: Right. And I don't mean to

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1 jump up here and get on the soapbox yet, but I
2 know we argue academically --

3 THE COURT: Insofar as the motion filed by
4 Mr. Bailey, it either -- I guess it's not moot
5 at this point, it's just not ripe, doesn't
6 exist.

7 MR. CUMMINGS: It's not ripe.

8 MR. BAILEY: That's correct, it's not ripe.
9 May be moot if nothing's worked out, but at this
10 point it's not ripe.

11 THE COURT: I'm with you. That is -- I
12 don't want to do that until we've got to do that
13 one.

14 MR. CUMMINGS: I'm sorry, Judge, I just got
15 up on the soapbox, I apologize.

16 THE COURT: No. I understand. I
17 understand that argument. All right.

18 MR. BAILEY: Your Honor, the State, and I
19 think our last motion which, again, is going to
20 be premature since it deals with the potential
21 penalty phase situation, is a motion in limine
22 to prohibit the defendant from attempting to
23 introduce what I characterize as execution
24 impact evidence to get a witness, a preacher, or
25 whoever, psychiatrist, to get up there and talk

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1 about their views on the death penalty, putting
2 their two cents' worth in and -- or to have
3 members of the family get up there and do
4 something beyond asking for mercy.

5 It's -- it goes toward prohibiting
6 somebody from trying to tell the jury what they
7 should be doing when that's the jury's sworn
8 duty. And I think I've got a fairly lengthy
9 motion that sort of incorporates the memorandum
10 on the law of that, but, again, that is
11 premature at this time also.

12 THE COURT: All right. We'll get there.
13 We'll get there. Very well.

14 MR. CUMMINGS: I'm just going to mark for
15 the record State's motion number six premature.

16 THE COURT: Is premature?

17 MR. CUMMINGS: Yes, ma'am.

18 THE COURT: Very well. I am delighted that
19 we have gotten through these motions this quick.
20 I would have never thought we could have done
21 it. I thought we were looking at three days to
22 get to this point.

23 MR. CUMMINGS: I'm sorry, Judge. My client
24 was asking me what that meant, premature, Judge,
25 I apologize, and I would never not want to

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1 listen to Her Honor and I want to make sure that
2 I can't --

3 THE COURT: I was just complimenting you
4 all for your efficiency and the willingness to
5 work together on the issues that you can work
6 together on, and because I am surprised that
7 we've been able to do as much as we have in the
8 time that we've been working here today.

9 Now, let's talk about -- I want to get
10 my calendar, because as we talk in the status
11 conference in my mind probably, Mr. Bailey,
12 based upon Mr. Cummings' comments more so than
13 yours on the Jackson v. Denno, sort of three
14 days was in my mind.

15 And I, therefore, pondered and
16 wondered whether or not it would make sense to
17 proceed with the Jackson v. Denno hearings
18 during the week of April the 8th, because that
19 week is -- belongs to this case in its entirety.
20 And whether or not we could use the two Fridays
21 before then for things such as the photographs
22 and things such as that. Tell me what you think
23 about that.

24 MR. BAILEY: As far as I know, the
25 witnesses that I talked to, and they're going to

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1 be Major Stephenson from the sheriff's office,
2 Coker, Van Doran, Larry Williams, and James
3 Helms from SLED, are all available for Friday of
4 next week. I'm not sure of their availability
5 of any date after that.

6 THE COURT: Sure.

7 MR. BAILEY: If we put this all off until
8 April the 8th and there is some -- any of these
9 guys are going to be on vacation that week or
10 something that may make us kind of cramped a
11 little bit.

12 THE COURT: Would you be willing to check
13 that and see?

14 MR. BAILEY: Sure.

15 THE COURT: Let me hear from you, too, Mr.
16 Cummings.

17 MR. CUMMINGS: I didn't think we'd ever get
18 all the people done in one day, I didn't think
19 Your Honor ever anticipated that, but we've got
20 five alleged statements on five different days,
21 so it's going to have to be taken, if we do it
22 logically, first date, first officer, maybe two
23 or three officers on the first date so we may
24 need them all here.

25 I think if we start next Friday, again

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1 around the Court's schedule, whatever, then
2 we'll maybe have one witness and partially get
3 started on it, but that will be it. But I think
4 the way we had it knocked out, I think every
5 Friday we were doing something along the way,
6 and I know part of the great evidentiary matters
7 in this case for Mr. Bowman's concern is some of
8 these statements that are going to be out here
9 hanging.

10 But, Your Honor, we've passed up our
11 orders of protection, and I know this is an
12 issue that came up, I actually passed them to
13 Walter first to get my protective orders done.
14 I just do that out of courtesy and kindness
15 because that's how we treat each other.

16 THE COURT: I understand.

17 MR. CUMMINGS: I anticipate from now on my
18 office is nothing but Mr. Bowman. And I'm
19 trying to let every judge out here, civil and
20 family court and criminal, know that this case
21 is now May and all the trials I had set up, or
22 depositions, or whatever the heck on other cases
23 are going to have to push aside until later.
24 But I think even if we just take two witnesses
25 it will take a whole morning to do just a

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1 policeman on each -- probably on each statement.

2 THE COURT: Okay. So what I'm hearing you
3 say is that either it's going to be chopped up
4 or else April the 8th make sense?

5 MR. CUMMINGS: I think -- and I'm not
6 trying to piggyback or make the Court have a
7 difficult time.

8 THE COURT: Not at all.

9 MR. CUMMINGS: I think if we keep the
10 schedule that we're doing with Her Honor's help
11 this morning, to do at least one one day, and
12 then do another one, because it gives us time
13 from one statement to another to keep things
14 moving and look at evidentiary issues with
15 Mr. Bowman. If we wait until that last week of
16 the 8th, something might pop its ugly head up
17 either way on a ruling or whatever. I'm not
18 saying an ugly ruling, I'm saying something
19 might pop up that is going to leave both of us
20 short.

21 THE COURT: So what is he telling me? Tell
22 me what you're telling me.

23 MR. BAILEY: If he's saying we should start
24 Friday I think I would agree with him just to
25 get going.

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1 THE COURT: I think that's what he's
2 saying. Isn't that what's he's saying?

3 MR. CUMMINGS: If we have people up here
4 that morning for civil court I don't care if we
5 do it down in chambers.

6 THE COURT: We just do it in the afternoon.
7 We may have some officers, but other than the
8 fellow from Columbia they're all here, so suits
9 me to begin then. All right. Very well. We'll
10 start that day on Friday.

11 MR. CUMMINGS: If it's not or if we really
12 can't use the courtroom, what I was going to
13 suggest, like even today, I'm not trying to put
14 an onerous burden on the sheriff's department,
15 again, to transport Mr. Bowman, but we've got a
16 pretty secure area down at --

17 THE COURT: It's fine.

18 MR. CUMMINGS: -- 212 Deming Way, and,
19 again, if nobody knows we're down there we can
20 probably handle motions and arguments in the
21 courtrooms down there.

22 THE COURT: We could, I agree with you.
23 But you know what? We'll probably be here.

24 MR. CUMMINGS: Yes, ma'am.

25 THE COURT: All right. Let me see a

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1 minute.

2 (Pause in proceedings.)

3 THE COURT: Let me say to you, if I may, on
4 the 29th you all make other plans because we
5 won't be doing motions on the 29th. So we're
6 going to be doing the -- just to review with
7 everyone, the 22nd.

8 MR. CUMMINGS: Yes, ma'am.

9 THE COURT: The 5th, all day.

10 MR. CUMMINGS: Right.

11 THE COURT: Eighth, 9th, 10th, 11th, 12th.
12 There may be a morning or two where we won't
13 begin quite as early in the day, but we're going
14 to work as much as we need to during those five
15 days. Thank you. And then, of course, beyond
16 that we'll continue -- by that point if we need
17 more time I'll set it as a priority and if I
18 step some common pleas weeks aside.

19 MR. CUMMINGS: Not to belabor this hearing
20 today.

21 THE COURT: No.

22 MR. CUMMINGS: Judge, again, I know the
23 clerk of court is trying to do everything she
24 can to accommodate everybody to get this thing
25 moving. Does the Court anticipate either from

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1 talking to Ms. Graham or whatever, knowing when
2 these first jury issues are going to go out,
3 jury summonses or whatever, so we can get that
4 questionnaire argued?

5 THE COURT: We do need to be moving along
6 to get our questionnaires out. I don't know the
7 answer to that, but I will endeavor to find that
8 out and let you know next Friday.

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

10 THE COURT: Okay. Very well.

11 MR. CUMMINGS: Thank you, Judge.

12 THE COURT: Sure. I know that you all are
13 going to try to do some preliminary matters
14 regarding your questionnaires.

15 MR. CUMMINGS: Okay.

16 THE COURT: And we need to be getting,
17 moving forward on that as well, just share that
18 with you.

19 MR. CUMMINGS: Judge, this is just a
20 housekeeping matter.

21 THE COURT: Sure.

22 MR. CUMMINGS: Again, I ask it be on the
23 record, though. Recently, I guess because of
24 the overcrowding, they had put somebody in
25 Mr. Bowman's cell. I talked with Mr. Bowman

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1 about it, Ms. Thomas talked to him about it and
2 the sheriff has removed that person out of his
3 cell. He has documents in there, he has court
4 preparation, attorney work product in there.
5 I'm not saying that the government would ever
6 put a jailhouse rat inside my client's cell.
7 There have been known of other places up in
8 safekeeping, whatever, that people have been put
9 in with somebody. It's never been done
10 deliberate by our solicitor.

11 Your Honor, respectfully, I think he's
12 now in a one-man cell now. I now that we don't
13 have complete control over the elected sheriff,
14 but I would ask, I would be arguing, just put
15 the solicitor on notice to keep Marion alone
16 right now so he can concentrate on his file, not
17 worry about his papers, or having somebody else
18 read them while he's going to a religious class,
19 or whatever else he's doing inside the jail for
20 help, or meeting with us.

21 And I would like to propose and draft
22 an order for Her Honor, and let Mr. Bailey know
23 that we would like to keep him in a one-man cell
24 right now so he can concentrate on his case and
25 not worry about anything being removed or --

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1 THE COURT: I understand. Any objection to
2 that?

3 MR. BAILEY: I have no position on that,
4 Your Honor.

5 THE COURT: Very well. Very well.

6 MR. BAILEY: It's up to somebody else.

7 THE COURT: Interestingly enough the jailer
8 was over here yesterday and we got some meetings
9 schedule for various things. Not about
10 Mr. Bowman, but just other things.

11 MR. CUMMINGS: Yes, ma'am.

12 THE COURT: Since I think he's going to
13 call you, Mr. Bailey.

14 MR. BAILEY: I talked to him out in the
15 hallway.

16 THE COURT: You know, he likes to meet on
17 his census. And so this is -- my only concern
18 is that in the event that the sheriff feels as
19 though this is a matter he needs to be heard
20 about, I certainly want to hear from him about
21 that, otherwise that would clearly be the order
22 of the Court.

23 And so I think what's appropriate is
24 I'll ask you to ask him whether or not he wishes
25 to be heard. And if he doesn't express a need

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1 to be heard, then go ahead and just prepare an
2 order.

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

4 THE COURT: Anything further?

5 MR. BAILEY: Nothing from the State, Your
6 Honor.

7 THE COURT: Very well.

8 (Pause in proceedings.)

9 MR. CUMMINGS: Mr. Bowman was speaking to
10 me about an issue at the jail this morning, it's
11 a housekeeping matter. Again, not anything for
12 Mr. Bailey or even Her Honor's province, but,
13 Judge, this morning they faxed in on the
14 intercom to him, whatever they do in there,
15 asking whether or not anybody in his family was
16 on insulin, or took insulin. And he couldn't
17 understand why they were asking him. And he
18 said just outright -- he calls his grandmama,
19 mama, and I guess what Mr. Bowman's main
20 concerns are, A, they're listening inside the
21 cell which they do for security reasons, I
22 guess; number two, they're asking questions.

23 We told him on the advice of counsel
24 to remain silent unless one of us are present.
25 And I know the law enforcement people are not

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1 asking him questions about his case, but what I
2 told Mr. Bowman I would do while we were talking
3 just a moment ago, Judge, is I'll go back over
4 to the jail and ask the lieutenant why they
5 asked that information of him and to let the
6 Court know, Mr. Bailey know, that he still
7 wishes not to speak to any law enforcement
8 officer unless both his attorneys of record are
9 present.

10 And I don't think anybody's trying to
11 subterfuge that, but, again, I wanted to put it
12 on the record that we'll go back over it with
13 him. Are you comfortable with that? Thank you,
14 Judge. Other than that, ma'am, we are finished
15 and I thank you for your time today.

16 MR. BAILEY: Thank you, Your Honor.

17 THE COURT: Thank you. We are adjourned in
18 this matter.

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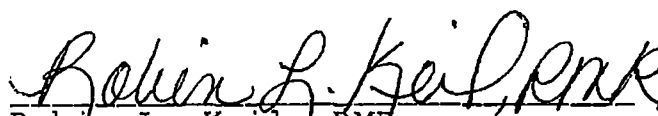
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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 5th day of May 2003.


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

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

STATE OF SOUTH CAROLINA,) VOLUME IV Pages 251 - 314
Plaintiff,) TRANSCRIPT OF RECORD
-versus-) JURY QUESTIONNAIRE MOTIONS
MARION BOWMAN, JR.,) March 22, 2002
Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein.

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

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

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

-and-

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

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

State vs. Bowman Volume IV

1 (March 22, 2002.)

2 THE COURT: Well, first of all, Mr. Bailey,
3 you have all three of the questionnaires?

4 MR. BAILEY: Yes, ma'am.

5 THE COURT: Very well. Mr. Cummings, Ms.
6 Hardee-Thomas, do you all have all three of the
7 questionnaires?

8 MR. CUMMINGS: Yes, ma'am.

9 THE COURT: Very well.

10 MR. CUMMINGS: Just for the record, Marva
11 and I have been conducting our own and doing our
12 own from calling around for various members of
13 the bar, appellate defense. And when we
14 received this from the bench, what I call the --
15 the one that Judge Howard used and everything --

16 THE COURT: Yes.

17 MR. CUMMINGS: -- so we've done our own, we
18 have had our own retyped. I've not presented
19 that today because I don't think I can act like
20 a mirror to all the issues in here, but I would
21 like to, whenever we argue, talk about a couple
22 modifications in this one just to make it comply
23 with the facts of this case.

24 THE COURT: I understand. Let me tell you
25 with regards to the -- the one which was used by

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1 Judge Howard, let me just direct your attention
2 to several numbers that I think clearly would
3 not be applicable. And I'm happy to hear from
4 you with other questions that would be
5 applicable, but I wanted to give you a listing
6 of the ones that I didn't think would be
7 applicable even with the very extremely limited
8 information that I have at this point, but it
9 seems clear to me that they were specifically
10 tailored to this other case.

11 And that would be Number 10, Number
12 12, Number -- the second half of Number 15, 16,
13 17, 18. Don't let me go too fast for everyone.
14 Then 47 through 56. I'll give you a minute to
15 make that note. And to that end, 53 and 54 may
16 or may not be appropriate. And we'll talk about
17 53 and 54.

18 MR. CUMMINGS: While we're on that page,
19 Number 59 also, ma'am, "Do you know of anyone
20 who has drowned?" Basically paraphrasing that
21 line.

22 THE COURT: I'm getting there.

23 MR. CUMMINGS: I am sorry, Judge.

24 THE COURT: Fifty-nine through 64, I think
25 also. And, again, based upon the limited, very

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1 limited information that I know at this point,
2 and then on page 18, 65. And then in 66, the
3 word "extensive." See where it says "Do you
4 feel an extensive media presence?" I didn't --
5 I starred that one because I didn't know that
6 that was appropriate, but probably something
7 would certainly be appropriate. So it seemed to
8 me that those clearly just were uniquely
9 tailored to another case.

10 And as I look at the three
11 questionnaires, it seems to me that the two-page
12 questionnaire, it's certainly fine, but it seems
13 a little short to me, the questionnaire that was
14 passed up, but, Mr. Bailey, it would probably
15 take a little bit of time to really see what the
16 differences are.

17 I think the one that I faxed around
18 requests a little more information, but it may
19 just be that it's formatted better, too, but it
20 didn't seem to me to be so much more information
21 that is requested. And it very well may be that
22 the one that Mr. Bailey passed up is just more
23 officially done, too. I didn't see that there
24 was a tremendous difference in the information
25 that was requested. So do you like -- you like

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1 yours?

2 MR. BAILEY: I like the short one.

3 THE COURT: You like either the two-page or
4 yours?

5 MR. BAILEY: Yes, ma'am.

6 THE COURT: Sure.

7 MR. BAILEY: And one reason -- well, two
8 reasons, actually. I think that particular form
9 is the Court Administration form, so at some
10 point they kind of sanctioned that, the two-page
11 form.

12 THE COURT: I'm with you.

13 MR. BAILEY: I think that elicits all the
14 basic information without trying to develop a
15 personality profile, which is what our court
16 says you're not supposed to be doing in voir
17 dire.

18 And the other thing is, Judge, I think
19 they're too long. A lot of the jurors don't
20 have a whole lot of education, and if they get a
21 multi-page questionnaire it kind of -- they
22 think they're being probed, and their lives have
23 been gotten into, and they write stuff on them
24 like "None of your business." And I've seen all
25 kind of responses that they make when they think

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1 you're probing too deep into their personal
2 thoughts.

3 THE COURT: Sure. Sure. And I think
4 that's certainly a legitimate concern for
5 jurors. All right.

6 MR. CUMMINGS: Yes. Judge, obviously the
7 two-page questionnaire comes from either Court
8 Administration or the like, one clearly that's
9 not intended for a death penalty case. And I
10 know that sometimes -- short and sweet, but I'm
11 going to keep my argument down also short and
12 sweet, I don't think that was applicable.

13 The one that Mr. Bailey submitted is
14 one that I've seen used in the past. The only
15 reason why, for lack of a better word, Judge,
16 Howard's questionnaire was submitted to him with
17 modifications would be this: Is because we do
18 want the kind of juror that, (a), wants to be
19 here and serve their duty and responsibility.
20 We've got a person's life at stake. I don't
21 want to have that kind of juror who says "None
22 of your business" up here. This is their
23 business, it's their community.

24 The other issue I would say, Judge,
25 with modifications here is I want to know about

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1 this juror not for personalities so much as I do
2 want to know if they belong to the -- and this
3 is a horrible situation -- the NRA, I want to
4 know if they belong to the KKK, I want to know
5 if they belong to the NAACP. I'm sure
6 Mr. Bailey, as solicitor, would want to know if
7 they have certain organizations they belong to.
8 Also whether they contribute to CAVE or MADD,
9 SADD, and the other activities out here.

10 With the modifications and fine tuning
11 that I would like to hope get done today so we
12 can get these out to the public as Your Honor
13 has mandated, Judge. I just think that the more
14 information we can from the juror the better one
15 of the jurors we will have, especially since
16 this is the ultimate case, particularly the
17 ultimate case for Mr. Bowman.

18 I'll let Ms. Thomas answer if I've
19 failed to cover this topic, but I think that
20 would be a great compromise to find what's
21 already been approved by the bench, approved by
22 the courts, there's been no challenges to that
23 as an appellant issue as I learned about the
24 Susan Smith case. And obviously she did not
25 receive the death penalty, but nobody challenged

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1 it that -- the questionnaire that went out.

2 And, Your Honor, I know it's an
3 academic argument between Mr. Bailey and I for
4 judicial economy to move this thing along, but I
5 would like to ask the most important questions
6 that I can. And, again, we served our own,
7 we've done our own, but when you faxed this to
8 us it's an all-inclusive. And that's why I am
9 going to sit here and tell you I don't need to
10 try to redo the work that's already been done
11 greatly, and I'll just apply my work to this.

12 THE COURT: Do you have questions that you
13 would do, that you would pose in addition to
14 these?

15 MR. CUMMINGS: Just modifications, ma'am.

16 THE COURT: Okay.

17 MR. CUMMINGS: And, again, with some of the
18 issues I might just argue, if I can, I'll take
19 the questions that Your Honor had questions
20 about or feel they're not applicable here, and,
21 again, ask my co-counsel to make a comment if
22 she cares to.

23 THE COURT: Okay.

24 MR. CUMMINGS: Like Number 10, "Do you now,
25 or have you ever worked supervising people?" I

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1 would like to ask that question for the
2 following reasons: One of the things I think we
3 look for for a foreperson on the jury is to find
4 somebody who cannot be a leader, per se, but at
5 least know what goes on in the back room, to
6 gather around and take their collective advice
7 together. Also the kind of person that
8 supervises people is usually somebody that's
9 organized.

10 We're going to be talking about DNA
11 evidence in here, we will be talking about
12 fingerprints, we will probably talking about,
13 oh, chemicals and other issues, Judge, and I
14 think a more -- a person who supervises people
15 has to account for time, time management, and
16 other issues. And I would ask that question
17 Number 10 stay in. And I'll sit down for a
18 moment and let Mr. Bailey speak.

19 THE COURT: Okay.

20 MR. BAILEY: Your Honor, if we're going to
21 go by the Susan Smith questionnaire, which I
22 certainly have no strong opposition to, I mean
23 I'll just state my preference of the shorter
24 one. And by the way, the last, Number 27 on the
25 two-page questionnaire would address Mr.

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1 Cummings' concerns about organization, so that
2 is in there, but if we're going by the Susan
3 Smith one I have no objection to leaving Number
4 10 in there.

5 THE COURT: Okay. All right.

6 MR. CUMMINGS: Thank you, Judge. Unless
7 Your Honor has an objection to Number 10.

8 THE COURT: That's fine.

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

10 Judge, as to Number 12 and number --
11 and, I believe, Judge, it's like 12 1/2, for
12 lack of better words, on mine I have just taken
13 out the former place of employment, I think was
14 Cowen (phonetic) for that, up there in that
15 county.

16 THE COURT: Right.

17 MR. CUMMINGS: We know that Mr. Martin, the
18 father of this young lady who is deceased, we'd
19 like to ask about the mom and dad's employment,
20 and so therefore in our questionnaire I would
21 like to ask about the gentleman's employment.

22 Mr. Bailey's given us discovery and
23 stuff, and in order for our questionnaire to be
24 sent out I would like to know if anybody's
25 worked with the daddy of Miss Martin. So I

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1 would need to put that in or have it typed in by
2 the clerk if you want us to do the
3 questionnaire, if you want the clerk to do it.
4 Daddy or mommy has worked last, so we get a --
5 at least a jury that may not have worked with
6 the Martins, Judge.

7 MR. BAILEY: My problem, Judge, is I don't
8 know where they work. And I would think that
9 could be handled by, you know, the normal
10 questions. You would ask the jurors do you know
11 the victim, anybody in the victim's family; do
12 you know the defendant, anybody in the
13 defendant's family.

14 THE COURT: Isn't that the most direct way
15 to do that?

16 MR. CUMMINGS: It is, Judge. Again,
17 following this questionnaire and also trying to
18 get the most information, somebody may not
19 remember that they worked with Mr. Martin back
20 in wherever the last place of work was, might be
21 a factory warehouse, Wal-Mart even, and maybe
22 they didn't know him by name, but he worked
23 there and somebody talked about the case at his
24 employment. That's the only reason I would ask
25 it. But, again, Judge, I defer to your ruling.

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1 THE COURT: Yes. What concerns me if that
2 information is not available to us, it seems to
3 me the best, the best route is the most direct
4 one which would just be to simply ask do you
5 know.

6 MR. CUMMINGS: Okay.

7 THE COURT: You know, do you know the
8 victim or her parents.

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: Okay.

11 MR. CUMMINGS: Judge, respectfully just
12 over our objection on that question.

13 THE COURT: Yes, sir.

14 MR. CUMMINGS: Thank you.

15 And then, Your Honor, the next
16 question you had was Number 15, the second half
17 of it. And it starts talking about children,
18 what are names, address, where do they go to
19 school, work. This is a young lady and as long
20 as Mr. Bowman's a young man, they have a --
21 there's a child involved in this, this is not
22 the issue of my client. But other than that,
23 Judge, I understand the question, we don't want
24 to ask the jurors about their children, but one
25 question why I would like to have that is

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1 sometimes -- and, again, this is a very
2 emotional argument, I apologize to the ladies in
3 here, a lot of mommies don't even want to hear
4 somebody else has hurt their baby. And one of
5 the issues we want to try to develop in here is
6 how many ladies that might be picked for the
7 jury have children, have young daughters that
8 might be the victim allegedly of a rape, of
9 robbery, beatings, domestic violence, so I want
10 the questions as inclusive as I can without
11 offending anybody.

12 THE COURT: Let me follow where you are.
13 In Number 15 it was the second part, the names,
14 age, where they go to school.

15 MR. CUMMINGS: Right. And I agree, Judge,
16 I don't want their names or ages, but I did want
17 to at least maintain the question --

18 THE COURT: Well, I'll put "Do you have
19 children?" I think is a fair question.

20 MR. CUMMINGS: Yes, ma'am, but that's all.
21 I don't want to ask their ages, addresses, or
22 anything else.

23 THE COURT: Right.

24 MR. CUMMINGS: Yeah.

25 THE COURT: Any objection to that, "Do you

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1 have children?"

2 MR. BAILEY: No.

3 THE COURT: In other words, what I was
4 concerned about, and you picked it exactly, was
5 the more extensive information.

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: That certainly can be
8 extraordinarily perhaps the most intrusive
9 question you could ask.

10 And then 16, 17, and 18 did not seem
11 to have any application based on what I know.

12 MR. CUMMINGS: Thank you, Judge. If I may
13 be on the record here for a moment.

14 THE COURT: Yeah.

15 MR. CUMMINGS: And I want my client to hear
16 this because some good lawyer probably after me
17 is going to talk to him about it. One of the
18 questions that came up in a PCR case on the
19 Gardner case and it was not disclosed to any of
20 us, Mr. Bailey didn't know and I didn't know,
21 there was a juror, a mommy who had a child who
22 was murdered in Florida.

23 And when she went through the voir
24 dire process we asked the question has anybody
25 ever been the victim of a homicide, anybody's

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1 family members been a victim. The young lady
2 did not answer.

