

VOLUME ELEVEN

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

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S.C. Supreme Court

MARION BOWMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213468

APPENDIX

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

PLAINTIFF'S EXHIBIT #72 (PHOTOGRAPH)
PLAINTIFF'S EXHIBIT #73 (PHOTOGRAPH)

Closing Argument by Mr. Cummings

1 car, drives the car into the little tractor
2 road, lights it down with gasoline, throws a
3 match on it, if that's what you believe, ladies
4 and gentlemen, from Mr. Felder, I submit to you
5 why wasn't gasoline found on the same pants that
6 everybody's made a big point about identifying
7 here?

8 They made sure it was gasoline,
9 remember? And this is the horrible thing now,
10 and I beseech you not to punish me when I say
11 this, that little girl had gasoline poured on
12 her. And I deliberately asked a question in
13 here of Mr. Helms not as a trick, not as
14 anything else, but to get you to show that the
15 car was pulled down and pulled out tail end
16 first. Water, everything else would have been
17 going that way.

18 So there was no explosion of the gas
19 tank like the chief of the fire department
20 thought. Agent Helms got underneath that thing,
21 checks this out, the gas tank's intact. So
22 gasoline didn't come up, okay, law of physics,
23 just didn't blow up, something was poured on it.

24 The person who had gasoline on them
25 was who? You cannot -- you cannot by law in

Closing Argument by Mr. Cummings

1 this room after listening to Mr. Layton find
2 there was gasoline on my client. There was
3 nothing on his coat, only a trace of kerosene on
4 his pants. And they made a big deal out of that
5 and they called Mr. Layton in to try to tell you
6 that.

7 Where this gasoline was, ladies and
8 gentlemen, was on the person of Miss Martin
9 after, and Dr. Ross stated this, after she was
10 deceased. No carbonation in her lungs, no smoke
11 in her lungs. And I ask you, please, do not be
12 bitter at me or angry at me for saying that. I
13 had to say that to you because that's what the
14 evidence shows. And I asked Dr. Ross that
15 question for a reason.

16 What you do know, ladies and
17 gentlemen, is this: Everybody who has a reason
18 to say something in here said what they had to
19 say and it was only after we tried to pull
20 things out to establish some issues here that
21 you heard anything contrary. Did you hear, see
22 anything flash up on the screen that said
23 anything other than words to convict Mr. Bowman?
24 That's not anybody's job. Everybody's job in
25 here is to do justice and everybody wants a

Closing Argument by Mr. Cummings

1 verdict that speaks the truth. Then why wasn't
2 some of the truth shown to you also?

3 I have a job to do, that's right, and
4 nobody has to do our job for us, but, ladies and
5 gentlemen, Marion has pled not guilty and Her
6 Honor will tell you the burden stays with the
7 State until they prove that guilt beyond a
8 reasonable doubt. Her Honor will give you the
9 definition of reasonable doubt. You each have a
10 right along with your right to share
11 collectively with your fellow jurors. And at
12 the end of that you and your fellow jurors reach
13 a decision.

14 Her Honor will tell you, and she'll
15 tell you about the credibility, she'll tell you
16 about when people cut deals what happens.
17 They'll tell you, ladies and gentlemen, about
18 what happens. If everybody in this jury panel
19 believes that the only motive in here was so
20 that Marion, Marion would kill this little girl,
21 what happens in here? He was charged with
22 murder and arson. He has not been charged with
23 stealing a car, but what was said? Where did
24 that come from?

25 Okay. The only problem is at the club

Closing Argument by Mr. Cummings

1 everybody else testified, Valorna Smith, Carolyn
2 Brown, and believe me, and this is important
3 here, ladies and gentlemen, and I know I'm
4 getting long winded, and I apologize, Carolyn
5 Brown got called back to the stand by the State
6 because the first time they asked her questions
7 about what kind of car or anything else she
8 didn't say what they thought she would say, she
9 stuck to her guns. The second time up we went
10 over the same old, what we call, plowed ground.
11 And Her Honor sustained my objection a few times
12 and said where's the new questions.

13 If anybody looks at Ms. Carolyn Brown,
14 you look at what? She knows in her mind what
15 time the fellows were there and she knows what
16 was going on at that club because she saw them
17 in Yolanda's car, not Miss Martin's car. My
18 client has not been charged with stealing a car.
19 That's like the 15-yard penalty in football,
20 kind of like piling on. It's like piling it on
21 hoping that something sticks. It's not here for
22 you to consider, but it's easy if you don't
23 follow Her Honor's laws to go back there and
24 say, stole the car. No, he didn't. He's not
25 charged with it. Not charged with it.

Closing Argument by Mr. Cummings

1 Ladies and gentlemen, big deal about
2 the watch in the pocket. There's been no charge
3 of Mr. Bowman about the watch in the pocket.
4 I'll tell you that it's a big deal, how it came
5 about was let's look at the DNA. It showed
6 sometime that Miss Martin, who was friends with
7 Mr. Bowman, Miss Martin who was friends with
8 Mr. Gadson, Miss Martin who was friends with a
9 lot of these folks in this community in
10 Branchville, sometime Mr. Bowman and her had
11 relations. Sometime. Do you think that was put
12 there to try to poison you to get you angry? Do
13 you think that was presented to want to get you
14 to lash out? Do you think there was a reason?
15 How can you tie that into this case? How?

16 There's a reason. If you look in your
17 heart, you look in your common sense you'll find
18 a reason. And I'll say this also to you. Why,
19 why would Marion want to kill her? He's told
20 you by pleading not guilty he didn't do it.
21 You've got to prove the physical evidence that
22 Marion did it.

23 Ladies and gentlemen, if this is the
24 only issue that preys to you, did Mr. Gadson fit
25 why he had to say she was shot in the front?

Closing Argument by Mr. Cummings

1 Because maybe when he's up there his script that
2 he was supposed to follow did ring like it was
3 supposed to ring, because maybe he realized when
4 he had his head down the whole time, wouldn't
5 look you folks in the eye, wouldn't answer
6 questions back on cross, and maybe he knows he
7 had to cut his deal and go on. It's easy,
8 ladies and gentlemen, to cut deals. It's easy
9 to say the last guy holding the bag is going to
10 take the fall.

11 Now, what I just said to you is
12 probably going to offend you because it's not
13 the fact of cutting a deal here that you want to
14 hear. You want to know who took Miss Martin's
15 life and that is your answer, but it's not your
16 answer because the State has the burden of
17 proving who.

18 I asked if certain other tests were
19 done in this room. And, you know, it's easy for
20 you to say, come on, what's he bothering us
21 about that for, why has he asked that question,
22 I've heard enough. No, you haven't yet, please.
23 Because it's easy to shut it off. The last man
24 holding the bag here is that kid right there.
25 And the only one holding the bag is him, so they

Closing Argument by Mr. Cummings

1 want you to say that he killed Miss Bowman
2 because nobody else can be charged with it.
3 Nobody else is at stake for you to determine
4 because he pled not guilty and asked for a jury
5 panel.

6 And, ladies and gentlemen, where are
7 the statements that say anything positive about
8 where Mr. Bowman was? Where are all these
9 people? All you saw were flash cards about how
10 bad, what he could have said, what he would have
11 said. Look at the time that passed from these
12 alleged statements that were made and put up the
13 curse words for you to inflame you, to get you
14 angry, angry enough to vote this man guilty.
15 You know what it is? That's exactly what it is.
16 I don't think you're going to fall for that. I
17 don't think.

18 MR. BAILEY: Judge, I want to object to Mr.
19 Cummings expressing his own personal opinion,
20 that's clearly not allowed.

21 THE COURT: Yes, refrain, please.

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

23 THE COURT: Yes, sir.

24 MR. CUMMINGS: Please, don't fall for that.
25 I apologize for using the word. Marion had to

Closing Argument by Mr. Cummings

1 have the gun in this case in order for you folks
2 to be angry enough to want to convict him. Also
3 let's just go briefly on the bullets. Why do
4 you think six -- February to June all of a
5 sudden there's a box of bullets in the same
6 couch four months later and there's a mysterious
7 call upon some mysterious wind of intervention
8 to want to lead to go back to that couch. I
9 wonder who dropped that little hint about where
10 the bullets might be?

11 You're right, it's easy to say, well,
12 you know, it follows my case. No little bread
13 crumbs were followed. I feel like the little
14 story of Little Red Riding Hood going to
15 grandma's house, bread crumbs, where are bread
16 crumbs leading? It's got to point towards
17 Marion. Red spatters in the trailer there days
18 afterwards, Marion's not around. Nobody sent
19 that up here to have that gentleman do any
20 samples, the DNA guy. You want to ask him that?
21 Everything else got sent up there.

22 Were there selective issues here?
23 Were there selective charges? Were there
24 selective deals cut? Sure, there were. But is
25 that enough to convince you beyond a reasonable

Closing Argument by Mr. Cummings

1 doubt that Marion Bowman is guilty of murder?
2 That is your province. Submitting that issue to
3 you reasonable doubt exists.

4 You have no one to reward, no one to
5 punish. Everybody feels bad about what happened
6 here. Nobody will ever question you about your
7 decisions that you make in that box or in that
8 backroom. Nobody has been allowed to go near
9 you good folks and nobody will afterwards unless
10 you want to talk to somebody about it. And
11 those questionnaires asked you about that,
12 whether you would have an impact, whether you
13 would have some pressure on you to vote your
14 conscience, to vote what you found in this room
15 and only in this room.

16 Oh, ladies and gentlemen, someone has
17 to pay for the loss of that little girl, but are
18 you so sure that the right one's going to pay?
19 And that's the question that only you can
20 determine. It's obvious, it is so obvious to be
21 angry, it is so obvious that you know that the
22 price of justice is screaming out here to find
23 somebody for this. What if the one who did cut
24 his deal and got a deal and will go on?

25 It's easy to jump. I wanted to jump

Closing Argument by Mr. Cummings

1 up several times in Mr. Bailey's closing, I
2 wanted to jump up, say, hey, come on, take the
3 words off the prompters. They left them on for
4 you to get you angry. Please don't let anger
5 close your mind to facts.

6 And as to the arson charge, the only
7 thing as to the arson charge is what? No
8 gasoline on my client's trousers? There is
9 nothing there other than Mr. Felder saying, oh,
10 Marion did it. But if he was in such shock,
11 ladies and gentlemen, when he went back after
12 this according, if you believe this man's
13 testimony, his deal cutter who's going to get
14 probation, this deal cutter goes back, gets his
15 hair either braided up or braided down. I'm
16 sorry, I apologize, I was kind of like stunned
17 when I heard that from Mr. Felder. And he's so
18 upset he goes and has a beer and goes to sleep.

19 And of course because of all his good
20 civic nature and the importance of the fact
21 he'll come in and tell you folks what his side
22 of the story is, that until May, right, the week
23 of this trial, that he tells you now, oh, this
24 is what happened.

25 Mr. Felder, the good gentleman that he

Closing Argument by Mr. Cummings

1 is, he cut his deal. In order to get a deal,
2 this is what he had to testify to. There is
3 nothing, ladies and gentlemen, tying my client
4 to the car other than the deal cutters. If you
5 believe them, ladies and gentlemen, then so be
6 it. Is there reasonable doubt here some? Sure,
7 there is.

8 And you're right, we took a long time
9 looking at the pieces of evidence to try to show
10 it to you this could have happened, that could
11 have happened. I didn't put six -- excuse me,
12 nobody put six shells on the ground except what
13 happened that night and nobody is here to
14 testify to you as to the six shells, no one.

15 So you know there's a doubt about what
16 was said, you know, but you want to punish
17 somebody, that's human nature. There's no one
18 here -- if these people are so afraid of blowing
19 his brains out why did they ride to the club
20 with him? Why? You get away from people if
21 they scare you, don't you? You don't hang
22 around. Marion Bowman is the only stoop, that's
23 it. Point it at him. He got it. We got him,
24 let's say he did it. You wait, that's it.

25 No citizen can come in here and prove

Closing Argument by Mr. Cummings

1 himself innocent, you can't do that. That's why
2 our forefathers years and years and years ago
3 said to you you've got to have proof beyond a
4 reasonable doubt. If you want punishment, so be
5 it. If you want revenge, so be it. If you want
6 justice, if you want truth, then you shall seek
7 it. If you want to give Marion Bowman, Jr. a
8 fair trial you will do so. If you want to
9 follow Her Honor's law and instructions you will
10 do so. If you choose not to do that is a breach
11 of your sacred oath.

12 Ladies and gentlemen, in a moment,
13 again, I'm going to ask you to beg my indulgence
14 to walk to the table. I do not want to turn my
15 back on you. As I stand here I just want to end
16 my final words with a few words if I can,
17 please.

18 Ladies and gentlemen, this is
19 Mr. Marion Bowman, Jr., again, and I know you're
20 angry for the loss of Miss Martin, I'm asking
21 you to, please, on behalf of Ms. Thomas, myself,
22 take this case as serious as you said you would,
23 weigh the facts and the evidence as the State
24 had the burden of presenting them, and if you
25 find him not guilty, so be it. I'm asking you

Closing Argument by Mr. Cummings

1 to find him not guilty.

2 If you find him guilty, ladies and
3 gentlemen, it's because each and every one of
4 you put your mind together and reached that
5 decision. There are two charges. Don't let the
6 rest of this stuff cloud everything. And that's
7 what this is. If you want to talk about smoke
8 and mirrors, there they are. Please look at
9 what was presented here today. Thank you, Your
10 Honor.

11 THE COURT: Thank you, Mr. Cummings.

12 Ladies and gentlemen, do any members
13 of our jury panel need to take a short comfort
14 break? It's going to take me about 45 minutes
15 to deliver the charge to you, so does anyone
16 need to take a short comfort break? If so don't
17 be shy, raise your hand.

18 All right then. I'll tell what you
19 I'm going to do is just stand where you are for
20 just a moment. Stand and see if you can get
21 the -- there you go. How good does that feel?
22 And, ladies and gentlemen, when you are prepared
23 to be seated, be seated.

24 THE COURT: Ladies and gentlemen, I'm going
25 to ask that you please give me your undivided

Jury Charge

1 attention for a few moments. You have been
2 indeed very patient throughout the trial of this
3 case. You have listened attentively to the
4 presentation of the evidence and the testimony
5 throughout the trial, and even through the jury
6 selection process itself, and finally to the
7 very capable arguments that were made both by
8 the solicitor and by defense counsel in this
9 case.

10 It now becomes my duty under the
11 constitution of this state to charge you.
12 That's just another word. That means to
13 instruct you as to what the law is in this case.
14 It is your duty as jurors to accept the law and
15 to apply it to the facts of this case. Because
16 as jurors, ladies and gentlemen, it is your
17 exclusive duty to decide all of the issues of
18 fact in this case.

19 For that purpose, you have to
20 determine the effect, the value, the weight, and
21 the truth of the evidence. Both the State and
22 the defendant have the right to expect that you
23 will conscientiously consider and evaluate the
24 evidence, and that you will apply the law of the
25 case to that evidence to the end that both the

Jury Charge

1 State and the defendant will receive a fair and
2 impartial trial at your hands.

3 Throughout the course of this case,
4 Madam Presiding Juror, Madam Foreperson, and
5 ladies and gentlemen, please know that when I
6 use the word defendant, when I have used the
7 word defendant and now in this charge when I use
8 the word defendant, I am referring to Mr. Marion
9 Bowman, Jr.

10 The State of South Carolina by these
11 indictments has charged Mr. Bowman with the
12 following offenses. I will read portions of the
13 indictments to you. First indictment says in
14 part that Marion Bowman, Jr. did in Dorchester
15 County on or about February the 16th, 2001 and
16 February the 17th, 2001 with malice aforethought
17 kill one Kandee Martin by means of shooting the
18 victim in the head and back, and the said victim
19 did die as a proximate result thereof.

20 The other indictment reads in part
21 that Marion Bowman, Jr. did in Dorchester County
22 on or between February the 16th, 2001 and
23 February the 17th, 2001, willfully, unlawfully,
24 and maliciously burn or cause to be burned with
25 intent to destroy a car belonging to Cordillia

Jury Charge

1 Martin and/or Kandee Martin, this being the
2 offense, being an offense of the law.

3 Now, ladies and gentlemen, as I told
4 you earlier and I remind you again, the
5 indictments themselves are not evidence of the
6 charge which the indictment contains, it is not
7 proof of the charge which it contains. You may
8 not consider an indictment as proof in support
9 of the charge that it contains, it is just a
10 piece of paper which contains a charge and what
11 they are about.

12 To both indictments and to the charge
13 contained in each indictment Mr. Bowman has
14 entered pleas of not guilty. The pleas of not
15 guilty which he has entered places the burden of
16 proof on the State to prove by evidence his
17 guilt beyond a reasonable doubt before you as a
18 jury, and before a jury can convict him and find
19 him guilty.

20 Mr. Bowman is presumed in law innocent
21 of the charge contained in these indictments; in
22 other words, one charge per indictment. Two
23 charges, two indictments. It is a cardinal and
24 fundamental rule of the law of evidence that a
25 defendant regardless of the nature of the

Jury Charge

1 charges or the number of the charges or the
2 seriousness of the charges against him, will
3 always be presumed innocent of those charges
4 unless and until his guilt has been proven by
5 evidence, evidence that satisfies you, the jury,
6 of that guilt beyond a reasonable doubt.

7 Now, ladies and gentlemen, the
8 presumption of innocence is not a mere legal
9 theory, it is not an empty legal phrase. The
10 presumption of innocence has been linked and
11 likened to a robe of righteousness which is
12 placed about the shoulders of a defendant. It
13 remains with him and it assigns him to that
14 class known as the innocent, unless and until
15 that presumptive robe of righteousness has been
16 stripped from his person by evidence that
17 satisfies you of his guilt beyond a reasonable
18 doubt.

19 The presumption of innocence
20 accompanies the defendant throughout this trial,
21 throughout his appearance in court. Indeed it
22 even follows him as you go into the jury room to
23 deliberate your verdict. The presumption of
24 innocence continues in existence to the benefit
25 of a defendant until you, the jury, reach the

Jury Charge

1 conclusion that the State has proven his guilt
2 beyond a reasonable doubt.

3 When I tell you that the State has the
4 burden of proving the defendant guilty beyond a
5 reasonable doubt, some of you have served as
6 jurors in civil cases where you were told that
7 it is only necessary to prove a fact more likely
8 true than not true to prove -- the burden of
9 proof being the greater weight or the
10 preponderance of the evidence. But in criminal
11 cases the State's proof must be more powerful
12 than that, here it must be beyond a reasonable
13 doubt.

14 So what then do we mean by the words
15 "beyond a reasonable doubt"? Proof beyond a
16 reasonable doubt is proof that leads you firmly
17 convinced of the defendant's guilt.

18 Now, there are very few things in this
19 world that we know with absolute certainty, and
20 in criminal cases the law does not require proof
21 that overcomes every possible doubt. If, based
22 on your consideration of the evidence, you are
23 firmly convinced that the defendant is guilty of
24 the crime or crimes charged, you must find him
25 guilty. If, on the other hand, you think there

Jury Charge

1 is a real possibility that he is not guilty, you
2 must give him the benefit of that doubt and find
3 him not guilty.

4 Reasonable doubt, ladies and
5 gentlemen, can arise from evidence in the case
6 or it may arise from the lack of evidence in the
7 case, so you must determine whether or not
8 reasonable doubt exists as to the guilt of this
9 defendant. I tell you that the defendant is
10 entitled to every reasonable doubt which arises
11 in the case, so if on any issue of fact which is
12 essential to a conviction and a verdict of
13 guilty you have a reasonable doubt as to how
14 this issue should be resolved, it is your duty
15 to resolve that reasonable doubt in favor of the
16 defendant.

17 I remind you, ladies and gentlemen, I
18 instruct you now and emphasize to you that the
19 burden of proof is, again, beyond a reasonable
20 doubt. Beyond a reasonable doubt has also been
21 defined as the kind of doubt that would cause a
22 reasonable person to hesitate to act.

23 Now, ladies and gentlemen, I remind
24 you, I instruct you, and I likewise emphasize to
25 you that the fact that the defendant in this

Jury Charge

1 case did not testify in his own behalf is not,
2 is not a factor to be considered by you in any
3 way in your deliberations and in your
4 consideration in the question of his guilt or
5 innocence.

6 It must not be considered by you in
7 any manner whatsoever against him, or mitigate
8 him in any manner whatsoever in any respect
9 whatsoever because a defendant has a
10 constitutional right to remain silent. And if
11 he chooses to assert that constitutional right,
12 that fact cannot and must not be considered by
13 you in your deliberations.

14 So under your oath then you are to
15 reach no inference and draw no conclusion
16 whatsoever from the fact that the defendant in
17 this case did not testify. The fact that this
18 defendant did not testify should not even be
19 discussed by you in the jury room, because the
20 burden of proof, as I have told you, is and
21 remains upon the State.

22 The defendant has no obligation to
23 prove his innocence. The burden of proof
24 remains upon the State to prove guilt beyond a
25 reasonable doubt. And the fact that the

Jury Charge

1 defendant did not testify is not a factor to be
2 considered by you in determining his guilt or
3 innocence.

4 So, ladies and gentlemen, if then upon
5 the whole case you have a reasonable doubt as to
6 the guilt or the innocence of the defendant, he
7 is entitled to that reasonable doubt and would
8 be entitled to an acquittal and a verdict of not
9 guilty.

10 But, on the other hand, if upon the
11 whole case you find that the State has proven by
12 evidence which satisfies you as a jury of the
13 guilt of the defendant beyond a reasonable
14 doubt, then in such circumstances it would
15 equally be your duty to convict the defendant
16 and to find him guilty.

17 Now, ladies and gentlemen, during the
18 trial each of us, you and I, have our separate
19 and distinct duties to perform. As a trial
20 judge it is my job to preside over the trial of
21 this case. I also have the duty to rule upon or
22 pass upon the admissibility of the evidence
23 which has been offered during the progress of
24 this trial. So you are to consider then only
25 the testimony which has been presented from this

Jury Charge

1 witness chair here together with the exhibits
2 which have been entered into the record of this
3 case in accordance with our rules and any
4 stipulations which have been made by counsel
5 during the course of the trial. You are, ladies
6 and gentlemen, of course, to consider the
7 competent evidence presented to you.

8 Now, ladies and gentlemen, I have the
9 additional duty to charge you the applicable law
10 in this case. As the presiding judge I am made
11 the sole judge of the law of the case and it is
12 your duty to accept the law and apply the law
13 precisely as I now state it to you.

14 If you brought with you this week into
15 your service as jurors some preconceived ideas
16 about what you think the law is, or if you
17 brought with you some preference as to what you
18 would like for the law to be, and if your
19 preferences about what you think the law should
20 be and your preconceived ideas about what you
21 think the law is do not agree with what I am
22 telling you the law actually is, it is your
23 obligation under your oath to abandon your
24 preconceived ideas and your preferences about
25 the law because you are obligated under that

Jury Charge

1 oath to accept the law precisely as I now state
2 it to you.

3 On the other hand, ladies and
4 gentlemen, in every case tried in this court
5 before a jury, you, the jury, are the sole and
6 exclusive judges of the facts of this case. I
7 am the judge of the law and you are the judges
8 of the facts. Our constitution has declared
9 that a trial judge cannot comment upon the facts
10 of the case. I cannot hint to you or suggest to
11 you any feeling that I might have about the
12 facts of this case and I am not allowed, as I
13 said, to comment upon the facts of this case.

14 Because you are the sole judge of the
15 facts then, ladies and gentlemen, you are not to
16 gather anything that I have said during the
17 course of this trial as I have ruled upon the
18 admissibility of evidence or otherwise, or
19 anything that I say to you now during the course
20 of this charge that I have an opinion about the
21 facts of this case. The law does not permit me
22 to have any such opinion, because that is solely
23 a matter for you to determine.

24 As jurors then, ladies and gentlemen,
25 it becomes your duty, as I have told you, to

Jury Charge

1 determine the effect, the value, the weight, and
2 the truth of the evidence presented during the
3 course of this trial.

4 Now, as you determine what the facts
5 of the case are you must necessarily pass upon
6 the credibility of the witnesses who have
7 testified and the force, and effect, and value,
8 and weight that you will give to their
9 testimony. Credibility is just another word
10 that means believability. You can use those
11 words as synonyms for each other. You and you
12 alone must determine the force, and the effect,
13 and the truth of the testimony.

14 Now, as you make this decision about
15 credibility and believability, and force, and
16 effect, and value, and weight and things of that
17 nature, there are many things that you may and
18 should take into account. For example, you may
19 take into account the appearance, the manner of
20 a witness as he or she testified here from the
21 witness stand. We sometimes refer to that as
22 the demeanor of the witness. Was the witness
23 forthright or was the witness hesitant in
24 answering? Was the witness's testimony
25 consistent or did it contain discrepancies?

Jury Charge

1 What was the ability of the witness to know the
2 things about what he or she testified?

3 Did the witness have a cause or a
4 reason to be biased and prejudiced in favor of
5 the testimony that he or she gave; in other
6 words, an interest to be served by that
7 testimony? Was the testimony of a witness
8 corroborated; in other words, made stronger by
9 other evidence, testimony in the case? Or was
10 the testimony of a witness impeached; in other
11 words, made weaker by other evidence and
12 testimony in the case?

13 You have heard the testimony in this
14 case from persons who have been described as
15 experts in certain fields. Our law allows
16 persons who because of their knowledge,
17 training, education, and experience have become
18 experts in certain fields to state their
19 opinions on matters in those fields, and also to
20 give their reasons for those opinions. Expert
21 opinion testimony, however, should be judged
22 just like any other testimony. You can accept
23 it or reject it, you can give it as much weight
24 as you think it deserves considering the
25 witness's education and experience and the

Jury Charge

1 reasons given for the opinion and all the other
2 evidence in the case. Expert testimony, ladies
3 and gentlemen, is given for the purpose of
4 helping you understand the evidence and not for
5 the purpose of controlling your judgment.

6 Now, ladies and gentlemen, as you
7 decide this matter of credibility and
8 believability, you have the right to believe a
9 small portion of the testimony of a single
10 witness and disbelieve the larger portion of the
11 testimony of that same witness or the other way
12 around, you can believe the larger and
13 disbelieve the smaller. You can believe
14 everything that a witness says to you, tells
15 you, or you can believe none of what a witness
16 tells you. You can believe the testimony of one
17 witness as against several, or you can believe
18 the testimony of several witnesses as against
19 one. You don't exercise these considerations
20 arbitrarily, ladies and gentlemen. There has to
21 be some sound reason in the record and evidence
22 for you to do so.

23 Now, most certainly you don't
24 determine the matter of credibility or
25 believability by counting the number of

Jury Charge

1 witnesses who may have testified on behalf of
2 the respective sides of this case. Because your
3 sole objective, ladies and gentlemen, is to find
4 the truth, it doesn't matter to you whether that
5 truth comes from a witness or a witness from --
6 wherever you receive it. Ladies and gentlemen,
7 your sole objective is to find the truth.

8 As you do this, ladies and gentlemen,
9 as you determine this matter of credibility and
10 believability, you exercise your mental process.
11 You determine what you consider to be true. You
12 exercise your sense of common sense and sound
13 judgment, logic, and reasoning. You apply those
14 attributes of ability that you have, your mental
15 process, your common sense, your sense of logic
16 and reason that each of you brings from your
17 respective walks of life and from your
18 respective homes and businesses and jobs into
19 this case. You apply those attributes that you
20 have to the evidence which you have heard and
21 you determine what you consider to be the truth
22 in this case.

23 Once you have determined what you
24 consider to be the truth, you take the truth and
25 you wrap it in the mantel of the law that I am

Jury Charge

1 now charging you and thus arrive at a verdict
2 which speaks the truth of this case.

3 Now, ladies and gentlemen, I now
4 charge you as to the elements of the offenses
5 contained in these indictments. As I told you
6 each of these offenses have elements. The State
7 has the burden of proving these elements of each
8 offense to your satisfaction beyond a reasonable
9 doubt. If it can bear that burden it is
10 entitled to a verdict of guilty on any and all
11 offenses on which it has met that burden of
12 proof. If it cannot bear that burden, the
13 defendant is entitled to a verdict of not guilty
14 on any and all offenses which have not satisfied
15 that burden of proof.

16 I remind you, ladies and gentlemen,
17 that the indictment charges the defendant with
18 murder. I need not repeat that charge to you or
19 remind you of the specifics of the indictment.
20 Under the law what is murder? Section 16-3-10
21 of the Code of Laws of South Carolina describes
22 and defines murder as the killing of any person
23 with malice aforethought either expressed or
24 implied.

25 In order for the State to prove the

Jury Charge

1 defendant guilty of murder it must be proven
2 beyond a reasonable doubt that the defendant did
3 kill a person and that the killing was done with
4 malice aforethought. Now, the State is not
5 required to prove any motive for the killing,
6 but it is required to prove the existence of
7 malice and to prove that beyond a reasonable
8 doubt.

9 So what then is malice? Malice is the
10 intentional doing of a wrongful act without just
11 cause or excuse and with an intent to inflict
12 injury. Malice aforethought is the deliberate
13 and well-formed purpose to the unlawful act.
14 Aforethought means that the intention to do the
15 unlawful act was conceived or planned sometime
16 before the actual commission of the unlawful
17 act, but the malice need not exist for any
18 particular length of time prior to the act to be
19 malice aforethought. Malice is a word that
20 suggests wickedness, or a hatred, or a
21 determination to do what one knows to be wrong
22 without just cause or excuse or legal
23 provocation.

24 Malice, as I have said, need not be in
25 the mind of the one doing the act for any

Jury Charge

1 particular length of time before the act of
2 killing in order to render the killing murder.
3 If it is present in the mind of the one doing
4 the killing any length of time before the act,
5 then its presence would be sufficient to render
6 the killing murder. Malice may be either
7 expressed or inferred. Malice is said to be
8 express malice where there is shown a violent,
9 deliberate intention to unlawfully take the life
10 of another human being. Malice may be inferred
11 where no excuse or legal provocation for the
12 killing appears, and when circumstances
13 attending the killing show an abandon heart or a
14 malignant heart fatally bent upon mischief.

15 The law says that if one intentionally
16 kills another with a deadly weapon the inference
17 of malice may arise. A deadly weapon is any
18 object or substance which reasonably could be
19 used to cause bodily harm. Malice may be
20 inferred from the use of such a deadly weapon.
21 You are permitted to infer malice from the
22 conduct of the defendant in the use or the
23 handling of a deadly weapon if the conduct
24 results directly in the death of another and if
25 such conduct was so inexcusable, so aggravated,

Jury Charge

1 grossly reckless as to show an actual
2 intentional disregard of consequences to human
3 life.

4 A conduct sufficient to show a
5 deliberate, intentional design to use, employ,
6 or handle a deadly weapon so as to endanger the
7 life of another, or others without just cause or
8 excuse is sufficient to raise an inference of
9 malice.

10 So if facts are proved beyond a
11 reasonable doubt sufficient to raise an
12 inference of malice from the use of a deadly
13 weapon to your satisfaction, that inference
14 would simply be an evidentiary fact to be taken
15 into consideration by you along with all the
16 other evidence in this case bearing upon the
17 issue of malice, and you should give it such
18 weight as you determine it should receive. I
19 remind you that the defendant is not required to
20 prove the absence of malice. The State is
21 required to prove the existence of malice. The
22 State is required to prove that beyond a
23 reasonable doubt.

24 The indictment, or the other
25 indictment charges the crime of arson third

Jury Charge

1 degree. In order to prove third degree arson
2 the State must prove beyond a reasonable doubt
3 that the defendant willfully and maliciously
4 caused an explosion, set fire to, burned, caused
5 to be burned, aided, counselled, or procured the
6 burning of certain properties.

7 Willfully means that it was not done
8 by accident, but was done knowingly or
9 intentionally. It must be shown that the
10 burning was by the willful act of some person
11 and not as a result of a natural or accidental
12 cause.

13 Maliciously means with hatred, ill
14 will, or hostility towards another person. A
15 person who intentionally does a wrongful act
16 without legal justification or excuse does the
17 act maliciously. A malicious burning is an act
18 done with a condition of mind that shows a heart
19 bent on mischief, showing a design to do an
20 intentional wrong act toward another or toward
21 the public without any legal justification or
22 excuse. This malice need not be expressed, but
23 may be inferred.

24 Burning means actual combustion of
25 some portion of a piece of property. It is not

Jury Charge

1 necessary that the property be consumed or
2 destroyed, charring of the material of which the
3 property is constructed, or a change in the
4 fiber of composition of the structure is
5 required for the burning. Singeing, smoking,
6 blistering, scorching, or discoloring by the
7 heat, however, is not enough to constitute a
8 burning.

9 Next the State must prove beyond a
10 reasonable doubt that the property which was
11 burned was a structure other than a dwelling
12 house, a church, or other place of worship, a
13 public or private school facility, manufacturing
14 plant or warehouse, a building where business is
15 conducted, an institutional facility or any
16 structure designed for human occupants including
17 local and municipal buildings. Or that it was a
18 railway car, a ship, boat or other watercraft,
19 an aircraft, an automobile or other motor
20 vehicle or personal property. Finally, the
21 State must prove beyond a reasonable doubt that
22 the defendant had the intent to destroy or
23 damage the property by explosion or fire.

24 Now, ladies and gentlemen, if the
25 State meets all of those elements of proof

Jury Charge

1 beyond a reasonable doubt it is entitled to a
2 verdict of guilty as to the charge. If it fails
3 to meet the burden of proof as to any of those
4 elements, the defendant is entitled to a verdict
5 of not guilty.

6 Now, ladies and gentlemen, I have used
7 the word "intent" at various stages throughout
8 this charge. I tell you that criminal intent is
9 a necessary element of a crime and it has to be
10 proven by the State beyond a reasonable doubt.
11 Criminal intent is always a matter that has to
12 be determined by you, the jury, from the
13 circumstances surrounding the incident in the
14 indictment.

15 Now, obviously there is no way that
16 intent can be proven to a mathematical
17 certainty. There is no way that medical science
18 can dissect a person's brain and look down in it
19 and figure out what the person had in mind at a
20 given time, so the law says that criminal intent
21 may be inferred from the circumstances which
22 were shown to have existed. And that's how you
23 make a determination as to whether or not the
24 element requiring intent was present.

25 Criminal intent then is a state of

Jury Charge

1 mind and it operates jointly with an act in the
2 commission of a crime. Criminal intent is a
3 mental state, it is a conscious wrongdoing. It
4 is up to you, the jury, to determine what the
5 defendant intended to do based upon the
6 circumstances which were shown to have existed.
7 I tell you that the State has to prove criminal
8 intent beyond a reasonable doubt just as it must
9 prove every other element beyond a reasonable
10 doubt as I have previously explained to you.

11 Now, ladies and gentlemen, there are
12 two types of evidence which are generally
13 presented during the course of a trial and that
14 has been true in this trial as well, the two
15 types of evidence are direct evidence and
16 circumstantial evidence. I want to define those
17 for you and give you some examples of them as
18 best I can in just a moment.

19 Direct evidence, first of all, is the
20 testimony of a person who claims to have actual
21 knowledge of a fact, such as an eyewitness. In
22 other words, direct evidence is evidence that
23 normally appeals to one of our senses, it is
24 something that we can see, or hear, or smell, or
25 taste, or touch, and we come to court and talk

Jury Charge

1 about what we saw, or heard, or smelled, or
2 tasted or touched. That is direct evidence.
3 Circumstantial evidence is the proof of a chain
4 of facts and circumstances which indicates the
5 existence of a fact.

6 Now, the law makes absolutely no
7 distinction between the weight and value to be
8 given either direct or circumstantial evidence,
9 nor is a greater degree of certainty required of
10 circumstantial evidence than that of direct
11 evidence, because circumstantial evidence is
12 good enough provided it meets the test of strict
13 proof.

14 Another way, ladies and gentlemen, of
15 explaining direct and circumstantial evidence is
16 this: We don't have snow around here very
17 often, but if you were to go to bed on a cold
18 winter night and before you went to bed you
19 looked out across your lawn and all you see is
20 the brown, dry, dead grass of winter on your
21 front lawn and then you go to sleep with that
22 vision in your head and on your mind.

23 You get up the next morning and you
24 look out across the lawn once again and you see
25 that it is covered with a blanket of snow and

Jury Charge

1 that there are footprints leading up to your
2 front door. What can you gather from those
3 things that you see the next morning? First of
4 all, you know that it snowed after you went to
5 sleep. You didn't see a single flake fall, but
6 you know that it snowed. Secondly, you know
7 that after it snowed somebody came across your
8 front lawn and walked up to your front door.
9 You didn't see them, you don't know who they
10 were, but you know they were there. That's what
11 circumstantial evidence is. It is proof of a
12 chain of facts and circumstances which lead to
13 the existence of a fact as in that case that it
14 snowed last night and somebody came to your
15 front door after the fact of snowing.

16 Now, to the extent that the State
17 relies upon circumstantial evidence, then not
18 only must the circumstances themselves be
19 proved, but they must point conclusively to the
20 guilt of the accused. They must be wholly and
21 in every way perfectly consistent with each
22 other, and they must further be absolutely
23 inconsistent with any other reasonable
24 explanation than the guilt of the accused.

25 Every circumstance which is relied

Jury Charge

1 upon by the prosecution as material must be
2 brought to the test of strict proof. All of the
3 facts proven must be consistent with each other
4 and taken together should be of a conclusive
5 nature and tendency producing a reasonable
6 certainty that the defendant and no one else
7 committed the crimes charged. It's not enough
8 that the facts create a possibility of guilt
9 even though a strong one. If assuming those
10 facts to be true there is any other reasonable
11 explanation which does not include the guilt of
12 the defendant, then the proof fails.

13 The reason for this is that all
14 presumptions of law independent of evidence are
15 in favor of innocence, and every person is
16 presumed to be innocent until he is proven to be
17 guilty. It is not enough to establish a
18 probability of guilt arising from the doctrine
19 of chances that a fact charged is likely to be
20 true.

21 Now, ladies and gentlemen, finally
22 there is a word you've been waiting for since
23 this trial started, finally, let me tell you
24 that you do not serve as jurors in this or in
25 any case as partisans or advocates either for

Jury Charge.

1 the State of South Carolina or for the
2 defendant, Mr. Bowman. You don't serve as
3 jurors to punish your enemies nor reward your
4 friends. Obviously such a perverted system of
5 justice would be intolerable.

6 You have been selected at the end of a
7 long and grueling process by both the State and
8 the defendant, Mr. Bowman, to be fair and
9 impartial jurors. It is your duty, then, by
10 your joint deliberations to determine the truth
11 in this case giving to the defendant the benefit
12 of every reasonable doubt on each and every
13 issue. And from the facts which you determine
14 to be true you take and apply the law which I
15 have just given you and thus arrive at a verdict
16 which speaks the truth of this case.

17 Interestingly enough, ladies and
18 gentlemen, that's what the word "verdict" means.
19 It comes from two Latin words which mean a true
20 saying. Once you've done that, ladies and
21 gentlemen, you will have accomplished your
22 responsibilities and you will have satisfied the
23 oath that you took just before this trial began,
24 and which I will remind you again that you will
25 well and truly try this case, and a true verdict

Jury Charge

1 render according to the law and the evidence so
2 help you God.

