

VOLUME SEVEN OF NINE

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Lee S. Alford, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

RECORD ON APPEAL

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INDEX

INDEX.....	i

VOLUME ONE

TRIAL TRANSCRIPT NOVEMBER 1, 2007	1

TESTIMONY

CARLISLE MCNAIR

Direct Examination by Mr. Starnes.....	8

GWEN BAILEY

Direct Examination by Mr. Starnes.....	16
Cross Examination by Mr. Gowdy.	27
Redirect Examination by Mr. Starnes.....	32
Recross Examination by Mr. Gowdy.....	38
Redirect Examination by Mr. Starnes.....	40

DETECTIVE DARREN AMICK

Direct Examination by Mr. Starnes.....	45
Cross Examination by Mr. Gowdy	53

DR. JOEL SEXTON

Direct Examination by Mr. Starnes.....	56
Cross Examination by Mr. Balsa.....	67
Redirect Examination by Mr. Starnes.....	73

DONALD GIRNDT

Direct Examination by Mr. Starnes.....	74
Cross Examination by Mr. Coler	81
Redirect Examination by Mr. Starnes.....	90
Recross Examination by Mr. Coler.....	94
Redirect Examination by Mr. Starnes.....	97

SCOTT TAYLOR

Direct Examination by Mr. Starnes.....	99
Cross Examination by Mr. Gowdy	153
Redirect Examination by Mr. Starnes.....	174

GWEN BAILEY

Direct Examination by Mr. Starnes.....	205
Cross Examination by Mr. Coler	208

TRIAL TRANSCRIPT NOVEMBER 5, 6, 7, 8, 9, 12, 13, 14, 15, 16 AND 17, 2007	301
JURY VENIRE PANEL SWORN	342
JURY VENIRE QUALIFICATIONS.....	342
DONNA L. KEISLER, #143	
Voir Dire Examination by the Court.....	448
Voir Dire Examination by Mr. Starnes.....	453
JAMES R. STONE, #268	
Voir Dire Examination by the Court.....	456
Voir Dire Examination by Mr. Gowdy.....	459
Voir Dire Examination by Mr. Starnes.....	460
THEO E. ELMORE, III, #82	
Voir Dire Examination by the Court.....	464
Voir Dire Examination by Mr. Gowdy.....	469
Voir Dire Examination by Mr. Starnes.....	471
Re-Voir Dire Examination by Mr. Gowdy	473
Re-Voir Dire Examination by Mr. Starnes.....	474
Re-Voir Dire Examination by the Court.....	479
Re-Voir Dire Examination by Mr. Starnes	481
DIANE F. TURKETT, #288	
Voir Dire Examination by the Court.....	497

VOLUME TWO

DIANE F. TURKETT, #288	
Voir Dire Examination by Mr. Gowdy	501
Voir Dire Examination by Mr. Starnes.....	502
PAULA MALLORY, #171	
Voir Dire Examination by the Court.....	507
Voir Dire Examination by Mr. Gowdy.....	511
Voir Dire Examination by Mr. Starnes.....	515
CLAUDE WESSINGER, # 305	
Voir Dire Examination by the Court.....	520
Voir Dire Examination by Mr. Gowdy	254
Voir Dire Examination by Mr. Starnes.....	526
JEAN PAQUIN, # 213	
Voir Dire Examination by the Court.....	530
Voir Dire Examination by Mr. Bulsa.....	535
Voir Dire Examination by Mr. Starnes.....	537

Re-Voir Dire Examination by Mr. Bulsa.....	540
Re-Voir Dire Examination by Mr. Starnes	541
EVERETT ERNST, # 84	
Voir Dire Examination by the Court.....	543
Voir Dire Examination by Mr. Bulsa.....	547
Voir Dire Examination by Mr. Starnes	548
H.L. MCCART, JR., #176	
Voir Dire Examination by the Court.....	564
Voir Dire Examination by Mr. Bulsa.....	569
Voir Dire Examination by Mr. Starnes	570
VERONICA SNOW, #259	
Voir Dire Examination by the Court.....	574
Voir Dire Examination by Mr. Starnes	577
RODNEY HEATLY, #117	
Voir Dire Examination by the Court.....	580
Voir Dire Examination by Mr. Bulsa.....	584
Voir Dire Examination by Mr. Starnes	588
Re-Voir Dire Examination by Mr. Bulsa.....	590
Re-Voir Dire Examination by Mr. Starnes	592
ERIC PANTSARI, #212	
Voir Dire Examination by the Court.....	594
Voir Dire Examination by Mr. Bulsa.....	599
Voir Dire Examination by Mr. Starnes	600
DANIEL WALLACE, #298	
Voir Dire Examination by the Court.....	607
Voir Dire Examination by Mr. Coler	612
Voir Dire Examination by Mr. Starnes	613
Re-Voir Dire Examination by Mr. Coler	615
Re-Voir Dire Examination by Mr. Starnes	616
CATHERINE JOHNSON, #135	
Voir Dire Examination by the Court.....	618
Voir Dire Examination by Mr. Coler	625
Voir Dire Examination by Mr. Starnes	626
CHARLES PHIPPS, #218	
Voir Dire Examination by the Court.....	629
JO ANN KAPPAUF, #141	
Voir Dire Examination by the Court.....	634
Voir Dire Examination by Mr. Gowdy	640
Voir Dire Examination by Mr. Starnes	643
Re-Voir Dire Examination by Mr. Gowdy	646

CHARLES ROBERSON, #233

Voir Dire Examination by the Court.....	649
Voir Dire Examination by Mr. Gowdy	654
Voir Dire Examination by Mr. Starnes	655

LAURA ALEXANDER, #3

Voir Dire Examination by the Court.....	659
Voir Dire Examination by Mr. Coler	664
Voir Dire Examination by Mr. Starnes	665

EMMA SUTTON, #273

Voir Dire Examination by the Court.....	713
Voir Dire Examination by Mr. Gowdy	719
Voir Dire Examination by Mr. Starnes	722

HARRY JOHNSON, Jr. # 136

Voir Dire Examination by the Court.....	727
Voir Dire Examination by Mr. Gowdy	732
Voir Dire Examination by Mr. Starnes	734

DEANNA LUCAS, #165

Voir Dire Examination by the Court.....	739
Voir Dire Examination by Mr. Gowdy	744
Voir Dire Examination by Mr. Starnes	745

BERNICE SMITH, #255

Voir Dire Examination by the Court.....	750
Voir Dire Examination by Mr. Gowdy	754
Voir Dire Examination by Mr. Starnes	757

STEVEN HANES, #112

Voir Dire Examination by the Court.....	778
Voir Dire Examination by Mr. Gowdy	783
Voir Dire Examination by Mr. Starnes	784

BYRON SONNER, #260

Voir Dire Examination by the Court.....	788
Voir Dire Examination by Mr. Starnes	792

MARTI SOX, #260

Voir Dire Examination by the Court.....	794
Voir Dire Examination by Mr. Coler	799
Voir Dire Examination by Mr. Starnes	804
Re-Voir Dire Examination by Mr. Coler	806

DAVID BUTZ, #40

Voir Dire Examination by the Court.....	809
Voir Dire Examination by Mr. Coler	814

Voir Dire Examination by Mr. Starnes	816
THOMAS ZOBEL, JR., #325	
Voir Dire Examination by the Court.....	822
Voir Dire Examination by Mr. Coler.....	827
Voir Dire Examination by Mr. Starnes	829
MURRAY JEFFERS, #134	
Voir Dire Examination by the Court.....	832
Voir Dire Examination by Mr. Coler.....	838
Voir Dire Examination by Mr. Starnes	840
KELLYDAWN CANADAY GAMBLE, #134	
Voir Dire Examination by the Court.....	844
Voir Dire Examination by Mr. Coler.....	850
Voir Dire Examination by Mr. Starnes	853
Re-Voir Dire Examination by Mr. Coler.....	856
Re-Voir Dire Examination by Mr. Starnes	858
WILLIAM CAMILIN, # 42	
Voir Dire Examination by the Court.....	862
Voir Dire Examination by Mr. Coler.....	867
Voir Dire Examination by Mr. Starnes	868
CHARLES MCKINNEY, #182	
Voir Dire Examination by the Court.....	874
Voir Dire Examination by Mr. Bulsa.....	879
Voir Dire Examination by Mr. Starnes	880
JAMES FARRELL, #87	
Voir Dire Examination by the Court.....	885
Voir Dire Examination by Mr. Bulsa.....	890
Voir Dire Examination by Mr. Starnes	892
Re-Voir Dire Examination by Mr. Bulsa.....	896
THOMAS SHUMPERT, #251	
Voir Dire Examination by the Court.....	904
Voir Dire Examination by Mr. Bulsa.....	909
Voir Dire Examination by Mr. Starnes	911
Re-Voir Dire Examination by the Court.....	914
PEGGY LEAPHART, #158	
Voir Dire Examination by the Court.....	917
Voir Dire Examination by Mr. Bulsa.....	923
Voir Dire Examination by Mr. Starnes	925
Re-Voir Dire Examination by Mr. Bulsa.....	929
Re-Voir Dire Examination by Mr. Starnes	930

FRANK TYLER, #291	
Voir Dire Examination by the Court.....	933
Voir Dire Examination by Mr. Balsa.....	937
Voir Dire Examination by Mr. Starnes	939
BENNIE BASS, #14	
Voir Dire Examination by the Court.....	946
Voir Dire Examination by Mr. Gowdy	950
Voir Dire Examination by Mr. Starnes	952
EARL MCPHERSON, #184	
Voir Dire Examination by the Court.....	956
Voir Dire Examination by Mr. Gowdy	958
EUGENE PETRY, #216	
Voir Dire Examination by the Court.....	961
Voir Dire Examination by Mr. Gowdy	967
Voir Dire Examination by Mr. Starnes	970
IN-CHAMBERS HEARING CONFERENCE CALL WITH DR. ANDREW MASON	977

VOLUME THREE

MARGARET ALBERT, #2	
Voir Dire Examination by the Court.....	1012
BENNIE BETTIS, #19	
Voir Dire Examination by the Court.....	1017
Voir Dire Examination by Mr. Gowdy	1022
Voir Dire Examination by Mr. Starnes	1025
DARREN HAMELINCK, #109	
Voir Dire Examination by the Court.....	1030
Voir Dire Examination by Mr. Coler.....	1034
Voir Dire Examination by Mr. Starnes	1035
PATRICIA OUTLAW, #210	
Voir Dire Examination by the Court.....	1040
Voir Dire Examination by Mr. Starnes	1043
TINA RIVERS, #232	
Voir Dire Examination by the Court.....	1045
Voir Dire Examination by Mr. Gowdy	1050
JOSEPHINE MENIE, #185	
Voir Dire Examination by the Court.....	1053
Voir Dire Examination by Mr. Coler.....	1058
Voir Dire Examination by Mr. Starnes	1059

Re-Voir Dire Examination by Mr. Coler	1063
KIMBERLY TEBEAU, #281	
Voir Dire Examination by the Court.....	1071
Voir Dire Examination by Mr. Bulsa	1076
Voir Dire Examination by Mr. Starnes	1077
Re-Voir Dire Examination by the Court.....	1081
NANCY ROSS, #238	
Voir Dire Examination by the Court.....	1084
Voir Dire Examination by Mr. Bulsa	1089
Voir Dire Examination by Mr. Starnes	1092
DONNA RICHARDSON, #229	
Voir Dire Examination by the Court.....	1097
CYNTHIA BROWNLEE, #34	
Voir Dire Examination by the Court.....	1104
Voir Dire Examination by Mr. Gowdy	1110
Voir Dire Examination by Mr. Starnes	1111
MICHAEL SAWYER, #245	
Voir Dire Examination by the Court.....	1116
Voir Dire Examination by Mr. Gowdy	1124
Voir Dire Examination by Mr. Starnes	1127
LINDA HAIR, #108	
Voir Dire Examination by the Court.....	1130
Voir Dire Examination by Mr. Gowdy	1135
Voir Dire Examination by Mr. Starnes	1137
NANCY BEYM, #21	
Voir Dire Examination by the Court.....	1141
Voir Dire Examination by Mr. Gowdy	1146
Voir Dire Examination by Mr. Starnes	1149
ALONZO CHAVIS, #51	
Voir Dire Examination by the Court.....	1152
Voir Dire Examination by Mr. Gowdy	1157
Voir Dire Examination by Mr. Starnes	1161
JANICE MACHOS, #168	
Voir Dire Examination by the Court.....	1164
Voir Dire Examination by Mr. Gowdy	1169
Voir Dire Examination by Mr. Starnes	1171
Re-Voir Dire Examination by the Court.....	1176
Re-Voir Dire Examination by the Court.....	1183

PHILLIP ARMS, #5

Voir Dire Examination by the Court.....	1187
Voir Dire Examination by Mr. Coler	1192
Voir Dire Examination by Mr. Starnes.....	1193

MELISSA WATSON, #301

Voir Dire Examination by the Court.....	1197
Voir Dire Examination by Mr. Bulsa	1202
Voir Dire Examination by Mr. Starnes.....	1203

JOHN KENNERLY, #147

Voir Dire Examination by the Court.....	1206
Voir Dire Examination by Mr. Bulsa	1211
Voir Dire Examination by Mr. Starnes.....	1211

TRENT MULDROW, #200

Voir Dire Examination by the Court.....	1215
Voir Dire Examination by Mr. Bulsa	1221
Voir Dire Examination by Mr. Starnes.....	1221

KATHY HYNES-ROBERSON, #131

Voir Dire Examination by the Court.....	1225

TIFFANY SWINFORD, #275

Voir Dire Examination by the Court.....	1231
Voir Dire Examination by Mr. Bulsa	1236
Voir Dire Examination by Mr. Starnes.....	1236

JURY IMPANELED.....	1316

JURY PANEL SWORN	1327

OPENING STATEMENT BY MR. COLER.....	1342

OPENING STATEMENT BY MR. STARNES.....	1351

TESTIMONY

DAWN MARIE HOLRATH

Direct Examination by Mr. Gowdy.....	1362
Cross Examination by Mr. Starnes	1389
Redirect Examination by Mr. Gowdy	1450
Recross Examination by Mr. Starnes.....	1454

VOLUME FOUR

CAPTAIN DARREN AMICK

Direct Examination by Mr. Gowdy.....	1519

Cross Examination by Mr. Starnes	1530
Redirect Examination by Mr. Gowdy	1565
ROBERT T. DORAY	
Direct Examination by Mr. Bulsa	1566
Cross Examination by Mr. Starnes	1574
Redirect Examination by Mr. Bulsa.....	1575
DEPUTY CORONER CHRIS LORICK	
Direct Examination by Mr. Gowdy.....	1576
Cross Examination by Mr. Starnes	1583
Redirect Examination by Mr. Gowdy	1585
DEAN SEASE	
Direct Examination by Mr. Coler	1588
Cross Examination by Mr. Starnes	1597
Redirect Examination by Mr. Coler.....	1602
GWENDOLYN BAILEY	
Direct Examination by Mr. Gowdy.....	1604
Cross Examination by Mr. Starnes	1643
Redirect Examination by Mr. Gowdy	1668
Recross Examination by Mr. Starnes.....	1675
VICKIE BRANNON	
Direct Examination by Mr. Bulsa	1676
DONNA RIKARD	
Direct Examination by Mr. Bulsa	1694
Cross Examination by Mr. Starnes	1700
Redirect Examination by Mr. Bulsa.....	1702
Recross Examination by Mr. Starnes.....	1706
DAWN HOLRATH	
Direct Examination by Mr. Gowdy.....	1707
Cross Examination by Mr. Starnes	1709
SLED AGENT KELVIN CRIMMINGER	
Direct Examination by Mr. Bulsa	1711
Cross Examination by Mr. Starnes	1738
Redirect Examination by Mr. Bulsa.....	1745
Recross Examination by Mr. Starnes.....	1749
ROBERT KNIGHT	
Direct Examination by Mr. Bulsa	1753
Cross Examination by Mr. Starnes	1758
Redirect Examination by Mr. Bulsa.....	1761

DR. JOEL SEXTON

Direct Examination by Mr. Bulsa	1762
Cross Examination by Mr. Starnes	1801
Redirect Examination by Mr. Bulsa.....	1812

TONY TINDAL

Direct Examination by Mr. Bulsa	1857
Cross Examination by Mr. Starnes	1866
Redirect Examination by Mr. Bulsa.....	1872
Recross Examination by Mr. Starnes.....	1872
Redirect Examination by Mr. Bulsa.....	1873

CHARLES CATO

Direct Examination by Mr. Bulsa	1874
Cross Examination by Mr. Starnes	1879

SLED AGENT AMANDA SIMMONS

Direct Examination by Mr. Coler	1882

RONNIE THRAILKILL

Direct Examination by Mr. Coler	1894
Cross Examination by Mr. Starnes	1899
Redirect Examination by Mr. Coler	1902

SLED AGENT DAVID COLLINS

Direct Examination by Mr. Coler	1906
Cross Examination by Mr. Starnes	1916
Redirect Examination by Mr. Coler.....	1923

J.R. BERRY

Direct Examination by Mr. Bulsa	1924
Cross Examination by Mr. Starnes	1927

CAPTAIN DARREN AMICK (RECALLED)

Direct Examination by Mr. Bulsa	1927

SLED AGENT JOSEPH POWELL

Direct Examination by Mr. Gowdy.....	1930
Cross Examination by Mr. Starnes	1937

DR. DEMI GARVIN

Direct Examination by Mr. Bulsa	1949
Cross Examination by Mr. Starnes	1955

CAPTAIN DARREN AMICK (IN-CAMERA)

Direct Examination by Mr. Gowdy.....	1962
Cross Examination by Mr. Starnes	1964

VOLUME FIVE

CAPTAIN DARREN AMICK

Direct Examination by Mr. Gowdy.....	2003
Cross Examination by Mr. Starnes	2007
Redirect Examination by Mr. Gowdy.....	2009
Recross Examination by Mr. Starnes.....	2009

CLAUDETTE HARBERT

Direct Examination by Mr. Starnes.....	2075
Cross Examination by Mr. Coler	2085
Redirect Examination by Mr. Starnes.....	2098
Recross Examination by Mr. Coler.....	2100

KAREN PRATT

Direct Examination by Mr. Starnes.....	2102
Cross Examination by Mr. Coler	2123
Redirect Examination by Mr. Starnes.....	2144

JODY FOGLE

Direct Examination by Mr. Starnes.....	2149
Cross Examination by Mr. Coler	2160
Redirect Examination by Mr. Starnes.....	2192

MARION DONNIE POWELL (PROFFER)

Direct Examination by Mr. Starnes.....	2197
Cross Examination by Mr. Coler	2201

MARION DONNIE POWELL

Direct Examination by Mr. Starnes.....	2225
Cross Examination by Mr. Coler	2230
Redirect Examination by Mr. Starnes.....	2241

DONNA BENSON (PROFFER)

Direct Examination by Mr. Starnes.....	2242
Cross Examination by Mr. Bulsa	2250

DONNA BENSON

Direct Examination by Mr. Starnes.....	2253
Cross Examination by Mr. Bulsa	2262
Redirect Examination by Mr. Starnes.....	2284

DR. ANDREW MASON

Direct Examination by Mr. Starnes.....	2285
Cross Examination by Mr. Bulsa	2298
Redirect Examination by Mr. Starnes.....	2304
Recross Examination by Mr. Bulsa	2307

NORMAN EDWIN STARNES

Direct Examination by Mr. Starnes.....	2379
Cross Examination by Mr. Gowdy	2396
Redirect Examination by Mr. Starnes.....	2448
Recross Examination by Mr. Gowdy.....	2450

CAPTAIN DARREN AMICK (REBUTTAL)

Rebuttal Direct Examination by Mr. Bulsa	2454
Rebuttal Cross Examination by Mr. Starnes.....	2455
Rebuttal Redirect Examination by Mr. Bulsa.....	2456

OFFICER CLARK ROWE (REBUTTAL)

Rebuttal Direct Examination by Mr. Coler.....	2456
Rebuttal Cross Examination by Mr. Starnes.....	2463
Rebuttal Redirect Examination by Mr. Coler	2466
Rebuttal Recross Examination by Mr. Starnes	2467

DAWN HOLRATH (REBUTTAL)

Rebuttal Direct Examination by Mr. Gowdy.....	2467
Rebuttal Cross Examination by Mr. Starnes.....	2471

VOLUME SIX

CLOSING ARGUMENT BY MR. GOWDY.....	2563

CLOSING ARGUMENT BY MR. STARNES	2580

JUDGE’S JURY INSTRUCTIONS	2594

JURY VERDICT	2634

PENALTY PHASE.....	2684

OPENING STATEMENT BY MR. BULSA.....	2684

OPENING STATEMENT BY MR. STARNES.....	2687

TESTIMONY

EVELYN CHAPEL

Direct Examination by Mr. Coler	2689
Cross Examination by Mr. Starnes	2716
Redirect Examination by Mr. Coler.....	2722

CAPTIAN MARION JONES GAMBLE

Direct Examination by Mr. Bulsa	2723

BRENDA JOHNSON	
Direct Examination by Mr. Coler	2731
OFFICER ROBERT SCOTT SMITH	
Direct Examination by Mr. Bulsa	2735
BURKE FITZPATRICK	
Direct Examination by Mr. Gowdy.....	2784
Cross Examination by Mr. Starnes	2788
KEITH ALLEN HARTLEY	
Direct Examination by Mr. Coler	2789
Cross Examination by Mr. Starnes	2803
STUART PRETTLE	
Direct Examination by Mr. Coler	2807
Cross Examination by Mr. Starnes	2815
Redirect Examination by Mr. Coler.....	2817
Recross Examination by Mr. Starnes.....	2818
OFFICER BRIAN MAYFIELD	
Direct Examination by Mr. Coler	2823
GWEN BAILEY	
Direct Examination by Mr. Gowdy.....	2826
Cross Examination by Mr. Starnes	2840
Redirect Examination by Mr. Gowdy	2847
Recross Examination by Mr. Starnes.....	2849
STANLEY GLEATON	
Direct Examination by Mr. Coler	2850
Cross Examination by Mr. Starnes	2860
Redirect Examination by Mr. Coler.....	2867
OFFICER MITCHELL MCCARTY	
Direct Examination by Mr. Bulsa	2870
JAMES E. BRUNER, JR.	
Direct Examination by Mr. Bulsa	2873
JAY FRANK WARD	
Direct Examination by Mr. Bulsa	2876
Cross Examination by Mr. Starnes	2880
CLAUDE RAY	
Direct Examination by Mr. Gowdy.....	2884
Cross Examination by Mr. Starnes	2888

BOBBY PHILLIPS

Direct Examination by Mr. Coler	2892
Cross Examination by Mr. Starnes	2893

NEHEMIAH MAYES

Direct Examination by Mr. Coler	2895
Cross Examination by Mr. Starnes	2897

FREDERICK JONES

Direct Examination by Mr. Gowdy.....	2901
Cross Examination by Mr. Starnes	2905

CHAD TYLER OTT

Direct Examination by Mr. Gowdy.....	2906
Cross Examination by Mr. Starnes	2910

SLED AGENT KELVIN CRIMMINGER

Direct Examination by Mr. Bulsa	2913

DR. JOEL SEXTON

Direct Examination by Mr. Bulsa	2925

DAWN MARIE HOLRATH

Direct Examination by Mr. Gowdy.....	2932

MONROE "MONTY" WELBORN

Direct Examination by Mr. Gowdy.....	2941

VOLUME SEVEN

OFFICER JAMES CLAWSON

Direct Examination by Mr. Starnes.....	3000
Cross Examination by Mr. Gowdy	3003

OFFICER RUSSELL JACKSON

Direct Examination by Mr. Starnes.....	3004
Cross Examination by Mr. Gowdy	3009

OFFICER VALERIE SCIPIO

Direct Examination by Mr. Starnes.....	3010

OFFICER RONALD PALMER

Direct Examination by Mr. Starnes.....	3012

WILLIAM FITZHUGH

Direct Examination by Mr. Starnes.....	3014

OFFICER YVONNE PEAK

Direct Examination by Mr. Starnes.....	3018

OFFICER LADONNA DAVID	
Direct Examination by Mr. Starnes.....	3021
PAMELA SHORT	
Direct Examination by Mr. Starnes.....	3024
TRACY DUBOIS	
Direct Examination by Mr. Starnes.....	3028
KAYLA DUBOIS	
Direct Examination by Mr. Starnes.....	3032
ANITA HOWELL	
Direct Examination by Mr. Starnes.....	3034
SUSAN WALTON	
Direct Examination by Mr. Starnes.....	3037
REVEREND JERI SARRACINO	
Direct Examination by Mr. Starnes.....	3041
TERRANCE HARRIS	
Direct Examination by Mr. Starnes.....	3044
REVEREND ANDREW MCALISTER	
Direct Examination by Mr. Starnes.....	3049
SYLVIA STARNES EVANS	
Direct Examination by Mr. Starnes.....	3056
CLOSING ARGUMENT BY MR. GOWDY	3069
FINAL ARGUMENT BY MR. STARNES	3084
JUDGE’S JURY INSTRUCTIONS	3087
JURY VERDICT	3123
SENTENCING	3136
PRE-TRIAL TRANSCRIPT MARCH 21, 2002	3140
MOTION HEARING AUGUST 18, 2003	3148
MOTION HEARING AUGUST 27, 2003	3210
MOTION HEARING SEPTEMBER 3, 2004.....	3236
MOTION HEARING JANUARY 28, 2005	3283

MOTION HEARING MARCH 23, 2005	3380
MOTION HEARING APRIL 29, 2005	3443

VOLUME EIGHT

MOTION HEARING JUNE 9, 2005.....	3523
PRE-TRIAL MOTION HEARING TRANSCRIPT MARCH 11, 2004.....	3551
PRE-TRIAL HEARING TRANSCRIPT SEPTEMBER 10, 2004	3581
PRE-TRIAL HEARING TRANSCRIPT DECEMBER 12, 2005.....	3621
PRE-TRIAL HEARING TRANSCRIPT MAY 1, 2006.....	3641
TESTIMONY	
JOSEPH QUIG.....	3676
MOTIONS.....	3715
PRE-TRIAL HEARING TRANSCRIPT NOVEMBER 3, 2006	3764
PRE-TRIAL HEARING TRANSCRIPT MARCH 27, 2007	3833
PRE-TRIAL HEARING TRANSCRIPT JULY 13, 2007	3983

VOLUME NINE

PRE-TRIAL HEARING TRANSCRIPT AUGUST 21, 2007	4009
PRE-TRIAL HEARING TRANSCRIPT SEPTEMBER 19, 2007	4146
INDICTMENTS.....	4219
REQUEST TO CHARGE VOLUNTARY MANSLAUGHTER	4221
SENTENCING SHEETS.....	4228
ORDER OF JUDGE WESTBROOK DATED MARCH 3, 2004	4243
CERTIFICATE OF COUNSEL	4245

*NOTE: COURT'S EXHIBIT 10 (DVD OF REENACTMENT) ARE FILED AT THE SOUTH CAROLINA SUPREME COURT

1 Q. Could you explain to the jury exactly what a field
2 officer is?

3 A. A field training officer is an officer who trains
4 oncoming new officers on how to work in the pods inside the
5 detention center.

6 Q. Prior to being a field training officer, you were a
7 housing officer?

8 A. That's correct.

9 Q. Could you explain to the jury the duties and what a
10 housing officer does?

11 A. A housing officer maintains security and safety inside
12 a facility. He feeds the inmates. He makes sure that their
13 safety and medical needs are met. He makes sure they are in
14 the proper areas at all times.

15 Q. Sergeant Clawson, is it sometimes that officers get
16 assaulted in the housing areas?

17 A. It's happened from time to time.

18 Q. When that happens, what do the staff normally do with
19 the inmates?

20 A. The inmate would go to confinement.

21 Q. Would that be called lockup?

22 A. That would be a nickname for it, yes.

23 Q. Sergeant Clawson, could you tell the jury how long you
24 have known me?

25 A. As long as -- I have been at the detention center as

1 long as you have been there, I have known you.

2 Q. Have you ever known me to be in any fights with any
3 inmates?

4 A. No, sir, none.

5 Q. Could you explain to the jury my conduct while in the
6 Lexington County detention center?

7 A. Inmate Starnes has always been respectful and has not
8 been a problem.

9 Q. Sergeant Clawson, if sentenced to life without the
10 possibility of parole, do you feel that, in your opinion, as
11 long as you have known me, that I would become a problem, a
12 problem inmate?

13 A. From your -- what you have done inside our detention
14 center, you have not been a problem. So basing it on that,
15 I would say that you would not be a problem inside the
16 Department of Corrections.

17 Q. During your course of being a housing officer, did you
18 ever write me up for any disciplinaries?

19 A. No, sir.

20 Q. Sergeant Clawson, on the scale of one to ten, could you
21 please tell the jury how you would rate me as an inmate?

22 A. Probably a nine, because I would give nobody a ten.

23 Q. Okay. As far as my living quarters and stuff at the
24 detention center, is it often that y'all come around and do
25 room inspections?

1 A. We do that periodically. Every day we look at the
2 rooms, yes.

3 Q. Could you tell the jury when you do room inspections in
4 my housing unit, how I keep mine?

5 A. Your room is very neat and orderly.

6 Q. Thank you, Sergeant Clawson.

7 A. You are welcome.

8 CROSS EXAMINATION BY MR. GOWDY:

9 Q. Good morning, sir.

10 Can inmate Starnes write and receive letters?

11 A. Yes, he can write and receive letters, yes, sir.

12 Q. Can inmate Starnes have visitors?

13 A. Yes, sir.

14 Q. Thank you.

15 THE COURT: Any reason why this witness couldn't
16 be excused?

17 MR. GOWDY: No, sir.

18 THE COURT: Thank you for coming. You may be
19 excused at this time.

20 MR. STARNES: Officer Jackson.

21 OFFICER RUSSELL JACKSON, having been first duly
22 sworn, testified as follows:

23 THE CLERK: Please have a seat and state your name
24 for the record and spell your last name.

25 THE WITNESS: Officer Russell Jackson,

1 J-A-C-K-S-O-N.

2 DIRECT EXAMINATION BY MR. STARNES:

3 Q. Officer Jackson, can you tell the jury where you are
4 currently employed at?

5 A. I'm employed with the Lexington County detention
6 center.

7 Q. In what capacity?

8 A. I'm an officer, a detention officer.

9 Q. Have you ever worked as a housing officer inside the
10 detention center?

11 A. Yes, sir.

12 Q. When did you become a housing officer inside the
13 Lexington County detention center?

14 A. March 11th, 2002.

15 Q. And when you become a housing officer, did you ever --
16 did you ever write me up for anything?

17 A. Not that I can recall, no, sir.

18 Q. Can you describe to the jury what type of inmate I have
19 been since I have been in the detention center?

20 A. Since I have been employed at the Lexington County
21 detention center, I have not had any problems with you at
22 all during my tour there at the detention center. As far as
23 I know, you have not had any problems. I haven't had any
24 problems with you at all.

25 Q. After you were housing officer, did you work in the

1 booking area?

2 A. Yes, sir.

3 Q. Could you explain to the jury what the booking officer
4 does?

5 A. The booking officer has a number of responsibilities,
6 as far as in-taking individuals that become incarcerated in
7 our detention center. We process you, receive -- take your
8 property, assign you to a housing area and release. We do
9 numerous responsibilities there as a booking officer.

10 Q. One of the responsibilities that you have is responding
11 to backup calls for other officers?

12 A. That's correct.

13 Q. And could you explain to the jury how that works?

14 A. Well, working at the booking desk, we are responsible
15 for responding to backup calls. If an officer in a housing
16 unit is having an issue or problem down there, they would
17 get on the radio and call for assistance or backup, is what
18 our policy is, and all or any available officers from the
19 booking desk are to respond to the scene, contain it, and
20 write reports and handle it accordingly.

21 Q. Have you ever had to respond to a backup call relating
22 to me?

23 A. No, sir, I haven't.

24 Q. Officer Jackson, prior to being an officer at the
25 Lexington County detention center, did you work in the

1 Department of Corrections?

2 A. Yes, sir.

3 Q. And what institution did you work at in the Department
4 of Corrections?

5 A. Allendale Correctional Institution.

6 Q. And is that a high level security institution?

7 A. At that time it was a level four facility, yes, sir.

8 Q. Could you explain to the jury what a level four
9 security prison is?

10 A. Level four facility, it requires -- it's two razor wire
11 fences and has a maximum security unit, and -- it's a
12 facility that houses individuals that have to do 85 percent
13 of their time, violent, nonviolent crimes.

14 Q. What is the quality of food in prison like?

15 A. The quality of the food?

16 Q. Yes.

17 A. It's three meals a day. Let's see, certain diets. I'm
18 not sure what kind of diet it is, because I'm not working in
19 the food service but, it's --

20 Q. Inmates --

21 A. I don't understand your question.

22 Q. Inmates don't get to choose what they eat, is that
23 correct?

24 A. Yes, sir, that's correct.

25 Q. They eat what the detention center or the facility

1 feeds them, is that correct?

2 A. That's correct.

3 Q. Have you ever worked the visitation area at the
4 detention center?

5 A. No, sir, I have not.

6 Q. Are you familiar with the way visitation works?

7 A. A little bit, yes, sir.

8 Q. Are there contact visits where you can hug your family?

9 A. Yes, there is contact, but it's contact as far as
10 talking through a glass, as far as that kind of contact. No
11 physical contact, no, sir.

12 Q. So, in other words, you can't hug your family or
13 anything like that?

14 A. No, sir, not in the -- not back in the detention
15 center, unless you are inmate working.

16 Q. Could you explain to the jury restrictions that inmates
17 have on prison in prison life?

18 A. Repeat?

19 Q. Could you explain to the jury the restrictions that an
20 inmate has while he's incarcerated in prison life?

21 A. Restrictions, as far as visitation, or --

22 Q. As far as visitation, family and friends.

23 A. Well, they have -- as far as restrictions, they are
24 allowed to be outside of their cell certain amount of times
25 a day. They are allowed to use the phone a certain amount

1 of time of day. They have three meals a day.

2 As far as restrictions, they are very limited, unless
3 you violate the rules of the facility.

4 Q. And what happens when inmates violate rules?

5 A. Well, when you violate rules in the facility, then some
6 of your privileges are revoked, as far as taken away. Like
7 you might lose your recreation for today, or -- depending on
8 the severity of it, you could lose your visits. You know,
9 it could be numerous privileges.

10 Q. Officer Jackson, are you now a transportation officer?

11 A. That's correct, I'm a correctional
12 officer/transportation officer.

13 Q. And in the last couple of months you have transported
14 me several times?

15 A. Yes, sir, several occasions I have transported you.

16 Q. During these transports have I ever given you any
17 problems or been disrespectful to you?

18 A. No, sir. No.

19 Q. Officer Jackson, if I had to spend my life, the rest of
20 my life in prison, do you think that I would be a threat to
21 other inmates or other officers?

22 A. Not to my knowledge, not as being employed at the
23 department of Lexington County detention, no, I don't see
24 any issue that you would be a threat to any other inmate.

25 Q. And how long have you known me since you have been

1 working there?

2 A. As long as I have been employed at the Lexington County
3 detention center, which is five years, eight months and six
4 days.

5 Q. Thank you, Officer Jackson. Answer any questions that
6 they have.

7 THE COURT: Wait.

8 THE WITNESS: Sorry.

9 CROSS EXAMINATION BY MR. GOWDY:

10 Q. I'll do it from here. Thank you for coming.

11 If I understand you correctly, inmates can have
12 visitors?

13 A. That's correct, depending upon what custody level you
14 are, that's correct.

15 Q. They have three meals a day?

16 A. That's correct.

17 Q. They have health care provided for?

18 A. That's correct.

19 Q. They have recreational time?

20 A. That's correct.

21 Q. They can write letters and receive letters?

22 A. That's correct.

23 Q. Thank you, officer.

24 THE COURT: Thank you.

25 MR. STARNES: Nothing further.

1 THE COURT: Thank you, officer.

2 Any reason why this witness could not be excused?

3 MR. STARNES: No reason.

4 MR. GOWDY: No.

5 THE COURT: Thank you for coming, officer.

6 Defense calls Officer Valerie Scpio.

7 OFFICER VALERIE SCIPIO, having been first duly
8 sworn, testified as follows:

9 THE CLERK: Have a seat and state your name for
10 the record and spell your last name.

11 THE WITNESS: Valerie Scpio. Last name spelled
12 S-C-I-P, as in Paul, I-O.

13 DIRECT EXAMINATION BY MR. STARNES:

14 Q. Ms. Scpio, where are you currently employed at?

15 A. The Lexington County detention center.

16 Q. And how long have you been at the Lexington County
17 detention center?

18 A. Since November of 2001.

19 Q. Since November of 2001, have you had an opportunity to
20 be a housing officer where I was housed at?

21 A. Yes, sir.

22 Q. Could you explain to the jury my conduct since I have
23 been an inmate at the Lexington county detention center?

24 A. I have never had any problems from you. You have been
25 very respectful and follow your rules or orders that has

1 been given to you.

2 THE COURT: If you can just speak up just a little
3 bit. You are kind of soft spoken.

4 THE WITNESS: Okay.

5 BY MR. STARNES:

6 Q. As a female inmate (sic) at the Lexington County
7 detention center, do you sometimes get harassed by male
8 inmates?

9 A. Yes, sir.

10 Q. Has that ever occurred with me?

11 A. No, sir.

12 Q. Have you ever had to place inmates in lockup or special
13 management housing unit due to their conduct?

14 A. Yes, sir.

15 Q. And have I ever given you any problems since you have
16 been an officer there?

17 A. No, sir.

18 Q. Never had to put me on confinement or anything?

19 A. No, sir.

20 Q. Officer Scipio, in your opinion, since you have been an
21 officer there, if this jury were to sentence me to life in
22 prison until death, do you feel that I would be a threat to
23 officers or inmates in the future?

24 A. Not in my opinion.

25 Q. Thank you very much, Ms. Scipio.

1 Answer any questions that the State may have.

2 MR. GOWDY: Thank you for coming Officer Scipio.

3 We have no questions.

4 THE COURT: Any reason why she could not be
5 excused?

6 MR. GOWDY: No, sir, Your Honor.

7 MR. STARNES: No, sir.

8 THE COURT: Thank you for coming, ma'am. You may
9 be excused at this time.

10 MR. STARNES: Officer Ronald Palmer.

11 OFFICER RONALD PALMER, having been first duly
12 sworn, testified as follows:

13 THE CLERK: State your name for the record and
14 spell your last name.

15 THE WITNESS: My name is Ronald Palmer. Last name
16 spelled P-A-L-M-E-R.

17 DIRECT EXAMINATION BY MR. STARNES:

18 Q. Officer Palmer, where are you currently employed at?

19 A. Lexington County detention.

20 Q. And how long have you been at the Lexington County
21 detention center?

22 A. I have been there now eleven years.

23 Q. In the eleven years that you have worked at the
24 Lexington County detention center, have you had an
25 opportunity to interact with me?

1 A. Yes, sir, I have.

2 Q. And during the time of your employment there, your
3 interactions with me, have I ever been given you any
4 problems?

5 A. No, sir, you never have.

6 Q. Is it often that inmates give you problems at the
7 Lexington County detention center?

8 A. Yes, sir, they do.

9 Q. Could you give the jury an idea of some of the problems
10 that inmates give officers at the detention center?

11 A. Well, most of them, they would try to do things against
12 the rules. Some of them try to take from other inmates.

13 Some other harass other inmates. Some would try to
14 manipulate the officers and try to do anything they can to
15 try to get over for their own reason.

16 Q. Is it often or occasionally that inmates assault
17 officers?

18 A. Yes, sir, they do.

19 Q. And inmates assault other inmates?

20 A. Yes, sir.

21 Q. Have you ever known me to be in a situation where I
22 have an assaulted on officer or an inmate?

23 A. No, sir.

24 Q. Officer Palmer, in the eleven years that you have
25 worked and interacted with me at the detention center, do

1 you know of any reason, if this jury was to sentence me to
2 life imprisonment without the possibility of parole, that I
3 would cause any problems with any officers or any other
4 inmates that I was confined with?

5 A. From my opinion of dealing with you, no.

6 Q. Thank you, Officer Palmer.

7 Please answer any questions that they have.

8 MR. GOWDY: We have no questions for Officer
9 Palmer and ask that he be excused.

10 THE COURT: No objection to his being excused?

11 MR. STARNES: No objection, Your Honor.

12 THE COURT: Thank you for coming, sir. You may be
13 excused.

14 MR. STARNES: Officer Fitzhugh.

15 WILLIAM FITZHUGH, having been first duly sworn,
16 testified as follows:

17 THE CLERK: Please state your name and spell your
18 last name for the record.

19 THE WITNESS: My name is William Fitzhugh,
20 F-I-T-Z-H-U-G-H.

21 DIRECT EXAMINATION BY MR. STARNES:

22 Q. How are you doing today, Officer Fitzhugh?

23 A. Real good.

24 Q. Where are you currently employed at?

25 A. Pardon?

1 Q. Where are you currently employed at?

2 A. I'm retired.

3 Q. Okay. At some point did you work with the Lexington
4 County detention center?

5 A. I did. I worked as a housing officer for four years.
6 I was an officer. I was AFTO. I worked booking. And then
7 I went into communications at the front desk.

8 Q. During your employment at the Lexington County
9 detention center, were you ever assaulted by any inmate?

10 A. Yes, I was.

11 Q. On how many occasions?

12 A. Twice.

13 Q. On one occasion were you taken hostage and locked into
14 a jail cell?

15 A. I was.

16 Q. Could you explain to the jury what happened in that
17 situation?

18 MR. GOWDY: Your Honor, I'm assuming Mr. Starnes
19 didn't do it, which means it's not relevant. What is the
20 relevance of what happened, if he didn't do it?

21 THE COURT: Okay. Well, I'll allow it under the
22 rule. Go ahead. I'll allow it.

23 BY MR. STARNES:

24 Q. Could you explain to the jury what happened in that
25 situation, Officer Fitzhugh?

1 A. I had locked everyone down. I was coming back up the
2 hallway on the third floor. An inmate banged on the cell
3 door. I went to the cell door, looked through the window.
4 He was making a gesture as if he was choking. I was afraid
5 he was having a medical emergency. I opened the door -- or
6 started to open the door. I had turned the key and he
7 kicked the door. The door came open, struck me in the
8 chest. And as the door struck me in the chest, the large
9 brass key hit me in the stomach. And I brought my head back
10 to keep from getting smacked in the face, got my nose
11 bloodied, and I have bone spurs, I found out later, on my
12 back. One of the spurs went between the two discs in my
13 back, and pretty much took out my arms. It -- it numbed my
14 arms where I couldn't react. We fought, and without my arms
15 I lost. And I was put in the cell with two inmates. The
16 two inmates that were in the cell actually took care of me.
17 I stayed in the cell for about -- I guess about three hours,
18 something like that. And finally the other inmates on the
19 floor started banging on the doors and hollering, trying to
20 get me some help, and help finally arrived and it was all
21 over with.

22 Q. Have you ever had to write me up for any disciplinary
23 problems?

24 A. No, sir.

25 Q. Have I ever been involved in any assaults that you were

1 in?

2 A. No, sir.

3 Q. Officer Fitzhugh, if you could, how long were you
4 employed with the sheriff's office at the detention center?

5 A. For five years. Four years in detention and one year
6 in communications.

7 Q. During your employment at the Lexington County
8 detention center, did you and I have an opportunity to
9 interact a lot?

10 A. Actually many times. Every time that I would work in
11 the pod where you were in, I think you would come out and
12 speak to me.

13 Q. Could you explain to the jury my conduct while I have
14 been housed in the Lexington County detention center when
15 you were employed there?

16 A. Always -- always a gentleman. I think I heard that
17 said here before.

18 Q. Officer Fitzhugh, in your opinion, if the jury was to
19 sentence me to life imprisonment without the possibility of
20 parole, do you think that I would, in your opinion, create
21 risk to other officers or inmates in the Department of
22 Corrections?

23 A. No, sir.

24 Q. Thank you, Officer Fitzhugh.

25 Please answer any questions that they have.

1 MR. GOWDY: No questions, Your Honor.

2 THE COURT: Thank you, sir, you may stand down.

3 Any reason why this witness couldn't be excused?

4 MR. STARNES: He may be excused, Your Honor.

5 THE COURT: Thank you for coming. You may be
6 excused at this time.

7 MR. STARNES: Officer Peak.

8 OFFICER YVONNE PEAK, having been first duly sworn,
9 testified as follows:

10 THE CLERK: Have a seat. State your name for the
11 record and spell your last name.

12 THE WITNESS: Officer Yvonne Peak, last name
13 spelled P-E-A-K.

14 DIRECT EXAMINATION BY MR. STARNES:

15 Q. Ms. Peak, would you please tell the jury where you are
16 currently employed at?

17 A. Lexington County detention center.

18 Q. And how long have you been employed at the Lexington
19 County detention center?

20 A. Twelve years.

21 Q. During your twelve years of employment at the Lexington
22 County detention center, the past seven years have you had
23 an opportunity to interact with me, as far as being an
24 officer in the jail?

25 A. Yes, I have, in the pod areas.

1 Q. Could you explain to the jury my conduct when you would
2 be assigned to my housing unit and the way I acted?

3 A. You were always respectful, courteous. You never
4 bucked the rules. You were always -- if you had to have
5 anything, you come up and very, you know, courteous. You
6 never tried to break the rules. You -- your area -- living
7 area was perfect. If you had to use the phone or anything,
8 you always show me documentation where you had approval from
9 the captain. When you had to use the legal rec rooms for
10 your legal, you would go in there. You were always quiet,
11 mannerless. Your mannerism was always great.

12 Q. Ms. Peak, could you describe to the jury my actions
13 towards other inmates?

14 A. You were always courteous, friendly. You never had any
15 problems in the pod interacting with them. You got along
16 with everybody well. You never had any arguments or
17 anything. You always just very, very kind, and never --
18 always courteous to all the inmates.

19 Q. During your employment at the Lexington County
20 detention center, did you ever have an occasion where you
21 had to put me on confinement?

22 A. Never. I have never had to put you on confinement.

23 Q. Have you ever had to write me up for any disciplinaries
24 or breaking any rules?

25 A. No, sir.

1 Q. Ms. Peak, in the last seven years that you have known
2 me at the Lexington County detention center, if this jury
3 was to sentence me to life without the possibility of
4 parole, do you feel that I would be a threat to any officer
5 or to any other inmates in the Department of Corrections?

6 A. No, sir, I don't think that you would be a threat at
7 all.

8 Q. And how do you base that opinion, Ms. Peak?

9 A. By your conduct. You were always respectful. You
10 never gave myself no problems ever, and I feel that you
11 would do quite well there.

12 Q. Thank you Ms. Peak.

13 Please answer any questions that the State may have.

14 MR. GOWDY: No questions.

15 THE COURT: Thank you, ma'am.

16 Any reason why she may not be excused?

17 MR. STARNES: No, sir.

18 MR. GOWDY: No, sir.

19 THE COURT: Thank you, ma'am. You may be excused
20 at this time.

21 MR. STARNES: Officer David.

22 MR. GOWDY: Your Honor, may we approach?

23 THE COURT: Yes, sir.

24 (Whereupon, the lawyers and the defendant
25 approached the bench for an off-the-record discussion)

1 OFFICER LADONNA DAVID, having been first duly
2 sworn, testified as follows:

3 THE CLERK: Have a seat, state your name for the
4 record and spell your last name.

5 THE WITNESS: Ladonna David, last name spelled
6 D-A-V-I-D.

7 DIRECT EXAMINATION BY MR. STARNES:

8 Q. Ms. David, could you tell the jury where you are
9 currently employed at?

10 A. The Lexington County detention center.

11 Q. And how long have you been at the Lexington County
12 detention center?

13 A. Sixteen years.

14 Q. During the course of your employment in the past
15 sixteen years, did you have an occasion to become -- to
16 interact with me back in 1996?

17 A. I can't go back that far. You have been there quite
18 awhile, so I don't know exactly what year, but, yes, I have
19 interacted with you.

20 Q. Okay. In the past seven years that I was incarcerated
21 there, do you know of any occasions of which I have given
22 you any problems or you have had to write me up for any
23 disciplinary problems?

24 A. No, I never had to write you up or had any disciplinary
25 problems with you.

1 Q. I believe you are currently a transportation officer?

2 A. That's correct.

3 Q. Would you explain to the jury the duties of a
4 transportation officer, the things that that duty incurs?

5 A. We transport inmates to various appointments - doctors
6 appointments, mental health appointments. Wherever an
7 inmate may need to go outside the facility that we -- when
8 we don't have the stuff there that they need, we take them
9 to other places.

10 Q. Ms. David, being a female inmate (sic) at the Lexington
11 County detention center, do you ever -- is there ever an
12 occasion where you are harassed by male inmates?

13 A. Yes.

14 Q. At any point in the past eleven years have I ever given
15 you any problems harassing you or been disrespectful to you?