3 They found this out through the Death
4 Penalty Resource Center asking the former jurors
5 questions that we couldn't do at the beginning
6 other than in our questionnaire, one of the
7 issues was she said she talked to Captain -- or
8 at that time Captain Moultrie not about being on
9 jury service, but about the death of her child.
10 And nobody asked her whether or not she believed
11 the child was killed. In her mind she didn't
12 want to believe her child was murdered.

13 So one of the issues came up about
14 ineffectiveness that this lady sat on a jury and
15 had been the mom of a child who was murdered, so
16 she sat on this jury. And I think that was one
17 of the issues, I think, I'm not sure Mr. Bailey,
18 as solicitor, would say if the AG talked to him
19 about that to find out if anybody had known
20 that, but that's why that question, Judge,
21 Number 16, may be important in our case.

22 We have a young lady who has a child
23 who's now deceased and we have -- her mother is
24 still surviving, and I would ask, if we could,
25 please, ask at least, 16, 17, because there is

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1 an issue of a grandchild in this case and it may
2 came up both in the guilt and in the penalty
3 phase --

4 THE COURT: But you don't care about the
5 names, age, and where they go to school?

6 MR. CUMMINGS: Yes, ma'am. And as far as
7 teaching children, caring for children, 18, I
8 don't have a legal argument for that question.
9 I think it was probably just asked to see if
10 people care, or if they take care of other
11 people's children and may have an emotional tie
12 to a child being the victim of a crime. That's
13 the only reason why I saw 18 in that
14 questionnaire.

15 Marva, is that fair? Thank you. I'll
16 sit down and let Mr. Bailey talk.

17 MR. BAILEY: Your Honor, my idea of the
18 questionnaire is that it shouldn't be allowed to
19 elicit any information that the lawyers would
20 not be allowed to elicit during the course of
21 the verbal voir dire of the jury.

22 And I think if we would -- were to
23 attempt to question the jurors on things that
24 would be case specific to this case trying to
25 get their feelings on things, would you be

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1 sympathetic if a young woman with a child was
2 killed, would you feel sorry for that child born
3 of that mother, I think would be clearly
4 objectionable because you're trying to get --
5 you're trying to stake that juror out not on
6 whether or not they could follow the law,
7 whether they're death qualified, you're trying
8 to do a personal profile and see whether or not
9 they would be favorable to you in this case
10 because of something case specific.

11 But for the same reason Mr. Cummings
12 wants it in there, I think it's appropriate to
13 get it in there. I think these questions should
14 be generalized whether or not they -- they're
15 qualified jurors on any case and whether or not
16 they're death qualified, but not to get case
17 specific.

18 THE COURT: What I'm hearing from Mr.
19 Cummings is anecdotal, quite frankly, is that
20 based on a specific experience in a specific
21 case --

22 MR. CUMMINGS: Absolutely.

23 THE COURT: -- that that's where the
24 concern lies and I certainly understand that. I
25 think that for the purposes of the qualification

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1 that it is appropriate -- I mean, obviously if
2 the alleged victim in this matter was a child,
3 goodness, it would clearly be appropriate, and I
4 think that's why it was appropriate in this
5 particular questionnaire. I think that it is
6 appropriate to ask, again, the question
7 directly, have you -- and it's extensive, this
8 particular questionnaire regarding witnessed a
9 crime, investigating for a crime, you were a
10 close personal friend, ever been the victim of a
11 violent event. And I'm satisfied that it is
12 reasonable to expect a juror to relinquish that
13 information knowing that it is impossible to
14 think of what a juror may be into denial of.

15 So understanding that your concern is
16 anecdotal and understanding that the concern, in
17 fact, is to ascertain what jurors may have had a
18 loved one die in a violent sense, I'm satisfied
19 that later on the questions which are asked in
20 this questionnaire satisfy that I think very
21 well. So noting your objection, I think it is
22 appropriate that 16 remain out.

23 MR. CUMMINGS: Sixteen's out?

24 THE COURT: Yes, sir.

25 MR. CUMMINGS: Okay, yes, ma'am.

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1 THE COURT: Seventeen's fine, to ask them
2 if they have grandchildren. We ask children,
3 that's grandchildren, but not the second part,
4 you understand?

5 MR. CUMMINGS: Yes, ma'am.

6 THE COURT: Would not ask, "If so, what are
7 their names, ages, where do they go to school or
8 work and how often do you see them?"

9 And with regards to question Number
10 18, although I know it's difficult to concede,
11 any moment, Mr. Cummings, I think even -- I
12 think what I'm hearing from you is that you've
13 struggled and you can't find an application for
14 that.

15 MR. CUMMINGS: No, ma'am. There's no way I
16 can put 18 in here in good conscience other than
17 I want to see how many school teachers I can
18 find in the jury pool. But, Judge, just for my
19 clarification, if I heard wrong I apologize.

20 THE COURT: No, that's all right.

21 MR. CUMMINGS: I know I thought I heard
22 Your Honor say 16 was out, and 17...?

23 THE COURT: Seventeen, do you have any
24 grandchildren, is in.

25 MR. CUMMINGS: Right. Okay.

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1 THE COURT: The rest of 17, "If so, what
2 are their names, ages, where do they go to
3 school or work?" is out.

4 MR. CUMMINGS: Is out, okay.

5 THE COURT: Yes.

6 MR. CUMMINGS: Thank you, Judge.

7 THE COURT: How often do you see them would
8 be out.

9 MR. CUMMINGS: Right.

10 THE COURT: Nineteen is in all of them it
11 appears.

12 And then what was your next one, Mr.
13 Cummings?

14 MR. CUMMINGS: Judge, I think you said
15 Numbers 47 through 56, if I'm not mistaken.

16 THE COURT: Okay.

17 MR. BAILEY: Are we going to take them in
18 order?

19 THE COURT: Yes. Yes. Are you okay up to
20 this point?

21 MR. BAILEY: I'm okay up to 38.

22 THE COURT: Okay. Great. Let me go to 38.

23 MR. BAILEY: And if I could address them
24 together just to save time, 38, 39, 40 --

25 THE COURT: Yes.

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1 MR. BAILEY: -- 41 through 45.

2 THE COURT: Sure.

3 MR. BAILEY: Again, I think what you're
4 trying to do is establish a personality profile
5 by asking those type questions. I think it's --
6 to some extent it tries to get into the jurors'
7 heads in areas that don't really relate to this
8 case or any other case, it's just seeking
9 personal information.

10 THE COURT: Forty, clearly, you know, when
11 I was going through it earlier, in other words,
12 asking somebody what kinds of TV shows do they
13 watch. With regards to 38, and 39, and 41 your
14 concern about that is likewise the same?
15 Because then I think it -- I think it gives you
16 some sense of what kind of coverage these jurors
17 may have seen. Do you know what I'm saying?

18 MR. BAILEY: Yeah.

19 THE COURT: Not so much just what do they
20 normally, just what could they have heard.

21 MR. BAILEY: Yeah.

22 THE COURT: I tend to agree with you on
23 Number 40.

24 And I'll hear from you, Mr. Cummings.

25 MR. CUMMINGS: Thank you, Judge. I just

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1 want to state this on the record. I just
2 learned from Ms. Thomas that last Sunday there
3 was an article in the Orangeburg Democrat, I
4 believe, about this case. Obviously, Judge, I
5 didn't read that paper. And we'll get a copy of
6 it, I just learned about that.

7 So I was prepared to argue about the
8 question that you already ruled on and I think
9 Mr. Bailey acquiesced. But as to Number 40 the
10 only logical argument I have, Judge, is
11 everybody seems to be watching this show called
12 "CSI," I don't have time to watch TV anymore,
13 it's "Crime Scene Investigation," other than
14 that there has been so much television going on
15 right now, like Court TV, the dog mauling case,
16 the lady in Texas, you know, what happened down
17 there, everybody is watching TV anymore about
18 what happened in New York City on September
19 11th, so I would ask respectfully that 40 be
20 included.

21 And I would like to find out if the
22 jurors are watching nothing but police dramas,
23 "NYPD Blues" to whatever. I know it's
24 recreational entertainment normally, but some
25 jurors, if a policeman makes an arrest, they're

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1 guilty. And I know Your Honor rules from the
2 bench.

3 THE COURT: We have other questions
4 regarding that, though.

5 MR. CUMMINGS: Yes, ma'am. I would just
6 respectfully ask that Number 40 stay in there, I
7 gave you my best argument.

8 THE COURT: Sure. Absolutely.

9 MR. BAILEY: Without beating it to death,
10 my concern is that if the reason Mr. Cummings
11 wants that in there is to get into what specific
12 cop programs people are watching, or Court TV,
13 or Fox News, or whatever, then that kind of
14 opens the door to getting into those cases, and
15 instead of talking about this case we're talking
16 about O. J. Simpson and the California dog
17 mauling case and all kind of other stuff that's
18 really going to get far afield, that's my only
19 concern. I realize we're just kind of getting
20 started and getting the ground rules, but that's
21 my thoughts on it.

22 THE COURT: Sure. Let me live with 40 for
23 just a few more minutes.

24 All right. Forty-two is the same
25 objection, talk radio. The only talk radio --

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1 the only reason I think this would be, again, of
2 importance would be whether or not there has
3 been a particular talk radio that has had a lot
4 of coverage and that would be what I would --

5 MR. CUMMINGS: We know WCSC was out at the
6 crime scene after -- by stumbling into that.
7 Mr. Bailey, of course, wasn't given a copy of
8 any tapes and I don't think Mr. Bailey was out
9 at the crime scene that night or that day, but
10 we learned that by a member of the bar's
11 brother. And I guess WSCS and TMA and all the
12 rest of them are closely connected and that's
13 why we would ask 42 to stay in.

14 THE COURT: All right. I'll leave it in.

15 All right. And then 43, and 44, and
16 45, the concern of that's going to be just the
17 personality typing. What of that, Mr. Cummings?

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

20 THE COURT: Sure.

21 MR. CUMMINGS: As far as reading books,
22 again, the only logical answers we have to this
23 is what type of books are jurors reading? If
24 they're reading a South Carolina code to find
25 out what the definition of murder is versus Your

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1 Honor's interpretation and instruction of the
2 final closing argument, I would kind of like to
3 know that.

4 It's amazing to me that people walk in
5 with their computer printouts in your office
6 today and say, "I found this on the internet.
7 Is this okay for me to present in court?" And
8 they'll tell you how to try the case. And I'm
9 just asking, again for reading books, if they
10 read Chaucer, well, they're an educated
11 gentleman, if they read Marvel Comic Books....
12 Again, it's not to the personality of the juror,
13 but to give us the enlightenment. If somebody's
14 stuck on reading Mya Comp I think that's
15 important in this room and important to my
16 client.

17 Everybody likes to read books, I hope.
18 We started off with "The Cat in the Hat." It
19 is, it's an over-inclusive question and I know
20 that if Judge Howard left that in there in that
21 particular case I'm asking the same thing, I
22 have a homicide case where a young lady has a
23 child and I would like to see if people are
24 reading about psychosis anymore, or postpartum
25 depressions, you name it.

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1 I really don't know how Her Honor is
2 going to feel, and Mr. Bailey has a strong
3 argument about not getting into personalities of
4 jurors, this is the only chance we have to look
5 at the total juror on the outside of what they
6 believe should go on in this courtroom while
7 they're here.

8 And, again, remember reading -- and I
9 think if we can come to some compromise, maybe
10 put questions 43 to 45 into one solid question
11 so it doesn't look like it's so intrusive about
12 what books, what's your favorite movie.

13 MR. BAILEY: Your Honor, could I have a
14 minute to respond to that? Because I think I've
15 got a case, if I can find it, that I think may
16 be on point.

17 THE COURT: There is a case, that would be
18 fine. I think there is as well.

19 (Pause in proceedings.)

20 MR. BAILEY: State vs. Smart, which is 29
21 S.E.2d 686, which is -- I think is a similar
22 South Carolina death penalty case on what jurors
23 are allowed to be questioned on, and that case
24 stands for the proposition that the reason you
25 have voir dire is not to develop a personality

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1 profile. And that opinion pointed out that the
2 defense asked jurors about their families,
3 careers, church membership, hobbies, sports,
4 favorite movies and television programs, their
5 attitudes toward psychiatric medicine, reactions
6 to defendant's appearance and knowledge of the
7 law and so forth. And this specifically, as I
8 read that case, saying these are areas that you
9 shouldn't be getting into.

10 And Mr. Cummings, especially talking
11 about psychosis and depression and all that,
12 it's clear under Smart something our Supreme
13 Court has said we're not supposed to be getting
14 into. And, again, if it's getting case specific
15 into this case, that's an additional reason not
16 to get into it.

17 MR. CUMMINGS: I'm sorry, Judge, but same
18 thing on page 324 of Mr. Bailey's book, and I
19 love that line from Patton where it says, I read
20 your book, and I compliment my colleague in this
21 case, unfortunately my adversary.

22 THE COURT: Let me see the front of it.

23 MR. CUMMINGS: I'm sorry, ma'am?

24 THE COURT: Let me see the front of it.

25 Oh, you do have the most recent one.

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1 MR. CUMMINGS: Yeah. Oh, yeah. But in
2 question 22-A it says "What TV, radio shows do
3 you regularly watch or listen to, what magazines
4 or papers do you regularly read?" This is the
5 questionnaire on page 324 that let's it happen
6 and think that's why I would not be offended if
7 we could just ask it that way. And, I mean,
8 I'll copy 22 right to -- between 43 and 45 if we
9 could.

10 MR. BAILEY: That's Judge Clarey's part of
11 that.

12 THE COURT: Exactly. With all due respect
13 to you, Mr. Bailey, he's a colleague of mine.
14 I'll allow it.

15 MR. BAILEY: He deserves the billing here,
16 too.

17 THE COURT: All right. And then we're on
18 to 47, 48, 49, 50. Those just seem to be very
19 specific to this particular case.

20 MR. CUMMINGS: Judge, there is no relevance
21 to any child being the victim in this case.
22 It's an adult female. I have no legal arguments
23 to make on those, nor would I delay the Court.

24 THE COURT: Yes, sir. And 51 and 52,
25 likewise, unless you -- and, again, unless you

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1 can tell me.

2 MR. CUMMINGS: May it please the Court,
3 Judge. On 51 I would respectfully like to argue
4 on that, have that in there.

5 THE COURT: Okay.

6 MR. CUMMINGS: Judge, one of the issues
7 that we have, of course, is we want a competent
8 jury. There are a lot of reasons that somebody
9 might want to take their own life, and God bless
10 them, that's their business, but when it comes
11 into this courtroom here it becomes the
12 community's business.

13 Also on behalf of Mr. Bowman it's
14 important to know whether this juror might be
15 suffering some reason that they could not devote
16 their entire attention to this case, that they
17 would not be able to understand what we're
18 really doing in here.

19 Human life is precious, that's why we
20 build in all these safeguards, and at that point
21 that juror or potential juror wanted to take
22 their life. So life be, and I know this is bad
23 English language, a cheaper version to that
24 person versus Mr. Bowman.

25 THE COURT: Or more precious because he

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1 chose not to.

2 MR. CUMMINGS: Correct. But that would be
3 a reason I would want to know about that
4 juror --

5 THE COURT: Right.

6 MR. CUMMINGS: -- respectfully about 51 and
7 52 because, again, if some family member has
8 enabled or covered for this person who takes a
9 bottle of pills every other Friday night because
10 the star, sun, and the moon don't come up I
11 would like to know about that. On the other
12 hand, if they had somebody who has been lost
13 because of whatever reason, that should be a
14 reflective issue that we need to discover in
15 here.

16 It is, it is no perfect questionnaire,
17 there's no perfect juror, there's no perfect
18 case, we need a fair trial.

19 THE COURT: Yeah.

20 MR. CUMMINGS: And I think, Your Honor,
21 that we're asking for 51, 52 to stay in and 53
22 to give us the total picture of the juror. Not
23 personalities again, not to try to see that, but
24 to find out about whether or not they're going
25 to tell the truth and whether or not they can

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1 handle this stressful case.

2 THE COURT: Okay. With regards to 51 and
3 52, those are case specific to this particular
4 case and there are many questions. Perhaps not
5 many questions, but there certainly is a
6 concluding question where the juror has an
7 opportunity to state any reason why they do not
8 think they are capable of serving on a jury. I
9 think that 51 and 52 would be excessively
10 intrusive beyond the areas I think contemplated
11 by the case law to ascertain if one could be a
12 juror in a capital case.

13 Mr. Bailey, anything else you would
14 like to add to that?

15 MR. BAILEY: No, ma'am.

16 THE COURT: Very well. Fifty-one and 52 is
17 out.

18 MR. CUMMINGS: Judge, just so I can protect
19 the record, respectfully, over my objection.

20 THE COURT: Indeed.

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

22 THE COURT: Over the objection of the
23 defense. Thank you.

24 The same for -- my concern is with
25 regards to 53 and 54, I believe that those

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1 likewise were case specific in that -- as a
2 matter of fact, I remember that they were case
3 specific in that matter, but is there any other
4 than, if you will, the ascertainment of whether
5 or not a juror has sought psychiatric or
6 psychological care just to determine whether or
7 not we have mentally stable jurors.

8 MR. CUMMINGS: Jurors.

9 THE COURT: In that case there was some
10 reason to ask the question because of the
11 purposes of that case and the psychological
12 history that was going to be a part of that
13 particular trial. I would just ask of you is
14 there anything in this case that would make this
15 question case specific?

16 MR. CUMMINGS: Your Honor, as our case
17 progresses, and I've already told you as an
18 officer of the Court and Ms. Thomas has told you
19 we don't have an issue of insanity. The only
20 issues that would come into play is there may be
21 testimony, again, from the State's psychiatrist,
22 psychologist, maybe, maybe in the penalty phase,
23 if we ever get that far, God forbid, that there
24 might be a psychiatrist or psychologist
25 testifying. Some people assimilate or they

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1 associate with if doctor so and so says this on
2 the stand, like Dr. Phil, everybody, you know,
3 wants to listen to Dr. Phil. I don't know his
4 qualifications, I've never heard this gentleman
5 speak, I just know he's on every bookstand and
6 every bookstore I see.

7 So I would like to know that because
8 obviously a lot of people -- he's on the number
9 one best seller's list. I would like to know
10 what is so tantamount important with this man
11 saying, or other professionals saying to these
12 jurors that people want to buy these books and
13 follow their advice.

14 THE COURT: I understand.

15 MR. CUMMINGS: So I understand Your Honor's
16 ruling, and I know I'm going to lose this legal
17 argument and I would respectfully just note my
18 objection for the record and try to move on as
19 quickly as we can.

20 THE COURT: Very well. Thank you, sir.

21 And 55 and 56, clearly case specific,
22 Mr. Cummings. Is there anything?

23 MR. CUMMINGS: Your Honor, Judge, if I may,
24 please, and briefly be heard on this.

25 THE COURT: Sure.

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1 MR. CUMMINGS: And it's not going to our
2 defense, my client is a married man. There will
3 be some testimony allegedly that there was an
4 involvement between Miss Martin and my client.
5 They were friends, my client's a black
6 gentleman, Miss Martin's a white lady. So, yes,
7 Judge, there may be some issues about morality,
8 there may be some issues about what is a married
9 man having a friendship with a white female.

10 So 55 and 56, Judge, I would ask in
11 particular since you have not heard the
12 testimony, not even allowed to hear testimony
13 yet, but to let you know as an officer of the
14 Court that there may be an issue about that.
15 His wife has been charged in this case by the
16 State.

17 THE COURT: All right.

18 MR. CUMMINGS: So I would ask, Judge, that
19 55 and 56 be left in there, Judge, because if
20 somebody -- and, again, adultery is still a
21 crime in our state and it has not been
22 prosecuted by anybody, thank God, in a long,
23 long time, not to be hypocritical, but, again,
24 Judge, there are some people out here that do
25 believe that adultery should -- people should

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1 still be stoned. And I would respectfully say
2 based on the investigation of this case that 55
3 and 56 would apply in some aspect of this case
4 possibly.

5 MR. BAILEY: Your Honor, I just don't think
6 it's appropriate to try to voir dire the jury on
7 what may or may not come out in this particular
8 case. Mr. Cummings has an idea of what he
9 thinks may be coming out, he may be correct and
10 he may not, but to gear the voir dire towards
11 the specific facts of his case is trying to
12 stake out a juror and trying to determine what
13 they may do not based on whether or not they can
14 follow the law and the evidence, but how they
15 may react to specific testimony, so that would
16 be my objection.

17 MR. CUMMINGS: They ask this question in
18 this questionnaire dealing with immorality and
19 adultery based on the facts of that case and the
20 fact of some other personal matters involving
21 Ms. Susan Smith's life within her family, and
22 basically advising the bench that there may be
23 an issue. I mean, you can make anything look
24 dirty today if somebody wants to, but I'm asking
25 that 56 -- excuse me, 55 and 56 at least remain

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1 as a question to find out if the jurors would be
2 offended by that and whether or not they could
3 give my client a fair trial, Judge.

4 THE COURT: Mr. Cummings, are you telling
5 me that there may be testimony of -- there may
6 be testimony of a friendship or something more
7 than a --

8 MR. CUMMINGS: Yes, ma'am. And, again,
9 this is not -- I'll keep this as generic as I
10 can.

11 THE COURT: All right.

12 MR. CUMMINGS: The deceased lady in this
13 case had a child that we've learned from a
14 gentleman named Mr. Goldsmith. There have
15 been -- there has been physical contact between
16 my client and Miss Martin over a long period of
17 time that leads to an adult situation. The
18 State may even try to argue that there is some
19 DNA seminal fluid from my client inside this
20 young lady. That would constitute, possibly,
21 Judge, the issue of adultery, it would also
22 constitute the issue of possible other factors
23 the State may wish to present. So, yes, ma'am,
24 again without going into more specific things
25 because we don't have all the DNA.

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1 THE COURT: That's sufficient for my
2 purposes.

3 MR. CUMMINGS: Yes, ma'am.

4 THE COURT: Let me think about that one,
5 those two.

6 Now, the next one that I have
7 obviously is 59, 60, 61, 62, 63, 64 which are
8 clearly case specific.

9 MR. CUMMINGS: Judge, absolutely. And I
10 have no issues with that also. Again, I would
11 speak to co-counsel.

12 THE COURT: And obviously 65 as well?

13 MR. CUMMINGS: Yes, ma'am.

14 THE COURT: All right. I haven't skipped
15 over any, Mr. Bailey, that you had specific
16 concerns, have I?

17 MR. BAILEY: No, ma'am.

18 THE COURT: All right. Then let us go on
19 to Number 66. Obviously the case, the
20 appropriate caption would need to be given.

21 MR. CUMMINGS: I don't mean to be sitting
22 down, I know, Your Honor, you got 66.

23 THE COURT: You're fine.

24 MR. CUMMINGS: One, two paragraph, it says,
25 "Do you feel that extensive media presence in

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1 the community --"

2 THE COURT: And I don't want to tell them
3 that. That's what concerns me about this
4 particular question is that that assumes that
5 there has been a particular kind of presence and
6 I don't know that there has been.

7 MR. CUMMINGS: Judge, could we just strike
8 the word "extensive" out and leave "media
9 presence in the community"? Obviously there has
10 been media coverage, there has been, and we say
11 that to you and I think everybody in here would
12 say that, but I don't --

13 THE COURT: Do you feel that the -- just
14 that, the media presence?

15 MR. CUMMINGS: Yes, ma'am.

16 THE COURT: Well --

17 MR. CUMMINGS: "Do you feel that media
18 presence in the community will have an effect on
19 your ability to be impartial?" If I could read
20 the question that way I would be satisfied.

21 MR. BAILEY: I don't have an objection to
22 that, Judge. I don't think there's been a whole
23 lot of publicity so far, but generally what
24 happens is the day of jury selection the Post &
25 Courier leads off with something on the front

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1 page.

2 MR. CUMMINGS: Absolutely.

3 MR. BAILEY: So there may be at the time.

4 THE COURT: What concerns me about that is
5 in this particular case they did camp out for
6 months and months. I mean, it was apparently
7 remarkable the number of trucks and the
8 satellite dishes, I think that's what they are
9 talking about presence, but we'll leave it in
10 because that could occur, as you say,
11 Mr. Bailey, the day of jury selection. All
12 right.

13 MR. CUMMINGS: Thank you, Judge.

14 MR. BAILEY: Your Honor, the last one in
15 66, about do you feel the fact the defendant and
16 the victim's family and friends live in the
17 community. I believe both the victim and the
18 defendant lived in Orangeburg County and I
19 believe the family is there also, so that really
20 is not a correct statement as far as this case
21 to my knowledge.

22 MR. CUMMINGS: I know we're arguing on a
23 county map, but I think we call it the Tricounty
24 area for all of us, Summerville now is into
25 three, almost four counties, I would ask, Judge,

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1 that the question remain as is. Because
2 Reevesville, Branchville is so close, the people
3 who live in Branchville have to shop here in
4 St. George unless they want to drive all the way
5 to Orangeburg. Again, if I'm in error, Judge,
6 you've lived in the community and I know
7 Mr. Bailey has all these years, I would just ask
8 the question remain as stated.

9 THE COURT: All right. I'll leave it in.
10 Great.

11 Now, let me ask you this, counsel, and
12 the question is this: Obviously the
13 beginning -- there needs to be some explanation
14 sent to the jury -- and have you all looked at
15 the beginning paragraph? There's no magic,
16 there may be another, if you will, prefatory
17 information given to a juror, but I do, I really
18 do believe that there needs to be something
19 more, or more information given than appears on
20 either of the two beginning ones. I like this
21 one very much, but I am certainly -- want you
22 all to look at it and give me the benefit of
23 your thoughts. I think it's important that they
24 be given some information about what this is
25 about and the importance not to discuss it with

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1 anyone and to be truthful with it.

2 MR. BAILEY: I think that's fine. I just
3 read it and I have no problem at all with it.

4 MR. CUMMINGS: Absolutely, Judge. And I
5 know that for the record we'll probably have to
6 mark the document that's been sent to us as a
7 Court's Exhibit, but, Judge, I think that hits
8 it right to the point without us trying to be
9 too more inclusive or try to exclude anything
10 out. It hits them right where it needs to hit
11 them, and that is answer the questionnaire and
12 please send it back to us.

13 One thing that happens, Judge, and I
14 think this may be something that needs to be put
15 on the record, is some jurors won't send these
16 back.