3 You have heard the evidence, you have
4 now heard the law. The verdict form is now
5 going to be shown to you. Madam Foreperson, you
6 will use this form -- you're fine right where
7 you are, we'll bring it to you -- you will use
8 this form to indicate your decisions in this
9 case on the various charges before you. Ladies
10 and gentlemen, this is the verdict form which
11 will be used in this case. The order in which
12 the possible forms of verdict are written on
13 that form is entitled to no significance, and
14 you are to reach no inference and draw no
15 conclusion whatsoever from the order in which
16 the possible verdict forms are written there.
17 It is obvious that I have to write them in some
18 order. The order that I write them is the order
19 that I find them easiest to explain.

20 Now, ladies and gentlemen, let me
21 remind you that your verdict must be unanimous.
22 This must be the verdict of each and every one
23 of you, the 12 of you. This is not the verdict
24 of the majority of you or any one of you, but
25 must be the verdict of each and every one of

Jury Charge

1 you, it must be unanimous.

2 Ladies and gentlemen, I have set out
3 the charges, listed them one and two. The first
4 charge is, number one, as to the charge of
5 murder: We, the jury, unanimously find the
6 defendant, there are two choices, the first is
7 guilty, the second is not guilty. Whatever is
8 the verdict of the jury, you will circle that
9 verdict so that it is clear what is the verdict,
10 the unanimous verdict of this jury. That will
11 be your task upon the conclusion of the
12 deliberations of the jury. You circle not
13 guilty or guilty, whichever is the unanimous
14 verdict of this jury.

15 With regards to the second offense,
16 and number two reads as to the charge of arson
17 in the third degree: We, the jury, unanimously
18 find the defendant, and, again, there are two
19 choices, guilty and not guilty. I could have
20 just as easily put not guilty and guilty, it
21 simply is you put the verdict, put words on
22 paper, one has to be first and one has to be
23 second. And, again, based upon the unanimous
24 verdict of this jury you will circle the
25 verdict, either not guilty or guilty, to

Jury Charge

1 indicate clearly the verdict of the jury.

2 Now, ladies and gentlemen, once you
3 have concluded your deliberations, you will
4 knock on the door, return to the jury room and
5 you'll pass the verdict form to our clerk who
6 will in turn pass it to me. You do not have to
7 publish the verdict when you return to the
8 courtroom.

9 Now, ladies and gentlemen, I have told
10 you the standards you have to apply to each of
11 those particular charges in each of the
12 indictments. I tell you now, ladies and
13 gentlemen, that you have to consider each of the
14 indictments and each charge on each indictment
15 independent of the other. Your verdict on one
16 particular charge does not necessarily determine
17 your verdict on the other. You may acquit or
18 convict the defendant on any or all of the
19 charges contained in the indictments. Of course
20 one charge per indictment, two indictments.

21 Whatever your verdict as to each of
22 the particular charges, Madam Foreperson, you
23 will indicate as I've told you by circling the
24 appropriate verdict on the verdict form, you
25 will sign the bottom of the verdict form and

Jury Charge

1 date it. Today is May 20th and so forth, but
2 just as a reminder today is May the 20th.

3 Now, ladies and gentlemen, the verdict
4 form will be given to your foreperson because
5 she is the one who has to fill it out. She is
6 the one who has to sign it when it is complete,
7 but the verdict, of course, will not be hers
8 alone. The verdict has to be unanimous as to
9 each charge. Madam Foreperson, you are not
10 authorized to write, nor sign the verdict form
11 until all of your number have agreed as to what
12 the verdict should be.

13 Now, ladies and gentlemen, I'm going
14 to send you to your jury room. And I tell you
15 one last time that you are not yet to discuss
16 this case among yourselves. As hard as you
17 might find that to believe given the, goodness,
18 close to -- I suppose close to an hour that I've
19 been talking to you, I may have left something
20 out, or I may have misstated something. The
21 lawyers have been following what I have been
22 telling you as I have been instructing you, so I
23 may need to bring you back out and correct
24 something that I have stated incorrectly.

25 When you go to your jury room this

Jury Charge

1 next time, I'm going to simply turn to them and
2 ask them have I given this jury all the law that
3 they may need for their consideration and I have
4 stated the law correctly. I may need to bring
5 you back out because I have stated something
6 incorrectly. If I have to bring you back out to
7 correct something that I have stated
8 incorrectly, please allow me to correct my error
9 in your minds. In the event that I need to
10 bring you back out because I have failed to give
11 you some portion of the law that you may need
12 for your consideration, please don't consider
13 that additional instruction with any emphasis,
14 just know this is my chance to get this right,
15 to give you all of the law that you may need for
16 your consideration and your deliberations and to
17 give it to you correctly.

18 If I do not need to bring you back
19 out, then we will assemble the items of evidence
20 and then they will be brought to you along with
21 an instruction to begin your deliberations. My
22 four alternates I'm going ask you to remain here
23 in the courtroom when the jury next retires to
24 their jury room.

25 Now, once you begin your deliberations

Jury Charge

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

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

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

Jury Charge

1 allow anyone to discuss it with you.

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

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

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

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

16 THE COURT: From the defense?

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

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

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

Jury Charge

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

4 (Pause in proceedings.)

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

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

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

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

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

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

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

9 THE COURT: Mr. Bowman is not here.

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

18 THE COURT: I understand.

19 Any objection?

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

25 MR. CUMMINGS: If we get it.

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

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

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

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

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

23 MR. CUMMINGS: Thank you, Your Honor.

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

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

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

19 Yes, sir.

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

22 THE COURT: Yes, sir.

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

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

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

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

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1 THE COURT: All right.

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

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

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

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1 to view it.

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

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

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

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

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

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

24 MR. BAILEY: Yes, ma'am.

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

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

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

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

14 THE COURT: Sure.

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

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

4 THE COURT: Doesn't seem quite right?

5 MR. BAILEY: Yeah.

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

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

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

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

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

21 THE COURT: Hide it.

22 MR. BAILEY: Yes, ma'am.

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

25 MR. BAILEY: This back here too just in

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

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

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

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

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

4 A JUROR: No, ma'am.

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

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

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

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

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

21 MR. BAILEY: Yes, ma'am.

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

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

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

9 What says the State about that?

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

12 MR. CUMMINGS: Absolutely, Judge.

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

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

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

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

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

23 (Whereupon, the jury retires to the jury room at
24 5:18 p.m.)

25 THE COURT: Any objections to my comments

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1 to the jury?

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

4 THE COURT: From the defense?

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

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

10 (6:28 p.m.)

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

25 If anyone wishes to step out at this

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

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

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

11 THE COURT: From the defense?

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

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

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

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

21 THE PRESIDING JUROR: Yes, ma'am.

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

24 THE CLERK: Thank you.

25 THE COURT: All right. I find that the

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

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

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

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

16 BY THE CLERK:

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

18 A. Yes, ma'am.

19 Q. Is it still your verdict?

20 A. Yes, ma'am.

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

22 A. Yes, ma'am.

23 Q. Is it still your verdict?

24 A. Yes, ma'am.

25 Q. Gene Davis. Is this your verdict?

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- 1 A. Yes, ma'am.
- 2 Q. And is it still your verdict?
- 3 A. Yes, ma'am.
- 4 Q. Lorraine Pringle. Is this your verdict?
- 5 A. Yes, ma'am.
- 6 Q. And is still your verdict?
- 7 A. Yes, ma'am.
- 8 Q. Richard Perez. Is this your verdict?
- 9 A. Yes, ma'am.
- 10 Q. And is it still your verdict?
- 11 A. Yes, ma'am. It is.
- 12 Q. Andre Porcher. Is this your verdict?
- 13 A. Yes, ma'am.
- 14 Q. And is it still your verdict?
- 15 A. Yes, ma'am.
- 16 Q. Eric Lowery. Is this your verdict?
- 17 A. Yes, ma'am.
- 18 Q. And is it still your verdict?
- 19 A. Yes, ma'am.
- 20 Q. Kathleen McPartlin. Is this your verdict?
- 21 A. Yes, ma'am.
- 22 Q. And is it still your verdict?
- 23 A. Yes, ma'am.
- 24 Q. Tamra Tyndell. Is this your verdict?
- 25 A. Yes, ma'am.

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1 Q. And is it still your verdict?

2 A. Yes, ma'am.

3 Q. Margaret Washington. Is this your verdict?

4 A. Yes, ma'am.

5 Q. And is it still your verdict?

6 A. Yes, ma'am.

7 Q. Raymond Dejong. Is this your verdict?

8 A. Yes, ma'am.

9 Q. And is it still your verdict?

10 A. Yes, ma'am.

11 Q. Lianne Luisi. Is this your verdict?

12 A. Yes, ma'am.

13 Q. And is it still your verdict?

14 A. Yes, ma'am.

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

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

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

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

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

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

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

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

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

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

13 MR. CUMMINGS: Thank you, Judge.

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

25 MR. BAILEY: None from the State, Your

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1 Honor.

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

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

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

18 MR. CUMMINGS: Absolutely, please.

19 THE COURT: Very well.

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

25 THE COURT: All right. Very well. It

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

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

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

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

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

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

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

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

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

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1 four alleged statutory aggravating factors.

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

4 MR. CUMMINGS: Yes, ma'am.

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

10 MR. CUMMINGS: Yes, ma'am.

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

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

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

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1 excuse them for the evening?

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

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

9 MR. BAILEY: All right. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 Harold Morgan may have also been on the list.

2 Is it Donald Morgan, Mr. Cummings?

3 MS. HARDEE-THOMAS: That is correct.

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

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

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

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

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

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

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

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

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

7 MR. BAILEY: Thank you, Your Honor.

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

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

11 THE COURT: Anything further for this
12 evening?

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

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

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

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

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

23 MR. CUMMINGS: Yes, ma'am.

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

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

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

14 THE COURT: Yes.

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

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

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1 late hour if they were back there.

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

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

6 MR. CUMMINGS: Yes, ma'am.

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

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

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

13 THE COURT: Yes.

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

24 MR. BOWMAN: Yes, ma'am.

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

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1 back out. Let me caution them. Very well.
2 (Whereupon, the jury returns to the courtroom at
3 6:54 p.m.)

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Very well. We will be in

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

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

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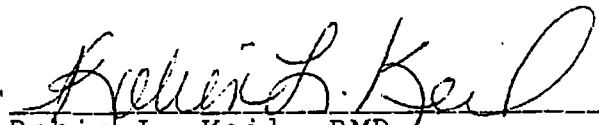
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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

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

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

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


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

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

ORIGINAL

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

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1 (May 22, 2002.)

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

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: So let me hear from you.

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

12 THE COURT: Yes, sir. |

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

19 THE COURT: Certainly.

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

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

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

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

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

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

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

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

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

25 THE COURT: Thank you.

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1 Mr. Bailey, good morning.

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

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

25 And if I can quote, Your Honor, for

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

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

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

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

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

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

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

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

23 Your Honor, the --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 THE COURT: Yes, sir.

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

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

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

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

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

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

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

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

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

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

16 THE COURT: I understand.

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

20 THE COURT: I understand.

21 What about that, Mr. Bailey?

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

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

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

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

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

21 THE COURT: Indeed.

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

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

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

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

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

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

14 THE COURT: I know you do.

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

18 (Pause in proceedings.)

19 THE COURT: Is there someone that can look?

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

22 THE COURT: Oh, all right.

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

25 THE COURT: Yes.

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

2 THE COURT: All right.

3 (Pause in proceedings.)

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

7 MR. BAILEY: All right.

8 THE COURT: All right.

9 MR. CUMMINGS: Thank you, Judge.

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

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

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

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

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

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

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

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

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

22 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 else in the world, it's heard.

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

15 THE COURT: I understand.

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

17 THE COURT: I understand.

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

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

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

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

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

4 MR. CUMMINGS: Yes, ma'am.

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

8 You received that, Mr. Bailey?

9 MR. BAILEY: Yes, ma'am.

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

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

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

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

25 THE COURT: Yes.

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

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

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

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

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

16 THE COURT: I understand.

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

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

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

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

15 MR. CUMMINGS: Yes, ma'am.

16 THE COURT: Very well.

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

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

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

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

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

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

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

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

8 THE COURT: Sure.

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

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

22 MR. CUMMINGS: Yes, ma'am.

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

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

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1 Honor.

2 THE COURT: All right.

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

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

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

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

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

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

19 MR. CUMMINGS: Not a ruling.

20 THE COURT: All right.

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

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

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1 will not be a problem.

2 MR. CUMMINGS: Thank you, Judge.

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

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

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

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

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

3 Bailey is walking up to you to know that I

4 objected to any and all photographs being

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

6 renew my motions and my objections again this

7 morning about any of those photographs being

8 presented to the jurors, Your Honor,

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

10 renew my objection and respectfully sit down.

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

12 Cummings.

13 Did you just pass them up?

14 MR. BAILEY: Yes, ma'am.

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

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

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

18 photos do not go to jury?

19 THE COURT REPORTER: Yes, ma'am.

20 THE COURT: Thank you.

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

22 Exhibit 38, photographs of victim.)

23 THE COURT: Anyone need to take a quick

24 comfort break?

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

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1 THE COURT: Yes.

2 (Pause in proceedings.)

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

5 THE COURT: All right. I am listening.

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

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

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

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

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

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

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

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

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

21 THE COURT: Yes, sir.

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

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1 our statements are not sworn testimony.

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

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

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

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

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

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

20 THE COURT: All right.

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

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

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

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

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

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

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

19 Anything further before we bring the
20 jury out?

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

24 THE COURT: Sure. Certainly.

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

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

3 THE COURT: Surely. Very vell.

4 (Pause in proceedings.)

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Mr. Bailey.

17 MR. BAILEY: May it please the Court.

18 THE COURT: Yes, sir.

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

Opening Statement by Mr. Bailey

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

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

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

Opening Statement by Mr. Bailey

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

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

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

Opening Statement by Mr. Bailey

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

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

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

Opening Statement by Mr. Bailey

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

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

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

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

Opening Statement by Mr. Bailey

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

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

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

Opening Statement by Mr. Bailey

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

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

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

Opening Statement by Mr. Bailey

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

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

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

Opening Statement by Mr. Bailey

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

7 THE COURT: Thank you, Mr. Bailey.

8 Mr. Cummings.

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

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

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

Opening Statement by Mr. Cummings

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

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

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

Opening Statement by Mr. Cummings

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

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

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

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

Opening Statement by Mr. Cummings

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

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

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

Opening Statement by Mr. Cummings

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

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

10 THE COURT: Surely.

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

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

Opening Statement by Mr. Cummings

1 happened.

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

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

Opening Statement by Mr. Cummings

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

3 Thank you, Judge.

4 THE COURT: Thank you, Mr. Cummings.

5 Yes, sir. Mr. Bailey.

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

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

12 MR. CUMMINGS: Yes, ma'am.

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

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

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

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

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

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1 Honor, may I publish these to the jury?

2 THE COURT: You may.

3 MR. BAILEY: Thank you, Your Honor.

4 THE COURT: What numbers are they?

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

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

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

10 THE COURT: Very well.

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

13 THE COURT: Thank you.

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

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

19 MR. BAILEY: Yes, ma'am.

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

23 MR. CUMMINGS: Thank you, Judge.

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

State vs. Bowman - Volume XXIII

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

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

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

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

20 The State would next call Joey
21 Wimberly.

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

25

Joseph W. Wimberly, III - Direct Exam

DIRECT EXAMINATION

1

2 BY MR. BAILEY:

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

4 A Branchville, South Carolina.

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

6 A Outside of Branchville on Highway 210.

7 Q In Orangeburg County?

8 A Yes, sir.

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

12 A My home was broken into.

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

14 A Entered through the front door.

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

18 A One pump shotgun.

19 Q All right, sir. A pump shotgun?

20 A Yes, sir.

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

24 A Yes, sir.

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

Joseph W. Wimberly, III - Direct Exam

1 A Yes, sir.

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

3 A The barrel had been sawed off.

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

6 THE COURT: Cross-examination.

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

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

15 MR. CUMMINGS: Thank you.

16 CROSS-EXAMINATION

17 BY MR. CUMMINGS:

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

22 A Yes, sir.

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

25 A No, sir.

Joseph W. Wimberly, III - Cross-Exam

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

3 A Not to my knowledge.

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

6 A Right.

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

8 A I don't know, sir.

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

10 A Pardon me?

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

12 A No, sir.

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

15 A No, sir.

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

19 A No, sir.

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

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

23 THE COURT: Certainly. Certainly.

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

Joseph W. Wimberly, III - Cross-Exam

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

4 A Yes, sir.

5 Q Was that paid by Mr. Bowman?

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

8 Q So you were made whole again?

9 A Right. Yes, sir.

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

12 THE COURT: Any redirect?

13 MR. BAILEY: No redirect, Your Honor.

14 THE COURT: Is this witness free to leave?

15 MR. BAILEY: Yes, ma'am.

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

18 THE COURT: You are free to go.

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

21 MR. BAILEY: D. L. Thompson.

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

25

David L. Thompson - Direct Exam

DIRECT EXAMINATION

1

2 BY MR. BAILEY:

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

5 A I live in Branchville, South Carolina.

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

7 A Branchville, South Carolina.

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

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

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

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

23 Q All right, sir. Thank you.

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

25 THE COURT: Cross-examination.

David L. Thompson - Cross-Exam

CROSS-EXAMINATION

1

2 BY MR. CUMMINGS:

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

5 A Okay.

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

8 A Yes, sir.

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

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

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

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

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

19 A Not to my knowledge.

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

22 A That's correct.

23 Q And some items were taken?

24 A That's correct.

25 Q And had you received full restitution from our

David L. Thompson - Cross-Exam

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

3 A Yes, sir.

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

7 A That is correct.

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

10 THE COURT: Yes.

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

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

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

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

18 A My wife.

19 Q Thank you.

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

22 THE COURT: Any redirect?

23 MR. BAILEY: No redirect, Your Honor.

24 THE COURT: Is this witness free to leave?

25 MR. BAILEY: Yes, ma'am.

David L. Thompson - Cross-Exam

1 MR. CUMMINGS: Without objection, Judge.
2 Thank this gentleman.

3 THE COURT: You are free to go, thank you.
4 (Whereupon, the witness steps down from the
5 witness stand.)

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

8 THE COURT: All right.
9 (James Helms, called as a witness, having first
10 been duly sworn, is examined and testifies as
11 follows:)

12 DIRECT EXAMINATION

13 BY MR. BAILEY:

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

17 A That's correct, sir.

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

22 A Yes, sir.

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

25 A That's correct, sir.

James Helms - Direct Exam

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

3 A Yes, sir.

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

7 A That is correct, sir.

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

11 A Yes.

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

15 A Yes, sir. I can.

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

18 A I took those photographs, sir.

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

22 A Yes, sir. They do.

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

25 MR. CUMMINGS: Judge, subject to all the

James Helms - Direct Exam

1 legal objections we made throughout the trial.

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

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

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

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

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

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

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

21 A That would be correct, sir.

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

James Helms - Direct Exam

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

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

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

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

James Helms - Direct Exam

1 The forelady is...?

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

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

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

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

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

James Helms - Direct Exam

1 THE COURT: Sustained.

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

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

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

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. CUMMINGS:

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

24 A Correct, sir.

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

James Helms - Cross-Exam

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

4 A Either myself or Detective Coker did.

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

7 A Yes, sir.

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

10 A That's correct, sir.

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

13 A I need to check my notes.

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

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

20 THE COURT: You may.

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

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

James Helms - Cross-Exam

1 written down in some notes on my case file.

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

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

9 THE COURT: Certainly.

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

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

15 THE COURT: Certainly.

16 Q Thank you, agent Helms.

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

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

21 A Yes, it is.

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

James Helms - Cross-Exam

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

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

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

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

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

15 Q What name is that, sir?

16 A That would be James Gadson.

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

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

James Helms - Cross-Exam

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

3 Q Okay.

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

6 THE COURT: Any redirect?

7 MR. BAILEY: No redirect, Your Honor.

8 THE COURT: Is this witness free to leave?

9 MR. BAILEY: Yes..

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

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

13 THE COURT: Please call your next witness.

14 MR. BAILEY: Call Dr. Ross.

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

18 DIRECT EXAMINATION

19 BY MR. BAILEY:

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

24 A Yes, sir.

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

Janice E. Ross - Direct Exam

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

3 A Yes, we do.

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

8 A Yes, sir.

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

13 A Yes, sir. They are.

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

17 A Yes.

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

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

24 Q Thank you.

25 MR. BAILEY: Your Honor, I would offer

Janice E. Ross - Direct Exam

1 these into evidence at this time.

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

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

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

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

17 MR. BAILEY: Thank you.

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

22 A Yes, it is.

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

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

Janice E. Ross - Direct Exam

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

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

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

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

14 A Yes, sir.

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

18 A Yes.

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

22 A Yes.

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

Janice E. Ross - Direct Exam

1 A No, sir. It does not.

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

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

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

14 A Yes, it would.

15 Q Okay.

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

19 Q And is it depicted in the photograph?

20 A Yes.

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

23 THE COURT: Very well.

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

Janice E. Ross - Cross-Exam

CROSS-EXAMINATION

1

2 BY MR. CUMMINGS:

3 Q You created two charts --

4 A Yes.

5 Q -- that were testified to in the case in chief,

6 Doctor; is that correct, ma'am?

7 A Yeah.

8 MR. CUMMINGS: If I may, Judge, just hold

9 them up for a moment. Judge, may I approach?

10 THE COURT: You may.

11 Q Doctor, I'm showing you what's been marked as

12 State's Exhibit Number 74. There's a round marking

13 up here at the top of the head. Is that where you

14 put the entrance wound, the same thing that you would

15 use that autopsy photograph?

16 A Yes, sir.

17 Q Okay. And, Doctor, you've testified already to

18 the manner and cause of death on direct; have you

19 not?

20 A Yes, sir.

21 Q Okay. And you testified as to the trail and the

22 exit of that projectile out of that human being?

23 A Yes, sir.

24 Q Okay. So you could easily use this as well as

25 this photograph; is that correct?

Janice E. Ross - Cross-Exam

1 A Yes.

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

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

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

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

15 A Yes, that's right.

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

18 A That's correct.

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

21 A Yes.

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

25 A Yes.

Janice E. Ross - Cross-Exam

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

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

7 MR. CUMMINGS: Oh, I am sorry.

8 THE COURT: Surely. Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. BAILEY:

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

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

17 Q Okay. Generic picture of any female anatomy?

18 A Yes. Yes, sir.

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

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

Janice E. Ross - Redirect Exam

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

3 Q Okay. Thank you.

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

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

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

24 THE COURT: Yes.

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

Janice E. Ross - Redirect Exam

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

3 THE COURT: All right.

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

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

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

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

15 THE COURT: Very well.

16 MR. CUMMINGS: Thank you, Judge.

17 RECROSS-EXAMINATION

18 BY MR. CUMMINGS:

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

23 A Yes.

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

Janice E. Ross - Recross-Exam

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

2 A Yes.

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

5 A Yes.

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

8 A Yes.

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

11 A Yes.

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

15 A Yes.

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

22 A Yes.

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

Janice E. Ross - Recross-Exam

1 of Miss Kandee Martin?

2 A Yes.

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

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

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

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

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

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

15 Q Yes. Thank you, ma'am.

16 MR. CUMMINGS: Thank you, Judge.

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

19 MR. CUMMINGS: Yes, ma'am.

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

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

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

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

11 THE COURT: I understand.

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

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

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

6 MR. CUMMINGS: Yes, ma'am.

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

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

15 THE COURT: Very well.

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

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

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

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

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

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

19 MR. BAILEY: Yes, ma'am.

20 THE COURT: Oh, all right.

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

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

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

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

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

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

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

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

19 THE COURT: All right.

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

25 THE WITNESS: Benzolecgoinine.

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

4 THE WITNESS: Yes, sir.

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

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

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

19 THE WITNESS: Yes.

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

22 THE WITNESS: Yes.

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

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

3 THE COURT: Thank you.

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

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

8 MR. BAILEY: Yes, ma'am.

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

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

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

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

19 THE COURT: Okay.

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

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

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

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

13 THE COURT: Yes.

14 MR. BAILEY: In order to avoid --

15 THE COURT: Yes, be happy to.

16 MR. BAILEY: Yes, ma'am.

17 THE COURT: Happy to, Mr. Bailey.

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

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

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

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

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

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

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

12 MR. BAILEY: All right. |

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

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

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

24 MR. BAILEY: Thank you, Your Honor.

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

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1 jury.

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

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

5 MR. BAILEY: Thank you, Your Honor.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. BAILEY:

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

12 A Yes.

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

17 A Yes, it does.

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

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

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

Janice E. Ross - Continued Direct Exam

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

3 MR. CUMMINGS: Thank you, Judge.

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

6 Q All right. Both entrance wounds?

7 A Yes.

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

12 A Yes. May I approach the jury?

13 Q Yes, ma'am.

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

25 Q Covered up the entrance wound?

Janice E. Ross - Continued Direct Exam

1 A Yes, on the back.

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

4 A That's correct.

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

7 CROSS-EXAMINATION

8 BY MR. CUMMINGS:

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

12 A Yes, sir.

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

15 A Let side of the head, yes.

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

18 A Yes.

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

22 A That's correct.

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

Janice E. Ross - Cross-Exam

1 A That's correct.

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

4 A That's correct.

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

6 A Yes, sir.

7 MR. CUMMINGS: Thank you, Your Honor.

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

10 THE COURT: Any redirect?

11 MR. BAILEY: No redirect.

12 THE COURT: Is this witness free to leave?

13 MR. BAILEY: Yes, ma'am.

14 THE COURT: You are free to go.

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

17 MR. BAILEY: Ms. Martin.

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

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q You're Cordillia Martin?

24 A Yes, sir.

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

Cordillia Martin - Direct Exam

1 A Yes, sir. It's DiDi.

2 Q DiDi. And your friends call you DiDi?

3 A Everyone knows me as DiDi.

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

5 A Yes, sir.

6 Q And who are you married to?

7 A Wayne Martin.

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

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

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

12 A We live in Orangeburg, .

13 Q In the City of Orangeburg?

14 A Yes, sir.

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

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

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

21 A Two.

22 Q Okay. And their names?

23 A David Martin and Kandee Louise Martin.

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

25 A David a 24.

Cordillia Martin - Direct Exam

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

3 A Twenty-one.

4 Q She was your youngest child?

5 A Yes, sir.

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

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

14 Q Was she in sales there of mobile homes?

15 A She was in sales, yes, sir.

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

18 A Yes, sir.

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

21 A She stayed with a friend several times.

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

25 A Yes, sir.

Cordillia Martin - Direct Exam

1 Q What year was that?

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

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

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

6 Q This was Kandee's son?

7 A It was her son.

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

10 A Yes, sir.

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

13 A Yes, sir.

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

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

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

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

Cordillia Martin - Direct Exam

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

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

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

11 A Yes, sir.

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

14 A Okay.

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

16 A Okay.

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

19 MR. CUMMINGS: Without objection.

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

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

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

Cordillia Martin - Direct Exam

1 photograph.)

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

3 photograph.)

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

7 A Yes, sir.

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

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

15 Q Okay.

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

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

19 A Kandee was 18.

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

23 THE COURT: All right.

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

Cordillia Martin - Direct Exam

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

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

8 Q How old was Kandee then?

9 A Kandee was 20.

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

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

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

17 THE COURT: Sure.

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

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

24 You may proceed, Mr. Bailey.

25 MR. BAILEY: Thank you, Your Honor.

Cordillia Martin - Direct Exam

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

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

8 Q Based on what your son told you?

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

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

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

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

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

22 THE WITNESS: Okay.

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

25 Q All right.

Cordillia Martin - Direct Exam

1 A But --

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

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

8 Q So DNA was how you found out?

9 A DNA is how we found out.

10 MR. CUMMINGS: Your Honor, respectfully.

11 THE COURT: Sustained.

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

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

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

18 A Yes, sir.

19 Q You testified that Tyler was born on

20 [REDACTED].

21 A Yes, sir.

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

24 A Yes, sir.

25 Q What plans did you all make?

Cordillia Martin - Direct Exam

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

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

9 A Yes, sir.

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

12 A Traumatic. He asks about her.

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

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

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

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

22 MR. BAILEY: Thank you, Your Honor.

23 A Could you please ask that question again?

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

Cordillia Martin - Direct Exam

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

5 Q He asks when she's coming home?

6 A Yes, sir.

7 Q And Tyler is how old now?

8 A He's three.

9 Q He still remembers her?

10 A He remembers, yes.

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

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

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

22 THE COURT: Cross-examination.

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

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

Wayne Martin - Direct Exam

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

3 THE COURT: Yes, sir.

4 MR. BAILEY: Wayne Martin.

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

8 DIRECT EXAMINATION

9 BY MR. BAILEY:

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

11 A Forty-six.

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

14 A Yes, sir.

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

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

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

21 A I'm a construction worker.

22 Q What type of construction, home building?

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

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

Wayne Martin - Direct Exam

1 father; is that correct?

2 A Yes, sir.

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

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

9 Q Did she have a lot of friends?

10 A Oh, she had a lot of friends.

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

13 A Yes, sir.

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

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

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

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

Wayne Martin - Direct Exam

1 girl.

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

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

8 Q Yeah.

9 A And she done other things.

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

11 A Yes, sir.

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

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

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

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

Wayne Martin -- Direct Exam

1 that's her best friend.

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

3 A Yes, sir.

4 Q What is she on?

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

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

7 that.

8 Q Are you taking an antidepressant medication

9 also?

10 A I take Prozac.

11 Q Did either one of y'all take any kind of

12 antidepressant medication before Kandee's murder?

13 A No, sir.

14 Q Are you still taking it?

15 A Yes, sir.

16 Q Tyler lives with you and your wife?

17 A Yes, sir.

18 Q Could you tell the jury in your words the effect

19 of the loss of his mother had on this baby?

20 A Well, he -- you know, he asks about her a lot

21 and, you know, it's just times he just sits with us

22 and cry, you know, wondering when his mamma is going

23 to come home. And I don't know the words to tell

24 her -- tell him. And I just tell him that, you know,

25 one day he will be able to see her again.

Wayne Martin - Direct Exam

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

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

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

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

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

12 THE COURT: Cross-examination.

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

15 CROSS-EXAMINATION

16 BY MR. CUMMINGS:

17 Q Sir, I thank you for your kindness. I didn't
18 hear correctly, we know of one child, is that correct
19 sir, the child that is being raised by you?

20 A You're talking about she had?

21 Q Yes, sir.

22 A I got two. I got two children, but she's got a
23 baby.

24 Q Yes, sir. Did Kandee have another older child,
25 sir, being raised?

Wayne Martin - Cross-Exam

1 A No.

2 Q No other child, just that one child?

3 A Just that one child.

4 Q And the reason I ask that, sir, is obviously --
5 and, again, I'm just asking this as a gentleman now,
6 I want to make sure that I heard that correct and I
7 apologize to you, sir, for asking that.

8 Kandee, as Mr. Bailey asked, she had
9 friends in all different walks of life?

10 A All different walks of life?

11 Q Yes, sir. I mean like --

12 A She had school friends and -- you know, and
13 friends that we go places, camping or whatever. You
14 know, they make friends, you know, everybody does
15 that.

16 Q Yes, sir. What I mean by friends of all walks
17 of life, different kinds of people?

18 A Yeah.

19 Q And what is the name of the father of your
20 grandchild, sir?

21 A I don't know. I don't want to release that
22 information.

23 Q You don't know it, sir?

24 A I don't know. I'm his daddy.

25 Q Yes, sir.

Wayne Martin - Cross-Exam

1 MR. CUMMINGS: I beg the Court's
2 indulgence, Your Honor.
3 (Mr. Cummings and Ms. Hardee-Thomas conferring
4 with Mr. Bowman.)

5 MR. CUMMINGS: Judge, that's all the
6 questions I have of this nice gentleman.

7 THE COURT: Any redirect?

8 MR. BAILEY: No redirect, Your Honor.

9 THE COURT: All right. You may come down.
10 (Whereupon, the witness steps down from the
11 witness stand.)

12 THE COURT: Call your next witness please.

13 MR. BAILEY: State rests, Your Honor.

14 THE COURT: Very well. Ladies and
15 gentlemen, you have now heard from the State's
16 case, the witnesses and received the evidence
17 which you will. That signifies to me that there
18 are matters which I must take up outside your
19 presence. Therefore, I'm going to ask you to
20 please step to your jury room remembering not to
21 discuss this matter or allow anyone to discuss
22 it with you. Step to your jury room.

23 (Whereupon, the jury retires to the jury room at
24 12:06 p.m.)

25 THE COURT: Thank you, Mr. Taylor.

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1 All right. Are there any motions at
2 this time?

3 MR. CUMMINGS: May it please the Court,
4 Judge.

5 THE COURT: Yes.

6 MR. CUMMINGS: Again, if I'm long winded I
7 apologize to the Court. Your Honor, as to the
8 issues asking for a directed verdict as to any
9 aggravating circumstances, Your Honor, I would
10 request to start at the very first one the State
11 has put us on notice of and, Your Honor,
12 respectfully, that is aggravating factor of
13 kidnapping. Your Honor, respectfully, there's
14 been no testimony at all against my client as to
15 any kidnapping. If I may be -- there is such a
16 broken chain in here about the allegations of a
17 murder, we know that the aggravating
18 circumstances have to be in the commission of as
19 I humbly state to the Court.

20 Your Honor, there's been no evidence
21 presented as to any issue of kidnapping. There
22 is, respectfully, Your Honor, looking at the
23 totality of the case, looking at everything
24 that's been presented on behalf of the State,
25 Your Honor, you would have to leap to find any

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1 issues of kidnapping dealing with the murder of
2 Miss Martin.

3 If the Court were to take the
4 testimony of Mr. Gadson stating that they go to
5 Nursery Road, if you put any credibility, any
6 weight on that, ma'am, that there's a break in
7 the chain as people, the three of them allegedly
8 jump in the bushes. Clearly nobody has control
9 of anybody at that point, there's no forceable
10 retention, there's no testimony of a weapon
11 being presented or threatened with or used about
12 trying to keep Ms. Martin in any particular
13 place.

14 As far as any issues, Judge, of going
15 through the elements of kidnapping, inveigle, or
16 decoy, or trying to convince somebody out there,
17 the only testimony we have in here is at the
18 best as I recall, ma'am, is there may have been
19 some conversations about turn here, turn there.

20 Your Honor, somebody else -- there's
21 been no testimony whatsoever that anybody was in
22 fear of being taken away, deprived of their
23 liberty or their right of movement as I
24 understand the broadest reaching of our
25 kidnapping statute.

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1 Further, Your Honor, respectfully,
2 that once the parties are there after they come
3 back out of the woods the testimony is as
4 related by Mr. Gadson, stated that she walked
5 back to her car. Her property, her domain.
6 Respectfully, Miss Martin's chain is broken away
7 from any of the two co-defendants if Your Honor
8 finds that to be credible based on what
9 Mr. Gadson states.

10 And further thereafter, Judge, there
11 is no other testimony of decoy, inveigle,
12 maintain, control, threaten with a weapon or
13 anything. The testimony, again, taken by Mr.
14 Gadson would be that she was shot
15 instantaneously without any warning, without any
16 issue and then shot a second time where this
17 young lady came to rest right on the property,
18 right there.

19 Your Honor, respectfully, we do not
20 believe the State has sufficient facts to submit
21 to you beyond a reasonable doubt or submit to
22 this jury, ma'am, please, the element of
23 aggravation of kidnapping.

24 THE COURT: All right. Let me hear about
25 kidnapping.

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1 MR. BAILEY: Your Honor, of course the
2 statute uses the terms inveigle and decoy in
3 there for a reason, to distinguish that from any
4 forceable kidnapping. I think in this case you
5 have the evidence that the jury believes them
6 both. As far as enforceable kidnapping,
7 certainly between the time she is shot in the
8 back and that would have had to have been the
9 first shot for her to run toward Gadson, between
10 that time and the time she spun around, begged
11 for her life and he shot her the second time,
12 certainly she was not free to go, she was being
13 detained, held at gunpoint and had been shot.

14 Your Honor, there are a couple cases I
15 could cite with respect to inveigle, decoy
16 aspect of kidnapping statute, one is State vs.
17 Plath and Arnold, 313 S.E.2d, 619, in which they
18 upheld the aggravating circumstance of kidnap
19 under the inveigle and decoy element when the
20 victim was invited into the defendant's car
21 after the defendant had formed the intention to
22 murder her.

23 With the exception of the fact that
24 they're in the victim's car instead of the
25 defendant's car, it's the same thing. There's

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1 testimony from three people, Eddie Waters,
2 Yolanda Bowman, and Katrina West, that he had
3 formed the intent to kill her that night.
4 Obviously she would not have gotten into the car
5 to ride out in the woods with him if she had
6 known the purpose of that was to have her life
7 ended.

8 Your Honor, also State vs. John Ray in
9 which the defendant has shot the victim, wounded
10 her, told her he would take her to the hospital,
11 but instead took her to another location where
12 he strangled her and stabbed her to death. Your
13 Honor, here the victim was inveigled, decoyed
14 into thinking she was going to go somewhere
15 where she would be protected. Instead she was
16 being driven off for the purpose of being killed
17 which is exactly what happened here.

18 Your Honor, the last one, and I don't
19 have the cite here, is State vs. Stokes, which
20 was a case I tried in Orangeburg where the same
21 issue was raised on the appropriateness of the
22 kidnapping statute as an aggravator in which the
23 victim in that case thought that she was going
24 to a wooded area to see a third party being
25 killed. Instead the plan was to kill her which

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1 was what happened. And our Court upheld that,
2 the trial judge upheld that as being inveigle
3 and decoy.

4 So, Your Honor, I think you both types
5 of kidnapping, inveigle and decoy, plus the
6 force of confinement. I'm not aware of any law
7 that says the kidnapping has to exist for any
8 period of time, and I think clearly there is
9 evidence to go to the jury on that kidnapping
10 based upon case law.

11 THE COURT: In other words, your position
12 is much like the State vs. Plath, in that there
13 was an intention stated early on that at the
14 point in time when Miss Martin drove Mr. Gadson
15 and Mr. Bowman on that trip, that at that point
16 much like State vs. Plath --

17 MR. BAILEY: Yes, ma'am.

18 THE COURT: -- maybe a little less extent
19 State vs. Ray, but certainly State vs. Plath.

20 MR. BAILEY: That line of cases, Your
21 Honor, both of those cases.

22 THE COURT: I understand. It began because
23 there was an intention and that drive was the
24 inveigle?

25 MR. BAILEY: Yes, ma'am. An expressed

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1 intention to kill her by nightfall, which is
2 exactly what happened.

