

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Court of Common Pleas Case No. 2011-CP-26-3907
(Capital PCR Action)
Appellate Case No. 2014-000904

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S.C. Supreme Court

LOUIS MICHAEL WINKLER, JR.,

Respondent/Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Petitioner/Respondent.

APPENDIX

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1 the text of this recommendation form:

2 We the jury in the above-entitled case recommend
3 to the court that the defendant, Louis Michael
4 Winkler, be sentenced to life imprisonment.

5 Please note that although you must unanimously agree
6 to recommend life imprisonment, only the foreman has to
7 sign that form.

8 I will now instruct you what you may consider in
9 making your decision as to which sentence to recommend. As
10 I previously instructed, if you find the existence beyond a
11 reasonable doubt of a statutory aggravating circumstance,
12 then you are permitted but not required to recommend the
13 death penalty. There are three conditions which you should
14 consider in reaching your decision: whether the existence
15 of a statutory mitigating circumstance was afforded by the
16 evidence; whether the existence of any other non-statutory
17 mitigating circumstances were supported by the evidence;
18 and third, whether for any reason you can think of or for
19 no reason at all the defendant should be sentenced to life
20 imprisonment.

21 Now, just as our statute has the statutory aggravating
22 circumstances, our legislature also has a list of statutory
23 mitigating circumstances which, if the jury finds evidence
24 exists, exists, they can consider. It's an incident and a
25 detail, an occurrence which our legislature has declared

1 by, declared by statute would reduce the severity of the
2 offense of murder.

3 In other words, it is a circumstance recognized by
4 statute as one which in fairness and mercy may be
5 considered as extenuating or as reducing the degree of
6 moral culpability of the commission of the act of murder.
7 A mitigating circumstance is neither justification nor
8 excuse for the murder. It simply lessens the degree of
9 one's guilt. That is, makes him less blameworthy or less
10 culpable.

11 What statutory mitigating circumstances are admitted,
12 considered in this case? Well, once again on that sheet
13 I'll have them listed, but here's the list that the defense
14 puts forth as statutory mitigating circumstances. One,
15 that the defendant has no significant history of prior
16 criminal conviction involving the use of violence against
17 another person. The murder was committed while the
18 defendant was under the influence of mental, mental or
19 emotional disturbance. The victim was a participant in the
20 defendant's conduct or consented to the act. The defendant
21 acted under duress or under the domination of another
22 person. The capacity of the defendant to appreciate the
23 criminality of his conduct or to conform his conduct to the
24 requirements of the law were substantially impaired. The
25 age or mentality of the defendant at the time of the crime.

1 The defendant was provoked by the victim in committing
2 murder.

3 You may also considered any non-statutory mitigating
4 circumstance. A non-statutory mitigating circumstance is
5 one which is not provided for by statute but is one which
6 the defendant claims serves the same purpose. That is, to
7 reduce the degree of his guilt in the offense. While there
8 must be some evidence which supports a finding by you that
9 a statutory or non-statutory mitigating circumstance
10 exists, it is not necessary for you to find the existence
11 of such a circumstance unanimously nor beyond a reasonable
12 doubt.

13 In reaching your decision as to which sentence to
14 recommend, you will consider the aggravating circumstances
15 the state alleges, as well as the mitigating circumstances
16 the defense puts forth, as well as any non-mitigating,
17 statutory mitigating circumstances you consider. While
18 aggravating circumstances must be found before you can even
19 consider recommending the death penalty, one such finding
20 is made beyond a reasonable -- once such finding is made
21 beyond a reasonable doubt, you may recommend the death
22 sentence although you will -- although you do find the
23 existence of a statutory mitigating circumstance or even a
24 non-statutory mitigating circumstance or both.

25 In other words, the existence of alleged statutory

1 mitigating circumstance or an alleged non-statutory
2 mitigating circumstance or both is not a bar to the
3 imposition of the death penalty.

4 The third element you may consider if you conclude
5 that a statutory aggravating circumstance exists is whether
6 the defendant should be sentenced to life imprisonment for
7 any reason at all or no reason at all. That is what has
8 been traditionally referred to as a recommendation of
9 mercy. And should such be in -- your decision, you would
10 so indicate by returning to the court the form that says
11 Recommendation of Life Imprisonment which will be signed by
12 the foreperson alone.

13 In other words, you may choose to recommend life
14 imprisonment if you find a statutory or a non-statutory
15 mitigating circumstance, or you may choose to recommend
16 life imprisonment as an act of mercy. And you may also
17 recommend life imprisonment even if you do find aggravating
18 circumstance. In any instance, should you choose to
19 recommend life imprisonment, your decision must be a
20 unanimous one. Then the foreman alone would be required to
21 sign the recommendation, although it must be a unanimous
22 decision.

23 Madame Clerk, would you please hand the foreman the
24 form?

25 Now, those are copies which I'm going to take back,

1 but I have the original that's in the jury room with you.

2 Mr. Foreman, and I'm showing you, and of course you
3 show this all to the other members of the jury, but the
4 first document is the statutory instructions. See that
5 number one there? You see on the statutory instructions,
6 the state alleges as far as aggravating circumstances two
7 circumstances. Our legislature has listed many of them.
8 In, in this case it's for the state to choose, and they
9 chose those two: burglary of any degree, as well as the
10 murder of a witness or potential witness committed at any
11 time during the criminal process for the purpose of
12 impeding or deterring prosecution of any crime. Those are
13 the aggravating circumstances.

14 And you see listed what the defense alleges are
15 statutory mitigating circumstances. I think there's seven
16 listed there. You see all seven of them? I've read them
17 already, but you go ahead and read them again. In
18 addition, the last sentence says: You may also consider
19 non-statutory mitigating circumstances. So, those you'll
20 have in your jury room with you, those things there.

21 Now, the first thing you do, Mr. Foreman, is you all
22 determined if the state has proven guilt of aggravating
23 circumstances beyond a reasonable doubt listed in that
24 sheet. If you determine that the state has proven guilt of
25 aggravating circumstances beyond a reasonable doubt, you

1 would then list which one or both they've proven. And so
2 you'd list those two that you find if you determine the
3 state's proven guilt beyond a reasonable doubt of one or
4 both of them sitting right there on that sheet in front of
5 you. You list them. Then each juror would sign it. So,
6 if you as a jury determine beyond a reasonable doubt the
7 state's proven burglary of any degree, then you put --
8 write down burglary. If you also feel the state's proven
9 guilt beyond a reasonable doubt the second aggravating
10 circumstance of killing someone who's material to the case
11 and criminal process, pending charge, then you'd write that
12 one down, too, and then every juror must sign it. Now, not
13 just you but everyone.

14 Now, if you do not find the existence of aggravating
15 circumstance, if you do not, you do not, then you would not
16 put anything on this form at all. And you'd go two forms
17 over to the last one in your hand, and you would sign the
18 last one which says recommendation. See it says
19 recommendation of life imprisonment?

20 FOREPERSON: Yes, sir.

21 THE COURT: So, if you do not find aggravating
22 circumstances, you must go to that, to the life
23 imprisonment form.

24 Now, if you do find -- come back to the previous form
25 -- if you do find the -- that the state has proven an

1 aggravating circumstances beyond a reasonable doubt, then
2 you may consider the -- either one of these two: the
3 recommendation of the death sentence or the recommendation
4 of life imprisonment, either one of the two. I know you
5 know that you must sign, every juror must sign the one that
6 has the recommendation of the death penalty, and only you
7 sign the other one. However, you must be unanimous on
8 either one of them. Just, the law just requires every
9 juror sign one, you sign the other, but you must be
10 unanimous.

11 Let me read to you the final two pages. I might
12 repeat what I just said, but I need to read them to you.

13 The statutory instructions state the only aggravating
14 circumstances you shall consider in the case, those are the
15 only two I read, the only two aggravating circumstances you
16 may consider. Should you fail to find beyond a reasonable
17 doubt one of those exists, then your recommendation must be
18 life imprisonment. Should you find, should you find beyond
19 a reasonable doubt the existence of that aggravating
20 circumstance or circumstances, you would then be authorized
21 in considering recommending the death penalty.

22 In your deliberations, you will consider any statutory
23 or non-statutory circumstances which are supported by the
24 evidence. You will consider the aggravating circumstances
25 or circumstance you found and the mitigating circumstances,

1 and then you will decide whether to recommend the death
2 penalty or life imprisonment. You also may consider any
3 other type of mitigation of the offense, and you can, you
4 can recommend a sentence of life imprisonment for no reason
5 at all.

6 If you decide, as I said, to recommend the death
7 penalty, you'll complete that, that proper form. You must
8 write out the aggravating circumstances on the -- that form
9 the aggravating circumstances that you found. And all
10 jurors must sign the recommendation. And as I said on the
11 life imprisonment form, only you have to sign, although it
12 must be a unanimous decision. And whatever decision you
13 make, it must be unanimous. Please remember your
14 sentencing recommendations will be followed by this court.

15 Mr. Foreperson, do I need to go over the forms again,
16 or you think you understand the forms?

17 FOREPERSON: I believe I understand the forms.

18 THE COURT: All right. So, therefore, you would start
19 sheet and need to keep them in that order: statutory
20 instructions, then whether you find aggravating
21 circumstances, and then to sentencing forms.

22 Now, ladies and gentlemen of the jury ---

23 MR. HUMPHRIES: May we approach briefly?

24 THE COURT: Sure.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

1 THE COURT: Two things I want to say. Burglary, I
2 guess I do need to charge you again on the elements of
3 burglary. You're incorporated all the evidence in the
4 first trial for you this trial.

5 As you recall, I said burglary is the entering the
6 dwelling of another without consent with the intent to
7 commit a crime therein, and one of the following events
8 occurring during the course of that burglary. The
9 defendant was in the possession of a weapon. That when
10 entering or while in the dwelling or when fleeing, the
11 defendant was armed with a deadly weapon. And a deadly
12 weapon, as I told you, is any article or instrument or --
13 which is likely to cause death or great bodily harm.
14 Following examples of weapons: pistol, shotgun, rifle,
15 dirk. Or while entering or when entering or while entering
16 or while in the dwelling or when fleeing, the defendant or
17 accomplice caused physical injury to anyone not
18 participating in the crime. Or when entering or while in
19 the dwelling or when fleeing, the defendant or accomplice
20 used or threatened to use a dangerous object. Or when
21 entering or while in the dwelling or when fleeing, the
22 defendant or accomplice displayed what was or appeared to
23 be a knife, pistol, revolver, or shotgun. In other words,
24 the -- that's burglary first degree.

25 But here they can prove any burglary of any degree.

1 And a burglary, of course, is entering the dwelling of
2 another without consent with the intent to commit a crime
3 therein. And I gave you examples of first-degree burglary.

4 Now, ladies and gentlemen, also let me make sure that
5 when I summarize instructions -- I told you that the
6 statutory or aggravating circumstances were that the murder
7 was committed while in the commission of a burglary in any
8 decree. Two, the murder of a witness or potential witness
9 committed at any time during the criminal process for the
10 purpose of impeding or deterring prosecution of any crime.

11 Any other requests to come forward at this time with
12 these things?

13 MR. HUMPHRIES: No, Your Honor.

14 MR. WILSON: None, Your Honor.

15 THE COURT: All right.

16 Now, ladies and gentlemen, in considering whether to
17 recommend the defendant will be sentenced to death or life
18 imprisonment, I charge you that as jurors, you must decide
19 the issue involved in this proceeding without bias, without
20 prejudice to any party. You were selected many days ago
21 now as fair and impartial jurors. You came up here
22 individually. I talked with you. After you were selected
23 on this case, you were put under oath again. You were
24 sworn to impartially try and determine the facts of this
25 case and, and, and when you comply with your oath to do so,

1 then no one will have a right to criticize your verdict
2 when you fully discharge your duties. Whatever sentence
3 you bring back, as long as you do it after considering all
4 the evidence and you feel that is the appropriate matter
5 after considering the law, then no one can criticize your
6 verdict.

7 You are to decide in this case according to the
8 testimony you heard from the list of sworn witnesses, along
9 with the exhibits and all the evidence introduced.

10 I charge you once again you must do this without bias
11 or without prejudice to any party. You cannot allow
12 yourself to be governed by sympathy, prejudice, passion,
13 public opinion, or any other arbitrary factor. Both the
14 state and the defendant have a right to expect that each of
15 you will carefully and impartially consider all the
16 evidence in the case and you will follow the law as I
17 explained it to you.

18 Now, ladies and gentlemen, this case now is going to
19 be turned over to you for the final phase. You decide the
20 issues; you decide the sentence you wish to recommend.
21 Consider all the evidence in the trial over the last
22 several days which you've heard, all the evidence and
23 information from both sides. Fill out the forms properly.
24 Do your duty as you swore on your oath to do, and no matter
25 what sentence you come back with, no one can criticize it

1 because you would have done what your duty and justice
2 demands of you and mercy demands of you and law demands of
3 you, and all that. You just decide for yourself what you
4 think is the appropriate thing to do. Once you do that, no
5 one can criticize your verdict.

6 Any matters because we send them to the jury?

7 MR. HEMBREE: No, Your Honor. None from the state.

8 MR. WILSON: None, Your Honor.

9 THE COURT: All right, ladies and gentlemen of the
10 jury, if you would, if you would, step to the jury room and
11 do not begin your deliberations. Look at those forms
12 there, and I will send the exhibits in, and you can begin
13 deliberations.

14 If you would at this time, have the alternates taken
15 to a separate place, please. If y'all would, please go to
16 the jury room. Do not begin deliberations until -- wait,
17 one other thing I want to tell you. Your lunch is here.
18 You're free to deliberate over lunch, but make sure
19 everyone is deliberating. Some people should not take a
20 break and other ones deliberate. So, if your lunch is
21 here, you deliberate over lunch, that's fine, but everyone
22 should participate.

23 When you reach a decision, knock on the door and we
24 will receive your verdict. Thank you very much.

25 (THE JURY EXITS AT 1:20 P.M.)

1 THE COURT: Any exceptions from the state?

2 MR. HEMBREE: None from the state.

3 THE COURT: Defense?

4 MR. WILSON: No, sir.

5 THE COURT: All right, let's get all this evidence
6 together and send it in to them, and here are my
7 instructions. Tell them to look at those.

8 (A PAUSE.)

9 MR. WILSON: We're satisfied. Defense is satisfied.

10 MR. HEMBREE: State recognizes all the exhibits are
11 accounted for.

12 (OFF THE RECORD.)

13 (JURY DELIBERATIONS BEGIN AT 1:30 P.M.)

14 THE COURT: This is nothing significant, so no one has
15 to be that excited. Just an inquiry. It's about me.

16 (A PAUSE.)

17 THE COURT: Since jury is obviously still
18 deliberating, it's now 8:00. I just thought I might better
19 let them know if they want us to go get them sandwiches,
20 it's going to take an hour or over an hour to get them
21 here, and if they -- or if they're close. So, just give
22 them a choice of getting lunch, or maybe they don't want us
23 to go order them lunch. So, I thought I'd bring them out
24 just to mention that to them and nothing else.

25 Okay, everybody ready?

1 MR. HEMBREE: State's ready, Your Honor.

2 MR. WILSON: Yes, sir.

3 THE COURT: Bring them out.

4 (THE JURY ENTERS AT 8:04 P.M.)

5 THE COURT: Ladies and gentlemen of the jury, I didn't
6 want to interrupt you or anything, but I just noticed the
7 hour is 8:00. So, if we were going to get you all dinner,
8 sandwiches or whatever, it's going to take an hour and a
9 half. So, I just wanted you all to let me know if you
10 wanted me to go ahead and order since it will take an hour
11 or so to get it here.

12 So, if you would, when you go back in the jury room,
13 let the bailiff knock and -- I mean, let the foreperson
14 knock and I will have Ms. Huggins there at the door, and
15 just let her know whether y'all feel that y'all want her to
16 order your dinner. And if so, then we'll go ahead and get
17 on it so that it won't be too late when it gets here. It
18 will be after 9:00, but -- and if you don't want dinner,
19 you want to continue deliberating, you feel that you don't,
20 you don't need dinner or whatever, that's up to you. It's
21 your choice.

22 So if you would, step back to the jury room and just
23 have the foreperson knock at on the door and let Ms.
24 Huggins know if you'd like for us to order you some, some
25 dinner, and then she'll get some sort of orders or either

1 go get some stuff and bring it back for you, okay? Please
2 step back to the jury room.

3 (THE JURY EXITS AT 8:06 P.M.)

4 THE COURT: All right, Ms. Huggins, if you'll just go,
5 and I'm just going to wait here. You can let me know,
6 okay?

7 (OFF THE RECORD.)

8 THE COURT: The clerk said the jury is writing out a
9 question.

10 (A PAUSE.)

11 THE COURT: The foreperson wanted to know could they
12 ask a question, and Ms. Huggins told them yes, but I just
13 want to make sure I tell all the jurors that just in case
14 there's some misunderstanding. Obviously they can ask
15 questions.

16 Any objection, Mr. Wilson or Mr. ---

17 MR. HEMBREE: None from the state, Your Honor.

18 MR. WILSON: No, sir.

19 (THE JURY ENTERS AT 8:15 P.M.)

20 THE COURT: Ms. Huggins stated the foreperson had
21 asked could they ask, could y'all ask a question. She told
22 him yes but since that -- he did ask a question, I want to
23 make sure I -- I had told everyone yes.

24 If you need to ask questions, just ask the foreperson
25 to write it down and send it out to me. I'll be glad to

1 see if I can answer the question about any evidence
2 presented for you, or anything that's about the law or
3 whatever. Just if you need to ask a question, just write
4 it down. I'll see if I can answer it.

5 That doesn't mean you have to ask a question or you
6 have a question. I'm only stating if you need to ask a
7 question if you want, you may. But you don't have to.
8 It's up to you all. So, I just wanted to let you all know
9 that, all right?

10 And Ms. Huggins said y'all do not want dinner at this
11 time. So, if you change your mind, let us know.

12 Okay, you may proceed back to the jury room.

13 (THE JURY EXITS AT 8:16 P.M.)

14 THE COURT: Now, Ms. Huggins, as I understand it, they
15 told you they did not want lunch -- dinner at this time,
16 but the foreperson said could he ask a question. You told
17 him yes but since you were only speaking to him, I thought
18 I'd tell everybody that, but that's basically what you told
19 me?

20 CLERK OF COURT: That's correct.

21 THE COURT: Okay, Thank you. Any objection from the
22 state?

23 MR. HEMBREE: No, Your Honor.

24 THE COURT: Defense?

25 MR. WILSON: No, sir, Your Honor.

1 Judge, on another matter.

2 THE COURT: Okay.

3 MR. WILSON: Defendant has to take some medication.

4 THE COURT: Did I say lunch to them instead of dinner?
5 I wonder why I said that.

6 MR. HUMPHRIES: You did, but I think that's all right.

7 MR. WILSON: They understood I think.

8 THE COURT: I'm on West Coast time.

9 MR. WILSON: The defendant takes ---

10 THE COURT: Okay, hold on there. Yes, sir.

11 MR. WILSON: The defense takes Seroquel, which he has
12 to take in about an hour.

13 (A PAUSE.)

14 MR. WILSON: I thought I was told that he had -- was
15 going to take it, but what happens when he takes it, it
16 puts him to sleep. So, I'm just letting you know.

17 THE COURT: Okay, she said up to about 11.

18 MR. WILSON: Thank you.

19 THE COURT: We'll be in recess.

20 (OFF THE RECORD.)

21 THE COURT: The jurors sent the following question
22 out:

23 Could you please explain what happens if we're
24 not able to reach a unanimous decision?

25 State and defense, I showed them this question before

1 we came out. Both agree that this is not a communication
2 that they're deadlocked. They're just asking a question
3 which may or may not apply, matter other than of interest,
4 a matter of interest to them.

5 And I think the state and the defense are both
6 concerned if I send in something without asking them a
7 question about what they mean by this question. Or if I
8 send in something saying please continue to deliberate may
9 be in essence an Allen charge. I don't interpret this
10 question as being an Allen -- a deadlocked statement. It's
11 just a question, and it could just once again be academic.
12 I don't know.

13 What's the state's position?

14 MR. HUMPHRIES: We agree, Your Honor. That's -- if
15 there's to be an Allen charge, I believe the jury has to
16 state that expressly, that they are -- they can't reach a
17 decision or hopeless deadlocked, something of that nature.
18 And any, any response asking them to continue to deliberate
19 I believe would be touching on an Allen, and then that
20 would put us sort of in perilous waters in terms of what we
21 can do after that.

22 THE COURT: Defense?

23 MR. WILSON: And, and, Your Honor, I concur with that.

24 THE COURT: Then if I sent back a response: I cannot,
25 I cannot answer the question the way you phrased it; if

1 you have any questions, let me know.

2 MR. HUMPHRIES: I don't object to that.

3 MR. WILSON: The, the -- I don't have any objection to
4 that, no, sir.

5 THE COURT: I'll write down: I cannot answer the
6 question the way you phrased it. Please let me know if you
7 have any other questions.

8 (A PAUSE.)

9 THE COURT: Ms. Huggins.

10 CLERK OF COURT: Yes, sir.

11 THE COURT: Let them read my response to them. Tell
12 them that we must keep that question.

13 Listen, tell them to read it and then hand it back to
14 you. Let them keep it for a while, then give it back to
15 you.

16 Okay, we'll see if they have any other questions.
17 Y'all stay close by.

18 MR. HUMPHRIES: Thank you, Your Honor.

19 (OFF THE RECORD.)

20 THE COURT: Everybody be seated. It's been about two
21 hours since we sent the comment back to the jury. There's
22 been no response to that. Both the state and defense
23 wonders if, wonders if the jurors, whether they, whether
24 they were seeking another question of the court, don't know
25 how to phrase it, what. I brought the attorneys back into

1 chambers, and my understanding, the state and defense both
2 agree that I will send a message to the jury: Do you have
3 any questions or messages for the court, and would you like
4 to ask any questions or send any messages to the court?

5 Is that it?

6 MR. HUMPHRIES: Yes, sir.

7 MR. WILSON: Yes, sir. That's correct.

8 (A PAUSE.)

9 THE COURT: Y'all approach for a second.

10 (OFF-THE-RECORD BENCH CONFERENCE.)

11 THE COURT: State and defense, I'm sending the
12 following to the jury:

13 Mr. Foreman and members of the jury, do you have
14 any questions or messages for the court?

15 February 8, 2008.

16 Everyone agrees?

17 MR. HUMPHRIES: Yes, sir.

18 MR. WILSON: Yes, Your Honor.

19 THE COURT: All right. They may want dinner. They
20 may want to go back to the hotel or maybe whatever and not
21 know they can ask.

22 All right, if you would, Madame Clerk, take this back
23 to them.

24 All right, I'll let y'all know if they send anything
25 out.

1 (OFF THE RECORD.)

2 THE COURT: The question the juror replied was:

3 What is the law state when a jury does not reach
4 any unanimous decision at this stage of the
5 trial?

6 The concern is and the question is he's asking a
7 hypothetical legal question which doesn't directly state
8 they have any problems. I could send them a message back
9 in I cannot answer hypothetical questions. Do you have any
10 specific questions or comments about your jury and that
11 refer to your jury, or I could bring them out and tell
12 them. Preferences or comments from the defense or from the
13 state?

14 MR. HUMPHRIES: Send a note.

15 MR. WILSON: I agree with the note.

16 THE COURT: All right, the note will say -- I'll tell
17 you again. Y'all reviewed the note from the jury, so I
18 cannot answer hypothetical questions. Do you have any
19 specific questions or comments that relate to your jury?

20 MR. HUMPHRIES: Yes, Your Honor.

21 MR. WILSON: Yes, sir. Yes, sir.

22 (A PAUSE.)

23 THE COURT: I cannot answer hypothetical questions.

24 Do you have any specific questions to ask or
25 comments that you would like to make about your

1 jury?

2 All right with everyone?

3 MR. WILSON: Yes, sir.

4 MR. HUMPHRIES: Yes, sir. Yes, sir.

5 (A PAUSE.)

6 THE COURT: It might take them five minutes. Just
7 hang around close. I'll come back in as soon as they do.

8 (OFF THE RECORD.)

9 THE COURT: Okay, be seated. The last message the
10 jury sent out, both sides agree indicates that they're
11 deadlocked. The state agree?

12 MR. HEMBREE: Yes.

13 MR. HUMPHRIES: Yes, Your Honor.

14 THE COURT: Defense agree?

15 MR. WILSON: Yes, Your Honor.

16 THE COURT: Court's Exhibit 25.

17 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
18 NUMBER 25.)

19 THE COURT: What I propose to do is bring them out,
20 give them an Allen charge, and then give them the option of
21 continuing the deliberations tonight or to go home, go back
22 to their rooms and come back tomorrow. Propose to give
23 them the Allen charge and then give them the choice if they
24 wish to continue deliberations tonight, see if they can
25 reach a decision in a reasonable time. Fine, we'll wait

1 for them, but if they do not feel so, they'd rather go,
2 rather go home, go back to their room and come back
3 tomorrow and try in a reasonable time, we'll do that.

4 I read to you all I will read them as an Allen charge,
5 which includes the general Allen charge except it doesn't
6 have the thing about mistrial.

7 Okay, position of the state?

8 MR. HUMPHRIES: State agrees.

9 THE COURT: Okay, defense now. Mr. Wilson, be glad to
10 hear from you.

11 MR. WILSON: Judge, I agree that -- Judge, can I have
12 one second, please?

13 (COUNSELORS CONFER WITH DEFENDANT.)

14 MR. WILSON: Judge, we, we agree with bringing them
15 out, and we agree with bringing them out and asking what
16 choice is.

17 THE COURT: Does anybody have anything as a guide to
18 submit to me as far as other than what I said I would read
19 to them?

20 MR. HUMPHRIES: No, Your Honor.

21 MR. WILSON: No, sir.

22 THE COURT: All right, bring the jury out, please.

23 BAILIFF: You want the alternates?

24 THE COURT: Yeah, let's go ahead and -- no, leave the
25 alternates in the room.

1 (THE JURY ENTERS AT 12:26 A.M.)

2 THE COURT: Ladies and gentlemen, I have your comment.
3 Let me reply to you in this fashion and in this way.

4 Mr. Foreman, ladies and gentlemen of the jury, you
5 stated that you've been unable to unanimously agree on the
6 decision in this case. As I instructed you earlier, the
7 decision of the jury must be unanimous.

8 When a matter is in dispute, it isn't always easy for
9 even two people to agree. So, when twelve people must
10 agree, it's even more difficult. In most cases, absolute
11 certainty cannot be reached or expected. However, you have
12 a duty to make every reasonable effort to reach a unanimous
13 decision.

14 In doing so, you should consult with one another,
15 express your own views, listen to the opinions of your
16 fellow jurors, tell each other how you feel, and why you
17 feel that way. Discuss your differences with open minds.
18 Although the decision of the jury must be unanimous, every
19 one of you has a right to your own opinion. The verdict,
20 the decision you agree to must be your own decision, the
21 result of your own convictions, and you should not give up
22 your firmly-held beliefs merely to be in agreement with a
23 fellow juror.

24 The majority should consider the minority's position,
25 and the minority should consider the majority's position.

1 You should carefully consider and respect the opinion of
2 each other and reevaluate your position for reasonableness,
3 correctness, and impartiality. You must lay aside all
4 outside matters and reexamine the questions before you
5 based on the law and the evidence in this case.

6 Now, ladies and gentlemen of the jury, I'm going to
7 give you an option at this time. I'm going to ask you to
8 return and continue deliberations with the hope that you
9 can arrive at a decision, a unanimous decision within a
10 reasonable time. If you wish to do so, to continue
11 deliberations tonight to see if you can come to a unanimous
12 decision within a reasonable time, then I'll be glad to let
13 you do so. I'll let you make the decision. If you'd
14 rather go back to the hotel room, come back tomorrow to see
15 if you can reach a unanimous decision in a reasonable time,
16 you can do that. I will let you make the decision.

17 So, return to the jury room. If you wish to continue
18 deliberations tonight to see if you can reach a unanimous
19 decision, that's fine. That's your choice, and we'll wait
20 with you. Or if you feel you'd rather return to the hotel
21 rooms and come back tomorrow to continue deliberations, see
22 if you can reach a unanimous decision within a reasonable
23 time, then we'll do that.

24 If you would, go to the jury room and, Mr. Foreman,
25 you can let the clerk know whether or not you wish to

1 consider deliberations tonight to see if you can reach a
2 decision in a reasonable time, or if you'd rather come back
3 tomorrow morning, okay?

4 FOREPERSON: Yes, sir.

5 THE COURT: Go to the jury room, and the clerk will be
6 outside waiting for your decision on whether you wish to
7 continue tonight. You may step to the jury room.

8 (THE JURY EXITS AT 12:30 A.M.)

9 THE COURT: Any exceptions from the state?

10 MR. HEMBREE: No, sir.

11 THE COURT: Defense?

12 MR. WILSON: No, sir.

13 THE COURT: Well, let's just wait right here and see
14 if we get an answer to that. While we're waiting, can I
15 see counsel at the bench?

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 THE COURT: All right, bring the jury out. They say
18 they would like to return tomorrow at 9 a.m. I just want
19 to give them a brief instruction before they go. I gave
20 them the choice of times.

21 BAILIFF: Alternates, too, Judge?

22 THE COURT: All of them.

23 (THE JURY ENTERS AT 12:44 A.M.)

24 THE COURT: Okay, ladies and gentlemen, I understand
25 that you all would like to come back tomorrow to consider

1 my additional charge I gave you earlier and see if you
2 reach a decision in a reasonable time, and that will be
3 fine. We'll let you go tonight and bring you back
4 tomorrow. Understand you chose 9 a.m. to come back. So,
5 we'll be back then, too.

6 Please do not discuss this case with anyone at home or
7 back to your rooms. Relax and we will -- I'll talk to you
8 briefly tomorrow morning at 9 a.m.

9 Once you get here, do not begin your deliberations.
10 I'll bring you out, say good morning, hello, and then we'll
11 get you back started then, okay?

12 All right, do not watch any news again; don't look at
13 any local papers. We'll look to see y'all then tomorrow
14 morning.

15 (THE JURY EXITS AT 12:46 A.M.)

16 THE COURT: Wait.

17 DEPUTY SHERIFF: Yes, sir.

18 THE COURT: Make sure they're here no later than about
19 ten minutes to 9, okay?

20 DEPUTY SHERIFF: Yes, sir.

21 THE COURT: All right, we'll see you tomorrow morning.
22 All right, we will then adjourn.

23 Now listen. Normally we are not going out because the
24 jury is going out. So, everyone be careful. Don't get
25 anywhere close to where the jurors are loading up or

1 whatever else. I don't want anyone to be close in that
2 regard, and we will start back, we will start back at 9
3 a.m. tomorrow, 9 a.m. Everyone have a good evening.

4 I will bring the jury out for before they begin
5 deliberations and then send them back. See y'all tomorrow
6 morning.

7 (A PAUSE.)

8 THE COURT: Y'all have any problem with her locking
9 the exhibits in a room in the back?

10 MR. HEMBREE: No, sir. No objection from the state,
11 Your Honor.

12 MR. WILSON: No objection.

13 (WHEREUPON, THE CASE IS AT EASE.)

14 FRIDAY, FEBRUARY 8, 2008

15 (COURT RESUMES AT 9:07 A.M.)

16 THE COURT: Okay, state ready to bring the jury in and
17 they can begin the deliberations?

18 MR. HEMBREE: State's ready, Your Honor.

19 THE COURT: Defense ready?

20 MR. WILSON: We're ready.

21 THE COURT: Bring the jury in, please.

22 (THE JURY ENTERS AT 9:09 A.M.)

23 THE COURT: All right, ladies and gentlemen, good
24 morning to you. I gave you an additional charge last
25 night. If you need me to recharge that, then let me know.

1 If not, then you may begin your deliberations and let us
2 know when you reach a decision.

3 One juror is doing this. Do you hear me all right,
4 Mr. Randall?

5 JUROR: I can hear you fine, but I would like to hear
6 the recharge.

7 THE COURT: Well, if you would, how about if y'all
8 would, just step outside. If that's the request, I'll just
9 wait right here. Just step outside. If that's your
10 request, come on in and I'll just recharge you if you
11 haven't begun your deliberations.

12 (THE JURY EXITS AT 9:11 A.M.)

13 (A PAUSE.)

14 THE COURT: All right, I'm just going to see if all of
15 them -- I assume they do, but I told them last night not to
16 begin their deliberations. So, in essence, this would not
17 be a second Allen charge. I'm just basically repeating
18 what I said. So, they haven't deliberated since last
19 night. Everyone agree?

20 MR. HUMPHRIES: Yes, sir.

21 MR. WILSON: Judge, I, I, I agree with your assessment
22 that they have not deliberated since you gave them the
23 Allen charge last night. I just, I don't know that I agree
24 that that, that it's appropriate to give it to them again.

25 THE COURT: Once they request it.

1 MR. WILSON: I understand. I, I know that they've
2 requested it, and I've heard them request it obviously. I
3 -- but, I mean, it was given to them last night. I, I
4 don't -- I mean, my position is is that, I mean, you gave
5 it to them last night, and so I don't want them to have it
6 again. And the reason for that is is that I think that
7 if, if by giving it, it makes it -- at least to me, I get
8 the ---

9 THE COURT: Mr. Wilson, I'm concerned. What do you
10 want me to do? I thought when I came out before, I came
11 out from chambers, you all said that if they asked for it,
12 that it was fine.

13 MR. WILSON: I did say that.

14 THE COURT: I would not have mentioned that unless you
15 said in chambers that if they asked for it, you'd have no
16 problem.

17 When I mentioned it, I saw the gentleman in the back
18 waving his hand clearly. Did anyone else decide while he
19 was, Mr. Randall, was waving his hand saying this, and I
20 said did you hear me, and he said point blank I would like
21 to hear the charge again. I mean, that was the request,
22 and then the lady on the front left, I forget her name. I
23 think it was Ms. Vaught, Vaught-Morris raised her hand,
24 said she wanted to hear it again. So, they've requested
25 it. I didn't -- I mean, that that's because they were

1 themselves making motions saying they wanted to hear it.

2 Mr. Humphries?

3 MR. HUMPHRIES: The only thing that, and I don't want
4 to interject if Mr. Wilson's not finished.

5 MR. WILSON: That's all right. Go ahead.

6 MR. HUMPHRIES: But the concern that defense had last
7 night regarding whether or not we Allen charged them at all
8 was that they were so tired and had been at it so long,
9 that we -- that they wanted the court just to send them
10 home without anything. Now, in that context with their
11 concerns, the court gave them the Allen charge.

12 THE COURT: Then I gave them the option to deliberate
13 tonight or tomorrow morning.

14 MR. HUMPHRIES: You did. So, if the position was last
15 night that they were too tired to fully concentrate and
16 continue deliberating, I can't see where there is -- in
17 fact it seems to me it would be a benefit to the defense
18 and would, it would match with their position last night
19 that now they are fresh and they can hear it again as they
20 requested. I don't understand the distinction there. It
21 seems to me that it follows their, their position from last
22 night.

23 THE COURT: Is the foreman outside, Mr. McLeod?

24 AGENT McLEOD: Yes, sir.

25 THE COURT: Hold on one second.

1 MR. WILSON: Judge, and I think counsel is correct. I
2 did say last night that, that I thought that they were
3 tired and I thought that they may not be thinking clearly
4 and as a result of that, that I wanted them to go home and
5 get some rest and ---

6 THE COURT: So, therefore, you were concerned last
7 night they did not hear my charge?

8 MR. WILSON: So, so, yes, that's where I'm going. I'm
9 saying now that I'm going to withdraw my objection because
10 I did say that last night, and that really would put me in
11 an inconsistent position if I take the opposite position
12 now. So, I, I withdraw my...

13 THE COURT: Bring them in, please. So, everyone does
14 agree, though, that at least two jurors and probably the
15 rest of them requested it?

16 MR. WILSON: Yes, sir.

17 THE COURT: Okay. Bring them in.

18 (THE JURY ENTERS AT 9:15 A.M.)

19 THE COURT: Mr. Foreman, I take it that your jury
20 wants me to repeat what I said last night?

21 FOREPERSON: Yes, sir, please.

22 THE COURT: Ladies and gentlemen, take no emphasis on
23 me repeating it. What I take from you all is that it was
24 after midnight last night and maybe because of the length
25 of the day, you didn't listen carefully or could not listen

1 as carefully as maybe you can after some rest, and you
2 really want me to charge it, but no emphasis about anything
3 other than the fact that you may not heard what I said last
4 night. That's what I assume, so please don't take any, any
5 meaning of about me doing. This is like the first time
6 charging this.

7 Ladies and gentlemen of the jury and Mr. Foreman, you
8 stated that you've been unable to unanimously agree on the
9 decision in this case. As I instructed you earlier, the
10 decision of the jury must be unanimous. When a matter is
11 in dispute, it isn't always easy for even two people to
12 agree. So, when twelve people must agree, it becomes even
13 more difficult.

14 In most cases, absolute certainty cannot be reached or
15 expected. However, you have a duty to make every
16 reasonable effort to reach a unanimous decision. In doing
17 this, you should consult with one another, express your own
18 views, and listen to the opinions of your fellow jurors.
19 Tell each other how you feel and why you feel that way;
20 discuss your differences with open minds.

21 Although the decision of the jury must be unanimous,
22 every one of you has the right to your own opinion. The
23 decision you agree to must be your own decision, the result
24 of your own convictions, and you should not give up your
25 firmly-held beliefs merely to be in agreement with your

1 fellow jurors.

2 The majority should consider the minority's position,
3 and the minority should consider the majority's position.
4 You should carefully consider and respect the opinions of
5 each other and reevaluate your position for reasonableness,
6 correctness, and impartiality. You must lay aside all
7 outside matters and reexamine the questions before you
8 based on the law and the evidence in this case.

9 I therefore, ladies and gentlemen, ask you to return
10 to your deliberations with the hope that you can arrive at
11 a verdict within a reasonable time.

12 Now, ladies and gentlemen, I told you not to
13 deliberate last night after I charged you in this, and I
14 told you not to deliberate this morning until after you --
15 I came in and saw you. So, now at this time with that
16 additional charge then, if you would please step to the
17 jury room. You may begin deliberations until you reach a
18 decision within a reasonable time. You may return to your
19 jury room.

20 (THE JURY EXITS AT 9:18 A.M.)

21 THE COURT: Okay, hearing no exceptions, then we'll
22 wait for the jury's questions or decision or whatever.
23 I'll be in my chambers.

24 MR. HUMPHRIES: Thank you, Your Honor.

25 MR. WILSON: Thank you, Your Honor.

1 THE COURT: I assume no, I hear no exceptions.

2 MR. WILSON: There are no exceptions.

3 MR. HUMPHRIES: No, Your Honor.

4 (OFF THE RECORD.)

5 THE COURT: All right now, ladies and gentlemen,
6 whatever this verdict is, this is a court of law and so
7 let's remain civil, and I don't want any outbursts in any
8 way whatsoever, please. Officers, if you would help me
9 maintain order.

10 State ready?

11 MR. HEMBREE: State's ready, Your Honor.

12 THE COURT: Defense ready?

13 MR. WILSON: We're ready, Your Honor.

14 THE COURT: All right. If you would, bring the jury
15 in, please.

16 (THE JURY ENTERS AT 10:14 A.M.)

17 THE COURT: Mr. Foreman, ladies and gentlemen of the
18 jury, Mr. Foreman, I understand you have reached a
19 decision. Is that correct?

20 FOREPERSON: Yes, sir.

21 THE COURT: If you would, hand the form to the clerk
22 for me, please.

23 (A PAUSE.)

24 THE COURT: All right, if you would, counsel and
25 defendant please stand.

1 CLERK OF COURT: The *State vs. Louis Michael Winkler*,
2 Winkler, we the jury in the above-entitled case find beyond
3 a reasonable doubt the following statutory aggravating
4 circumstances: one, the murder was committed while in the
5 commission of a burglary in any degree; two, the murder of
6 a witness or potential witnesses committed at any time
7 during the criminal process for the purpose of impeding or
8 deterring prosecuting of any crime.

9 THE COURT: And is that signed by all twelve jurors?

10 CLERK OF COURT: It is signed by all twelve jurors.

11 After finding these aggravating circumstances, we the
12 jury in the above-entitled case, having found beyond a
13 reasonable doubt the existence of the following statutory
14 aggravating circumstances -- to wit, one, the murder was
15 committed while in the commission of burglary in any
16 degree; two, the murder of a witness, a potential witness
17 committed at any time during the criminal process for the
18 purpose of impeding or deterring prosecution of any crime
19 -- now recommend to the court that the defendant, Michael
20 Louis Winkler, be sentenced to death.

21 THE COURT: If this is the verdict of all jurors and
22 your signature appears on this sheet, please raise your
23 right hand.

24 (THE JURORS COMPLY.)

25 THE COURT: You may put it down.

1 Any polling requested by the state?

2 MR. HEMBREE: No polling requested by the state, Your
3 Honor.

4 THE COURT: Polling requested by the defense?

5 MR. WILSON: Yes, Your Honor, I do. Thank you, Your
6 Honor.

7 THE COURT: What I'll ask for the clerk to do is
8 similar to what we did in the other phase. She'll say is
9 this decision, is this your decision, is it still your
10 decision. So, when she calls your name out, please stand.
11 She'll say is this your decision, is it still your
12 decision.

13 You may proceed, Madame Clerk.

14 CLERK OF COURT: Christopher S. Trout, is this your
15 decision?

16 JUROR: Yes, ma'am.

17 CLERK OF COURT: Is this still your decision?

18 JUROR: Yes, ma'am.

19 CLERK OF COURT: Vicki Bell, is this your decision?

20 JUROR: Yes, ma'am.

21 CLERK OF COURT: Is this still your decision?

22 JUROR: Yes, ma'am.

23 CLERK OF COURT: Thomas Hardwick, Sr., is this your
24 decision?

25 JUROR: Yes, ma'am.

1 CLERK OF COURT: Is this is still your decision?

2 JUROR: Yes, ma'am.

3 CLERK OF COURT: Stephanie Morris, is this your
4 decision?

5 JUROR: Yes, ma'am.

6 CLERK OF COURT: Is this still your decision?

7 JUROR: Yes, ma'am.

8 CLERK OF COURT: Philip Randall, is this your
9 decision?

10 JUROR: Yes, ma'am.

11 CLERK OF COURT: Is this still your decision?

12 JUROR: Yes, ma'am.

13 CLERK OF COURT: Kevin Brown, is this your decision?

14 JUROR: Yes, ma'am.

15 CLERK OF COURT: Is this still your decision?

16 JUROR: Yes, ma'am.

17 CLERK OF COURT: Sandra Thompson, is this your
18 decision?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Is this still your decision?

21 JUROR: Yes, ma'am.

22 CLERK OF COURT: Lorene Wright, is this your decision?

23 JUROR: Yes, ma'am.

24 CLERK OF COURT: Is this still your decision?

25 JUROR: Yes, ma'am.

1 CLERK OF COURT: Lauren Roughton, is this your
2 decision?

3 JUROR: Yes.

4 CLERK OF COURT: Is it still your decision?

5 JUROR: Yes.

6 CLERK OF COURT: JohnPaul Plewa, is this your
7 decision?

8 JUROR: Yes.

9 CLERK OF COURT: Is this still your decision?

10 JUROR: Yes.

11 CLERK OF COURT: Glenn ---

12 THE COURT: Sir, what was your answer from, from you
13 for both those questions?

14 JUROR: Yes, sir.

15 CLERK OF COURT: Yes, sir, he did.

16 Glenn Cole, is this your decision?

17 JUROR: Yes, ma'am.

18 CLERK OF COURT: Is it still your decision?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Jeron Wallingford, is this your
21 decision?

22 JUROR: Yes.

23 CLERK OF COURT: Is this still your decision?

24 JUROR: Yes.

25 THE COURT: Now, ladies and gentlemen of the jury, if

1 you would, please step back to the juror room and I'll
2 bring you back out shortly. Just step back.

3 (THE JURY EXITS AT 10:22 A.M.)

4 THE COURT: Okay, motions by the state?

5 MR. HEMBREE: No motions by the state, Your Honor.

6 THE COURT: Any motions by defendant?

7 MR. WILSON: Yes, Your Honor. Your Honor, at this
8 time several motions. One, I would move at this time to
9 have the court set aside the sentence of death proposed by
10 the jury as being a verdict of sympathy, prejudice, and/or
11 caprice on the part of the jury. I think that, that the
12 verdict is inconsistent with, with the facts and
13 circumstances surrounding the defendant's character and
14 inconsistent with, with the testimony I think that was
15 produced during the sentencing phase of the trial.

16 Secondly I think, Your Honor, that the state had
17 failed to prove the existence of the second aggravating
18 circumstance which was the one which is number -- it's the
19 statutory number 11, that a, that the person was killed as
20 a result of being a witness in a, in a case. And I, I
21 can't remember the exact statutory language, but it was
22 number 11 in the statute and -- which is the aggravating
23 circumstance they relied on.

24 I would submit to the court that, that, that the state
25 has failed to prove that beyond a reasonable doubt. And

1 that the jury, in spite of that, found that the existence
2 of that aggravating circumstance and, therefore, I think
3 that that also prejudiced the defendant in the verdict, in
4 the outcome of the verdict. So, I would ask the court to
5 set aside the sentence of death in this particular case on
6 those grounds.

7 THE COURT: All right, I find that the decision of the
8 jury was one they thought long and hard about. That they
9 made a decision based on the evidence presented, and there
10 was sufficient evidence for the jury to make this decision,
11 and this decision of the jury was not the result of any
12 prejudice, of any passion, any capricious or arbitrary
13 factors, and that the evidence was there.

14 And as to the other aggravating circumstance, I find
15 that the evidence was sufficient for the jurors to
16 determine that was an aggravating circumstance. And that
17 their decision is, is supported by the evidence in this
18 case. So, in that regard, Mr. Wilson, I respectfully deny
19 your motion. Any other motions from defense?

20 MR. WILSON: No, sir, no other motions.

21 THE COURT: All right. I'm ready then to proceed to
22 the sentencing phase by the court at this time if y'all are
23 ready to come round. State, anything y'all wish to -- come
24 around.

25 MR. HEMBREE: No, Your Honor. You are familiar with

1 the defendant's prior criminal history based on the matters
2 that were presented during the penalty phase of the case.

3 Your Honor, we have consulted with the family. They
4 have indicated they do not need -- feel the need to make
5 any additional statement to the court. Any of victim
6 impact statements they -- of course family and friends did
7 appear during the penalty phase and made, made victim
8 impact statements. And we would just of course incorporate
9 those statements into the, into the sentencing proceeding
10 at this time.

11 THE COURT: And of course, Mr. Wilson, I'll be glad to
12 hear from you, your client, anyone else. Y'all wish to
13 come around to the center? All right, Mr. Wilson, be glad
14 to hear from you or Mr. Winkler, Mr. Rathbun.

15 MR. WILSON: Yes, sir. Your Honor, I mean, I would
16 say obviously the court heard all of the evidence and
17 testimony that was produced both in the sentence -- in the
18 trial and in the sentencing phase of the case. And the
19 court also observed all the mitigation that was offered in
20 the defendant's behalf and observe the defendant's
21 testimony during the course of the trial and the sentencing
22 phase.

23 And I ask the court, I understand that the court is
24 limited in what it can do. It denied motions that we made
25 for -- set aside the sentence, so I understand that that is

1 now mandatory, the sentence is now mandatory. And beyond
2 that, I don't have anything.

3 THE COURT: Mr. Rathbun, anything from you, sir?

4 MR. RATHBUN: I have nothing to add, Your Honor.

5 THE COURT: Mr. Winkler, I'd be glad to hear from you,
6 sir.

7 MR. WINKLER: Well, Your Honor, I believe the jury has
8 had their time and done their thing. They found me guilty
9 and found me guilty of death. But I feel that you have run
10 the most unfair trial I've ever heard of. You yourself,
11 you've denied twenty-two of twenty-three motions that my
12 lawyers have put forth. You put a juror on the jury box
13 and qualified him and he knew four of the defense
14 witnesses. I have a clerk of courts who has been involved
15 in every aspect of this, of this trial who was a friend of
16 my wife's for twenty years.

17 You kept telling me to be quiet. You've heard enough
18 and this and that. It was the most unfair trial I've ever
19 even heard of, and everybody that has been here throughout
20 that time knows that. You've been totally biased against
21 me, and I don't know why because I don't know you, but I
22 know one thing. I did not shoot my wife, and the man that
23 shot her is sitting amongst her, her family. That's their
24 problem. But if I have been found guilty, I'm willing to
25 accept it, and if I've been put, found put to death, I will

1 accept that.

2 I will appeal everything I can as, as long as I can
3 and fight to my last breath, but this has been an unfair
4 and impartial trial on your behalf, and, and there's a lot
5 of people that have been sitting here through this whole
6 thing and, and they know that from day one. There was four
7 or five jurors that should never have been qualified to be
8 put on a jury, knowing the fact that they knew Rebekah
9 Winkler. That's all I have to say, Your Honor.

10 THE COURT: Mr. Winkler, this court has done its best
11 to give you the fairest trial that we can. And as far as
12 whether or not you were asked not to say anything, Mr.
13 Winkler, I think you were given, what, a couple of hours,
14 three hours, four hours and maybe more to say what you
15 wanted to say, and I tried to be as fair as I can to you.

16 I'm sorry you feel the way you do. And in fact, Mr.
17 Winkler, I'm not sure there's anybody within this system of
18 justice, from defense counsels to officers to prosecutors
19 to court officials who have nothing to do with anything
20 other than administratively trying to get things done for
21 court, as well as jurors who are now leaving court. So,
22 you had concern about everyone involved in this thing but,
23 but concerns about your own conduct, you're not concerned
24 about your own conduct. It seems you've never have any
25 concern about your own conduct.

1 SENTENCE OF THE COURT:

2 And the jury's decision has been made and the
3 defendant, Louis Michael Winkler, having been found by the
4 jury to be guilty of the offense of murder, the jury has
5 recommended that the defendant should be sentenced to
6 death. It is therefore the judgment of the law and the
7 sentence of this court that the defendant, Louis Michael
8 Winkler, be taken to the J.B. Long Detention Center, thence
9 to the State Department of Corrections, henceforth to be
10 kept in close and safe confinement until the 10th day of
11 March 2008, upon which day between the hours of 6:00 p.m.
12 and 6:00 a.m. or on the order of execution issued by the
13 South Carolina Supreme Court the defendant, Louis Michael
14 Winkler, shall suffer death by electrocution or by lethal
15 injection in the manner provided by law. That is the
16 sentence of the court.

17 MR. WILSON: Thank you, Your Honor.

18 MR. HEMBREE: Your Honor, I believe we have two other
19 charges that the defendant needs to be sentenced.

20 THE COURT: We have burglary charges. They are not
21 consumed. So, you've heard the charges. The sentence of
22 the court is, it is thirty years and on the assault and
23 battery high and aggravated nature, it's ten years, all
24 those to run concurrent and concurrent with this sentence.
25 Thank you.

1 MR. WILSON: Thank you, Your Honor.

2 THE COURT: Now, Mr. Wilson.

3 MR. WILSON: Yes, sir.

4 THE COURT: Make sure Mr. Winkler's informed all his
5 rights to appeal.

6 MR. WILSON: I'm doing that now.

7 THE COURT: You document that. I am going to bring
8 the jury back in to give them a sheet about discussions.
9 I'll say of course now that this sheet -- this trial is
10 over, the gag order I had on you all is released. However,
11 y'all still have the standards of ethics and the standards
12 of legal responsibility regarding any comments you make.

13 MR. WILSON: Yes, sir.

14 THE COURT: You understand that?

15 MR. WILSON: Yes, sir.

16 THE COURT: And you understand that?

17 MR. HEMBREE: Yes, Your Honor. Thank you.

18 THE COURT: All right, bring the jury back in, please.

19 MR. HEMBREE: Your Honor, what about the alternates?

20 THE COURT: Bring them in, too.

21 (THE JURY ENTERS AT 10:33 A.M.)

22 THE COURT: Ladies and gentlemen of the jury, pursuant
23 to the decision you, you've, that you rendered and my
24 decision after hearing from the defendant and considering
25 the evidence in the case, I decided that your decision was

1 not the result of any arbitrary, capricious passion or
2 prejudice but was based upon evidence presented in the
3 trial and supported by the evidence in the trial. And,
4 therefore, I have sentenced, affirmed your, your
5 recommendation and I have decided to sentence the defendant
6 to death by lethal, lethal injection or electrocution, and
7 the date I set, 10 March 2008. But there are automatic
8 appeals and it's almost assured that that date will not be
9 the day. There will be appeals and that type of thing, and
10 it will be I'm sure many years before the results of your
11 sentence is completed.

12 I do want to thank you very much for your service. I
13 know these things, it's almost an understatement to say
14 that they're not easy. They are very difficult. We are
15 dealing with humans; we're dealing with people in the
16 courtroom. We look at them. You look at them. You listen
17 to them, and you also have to deal with what horrible
18 things some people have done, and you decided that in this
19 case horrible things were done. And as a result of that,
20 you decided that the defendant was guilty of the crimes of
21 murder, burglary, assault and battery of a high and
22 aggravated nature.

23 After that, you not only heard that he had done those
24 crimes. You heard more about the defendant and after you
25 heard those things, you determined that looking at all the

1 circumstances of Mr. Winkler, at his actions, that you felt
2 under the law, and the law is what we live under in this
3 society. The law is what makes America the greatest nation
4 on earth. That this thing took days and days and days. It
5 was not something that automatically happened. It was not
6 something that is quickly done or quickly decided. It is
7 not something that's done by public officials or done by
8 government employees or done by people who have to answer
9 to anyone other than citizens of a community who answer to
10 the evidence and answer to the law and to their oath to
11 uphold the law with the evidence.

12 And you've done that. You've done what you've felt
13 after deliberation among all of you for hours and -- well,
14 really for days what you felt was appropriate. No one, no
15 one can criticize your decision because your decision was
16 based on what you heard, what you considered, and the law
17 as I instructed it to you.

18 It is, it's, it would be wrong for you not to feel
19 sad. It would be wrong for you to go about today as if
20 this was any other day because then it would probably show
21 that, that if it's within you, that maybe you weren't
22 listening. But it would also be wrong for you to say in
23 your mind that we had no evidence or what we did was wrong
24 because it wasn't. What you did was supported by the
25 evidence. Either way you would have come out, I would have

1 supported that decision because there was sufficient
2 evidence either way. So, you should know that in this time
3 that you've been here for two weeks now, you have done what
4 other Americans, other citizens in a free society where we
5 are free but we also know there are limits to making sure
6 you respect the freedom of others. Part of that freedom is
7 that right to live and you're not to take their life and
8 not to be involved in so much violence throughout your
9 life. You've listened to all that, and you made your
10 decision. So, please understand what you did was correct
11 under the law and the evidence.

12 I am going to give you a sheet of paper, and what the
13 sheet of paper says, it says that, ladies and gentlemen,
14 you have no duty to discuss your decision with anyone, with
15 anyone. If anyone pressures you to make you say something,
16 then please, I've got down here Ms. Huggins's phone number.
17 Contact her; she will contact me. You have no duty at all.

18 Also, I cannot prohibit you from discussing matters.
19 I would, though, really say do not discuss other jurors.
20 If you choose to discuss something, don't discuss any other
21 jurors by name. That would be so unfair and so against the
22 process that you have gone through and the process that
23 you've, you've taken part in for these two weeks. So,
24 please do not discuss other jurors by name. But if you
25 choose to discuss matters, you're American. This is a free

1 society. You can do so. If you choose not to, though, and
2 someone continues to bother you, you let me know and I will
3 take care of that.

4 My alternates, in a way you've gone through a lot of
5 emotional and difficult times also because all day
6 yesterday you had to sit in a room all by yourself not
7 knowing whether you would end up being on the jury or not.
8 And then when the decisions in both cases were made, the
9 decisions were of these twelve and you were not able to
10 participate in reaching those decisions. I know that you
11 probably were a little frustrated and wanted to be in to
12 discuss maybe the last one or this one. But please know
13 that your presence was very, very important because up to
14 the very last time with the decision today, we could have
15 needed you. But you stayed and you were there and willing
16 and ready to serve. So, I thank you very much.

17 Now, Ms. Huggins, if you would, give the foreperson,
18 they can pass -- those are instructions from me about how
19 to contact someone if, in fact, you have any problems with
20 anyone. I dated it February 7th, but I had my clerk change
21 that 7 to an 8 down here, so I had it ready for yesterday.
22 And I mean that sincerely: if someone does bother you, let
23 me know.

24 Now, your jury service obviously is over. I want to
25 appreciate -- once again, I tell you I appreciate your

1 service. If you'd do me one last thing? Let me have the
2 honor of stepping down over there on the side and as you
3 step out of the box, I would personally like to thank you
4 as one American citizen to another American citizen. Thank
5 you for your service, and I mean it sincerely.

6 You may want to step back to the jury room if you wish
7 to say goodbye to each other. Ms. Huggins will go back and
8 tell you information regarding other matters
9 administratively as far as your jury service, any -- your
10 jury service checks and as far as things with your
11 employer. She'll be back in the jury room to discuss those
12 with you. And let me step down now so I can have the honor
13 of shaking your hand.

14 I want to thank the SLED agent Mr. McLeod, his group,
15 Sheriff Thompson and Ms. Huggins and all they've done to
16 try to make your stay comfortable here. We appreciate it.

17 (THE JURY EXITS AT 10:40 A.M.)

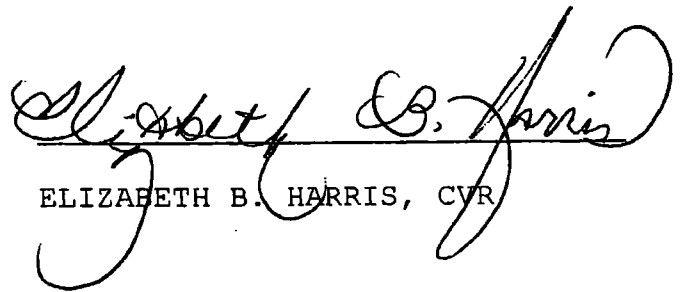
18 THE COURT: All right, I'm going to finish signing
19 these in chambers, get you to sign this matter here. All
20 right, the matters that have come before this court of
21 General Session term that began January 28, 2008, those
22 matters now having been completed, this court is hereby
23 adjourned *sine die*.

24 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR HORRY COUNTY, SOUTH CAROLINA, ON THE 28TH, 29TH, 30TH, 31ST DAYS OF JANUARY 2008 AND THE 1ST, 2ND, 4TH, 5TH, 6TH, 7TH, AND 8TH DAYS OF FEBRUARY 2008.

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



ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

DECEMBER 21ST, 2008

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

)
IN THE COURT OF GENERAL SESSIONS
)

STATE OF SOUTH CAROLINA

PLAINTIFF,

-VS-

LOUIS M. WINKLER

DEFENDANT.

COPY

2006-GS-26-2101

NON JURY PROCEEDINGS HELD BEFORE

THE HONORABLE JAMES E. LOCKEMY;

COMMENCING AT THE HOUR OF 2:12 PM, ON THE 3RD DAY OF
JANUARY, 2006, AT THE HORRY COUNTY COURTHOUSE, 15TH JUDICIAL
DISTRICT, CIRCUIT COURT, CONWAY, SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

COPY

H. Eugene Buckner
Official Court Reporter at Large
15th Judicial Circuit
PO Box 1462, Conway, SC 29528-1462

APPEARANCES:

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.... ON BEHALF OF THE STATE

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.... ON BEHALF OF THE DEFENDANT

NO EXHIBITS WERE MARKED BY THE COURT REPORTER IN THIS
HEARING AND NO WITNESSES TOOK THE STAND FOR EXAMINATION BY
COUNSEL.

1 MR. HUMPHRIES:

2 If it please The Court, Your Honor?

3 THE COURT:

4 Yes sir.

5 The matter in the interest of the
6 State versus Louis M. Winkler, Docket Number 2006-GS-26-
7 2101: It is of course an indictment for murder, burglary in
8 the first degree, assault and battery of a high and
9 aggravated nature, and escape.

10 The Defendant is present here with
11 his attorneys of record, Mr. Wilson and Mr. Rathbun.

12 The State's represented by Fran
13 Humphries, Deputy Solicitor.

14 Uh -- We're here for the matter of
15 scheduling and other matters pertaining to the capital case.

16 THE COURT:

17 Yes.

18 What I wanted to do today -- We'd
19 scheduled this matter for this day a while back. I wanted
20 to -- uh -- see if we needed to do a Blair Hearing -- uh --
21 and also see how far we were along to go ahead and set this
22 thing for a day certain for trial.

23 Uh -- Has the Defendant been examined
24 by the State Department of Mental Health?

25 MR. RATHBUN:

1 He has, Your Honor.

2 MR. HUMPHRIES:

3 He has, Your Honor.

4 THE COURT:

5 And -- uh -- I have not gotten a
6 written report. Uh -- You have Mr. Humphries, and you have
7 a copy of it Mr. -- uh --

8 MR. RATHBUN:

9 Yes.

10 THE COURT:

11 -- Wilson?

12 MR. WILSON:

13 Yes sir.

14 THE COURT:

15 Okay. Now do y'all object to me
16 reviewing the report?

17 Anybody object to me --

18 MR. WILSON:

19 No sir.

20 THE COURT:

21 Okay. Who has it?

22 MR. WILSON:

23 I have a copy.

24 THE COURT:

25 Mr. Rathbun has an extra copy too?

1 Let me look at that.

2 (WHEREUPON: The Court examines
3 documents handed up.)

4 THE COURT:

5 Now Mr. Wilson -- uh -- and Mr.
6 Humphreys, assuming -- uh -- if -- if the report indicates
7 that -- uh -- Mr. Winkler is competent -- I haven't reviewed
8 it myself -- but it does indicate that he was competent and
9 it does indicate that he knew right from wrong, and -- uh --
10 are you all ready for trial; or you all have other issues
11 that you need, Mr. Wilson?

12 MR. WILSON:

13 Judge, first of all, the -- the
14 report does indicate that the Defendant is competent and
15 does indicate that -- uh -- that he is able to stand trial.

16 My -- My concern is in my dealings --
17 and I -- I've indicated this to The Court in previous
18 conversations -- uh -- on the record that my concern is that
19 I don't obviously that I agree with this report.

20 We have contacted a -- uh -- a
21 psychologist in Charleston who does a good bit of this kind
22 on work and asked him if he would be willing to -- uh -- to
23 -- this speak with the Defendant and to -- to make a
24 determination -- an independent determination as to whether
25 or not the Defendant is competent; and whether or not the

1 Defendant -- uh -- is culpable for -- uh -- the alleged
2 activity -- criminal activity on his part. He has agreed to
3 do that.

4 He says that he can see the Defendant
5 some times middle or late January; and I -- I want to --

6 THE COURT:

7 The only thing I'm concerned about
8 though, this thing was -- uh -- dated 11-13-06 from Mr.
9 Frierson -- communicated -- uh -- I guess back -- uh -- Mr.
10 Wilson, have you requested -- uh -- for me to approve
11 anything in that regard -- and I --

12 MR. WILSON:

13 Judge, I got this order December
14 21st.

15 MR. HUMPHRIES:

16 As did we, Your Honor.

17 THE COURT:

18 Wow. And it looks like the exam was
19 done October the 18th.

20 MR. WILSON:

21 Yes sir. We --

22 MR. HUMPHRIES:

23 Yes sir. No question.

24 MR. WILSON:

25 Yes sir.

1 In fact, I called up there and asked
2 him -- because I knew from my last meeting that you were
3 concerned about it; and -- uh -- they said they would get it
4 to us as quick as they could. But we got it December 21st.

5 THE COURT:

6 The State have any objection to the
7 Defendant being -- uh -- diagnosed -- uh -- or at least an
8 evaluation made by and outside in -- uh -- outside -- uh --
9 either physician or PhD?

10 MR. HUMPHRIES:

11 Your Honor, I do not. And for the
12 record, I have reviewed the order and -- uh -- as The Court
13 has noted, not only was the Defendant found competent to
14 stand trial, but he was found criminally responsible and --
15 responsible for the crime -- uh -- and -- in -- in every
16 other aspect of which he was examined, he was found to be
17 satisfactory for the purpose of advancing trial.