17 THE COURT: Right.

18 MR. CUMMINGS: And I know that's Your
19 Honor's province and how to deal with that with
20 the sheriff, whatever, when they come into
21 court. And sometimes we have a stack of these
22 forms up here and we make them go sit down in
23 the back of the room back here. We would like
24 to for the record have those jurors identified,
25 as Your Honor probably would for us, the ones

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1 who would not fill these out and send them back
2 in ahead of time, or the jurors that may come
3 into the room and say, "I left it at home, I
4 forgot it, I didn't mail it in, the dog ate it,"
5 whatever. I really am concerned about that.
6 Because giving somebody a stack of 10 to 15
7 pages and tell them to go down here and fill it
8 out is not going to be a juror who is going to
9 give us complete and thoughtful answers.

10 And I would ask ahead of time, Judge,
11 I know I have to legally make my motion to
12 strike jurors, but I think this questionnaire is
13 the most important thing we send out to people,
14 that's why we take the time to do it.

15 THE COURT: What you're saying is that you
16 just want there to be extra questionnaires so
17 that if the jurors have not filled it out that
18 they be given pencil and time and a lap. I
19 guess they got to provide their own lap to fill
20 it out.

21 MR. CUMMINGS: No. I think I've made
22 myself unclear to the Court, I apologize.

23 THE COURT: You want to exclude them?

24 MR. CUMMINGS: I don't want those jurors.
25 I mean, I would stand up and argue all day long

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1 not to have those people. If they can't follow
2 the simple instructions as sent out by Madam
3 Clerk and Your Honor I don't want them. Again,
4 I won't speak for my colleague, but if they
5 don't obey Your Honor's instructions and rules I
6 don't want those people as a juror.

7 THE COURT: Oh, all right.

8 MR. CUMMINGS: And I would like to have a
9 date that they have to have these returned by, I
10 think we usually do that, too. Because that
11 gives us time to read them, give the Court time
12 to look at some of these if Your Honor wants to
13 read them ahead of time, to find out before they
14 come into this courtroom is what we always do.

15 THE COURT: Well, I'm certainly not -- I
16 understand that. One of the -- obviously the
17 best way to be assured that the questionnaires I
18 guess are filled out is to have them come and
19 sit and do it in the courtroom. And I have
20 given that some thought. I don't know that -- I
21 think that -- well, let me hear from you,
22 Mr. Bailey, before I begin.

23 MR. BAILEY: Your Honor, you're talking
24 about pretrial to have them come in and fill it
25 out after it's served?

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1 THE COURT: No, sir. I know that there are
2 some -- you know, all different states run
3 courts on all different ways and some courts,
4 you know, a judge is going to have a capital
5 case -- has a hiatus and they have the capital
6 case. And in those instances you can -- you
7 have more of an ability, rather than in South
8 Carolina where we do have so much court and we
9 do have limited courtroom space and very limited
10 jury space in most of our counties. In some
11 places they have come in on Friday afternoon,
12 fill it out, they take it up, and they copy it,
13 but that's very difficult.

14 MR. BAILEY: My experience is just in South
15 Carolina.

16 THE COURT: Yes.

17 MR. BAILEY: And what I found is that you
18 usually ask them to send it in within like two
19 days and you get an influx of them at first and
20 then they trickle in because people are on
21 vacation or they put it aside. And a certain
22 of -- percentage of people, for whatever reason,
23 don't fill it out. And usually it's not more
24 than maybe 10 percent. And during that first
25 day if they're questioned about the

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1 questionnaire and they're asked to raise their
2 hands if they don't have it, there's generally
3 ample opportunity for them to fill that out that
4 day or the next day while the panels are being
5 formed.

6 THE COURT: And I think that there's -- I
7 hear what you're saying, Mr. Cummings, but
8 people cannot fill out their questionnaires for
9 all kinds of reasons and I don't think in and of
10 itself that that's an indication of anything.
11 It may be just simply lack of organization in
12 their life, but it doesn't mean in and of itself
13 that they're not a suitable juror.

14 And I think that given the, really the
15 constraints that we have in that we can't have
16 them come and sit and fill out and go away and
17 come back again and go away and come back again,
18 I think when we balance all of those items that
19 it is appropriate to mail the questionnaire out,
20 to get it back and to have them available for
21 those that did not fill it out and we'll just --
22 we'll just have to get those back, copy them so
23 that you have benefit of them.

24 I note your exception, and over the
25 objection of the defense it would be my

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1 determination that we will not exclude jurors
2 automatically for failing to return the
3 questionnaire. Very well.

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

5 THE COURT: Very well. And what else?

6 MR. CUMMINGS: Judge, do we know when the
7 questionnaire will be mailed out from either
8 Madam Clerk or the bench?

9 THE COURT: Yes. I know that the clerk's
10 office is concerned about getting the
11 questionnaire out. They want to mail it -- Ms.
12 Footman's been kind enough to be here today, do
13 I understand 35 days prior to the start of the
14 term? Thirty-five days.

15 One of the concerns that we have is
16 that we still need these jurors to fill out the
17 shorter form that goes with them as well.

18 MS. FOOTMAN: Right.

19 THE COURT: And I think it probably is
20 appropriate that we add a sentence to this
21 beginning section that reiterates and asks them
22 to be mindful that they also must fill out
23 the -- what is the clerk's --

24 MS. FOOTMAN: It's called a general
25 questionnaire, not questionnaire but summons.

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1 THE COURT: Oh, okay. Just to reiterate
2 that we need them to fill out.

3 MS. FOOTMAN: And it's a three-part.

4 THE COURT: The three -- the juror -- it's
5 called the juror summons, so we'll need to add a
6 sentence to that effect, to fill out the juror
7 information card as well. We need to add a
8 sentence.

9 Now, here's what I would -- the way
10 that I would like to proceed at this time. I
11 would like for, Mr. Cummings, for you to take
12 the hearing today and for you all to revise the
13 juror questionnaire.

14 MR. CUMMINGS: Yes, ma'am.

15 THE COURT: Obviously, immediately if
16 you'll get it to Mr. Bailey for your review.
17 And if there are any questions after you've done
18 that then we can get back together, but I would
19 like to get that in the hands of the clerk one
20 day this week.

21 MR. CUMMINGS: Sure. Judge, we had already
22 retyped what I call the Susan Smith one on the
23 computer at the office and I was waiting for Her
24 Honor's instructions today what to delete, what
25 to put in. We stayed last night until 7:30 and

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1 did that. That's why I didn't want to challenge
2 this because it was so inclusive from all the
3 other ones Marva and I put together, along with
4 the ones Mr. Bailey used in the past, and I was
5 hoping we would find some modification.

6 THE COURT: See, I knew when I was out on
7 my walk walking my dog last night and walked by
8 your office, I knew that's what you were doing.
9 I saw the lights on in the office late into the
10 evening.

11 MR. CUMMINGS: Thank you, Judge.

12 THE COURT: Thank you, Mr. Cummings. That
13 would be terrific. And, Mr. Bailey, I know
14 you'll look at it the moment you get it. If we
15 can get this in the hands of the clerk this week
16 I would really be most appreciative because then
17 I don't have to worry about it going out in a
18 timely fashion. I think that was the task that
19 I wanted to get accomplished today, and as is
20 becoming your usual way you all are most
21 efficient and I participate it so much.

22 The clerk's office has some questions
23 and some concerns. Are you all prepared to at
24 least hear those?

25 MR. BAILEY: Yeah.

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1 MR. CUMMINGS: Sure.

2 THE COURT: Then we'll see what we can
3 resolve. For our record, if you would identify
4 yourself, please, ma'am.

5 MS. FOOTMAN: I'm Flora Footman.

6 THE COURT: And you are the juror
7 coordinator for Dorchester County?

8 MS. FOOTMAN: Yes, ma'am.

9 THE COURT: And you're assigned to send out
10 this questionnaire as well as the juror summons
11 in this matter?

12 MS. FOOTMAN: Yes.

13 THE COURT: Thank you, Ms. Footman.

14 MS. FOOTMAN: We, as the clerk's office,
15 have a concern concerning the authority to
16 excuse jurors. We wanted to ask whether we
17 could or could not excuse jurors in the normal
18 fashion that we do, like people that have small
19 children and do not work outside their home,
20 person's with doctor's excuses or doctor's
21 appointments, persons over 65, persons with
22 planned or prepaid vacation plans, working out
23 of town or out of state, full-time students,
24 persons with criminal records and persons
25 working in the school systems. And those were

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1 some concerns that the clerk told me to address
2 today.

3 MR. CUMMINGS: I'll let my colleague
4 address it.

5 MR. BAILEY: The State's position on that
6 is that in all those categories except the
7 criminal records I would have no objection to
8 the clerk excusing those people if they
9 establish in writing that they meet one of those
10 situations. You all aren't going to have the
11 information on the records.

12 MS. FOOTMAN: Right.

13 THE COURT: You won't have rap sheets in
14 the clerk's office?

15 MS. FOOTMAN: No, we won't.

16 MR. BAILEY: So I think we probably have to
17 reserve that.

18 MS. FOOTMAN: Unless they say they have.

19 MR. BAILEY: Let me just check my notes
20 here. Occasionally the doctor's excuses are
21 ambiguous as to whether or not they really have
22 a disqualified situation or just don't feel
23 good, so that may be an area where we could get
24 together and review it, you know, if you would
25 let us.

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1 MR. CUMMINGS: Judge, what we've done in
2 the past, and I know Your Honor has given us
3 great indulgence in here and I do want to check
4 with my client about a couple of the topics
5 here, Mr. Bailey and I in three cases that we've
6 done together now, we have with the jury
7 questionnaires together, and if somebody writes
8 in there that they're on kidney dialysis or
9 whatever, Judge, we obviously would sit to you
10 and say we would stipulate the juror number and
11 I'll pick an illusory number, 32 should be
12 excused for medical reasons.

13 Obviously a lot of people try to find
14 a way not to serve as we all know, but, Judge, I
15 would like to have the opportunity to have them
16 do this again even if we have to protect the
17 record, come in on the record and look at all
18 the people sending excuses so that these ladies
19 don't have to make a call and then all of a
20 sudden somebody would be angry.

21 I think once they get them in it's
22 almost our job to go through them with everybody
23 and see who can be excluded off the cuff.

24 THE COURT: This is what I am comfortable
25 doing, and let me hear from you further. I am

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1 happy and most appreciative if the two of you
2 are willing to go through those questionnaires
3 together so that you can look at it and know
4 just that clearly this is a juror that ought to
5 be excused. And then we'll make a record of it
6 in some fashion, it may be just a consent order
7 between the two of you that those individuals
8 were excused by consent of the parties.

9 If there are ambiguities or just
10 insufficient information regarding folks on the
11 juror questionnaires when they say they can't
12 serve for whatever reason and you've been
13 through those, I would like to have a hearing
14 prior to the Monday just to give us an
15 opportunity if we need more information to have
16 a hearing regarding those folks and we'll talk
17 to them one at a time, and then we'll make a
18 decision regarding those individuals that we
19 know from the questionnaires have got a problem.
20 If we can't make a determination, then we'll
21 have a hearing. I would like to do that prior
22 to the Monday, prior to the 13th and then
23 they'll know where they are.

24 MR. CUMMINGS: Yes, ma'am.

25 THE COURT: Let me hear from you about

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1 that.

2 MR. CUMMINGS: Judge, as to the statutory
3 reasons, Your Honor, of course it's going to be
4 a ruling of the bench and that's why I think we
5 made one of our motions to clarify when the
6 solicitor comes up with the reasons of criminal
7 convictions, that that's our job, again, to go
8 through that and see who's automatically
9 excluded. There may be some legal arguments
10 before Her Honor as to what crimes really are
11 excludable, one year or less.

12 THE COURT: Sure.

13 MR. CUMMINGS: Your Honor, and then,
14 respectfully, as to the school teachers, my
15 client -- we're going to start this thing
16 May 13th, school gets out like May 28th,
17 June 1st is graduation, remember that date. But
18 the reason I'm saying that is my client has
19 whispered in my ear and co-counsel that he would
20 hope that school teachers would be a part of
21 this jury pool. They are a learned group, they
22 are people that care about the community and
23 they don't get paid worth a darn. So what we're
24 trying to say basically is they are a caring
25 person.

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1 I know Your Honor has the ultimate
2 ruling on that whether they're excluded by
3 statute. There are some jurors, teachers that
4 would be out earlier, so I would like to at
5 least have the opportunity to look at the pool
6 and maybe get my client, and I, and Ms. Thomas a
7 chance to argue that that Friday before.

8 And mommies and little children,
9 Judge, again, the ultimate question comes in, do
10 you work, are the kids in day-care, or are you
11 really the ones that stay home.

12 THE COURT: Sure.

13 MR. CUMMINGS: So I would kind of like to
14 look at that. But I know each, individual one,
15 Ms. Footman has done this for years also with us
16 and has been most kind, I think the only ones I
17 think would be clearly a call between the
18 lawyers and the Court would be the criminal
19 people and the people with doctor's excuses.

20 Vacations, Judge, obviously I don't
21 want to have anybody angry or upset on this
22 jury, at either Mr. Bailey for making them come
23 here today or Norb to make sure that we keep
24 them here, but I think, Your Honor, if they can
25 prove they've had vacations plans or

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1 longstanding plans, again, they went and bought
2 the tickets the week before or the day they got
3 the juror summons, I think it would be important
4 to maybe ask them on that, when did they plan
5 their vacation. So I would like to at least
6 have the opportunity to look at that if
7 possible.

8 THE COURT: Sure.

9 MR. CUMMINGS: But I am not trying to make
10 this any harder than it is, but I think we're
11 going to run out of jurors real quick around
12 May, June, and July.

13 THE COURT: All right. Ms. Footman, for
14 your purposes, and counsel you listen to me to
15 be sure, I think I know where we are, and I
16 think where we are, counsel will look at the
17 questionnaires, see which individuals they can
18 consent to. And if they cannot consent, then
19 we'll have a list of those folks who have asked
20 to be excused, or indicated that they need to be
21 excused. We will have a hearing -- for sure
22 we'll have a hearing the Friday before.

23 However, if we are getting many such
24 individuals earlier on, we'll have time to hear
25 some of those earlier depending on how many you

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1 are receiving. In other words, if we get 50 of
2 them, and we know we've got 50 in late April,
3 then I would like to have an opportunity to do
4 some of those hearings as they come in. I think
5 that would be appropriate to do that in that
6 fashion.

7 MR. CUMMINGS: Yes, ma'am.

8 THE COURT: Very well. All right. All
9 right.

10 MS. FOOTMAN: Judge, to make sure that I'm
11 clear.

12 THE COURT: Sure.

13 MS. FOOTMAN: You want everybody -- we
14 don't excuse anybody, right?

15 THE COURT: Not on your own. Ms. Footman,
16 look here. What you will do is you will not
17 exclude anyone on your own.

18 MS. FOOTMAN: Okay.

19 THE COURT: The individuals that want to be
20 excluded -- if somebody calls in and you know
21 who they are you need to tell them they need to
22 complete the questionnaire, put their concern on
23 the questionnaire. The questionnaires will come
24 in, counsel will look at the questionnaires. If
25 you've had a telephone call and somebody's

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1 communicated concerns to you, it's my advice
2 that you make a record of that so these lawyers
3 can see that as well, because they may not be as
4 articulate in the questionnaire as they have
5 been over the telephone.

6 MS. FOOTMAN: Okay.

7 THE COURT: And then they will get
8 together, I gather periodically, and go through
9 the questionnaires and then will begin to
10 develop a list of those individuals that we may
11 have a hearing regarding.

12 MR. CUMMINGS: Thank you, Judge.

13 THE COURT: Yes. And certainly if you all
14 consent you can tell the clerk's office and
15 they'll be happy to contact them. I think
16 that's appropriate that the clerk's office would
17 contact them once you all have consented to
18 excuse someone. Great.

19 MR. CUMMINGS: Judge, just for the record
20 now.

21 THE COURT: Yes.

22 MR. CUMMINGS: And my client here, next
23 Friday is a state religious holiday, we've got
24 that, and also Thursday, so there won't be any
25 motions next Friday in the courtroom as I

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1 understand it.

2 THE COURT: Is it a state holiday?

3 MR. CUMMINGS: I went over to Berkeley
4 County courthouse today and they're closed next
5 Friday.

6 THE COURT: It's a state holiday in
7 Berkeley County, got you.

8 MR. CUMMINGS: I thought it said state.
9 You know, again, I'm from Brooklyn, you got to
10 excuse it.

11 THE COURT: I'm finished Wednesday after
12 Passover, what do I know? You're right, we are
13 not -- it has now become a pattern of getting
14 together on Friday afternoon, we're not going to
15 get together next Friday afternoon. We'll have
16 a holiday, we'll call it Ms. Hardee-Thomas's
17 birthday holiday, is what we're going to call
18 it.

19 MS. HARDEE-THOMAS: On the record?

20 THE COURT: But then the next Friday we
21 will be back together.

22 MR. CUMMINGS: Yes, ma'am. And I know
23 we're going to need some time to get caught up
24 from the Jackson v. Denno and I think Mr. Bailey
25 and I want to find Your Honor's schedule as soon

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1 as --

2 THE COURT: And remember that will be that
3 Friday, if we have things that Friday. But
4 beginning that Monday we will be together all
5 week.

6 MR. BAILEY: Two weeks from today will be
7 the next one?

8 THE COURT: Yes, two weeks today. Now, may
9 I say to both of you if you would rather not
10 work that Friday and just begin the work that
11 Monday, I'm going to leave it completely to the
12 two of you. Because remember that Friday is
13 the -- what is that? Well, it's -- what is that
14 like the 5th of April; is that what that is?

15 MR. BAILEY: I don't have a calendar.
16 Eighth is on Monday.

17 THE COURT: Eighth is on a Monday, so it
18 would be the 5th of April. On the 5th of April
19 I am available and I have set that time aside
20 all day for us because it's a non-jury term and
21 my obligations will end on Thursday. So that
22 Friday is good for me, but I want you all to
23 also know that you have from the 8th through
24 that Friday.

25 MR. CUMMINGS: I think if we could just for

State vs. Bowman Volume IV

1 today's purposes, Mr. Bailey and I can at least
2 reserve your time on that Friday for right now.

3 THE COURT: Certainly.

4 MR. CUMMINGS: And then divulge whether or
5 not we're going to do it for Jackson v. Denno or
6 some other issues that might have to be
7 answered.

8 THE COURT: Counsel, I'm going to be
9 available. I'm going to be working on this
10 matter one way or the other because I've got
11 things to do, but if for whatever reason it's
12 more efficient for you not to work that day --
13 in other words, I'm not going to force you -- if
14 you're not prepared on that occasion to go
15 forward, I'm not going to force you to go
16 forward that Friday. I will force you to go
17 forward that Monday, though --

18 MR. CUMMINGS: Thank you, Judge.

19 THE COURT: -- because I do want to -- my
20 goal is to be in a posture after that week of
21 April the 8th that but for matters that would
22 come up or reviewing the juror requests to be
23 excused that we'll be in a shape to go.

24 MR. CUMMINGS: Thank you, Judge.

25 MR. BAILEY: All right, Your Honor. While

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1 we're on the record just one other item
2 Mr. Coker asked me about. The State has
3 subpoenaed the sheriff's office entire file and
4 Mr. Coker is the case officer, he has the file
5 with him. And he would prefer to go over that
6 file with you all this afternoon if possible,
7 rather than making copies because we're dealing
8 with stuff that you should already have through
9 me.

10 MR. CUMMINGS: I don't mind. I'm here all
11 day and I don't mind staying as long as it's
12 convenient for Mr. Coker.

13 THE COURT: We're going to be here, we can
14 have somebody here while they go through the
15 file?

16 MR. MOULTRIE: Yeah, I can get somebody.

17 THE COURT: Terrific. Done. You all go
18 through that then today, that suits everyone.

19 MR. CUMMINGS: Judge, I think the purpose
20 of that was Mr. Bowman to be present if
21 possible, and that's why.

22 MR. MOULTRIE: Okay.

23 THE COURT: For Mr. Bowman to be present
24 while you went through the file?

25 MR. CUMMINGS: Right.

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1 THE COURT: All right. Hold on.

2 (Pause in proceedings.)

3 THE COURT: Why can't you go to the jail?

4 MR. CUMMINGS: I agree, that's what I was
5 trying to say, would that be convenient to meet
6 you over there, in your office over there?

7 MR. BAILEY: Or over at your office?

8 THE COURT: That would be a yes?

9 MR. COKER: We can find someplace.

10 MR. MOULTRIE: Don't we have a conference
11 room at the jail to interview?

12 THE COURT: Stop a second. Mr. Cummings,
13 where are you, where do you and Ms.
14 Hardee-Thomas work with Mr. Bowman?

15 MR. CUMMINGS: I would put us wherever the
16 service department desires so we could meet with
17 this gentleman quietly and Mr. Bowman could see
18 everything in Mr. Coker's file we have.

19 THE COURT: Well, let me says this, I'm
20 going to be here for a few more minutes and I'm
21 confident that the jail personnel will find an
22 adequate place for you all to do that work. I
23 will be here if there's a problem and we'll
24 solve the problem.

25 MR. COKER: Your Honor, we'll find a place.

State vs. Bowman Volume IV

1 We'll find it.

2 THE COURT: I know you will, that was the
3 whole point. Thank you so much.

4 MR. CUMMINGS: Thank you, Judge.

5 THE COURT: What I'll do, I'll just fax a
6 letter much like I did before regarding 40, 55
7 and 56, all right?

8 MR. CUMMINGS: Okay.

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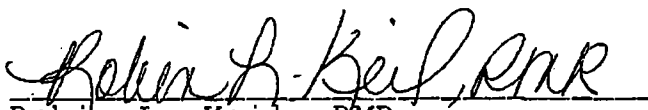
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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 6th day of May 2003.


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

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

ORIGINAL

STATE OF SOUTH CAROLINA,) VOLUME V. Pages 315 - 555
)
 Plaintiff,) TRANSCRIPT OF RECORD
)
 -versus-) JACKSON VS. DENNO
)
 MARION BOWMAN, JR.,) April 9, 2002
)
 Defendant.) St. George, South Carolina

B E F O R E:
 The Honorable Diane S. Goodstein

A P P E A R A N C E S:
 Walter M. Bailey, Jr., Esquire
 Benjamin Lafond, Esquire
 Office of Solicitor
 First Judicial Circuit
 140 North Main Street, Suite 102
 Summerville, SC 29483
 For the State of South Carolina

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

-and-

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

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

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1 (April 9, 2002.)

2 THE COURT: Let me tell everyone on the
3 record if I may, that I know that we've had --
4 Ms. Keil, our court reporter, has had some
5 technical difficulties this morning and with help
6 from Radio Shack who's been able to rectify those
7 problems, I feel compelled to tell everyone
8 in the courtroom that it is not her problem, it's
9 not her fault, it's my fault. I'm responsible
10 for bringing her equipment back from Orangeburg
11 and I did such a wonderful job that I left several
12 pieces of her equipment that she's had to rectify
13 today. So I apologize to you on the record,
14 Ms. Keil, and I'm -- just appreciate you being
15 able to cause all of your equipment to now work
16 properly.

17 All right. Of course we're here to
18 continue the Jackson vs. Denno hearing.

19 And let me just put also on the record
20 that Mr. Cummings as well as Ms. Hardee-Thomas
21 have shared with me that the issue regarding the
22 certifications as trial counsel in the capital
23 matter, Mr. Cummings has passed up a copy of his
24 certification which we're going to make a part of
25 the record. And it is my understanding that Ms.

1 Hardee-Thomas, that her certification is in
2 route --

3 MS. HARDEE-THOMAS: Exactly.

4 THE COURT: -- from the Supreme Court. And
5 when yours has arrived there may be some very
6 limited representations I will ask the two of you
7 to put on the record. But there's no need in
8 doing that piecemeal, let's wait until your
9 certification has arrived. And I understand that
10 the questionnaire is in close to final form; is
11 that right?

12 MR. CUMMINGS: Judge, I presented to Lynn two
13 forms. One with a question that Mr. Bailey says I
14 believe Your Honor ruled either objectionable and
15 I have put one in according to my notes, but I
16 figured either at the lunch break or whatever --

17 THE COURT: We'll go over that.

18 MR. CUMMINGS: We have both presented to you
19 either way Your Honor rule.

20 THE COURT: That will be excellent. And you
21 have one copy with it in and one with it out.

22 MR. CUMMINGS: Yes, ma'am.

23 THE COURT: And that will be excellent
24 because that way we can give the questionnaire
25 today to the clerk's office. I think that will

1 work very, very well. All right. Anything before
2 we continue with the Jackson vs. Denno hearing?

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

5 MR. CUMMINGS: Our motion for sequestration
6 is ongoing; I would just renew it to the Court. I
7 know we have other law enforcement members in our
8 courtroom today.

9 THE COURT: And it would be. And if there's
10 anybody who's present that's going to testify
11 other than, of course, the case agent, then
12 they'll need to leave at this point. Nope? Nope?
13 Very well.

14 All right. Mr. Bailey.

15 MR. BAILEY: Thank you, Your Honor. Call
16 Chief Quillie Boone Walters.

17 THE COURT: All right, sir. If you'll come
18 along, please, and be sworn. Place your left hand
19 on the Bible, please, and raise your right hand.
20 (Quillie B. Walters, called as a witness, having
21 Been duly sworn, is examined and testifies as
22 follows:)

23 THE COURT: Thank you, sir. If you would
24 please be seated. I want you to wait just one
25 second before you begin. All right, sir, if you

1 would please state your full name for the record.

2 THE WITNESS: My name is Quille Boone
3 Walters.

4 THE COURT: If you would spell maybe your
5 first name and your last name.

6 THE WITNESS: Q-u-i-l-l-i-e, W-a-l-t-e-r-s.

7 DIRECT EXAMINATION

8 BY MR. BAILEY:

9 Q. You're chief of police in Branchville?

10 A. Yes, sir.

11 Q. Did you hold that position back in February of
12 2001?

13 A. Yes, sir.

14 Q. All right, sir. Are you familiar with the
15 defendant in this case, Marion Bowman?

16 A. I know Mr. Bowman.

17 Q. Okay. And how long have you known him?

18 A. Ever since he's a younger man. I don't know how
19 many years.

20 Q. All right, sir.

21 A. Since I've been chief.

22 Q. All right, sir. I want to ask whether or not in
23 the course of your duties as chief of police in the
24 town of Branchville whether or not you were aware of
25 the existence of an arrest warrant for receiving stolen

1 goods against Marion Bowman, Jr.?