3 THE COURT: Yes, sir.

4 MR. CUMMINGS: This is why if you take that
5 testimony in the light as presented by the
6 State, this happened around noon, there is
7 nothing else that happens, Miss Martin comes
8 back to Mr. Bowman. If Mr. Waters had heard all
9 those things, if all that stuff had come out it
10 clearly would have been evidence of that, that
11 Miss Martin would have noticed Mr. Waters'
12 reactions or anything else, respectfully, Judge.
13 The chain of causation here, the time factors
14 are imperative. To have the State rely on the
15 inveigle or decoy, they have to prove the
16 inveigle or decoy. Something happened out here
17 that night, but they have the burden of proving
18 the aggravating circumstance to present to the
19 jury beyond a reasonable doubt that that would
20 have occurred. And that, again, Your Honor, is
21 in strict compliance with our aggravating factor
22 statutes.

23 And, Your Honor, respectfully, looking
24 at Ray vs. State and Plath, Your Honor, there's
25 some movement, there's some issues, there's a

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1 close correlation of time. In this thing we
2 have at least a seven to eight-hour break even
3 taking the State's testimony at their best,
4 respectfully. And I would ask Your Honor before
5 any submission of that the Court review or
6 reinspect your notes, Your Honor, as well as the
7 parties' testimonies.

8 Because, Your Honor, the kidnapping
9 issue here has always been one of contention
10 about whether or not Miss Martin had control of
11 her ability to travel, to come, go, to leave.
12 And so many times and so many instances where
13 she was free and able to leave and come about as
14 she chose, respectfully.

15 THE COURT: I understand. I have that
16 issue. Let me hear from you about your next.

17 MR. CUMMINGS: Yes, ma'am. As to criminal
18 sexual conduct, Judge, there's been no evidence
19 whatsoever, any representative of any criminal
20 sexual conduct activity. Even if Your Honor
21 looks at anything about DNA, the professionals
22 stated they could not say when semen was there,
23 they could not say anything about it. There's
24 been no testimony in this room whatsoever about
25 anything dealing with sex against my client.

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1 Not in the case in chief, not in the guilt
2 phase, not in the penalty phase even, Judge. I
3 have not heard anything today about that
4 whatsoever.

5 THE COURT: All right.

6 MR. CUMMINGS: And, again, Your Honor, I
7 would quote cases, but, Judge, I don't think
8 there's been any testimony whatsoever to submit
9 to the jury as an aggravating factor.

10 THE COURT: Mr. Bailey.

11 MR. BAILEY: Your Honor, if it please the
12 Court. There was a chain of custody of the
13 vaginal swab up to Matt Fitts, Dr. Fitts, that
14 did the DNA analysis that said the defendant's
15 DNA profile matched the DNA profile of the
16 semen, the vaginal swabs. The odds of somebody
17 else unrelated to him having that same profile
18 is 1 in 5,300.

19 Your Honor, I would cite, and I think
20 this case is pretty much on all fours State vs.
21 Horace Butler, 290 S.E.2d 1, 1982. In that case
22 the evidence, the only evidence in support of
23 the aggravating circumstance of rape for the
24 jury was, one, the victim had a blow to the
25 head; two, the defendant was armed with a deadly

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1 weapon; three, semen was in the victim's vagina.
2 And there was no DNA back then, just the semen;
3 and four, the doctor testified the semen could
4 have been defendant's blood type; and five, the
5 victim was killed.

6 Your Honor, this is the same scenario
7 we have here and I think certainly if it was
8 sufficient to go to the jury in Butler it would
9 be sufficient to go to the jury in this case,
10 especially this is actually stronger because
11 you've got the DNA evidence which was lacking in
12 Butler.

13 THE COURT: I understand.

14 MR. CUMMINGS: May it please the Court,
15 Judge.

16 THE COURT: Yes.

17 MR. CUMMINGS: Mr. Gadson testified of what
18 happened. There was a shooting on the premise.
19 Again, this is the only evidence this jury would
20 hear, that he's there, there's shots. Miss
21 Martin is taken off the roadway. Again, I'm
22 going on what I read the notes are. There
23 wasn't any time, there wasn't any testimony at
24 all mentioned about any touching of that lady's
25 person at all, Your Honor, respectfully, at that

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1 time, whatsoever.

2 Again, if we take it back to
3 Mr. Felder's testimony, you pull back up there,
4 if the Court believes Mr. Felder's testimony in
5 its entirety or any portion of it, when he
6 pulled back up there placing in the trunk, car
7 is driven, gasoline's poured on the car
8 allegedly by my client and car is set on fire.
9 There's been no testimony of any sort in here.
10 And under Butler and all the facts, Your Honor,
11 that case, if you read it in its entirety, there
12 had been contact, there had been some issue that
13 raised the issue of whether or not he could have
14 done that, that he had the time to do that.

15 In this case we don't have that.
16 There's been no testimony whatsoever about that
17 issue, ma'am. And, respectfully, I would ask
18 that the issue of kidnapping -- excuse me, CSC
19 as an aggravating factor not be submitted to the
20 jury, Your Honor, I think it would be, Your
21 Honor, without any evidentiary basis as we speak
22 today.

23 THE COURT: What about that, Mr. Bailey,
24 what about Mr. Cummings says that given the
25 testimony of the witnesses that there was the

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1 opportunity because --

2 MR. BAILEY: Your Honor, I would concede
3 there's no eyewitness that said they witnessed a
4 rape occurring, there was no eyewitness in
5 Butler that witnessed a rape occurring. And in
6 regard to how long it would have taken, whether
7 or not it could have occurred, I don't recall
8 there being any -- I mean, they testified the
9 body was dragged into the woods and dragged out
10 of the woods and I don't think it would take a
11 great deal of time for the semen to have been
12 deposited on either one of those occasions if
13 that had happened, I think the jury could
14 reasonably construe that as occurring.

15 And, again, I fail to see the
16 distinction here in the Butler case with the
17 facts as they looked at it. Obviously there was
18 sexual intercourse, obviously the young woman
19 was killed. The jury's found he killed her.
20 And the idea of consensual sexual intercourse
21 followed by murder is just pretty bizarre.

22 MR. CUMMINGS: Judge, that goes to an issue
23 that has not been presented as evidence to this
24 jury. It is not beyond a reasonable doubt to
25 show the crime of criminal sexual conduct, there

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1 are certain elements to that. So an unlawful
2 sexual battery has not been proven here,
3 respectfully. Looking at every issue, again,
4 looking at that, the bra strap was maintained,
5 clothing was there, they went into great detail
6 about that and they showed everybody the
7 pictures, respectfully.

8 But, Your Honor, there has been no
9 evidence presented by the State and that's the
10 burden, the burden is beyond a reasonable doubt
11 for them to show it and not for anybody to prove
12 it's consensual. Again, it's burden shifting,
13 and permissibly, please.

14 THE COURT: I understand that. Let me hear
15 about the next one, your next objection.

16 MR. CUMMINGS: I'm sorry, Judge. Your
17 Honor, murder of Miss Martin was committed while
18 in the commission of robbery. Your Honor knows
19 the elements of robbery, we know the case law as
20 to the issue of robbery. Your Honor, robbery
21 you have to be -- you have to know you're being
22 robbed.

23 There's been no testimony whatsoever
24 here that if we look at any of the items that
25 are taken as personal property. The car. The

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1 only testimony about taking the car is from a
2 gentleman who has absolutely testified that he
3 had a brain injury and that he had been shot by
4 the police.

5 And he is the only person who said
6 allegedly that my client stole this lady's car.
7 There has been no testimony at all from anybody
8 of the unlawful taking while armed with a deadly
9 force. Mr. Gadson, if Your Honor, again,
10 believes him that he was there, never testified
11 that there was a forceful taking of property
12 either while armed with a deadly weapon or the
13 threat or use of one, Judge. Looking at the
14 circumstances and, again, the totality of the
15 testimony which is all we have. There's been
16 nothing else presented today in this case other
17 than the guilt phase. We've had some issues
18 that morning that Your Honor's ruled on.

19 So that's the only evidence the State
20 could put up now is what happened in the case in
21 the guilt phase. Been no testimony as to that.
22 There's been no statements as to a forceful
23 taking of property from this lady while she was
24 alive. And, Your Honor, and that is the issue
25 of robbery.

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1 Further, Judge, again, no presentation
2 of any weapon showed or displayed, nothing
3 testified to from Mr. Gadson or Mr. Felder.
4 Again, Your Honor, if there was any
5 reasonableness as to their testimony it goes and
6 that's the only testimony the jury has. It's
7 not until thereafter, allegedly at the club,
8 that a statement is made by my client to
9 Mr. Johnson, again, with the highest respect to
10 him, Judge, as a credible witness to you,
11 whether or not he then is trying to sell a car.
12 And there's been nobody testifying to that.

13 Mr. Johnson, despite repeated attempts
14 by the State and two attempts to put him back up
15 on the stand, never said that you saw him in
16 that car, Miss Martin's car. There's been a
17 controversy issue of testimony of whether or not
18 he was in Yolanda's car, about how he got to the
19 club in Yolanda's car. He was sitting there.
20 Nobody other than Hiram Johnson saw
21 Miss Martin's car as I humbly, respectfully,
22 remember the evidence.

23 Your Honor, I think the elements of
24 robbery have to be proven by the State. And,
25 again, to submit that issue to the jury is

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1 clearly prejudicial, and, again, Your Honor,
2 respectfully not -- not proven by the State.

3 THE COURT: Thank you very much.

4 Yes, sir. Mr. Bailey.

5 MR. BAILEY: Your Honor, in order for this
6 to be a legitimate aggravating circumstance the
7 armed robbery has to occur during the commission
8 of a murder. Mr. Cummings is incorrect when he
9 says the victim has to know they're being
10 robbed. And I think he was implying that the
11 victim is dead, he can't commit the robbery
12 because the victim doesn't know that.

13 If I can cite two cases, Your Honor,
14 the proposition that that is not correct. The
15 first would be State vs. Shelly Damon, 328
16 S.E.2d, 628, 1985 South Carolina death penalty
17 case which stated that murder is committed in
18 the commission of armed robbery or larceny with
19 use of a deadly weapon when there's evidence the
20 victim's property was stolen in a continuous
21 sequence of criminal acts at the time of the
22 murder.

23 Your Honor, the factual scenario in
24 the Shelly Damon case was that the victims were
25 murdered and then property was taken after the

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1 murder took place.

2 The other case on point, Your Honor,
3 is State vs. Donald Jones, 340 S.E.2d, 782, 1985
4 case. I'm quoting from that. "The fact that
5 the crimes of kidnapping and criminal sexual
6 conduct were committed after the murder and upon
7 a different victim does not validate them as
8 aggravating circumstances for Mr. Fowler's
9 murder. The crimes were consummated in the
10 continuous series of acts with the murder, they
11 were committed in the same place and were not
12 separated by any substantial lapse in time."

13 Your Honor, Ms. Martin identified the
14 victim's watch that she purchased at Wal-Mart
15 about two weeks previously. The morning after
16 the murder and the morning the car is burned
17 that watch is found in the victim's pocket. And
18 I think certainly the jury can draw an inference
19 that was taken from the victim based on the
20 testimony so far.

21 The other item, Your Honor, that's the
22 subject of both aggravating circumstances of
23 larceny and robbery with a deadly weapon,
24 there's no dispute the deadly weapon is used,
25 they found him guilty of murder and the cause of

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1 death is the gunshot.

2 He was seen driving Kandee Martin's
3 car according to the testimony by Travis Felder,
4 by James Taiwan Gadson, by Hiram Johnson, all of
5 these people. And the jury if they -- and it's
6 a credibility issue. If the jury believes Hiram
7 Johnson's testimony, he says "I stole the car."
8 Stealing is larceny.

9 So with respect to both the watch and
10 the gun, clearly, Your Honor, there's sufficient
11 evidence to go to the jury on the aggravating
12 circumstance of robbery with the commission --
13 during the commission of murder, robbery with a
14 deadly weapon and larceny with a deadly weapon.

15 MR. CUMMINGS: I don't believe it's an
16 inference and it has to be beyond a reasonable
17 doubt and I don't --

18 MR. BAILEY: And I -- I'm sorry.

19 THE COURT: Go ahead.

20 MR. CUMMINGS: And, respectfully, Judge,
21 that is the higher standard, that is the burden
22 of proof of the State and not shifting it to the
23 defendant to prove that he didn't do these
24 things which is anticipated and why we objected
25 in the very beginning here, Judge.

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1 There is no testimony as to when my
2 client got that watch, there is none. Your
3 Honor, if you look at the cases Damon and Donny
4 Jones and you read them in totality, we
5 respectfully say they differ from the facts and
6 circumstances in this case.

7 Your Honor, respectfully, again, going
8 back to that issue of robbery, there's been no
9 testimony as to robbery. And, again, a
10 defendant who's put on notice of death and
11 trying to anticipate a defense can only rely on
12 the evidence that's presented against him in
13 this case and that's the only thing that can go
14 to the jury now. There's nothing else presented
15 in aggravation here to prove beyond a reasonable
16 doubt to show that the issue should be submitted
17 to the jury, respectfully. The only testimony
18 was allegedly back there.

19 Your Honor, again, that is in
20 controversy. Looking at the time when Your
21 Honor's heard this evidence, you have paid
22 attention to this case and been so kind and
23 respectful to both sides in this case as to the
24 issues of allowing us to supplement and to go
25 back and talk to you about the evidence

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1 presented here, and I would ask, again, in
2 reading this in totality, again, and I know you
3 will do before any evidence is presented to the
4 jury if you find it, ma'am, over our respective
5 objections.

6 Your Honor, as to the issue of
7 robbery, again, what item is the State relying
8 on to prove the robbery, the taking of the car
9 or the taking of the watch? I've not heard that
10 presented. Again, Judge, I leave that to you in
11 your deference, ma'am.

12 As to larceny of the watch while armed
13 with a deadly weapon there's been, again, no
14 testimony about how or whatever came into my
15 client's possession from any witnesses out
16 there. Never said that he took the watch off
17 this lady's person, never did he hold a gun out
18 there to take a watch off a person, never did he
19 have the time to do any of that there during the
20 commission of this murder.

21 Your Honor, respectfully, that is all
22 that the evidence will ever show in this file
23 and in this case, is that the mom did identify a
24 watch, it's clearly that, but petty larceny is
25 not enough to submit to a jury if the case in

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1 its entire finding were to find that my client
2 might have somehow illegally came into
3 possession of a watch different from that of the
4 gun. You're looking at the totality here again
5 of the testimony, there is no testimony at all
6 as to how my client came in possession of that
7 watch, Judge. And, again, not speculation, not
8 bootstrapping back, it's the State's burden to
9 prove how my client got that watch and they have
10 not done that.

11 THE COURT: Very well. Let me ask you this
12 question, I know that I want to do a little
13 looking just to finalize my rulings so I'm going
14 to take a little bit of time to do that, but let
15 me ask of you whether or not -- it's 12:30, it
16 seems now is a good time to take our lunch
17 break. Is the lunch here for the jurors?

18 MR. BAILEY: Yes, ma'am.

19 THE COURT: Would you prefer I bring them
20 back out to tell them we will have lunch for an
21 hour or just may I deliver a message that we
22 will have lunch and they are to take their lunch
23 break now?

24 MR. BAILEY: Deliver the message is fine
25 with the State, Your Honor.

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1 MR. CUMMINGS: Deliver the message is fine
2 with us, too, stop them from coming in and out.

3 THE COURT: We will do that. Let us take
4 then an hour for lunch, we'll have lunch now,
5 and we will begin back at 1:15. Very well.
6 Thank you. Jury gets an hour, we get 45
7 minutes.

8 (Recess, from 12:30 p.m. to 1:20 p.m.)

9 THE COURT: All right. I have had an
10 opportunity to review the cases again. And, of
11 course, with the same standard that's applicable
12 as a directed verdict in any criminal case, I am
13 not charged with the responsibility of weighing
14 the evidence, but ascertaining whether or not
15 there is evidence on each of which the State
16 would have to show to establish its aggravating
17 circumstances and I've done that.

18 And with regards to the first which is
19 kidnapping, and I do state -- cite the State vs.
20 John Plath and John Arnold, and the language
21 there that talks about in that case where the
22 victim was lured into a car after the defendants
23 had formed and expressed intention to carry away
24 and murder her. That is certainly with
25 substantial similarity to this case and I will

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1 allow kidnapping to go to the jury as an
2 aggravating circumstance and will respectfully
3 deny the motion for directed verdict as to
4 kidnapping.

5 With regards to criminal sexual
6 conduct, and I'm citing the State vs. Butler
7 case. And in the State vs. Butler case just as
8 Mr. Bailey, you relied on the five factors that
9 the Court there talks about, that the -- there
10 are two substantial differences. In the Butler
11 case they talk about the victim receiving a blow
12 to her head prior to death and talking about the
13 blood type which was ascertained from the semen.
14 The two differences being that the injury to
15 Miss Martin occurred at the time of her death of
16 the two gunshots and that the DNA is what was
17 found present rather than a blood type.

18 Absent those two differences the case
19 is on all fours. And on the basis of the State
20 vs. Butler I would find that there is evidence
21 on each element of criminal sexual conduct in
22 accordance with the Butler case.

23 With regards to the robbery while
24 armed with a deadly weapon and the larceny armed
25 with a deadly weapon, I would point to State vs.

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1 Damon and also to the State vs. Jones, but
2 particularly the State vs. Damon where clearly
3 the position of the appellant in the Damon case
4 was that the robbery was, if you will, an
5 afterthought. And that's the way the Court
6 refers to it and, therefore, it could not be
7 used as aggravating circumstance because it
8 occurred after the murder.

9 And the Court there determines that if
10 the robbery or larceny occurs in the commission
11 of the murder then it can be an aggravating
12 circumstance and would, therefore, respectfully
13 deny your motion as to larceny and robbery while
14 armed with a deadly weapon on the basis of the
15 State vs. Damon case. So with regards to the
16 four aggravating circumstances which have been
17 alleged by the State, I would deny,
18 respectfully, your motion for directed verdict.

19 MR. CUMMINGS: Thank you, Judge.

20 MR. BAILEY: Thank you, Your Honor.

21 THE COURT: Is the defense ready to
22 proceed?

23 MS. HARDEE-THOMAS: We're ready, Your
24 Honor.

25 THE COURT: Counsel, of course, I'm going

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1 to and I want to talk to Mr. Bowman, both --
2 don't need to do that now -- about certainly his
3 right to testify as well as his right to
4 argument. I simply want to do that prior to the
5 time the defense rests. So if you all will
6 approach and let me know at that point and then
7 I can do those things. Unless you think it
8 would be better that I do that now? Let me see
9 you just one minute.

10 (Whereupon, a bench conference was held off the
11 record.)

12 THE COURT: All right.

13 EXAMINATION

14 BY THE COURT:

15 Q Mr. Bowman, as you will recall we talked about
16 your right to testify, your right to decide not to
17 testify in the first phase of the trial. And at that
18 time you were placed under oath for the limited
19 questions that I asked you then and I would simply
20 remind you that you remain under oath for the limited
21 questions I'll ask you now. Do you understand that?

22 A Yes, ma'am.

23 Q All right, sir. Now, I am going to, again,
24 explain to you certain of your rights. And you will
25 recall these because we went over them in the first

Marion Bowman, Jr. - Examination

1 phase. Please know, though, if you do not understand
2 anything I say, please let me know. And if you want
3 me to explain anything in more detail, please let me
4 know. Do you understand?

5 A Yes, ma'am.

6 Q All right. Now, we, of course, have reached the
7 stage of the trial where you may present your
8 defense. And you have the right to claim the
9 protections given to you by the Fifth Amendment to
10 the Constitution of the United States. And this
11 amendment states in part that no person shall be
12 compelled in any criminal case to be a witness
13 against himself. This means that you cannot be
14 required to testify in this case.

15 You have the right to testify on your
16 own behalf; however, no one can make you testify.
17 This is a personal right and no one can waive this
18 right except you. If you decide to testify, you will
19 be subject to the same rules that govern other
20 witnesses and you may be examined and cross-examined
21 on any relevant issue in this case.

22 In addition, if you have any
23 convictions involving dishonesty or false statement
24 or for crimes punishable for imprisonment for more
25 than one year and this Court determines that the

Marion Bowman, Jr. - Examination

1 probative value of admitting this evidence outweighs
2 its prejudicial effect to you, the solicitor will be
3 able to introduce your record to attack your
4 credibility. And when I mean this case, of course,
5 I'm talking about this phase of this trial.

6 If you decide to testify, this
7 decision on your part must be freely, voluntarily,
8 and intelligently made with knowledge of the
9 protections given to you by the Fifth Amendment and
10 the consequences of your decision to testify. If you
11 decide not to testify, I will instruct the jurors
12 that they cannot give the fact that you chose not to
13 testify any consideration whatsoever and that there
14 is to be absolutely no prejudice to you because you
15 chose not to testify. It is left entirely up to you
16 whether or not you testify. Of course you may talk
17 to your attorneys, your family and friends, or
18 anyone, but the final decision will be left entirely
19 up to you. Do you understand what I have explained
20 to you?

21 A Yes, ma'am.

22 Q And do you have any questions about what I have
23 explained to you?

24 A No, ma'am.

25 Q All right, sir. And have you discussed with

Marion Bowman, Jr. - Examination

1 your lawyers whether or not you should or should not
2 testify?

3 A Yes, ma'am.

4 Q And do you need any more time to talk to your
5 lawyers about whether or not you wish or should
6 testify?

7 MR. CUMMINGS: Your Honor, if I may for the
8 record, please.

9 THE COURT: Sure.

10 MR. CUMMINGS: Based on Your Honor's
11 decisions a few moments ago in allowing any
12 aggravating factors to go to the jury, I think
13 Mr. Bowman is requesting an additional period of
14 time before he makes the ultimate decision.

15 THE COURT: Certainly. Certainly.

16 MR. CUMMINGS: Therefore, Judge, not to tie
17 up anything. I know that you'll finish the
18 charges, but his decision will probably be held
19 in abeyance at least until a later moment if we
20 may, Judge.

21 THE COURT: You certainly may. And we will
22 certainly -- if you have the number of witnesses
23 which I am anticipating, then there will
24 certainly be time. And even if there isn't time
25 we will take time for you all to have that

Marion Bowman, Jr. - Examination

1 opportunity to confer before Mr. Bowman makes
2 his final determination.

3 MR. CUMMINGS: Thank you, Judge.

4 THE COURT: You may need to remind me as
5 the afternoon goes along, but it certainly would
6 be my intention and you all will remind me if
7 need be.

8 MR. CUMMINGS: Yes, ma'am.

9 THE COURT: All right, then. I've
10 instructed Mr. Bowman and then once you've had
11 an opportunity to confer if you all would just
12 let me know. Mr. Bowman, you'll let me know
13 your decision?

14 MR. BOWMAN: Yes, ma'am.

15 THE COURT: All right. Very well then.
16 Anything further before we bring our jury out?

17 MR. BAILEY: Nothing from the State at this
18 time, Your Honor.

19 MR. CUMMINGS: Judge, I think we're going
20 to have access again to that easel from that
21 nice, kind gentleman again.

22 THE COURT: He's got to go find the easel.

23 MR. CUMMINGS: Then we've got to make sure,
24 it might be in the jury room. And one more
25 thing in addition there. Madam Clerk, do we

Marion Bowman, Jr. - Examination

1 have one of those pieces of paper that folds
2 over again?

3 THE COURT: Do we have paper?

4 THE CLERK: We had a whole pad here at the
5 beginning of the trial.

6 MR. CUMMINGS: I noticed when we started
7 the trial it was here, but I don't know if we
8 cleaned the courtroom out a little bit.

9 THE COURT: I don't know where it may be.
10 Let us look and see if it can be located.
11 (Pause in proceedings.)

12 MR. BAILEY: Your Honor, while he's looking
13 for that Mr. Cummings advised me one of his
14 first witnesses may be the defendant's mother.

15 THE COURT: All right.

16 MR. BAILEY: She has a 2000 Dorchester
17 County conviction of distribution of marijuana
18 and I would intend to cross-examine her on that,
19 Your Honor. It's very recent, it is not related
20 to any manner whatsoever to the -- what's going
21 on in this trial and it's a serious offense and
22 I think it would affect her credibility and
23 would advise the Court that I plan on subject to
24 the Court's ruling cross-examining her on that.

25 MR. CUMMINGS: As to 609, yes, ma'am, we

Marion Bowman, Jr. - Examination

1 understand.

2 THE COURT: All right. Y'all are aware.

3 Great.

4 (Pause in proceedings.)

5 MR. BAILEY: Your Honor, also in regard to
6 the family members I know this has come up
7 before in other cases, but there are limitations
8 on what they can go into as far as -- and I'd
9 filed a memorandum in that. I'm sure Mr.
10 Cummings has advised her that she can't try to
11 usurp the province of the jury and tell the jury
12 what to do and that type thing, that there are
13 limitations on what she can get into as far as
14 going beyond asking mercy for the defendant, so
15 I just bring that up at this time

16 MR. CUMMINGS: Yes, ma'am. Just as we did
17 politely and how we've been in an adversarial
18 situation as to victim impact evidence versus
19 the defendant. I think, Judge, you controlled
20 both of us as adversaries.

21 THE COURT: Yes. You can't tell the jury
22 what it is that they are supposed to do.

23 MR. CUMMINGS: Yes, ma'am.

24 THE COURT: Very well.

25 MS. HARDEE-THOMAS: One more matter.

Marion Bowman, Jr. - Examination

1 THE COURT: Yes.

2 MS. HARDEE-THOMAS: I had some pictures we
3 want to try to introduce and we want to get them
4 marked before so it will flow through a little
5 bit with regards --

6 THE COURT: All right. Have you seen those
7 photos? Let Mr. Bailey see those.

8 MR. BAILEY: Your Honor, for the record no
9 objection to any of those photographs Ms.
10 Hardee-Thomas showed me.

11 THE COURT: All right. Let us go ahead and
12 mark the photos as an exhibit, we'll put them
13 in.

14 (Entered into evidence were Defendant's Exhibits
15 5 through 15, photographs.)

16 THE COURT: Anything further before the
17 jury comes out?

18 MR. BAILEY: Not from the State, Your
19 Honor.

20 MR. CUMMINGS: Other than getting settled.

21 THE COURT: I got you, very well. Let us
22 have our jury.

23 (Whereupon, the jury returns to the courtroom at
24 1:38 p.m.)

25 THE COURT: I hope that you had a very

Marion Bowman, Jr. - Examination

1 pleasant lunch. At this time we will hear from
2 the defense.

3 MS. HARDEE-THOMAS: The defense calls
4 Kendra Bowman to the stand.

5 THE COURT: Thank you, Ms. Hardee-Thomas.
6 If you would come along, please.

7 (Kendra Bowman, called as a witness, having
8 first been duly sworn, is examined and testifies
9 as follows:)

10 DIRECT EXAMINATION

11 BY MS. HARDEE-THOMAS:

12 Q I'm going to ask that you speak up loudly in the
13 microphone. Can you tell us a little bit about the
14 early years in your life?

15 A Yes. About me and Marion?

16 Q Your family, yes.

17 A Well, me, Marion, we basically grew up together
18 and we played, we always argue over who wear who
19 clothes.

20 Q Who's older?

21 A I'm the oldest.

22 Q Okay.

23 A He's in the middle.

24 Q And you have another sibling?

25 A And I have a sister.

Kendra Bowman - Direct Exam

1 Q Who's younger?

2 A Who's younger, Yolanda Bowman.

3 Q Are there any other siblings?

4 A Unh-unh.

5 Q Can you finish telling us what you were getting
6 ready to say?

7 A And me, Marion, we would always argue about who
8 wear who clothes. And it always turned up I say, no,
9 you're not wearing my clothes so I always end up
10 giving him the clothes to wear. Then we would always
11 like do things together, things like that. When my
12 mom took sick in her back it was only left with me
13 and Marion to do the cleaning and the cooking. And I
14 was never the type to cook. I would always clean, he
15 would do the cooking.

16 Q Okay. So he took care of the cooking and you
17 did what now?

18 A I would always clean.

19 Q Did there come a time where you had siblings,
20 other siblings, or children or relatives in the house
21 with children?

22 A Yes, we had our godson. Well, my mother's
23 godson, Donique, she used to keep him during the
24 summer and stuff and he used to go out and play with
25 him, get up on the truck and they would ride.

Kendra Bowman - Direct Exam

1 Q Okay. Was your father at home?

2 A No. My father was never there.

3 Q Okay.

4 A Which is Marion Bowman, Sr.

5 Q Okay. Was there another man in the home?

6 A Yes. My stepfather, Joseph Sims.

7 Q Okay. What part did he play in the home?

8 A He played the daddy part.

9 Q Okay. Meaning what did he do with the children?

10 A He would take us out, you know, show us what a
11 father supposed to do, you know, help discipline us
12 when we didn't have our own father to do it. I mean,
13 take us out on the road with him, you know, show us,
14 you know, what a father supposed to do.

15 Q What did he do for a living?

16 A He drove truck, truck driver.

17 Q So it enabled you guys to get out of the state?

18 A Uh-huh (affirmative response).

19 THE COURT: Could you answer audibly for us
20 instead of unh-unh or uh-huh?

21 THE WITNESS: Oh, yes, ma'am.

22 THE COURT: Thank you.

23 Q I wanted to show you some pictures.

24 MS. HARDEE-THOMAS: Your Honor, may I
25 approach?

Kendra Bowman - Direct Exam

1 THE COURT: You may.

2 Q Can you look at these and identify them and then
3 I'll talk to you about them?

4 A Uh-huh (affirmative response).

5 Q You have some pictures in your hand. Can you
6 identify those?

7 A Yes, ma'am.

8 Q Okay. One in particular, the first picture that
9 you have, that's a picture of Marion Bowman?

10 A Yes, ma'am.

11 Q And where did that picture come from?

12 A Six Flags Great Adventures.

13 Q Who took that?

14 A I think it's my stepfather snapping the picture.

15 Q You was with him?

16 A Yes, ma'am.

17 THE COURT: What exhibit number is that?

18 MS. HARDEE-THOMAS: That's Defense Exhibit
19 Number 11.

20 THE COURT: All right.

21 MS. HARDEE-THOMAS: We're going to
22 eventually pass those on to the jury, Your
23 Honor.

24 Q All right. Can you tell us about Defense
25 Exhibit Number 10?

Kendra Bowman - Direct Exam

1 A Yes, ma'am. This is my father, Joseph Sims,
2 with the truck, up on the Cadillac, that is my
3 brother, Marion Bowman, we are at Six Flag Great
4 Adventures.

5 MS. HARDEE-THOMAS: Okay. We're going to
6 eventually pass that up to the jury, Your Honor.

7 Q Looking at Defense Exhibit Number 12, can you
8 tell the jury what that is?

9 A Yes. This is my brother, Marion, and this is
10 our god-sister Naquasha W..

11 Q He's holding the baby?

12 A Yes, ma'am.

13 Q Okay..

14 MS. HARDEE-THOMAS: That's, again, Defense
15 Exhibit Number 12.

16 Q Can you tell us about Defense Exhibit Number 8?

17 A This is the blue truck of my stepfather's,
18 Joseph Sims, and this is my brother, Marion Bowman,
19 Jr., and this is my god-brother Donique B..

20 Q Can you identify these pictures? I believe this
21 is Defense Exhibit 15.

22 A This is now my eight-month-old niece, Marissa
23 B..

24 Q Whose child is that?

25 A Dorothy Mae Bowman is the mother and the father

Kendra Bowman - Direct Exam

1 Marion Bowman, Jr.

2 Q We're looking at Defense Exhibit Number 14.

3 A Again, this is my niece, Marissa B. [REDACTED].

4 Q All right. Lastly we're looking at Defense
5 Exhibit 13.

6 A And this is my niece, Marissa B. [REDACTED].

7 Q All right.

8 MS. HARDEE-THOMAS: Your Honor, they've
9 been marked for identification into evidence.
10 May I be allowed to pass these to the jury?

11 THE COURT: You may.

12 Q Ms. Bowman, do you love your brother?

13 A Yes, ma'am. I do.

14 MS. HARDEE-THOMAS: Beg your indulgence,
15 Your Honor.

16 THE COURT: All right.

17 (Ms. Hardee-Thomas and Mr. Cummings conferring
18 with Mr. Bowman.)

19 Q Now, you touched on a point with regards to you
20 and the other siblings in the home when your mom had
21 health problems. When was that, what age were you
22 then?

23 A I don't know, I was about -- probably about -- I
24 was in my teens. Really, to be honest, I don't
25 remember.

Kendra Bowman - Direct Exam

1 Q What grade in school were you?

2 A About in seventh grade.

3 Q Okay. What grade was Marion then?

4 A Marion was in the sixth grade, I think.

5 Q And you basically helped your mom at home?

6 A Yes, ma'am.

7 Q Did you go to school during that time?

8 A Yes, ma'am.

9 Q Okay. When did your parents separate?

10 A My mom and my father separate when I was small,
11 when I was probably about to go on one.

12 Q Was there any problems in the home?

13 A Yes.

14 Q What type of problems, ma'am?

15 A My father was very abusive to my mother.

16 Q Okay. There was domestic violence in your home?

17 A Yes.

18 Q Are you asking for mercy for your brother?

19 A Yes, sir. Yes, ma'am. Yes, ma'am.

20 MS. HARDEE-THOMAS: No further questions,

21 Your Honor.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. BAILEY:

25 Q One thing, when was Dorothy Mae Bowman's baby

Kendra Bowman - Cross-Exam

1 born, the youngest child?

2 A [REDACTED].

3 MR. BAILEY: That's all I have, Your Honor.

4 THE COURT: All right. Any redirect?

5 MS. HARDEE-THOMAS: No redirect, Your
6 Honor.

7 THE COURT: Very well.

8 MR. CUMMINGS: We would call Mrs. Bowman.

9 THE COURT: You may come down. Is this
10 witness free to leave?

11 MR. CUMMINGS: Yes, ma'am.

12 THE COURT: Very well. You are free to go.
13 (Whereupon, the witness steps down from the
14 witness stand.)

15 MR. BAILEY: Can we approach briefly, Your
16 Honor?

17 THE COURT: You may.

18 (Whereupon, a bench conference was held
19 off the record in the presence of the
20 jury but out of the hearing of the jury.)

21 (Dorothy Bowman, called as a witness, having
22 first been duly sworn, is examined and testifies
23 as follows:)

24

25

Dorothy Bowman - Direct Exam

DIRECT EXAMINATION

1

2 BY MR. CUMMINGS:

3 Q Mrs. Bowman, good afternoon, ma'am.

4 A Good afternoon.

5 Q I'm going to ask you some very personal
6 questions right off the bat and I want you to
7 understand they're going to be very uncomfortable.
8 The very first thing I want to say to you is it a
9 truth, a true statement that you were convicted or
10 pled guilty in this court in the year 2000 of the
11 offense of distribution of marijuana?

12 A Yes.

13 Q In the year 2000?

14 A Yes.

15 Q What month in the year 2000, ma'am?

16 A I think it was like April. I think it's April,
17 I'm not sure.

18 Q Okay. And you received what type of sentence,
19 please, to the ladies and gentlemen of the jury?

20 A Probation.

21 Q Okay. Are you currently on probation?

22 A Yes.

23 Q I want to take you back to a real lifetime. Can
24 you please describe to these ladies and gentlemen of
25 the jury your life with Mr. Marion Bowman, Sr.

Dorothy Bowman - Direct Exam

1 starting from the time of your beginning of the
2 relationship until the present day?

3 A Well, he was abusive and I divorced him when my
4 baby was 18 months old so I had to raise my kids on
5 my own. Child support wasn't an issue because he
6 wouldn't pay it, so I had to take care of my kids
7 myself. Then once Marion got big enough to mow
8 grass, he mowed grass to make ends meet.

9 Q How old were you when you had your first child,
10 ma'am?

11 A I think 17.

12 Q How old were you when you had the second child?

13 A Eighteen.

14 Q How old were you when you had the third child?

15 A Nineteen.

16 Q When did Mr. Bowman -- again, when did
17 Mr. Bowman depart the family?

18 A Well, I said he been departed because ever since
19 I had them I had to take care of them myself, but he
20 was in the house but I still had to take care of them
21 myself. I think Yolanda was like eight months when
22 we did live in different houses and she was like 18
23 months when I divorced, when my divorce came final.

24 Q Did Marion have difficulty as a child in school,
25 particularly in grammar school?

Dorothy Bowman - Direct Exam

1 A Well, I think it's because -- yes. And I think
2 it's because he wanted his father to be a part of his
3 life and his father never were.

4 Q Did you ever attend school issues and school
5 functions on behalf of Marion?

6 A Yes, I did. I tried to attend all he had.

7 Q Did you ever address concerns or problems with
8 the school personnel about your son?

9 A Yes, I did.

10 Q Okay. Well, let's go back a little bit. The
11 oldest child was Kendra, ma'am?

12 A Yes, sir.

13 Q Did Kendra finish high school?

14 A Yes.

15 Q Did Marion finish high school?

16 A No.

17 Q Did Yolanda finish high school?

18 A No.

19 Q What grade was the last grade in school that
20 your son, Marion, finished, ma'am?

21 A I think it was the ninth, but he didn't stop on
22 his own, he could no longer go to that school.

23 Q So he finished the ninth grade?

24 A Yes.

25 Q At the end of the ninth grade how were you

Dorothy Bowman - Direct Exam

1 supporting yourself at that time?

2 A The best way I could.

3 Q And how was that, ma'am?

4 A Well, I had a little income.

5 Q From what?

6 A From -- he was in ninth grade. It was just like
7 whenever his dad would pay child support, then he
8 would go out and cut grass for different people to
9 make money to help.

10 Q Were there any other family members that Mr. --
11 that your son was close to at that time?

12 A Yeah. He was close to people in my family.

13 Q Who is that? Who was alive back then when he
14 was around ninth grade that he was close to, please?

15 A He used to loved his Aunt Lo, Lorraine Johnson.

16 Q And how would you describe that love, in
17 particular in what ways would Mr. Bowman, Marion,
18 help his aunt?

19 A Anything he could do to help her around the
20 house he would do it, he was always there. When she
21 need him he was always there. Well, anybody need him
22 he was always there, he was a very helpful person.

23 Q What in particular would cause Marion in the
24 ninth grade to want to help Aunt Lorraine, was there
25 anything significant about her?

Dorothy Bowman - Direct Exam

1 A Well, I guess because she helped me out when I
2 need help, she would help me out as far as taking
3 care of them.

4 Q Was there any reasons that Marion had to take
5 care of that lady?

6 A Love.

7 Q Were there any reasons other than love for him
8 taking care of you?

9 A All I can say is love and I'm his mom, you know,
10 he know I need the help.

11 Q Can you describe to the ladies and gentlemen of
12 the jury your physical condition from about the time
13 that Marion was in grammar school until he got to
14 high school?

15 A Well, I start having problems with my back back
16 in '90 and I was like couldn't do nothing for myself.
17 I kept going to the doctor and they was trying to
18 find out what it was. And he was my backbone because
19 if he didn't get me out of the bed and let Kendra and
20 Yolanda dress me before he get to school I had to
21 stay in the bed until he come back.