18 Uh -- I don't have an objection. I
19 think its a prudent step for Defense Counsel.

20 I do have some concern -- uh -- about
21 some time frame, so that we can have the Blair hearing in
22 short order.

23 Uh -- And just because we're talking
24 about scheduling, I have the proposed scheduling order with
25 the amendments that we discussed -- uh -- on our last

1 telephone teleconference -- uh -- which I'm prepared to
2 submit to The Court. It would not at this time contain any
3 -- uh -- any date for a -- a Blair hearing, although I'm
4 looking at -- uh -- some of the proposed dates. Uh --

5 THE COURT:

6 You have the one I signed?

7 MR. HUMPHRIES:

8 We haven't gotten a signed copy, Your
9 Honor.

10 THE COURT:

11 I didn't think so. All right --

12 MR. HUMPHRIES:

13 No. Recon -- Mr. Wilson, in case he
14 doesn't either. It -- This has the -- the changes.

15 We do have a January 29th date -- a
16 status conference scheduled for the 29th.

17 I don't know if -- if the 29th is a
18 date that -- uh -- Mr. Wilson believes his examination can
19 be -- uh -- completed for the purposes up a Blair hearing.

20 THE COURT:

21 Well, Mr. Wilson, you've got to do
22 what? You said you've talked to the psychologists already?

23 MR. WILSON:

24 Yes sir. In fact I spoke to him
25 again on yesterday, and he indicated that he could see him

1 sometimes around the 15th -- around the middle of the month;
2 and, you know, he hasn't given me a date yet; and said he
3 would call back tomorrow to give me an exact date.

4 Uh -- But -- uh -- But he thinks that
5 he can do it sometime the week of the 15th --

6 THE COURT:

7 What I'm looking at right now --
8 instead of looking at the major situation of scheduling, I
9 want to look at the date we can go ahead and have a Blair
10 hearing or a decision can be made there.

11 Uh -- I'm just concerned if he sees
12 him in the middle of the month, if he's going to be able to
13 -- uh -- see him sufficiently to not only make a decision,
14 but to issue a report or be prepared to testify.

15 MR. WILSON:

16 Judge, Yes sir.

17 And -- And I've explained that to
18 him. And he indicated to me that he has testified in
19 several death penalty cases, and in several -- uh -- uh --
20 major trials where he's actually gone to court and actually
21 testified in these kinds of competency hearings.

22 So he is very familiar with it; and
23 he is -- uh -- more than willing to try to accommodate The
24 Court's scheduling and our schedule.

25 I was asked The Court, though -- I

1 think that he's going to need at least ten days or two weeks
2 after he does the examination to reduce his findings to
3 writing; so that we can share them before the Blair hearing.

4 That being the case, I -- I would ask
5 The Court -- I know we got this hearing on the 29th. That's
6 going to -- that -- that's going to be -- uh -- that's going
7 to be close.

8 But -- But I think it -- I think we
9 can probably do it. I could probably give you a clearer
10 answer tomorrow; because I will certainly -- uh -- share my
11 concerns with him and -- but I think it may be possible to
12 do it on the 29th.

13 THE COURT:

14 I know that -- uh -- since I will not
15 be here, I'm going to have to change some other things to
16 get here. Uh -- And so I do not want to set something up
17 that can't go.

18 So y'all have a General Sessions term
19 that week? Is that why you're saying the 29th or what?

20 Ware you saying the 29th?

21 MR. HUMPHRIES:

22 That's just the -- that was the date
23 that we had proposed --

24 THE COURT:

25 On the scheduling order?

1 MR. HUMPHRIES:

2 -- because at that point we
3 anticipated we would be in teleconference.

4 Your Honor, we could go to where you
5 are, depending on how far you are away.

6 I don't know where you're scheduled
7 to be on the 29th?

8 THE COURT:

9 I have bags packed every week for the
10 next six months.

11 Uh -- Let's right now tentatively say
12 -- uh -- No, wait a minute. Is that not -- uh -- a holiday?

13 MR. HUMPHRIES:

14 The 29th?

15 THE COURT:

16 Yeah, the Martin Luther King holiday.

17 MR. WILSON:

18 Fifteenth.

19 MR. HUMPHRIES:

20 No sir, that's -- uh --

21 MR. WILSON:

22 15th or 16th.

23 THE COURT:

24 Okay. Uh -- Let's tentatively say
25 that; and y'all get with me if there's a different time,

1 then we'll a Blair hearing.

2 Uh -- And I'm going to let you know
3 in a minute where I'll be that day.

4 Uh -- The next thing is this. Uh --
5 Assuming for a second we have a Blair hearing and just
6 assuming, just for the sake of discussion now, that the
7 Defendant were to found competent and criminally responsible
8 -- uh -- the other dates in the scheduling order -- uh -- I
9 talked to Court Administration about the trial dates we had
10 proposed -- uh -- in June.

11 MR. HUMPHRIES:

12 Yes sir.

13 THE COURT:

14 Uh -- Mr. Humphries, I wanted to let
15 you know the Court Administration was rather concerned
16 because they said that one of those weeks was not a
17 scheduled General Sessions week for Horry. And they had a
18 concern of me canceling General Sessions in some other
19 circuit to have General Sessions here.

20 And they said: Please let Mr.
21 Hembree know that they would -- uh -- they would prefer
22 having two weeks of General Sessions in Horry when they
23 scheduled two weeks of General Sessions in Horry; realizing
24 that Mr. Hembree would love to have weeks extra of General
25 Sessions.

1 MR. HUMPHRIES:

2 Yes, we would.

3 THE COURT:

4 Uh -- And -- uh -- please know I am -
5 - uh -- not really concerned one way or the other, other
6 than I did breach a little bit of -- uh -- concern with
7 Court Administration, but -- uh -- we do live in the
8 interesting -- uh -- era of -- uh -- administration I
9 suppose to say let's do it then.

10 Uh -- But -- uh -- let me just -- so
11 we don't need to address this issue -- or we do need to --
12 uh -- the other matters in that scheduling order, do either
13 one of y'all see how that would change too much -- uh -- as
14 far as looking at a trial date in June?

15 MR. HUMPHRIES:

16 Your Honor, I do not.

17 I'm looking at -- Our deadline for
18 filing the pretrial motions is in March, which would give
19 us, you know, a month and a half or more after the -- the
20 Blair hearing -- which I think is more than adequate time.

21 Uh -- It would keep us on track with
22 that proposed scheduling order, so I don't see any problems
23 with the other dates in the scheduling order providing we
24 start a Blair hearing on the 29th. That the --

25 THE COURT:

1 When in June do you all now have a
2 General Sessions court scheduled?

3 MR. HUMPHRIES:

4 Your Honor, I don't have the schedule
5 with me. And -- uh --

6 THE COURT:

7 Madam Clerk, do you have it?

8 CLERK:

9 Yes sir. Uh --

10 THE COURT:

11 Let me look at it.

12 You have General Sessions the last
13 two weeks of June.

14 Uh -- That appears to -- Well, you've
15 got the -- the first week in June, you have -- you have two
16 terms.

17 No, you only have -- excuse me -- we
18 have one -- the 4th and the 11th you have General Sessions
19 scheduled.

20 MR. HUMPHRIES:

21 Yes sir.

22 THE COURT:

23 And we were looking in this matter to
24 be the -- uh -- June the --

25 MR. HUMPHRIES:

1 The 12th is --

2 THE COURT:

3 -- 12th and --

4 MR. HUMPHRIES:

5 -- when we're going to bring the jury
6 in.

7 THE COURT:

8 -- and 18th.

9 MR. HUMPHRIES:

10 Yes sir.

11 THE COURT:

12 Uh -- Why were we looking at the
13 12th, as opposed to the 11th?

14 MR. HUMPHRIES:

15 What -- What we had talked about
16 Judge, and this was your idea --

17 THE COURT:

18 Oh.

19 MR. HUMPHRIES:

20 -- is that we would bring the jury
21 panel --

22 THE COURT:

23 Right.

24 MR. HUMPHRIES:

25 -- for the other panels -- for the

1 other terms --

2 THE COURT:

3 Right.

4 MR. HUMPHRIES:

5 -- and that Monday, dispose of them;
6 and then bring the -- the death penalty jury in on the 12th,
7 and then began the qualification process at that time.

8 THE COURT:

9 I was thinking it's more practical.

10 MR. HUMPHRIES:

11 Yes sir. Yes, you were.

12 THE COURT:

13 Uh -- The -- uh -- right now, that
14 week I have a non-jury, which doesn't seem to be a problem
15 on the 11th. Uh -- The next week, I'm at General Sessions
16 in Lancaster that -- uh -- the problems of Judge Chavez's
17 (phonetic) illness -- Judge -- uh -- the Judge in the 6th
18 Circuit's had to go down to the 8th circuit.

19 Uh -- Mr. Humphries and Mr. Wilson,
20 are y'all saying basically y'all want these -- Do y'all both
21 agree this trial should be the 11th and 18th; or is the 4th
22 and 11th just as well.

23 MR. HUMPHRIES:

24 Your Honor, the -- I -- I can't
25 recall -- we were working round some -- some prior

1 commitments when we came to those dates. And I can't
2 remember exactly what they were; but I know that we were
3 dancing around and these were the dates that -- uh -- The
4 Court and the State and Defense came up with to sort of
5 shoe-horn in-between the commitments.

6 MR. WILSON:

7 That -- That -- I agree with that,
8 because that's been our --

9 THE COURT:

10 The problem I think that I'm going
11 to hear from Court Administration is that:

12 Well, you got Judge Breeden and Judge
13 Thomas that are local judges. I can't very well send them
14 out.

15 Uh --

16 MR. HUMPHRIES:

17 Judge Breeden likes to go out.

18 THE COURT:

19 So he wants to go to Allendale to --

20 MR. HUMPHRIES:

21 He likes to go somewhere 50 miles
22 away.

23 THE COURT:

24 All right. I'm not sure he's going
25 to want to go to Allendale though.

1 MR. HUMPHRIES:

2 He might not want to go to Allendale.

3 THE COURT:

4 Well, that's where I'm going to --

5 I'm going to be in the 14th Circuit, which is Beaufort -- uh

6 -- also that term.

7 Uh -- I will get with Court

8 Administration by the 29th. I'll basically let you all know

9 -- uh -- acknowledge, you know, before the 29th; but I'm

10 going to pressure them to see if we can go and have this

11 thing done that week -- uh -- have our jury report on the

12 12th and -- uh -- and -- uh -- continue on with this case.

13 Uh -- And we can do whatever motions

14 and all we need on the 11th too, because a lot of times

15 they'll be other things to do that day.

16 I'll be back with y'all probably

17 within a week about that.

18 Uh -- But right now, we're still

19 going to schedule the 29th of January. The 29th of January,

20 I'll be in Newberry General Sessions.

21 Uh -- Uh -- I started to say: Would

22 Beaufort would be closer? But I think -- uh -- Newberry is

23 about as close as Beaufort from you all and all the way

24 roads are around here.

25 Uh -- So -- uh -- let's plan to be in

1 Newbery for a -- uh -- evaluation -- uh -- there on -- Is
2 Monday just as well, or would y'all rather have it on
3 Tuesday so that if there's anything you need to get in you
4 hadn't gotten in yet that might be over the weekend mail,
5 Mr. Wilson.

6 MR. WILSON:

7 I would rather Tuesday morning but
8 that's -- I'll do it Monday if that's --

9 MR. HUMPHRIES:

10 I don't have a problem with that.

11 MR. WILSON:

12 -- what The Court decides.

13 THE COURT:

14 Why don't we do it -- uh -- Since
15 y'all have a long way to drive, why don't we just plan to do
16 it the 30th of January -- uh -- at -- uh -- at 1:30 in -- uh
17 -- in Newberry?

18 MR. HUMPHRIES:

19 Do you want us to make that change
20 to the proposed order, or --

21 THE COURT:

22 No use dealing with the order until
23 we --

24 MR. HUMPHRIES:

25 Yes sir.

1 THE COURT:

2 -- I get back from administration.

3 Uh -- You got that down; 1:30

4 Newberry -- uh -- January the 30th.

5 Mr. Wilson, if there's some concern
6 about getting a report back, or whatever else, you let Mr.
7 Humphries and me know --

8 MR. WILSON:

9 I will, Your Honor.

10 THE COURT:

11 -- so it -- we won't have to change.

12 Now for the record Mr. Wilson, the
13 other dates on that scheduling order, do you have any
14 problems with meeting those -- uh --

15 MR. WILSON:

16 No sir.

17 THE COURT:

18 -- requirements?

19 MR. WILSON:

20 No sir. I do not.

21 THE COURT:

22 So the next matter on there -- we'll
23 also do the status conference that day too; but on the 19th
24 of March -- uh -- you were to have your -- all motions filed
25 -- uh -- and we were going to try to set up a -- hearings.

1 But we were going to all the hearings done by the 15th of
2 May of all motions; and -- uh -- May 29th -- uh -- Why have
3 we got May 29th? That's not right.

4 Oh, I'm sorry.

5 Uh -- May 29th to review the
6 questionnaires. We've got to set a date for -- I don't see
7 a date for the questionnaires in here.

8 Do we -- Would y'all look at that?

9 MR. HUMPHRIES:

10 I guess if there was -- Well,
11 actually by the --

12 MR. WILSON:

13 27th.

14 MR. HUMPHRIES:

15 -- 17th, we should have -- We will
16 either have agreed or not agreed -- or just agree to
17 disagree about the --

18 THE COURT:

19 Very good.

20 MR. HUMPHRIES:

21 -- uh -- any additional questions to
22 the standard jury questionnaire.

23 THE COURT:

24 Well, we need to have here the date
25 we have the -- we're going to have the Clerk send out the

1 jury notices with the questionnaires.

2 That needs to be in the scheduling
3 order somewhere --

4 MR. HUMPHRIES:

5 All right. And I think --

6 THE COURT:

7 -- since this is going to be separate
8 jury.

9 MR. HUMPHRIES:

10 Yes sir. So they'll -- and they
11 typically go out how many days in advance?

12 THE COURT:

13 I think the statute requires -- isn't
14 it 45 days? 35 is normal, but -- but -- uh -- it seems like
15 it's 45 days or something; because you've got to give them
16 time to answer the questionnaires.

17 MR. HUMPHRIES:

18 Your Honor, then perhaps on -- uh --
19 Tuesday -- Well, I -- I tell you what we need to do is just
20 check with the Clerk and find out when they -- when they
21 pull their --

22 THE COURT:

23 Well, let's do that. Let's put some
24 date down that she's going to be sending out questionnaires.

25 MR. HUMPHRIES:

1 We'll do that.

2 THE COURT:

3 Uh -- And on the 29th then, if y'all
4 went on the 29th and 30th, y'all be prepared to let me know
5 -- uh -- if y'all -- might as well bring it with you -- any
6 additional questions you have.

7 Uh -- Uh -- I'll look at -- I'll get
8 the standard questionnaire -- uh -- that's recently
9 promulgated and we'll have that with us on the 30th.

10 And if y'all have additional matters
11 y'all want me to send out, y'all discuss it beforehand, and
12 those y'all can agree upon, just bring them on:

13 Thou you can't agree upon, then I'll
14 hear those matters that day also.

15 MR. WILSON:

16 All right, sir.

17 THE COURT:

18 All right.

19 Okay. Anything else on this matter
20 at all, then?

21 You think you can get an order to
22 assign some things --

23 MR. WILSON:

24 Yes sir. Yes sir.

25 THE COURT:

1 Well, you get me an order; and we'll
2 do that.

3
4 MR. WILSON:

5 All right, sir.

6 Judge -- uh -- I need --

7 THE COURT:

8 You might want to get it today or
9 tomorrow, if you going to have him see --

10 MR. WILSON:

11 Yes sir. I -- I also need to
12 discuss with you --

13 THE COURT:

14 The other matters? You to talk --

15 MR. WILSON:

16 Yes sir. Sure.

17 THE COURT:

18 Anything else?

19 MR. HUMPHRIES:

20 Nothing further from the State, Your
21 Honor.

22 THE COURT:

23 All right, then.

24 Thank you.

25 Now, please. I want somebody out

1 there noting where we were and what day; and who the court
2 reporter was.

3 MR. HUMPHRIES:

4 We are aware, Your Honor. We'll
5 request that transcript.

6 THE COURT:

7 Very good. Very good.

8 (WHEREUPON: There being nothing
9 further in this matter, these proceedings were ended on
10 January 3rd, 2007 at 2:31 PM.)
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CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceeding was taken on the 3rd day of January, 2007;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of January, 2007.


H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

1 STATE OF SOUTH CAROLINA } COURT OF GENERAL SESSIONS
 2 COUNTY OF HORRY }
 3 }
 4 STATE }
 5 VERSUS } TRANSCRIPT OF RECORD
 6 LOUIS MICHAEL WINKLER }
 7 } June 15, 2006
 } Conway, South Carolina

8 B E F O R E:

9 HONORABLE JAMES LOCKEMY, Judge.

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

11 GREG HEMBEREE, ESQ.
 12 SOLICITOR FOR THE FIFTEENTH JUDICIAL CIRCUIT
 13 ATTORNEY FOR THE STATE

14 PAUL RATHBUN, ESQ.
 15 ASSISTANT PUBLIC DEFENDER FOR HORRY COUNTY

16 RALPH WILSON, ESQ.
 17 ATTORNEYS FOR DEFENDANT

18

19

20

21

22

DIXIE COX KUBANK
 CIRCUIT COURT REPORTER
 FIFTEENTH JUDICIAL CIRCUIT

23

24

25

1 (THE FOLLOWING TAKES PLACE ON JUNE 15, 2006.)

2 THE COURT: All right. This is the matter of the State
3 versus Louis M. Winkler, a ---

4 Mr. Hembree, do you have the indictment numbers at this
5 time?

6 MR. HEMBREE: Yes, Your Honor.

7 THE COURT: I see (2101).

8 MR. HEMBREE: It's (06-GS-26-2101).

9 THE COURT: And Mr. Winkler is charged with the crime
10 of murder, as well as burglary in the first degree, assault
11 and battery of a high and aggravated nature, and escape.

12 MR. HEMBREE: That's correct, Your Honor. It was
13 indicted by the May Grand Jury, true-billed by the May Grand
14 Jury.

15 THE COURT: Now, when Mr. Winkler first appeared in
16 court Judge Cottingham appointed Ms. Orrie West to represent
17 him for the purposes of his appearance there, and until
18 someone had been assigned to represent him Ms. West was there
19 and -- I don't see Ms. West in the courtroom now. Is she
20 coming?

21 MR. KATHBUN: She's -- they are trying to find her,
22 bring -- she's on the floor somewhere.

23 THE COURT: Mr. Hembree, as I understand it, you all
24 served Ms. West who was, at the time, appointed by Judge
25 Cottingham as his attorney. You served her with written

1 notice that you intended to seek the death penalty if the
2 Defendant were convicted of the crime of murder and
3 aggravating circumstances. I assume burglary and maybe
4 something else.

5 MR. HEMBREE: That's correct, Your Honor. That was
6 served, in writing, on April the 13th, in open court, upon Ms.
7 West, as well as the Defendant personally.

8 THE COURT: Okay.

9 Mr. Rathbun, how did you get involved in this case, sir?

10 MR. RATHBUN: Your Honor, I am still employed with the
11 Public Defender's Office. As the Court is aware I have
12 primarily been doing Family Court work. I have asked Ms. West
13 to allow me to help and assist -- we have a number of murders
14 in the office. I have some spare time that I can use to do
15 research, that kind of thing. It has never been my intention
16 to sit first chair, but to sit second chair, to ---

17 THE COURT: Well, Mr. Rathbun, I recall when I was here
18 as Chief Administrative Judge about six years ago you were
19 doing principally General Sessions work as a Public Defender.

20 MR. RATHBUN: That's correct, Your Honor. I did that
21 for ---

22 THE COURT: So you spent many years doing General
23 Sessions work as a Public Defender.

24 MR. RATHBUN: About five years, Your Honor.

25 THE COURT: Did you do any trials?

1 MR. RATHBUN: I did trials. I did a number of trials,
2 actually.

3 THE COURT: Okay. Felony trials?

4 MR. RATHBUN: Yes sir.

5 THE COURT: Have you ever done a murder trial?

6 MR. RATHBUN: I have never done a murder trial.

7 THE COURT: Armed robbery?

8 MR. RATHBUN: Armed robbery, yes sir.

9 THE COURT: Burglary?

10 MR. RATHBUN: Not a burglary. I've done an armed
11 robbery. I've done criminal sexual conduct, drug charges.

12 THE COURT: Well, have you been appointed by anyone to
13 represent Mr. Winkler, in any capacity?

14 MR. RATHBUN: I believe that the Clerk of Court has
15 appointed the ---

16 THE COURT: Ms. West, you are now here.

17 MS. WEST: Yes, Your Honor. Excuse me.

18 When a file comes into the office, and it's just murder,
19 then one of the attorneys gets assigned to it, then we send
20 over the certificate of representation, file a copy with the
21 Clerk of Court, and give a copy to the Solicitor's Office.
22 Mr. Rathbun -- we did that process for him.

23 THE COURT: So, in essence, your -- but see, I have an
24 Order from Judge Cottingham appointing you, for the purpose of
25 that hearing.

1 And by the way, Ma'am, do you verify that you received
2 written notice from the Solicitor that they intended to seek
3 the death penalty on this case?

4 MS. WEST: Yes, I did, Your Honor, and it's in our
5 file.

6 THE COURT: All right, And -- but any event, within
7 your office, as Chief Public Defender you have assigned this
8 matter to Mr. Rathbun?

9 MS. WEST: Yes, Your Honor.

10 MR. HEMBREE: Your Honor, one other matter that might
11 be helpful. We have received an Order of Appointment from the
12 Public Defender's Office, indicating that Mr. Rathbun would be
13 the attorney for Mr. Winkler.

14 MS. WEST: And Your Honor, Mr. Winkler and I met
15 briefly the day he was served the Notice. We were not as
16 compatible as we could be. He appeared to be far more
17 compatible with Mr. Rathbun, if that matters.

18 THE COURT: Ms. West, is that why you chose not to
19 continue with him, or ---

20 MS. WEST: That is one of the reasons, yes, it is, Your
21 Honor.

22 THE COURT: Okay.

23 MS. WEST: And additionally, the Office has a
24 substantial number of homicides, and we are doing a lot of
25 juggling. Mr. Rathbun's schedule in the Family Court that

1 he's in gives him much more opportunity to spend quality time
2 with this Defendant than some of the other attorneys in my
3 office.

4 THE COURT: Well, you've worked with Mr. Rathbun now
5 for many years.

6 MS. WEST: Yes.

7 THE COURT: And you feel he is competent to handle this
8 matter, as long as he's not first chair?

9 MS. WEST: Yes, Your Honor, he is. Yes, he is.

10 THE COURT: Mr. Rathbun, have you met with Mr. Winkler?

11 MR. RATHBUN: I have met with him on three occasions at
12 J. Reuben Long. I did not meet him last week, and it's my
13 intention to be with him this week. I have made an obligation
14 to him that I would meet with him at least once a week.

15 THE COURT: All right. Now, once I was aware, by
16 phone, that Mr. Rathbun was involved, and that he would not be
17 qualified to serve as the lead counsel in this matter, I began
18 to determine who could be a lead counsel on the matter. I was
19 aware of the former Solicitor here. Mr. Ralph Wilson, has
20 handled several murder cases, and he's handled some death
21 penalty cases, I know on the prosecutorial side.

22 What about on the defense side, Mr. Wilson.

23 MR. WILSON: Yes sir. Your Honor, unfortunately, I
24 have done numerous death penalty cases on the defense --
25 probably somewhere between seven and nine, is what I remember.

1 THE COURT: All right. And you are certified, or at
2 least on the list of the Supreme Court.

3 MR. WILSON: I am certified.

4 THE COURT: Yes sir.

5 Now, I asked Mr. Wilson if he would represent Mr.
6 Winkler. He felt he could do so. He agreed to talk with Mr.
7 Winkler, and then today I was going to determine whether or
8 not I was going to appoint him as lead counsel.

9 Mr. Wilson, have you met with Mr. Winkler?

10 MR. WILSON: Yes sir, I have, Your Honor. I went out
11 to jail, spent about an hour and a half, two hours with him on
12 yesterday evening, and I have some concerns. My concern about
13 him is whether or not he is able to communicate, at this
14 point, in a very rational fashion. I am not satisfied that he
15 can at this point, and we talked a good bit. I'm just
16 concerned that he needs some kind of medical treatment or
17 attention before we go much further.

18 THE COURT: Okay.

19 Mr. Winkler, would you stand up for me, please sir.

20 A. Yes sir.

21 THE COURT: Mr. Winkler, have you met with Mr. Wilson
22 there, sir?

23 A. I have, yesterday.

24 THE COURT: And with Mr. Rathbun?

25 A. Several times.

1 THE COURT: Okay. Now, Mr. Winkler, do you feel that
2 Mr. Wilson would be an attorney who would represent you
3 aggressively, and do the best he could for you?

4 A. Sir, at this time I only met him one time. I have -- I
5 don't really know if my family is still -- I was trying to get
6 an attorney myself.

7 THE COURT: Okay. Well ---

8 A. And several times my family has -- and I gave him a
9 number to call to check on the status of that, but I did meet
10 with him yesterday, but I haven't had a -- I mean, I -- I
11 can't tell how he's going to be a lawyer for me. I'm sure he
12 is an adequate lawyer, but at this time I'll ---

13 THE COURT: Well, the last time you were before the
14 Court was in April with Judge Cottingham. That was two months
15 ago.

16 A. Yes sir.

17 THE COURT: And as of two months no one has met with
18 you, no attorney other than Mr. Rathbun, now Mr. Wilson?

19 A. No, there wasn't another one.

20 Mr. Bellamy came in four times since I've been in J.
21 Reuben Long, and talked to me, but then I was told -- he is
22 representing me on a previous case. Then I was told he is not
23 yet attained (s.i.c.) for this trial.

24 THE COURT: Well, he has informed the Court that he is
25 definitely not going to be representing you on this matter.

1 A. Okay. Well, then they will be ---

2 THE COURT: So Mr. Bellamy ---

3 A. ---Then they are looking into another one. I don't
4 know. I really don't have access to all that at this time.

5 MR. RATHBUN: If I may, Your Honor, I have spoken with
6 Mr. Winkler's sister and she has informed me that the family
7 does not intent to provide the funds to hire a private
8 attorney.

9 A. Your Honor, if I may.

10 THE COURT: Yes sir.

11 A. I didn't know you called my sister and talked to her.
12 I wasn't -- I wasn't aware of that.

13 When did you talk to her.

14 MR. RATHBUN: Two weeks ago.

15 THE COURT: Well, Mr. Winkler, let me ask you this.

16 Assuming you get no other counsel, do you have any concerns at
17 this time of Mr. Wilson?

18 A. The Pub --- no. No, I do not.

19 THE COURT: And what about Mr. Rathbun?

20 A. The Public -- as I understand he's a private attorney,
21 Mr. ---

22 THE COURT: Mr. Wilson, yes.

23 A. Yes. Well, the Public Defender's Office I have found
24 to be very inadequate. The day that I was at the hearing, the
25 first hearing, Ms. West called me Dave.

1 THE COURT: I know, but at this time Mr. Rathbun has
2 seen you. You got any problems with Mr. Rathbun individually?

3 A. The only problem I have with that, sir, is -- and I'll
4 try and be brief about it, but when I first met with him he
5 told me that he had never tried a murder trial before. He
6 said, well, the first thing we are going to do is get you a
7 bond, and I said, well, from what I understand, at the first
8 hearing the Judge had stated to me that there is not a bond on
9 -- when the prosecution is going for the death penalty, and he
10 said, oh, that's right. Now that's a simple matter of a
11 process, and if I knew that and he didn't, I can't see how he
12 would be at all anywhere near being adequate for my counsel.
13 I mean, I had to correct him on a simple point.

14 This is my life I'm talking about here, and I have
15 nothing against him, but as far as adequate for that, no, I do
16 not think that the Public Defender's Office has even come
17 close to -- I mean, when she called me Dave to start with, and
18 then told me that my mother called and hired her, and
19 everybody knows that they were appointed, not hired, and she,
20 you know, well ---

21 THE COURT: Well, sir, that's the past. Ms. West is
22 not representing you.

23 A. Well, it's ---

24 THE COURT: I'll consider that, Mr. Winkler ---

25 A. Thank you.

1 THE COURT: ---But obviously at this time I think Mr. -

2 --

3 Mr. Wilson, if I appoint you I assume you are going to
4 request to have Mr. Winkler evaluated?

5 MR. WILSON: Yes sir.

6 THE COURT: Mr. Winkler, do you have a past background
7 of any mental health treatment at all, sir?

8 A. No sir.

9 THE COURT: Okay. What type of work did you do before
10 you were arrested?

11 A. For thirteen years I was a site manager for Tilghman
12 Lakes by the Sea in North Myrtle Beach.

13 THE COURT: All right.

14 MR. RATHBUN: Your Honor, perhaps my client
15 misunderstood your question. But he was talking about seeing
16 a doctor, and having a doctor. He suffers from anxiety, and
17 he was on prescription of Paxil, and I believe that anxiety
18 does qualify for a ---

19 THE COURT: Well, I should have said emotional health.

20 A. Actually the Paxil is not something that -- it was
21 Prelazon, or something like that, but I've been on that now --

22 -

23 THE COURT: All right. I think at this time, Mr.
24 Wilson, I'm going to appoint you to represent Mr. Winkler.

25 Mr. Rathbun, let me consider a little bit more about

1 that as we go on. We are nowhere at a crucial point now that
2 I've got to make that.

3 MR. RATHBUN: Yes sir.

4 THE COURT: Let me look at a couple of things first.

5 Now, Mr. Wilson, since you are now -- I'm going to sign
6 an order appointing you, sir. I find that you are qualified.
7 You are certified by the State. You have done several of
8 these matters before, in the past, and I feel you would fully
9 represent the interests of Mr. Winkler.

10 And we are nowhere in -- right now of setting any type
11 of trial date, but -- other than a time frame, but do you want
12 to put in ---

13 Does the State oppose an evaluation of Mr. Winkler?

14 MR. HEMBREE: No, Your Honor.

15 THE COURT: All right. Do you want to put something in
16 writing, Mr. Wilson, or ---

17 MR. WILSON: Yes sir. I will prepare -- yes sir, a
18 motion, and ---

19 THE COURT: I don't want to delay it though. Can you
20 get that to me by the first of the week?

21 MR. WILSON: Yes sir.

22 THE COURT: Okay.

23 Ms. Wilson -- Ms. West ---

24 MS. WEST: Your Honor, we can have it over to you in an
25 hour. Would you like both of them?

1 THE COURT: I assume we are going to do both McNaghten
2 and Competency.

3 MR. RATHBUN: Yes, Your Honor.

4 MR. WILSON: Yes sir. Yes, Your Honor. Thank you.

5 THE COURT: Does the State have any desire regarding
6 time frame of trial? The matter is relatively new. The
7 charges arose out of instances this year, did they not?

8 MR. HEMBREE: That's correct, Your Honor.

9 THE COURT: I see Judge Cottingham signed it on April
10 the 13th.

11 Let's see what your warrants say when the alleged
12 matters occurred.

13 MR. RATHBUN: March the 6th, Your Honor.

14 THE COURT: March the 6th. Okay. So, we are dealing
15 with something that right now is about -- a little over three
16 months old.

17 The State got any time frame in mind?

18 MR. HEMBREE: Your Honor, time -- our time frame, we
19 were thinking in the Spring of 2007.

20 THE COURT: That sounds like a reasonable time frame.

21 All right. Well, let's -- anything we need to hand now,
22 other than going ahead and sign the issues regarding
23 evaluation? Anybody got anything they wish to handle? Mr.
24 Hembree?

25 MR. HEMBREE: Yes, Your Honor. Just a couple of

1 matters. One, on the appointment of counsel, I don't know if
2 the Court has required this in the past. It seems it has been
3 our custom that, once counsel was appointed they would submit
4 affidavits of their experience to the Court, affidavits of
5 their qualification, just for purposes of the record, and
6 submit those -- submit those to the Court.

7 THE COURT: Well, of course, we've got the record with
8 Mr. Wilson telling me his past, and right now I haven't
9 decided on Mr. Rathbun's situation there, but I don't know of
10 any statute that requires any written affidavit and -- and
11 that's another thing.

12 By the way, Mr. Wilson ---

13 MR. WILSON: Yes sir.

14 THE COURT: ---My direction, at this time, is that
15 every hearing we have you request a transcript.

16 MR. WILSON: Yes sir.

17 THE COURT: I want to make sure I know every court
18 reporter we have, want to have a copy of the transcript.
19 That, in my experience in P.C.R. matters, really comes in to
20 assist if you know what court reporter heard what, so you are
21 to request from Ms. Eubank a copy of the transcript today ---

22 MR. WILSON: All right, sir.

23 THE COURT: ---Because we don't know whether she would
24 be the next court reporter.

25 And I find you qualified. Let that be on the record. I

1 don't think I need an affidavit.

2 What about the issue of arraignment?

3 MR. HEMBREE: Your Honor, we are prepared to go forward
4 with arraignment today, as well as service of the certified
5 copy of the indictment on the Defendant.

6 MR. WILSON: Judge, I would ask that the arraignment be
7 delayed until he is examined. As I said, I have some real
8 serious question about his ability to understand.

9 THE COURT: Well, Mr. Hembree, I don't see any need for
10 us not to delay it until then. Do you have any reason ---

11 MR. HEMBREE: Your Honor, I have no objection to that
12 at all, none whatsoever.

13 I would like to go ahead and serve the certified copy of
14 the indictment, unless Mr. Wilson would ---

15 MR. WILSON: I'm sorry.

16 MR. HEMBREE: We will wait on -- we can just wait on
17 all of that, do that all at one time.

18 THE COURT: That would be something you did right after
19 the arraignment when you ---

20 MR. HEMBREE: Yes sir. We would do it at that time.

21 THE COURT: That's all part of one process.

22 All right. Mr. Wilson, review, and get an order for me.
23 I'm going to wait a while, a little while here. If not, I
24 think I'll have my law clerk -- I have a -- to be -- at two
25 o'clock I've got to be at another matter, so if you have to

1 look for a while -- I'll just have my law clerk wait and he'll
2 bring it with him, and I will sign it and get it back to you
3 in the mail.

4 Now, for purposes of address, Mr. Wilson, go ahead and
5 give me your address and phone numbers, if you would, for my
6 law clerk here.

7 MR. WILSON: My mailing address, Your Honor, it would
8 be Post Office Box 1827, Conway, South Carolina, 29527. My
9 telephone number is (843-381-0765), and my fax number is
10 area -- (843-381-0767).

11 THE COURT: All right.

12 And Mr. Hembree, of course, we know the official address
13 there.

14 MR. HEMBREE: Thank you.

15 THE COURT: Mr. Wilson, have you worked with Mr.
16 Rathbun before?

17 MR. WILSON: Not directly. I don't we've -- have we
18 ever had anything? I don't think we've had anything ---

19 MR. RATHBUN: We've never been opposing or worked
20 together, no sir, other than Family Court.

21 THE COURT: Mr. Winkler, am I to understand, sir, you
22 do not wish Mr. Rathbun to represent you?

23 MR. WILSON: We did have that one case ---

24 A. Your Honor, I -- I -- I'd like to -- I don't know. I
25 mean, if I had to give him a simple -- like I said again -- I

1 don't want to beat -- to go into that again, but I just -- I
2 don't think he's adequate for a murder trial. I mean, he
3 was -- we are talking about my life, and this -- he wanted to
4 give me a bond hearing, which is not legal.

5 THE COURT: Remember, Mr. Wilson would be your lead
6 counsel, sir.

7 A. Yes sir. I have no objection to that.

8 THE COURT: I know, but do you have an objection to Mr.
9 Rathbun as second chair?

10 A. Yes, I do. He doesn't get along -- he argued with me
11 more than anything so far, so -- I mean, he's telling me
12 points ---

13 THE COURT: All right. Let me consider that while we
14 are having the evaluation done.

15 Anything else?

16 MR. WILSON: Yes sir. Your Honor, in terms of getting
17 some money for investigators, or for any other expenses that
18 we have, how do we -- I know most of that is done ex parte.
19 How do we do that? Do we just ---

20 THE COURT: Ex parte.

21 MR. WILSON: I just wanted to be clear, if that's okay.
22 That's -- all right, sir.

23 THE COURT: Let me know what you need, and we will go
24 from there.

25 MR. WILSON: All right, sir. That's fine.

1 THE COURT: Mr. Wilson, what are your thoughts -- let
2 me ask you, what are your thoughts about having Mr. Rathbun?
3 You have no problem either way?

4 MR. WILSON: I am extremely comfortable with that. You
5 know, that's more than satisfactory with me.

6 THE COURT: All right. Let me think about it.
7 Anything else from the State?

8 MR. HEMBREE: Nothing from the State, Your Honor.

9 THE COURT: All right. Let's just wait and get a time
10 frame of how long it will be before the evaluation has been
11 completed, but I'm assuming here that we might get back
12 together sometime in August, or maybe September. I'm just
13 guessing. If it's going to be looking like we are being
14 delayed a lot longer than that, then I'll be on the phone
15 myself to push things a little forward, because obviously, in
16 a matter of this nature it shouldn't be six months to get an
17 evaluation done.

18 And Mr. Wilson, you might want to make sure they
19 understand the nature of this case.

20 MR. WILSON: I will.

21 THE COURT: Does the for -- the orders have what the
22 charges are, and what the State is seeking, because once they
23 know that I think it puts this matter so that it might go
24 ahead of some of the other cases.

25 MR. RATHBUN: Your Honor, at this time I have received

VOLUME SEVEN OF EIGHT
STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM HORRY COUNTY

James E. Lockemy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LOUIS MICHAEL WINKLER, JR.,

APPELLANT

RECORD ON APPEAL

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1 discovery from the State, and we are in the process of copying
2 that for delivery to Mr. Winkler.

3 THE COURT: You have served them with a Rule 5?

4 MR. RATHBUN: We have.

5 THE COURT: Okay.

6 MR. RATHBUN: And -- but of course, from this one I'm
7 going to continue to do that.

8 THE COURT: Mr. Hembree, what you have at this stage
9 you have given to Mr. Rathbun?

10 MR. HEMBREE: That's correct, Your Honor.

11 THE COURT: All right. And you know -- you do realize
12 it's a continuing Rule 5.

13 MR. HEMBREE: Yes sir.

14 THE COURT: I'm sure you are aware of that.

15 All right. Well, you give that to Mr. Wilson at this
16 time, what you have, and I'm sure Mr. Wilson will determine if
17 he needs to make any further requests.

18 MR. WILSON: I just need to ask one question of the
19 Solicitor, Your Honor, and I know that there are some
20 additional pending charges, and I don't know the status of
21 those charges at this point, and I guess what I'm asking ---

22 THE COURT: These are charges that arose before this
23 incident?

24 MR. WILSON: Yes sir.

25 MR. HEMBREE: That's correct, Your Honor.

1 MR. WILSON: And I would like to ask the State if they
2 are proceeding with those charges prior to the disposition of
3 the death case?

4 MR. HEMBREE: We do not intend to proceed with those
5 before the death penalty case.

6 THE COURT: Has there been any other Order other than
7 the Order by Judge Cottingham? That's the only Order, right?

8 MR. HEMBREE: That's the only Order, yes sir.

9 THE COURT: Okay. I've got it.

10 All right. Now, do I not have -- do I have copies of
11 the indictments and the warrants?

12 MR. HEMBREE: You have copies of the indictment. Your
13 Honor, I'll be glad to get you a copy of the warrant.

14 THE COURT: I'd like to have copies of the warrants
15 too.

16 Okay. So I have the indictments, the warrants, the
17 Judge -- Judge Cottingham's Order, as well as the orders I'm
18 going to sign regarding evaluation, and then any other
19 judicial functions, or any other matters that don't affect
20 either side, that I don't have a copy of, and that will be
21 done later. Other than the thing you gave Ms. West? I've got
22 that. I've got that here, Judge Cottingham's Order regarding
23 that.

24 MR. HEMBREE: Yes sir. Well, you should have a copy of
25 the actual letter that's the Notice of Intent to Seek the

1 Death Penalty.

2 THE COURT: I have that too.

3 MR. HEMBREE: Your Honor, as a matter of course we
4 typically prepare a very brief order confirming what occurred
5 in court ---

6 THE COURT: That's a good idea.

7 MR. HEMBREE: ---In this hearing, and we will provide
8 that to the Court. We will prepare that, provide it to
9 defense counsel. Assuming there is no conflict in that we
10 will send it along to you for your signature and filing with
11 the Clerk of Court's Office.

12 THE COURT: Very good. That will be fine.

13 MR. RATHBUN: To facilitate matters, Your Honor, if you
14 do choose -- allow me to sit second chair I'll provide Mr.
15 Hayes (s.f.c.) with my contact information.

16 THE COURT: Do that, if you would, Mr. Rathbun. I
17 appreciate it.

18 All right. All right. Listen, thank you very much.

19 Mr. Winkler, you will be notified about when you will
20 be transported to Columbia for evaluation, and we will see
21 everybody again in about two, two and a half months from now.

22 MR. WILSON: All right, sir.

23 MR. RATHBUN: Thank you, Your Honor.

24 MR. WILSON: Thank you, Your Honor.

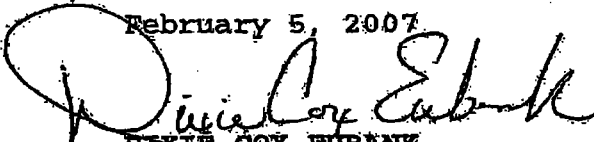
25 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the MOTIONS HEARING of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 15th day of June, 2006.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

February 5, 2007


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

COPY

State of South Carolina) Court of General Sessions
)
 County of Horry) Fifteenth Judicial Circuit
)
 State of South Carolina)
)
 vs.) Case No. 2006-GS-26-2101
)
 Louis M. Winkler,)
)
 Defendant.)

TRANSCRIPT OF RECORD

February 16, 2007

Charleston, South Carolina

B E F O R E:

The Hon. James E. Lockemy, Judge

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

Francis A. Humphries, Jr., Esq.
Attorney for the StatePaul E. Rathbun, Esq.
Ralph J. Wilson, Esq.
Attorneys for the DefendantBrenda Cooley
Circuit Court Reporter

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E X H I B I T S

(There were no exhibits.)

1 (On Friday, February 16, 2007, the
2 hearing convenes at approximately 12:00 noon, the
3 defendant being present with counsel, and the
4 following proceedings were had:)

5 THE COURT: This matter was set for
6 hearing in Charleston regarding a competency hearing
7 and criminal responsibility hearing on
8 Mr. Louis Winkler who previous had a report done by
9 the State Department of Mental Health in the fall of
10 '06, and the defense requested a private consultation
11 and a review of Mr. Winkler in regard to this matter.

12 Mr. Wilson and Mr. Rathbun, has there
13 been an evaluation of Mr. Winkler by a psychiatrist
14 of your choice?

15 MR. WILSON: Yes, sir, Your Honor.

16 THE COURT: Okay. Do you have any
17 written reports you want to ---

18 MR. WILSON: No, sir.

19 THE COURT: All right. Do you wish to
20 have a *M'Naghten and Blair* hearing?

21 MR. WILSON: Yes, sir, I think we have to
22 have a hearing.

23 THE COURT: Okay. All right. Do you
24 have witnesses, sir?

25 MR. WILSON: No, sir.

1 THE COURT: You have no witnesses?

2 MR. WILSON: I have no witnesses.

3 THE COURT: Do you wish for me to -- do
4 you have an objection for me to consider this matter
5 from the Department of Mental Health that has a date
6 of October 4th through October the 18th, '06, and
7 signed by Dr. Frierson, Ms. Frierson's communication
8 letter and report October the 18th and redone
9 November 13th, '06?

10 MR. WILSON: No, Your Honor. I've read
11 both reports. I'm aware of both reports. I don't
12 have any objections to the findings in the reports.

13 My client does indicate that some of the
14 history in the reports may not be correct, and he's
15 also indicated to me that some of the recounting of
16 events which took place at the state hospital may not
17 be correct to what it says occurred. But in terms of
18 the findings themselves, no, sir.

19 THE COURT: Does your client or you wish
20 to challenge the finding that on the day of the
21 alleged incident that Mr. Winkler knew right from
22 wrong, could adhere to the right, and was criminally
23 responsible for any acts that he may have done on
24 that day?

25 MR. WILSON: May I have one second,

1 Your Honor?

2 (Mr. Wilson, Mr. Rathbun, and the
3 defendant confer.)

4 MR. WILSON: Your Honor, he indicates to
5 me that he does want to challenge that.

6 THE COURT: Okay. Do you wish to put any
7 testimony up?

8 MR. WILSON: No, sir. I have no
9 testimony to that in that regard.

10 THE COURT: Okay. Do you have any
11 written evidence or documentary evidence?

12 MR. WILSON: No, sir.

13 THE COURT: Okay. Do you challenge the
14 finding that -- and prior, you said you do not object
15 to me considering this document from the Department
16 of Mental Health?

17 MR. WILSON: No, sir, I do not.

18 THE COURT: Do you challenge the finding
19 that Mr. Winkler understands the nature of the court
20 system, his ability to assist his attorneys in his
21 defense, and that he is basically competent to stand
22 trial?

23 MR. WILSON: May I have one second again,
24 Your Honor?

25 (Mr. Wilson, Mr. Rathbun, and the

1 defendant confer.)

2 MR. WILSON: Judge, he says that he does
3 not believe that he is competent to stand trial.

4 THE COURT: Mr. Humphries, do you have
5 any other evidence to present other than the report I
6 have in front of me now?

7 MR. HUMPHRIES: Your Honor has the report
8 and, of course, the doctor or the doctors who
9 performed the evaluation are in court if the Court
10 wished to hear from them.

11 Let me say this. They did have the
12 opportunity today prior to this hearing to reassess
13 or at least to interview the defendant to determine
14 his -- or to update their opinion regarding his
15 competency. So perhaps, just in the interest of
16 being very cautious, have me put up Dr. Dwyer.

17 THE COURT: All right. Dr. Dwyer, come
18 around, please, sir.

19 RICHARD GRAHAM DWYER, M.D.,
20 being first duly sworn by the Court, is examined and
21 testifies as follows:

22 THE COURT: Thank you.

23 Anybody here from the clerk's office in
24 Horry County?

25 MR. HUMPHRIES: No, sir.

DR. DWYER - DIRECT BY MR. HUMPHRIES

1 THE COURT: Okay.

2 MR. HUMPHRIES: Please the Court,
3 Your Honor.

4 THE COURT: All right. If you would,
5 sir, give me your full name, spelling your last.

6 THE WITNESS: Richard Graham Dwyer,
7 D-W-Y-E-R.

8 THE COURT: All right. Mr. Humphries.

9 MR. HUMPHRIES: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. HUMPHRIES:

12 Q. Dr. Dwyer, with whom are you now employed?

13 A. By the South Carolina Department of Mental
14 Health.

15 Q. In what capacity?

16 A. As a forensic fellow.

17 Q. And specifically let me ask you very briefly
18 about your expertise, your area of expertise. Is one
19 of those areas of expertise forensic psychiatry?

20 A. Yes, sir.

21 MR. HUMPHRIES: Your Honor, I believe
22 that Mr. Wilson stipulates to the expert
23 qualifications of Dr. Dwyer in the field of forensic
24 psychiatry.

25 THE COURT: Any objection in that regard,

1 any objection, Mr. Wilson?

2 MR. WILSON: No, sir.

3 THE COURT: And, Doctor, you are licensed
4 in the State of South Carolina as a doctor of
5 psychiatry?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. I will then
8 permit you to give opinion testimony in that regard.

9 You may proceed.

10 MR. HUMPHRIES: Thank you.

11 BY MR. HUMPHRIES:

12 Q. Pursuant to two orders of the Court regarding
13 this defendant, one an order for competency, an
14 evaluation to determine competency to stand trial,
15 and a second order for an evaluation in regard to the
16 defendant's criminal responsibility and capacity to
17 conform, which I believe was dated June 15th, 2006,
18 pursuant to those orders, did you have an occasion to
19 perform an evaluation of this defendant for that --
20 for those two purposes?

21 A. Yes, I did.

22 Q. Tell the Court very briefly what you did in
23 the context of that evaluation.

24 A. Okay. Before actually meeting with him, I
25 would review the records made available. That would

1 be the court orders, records that were provided to us
2 in regards to the alleged offenses, police records,
3 pertaining to psychiatric social worker history which
4 was done by our agency, and whatever other documents
5 were provided as part of the evaluation, and then we
6 scheduled an interview.

7 Q. And what components were there associated with
8 the interview?

9 A. During a clinical interview, we would conduct
10 a general assessment of his psychiatric mental
11 health, his general health, his social history,
12 substance abuse history, general background
13 information that we would gather in order to
14 determine whether or not there's a mental health
15 diagnosis.

16 We would also then focus on a mental status
17 examination, which was how he was functioning
18 cognitively on that day while they're sitting there
19 talking with him.

20 And then for the first order which was for
21 competency to stand trial, we would specifically
22 address his understanding of legal proceedings, what
23 takes place in the courtroom, working with his
24 attorney, some general questions about working out a
25 defense with his attorneys in terms of what he had

1 been charged with.

2 The next component of that clinical interview
3 would be to address the second order which was for
4 criminal responsibility and capacity to conform his
5 conduct, and in that portion we would be focused on
6 what the alleged offenses were and what's his
7 recollection of -- of those dates, what took place,
8 and using the information we have been provided which
9 is primarily police reports about what was said that
10 took place.

11 Q. Dr. Dwyer, did you, after reviewing all of
12 these documents and other items, along -- and then
13 having the interview and those components that you
14 just described to the Court, did you have enough
15 information, first of all, to form some diagnosis in
16 regard to this defendant, specifically as to his ---

17 A. Right. As I recall, we requested some
18 psychological testing to help with diagnoses. He was
19 -- after the first interview was admitted to Columbia
20 Care Center. That's where we saw him the second
21 time. As a result, we also looked at the records
22 that they put together and their treatment there.

23 I'll have to look at the report to see whether
24 we requested any records after meeting with him. As
25 I recall, we may have requested some police files

1 that we did not have when we met with him. So there
2 was more information gathered between the first and
3 second interview and then even after the second
4 interview additional information.

5 After we had obtained all of that, then we
6 were at a point to ---

7 Q. And let me ask you this. In your expert
8 opinion, to a reasonable degree of medical certainty,
9 did you have a diagnoses of this defendant?

10 A. Yes.

11 Q. And what are the diagnoses?

12 A. There's actually several. If I may look ---

13 Q. Please.

14 A. --- at the copy of the report. A diagnosis of
15 depressive disorder not otherwise specified, which --
16 an anxiety disorder not otherwise specified, alcohol
17 abuse by history, and paranoid personality disorder
18 traits are the three mental health diagnoses.

19 He also had a diagnosis of -- a general health
20 diagnosis of gastroesophageal reflux disease. We did
21 that by history because we did not do any assessment
22 of that diagnosis as part of our evaluation.

23 Q. And, first, as relates to his competence to
24 stand trial, do you have an opinion to a reasonable
25 degree of medical certainty as to this defendant's

1 competency to stand trial?

2 A. Yes.

3 Q. And what is that opinion?

4 A. That he is competent.

5 Q. As to his criminal responsibility, do you have
6 an opinion to a reasonable degree of medical
7 certainty as to this defendant's criminal
8 responsibility on the day of the alleged offense?

9 A. Yes.

10 Q. And what is that?

11 A. That he had -- did in fact have criminal
12 responsibility.

13 Q. And as to his capacity to conform, do you have
14 an opinion to a reasonable degree of medical
15 certainty as to this defendant's capacity to conform
16 on the day of the alleged offense?

17 THE COURT: And, Doctor, before you
18 answer that, do you understand what that means?

19 THE WITNESS: I believe I do, Judge, but
20 certainly if...

21 THE COURT: When you said "capacity,"
22 what do you mean by your question?

23 MR. HUMPHRIES: Well, just that ---

24 THE COURT: Ask him. Tell him what you
25 mean when you said it.

1 MR. HUMPHRIES: What I mean?

2 THE COURT: What do you mean by it? When
3 you ask that question, what do you mean?

4 BY MR. HUMPHRIES:

5 Q. I mean based on the medical, legal standard
6 regarding capacity to conform, in forensic
7 psychiatry, do you have an opinion as to his capacity
8 to conform his conduct on the date of the alleged
9 offense?

10 A. Yes.

11 Q. What is that?

12 A. That he had that capacity, yes.

13 Q. Now, did you also have an occasion today for a
14 period of time to spend with the defendant just prior
15 to this hearing?

16 A. Yes, I did.

17 Q. And approximately how long?

18 A. I'll check my notes for the time.

19 Approximately 22 minutes.

20 Q. And let me ask, is that time sufficient for
21 you, based on your interactions with the defendant,
22 to tell this Court whether or not there has been a
23 change in your expert opinion regarding those three
24 issues, competency and criminal responsibility and
25 capacity to conform?

1 A. I only focused on his competency to stand
2 trial. I didn't attempt to make any additional
3 assessments of criminal responsibility or capacity to
4 conform when I spoke with him.

5 Q. Which is -- which is basically a ---

6 A. Correct.

7 Q. And let me ask you, having spent that time
8 with the defendant, has your position or expert
9 opinion changed in regard to competency?

10 A. No, it has not.

11 Q. And is it then still your opinion as of today
12 that this defendant is competent to stand trial
13 within a reasonable degree of medical certainty?

14 A. Yes.

15 MR. HUMPHRIES: Your Honor, that's all I
16 have of this witness at this time.

17 THE COURT: All right. Mr. Wilson or
18 Mr. Rathbun.

19 MR. WILSON: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. WILSON:

22 Q. Doctor, just let me ask you a few questions.
23 One of the things I noted in the report was you said
24 that he -- he had paranoid personality disorder. It
25 said Mr. Winkler exhibited some features of paranoid

1 personality disorder. Now, would you explain to us
2 what that is?

3 A. Certainly. And, actually, I've said that he
4 had paranoid personality disorder traits. So I'm not
5 giving him the diagnosis of the disorder itself.

6 Q. Well, if ---

7 A. But ---

8 Q. Excuse me. But if you'll look back on page
9 five of your report.

10 A. What paragraph?

11 Q. This is paragraph two. Well, back to the
12 first full paragraph.

13 A. Okay.

14 Q. The bottom of that paragraph, there's a
15 sentence starting with "Psychological testing."

16 A. Yes, sir.

17 Q. And it says: Psychological testing conducted
18 as a consultation to this evaluation indicated that
19 based on test results and self-report, Mr. Winkler
20 exhibits some features of paranoid personality
21 disorder.

22 And my question to you is, what is -- what
23 does that mean? What does that mean?

24 A. Okay. When I say that there are some
25 features, that means he has some symptoms of that

1 disorder. Now, the disorder itself, is that -- I
2 want to make sure I understand the question. Do you
3 want me to describe?

4 Q. What do you mean when you say some features of
5 paranoid personality disorder?

6 A. Okay. That he had some symptoms of a disorder
7 known as paranoid personality disorder, which the
8 primary features of that are -- for someone that has
9 any personality disorder, it is a way of their
10 interacting with other people, a way of their
11 thinking, a way of their emotional -- the way they
12 exhibit emotions that starts in adolescence or early
13 adulthood and continues throughout their life, that
14 permeates all aspects of their -- of their life,
15 their social, their work, interactions with other
16 people. That's a personality disorder in general.

17 Specifically, a paranoid personality disorder,
18 particularly there is, of course, the word
19 "paranoid," meaning that in their interactions with
20 other people they may misinterpret what is said or
21 actions and believe that they are being targeted or
22 somebody is saying or doing something negative
23 towards them.

24 They're more likely to bear a grudge in a
25 setting that someone else may not. They're more

1 likely to have a more excessive response to something
2 that appears to be an insult or an attack on their
3 person, verbally, for example. Those can all be
4 symptoms of paranoid personality disorder.

5 There has to be a certain minimum number of
6 symptoms before someone can be diagnosed with the
7 disorder. I did not feel in my evaluations that he
8 had enough of those symptoms to be diagnosed with it,
9 which is why I said "some features." And then on the
10 first page where I listed diagnoses, I put only
11 "traits" so that somebody would -- would realize that
12 I wasn't saying it was the full disorder.

13 Q. So you're saying that -- and I understand that
14 he does not have a paranoid personality disorder but
15 that he has some of the symptoms or traits of that
16 disorder?

17 A. Yes, sir.

18 Q. Now, but then most people would have some
19 traits of some disorder; would they not?

20 A. Not necessarily.

21 Q. So you're saying that the vast majority of
22 people in this country, for instance, wouldn't have
23 some symptoms of some kind of disorder?

24 A. I don't know what the statistics are. I don't
25 know what those symptoms ---

1 Q. Say, depression or paranoid schizophrenia or
2 personality disorder, would the vast majority of
3 people have one or more of those traits?

4 A. I'm sorry. What was your -- what is the
5 question?

6 Q. I'm simply asking you whether or not that's
7 uncommon to have one or more of the traits of this
8 particular disorder and not have the disorder?

9 A. Again, I don't know that I would be able to
10 give you a figure on how many people would have
11 traits.

12 Keep in mind that especially with -- that with
13 the idea of paranoia that somebody may at one time or
14 another have a feeling that somebody was out to get
15 them or said something inappropriate to them; but
16 with a personality disorder, it's something that
17 started in late adolescence or early adulthood and
18 continues to develop and not periodically at one
19 point in their life having it. So that's one of the
20 keys, is that it permeates for a period of time.

21 Q. But then does it affect the person's ability
22 to assess reality?

23 A. It would not necessarily do so, no.

24 Q. Well, let's talk more specifically about
25 Mr. Winkler. Would those traits affect his ability

1 to assess reality?

2 A. I don't believe so.

3 Q. So you're saying that even if those traits
4 exist that you don't believe that those traits
5 -- or some of those traits exist, that you don't
6 believe that they affect his ability to assess
7 reality?

8 A. Well, depending on what you mean by "assess
9 reality."

10 Q. To realistically assess the situation, that's
11 what I'm asking.

12 A. Depending on the setting, no, I believe so.

13 Q. Okay. And is there any -- and I think the
14 other thing that you said was, was that he had
15 anxiety disorder, and explain to me what that would
16 be.

17 A. The anxiety disorder that -- that I diagnosed
18 him with is anxiety disorder not otherwise specified,
19 which means that he has traits of anxiety, of various
20 anxiety disorders, but not enough to meet a specific
21 anxiety disorder diagnosis.

22 Q. And you also diagnosed him with depressive
23 disorder?

24 A. That's correct, right.

25 Q. And what does that mean?

1 A. That means he has a disorder that affects his
2 mood, that can result in a mood that's down or sad
3 and have an impact on his -- there could be various
4 types of symptoms with that: sleep, appetite,
5 concentration.

6 Q. Then are you saying then that even with --
7 with the combination of those three, the depressive
8 disorder, the anxiety disorder traits, the paranoid
9 personality disorder traits, that the combination of
10 those three still does not affect his ability to
11 understand right from wrong? Is that your opinion?

12 A. That's my opinion.

13 Q. All right. And are you also saying that even
14 in combination, that with those three disorders that
15 -- or at least the traits of those disorders, that he
16 is still able to conform his conduct?

17 A. That's right.

18 Q. And, thirdly, you're also saying that he --
19 even though you found that he has these three
20 disorders, or at least traits of these three
21 disorders, that he is still competent today to stand
22 trial?

23 A. Yes.

24 Q. Now, you also diagnosed him as having a
25 history of alcoholism?

1 A. Of alcohol abuse.

2 Q. Alcohol abuse, okay. And what does that mean
3 in terms of -- obviously, it means that he used
4 alcohol, but is there any specific amount of time or
5 quantity of alcohol that one must consume in order to
6 have that?

7 A. It's not based on a quantity of alcohol.
8 There's actually several -- several possible criteria
9 that someone could meet to have a diagnosis of
10 alcohol abuse; specifically, engaging in something
11 that may be illegal or dangerous as a result of using
12 alcohol, which in this case is what I used for that
13 diagnosis.

14 Q. Were you aware, Doctor, at the time you did
15 your report that the defendant attempted to commit
16 suicide on more than one occasion while he was either
17 in custody of the Horry County Sheriff's Office or
18 while he was at Hall Institute?

19 A. He had mentioned to us this morning that he
20 had made an attempt since he had left the Columbia
21 Care facility.

22 Q. Well, were you aware that he had tried to
23 commit suicide or at least threatened to commit
24 suicide when he was at Hall?

25 A. Well, he actually made those comments to

1 myself and others during the first interview, which
2 resulted in his hospitalization.

3 Q. All right. And is that reflected in any way
4 in your report?

5 A. Yes.

6 Q. Was it in what way reflected?

7 A. Well, it's -- well, one way, as I recall --
8 I'll have to go look through the hospitalization, to
9 look through to see where it might be listed.

10 If you look at the section of the report under
11 the subheading of mental status exam, the first
12 paragraph, October 4th, if you go to the second page
13 of that, page six, on the second full side, he
14 endorses suicide ideation, continues advising that
15 probably nothing would keep him from taking his own
16 life.

17 Q. And you're saying that even though you made
18 that finding that you still do not believe that --
19 that he is insane, obviously?

20 A. Well, "insane" is a medical term for me to --
21 to use.

22 Q. Or that he's legally competent?

23 A. Right. Despite having ---

24 Q. Or medically competent, for that matter?

25 A. Despite having suicidal thoughts, that didn't

1 -- does not prevent him from being competent to stand
2 trial.

3 Q. Now, where do the suicidal thoughts emanate
4 from? Have you made that determination? Where does
5 his suicidal thoughts emanate from? I mean, they're
6 from schizophrenia or from psychotic disorder? I
7 mean, where do they come from?

8 A. Well, if you're -- if you're referring to the
9 diagnosis as depressive disorder, certainly a
10 depression can lead to suicidal thoughts.

11 Q. Now, after he left the state hospital or --
12 and he was brought back to the Horry County facility,
13 was there any follow up done by you or by the state
14 to determine whether or not he was continually
15 medicated from that period for the -- for either the
16 depressive disorder or the anxiety or the paranoid
17 personality disorder?

18 A. My role was only as an evaluator for the two
19 court orders, so I would not have a role once those
20 were completed. So I did not get involved in -- in
21 follow up, which would not be part of my role.

22 Q. Well, did you -- did you prescribe medications
23 for him to take when he left the state hospital?

24 A. No. I was not a treating physician for him.

25 Q. Who would that have been?

1 A. That would have been the physician at the
2 Columbia Care Center who I think was the ---

3 Q. Well, can you tell me who that was?

4 A. The physician listed as the attending
5 psychiatrist at the Columbia Care Center is
6 Peggy Wedman, M.D.

7 Q. So you didn't have any role in -- in assigning
8 medication or prescribing medication for him?

9 A. That's correct.

10 Q. All right. At the time that you saw him, was
11 he on medication?

12 A. The first time that we saw him on the -- the
13 -- our first clinical interview date, he was not. On
14 the second interview date, he was actually a patient
15 again at the Columbia Care Center and at that time
16 was on medication.

17 Q. Okay. And how many times did you see him,
18 Doctor, before you did this report?

19 A. I saw him in person those two occasions.

20 Q. All right. And the first time you saw him,
21 you indicated that he was not on medication as far as
22 you know?

23 A. Right, as far as I know.

24 Q. Then you saw him a day later?

25 A. No. Actually, it was 14 days later.

1 Q. Okay. So you saw him 14 days later, and at
2 that point had he been medicated for a period of
3 time?

4 A. It was my understanding he had been, yes.

5 Q. And were there any differences between his --
6 between your findings regarding his behavior and his
7 mental state when you saw him initially and when you
8 saw him 14 days later when he was medicated?

9 A. If you let me look at the mental ---

10 Q. Sure.

11 A. --- section here of the report and see if I
12 made differences there.

13 For example, on -- on the second interview
14 day, I have noted that he was denying that he was
15 having thoughts of suicide on that date, which would
16 be a difference between the first interview and the
17 second, for example.

18 Also, in terms of his mood, he -- I asked him
19 to rate that on a scale of one to ten. And the first
20 time he gave it a one, one being the worst, ten being
21 the best. The second time he made it a three on a
22 10-point scale. So he's -- that's his
23 self-description of his mood, his highest
24 improvement.

25 So those would be two differences in terms of

1 his mental status between the two interviews.

2 Q. Let me ask you, Doctor, when he was sent back
3 to J. Reuben Long from the hospital, was there -- did
4 you indicate to them that he was to be placed on
5 suicide watch?

6 A. I wasn't involved in his discharge from the
7 Columbia Care Center, so I made no recommendations in
8 those terms.

9 Q. All right.

10 A. The recommendations that I made are on the end
11 of the -- the report.

12 Q. And when you saw him this morning, was his
13 behavior and his mental state different than it was
14 when you saw him back on the initial two visits? My
15 understanding from you is you saw him twice while he
16 was hospitalized.