2 A. Yes, sir.

3 Q. All right, sir. Do you recall how you became
4 aware of the existence of that warrant?

5 A. It came from the -- Orangeburg County and I had
6 information that a warrant was out from them. In fact,
7 I had a copy of the warrant.

8 Q. All right, sir. And I want to hand you a
9 certified copy of an arrest warrant and ask if this is
10 a certified copy you had of the warrant back in your
11 office in February 2001?

12 A. Yes, sir.

13 MR. BAILEY: If I could have it marked for
14 identification.

15 MR. CUMMINGS: Mr. Bailey is showing that to
16 him for ID only.

17 THE COURT: Yes. I think that was the
18 request, just for ID as well.

19 (Marked for identification was State's Exhibit 5,
20 warrant.)

21 Q. Okay, Chief. I want to call your attention to the
22 morning of February 17th, 2001 and ask whether or not
23 you went to an address on Church Street in Branchville
24 along with a deputy from Orangeburg County and some
25 Dorchester County deputies for the purpose of arresting

1 Marion Bowman, Jr. pursuant to that warrant?

2 A. Yes, I did. But that address is not Church
3 Street. It used to be Church Street before 911 came
4 along.

5 Q. All right.

6 A. The trailer faces Evans Street, sits on the corner
7 of Evans Street and another street called Carry Street.

8 Q. Was that the home of Marion Bowman, the home of
9 his wife Dorothy May Bowman?

10 A. It was the home of his wife.

11 Q. All right. Now, is that home located in the town
12 limits of Branchville, within your jurisdiction?

13 A. Yes, sir.

14 Q. Do you recall what happened when you approached
15 the residence of Marion Bowman's wife?

16 A. I knocked on the door and it took a while for his
17 wife, Dorothy, to answer the door. And anyhow, when
18 she finally answered the door she invited me to come
19 inside. Came inside and I told them I was looking for
20 Marion. She said she didn't know where he was at, it
21 was all right to look around.

22 There was an Orangeburg County deputy with me
23 and there was also a couple officers from Dorchester
24 County.

25 Q. All right, sir.

1 A. And in the process of being in the trailer the
2 Orangeburg deputy found Mr. Bowman hiding behind the
3 bed in a bedroom.

4 Q. Was he arrested at that point pursuant to that
5 receiving stolen goods warrant marked as State's
6 Exhibit 5, I believe, for identification?

7 A. Yes, sir.

8 Q. All right. And would you state whether or not
9 Marion Bowman was taken back to the Branchville Police
10 Department, your office after he was arrested?

11 A. He was transported back to the Branchville PD.

12 Q. Okay. And were you involved directly in any of
13 the questioning that went on with Marion Bowman --

14 A. No, sir.

15 Q. -- after y'all got over there?

16 Okay. Were you present at the police station
17 throughout that day?

18 A. I was there off and on on something else. We
19 didn't have a call or anything going on, I was at the
20 PD.

21 Q. All right. Okay. Chief, please answer any
22 questions Mr. Cummings might have for you at this time.

23 MR. CUMMINGS: Thank you, Solicitor.
24
25

CROSS-EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q. Just for the record, sir, I'm Norb Cummings and I
4 haven't had the pleasure of getting to know you
5 personally until this morning.

6 A. Yes, sir.

7 Q. How long have you been the chief of Branchville,
8 sir?

9 A. Since '96. Six years.

10 Q. I'm sorry?

11 A. Six years.

12 Q. All right, sir. Again, if I cut you off, I
13 apologize. In the six years out there -- you stated a
14 moment ago this was Marion Bowman's wife's residence,
15 correct?

16 A. Right.

17 Q. All right. Either now it's known as Carry Street,
18 before it was Church Street?

19 A. Well, I don't know which street, the address. It
20 sets on the corner of Carry Street and Evans Street.

21 Q. Okay, sir. If I may, I'm going to ask, you've got
22 a copy of the warrant that's been marked and I want to
23 get this on the record.

24 MR. CUMMINGS: May I approach the witness,

25 Your Honor?

1 THE COURT: You may.

2 MR. CUMMINGS: Thank you.

3 Q. Good morning, Chief. On the back it's marked
4 State's Exhibit 5 for ID. I'm going to ask you to look
5 at that. Up in the left-hand corner can you read the
6 address of where that arrest warrant for Mr. Bowman,
7 his address would be?

8 A. It says .

9 Q. All right, sir. Where is Locket Street, is that
10 in the town of Branchville?

11 A. It's close by this Carry Street. It's a couple
12 streets or two over from Carry Street.

13 Q. All right, sir. And I'm asking now this is an
14 attested true copy. Did you or any law enforcement
15 officers on the day of the 17th have this piece of
16 paper in your possession?

17 A. I had the -- not -- I had a copy of the warrant.

18 Q. All right, sir. You carried just a photocopy
19 around with you?

20 A. I had it at the office and I carried it with me
21 that day.

22 Q. You would agree with me, Chief, a photocopy is not
23 a valid warrant, it has to have a judge's signature on
24 it?

25 MR. BAILEY: Objection to him getting any

1 legal implications. It's a valid warrant, he's a
2 fact witness.

3 MR. CUMMINGS: Judge, one of the issues here
4 in the Jackson v. Denno, somebody has to be
5 arrested in custody interrogation. Whether or not
6 my client was arrested lawfully, I would ask to
7 have some questions answered here about the
8 validity of the warrant. We don't have rubber
9 stamps on warrants deliberately today, so we have
10 the protection and dignity of the Court.

11 THE COURT: I'll allow you to proceed, Mr.
12 Cummings.

13 Q. When did you make a copy of that warrant?

14 A. I have no idea. I don't remember. It was sent
15 for me from the sheriff's office. But that morning in
16 question an investigator from the sheriff's department
17 checked with Orangeburg with their records and verified
18 that the warrant was in existence and it was still
19 needed to be, still active.

20 Q. Who did this, sir?

21 A. Investigator Varnadoe.

22 Q. All right, sir. Since last Friday until today
23 have you talked to any officers about your testimony
24 today?

25 A. No, sir.

1 Q. Has anybody come to you, asked you about any
2 issues?

3 A. No, sir.

4 Q. All right. Have you seen that attested true copy
5 of the warrant prior to testifying today?

6 A. Not to today.

7 Q. Okay. Mr. Bailey just when he showed it to you,
8 that's the first time today?

9 A. That's right.

10 Q. All right. Now, when -- you were told there was a
11 valid warrant in existence, but you didn't have
12 actually a warrant with a judge's signature on it that
13 day, correct?

14 A. I don't understand your question.

15 Q. Well, when you went to Mr. -- Ms. Bowman's house,
16 did you have a valid warrant with a judge's signature
17 on it that morning, sir?

18 A. I didn't have the original warrant, no, sir, I did
19 not.

20 Q. Did you have -- did you gentlemen have a search
21 warrant when you went to Ms. Bowman's residence?

22 A. No search warrant.

23 Q. Okay. Had you applied for a search warrant that
24 morning, sir?

25 A. This was the sheriff's department warrant, it

1 wasn't mine. I was assisting them in executing their
2 warrant.

3 Q. An arrest warrant on Mr. Bowman?

4 A. Right.

5 Q. Okay. And when you went there I believe it was
6 your testimony for Mr. Solicitor that you approached
7 the door and it took Ms. Bowman several minutes to
8 answer?

9 A. Right.

10 Q. Okay. And when you went and Ms. Bowman answered,
11 did you tell her of your authority and presence? In
12 other words, Chief, you had your uniform on?

13 A. Absolutely.

14 Q. All right. And you told her you had a warrant for
15 Mr. Bowman?

16 A. Right.

17 Q. Okay. And you gentlemen showed her that piece of
18 paper?

19 A. Right.

20 Q. And at that point it's your testimony, sir, that
21 she invited you in the residence?

22 A. Yes, sir.

23 Q. All right. And did she give you permission to
24 search?

25 A. She said it was okay to come in and look around,

1 yes, sir.

2 Q. Look around. Did you tell her what you were
3 looking for?

4 A. Well, she knew we were looking for Marion Bowman
5 from me telling her that.

6 Q. All right. And when you went in -- is this a
7 trailer or home, sir?

8 A. It's a trailer.

9 Q. All right. When you stepped in, did you see
10 Mr. Bowman?

11 A. I did not.

12 Q. All right. Did you ask permission to go beyond
13 the living room?

14 A. She give permission to look around. That means to
15 me, my understanding look around means the trailer.

16 Q. Okay. Were there minor small children present?

17 A. I don't remember any children at the trailer at
18 that time. I don't remember any.

19 Q. Okay. And what did you physically do, Chief, I
20 mean did you --

21 A. I talked with Ms. Bowman.

22 Q. Okay. Did you pull out any documents used in
23 your --

24 A. I had the warrant.

25 Q. All right. Did you pull out a form, what we call

1 a consent to search or anything, and ask her to sign
2 anything about walking around her residence?

3 A. No, sir. I did not do that.

4 Q. Okay. Did you see any other law enforcement
5 officers do that at all?

6 A. I don't remember. This has been a year ago. I
7 don't -- if they did, I don't remember.

8 Q. Did you fill out any incident reports to this
9 case, sir?

10 A. No, sir.

11 Q. Okay. And it's your testimony to the solicitor
12 that Deputy Varnadoe found Mr. Bowman?

13 A. Right.

14 Q. All right, sir. And, again, it's your testimony
15 that he was arrested pursuant to that arrest warrant
16 that you had just a copy of?

17 A. That is.

18 Q. All right. What did you do with your copy of that
19 piece of paper, sir?

20 A. I carried it back to the office. I don't --
21 that's been a year ago, I don't remember what I did
22 with it now.

23 Q. Okay. You wouldn't leave just copies of warrants
24 laying around, Chief, right?

25 A. No, but I don't remember what I did with it.

1 Q. All right.

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

3 THE COURT: Yes.

4 (Pause in proceedings.)

5 Q. Chief, when Mr. Bowman was taken into custody, who
6 actually arrested him, physically arrested him?

7 A. I would say myself and Investigator Varnadoe, the
8 sheriff's office.

9 Q. Did you put the handcuffs on him, Chief?

10 A. I don't think I put the handcuffs on him. I don't
11 remember.

12 Q. All right, sir. Did you do anything else with
13 Mr. Marion Bowman's person?

14 A. Such as what? I don't understand the question.

15 Q. When you arrest somebody, what do you usually do,
16 sir? What do you do when you arrest somebody?

17 A. Well, if they're lawfully under arrest I sometime
18 put cuffs on them, sometime we don't. It's a small
19 town. It's not a metropolis we live in out there,
20 everybody usually knows everybody.

21 Q. You told him he was under arrest for what
22 particular offense?

23 A. For this warrant from the sheriff's office for
24 receiving stolen goods.

25 Q. Okay, sir. And did you advise him anything else

1 further, did you do anything else?

2 A. I didn't do anything else.

3 Q. Okay.

4 A. He was just turned over to the sheriff's
5 department.

6 Q. And what did the sheriff's department do with the
7 person of Mr. Bowman?

8 A. I don't remember. I mean, I don't know that he
9 did anything other than carried him up to the police
10 department. He was transported up there in my
11 automobile.

12 Q. Okay. So he went up in your vehicle?

13 A. Right.

14 Q. All right. And when you got him there, where did
15 you put Mr. Bowman's person?

16 A. He was put in the police department.

17 Q. All right, sir. Can you please describe like how
18 big your office is, or where you put him?

19 A. I don't know how big. I don't know how to tell
20 you how big the office is. It's a regular size office.
21 It's probably 12 by 16 or 12 by 20 or something, I
22 don't know.

23 Q. All right, sir. And how many law enforcement
24 agents were using your office when Mr. Bowman was
25 inside that office?

1 A. Orangeburg County, myself, and Dorchester County
2 were there.

3 Q. Okay, sir. And how many numbers of police
4 officers?

5 A. I don't remember.

6 Q. How about when you were in your office now, you've
7 been there like you said six years. Are there tape
8 recorders available to you, sir, for your law
9 enforcement purposes?

10 A. We don't have a tape recorder.

11 Q. You don't have a tape recorder?

12 A. No, sir.

13 Q. How about the summary court right next door, they
14 always record everything that goes on there, Chief?

15 A. Summary court's not right next door now.

16 Q. It's in the same building, right?

17 A. It's in the same building.

18 Q. They always have a tape recorder because that's
19 the rules?

20 A. The judge has a tape, yes, sir.

21 Q. Do you have keys to that building?

22 A. I don't have access to his office.

23 Q. Did anybody bother to call the judge seeing if
24 they could --

25 A. Not that I know of.

1 Q. You're the chief, you're the boss, right?

2 A. Well, I guess, yeah, supposed to be.

3 Q. Okay. And is there a tape recorder available in
4 that building?

5 A. I have no idea.

6 Q. How many times have you appeared in your summary
7 court, Chief, for six years?

8 A. I can't answer that, either. I don't know how
9 many times.

10 Q. More than ten in six years?

11 A. I reckon.

12 Q. Probably once a month at least?

13 A. Whenever they have court I'm usually there.

14 Q. And His Honor, or Her Honor turns on the tape
15 recorder every time people come into court to protect
16 the record?

17 MR. BAILEY: I know we touched on this the
18 other day, but I object to Mr. Cummings really
19 getting into a jury argument in the context of
20 Jackson v. Denno hearing. We'll concede that
21 there was no taped statement.

22 MR. CUMMINGS: It's not a concession. I
23 appreciate, Mr. Bailey, your objection. But the
24 objection on a legal basis is saying I can't ask
25 him questions about how my client was

1 interrogated. That's the purpose of establishing,
2 her establishing whether or not under Jackson v.
3 Denno my client gave free, knowing, voluntary
4 statements. I'm asking the chief whether he had
5 the tools to protect my client's rights, whether
6 this thing could have been recorded or videotaped
7 at that time.

8 THE COURT: All right. I'll allow you to
9 certainly explore that.

10 Q. Did anybody even come to you, ask you if you had a
11 recording device, all these law enforcement people that
12 day?

13 A. I assume they had their own recording device. I
14 didn't have one for them.

15 Q. Okay. And they never asked you, Chief, to provide
16 them one?

17 A. No.

18 Q. I'll move off that question. Now, what time did
19 Mr. Bowman get to your police station by you?

20 A. Pardon?

21 Q. What time did Mr. Bowman get to the police
22 station?

23 A. At some time in the morning. I don't remember
24 what particular time it was.

25 Q. Do you call in like the procedure mileage, like

1 you have one, I don't want to use your code --

2 A. Sometimes we do, sometimes we don't.

3 Q. You didn't do it that morning?

4 A. I don't remember re-calling in. If I did, I don't
5 remember.

6 Q. All right. When he got in there, did you handcuff
7 Mr. Bowman to a chair or to a place that's secure in
8 your office?

9 A. No, sir. I don't think the handcuffs was on him
10 in the office.

11 Q. Okay.

12 A. I don't remember being on him. If it was on him
13 before it was taken off when he came in the office.

14 Q. Okay. Did you afford him the right to make a
15 phone call after you arrested him, sir?

16 A. I don't think he asked for one.

17 Q. Okay. But did you afford him the right to do one,
18 did you tell him, Here, Marion, you better call
19 somebody you're under arrest?

20 A. I don't think I did. I don't remember.

21 Q. You basically turned him over to the other lady?

22 A. Absolutely. That's right.

23 Q. Now, what did you do the rest of the day, did you
24 stay in the building?

25 A. No. I went in and out whenever anything would go

1 on. I was in there sometime, sometime dealing with the
2 business of the town.

3 Q. And how about did you hear Mr. Bowman at any time
4 ask to speak to a lawyer that day?

5 A. I didn't hear him ask for one, no, sir.

6 Q. Did you ask him, Chief?

7 A. I had no reason to ask him.

8 Q. When you had him in the patrol car, did you read
9 him his warnings?

10 A. I didn't ask him about anything. I didn't need to
11 ask him anything.

12 Q. So your answer is, no, you did not?

13 A. I did not, no.

14 MR. CUMMINGS: Beg your indulgence.

15 THE COURT: All right.

16 MR. CUMMINGS: Thank you, sir. That's all
17 the questions I have of this chief, Your Honor.

18 THE COURT: Any redirect?

19 MR. BAILEY: No redirect, Your Honor. He may
20 be excused.

21 THE WITNESS: Can I go back to Branchville
22 now?

23 MR. BAILEY: If the judge says you're
24 excused, yes.

25 THE COURT: Y'all don't need him? You best

1 go back to Branchville then.

2 MR. BAILEY: Thank you, Chief.

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

5 THE COURT: All right. Mr. Bailey, if you
6 would call your next witness.

7 MR. BAILEY: Your Honor, before I call my
8 next witness if I could very briefly, I know we're
9 not at the point now where we're giving legal
10 argument, this issue seems to be sort of ripe.
11 There are two cases I think that are state Supreme
12 Court cases, death penalty cases that deal
13 specifically with I think Mr. Cummings' apparent
14 point about whether or not you have to have the
15 arrest warrant in your possession and actually
16 serve that arrest warrant in order to have a valid
17 offense.

18 THE COURT: Yes, sir.

19 MR. BAILEY: That's State vs. Sims, 435
20 S.E.2d 377; State vs. Holmes, 464 S.E.2d 334. And
21 both of those cases have held, along as the
22 arresting officer has knowledge that there's an
23 outstanding warrant, that warrant doesn't have to
24 physically be in their possession. So I just
25 mention that while it's kind of fresh.

1 THE COURT: Thank you, Mr. Bailey.

2 All right. Do you wish to respond to
3 that at this point?

4 MR. CUMMINGS: Your Honor, we have a state
5 statute particularly on point that says when a
6 person is arrested they must be told of their
7 offense. We've had conflicted testimony. We have
8 an attested true copy of a warrant today in a
9 Jackson v. Denno that says that there was a
10 warrant valid somewhere, but yet I have a copy of
11 a warrant which is not a valid warrant.

12 Our state or Supreme Court has ruled
13 years ago, rubber stamp warrants aren't valid,
14 they're not allowed to exist. And that's one of
15 the issues here, how they had lawful right to come
16 on the property of Ms. Bowman and take my client
17 into custody. At first we heard conflicting
18 testimony. There was a bench warrant outstanding,
19 now we're saying it's an arrest warrant.

20 MR. BAILEY: Judge, anything said about a
21 bench warrant was from Mr. Cummings. Of course
22 he's not under oath, he can't testify.

23 MR. CUMMINGS: That's right. We're trying to
24 get to the heart of the matter of how everybody
25 arrested this gentleman.

1 THE COURT: I appreciate you all bringing
2 that issue up to me. At this point you've made a
3 notation. Thank you very much, both of you. I
4 would ask you, Mr. Cummings, because based on my
5 notes, my memory is the issue of the bench warrant
6 was presented by defense and your very effective
7 cross-examination where you asked do you know if
8 it was an arrest warrant or a bench warrant.

9 MR. CUMMINGS: Right.

10 THE COURT: However, if your notes reflect
11 that that was testimony of someone who testified
12 on Friday, share that with me, if you would, and
13 ask.

14 MR. CUMMINGS: Yes, ma'am.

15 THE COURT: Thank you very much. Thank you.

16 MR. BAILEY: Yes, ma'am. Recall Sergeant
17 Coker.

18 THE COURT: Yes, sir. If you would come back
19 along. Obviously Mr. Coker has been in this
20 matter, but it was on Friday. Anyone wish to have
21 him resworn at this time?

22 MR. BAILEY: State does not, Your Honor.

23 MR. CUMMINGS: Defense does not, Judge.

24 THE COURT: Very well. Thank you. If you
25 would please be seated. Just for our record a

1 different court reporter. State your full name.

2 THE WITNESS: Alvin Michael Coker.

3 THE COURT: I'm going to go ahead and swear
4 him since it would be on another transcript with
5 another court reporter.

6 (Alvin Coker, called as a witness, having first
7 been duly sworn, is examined and testifies as
8 follows:)

9 THE COURT: Again, I did that because we have
10 a different court reporter and that way it's in
11 this transcript as well.

12 MR. BAILEY: I apologize if I'm redundant,
13 what I'm going to ask him that's already been
14 marked by another witness but I'm not certain that
15 we got his involvement on the record so that's why
16 I might be backing up a little bit.

17 THE COURT: Thank you. Mr. Bailey, given the
18 fact that there is a break I much prefer the fact
19 that there be completeness, do not worry about
20 being redundant.

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q. I ask whether or not you were still present at the
24 Branchville Police Department?

25 A. I was.

1 Q. Were you present at about that time when Sergeant
2 Terry Van Doran reminded the defendant, Marion Bowman,
3 Jr., of his Miranda rights?

4 A. I was.

5 Q. Okay. And did he -- what was Marion Bowman's
6 demeanor, we're getting on into the afternoon, about
7 4:40, how was he acting at about that time?

8 A. He appeared to be coherent, he was -- appeared to
9 be probably a lot better shape than a lot were as far
10 as being observant, cooperative.

11 Q. Okay. And when Mr. Van Doran reminded him of his
12 Miranda rights which he had been given earlier, did he
13 appear to understand those rights?

14 A. Yes, sir. He did.

15 Q. Did he subsequently waive those rights and agree
16 to give a statement?

17 A. Yes, sir. He did.

18 Q. All right, sir. Was anything promised to him, any
19 threats, coercion of any type to induce him to make a
20 statement to you?

21 A. No.

22 Q. Okay. And did he then proceed to make a verbal
23 statement of any type?

24 A. He -- which time are we talking about?

25 Q. Okay. Well, talking about around 4:40 p.m.

1 MR. CUMMINGS: Judge, again, I know the
2 gentleman's reading from his notes and if he needs
3 to refresh his memory I think the procedure needs
4 to be laid, please.

5 THE COURT: Very well.

6 A. He, Major Stephenson, and Officer Van Doran had
7 interviewed him outside my presence. When I got -- I
8 had gone to another location, when I got back Officer
9 Van Doran was attempting or was just starting to do
10 another interview with him and I reentered the room,
11 witnessed him make his minutes to the Miranda rights
12 and sat down and reinterviewed him with Sergeant Van
13 Doran and obtained a written statement at that time.

14 Q. And I'm going to hand you State's 4 for ID, ask if
15 that's the written statement you're referring to?

16 A. Yes, sir. It's dated 2-17-01 16:40 p.m. It's
17 written actually by Detective Van Doran as it was told
18 by Mr. Bowman. Officer Van Doran signed it and I also
19 signed it as a witness and Mr. Bowman signed it.

20 Q. All right, sir. You witnessed Mr. Bowman sign
21 that first page?

22 A. Yes, sir.

23 Q. Okay. Did you also witness him sign the second
24 page?

25 A. Yes, sir.

1 Q. And third page?

2 A. Yes, sir.

3 THE COURT: Tell me the time again, I'm
4 sorry.

5 THE WITNESS: 16:40 p.m., which would have
6 been 4:40 p.m.

7 Q. All right, sir. And to the best of your
8 knowledge, Sergeant, was that statement a written
9 statement, State's 4 for ID, given for Mr. Bowman
10 freely and voluntarily after having been advised of his
11 Miranda rights?

12 A. Yes, sir. In my opinion it was.

13 Q. And you saw Sergeant Van Doran sign each of these
14 pages also?

15 A. I did.

16 Q. Okay. Please answer any questions Mr. Cummings
17 may have.

18 MR. CUMMINGS: Thank you, Solicitor.

19 CROSS-EXAMINATION

20 BY MR. CUMMINGS:

21 Q. Good morning, sir. You're holding State's Number
22 4, and I just want to go over a couple things to make
23 sure I'm clarified. I think the beginning of the
24 testimony from Mr. Solicitor you were in and out of the
25 courtroom.

1 A. When that interview -- initially Officer Van Doran
2 and myself interviewed Mr. Bowman, did not take a
3 written statement at that time. I left, Officer Van
4 Doran and Major Stephenson interviewed him outside of
5 my presence while I was out doing other things. And
6 when I came back they had concluded their interview and
7 Sergeant Van Doran was going to interview him again.
8 That's when I walked in the room and his rights were
9 given and this statement was taken.

10 Q. When you mean the rights were given, I think it
11 was your earlier testimony saying Mr. Van Doran had
12 said, "Marion, I want to remind you of the rights we
13 actually gave you."

14 A. Yes.

15 Q. Not the actual five sentences in the Miranda card
16 then, the bottom line. Do you understand what I just
17 read to you? Do you understand your rights? Are you
18 willing to speak to me?

19 A. I think that's correct.

20 Q. Just a rehash?

21 A. Reminded him, yes, sir.

22 Q. It wasn't a full Miranda warning that you've been
23 trained over a number of years to give, would it be
24 fair to say?

25 A. That would be fair to say.

1 Q. Okay. And then at about 4:40 to 16 -- no, excuse
2 me, 18:40, thereafter, there was a statement reduced to
3 writing by Mr. Van Doran?

4 A. Correct.

5 Q. And I see it bears your signature and Mr. Van
6 Doran's?

7 A. Correct.

8 Q. . Okay. And my question, were you in the room the
9 entire time this thing was handwritten down by Mr. Van
10 Doran?

11 A. Yes, sir. During that time I was.

12 Q. The entire time that Terry's writing this down?

13 A. Yes, sir.

14 Q. Okay. I'm going to hand this back to madam court
15 reporter for a minute.

16 MR. CUMMINGS: Beg the Court's indulgence,
17 Your Honor.

18 THE COURT: All right. Of course when you
19 refer to "Terry" you're referring to...?

20 MR. CUMMINGS: Mr. Van Doran. I apologize,
21 Judge.

22 THE COURT: That's all right. Just for the
23 record so it's clear.

24 Q. At about when you gentlemen, Mr. Van Doran and
25 you, sir, finished up with this, had Sheriff Larry

1 Williams arrived from Orangeburg County, sir?

2 A. I don't remember. Because if he had, he did not
3 come where we were. He may have been in the building
4 somewhere, but it's possible he was there in the
5 building when we came out.

6 Q. All right, sir. And you had concluded this second
7 statement now, like eight --

8 A. That was actually the first written statement, I
9 think.

10 Q. First written statement. And then he had
11 completed talking with Mr. Stephenson by this time?

12 A. Yes, sir.

13 Q. And then he was -- was he turned over to Sheriff
14 Williams?

15 A. I think he was back in the back room, in one of
16 the back rooms where we did this interview. I don't
17 recall whether Sheriff Williams actually went in to
18 talk to him or whether he asked for Sheriff Williams,
19 but Sheriff Williams did talk with him.