22 Q So that was Marion's chores?

23 A Yes. When I were able to work he was the one
24 would cook and Kendra and Yolanda would clean up.

25 Q Can you describe Marion's issues with his father

Dorothy Bowman - Direct Exam

1 to the ladies and gentlemen of the jury? And I want
2 you to be very open about that, please.

3 A Um.

4 Q If you don't understand my question I'll
5 rephrase.

6 A I don't understand.

7 Q Did his father ever have a relationship with
8 him?

9 A No, sir. His father always would promised him
10 that he's coming to take him fishing or to ride him
11 around. And he depend on his dad to come do those
12 things, then his dad wouldn't come and he would be
13 upset. And that's what he always do, always
14 promising he was going to come take him and do stuff
15 and spend time with him and he never would. And that
16 had bothered him a lot.

17 Q You understand today the purpose of this is to
18 have you talk to the ladies and gentlemen of the jury
19 about your son?

20 A Yes, sir.

21 Q Now, you've been shown some pictures.

22 MR. CUMMINGS: And, Your Honor, may I
23 approach the witness, please?

24 THE COURT: You may.

25 Q These are -- and, again, I don't mean to block

Dorothy Bowman - Direct Exam

1 anybody. I want to show you these first. Can you
2 identify the young male in these pictures?

3 A That's my loving son, Marion Bowman, Jr.

4 Q Now, these are what appear to be four school
5 pictures; is that correct, ma'am?

6 A Yes, sir.

7 Q Okay. When you were requested and asked by
8 Ms. Davis and other members of the -- Ms. Marva
9 Hardee-Thomas or I about pictures of Marion, did you
10 have any other photographs other than the ones we got
11 out of the school yearbook?

12 A No, sir. Because I wasn't -- I didn't have the
13 money to buy them like other people could buy
14 pictures for their kids, I couldn't buy them.

15 Q Again, my question to you, ma'am, is this now:
16 Out of the 20 years of Marion being on this earth,
17 and those are school photographs, that's the only
18 photographs that you have of that young man, your
19 only son?

20 A Yes, sir. It is.

21 Q Four photographs that depict the history of his
22 life?

23 A Yes, sir.

24 Q Not a birthday picture?

25 A No, sir.

Dorothy Bowman - Direct Exam

1 Q Not a picture of any issue of him in school
2 other than those four pictures?

3 A No, sir. And I would like --

4 Q Answer my question. Any pictures?

5 A No, that's it.

6 Q There came a time where you met a man in your
7 life named Mr. Joe Sims?

8 A Yes, sir.

9 Q Could you please tell the ladies and gentlemen
10 of the jury about your life with Mr. Sims and when
11 that occurred?

12 A He did what a father should do. He helped took
13 care of my kids, he took them on adventures, he took
14 out time with them and taught them different things
15 which a father should do with a guy which was my son
16 Marion, and he made our life different.

17 Q You met that man in what year?

18 A Early '90s.

19 Q All right. And he left your life when?

20 A Like '98. Like '98, '99, something like that.

21 Q In 1997 did Marion get in trouble with the law?

22 A Yes, sir.

23 Q How old was your son in 1997, ma'am?

24 A Like 18, 17, 18.

25 Q You're not sure? When was Marion born?

Dorothy Bowman - Direct Exam

1 A Marion was born in [] [] [] [] [].

2 Q So in 1997 you said he was about 18? I'm not
3 trying to trick you.

4 A Yes, 17, 18.

5 Q Okay.

6 A I'm kind of nervous so I ain't really thinking
7 the age.

8 Q When you need a glass of water or something I'll
9 ask her -- oh, I'm sorry. When Marion had -- would
10 you please describe the relationship that Marion had
11 to the limited time with Mr. Sims?

12 A He had a loving relationship. He looked up at
13 him like a real dad because that's the only guy -- he
14 was the only one took up a lot of time with him. His
15 dad never was there so it was like dad to him.

16 Q Of your personal knowledge, did Mr. Bowman, had
17 you ever seen your son in the company of Miss Kandee
18 Martin?

19 A Yes, sir. I have.

20 Q And would you please describe for these ladies
21 and gentlemen of the jury how often and what
22 occasions you might see Mr. Bowman in the company of
23 Miss Martin?

24 A I have seen them plenty of times because
25 Miss Martin used to always come to my house at one

Dorothy Bowman - Direct Exam

1 point and she was just like a member of the family.

2 Q Did Miss Martin have a child, ma'am?

3 A If I'm not mistaken she had two kids.

4 Q Was Miss Martin friends with Yolanda and Kendra,
5 ma'am?

6 A Yes, she were.

7 Q Would it be out of the ordinary to see
8 Mr. Bowman in the company of Miss Martin?

9 A No, sir.

10 Q Would it be out of the ordinary to see
11 Mr. Bowman in the car with Miss Martin?

12 A No, sir, because she would give him her car all
13 the time to drive.

14 Q There came a time in this case where your son is
15 convicted of murder and arson. You understand that?

16 A Yes, sir.

17 Q And you understand that the least amount of
18 sentence that the jury could impose is life without
19 the possibility of parole?

20 A Yes, sir.

21 Q What would you ask of this jury today in passing
22 judgment on your son?

23 A I'm asking the jury would they please have
24 mercy. I don't want to see my son die because that's
25 the only son I have and I don't know what went wrong.

Dorothy Bowman - Direct Exam

1 I don't believe he did it, but I ask the jury to
2 please have mercy on my son. That's my only son, he
3 have an eight-month-old daughter and I got to help
4 raise her now and I don't work. I'm on disability
5 and it's hard, so I'm asking y'all to please have a
6 little mercy on my son.

7 MR. CUMMINGS: Beg the Court's indulgence,
8 Your Honor.

9 THE COURT: All right.

10 (Mr. Cummings and Ms. Hardee-Thomas conferring
11 with Mr. Bowman.)

12 MR. CUMMINGS: Judge, that's all the
13 questions we have of this lady.

14 THE COURT: Cross-examination?

15 MR. BAILEY: No questions of Mrs. Bowman.

16 THE COURT: Very well. You may come down,
17 Mrs. Bowman.

18 (Whereupon, the witness steps down from the
19 witness stand.)

20 THE COURT: All right, sir. If you would
21 call your next witness.

22 MR. CUMMINGS: Ms. Alice Baughman, please.

23 THE COURT: All right.

24 (Margaret A. Baughman, called as a witness,
25 having first been duly sworn, is examined and

Margaret A. Baughman - Direct Exam

1 testifies as follows:)

2 DIRECT EXAMINATION

3 BY MR. CUMMINGS:

4 Q What do you do for an occupation, ma'am?

5 A I'm an adult education teacher for Dorchester
6 County School District Two.

7 Q Okay, ma'am. Have you had the opportunity and
8 the occasion to meet Mr. Marion Bowman, Jr., ma'am?

9 A Yes, I have.

10 Q Okay. And have you had the opportunity to work
11 with him as an instructor or teacher with Mr. Bowman?

12 A Yes, I have.

13 Q Can you please tell the ladies and gentlemen of
14 the jury approximately when you began any
15 instructions with Mr. Bowman?

16 A I don't know the exact date, but it was in the
17 late spring of 2001.

18 Q Could you just please describe to the ladies and
19 gentlemen of the jury in your own words, ma'am,
20 exactly what you teach and how in particular dealing
21 with Mr. Bowman?

22 A Well, I teach at the Dorchester County Detention
23 Center and I teach the keyboarding and GED
24 preparation along with academic refresher type
25 classes. And during the time that Mr. Bowman's been

Margaret A. Baughman - Direct Exam

1 my student he has sort of dabbled in a little of all
2 those different classes. He's also this last school
3 year been one of my teaching assistants and has taken
4 care of the library that I've established there.

5 Q And have you ever expressed any cares or
6 concerns about Mr. Bowman?

7 A Not while he was in my classroom, no.

8 Q Have you been able to form or express your --
9 anything in verbal or words dealing with Mr. Bowman
10 about how he assists you? Is he a help to you, is a
11 better question.

12 A Yes, he is. He's been a big help to me. He's
13 very consistent about coming to class. I can count
14 on him being there for me and that's important when
15 I'm in that room by myself with 15 different
16 individuals, some of whom I haven't gotten to know
17 very well. Because the jail does have a very
18 transient population, so it's hard to keep your eyes
19 on everything at one time.

20 Q Have you felt comfortable around Mr. Bowman,
21 ma'am?

22 A I have.

23 Q Have you ever expressed any cares or concerns
24 about being alone in the presence of Mr. Bowman?

25 A No, I haven't.

Margaret A. Baughman - Direct Exam

1 Q Have you ever had any difficulty with him
2 whatsoever, ma'am?

3 A Not in the classroom setting, no.

4 MR. CUMMINGS: Beg the Court's indulgence.

5 THE COURT: All right.

6 Q Excuse me, I'm sorry.

7 MR. CUMMINGS: Your Honor, may I approach
8 the witness for a moment?

9 THE COURT: All right.

10 Q Do you pass out little things that every once in
11 a while you teach people with, ma'am, or give them
12 little ribbons or certificates?

13 A Yes, I do.

14 Q Let me show you this and ask if you can identify
15 it first, please.

16 A This is the red ribbon week, drug-free ribbon
17 that I gave my students last year along with some
18 pencils and things like that.

19 Q And did you give that to Mr. Bowman? Is that
20 your initials on there?

21 A Well, no, I didn't write that, no.

22 Q Okay.

23 A But that's the type of ribbon I gave out and I
24 did give it to all my students.

25 Q Okay. But you can't identify this one?

Margaret A. Baughman - Direct Exam

1 A It looks just like all the other ones I gave
2 out, so....

3 Q Okay. If you had a stack of them it would be
4 about the same thing?

5 MR. BAILEY: Judge, I won't object to it if
6 he wants to put it in.

7 THE COURT: Very well. Defendant's Exhibit
8 16 in evidence without objection.

9 (Entered into evidence was Defendant's Exhibit
10 16, ribbon.)

11 Q When was the last class that you have had that
12 you have seen Mr. Bowman in, ma'am, what date, this
13 is now May of 2002, when was the last time you talked
14 with him?

15 A I believe the last time I had him in class was
16 maybe the second of May.

17 Q It's continued on. It's continued on from when
18 you met him until May of this week?

19 A Right. I work a regular school teacher schedule
20 so I was off last summer and, you know, I have my
21 holidays, but he's been consistently in my class
22 since he arrived at the detention center.

23 Q That's been at least 14, 15 months of your
24 personal knowledge?

25 A Yes, sir.

Margaret A. Baughman - Direct Exam

1 Q Thank you.

2 MR. CUMMINGS: Beg the Court's indulgence.

3 THE COURT: All right.

4 (Mr. Cummings and Ms. Hardee-Thomas conferring
5 with Mr. Bowman.)

6 MR. CUMMINGS: Your Honor, that's all the
7 questions we have of this nice lady.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. BAILEY:

11 Q Mr. Cummings asked you whether or not you had
12 any trouble with Mr. Bowman and you said not in the
13 classroom setting. What did you mean by that?

14 A Well, that's the only interaction that I have
15 with the --

16 Q Okay.

17 A -- inmates at the detention center, is in a
18 classroom setting.

19 Q All right. So you hadn't seen him outside of a
20 classroom setting?

21 A No, sir. No.

22 Q That's what I wanted to find out. With regard
23 to this Defense Exhibit Number 16, it says, "Take a
24 Stand for a Drug Free Land." You give one of these
25 to everybody in your class?

Margaret A. Baughman - Cross-Exam

1 A I did during red ribbon week which I believe
2 falls the last week in October.

3 Q Of course people locked up in jail even if they
4 want drugs, there are no drugs --

5 A I'm sorry, I didn't --

6 Q As far as "Take a Stand for a Drug Free Land" I
7 guess it would refer to illegal drugs?

8 A Yes, sir.

9 Q Okay. And people locked up in jail would not
10 have access to street drugs?

11 MR. CUMMINGS: Judge, I think that's a
12 speculation. I hope there's not anything across
13 the street. I don't know if this lady can
14 answer that.

15 THE COURT: All right, sir. I'll overrule
16 the objection. You may answer the question.

17 Q You understand my question? I'm just trying to
18 find out what the correlation is between giving
19 people in jail a sticker like "Take a Stand for a
20 Drug Free Land," what is the significance of that
21 when they're in jail and they could not get street
22 drugs even if they wanted to?

23 A Well, my hope is that when they are not in jail
24 and they're back on the street that they wouldn't be
25 involved in any type of illegal drug use.

Margaret A, Baughman - Cross-Exam

1 Q Sure. Okay. All right. And all the people in
2 your class get that, it's not something they earn,
3 you just pass them out?

4 A Right.

5 Q Okay.

6 A During that particular week of celebration for
7 red ribbon.

8 Q Sure. I just wanted to understand that. Thank
9 you very much.

10 MR. CUMMINGS: Just a couple back.

11 THE COURT: All right. Redirect.

12 REDIRECT EXAMINATION

13 BY MR. CUMMINGS:

14 Q There are very limited opportunities for the
15 people across the street to have any classes; is that
16 fair to say?

17 A Right. It's -- I guess it's considered a
18 privilege to be able to come to class. There are a
19 lot of inmates who would like to attend and we don't
20 have a whole lot of time or space.

21 Q And, therefore, Mr. Bowman made himself
22 available to you for the limited classes that anybody
23 had to offer him there?

24 A Yes, sir.

25 Q Thank you.

Margaret A. Baughman - Redirect Exam

1 MR. CUMMINGS: That's all the questions we
2 have, Judge.

3 THE COURT: All right. Recross?

4 MR. BAILEY: No, ma'am.

5 MR. CUMMINGS: Ask the young lady be
6 excused with Your Honor's permission.

7 MR. BAILEY: No objection.

8 THE COURT: Very well. You are free to go.
9 (Whereupon, the witness steps down from the
10 witness stand.)

11 THE COURT: If you could call your next
12 witness, please, Mr. Cummings.

13 MR. CUMMINGS: Judge, we would ask if
14 Dr. West has arrived yet.

15 THE COURT: Very well.

16 MR. CUMMINGS: If I may just check the
17 backroom.

18 THE COURT: Certainly.

19 (Pause in proceedings.)

20 MR. CUMMINGS: Mr. Youngman, please.
21 (Jeffrey J. Youngman, called as a witness,
22 having first been duly sworn, is examined and
23 testifies as follows:)

24

25

Jeffrey J. Youngman - Direct Exam

DIRECT EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q Mr. Youngman, would you please -- and, again,
4 I'll try to be as brief as I can, Doctor -- excuse
5 me, Mister. Could you please describe to the ladies
6 and gentlemen of the jury what is your educational
7 background, sir?

8 A I have a bachelor's degree from Ohio State
9 University and two master's degrees from Tulane
10 University, one in social work one in public health.

11 Q What is your summary of your work experience,
12 sir?

13 A My professional experience as a social worker I
14 started in '81, so I've been a social worker for 21
15 years now.

16 Q All right, sir.

17 A I was child protection for approximately seven
18 years, I was -- investigated child abuse cases and I
19 supervised a unit and then I supervised the entire
20 parish which is the counties in Louisiana.

21 Q All right, sir.

22 A And then I -- from there I worked two years at a
23 homeless and runaway shelter in New Orleans for kids
24 ages 18 to 21; I worked in the school system, then I
25 moved to South Carolina, worked for the Health

Jeffrey J. Youngman - Direct Exam

1 Department for three years, then I worked for
2 Carolina Youth Development Center which is an agency
3 had abused and neglected kids as well as emotionally
4 disturbed kids. I worked there for about six and a
5 half years and I've been at Crises Ministries, a
6 homeless shelter in Charleston, for the past three
7 years.

8 Q And do you have any relevant pre-master's work?
9 I know we've gone through a lot of things, but have
10 you spent any time in particular of a pre-master work
11 history?

12 A Well, prior to going to graduate school at
13 Tulane I was a New Orleans police officer.

14 Q How many years did you do that, sir?

15 A About two and a half.

16 Q Are you licensed as a social worker?

17 A Yes, I am. I'm licensed in the state of South
18 Carolina as a licensed independent social worker of
19 the -- there are three levels of social workers -- or
20 three levels of licensures or social workers in South
21 Carolina and LISW is the highest of the three levels.

22 Q And that's what you hold, sir?

23 A Yes, sir.

24 Q Now, do you have any postgraduate training or
25 continuing education beyond the scope of your highest

Jeffrey J. Youngman - Direct Exam

1 level of licensing in this state?

2 A Well, to maintain my licensure I have to have 20
3 hours of social work training every year. In
4 addition June of last year I completed a postmaster's
5 certification course at Tulane in forensic social
6 work. It's the first one of its kind in the country
7 and I was one of the first. I think there was 22 of
8 us in the class.

9 Q What is forensic social work, sir?

10 A Forensic social work is just a specialty of
11 social work that deals with sort of the interface
12 between social work and the law. Anybody that works
13 in, say, well, child protection, divorce mediation,
14 child custody cases, they're all considered forensic
15 social workers.

16 Q As a forensic social worker or in the work that
17 you do, is there a procedure that is routinely
18 accepted by the Court system?

19 A I do. And it's certainly been accepted in the
20 past what's called the psychosocial assessment. It's
21 sort of the basic tool any social worker does to get
22 information from the client so that some decisions
23 can be made to what should happen with the client,
24 what to work on with the client next.

25 Q Approximately, sir, how many times have you been

Jeffrey J. Youngman - Direct Exam

1 declared an expert in testifying in any state court,
2 or particular any state court or any federal court by
3 a judge?

4 A Well, let's see, this is the tenth case that
5 I've testified in, so ten times in forensic social
6 work. Of course I was an expert many times whenever
7 we did child protection.

8 Q All right. What are psychosocial assessments
9 used for, sir?

10 A Well, as I mentioned they're the basic building
11 block a social worker -- basic cornerstone perhaps is
12 a better term. It serves different purposes in
13 different settings. At the homeless shelter where I
14 work I do psychosocial assessments on the guests as
15 we call them that come into the shelter. They're
16 done so I can determine what were the causes of their
17 homelessness and what we can do to work on it to
18 alleviate those causes so they can be back in the
19 community in a home.

20 And the cases do -- the forensic
21 social work here in settings like this it's basically
22 to determine, again, what went on in a person's life
23 that would cause them to do the action that they've
24 been found guilty of. Because, of course, I only
25 testify in the penalty phase.

Jeffrey J. Youngman - Direct Exam

1 And I start from the -- well, I go
2 back from the moment the incident occurred backwards,
3 so I deal with only the past. And so no matter what
4 happened after the incident took place the past was
5 still the past, it still existed.

6 Q All right, sir. Can anyone do psychosocial
7 assessments or do you have to be a social worker and
8 have special training to do that?

9 A You really have to have the special training to
10 do a complete and thorough and appropriate one. Most
11 psychologists, psychiatrists, even William S. Hall up
12 in Columbia, have social workers do those for them,
13 they don't do them themselves.

14 Q Do you do psychosocial assessments in your
15 full-time job as well as in sentencing matters here,
16 in particular these types of cases, sir?

17 A Yeah. I've done them for 21 years.

18 Q About how many psychosocial assessments have you
19 done approximately, sir? I know you said 21 years,
20 but....

21 A 2,100. I've done quite a number.

22 Q Sir, would you say this is an area of
23 specialization for you?

24 A Of the forensic psychosocial assessments
25 certainly is for me, yes.

Jeffrey J. Youngman - Direct Exam

1 Q How do you conduct a psychosocial assessment?

2 A Again, depends on the setting. When I do it in
3 the homeless shelter I get information from the
4 guest. And if there are other agencies that have
5 worked with them I call those agencies to confirm
6 what the guest is telling me. In the case of
7 forensic psychosocial assessment I, again, talk to
8 the defendant in the case and then talk to his
9 family, talk to his friends, talk to people that have
10 had contact with him and review any records that seem
11 crucial to his life history.

12 Q In what ways do you validate your conclusions?

13 A By talking to other people. The more people
14 that tell me consistently the same information the
15 more likely the information is true.

16 Q And how many hours does it take for you to
17 complete a psychosocial assessment, sir?

18 A It, again, depends on the lead time. It seems
19 if I had 100 hours it would take me 110 because I
20 would always think of someone else I should talk to,
21 but in general 50 hours. Considering time reviewing
22 records and time interviewing people and time
23 traveling from place to place 50 hours.

24 Q What insight do forensic social workers bring to
25 the psychosocial assessments or to this courtroom,

Jeffrey J. Youngman - Direct Exam

1 sir?

2 A What social workers do is that no event in any
3 person's life happens in a vacuum, there's always
4 some precipitating factors, there's always some
5 causal factors, people make decisions for a reason.
6 Social workers are trained to look at those reasons,
7 determine what existed and then try to figure out why
8 it happened in the way it happened.

9 Q All right, sir. How many capital sentence cases
10 have you been asked to work on and over what period
11 of time, sir?

12 A Twenty-seven in the past five years.

13 Q How many have you actually testified in?

14 A Just ten.

15 Q Why is there such a discrepancy, sir?

16 A Well, a number of reasons. Sometimes the
17 defendant pleads guilty, then, of course, I don't
18 have to testify. Sometimes I find -- in the course
19 of doing my assessment I do find some mitigation,
20 some informations that is pertinent to the case, but
21 it may not be something I can testify to. Say
22 somebody had -- in the course the assessment I
23 determine the person had brain damage, that's not my
24 area of expertise so a neurologist would have to
25 testify in that so I don't testify in those cases.

Jeffrey J. Youngman - Direct Exam

1 Some cases there is no mitigation or nothing I could
2 find through the course of doing my assessment that
3 lends itself to the defense.

4 Q In your career have you testified for the
5 prosecution or State as well as for the defense?

6 A Oh, well, when I was a police officer obviously
7 I did, when I was in child protection I did. About a
8 year and a half ago I testified in a federal case in
9 North Carolina, pornography on the internet case.
10 The person happened to be somebody who was at Crisis
11 Ministers I had worked with, so I went up and
12 testified for the prosecution in that case.

13 Q All right. What type of cases -- again, you
14 just mentioned a moment ago the pornography case, but
15 what type of cases do you normally testify in?

16 A Now it's the capital sentence case that I
17 testify in mostly.

18 Q Has all of your court testimony been in South
19 Carolina, sir?

20 A No. I've testified in Georgia and Florida as
21 well.

22 Q Have you testified in other states as an expert
23 also?

24 A Yes. I was qualified in both those states.

25 Q And in those states as well as South Carolina,

Jeffrey J. Youngman - Direct Exam

1 have you been qualified as an expert witness in
2 conducting psychosocial assessments and qualified to
3 offer opinions based on your findings?

4 A Yes, I have.

5 Q And in those cases were you asked to draw
6 conclusions or to render opinions as to how the
7 information that you have gathered about the
8 defendant related to his situation?

9 A Yes, I was.

10 MR. CUMMINGS: If Your Honor please, I
11 would ask that Mr. Youngman be qualified as an
12 expert in the field of forensic social work and
13 the conducting of psychosocial assessments, Your
14 Honor.

15 THE COURT: Any voir dire?

16 MR. BAILEY: May I voir dire briefly?

17 THE COURT: You may.

18 VOIR DIRE EXAMINATION

19 BY MR. BAILEY:

20 Q Mr. Youngman, you're not an MD?

21 A No, sir. I'm not.

22 Q Not a psychiatrist?

23 A No.

24 Q You're not a psychologist?

25 A No.

Jeffrey J. Youngman - Voir Dire Exam

1 Q All right, sir. Your degree is in social work?

2 A Yes.

3 Q All right, sir. And you've testified that
4 you've testified in the past in various contexts as a
5 police officer and then some kind of a pornography
6 case?

7 A And in child protection cases.

8 Q All right, sir. Now, as a police officer you
9 didn't testify as a Court-ordered expert in
10 psychosocial assessment, did you?

11 A No. I didn't have a master's degree at the
12 time.

13 Q All right, sir. And the case that you testified
14 about the child pornography, did you testify as an
15 expert in that case?

16 A Not in -- I was an expert in homelessness in
17 that case.

18 Q All right. Were you qualified as an expert in
19 homelessness?

20 A Yes, sir.

21 Q I want to ask you about your expertise in
22 testifying as a Court-qualified expert in
23 psychosocial assessments. How many times have you
24 testified for either the State of South Carolina,
25 North Carolina, Georgia, the prosecution as an expert

Jeffrey J. Youngman - Voir Dire Exam

1 in this area?

2 A Ten times.

3 Q Ten times. All right, sir. And I thought that
4 you said --

5 A Excuse me, this is the tenth time.

6 Q You're not testifying for the State here. Let
7 me -- I apologize.

8 A Okay.

9 Q I might have asked the wrong question or asked
10 the right question the wrong way. You have testified
11 ten times as an expert in the field of psychosocial
12 assessment; is that correct, sir?

13 A Forensic psychosocial assessment.

14 Q Forensic psychosocial assessment?

15 A And this is the tenth time.

16 Q All right. And how many of those ten times did
17 you testify for the State, the prosecution?

18 A I did not testify for the State.

19 Q Okay. So all of those were for the defense?

20 A Yes, sir.

21 Q And the times that you were retained to look
22 into a case but you didn't testify as an expert, was
23 that all for the defense also?

24 A Yes, sir.

25 Q So the times you've testified for the State were

Jeffrey J. Youngman - Voir Dire Exam

1 in some other capacity, as a police officer or a
2 homelessness expert or something of that nature?

3 A Yes, sir.

4 Q All right, sir. And as I understand what you're
5 saying what you do, you go out and you gather history
6 on somebody; is that right?

7 A That's another way to put it, yes, sir.

8 Q And you write the history up?

9 A Yes, sir.

10 Q And then at some point somebody may or may not
11 draw some conclusions from that historical data?

12 A Well, that somebody would be me, but I would be
13 the one to draw the conclusions.

14 Q How do you go about drawing your conclusions if
15 you get a bunch of facts about somebody might have
16 had some head injuries or his father wasn't the best
17 father in the world or didn't do well in school, how
18 do you add all those up to equal something else? Do
19 you see what I'm asking you?

20 A Not really. Equal. I don't know what I'm
21 equalling here.

22 Q Sir?

23 A I'm not sure what I'm equalling. You said
24 equals something else.

25 Q I'm just struggling, sir, frankly to find out

Jeffrey J. Youngman - Voir Dire Exam

1 what it is you testify as an expert at. Forensic
2 psychosocial assessment. Tell me in layman's terms
3 what that is, sir.

4 A Can be called a social history, social work
5 evaluation, same terminology.

6 Q All right, sir.

7 A I go back and find -- go back and get the entire
8 history of an individual from him, from his family,
9 from records and try to determine if there are any
10 factors that -- in these cases that would cause them
11 to commit the crime of murder. Just like in homeless
12 cases I go and try to find why the person became
13 homeless and hence --

14 Q Okay. So are you prepared today to give some
15 opinion on why the defendant committed the act of
16 murder?

17 A Yes.

18 Q Would it be fair, sir, that the information you
19 get to base your opinion is no better than the
20 sources of information that you get?

21 A I'd -- I guess that's fair.

22 Q All right. The more people that are closely
23 connected with the individual you're working with
24 that you get accurate information from the better
25 report you can do?

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1 A Yes, sir.

2 Q All right, sir. Did you talk to Dorothy Mae
3 Bowman, Mr. Bowman's wife?

4 A No. There were people I could not talk to.

5 Q Okay. I'm not going to ask you why you couldn't
6 talk to them, just did you talk to them. Okay. Did
7 you talk to his sister, Yolanda Bowman?

8 A No, I did not.

9 Q Did you talk to his friend, Hiram Johnson?

10 A No, I did not.

11 Q All right. Did you talk to any law enforcement
12 officers?

13 A No, I did not.

14 Q Anybody over at the jail?

15 A No, I did not.

16 Q You didn't talk to the Martins, did you?

17 A No, I did not.

18 MR. BAILEY: Your Honor, I do have a matter
19 of law in regard to his qualifications.

20 THE COURT: Ladies and gentlemen, I'm going
21 to ask you to please step to your jury room. Do
22 not discuss this matter and do not allow anyone
23 to discuss it with you, we will be with you
24 shortly.

25 (Whereupon, the jury retires to the jury room at

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1 2:29 p.m.)

2 MR. BAILEY: Your Honor, let me apologize.
3 I'm not trying to be overly technical. If he's
4 qualified as an expert I'm willing to concede
5 it. My problem, Your Honor, is that I've read
6 an eight-page report that was faxed to me
7 yesterday from Mr. Youngman. And as I read the
8 report he garners a bunch of facts and then he
9 reaches conclusions he sets out here. And I
10 don't read these conclusions as giving any
11 opinion or reason why the defendant committed
12 the act of murder. If by qualifying him as an
13 expert in the field of forensic psychosocial
14 assessment it's going to open the door to him
15 giving an opinion to this extent, then I would
16 object to his qualification as an expert to do
17 that based on what he's said so far.

18 If he's just going to relate a history
19 and that's what the qualification's for, then I
20 have no objection to it. But what he says he's
21 going to do is not what I read in the report and
22 it's just such an esoteric field that I'm not --
23 I'm not ready to concede that he can give an
24 opinion on why this man committed murder.

25 MR. CUMMINGS: If it please the Court,

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1 Judge. The first issue is whether or not he's
2 qualified as an expert. That totally goes to
3 your weight, Judge, and if Mr. Bailey would
4 explain as his objection is that the ultimate
5 question or the ability of this gentleman to
6 give an opinion. So the very first thing is I
7 would submit to you, I think I've laid the
8 proper foundation now that he is an expert in
9 this field. And if Your Honor sees fit and so
10 find then he's subject to cross-examination.

11 We gave up the notes and the gentleman
12 summarized his summary what he was going to say
13 today and provided that over pursuant to 703,
14 Rule 5, and Brady. And, Your Honor,
15 respectfully, I believe that Mr. Youngman is,
16 again, Your Honor, with Your Honor being the
17 final word on that, an expert in this field,
18 he's been qualified. And, Your Honor, I think
19 I've met the rules with regards to 703, the
20 proper foundation.

21 I think it's great. And, again, like
22 I tell every expert I talk to, you're subject to
23 cross-examination and that would be the fodder
24 that you provide for cross-examination. And
25 it's the weight of the testimony the jury hears

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1 and not the question of whether or not he's an
2 expert. That is your province, ma'am, as I
3 understand it.

4 MR. BAILEY: Your Honor, could I ask one
5 follow-up question? It might help me, I might
6 even withdraw it.

7 THE COURT: Sure.

8 BY MR. BAILEY:

9 Q Dr. Youngman, have you testified in the past as
10 an expert in the field of psychosocial assessment and
11 given an expert opinion in court as to why you think
12 somebody committed a murder?

13 A Every time I testified.

14 Q Okay. Give me some of those cases.

15 A Last case I worked on was the Woods case in
16 Greenville, before that the Rogers case in Beaufort,
17 before that there was, oh, man, federal case in
18 Savannah, Garret, Lamont Garret. Before that I
19 testified at the Joseph Sheppard case in Greenville,
20 testified in Abyville at the John Kennedy Hughey
21 case, testified in Clinton, South Carolina, in the
22 first case I ever did, whose name I cannot remember
23 now.

24 Q Okay. And your testimony, sir, is that you are
25 allowed as an expert in forensic psychosocial

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1 assessment to give your opinion on why somebody
2 committed a murder?

3 A Every time I've given factual history of the
4 person and drawn from that a history of the
5 conclusion of what caused him to behave the way he
6 did, yes, sir.

7 Q When you say behave the way he did, you're
8 talking about committing the act of murder?

9 A In every case, yes.

10 Q Okay.

11 THE COURT: Anything further, Mr. Bailey?

12 MR. BAILEY: No, ma'am.

13 THE COURT: All right.

14 MR. CUMMINGS: Judge, I would offer
15 Dr. Youngman as an expert provided.

16 THE COURT: All right. Any objection?

17 MR. BAILEY: I would just defer to the
18 Court, Your Honor.

19 THE COURT: All right. Very well. I'm
20 going to qualify Mr. Youngman as an expert in
21 the field of forensic psychosocial assessment.
22 I understand that he is a forensic social worker
23 and that is the area that he will be addressing
24 his opinion to the field of forensic
25 psychosocial assessment.

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1 Very well. Let us have our jury.

2 Can I do one thing, just one thing? I
3 know I'm interrupting, but I did want to place
4 on the record that during the -- before
5 Ms. Martin's testimony and before Ms. Bowman's
6 testimony originally there was an objection to
7 the impact statement. We had a sidebar, that
8 original objection was made by -- on behalf of
9 the defense to Ms. Martin and then to Ms. Bowman
10 by the State.

11 And let me say that with regard to the
12 State it's more in line of, Judge, remember what
13 you ruled regarding to what the State could
14 permit, sauce for goose, sauce for gander, and
15 wanted the same standard to apply to both which
16 I have. And that is, of course, pursuant to the
17 Payne vs. Tennessee, that testimony to the
18 character of the victim as well as to the effect
19 of the murder on the family is admissible. And
20 that was the way that I ruled with regards to
21 both. And it allowed the impact statement of
22 Ms. Martin over the objection of the defendant.

23 And then with regards to when
24 Ms. Bowman testified that 609 (a) was raised and
25 at that time I determined that the probative

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1 value of the conviction outweighed any
2 prejudicial effect and I'll allow the
3 cross-examination of Ms. Bowman regarding her
4 conviction and I did that over the objection of
5 the defense. But I did -- thank you. I did
6 want to place those on the record at my next
7 available opportunity which just arose.

8 MR. CUMMINGS: Thank you, Your Honor.

9 MR. BAILEY: Thank you, Your Honor.

10 THE COURT: All right. Let's have our
11 jury.

12 (Whereupon, the jury returns to the courtroom at
13 2:36 p.m.)

14 MR. CUMMINGS: I would so move to declare
15 this gentleman an expert in the field of
16 psychosocial assessment.

17 THE COURT: Very well. And I find that
18 over the objection of the state that this
19 witness is an expert in the field of
20 psychosocial assessment and is a forensic social
21 worker, an expert in that field, yes. You may
22 proceed.

23 CONTINUED DIRECT EXAMINATION

24 BY MR. CUMMINGS:

25 Q. If it would assist you in explaining any issues

Jeffrey J. Youngman - Continued Direct Exam

1 to the ladies and gentlemen of the jury we've
2 prepared an easel up here which is blank, but I would
3 like to start the question by asking you, I would
4 like to just ask you to please tell the Court again
5 what the sources of your information were.

6 A In --

7 Q Again, I'll stand over here, I'm sorry.

8 A I interviewed -- in the case of Marion I
9 interviewed his mother, his grandmother, his sister,
10 four aunts, two teachers, a principal, and the family
11 doctor. And then I reviewed records from his school
12 records, his attendance records at the Dawn Center
13 which is a program sponsored by the Tricounty
14 Commission of Alcohol and Drug Abuse, I looked at his
15 medical records, his group counseling records from
16 William J. McCord Adolescent Treatment Facility from
17 Orangeburg, the sheriff's office records in regards
18 to the incident of 2-17-01, and psychiatric
19 evaluation of Marion from William S. Hall and some
20 Department of Social Service records from the years
21 '85 to 2000.

22 Q Were there any records that you did not review
23 that you would have like to have reviewed, or any
24 people you would have liked to have interviewed that
25 you did not or could not?

Jeffrey J. Youngman - Continued Direct Exam

1 A Well, there was a number of people I would have.
2 The records, I think I got all the records I needed.
3 There were certainly people I didn't get to interview
4 that I would have liked to interview.

5 Q Now, would you please, and, again, if you need
6 for demonstrative purposes and then explain up here,
7 would you please summarize your conclusions and what
8 major findings did you make after you conducted the
9 interviews and reviewed any reports that you deemed
10 appropriate or necessary, sir?

11 A Well, as far as the assessment I'm asked to
12 determine five things, if there's any evidence that
13 Marion Bowman, Jr.'s social and emotional functioning
14 as a child and young adult was affected by any
15 childhood trauma or family dysfunction to determine
16 if there's any evidence that Marion Bowman, Jr.'s
17 social environment played an adverse role in the
18 level of this social and emotional functioning, to
19 determine if there's any evidence that Marion Bowman,
20 Jr. had a significant history of mental illness or
21 substance abuse, to determine if there's evidence of
22 Marion Bowman, Jr. suffered any significant head
23 trauma as a child or young adult, and determine if
24 there's any evidence that Marion Bowman, Jr. had a
25 significant history of prior criminal convictions

Jeffrey J. Youngman - Continued Direct Exam

1 involving violence against another person.

2 Q And did you do that?

3 A I did that.

4 Q All right. Starting with the first one, sir,
5 please tell the ladies and gentlemen of the jury
6 exactly what you did and what your findings are,
7 please, sir, and then your conclusions.

8 A Okay. Well, what -- I'm sorry. In regards to
9 whether his social and emotional functioning as a
10 child in young adult was affected by his childhood
11 trauma or family dysfunction I found that, yes, his
12 functioning both social and emotional was affected by
13 trauma that occurred in his childhood.

14 Q What was that, sir?

15 A Well, if you'd like I can just go through what I
16 found out about Mr. Bowman, that might be better to
17 answer your question for you.

18 Q Thank you, Mr. Youngman, please.

19 A Briefly without reading it verbatim, Marion
20 Bowman was born on [] [] [] in Orangeburg, South
21 Carolina, he weighed 5 pounds and 4 ounces. He had
22 to stay in the hospital an extra day due to an
23 increase in bilirubin, but other than that there was
24 no reported problems with his pregnancy and delivery.

25 At the time of his birth his mother

Jeffrey J. Youngman - Continued Direct Exam

1 was married to Marion Bowman, Sr., they were married
2 in '78 when she was 15 and he was 20. Marion had an
3 older sister, Kendra, who was born in '79 and another
4 younger sister, Yolanda, who was born a year, 13
5 months after Marion.

6 When Marion was approximately three
7 years old his parents separated. He and his mother
8 and sisters moved in with their maternal grandmother
9 in Branchville. From all reports Mr. Bowman was very
10 abusive to Mrs. Bowman. There was reports from
11 various relatives that they saw bruises on her from
12 the beatings she received, that her own daughter told
13 me about the time that her teeth were knocked out
14 when Mr. Bowman used brass knuckles and hit her in
15 the mouth. He also used to rake the yard when he
16 left the house so that he could see if there were any
17 footprints in the yard to keep his wife in the house.
18 Finally she could not take it anymore, she loaded her
19 kids up into a little red wagon and pulled the kids
20 down the street with the clothes on her back and went
21 to live with her mother.

22 After they separated it was
23 financially and emotionally difficult for the kids,
24 especially Marion, he wanted to have a relationship
25 with his father, he has said that, other family

Jeffrey J. Youngman - Continued Direct Exam

1 members have said that. Mr. Bowman -- he would run
2 into Mr. Bowman in the town of Branchville,
3 Mr. Bowman would show him that he had money, but not
4 give them any money, tell them to go see their mother
5 about it. He would say I'll come over and pick you
6 up to take you, I don't know, to the movies, and he
7 would not show up. Or he would show up and not do
8 what he was supposed to do. And Marion felt that his
9 father would continually lie to him.