16 A. No, you haven't.

17 Q. Officer David, in the last couple of months I
18 believe -- have you transported me on a couple of occasions?

19 A. Yes.

20 Q. At any time during your transportation with me, have I
21 ever given you any problems?

22 A. No, you haven't.

23 Q. Have I ever been disrespectful?

24 A. No, you haven't.

25 Q. All right. Can you give the jury an idea or explain to

1 them my conduct while incarcerated, the type of inmate I
2 have been?

3 A. You have always been polite. You have never been
4 disrespectful.

5 Q. In my interaction with other inmates, could you give
6 the jury --

7 A. I have never known you to have problem with other
8 inmates. You have never disrespected any other inmate.
9 From what I can tell, you get along with other inmates fine.

10 Q. Thank you, Ms. David.

11 Please answer any questions the State may have.

12 MR. GOWDY: No questions.

13 THE COURT: Any reason why she cannot be excused?

14 MR. STARNES: She can be excused, Your Honor.

15 THE COURT: Thank you for coming in, ma'am. You
16 may be excused at this time.

17 MR. STARNES: I believe that's all the officers
18 from the detention center, Your Honor.

19 THE COURT: Okay.

20 MR. STARNES: Ms. Pamela short.

21 PAMELA SHORT, having been first duly sworn,
22 testified as follows:

23 THE CLERK: Please have a seat and state your name
24 for the record and spell your last name.

25 THE WITNESS: My name is Pamela Short. Last name

1 is spelled S-H-O-R-T.

2 DIRECT EXAMINATION BY MR. STARNES:

3 Q. Ms. Short, could you tell the jury what you currently
4 do for a living?

5 A. I'm currently retired.

6 Q. Okay. Prior to retirement, where did you work at?

7 A. Leiber Correctional Institution.

8 Q. And what year did you work at Leiber Correctional
9 Institution?

10 A. From 1994 until 2000.

11 Q. Okay. Between 1997 and 2000, did you have an occasion
12 to meet me?

13 A. Yes.

14 Q. And was I housed in the special management housing unit
15 back then?

16 A. Yes.

17 Q. Could you explain to the jury the security
18 classifications and what a special management housing unit
19 is?

20 A. Special management is a high security area. Movement
21 is limited, contact is limited, and only assigned officers
22 are allowed in that housing unit.

23 Q. Visitation at Leiber in the special management housing
24 unit, are there any contact visits with family members?

25 A. Never.

1 Q. So you have to visit your family members through a
2 glass, talk through a glass?

3 A. Yes.

4 Q. Was there an occasion between 1997 and 2000, in which
5 an officer was stabbed at Leiber Correctional Institution?

6 A. Yes.

7 Q. Were you aware that -- was I involved in that in any
8 way?

9 A. No.

10 Q. Between 1997 and 2000, was there an occasion where
11 several inmates tried to escape from Leiber Correctional
12 Institution?

13 A. Yes.

14 Q. And during that time was I involved in that escape in
15 any manner?

16 A. No.

17 Q. Who was the officer that originally found out the
18 inmates were going to escape? Would you tell the jury
19 basically what happened?

20 A. I was the first officer that was alerted. One of the
21 inmates, as I was bringing them -- bringing my inmates in
22 off the rec field, as he passed me, he just said that I
23 needed to take a walk on the rec field. I knew then
24 something was wrong. And the first opportunity I took a
25 walk on the rec field and found a five foot hold, and at

1 that time I alerted my supervisor.

2 Q. And when you did that, could you tell the jury where
3 the defendant -- where I was at?

4 A. In your room. As a matter of fact, you were the first
5 one in your room. When I gave the direction for all inmates
6 to report to their rooms, you were the first one I saw go in
7 his room.

8 Q. During your course of employment at Leiber Correctional
9 Institute, did you ever know me to be in any fights?

10 A. No.

11 Q. Did you ever know of me to disrespect any officers that
12 worked at the institution?

13 A. No.

14 Q. Can you give the jury an idea of what type of inmate I
15 was at Leiber Correctional Institution while you were
16 employed there, Ms. Short?

17 A. Actually I was kind of surprised. You were one of the
18 few who came in and from the first day there was very
19 respectful, friendly, easy to get along with. And after
20 your receiving period was over, the attitude was maintained.
21 And you would assist voluntary the new guys that came in,
22 getting them acquainted with the routine on the cell block.
23 And if there were any that were having a hard time, usually
24 went out of your way to give them somebody to talk to.

25 Q. So I interacted pretty good with other inmates?

1 A. Yeah.

2 Q. And honest?

3 A. Yeah.

4 Q. Ms. Short, in your opinion, if the jury was to sentence
5 me to life without the possibility of parole, do you feel
6 that I would be a threat to other officers or inmates in the
7 future?

8 A. No. As a matter of fact, I feel you would probably be
9 a true assistance to the inmates and other officers.

10 Q. Thank you, Ms. Short.

11 Please answer any questions that the State may have.

12 MR. GOWDY: No questions, Your Honor.

13 THE COURT: Thank you, ma'am. You may stand down.
14 No reason why she couldn't be excused, if she
15 wishes?

16 MR. STARNES: She may be excused, Your Honor.

17 Beg the court's indulgence just one minute.

18 (Off the record)

19 (Back on the record)

20 MR. STARNES: Tracy Dubois.

21 TRACY DUBOIS, having been first duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat and state your name for
24 the record and spell your last name.

25 THE WITNESS: My name is Tracy Dubois,

1 D-U-B-O-I-S.

2 DIRECT EXAMINATION BY MR. STARNES:

3 Q. Tracy, if you could, please tell the jury how you met
4 me.

5 A. We met in Riverland Park. We grew up together.

6 Q. And where is Riverland Park?

7 A. It's in Cayce.

8 Q. At any time when we were growing up did you ever know
9 me to be in any fights?

10 A. No.

11 Q. Did you ever know me to sell LSD or marijuana?

12 A. No.

13 Q. At some point did I get to know one of your neighbors?

14 A. As a matter of fact, you got to know two of my
15 neighbors.

16 Q. Would that have been Rita?

17 A. Yes.

18 Q. Could you explain to the jury basically what it was
19 like growing up in Riverland Park?

20 A. It was good. I mean, we had good times. You was the
21 type of person that would give your shirt off the back of --
22 you know, if somebody needed it. You was a good person to
23 talk to. I mean, we got along fine. We hung around. And
24 you -- you know, you was good. You was easy to talk to.
25 You was just a good person all over.

1 Q. Do you ever remember an occasion when I drove the
2 school bus?

3 A. Yes, sir.

4 Q. Were you a student on that school bus, Tracy?

5 A. Yes, sir.

6 Q. Could you tell the jury, please, the type of school bus
7 driver I was?

8 A. You was good. You got the bus driver of the year one
9 year.

10 Q. Do you remember that?

11 A. Yes, I do.

12 Q. Since I have been incarcerated at the Lexington County
13 detention center, have you had an occasion where you have
14 visited me a couple of times?

15 A. Yes, I have.

16 Q. Have you brought your children there to visit me?

17 A. Yes, I have.

18 Q. Could you tell the jury the impact that I have had on
19 your children, as far as their upbringing and morals and
20 principles that I think?

21 A. You have been a better impact on my kids more than
22 their own father.

23 Q. And who is your children?

24 A. Kayla Dubois and Sheldon Dubois.

25 Q. Tracy, when we were coming up, I believe you married a

1 good friend of mine?

2 A. Yes, I did.

3 Q. Could you tell the jury who that gentleman is?

4 A. Clarence Cane Dubois, III.

5 Q. And do you remember when me and Caney used to play
6 football together?

7 A. Yes, I do.

8 Q. And at some point in time did we work at K-Mart
9 together?

10 A. Yes, y'all did.

11 Q. Tracy, in your opinion, just since you have known me
12 growing up and visiting me at the Lexington County detention
13 center, do you feel like I would be a threat to anyone if
14 sentenced to life without the possibility of parole?

15 A. No, sir.

16 Q. Please answer any questions that the State may have.

17 A. Okay.

18 MR. GOWDY: We have no questions, Your Honor.

19 THE COURT: Thank you, ma'am. You may stand down.
20 Any reason why she couldn't be excused?

21 MR. STARNES: No, sir, no reason.

22 THE COURT: Thank you for coming, ma'am. You may
23 be excused at this time.

24 MR. STARNES: Your Honor, can we approach?

25 THE COURT: Yes, sir.

1 (Whereupon, the lawyers and the defendant
2 approached the bench for an off-the-record discussion)

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, we are going to take a short break at this time.
5 You may refresh yourselves during the break. Please do not
6 discuss the case at this time.

7 (The following takes outside the presence of the
8 jury panel)

9 THE COURT: All right. I'll ask everyone to
10 remain seated when the jury is going out of the room. Thank
11 you.

12 We will take about ten minutes. Thank you.

13 (Whereupon, proceedings were recessed)

14 (Whereupon, proceedings were reconvened)

15 THE COURT: Counsel, are you ready to proceed,
16 each side?

17 MR. GOWDY: Yes, sir.

18 MR. STARNES: The defense is ready, Your Honor.

19 THE COURT: All right. Please bring the jury in.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: All right. You may proceed.

23 MR. STARNES: Yes, sir. The defense calls Kayla
24 Dubois.

25 KAYLA DUBOIS, having been first duly sworn,

1 testified as follows:

2 THE CLERK: Have a seat and state your name for
3 the record and spell your last name.

4 THE WITNESS: My name is Kayla Dubois, spelled
5 D-U-B-O-I-S.

6 DIRECT EXAMINATION BY MR. STARNES:

7 Q. Kayla, are you Tracy's daughter?

8 A. Yes, sir.

9 Q. Kayla, can you tell the jury the first time that you
10 remember seeing me?

11 A. I can't really remember the first time that I met you,
12 but we used to always go to the Panther Parlor and join you
13 for dinner and you would make us subs. And we -- you teach
14 me how to play the drums.

15 Q. How old were you when I got arrested, Kayla?

16 A. I believe nine.

17 Q. Since I have been at the Lexington County detention
18 center, have you had an occasion to visit me with your mom?

19 A. Yes, sir.

20 Q. During our visits, would you explain to the jury some
21 of the things that we would discuss, such as drugs, and
22 alcohol, and education, and stuff like that? Can you tell
23 the jury about that?

24 A. You would always make sure that I wasn't on drugs. I
25 mean, what I needed to do and what I didn't need to do,

1 because you were always like a part of the family and wanted
2 to make sure that we were always doing okay. And math was
3 my hardest subject. You always told me that if I would pass
4 it, that you would make sure that I would get a set of drums
5 to make me get through it.

6 Q. So I emphasized that education was real important?

7 A. Yes, sir.

8 Q. Are you still working on your education, Kayla?

9 A. Yes, sir.

10 Q. During the time that you seen me at the Lexington
11 County detention center, did you ever see me cuss or --

12 A. No, sir.

13 Q. Did you ever see me in any arguments with anyone
14 visiting?

15 A. No, sir.

16 Q. Please answer any questions that the State may have,
17 Kayla.

18 MR. GOWDY: No questions.

19 THE COURT: All right. Thank you, ma'am. You may
20 stand down.

21 MR. STARNES: Anita Howell.

22 ANITA HOWELL, having been first duly sworn,
23 testified as follows:

24 THE CLERK: Have a seat and state your name for
25 the record and spell your last name.

1 THE WITNESS: My name is Anita Howell. The last
2 name is spelled H-O-W-E-L-L.

3 DIRECT EXAMINATION BY MR. STARNES:

4 Q. Ms. Howell, if you could, could you tell the jury where
5 you currently live at?

6 A. 2705 Granite Hill Road in Riverland Park.

7 Q. In Riverland Park, could you give the jury an idea of
8 about approximately the year that we met?

9 A. Around 1973.

10 Q. Okay. And how did we meet one another?

11 A. My children attended school with you and they were
12 friends with you.

13 Q. Did I drive your children's school bus?

14 A. Yes, you did.

15 Q. Can you give the jury an idea of what type of person I
16 was growing up, Ms. Howell, at Riverland Park?

17 A. Yes. You were always kind-hearted, willing to help
18 anyone that needed help. You had a sense of humor. A well
19 behaved child.

20 Q. Did you ever on any occasion see me in any fights or
21 anything?

22 A. No, I didn't.

23 Q. Did you ever know or hear of me selling drugs, LSD or
24 marijuana?

25 A. No, I didn't. I didn't mind my children at all being

1 your friend.

2 Q. How many children do you have?

3 A. Three.

4 Q. During the time that I lived in Riverland Park, did you
5 ever know me to work?

6 A. Yes, I did.

7 Q. Did I hold a job pretty steady?

8 A. Yes.

9 Q. At some point did I ever help your husband clean the
10 yard, fix his motorcycle, and things like that?

11 A. Yes, you did.

12 Q. As far as my character, Ms. Howell, could you just give
13 the jury a brief description of my character the time that
14 you have known me?

15 A. Well, my visits to the detention center. I have one
16 granddaughter that was on the wrong -- facing the wrong
17 track of life, and you did talk to my grandchildren and tell
18 them that it was very important not to do drugs, to get an
19 education, that they were going down the wrong road. You
20 would write letters to them. You have always been there
21 when my family needed you, and I think you're a wonderful
22 person.

23 Q. Now, you have a grandson named Rusty?

24 A. Yes, I do.

25 Q. And at some point -- could you tell us who Rusty's

1 father is, or was?

2 A. Gordon -- Gordon Coker.

3 Q. And is Gordon still alive?

4 A. No, he's not.

5 Q. Since Gordon's death, did I have an impact on Rusty's
6 life?

7 A. Yes, you had a great impact on my grandson's life,
8 because he had gotten in trouble with the law. And you have
9 written him letters and you lectured him on how his life
10 could really go downhill if he didn't change, and it's
11 really made a great influence on him.

12 Q. And did Rusty have an opportunity to come visit at the
13 Lexington County detention center?

14 A. Yes, he did.

15 Q. During the times that he visited, did I emphasize to
16 him the dangers of drugs and how important education was?

17 A. Yes, you did.

18 Q. And do you feel that that made an impact on Rusty's
19 life?

20 A. Yes, I do, because he considers you his godfather, you
21 might as well say, godparent.

22 Q. Ms. Howell, please answer any questions that the State
23 may have.

24 MR. GOWDY: We have nothing.

25 THE COURT: Thank you, ma'am. You may stand down.

1 MR. STARNES: Defense calls Susan Walton.

2 SUSAN WALTON, having been first duly sworn,
3 testified as follows:

4 THE CLERK: Have a seat and state your name for
5 the record and spell your last name.

6 THE WITNESS: My name is Susan Walton. My last
7 name is spelled W-A-L-T-O-N.

8 DIRECT EXAMINATION BY MR. STARNES:

9 Q. Ms. Walton, could you please tell the jury where you
10 are from?

11 A. From Pelion.

12 Q. Pelion.

13 Could you give the jury an idea of what the town of
14 Pelion is like?

15 A. It's very small. We have one -- actually we have an
16 actual traffic light now. We used to always have a caution
17 light there.

18 Q. When you were living in Pelion, could you give the jury
19 an idea about what year it was that we met?

20 A. My son was about a year, so that would have made it in
21 1990.

22 Q. Around 1990?

23 A. Yeah.

24 Q. And how did we meet?

25 A. You had opened a sub shop in Pelion, which is, you

1 know, something that needed to be done. There is not very
2 many places to eat. And my family and I -- my son and my
3 parents and I would eat two or three nights a week. I think
4 my aunt and uncle probably were there every night of the
5 week. So my family and I got to know you and your mother
6 pretty well.

7 Q. Back in 1995, Susan, when I opened the restaurant, did
8 I work a lot of hours?

9 A. Yes.

10 Q. And my mom worked in there with me?

11 A. Yes, she did.

12 Q. Recently was there an occasion where --

13 Well, let me back up just a little bit. How many
14 children do you have, Susan?

15 A. Just one. Just Jared.

16 Q. Recently was Jared incarcerated at the Lexington County
17 detention center?

18 A. Yes, he was.

19 Q. Could you tell the jury what he was incarcerated for?

20 A. He -- he was actually in jail at that time because he
21 had gone to Myrtle Beach and his girlfriend had run away to
22 be with him. She was a little bit under age. So at the
23 time he was in there waiting for a court date over that
24 situation.

25 He has had some drug problems in his past. Between the

1 age of age of 13 and 15 he had some pretty bad drug problems
2 that he has put behind him in life. So, you know, once you
3 been through that, you struggle with it when you are a young
4 person.

5 Q. Raising Jared you were a single mom?

6 A. Yes.

7 Q. You had some assistance from your parents in raising
8 Jared?

9 A. Yes.

10 Q. When Jared come to the Lexington County detention
11 center, did he -- did he tell you that I ever emphasized to
12 him the dangers and how bad drugs are?

13 A. Yes, you did. You were actually a source of strength
14 for all of us. It was one of the ways that we were able as
15 a family to get through his time in jail was knowing that
16 you were there.

17 Q. And during these occasions did you have an opportunity
18 to visit with me when you would visit Jared at the detention
19 center?

20 A. Yes.

21 Q. Do you feel that Jared being incarcerated with me made
22 an impact on his life, as far as --

23 A. I absolutely do. And if he were here, he would tell
24 you the same thing.

25 Q. Where is Jared at now, Susan?

1 A. He's in shock camp right now. He's going to be
2 released on Thanksgiving day.

3 Q. How long has he been in shock?

4 A. 90 days.

5 Q. Susan, just in your opinion, since you have known me
6 and visited me at the Lexington County detention center, if
7 I was sentenced to life without the possibility of parole,
8 do you feel that I would be a danger to any inmates or other
9 officers or anything?

10 A. No. No, absolutely not. You would be welcome with my
11 family in my home at any time, you know.

12 Q. At some point around 1995, did you ever know that I had
13 a drug problem?

14 A. I had heard rumors, but it was just rumors.

15 Q. During that period of time you never had an opportunity
16 to socialize with me when I was on drugs, did you?

17 A. No.

18 Q. Prior to me being on drugs, Susan, can you tell the
19 jury what type of person I was?

20 A. Yeah, very, very down to earth. Always very happy.
21 Always in the same mood, you know. Just the type of person
22 that you were always happy to see or meet. Very motivated.
23 You know, you were just a great guy.

24 Q. And prior to me using drugs, did you have an
25 opportunity to take your first airplane ride?

1 A. I absolutely did. I had never been up in an airplane
2 and you had gotten your pilot's license and had the
3 opportunity to take someone up, and you took me up with you.
4 It was wonderful.

5 Q. Thank you, Susan. If you would please answer any
6 questions that the State may have.

7 MR. GOWDY: No questions.

8 THE COURT: Thank you, ma'am. You may stand down.

9 MR. STARNES: Defense calls Reverend Dr. Jeri
10 Sarracino.

11 REVERAND JERI SARRACINO, having been first duly
12 sworn, testified as follows:

13 THE CLERK: Have a seat and state your name for
14 the record and spell your last name.

15 THE WITNESS: Yes, my name is Reverend Dr. Jeri
16 Sarracino. The last name is S, as in Sierra,
17 A-R-R-A-C-I-N-O.

18 DIRECT EXAMINATION BY MR. STARNES:

19 Q. Ms. Sarracino, what do you currently do for a living?

20 A. Well, for a living I'm a 7th grade English teacher.

21 Q. And where are you a 7th grade English teacher at?

22 A. League Academy in Greenville, South Carolina.

23 Q. Ms. Sarracino, could you tell the jury how long you
24 have known me?

25 A. We met in 1997. I'm not sure if it was summer or early

1 fall.

2 Q. And when we met, where was I incarcerated at?

3 A. You were incarcerated at Leiber Correctional
4 Institution.

5 Q. And could you tell the jury how we come to meet one
6 another?

7 A. I was visiting another prisoner there, and you and he
8 had become friends, and you were on visit with your mother,
9 I believe, the day we met.

10 Q. Are you currently involved in prison ministries?

11 A. Yes, I am.

12 Q. And do you have occasions where you get to interact
13 with other inmates and stuff?

14 A. Well, most of my prison ministry is long distance
15 through letter writing and phone correspondence, because
16 most of the prisoners I do minister to are not in South
17 Carolina or close by enough for me to visit. I would if I
18 could. I do visit -- I do visit you and still correspond
19 with you here in South Carolina.

20 Q. When did you start corresponding with me, Ms.
21 Sarracino?

22 A. You were still at Leiber, so it would be between 1997
23 and 2000, I believe.

24 Q. During our visits at Leiber, did you ever know an
25 occasion where I was rude, or disruptive, or used foul

1 language?

2 A. Oh, no, not at all. You were always very respectful,
3 nice and kind.

4 Q. Have you ever had an opportunity since I have been
5 incarcerated at the Lexington County detention center to
6 visit me?

7 A. Yes, when I lived here in Columbia I would visit. I
8 have moved to Greenville and so I haven't visited since I
9 left, but we have written and talked on the phone. But,
10 yes, when I lived here I did visit.

11 Q. Since you have known me, Ms. Sarracino, have you ever
12 known me to be on drugs or anything?

13 A. No, not to my knowledge.

14 Q. So the only time that you have actually had an
15 opportunity to know me is since I have been incarcerated?

16 A. Yes.

17 Q. And could you give the jury an opinion -- if they was
18 to sentence me to life without the possibility of parole, do
19 you feel that I would be a threat to other inmates or
20 officers in the institution?

21 A. Not at all.

22 Q. Thank you, Ms. Sarracino. Please answer any questions
23 the State would have.

24 MR. GOWDY: None from the State.

25 THE COURT: Thank you, ma'am. You may step down.

1 MR. STARNES: Terrance Harris.

2 TERRANCE HARRIS, having been first duly sworn,
3 testified as follows:

4 Have a seat and state your name for the record and
5 spell your last name.

6 THE WITNESS: For the record Terrance Harris,
7 H-A-R-R-I-S.

8 DIRECT EXAMINATION BY MR. STARNES:

9 Q. Terrance, could you explain to the jury how we come to
10 know one another?

11 A. I was incarcerated at the Lexington County detention
12 center in the year of 2001.

13 Q. And since you were incarcerated at the Lexington County
14 detention center, did you receive a sentence in the South
15 Carolina Department of Corrections?

16 A. Yes, I did.

17 Q. How long were you incarcerated in the South Carolina
18 Department of Corrections?

19 A. Two and a half years.

20 Q. What type of institution were you at, Terrance? Was it
21 a high level, medium security, maximum security?

22 A. I was at a maximum security.

23 Q. If you could, Terrance, could you explain to the jury
24 what a maximum security prison is like?

25 A. A maximum security prison is a prison that is encamped

1 with three sets of fences, barbed wire, and you have a
2 controlled movement.

3 Q. Could you explain to the jury kind of what controlled
4 movement is so they will understand what controlled movement
5 is?

6 A. Controlled movement is where you have to walk in the
7 single file line. You can only move at certain periods a
8 day, and you can only move at guards -- at guards request or
9 at guards commands.

10 Q. As a result of your incarceration, did you become
11 involved in prison ministries?

12 A. While I was there I got involved with a Bible study
13 group there, and then I taught Bible study there, but that
14 was not my first initial introduction to religion. Family
15 members grew up in religion, but it was just a stepping
16 stone back to where my roots lie.

17 Q. Did prison life change you, Terrance?

18 A. It had a big effect on my life. I wasn't a constant
19 stranger to being in and out of the detention center in
20 Lexington, but prison was definitely a change of life for
21 myself and it was a definite impact.

22 Q. Since you become an ordained minister, have you visited
23 me at the Lexington County detention center?

24 A. Yes, I have.

25 Q. On how many occasions?

1 A. Several.

2 Q. Let me back up just a little bit. Could you explain to
3 the jury what it's like to be incarcerated in prison, or the
4 Lexington county detention center?

5 A. In the detention center, or the prison system?

6 Q. The detention center first, and then we will get to the
7 prison.

8 A. The Lexington County detention center is definitely an
9 overcrowded facility. There is usually more than three
10 people to a cell, where it usually -- where the new facility
11 houses four to a pod, usually -- or four to a cell block,
12 it's usually now eight to a cell block. Where it usually
13 housed anywhere from 54 to 76, there is usually anywhere
14 from 99 to 100 into the cell block now.

15 The food is not actually that great, but I guess that's
16 just because the circumstances. But, nevertheless, it's
17 just probably not one of the best conditions, but
18 nevertheless --

19 Q. Inmates don't get to eat what they want to, do they?

20 A. No, they do not. Not by choice.

21 Q. What about laundry? Is it often that when you get
22 laundry back, your laundry is dirty?

23 A. The laundry is not in the best -- it's not in the best
24 conditions. Usually a lot of the uniforms are torn or
25 dismantled. Some of the uniforms are not cleaned. No, they

1 are not.

2 Q. As far as medical facilities, could you explain to the
3 jury a little bit what the medical facility is like in
4 prison?

5 A. In the facility that I was at, which was Broad River
6 Correctional Institution, that particular institution mainly
7 housed HIV inmates.

8 While I was there, in my initial first year, there were
9 several inmates that died -- that died while I was there.

10 During the time that I needed medical assistance, it
11 was hard to get.

12 I just don't honestly in my opinion think it was the
13 best facility to take care of their inmates. It was just in
14 my opinion.

15 Q. Do you believe that prison life can change somebody?

16 A. I honestly believe that prison can change a person, if
17 the person is willing to be changed. I honestly believe
18 that it's up to the individual himself or herself to want to
19 change. And, you know, it's -- it's -- the opportunity in
20 the prison system is there to change. That's what they are
21 there for is for you to be rehabilitated. And like I said,
22 all the opportunity is there for them to be changed, if the
23 person chooses to be changed.

24 Q. Terrance, you didn't have an opportunity to know me
25 back in 1995 or 1996, did you?

1 A. No, sir.

2 Q. Actually we only met since -- we met actually being
3 incarcerated at the detention center together, is that
4 correct?

5 A. That's correct.

6 Q. And during our incarceration, did you ever know a time
7 where I was disrespectful to any of the officers?

8 A. No.

9 Q. Did you ever know of a time during the period of our
10 incarceration together in which I was involved in any fights
11 or anything with other inmates?

12 A. No.

13 Q. Could you explain to the jury how I interacted with
14 other inmates?

15 A. You were definitely always helpful to any inmate that
16 needed it. If there was an inmate that needed -- that came
17 in there for a period of time and they didn't have any
18 canteen or something like that, you were always willing to
19 share -- share the things that you had. You offered advice
20 when needed to be. And you definitely, especially in my
21 state, was definitely a confidante and a friend at a point,
22 so I -- you definitely were a good person.

23 Q. Thank you, Terrance. Please answer any questions that
24 the State may have.

25 MR. GOWDY: No questions.

1 THE COURT: Thank you, sir. You may stand down,
2 sir.

3 MR. STARNES: Reverend Owen McAlister.

4 REVERAND ANDREW OWEN MCALISTER, having been first
5 duly sworn, testified as follows:

6 THE CLERK: Have a seat and state your name for
7 the record and spell your last name.

8 THE WITNESS: Andrew Owen McAlister,
9 M-C-A-L-I-S-T-E-R.

10 DIRECT EXAMINATION BY MR. STARNES:

11 Q. Reverend McAlister, will you please tell the jury where
12 you are from?

13 A. Wagener, South Carolina, New Holland community.

14 Q. What did you do currently do for a living?

15 A. I'm pastor of New Holland Baptist Church and assistant
16 principal of Wagener-Salley High School.

17 Q. Reverend McAlister, back in 1995 and 1996, did you know
18 me at any point back then?

19 A. Along about that period of time I got to know you while
20 you was at Lexington detention center.

21 Q. So you haven't known me since I have not been -- I mean
22 the only time that you have known me is just since my
23 incarceration, is that correct?

24 A. Correct.

25 Q. Can you give the jury an idea of the type of person

1 that I am, or the character of -- the things that we would
2 talk about on visits, or things when you would see me those
3 particular times?

4 A. I started visiting you because I knew your relatives,
5 your grandmother, particularly, a member of our church. And
6 upon visiting you, I developed a respect for you, because
7 you were always so courteous and kind and a gentleman just
8 by your features, of course, while there at Lexington
9 County, but I think what impressed me more than just simply
10 being a person that looked clean and nice, was your concern
11 for inmates on occasion. When we would talk, we would
12 always talk. Your first questions naturally always was
13 about your grandmother and your mother, how they were doing.
14 And you would write me and tell me when personally I was
15 there to, if I would, to keep eye out for them. As you well
16 remember, you sort of was help me realized some of the needs
17 that your grandmother has that she will never mention, so we
18 could minister through our church because of your help
19 there.

20 But then in our correspondence and also verbally and by
21 letter, you were concerned about some inmates, and I think
22 particularly about one young man who is Hispanic who had a
23 language barrier problem, could not speak English, and
24 that's tough in an American jail. So that impressed me I
25 guess more than any single thing. Other inmates we talked

1 about and your own life situation as well, but this one
2 person you actually out of respect, I guess for him and for
3 myself, you had him -- he was a good artist. I don't know
4 if you remember this occasion or not, but you had him draw
5 me a picture and sent it to me for Christmas, which I have
6 framed today, and I appreciated that.

7 Q. Reverend McAlister, have you had an opportunity to
8 visit other inmates that have been incarcerated?

9 A. Yes, I go regularly to the Lower Savannah state prison
10 system there in Aiken, South Carolina.

11 But I visited many years ago, before you were there, at
12 Leiber when I was pastoring a full time church down in
13 Summerville.

14 I visited, of course, Lexington County several times
15 before you and other people. Aiken County detention center
16 as well, and presently a young man who's incarcerated for
17 many years down at Edisto.

18 Q. Have you ever known prison to change a person's life,
19 Reverend McAlister?

20 A. Yes, it's changed many lives. But those that I have
21 known of, of course, I think of one person we are talking
22 about, that was mentioned, alluded to, who was at Lexington
23 County then transferred to Edisto. This young man had a
24 very -- he was young, late adolescence, but he had very
25 strong issues with racial issues. And while being

1 incarcerated low and behold his closest confidant and friend
2 was a person of another race that he had had bitterness
3 towards, or at least thought he had in his own mind, based
4 upon prejudice in his community, but he became very close
5 friends. And he and I have talked many times. Several.
6 And he's confessed that to the fact that how he's learned so
7 much about getting along with other people, for being
8 incarcerated. He will be released some 27 years down the
9 road. Anyway, I'm sure while incarcerated he will make a
10 difference by interacting with people then when he comes
11 home, but this person became a believer.

12 Now, as the chaplain mentioned a minute ago, perhaps
13 already had those roots in his life, but they were restored
14 or either first-hand experience became a believer and became
15 a real witness there while incarcerated and actually asked
16 me -- they would not -- they didn't have a good study Bible,
17 so I had to send the Bible through the mail, a brand new
18 study Bible, rather expensive Bible to become the property
19 of the county detention center, which is no problem. It
20 couldn't be his problem, but it allowed them to continue
21 their studies in a little more deeper level than just simply
22 reading a bunch of scripture.

23 I would say likewise you have asked for advice and help
24 to, as you counsel people while you are incarcerated on
25 spiritual issues.

1 Q. Reverend McAlister, I believe that you stated that you
2 worked in education?

3 A. That's correct.

4 Q. At some point in time did there ever come a time when
5 y'all were going to discard some old books from school?

6 A. That's right. I don't know why the conversation came
7 up, because a lot of time we just talked in general stuff,
8 you know, just trying to make it a little lighter. On one
9 of those occasions, I guess that day I said -- I mentioned I
10 had been discarding books that are way outdated, couldn't
11 give them away. The state says give them away and nobody
12 wants them. It's just hard to throw away textbooks,
13 particularly literature books. They are not outdated. They
14 are classic literature. So I was mentioning how frustrated
15 I was that day. You said "my goodness, you know, we need
16 textbooks here. There are so many inmates that don't have
17 an education, a formal education, beyond when they quit
18 school or their grade was." And I said "well, we will get
19 them here." So you talked to your captain, or whoever, and
20 we made contact and I brought two cases of books up to the
21 Lexington County detention center.

22 Q. Reverend McAlister, as a result of our visits and the
23 interaction that we have had, have you ever seen an occasion
24 where I have been disruptive at the detention center while
25 on a visit?

1 A. No.

2 Q. In your opinion, from visiting other inmates that have
3 been incarcerated in the past, if the jury was to sentence
4 me to life without the possibility of parole, do you feel
5 that I could interact and get along with other inmates?

6 A. I definitely do. I have been inside federal prisons
7 and sit in cells with people on certain days, certain
8 occasions that the clergy is allowed certain privileges to,
9 and I know the feeling inside of those. But with you, in
10 your presence I would -- from what I know of you, I would
11 never feel the least bit threatened and actually feel like
12 you were a person who is an assistance by helping other
13 inmates through their troubled time as you have gone through
14 yours.

15 Q. Okay. Reverend McAlister, I believe you said you visit
16 my grandmother?

17 A. Correct.

18 Q. Could you tell the jury who that lady is?

19 A. Mrs. Woods. She's the lady sitting in the aisle there
20 confined to the wheelchair.

21 Q. And how old is she? How old is she?

22 A. How old is she?

23 I don't know if she wants me to say or not, but I'm
24 going to speculate. I'm thinking 96, but sometimes I lose
25 track. She's very -- she's very alert. Her mind is

1 unbelievably alert and she -- her body looks bad, but she's
2 an amazing person. Somehow God has blessed her with a good
3 clear mind through these many years. It's hard to believe
4 that she's in her upper nineties.

5 Q. At some point in time do you remember an occasion when
6 grandma's wheelchair broke down?

7 A. Yes, I do.

8 Q. She couldn't get it replaced?

9 A. That's right.

10 Q. Did you know that I had wrote a state senator? Can you
11 tell the jury a little bit about that?

12 A. Well, you made the contacts there that set the
13 groundwork that got things in motion for -- that got -- they
14 were able to provide her with a newer more modern type chair
15 that works. And as I said before, you -- you are able to
16 make contacts with whoever necessary to provide for her
17 needs, even while incarcerated.

18 Q. Thank you very much, Reverend McAlister. Please answer
19 any questions that the State may have.

20 MR. GOWDY: We don't have any questions.

21 THE COURT: Thank you, sir. You may stand down,
22 sir.

23 MR. STARNES: Beg the court's indulgence just one
24 moment.

25 THE COURT: Yes.

1 (Off the record)

2 (Back on the record)

3 MR. STARNES: Sylvia Evans.

4 SYLVIA STARNES EVANS, having been first duly
5 sworn, testified as follows:

6 THE CLERK: Just have a seat and state your name
7 for the record and spell your last name.

8 THE WITNESS: All right. My name is Sylvia
9 Starnes Evans, E-V, as in Victor, A-N-S.

10 DIRECT EXAMINATION BY MR. STARNES:

11 Q. Ms. Evans, could you tell the jury how you are related
12 to me?

13 A. Your my son.

14 Q. This wasn't my idea, was it?

15 A. No, Norman was severely against me testifying, and I
16 prayed he doesn't get emotional. I have prayed over this
17 for many years. I told Norman, I said "God will give me the
18 strength and the Holy Spirit to get me through this." I'm a
19 very religious woman, and Norman and I had several hours of
20 discussion over this. He got emotional. He cried, but in
21 my heart and soul I think that the jury needs to know
22 Norman, from the time Norman was born, until up to this
23 date, and I know that God will give me the power and the
24 strength to explain this to you all.

25 Please don't get emotional, son.

1 Q. Can you tell the jury where I was born at?

2 A. Norman was born in Ukiah, California.

3 When Norman was born, he almost died twice. We had
4 some medical problems with Norman, and we got through that.

5 And I lived in California I guess about a year. My
6 husband and I had been having problems at the time, Percy
7 Starnes, and -- we moved from South Carolina. And I had
8 always been taught religiously growing up that when you
9 marry, it's for a lifetime, for better, for worse, so we
10 were having problems with his family and my family. He --
11 he thought that -- and he and I discussed it and we thought
12 about moving to California with 3,300 miles away, maybe it
13 would make a difference, so we moved there with our two
14 children and I was expecting Norman. Norman was born in
15 Ukiah.

16 Well, when we -- when we got out there, my husband
17 wouldn't go to church with me. He wasn't -- he proclaimed
18 to be an atheist, but I really don't think he was, in my
19 heart. But when we moved out there things became worse, and
20 I was a battered housewife. And there were things that I
21 went through that God knows I wouldn't wish on any woman,
22 but, nevertheless, that's beside the point. I prayed about
23 it. I took the children to church. He wouldn't go with me.
24 And I stayed with Percy until he started abusing my
25 children. And I knew then that if I didn't get away, that

1 he would either kill me or them, because he was -- he was an
2 alcoholic and he had very bad temper when he was drinking,
3 and he did things that if anyone in here has ever been a
4 battered housewife, they know what I'm talking about.

5 Well, I left him. I called my mother and father and I
6 told them I said "momma, daddy, if you will just send me the
7 money to come home," I said "I have made God promise that if
8 I ever get my feet on South Carolina soil, I will never
9 leave again. So they sent me the money and we came home.

10 And when I got home, I moved in with my children, with
11 my mother and father, and I was under medical care for over
12 a year, because I had gone down to 76 pounds and I had
13 bruises on me when I came home. I filed for a divorce and
14 year later the divorce became final.

15 We were raised poor. I believe that a person that's
16 raised poor -- this is just my personal opinion. I was
17 raised poor. My children and I were raised poor. I was a
18 single parent. But because a person is raised poor -- I
19 just believe God created us all equal. I don't care what
20 nationality, what race, what color you are. It's just my
21 religious belief, and my faith in God has never faltered and
22 it never will. Well, when --

23 THE COURT: Can we move on?

24 THE WITNESS: Yes, sir.

25 THE COURT: From her personal views to something

1 that's relevant to this particular trial, please?

2 THE WITNESS: Oh, I'm sorry.

3 BY MR. STARNES:

4 Q. I'll just ask a question.

5 A. I'm sorry.

6 Q. Can you give the jury an idea of what it was like when
7 you come home from California and was living in Wagener?

8 A. It was -- it was really nice. We went to church every
9 Sunday. We lived next to the church at that time, and it
10 was -- it was really nice. It was a piece of mind.

11 When we were living at mom and dad's, Norman got sick
12 again. We took him to the doctor. And then when he had his
13 surgery, he started hemorrhaging. We almost lost him that
14 time. But as far as living in Wagener, it was a local
15 community.

16 Q. Mom, where did I go to school at?

17 A. Well, you went to school in Wagener. And then when we
18 moved to Cayce, you went to school in Cayce.

19 Q. You remarried in 1973, is that correct?

20 A. Yes.

21 Q. In 1980 -- in June of 1980 -- can you tell the jury
22 what happened in June of 1980?

23 A. In June of 1980, my husband died, my second husband.

24 Q. And from 1980, until 1988, you raised me as a single
25 mom?

1 A. Yes, I did.

2 Q. Tell the jury what that was like, please.

3 A. Well, we had three children. As a single parent, as
4 you all know, it's a big responsibility. When Norman was
5 old enough to go to work -- well, he was driving school bus
6 at the time. And when he was old enough, he obtained a
7 second job. He worked his Swain's Steakhouse. And Norman
8 would bring his money home and he gave it to -- would give
9 to it me and he would say "momma, you need this to pay the
10 bills and help you get food."

11 During that time Norman drove the bus and obtained a
12 check from there, and worked at Swain's. He always brought
13 him money home and he gave it to me, and then I would give
14 him an allowance.

15 Q. Now, back then how, many kids did you have, momma?

16 A. Pardon me?

17 Q. How many children did you have?

18 A. I had three children.

19 Q. And at some point Mike -- could you explain to the jury
20 all of your kids and our age differences?

21 A. There is 16 months age difference between Michael,
22 which is my oldest. Cheryl was the middle child. She's
23 deceased. And then Norman was the youngest.

24 Q. Cheryl used to work at Swain's with me?

25 A. Yes, she did. Cheryl worked with Norman at Swain's.

1 Q. And Cheryl used to also give her paycheck and help out?

2 A. Yes, yes, Cheryl brought her paycheck home too, and I
3 would give her an allowance.

4 Q. In high school, mom, do you remember me driving the
5 school bus? Do you remember me receiving any award or
6 anything?

7 A. Yes, Norman, you received bus driver of the year. And
8 there would be buses that some of the bus drivers couldn't
9 have control over the children and they would ask Norman to
10 drive those buses, so that the temperament could be meted
11 out. And he drove several other buses. He was well liked.
12 In fact, the bus would come by the house sometimes and
13 everybody would be hanging out the window and saying hello
14 Ms. Starnes. I never did -- they never could relate that I
15 was an Evans. They always called me Ms. Starnes.

16 Q. At some point I moved away from home in 1988, is that
17 correct?

18 A. Yes, sir.

19 Q. And then I moved to Pelion?

20 A. That's right.

21 Q. At some point later we opened up the Panther Parlor?

22 A. Yes.

23 Q. Could you tell the jury a little bit about what that
24 was like?

25 A. The Panther Parlor, working there with Norman, it was

1 an adventure. I'm a people person, just as Norman is, and I
2 just enjoyed the people and the -- it was hard work, but it
3 was rewarding work as well, and we had a lot of good times
4 there.

5 The Peanut Party in Pelion, it was once a year, and we
6 worked long hours, but it was rewarding. And the carnival
7 people that came in -- Norman never opened on Sunday. Norm
8 didn't believe in opening on Sunday, but we would feed the
9 carnival people breakfast, and then we would feed them their
10 evening meals. It really was. I miss working in the
11 restaurant with Norman and his employees. I really do.

12 Q. Momma, in mid 1995, was there an occasion when I told
13 you I had a drug problem?

14 A. Yes, Norman, there was.

15 Q. Can you explain to the jury?

16 A. Yes, I will.

17 We were setting on Norman's porch in his swing and I
18 knew Norman had something on his mind. A mother knows.
19 Don't tell me how. It's just a sense they know. And Norman
20 looked at me. He had tears in his eyes and he started
21 crying and he said "momma," he says "I have something I need
22 to tell you." And I said "I know that you do, Norman." I
23 said "what is it, honey?" He says "momma, I have a drug
24 problem." And I said to Norman, I said "well, Norman, first
25 of all, let's pray about it," and we did.

1 And I really didn't have any real close friends in
2 Pelion, and the only person that I could think of was John
3 Cherry at Carolina First, which was Norman's banker. Well,
4 John Cherry and I, when I worked at Bankers Trust back in
5 the fifties, John and I worked together. We went to bankers
6 school and John and I became really close friends. And so
7 Norman -- Norman and I went and we talked to John, and John
8 gave us some very good advice, and we prayed together
9 with -- John prayed together with us. And then Norman and I
10 came back home and Norman was supposed to go get some help
11 and --

12 It wasn't long after that that Norman got shot. I got
13 a call. I was in bed. And he was taken to the hospital,
14 Richland Memorial. In fact, I got stopped that night
15 because I was driving 120 miles an hour, but it was I think
16 about two o'clock in the morning. I can't remember the
17 exact time, and I explained the situation to the police.

18 Norman had called me from the house when he got shot.
19 Gwen was upset. She was screaming in the background. And
20 Norman told her "Gwen, just please be quiet. I want to
21 talk. My mother is the last voice I want to hear if I die."

22 Well, anyway, the police stopped me. They escorted me
23 into the hospital. And after they did whatever they did to
24 Norman, then they allowed me to go up to Norman's room there
25 at the emergency room. And there was a police officer, I

1 think, or an undercover agent. I don't know which one it
2 was. Anyway, that's when they asked Norman "you know what
3 had happened?" And Norman told him that he had went to buy
4 drugs and Stanley Gleaton shot him. And to this day Norman
5 has a bullet in him, because they can't take it out. It's
6 too close to the lungs. And that's the story of how I found
7 out about my son doing drugs.

8 Q. Momma, prior to my drug use, can you give the jury an
9 idea of what type of person I was, as far as working?

10 A. Norman was always a very happy person. He smiled all
11 the time. He was a generous person. Even when he had the
12 Panther Parlor, he would feed people that couldn't afford to
13 eat. I have known him to give people clothes that
14 couldn't -- you know, that couldn't afford to buy clothes.

15 As a young man -- well, as a child, Norman was a very
16 happy person. Norman had many friends. He -- he was always
17 a hard worker around the house. He helped inside the house
18 as well. And he was just a wonderful person and a loving
19 person and a generous person. Norman had a very good heart.

20 Q. Mom, during the period when I was using drugs, can you
21 explain to the jury my behavior and how reclusive to the
22 family and things?

23 A. I begin to notice a change in Norman. I didn't notice
24 the change until -- well, for one thing, his sister died
25 from a gunshot wound. And Norman would go and he would sit

1 at the cemetery for hours. Sometimes he would be down there
2 at two, three or four o'clock in the morning. That's when I
3 really started noticing.

4 After I found out about the drugs, Norman's person --
5 he just changed. It just seemed like he couldn't deal with
6 anything. And I don't know that the responsibility of
7 growing up, having so much responsibility, being shot,
8 and -- I really don't know, but Norman changed.

9 He began to act -- we would leave the Panther Parlor
10 and Norman would -- he would get out of the car and he would
11 go and he would look around towards the back of the
12 restaurant. And I would ask him "son, what's wrong?" And
13 he would say "nothing, momma, I'm just checking the
14 restaurant." I found that he was more hyper. It just
15 wasn't Norman. He was like a different person.

16 And finally we talked and I told him, I said "son, you
17 have got to do something." I said "I know that you have to
18 be doing drugs, because this isn't you, Norman." And so
19 Norman and I talked, and, Lord, the next thing I know, I
20 found out all this and --

21 The only thing I can tell you, the only way I can
22 describe the way I feel is it's touched so many lives. But
23 I know God will get me through this, but the only way that I
24 know to explain it to you is it's hell on earth without the
25 fire. That's the only way that I know to explain it in

1 laymen terms.

2 Q. Momma, can you explain to the jury --

3 A. I said I wasn't going to do this.

4 Q. Can you explain to the jury how we visit, what it's
5 like to visit in prison?

6 A. Okay. When I go to visit Norman in the Lexington
7 County detention center, up until the last few weeks when
8 the trial got nearer, there is a -- there is a glass window
9 and there is little holes around the side of the windows,
10 the frame, and mother and I would visit Norman and talk with
11 him that way.

12 And anytime we went, Norman appeared to be trying to
13 cheer us up and keep us on an even keel and -- we had very
14 good visits. We talked about many things. We talked about,
15 you know, family and friends, which all families do, and we
16 talked about God. Just the general things that family talk
17 about and --

18 Q. You have been my paralegal the past couple of months,
19 haven't you?

20 A. Yes, I have learned a lot. I have been Norman's
21 part-time paralegal and I have done all I can to help him,
22 which any mother would do for her son, and it's kept me
23 busy.

24 I retired from the South Carolina Department of Revenue
25 on September the 16th so I could help Norman, because it was

1 coming so close to his trial. And I have just done what any
2 mother would do for a child.

3 Q. Mom, can you tell the impact -- can you tell the jury
4 the impact my incarceration has had on my family?

5 A. The impact that it's had on the family is I think
6 it's -- and it's a good thing and it's a bad thing. It's
7 been trying for everyone concerned. Our family has been
8 through it a lot. And I know if any of you had to go
9 through anything like this, you could relate to it. It's --
10 it's aged everyone. It's hurt everyone, but in so many ways
11 it's brought everyone closer to God.

12 One thing I would like to say. I thank God I have got
13 the old Norman back. I am just so grateful for that.

14 Q. Please answer any questions that the State has.

15 MR. GOWDY: No questions.

16 THE COURT: Thank you, ma'am. You may stand down.

17 THE WITNESS: Your Honor, may I say one more
18 thing?

19 THE COURT: No, ma'am. He's already asked you the
20 questions. Please stand down.

21 MR. STARNES: Defense rests.

22 THE COURT: All right. Mr. Foreman, ladies and
23 gentlemen of the jury --

24 Well, let me ask you. Anything in reply?

25 MR. GOWDY: No, sir.

1 THE COURT: All right. We are going to take a
2 short recess at this time. There might be a couple of
3 matters I need to take up with counsel at this time, so
4 let's take about a 15 minute break. We will take about a 15
5 minute break, unless you hear otherwise from me.

6 Please do not -- even though you have heard all of
7 the testimony and evidence in this phase of the trial, you
8 haven't heard my instruction to you with regards to the law
9 that applies, so please do not begin discussing the case at
10 this point. Wait until you have all that information before
11 you begin discussing the case.

12 Please retire to the jury room at this time.

13 Those who would like to smoke, I will allow you to
14 do it during this break.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right. Is there any matter we
18 need to take up out of the presence of the jury at this time
19 from either side?

20 MR. GOWDY: Not from the State.

21 MR. STARNES: Nothing, Your Honor.

22 THE COURT: All right. Please approach just a
23 minute, if you will.

24 (Whereupon, the lawyers and the defendant
25 approached the bench for an off-the-record discussion)

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: All right, counsel, ready to proceed?

4 MR. GOWDY: The State is Your Honor?

5 THE COURT: Defense?

6 MR. STARNES: Defense is ready, Your Honor.

7 THE COURT: Please bring the jury in.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, we are to that part of the trial where counsel
12 will make their final arguments to you in this phase of the
13 trial. I would ask you to listen attentively now as counsel
14 address you in final argument.