20 Q. All right, sir.

21 MR. CUMMINGS: Beg the Court's indulgence,
22 Your Honor.

23 THE COURT: All right.

24 MR. CUMMINGS: Judge, I think this officer,
25 that's all the questions I have at this time.

1 THE COURT: Any redirect?

2 MR. BAILEY: No redirect, Your Honor.

3 THE COURT: All right.

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

6 MR. BAILEY: Your Honor, I want to recall
7 Major Stephenson. We'll inspect the record, but
8 he did provide his file to me, the polygraph file.
9 I provided the defense with a copy of that this
10 morning.

11 THE COURT: Thank you. Have you had an
12 opportunity to review that file, Mr. Cummings?

13 MR. CUMMINGS: We reviewed it this morning,
14 yes, Your Honor.

15 THE COURT: Very well. Thank you.

16 Detective Stephenson, I'm going to swear
17 you in again. I guess it's Major?

18 THE WITNESS: Yes, ma'am.

19 (Tim Stephenson, called as a witness, having first
20 been duly sworn, is examined and testifies as
21 follows:)

22 THE COURT: Very well. If you would please
23 be seated. And when you are, state your full name
24 for the record for us.

25 THE WITNESS: Tim Stephenson,

1 S-t-e-p-h-e-n-s-o-n.

2 DIRECT EXAMINATION

3 BY MR. BAILEY:

4 Q. Mr. Stephenson, I want to call your attention to
5 the evening of February 17th, 2001, roughly eight
6 o'clock or so, and ask whether or not you were still
7 present at the Branchville Police Department?

8 A. Yes, I was.

9 Q. All right, sir. I want to ask whether or not you
10 participated in an interview with Sheriff Larry
11 Williams with the defendant, Marion Bowman, Jr.?

12 A. Yes, I did.

13 Q. Okay. And do you recall right now which part of
14 the Branchville police office you all were in?

15 A. In the -- if you walk in the front door all the
16 way at the back, back right office, to the best of my
17 recollection. It was like, I would say, maybe a
18 council chambers.

19 Q. What do you recall of Mr. Bowman's demeanor at
20 that time? We're talking about roughly 8:00 p.m.

21 A. He was alert, cooperative, no problems of any
22 kind.

23 Q. Okay. And did either you -- was it just the three
24 of you all in the room; you, and Sheriff Williams, and
25 Marion Bowman, Jr.?

1 A. Yes.

2 Q. Did either you, or the sheriff while you were
3 there, make any promises to Mr. Bowman if he would give
4 you a further statement?

5 A. No.

6 Q. Any threats made, any physical abuse, verbal
7 abuse, anything of that nature?

8 A. No, sir.

9 Q. Okay. And I would ask whether or not Marion
10 Bowman said anything in your presence?

11 A. Yes, he did.

12 Q. And also in the sheriff's presence?

13 A. Yes.

14 Q. All right, sir. And using the best of your
15 recollection, was whatever he told you given to you
16 freely and voluntarily?

17 A. Yes, it was.

18 Q. Okay. What do you recall him saying?

19 A. Sheriff Williams did most of the talking to
20 Marion. And I remember Marion saying that James Gadson
21 and Terry Kelly had told him that they shot Kandee
22 Martin. According to Marion, James had shot Kandee
23 once and Terry shot Kandee twice with a .38 pistol.

24 He went on to say that the -- one of them got
25 the pistol from Woody's Pawn Shop and that after they

1 shot her they took her to a field, took her body to a
2 field near McAlhany Road. He also said that they had
3 fondled her vagina after they had killed her and then
4 they left her in this field on McAlhany Road.

5 Q. All right, sir. And at some point did you leave
6 the room?

7 A. Yes, I did.

8 Q. And how did that come about?

9 A. Sheriff Williams asked me if I would mind leaving,
10 that Marion did not feel comfortable with me in the
11 room.

12 Q. Okay. And did you leave at that point?

13 A. Yes, I did.

14 Q. Okay. And at the time you left the room, what do
15 you recall of Marion Bowman's demeanor?

16 A. He was still very cooperative, very matter of
17 fact.

18 Q. Okay. All right. Please answer any questions Mr.
19 Cummings may have for you.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. CUMMINGS:

23 Q. Thank you for producing your file. And I want to
24 just go, if I may, the very first page. Document one
25 is just like a table of contents that you do?

1 A. Yes, sir.

2 Q. All right. Did you type that up that day on 2-17,
3 or is this a standard form?

4 A. Standard form.

5 Q. Okay. And for your information it just says
6 investigating officer Mr. Van Doran, right?

7 A. Right.

8 Q. And type of criminal case it says that Mr. Bowman
9 was a suspect in a death investigation?

10 A. Right.

11 Q. All right, sir. There was a line crossed out
12 saying drug investigation?

13 A. Yeah. Apparently I must have checked the wrong
14 line. It's the next one to it.

15 Q. Did you ever show Mr. Bowman any of these
16 documents you were filling out?

17 A. Yes, two of them.

18 Q. Okay.

19 A. Of course the Miranda rights form and --

20 Q. All right, sir.

21 A. -- the consent to interview form was read to him
22 and while it was in front of him. And he signed it.

23 Q. Okay. All right. If I may, you started on your
24 rights, you just mentioned a minute ago date 2-17-01?

25 A. Yes.

1 Q. About 12:34? Looks like 12:34.

2 A. Yes.

3 Q. We're talking p.m.?

4 A. Yes, sir.

5 Q. All right. And on the bottom of it it says date
6 2-17-01?

7 A. Correct.

8 Q. And your initials at the bottom?

9 A. Right.

10 Q. And you read these rights to Mr. Bowman?

11 A. Yes.

12 Q. All right, sir. You didn't ask him to initial
13 down the column as you had seen the other guys doing?

14 A. No, I did not.

15 Q. All right, sir. And then you proceeded to run a
16 polygraph on him?

17 A. Well, after a few more things to go over with him.
18 I just didn't go right into running the test at that
19 time.

20 Q. All right, sir. And then there was a Consent to
21 Interview form with the polygraph and says your rights
22 again.

23 A. Right.

24 Q. These are just rights dealing with a polygraph,
25 not Miranda warnings?

1 A. Exactly.

2 Q. You would agree with me those are separate?

3 A. Yes.

4 Q. Okay. When you -- you made some field notes
5 yourself that day based on your issues about no medical
6 problems?

7 A. Right.

8 Q. If you need to turn to that page, I do not want to
9 ask you something that you're not prepared to answer.

10 A. (The witness complies.)

11 Q. All right, sir. If you look at that block where
12 it says "medical problems."

13 A. Right.

14 Q. Everything's checked "no" until you get to looks
15 like a number of hours' sleep; is that correct?

16 A. Correct.

17 Q. It looks like a question mark there?

18 A. Correct.

19 Q. All right, sir. Did you ask Mr. Bowman how many
20 hours of sleep he had had?

21 A. Yes, I know I asked it. And I think the question
22 mark is because I don't think he knew how long he had
23 slept the night before.

24 Q. And would sleep affect results of a polygraph,
25 sir?

1 A. If someone was sitting there obviously extremely
2 stressed and I could tell they were having a hard time
3 staying awake it would be very difficult for me to run
4 a test on somebody that was about to fall asleep, but
5 he did not appear to be that way.

6 Q. Did he tell you from your own notes what time he
7 had been out, what time he had been up to?

8 A. I've got some notes here on that, says something.
9 He woke up at 9:30. I guess you can see, you know,
10 went to Rowesville.

11 Q. Okay. Doesn't say what date he woke up at 9:30,
12 right?

13 A. No, sir.

14 Q. All right, sir. And it -- went to Rowesville,
15 sister's hair?

16 A. Yeah.

17 Q. Okay. And the sheet before that, again I want to
18 maybe flip back a little bit, it's just a numerical
19 analysis. The one I have stapled in front of that says
20 his Consent to Interview with Polygraph form going back
21 a little bit is the polygraph examiner's pretest
22 worksheet. All right. You have a note on there second
23 line says, "130 Murray's Club." Second line under
24 note, sir.

25 A. Right.

1 Q. Okay. Is that your handwriting?

2 A. 130 Murray's club, right.

3 Q. Okay. Then went to St. George Huddle House?

4 A. Huddle House.

5 Q. Okay. So your 3:30 statement means what to you,
6 sir, from your notes?

7 A. Usually this is a place where I will indicate
8 things that are told to me by officers prior to the
9 test. So for some reason I was jotting some notes down
10 to help me remember what was told to me prior to the
11 test.

12 Q. Not what Mr. Bowman said, but other officers'
13 notes?

14 A. Typically that's where I put these notes, is in
15 what officers would tell me.

16 Q. Okay. So you were told by officers this allegedly
17 happened about 3:30 in the morning is the first line,
18 correct?

19 A. That something happened, yes.

20 Q. Okay. 130 Murray's Club, you explained that, sir?

21 A. Apparently there was some significance about that
22 time at Murray's Club. And then went to the St. George
23 Huddle House.

24 Q. So Mr. Bowman never said anything happened at
25 3:30, I just want to make sure that's your testimony?

1 A. Yeah. Like I said, I mean having done hundreds of
2 these types of tests, that this is typically where I
3 put notes from officers in this place right here.

4 Q. Could it be the question of the hours of sleep,
5 that Mr. Bowman didn't know how many hours he slept?
6 Because reading through the rest of your notes that
7 were provided today he's saying he was dropped off at
8 5:30, 6:30 in the morning on the last line of your
9 handwritten notes.

10 A. What was the question again? I'm sorry.

11 Q. I'm sorry, sir. The question on your form that
12 says number of hours of sleep was a question mark there
13 if I'm correct, sir. And at the very last line of what
14 looks like your field notes, Major, it says, "Travis
15 dropped me off at 5:30, 6:30." I'm asking you is that
16 a statement from Mr. Bowman?

17 A. Right.

18 Q. All right. And he was arrested, by all the
19 investigation you had done and all the case work you
20 had done with these other good officers, at what time
21 in the morning?

22 A. If this was the same morning then I guess you
23 could conclude it was about four hours, three to four
24 hours.

25 Q. So that would not have been hard to go back and

1 change that block, Major, if that was important to you,
2 right?

3 A. Right.

4 Q. Obviously you just left a question mark there
5 because you were there to run the test?

6 A. Right. When I had asked him at that time.

7 Q. I think Mr. Bailey asked you a very important
8 question, that was how did he look to you. And I think
9 in your notes you said he was out drinking at a club.
10 Would alcohol or depressant affect a polygraph test?

11 A. If he was obviously intoxicated it could have some
12 effect on it.

13 Q. Did you ask him any questions about his state of
14 inebriation or how much he had had to drink, sir?

15 A. Yes, I did.

16 Q. What did he say to you?

17 A. He indicated he had not been drinking.

18 Q. Okay. And did you ever tell him that he was -- if
19 he finished his polygraph test with you that he was
20 then free to go so he can go with the Orangeburg people
21 and go wherever they needed to take him?

22 A. I don't specifically remember making that
23 statement.

24 Q. All right, sir. Did you say anything to words to
25 that effect?

1 A. As to what?

2 Q. That when you were done and concluded with your
3 polygraph test that he was free to be turned over to
4 the Orangeburg County people?

5 A. I don't specifically remember saying that. I
6 mean, he was obviously free to go at any point in time
7 when I was dealing with him.

8 Q. He was never free to go anywhere. They had a
9 warrant for him, right?

10 A. As far as I was concerned.

11 Q. Okay. And no promises were made to him that if he
12 gave a statement, took a polygraph test that he could
13 then go, go up to Orangeburg County and have a bond
14 hearing or anything?

15 A. No.

16 Q. Okay. Did you ever hear any law enforcement
17 officers in your presence, Major, say that if my client
18 had not given a statement that they would have arrested
19 his wife, Dorothy, for any charges, including
20 obstruction of justice?

21 A. No, I did not.

22 Q. Did anybody ever say they would have his kids
23 picked up by DSS or have her turned over to Department
24 of Social Services because of her actions that morning?

25 A. No, sir.

1 Q. Okay. That did not happen in your presence?

2 A. No, sir.

3 Q. Now I'm just going to ask you some things.

4 Mr. Bowman was with you, took this polygraph for you,
5 was working with you. Did you have any troubles with
6 him at all the whole time he was with you in those
7 hours?

8 A. I had no trouble out of him.

9 Q. He didn't do anything, he didn't say anything,
10 didn't raise his voice to you?

11 A. No, sir.

12 Q. Did you find it strange or maybe a little
13 unsettling to you as a professional police officer that
14 another person would say to you, Hey, maybe you ought
15 to leave the room, Marion needs to -- he feels
16 uncomfortable with you?

17 A. Would I feel that that is --

18 Q. Yeah. Did that hit you in any way strange?

19 A. No.

20 Q. Well, let's talk about that, because there were
21 policemen coming in and out all the time other than the
22 time you were actually running the test?

23 A. From the time we were together there was no
24 interruptions.

25 Q. At all?

1 A. For the purposes of the test and the pretest, no,
2 sir.

3 Q. Did he ever tell you that he didn't want to be in
4 your presence, Major, did he ever tell you he didn't
5 like the way you look or whatever, sir?

6 A. No, sir. The only thing that I can recall when
7 myself and Sheriff Williams were talking to him, that
8 he asked Sheriff Williams if he could just talk to two
9 of them. And Sheriff Williams I think even commented
10 to me that there was -- it was a white thing because I
11 was white and he didn't like white people.

12 Q. Okay.

13 A. So I said, "Sure," and I left.

14 Q. All right. Who said that? You said Sheriff
15 Williams said that?

16 A. Right, to me. That he had indicated that to him,
17 that that's why he wanted me to leave the room.

18 Q. That Marion didn't like white people?

19 A. Right.

20 Q. Okay. And he's been around white people all day?

21 A. Sure.

22 Q. Okay. And then when you left the room, where did
23 you go?

24 A. I think I left him and went home.

25 Q. Okay.

1 A. I may have hung around for a few minutes, but best
2 I can remember is getting, you know, kind of late and I
3 left. No, I take that back. We waited and then we
4 went to a house right there in Branchville. And
5 because apparently through the conversation that Marion
6 Bowman had with Sheriff Williams they just -- Marion
7 had apparently told him that there was a gun that was
8 used in this case that was thrown in this old abandoned
9 house.

10 And I think myself and Sergeant Van Doran and
11 a couple of other people went to this house to look for
12 the gun. And this house was an old vacant house with
13 just literally four walls and trees growing up in the
14 middle of it, and it took quite some time to go through
15 it. And we searched it thoroughly and even had a K-9
16 to come up, search as well. We didn't find anything.

17 Q. I'm going to ask you a couple basic questions
18 here, I ask you not to insult you. Was this apparently
19 an abandoned home?

20 A. Yes.

21 Q. You didn't stop, apply for a search warrant of any
22 lawful judge with Orangeburg County?

23 A. It looked like it had been abandoned for years.

24 Q. All right, sir. Was any handgun recovered there?

25 A. No.

1 Q. And would you state for the record that you did a
2 thorough search?

3 A. Yes.

4 Q. And you feel real comfortable in your position as
5 a professional police officer saying that was a
6 thorough, thorough search and nothing was found?

7 A. Right.

8 Q. Did you recover anything out there, any contraband
9 at all?

10 A. Not that I can remember, no.

11 Q. Nothing of an evidentiary value?

12 A. Not that I can remember.

13 Q. You weren't the scrivener doing the bagging or
14 tagging?

15 A. No, sir. I was looking.

16 Q. Okay. And as far as going back now, when you left
17 Mr. Bowman with Sheriff Williams, did you hear any
18 ruckus inside the room or any problems at all before
19 you left to go search?

20 A. No, sir.

21 Q. All right. Did Mr. Bowman ever say any words to
22 you that he felt intimidated by the sheriff of
23 Orangeburg County?

24 A. No.

25 Q. All right. He never complained to anybody about

1 being threatened with anything, sir?

2 A. No.

3 Q. Okay.

4 MR. CUMMINGS: Beg the Court's indulgence,
5 Your Honor.

6 THE COURT: All right.

7 (Pause in proceedings.)

8 Q. I just want to clarify this. I think a few
9 moments ago you told me you think Marion said he had
10 not been drinking that day, right? If you look down on
11 the bottom of your notes, I'm not -- okay. I hate to
12 start a sentence in mid-section, looks like I'll start
13 with the word "I." "I got in Cadillac, went to
14 Murray's." I believe it said, "hanging around"?

15 A. Midway down towards the bottom?

16 Q. Yes, sir. I'm sorry. Almost the right, bottom
17 paragraph beginning with the word "I"

18 A. "I went to Murray's." Is that where you're at?

19 Q. Yes, sir. "...went to Murray's." I can't read
20 that next word, I'm sorry, sir.

21 A. "...went to Murray's 11:30, 12:00, Lichenberger,
22 talking to Van, I saw Kandee."

23 Q. Okay.

24 A. "Cars..."

25 Q. Keep going down.

1 A. "Cars going to St. George."

2 Q. Okay.

3 A. "Tyrone drives Cadillac. I got a Cadillac. Went
4 to Murray's, standing around at Murray's, drinking."

5 Q. Okay. I'm going to stop you there for a minute.

6 A. Okay.

7 Q. These are your field notes?

8 A. Right.

9 Q. Okay. So now you're stating that he told you he
10 was drinking?

11 A. No. I don't know if he's telling me that that's
12 what he was doing or if he was referring to some other
13 people standing around at Murray's drinking.

14 Q. Okay. So it would be your testimony today that
15 you're not sure what those notes mean?

16 A. I'm not sure exactly what this one sentence means,
17 if that was referring to him or to some other people.

18 Q. All right, sir. Now, did you place these notes in
19 your notes as you were being talked to verbatim by
20 Mr. Bowman, or are these just your recollection as
21 your --

22 A. Probably a little bit of both. I mean, when
23 you're -- as he was talking to me, I'm writing some as
24 he's talking, then probably as the thing's going on I'm
25 writing down some things.

1 Q. You'll agree with me the purpose of field notes is
2 so you can recall --

3 A. Sure.

4 Q. -- for either later on, testimony in court?

5 A. Absolutely.

6 Q. Is it your testimony today, Major, that based on
7 reading that, does that bring to mind whether
8 Mr. Bowman said this, or is this from information from
9 other officers, sir?

10 A. This is what Mr. Bowman said. The only thing I
11 can't say is if he was -- if I remember if he was
12 saying he stood around, or if he's telling me that
13 somebody was standing around.

14 Q. Okay. All right. Now, as far as the polygraph
15 results, did you tell Mr. Bowman, for lack of better
16 words, that he had failed?

17 A. Yes.

18 Q. All right. And I see on your sheets, remember I
19 asked you about a number of a negative eight. We had
20 not had your notes prior to this and Mr. Bailey did not
21 have your notes prior to this; is that correct?

22 A. Correct.

23 Q. Okay. So when I got, turned to you and said the
24 number negative eight, you came up with that number
25 right, sir?

- 1 A. That's correct.
- 2 Q. Did you tell Mr. Bowman that?
- 3 A. I don't tell him negative a number. It's a pass
- 4 or fail.
- 5 Q. So if he had gotten those numbers somehow or
- 6 learned those numbers, how would we have gotten it?
- 7 A. It wasn't from me.
- 8 Q. Did you tell the other officers about what you
- 9 did, sir?
- 10 A. I would have.
- 11 Q. All right. And do you use that as an
- 12 investigative tool to try to elicit testimony from
- 13 people or statements?
- 14 A. By me telling someone --
- 15 Q. Yes, sir.
- 16 A. -- what their number is?
- 17 Q. Correct.
- 18 A. No, sir.
- 19 Q. Telling other officers what that means with all
- 20 your education, training, experience?
- 21 A. If he found out it might have been in passing. If
- 22 one of the officers asked me what the score was I could
- 23 have told them, oh, yeah, he was a negative eight or
- 24 negative four, or whatever the case may be.
- 25 Q. Thank you.

1 MR. CUMMINGS: Your Honor, I think that's the
2 last, but I beg the Court's indulgence a moment.

3 THE COURT: Surely.

4 (Pause in proceedings.)

5 MR. CUMMINGS: That's all the questions of
6 the good officer. Thank you, ma'am.

7 THE COURT: Very well. Redirect?

8 MR. BAILEY: No redirect. May he be excused,
9 Your Honor.

10 MR. CUMMINGS: Without objection. You're
11 free to go.

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

14 MR. BAILEY: Call Sheriff Larry Williams.

15 THE COURT: Yes, sir. If you would come
16 along, please, and place your left hand on the
17 Bible and raise your right hand.

18 (Larry Williams, called as a witness, having first
19 been duly sworn, is examined and testifies as
20 follows:)

21 THE COURT: Very well. If you would please
22 be seated, and Ms. Saulisbury will help you with
23 the microphone. And when you are seated, the
24 microphone is in place, if you would please state
25 your full name for the record.

1 THE WITNESS: Larry Williams.

2 THE COURT: Your witness.

3 DIRECT EXAMINATION

4 BY MR. BAILEY:

5 Q. Mr. Williams, what is your present position?

6 A. Sheriff of Orangeburg County.

7 Q. When were you elected sheriff?

8 A. November of '99.

9 Q. All right, sir. And how much time have you had in
10 law enforcement?

11 A. Twenty-four years.

12 Q. Okay. And are you from Orangeburg County?

13 A. Yes, sir. Branchville.

14 Q. From Branchville?

15 A. Yes, sir.

16 Q. All right. And do you know the defendant in this
17 case, Marion Bowman, Jr.?

18 A. Yes, sir. I do.

19 Q. Could you point him out, please, for the record?

20 A. To my left.

21 Q. How do you know Marion?

22 A. From living in Branchville and knowing his family.

23 Q. Okay. I want to call your attention to

24 February 17th, 2001, that evening, late that afternoon
25 or so. Did you have occasion to go to the Branchville

1 Police Department?

2 A. Yes, sir. I did.

3 Q. Okay. What prompted you to go to the police
4 station then?

5 A. I was informed by my office that there had been a
6 homicide in the lower part of Branchville in Orangeburg
7 County in the Dorchester County area and that there had
8 been an investigation.

9 Q. Okay. So you went to Branchville?

10 A. Yes, sir.

11 Q. You went to the police station?

12 A. Yes, sir.

13 Q. When you went to the police station, did you speak
14 with other law enforcement officers that may have been
15 there?

16 A. Yes, sir. I spoke with the authorities from
17 Dorchester County that was there.

18 Q. Okay. And do you recall talking to Major Tim
19 Stephenson of the sheriff's office?

20 A. Yes, I did. Yes, sir.

21 Q. And do you recall asking any specific questions of
22 any deputies to determine what was going on when you
23 got there?

24 A. Yes, sir. I was informed that an individual had
25 been picked up that was a possible suspect in the

1 homicide that had occurred there in Dorchester County.

2 Q. Okay. Did you see Marion Bowman then?

3 A. No, sir. I did not.

4 Q. Okay. Did you see him later on?

5 A. Yes, sir. After the -- I was informed of what was
6 going on in regard to the investigation I did, I saw
7 Marion at that time.

8 Q. Okay. And did you see him initially along with
9 Major Stephenson?

10 A. Yes, sir.

11 Q. Okay. And what room were you all in at the
12 Branchville Police Station or Branchville Town Hall?

13 A. As you walk into the door of the town hall to your
14 left through the corridor there's the chief's office
15 there and that office was being utilized for -- by the
16 investigators there.

17 Q. Okay. And when you first saw Marion Bowman that
18 evening, do you recall what his demeanor was, his
19 appearance, the way he was acting?

20 A. My opinion he was calm, he was Marion as I know
21 Marion.

22 Q. Okay. And you testified about your, I think, 17
23 years or so in law enforcement you've dealt with people
24 under the influence of alcohol or drugs; is that
25 correct?

1 A. Yes, sir.

2 Q. And did it appear to you that Marion Bowman was
3 under the influence of any alcohol or drugs to the
4 extent --

5 A. He didn't appear to be, no, sir.

6 Q. Okay. Did he appear alert to you, awake?

7 A. Yes, sir.

8 Q. Okay. And what do you recall initially saying to
9 Marion Bowman, if anything, when you and Mr. Stephenson
10 saw him at the police station?

11 A. Well, I was informed that they were talking to
12 Marion about the Kandee Martin case and they were
13 trying to ask him some questions in regard to what may
14 have happened. And I -- at this point Major Stephenson
15 or one of the investigators asked me would I talk with
16 him. And I said, yes, I would.

17 And prior to talking with him I asked the
18 question was he under his Miranda. And of course he
19 was under his Miranda rights. And then after
20 validating that he was under his Miranda I talked with
21 Marion and made certain that he understood what was
22 going on and that he had the right to have an attorney.
23 And he decided to speak with me.

24 Q. Okay. So did you go over his Miranda rights with
25 him again even though you had been informed that he had

1 previously been given Miranda rights?

2 A. Yes, sir. I did.

3 Q. How did you give them to him, from memory or from
4 a card?

5 A. From memory.

6 Q. From memory. When you went over the rights with
7 Marion Bowman, did he appear to understand you?

8 A. Yes, sir.

9 Q. Okay. Did you offer any inducement, or promises,
10 or anything to Marion Bowman if he would give you a
11 statement?

12 A. Marion asked me to get him a bond, or to get him
13 out of jail and that he was afraid, he was afraid of
14 what was going on. And my reply to Marion was "By law
15 I can't promise you anything. I'll try to help you,
16 but I don't know what I can do. If you want to talk
17 with me, you can talk with me." And on his freewill he
18 did talk with me.

19 Q. Okay. And was his talking with you conditioned on
20 you saying you would try to get him a bond or anything
21 of that nature?

22 A. No, sir. No, sir.

23 Q. Okay. Any threats that were made either by you or
24 Major Stephenson to try to get Marion Bowman to talk to
25 you?

1 A. No, sir. I didn't make any threats towards him.

2 Q. Was there any physical abuse of any type?

3 A. No, sir. No physical abuse.

4 Q. And would you state whether or not Marion Bowman
5 agreed to talk to you?

6 A. Yes, sir. He called me Big Larry, he said, "Big
7 Larry, I want to talk to you." He said, "I don't trust
8 these folk here."