10 Q What else did you do as a result of learning
11 those things, sir?

12 A By the time Marion started school he was five,
13 when he started at Locket Elementary which is now
14 Branchville Elementary. His family had moved to
15 Turnkey Apartments and she was on welfare, the family
16 was on welfare and they still were having financial
17 difficulties. The child support payments didn't come
18 on a regular basis from his dad. Relatives have told
19 me that the kids were deprived, they were dirty, they
20 were wearing tattered clothes and they never had
21 stuff like other kids had they said.

22 After two years Mr. Bowman filed for a
23 divorce on the grounds of a one-year separation.
24 Ms. Bowman didn't contest the divorce. Ms. Bowman
25 did have difficulty being 21, or actually 20 at the

Jeffrey J. Youngman - Continued Direct Exam

1 time I think, with three kids under five. She was
2 described by family members as real strict. They
3 told me that she boxed the children, boxed being in
4 parenthesis, and beat the children daily. Beat,
5 again, the word they used. She would cut their
6 behind using switches or a belt. The relatives also
7 told me that Mrs. Bowman was known to drink, also
8 suspected of using drugs and she testified she was
9 arrested once for possession of drugs.

10 In 1986 Marion's hand was -- when he
11 was six his hand was burned on a kerosene heater.
12 According to the hospital records they were burned
13 bad enough to leave blisters on his hand. This was
14 the second injury he had as a child. The first one
15 was at 18 months when he broke his arm when he
16 reportedly fell off the porch. And he was also
17 involved in an automobile accident in '86 when he
18 flew from the back seat and hit his head on the front
19 seat. He had a contusion of his forehead when he
20 flew forward.

21 I spoke to Dr. O'Quinn yesterday, late
22 yesterday about the injuries and to whether he could
23 determine if there were any abuse or neglect. He
24 said he could not recall, he did not suspect any, he
25 does not remember the incidents themselves.

Jeffrey J. Youngman - Continued Direct Exam

1 Marion then entered school. He did
2 pretty good in first, second, third grades. Third
3 grade his -- he was -- his mother was notified that
4 his grades were below standard. First grade,
5 actually. The teacher checked in one of the standard
6 text boxes that Marion was handicapped. There was no
7 follow-up on that, something I saw anywhere else that
8 indicated he was handicapped so I'm not sure why that
9 handicapped condition occurred.

10 By the fourth grade then Marion
11 started to have problems in school. In one incident
12 he asked to go to the bathroom and the teacher
13 refused because he had just -- they just had a break.
14 He ended up defecating in his pants, the teacher made
15 him stay all day with feces in his pants. He went
16 home and told his mother what had happened, she went
17 back the next day and put the pants on the teacher's
18 desk and they had words.

19 This was probably the first in what
20 the school system tells me are a series of incidents
21 where -- although certainly this case one would make
22 a case the teacher shouldn't have let him -- let him
23 use the bathroom. But over time the teachers and the
24 school would have problems with Marion, they would
25 describe his mother as coming to the school and

Jeffrey J. Youngman - Continued Direct Exam

1 always sticking up for Marion, never listening to the
2 teacher's side of the story, never taking the side of
3 the school, never making Marion be responsible for
4 his actions. A few months after this incident
5 there's documented in the medical records that he had
6 been grabbed on the left arm causing abrasions by a
7 teacher, but I didn't see anything in any of the
8 school records on that.

9 He certainly by fourth grade was
10 described as very impulsive. This could have been
11 attention -- ADHD attention deficit.

12 MR. BAILEY: Your Honor, I'm going to
13 object to "could have been" if he's unable --

14 THE COURT: Sustained.

15 MR. BAILEY: Thank you.

16 A Whether it was or not the school didn't explore
17 it.

18 Q Okay.

19 A That same year when he was -- when he was nine,
20 his sister was ten, Kendra was ten and Yolanda was
21 seven is when his mother became bedridden with her
22 back injury. So at the age of ten, nine, seven the
23 kids were providing for their mother. And as Kendra
24 said, she was doing the cleaning, Marion was doing
25 the cooking. Other family members did not -- helped

Jeffrey J. Youngman - Continued Direct Exam

1 some, but it really fell on those three kids and
2 especially the two oldest, Marion and Kendra, to
3 provide for their mother. They had to change her
4 when she used the bathroom, they had to feed her,
5 they had to clean the house, they had to do
6 everything. They sometimes missed school because of
7 this, sometimes they were late for school because of
8 this.

9 The next year, 1990, Marion's dad
10 remarried after having very little if any contact
11 with his kids over that period of time. In that same
12 year Marion's mother's boyfriend, Joseph Sims, moved
13 into the home. By all reports from people in the
14 school system things changed when Joseph Sims was in
15 the home. He would go to the school, he would listen
16 to what the school would say, he would hold the kids
17 accountable, he would be cooperative with the school,
18 but he was a long distance truck driver so he was not
19 home all the time, he was on the road a lot.

20 Fourth grade was a grade that Marion
21 had to repeat. The next year he was suspended and
22 sent to an intervention program for students with
23 chronic behavior problems. Also that same year he
24 began experimenting with drugs -- excuse me, not with
25 drugs, with alcohol. He would steal sips from his

Jeffrey J. Youngman - Continued Direct Exam

1 uncle's drinks. His use of alcohol is not
2 surprising, his mom and dad both drank and there is a
3 history of alcohol use on his -- heavy alcohol use on
4 his mother's side of the family.

5 During summer break after the second
6 year in fourth grade the family, including Joseph
7 Sims, moved to New York City. They lived in a
8 downstairs apartment at Mr. Sims' mother's house. He
9 attended PS 37. Although there were some records on
10 that there was also a record that no PS 37 ever asked
11 for Branchville records, so I'm not sure what went on
12 there with the school. There was a note in the
13 school records from PS 37 that Marion did have
14 problems completing his homework, completing
15 classroom assignments and that he was frequently
16 daydreaming.

17 In '92 Marion and his family moved
18 back to Branchville where the sixth grade his
19 behavior resulted in an expulsion hearing in that
20 year. Reportedly Marion went over after another
21 student with a pine limb. Marion says he was hit
22 first, but the school found that after that he had to
23 take -- they had to take the limb forcibly from
24 Marion. They did not expel him, they placed him on
25 probation the rest of the school year. He did have

Jeffrey J. Youngman - Continued Direct Exam

1 an expulsion hearing, though.

2 In seventh grade he also had problems,
3 it was noted he was disruptive in the DARE program
4 and in class, school sent home a letter saying he was
5 in danger of being suspended again. There's no
6 evidence in this grade or any of the grades of school
7 that the school ever addressed Marion's behavior
8 problems by an individualized education plan or a 504
9 accommodation plan, which is often done in cases
10 where kids are having behavior problems. They're
11 usually used to determine what those problems are or
12 why those problems are occurring, address them, and
13 there's nothing in the records to indicate that was
14 done.

15 Q Did the mother come up to the school and ask for
16 any particular assistance?

17 A No, that did not occur either. The mother
18 didn't push the issue, the school didn't address the
19 issue.

20 In '94 he entered the eighth grade at
21 Branchville High School. Due to his behavior in that
22 year he was referred to Dawn Center in Orangeburg for
23 structured group counseling which he did go to. The
24 assessment done there at the Dawn Center indicated
25 Marion wanted a closer relationship with his father

Jeffrey J. Youngman - Continued Direct Exam

1 and he resented that his father had refused to
2 maintain that relationship.

3 That same year, '94, he and Kendra
4 encountered their father on the streets of
5 Branchville, in the town of Branchville. And they
6 said they needed money for a field trip, he gave
7 Marion \$10. Kendra said she needed money, too. He
8 said, "Get it from your mother." At that point
9 Marion through down the money, said, "I don't want
10 your money," and left his father. At that point
11 Marion told me that they then realized that he had to
12 help support the family since it was pretty clear
13 that his dad wasn't going to be supportive.

14 Unfortunately the way he did that is
15 that same year he would mow lawns to earn money then
16 use that money to buy drugs which he could sell
17 drugs, mostly marijuana. So at 14 -- and the same
18 time at age 14 he began drinking on weekends on a
19 fairly regular basis, so by age 14 he was drinking
20 and using -- he was selling drugs and drinking.

21 In ninth grade his mother was notified
22 twice that his grades were unsatisfactory and he was
23 in danger of failing. In tenth grade he was referred
24 to the Alternative Living Environment Program, ALEP,
25 for students who can't complete their regular

Jeffrey J. Youngman - Continued Direct Exam

1 classroom assignments. Before he finished the tenth
2 grade he dropped out of school, at that time he was
3 failing four courses and his GPA was 1.50.

4 From '95 to '97 while he struggled in
5 school he did experience a number of traumatic events
6 that caused him great sadness, great distress. One
7 was in '95, his cousin Orin, who he was very close
8 with, fell and hurt his arm in school, he was taken
9 to Orangeburg Medical Center where they gave him the
10 wrong medication and he died.

11 This upset Marion greatly, so much so
12 that he described one incident where he was driving
13 along a road at night and he thought he saw Marion --
14 or, excuse me, he thought he saw Orin on the street,
15 on the road in front of him as he was driving. And
16 he swerved, went off the road to avoid Orin who of
17 course was not there.

18 In '97 another cousin of his who he
19 was close with, Patrick, shot himself with a gun that
20 Marion had given him, or Marion had made available to
21 him. And that gun was a gun that Marion had stolen
22 in a burglary. Marion still to this day talks about
23 how responsible he feels for Patrick's death, he
24 described it as a death that ate him up. His guilt
25 became so bad that his mom actually insisted he go to

Jeffrey J. Youngman - Continued Direct Exam

1 mental health, which he did one time. He said he
2 didn't like it and didn't believe in what mental
3 health had to offer so he didn't go again.

4 That same year with the death of
5 Patrick, Joseph Sims, who had been a very stabilizing
6 force in the family, had done -- had really taken an
7 active role as a father for Marion and his sisters,
8 left the home, he moved out. And so this was the
9 second father figure that abandoned Marion.

10 They moved again after Mr. Sims left
11 which made the eighth move in 17 years for the Bowman
12 family. In addition, that year Marion was hit in the
13 head with a small baseball bat and was knocked
14 unconscious for ten to 15 minutes. He reported that
15 he was breaking up a fight between a man and a woman
16 and was struck by one of the man's friends.

17 In '98 as a result of the burglary of
18 a gun that killed Patrick, Marion was convicted of
19 third degree burglary and sentenced under the
20 Youthful Offender's Act, he served 104 days in shock
21 incarceration, given two years' probation. After he
22 was released he held a succession of construction and
23 rebar jobs. He remained essentially employed most of
24 that time until his most recent arrest.

25 While he was doing this and actually

Jeffrey J. Youngman - Continued Direct Exam

1 all the time he was growing up, he would help his
2 relatives around the house, especially his
3 grandmother, Mary Ellen Gadson, and more especially
4 his aunt, Mary Johnson, who is an invalid and can't
5 do for herself. And he would go to her house
6 frequently offering to do whatever he could to help
7 her, mow the lawn, clean the fan blades on the
8 ceiling fan, do whatever he could to help her.

9 In '99 Marion lost the third father
10 figure in the form of his maternal grandfather,
11 Robert Gadson, Sr. Marion described Mr. Gadson as
12 his life and he said he felt dead when his
13 grandfather passed away. He also admitted that he
14 started drinking even heavier than he had before and
15 almost to the point where he was drinking every day.

16 The same year, though, he did marry
17 Dorothy Mae Williams. They're still currently
18 married, to my knowledge, and that he had -- was
19 never violent towards his wife. She had two children
20 which he had a very good relationship with and who
21 reportedly love him. He also had a daughter,
22 Marissa, who was born in 2001.

23 Marion was arrested again in 2000 on
24 charges of burglary, two charges of armed robbery.

25 Q I want to stop you there again and ask you -- he

Jeffrey J. Youngman - Continued Direct Exam

1 was found not guilty of those, correct?

2 A Yes, he was. That same year he was knocked
3 unconscious once again when he fell back and hit his
4 head on a bench when he was playing outside. They
5 were playing in water, he slipped and fell. He
6 suffered a deep gash in his head, had severe
7 headaches and blurred vision, but he refused to go to
8 the hospital, he refuses to use a hospital since the
9 death of his cousin, Orin.

10 And by the end of 2000 Marion was --
11 alcohol use was getting progressively worse, he drank
12 every day of the week usually to a point of
13 intoxication, usually mostly Old English malt liquor
14 and gin.

15 Q Mr. Youngman, I'm just going to ask you a brief
16 question here now. As far as any conclusions that
17 you reached after going through all of what you just
18 told these good ladies and gentlemen of the jury, and
19 I'm going to ask you to briefly describe your
20 conclusions. If you need to use the easel here,
21 please do so.

22 A I would like to draw it if that's okay.

23 THE COURT: It is.

24 Q And, again, you'll have to stand now so that
25 each one of these young folks can see what you've got

Jeffrey J. Youngman - Continued Direct Exam

1 to do and if I move it this way --

2 A Yeah, this will do.

3 Q So Mr. Bailey can see also. Again, please,
4 explain to the ladies and gentlemen of the jury what
5 you're doing and why.

6 A The idea is, as I mentioned earlier in my
7 testimony, no event happens in a vacuum, things come
8 about in a person's life to cause them to behave the
9 way they did. So to conceptualize this if you think
10 of a valley, I guess. And this side of the valley is
11 a problem, something that comes up in a person's life
12 that they have to address in some way. And over here
13 is the choices they make or the decision they make
14 that leads that -- that addresses that problem. Not
15 necessarily solves that problem, but at least
16 addresses it.

17 Okay. So to get from the one to the
18 other you have to have a bridge, you have to have in
19 your mind some way to cross over to the problem to
20 how to solve that problem, what decision to make or
21 what choice to make, the various options you have.
22 Okay. In life everybody has these bridges, everybody
23 has some supports that help hold that bridge up to
24 help you make good decisions.

25 In Marion's case some of those

Jeffrey J. Youngman - Continued Direct Exam

1 supports, or some of the good things that helped him
2 make good decisions, was that he was helpful to his
3 family, he was good to his stepchildren, he was
4 actually good to Kendra's child, too, his nephew. He
5 had no prior criminal convictions.

6 Q Mr. Youngman, you're going to have to step back
7 so the jury can see right there.

8 A I'm sorry.

9 Q I'm sorry.

10 A I'll just put no prior criminal....

11 Q Could you repeat that again? Because I blocked
12 that.

13 A He has no prior criminal convictions. And he
14 was able to maintain employment. Not always the same
15 job, but always employed in some way. These things
16 are all supports on that bridge. But there's also
17 things that weaken your decision-making abilities,
18 weaken the way you think things through. In Marion's
19 case he had a number of things that weakened his
20 bridge, such things as the fact that his mother was
21 age 15 at birth, at the birth of her first child.

22 Q I'm going to ask you to hold up one second while
23 a train goes by.

24 (Train.)

25 THE COURT: All right. You can proceed.

Jeffrey J. Youngman - Continued Direct Exam

1 Q Age 15 at the birth of her first child and she
2 had three children while still a teen. There was
3 certainly domestic violence in the home, there was
4 his father abandoned him, there was the financial
5 difficulties in the home, there was his mother's
6 incapacitation, or invalid status, and there was his
7 mother's -- well, excuse me, the family history of
8 alcohol abuse and the mother's drug use, or at least
9 conviction of drug selling. All these things were
10 things that weakened that bridge structure that
11 helped Marion make a decision and make choices, make
12 a decision on any given issue.

13 But you also have things that happen
14 in your life to weigh this bridge down, cause that
15 bridge to weaken and further things that happen as
16 you go through life as you get older. In Marion's
17 case he had a whole host of things that were weighing
18 his bridge down. His own alcohol abuse, the fact
19 that he was selling drugs, his IQ which is measured
20 according to the William S. Hall at 81, his mother's
21 uncooperativeness with the school and in refusal to
22 take responsibility or having Marion take
23 responsibility for his actions, the trauma of the
24 death of Orin, the death of Patrick, the death of his
25 grandfather, Joe Sims leaving the house all within a

Jeffrey J. Youngman - Continued Direct Exam

1 period of two years, his chaotic, deprived childhood,
2 the fact just going through adolescence, lack of
3 school intervention. Let's see, the fact that he
4 received, let's see, excessive corporal punishment,
5 last one school behavior problems.

6 Q As a result of those, Mr. Youngman, looking at
7 all those things that you described as a bridge or
8 going between the valley to here, have you been able
9 to reach a conclusion as to a degree of reasonable,
10 and, again, I'm going to defer to my -- yeah, please,
11 go back on the stand for a moment -- forensic
12 psychosocial assessment as a licensed social worker,
13 to a reasonable degree of psychosocial assessment or
14 social work assessment have you reached an opinion as
15 to this?

16 A Yes, I have.

17 Q And what is that, sir?

18 A Anybody that would experience those many things,
19 those many factors that effectively weighed on his
20 bridge as it were, and pretty much crumbled that
21 bridge would be expected to make poorly thought out
22 impulsive decisions, decisions that where the person
23 in this case, Mr. Bowman, would not consider the
24 consequence of actions because all these things
25 weighing on him he doesn't think those things

Jeffrey J. Youngman - Continued Direct Exam

1 through. It's just his whole decision-making process
2 is affected and his choices that -- his, say, menu of
3 choices is limited by all these things that happened.
4 Certainly his IQ is, lack of school intervention,
5 everything he went through as a child. You know, if
6 you didn't have those things you would have a wider
7 array of choices to address any issue. Marion did
8 not have that wide of array because of all the things
9 that happened in his life.

10 Q What you're saying is that an excuse for his
11 behavior, sir?

12 A No.

13 Q And, please, tell these ladies and gentlemen of
14 the jury what you would say.

15 A It's not an excuse. There's no excuse for
16 murdering another human being. What it is, is an
17 explanation as to why one person would act a
18 particular way in a particular incident, in this case
19 Mr. Bowman. It certainly is not meant by any stretch
20 to be an excuse for what he did.

21 Q In working with Ms. Thomas and I --

22 MR. CUMMINGS: And, again, if I may
23 approach the witness just for a moment, Judge.

24 THE COURT: All right.

25 Q When you learned -- and, again, I'm not going to

Jeffrey J. Youngman - Continued Direct Exam

1 try to block these young ladies and gentlemen. When
2 you learned, and I'm going to use this word, mamma,
3 had only four pictures which were taken out of a
4 yearbook of her son, did that cause you any prompting
5 or anything else in your work along this line?

6 A Oh, yeah. Well, certainly. I, you know, in the
7 course of my 21 years as a social worker I have been
8 some -- and especially in child protection and now
9 work with the homeless population, I've had a lot of
10 dealings with some of the most deprived people that
11 exist. And I don't know of a family that I've ever
12 worked with, I expect there probably is one somewhere
13 out there or a couple, I don't know for sure, but the
14 vast, vast, vast majority of people I work with, at
15 least even when they were deprived had money to put
16 together some pictures of their children. Some go to
17 JC Penney and the 99-cent picture, or K-Mart, or
18 whatever. There's always been some pictures. Always
19 been some pictures at least of major holidays, like
20 Christmas and birthday, there's something to document
21 a child's life.

22 In this case there was nothing, which
23 astounded me that that could occur. That just
24 doesn't happen much, and would lead me to believe
25 that I can conclude the family didn't really care

Jeffrey J. Youngman - Continued Direct Exam

1 much for the kids if they weren't going to keep
2 pictures of them.

3 MR. CUMMINGS: Your Honor, at this time we
4 would move into evidence the chart that
5 Mr. Youngman had prepared here, Your Honor.

6 MR. BAILEY: Without objection, Your Honor.

7 THE COURT: Very well. That chart will be
8 marked as Defense Exhibit 17 without objection.
9 (Entered into evidence was Defendant's Exhibit
10 17, chart.)

11 MR. CUMMINGS: Can I just beg the Court's
12 indulgence for one moment?

13 THE COURT: All right.

14 (Mr. Cummings and Ms. Hardee-Thomas conferring
15 with Mr. Bowman.)

16 MR. CUMMINGS: Judge, that's all the
17 questions we have of this gentleman.

18 Q. Please answer any questions Mr. Bailey may have,
19 sir.

20 THE COURT: Cross-examination.

21 MR. BAILEY: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MR. BAILEY:

24 Q Mr. Youngman, it appears someone did take some
25 pictures of Mr. Bowman when he was younger. Have you

Jeffrey J. Youngman - Cross-Exam

1 seen these pictures here?

2 A Yes, I have.

3 Q All right, sir.

4 A These aren't him.

5 Q Okay.

6 A I have seen these, and appeared to me that at
7 least two of four were actually more of the child he
8 was holding rather than him.

9 Q Well, he's in the picture?

10 A He's in the picture. And the other one was more
11 of his stepfather, his mother's boyfriend, Joseph
12 Sims, than him. So only really one is a picture
13 solely devoted to him, that would be this one.

14 Q What you're saying is other people in the
15 picture besides him?

16 A Yes, sir.

17 Q And you don't know whether whoever took the
18 picture was more interested in Marion or the other
19 person, do you?

20 A No, I don't.

21 Q Because you don't know who took the picture?

22 A No.

23 Q You would assume somebody in his family, though,
24 sir, wouldn't you, or a friend?

25 A I received them from his sister, Kendra, so

Jeffrey J. Youngman - Cross-Exam

1 assume it was --

2 Q His sister, Kendra, that grew up with him in the
3 same house, and you would assume that these were
4 pictures taken of him as a child?

5 A Well, they are not really child. He was a young
6 adult in those pictures.

7 Q Young adult, okay. I want to ask you about your
8 bridge. If you can step around here. As I
9 understand what we're talking about here, problems
10 over here?

11 A Yes, sir.

12 Q Choices over here. Those choices would be to
13 solve the problem, right?

14 A Correct.

15 Q And to get from the problem to the choice or the
16 decision we've got to cross this bridge?

17 A The process, yes.

18 Q Okay. Now, bear with me a second. And this
19 case this jury is considering, the choice or decision
20 that Mr. Bowman made was the murder of Kandee Martin,
21 burning of her automobile with her body, corpse in
22 the trunk, are you aware of that, sir?

23 A Yes, sir.

24 Q On this piece of paper here, sir, if you would,
25 I want you to tell the jury what Marion Bowman's

Jeffrey J. Youngman - Cross-Exam

1 problem was over here that he solved by killing and
2 burning Kandee Martin's body. Could you do that for
3 me?

4 A I can speculate.

5 Q No, sir. I don't want you to speculate. I want
6 you to put the problem over here. Because you've
7 explained this bridge, kind of sums up your whole
8 concept here. You got -- you had a person with a
9 problem, they make a bad choice and they get from the
10 problem to the choice. This is where Bowman ended
11 up, this is his decision to solve a problem. I want
12 you to write down here what the problem was.

13 MR. CUMMINGS: Your Honor, speculation. Of
14 course, I don't think this gentleman can do
15 that.

16 MR. BAILEY: Cross-examination, Your Honor,
17 it's his exhibit.

18 MR. CUMMINGS: I agree, but I don't think
19 about speculation. I would hope Mr. Youngman
20 would have time to think and answer, I'm sure he
21 will, but as far as speculation I don't think
22 the Court or anybody would be allowed to answer
23 that way.

24 THE COURT: You're objecting?

25 MR. CUMMINGS: Yes, ma'am. Only as to the

Jeffrey J. Youngman - Cross-Exam

1 issue of speculation. If he can't answer
2 something, he can't answer if.

3 MR. BAILEY: I agree, Your Honor, if he
4 can't answer it he can tell us he can't answer
5 it.

6 THE COURT: Very well. Do not speculate.
7 If you can't answer, say you can't answer.

8 A. I don't know what the problem was. I know the
9 solution, but I don't know what the problem was.

10 Q You know what a solution was. And isn't the
11 solution the answer to a problem?

12 A Well, yes.

13 Q I'm not trying to be cute with you, sir, I'm
14 just trying to see where you're coming from because I
15 don't understand.

16 A I know -- I know this is what he did.

17 Q Right.

18 A And I know his decision to do this was based on
19 all this stuff.

20 Q You know that because people told you that,
21 right?

22 A Correct. Well, no, I know that because I've
23 been a social worker 21 years.

24 Q You hadn't been working on this case 21 years?

25 A No, but I know these things from my life history

Jeffrey J. Youngman - Cross-Exam

1 of being a social worker.

2 Q How long have you been working on this case?

3 A Three months, two months.

4 Q All right, sir. And everything you got up here
5 is something that somebody else told you in the last
6 three months; is that correct, sir?

7 A Correct.

8 Q You didn't grow up in Branchville, you don't
9 know this firsthand.

10 A No.

11 Q I'm sorry, I didn't mean to interrupt you, go
12 ahead.

13 A I lost my train of thought.

14 Q I apologize. Let me ask you again. We got a
15 solution which was the murder of a young 21-year-old
16 woman with a child. There was a problem that you
17 said he had to cross this bridge and made this bad
18 choice here. What problem did he solve by killing
19 Kandee Martin?

20 A That part I don't know.

21 Q Okay. Well, could you put a question mark on
22 this yellow paper you don't know?

23 A Sure.

24 Q Thank you, sir. All right. Let me ask a couple
25 other things. These things here that you say are

Jeffrey J. Youngman - Cross-Exam

1 weighting down the bridge.

2 A Yes, sir.

3 Q They're making tough decisions, tough for Marion
4 to cross the bridge? Just trying to --

5 A Okay. Using the bridge analogy.

6 Q It's your analogy.

7 A Sort of mixed analogy. These things all affect
8 his decision-making process. In this case, yes,
9 crossing the bridge, viewing the bridge as a
10 decision-making process this affects it.

11 Q Okay. So the fact that Marion voluntarily sold
12 some drugs is affecting his decision making process
13 that ended up in the murder of Kandee Martin?

14 A Yes, sir.

15 Q Can you explain that to me, how his acts of
16 selling drugs to somebody in the past caused him to
17 murder Kandee Martin or was a factor in that
18 decision?

19 A People who sell drugs have a certain code -- or
20 it's not code, behavior patterns that they have to
21 protect their image, so I don't know -- I think part
22 of this whole process was him protecting his image.

23 Q His mamma sold drugs, but she didn't kill
24 anybody, did she?

25 A No, but his mamma didn't go through these

Jeffrey J. Youngman - Cross-Exam

1 things.

2 Q Well, let's take another one. Grandfather died.
3 If you live long enough your father dies, your mother
4 dies, your grandparents die, that's the way it goes
5 generation after generation, right? That's not
6 unusual?

7 A Not unusual, but it's the third father figure of
8 his that he saw leave his life.

9 Q Okay. And Patrick Strange, right? Patrick
10 Strange is a young man that apparently shot himself
11 with a .357 Magnum that Mr. Bowman stole in a
12 burglary; is that correct, sir?

13 A That's correct.

14 Q Okay. And that was volitional behavior on the
15 part of Mr. Bowman, wasn't it?

16 A The burglary?

17 Q Yes, sir. The burglary is something he decided
18 to do and he did it?

19 A He did.

20 Q He decided to enter that home of somebody else,
21 somebody else's residence and take a gun out of it,
22 didn't he?

23 A Yes, he did.

24 Q And then his cousin gets shot with the gun and
25 he feels bad about it?

Jeffrey J. Youngman - Cross-Exam

1 A He feels worse than bad. He feels guilty, he
2 feels responsibility.

3 Q Yes, sir. And how does that enter into his
4 decision to burn Kandee Martin's body up after he
5 shoots her two times?

6 A It's a process. You think things through and
7 you have different choices you can make.

8 Q Okay.

9 A And in his case all these things that occurred
10 in his life sort of skewed his decision-making
11 process.

12 Q All right. Okay. Okay. Behavior problems in
13 school. He was a bad kid in school, right?

14 A Yes, he was.

15 Q Okay. And the fact that he decided not to
16 follow the rules of school, are you saying that had
17 something to do with his decision to murder this
18 young woman?

19 A Sure, because from everything I read the school
20 didn't intervene and try to deal with his problems.

21 Q So it's the school's fault he killed Kandee
22 Martin?

23 A No, I didn't say that. It's the school's fault
24 they didn't intervene in his behavior problems.

25 Q Okay. So let's blame the school, okay?

Jeffrey J. Youngman - Cross-Exam

1 A No, I didn't stay that.

2 MR. CUMMINGS: It's not what the gentleman
3 stated.

4 THE COURT: It's cross-examination, he can
5 respond.

6 Q Is it the school's fault?

7 A I didn't say it was the school's fault.

8 Q Well, is it Marion's fault then that he didn't
9 behave in school?

10 A Marion's fault he didn't behave in school. It's
11 the school's fault that they didn't intervene to
12 change the behavior.

13 Q. We're all at fault.

14 MR. CUMMINGS: Judge, the comment --

15 THE COURT: Yes, sir. If you'll ask
16 questions and not comment.

17 MR. BAILEY: Yes, ma'am. I apologize, Your
18 Honor.

19 THE COURT: Okay.

20 Q Adolescence. You used to be a adolescent, Mr.
21 Cummings, we're all adolescents. And you're saying
22 that leads into the act of murder?

23 A I'm saying one factor that made him make his
24 decision.

25 Q Because he was an adolescent?

Jeffrey J. Youngman - Cross-Exam

1 A If he been an adult he might have decided
2 differently.

3 Q Wasn't he an adult? He was 21 years old.

4 A Twenty-one is pretty young.

5 Q Pretty young. Old enough to be in the army,
6 vote? All right, sir. I'm trying to read some of
7 this stuff. Drug use, we talked about that. You say
8 he had no prior criminal record. You weren't correct
9 there, were you?

10 A No. I said no prior convictions for violent
11 crimes.

12 Q Okay. He does, in fact, have a record of
13 burglary third?

14 A Yes, he does.

15 Q All right, sir. Which involved going in
16 people's homes and taking guns.

17 All right, sir. Why don't you have a
18 seat, I want to ask you a few more questions, but I
19 don't think we need the chart.

20 A (The witness complies.)

21 Q Mr. Youngman, you were asked -- you said on the
22 first page of your report dated May 21st that the
23 lawyers have given me a copy of, the purpose of your
24 assessment was to do five things that you listed on
25 that first page, is that right, sir, and you had that

Jeffrey J. Youngman - Cross-Exam

1 in front of you?

2 A Yes, sir.

3 Q All right, sir. Isn't it a fact, sir, that what
4 you were doing, you were going out there in the
5 Branchville community talking to people that you
6 thought were going to give you information that can
7 lead you to a specific conclusion?

8 A That's not the case, no.

9 Q You were looking for the bad stuff?

10 A I was doing a forensic psychosocial assessment.
11 I didn't know what I was going to find.

12 Q Well, the scientific method is if you're looking
13 for something you don't have a preconceived idea of
14 what you're looking for, you're just studying the
15 facts and you follow those facts where they lead you;
16 is that correct?

17 A Yes.

18 Q All right, sir. Let's take your first one. Do
19 you have a copy of it up there?

20 A Yes, I do.

21 Q Determine if there is any evidence that Marion
22 Bowman, Jr. social's and emotional functioning as a
23 child and a young adult was affected by any childhood
24 trauma or family dysfunction.

25 Well, sir, you were specifically going

Jeffrey J. Youngman - Cross-Exam

1 out there and looking for evidence of childhood
2 trauma and family dysfunction; were you not? You
3 weren't looking for a happy childhood, were you?

4 A I was looking to see if it existed.

5 MR. CUMMINGS: It was two questions and --

6 THE COURT: Yes. Ask him one question,
7 allow him to answer.

8 MR. BAILEY: I apologize.

9 THE COURT: All right.

10 A I was looking to see if that existed.

11 Q Okay. Were you looking to see if he had a happy
12 family?

13 A I was looking to see what kind of family he had.

14 Q Tell me why it's -- you wrote this, sir, didn't
15 you?

16 A Yes, I did.

17 Q Why is it that you say that the purpose of the
18 assessment was to determine if there was any evidence
19 of Marion Bowman Jr.'s social and emotional function
20 as a child and a young adult was affected by any
21 childhood trauma or family dysfunction; in other
22 words, why didn't you say the purpose of the
23 assessment was to see whether or not his actions were
24 affected by a happy childhood?

25 A Just the way I wrote it. I mean, I could have

Jeffrey J. Youngman - Cross-Exam

1 found either.

2 Q And Marion Bowman's two sisters, Kendra and
3 Yolanda Bowman, were raised in that same family,
4 weren't they?

5 A Yes, they were.

6 Q They didn't go out and kill people, did they?

7 A No, they did not.

8 Q All right. Your second one: "Determine if
9 there is any evidence that Marion Bowman, Jr.'s
10 social environment played an adverse role in his
11 level of social and emotional functioning."

12 His two sisters were raised in that
13 same environment, weren't they?

14 A Yes, they were.

15 Q Again, they didn't go out and become criminals,
16 did they?

17 A No, they did not.

18 Q Your third one is to determine if there's
19 evidence that Marion Bowman, Jr. has a significant
20 history of mental illness or substance abuse. Now,
21 you found no significant history of mental illness;
22 is that correct?

23 A That is correct.

24 Q You found substance abuse?

25 A Yes, I did.

Jeffrey J. Youngman - Cross-Exam

1 Q You didn't find that anybody forced any alcohol
2 or drugs into him, did you?

3 A No.

4 Q Whatever he did he did of his own freewill and
5 choice because he wanted to?

6 A Certainly did.

7 Q All right, sir. Number four you want to
8 determine if there's evidence of Marion Bowman, Jr.
9 suffered any significant head trauma as a child or
10 young adult. And you found that there was no
11 significant head trauma; is that correct, sir?

12 A Correct. He did suffer head trauma, but I saw
13 nothing -- or there was no records indicating it was
14 severe.

15 Q Okay. The fifth one is to determine if there is
16 evidence that Marion Bowman, Jr. has a significant
17 history of prior criminal convictions involving
18 violence against another person. You found that he
19 did not. Although in the course of looking for that
20 you found out about at least three burglaries; is
21 that correct?

22 A Yes.

23 Q And these were all three burglaries of
24 residences where people lived?

25 A Yes.

Jeffrey J. Youngman - Cross-Exam

1 Q All right, sir. Excuse me a second, please,
2 Mr. Youngman.

3 THE COURT: All right.

4 (Pause in proceedings.)

5 Q That's all I have. I apologize if I stated
6 questions in a way that might have confused you, but
7 I'm not real good at scientific stuff so I'm just
8 trying to figure it out. Thank you.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. CUMMINGS:

12 Q Just as Mr. Bailey stated a moment ago, thank
13 you, two burglary convictions, correct, two burglary
14 convictions?

15 A Yes. Two burglary convictions, that's right.

16 Q And did you go out looking for any preconceived
17 ideas in your mind, sir, that you're going to go out
18 there, and particular when asked a question about
19 family dysfunction or looking for childhood trauma,
20 did you go out with a closed mind?

21 A No. I go out to see what people have to say.

22 Q Is there anything that you have found here or
23 stated here that leads you towards one side or the
24 other stating the testimony to these ladies and
25 gentlemen of the jury; in other words, the State or

Jeffrey J. Youngman - Redirect Exam

1 defense? Is there anything leading towards one or
2 the other, did anybody ask you to find one way or the
3 other?

4 A No, certainly not.

5 Q All right. Is your testimony today based on
6 what you found?

7 A Yes, sir.

8 Q Did you answer Mr. Bailey's questions on
9 cross-examination to the best of your ability?

10 A Certainly I did, yes.

11 MR. CUMMINGS: Beg the Court's indulgence,
12 Your Honor.

13 THE COURT: All right.

14 (Mr. Cummings and Ms. Hardee-Thomas conferring
15 with Mr. Bowman.)

16 MR. CUMMINGS: That's all the questions we
17 have of this gentleman, Judge.

18 THE COURT: Any recross?

19 MR. BAILEY: No, Ma'am.

20 THE COURT: All right. Is this witness
21 free to okay leave?

22 MR. CUMMINGS: Yes, ma'am. If he so
23 chooses.

24 THE COURT: Very well. You are free to go.
25 (Whereupon, the witness steps down from the

Jeffrey J. Youngman - Redirect Exam

1 witness stand.)

2 THE COURT: Ladies and gentlemen, we are
3 going to take our afternoon break at this time.
4 And I'm going to ask you to please in a moment
5 to step to your jury room, being mindful not to
6 discuss this matter or allow anyone to discuss
7 it with you, smokers can smoke, walkers can
8 walk. Be mindful not to discuss this matter or
9 allow anyone to discuss it with you.
10 (Whereupon, the jury retires to the jury room at
11 3:25 p.m.)

12 THE COURT: Anything before we take our
13 break from the State?

14 MR. BAILEY: No, ma'am.

15 THE COURT: From the defense?

16 MR. CUMMINGS: Nothing else right now,
17 Judge, thank you.

18 (Recess, from 3:25 p.m. to 3:56 p.m.)

19 THE COURT: All right, then. Anything
20 before we bring the jury out?

21 MR. BAILEY: Nothing from the State, Your
22 Honor.

23 MS. HARDEE-THOMAS: Your Honor, my
24 co-counsel is saying start without him, he's in
25 the back.

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1 THE COURT: All right. With the permission
2 of your client? Please consult with Ms.
3 Hardee-Thomas.

4 MS. HARDEE-THOMAS: One second, Your Honor.

5 THE COURT: Certainly. Certainly.

6 (Pause in proceedings.)

7 MR. CUMMINGS: I apologize, Judge.

8 THE COURT: Not a problem. All right.
9 Anything from the State before we bring the jury
10 out?

11 MR. BAILEY: Nothing from the State, Your
12 Honor.

13 THE COURT: All right. Anything from the
14 defense?

15 MR. CUMMINGS: Nothing else, Judge.

16 THE COURT: Very well. All right, yes, let
17 us have our jury.

18 (Whereupon, the jury returns to the courtroom at
19 4:01 p.m.)

20 THE COURT: All right. Ladies and
21 gentlemen, we will continue with the defense
22 case.

23 MS. HARDEE-THOMAS: The defense calls
24 Mr. Frankie Martin to the stand.

25 (Frankie Martin, called as a witness, having

Frankie Martin - Direct Exam

1 first been duly sworn, is examined and testifies
2 as follows:)

3 DIRECT EXAMINATION

4 BY MS. HARDEE-THOMAS:

5 Q Mr. Martin, where were you on the 16th of
6 February of 2001?

7 A I just had came home from work about twelve
8 o'clock.

9 Q Okay. And you were where?

10 A At my house.

11 Q Okay. And can you tell us who else was there?

12 A Kandeel came by and asked me to borrow \$3.

13 Q Excuse me, do not talk about what someone said
14 to you and I'll try not to ask a question in that
15 regard. Who was at your home?