17 A. Once while he was hospitalized. The first
18 time, he was coming from the detention center. He
19 was hospitalized from that appointment, and then the
20 next time I saw him he was actually in the hospital.

21 Q. Okay. And today would have been the third
22 time that you would have seen him?

23 A. That's correct.

24 Q. And my question is: When you saw him today,
25 was his mental state different than it was the two

1 previous times that you'd seen him?

2 A. I didn't specifically ask about his -- his
3 mood today, although he was upset about his
4 medication, lack of medication, and mental health
5 treatment that he's received.

6 Q. Okay. So, and I'm not -- you're saying you
7 didn't make an inquiry about his mental state; is
8 that what you're saying?

9 A. Well, I didn't make an inquiry about the mood,
10 other than comparing to the things that I just made
11 the difference between the two interviews. I didn't
12 specifically ask about...

13 Q. Okay.

14 A. --- his mood.

15 Q. But your opinion was that he -- when you saw
16 him initially, that is, the first two visits, you
17 made a determination that he was competent to stand
18 trial. And after seeing him today, that's still your
19 opinion?

20 A. Yes, it is.

21 Q. Is that correct?

22 A. That's -- that's correct.

23 MR. WILSON: All right. Bear with me
24 just one second.

25 (Mr. Wilson, Mr. Rathbun, and the

1 defendant confer.)

2 BY MR. WILSON:

3 Q. Since you've observed Mr. Winkler this morning
4 and since you've seen him back when he was at the
5 hospital initially from J. Reuben Long, would it be
6 your opinion that he is in need of hospitalization
7 as opposed to being in jail at this point in time?

8 A. I don't know what services are provided at the
9 -- at the jail. I believe he's in need of some
10 mental health treatment.

11 Q. Was there any particular reason when he was
12 sent to Columbia Care Center back on 10/04, I think
13 you said. Is that...

14 A. I'd have to look at the date again.

15 Q. --- the date?

16 A. October 4th.

17 Q. Yeah. Why was he sent to Columbia Care
18 Center?

19 A. I can -- I'm sorry.

20 Q. Go ahead. I'm sorry. Go ahead.

21 A. I can look at the commitment order to see
22 exactly what we put.

23 THE COURT: I'm looking at your report,
24 so you're talking about ---

25 MR. WILSON: I think maybe he

1 misunderstood my question. Maybe I didn't make
2 myself clear, and I apologize.

3 BY MR. WILSON:

4 Q. What I was asking was, when he -- he was sent
5 there on 10/4, but rather than evaluate and send him
6 back to the jail, he was sent to Columbia Care
7 facility, and I was asking why was that.

8 A. Oh, I'm sorry. Then I did misunderstand.

9 Q. I'm sorry.

10 A. We recommended a commitment to hospitalization
11 because of his suicidal ideations and concern about
12 his taking -- actually attempting suicide.

13 Q. And I know we talked about this a little bit,
14 about the traits which you said that his -- the
15 traits of paranoid disorder that he showed, and I
16 think we talked about it in general, but do you know
17 or can you tell me specifically which of the traits
18 he actually does have of paranoia?

19 A. Okay. I can -- can look at my notes of...

20 He actually at one point used the term
21 "paranoid." He mentioned that there were times that
22 he thinks people are talking about him, starting in
23 high school, said that it hasn't had an effect on his
24 work or his relationships or work, that he has led --
25 that he's able to hide it, conceal it, yet he still

1 thinks about it.

2 Q. So, now, those are some of the symptoms which
3 suggest paranoia. Now, are there particular traits
4 that -- that are assigned to those symptoms, or was
5 it -- or it's just the fact that he had some of the
6 symptoms which might be associated with paranoia? Is
7 that what we're saying?

8 A. Well, when it comes to paranoid personality
9 disorder, what -- the different criteria, one of the
10 criteria could be misinterpreting what other people
11 are saying or how they're looking or acting towards
12 you.

13 Q. All right. And if a person is diagnosed with
14 paranoid disorder, would that person be able to
15 conform that disorder so that they can control it and
16 -- and not act on it? Is there a way for them to do
17 that without medication?

18 A. Having the personality disorder does not mean
19 that -- that the person would not be able to control
20 their behavior to conform to the requirements of the
21 law necessarily.

22 MR. WILSON: I don't have any other
23 questions.

24 THE COURT: Mr. Humphries.

25 MR. HUMPHRIES: Very briefly.

REDIRECT EXAMINATION

BY MR. HUMPHRIES:

Q. Let's refer back to the mental status exam. On your report on page six -- it's on my page six. I assume it's on your page six, discussing whether or not there were any differences between the first interview on October 4th, 2006, when he wasn't on meds, and October 18th, 2006, when he was on meds.

And let's -- let's refer first to the interview of the 4th. You indicate he was awake, alert, and in no acute distress. Did you have that same conclusion on October 18th?

A. Yes.

Q. He was cooperative and had appropriate eye contact. Did you have that same conclusion on October 18th?

A. His eye contact was appropriate, yes, that's...

Q. He displayed no increased or decreased motor activity and his gait was steady. Did you find that, as well, on October 18th?

A. I didn't specifically address his gait; but in terms of his motor activity, I said the same thing both times.

Q. His speech had a conversational volume and

1 rate. Did you also find that on the 18th?

2 A. Yes.

3 Q. His thought process was logical and goal
4 directed with no indications of delusions. Did you
5 find that, as well, on the 18th?

6 A. Yes.

7 Q. He denied auditory and visual hallucinations.
8 Did you find that, as well, on the 18th?

9 A. Yes.

10 Q. He was oriented as to person, place, or time.
11 Did you find that, as well, on the 18th?

12 A. On the 18th, pointing to person, place, or
13 time except getting the day wrong by one day.

14 Q. And is that ---

15 THE COURT: Is that day or date? Is that
16 Monday-Tuesday or like October 18th?

17 THE WITNESS: I'd have to look back at my
18 notes, but usually, Judge, when I put "days," it's
19 Monday-Tuesday is what I mean by that, but I will
20 check.

21 BY MR. HUMPHRIES:

22 Q. And, in fact, on the 18th, I believe you note
23 that his affect was at times irritable, something you
24 didn't note when he was not on meds on the 4th. Is
25 that correct?

1 A. I'm sorry. Go back to the...

2 Q. Go back to the -- go to the 18th, there's a
3 notation that indicates his affect was at times
4 irritable. This is ---

5 A. That's correct.

6 Q. That's when he was on meds?

7 A. Correct.

8 Q. And is that different than when you found him
9 on the 4th when he actually wasn't on meds, or is it
10 just not mentioned?

11 A. I mentioned that he appeared sad on the -- on
12 the 4th. I didn't mention irritability.

13 Q. Very good. So with the exception of his lack
14 of -- or a denial of any suicidal ideation, were your
15 conclusions on his -- as relates to his mental status
16 significantly different on either the -- between
17 those days, the 4th and the 18th?

18 A. The only other thing I would say is that his
19 subjective assessment of his mood was improved such.

20 Q. From a one to a three?

21 A. Correct.

22 MR. HUMPHRIES: That's all I have. Thank
23 you, Your Honor.

24 MR. WILSON: I just have one other
25 question, Your Honor, if I might.

RECROSS-EXAMINATION

BY MR. WILSON:

Q. Just let me ask you, Doctor, is it your belief today that he needs to be reassessed prior to having a trial or going forward with a trial, that this defendant needs to be reassessed?

A. Reassessed in terms of?

Q. Of his mental health.

A. I believe he needs to have mental health treatment, an assessment for that, but not -- not any further assessment for competency to stand trial.

MR. WILSON: Okay. Thank you.

THE COURT: Now, Doctor, as to your assessment about the capacity to conform, do you feel that on the day in question back in '05, do you feel that -- basically, do you feel that he had any mental illness that would have affected his ability to conform his conduct with the requirements of the law?

THE WITNESS: I don't -- don't believe there was any -- anything that would interfere with that, Your Honor.

THE COURT: Okay. Any other questions then?

MR. HUMPHRIES: Nothing from the state, Your Honor.

1 THE COURT: You may step down.

2 MR. HUMPHRIES: Your Honor, I ask that
3 this witness be allowed to be excused unless the
4 Court has some ---

5 THE COURT: What was the date of the
6 alleged offense?

7 MR. WILSON: March 6th.

8 THE COURT: March 6th, '06?

9 MR. WILSON: Yes, sir.

10 THE COURT: Not that '05. I meant March
11 6th, '06. Would the question -- the answer still be
12 the same?

13 THE WITNESS: Yes, sir. I -- I misheard
14 you. I thought you meant ---

15 THE COURT: I did.

16 THE WITNESS: --- that date. The same
17 thing, sir.

18 THE COURT: Thank you. You may step
19 down.

20 MR. HUMPHRIES: And may he be excused,
21 Your Honor?

22 THE COURT: Any objection?

23 MR. WILSON: No, sir, Your Honor.

24 THE COURT: Yes. Thank you, Doctor. You
25 may be excused.

1 THE WITNESS: Thank you, sir.

2 (The witness is excused from the witness
3 stand and leaves the courtroom.)

4 THE COURT: Any other testimony or
5 evidence from the state?

6 MR. HUMPHRIES: Nothing from the state,
7 Your Honor.

8 THE COURT: Anything from the defense?

9 MR. WILSON: Nothing, Your Honor.

10 THE COURT: Okay.

11 MR. WILSON: Judge, I do have some other
12 matters but not with the doctors.

13 THE COURT: Any comments regarding
14 criminal responsibility, capacity to conform, or
15 competency for me to decide? State?

16 MR. HUMPHRIES: No, Your Honor. I just
17 want to make clear that the defense, as I understand
18 it, as we -- we talked a bit about it, is they don't
19 object to the submission of the report as evidence
20 for Your Honor to consider on those issues, but they
21 do challenge the findings.

22 MR. WILSON: That is correct. That is
23 correct.

24 THE COURT: That's what I believe, as
25 well. Okay. Now, any other comments from the state?

1 MR. HUMPHRIES: No, Your Honor.

2 THE COURT: From the defense regarding
3 capacity to conform, criminal responsibility, or
4 competency?

5 MR. WILSON: No, sir.

6 THE COURT: All right. Based on the
7 testimony and based on the report I've considered, I
8 find that the defendant, Louis Winkler, on the day of
9 the alleged incident did have criminal responsibility
10 for those -- for any event that he may have done on
11 that date; that also he had the capacity to conform
12 his conduct to the requirements of the law; and I
13 find that at this time he is competent to assist in
14 his defense, he understands the nature of the court
15 system and the charges against him, and he is
16 competent to stand trial for these matters.

17 Now, with that being done, is there any
18 other matter that we need to discuss? I do have some
19 matters that I've signed for you, Mr. Wilson.

20 MR. WILSON: Yes, sir.

21 THE COURT: And, Mr. Wilson, if you'd
22 approach the bench, I'll be glad to give you this
23 order if you want ---

24 MR. WILSON: Thank you, Your Honor.

25 Your Honor, this is the original

1 affidavit from the investigator. I've actually given
2 a copy of that to the solicitor.

3 THE COURT: Mr. Wilson, have you checked
4 with another investigator?

5 MR. WILSON: I have called several, and I
6 actually ended up choosing this particular person
7 because they have done several and have come highly
8 recommended back. I know the solicitor had worked
9 with him on a case very recently, and I know that
10 she's doing one here in Charleston right now.

11 And I know that she is, if not the best,
12 certainly one of the best in the state doing this
13 kind of work, and I wanted to make sure that I got
14 somebody who knew what they were doing and who I
15 thought -- that I felt very comfortable with. And
16 out of the list of the ones that I've talked to and
17 that I've had, that's kind of who I wanted, the one I
18 preferred going with.

19 I think -- if you ask me, could I have
20 gotten somebody else? Probably. I don't think I
21 could have gotten anybody else with the same quality
22 of this lady, and that's why I ended up choosing her
23 out of the other people that I had. And we had the
24 names of several; and from that, we chose her.

25 THE COURT: It looks as if that her main

1 emphasis is going to be on the background of
2 Mr. Winkler.

3 MR. WILSON: That's correct. And, Judge,
4 we're doing that, obviously, for -- for, you know,
5 mitigation purposes, you know, in case we get to that
6 stage of the trial, so that we'll be in a position
7 to ---

8 THE COURT: Well, do you have anyone,
9 sir, on the ---

10 MR. WILSON: Yes.

11 THE COURT: --- as an investigator on the
12 guilt phase of the trial?

13 MR. WILSON: Yes. Yes, sir. And ---

14 THE COURT: And that person can have
15 everything done even if we have the trial in June?

16 MR. WILSON: Yes, sir. She indicates to
17 me that she can and -- and has already started.

18 THE COURT: This person says they could
19 not begin until June, Ms. Davis.

20 MR. WILSON: Well, she's actually begun.
21 She came down and -- and actually spent some time
22 with Mr. Winkler. She came down and spent a whole
23 day with me, going over his file.

24 And I know she's had some other things
25 going on. I do understand that. She made that ---

1 THE COURT: Her affidavit says: "It will
2 take six to eight months, and I can't start till
3 June." Mr. Wilson, that's determinative.

4 MR. WILSON: Well -- and I agree. And I
5 think, to be honest with you, Judge, that we could --
6 that she could do it in less time than that; but I
7 know she indicated to me that there was no way she
8 could do it in June, that she could do it by June.

9 THE COURT: Well, my concern is that we
10 maybe thought about changing it a month or so, but it
11 sounds to me she wants to change it till the
12 following year.

13 MR. WILSON: Well, I don't -- I mean, I'm
14 sure she would love to have that, I would too, but we
15 don't ---

16 THE COURT: Well, she said that at least
17 -- she said that at least six months to eight months.

18 MR. WILSON: Well, and she would like to
19 have that time, I don't think there's any question
20 about that, but I do believe that if -- if the Court
21 gave her 60 to 90 days that she would be able to do
22 it. I do believe that.

23 THE COURT: From now?

24 MR. WILSON: Yes, sir. Well, but --
25 well, not from now but...

1 THE COURT: From June?

2 MR. WILSON: From June, yes, sir.

3 THE COURT: I will tell you right now, I
4 am not going to carry this case over into '08.

5 MR. WILSON: I understand that.

6 THE COURT: And so if this person cannot
7 get this matter completed, the mitigation specialist
8 here, until late fall of '07, then you need to find
9 another mitigation specialist.

10 MR. WILSON: All right, sir.

11 THE COURT: I know that you feel she's
12 very good, and she probably is -- I assume it's a
13 woman?

14 MR. WILSON: Yes, sir.

15 THE COURT: -- that she probably is.
16 But, obviously, there are other ones that are very
17 good, too, and -- and we can't have this thing
18 delayed that long.

19 MR. WILSON: I understand.

20 THE COURT: I want to go ahead and just
21 set a date for this trial.

22 Mr. Humphries, what's your position, sir?

23 MR. HUMPHRIES: Your Honor, we have --
24 there certainly are some time constraints that we
25 previously discussed. I need to let the Court know

1 that we have a date for the next capital case that
2 was anticipated to be after Mr. Winkler's which will
3 either be the last -- starting the last week of
4 October or the first week of November.

5 So, in that case, there have been no
6 indications from the defense in that case that that's
7 not a realistic court date. That's the one that
8 we're just trying to narrow it down to the last week
9 of October or the first week of November, based on
10 Judge Baxley's case.

11 So, you know, if we're talking about an
12 extensive period of time, we're going to go -- we're
13 going right into that date.

14 I can't speak for Mr. Wilson. I've --
15 I've done a bunch of these, and I've seen a bunch of
16 mitigation specialists. I know that there's been an
17 entire cottage industry developed around mitigation
18 in capital cases, and there are a lot of mitigation
19 specialists.

20 I don't take any exception to this lady's
21 qualifications. She did -- she didn't work for the
22 state. She worked for -- for Stenko in the last
23 capital case we tried. So I know that she does that
24 kind of work, and it appears she does that work well,
25 but I am very concerned that if we start talking

1 about an extended delay from the original trial date
2 -- and, quite frankly, this is -- this is the second
3 date that we have talked about. We first talked
4 about April, then we talked about June, and now we're
5 talking about the 60 to 90 days. That's going to put
6 us right -- right up against the next capital case
7 which we forecasted out some time ago when we started
8 this process.

9 So I have some -- some serious concerns
10 about continuing any significant period of time. If
11 we continue the 60 days, putting us into August,
12 certainly the state will be prepared to go forward at
13 any time, but in terms of ---

14 THE COURT: I was looking at the schedule
15 with August, July-August, and looking at maybe -- if
16 I did continue it, to do it in July, beginning the
17 30th of July.

18 I notice the first week in August, Horry
19 now has General Sessions with Judge Milling. I don't
20 know what you have the 30th of July. Do you have any
21 General Sessions involved then?

22 MR. HUMPHRIES: I don't have that
23 schedule, Your Honor. I can find out very quickly.

24 THE COURT: I'm scheduled to do Common
25 Pleas in Beaufort the 30th of July, but we can change

1 that. And I've got General Sessions in Spartanburg
2 on August 6th. If Judge Milling could change with
3 me, then I'd be able to go into Horry August 6th.
4 And then August 13th, I have Common Pleas in Horry,
5 so I'd already be there.

6 Do y'all feel this case will take longer
7 than three weeks?

8 MR. WILSON: No, sir.

9 MR. HUMPHRIES: No, sir.

10 THE COURT: Mr. Wilson, how about a
11 schedule for August 6th or July 30th?

12 MR. WILSON: Judge, you know, I could be
13 -- I will be ready, obviously, whenever the Court
14 indicates.

15 THE COURT: No, you won't. You're not
16 ready in June, you said.

17 MR. WILSON: Well, I'm not ready, but --
18 I am ready. It's my expert who is not ready, and
19 she's the one who's asking for time. I can be ready
20 as far as -- as representing, but it is important to
21 me to try to get somebody that he is comfortable
22 with, and I -- you know, which has been the other
23 problem. We had another investigator, and he was not
24 comfortable with the investigator, so we had to
25 switch, which is one of the problems. And -- and I

1 finally found somebody that I think he's comfortable
2 with that I'm certainly comfortable with, very
3 comfortable with, and -- and I think that this person
4 is worth some wait.

5 I understand the Court's reluctance to
6 give us six or eight months, and I certainly
7 understand that. I do think that she is worth some
8 wait.

9 And what I'm saying is, if you can give
10 me then -- if all you can give me is until August
11 6th, then I will take that; and if she can't do it,
12 then I will try to find somebody else who can.

13 Now, the problem I have is, I can't
14 promise the Court at this point that I can find
15 somebody who's going to say that I can do it by
16 August 6th who is going to be competent to do it. I
17 don't just want to get somebody and have ---

18 THE COURT: I know, but, Mr. Wilson, you
19 know, we've been dealing with this thing for months
20 now.

21 MR. WILSON: I understand that.

22 THE COURT: There comes a point in time
23 that we've got to say it's going to be done.

24 Here's what I'm going to do.

25 MR. WILSON: All right, sir.

1 THE COURT: We've got this matter -- I'm
2 going to go ahead and schedule this matter to be
3 tried beginning on either July 30th or August 6th,
4 one or the other. I'm going to call various judges
5 to change some schedules, and it's going to begin
6 either July 30th or August 6th.

7 MR. WILSON: All right, sir.

8 THE COURT: If either one of y'all have
9 problems on the schedules, then -- I can't imagine
10 how you can, since this is the highest priority of
11 any trial -- but you need to contact me.

12 Mr. Wilson.

13 MR. WILSON: Yes, sir.

14 THE COURT: I want you to give me
15 assurances, sir, within ten days that you either have
16 Ms. Davis who says she can be ready to go or you've
17 got to get another investigator.

18 MR. WILSON: I will.

19 THE COURT: You're to send that to me by
20 e-mail with a copy to Mr. Humphries.

21 MR. WILSON: All right, sir.

22 THE COURT: And I don't need to know
23 anything about names but that you're ready to go.
24 Let's just assume it's going to be July 30th, but it
25 could be August 6th. I'll let y'all know the exact

1 date.

2 I feel more comfortable with the July
3 30th date, but August 6th looks like it's easier to
4 arrange schedules there since we've got General
5 Sessions already scheduled, so I'd only have to
6 change, really, one time with Judge Milling or Judge
7 Burch or some of the others. All right.

8 MR. WILSON: Thank you, sir.

9 THE COURT: So, anyway, that's where we
10 are, and I do not -- and I do not plan for that to
11 change.

12 MR. WILSON: All right, sir.

13 THE COURT: So please understand either
14 the -- it's going to be her or someone else to have
15 it done.

16 MR. WILSON: I understand.

17 THE COURT: I cannot imagine anybody if
18 they got started ten days from now couldn't have this
19 stuff done if they put priority on this by that time
20 on the mitigation stuff.

21 MR. WILSON: Yes, sir.

22 THE COURT: All right. Do we have other
23 matters that you all -- yes, Mr. Humphries.

24 MR. HUMPHRIES: The only other matter is
25 the scheduling order which my assistant e-mailed to

1 your law clerk. And I believe with exception of the
2 trial date we may have to change some of the dates if
3 we're advancing or postponing the case, just for the
4 dates -- the dates preceding the start date more
5 closely in time. I'll be glad to, upon being
6 notified by the Court, to change those.

7 THE COURT: Do you have a copy of that
8 with you there?

9 MR. HUMPHRIES: We mailed it -- we
10 e-mailed it. I actually left Conway without going by
11 the office. And, of course, she had it in the file,
12 but I didn't pick it up. She said she e-mailed it
13 this morning, re-e-mailed it.

14 THE LAW CLERK: When was the first time?

15 MR. HUMPHRIES: We had previously
16 submitted one.

17 THE LAW CLERK: Okay.

18 MR. HUMPHRIES: But those dates, like I
19 said, those dates will change if ---

20 THE COURT: Well, let's find out whether
21 we need to change those.

22 All right. The one we have here that
23 wasn't signed, of course, had prior -- December 1st
24 status conference, January 18th status call
25 conference, January 22nd deadline per agreement as to

1 additional questions. That seems to be the first
2 one.

3 MR. HUMPHRIES: That was -- that was
4 jurors. And in that one, if you look back on the
5 back page, you'll see a start date on that order, and
6 that probably anticipates in April.

7 THE COURT: It does, April 16th.

8 MR. HUMPHRIES: Yes, sir.

9 THE COURT: The jury to be chosen. But,
10 and then we -- it continued.

11 Let me ask y'all this. Let's now -- let
12 me go ahead and just hand write some changes in here.
13 I don't need to change things through January 22nd.
14 But when do y'all think y'all can have your questions
15 ready to send to the jurors if we're going to do this
16 thing July 30th as a proposed date and no later
17 August 6th?

18 MR. HUMPHRIES: They need two -- the
19 clerk needs two months, Your Honor.

20 THE COURT: So we need to send them out
21 by no later than June 1st. Really, let's say the
22 last week of May.

23 MR. HUMPHRIES: Yes, sir.

24 MR. WILSON: The 1st of May is fine with
25 me.

1 THE COURT: Well, I'm just -- that's
2 really a short time. I was looking a little more
3 earlier than that. What about two months from -- two
4 and a half, say April the 20th? Just get your
5 questions together.

6 MR. WILSON: April, April 20th is fine.
7 I don't have -- I think they're scheduled for March
8 now, right? Aren't they scheduled for March?

9 MR. HUMPHRIES: They were scheduled
10 for...

11 THE COURT: I'm thinking April 23rd, I'm
12 in Dillon for Common Pleas -- General Sessions Court,
13 and we could meet at that time to have a conference
14 on those questions one day during that week.

15 MR. HUMPHRIES: Yes, sir.

16 THE COURT: I can go ahead and put it for
17 Wednesday morning, April the 25th.

18 MR. HUMPHRIES: Yes, sir. What time?

19 THE COURT: Ten o'clock in Dillon.

20 MR. WILSON: All right, sir.

21 And, Judge, the only other thing is a
22 date for the motions. I think the date for motions
23 is now set for March, March -- sometime in March, and
24 I don't remember what the date was.

25 MR. HUMPHRIES: March 19th?

1 MR. WILSON: March 19th? Can we do those
2 at the same time when we come over to Dillon?

3 THE COURT: Sounds like a good time to
4 me.

5 MR. WILSON: All right, sir.

6 THE COURT: Mr. Humphries, any objection?

7 MR. HUMPHRIES: Your Honor, no. But let
8 me say this: If we're going to argue motions on that
9 day, then we need a day preceding that when the
10 motions would have to have been served on opposing
11 counsel so that we can respond to motions.

12 MR. WILSON: I agree with that.

13 THE COURT: Let's say all motions served
14 by April the 20th. April the 20th would be a Friday.
15 Okay? Well, then you have ten days, I assume, to
16 have motions before you can argue -- require the
17 argument. Let's have them April 13th.

18 MR. HUMPHRIES: All right, sir.

19 THE COURT: Now, April 25th, obviously,
20 if anyone had any motions to file, we may not
21 complete the motions hearing.

22 MR. HUMPHRIES: Yes, sir.

23 THE COURT: Wait and see, but we'll do
24 motions. And if we do on the 25th have to
25 reschedule, we'll reschedule. For example, this

1 order had that on it. And that day we can hear
2 any -- we can set a date for any motions we don't
3 hear. For example, let's go to May, and I'm looking
4 for an appropriate time to hear matters that...

5 It's probable, Mr. Humphries, that you'll
6 have a court reporter in Horry County almost at all
7 times. For example, if I come on down there on May
8 the 25th, on a Friday morning, you can arrange for
9 the court reporter to be there for some of them; can
10 you not?

11 MR. HUMPHRIES: Yes, sir, Your Honor.

12 THE COURT: I've got a conference in
13 Chester which I'm sure will be over by Friday.

14 MR. HUMPHRIES: Yes, sir.

15 THE COURT: So we'll schedule May 25th
16 for all remaining motions to be heard.

17 MR. HUMPHRIES: Ten o'clock, Your Honor?

18 THE COURT: Yes. And that day, also,
19 will be the day that we will direct the clerk to send
20 out all jury notices. Okay?

21 MR. HUMPHRIES: Yes, sir.

22 MR. WILSON: Yes, sir.

23 THE COURT: So, therefore, any objections
24 to the questions and all that, that we -- on April
25 25th when we have the hearing, I'm going to do

1 everything, and she can send the motions -- the jury
2 notices out on April -- May 25th. That should be
3 enough time; should it not?

4 MR. HUMPHRIES: Yes, sir.

5 THE COURT: And then we can set a time to
6 meet to review responses to jurors in June or July.
7 Let's see. If she mails them May 25th, we should
8 have all the responses back in a month; don't you
9 think?

10 MR. HUMPHRIES: They are required to
11 return them within 30 days, I believe, Your Honor.
12 It takes -- of course, it takes some time for them to
13 compile them. And as -- if this is like every other
14 capital case, they'll -- they will trickle in after
15 that. So, typically, we try and do the -- we talk
16 about the jurors within a couple of weeks of -- a
17 week or two of the trial date, but whatever the
18 Court...

19 THE COURT: I'm just looking here to see
20 about when we can do that. The trouble is right now
21 my court schedule has me in July in Hampton, Aiken,
22 and Colleton for those three weeks. I hate for y'all
23 to have to come all the way to Hampton.

24 MR. HUMPHRIES: Aiken's not so bad.

25 THE COURT: Yeah, but Aiken is July 16th.

1 MR. HUMPHRIES: That's -- Your Honor,
2 and, obviously, it's up to the Court, but typically
3 that's the time frame which ---

4 THE COURT: I know, but I'm just...

5 MR. HUMPHRIES: --- we do this.

6 THE COURT: Depending on whether we have
7 it July 30th or August 6th.

8 All right. Let's do that then. Let's
9 get together on July the 17th at two o'clock in
10 Aiken. There we'll review juror questionnaires,
11 excusable jurors, and all that.

12 And, Mr. Humphries, I need you to make
13 sure we know we do need a clerk of court there.

14 MR. HUMPHRIES: Yes, sir. Oh,
15 absolutely. They'll bring -- they'll be prepared to
16 do that.

17 THE COURT: Okay. And then let's meet --
18 at that time, this is so close, we may also go ahead
19 and say that's the time when we'll also look and see
20 if y'all can agree on your exhibits and all. Because
21 if we do it at that point in time with two to three
22 weeks from the trial, in other words, July 30th or
23 August 6th...

24 MR. HUMPHRIES: You know, we can do that
25 at the -- I'm just trying to think in terms of

1 logistics.

2 THE COURT: If not, all I can see is we
3 can do it on July 30th -- July 20-something in
4 Colleton.

5 MR. HUMPHRIES: Your Honor, we can do
6 that or -- I mean, quite frankly, we can do that. It
7 will only take an hour or so, morning or afternoon.
8 We could do that while we're doing jury
9 qualifications if that's acceptable to the Court.

10 THE COURT: Well, I have no problem.

11 Mr. Wilson, any problem with that?

12 MR. WILSON: I don't have any problem
13 with that.

14 THE COURT: Okay. So we'll do the
15 discussion on exhibits on the first day of trial or
16 first day the jury arrives.

17 And then right now for sake of
18 discussion, I'll let y'all know about July 30th or
19 August 6th. I started to just go ahead and put down
20 August 6th, but let me -- let me check with Court
21 Administration. And I'll let you both know, but it's
22 either going to be July 30th or August 6th and the
23 jury is going to arrive one way or the other.

24 August 6th seems like a good date because
25 -- but if I can get someone to go to Spartanburg,

1 that seems like to me that that would work out fine
2 because then we'd have two weeks and then the week
3 after the two is a chamber's week. So, therefore, no
4 court conflicts there. So if we went into the third
5 week, we would have that chamber's week. So, to me,
6 that seems like the best time, but I'll let y'all
7 know for sure. Okay.

8 All right. So that means the next thing
9 we're going to do now, right now, is April 25th.
10 We're going to gather and discuss jury questions and
11 all, and we'll do that in Dillon on April the 25th.
12 We then will agree on -- we'll have the clerk there
13 with us then, too, please.

14 MR. HUMPHRIES: Yes, sir.

15 THE COURT: We'll then on the -- but
16 before April 25th, all the motions should have been
17 filed on April 13th. We'll hear all the motions we
18 can on April 25th. Did we set a time on the 25th?

19 MR. HUMPHRIES: Yes, sir, we did. Ten
20 o'clock in the morning.

21 THE COURT: So I need to make sure Dillon
22 knows that, that I want to do that. And we'll hear
23 all the motions we can on that day. What we cannot
24 hear on that day, we'll set it for May 25th at
25 10:00 a.m. May 25th we'll be in Chesterfield.

1 MR. HUMPHRIES: You said you were going
2 to be in ---

3 THE COURT: Horry. I'm sorry. Come to
4 Horry.

5 MR. HUMPHRIES: Yes, sir. And we'll make
6 sure you have a court reporter.

7 THE COURT: That's in Horry.

8 And by the way, that May 25th thing, if I
9 get to Chesterfield and, say, the Common Pleas docket
10 falls apart, we may go to Horry that week if y'all
11 can get together earlier that week. Okay?

12 MR. HUMPHRIES: Yes, sir.

13 MR. WILSON: Yes, sir.

14 THE COURT: So be prepared.

15 On July 17th, we'll all meet in Aiken at
16 two o'clock to review all the jurors' things that
17 have come back in and see if you contest or object to
18 any jurors that we have excused for whatever reason
19 or who want to be excused. And that will be on July
20 17th.

21 And then we'll be ready for trial later
22 on, and we'll resume any exhibit discussion on the
23 day that the jurors report for trial either on July
24 30th or August the 6th. Okay?

25 MR. HUMPHRIES: Very good.

1 MR. WILSON: Yes, sir.

2 Your Honor, of course, intended the --
3 you wanted the clerk to send out the jury notices.

4 THE COURT: May 25th.

5 MR. WILSON: The 25th.

6 (There was off-the-record discussion by
7 the Court and the law clerk.)

8 THE COURT: Let me ask y'all, because my
9 law clerk brought something up here. Is April 26th
10 as good for y'all as April 25th?

11 MR. HUMPHRIES: Yes, sir.

12 MR. WILSON: Yes, sir.

13 THE COURT: All right. So it's April
14 26th, on Thursday instead of Wednesday, in Dillon.

15 Now, in the meantime, Mr. Wilson...

16 MR. WILSON: Yes, sir.

17 THE COURT: Mr. Humphries...

18 MR. HUMPHRIES: Yes, sir.

19 THE COURT: By April 15th, how about if
20 you all would send me any questions you all have
21 different than the normal ones that we're going to
22 send out, so I can have -- I'd rather have something
23 in my hand before April 26th if y'all want some
24 additional questions to be sent out.

25 And you all know there's sort of a set

1 number of questions that everybody has, sort of a --
2 standard ones that are sent out, and I'll be getting
3 a copy of that.

4 But if y'all have any additional ones
5 that we're going to discuss that day, how about going
6 and sending them to me, Mr. Wilson?

7 Do you have any particular ones,
8 Mr. Humphries?

9 MR. HUMPHRIES: There will be no
10 additional questions from the standard questions.

11 MR. WILSON: By what day, Your Honor?

12 THE COURT: Say, April 20th. I mean, if
13 it gets to me the 21st or 22nd or -- I just want to
14 make sure I've got them before April 26th.

15 MR. WILSON: Yes, sir.

16 THE COURT: I don't want to see them that
17 day. Then we've got to spend time with everybody
18 thinking about them and looking at them. We want to
19 know beforehand so that me and Mr. Humphries -- April
20 20th, I think, is a Friday; is it not? Let's see. I
21 think so. So -- yes, it is. So April 20th I want
22 the questions we're going to go over on the 26th. I
23 want them to arrive by April 20th.

24 Mr. Humphries.

25 MR. HUMPHRIES: Yes, sir.

1 THE COURT: In the past in Horry, since
2 I've not done one of these in Horry before, I always
3 have gotten services of SLED and everything else.

4 MR. HUMPHRIES: Yes, sir.

5 THE COURT: I assume you all -- since
6 your sheriff's department is different than other
7 sheriff's departments in that it doesn't get itself
8 involved in criminal investigation, I assume SLED,
9 though, still gets involved in these matters if the
10 sheriff is not going to be involved.

11 MR. HUMPHRIES: Yes, sir.

12 THE COURT: Okay. All right. Well, I'll
13 have to get SLED involved then.

14 MR. HUMPHRIES: And you will be -- you'll
15 make that contact?

16 THE COURT: I'll make contact.

17 MR. HUMPHRIES: Very good.

18 THE COURT: Okay. All right.

19 Then your motion, Mr. Wilson, for a
20 continuance of the case is granted, but continued to
21 either July 30th or August 6th, and that's it.

22 And have y'all got the court reporter's
23 name and your cards and everything?

24 MR. WILSON: Yes, sir.

25 THE COURT: Anything else, Mr. Wilson ---

1 MR. WILSON: Yes, sir.

2 THE COURT: --- at this time?

3 MR. WILSON: Yes, sir. Your Honor, one
4 of the things is, the defendant has been incarcerated
5 now, obviously, since his arrest in March of '06, and
6 one of the things that he has constantly complained
7 about is the conditions under which he's kept. And
8 -- and today I think that the doctor testified that
9 he thought that he needed ongoing mental health
10 treatment. And he's not been getting that.

11 THE COURT: He said for depression.

12 MR. WILSON: Right, yes, sir. But he's
13 not -- that's correct. But my point is he's not
14 getting any at this point and has not since he left
15 the state hospital, other than the fact that he saw a
16 physician -- a psychologist -- on the 7th?

17 (Mr. Wilson and the defendant confer.)

18 MR. WILSON: Whatever, the 7th, when we
19 had him evaluated, had the private evaluation on the
20 7th.

21 THE COURT: And you made the request
22 through the facility where he's housed?

23 MR. WILSON: Yes, sir.

24 THE COURT: And they said what?

25 MR. WILSON: They said that all they have

1 is the order from the state hospital.

2 In fact, he complained to me, so I
3 finally went out to the jail and met with the nurse
4 out at the jail to discuss it with her, because he
5 had been constantly complaining that he hadn't been
6 receiving his medications. The medications and the
7 prescriptions that he had had run out.

8 And she said that they will not give him
9 the additional prescriptions and that they called the
10 state hospital and asked the doctors there about
11 continuing to provide it to him and that they have
12 refused. So she said ---

13 THE COURT: Why didn't you ask this
14 doctor while he ---

15 MR. WILSON: Well, I did ask him outside
16 before we came in...

17 THE COURT: Okay.

18 MR. WILSON: --- about that. And what he
19 said is, he said that the normal procedure, at least
20 in their estimation, was that that's the jail's
21 responsibility to do it.

22 Well, the jail said that they thought it
23 should have been the state hospital's responsibility
24 and that since there was nothing in the discharge
25 order then they didn't do anything.

1 And, you know, so the problem is he's ---

2 THE COURT: So, Mr. Wilson, I wish you'd
3 brought that to my attention before I let the doctor
4 go. We could have...

5 MR. HUMPHRIES: I might be able to
6 assist, Your Honor. I spoke with the director of
7 detention, Tom Fox, just before this hearing and
8 apprised him of that situation. He was unaware of
9 that. He said that the detention center uses the
10 discharge directions to determine what, if any,
11 follow up is done.

12 I told him that the doctor from the state
13 hospital indicated that he does need the follow-up
14 treatment. And he's assured me that the detention
15 center now, based on those oral instructions, will
16 begin to follow up with mental health.

17 He'll be seen. If based on their -- this
18 assessment, this new assessment or this reassessment,
19 as it relates to his anxiety and his depression, if
20 he requires medication, that prescription will be --
21 will be given and medications will be given.

22 THE COURT: Now, Mr. Wilson, if that's
23 not done in ten days, you call -- you get on a
24 conference call.

25 MR. WILSON: All right, sir.

1 THE COURT: And I'll make sure it's done.

2 MR. WILSON: One additional thing,
3 Your Honor, is that he has been on suicide watch,
4 which is the other thing, and -- and if you noticed,
5 I asked the doctor whether or not he was in need of
6 additional assessment or reassessment, because one of
7 the things that they placed in his report when they
8 sent it to the -- to everybody was that he indicated
9 that he might do harm to himself.

10 And the jail's position on it is, is
11 that, look, we're not taking him off suicide watch
12 because the doctors put that in his report that if he
13 got an opportunity he was going to do harm to
14 himself, we're not going to take him off that.

15 I asked them, I said, well, he wants to
16 get off. I said, has he done anything?

17 They said, well, no, he hasn't done
18 anything recently, but we're not taking the
19 responsibility for taking him off suicide watch. And
20 if you want, meaning me, if I wanted to do it, that I
21 could sign a waiver taking him off.

22 Well, obviously, I can't sign a waiver.

23 THE COURT: Mr. Wilson, we're not going
24 to encroach on that. When he gets the first
25 evaluation, let some mental health treatment person

1 to do it.

2 MR. HUMPHRIES: And let me -- let me say,
3 I can probably shortcut it. I hate to keep jumping
4 in, but I think I can speed it along a little bit.

5 I talked about that issue, as well, with
6 the director. He, in fact, advised me that Defendant
7 Winkler's file was on his desk, and he was in the
8 process of reevaluating his status for the purpose of
9 taking him off of suicide watch and changing his
10 custody level so at least Mr. Winkler will have a
11 more favorable custody level. Once they do the
12 follow up with the local mental health facility,
13 that's going to be reassessed.

14 THE COURT: It seems to me that it would
15 not be prudent until he does have at least his first
16 visit with some mental health individual to give an
17 opinion to the director, an opinion which he would
18 use in making his decision. That's why if it's not
19 something done within the ten days, let me know.

20 MR. WILSON: All right, sir. That's
21 fine.

22 THE COURT: And I'm sure that if after
23 his first interview with mental health, if they feel
24 like he'd be appropriate, they'd recommend it to the
25 detention center.

1 MR. WILSON: And that's satisfactory.

2 THE COURT: And if that doesn't happen,
3 let me know on a conference call and we'll handle it.

4 It has nothing to do with the trial, it
5 has nothing to do with ---

6 MR. WILSON: No, sir.

7 THE COURT: --- you know, his situation.
8 So we can do that on a conference call.

9 MR. WILSON: Yes, sir. It hasn't -- it
10 doesn't have anything to do, obviously, with his
11 competency. And they testified to that, and they
12 made it very clear.

13 THE COURT: What I'm saying, though, it
14 doesn't need -- any of you gentlemen need it on the
15 record as long as we get something done.

16 So if you have some concern after ten
17 days, if it hasn't been done, if he hasn't been
18 evaluated, and if in fact an evaluation opinion is
19 that he should be taken off suicide watch and the
20 detention says no or whatever else -- and I'm not
21 saying one way or the other is correct -- but we'll
22 have a conference call and work that out.

23 MR. WILSON: That's fair enough, okay.

24 THE COURT: If we can't, we'll have to
25 bring Mr. Humphries into it.

1 MR. WILSON: All right. Thank you,
2 Your Honor.

3 THE COURT: Okay. Anything else?

4 MR. WILSON: Nothing else, Your Honor.

5 MR. HUMPHRIES: No, sir.

6 THE COURT: Do you have any other
7 matters? Have I signed everything you need signed?

8 MR. WILSON: I don't think we have
9 anything else. No, sir. That's all.

10 THE COURT: All right. Then I'll be back
11 with y'all probably within a week or ten days with
12 the exact date of the trial, but it's going to be
13 either July 30th or August 6th, one or the other.

14 MR. WILSON: All right, sir.

15 MR. HUMPHRIES: Thank you, Your Honor.

16 MR. WILSON: Thank you very much.

17 MR. RATHBUN: Thank you, Judge.

18 (Whereupon, the hearing is concluded at
19 approximately 1:20 p.m.)
20
21
22
23
24
25

CERTIFICATE OF THE COURT REPORTER

I, the undersigned, Brenda Cooley, Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned case, pages 3 through 67, inclusive, relative to appeal, in the Court of General Sessions for Horry County, Conway, South Carolina, on the 16th day of February 2007.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 30, 2007

Brenda Cooley

Brenda Cooley

Circuit Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF DILLON) FOURTH JUDICIAL CIRCUIT
2006-GS-26-2101

STATE OF SOUTH CAROLINA,)
COUNTY OF HORRY,)

PLAINTIFF,)

VS.)

LOUIS M. WINKLER,)

DEFENDANT.)

TRANSCRIPT OF RECORD

APRIL 26, 2007
DILLON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES E. LOCKEMY, JUDGE

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

J. GREGORY HEMBREE, ESQUIRE
FRANCIS HUMPHRIES, JR., ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

RALPH J. WILSON, ESQUIRE
PAUL E. RATHBUN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

BONNIE H. KELLY
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

NO EXHIBITS INTRODUCED.

1 THE COURT: Now, what I do have is several motions
2 here filed by the defense, and what I'd like to do today is
3 a few things. One is I want to have everybody have an
4 opportunity -- I thought, and I mistakenly thought, that
5 everybody had the standard questionnaire -- go through the
6 standard questionnaire to see what additional questions you
7 wanted. That was the purpose of this hearing.
8 Unfortunately, we can't do that. As far as people prepared
9 for it, we can try and do it.

10 And the next thing is to make sure the clerk has -- I
11 mean, the clerk obviously cannot send out the jury notices
12 until we have this questionnaire thing completed. And I
13 guess we want to make sure we send the notices out minimum,
14 I would think, 45 days before trial. Trial is now set,
15 what? for the 16th of July as I recall; is that right?

16 MR. HUMPHRIES: Yes, sir, Your Honor. And we do have
17 the order for the additional jurors prepared for your
18 signature.

19 THE COURT: All right.

20 MR. HUMPHRIES: And I believe 45 days will be
21 sufficient?

22 MR. WILSON: Yes, sir.

23 THE COURT: Well, you were -- as y'all know, what we
24 need to do is once we send it out with the questionnaires,
25 not only do you have to be concerned with the

1 questionnaires coming back in, also got to be concerned
2 with the number of jurors who say -- well, some of those
3 you can't serve. Then you got to try again; then you got
4 to get with the sheriff.

5 And then also jurors that come back in with reasons
6 why they cannot serve. We have to have a meeting to
7 discuss those issues to determine how many of those I need
8 to bring in and personally examine or how many y'all can
9 agree we don't need to personally examine and can actually
10 be excused. Some of those should be no problem: Those
11 over 65 that wish to or those who have affidavits of -- of
12 children under seven and do not work, those situations.
13 But some of them I'm sure we're going to have to examine in
14 determining that. So I'm trying to think: Is 45 days
15 enough to get that done?

16 If we did that, that would -- we're talking about June
17 1st, and we are dealing with the summer months.

18 MR. HUMPHRIES: Your Honor, we -- I just -- and this
19 may or may not be helpful. I talked with Mr. Wilson. I
20 was under the impression that I would get his request in
21 advance of the trial. We talked about it, and I imagine he
22 -- he just got caught up and wasn't able to deliver them to
23 us. I believe that given a few minutes, we and the defense
24 counsel can go through his expanded voir dire questionnaire
25 and come to some resolution as to those that we don't

1 object to. And then ---

2 THE COURT: All right.

3 MR. HUMPHRIES: --- send them to the Court.

4 THE COURT: Now, I want today -- before the day is
5 over -- this is going to take more time than I anticipated
6 now. But before the day is over, we've got to make sure we
7 agree on the questions, one or the other. Unfortunately,
8 you probably got a lot of questions in here that we already
9 got in the standard questionnaire.

10 MR. WILSON: Yes, sir.

11 THE COURT: And we've got to work on that. Okay,
12 those are the two things: getting a date for jury to be
13 sent out -- for the jury notices to be sent out, setting
14 the questions to go out with it; signing a -- well, how
15 many -- what you got on that -- 150/200? What do you got -
16 - what number you got on that?

17 MR. HUMPHRIES: Four hundred.

18 THE COURT: Four hundred.

19 MR. HUMPHRIES: And that's in -- and Your Honor, quite
20 frankly, for Horry County in the summer, 400 for a capital
21 case is actually less than we have had in other cases.

22 (Sotto voce discussion between the Court and law
23 clerk.)

24 MR. HUMPHRIES: Because we have vacationing folks, we
25 have some transient folks. So 400 is probably going to get

1 us around 150 to 180..

2 (Sotto voce discussion between Mr. Humphries and
3 deputy clerk.)

4 MR. HUMPHRIES: Yeah, so it's -- we're -- 400 --

5 THE COURT: Just for information, y'all may have heard
6 of a case called "Hinson" that happened a week or so ago.
7 We sent out 250 for that, and we did it the same as if it
8 were a capital case, in Georgetown County.

9 MR. HUMPHRIES: Yes, sir.

10 THE COURT: And we ended up getting -- actually seated
11 somewhere like 95 jurors. But ---

12 MR. HUMPHRIES: It's a little different in Horry than
13 it is in Georgetown.

14 THE COURT: Got more of a transient group?

15 MR. HUMPHRIES: It's a lot different in Horry than it
16 is in Georgetown.

17 THE COURT: All right.

18 MR. HUMPHRIES: I can tell you ---

19 THE COURT: Well, I -- I have no problem if y'all --
20 y'all do it in Horry more than I do, so if you think 400 is
21 enough. I thought I saw Anita saying 700.

22 MR. HUMPHRIES: We had 700 in a very televised case
23 and -- in the -- I can't remember if we did it in the
24 summer or not. In any event, we had 700; and I think we
25 ended up qualifying, in the general qualification, about

1 200 of the 700.

2 THE COURT: Do you want to send 500 to be safe?

3 MR. HUMPHRIES: I'll defer to Anita. She's nodding
4 her head "yes."

5 THE COURT: All right. Well ---

6 DEPUTY CLERK: That would be much better, Judge. We
7 just have so many retired people and there are going to be
8 scheduled vacations ---

9 THE COURT: And by the way, what we did in the -- in -
10 - in -- in Georgetown a few weeks ago is we basically also
11 made sure that you don't assume if they're 65, they don't
12 want to serve.

13 MR. HUMPHRIES: That's correct.

14 THE COURT: So make sure now that they make the
15 choice.

16 MR. HUMPHRIES: Your Honor, we've addressed that in
17 prior capital cases and that's the clerk's policy now is
18 that, you know, they have to make that request.

19 THE COURT: Well, once I told the clerk that and she
20 then checked with them, you'd be amazed the number of
21 people that wanted to serve.

22 MR. HUMPHRIES: Yes, sir.

23 THE COURT: Okay. So let's make sure we do that. So
24 we'll do 500 then.

25 MR. HUMPHRIES: And Your Honor, they have 30 days to

1 respond?

2 MR. HUMPHRIES: How many days do they have to respond
3 to the questionnaire?

4 DEPUTY CLERK: They're -- two weeks.

5 MR. HUMPHRIES: Two weeks. And if we -- if we take up
6 the jury excusals the week before, 45 days should give us
7 ample time to get -- get them in, get them collated, and
8 then ---

9 THE COURT: June 1st is a Friday, I think. Yeah.
10 June 1st is a Friday. I guess we'll probably need to send
11 them out maybe either May 31st or June 1st, and not wait
12 until the Monday, June 4th. So let's -- May 31st might be
13 the day. Let's send them out May 31st.

14 All right. So we've got the number of jurors set;
15 we've got the date we're going to send them out. We're
16 going to go over the questionnaire. Then the next thing we
17 had I wanted to deal with today was the motions of defense,
18 motions of the State, and anything -- other issues y'all
19 want to deal with other than those?

20 MR. HUMPHRIES: Your Honor, there is a matter of
21 arraignment that we'd like to do today.

22 THE COURT: Okay.

23 MR. HUMPHRIES: That we have put off until all --

24 THE COURT: And remember also my -- if I haven't
25 ordered it -- I know I've ordered it before. It's my

1 policy, Mr. Wilson, Mr. Hembree, that you all note who the
2 court reporter is and you request a transcript. Have I
3 told y'all that already?

4 MR. HEMBREE: Yes, sir. And we have ---

5 MR. WILSON: We've got ---

6 THE COURT: All right. Make sure. I don't want
7 anything to happen that people forget who the court
8 reporters were that I see in so many PCR's. So make sure:
9 Ms. Bonnie Kelly; you order a transcript. All right.
10 Well, I think that should be the first order of business.
11 Let us proceed with arraignment.

12 MR. WILSON: Your Honor, may I have one second to ---

13 THE COURT: To explain it to him? Sure.

14 (Sotto voce discussions between the Court and law
15 clerk.)

16 MR. WILSON: We're ready to proceed, Your Honor.

17 THE COURT: All right. Have your client stand up,
18 please.

19 MR. HUMPHRIES: Please the Court, Your Honor ---

20 MR. WILSON: Your Honor, before we do that, let -- let
21 me raise this issue, because this is something he's -- he
22 has asked me about repeatedly about -- well, two things.

23 One, the red suit. And I've explained to him that
24 there's no jury here and there's probably not any media
25 here. But he's concerned about the fact he's in this red

1 outfit and he says he should be in a brown one. And he's
2 also concerned that he has some clothing. I -- in fact, I
3 went to Wal-Mart personally and bought clothing and took it
4 out to the jail; and yesterday gave it to the
5 transportation people so that he could have street clothes
6 on. And apparently they brought them here, but they
7 wouldn't allow him to put them on.

8 MR. HUMPHRIES: I can address that, Your Honor.

9 THE COURT: Well, let -- wait one second, before we
10 address that. Mr. Wilson, make sure your client's aware,
11 as you did say he's aware, there's no jury here. And I'm
12 not here to -- and it's not my job to determine guilt or
13 innocence, so I'm really an administrative procedural
14 situation. There are some legal issues I'm going to rule
15 on, but that has nothing to do with the way he's dressed.

16 I'm aware he is limited in his own ability to wear
17 what he needs to wear or he wants to wear, so that doesn't
18 affect me one way or the other. And I will guarantee him
19 that he will not appear before jurors dressed like he's
20 dressed. I'll guarantee him that when he appears before
21 any jurors, he'll be dressed in appropriate civilian
22 clothing that in no way would prejudice him or make jurors
23 feel they should look at him differently because of his
24 dress. So I'll guarantee him that.

25 And all we're doing right now is basically -- an

1 arraignment is doing an official notification of him -- to
2 him of the charges that are pending against him. And
3 that's really all the purpose of an arraignment is: to
4 notify him and for him to officially enter a plea in the
5 matter. And that's all we're doing today.

6 So I accept that, but when we're having these
7 proceedings between just the Court and counsel and Mr.
8 Winkler being here, as his right is to be here, I'm not
9 going to require people to dress in a manner other than the
10 clothing he would wear in the -- in -- in the detention
11 center. Okay?

12 MR. WILSON: Yes, sir.

13 THE COURT: All right. Now, I want to make sure
14 though, since we're on the record, that he knows what an
15 arraignment is and that depending upon his choices, he
16 knows what the appropriate responses are, depending upon
17 what he's chosen. Now, do you need a minute more to go
18 over it with him just to make sure?

19 MR. WILSON: Yes, sir. And I -- I'll put this on the
20 record that I just explained to him what an arraignment is
21 and that it's -- it's a formal notification of the charges
22 against him, and that the solicitor will -- normally read
23 the indictment to him and say what the charges are and that
24 that's -- and that they will ask him if he's guilty or not
25 guilty of the charges and that his response will be "not

1 guilty."

2 THE COURT: Which would be his formal plea of "not
3 guilty."

4 MR. WILSON: And that he will be tried by God and
5 country.

6 THE COURT: All right. You ready to proceed, Mr.
7 Humphries?

8 MR. WILSON: Yes, sir.

9 MR. HUMPHRIES: Your Honor, at this time, I serve upon
10 the defendant a certified true copy of the docket number
11 2006-GS-26-2101. Your Honor, this is an indictment against
12 Louis M. Winkler, the State of South Carolina against Louis
13 M. Winkler. And at this time I ask, "Louis M. Winkler, if
14 you answer by this name, will you raise your right hand?"

15 THE COURT: To the best of your ability, sir. There
16 you -- let the record reflect he did so.

17 (Defendant raises his right hand.)

18 MR. HUMPHRIES: In regard to the indictment, Your
19 Honor ---

20 THE COURT: Or the defendant did so. I'm sorry.

21 MR. HUMPHRIES: Thank you. As to count 1, murder:
22 That Louis M. Winkler did in Horry County on or about March
23 6th, 2006, willfully, feloniously, and -- and intentionally
24 with malice of forethought kill the victim, Rebecca
25 Winkler, by means of shooting her in the head. The victim

1 did die as a proximate result thereof in Horry County on or
2 about March 6th, 2006, in violation of Section 16-3-10 Code
3 of Laws of South Carolina 1976, as amended in the common
4 law of South Carolina.

5 Count 2, burglary in the first degree: That Louis M.
6 Winkler did in Horry County on or about March 6th, 2006,
7 enter the dwelling of the victim, Rebecca Winkler, without
8 consent and with intent to commit a crime in the dwelling,
9 to wit: murder and -- and/or assault and battery. And
10 when in effecting injury or while in the dwelling or
11 immediate flight, he was armed with a deadly weapon or
12 explosives, to wit: a semi-automatic handgun; and caused
13 physical injury to a person who was not a participant in
14 the crime, to wit: The defendant shot and killed the
15 victim, Rebecca Winkler. He used or threatened to use a
16 dangerous instrument, to wit: a semi-automatic handgun.
17 He displayed what was a pistol or a firearm and/or he
18 entered into or remained in the dwelling in the nighttime
19 in violation of Section 16-11-311-A(1), a, b, c, d, and/or
20 A(3) Code of Laws of South Carolina 1976, as amended.

21 Count 3: That Louis M. Winkler did in Horry County on
22 or about March 6th, 2006, commit an assault and battery
23 upon the victim, J [REDACTED] G [REDACTED], constituting an
24 unlawful act of violent injury to the person of said
25 victim; accompanied with circumstances of aggravation

1 including, but not limited to, to wit: Defendant
2 committed assault and battery upon the victim while in the
3 commission of a burglary or felony, and there exists a
4 great disparity of -- in the age and/or physical conditions
5 of the parties, to wit: The defendant was a 45-year-old
6 male adult and the victim was a 14-year-old child, in
7 violation of the common law crime of assault and battery of
8 a high and aggravated nature.

9 Count 4, escape: That Louis M. Winkler in Horry
10 County on or about March 6th, 2006, while lawfully confined
11 upon the public works of the county, to wit: the J.
12 Reubin Long Detention Center; or while in the custody of a
13 superintendent, guard, or officer, to wit: defendant was
14 in lawful custody of the J. Reubin Long Detention Center on
15 house arrest and electronic monitoring pursuant to the
16 lawful order of the Circuit Court, did escape; to wit:
17 The defendant failed to return to his residence at 6 p.m.
18 on March 6th, 2006, as required by the court order amending
19 his conditions of bond, in violation of Section 24-13-14
20 Code of Laws of South Carolina, as amended.

21 Now, to Louis M. Winkler, I say, "What do you say?
22 Are you guilty or not guilty of the felonies and other
23 crimes wherein you stand indicted?"

24 DEFENDANT: Not guilty.

25 MR. HUMPHRIES: How shall you be tried?

1 DEFENDANT: By God and country.

2 MR. HUMPHRIES: These good and lawful jurors of Horry
3 County will pass between you and the State and upon the
4 trial of this case. If you challenge them or any of them,
5 you will do so as each is called to the bar to be sworn,
6 before he or she is sworn. May God grant you a just
7 deliverance.

8 Your Honor, that concludes the arraignment. I have an
9 order prepared for your signature memorializing the
10 arraignment. I hand it to the clerk at this time. Beg the
11 Court's indulgence.

12 MR. WILSON: Thank you.

13 MR. HUMPHRIES: I passed it to defense counsel for the
14 defendant. I assume there's no objection to the form of
15 the order.

16 MR. WILSON: Well, the only -- the only issue I have,
17 Judge, is I'm not aware of any plea offer. I know that it
18 addresses a plea offer and says that there -- that the
19 defendant has rejected the plea offer. There is no plea
20 offer and never has been a plea offer that I'm aware of.

21 THE COURT: That's No. 3, Mr. Humphries. Why is that
22 in there? Is this a ---

23 MR. HUMPHRIES: There is -- there is -- there's always
24 an offer to plead guilty as charged.

25 THE COURT: Okay. So they offer to let him plead

1 guilty as charged.

2 MR. HUMPHRIES: With no -- with no recommendation as
3 to sentence ---

4 THE COURT: With the Court deciding the issues to
5 accept the plea and to find him guilty, and the Court
6 decide the issue of whether to impose life imprisonment
7 without parole or death. And so that offer is always there
8 if he doesn't wish a jury trial.

9 MR. RATHBUN: Could I have a moment with counsel?

10 THE COURT: Uh-huh.

11 (Sotto voce discussion between defense attorneys.)

12 THE COURT: And Mr. Wilson, let's make sure we
13 understand both situations: He could plead guilty to the
14 charge and let the jury decide whether it's -- the
15 sentence, or he could let the judge decide.

16 MR. WILSON: Yes, sir.

17 THE COURT: During the trial and the hearing ---

18 MR. WILSON: Yes, sir.

19 THE COURT: --- in other words. Mr. Humphries, you
20 were standing, sir?

21 MR. HUMPHRIES: I -- I don't believe, under the
22 circumstances, if he were to plead guilty before Your
23 Honor, that he would be entitled to a -- a sentence by the
24 jury. I believe state law requires that he's sentenced by
25 you. I don't believe there's any discretion in that

1 regard, based on the statute.

2 THE COURT: Let's -- we'll look at the statute to make
3 sure. But in any event whether it's before me or not,
4 pleading guilty he would still have a sentencing phase such
5 that the decider of the penalty would be presented evidence
6 from both sides in that regards.

7 MR. WILSON: Yes, sir.

8 THE COURT: According to statute and according to law.
9 So the plea is there.

10 MR. WILSON: Yes, sir.

11 THE COURT: A plea offer's there in that regard. One
12 thing else, now that we're doing arraignment in this, I
13 notice that Judge Cottingham is the one that served the
14 defendant with his attorney at that time, in April, a
15 notice that the State intended to seek the death penalty.
16 There's been no other notice served other than that notice;
17 is that correct? In April of '06?

18 MR. HUMPHRIES: Your Honor, he's received notice which
19 was confirmed by written order. He's also received notice
20 of evidence in aggravation.

21 THE COURT: Well, I saw you have that today, but -- or
22 you have -- you sent me something here today with it, but -
23 - but ---

24 MR. HUMPHRIES: That -- that was just a copy for your
25 reference. That ---

1 THE COURT: All right. But I just want to make sure
2 though, you got a copy of the order that Judge Cottingham
3 signed in April, Mr. Wilson?

4 MR. WILSON: Yes, sir.

5 THE COURT: And your client's -- has -- is aware of
6 the order?

7 MR. WILSON: Yes, sir.

8 THE COURT: As far as the order of notice of
9 aggravation that you have here, what date was that given to
10 the defendant, the notice of ---

11 MR. HUMPHRIES: March 9th.

12 THE COURT: --- evidence in aggravation of the
13 punishment?

14 MR. HUMPHRIES: March 9th.

15 THE COURT: March 9th of this year?

16 MR. WILSON: Yes, sir.

17 MR. HUMPHRIES: Yes, Your Honor.

18 THE COURT: Of course. Okay.

19 MR. WILSON: I'm in receipt of that.

20 THE COURT: March 9th.

21 MR. HUMPHRIES: And obviously, for the record, that's
22 within the 30-day requirement statute.

23 THE COURT: And the defendant has not -- was there an
24 acknowledgment returned back or is this the acknowledgment
25 that he got it? just in case we need acknowledgment.

1 MR. WILSON: Well, this is the acknowledgment I ---

2 THE COURT: Okay. So acknowledged --

3 MR. WILSON: And I acknowledge that I have received
4 it, yes, sir.

5 THE COURT: And you shared that with your client?

6 MR. WILSON: Yes, sir.

7 THE COURT: Okay. And today's April 26th. Okay. All
8 right. All right. We have the arraignment. I've signed
9 an order memorializing that on April 26th.

10 MR. WILSON: Judge?

11 THE COURT: We've also confirmed that he has been
12 served with the -- an order of the notice they're going to
13 be seeking the death penalty, as well as the circumstances
14 or the evidence in aggravation they plan to introduce at
15 trial.

16 MR. WILSON: Yes, sir.

17 THE COURT: Yes, sir, Mr. Wilson?

18 MR. WILSON: Judge, one -- one other thing in -- in
19 regards to the indictment. I would object to the -- to the
20 escape charge in the indictment. I think that that is a
21 separate offense and a distinct offense, and I think that
22 it interjects into the trial of the case the -- the October
23 charges which this defendant faced.

24 THE COURT: Isn't that -- is that one -- one in your
25 motions?

1 MR. WILSON: Well --

2 THE COURT: I mean, can't we handle this with the
3 motions? I mean, they've arraigned him in notice of this.
4 As far as whether I sever one of the charges for trial at a
5 later date, can we handle that in the -- in the motions we
6 have here?

7 MR. WILSON: I can, but -- yes, sir. But it -- but it
8 -- but it's actually separate, too, because of the
9 arraignment; and because they are now arraigning him on
10 that issue, I felt like I needed to raise it now, because
11 he's being arraigned on it.

12 THE COURT: Well, I don't know that -- we'll deal with
13 it today. We'll deal with it; we'll discuss it. Anything
14 else regarding those issues of arraignment? issues of
15 notification? anything else from anyone?

16 Now, for information purposes, the State has sent me a
17 copy of a request for discovery, which I assume is just a
18 Rule 5 situation.

19 MR. HUMPHRIES: Your Honor, we have a series of -- of
20 four requests for discovery and motions that we file in
21 every capital case.

22 THE COURT: Well, has Mr. Wilson complied with those
23 yet or -- or -- or he could still be in the process of
24 gathering information. (To Mr. Wilson) You complied with
25 it ---

1 MR. HUMPHRIES: Well, he -- he may well be. We
2 received nothing from -- from Mr. Wilson or his client in
3 regard to any of these motions.

4 THE COURT: Have you reviewed what they supplied to
5 me? Really, the -- basically, Rule 5 situation.

6 MR. WILSON: Yes, sir. I -- I am aware of what they
7 sent me. I have not sent them anything in return as of
8 yet.

9 THE COURT: Well, we do need to make sure though you
10 send them something within time for them to review it and
11 not send it to them on the -- say, the 10th or 11th or 12th
12 or 14th of July. So ...

13 MR. WILSON: I -- I will certainly do it within 30
14 days of trial, but I just haven't had an opportunity to do
15 it.