9 And I said, "Well, I'll talk with you." And
10 very calm he talked with me.

11 Q. Okay. And would you state whether or not when
12 Major Stephenson left the room at some point?

13 A. Yes, sir.

14 Q. And what caused him to leave the room?

15 A. Marion indicated he's very uncomfortable with
16 Major Stephenson.

17 Q. Okay. He told you that?

18 A. Yes, sir.

19 Q. And did you then ask Major Stephenson to step out?

20 A. Yes, sir.

21 Q. And did he agree to step out?

22 A. Yes, sir.

23 Q. Okay. After Major Stephenson left the room, would
24 you just go ahead and relate to the best of your
25 recollection how the conversation went with you and

1 Marion?

2 A. Marion began to tell me that -- you know, he said,
3 "Big Larry, I'm in -- I have some problems," I
4 remember.

5 And I said, "Well, you know, I don't know
6 what I can do for you. Do you feel comfortable talking
7 with me?"

8 And of course he related to me that he did.
9 And than I began to ask him some questions about his
10 whereabouts and where he was. And then he began to
11 tell me the story of his whereabouts and what he
12 remembered happened with Miss Martin.

13 Q. And would you state whether or not based on the
14 conversation you had with Marion Bowman, did you write
15 out a statement for him?

16 A. Yes, I did.

17 Q. Was the statement you wrote out based 100 percent
18 on information that he gave you?

19 A. Totally, yes, sir.

20 Q. I'm going to hand you a document, ask if you can
21 identify it, it's three pages.

22 A. Yes, sir. This is the statement given to me by
23 Marion.

24 Q. Okay.

25 MR. BAILEY: I would like to mark this for

1 identification.

2 MR. CUMMINGS: ID only. Thank you, Judge.

3 (Marked for identification was State's Exhibit 6,
4 three-page statement.)

5 Q. When you were with Marion back in the room you
6 described, was he handcuffed do you recall?

7 A. No, sir.

8 Q. Okay. There's several places on there where
9 there's some initials throughout that that state M. B.

10 A. Yes, sir.

11 Q. Whose initials are those?

12 A. Marion's.

13 Q. Other than those initials and the signature where
14 he signed that statement, is everything else in your
15 handwriting?

16 A. Yes, sir. It is.

17 Q. Okay. And again as we progress you testified
18 about your conversation with Marion when Major
19 Stephenson was there, but getting to the actual taking
20 of the statement from him I'm going to ask you the same
21 thing again. Were any promises made to Marion Bowman
22 if he would give a statement?

23 A. There was no promises made to Marion. I knew I
24 couldn't make promises, I told him that.

25 Q. Any threats made to him?

1 A. Never a threat made to him. Marion was very
2 comfortable talking with me.

3 Q. Was there any physical abuse at all? Did you
4 strike him, or slap him, or kick him, or do anything
5 like that to make him give you a written statement,
6 Sheriff?

7 A. Marion was never intimidated nor threatened or any
8 physical harm was ever -- I wouldn't allow that by me
9 or anyone on my department to do such act upon anyone.

10 Q. All right, sir. And when you wrote that statement
11 out, what did you do with it?

12 A. After the statement was written I -- Bowman and I
13 had gone over where it's indicated there his signature.
14 I wanted to be for certain what was in this statement
15 is what he said. It is not from my thoughts and I went
16 over with him page by page and line by line, sentence
17 by sentence. And at the conclusion I asked him did he
18 understood what he had said. He said he did.

19 At that time at the end of the sentence where
20 this statement is the truth he signed it, Marion Bowman
21 indicating this is what he said. And then I witnessed
22 the statement and then he signed it again at the bottom
23 after I witnessed the statement that this was the
24 content of his story.

25 Q. Okay. And after he signed that statement, did you

1 give him a copy of it?

2 A. Yes, sir.

3 Q. Okay. Sheriff, I want to call your attention to
4 the next day which would have been February the 18th,
5 2001, and ask whether or not you again saw Marion
6 Bowman, Jr.?

7 A. Yes, sir. I did.

8 Q. Okay. And why did you, what prompted you to see
9 him again the next day?

10 A. Talking with the authorities from Dorchester
11 County there was some questions in regards to what
12 their discovery was and what may have been included in
13 his statement. Based upon that I agreed to talk with
14 Marion. Marion wanted to talk with me again and I did
15 talk with him, yes, sir.

16 Q. Where was he when you talked to him?

17 A. He was at the -- this was a Sunday, he was at the
18 town hall in Branchville.

19 Q. All right. And where did you see him on that
20 occasion, the police station?

21 A. You mean Sunday?

22 Q. Yes, sir.

23 A. My best recollection he was at the town hall. The
24 Saturday he was, yes, sir.

25 Q. Okay. All right. During the second interview,

1 the interview on the 18th which I think was at that
2 evening around seven o'clock, was anybody else present
3 besides you and Marion Bowman?

4 A. There were other officers there, but I don't
5 recall who.

6 Q. Okay. Was it your information that he had been in
7 jail that night?

8 A. The night after the 17th?

9 Q. Yeah.

10 A. Yes, sir.

11 Q. Okay. Now, talking about his appearance on the
12 evening of the 18th, did you describe his demeanor and
13 appearance at that time?

14 A. Every time I spoke to Marion the times that I
15 spoke with him he was willing to talk with me. At one
16 point, a second time, he was upset about what had
17 happened and what he had told me about, or what he had
18 talked with me about, but not to the point where he was
19 not knowledgeable about what the statement was, what he
20 had made the statement to me.

21 Q. Okay. All right. Now, on the 18th when you were
22 getting ready to get into the second statement that I'm
23 going to ask you about in a minute, did you go over the
24 Miranda rights with him again?

25 A. Yes, sir.

1 Q. Okay. Did you do that the same way you did the
2 previous day on the 17th?

3 A. Yes, sir.

4 Q. By memory, okay. Did he appear to understand you
5 when you went over the Miranda rights with him?

6 A. Yes, sir. Totally.

7 Q. Again, same questions as on the 17th, did you
8 offer any inducement, any promises to him if he would
9 talk to you, give you a further statement?

10 A. No, sir. I at no time threatened him or offered
11 Mr. Bowman anything in exchange for any statements.

12 Q. And, again, I don't want to insult you, but was
13 there any physical abuse of him on the 18th?

14 A. No, sir. No physical abuse.

15 Q. And did he voluntarily agree to give you a second
16 statement?

17 A. Yes, sir. He was very cooperative with me at all
18 times.

19 Q. Okay. And was that statement in writing?

20 A. Yes, sir. It was.

21 Q. Okay. Did he give you that of his own freewill
22 and accord, to the best of your knowledge?

23 A. Yes. I made for certain that he did. I had a
24 young man in trouble, or that had possible -- may have
25 been in trouble and I wanted him to be comfortable in

1 telling what he wanted to tell he did.

2 Q. I want to hand you a four-page document -- excuse
3 me, five pages and ask if you can identify that.

4 A. Yes, sir. I do.

5 Q. Okay. What is that, Sheriff?

6 A. The second statement.

7 Q. Okay.

8 MR. BAILEY: Your Honor, I would like to mark
9 this for identification.

10 THE COURT: I believe that's State's Exhibit
11 6 for identification.

12 MR. CUMMINGS: ID only, ma'am.

13 THE COURT REPORTER: It's 7.

14 THE COURT: Seven? Thank you.

15 (Marked for identification was State's Exhibit 7,
16 five-page statement.)

17 Q. I'm going to hand you State's 7 for your
18 reference. I'm going to ask you the same thing about
19 that statement as I did of the statement of the 17th,
20 ask you if that statement is in your handwriting?

21 A. Yes, sir. It is.

22 Q. Is that based on information you got from Marion
23 Bowman, Jr. on the 18th?

24 A. Totally on the information he gave me, sir.

25 Q. Okay. And other than the -- are there some

1 initials there, M. B.?

2 A. Not on this statement.

3 Q. Okay. So after you wrote that statement out, what
4 did you do with it?

5 A. After I wrote it, again I read the statement to
6 Marion. In fact, I believe in this statement he read
7 it, we read it together. He assured me this is what he
8 wanted to say and at that point we concluded. When we
9 concluded here at the end he signed the statement twice
10 Marion Bowman understanding what he had stated to me
11 was the truth.

12 Q. Okay. And you saw him sign his name to that
13 statement?

14 A. Yes, sir.

15 Q. And did you witness that, did you sign that after
16 he signed it?

17 A. Yes, sir.

18 Q. Okay. And you had been over the statement with
19 him?

20 A. Yes, sir.

21 Q. And he said that was his true and accurate
22 statement?

23 A. Yes, sir.

24 Q. All right, sir. And after he signed that
25 statement, was he given a copy of it?

1 A. Yes, sir.

2 Q. Sheriff, please answer any questions Mr. Cummings
3 might have for you at this time.

4 MR. CUMMINGS: Thank you, Solicitor.

5 CROSS-EXAMINATION

6 BY MR. CUMMINGS:

7 Q. Good afternoon, Sheriff.

8 A. How are you doing, sir?

9 Q. Sheriff, this is a Saturday on the 17th,
10 approximately, of the year 2001. February 17th, 2001
11 is a Saturday, correct, sir?

12 A. Yes, sir.

13 Q. This is over the Martin Luther King holiday back
14 in 2001, I believe Monday would have been a legal
15 holiday?

16 A. I'm not certain of that.

17 Q. All right, sir. Let's go back a little bit on
18 that Saturday. What time did you first get the call to
19 come down to the Branchville Police Department in your
20 lower county, sir?

21 A. I don't remember the time exactly I was informed.
22 That is the protocol of the office, to notify me of
23 anything that is going on major. And I received a
24 phone call in regard to the death of a young girl.

25 And sometime in that afternoon my best memory

1 is that Major Walters called me and informed me that
2 there was individuals from the Dorchester County
3 Sheriff's Office at the Branchville Town Hall and they
4 were possibly questioning or beginning to question a
5 suspect.

6 Q. All right, sir. Would it have been important to
7 you, sir, the number 24, 24 years now you've been in
8 lawn enforcement, to know how long this person might
9 have been in custody?

10 A. Rephrase your question. I don't understand your
11 question.

12 Q. With the number of years you have in law
13 enforcement, I think it's 23 or 24 years; am I correct?

14 A. Yes, sir.

15 Q. All right, sir. Is it important to you with all
16 those years of experience, education, and training to
17 know how long somebody's been in custody before you
18 speak to them?

19 A. No, sir.

20 Q. All right, sir. You don't worry about how long
21 they've been interrogated before, or perhaps maybe
22 deprived of sleep or food?

23 A. I'm very much concerned. I'm concerned about
24 every person that I talk with. And I can't say that he
25 was interrogated. Surely he wasn't interrogated by me,

1 he was questioned. He was never treated ill by anyone
2 in my presence, or especially me.

3 Q. All right, sir. Again I don't ever mean to cut
4 you off, sir. If I do, I apologize to you, sir.

5 A. Yes, sir.

6 Q. When you got to the Branchville Police Department
7 how many law enforcement agents did you see there, the
8 number?

9 A. I don't recall the number. There probably had
10 been five or six officers there.

11 Q. All right, sir. Would you agree with me this is a
12 small little place, Branchville Town Hall?

13 A. It's a fairly large place. It has three offices
14 to your left, has a wide corridor, it has the mayor's
15 office. A pretty large building.

16 Q. So you've been there a lot all the times you've
17 been in Orangeburg?

18 A. Yes.

19 Q. Is there a summary court there?

20 A. Yes, sir.

21 Q. Are all summary court proceedings since you've
22 been familiar with that, are they tape recorded down
23 there?

24 A. All summary court proceedings?

25 Q. Yes, sir.

1 A. I'm not certain.

2 Q. Have you ever appeared in court there, Sheriff,
3 either testified -- I know you've worked your way up
4 through the ranks because I've had the pleasure of
5 knowing you for a lot of years, but when you testified
6 was there a recorder there?

7 A. I don't recall, no, sir.

8 Q. When you got there that day as the boss, the
9 elected sheriff, when you were going to talk to
10 Mr. Bowman did you ask if anybody had a tape recorder
11 there?

12 A. No, sir.

13 Q. Did you have one available to use, sir? I know
14 you've been doing that a lot of years.

15 A. I utilize that optionally. Sometimes individuals
16 are reluctant in talking on tape recorders. In this
17 particular scenario, Marion was comfortable, he knew
18 who I was, I know him well, so there was never a time
19 where I felt the point that there was one needed.

20 Q. All right, sir. Let me go back a little bit
21 there. When you get there that day does Major
22 Stephenson come up to you and basically brief you on
23 what they have, what their situation is, sir?

24 A. Yes, sir.

25 Q. All right. And do they show you a copy of two

1 statements allegedly given by Mr. Bowman?

2 A. He showed me some information. I don't recall
3 them being statements. He just gave me information or
4 briefed me on information what had transpired prior to
5 my arrival.

6 Q. All right, sir. And of your personal knowledge
7 and experience was Mr. Bowman under arrest?

8 A. He was being detained. Whether or not he was
9 under arrest.... My best recollection that they served
10 a warrant on him or outstanding warrant, but I don't
11 recall during that time.

12 Q. All right, sir. So it's your testimony today
13 you're not sure is the best way to answer that?

14 A. I don't recall whether he was or not.

15 Q. All right. Now, when you went in there to speak
16 to Mr. Bowman, Mr. Stephenson was in there with you,
17 correct, sir?

18 A. Right.

19 Q. All right. Did -- and I think it's your words,
20 sir, if I'm in error then you correct me, said Major
21 Stephenson came out to get you, asked you if you would
22 begin to talk to Mr. Bowman. Is that correct, sir?

23 A. No, sir. That wasn't quite the way it was done.
24 When I arrived there, of course recognizing this is a
25 case that occurred in Dorchester County, I was there

1 totally as assistance to them in whatever help I can
2 offer to their agency.

3 Q. Support staff officer to officer lending any help?

4 A. That's correct, sir.

5 Q. All right, sir. Again, I kind of took this note
6 down here, Mr. Stephenson asked if you would talk to
7 Mr. Bowman, correct?

8 A. He had asked me or I asked him. I don't recall
9 how the question was phrased, but I knew that Tim was
10 talking with him. And I knew that he was under Miranda
11 when Tim was doing his interview and that's when I
12 spoke with him after Tim did.

13 Q. You didn't hear them read Miranda, you were told
14 this by another brother officer?

15 A. I asked Major Stephenson that in the presence of
16 Marion and he answered, "Yes." When I was standing
17 there before he departed I said, "Have you read him his
18 rights?" He said he did. I asked Marion that he did
19 and Marion agreed that he did.

20 Q. All right, sir. You've stated you've known Marion
21 a number of years, sir, right?

22 A. Yes, sir.

23 Q. Do you know his mom?

24 A. Know the whole family, yes, sir.

25 Q. How far did Marion go in school, sir? Because

1 you're a professional trained police officer in talking
2 to somebody that may not have a lot of education and I
3 know you take this into consideration.

4 A. I don't understand the question.

5 Q. Well, how far do you think Marion went in school
6 in your life experience or knowledge of this man?

7 A. Numerically I couldn't tell you what grade that he
8 had completed. Of my knowledge of Marion he has -- or
9 during that time I felt -- he's not a dumb person, he's
10 intelligent, and I felt comfortable enough that I could
11 talk with him and he could understand what I was trying
12 to tell him or what he was telling me, so I mean of my
13 professional opinion he is not of the person that you
14 can just tell to do something and he's going to do it.
15 I mean, he's smart enough to do what he thinks is what
16 he need to do.

17 Q. Did you ever ask him to read any documents back to
18 you, sir, while you were in there talking to
19 Mr. Bowman?

20 A. The only document that was present, I mean to --
21 for Marion to read was the statement which he had
22 given. And of course he proofed it, I proofed it, had
23 him to sign it, so I mean it was of the utmost
24 importance to me that he understand what he said.

25 Q. All right, sir. And that's the statement, again,

1 that's been taken at approximately 8:50 p.m.? Again,
2 if you look at the, I believe, State's Number 6.

3 MR. CUMMINGS: If I may approach the witness,
4 Your Honor?

5 THE COURT: Yes.

6 Q. Looking at State's Exhibit Number 6 it says that
7 statement starts at 8:50 p.m., sir; is that correct?

8 A. Yes, sir.

9 Q. And this statement is in your handwriting,
10 correct, sir?

11 A. Yes, sir.

12 Q. And when you begin it's important for you --
13 obviously you wrote down that -- where it says
14 location, number of hours, some words, looks like ten
15 minutes after statement number. Could you please tell
16 us what that is in your handwriting, sir?

17 A. At the top?

18 Q. Where it says location, yes, sir, right, looks
19 like a parentheses.

20 A. 8:50 p.m. starting, start.

21 Q. All right, then. Then what are the next words
22 underneath that, sir?

23 A. "Time."

24 MR. CUMMINGS: I'm sorry, let me approach
25 again.

1 THE COURT: All right. You may.

2 Q. It says, "8:50 p.m., Branchville Police
3 Department"?

4 A. Orangeburg County.

5 Q. All right, sir. And that's Marion's Social
6 Security number?

7 A. Yes, sir. That's the number that he provided to
8 me.

9 Q. All right, sir. I apologize, I'll ask you the
10 other questions I asked about the writing:

11 When I look at this statement now, your
12 handwriting, did he talk to you and then you reduced it
13 to writing like in a verbatim method, sir, or you let
14 him talk, answer some questions? How did you conduct
15 this interview?

16 A. My personal style of interviewing or talking with
17 an individual is to sit and listen to what they're
18 telling me. And of course, you know, I tried to
19 establish some rapport with the individual. No, he
20 didn't sit down sentence by sentence or at the
21 conclusion of the paragraph or write it that way, no,
22 sir, I don't do that.

23 What I try to do is talk with an individual
24 and from my memory compile what he's telling me and
25 then we'll go back through the statement. I may write

1 a sentence, or I may write a paragraph and I'll ask him
2 now this is what you're saying. And through the
3 entire -- both of his statements, you know, this was
4 done in a very systematic way. It wasn't write down
5 the statement, you sign here. I mean, he was a major
6 role player in the creation of these statements.

7 Q. Because it is his statement in your writing; is
8 that correct, sir?

9 A. His statement, his words, yes, sir.

10 Q. And when you reduced this back to writing after
11 speaking with Marion, there were some either
12 scrivener's errors on State's Exhibit Number 6, I think
13 in the first line after there's some signatures it
14 says, "I first saw Kandee Martin..." and then there's
15 a -- like something crossed out or not written
16 correctly. And there's an initials above it, M. B. J.?

17 A. Yes, sir.

18 Q. As you were writing it you made an error. Did you
19 stop, let him initial it or wait until the end?

20 A. I don't recall. I may have completed one
21 sentence, may have completed one paragraph, I don't
22 recall. But in the proof and process of this statement
23 if I saw what I believe to be an error I would have him
24 to initial that.

25 Q. Okay. Not the defendant, but if you saw there was

1 an error; is that your statement, sir?

2 A. No, including the defendant. I'm going over with
3 him, I'm like I first saw Kandee Martin that date, he
4 may change it or the person who I'm interviewing may
5 change.

6 Q. He speaks with you. You were in there from what
7 time from your notes, sir, did you complete this
8 statement?

9 A. From his statement it indicates 10:05 p.m.
10 endorsed by Marion as the time.

11 Q. You were the only witness to this statement?

12 A. Yes, sir.

13 Q. All right, sir. Nobody was allowed, didn't come
14 in the room, you didn't ask anyone else to witness this
15 statement?

16 A. No, sir.

17 Q. Is that your policy and procedure?

18 A. Well, as I stated, Marion informed me he's very
19 uncomfortable. In essence he's saying I'm very
20 uncomfortable with the white officers here. When I
21 talked with him at no time that he felt comfortable
22 talking with anyone else, and due to that fact I
23 witnessed the statement. I've done it many times and
24 it's not a policy or anything.

25 Q. All right, sir. And when he was talking with you

1 and giving you this statement, did he ask you to take
2 him to a judge, get a bond set on him or words to that
3 effect?

4 A. Yes, sir.

5 Q. All right. And, again, using your training,
6 education, experience, you know that when normally
7 somebody's arrested they're taken to answer a criminal
8 charge in front of a judge for purposes of bail or
9 bond?

10 A. That's correct, sir.

11 Q. All right, sir. Was he entitled to bail or bond
12 that day, sir, if he requested it?

13 A. Here again he was informed that at the appropriate
14 time he will go before a judge for an arraignment or a
15 bond. I did not, personally did not see to that, but
16 he was informed of that, that he will see a judge for
17 an arraignment or a bond hearing on alleged charges.

18 Q. All right, sir. Did you tell him that? Again,
19 Sheriff, I don't want to misunderstand that.

20 A. Did I tell Marion?

21 Q. Yes, sir.

22 A. Yes, I did.

23 Q. At any time did any concern come up about his
24 wife, Ms. Dorothy Bowman, sir, in talking with you,
25 Sheriff?

1 A. Yes.

2 Q. All right, sir. Did anybody go in there, either
3 you or any law enforcement officer say they would
4 charge Ms. Bowman with any offense if he didn't give a
5 statement?

6 A. Am I correct, you're saying that we're telling
7 Ms. Bowman if Marion don't talk we're going to charge
8 you?

9 Q. I'm asking you did anybody tell Mr. Bowman that if
10 he did not give a statement, did not talk to you or any
11 other law enforcement officer that his wife may be
12 charged with a criminal offense?

13 A. I wouldn't allow that.

14 Q. All right. So, again, I know you're speaking to
15 me and I'm talking too at the same time, I apologize.
16 The answer is no, you never told him that?

17 A. No, sir.

18 Q. You wouldn't let any other officer tell him that?

19 A. Not in my presence.

20 Q. Well, have you learned of that in working this
21 case or working with Mr. Bowman that any other law
22 enforcement officer might have told him that?

23 A. I never heard that before.

24 Q. All right, sir. You would agree with me that
25 would be very important to have somebody know that for

1 the Court because that might be a threat or coercion to
2 get somebody to give a statement for law enforcement if
3 a loved one's going to be charged with something?

4 A. There was ongoing investigation and there was many
5 individuals, or some individuals of the investigative
6 opinion that may have played a role into the case.
7 Whether or not it was the wife or whomever, or any
8 siblings that may have been questioned in regard to any
9 allegations, I can't elaborate on that. I can only say
10 that -- what transpired once I talked with Marion and I
11 made for certain that Marion was comfortable in what he
12 was saying and made for certain that he wasn't promised
13 anything.

14 Q. So the answer then is that nobody in your presence
15 used any coercion, duress, intimidation to get him to
16 talk to you?

17 A. No, sir.

18 Q. And you never would have done that?

19 A. Never have, never will, no, sir.

20 Q. Okay. Had you learned how long Marion had been in
21 custody as you were talking to him about this first
22 statement that day, sir?

23 A. No, sir. I don't recall the time parameters that
24 he had been there. I know that -- I don't know, I
25 believe he was there sometime that afternoon, or maybe

1 midday. Or I'm not sure what time it was and I don't
2 recall. You know, my only recollection was that when I
3 talked with Marion, that he was alert and he was -- he
4 talked to me.

5 Q. All right, sir. Had you asked him if he had
6 anything to eat that day for any nourishment or
7 anything?

8 A. Yes, sir. I did.

9 Q. Okay. Can you please tell me about that? Do you
10 know that he had something to eat?

11 A. Well, here again I try to establish rapport with
12 individuals that I'm interviewing, but I don't want it
13 to be ever misconstrued I'm offering someone a meal or
14 burger in exchange for information. And it's important
15 that a person feel like he's human regardless of what
16 is going on and I want him to feel like I'm human
17 enough to ask him those questions. And to the best of
18 my recollection there was a question about had he had
19 any food or anything.

20 Q. All right. And what happened? What did you
21 learn?

22 A. I recall that he wasn't given any food, but I was
23 just trying to the best of my ability to not -- to make
24 him comfortable to assure that there was a concern. It
25 wasn't bad cops beating up on a young man or trying to

1 talk against a young man. We were there to help.

2 There was nothing intimidating about what we were
3 doing, or physical.

4 Q. I understand, Sheriff, that that is your respected
5 opinion, but what I'm trying to get at is this man had
6 been in law enforcement custody for a while, you're in
7 there speaking with him now in the nighttime, had he
8 eaten anything of your knowledge, did you request
9 anybody to bring him any food, talk to him? As you
10 stated you like to treat everybody, again, sir, with
11 the highest respect as a human being.

12 A. Marion was treated fairly. He wasn't treated like
13 a criminal, I was certain of that.

14 Q. So the answer to the question is you're not
15 certain whether he ate or not?

16 A. I'm not sure, no.

17 Q. Did you let him make a phone call? Because I know
18 you know his family, he testified to that, will you --
19 did you let him call his family?

20 A. He didn't want to call his wife, I know that.

21 Q. Did you let him make a phone call to an attorney?

22 A. He didn't ask to make a call to an attorney.

23 Q. Was he represented by counsel of your personal
24 knowledge when you went in to speak to him?

25 A. No, sir.

1 Q. Did you ask him that, sir, did you verify that
2 from just your knowledge?

3 A. Whether he was represented by an attorney?

4 Q. Yes, sir.

5 A. I asked in my Miranda given to Marion in the
6 question about an attorney, told him he could have one,
7 he could get one and he declined. His statement was
8 that he was comfortable talking with me, and he did.

9 Q. All right, Sheriff. Did you ask him if he was
10 represented by an attorney?

11 A. No, sir.

12 Q. All right. And when you concluded this statement
13 with Mr. Bowman, you went back and had him initial any
14 scrivener's errors on State's Exhibit Number 6 for ID,
15 correct, sir? I think you know what I mean by that,
16 any errors of writing that you did or whatever,
17 correct, sir?

18 A. Yes, sir. I've gone over the statement with
19 Marion by sentence or by paragraphs, and gone over what
20 he had told me and what I had drafted on his behalf and
21 where the initials are.

22 Q. Because this is a one, two, three-page statement
23 for State's ID Number 6; is that correct, Sheriff?

24 A. That's correct.

25 Q. All right, sir. And when you went back over the

1 statement did you ask him to read any of this back to
2 you after you completed this statement, Sheriff?