15 You may proceed.

16 MR. GOWDY: May it please the court?

17 THE COURT: Solicitor.

18 MR. GOWDY: Ladies and gentlemen, this will be the
19 last time anyone from the State of South Carolina stands
20 before you in this trial, and I would be remiss if I did not
21 begin by thanking you for your service. It's been almost
22 two weeks since you first came into this courtroom and
23 became qualified to serve on this jury. We acknowledge your
24 patience, your careful attention to detail, and we all thank
25 you.

1 About two weeks ago all of you sat in a chair
2 right there and you told the judge and you told both sides
3 that you could give life if you thought it was appropriate,
4 and you could give death if you thought it was appropriate.
5 You told both sides you need to hear everything. Now you
6 have heard everything. Now is the time for you to decide
7 what is the appropriate sentence in this case for this
8 defendant for this crime.

9 And, ladies and gentlemen, I readily admit that
10 issues of life and death are hard. It is hard to pass
11 judgment on our fellow human being. It is hard to pass
12 judgment on issues that involve life and death, but each of
13 you said that you could do it, if you thought that it was
14 the right thing to do.

15 Judge Alford is going to give you the law in just
16 a minute. He is going to talk to you about aggravating
17 circumstances and mitigating circumstances.

18 All murder cases in South Carolina are not
19 eligible for the death penalty. To be eligible for the
20 death penalty, there has to be at least one aggravating
21 circumstance. The State has alleged three. One is double
22 murder. You have already found that.

23 The other aggravating circumstances are armed
24 robbery, murder during the commission of an armed robbery,
25 and murder during the commission of what we call larceny or

1 stealing with a deadly weapon.

2 And, ladies and gentlemen, if you think back to
3 the guilt phase, you think back to the money that Bill and
4 Jared had taken from them and the personal effects.

5 In reality, you have already found all three
6 aggravating circumstances. But just finding an aggravating
7 circumstance does not mean that you automatically have to
8 impose a death sentence. The ultimate decision, no matter
9 how aggravating -- how many aggravating circumstances the
10 State proves, ultimately the decision on life and death will
11 come down to you.

12 This case today stands qualified for imposition of
13 society's ultimate punishment. It is death penalty
14 qualified. It's double murder. There was a robbery during
15 the commission of a murder, and there was a larceny during
16 the commission of the murder. It stands qualified.

17 And as you move to the next stage to decide what
18 the proper punishment is, there are three things that I
19 think you need to look at: Number one are the circumstances
20 of the crime; number two, the impact that Bill Welborn and
21 Jared Champlin's death has had on their family, their
22 friends, their community; thirdly, you can consider the
23 character of Norman Edward Starnes.

24 When we talk about the circumstances of the crime,
25 you see them in the top photograph. We spent several days

1 and you ultimately decided that this defendant, with malice
2 aforethought, took two lives. Five shots. Unloaded a gun.

3 You heard ample testimony about the malice
4 aforethought. You heard about what happened to the bodies
5 afterwards. You heard about the burial and reburial, and I
6 am not going to belabor that point. You heard the
7 circumstances of this case.

8 I stood in front of you the last time and I
9 mentioned the word hypocrisy. I'll mention the word
10 hypocrisy, the hypocrisy of leaving bodies like those two
11 were left and then complaining that there is not enough
12 blood and hair to test. You remember that.

13 You remember in the guilt phase the allegations
14 that Bill Welborn and Jared Champlin had a double life. And
15 now you know that the accuser should have been the accused,
16 that the one casting aspersions about Bill Welborn and Jared
17 Champlin was himself leading a double life; fully emerged in
18 the drug culture; trading guns for crack; trading Uzis for
19 crack; trading food for crack; stealing money out of a tip
20 jar for crack. The only drugs in this case were in Norman
21 Edward Starnes system. And that is hypocrisy for him to
22 allege otherwise.

23 Under the word hypocrisy, I could not help but
24 notice this morning when a question was asked about the
25 laundry service in prison, whether or not it was good or

1 not. Imagine having a forensic pathologist wash off your
2 clothes. You want to complain about a laundry service?
3 Imagine having Joel Sexton have to wash off your clothes.

4 You can consider the circumstances of this crime.

5 And you can also consider the character, the
6 worthiness of Bill Welborn and Jared Champlin.

7 You know, in the guilt phase you didn't hear a
8 whole lot about those two, but you did here. You heard that
9 Bill Welborn grew up in Laurel, Mississippi; that his mom
10 sewed Purina sacks for shirts. Grew up hard. His daddy got
11 hurt. His daddy got hurt again.

12 Monty, who you heard from last from us had to go
13 to work. They had to live on credit. They had to wait on
14 the check from the government just to survive. And Monty,
15 he described his family as a family of wheels. They all
16 used wheels. Daddy was a bus driver.

17 Monty went into the Armed Service, served in the
18 Marines, and then went into the Air Force, and his little
19 brother followed his footsteps. And with the pride that
20 only a big brother can have, he told you about Bill Welborn
21 joining the Air Force, the youngest person to ever rise to
22 the level of an E-9. From Thailand to Naples, where he
23 developed a love of scuba diving and jumping out of
24 airplanes.

25 You heard him described by men as impressive as

1 Burke Fitzpatrick, who works for state government, and women
2 as impressive as Dawn Holrath. You heard Bill Welborn
3 described as gregarious, full of life, a zest for life.
4 Everybody that met him liked him.

5 And then you heard Monty describe Bill's
6 relationship with his momma, how he could brighten her up.
7 When she would say no to everybody else when they asked to
8 go out to eat, but Bill would show up and she would go.

9 And then you heard the sorrow in Monty's voice as
10 he talked about lying to his mother, telling her white lies
11 saying "Bill was starting a new business. Bill is busy."
12 And finally Thanksgiving in 1996, coming along, he finally
13 had to tell momma "your baby child is dead. Your baby child
14 died before you," but not for long, because as Monty said,
15 her life ended that day too. She didn't die. The death
16 certificate doesn't say that day, but Monty says that's the
17 day she died.

18 That's Bill Welborn. A zest for life, loved by
19 good quality people, from Dawn Holrath, to Burke
20 Fitzpatrick, to Monty Welborn; a father, a son, a brother,
21 someone who served his country.

22 Then you heard about Jared Champlin. Jared
23 Champlin lived about half the life that Bill Welborn got to
24 live. In his mid-twenties he finally found what many of us
25 search for for a lifetime, which is a passion, something

1 that gets us energized, a reason to keep going, and he found
2 it. He found it in jumping out of airplanes, skydiving. He
3 found the woman that he cared about in Karen Pratt, he found
4 a man he could look up in Bill Welborn, and he found a
5 reason, a passion for life.

6 Dawn told you that Jared was an artist. I used
7 the word accomplished. She kind of laughed and said no, it
8 wasn't published. Just did it for us. He loved children.
9 He was good with children, but he did not live long enough
10 to feel the sweetest kiss of all, which is the kiss of your
11 own child on your face. He did not live long enough to have
12 his own children.

13 You are entitled to consider the circumstances of
14 this crime. You are entitled to consider the impact that
15 Bill and Jared's life had on other people.

16 Ladies and gentlemen, we live in a culture that
17 seemingly is obsessed with death. You read the newspaper,
18 you watch television, you go to the movie theatre, you play
19 video games, you listen to music, we are seemingly obsessed
20 with death, and we lose sight of the fact, we lose sight of
21 the fact that death is final.

22 I have got a phone that my daughter likes to play
23 a game called brick breaker on it. Her name is Abigale and
24 I will hand the phone to her when we are in the car. And
25 she will say "daddy I got a new life. I got a new life,

1 daddy," because you can get new lives in this game. You
2 can't get real lives in real life. It would be great if we
3 could.

4 It would be great if life imitated art and we
5 could hit the restart button, but whatever Jared Champlin
6 said to Karen Pratt on January 8th is going to have a last a
7 lifetime. Whatever Bill Welborn said to Dawn Brudose, which
8 is "I will call you back in ten minutes," I hope that's
9 enough to last a lifetime. Whatever Jared said to his momma
10 up in Liberty, South Carolina, and whatever Bill said to his
11 momma in New Burn, North Carolina, it's going to have to
12 last a lifetime, because death is final.

13 You can consider the circumstances of the crime.
14 You can consider the impact those two men had on other
15 people, and you can consider the character of Norman
16 Starnes.

17 A decade, beginning in 1984, it started innocently
18 enough with a speeding ticket. And then it moves from a
19 speeding ticket into running from police officers. And then
20 from running to police officers to fighting with police
21 officers. Then we go from stealing money out of tip jars,
22 to stealing a car from an auto dealership. Then we go from
23 burning cars for money, wrestling with police officers,
24 giving false information to police officers. You see a
25 steady escalation in Norman Starnes criminal history that

1 did not begin with his drug use. It well preexisted his
2 drug use.

3 You see a disdain for the law. You see it in
4 front of you. A disdain for the rule of law and then you
5 see a disdain for the criminal justice process. To sit
6 around a coffee shop table and conspire to suborn perjury.
7 You have a disdain for the rule of law, you have a disdain
8 for the justice process.

9 Ladies and gentlemen, I have been a prosecutor for
10 15 years. I have worked with almost every law enforcement
11 agency you can imagine, from your own fine sheriff's
12 department, to the Federal Bureau of Investigation. Law
13 enforcement officers can take up for themselves. That
14 officer that wrestled with him in the house, in the
15 bathroom, he can take up for himself. The officers that had
16 to chase him in the field, they are big guys, they can take
17 up for themselves. It's when you begin to pick on the weak
18 and the innocent, like an Evelyn Miles, that you begin to
19 show your character. It's enough stealing money out of a
20 tip jar. It's enough to not pay her any money. It's enough
21 to make her work while you out smoking up the town with
22 Stanley Gleaton.

23 But the one nice thing, you may have noticed the
24 excitement in her voice. The only time she perked up is
25 when she was in front of you is when she was talking about

1 going to the drag race. That may not seem like much to us.
2 Most of us have never worried about where we go to sleep
3 from night to night. She is surviving off the tips. She's
4 working twelve hours a day, while her boss is out smoking up
5 Pelion, and he says "let's go to the drag race." And while
6 it may not sound like a lot of fun to us to sleep five in a
7 motel room, she was excited. She got to go to a drag race.
8 Do you remember how that drag race ended? Do you remember
9 how she got home? She's left on the side of the road with
10 an eleven year old child.

11 It's one thing to fight with police officers.
12 It's another thing to pick on a woman who cannot defend
13 themselves.

14 And then we move to the night before Gwen
15 Ott-Bailey went to the police at Tony Tindal's house. He's
16 beating up women. That's not enough. He comes inside and
17 he sits besides Evelyn Miles and he sticks her fingers in
18 his mouth and he licks her legs and says "you don't want to
19 fuck with me, Evelyn."

20 You want the character of Norman Edwin Starnes?
21 You got it. A decade of lawlessness, of drugs. In
22 hindsight you can see that he's on the road to
23 self-destruction and it almost ended when he got shot. But
24 life gave him a reprieve. Stanley Gleaton didn't kill him.
25 He gave him a reprieve. And what did he do with it? He

1 found another dealer.

2 You heard from four or five different men who said
3 they sold crack cocaine to Norman Starnes; that he would
4 trade guns; that he would trade food; that he would bring in
5 change. He's in the throws of an addiction when he killed
6 Bill Welborn and Jared Champlin.

7 You know, he wrote a letter and I had him read it.
8 He said "Jody Fogle will never come forward," but he did.
9 And then he said "they will never find the murder weapon,"
10 but they did. And then he said "they will never know the
11 real motive behind this murder," and now you do.

12 The only one with the drug problem in this case,
13 ladies and gentlemen, is Norman Edwin Starnes.

14 You can consider the circumstances of the crime.
15 You can consider the impact of the loss of Bill Welborn and
16 Jared Champlin, and you can consider the character of Norman
17 Edwin Starnes.

18 Let me say this before I will leave this area.
19 He's going to stand up in front of you in a minute. He's
20 going to beg you for mercy. You watch him. You wait and
21 you watch. He will stand in front of you and ask you for
22 mercy. And my question to you is this. Why is it that the
23 people who can never show mercy to anyone else are the first
24 ones to ask for it? Where is the mercy for those two men?
25 Where is the mercy for Evelyn Miles? Where is the mercy for

1 Gwen Ott-Bailey or Tyler Ott?

2 You know, I couldn't help but think when he's
3 talking about being the bus driver of the year, the trip
4 will stand out the most in my mind is driving an 11 year old
5 in a car with two corpses in the back. They don't give out
6 certificates for that.

7 You can consider the character of Norman Edwin
8 Starnes.

9 Ladies and gentlemen, if you have ever stood out
10 in front of an elementary school the first day of school and
11 watched the moms and dads and grandparents say good-bye to
12 their children. If you are a parent, you know exactly what
13 I'm talking about. It's their first day of school, and
14 there are tears and there are hugs and there are glances
15 backward to make sure that mom and dad are still there.
16 That's good-bye for a day.

17 I want you to imagine saying good-bye for a
18 lifetime. Imagine Bill Welborn's sons. Imagine Bill
19 Welborn's momma.

20 Imagine Karen Pratt. Do you think if she had
21 scripted this out, she would have argued with Jared about
22 money?

23 Death is the one constant in life. It's something
24 that every one of us will have in common. We may have
25 nothing else in common, but unless the Lord comes back

1 before we die, all of us must die. It is not dying that
2 bothers us. It's not dying. It's how we die. Is death
3 going to walk up to the front door of our lives and gently
4 knock and give us time to get our souls in order, to say a
5 prayer, to say good-bye to your family, to get your affairs
6 in order? Is death going to walk slowly to your front door
7 and give you time to do all the things that you want to do?
8 Or is it going to come up and kick in the front door of your
9 life and not even give you time to beg?

10 Do you think Bill Welborn and Jared Champlin had
11 any idea when they woke up January the 8th, that by midnight
12 they would be laying in a grave on top of one another?

13 Death is constant. How we die is not.

14 I could not help but notice that the defendant got
15 to see his mother today, and yesterday, and the day before
16 yesterday, and the day before that. No matter what you
17 decide, he's had more time to put his affairs in order, to
18 say good-bye, to hug whoever he wants to hug, to write
19 whoever he wants to write. He's had more time than Bill
20 Welborn and Jared Champlin had.

21 What would they give for one more day? Just one
22 more chance?

23 On one end of life's spectrum I suppose there is
24 something we call mercy. We all need mercy. We have all
25 tasted mercy, but I cannot ask for mercy for Norman Edwin

1 Starnes. He has already tasted mercy. He's been shot and
2 lived. He had a mother that cared about him. He had a
3 business.

4 Norman Edwin Starnes, why show him mercy, when you
5 can have that kind of a record and never see the inside of a
6 jail? I cannot and I will not ask for mercy for Norman
7 Edwin Starnes.

8 But there is also something called vengeance. A
9 retribution, an eye for an eye, a tooth for a tooth. And
10 I'm not going to ask for vengeance on him either. I'm not
11 going to ask you to treat him the way that he treated Bill
12 and Jared. I'm not going to ask you to shoot him in the
13 back, to throw his body in the back of a car, to take it to
14 an isolated farm, to bury it where the animals can get it,
15 and then to re-bury it. I am not going to ask for
16 vengeance.

17 I'm going to come in the middle of mercy and
18 vengeance and stand on a rock called justice and I'm going
19 to tell you that there are some crimes that deserve
20 society's ultimate punishment: The taking of two lives.
21 The planning, the lies afterwards, the disposal of the
22 bodies. The concealment. You are the collective conscience
23 of this community. It is your community. But, ladies and
24 gentlemen, there are some crimes that call out for your
25 toughest punishment.

1 I heard about drug abuse. I heard about growing
2 up with a single mom. Ladies and gentlemen, you can walk a
3 mile in any direction from this courthouse and find people
4 that grew up much tougher than that. You can walk in any
5 direction you want and find people that grew up with single
6 parents. You can find people in the throws of addiction.
7 He had a chance to get out. Imagine what some of the men
8 that you heard from would have given to have had a mom and a
9 girlfriend drive him to Charleston and say "let me help you
10 get off the stuff." He's had it better than a lot of
11 people.

12 Ladies and gentlemen, it's time for me to sit
13 down, but I fear that I have not done a good enough job of
14 telling you what Bill and Jared were like. I want you to
15 look at the pictures. You know, that's the nature of our
16 Criminal Justice System. All the attention is on the
17 defendant and so little was on the victim. I want you to
18 look at the pictures. I want you to see Jared. I want you
19 to see Bill.

20 You know, those two deserved mercy. They wouldn't
21 settle for justice. Imagine if you had given them the
22 choice to have the twelve of you and Norman Starnes at his
23 house on January the 8th. Imagine if they had had the
24 luxury of a jury of twelve to decide what they deserved.
25 He's already got it better than they had it. Ten years to

1 put your affairs in order, to say good-bye, to write whoever
2 you want to write.

3 I'm going to sit down, but I'm going to sit down
4 with this. Jared is in a better place. He's not there
5 anymore. I'm convinced that he's at a place where he has
6 hands and feet.

7 And Bill Welborn is in the best place you can be.
8 He's under his momma's arm, because his big brother kept his
9 word. Monty, you kept your word. He said he would take his
10 momma back home to be buried. He took his momma and he took
11 his baby brother and he buried his baby brother under his
12 momma's arm. Monty kept his word.

13 We are asking you to keep your word. You said
14 there was some crimes that were serious enough. We trust
15 you. We trust you. When you come back in the courtroom,
16 may justice fill the air for Bill Welborn and Jared
17 Champlin.

18 THE COURT: Mr. Starnes.

19 MR. STARNES: If it please the court, Your Honor?

20 THE COURT: Yes, sir.

21 MR. STARNES: The judge is going to give you all
22 the law in just a minute as it relates to this case.

23 For a year of my life I had a drug problem. And I
24 told y'all from the very first day that I shot and killed
25 Bill Welborn. I ruined a lot of people's lives. I hurt a

1 lot of people and I'm responsible for that. I not only hurt
2 Welborn and Champlin's family, I always devastated a lot of
3 people in my family, and I take responsibility for that.

4 I believe Mr. Gowdy exploited my entire life and
5 you all know everything about me. During my drug use I was
6 involved with a stolen car, burning the truck, the incident
7 at the race track. I hurt a lot of people because I chose
8 to use drugs.

9 The last eleven years of my incarceration I have
10 been the most decent inmate that I could be and I have did
11 what I was asked to do.

12 Whether it's life imprisonment without the
13 possibility of parole or the death penalty is your own
14 individual decision.

15 The judge is going to instruct you in the law
16 regarding aggravating circumstances. And I believe a few
17 days ago you have already found one.

18 A couple weeks ago when each of y'all come into
19 the courtroom, we asked would you consider aggravating and
20 the mitigating circumstances and let it be your own
21 individual decision.

22 You can give life imprisonment without the
23 possibility of parole or you can give the death penalty.
24 And you have the option for each victim in this case. You
25 can give life for one and death for one. You can give death

1 for both, or you can give life imprisonment for both.
2 That's your own individual decision.

3 I take full responsibility for burying Bill and
4 Jared, and I'm deeply sorry for that, and I can't change
5 that. And I know I hurt a lot of people.

6 My mother never did any drugs. And I'm asking
7 y'all not to kill me for that lady right there. I was
8 raised -- my mom raised me as a single parent. She never
9 stole a vehicle. She never left us on the side of the road.
10 She never burned a vehicle. She never lied.

11 I could sit up here and probably talk all day and
12 it wouldn't change anything. It's not going to bring Bill
13 and Jared back. It's not going to make the families heal
14 any more. They will live with this pain for the rest of
15 their life, and I'm responsible for that.

16 I'm just asking y'all when you make a decision,
17 that it be your own individual decision. If you feel I
18 deserve life imprisonment without the possibility of parole
19 and dying in prison, that would be your decision. If you
20 feel that I deserve society's ultimate punishment in giving
21 me the death penalty, please let it be your own individual
22 decision.

23 Prior to drug use I wasn't the worst person in the
24 world. And for the last eleven years I have tried to take
25 this experience and make it positive on other people's

1 lives, on other kids, so that they don't go down the road
2 that I went down and that they don't make the decisions that
3 I made.

4 Thank you, Your Honor.

5 THE COURT: Anything else you want to say to the
6 jury, Mr. Starnes?

7 MR. STARNES: No, sir.

8 (Whereupon, at 11:13 a.m., the court charged the
9 jury panel)

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, you have heard final arguments from each side in
12 this case. It's now time for me to instruct you with regard
13 to the law that applies to this phase of the trial or this
14 trial phase. You have heard the evidence and the arguments
15 of both the State and the defendant. I'll explain the law
16 now that applies to the sentencing phase of this trial.

17 I charge you first, as I told you earlier, you are
18 the sole finders of the facts in this case, which makes you
19 also the sole judges of the credibility or believability of
20 the witnesses who have testified during the phase of this
21 trial.

22 As I explained to you earlier, only the jury can
23 make the findings of facts in this case, and I am not
24 permitted as the judge of the law to indicate to you how I
25 may feel about the facts. If I have said or done anything

1 during the course of this phase of the proceedings that
2 might indicate to you that I have an opinion about the facts
3 or that I have an opinion as to what the sentence should be,
4 then you must disregard that and form your own opinion in
5 that regard.

6 As the judges of the facts you must evaluate the
7 credibility of the witnesses, just as you did before. In
8 passing upon their credibility, you may take into
9 consideration many things, such as the demeanor or manner of
10 testifying; whether the witness had reason to be biased or
11 prejudiced; whether a witness' testimony was contradicted on
12 the one hand or supported and corroborated on the other
13 hand.

14 Further, you may consider both direct and
15 circumstantial evidence. The definitions for those that I
16 give you during first phase of the trial still apply. You
17 will consider those, as I previously explained them to you,
18 as to circumstantial and direct evidence.

19 You certainly do not determine the credibility or
20 believability of witnesses by counting the number of
21 witnesses for either side. You may believe a portion of the
22 witness' testimony and disregard the larger, or vice versa.

23 You may believe one witness as against many, or
24 many against one.

25 All of these things that you will consider,

1 bearing in mind that you should give the defendant the
2 benefit of all reasonable doubt.

3 Mr. Foreman, ladies and gentlemen of the jury, you
4 heard the testimony of an expert witness in this phase, just
5 as you did in the first phase of the trial. Expert
6 witnesses who have special knowledge, skill, experience,
7 training, or education in a particular profession or
8 occupation, because of those special qualifications, experts
9 are allowed to give opinions as to matters within their area
10 of expertise. In determining the weight to be giving
11 opinions given by experts, you should consider the
12 qualifications and credibility of the expert and the reasons
13 given for his opinion. You are not bound by such opinions.
14 Give them the weight, if any, that you deem them entitled.

15 If you should decide that the opinion of an expert
16 witness is not based upon sufficient education, experience,
17 or you should conclude that the reasons given in support of
18 the opinion are not sound, you feel that it is outweighed by
19 other evidence, you may disregard the opinion entirely.

20 Mr. Foreman, ladies and gentlemen of the jury, I
21 instruct you with regard to the fact that the defendant did
22 not testify in this phase of the trial. I instruct you and
23 emphasize to you that the fact that the defendant did not
24 testify during this phase of the trial must not be
25 considered by you in any way in your deliberations. The

1 defendant has a Constitutional Right to remain silent. The
2 exercise of that Constitutional Right cannot and must not be
3 held against the defendant. Under the oath that you have
4 taken as jurors, you are to draw no inference and draw no
5 conclusion whatsoever of the fact that the defendant did not
6 testify. Please do not even discuss the fact that the
7 defendant did not testify during this phase of the trial in
8 your jury room.

9 Mr. Foreman, ladies and gentlemen of the jury, as
10 I explained to you earlier, I am the exclusive and sole
11 judge of the law. So if you have some idea as to what the
12 law is or what the law should be and it does not agree with
13 what I now tell you that the law is in this state, then you
14 are obligated under your oath that you have taken as jurors
15 to set your notion of the law aside and accept the law and
16 apply the law precisely as I now explain it to you.

17 Mr. Foreman, ladies and gentlemen of the jury, it
18 now becomes your duty to decide what sentence that you will
19 recommend to this court to impose upon the defendant Norman
20 E. Starnes.

21 Now, there are two verdicts that you are to
22 consider in this case, if you find beyond a reasonable doubt
23 the existence of a statutory aggravating circumstance.

24 One is the death penalty, which is in this state
25 by electrocution or by lethal injection; and the other is

1 life imprisonment without the possibility of parole.

2 You should understand that these sentences mean
3 what they say; that is, if you recommend that the defendant
4 be sentenced to death, he will actually be put to death by
5 electrocution or lethal injection.

6 And if you recommend that the defendant be
7 sentenced to life imprisonment, he will actually be
8 sentenced to life imprisonment without any possibility of
9 parole.

10 In your deliberations you are not to speculate
11 that these sentences of death or life imprisonment without
12 the possibility of parole mean anything different from their
13 ordinary plain meaning. That's what they mean, either death
14 or life imprisonment without any possibility of parole.

15 Please understand your sentencing recommendation
16 will be followed by this court. And so whatever you
17 recommend, the court is required to impose by law. So
18 whatever sentence that you recommend, the court would
19 impose. You should fully understand that.

20 Now, I'm going to explain about the sentences.
21 And the order in which I explain the sentences is in no way
22 a recommendation by this court as to which sentence you
23 should choose to recommend. It's simply that one must be
24 stated first.

25 I'm going to talk to you insofar as a reasonable

1 doubt. I have previously explained reasonable doubt to you
2 in the first phase of the trial. I'm going to explain it to
3 you again now.

4 The State has the burden in this case. When I say
5 the State has the burden beyond a reasonable doubt, I
6 explain to you again with regard to reasonable doubt, that
7 some of you may have served as jurors in civil cases where
8 you were told it was only necessary to prove the fact is
9 more likely true than not, such as by the greater weight or
10 preponderance of the evidence. However, in criminal cases
11 the State's proof must be more powerful than that. It must
12 be beyond a reasonable doubt.

13 Ladies and gentlemen, proof beyond a reasonable
14 doubt is proof that leaves you firmly convinced of the
15 defendant's guilt.

16 There are very few things in this world that we
17 know with absolute certainty, and in criminal cases the law
18 does not require proof that overcomes every possible doubt.

19 A reasonable doubt may also be described as the
20 kind of doubt that would cause a reasonable person to
21 hesitate to act.

22 If you have such a doubt in this phase of the
23 trial, then the defendant would be entitled to the benefit
24 of that reasonable doubt.

25 Now, a reasonable doubt may arise from evidence

1 which is in the case, or the absence or lack of evidence in
2 the case.

3 You alone must make the determination of whether
4 or not reasonable doubt exists in this case, when I refer to
5 reasonable doubt.

6 Mr. Foreman, ladies and gentlemen of the jury, I'm
7 going to define for you first what a statutory aggravating
8 circumstance is. You are not going to have these
9 instructions written back down for you. I take that back.
10 You will have written down for you, as I will go over with
11 you in a minute, a sheet called statutory instructions,
12 which will list statutory aggravating circumstances that you
13 may consider, and also statutory and non-statutory
14 mitigating circumstances that you can consider, which are in
15 and of themselves not complete insofar as mitigating
16 circumstances, because you can consider all mitigating
17 circumstances that you think might be raised -- that you
18 believe are raised during the course of this phase of the
19 trial.

20 Now, let me explain to you first what is a
21 statutory aggravating circumstance.

22 A statutory aggravating circumstance is a fact, an
23 incident, a detail, or an occurrence which the South
24 Carolina General Assembly has declared by statute would make
25 worse, that is, aggravate the offense of murder or the two

1 occur together. In other words, it is something which
2 increases the enormity or adds to the injurious consequences
3 of the offense.

4 Now, I have prepared for your use in the jury room
5 a sheet called statutory instructions. I hold that up for
6 you now and look at it and you would be able to look at it
7 more closely when you get back there. Now, on this sheet of
8 paper, which I hold in my mind, is written at the top
9 statutory instructions. And, again, you will have this form
10 back in your jury room to look at.

11 The body of this form states as follows: "In
12 determining whether to recommend that the defendant Norman
13 Starnes be sentenced by the court to life imprisonment or to
14 death, you may consider the following statutory aggravating
15 circumstances."

16 Listed on this form are three statutory
17 aggravating circumstances that the jury could consider.

18 First listed is the murder was committed while
19 armed with a deadly weapon.

20 Second, that murder was committed along with
21 larceny with the use of a deadly weapon.

22 And the third possible statutory aggravating
23 circumstance is listed is two or more persons were murdered
24 by the defendant by one act or pursuant to one scheme or
25 course of conduct.

1 Now, I need to explain to you or define for you
2 what the statutory aggravating circumstance that the murder
3 was committed while in the commission of a robbery while
4 armed with a deadly weapon. I'll need to define that for
5 you, explain to you the law.

6 What is robbery? Robbery is the larceny from the
7 person or immediate presence of another by violence or
8 intimidation.

9 Larceny -- and I'm going to -- robbery includes
10 larceny, so I'm going to explain larceny to you now.

11 Larceny is the felonious taking and carrying away
12 by any person of the personal goods or things of another
13 person with the intent to appropriate them to one's own use
14 and to deprive the owner permanently of his property.

15 There are four elements which must be present and
16 established beyond a reasonable doubt to make out larceny.

17 First, that there was a taking.

18 Second, that the taking was of the personal
19 property of another person.

20 Third, that after being taken, the property was
21 carried away.

22 And fourth, that the taking and carrying away of
23 the property was done with an intent to steal.

24 Those are the four elements of larceny.

25 To constitute robbery, in addition to those four

1 elements of larceny, which is larceny, would be two
2 additional elements; in other words, robbery is larceny with
3 two elements added. The property is taken from the person
4 of another or in his immediate presence, and the taking of
5 property must not only be taken without the consent of the
6 owner, it must be accomplished by violence or by putting the
7 person in fear. That is the difference between robbery and
8 larceny.

9 That violence must be actual personal violence or
10 the threat of it. This violence or intimidation must either
11 precede or be contemporaneous with the taking of the
12 property.

13 Finally, in addition to the elements of robbery,
14 one additional element must be proven by the State to
15 constitute robbery with a deadly weapon, and that is the
16 robbery must have been committed with a pistol or other
17 deadly weapon; that is, the person who committed the crime
18 actually had and used a pistol or another deadly weapon.

19 Now, as I told you, another statutory aggravating
20 circumstance would be murder committed along with larceny
21 with the use of a deadly weapon. And I have previously
22 instructed you now the four elements of larceny, and you
23 will keep that in mind. Let me run right back through them
24 again with regard to larceny. There are four elements.

25 That there were a taking;

1 That the taking was of the personal property of
2 another person;

3 That after being taken, the property was carried
4 away;

5 And that the taking and carrying away of the
6 property was done with an intent to steal.

7 Those are the four elements of larceny.

8 Now, in addition to proving the four elements of
9 larceny, the State must prove beyond a reasonable doubt that
10 the larceny must have been committed with a pistol or
11 another deadly weapon; that is, the person who committed the
12 crime actually had and used a pistol or another deadly
13 weapon.

14 Again, the elements of each of these offenses must
15 be proven by the State beyond a reasonable doubt.

16 The third statutory aggravating circumstance used,
17 or you are to consider, are that two or more persons were
18 murdered by the defendant by one act or pursuant to one
19 scheme or course of conduct.

20 Now, Mr. Foreman, ladies and gentlemen of the
21 jury, I charge you that aggravating circumstances are
22 committed while in the commission of a capital murder when
23 they are consummated in a continuous series of facts with
24 the murder and in the same place and not separated by any
25 substantial length of time. The fact that the circumstances

1 occur after the murder does not invalidate them as statutory
2 aggravating circumstances.

3 Mr. Foreman, ladies and gentlemen of the jury, the
4 State has also introduced evidence of other crimes that the
5 defendant allegedly committed in the past. I charge you
6 that the evidence of these crimes, these other crimes, may
7 not be considered as substantive evidence of statutory
8 aggravating circumstances, but if you are convinced that the
9 defendant committed these crimes, or any of them, you may
10 consider them as evidence of his character. These may be
11 considered, along with all of the other evidence, and you
12 may give them whatever weight that you deem proper under the
13 circumstances of this case.

14 Mr. Foreman, ladies and gentlemen of the jury,
15 once you have considered the evidence and determined whether
16 a statutory aggravating circumstance existed beyond a
17 reasonable doubt, please remember you are still never
18 required to recommend the death penalty, even if you find a
19 statutory aggravating circumstance existed at the time the
20 offense occurred.

21 I instruct you further that should you find the
22 State has not proven that such a statutory aggravating
23 circumstance has existed, that is to say you find that you
24 still have a reasonable doubt as to the existence of such a
25 statutory aggravating circumstance, then you would not be

1 authorized to recommend a sentence of death or life
2 imprisonment, and you must fill out a form entitled no
3 finding of statutory aggravating circumstance and cease
4 deliberating.

5 If you do not find the existence of a statutory
6 aggravating circumstance, the foreperson is the only juror
7 required to sign this form so finding.

8 Now, should you unanimously find beyond a
9 reasonable doubt that the one, some, or all of the
10 aggravating circumstances listed on the sheet of statutory
11 instructions existed at the time of the murder, the
12 foreperson should fill out the statutory aggravating
13 circumstances on the form entitled statutory aggravating
14 circumstances that you will have with you in the jury room.
15 Then the foreperson and each of the twelve jurors, that is,
16 the foreperson and the other eleven jurors, shall sign the
17 form in the spaces provided.

18 If you do find the existence of at least one
19 statutory aggravating circumstance beyond a reasonable
20 doubt, and further determine, after taking into
21 consideration any evidence for a sentence of life
22 imprisonment, which I'll explain to you in a moment, that
23 the sentence you will recommend to the court is death, you
24 will indicate that decision by filling out the
25 recommendation of sentence death penalty form.

1 By this recommendation of sentence death penalty,
2 from which I hold in my hand, that's this form, Mr. Foreman,
3 ladies and gentlemen of the jury, if this is the jury's
4 instruction, Mr. Foreman, you would be responsible for
5 writing in the form any statutory aggravating circumstances
6 that the jury found to exist beyond a reasonable doubt.

7 Please observe that immediately below the body of
8 the recommendation there are twelve lines. This is where,
9 should you decide the recommend the death penalty, each
10 juror should sign their name.

11 It is the law in this state, Mr. Foreman, ladies
12 and gentlemen of the jury, that a recommendation for
13 imposition of the death penalty be made unanimous
14 recommendation and that each and every juror sign his or her
15 name to the recommendation form.

16 I want to read to you the text of that form. It
17 says, "we, the jury, in the above-entitled case, having
18 found beyond a reasonable doubt the existence of the
19 following statutory aggravating circumstances: To-wit," at
20 this point there is place provided for the foreperson to
21 write down the statutory aggravating circumstances which the
22 jury unanimously finds beyond a reasonable doubt, if proven
23 by the State, which I have already quoted you, "now
24 recommend to the court that the defendant, Norman E.
25 Starnes, be sentenced to death."

1 Now, there is a recommendation of life
2 imprisonment form, Mr. Foreman, ladies and gentlemen of the
3 jury. I hold that form up to you now. It's a much briefer
4 form.

5 By this form, which I just showed to you, it is a
6 recommendation of a sentence of life imprisonment. You, the
7 jury, can recommend to this court the defendant be sentenced
8 to life imprisonment, even if a statutory aggravating
9 circumstance is proved. If you find proof beyond a
10 reasonable doubt, you still can recommend, of course, a life
11 imprisonment sentence.

12 And this form reads as follows: "We, the jury, in
13 the above-entitled case recommend to the court that the
14 defendant, Norman E. Starnes, be sentenced to life
15 imprisonment."

16 Please note, although, you may unanimously agree
17 to recommend life imprisonment, only the foreperson is
18 required to sign this form, recommendation form, on behalf
19 of the jury.

20 I now instruct you on what you may consider in
21 making your decision as to which sentence to recommend.

22 As I previously instructed to you, if you find the
23 existence beyond a reasonable doubt of a statutory
24 aggravating circumstance, then you are permitted, but not
25 required, to recommend the death penalty.

1 There are three conditions which you should
2 consider in reaching your decision as to whether to
3 recommend the death penalty or life imprisonment:

4 First, whether the existence of a statutory
5 mitigating circumstance or circumstances was supported by
6 the evidence.

7 Second, whether the existence of any other
8 non-statutory mitigating circumstance was supported by the
9 evidence.

10 Third, whether for any reason you can think of, or
11 for no reason at all, the defendant should be sentenced to
12 life imprisonment.

13 Now, I want to go over with you the statutory
14 mitigating circumstances, which are also listed on this
15 statutory instruction form. You will find them listed
16 below, possible statutory aggravating circumstances. You
17 will find statutory mitigating circumstances listed that you
18 are to consider.

19 What is statutory mitigating circumstance? It is
20 a fact, an incident, a detail, or an occurrence which the
21 South Carolina General Assembly has declared by statute
22 would reduce the severity of the offense of murder. In
23 other words, it is a circumstance recognized by statute as
24 one which in fairness and mercy may be considered as an
25 extenuating or as reducing the degree of moral culpability

1 for the commission of the act of murder.

2 A mitigating circumstance is neither justification
3 nor excuse for the murder. It simply lessens the degree of
4 one's guilt, that is, makes him less blameworthy or less
5 culpable.

6 What statutory mitigating circumstances should you
7 consider in this case? Again, I have listed them on the
8 sheet, and it will be next following the statutory
9 aggravating circumstances, and they are as follows:

10 You may also consider the following statutory
11 mitigating circumstances:

12 First, the murder was committed while the
13 defendant was under the influence of mental or emotional
14 disturbance.

15 Second, the defendant has no significant history
16 of prior criminal conviction involving the use of violence
17 against another person.

18 Third, the victim was a participant in the
19 defendant's conduct or consented to the act.

20 Fourth, the defendant was provoked by the victim
21 into committing the murder.

22 You may also consider any non-statutory mitigating
23 circumstances. I have listed for you on this form under
24 non-statutory mitigating circumstances:

25 That the defendant's adaptability to prison life.

1 Now, in addition, Mr. Foreman, ladies and
2 gentlemen of the jury, to the non-statutory mitigating
3 circumstance listed on this form, you may consider any other
4 non-statutory mitigating factor that you believe you ought
5 to consider, based on the testimony and evidence that you
6 have heard during the sentencing phase of the trial and
7 anything that you heard. So those do not have to be listed,
8 but any non-statutory mitigating circumstance you believe
9 ought to be considered, based on what you heard, you can
10 also consider that non-statutory mitigating circumstance, if
11 you think it's appropriate under the facts of this case.

12 Now, the defendant has presented evidence of
13 non-statutory mitigating circumstances concerning his
14 adaptability to prison life. In addition to this
15 non-statutory mitigating circumstance, again, you may
16 consider any other non-statutory mitigating circumstances
17 that you find exists.

18 While there must be some evidence which supports a
19 finding by you that a statutory or non-statutory mitigating
20 circumstance exists, it is not necessary for you to find the
21 existence of such a circumstance unanimously. You should
22 use your own individual judgment in that regard. You are
23 not required to find any statutory or non-circumstantial --
24 excuse me, non-statutory -- statutory or non-statutory
25 mitigating circumstance, you are not required to find them

1 unanimously; neither are you required to find them beyond a
2 reasonable doubt. It does not require you to find them
3 beyond a reasonable doubt.

4 In reaching your decision as to which sentence to
5 recommend, you will consider the aggravating and mitigating
6 circumstances. While an aggravating circumstance must be
7 found before you can even consider recommending the death
8 penalty, once such finding is made beyond a reasonable
9 doubt, you may recommend the death sentence, even though you
10 find the existence of a statutory mitigating circumstance, a
11 non-statutory mitigating circumstance, or both. In other
12 words, the existence of alleged statutory mitigating
13 circumstance and alleged non-statutory mitigating
14 circumstance, or both, is not a bar to the imposition of the
15 death penalty.

16 The third element that you may consider, should
17 you conclude that a statutory aggravating circumstance
18 exists, is whether the defendant should be sentenced to life
19 imprisonment for any reason, or for no reason at all, as a
20 simple act of mercy. This is what has been traditionally
21 referred to as a recommendation of mercy. And should such
22 be your decision, you would so indicate by returning to the
23 court the recommendation of life imprisonment form, which
24 will be signed by the foreperson alone. The other jurors
25 are not required to sign that form.

1 In other words, you may choose to recommend life
2 imprisonment if you find a statutory or non-statutory
3 mitigating circumstance, or you may choose to recommend life
4 imprisonment as an act of mercy for no reason at all.

5 In any instance, if you choose to recommend life
6 imprisonment, your decision must be a unanimous one and the
7 foreperson alone, again, would be required to sign the
8 recommendation for life imprisonment.

9 I'll go back over that with you now, with regard
10 to the forms and hopefully simplify it a little bit.

11 The first thing you are going to have back there,
12 Mr. Foreman, ladies and gentlemen of the jury, is a
13 statutory instructions form. And it lists first on the form
14 statutory aggravating circumstances for you to consider.
15 There are three of those.

16 Next, they list the statutory mitigating
17 circumstances for you to consider, and there are four of
18 them.

19 Then it lists non-statutory mitigating
20 circumstances to be considered by you, and there is one of
21 them. In addition of that, of course, you can consider any
22 other non-statutory mitigating circumstances which are not
23 listed on this form that you feel ought to be considered,
24 based on what you have heard during the course of the trial.

25 Now, what I'm going to suggest to you is you take

1 this form, Mr. Foreman, ladies and gentlemen of the jury,
2 statutory instruction form.

3 Then the first thing that you would do is make a
4 determination whether the State has proven a statutory
5 aggravating circumstance beyond a reasonable doubt, at least
6 one of them. Now, you should consider all three that have
7 been listed for you.

8 If you do not find that the State has found a
9 statutory aggravating circumstance beyond a reasonable
10 doubt, then you would simply sign your name on the line
11 above the word foreperson on that information, date it, and
12 knock on the door and let the bailiff know that you have
13 concluded your deliberations, because that would end the
14 matter.

15 If you do not find at least one statutory
16 aggravating circumstance, you cannot recommend to the court
17 either death or life. You simply would make that finding,
18 if you don't find one, knock on the door. Sign this form,
19 put the date on it, knock on the door and let the bailiff
20 know that you are ready. So that form would be there.
21 That's the first determination that you are to make.

22 Secondly, if you do find that one, two, or all
23 three statutory aggravating circumstances have been proved
24 by the State beyond a reasonable doubt, then you would take
25 that form, like this, Mr. Foreman, ladies and gentlemen, and

1 it says "we, the jury, in the above-entitled case find the
2 State had proven beyond a reasonable doubt the existence of
3 the following statutory aggravating circumstances:" You
4 would take from the instruction sheet such that the jury
5 finds unanimously and write those in. You can list them on
6 here on those blank forms, Mr. Foreman.

7 Now, if you find statutory aggravating
8 circumstances, one, or more, of them, you would write them
9 on this form. You would sign your name on the form and
10 every single juror. The other eleven jurors would also have
11 to sign their name on that particular form, and you will see
12 it and it's explained by the form.

13 Now, the next form that you are to consider, after
14 considering the -- if you find that the State had proven
15 beyond a reasonable doubt at least one statutory aggravating
16 circumstance, you filled out on this form, fill that out,
17 then you would consider whether to impose a sentence of life
18 imprisonment or the death penalty.

19 If you find that after considering the statutory
20 aggravating circumstances, the statutory mitigating
21 circumstances, non-statutory mitigating circumstances, you
22 consider all of that, if you find that the defendant should
23 be sentenced to life imprisonment, then, Mr. Foreman, you
24 would -- there is a form for that and you would sign your
25 name on the line above the word foreperson and date it.

1 Okay. The other jurors do not have to sign that form, if
2 that is the finding of the court -- excuse me, of the jury,
3 or the recommendation of the jury.

4 Finally, if you find a statutory aggravating
5 circumstance and you have listed that on that form, filled
6 out that form, and you find, after considering the statutory
7 aggravating circumstance, statutory and non-statutory
8 mitigating circumstances, considering all of that, if you --
9 if the jury recommends unanimously the death penalty, then,
10 Mr. Foreman, you would take that form. You would have to
11 list first on that form any statutory aggravating
12 circumstances unanimously found were proven beyond a
13 reasonable doubt by the State, you would list them on this
14 form, just as you do on the other form that I went over.
15 And if the unanimous recommendation of the jury is for the
16 death penalty, then each -- you would sign it and each juror
17 would sign this particular form, and it has some
18 instructions on there with regard to that.

19 Now, we have prepared -- since there are two
20 victims in this case, there is William C. Welborn and there
21 is Jared Champlin, there are two sets of forms in this case.
22 One for each of the victims in the case.

23 On that as to William C. Welborn, those forms has
24 his name at the top underneath whatever the form is. So if
25 you will look at the top of the form. You will find in each

1 case there are two sets of forms. One, William C. Welborn,
2 and the other is Jared Champlin.

3 You will need to make a separate finding as to
4 each of these two victims; in other words, Jared Champlin
5 and William C. Welborn. You will consider them separately
6 and the jury will make a separate finding, unanimous finding
7 as to each of these two victims, and you will fill out the
8 forms accordingly.

9 Now, let me reiterate to you, Mr. Foreman, ladies
10 and gentlemen of the jury, the order in which I have gone
11 through these instructions and the forms means absolutely
12 nothing. I have tried to simplify it as much as I can, but
13 the order in which I have gone over them with you means
14 absolutely nothing. You should draw no inference from that
15 as to what the court may feel about this case or to what
16 your verdict should be in this case, absolutely not. What
17 you should do, Mr. Foreman, ladies and gentlemen of the
18 jury, you should deliberate, follow the instructions that I
19 have given you and go through these forms. They are in the
20 order that I gave them to you and consider them in that
21 fashion.

22 And if you get back and you start deliberating and
23 you are still not sure about any instruction that I just
24 given you and you want me to repeat any of this instruction,
25 I will be glad to do that, if you request it, obviously.

1 But I think if you follow the forms as they are listed and
2 as I have gone over them, then you should find them
3 self-explanatory as you go through them.

4 Again, the order in which I have gone through them
5 or given them to you means absolutely nothing. It's your
6 decision as to what to do and what your findings will be in
7 this case. But you must make a separate finding as to each
8 of the victims in the case, and each of them should be
9 separately considered and you should make a separate
10 finding. Whatever you do, it must be your unanimous verdict
11 in order to fill out these verdict forms, Mr. Foreman,
12 ladies and gentlemen.

13 I'm going to ask you now, if you will, please,
14 to --

15 I'll remind you one more time that whatever your
16 recommendation to the court is, whichever verdict forms that
17 you fill out or recommendation forms that you fill out, I
18 should say, it must be unanimous. All twelve jurors must
19 have agreed, must be in agreement.

20 I'll ask you, please, now to retire to the jury
21 room. Do not yet begin your deliberations. I have to give
22 counsel an opportunity to request additional instructions.
23 And if additional instructions are requested and I deem them
24 necessary, I will bring you back out and give you those
25 instructions. Please do not begin deliberating until you

1 get instructions to begin deliberating and the forms are
2 brought to you. And any exhibits which have been admitted
3 into evidence during this phase will also be sent back to
4 you for you to further examine and consider.

5 Now, please retire to the jury room, the twelve
6 original jurors.

7 The three alternates, I'll ask that you not go
8 back in the jury room at this time, but they would be
9 maintained separately in a separate room at this time, if
10 you will.

11 I would tell -- let me instruct the alternates not
12 to discuss this case at all while the first twelve jurors
13 are deliberating. And the reason for that is -- you should
14 not begin discussing it at all, the case at all, among
15 yourselves, discuss it at all, because if for any reason an
16 emergency develops with regard to one of the first twelve
17 jurors chosen during their deliberations and we had to
18 excuse one of the jurors, then you would -- one of you would
19 automatically fill in for the missing juror. We need to
20 ensure that you have not been discussing the case so you can
21 begin with the other jurors to discuss the case freshly
22 without any previous deliberation or discussion.

23 All right. Please retire to the jury room.
24 Again, we will keep the alternates separate this time, and
25 wait for further instruction from the court. Thank you.

1 (Whereupon, at 12:48 p.m., the jury retired to the
2 jury room, awaiting instructions to begin deliberations)

3 (Whereupon, the alternate jurors were taken to
4 another room, separate from the jury panel)

5 THE COURT: Exceptions or additional requests to
6 charge, from the State?

7 MR. GOWDY: Not from the State.

8 THE COURT: From the defense?

9 MR. STARNES: Yes, sir, Your Honor.

10 I would ask the jury to be instructed that life
11 without parole means until the death of the offender.

12 THE COURT: I think I did do that.

13 I said you should consider that life imprisonment
14 without the possibility of parole means that the defendant
15 would never be eligible for parole? Didn't I say that, I
16 thought?

17 I don't mind instructing them that. Let's -- I'll
18 bring them back and instruct them on that. I want to be
19 sure that's correct.