16 THE COURT: All right. Then therefore you're saying
17 you will comply with what you're required to comply with.
18 I don't really need to read the individual motions. Rule
19 5, you will comply with the reciprocal Rule 5 on or before
20 June 16th, 2007?

21 MR. WILSON: That is correct, yes, sir.

22 MR. HUMPHRIES: Let me address specifically one motion
23 and -- and I understand that the most of them are, quite
24 frankly, general discovery motions and ---

25 THE COURT: All right. Which one you want to address?

1 MR. HUMPHRIES: I want -- it would be "Request for
2 Discovery," No. 2.

3 THE COURT: Of the alibi. Okay.

4 MR. HUMPHRIES: Alibi and/or insanity or plead guilty
5 but mentally ill. Your Honor, I'm -- I'm -- I'm less
6 comfortable with waiting the 30 days. Obviously under the
7 rules -- and I'm -- we're not, you know, we -- we served
8 these motions as we said on the -- on the 9th of March, and
9 he has a period of time in which to respond.

10 THE COURT: Well, I didn't know you -- you served all
11 of these on the 9th of March?

12 MR. HUMPHRIES: Yes, sir.

13 THE COURT: That you handed me? Okay.

14 MR. HUMPHRIES: Yes, sir. But obviously, the rules
15 require within ten days of the -- of the motion that a
16 response, particularly to -- to that motion request for
17 discovery 2, be filed. Now, obviously, I'm not going to
18 hold Mr. Wilson to the ---

19 THE COURT: I thought ten days was the date you got a
20 hearing.

21 MR. HUMPHRIES: No, sir. Ten days after ---

22 THE COURT: So the rule says "ten days he must
23 comply."

24 MR. HUMPHRIES: Yes, sir.

25 THE COURT: But then you had a hearing -- well,

1 anyway, whatever it says, the judge will do what's fair.
2 But I can see your point regarding the alibi or the plea of
3 "guilty/mentally ill" or any insanity defense.

4 Mr. Wilson, are you prepared to answer either one of
5 those two today? Or three? Really three issues.

6 MR. WILSON: Your Honor, to be honest with you, no,
7 sir. I can say with ---

8 THE COURT: You had them over a month.

9 MR. WILSON: Yes, sir. I -- I realize that and -- and
10 I can say with some -- but we're still in the -- in the
11 process of having evaluations done and having him visit
12 with ---

13 THE COURT: What about alibi?

14 MR. WILSON: Sir?

15 THE COURT: Let's do them one by one. What about
16 alibi?

17 MR. WILSON: May I have one second?

18 THE COURT: Uh-huh.

19 (Sotto voce discussion between the Court and law
20 clerk.)

21 MR. WILSON: Judge, I have -- the -- the concern is we
22 -- we may offer some alibi, but not in the traditional
23 sense of "I wasn't there," and I -- and I don't know how to
24 explain that without getting into what my defense is.

25 THE COURT: Well, I know that, but -- but you had --

1 but if you plan to claim alibi, they have a right to notice

2 ---

3 MR. WILSON: Absolutely.

4 THE COURT: --- of where he said he was instead and
5 who's going to verify and that thing, so we need to know
6 that. Now, if you're saying it's not alibi ---

7 MR. WILSON: Well --

8 THE COURT: --- that's different. But if you feel
9 it's coming close to alibi, then, you know, this is very
10 serious.

11 MR. WILSON: I don't think that under the legal
12 standard that it's actually alibi, because it's not a --
13 it's not a statement that we're saying the defendant was
14 not present. That is not what we're saying. And yet we're
15 saying that he didn't commit the crime. So I'm not sure
16 it's alibi in that -- in the traditional sense is what I'm
17 saying. So in that -- in those terms, no, I'm not claiming
18 alibi. I'm not claiming if they're asking -- if the
19 question is whether I'm claiming that he was some other
20 place other than at that -- at the -- at the crime scene,
21 no. I am not claiming that. That is not ---

22 MR. HUMPHRIES: That -- that satisfies -- that
23 satisfies the State's inquiry. Of course, that -- if -- if
24 that's the ruling and if that's the -- the position of the
25 defense is that -- can we -- can we determine today that

1 any offer of any alibi witnesses would be excluded based on
2 his position today? I mean that's what I'm trying to get
3 at.

4 MR. WILSON: I'm sorry. I apologize.

5 THE COURT: What Mr. Humphries said, that if you're
6 saying that you're going to produce no witnesses that are
7 going try to establish that Mr. Winkler was not at the
8 crime scene at the time the crime was committed or the time
9 the incident occurred, that you -- that you're not going to
10 present any witnesses, including himself or anyone else,
11 that he was somewhere else ---

12 MR. WILSON: That's correct. I will not.

13 THE COURT: Then therefore, they're fine as long as
14 you lock into that.

15 MR. WILSON: I -- I -- I am locked into the -- to the
16 -- to the idea or to the fact that, no, we will not present
17 witnesses who say, "He was not there at the -- at that
18 location." We're not saying ---

19 THE COURT: At the time the incident was committed.

20 MR. WILSON: That's correct.

21 MR. HUMPHRIES: That satisfies the State, Your Honor.
22 Thank you.

23 THE COURT: Now, Mr. -- just to make sure we're clear,
24 Mr. -- Mr. Wilson, you know that includes the defendant as
25 far as witnesses.

1 MR. WILSON: That's correct. Yes, sir.

2 THE COURT: Okay.

3 MR. HUMPHRIES: Your Honor, can we -- can we discuss
4 some time frame regarding ---

5 THE COURT: Wait. Let me just write this little note.

6 MR. HUMPHRIES: --- the alibi?

7 THE COURT: I understand -- (speaks to himself while
8 writing a note.) The other two things then as whether
9 there will be an insanity defense or a defense of -- of --

10 MR. HUMPHRIES: Guilty but mentally ill.

11 THE COURT: Yeah. Guilty but mentally ill, GBMI. All
12 right.

13 MR. WILSON: That is a possibility.

14 THE COURT: Well, then we need to know at some point
15 in time very shortly about whether that is going to be
16 pursued, because obviously the State may need to have
17 various witnesses together if they wish to try and refute
18 either one of those two assertions. And I don't want to
19 just give them a couple of weeks to do so.

20 MR. WILSON: Yes, sir. And I appreciate that. Your
21 Honor, we -- he is being -- he is undergoing counseling
22 continuously, and the -- the psychiatrist who is working
23 with him is not yet in a position to give us a written
24 report and statement. As -- as soon as I have that -- and
25 she is doing all she can as quickly as she can,

1 understanding that we have a deadline. And I hope to have
2 that shortly. I cannot give you a date as to when I will
3 have it. Obviously, I understand that it's important and
4 that they ---

5 THE COURT: May 16th is a Wednesday. You have until
6 May 16th.

7 MR. WILSON: All right, sir.

8 THE COURT: That is two weeks from -- I guess, two
9 weeks from today or yesterday.

10 MR. WILSON: All right, sir.

11 THE COURT: Or is it three weeks?

12 MR. HUMPHRIES: It's three.

13 THE COURT: Three weeks.

14 CLERK OF COURT: Three weeks, Your Honor.

15 THE COURT: That gives y'all two months. So you've
16 got ---

17 MR. HUMPHRIES: That satisfies us.

18 THE COURT: You've got three weeks from yesterday.

19 MR. WILSON: Yes, sir.

20 MR. HUMPHRIES: Your Honor, as to the remainder of the
21 State's request for discovery, as long as -- as the
22 defense's position is that they consent to provide those
23 materials as required under the discovery rules, then the
24 time frame we can leave for another day. If there's an
25 objection to one, I think we need to address it today.

1 THE COURT: For information purposes, that'd be page 1
2 and page -- or request No. 3, I guess, page 3; page 4,
3 request 4. And so those would be the correct -- requests
4 1, 3, and 4. Have you looked them over, Mr. Wilson?

5 MR. WILSON: Yes, sir. I've read them and I'm
6 familiar with them, Your Honor. I've -- it's just that I --
7 - and I -- I appreciate what the solicitor is saying, but
8 my concern is -- is this: You know ---

9 THE COURT: Remember, we're not talking about time
10 frame. We're talking about whether you object to them per
11 se for some reason.

12 MR. WILSON: I don't object to an alibi.

13 THE COURT: No, no.

14 MR. WILSON: I -- and -- and I don't -- and I don't --
15 and I understand the statute ---

16 THE COURT: Alibi we're through with, sir. You're
17 talking about one -- Request 1 -- the standard Rule 5s.

18 MR. WILSON: All right, sir.

19 THE COURT: One, three, and four.

20 MR. WILSON: I -- I will abide by all Rule 5 requests.

21 THE COURT: Now, if I read your 1, 3, and 4 ---

22 MR. WILSON: If we have ---

23 THE COURT: --- they're standard reciprocal Rule 5s,
24 aren't they, Mr. Humphries?

25 MR. HUMPHRIES: Your Honor, 1 and 3 are direct --

1 directed from the rules. Four -- the only -- which deals
2 with experts, which requires that those expert witnesses
3 the defendant intends to call upon -- it's the -- it --
4 it's actually rule -- it -- it -- it ---

5 THE COURT: Civil rule.

6 MR. HUMPHRIES: --- goes to the rules of evidence and
7 it tracks the rule of evidence regarding experts.

8 THE COURT: Well, it might track Rule 700 or 702,
9 whatever; but it's more of a civil -- civil rules-type
10 request that you want names of the experts.

11 MR. HUMPHRIES: Well, it's -- it -- it -- the -- the
12 rule requires that we be made -- that certain documents,
13 tests relied upon, anything that the expert used to form
14 his opinion ---

15 THE COURT: But that's in Rule 5 reciprocal, is it
16 not? Or not?

17 MR. HUMPHRIES: No. No, it's -- it's -- it's a
18 slightly different issue which ---

19 THE COURT: Okay.

20 MR. HUMPHRIES: --- which the rules of evidence
21 require prior to that witness testifying.

22 THE COURT: Oh, okay. I -- I ---

23 MR. HUMPHRIES: You understand?

24 THE COURT: 702 or 704 that the underlying facts ---

25 MR. HUMPHRIES: Yes, sir.

1 THE COURT: Yes, sir.

2 MR. WILSON: Judge, and -- and I -- I guess the first
3 question I have is, "Now, is he asking me for any expert
4 that we use, or just those that we intend to call as
5 witnesses?"

6 MR. HUMPHRIES: No, no. I -- I don't -- I don't have
7 any problem -- I don't need anything from experts that he
8 does not intend to call as a witness. But for every expert
9 he intends to call as a witness, the State, under Rule 702
10 and 703 of the rules -- of evidence rules, require
11 production of those documents and other items and other
12 things relied upon in forming his -- his or her opinion ---

13 MR. WILSON: And -- and I ---

14 MR. HUMPHRIES: --- prior to his testimony.

15 MR. WILSON: And I agree and I think that that's a
16 correct statement, and I -- and I think he's entitled to
17 that.

18 THE COURT: Okay. Now, the question is, "When would
19 you provide it?"

20 MR. WILSON: Well, and -- and that's a tougher one,
21 because Judge, all these experts that we've hired are
22 working. They are doing the best they can to put together
23 everything that they can as quickly as they can. I will --
24 I mean, I -- I can't give you a date. I mean, if you give
25 me a date, I will try to abide by that with every way I

1 can. I will try to force them to get -- get for me as
2 quickly as they can, which I have already instructed them
3 to do. It's just that I don't have it at this point, which
4 is why I can't give it to them.

5 THE COURT: Let's divide it in two areas -- and we
6 don't know if we'll ever get to the second area -- but
7 let's say in the -- the first area, the area of the State's
8 allegations of guilt: Are you having problems getting any
9 -- any in that regard or should we not be concerned really
10 with that? As far as getting information to the State, you
11 think you can do that with no problem?

12 MR. WILSON: Well, for instance -- and I'm going to
13 try not to give away all my defenses.

14 THE COURT: Don't do that. Don't -- please don't do
15 that.

16 MR. WILSON: Yes, I am having some difficulty.

17 THE COURT: Okay.

18 MR. WILSON: With some of the ---

19 THE COURT: Can you give me an estimate of when you
20 feel you could have those you choose to call -- then let's
21 do both phases then -- just make an assumption of both
22 phases for a second. For those you assume to call, do you
23 have an estimate of when you can get some reports back and
24 conclusions back and opinions back?

25 MR. WILSON: Probably by the first of June is what I

1 suspect. I have had conversations with these people. They
2 are all saying, "Look, you know, that we're working as fast
3 as we can and as quickly as we can."

4 I expect that I should have it in my hands by June
5 1st. That's what I've been begging them for and actually
6 I'd asked them for -- before the end of May. I've asked
7 them to try to get me everything before the end of May.
8 And they're trying, but it's just a lot of stuff and they -
9 --

10 THE COURT: Well, I would say then have it by the 16th
11 of June, a month ahead of time; however, my concern is if
12 it isn't, then we've got a hearing and all that. So why
13 don't we say that you have it to them by June 8th, which is
14 Friday after the 1st of June?

15 MR. WILSON: All right, sir.

16 THE COURT: Mr. Humphries?

17 MR. HUMPHRIES: Yes, sir.

18 THE COURT: Fine with that?

19 MR. HUMPHRIES: Yes, sir.

20 THE COURT: And then if it's not there, then we can
21 try to get together in the next ten days to -- after that
22 to determine where it is.

23 MR. HUMPHRIES: And Your Honor, the only other issue
24 in regard to State's request for Discovery 4 relates to the
25 potential lay witnesses which will testify -- which could

1 potentially testify regarding the defendant's position as
2 to his insanity -- or plea of "guilty, but mentally ill,"
3 that those witnesses be identified.

4 THE COURT: Well, once you decide if you're going that
5 route, Mr. Wilson, if you're going to have people who will
6 testify in that regard, just let them know.

7 MR. WILSON: Yes, sir.

8 THE COURT: But let's assume then by Monday, June
9 11th, we'll all know all that, one way or the other.

10 MR. WILSON: Yes, sir.

11 MR. HUMPHRIES: Thank you, Your Honor.

12 THE COURT: So June 8th.

13 MR. WILSON: Yes, sir.

14 MR. HUMPHRIES: That -- that concludes the State's
15 matters regarding the requests for discovery.

16 THE COURT: Now, I'm putting June 8th down for request
17 1 -- excuse me -- for request -- yeah, 2 -- excuse me -- 1,
18 3, and 4. All right. Now, would you like to get to your
19 motions, Mr. Wilson?

20 MR. WILSON: Yes, sir. Your Honor, I guess -- I don't
21 know what order yours are in. I think ---

22 THE COURT: I have just a thick packet.

23 MR. WILSON: And I apologize; I should have numbered
24 them so that you could follow ---

25 THE COURT: You just say one, and I'll go through and

1 find it.

2 MR. WILSON: All right, sir. I'm going to start --
3 the first one that I'll start with is a motion to -- for
4 leave to file additional motions.

5 THE COURT: All right. Let me find that one.
6 Probably be the last one I go through here, won't it?

7 MR. HUMPHRIES: It's not your -- well, I -- I've got
8 them in the order in which they provided them to me, and
9 it's not the last one.

10 (Sotto voce discussion between defense and plaintiff
11 counsel.)

12 THE COURT: All right. I have it right here, let's
13 see. All right. I've got it.

14 MR. WILSON: All right, sir. And Your Honor, in this
15 particular motion, I'm simply asking the Court --
16 obviously, we're doing motion hearings today, and we knew
17 for a while now that we were going to do the motions today;
18 and I am just concerned that -- as we go through this
19 process that other matters will arise. As I said, at this
20 point, we have not gotten information back from some of our
21 experts and once I get that information, it may raise
22 additional issues that I need to come back to the Court
23 with.

24 THE COURT: But you're only asking for seven days.

25 MR. WILSON: Right. Well, I'm asking for seven days

1 now, but I may be asking for more time later on. I'm
2 asking you for an additional seven days so that when I go
3 back today and I think of some other things that I probably
4 either didn't ask for or I probably should have asked for
5 or issues that were raised from this particular thing --
6 and I know one already that I ---

7 THE COURT: Here's my concern. My law clerk says you
8 don't send the motions to me, that you file them with the -
9 - with the clerk of court and I don't get them. I -- it
10 was very difficult getting all these motions.

11 MR. WILSON: All right, sir.

12 THE COURT: And Mr. Wilson, you need to make sure you
13 mail them to me ---

14 MR. WILSON: I agree.

15 THE COURT: --- as well as file them and -- and it gets
16 to be a problem. So I'm going to -- your motion is granted
17 for seven days.

18 MR. WILSON: All right, sir.

19 THE COURT: But all those must be things we haven't
20 handled today, as well as they've got to be mailed to me --
21 as well as filed and mailed to the -- I assume he mails them
22 to you all, does he, Mr. Humphries?

23 MR. HUMPHRIES: No, they deliver them -- they delivered
24 them to -- to us. But just -- just so we can clear it for
25 the record, that motion says, "within seven days," but in

1 parens it says, "... or the starting of the trial, whichever
2 occurs first."

3 THE COURT: Seven days occurs first.

4 MR. WILSON: Right.

5 MR. HUMPHRIES: Okay.

6 THE COURT: So I'm saying -- right now, I'm saying,
7 "seven days from today." In other words, today is April the
8 26th, so next Thursday is April the 3rd, so -- May the 3rd.
9 So May the 4th.

10 MR. WILSON: Thank you.

11 MR. HUMPHRIES: Thank you, Your Honor, and we consent
12 to that, just for the record.

13 MR. WILSON: Your Honor ---

14 THE COURT: But make sure you send them to me, Mr.
15 Wilson.

16 MR. WILSON: Yes, sir.

17 THE COURT: I -- I cannot emphasize this so much how
18 difficult it is that I -- I keep asking my law clerk,
19 "Where's the motions he e-mails you? He said he doesn't get
20 a response back. I've got to have these motions filed with
21 me so I don't have to go back bothering the clerk or
22 bothering Anita or whatever.

23 MR. WILSON: All right, sir.

24 THE COURT: And by the way, Anita, are -- are you the
25 person I'm to deal with point blank on this case or someone

1 else?

2 DEPUTY CLERK: Yes, sir.

3 THE COURT: Okay.

4 MR. WILSON: Judge, the next motion is notice and
5 motion to seal the defendant's visitation log ---

6 THE COURT: I got that one.

7 MR. WILSON: And my concern is -- is that ---

8 MR. HUMPHRIES: We consent to that.

9 MR. WILSON: All right.

10 THE COURT: All right.

11 MR. WILSON: The next motion, Your Honor, is the motion
12 ---

13 THE COURT: Now, wait a minute. We need to communicate
14 this to the sheriff's department. I assume the sheriff runs
15 the detention center?

16 MR. WILSON: Yes, sir.

17 THE COURT: Or someone else?

18 MR. HUMPHRIES: Your Honor, what I would like ---

19 THE COURT: Or the county -- who runs the detention
20 center in Horry County?

21 MR. HUMPHRIES: Tom Fox.

22 THE COURT: I know, but is he -- he's a county
23 employee. He's not -- he does not work for the sheriff.

24 MR. HUMPHRIES: He is an employee of the sheriff's
25 department. He's the director of the detention center. The

1 sheriff is in control of the jail in Horry County.

2 THE COURT: All right. So therefore we need to make
3 sure that Mr. Thompson knows then that ---

4 MR. HUMPHRIES: And -- and I hate to -- I'm -- I
5 apologize for interrupting the Court. I think it best in
6 order to ensure that the order of the Court is carried out,
7 Mr. Wilson could draft an order ---

8 MR. WILSON: Absolutely.

9 MR. HUMPHRIES: --- so that they could actually put on
10 the record instead of just saying it by word of mouth.

11 MR. WILSON: And -- and I agree a hundred percent with
12 that.

13 THE COURT: Well, you may agree, but that means it's
14 got to be done, Mr. Wilson.

15 MR. WILSON: Yes, sir. I will draft an order and I
16 will get it to the Court and get a copy to the solicitor.

17 THE COURT: If you have ability within your office, you
18 can e-mail it to me, and then I could sign it and then fax
19 it to the detention center or fax it back to you.

20 MR. WILSON: All right, sir. I will -- I will ---

21 THE COURT: Which could -- could -- maybe be the
22 quickest way to do it.

23 MR. WILSON: All right, sir. The next ---

24 THE COURT: And when you do that, do you have my law
25 clerk's e-mail also?

1 MR. WILSON: Yes, sir.

2 THE COURT: It's the same as mine, except "j" --
3 except "jlockemyj," it's "jlockemylc."

4 MR. WILSON: Yes, sir.

5 THE COURT: Okay.

6 MR. WILSON: I got it.

7 THE COURT: All right. What's your next one?

8 MR. WILSON: The next one is motion for preservation of
9 evidence.

10 THE COURT: I have that.

11 MR. WILSON: And Your Honor, in that regard, what we
12 are simply asking is: There is, you know, multiple,
13 multiple items of evidence in this case, some of which may
14 or may not be used during the trial of the case.

15 MR. HUMPHRIES: We consent to that.

16 MR. WILSON: All right.

17 MR. HUMPHRIES: And -- and for the record, Your Honor,
18 we will coordinate his -- either the defense counsel or
19 their experts' inspection of these. All they have to do is
20 let us know and we'll -- we'll make it happen expediently.

21 THE COURT: The next one.

22 MR. WILSON: The next one, Your Honor, is notice of
23 motion and motion to reveal grant of immunity or other
24 concessions made by the State.

25 MR. HUMPHRIES: There are none. We consent to that.

1 MR. WILSON: You're making this too easy.

2 THE COURT: So wait a minute, Mr. Humphries. Make sure
3 we understand, sir, you're saying that no witnesses will be
4 testifying to you have received any concessions or immunity
5 or other offers in return for testifying?

6 MR. WILSON: No, Your Honor. And if -- if -- and as is
7 often the case, as the trial date approaches, if for
8 instance, we have some jailhouse informant who approaches
9 us, if we elect to call them as a witness -- and we'll make
10 that determination immediately upon evaluation ---

11 THE COURT: So in other words, this is a continuing
12 motion. If something happens from the day forth, you'll let
13 him know who it is and all that, and what you've agreed to
14 do.

15 MR. HUMPHRIES: Absolutely.

16 MR. WILSON: Thank you, Your Honor.

17 THE COURT: All right. Next motion.

18 MR. WILSON: Motion to request an in camera hearing.
19 And Your Honor, this is simply for the admissibility of any
20 in-court identification of the defendant which is being made
21 by any person during the course of the trial, that before
22 that -- the in-court identification is made, that there be
23 an in camera proceeding to determine the reliability of that
24 in-court identification.

25 MR. HUMPHRIES: Now, let me say this for the -- for the

1 purposes of the record: There are no identification issues
2 as it relates to this case. The only identification which
3 will come placing -- identification by eye-witness testimony
4 is from a person who has known Mr. Winkler for a great
5 period of time -- actually lived in his home -- does not
6 require a *Bigger's* hearing. And that is ---

7 THE COURT: There's no lineups or anything like that?

8 MR. HUMPHRIES: No, sir. None whatsoever.

9 THE COURT: And no photograph lineups or anything ---

10 MR. HUMPHRIES: No.

11 THE COURT: What about on your ABHAN charge?

12 MR. HUMPHRIES: That -- that victim is the one who --
13 who is known as the -- was the stepson for a period of time.

14 THE COURT: So he -- he plans to identify the defendant
15 in court.

16 MR. HUMPHRIES: Yes, sir.

17 THE COURT: And the -- how would -- why would you need
18 in camera hearing of that? Do you not think that -- I mean,
19 if he -- if he testifies that this is the person that
20 assaulted him and did the things that the indictment says
21 and -- and he's his nephew, why would you need in camera
22 hearing about that?

23 MR. WILSON: Well, he's -- he's actually his stepson.

24 THE COURT: Stepson. I'm sorry.

25 MR. WILSON: And -- and -- and my concern is -- is --

1 is whether or not -- my concern is, before he testifies in
2 open court in front of the jury about the identification,
3 that I -- I would like to -- to have an in camera hearing so
4 that I can determine whether or not he is -- whether his --
5 whether his identification is -- is reliable.

6 THE COURT: All right. Now, Mr. Wilson, please
7 understand, I -- I understand what you're saying. But I do
8 not want to be twisting around the thing of having an
9 opportunity to cross-examine somebody twice about all facts
10 that you would not normally get to do. That's not -- would
11 not be appropriate or fair. So I'm rather concerned about
12 how -- why you want an in camera hearing about a stepson who
13 would say, "That's the person who assaulted me," or he may
14 also be the one you've got to say, "That's the person who
15 committed this other crime."

16 MR. HUMPHRIES: He is.

17 MR. WILSON: He is.

18 THE COURT: And I'm not sure what -- what -- give me an
19 example of how it would be concerns with identification.

20 MR. WILSON: Well -- well, my -- my concern is not so
21 much that he will -- not so much that he doesn't know Mr.
22 Winkler. I'm not arguing that he doesn't know him. I'm
23 just arguing whether or not he really -- whether it was
24 really Mr. Winkler who was there -- who he's claiming was
25 there at that time and ---

1 THE COURT: But how would that ever be such that the
2 Court would go so far as exclude it as opposed to letting
3 you cross-examine about it?

4 To me, the Court would exclude things if there were
5 some sort of encouragement to a witness, some sort of a
6 unfair-type lineup or some sort of a -- something to suggest
7 to the witness by police authorities or governmental
8 entities that -- that this is who you need to choose. If
9 the person is making an error because of eye-witness
10 identification or knowledge, that would be something that
11 would be subject to cross-examination, but it wouldn't be
12 excluded.

13 MR. WILSON: Well, what -- what if -- what if the
14 witness was told to say that it was Mr. Winkler by some
15 other person?

16 THE COURT: Well, if that person wasn't a governmental
17 entity, I am -- hmm, that's an interesting point. Mr.
18 Humphries, what's your response to that?

19 MR. HUMPHRIES: Your Honor, he's not entitled to a
20 *Bigger's* hearing on identification made by his stepson. And
21 Your -- Your Honor is right. It is merely an opportunity to
22 cross-examine a child witness more than once. It's entirely
23 improper. There's absolutely no basis in the law for an in
24 camera hearing with regard to that, and we'd object to it.

25 THE COURT: Mr. Wilson, I'm inclined to agree with Mr.

1 Humphries. I -- I mean, just sounds to me it's more of a --
2 I mean, that would be very much a strong point of cross-
3 examination of yours. How old is the young man?

4 MR. HUMPHRIES: Fourteen at the time.

5 THE COURT: Well, and therefore we don't really have
6 any issues of competency, assuming there are no mental
7 health issues. I will do this: Anything that comes within
8 the purview of *Bigger's* that the State wishes to introduce
9 is granted; anything else, not granted.

10 MR. HUMPHRIES: Thank you, Your Honor.

11 MR. WILSON: Thank you, Your Honor. Your Honor, the
12 next motion is the motion to replace toxic terms commonly
13 used in a trial of a -- of a capital case. And -- and --
14 and I'm referring to things like the "death phase" or the
15 "guilt phase" of the trial proceeding. And I know that we
16 commonly do that.

17 My concern is is that during -- especially during the
18 course of voir dire, I think that that has an impact on
19 jurors. I think that it can desensitize them to the
20 seriousness of -- of the -- of the proceeding; and when we
21 constantly use the term "death case" or we constantly use
22 the term "guilt," I mean, it -- it's almost as though it's a
23 foregone conclusion that it's a guilty verdict and that it's
24 a death case. And I would object to those terms being used
25 during the course of the process, especially during voir

1 dire of the jury.

2 THE COURT: Is this based on your concerns in a
3 constitutional sense with no case law or ...

4 MR. WILSON: Well, I mean, that -- that's my concerns
5 and I -- I've tried this ---

6 THE COURT: I mean, I see where -- several cases you've
7 cited, but ...

8 MR. HUMPHRIES: I can tell you none of those cases say
9 that you can't -- you don't use it. Let -- let me -- I
10 might be able to make this easy.

11 THE COURT: I know, but my concern is -- see, the Court
12 itself, in its examination of jurors, uses these terms in a
13 way when it talks about how they see themselves in a capital
14 case. You know, being Juror 1, 2, or 3, as both of y'all
15 have experienced where you have 1, 2, or 3. And I'm
16 concerned you're also limiting the Court.

17 MR. WILSON: Well -- well, I'm not -- not limiting the
18 Court in terms of -- of its explanation to the jury and to
19 the veniary of -- of -- of what happens during the course of
20 the proceedings. Simply the terms -- some of the terms that
21 are being used. Because I do think that -- that it does
22 have an impact when -- when -- when constantly in Court --
23 and I'll -- I'll use this example. If the Court, throughout
24 its entire presentation to the jury, refers to the first
25 phase of the trial as the "guilt phase," I mean, and then by

1 the end of that time, the jury's sitting there thinking,
2 "Well, okay, this is the guilt phase, so we just got to find
3 him guilty." Or if -- if -- if when every time that -- that
4 we talk about the sentencing phase of the trial we talk
5 about the death phase -- "This is the death phase of the
6 trial" -- well, it's not the death ---

7 THE COURT: Well, I've never heard -- I've heard the
8 first term; I've never heard the second term.

9 MR. HUMPHRIES: Nor have I, Your Honor.

10 MR. WILSON: Well, I've heard both.

11 THE COURT: You heard the Courts refer to the jurors,
12 "This is the death phase"?

13 MR. WILSON: No, no. No, sir, not a Judge, no, sir.

14 THE COURT: Or even an attorney refer to the jury,
15 "This is the death phase"?

16 MR. HUMPHRIES: I can tell you that -- that this
17 solicitor's office will not call it the "death phase."

18 THE COURT: Well, I have never heard any solicitor's
19 office -- I mean, I've had death penalty cases around, but
20 I've never had that term used.

21 But in any event, when the Court qualifies the jurors,
22 the Court explains what the term "guilt phase" means in the
23 first phase of the trial, where the determination is made of
24 guilt or innocence, and if the determination is made of
25 acquittal, then -- then we end the matter there.

1 MR. WILSON: Judge, you know in a -- in a regular and a
2 normal trial -- in a normal trial, say in a normal murder
3 trial which is not a capital case, we never refer to it as
4 the "guilt phase" of the murder trial or the "guilt phase"
5 of the burglary trial. We refer to it as a "trial," and --
6 and when we ---

7 THE COURT: Because the jury does not participate in
8 imposing the penalty if they decide guilt.

9 MR. WILSON: That is correct, but that's the sentencing
10 phase. And -- and what we simply tell them is, "We're going
11 to have a trial and we're going to try him on these issues.
12 And if he's found guilty of these -- of these issues, then
13 we're going to go to a sentencing phase, where you will be
14 the sentencer." And -- and -- and -- and as opposed to
15 saying, "Oh, this is the guilt phase of the trial and you
16 guys got to determine guilt."

17 Well, I mean, almost by its very wording we're
18 suggesting to them, "Okay, well, we need you to find him
19 guilty before we get over here and we can do the rest of
20 this trial." And -- and -- and -- and we would never do
21 that in a murder trial. It would -- it would be unheard of
22 to say that in a murder trial or in a burglary trial or a
23 rape trial. We would never say that. But we do it commonly
24 in -- in these cases; and I think it is prejudicial to a
25 defendant who is facing his very -- facing death and -- as

1 opposed to somebody who's only facing 30 years, say, on a --
2 on a rape charge.

3 THE COURT: But -- but Mr. Wilson, how would you
4 suggest then the Court make sure the jury knows that once
5 they decide guilt or innocence were -- if they were to
6 decide guilt, they're not to go home? They've got to wait
7 24 hours and come back. And they could come back for
8 several more days, theoretically. There's got to be a --
9 and that's really reason you do those terms.

10 MR. WILSON: Yes, sir. And I think that that's
11 appropriate -- absolutely appropriate when the Court says to
12 the jury, "We -- this trial -- if this trial would normally
13 be a two phase -- this is a capital trial and capital trials
14 are -- are composed of two phases: One is the trial phase,
15 where you're going to determine innocence or guilt. And
16 then, two, if in fact you find him innocent, we don't go any
17 further. If you find him guilty, then we go to the next
18 stage of this trial."

19 THE COURT: Of course, I've had lawyers complain about
20 the term "innocent," meaning you don't need to find him
21 innocent, you find him "not guilty." And they claim there's
22 a difference in those two terms ---

23 MR. WILSON: I think that there is.

24 THE COURT: --- and I -- I think it's a logical
25 argument there is. But anyway, Mr. Humphries, what's your

1 response to this, sir?

2 MR. HUMPHRIES: Your Honor, I don't want to be
3 restricted in any fashion as a lawyer in being able to tell
4 this jury that they're -- they're to determine the guilt --
5 determine the guilt of the defendant in the guilt phase. I
6 mean, clearly I'm an advocate. That's the position I'm
7 advocating and that's what I'm going to ask them to do
8 ultimately at the end of that -- of the first phase. So any
9 restriction to -- to -- to artificially place upon me the --
10 the restriction of having to refer to it as the "trial
11 phase" ---

12 THE COURT: That's my concern. He stands up and he
13 says, you know, "We're now in the guilt phase," and you
14 stand up and object. If I grant your motion, I got to grant
15 your objection -- sustain your objection and -- and instruct
16 him not to say that. I'm -- I'm -- I've never had this
17 motion. By the way, I'm glad I read the body of it, because
18 when I saw just the heading of it, I thought we were dealing
19 with some chemical thing -- but -- initially.

20 But Mr. Wilson, I will control to make sure that there
21 are no use -- there's no use in the phase as such that it
22 makes the jury feel that there is a pro forma or mere
23 formality of the first part; that there is an actual
24 decision that -- that they -- they make, and there's no
25 foregone conclusion of what that decision is going to be.

1 And I think my policy when I do the selection or --
2 excuse me -- qualification of the jurors, I explain to them
3 about the two phases and the first phase is where they
4 determine whether someone is guilty or not guilty.

5 MR. WILSON: Yes, sir.

6 THE COURT: And I -- I -- I can only assure you of
7 that. I just -- I'm just concerned about granting this
8 thing totally as you've got it here.

9 MR. WILSON: All right, sir.

10 MR. RATHBUN: A moment, Your Honor.

11 THE COURT: Uh-huh.

12 MR. WILSON: Judge, I -- I understand the Court's
13 ruling and I -- and -- and -- and just so I -- I'm clear,
14 when -- when the solicitor says that -- that he's being
15 restrained, and you know, I disagree with that. I mean, I -
16 - I think that -- as I said, I mean, we don't do this in any
17 other trial, you know? And -- and we've all tried dozens
18 and dozens and dozens of murder cases. We've never called
19 it the "guilt phase" of the murder trial.

20 THE COURT: And I never tell the jury that this is the
21 "trial phase" of a trial in -- in any other type of trial.
22 We're going to have a "failure to stop for a blue light"
23 later this afternoon. I'm not going to say, "This is the
24 trial phase."

25 MR. WILSON: Well, if we tell them that this is a trial

1 on the issue of guilt or innocence. And that's all I'm
2 asking to do -- that I'm asking ---

3 THE COURT: I'll assure you when those jurors are
4 qualified, that will be explained to them. Each juror that
5 we talk with, that's -- it will be explained to them in that
6 regard. But no presumptive terms as far as presumptive
7 terms or anything presumptive will be presented to the jury
8 that there's a presumption that someone's going to be found
9 guilty in the -- in the guilt or innocence phase.

10 MR. WILSON: All right, sir. Thank you, Your Honor.

11 THE COURT: What's your next ---

12 MR. WILSON: The next one is a motion to allow for
13 independent analyzation of blood evidence. There was
14 apparently one speck of blood and I think ---

15 MR. HUMPHRIES: Let me -- let me address -- let me
16 address both the independent analyzation of blood evidence
17 and the independent analyzation of ballistic evidence.

18 MR. WILSON: Which would have been the next motion,
19 Your Honor.

20 MR. HUMPHRIES: Your Honor, I received these motions on
21 April 17th. I sent a letter to Mr. Wilson on April 18th,
22 taking this position (as read): "I received your pre-trial
23 motions in the above referenced matter. After review of the
24 motions ---"

25 THE COURT: Now, Mr. Humphries.

1 MR. HUMPHRIES: Yes, sir.

2 THE COURT: If you're reading out loud, she's got to
3 take it down and it's very tough.

4 MR. HUMPHRIES: Well, I'm going to hand her a copy of
5 this after I read it, if that'll make it easier.

6 THE COURT: Well, not even if you read it fast, she's
7 still going to try to repeat it.

8 MR. HUMPHRIES: I will read slower, Your Honor.

9 THE COURT: Thank you.

10 MR. HUMPHRIES: (As read): "After review of your
11 motions, I advise you of the following position of the State
12 as it relates to two of your motions.

13 "Regarding your motion for independent analyzation of
14 ballistic evidence (more appropriately firearm and toolmark
15 identification evidence) and independent analyzation of
16 blood evidence, the State consents to both of these motions.

17 "Further, in the interest of time, the State will
18 assist you by coordinating the availability of these items
19 of evidence for independent analysis at your request.

20 "Because these tests may take some time, I encourage
21 you to contact me immediately to begin the process. Should
22 you have any questions regarding my position in this matter,
23 please do not hesitate to call on me."

24 THE COURT: What's the date of the letter?

25 MR. HUMPHRIES: The 18th.

1 MR. WILSON: And I received it on the 18th.

2 THE COURT: All right.

3 MR. HUMPHRIES: And it's the 26th today.

4 THE COURT: Then therefore --

5 MR. HUMPHRIES: I've received no requests as of this
6 time, but as it relates to both of these motions and -- and
7 actually there are a number of other motions that -- that
8 relate tangentially to these motions.

9 THE COURT: Well, Mr. -- while you're looking for the
10 other one, Mr. Wilson ---

11 MR. WILSON: Yes, sir.

12 THE COURT: --- then therefore, in essence, he
13 consents. But ---

14 MR. WILSON: He consents.

15 THE COURT: -- but -- but my -- my concern -- I
16 assuming the tenor of that letter's concern is we're moving
17 on now, so are you going to have this done? The independent
18 analysis?

19 MR. WILSON: Well ---

20 THE COURT: You got to coordinate with them to get it
21 done.

22 MR. WILSON: What -- what ---

23 THE COURT: And they're going to want to keep
24 possession of these things.

25 MR. WILSON: Even though I've asked for it, I am not

1 saying to this Court that I am going to necessarily have an
2 independent. But I certainly want the option available to
3 me to -- to do that.

4 THE COURT: But one question I would have is: Why
5 would you think you wouldn't have that option? How would
6 the Court deny you that anyway? I'm curious as to why ---

7 MR. WILSON: Well, I don't think they would. I just --
8 -

9 THE COURT: Well, why -- I'm just curious why you'd
10 even think you had to file a motion for that?

11 MR. WILSON: Well, because sometimes when you ask for
12 things, you don't always get them. And he immediately -- in
13 fact, the same -- if I'm not mistaken, it was the same day
14 that I served my motions on him, he did fax me back a letter
15 or sent me over a letter the same day saying that he would
16 agree to it and that he consented to it. But it doesn't
17 normally happen that way and it certainly doesn't usually
18 happen that way.

19 MR. HUMPHRIES: Your Honor, let me say this. This is -
20 - and -- and we've done this in a number of other capital
21 cases in order to expedite these particular kinds of
22 examinations. He also has two motions and I hate to ---

23 MR. WILSON: I don't know where you are.

24 MR. HUMPHRIES: Well, I'll -- I'm going to tell you
25 what they are and you can pull them out. One is a motion to

1 produce relating to "any and all photographs made by SLED or
2 other authorized individuals," duh-duh-duh-duh-duh-duh-duh.

3 THE COURT: Then you have an audio recording.

4 MR. HUMPHRIES: Of any -- no -- "of projectile casings
5 and cartridges during the visual and microscopic enhanced
6 visual examination," talking about the firearms evidence.
7 And -- and another motion which talks about production of
8 all SLED reports, notes and/or documents produced in the
9 examination of any and all evidence in any laboratories.

10 Your Honor, I have no objection to providing whatever
11 SLED has in regard to -- to these tests. What I suggest and
12 what we've done in the past, neither -- neither Mr. Wilson
13 nor I know exactly what experts need -- that is, experts in
14 these fields need in order to conduct these kinds of tests.
15 But the experts do. So what we've done in the past is to
16 coordinate with SLED and the defendant's experts to get
17 together at SLED with the file, all the originals, because
18 obviously there's some drop-off in terms of originals versus
19 copies. And let them get together. The SLED agents don't
20 ask what the defense expert's positions are. They say,
21 "Here's my file; how can I be of assistance?"

22 They're willing to do it. They've done it a number of
23 occasions for us and what we've found is: No. 1, it's done
24 expediently; and No. 2, the defense doesn't have to come
25 back to us and say, "Well, you know, we got this, but we

1 really need this."

2 But the experts get together, they know how to talk
3 "expert," and Mr. Wilson and I -- and I'm just -- I'm
4 assuming for Mr. Wilson -- I know for myself and I've been
5 doing it for over 20 years. I know I can't talk that
6 language as fluently as they can. We get the experts
7 together; they can work it out. They know what they need.
8 It's an open -- it's an open-file policy in that regard. I
9 suggest that to Mr. Wilson as a solution to these motions.

10 THE COURT: And Mr. Wilson, as the attorney general
11 found out last week, SLED cooperates with the defense also.

12 MR. WILSON: Yes, sir.

13 THE COURT: Because last week there was a SLED agent
14 testifying for the defense. And so -- with the information
15 they had.

16 MR. WILSON: I can -- I do appreciate that. I -- and I
17 -- you know, and I would also say that I appreciate the
18 solicitor being willing to ask law enforcement to cooperate
19 with us to do that.

20 THE COURT: Well, I don't -- I -- I don't know how to
21 address all of them individually other than to say this:
22 That any information they have from law enforcement agencies
23 that require an opinion testimony because of their
24 experience in certain fields, they're required to make sure
25 you have the ability to have someone of your choosing also

1 review, as well as you review what they have, but I'm
2 assuming they sent those to you, those reports, if they got
3 them. But -- but you're entitled to also have an
4 opportunity to do that.

5 I agree with Mr. Humphries that instead of going
6 through Mr. Humphries, usually it's just as well to go
7 through the expert when you get a name. And if they give
8 you a problem, you can let him know; and if that doesn't
9 work, let me know. But you're entitled to review any -- any
10 matters dealing with audio recordings, any matters dealing
11 with analysis of -- of -- of -- of some sort of weapons or
12 cartridges or anything of that nature, so ...

13 MR. WILSON: Judge, just -- just so the record's clear
14 and -- and I need to put on here what it is that I'm asking
15 for and I -- there are -- I filed and I think there are
16 three -- six motions to produce and just so the record is
17 clear, I will try to be real -- real short. But basically -
18 -

19 THE COURT: Are all six of them entitled "Motion to
20 Produce"?

21 MR. WILSON: Yes, sir. They're all ---

22 THE COURT: Well, I've got several here.

23 MR. WILSON: And they're very similar in nature and --
24 and I think we probably covered most of them, but I need to
25 be clear.

1 THE COURT: Okay.

2 (Sotto voce discussion between Mr. Humphries and Mr.
3 Wilson.)

4 MR. HUMPHRIES: Actually, there are more than six.

5 MR. WILSON: Well, two of them are actually for ---

6 THE COURT: I was beginning to wonder if I had maybe
7 duplicate copies. I haven't gone through everything, but --
8 -

9 MR. WILSON: The request for -- for -- for the jury's -
10 for the criminal history on the jury and criminal history on
11 witnesses. I think there are two for that and so there -- I
12 think there would be eight.

13 THE COURT: Well, I'm just looking at things you've got
14 titled "Motions to Produce." I have seven just from looking
15 halfway through here.

16 MR. HUMPHRIES: There should be eight. I -- I've got
17 more than seven.

18 MR. WILSON: There should be eight.

19 THE COURT: And I'm just doing just the term "Motion to
20 Produce," nothing else.

21 MR. HUMPHRIES: One, two, three, four, five, six,
22 seven, eight, nine. And all of them don't relate to
23 evidence.

24 MR. WILSON: There -- there were two, Your -- Your
25 Honor: One which goes to the criminal history of jurors;

1 another is for registration information on the gun that's
2 involved and that may be addressed in some of the other
3 things. And then the third one was criminal history of
4 witnesses.

5 MR. HUMPHRIES: And I'll be glad to address those when
6 you get to them, Your Honor.

7 THE COURT: Now I have ten.

8 MR. HUMPHRIES: Well, I may have ---

9 THE COURT: Eleven.

10 MR. HUMPHRIES: --- already done one. I'm not sure.

11 MR. WILSON: I think we did one. We did.

12 THE COURT: I wonder if I have duplicate copies or
13 something there?

14 MR. HUMPHRIES: Probably not, Judge.

15 THE COURT: I mean, just with the term "Motion to
16 Produce," I've now -- with no other words other than that,
17 I've got 11. Here's 12. I have 12, but whatever. Go
18 ahead.

19 MR. WILSON: Well, let -- let me -- let me try to go
20 through the ones that I have and then we'll ---

21 THE COURT: I believe I have some duplicates.

22 MR. WILSON: This -- this motion to produce, Your
23 Honor, is simply asking for law enforcement for the -- for
24 the solicitor to make available to us through any law
25 enforcement, any of the projectiles, casings, cartridges

1 during the visual or microscopic enhanced visual examination
2 in the above case.

3 MR. HUMPHRIES: And Your Honor, to that one, we consent
4 suggesting the procedure that I believe Mr. Wilson does not
5 object to, that we coordinate the experts and let them deal
6 with it.

7 MR. WILSON: Absolutely. I -- I consent to that.

8 THE COURT: Okay. I have one here -- it's a duplicate
9 anyway -- but I -- I -- the one on the audio recording. So
10 hold on. Let me get to the one you just mentioned so I can
11 make a note on it. Which one is that -- the SLED? Which
12 one?

13 MR. WILSON: It's ---

14 MR. HUMPHRIES: It deals with the projectile, casings
15 and ---

16 THE COURT: All right. Okay.

17 MR. HUMPHRIES: -- cartridges, you'll find in the --
18 that last sentence.

19 THE COURT: Well, here I have now -- I have three
20 copies of the motion to produce regarding audio recordings
21 for some reason.

22 MR. HUMPHRIES: We haven't gotten to that one yet.

23 THE COURT: I know, but I'm just trying to sort them
24 out. All right. So the one on cartridges, consented to?

25 MR. WILSON: Yes, sir.

1 THE COURT: With coordination with SLED.

2 MR. WILSON: The next -- the next one, Your Honor, is
3 an order to have us have copies of all evidence inventory
4 forms from SLED or the Horry County Police Department or any
5 other agency that may have processed forms which are going
6 to be -- which are related to this case.

7 MR. HUMPHRIES: And Your Honor, that -- there is a
8 computer with a -- typically called the "computer chain,"
9 and we don't have any problem -- and if he can -- if he can
10 identify those items that he's -- he's interested in, it --
11 it's a matter of -- of a call to SLED and we'll be able to
12 produce that. I can tell the Court it's not all that
13 intelligible to people outside SLED, but they generated it
14 before and would be willing to generate it again.

15 MR. WILSON: And -- and my -- my request is broader, I
16 guess, in that what I'm looking for -- because I don't know
17 what I'm looking for until I get it. I'm looking for any
18 forms that there might be which might lead me to something
19 that I don't know about, I guess -- what, I guess --

20 THE COURT: But how do they know what to present to
21 you?

22 MR. WILSON: Well, what -- because I -- what I'm asking
23 them to do is any evidence forms that are related to this
24 case, to give it to me. Then I will look through it and
25 determine what's of value in it, if anything.

1 MR. HUMPHRIES: Here's what -- here's what we'll do,
2 Your Honor, if it -- if it's satisfactory with Mr. Wilson.
3 We will -- we will review the file. We'll determine every
4 item of evidence which has been submitted to SLED for the
5 purposes of testing, and those items then we will request
6 the computer chain on them, provide him the computer chain,
7 and we can go from there.

8 THE COURT: Well, he said "every item," Mr. Wilson.
9 That covers it.

10 MR. WILSON: If -- if he gets it from every -- every
11 item, that's it.

12 THE COURT: All right. Good. All right.

13 MR. WILSON: And that -- Your Honor, that also includes
14 any other law enforcement agency, not just SLED.

15 MR. HUMPHRIES: There's been no other ---

16 MR. WILSON: The sheriff ---

17 MR. HUMPHRIES: I -- I understand his position. There
18 have been no other testing of any items of evidence.

19 THE COURT: All right. Consented to. Let's move on.
20 What's your next one?

21 MR. WILSON: The next one, Your Honor, is an order for
22 -- to produce any and all written, oral, or third party
23 statements allegedly made by the defendant to any inmate at
24 J. Reuben Long or any -- and I'm adding this -- any
25 detention officer that he might have given a statement to or

1 who says he gave him a statement.

2 MR. HUMPHRIES: If the court will give me just a minute
3 to find that one, Your Honor.

4 THE COURT: It says here, "to produce any and all
5 written, oral, or third party statements allegedly made by
6 the defendant to any inmate of J. Reuben Long Center."

7 MR. HUMPHRIES: We will consent to that one to the
8 extent that it's -- I mean, at this point, we're not aware
9 of any that have not already been provided; and if we come
10 across any which we intend to use as a witness, we'll
11 provide those statements.

12 THE COURT: So you're consenting to that?

13 MR. HUMPHRIES: Yes, sir. Absolutely.

14 THE COURT: Okay.

15 MR. HUMPHRIES: I'm saying for the record at this time
16 we don't have any statements made by the defendant to any
17 other party other than the statement he's already provided
18 law enforcement, which Mr. Wilson's got a videotape of.

19 MR. WILSON: Right.

20 MR. HUMPHRIES: I'm not aware of any at this time and
21 if any comes to light, obviously it's the substance -- if --
22 even if it's an oral statement, we'll provide the substance
23 of his oral statement pursuant to the rules to Mr. Wilson
24 immediately upon delivery to us.

25 MR. WILSON: Thank you.

1 THE COURT: Okay. Now, educate me on the rules,
2 though. If this inmate is not working with the government
3 and just happened to be an inmate, that's not covered under
4 Rule 5. Are you going to produce it or not?

5 MR. HUMPHRIES: It doesn't matter. If -- if it's an
6 oral -- if it's an -- if it's a statement of the defendant,
7 then I believe it's -- we're still required to provide that
8 -- the substance of that oral statement to the -- to the
9 defense.

10 THE COURT: Okay. Now, are you saying you're
11 consenting to this in both phases of the trial?

12 MR. HUMPHRIES: This is -- this is for the guilt phase.

13 THE COURT: All right. So you're only consenting to
14 this in regard to -- because I have no idea what may happen
15 -- regard if it gets to the next phase that you might ---

16 MR. HUMPHRIES: If it gets to the guilt phase.

17 THE COURT: All right.

18 MR. HUMPHRIES: Now, as a practical matter, if someone
19 who's known him in the past or had some relationship with
20 him in the past we call to testify in the penalty phase, no,
21 I don't intend to, unless there is already a written
22 document which is their statement.

23 THE COURT: I just want to make sure we clear up what
24 you've consented to.

25 MR. HUMPHRIES: But I don't intend to -- no.

1 THE COURT: All right. All right. Next motion.

2 MR. WILSON: Your Honor, the next motion is a motion --
3 and -- and I think that actually there are two. But this
4 one is asking for any latent prints or partials or otherwise
5 -- to produce any and all photographs made by SLED of any
6 prints or -- or latent prints, partials or otherwise, which
7 were made during the examination of any items of evidence.

8 MR. HUMPHRIES: And Your Honor, we consent to that to
9 the extent that there is any such evidence. And we suggest
10 we use the same procedure as we're using with the -- all the
11 other experts: getting the experts together. We consent to
12 that motion to the extent that there is any such evidence.

13 THE COURT: That's one I can't seem to find here. I
14 thought I'd seen it. All right. That's consented to, but I
15 just don't know why I can't seem to find it. Okay.

16 MR. WILSON: The next one, Your Honor, is to produce to
17 the Defendant a copy of any and all SLED reports, notes, or
18 documents produced during examination of any and all
19 evidence while in any laboratories where -- where tests were
20 conducted on said items.

21 MR. HUMPHRIES: And Your Honor, we will -- we consent
22 to the production of reports and have already been -- those
23 reports have already been provided. As it relates to their
24 -- to their notes and/or other documents produced during the
25 course of the examination, we'd like to fall back on that

1 procedure where the two experts get together. But as to any
2 written report, which is really all that's required by the
3 rule, if a report's done, we consent to that. But as any --
4 as to any bench notes or anything like that, I don't have
5 any problem in letting the defendant -- the experts get
6 together and work through the entire file. It'll be open to
7 them.

8 THE COURT: Mr. Wilson, do you understand his --

9 MR. WILSON: I do.

10 THE COURT: -- concession?

11 MR. WILSON: Yes, sir.

12 THE COURT: Let me write this down as far as the
13 experts. All right. Next one.

14 MR. WILSON: The next one, Your Honor, is we're asking
15 for any audio recordings -- copies of any audio recordings
16 of any telephone conversations with any potential witness in
17 the above case.

18 THE COURT: Well, that must be important because you
19 got three -- you sent me three copies of it.

20 MR. HUMPHRIES: Your Honor, as to that motion, we will
21 consent as to the witnesses that the State intends to call.
22 Obviously, we talked to lots of folks.

23 THE COURT: Let me make sure I understand this. Are
24 you asking for the audio recordings of a witness talking to
25 a member of the solicitor's office?

1 MR. WILSON: If it's recorded.

2 MR. HUMPHRIES: We'll -- we'll give those to him. I
3 don't -- we don't have any objection to that. That's a
4 formal statement of a witness, which he's entitled to --

5 THE COURT: All right.

6 MR. WILSON: -- prior to the witness testifying. As to
7 those we intend to call as witnesses, not every person we
8 speak to in connection with the case.

9 THE COURT: Unless it comes within *Brady*?

10 MR. HUMPHRIES: Clearly. But obviously we've got a
11 continuing duty there.

12 THE COURT: All right. I'm going to toss two of the --
13 two of the three here.

14 MR. WILSON: All right, sir.

15 THE COURT: I don't know why you sent me three of
16 those. Let me make sure they're -- yeah, they're the exact
17 same.

18 (Sotto voce discussion between the Court and law
19 clerk.)

20 THE COURT: All right. Next motion.

21 MR. WILSON: Your Honor, the next one is a motion to
22 produce to the defendant the -- there was a gun apparently
23 found under the pillow of the 13-year-old stepson, who is a
24 primary witness in this case. And I'd like to know who that
25 gun is registered to.

1 MR. HUMPHRIES: We consent to that, as to -- as to both
2 weapons, if it's in the possession of SLED.

3 THE COURT: You need -- tell me about the facts, your
4 allegation of the facts. Two weapons?

5 MR. HUMPHRIES: No, Your Honor, there's one weapon.
6 There was a -- there was a weapon found in the residence,
7 but it was not used as a part of the -- but it was not
8 utilized in the crime. It was a weapon brought -- the State
9 alleges it was brought by the defendant to the home of the
10 victim, which he himself was armed with, and he shot the
11 victim with it. Upon a search of the residence, a handgun
12 was -- another handgun was found in the home, but the
13 State's evidence is it had no involvement in the case.

14 As to this, we -- we consent if that information is in
15 the custody of SLED Regulatory. Obviously, handguns cannot
16 be purchased in the state and registered in the state as a -
17 - as a condition of the purchase -- or they could be
18 private-owner guns, in which case that information we
19 wouldn't have.

20 Now, Mr. Wilson can obtain from the Court an order
21 requiring -- ATF would be able to do a -- a records check
22 which may ultimately reveal the -- you know, the first
23 purchaser. But if they're private citizen purchases
24 subsequent to ---

25 THE COURT: Now, Mr. Wilson, do you understand his

1 answer?

2 MR. WILSON: Yes, sir.

3 THE COURT: If SLED has it, he'll provide it to you.
4 But they're not going to do some sort of exhaustive
5 nationwide search through any federal agency or other type
6 agency to find this. They'll tell you what our state law
7 enforcement division has as to the ownership of the two
8 weapons.

9 MR. WILSON: All right, sir. Then -- then I would ask
10 the Court if -- if, in fact, SLED does not have it, I would
11 ask the Court for an order to allow me to try to get it
12 through ATF.

13 THE COURT: Well, I'm wondering how this Court could
14 order ATF to do anything?

15 MR. WILSON: Well, I don't know that we have any
16 authority, but what I'm ---

17 THE COURT: Well, what would my order say?

18 MR. WILSON: That ---

19 THE COURT: "Please help him"?

20 MR. HUMPHRIES: I tell you what. Let -- let me do
21 this, just -- just to make things simple: If SLED doesn't
22 have it, I'll request Horry County Police Department make a
23 request of ATF, which I believe they have the authority to
24 do.

25 THE COURT: That sounds a little bit better I think.

1 All right. Next motion.

2 MR. WILSON: The next one, Your Honor, is a motion to
3 produce copies of criminal history of all jurors.

4 MR. HUMPHRIES: Your Honor, we consent as to the jurors
5 that have been generally qualified and called to be examined
6 individually. Obviously, there are some -- some very
7 serious restraints about disclosing prior criminal histories
8 of people ---

9 THE COURT: All right. Let's get down to -- are we're
10 talking then that after I qualify jurors and we get sort of
11 about 50 -- 50 out there -- or 40 something out there, are
12 those the ones you're talking about? Are those the ones --
13 are you talking about the ones after you do the general
14 qualifications of the jury and divide them into panels?

15 MR. HUMPHRIES: Here's what I'm talking about and this
16 is what we've done in the past. Prior to that juror going
17 through the individual voir dire, I will hand the defense
18 counsel their rap sheet, if in fact there -- anything
19 appears on that rap sheet.

20 THE COURT: What's the word "prior to" mean? As -- as
21 they're called up here?

22 MR. HUMPHRIES: I could do it then; I could do it one
23 before. I just -- because if for various reasons witnesses,
24 you know, are excused, I just got some obligations under
25 state law in not disclosing that information until it's

1 relevant to the Court.

2 THE COURT: Yeah, I thought -- what I thought he was
3 talking about jurors, you know.

4 MR. HUMPHRIES: That's what I'm talking about.

5 THE COURT: Well, you said "witnesses," but ---

6 MR. HUMPHRIES: Well, you know, the jurors who will be
7 a witness during the voir dire.

8 THE COURT: Okay. So Mr. Wilson, he's saying that once
9 we do a general qualification of the jury and after I divide
10 them into panels, he will give you one ahead as I call the
11 jurors up. You'll have the rap sheet of that juror before I
12 call them up here.

13 MR. WILSON: Well, I would actually -- Your Honor, I
14 would love to have them at the time they get divided into
15 panels. And I realize that -- no, I don't expect him to
16 give me 500 rap sheets. I don't. But I ---

17 THE COURT: But as you know, some jurors are going to
18 be disqualified before y'all answer any questions -- ask
19 them any questions at all.

20 MR. HUMPHRIES: That's my -- that's my concern.

21 THE COURT: You know, I'll -- you know, when I ask them
22 one or two questions, I may decide right then, no matter
23 what you all ask, "These jurors are not qualified as jurors
24 because of their opinion about certain issues."

25 MR. WILSON: Part of my concern is that this is a -- if

1 -- if I don't get it until the juror comes up ---

2 THE COURT: No. He said he'd give you one ahead.

3 MR. WILSON: Right. One ahead. Right. One ahead.

4 The problem is this: Is that if I don't get it until one
5 ahead, then I don't know when I'm thinking through who I
6 want to serve and how I'm going to use my strikes, and
7 whether I want to try to rehabilitate a juror or let him
8 fall by the wayside and not serve on the jury, I don't -- I
9 don't know -- in strategically -- in planning that that it
10 gives me any room to do that, because I won't really know
11 until that next juror -- until one juror removed what I'm
12 dealing with. And it just doesn't give me much leeway. And
13 -- and I -- I -- and solicitor has that information, so he
14 knows. I don't know, so I'm at a real disadvantage. And he
15 knows, "Okay, well I got two other jurors coming up who've
16 got criminal records. They're going to be, you know,
17 stricken, so I don't really need to worry about that."

18 THE COURT: What do you mean, they're going to be --
19 how do you know they're going to be stricken?

20 MR. WILSON: No, no. I'm -- I'm saying maybe because
21 of their criminal record, maybe ---

22 MR. HUMPHRIES: That'll happen before ---

23 MR. WILSON: --- for some other reason. I don't know.
24 But what I'm saying is he has that information, so he has
25 that advantage. I don't have that advantage, so I can't

1 really --

2 THE COURT: Now, we're dealing with people who don't
3 have serious criminal records in the first place, or they
4 may have a pardon.

5 MR. WILSON: Yes, sir.

6 THE COURT: But practically speaking, we're dealing
7 with people who don't have serious criminal records.

8 MR. WILSON: That's correct.

9 THE COURT: Because they got to be sentences of a year
10 of less. So we're not dealing with that much there.

11 Mr. Humphries, let's -- trying to think if we can do it
12 a little -- a little bit more reasonable. Not too much
13 more, but work out a little bit more. He does have a good
14 point: That you have it and you can plan the night before
15 and everything else about people who you know.

16 MR. HUMPHRIES: How about if I assure you I won't plan
17 for it the night before. We'll give them -- how about if we
18 give it to him in panels of five?

19 THE COURT: You know, here's what happens. As you all
20 know, generally when you qualify a jury in a standard
21 situation, you come up there, the solicitor tells you right
22 then whether that juror -- if they have something you're not
23 sure of as whether it's a year or not, especially if it's an
24 out-of-state conviction. Generally, the defense knows right
25 then. But of course, if it's something we know for sure

1 they're disqualified on, they're gone anyway.

2 MR. HUMPHRIES: Yes, sir.

3 MR. WILSON: And Your Honor, you know, just in -- in
4 clarification, the solicitor obviously will have this
5 information already available to him when we have these
6 panels. And I don't really understand the significance of
7 not giving it to me at the beginning of the panel, as
8 opposed to be giving it to me, you know, after three persons
9 have -- after three jurors have testified, and we finally
10 get to one who has a criminal record.

11 MR. HUMPHRIES: I will give it to him in panels of five
12 in advance so that examination, if any, can continue.

13 MR. WILSON: I appreciate that.

14 THE COURT: That sounds -- sounds reasonable.

15 MR. WILSON: Thank you.

16 MR. HUMPHRIES: You're welcome.

17 THE COURT: I was thinking the same thing, Mr.
18 Humphries. I'm glad we're on the same page.

19 MR. HUMPHRIES: Well, that was Mr. Hembree's
20 suggestion.

21 THE COURT: All right.

22 MR. WILSON: And then you can also just discard one of
23 my motions, because I was asking that jurors be in panels of
24 -- panels of ---

25 THE COURT: Well, we'll get that later. We're still on

1 your motion to produce right now.

2 MR. WILSON: All right. The next one, Your Honor, is
3 criminal history of -- of witnesses that the State intends
4 to offer at trial.

5 THE COURT: Well, the rule provides how they do that.

6 MR. WILSON: Yes, sir. And that's ---

7 THE COURT: It says that after they testify, but of
8 course, normally I've experienced that solicitors give it to
9 you before then.

10 MR. HUMPHRIES: We'll do that on everybody we call to
11 testify; not every potential witness, but those that we
12 actually call.

13 THE COURT: You'll give it to him when?

14 MR. HUMPHRIES: Prior to the -- our examination --
15 prior to the direct.

16 MR. WILSON: That's fair enough.

17 Your Honor, the next motion is -- I think that --
18 that's all my motions to produce.

19 THE COURT: That's all I have. Well, I have one more
20 here about incident reports, South Carolina Law Enforcement
21 Division. Have we covered that one?

22 MR. HUMPHRIES: No, we -- we haven't covered -- covered
23 that one: Any and all incident reports from everybody. And
24 I'll just say that we consent to that motion, but that all
25 reports of which we are aware have already been provided

1 through discovery.

2 MR. WILSON: The incident reports, yes. Okay. Thank
3 you.

4 MR. HUMPHRIES: And then there's one other.

5 THE COURT: Let me just make a note.

6 MR. HUMPHRIES: I'm sorry. That's the audio -- we've
7 already ---

8 MR. WILSON: We've done the audio.

9 THE COURT: I got three copies of the audio.

10 MR. HUMPHRIES: Maybe I got two of them then. But
11 we're done with that.

12 THE COURT: All right. What's your next matter?

13 MR. WILSON: Motion to produce DNA evidence and -- and
14 I think we've probably addressed the ---

15 MR. HUMPHRIES: We just addressed that. That was -- I
16 think we addressed that at the same time we addressed ---

17 THE COURT: Which -- which one is it?

18 MR. HUMPHRIES: --- the ballistic evidence.

19 MR. WILSON: Motion to produce DNA evidence, and we --
20 we've actually addressed that in the agreement. We have an
21 agreement as to how it should be done with the experts.