3 A. In providing Marion the statement did I ask him to
4 read it?

5 Q. Yes, sir. Did he read it verbally back to you?

6 A. I sat next to Marion after he concluded with the
7 statement and I asked Marion, "Let's go over this
8 together because I want to be for certain that what is
9 in here is what you said and not what Larry Williams
10 said." We went over that. I took my time with Marion,
11 went over it sentence by sentence and paragraph.

12 Q. All right.

13 A. And at the conclusion this wasn't ever endorsed,
14 State's Exhibit 6 or 7, until Marion had gone over that
15 and read it.

16 Q. All right, sir. I apologize. Excuse me. I guess
17 if I haven't made myself clear on that I apologize to
18 you. Did he read it verbally back to you, not you
19 reading it to him, but did he read it to you, sir?

20 A. He read it along as we went. I'm sitting next to
21 him, Marion has the state -- he has a copy of it, of
22 the -- copy of the statement he's made and he's given
23 it, we're going over the statement, his copy as well as
24 my copy. He acknowledged that he understood the
25 content of the statement.

1 Q. But he did not read it out verbally to you like I
2 am asking you a verbal question?

3 A. No, sir.

4 Q. All right. Did you ask him to ever read this
5 document back to you to establish that he could read
6 any pieces of paper and English words back to you,
7 Sheriff?

8 A. I didn't ask him to read the document, but he read
9 a portion of the statement. Or the best of my
10 recollection he read the statement and read at one
11 point aloud what was in the statement. He went --
12 after going over the statement he went over -- again,
13 his statement was "I want to make for certain
14 everything I have here is correct."

15 Q. And then at the end you asked him to sign it,
16 correct?

17 A. Asked him if he understood it, yes, sir.

18 Q. It's your testimony you gave him a copy of his
19 statement?

20 A. Yes, sir.

21 Q. Tore off a carbon sheet, usually four, white,
22 yellow, or pink copy?

23 A. Xeroxed a copy.

24 Q. You Xeroxed a copy?

25 A. Yes, sir.

1 Q. All right. Not any carbon copy, sir, issue in
2 your file?

3 A. I don't remember one.

4 Q. All right, sir. When you were done taking that
5 statement that night did you hand the statement to the
6 Dorchester County Sheriff's Department? Because it's
7 all on their letterhead, their forms.

8 A. After I provided the -- Marion a copy of the
9 statement I then forward the copy of it to the
10 investigative agency.

11 Q. All right, sir. Did you ever keep a copy of your
12 work product, or what you did that night?

13 A. I forward everything I had to Dorchester County.

14 Q. All right, sir. And you had nothing else
15 concerning Mr. Bowman on that evening on the 17th that
16 you spoke to him?

17 A. Notations, et cetera, yes, sir.

18 Q. Field notes, whatever you take, sir?

19 A. No, sir.

20 Q. And when you completed that night -- I know it's
21 your testimony to Mr. Bailey that you then went back to
22 either your home, or -- your home, sir, the night of
23 the 17th, correct?

24 A. Yes, sir.

25 Q. Now, of your personal knowledge, Sheriff, what was

1 done with the person of Mr. Marion Bowman after you
2 were done with him that night?

3 A. My personal knowledge he was returned to the
4 detention center.

5 Q. Which detention center, sir?

6 A. Orangeburg County.

7 Q. Okay, Sheriff. That's the Orangeburg/Calhoun
8 Regional Center?

9 A. Yes, sir.

10 Q. All right, sir. And he was placed in there. When
11 would he have gotten a bond hearing, sir?

12 A. I don't recall.

13 Q. All right, Sheriff. Because later that day, and
14 Mr. Bailey asked you, when did you next see Mr. Bowman
15 on the 18th of February, sir?

16 A. There was a time when I spoke with Mr. Bowman and
17 his family, I don't recall. I see Marion maybe twice
18 since the initial statement, but there was one time
19 when he was at -- he was signed out of the jail and --
20 but I don't recall the date, no, sir.

21 Q. All right, sir. When did you next meet with
22 Mr. Bowman, sir?

23 A. I don't recall, no, sir.

24 Q. Okay. Well, there came a time where you began to
25 take a second statement, for lack of better words, sir,

1 right now State's Exhibit Number 7, I believe, Sheriff.

2 A. Yes, sir.

3 Q. And what time did you begin to talk to him about
4 that, sir?

5 A. That's State's Exhibit 7 ID?

6 Q. Yes, sir.

7 A. I said, indicated 7:35.

8 Q. All right, sir. What precipitated, or what
9 necessitated you going and wanting to speak to
10 Mr. Bowman at 7:35 p.m. after he's incarcerated at your
11 jail, sir?

12 A. Because the investigation had led to some
13 co-defendants that may have been involved that --
14 possibly that may have been involved that -- in
15 Marion's first statement that may have been -- not been
16 the rifle he had given. And it was asked upon me to
17 talk to Marion again.

18 Q. Who asked you, sir?

19 A. One of the Dorchester County authorities, I
20 believe. Maybe it wasn't Major Stephenson. It was
21 Detective Coker, I believe. I'm not sure.

22 Q. All right, sir. Now, he's inside your jail. Who
23 brings the person, Mr. Marion Bowman, to you, sir?

24 A. I don't remember. I don't recall.

25 Q. Where did this meeting take place that you met

1 Mr. Bowman, sir?

2 A. From State's Exhibit 7?

3 Q. Yes, sir.

4 A. It's indicated here the Orangeburg County
5 Sheriff's Office.

6 Q. When you spoke to Mr. Bailey, asked about the
7 second statement, you didn't take him back to
8 Branchville, he was inside the complex?

9 A. Yes, sir.

10 Q. That's your handwriting, right, sheriff?

11 A. Yes, sir.

12 Q. So the statement was taken inside the jail. You
13 have an office at that location, sir?

14 A. Yes, sir.

15 Q. All right. You're the boss, you're elected
16 sheriff, you've got an office wherever you want one,
17 right, but I mean you have an office right there at the
18 jail?

19 A. Yes, sir. No, no, no, it's not at the jail. I'm
20 not the custodian of the jail, so I'm in a different
21 part of or part out of, so it's a different --

22 Q. They have a contract basis with a regional jail
23 director?

24 A. It wasn't a jail setting, it was at an office
25 inside the sheriff's office.

1 Q. So he was taken out of the jail and brought to
2 your office located -- and again, Sheriff, just for the
3 record, where was the physical location of your office
4 on the 18th of February 2001?

5 A. Where's the physical office?

6 Q. Yes, sir. Your physical address there, I'm sorry.

7 A. 1520 Ellis Avenue.

8 Q. When he's brought in to your office, how many law
9 enforcement officers were in your office when
10 Mr. Bowman arrived to talk to you to try to elicit
11 another statement?

12 A. I don't recall any law enforcement officers there.
13 There was a time when I spoke with his mother or I
14 spoke with some family member, but I don't recall any
15 law enforcement officers. Because I didn't see the
16 need of a law enforcement officer because Marion was
17 very comfortable talking with me and so I didn't see a
18 need.

19 Q. All right, sir. Of your personal knowledge,
20 Sheriff, or even reviewing your notes prior to coming
21 into this courtroom today and testifying for Her Honor
22 and Mr. Bailey and I, had he been afforded a right to a
23 bail or bond hearing that day, on that Sunday?

24 A. Not to my knowledge. I don't know, I wasn't asked
25 that information or provided.

1 Q. Would that have been important to you, sir, to
2 know whether or not Mr. Bowman had been accorded the
3 right to a bail or bond hearing and then have a judge
4 read him his rights to know the charge and his rights
5 to an attorney and other issues that a judge would say
6 basically calling Miranda?

7 A. Yes, sir. It's probably important that a person
8 is arraigned and given an opportunity to go before a
9 judge. And I'm quite certain that the investigators,
10 including Dorchester County, had arranged that or were
11 in the process of arranging the arraignment or bond
12 hearing, but I have no personal knowledge of that.

13 Q. All right, sir. But of your personal knowledge
14 from testimony to me a few moments ago, you knew he was
15 put in at least the regional jail for Orangeburg and
16 Calhoun sometime that Saturday night?

17 A. Yes, sir.

18 Q. And then you didn't come back and talk to him
19 again until Sunday at 7:35 p.m.?

20 A. Yes, sir.

21 Q. All right, sir. And it's 7:35 p.m. that day that
22 Mr. Bowman asks you if he could have a bail or a bond?

23 A. Yes, sir.

24 Q. What did you say to him exactly, sir?

25 A. My words to him -- he asked me could he get out of

1 jail. He said, "Big Larry, can I get out of jail?"

2 Q. Yes, sir.

3 A. I said, "Marion, I can't promise you to get out of
4 jail. The best I can do is talk to your parents and
5 try to help them in getting you out, but I can't do
6 nothing against the policy or the law. You have to go
7 before your judicial process."

8 Q. All right, Sheriff. And that had not been done
9 for Mr. Bowman, at least he's still inside your jail at
10 7:35 p.m.? Not -- I don't mean your jail, per se, sir,
11 and I apologize, at least the facility provided to
12 Orangeburg and Calhoun.

13 A. I'm not certain he had gone before a judge and on
14 arraignment, but I'm quite certain they were in the
15 process of if it hasn't been done.

16 Q. Okay. And who would have been responsible for
17 that, Sheriff, such as inside a facility held by
18 Orangeburg County?

19 A. The investigators of the sheriff's office as well
20 the investigators of the Dorchester County authorities.

21 Q. All right. You would agree we in -- that
22 Dorchester doesn't really have any authority over
23 across your line, right?

24 A. Yes, they have authority.

25 Q. In what aspect, sir?

1 A. If we're working on a joint investigation, I mean
2 we have a policy where we have a cooperative agreement.
3 I mean, of course they have. If you mean lawful power,
4 no, they don't. But, I mean, they have the right to
5 work with my officers in regard to following any lawful
6 proceedings or procedures that need to extradite my
7 assistance to those individuals who may have been
8 charged or that were being investigated.

9 Q. And that's what I'm trying to drive at right here.

10 A. Yes, sir.

11 Q. Who was in charge of this investigation on
12 Mr. Bowman while he was in the Orangeburg County
13 Regional Jail, an alleged crime happening in Dorchester
14 County, who's responsible for Mr. Bowman's person?

15 A. The -- it was a joint responsibility I would find
16 it as.

17 Q. All right, sir. And when he's brought to you and
18 you sit down to talk to him again, Sheriff, what was
19 the purpose of why you wanted to talk to him again?
20 You already talked to him once, you said he was very
21 cooperative with you the night before and he had
22 done -- you know, basically talked to you. And like
23 you said, sir, felt very comfortable, but why would you
24 have him brought to you?

25 A. To the best of my recollection Marion had -- I was

1 informed that he wanted to talk with me, or I
2 initiated -- I don't recall. But at one point there
3 was a family member that wanted to talk with Marion.
4 He again talked with the investigators from Dorchester
5 County. There had been some developments in regard to
6 possible co-defendants or -- that may have been
7 involved and that may have prompted my second
8 interview.

9 Q. All right, sir. And, Sheriff, will you agree with
10 me this is your office, right, I mean it's your office
11 and your elected facility?

12 A. Yes, sir.

13 Q. All right, sir. Did you have tape recording
14 devices available to you to use in your investigation
15 here taking this second statement?

16 A. Yes, sir.

17 Q. All right, sir. Did you choose to do that?

18 A. I chose not to. It wasn't a question that I
19 needed, I thought it was necessary.

20 Q. All right, sir. Would you not have felt it was
21 better practice in all the 23 and 24 years there to
22 record for infinitum; in other words, for forever, any
23 words that might be said and used in court against
24 somebody?

25 A. My knowledge of Marion, Marion wouldn't have

1 talked on a tape recorder. I didn't utilize the tape
2 setting. We started with the handwritten statement and
3 we concluded with the handwritten statement.

4 Q. Do you have videocassette capability there in your
5 office, your department, sir, like setting up a camera?

6 A. We have it in the department, yes, sir.

7 Q. You've used that in the past; have you not, sir?

8 A. No, sir.

9 Q. Not your big crimes? I mean it's your word, not
10 your big crimes or using in court?

11 A. I use whatever in the lawful sense that I feel --
12 if a person has appearances of being unconscionable I
13 mean of course a person -- I mean they don't want to
14 give a statement or a recorded statement, I mean I
15 don't force them to do that. I mean, I've taken many
16 statements in the past and given individuals Miranda
17 and I make for sure, you know -- you know,
18 professionally and ethically that the people understand
19 what I'm saying to them and what they're saying is
20 true.

21 Q. And I'm asking this in this particular case, sir.
22 Now, at first, the first two statements you read from
23 the police deny any culpability or any -- when you met
24 with Mr. Bowman did you read those statements about
25 culpability with Mr. Bowman?

1 A. The statements that had been offered by Dorchester
2 County authorities?

3 Q. Yes, sir.

4 A. No, sir.

5 Q. Okay. You did not read those?

6 A. No, sir.

7 Q. And your third statement that you took from
8 Mr. Bowman, based on that what was his involvement in
9 the case of your professional experience?

10 A. The third statement?

11 Q. Yes, sir. In other words, the statement you took.
12 Excuse me, Number 6, State's Exhibit Number 6.

13 A. What was your question in regard to this
14 statement?

15 Q. My question to you, sir, is what did Mr. Bowman
16 state in that statement to you that made him a part of
17 this case involving the death of Miss Kandee Martin,
18 sir?

19 MR. BAILEY: Judge, the statement speaks for
20 itself, unless he wants him to read the whole
21 statement into the record, I have no objection to
22 that.

23 MR. CUMMINGS: I ask this professional
24 gentleman if he remembers why after taking this
25 statement he wanted to go back and talk to my

1 client again.

2 THE COURT: All right. I think that's a
3 different question.

4 Q. After you did the third statement why did you want
5 to go back and talk to my client again the next day
6 after he's already in jail?

7 MR. BAILEY: Judge, I want to add to that
8 asked and answered two times already. He's
9 testified other things developed through the
10 investigation, he was requested to reinterview.

11 THE COURT: I'll allow the question to be
12 asked again since it is on cross-examination.

13 A. Yes, sir. Question again?

14 Q. What made you want to go back and talk to
15 Mr. Bowman again to get a second statement, which is
16 now State's ID Number 7?

17 A. There were information on possible co-defendants
18 that may have been involved in the case. Here again as
19 stated, I live in this community and I did not want
20 anything to happen to this kid that it was any -- oh,
21 had the appearances of any wrongdoing by law
22 enforcement, me, or anyone else. And there was
23 information that developed in the case and --

24 Q. Can you please tell us what that is, Sheriff?
25 Because that's going to be important to why you went

1 back.

2 A. Information about a Felder kid who may have been
3 involved with it. There were -- I have to read the
4 statement to tell you verbatim, but there was other
5 information that had developed.

6 Q. Yes, sir. In other words, other suspects?

7 A. Other co-suspects along with, other than the
8 defendant.

9 Q. And had any other suspects given a statement at
10 this time involving Mr. Marion Bowman?

11 A. I didn't take any statements, no, sir.

12 Q. Were you made aware of any, Sheriff?

13 A. I don't recall. I'm quite certain there's
14 numerous statements that were taken, but to say that to
15 author or to witness, no, sir, I did not.

16 Q. From the tone of what you are saying, Sheriff, I
17 know that you're a very conscientious gentleman in
18 answering my questions this afternoon, did you believe
19 there was a threat against Mr. Bowman's physical well
20 being involved in this thing? Because you said you
21 lived in the community and you were very concerned. My
22 client's in jail.

23 A. A threat?

24 Q. Yes, sir. That's what I'm trying to find out.

25 A. This is professional courtesy. I know the family,

1 the grandmother, the sisters, the brothers, the
2 cousins, the nieces. I'm an elected official in the
3 county that I reside. I, of all people, need to be for
4 certain that this young man is given every courtesy
5 that is possible and that's why I was there. I had no
6 knowledge of any involvement until he told me what he
7 did, or I concluded anything from that point well
8 enough to know to the point that until trial the young
9 man is presumed innocent.

10 So I did -- what he gave me I wrote down and
11 I followed precautions that I thought were in the best
12 interest of the State as well as the defendant.

13 Q. So it was your purpose to go back in there, elicit
14 testimony from Mr. Bowman to either exculpate himself
15 or clear himself from this, or in other words,
16 inculcate himself when you took this statement?

17 A. You know, many times you're investigating a case
18 there's no limitations, there's no time, realm of time
19 that you talk with a person. You know, you may talk
20 with a person one time, you may talk with a person ten.
21 And here again as from the first statement he was
22 willing in cooperating with me to talk with me. There
23 was never an invitational type setting, Marion, you
24 have to sit here, do this or do whatever. This was
25 solely based on behalf of Marion that wanted to talk

1 with me. I mean, wasn't no high pressure interviews or
2 nothing of such.

3 Q. Let me go back then a little bit maybe. If I'm in
4 error, Sheriff, I apologize to you. Mr. Bowman didn't
5 pass you a note, write you anything saying may I go
6 please speak to my friend, professional colleague
7 Mr. Larry Williams elected sheriff of Orangeburg, can I
8 talk to you more about this case, that didn't happen,
9 right?

10 A. I don't understand that question.

11 Q. In other words, he didn't pass you a note like
12 some inmates do, or write you a letter through a family
13 member saying I want to go back and speak to
14 Mr. Williams?

15 A. If I'm understanding you correctly that I received
16 a note from Marion?

17 Q. Yes, sir. On the 18th of February at any time
18 requesting that he come and speak to you, sir?

19 A. I don't recall a note, no, sir.

20 Q. All right, sir. And you never got a phone call
21 from Mr. Bowman from the jail requesting to the elected
22 sheriff that he wanted to come and talk to you more?

23 A. There again, there was discrepancies.

24 THE COURT: No, sir. I'm going to ask you to
25 answer that question yes or no. If you need to

1 explain your answer, please feel free to do so,
2 but I think that is a yes or no question.

3 A. Ask that question again.

4 Q. Did you receive a phone call --

5 A. No.

6 Q. -- from Mr. Bowman --

7 A. No.

8 Q. -- asking that he would speak to you?

9 A. No, sir.

10 Q. So this is a law enforcement attempt issue between
11 Dorchester -- or the officers of your department, sir,
12 to bring Mr. Bowman to you to elicit another statement;
13 is that not correct?

14 A. No, that's not correct.

15 Q. Well, Sheriff, why would you speak to him then?
16 He's already inside your jail, he's been charged with
17 an arrest warrant on the case, why did you want to go
18 back and talk to him again and take another statement?

19 A. He was not convicted.

20 Q. That's correct, sir, that's for a judge and jury
21 to do.

22 A. Here again, it was that I wanted to be thorough
23 that what had transpired with him is thorough and
24 right.

25 Q. Did you do the same with Mr. Gadson, the

1 co-defendant in this case?

2 A. What same, sir?

3 Q. Mr. James Gadson, did you ever speak to him like
4 you did Mr. Bowman, sir?

5 A. No, sir.

6 Q. Because you said you had some caring and, you
7 know, concern about him as a professional police
8 officer and an elected official in your community, sir,
9 did you speak to him the same way, have him brought out
10 of your jail to talk to you?

11 A. No, sir.

12 MR. BAILEY: Your Honor, I want to object to
13 what he's done in other cases, other defendants,
14 has no relevance whatsoever with what he did with
15 Mr. Bowman.

16 THE COURT: Thank you. Overruled. You may
17 proceed.

18 Q. Please answer that question, Sheriff.

19 A. Did I talk with other co-defendants?

20 Q. Yes, sir. Like you did Mr. Bowman.

21 A. No, sir.

22 Q. Was it because of your close relationship with
23 Mr. Bowman that you wanted to speak to him, that you
24 were trying to help him, sir?

25 A. It was because that he was indicated as possibly,

1 possibly an individual involved. And through his own
2 confession he admitted, he admitted to that in his
3 statement.

4 Q. A confession now up until Number 7, up until
5 Number 7 had he admitted to anything, the death of
6 Kandee Martin, sir?

7 A. Said in the statement he shot her.

8 Q. In what statement, sir, in Number 7, the one that
9 you took on the night of the 18th?

10 A. Bear with me one second, please, sir. (Pause in
11 proceedings.) In the second page, page 2 of the
12 statement continuation.

13 Q. Page 2 of which exhibit, sir, Number 6 or Number
14 7?

15 A. Number 7.

16 Q. All right, sir. And that's my question, when you
17 took a statement from him the night before --

18 A. Yes, sir.

19 Q. -- Mr. Bowman had not said anything about his
20 involvement with the death of Kandee Martin other than
21 what other people had told him in statement Number 6?

22 A. What Mr. Bowman said is included in the statement,
23 sir, that's what I wrote.

24 Q. So that's my big question in questions with you
25 today now. Because at 7:30 p.m., 7:35, somehow he's

1 brought out of jail, brought to your office on Ellis
2 Street as I understand it, sir?

3 A. Yes, sir.

4 Q. He's in custody, clearly?

5 A. Yes, sir.

6 Q. And now you are going to interrogate him, you're
7 going to ask him questions, ask him to give you a
8 statement?

9 A. I interviewed him, sir.

10 Q. Would you not agree, Sheriff, that's a term of
11 art, interview, interrogation? What's the difference
12 between them, interview and interrogation?

13 A. In my opinion there's a great preference.

14 Q. Could you please describe interrogation and
15 interview and your procedures?

16 A. In my opinion interrogation, you may have an
17 individual that may be at the brink of disclosing
18 information and investigator techniques that you may
19 well know may be utilized as interrogation to bring
20 that individual, strategize or to sometime in some folk
21 terminology to confuse a person, but I wasn't trying to
22 do that. I was just simply trying to interview an
23 individual who is a suspect in a case and talk to him
24 as professionally as I know how and that's what I did.

25 Q. Did you use your friendship with him to try to

1 elicit information that makes Mr. Bowman inculcate
2 himself in this case in the Exhibit Number 7?

3 A. Sir, I'm not a friend with Mr. Bowman.

4 Q. All right, sir. I'll rephrase. As an
5 acquaintance of the family or a gentleman who cares
6 about his community, did you use that to get this
7 gentleman to want to talk to you?

8 A. No, sir.

9 Q. Okay. So Mr. Bowman sits down at 7:35 p.m. Did
10 you tell him why he was brought to your sheriff's
11 office, sir?

12 A. Mr. Cummings, I believe, correct, from thinking
13 about talking with Marion the day before, you know, he
14 wanted to talk to me, he knew he was going to jail.
15 And, you know, and since we're talking on this, you
16 know, I sure enough would talk with him. We're talking
17 about the note. There was a conversation that night.

18 Q. All right, sir. That you would, again, see him
19 the next day?

20 A. Talk with him again, yes, sir. Of course there
21 had been information that had transpired since our last
22 interview that may have implicated other folk.

23 Q. When he got to your office, did he ever state that
24 he did not want to talk to you and ask for a lawyer?

25 A. No, sir.

1 Q. Did he ever tell you he wanted to make a phone
2 call to somebody?

3 A. No, sir.

4 Q. Of course I know he asked you about a bail or
5 bond. And you told him he would get his rights
6 afforded to him by somebody now, correct, sir?

7 A. He would be given a right for arraignment or bond,
8 that's correct, sir.

9 Q. But clearly 24 hours had passed at least that you
10 know he was in police custody?

11 A. I don't recall the time, sir.

12 Q. Well, you met him what time the night before, sir,
13 to take that first statement Exhibit Number 6?

14 A. State's Exhibit 6 indicated 8:50 p.m.

15 Q. So at least from 8:50 p.m. of your personal
16 knowledge until 7:35 the next time he was incarcerated?

17 A. Yes, sir.

18 Q. Okay. And then, Sheriff, when you sat down in a
19 room with him you just began like a little
20 conversation, for lack of better words, like you and I
21 are having today?

22 A. A little conversation?

23 Q. Yes, sir.

24 A. I don't recall. I don't recall the opening
25 statement, no, sir.

1 Q. Would it be fair to say that now you wanted
2 Mr. Bowman -- you had some other information. Did you
3 feed him information that you learned from other
4 policemen or other police agencies and then say, now,
5 Marion, I want you to talk to me about this, or did
6 Marion just start off by saying the following words,
7 "On Friday..."?

8 A. I had phoned Marion after Miranda, some
9 information that had transpired or transcended since we
10 last talked. And then he initiated the information
11 from that point.

12 Q. All right, sir. Now, and, again, we don't have it
13 in writing, it's just your verbal gone down the five
14 forms under Miranda vs. Arizona and then the sixth one
15 saying he understands his rights not to speak to you
16 and he desires to talk?

17 A. I made certain of that.

18 Q. All right, sir. Because it's Number 7, you're at
19 your office in Orangeburg and this is on a Dorchester
20 County Sheriff's Office statement form?

21 A. Yes, sir.

22 Q. Okay. So obviously Dorchester County had either
23 brought these forms to you or had handed you the sheets
24 to rewrite what you were talking about with Mr. Bowman,
25 correct?

1 A. Yes, sir.

2 Q. Sheriff, who was present from Dorchester County
3 when you took Exhibit Number 7?

4 A. I think I stated no one from Dorchester County.

5 Q. No one. Then how would you have gotten this form,
6 sir?

7 A. We had these statements, we had forms. These are
8 the same forms they used the day before.

9 Q. So you just had extra blank forms with you at your
10 office, Sheriff?

11 A. I don't recall, no, sir.

12 Q. This is not something kept in the normal course of
13 business, Dorchester County statement forms in
14 Dorchester County?

15 A. During an investigation we may have, I can't tell
16 you for certain.

17 Q. All right, Sheriff. So you met with this
18 gentleman in your office from 7:35 p.m. and you ended
19 the statement at approximately -- is that nine o'clock
20 p.m., sir, at end of exhibit Number 7?

21 A. Yes, sir.

22 Q. All right, sir. On that information do you have
23 any areas on there like you do on exhibit Number 6 that
24 required any scrivener's errors to be checked, or
25 anything where you would want Mr. Bowman to initial

1 anything that was wrong with your written words on this
2 four -- excuse me, one, two, three, four, five-page
3 document, sir?

4 A. Bear with me a second, please.

5 Q. Yes, sir.

6 (Pause in proceedings.)

7 A. I don't see any, no, sir.

8 Q. All right, sir. Did you offer Mr. Bowman to
9 initial any place where you had put a word that maybe
10 he couldn't read or that he could not have understood?