20 Anything else?

21 MR. STARNES: No, sir.

22 THE COURT: All right. Please bring them back for
23 just a second.

24 THE BAILIFF: All 15, Your Honor?

25 THE COURT: Yes, sir.

1 Counsel, approach just a minute.

2 (Whereupon, the lawyers and the defendant
3 approached the bench for an off-the-record discussion)

4 MR. STARNES: Your Honor, could we approach just
5 one second?

6 THE COURT: Yes, sir.

7 (Whereupon, the lawyers and the defendant
8 approached the bench for an off-the-record discussion)

9 (Whereupon, 12:53 p.m., all members of the jury
10 panel returned to the courtroom)

11 THE COURT: Mr. Foreman, ladies and gentlemen of
12 the jury, I want to go over one instruction with you just to
13 be sure that I was clear with you, and this would be very
14 brief.

15 Let me instruct you that when the court says life
16 without parole or life without the possibility of parole,
17 that's exactly what it means. Life without the possibility
18 of parole means that a person is sentenced under life
19 without the possibility of parole would never be eligible
20 for parole. That's what it means, life without any
21 possibility of parole.

22 Thank you for that additional instruction.

23 Please retire to the jury room with the three
24 alternates separately.

25 (Whereupon, at 12:55 p.m., the jury retired to the

1 jury room, pending instructions to begin deliberations)

2 (Whereupon, the alternate jurors were taken to
3 another room, separate from the jury panel)

4 THE COURT: Any other exceptions?

5 MR. STARNES: Your Honor, I just renew our request
6 to put on that life means until death.

7 THE COURT: I just can't satisfy you, can I, Mr.
8 Starnes?

9 MR. STARNES: Your Honor, I'm just putting it on
10 the record. That's all.

11 THE COURT: Yes, sir.

12 And I'm going to put on the record that life
13 without the possibility of parole does not mean that,
14 because a defendant is eligible -- could be eligible for
15 parole, provided old age, infirmness, disease, and that sort
16 of thing. There is a provision in the statute, I believe,
17 which allows under extraordinary circumstances when a person
18 is so old and infirmed to represent no danger to anybody
19 with great health concerns, there is possibility of that.
20 We are prohibited from instructing the jury that way. By
21 Supreme Court order. In the Shaffer case the court
22 prohibited the trial court from instructing the jury about
23 that that's a possible circumstances. But when you asked me
24 to tell the jury that you will die in prison, I can't tell
25 them that, because I don't know that. I don't think that's

1 the law.

2 What is the law is that you will never be eligible
3 for parole. That life imprisonment without the possibility
4 of parole means that you would never be eligible for parole,
5 and that's exactly what I told them, that you would never be
6 eligible for parole. I think that's the appropriate
7 instruction.

8 As a matter of fact, I think I instructed that
9 twice to the jury, that life imprisonment without parole
10 means that you will never be eligible for parole. Okay.
11 All right.

12 The exception is noted, however. I can't tell
13 them that you will die in prison, because I don't -- I don't
14 think that's the law. All right. I think they clearly
15 understand that you would never be eligible for parole.

16 In the old days you could be eligible in 20 or 30
17 years, that's no longer the case, and I so instructed the
18 jury.

19 Anything else from either side?

20 MR. GOWDY: No.

21 THE COURT: Then I forgot to tell the jury their
22 food is here, but I think food is here, but if you will,
23 gentlemen, please make sure only those exhibits which are
24 admitted into evidence go back to the jury.

25 (Off the record)

1 (Back on the record)

2 THE COURT: If you take these back, along with any
3 exhibits.

4 (Whereupon, at 1:00 p.m., the jury panel was
5 instructed to begin deliberations)

6 (Whereupon, at 1:01 p.m., proceedings were
7 recessed, pending the verdict of the jury panel)

8 (Whereupon, at 2:32 p.m., proceedings were
9 reconvened)

10 THE COURT: Gentlemen, we had a request from the
11 jury, which states as follows: "Please give us a
12 description of the elements of robbery and larceny," those
13 being, of course, two of the statutory aggravating
14 circumstances I charged them on. And what I plan to do is
15 bring the jury back out, re-read the exact same charge as I
16 gave before to them by way of explanation. All right.

17 Please bring -- hold it just a minute.

18 I'm trying to decide whether I bring the three
19 alternates in to hear this as well or not. I don't think
20 so, because they are not deliberating. Just bring us the
21 twelve in.

22 (Whereupon, at 2:35 p.m., the jury panel returned
23 to open court)

24 THE COURT: Mr. Foreman, ladies and gentlemen of
25 the jury, I have your request to give a description of the

1 elements of robbery and larceny, so I'm going to recharge
2 you on those as I charged it previously, and ask you to
3 please listen carefully now as I go back through those.

4 I would remind you that larceny -- the elements of
5 larceny -- the four elements of larceny are also included in
6 robbery; robbery containing two more elements than larceny,
7 so please listen carefully as I go through them.

8 Robbery is the larceny from the person or
9 immediate presence of another by violence or intimidation.

10 Larceny is the felonious taking and carrying away
11 by any person of the personal goods or things of another
12 person with the intent to appropriate them to one's own use
13 and to deprive the owner permanently of his property.

14 There are four elements which must be present and
15 established beyond a reasonable doubt to make out larceny:

16 First, that there was a taking.

17 Second, that the taking was of the personal
18 property of another person.

19 Third, that after being taken, the property was
20 carried away.

21 And fourth, that the taking and carrying away of
22 the property was done with an intent to steal.

23 Those are the four elements of larceny.

24 To constitute robbery, in addition to these
25 elements of larceny, would be two additional elements; in

1 other words, robbery is larceny with two elements added:

2 The property is taken from the person of another
3 or in his immediate presence;

4 And the taking of property must not only be taken
5 without the consent of the owner, it must be accomplished by
6 violence or by putting the person in fear.

7 That is the difference between robbery and
8 larceny.

9 That violence must be actual personal violence or
10 the threat of it. This violence or intimidation must either
11 precede or be contemporaneous with the taking of property.

12 Finally, in addition to the elements of robbery,
13 one additional element must be proven by the State to
14 constitute robbery with a deadly weapon, and that is the
15 robbery must have been committed with a pistol or other
16 deadly weapon; that is, the person who committed the crime
17 actually had or used a pistol or another deadly weapon.

18 Now, with regard to the larceny, I instructed you
19 that -- I had previously instructed you on four elements of
20 the larceny.

21 In addition to proving those four elements, the
22 State must prove that the larceny have been committed with a
23 pistol or another deadly weapon; that is, the person who
24 committed the crime actually had and used a pistol or
25 another deadly weapon.

1 I also instructed you that aggravating
2 circumstances are committed while in the commission of a
3 capital murder when they are consummated in a continuous
4 series of facts with the murder in the same place and not
5 separated by any substantial length of time. The fact that
6 the circumstances after the murder does not invalidate them
7 as statutory aggravating circumstances.

8 Again, I would tell you that the four elements of
9 larceny -- I'll go over those:

10 That there was a taking.

11 Second, that the taking was of the personal
12 property of another person.

13 Third, that after being taken, the property was
14 carried away.

15 And fourth, that the taking and carrying away of
16 the property was done with an intent to steal.

17 Those are, again, the four elements of larceny.

18 I hope this information will answer your question.
19 If not, if you still have some questions about it when you
20 get back there and start deliberating, let me know with
21 another not and I'll bring you back and we will go back over
22 them again.

23 Thank you. Please retire back to the jury room
24 and begin deliberating.

25 (Whereupon, at 2:40 p.m., the jury returned to the

1 jury room to continue deliberations)

2 THE COURT: All right. Exceptions to the charge
3 as given?

4 MR. GOWDY: Not from the State.

5 THE COURT: Defense?

6 MR. STARNES: None, Your Honor.

7 THE COURT: All right. We will make this another
8 Court Exhibit, please, sir.

9 (Jury Note marked as Court's Exhibit No. 57 for
10 identification)

11 THE COURT: We will be at ease.

12 (Whereupon, at 2:41 p.m., proceedings were
13 recessed, pending the verdict of the jury panel)

14 (Whereupon, at 3:24 proceedings reconvened)

15 THE COURT: We don't need the alternates yet. We
16 will bring them in separately after the verdict. Just bring
17 the regular jury in and just keep the other jurors out.

18 (Whereupon, at 3:25 p.m., the jury panel returned
19 to open court to report its verdict)

20 THE COURT: I'll remind the cameraman when the
21 jurors names are read, they are not to be recorded. Please
22 turn your recorder off during that time.

23 Mr. Foreman, have you and the jury reached a
24 unanimous verdict in this case?

25 JURY FOREMAN: Yes, Your Honor, we have.

1 THE COURT: Would you please hand the verdict
2 forms up to the bailiff?

3 All right. In case number 96-GS-32-3339, the
4 State versus Norman Starnes, with regard to Jared Champlin,
5 the jury finds that the following statutory aggravating
6 circumstances beyond a reasonable doubt:

7 They are, two or more persons were murdered by the
8 defendant.

9 They find larceny with the use of a deadly weapon.

10 They find robbery while armed with a deadly
11 weapon.

12 The form is signed by the foreperson and all
13 eleven other jurors.

14 Mr. Foreman, ladies and gentlemen of the jury, if
15 this is your verdict as to Jared Champlin as to the
16 statutory aggravating circumstances, please raise your right
17 hands.

18 Let the record reflect that all twelve jurors
19 raised their hands.

20 In the case of William C. Welborn, the jury has
21 found the same three statutory aggravating circumstances
22 beyond a reasonable doubt, and that form is signed by the
23 foreperson and all eleven other jurors.

24 Mr. Foreman, ladies and gentlemen of the jury, if
25 that be your verdict with regard to your decision as to the

1 statutory aggravating circumstances, please raise your right
2 hands.

3 Let the record reflect that all twelve jurors
4 raised their right hands.

5 With regards to William C. Welborn, the jury finds
6 as follows: We, the jury, in the above-entitled case,
7 having found beyond a reasonable doubt the existence of
8 following statutory aggravating circumstances, to-wit:

9 Robbery while armed with a deadly weapon.

10 Larceny with the use of a deadly weapon.

11 Two or more persons were murdered by the
12 defendant.

13 Now recommend to the court that the defendant
14 Norman's Starnes be sentenced to death.

15 Mr. Foreman, ladies and gentlemen of the jury, if
16 that be your verdict, so say you all, raise your right
17 hands.

18 Thank you. Let the record reflect that all raised
19 their right hands.

20 With regard to Jared Champlin, the verdict form is
21 that, we, the jury, in the above-entitled case, having found
22 beyond a reasonable doubt the existence of the following
23 statutory aggravating circumstances, to-wit:

24 Robbery while armed with a deadly weapon.

25 Larceny with the use of a deadly weapon.

1 And two or more persons were murdered by the
2 defendant.

3 Now recommend to the court that the defendant,
4 Norman Starnes, be sentenced to death.

5 Signed by the foreperson and all eleven other
6 jurors.

7 Mr. Foreman, ladies and gentlemen of the jury, if
8 these be your verdicts, please indicate by raising your
9 right hands.

10 The record will reflect that all twelve jurors
11 raised their hands.

12 Madam Clerk, will you please poll the jury as to
13 their verdict? We can do them both at the same time as to
14 the death penalty verdict. Please poll them as to their
15 verdict.

16 THE CLERK: As I call your name, if you will
17 please hold your hand up so I can recognize you. I will ask
18 you as to your sentence on both, on Mr. William Welborn and
19 Jared Champlin, if this was your sentence and still your
20 sentence, and please respond at that time.

21 Thomas Shumpert, as to this death sentence on
22 William Welborn and Jared Champlin, is this your sentence
23 and is it still your sentence?

24 JUROR NUMBER 251: Yes, ma'am.

25 THE CLERK: James Stone, as to the sentence of

1 death, on the murders of William Welborn and Jared Champlin,
2 is this your sentence and is still your sentence?

3 JUROR NUMBER 268: Yes, it is.

4 THE CLERK: Diane Turkett, as to the sentence of
5 death on the victims William Welborn and Jared Champlin, are
6 these your sentences and still your sentences?

7 JUROR NUMBER 288: Yes, ma'am.

8 THE CLERK: Paula Mallory, as to the death
9 sentence for the victims William Welborn and Jared Champlin,
10 is this your sentence and is it still your sentence?

11 JUROR NUMBER 171: Yes, it is.

12 THE CLERK: Everett Ernst, as to the death
13 sentence on the victims William Welborn and Jared Champlin,
14 is this your sentence and still your sentence?

15 JUROR NUMBER 84: Yes, it is.

16 THE CLERK: H.L. McCart, as to the death sentence
17 for the victims William Welborn and Jared Champlin, is this
18 your sentence and is it still your sentence?

19 JUROR NUMBER 176: Yes, it is.

20 THE CLERK: Daniel Wallace, as to the sentence of
21 death for the victims William Welborn and Jared Champlin, is
22 this your sentence and is it still your sentence?

23 JUROR NUMBER 298: Yes, it is.

24 THE COURT: Catherine Johnson, as to the sentence
25 of death on victims William Welborn and Jared Champlin, is

1 your sentence and is it still your sentence?

2 JUROR NUMBER 135: Yes.

3 THE CLERK: Laura Alexander, as to the sentence of
4 death on the victims William Welborn and Jared Champlin, are
5 these your sentences and still your sentences?

6 JUROR NUMBER 3: Yes, ma'am.

7 THE CLERK: Harry Johnson, as to the sentence of
8 death on the victims William Welborn and Jared Champlin, are
9 these your sentences and is still your sentences?

10 JUROR NUMBER 136: Yes, ma'am.

11 THE CLERK: Deanne Lucas, as to the sentence of
12 death for William Welborn and Jared Champlin, is it your
13 sentences and still your sentences?

14 JUROR NUMBER 165: Yes, ma'am.

15 THE CLERK: Murray Jeffers, as to the sentences of
16 death for the victims William Welborn and Jared Champlin,
17 are these your sentences and still your sentences?

18 JUROR NUMBER 134: Yes, it is.

19 THE CLERK: The jury is polled, Your Honor.

20 THE COURT: Any questions of the jury panel from
21 the State?

22 MR. GOWDY: No, sir.

23 THE COURT: Any questions of the jury panel from
24 the defense?

25 MR. STARNES: None from the defense, Your Honor.

1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury, this will conclude your service on this case.

3 I would like to take this opportunity to thank you
4 for your service on the jury and thank you for the many
5 sacrifices that you have made to help make our justice
6 system work. We realize -- we certainly realize and
7 understand that your being here requires sacrifices on your
8 part. We understand that you have had to be away from your
9 jobs and family to some extent and other things that you
10 feel are important to you to be doing. We certainly do not
11 take your service for granted. We deeply appreciate the
12 amount of time that you have had to spend and the sacrifices
13 that you have had to make in order to perform jury service.

14 Jury service is an extremely important, and I
15 think that you have seen what a difficult experience it is.
16 Jury service is a very difficult experience. As difficult
17 an experience for everybody involved in these cases, just as
18 it is for you, it is for everybody else as well, but I
19 think -- and you certainly understand that by now.

20 I would tell you, Mr. Foreman, ladies and
21 gentlemen of the jury, that when you complete your service
22 and you leave, of course, the clerk will put a check in the
23 mail for your service that you were required to be here. If
24 you need anything to take to your employer showing that you
25 are required to be here, you can get that from the clerk's

1 office before you leave.

2 I would tell you that with regard to your service
3 on the jury, if you do not wish to discuss your service on
4 the jury or anything about this case with anybody, you are
5 not required to do that. If the media should attempt to
6 interview you, if you wish to discuss the case with them,
7 certainly you are welcome to do that. If you do not wish to
8 discuss it with them, please just let them know that you do
9 not wish to discuss it with them. If anyone else tries to
10 discuss it with you, you are welcome to discuss it with them
11 or not discuss it with them.

12 If they -- if you choose not to discuss it with
13 them and they insist on trying to discuss it with you, if
14 you will let the clerk's office know that person's name.
15 Then the court will then intervene in your behalf. You are
16 not required to discuss the case with anyone. And so if you
17 choose not to discuss it with them, you are not required to
18 do that. So please keep that in mind. If someone insists
19 on trying to talk to you about it and you are told you do
20 not want to, just let the clerk's office know and we will
21 assist you in that regard.

22 Again, I thank you very much for your service, and
23 your free to go at this time. Thank you.

24 (Whereupon, at 3:35 p.m., the jury panel was
25 discharged)

1 THE COURT: Bring the alternates in, please, sir.

2 (Whereupon, the alternate jurors were brought into
3 the courtroom)

4 THE COURT: If you will stand right there, if you
5 will.

6 As it termed out we made it all the way through
7 the trial, including the deliberation process. And I'm sure
8 you were probably informed as to what the verdict is, but
9 the -- well, if you haven't been informed, the jury reached
10 a verdict of -- found that the State had proven the
11 statutory aggravating circumstances, all three that were
12 submitted beyond a reasonable doubt. They recommended to
13 the court the death penalty in this case.

14 But that concludes the case, and, of course, it
15 would not be necessary for you to participate in
16 deliberations to help reach a verdict. Your completed your
17 service on the case.

18 I want to take this opportunity to thank you for
19 your service, the many sacrifices that you have made in
20 order to help make our justice system work. We deeply
21 appreciate that sacrifice. We do not take it for granted,
22 and we appreciate it very much. We know it's a long trying
23 experience for you, as it has been for everybody else. You
24 see just how difficult some of these decisions could be, and
25 you understand that now, but we deeply appreciate your

1 service. You are free to go at this time.

2 If you need to anything to take to your employer
3 showing that you were required to be here this week, you can
4 get that from the clerk's office. When you leave here, they
5 will show you where to go. You can get something from them
6 to take. They will put a check in the mail for your service
7 this week. And, again, we deeply appreciate your service.

8 I would tell you the same thing I told the first
9 twelve jurors that were chosen, that if you wish to discuss
10 this case after, now that it's over, you are welcome to do
11 that with anyone that you wish to discuss it with.

12 If you do not wish to discuss it with anyone, you
13 do not have to discuss it with anyone.

14 And if the media or anyone else should try to
15 discuss the case with you, you want to discuss it with them,
16 you can. If you do not want to discuss it with them, let
17 them know that. If anyone tries to insist that you discuss
18 the case with them after you have told them that you do not
19 wish to discuss it with them, and they continue to try to
20 get you to discuss it, if you will contact the clerk's
21 office and we will help you then alleviate that situation.
22 You are not required to discuss it. You are welcome to, if
23 you wish to do so. But if you wish not to do so, then you
24 are not required to do so. Okay.

25 Again, thank you very much for your service and

1 sacrifice. You are free to go at this time.

2 (Whereupon, the alternate jurors were discharged)

3 THE COURT: Any motions that need to be made at
4 this time?

5 MR. STARNES: Yes, sir, Your Honor.

6 We would renew all our motions from the guilt
7 phase part of the trial, also renew our penalty phase
8 motions and arguments and objections.

9 Also, Your Honor, I believe under the Martinez
10 case, U.S. Supreme Court, I'm not going to be able to file
11 the appeal, nor can I appear or argue the appeal.

12 It's my understanding that Mr. Nettles is going to
13 file the appeal within ten days. And I believe he's going
14 to take my files and stuff that are at the Lexington County
15 detention center now and take custody of that stuff.

16 THE COURT: Okay.

17 MR. STARNES: Other than that, I believe that's
18 it, Your Honor.

19 THE COURT: Let me -- your motions are noted for
20 the record and denied.

21 Let me -- one thing I want to clear up. In
22 looking at the -- I believe it was one of the photographs
23 that was entered into evidence. I believe it was 91 or 92.
24 I can't remember now. There were two that were admitted
25 over objection. One of those was at the grave site where

1 the bodies were loaded up and that sort of thing, getting
2 ready to take to the pathologist, and I don't think I
3 finished what I was trying to say there, because I think I
4 got interrupted. But what I was trying to say was that the
5 pathologist -- that those were the bodies in the form they
6 were in after taking them out of the grave site to be
7 shipped to the pathologist. And there some things that were
8 illustrated that in the pathologist's report and testimony
9 by that is the reason I let it in. I found it was more
10 probative than prejudicial.

11 One of the things I don't think I said was -- I
12 was trying to say, but I think I got cut off somewhere, is
13 that the pathologist -- questions of the pathologist as to
14 why they were not able to get some scientific evidence, some
15 of the evidence with regard to toxicology and that sort of
16 thing, and his testimony about how the bodies were covered
17 in mud, had to be separated, washed the clothing also. And
18 that also illustrated just what I was trying to say and
19 finding that it was more probative than prejudicial and the
20 reason I let it in.

21 Of course, the others that did not have that, that
22 prejudicial, I did not let in.

23 But in any event, I wanted to make sure that was
24 clear on the record. It was about the pathologist and being
25 the bodies together and taken to pathologist in that form,

1 showing how they were buried and separated, but I don't
2 think I ever got into saying the toxicology and other
3 evidence, washing clothes. Questions were asked about why
4 he was not able to preserve the evidence for testing, and it
5 was not, I don't think they put on there that that was part
6 of it.

7 MR. STARNES: Yes.

8 THE COURT: All right. Of course, if Mr. Nettles
9 is going to file a notice of intent to appeal, it has to be
10 filed within ten days. He will file that notice of intent.

11 Is that right, Mr. Nettles? Are you going to file
12 a notice of intent to appeal? Mr. Starnes thinks that you
13 are going to do that?

14 MR. NETTLES: He's right, I am.

15 THE COURT: Okay. And you are going to take
16 charge of whatever he has?

17 MR. NETTLES: Yes, it's my understanding that
18 there is fair amount of stuff at the Lexington County jail,
19 and I would be back in Lexington on Tuesday. I will drive
20 by and pick it up then.

21 THE COURT: And I'll say I struggled to some
22 extent with the murder or voluntary manslaughter. I think I
23 made the right decision on that for several reasons, but I
24 think this decision justifies that decision. Certainly I
25 don't think that a jury would have sentenced someone to

1 death if they didn't think it was malicious murder, not
2 voluntary manslaughter, so I think even if I had instructed
3 voluntary manslaughter, there was no way that they would
4 have found the death penalty. That would be this court's
5 opinion.

6 All right. Please, if you would approach, Mr.
7 Starnes, and if y'all will.

8 MR. STARNES: Stand here, judge?

9 THE COURT: That's fine.

10 Let me ask you, Mr. Starnes, with regard to the
11 original charge of possession of a weapon during the
12 commission of a violent crime in this case, the violent
13 crime as being murder, is there is anything that you wish to
14 say on that charge?

15 THE WITNESS: Your Honor, I don't believe under
16 the code that this is applicable in a case that carries a
17 life without parole or the death penalty. I don't believe
18 that --

19 THE COURT: You don't think -- I think you are
20 right. I think you are exactly right.

21 I wanted to give you a chance to speak on it, if
22 you want to speak on it.

23 MR. STARNES: Thank you.

24 THE COURT: I think your point is well taken. I
25 don't think that you can get an additional sentence for

1 that, if you were convicted of this charge.

2 Now, as to the murder of William C. Welborn, is
3 there anything that you wish to say to the court with regard
4 to that charge and the court's sentence on that charge
5 before I sentence you on that charge?

6 MR. STARNES: Your Honor, I believe the record
7 speaks for itself, and I would not add anything to that,
8 Your Honor, at this time.

9 THE COURT: All right. As to the murder charge
10 and the death sentence with regard to Jared Champlin, that
11 case, is there anything that you wish to say to the court at
12 this time before the court sentences you on that charge?

13 MR. STARNES: The same position, Your Honor.

14 THE COURT: Is there anything else you wish to say
15 before sentencing, Mr. Starnes?

16 MR. STARNES: No, sir. I just -- I thank the
17 court and the ladies of the clerk of the court for their
18 help.

19 THE COURT: Well, I would just state for the
20 record, Mr. Starnes, it's been about two years, I think, or
21 a little over two years probably that I have been involved
22 in this case with you on the other side. I have done
23 everything in the world I could that you asked me to do with
24 regard to funding, transferring funds, funds; doing
25 everything that I could to expedite things at the detention

1 center, making sure that you had the ability to do -- to
2 have Westlaw and time to work on your case and getting
3 into -- go against their own policies and things just so you
4 get to do whatever you needed to do to get ready for this
5 trial. I think you would agree with me that I tried to do
6 everything that I could do to help you get ready for this
7 trial, in trying to make sure that you had everything that
8 you needed in order to do that. I have provided everything
9 I think that you have requested that I could do during that
10 time. I think you would agree with that.

11 All right. In case number 96-GS-32-3339, the
12 sentence with regard to the murder charge on William C.
13 Welborn, the defendant Norman Starnes, having been found by
14 the jury to be guilty of the offense of murder, the jury has
15 recommended the defendant to be sentenced to death.

16 Therefore, the judgement and the law and the
17 sentence of the court is that the defendant, Norman Starnes,
18 be taken to the Lexington detention center and then to the
19 State Department of Corrections henceforth, to be kept in
20 close and safe confinement until the 12th day of January,
21 2008, upon which day, between the hours of six o'clock p.m.
22 and six o'clock a.m., or upon the order of execution issued
23 by the South Carolina Supreme Court, the defendant, Norman
24 Starnes, shall suffer death by electrocution or by lethal
25 injection in the manner provided by law.

1 Case number 96-GS-32-3339, the State versus Norman
2 Starnes with regard to the murder of Jared Champlin, the
3 defendant, Norman Starnes, having been found guilty by the
4 jury to be guilty of the offense of murder, the jury has
5 recommended the defendant should be sentenced to death.

6 Therefore, the judgement and the law and the
7 sentence of the court, that the defendant, Norman Starnes,
8 be taken to the Lexington detention center and then to the
9 State Department of Corrections, henceforth, to be kept in
10 close and safe confinement until the 12th day of January,
11 2008, upon which date between the hours of six o'clock p.m.
12 and six o'clock a.m., or upon an order of execution issued
13 by the South Carolina Supreme Court, the defendant, Norman
14 Starnes, shall suffer death by electrocution or by lethal
15 injection in the manner provided by law.

16 Let me -- I neglected to read this. Let me read
17 and I have already signed. I just jumped over it, but the
18 court finds as the trial judge in this action, prior to the
19 imposition of the death sentence, I had already signed this,
20 I find the affirmative factor that the evidence in the case
21 warrants the imposition of the death penalty and its
22 imposition is not a result of prejudice, passion, or any
23 other arbitrary factor in the case of William C. Welborn and
24 also the case of Jared Champlin.

25 The court makes the same finding as the trial

1 judge in the above-entitled action prior to the imposition
2 of the death sentence upon Norman Starnes. I find as an
3 affirmative factor that the evidence warrants the imposition
4 of the death penalty. Its imposition is not a result of
5 prejudice, passion, or any other arbitrary factor.

6 I signed these two forms before I filled out the
7 sentence form. I just neglected to go over it, but that
8 would be the sentence of the court.

9 Thank you.

10 MR. STARNES: Thank you, Your Honor.

11 (Jury Sheet of No Finding of Statutory Aggravating
12 Circumstances for Victim Jared Champlin marked as Court's
13 Exhibit NO. 58 for identification)

14 (Jury Sheet for the Recommendation of Life
15 Sentence marked for Victim Jared Champlin as Court's Exhibit
16 No. 59 for identification)

17 (Jury Sheet of No Finding of Statutory Aggravating
18 Circumstances for Victim William Welborn marked as Court's
19 Exhibit No. 60 for identification)

20 (Jury Sheet for the Recommendation of Life
21 Sentence for Victim William Welborn marked as Court's
22 Exhibit No. 61 for identification)

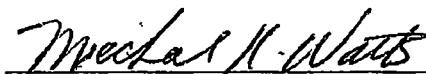
23 (END OF REQUESTED TRANSCRIPT OF RECORD)
24
25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for LEXINGTON County, South Carolina, on the 5th, 6th, 7th, 8th, 9th, 12th, 13th, 14th, 15th, 16th, 17th days of November, 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

MAY 15TH, 2008



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

E682636

THE STATE OF SOUTH CAROLINA

-VS-

NORMAN STARNES

:
:
: TRANSCRIPT OF RECORD
:
:

MARCH 21, 2002

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

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

D. SHAWN GRAHAM, ESQUIRE
ATTORNEY FOR THE STATE

WILLIAM N. NETTLES, ESQUIRE
JOHN DELGADO, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

1 MR. GRAHAM: THIS IS A MATTER IN THE STATE VERSUS
2 NORMAN STARNES, YOUR HONOR. OUR OFFICE HAS RECEIVED A LETTER
3 AND MOTION FROM HIM BACK IN NOVEMBER REGARDING AN
4 ATTORNEY/CLIENT MATTER BETWEEN HIMSELF AND MR. NETTLES, AND I
5 BELIEVE THAT THEY ARE ALL HERE, JUDGE, TO ADDRESS THAT MATTER
6 BEFORE THE COURT.

7 THE COURT: OKAY. THIS IS IN THE MATTER OF THE
8 STATE VERSUS NORMAN STARNES. MR. STARNES WAS PREVIOUSLY
9 SENTENCED BY A JURY IN THIS COUNTY TO A SENTENCE OF DEATH.
10 THAT WAS REVERSED BY THE STATE SUPREME COURT, AND HE WAS
11 TRANSFERRED BACK TO -- I BELIEVE BACK TO LEXINGTON COUNTY
12 JAIL AND IS NOW AWAITING TRIAL ON THE SECOND TRIAL. WE HAVE
13 A MOTION WHICH I BELIEVE IS A MOTION TO RELIEVE. IS IT --
14 IT'S JUST ONE ATTORNEY. MR. NETTLES, IS THAT CORRECT?

15 MR. STARNES: NO, SIR. ACTUALLY IT'S A CONFLICT
16 MOTION. IT'S NOT A MOTION TO RELIEVE, YOUR HONOR.

17 THE COURT: OKAY. ALL RIGHT. SO YOU'RE NOT ASKING
18 TO HAVE HIM RELIEVED THEN; IS THAT CORRECT?

19 MR. STARNES: NO, SIR, I'M NOT.

20 THE COURT: OKAY. DO -- DO WE NEED TO TAKE THIS UP
21 OUTSIDE OF THE PRESENCE OF ANYBODY ELSE, COUNSEL?

22 MR. NETTLES: IF I MAY HAVE TWO SECONDS, YOUR HONOR.

23 THE COURT: OKAY. SURE.

24 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN
25 MR. NETTLES AND MR. STARNES. ALSO AN OFF-THE-RECORD

1 DISCUSSION TAKES PLACE BETWEEN MR. STARNES AND MR. DELGADO.)

2 MR. STARNES: YOUR HONOR, I THINK -- THIS MOTION
3 WAS FILED BACK ON NOVEMBER 7TH.

4 THE COURT: RIGHT.

5 MR. STARNES: AND SINCE I FILED THE MOTION, MR.
6 NETTLES DID COME OVER TO THE JAIL AND WE TALKED AND WE
7 DISCUSSED -- I REALLY DON'T WANT TO GET INTO WHAT WE
8 DISCUSSED BECAUSE THAT WOULD BE A VIOLATION OF
9 ATTORNEY/CLIENT---

10 THE COURT: RIGHT.

11 MR. STARNES: ---AND THE STATE IS HERE.

12 THE COURT: WHAT I'M ASKING BASICALLY IS THIS: THAT
13 IF THIS IS GOING TO INVOLVE YOUR HAVING TO GET INTO ANYTHING
14 THAT'S GONE ON BETWEEN YOU AND YOUR LAWYER, WE CAN HAVE THE
15 COURTROOM CLEARED AND NOBODY IN HERE AND JUST BE ONLY -- ONLY
16 THE NECESSARY PEOPLE.

17 MR. STARNES: RIGHT. I UNDERSTAND, AND I THINK THAT
18 WE'VE KIND OF RESOLVED THE SITUATION. HOWEVER, I WOULD LIKE
19 -- WOULD LIKE TO LEAVE OPEN -- WHEN I FILED THIS MOTION TO --
20 TO THE CLERK OF COURT'S OFFICE I RECEIVED A LETTER BACK FROM
21 THE CLERK SAYING THAT SINCE I HAD AN ATTORNEY THAT THEY WOULD
22 NOT ENTERTAIN THE MOTION. THEY SENT IT BACK AND, OF COURSE,
23 I WAS CALLED OVER HERE TODAY TO GO OVER THIS MOTION.

24 THE COURT: RIGHT.

25 MR. STARNES: BUT IN THE EVENT THAT I HAVE A PROBLEM

1 IN THE FUTURE, I DON'T -- I'M PRETTY SURE ME AND MR. NETTLES
2 AND MR. DELGADO HAVE THE SITUATION RESOLVED. BUT IN THE
3 FUTURE IF I HAVE A PROBLEM, WILL IT BE -- CAN I WRITE THE
4 COURT AND ASK TO BE HEARD?

5 THE COURT: CERTAINLY. IF YOU TALK WITH ANYBODY AT
6 THE JAIL -- AND YOU'RE PROBABLY AWARE THAT I MAKE IT A POLICY
7 OF ANSWERING EVERY QUESTION THAT COMES FROM ANYBODY WHO IS
8 INCARCERATED. AS YOU KNOW, A LOT OF JUDGES IN THE STATE
9 DON'T HAVE THAT POLICY.

10 MR. STARNES: RIGHT.

11 THE COURT: BUT I DO AND I ANSWER EVERY ONE. NOW,
12 IF IT'S SOMETHING THAT INVOLVES YOUR LAWYER, OBVIOUSLY
13 THEY'RE GOING TO BE NOTIFIED OF IT. WE DON'T NOTIFY ANYBODY
14 ELSE, BUT WE DO NOTIFY YOUR LAWYER SO THAT THEY KNOW WHAT'S
15 GOING ON IN THE CASE. AND PARTICULARLY IF IT'S A MOTION,
16 THEN I CAN'T TAKE THAT BECAUSE THAT HAS TO COME FROM YOUR
17 LAWYERS.

18 MR. STARNES: RIGHT. YES, SIR.

19 THE COURT: OKAY?

20 MR. STARNES: ALL RIGHT. I HAVE ONE OTHER THING I
21 MAY NEED TO TAKE UP.

22 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN
23 MR. STARNES AND MR. NETTLES.)

24 MR. STARNES: YOUR HONOR, I'VE BEEN LOCKED UP GOING
25 ON SIX YEARS NOW, AND WE HAD A MOTION BACK ON MAY THE 22ND IN

1 WHICH WE HAD A BOND MOTION AND YOUR HONOR DENIED THE BOND. I
2 HAVEN'T HUGGED MY GRANDMOTHER IN SIX YEARS. COULD I HAVE 15
3 MINUTES WITH HER?

4 THE COURT: SECURITY, DOES THAT GIVE YOU ANY PROBLEM
5 GIVING HIM A FEW MINUTES WITH HIS GRANDMOTHER?

6 OFFICER: I HAVE NO PROBLEM.

7 MR. STARNES: MY MOTHER IS HERE ALSO.

8 THE COURT: LET'S GIVE HIM -- WELL, IN FACT, LET'S
9 JUST GIVE HIM A FEW MINUTES WITH HIS FAMILY IN THERE. OKAY?

10 MR. STARNES: AND I APPRECIATE THE COURT'S TIME AND
11 ATTENTION TO THIS MATTER.

12 THE COURT: SURE. OKAY.

13 MR. NETTLES: THANK YOU, YOUR HONOR. APPRECIATE IT.

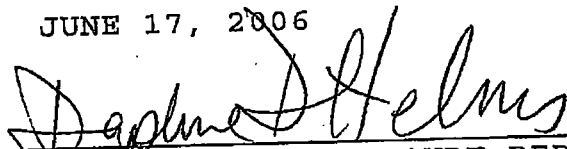
14 THE COURT: SEE YOU LATER.

15 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED. THERE
16 WERE NO EXHIBITS INTRODUCED.)
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6
I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT
REPORTER FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE
OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD
OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN
THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
THE CIRCUIT COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA,
ON THE 21ST DAY OF MARCH, 2002.

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

JUNE 17, 2006


DAPHNE D. HELMS, COURT REPORTER

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

3
4
5 STATE OF SOUTH CAROLINA)

6 -vs-)

7 NORMAN STARNES,)

8 Defendant.)

TRANSCRIPT OF RECORD

96-GS-32-3339

9
10 August 18 & 27, 2003

September 3, 2004

January 28, 2005

March 23, 2005

April 29, 2005

June 9, 2005

Lexington, South Carolina

13 B E F O R E:

14 HONORABLE MARC H. WESTBROOK, Judge

15
16 A P P E A R A N C E S:

17 DONALD V. MYERS, Solicitor

C. DAYTON RIDDLE, III, Deputy Solicitor

18 SAMUEL R. HUBBARD, III, Deputy Solicitor

DAVID SHAWN GRAHAM, Senior Asst. Solicitor

19 JOHN W. TATE, Esquire

Attorneys for the State

20 NORMAN STARNES appeared pro se.

21 JOHN D. DELGADO, Esquire

22 WILLIAM N. NETTLES, Esquire

Standby counsel for the Defendant

23
24 L. COCONUT PANTSARI, R.P.R.
25 Circuit Court Reporter

INDEX

Motion Hearing 8/18/03	3
Motion Hearing 8/27/03	65
Motion Hearing 9/3/04	91
Motion Hearing 1/28/05	138
Motion Hearing 3/23/05	235
Motion Hearing 4/29/05	297
Motion Hearing 6/9/05	378
Certificate	405

INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Sealed records	235	

1 (The following proceedings were reported on
2 August 18, 2003).

3 THE COURT: We are going to take up the
4 Starnes matter first. In the matter of State versus
5 Norman Starnes, present are Mr. Myers and Mr. Riddle on
6 behalf of the State, and Mr. Delgado representing
7 Mr. Starnes, who is also present with the Defendant. As
8 I understand, this is a motion to allow Mr. Starnes to
9 proceed pro se; is that correct?

10 MR. DELGADO: Yes, Your Honor.

11 THE COURT: Okay. Mr. Delgado, if you would,
12 how about tell me at this point what the situation is
13 with him and what your position is on it.

14 MR. DELGADO: Yes, sir. Your Honor, first let
15 me back up and just state for the record as well that
16 both Bill Nettles and myself represent Mr. Starnes.
17 Mr. Nettles was court appointed for the first trial
18 before this Court.

19 As a result of the reversal from the Supreme
20 Court, the case was remanded; and I was appointed to
21 assist Mr. Nettles and Mr. Starnes. Mr. Nettles is out
22 of the country today, Your Honor.

23 I appreciate the rapidity with which we are
24 having this hearing; that, however, obligated
25 Mr. Nettles to be out of the country. So I am speaking

1 on his behalf as well as mine.

2 Your Honor, Mr. Starnes has been very
3 aggrieved over -- and Norman can speak better for
4 himself than anything I could say on his behalf -- about
5 when his case will be called for trial.

6 Mr. Starnes is of the opinion that if he
7 represents himself, he can get a trial date earlier than
8 he thinks we could get a trial date. I have explained
9 to him on several occasions with Mr. Nettles, and then
10 separately, the rule of law relating to that information
11 or relating to the call of the case of the Solicitor's
12 Office.

13 He is of the opinion that we cannot get him a
14 trial date as fast as he wants one. As a result of that
15 and other problems in what he thinks is our trial
16 preparation, he thinks that he can do a better job for
17 himself than we can.

18 To be very candid with Your Honor, I must say
19 to you he is a very bright fellow and an extraordinarily
20 hard worker. Both Mr. Nettles and myself have explained
21 to him our view of self-representation in any sort of
22 case, much less in a death penalty case.

23 Then specifically I tried to break it down for
24 him about some problems about representation going pro
25 se, about some of the things he would have to do. That

1 he, as much as you can study, you can't prepare for
2 unless you have had that experience, voir dire being an
3 example.

4 He wants -- first of all, the motion is to
5 appoint Mr. Nettles and myself and Mr. Starnes as
6 co-counsel, in other words, as hybrid counsel. Failing
7 that, then to allow him to proceed pro se.

8 I can say to the Court as an officer of the
9 Court, and I know I speak for Mr. Nettles, we have
10 advised him and we have recommended to him that he not
11 take this course of action. He is adamant and is simply
12 just opposed to continuing the case in its present
13 posture.

14 I think Norman wishes to address the Court,
15 and maybe the Court can enter into a colloquy with him
16 that would be satisfactory to ensure the Court. Your
17 Honor, the reason I know this because I had to appeal
18 the Bennett decision by Judge Peeples to the Supreme
19 Court, and I think the Court very likely is bound by
20 that decision.

21 I think Mr. Starnes knows that case. This
22 puts a very different spin on this whole matter, but I
23 think he has an absolute right under the Constitution to
24 do this, even though I say to him that he shouldn't do
25 it. But I would like to be able to ask the Court to

1 have an inquiry or colloquy with Mr. Starnes.

2 THE COURT: Yes, sir. I think we do need to
3 go through a very thorough Feretta procedure to see that
4 we cover this.

5 Mr. Starnes, let me ask if you will stand
6 please, sir. Madame Clerk, would you put Mr. Starnes
7 under oath, please.

8 NORMAN STARNES is first duly
9 sworn.

10 THE COURT: First of all, Mr. Starnes, you are
11 Norman Starnes; is that correct?

12 MR. STARNES: That is correct, Your Honor.

13 THE COURT: Mr. Starnes, you understand in
14 this case, as you know there has been one prior trial
15 and there has been an appeal; and the case has been sent
16 back. Do you understand that?

17 MR. STARNES: Yes, sir, I do.

18 THE COURT: Do you understand, as before, the
19 State charges you with two counts of murder and display
20 of a firearm during a violent crime. Do you understand
21 that?

22 MR. STARNES: Yes, sir, I do, Your Honor.

23 THE COURT: Do you understand, as before, they
24 are seeking the death penalty?

25 MR. STARNES: Right.

1 THE COURT: So you understand that, first of
2 all, this is extremely unusual compared to other
3 criminal cases. Do you understand that?

4 MR. STARNES: I understand that, sir.

5 THE COURT: Was the advice given to me by
6 Mr. Delgado correct?

7 MR. STARNES: To some extent it was, but it
8 wasn't, Your Honor. Your Honor, on July the 6th of
9 2003, I sent a letter to Mr. Delgado's office; and it
10 was addressed to Mr. Nettles. It was stamped received
11 in their office.

12 Also in the letter I asked Mr. Delgado and
13 Mr. Nettles and made it clear not to file the affidavit
14 because section two of the affidavit states that the
15 Defendant, Norman Starnes, continues to insist on the
16 right to self-representation.

17 That is not what we are here today for. I
18 have some other matters I would like to address before
19 we get to that because it very well might get to that.
20 I asked him not to file this affidavit with the Court
21 because it's misleading, and I felt it was self-serving.

22 In addition, I asked him if he did file the
23 affidavit with the Court to please include the fact that
24 I have begged you both to get my discovery, and the fact
25 I have asked you both long ago for a court date.

1 The problem I have had is -- it's not the
2 representation of Mr. Delgado or Mr. Nettles. I feel
3 that maybe this is an issue that lies in the Solicitor's
4 Office. I have asked them to get my discovery. If I
5 could, can I just give a brief history of everything?

6 THE COURT: Yes, sir, if you want to.

7 MR. STARNES: The case was reversed, as Your
8 Honor knows, on May the 8th of 2000. I was sent back
9 here to the Lexington County jail on June 23rd, 2000.

10 On September 5, 2000, various motions were
11 filed pro se with this Court, and I believe Your Honor
12 had me transported over here to hear those motions. At
13 that time. Your Honor, I met with attorney Lourie
14 Salley and Mr. Nettles about representation.

15 Somewhere thereafter, Your Honor appointed
16 Mr. Delgado and Mr. Nettles to represent me. On
17 September 14, 2000, that's when I spoke to Mr. Nettles
18 and Mr. Salley.

19 On May 21, 2001, I was taken over into another
20 judicial circuit for the purpose of having a bond, in
21 which I pled with my attorneys to please have me a bond
22 hearing. I have pled self-defense to the Court, and
23 that is my plea.

24 We had a bond hearing over in Richland County
25 on May 21st in which Your Honor denied bond. At that

1 time, Your Honor, Mr. Myers on the record stated to the
2 Court that he was ready to retry this case any time.

3 On March 21, 2002, we were going to have --
4 excuse me -- March 21, 2002, we were going to have a
5 conflict hearing over here. I believe Your Honor had
6 me brought over here because at that point I was
7 thinking of dismissing my attorneys at that time because
8 I wasn't happy with the course the representation was
9 going as far as the discovery and possibly setting a
10 trial date.

11 On April 21, 2003, I sent Your Honor a letter,
12 and I copied Mr. Myers with that letter and addressed
13 three areas: I addressed the discovery, I addressed the
14 issue of the trial, and I addressed the issue of who
15 might the retrial judge would be. I do not mean any
16 disrespect to Your Honor. That's an issue also I would
17 like to take up.

18 On the discovery on May 21, 2001, Mr. Nettles
19 and Mr. Delgado filed a Brady versus Maryland and Rule 5
20 motion with this Court. On July 12, 2001, a motion to
21 compel was filed with this Court; and we asked for this
22 Court's assistance in obtaining discovery.

23 On July the 18th of 2001, Mr. Myers sent a
24 letter to my counsel and said that Brady and Rule 5
25 didn't apply. On August 21st of 2001, a supplemental

1 affidavit was filed with this Court; and we asked this
2 Court for help in getting the discovery.

3 At that time I believe they made aware to the
4 Court through the motion that there was 275 pages of
5 original discovery that was missing from my file. I
6 don't know what happened to the file at Mr. Salley's
7 office or Mr. Bank's office, but there was a lot of
8 discovery that was missing in the file. On April 21,
9 2003, is when I sent Your Honor the letter asking for
10 assistance on that.

11 My appointed counsel tells me that they cannot
12 force Mr. Myers to release the discovery and, Your
13 Honor, I believe there is a course we can take that we
14 can compel the State to comply with the rules, given the
15 fact they are asking for the death penalty.

16 I don't think us asking for discovery, when
17 they have sat on this discovery request for over two
18 years, Your Honor, and Rule 5 says they have 30 days to
19 release the discovery. It's a capital case. They
20 should do so. I filed an ethics complaint with the
21 Commission on --

22 MR. RIDDLE: Your Honor, excuse me. If it
23 please the Court, can we handle one issue at a time and
24 deal with the lawyer situation first. Then we will
25 determine whether or not any of this is appropriately

1 coming from Mr. Starnes or should be coming through his
2 counsel.

3 THE COURT: Okay. Before I address that, let
4 me find out, are you trying to make a motion at this
5 point for discovery?

6 MR. STARNES: Your Honor, I am trying to
7 explain to the Court what has led up to this hearing
8 today, the discovery motion, the fact about the trial,
9 and the fact that this case, I have been back in the
10 Lexington County jail for 41 months. They haven't
11 released discovery. I have asked my attorneys: Please
12 get my discovery. They tell me they can't do it.

13 THE COURT: Okay. I am going to let him go
14 ahead, Mr. Riddle. We are not obviously going to take
15 up any discovery. The only motion we are going to take
16 up today is the issue of your representation. As far as
17 discovery of anything, none of those motions will be
18 taken up today. Go ahead.

19 MR. STARNES: Well, Your Honor, the problem
20 with that, I guess, is Mr. Nettles and Mr. Delgado can't
21 get my discovery and doesn't want to compel Mr. Myers or
22 Mr. Riddle to release it. Then I guess I have no choice
23 but to represent myself.

24 If they are not going to be a voice for me,
25 then I feel like I have to be a voice for myself. The

1 constitutional requirement of substantial equality of
2 fair process can only be attained where counsel acts in
3 the role of an advocate in behalf of his client as
4 opposed to that of a mock currier.

5 THE COURT: Mr. Delgado, did you want to
6 address that?

7 MR. DELGADO: No, Your Honor.

8 THE COURT: What I want to do is this at this
9 point, Mr. Starnes. I have some questions that I really
10 need to ask you and some things that we need to get on
11 the record. Before a decision is made on this, I need
12 to be sure that you understand all the repercussions
13 that go with it, okay?

14 Because you understand that your representing
15 yourself would be more than just the issue of getting
16 discovery. If you represent yourself, you have got to
17 cover the whole thing with it. Do you understand that?

18 MR. STARNES: What would be the role of
19 standby counsel, Your Honor? What role do they envision
20 with standby counsel?

21 THE COURT: Standby counsel is allowed to be
22 with you in the courtroom to give you advice. If you
23 were appointed to represent yourself, if you are allowed
24 to represent yourself and standby counsel is appointed,
25 they will be able to be in the trial with you and give

1 you advice.

2 They will not be able to question for you.
3 They can't give statements to the jury. You have got to
4 do all of that, but they can give you advice in terms of
5 how you proceed. But the bulk of it, the bulk of the
6 work, would be on you. That's what the gist of it is.
7 You would have to do these things for yourself.

8 MR. STARNES: Right.

9 THE COURT: And there are some advantages to
10 that, and there are a lot of disadvantages to that.

11 MR. STARNES: Right.

12 THE COURT: One thing I want to do is be sure
13 that you are aware of them, okay? Let me ask you a few
14 things just to get it on the record, okay?

15 MR. STARNES: Yes, sir.

16 THE COURT: How old are you at this time,
17 Mr. Starnes?

18 MR. STARNES: Thirty-eight.

19 THE COURT: How far did you go in school?

20 MR. STARNES: Twelfth grade. I graduated,
21 sir.

22 THE COURT: What kind of work have you done
23 since that time?

24 MR. STARNES: I worked at U.P.S. for six
25 months, I've worked in the retail business, and I was

1 self-employed for the last seven years before my arrest.