22 THE COURT: All right. Next matter.

23 MR. WILSON: The next one, Your Honor, is a motion for
24 witness information. What we're asking for is -- we're
25 asking for -- actually information concerning the witnesses

1 who the State -- the State intends to call or who the State
2 -- who the State places -- well, who have authorized the
3 State to place the defendant at the scene of the crime.

4 MR. HUMPHRIES: Your Honor, as to that, we consent as
5 to the names, and they have already been provided in
6 connection with the incident reports that Mr. Wilson and Mr.
7 Rathbun have.

8 As to the contact information, we specifically object
9 to that. We have had occasions in context with this case
10 with this defendant where he has directly corresponded with
11 members of the victim's family in a very, very negative
12 fashion, and we would object to providing this defendant
13 contact information, specifically with relation to the
14 witnesses. And when we're talking about witnesses, we're
15 talking about that 14 year old -- how to get in touch with
16 him.

17 THE COURT: All right. In any event, Mr. Wilson, it's
18 consented to as to names; as to contact information, case-
19 by-case basis. You go to Mr. Humphries, say he won't; and
20 if they cannot provide them for you at a certain place,
21 certain time or whatever that you want, something like that,
22 if -- if -- if they cannot or if y'all can't work it out,
23 then come back to me on a case-by-case basis. But names
24 only they're going to provide to you. But I -- I agree
25 with, as a general rule, not all contact information.

1 MR. WILSON: Thank you, Your Honor.

2 THE COURT: But the door's still open, Mr. Wilson.
3 It's not you've been denied that. It's just that if you
4 find there's someone that you really need to talk with and
5 you've had no opportunity to talk with them and you feel you
6 have a right to talk with them and the State's, you feel, is
7 secluding that witness from you or you can't find them, then
8 let me know. Next motion.

9 MR. WILSON: Your Honor, this is a motion -- notice of
10 motion prohibiting extrajudicial statements of the trial
11 participants and -- and essentially what I'm asking is so
12 that ---

13 MR. HUMPHRIES: Your Honor, we consent to that.

14 THE COURT: Let me find that one. What's the name of
15 it again?

16 MR. WILSON: It's "Motion -- Motion Prohibiting
17 Extrajudicial Statements of Trial Participants."

18 MR. HUMPHRIES: Your Honor, we consent to it except as
19 to inquiries about the scheduling of hearings. We're -- you
20 know, we're not going to -- we're not going to seek out the
21 media, but we, on a regular basis, in connection with this
22 case and -- and many other ---

23 THE COURT: Now, once the trial begins -- wait a
24 minute. I thought a gag order had already been signed on
25 this. Has it not?

1 MR. WILSON: I don't think so.

2 THE COURT: Well -- well, once the trial begins, we are
3 going to have a gag order on this matter. I've not seen
4 much in the press about it is why I haven't really been
5 pushing it. And -- but the minute I got hold of the Hinson
6 matter, I put a gag order on. But what is your concern
7 here, Mr. Wilson?

8 MR. WILSON: Well, I just know that during the course
9 of these death cases, it does -- there's usually a lot of
10 media publicity surrounding them, and -- and it can get very
11 involved. And there usually are details which the media
12 digs up and tries to print, and I'm trying to prevent that
13 from happening.

14 THE COURT: Well, Mr. Humphries, I hear, is telling me
15 that he's not going to mention anything except -- he or his
16 office -- Mr. Hembree's office -- mention anything other
17 than procedurally about when the trial is scheduled.

18 MR. WILSON: And that -- and that's fine. That
19 satisfies me.

20 THE COURT: Is that right, Mr. Humphries?

21 MR. HUMPHRIES: Your Honor, yes. As it relates to our
22 office, any law enforcement officer under our charge, and we
23 will counsel the family to the extent that we can. I mean,
24 it's a -- we don't -- I don't know if we know all the family
25 members, quite frankly. But the family members that we

1 know, we will advise -- although quite frankly, they're not
2 the parties.

3 MR. WILSON: They're not.

4 MR. HUMPHRIES: They're not the parties to this action.
5 We will counsel them against making statements prior to the
6 trial of the case.

7 MR. WILSON: Judge ---

8 MR. HUMPHRIES: But I don't know that we can bind other
9 people.

10 MR. WILSON: I agree. And I'm not -- I'm not trying to
11 get the solicitor to -- to -- to be responsible for the
12 family of -- of -- of the victim, obviously, and I don't
13 think that would be fair. And so I'm not -- I'm not trying
14 to do that. Just for law enforcement and for the solicitor.

15 MR. HUMPHRIES: No problem.

16 THE COURT: All right. And that's as to substantive
17 matters about the case as far as what they feel evidence is
18 there for this or that, but the -- procedurally, the trial
19 is going to be a certain date in a certain place, who the
20 judge is, stuff like that, he's not prohibited from doing
21 that. As far as the family members, unless it becomes very,
22 very prejudicial to you, I'm not going to call anybody in.

23 But if it does get to that point, Mr. Wilson, you feel
24 someone's out there that's endangering your chances of
25 getting a fair trial, let me know and I will call that

1 individual in. Or individuals.

2 MR. WILSON: All right. Thank you, Your Honor. Next
3 one is a motion for law enforcement officers to retain any
4 notes that they may have taken. And what I'm simply asking
5 there is, if they have any notes that they have that they've
6 not yet turned over to the solicitor, which have not yet
7 been turned over to me, that they not destroy -- they do not
8 destroy those notes, but that they make them available to
9 the solicitor and the solicitor keep them, or if he will,
10 make them available to me. If not, then at least hold them
11 until trial.

12 MR. HUMPHRIES: As long as ---

13 THE COURT: Does that mean -- okay. Go ahead.

14 MR. HUMPHRIES: As long as there is no -- there is no
15 responsibility on the State for notes which may have already
16 been destroyed in the time -- because I know many of those -
17 - and I know many of them personally. Once they -- they
18 write their report out, they destroy their notes, because
19 they -- they've taken their notes ---

20 THE COURT: Well, let me ask you this: If I grant this
21 motion, are you going to be able to make sure that every
22 conceivable law enforcement officer who was involved in this
23 case knows not to do it?

24 MR. HUMPHRIES: No, sir.

25 THE COURT: Because I -- I mean, in my experience in

1 trials are during -- sometimes in the course of the trial,
2 something comes up in an issue and you have to call law
3 enforcement officers you didn't plan to call and -- and
4 really -- people you didn't think about but -- say, just
5 happened to be somewhere at a certain time, and I -- I'm
6 just concerned. I don't want to end up issuing an order
7 that's going to require me to hold somebody in contempt that
8 didn't know they had some duty.

9 MR. WILSON: Oh, no, sir. And Judge, I'm not
10 suggesting that. I don't ---

11 MR. HUMPHRIES: Especially me.

12 MR. WILSON: I don't think it's retroactive. I'm
13 simply asking that if they have notes now, that they retain
14 those notes. If they're -- they're already destroyed, then
15 they're gone.

16 THE COURT: I know that. I know that. I -- that --
17 that's -- I understand that. But -- but sometimes in the
18 course of a trial, you end up with something happening that
19 necessitates the calling of a law enforcement officer that
20 no one really anticipated being that very much involved in
21 the case at all. And I just want to make sure that if there
22 are law enforcement officers for some reason was not aware
23 of this order, I'm not required to hold him or her in
24 contempt when they were not noticed as a witness, didn't
25 think that they were going to be a witness; all of a sudden,

1 they just happen to -- they now realize through testimony
2 there was someone else there they didn't know at a certain
3 time that may have observed something or wrote something
4 down. Because Mr. Humphries, how do you disseminate this
5 order if I sign it, sir?

6 MR. HUMPHRIES: The only way I would be able to do it
7 is to -- to determine who we intend to call in our case in
8 chief, those officers; and directly communicate with them or
9 their supervisor with the Court's order that if they have
10 any notes at this time, that they maintain them.

11 But in terms of who was involved tangentially in the
12 investigation over the course of the investigation, because
13 you have to keep in mind, this thing didn't occur on one
14 night with the -- the arrest immediately. This involved a
15 significant period of time where numerous -- not only -- not
16 only numerous officers, but numerous agencies were involved
17 in the attempts to locate this defendant. So there is --
18 and I couldn't possibly tell you what officers and what
19 agencies were involved in every aspect of this case.

20 I am confident that I can tell the Court, and I can
21 identify for the Court and Mr. Wilson, those officers I
22 intend to call in my case in chief in the guilt phase as it
23 relates to their notes, if any exist.

24 MR. WILSON: Judge, I ---

25 MR. HUMPHRIES: I feel confident I can do that.

1 MR. WILSON: I might be able to narrow that down. I
2 could give him a list of those officers who we -- who they --
3 -- the information they provided us and I -- whose notes I
4 would be interested in.

5 MR. HUMPHRIES: Fair enough.

6 MR. WILSON: And -- and then he can check with them to
7 see if they have them.

8 MR. HUMPHRIES: Okay.

9 MR. WILSON: If they've not already destroyed them, ask
10 them not to destroy them.

11 MR. HUMPHRIES: As -- as long -- if that's -- the State
12 is -- is fine with that procedure and we appreciate that
13 concession. As long as this -- this motion and the Court's
14 order is not that the State is required to produce those
15 notes at this time. Obviously, we ---

16 THE COURT: The only motion is not to destroy them,
17 that's the only ---

18 MR. HUMPHRIES: Yes, sir.

19 MR. WILSON: That's all, not to destroy them. Not -- I
20 understand that there's no duty to produce them.

21 THE COURT: All right. That's a list you provide
22 within the next 15 days, or if not, then we're just going to
23 assume the list is going to be who he intends to call.

24 MR. WILSON: Yes, sir. Your Honor, the next motion is
25 a motion for disclosure of similar acts.

1 MR. HUMPHRIES: We consent and there are none in the
2 guilt phase.

3 MR. WILSON: All right.

4 THE COURT: Well, I saw two motions in that regard and
5 I just want to see if they're the same one.

6 MR. WILSON: One -- I think one says "surveillance,"
7 Your Honor. And just a --

8 THE COURT: Now, I have two motions: "Notice -- Notice
9 of Motion and Motion for Disclosure of Similar Acts" have
10 two sheets of paper. Let's make sure they're the same ones.
11 They're not. Okay. One -- the second paragraph deals with
12 (as read): "18 U.S.C. 2510."

13 MR. WILSON: Yes, sir.

14 MR. HUMPHRIES: Okay. I'm -- I don't have that one.

15 MR. WILSON: You don't have it?

16 (Sotto voce discussion between counsel.)

17 THE COURT: Now, as to the one you do have though, Mr.
18 Humphries, you -- you state there are no similar acts you
19 intend to try and introduce?

20 MR. HUMPHRIES: Not in the guilt phase.

21 THE COURT: Is this a 408 type thing? What do you ...

22 MR. HUMPHRIES: We will not do -- we will not attempt
23 to elicit or introduce any Lyle evidence in the guilt phase.

24 MR. WILSON: Does that include the defendant testimony?

25 THE COURT: Well, now wait a minute. How do they know

1 what he's going to say?

2 MR. WILSON: No, I'm asking. I'm just asking a
3 question. I don't -- I'm not -- I mean, I don't know that
4 they know the answer. I'm just asking the question.

5 MR. HUMPHRIES: Yes. He can testify all he wants when
6 we talk about similar acts -- when I'm talking about that
7 act.

8 MR. WILSON: Well, how do you know what he -- how do
9 you know what he's -- well.

10 MR. HUMPHRIES: The only --

11 THE COURT: That's none of my business. Okay.

12 MR. HUMPHRIES: As it relates to similar acts. Now, if
13 we're talking about impeachment purposes, it's a different
14 issue.

15 MR. WILSON: Well, that's what I'm ---

16 MR. HUMPHRIES: I'm not going to put him -- I'm -- he
17 will not -- the -- the State's not going to sit down and
18 listen to him testify about "I've never hurt a woman
19 before," when -- when we are possessed with the facts that
20 he has, in fact, harmed many women physically before.

21 THE COURT: Well, see, that's a notice of
22 clarifications that we need to know.

23 MR. HUMPHRIES: Yeah, but -- but --

24 THE COURT: But he might -- when you said "yes" to
25 that, Mr. Wilson may have assumed you meant you were not

1 going to do anything if he testifies, that you have evidence
2 contradicting what he's going to say regarding any prior ---

3 MR. HUMPHRIES: I -- I don't restrict this in terms of
4 impeachment in any fashion. In terms of *Lyle* evidence in
5 the guilt phase, the State will not elicit any similar act
6 or *Lyle* evidence testimony.

7 THE COURT: Tell you what, I'm going to interpret that
8 to be is that in their case, they will introduce no evidence
9 in their case.

10 MR. WILSON: I understand.

11 THE COURT: If we get to your case, then at that point
12 in time, we will discuss it.

13 MR. WILSON: Judge, this -- this -- this ---

14 THE COURT: All right. Now, what about the one
15 regarding 18 U.S.C. 801? Or 2510, rather?

16 MR. WILSON: I don't even know if this -- that there is
17 any -- that this has been done. I'm -- it's just -- I'm
18 asking, I guess, more than anything else -- and I guess, if
19 you want to call it a fishing expedition, I'm asking if
20 there is any kind of surveillance that's been done while
21 he's -- especially while he's been in the jail ---

22 MR. HUMPHRIES: No.

23 MR. WILSON: --- of him or any conversations that he
24 may have had or anything like that.

25 MR. HUMPHRIES: No.

1 THE COURT: All right.

2 MR. WILSON: The next motion I have, Your Honor, is a
3 motion -- well -- I'm sorry. We did motions for
4 extrajudicial participants. I think we did that one.

5 THE COURT: You have a motion here regarding
6 analyzation of blood evidence and -- and I want to see if --
7 did we handle those or no?

8 MR. WILSON: We addressed that, Your Honor.

9 THE COURT: All right. So the blood evidence as well
10 as the ballistic evidence is consented to with the -- them
11 getting together -- the experts getting together.

12 MR. HUMPHRIES: Yes, sir.

13 MR. WILSON: Yes, sir. Your Honor, my next motion is a
14 notice of motion to bar electronic broadcasting of court
15 proceedings. Now, I understand ---

16 THE COURT: Oh, can we get -- are we through with all
17 the substantive motions about the trial itself yet?

18 MR. HUMPHRIES: No, sir.

19 THE COURT: Let's do those first.

20 MR. WILSON: All right, sir. Let me see what else I
21 got for that. I got a -- I -- you wanted -- I got a change
22 of venue motion.

23 THE COURT: Well, let's get -- that should be a last
24 one, too. Let's get to -- let's see what else I got here.

25 MR. WILSON: We -- the "panels of five" you've already

1 addressed. I have a motion ---

2 THE COURT: What about -- I have a -- a motion for
3 trial procedures, a motion for witness information --

4 MR. WILSON: Witness, we've done that.

5 MR. HUMPHRIES: We've done that, Your Honor. Names ---

6 THE COURT: A motion requiring the solicitor to respond
7 in writing to every motion which he's -- has not done today.

8 MR. WILSON: I withdraw that particular motion, Your
9 Honor.

10 THE COURT: Okay.

11 MR. WILSON: I don't think there's any reason for it.
12 We -- we've addressed all these issues and it's on the
13 record, so there's no point in --

14 THE COURT: I have found that that motion, in other
15 areas, has ended up being more trouble than it has been of
16 benefit to anyone. Now, motion for witness information, has
17 that -- you said we've already handled that. And was that -
18 --

19 MR. HUMPHRIES: That was names and no contact numbers.

20 THE COURT: I know. I must -- I must have two copies
21 of this.

22 MR. WILSON: Your Honor, we have not addressed the
23 motion for fair trial procedures. If you want to do that,
24 we could do that next.

25 THE COURT: Motion for fair trial procedures. You

1 don't need a motion for that. I guarantee you fair trial
2 procedures.

3 MR. WILSON: Well, I guess we're asking for some
4 special concessions. One -- one of the things that we're
5 asking for in that motion, Your Honor, is the fact in the
6 normal practice the -- the prosecutor's office normally
7 takes the -- the table closest to the panel and -- and I'm
8 not aware of any statutory law which requires that.

9 THE COURT: It's custom that the one that has the
10 burden of proof usually sits closest to the jury.

11 MR. WILSON: Well, but I'm not -- I'm not -- I'm not
12 aware of any statute that requires that.

13 THE COURT: Well, I know that it's commented on many
14 times in various cases by this Supreme Court as well as
15 other Supreme Courts in the nation, and it may have even
16 been by the U.S. Supreme Court about the custom who goes
17 there. But -- but you request to be able to sit there,
18 closest to the jurors.

19 MR. WILSON: Yes, sir.

20 THE COURT: What statute provides for that?

21 MR. WILSON: There is none.

22 THE COURT: Okay.

23 MR. WILSON: And -- and it's just a -- a -- a matter of
24 -- of allowing us to have the opportunity to do it ---

25 THE COURT: Aren't you concerned they may hear your

1 discussions with you client or whatever else?

2 MR. WILSON: No, sir.

3 THE COURT: Of course, I guess not in Horry. The
4 courtroom is so very large.

5 MR. HUMPHRIES: Your Honor, we do object to that, and
6 I'm advised there may be some security concerns with the
7 defendant in close proximity to the jury.

8 THE COURT: Anyway, based on that, but also based on
9 custom and burden of proof issues, this Court denies that.
10 I think it's better to go -- that's denied.

11 MR. WILSON: All right, sir. Judge, I would also ask
12 that the Court allow the jurors to choose their own
13 foreperson.

14 THE COURT: I'll think about that. The statute says
15 there's two choices in doing that: The Court can do it or
16 the jurors can do it. I know of no requirement that the
17 Court do one or the other.

18 MR. HUMPHRIES: The Court's discretion, Your Honor,
19 from the State.

20 THE COURT: But I see you've cited some -- you cited a
21 California case in this Court? Let's see. Oh, I'm sorry.
22 California constitution? Okay.

23 MR. HUMPHRIES: You must have been to a seminar.

24 MR. WILSON: They're still a state, Your Honor.

25 THE COURT: I -- I -- I do it both ways. I still do it

1 both ways, but I'll think about that. Remind me of that at
2 the time of trial. I ---

3 MR. WILSON: Yes, sir.

4 THE COURT: --- I -- I really think that's -- I just
5 don't want to bind this Court and then let this be used in
6 some other cases to say, "Well, we've had it approved on
7 some other cases." I'd rather that it remain the province
8 of the Court to decide.

9 And I don't think our constitution in our state
10 comments on this. It's a statute, as I recall. I don't
11 know if there's anything in the constitution about that, but
12 I think it's in the statute. All right. The Court will
13 decide that issue. I'll let you know before I do it though;
14 let you have an opportunity.

15 MR. WILSON: The -- the next part of that same motion,
16 No. 3, is that the jurors should not be sequestered either
17 during the presentation of evidence or during the
18 deliberations. And I -- I understand that this is a capital
19 case, and -- and obviously because of that, it's -- it's
20 very serious; and you know, and -- and obviously there are a
21 lot of things that can go wrong. And I understand the costs
22 and -- and all those things in trying to preserve the
23 integrity of the process so that we don't have to retry it,
24 or there is not a taint involved with jurors getting
25 involved.

1 I just think, though, that when -- when jurors are
2 sequestered, especially for long periods of time, that I --
3 it worries me or it concerns me that -- that they may hold
4 that against the defendant in some way or that they may feel
5 that -- that being sequestered, they need to ---

6 THE COURT: Would you like for the Attorney General to
7 let you know that's not so? The jurors last week were
8 sequestered in the case I had, the Hinson trial.

9 MR. WILSON: Yes, sir. And -- and I understand. But I
10 just think that -- and the other concern I have is the fact
11 when they are sequestered, they are normally surrounded by
12 law enforcement people.

13 THE COURT: That's your next motion.

14 MR. WILSON: Which is -- right. But I'm really kind of
15 -- it's also a part of this one so I'm just kind of
16 concerned about that whole atmosphere with the jurors with -
17 - you know, is this being fair to the defendant? So in
18 making sure that he -- not just that the State is -- has --
19 typically a -- a -- the obvious thing is -- is that it
20 appears that the State has -- well, not appears, they do.
21 They have all this authority and all of this power and the
22 defendant, I mean, and -- and it's their personnel who's
23 surrounding the jury. It's their personnel who's taking
24 them back and forth, you know, when they're sequestered.

25 THE COURT: Well, when you say "their," now, you're not

1 saying "their" being the prosecution. The clerk of court is
2 really put forth as the -- and the judge -- as the
3 coordinator of those and -- and -- and the solicitor is
4 really never involved in that and the agents are usually
5 retired. But I have never got the sense that the jurors
6 felt the prosecution had anything to do at all with that:
7 that the clerk makes sure they're comfortable, make sure
8 they get meals and this type of thing and all that. And
9 once the judge sort of gets it all started, the clerk pretty
10 much handles it from there and the clerk is totally separate
11 from the solicitor's office. It has no connection with them
12 other than it's a repository for information and
13 coordination like it is for all things that operate within
14 that county --

15 MR. WILSON: The -- the reason ---

16 THE COURT: -- as far as the county's monitor ---

17 MR. WILSON: -- the reason, Your Honor, that I have the
18 concerns is for instance, in this particular case, there may
19 very well be testimony from SLED about the analyzation of
20 different items in regards to this case. There are going to
21 be testimony from other law enforcement officers, you know,
22 and -- in this particular case. And I'm -- and I'm just --
23 I think it just -- it -- it gives an overpowering effect to
24 law enforcement and to the prosecution over the jury, and --
25 and I worry about that and how that will impact the

1 defendant's ability to have a fair trial.

2 THE COURT: Well, are you concerned with this case, as
3 far as if it's not sequestered, of any publicity, of any
4 opportunities they may have to unavoidably be exposed to
5 information about the trial that -- that not necessarily
6 they would be exposed to in the courtroom; or opinions from
7 various individuals that they may meet on the streets; or --
8 or may look up in a computer just by surfing the internet;
9 or something of that nature?

10 MR. WILSON: Yes, sir. I -- be honest with you, I am
11 concerned about that, too. And -- and it's -- and it's my
12 feeling about it's the lesser of two evils.

13 THE COURT: So you don't think there'll be much
14 publicity on this matter?

15 MR. WILSON: Oh, yes, sir. I do think that there will
16 be publicity on this matter as we go -- as we go through
17 this trial process. I do believe that. But when I weigh
18 that against the law enforcement's continuous presence: Not
19 just when they take them to breakfast, they take them to
20 lunch; they bring them to court; they -- they -- you know,
21 they're with them every second for two solid weeks.

22 THE COURT: But there's two different situations there,
23 Mr. Wilson. The one about the publicity situation is a
24 situation of the Court, because the publicity could be pro
25 and con -- it might not necessarily be pro State -- and the

1 Court's got to make sure jurors make the decision based on
2 evidence presented in the courtroom. And if I don't do
3 something to make sure I don't end up having to excuse this
4 juror or that juror or that juror or that juror, I may end
5 up with having to get 20 or 30 alternates.

6 I know there's been a couple of judges in this State,
7 though, who've talked to me about it on other issues and
8 other cases. I haven't talked with them in months about it,
9 but I know one or two that have done non-sequestered capital
10 cases. What's the State's position?

11 MR. HUMPHRIES: We would object to not sequestering the
12 jury, Your Honor. It -- this case -- these cases are
13 extremely difficult and time consuming in terms of
14 preparation. They are going to have a life after this trial
15 for years and years and years to -- to -- to basically
16 arbitrarily inject that potential juror issue in these cases
17 is, in my mind, something that just, you know, quite
18 frankly, should be avoided at all occasions.

19 What we're talking about with the sequestration team,
20 this jury, when they're seated, are going to be told, "These
21 people are here -- they're here to serve you, to watch over
22 you. They are not connected in any fashion with the State
23 or the defense." You know, they're working under the
24 direction of this Court. They are instructed and swear an
25 oath that they will not have any -- they will not talk with

1 the jurors about the case, will not attempt to influence,
2 will -- will not communicate for the parties regarding the
3 jury. These are things that the Court can control. What
4 the Court cannot control is a juror who's at home watching
5 TV or sitting in front of a computer.

6 So in my mind, given the seriousness of these cases and
7 the life that they lead after the trial, it only makes sense
8 that you take out those things which are arbitrary and which
9 the Court has no control over, and rely on those things
10 which you do have control over.

11 THE COURT: Anything else, Mr. Wilson?

12 MR. WILSON: No, sir, Your Honor.

13 THE COURT: All right. Number 3 is denied. Number 4,
14 I know no other practical way to do this other than retired
15 SLED agents, Mr. Wilson. You know, I agree with you that I
16 would not have Horry County policemen involved in protecting
17 them; however, the sheriff's department -- which I'm not
18 sure if they're going to be involved or not, but they really
19 do not get involved very much with -- with criminal matters
20 investigation. However, they are in charge of the county
21 jail or the detention center. But normally we can provide
22 it with SLED agents.

23 In your experience in Horry County, does the sheriff
24 department get involved much in the sequestration of jurors,
25 or just by the SLED agent that's ---

1 MR. HUMPHRIES: No, they do not.

2 THE COURT: So I'll just only have then the SLED
3 agents. My experience is almost every one of them is a
4 retired SLED agent.

5 MR. HUMPHRIES: Yes, sir.

6 THE COURT: So anyway, I will deny both 3 and 4.

7 MR. HUMPHRIES: Your Honor, as to 5, we consent to the
8 extent that obviously there are some security concerns which
9 are not directly our concerns. I am advised that Mr.
10 Winkler will have -- he will be --

11 THE COURT: Y'all have a ---

12 MR. HUMPHRIES: He'll have on a shock belt.

13 THE COURT: Yeah.

14 MR. HUMPHRIES: It will be underneath his clothing,
15 will not be seen by the jury.

16 THE COURT: Is that on the ankle or is that on ---

17 MR. HUMPHRIES: It's around the waist, Your Honor. And
18 obviously, if during the course of the -- the trial, if --
19 if security brings to you certain concerns that may require
20 something other than the shock belt, something in addition
21 to, you know, that's not the State's position to -- to deal
22 with. But I -- I consent to the extent that -- at least at
23 this time, without any other factors being involved, we
24 consent.

25 THE COURT: Make sure there's no misunderstanding about

1 this, Mr. Wilson. The motion is granted. However, if
2 something occurs during the course of the trial that, for
3 whatever reason, this Court deems it necessary because of
4 something may occur that we don't know right now is going to
5 occur, that the Court has to do something, then the Court
6 still has that prerogative. But unless something unusual
7 happens, the Court would -- will -- will very, very strongly
8 do everything it can to make sure that the jurors only see
9 Mr. Winkler in civilian clothing and with no indication that
10 he is in custody of any type that the jurors can observe.

11 MR. WILSON: Thank you, Your Honor. Your Honor, the --
12 the -- one of the other motions that I filed was -- well, I
13 guess I'll take this one -- a motion to sequester witnesses.

14 MR. HUMPHRIES: Consented, as long as it's reciprocal,
15 with the exception of the chief case officer and members of
16 the victim's family.

17 MR. WILSON: That's agreeable.

18 THE COURT: Consented to except for chief investigating
19 officer and victim's family.

20 MR. HUMPHRIES: Yes, sir.

21 THE COURT: And it is reciprocal, Mr. Wilson?

22 MR. WILSON: Yes, sir.

23 THE COURT: That means you've got to let them know who
24 your witnesses are, because how are we going to know they're
25 sequestered?

1 MR. HUMPHRIES: We -- Your Honor, at this time, we'll
2 take his word for it. But obviously, if we suddenly see
3 someone in the courtroom with Mr. Wilson and then all of a
4 sudden in the case -- and in his case, he appears on the
5 stand, we might have an issue.

6 MR. WILSON: Absolutely.

7 MR. HUMPHRIES: But I -- we'll -- we'll take his word
8 for it at this time.

9 THE COURT: All right. Very good. All right. I have
10 another motion for similar acts. I don't know --

11 MR. WILSON: We've done that one.

12 THE COURT: I know. I don't know why I have another
13 one of that.

14 MR. HUMPHRIES: That one's done.

15 THE COURT: Yeah. That was the "2510." "Motion to
16 Adjourn at a Reasonable Time"?

17 MR. WILSON: Yes, sir.

18 THE COURT: Judge Anderson's on the Appellate Court
19 now, Mr. Wilson.

20 MR. WILSON: Judge, I -- I've actually tried two death
21 cases with him.

22 THE COURT: But let me tell you this, Mr. Wilson. Just
23 to let you know if -- if I -- I've done this in several
24 other cases. My concern is that I don't want jurors sitting
25 here to just be sitting there for no other reason other than

1 they're present, and not listening and paying attention.
2 And therefore, I think it is my job and my duty to make sure
3 that each side has an opportunity to present matters to an
4 alert, attentive jury. And to do that, I don't have a
5 formal thing of eight hours, five hours, four hours. I can
6 assure you though that -- that we will not go from nine in
7 the morning until midnight or ten or eleven.

8 Now that does not mean that something may occur that
9 may be such that we take a break at a certain time and
10 everybody has dinner and wants to come back to hear a
11 certain -- small certain matter for 30 or 40 minutes or
12 whatever. I don't think that'll happen, but I just don't
13 want to lock myself into saying that by doing this I'm
14 agreeing to you if I didn't sign it, I'd be unreasonable.
15 Because I will not be unreasonable. I am going to be very
16 cognizant of -- of the ability of you and the State to
17 present your -- your matters to an alert and attentive jury.
18 Plus, I'll be attentive to the jurors, as well as to people
19 like the court reporter --

20 MR. WILSON: Yes, sir.

21 THE COURT: -- who has to repeat over and over
22 everything people said and sometimes the jurors want to go
23 home -- don't want to go home. They want to stay and I tell
24 them, "No, we've got to adjourn because we've got to
25 consider the county employees, the court reporter, and

1 everybody else." So sometimes I send them home when they
2 want to stay.

3 MR. WILSON: All right, sir.

4 THE COURT: So I can only assure you of that.

5 MR. WILSON: All right.

6 THE COURT: You don't have any comments, do you, Mr.
7 Humphries, at all on that?

8 MR. HUMPHRIES: No, sir, Your Honor.

9 THE COURT: Okay.

10 MR. HUMPHRIES: We'll work as long as you want to,
11 Judge. Every day.

12 MR. WILSON: I will, too. I -- not that I have a
13 choice.

14 THE COURT: The Court will decide that issue as it
15 occurs.

16 MR. WILSON: Thank you, Your Honor. Your Honor, the
17 other motion is the ---

18 THE COURT: Where'd you get that motion anyway?

19 MR. WILSON: Sir?

20 THE COURT: Where'd you get that motion? I mean, is
21 this something happened in the past or something?

22 MR. WILSON: Well, I -- yes, sir. I --

23 THE COURT: Or is this something you got off of a -- of
24 a --

25 MR. WILSON: No, sir. I actually --

1 THE COURT: -- of a form?

2 MR. WILSON: -- have -- I've told you I've tried two
3 death cases with Judge Anderson and we worked until nine,
4 sometimes 9:30 at night and -- and the last one I did with
5 him was in Georgetown and which involved a police officer
6 and we were there until 9:30 at night. And then the next --
7 then you got to leave there and go meet with your witnesses
8 to get ready for the next morning, and you were back at
9 eight o'clock or 8:30 the next morning. And it is
10 difficult, Your Honor, and -- to do that and be fresh and be
11 ready and be prepared to go forward.

12 THE COURT: Well, you honor me by filing the motion,
13 put it that way.

14 MR. WILSON: All right, sir. And Your Honor, the --
15 the next one and -- and I think as we said earlier, we've
16 addressed this and I've come to it three times now. We --
17 and this is a panel of five, where we are making a motion
18 for voir dire in panels of five and -- and I -- I assume
19 that that's what we've already agreed to do.

20 MR. HUMPHRIES: Your Honor ---

21 THE COURT: No, no, no. He was talking about giving
22 you information on the jurors as far as their --

23 MR. WILSON: Yes, sir.

24 THE COURT: -- criminal history.

25 MR. WILSON: That's what we were addressing, but the --

1 -

2 MR. HUMPHRIES: I -- I will tell the Court I've
3 reviewed this, and it actually is the preferred method by
4 this office. It's something that we've done in almost every
5 case unless coerced to do it another way, and absolutely
6 consent to it.

7 MR. WILSON: All right.

8 MR. HUMPHRIES: The only -- the only issue -- and it's
9 not really an issue. It's a suggested number of 45.
10 Obviously, we may get to the point where we're only able to
11 get 40. We only have to have ---

12 THE COURT: Depending on how many alternates.

13 MR. HUMPHRIES: --- 45. So -- yeah. So yeah, 45 is a
14 great number if we get there, but I wouldn't want to, you
15 know, examine ---

16 THE COURT: In fact, I'm not sure I've gone to 45
17 before.

18 MR. HUMPHRIES: I've never -- we've never gone to 45.

19 THE COURT: Trying to think if I've ever done that.

20 MR. HUMPHRIES: In 18 cases, I've never gone to 45.

21 THE COURT: But in essence, you all suggest five every
22 hour and 15 minutes.

23 MR. HUMPHRIES: Well, I -- I --

24 THE COURT: Depending on breaks and all.

25 MR. HUMPHRIES: Yeah, I mean, that's about what we --

1 that's -- we always start out with the best of intentions,
2 that is not just the State, everybody; and sometimes we'll
3 get through a panel in an hour and 15 minutes; sometimes it
4 takes an hour and 45 minutes.

5 MR. WILSON: All right.

6 MR. HUMPHRIES: We just have to be flexible in that
7 regard. But this procedure, as it's set up, is our stated
8 preference and we would consent to it.

9 THE COURT: Now, my -- in doing it in the past, I have
10 got a group of like 20 or 25 seems like, and then we would
11 have them come at certain times; and have group 2 not have
12 to worry about even calling in until -- or we get them later
13 on. I -- I just don't -- I'm trying to -- y'all are
14 suggesting that, right? We would get ---

15 MR. WILSON: I'm -- here's what --

16 THE COURT: --- maybe three groups of 25 or something
17 like that --

18 MR. HUMPHRIES: No, no, no, no, no.

19 THE COURT: Or something like that?

20 MR. HUMPHRIES: No, sir. What we're suggesting, I mean
21 I think we're both suggesting the same thing. And like I
22 said, we've done it -- it's more manageable when you -- you
23 do it in the -- in the panels of five for the clerks office
24 because those are the ones that will have to be contacting
25 everybody.

1 What -- what we've done in -- in the past is do the
2 general qualifications and take a break. At that break, the
3 Court or the -- the clerk will pull out, in panels of five,
4 the jurors. As they pull them -- or they'll pull them out
5 during that break and then they'll call them up. The Court
6 will call them up in those panels of five.

7 "You are panel No. 1. You are to remain here; we will
8 be examining you this afternoon." Call up the next panel.
9 "You are panel No. 2. We project that we will examine you
10 at whatever time. Please be back in advance of that time."
11 And -- and go that way.

12 And we'll -- we'll call them up and see, when we panel-
13 out -- depending on how many we've got actually qualified.
14 We've paneled-out all of them in the past.

15 THE COURT: But see, what I have -- that's a little
16 different from what I've done in the past. I've usually
17 done panels -- maybe about four panels of -- of 25 or 30 and
18 then, within the panel itself, have five or seven or eight
19 report at certain times, five or seven or eight report at
20 certain times; so that when you do have enough, you can just
21 let the 30 or 40 left in the last panel -- usually you never
22 get to -- say, "You don't have to show up."

23 But you all are proposing, just to do it in five. You
24 going to end up with about maybe 20 panels or 15 panels or
25 maybe -- maybe 20 panels or maybe more of -- of five?

1 MR. HUMPHRIES: Uh-huh. Now, there have been times --
2 depending on what we've got in the qualified pool, there
3 have been times when we've stopped. You know, we'll --
4 we'll give the times for them to show up. Typically, it's
5 up through Wednesday morning and after that, we'll say,
6 "You're to call back at, you know, Wednesday morning or
7 Tuesday night, and you'll have further instructions of the
8 Court. But you --" and it'll be given to you by panel
9 number -- "if you're in panel No. 13, you need to be here at
10 such and such a time." And that's the way we've done it in
11 the past.

12 Logistically, it's -- it's -- it's logistically
13 difficult to deal with that number of people anyway, but
14 when you deal with them in panels of five, it makes it much
15 easier for the clerk. And plus, we have an idea about
16 what's coming up, what we need to be prepared for, and at
17 what time.

18 THE COURT: Well, here's -- y'all have done it before
19 in the past; I guess it's worked. But you know, once --
20 it's going to be at least Thursday before we get to this and
21 it's probably Friday or theoretically Saturday. And I'm --
22 I'm sort of concerned with the call nature, and also of the
23 publicity nature if there is any, of people out there when
24 I've got 20 or 25 already sitting in a room. And usually
25 you can go through, in my experience, about what? about --

1 go through about 25 or 30 people a day?

2 MR. HUMPHRIES: We've done less in a day. About 30,
3 yeah. Here's the -- here's the thing, Judge. They're all
4 going to have to be talked to. So whether you bring them in
5 groups of five or you bring them in groups of 25 and make
6 them sit in a room to the point of when they walk out,
7 they're so aggravated at all of us that none of us can get
8 an idea about where they are.

9 THE COURT: No, no. I didn't -- I didn't make them sit
10 in a room. I just got them there and then said, "I need --"
11 I usually -- I think I said, "Ten of y'all stay and the rest
12 of you take a break. Go here, go there; come back in about
13 20 minutes or so." But -- or an hour or so, two hours. But
14 if y'all want to do it, because I have no problem -- if
15 y'all consent to this, we can work this thing out.

16 Anita, you can work this out?

17 DEPUTY CLERK: Yes, sir.

18 MR. HUMPHRIES: It's the way they do it.

19 THE COURT: Well, I'll work with her and we'll work it
20 out in that regard.

21 MR. HUMPHRIES: Thank you, Your Honor.

22 THE COURT: When in the Republic of Horry...

23 MR. WILSON: Judge, the next -- the next motion is the
24 motion for expanded voir dire, and I don't know -- my -- my
25 concern is it -- because I think that there is some

1 sensitive ---

2 THE COURT: Somehow I don't have that motion.

3 MR. WILSON: You don't have it? Let me pass you up
4 mine.

5 (Sotto voce discussion between counsel.)

6 MR. WILSON: Judge, my -- my -- my motion is -- is --
7 is based on the fact that I think that there -- there are
8 some issues which are a little sensitive here. I think one
9 that there is a -- a -- a female victim who is -- has been
10 murdered. I think that there is some really -- some
11 photographs which depict her -- her -- her body in -- you
12 know, in a fashion that may very well be upsetting to
13 jurors. The -- the manner of her death may be upsetting to
14 some jurors and -- and -- and -- and because of those
15 issues, I -- I would like the opportunity to be able to ask
16 the -- the perspective jurors some more probing questions
17 about their sensibility to those kinds of things, to the
18 photographs and to ---

19 THE COURT: I know, but Mr. Wilson -- I appreciate your
20 concern, but I don't -- I'd rather have your specific
21 questions. I'm just concerned of giving you a blanket in
22 that regard and then all of a sudden you ask questions that
23 to me are -- are maybe beyond what you should be allowed to
24 do.

25 MR. WILSON: That's fair enough. Then I would ask the

1 Court to allow me when I -- you've granted my motion to give
2 me seven days to file additional motions, and if I could
3 file my questions at that time ---

4 THE COURT: It doesn't mean I'll -- I'll permit them.
5 It's just that I think I'd rather see exactly what questions
6 you're wanting to ask.

7 MR. WILSON: That's fair enough. I -- I -- I
8 understand that.

9 MR. HUMPHRIES: We'll address at that time. We -- the
10 State does have an objection to the extent of voir dres
11 he's proposed, just for the record.

12 THE COURT: Well, wait until you see his questions.
13 But we'll look at them then, okay.

14 MR. HUMPHRIES: I -- I've seen the topics. I got that
15 figured out.

16 THE COURT: Okay.

17 MR. WILSON: I -- I have a motion, Your Honor, for
18 disclosure of the State's witness list. I don't know that -
19 -

20 THE COURT: Now, why ---

21 MR. WILSON: -- you -- that I ---

22 THE COURT: --- I don't even have a copy of that motion
23 either. I don't know how I missed some of your motions
24 there.

25 MR. WILSON: You got two -- two motions that -- you've

1 got duplicates of ---

2 THE COURT: Well, I think that one you can just tell me
3 about anyway.

4 MR. WILSON: Okay.

5 THE COURT: Just tell me about it, if you ---

6 MR. WILSON: All I'm -- all I'm asking for is that they
7 give me a copy of their witness list or witnesses they
8 intend to call during the course of the trial.

9 MR. HUMPHRIES: No.

10 THE COURT: He said "no."

11 MR. HUMPHRIES: There is -- there is no rule of law --

12 THE COURT: Now, I know that. He said "no." What --
13 why do you feel you have a right to it?

14 MR. WILSON: Well, it'd be very helpful to ---

15 THE COURT: Okay. It's very helpful, that's a good ---

16 MR. WILSON: Yes, sir. To -- to -- in order to know
17 how to prepare for the trial and how to get ready for the
18 next witnesses he's going to call. So I mean, I'd be remiss
19 not to ask for it.

20 THE COURT: Well, he is required to provide you every
21 witness -- he's required to provide you under Rule 5, and I
22 assume he's -- when he says, "no," he's not responding to
23 that. But as to other general witnesses he's going to call,
24 I know of no authority I have to force him to do so.

25 MR. WILSON: I don't either, but I thought I'd ask.

1 THE COURT: Okay.

2 MR. WILSON: Your Honor, the next motion is a motion
3 for a change of venue. And this -- and -- and again, I
4 think before I make this motion -- and this motion ---

5 THE COURT: Is that the one that Mr. Rathbun has in a
6 affidavit with?

7 MR. WILSON: Yes, sir. There should be two affidavits
8 attached.

9 THE COURT: Yours too, yes.

10 MR. WILSON: Yes, sir. There has been a significant
11 amount of pretrial publicity surrounding this case. And the
12 -- there was a point in time when -- when apparently there
13 was -- the defendant was out of place and they -- was being
14 sought by law enforcement and that went on for a couple of
15 weeks. And -- and there were all kind of -- almost
16 continuous over that whole period -- I mean, there were
17 sightings and things with people on the news saying that
18 they thought they saw him. And I -- I just think that --
19 there were newspaper articles galore about it during his
20 arrest. There was this huge manhunt involved. It -- it was
21 -- it was a tremendous event in the Horry County community.
22 I am very concerned about the ability to find 12 jurors that
23 honestly can say that they have not heard or read about this
24 case and have not been prejudiced to the point that they can
25 give this defendant a fair and impartial trial. I -- I have

1 some real concerns about that and my -- my other concern is
2 that if they said it, I have a really difficult time, you
3 know, believing it, even though they said it. And -- and
4 which is the other problem I'm having.

5 Now, again, I understand the -- the process well enough
6 to understand that when a juror testifies that -- that
7 normally they say, "Well, no, I've -- yeah, I heard about
8 it, but I can set it aside and I can give the defendant a
9 fair and impartial trial," and I understand that that's the
10 ---

11 THE COURT: Because they hear about it when I read the
12 indictment to the jury panel.

13 MR. WILSON: Well, yes, sir. But -- but I think that's
14 a little bit different than hearing multiple news accounts
15 over an extended period of time and -- and -- and not only
16 that, but -- but talking with other people in the community
17 about it or -- or -- or talking to -- to their family
18 members about it, I -- I just think that that's very
19 different than ---

20 THE COURT: Let me ask you this: Assuming the State
21 objects to your motion, what under the law gives me
22 authority to change it without doing a -- an attempt to
23 qualify the jury in the first place, if the State objects to
24 your motion?

25 MR. HUMPHRIES: That's the State's position, Your

1 Honor. We object as it being premature at this time.

2 THE COURT: Yeah.

3 MR. WILSON: Well, I -- I don't -- I don't necessarily
4 think it's premature. One of the reasons I don't think it's
5 premature is one of the things that we're trying to do here
6 is we're trying to get this case tried in July, which --
7 which has been, you know, a real effort to -- to occur. And
8 -- and if we're trying to that and we're going to wait until
9 July until we call up 200 or 400 or 500 jurors; and then if
10 we don't get anybody, then we're not going to try it in
11 July, because there's no way then to go to another county
12 and get another panel ---

13 THE COURT: No, but I would grant your motion and we'd
14 have to set another date.

15 MR. WILSON: Well, but -- but there -- if we're going
16 to do that ---

17 THE COURT: Most probably.

18 MR. WILSON: But -- but my point is if -- if there is
19 such a necessity of trying this case now and trying it in
20 July, then why would we take the risk of -- of -- of -- of
21 potentially getting there in July and not having 12 jurors
22 who can try this case and then we've got to put it off
23 anyway?

24 THE COURT: Well, let me ask you this: Other than this
25 event occurred in March of '06 ---

1 MR. HUMPHRIES: Yes, sir.

2 THE COURT: -- so it's been -- it's going to be a year
3 -- about a year and a half, little less than a year and a
4 half. Has there been anything about this in the paper in
5 the last few months?

6 MR. HUMPHRIES: No, sir.

7 MR. WILSON: There was something. I -- I guess it was
8 in January. It was during the --

9 THE COURT: But other than this procedure ---

10 MR. HUMPHRIES: There may have been some reference to
11 that in connection with some other domestic homicide. They
12 oftentimes recount, you know, this is the number of domestic
13 violence ---

14 THE COURT: We can discuss this all day, but Mr.
15 Wilson, I'm going to wait and see if we can address a jury
16 in July. I mean, you want to put something on the record,
17 you can, but I'm going to wait until July to see if we can
18 get a jury. If we can't, then I'll grant your motion and
19 we'll have to try this case with some other panel from some
20 other county at some other time.

21 MR. HUMPHRIES: Thank you.

22 MR. WILSON: All right, sir.

23 THE COURT: Now, if you want to put something else on
24 the record, you can, but ---

25 MR. WILSON: Yes ---

1 THE COURT: --- I know of no authority that says I --
2 to me the -- the authority on both sides, of whether it's
3 for the State or the defense requesting it, instructs the
4 trial judge to attempt first to get the jury. And until the
5 trial judge attempts to get the jury, I think that I would
6 be going against current guidance from our Supreme Court.

7 MR. WILSON: All right, sir. But one last thing, I
8 think there was an article, Your Honor, in March. I thought
9 it was in March, which was the anniversary of her death.
10 There was an article then, but -- but that's the last one
11 that I remember. And a TV article or whatever it was. And
12 I'm trying to think -- is that my ...?

13 MR. HUMPHRIES: No, there's one more: Keeping the
14 press out.

15 MR. WILSON: Which one?

16 THE COURT: Okay. That motion's denied at this time,
17 the change of venue motion.

18 MR. WILSON: All right, sir. Thank you, Your Honor.

19 THE COURT: And by the way, it sure is a coincidence
20 that you and Mr. Rathbun's affidavit has exactly the same
21 words in it.

22 MR. WILSON: Just read mine.

23 THE COURT: Nice that y'all are on the same page about
24 things.

25 MR. WILSON: Either that or I wrote it for him.

1 THE COURT: All right. Notice of Motion to Bar
2 Electronic Broadcasting of Court Procedures.

3 MR. WILSON: Judge, yes, sir. My -- my reasoning for
4 this is this is I -- I -- I have -- I have been involved in
5 multiple trials where the media has provided coverage. And
6 my concern is that witnesses, and I think to some degree
7 even jurors, act differently than -- and they -- you know,
8 than they do when the media is not present and when there
9 are no video cameras available.

10 You know, people probably say lawyers do that, too, but
11 I -- I'm -- I'm much more versed with the fact that
12 witnesses do it, and that causes me some concern. And if
13 the media is there and if -- if -- if -- if -- if they're
14 going -- if it influences the testimony of even one witness
15 during the course of the trial, then, you know, I think
16 that's unfair to the defendant. The defendant's position is
17 that he does not want -- and I understand it's left to the
18 sound discretion of the Court. I don't want you to think
19 that I don't understand that.

20 THE COURT: Yes, sir.

21 MR. WILSON: I realize that. I'm simply arguing that -
22 - that from -- from a fairness standpoint as far as the
23 defendant is concerned, we would ask that the media not be
24 permitted to have video coverage of the trial, even though,
25 obviously, they're -- they have the right to be present,

1 they have the right to -- to do a manuscripts or whatever it
2 is that they do. We're asking the Court to not allow video
3 coverage inside the trial.

4 MR. HUMPHRIES: Your Honor, here's -- here's the
5 State's position. We don't really care in substance. I
6 believe that the press has a right to be there, but let me -
7 - let me tell you as a practical matter what happens.

8 THE COURT: Well, not video.

9 MR. HUMPHRIES: Right. I understand that. But here --
10 but here's -- here's what happens. In -- in my mind, this
11 is -- as a practical effect, let's say you issue this order.
12 The day that we start the trial, they're going to show up
13 with cameras. They're going to request that they be allowed
14 to bring cameras into the courtroom. You would say, "Well,
15 I previously ordered." And they go, "We haven't had a right
16 to be heard on this," which they didn't.

17 THE COURT: Right to be heard. You're right.

18 MR. HUMPHRIES: We'd have to continue the case until
19 they have a -- an -- an opportunity to respond to that. And
20 I can -- well, I am very confident in saying if this order
21 is granted, there will be a delay in the start of the trial
22 as a result of that. They've done it on every occasion in a
23 capital case. And I've been in those hearings and I can
24 tell you, as a practical matter, in every one of those
25 hearings we've had, when it was previously barred by consent

1 of the parties or by the Court, the Court has reversed their
2 ruling and let them in after the hearing. So we really
3 hasn't accomplished anything except to delay the case for a
4 period of time.

5 THE COURT: Here's a -- the concern I have, Mr. Wilson,
6 I agree with you on is that we experience -- and my law
7 clerk and I -- and had to go over and over and over, and he
8 and I worked out something, I think, defines that. You go -
9 - it's 605, I think it is.

10 But you tell the media, "You can come in, but you're
11 limited to -- for two cameras," and then you end up with --
12 and maybe not in this particular case, but in the one we did
13 the other week, is that then all of a sudden they say,
14 "Well, we all have different formats," and they want three
15 and four.

16 But I'm going to hold this in -- in -- in abeyance as
17 far as any ruling. I'm probably -- it's probable I'm going
18 to admit them in, but I do have a little concern with so
19 many cameras coming in there and it concerns me a little bit
20 with that. But I'll hold it in abeyance and think about it,
21 but it's probable I'm going to -- with due deference to
22 making sure that they're located in a place that will not in
23 any way affect the jurors, plus I make a little comment to
24 the jurors beforehand. And then I notice that in the other
25 cases I've been in after 30/40 minutes or even an hour,

1 everybody's forgotten all about all that; and it ends up
2 with nobody even realizing they're there. The print media,
3 I have a little concern with people moving around. I don't
4 permit the moving around once the jury's in place or we've
5 started back with the evidence in the case. So if they're
6 going to move around and take photographs, it has to be done
7 while we're on breaks on in an in-camera hearing. But I do
8 have -- have y'all had experience down there of more than
9 two wanting to come in?

10 MR. HUMPHRIES: No, sir, Your Honor. We've -- we
11 haven't had an experience with more than one. What they do
12 is they pool it, and they pull from one camera. I don't
13 think -- I don't know if that goes to Mr. Wilson's -- I
14 think his position is based on -- his motion is he doesn't
15 want any cameras.

16 THE COURT: No, I know he doesn't want any, but I -- I
17 said ---

18 MR. HUMPHRIES: But I -- I'm telling you, as a
19 practical matter, in -- in every capital case we've tried,
20 with the exception of *Stanko*. You couldn't see the cameras
21 in *Stanko's*. They were in boxes. But in every other
22 capital case we've tried --

23 THE COURT: What do you mean "they were in boxes"?

24 MR. HUMPHRIES: They -- Court TV brings their --

25 MR. WILSON: Their cabinets.

1 MR. HUMPHRIES: You know ---

2 THE COURT: All right.

3 MR. HUMPHRIES: --- and they look like -- they even
4 match the -- the furniture. They built them to -- to match
5 the -- I think, you know, it's all the money.

6 THE COURT: Yeah.

7 MR. HUMPHRIES: But anyway, you didn't even know they
8 were cameras. But separate and apart from that, local
9 media, they'll use one camera and then use it ---

10 THE COURT: Well, two weeks ago, both -- well, they had
11 Columbia media there for that.

12 MR. HUMPHRIES: Right.

13 THE COURT: The Columbia media was there, and the
14 Columbia media had some concern with the Pee Dee media as
15 far as their compatibility. But I'll handle that.

16 I'll -- I'll think about that and see how things are
17 going, but it's probable I'm going to permit it as long as
18 it's something that I make the determination would in no way
19 affect the jury or in no way would affect witnesses or the
20 proper administration of justice.

21 MR. WILSON: Thank you, Your Honor.

22 THE COURT: Under advisement.

23 MR. HUMPHRIES: How do you want to proceed? The
24 solicitors had an opportunity to look through the voir dire
25 questions -- expanded voir dire questions for the jury

1 questionnaire.

2 THE COURT: You're talking about which one? The one
3 Mr. Wilson submitted or what?

4 MR. HEMBREE: Your Honor, and I'm not trying to extend
5 this any longer than we have to, and I understand you have
6 other matters this afternoon. Your Honor, this expanded
7 voir dire is -- it's got some -- there are some -- I have
8 some concerns about quite a bit of it.

9 THE COURT: Well, I haven't had a chance to look at it
10 at all yet.

11 MR. HEMBREE: And I understand that. We -- and I just
12 perused it as we were sitting here. What I would -- there's
13 a lot of it I could agree to. What I would suggest is that
14 we -- we -- that we'll continue to study on this, get with
15 Mr. Wilson and decide which questions that we can agree
16 upon, because I think that's going to be most of it; and
17 then reconvene for another hearing to talk about the
18 questions. And possibly we could do that -- well, I think
19 we'll have to do it in another hearing to -- to present our
20 concerns about various questions that we don't agree upon.
21 And I'm certainly willing to do that as soon as possible. I
22 -- I -- we can be ready ---

23 THE COURT: Well, I want the matters to go out on -- no
24 later than Thursday, May 31st.

25 MR. WILSON: Judge, it shouldn't take us more than a

1 week.

2 MR. HEMBREE: I was going to say next week sometime,
3 Judge, any time the latter part ---

4 THE COURT: But as far as us getting together, it may
5 be difficult for everyone. I have a -- during the month of
6 May, the chambers week other than Monday; and Monday, we
7 could maybe do it on Monday, the 14th. But 15, 16, 17 I'll
8 be in our judicial conference and then the other two weeks,
9 I'm going to be -- or the next week, I will be in
10 Chesterfield or Greenwood. So maybe we could get together
11 on the 8th or something to go over these matters. I mean,
12 the 14th, rather, to go over these matters.

13 If we cannot agree, maybe we -- or we could do a --
14 something with me -- with me in one county with a -- a
15 speaker phone with a court reporter, and you all located
16 with the defendant present, Mr. Wilson present, y'all
17 present, with a court reporter taking everything down. We
18 might work that out instead of y'all having to go somewhere,
19 because it would be a long drive for something like this.

20 MR. HUMPHRIES: The 14th -- the 14th is suitable for
21 the State.

22 MR. WILSON: That's fine. Fourteenth of May?

23 THE COURT: Yes.

24 MR. WILSON: That's fine.

25 THE COURT: And we may even do it -- if we don't do it

1 the 14th, we may do it Tuesday, the 15th. That way I could
2 do it and then be on the way. In other words, go from there
3 on down towards the lower part of the state where the -- our
4 conference is that I'm going to reside that night. So we
5 might look at the -- at the 15th, which is a Tuesday, but
6 I'll let you know.

7 MR. WILSON: To meet in Horry County?

8 THE COURT: Yes. That way I could go to Horry County
9 might be a lot simpler for everyone.

10 MR. HUMPHRIES: Your Honor, we have our standard juror
11 questionnaire. I don't know that this has been provided ---

12 THE COURT: I think we have it ---

13 MR. HUMPHRIES: And we worked off ---

14 MR. WILSON: And I have those lists. Thank you.

15 MR. HUMPHRIES: And we -- and we informed the Court the
16 last hearing we had that that was the -- the one that we
17 were submitting to the Court for -- for use. So that's ---

18 THE COURT: And I have it here, right?

19 MR. HUMPHRIES: You've got the standard. You have the
20 standard questionnaire. But actually, the clerk volunteered
21 to send it to me.

22 (Sotto voce discussion between the Court and law
23 clerk.)

24 MR. HUMPHRIES: We did not send you back the standard
25 questionnaire, because you already had it and you -- and you

1 had volunteered to send it to us. So you already had it and
2 we had it, so we didn't send it to anybody.

3 THE COURT: I have here one I used in the last case I
4 did about a year ago, and it may have some of the ones you
5 want to add to it or whatever. But you have -- when you say
6 a "standard" one, you've got yours ---

7 MR. HUMPHRIES: The standard -- there is the standard.

8 THE COURT: Which I've asked -- I'm trying to find.

9 MR. HUMPHRIES: And is not ---

10 MR. HEMBREE: The one that's been approved by the
11 Supreme Court.

12 THE COURT: Yes. Anyway, we'll get that and you look
13 over that. We'll plan for maybe -- depending on how much
14 time we think it'll take, we may plan to do it the afternoon
15 of the 15th, but if it's going to take a lot of time, we may
16 plan to do it the morning of the 15th.

17 Let's wait and have y'all look it over. And how about,
18 Mr. Hembree, you and Mr. Humphries, after y'all have talked
19 with Mr. Wilson and Mr. Rathbun, that say, in the next ten
20 days you all will e-mail to me, with copies to each other,
21 about how long you think it'll take us to go over these
22 questionnaires to determine and we'll go from there with it,
23 okay? And I'll determine then whether we're going to meet
24 in the morning of the 15th or the afternoon of the 15th.

25 MR. WILSON: All right, sir.

1 MR. HEMBREE: Thank you, Your Honor.

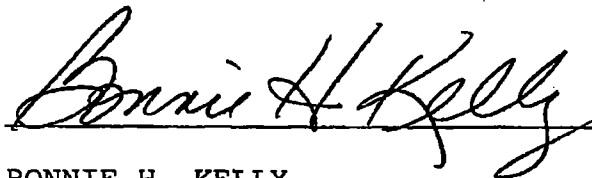
2 MR. WILSON: Thank you, Your Honor.

3 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR DILLON COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF APRIL, 2007.

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

A handwritten signature in cursive script, reading "Bonnie H. Kelly", written over a horizontal line.

BONNIE H. KELLY

COURT REPORTER, AT-LARGE

FOURTH JUDICIAL CIRCUIT

COLUMBIA, SOUTH CAROLINA

JUNE 14TH, 2007

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
2006-GS-26-2101

THE STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
VS.) TRANSCRIPT OF RECORD
LOUIS WINKLER,)
DEFENDANT.)

JULY 3, 2007
CONWAY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES E. LOCKEMY, JUDGE

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

J. GREGORY HEMBREE, ESQUIRE, ASSISTANT SOLICITOR
FRANCIS A. HUMPHRIES, JR., ESQUIRE, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

RALPH J. WILSON, ESQUIRE
PAUL ELBERT RATHBUN, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

ELIZABETH B. HARRIS, CVR
CIRCUIT COURT REPORTER

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

NO EXHIBITS INTRODUCED.

1 THE COURT: All right, now, what I want to do here is
2 today is as we've got all these jury returns in and we've
3 had some jurors who request statutory or constitutional or
4 personal reasons why they cannot serve on this jury, and I
5 wanted both sides to have an opportunity to go through
6 those who requested to be excused to see if we have any
7 objections. As I understand it from the clerk's office
8 right now, of the juror notices she sent out, she has 159
9 who have stated that they will be here. So, she has pretty
10 much confidence that 159 -- or 155 excused. It's changed
11 by four since we talked.

12 CLERK OF COURT: We lost four.

13 THE COURT: 155, 155 will be here, which obviously
14 that would be enough anyway to, I would think, get a good
15 jury, but we'll see. Now, I have packets up here, Madam
16 Clerk. What are these packets? These are the 155 here?

17 CLERK OF COURT: That's correct.

18 THE COURT: Are these divided in any fashion?

19 CLERK OF COURT: Those are the affidavits of ones that
20 are over sixty-five years old.

21 THE COURT: Okay.

22 CLERK OF COURT: And unable to locate.

23 THE COURT: There?

24 CLERK OF COURT: Preschool children and unable to
25 locate part.

1 THE COURT: And these?

2 CLERK OF COURT: Those are ones that are asking to be
3 excused.

4 THE COURT: All right. Now, what I wanted to do in
5 talking with the attorneys in chambers, the defense, Mr.
6 Wilson said one of the main concerns he had was making sure
7 we'd verified regarding people who said they had children
8 under seven and those who mentioned school. So, have y'all
9 gone through these to determine which ones of this group
10 are that type of people that you had some concerns with,
11 Mr. Wilson, Mr. Hembree?

12 MR. HEMBREE: Your Honor, when we began that process,
13 trying to match those up and decide, it became clear -- it
14 got so confusing, it became clear that the better practice
15 would be to just go through each one of them individually
16 and agree or disagree about them. It's not a very large
17 number.

18 THE COURT: All right.

19 MR. HEMBREE: It can be done fairly quickly, and that
20 way we could ---

21 THE COURT: All right, do y'all have the package I
22 have?

23 MR. RATHBUN: Yes, sir.

24 MR. WILSON: Yes, sir.

25 THE COURT: Starts off with juror number 4.

1 MR. RATHBUN: We don't have an individualized packet,
2 Your Honor. We just have the number ---

3 THE COURT: Well, on the top right it says number, and
4 I assume that means juror number.

5 MR. RATHBUN: Yes, yes, sir.

6 THE COURT: Is that what that is? You talking ---

7 CLERK OF COURT: The one that starts with number 4,
8 Your Honor, is the ones wanting to be excused.

9 THE COURT: Right.

10 CLERK OF COURT: And transferred.

11 THE COURT: All right, those are the ones we're going
12 to deal with right now. So, let's first, then, go look at
13 juror number 4, who says -- I would assume there is an
14 objection about excusing juror number 4.

15 MR. HEMBREE: Your Honor, she's, from the state's
16 perspective, she is just requesting to be excused because
17 of a hardship because of her employment.

18 THE COURT: Right.

19 MR. HEMBREE: I would object to her being excused.

20 THE COURT: We'll have her come in, juror number 4
21 come in; we'll decide that once she gets here. Next is
22 juror number 11.

23 MR. HEMBREE: This says doctor's. From the state's
24 standpoint, Your Honor, there's a doctor's excuse on this
25 one, and we would not object to number 11 being excused.

1 THE COURT: Mr. Wilson, Mr. Rathbun?

2 MR. WILSON: I have no objection.

3 THE COURT: Says she's at the Hollings Cancer Center,
4 MUSC.

5 MR. WILSON: That's correct.

6 THE COURT: All right, juror number 11 is excused
7 without objection. Juror 27, state?

8 MR. HEMBREE: Your Honor, the potential juror on this
9 case has a seminar that he appears to have already paid for
10 during this time frame, and we would not have any objection
11 to him being accused or transferred.

12 THE COURT: Or transferred. Okay, Mr. Defense?

13 MR. WILSON: I don't have any objection, Your Honor.

14 THE COURT: All right, he's to be transferred, Madam
15 Clerk, not excused, transferred. All right, then, number
16 51.

17 MR. HUMPHRIES: I have 55.

18 MR. WILSON: I have 55.

19 THE COURT: I have juror 51 in this packet myself.
20 It's a gentleman by the name -- trying to find out, see the
21 name -- Salvatore Buffa.

22 MR. HEMBREE: No, Your Honor, the next one we have is
23 55.

24 THE COURT: All right, Madam Clerk, why do I have 51
25 here?

1 CLERK OF COURT: I have 51 as well, and the reason it
2 was pulled out is because he called today and says he has
3 a class 2 felony out of Rochester, New York, from 1990.
4 We pulled it out because we have no way to verify that.
5 He said he served forty-two months on a drug and gun
6 charge.