16 A Kandeel.

17 Q Okay. Who else later arrived at your home?

18 A Marion and Joe Fogle.

19 Q How did they get there?

20 A In Joe Fogle's car.

21 Q Okay. Who was there first?

22 A Kandeel.

23 Q Now, how long were they all there?

24 A A couple of minutes is all.

25 Q And where were they?

Frankie Martin - Direct Exam

1 A Well, they were in the bathroom, talked for a
2 minute, then they left out.

3 Q Okay. And where were you?

4 A I was in the room hanging up clothes.

5 Q You were in the --

6 A Hang up clothes, getting myself ready.

7 Q In one of your rooms?

8 A Yeah.

9 Q One of the backrooms, or front rooms?

10 A Yeah, backroom.

11 Q Were you able to see where they went?

12 A They were in the bathroom.

13 Q Okay. How long did they stay in your home?

14 A About a minute or two, couple of minutes.

15 Q Okay. What happened after that?

16 A Marion left with Kandee and Joe Fogle followed
17 in the car.

18 Q Okay.

19 MS. HARDEE-THOMAS: Please beg your
20 indulgence, Your Honor.

21 THE COURT: Yes.

22 (Ms. Hardee-Thomas conferring with Mr. Cummings
23 and Mr. Bowman.)

24 Q You indicated what time of day was that?

25 A About 12:00 or 1:00, something like that.

Frankie Martin - Direct Exam

1 Q Thank you. No further questions.

2 THE COURT: All right. Cross-examination.

3 MR. BAILEY: Indulge me one second, please.

4 THE COURT: Yes.

5 MR. BAILEY: No questions, Your Honor.

6 THE COURT: Very well. Is this witness
7 free to leave?

8 MR. BAILEY: Yes, ma'am.

9 MS. HARDEE-THOMAS: Yes, Your Honor.

10 THE COURT: You are free to go.

11 (Whereupon, the witness steps down from the
12 witness stand.)

13 THE COURT: If you would call your next
14 witness.

15 MR. CUMMINGS: Judge, we would call
16 Mr. James Evans Aiken.

17 (James E. Aiken, called as a witness, having
18 first been duly sworn, is examined and testifies
19 as follows:)

20 DIRECT EXAMINATION

21 BY MR. CUMMINGS:

22 Q Mr. Aiken, can you please at present time please
23 tell us your profession, sir?

24 A I am a correctional consultant. I consult
25 concerning prison systems and the like.

James E. Aiken - Direct Exam

1 Q All right. I want to take you back in your
2 young life today, sir, all right? And take you back
3 a little bit. When were you first employed -- let me
4 go back. What is your educational background, sir,
5 please, starting with your college?

6 A Well, I was born and raised in Camden, South
7 Carolina, I was received an undergraduate degree from
8 Benedict College, Columbia, South Carolina, and a
9 master's degree from the University of South
10 Carolina, master's in criminal justice.

11 Q All right, sir. And what year did you obtain
12 that, sir? I know we're dating you now.

13 A Okay. 1985/'86.

14 Q All right, sir. And what is your work history
15 or summary of your work history as you go on from
16 dealing with your education now, sir?

17 A I started with the South Carolina Department of
18 Corrections in 1971 in the capacity of a social
19 worker in the substance abuse program at the Manning
20 Correctional Institution. Manning Correctional
21 Institution was about a 400-bed medium security
22 prison that had fences and gun towers around it. It
23 was a male facility for what we call youthful
24 offenders, individuals from age 18 through age 26, 25
25 or 26. From there I became deputy warden of that

James E. Aiken - Direct Exam

1 same facility. And from there -- I mean I wasn't
2 deputy warden, I became administrative assistant and
3 then I became deputy warden of that facility.

4 From there I became deputy warden of
5 the Central Correctional Institution commonly known
6 as CCI. It is a medium/maximum security prison that
7 housed approximately 1,800 predator, high security
8 inmate population. I served in that capacity until I
9 was appointed warden of the Women's Correctional
10 Prison which is also in Columbia.

11 From there I became warden of CCI,
12 which was the State penitentiary. And this facility,
13 of course, housed predator population as I stated to
14 you before, as well as psychiatrically impaired
15 criminals as well as death row population.

16 From there I became a deputy regional
17 administrator for the Midlands Correctional Region in
18 South Carolina. I supervised approximately 16
19 wardens over 16 facilities. Those facilities ranged
20 from open custody minimum security prisons to the
21 most super maximum security prisons.

22 And from there I became commissioner
23 of corrections for the State of Indiana, and it
24 encompassed about 46, 47 facilities, adult facilities
25 as well as juvenile facilities, parole services as

James E. Aiken - Direct Exam

1 well as maximum, super maximum security environment.

2 And I was the chief policy maker for that agency.

3 And from there I took over the United
4 States Virgin Islands as the chief administrator over
5 their jail and prison population. I've also, since
6 1986, I have been a consultant with the US Justice
7 Department as well as a private consultant to
8 correctional agencies throughout the United States
9 and other countries. I have provided technical
10 assistance and expert assistance to jurisdictions
11 involving classification. Classification is putting
12 the right inmate in the right level of security and
13 the right level of management. And the reason why is
14 because my previous experience I have literally
15 classified thousands of inmates, thousands of inmates
16 in putting them in the right custody in the right
17 security.

18 Also I advised jurisdictions in
19 relationship to managing disruptive predator inmate
20 population, I train wardens of prisons, I train
21 wardens that are just becoming wardens of prisons, I
22 train wardens of super maximum security prisons.
23 Also I have provided technical assistance and
24 leadership training for wardens as well as
25 correctional professionals throughout the United

James E. Aiken - Direct Exam

1 States. I also provide technical assistance and have
2 provided technical assistance to the countries of
3 Canada, Costa Rica, and the Dutch Kingdom.

4 Additionally, I involve myself in gang
5 management, security threat group management, also
6 for -- involved myself in providing technical
7 assistance to other jurisdictions throughout the
8 United States as well as other countries in
9 relationship to managing populations that are -- we
10 call emerging populations, people with different
11 behavior patterns that they did not have previously.

12 Q All right, sir. Have you ever been qualified as
13 an expert to provide such testimony particular in
14 this state, sir? And thereafter I'll ask you other
15 questions.

16 A Yes. I have provided expert testimony in these
17 type of proceedings in the state of South Carolina as
18 well as --

19 Q I'm sorry.

20 A Go ahead.

21 Q You've been approved by a judge like Her Honor
22 in this state to testify in this capacity?

23 A Yes, on a number of occasions.

24 Q What other states, sir, have you testified in
25 that you qualified as an expert?

James E. Aiken - Direct Exam

1 A I've provided expert testimony in these type of
2 proceedings in the state of Florida, in the state of
3 Georgia, of course the state of South Carolina, the
4 state of Virginia, the state of Mississippi, the
5 state of Alabama, the state of Missouri, and the
6 United States Federal District Court.

7 Q And in particular the United States District
8 Court, sir, what were you qualified as an expert in
9 that testimony, sir, and what you were able to
10 testify about in a district court, sir?

11 A I was able to provide expert testimony in
12 relationship to the placement of an inmate and
13 classifying of an inmate within a correctional
14 setting.

15 Q All right, sir. What about as to relative --

16 A If I'm not mistaken.

17 Q What about as to the relevant issue of future
18 danger and prison adjustment issues?

19 A That is -- when I say classification, that is
20 what I'm saying.

21 Q All right. Thank you, sir. And, again, have
22 you ever been denied testifying as an expert into
23 that particular area, sir, by any judge either on a
24 district court level, sir, or, respectfully, in a
25 state court level?

James E. Aiken - Direct Exam

1 A No.

2 MR. CUMMINGS: Your Honor, at this time I
3 would offer Mr. Aiken as an expert in, Your
4 Honor, classification and, Your Honor, as to
5 relative in future danger and prison adjustment
6 issues.

7 MR. BAILEY: Your Honor, I'm familiar with
8 Mr. Aiken's qualifications and I have no
9 objection.

10 THE COURT: Very well, he's so qualified.

11 MR. CUMMINGS: Thank you, Your Honor.

12 Thank you, Solicitor.

13 Q I want to call your attention back now to before
14 coming into this court today and preparing your
15 testimony in this case, have you had the occasion to
16 review records that would lend to you, sir, the
17 appropriate ability to speak to these ladies and
18 gentlemen of the jury as to the issues of Mr. Bowman
19 being, question of future danger of prison adjustment
20 issues?

21 A That's correct, sir. I have been provided
22 documents by counsel to review in formulating my
23 opinion.

24 Q All right, sir. Have you received information
25 from Mr. Bowman's prior incarceration, sir, on crimes

James E. Aiken - Direct Exam

1 of burglary and petty larceny?

2 A That is correct, sir.

3 Q All right, sir. Mr. Aiken, I'm going to ask
4 you, please, if you would, tell the ladies and
5 gentlemen of the jury what you did and then how you
6 came to your conclusion, sir.

7 A The approach that I take is not a theoretical
8 approach. I evaluate the record and relationship to
9 that inmate coming to my prison and I classify that
10 inmate as if he was coming to my prison. And I'm
11 responsible for the welfare of staff as well as
12 inmates.

13 I evaluate not only what's in the
14 record, but what is not in the record. What type of
15 behavior patterns have been noted by the officials
16 and what type of behavior patterns that have not been
17 noted by officials. And the key word is "officials."
18 Those people that have evaluated this inmate every
19 day in a confinement setting.

20 Q When you have the occasion, sir, to review
21 everything in this file and in particular in dealing
22 with Mr. Marion Bowman, Jr. were you put on notice
23 that he was facing a murder charge, sir, and an arson
24 charge when you did your background or qualification
25 and classification of Mr. Bowman, gentleman seated

James E. Aiken - Direct Exam

1 right there in the blue jacket, sir?

2 A Yes, sir. When I make my evaluation I make the
3 assumption that the individual is guilty of
4 everything, because he would never come to me in the
5 first place if he was not guilty.

6 Q All right, sir. When you looked at that nature
7 of the offense and the nature surrounding this
8 offense, did that cause you any hesitation in your
9 qualification of this gentleman?

10 A No, it did not, because of the fact that I have
11 dealt with those type of people for 30 years. I have
12 dealt with people that have committed very heinous
13 crimes, I have dealt with people that require being
14 excluded from the general community for the remainder
15 of his or her life. And I put a very high level of
16 priority on that person's community behavior in
17 relationship to the protection of the public.

18 Q In this particular case, sir, now that the
19 ladies and gentlemen of the jury have found
20 Mr. Bowman guilty of murder, what is your
21 understanding, sir, as our sentence, as to the
22 sentence that Mr. Bowman will receive if the jury
23 finds life without the possibility of parole, what
24 would happen to Mr. Bowman in our state prison
25 system, sir?

James E. Aiken - Direct Exam

1 A Repeat that question, please.

2 Q If the ladies and gentlemen of this jury
3 determine that a life without the possibility of
4 parole sentence would be appropriate, they have two
5 choices and only two, what would happen to him as far
6 as his sentence, sir, to be carried out by the prison
7 system?

8 MR. BAILEY: Your Honor, I may have an
9 objection. Could we approach just as a
10 clarification?

11 THE COURT: Surely.

12 (Whereupon, a bench conference was held
13 off the record in the presence of the
14 jury, but out of the hearing of the jury.)

15 Q Mr. Aiken, to simplify my question it's been
16 agreed to just ask you this: Will Mr. Bowman ever
17 walk out of a South Carolina State Department of
18 Corrections prison if these ladies and gentlemen of
19 the jury so find that to be the appropriate sentence?

20 A No, he would not. He will stay there until he's
21 dead.

22 Q In dealing and looking with the issues of
23 Mr. Bowman, in particular his age, what makes you so
24 certain, sir, when using your education, your
25 training, your experience and your issues here that

James E. Aiken - Direct Exam

1 this gentlemen could adapt to prison and follow the
2 adjustments and not be a danger in the future?

3 A I look at his previous institutional record,
4 he's had one fight. I would look at the ability of
5 that individual to serve time, he's been incarcerated
6 in three separate facilities -- systems, should I
7 say. That is the Orangeburg system, Dorchester
8 system, and the South Carolina Department of
9 Corrections system. And this individual has adjusted
10 relatively well.

11 Keeping in mind that the South
12 Carolina Department of Corrections can incapacitate
13 an individual for the remainder of his life. That
14 means we have fences, we have gun towers, we have
15 people that know how to use weapons, we know how to
16 lock people up and keep them there for extended
17 periods of time.

18 Additionally, every day this
19 individual is getting older and older, which means
20 that we can adequately manage this person whether
21 he's 20 years old or whether he's a hundred years
22 old, we have the capacity to do that.

23 Q What does it show you, sir, that if somebody who
24 is awaiting trial, pretrial detainee in a county
25 facility attends classes, what is that showing you as

James E. Aiken - Direct Exam

1 a classifier of prison, sir?

2 A It tells me two things, especially in this
3 situation. This individual is a fairly young
4 individual and has been able within the proper
5 confinement and structure to do some positive things.
6 Something else that it tells me as a penitentiary
7 warden, is that I don't care how good he may be, he's
8 not getting out. You have to understand that. It is
9 appropriate, it is appropriate that we acknowledge
10 that this individual is doing the right thing,
11 especially during a period of time of high stress,
12 but the point is, is that we will manage this
13 individual and incapacitate this individual as
14 required in whatever manner that's authorized by law.

15 Q Mr. Aiken, if that person in the class also
16 assists a professor or teacher, would that also have
17 an incident to bear upon your classification?

18 A It is a very good predictor that this individual
19 will adequately adjust to a maximum security
20 correctional environment for the remainder of his
21 life.

22 Q As far as, again, sir, and I do not state this
23 lightly, as a person gets ready to face trial in a
24 pretrial confinement setting or whatever and as they
25 get ready to come to court, you testified previously

James E. Aiken - Direct Exam

1 about stress levels. Would that cause a person
2 sometimes to speak out?

3 A Not only speak out, inmate population also can
4 have the tendency to inflict violence upon other
5 inmates as well as staff. And I saw nothing of that
6 in his record.

7 Q If somebody were the type of person you just
8 told these ladies and gentlemen about, would that
9 appear after a period of three incarcerations, would
10 that show up somewhere?

11 A One thing that -- the answer to that is yes, it
12 would show up, because one thing people, layman who
13 have never been in a correctional environment don't
14 understand, and it is you can't fake it. You can't
15 fake it. That behavior pattern, that behavior
16 pattern that you are most accustomed to, whether it's
17 violence or nonviolence, in a stressful correctional
18 environment you can't fake it.

19 Q As far as Mr. Bowman, sir, would you have any
20 hesitation in telling these ladies and gentlemen of
21 the jury at the end of your statements today that he
22 could adapt to future prison knowing that he would be
23 there the rest of his life?

24 A I have no reservations whatsoever.

25 Q Would you have any concerns as a warden, or a

James E. Aiken - Direct Exam

1 man, or a lady under your direction, sir, working in
2 that prison being around Mr. Bowman?

3 A No.

4 Q Would you have any issues to tell these ladies
5 and gentlemen of the jury about the classification of
6 Mr. Bowman that you would make if he were delivered
7 from this courthouse to your prison tomorrow?

8 A That he would be kept behind gun towers, behind
9 fences, behind bars, behind concrete, and he would be
10 adequately managed in a security setting for the
11 remainder of his life because of his behavior in the
12 community. And that the system can adequately manage
13 him. And that I have classified thousands of inmates
14 in this type of situation where they have inflicted
15 violence upon people, they have violated the laws of
16 the jurisdiction.

17 Q Mr. Aiken, would you have this statement, I
18 guess, sir, as not to embarrass you or anything, are
19 you saying this because you've been asked by the
20 defense to come up to the stand and testify, sir?

21 A No. I don't take every case.

22 Q Have you also testified for the State or the
23 federal government, sir, against people?

24 A Yes. I have testified for the prosecution in
25 criminal matters.

James E. Aiken - Direct Exam

1 Q Where you have told ladies and gentlemen of the
2 jury what, sir?

3 A Beg your pardon?

4 Q In what capacity would you have told ladies and
5 gentlemen of the jury about people's adaptation or
6 classification in prisons?

7 A I'm talking about criminal matters in which I
8 have testified for the prosecution for this person to
9 be punished for his behavior. I have done that
10 before.

11 MR. CUMMINGS: Beg the Court's indulgence,
12 Your Honor.

13 THE COURT: All right.

14 (Mr. Cummings and Ms. Hardee-Thomas conferring
15 with Mr. Bowman.)

16 Q. Mr. Aiken, I thank you very much, sir. Please
17 answer any questions Mr. Bailey or Her Honor may have
18 for you, sir.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. BAILEY:

22 Q Mr. Aiken, how are you doing?

23 A Fine, sir. How are you?

24 Q Fine. Good to see you.

25 A Good to see you, too.

James E. Aiken - Cross-Exam

1 Q Tell the jury what a YOA sentence is.

2 A A youthful offender sentence. YOA means
3 Youthful Offender Act. It is a statute that was
4 passed in South Carolina to give an individual an
5 opportunity even though he or she has violated a
6 serious offense, a sentence that would give that
7 individual some incarceration but an opportunity to
8 get back into the community with proper supervision.

9 Q And the whole purpose of that is an attempt to
10 rehabilitate the youthful offender; is that correct,
11 sir?

12 A That's my understanding, sir.

13 Q All right. And the type sentence Mr. Bowman
14 received when he got the two burglary convictions,
15 you reviewed his records, was a youthful offender
16 sentence; is that correct, sir?

17 A That's correct. To include, if I'm not
18 mistaken, something about restitution and shock
19 probation, if I'm not mistaken, sir.

20 Q And the whole thrust as you just said is to try
21 to rehabilitate that person and hopefully he won't
22 come back to the Department of Corrections?

23 A The centerpiece of that you said correctly, is
24 for successful reintegration into the society.

25 Q All right. He didn't make it, did he?

James E. Aiken - Cross-Exam

1 A Beg your pardon?

2 Q Mr. Bowman didn't make it, did he?

3 A He flunked out.

4 Q All right, sir. Now, what is a use of force
5 document?

6 A A use of force document is a document -- I'm
7 using it in a prison context.

8 Q Yes, sir. That's what I intended.

9 A Use of force is when staff makes any contact,
10 physical contact with an inmate.

11 Q So if an inmate gets out of hand or something
12 and they have to physically restrain them or hold
13 them back or something, they would fill out a use of
14 force form which would become part of the record of
15 that inmate?

16 A Yes. And to understand the concept of the use
17 of force we have to keep extreme important --
18 extremely important that we have to keep
19 documentation in these environments. And a use of
20 force is left up to interpretation of use of force
21 and it has a very wide variance.

22 Q All right, sir. In reviewing Mr. Bowman's file
23 from his YOA sentence, did you find out whether there
24 was force used against him on one occasion?

25 A I think there was a use of force report in

James E. Aiken - Cross-Exam

1 relationship to after a fight, if I'm not mistaken,
2 sir. And that was at Stephenson; is that correct?

3 Q I don't know. I forget.

4 Mr. Aiken, as far as the
5 classification process, when a person receives a
6 sentence they go to R and E; is that correct?

7 A R and E means Reception and Evaluation, yes.

8 Q At that point in time they're tested and then
9 they're sent out to one of the different facilities
10 in the state?

11 A In relationship to not only just testing, but to
12 looking at the security needs of the individual, yes.

13 Q All right, sir. And what factors do you take
14 into consideration when you classify somebody that
15 decides whether they go to a minimum security or
16 maximum security, do you look at the offense or do
17 you look at the characteristics of that individual,
18 or do you look at both?

19 A Classification is all of that and probably some
20 additional stuff, too, sir.

21 Q All right, sir. And starting at the bottom, the
22 least restrictive classification, the most harmless
23 inmate, is there a name or a letter for that?

24 A Well, it's minimum custody.

25 Q Minimum custody?

James E. Aiken - Cross-Exam

- 1 A Yes, sir.
- 2 Q And didn't it used to be like an alpha and
3 different --
- 4 A We're talking about apples and oranges now.
- 5 Q Okay. Help me out.
- 6 A Okay. When you start talking about objective
7 classification which we started off with this
8 conversation, we're talking about maximum security,
9 or medium security, or minimum security.
- 10 Q Right.
- 11 A And some jurisdictions level one through level
12 five.
- 13 Q Let's just talk South Carolina starting from the
14 bottom to the top.
- 15 A It's the lowest level of security which is
16 minimum security and maximum security.
- 17 Q What's next?
- 18 A You've got medium security and then maximum
19 security. But you can have low medium, high medium,
20 and B custody, and C custody, but basically for
21 layman I use maximum, medium, and minimum. And when
22 you said alpha, that's what is known as internal
23 classification.
- 24 Q Tell us about that.
- 25 A Once a person is inside a prison, then -- in a

James E. Aiken - Cross-Exam

1 number of systems another evaluation is taken in
2 relationship to that person's personality. That
3 person's personality may be manipulative or
4 aggressive, or it may be passive, or it may be a
5 person that gets along with just about anybody. And
6 that internal classification system places inmates in
7 living areas only in relationship to those
8 personality traits, because what we found is that you
9 put more aggressive population with more aggressive
10 population with adequate management the incidence of
11 violence decrease.

12 Q Starting with internal classification starting
13 at the least, I guess the more passive and going on
14 up to the most aggressive, how do you classify it?

15 A Alpha, beta, and gamma. But I think that's a
16 misnomer when you say the least. We're not talking
17 about the most, we're not talking about the least.
18 What we're talking about is what type of management
19 and supervision that this individual requires, that's
20 objective classification. What we're talking about
21 also with internal classification, alpha and gamma
22 and beta, is how we place them in the institution in
23 relationship to their ability to get along with other
24 inmates.

25 Q Okay. Well, at the risk of being --

James E. Aiken - Cross-Exam

1 A So it's punitive, that's what I am trying to
2 say.

3 Q What's alpha, layman's terms what kind of inmate
4 is an alpha classified inmate?

5 A Manipulative, a person that can -- has the
6 ability to use verbal skills that can be considered
7 to be intimidating at times, a person that can be
8 aggressive, but not necessarily violent.

9 Q All right. How about beta?

10 A Beta are those people that I don't bother you,
11 you don't bother me. I'm sorry, beta is those people
12 that are people saying that I'm worried all the time,
13 somebody may get me, those passive inmates. And the
14 latter being an inmate that we said get along with
15 you, I don't bother you, you don't bother me.

16 Q Okay. That's gamma?

17 A Yes.

18 Q Okay. All right. Now, you got different
19 facilities in the state that house different
20 classifications of inmates and you've got some
21 facilities like that that are medium/maximum that
22 would have both types, right?

23 A Both types. What are you talking about?

24 Q Medium/maximum.

25 A Yeah, medium/max. This system can house medium

James E. Aiken - Cross-Exam

1 inmates and maximum inmates in the same environment
2 because the external fences and gun towers and
3 electronic surveillance systems determine maximum as
4 well as medium.

5 Q Okay. So if you have an individual first-time
6 offender that commits a nonviolent crime and he's
7 kind of a passive person, where would he start out
8 within the system?

9 A It all depends. It all depends. Sometimes they
10 will go straight to a minimum security environment,
11 sometimes they may go to a max or a medium/maximum
12 security environment because they have a detainer,
13 for example. Or maybe they'll go to a medium/maximum
14 security environment because they require certain
15 medical evaluation.

16 So I've seen people go from a maximum
17 security environment and stay there for a couple of
18 days, or a couple of weeks, or even a month or so and
19 then go straight to the least restrictive environment
20 such as a work release center.

21 Q All right, sir. So a person that gets in a
22 maximum security situation would have a tendency to
23 want to work toward a less restrictive environment
24 within the prison system normally?

25 A The word "normal" is what I'm kind of having

James E. Aiken - Cross-Exam

1 difficulty with.

2 Q Well, I realize that's not a normal environment
3 in the prison system, but normal as far as the prison
4 system goes. Don't most people that have restrictive
5 classifications that are in the most secure portion
6 of the facility that are locked down, don't they
7 aspire to gain more privileges and to get classified
8 in a manner where they would have more freedom, more
9 privileges?

10 MR. CUMMINGS: I have a matter of law that
11 we had at sidebar earlier about what Mr. Bailey
12 is asking on cross now, ma'am. There was an
13 objection at sidebar as to --

14 THE COURT: I remember. Let me see you,
15 counsel.

16 (Whereupon, a bench conference was held
17 off the record in the presence of the
18 jury, but out of the hearing of the jury.)

19 MR. BAILEY: Your Honor, if I may.

20 THE COURT: Yes, sir. You may continue,
21 Mr. Bailey.

22 Q If you're an inmate you can move from one
23 classification to another; is that correct,
24 potentially?

25 A Potentially, yes, with the understanding that

James E. Aiken - Cross-Exam

1 certain offenses you do not move down.

2 Q All right. And you would not move down at all?

3 A That's correct, sir.

4 Q What is super max?

5 A Super max is in layman's terms.

6 Q Sure.

7 A Is the jail for the prison system.

8 Q Okay.

9 A. It's a place where people that cannot adjust to
10 a correctional environment that causes problems, you
11 take this person and separate that person from the
12 general population and put them in special housing.
13 Some jurisdictions call it super max. Such as a
14 federal system and ADX, that's where you have your
15 terrorists and those kind of folks. But also in
16 prisons like in South Carolina you have
17 administrative segregation or super max environment.

18 Q Okay. They're the guys that wear the yellow
19 jumpsuits?

20 A Different systems have different types of
21 jumpsuits.

22 Q I'm talking about South Carolina.

23 A Yeah, I think so. I'm not sure.

24 Q All right, sir. And those people wouldn't
25 necessarily stay there forever, would they, in super

James E. Aiken - Cross-Exam

1 max? They would do a period of time there, then
2 dropped down a level?

3 A It depends on their behavior.

4 Q But there is the ability to move from one
5 classification to another?

6 A They go to their program and they can move back
7 to general population in relationship to their
8 behavior, but if their behavior dictates that he want
9 to be disruptive to other inmates as well as to staff
10 they stay there.

11 Q Okay. And general population, does that mean
12 you kind of got the run of the yard to a certain
13 extent?

14 A Well, when you say run of the yard, that's you
15 can go from point A to point B, but you are
16 constantly under supervision and you're constantly
17 around very predator inmate population.

18 Q Prison is not a nice place, is it?

19 A Prisons are a dangerous place.

20 Q Okay. But my point is that, as you've said,
21 there are different levels of security within
22 particular prison facilities and based on an inmate's
23 conduct he can move from a more restrictive and a
24 less restrictive environment within that prison
25 potentially, is that --

James E. Aiken - Cross-Exam

1 A Potentially, yes, with the understanding that
2 the community sanction, and that is the nature of the
3 offense, the sentence is the driving force and the
4 overriding force in making those decisions.

5 Q All right, sir. But an inmate's conduct while
6 incarcerated also would have an effect of his ability
7 to move from one or the other; would it not?

8 A Whether he moves up or whether he moves down,
9 but he can move up and down and still have gun towers
10 and maximum security.

11 Q I understand all that.

12 A Okay.

13 Q But within the gun towers around the whole
14 place, but within the place you have people that have
15 more freedom than other people?

16 A That is correct, sir.

17 Q And that is not a carved in concrete situation,
18 you can move from one to the other and back and forth
19 and all around?

20 A As long as you stay behind those fences and gun
21 towers.

22 Q We understand that. We're talking about within
23 that facility?

24 A You go to work and those type of things, yes,
25 sir.

James E. Aiken - Cross-Exam

1 Q Right. Okay. On occasion people are allowed to
2 leave that facility to pick up trash on the side of
3 the road?

4 MR. CUMMINGS: Objection, Your Honor.
5 That's clearly not available here and it's not
6 proper.

7 MR. BAILEY: Your Honor, he just said
8 they're all behind the walls all the time.
9 (Whereupon, a bench conference was held
10 off the record in the presence of the
11 jury but out of the hearing of the jury.)

12 Q Mr. Aiken, would it be fair to say that
13 regardless of how bad a person thinks he is or how
14 serious the crime is, there is a mechanism in place
15 within the South Carolina Department of Corrections
16 to deal with that inmate; is that correct?

17 A That is correct, to include killing the inmate.

18 Q Yes, sir. Execution?

19 A Not only that, use of lethal force.

20 Q Okay. I understand that, too. Now, if a person
21 is docile, gets along, does what he's supposed to do,
22 it's going to take a fairly minimum level of
23 supervision given the fact that you're behind the
24 walls and you have the guns and the towers and all
25 that; is that correct?

James E. Aiken - Cross-Exam

1 A That's not correct, sir.

2 Q It's not?

3 A No, sir. The word minimum is a misnomer. In a
4 prison environment in a maximum security, a
5 medium/maximum security environment with fences and
6 gun towers, providing supervision, a level of
7 supervision is always maintained.

8 Q I understand that.

9 A And it has no relationship to minimum security
10 supervision that will be in a work release center, a
11 work release center will never be seen by this
12 individual.

13 Q Okay. But when you say minimum custody, you
14 have facilities that have minimum custody and medium
15 custody; is that correct?

16 A Not together, no, sir.

17 Q Okay.

18 A There are some exceptions, such as a person that
19 needs to be in medium custody even though they are
20 minimum classified for a certain reason.

21 Q Okay.

22 A But you don't normally put minimum custody
23 inmate population behind gun towers and fences.

24 Q Okay. Well, I'm trying to kind of talk your
25 language and if I'm using the wrong words, please

James E. Aiken - Cross-Exam

1 correct me.

2 A Okay.

3 Q And I'm not trying to be cute or tricky.

4 A I certainly understand that.

5 Q All right, sir. What I'm trying to get at, what
6 I'm asking you about is some people that are not
7 aggressive and that are following the rules have less
8 restrictions on them within the prison system than
9 somebody, what I'm going to call, super max; is that
10 correct?

11 A With the understanding --

12 Q That they're all behind the walls?

13 A They're all behind the walls.

14 Q I got that.

15 A They're all being strip searched.

16 Q Sure.

17 A They're all being watched with gun towers and --

18 Q I got that, Mr. Aiken.

19 A -- all of that.

20 MR. CUMMINGS: He's allowed to answer the
21 question.

22 THE COURT: I'll allow him to finish. Let
23 him finish.

24 A Okay. With all of that being considered, and as
25 I stated to you previously when you said the word

James E. Aiken - Cross-Exam

1 supermax is the jail for the prison system. And what
2 I also stated in previous testimony here today is
3 that certain inmates, such as this individual, I
4 don't care how good they are, I don't care how docile
5 they may act, this individual will be kept in the
6 secure environment for the remainder of his life.

7 Q All right, sir. Let me ask you about that. An
8 individual serving life without parole cannot work
9 into a minimum security situation, what incentive
10 does he have to follow the rules of that institution?

11 A The incentive that he has is one thing that the
12 management of that prison system has authority to
13 ensure that his behavior is appropriate. And that's
14 anywhere from sanctioning him, that's anywhere from
15 using lethal force against that individual, as well
16 as to give this individual an opportunity to obey the
17 rules and regulations. His motivation. We are not
18 in the business of motivation when you deal with a
19 life without parole. Our business is incapacitation.

20 We're not preparing you to go
21 anywhere. You're going to stay with us as long as
22 you are breathing, so we're not talking about trying
23 to prepare you for anything. What we're talking
24 about is that we do a good job of keeping you behind
25 bars and behind fences and in gun towers for the

James E. Aiken - Cross-Exam

1 remainder of your life.

2 Q Okay.

3 A So it's a different ball game all together.

4 Q I got that. I understand that. My question
5 simply, sir, that I've asked you several times, let
6 me try again, there are different levels of
7 restriction that a person serving life without parole
8 can find himself under and he can work from one end
9 to the other and back again or stay in the middle.
10 Am I saying something that you don't understand?

11 A Yes. Let me try to explain it this way then.

12 Q Please do.

13 A I'm the one that's maybe confusing it and I'm
14 sorry. But a person with life without parole when
15 you say least, you know, incentives or something, a
16 person gets to go to work, the person gets an
17 opportunity to live --

18 Q A person serving life without parole gets to go
19 to work?

20 A A person -- if you're going to be in prison
21 you're going to work.

22 Q Okay. What if he doesn't want to work? What if
23 he says I don't want to work today?

24 A If he doesn't want to work we'll put you in a
25 place you don't have to work and you call that super

James E. Aiken - Cross-Exam

1 max, where we lock you down 23 hours a day and feed
2 you three times because you will be given a direct
3 order to work and if you don't work you have violated
4 the rules and regulations.

5 And on top of that, this dimension,
6 which we haven't discussed since we're talking about
7 the environment, is that this prison system of a
8 prison contains very dangerous people. People that
9 resolve issues through violence, people that do not
10 necessarily want to go by the rules and regulations.
11 And looking at this gentleman as we were discussing,
12 he has been in an environment that's very stressful
13 which increases the probability of antisocial
14 behavior. And I've not seen that in his record.

15 So in a prison environment I don't
16 anticipate him being disruptive. I anticipate him
17 getting up and going to work, I anticipate this
18 individual obeying rules, regulations, and orders.
19 But as we were discussing if we have to put him away,
20 we'll do that. And if we have to use lethal force
21 against him, we can do that also.

22 Q So no matter how bad that person acts, you can
23 ratchet up that level of control to control his
24 behavior?

25 A To manage his behavior, yes, sir.

James E. Aiken - Cross-Exam

1 Q They can't beat the system?

2 A They can't beat the system.

3 Q So wouldn't it be true, Mr. Aiken, that with a
4 system like that in place there's nobody that cannot
5 adapt to the prison system because the prison system
6 is going to adopt to whatever level of conduct they
7 display?

8 A The prison system can manage any type of
9 behavior this individual demonstrates.

10 Q Okay. That was the point I was trying to get
11 at. Thank you, sir.

12 THE COURT: Yes, sir. Any redirect?

13 MR. CUMMINGS: Yes, please.

14 REDIRECT EXAMINATION

15 BY MR. CUMMINGS:

16 Q I just want to make sure I'm clear on this. I
17 know Mr. Bailey asked you this question. A person
18 serving life without the possibility of parole, could
19 he ever be able to pick up trash or go outside that
20 gate?

21 A No way.

22 Q Could that person, again, if anything happens
23 inside the prison, can they be referred to a good
24 solicitor to be prosecuted in here in front of 12
25 other good citizens tried and true?

James E. Aiken - Redirect Exam

1 A No. The person can be tried, that is correct.
2 Just because you're in prison doesn't mean you can't
3 break the law and can't be prosecuted for it.

4 Q And then are they not dealt with inside there
5 even including as you stated, up to lethal force if
6 it's called upon by the Department of Corrections,
7 people inside that prison?

8 A The Department of Corrections is authorized to
9 use lethal force. And I have authorized lethal force
10 to be used.

11 Q The prison that Mr. Marion Bowman may go to,
12 whatever the Department of Corrections states he
13 would go to, is it going to be a kiddy camp?

14 A No way.

15 Q Is it going to be someplace where, you know,
16 they have picnic lunches outside the gate?

17 A No. You will be around predator, dangerous,
18 violent inmate population.

19 Q And when you say "super max," I want you to
20 again, because I know quickly, sir, you were
21 answering that question, I want you to tell the folks
22 exactly what super max is.

23 A It is a confinement facility in which people
24 stay in their cells 23 hours a day, they get out one
25 hour a day as mandated by federal judiciary. And

James E. Aiken - Redirect Exam

1 this houses -- the staff are especially trained to
2 use whatever force that's legally necessary to manage
3 the behavior.

4 Q Describe a super max cell for these folks,
5 please.

6 A I guess the best way to describe it is it's
7 about the size of a -- little bigger than a bathroom
8 and it's got steel and concrete to include the bed.
9 And your toilet is right there with you and you are
10 under constant surveillance by a security staff or
11 technology.

12 Q If an inmate such as Mr. Bowman is following the
13 basic prison that can make him get up to something
14 productive for society to pay his debt back, what is
15 available? When you say work, what can he do within
16 a prison that doesn't make light of somebody trying
17 to do something with their time?

18 A This individual can be constructively engaged in
19 prison industry that is reducing your tax load by
20 providing cheap labor to pay back to the society that
21 government does not have to pay so much money for.
22 This individual can work in a food service area, for
23 example, this person can provide maintenance at the
24 facility such as painting, this person can do
25 something for himself, do something for himself in

James E. Aiken - Redirect Exam

1 order to become constructively engaged. But the
2 understanding is that the mission here is
3 incapacitation. I don't care how well he does, he
4 will never get out of that prison.

5 Q And as far, again, as ever being, for lack of
6 better words, model-collied (phonetic), is he going
7 to model-collied by anybody inside there going in
8 there on a murder conviction found by Dorchester
9 County jurors and an arson conviction knowing the
10 rest of his life will be behind bars?

11 A That's not the nature of prisons.

12 Q As far as a 21-year-old man, 20-year-old at the
13 time of the offense and a 21-year-old man now, can
14 Mr. Bowman salvage something of his life inside our
15 prison?

16 A Yes. As long as he stays within that prison,
17 and he will remain in that prison, he can have
18 redeeming qualities, yes. But the understanding is
19 that those redeeming qualities will never get him
20 released or exposed to the public.

21 Q Do you think Mr. Bowman, based on your records
22 and representations and your reading and your
23 experience, sir, would be a gentleman that could work
24 with the Scared Straight program to try to solve some
25 other little kid coming through the system where

James E. Aiken - Redirect Exam

1 other citizens don't have to sit in judgment of them?

2 A Yes, sir. With time he could be a very living
3 example of saying that I came into a correctional
4 environment when I was in my 20s, now I'm in my 40s
5 and I've been in prison so long I don't remember what
6 you go through the stoplight with, a red light or a
7 green light because I've never, I have never done
8 this. I have not done this in 30 years, I don't even
9 remember.

10 Q As far as, again, Mr. Bowman, when you read that
11 issue about the disturbance that Mr. Bailey asked you
12 about when he was in the youthful facility, Stevenson
13 I believe it is, was that a disturbance with another
14 individual in a line, or was that towards the hurting
15 or going near a guard, sir?

16 A That was a fight. And don't -- it's not a
17 disturbance.

18 Q All right, sir.

19 A That was a fight between two inmates. And he
20 was properly sanctioned for it, I think he got two
21 weeks extension. And in a scale of 1 to 10 this
22 barely makes it to a 1.

23 Q The guard was never in jeopardy by Mr. Bowman?

24 A As I stated it, no, he was not. As I stated in
25 my definition of use of force, when there is physical

James E. Aiken - Redirect Exam

1 contact, it may be touching, I have to fill out a use
2 of force because we document everything in the prison
3 environment.

4 MR. CUMMINGS: Beg the Court's indulgence,
5 Your Honor.

6 THE COURT: All right.

7 (Mr. Cummings and Ms. Hardee-Thomas conferring
8 with Mr. Bowman.)

9 MR. CUMMINGS: Your Honor, that's all the
10 questions we have of this gentleman.

11 RECROSS-EXAMINATION

12 BY MR. BAILEY:

13 Q Mr. Cummings asked you and I think you said in
14 response he will never get out of prison; is that
15 correct, sir?

16 A That's correct.

17 Q During the time that you have been affiliated
18 with the Department of Corrections of South Carolina,
19 how many inmates have escaped?

20 MR. CUMMINGS: I'm going to object. This
21 is a life without possibility of sentence and we
22 have told this jury that is all he will ever get
23 and that is the law.

24 MR. BAILEY: Your Honor, I'm asking --

25 THE COURT: Let me hear the question,

James E. Aiken - Recross-Exam

1 first, gentlemen.