2 THE COURT: Have you ever been treated for any
3 kind of abuse of alcohol or drugs or for mental illness
4 of any kind?

5 MR. STARNES: No, sir.

6 THE COURT: Have you had any -- in the past 24
7 hours, have you had any kind of medication or drugs or
8 alcohol at all?

9 MR. STARNES: No, sir.

10 THE COURT: Are you under the influence of any
11 kind of medication or drugs or alcohol today?

12 MR. STARNES: No, sir, I'm not.

13 THE COURT: All right. Do you know of any
14 sort of physical or emotional or nervous or mental
15 situation that would keep you from understanding what
16 you are doing today?

17 MR. STARNES: Well, Your Honor, not today.
18 But, Your Honor, this is a capital case. I mean,
19 emotions run high in these type of cases.

20 THE COURT: What I'm saying is, do you have
21 any emotional condition?

22 MR. STARNES: I'm sorry?

23 THE COURT: I'm just saying, do you have any
24 emotional condition that would affect what you are
25 doing?

1 MR. STARNES: No, sir, not today.

2 THE COURT: Have you ever been examined by a
3 doctor to determine mental competency for trial?

4 MR. STARNES: I believe Your Honor ordered
5 that at the original trial. There was copies of the
6 hearing that was held.

7 THE COURT: What was the result of that study?
8 I know it. For the record I know that you were found
9 competent.

10 MR. STARNES: I never got the results. I
11 never saw that. I mean, I was competent. I don't think
12 mental illness or anything like that was an issue at my
13 original trial, but I did not read that report from the
14 Department of Mental Health.

15 THE COURT: Have you ever studied the law,
16 Mr. Starnes?

17 MR. STARNES: A little bit.

18 THE COURT: How? Where have you studied it?

19 MR. STARNES: I studied it at the death row
20 unit at Leiber Correctional Institution. We had limited
21 access to the law library. We actually couldn't go into
22 the law library and study it, but the officers brought
23 the books to our cell at night so we could read them and
24 stuff.

25 THE COURT: Other than that, have you ever had

1 any formal training in the law?

2 MR. STARNES: No, sir.

3 THE COURT: Have you ever appeared -- other
4 than I know you went through a trial, and you have been
5 through a number of motion hearings before and since,
6 and you have been through some procedures in the Supreme
7 Court; but other than that, had you ever been in a
8 criminal court before?

9 MR. STARNES: No, sir. Other than this?

10 THE COURT: Just this.

11 MR. STARNES: I take that back. I mean,
12 traffic court. What do you mean by criminal court, a
13 trial?

14 THE COURT: In essence with a non-traffic
15 criminal offense.

16 MR. STARNES: No, sir. I sat on the jury.

17 THE COURT: Have you -- and what kind of case
18 did you sit on a jury on?

19 MR. STARNES: It was a civil case, a car
20 wreck.

21 THE COURT: Have you ever appeared in a
22 magistrate's court?

23 MR. STARNES: For traffic, yes, sir.

24 THE COURT: Just for traffic offenses; is that
25 right?

1 MR. STARNES: Yes, sir.

2 THE COURT: And, again, as I mentioned to you
3 earlier, you understand that you are charged in this
4 matter with two counts of murder and possessing a
5 firearm during a violent crime. Do you understand
6 that?

7 MR. STARNES: Yes, sir, I do, Your Honor.

8 THE COURT: As you mentioned yourself, you
9 understand that if you are found guilty of these crimes,
10 you would receive at least 30 years in jail. That's the
11 minimum you could get, and you could face the death
12 penalty.

13 MR. STARNES: I understand that, Your Honor.

14 THE COURT: Of course, I assume you understand
15 it because you have been through this situation once
16 before. You understand that?

17 MR. STARNES: Correct.

18 THE COURT: Do you understand -- and this may
19 not be significant in any way in this circumstance --
20 but these could be imposed concurrently or
21 consecutively?

22 Even if you got 30 years, theoretically they
23 could be imposed consecutively. You understand you
24 could face as much as 60 or 65 years for that even if
25 you got the minimum on them. Do you understand that?

1 MR. STARNES: Yes, sir.

2 THE COURT: Do you understand, as I hinted to
3 you a moment ago, and I will say it directly: If you
4 represent yourself, you are on your own. Do you
5 understand that?

6 MR. STARNES: Right.

7 THE COURT: In other words, you are
8 responsible for the decisions that are made, which I
9 understand you want to do. But you are also responsible
10 for questioning witnesses, making appropriate motions,
11 voir dire, which can be extremely complicated in a
12 capital case, opening and closing statements, making the
13 appropriate motions at the appropriate times. You
14 understand all of that is up to you to do.

15 Now, you would have attorneys, standby
16 attorneys, to give you advice. But if you forgot to do
17 some of these things, you could not blame them. You are
18 stuck with it. Do you understand that?

19 MR. STARNES: Yes, sir.

20 THE COURT: Are you familiar with the Rules of
21 Evidence in South Carolina?

22 MR. STARNES: Very little. What rules are you
23 talking about, Your Honor?

24 THE COURT: I am just talking about the rules
25 in general. Have you ever dealt in any substantial way

1 with the Rules of Evidence in South Carolina?

2 MR. STARNES: I have copies of the rule book.
3 I have read some of it.

4 THE COURT: Do you realize that the Rules of
5 Evidence govern what could or could not come in in a
6 trial?

7 MR. STARNES: That's correct. I understand.

8 THE COURT: Do you understand, too, no matter
9 how good a case may look on the outside, if you don't
10 have a way to get it in before the jury, then it's not
11 going to do you any good unless it actually gets to be
12 heard by the jury?

13 MR. STARNES: I'm sorry, I didn't understand.

14 THE COURT: In other words, no matter how good
15 your case may look, you may have some information and
16 you may say this information is going to really help me,
17 but if you don't know how to get it into the courtroom,
18 if you don't know how to get it in front of the jury,
19 then they would never hear it; and it wouldn't do you
20 any good.

21 MR. STARNES: I understand that.

22 THE COURT: Do you understand, particularly
23 things such as the rule against hearsay, what hearsay
24 is, for example?

25 MR. STARNES: I'm not real familiar with it,

1 but I think it's 803.

2 THE COURT: That's part of it. Do you
3 understand there is more to it than that?

4 MR. STARNES: Yes, sir.

5 THE COURT: Do you understand the rules
6 involving relevance?

7 MR. STARNES: Some of it.

8 THE COURT: And do you understand and are you
9 familiar with the South Carolina Rules of Criminal
10 Procedure?

11 MR. STARNES: Briefly, yes, sir.

12 THE COURT: And you understand that those
13 rules govern not just the trial of the case, but also
14 things that happen before the trial of the case. Do you
15 understand that?

16 MR. STARNES: Yes, sir.

17 THE COURT: And particularly those rules
18 govern motions which can be made before and during the
19 trial. Do you understand that?

20 MR. STARNES: Yes, sir.

21 THE COURT: What motions do you understand
22 could be made under the Rules of Criminal Procedure?

23 MR. STARNES: A motion for Brady, a motion for
24 them to release the discovery.

25 THE COURT: What beyond that?

1 MR. STARNES: As far as criminal procedure?

2 THE COURT: Yes, sir.

3 MR. STARNES: Rule 106, admissibility of
4 statements; 404, character evidence.

5 THE COURT: You understand those are rules of
6 evidence now, those are not rules of criminal procedure.
7 Do you understand that?

8 MR. STARNES: I thought that's what you were
9 talking about.

10 THE COURT: Do you understand the difference
11 between evidence and criminal procedure rules?

12 MR. STARNES: Briefly.

13 THE COURT: What do you understand the
14 difference between them to be?

15 MR. STARNES: I have to have the book to read
16 them, Your Honor. I don't have the book here with me.
17 I can't quote all this off the top of my head.

18 THE COURT: Right.

19 MR. STARNES: I'm not a skilled attorney.

20 THE COURT: Do you understand though that if
21 you are in a trial, that is not going to help you
22 because what is going to happen is as things go on in
23 the trial, if you don't make an objection timely, then
24 the Supreme Court is not going to consider it.

25 You are not going to be able to consider that

1 in an appeal. Something may come in that could be
2 devastating to your case, and you may not be able to
3 stop it if you don't know how to object to it. Do you
4 understand that?

5 MR. STARNES: Your Honor, what would the
6 predicate be if I was on the stand? Who would do the
7 direct examination?

8 THE COURT: You in essence would have to get
9 on the stand and just basically make your statement, and
10 you would be subject to any objections that the
11 Solicitor had during your direct testimony in essence is
12 what it would be.

13 Then you would face cross examination by the
14 Solicitor. Of course, you understand during a cross
15 examination by the Solicitor, you would be hard pressed
16 not just to answer to his questions but also to know
17 when to object.

18 MR. STARNES: So then, in other words, what
19 I'm understanding is that if I testify, I take the
20 stand, I testify on direct. Then on cross examination I
21 have to stop him?

22 THE COURT: Basically that's what it comes
23 down to. In essence if you get into just a bombardment
24 of questions by the Solicitor, you have got to figure
25 out two things.

1 You have got to figure out how to answer the
2 question appropriately, and you have got to figure out
3 whether or not to object to it under the rules of
4 evidence. So there is a sort of two-part problem going
5 on for you there. Do you understand that?

6 MR. STARNES: Yes, sir.

7 THE COURT: Do you understand also in a
8 capital case, there are some particular rules of law
9 that apply in a capital case that may not apply
10 otherwise? Do you understand that?

11 MR. STARNES: Yes, sir. Can I ask something?

12 THE COURT: Yes, sir.

13 MR. STARNES: We are operating, I believe,
14 under 16-3-26 (b)(1). I believe that is the statute
15 that requires two attorneys under South Carolina law.

16 THE COURT: Yes, sir.

17 MR. STARNES: First of all, Your Honor, we
18 haven't gotten your position on hybrid.

19 THE COURT: It's not my position, it's the
20 Supreme Court's position. They have said you can't do
21 it. I would not be able to let you do that.

22 MR. STARNES: Can I argue that just briefly?

23 THE COURT: Sure, let me hear what you have to
24 say.

25 MR. STARNES: Beg the Court's indulgence just

1 a minute.

2 THE COURT: Yes, sir.

3 (Pause).

4 MR. STARNES: It is my understanding, Your
5 Honor, that under the Stuckey decision, State versus
6 Stuckey, 508 S.E.2d 564, in Stuckey the South Carolina
7 Supreme Court said that the United States Supreme Court
8 has not expressly stated that the Sixth Amendment also
9 provides a right to hybrid representation.

10 However, Feretta does not require a trial
11 judge to permit hybrid representation. A defendant does
12 not have a right -- excuse me -- a defendant does not
13 have a constitutional right --

14 COURT REPORTER: Judge, I'm sorry. I didn't
15 understand.

16 THE COURT: Mr. Starnes, you need to slow down
17 just a little bit.

18 MR. STARNES: In Stuckey and several other
19 opinions that I have here, it says that the matter of
20 hybrid representation is left to the discretion of the
21 trial judge.

22 There's some U.S. Supreme Court cases on that.
23 McCaskell versus Wiggins, that's 104 S.Ct. 944. In
24 determining whether a defendant's Feretta rights have
25 been respected, the primary focus must be on whether the

1 Defendant has had a fair chance to present his case in
2 his own way.

3 Your Honor, I kind of feel like I'm going into
4 an attorney/client thing here, but maybe if I explain to
5 the Court what I'm trying to do before you make this
6 ruling on the pro se, you would understand.

7 There is only one opportunity that I have to
8 talk with this jury, and basically what I want to do is
9 I would like to conduct the voir dire. Given the fact
10 that it's a capital case and these jurors are going to
11 make a decision whether I am guilty or not guilty and
12 possibly make the decision whether I live or die, it is
13 my position that it is not asking too much to be able to
14 converse with these people.

15 What I want to do, Your Honor, is I am not
16 wanting to represent myself and take control of this
17 whole case. I'm not asking Your Honor to give me a
18 remote control to Mr. Delgado and tell him to do this
19 and do that.

20 What I would like to do is I would like to
21 voir dire this jury. I would like to talk to the people
22 in the community that is going to make a decision
23 possibly whether I live or die, Your Honor.

24 I am not asking to file -- I'm not asking to
25 file motions with this Court. I'm not asking to cross

1 examine certain witnesses and stuff. The federal courts
2 have said in Fields versus Murray that in certain
3 situations, the trial courts have hybrid representation.

4 The Fields case was a case dealing with a
5 criminal sexual conduct case in which a defendant
6 exercised his Feretta rights to represent himself. The
7 victim took the stand, and the trial judge stopped him
8 and would not let him cross examine the victim because
9 of the trauma involved. He had the Defendant write the
10 questions down and put it on a piece of paper and have
11 the attorney do it. That is hybrid representation.

12 What I'm wanting to do, is I'm wanting -- I'm
13 asking Your Honor for a ruling to allow me to do the
14 voir dire and make the opening statement. I do not want
15 to cross examine no witnesses.

16 Under 16-3-28, the allocution statute, Your
17 Honor, only in capital cases does the Defendant have the
18 right to make a closing argument. A closing argument in
19 a noncapital case is a function that normally a
20 defendant's attorney does.

21 But in capital cases, the statute -- and we
22 know this from Charping and Cooper and other cases that
23 has been reversed because defendants have the right to
24 make the last closing argument to the jury.

25 And what I am wanting to do is I'm wanting to

1 voir dire this jury, and I'm wanting to make an opening
2 statement. That's all I'm asking for Your Honor. Could
3 we get the State's position on that?

4 THE COURT: Let me ask, Mr. Delgado, do you
5 want to address that at all?

6 Mr. Starnes, you are saying that you want to
7 do it instead of the attorneys doing voir dire; is that
8 correct?

9 MR. STARNES: Yes, sir, and could I add one
10 more thing before Mr. Delgado goes?

11 THE COURT: Yes, sir.

12 MR. STARNES: This is a matter when this case
13 was reversed on May the 8th, on May the 10th,
14 Mr. Nettles come down to the death row unit; and we
15 talked about this. We talked about this. This is trial
16 strategy, but we talked about prior to you appointing
17 him -- Mr. Delgado has known about this, and we've
18 talked about this.

19 This was all okay until it has become a
20 serious matter. They know I'm serious about it. Then
21 it has been a problem at one point -- and here we are in
22 an attorney/client situation, Your Honor. I really
23 don't like going through this, but I feel like I need to
24 do this so Your Honor knows where we stand here.

25 I met with Mr. Nettles and Mr. Delgado in the

1 attorney room over at the jail. We covered this
2 situation. I asked Mr. Delgado, I said: If Judge
3 Westbrook grants this right to hybrid or to allow me to
4 do the voir dire and do the opening statement, will you
5 maintain? Will you stay on this case with us? He said
6 no.

7 I then turned to Mr. Nettles, I said:
8 Mr. Nettles -- I call him Bill -- I said: We have
9 talked about this since 2000. Are you staying or are
10 you leaving? Mr. Nettles says: I'll stay on the case
11 with you.

12 At that time Mr. Delgado says: Well, I will,
13 too, but I'm doing it because he's doing it. I get the
14 impression that if I have got an attorney that is not
15 happy and doesn't want to do something that I want to
16 do, it makes me feel uncomfortable.

17 But, Your Honor, I don't feel like in a
18 capital case where the State wants me executed, to talk
19 to that jury and to make that opening statement, and the
20 allocation statute allows me to do the closing argument
21 Your Honor, I don't think that is asking too much.

22 THE COURT: Let me just mention another side
23 to you before I discuss this and before I let
24 Mr. Delgado say anything. I think you are looking at
25 the positive side. You are saying: Well, it can only

1 help by my being able to have contact with the jury.

2 Do you understand that sometimes there is a
3 built-in protection with lawyers because if you get into
4 voir dire with a particular juror and that juror feels
5 like he or she is being harassed or intimidated by you
6 and winds up on the jury, you may have a problem with a
7 juror from the very start there.

8 At least if an attorney is doing it and has to
9 be hard on it, you've got the insulation that comes from
10 them saying that was the lawyer doing it. It's not the
11 Defendant. But if you do it, then there is always that
12 other side of it. Do you understand that?

13 MR. STARNES: Yes, sir, I understand. Like in
14 the Fuller case, it talks about hybrid representation.
15 I'm understand that I'm not doing this to waste time.
16 In Fuller it says: It is incumbent upon trial court to
17 determine whether the request is made for the purpose
18 for delay or to gain tactical advantages.

19 I am not doing this to create a frustration
20 with this Court. I'm not doing this for delay. I am
21 doing this because I feel it's in my best interest. I
22 have talked about this situation with Mr. Delgado and
23 Mr. Nettles.

24 In Martinez versus California, that's 120
25 S.Ct. 684, the U.S. Supreme Court said that appellants

1 are not constitutionally guaranteed the right to pro se
2 representation on appeal. They said that matter is left
3 up to the states and the appellate courts.

4 There is a case pending right now before the
5 U.S. Supreme Court -- excuse me -- before the South
6 Carolina Supreme Court, and I have a copy of that order
7 in which Judge Toal signed an order allowing a capital
8 murder defendant to do his own appeal.

9 The United States Supreme Court says, just
10 like Feretta says, this issue is left up to the trial
11 court. It doesn't say that you can't grant it. It
12 didn't say the courts are permitted. They say it is a
13 trial court's discretion.

14 THE COURT: Right. I've got a question. I
15 will wait. Go ahead.

16 MR. STARNES: One more thing. This is not the
17 first time this happened in Lexington County. I have a
18 copy of an order or a motion that this was done in 1991
19 in State versus Cooper in which Mr. Myers prosecuted.

20 I have a copy of that. This motion was
21 granted to allow him to be co-counsel. They cite
22 Feretta in here. This motion was granted. It has been
23 granted before, and that is my prayer to this Court.

24 THE COURT: Mr. Delgado, what is your position
25 on this?

1 MR. DELGADO: Your Honor, I'm --

2 THE COURT: And let me ask one thing to be
3 sure. You are asking, Mr. Starnes, in essence not that
4 you do the voir dire jointly with the attorneys, but
5 that you do all the voir dire and the opening yourself;
6 is that right? Am I right about that, Mr. Starnes?

7 MR. STARNES: I'm sorry, Your Honor?

8 THE COURT: You are asking to do the voir dire
9 just by yourself, not with the attorneys, and you are
10 asking to do the opening by yourself and not with the
11 attorneys?

12 MR. STARNES: Right. That's what I would like
13 to do. When we get to court, Your Honor, I've never
14 examined a juror. But it may be that after two or
15 three, I may say: I don't think -- I'm not going to get
16 good vibes off this and ask Mr. Delgado and Mr. Nettles
17 to do it.

18 THE COURT: Well, you understand that puts an
19 attorney in a terrible position though because you are
20 asking him then to do something that he has not prepared
21 himself to do.

22 You understand voir dire doesn't take place
23 just with the asking of questions of the jurors in the
24 courtroom, but there is a substantial amount of
25 preparation that takes place to get ready for it and to

1 get enough information about the jurors that you
2 probably in all honesty are not going to be able to do
3 from the jail.

4 MR. STARNES: What would the predicate be if I
5 was pro se, Your Honor? I would have to waive that?

6 THE COURT: I'm sorry, I don't understand.

7 MR. STARNES: What would the predicate be if I
8 was pro se? I couldn't send the summonses out to the
9 jurors with the questionnaires if I exercise my Feretta
10 rights.

11 THE COURT: No, lawyers don't send summons out
12 to the jurors anyway. They don't send anything out to
13 the jurors.

14 MR. STARNES: They don't send the
15 questionnaire out to the juror asking them certain
16 questions?

17 THE COURT: No, sir, the Court does that.

18 MR. STARNES: But who prepares the questions?

19 THE COURT: Well, that's up to the judge to
20 decide. That's up to the judge to decide before the
21 summons go out to the jurors.

22 MR. STARNES: Right.

23 THE COURT: But, again, there is some
24 information you get from that, and you would probably
25 have that if you were pro se; but then there is a lot of

1 other research that could be done in other ways
2 legitimately by the attorneys.

3 You probably would not be in a position -- you
4 might -- but probably would not be in a position to do
5 that from jail. Certainly you wouldn't have the freedom
6 to do what they are doing.

7 MR. STARNES: Right. Could I work with them
8 and do it?

9 THE COURT: Mr. Delgado, what is your position
10 on this?

11 MR. DELGADO: Judge, my position is this.
12 Attempting to honor his rights to the fairest trial
13 possible compels me to say -- the Court asks me my
14 personal opinion -- the motion is not in his interest.

15 Creating a hybrid representation, for a number
16 of reasons, I think it would work against Mr. Starnes.
17 Having him be his own attorney, have Mr. Nettles and I
18 as standby or advisory counsel is not in his interest.

19 I know I speak for Mr. Nettles when I say that
20 we wish to have this relationship continue in the
21 fashion it has up to this time. Norman is a very bright
22 fellow. As you can see by preparation, he works
23 extremely hard. He can do a very competent job.

24 The problem with it is those waters get very
25 murky and very deep very quickly. You can sit on Gibson

1 Road for a couple of years and think you know how to try
2 a death case, but in the first couple of hours here,
3 that can be destroyed.

4 It seems to me also, Your Honor, without going
5 into some trial strategy, that if we have a hybrid
6 representation, then we have a decision of who is going
7 to cross examine whom on what issues and the exact ways
8 that that cross examination is going to be employed.

9 I think -- I have done this once or twice -- I
10 think I know how to cross examination witnesses in the
11 best interest of the client. I think Mr. Nettles does
12 as well.

13 We both just believe that hybrid
14 representation is not in his best interest. We both
15 believe that pro se representation is not in his
16 long-term interest. That's our position, Your Honor.

17 THE COURT: Okay. Mr. Riddle, do you want to
18 address any of this at this point?

19 MR. RIDDLE: Yes, sir, Your Honor.
20 Mr. Starnes has cited a number of cases. I know the
21 Foster case back in 1989 says there is no right for pro
22 se litigants to have hybrid representation in
23 conjunction with appointed counsel.

24 That case was followed up by Stuckey, which I
25 will come back to in a minute, and was last addressed by

1 the Court of Appeals in Cabrera-Pena, which is a 2002
2 case which Judge Anderson wrote it.

3 Your Honor, all through the history of this
4 issue being heard by the appellate courts of South
5 Carolina, they have consistently and repeatedly ruled
6 the same thing:

7 A person is not entitled to hybrid
8 representation. I would quote from the Stuckey case: A
9 defendant does not have a constitutional rights to
10 choreograph special appearances by counsel. That's
11 exactly what he is trying to do here.

12 He talks about his right to allocution. That
13 is a statutory right granted to him in a death penalty
14 case. That's a right that he has, a right that he may
15 or may not choose to exercise.

16 But what he wants to do is gain other rights
17 to allocute that are delineated in the capital murder
18 scheme. He wants to have the right to allocute before
19 the jury is picked, he wants to have the right to
20 allocute at the beginning of the case. He wants to have
21 the right to allocute at the end, as is statutorily
22 permitted.

23 But there is nothing in South Carolina case
24 law that permits it. In fact, they have repeatedly and
25 consistently time and time and time again, from Foster

1 to Stuckey, all the way up to Cabrera-Pena this past
2 year, said that there is no right to that situation.

3 Your Honor, I agree with Mr. Delgado and the
4 Court that it puts defense counsel, if they are asked to
5 step in at some later point to do voir dire, to do
6 opening statements or to do whatever that they are not
7 prepared to do, puts them in a horrible situation.

8 It puts them in a situation where they are per
9 se ineffective, which means we are completely and
10 totally engaged in an exercise in futility if we reach
11 that point.

12 If that is not seeking to use this process for
13 delay or for tactical advantage, as Mr. Starnes cited in
14 the Fuller case, which I believe he cited to the Court,
15 I don't know what is.

16 We strenuously object to Mr. Starnes being
17 allowed to choreograph special appearances by counsel in
18 this particular case.

19 THE COURT: Mr. Starnes, anything else on
20 this?

21 MR. STARNES: Your Honor, first of all, I'm
22 not wanting to choreograph. Mr. Delgado got into a
23 situation about witnesses. Please let the record
24 reflect that I am not wanting to cross examine
25 witnesses. This is a voir dire situation.

1 What Mr. Riddle doesn't say that Stuckey says:
2 This matter of hybrid representation is left to the
3 discretion of the trial judge and the trial courts, just
4 as they say in this situation in appellant matters.

5 There are situations where these motions have
6 been granted and this has happened. It's going on in
7 the Supreme Court right now in the Robertson case. I
8 have Judge Toal's order here if Your Honor would like to
9 see this.

10 THE COURT: Let me ask, Mr. Starnes, are you
11 familiar or have you studied the law as it relates to
12 the voir dire in a death penalty case?

13 MR. STARNES: Yes, sir, I have. I am familiar
14 with Bennett. I am familiar with many of the capital
15 cases dealing with voir dire. I understand you can't go
16 on a fishing expedition, that you are confined to asking
17 jurors matters relating to:

18 Can they follow the law? Can you sign this
19 paper to have the Defendant put to death? I have read
20 my transcript, and I have read several transcripts
21 dealing with these capital cases and doing voir dire. I
22 pretty much understand what I can ask and what I can't.

23 THE COURT: You understand that when it comes
24 to voir dire in capital cases, there are actually at
25 least some 30 or 40 or 50 cases, maybe more, that

1 address this that have intricate details that are thrown
2 into the mix of all this that can influence in various
3 ways how you are able to conduct voir dire.

4 An experienced attorney who has done this
5 before is going to be able to take the best advantage of
6 that and use it properly and expansively to your
7 benefit. But the problem is are you familiar enough
8 with all those cases that you feel like you are going to
9 be able to do that sort of thing yourself?

10 MR. STARNES: I believe I can do it, Your
11 Honor. Can I just have a chance? That's all I'm asking
12 for.

13 THE COURT: That's what we are trying to
14 determine here.

15 MR. STARNES: Yes, sir. In a Feretta
16 situation, Your Honor, and I don't know mean no
17 disrespect, in a Feretta situation, the Court is kind of
18 stuck with it. That's not what I'm seeking to do. I'm
19 not seeking to represent myself.

20 Now, do I have a constitutional right to talk
21 to that jury? Yes, sir. I can say fire Mr. Delgado,
22 fire Mr. Nettles. I will see you at court and I will
23 get to come back here, and I'll get to talk to these
24 people. But that is not my goal, and that is not what
25 I'm trying to do. That is not what I'm trying to do.

1 Mr. Delgado and Mr. Nettles can work with me
2 on this. I have read a lot of these death penalty
3 opinions, and I understand that I'm confined to only
4 asking certain questions. I'm not going to try to
5 harass nobody. I am not going to make nobody feel
6 uncomfortable or anything like that.

7 But I feel what I want to do and my prayer to
8 this Court is to let me converse with these people that
9 may make a decision whether I live or die. State versus
10 Brewer, Johnny Brewer did it. He came in here.

11 Mr. Myers has a track record of winning more
12 death penalty cases in the State. Mr. Brewer come in
13 this courtroom without a high school education, and they
14 lost the penalty phase.

15 THE COURT: I think Mr. Myers didn't try that
16 case.

17 MR. STARNES: He stepped out part way.

18 THE COURT: He never tried the case at all,
19 and Mr. Riddle didn't try the case. I believe it was a
20 couple of other assistant solicitors as I recall, but it
21 wasn't -- I don't think either he or Mr. Riddle actually
22 tried that case.

23 MR. STARNES: I was under the impression, and
24 shame on me for reading the newspaper, but I was under
25 the impression that Mr. Myers tried the case.

1 THE COURT: You can't read the newspaper.

2 MR. STARNES: I understand. There were quotes
3 saying: I'm going not to sit on the sidelines anymore.

4 THE COURT: I'm pretty sure and pretty
5 familiar that Mr. Myers and Mr. Riddle both did not try
6 that case.

7 MR. STARNES: Did Your Honor?

8 THE COURT: I was the trial judge in the case.

9 MR. STARNES: That's what I was going to ask.

10 THE COURT: I think Mr. Humphries and -- I
11 can't remember who the other one was.

12 MR. RIDDLE: Mr. Chase, Your Honor.

13 THE COURT: Mr. Chase. As I recall, it was
14 another assistant who had never tried a death case
15 before, tried it. I think those two tried the case as I
16 recall.

17 You understand in that case there were -- and
18 I will be very honest with you. As the trial judge in
19 dealing with a number of people, including his standby
20 attorneys, he had two standby lawyers, his standby
21 lawyers were of the concern that given the case the way
22 they case went and the way it was handled on both sides,
23 had he had an attorney, there was substantial opinion
24 that he might not have even been convicted of murder
25 because he had a reasonable chance.

1 But the fact that he represented himself
2 basically took that out for him. I'm not saying that is
3 exactly the case, but there were some substantial
4 opinion to that. So I wouldn't give that all the
5 substance that you seem to be giving it. You need to be
6 very careful when you look at something like that.

7 MR. STARNES: Right.

8 THE COURT: Go ahead. I didn't mean to stop
9 you.

10 MR. STARNES: The State is pretty much
11 shackled with the fact, and I haven't denied, that I
12 shot these individuals. I think even the Supreme Court
13 ruled that the facts and circumstances of this case not
14 only warrants a self-defense charge but an expansion
15 under State versus Fuller. They are shackled with a
16 case of self-defense, and they are stuck with that.

17 One of the things that I would like to do is
18 talk to this jury, Your Honor. If I can't, if I
19 can't -- basically I guess what I'm trying to say, Your
20 Honor, is that if we can't work on this and I can't do
21 the voir dire on this jury, if Mr. Delgado has a problem
22 with it -- and I can't speak for Mr. Nettles -- but we
23 have talked about this, he told me that this was not a
24 bad idea.

25 Mr. Nettles isn't here today. If you would

1 like to continue this, if Your Honor would like to
2 continue this hearing to get his position on the record,
3 but this was a trial strategy, Your Honor, that we
4 talked about on May the 10th of 2000, at the death row
5 unit in Leiber Correctional Institute.

6 This is a self-defense case. Kind of, I
7 guess, what I'm wanting to do is blend a lit bit of
8 self-defense in there with it. I would like to voir
9 dire this jury and possibly make the opening statement.

10 If Your Honor doesn't want me to make the
11 opening statement, I will stop at voir dire; but I would
12 like to look at these people that are going to make this
13 decision whether I am guilty or not or whether I live
14 and die. The only chance that I can have to talk to
15 these individuals is through voir dire.

16 THE COURT: You are really misunderstanding
17 something, Mr. Starnes, at this point. In voir dire you
18 don't get to talk to the jurors. You have a right to
19 ask them certain limited questions, and that's all.

20 I notice from what you said a minute ago,
21 apparently you seem to give some substance to being able
22 just to ask them the question. I gather you are going
23 to do it the way Mr. Brewer tried to do it, and that is
24 just ask the jurors:

25 Can you sign a sheet saying putting me to

1 death? And try to make it personal in a sense with
2 them, but you understand there is a whole lot more than
3 that involved in the voir dire process.

4 MR. STARNES: Yes, sir, I had -- I left a
5 folder over at the jail. I've got a folder on voir
6 dire, and possibly I could have went over some of these
7 questions with you. But some of the questions I wanted
8 to ask, basically what I wanted to ask these jurors is
9 what they did -- what Mr. Salley, Mr. Nettles, and
10 Mr. Banks asked -- in the original trial of this case,
11 in which Your Honor presided.

12 I would like to ask some of the other
13 questions that I think is allowed by the rules. I'm not
14 trying to go on a fishing expedition. I'm not trying to
15 hurt anybody's feelings. Am I making any sense, Your
16 Honor?

17 THE COURT: You are making a lot of sense, but
18 I guess the question that comes to mind is and I would
19 ask just so it's on the record: Why can you not give
20 those questions to Mr. Delgado and Mr. Nettles to ask
21 and let them ask them?

22 MR. STARNES: Because it's different when the
23 Defendant is asking those questions his self. At no
24 point in this trial through these proceedings can I look
25 at a juror and ask them a question and him answer me,

1 him or her.

2 I can't go over there and ask these jurors
3 questions when they are in that jury box. The only time
4 that we can ask questions is during voir dire, and
5 that's the only time that these people -- I'm not asking
6 to have a conversation.

7 THE COURT: I understand.

8 MR. STARNES: I am asking to come up there and
9 ask these people the questions that I'm allowed to ask
10 pursuant to the law and pursuant to the rules of this
11 Court.

12 THE COURT: So what you are saying then and it
13 sounds like Mr. Riddle is right, you are trying to
14 choreograph it so that in essence you make the jurors
15 have to say certain things to you personally. If I'm
16 saying the word choreograph right, that's what you are
17 trying to do. Does that not sound correct?

18 MR. STARNES: Your Honor, I don't mean to be
19 hyper technical or crazy, but what does choreograph
20 mean?

21 THE COURT: You are trying to set up a certain
22 situation, a certain scenario.

23 MR. STARNES: A certain scenario?

24 THE COURT: A scenario where the jurors have
25 to answer these questions directly to you and not just

1 answer them just for the knowledge and for the benefit
2 of the Court's knowledge in making a decision as to
3 whether they are qualified.

4 MR. STARNES: I guess what I'm asking is to
5 ask questions that is allowed by the rules of Court.
6 I'm not asking to ask them questions that Your Honor
7 says that I can't ask.

8 I know there are certain questions that you
9 can't ask, and the scope of voir dire is limited. In
10 death penalty cases it's different than in a regular
11 criminal trial.

12 One of the things that we have discussed is:
13 Can they follow the law? Can they sign the form? Can
14 you respect other's feelings? Can you respect other
15 people's feelings on the jury? Those questions can be
16 asked.

17 I have read some of the transcripts in other
18 death penalty cases, and I don't have all the questions
19 written down but different questions that different
20 defense attorneys -- and one of them happens to be
21 sitting right behind me, Mr. Bruck, who is very
22 experienced in death penalty work. I have read a lot of
23 his work and lot of his trials and a lot of his closing
24 arguments.

25 That's where this is going, Your Honor. I am

1 not trying -- I'm not trying to ask Your Honor to give
2 me a remote control and have this man do what I want him
3 to do for me.

4 I am not interested in questioning witnesses.
5 I am not interested -- what I'm interested in doing and
6 what I feel the Constitution allows me to do under
7 Article 114 and the Sixth Amendment, and I raised this
8 on Sixth Amendment issues and on the Fifth and
9 Fourteenth Amendment issue, due process, compulsory
10 process, the right to be heard by counsel, as the State
11 Constitution says or by both. Article 114 says that.

12 The case, the Foster case, is a case in which
13 it says the constitutional provision preserves and
14 guarantees litigants to certain trial rights. Foster
15 was a case dealing with an appeal where an appellant
16 wanting to file motions with the Court while he was
17 represented by counsel.

18 Your Honor, this matter is left up to the
19 trial court's discretion. I have several United States
20 Supreme Court cases here. As it says in Stuckey and it
21 says in all these cases where hybrid is raised, that the
22 matter is left to the trial court's discretion. I'm not
23 trying to frustrate this Court. I am not trying to
24 waste time. I am trying to do what I feel is best in my
25 heart.

1 THE COURT: Certainly. I want you to know I
2 don't feel frustrated in the least by that.

3 MR. STARNES: And I very much appreciate the
4 Court's time.

5 THE COURT: You and I have a good history,
6 Mr. Starnes. That doesn't bother me at all.

7 MR. STARNES: I appreciate you allowing me to
8 be heard, Your Honor.

9 THE COURT: Sure, sure. Let me tell you at
10 this point, I am going to have to deny the motion. In
11 exercising the discretion to do it, let me give you the
12 reasons why.

13 One, there is still a bent against it from the
14 Supreme Court. They may leave it to the discretion of
15 the trial judge. There may be one where Chief Justice
16 Taal has allowed someone to do it, but hybrid
17 representation still is not a normal situation that
18 should be handled very often and shouldn't be granted
19 very often because there are just some situations where
20 it works and some doesn't.

21 So there tends to be a feeling by the Supreme
22 Court opinions that I have read against it, even though
23 there may be some chance, some opportunities for it to
24 be used.

25 Secondly, based on the input from Mr. Delgado

1 and just from understanding myself the nature of voir
2 dire, it would hamper the attorneys unquestionably in
3 terms of their representation because voir dire can be
4 used successfully by an attorney.

5 I realize that they are not allowed to define
6 jurors but at least to get some idea of where a juror
7 may stand on certain serious areas that may be part of
8 the defense. They know what they are doing with it, and
9 they know how to follow it up with the questions.

10 If you make it a two-part thing, then there is
11 sort of a disconnect there that causes some problems in
12 the flow of the trial. The attorneys should be able to
13 do that themselves. So it would hamper them.

14 Particularly if you got into it like you said
15 with a few witnesses and realized you were in trouble
16 and tried to turn it over to them, there is no way at
17 that point that they can pick it up. That would be an
18 impossible situation for them.

19 Third, to be very honest with you, and I know
20 you don't mean this with any sinister motive as such,
21 and you are wanting to do what you think is proper; but
22 it is an attempt to choreograph a scenario whereby the
23 jurors are required to say certain things to you and
24 look you in the eye when they do it.

25 They have to try this in front of and do what

1 they do in front of you, but I don't think the law
2 requires them to do that. So for those reasons I would
3 have to deny the motion for hybrid representation.

4 MR. STARNES: Can I put one more case on the
5 record?

6 THE COURT: Yes, sir. I wasn't trying to cut
7 you off and I didn't mean to.

8 MR. STARNES: This is a 1958 case. It's a pre
9 Gideon case. It's 102 S.E.2d at 873, State versus
10 Holloman (phonetic). I have the Lexus copy here. I am
11 kind of used to reading West Law. Quoting from the
12 opinion, it says:

13 It is true that where one has conducted his
14 defense in person, technical rules are to be applied
15 with much less stringency than where he has been
16 represented by counsel, quoting State versus Owen. Our
17 custom of longstanding requires that we relax them in
18 capital cases even when the Defendant has been
19 represented by counsel.

20 In the McCaskell versus Wiggins case: In
21 determining whether a defendant Feretta's rights has
22 been respected, the primary focus must be on whether the
23 Defendant had a fair chance to present his case in his
24 own way.

25 What I would like to do if Your Honor would

1 allow me is I would like to put a brief together on this
2 and submit it to the Court. Since we are operating
3 under the dual attorney statutes and Mr. Nettles is not
4 here, if Your Honor could possibly schedule another
5 hearing.

6 Because my intentions at this time is probably
7 to go pro se. Before I do that, I would like to speak
8 with Mr. Nettles before I do it. I understand he is out
9 of the country right now, and I believe he will be back
10 tomorrow.

11 If we can have, I believe it's a Boykin
12 hearing, on the knowing and intelligent waiver. If Your
13 Honor would please give me a chance to speak with
14 Mr. Nettles and discuss this situation with him and
15 bring me back over here so we can go on the record and
16 have this hearing as far as pro se.

17 Because when I go that route, I am going to
18 have to talk to Your Honor about some housing issues,
19 some funding orders for investigators, for expert
20 witnesses, and things of that nature.

21 If Your Honor would please grant me a hearing
22 after I can talk with Mr. Nettles about that. Because
23 we are under a statute here in capital cases that
24 require two attorneys.

25 I would like to speak Mr. Nettles about that

1 first. Because before I shoot myself in the foot, so to
2 speak, I would like to talk with Mr. Nettles and I'd
3 rather not go into that. I would like to talk to
4 Mr. Nettles first.

5 THE COURT: I understand. There are actually
6 some other things I need to go into with you on this
7 issue of pro se representation. I want to be sure we
8 get all this on the record.

9 MR. STARNES: Sure.

10 THE COURT: Another thing I want to go over
11 with you, you understand the right, your Fifth Amendment
12 rights, as to when a defendant -- that a defendant does
13 not have to testify and when a defendant maybe should
14 testify or should not testify. Do you feel like you
15 understand that?

16 MR. STARNES: I understand I have a
17 constitutional right to testify or not testify.

18 THE COURT: Right. You understand you have a
19 constitutional right to testify if you want to.

20 MR. STARNES: Sure.

21 THE COURT: Do you understand that there may
22 be some fine points that may determine whether or not
23 you do or do not testify? There's are other things,
24 that it's not simply a matter of getting on the stand
25 and telling your story. There are a lot of other

1 factors that go into it. Do you feel like you
2 understand that?

3 MR. STARNES: To a certain degree. I'm a
4 little confused what you are saying. As far as if I
5 testify what I can do?

6 THE COURT: Well, no. For example, in
7 deciding whether to testify or not, you certainly want
8 to have the advice of counsel. You may be able to let
9 standby counsel give you advice, but you still have to
10 make the decision. Factors such as prior record and
11 various other things may apply as to whether or not you
12 want to testify or not. Do you understand that?

13 MR. STARNES: Yes, sir, I understand that.

14 THE COURT: There are several crimes, a couple
15 of crimes, three crimes I think, charging you at this
16 point. Particularly as to murder, do you understand the
17 elements of murder, what the State has to prove before a
18 jury can find you guilty for the charge of murder?

19 MR. STARNES: Yes, sir, I believe that is in
20 Elmore.

21 THE COURT: What do you understand the
22 elements of murder are? What do they have to prove?

23 MR. STARNES: They have to prove felony
24 killing with malice aforethought.

25 THE COURT: What do you understand malice

1 aforethought to be?

2 MR. STARNES: Malice can either be express or
3 implied from Your Honor's charge at the original trial.
4 Implied malice, I don't have it in front of me, but I
5 know there is a distinction between implied malice and
6 express malice.

7 THE COURT: What do you understand
8 aforethought to be?

9 MR. STARNES: Aforethought can be over an
10 amount of time. It can be for a split second. That's
11 for the jury to decide.

12 THE COURT: Right. Are you aware of possible
13 defenses you could use?

14 MR. STARNES: Yes, sir. I understand the
15 burden is on them to disprove self-defense in this case,
16 and that's the defense we will be taking.

17 THE COURT: You don't know of any other
18 defenses that you would use in this case particularly?
19 You don't have to.

20 MR. STARNES: Do I have to go on record with
21 that? That's trial strategy, isn't it?

22 THE COURT: Right, I understand that. I'm not
23 asking what they are but as to whether you are aware of
24 what they might or might not be.

25 MR. STARNES: Right. I understand. I do have

1 certain defenses, Your Honor.

2 THE COURT: As to self-defense obviously that
3 is no secret to the State because that was involved in
4 the first trial.

5 MR. STARNES: I think they are shackled with
6 that, Your Honor.

7 THE COURT: Do you understand what we mean by
8 lesser included charges?

9 MR. STARNES: I think that is in State versus
10 King, Your Honor, a 1945 case.

11 THE COURT: What do you understand that to be?

12 MR. STARNES: That depending on the facts and
13 circumstances of the case that possibly I could get or
14 receive a lesser charge of manslaughter. If the jury
15 has any doubt as to murder or manslaughter, they have to
16 resolve that doubt in favor of the lesser offense.

17 THE COURT: Okay.

18 MR. STARNES: State versus King.

19 THE COURT: Yes, sir. And you understand the
20 circumstances where you might or might not be able to
21 ask for a lesser included charge?

22 MR. STARNES: Yes, sir.

23 THE COURT: There are some other questions
24 that I want to ask you. I don't want to ask you these
25 other questions, such as voluntariness and intelligently

1 making this decision until you have had a chance to talk
2 with both of your attorneys. I understand what you are
3 wanting to do. You are wanting to talk with
4 Mr. Nettles, in addition to Mr. Delgado before this is
5 decided.

6 Let me just tell you based on what we have
7 talked about here, frankly it's my opinion that you
8 really would be better off being represented by a
9 trained attorney, particularly an attorney who has been
10 trained in areas such as this.

11 I will tell you this and I don't mean this
12 personal in any sense towards anybody, but there are
13 four, probably four, five or six of the lawyers in this
14 State, defense lawyers in death cases, who are sort of
15 in a league by themselves. Mr. Delgado is one of those
16 folks.

17 MR. STARNES: I understand.

18 THE COURT: He has been through the fires on
19 this thing. When he gives you an opinion or he talks
20 about something, it comes from well-heeled experience on
21 his part. He has been through the fires as I said.

22 So you have to understand that when you are
23 dealing with an attorney such as Mr. Delgado, you are
24 dealing with an attorney who has been this way before,
25 has tried various things, and to a large degree knows

1 what works and what does not work under certain
2 scenarios.

3 So, again, it's my feeling that you are better
4 off being represented by somebody like him and
5 Mr. Nettles. Both of them are excellent lawyers. I
6 will tell you, being very direct, that you don't have a
7 strong familiarity with the Rules of Evidence or the
8 Rules of Criminal Procedure.

9 It would be very difficult to imagine that you
10 would get yourself into a position to where you would be
11 able to use them in such a quick snap situation as you
12 would have to do during a trial. So I think your
13 working knowledge would be very hampered in that
14 particular situation.

15 So I would tell you that I would strongly urge
16 you not to represent yourself. Having said that, you do
17 have a constitutional right to represent yourself. You
18 probably -- there are some scenarios where a judge could
19 deny someone the right to do this.

20 I think in this circumstance I wouldn't be
21 able to do that. If you want to represent yourself, I
22 probably would have to allow you to do it and would do
23 so.

24 But I will tell you that it would be extremely
25 unwise to do so because, again, given the laws of

1 self-defense, the laws involving lesser included
2 charges, there are some intricate areas that an attorney
3 can exploit much better than an untrained lay person can
4 do.

5 No question, I think you have done a marvelous
6 job in terms of your preparation. I've been quite
7 impressed with the way you have presented yourself today
8 with it.

9 MR. STARNES: Thank you.

10 THE COURT: But it's one thing to have all
11 that preparation and come into a situation such as this
12 where you know you what are going to do, as opposed to
13 getting into a trial and not knowing what the State is
14 going to do and having to make quick decisions in the
15 flurry of the moment in literally what can be a
16 combative situation in a trial courtroom.

17 An attorney can do that much better, in all
18 honesty, than you could do it. However, what I want to
19 do is give you a chance to talk further with Mr. Delgado
20 and Mr. Nettles. Then at some later point within a week
21 or two, we will get you back. We will ask you some
22 other questions. I will let you give me a determination
23 as to what you want to do on it.

24 MR. STARNES: Okay. Can I ask a question?

25 THE COURT: Yes, sir.

1 MR. STARNES: As far as the trial, will Your
2 Honor be the presiding judge at my retrial?

3 THE COURT: Yes, sir. As I understand at this
4 point, I would be. The Supreme Court's procedure has
5 been to have the trial judge try it unless they make
6 some decision to change trial judges. I have not heard
7 that yet.

8 MR. STARNES: I didn't mean no disrespect by
9 that or anything.

10 THE COURT: Sure.

11 MR. STARNES: I have an objection to that,
12 Your Honor.

13 THE COURT: I understand.

14 MR. STARNES: And I don't mean it as nothing
15 personal to you or nothing, but I have an objection.
16 There is a reason and I really don't want to tell you.
17 I don't know if I have to take it up through Court
18 Administration.

19 Because the situation would be that if the
20 jury did come back with a manslaughter verdict on me,
21 Your Honor has heard three, four days of aggravating
22 circumstances.

23 You heard the penalty phase. If they come
24 back with a manslaughter conviction, we don't go into
25 the second part; and Your Honor has heard every bad

1 thing that they can come up with. Also --

2 MR. RIDDLE: Your Honor, at this point I would
3 object because we are getting right back into a hybrid
4 representation situation. If there is a motion, it
5 needs to be made by Mr. Delgado or Mr. Nettles.

6 THE COURT: That's correct.

7 MR. STARNES: I understand.

8 THE COURT: Either you or your attorneys can
9 make that motion later on if you want to.

10 MR. STARNES: I understand.

11 THE COURT: And I'm not offended by it.

12 MR. STARNES: The reason that we got here
13 today is -- and I would like the record to reflect
14 that -- is a discovery issue that I have begged and
15 pleaded with these attorneys to give me for two years.
16 They won't turn it over and they are supposed to, Your
17 Honor. They are asking for the death penalty.

18 I don't think that is asking for too much.
19 I've been back in the jail for 41 months now waiting for
20 retrial. Mr. Myers said at my bond hearing that he was
21 ready to retry this at any time. That doesn't seem to
22 be the case, Your Honor.

23 THE COURT: All right. Let's do this.

24 MR. STARNES: That's part of the reason that
25 is leading up to this that I feel like maybe it's best I

1 do it myself. Evidently the attorneys agree with the
2 State to leave me in jail.

3 I don't mean no disrespect to them. You know,
4 I pled not guilty. This was a case about self-defense.
5 We don't have to get into any facts. I know this isn't
6 the time and place for that.

7 THE COURT: Here is what we are going to do.
8 When we come back next time, regardless of whether you
9 are representing yourself or whether the attorneys are
10 representing you, one thing I want to do is I want to
11 get an answer from you in terms of what you have decided
12 you wish to do in terms of representation.

13 The other thing is at that time we will
14 conduct a hearing on the discovery issues. We will find
15 out what is going on, whether it should be -- whether
16 what you want should be turned over or whether it should
17 not be turned over.