7 THE COURT: Well, we know none of that now. He's got
8 to show up until we find that out for sure.

9 CLERK OF COURT: I don't know if they've run any kind
10 of NCICs on anything on anyone or not.

11 MR. HUMPHRIES: We've run them and there's no, he has
12 no record in NCIC.

13 THE COURT: Which sometimes doesn't mean ---

14 MR. HUMPHRIES: Correct.

15 THE COURT: --- he doesn't have a record.

16 MR. WILSON: Your Honor, I would just ask that he be
17 brought in and at least us inquire.

18 MR. HEMBREE: State would agree, Your Honor.

19 THE COURT: Bring him in. All right now, juror number
20 55. Now, do y'all need to know who juror number 51 was so
21 y'all will know to note it? Just number 51, y'all write
22 that down, Mr. Wilson.

23 MR. WILSON: Yes, sir.

24 THE COURT: 51, just add that to it, 51. All right,
25 now, juror number 55.

1 MR. HEMBREE: Your Honor, this individual appears to
2 be in the same category as juror number 4. He is
3 requesting a transfer simply because he's a dentist. And
4 I'm sure he's very busy, but it appears that he's just
5 requesting based on a hardship, a professional hardship it
6 would create.

7 THE COURT: I did serve a week of jury duty in May of
8 '04. Of course, that could have been more -- no, that
9 would have been more than three years anyway. Golly, time
10 passes.

11 All right, defense position?

12 MR. WILSON: Your Honor, I say we ask that you bring
13 him in.

14 THE COURT: Bring him in. All right, J.C. Costello.

15 MR. WILSON: Your Honor, I have number 57, which is a
16 student.

17 THE COURT: Well, I don't have 57. What does the
18 state have, 57 next? 69?

19 MR. HEMBREE: 57, Your Honor.

20 THE COURT: I don't have 57.

21 CLERK OF COURT: This one says over sixty-five.

22 THE COURT: Let me look at it right quick.

23 CLERK OF COURT: And an affidavit for over sixty-five.

24 THE COURT: Date of birth 1938 [REDACTED] is what the
25 records of the clerk's office has for her birthday. Has

1 she requested to be excused, Madam Clerk?

2 CLERK OF COURT: Yes, sir.

3 MR. WILSON: Judge, mine is showing a date of birth of
4 1986.

5 MR. HEMBREE: That's what we show as well, Your Honor,
6 1986.

7 MR. HUMPHRIES: This is 57.

8 THE COURT: Juror number 57, according to the clerk's
9 pink sheet, it shows her birth date being [REDACTED], 1938.
10 Is there some dispute about whether ---

11 CLERK OF COURT: And our panel list as well says
12 [REDACTED]/38.

13 THE COURT: Where did y'all get the '86 at? What
14 sheet is that on?

15 MR. HEMBREE: This is on her pink sheet that says
16 juror number 57.

17 THE COURT: Go and look at that pink sheet.

18 MR. WILSON: Her name is Samantha Collins according to

19 ---

20 THE COURT: No, no, no. This is -- well, we've got a
21 wrong 57 then.

22 CLERK OF COURT: This here is for the jury term
23 beginning June the 18th.

24 MR. RATHBUN: Well, then, we've got the wrong ---

25 CLERK OF COURT: This one got in there by error.

1 MR. RATHBUN: Well, there's another one that -- what
2 was the other number?

3 MR. HEMBREE: 174.

4 MR. RATHBUN: 174.

5 THE COURT: Let's get to that later. Let's -- I'd
6 rather we just do it as we go.

7 CLERK OF COURT: The next is June 18th on that.

8 THE COURT: Good. All right, we know it's a mistake.
9 Anyway, juror 57 is obviously for this term is Ms. Cabanaw,
10 and she was over 65 and she requests to be excused.

11 CLERK OF COURT: We have her and the affidavit
12 attached to that.

13 THE COURT: Now, the next one I have is juror 69. Is
14 that your next one?

15 MR. WILSON: That's my next one.

16 THE COURT: State's next one?

17 MR. HEMBREE: Yes, sir.

18 THE COURT: All right. Same thing as number 4, looks
19 like to me.

20 MR. HEMBREE: Yes, Your Honor. It's simply a
21 professional hardship.

22 MR. WILSON: That's correct.

23 MR. HEMBREE: We'd ask that he be brought ---

24 MR. WILSON: We agree.

25 THE COURT: Bring him in. Number 70 is my next one.

1 MR. HEMBREE: Your Honor, my next one is number 120.

2 THE COURT: All right, so why do I have 70 there,
3 Madam Clerk?

4 CLERK OF COURT: This one was just brought in today;
5 that's the reason you do not have that copy.

6 THE COURT: Does it show why he wants to be -- he
7 doesn't say anything about being excused?

8 CLERK OF COURT: His sister brought it in and said he
9 is mentally -- she doesn't have any kind of paperwork to
10 back that up, but he can't read or write and he is ---

11 THE COURT: It says quit school in grade school, but
12 I'm afraid you're either going to have to have something
13 from a doctor or bring him in, one way or the other.

14 CLERK OF COURT: We'll bring him in.

15 THE COURT: Okay.

16 MR. WILSON: What number is that, Ms. Clerk?

17 THE COURT: Number 70 just came in today. My notes
18 are going to bring him in or have doctor's excuse unless
19 y'all wish to agree to excuse him, both of you.

20 MR. WILSON: I would ask that he be brought in.

21 MR. HEMBREE: No, Your Honor, but the state would have
22 no objection to the clerk contacting the sister and
23 requesting medical documentation if that's ---

24 THE COURT: Melanie, that might work out better that
25 way, and you can show it to everybody.

1 MR. HUMPHRIES: It also appears he will ultimately
2 claim that he's going to have some difficulty in serving.
3 He fell from a tree and broke his back and crushed his
4 foot. It's hard for him to sit in one position for a long
5 time

6 THE COURT: Just see what you get for me. All right,
7 number 120.

8 MR. HEMBREE: Your Honor, this appears to be a medical
9 excuse signed by an MD. We would have no objection to this
10 juror being excused or transferred.

11 THE COURT: Defense?

12 MR. WILSON: We have no objections to that.

13 THE COURT: Okay, she is excused. I think with that
14 right now, I think that looking at this, chemotherapy and
15 trying to see what -- and her age being as it is now, let's
16 just go ahead and excuse her. I think if she gets through
17 that, it'll be better.

18 Part of the Air Force. All right, it looks to me like
19 he has military necessity there.

20 MR. HUMPHRIES: What number are you looking at?

21 CLERK OF COURT: We need 130.

22 THE COURT: Number 140. Huh?

23 CLERK OF COURT: Number 130 is next.

24 THE COURT: Well, then, why do you -- I don't have
25 130. I don't know -- I've got 143.

1 CLERK OF COURT: 130 is a medical excuse on a Chris --
2 cannot say his last name.

3 MR. HEMBREE: Fazakerly.

4 CLERK OF COURT: Thank you.

5 THE COURT: Bipolar.

6 MR. RATHBUN: Wasn't there a doctor's, wasn't there a
7 thing that he was severely bipolar?

8 CLERK OF COURT: Yes, sir. It's attached to the very
9 front.

10 THE COURT: Yeah. Well, the Dr. ---

11 MR. HEMBREE: Signed it.

12 THE COURT: --- Paige signed it in June. He's
13 disabled to work.

14 MR. HEMBREE: No objection to him being excused, Your
15 Honor.

16 MR. WILSON: I have no objections.

17 THE COURT: All right, he is excused. Now, is the
18 next one 143?

19 CLERK OF COURT: Yes, sir.

20 THE COURT: Thank you. All right, 143, the part of
21 the Air Force, senior master sergeant states he will be,
22 this gentleman will be in training at Charleston Air Force
23 Base.

24 MR. HEMBREE: No objection that he be excused.

25 MR. WILSON: No objection.

1 THE COURT: All right, transfer him; he's in the
2 Reserves, so transfer him. Okay, now, my next one is 164.
3 Did I miss another one? All right, sorry, my next one now
4 is 150. All right, it sounds to me she has a statutory
5 right to be transferred.

6 MR. HEMBREE: State would agree, Your Honor, under
7 summer school program.

8 MR. WILSON: She has a statutory right. I have no
9 objection.

10 THE COURT: Transfer her then, transfer. Now 164, is
11 that next for everyone?

12 MR. WILSON: Yes, sir.

13 MR. HEMBREE: Yes, Your Honor.

14 THE COURT: Looks like an airline ticket leaving on
15 the 19th of July. Wait a minute. This says an occupation.
16 I see -- I'm not reading this as what I initially read it
17 as.

18 MR. HEMBREE: Your Honor, it certainly doesn't --
19 typically, we excuse folks or don't have any objection
20 to excusing folks that have a preplanned vacation with
21 non refundable tickets, but this appears to be a business
22 trip.

23 MR. HUMPHRIES: Well, he's actually on vacation; he's
24 coming back on the 6th of July.

25 MR. WILSON: Right. He's going to be here.

1 THE COURT: And I'm looking at this ticket. It
2 doesn't have his name on it. It's got Margaret Gore's name
3 on it.

4 MR. HEMBREE: Are these together?

5 THE COURT: There's a juror Margaret Gore there. Then
6 why is Dale Craig Lick the ---

7 MR. HEMBREE: Your Honor, these two are stapled
8 together, 164 and 174.

9 THE COURT: Oh, I see. I'm sorry, excuse me. 164 and
10 174 are put together, that's right, okay.

11 MR. RATHBUN: 174, Your Honor, is the one that's going
12 out of town.

13 THE COURT: You're right.

14 MR. HEMBREE: Your Honor, I don't have any objection
15 to Ms. ---

16 THE COURT: Ms. Gore.

17 MR. HEMBREE: --- Gore being excused. It appears it's
18 a preplanned vacation.

19 MR. WILSON: I have no objection.

20 THE COURT: All right, excused. Transfer, transfer.
21 Now, 174 was another term, so let's go to 175. Going to
22 his brother's wedding.

23 MR. WILSON: Judge, I didn't see a date.

24 THE COURT: I know. I'm looking to see if that's in
25 there, too.

1 MR. HEMBREE: Your Honor, might I suggest that the
2 clerk contact Mr. Green to try to obtain some additional
3 information just ---

4 THE COURT: Madam Clerk, if Mr. Green is here on
5 Monday, he's -- on the 16th, he's to be here on the 16th.
6 If he is, if he is going to be at the wedding for a week,
7 which -- or either the following weekend, he still needs to
8 be here on Monday the 16th, all right? If, in fact, there
9 is a problem there about him being here, you get on the
10 phone with me on a joint phone call. I'll somehow get it
11 taped somehow, but he did not give us enough information
12 when he says I'll be around that time. That concerns me,
13 so he'll be here.

14 Barbara -- number 187, is that your next one?

15 MR. HEMBREE: Yes, Your Honor.

16 THE COURT: All right, looks like some sort of airline
17 situation here. I can't read it. Can y'all read what it
18 says as far as dates there? I cannot tell.

19 MR. WILSON: I can't read the dates on mine; it's not
20 legible.

21 THE COURT: I see 23 -- oh, that's a...

22 MR. RATHBUN: I don't have my copy, Your Honor, but
23 from her letter it appears that she was going to be out of
24 the country.

25 THE COURT: State's position?

1 MR. HEMBREE: Again, Your Honor, I don't feel
2 comfortable we have enough information to make an informed
3 judgment about the status.

4 THE COURT: Defense position?

5 MR. WILSON: I would like for them to come unless
6 they're out of the country.

7 THE COURT: Well, then, therefore I got to look into
8 it, see if they're out of the country. Let's look at it.
9 I thought y'all ---

10 MR. HEMBREE: Your Honor, let me -- as I said that, I
11 was continuing to read. It appears that juror number 187
12 will be leaving on July the 7th to go to, flying into
13 Liverpool, England, and will be flying back July 24th from
14 Ireland to New York/JFK. It appears that this juror will
15 be out of town. We would have no objection to her being
16 transferred.

17 THE COURT: Where are you reading that? Yeah, but it
18 look like it says 2 July, though.

19 MR. HEMBREE: It said -- yes, sir, that's the ticket
20 going from New York to Liverpool. It is July the 2, 2007,
21 through July the 8, 2007, and then the return on the second
22 page where it says start. It's 24 July '07.

23 THE COURT: Okay.

24 MR. HEMBREE: And ends July 24, '07, and that's coming
25 back from Ireland to New York.

1 THE COURT: I see.

2 MR. WILSON: Your Honor, that's correct.

3 THE COURT: So, she's not even here, so no objection
4 to her being transferred?

5 MR. HEMBREE: None from the state, Your Honor.

6 MR. WILSON: No, Your Honor.

7 THE COURT: Transfer. All right, 213 is my next one.
8 Is that everybody else's next one?

9 MR. HEMBREE: Yes, Your Honor. Once again this is
10 just a professional hardship, and we would ask that this
11 juror be required to come in.

12 THE COURT: Don't they know there's a housing slump?
13 Shouldn't be that much business going on apparently.

14 MR. WILSON: We'd ask that he come in.

15 THE COURT: Cleta S. Sherra -- wait, a minute. Oh, I
16 see. It's the employer asking for Ms. Hubert not to have
17 to come in. Okay, have Ms. Hubert come in. My next one is
18 241.

19 MR. HEMBREE: Your Honor, my next one is 258.

20 THE COURT: Okay, so why do I have 241?

21 CLERK OF COURT: 241 just came; we just got it.

22 THE COURT: It says a C-O-N-S-I-L-L-E-D weapon,
23 concealed, C-O-N-S-I-L-L-E-D. That would not necessarily
24 excuse it. It could be a one-year statute.

25 MR. HUMPHRIES: What is the offense?

1 THE COURT: It just says concealed weapon.

2 MR. HUMPHRIES: It's not likely that that would be a

3 ---

4 THE COURT: That would probably be a year or less.

5 MR. HUMPHRIES: Yes, sir. Hang on a second. I've got
6 the rap sheet right here.

7 THE COURT: Jewel Ray Johnson.

8 MR. HUMPHRIES: I've got the rap sheet, and she's got
9 a shoplifting conviction in '87. It doesn't even show the
10 weapons charge, but the shoplifting is a magistrate's level
11 offense.

12 THE COURT: Well, have you checked under
13 C-O-N-S-I-L-L-E-D as opposed to...

14 MR. HUMPHRIES: Yeah, we did. There's, there's -- not
15 even that one is on there.

16 THE COURT: What are your favorite movies: westerns.
17 Bring this juror in, please. 258, Greg Killian.

18 MR. HEMBREE: Your Honor, this appears to be a seminar
19 registration for one day in Myrtle Beach July the 20, 2007.
20 Quite frankly, if it was a week-long seminar that's -- I
21 just wondered how...

22 THE COURT: All right, so the defense -- did he send a
23 letter in with this or just sent copies of this thing?

24 MR. HEMBREE: Just registration it appears, Your
25 Honor.

1 THE COURT: Well, it looked like a professional
2 seminar because he's a social worker at the hospital, a
3 six-hour seminar. I don't see how it could be that big of
4 a difference in his career one way or the other. So, the
5 state wants him to show up. Mr. Wilson, for the defense?

6 MR. WILSON: Yes, sir.

7 THE COURT: All right, bring him in. My next one is
8 268.

9 MR. HEMBREE: Same for the state, Your Honor.

10 MR. WILSON: Same, Your Honor.

11 THE COURT: All right, what's the position? Let's
12 see, teacher.

13 MR. HEMBREE: Your Honor, it appears that she has a
14 statutory right to request a transfer.

15 THE COURT: She'll be with special ed kids providing
16 extended school year service. State's position?

17 MR. HEMBREE: Your Honor, we would, we would not
18 object to her ---

19 THE COURT: Defense?

20 MR. HEMBREE: --- transfer.

21 MR. WILSON: She's actually working this summer
22 apparently, and if she's actually involved in a summer
23 program, then I don't have any objection.

24 THE COURT: All right, transfer. 278 is my next one.

25 MR. HEMBREE: Same for the state, Your Honor. It's

1 got a medical excuse. We'd ask that he be transferred or
2 possibly excused from jury duty.

3 THE COURT: Defense?

4 MR. WILSON: I would, I would agree, Judge.

5 THE COURT: All right, excused. 281. I'm just going
6 to go ahead, assume that y'all have the same number I do.
7 281.

8 MR. HEMBREE: Yes, sir.

9 THE COURT: All right, Douglas A. Lind, Ph.D.

10 MR. HEMBREE: State has no objection to this juror
11 being excused. Even though it's a local vacation, sounds
12 as if there's been a fair amount of prepayment that can't
13 be recouped. We'd ask that he be transferred.

14 THE COURT: Defense?

15 MR. WILSON: Judge, I think I will agree since
16 vacation's actually starting prior to the trial.

17 THE COURT: Transferred. 282.

18 MR. HEMBREE: Your Honor, we have no objection, based
19 on the medical excuse, that this juror be excused.

20 THE COURT: There is the statutory or provision if you
21 have someone at home that you a duty to take care of, that
22 you can be excused if it would be seriously detrimental to
23 their health. Apparently that's what this person is saying
24 about a severely handicapped child. Defense?

25 MR. WILSON: No objections.

1 THE COURT: All right, 282 excused. 284.

2 MR. WILSON: The next is 285.

3 THE COURT: I don't have a 285. Melanie, your next
4 one, 284?

5 CLERK OF COURT: Yes, sir.

6 THE COURT: Do you have a 285?

7 CLERK OF COURT: No, sir, not in this stack.

8 THE COURT: Andrea Long.

9 MR. HEMBREE: Yes, Your Honor, we've got Andrea Long.

10 MR. WILSON: I don't have a 284.

11 THE COURT: I'll show it to you here. Let me look at
12 it right quick. Says she's in school -- one's a
13 verification of school -- from 23 May until 7 August,
14 Horry-Georgetown Tech.

15 MR. HEMBREE: State requests this juror be
16 transferred.

17 MR. WILSON: I would agree.

18 THE COURT: All right, transfer. My next one, 310, a
19 religious excuse.

20 MR. WILSON: I would ask that they come in.

21 MR. HEMBREE: The state agrees, Your Honor.

22 THE COURT: Any decision I would make would be based
23 on my intuitions. Y'all want me to have this person come
24 in, right?

25 MR. WILSON: Yes, sir.

1 CLERK OF COURT: This is the one that I spoke to you
2 that is ---

3 MR. HUMPHRIES: Your Honor, unless, based on what
4 you've got before you, you find that she's not going to be
5 fair and impartial.

6 THE COURT: Well, of course I don't have the person
7 with me personally telling me this, but obviously you know
8 good and well a person's not going to be qualified to serve
9 if they're saying I'll base my decision on my intuitions,
10 not on the evidence.

11 CLERK OF COURT: Your Honor, she's the one that
12 personally came to see me.

13 THE COURT: And said what?

14 CLERK OF COURT: Yes, sir.

15 THE COURT: What did she basically tell you?

16 CLERK OF COURT: The same thing here and was very
17 adamant and was very nervous and ---

18 THE COURT: Oh, oh, wait, wait. I'm reading the
19 second paragraph now.

20 CLERK OF COURT: --- crying and ---

21 THE COURT: You have a second paragraph concerns me: I
22 will not be able to make a living for the two weeks in
23 court.

24 CLERK OF COURT: Your letter must be longer than mine.

25 THE COURT: She runs a holistic health center.

1 CLERK OF COURT: You're on 319?

2 THE COURT: 310.

3 MR. HEMBREE: 310.

4 MR. WILSON: 310.

5 CLERK OF COURT: Oh, my bad. My bad, my bad.

6 THE COURT: All right, so state and defense wants me
7 to bring 310 in to personally qualify them, or do state and
8 defense feel this person would not be a qualified juror?

9 MR. WILSON: I think she should be brought in.

10 THE COURT: That's enough. She's brought in. All
11 right, 319.

12 CLERK OF COURT: That's the one I was -- talked to you
13 about, Judge.

14 THE COURT: Okay. All right, if y'all look at this
15 letter, I think y'all would agree she probably would not be
16 qualified to be on this jury.

17 MR. HEMBREE: State requests that she be transferred,
18 number 319.

19 THE COURT: Mr. Wilson, I think you would agree in
20 regard to that.

21 MR. WILSON: Judge, I don't have a copy of the letter.

22 THE COURT: Well, okay, show him the letter there.

23 (MR. WILSON AND CLERK CONFER.)

24 MR. WILSON: Your Honor, I would ask that she be
25 excused.

1 THE COURT: 319 transferred. 322.

2 MR. HEMBREE: Your Honor, this juror, number 322, in
3 this short explanation doesn't strictly meet the statutory
4 exemption for having to care for children.

5 THE COURT: Unless a disabled child's involved there.

6 MR. HEMBREE: But she certainly sounds like that
7 sequestration is going to be a hardship. I just don't see
8 how in the world she's going to get...

9 THE COURT: Or how she's going to keep her mind on the
10 trial.

11 MR. HEMBREE: I wouldn't have, I don't have any
12 objection to transferring her.

13 THE COURT: Mr. Wilson, 322, you see the letter there
14 with it?

15 MR. WILSON: No, sir, I don't have the letter.

16 THE COURT: Well, what's...

17 MR. WILSON: I, I -- we got -- I assume we got our
18 copies from the solicitor's office.

19 CLERK OF COURT: No. Ours ---

20 MR. HUMPHRIES: No.

21 CLERK OF COURT: --- come from our office, but they
22 haven't been being picked up on a timely manner.

23 MR. WILSON: Your Honor, I have ---

24 MR. RATHBUN: We don't have it.

25 THE COURT: Well, let's go through it. We don't have

1 that many more. Look at 322, Mr. Wilson, if you will.

2 (A PAUSE.)

3 THE COURT: Concern is if what she says is true is is
4 a way for her to keep her mind on the trial.

5 MR. WILSON: I don't have any objection.

6 THE COURT: All right, excuse her. The next one I
7 have is 340. Anybody have -- do you have 340, Mr. Wilson?

8 MR. WILSON: Yes, sir.

9 THE COURT: Okay. This is dealing with Regina
10 O'Toole, I guess.

11 MR. HEMBREE: Your Honor, it appears that juror number
12 340 has a prepaid vacation. It falls in the similar
13 situation as the other juror that's traveling to Great
14 Britain. We would ask that this juror be transferred.

15 MR. WILSON: I have no objection.

16 THE COURT: All right, transfer. 344, Debra Parris,
17 state's position?

18 MR. HEMBREE: Your Honor, it sounds as if this
19 training is mandatory and essential for this juror's
20 professional standing.

21 THE COURT: I can't tell whether it's government or
22 whether it's private, but I think it's private, quasi.

23 MR. HEMBREE: I'm not sure, Your Honor, but
24 regardless, we would, we'd ask that this juror be
25 transferred.

1 THE COURT: Defense?

2 MR. WILSON: I have no objection.

3 THE COURT: Transfer. 346, airlines tickets, Sunita
4 Patel. It looks like July 17th going to London and then
5 returning on July 30th

6 THE COURT: No objection to this juror being
7 transferred, Your Honor, from the state.

8 MR. WILSON: No objections.

9 THE COURT: Transfer. 353.

10 MR. HEMBREE: Your Honor, it appears that juror number
11 353's hardship is strictly a professional hardship.

12 THE COURT: I know, but it does seem to be a serious
13 professional hardship for July if she's going to close her
14 business for July for this time of year, but if y'all want
15 me to bring her in I will, but ---

16 MR. WILSON: Judge, I'm going to have to ask that she
17 be brought in, at least for qualifications.

18 THE COURT: It's probable, though, with that type of
19 business and this type of time frame, like I would an
20 accountant who was doing tax returns in April. So, it's
21 probable I will probably let her go, but I'll bring her in
22 right now. 353, bring her in. 355, what? What?

23 MR. HEMBREE: Yeah. Your Honor, we'd ask that this
24 juror be brought in.

25 THE COURT: A lawyer wrote me this?

1 MR. WILSON: We agree, Your Honor.

2 THE COURT: Yes, bring that lawyer in, too. Is this
3 the -- have I met this gentleman before or lady? Is this a
4 man or a woman?

5 MR. WILSON: It's a lady.

6 MR. HEMBREE: It's a lady.

7 THE COURT: Bring her in. All right, 368.

8 MR. HEMBREE: Once again, Your Honor, it appears that
9 juror number 368's only hardship is just a professional
10 inconvenience.

11 THE COURT: Well, this is different than the last one;
12 this is not like the whole Remax is going to close up. All
13 right.

14 MR. WILSON: I'd ask that they come, too, Your Honor.

15 THE COURT: All right, bring Mr. Redding in with us.
16 Alaska, all right, any objections on 371?

17 MR. HEMBREE: No objections from the state, Your
18 Honor.

19 MR. WILSON: No objections.

20 THE COURT: All right, transfer him. 390.

21 MR. HEMBREE: We ask that this juror be brought in,
22 Your Honor.

23 MR. WILSON: We agree.

24 THE COURT: Bring him in. 391, let's see, I can't
25 tell what it is. Let see. Uh-oh, looks to me like this

1 gentleman has a serious ---

2 MR. HEMBREE: Heart.

3 THE COURT: --- heart condition.

4 MR. HEMBREE: We'd ask this juror ---

5 MR. WILSON: Coronary.

6 MR. HEMBREE: -- be excused.

7 MR. WILSON: I agree, Your Honor.

8 THE COURT: All right, excused, 391 excused. My next
9 one is 392. The person is on, what, some sort of recovery?

10 CLERK OF COURT: No, sir. It's her husband that she
11 completely has to take care of.

12 (THE COURT AND CLERK CONFER.)

13 THE COURT: Clerk says the lady has a severely
14 disabled husband who she's taking care of.

15 MR. HEMBREE: Your Honor, I don't have any objection
16 to her being transferred, transferred or excused.

17 THE COURT: Says he has pseunomas -- pseudomonas
18 pneumonia, acute respiratory failure, hypomagnesmia.

19 MR. WILSON: Your Honor, if she's his caretaker, then
20 I don't have any objections either.

21 THE COURT: All right.

22 MR. WILSON: It says she's retired.

23 THE COURT: All right, excused. 445, okay, 445,
24 Marilyn Suggs' husband Cecil was previously scheduled for
25 appointment at Mayo Clinic and had to cancel when he was in

1 the hospital and had surgery. She wrote 7/30/07. We know
2 the Mayo Clinic is either the one in Florida or the one in
3 Minnesota.

4 MR. WILSON: It's the one in Florida, I think, is the
5 one he said.

6 THE COURT: Okay, so she -- apparently -- and it's
7 Mayo. We know it's probably very serious, so the lady
8 wants to go to her husband.

9 MR. HEMBREE: I have no objection, Your Honor.

10 MR. WILSON: No objection.

11 THE COURT: All right.

12 CLERK OF COURT: Transfer?

13 THE COURT: Transfer. 461.

14 CLERK OF COURT: We have 412 next, and it was pulled
15 out and put in because they called this morning stating
16 that he has a criminal record for drug charges.

17 THE COURT: Give them the name and see if they've run
18 the check.

19 MR. WILSON: 461?

20 CLERK OF COURT: Yes, that's Joe Shook.

21 THE COURT: 412, 412.

22 CLERK OF COURT: S-H-O-O-K.

23 THE COURT: The one they just got in today. Let's
24 come back to that while she checks the record. Can she
25 check the record on that?

1 MR. HUMPHRIES: She's checking it right now.

2 THE COURT: All right, we're go to 461. Man says he's
3 a tobacco farmer.

4 MR. HUMPHRIES: We do not have the questionnaire, so
5 we have not run that rap sheet. Doesn't have a rap sheet.

6 MR. HEMBREE: We'll double check it, but we have to
7 bring him in for now.

8 CLERK OF COURT: You want him to come in now?

9 THE COURT: All right, let's go then to 1 -- to 461.
10 Those of you who grew up in this area know that this is the
11 high time of cropping tobacco. The man has 1000 acres.
12 Why he didn't sell his allotment, I don't know with that
13 many acres.

14 MR. WILSON: I say let him farm, Judge.

15 THE COURT: Seriously, this is almost like an
16 accountant in April for this situation.

17 MR. HEMBREE: Transfer him, Your Honor.

18 THE COURT: No objection transfer, Mr. Wilson, right?

19 MR. WILSON: Right.

20 THE COURT: Transfer him. I remember those cropping
21 tobacco days, sand lugs. All right, travel plans on 471.
22 It looks like leaving on July 16th going to the Netherland
23 Antilles. Rough time it looks like.

24 MR. HEMBREE: No objection to this juror being
25 transferred.

1 MR. WILSON: No objections.

2 THE COURT: Okay, 471 transferred. 497. Sounds like
3 y'all don't want her to come in or him. I can't tell
4 whether it's a man or woman.

5 MR. HEMBREE: Your Honor, quite frankly we don't have
6 the ---

7 THE COURT: Beryl C. Wright.

8 MR. WILSON: Neither do I.

9 THE COURT: Well, Beryl C. Wright, I'll read what it
10 says to Ms. Huggins:

11 As per our phone conversation, I respectfully
12 request that I be moved to possibly the winter term for
13 jury duty. At this time our company -- that's Ensure
14 Imports, Incorporated, Mercedes, BMW, Volvo Domestic Car
15 Repair -- at this time, our company only has two
16 technicians. We have unsuccessfully tried to hire another
17 one, and I am the key employee. I work commission and make
18 most of my money during the season, so not only would this
19 cause financial hardship to me, but also to the company I
20 work for. I have no objections to serving jury duty and
21 would be honored to do so, but it would be much better in
22 the winter.

23 I'm not sure why.

24 MR. HEMBREE: We request this juror be brought in.

25 MR. WILSON: I agree.

1 THE COURT: Bring him. I need some work on my car
2 anyway. All right, now, so everyone will know, any others?
3 Is that it? Here are the ones that we're not bringing in.
4 Madam Court Reporter, make sure we get down these are the
5 ones who've been excused with no objections: number 1,
6 number 120.

7 MR. HEMBREE: Number 1?

8 CLERK OF COURT: No.

9 THE COURT: Excuse me, 11, I meant one-one, number 11,
10 number 120. Then I have number 130. Then I have number
11 278. Then I have number 282. Then I have number 322.
12 These are excused now. Then number 391 and number 392,
13 those are excused.

14 Those that we've transferred. Did we excuse number 57
15 for being over sixty-five?

16 CLERK OF COURT: No.

17 MR. HUMPHRIES: We haven't gotten down to him.

18 CLERK OF COURT: We put him back in the other stack to
19 go along with not available and the over sixty-five group.

20 THE COURT: 284's been transferred, 319's been
21 transferred, 340's been transferred, 344, 346, 371, 445,
22 461, 471, and also go back to the beginning: 27, 143, 150,
23 164, 187, 268, and 281. Those were transferred.

24 All the other ones that were up here are coming in,
25 which means that the clerk will make sure that juror number

1 4, juror number 51, juror number 55, juror number 69, juror
2 number 70, juror number 175, juror number 213, juror number
3 241, juror number 258, juror number 310, juror number 353,
4 juror number 355, juror number 368, juror number 390, juror
5 number 397 will be coming in.

6 CLERK OF COURT: And number 412 to check him for the
7 criminal record. I have that in the ---

8 THE COURT: Yeah, 412 says they have a criminal
9 record, but we don't know yet, so they're coming in. 412
10 is coming in.

11 CLERK OF COURT: And then I also have the one that if
12 they show that there is the wedding date, then I will call
13 you and we'll have a conference call at that time. That's
14 number 175.

15 THE COURT: Right. Okay, here are excused,
16 transferred, and coming in. Now, do we have other ones?

17 CLERK OF COURT: Yes, sir.

18 THE COURT: All right.

19 CLERK OF COURT: Would you just like for me to go down
20 the line because it's a big stack of ---

21 THE COURT: Let me see what it is. What is it?

22 CLERK OF COURT: It's the affidavits of over
23 sixty-five, unable to locate, preschool children, deceased.

24 THE COURT: All right, now, we have those they cannot
25 find, those that say they're over sixty-five. And you have

1 the ones that say over sixty-five, under your records
2 they're over sixty-five, are they not?

3 CLERK OF COURT: And I have affidavits notarized from
4 the sheriff's office.

5 THE COURT: Well, and also your records for them when
6 you sent out ---

7 CLERK OF COURT: Yes, and their date of birth is on
8 there, yes, sir.

9 THE COURT: Now, does anybody have any objection to
10 those over sixty-five being excused if they request to be
11 excused?

12 MR. WILSON: No.

13 MR. HEMBREE: No, Your Honor.

14 THE COURT: All right, those are excused. All right,
15 those the sheriff cannot locate, does anybody want the
16 sheriff to go back out again? Has the sheriff tried
17 personally on all of these?

18 CLERK OF COURT: Yes, sir.

19 THE COURT: You want the sheriff to go back again?

20 MR. HEMBREE: No, Your Honor.

21 MR. WILSON: If he's been, no, sir.

22 THE COURT: All right, then the next is those with
23 children.

24 CLERK OF COURT: I've got one more here that is
25 employed with the solicitor's office that I have an

1 affidavit of Debra Awsbry.

2 MR. WILSON: We'll agreed to excuse her.

3 THE COURT: Transfer.

4 MR. HEMBREE: Transfer her. Well, she ---

5 THE COURT: She works in the courthouse; she works in
6 the courthouse. Excuse her.

7 CLERK OF COURT: And no longer resides in Horry
8 County.

9 THE COURT: By signature?

10 CLERK OF COURT: Yes, sir, by affidavit of Phillip
11 Thompson with the sheriff's office.

12 THE COURT: All right, the sheriff says these two say
13 they no longer live in this county. Any objection?

14 MR. HEMBREE: No.

15 MR. WILSON: No.

16 THE COURT: All right, good.

17 (A PAUSE.)

18 CLERK OF COURT: Unable to locate.

19 THE COURT: We've already said that's good.

20 CLERK OF COURT: Deceased.

21 THE COURT: That's good. With affidavit from the
22 sheriff they're deceased, no objection?

23 CLERK OF COURT: Yes, we did.

24 MR. WILSON: No, sir.

25 THE COURT: Okay.

1 CLERK OF COURT: We did, and ---

2 THE COURT: All we got left are the children ones. Do
3 you have those grouped at all?

4 CLERK OF COURT: They're all with these. Excuse me.

5 (A PAUSE.)

6 THE COURT: All right, Madame Clerk, those who say
7 they have children under seven, how do you have that? Is
8 there an affidavit from them?

9 CLERK OF COURT: Yes, sir, I have an affidavit from
10 the sheriff.

11 THE COURT: Well, the statute ---

12 CLERK OF COURT: Signed by the sheriff.

13 THE COURT: The statute says an affidavit. I don't
14 know if it says particularly by parent, but it says an
15 affidavit that they're under -- that they have children
16 under seven and are not employed. What -- Mr. Wilson, the
17 state, have any concern about that?

18 MR. HEMBREE: My only concern, Your Honor, is the
19 language that was used. I'm looking at one of these
20 affidavits.

21 THE COURT: Let me at it.

22 MR. HEMBREE: 126. The language used in that is a bit
23 incomplete.

24 CLERK OF COURT: It just says preschool children. It
25 doesn't say work outside the home.

1 MR. HEMBREE: Correct.

2 MR. WILSON: That's correct.

3 THE COURT: All right, if I have the clerk contact
4 these people, have them come in and sign a statement --
5 well, here you got Stephanie Blackman. It says: I have
6 legal custody, duty of care of children under the age of
7 seven. But it doesn't say I'm not -- I don't work, I'm not
8 employed outside the home.

9 Madam Clerk, if these people come in and sign saying
10 they have children under seven and they are not employed
11 outside the home, they will sign that in your office or in
12 front of a notary, anybody got any objection once they sign
13 that?

14 MR. HEMBREE: No, Your Honor.

15 MR. WILSON: No, sir.

16 THE COURT: All right, so if they'll sign that, that's
17 what I need: children under seven and I'm not employed
18 outside of the home.

19 CLERK OF COURT: Okay.

20 THE COURT: I need that signed by them and if that --
21 then they're excused. If not, they're to be here.

22 CLERK OF COURT: Yes, sir. Then I have number 44 says
23 he's a full-time student and has their summer schedule
24 attached.

25 THE COURT: Okay, show that to the counselors. If

1 that's the case, I have no objection to him being
2 transferred.

3 MR. WILSON: No objection.

4 MR. HEMBREE: No objection.

5 THE COURT: Transferred.

6 CLERK OF COURT: Number 47, Jeffrey Brown says he's an
7 Horry County police officer.

8 THE COURT: Power of arrest, he'd be excused. Any
9 objection?

10 MR. HEMBREE: None from the state, Your Honor.

11 MR. WILSON: None from the defense.

12 CLERK OF COURT: Number 115, served jury duty in the
13 last three years. Donna did not write down the day she
14 verified that March of 2005 was the correct time that they
15 served, which would put him in the ---

16 THE COURT: Stand up, Donna, if you would. Raise your
17 right hand.

18 DONNA WILLIAMS, BEING DULY SWORN,
19 TESTIFIES AS FOLLOWS:

20 THE COURT: State your full name.

21 MS. WILLIAMS: Donna Williams.

22 THE COURT: What's the name of that juror?

23 MS. WILLIAMS: Teresa Dubrill.

24 THE COURT: And juror number?

25 MS. WILLIAMS: And her number is 115. She has a

1 letter attached that the solicitor's office sends out
2 routinely thanking her for her juror service on March 28,
3 2005.

4 THE COURT: Okay, and you verified she did serve on
5 jury duty in the Circuit Court in 2005?

6 MS. WILLIAMS: I did.

7 THE COURT: Any objection to her being excused on the
8 verification of what Ms. Clerk says?

9 MR. WILSON: No objection.

10 MR. HEMBREE: No, no objection.

11 THE COURT: All right, she's excused. Next person.

12 CLERK OF COURT: Number 23, verified that one. Served
13 on jury duty August 31, 2006.

14 THE COURT: You verified that, Madam Clerk?

15 CLERK OF COURT: I did.

16 THE COURT: All right, any objection?

17 MR. HEMBREE: No objection from the state.

18 MR. WILSON: No objection.

19 THE COURT: All right.

20 CLERK OF COURT: Number 128, Steve Evans, says he's in
21 the treatment program in Charleston, South Carolina, and
22 has been for several months, and this come from his sister.
23 They was unable to deliver. The sheriff's office went out
24 and did this affidavit and brought it in because the mail
25 was returned.

1 THE COURT: So, it seems to me he's in a treatment
2 program, not living right now in Horry County. Any further
3 request from the state or defense to look further for this
4 juror, or y'all have objection if I excuse him from this
5 term?

6 MR. HEMBREE: No objection, Your Honor.

7 MR. WILSON: I have no objections. His mail was
8 returned.

9 THE COURT: This mail was returned. They went out
10 looking for him. He doesn't live there. Said -- the
11 sister said he's in a treatment program in Charleston.

12 CLERK OF COURT: Yes, sir. Number 152, Holly Garner,
13 full-time student. Do not have, yeah, we do not have
14 anything else other than the affidavit from the sheriff's
15 office stating that. I do not have a schedule of any type.

16 THE COURT: All right, if I have the clerk verify that
17 with a schedule that she's in school sometime during the
18 period of July 16th to July 30th, anyone got any objections
19 that the clerk will then use that discretion with a copy of
20 her schedule to excuse her?

21 MR. HEMBREE: No objection from the state.

22 MR. WILSON: No objection.

23 THE COURT: All right, just get a schedule, Madam
24 Clerk.

25 CLERK OF COURT: Yes, sir.

1 THE COURT: She doesn't bring you a schedule, she's to
2 come in.

3 CLERK OF COURT: Okay, and you want all preschool
4 children ones to come in and do the affidavit?

5 THE COURT: Under seven.

6 CLERK OF COURT: This one here states she is a
7 housewife and her children are three and four.

8 THE COURT: Did she sign an affidavit?

9 CLERK OF COURT: No, the sheriff, but on her
10 questionnaire she put she's a housewife. Whatever you
11 want.

12 THE COURT: Somebody signed. Anybody here have any
13 objection to that? You want her to sign the affidavit?

14 MR. HEMBREE: It's not -- I don't have any problem.

15 MR. WILSON: I would ask that she sign.

16 THE COURT: Just have her sign the affidavit: children
17 under seven, I'm not employed outside the home.

18 CLERK OF COURT: All right, I'm not going to go
19 through any more of those then.

20 THE COURT: All right, just have them -- just call and
21 say they need to come in on Monday or either sign that
22 beforehand.

23 CLERK OF COURT: I have number 158. Okay, here's
24 another one. Cynthia Gilbert served jury duty within the
25 last three years. Donna verified it.

1 THE COURT: Any objection?

2 MR. HEMBREE: None from the state.

3 MR. WILSON: None.

4 THE COURT: All right, verified. She's excused. Any
5 more?

6 CLERK OF COURT: I'm looking. 222, Doug Kimond, he's
7 employed with the Horry County Sheriff's Office.

8 THE COURT: As a deputy?

9 CLERK OF COURT: Yes, sir.

10 MR. HEMBREE: No objection from the state.

11 MR. WILSON: No objections.

12 THE COURT: Excused.

13 CLERK OF COURT: 238 is another student and we do have
14 their schedule.

15 THE COURT: Does it show the period from between July
16 16th, July 30th?

17 CLERK OF COURT: That says fall, though.

18 THE COURT: Well, then, have him come in, or either
19 you get a schedule saying that period of time, all right?

20 CLERK OF COURT: I do not see that.

21 THE COURT: All right, but you've given -- I give you
22 authority if anybody brings you a schedule showing they're
23 enrolled between July 16th, July 30th, you can excuse them.

24 CLERK OF COURT: Yes, sir.

25 THE COURT: But if not, they're to come in, enrolled

1 or working in school during that period of time.

2 CLERK OF COURT: 269, Nancy L. Lane, jury duty in the
3 last three years. Donna verified it.

4 MR. HEMBREE: No objection.

5 THE COURT: No objection, excused.

6 MR. WILSON: No objection.

7 THE COURT: You don't have to tell us those. If
8 they've been verified, they've been verified; they're out.

9 CLERK OF COURT: Okay. 296, Jacqueline Martin works
10 within the walls of the courthouse, administrative
11 assistant Horry County Auditor's Office, which is an
12 extension of this building just over there.

13 THE COURT: Position of the state?

14 MR. HEMBREE: No objection to this juror being
15 excused.

16 MR. WILSON: The question is whether ---

17 THE COURT: Bring her in.

18 MR. WILSON: Thank you.

19 CLERK OF COURT: 299.

20 THE COURT: I don't know if the Supreme Court's ever
21 defined the word courthouse.

22 CLERK OF COURT: 299 is Leroy McCray is in the Navy
23 stationed in Japan.

24 THE COURT: Any objection?

25 MR. HEMBREE: No objection.

1 MR. WILSON: No objection.

2 THE COURT: Excused. Anybody in the military service
3 not here at this time is excused, Ms. Suggs; anybody not
4 here at this time, you may excuse them.

5 CLERK OF COURT: Yes, Judge. 323 is another -- no, we
6 said we're going to take care of those. Never mind.
7 That's a preschool child. 334, Robert L. O'Brian is a law
8 enforcement officer with the IRS, special agent and has
9 powers of arrest, and that was an affidavit from the
10 sheriff's office stating that.

11 MR. WILSON: We agree to excuse him.

12 MR. HEMBREE: No objection.

13 THE COURT: Nobody wants to cross that fellow.

14 CLERK OF COURT: Not the IRS.

15 THE COURT: He's excused. Those are the guys that got
16 Al Capone. What else you got, Ms. Huggins?

17 CLERK OF COURT: I think that could be all.

18 THE COURT: All right, let me recap, Ms. Huggins.
19 Anybody who comes in and signs saying that they are not
20 employed outside the home and they have children under
21 seven, you have the power to excuse them. Anyone who comes
22 in with a schedule saying they are attending school and
23 signs a statement to that effect during the period of July
24 16th to July 30, 2007, you have the power to excuse them.
25 If you come across anyone else who has signed a statement

1 that they're employed with law enforcement and has the
2 general power of arrest, you have the power to excuse them.
3 Anybody who you verify served on jury duty in the last
4 three years, you have the power to excuse them. Don't need
5 to go over any more of those. Anyone else that you have
6 some questions about, contact me and let me know, okay?

7 CLERK OF COURT: Okay. Would you like to go through
8 the numbers that are definitely going to be here?

9 THE COURT: No. I think you've got ---

10 CLERK OF COURT: You don't put them on the record?

11 THE COURT: --- 155 and once you call them, that's
12 fine with me.

13 MR. HEMBREE: Your Honor, I don't like to belabor
14 this, but I would like to review the numbers of those that
15 have been excused in this group, just a quick review by the
16 clerk to make sure that we're, we know who we're dealing
17 with.

18 THE COURT: Okay, the ones we just excused in the last
19 fifteen minutes.

20 MR. HEMBREE: In the last group.

21 THE COURT: The ones you called and we just excused.

22 (A PAUSE.)

23 THE COURT: All right, let Donna get them together,
24 and make sure you get a list to the solicitor and to the
25 defense of the ones who've been excused today.

1 CLERK OF COURT: We will.

2 THE COURT: I've read out the numbers of the ones I
3 have, and y'all are welcome to come look at them, too, but
4 I would need to know the numbers of the ones we just
5 handled that you called out their names, but go ahead and
6 get the numbers and give them to both sides.

7 CLERK OF COURT: Is that fine with you?

8 MR. WILSON: That's fine with me.

9 MR. HEMBREE: That's acceptable, Your Honor. Thank
10 you.

11 THE COURT: Anybody with a criminal record, let's get
12 them run and then you can let me know about that.

13 MR. HUMPHRIES: Your Honor, there are two we can
14 address now, and I don't believe that these have been
15 excused, but let me refer you to juror number 92, which is
16 Zany M. Crosland. Ms. Crosland has a conviction for
17 failure to stop for blue light in 1981.

18 THE COURT: Well, she's not in the -- this is the 155
19 here, right?

20 MR. HUMPHRIES: Is she in the, she's ---

21 CLERK OF COURT: No, sir. Those are your affidavits
22 there.

23 THE COURT: This is them here now?

24 CLERK OF COURT: There should be a note on it, says

25 ---

1 THE COURT: I got it. 92, you say?

2 MR. HUMPHRIES: Yes, sir. 92.

3 THE COURT: All right, I got it, Crosland.

4 MR. HUMPHRIES: There's a 1981 conviction for failure
5 to stop for blue light, which at the time carried three
6 years.

7 THE COURT: Okay, the question is did she get a pardon
8 or amnesty? I don't know.

9 MR. HUMPHRIES: There is, there is no reflection of
10 pardon or amnesty on her criminal record. It indicates
11 that she received a three year sentence suspected to five
12 months' confinement, eighteen months' probation, and \$500
13 fine.

14 THE COURT: My concern and what I'd prefer we do, Mr.
15 Humphries, what I'm going to do is this. On the day that
16 we start, before I start calling out names of jurors and
17 all that, why don't I just call that list out, call all
18 them up there and verify they got their convictions and
19 they don't have a pardon, and we can just let them go then.

20 MR. HUMPHRIES: Yes, Your Honor. There are only two
21 out of the ones that have turned in ---

22 THE COURT: Well, if Mr. Wilson doesn't object to not
23 have them come in in case they have pardons, then I don't
24 have a problem.

25 MR. WILSON: No, sir, I want them to come in.

1 THE COURT: We'll call them out, those two, when they
2 get here then. Just give me those two names. I'll call
3 those two names out Monday morning.

4 MR. HUMPHRIES: We'll tell you. I'll tell you.

5 THE COURT: Then we'll let them go before we have to
6 worry about qualifications.

7 MR. HUMPHRIES: Yes, sir.

8 THE COURT: All right, now, as far as security, as you
9 all know it is normal to have S.L.E.D. with the team headed
10 by retired agent Rick McLeod doing this. Horry County,
11 because of the population situation and everything else,
12 makes it such that we probably would need more than we need
13 usually with the four S.L.E.D. agents, three males and one
14 female.

15 The sheriff in this county is not generally involved
16 in investigations, not generally involved in criminal
17 investigations, and has had no involvement with this case
18 at all. To make sure we have enough to accommodate the
19 jurors, I've asked him to let me have two deputies and the
20 sheriff get involved with -- who have not had anything to
21 do with this case at all get involved with helping me
22 transport and keep security for these jurors. Any comments
23 or concerns from the -- and I'll swear those deputies
24 obviously. Any concerns from the state?

25 MR. HEMBREE: None whatsoever, Your Honor.

1 THE COURT: Defense?

2 MR. RATHBUN: Your Honor, I'd just remind the Court
3 that my wife is an employee of the sheriff's department as
4 a deputy.

5 THE COURT: I'll make sure she's not one of them.
6 Okay, but then you know as well as I do that they have no
7 involvement with criminal investigations.

8 MR. RATHBUN: Yes, sir.

9 THE COURT: So, they wouldn't be involved in this.

10 MR. WILSON: Judge, the sheriff deputies will not be
11 detention officers?

12 THE COURT: No, they will not. I will have them.
13 Altogether, they will be only involved with jurors.

14 MR. WILSON: All right, sir.

15 THE COURT: And Mr. Sheriff is here right now to make
16 sure, whoever it is. Dan, make sure whoever it is -- Dan.
17 Mike. Boy, the days. I remember the days of Dan. Mike,
18 if you would, make sure the sheriff or whoever it is that
19 we're going to have doing that, that from here they're not
20 going to have anything to do with this case so far as
21 security back and forth with Mr. Winkler, okay?

22 DEPUTY SHERIFF: Okay.

23 THE COURT: Whatever two he's chosen. All right,
24 okay, now, during the course of the trial I assume we'll
25 have a *Jackson vs. Denno* of some sort or whatever. We can

1 do that after we get a jury drawn or during the course of
2 it. I'm trying to think if we need to meet again before
3 Monday. What time is the jury coming in on Monday?

4 CLERK OF COURT: 10:00.

5 THE COURT: Now, I would prefer. I wish there was
6 some way of having the jurors report to the big courtroom.
7 Would they fit in the big courtroom?

8 CLERK OF COURT: Yes, because we have another jury
9 coming in that same day. What I will do is on that Monday
10 morning, I set up two tables out in the atrium with colored
11 slips of paper, check them off as they come in, give them
12 ---

13 THE COURT: Are they all coming in, both coming at the
14 same time?

15 CLERK OF COURT: Yes, sir.

16 THE COURT: Wish we'd have coordinated that.

17 CLERK OF COURT: I already take care of it before they
18 ever get in the door though. They have a slip of paper to
19 tell them where they go, either upstairs to this trial or
20 downstairs for the regular jury panel.

21 THE COURT: All right.

22 CLERK OF COURT: And that will be coordinated when ---

23 THE COURT: I'd just rather have a courtroom to
24 qualify these jurors as opposed to that assembly room. It
25 doesn't really ---

1 CLERK OF COURT: We're going to send those to the B
2 courtroom.

3 THE COURT: All right.

4 CLERK OF COURT: The ones for this trial are going to
5 be sent to the big courtroom.

6 THE COURT: All right, good, so we'll be in the
7 courtroom there. All right, does anyone anticipate us
8 needing to meet as a group again? There is one meeting I
9 do want to have we discussed in chambers, but other than
10 that, any need y'all see for us to meet before Monday week?

11 MR. WILSON: Not from the defense other than what we
12 discussed earlier.

13 THE COURT: Okay.

14 MR. HUMPHRIES: Your Honor, we will have to reaffirm
15 the findings of the state hospital in regard to the
16 defendant's competence to stand trial prior to the call of
17 the case.

18 THE COURT: What time is the jury coming in?

19 CLERK OF COURT: 10:00.

20 THE COURT: We can either do that beforehand, or we
21 could do it after we do the general qualifications of the
22 jurors. We could -- as long as we do it before we swear
23 the jury we should be all right, it seems to me. Any
24 reason why we can't do it sometime during the week?

25 MR. HUMPHRIES: Yeah, we'll have to, we'll have

1 reaffirm his competency prior to we start the qualification
2 process I believe, Your Honor. We can do it early that
3 morning. It's going to take, it's going to take longer
4 than -- they'll be in at 10, but it'll take some time to
5 assemble them. And it shouldn't, the competency hearing
6 shouldn't ---

7 THE COURT: All right, is this courtroom busy? Get me
8 a courtroom that's not being used Monday morning.

9 CLERK OF COURT: It won't be.

10 THE COURT: Okay, might just ---

11 CLERK OF COURT: We only have those two courts.

12 THE COURT: Well, just let me know and let Ms. Harris
13 know, and we'll set up in that courtroom initially at 9:00
14 on Monday morning the 16th.

15 CLERK OF COURT: 9:00.

16 THE COURT: Okay, 9:00 on the 16th.

17 CLERK OF COURT: I'll call you prior to that and let
18 you know which courtroom it is.

19 THE COURT: Okay. All right. Now as I understand it,
20 the defendant's been meeting and talking with two
21 psychiatrists. Does -- I'm a little concerned about making
22 sure they've coordinated their efforts on behalf of the
23 defendant and with a neutral person present, I wondered if
24 defense wanted me to talk with them, make sure they are
25 coordinating their efforts on behalf of the defendant. Not

1 necessarily in a courtroom setting. More so in a meeting
2 setting with neutral people present.

3 MR. WILSON: Yes, sir.

4 THE COURT: You want me to do so?

5 MR. WILSON: Absolutely, yes, sir.

6 THE COURT: All right. Ms. Huggins, will you be
7 around Friday?

8 CLERK OF COURT: Yes, sir.

9 THE COURT: All right, I would need you there. Mr.
10 Wilson and Mr. Hembree, maybe the two of y'all in the
11 anteroom maybe or something or with me, it doesn't matter,
12 but just to discuss and not necessarily -- no, definitely
13 not testimony. Just coordinating the treatment, making
14 sure Mr. Winkler's getting proper treatment getting ready
15 for the trial, okay? So, what's a good time? Well, I need
16 to know whether or not you have them available on Friday.
17 I'm available on Friday.

18 MR. WILSON: This Friday?

19 THE COURT: Yes, sir.

20 MR. WILSON: Friday of this week?

21 THE COURT: Yes, sir.

22 MR. WILSON: Two days? I know that he ---

23 THE COURT: I'll be in Hampton next week, but I can
24 come back later on in the week like Thursday or so.

25 MR. WILSON: Friday, Friday ---

1 THE COURT: We're going to be getting too close to
2 trial to be adjusting medication, whatever else.

3 MR. WILSON: Friday is fine with me, Judge, and he
4 will be here on Friday. He has an appointment with the
5 doctor on Friday, but we can work around that with whatever
6 your schedule is.

7 THE COURT: Okay, why don't we try to get to get
8 together, see if you can, if you can get both doctors
9 available in that same chambers I was in the other day.
10 Say 11:00 on Friday might be good. One of them has to come
11 from out of town?

12 MR. WILSON: She's from Charleston.

13 THE COURT: Well, let's say 11:00.

14 MR. WILSON: All right, sir.

15 THE COURT: Y'all see any need for me to have the
16 court reporter there? I'm not going to discuss the case at
17 all. A neutral person present, too.

18 MR. WILSON: I don't have any objection to not having
19 a court reporter for that meeting.

20 THE COURT: Just trying to think. I'd better have
21 somebody there. I've got to have somebody taping what
22 we're doing. Madam Court Reporter, that would really
23 impose possibly a serious hardship on you to be here
24 Friday, would it?

25 COURT REPORTER: I have an Advisory Committee meeting

1 that morning with Court Administration.

2 THE COURT: Well, how about getting me a court
3 reporter to be here Friday, okay?

4 COURT REPORTER: I'll call them.

5 THE COURT: Just get me someone. Dixie might be good.
6 Do you think Dixie's around or whatever?

7 CLERK OF COURT: I do not know, sir.

8 THE COURT: Well, I'm depending upon you. Since
9 you've got this case, you got to find me somebody Friday,
10 all right?

11 COURT REPORTER: What time?

12 THE COURT: 11:00.

13 MR. HEMBREE: Brenda, Brenda doesn't have a judge.

14 THE COURT: That's good, but I just want somebody to
15 get me somebody, and I'm just putting her -- get me
16 somebody.

17 CLERK OF COURT: In your chambers?

18 THE COURT: In Judge Cottingham's chambers. Is that
19 the one I'm going to use during the trial or not?

20 CLERK OF COURT: That's the one you want, it's yours.

21 THE COURT: Judge Cottingham wants it, it's Judge
22 Cottingham's.

23 CLERK OF COURT: I'm not sure who the other judge is
24 that week.

25 THE COURT: Just find me some reasonable chambers will

1 be fine.

2 CLERK OF COURT: I will. I'll take care of it.

3 THE COURT: As close as possible to the large
4 courtroom.

5 CLERK OF COURT: Yes, sir.

6 THE COURT: Anything else before we adjourn?

7 MR. HEMBREE: Nothing from the state, Your Honor.

8 MR. WILSON: Yes, sir. I have a couple of things I
9 need to put on the record, and I'll start with this one.
10 The defendant has indicated to me on several occasions that
11 he is dissatisfied as Mr. Rathbun and that they've had some
12 disagreements, according to him, and he has been very
13 concerned about it. He made me aware of it. I told him
14 that I would bring that to the attention of the Court, and
15 I'm attempting to do that.

16 I know the last episode was, I guess, a couple of
17 weeks ago. Mr. Rathbun went to see him and they had a
18 conversation. I was not present at that meeting. Mr.
19 Rathbun and I had gone out on the Friday before, and they'd
20 actually taken him to Charleston to meet with the
21 psychiatrist. So, when we got there he had already left,
22 so we didn't get to see him. On Monday, Mr. Rathbun went
23 back out there to see him -- I wasn't there -- and actually
24 did see him. Had a conversation with him.

25 When I saw him on Tuesday, he was upset and irrate,

1 saying that Mr. Rathbun said some things to him, and I'm
2 reluctant to go into the details of some of the things he
3 said in open court because I don't want to prejudice him in
4 any way by going into the things that were said. So, I'm
5 not sure how much of it that I can repeat without
6 compromising him and ---

7 THE COURT: The state looks like they're ready to
8 leave, but then again it doesn't matter. This is going to
9 be on the record anyway. So, if y'all wish to, you can but
10 there may be a motion to excuse Mr. Rathbun. If I excuse
11 him, then we would be continuing the case. So, if y'all
12 want to leave, you can but you're leaving at your own peril
13 in that regard because this is going to be on the record.
14 I'm not going to take too much about any specifics
15 regarding it because I don't want to prejudice the
16 defendant.

17 MR. HEMBREE: We'll just step outside, Your Honor, and
18 that way ---

19 MR. WILSON: Well, I'm not going to say any more in
20 that regard, so they're fine to stay. And then I think
21 they need to stay for the second part of my motion.

22 THE COURT: All right.

23 MR. WILSON: But I don't know if he wants to be heard
24 in that regard, and I know I'm kind of handicapping you
25 because I'm only giving you ---

1 THE COURT: Well, Mr. Winkler needs to know that
2 unless anything regarding Mr. Rathbun reaches the point of
3 incompetence or something that I would make a preliminary
4 determination of ineffective assistance, it's improbable
5 that I would remove Mr. Rathbun unless it's something that
6 would really seriously prejudice Mr. Winkler's rights to
7 receive a fair trial. From what you've told me, Mr.
8 Wilson, it sounds to me like disagreements among them.
9 With you being the chief counsel, I mean, you know, if ever
10 there are disagreements between you and Mr. Rathbun, I'm
11 sure Mr. Rathbun defaults to your leadership because of
12 your experience and the fact you are lead counsel. Are
13 there any problems there?

14 MR. HEMBREE: No, sir, I don't have any problems.

15 THE COURT: So, even though there might be
16 disagreement between Mr. Winkler and Mr. Rathbun, you've
17 always ended up basically deciding after talking to Mr.
18 Winkler, with him, with his consent, the correct course to
19 go, right?

20 MR. WILSON: Yes, sir.

21 THE COURT: Well, then, I really don't see any need to
22 pursue it any further unless you know of something that
23 would be such that would be to the level of ineffective
24 assistance of counsel to this preliminary point.

25 MR. WILSON: I do not. He's sitting here at this, at

1 this point saying that's not the case, and I, so I want --
2 I -- just out of an abundance of caution, I want the Court
3 to give him an opportunity to be heard. You know, I'm not
4 -- I don't want in any way to prevent him from having his
5 say. And even if the solicitor has to go outside while he
6 has his say, I just think it's important that he has his
7 say so that it's in the record.

8 THE COURT: Well, when the solicitor goes outside,
9 we've got twenty witnesses in here. And if he were to say
10 something to prejudice himself, obviously I couldn't
11 prevent these people from testifying to that. So, he might
12 even be better with the solicitor in here. That way, the
13 solicitor might be called as a witness, couldn't be an
14 attorney.

15 But, Mr. Winkler, sir, my concern is this. Now, you
16 understand my serious concern. I don't want you in any way
17 to prejudice yourself, Mr. Winkler. So, if you want to
18 tell me anything, I don't want to hear anything, sir, about
19 the case. And if we get to talking about the case, we're
20 going to have to stop it totally. Now, if you have some
21 concern about Mr. Rathbun as an individual or his
22 experience or his treating you fairly, that type of thing,
23 I'll be glad to hear from you, but nothing about the case
24 itself.

25 MR. WINKLER: Well, I mean, I'm -- the situation here,

1 I don't know if I should be -- he's going to tell me to go
2 ahead and say it or not. I mean, the question is is he was
3 looking for the easiest way out. It's apparent that he's
4 not going to do that, and he's telling me to take a plea,
5 to plead guilty and everybody knows there's no plea. Even
6 if there was a plea ---

7 THE COURT: Mr. Winkler, let me assure you of this.
8 Regardless of whether anybody tells you to or not, sir, I
9 would not accept a plea unless you yourself felt that way.
10 And I understand from you, sir, you wish a trial and you
11 feel that you're innocent, and you don't feel the state can
12 prove you're guilty, and so I agree with you, sir. You
13 need a trial.

14 MR. WINKLER: Absolutely, sir, and everybody knows
15 that there's no plea in this case. He's telling me to
16 plead guilty.

17 THE COURT: That hasn't changed your mind, has it?

18 MR. WINKLER: Well, no, sir.

19 THE COURT: Okay, let's continue on.

20 MR. WINKLER: No, I mean, as a lawyer, I mean, I don't
21 know. I was seeking counsel on it. That's the only
22 counsel he's given me.

23 THE COURT: Okay.

24 MR. WINKLER: Was to plead guilty. So, apparently he
25 thinks that I'm guilty. I mean, that's all he told me that

1 day. That's all the -- why, the reason he came in to see
2 me.

3 THE COURT: All right. Thank you, Mr. Winkler. Mr.
4 Rathbun, stand up for me, sir. Mr. Rathbun, is your
5 interest concerning this case the best interests of Mr.
6 Winkler?

7 MR. RATHBUN: I believe it is, Your Honor. I believe
8 that Mr. Winkler heard what he wanted to hear and didn't
9 hear what I was saying.

10 THE COURT: All right, and you will assure the Court
11 you will do your utmost to represent him in a trial if
12 that's what he decides to go forth and do, and which
13 apparently is what we're going to be doing?

14 MR. RATHBUN: Yes, I do.

15 THE COURT: Okay. Mr. Wilson, anything else, sir?

16 MR. WILSON: No, sir, on that issue.

17 THE COURT: I do not believe this has reached the
18 level of Mr. Rathbun being excused at all.

19 MR. WILSON: All right, sir. And, Your Honor, just --
20 and that satisfies me with regard to Mr. Rathbun in that
21 issue.

22 The next issue is one at the jail. He tells me that,
23 and I've written a letter to Director Fox out at the jail
24 in that regard, that some of the jail detention officers
25 have made statements regarding him. And the one most

1 recently, he tells me that one of the guards, and he gave
2 me the detention officer's name and I've sent that to Mr.
3 Fox, but that they've called him dead man walking and that
4 he was really upset by that.

5 THE COURT: Mr. Wilson, I will not tolerate that. If
6 that's going on, that is going to the stop.

7 MR. WILSON: And he did tell me that, and I sent a
8 letter, so.

9 THE COURT: No, you need more than a letter. You want
10 me to call someone, sir? That is not appropriate. It will
11 not occur.

12 MR. WILSON: Yes.

13 THE COURT: Who's -- Mr. Fox is in charge of the jail?

14 CLERK OF COURT: The sheriff is the big one in charge
15 of the jail. He is -- Mr. Fox is the director, but the
16 sheriff is in charge of the jail.

17 THE COURT: All right, the sheriff's not here. Who's
18 the chief deputy here in this room right now? Who's the
19 highest ranking deputy? All right, good. All right, now
20 what I need from you, I need for you to make sure that the
21 sheriff -- this is Officer Corporal Johnson, right?