2 (Whereupon, a bench conference was held
3 off the record in the presence of the
4 jury but out of the hearing of the jury.)

5 THE COURT: Ladies and gentlemen, I'm going
6 to ask you to please step to your jury room,
7 there is a matter that I must take up outside
8 your presence. Be mindful not to discuss this
9 matter or allow anyone to discuss it with you.
10 (Whereupon, the jury retires to the jury room at
11 4:58 p.m.)

12 MR. BAILEY: Your Honor, to --

13 THE COURT: Yes.

14 MR. BAILEY: Your Honor, the case I had in
15 mind was State vs. Plath, 313 S.E.2d, 619. That
16 case said that when a defendant expert testifies
17 on life in prison the State cannot err by
18 cross-examining him on prison conditions and on
19 a specific inmate escaped while serving a life
20 term, Your Honor. That's the line of
21 questioning I was getting into.

22 I think Mr. Cummings opened the door
23 when Mr. Aiken said the quote from my notes, "He
24 will never get out of that prison." And, Your
25 Honor, case law says I can ask that and --

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1 THE COURT: Let me look at the case.

2 MR. BAILEY: Ma'am?

3 THE COURT: Let me look at the case.

4 MR. CUMMINGS: As you wait for it to pop up
5 this door would not even have swung open if we
6 had followed the strict instructions you had
7 asked, ma'am.

8 MR. BAILEY: Your Honor, of course, Mr.
9 Cummings referred to it as a kiddy camp and that
10 he could not be in super max, I think the door
11 is wide open.

12 (Pause in proceedings.)

13 THE COURT: Tell me where you find the
14 language in the -- first of all, which State vs.
15 Plath decision and then where in that decision?

16 MR. BAILEY: It's 1984, the second State
17 vs. Plath decision.

18 THE COURT: Okay. I got it. All right.
19 In the Plath decision the difference is, is that
20 Plath himself was an escapee. That's why it was
21 relevant and that's why the door had been opened
22 was because Plath was an escapee at the time
23 that the offense was committed. And the door
24 was open at the point in time when the question
25 was -- when they went into that area regarding

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1 Mr. Plath. And specifically the door was opened
2 because Mr. Plath had committed the offense that
3 he was being tried on when he was actually an
4 escapee, not in general.

5 MR. CUMMINGS: Now I'm at a loss and I
6 apologize to Your Honor in not calling upon the
7 Court here. I don't know if a curative
8 instruction would reemphasize the issue of an
9 escape or the possibility of escape to these
10 jurors which would be in violation of everything
11 about the instruction from the Supreme Court of
12 the United States and our Supreme Court that
13 life without the possibility of parole means
14 just that, the literal meaning. They've heard
15 now a question about escape. I objected I hope
16 in a timely manner, Your Honor has ruled.

17 Again, it places the defense in a
18 quandary of how to get that thought out of the
19 jurors' minds now about the possibility of a --
20 you're talking about a possibility. And even
21 then time to come back now, explain that no, you
22 know, worry about escape. Well, now it's been
23 planted.

24 MR. BAILEY: Your Honor, of course -- I'm
25 sorry, I don't mean to interrupt you.

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1 THE COURT: That's okay.

2 MR. BAILEY: Of course this witness has
3 said repeatedly in a nonresponsive manner to
4 several questions I've asked him about the guns
5 and the walls and the guns trained on everybody
6 to try to intentionally give the jury the
7 impression nobody gets out of there. And I
8 think it's common knowledge there's probably not
9 a single prison in this state, including Lieber,
10 where people don't escape on a halfway frequent
11 basis. I mean, if I could proffer -- can I
12 proffer, Your Honor?

13 THE COURT: You can certainly proffer, but
14 that will be the extent of it. We're not going
15 to put that before the jury, but you certainly
16 may, please.

17 MR. BAILEY: No point in proffering then.

18 THE COURT: Please proffer it if you would
19 like to for purposes of the record, but I'm not
20 going to allow that to go to the jury.

21 MR. BAILEY: It wouldn't do any good. In
22 view of the fact that Mr. Cummings has
23 established that it's not a kiddy camp and that
24 there is work available and that he probably
25 would not be in super max since he's such a

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1 model inmate, can I pursue those areas by asking
2 about certain conditions of the general
3 population, the work conditions he's already
4 gotten into, that area?

5 THE COURT: Yes, you may.

6 MR. BAILEY: Thank you.

7 MR. CUMMINGS: We're on recross, Judge.

8 THE COURT: I understand. I will let him
9 go into those areas. Where are the work
10 situations, I certainly will, because insofar as
11 I think those issues are certainly before the
12 jury at this point. What I would like to know
13 is how far the question got.

14 Ms. Keil, if you could go back to the
15 question that was asked by Mr. Bailey and let me
16 know. I think you were sitting on the edge of
17 your seat, so I don't know if the word got past
18 "S," so we'll see.

19 MR. CUMMINGS: Then it got out.

20 THE COURT: Okay. All right. What would
21 you propose for a curative instruction?

22 MR. CUMMINGS: This is the quandary I get
23 in every case that I've been appointed on death
24 penalty. You ask for a curative instruction and
25 you say no thank you, then you have settled for

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1 that and my client settles for that. If you go
2 back and ask for a curative instruction it
3 reemphasized like, I hate to say it, bad
4 analogy, but rookie policeman standing there
5 testifying he saw somebody run a red light and
6 the defense attorney says are you sure you saw
7 my client run a red light? They've heard it
8 twice now.

9 And I guess, Judge, respectfully in
10 standing up before you to protect the record of
11 course I would move for a mistrial in the
12 sentencing phase here based on the fact that
13 this is more prejudicial to my client now and
14 cannot be curative, respectfully. And in so
15 doing so then Your Honor has -- again, will call
16 upon me and Ms. Thomas to quandary whether or
17 not --

18 THE COURT: Let me give you this as a
19 proposal. I'm going to deny your motion for a
20 mistrial.

21 MR. CUMMINGS: Yes, ma'am.

22 THE COURT: But I would propose as curative
23 instruction that I tell the jury that there are
24 two instructions, or two sentences that they
25 will concern themselves. One, the death penalty

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1 which we'll talk about, and the other is life
2 imprisonment without the possibility of parole.

3 MR. CUMMINGS: Yes, ma'am.

4 THE COURT: All right. And if you like
5 I'll give the definition that's in the statute
6 that says until the death of the defendant. And
7 that those are the two sentences that they
8 will -- to which they are going to be concerned.

9 MR. CUMMINGS: Yes, ma'am. And, again,
10 with the legal quandary that we've been placed
11 in that is the only issue that once Your Honor
12 has denied the mistrial motion if I don't want
13 the curative instruction at that point, Judge,
14 then I would waive it. And, respectfully, I
15 would ask for that, but noting, Judge, that
16 again that word would not have come out and now
17 the jurors have heard it and it's something
18 they've got to consider.

19 THE COURT: I understand.

20 MR. CUMMINGS: Thank you, Judge.

21 THE COURT: Thank you. And I'll entertain
22 an additional one, or a change if you would like
23 me to, but that's what I would propose to tell
24 them.

25 MR. CUMMINGS: Yes, ma'am.

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1 THE COURT: All right. Very well. Let us
2 have our jury back.

3 (Whereupon, the jury returns to the courtroom at
4 5:07 p.m.)

5 THE COURT: Ladies and gentlemen, there was
6 a question that was asked before you left and I
7 have ruled that the question was not a proper
8 question and I'm going to ask you to disavow
9 that from your minds for this reason: There are
10 two sentences that you will concern yourselves
11 and we're going to have an opportunity during my
12 charge to talk about them at great length, but
13 for this moment I will tell you, and I think I
14 am reminding you based on the instructions that
15 you have received even preliminarily, but there
16 are two sentences that you will concern
17 yourselves. One, the death penalty, and the
18 other is life imprisonment without the
19 possibility of parole. The Statute says until
20 the death of the defendant. Those would be the
21 two sentences that you will concern yourselves.

22 With that instruction you may proceed,
23 Mr. Bailey.

24 MR. BAILEY: Thank you, Your Honor.

25 BY MR. BAILEY:

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1 Q Mr. Aiken.

2 A Yes, sir.

3 Q I take it in response to your questions from Mr.
4 Cummings that Mr. Bowman would not be a candidate for
5 super max, he would be a lower level of control?

6 A Based on his behavior, this individual can --
7 will not be initially placed in super max due to the
8 fact of his behavior and due to the fact that super
9 max is an additional management tool that we use for
10 disruptive population.

11 Q All right, sir. And you mentioned that if he's
12 not in super max he would have the availability to
13 work; is that correct, sir?

14 A That's correct.

15 Q Would he be compensated for that work?

16 A Very minimally as provided by the courts.
17 Whether he's in super max or whether he's in the
18 general population all inmates get a certain level of
19 income.

20 Q So they get more if they work?

21 A Yes.

22 Q How much?

23 A I couldn't tell you right off, 3, 4, \$5, I
24 guess.

25 Q All right, sir. And assuming he's in a

James E. Aiken - Recross-Exam.

1 medium/maximum facility, not in super max, obviously
2 not work release as you've said, when he's not at
3 work what is he adapting to, what is going on there?

4 A Well, there are two things going on. I can give
5 you the routine, and the routine in relationship to
6 such as your daily routine of coming home and mowing
7 the lawn or something like that.

8 An inmate's routine in that context is
9 one of getting up in the morning, being able to eat,
10 being able to go to work, to be able to take recess
11 in the middle of the day, lunch break, to eat as
12 provided by the constitution, and of course go back
13 to work and then eat in the evening.

14 And a person can involve himself in
15 Bible study, a person can involve himself in
16 education, a person can involve himself in anger
17 management and other things that are provided within
18 the correctional environment. That's one routine.

19 But to put it in a wholistic concept
20 you have to understand that this is in a prison
21 environment and this is not in a community
22 environment. And what I mean by that, you have the
23 police watching you 24 hours a day, seven days a
24 week. It's just like the police being in your home
25 and writing you up for any violation. Not

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1 necessarily of law, even though they have that
2 authority, but administrative violations such as
3 speaking too loud, such as disrespect, such as
4 disobeying a direct order.

5 Additionally you are around very
6 predator people. What do you mean by predator? I've
7 used that term. Predator people are people --

8 MR. BAILEY: Your Honor, I think he's not
9 being responsive to my question. I was simply
10 asking him about conditions of the prison that
11 he had testified about and he's going off into a
12 speech. I would ask him to respond. So I've
13 tried to ask simple questions and get direct
14 answers.

15 MR. CUMMINGS: I think the gentleman was
16 trying to answer, Judge.

17 THE COURT: I think he is trying to answer.

18 Let me ask you, if you will, please,
19 to be as responsive as you can. Rather than
20 giving quite as much as a narrative I want you
21 to answer your question, I want you to answer
22 the question fully, but if you could be mindful
23 to remember brevity I would appreciate it.

24 THE WITNESS: I will certainly do that,
25 Your Honor. Thank you.

James E. Aiken -- Recross-Exam

1 THE COURT: Thank you. You may proceed.

2 A I'll just answer the question like this. I gave
3 the daily routine, but you have to understand that
4 you are doing it around very dangerous people that
5 use violence to resolve issues. And that gives a
6 better picture of what it means living in prison.

7 Q All right, sir. And are there recreational
8 facilities available?

9 A Yes, sir.

10 Q What type of recreational facilities?

11 A An inmate can play basketball, an inmate can
12 exercise, you know, on his own, but to understand,
13 again, to give it in a complete context as briefly as
14 I can, you're doing it around very dangerous predator
15 people.

16 Q My question is related to the recreational
17 facilities and we understand prison is dangerous
18 people. In addition to that are there libraries they
19 go to, to read books?

20 A Yes, sir. As guaranteed by the constitution.

21 Q Are there movies they can watch?

22 A Yes, sir.

23 Q Television?

24 A In some instances, yes, sir.

25 Q Softball, do they play softball?

James E. Aiken - Recross-Exam

1 A I don't know. It's some type of recreation such
2 as that.

3 Q Thank you. That's all I have.

4 THE COURT: Very well. Is this witness
5 free to leave?

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: Very well. You are free to go.
8 (Whereupon, the witness steps down from the
9 witness stand.)

10 THE COURT: Yes, sir. If you would call
11 your next witness.

12 MR. CUMMINGS: Ms. Branch, please.

13 (Sharon J. Branch, called as a witness, having
14 first been duly sworn, is examined and testifies
15 as follows:)

16 DIRECT EXAMINATION

17 BY MR. CUMMINGS:

18 Q Ms. Branch, I just wanted to go back a little
19 bit. Obviously you're in the uniform of a Dorchester
20 County Detention Center, correct?

21 A. Yes.

22 Q. And you are the rank of a sergeant?

23 A Yes.

24 Q How long have you been employed by the
25 Dorchester County Sheriff's Department, ma'am?

Sharon J. Branch - Direct Exam

1 A This coming July will be six years.

2 Q Six years. And I'm going to recall your
3 attention back to February of 2001. And did you come
4 into contact with Mr. Marion Bowman, Jr., ma'am?

5 A Not on that particular day. I wasn't there when
6 he came in.

7 Q Okay. Since February of that year, have you
8 been in contact with Mr. Bowman?

9 A Yes.

10 Q Okay. Almost on a daily basis?

11 A Yes.

12 Q Okay. Dealing with Mr. Bowman, could you
13 briefly describe to the ladies and gentlemen of the
14 jury dealing with Mr. Bowman exactly where he has
15 been inside the facility, please?

16 A Ever since he came to us in 2001 he's been in
17 maximum security, which we call C side or max.

18 Q Okay. Is that because of the nature of the
19 offense?

20 A Yes.

21 Q Okay. And that's the sole reason?

22 A Yes.

23 Q And since he's been over there that time, has he
24 ever done anything to harm a law enforcement officer
25 in your facility to your personal knowledge?

Sharon J. Branch - Direct Exam

- 1 A No.
- 2 Q All right. Has he done anything to you to be
- 3 disrespectful?
- 4 A Attitude.
- 5 Q Okay. When was that, this past Sunday?
- 6 A This past Sunday and other occasions in the past
- 7 from time to time.
- 8 Q Attitude means he spoke out about something?
- 9 A He spoke out. And he does a lot of refusing.
- 10 Q Okay. Did he ever, ever raise his hand?
- 11 A Negative.
- 12 Q Have you ever felt threatened by him?
- 13 A Negative.
- 14 Q Have you ever felt that he would not follow the
- 15 rules and regulations as you demanded?
- 16 A Yes.
- 17 Q What was that?
- 18 A His refusal to do a lot of direct orders.
- 19 Q What's that?
- 20 A They were very simple orders, go back in your
- 21 cell, when the lights flash go back in your cell.
- 22 I'm not going. If you want me to go in, put me in.
- 23 It just depended on what kind of day Marion was
- 24 having.
- 25 Q Was that as we got closer to trial also?

Sharon J. Branch - Direct Exam

1 A As we got closer to the trial he got to become a
2 calmer person, a better person. Then, like you said,
3 all of a sudden Sunday, I don't know what happened.

4 Q That was Sunday morning, about what time for
5 what?

6 A We were getting ready for church service
7 about -- we normally get them ready about a quarter
8 to 8:00 when we start calling them out and he wanted
9 to go to church. And we told him that, you know, he
10 couldn't go to church. And we tried to explain to
11 him why he couldn't go to church because of the fact
12 he was on trial and the trial was so significant. We
13 kept explaining it to him, he kept demanding if I
14 don't go to church I'm not going to court. We kept
15 saying you can't do that. They sent officers back
16 there to talk to him before I got back there. So
17 when the ministers came in we asked the ministers to
18 go back there and talk to him.

19 So the ministers talked to him. I
20 went back there to assist the ministers to talk to
21 him. So I was the sergeant next on shift, I said if
22 anything will go down, I said let me go with the
23 ministers and let me take in manpower. So I took
24 another guy with me. So I went back and told Marion,
25 said, "Marion, let's go out front so we can get you

Sharon J. Branch - Direct Exam

1 dressed and get ready for court because you couldn't
2 go to church because of what was going on."

3 "That's the reason they stopped
4 church, stopped court because of, you know, me going
5 to church?"

6 I said, "No, Marion, they stopped
7 court, not to talk to ten o'clock so the jurors could
8 go to church." He couldn't understand that. He
9 couldn't understand that. So like I said, the
10 ministers talked to him.

11 And I went back up front and I said,
12 "Lieutenant Heyward," I said, "Marion is refusing to
13 do anything." I said, "How do you want me to bring
14 him to you?"

15 Said, "The choice is yours, just tell
16 us." And so that's when she came back along with the
17 ministers. So we talked to him, ministers prayed for
18 him, talked to him and explained things to him. So
19 finally he gave in, he came up front and got dressed.

20 Q Without any hand placed on anybody?

21 A He did not touch them.

22 Q And his major complaint was Sunday morning,
23 right?

24 A Yeah, at that particular time.

25 Q And, again, of your personal knowledge, I know

Sharon J. Branch - Direct Exam

1 you've been seeing Ms. Thomas and I up there a long
2 time.

3 A Right.

4 Q Have you ever had any issues with Mr. Bowman in
5 dealing with us, or any concerns about that?

6 A No, sir.

7 Q Have you ever had any issues about Mr. Bowman in
8 placing any correctional officer in jeopardy?

9 A No, sir.

10 MR. CUMMINGS: Beg the Court's indulgence,
11 Your Honor.

12 THE COURT: All right.

13 (Mr. Cummings and Ms. Hardee-Thomas conferring
14 with Mr. Bowman.)

15 Q When you said that he had some trouble following
16 rules and regulations, would he work on some
17 paperwork, read, didn't want to go back into his
18 cell, is that what you meant?

19 A No, we allowed them because they were in maximum
20 security. We know they only came out -- policy
21 procedure wise only entitled to one hour of rec per
22 day or whatever and, you know, if you complied with
23 us we try to be lenient on you. We say, well, we'll
24 let him out extra, give him time, all depends on how
25 you're acting toward us. We try to give you a break

Sharon J. Branch - Direct Exam

1 sometimes. Any inmate, they get out of hand, take
2 advantage of situations. When you flash the lights
3 they don't want to go back in, you have to go back
4 there, try to talk to them. They want to get hostile
5 because they want to show up in front of other
6 inmates, so to speak, and you cause everybody to get
7 involved and you cause confrontation, you start a
8 small thing into something big. That's not needed.
9 And you keep asking to go back in. No, I'm not going
10 back. If you if you want me to go back in, you put
11 me back in. You never want to do that.

12 Q You didn't have to do that with him?

13 A I didn't have to do that.

14 Q The other issue is, I don't mean this with any
15 disrespect to you, ma'am, that is one hour a
16 Saturday, that is all they're allowed out of that
17 cell unless their lawyer came?

18 A Right.

19 Q In 15 months?

20 A Yes.

21 Q That's all we have.

22 CROSS-EXAMINATION

23 BY MR. BAILEY:

24 Q You have never worked in the Department of
25 Corrections, have you, as a correctional officer?

Sharon J. Branch - Cross-Exam

1 A No, sir.

2 Q So you don't know anything about conditions in
3 prison as compared to the jail here, do you?

4 A No, sir.

5 Q Okay. Now, this Sunday when you had the
6 incident where Mr. Bowman didn't want to come to
7 court here, you said the ministers went in to talk to
8 him and then you went in after that, after --

9 A I went in along with them.

10 Q All right. Did you go in there to protect the
11 ministers?

12 A So to speak, yeah.

13 Q Okay. From Marion?

14 A Right.

15 Q Thank you.

16 REDIRECT EXAMINATION

17 BY MR. CUMMINGS:

18 Q Did you need to do that, though, in reality?

19 A I didn't know, I was just being prepared for
20 anything.

21 Q He asked to pray to his god?

22 A Right.

23 MR. BAILEY: Judge, I object.

24 THE COURT: I sustain the objection.

25 MR. BAILEY: Thank you, ma'am.

Sharon J. Branch - Redirect Exam

1 THE COURT: Very well.

2 MR. CUMMINGS: That's all the questions I
3 have.

4 THE COURT: Is this witness free to leave?

5 MR. CUMMINGS: Yes, Your Honor.

6 THE COURT: I'm sorry, did you any recross
7 along that line?

8 MR. BAILEY: No, ma'am.

9 THE COURT: All right. You are free to go.
10 (Whereupon, the witness steps down from the
11 witness stand.)

12 THE COURT: Please call your next witness.

13 MR. CUMMINGS: Judge, may we approach?

14 THE COURT: I was going to ask you if you
15 need to approach, all right, come on.

16 (Whereupon, a bench conference was held off the
17 record in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: Ladies and gentlemen, that will
20 conclude the work which we will do today. You
21 obviously -- I understand there's another
22 culinary event scheduled for you this evening
23 which I certainly hope that you will enjoy and
24 hope you enjoy your rest over the evening. We
25 will begin in the morning at nine o'clock, at

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1 nine o'clock. Be mindful also, ladies and
2 gentlemen, not to discuss this matter or allow
3 anyone to discuss it with you. I look forward
4 to seeing you in the morning at nine o'clock.
5 (Whereupon, the jury is excused at 5:25 p.m.)

6 THE COURT: All right. Anything further
7 for this evening from the State?

8 MR. BAILEY: Nothing we need to put on the
9 record, Your Honor. I've got some proposed
10 requests on the penalty phase, I didn't know
11 when you wanted to address that.

12 THE COURT: I was going to ask you all, I
13 wanted to see what you needed to do then I
14 wanted to tell you what I need to do.

15 MR. CUMMINGS: We've got some as far as
16 charge, but also like we did the last time I
17 think is probably going to be the way the
18 Court's going to go again about following one
19 instruction you created by using our legal
20 arguments so you feel comfortable with reading
21 them.

22 THE COURT: What I would ask that you do is
23 come on back, I wanted to give you a copy of my
24 charge at this point; therefore, you can work it
25 over the evening. And I have a specific

State vs. Bowman - Volume XXIII

1 question as I craft one portion of it, so if you
2 all will come back and work with me a little
3 bit. All right. Then we'll be in recess until
4 nine o'clock in the morning. Actually for any
5 of us, if we have any issues we'll be here at
6 8:30, but the jury will be back at 9:00.

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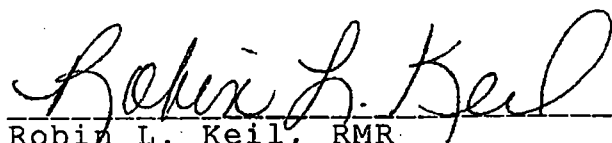
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 24th day of September 2003.



Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

4894

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) CASE NO. 01-GS-18-0348, 0349

ORIGINAL

STATE OF SOUTH CAROLINA,) VOLUME XXIV Pages 4894 - 5068

Plaintiff,) TRANSCRIPT OF RECORD
-versus-) SENTENCING PHASE
MARION BOWMAN, JR.,) May 23, 2002
Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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1 (May 23, 2002.)

2 THE COURT: Thank you all so much and
3 please be seated. Now, yesterday I had an
4 opportunity to speak to Mr. Bowman about whether
5 or not he wished to testify and instructed him
6 regarding his decision to testify or not to
7 testify.

8 And, counsel, has Mr. Bowman made his
9 decision?

10 MR. CUMMINGS: May it please the Court,
11 Judge, I would like to have Mr. Bowman stand up.

12 THE COURT: Certainly.

13 MR. CUMMINGS: And then I'll tell you first
14 and then Mr. Bowman can correct me if I'm in
15 error.

16 THE COURT: Certainly.

17 MR. CUMMINGS: Mr. Bowman has made the
18 decision with advice of counsel to not testify
19 in the sentencing phase.

20 THE COURT: Very well. And that is your
21 decision?

22 MR. BOWMAN: Yes, ma'am.

23 THE COURT: You don't have any questions
24 for me?

25 MR. BOWMAN: No, ma'am.

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1 THE COURT: You understand your right to
2 testify and your right to choose not to testify?

3 MR. BOWMAN: Yes, ma'am.

4 THE COURT: Very well. Understanding those
5 things, though, and remembering the instruction
6 yesterday, then you choose not to testify?

7 MR. BOWMAN: Yes, ma'am.

8 THE COURT: Very well. All right. Thank
9 you.

10 Anything before we bring the jury out?

11 MR. CUMMINGS: Just for housekeeping
12 matters this morning.

13 THE COURT: Certainly.

14 MR. CUMMINGS: As you know we're going to
15 have one short witness. We have an affidavit
16 which I would propose to mark ahead of time to
17 Madam Clerk from one lady. And, Judge, we
18 showed Mr. Bailey the reason for the
19 incapacitation of this young lady and I'll pass
20 this up to the Court. This is not evidence, but
21 I want to show Your Honor why we are marking it
22 my affidavit pursuant to statute.

23 THE COURT: Certainly.

24 MR. CUMMINGS: That's the reason why the
25 young lady -- we can't have anything to get her

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1 to the courthouse.

2 THE COURT: I understand. Why don't you
3 mark that as a Court's Exhibit?

4 MR. CUMMINGS: Thank you, ma'am.

5 THE COURT: As I understand there's no
6 objection to the affidavit being submitted?

7 MR. BAILEY: That's correct, Your Honor. I
8 have reviewed that and I have no objection to
9 it.

10 THE COURT: Very well. We'll mark that
11 photo as a Court's Exhibit.

12 Anything further?

13 MR. BAILEY: Nothing from the State, Your
14 Honor.

15 THE COURT: Thank you.

16 (Marked for purposes of the record was
17 Court's Exhibit 39, photograph.)

18 MR. CUMMINGS: Then, Judge, of course the
19 method of playing the tape, the chain has been
20 stipulated to. Without having to call an
21 officer or anything else what I would propose to
22 do is to play the tape, stop it at integral
23 point and let them see the tape and then put
24 that into evidence as far as the tape going that
25 was recovered from the store. I don't know if

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1 Mr. Bailey has any objections to that.

2 MR. BAILEY: Your Honor, I have no
3 objection to the chain of custody on the tape.

4 THE COURT: Very well.

5 MR. BAILEY: If that's the issue.

6 THE COURT: Very well. All right.

7 MR. CUMMINGS: I don't know if there's
8 going to be an objection to the introduction of
9 the tape, I know no argument to the chain.

10 MR. BAILEY: No objection to the chain or
11 the introduction of the tape.

12 THE COURT: Very well.

13 MR. CUMMINGS: Thank you, Judge.

14 THE COURT: Got it. There's something,
15 what?

16 MR. BAILEY: Your Honor, I'm not sure what
17 the tape shows, what the probative value of it
18 is.

19 THE COURT: I understand.

20 MR. BAILEY: And I'm not certain whether
21 anybody, if they can be identified on the tape,
22 whether that's going to require somebody to
23 explain who that is and so forth.

24 THE COURT: As I understand there would not
25 be a witness --

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1 MR. BAILEY: That's correct.

2 THE COURT: -- to explain that.

3 MR. BAILEY: Yes, ma'am.

4 THE COURT: The tape will only be what the
5 tape is.

6 MR. BAILEY: Yes, ma'am. I'll not object
7 to it for whatever, whatever it's worth.

8 THE COURT: Very well. All right.

9 Anything else that you need to put on
10 the record?

11 MR. CUMMINGS: Beg the Court's indulgence,
12 please, for a moment.

13 THE COURT: Certainly.

14 (Pause in proceedings.)

15 MR. CUMMINGS: Your Honor, in the interest
16 of justice may I approach the bench with the
17 solicitor and this lady at --

18 THE COURT: Certainly, of course.

19 (Whereupon, a bench conference was held off the
20 record.)

21 THE COURT: All right, sir.

22 MR. CUMMINGS: May it please the Court,
23 Judge. At this time, Judge, of course we're
24 going to move to -- and you'll see us busy at
25 the table here and I have a subpoena issued for

State vs. Bowman - Volume XXIV

1 a particular gentleman and have him brought to
2 the courthouse today, Judge, per my client's
3 instructions.

4 THE COURT: All right. Very well.

5 MR. CUMMINGS: Thank you, Judge.

6 THE COURT: All right. You are prepared to
7 call your first witness?

8 MR. CUMMINGS: Yes, ma'am. We are.

9 THE COURT: Very well. Let us have our
10 jury.

11 (Whereupon, the jury returns to the courtroom at
12 9:31 a.m.)

13 THE COURT: Good morning, ladies and
14 gentlemen. And I certainly hope that you had a
15 pleasant evening last evening. I understand
16 that you continued your culinary tour around
17 Dorchester County. And I certainly hope your
18 meal last evening was satisfactory for you. And
19 at this time we will continue with the defense
20 case.

21 Mr. Cummings.

22 MR. CUMMINGS: Thank you, Your Honor. We
23 would call Deputy Badillo to the stand, please.
24 (Enrique Badillo, called as a witness, having
25 first been duly sworn, is examined and testifies

Enrique Badillo - Direct Exam

1 as follows:)

2 DIRECT EXAMINATION

3 BY MR. CUMMINGS:

4 Q. As Her Honor stated you do need to speak up very
5 loudly this morning. I know you're tired. What time
6 did you get off this morning?

7 A. Six o'clock in the morning, sir.

8 Q. I'm going to ask you a little bit, obviously by
9 your uniform, where are you employed?

10 A. I work for Dorchester County Detention Center.

11 Q. All right, sir. And have you had the occasion
12 to come into contact with Mr. Marion Bowman, Jr.,
13 sir?

14 A. Yes, sir.

15 Q. In what capacity have you been in contact with
16 Mr. Bowman?

17 A. Well, I work 12-hour shift and every day we just
18 go and check in the place he had every single day for
19 one hour every other hour. Every time I just got the
20 privilege to go back there and talk to him and talk
21 to the other inmates that are back there.

22 Q. Did Mr. Bowman ever give you any difficulty at
23 all, sir?

24 A. Never.

25 Q. Has he been anything other than a gentleman to

Enrique Badillo - Direct Exam

1 you?

2 A. Yes, sir. He is just as polite as can be.

3 Q. And have you had the occasion to be around him
4 sufficiently, sir? I'm going to ask you when exactly
5 did you meet Mr. Bowman?

6 A. I met him in August, that's when I start working
7 in detention center.

8 Q. Yes, sir.

9 A. Until this day.

10 Q. And what unit is Mr. Bowman housed in because of
11 the nature of his charge?

12 A. He is in maximum security, sir.

13 Q. All right, sir. And have you had the occasion
14 to be where Mr. Bowman has been out of his cell and
15 be around you and have you work -- you work around
16 him, sir?

17 A. Yes, sir.

18 Q. All right. Would you please tell the ladies and
19 gentlemen of the jury his demeanor and his attitude
20 towards you?

21 A. Well, his attitude towards not only me, but the
22 rest of the officer is I would say it's all right.
23 He never raise his voice. And when somebody get out
24 of line over there in max he, himself, he tell the
25 people just to be polite with the officers because we

Enrique Badillo - Direct Exam

1 always try to help them in anything, you know, we
2 can.

3 Q. Have you ever noticed anything about him that
4 would cause you any concern or any care for your
5 safety?

6 A. No, sir. Never.

7 Q. Have you ever asked his assistance while back in
8 that unit for any reason?

9 A. No, sir.

10 Q. Have you ever had any issues or problems with
11 Mr. Bowman that would lead you to state that he is
12 anything other than a person who could adapt to his
13 surroundings?

14 A. No, sir.

15 MR. CUMMINGS: Beg the Court's indulgence,
16 Your Honor.

17 THE COURT: All right.

18 (Mr. Cummings and Ms. Hardee-Thomas conferring
19 with Mr. Bowman.)

20 MR. CUMMINGS: Your Honor, that's all the
21 questions we have of this gentleman, and thank
22 you.

23 CROSS-EXAMINATION

24 BY MR. BAILEY:

25 Q. You have never worked in the South Carolina

Enrique Badillo - Cross-Exam

1 Department of Corrections, have you, sir?

2 A. No, sir.

3 Q. Yes, sir. So your experience would be limited
4 to the Dorchester County Detention Center?

5 A. Yes, sir.

6 Q. All right, sir. And you do not have any
7 knowledge of the conditions and incarcerations at any
8 other facility besides the jail over here?

9 A. That is correct, sir.

10 Q. All right, sir. Are you here under subpoena?

11 A. No, sir.

12 Q. Thank you. That's all I have.

13 THE COURT: Very well. Any redirect?

14 MR. CUMMINGS: No, ma'am. Nothing else on
15 redirect.

16 THE COURT: Is this witness free to go?

17 MR. CUMMINGS: Yes, ma'am. I hope he goes
18 home and gets some sleep.

19 THE COURT: You are free to leave.

20 THE WITNESS: Thank you.

21 (Whereupon, the witness steps down from the
22 witness stand.)

23 MR. CUMMINGS: Judge, as this gentleman is
24 getting off the stand, Your Honor, pursuant to
25 our rules and by agreement and stipulation there

Enrique Badillo - Cross-Exam

1 is one affidavit which will be presented as
2 Defendant's Exhibit Number 18 into evidence,
3 Your Honor, which is an affidavit from Ms. Mary
4 Johnson in reference to Mr. Bowman. Due to her
5 health problems, incapacitation, she has
6 submitted a limited affidavit based on our
7 rules, ma'am, and, we would offer that into the
8 jury's consideration, ma'am.

9 MR. BAILEY: Without objection, Your Honor,
10 would stipulate.

11 THE COURT: Very well. Defendant's Exhibit
12 18 in evidence without objection.
13 (Entered into evidence was Defendant's Exhibit
14 18, affidavit of Mary Johnson.)

15 MR. CUMMINGS: Thank you, Judge. Your
16 Honor, we pose the next issue before you that we
17 talked about earlier.

18 THE COURT: Very well. All right.
19 Counsel, let me see you a second.
20 (Whereupon, a bench conference was held
21 off the record in the presence of the
22 jury but out of the hearing of the jury.)

23 THE COURT: Ladies and gentlemen, we are --
24 there is an additional matter that you very well
25 may need to concern yourselves. And the

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1 scheduling of a trial sometimes gets to be a
2 little bit like probably orchestrating an event,
3 play, or something of that nature. And I
4 mention that to you because we have a little
5 scheduling snafu at this point and I'm going to
6 ask you to be at ease in your jury room while we
7 wait on the individual to show up. And we are
8 hoping that it will not be particularly lengthy,
9 but those of you that wanted to take your walk
10 outside or to go ahead and smoke, I wanted you
11 to be at ease to do that because it is
12 appropriate that we allow this person to arrive
13 and that's what we're going to be doing at this
14 time, quite frankly, is we're going to have, if
15 you will, a little break at this point, but I
16 wanted you to know what this break is about and
17 I wanted you to certainly be at ease.

18 Those of you that wanted to smoke I
19 wanted you to smoke, those of you I know that
20 sometimes you've taken a stroll and I wanted you
21 to be able to do that as well. I don't think it
22 will be lengthy, I genuinely don't, but we need
23 to do that. Certainly no fault of these folks,
24 it's just one of those things that happens
25 frequently during the conduct of a trial. So we

State vs. Bowman - Volume XXIV

1 will be at ease.

2 Be mindful not to discuss this matter
3 or allow anyone to discuss it with you. I think
4 there are probably cookies, et cetera, snacks
5 for you in your jury room. If not we'll
6 certainly get those for you immediately. Thank
7 you. If you would, please, step to your jury
8 room. Remember not to discuss this matter with
9 anyone or allow anyone to discuss it with you.
10 (Whereupon, the jury retires to the jury room at
11 9:41 a.m.)

12 THE COURT: All right. Counsel, what I'd
13 like you to do is I understand the solicitor's
14 office has made a phone call. I would like you
15 to follow that up to see if his lawyer's been
16 able to locate him and then just report to me so
17 I can have an idea how long we're going to need
18 to be at ease.

19 MR. CUMMINGS: We've also sent the
20 investigator for our team, ma'am, to go.

21 THE COURT: Subpoena as well.
22 Unfortunately by the time the subpoena finds him
23 it could be hours and we cannot wait hours.

24 MR. CUMMINGS: Yes, ma'am.

25 THE COURT: But we'll certainly wait a

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1 reasonable period of time.

2 MR. BAILEY: Can I put one thing on the
3 record in regard to Mr. Felder who is
4 potentially going to be recalled by the defense?

5 THE COURT: Yes.

6 MR. BAILEY: As I advised Mr. Cummings and
7 the Court as he testified to, there was a plea
8 agreement he negotiated through Charles
9 Williams, his attorney. At the time he
10 testified we had not consummated that into a
11 written agreement. And after he testified I did
12 receive from Mr. Williams the copy of the
13 agreement that he has signed and since he'll be
14 testifying I think I ought to go ahead and
15 provide him with a copy of that now, make
16 that -- just put that on the record.

17 THE COURT: Very well.

18 MR. BAILEY: I've not even signed this yet,
19 it just came in the mail, so I'll sign that and
20 run a copy for him.

21 THE COURT: Very well. Thank you for doing
22 that, Mr. Bailey.

23 Anything further?

24 MR. CUMMINGS: No, Judge. We appreciate
25 your kindness.

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1 THE COURT: All right. We'll be in recess.
2 You all just let me know what you learn.

3 MR. CUMMINGS: Yes, ma'am.

4 (Recess, from 9:42 a.m. to 10:18 a.m.)

5
6 THE COURT: Thank you very much. And
7 please be seated. Anything before we bring the
8 jury out?

9 MR. BAILEY: No, ma'am.

10 MR. CUMMINGS: No, Judge. And we thank you
11 very much for your kindness. Just so you know,
12 Your Honor, Ms. Thomas is more electronically
13 inclined than I am so she may be standing by as
14 we're talking about things, not looking like two
15 lawyers working on the same witness.

16 THE COURT: Very well. That is fine. As I
17 understand it, Mr. Williams did not wish to be
18 present today; is that right?

19 MR. BAILEY: That's correct, Your Honor. I
20 talked to Mr. Williams on the phone, he does not
21 wish to be present, but he's given his go ahead
22 to have Mr. Felder testify again.

23 MR. CUMMINGS: Thank you, Judge.

24 THE COURT: Very well, all right. Let us
25 have our jury.

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1 (Whereupon, the jury returns to the courtroom at
2 10:18 a.m.)

3 THE COURT: All right. Ladies and
4 gentlemen, at this time we will continue with
5 the defense's case.

6 Mr. Cummings.

7 MR. CUMMINGS: Thank you, Your Honor. We
8 would call Mr. Travis Felder to the stand,
9 please.

10 THE COURT: All right. Mr. Felder, please.

11 Mr. Felder, if you will recall you've
12 already been sworn in on this matter, you can
13 come around.

14 (Travis D. Felder, called as a witness, having
15 first been duly sworn, is examined and testifies
16 as follows:)

17 DIRECT EXAMINATION

18 BY MR. CUMMINGS:

19 Q. Mr. Felder, good morning, sir.

20 A. Good morning.

21 Q. I'm going to recall your attention back to the
22 night of the 16th and 17th of February in the year
23 2001, sir. And you should recall that, you testified
24 in here a few days ago.

25 A. Yes.

Travis D. Felder - Direct Exam

1 Q. All right. And I want to bring you back to that
2 evening at approximately around the time of three
3 o'clock in the morning. Where did you go?