18 MR. STARNES: Right.

19 THE COURT: We will give you a chance to be
20 heard on that.

21 MR. STARNES: I appreciate it. Also, if you
22 would just let me, I would like to prepare a brief. I
23 know I can't do that until Your Honor has ruled on the
24 pro se or not, but there was some other decisions.

25 THE COURT: I want to be sure, I have ruled on

1 the pro se. My ruling on the pro se is that you are
2 going to be allowed to do it if you still want to after
3 you talk with your attorneys.

4 MR. STARNES: I'm sorry, I meant the hybrid,
5 co-counsel motion.

6 THE COURT: I have ruled on that, too.

7 MR. STARNES: Can I add something? Not today
8 but when we come back, can I add some case law and
9 address the Court on that issue because I feel under the
10 Torrence rule that we are required to preserve the
11 record in case we get into another situation. I would
12 like to do that because I think there are some
13 constitutional issues and some other case law that I did
14 not put on the record today.

15 THE COURT: Yes, sir, I will let you do that.

16 MR. STARNES: I'm kind of in a stir situation.
17 If you would allow me to do that at the next hearing,
18 Your Honor, I would very much appreciate it. I do feel
19 like it's a capital case. We need to reserve the
20 record.

21 THE COURT: We will do that. I would ask you
22 if you would, before the hearing send me a copy of the
23 brief so I have a chance to look it over.

24 MR. STARNES: Send it directly to Your Honor?

25 THE COURT: Yes, sir, ahead of time. Just

1 send it to me.

2 MR. STARNES: When I send stuff through the
3 Clerk's Office, they send it back.

4 THE COURT: Send it directly to me.

5 MR. STARNES: I will send it directly to you.

6 THE COURT: Normally we don't but the clerk
7 sends those back because I have advised them to do that
8 when someone is being represented by a lawyer, except in
9 scenarios where they are wanting to have their lawyer
10 replaced to be allowed to go forward pro se. Those
11 things do come to me and this would come to me.

12 MR. STARNES: One other thing, Your Honor, and
13 we will end today unless you have something also you
14 want to cover, if you would have Mr. Riddle or
15 Mr. Delgado just give me some notice as to when we are
16 going to do this.

17 Because they will come wake me up out of out
18 jail cell and I might think I'm going to the dentist
19 office or something. I would like to be prepared when I
20 come up here. If I could have some notification, I
21 would very much appreciate it.

22 THE COURT: You understand that is something
23 the Court doesn't do. The jail does that for security
24 reasons.

25 MR. STARNES: Yes, sir.

1 THE COURT: Obviously you can understand the
2 security issue involved in somebody not knowing when
3 they are going to be transported outside of the jail.
4 So I certainly understand that.

5 I think the best thing I can suggest is just
6 have your stuff together, keep it together. So if they
7 do -- when they do come to bring you up here, you will
8 be able to just pick it up and bring it with you. If
9 you come without it, I will have them somehow go back
10 and get it for you.

11 MR. STARNES: All right, sir.

12 THE COURT: We will see that you have your
13 stuff with you.

14 MR. STARNES: Mr. Nettles, I think comes back
15 tomorrow?

16 THE COURT: I don't know.

17 MR. STARNES: I believe tomorrow or something.
18 If Your Honor could, as soon as he gets back, if you
19 could, as soon as possible, allow us to have this
20 hearing so we can have this on record and I can move
21 forward. I would very much appreciate it.

22 THE COURT: Yes, sir, we will do that.

23 MR. STARNES: I very much appreciate it. I
24 thank the Court for the time in allowing me to be heard
25 today.

1 THE COURT: Sure. It's good to see you again.

2 MR. STARNES: I appreciate security bringing
3 me up here and keeping an eye on me. There is one other
4 thing. My mother has a book. It's from the South
5 Carolina Code of Laws. It's Title 18 dealing with
6 appeals. Could she give it to Captain Williams so I can
7 have it? I will need that book for what we are doing
8 here.

9 THE COURT: Captain, do you have any problem
10 with taking that? You can inspect the book if you need
11 to.

12 OFFICER: Sir, as long as I get it where he
13 will release it, if he signs the release. He knows the
14 process, sir.

15 MR. STARNES: That's fine.

16 THE COURT: Let him do it then. Anything else
17 Mr. Starnes?

18 MR. STARNES: That will do it.

19 THE COURT: Mr. Delgado, do you have anything
20 else?

21 MR. DELGADO: Nothing. Thank you, Your Honor.

22 THE COURT: Mr. Myers, Mr. Riddle, anything?

23 MR. RIDDLE: No, sir, Your Honor.

24 THE COURT: All right. Thank you.

25 (Whereupon the proceedings were concluded for

1 August 18, 2003).

2 (The following proceedings were reported on
3 August 27, 2003).

4 THE COURT: First is in the matter of the
5 State versus Starnes. Present are Mr. Myers and
6 Mr. Riddle and Mr. Graham on behalf of the State. The
7 Defendant is present with Mr. Nettles and Mr. Delgado.

8 I received a letter, Mr. Delgado, from you
9 recently indicating -- I'm sorry, Mr. Nettles, I
10 think -- indicating that you and Mr. Delgado have talked
11 with Mr. Starnes, and it was your understanding at that
12 time that he still wished to proceed pro se; is that
13 correct?

14 MR. NETTLES: Since we are on record, we spoke
15 with him. We spent a fair amount of time with him or as
16 much time as we thought all of us needed. Then I think
17 he decided he was going to let us know the next day or
18 something like that. Then he called our office and told
19 us verbally that he had decided he wanted to represent
20 himself.

21 THE COURT: Mr. Starnes, let me ask you to
22 raise your right hand. Madame Clerk, would you put him
23 under oath for me, please.

24 NORMAN STARNES is first duly
25 sworn.

1 THE COURT: Mr. Starnes, if you recall, we had
2 a rather detailed discussion last time we were together
3 about the question of your representing yourself. Do
4 you recall all that?

5 MR. STARNES: Yes, sir.

6 THE COURT: Do you recall we went over a
7 number of questions related to your experience in
8 dealing with legal issues and the fact that you were
9 frankly unfamiliar with a lot of the rules of procedure
10 that would be involved and a lot of the rules of
11 evidence? Do you recall that?

12 MR. STARNES: Yes, sir, I do, Your Honor.

13 THE COURT: And you recall that we discussed
14 two requests of yours, one was to allow hybrid
15 representation, which we denied; and the other was to
16 allow you to represent yourself.

17 I indicated at that time based on everything,
18 that while I didn't think it was the best idea for you
19 to do it, I would allow you to do it after you had
20 talked with Mr. Nettles and Mr. Delgado. I understand
21 you have now talked with them; is that correct?

22 MR. STARNES: That is correct, Your Honor.

23 THE COURT: And is it still your wish to
24 represent yourself at this point?

25 MR. STARNES: Yes, sir, kind of it is. Could

1 I clarify a few things?

2 THE COURT: Yes, sir.

3 MR. STARNES: It is my understanding from Your
4 Honor's ruling that we had last week that the matter
5 about discovery and my wishes to go to trial would not
6 be taken up until I went pro se. Is that Your Honor's
7 ruling?

8 THE COURT: Yes, sir, that's correct. In
9 other words, you can't make any motions on your own
10 unless you are representing yourself.

11 MR. STARNES: Right. I can ask them to do it
12 for me; and if they don't respect my request, then I'm
13 in a dilemma. So I have two choices.

14 THE COURT: Well, if they are standby counsel,
15 you understand what is going to happen is once we
16 finalize this and allow you to represent yourself, the
17 next question is: Do you want standby counsel?

18 If you do, we will have standby counsel. Of
19 course, I may not necessarily require Mr. Nettles and
20 Mr. Delgado to do it. We could appoint other standby
21 counsel. It doesn't have to necessarily be them.
22 Frankly if either one of them wants out, I'm going to
23 let them out if you represent yourself. Go ahead.

24 MR. STARNES: I guess what I'm trying to
25 preserve for the record, Your Honor, is part of the

1 reason why I feel like I want to go pro se is because
2 there are certain things that I have asked my appointed
3 counsel to do.

4 One is to compel the State to release the
5 discovery in this case, and they have sat on it for two
6 years and refused to do it. Another, Your Honor, is
7 that I have been in the Lexington County jail now for
8 over three years.

9 I have asked my attorneys to exercise my
10 constitutional right to a fair and speedy trial and to
11 move forward with this case. I can't get them to do
12 that.

13 So part of the reason in why I'm doing this is
14 the fact that the State will not release the discovery
15 and the fact that I cannot get counsel to move forward
16 on a trial date.

17 As I said at our last hearing, Your Honor, is
18 the fact of me going pro se, those two issues really is
19 very important to me. I can't make -- I'm not here
20 dissing Mr. Nettles and Mr. Delgado because they've both
21 been very nice.

22 Mr. Nettles and I have been through this for a
23 long time. But I just want it preserved for the record
24 that part of the reason why I want to go pro se is
25 because I feel like I don't have any other choice.

1 THE COURT: Yes, sir. Let me be sure and
2 clarify it. As you know, if you recall last time we
3 were together, I told you that we would take up
4 discovery today when we were back together if you want
5 to.

6 MR. STARNES: Right.

7 THE COURT: We will get a resolution on that.
8 So I think that would reduce any conflict between you
9 and your attorneys.

10 Let me just be sure -- and so it's on the
11 record, and I certainly could not ever try to guess why
12 Mr. Delgado or Mr. Nettles would do anything because
13 they are much better attorneys than I am. They know
14 this area much better than I.

15 But in seeking a speedy trial, any time a
16 defendant faces the death penalty, that is extremely
17 risky to seek a speedy trial because you made speed up
18 the day of his impending execution.

19 Given that you have been already received the
20 death penalty one time, it's not at least beyond the
21 pale of some possibility that you could get the death
22 penalty again.

23 Certainly in just all honesty, the longer
24 things go in a trial, sometimes it tends to help the
25 defense because witnesses don't remember as much and

1 various things go on.

2 So a number of attorneys are of the school
3 that the longer it takes for a trial, the more advantage
4 they think there may be to their client. I'm not saying
5 that is what your attorneys are thinking.

6 But you understand there is another school of
7 thought. You seem to feel like this issue of a speedy
8 trial is some sort of a clear-cut issue, and it's not
9 really that clear-cut. Do you understand that?

10 MR. STARNES: Yes, sir, Your Honor.

11 THE COURT: I say that for the record just so
12 I be sure that you at least are considering that
13 possibility, and you are thinking about it.

14 I would hate for you to come up later on and
15 seek the speedy trial, get the speedy trial, and
16 basically say: Whoa, whoa, wait a minute. Nobody told
17 me this was going to happen or that was going to happen.
18 Do you understand that?

19 MR. STARNES: Yes, sir. There are certain
20 records I have tried to -- and I really don't want to
21 get into this because this is strategy, but there are
22 certain records that certain State agencies have that
23 I've tried to seek in this case, something that was more
24 or less missed at the first time.

25 I don't believe my attorneys got those

1 records. When I wrote to obtain those records, I was
2 told that time has destroyed them. I understand in
3 certain circumstances it may be in the Defendant's best
4 interest to prolong things; and I'm certainly not
5 getting into an argument, Your Honor, about that.

6 THE COURT: Sure, I'm not worried about that.

7 MR. STARNES: There are certain things I can't
8 tell you on the record. But in certain situations, you
9 know, that is opposite: Evidence gets stale, witnesses
10 die in cases.

11 THE COURT: Absolutely.

12 MR. STARNES: When we get to mitigation --

13 THE COURT: The important thing is that you
14 have considered both sides of that issue, I gather; is
15 that right?

16 MR. STARNES: Yes, sir.

17 THE COURT: You understand -- and let me be
18 sure you understand -- if you represent yourself, you
19 understand there are certain constraints that would come
20 from the fact that you are incarcerated.

21 There are just some things you are not going
22 to be able to do, and you can't necessarily, even though
23 we will allow you to have standby counsel if you wish,
24 they can't be errand runners for you.

25 They may be willing to. If they are willing

1 to, that's fine; but you can't require them to do that.
2 Standby counsel probably is going to be obligated to be
3 with you at the time of trial.

4 If they do something beforehand, that's fine
5 if they want to do it. There are going to be some
6 limitations. Have you considered that?

7 MR. STARNES: So it's my understanding that
8 Your Honor's ruling is that standby counsel cannot
9 assist and advise me? Is that Your Honor's ruling?

10 THE COURT: No, no, they can assist you and
11 advise you. But you can't simply get on the phone and
12 call one of them and say: I want you to bring me so and
13 so book.

14 MR. STARNES: Correct.

15 THE COURT: It's just not going to work that
16 way.

17 MR. STARNES: But they couldn't assist me at
18 trial?

19 THE COURT: No, they can assist you at trial.
20 They will sit right behind you at trial. They can
21 advise you. They cannot get up and do things. They
22 can't ask the questions for you. You have to got
23 examine witnesses. You have got to give the opening and
24 closing arguments. You can't get them to do that.

25 While you can have advice from them on the

1 line of questioning, you can't go back to them, for
2 example, with every question and ask them what to ask
3 next, that sort of thing. There are certain things they
4 can do, but there are some limitations on what they can
5 do.

6 MR. STARNES: Okay. Just a couple of other
7 things, and I am trying to make this as concise as I
8 can.

9 THE COURT: Sure.

10 MR. STARNES: I certainly don't want to waste
11 the Court's time. It's my understanding that if I
12 decide to testify at retrial that neither one of the
13 standby counsel can participate as far as on direct or
14 cross examination. That will be solely left up to me.

15 In other words, Your Honor's ruling is that if
16 it comes to the point at retrial that I testify, my
17 attorneys, standby counsel, cannot object during cross
18 examination to Mr. Myers and Mr. Riddle or whoever is
19 handling it.

20 THE COURT: That's right. They can't do that.

21 MR. STARNES: They can't do that.

22 THE COURT: I know what you are thinking
23 about. A minute ago, you mentioned, or I think at the
24 last hearing you mentioned the patron saint of a lot of
25 these inmates at the jail, Johnny Brewer, who

1 represented himself and was allowed to have Mr. Hendrix
2 do the direct examination of him.

3 We allowed them to do it because the State
4 agreed to it. Had they not agreed to it, we probably
5 would not have allowed that. I imagine that may be what
6 you are getting at. You can't expect that the State is
7 going to automatically agree to let you do that.

8 I agree certainly if you are up there and the
9 Solicitor is asking a question, you can't have the
10 attorneys back there doing the objections for you.

11 MR. STARNES: Okay. One other issue, Your
12 Honor, the housing at the jail. I'm in an environment
13 right now where I am housed in A. pod. When I went back
14 to the jail after we had the hearing, I had put in a
15 request to see a licensed psychologist.

16 It had nothing to do with my mental health or
17 anything. I think it was a misunderstanding between the
18 counselor that worked at the jail. I asked her was she
19 licensed through the Board of Medical Examiners. She
20 said it was strange behavior, and she moved me to a
21 housing area and put me on mental health watch.

22 I very much would like to go through with
23 this, but I would like to kind of know the restrictions
24 that the jail will place on me. In other words, I'm in
25 an area that is comfortable. It's quiet. I can work

1 during the day, and I can sit at my cell door and read
2 at night.

3 I spoke with the captain just before Your
4 Honor come into the courtroom, and I'm not really sure
5 how he is going to handle the situation. I believe it's
6 kind of left up to Your Honor.

7 Would you consider leaving me in the
8 housing -- in other words, leaving me housed in the
9 Lexington County jail instead of moving me to the
10 Department of Corrections where I would be away?

11 Plus, I would be over here and I would be
12 close to my standby counsel; and I would like to be
13 housed in an environment where I can study and I can
14 function.

15 There is a certain housing area at the jail
16 that is known as the special management housing unit.
17 Your Honor, it's down there with inmates that's
18 assaulted guards, that has been in fights, that have
19 mental health conditions. The C. wing part is for
20 protective custody.

21 Being in that area of the jail, it's very
22 uncomfortable. It's very noisy. They let inmates out
23 at 2:00 o'clock to shower, and they holler and scream
24 down the wall, kick the doors, and stuff like that.

25 Basically what I'm asking, Your Honor, is I am

1 in a housing area that I can function. It would benefit
2 me, Your Honor. I would like to stay at the jail, and I
3 would kind of just like to stay where I'm at.

4 THE COURT: You understand that to some
5 degree, I can get into that. I normally can't and
6 normally don't because I can't start trying to
7 micromanage the jail and tell them who to put where.

8 Certainly I can certainly order that they not
9 do anything to hamper your being able to prepare your
10 case; but at the same time, I certainly will not
11 interfere with security over there.

12 MR. STARNES: Right.

13 THE COURT: That's their decision and it's up
14 to them to do that. I can't just simply get into the
15 middle of something like that. Unless you show me they
16 are doing something to hamper the preparation of your
17 case, I'm just not going to get in the middle of that.

18 MR. STARNES: Right.

19 THE COURT: While we are at it, let me ask and
20 let me kind of depart from the normal procedure.

21 Mr. Myers, assuming at some point that a motion for
22 speedy trial is going to come, are you prepared -- you
23 may not have had a chance to get ready yet. Have you
24 had a chance to get ready to respond to it and to
25 determine when you might be able to do that?

1 SOLICITOR MYERS: We have got a hearing this
2 afternoon on the next case we are going to try,
3 Northcutt.

4 THE COURT: Right.

5 SOLICITOR MYERS: The one after that, we were
6 talking to Mr. Delgado before you came in on that case.

7 THE COURT: Right.

8 SOLICITOR MYERS: That's on Radwell. Then we
9 have this case and we have Jeffrey Jones and then we
10 have Cooper, those three. After Northcutt and Radwell,
11 we have not decided on the order of the other three.

12 THE COURT: If we were in a position where we
13 needed to try this one after Radwell, would that put you
14 in a difficult position to do that?

15 SOLICITOR MYERS: Well, we have a speedy trial
16 motion in the Tony Cooper matter. So between that one
17 and this one, I don't know which one would go first.

18 THE COURT: I will be hearing that one, too.
19 So I would have to determine something between these
20 two. I guess what I'm trying to get at is this -- and
21 I'm trying to get some input from all of you to see if
22 we can shortcut some of this.

23 I guess, Mr. Delgado and Mr. Nettles, if we
24 can do something to resolve this issue as to the speedy
25 trial issue and as to the discovery issue, do you think

1 it would still be possible to basically have both of you
2 still represent Mr. Starnes?

3 MR. DELGADO: Yes, sir.

4 MR. NETTLES: Sure.

5 THE COURT: Frankly, I think it is just
6 foolhardy for him to continue this course.

7 MR. NETTLES: If I may.

8 THE COURT: Sure. And I say this and I'm not
9 saying it because of the two of you are here, but he has
10 two of the best criminal defense lawyers in the State
11 representing him.

12 MR. NETTLES: That's kind of you to say that.

13 THE COURT: It just makes no sense to have
14 them sit as standby attorneys and not able to be do what
15 they do. That's why I say that, Mr. Nettles.

16 MR. NETTLES: Thank you. Perhaps I haven't
17 been as diligent in reminding -- we filed a long time
18 ago a motion for discovery. So that's on the record. I
19 think we are fairly specific. Sadly I don't have it
20 with me today. I'm almost certain at some point a long
21 time ago we filed two as a matter of fact.

22 So, I mean, those are filed. In all fairness
23 to the government, I haven't been jumping up and down
24 screaming and ranting and raving about it because there
25 wasn't any pending trial date, but those are filed.

1 SOLICITOR MYERS: If I can say this.

2 THE COURT: Yes, sir.

3 SOLICITOR MYERS: It's our desire to take care
4 of the attorney matter first. Once we resolve that
5 today, then we would like to discuss the discovery after
6 that.

7 THE COURT: Okay.

8 SOLICITOR MYERS: As to the attorney matter,
9 State versus Johnny Brewer, 492 S.E.2d 97, that case has
10 been mentioned several times. The judge in that case,
11 as you know, ruled that Mr. Brewer couldn't represent
12 himself in a capital case. The Supreme Court --

13 THE COURT: And that was not me that actually
14 did that. At that time I wasn't doing the case.

15 SOLICITOR MYERS: Yes, sir. The Supreme Court
16 promptly overruled that judge and said there was no
17 prohibition against a capital defendant knowingly and
18 intelligently waiving the right to counsel.

19 They said that the trial judge in this case,
20 not Your Honor, violated the Defendant's Sixth Amendment
21 right to self-representation. The Court found that the
22 appellant was entitled to proceed pro se with the
23 assistance of standby counsel.

24 I watched that trial, didn't participate.
25 During the process, there were a lot of issues that came

1 up. One of them was how Mr. Brewer would get a certain
2 privilege at the jail, which has just been brought up,
3 how he would get certain documents, how he would get
4 certain witnesses. He was hampered in that somewhat.

5 At trial Mr. Brewer had to conduct the trial,
6 and he had to handle everything. His attorneys, as you
7 said, were able to sit back here; and if he had a legal
8 question, he could ask for legal assistance, but he had
9 to do everything.

10 Later on, Your Honor, in State versus James
11 Earl Reed, 503 S.E.2d 747, Mr. Reed was allowed to
12 represent himself in a capital case. However, after he
13 was convicted in the penalty phase, he wanted his
14 lawyers then to take over. That was not allowed and the
15 Supreme Court upheld it.

16 Some statements were made last week or
17 whenever we had that other hearing that the Defendant,
18 Mr. Starnes, said: Well, I'd like to start off this
19 thing; but if I get some bad vibes on it, I might want
20 the attorneys to take over.

21 If he is going to represent himself pro se --
22 and we take no position on that -- if he wants to do
23 that and you advise him of the advantages and
24 disadvantages of proceeding pro se and he knowing,
25 voluntarily, intelligently, and freely waives the right

1 to counsel, we are going to insist at trial that he do
2 everything himself.

3 We are going to object to any participation
4 whatsoever by any standby counsel. They can stand back
5 and offer legal advice. But if he wants to be the
6 lawyer, it's going to be our position that he is his
7 lawyer.

8 At no time should the standby attorneys be
9 asked to argue to the judge, question a witness, make a
10 closing argument or do anything else. We will insist
11 that Mr. Starnes do everything on his own if he proceeds
12 pro se.

13 In Reed the Court said that the trial judge is
14 not required to permit hybrid representation, and you
15 have already ruled on that. So since there is no hybrid
16 representation, we insist that if he proceeds pro se, he
17 be given the ball and he has to run the entire length of
18 the contest.

19 Also, the Supreme Court said in Reed: The
20 judge held several hearings to make sure the Defendant
21 knew what pro se was. This is at least the second time.
22 So I think you have given him that opportunity, but I
23 don't want any misunderstanding of where we are coming
24 from.

25 We are coming from this standpoint: If the

1 Defendant decides he wants to go pro se, there is no
2 hybrid representation, that standby counsel be allowed
3 only to recommend things to him, provide him legal
4 assistance in the form of advice; but their active
5 participation in the trial will be absolutely nil as far
6 as them standing up saying anything.

7 MR. STARNES: Your Honor, may I respond to
8 that?

9 THE COURT: Well, yes, sir, I reckon so.

10 MR. STARNES: First of all, the Reed case was
11 not timely made. In State versus Reed, the Supreme
12 Court also noted that Reed, when he asked the Court for
13 counsel, it was not timely made. He elected to go pro
14 se, and then in the middle of the trial he asked for his
15 counsel.

16 THE COURT: That's what Mr. Myers said.

17 MR. STARNES: The difference in this case is
18 Reed didn't do what I'm doing. Reed didn't come in and
19 ask for hybrid representation or he didn't ask the Court
20 to allow him to do the voir dire.

21 Also, in the Martinez case, the United States
22 Supreme Court case says that trial counsel may
23 participate in the trial. Martinez says that.

24 THE COURT: I think you miss Mr. Myers' point.
25 As I understood the point simply was this. If you get

1 into the trial pro se and you've got two standby
2 attorneys and at some point you realize you are in
3 trouble and you want them to get in to bail you out, I
4 think what he is saying is they are going to object to
5 it. They are not going to agree to it.

6 MR. STARNES: Right.

7 THE COURT: So that is the point he is making.
8 Again, it's important that you understand that, too. I
9 am not trying to give you a hard time.

10 MR. STARNES: I understand.

11 THE COURT: I just want to be sure this thing
12 is done right, and we know what we are doing whenever we
13 do it.

14 I think the appropriate thing to do would be
15 to schedule another hearing, as Mr. Myers said, to hear
16 discovery and the motion for speedy trial. It sounds
17 like you really are not too far apart in terms of the
18 trial setup anyway.

19 MR. NETTLES: Could you give me three seconds?

20 THE COURT: Sure, more than that if you need
21 it.

22 (Pause).

23 MR. NETTLES: Your Honor, I believe, after
24 having a brief consultation with Mr. Starnes, if my
25 understanding from the Solicitor is correct in that, we

1 could at least at some point agree to an order of trial.
2 They have already agreed to try cases, and my
3 understanding and I could be wrong about this, was now
4 it came down to which would go first, Cooper or this.

5 THE COURT: Mr. Myers is that the way you
6 understood it? I kind of get that impression. Does
7 that sound about right?

8 SOLICITOR MYERS: I'm just saying that Cooper
9 has also got a speedy trial motion. This one, too. We
10 have not determined after this case and after the
11 Radwell case what is coming next.

12 THE COURT: If I am hearing them, I can tell
13 you that obviously I will have to decide between -- if
14 there are no other speedy trial motions in capital
15 cases, then I would probably make this one or Cooper the
16 next one after Radwell.

17 MR. NETTLES: Mr. Starnes just asked me for a
18 specific time frame. I told him I couldn't guarantee
19 that, but I thought that we might be able to come to a
20 consensus today where we can at least decide on the
21 order that the cases would be tried, which would at
22 least give him some assurance there is a light somewhere
23 near the end of the tunnel. Is that possibly asking too
24 much?

25 THE COURT: That sounds pretty accurate to me.

1 Frankly, Mr. Myers, let me say this. Unless you have a
2 lot of objection, that is what I'm going to do basically
3 after Radwell is decide between this one and Cooper as
4 to which one comes next.

5 SOLICITOR MYERS: We can do that, but our
6 desire right now is just to resolve the attorney thing
7 and then cross those bridges after we resolve the
8 attorney thing.

9 THE COURT: Yes, sir, I agree. I think that's
10 what we have got to do at this point. The other matter
11 is the discovery matter.

12 Mr. Starnes, at this point I think we have
13 been through everything. I really don't know of
14 anything else that we could cover in this area.
15 Frankly, it simply is decision time for you.

16 Either now or if you need a new more days to
17 think about it, you can let me know one way or the
18 other. I don't know there is anything else that can be
19 done in the hearing to resolve this.

20 MR. STARNES: First of all, I want Your Honor
21 to understand that I'm not trying to waste the Court's
22 time.

23 THE COURT: I never thought that.

24 MR. STARNES: Mr. Riddle said that the last
25 time. That's not the purpose of this. At this time I

1 would like to keep my attorneys. It is my understanding
2 that they are going to work with Mr. Myers and Your
3 Honor and see if they get this case set.

4 If they want to try Cooper first, he can go
5 first. A year and a half, is that being stingy asking
6 for a trial in a year and a half? I've been back here.
7 This case has been overturned over three years. A year
8 and a half, that's my prayer to the Court. Is that
9 asking too much?

10 THE COURT: Obviously I can't say at this
11 point what is too much or not too much. That's not for
12 me to say. I simply have certain parameters that I
13 operate within in deciding these things.

14 It's just frankly that's what I have got to
15 do. I think it simply comes down between this one and
16 Cooper after Radwell, and it's just a matter of deciding
17 it at the appropriate time. Mr. Myers is right. We
18 have got to get the attorney issue resolved first here
19 before we do anything else.

20 MR. STARNES: Begging the Court's indulgence.

21 THE COURT: Yes, sir. You understand that
22 whatever you decide is what you are going to have to do.
23 We can't be going back and forth.

24 (Pause).

25 MR. STARNES: Okay, Your Honor. Just for the

1 record I appreciate your time. It's my understanding
2 that Mr. Delgado represents Radwell -- and I know I
3 don't make the decisions -- but if you could not put me
4 behind Radwell because it would put Mr. Delgado in a
5 position of trying two capital cases back to back.

6 As far as the pro se representation, today
7 it's withdrawn. I will stay with my attorneys. Two
8 years from now if we are in the same situation. I'm
9 going to let them go.

10 THE COURT: Two years from now I don't think
11 it will be an issue.

12 MR. STARNES: I hope not, Your Honor. If it
13 is, I want Your Honor to know we are going to be back
14 here; and I will let them go.

15 THE COURT: Yes, sir. Mr. Myers.

16 SOLICITOR MYERS: The attorney thing now is
17 resolved? He has withdrawn his pro se motion?

18 THE COURT: That's what I understand. Is that
19 correct?

20 MR. STARNES: I have withdrawn it at this
21 time, Your Honor, but I do not acquiesce to being stuck
22 with attorneys if we are here two years from now and
23 nothing is done. Because I feel like just because I
24 have withdrawn it today, that I cannot raise this issue
25 again two years from now.

1 THE COURT: At some reasonable period down the
2 line, you can. You certainly can't raise it again in a
3 short period of time here.

4 MR. STARNES: Yes, sir, Your Honor. I very
5 much thank the Court's time for hearing this today.

6 THE COURT: Yes, sir.

7 MR. STARNES: And I appreciate security for
8 bringing me up here and hearing me.

9 THE COURT: Mr. Myers.

10 SOLICITOR MYERS: Mr. Delgado and Mr. Nettles
11 are both attorneys of record?

12 THE COURT: Yes, sir, that's my understanding.

13 SOLICITOR MYERS: There has been some
14 statements --

15 THE COURT: Let me do this to be sure.
16 Mr. Delgado and Mr. Nettles, is that agreeable with both
17 of you?

18 MR. DELGADO: Yes, sir.

19 MR. NETTLES: Yes, Your Honor.

20 THE COURT: They are attorneys of record.

21 SOLICITOR MYERS: There have been some
22 statements made about discovery. There has been some
23 statements made about the discovery that we initially
24 provided to them that they have now lost.

25 That's not my problem, but I don't know what

1 they have lost. I have heard some statements that
2 Mr. Salley lost some or some other ones did. We, to my
3 knowledge, have not received any other investigative
4 reports since this last trial.

5 So whatever we provided them before, we are
6 not going to Xerox again and provide it to them again.
7 However, I would like for Mr. Nettles and/or Mr. Delgado
8 to write Mr. Riddle and ask him what they need.

9 If they can't find it, if they have lost it
10 and they can identify what it is and it comes under
11 discovery rules or even it doesn't come under discovery
12 rules, if we gave it to them before, we will give it to
13 them again.

14 We don't know what they are talking about. So
15 if they will identify those things, if they will get
16 with Mr. Salley, if Mr. Salley has not turned over his
17 file, if they will ask Mr. Salley if he lost it, if he
18 can find it. If he can't, then if they will correspond
19 with Mr. Riddle and say they need these documents and
20 can't locate it, we will try to find those and provide
21 it to them once again.

22 THE COURT: Mr. Delgado or Mr. Nettles.

23 MR. NETTLES: I don't know that anything is
24 lost. I take issue with that. Norman had some concerns
25 about some documents that he thinks he is entitled to.

1 I think that's the civil way to leave it.

2 We will be more than happy to provide a
3 written list of what it is that we feel we are entitled
4 to. If they think we are not entitled to it, we will be
5 happy to have a hearing.

6 THE COURT: But you are saying now that there
7 is nothing from the first trial that has been lost? So
8 you don't need anything else from the first -- that came
9 up before?

10 MR. NETTLES: I don't know. That file went
11 from Mr. Lourie to us. All I know is that Norman
12 feels -- and I will go back and take another look at it.
13 We filed a motion a while ago. I think we listed it
14 out. I will be happy to bring it to their attention. I
15 will write them a letter to that effect. I am sure it's
16 something we can work out.

17 THE COURT: Anything else on the Starnes case
18 then?

19 SOLICITOR MYERS: Nothing from the State.

20 THE COURT: Defense?

21 MR. NETTLES: Nothing from the defense, Your
22 Honor.

23 THE COURT: That concludes it then.

24 MR. DELGADO: Thank you, Your Honor.

25 (Whereupon the proceedings were concluded for

1 August 27, 2003).

2 (The following proceedings were reported on
3 September 3, 2004).

4 THE COURT: In the matter of State versus
5 Norman Starnes, present are Mr. Starnes, who is pro se
6 by previous order of the Court, the Solicitor's Office,
7 represented by Mr. Hubbard and Mr. Graham. Mr. Myers
8 was notified of the hearing today, counsel. I assume he
9 could have been here if he wanted to.

10 MR. HUBBARD: Yes, sir.

11 THE COURT: Mr. Starnes, we are finally
12 getting this hearing set. We have tried two or three
13 different times. We had a problem today, too. I don't
14 know if you are aware that your standby attorneys wanted
15 to be excused today.

16 I told them -- they already had something
17 planned and they couldn't be here. I told them we would
18 go ahead and go forward with the hearing unless you
19 insisted on coming back another time when they could be
20 here. You can do that if you want to. I will leave
21 that up to you. Other than that, we will plan to go
22 forward with the hearing.

23 MR. STARNES: That will be fine. There is one
24 motion, the motion for standby capital assistance. I
25 don't know if you want them here to respond to that.

1 THE COURT: We probably need to have them
2 present for that. We can go ahead and take up what you
3 would like to take up today, and the other motions we
4 can take up at another time.

5 MR. STARNES: Yes, sir.

6 THE COURT: Can you get his hands freed there.
7 He will have trouble doing anything like that.

8 (Pause).

9 THE COURT: Which motions do you have,
10 Mr. Starnes?

11 MR. STARNES: The first motion I would like to
12 take up, Your Honor, is the Rule 5, Brady motion.

13 THE COURT: Okay. Are you alleging there are
14 some particular items that the State has not given you?

15 MR. STARNES: Your Honor, I think the record
16 reflects previously that the file was placed in
17 Mr. Lourie Salley and Mr. Leon Banks' office.

18 THE COURT: Right.

19 MR. STARNES: Somewhere in the process of the
20 appeal, some of that file is missing. In addition,
21 there was some items that was not provided that was
22 brought into court, some photographs and things of that
23 nature.

24 Your Honor, I have two letters from the Clerk
25 of Court's Office. One of them is dated October 24,

1 1996. The other one is March 10, 1997, that reflect the
2 Bate stamp numbering system that the Solicitor's Office
3 used.

4 Some of the items in those two letters are
5 missing. I can recite them. In addition, Your Honor, I
6 have some documents that were in the discovery. If Your
7 Honor would like to take a look at them.

8 THE COURT: Let me ask this if I might.
9 Solicitor, if he can give you a list of what is missing,
10 do you have any problem just furnishing another copy?

11 MR. HUBBARD: No, sir, as long as we know what
12 we are looking for because it's a big file. I know we
13 have provided it. We would be happy, whatever is
14 missing, if you let us know, we will go back and find
15 it.

16 THE COURT: In fact, do you want a list today?
17 Do you know what you are actually looking for
18 particularly?

19 MR. STARNES: Kind of I do because there are
20 some items in there that have different dates on them.
21 I just kind of need to know the dates that they released
22 all this stuff because some of that stuff is missing in
23 the file.

24 Like I said, I have two letters here from
25 Mr. Myers' office that reflect two dates, but there's

1 some other dates have appeared in the discovery, but
2 there is no cover letters. If I could get the cover
3 letters each time they released all that discovery, it
4 would give me a better understanding of what is missing.

5 THE COURT: What are the date of those letters
6 there again?

7 MR. STARNES: March 10, 1997. It was filed
8 with the clerk on the same date. October 24, 1996,
9 filed the same day.

10 MR. HUBBARD: October what?

11 MR. STARNES: Twenty-four, 1996.

12 THE COURT: And you need copies of the cover
13 letters, right?

14 MR. STARNES: I have those two cover letters,
15 but there is a date in here, March 25, 1997, Bates
16 number 00019. I'm not familiar with how many items were
17 released on that day, Your Honor, because there is no
18 cover letter for all of that discovery.

19 I have a list here I can provide the State
20 with today. There are 34 documents that are missing
21 from the October 23, 1996, date that they released. In
22 addition --

23 THE COURT: That is from which one now?

24 MR. STARNES: October 23, 1996. Maybe I need
25 to slow down a little bit.

1 THE COURT: I just need to get be sure I get
2 my dates and everything correct. It's the October 23,
3 1996, letter.

4 MR. STARNES: Yes, sir, and there is 34
5 documents total that are missing. I have a carbon copy
6 that I can give to the State.

7 MR. HUBBARD: That would be great. It would
8 probably be easier that way than us trying to figure out
9 what he is talking about.

10 MR. STARNES: In addition, the October 23,
11 1996, letter, there are 112 total documents that are
12 illegible. I have some copies of those. The photo
13 machine evidently didn't pick it very good.

14 THE COURT: You want those replaced then?

15 MR. STARNES: Yes, sir.

16 MR. HUBBARD: Your Honor, we will try. Ours
17 may be as illegible as his, but we will certainly try.
18 Am I understanding that these are all pages that are
19 missing?

20 MR. STARNES: That's the illegible and the 34
21 is the pages that are missing that I do not have.

22 MR. HUBBARD: Okay.

23 MR. STARNES: There appear to be some items,
24 March 24, 1997, there are 45 total documents missing. I
25 believe these were some letters that were written to a

1 female inmate.

2 I believe all of these -- I'm not sure how
3 many it is. The last Bates number I have is 00638. So
4 I know there's 638 pages of that discovery. I went
5 through that, and there's 45 total missing on that also.

6 THE COURT: 00638?

7 MR. STARNES: 00638 was the last one that I
8 seen. I don't know if there's anymore after that.
9 What I have is 45 total documents that were missing out
10 of that. They are Bates numbered March 24, 1997. I am
11 providing the State with a copy of that also, Your
12 Honor.

13 THE COURT: Okay.

14 MR. STARNES: March 25, 1997, the documents
15 that are missing, I am unable to tell how many are
16 really missing. There are 11 that I see so far, but I
17 really can't tell because there is not a cover letter
18 that followed this that tells exactly how many items
19 were released on that date. I will provide the State
20 with a copy of that also, Your Honor.

21 THE COURT: Okay.

22 MR. HUBBARD: Your Honor, am I to understand
23 that all of these -- I mean, we are well into 200-plus
24 documents now. All of these your lawyers lost?

25 MR. STARNES: Yes, sir. There was an

1 affidavit filed back in 2001 by Mr. Delgado and
2 Mr. Nettles, and they brought that to the State and the
3 Court's attention and requested a hearing on that.

4 THE COURT: They filed an affidavit in 2001?

5 MR. STARNES: Yes, sir.

6 THE COURT: Saying that they had lost those?

7 MR. STARNES: Right. Well, what actually
8 Mr. Nettles and Mr. Delgado said is when they obtained
9 the file from Mr. Banks and Mr. Salley that the file was
10 in such disarray and that there were several boxes
11 missing.

12 THE COURT: That's unfortunate.

13 MR. STARNES: Yes, sir.

14 THE COURT: We've got to get it corrected.

15 MR. STARNES: Also, Your Honor, and I am
16 trying to be as concise as possible here.

17 THE COURT: That's okay.

18 MR. STARNES: If I could recite some of these
19 other things that I noticed that are missing in the
20 discovery, if I could for the record, Your Honor.

21 THE COURT: Sure.

22 MR. STARNES: October 23, 1996, Bates number

23 00 --

24 THE COURT: Wait one second. October 23rd?

25 MR. STARNES: 1996. The Bates number is 001

1 through 003, any and all of Officer Doray's handwritten
2 notes, reports or other documents relating to this case
3 in the above-mentioned Bates number.

4 THE COURT: Officer Doray?

5 MR. STARNES: Right, Officer Robert Doray.

6 THE COURT: How do you spell that?

7 MR. STARNES: D-O-R-A-Y.

8 THE COURT: Okay.

9 MR. STARNES: Only the typed reports is what I
10 was provided with. Some of the discovery has the
11 written notes. Like Detective Amick, he submitted
12 reports. In addition to getting his typed notes, there
13 were also written notes in there also. Some of the
14 written notes were not put in typed form. I will need
15 those handwritten notes from Robert Doray.

16 MR. HUBBARD: Your Honor, I'm not even sure
17 what he's talking about. Have you seen these notes?

18 MR. STARNES: No, sir, I haven't. They are
19 missing.

20 MR. HUBBARD: Because typically we give
21 reports. We are not obliged to give notes. I know this
22 officer doesn't work there and hasn't worked there for
23 years.

24 I can try to track him down. I'm not even
25 sure where he is. I know officers take notes all the

1 time, but they put everything into a report form.
2 That's what we are obligated to give under Rule 5 and
3 Brady. I can try to see what is out there, but I can't
4 guarantee that we can find notes on an officer that has
5 been gone.

6 THE COURT: Have somebody check on it if you
7 will.

8 MR. HUBBARD: Yes, sir.

9 THE COURT: That will be the first question is
10 whether or not you can find them. If you can, then we
11 can take up the other issue later if we need to. First
12 is go ahead and see if you can find the notes. Maybe
13 the Sheriff's Department can help you try to track them
14 down.

15 MR. HUBBARD: Yes, sir.

16 THE COURT: If he is still in law enforcement.

17 MR. STARNES: The reason I was asking, Your
18 Honor, is because like I said, Detective Amick's typed
19 version notes are there and his handwritten notes.
20 Everything that was handwritten was not put in typed
21 formed.

22 That's why I wanted to go back and look at
23 Officer Doray's handwritten notes because maybe there's
24 some things that he put in his handwritten notes or the
25 handwritten reports that's not reflected in the

1 typewritten one.

2 THE COURT: Okay, I see. Go ahead.

3 MR. STARNES: Were you finished?

4 THE COURT: Go ahead.

5 MR. STARNES: Also October 23, 1996, the Bates
6 number 005 through 007. This was Officer Lorick's
7 report. Also, I would request to have his handwritten
8 notes. Only the typed versions were released.

9 Also October 23, 1996, Bates number 008
10 through 009, any and all of Lieutenant Harris'
11 handwritten or typed notes, reports or other documents
12 relating to this case.

13 October 23, 1996, number 0009, any and all of
14 Chief McCarty's handwritten or typed notes, reports or
15 any documents relating to this case.

16 October 23, 1996, number 0012, the audiotape
17 of this interview mentioned on the above Bates document.
18 This appears to be a telephonic interview with Detective
19 Amick and an individual by the name of Donna Benson. If
20 there is an audiotape of this, I would request that
21 under Brady and Rule 5, Your Honor.

22 October 23, 1996, number 0013, all of the bank
23 and financial card information obtained by Detective
24 Chapman relating to this case and relating to the above
25 Bates document that I mentioned, as well as any and all

1 handwritten --

2 THE COURT: Wait one second. Officer, close
3 that door if you would. I'm sorry, there was some
4 background noise, and I think at my advanced age I just
5 can't hear like I used to.

6 MR. STARNES: October 23, 1996, number 0013,
7 any and all of the bank and financial card information
8 obtained by Detective Chapman relating to this case, as
9 well as any and all handwritten or typed notes, reports
10 or other documents relating to this case taken by
11 Detective Chapman.

12 October 23, 1996 --

13 MR. HUBBARD: Before we get to that. What
14 bank notes are you talking about? I have no idea what
15 we are doing.

16 THE COURT: Do you know which bank it is?

17 MR. STARNES: No, sir. It's just a note that
18 Detective Amick made to Detective Chapman relating to
19 the financial card and bank statements.

20 THE COURT: Was it your bank, your statements?

21 MR. STARNES: No, sir, I believe it's for
22 Mr. Welborn, I believe.

23 THE COURT: Mr. Welborn's bank?

24 MR. STARNES: I believe that's what it is.
25 It's mentioned on this document 0013. It mentions this.

1 In other words, in the report it just says that he give
2 Detective Chapman all bank and financial card
3 information, but the results of that is not in the
4 discovery.

5 MR. HUBBARD: Your Honor, if we can get copies
6 of whatever he is talking about here so we can -- we are
7 trying to write it down. I don't want to mistranslate
8 what he is asking for. It might make it easier for us
9 to have something when we go back and start looking for
10 this stuff.

11 THE COURT: Do you have some things that can
12 be copied there?

13 MR. STARNES: I have them. I don't have a
14 copy of these with me now.

15 THE COURT: If you would let us, could he make
16 a copy of these? Could you let the clerk use them,
17 Mr. Starnes?

18 MR. STARNES: There's some notes on there. I
19 want to make sure I hadn't put nothing on here.

20 THE COURT: Why don't we do this. Why don't
21 we let him make the copies and give them back to you and
22 then let you strike through whatever you want to, cover
23 over whatever you want to cover over. How about that?

24 MR. STARNES: That will be fine.

25 MR. HUBBARD: Your Honor, my only concern is

1 the just volume of stuff he is asking for. It sounds
2 like basically he wants our whole file again. We are
3 getting into hundreds and hundreds of documents here.

4 THE COURT: Right.

5 MR. HUBBARD: I can't believe that all that
6 was lost. I'd almost prefer to have those two lawyers
7 come in here and tell us what they provided Mr. Starnes
8 because from my understanding he has gotten several
9 banker's boxes full of discovery.

10 It sounds like he has got more than we have
11 got. We have got a death penalty case coming up, and I
12 certainly hate to have my office go recopy all this
13 stuff, search for stuff, most of which sounds like it's
14 not even discoverable, all these notes and things, stuff
15 that he had already been provided.

16 THE COURT: Right.

17 MR. HUBBARD: I know we want to protect his
18 rights. I don't have a problem with that, but it sounds
19 like he is moving into --

20 THE COURT: Let me note this. He indicates
21 apparently there is one situation where an officer made
22 notes and did a typed report and that some of the notes
23 didn't get into the typed report.

24 MR. HUBBARD: Okay.

25 THE COURT: He at least has a right to at

1 least have an independent review of the other officer's
2 notes and make sure everything got in okay.

3 MR. HUBBARD: I don't mind checking on that,
4 Your Honor, at all to find out if there are notes.

5 THE COURT: I will be very frank with you,
6 too. Certainly I don't mean to make any indicting
7 comments toward any attorneys. But if they lost that
8 much information, that obviously is cause for concern.

9 MR. HUBBARD: And that's my concern, whether
10 it was them or whether he actually has stuff and he just
11 hasn't found it in his own materials.

12 THE COURT: I don't know.

13 MR. HUBBARD: I am happy to try to do
14 whatever, Your Honor.

15 MR. STARNES: Like I said, Judge Westbrook,
16 they filed an affidavit and made this aware back in May
17 21st of 2001.

18 THE COURT: Right. I have not seen that
19 affidavit. I probably need to get a copy of it. Can
20 you go ahead and let Jim take those?

21 MR. STARNES: Yes, sir.

22 THE COURT: He won't show them to anybody else
23 right now.

24 MR. STARNES: There is a matter of ex parte I
25 would like to take up if we possibly could, and if he

1 could do a copy of that and keep it confidential. It's
2 a funding matter.

3 THE COURT: Sure.

4 MR. STARNES: How many copies do you need,
5 Your Honor?

6 THE COURT: I only need one copy for me to
7 look at. Do you want an extra copy for yourself?

8 MR. STARNES: I will need a copy to do what
9 I'm going to do.

10 THE COURT: Make two copies of all those
11 documents if you would.

12 CLERK: Yes, sir.

13 MR. STARNES: That will be fine.

14 THE COURT: Is that all you need copied?

15 MR. STARNES: Yes, sir, I believe so.

16 THE COURT: If you will do that then.

17 CLERK: Yes, sir.

18 THE COURT: I assume it won't take but a
19 minute to do that.

20 CLERK: No, sir, a couple of minutes.

21 THE COURT: We will sit here and wait on you.

22 CLERK: I will be right back.

23 (Pause).

24 THE COURT: I thought he was going to be
25 quicker than that. What other motions do you have?

1 MR. STARNES: Are we on the record, Your
2 Honor?

3 THE COURT: Yes, let's go back on the record.

4 MR. STARNES: I guess we will do the one, the
5 motion to recuse Your Honor.

6 THE COURT: I think I had already ruled on
7 that, hadn't I?

8 MR. STARNES: Yes, sir, but if I could just
9 put some case law on the record.

10 THE COURT: Sure.

11 MR. STARNES: Basically when I did it, there
12 was no motion filed on it, and it was just kind of a
13 verbal request that I had. On the first issue, Your
14 Honor, I'm not familiar with any case law regarding
15 this.

16 This falls under the Batson line of cases.
17 The case that I would be relying on would be Campbell
18 versus Louisiana, 118 S.Ct 1419; Powers versus Ohio, 111
19 S.Ct. 1364; Rose versus Mitchell, 99 S.Ct. 2993; Swain
20 versus Alabama, 380 U.S. 202; Strauder versus West
21 Virginia, 100 U.S. 303.

22 THE COURT: How do you spell that?

23 MR. STARNES: S-T-R-A-U-D-E-R. Peters versus
24 Kiff (phonetic), 407 U.S. 493; and Neal versus Delaware,
25 103 U.S. 370. All of the case law is mentioned, except

1 the Delaware case.

2 Also in the Federal Constitution, Fifth,
3 Sixth, and Fourteenth Amendments to the Federal
4 Constitution, Article 13, 14, 22, and 22 of the State
5 Constitution.