22 CORPORAL JOHNSON: Yes, sir.

23 THE COURT: Corporal Sam Johnson. Corporal Johnson, I
24 want a report back from you that you've talked to the
25 sheriff and that you've looked into these matters that Mr.

1 Wilson says, and you have done your utmost and the sheriff
2 has done his utmost to discipline or stop and stop that
3 from happening, okay, sir?

4 CORPORAL JOHNSON: Yes, sir.

5 THE COURT: If it is happening. I'm not saying it is,
6 but he says it is, so let's look into it. That is not
7 appropriate whatsoever, and that is to stop. So, Mr.
8 Wilson, that will stop and if we find it's still going on,
9 someone's going to be disciplined for it.

10 MR. WILSON: Thank you.

11 THE COURT: If the sheriff doesn't, I will.

12 MR. WILSON: Thank you. Your Honor, the last issue is
13 one of the ones I raised with you in chambers, and that is
14 his medication.

15 THE COURT: I told you we'll talk to the physicians on
16 Friday about that.

17 MR. WILSON: All right, sir.

18 THE COURT: That will be the purpose of our discussion
19 on Friday is making sure that the two physicians get
20 together on the proper type of medication.

21 MR. WILSON: All right, sir.

22 THE COURT: For the best interest of Mr. Winkler.

23 MR. WILSON: All right, sir, then that covers
24 everything.

25 MR. HEMBREE: Thank you, Your Honor.

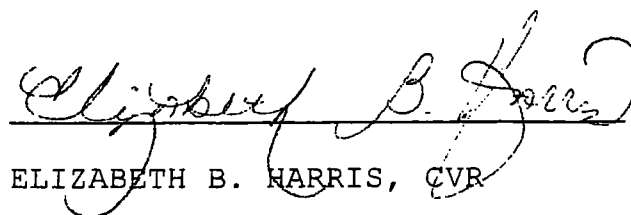
1 THE COURT: All right. Okay, I'll be back here at 11
2 on Friday, and we'll go from there.

3 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR HORRY COUNTY, SOUTH CAROLINA, ON THE 3RD DAY OF JULY, 2007.

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


ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

AUGUST 9TH, 2007

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS
06-GS-26-2101

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
 vs.)
)
 LOUIS M. WINKLER,)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF RECORD

JULY 6, 2007
CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, JAMES E. LOCKEMY

APPEARANCES:

BY: J. GREGORY HEMBREE, ESQ.
ATTORNEY FOR STATE

BY: FRANCIS A. HUMPHRIES, JR., ESQ.
ATTORNEY FOR STATE

BY: RALPH J. WILSON, ESQ.
ATTORNEY FOR LOUIS M. WINKLER

BY: PAUL E. RATHBUN, ESQ.
ATTORNEY FOR LOUIS M. WINKLER

BRENDA R. BABB
Circuit Court Reporter

	2
EXAMINATION OF DR. ELLISON BY ^{INDEX} MR. WILSON	18
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HEARING ON MEDICATION - JULY 6, 2007

3

1 THE COURT: ALL RIGHT, MADAM COURT REPORTER, I
2 ASSUME YOU HAVE THE INDICTMENT NUMBERS AND ALL ON RECORD.

3 MADAM COURT REPORTER: YES, SIR.

4 THE COURT: THE PURPOSE OF THE HEARING TODAY IN
5 THE STATE V. WINKLER IS THEY WANTED TO DISCUSS SOME ISSUES
6 REGARDING THE MEDICATION OF MR. WINKLER TO MAKE SURE HE IS
7 GETTING ADEQUATE MEDICATION AND ALSO WANTED TO DISCUSS SOME
8 ISSUES REGARDING JUROR REQUESTS THAT THE CLERK HAS.

9 SO, MR. WILSON, YOU HAD MENTIONED TO ME ON
10 TUESDAY WHEN WE WERE HERE TO DISCUSS JUROR ISSUES THAT YOU
11 HAD SOME CONCERN REGARDING THE TREATING PHYSICIAN THROUGH
12 THE STATE AS WELL AS THE PHYSICIAN YOU HAD RETAINED TO
13 TESTIFY FOR MR. WINKLER IF IT BECOMES NECESSARY IN THE
14 TRIAL THAT THERE HAD BEEN DIFFERENCES BETWEEN THEM
15 REGARDING THE MEDICATION OF MR., MR. WINKLER. YOU CALLED
16 ME YESTERDAY AND SAID THAT YOU HAD SET UP DR. ELLISON TO
17 SEE MR. WINKLER AND TO MAYBE SEE IF THERE'S A WAY TO
18 INCREASE THE MEDICATION. I TOLD YOU THAT IF YOU NEEDED MY
19 ASSISTANCE IN THAT REGARD LET ME KNOW BUT YOU SAID THAT YOU
20 FELT THROUGH WORKING WITH THE STATE YOU COULD GET MR.
21 WINKLER TRANSPORTED TO SEE THE DOCTOR, BUT WE HAD INITIALLY
22 SET UP TO HAVE TO HAVE HIM HERE AS WELL YOUR EXPERT
23 WITNESS. I UNDERSTAND, THOUGH, THAT YOU NOW DECIDED NOT TO
24 HAVE DR. ELLISON BE HERE TODAY?

25 MR. WILSON: YES, SIR, YOUR HONOR, I TALKED WITH DR.

HEARING ON MEDICATION - JULY 6, 2007

4

1 ELLISON ON YESTERDAY AND HE AGREED TO MEET WITH AND SEE MR.
2 WINKLER ON YESTERDAY AND HE DID DO THAT AND HE ALSO AGREED
3 THAT HE WOULD FAX ME OVER A COPY OF HIS FINDINGS ONCE HE
4 EVALUATED HIM AGAIN AND, AND DECIDED WHAT, IF ANY,
5 MEDICATION CHANGES WERE NEEDED WHICH WAS WHAT WE WERE
6 TRYING TO ACCOMPLISH BY THE HEARING, WHICH WAS TO GET HIM
7 TO AGREE TO INCREASE THE MEDICATION BECAUSE WE THOUGHT THAT
8 IT NEEDED TO BE INCREASED IN ORDER TO, TO COUNTER HIS
9 GROWING ANXIETY AS THE TRIAL APPROACHES. THAT WAS DONE.

10 HE DID FAX ME OVER A LETTER ABOUT 5 O'CLOCK
11 YESTERDAY AFTERNOON INDICATING THAT. AND I KNEW THAT DR.
12 HALAVONICH WAS GOING TO BE HERE BECAUSE SHE WAS SCHEDULED
13 TO COME ANYWAY TO MEET WITH THE DEFENDANT, AND I WANTED TO
14 GET BOTH OF THEM TOGETHER TO TRY TO GET DR. ELLISON TO
15 CHANGE HIS OPINION AND TO INCREASE THE MEDICATION SO HE'S
16 INCREASED IT.

17 THE QUESTION NOW BECOMES WHETHER OR NOT THE
18 INCREASE THAT HE HAS PRESCRIBED IS SUFFICIENT TO GET THE
19 DEFENDANT TO WHERE HE NEEDS TO BE FOR THE PURPOSES OF THE
20 TRIAL AND AT THE SAME TIME TO ALLOW HIM TO BE COMPETENT
21 AND, AND, AND ABLE TO PARTICIPATE MEANINGFULLY IN THE
22 COURSE OF THE TRIAL AND DR. HALAVONICH, WHO IS SEATED
23 BEHIND ME, DID SEE HIM THIS MORNING. AND, YOUR HONOR, FOR
24 THE RECORD SHE'S A FORENSIC PSYCHIATRIST, AND I WILL PUT
25 SOME INFORMATION IN THE RECORD ---

HEARING ON MEDICATION - JULY 6, 2007

5

1 THE COURT: AND DR. ELLISON IS A PSYCHIATRIST
2 ALSO?

3 MR. WILSON: HE IS A PSYCHIATRIST, I DON'T
4 THINK HE'S A FORENSIC PSYCHIATRIST.

5 THE COURT: BUT HE IS A MEDICAL DOCTOR. HE'S A
6 PSYCHIATRIST, OKAY.

7 MR. WILSON: THAT'S MY -- YES, SIR.

8 THE COURT: OKAY, ALL RIGHT.

9 MR. WILSON: AND DR. ELLISON HAD BEEN WORKING
10 WITH HIM I THINK SINCE MARCH OF THIS YEAR WHEN HE WAS
11 ORIGINALLY PRESCRIBED SOME OF THE MEDICATIONS THAT, THAT HE
12 IS ON AFTER HE HAD GONE TO WILLIAM S. HALL AND HAD A STINT
13 UP THERE.

14 SO WHAT, WHAT I, WHAT I, SINCE WE, AFTER THIS
15 MORNING, I HAD DR. HALAVONICH SPEAK WITH THE DEFENDANT.
16 SHE HAS COME BACK AND SHE'S TOLD ME THAT SHE BELIEVES THAT
17 THE MEDICATION THAT HE IS ON IS PROBABLY STILL INSUFFICIENT
18 AND THAT SHE WOULD RECOMMEND, AND I'LL LET HER TELL YOU
19 THIS, BUT, BUT SHE BELIEVES THAT IT PROBABLY SHOULD BE 150
20 AS OPPOSED TO 100 MILLIGRAMS OF SEROQUEL.

21 THE COURT: AND IT WAS 75 BEFORE TODAY?

22 MR. WILSON: IT WAS 75 AND HE INCREASED IT TO
23 100. DR. ELLISON INCREASED IT YESTERDAY TO 100 SO IT'S NOW
24 IT STANDS AT 100 AND HER CONCERN IS IS THAT THAT'S NOT
25 GOING TO BE ENOUGH.

HEARING ON MEDICATION - JULY 6, 2007

6

1 THE COURT: BUT YOU DO UNDERSTAND, MR. WILSON,
2 THAT THE COURT IS NOT A PHYSICIAN.

3 MR. WILSON: YES, SIR, I DO UNDERSTAND.

4 THE COURT: AND BETWEEN OPPOSING PHYSICIANS, ONE
5 BEING THE TREATING PHYSICIAN AND ONE EXPERT OPINION, THE
6 COURT'S REALLY NOT ABLE TO TELL ONE TO DO THE OTHER. I'M
7 NOT GOING TO ORDER A DOCTOR TO GIVE SOMEONE MEDICATION.

8 IF YOU WISH TO HAVE ANOTHER PHYSICIAN WE'RE
9 GETTING AT A LATE HOUR TO DO THAT AS FAR AS WITHIN THE
10 STATE TO LOOK AT HIM. BUT I AM A LITTLE CONCERNED ABOUT US
11 DEBATING THIS AT THE TENTH HOUR IF NOT THE ELEVENTH, BUT
12 I'LL BE GLAD TO HEAR FROM DR. HALAVONICH AND WE CAN DISCUSS
13 THOSE THINGS WITH HER IF YOU WANT TO CALL HER TO THE STAND.

14 MR. WILSON: YES, SIR, I WILL AND, JUDGE, JUST
15 ONE MORE THING ---

16 THE COURT: BUT LET'S MAKE WE GET THE PARAMETERS
17 OF HER APPEARANCE ON THE STAND SO I CAN MAKE SURE I LIMIT
18 THE SCOPE OF ANY QUESTIONING OF HER.

19 MR. WILSON: YOUR HONOR, THE, THE, THE ONLY
20 PURPOSE FOR WHICH SHE'S HERE TO DAY IS SIMPLY TO DISCUSS
21 THE MEDICATION THAT MR. WINKLER IS ON AND WHETHER OR NOT
22 THE, THE, THAT THE AMOUNTS OF THAT MEDICATION IS GOING TO
23 BE SUFFICIENT TO GET HIM TO BE IN A POSITION MENTALLY AND
24 EMOTIONALLY SO THAT HE CAN PARTICIPATE EFFECTIVELY DURING
25 THE COURSE OF THE TRIAL.

HEARING ON MEDICATION - JULY 6, 2007

7

1 THE COURT: AND AS I MENTIONED TO YOU IN
2 CHAMBERS TODAY I AM AMAZED THAT DR. ELLISON IS NOT HERE.
3 YOU SAID THAT HE DECIDED HE DIDN'T WANT TO BE HERE TODAY,
4 BUT SINCE HE IS A PHYSICIAN WITHIN SOUTH CAROLINA I WOULD
5 HAVE REQUIRED HIM TO BE HERE TODAY. IT'S GOING TO BE
6 DIFFICULT FOR THIS COURT TO DO SOMETHING HEARING ONLY ONE
7 SIDE ANYWAY WHETHER I COULD HAVE OR NOT AND I'M CONCERNED
8 WHETHER YOUR REQUEST ON TUESDAY TO HAVE THEM BOTH HERE AND
9 I TOLD YOU I WOULD DO SO AND THEN ONE'S NOT HERE.

10 MR. WILSON: YOUR HONOR, LET ME SAY AND I, AND
11 I TAKE FULL RESPONSIBILITY FOR THAT. I THINK ON YESTERDAY
12 WHEN I TALKED WITH DR. ELLISON BECAUSE THAT WAS MY
13 UNDERSTANDING OF YOUR, OF YOUR POSITION IS THAT I WAS TO
14 HAVE BOTH DOCTORS HERE ON THIS MORNING SO THAT WE COULD
15 TALK WITH BOTH OF THEM. AND AFTER TALKING WITH DR. ELLISON
16 ONE OF THE THINGS THAT HE INDICATED TO ME WAS THAT HE
17 NEEDED TO SEE HIM AND TO EVALUATE HIM TO DECIDE IF IN FACT
18 HE NEEDED ADDITIONAL MEDICATION.

19 THE COURT: DO YOU HAVE HIM ON THE STAND BY AT
20 LEAST BY TELEPHONIC COMMUNICATION?

21 MR. WILSON: YES, SIR, I TOLD HIM THAT WE WOULD
22 HAVE THIS HEARING THIS MORNING AND THAT I MAY NEED TO GET A
23 HOLD OF HIM ONCE WE HAD THE HEARING SO WE CAN TRY TO GET A
24 HOLD OF HIM.

25 THE COURT: MS. HUGGINS?

HEARING ON MEDICATION - JULY 6, 2007

8

1 MS. HUGGINS: YES, SIR?

2 THE COURT: DOES THIS PHONE HAVE A SPEAKER PHONE
3 ON IT?

4 MS. HUGGINS: I THINK SO, YES, SIR.

5 THE COURT: WELL MAYBE AFTER WE HEAR FROM DR.
6 HALAVONICH MAYBE WE MIGHT SEE IF WE CAN CALL HIM AND PUT
7 HIM ON THE SPEAKER PHONE HERE SO THAT MS. BABB CAN PICK UP
8 THE CONVERSATION WE HAVE WITH HIM.

9 MR. WILSON: ALL RIGHT, SIR.

10 THE COURT: ALL RIGHT.

11 MS. HUGGINS: I DON'T THINK THESE PHONES HERE
12 DIAL OUT LONG DISTANCE.

13 MR. HUMPHRIES: IT'S NOT LONG DISTANCE.

14 MR. WILSON: IT'S NOT LONG DISTANCE.

15 MS. HUGGINS: OKAY.

16 MR. WILSON: WACCAMAW MENTAL HEALTH.

17 MS. HUGGINS: OKAY.

18 THE COURT: WAIT A MINUTE. HE'S ONLY 10 MILES
19 FROM HERE, FIVE MILES FROM HERE?

20 MR. WILSON: YES, SIR, IT'S NOT EVEN FIVE
21 MILES.

22 THE COURT: WELL WHY DON'T YOU JUST CALL HIM AND
23 TELL HIM TO COME ON OVER?

24 MR. WILSON: I'LL CALL HIM, JUDGE. I DON'T
25 KNOW THAT HE'LL LISTEN TO ME, HE MIGHT LISTEN TO THE STATE.

HEARING ON MEDICATION - JULY 6, 2007

9

1 THE COURT: WELL HE'S YOUR DOCTOR, MR. WILSON.

2 MR. WILSON: NO, SIR, HE'S THE STATE DOCTOR.

3 THE COURT: NO, NO, HE'S THE TREATING DOCTOR FOR
4 HIM, THOUGH.

5 MR. WILSON: YES, SIR, BUT HE DOESN'T, HE WORKS
6 FOR THE STATE OF SOUTH CAROLINA AND HE EXAMINED ---

7 THE COURT: WELL DID YOU ASK THEM TO HELP YOU
8 GET HIM HERE?

9 MR. WILSON: NO, SIR, I DID NOT AND I NEVER
10 REQUIRED HIM TO BE HERE THAT'S WHAT I, THAT'S WHY WE'RE
11 HAVING THIS DEBATE NOW. I NEVER REQUIRED HIM TO BE HERE.

12 THE COURT: WELL LET ME ASK YOU THIS, DR.
13 HALAVONICH -- COULD YOU STAND UP, PLEASE MA'AM? HAVE YOU
14 TALKED WITH DR. ELLISON?

15 DR. HALAVONICH: YES.

16 THE COURT: HAVE YOU TALKED WITH HIM THE LAST
17 DAY OR SO?

18 DR. HALAVONICH: NO, THE LAST TIME I TALKED TO
19 HIM WAS ABOUT THREE WEEKS AGO.

20 THE COURT: WOULD IT NOT BE BENEFICIAL IF HE
21 WERE HERE TODAY FOR YOU TWO TO TALK TOGETHER?

22 DR. HALAVONICH: SURE, I THINK IT WOULD BE.

23 THE COURT: MR. HEMBREE, SEE WHAT YOU CAN DO TO
24 SEE IF YOU CAN GET HIM. MR. WILSON, GET A PHONE NUMBER.
25 LET'S GET HIM OVER HERE. TELL HIM I'LL BE GLAD TO GET HIM

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10

1 A RIDE WE CAN GET IN HERE QUICKLY BY, WELL I KNOW HE DRIVES
2 PRETTY FAST OVER THERE, SO I CAN GET HIM THERE. WE'RE IN
3 RECESS, WE'RE IN RECESS FOR A SECOND. LET MR. HEMBREE MAKE
4 A PHONE CALL.

5 MR. WILSON: ALL RIGHT, SIR.

6 (WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING
7 TAKES PLACE ON THE RECORD AFTER THE RECESS.)

8 THE COURT: DR. ELLISON IS ON THE WAY?

9 MR. WILSON: YES, SIR.

10 THE COURT: HE'S ONLY A FEW MINUTES AWAY?

11 MR. WILSON: YES, SIR, IT'S ABOUT FOUR MILES.

12 THE COURT: ALL RIGHT, BUT HE SAID HE WAS IN A
13 VEHICLE COMING. IT'S NOT LIKE HE'S GOT AN APPOINTMENT
14 FIRST OR HAVING LUNCH WHATEVER ELSE HE IS COMING?

15 MR. HEMBREE: YOUR HONOR, HE IS ON HIS WAY
16 IMMEDIATELY. IT WAS CLEARLY UNDERSTOOD THAT WE WERE
17 WAITING ON HIM.

18 THE COURT: ALL RIGHT, NOW A MATTER OF THREE
19 JURORS HERE, REALLY FOUR, BUT ONE HAS SENT A COPY OF THEIR,
20 A COPY OF THE SCHEDULE SHOWING THEY'RE IN SCHOOL. DONNA,
21 YOU DON'T HAPPEN TO KNOW THE NAME OF THAT PERSON, DO YOU?

22 MADAM CLERK: DUSTIN JOHNSON.

23 MR. HUMPHRIES: WHAT NUMBER?

24 MADAM CLERK: 238.

25 MR. HUMPHRIES: 238.

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11

1 THE COURT: AND HE SENT A COPY OF HIS SCHEDULE
2 SHOWING HE IS IN SCHOOL THIS SUMMER.

3 ANOTHER ONE IS JUROR NUMBER 358, DANIELLE
4 SKIPPER. DANIELLE SKIPPER INITIALLY ALL WE HAD ON HER WAS
5 A AFFIDAVIT FROM THE SHERIFF THAT SHE WAS A FULL TIME
6 STUDENT AND PURSUANT TO MY DISCUSSION WITH THE CLERK I
7 NEEDED SOMETHING MORE THAN THAT. WE HAVE A LETTER FROM THE
8 DEAN OF, OF THE EDUCATION DEPARTMENT I ASSUME AT FRANCIS
9 MARION UNIVERSITY AND THE DEAN STATES THAT MS. SKIPPER IS
10 IN FACT IN SCHOOL FROM JULY 9TH TO AUGUST THE 2ND WORKING
11 ON A MASTERS DEGREE AND SHE'LL BE WORKING AT MARION COUNTY
12 COHORT GROUP WORKING ON HER MASTERS DEGREE FROM JULY 9TH TO
13 AUGUST 2ND, 2007, DOING QUANTITATIVE RESEARCH METHODS IN
14 EDUCATION. THEY MEET FROM 12 TO FIVE MONDAY THROUGH
15 THURSDAY, ALL RIGHT.

16 MR. HUMPHRIES: NO OBJECTION, YOUR HONOR.

17 MR. WILSON: NO OBJECTION.

18 THE COURT: ALL RIGHT, THE NEXT PERSON IS JUROR
19 NUMBER 272, THAT PERSON IS LINDA B. LEAGANS KNOWN AS JANE
20 LEAGANS. WHY LINDA B. LEAGANS IS KNOWN AS JANE LEAGANS I
21 DON'T KNOW BUT THAT'S HOW SHE'S KNOWN AS JANE LEAGANS; HAVE
22 A STATEMENT FROM LISA BRYAN, ADMINISTRATIVE ASSISTANT TO
23 DR. KENNETH BERGMAN AT THE MEDICAL UNIVERSITY OF SOUTH
24 CAROLINA IN THE NEURO SCIENCES DEPARTMENT DEALING WITH
25 MOVEMENT DISORDERS, FROM HIS, FROM HIS OFFICE. MS. BRYAN

HEARING ON MEDICATION - JULY 6, 2007

12

1 STATES THAT MS. LEAGANS IS A PATIENT OF DR. BERGMAN AND HAS
2 A DEEP BRAIN STIMULATION APPOINTMENT SCHEDULED FOR JULY
3 16TH THAT SHE MUST KEEP BECAUSE OF HER SERIOUS MEDICAL
4 CONDITION. SO HE REQUESTS THAT SHE NOT BE REQUIRED TO COME
5 TO JURY DUTY. ANY OBJECTION TO HER BEING EXCUSED?

6 MR. HUMPHRIES: I DON'T KNOW WHAT THAT IS, BUT I
7 DON'T OBJECT.

8 MR. WILSON: I HAVE NO OBJECTION, YOUR HONOR.

9 THE COURT: USING THE WORD DEEP AND BRAIN AND
10 DISORDER ALTOGETHER WOULD MAKE ME ENOUGH THAT WOULD BE
11 CONCERNING, TOO.

12 THEN I HAVE A LETTER THAT I RECEIVED ON THE DESK
13 IN THERE TODAY. IT'S A FORM OF A CARD WHICH MADE IT
14 INTERESTING TO ME, BUT DIDN'T KNOW WHAT IT WAS. I OPENED
15 IT, AND IT'S JUST A LETTER FROM A RUTH KEILEN AND SHE IS
16 JUROR NUMBER 254 THAT SAYS SHE JUST STARTED WORKING AT
17 MARRIOTT VACATION IN FEBRUARY, WHICH WAS FOUR MONTHS AGO,
18 JUST STARTED WORK, REALLY ALMOST FIVE MONTHS AGO, BUT SHE
19 STARTED IN FEBRUARY AND SHE HAS A SIX MONTH PROBATION
20 PERIOD. SHE WORKS ON STRAIGHT COMMISSION SELLING CONDOS
21 AND THE SUMMER IS THEIR PEAK PERIOD. I DON'T THINK THERE
22 IS A PEAK PERIOD RIGHT NOW WITH SELLING CONDOS AT THE
23 BEACH. BUT IN ANY EVENT, AND SHE HAS TO MEET CERTAIN
24 SALES, SALES GOALS OR SHE COULD BE TERMINATED. PURSUANT TO
25 MY INSTRUCTIONS OF THE CLERK, THE CLERK GOT A SIMILAR

HEARING ON MEDICATION - JULY 6, 2007

13

1 LETTER AND, MS. WILLIAMS, YOU'VE TALKED WITH HER HUSBAND
2 WHO CALLED?

3 MS. WILLIAMS: I DID.

4 THE COURT: AND YOU TOLD HIM?

5 MS. WILLIAMS: THAT SHE NEEDED TO COME IN AND
6 SHE COULD ASK THE COURT ---

7 THE COURT: WE'LL HANDLE IT THEN SO WE'LL HANDLE
8 THAT THEN, JUST LETTING YA'LL KNOW SHE WILL BE HERE ON
9 MONDAY THE 16TH.

10 OKAY, THAT HANDLES OUR MATTERS WITH JURORS.
11 THERE ARE NO OTHER MATTERS OTHER THAN I AM, I AM GETTING A
12 SEPARATE COURTROOM, MS. WILLIAMS OR MS. HUGGINS WILL LET
13 YA'LL KNOW WHAT ROOM THAT IS, THAT WE'LL MEET AT 9:00 ON
14 THE 16TH OUTSIDE THE PRESENCE OF THE JURY. IN DOING THAT,
15 MR. HUMPHRIES, DO YA'LL PLAN TO HAVE A WITNESS HERE THAT
16 DAY OR WILL WE DO IT ON THE VARIOUS WRITTEN DOCUMENTS THAT
17 WE'VE GOT BEFORE?

18 MR. HUMPHRIES: WE WILL HAVE A WITNESS, THAT'S
19 OUR STANDARD PRACTICE PARTICULARLY IN CAPITAL CASES. WE'LL
20 HAVE THE, ACTUALLY IT WILL BE DR. FRIARSON WHO WILL BE
21 COMING DOWN. HE WAS ONE OF THE EXAMINING PHYSICIANS FOR
22 HIS EVALUATION REGARDING COMPETENCE AND CRIMINAL
23 RESPONSIBILITY. HE'LL JUST DO A BRIEF REASSESSMENT AND
24 THAT COMBINED WITH HIS PRIOR EXAMINATION WILL AFFORD HIM
25 THE OPPORTUNITY TO GIVE US SOME OPINION.

HEARING ON MEDICATION - JULY 6, 2007

14

1 THE COURT: SO HE IS GOING TO SEE MR. WINKLER
2 BEFORE NEXT MONDAY?

3 MR. HUMPHRIES: YES, SIR, WELL HE'S GOING TO BE
4 HERE THAT MORNING. WHAT WE'LL DO IS WE'LL HAVE MR. WINKLER
5 BROUGHT OVER ABOUT ---

6 THE COURT: ABOUT 9:00?

7 MR. HUMPHRIES: I KNOW, WE'LL HAVE HIM, WE'LL
8 BRING DR. FRIARSON IN AND PUT HIM UP SOME PLACE SUNDAY
9 NIGHT. I'M CERTAIN HE'LL BE ABSOLUTELY PLEASED WITH US AS
10 A RESULT OF THAT BUT --

11 THE COURT: AND, OKAY, MR. WILSON, TO LET YOU
12 KNOW IF YOU WISH TO HAVE SOMEONE JUST LET ME KNOW IF YOU
13 NEED MY ASSISTANCE IN GETTING SOMEONE HERE AND LET ME KNOW
14 ALSO WE'LL DO THAT BEFORE WE START JURY QUALIFICATION ON,
15 ON THAT DATE.

16 ANYBODY HERE FROM THE PRESS? ANYBODY HERE WITH
17 POTENTIAL JURORS? ALL RIGHT, LET'S JUST PUT THIS ON THE
18 RECORD TO MAKE SURE WE SET SOMETHING STRAIGHT. THERE WAS
19 CONCERN MENTIONED THE LAST HEARING ABOUT MR. WINKLER STATED
20 MR. RATHBUN HAD TALKED WITH HIM ABOUT GUILTY PLEAS. AS I
21 UNDERSTAND IT THIS HAS NOT CHANGED, THAT THE STATE ITSELF
22 IS NOT WILLING TO ACCEPT, IS WHAT YA'LL HAVE TOLD ME,
23 THEY'RE NOT WILLING TO ACCEPT A GUILTY PLEA THAT WOULD END
24 UP WITH NOT GOING THROUGH THE PENALTY PHASE OF THE TRIAL
25 FOR A JURY OR A JUDGE TO DECIDE THE PENALTY WHICH COULD

HEARING ON MEDICATION - JULY 6, 2007

15

1 RANGE FROM EXECUTION TO LIFE. SO, MR. HUMPHRIES, AM I
2 CORRECT IN THAT UNDERSTANDING OR HAS THAT CHANGED? IF IT
3 HAS YOU NEED TO LET THE DEFENSE KNOW?

4 MR. HUMPHRIES: IT HAS NOT CHANGED, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. HUMPHRIES: THERE IS, THERE WILL BE NO OFFER
7 FROM THE STATE FOR RECOMMENDATION OF A LIFE SENTENCE IN
8 RETURN FOR A GUILTY PLEA.

9 THE COURT: ALL RIGHT, I JUST WANT TO MAKE SURE,
10 MR. WILSON, THAT EVERYONE IS AWARE THEY HAVE NO
11 MISUNDERSTANDING ABOUT THAT THAT THERE IS NO OFFER FOR TO
12 ACCEPT A PLEA FOR LIFE WITHOUT PAROLE.

13 MR. HUMPHRIES: AND, JUDGE, I GUESS I NEED TO BE
14 CLEAR THAT THERE HAS NEVER BEEN IN THIS CASE SUCH AN OFFER
15 SO THAT'S NOT A CHANGE IN POSITION.

16 THE COURT: WELL I STATED THAT EARLIER I
17 THOUGHT.

18 MR. HUMPHRIES: YES, SIR.

19 MR. WILSON: AND HE'S ABSOLUTELY CORRECT,
20 JUDGE. I ASKED HIM ABOUT THAT SEVERAL MONTHS AGO, HE TOLD
21 ME, NO, THEN, THAT HAS NEVER CHANGED THROUGHOUT THIS ENTIRE
22 PROCESS.

23 THE COURT: ALL RIGHT, JUST WANTED TO MAKE SURE
24 THAT WAS CLEAR. NO, NO, MR. WINKLER. I HEARD YOU MENTION
25 YOU HAD NEVER OFFERED THAT, I JUST WANTED TO MAKE SURE,

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16

1 THOUGH, BECAUSE, YOU KNOW, THERE WAS COMMENTS FROM MR.
2 RATHBUN BUT I WANTED TO MAKE SURE THAT MR. RATHBUN'S
3 AWARE OF THAT AS AND MR. WILSON AND THAT THE RECORD IS
4 PRETTY CLEAR THAT THAT'S THERE, OKAY.

5 MR. RATHBUN: YES, YOUR HONOR.

6 THE COURT: THANK YOU, SIR.

7 MR. RATHBUN: YES, SIR, THE FACT OF THE MATTER
8 IS THAT HE DID ASK ME THAT.

9 THE COURT: I KNOW BUT I WANTED TO MAKE SURE
10 THAT, THAT THERE'S NO MISUNDERSTANDING ON HIS PART THAT
11 ASKING IS BASICALLY OF NO IMPORT AT THIS TIME APPARENTLY.

12 ALL RIGHT, NOW, MR. WILSON, YOU WANTED ME TO HEAR
13 FROM DR. HALAVONICH BEFORE DR. ELLISON GETS HERE OR DO YOU
14 WANT ME TO WAIT UNTIL DR. ELLISON GETS HERE?

15 MR. WILSON: IT WOULD PROBABLY BE BETTER IF WE
16 DO IT ONE TIME WHEN HE COMES BECAUSE I ASSUME HE NEEDS TO
17 HEAR WHAT SHE'S SAYING SO THAT HE CAN --

18 THE COURT: BY THE WAY WHILE YA'LL WERE OUT
19 THERE DID SHE AND HE TALK TOGETHER ON THE PHONE?

20 MR. WILSON: YES, SIR, THEY DID.

21 THE COURT: AND TO NO AVAIL, OKAY.

22 MR. WILSON: HE'S ON HIS WAY.

23 THE COURT: OKAY, ALL RIGHT. WELL WHY DON'T I
24 JUST STEP OFF FOR A SECOND THEN AND YOU ALL JUST LET ME
25 KNOW WHEN HE'S HERE AND WE'LL CONTINUE BACK UP AT THAT

EXAMINATION OF DR. ELLISON BY MR. WILSON

17

1 POINT IN TIME. BUT IF HE'S NOT HERE IN ABOUT 10 MINUTES
2 WE'RE GOING TO BE ON THE PHONE AGAIN AND GET SOMETHING
3 DONE. ALL RIGHT, I'LL STEP OUT THEN FOR A SECOND.

4 (WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING
5 TAKES PLACE ON THE RECORD AFTER THE RECESS.)

6 THE COURT: DR. ELLISON ARRIVED AND I TALKED
7 BRIEFLY WITH MR. WILSON AND WITH MR. HUMPHRIES AND MR.
8 RATHBUN AND MR. HEMBREE WITH DR. HALAVONICH. DR.
9 HALAVONICH, SPELL YOUR NAME AGAIN FOR ME, PLEASE, MA'AM?

10 DR. HALAVONICH: IT'S H-A-L-A-V, AS IN VICTOR,
11 O-N-I-C-H.

12 THE COURT: OKAY, HALAVONICH. HALAVONICH TALKED
13 WITH HER AND DR. ELLISON. I INFORMED DR. ELLISON OBVIOUSLY
14 HE'S THE TREATING PHYSICIAN SO I WANTED TO SEE WHAT HE
15 THOUGHT WAS BEST FOR MR. WINKLER. DR. ELLISON THEN TALKED
16 WITH MR. WINKLER AND AT THIS TIME MR. WINKLER IS RECEIVING
17 100 MILLIGRAMS OF SEROQUEL AT NIGHT, 50 MILLIGRAMS OF
18 VISTARIL IN THE MORNING AND 50 IN THE AFTERNOON. AND, AND
19 DR. HALAVONICH IN, IN HER BRIEF DISCUSSIONS WITH MR.
20 WINKLER AND HER EXPERIENCE AS A FORENSIC PSYCHIATRIST SHE
21 HAD THOUGHT MAYBE THE DOSAGE SHOULD BE MORE BUT I WANTED
22 DR. ELLISON TO LOOK AND GIVE HIS THOUGHTS.

23 DR. ELLISON SAYS THAT IN TALKING WITH HIM HE
24 WOULD PRESCRIBE 50 MORE MILLIGRAMS OF SEROQUEL TO BE GIVEN
25 IN THE MORNINGS IN ADDITION TO THE 100 THAT HE TAKES AT

EXAMINATION OF DR. ELLISON BY MR. WILSON

18

1 NIGHT AND THEN 50 OF THE VISTARIL HE'S ALREADY TAKING TWICE
2 A DAY TO KEEP THAT AS IT IS THEN HE'D REEVALUATE HIM ON
3 MAYBE THE MIDDLE OF NEXT WEEK TO SEE HOW THAT IS WORKING IN
4 THAT REGARD. SO, DR. ELLISON, IF YOU WOULD, WOULD YOU MIND
5 JUST COMING AROUND AND LET'S JUST VERIFY THAT AND WE'LL GO
6 FROM THERE WITH DR. ELLISON, JUST NEED TO GET YOU UNDER
7 OATH AND READY TO GO.

8 DID YOU KNOW GEORGE BUSH WHEN YOU WERE AT YALE?

9 THE WITNESS: NO, HE'S A LITTLE OLDER THAN I AM.

10 DR. RICHARD ELLISON

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 THE COURT: ALL RIGHT, IF YOU WOULD, PLEASE,
13 SIR, GIVE US YOUR FULL NAME?

14 THE WITNESS: RICHARD ELLISON.

15 THE COURT: OKAY, IS THAT E-L-L-I-S-O-N?

16 THE WITNESS: YES.

17 THE COURT: NOW, MR. WILSON, WHY DON'T YOU ASK
18 DR. ELLISON ABOUT HIS TREATMENT WITHOUT GETTING INTO TOO
19 MUCH BUT JUST IN HIS DECISION REGARDING THE MEDICATION?

20 MR. WILSON: ALL RIGHT, SIR.

21 DIRECT EXAMINATION

22 BY MR. WILSON:

23 Q DR. ELLISON, YOU'VE BEEN TREATING LEWIS
24 WINKLER SINCE MARCH OF THIS YEAR?

25 A YES.

EXAMINATION OF DR. ELLISON BY MR. WILSON

19

1 Q ALL RIGHT, AND ON HOW MANY OCCASIONS HAVE
2 YOU SEEN HIM?

3 A TWICE.

4 Q ALL RIGHT, AND THE MOST RECENT OCCASION
5 HAVING BEEN YESTERDAY WHICH WOULD HAVE BEEN JULY THE --

6 A 5TH.

7 Q 5TH, AND AT THAT TIME WHAT WAS HIS
8 MEDICATION, WHAT MEDICATIONS WAS HE RECEIVING AT THE TIME
9 YOU SAW HIM ON YESTERDAY?

10 A HE WAS RECEIVING SEROQUEL 25 MILLIGRAMS IN
11 THE MORNING AND 50 MILLIGRAMS AT NIGHT.

12 Q AND AFTER SEEING TODAY DID YOU MAKE A
13 DECISION TO CHANGE THAT AND AFTER HAVING CONVERSATIONS WITH
14 DR. HALAVONICH?

15 THE COURT: NOW, MR. WILSON, I THINK HE CHANGED
16 IT, YOU ASKED HIM WHAT HE WAS DOING BEFORE THURSDAY ---

17 MR. WILSON: YES, SIR.

18 THE COURT: --- REMEMBER HE DID CHANGE IT FROM
19 THE 50 AND 25 ON THURSDAY ---

20 MR. WILSON: THAT'S CORRECT.

21 THE COURT: --- TO 50 AND 50.

22 MR. WILSON: YES, SIR, JUDGE.

23 THE COURT: AND THEN TO 100.

24 MR. WILSON: YES, SIR, LET ME REPHRASE THE
25 QUESTION.

EXAMINATION OF DR. ELLISON BY MR. WILSON

20

1 MR. WILSON: (CONTINUING)

2 Q AFTER SEEING HIM ON JULY THE 5TH DID YOU
3 CHANGE HIS MEDICATION?

4 A YES, I DID.

5 Q ALL RIGHT, AND WHAT DID YOU CHANGE IT TO ON
6 JULY 5TH?

7 A I CHANGED IT TO 100 MILLIGRAMS OF SEROQUEL
8 AT NIGHT DISCONTINUING THE 25 IN THE MORNING AND I ADDED
9 VISTARIL, ANOTHER MEDICATION, 50 MILLIGRAMS IN THE MORNING,
10 AND 50 MILLIGRAMS AT NOON OR MIDDAY.

11 Q AND THEN YOU SAW HIM AGAIN ON TODAY; IS
12 THAT CORRECT?

13 A YES.

14 Q ALL RIGHT, AND AFTER SEEING TODAY AND AFTER
15 HAVING A CONVERSATION WITH DR. HALAVONICH HAVE YOU CHANGED
16 OR INCREASED HIS MEDICATIONS AGAIN?

17 A YES, I AGREED TO GIVE HIM ANOTHER 50
18 MILLIGRAMS OF SEROQUEL IN THE MORNING IN ADDITION TO THE 50
19 MILLIGRAMS OF VISTARIL IN THE MORNING AND THEN KEEP THE 50
20 MILLIGRAMS OF VISTARIL AT MIDDAY AND THE 100 MILLIGRAMS OF
21 VISTARIL AT NIGHT.

22 Q ALL RIGHT, AND IT'S YOUR OPINION THAT HE
23 SHOULD BE ABLE TO FUNCTION WITH THAT DOSAGE?

24 A HOPEFULLY HE WILL BE ABLE TO, YES.

25 Q AND YOU WILL SEE HIM AGAIN ON WHEN?

EXAMINATION OF DR. ELLISON BY MR. WILSON

21

1 A WELL I HAD ORIGINALLY MADE AN APPOINTMENT
2 FOR HIM TO BE BROUGHT BACK TO THE MENTAL HEALTH CENTER NEXT
3 FRIDAY BUT WE CAN MOVE THAT UP TO, YOU KNOW, MAYBE TUESDAY
4 OR WEDNESDAY OF NEXT WEEK TO SEE HIM SOONER JUST MAKE SURE
5 THAT ---

6 THE COURT: WOULDN'T IT BE BETTER WEDNESDAY,
7 THOUGH, INSTEAD OF TUESDAY TO GIVE SEVERAL DAYS FOR THIS TO
8 WORK?

9 THE WITNESS: (CONTINUING)

10 A SURE, EITHER, EITHER WOULD BE FINE I THINK.
11 TUESDAY, HE'LL HAVE SOME EXPERIENCE WITH THE MEDICATION
12 OVER THE WEEKEND AND SO BY THE TIME I SEE HIM HE WOULD HAVE
13 THREE OR FOUR DAYS OF EXPERIENCE WITH THE MEDICATIONS.

14 THE COURT: I HATE TO INTERRUPT YOU, MR. WILSON.

15 MR. WILSON: THAT'S ALL RIGHT.

16 THE COURT: MR. HUMPHRIES WHY ARE YOU STANDING,
17 SIR?

18 MR. HUMPHRIES: THE ONLY REASON I'M STANDING
19 YOUR HONOR, IS THAT I BELIEVE THAT SECURITY WOULD PREFER
20 THAT WE NOT DESIGNATE A SPECIFIC TIME ON A SPECIFIC DAY IN
21 REGARD TO HIS BEING TRANSPORTED TO DR. ELLISON.

22 THE COURT: OKAY, WELL WE WON'T DO THAT ---

23 MR. HUMPHRIES: YES, SIR.

24 THE COURT: --- BUT HE'LL SET UP, HE'LL SET UP
25 THAT ---

MOTION TO QUASH BY DEFENSE

22

1 MR. HUMPHRIES: YES, SIR.

2 THE COURT: --- BUT WEDNESDAY I THINK WOULD
3 PROBABLY BE BETTER IF YOU COULD TO GIVE MORE TIME BUT
4 THAT'S UP TO YOU, IF YOU THINK TUESDAY IT'S UP TO YOU.

5 MR. WILSON: I DON'T HAVE ANY OTHER QUESTIONS.

6 THE COURT: OKAY, I ASSUME THE STATE HAS NO
7 QUESTIONS?

8 MR. HUMPHRIES: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT, THANK YOU. AND, DOCTOR,
10 IF YOU WOULD, I'VE ALSO JUST FOR YOUR INFORMATION MADE SURE
11 THAT IN CASE YOU WISH TO COMMUNICATE WITH DR. HALAVONICH
12 THAT YOU HAVE THE NUMBER AND SHE HAVE YOURS, YA'LL, YA'LL
13 HAVE SHARED THAT, I ASSUME, HAVEN'T YOU?

14 THE WITNESS: YES, WE'VE SPOKEN BEFORE.

15 THE COURT: ALL RIGHT, AND IF YOU WOULD IF AFTER
16 YOU REVIEW MR. WINKLER NEXT WEEK IF YOU HAVE ANY THOUGHTS
17 YOU WANT TO SHARE WITH MR. WILSON ABOUT THE MEDICATION
18 PLEASE LET HIM KNOW AND I'M GOING TO MAKE SURE HE LET'S ME
19 KNOW AND, AND THE STATE TO SEE IF I NEED TO HAVE ANY
20 ADDITIONAL CONVERSATION BEFORE MONDAY THE 16TH.

21 IN THE MEANTIME ALSO, DOCTOR, I'M GOING TO ASSURE
22 YOU THAT I'M NOW INSTRUCTING THE STATE TO WORK WITH THE
23 SHERIFF'S DEPARTMENT TO MAKE SURE THAT THE MEDICATIONS YOU
24 PRESCRIBE THAT THESE MEDICATIONS ARE OFFERED TO MR. WINKLER
25 ON THE TIME AND DATES THAT YOU'VE TOLD THEM AND YOU FEEL

MOTION TO QUASH BY DEFENSE

23

1 THAT HE'S RECEIVED THEM. SO AS I UNDERSTAND IT, WE WANT TO
2 MAKE SURE HE GETS 100 GRAMS OF SEROQUEL AT NIGHT BEFORE
3 BED. WE WANT TO MAKE SURE HE GETS 50 MILLIGRAMS OF
4 SEROQUEL IN THE MORNING AS WELL AS 50 MILLIGRAMS OF
5 VISTARIL AND WE WANT TO MAKE SURE HE GETS 50 MILLIGRAMS OF,
6 OF VISTARIL AROUND NOON MIDDAY.

7 THE WITNESS: YES.

8 THE COURT: ALL RIGHT. SO THOSE ARE, MR.
9 HEMBREE, I WANT TO MAKE SURE THAT THE SHERIFF'S DEPARTMENT
10 MAKES THAT AVAILABLE TO HIM. UNLESS THERE'S SOME EXTREME
11 EMERGENCIES I WANT SOME WRITTEN RECORDS THAT THOSE THINGS
12 HAVE BEEN MADE AVAILABLE TO HIM AT THOSE TIMES.

13 MR. HEMBREE: WE'LL MAKE THOSE ARRANGEMENTS,
14 YOUR HONOR.

15 THE COURT: ALL RIGHT. AND, AND THEN YOU SEE
16 HIM NEXT WEEK AND LET MR. WILSON KNOW, OKAY. THANK YOU,
17 DOCTOR, THANK YOU VERY MUCH.

18 OKAY, ANY OTHER MATTERS WE NEED HANDLED DURING
19 THIS HEARING THEN?

20 MR. HUMPHRIES: NONE FROM THE STATE, YOUR HONOR.

21 MR. WILSON: MAY I HAVE ONE SECOND, YOUR HONOR?

22 THE COURT: UH-HUH.

23 MR. RATHBUN: YOUR HONOR, ABOUT A MONTH AGO WE
24 MET AND I HAD SERVED THE COURT AND THE STATE WITH A MOTION
25 TO HAVE COUNT FOUR OF THE STATE ON THE INDICTMENT QUASHED

MOTION TO QUASH BY DEFENSE

24

1 AND THE STATE AGREED TO DROP THAT.

2 MR. HUMPHRIES: NO, NO. HERE'S WHAT WE, HERE'S
3 WHAT WE AGREED TO DO. WE ARE NOT, IT'S A MATTER OF
4 SEMANTICS. WE ARE NOT GOING TO ADVANCE THE ESCAPE CHARGE.

5 THE COURT: IS IT ON A SEPARATE INDICTMENT?

6 MR. HUMPHRIES: IT'S ON THE SAME INDICTMENT BUT
7 ATYPICALLY THE INDICTMENTS AREN'T PROVIDED TO THE JURY
8 ANYWAY.

9 THE COURT: ALL RIGHT, I'M JUST CURIOUS.

10 MR. HUMPHRIES: IT'S ON THE SAME, IT'S ON THE
11 SAME INDICTMENT. WE WILL NOT ADVANCE THE PROSECUTION OF
12 THE ESCAPE CHARGE. NOW HAVING SAID THAT WE WILL INTRODUCE
13 EVIDENCE REGARDING FLIGHT, WHICH WE'RE PERMITTED TO DO
14 UNDER THE LAW, BUT WE WILL NOT ADVANCE THAT PARTICULAR
15 CHARGE TO AVOID ANY DISCUSSION OF A PRIOR ARREST IN THE, IN
16 THE GUILT PHASE.

17 MR. RATHBUN: THAT'S MY UNDERSTANDING AS FAR AS
18 THAT GOES.

19 THE OTHER HALF OF THAT MOTION WAS TO HAVE THE
20 PRIOR INDICTMENT QUASHED BECAUSE THE GRAND JURY RELIES ON
21 THE STATE'S INFORMATION AND THE INFORMATION WAS THAT THE
22 ORDER, THE SECOND ORDER STATED THAT MY CLIENT HAD TO BE IN
23 THE HOUSE AT 6:00 AND IN MY COPY OF THE ORDER IT'S NOT IN
24 THERE AT ALL. I'VE PROVIDED A COPY OF THE ORDERS WITH ---

25 THE COURT: WELL LET ME ASK YOU THIS. WHEN YOU

MOTION TO QUASH BY DEFENSE

25

1 SAY THE ENTIRE INDICTMENT DO YOU MEAN ALL THE CHARGES OR
2 THE ESCAPE CHARGE?

3 MR. RATHBUN: ALL THE CHARGES.

4 THE COURT: WELL HOW WOULD WHETHER HE WAS
5 VIOLATING AN ORDER ABOUT BEING IN A HOUSE AT A CERTAIN TIME
6 OR NOT BEING SOMEWHERE AT A CERTAIN TIME HAVE SOMETHING TO
7 DO WITH THEIR DECISION TO INDICT HIM ON THE OTHER CHARGES?

8 MR. RATHBUN: BECAUSE THE INDICTMENT IS ONE
9 PIECE WITH FOUR COUNTS.

10 THE COURT: IS IT MURDER, KIDNAPPING, AND WHAT
11 IS THE OTHER ONES?

12 MR. HUMPHRIES: NO, NO, IT'S MURDER AND BURGLARY
13 IN THE FIRST DEGREE.

14 THE COURT: OKAY, SO ---

15 MR. HUMPHRIES: AND ABHAN.

16 THE COURT: OKAY, SO HOW WOULD THE BURGLARY
17 FIRST OR BURGLARY FIRST OR ABHAN OR, OR MURDER HAVE
18 SOMETHING TO DO WITH WHERE HE WAS AT A CERTAIN TIME?

19 MR. RATHBUN: BECAUSE IT'S ALL ONE PIECE, ONE,
20 ONE INDICTMENT WITH FOUR DIFFERENT COUNTS AND THE GRAND
21 JURY RELIED ON THE STATE'S VERACITY AS TO THAT COUNT AND SO
22 THEREFORE I DON'T KNOW WHETHER THE GRAND JURY WENT FORWARD
23 ON THE WHOLE INDICTMENT BECAUSE OF THAT OR NOT. I DON'T
24 HAVE THE, I'M NOT PRIVY TO THAT, SO I'M ASKING TO HAVE THE
25 WHOLE INDICTMENT QUASHED.

MOTION TO QUASH BY DEFENSE

26

1 THE COURT: WELL IF THAT WERE THE CASE IF ANY
2 TIME A PERSON WERE FOUND NOT GUILTY ON A CHARGE IN A
3 MULTIPLE COUNT INDICTMENT YOU WOULD SAY THAT THEY CAN'T
4 FIND HIM GUILTY ON ANYTHING.

5 MR. RATHBUN: YOUR HONOR, I'M JUST ASKING ---

6 THE COURT: IS THAT YOUR POSITION? ALL RIGHT,
7 THE STATE'S POSITION?

8 MR. HUMPHRIES: WE WOULD DISAGREE.

9 THE COURT: ALL RIGHT.

10 MR. HUMPHRIES: LET ME SAY THIS JUST FOR
11 CLARIFICATION AS IT RELATES TO THE 6:00, THE LAST ORDER
12 MODIFYING BOND FOR MR. WINKLER PROVIDED THAT HE BE ALLOWED
13 TWO HOURS OUT DURING EACH DAY, THOSE TWO HOURS, THAT TWO
14 HOUR WINDOW ---

15 THE COURT: NOW THESE WERE CRIMINAL COURT BOND
16 CONDITIONS? THIS WAS NOT A FAMILY COURT MATTER?

17 MR. HUMPHRIES: NO, NO, NO, THIS IS, THIS IS
18 CRIMINAL. THIS IS HIS BOND ON THE PREVIOUS KIDNAPPING,
19 ASSAULT AND BATTERY WITH INTENT TO KILL ---

20 THE COURT: OKAY.

21 MR. HUMPHRIES: --- AND CSC FIRST. THE FOUR TO
22 SIX PERIOD ACTUALLY WAS AN AGREEMENT BETWEEN MR. WINKLER
23 AND THE FOLKS AT J. REUBEN LONG DETENTION CENTER WHO ARE
24 MONITORING HIS ELECTRONIC, THE ELECTRONIC MONITORING. THAT
25 PERIOD WAS PROPOSED BY MR. WINKLER BECAUSE HE HAD A

MOTION TO QUASH BY DEFENSE

27

1 NEIGHBOR WHO WAS AVAILABLE TO DRIVE HIM DURING THAT PERIOD.
2 THE FOUR TO SIX HOUR PERIOD WAS A PART OF A CONTRACT HE
3 ENTERED WITH J. REUBEN LONG. THE TWO HOUR WITHOUT ANY
4 DESIGNATION OF A START AND FINISH TIME WAS ORDERED BY THE
5 COURT SO THE FOUR TO SIX WAS ACTUALLY MR. WINKLER'S OWN
6 DOING. BUT THAT'S PART OF THE, THAT STILLS CONSTITUTES THE
7 ESCAPE BECAUSE WITHIN THAT TWO HOUR PERIOD THAT HE WAS
8 ALLOWED TO BE OUT AT THAT, AT THE END OF THAT TWO HOUR
9 PERIOD HE FAILED TO RETURN TO HIS RESIDENCE.

10 MR. RATHBUN: AND AGAIN MY ONLY ARGUMENT IS THAT
11 THE STATE AND THEIR COMPTROLLER SET UP THE ORDER STATING
12 THAT HE HAD TO BE IN AT 6 O'CLOCK. THE ORDER DID NOT SAY
13 THAT.

14 THE COURT: OKAY.

15 MR. HUMPHRIES: IT'S PREMATURE, WE'RE NOT
16 ADVANCING THAT CHARGE. THIS IS A PREMATURE ARGUMENT.

17 THE COURT: WELL, WELL, NO. BUT HIS ARGUMENT
18 IS, MR. HUMPHRIES, THAT THE FACT THAT IT'S THERE AND HE
19 FEELS IT'S AN INCORRECT STATEMENT OF THE CONDITIONS THAT
20 WERE THERE THAT SINCE THE STATE IN HIS VIEW AND AND ITS
21 WITNESSES GAVE WITNESSES THAT WERE NOT TRUTHFUL ABOUT WHAT
22 THE ORDER OF CONDITIONS WERE THAT THERE COULD ALSO BE SOME
23 CONCERN IF THE GRAND JURY WAS AWARE OF THAT, THAT THEY MAY
24 NOT HAVE BEEN TOTALLY TRUTHFUL IN THAT REGARD, THAT THE
25 GRAND JURY MAY HAVE HAD CONCERN ABOUT THE TRUTHFULNESS IN

MOTION TO QUASH BY DEFENSE

28

1 THE OTHER CHARGES AND MAY NOT HAVE INDICTED HIM ON THE
2 OTHER THREE EITHER. I ASSUME THAT'S YOUR POSITION?

3 MR. RATHBUN: IT IS, YOUR HONOR.

4 THE COURT: OKAY.

5 MR. HUMPHRIES: OF COURSE, YOUR HONOR, AND, WELL
6 THAT HAVING BEEN SAID OUR POSITION IS NOT THAT, THAT THE
7 WITNESS TO THE GRAND JURY WAS NOT TRUTHFUL, WAS IN FACT
8 TRUTHFUL. THE ORDER PROVIDED FOR TWO HOURS, THE TWO HOURS
9 BEING CONTRACTED WHICH IS INCORPORATED INTO THAT ORDER BY
10 MR. WINKLER HIMSELF.

11 THE COURT: WELL IN ANY EVENT I RESPECTFULLY
12 DENY YOUR MOTION.

13 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

14 THE COURT: I THINK THAT'S A MATTER THAT CLEARLY
15 THE GRAND JURY LOOKED AT ALL THE ISSUES OF EACH INDIVIDUAL
16 CHARGE AND THEN INSTRUCTED TO LOOK AT THE THINGS OF EACH
17 INDIVIDUAL CHARGE AND MAKE THE DECISIONS REGARDING THAT ON
18 EACH INDIVIDUAL COUNT IN AN INDICTMENT. SO THANK YOU VERY
19 MUCH.

20 MR. RATHBUN: THANK YOU, YOUR HONOR.

21 THE COURT: OTHER MATTERS YOU'D LIKE TO BRING UP
22 AT THIS TIME, ANYONE?

23 MR. WILSON: NOTHING, YOUR HONOR.

24 THE COURT: HEARING NOTHING THEN UNLESS I HEAR
25 FROM YOU ALL IF THERE'S A NEED FOR A HEARING BEFORE NEXT

MOTION TO QUASH BY DEFENSE

29

1 MONDAY THE 16TH LET ME KNOW. IF NOT WE WILL GATHER, MS.
2 WILLIAMS, WILL LET YOU KNOW, HER OR MS. HUGGINS WILL LET
3 YOU KNOW WHERE WE'LL BE MEETING AT 9 A.M. ON THE 16TH. IT
4 WILL NOT BE IN COURTROOM B; IT WILL BE ANOTHER ROOM
5 INITIALLY AT 9 A.M., HAVE A BLAIR HEARING AT THAT TIME.
6 AFTER THAT WE'LL THEN MOVE OVER TO THE MAJOR COURTROOM
7 WHERE WE'LL DO JURY QUALIFICATION, ALL RIGHT. ALL RIGHT,
8 THANK YA'LL VERY MUCH, SEE YA'LL LATER.

9 MR. HUMPHRIES: THANK YOU, JUDGE.

10 MR. HEMBREE: THANK YOU, JUDGE.

11 THE COURT: THE COURT'S ADJOURNED.

12 END OF REQUESTED TRANSCRIPT - - - -
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA.

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

March 21, 2008

Brenda R. Babb
BRENDA R. BABB, CVR

OFFICIAL REPORTER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF HORRY	)	
	)	
The State	)	DECEMBER 13, 2007
Plaintiff,	)	
	)	
Versus	)	TRANSCRIPT OF RECORD
	)	
Louis M. Winkler, Jr.	)	
Defendant.	)	2006-GS-26-2101
	)	

B E F O R E**THE HONORABLE JAMES E. LOCKEMY****A P P E A R A N C E S:**

Francis A. Humphries, Jr., Esquire
Deputy Solicitor - 15th Judicial Circuit
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Pamela Ozment-Cartee
Circuit Court Reporter

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WITNESS

	Voir Dire	Direct	Cross	Re-Cross
RICHARD FRIERSON, M.D.	04	05	08	10

1 (Whereupon, the Court comes to order at 3:07 p.m. on
2 December 13, 2007.)

3 **The Court:** All right. Is there anything else before
4 we get started, Mr. Solicitor?

5 **Mr. Wilson:** Just one second, Your Honor.

6 (Pause)

7 **The Court:** All right. The purpose of this hearing,
8 number one is to have a Blair Hearing, to determine the
9 competency of the defendant to stand trial. We have had
10 one before, but we are going to do an updated one, and then
11 after that to have administrative discussion about
12 everything, preparing for the trial which is scheduled for
13 trial January 28, in Horry County.

14 All right. Mr. Humphries, do you have any matters you
15 wish to present to the Court regarding the competency of
16 the defendant?

17 **Mr. Humphries:** Yes, Your Honor we have a witness we
18 would like to call in that regard. Your Honor, you called
19 the case, but is that --

20 **The Court:** Madame Court Reporter, do you have the
21 Caption of the Case?

22 **Madame Court Reporter:** Yes, sir.

23 **The Court:** All right. This is State v Winkler.

24 **Mr. Humphries:** Very Good Your Honor. Your Honor, the
25 State calls Richard Frierson to the stand.

RICHARD FRIERSON, M.D.

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

DOCTOR FRIERSON: I so affirm.

CLERK OF COURT: I am sorry, you so affirm.

DOCTOR FRIERSON: Yes, ma'am.

CLERK OF COURT: Please state your name, spelling your last.

DOCTOR FRIERSON: My name is Richard Lusane Frierson,
F-R-I-E-R-S-O-N.

The Court: All right. Mr. Humphries, your witness.

Mr. Humphries: Thank you, Your Honor.

VOIR DIRE EXAMINATION BY MR. HUMPHRIES:

Q. Doctor Frierson, with whom are you employed.

A. I am an Associate Professor of Psychiatry at the University of South Carolina School of Medicine.

Q. Let me ask you, do you also have training in the area of forensic psychiatry.

A. Yes

Mr. Humphries: Your Honor, I have spoke with counsel for the defendant. They advise me that they are going to stipulate to Doctor Frierson's qualifications as an expertise in the area of Forensic Psychiatrist.

The Court: And, did he not testify when we had this matter back in the spring?

Mr. Humphries: Actually Your Honor, I am not certain

1 of that. We had actually three, I believe, we had one in
2 Charleston. I believe we had an update in Horry, just in
3 anticipation of a trial that was continued, and this would
4 be the third. I don't know if --- I know which --- I know
5 that Doctor Frierson --

6 **The Court:** Well, Doctor Frierson, have you ever
7 testified in this case before?

8 **Doctor Frierson:** No.

9 **The Court:** But, I have had Doctor Frierson before me
10 before, so I am aware of his background. You don't have
11 any objection to him giving opinion testimony in the area
12 of psychiatry?

13 **Mr. Wilson:** Absolutely none, Your Honor. I have had
14 this witness many many times, he has testified many times
15 when I was a prosecutor, and as a defense lawyer, and I
16 have absolutely no objections to his qualifications.

17 **The Court:** All right. I will permit him to give
18 opinion testimony in the area of psychiatry. You may
19 proceed.

20 **Mr. Humphries:** Thank you, Your Honor.

21 **DIRECT EXAMINATION BY MR. HUMPHRIES:**

22 Q. Doctor Frierson, can you tell this Court, and
23 obviously this is a revisiting of a Blair issue. Can
24 you tell me first of all just for the record, what
25 findings regarding competency, criminal

1 responsibility, and capacity to conform, did your
2 agency reach in regard to Mr. Winkler, the defendant
3 in this case, initially.

4 A. Initially. It is my recollection that there was never
5 a request for a criminal responsibility, and capacity
6 to conform opinion. We were only asked to examine his
7 competency to stand trial. We issued a report dated
8 October 4th and October 18th 2006 relating an opinion
9 to the Court we felt that Mr. Winkler was competent to
10 stand trial.

11 Q. Let me say this. This issue was raised in Horry
12 County, obviously a Blair Hearing is usually
13 restricted to a finding of competency, the Court
14 actually raised the other issue, capacity to conform
15 to criminal responsibility. We asked this of Doctor
16 Dwyer, and a report was made for that Blair Hearing,
17 and he issued a report. Do you have that report with
18 you, if not I have a copy.

19 A. Let's see.

20 **The Court:** Well, Mr. Humphries, one would assume
21 that the Court made a decision on that back then in the
22 spring anyway.

23 **Mr. Humphries:** You did.

24 **The Court:** And, so since that was the decision,
25 criminal responsibility, at the time of the alleged acts,

1 that would not change.

2 **Doctor Frierson:** I am in error. You are correct.
3 There was a request for criminal responsibility and
4 capacity to confirm, and it is reported to the Court in a
5 separate report

6 **Mr. Humphries:** Very good.

7 **The Court:** Let's proceed on into the Blair Hearing.

8 **Mr. Humphries:** Yes, sir. I will.

9 Q. (By Mr. Humphries) Concerning his competency, have
10 you had an occasion today, to revisit the issue of his
11 competency as it relates to the criminal charges, and
12 his competency to stand trial.

13 A. Yes.

14 Q. Can you tell the Court when that took place?

15 A. I met with him from 12:45 to 1:30 today.

16 Q. Can you tell the Court based on that meeting, has your
17 opinion changed in regard to his competency to stand
18 trial on the charges now pending against him?

19 A. No, it has not.

20 Q. Just for the record, within a reasonable degree of
21 medical certainty in the field of forensic psychiatry,
22 what is your opinion on his competency to stand trial.

23 A. It is my opinion that as of today Mr. Winkler remains
24 competent to stand trial.

25 **Mr. Humphries:** And, that is all we have, Your Honor.

1 **The Court:** Mr. Wilson.

2 **Mr. Wilson:** Thank you, Your Honor.

3 **CROSS EXAMINATION BY Mr. WILSON:**

4 Q. Let me ask you, Doctor Frierson you did not testify in
5 the hearing in Charleston or the hearing in Horry,
6 correct?

7 A. Correct. I was at Charleston, supervising Doctor
8 Dwyer, but I was not at the Horry Hearing.

9 Q. Were you in Court when Doctor Dwyer testified?

10 A. Yes.

11 Q. Did you hear the testimony regarding a personality
12 disorder trait that we said the defendant possessed?

13 A. Yes.

14 Q. Do you agree with his assessment in that regard, or do
15 you have a different opinion about his state of mind?

16 A. I agree with the diagnosis that Dr. Dwyer has
17 assigned. I do not recall specifically what testimony
18 you are referring to. I don't recall anything that he
19 said that I disagree with.

20 Q. Was there any disagreement with what you found to be
21 the situation with the defendant, and what Doctor
22 Dwyer found?