4 A. I went to EZ Shop.

5 Q. I'm going to ask Ms. Thomas with the Court's
6 permission to turn the tape on. I'm going to ask
7 you, Mr. Felder, if you'll, please, go down, stand
8 next to the television set for a moment.

9 THE COURT: You got to be careful not to
10 block.

11 Q. There's a pointer right there, young man. Okay.
12 If you stand close to the side of the TV set for a
13 moment and we'll start and stop the frame as needed,
14 but you won't block those nice folks. Stand right
15 there, okay?

16 A. (The witness complies.)

17 Q. All right. Can you identify the gentleman in
18 the frame up here, sir? Take a good look.

19 A. Right here?

20 Q. Yes, sir. Okay. Keep watching.

21 A. (The witness complies.)

22 Q. Okay. Mr. Felder, is that you talking to the
23 young lady there?

24 A. I guess.

25 Q. Don't guess. Is that you?

Travis D. Felder - Direct Exam

- 1 A. I can't -- I can't see it.
- 2 Q. Okay. Hold on. All right. Stop the frame. Is
- 3 that you, sir? Stop right there. Is that your face
- 4 here, sir?
- 5 A. Yeah, that's me.
- 6 Q. That's your voice?
- 7 A. Yeah.
- 8 Q. No question. What time does it say on this
- 9 machine, sir, if you can see it, two...?
- 10 A. 2:58.
- 11 Q. 2:58 in the morning, okay.
- 12 A. Uh-huh (affirmative response).
- 13 Q. No question about that, right?
- 14 THE COURT: You need to answer audibly,
- 15 please.
- 16 A. Yes. Yes, sir.
- 17 Q. And the date?
- 18 A. Seventeenth.
- 19 Q. Of February?
- 20 A. Yes, sir.
- 21 Q. 2001?
- 22 A. Yes, sir.
- 23 Q. And you were at the store there?
- 24 A. Yes, sir.
- 25 Q. Was Mr. Bowman with you?

Travis D. Felder - Direct Exam

1 A. No, sir.

2 Q. Okay. Ms. Thomas is going to fast forward this
3 for a few moments, but I don't want to block
4 anybody's view, if you'll just stand right there for
5 a moment, sir. As she's doing that, where did you go
6 after you made that purchase?

7 A. I went to Apartment [REDACTED] in the Villa Apartments.

8 Q. How far is that from this store?

9 A. Maybe a mile to two.

10 Q. And what's the name of the store you went into
11 that night?

12 A. Horizon.

13 Q. Horizon?

14 A. EZ Horizon.

15 MR. CUMMINGS: Beg the Court's indulgence,
16 Your Honor, while we fast forward this.

17 (Pause in proceedings.)

18 Q. Stop the frame. Is that you again, Mr. Felder?

19 A. No idea, I didn't see it.

20 Q. No idea. Well, let it run first then.

21 A. Yes, sir.

22 Q. Okay. What time is that, sir?

23 A. 3:14.

24 Q. 3:14. And what day of the week and the month,
25 sir?

Travis D. Felder - Direct Exam

1 A. 2-17.

2 Q. You came back to the store, what did you
3 purchase?

4 A. Gasoline.

5 Q. Gasoline. I'm going to ask you to take the
6 stand for just a moment. And if we could just leave
7 that frame on for just a minute.

8 A. (The witness complies.)

9 Q. When you testified here a few days ago did you
10 tell the ladies and gentlemen of the jury that you
11 purchased gasoline?

12 A. No, sir. I didn't.

13 Q. Did you ever tell them that you went back to the
14 store that night after testifying in here the other
15 day?

16 A. No, sir. I didn't.

17 Q. Mr. Bowman is not in that picture at all in the
18 store, is he?

19 A. No, sir. He isn't.

20 Q. Because he wasn't there in the store with you?

21 A. No, sir. He wasn't.

22 Q. And then Mr. Bowman -- it's your testimony to
23 these ladies and gentlemen of the jury, and if I'm
24 incorrect, sir, you'll correct me, it's your
25 testimony that you went back to the projects after

Travis D. Felder - Direct Exam

1 buying a dollar's worth of gas or a gallon jug of
2 gas?

3 A. No, sir. That's not my testimony.

4 Q. Did you state that you were at the projects and
5 Marion came and got you?

6 A. Yes, sir.

7 Q. You purchased the gasoline; is that correct,
8 sir?

9 A. Yes, sir.

10 Q. All right. Did you go to the projects and pick
11 Marion up?

12 A. No, sir.

13 Q. Did Marion come to you and pick you up? Did he
14 pick you up in a car?

15 A. No, sir. He came to the projects -- he came to
16 the projects in a car.

17 Q. You asked -- you were asked in here, you stated
18 that Marion, Mr. Bowman, was the person who goes
19 out -- and, again, sir, I'm going to ask you to
20 recall your memory first, your testimony in here,
21 it's your testimony that you -- Marion comes to the
22 door, you leave at 3:15; is that correct?

23 A. Somewhere like that, yes, sir.

24 Q. 3:15 you left. And you followed him to Nursery
25 Road in your car?

Travis D. Felder - Direct Exam

1 A. Yes.

2 Q. You stayed -- as I understand correctly, sir,
3 did you follow him out there, you're sitting in the
4 car, Marion gets out, brings Miss Martin back out,
5 puts her in the car, drives up a little bit, sets it
6 on fire?

7 A. Yes, sir.

8 Q. How did Marion have anything in his hand to do
9 that?

10 A. He came and got the gas.

11 Q. Where did he get the gas from?

12 A. Out of my car.

13 Q. Out of your car. So you transported the gas to
14 Nursery Road according to your testimony?

15 A. Yes.

16 Q. You did not state that the other day, did you?

17 A. No, I didn't.

18 Q. When you testified today to these folks, that's
19 you in that store buying gas at 3:14 in the morning?

20 A. Yes, sir.

21 Q. There's no question now, today, you purchased
22 the gas, correct?

23 A. Yes, sir.

24 Q. You transported the gas to Nursery Road
25 according to your testimony?

Travis D. Felder - Direct Exam

1 A. Yes, sir.

2 Q. It's now your testimony that you gave Marion the
3 gas, correct, you gave him?

4 A. Yeah.

5 Q. You drove -- let me ask you a simple question:
6 Was the gasoline in your car?

7 A. Yes.

8 Q. In what type of container?

9 A. A gas jug.

10 Q. And you're just driving down the road from
11 Branchville to Nursery Road with a jug of gas?

12 A. Yes, sir.

13 Q. Then, again, from your testimony it's Marion
14 that does this?

15 A. Yes, sir.

16 Q. No doubt about that?

17 A. Yes, sir.

18 Q. And as far as your testimony, you never
19 mentioned buying gas to these folks when you
20 testified, did you?

21 A. No, sir.

22 Q. And you were asked again by Mr. Bailey as part
23 of your deal to tell the truth to these good folks?

24 A. Yes, sir.

25 Q. I mean, that was one of the questions Mr. Bailey

Travis D. Felder - Direct Exam

1 asked you in particular about that?

2 A. Yes, sir.

3 Q. Okay. And then as far as -- I'm sorry, I
4 apologize. No question that's your face in the
5 camera, your person?

6 A. Yes.

7 Q. No question what you did now? No question what
8 you did?

9 A. No question.

10 Q. You testified you were in shock the other day.

11 A. Yes, sir.

12 Q. You were in shock when you bought the gasoline?

13 A. No, sir.

14 Q. You were in shock transporting the gasoline?

15 A. No, sir.

16 Q. You were in shock having the gas in your car
17 seeing Marion touching a human being from your
18 statements by the ankles, I believe you said?

19 A. Yes, sir.

20 Q. That when he came up to you from your testimony
21 now and asked you for a gallon of gas, you told your
22 buddy here? I'm trying to get your words out of you,
23 sir. Answer my question.

24 A. Could you repeat the question?

25 Q. You saw Marion touch Miss Martin by her ankles,

Travis D. Felder - Direct Exam

1 your testimony, I'm only using your words, and take
2 Miss Martin and drag her body out of the woods.

3 A. Yes, sir.

4 Q. Picked this person up, put it in the trunk, all
5 by himself?

6 A. Yes, sir.

7 Q. And then he just comes over to you nonchalantly
8 or in any way, walks over to you and says may I have
9 the gallon of gasoline that you just purchased?

10 A. Yes, sir.

11 Q. And you just sat there?

12 A. Yes, sir.

13 Q. Because I believe you said you stated to the
14 ladies and gentlemen of the jury that, oh, my
15 goodness, it's Kandee, your friend?

16 A. No, I didn't. I did not. I did not say that.

17 Q. What did you say, sir, when you recognized it
18 was Miss Martin? You told them that.

19 A. Yes. I asked him, I said --

20 Q. Speak up, please.

21 A. I said, "What's going on?" He said, "I killed
22 Kandee."

23 Q. You're as sure of that as the rest of the
24 testimony you gave these folks the other day in
25 giving them your complete testimony?

Travis D. Felder - Direct Exam

1 A. Yes, sir.

2 Q. So Marion had to be the one to burn the remains
3 of Miss Martin?

4 A. Yes, sir.

5 Q. And Marion had to be one that killed her because
6 you say so?

7 A. That's what he said.

8 MR. CUMMINGS: Beg the Court's indulgence.

9 (Mr. Cummings and Ms. Hardee-Thomas conferring
10 with Mr. Bowman.)

11 Q. I understand this morning you've had the
12 opportunity to speak to Mr. Bailey and myself
13 politely; have you not, sir?

14 A. Yes, sir.

15 Q. And you were brought back to the courtroom today
16 for your testimony again?

17 A. Yes, sir.

18 MR. CUMMINGS: Thank you, Your Honor.
19 That's all the questions we have of this
20 gentleman.

21 THE COURT: All right. Cross-examination.

22 MR. CUMMINGS: At the end, Your Honor, I do
23 have one issue I would like to raise.

24 THE COURT: All right.

25

Travis D. Felder - Cross-Exam

CROSS-EXAMINATION

1

2 BY MR. BAILEY:

3 Q. Mr. Felder, all I want out of you today is what
4 I asked you for the last time, is the truth. So you
5 understand that?

6 A. Yes, sir.

7 Q. All right. Now, backing up a little bit, you
8 left the Allen Murray Club in Bowman with two girls;
9 is that correct?

10 A. Yes, sir.

11 Q. You stopped at the EZ Store?

12 A. Yes, sir.

13 Q. The jury has seen about three minutes to 3:00 I
14 think you stop and you go in there and you see
15 yourself getting chips and dip?

16 A. Yes, sir.

17 Q. Where did you go then?

18 A. I went to Apartment ☐.

19 Q. Okay. Were you expecting to meet Marion Bowman
20 later on?

21 A. No, sir. I wasn't.

22 Q. At some point after you got back to Apartment ☐
23 you got a knock on the door; is that right?

24 A. Yes, sir.

25 Q. Who was at the door?

Travis D. Felder - Cross-Exam

1 A. Marion Bowman.

2 Q. Okay. And you've testified previously that he
3 asked you to step outside and you did; is that
4 correct?

5 A. Yes, sir.

6 Q. What did he tell you?

7 A. He said he want to go park a car.

8 Q. Go park a car. And you agreed to that; is that
9 correct, sir?

10 A. Yes, sir.

11 Q. Okay. And on this videotape here at about 3:17
12 you drove to the Horizon EZ Store again, the same
13 place you bought the chips and dip?

14 A. Yes, sir.

15 Q. You bought some gasoline?

16 A. Yes, sir.

17 Q. What kind of container did you put the gasoline
18 in?

19 A. In a gas jug.

20 Q. Metal jug, glass jug?

21 A. One of the red plastic jugs.

22 Q. Where did it come from?

23 A. From Mr. Bowman.

24 Q. Okay. When did Mr. Bowman give you that jug?

25 A. Before I got in my car.

Travis D. Felder - Cross-Exam

1 Q. Did he say anything to you when he gave you that
2 jug?

3 A. He said he needed 2 or \$3 worth of gas.

4 Q. Okay. All right. And so you stopped at the
5 store on the way out of town and bought that gas at
6 the request of Marion Bowman?

7 A. Yes, sir. I did.

8 Q. And what did you do with the gas after you
9 bought it, where did you put it?

10 A. I put it in my car.

11 Q. All right, sir. And as you followed Marion
12 Bowman driving Kandee Martin's car out to the Nursery
13 Road near Reevesville, what was on your mind as far
14 as what was going to happen once he got to wherever
15 he was going to park this car?

16 A. He was going to park the car, put the gas in it,
17 maybe he was going to come back to it later on
18 another day.

19 Q. Okay. All right. And then when you got out
20 there, you followed him out there, he parked Kandee's
21 car, you parked your car?

22 A. Yes, sir.

23 Q. You testified previously that he got out and he
24 dragged the body out of the woods?

25 A. Yes, sir.

Travis D. Felder - Cross-Exam

1 Q. Put it in the trunk, admitted to you that he
2 shot Kandee Martin. Is all that true?

3 A. Yes, sir.

4 Q. Okay. And what happened to the gasoline?

5 A. He came and got the gas out of my car.

6 Q. Okay. What did he do with it?

7 A. He came and got the gas out of my car, he got in
8 his car.

9 Q. And you testified earlier he told you to go make
10 a U-turn and come around back heading the other way?

11 A. Yes, sir.

12 Q. You testified you saw Marion Bowman light that
13 car on fire; is that correct?

14 A. Yes, sir.

15 Q. All right. Did that happen?

16 A. Yes, sir.

17 Q. Why didn't you tell us that the other day,
18 Mr. Felder?

19 A. Excuse me?

20 Q. Why didn't you tell us about the gasoline the
21 other day?

22 A. You didn't ask.

23 MR. BAILEY: Your Honor, that's all I have.

24 THE COURT: Redirect?

25

Travis D. Felder - Redirect Exam

REDIRECT EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q. You were asked to tell these ladies and
4 gentlemen of the jury what happened that day and Mr.
5 Bailey stood up here and you talked for a long period
6 of time. So it's not the fact that the State
7 prosecutor didn't ask you, you didn't tell them;
8 isn't that true?

9 A. Excuse me? Say that again.

10 Q. Isn't it true it's not that Mr. Bailey didn't
11 ask you, son, because the whole part of this deal is
12 you had to tell these folks everything to keep your
13 deal. You didn't tell them that, did you?

14 A. I was supposed to tell the truth. Tell the
15 truth.

16 Q. Yeah, okay. You did not tell them that you
17 bought the gasoline?

18 A. No, sir. I didn't.

19 Q. You did not tell these folks that you're driving
20 down a road with a gallon jug of gas, from your
21 statements now, driving down the road because you
22 think he's going to go park a car. Well, the purpose
23 of buying gas in a jug normally is to put the gas in
24 a car; is it not?

25 A. Yes, sir.

Travis D. Felder - Redirect Exam

1 Q. If you're asking to buy a dollar's worth of gas,
2 what does it usually mean to you when you go by a
3 dollar's worth of gas?

4 A. It was \$3 worth of gas.

5 Q. Oh, okay. You buy this gas as Mr. Bailey asked
6 you a few moments ago. This is a matter of seconds
7 according to your testimony now. You stopped the
8 car, Mr. Bowman gets out, goes to the woods, drags
9 Kandee by her feet, ankles, pulls her out, puts her
10 in the trunk, drives up a little bit and then sets
11 the car on fire because that's what you say?

12 A. Yes, sir.

13 Q. When you left the gas station, what direction do
14 you go, what direction is your car going at 3:17 in
15 the morning?

16 A. Out towards McAlhany Road.

17 Q. McAlhany Road. Did Marion ask you to take him
18 home from the projects? Isn't that why he knocked on
19 the door, he asked you to take him home?

20 A. No, sir.

21 Q. No. Because you took him out to the Nursery
22 Road because you say so; isn't that right?

23 A. Yes, sir.

24 Q. You told these folks you said that?

25 A. Yes, sir.

Travis D. Felder - Redirect Exam

1 Q. You're riding around with a gallon or two or
2 three gallons worth of gas in your front seat and you
3 think he's just going to park a car?

4 A. Yes, sir.

5 Q. Are you as sure about all your testimony about
6 what you said today as what you left out to those
7 folks the other day?

8 A. Excuse me?

9 Q. Are you as sure today about your testimony,
10 exactly as sure about your testimony today as what
11 you left out the other day for those good folks to
12 hear?

13 A. Yes.

14 MR. CUMMINGS: That's all the questions of
15 this gentleman.

16 THE COURT: All right. Any redirect?

17 MR. BAILEY: No, ma'am.

18 THE COURT: Is this witness free to leave?

19 MR. CUMMINGS: Yes, ma'am, Judge.

20 THE COURT: You are free to go.

21 (Whereupon, the witness steps down from the
22 witness stand.)

23 THE COURT: All right then, Mr. Cummings,
24 if you would please call your next witness.

25 MR. CUMMINGS: May it please the Court,

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1 Judge, as I said we may have a matter. Your
2 Honor, I would move to mark this tape into
3 evidence, Your Honor, Defense Exhibit Number 19.

4 MR. BAILEY: Without objection.

5 THE COURT: Without objection. Defense
6 Exhibit Number 19 in evidence without objection.
7 (Entered into evidence was Defendant's Exhibit
8 19, videocassette tape.)

9 MR. CUMMINGS: Your Honor, at this point
10 the defense would rest, please.

11 THE COURT: Will there be any reply?

12 MR. BAILEY: No, ma'am.

13 THE COURT: Very well. Ladies and
14 gentlemen, you have now heard the witnesses and
15 received the evidence which you will in this
16 phase of this trial. That signifies to me that
17 there are matters which I must take up outside
18 your presence; therefore, I'm going to ask you
19 to please step to your jury room. Do not
20 discuss this matter and do not allow anyone to
21 discuss it with you. We will be with you
22 shortly. And when we are together on our next
23 occasion we will be together to hear the
24 arguments of counsel and then my charge on the
25 law. Please step to your jury room.

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1 (Whereupon, the jury retires to the jury room at
2 10:44 a.m.)

3 THE COURT: First of all, Mr. Cummings, you
4 said you had a matter.

5 MR. CUMMINGS: That was it, Judge. I
6 wanted to state we would rest and of course make
7 my legal argument before the Court again
8 renewing my motions, again, Judge, and just
9 trying to give Your Honor the preface ahead of
10 time.

11 THE COURT: Yes, sir. Let me hear from
12 you.

13 MR. CUMMINGS: My arguments, again, as to
14 the aggravating factors being submitted to the
15 jury, Your Honor, for their consideration as to
16 punishment, Your Honor, I'll start off again
17 with kidnapping. You've heard my argument, you
18 read everything. I think, Judge, now
19 particularly in light of listening to Mr. Felder
20 again, as well as other evidence taken in
21 totality, again, Judge, we respectfully renew
22 our motion for a directed verdict or to prohibit
23 the Court in allowing the aggravating factor to
24 be presented to the jury because, Your Honor,
25 there has been no evidence presented that would

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1 show kidnapping beyond a reasonable doubt that
2 any reasonable jury could infer from, ma'am, and
3 that we would ask Your Honor to direct that
4 verdict and to prohibit or not allow the
5 aggravating factor of kidnapping to go back,
6 ma'am.

7 THE COURT: Thank you very much. I'll
8 incorporate my ruling from the other day and
9 respectfully deny your motion on the same basis
10 and on the same -- on those same cases that I
11 cited I believe yesterday and would respectfully
12 deny your motion for a directed verdict and note
13 your exception for the record.

14 MR. CUMMINGS: Thank you, ma'am. And then
15 as to the second one, criminal sexual conduct in
16 any degree, Your Honor, respectfully, I believe
17 there's not any evidence at all of any criminal
18 sexual activity, there's been no proof of any
19 nonconsensual criminal sexual conduct on behalf
20 of Mr. Bowman with Miss Martin.

21 Your Honor, the reason why I state
22 that is we have certain degrees of criminal
23 sexual conduct and I know that we have studied
24 this, everybody, both Mr. Bailey, the defense,
25 Your Honor has studied this in great detail

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1 about the charge of criminal sexual conduct and
2 I believe humbly, Your Honor, the State has the
3 burden of proving some degree of criminal sexual
4 conduct and the fact that it was nonconsensual
5 sexual activity in any presentation of evidence.
6 There's only been the matters presented here and
7 evidence that they found some DNA of Mr. Bowman
8 with this lady, Your Honor.

9 And at that point, Judge, there's no
10 possible way you could charge any degree of
11 criminal sexual conduct with reasonable degree
12 of certainty or that this jury could find any
13 degree of criminal sexual conduct beyond a
14 reasonable doubt and, Your Honor, I would ask
15 that you not present or allow that evidence to
16 be presented as an aggravating factor on behalf
17 and against Mr. Bowman.

18 THE COURT: Very well. Do you want to
19 speak to that, Mr. Bailey, the degrees, that's a
20 little different than --

21 MR. BAILEY: Yes, ma'am. Your Honor, of
22 course the evidence with regard to criminal
23 sexual conduct is circumstantial evidence and we
24 discussed State vs. Butler which is on all fours
25 with this. As far as the degrees would go in I

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1 would defer to the Court, Your Honor. I think
2 the only one that would be inconsistent with any
3 circumstantial evidence the jury might reach
4 would be the latter part of the third degree,
5 the death issue third degree with criminal
6 sexual conduct.

7 The State's position is CSC should be
8 submitted with specific wording in the charge.
9 If you want to just charge generic CSC I would
10 have no objection to that. If you wanted to get
11 the entire first degree, second degree, and the
12 appropriate portion of the third degree I would
13 have no objection to that either at the Court's
14 discretion.

15 THE COURT: Very well.

16 MR. CUMMINGS: Judge, the only dilemma I
17 have, of course Ms. Thomas and I discussed this,
18 in charging all three it appears almost -- and,
19 again, from practice and pattern of being around
20 a long time the true professionals that we argue
21 all the time, is that you start reading off the
22 first and a lesser included offense is second
23 and a lesser included offense may be third
24 depending on the characteristics, and by that
25 time the jury's hearing, respectfully, ma'am, if

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1 you don't find one let's look at two, if you
2 don't find two let's look at three. Then we
3 have the general catch-all statute if Your Honor
4 just includes that generic charge also.

5 So on behalf of Mr. Bowman I would
6 respectfully state that, Judge, and also for the
7 record, that I know we're going to have to
8 tailor this charge about presenting it back in
9 aggravation in a particular manner and I would
10 ask the Court even as we're talking right now to
11 take any consideration that we may need again to
12 go over what you all believe would be the proper
13 presentation back to this jury on the
14 aggravating factor of criminal sexual conduct,
15 Judge.

16 THE COURT: Let me say to you that on the
17 basis of State vs. Butler just as I did I'm
18 going to submit criminal sexual conduct as an
19 aggravating circumstance. And I know that at
20 this moment my charge has the generic, if you
21 will, the general CSC charge, criminal sexual
22 conduct charge. However, if you request
23 anything additional to that I will charge that.

24 MR. CUMMINGS: No, ma'am. And that's why I
25 presented that to Your Honor, respectfully,

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1 Judge.

2 THE COURT: Yes, sir.

3 MR. CUMMINGS: In that the generic charge
4 is what I would request and, again, over my
5 objection, Your Honor, respectfully about
6 it's --

7 THE COURT: I do understand that, that you
8 don't think it ought to be in there at all.

9 MR. CUMMINGS: Correct.

10 THE COURT: Very well.

11 MR. CUMMINGS: And I'll move on now.

12 THE COURT: All right, sir.

13 MR. CUMMINGS: As to the aggravating factor
14 of robbery, again, while armed with a deadly
15 weapon, it would be the same argument we made
16 the other day and I won't speak longer, Judge.
17 And, again, we emphasize at the end of the
18 State's case and the of the defendant's case
19 now, that there's been no evidence at all of a
20 robbery while armed with a deadly weapon at all
21 and we would ask that you not submit that,
22 Judge, and direct a verdict of the fact that my
23 client would not be facing that aggravating
24 factor, ma'am.

25 And as to larceny while armed with a

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1 deadly weapon, Judge, there's been no evidence
2 in the record of any property being taken,
3 there's been no evidence, again, Your Honor,
4 respectfully, that he was armed with a deadly
5 weapon when any larceny took place. And I know,
6 Your Honor, it's an aggravating factor that,
7 respectfully, Judge, that should not be
8 submitted to the jury and we would ask you to
9 bar that from the jury again. That would be the
10 four, Your Honor, I've covered and I believe
11 I've stated that now twice and I hope I've not
12 been too repetitive here, Your Honor.

13 THE COURT: No, sir. Not at all. And on
14 the same basis in incorporating my rulings from
15 the other day I would respectfully deny your
16 motion for a directed verdict as to both robbery
17 and larceny, both of them armed with a deadly
18 weapon, and I will submit all four of the
19 aggravating circumstances over the objection of
20 the defense.

21 MR. CUMMINGS: Normally ask you about
22 mitigating factors, I thank Your Honor for
23 allowing me to stand back up and state that. We
24 have requested certain mitigating issues, Judge,
25 to include, of course, the last one the jury may

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1 consider any mitigating factor or mercy without
2 any reason.

3 THE COURT: Yes, sir.

4 MR. CUMMINGS: Reading Your Honor's charge
5 it actually states it out more specific than my
6 listing them out just under what I call the head
7 notes of the statute. We had asked for
8 particularly, Judge, in our number two submitted
9 to the Court for the capacity of the defendant
10 to appreciate the criminality of his conduct or
11 to conform his conduct to the requirements of
12 law was substantially impaired!

13 Your Honor, respectfully, we have
14 requested that. I know that there's a basis in
15 law that has to be met to the satisfaction of
16 the Court to ask that, but, again, on behalf of
17 Mr. Bowman he has asked that we submit that to
18 you for consideration of mitigation. And
19 because of certain issues that were part of
20 preliminary matters, certain issues that were
21 part of the record that my client would be
22 placed in greater jeopardy, Your Honor, if we
23 had presented anything else yesterday as to the
24 issues surrounding mitigating factor number two.

25 But, therefore, Judge, I believe,

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1 respectfully, as we read that the defendant
2 should not be denied the right according to our
3 statutory scheme to seek the mitigating factors
4 and, again, Judge, as the sole ruler of the
5 evidence to find if we met any part of that to
6 allow that to be considered by the jury since
7 his life is at stake, ma'am.

8 THE COURT: Thank you very much.

9 MR. CUMMINGS: Other than that, Judge, I
10 don't believe there's any other mitigating
11 factors, but I know the Court would ask
12 Mr. Bowman if he wanted to have these three
13 mitigating factors, Judge, as Your Honor has
14 found. And then of course the fourth one asked
15 for by the defendant subject to Your Honor's
16 ruling.

17 THE COURT: Very well. All right. Yes,
18 sir. Do you need to speak to any of that, Mr.
19 Bailey?

20 MR. BAILEY: No, ma'am.

21 THE COURT: Very well.

22 MR. BAILEY: At this point I don't. I
23 would just say that Mr. Cummings apparently has
24 made a tactical decision as part of this trial
25 strategy, and not to get into any potential

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1 diagnosis of any mental health conditions that
2 could create some impairment in his ability to
3 conform his conduct. Since that's not before
4 the jury I think it would be inappropriate to
5 submit that as a mitigating circumstance,
6 there's no evidential basis for it.

7 THE COURT: Thank you. With regards to the
8 mitigating circumstance that was listed as
9 number two and that was, of course, the capacity
10 mitigating circumstance, I do believe that there
11 would be some evidence required to show that
12 Mr. Bowman lacked the capacity to conform his
13 conduct and lacked -- so -- and I find the
14 record void of any evidence to that. And if
15 I've missed anything, please let me know, but I
16 think, as you say, you've made a decision not
17 to -- such that perhaps that was considered, but
18 is not before the Court, has not been submitted
19 to the Court, but certainly -- I certainly would
20 submit the other mitigating circumstances
21 requested.

22 And, of course, number three is listed
23 as any other mitigating factors that the jury
24 may find and then also tell the jury that they
25 may also consider any nonstatutory mitigating

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1 circumstances that they wish and then the other
2 charges which you have seen that even finding --
3 even if this jury was to find an aggravating
4 circumstance beyond a reasonable doubt, they can
5 choose life or even in the face of finding an
6 aggravating circumstance or they don't need any
7 reason for recommending life.

8 MR. CUMMINGS: Yes, ma'am. Again, I wanted
9 Mr. Bowman to hear that from the bench as part
10 of your charge, Your Honor.

11 THE COURT: Certainly.

12 MR. CUMMINGS: You would charge what we
13 would call the catch-all mitigating factor,
14 respectfully. And, Judge, please, respectfully
15 over my objection as to the capacity of the
16 defendant to conform I noticed Your Honor -- I
17 did not stand up right immediately thereafter
18 and object, I apologize for that.

19 THE COURT: That's quite all right. I can
20 certainly understand the exception of the dense.

21 MR. CUMMINGS: I have also advised my
22 client that he has a statutory right to make a
23 statement to the jury at the -- we've ended now,
24 at the conclusion, Your Honor, before you charge
25 and at the conclusion as Your Honor sees fit in

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1 time here. I told my client that he can
2 formulate, or whatever word we want to call it
3 here, he can guide himself by the evidence as
4 presented both in the case in chief, the guilt
5 phase thing, and the penalty phase here in his
6 statement to the jury on behalf of his life.

7 And I've told him that he is subject,
8 if Mr. Bailey raises an objection about an
9 issue, subject to Her Honor's rules and
10 regulations and that his conduct must conform to
11 the guidelines as Your Honor states just as we
12 as officers of the Court.

13 But, Your Honor, I know, again, I
14 state this on the record, my client is a young
15 man, he has not finished high school and I know
16 the Court would show leniency and, again,
17 temperance in Mr. Bowman if he makes an error,
18 how to instruct him how to do it. I'm willing
19 to stand by him, stand anywhere near, Your
20 Honor, wherever you want me to be as he speaks
21 to the jury.

22 THE COURT: Very well. A couple of things.
23 As I understand it from the defense the defense
24 does wish for me to submit that the defendant
25 has no significant history of prior criminal

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1 conviction involving the use of violence against
2 another person, that one the defense wishes to
3 be submitted.

4 MR. CUMMINGS: Yes, ma'am.

5 THE COURT: Along with the age or mentality
6 of the defendant at the time of the crime.

7 MR. CUMMINGS: Correct, Judge.

8 THE COURT: I will submit those as well as
9 number three, which is or any other mitigating
10 factors that the jury may find.

11 MR. CUMMINGS: Yes, ma'am. And then the
12 last one you're basically summing up all the
13 issues the jury could find mercy.

14 THE COURT: Yes. And, Mr. Bowman, if I
15 may -- thank you, Mr. Bowman. I wanted to tell
16 you that, again, that under the law under our
17 Code of Laws at Section 16-3-28, the law says
18 that in any criminal trial where the maximum
19 penalty is death or in a separate sentencing
20 proceeding following the trial, and that's this,
21 of course, is a separate sentencing proceeding,
22 that you and your lawyers have the right to make
23 the last argument. And your lawyers have
24 discussed this with you?

25 MR. BOWMAN: Yes, ma'am.

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1 THE COURT: All right. And you understand
2 that normally the State gets the right to make
3 the last argument. However, because of this
4 type of trial and because the State is seeking
5 the imposition of the death penalty, you and
6 your lawyers have the right to make the last
7 argument. And do you understand that?

8 MR. BOWMAN: Yes, ma'am.

9 THE COURT: All right. You do understand
10 that if you make the last argument, Mr. Bowman,
11 that obviously, like the other people who are
12 making final arguments, you must be bound by the
13 evidence and you could not testify in effect
14 before the jury. You could simply make an
15 argument within the record that is established
16 in the case. Do you understand that?

17 MR. BOWMAN: Yes, ma'am.

18 THE COURT: In other words, you are to
19 stick to the facts and the inferences which
20 reasonably can be drawn from those facts. You
21 understand that?

22 MR. BOWMAN: Yes, ma'am.

23 THE COURT: Rather than testifying, if you
24 will. You understand that?

25 MR. BOWMAN: Yes, ma'am.

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1 THE COURT: All right. Now, obviously, and
2 your lawyers I'm sure will go over with you your
3 right, your ability to talk to this jury about
4 penalty, you certainly are entitled to do that
5 and I want you to feel free to do that,
6 Mr. Bowman. Do you understand what I'm saying?

7 MR. BOWMAN: Yes, ma'am.

8 THE COURT: In other words, I want you to
9 feel very free to discuss with them as you
10 choose to discuss with them the issue of
11 penalty.

12 MR. BOWMAN: Yes, ma'am.

13 THE COURT: In other words, I want you to
14 stick within the facts that have been presented
15 in the trial, but when it comes to the issue of
16 penalty itself I want you to feel free to
17 discuss that with them freely.

18 MR. BOWMAN: Yes, ma'am.

19 THE COURT: All right, sir. Now, are you
20 fully aware of your right to make the last
21 argument?

22 MR. BOWMAN: Yes, ma'am.

23 THE COURT: All right. In regards to the
24 last argument any other questions, Mr. Bailey?

25 MR. BAILEY: Nothing from the State at this

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1 time, Your Honor.

2 THE COURT: And, Mr. Bowman, have you
3 decided whether you will make a final argument
4 at this time?

5 MR. BOWMAN: I said not yet.

6 THE COURT: All right. Very well. Well,
7 you have a little longer to make that decision.

8 MR. BOWMAN: Yes, ma'am.

9 THE COURT: All right, sir. I will note --
10 thank you, Mr. Bowman. What I will -- I think
11 that the way to proceed is that you obviously
12 will know whether or not Mr. Bowman chooses to
13 make the final argument, I gather that both of
14 you will argue and then whoever of the -- maybe
15 the first of you who argues will be -- will have
16 the word from Mr. Bowman. When the second is
17 finished if you will just simply stand and let
18 me know that Mr. Bowman will now argue or, Your
19 Honor, that concludes the defense's arguments,
20 if you will do that for me.

21 MR. CUMMINGS: Thank you, Judge.

22 THE COURT: That will be a signal to me.

23 Now, Mr. Bowman, in that we are going
24 to be proceeding that way, be mindful that your
25 choice to argue the final argument or not argue

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1 the final argument must be freely and
2 voluntarily made. Do you understand that?

3 MR. BOWMAN: Yes, ma'am.

4 THE COURT: And do you believe that you
5 will make that decision freely and voluntarily?

6 MR. BOWMAN: Yes, ma'am.

7 THE COURT: All right, sir. And you know
8 that's your decision to make?

9 MR. BOWMAN: Yes, ma'am.

10 THE COURT: You can talk to your lawyers
11 about that, or your friends, or family, or
12 anyone that you feel that you want to talk to
13 about that, but you understand that that is your
14 decision?

15 MR. BOWMAN: Yes, ma'am.

16 THE COURT: All right. And irrespective of
17 what that decision is you feel that you will be
18 able to make that decision freely and
19 voluntarily?

20 MR. BOWMAN: Yes, ma'am.

21 THE COURT: And do you understand what I'm
22 asking your lawyers to do, is just at that -- at
23 the moment where that comes in the trial that
24 they will either introduce you in terms of
25 making the argument or tell me that that is the

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1 final argument?

2 MR. BOWMAN: Yes, ma'am.

3 THE COURT: You understand that procedure?

4 MR. BOWMAN: Yes, ma'am.

5 THE COURT: And do you think that that will
6 allow you a little more time to make up your
7 mind whether or not you wish to argue?

8 MR. BOWMAN: Yes, ma'am.

9 THE COURT: All right, sir. All right.
10 And if you have any concerns at that time just
11 ask your lawyers to approach and we'll handle it
12 then, okay?

13 MR. BOWMAN: Yes, ma'am.

14 THE COURT: Very well. Thank you.

15 MR. CUMMINGS: Thank you, Judge.

16 THE COURT: All right. Any other motions
17 at this time?

18 MR. BAILEY: None from the State, Your
19 Honor.

20 MR. CUMMINGS: Nothing else from the
21 defense, Judge, that we can think at this time.

22 THE COURT: Very well. What we will do
23 then is I know you all are going to need a few
24 moments to take a break and we'll take what's
25 known as a comfort break, but I also wanted to

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1 have an opportunity to pull the television down,
2 we're going to need that space. If you need
3 easels, to put up easels, but I did want an
4 opportunity to move the lectern around and I
5 wanted to have an opportunity really to look at
6 the way that we are, we have configured the
7 courtroom.

8 Ms. Keil, let me see you a minute as
9 well. All right. We'll be in recess for about
10 five minutes.

11 MR. CUMMINGS: Thank you, Judge.

12 (Recess, from 11:03 a.m. to 11:23 a.m.)

13 THE COURT: All right. Anything before we
14 bring our jury out for closing arguments and
15 charge?

16 MR. BAILEY: Nothing from the State.

17 MR. CUMMINGS: Nothing from the defense,
18 Judge.

19 THE COURT: Once the closing arguments have
20 begun I do not want anyone entering the
21 courtroom, I do not want these lawyers
22 distracted or disturbed during these closing
23 arguments. In between the closing arguments
24 they're welcome to come in quickly and sit at
25 the back. Thank you very much, all right.

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1 If you'll announce in the back for me,
2 ma'am, if anyone is coming in for closing
3 arguments let them come in now just so anyone
4 that wants to come in will know. Thank you.

5 Let us have our jury.

6 (Whereupon, the jury returns to the courtroom at
7 11:23 a.m.)

8 THE COURT: Ladies and gentlemen, I want to
9 tell you a little bit about how we will be
10 proceeding. You will first hear the closing
11 arguments from the State and then you will hear
12 the closing arguments on behalf of the defense.
13 When the closing arguments are concluded we will
14 have a very short break and then I will deliver
15 to you the charge or the instruction on the law
16 and there will be another very short break and
17 then you will receive this matter for your
18 deliberations.

19 Ladies and gentlemen, I'm going to ask
20 that you draw close as we listen to the closing
21 arguments.

22 Mr. Bailey.

23 MR. BAILEY: Thank you, Your Honor.

24 I want to thank you all one final time
25 for your attention, I ask you to bear with us

Closing Argument by Mr. Bailey

1 all a little longer as we finish up these
2 proceedings.

3 Jury service in a case of this
4 magnitude is the highest duty that any citizen
5 can render their state, their county, and their
6 country except military service in time of war,
7 so I think I can speak for everybody at this
8 courthouse that we appreciate your service
9 beyond any way that we can express it.

10 This is the last opportunity I'll have
11 to speak to you and as previously somebody has
12 to go first, somebody goes last and so whatever
13 I say I've got to go ahead and get it out now.
14 So if I go on too long I apologize in advance.

15 At this stage of the proceedings
16 guilt, innocence are no longer an issue. Each
17 of you has found Marion Bowman, Jr. guilty of
18 murder of Kandee Martin with malice aforethought
19 and arson. He sits before you a convicted
20 murderer. And that cloak of innocence, that
21 presumption of innocence that he had when we
22 started this trial has been removed by the
23 evidence from that witness stand. Your sole
24 duty, ladies and gentlemen, as you know at this
25 point is to determine the appropriate