6 It's my understanding, Your Honor, that there
7 has never been a black judge to hear a capital case in
8 Lexington County. The very fact that African-American
9 judges are singled out from hearing capital cases in
10 Lexington County expressly violates the administration
11 of law.

12 The injury is not limited to the defendant.
13 There is an injury to the jury system, to the law as an
14 institution, to the community at large, and to the
15 democratic ideals reflected in the process of our
16 courts.

17 Because discrimination on the basis of sex,
18 race or any other factor in the selection of judges
19 assigned to hear a certain case strikes at the
20 fundamental value of our jury system and our society as
21 a whole.

22 It is the defendant's position that no state
23 is at liberty to impose one charged with a capital crime
24 the discrimination in his trial procedures which the
25 Constitution forbids.

1 A criminal defendant's right to equal
2 protection of the law has been denied when he or she has
3 been tried by or before a judge from which members of a
4 race or sex group has perfectly been excluded.

5 In Campbell the Court ruled that exclusion of
6 the grand juries over a period of time can give rise to
7 a level of constitutional violation. Also in Powers
8 versus Ohio, the Court ruled -- I am sure Your Honor
9 knows all these cases.

10 THE COURT: Yes, sir, go ahead.

11 MR. STARNES: When solicitors strike jurors in
12 open court, and I believe I have a standing claim -- I
13 am not really familiar with any U.S. Supreme Court or
14 South Carolina cases on this issue, and I don't have
15 access to do research on all of that. Pursuant to the
16 Federal and State Constitution I would request that an
17 African-American judge be allowed to hear my case for
18 the first time in Lexington County.

19 THE COURT: Again, I have to deny the motion.
20 I will note incidentally that the judges are not decided
21 by me, and they are not decided by local folks. They
22 are decided by the Chief Justice of the Supreme Court.
23 In fact, if I recall correctly, I was originally
24 appointed to hear this case by Judge Finney, who was a
25 black Chief Justice.

1 MR. STARNES: Yes, sir.

2 THE COURT: A number of the judges who have
3 heard these cases in the last few years were appointed,
4 again, by Chief Justice Finney. Of course, since that
5 time Chief Justice Toal has appointed a number of them.

6 I don't know that there is any -- I can make
7 any particular racial element out of the fact that they
8 have not appointed a black judge in Lexington. To be
9 truthful, I didn't know it and I never really thought
10 about it.

11 There are probably some 20 or 30 different
12 judges who have heard death cases in Lexington County, I
13 suspect, over the past 25 years or so. But anyway I
14 note the motion, and I would have to deny the motion.

15 MR. STARNES: I understand and understand that
16 we aren't pointing no fingers at anybody. I am
17 preserving the record.

18 THE COURT: I understand. I'm not worried
19 about that.

20 MR. STARNES: The second ground, Your Honor,
21 is the fact that you had previously heard this case
22 before and the fact it's possible upon retrial, the jury
23 may return a lesser included offense, such as
24 manslaughter.

25 If that happened, Your Honor, I would have

1 before me a judge who had already heard a whole penalty
2 phase of aggravating circumstances. I think there is
3 some case law on it. State versus Cabanis (phonetic),
4 254 S.E.2d 291.

5 They cite People versus Campbell, 338 N.E. 2d,
6 609. That's a 1975 case from another jurisdiction.
7 Ellis versus Proctor and Gamble, 433 S.E.2d 856.
8 Because this case is related to the same thing -- it's
9 not an unrelated matter -- I would object to Your Honor
10 being the retrial judge in the event that we get into
11 the situation where a manslaughter verdict is delivered
12 by the jury.

13 THE COURT: Okay.

14 MR. STARNES: There is also one more case I
15 would like to cite for the record.

16 THE COURT: Sure.

17 MR. STARNES: The Ackerberry (phonetic) case.
18 This is an older case, Your Honor. It's a 1926 case,
19 State versus Ackerberry, 133 S.E. at 101.

20 THE COURT: Anything else on that?

21 MR. STARNES: Give me just one second, Your
22 Honor.

23 THE COURT: Sure.

24 MR. STARNES: No, sir.

25 THE COURT: Again, I will note that motion,

1 Mr. Starnes, and would have to deny the motion.

2 MR. STARNES: Okey-doke.

3 THE COURT: Any other grounds on this?

4 MR. STARNES: One other ground. I guess this
5 is something I need to ask you to take judicial notice
6 on possibly. Have you ever appointed a foreman in a
7 Lexington County grand jury case?

8 THE COURT: Yes, I have appointed a black
9 foreman if that's the point you are getting at. I did
10 that in Lexington County, and I did that over here when
11 I was the administrative judge in Richland County as I
12 recall. I think I have on a couple of occasions. It
13 may have been another county. On a couple of occasions,
14 I have appointed African-Americans as foreman of the
15 grand jury.

16 MR. STARNES: For the record, the original
17 record reflected, I think, that you took judicial notice
18 that you had never done it before in my case.

19 THE COURT: That may have been some while
20 back.

21 MR. STARNES: Back in '96 or '97 as a matter
22 of fact, Your Honor. That takes care of that motion.
23 Do you want to continue with the discovery motion?

24 THE COURT: Sure. Let's do this. Did you get
25 a copy? Did y'all get a copy of this? Did you get a

1 copy of these, Mr. Starnes? That is yours back, I
2 believe.

3 Officer, can you give him that. You needed an
4 extra copy, I think.

5 Solicitors, have you had a chance to look at
6 these before?

7 MR. HUBBARD: No, sir, this is the first time
8 we have gotten this that I know of.

9 THE COURT: Let's do this, Mr. Starnes. What
10 about on these that we have got right here, let's let
11 them have a few days to look them over and give a
12 response. How about that?

13 Solicitor, if you can, whatever you can find,
14 go ahead and try to produce it if you can.

15 MR. HUBBARD: Yes, sir.

16 THE COURT: And if there's some you can't,
17 just let us know why, give us an answer. Then what we
18 will do is set a hearing in a few days to take these
19 back up.

20 MR. HUBBARD: Yes, sir.

21 MR. STARNES: They don't have a copy of the
22 funding motion, do they?

23 MR. HUBBARD: I have no idea. Is there a page
24 number?

25 THE COURT: Is this the one that says: File

1 under seal?

2 MR. STARNES: Yes, sir.

3 THE COURT: He made two and I have both.

4 MR. HUBBARD: We don't have that.

5 THE COURT: Officer, would you give this to
6 Mr. Starnes if you would.

7 MR. STARNES: What I can do, Your Honor, is
8 when I get back to the jail, I can go back through this.
9 I will even send them another letter. I sent Mr. Myers
10 a letter on April 9, 2004, and made them aware that I
11 would address this issue.

12 THE COURT: What this does is give them
13 something definite to look at so that they can give
14 specific answers as to what the situation is with each
15 one. That way we will know for sure. What is your next
16 motion?

17 MR. STARNES: Give me just a second here, Your
18 Honor.

19 THE COURT: Sure.

20 MR. STARNES: Very quickly, Your Honor, on the
21 Rule 5 now, they are going to get back in touch with me
22 in a couple days?

23 THE COURT: Yes, sir. How long will you need
24 to go over that, Solicitor?

25 MR. HUBBARD: Your Honor, if we can just have

1 some date next week. I don't know what is good for you.

2 THE COURT: Next Friday.

3 MR. HUBBARD: That will be fine. Are you
4 going to be in Lexington next week, Your Honor?

5 THE COURT: Yes, sir. No, I am in McCormick
6 next week, but I am sure by Friday I will be back in
7 Lexington. I have got a meeting, in fact, in Lexington
8 Friday afternoon. I will be there for this. That will
9 be what the 10th?

10 MR. HUBBARD: I think that is probably right.

11 THE COURT: If you will respond by Friday and
12 send a copy to Mr. Starnes and to me.

13 MR. STARNES: Your Honor, there's three other
14 motions I have. One is access to law material. One is
15 a law student. These were things I believe you had
16 written in your order. I don't know if you wanted
17 counsel here because it might affect them.

18 THE COURT: These are on funding?

19 MR. STARNES: No, sir. Actually it's access
20 to legal material.

21 THE COURT: What I will do is this. As far as
22 the one on the law student, I will grant that motion. I
23 will give you -- let me set up a law student as sort of
24 a law clerk.

25 What that will do is I have found that what

1 that does is that saves the standby lawyers from having
2 to do a whole lot. Sometimes a law student can take
3 care of some research and things that they wouldn't do.

4 Mr. Tate, are you going to volunteer to be the
5 law clerk?

6 MR. TATE: No, sir. I clerked at the P.D.'s
7 office when I was a third year over here. If we could
8 just, whoever that person is, if we can have 15 or 20
9 minutes with one of the correctional officers to
10 familiarize them on how to bring materials in and
11 security.

12 THE COURT: Absolutely.

13 MR. TATE: That would save problems down the
14 road.

15 THE COURT: Do you have somebody that you have
16 talked to Mr. Starnes that you know of?

17 MR. STARNES: No, sir, not yet.

18 THE COURT: Why don't I do this. Why don't I
19 contact the lady who handles the employment issues at
20 the law school and see if she can come up with a name.
21 They have a number of students over there I know from
22 time to time who have very passionate feelings about
23 death penalty issues and like to do things like this.

24 MR. STARNES: I would appreciate it.

25 THE COURT: Perhaps we can find one.

1 MR. STARNES: For the record, Your Honor, I
2 promise you I'm not going to tie up the attorney room.

3 THE COURT: I'm not worried.

4 MR. STARNES: And I'm not going to abuse the
5 privilege.

6 THE COURT: I understand.

7 MR. STARNES: I just want the record to
8 reflect that. Before Mr. Delgado and Mr. Nettles had
9 law students that clerked for them. They visited the
10 jail and provided me with the legal opinions, and the
11 visits were kept very minimal, and there was never a
12 problem.

13 THE COURT: You understand this law clerk will
14 not go through them, but the law clerk will basically, I
15 guess, report to you in essence and deliver materials or
16 whatever to you.

17 MR. STARNES: I just need access to the
18 Southeastern Reporter and some of the Federal reporters.
19 My mother is here, and I've sent her to the law library
20 over at the University. She really doesn't understand a
21 lot of this stuff.

22 THE COURT: It's been years since I have been
23 at the law library. I would have trouble doing that,
24 too, if I went back. What other issue? You say the
25 other issues are funding issues then or what?

1 MR. STARNES: Yes, sir. One of them the
2 motion I was going to make --

3 THE COURT: Do you need to do this ex parte
4 then?

5 MR. STARNES: Yes, sir, but possibly could we
6 hear this motion first?

7 THE COURT: Sure.

8 MR. STARNES: What it is actually is since we
9 are dealing with state funding here, what I was going to
10 ask Your Honor to do, unless the defense attorneys, the
11 standby counsel objected, was to let them handle the
12 funding matter, as far as submitting the internal
13 vouchers to the Office of Indigent Defense and doing the
14 ex parte orders. I don't have a problem drawing these
15 ex parte orders up, but I just thought maybe...

16 THE COURT: Have you talked with them about
17 it?

18 MR. STARNES: No, sir, I haven't.

19 THE COURT: I don't have a problem with
20 letting them do it if you will talk with them and see.
21 That is normally not what a standby attorney would do,
22 but if they are willing to, I don't have a problem
23 letting them do it.

24 MR. STARNES: If they are not willing to, then
25 I need to submit these vouchers to Mr. Lee's office and

1 draw up all the ex parte orders and submit them to the
2 Court.

3 THE COURT: Yes, sir, you need to do that.
4 Just get the orders to me and we can work out getting
5 them over to Mr. Lee.

6 MR. STARNES: Okay. One other matter, Your
7 Honor. I had served a subpoena on the Sheriff's Office.
8 These are relating to certain policies that go towards
9 Skipper versus South Carolina. I think that's the case
10 on prison adaptability. I do not have the case before
11 me to cite it.

12 Also, there are some -- I noticed in some of
13 the reports that Detective Amick had written, in some of
14 the handwritten notes that he did, he refers to
15 different case numbers. These case numbers do not
16 appear in the discovery.

17 I am sure they are on file with the Sheriff's
18 Office because they keep this stuff. I had issued a
19 subpoena to Sheriff Metts for these things and some of
20 these policies. They received the subpoena on May 25th
21 of this year, and I have not received any response
22 whatsoever from the Sheriff's Office on it.

23 I believe today they should have received
24 another letter from me, and I sent it to be filed today
25 with the Clerk of Court relating to the matters in this

1 subpoena.

2 One of the things that I was requesting, Your
3 Honor, is in 1997 when my case was called and Your Honor
4 was the presiding judge, I am sure you remember they
5 called various inmates out of the jail to testify
6 against me.

7 It has come to my attention that there are
8 members of the investigation team -- I think they are
9 narcotics officers -- that have approached certain
10 inmates in the jail.

11 Some of these inmates has written me letters.
12 Some of them have come up to me and explained to me that
13 they've been approached by agents. What I wanted to do
14 is subpoena the documents.

15 I understand whenever an investigator comes
16 into the jail and takes an inmate out, there is a
17 sign-out sheet that they have to fill out to take these
18 inmates out to the Sheriff's Office or whatever.
19 There's other records that are relevant to that. I
20 believe that falls under discovery. Could I get the
21 State's position on that subpoena?

22 THE COURT: What about that, Mr. Tate?

23 MR. TATE: Thank you, Your Honor. As to the
24 case he asked for, 95-38-740 -- and I have gotten the
25 original subpoena. This follow-up letter I've never

1 seen. I don't know where that is, but we have not
2 received that.

3 On the incident on Forts Pond Road, I would be
4 happy to provide that to Mr. Starnes. It doesn't appear
5 to be Rule 5, Brady material. It's an unrelated matter
6 in which Mr. Starnes was the victim in that case. I
7 will be happy to provide that.

8 As to the warrants he asked for, I have
9 trouble referencing these by numbers. If he will simply
10 tell me whose warrants these are, the names -- and I
11 have, Your Honor, for the record I wrote Mr. Starnes
12 when he first went pro se and asked him to please
13 communicate with me in writing.

14 So if he will write me and tell me who is
15 charged under those warrants and the circumstances, I
16 will try to find them for you. So long as they are not
17 Rule 5, Brady material, which is provided through the
18 Solicitor's Office, I will be glad to provide them.

19 As to the policies and procedures of the
20 Lexington County Sheriff's Department, Mr. Starnes has
21 subpoenaed policies such as inmate and staff
22 communications, staffing, facility security responding
23 to and calling for back up. Basically it's 36 chapters,
24 including inmate medical records and menu planning and
25 food service.

1 Your Honor, I don't have a problem providing
2 those. There is just one caveat. There is no way
3 Mr. Starnes can live at the Lexington County Detention
4 Center and have all the security and related material.

5 We will be happy to transfer him to some other
6 facility which can house him, whether it be Orangeburg
7 or Calhoun Regional or Newberry. We will just have to
8 try to find somewhere if he insists on these things. We
9 can't have those policies obviously circulating through
10 the inmate population.

11 THE COURT: What about that, Mr. Starnes?

12 MR. STARNES: If there's certain security
13 policies, if he will cite which ones they are -- he has
14 got the subpoena -- I don't think that will be a
15 problem.

16 But later probably, maybe when the trial
17 starts and we start doing voir dire or whatever, Your
18 Honor can keep them under seal. Because apparently if
19 we get into a penalty phase, prison adaptability and my
20 conduct in the jail is possibly going to become an
21 issue.

22 If that happens, Your Honor, these policies
23 and procedures, I will need these for impeachment
24 purposes in the event, for instance, an officer
25 testifies against me.

1 If they put an officer up to testify against
2 certain things, I think that I am entitled to policies
3 to impeach that officer if he did not follow proper
4 protocol.

5 THE COURT: You are asking to produce them and
6 let them be sealed until the trial?

7 MR. STARNES: The security policies, yes, sir.
8 As far as case record management and stuff like that,
9 the reason I ask for case record management is to
10 know -- for instance, I explained to you, if an inmate
11 is signed out of the jail, they sign out on a temporary
12 sign-out sheet.

13 I am sure this policy probably might explain
14 that, but I was told by an officer how that happens.
15 With these policies it would better familiarize me with
16 the way they do things so I will know what to look for.

17 If he will cite whichever one of these
18 policies pertain to security that he didn't want to
19 release right now, I will mark them and possibly we can
20 put those policies under seal.

21 I think some of them, like inmate records, I
22 don't see how the State can say security relating to a
23 piece of paper.

24 THE COURT: Can you distinguish those,
25 Mr. Tate?

1 MR. TATE: Your Honor, the same concern on the
2 video surveillance tapes, the daily log pass-on books
3 that he wants also are just grave security concerns.
4 There would be notes any officers may have made about
5 medical conditions, security conditions.

6 I'm certainly not commenting on the relevance
7 of any of this material, but I think if we provide these
8 to Mr. Starnes, he just can't live in our facility and
9 have these materials. I understand why he wants them,
10 and I am simply not commenting on them.

11 THE COURT: You are saying you are willing to
12 provide all those, provided he is in another facility.

13 MR. TATE: Absolutely. We will be happy to
14 move him. It could be Orangeburg, Calhoun or one of the
15 other facilities. We'll have to figure it out as we go
16 on that.

17 THE COURT: What about that, Mr. Starnes?

18 MR. TATE: I just can't have that stuff in the
19 jail.

20 THE COURT: I understand, no question.

21 MR. STARNES: Can we keep it under seal? Can
22 we keep it under seal until we get closer to trial or
23 until the trial starts?

24 THE COURT: Do you have any problem with that?

25 MR. STARNES: My main concern is and I asked

1 for the surveillance tape because I know that they have
2 a time line. Some of this stuff, maybe they reuse the
3 tape or they destroy it.

4 As long as the evidence is preserved and not
5 destroyed, I don't have a problem with it. They don't
6 have to give it to me. As long as I'm asking for it now
7 and later if they say: Well, we reused the tape or we
8 threw it away. One of these surveillance tapes is an
9 inmate -- that is discovery and I really don't want to
10 get into it.

11 THE COURT: Right.

12 MR. STARNES: But as long as they will
13 preserve it and keep it and not destroy it, they don't
14 have to give it to me right now, Your Honor.

15 THE COURT: What about that, Mr. Tate?

16 MR. TATE: File it under seal with the Clerk
17 of Court's Office?

18 THE COURT: You can, just as long as you
19 secure it. That will be fine, just in the Clerk's
20 Office and let them secure it.

21 MR. TATE: That way nobody has access to it.

22 THE COURT: Right.

23 MR. TATE: Until it's opened in court if my
24 understanding is correct.

25 THE COURT: Okay.

1 MR. STARNES: How about the access to counsel,
2 courts and legal material, Policy 303.5? It's in
3 Section 25 of the subpoena.

4 MR. TATE: Mr. Starnes, if you could repeat
5 that, please.

6 MR. STARNES: Number 25, policy 303.5. What I
7 can do to save some time, Your Honor, is I can send
8 Mr. Tate a letter or he can notify me in writing of
9 whatever policies that he deems security matters.

10 THE COURT: Right.

11 MR. STARNES: Or whatever ones he determines
12 that isn't a breach of security that he can give me,
13 just have him give me those policies. The other ones,
14 just make sure they are put under seal in case I need
15 them later.

16 THE COURT: What about that, Mr. Tate? Any
17 problem with that?

18 MR. TATE: I will be glad to do that and
19 correspond with Mr. Starnes. I think I can solve some
20 of the problems or some of the issues. I received a
21 Freedom of Information Act request from Mr. Starnes back
22 when he was represented by counsel.

23 As he was represented by counsel, I responded
24 to that, to counsel, to Mr. Delgado, and Mr. Nettles.
25 If memory serves me correctly, the times he was asking

1 for -- and he was very specific about dates -- that was
2 in one of the lightning strike areas when there were no
3 cameras operational on that particular day.

4 There simply wasn't. I went and looked for
5 the tape. There was no tape. This same issue has come
6 up during several other trials, and the custodian of
7 tapes issued an affidavit to that effect.

8 THE COURT: Okay.

9 MR. TATE: Those tapes don't exist.

10 THE COURT: How long will it take you to
11 respond if he gives a listing of all that?

12 MR. TATE: I will pass it on to the facility.
13 I am certainly not an expert in security by any stretch
14 of the imagination.

15 THE COURT: Ten or 15 days?

16 MR. TATE: Oh, sure.

17 THE COURT: Just say ten days.

18 MR. TATE: Ten is fine.

19 MR. STARNES: On the matter about the
20 warrants, Your Honor, I can't provide the name on these
21 warrants because I only have the numbers.

22 THE COURT: He said if you will give him the
23 list, he will get those to you.

24 MR. TATE: I will do the best I can to figure
25 out what they are.

1 THE COURT: Can you give him the warrant
2 numbers?

3 MR. STARNES: I have done that, Your Honor.
4 That's in the subpoena. I put the warrant numbers. I
5 can't give you no further information.

6 THE COURT: Can you supply that within ten
7 days, Mr. Tate?

8 MR. TATE: If I can locate them by warrant
9 number, I will.

10 THE COURT: Okay.

11 MR. STARNES: I very much appreciate your time
12 on this, Your Honor. I guess we can take up the ex
13 parte matters. One more thing very quickly. The dates
14 on the transcripts, is it possible that I could get
15 these transcripts, a copy of these transcripts, Your
16 Honor?

17 There was some arguments that were made, and
18 I'm not sure if I preserved the record on all these. In
19 addition, I am going to need them for trial preparation.

20 THE COURT: I think we probably can. Most of
21 these were motion hearings similar to this one, as I
22 recall; weren't they?

23 MR. STARNES: Yes, sir.

24 THE COURT: Do you know if you have any of
25 those, Mr. Hubbard?

1 MR. HUBBARD: The transcripts?

2 THE COURT: Yes, sir.

3 MR. HUBBARD: No, sir. We may very have well
4 some, Your Honor. I will see if we have them.

5 Your Honor, I do have one issue. We have got
6 a car in the meter parking, and we're right borderline
7 needing to feed that meter.

8 THE COURT: I think we are almost done here,
9 it sounds like. Let's do this. Let me check with Court
10 Administration on these transcripts. I will have my law
11 clerk check it, Mr. Starnes. We will find out who these
12 court reporters are. We will get back on that. We will
13 arrange for the transcripts. We will find out.

14 MR. STARNES: Two more matters very, very
15 quick, Your Honor.

16 THE COURT: Sure.

17 MR. STARNES: Is there any way that I can have
18 access to the Court exhibits? I know there was a video
19 that was taken of my direct when we reenacted the
20 shooting in the courtroom. There was a mockup done of
21 the house.

22 Also there's some letters, some photographs
23 and stuff that were submitted to the Court. I spoke
24 with Mr. Salley last week. He explained to me that
25 there were certain photographs that were entered into

1 evidence that was not provided to me through the
2 discovery process.

3 There were some aerial photographs of my house
4 and some of the restaurant. The photographs that I do
5 have are photographs from my house when they processed
6 the house, some photographs that were taken of Aiken
7 County where the bodies were recovered, and there was
8 some photographs that were taken of my mother's vehicle
9 and Mr. Tony Tindal's vehicle.

10 There's 152 photographs that I have, but I
11 understand that there are some other photographs out
12 there, and I was not provided with any of that.

13 MR. HUBBARD: A lot of that was trial
14 preparation, probably photos by my office in preparation
15 for the trial, not by law enforcement under
16 investigation.

17 We often do that. We will go back out to a
18 scene long afterwards right before trial and take a
19 photograph or something, but all that we presented is --
20 if we presented something at trial, it went through the
21 objection versus yes/no, we are going to let this in
22 process.

23 THE COURT: If there has been something that
24 has been introduced at the trial before, he probably has
25 a right to get a copy of that.

1 MR. HUBBARD: Yes, sir. I believe all the
2 evidence that was introduced is in the Clerk's Office
3 now. It's been pulled out, and I think it's just a
4 matter now of having the Sheriff's Department review it
5 to see if it's suitable for him to have access to it
6 where he is now.

7 MR. TATE: Your Honor, I think that took place
8 back in April; didn't it? Hope Frick brought over a
9 bunch of material that was given to Mr. Starnes. I
10 don't know if the Clerk's Office -- if it's all or none.
11 I just know it was a lot of stuff that came over.

12 MR. STARNES: The only thing I got, Your
13 Honor, was the paperwork, the motions and pleadings that
14 were filed in the Court. The Court exhibits, all that,
15 I haven't seen any of that.

16 I take the position if they took photographs
17 of anything dealing with the investigation, whether it's
18 the Solicitor's Office or law enforcement throughout
19 their investigation, it's still investigative purposes
20 and that I should be entitled to that under the rule.

21 THE COURT: Yes, sir.

22 MR. HUBBARD: Not under the rules.

23 THE COURT: Go ahead.

24 MR. HUBBARD: Your Honor, I was going to just
25 say not under the rules.

1 THE COURT: Right. You are not allowed to get
2 copies of attorney's work product, which is what the
3 photographs would be if they did it in preparation for
4 trial as part of their case. But if it was introduced
5 at trial, you certainly would have a right to get a copy
6 of that though.

7 MR. STARNES: I would like to get that if I
8 could, Your Honor.

9 THE COURT: Right.

10 MR. STARNES: Because there was a lot of
11 photographs, and there was a video that was taken. This
12 video was taken from the Clerk's Office. The Attorney
13 General's Office got it and submitted it to the Supreme
14 Court. I can't locate it. I wrote the Attorney
15 General's Office but they have not responded.

16 THE COURT: We will contact the Clerk's Office
17 to get her to take care of that.

18 MR. HUBBARD: Your Honor, it might help if he
19 gives us a list of what photos he wants, what he is
20 talking about. I can go and get with the clerk to see.
21 Unless it's just simply restricted to what was put in
22 evidence, that's easy. I can get with the clerk and we
23 can see what was provided back to us versus what is
24 provided to him. We don't have any problem giving him
25 whatever we've got.

1 THE COURT: Do you want to give him a list of
2 that first, Mr. Starnes?

3 MR. STARNES: Yes, sir. I have got a list. I
4 have got the discovery, the index, the Court index.
5 It's got all that stuff. It was in the trial
6 transcript. If you want, if Mr. Graham would like a
7 copy of that, I have that here today I can give him. I
8 have an extra copy of it.

9 MR. HUBBARD: Might as well, just so we know
10 exactly what he is talking about.

11 MR. STARNES: One other thing, Your Honor, is
12 whenever I receive all this information is it possible
13 that we can set a trial date, a hearing, a date that I
14 can be heard to argue a motion for a speedy trial?

15 THE COURT: Certainly. Why don't you do this.
16 When you've got all of it, go ahead and let me know.
17 Just let me know when you've got it and when you are
18 ready to have the motion heard. I thought there had
19 already been a motion for a speedy trial.

20 MR. STARNES: No, sir.

21 MR. HUBBARD: I thought there was one, Your
22 Honor.

23 THE COURT: I was operating on that basis that
24 there was. The only other problem we have was there was
25 one other one. That's in the Tony Gene Cooper case

1 also. We have to balance between yours and his in terms
2 of which one would go next. Why don't you do this.
3 When you get through all that, just notify me; and we
4 will set a hearing up after that. How about that?

5 MR. STARNES: That will be fine. I said I
6 brought it, Your Honor. I don't have it. I can mail it
7 to Mr. Graham. I will send out in the mail Sunday
8 night. He should get it Tuesday.

9 THE COURT: Okay.

10 MR. STARNES: I believe that's it, other than
11 the funding matter if I can take that up ex parte.

12 THE COURT: Let me ask everyone to step out of
13 the courtroom, please, except any necessary security.
14 We will go ahead and take that up at this time.

15 (All attorneys and parties for the State leave
16 the courtroom at this time).

17 THE COURT: This is clerk personnel. Jim, you
18 can stay if you want to. All unnecessary personnel have
19 stepped from the courtroom. There are three security
20 officers.

21 Security officers, let me remind you that
22 whatever is said in here is not to be repeated anywhere.
23 If anyone does ask you, just tell them the judge would
24 skin you alive if you give them that information.

25 Go ahead, Mr. Starnes.

1 MR. STARNES: Just one second.

2 THE COURT: Sure.

3 MR. STARNES: The first matter, Your Honor, is
4 a funding order for an investigator. May I approach the
5 bench, Your Honor? Would you like to see these?

6 THE COURT: I will grant that.

7 MR. STARNES: I have not signed it because I
8 didn't know if you wanted me to sign it in your
9 presence.

10 THE COURT: It's not necessary.

11 MR. STARNES: The investigator that
12 Mr. Nettles and Mr. Delgado worked with, he is from out
13 of town. He would have to travel one way about an hour
14 and 20 minutes to come and see me.

15 The only concern that I have, Your Honor, is
16 his traveling time. I'm sure he's going to bill me for
17 that. Would that affect the hours that I need for him
18 to do investigation? In other words, do I need to look
19 for an investigator here locally? He is very familiar
20 with the case.

21 THE COURT: He is where now?

22 MR. STARNES: He is in Rock Hill. Mr. Nettles
23 uses him in every capital case and some other cases. He
24 has been on the case since May of 2000.

25 THE COURT: What I will do is I will go ahead

1 and let you use him if you want to. I will sign this
2 order and authorize it; but you need to understand that
3 if he is going to charge you extra time for travel, that
4 will have to be taken care of in this. Somebody local
5 would probably be able to get you more time in, but I
6 will let you make that determination though.

7 MR. STARNES: Also, Your Honor --

8 THE COURT: If you will give me one second, I
9 will go ahead and sign this order now if you want me to.
10 I note for the record that I am signing the order, and I
11 am going to give it to you and let you arrange for
12 filing and so forth of it.

13 MR. STARNES: Okay. I will put on the top and
14 make sure that they file it under seal.

15 THE COURT: Yes, sir. Go ahead.

16 MR. STARNES: The second order, Your Honor, is
17 I issued a subpoena for some records on a financial
18 institution. There's some costs related to that, and I
19 have an order here.

20 THE COURT: Is this it here?

21 MR. STARNES: I am looking for the other copy.

22 THE COURT: It says ex parte order for
23 records?

24 MR. STARNES: Yes, sir, that's it. I couldn't
25 find it.

1 THE COURT: At Carolina First?

2 MR. STARNES: Yes, sir. I need to send them a
3 copy so they will go ahead and start processing that
4 subpoena. I have some extra copies here if Your Honor
5 could sign one so I could send it to them.

6 THE COURT: Mr. Starnes, the clerk is now
7 handing you the originals that I just signed. You
8 acknowledge that you have those?

9 MR. STARNES: Yes, sir.

10 THE COURT: Do you have an extra copy of these
11 by any chance that I can keep for my file?

12 MR. STARNES: Yes, sir, I do. The one for
13 records, I believe -- I don't think the gentleman that
14 just made the copies for the investigator, I only have
15 just one.

16 THE COURT: There are two up here.

17 MR. STARNES: Okay. You have got them. I
18 just need to file the original with the clerk and then
19 keep one for my record. That should leave one extra
20 one.

21 THE COURT: Here is a third one for records.

22 MR. STARNES: That was just extra copies I
23 had. This is just two orders today.

24 THE COURT: Okay.

25 MR. STARNES: I believe that's it, Your Honor.

1 As soon as I hear back from Mr. Tate and the State, if
2 we could set up a hearing. Whenever we decide when the
3 trial would be, I would like to address the issue of
4 speedy trial.

5 I believe when I addressed the speedy trial
6 was during a conflict hearing with counsel, Mr. Nettles
7 and Mr. Delgado. That was one of the problems I was
8 having is getting them to get me into trial. That was
9 one of the things I wished.

10 THE COURT: What we are going to do is this to
11 make sure we have an understanding. When you get these
12 documents and you have had a chance to look everything
13 over, you will let me know when you are ready, and we
14 will set up a hearing on that.

15 MR. STARNES: Yes, sir.

16 THE COURT: We will set the hearing, and at
17 that time we will set a trial date, too. As I told you,
18 what I will have to do is balance it with the Cooper
19 trial and see what the status is with that. I don't
20 know what the dates are and when convictions were and so
21 forth and how far along the Cooper case is, too.

22 MR. STARNES: Right.

23 THE COURT: We will take all that into
24 account, and we will get something set after that.

25 MR. STARNES: Has there been a trial date set

1 for the Cooper case yet?

2 THE COURT: I don't think there has been one
3 set yet. My understanding is there has not been.

4 MR. STARNES: I very much appreciate the
5 Court's time, and I appreciate security for bringing me
6 up here.

7 THE COURT: Thank you. I hope you have a good
8 day.

9 MR. STARNES: Thank you, sir. You have a good
10 weekend, too.

11 (Whereupon the proceedings were concluded for
12 September 3, 2004).

13 (The following proceedings were reported on
14 January 28, 2005).

15 THE COURT: This is the matter of the State
16 versus Norman Starnes. We are convened to take up
17 matters, I believe motions filed by Mr. Starnes.

18 Mr. Starnes, let me note for the record, and I
19 always do this before I start every trial in a case such
20 as this, as you know, the State has charged you in this
21 matter with two counts of murder.

22 MR. STARNES: Yes, sir, I'm aware of that.

23 THE COURT: And you understand that the State
24 also is asking for the death penalty.

25 MR. STARNES: I understand that, Your Honor.

1 THE COURT: I note also by prior order of the
2 Court, you are still representing yourself; is that
3 correct?

4 MR. STARNES: That is correct, Your Honor.

5 THE COURT: Anything from the State before we
6 begin?

7 MR. HUBBARD: No, sir, Your Honor.

8 THE COURT: I saw Mr. Nettles, I believe,
9 present.

10 MR. NETTLES: Yes, sir.

11 THE COURT: I see you are able to arrange to
12 be with us. I believe I had indicated you didn't have
13 to if you couldn't make it, but I am glad you are able
14 to get with us this morning.

15 MR. NETTLES: It's a good thing I came.
16 Somehow Mr. Delgado must have gotten lost.

17 THE COURT: Mr. Delgado stays lost sometimes.

18 MR. NETTLES: He does.

19 THE COURT: I'm sure he will get in.
20 Mr. Starnes, I believe we are here to hear some motions
21 in your matter this morning; is that correct?

22 MR. STARNES: Yes, sir, that is correct, Your
23 Honor.

24 THE COURT: Is there a particular order you
25 want to take them up?

1 MR. STARNES: If I could be unrestrained.

2 THE COURT: Yes, sir. Officers, let's take
3 the handcuffs off if you could, please.

4 MR. STARNES: Beg the Court's indulgence just
5 a minute.

6 THE COURT: Let's just pause a second and let
7 you get your files organized, okay?

8 (Pause).

9 THE COURT: Are you ready?

10 MR. STARNES: Yes, sir.

11 THE COURT: Okay.

12 MR. STARNES: Your Honor, I have filed two
13 motions. Before we go into those motions, possibly if
14 we could, I would like to revisit the discovery matter.

15 THE COURT: Okay.

16 MR. STARNES: This matter, as Your Honor is
17 aware of, on March 24, 2004, I filed a discovery motion
18 with the Clerk of Court. I served the State and I
19 believe Your Honor was copied the same day.

20 Then on June 20, 2004, three months later, I
21 sent a note to Your Honor requesting a hearing during
22 the July 2004 term of court. The State was copied and
23 the Clerk of Court was notified. I believe that
24 document was on file with the Clerk of Court.

25 On August 12, 2004, I sent a letter to the

1 Clerk of Court at the Supreme Court requesting help
2 getting a hearing. The problem I have been having, Your
3 Honor, is when I filed these motions and ask for
4 hearings, sometimes it takes four, five, six or seven
5 months to be heard on these matters.

6 I think I made it clearly apparent to the
7 State when I proceeded pro se that I requested and moved
8 for a speedy trial and to move forward with this. That
9 was one of the problems I had with the attorneys that
10 was involved in this case, that the discovery motions
11 they filed, they left it at the Clerk of Court's Office
12 and didn't force the State to entertain those motions.

13 Your Honor, I would like to revisit the issues
14 that we had in the Richland County courthouse on
15 September the 3rd. We revisited that issue here on
16 September the 10th.

17 What is the State's position on the discovery
18 matter, Your Honor?

19 THE COURT: Counsel, what is your position?

20 MR. HUBBARD: What discovery matter
21 specifically? He has made so many motions. I would
22 kind of like to know what I'm addressing.

23 THE COURT: Mr. Starnes, which motion are you
24 referring to?

25 MR. STARNES: The discovery of October 23,

1 '96, if I could just go through this very briefly.

2 THE COURT: Yes, sir.

3 MR. STARNES: May it please the Court. I have
4 a supplemental affidavit that was filed with Mr. Delgado
5 and Mr. Nettles. This affidavit was filed on
6 August 24 -- excuse me -- August 21st of 2001.

7 In that supplemental affidavit, defense
8 counsel had calculated over 275 pages of discovery
9 missing from the case file. They asked assistance from
10 this Court in obtaining the discovery. I have it, Your
11 Honor, if you would like to take a look at it.

12 The discovery that is missing, the dates that
13 I have, is October 23rd of '96. Those are documents
14 0001 through 423. There was another release on
15 March the 5th of '97. There was 35 documents released
16 on that date.

17 On March the 10th of 1997, there was 46
18 documents that was released on that date. That file is
19 complete. There is a cover letter with that file that
20 indicates how many documents were released on the date
21 and the Bates numbering system. On March 24, 1997,
22 there was 638 pages that was released by the State.
23 That file is incomplete.

24 On March 25, 1997, there is some discovery
25 that is in there, but there is no way to tell how much

1 discovery was in that file, how much was released
2 because there was no cover letters that accompany that
3 material. So I really can't tell how much material was
4 released that day.

5 On April 4, 1997, there was 14 pages that was
6 released. There was a cover letter that followed that
7 discovery, and I have that file. That file is complete.
8 On April the 11th, 1997, there was four pages of
9 documents that was released; and that file is complete.

10 On September the 10th, Your Honor, we had a
11 hearing over here; and Mr. Hubbard provided some
12 material. However, some of that material was illegible
13 and some of the Bates numbers could not be read. I have
14 some of that material with me, Your Honor, some of the
15 stuff that he released to me.

16 If you would like to take a look at it, I
17 would be glad to provide it to the Court so you can make
18 a judicial determination. Because I believe it's the
19 State's position and they made it clear on the record
20 that I might be playing some kind of discovery game.
21 That's not the case.

22 Prior to me going pro se, Mr. Delgado and
23 Mr. Nettles made aware to the State, before I even got
24 this file, there was 275 pages of documents missing. I
25 sent them -- excuse me -- I hand delivered them a copy

1 of what I believe was missing when we had the hearing
2 over in Richland County.

3 They haven't provided all that stuff to me.
4 In addition, I went through the entire file and I have
5 what I believe is missing. Now, on one of the dates,
6 March 25, '97, I can't tell what is missing because
7 there was no cover letter that follows that file.

8 THE COURT: Let me see if I can clear some of
9 this up. Was this material that was provided prior to
10 the first trial?

11 MR. STARNES: I don't know because I've never
12 seen the file, Your Honor. Supposedly it was. I spoke
13 to Mr. Salley on the telephone and supposedly everything
14 that he had was turned over to Mr. Nettles when
15 Mr. Nettles and Mr. Delgado was appointed.

16 Mr. Salley did tell me that the day that the
17 State -- or excuse me -- the day that the jury rendered
18 a guilty verdict that they produced a foot and a half of
19 documents relating to aggravating circumstances. They
20 did that in the middle of the trial.

21 Now, Mr. Salley supposedly, I guess, lost it,
22 either him or Mr. Banks lost it. But before I got this
23 file, the State knows that my attorneys did not have all
24 this stuff.

25 THE COURT: Let's see if we can track it down

1 again. Mr. Nettles, is there anything you can add about
2 this?

3 MR. NETTLES: Well, we did file that, the
4 document, obviously that he is talking about. We signed
5 it and filed it. I've got here what Stephie, my
6 paralegal, just gave me.

7 What we did was when Norman decided that he
8 wanted to represent himself, we didn't even copy the
9 file. We just pulled everything that we had, and he
10 signed a release.

11 We just gave him the whole file. So we don't
12 have anything now. Norman has got everything that we
13 have got or had, I apologize. It seemed to us it didn't
14 make any sense to copy it, but the best thing to do was
15 just give it to him. So that's what we did.

16 THE COURT: Okay. Do you know anything about
17 these 275 pages he refers to, Mr. Nettles?

18 MR. NETTLES: I did at one time. I mean, I
19 will have to represent to the Court that if we didn't
20 think there was a basis -- at the time I was obviously
21 more familiar with it than I am now.

22 I can represent to the Court that we wouldn't
23 have filed it unless we thought that there was a good
24 faith basis for believing they weren't there.

25 THE COURT: Okay. What are you referring to

1 exactly then, Mr. Starnes?

2 MR. STARNES: I'm sorry, Your Honor?

3 THE COURT: What are you saying is not there?

4 MR. STARNES: Okay. What is not in that
5 file --

6 THE COURT: Yes, sir.

7 MR. STARNES: -- on October 23rd -- and if I
8 can recite all this for the record, I would appreciate
9 it.

10 THE COURT: Well, what I want to do is let's
11 take them one at a time.

12 MR. HUBBARD: Your Honor, I might be able to
13 help with a copy. He did give me a handwritten copy, if
14 that's what he is talking about, at our last hearing.
15 Is it all the pages numbers you cited with the date
16 stamps?

17 MR. STARNES: Right.

18 MR. HUBBARD: Your Honor, I tell you what. I
19 can give you this because I've got a copy here. It will
20 take quite a while but we do have -- I can address the
21 discovery requests as listed on that page or those
22 pages.

23 THE COURT: Let me ask, what is on these
24 papers, Mr. Starnes, I assume is what you gave the State
25 and said is missing; is that correct?

1 MR. STARNES: That was earlier. This is what
2 I have. I went through the whole file. I went through
3 everything, and this is what's missing.

4 THE COURT: So you've got a new version of it
5 now; is that right?

6 MR. STARNES: It's what's missing, Your Honor.
7 I give them --

8 THE COURT: No, no. We've got to take this a
9 step at a time so I can keep up with it; okay? All of
10 you have been doing this, but I haven't been doing this.
11 I need to kind of get up to pace with where you are
12 obviously.

13 This list you gave them before, you say -- I
14 guess you are saying is now outdated; is that right?

15 MR. STARNES: I have discovered more material
16 that is missing.

17 THE COURT: How many pages were on this, do
18 you know?

19 MR. STARNES: The pages that were missing on
20 that was 90 pages.

21 THE COURT: Ninety pages?

22 MR. STARNES: Yes, sir.

23 THE COURT: You are saying now that there are
24 more pages than that you found are missing?

25 MR. STARNES: Yes, sir.

1 MR. HUBBARD: Your Honor, I can start with
2 what is on there. We have gone through and tried to
3 find every one of those pages.

4 THE COURT: Right. Do you have any problem
5 with that, Mr. Starnes, to let him cover these first?

6 MR. STARNES: That's fine.

7 THE COURT: Go ahead.

8 MR. HUBBARD: Your Honor, just so you know,
9 the dates listed on there and the page numbers, that
10 comes from a date stamp that we use in the office.

11 THE COURT: The Bates stamp?

12 MR. HUBBARD: Yes, sir. Everything he says is
13 missing or he has determined is missing because he has
14 not seen pages number, which is an indication that at
15 one time he was given this stuff.

16 THE COURT: Okay.

17 MR. HUBBARD: We certainly don't mind trying
18 to recreate what we had. I am letting Your Honor know
19 that we provided stuff when we were supposed to last
20 time.

21 Of all those pages numbers that Your Honor has
22 in front of the you, only two pages, two pages, we were
23 not able to find. That is two pages from March 25,
24 1997. It's page 62 and 63.

25 We think we might know where those are. We

1 will locate them, Your Honor. I am prepared right now
2 to serve him with the page numbers, all the material he
3 requests, on those pages before Your Honor. I will do
4 so right now.

5 THE COURT: Mr. Starnes, he will give those to
6 you. You say that is everything in this document?

7 MR. HUBBARD: Yes, sir.

8 THE COURT: Except pages 62 and 63?

9 MR. HUBBARD: Yes, sir, Your Honor, from
10 March 25th, I believe it is.

11 THE COURT: March 25th. Mr. Starnes, do you
12 want to go through and take a second and go through that
13 and make sure it's all there or have somebody do it for
14 you?

15 MR. STARNES: Yes, sir, I would like -- I
16 mean, I am not saying they are playing no discovery game
17 or nothing. Your Honor, this is what he released to me.
18 This is a copy.

19 This one, when it was run on a photocopy
20 machine, evidently this stuff is in a metal spiral
21 binder in his office. This is one of the pages that he
22 give to me the last time that we were over here.

23 (Hands to Court).

24 MR. STARNES: If you would like to take a look
25 at that, can you tell me the Bates number on that?

1 THE COURT: Mr. Starnes, the way this works is
2 I don't answer your questions; okay? I am sure there is
3 something rhetorical meant about that, and I'm sure that
4 some of them are not clear. We will take that up.

5 But I am trying to get to the bottom of it and
6 make sure you have got everything coming to you. Let's
7 go back to my question. On these documents here on this
8 sheet here, these documents?

9 MR. STARNES: Right.

10 THE COURT: Do you want to have somebody go
11 through it for you and look and make sure that all those
12 pages are there?

13 MR. STARNES: Yes, sir, I do.

14 THE COURT: Because when we leave here today,
15 I want to have all this done.

16 MR. STARNES: That will be fine.

17 THE COURT: Do you have somebody that can do
18 it or do you want to do it yourself?

19 MR. STARNES: I can do it. We can go ahead.

20 THE COURT: No, no. Let's take this first.
21 Let's get this one step at a time. Let's get this done.
22 It's going to take a while to do it. We may be here
23 till midnight, but we are going to have this done when
24 we leave today.

25 MR. STARNES: I totally agree with that, and I

1 appreciate it.

2 THE COURT: Take a second and go through those
3 documents.

4 (Pause).

5 THE COURT: Mr. Starnes, I think we provided
6 some paralegal to you before; did we not?

7 MR. STARNES: No, sir, Your Honor.

8 THE COURT: I thought I had a call from
9 Mr. Walker.

10 MR. STARNES: Right, there has not been an
11 order signed or anything.

12 THE COURT: He wasn't going to do anything on
13 it?

14 MR. STARNES: Yes, sir, he was, but he
15 couldn't until Your Honor signed the order. I have the
16 order here with me if you would like to take a look at
17 that.

18 THE COURT: You need to hand it up.

19 MR. STARNES: Yes, sir. I am trying to do too
20 much at one time. Hold on just a second, please. I
21 didn't mean no disrespect by asking the question or
22 anything. I wanted a judicial determination.

23 THE COURT: I understand. My point is I don't
24 want us to divert from this. I want to focus on this so
25 that we attend to everything we are trying to do today.

1 (Hands to Court).

2 (Pause).

3 MR. STARNES: Some of them is still not
4 legible, Your Honor. I can't read it.

5 MR. HUBBARD: One of the problems we had, Your
6 Honor, some of the documents are written on a yellow pad
7 just like this. In copying these materials, using the
8 darkest setting on our copier, that's the best we can
9 do. I don't know what else to do.

10 THE COURT: Then what you need to do is bring
11 the originals in here and let him look at the originals.

12 MR. HUBBARD: Yes, sir.

13 THE COURT: Have somebody do that now. Let's
14 bring the originals in here now.

15 MR. HUBBARD: Yes, sir, it's being done.

16 THE COURT: All right, Mr. Starnes, go on
17 through it.

18 (Pause).

19 THE COURT: Yes, sir, Mr. Starnes.

20 MR. STARNES: Your Honor, on October 23, '96,
21 I went through everything. The pages that are illegible
22 that I cannot read, I made a copy.

23 THE COURT: Tell me what pages. Mr. Hubbard,
24 if you will, how about have somebody let's take them and
25 show him now.

1 MR. HUBBARD: Yes, sir.

2 THE COURT: Let me see the sheet just one
3 minute.

4 MR. STARNES: Your Honor, that coincides with
5 what I have got on this new page that I did when I went
6 through the entire files that Mr. Nettles provided to
7 me. So if they provided that to me, that date is taken
8 care of.

9 THE COURT: I thought that was this whole
10 document here?

11 MR. STARNES: No, sir, that's just October 23,
12 '96.

13 THE COURT: What about the rest of the other
14 pages?

15 MR. STARNES: Do all of them at the same time?

16 THE COURT: Yes, sir. You can give this to
17 the State and let them start looking that over.
18 Mr. Starnes, you mean you haven't gone through all
19 these?

20 MR. STARNES: Some of them I can't read, Your
21 Honor.

22 THE COURT: That's what you need to do is
23 write down the pages that you can't read.

24 MR. STARNES: Right.

25 THE COURT: So the State can show them to you.

1 I will let them show them to you right now. All you
2 have got to do is write down the pages that you can't
3 read.

4 (Pause).

5 THE COURT: Mr. Starnes.

6 MR. STARNES: The remaining documents are
7 here, Your Honor.

8 THE COURT: They are all okay?

9 MR. STARNES: Yes, sir.

10 THE COURT: The only ones on this first list
11 that you can't read are the ones -- that's what the
12 solicitor has there; is that right?