23 A. No.

24 Q. Are you holding consistent with his report?

25 A. Yes.

1 Q. You are?

2 A. Yes.

3 Q. you still are at this point?

4 A. Yes.

5 Q. In your conversation with the defendant today ---

6 Well, let me back up and ask you this, at any time

7 back in October 4th and 18th, I think you said, 4th

8 and 18th I believe you said, is when the Reports were

9 issued; is that correct? October 4th, and 18th, of

10 2006?

11 A. Yes.

12 Q. Did you or Doctor Dwyer prescribe medication for the
13 defendant?

14 A. No. We would not prescribe any medication or
15 treatment for defendants that we are evaluating for
16 the Court. We did recommend after the first
17 evaluation of Mr. Winkler that he be hospitalized, and
18 we did arrange for him to be hospitalized.

19 Q. And, what was the purpose of the hospitalization?

20 A. We had some concerns regarding statements that he made
21 to us that he had potential for a suicide attempt.

22 Q. All right. And, in your conversations with him today,
23 do you still have those concerns, or those concerns
24 now?

25 A. I would say those concerns are abated. He does not

1 report today having any thoughts about wanting to kill
2 himself, and has not had that for some time.

3 Q. In your diagnosis doctor, did you find evidence of any
4 mental illness, or any --- Let me ask it that way
5 first. Did you find any evidence of any mental
6 illness on the part of the defendant?

7 A. Yes.

8 Q. All right. And, what mental illness did you find?

9 A. Well, he has a history of treatment for both depressed
10 mood and anxiety that predates his involvement in this
11 case. Also, he has a history of alcohol abuse, and
12 has paranoid personality traits.

13 Q. And, in your professional opinion, those things would
14 rise to the level of a mental illness?

15 A. Well, it could be argued about personality traits. We
16 all have personality traits. But, certainly the
17 depression and anxiety were significant enough that we
18 felt that they required a diagnosis, so, yes, for
19 those and the alcohol abuse.

20 Mr. Wilson: Thank you, very much doctor.

21 The Court: Any redirect?

22 Mr. Humphries: Very briefly.

23 **REDIRECT EXAMINATION BY MR. HUMPHRIES:**

24 Q. Just for clarification in the record. Doctor Dwyer
25 testified at the last two hearings that describe

1 briefly your involvement in the evaluation of this
2 defendant?

3 A. I was present for all evaluations of this defendant.
4 I supervised Doctor Dwyer when he conducted this
5 evaluation. He was a fellow in Forensic Psychiatry,
6 which means he has completed his residency, and was
7 doing a one year fellowship to become Board eligible
8 in the field of Forensic Psychiatry where I teach.
9 So, I was present and supervised him, and I also asked
10 questions of Mr. Winkler every time he was seen.

11 Q. Just to follow up Mr. Wilson's line of questioning in
12 regarding particularly his AXIS one, and AXIS two
13 diagnosis. These diagnoses that you have indicated
14 --- Let's go back to that other report regarding his
15 capacity to conform, and his criminal responsibility.
16 Do you have that in front of you? I will be glad to
17 hand you a copy.

18 A. I've got it.

19 Q. Very good, thank you.

20 A. It is not in my file where it should be, but it is in
21 another one.

22 Q. Very good. Based on your examination, evaluation of
23 this defendant, with those diagnoses, or AXIS one, and
24 AXIS two, and AXIS three for that matter, do you have
25 an opinion regarding his criminal responsibility to a

1 reasonable degree of certainty in the field of
2 Forensic Psychiatry?

3 A. Yes.

4 Q. What is it?

5 A. It is my opinion that Mr. Winkler's mental illness
6 does not prevent him from distinguishing legal or
7 moral rights from legal or moral wrong, or recognizing
8 the particular act charges legally or morally wrong.
9 Therefore, he would have been criminally responsible
10 pursuant to South Carolina Code §17-24-10.

11 Q. And, as to his capacity to perform, do you have an
12 opinion to a reasonable degree of medical certain in
13 the field of Forensic Psychiatry?

14 A. Yes.

15 Q. What is that?

16 A. It is my opinion that Mr. Louis Winkler's anxiety and
17 depression would not have risen to a level as to
18 substantially impair his ability to conform his
19 conduct to the requirements of the law.

20 **Mr. Humphries:** Thank you. That's all Your Honor,

21 **The Court:** Anything else, Mr. Wilson?

22 **Mr. Wilson:** No, sir, Your Honor.

23 **The Court:** As far as your discussion about
24 competency on the Blair Hearing, I assume that your
25 conclusion in that, in your report is that he understands

1 the nature of the Court system, he understands the role of
2 the various people in the Court system, including the
3 prosecutor, the solicitor, the judge, defense counsel, the
4 jury, and he understands that process, and is able to
5 assist his counsel in his defense? Is that included in
6 your determination and review of his competency?

7 **Doctor Frierson:** Yes, Your Honor.

8 **The Court:** Thank you very much. Is there anything
9 else?

10 **Mr. Humphries:** No, Your Honor, we ask that this
11 witness be excused.

12 **The Court:** Any objection to him being excused?

13 **Mr. Wilson:** Absolutely not.

14 **The Court:** Doctor Frierson, thank you very much. Do
15 you have a written and updated report Mr. Humphries from
16 Doctor Frierson?

17 **Mr. Humphries:** No, Your Honor. And, that is not
18 typical.

19 **The Court:** Any other witnesses from the State?

20 **Mr. Humphries:** No sir, Your Honor

21 **The Court:** Any witnesses from the defense?

22 **Mr. Wilson:** No, sir.

23 **The Court:** I will be glad to hear anything from the
24 State. Hearing nothing, anything from the defense?

25 **Mr. Wilson:** Nothing in this regard, No, sir.

1 **The Court:** All right. Are there any other issues
2 you wish to discuss before I make a decision in this
3 matter?

4 **Mr. Wilson:** Nothing as to competency, Your Honor.

5 **Mr. Humphries:** No, Your Honor.

6 **The Court:** All right. After hearing the testimony
7 of Doctor Frierson, and also recalling my hearings of
8 Doctor Dwyer, and other matters over the course of this
9 trial, of this case, I find it unnecessary to do this, but
10 I am going to do it anyway. I am reaffirming my decision
11 that at the time of the alleged events that Mr. Winkler did
12 understand the nature of right and wrong. He did
13 understand the difference between moral right and moral
14 wrong. And that he was able to conform his conduct, to the
15 requirements of the law. Therefore, he was judged
16 criminally responsible for any acts he may have done.

17 Okay. Further I find that as of this date that Mr.
18 Winkler is competent to go to trial, and to participate in
19 the trial on these changes. He is able to assist his
20 defense. He understands the nature of the Court system.
21 And, that he is competent to stand trial on these matters.
22 Are there any other matters from anyone?

23 **Mr. Humphries:** The only thing Your Honor, and I have
24 been advised by the Clerk, and she is going to address this
25 with the Chief Administrative Judge for Criminal Court in

1 the 15th Circuit.

2 **The Court:** Who will be Chief in --

3 **Mr. Humphries:** That will be Judge John, yes, sir.

4 Our office just received an Order from the Supreme Court --

5 **The Court:** I have discussed --- On that day, they
6 have reassigned as Judge Houston --

7 **Mr. Humphries:** It was Judge Houston.

8 **The Court:** I talked to Court Administration
9 yesterday, and they said that they only did that because
10 they have not gotten to conforming the Orders of putting me
11 there, and they are going to readdress all of that. That
12 is what I received from Court Administration. They are
13 doing things in the Administrative fashion that they do.
14 They have not gotten around to making the other ones, but
15 they assured me they were. When I saw it I got a little
16 concerned with it too.

17 **Mr. Humphries:** Very good, thank you, Your Honor.

18 **Mr. Humphries:** I was just going to discuss the next
19 time that we are scheduled to get together.

20 **The Court:** Let me ask the Clerk on the record. Were
21 the Jury Summons sent out?

22 **Clerk of Court:** Yes, sir.

23 **The Court:** Do we have anything else that we need to
24 discuss or address?

25 **Clerk of Court:** Yes, sir.

1 **The Court:** What is that? Stand up so we can hear
2 you well there.

3 **Clerk of Court:** WE have had several --- We pulled
4 the jury on December 7th. We have had several questions
5 from jurors calling concerning a couple of questions on
6 here. In the past we have always been instructed, in our
7 office by the judge, to not say what the case is, who the
8 defendant is, or anything like that.

9 **The Court:** Right.

10 **Clerk of Court:** We have always been instructed in the
11 past, not to say who the defendant is, or anything about
12 it. Well, one or two of the questions on here directly ask
13 do you know the defendant? Two separate questions. We
14 have no other choice but to tell the people what the case
15 is --

16 **The Court:** Okay. That has already been sent out.
17 So, it has been sent out. So, what is the question.

18 **Clerk of Court:** I just wanted the Court to be aware
19 --

20 **The Court:** Okay. It was sent out for the last case
21 too?

22 **Clerk of Court:** Yes. But, we didn't have the
23 questions we seem to be having on it this time.

24 **The Court:** Give me an example of a question.

25 **Clerk of Court:** Specifically number 79, do you know

1 the defendant?

2 **The Court:** No, what I am saying, wasn't that
3 question sent out the last time?

4 **Clerk of Court:** It was, but nobody --

5 **The Court:** Well, when someone calls you what do they
6 say?

7 **Clerk of Court:** They want to know who is the
8 defendant?

9 **The Court:** Okay. Tell them you can only say what is
10 on the questionnaire. Just answer what is on the
11 questionnaire. If you are not sure, you're not sure,
12 because you are not sure.

13 **Clerk of Court:** I don't know.

14 **The Court:** No, no, no, ma'am. Just tell them to
15 answer the question. That the only thing you can give them
16 is what is on the questionnaire. If they know somebody by
17 that name, and if they are not sure if it is him or not,
18 just put not sure, or put yes I know him by name, but I
19 don't know who this person --

20 **Clerk of Court:** They don't specifically say his name
21 on the questionnaire. It just says the defendant, but it
22 specifically says the victim.

23 **The Court:** Okay. Do you know the defendant is what
24 it says?

25 **Clerk of Court:** Yes.

1 **The Court:** Does the caption have the name of the
2 case on there?

3 **Clerk of Court:** It does not.

4 **The Court:** Okay. Well, that was an interesting
5 question. Y'all reviewed it to send out?

6 **Mr. Humphries:** Yes, sir. I think it was an error,
7 because I think his name was actually on there. I think it
8 was actually on there, but for whatever reason it is not on
9 there now.

10 **The Court:** Well, when the jurors get there, of
11 course, we will be able to find out more about it.

12 **Mr. Wilson:** That is why I would ask that they not be
13 given any information. I agree with --

14 **The Court:** See, I thought she said they had their
15 names, but, yes, don't give them any information. Tell
16 them basically to just disregard that question, because we
17 will find out once they get here.

18 **Clerk of Court:** I just wanted the Court to be aware
19 of that, of what was going on.

20 **The Court:** All right. Very good. Anything else
21 Ms. Huggins, you have the necessary administrative
22 relations?

23 **Clerk of Court:** Let's talk about that back there in
24 a minute, then we will get that going.

25 Anything else from the State?

1 **Mr. Humphries:** Your Honor, just our next date, which
2 appears to be January 11th, which is a Friday. That will
3 be the conference to review the jury questionnaires. Is
4 that still going to be adequate time to have the
5 questionnaire in?

6 **The Court:** Mr. Humphries what do you think?

7 **Mr. Humphries:** That is when we are scheduled now. Is
8 that going to be adequate time? I mean, if not we still
9 got, we still got a week in between.

10 **The Court:** Well, I know, but that week in between, I
11 think I am going to be someplace like Spartanburg. But,
12 that week I will be in Horry County. I am trying to use
13 that as the --- I have been reassigned to Horry County for
14 the week of the seventh.

15 **Mr. Humphries:** Right, but that will be on a Thursday,
16 right?

17 **The Court:** Now, I don't mind if you want to get
18 together the next week. Let's wait and see how it is
19 going. If we need to recharge it, I will just come back
20 from Spartanburg on Thursday, the following week or
21 something.

22 **Clerk of Court:** I doubt that will be enough anyway.

23 **Mr. Humphries:** Actually, typically what we will do is
24 meet the week before, because that way we have our best --

25 **The Court:** Let's just see how things are going. We

1 might need that date just in case something is going on
2 that we need to discuss.

3 **Mr. Humphries:** We may.

4 **The Court:** I just want to make sure that we have
5 everything moving smooth. Is there anything else from the
6 State?

7 **Mr. Humphries:** Nothing from the State, Your Honor.

8 **The Court:** Mr. Wilson, anything else sir?

9 **Mr. Wilson:** No, sir.

10 **The Court:** Mr. Wilson, I want to know if you could
11 approach for you and I, to have an ex parte, just you and
12 I. Any objection? Hearing none, all right, sir.

13 (Whereupon, an ex parte conversation took place
14 between defense counsel and the Court which is transcribed
15 below.)

16 **The Court:** Get me that number. Okay. That will
17 conclude this hearing. We will get together on the 11th,
18 January 11th, at 10:00 a.m. is the time they have it set
19 for, we will review at that time. Then we will get
20 together again around the 18th, 19th, 20th, or something
21 like that, or 21st, 22nd, rather to review further where we
22 are. That will conclude everything. I am going to leave
23 it with the Clerk about other administrative matters. We
24 will see you then, January 11th. Have a good holiday,
25 Christmas season.

1 **Mr. Humphries:** Thank you, Your Honor.

2 (Whereupon, this hearing was concluded at 3:07 p.m. on
3 December 13, 2007.)

4 **-- END OF TRANSCRIPT --**

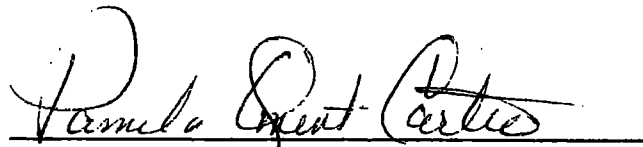
Certificate of Reporter

22

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in The Court of General Sessions, Dillon County, South Carolina, on the 13th day of December 2007.

I do further certify that I am neither, of kin, counsel, nor interest to any party hereto.

March 16, 2008

A handwritten signature in cursive script, reading "Pamela Ozment-Cartee", is written over a horizontal line.

Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
 IN THE COURT OF GENERAL SESSIONS
 COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)
)
 PLAINTIFF,)
)
 -vs-) 2006-GS-26-2101
)
 LOUIS M. WINKLER)
)
 DEFENDANT.)

NON JURY PROCEEDINGS HELD BEFORE
 THE HONORABLE JAMES E. LOCKEMY;
 COMMENCING AT THE HOUR OF 10:18 AM, ON THE 11TH DAY OF
 JANUARY, 2008, AT THE HORRY COUNTY COURTHOUSE, 15TH JUDICIAL
 DISTRICT, CIRCUIT COURT, CONWAY, SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

COPY

H. Eugene Buckner
 Official Court Reporter at Large
 15th Judicial Circuit
 PO Box 1462, Conway, SC 29528-1462

APPEARANCES:

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.... ON BEHALF OF THE DEFENDANT

ALSO APPEARING: Melanie Huggins, Clerk of Court, Horry
Count, S.C.; along with assigned deputy clerks.

COURT'S EXHIBIT NUMBER 1 ----- Page 10

NO WITNESSES TOOK THE STAND FOR EXAMINATION BY COUNSEL.

1 THE COURT:

2 All right; be seated.

3 Uh -- Mr. Court Reporter, do you have
4 a caption on this case?

5 COURT REPORTER:

6 No sir; I don't have it; but I've got
7 somewhere. I mean I'm familiar with it.

8 THE COURT:

9 It's State v Winkler. You need the
10 indictment numbers?

11 COURT REPORTER:

12 Yes sir.

13 THE COURT:

14 Madam Clerk, you got the indictment
15 numbers? You want to --

16 CLERK:

17 Yes sir.

18 It is 2006-GS-26-2101, Lewis M.
19 Winkler. You want me to read the indictment for him?

20 THE COURT:

21 No, no; that's okay.

22 CLERK:

23 Okay.

24 THE COURT:

25 All right.

1 Uh -- Now, the purpose of the hearing
2 today and the meeting between -- uh -- uh -- Counsel as well
3 as The Court is to look over the returns we have regarding
4 jurors.

5 Uh -- We have -- so far, we sent 500
6 jurors notices. Of the 500 juror notices, 139 of those
7 people are coming in; apparently.

8 They sent them back in; say they got
9 them and have not indicated they won't be reporting on the
10 28th of January.

11 The -- There are 144 that did not
12 send anything back in; so the Clerk has sent that
13 information to the Sheriff for the Sheriff to personally
14 serve these people; and we'll have a report on those I am
15 sure within the next wee -- excuse me -- week -- week -- uh
16 -- on that.

17 There are 182 that -- uh -- the
18 Sheriff has returned saying:

19 They were deceased. They have moved
20 out of the County and I don't know where here; over 65; or
21 have small children.

22 Is that correct, Madame Clerk?
23 That's what the 182 represent?

24 CLERK:

25 Yes sir.

1 THE COURT:

2 All right.

3 Then we have 35 that either are
4 students, teachers, or want to be excused?

5 CLERK:

6 Yes sir.

7 THE COURT:

8 All right.

9 So we have 35 who -- who wish to use
10 the statutory school reason to be excused; or they have a
11 personal reason to be excused.

12 So -- uh -- uh -- what I want you all
13 to do then -- Mr. -- uh -- Wilson, you first-- you and Mr.
14 Rathbun is to go over that information with Mr. Winkler; and
15 -- uh -- see if you have any concerns regarding those that
16 that affidavits -- 182 -- uh -- affidavits from Sheriff's
17 Department or the individuals; if you have any concern with
18 the 35 and if you want to go over those individually.

19 Uh -- Uh -- I plan to go over
20 individually those who are not involved with the school.

21 If you, yourself, though -- after
22 talking to your client -- if y'all wish for me to -- uh --
23 bring in the ones with school, I'll bring them and we'll
24 examine them ourselves -- uh -- or if you don't, then don't.

25 But we probably need to go over

1 individually the 35.

2 So I want to give you time to go over
3 the matters with Mr. Winkler; and -- uh -- see if you've got
4 any concern with the 182 -- the affidavits; or with the 35.

5 Of course, the 144 the Sheriff's
6 looking for, we have no way of doing anything about that now
7 until we get a report back from the Sheriff.

8 And we've got 139 coming in.

9 All right; why don't you take about a
10 half an hour and do that.

11 Then after you finish discussing with
12 Mr. Winkler; then you talk with Mr. Humphries; and then
13 we'll have another hearing in about a half an hour or so.

14 MR. WILSON:

15 All right, sir.

16 THE COURT:

17 All right?

18 MR. WILSON:

19 Yes sir.

20 THE COURT:

21 And Mr. Humphries, I'm going to let
22 him talk with Mr. Winkler about that first.

23 And now, Donna, you be ready. I will
24 do some civil matters here; but you be ready with all this
25 information in case Mr. Wilson needs anything.

1 CLERK:

2 All right.

3 THE COURT:

4 So if you have something missing, Mr.
5 Wilson -- I recall last summer in a hearing of this type, we
6 had differing documents.

7 MR. WILSON:

8 Right.

9 THE COURT:

10 And you have something -- something
11 different or you have some questions about anything, Donna's
12 going to be right here with all the original information.

13 MR. WILSON:

14 All right, sir.

15 THE COURT:

16 All right.

17 Take about a half an hour to do that.

18 MR. HUMPHRIES:

19 And just so Mr. Wilson will be armed
20 with this information, the State would take the position
21 that:

22 We do need to go through the 35
23 individually.

24 As to the -- uh -- the 182, those
25 other statutory exemptions -- uh -- we -- we do not believe

1 that we need to get through those individually.

2 We do need to place in the record
3 those jury numbers, I believe, that are being excused for
4 those reasons.

5 Uh -- I --

6 THE COURT:

7 Do you have that on a list somewhere?

8 CLERK:

9 I have a printer.

10 THE COURT:

11 What you might want to do, Madame

12 Clerk, is:

13 While we are taking this time out on
14 this civil matter, is sort of write that on one sheet of
15 paper.

16 That way, we will give it to the
17 court reporter and get it inside; instead of having to read
18 out, we'll make it an exhibit on one sheet of paper.

19 CLERK:

20 All right.

21 MR. HUMPHRIES:

22 Very good; thank Your Honor.

23 WHEREUPON: The court recessed at
24 10:27 AM, January 11th, 2008.

25 WHEREUPON: The court again

1 reconvened this matter at 11:54 AM, January 11th, 2008.

2 BAILIFF:

3 Order in the court.

4 THE COURT:

5 All right.

6 If y'all would, I'm going to do this
7 quick matter here. It won't take long. Y'all be seated.

8 Okay; now what I would like to do
9 State and Winkler is to make sure that we have review what
10 we have on the returns of the 500 -- uh -- jury summons we
11 sent out.

12 We had 139 come in; so we know they
13 are coming in.

14 We have 144 that the Sheriff is
15 looking for we can't deal with today.

16 We have 182 that have sent in
17 affidavits that:

18 They are 65; that:

19 They have children under seven and
20 they are not employed; or

21 have been deceased by the Sheriff's
22 affidavit; or

23 have moved out of the County by the
24 Sheriff's affidavit.

25 Dealing with those -- and Madame

1 Clerk, do you have those separated by numbers for me?

2 CLERK:

3 Yes.

4 THE COURT:

5 Also unable to locate?

6 CLERK:

7 Everything.

8 THE COURT:

9 Who is Howard E. Buckner?

10 The court reporter was called as a

11 wit -- as a juror?

12 MR. HUMPRHIES:

13 I can -- I can find him.

14 THE COURT:

15 Courthouse employees.

16 Uh -- Also, you might want a K. M.

17 Lilly (phonetic), City of Conway Court Clerk; so I guess it

18 would be within the courthouse.

19 MR. HUMPHRIES:

20 Actually, not.

21 THE COURT:

22 But you see I am going to hand this

23 document to the court reporter as Court's Exhibit Number 1

24 on this hearing; direct also, that he give to the court

25 reporter handling -- or somehow make sure she knows he's got

1 it.

2 WHEREUPON: The documents referred to
3 were marked as Court's Exhibit Number 1.

4 THE COURT:

5 Now looking over those names; that's
6 182 people; right Madame Clerk?

7 CLERK:

8 Yes sir.

9 THE COURT:

10 Any objection to those 182 people; we
11 take no more effort to bring into court -- uh -- that we
12 except that as being true statements; and we move on.

13 MR. WILSON:

14 Judge, I only have -- and I don't
15 know if these are really objections; but I have some
16 concerns about 1, 2, 3, 4, 5, 6 of those 182.

17 THE COURT:

18 All right; and of that 182, what six?

19 MR. WILSON:

20 Specifically number 104.

21 THE COURT:

22 All right, hold on a second; 104, and
23 that's in what category?

24 MR. WILSON:

25 One oh -- Number 104 has small kids.

1 THE COURT:

2 Okay.

3 MR. WILSON:

4 Uh -- But my understanding is that:

5 In affidavit it doesn't say that --
6 that -- whether or not she works full time.

7 And -- And from looking at the -- the
8 other information, I have the impression that she might work
9 full time.

10 THE COURT:

11 Uh-huh.

12 MR. WILSON:

13 And -- And if that's true, then --
14 you know -- we would want her to come in.

15 THE COURT:

16 Madame Clerk, I'm directing you
17 contract Ms. Crawley (phonetic), Juror 104; and make sure
18 she understands this.

19 And I want something in writing --
20 whether or not she's employed or not. If she's employed
21 outside the home, then she is directed to be here.

22 Uh -- Get an affidavit from her; and
23 if she says she's not, show that to Mr. Wilson. Because Mr.
24 Wilson has a concern about it, she is to show up on that
25 day.

1 What's the other one?

2 MR. WILSON:

3 Number 224.

4 Your Honor -- uh -- has filed an
5 affidavit; but the -- the exemption that -- the -- there is
6 no information in the affidavit which suggest that the juror
7 is claiming the exception. And it might be just an
8 oversight --

9 THE COURT:

10 Marshall G. Howell (phonetic) -- uh
11 -- is one who says he's over 65?

12 MR. WILSON:

13 Right.

14 THE COURT:

15 In other words, has he requested to
16 be excused?

17 CLERK:

18 Yes.

19 MS. HUGGINS:

20 Yes sir; most of them call in.

21 THE COURT:

22 Well, I mean --

23 MS. HUGGINS:

24 Born [REDACTED]-1940 --

25 THE COURT:

1 No, no; not -- There's no question
2 he's over 65. The question is:

3 Does he wish not to serve?

4 MS. HUGGINS:

5 Yes sir. We wouldn't have done an
6 affidavit if --

7 THE COURT:

8 Well, I know; but do we have any
9 information about that?

10 MS. HUGGINS:

11 We have an affidavit that she's over
12 65. Most of them --

13 THE COURT:

14 Remember the law is:

15 Over 65 and does not wish to serve.

16 MS. HUGGINS:

17 I don't think -- The Sheriff's Office
18 just didn't type it on there. I mean, we can get it updated
19 to say that she doesn't want to serve.

20 THE COURT:

21 Well, on 224, I need you to check
22 about Ms. Howell (phonetic):

23 Does she wish to serve.

24 MS. HUGGINS:

25 They just didn't type it on there.

1 THE COURT:

2 Well, we need to get something from
3 her about whether she wishes to serve or not.

4 MR. WILSON:

5 And -- And -- And Judge, I don't want
6 to skip; but while we are on that vein, 425 is exactly the
7 same issue.

8 And as I said:

9 Again, it may very well be a typo.

10 THE COURT:

11 All right; all right; do the same
12 thing on 425.

13 CLERK:

14 Okay.

15 THE COURT:

16 Same as 224.

17 MR. WILSON:

18 The -- The other one, Your Honor, is
19 277. It is a courthouse employee.

20 Now -- uh -- I am not sure who that
21 individual is. I don't know that I know them individually.
22 And I don't know which -- whether they actually work in this
23 building or some other facility?

24 THE COURT:

25 Madame Clerk, what building would

1 that be?

2 MS. HUGGINS:

3 That's K. Lilly (phonetic).

4 She works in City Court.

5 CLERK:

6 K. Lilly (phonetic), and she is one
7 that works in the courtroom in city court.

8 MS. HUGGINS:

9 And we put it in that stack.

10 CLERK:

11 Whatever y'all tell us to do. If
12 y'all want us to --

13 THE COURT:

14 She works in City Court?

15 MS. HUGGINS:

16 Yeah. She's Jane Mackin (phonetic)
17 assistant. She works in the courtroom.

18 MR. WILSON:

19 That wouldn't --

20 THE COURT:

21 Well, I'm asking you:

22 You want her to come in?

23 MR. WILSON:

24 I think she'd have to --

25 THE COURT:

1 I haven't no -- If the State doesn't
2 object.

3 MR. HUMPHRIES:

4 I -- I agree with Mr. Wilson on that
5 point.

6 THE COURT:

7 Bring her in.

8 MR. WILSON:

9 And -- uh -- the -- the last one that
10 I have a problem with in that group is 427.

11 Uh -- 427 -- uh -- is the same
12 situation.

13 Apparently the individual does have
14 children under the age. The question is whether or not that
15 that individual also works outside the home.

16 THE COURT:

17 Okay.

18 MR. WILSON:

19 And those are the only objections out
20 of that one -- out of that group.

21 THE COURT:

22 Okay.

23 All right; and that means I want an
24 additional affidavit from 104 and 427.

25 Uh -- I want -- uh -- a -- a

1 statement from Ms. Howell (phonetic) and Ms. Beck (phonetic)
2 as to whether they wish to serve.

3 Uh -- And -- uh -- we are going to
4 bring it 277 Ms. Luke (phonetic).

5 So an additional affidavit on 224 and
6 225 as to whether they want to serve.

7 Ms. Lilly (phonetic) will be coming
8 in.

9 And then on 104 and 427, additional
10 affidavit; and again, whether they work outside the home or
11 not; if they do, they are to come in.

12 And get back with me -- uh -- Ms. --
13 uh -- uh -- Huggins on that.

14 And -- uh -- uh -- I'll let you know
15 -- uh -- once you get back to me.

16 If they want to serve and all that,
17 then bring them on in. But if not, we'll give it to Mr.
18 Wilson or Mr. -- uh -- or Mr. Humphries -- to see if they
19 have any additional objections; all right.

20 That covers one -- uh -- 182.

21 Now we got 35?

22 MR. WILSON:

23 Yes sir.

24 THE COURT:

25 Do you have that list anywhere?

1 MR. HUMPHRIES:

2 We don't have that list, because
3 we're going through individually.

4 MS. HUGGINS:

5 That is ones we go through
6 individually.

7 THE COURT:

8 Right; right; all right; great.

9 MS. HUGGINS:

10 Yes sir.

11 THE COURT:

12 All right; here we go.

13 All right; Juror Number 3 --

14 MR. HUMPHRIES:

15 Your Honor --

16 THE COURT:

17 -- surgery scheduled; any objection?

18 MR. HUMPHRIES:

19 No objection.

20 MR. WILSON:

21 No objection.

22 THE COURT:

23 All right; 3 is excused.

24 Juror Number 37; it says here:

25 On vacation.

1 MR. HUMPHRIES:

2 No objection; looks like it was -- uh
3 -- she got the -- uh --

4 MR. WILSON:

5 No objection.

6 MR. HUMPHRIES:

7 August was when she heard that.

8 THE COURT:

9 All right.

10 Juror Number 39; says:

11 She works for a school.

12 MR. HUMPHRIES:

13 No objection from the State.

14 MR. WILSON:

15 No objection.

16 THE COURT:

17 Juror Number 48:

18 Uh -- Patient, Waccamaw Mental Health
19 Center; treating current medical condition by a Dr. Allison
20 (phonetic).

21 MR. HUMPHRIES:

22 Uh -- Given the comments on that form
23 -- I don't know who wrote them; but -- uh -- huh?

24 CLERK:

25 It was sent in by -- uh --

1 I take your word for it. There is no
2 objection.

3 MR. WILSON:

4 No objection.

5 THE COURT:

6 You mean they're handwritten
7 comments?

8 MR. HUMPHRIES:

9 Yes sir.

10 THE COURT:

11 All right.

12 All right, Juror Number 49:

13 Uh -- I don't who wrote the things at
14 the bottom "for medical reasons" --

15 MR. HUMPHRIES:

16 This is -- What number you're at,
17 please?

18 THE COURT:

19 Number 49.

20 MR. HUMPHRIES:

21 I go straight to 53's.

22 THE COURT:

23 Okay; 49 is Martha L. Brunket
24 (phonetic).

25 MR. HUMPHRIES:

1 Do you have that?

2 MR. WILSON:

3 Yes, I do; and we have no objections.

4 MR. HUMPHRIES:

5 It's a doctor's excuse? Okay. I
6 just don't see it; but that's --

7 THE COURT:

8 Okay, it's Juror 49.

9 MR. HUMPHRIES:

10 No objection.

11 THE COURT:

12 All right.

13 Juror 53 -- uh -- says:

14 I am a convicted felon -- uh --
15 released --

16 MR. HUMPHRIES:

17 He is -- He's disqualified by law,
18 Your Honor.

19 THE COURT:

20 Any objection?

21 MR. WILSON:

22 No sir.

23 THE COURT:

24 Okay.

25 Juror 62 -- uh -- see second page --

1 uh -- they're musicians that have outstanding -- what --
2 contracts to perform?

3 MR. WILSON:

4 Yes sir. And I do have an objection
5 to that one, Judge -- uh -- because they only -- the reason
6 that they give is simply that:

7 They are musicians and that they have
8 outstanding contracts.

9 THE COURT:

10 Hearing nothing from the State, they
11 will report.

12 MR. HUMPHRIES:

13 Yes sir.

14 THE COURT:

15 Juror -- Juror 63; shows:

16 Airline; going to Atlanta and back.

17 MR. HUMPHRIES:

18 And it was booked some --

19 MR. WILSON:

20 Yeah.

21 THE COURT:

22 Any objection?

23 MR. WILSON:

24 No objection.

25 MR. HUMPHRIES:

1 No objection, Your Honor.

2 THE COURT:

3 63; transferred.

4 67; has a previous stoke; history of
5 lupus.

6 MR. WILSON:

7 No objection.

8 MR. HUMPHRIES:

9 No objection, Your Honor.

10 THE COURT:

11 67; excused.

12 86.

13 MR. WILSON:

14 No objections.

15 MR. HUMPHRIES:

16 No objections, Your Honor.

17 THE COURT:

18 I started to say:

19 Hey, he works at the same place my
20 son does; Warner (phonetic), okay.

21 Then I have another 86. I guess it's
22 just two copies of the same one.

23 MR. HUMPHRIES:

24 Well, let me ask this, Judge, about
25 number 86:

1 This juror; has he moved, or is he
2 just working there in Atlanta for a short period of time?

3 THE COURT:

4 That's a good point.

5 MR. WILSON:

6 Well, I had the impression that he
7 just works there because he said that he drives trucks; and
8 apparently his -- he said that he would have to come here
9 and take the truck back to Atlanta before he could serve for
10 the two weeks; so -- uh --

11 THE COURT:

12 Atlanta is where there's a trucking
13 training center or whatever. Transfer him and -- uh -- try
14 at later time

15 88?

16 MR. WILSON:

17 No objection.

18 MR. HUMPHRIES:

19 I'm not sure whether it's -- uh -- I
20 mean, it looks like she's a teacher.

21 THE COURT:

22 Oh, teacher. Okay; good, but no
23 objection?

24 MR. WILSON:

25 No objection.

1 MR. HUMPHRIES:

2 No objection.

3 THE COURT:

4 109; full time student, she says.

5 MR. WILSON:

6 No objection.

7 MR. HUMPHRIES:

8 No objection.

9 THE COURT:

10 112; says: teacher.

11 MR. WILSON:

12 No objections for that.

13 MR. HUMPHRIES:

14 No objection.

15 THE COURT:

16 122; full time student, it says.

17 MR. WILSON:

18 No objection.

19 MR. HUMPHRIES:

20 No objection.

21 THE COURT:

22 130; trip planned.

23 MR. WILSON:

24 No objection.

25 THE COURT:

1 Any objection from the State?

2 MR. HUMPHRIES:

3 Just looking to see what -- no -- no
4 objection.

5 THE COURT:

6 All right; that will be transferred.
7 Forest (phonetic) Number 151?

8 MR. WILSON:

9 No objections.

10 MR. HUMPHRIES:

11 No objection.

12 THE COURT:

13 Excused; Number 151 excused.
14 181?

15 MR. WILSON:

16 No objection, sir.

17 THE COURT:

18 Any objection from the State?

19 MR. HUMPHRIES:

20 No objection, Your Honor.

21 THE COURT:

22 Excused.

23 199?

24 MR. WILSON:

25 Objection.

1 THE COURT:

2 All right; is that the one with the
3 trip?

4 MR. WILSON:

5 Uh -- Well, he it didn't really give
6 an excuse -- as for what my concern was -- as to why he
7 wanted to be -- uh -- excused.

8 And -- And he didn't complete the
9 form -- the questionnaire.

10 THE COURT:

11 Well, if he's a bus driver, I assume
12 he works for the school system; but says: he's retired.

13 MR. WILSON:

14 Uh -- I know; but -- but he doesn't
15 say why he wants to be excused; and he doesn't say -- it
16 doesn't -- and he does not complete the last page and a half
17 of the -- of the questionnaire.

18 THE COURT:

19 Well, we agree that if he's a bus
20 driver for the school system, he would have the right to be
21 transferred?

22 MR. WILSON:

23 Yes sir; if he's -- Yes, Your Honor;
24 if he's a full time bus driver.

25 THE COURT:

1 Uh -- Who wrote bus driver on there?

2 MS. HUGGINS:

3 I did.

4 THE COURT:

5 And --

6 MS. HUGGINS:

7 He called in -- (inaudible) --

8 COURT REPORTER:

9 I'm sorry, I couldn't hear that.

10 MS. HUGGINS:

11 He said he had retired from Santee

12 Cooper; but now drives a school bus.

13 THE COURT:

14 All right; get him to make that

15 statement in writing in affidavit form.

16 If he doesn't, bring him in.

17 MR. HUMPHRIES:

18 Okay.

19 THE COURT:

20 If he does make it in writing; fine

21 for you all then, Mr. -- uh -- Wilson?

22 MR. WILSON:

23 I'll withdraw my objection --

24 THE COURT:

25 All right.

1 MR. WILSON:

2 -- at that time.

3 THE COURT:

4 Juror Number 210? Wow -- umph.

5 MR. HUMPHRIES:

6 No objection as to -- uh --

7 MR. WILSON:

8 We're what number?

9 CLERK:

10 210.

11 MR. HUMPHRIES:

12 I don't have that one.

13 MR. WILSON:

14 I don't have it either.

15 CLERK:

16 Okay. I didn't -- I hadn't got y'all
17 a copy yet but it's because of a kidney.

18 THE COURT:

19 It looks like one son giving a lung
20 to another one -- kidney to another.

21 CLERK:

22 And he has --

23 THE COURT:

24 It says -- It says:

25 My son is to receive -- this is under

1 Question Number 33:

2 My son is to receive a kidney from
3 his brother at MUS sometime in January; and we're waiting
4 for a date for surgery.

5 So obviously she's waiting for a date
6 for the surgery.

7 MR. HUMPHRIES:

8 I don't have any objection to her
9 being excused.

10 MR. WILSON:

11 Is that a separate document?

12 THE COURT:

13 No, it's on the questionnaire; Number
14 33; look at the questionnaire answer on Number 33.

15 MR. WILSON:

16 No objections, Your Honor.

17 THE COURT:

18 All right.

19 226?

20 MR. WILSON:

21 No objection.

22 MR. HUMPHRIES:

23 No objection, Your Honor.

24 273?

25 MR. WILSON:

1 No objections.

2 THE COURT:

3 296?

4 MR. WILSON:

5 I got two --

6 MR. HUMPHRIES:

7 You're at 275.

8 THE COURT:

9 Sorry. I'm sorry; you got:

10 275; teacher.

11 MR. WILSON:

12 No objection.

13 THE COURT:

14 All right.

15 296?

16 MR. WILSON:

17 No objections.

18 MR. HUMPHRIES:

19 Let me take --

20 THE COURT:

21 All right.

22 MR. HUMPHRIES:

23 No objection.

24 THE COURT:

25 299?

1 MR. WILSON:

2 Judge, I -- I have an objection.

3 In regards to that particular -- uh
4 -- juror, it says that the juror has a decease; but she's a
5 full time -- she works full time -- uh -- at a doctor's
6 office, I think it was, as a -- as a -- uh -- x-ray
7 technician.

8 And she has been doing that for those
9 six consecutive years; so I'm not real sure how she is
10 disabled.

11 MR. HUMPHRIES:

12 I agree.

13 THE COURT:

14 Bring her in.

15 We'll let Sandra hang her when she
16 gets here. (Laughter.)

17 MR. HUMPHRIES:

18 Okay.

19 THE COURT:

20 Uh -- 315?

21 MR. HUMPHRIES:

22 No objection.

23 MR. WILSON:

24 No objections.

25 THE COURT:

1 320?

2 MR. WILSON:

3 Judge, from 320 -- the same thing;
4 320 -- uh -- works -- has a full-time job. He -- He runs a
5 business, if I'm -- he runs a business and -- and his only
6 excuse is -- is that he -- uh -- it's a small business and
7 that it would be an inconvenience.

8 And I -- I would -- Well actually,
9 this letter is from the owner; but he says he's an employee,
10 but he's the only one that can do whatever it is that they
11 need done at the job.

12 MR. HUMPHRIES:

13 I agree.

14 THE COURT:

15 Bring him in.

16 339?

17 MR. WILSON:

18 Judge, I have an objection to 339.

19 339 apparently booked his reservation
20 after these notices were sent out to jurors.

21 His notice to his -- for his trip was
22 scheduled December the --

23 MR. HUMPHRIES:

24 12th.

25 MR. WILSON:

1 -- 12th; and -- and the notices had
2 already been sent out at that time. And I -- I just have a
3 concern about him booking the trip after the notices were
4 sent out.

5 MR. RATHBUN:

6 And Your Honor, this gentleman
7 returns -- uh -- back to Myrtle Beach at 8:30 p.m.

8 CLERK:

9 That's a.m.

10 THE COURT:

11 Do y'all have a problem -- I mean
12 obviously -- uh -- we are still going to be dealing with
13 jurors on Tuesday. Do y'all have any problem with him just
14 reporting Tuesday morning?

15 MR. HUMPHRIES:

16 Do not.

17 THE COURT:

18 And I can individually qualify him
19 and go ahead and put him with one of the groups -- uh -- by
20 then; and -- uh -- whichever group he's in -- uh -- uh --

21 MR. WILSON:

22 That's satisfactory with us.

23 THE COURT:

24 No problem with you either?

25 MR. HUMPHRIES:

1 No problem with that, Your Honor.

2 THE COURT:

3 All right, you understand what to
4 tell him to do?

5 You're going to have to tell him:

6 He is to report at 9:00, Tuesday
7 morning.

8 So what I want you to do is to have
9 in the -- in the grouping. And if we do pick up -- pick out
10 groups on Monday -- you know -- if we get that far that and
11 we're actually selecting groups; then you put him -- and
12 whatever group he gets in, he gets in.

13 If for some reason he gets in the
14 first group, then I will finish the first group -- uh --
15 then I'll still do him the next morning.

16 MR. HUMPHRIES:

17 Okay. And he'll stat in order as
18 he's selected?

19 THE COURT:

20 Just as he's selected.

21 MR. HUMPHRIES:

22 Okay.

23 THE COURT:

24 I want it no different; exactly the
25 same as if he were here.

1 MR. HUMPHRIES:

2 Very good.

3 MR. WILSON:

4 Thank you, Your Honor.

5 THE COURT:

6 All right.

7 341?

8 MR. WILSON:

9 No objection.

10 MR. HUMPHRIES:

11 No objection, Your Honor.

12 THE COURT:

13 357?

14 MR. WILSON:

15 No objection.

16 THE COURT:

17 State?

18 MR. HUMPHRIES:

19 Your Honor, this is -- this is
20 another where they -- they own a small restaurant; and --
21 this is 357?

22 THE COURT:

23 357; yes.

24 MR. HUMPHRIES:

25 I would -- uh -- I -- I'd request

1 that they come in. This is -- This is another hardship for
2 -- uh -- work.

3 We've required the -- uh -- the other
4 two work hardship --

5 THE COURT:

6 This is the busy season down there.

7 MR. HUMPHRIES:

8 I -- uh -- Well --

9 THE COURT:

10 January is the busy season in Myrtle
11 Beach?

12 MR. WILSON:

13 I agree with the solicitor, Judge.

14 THE COURT:

15 All right; have -- uh -- Ms. Penally
16 (phonetic) come in.

17 I'm trying to think of the name of
18 the business over there.

19 MR. HUMPHRIES:

20 She runs a small restaurant.

21 MR. WILSON:

22 Corner -- Corner grill.

23 MR. HUMPHRIES:

24 Uh-huh.

25 THE COURT:

1 | Anyone know where that is?

2 | MR. HUMPHRIES:

3 Uh-uh.

4 MR. WILSON:

5 I think I know where it is.

6 MR. HUMPHRIES:

7 I wouldn't admit it.

8 THE COURT:

9 | It's out on the corner, yeah.

10 Uh -- 371?

11 MR. HUMPHRIES:

12 No objection, Your Honor.

13 MR. WILSON:

14 No objection.

15 THE COURT:

16	Excused.

17 | 376; student.

18 MR. WILSON:

19 I don't have it. I don't have 376.

20 THE COURT:

21 All right; 376, shows -- uh -- it's a
22 student -- shows her -- her transcript from -- What school
23 is it?

24 MR. HUMPHRIES:

25 | She's at Coast -- Well, I guess she's

1 at Clemson now.

2 THE COURT:

3 It says [REDACTED] (phonetic) on
4 the web.

5 MR. HUMPHRIES:

6 What is it -- Well --

7 THE COURT:

8 [REDACTED] (phonetic) not in Clemson.

9 MR. HUMPHRIES:

10 No; well it was -- she was at -- this
11 is she? She was at Clemson 'till -- uh -- May of -- I don't
12 know where she is now.

13 MR. WILSON:

14 I don't know

15 THE COURT:

16 Primary occupation; says full-time
17 student.

18 MR. HUMPHRIES:

19 If it shows a transcript; but it's --
20 uh -- her transcript from her last -- uh --

21 THE COURT:

22 It says:

23 She's 19 years of age. Current
24 business student at the College of Charleston --

25 MR. HUMPHRIES:

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There you go.

THE COURT:

-- graduating in May.

Look at Number 19; question 19.

MR. HUMPHRIES:

No objection.

MR. WILSON:

No -- No objections, Your Honor.

THE COURT:

All right.

382; says: substitute teacher.

I don't think that's covered by the

statute.

MR. WILSON:

Did we do 371?

CLERK:

We did.

MR. HUMPHRIES:

Realtor; looks like the only ting

there --

THE COURT:

371; you said you had no -- no

objection.

MR. WILSON:

No objections to three-seventy.

1 THE COURT:

2 One.

3 MR. WILSON:

4 One.

5 THE COURT:

6 Okay. Now no objection to 371 and
7 376. You had no object -- that's the student.

8 MR. WILSON:

9 That's the student.

10 THE COURT:

11 All right; 382, I want her in.

12 MR. HUMPHRIES:

13 Yes sir.

14 THE COURT:

15 382, Ashley -- him or her -- Ashley
16 L. Rivera (phonetic), she's to come in or he's to come in.

17 MR. WILSON:

18 Yes; that's correct.

19 THE COURT:

20 Okay.

21 396?

22 MR. WILSON:

23 Judge, on 396 -- 396 was, I think, a
24 professor from our local university, that I think refused to
25 fill out form; and he puts all these responses on there --

1 is that right -- saying: Will not provide.

2 MR. HUMPHRIES:

3 Well, he's a Professor of Philosophy,
4 for goodness sakes.

5 MR. WILSON:

6 And that's dispositive.

7 MR. HUMPHRIES:

8 There you go. I'm going to strike
9 him anyway, if you to put him on.

10 THE COURT:

11 Excuse me -- I heard a tree fall out
12 there. Let me go check on it. (Laughter.)

13 You are going to suggest to do what?

14 MR. HUMPHRIES:

15 No; I said that if you -- if you put
16 him on, I'm going to strike him anyway.

17 THE COURT:

18 Well, I mean, I can put him under the
19 law; I mean I can't --

20 MR. HUMPHRIES:

21 I agree. I -- I don't object to his
22 being excused.

23 He's way smarter than me.

24 THE COURT:

25 Anyway, 396; he's a teacher under the

1 statute; he has a right not to come.

2 Transfer him; don't excuse him;
3 transfer him.

4 THE COURT:

5 And say that I'm looking forward to
6 hearing on what jury he is on.

7 But since Judge Baxley just came back
8 from medical leave, don't transfer him to a term Judge
9 Baxley's here.

10 MS. HUGGINS:

11 I'm going to transfer him to a term
12 when you are here.

13 THE COURT:

14 I don't know if I'm here after this
15 for awhile.

16 MS. HUGGINS:

17 I'll find you.

18 THE COURT:

19 Find me; yeah, transfer him to
20 Dillon. He'd love it in Dillon; especially if he talked
21 philosophy; it'd go well.

22 But, honestly, transfer him; do not
23 excuse him.

24 413?

25 MR. HUMPHRIES:

1 Uh --

2 THE COURT:

3 The statute passed two years ago --

4 MR. HUMPHRIES:

5 Which one we're at; 430?

6 THE COURT:

7 413. Let's see, I got 413 after --

8 uh -- after 396 here, I got 413.

9 MR. HUMPHRIES:

10 Well, he's also got some other

11 physical condition. (Laughter.)

12 Well, I'm just saying --

13 (Laughter.)

14 THE COURT:

15 I -- I have no way that y'all going

16 to be excused.

17 MR. HUMPHRIES:

18 I don't either.

19 THE COURT:

20 Y'all must have something I don't

21 have.

22 (Laughter.)

23 MR. HUMPHRIES:

24 Well, I --

25 THE COURT:

1 Oh, okay, I see. Yeah. I thought
2 that was on the first name and security report.

3 MR. HUMPHRIES:

4 No, apparently this was him on --

5 MR. RATHBUN:

6 That's him.

7 THE COURT:

8 413; excused.

9 422? 422 is a student. 29 years of
10 age?

11 MR. HUMPHRIES:

12 Nursing student?

13 THE COURT:

14 Spring '08; registered Horry
15 Georgetown Tech.

16 MR. HUMPHRIES:

17 Right.

18 THE COURT:

19 Class 1 p.m. to 3 p.m.

20 MR. WILSON:

21 I have no objection.

22 MR. HUMPHRIES:

23 I think, yeah, we don't have any
24 objection, Your Honor.

25 THE COURT:

1 Okay.

2 431?

3 MR. WILSON:

4 No, that's 422.

5 THE COURT:

6 I -- I mean, 431 is the next one I've
7 got.

8 He has a concern about child support.

9 MR. WILSON:

10 Judge, we -- we -- Judge, we'd ask
11 that he come in.

12 MS. HUGGINS:

13 (Inaudible.)

14 COURT REPORTER:

15 Judge, for the record, I can't hear
16 that.

17 MS. HUGGINS:

18 (Inaudible.)

19 THE COURT:

20 She don't get to decide whether it's
21 on the record or not. Go on and put it on the record.

22 MS. HUGGINS:

23 Don't put that on the record, Judge.

24 THE COURT:

25 Of the -- uh -- he's making a

1 statement though -- he's telling here about child support
2 issues which wouldn't -- uh -- uh -- excuse him; and he does
3 respond that he's very upset; but unfortunately he has no
4 statutory reason to be excused; so 431 comes in.

5 443?

6 MR. WILSON:

7 No objection.

8 MR. HUMPHRIES:

9 Uh -- No objection.

10 Hey, I don't know if he or she's kin
11 to Hillary or not.

12 Okay; 443 is excused.

13 468?

14 MR. HUMPHRIES:

15 No objection.

16 MR. WILSON:

17 Judge, four -- 468 -- I got one --
18 all I have is one sheet of paper from Horry Georgetown Tech.

19 Is there anything else on that juror,
20 other than that one sheet of paper?

21 I don't have it.

22 THE COURT:

23 All I have is a sheet of paper too.

24 It shows he works at Georgetown Horry Tech.

25 MR. WILSON:

1 Yeah.

2 THE COURT:

3 He got an increase in salary; but --

4 MR. WILSON:

5 Well, that's good.

6 MR. HUMPHRIES:

7 He's proud, I guess.

8 MR. WILSON:

9 What is he, a professor? I mean, is

10 he --

11 THE COURT:

12 No, he's a -- only one person at a
13 time. Don't give the court reporter the heebie-jeebies
14 over there.

15 Uh -- Well, the statute doesn't say
16 he has to be a professor or a teacher; if you work at the
17 school system.

18 Uh -- If you want me to bring him in,
19 I can bring him in for more information; but --

20 MR. HUMPHRIES:

21 I don't object to his being excused,
22 Your Honor.

23 THE COURT:

24 All right; Ms. Huggins says she has
25 information he is a professor.

1 How did you get that information, Ms.
2 Huggins?

3 MS. HUGGINS:

4 We have the questionnaire and it was
5 here. It probably came in after the fact.

6 THE COURT:

7 You want to show it to Mr. Wilson?

8 MR. WILSON:

9 Thank you. Thank you, ma'am.

10 THE COURT:

11 I didn't know they can rate a
12 professor -- you can get your salary based on your
13 performance. How do they decide that; how many people
14 passed, failed, or student questionnaires?

15 MR. WILSON:

16 Judge, would you bear with me just
17 one second please.

18 THE COURT:

19 I can't tell which is his -- his
20 salary -- I mean -- nine months?

21 MR. WILSON:

22 I have no objection to that one.

23 THE COURT:

24 All right; 468 transferred.

25 The last one is 495.

1 MR. WILSON:

2 No objections.

3 MR. HUMPHRIES:

4 Whoa -- 495.

5 THE COURT:

6 Sole employee; owns own business.

7 MR. HUMPHRIES:

8 He is -- He's simply situated. I

9 would -- uh -- I would request that he come in.

10 CLERK:

11 Okay.

12 MR. HUMPHRIES:

13 That's -- That's what we've done with

14 the other hardships -- work hardships. I mean --

15 THE COURT:

16 Rick's Bacon -- Bait and Tackle

17 (phonetic.

18 All right; that -- uh -- bring him in

19 and I'll discuss that with him on the new statute, but we'll

20 see.

21 Now Mr. Wilson, you have no objection

22 to him being excused?

23 MR. WILSON:

24 No sir; I don't have any objection.

25 THE COURT:

1 And Mr. --

2 MR. HUMPHRIES:

3 I do.

4 THE COURT:

5 -- Humphries, you do?

6 MR. HUMPHRIES:

7 Yes, sir, Your Honor.

8 THE COURT:

9 Ms. Huggins -- and we've been aware
10 that some of the other things as far as people who are sole
11 proprietors; but -- uh -- it's kind of a discretionary thing
12 too.

13 But I'll -- I'll look at it and see
14 when he gets here.

15 All right; so that means that those
16 that are going to be reporting of the 35 are numbers:

17 62; Number 199; Number 299; Number
18 320; Number 339 is going to report at 9 a.m. the next
19 morning; Number 357; Number 382; Number 431; Number 495.

20 The rest -- uh -- Ms. Huggins, if
21 they have medical reasons, they are excused.

22 If they have school reasons, they are
23 transferred.

24 If they have vacation or out of town
25 reasons, they're transferred.

1 Uh -- And I will give those back to
2 you.

3 Uh -- When did the Sheriff get the
4 144?

5 CLERK:

6 Yesterday.

7 MS. HUGGINS:

8 Whenever we -- They have been getting
9 them along, and along, and along.

10 THE COURT:

11 Do you have any idea when I'm going
12 to be able to get the results of their efforts on the 144;
13 by the end of next week, you think?

14 MS. HUGGINS:

15 We won't get them all at one time.
16 As they get them in, they'll bring us a stack at a time,
17 rather than them all come in at one time.

18 THE COURT:

19 All right; well you just see if we
20 get them all at one time and get them when they're all here
21 instead of having to gather them together.

22 Uh --

23 MS. HUGGINS:

24 You want a cut-off date, or do you
25 want --

1 MR. HUMPHRIES:

2 Judge, what have you got the -- the
3 week before --

4 THE COURT:

5 Unfortunately, I'll be in
6 Spartanburg.

7 MR. HUMPHRIES:

8 That's a problem.

9 THE COURT:

10 Spartanburg doesn't think so.

11 MR. HUMPHRIES:

12 Well, I (laughter) --

13 THE COURT:

14 Uh -- We have a major meeting of the
15 bar in Charleston -- uh -- beginning on that Thursday
16 evening.

17 Uh -- Uh -- If I could come back
18 through here Thursday -- uh -- maybe -- uh -- and come back
19 through here for a quick hearing.

20 Uh -- We might do that. Uh --

21 MR. HUMPHRIES:

22 That's Thursday the -- uh --

23 THE COURT:

24 24th, isn't it?

25 MR. HUMPHRIES:

1 -- 24th.

2 THE COURT:

3 When they finish with the 144 -- I
4 hope by next Friday -- get me some numbers of those they say
5 we just cannot locate; and I mean, it may end up that they
6 cannot locate them or they're coming in; one or the other.

7 There may not be that many. It might
8 be one way or the other.

9 MR. HUMPHRIES:

10 Really the only ones we will have to
11 deal with on the record are those that we got questionnaires
12 from that wanted to be excused.

13 THE COURT:

14 Who don't want -- Who don't want to
15 come in for some reason; or they were teachers or students
16 or whatever else.

17 MR. HUMPHRIES:

18 Right.

19 THE COURT:

20 Uh -- So it shouldn't be that many
21 out of 144; so let's get me the numbers.

22 Tell -- Tell the Sheriff I'd like to
23 have this finished by Thursday, next week. And tell him
24 that he looked good on TV last night.

25 He must have stood there for 20

1 minutes behind the interviews with the candidates.

2 MR. HUMPHRIES:

3 They didn't get a profile; did they?

4 THE COURT:

5 He was just standing out there. He's
6 got the whole place secure.

7 Uh -- All right; now, any other
8 issues regarding jurors?

9 MR. HUMPHRIES:

10 Nothing from the State.

11 MR. WILSON:

12 Nothing, Your Honor.

13 THE COURT:

14 All right.

15 Once again, though:

16 224 -- uh -- we're going to find out
17 whether or not she and 425 and 065; if you can get something
18 in writing they don't wish to serve, then they are excused.

19 Uh -- 277 is coming in.

20 104; unless 104 signs saying: she's
21 not employed; then she's to come in.

22 Now if she's not employed and she has
23 children outside the -- I mean, she has children under
24 seven, she's excused.

25 427; if she says the same thing:

1 she's not employed and she has children under seven, she's
2 excused.

3 And if she's employed, she'll need to
4 come in and I will make my decision there.

5 Mr. Court Reporter, I ought to give
6 you these; but my problem is, I'm just -- I'm probably going
7 to need them the day of trial.

8 Uh --

9 COURT REPORTER:

10 All I'll do is sign them back to her.

11 THE COURT:

12 All right, good.

13 I'm going to give them to you to
14 mark; and then you sign them back to her, all right.

15 Any other issues we need to discuss
16 other than the fact we are going to get together next
17 Thursday two weeks from yesterday; and --

18 MR. WILSON:

19 Yes sir. On 277 --

20 THE COURT:

21 Anything on jurors?

22 MR. WILSON:

23 On Juror 277, the courthouse employee

24 --

25 THE COURT:

1 She's coming in.

2 MR. WILSON:

3 We don't have her questionnaire.

4 THE COURT:

5 Okay; well --

6 CLERK:

7 Yes, I have it.

8 MR. WILSON:

9 Well, I know; but --

10 THE COURT:

11 We'll get it.

12 MR. WILSON:

13 All right, sir.

14 THE COURT:

15 Make sure we get it for him, okay.

16 CLERK:

17 Yes sir.

18 MS. HUGGINS:

19 Can I have a time for next Thursday

20 the 24th?

21 THE COURT:

22 Sometime after noon; that's about the

23 best right now.

24 MS. HUGGINS:

25 Yes sir.

1 THE COURT:

2 Okay. I got to get to Darlington --
3 I mean, get to Spartanburg -- and see what time I can finish
4 up there; but I'll get with you on that.

5 MR. HUMPHRIES:

6 It's kind of a short week for us.

7 THE COURT:

8 And we'll be -- everybody's got to --
9 all judges, we've got to go.

10 MR. WILSON:

11 You know, Monday.

12 CLERK:

13 Well, that Monday, we're closed down
14 --

15 THE COURT:

16 Oh, Monday's a holiday too. I forgot
17 about that. That's going to be -- goodness, it is going to
18 be a short week.

19 Uh -- All right; anything else on
20 these issues?

21 MR. HUMPHRIES:

22 No, Your Honor.

23 THE COURT:

24 Anything else from Mr. Wilson?

25 MR. WILSON:

1 No sir, Your Honor.

2 THE COURT:

3 All right; then we'll adjourn and --
4 and reconvene sometime Thursday, the 24th of January;
5 prepare for the trial again -- or the jury selection again
6 on the 28th.

7 Uh -- I'm sorry; one other thing we
8 need to put on the record, I forgot.

9 Uh -- I was -- uh -- at North Myrtle
10 Beach -- Cherry Grove Beach -- last week. I went into
11 Boano's (phonetic). I saw two people from Dillon sitting
12 there in the restaurant area at Boano's (phonetic) -- a Mr.
13 and Mrs. Sapp (phonetic). He went to school with me. She
14 was a year or so behind.

15 I walked over to say hello to them.
16 As I said hello to them, another person walked up -- who now
17 I understand to be Ms. Craft (phonetic); and who was
18 originally -- although I never -- did not know her in school
19 or anything else but her family was originally from Dillon.

20 She said: Hello.

21 And I said: Hello.

22 And she said: I'll see you in a
23 couple of weeks.

24 I said: Are you in jury duty
25 sometime?

1 She said: No; I may be a witness in
2 a case you're handling in Horry County.

3 And when I knew what she meant, I
4 said: Not allowed; I can't talk. I've got to go.

5 And so I walked away. I didn't hear
6 anything or anything else. I just walked away from there.

7 Uh -- All right; any questions of me
8 about that; or any concerns?

9 I mean, the minute I heard she said
10 she may be a witness, I walked away.

11 MR. WILSON:

12 I don't have any objection, Your
13 Honor.

14 THE COURT:

15 You are welcome to contact the Sapps
16 (phonetic) -- uh -- Donald and Teresa Sapp; they were there.

17 Uh -- And Mr. -- uh -- Humphries or
18 Mr. Wilson; is she going to be a witness?

19 MR. HUMPHRIES:

20 Your Honor, I don't intend at this
21 time to call her as a witness.

22 There may be some matters in reply
23 that might require it; but I do not intent to call her as a
24 -- as a witness in the case in chief.

25 THE COURT:

1 All right; well anybody's welcome to
2 verify that; but that is what occurred.

3 All right. That's it. Thanks
4 everyone.

5 MR. WILSON:

6 Thank Your Honor.

7 MR. HUMPHRIES:

8 Thank you, Your Honor.

9 (WHEREUPON: There being nothing
10 further in this matter, these proceedings were ended on
11 January 11th, 2008 at 12:31 PM.)

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CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceeding was taken on the 11th day of January, 2008;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 17th day of February, 2008.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

1 STATE OF SOUTH CAROLINA
2 COUNTY OF HORRY

} COURT OF GENERAL SESSIONS

4 STATE OF SOUTH CAROLINA,
5 PLAINTIFF,
6 vs.
7 LOUIS MICHAEL WINKLER, JR.,
8 DEFENDANT.

} TRANSCRIPT

} OF

} RECORD

} 06-GS-26-2101

9
10
11 January 24th, 2008
12 Spartanburg, South Carolina

13 B E F O R E:

14 THE HONORABLE JAMES E. LOCKEMY, JUDGE.

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

16 FRAN HUMPHRIES
17 SOLICITOR
18 Attorney for the State

19 RALPH WILSON and PAUL RATHBURN
20 ESQ.
21 Attorneys for the Defendant

22
23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

(There were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

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2
3 THE COURT: All right. I have here -- I have Pam
4 Green, a court reporter up in Spartanburg County. She's
5 here taking down our hearing.

6 MRS. HUGGINS: Okay. Would you like to know who's
7 present in the courtroom?

8 THE COURT: All right. Go ahead.

9 Melanie Huggins, Clerk of Court, is speaking.

10 Now, yes, Melanie, who's in the courtroom?

11 MRS. HUGGINS: Donna Williams from the Clerk's Office.
12 Fran Humphries from the Solicitor's Office. I think Alton
13 from the Solicitor's Office. Sheriff Phillip Thompson,
14 Deputy Livingston, Sergeant Harmley, Captain Gray, Deputy
15 Hemingway, Deputy Gerald.

16 THE COURT: Deputy who?

17 MRS. HUGGINS: Gerald.

18 THE COURT: Gerald.

19 Okay.

20 MRS. HUGGINS: Mr. Louis Winkler, Ralph Wilson,
21 Daniella DePursio, and Paul Rathburn.

22 THE COURT: Now, Daniella, is that a, Ms. DePursio, is
23 that a paralegal?

24 MRS. HUGGINS: Yes, with Mr. Wilson.

25 THE COURT: Okay. And did you say that Mr. Emory's

1 there also?

2 MRS. HUGGINS: No, Mr. Humphries.

3 THE COURT: All right. Who is with Mr. Humphries?

4 MRS. HUGGINS: Peggy Stout.

5 THE COURT: All right. Good.

6 Okay. Now, the purpose of this hearing, everyone, is
7 to go over the attempt by the sheriff to locate jurors that
8 had returned, that had returned notices of jury service
9 without being picked up from regular mail.

10 So, Mrs. Huggins, did you direct the sheriff or ask the
11 sheriff to go out and find, try and find these people?

12 MRS. HUGGINS: Yes, we did.

13 THE COURT: What's the total number?

14 MRS. HUGGINS: We have nine left that is, that we are
15 waiting for the Sheriff's Office on a response.

16 THE COURT: But what's the total number that you gave
17 to him?

18 MRS. HUGGINS: It was a, over a hundred. I don't know
19 the exact number. But it was over a hundred.

20 THE COURT: Yeah, seemed like it said 142 if I recall
21 or something like that.

22 MRS. HUGGINS: That is correct. 142.

23 THE COURT: All right. Now, what -- that means nine
24 you're waiting on. So, that's 133.

25 Of the 133, what are your, what -- give me your