11 A. Mr. Bowman understood the statement.

12 Q. Did he read any words back to you on this
13 statement?

14 A. He was thoroughly -- he went over the statement,
15 he -- as we read the statement we went over it. He
16 concluded to me and assured me that this is what he
17 wanted to say, this is what happened.

18 Q. Sheriff, again, there was nobody else in the room
19 but you and he?

20 A. Yes, sir.

21 Q. All right. And clearly this statement was
22 handwritten by you?

23 A. Right.

24 Q. All right, sir. And, again, you've already
25 testified to Her Honor that this is words spoken and

1 then later on you went back using your recollection and
2 memory to record this down and then you asked
3 Mr. Bowman to check the statement, read it over and
4 then sign his name, correct, sir?

5 A. Read it over, check the statement. It was gone
6 over with him, that's my answer. And he understood it
7 and I made certain of that.

8 Q. All right, sir. Now, on that day -- and, Sheriff,
9 I -- Sheriff, I ask you this with the highest respect,
10 Mr. Bailey had asked you some questions earlier, you
11 didn't make any promises that you would help him get a
12 bail or bond, anything to talk to you again at
13 7:35 p.m.?

14 A. No, sir.

15 Q. You didn't say that you would protect him in any
16 way, as the good gentleman that you are in your elected
17 office, that nobody who's in your jail, or in your
18 hands for lack of better words, would be protected,
19 afforded human decency?

20 A. I can't recall there was ever a time that Marion
21 felt intimidated other than when he was first,
22 initially. He was just he didn't want to talk to white
23 officers, but it was never indicated that he was under
24 any threat or duress.

25 Q. All right, sir. For lack of better words, again,

1 I apologize to you, sir, for a gentleman, did you ever
2 tell him the words that he's crackers or trying to kill
3 you or they're going to kill you? I've never heard you
4 use those words, but I'm asking you would you ever say
5 that?

6 A. No, sir.

7 Q. Okay, sir. So if Marion was afraid of white
8 people, did you afford him the comfort, being that
9 elected gentleman, professional, a colleague of all of
10 ours in here, an officer of the Court, did you tell him
11 he didn't have to worry about anybody who was of a
12 lighter pigmentation?

13 A. I understand your question is, was he afraid of
14 white people?

15 Q. Yes, sir.

16 A. I don't think so. He had a white girlfriend.

17 Q. Okay. And but you testified earlier that he was
18 uncomfortable talking with a white -- Mr. Stephenson?

19 A. White officer, yes, sir.

20 Q. All right. And then with working on this did you
21 tell him that he would be better off talking to you
22 than any other Dorchester County officer or any other
23 white officer, sir?

24 A. No, sir.

25 Q. Okay. And, Sheriff, I'm going to ask you this:

1 Did he ever, had you ever told him that if he didn't
2 come clean, tell the truth, give a statement, whatever,
3 that his wife would be arrested and put in jail?

4 A. That was never uttered to Marion, never at no
5 time.

6 Q. All right. The way you said that you never told
7 Marion that, but did anybody else, did you tell anybody
8 else that, any other law enforcement agent?

9 A. That anyone else told him that? No.

10 Q. Did you tell any other law enforcement agency that
11 his wife might be charged or any other officer, sir?

12 A. No, sir. I don't recall that, no, sir. I
13 wouldn't.

14 Q. Did you tell his family members, his mama or
15 somebody that his wife may be charged?

16 A. Only time I remember talking with his mom she
17 stopped by the office one day to tell Marion he did
18 wrong, but I didn't talk with him.

19 Q. All right, sir. And I guess I'm not making myself
20 clear. You never would have put the threat or the
21 intimidation factor out here if he didn't give you this
22 statement somebody else in his family might be charged
23 with obstruction of justice or harboring a fugitive
24 issue?

25 A. No, sir.

1 Q. All right, sir. And you never instructed any of
2 your underlings, or any of the people below you to tell
3 anybody that?

4 A. No, sir.

5 Q. You never informed him his children might be taken
6 by DSS if his wife got arrested or Marion got arrested
7 and kept in jail?

8 A. No, sir.

9 Q. And as far as being placed in the facility of
10 Orangeburg and Dorchester -- excuse me, Calhoun County
11 Jail, what is the typical procedure when somebody is
12 brought in the jail? What happens to their person when
13 they come in that door there, Sheriff?

14 A. Once they enter the booking area, which is a glass
15 door that is closed by a fencing of a type, they're
16 introduced or produced through the booking officer.
17 And at that point they are then received from the
18 arresting agency or the officer. And then they walk to
19 a metal door through a processing area at the detention
20 center.

21 Q. And the process center means photograph,
22 fingerprints, taking basic information like medical
23 information, et cetera, sir?

24 A. That's correct.

25 MR. CUMMINGS: Beg the Court's indulgence,

1 Your Honor, if I may just for a moment.

2 THE COURT: All right, sir.

3 (Pause in proceedings.)

4 MR. BAILEY: Can we take a short break while
5 Mr. Cummings is going over that, five minutes?

6 THE COURT: Surely we can, yes. And once
7 we've concluded, we're going to take our lunch
8 break when this witness is finished.

9 MR. CUMMINGS: I've got a lot more questions.
10 I didn't know Her Honor's pleasure as far as
11 taking a break or whatever, but I know this poor
12 young man is probably going to be uncomfortable
13 with me for the next remaining hours, obviously.

14 THE COURT: Thank you for that, that's so
15 helpful. So while we're taking a break, maybe
16 this ought to be the break because you have a bit
17 yet left to go.

18 MR. CUMMINGS: Yes, ma'am.

19 THE COURT: When you took that break I
20 thought maybe each time you've examined you take
21 the break and you conclude, but what you are
22 telling me is there's much more.

23 MR. CUMMINGS: If I may, Judge, please.

24 THE COURT: Absolutely. Why don't we do
25 that. And why don't we take our lunch break, it's

1 about 1:00, I have about -- the clock says about
2 1:15, why don't we reconvene about 2:15. Will
3 that give you enough time to do what you need to
4 do, get some lunch?

5 How about you, Mr. Bailey?

6 MR. BAILEY: Yes, ma'am.

7 MR. CUMMINGS: I know this Sheriff
8 professionally.

9 THE COURT: Happy to do that, Mr. Cummings.
10 The witnesses have been sequestered, Sheriff, and
11 it would be likewise for you not to discuss your
12 testimony or allow anyone to discuss your
13 testimony with you what has been ongoing in the
14 courtroom. We'll reconvene about 2:15-ish.
15 (Lunch recess taken from 1:15 p.m. to 2:22 p.m.)

16 THE COURT: We are back on the record in the
17 Jackson vs. Denno hearing and we are now
18 continuing cross-examination of this witness. Mr.
19 Cummings.

20 MR. CUMMINGS: Thank you, Judge.

21 BY MR. CUMMINGS:

22 Q. Thank you, Sheriff. Sheriff, I just want to go
23 back a little bit where we ended up there. He, from
24 your testimony, was brought to you to your office so
25 you could start talking to Marion about what time, sir?

1 A. Sometime that afternoon. I have to reflect the
2 statement.

3 Q. All right, sir. Is it policy and procedure of
4 your professional knowledge and expertise, sir, that if
5 somebody's taken in or out of the jail, even by the
6 elected sheriff like your county, sir, or elected
7 sheriff of Calhoun County, that somebody makes a note
8 in their record where a person is taken out of and time
9 and dated?

10 A. You mean a sign out or a discharge from the
11 detention center?

12 Q. Yes. Or some paperwork generated from the
13 detention center showing when they do their head counts
14 or whatever, sir, like Mr. Bowman would be in the
15 presence of somebody for some legal reason?

16 A. Not operating my jail or the jail in the county,
17 I'm quite certain there's a booking release endorsed by
18 whomever the person may be that's signing that
19 individual out.

20 Q. All right, sir. And if I may, I'm going to
21 approach the witness for a moment and ask if you can
22 identify this document.

23 MR. CUMMINGS: May it please the Court,
24 Judge?

25 THE COURT: Yes, sir.

1 A. I can't identify this document.

2 Q. You cannot identify that document?

3 A. No, sir.

4 Q. Okay. All right, Sheriff. When you had Marion
5 brought to you, did you make any notes of who brought
6 them with you or who brought them to you at all so you
7 could testify about this some day, particularly like
8 here today?

9 A. I gave some thought of your question you asked of
10 me.

11 Q. Yes, sir.

12 A. And in the sheriff's office, per se, the
13 structural building, but he was interviewed in the --
14 it's the office adjacent to my office, I guess you
15 would say directly across the hall.

16 Q. Whose office would that be, sir?

17 A. That's the chief deputy's office or the assistant
18 sheriff's office.

19 Q. This nice lady back here, Major Walters?

20 A. I don't recall if it was her office at the time.
21 It was when we just moved in the office.

22 Q. All right, sir. And you told me earlier on my
23 cross-examination, sir, that you knew Marion was going
24 to jail. But what was he going to jail for? I think
25 I'm trying to paraphrase your own words, sir.

1 A. I don't understand the question, sir.

2 Q. When you said that you knew Marion was going to
3 jail, what was he going to jail for? Why were you so
4 interested in this case? Obviously you weren't
5 interested in just the receiving stolen goods charge,
6 right?

7 A. I don't recall I said I knew he was going to jail.

8 Q. All right, sir. It's your testimony now that you
9 might not have said those words?

10 A. Not verbatim said I know he's going to jail.

11 Q. Okay. Now, when he was there with you, you
12 approximately brought him over to the jail about
13 sometime in the afternoon and you were very specific in
14 State's Exhibit Number 7 what time you started the
15 statement, correct?

16 A. I need to reflect.

17 Q. All right, sir. I'm sorry. Madam court reporter,
18 save her a step or two.

19 MR. CUMMINGS: Thank you, Judge.

20 Q. I'm going to show you what's been marked State's
21 Number 7 for identification.

22 A. Yes, sir.

23 Q. And you're time specific there about 7:30 p.m.

24 A. Yes, sir.

25 Q. Okay. If Marion were brought to you from like

1 4:30 approximately in the afternoon that day, what
2 would you have done for three hours with Mr. Bowman,
3 talked to him? If he had been brought to you at 4:30
4 approximately on that date, would you have talked to
5 him for three hours prior to taking that statement?

6 A. That's difficult to say.

7 Q. All right. I know you said you couldn't identify
8 this document, but if you learned that he had been
9 checked out of the jail at 16:37 which is 4:37 p.m. to
10 speak to Sheriff Larry Williams, would you think that's
11 about the right time?

12 A. The statement indicates the time that I began
13 talking with him in regard to writing what Marion had
14 given to me --

15 Q. So he --

16 A. -- prior.

17 Q. I'm sorry, sir, I apologize.

18 A. To tell you how long the interview process was
19 prior to that, I can't accurately tell you that, no,
20 sir.

21 Q. All right, sir. Did you ever tell him that you
22 would take him to Branchville or have any other member
23 of law enforcement take him to Branchville to see his
24 wife after he talked to you?

25 A. No, sir.

1 Q. Is it your testimony today, sir, that nobody took
2 him down to Branchville Police Department to see his
3 wife down there, Dorothy Bowman, on the date you took
4 the statement in State's ID Number 7?

5 MR. BAILEY: Your Honor, I object to that
6 question. That isn't what he asked him. He asked
7 him whether he promised him that he would do that
8 if he talked to him. And now he's asking him
9 whether or not he, in fact, took him to see his
10 wife. I mean, I don't think it's the same
11 question.

12 MR. CUMMINGS: I'll ask the two of them.

13 Q. First one. Did you ever promise him that he could
14 see his wife if he gave the statement, sir?

15 A. No, sir.

16 Q. All right. Did you make arrangements or did you,
17 yourself, Sheriff, allow him to be taken by either
18 Deputy McAlhany or somebody down to Branchville Police
19 Department to see his wife that evening?

20 A. I don't recall. There may have been. There were
21 a lot of actions in regard to the case. He may have
22 been taken there just to -- if there was a request of
23 the family, but there was never any actions or anything
24 done to -- in exchange for any statements or any
25 confessions of any type.

1 Q. Well, Sheriff, the reason I ask you that, isn't it
2 strange to allow somebody out of the jail to be driven
3 like almost, again I apologize if I'm wrong on the
4 mileage now, from about 38 to 50 miles from Orangeburg
5 County city limits all the way down to Branchville so
6 they can see their spouse on a Sunday night after
7 they're incarcerated?

8 MR. BAILEY: I'm going to again object to ask
9 the witness isn't that strange. This is a fact
10 witness. He can testify as to what he's done, but
11 whether or not things are strange or not strange I
12 think are beyond his expertise, beyond the scope
13 of his hearing.

14 MR. CUMMINGS: As to strange, or his
15 expertise, that's the important issue here as to
16 whether or not there was inducement, promises, or
17 some reward for him giving a statement. That's
18 exactly what Jackson v. Denno is all about, for
19 Your Honor to determine whether or not a jury can
20 even hear the statement.

21 And for somebody to be taken from the
22 jail down to see a spouse on a Sunday night after
23 he's already incarcerated, obviously is not the
24 norm of anybody in here as officers of the Court.
25 And I'm asking the Sheriff whether or not that was

1 done.

2 THE COURT: First of all, was it done?

3 MR. CUMMINGS: Yes.

4 THE COURT: Secondly, what is the nature of
5 it?

6 MR. CUMMINGS: Nature, yes.

7 THE COURT: First of all, was it done, to his
8 knowledge?

9 THE WITNESS: I don't recall.

10 Q. Sheriff, if that was not done have you learned
11 through any investigation you did, sir, whether or not
12 that indeed occurred?

13 A. An investigation on this case?

14 Q. Anything. I mean obviously, you know, you're
15 taking a statement, you become an integral part of this
16 case, you wouldn't be up on the stand now for over two
17 hours with me. Did you learn that ever happened?

18 A. No, sir. I don't recall.

19 Q. As far as Mr. Bowman, I'm going to ask if I can
20 approach the witness, ask you if you can identify first
21 the person in this photograph, sir. I know it's a
22 photocopy.

23 A. Yes, sir. It appears to be Marion, the defendant.

24 Q. All right, sir. And if you'll hold that for just
25 a moment now. Is that a document that was generated in

1 a normal course of business by the Orangeburg County
2 Regional Detention Center?

3 A. I don't know.

4 Q. All right, sir.

5 A. Not being the custodian of the jail this -- at one
6 time they utilized this database, but I'm not certain,
7 for certain.

8 Q. All right, sir. Is that how Mr. Bowman appeared
9 to look when that photograph was allegedly taken on
10 2-18-01 by somebody at the Orangeburg County Jail where
11 Mr. Bowman had been placed under arrest, is that how he
12 looked to you, sir?

13 A. It's Marion Bowman, yes.

14 Q. Look at his facial features, sir. Is that how he
15 looked? Because you met with him on the 17th of
16 February for a number of hours, sir, and then on the
17 18th for a number of hours politely, Sheriff.

18 A. To the best of my recollection.

19 Q. Recollection of what, sir?

20 A. It appears, this appears to be Marion Bowman.

21 Q. Let me just show that to Mr. Solicitor for a
22 moment.

23 MR. BAILEY: Your Honor, I can stipulate this
24 came from my file, that's part of the jail record
25 if that helps any.

1 MR. CUMMINGS: Thank you, sir.

2 MR. BAILEY: Of course the sheriff doesn't
3 generate jail records.

4 THE COURT: I understand. So you'll
5 stipulate that as an exhibit into evidence, that
6 is in fact a document from the jail.

7 MR. CUMMINGS: Yes, ma'am.

8 THE COURT: All right. Do you want to have
9 this marked?

10 MR. CUMMINGS: I think this is Defendant's ID
11 if I'm not mistaken.

12 THE COURT: Mark it only for identification.

13 MR. CUMMINGS: Yes, ma'am. At the present
14 time stipulate the document came out of the
15 solicitor's file.

16 (Marked for identification was Defendant's
17 Exhibit 2, photograph of the defendant.)

18 Q. Sir, again, I humbly ask you this, does
19 Mr. Bowman's face look puffy to you, sir?

20 MR. BAILEY: Judge, again, I'm going to have
21 to object. The picture speaks for itself. For
22 him to characterize the picture he has no
23 knowledge of, he did not take the picture. I
24 mean, he can --

25 THE COURT: Let me say this. Based -- I

1 think that it's a good objection based on the
2 foundation that has been laid to this point, Mr.
3 Cummings. If you can go back and lay a different
4 foundation it may be admissible.

5 MR. CUMMINGS: Sure.

6 Q. Sheriff, all the times he spent with you, it's
7 your testimony to the solicitor several times, and then
8 I've asked you this, I know it's uncomfortable for any
9 law enforcement officer to be asked this question, but
10 did you slap Mr. Bowman in the face, sir?

11 A. No, sir. I did not.

12 Q. I understand that, Sheriff. I thank you for your
13 answer. Because the reason I ask you that, his face
14 appears to be puffy from the photograph there. Why I
15 wanted to ask you that question he spent so much time
16 with you, because you've told the solicitor there's
17 been no threats, promises, no inducements, no physical
18 force used to get a statement, and then when I asked
19 you whether or not he was ever taken down from your --
20 the Orangeburg Jail down to see his wife that night
21 when this statement was given, I'm asking you to recall
22 the number of times you spent with Mr. Bowman, the
23 amount of time you spent with him because you've taken
24 two statements from this man now in two days, you spent
25 a lot of time with him.

1 A. Yes, sir. I spent some time with him.

2 Q. Okay. And so you did not put any hands on him or
3 give him any reason to want to sign the statement of
4 the 18th, correct, sir, item Number 7?

5 A. No, sir.

6 Q. All right, sir. Now, if -- does a Deputy McAlhany
7 still work in your department, sir?

8 A. No, sir. He's not with me no longer.

9 Q. All right. When did he leave your services?

10 A. Four days, four days ago.

11 Q. Four days ago?

12 A. Yes, sir.

13 Q. Was he discharged for cause? I mean, we're not
14 trying to get into his personnel record. Was he
15 discharged for cause? You serve the pleasure as
16 Sheriff of this state, right?

17 A. I regret losing him, he's a quality officer and he
18 found a better job.

19 Q. All right, sir. Do you know with who?

20 A. No, sir.

21 Q. Did he leave a resignation letter with you since
22 he's such a good officer?

23 A. Telling me I'm a good officer?

24 Q. I know you're a good officer. I mean, did he
25 leave a letter of resignation stating where he was

1 going to go to for employment, or tell you personally
2 where he was going next?

3 A. No, sir. I remember talking with him after his
4 resignation and informed him that if he -- whatever,
5 wherever he was going if he decided that's not what he
6 wanted to do the doors were open for him to return.

7 Q. Thank you, sir. As far as going back now and
8 trying to remember that night, did you ever go down to
9 the Branchville Police Department on the night of the
10 18th at any time to discuss this case either with
11 Ms. Dorothy Bowman or any of the officers at the
12 Dorchester County Sheriff's Department in Branchville,
13 sir?

14 A. That was the night of the first statement?

15 Q. Item Number 7, no, sir.

16 THE COURT: The 18th.

17 Q. The 18th.

18 A. I don't recall, sir.

19 Q. You would agree with me that would be very
20 important to remember if you went back down there to
21 Branchville Police Department with this gentleman.
22 Would you not agree with me with that, Sheriff?

23 A. Mr. Counsel, I live in a little town, I go back --

24 THE COURT: No, sir. Please just answer the
25 question.

1 A. No, sir.

2 Q. Sheriff, I'm going to show you another document, I
3 know you were not the person who generated this, ask
4 you if this is kept in the normal course of business of
5 your department, sir?

6 A. I don't understand your question.

7 Q. First thing, do you recognize this letter as being
8 a letter that's kept in the normal course of business
9 of your department, sir, as the elected official,
10 something that would be generated to answer a subpoena
11 from an underling of yours?

12 A. It could be, yes, sir.

13 Q. Have you ever had a chance to see this document
14 prior to today?

15 A. No, sir.

16 Q. You never talked to any other police officers in
17 your department about this letter?

18 A. No, sir.

19 Q. Did anybody ever come to you and ask you whether
20 or not you had any notes, records, tape recordings, or
21 any documentation as to this case?

22 A. The solicitor and I discussed the case, but I
23 don't recall specifics.

24 Q. All right, sir. When -- how long ago was that,
25 sir, you met with Mr. Bailey?

1 A. I don't recall the date, sir.

2 Q. Now, you testified that Mr. Bowman would never
3 have talked to you on the record with a tape recorder
4 present. That's your statement, right, sir?

5 A. His demeanor for him talking with me --

6 THE COURT: I need you to keep your voice up.
7 I'm having a very difficult time hearing you and
8 I'm sitting right next to you and I know our court
9 reporter has got to be struggling.

10 A. I felt that he wasn't comfortable with a recorder.

11 Q. Sheriff, is it true to say today, sir, Mr. Bowman
12 was taken from the office complex at Orangeburg County,
13 driven down to Branchville, spent some time with his
14 spouse and then you later on put that document in front
15 of him and asked him to please sign that? Isn't that
16 what happened?

17 A. That's very untrue.

18 Q. Because if I told you that Mr. Bowman was brought
19 back to the jail and logged back in at 22:00 hours,
20 thereafter, would you find that strange that first to
21 be out of the jail from four o'clock in the afternoon
22 until almost eleven o'clock, almost ten o'clock at
23 night until eleven o'clock at night? Excuse me, not --
24 morning?

25 A. I don't know how to answer your question.

1 Q. It's a Sunday night.

2 A. I can't say it's strange. You sign people out of
3 the jail for hours at a time in the interview process.
4 I can't say in this particular sequel that it's
5 strange.

6 Q. Aren't there records or notes who takes people out
7 of a jail cell, sir?

8 A. Yes, sir. It does. Yes, it does.

9 Q. And aren't there documentations, like I know
10 you're the sheriff, sir, and you don't have to actually
11 answer to anybody else other than your people who vote
12 for you and you know the people that you serve
13 including the courts and elected -- other elected
14 officials, right, sir?

15 A. Yes, sir.

16 Q. You don't have to get on the radio and say you're
17 going here or there, or give mileage, do you?

18 A. I don't understand your question.

19 Q. I guess maybe if I used the wrong code you'll
20 correct me, but usually sometimes when an officer makes
21 an arrest they'll say like 1067 one time and they give
22 a starting mileage in route to the jail, give the
23 ending mileage and usually the time and location are
24 noted for the record; would that be fair to say?

25 A. That is only normally in a transportation of a

1 female or a person inmate be deemed as unsafe or a
2 mental patient.

3 Q. Okay. And is it the policy, procedure of your
4 department that anybody taken out of a jail should give
5 the mileage and the time when they're taken out of a
6 jail?

7 A. No, sir.

8 Q. Okay.

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

10 THE COURT: All right.

11 (Pause in proceedings.)

12 Q. Sheriff.

13 A. Yes, sir.

14 Q. Looking at item Number 7 again, right in front of
15 you, what time, for the record, did you end that
16 statement with Mr. Bowman?

17 A. 9:00 p.m.

18 Q. 9:00 p.m.?

19 A. Yes, sir.

20 Q. Nobody else witnessed that other than you kindly,
21 sir, and Mr. Bowman, right?

22 A. No, sir.

23 Q. And, Sheriff, have you checked, or can you check
24 as the elected sheriff in Orangeburg, to find out what
25 time this gentleman was put back in the jail, that even

1 though you don't have control over you have some lawful
2 responsibility over, correct?

3 A. Over the detention center?

4 Q. Yes, sir. You have some lawful responsibilities
5 for it as the elected sheriff?

6 A. Infractions of the law or a complaint filed in
7 regard to any action in regard to my officers or
8 internal investigation, that's some of the
9 ramifications.

10 Q. If you finish the statement at 9:00, you're saying
11 the statement was taken at your office right in
12 Orangeburg?

13 A. At the sheriff's office, yes, sir.

14 Q. Where was he for two hours?

15 A. I can't -- I don't recall where he was.

16 Q. You don't know where -- I mean, when you were
17 finished with the statement did you turn him over to
18 somebody from your notes or something, sir?

19 A. When I concluded with my statement, apparently at
20 that time he had been taken by the officers or
21 interviewed further by the officers, they were -- this
22 was an ongoing investigation, several officers talked
23 with him, he was under Miranda.

24 Q. Okay. Well, the reason I'm going to ask you this
25 question again, not to try to trip you up, you start

1 the statement at the time stated on there, he signs the
2 statement at nine o'clock, we know he was out of the
3 jail earlier, we know he was put back in later. Isn't
4 it true, Sheriff, that this statement was not signed
5 until after he saw his wife in Branchville?

6 A. That's State's Exhibit 7?

7 Q. Yes, sir.

8 A. That is not true.

9 Q. Okay. Thank you.

10 MR. CUMMINGS: Beg the Court's indulgence,
11 Your Honor.

12 THE COURT: All right.

13 (Pause in proceedings.)

14 MR. CUMMINGS: Thank you. That's all the
15 questions I have for the elected sheriff.

16 MR. BAILEY: A couple of redirect.

17 THE COURT: Certainly.

18 REDIRECT EXAMINATION

19 BY MR. BAILEY:

20 Q. Sheriff, did you explain the difference between,
21 or how the jail in Orangeburg, Orangeburg/Calhoun
22 Detention Center is run as far as who's responsible for
23 it?

24 A. The jail or the detention center is operated by
25 two counties, Orangeburg and Calhoun County, and is

1 managed by an administration. Normally some counties,
2 I believe like in Dorchester the sheriff has the
3 responsibility of the jail, so there's no records kept
4 on behalf of my agency in regard to the inmates or any
5 particulars that may be occurring at the detention
6 center in Orangeburg County.

7 Q. All right, sir. You don't run the jail as the
8 sheriff in Orangeburg County; is that correct?

9 A. No, sir.

10 Q. So a board of directors does that?

11 A. Yes, sir.

12 Q. Okay. So any paperwork generated by the jail in
13 regards to mug shots, transportation of the inmates, is
14 that something your department does or something the
15 jail administration does?

16 A. The jail administration does, sir.

17 Q. Okay. Now, Mr. Cummings asked you a question
18 about Mr. Bowman's face, his appearance when the
19 picture was taken. I'm going to hand you what I think
20 is a copy of that. And I think Mr. Cummings asked you
21 if that appeared to be a picture of Bowman back about
22 the time he was arrested. I think that's been marked
23 for identification as Defense Number 2. Looking at
24 Mr. Bowman now, does he look the same as he did back in
25 February of 2001?