13 MR. STARNES: That's correct, Your Honor.

14 THE COURT: Mr. Hubbard.

15 MR. HUBBARD: Yes, sir. If he would like to
16 review this, I don't know if ours are much better than
17 his, but they are right here.

18 THE COURT: Do you want to just let him take
19 them to his table? Is that all right?

20 MR. HUBBARD: That will be fine.

21 THE COURT: I realize what is going to happen
22 when documents are hand created sometimes, people have
23 different types of handwriting. Some people write
24 heavier than others. Some use lighter pens. Some
25 things are just not going to copy well. Go ahead and

1 look over those, Mr. Starnes.

2 MR. STARNES: Your Honor, these aren't the
3 originals.

4 THE COURT: Those are not the originals?

5 MR. STARNES: No, sir, these are photocopies.

6 THE COURT: Where are the originals?

7 MR. HUBBARD: Here is the issue from our
8 standpoint. Those are the ones that are date stamped.
9 So that's how we know what to identify. Those are what
10 were in our trial notebooks.

11 THE COURT: Right.

12 MR. HUBBARD: The notes that we have gone
13 through, we have not been able to sort every single note
14 because they are not date stamped. We will have to go
15 through notes and see -- try to figure out what page
16 goes to what. It will take us some considerable time
17 just because it has taken us a while just to collect the
18 notes.

19 THE COURT: I understand.

20 MR. HUBBARD: There may be some in there that
21 don't even exist. The originals may not exist.

22 THE COURT: Yes, sir.

23 MR. HUBBARD: But that's what we had. That's
24 what was our work and trial notebook. I will state
25 this, too. We are happy to try to track this stuff

1 down. Those probably weren't even discoverable to begin
2 with. They were notes. That's where he's running into
3 issues. We are trying to and we will do our best --

4 THE COURT: I understand. I was wondering
5 when there was going to be an objection on that.

6 MR. HUBBARD: Your Honor, we are trying to be
7 as liberal as we can.

8 THE COURT: No question about it. I
9 understand.

10 MR. HUBBARD: But some stuff we are just not
11 going to be able to do for him probably.

12 THE COURT: I understand.

13 MR. HUBBARD: While he is looking at that,
14 Your Honor, we are looking to see if we see any of
15 those. We may need the specific stack back that we gave
16 him.

17 (Pause).

18 MR. HUBBARD: If Mr. Starnes will tell us, of
19 those pages if there is anything illegible. If there's
20 not something legible there, we are trying to find it
21 right now to show him an original if we can find it.

22 THE COURT: Can you read those, Mr. Starnes,
23 those pages?

24 MR. STARNES: Your Honor, some of it I can.
25 Some of it is faded out. Some of the words I can't make

1 out.

2 THE COURT: Officer, how about hand me those
3 documents and let me take a look at them and see. I
4 don't even know what the documents are in all honesty.

5 MR. STARNES: Page 42, Your Honor, is one.

6 THE COURT: I just want to look at the
7 documents and see what they are.

8 (Hands to Court).

9 MR. HUBBARD: Your Honor, we will need what we
10 gave him back. Then we will be out of it.

11 THE COURT: Sure. I note just one, what
12 appears to be page 38, really just appears to be almost
13 something that would fall under the attorney privilege.
14 It look like just a checklist of somebody reminding
15 themselves to do certain things, something about: Pull
16 up case number something or other. There is a phone
17 number.

18 I agree, that is not discoverable,
19 Mr. Starnes. All that is is work product. That is just
20 basically what the solicitors did in their office on the
21 case. That's almost basically requiring them to tell
22 you what they have done.

23 Are all of the pages like that? Is that what
24 all of these are?

25 MR. HUBBARD: Your Honor, I think that is

1 probably the case. There were some notes that were
2 really -- there were some notes also that we found. In
3 talking to the officers, they were notes that were used
4 to write up those reports.

5 THE COURT: Yes, sir.

6 MR. HUBBARD: So what is in the report is what
7 was in the notes. We also had a bunch of notes from
8 just to-do lists after talking to Solicitor Myers and
9 Deputy Solicitor Dayton Riddle and just tracking down
10 leads for the trial.

11 THE COURT: Yes, sir.

12 MR. STARNES: Your Honor, my position is that
13 I believe it's a Sixth Amendment issue to effective
14 cross examination. When an investigator goes out and
15 takes notes, interviews witness -- for instance, on one
16 of these was a phone number. Supposedly these
17 individuals were left at a pay phone.

18 There seems to be some phone records that were
19 obtained. I believe Detective Amick supposedly give
20 Detective Markley some phone records to be retrieved. I
21 believe that is discoverable.

22 Telecommunication records are discoverable.
23 The only way I knew that is from the note. It's my
24 position that if a detective goes out and he takes notes
25 relating to this case, it is discoverable.

1 In the event -- if there is any material that
2 they deem is not discoverable, that is work product, I
3 would move the Court to have those notes placed under
4 seal or made a part of this record in the event that we
5 get into another court and that becomes an issue. Then
6 another court can review it.

7 Evidently that is certainly going to become an
8 issue on appeal. I can't make a legal argument right
9 now on it because I haven't had access to a paralegal.
10 I don't want to try to give a legal argument on that now
11 and it not be properly preserved. I certainly would
12 like to revisit that issue after I do the proper
13 research, Your Honor.

14 THE COURT: Solicitor, what I would like to do
15 is this. Let me if I might just have these copied.

16 MR. HUBBARD: Yes, sir.

17 THE COURT: And I will seal them separately.
18 I am not going to make you furnish anything further than
19 this.

20 MR. HUBBARD: Yes, sir, Your Honor.

21 THE COURT: I notice of a couple of these
22 pages by the way are quite legible.

23 Officer, can you have somebody go back in my
24 office and maybe copy these and give them back to the
25 solicitor when they are done.

1 MR. HUBBARD: Thank you, Your Honor.

2 THE COURT: Any others on this list,
3 Mr. Starnes?

4 MR. STARNES: No, sir.

5 THE COURT: Those are the only ones. What
6 else now beyond that? You say there are some other
7 pages are missing; is that correct?

8 MR. STARNES: Yes, sir.

9 THE COURT: Let's do this, from what you have
10 that you say you found out that are also missing, let's
11 take them a page at a time. It will be a while doing
12 that, but let's just do it.

13 MR. STARNES: Back to October 23, '96, there
14 were two documents that were left in the file, but there
15 is no Bate stamp on them. There's only actually two
16 documents that was missing, but I have two documents
17 left over, which is 0195 and 0300. I have the copies
18 that the State give me. If they would identify those as
19 being those two documents.

20 THE COURT: Right now all I want to do is
21 determine what pages are missing, just pages. That's
22 all. We will get to that. Let's take one thing at a
23 time, okay?

24 MR. STARNES: Yes, sir.

25 THE COURT: Are those particular page numbers

1 or something?

2 MR. STARNES: Yes, sir, 0195 and 0300.

3 MR. HUBBARD: We are checking, Your Honor.
4 Just so Your Honor knows, that stamp sometimes is very
5 mechanical.

6 THE COURT: I understand. What is happening,
7 Mr. Hubbard, is that you folks are literally having to
8 go back through your entire file, which I imagine would
9 take up at least that table there to try to find
10 specific documents.

11 MR. STARNES: Your Honor, I might could make
12 it easy on them and give them these two documents. If
13 they could identify it, it might help them in their
14 research and kind of speed things up.

15 THE COURT: It may be, Mr. Hubbard, if it's
16 too much trouble, we may have to let you just have a
17 list of stuff and look for it and get a hearing.

18 MR. HUBBARD: Yes, sir.

19 THE COURT: I will be in York next week, but
20 maybe the week after next we can get a hearing.

21 MR. HUBBARD: Yes, sir.

22 THE COURT: Counsel, let me note, both of you
23 as I understand, the reason I wanted to do all this and
24 get this done, Mr. Starnes, is I believe you wanted to
25 get this motion -- this case to trial as I have

1 understood.

2 MR. STARNES: Yes, sir, Your Honor.

3 THE COURT: I would like us to see if we ca
4 set a time maybe sometime in April for the trial of the
5 case. So I would like to go ahead, and we want to
6 satisfy your motion for a speedy trial. So that's why
7 we need to go ahead and get these documents done now.
8 If some have to be done later, we will come back the
9 week after next.

10 MR. STARNES: Yes, sir. Your Honor, these
11 were the pages that were missing, 0195 and 0300. That
12 takes care of October 23, '96.

13 THE COURT: I thought we were talking about
14 this whole document here. You are talking about just
15 one page?

16 MR. STARNES: No, sir, the date, October 23rd,
17 '96.

18 THE COURT: That's only on the first page of
19 this.

20 MR. STARNES: Right.

21 THE COURT: These other pages are okay, right?

22 MR. STARNES: Yes, sir, on this.

23 THE COURT: Everything is covered.

24 MR. STARNES: Could I see what you have got,
25 Your Honor, to make sure that's what I have got and

1 we're on the same page here.

2 THE COURT: Officer, how about show it to him.
3 We've been through this about three times now.

4 (Pause).

5 MR. STARNES: Okay, Your Honor. Everything
6 except what I believe the State mentioned earlier, page
7 62 and 63, on March 25, '97, that would complete this
8 document. I have what you have, Your Honor.

9 THE COURT: We are going to give the solicitor
10 time later on to find that 62 and 62 .

11 MR. HUBBARD: We have an idea where they might
12 be. That may even have gone into evidence. We need to
13 review that.

14 THE COURT: That's all right. What about your
15 other documents, Mr. Starnes?

16 MR. STARNES: March 5, 1997, there's only
17 three pages that were illegible.

18 THE COURT: Have you given the solicitor a
19 copy of that?

20 MR. STARNES: No, sir, I haven't.

21 THE COURT: Officer, can we get a copy of that
22 made, please, sir.

23 MR. STARNES: Let me make sure I have got a
24 copy.

25 THE COURT: Officer, how about make two

1 copies, one for me and one for the solicitor.

2 (Pause).

3 THE COURT: We have copies of the documents
4 here. Mr. Hubbard, would it be easier to let y'all go
5 through and see if you can find some of these now?

6 MR. HUBBARD: Yes, sir.

7 THE COURT: We will take a few minutes,
8 Mr. Starnes, and see what they can find on this now,
9 okay?

10 MR. STARNES: Yes, sir.

11 (Pause).

12 MR. HUBBARD: Your Honor, I will for Your
13 Honor -- I will just show Your Honor. On March 6th of
14 '97, Mr. Salley did sign for the documents from
15 March 5th saying that he received them. We are going
16 through them to see what pages he says are missing.

17 THE COURT: I note that for the record.

18 MR. STARNES: Your Honor, may I have a copy of
19 that letter?

20 MR. HUBBARD: We will be happy to make a copy.

21 THE COURT: They will give you a copy. That's
22 fine.

23 (Pause).

24 MR. STARNES: If I may have a paralegal, I
25 will take it to the jail.

1 MR. TATE: Your Honor, if I can have a copy of
2 the order that was just signed in reference to the
3 paralegal, I will take it to the jail. You can get the
4 professional visiting privileges so you can use the
5 room, which is certainly available.

6 THE COURT: Do you want to let him have a copy
7 of that, Mr. Starnes?

8 MR. STARNES: That's fine, Your Honor. As
9 long as it's kept under seal because that's a matter ex
10 parte relating to funding.

11 MR. TATE: Tell me what the person's name is,
12 Judge. I will do it with a note to the jail.

13 THE COURT: Mr. Walker, Timothy Walker. They
14 will know who he is when he shows.

15 MR. STARNES: I need to sign that, too, Your
16 Honor. I haven't signed it.

17 THE COURT: I know.

18 MR. TATE: This is not the law clerk from the
19 Death Penalty Resource Center?

20 MR. STARNES: No, sir. I never heard back from
21 those people.

22 THE COURT: Oh, you never heard? They are not
23 doing anything on it?

24 MR. TATE: Judge, I talked with a young lady
25 on the phone. I told her to serve me a copy of the

1 order. She said she has never seen an order. I said:
2 When you get it, call me. I never heard back from her.

3 THE COURT: Is that who you want to do it,
4 Mr. Starnes?

5 MR. STARNES: Mr. Walker. The order I had
6 sent Your Honor I never received anything back. I spoke
7 to you on the phone after Christmas. I had sent an
8 order. I actually sent Your Honor two orders, and I
9 never received them back.

10 THE COURT: For what now?

11 MR. STARNES: The first order was sent back
12 in -- I don't have the date right in front of me, Your
13 Honor. It was in reference to photocopies and doing
14 certified mail from the jail because my account had
15 depleted. I didn't have money to do certified mail and
16 stuff.

17 I sent Your Honor a \$250 funding order so I
18 could do service on subpoenas and stuff. I included a
19 self-addressed stamped envelope, and I never heard back
20 from Your Honor.

21 THE COURT: Let me check and see if I can find
22 that.

23 MR. STARNES: And the order for Ms. Carr from
24 the Death Penalty Resource Center, I never heard back
25 from you. That's when I mentioned it to you on the

1 phone that I hadn't heard anything.

2 THE COURT: I will double-check on that. Do
3 you still want her to help or do you want Mr. Walker?

4 MR. STARNES: Mr. Walker.

5 THE COURT: So I don't need to worry about
6 that order then, right?

7 MR. STARNES: Right. There was a funding
8 order that you signed when we were over in Richland
9 County. It was relating to just a financial
10 institution. How would I void that order?

11 Because the records that I was seeking, they
12 weren't able to retrieve them because too much time had
13 went by. I think the records were spoiled. The
14 funding, the institution said they wasn't going to
15 charge anything. You had signed an order for that. It
16 was a \$500 funding order for those records. I just
17 needed to know the procedure.

18 THE COURT: Just send me another order
19 referring to that one specifically and saying that it's
20 void.

21 MR. STARNES: It's void?

22 THE COURT: Yes, sir.

23 MR. TATE: Mr. Walker's first name or his
24 business?

25 THE COURT: Timothy R. Walker.

1 MR. TATE: Thank you, Your Honor. Your Honor,
2 I will make sure the jail gets that.

3 MR. STARNES: Your Honor, while Mr. Tate is
4 here, when we get close to trial, I will need access to
5 them, probably physical access to do demonstrations and
6 stuff like that. Will he be able to facilitate that?

7 MR. TATE: I'm not sure I understand the
8 question.

9 THE COURT: That's one of the reasons you have
10 got a paralegal is he can handle things like that and
11 put that together.

12 MR. STARNES: One more thing, Your Honor,
13 while Mr. Tate is here. I had subpoenaed some records
14 on the jail, some policies and procedures, some video
15 surveillance tapes, and other things.

16 Since then I have a list of probably four or
17 five pages of more material, records from the jail, that
18 date back to '96, '97. The State called numerous
19 inmates out at the jail to testify against me in the
20 guilt or innocence phase.

21 I am going to be subpoenaing those records.
22 If it's their position that I cannot have that material
23 and be housed in the Lexington County jail, then I need
24 to take up a matter of being housed in another facility.
25 Is that Mr. Tate 's position still?

1 MR. TATE: I will have to see what records he
2 asks for. The ones you have already asked for, the ones
3 that have been requested, we filed a bunch of stuff
4 under seal, Your Honor.

5 THE COURT: Why don't you just subpoena the
6 records. Subpoena what you are asking for, Mr. Starnes,
7 and go from there. How does that sound?

8 MR. STARNES: That will be fine, Your Honor.
9 Basically it's log reports, daily log reports, the
10 pass-on book. Some of the records are going to be on
11 some employment records on investigators, some
12 employment records on officers relating to misconduct,
13 things of that nature.

14 I don't know who the State is going to call,
15 and in the event that they call officers as witnesses in
16 this trial -- because apparently if we get into a
17 penalty phase, my prison adaptability and my conduct
18 while incarcerated is going to become an issue. The
19 documents that I'm subpoenaing to the jail will be
20 documents relating to impeachment if these individuals
21 testify against me. So basically --

22 THE COURT: I think all you can do is just go
23 ahead and just do the subpoena and get it to Mr. Tate.
24 Then he can either comply with the subpoena or he can do
25 a motion objecting to it. If he does, we will take it

1 up; okay?

2 MR. TATE: Thank you, Your Honor.

3 THE COURT: Thank you, sir.

4 MR. HUBBARD: Your Honor, from the March 5,
5 1997 stack, he mentions three pages are illegible: 6,
6 28, and 29. I will hand up a copy of what we have got
7 out of our notebook.

8 We are looking for originals if we have
9 originals on these to see if anything that might be more
10 clear. Thus far we haven't found them. I am not sure
11 what the last page, 29, is, Your Honor.

12 (Hands to Court).

13 THE COURT: Do you want to show these to him?

14 MR. HUBBARD: Yes, sir, I will.

15 Mr. Starnes, these are our page 6, 28, and 29
16 from March 5, 1997, from our trial notebook.

17 (Pause).

18 MR. STARNES: Your Honor, I probably need the
19 originals.

20 THE COURT: What we will do is take the time
21 when we reconvene again, Mr. Hubbard, between now and
22 then, try to find the originals.

23 MR. STARNES: The stuff that you had copied
24 and put under seal, it's my understanding that you are
25 putting the copies under seal, not the original

1 documents.

2 THE COURT: Yes, sir, I'm putting copies of
3 them under seal. That's right. These are not original
4 documents.

5 MR. STARNES: Can we have the original
6 documents put under seal if they are not going to
7 release them to me?

8 THE COURT: I think what they are going to do
9 is between now and whenever we come back is they are
10 going to try to find the original documents.

11 MR. STARNES: I understand.

12 THE COURT: If they can, we will take them up
13 from there. These right now are just so that we have a
14 record of what the solicitor had that they gave you that
15 you indicated was illegible.

16 MR. STARNES: I understand.

17 THE COURT: Again, most of which appears
18 really not to be discoverable actually; but either way
19 we will have it sealed.

20 MR. HUBBARD: Your Honor, here is the copy of
21 the page that I showed Your Honor that was initially
22 signed by Larry Salley. I will give him a copy of that
23 now, too.

24 Your Honor, I think to maybe expedite this,
25 too, if he wants to make a list of everything that is

1 illegible, we will definitely try to find, by the next
2 hearing date, the originals.

3 THE COURT: Okay.

4 MR. HUBBARD: As to what is missing, that
5 might help us now, too, to see if we can find what is
6 missing as well. If we can find something, we will
7 certainly try to provide that.

8 THE COURT: I think the last document he
9 handed up indicates, does it not, which ones are
10 illegible and which ones are missing?

11 MR. HUBBARD: Right, from March 5th. Those
12 were just the illegibles. We will try to find the
13 originals on those, Your Honor.

14 THE COURT: Do you just want to do that
15 between now and when we come back?

16 MR. HUBBARD: Yes, sir. We did receive, I
17 guess, this today March 10, '97. Everything is
18 complete.

19 MR. STARNES: That file is complete. Your
20 Honor, I do have a cover letter with that. Some of this
21 discovery, a cover letter didn't follow it. So I can't
22 tell you -- I mean, I have no way of knowing how much
23 was released on that date.

24 THE COURT: Yes, sir. Let's do this. Let's
25 take it a step at a time. First of all, this that you

1 handed up today, the additional ones you indicated they
2 are illegible or missing?

3 MR. STARNES: Right.

4 THE COURT: What I'm going to do is let the
5 solicitor look for these until we come back. What I
6 will do is set a hearing week after next.

7 MR. HUBBARD: Yes, sir.

8 THE COURT: That will give them time to get
9 these documents to you or either to get them back or to
10 find the originals, understand?

11 MR. STARNES: Yes, sir.

12 THE COURT: Then during that hearing if they
13 have originals, they can show you the originals on
14 these. Again, it may be the originals may not be very
15 legible either. I will have them here so they can show
16 them to you and see what they are.

17 MR. STARNES: Yes, sir. What date will we
18 have that hearing?

19 THE COURT: We will get a date set before we
20 leave here. Let's do this, let's move on.

21 MR. STARNES: Yes, sir.

22 THE COURT: Is that everything on the
23 discovery issue at this point?

24 MR. STARNES: From what they have released,
25 kind of, yeah, but no. I believe that the State still

1 has some more discovery by what I have got. Your Honor,
2 if I can just recite it for the record.

3 THE COURT: Yes, sir.

4 MR. STARNES: Please let me do that and
5 preserve the record on that.

6 THE COURT: Have you given them a copy of
7 this?

8 MR. STARNES: Yes, sir, I have. The hearing
9 that we had on September the 3rd over in Richland
10 County, Mr. Hubbard and Mr. Graham, stopped me and I
11 provided --

12 THE COURT: Go ahead and put it on the record.
13 You say you want to put it on the record. Put it on the
14 record first.

15 MR. STARNES: Yes, sir. Any and all of
16 Officer Robert Doray's handwritten notes, reports or
17 documents relating to this case in the report that was
18 filed Bate stamped 0001 through 0003. It is only the
19 typed report. There's no notes or anything that follow
20 that.

21 THE COURT: That's who, officer who?

22 MR. STARNES: Officer Doray. He was the
23 original officer that --

24 THE COURT: How do you spell that?

25 MR. STARNES: D-O-R-A-Y.

1 THE COURT: Okay.

2 MR. STARNES: The next, and I will just refer
3 to them as document numbers. October 23, '96, number
4 0005 through 0007, any and all of Detective J.C.
5 Lorick's handwritten notes, reports or other documents
6 relating to this case in the above-mentioned Bates
7 number.

8 Only the typed versions were released. His
9 notes, his written report, none of that was in there.
10 He was the second officer to get this case. Robert
11 Doray actually took the missing person's report.

12 THE COURT: You don't have to explain it.
13 Just put it on the record. Put on the record what you
14 want.

15 MR. STARNES: Sure. October 23, 1996,
16 number 0008 through 0009, any and all of Lieutenant
17 Harris' handwritten or typed notes, reports or other
18 documents relating to this case and relating to the
19 above-mentioned Bates number.

20 October 23, 1996, document number 9, any and
21 all of Chief McCarty's handwritten or typed notes,
22 reports or other documents relating to this case.

23 October 23, '96, document number 12, the
24 audiotape of the interview mentioned on the above Bates
25 number with Detective Amick and a Donna Benson.

1 October 23, '96, document number 13, all of
2 the bank and financial card information obtained by
3 Detective Chapman relating to this case and relating to
4 the above-mentioned Bates document, as well as any and
5 all handwritten or typed notes, reports or other
6 documents relating to this taken by Detective Chapman.

7 October 23, '96, document number 13, any and
8 all phone record information obtained by Detective
9 Markley and all handwritten or typed reports, notes or
10 other documents by Detective Markley relating to the
11 indictment in this case.

12 October 23, '96, document number 13, any and
13 all of Jackie Brothers' reports, notes or other
14 documents she made relating to this case.

15 October 23, 1996, document number 14, a copy
16 of the ledger kept by Bill Welborn that was collected by
17 a Lexington County agent mentioned on document 14.

18 October 23, 1996, document number 15, any and
19 all handwritten or typed, notes, reports or other
20 documents by Detective Martin or any other government
21 agent relating to the drug raid that was mentioned on
22 the above-mentioned Bates document.

23 October 23, 1996, document number 16, any and
24 all handwritten or typed notes, reports or other
25 documents by Detective Amick relating to his interview

1 with a Johnny Merrick (phonetic) mentioned on the above
2 document.

3 October 23, 1996, document number 17, any and
4 all handwritten or typed notes, reports or other
5 documents by Detective Amick relating to his interview
6 with Billy Welborn, and Detective Amick's notes or
7 reports relating to Billy's interview, discussing Bill
8 Welborn's drug use.

9 October 23, 1996, documents 0037, any and all
10 handwritten or typed notes, reports or documents of the
11 follow-up interview with a Billy Turner mentioned on the
12 above Bates document.

13 October 23, 1996, document number 37, any and
14 all handwritten or typed notes, reports or other
15 documents of Detective Amick's follow-up interview with
16 a Greg Finley mentioned on the above Bates document
17 number.

18 October 23, 1996, document number 56, all of
19 the contents relating to the search warrant of the
20 above-mentioned document. This was a phone number
21 926-2920, relating to voice mail messages.

22 All of the contents relating to document 0059.
23 It's a search warrant that was issued on BellSouth.
24 The search warrant is in there, but the phone records
25 aren't. They are not included in the discovery.

1 October 23, 1996, document 68, any and all of
2 the records listed on this document. This is from
3 Heritage Trust Federal Credit Union. There was a
4 subpoena served, but some of those documents are
5 missing.

6 October 23, 1996, document 130, document 131,
7 132, 139, 140, 141, and 143, any and all handwritten or
8 typed notes or other documents relating to the
9 individuals listed on these documents.

10 October 23, 1996, document 151, any and all
11 handwritten or typed notes or reports relating to this
12 note mentioned above. It was Bobby Frierson relating to
13 Bill Welborn.

14 October 23, 1996, document 153, any and all
15 handwritten, typed notes or other documents relating to
16 this document. I noted on here that this document was
17 illegible, but I believe they provided it to me.

18 October 23, 1996, document 168 and 163, where
19 are the missing pages to this Viacat (phonetic) report?
20 Sections 55 through 98 are missing.

21 October 23, 1996, page number 286, where are
22 contents to the above-mentioned subpoena? This was a
23 subpoena done on my landline at Forts Pond Road. The
24 subpoena is in there but the phone records are missing.

25 October 23, 1996, document 0295, any and all

1 handwritten, typed notes or other documents by Sergeant
2 Duane Peake relating to this case.

3 October 23, 1996, document number 388, any and
4 all handwritten, typed notes or reports or other
5 documents by Lieutenant Phillips relating to this case.

6 October 23, 1996, document 331, any and all
7 handwritten, typed notes, reports or other documents
8 made by Detective Amick after May 31, 1996.

9 October 23, 1996, number 408, page 408, any
10 and all records relating to the subpoena issued on Pond
11 Branch Phone Company for 894-5249.

12 A copy of any and all videotapes that were
13 made the day that I was transported from the Lexington
14 County Detention Center to 375 Forts Pond Road, and
15 copies of all photos that were taken at the above
16 location on the same day.

17 There was some photographs that were taken of
18 the phone box and photographs that were taken when Your
19 Honor wrote an order for me to be transported back out
20 to the house with my attorneys. None of that appears in
21 this discovery.

22 In addition, there should be an inventory
23 sheet showing the number of photos that were taken at
24 the scene that day. That is not in the discovery.

25 Copies of all photos that were not provided to

1 the defense before, during and after the original trial.
2 There were photographs that were introduced at the
3 original trial. There were photographs of my
4 restaurant, aerial photos. There was photos of my house
5 that was taken.

6 I believe an investigator or one of the
7 solicitors went up in a helicopter and took some
8 pictures of my house and restaurant, and that was
9 introduced into evidence. We were not provided any of
10 that stuff.

11 A copy of the crime scene sign-in sheet.
12 There is no crime scene sign-in sheet that follows any
13 of this discovery.

14 Detective McNair's handwritten notes and
15 reports relating to this case prior to 5/27/96, any and
16 all typed written notes and reports.

17 All of Detective Amick's notes and reports for
18 the dates between January 15, 1996, and May 27, 1996,
19 both handwritten and typed.

20 Detective Amick's reports start on January the
21 11th, and they end on January 15th. There is no other
22 reports, notes or any other documents past January the
23 15th.

24 It's my understanding that Detective Amick
25 investigated this case all the way up to my arrest.

1 None of that is in there, Your Honor. All that is
2 missing.

3 October 23, 1996, page 247, all documents
4 relating to this case number on the above-mentioned
5 document. This was an illegible document, and I believe
6 the State provided this so I can see it.

7 October 23, 1996, document number 4, all
8 documents relating to the case number on the
9 above-mentioned page.

10 Amanda Simmons' notes, reports, and her
11 involvement in this case. It my understanding that
12 Ms. Simmons did a dive into Black Creek. I believe she
13 was one of the officers that was involved in the dive
14 team that dived in Black Creek. There's no reports or
15 anything in the discovery relating to Ms. Simmons'
16 involvement in this case.

17 Photos of the recovery effort in Black Creek.
18 It is my understanding that the Sheriff's Office went
19 to Black Creek to try to locate Mr. Chapman's pistol
20 that he pulled on Jody Fogle that night. None of that
21 is in there. If they took any photographs, any videos
22 or wrote any reports on that, I don't have it, Your
23 Honor.

24 Any of the discovery that the State intends
25 to introduce in the penalty phase. In the penalty

1 phase of the original trial, the State made allegations
2 that I tried or had burned a truck to defraud an
3 insurance company. None of that discovery is in there.

4 Two weeks prior to my arrest, I was in an
5 altercation with a gentleman who was not a witness in
6 this case but was a relative to one of the witnesses in
7 this case. They didn't provide any of that.

8 I say they didn't. Excuse me, I believe that
9 information was provided because I remember seeing that
10 at the trial in the conference room. But none of that
11 is included in this stuff. I believe that is some of
12 the stuff that might have been lost.

13 I request the State to release all of the news
14 videos of when the case was a missing person's case.

15 The voice mail messages and any other records
16 on phone number 401-7867 and number 796-4884. There was
17 a subpoena issued for this stuff. The subpoena is in
18 there, but the records are missing.

19 The phone records of the pay phone at C.J.'s.
20 It appears on one of the notes that Detective Markley
21 retrieved some phone records from two pay phones in
22 Pelion. Those numbers are 894-9997 and 894-5556.

23 This was the pay phone where the two victims
24 were allegedly left at that night. I believe the
25 Sheriff's Office went and got those phone records from

1 that pay phone when they were investigating this as a
2 missing person's case. Those phone records don't appear
3 in any of the discovery, but the notes where they did
4 the subpoena does.

5 Detective McNair's notes and reports of his
6 interview with a Gwen Ott at the Panther Parlor while
7 this was a missing person case. Mr. McNair come by and
8 interviewed Ms. Ott at the restaurant while he was
9 investigating this as a missing person's case.

10 There is no report, no document that he even
11 did such a thing; and I believe he probably made
12 documents of that. I am requesting that.

13 All reports and notes by Detective Amick and
14 Detective Grice of any attempted polygraph. While this
15 was a missing person's case, the Sheriff's Office had me
16 come or Detective Amick had me come up here and wanted
17 me to submit to a polygraph. None of the notes, none of
18 the reports when I met him up here appear in the
19 discovery.

20 Dr. Sexton's complete file -- slides, photos,
21 audio notes, video notes, and X-rays. The autopsy
22 report is in the discovery. None of the other material
23 that Dr. Sexton has or that Coroner Harry Harmon has
24 appear in the discovery.

25 Any and all handwritten, typed reports or

1 other documentation taken by Detective Edward Hite
2 relating to this case.

3 A copy of all documents that reflect the chain
4 of custody of Bill Welborn and Jerry Chapman's bodies
5 from the time of recovery in Aiken County until
6 Dr. Sexton performed the autopsy at the Newberry Medical
7 Center. The chain of custody paper on the bodies is not
8 listed in any of the discovery.

9 All telephone recordings relating to this
10 case, including but not limited to the audio recordings
11 of my residence, any phone taps that they did of my
12 residence on Forts Pond Road, of my restaurant in
13 Pelion, of Tony Tindall's house or of Don Dubose's
14 house.

15 Copies of all audio and videotapes that were
16 made during polygraph testing of all individuals
17 relating to this case, including but not limited to Don
18 Dubose, Donna Benson, Jody Fogle, Karen Pratt, and Gwen
19 Ott. It is my understanding that all of these
20 individuals were polygraphed and that they signed a
21 waiver to take the polygraph.

22 I think all of us kind of got the
23 understanding that when polygraphs are done at the
24 Lexington Sheriff's Office back in '95 and '96 that they
25 videotaped people without their consent maybe; and I

1 believe that is discoverable. If there is a video of
2 these polygraphs, I am asking them to turn it over to
3 me.

4 Any and all telephone recordings that were
5 made during the investigation of this case from
6 January 8, 1996, until present, including but not
7 limited to all recordings of the inmate phone systems at
8 the Lexington Detention Center, known as Evercom
9 (phonetic).

10 All recordings of phone conversations while I
11 was housed on Death Row at Leiber Correctional Institute
12 in Ridgeville, South Carolina. Any other phone
13 recordings that the State has made relating to this
14 case.

15 All photocopies of my incoming and outgoing
16 mail that the Lexington County jail made, as well as any
17 and all incoming and outgoing mail while I was housed on
18 Death Row.

19 Any and all records and notes, both
20 handwritten and typed, stemming from my transport to 375
21 Forts Pond Road in Pelion from the Lexington County jail
22 in March of '97. I believe I already covered that.

23 Any and all videotapes and all photos that
24 were taken of the Gaston airport during the
25 investigation of this case.

1 Any and all copies of Detective McNair's notes
2 taken during Gwen Ott's video statement.

3 MR. HUBBARD: Your Honor, if we can stop for
4 just a moment. I handed up to Your Honor a copy of what
5 Mr. Starnes asked us to look for last time, the last
6 hearing we had. For the past five minutes he has been
7 reading stuff we've never heard of or we have no copies
8 of. I don't know what --

9 MR. STARNES: I can be done in 40 seconds if
10 you will let me finish.

11 THE COURT: Go ahead and finish.

12 MR. STARNES: Any and all photos taken of any
13 firearm relating to this case. The complete file that
14 S.L.E.D. has relating to this case. The complete file
15 that the F.B.I. has relating to this case.

16 Any and all of Vickie Kyzer's written, audio
17 or video statements.

18 The dates prior to January 8, 1996, of an
19 Evelyn Miles' diary that Investigator Amick got.

20 The last thing, October 23, 1996, document 388
21 was when Detective Amick and Lieutenant Phillips and
22 some other investigators went out to the Panther Parlor
23 in Pelion on August 5, 1996.

24 They removed some items from my restaurant.
25 There is no inventory sheet. I requested they let me

1 inspect and notify me of everything that was taken out
2 of my restaurant.

3 They went in there and took stuff out. I
4 don't know what they all took. I don't know if they
5 took photographs or whatever. But anything stemming
6 from that seizure, I request the State to turn over to
7 me, Your Honor.

8 THE COURT: Now you have put it on the record.
9 What we are going to do now is I need you to give
10 somebody a copy of that in writing so the State knows
11 what to respond to.

12 You understand by the fact that you simply
13 stood here and rattled all this off on the record
14 doesn't mean they know what to respond to. If it's the
15 sheet that I have got here, again, you have gone way
16 beyond what was on this sheet here. So, have you got
17 something that copies can be made of?

18 MR. STARNES: All these pages I give them on
19 September the 3rd when we was over in Richland County.
20 They made me these copies. They've had this stuff since
21 September the 3rd, Your Honor.

22 THE COURT: Even some of the stuff at the end?

23 MR. STARNES: It's very brief but these four
24 pages they don't have, Your Honor. If it's okay with
25 the Court, what I can do is I can file a supplemental

1 discovery request and give them all this and file it
2 with the Court.

3 But the thing that I am worried about is I
4 kind of don't want the public to have access to some of
5 this stuff because it might contaminate my trial.

6 THE COURT: I haven't heard of the public
7 trying to get access to it.

8 MR. STARNES: Under the Freedom of
9 Information, they can get a discovery request. They can
10 read this stuff and they go back through what I've got.
11 In other words, one of their witnesses may come up here,
12 fill out a discovery request or a Freedom of Information
13 request. All this is public record.

14 I don't mind going back and writing up a big
15 old supplemental discovery request and serving them with
16 it if Your Honor will keep it under file so the public
17 don't have access to it.

18 THE COURT: I don't mind doing that. They've
19 just got to have something to respond to, Mr. Starnes.
20 That's all. You have detailed a bunch of things here.
21 They just have to know what to respond to.

22 MR. STARNES: Okay.

23 THE COURT: One thing that is a copy, they've
24 got; and they gave me a copy of that. You have got four
25 other pages you said?

1 MR. STARNES: Yes, sir.

2 THE COURT: Officer, how about make copies.
3 Make a copy of that, one for the State and one for me;
4 okay? When we get that back, we will look at all this.

5 Is the State ready to respond to these?

6 MR. HUBBARD: Partially anyway, Your Honor. I
7 know last time when we talked about a lot of this stuff,
8 the emphasis was on notes.

9 THE COURT: Yes, sir.

10 MR. HUBBARD: I will pass up to Your Honor our
11 efforts in that regard.

12 (Hands to Court).

13 MR. HUBBARD: What is listed there, Your
14 Honor, is a memo from our investigator -- this is
15 in-house -- to Mr. Graham listing the names of the
16 investigators and officers, both present and former,
17 with the Sheriff's Department, and any notes they had.

18 These are our efforts. He asked about James
19 Harris, no notes.

20 THE COURT: Right.

21 MR. HUBBARD: Basically what we did is we got
22 Chief Kirshner over with the Sheriff's Department to get
23 together with his officers that are currently over
24 there. This is what he determined:

25 James E. Harris had no notes. Dennis Chapman

1 said any notes would be in the case file. There were no
2 notes floating around outside there. He had none on
3 him. Chris Lorick, Jay Phillips, and Duane Peake each
4 responded that they had no notes on this case. Darren
5 Amick noted that all notes are with the case file.

6 As to those employees who are no longer with
7 the Sheriff's Department -- Larry Harrison, former Chief
8 Lewis McCarty -- no notes. Jim Markley, Eddie Hite said
9 any notes would be in the case file. Amanda Simmons who
10 was referred to said she had no notes.

11 Finally, Your Honor, as to two people at the
12 very end, Jackie Brothers, she was with the Sheriff's
13 Department. She is now with West Columbia. She was in
14 charge of victims' files.

15 She said any victims' files would have been
16 with the Sheriff's Department. We haven't located her
17 victims' files. I will address all that in just a
18 minute.

19 The final person is Robbie Doray, Robert
20 Doray. He used to be with the Sheriff's Department. He
21 was released. Attached with this is a letter we sent to
22 him notifying him we needed to know whether he took
23 notes, where those notes are. We left the means for him
24 to get in touch with us. He has not responded.

25 As to all of these notes, Your Honor, we got

1 with Captain Amick and went through what notes we had
2 and were able to find.

3 They kind of fell in three categories. There
4 were notes that were taken in preparation of doing
5 reports, supplemental reports. The reports don't vary
6 at all from the notes.

7 Then there were notes taken in preparation for
8 trial where they had meetings with Solicitor Myers,
9 Deputy Solicitor Riddle, notes talking about what they
10 needed to get for trial.

11 The final notes, Your Honor, were notes taken
12 by officers or by people in our office concerning the
13 jury panel when we were trying to strike a jury last
14 time.

15 As to all of these, Your Honor, certainly as
16 to the ones concerning the jury panel and the ones in
17 trial preparation are clearly nondiscoverable. The ones
18 with the jury panel aren't even relevant anymore. We
19 are not dealing with that pool of people anymore.

20 The only ones that I guess would be of any
21 question would be notes made in preparation of case
22 reports. Some of these officers, particularly Darren
23 Amick, would write notes out. Those notes he would
24 almost transcribe verbatim into his typewritten
25 supplementals.

1 We went through these with Detective Amick as
2 late as yesterday. There is nothing there that would
3 fall under Rule 5 or Brady, nothing in the form of a
4 report there that is exculpatory. There is nothing
5 there that would be -- he would be able to use for
6 impeachment purposes with any witness.

7 Nonetheless, we went through them, Your Honor.
8 He has the supplementals, even though we could argue, I
9 think on solid ground, that a lot of the supplementals
10 aren't even discoverable because they are in preparation
11 for trial.

12 But nonetheless we provided them all of that
13 stuff anyway. So basically we are taking about notes
14 which in and of themselves clearly aren't discoverable,
15 unless there is something exculpatory and there is
16 something he can use to impeach one of our witnesses.

17 Right now, Your Honor, we are not seeing that
18 at all. We do recognize our duty as prosecutors that if
19 we find something, from now until the very trial date,
20 we have a duty to turn that over the minute we find it.
21 That's where we are on the notes, Your Honor.

22 A lot of this other stuff, Your Honor, a lot
23 of it doesn't even exist, stuff he is assuming that was
24 done by the Sheriff's Department, things that might have
25 been found.

1 I am dealing with a lot of maybes and ifs.
2 Obviously this is an investigation long before I was
3 ever involved in the case. We are trying to put it
4 together. A lot of the stuff he is requesting, there is
5 nothing to give him.

6 The only thing -- and I would argue that a lot
7 of the stuff that he is asking for isn't even
8 discoverable. I know he would like to have it, but
9 unless it falls under Rule 5 or under Brady, he is not
10 entitled to it.

11 We are going to spend more time looking for
12 stuff that might have been involved in the last trial,
13 as opposed to just saying: Look, let's follow the
14 rules, Rule 5 and Brady, and let's prepare for the trial
15 coming up. Solicitor, whatever is discoverable, you
16 have an obligation to provide it.

17 We will meet that, Your Honor. We will do our
18 best to see whatever we have, find whatever files might
19 be missing. But some of the stuff he has mentioned
20 would be stuff he can ask on cross: Well, what did you
21 find at this place?

22 If there are no notes, he can hit the officers
23 on that: Why didn't you take notes? But I can't create
24 what is not there. It's almost an impossible task that
25 we are being asked to do: Go back and find if a return

1 was made on something on a search warrant that might
2 have been taken on a certain date with officers who are
3 no longer employed by the Sheriff's Department.

4 Your Honor, if it's something that wasn't used
5 in the last trial, we are probably not going to be using
6 it in the trial coming up. Our case is pretty well
7 known to him. It should be.

8 But, again, we are trying to -- if we find
9 something new, we know we have got to give it to him,
10 certainly Rule 5 or Brady. We acknowledge that duty.
11 Your Honor, obviously none of us want to lose our
12 license over any trial.

13 I don't know how else to respond, Your Honor.
14 There's just so much out there he is asking for. I
15 don't even know where to begin.

16 THE COURT: I understand. Mr. Starnes.

17 MR. STARNES: Your Honor, basically what I
18 would like to do is preserve the record in this case in
19 the event --

20 THE COURT: No, sir, we are not preserving the
21 record today. We are getting this stuff to a
22 conclusion. We are going to get this thing ready for
23 trial, and we are going to get it concluded one way or
24 another.

25 If we need to do it by coming back another

1 day, we will do it another day, but on that day then we
2 are going to get it concluded. We have been preserving
3 the record and preserving the record and preserving the
4 record. At some point we have just got to get to
5 reaching a decision on it.

6 MR. STARNES: Detective Amick's report here
7 starts on January the 11th. There's his report. It's
8 ten pages of it. This report starts on January the
9 11th of 1996. It ends on January the 15th.

10 Detective Amick didn't stop investigating this
11 case four days after it was given to him. He
12 investigated this case all the way up until I was
13 arrested.

14 The notes and reports past January the
15 15th are missing. They are not there. He took notes
16 and he made reports. I know from independent
17 investigation that he interviewed witnesses after
18 January the 15th. It's not here, Your Honor.

19 Is it the State's position -- I would ask the
20 Court to inquire of the State -- is it their position
21 that Darren Amick quit investigating this case on
22 January the 15th, 1996?

23 THE COURT: My understanding of what he is
24 saying is there are no other notes than what they have
25 given you. If they say there are not notes, what can

1 happen is when Detective Amick testifies, you can ask
2 him.

3 If you have got something there that says he
4 didn't do it and you basically get him to admit that he
5 did take notes later, pounce on him in front of the
6 jury. You can go after him on that.

7 MR. HUBBARD: Your Honor, just to clarify,
8 particularly as to Darren Amick, he was a note taker;
9 but those notes were put into his reports.

10 THE COURT: Yes, sir.

11 MR. HUBBARD: A lot of what I think he is
12 looking for are interviews we sent him in preparation
13 for the trial itself.

14 THE COURT: Okay.

15 MR. HUBBARD: But he is certainly available.
16 Darren Amick is available if Mr. Starnes even wants to
17 talk to him. We will try to make witnesses available.
18 I can't compel him, but we'd certainly try to make him
19 available if we had to if Mr. Starnes wanted to ask him
20 face to face.

21 THE COURT: What about that?

22 MR. STARNES: That would be great if we can do
23 it on record, Your Honor.

24 THE COURT: No, you don't get to do
25 depositions in criminal cases, not like that. But you

1 can -- they are saying they will make him available. I
2 don't know what better they can do than that.

3 MR. STARNES: Right. My position is, Your
4 Honor, that the notes that he would have taken past
5 January 15, 1996, I understand might not come in if they
6 give them to me in the middle of trial.

7 But there might be notes there that are
8 exculpatory. This case was a drug deal that went bad.
9 I believe after January the 15th when they investigated
10 this case, they investigated drug use in this case.
11 It's mentioned in some of the documents. That's what is
12 missing.

13 If Detective Amick went out and he interviewed
14 drug dealers, took statements or took notes from drug
15 dealers that these individuals used drugs, I think I'm
16 entitled to that, Your Honor. I think I am clearly
17 entitled to it under Rule 5 and Brady because it's
18 exculpatory.

19 MR. HUBBARD: Nothing under Rule 5 makes notes
20 available to a defendant. Brady, only things that are
21 exculpatory. We sat down with Darren Amick as late as
22 yesterday going over his notes. Your Honor, we didn't
23 see anything.

24 Of course, our licenses are on the line. We
25 didn't see anything exculpatory, nothing that he could

1 use for impeachment purposes. We understand our duty
2 very well. None of us is going to risk our licenses on
3 Mr. Starnes or anybody else for that matter.

4 THE COURT: Here is what we will do. You have
5 these documents that Mr. Starnes has presented. He has
6 put them in writing.

7 MR. HUBBARD: Yes, sir.

8 THE COURT: What I want you to do,
9 Mr. Hubbard -- and I know it's going to take some time.

10 MR. HUBBARD: Yes, sir.

11 THE COURT: Is have someone respond to each
12 one in writing as to what your position on it is.

13 MR. HUBBARD: Yes, sir. we will do that.

14 THE COURT: When you've done that, get a copy
15 to Mr. Starnes and get a copy to me.

16 MR. HUBBARD: Yes, sir.

17 THE COURT: At that point I will make a ruling
18 on each one of them.

19 MR. HUBBARD: Yes, sir.

20 THE COURT: Mr. Starnes.

21 MR. STARNES: Yes, sir. Your Honor, so it's
22 the Court's position and your ruling that I cannot
23 subpoena and bring these investigators in and put them
24 on record, that Your Honor is not going to allow me to
25 do that?

1 THE COURT: Yes, sir, you can't do that.

2 There is nothing that allows you to do that.

3 MR. STARNES: I object to that, Your Honor. I
4 don't have a legal argument because I haven't had access
5 to a law library. I think under the confrontation
6 clause that I am entitled to that. I would like to
7 later -- I am not going to further argue it to upset you
8 or anything, but once --

9 THE COURT: You are not upsetting me.

10 MR. STARNES: -- I do the legal research, I
11 would just like to preserve it for the record. Because
12 I think if we get into another court, they may look at
13 this and say: He didn't do this and he didn't preserve
14 it. I just want to ask for it and give a legal argument
15 on it. I can't do that at this time.

16 THE COURT: I have no problem with that. I
17 don't mind you preserving -- when you say preserve the
18 record, I don't mind you preserving the record. But you
19 understand that part of preserving the record is that at
20 some point, we have to come to a conclusion and we have
21 to make a decision on it.

22 MR. STARNES: Yes, sir, I understand.

23 THE COURT: That's what I am trying to get to.
24 That's why I want the solicitor to respond to each of
25 these in writing, that you presented, in writing, get a

1 copy to you and a copy to me. Then I will make a
2 decision on it, okay?

3 MR. STARNES: Okay.

4 THE COURT: What's next?

5 MR. STARNES: Beg the Court's indulgence just
6 one minute.

7 THE COURT: Take your time.

8 (Pause).

9 MR. STARNES: Your Honor, the State would make
10 Detective Amick and maybe Detective McNair available to
11 me? Would they be willing to meet with me with my
12 investigator present? I'm a little hesitant about
13 meeting with these individuals without having somebody
14 there with me.

15 THE COURT: Mr. Hubbard, what about that?

16 MR. HUBBARD: I know Detective Amick still
17 works with the Sheriff's Department. I think we can
18 have him over here whenever. Carlisle McNair is no
19 longer employed by the Sheriff's Department. He is a
20 private investigator. All I can do is ask.

21 Obviously I can't compel him. I certainly
22 don't have any trouble or a problem asking him to appear
23 on a particular date that is convenient for Mr. Starnes
24 to go over whatever questions he has.

25 THE COURT: All right. What is next,

1 Mr. Starnes?

2 MR. STARNES: Your Honor, we took up the
3 matter about transcripts on September 3rd when we was
4 over in Richland County. The prior transcripts in this
5 case, would the State provide them to me? If not, I
6 would ask the Court for a funding order to get a court
7 reporter to transcribe the prior records.

8 THE COURT: Which ones are you talking about
9 now? Are you talking about the previous trial of the
10 case or previous hearings?

11 MR. STARNES: Our previous hearings from May
12 the 22nd, 2001, to today. I have got those dates, Your
13 Honor, but I didn't note all the court reporters. I
14 started noting the court reporter when I went pro se. I
15 didn't see in the file a note of the court reporters
16 that were there on those dates.

17 THE COURT: Solicitor, what is your position?

18 MR. HUBBARD: Your Honor, I don't believe we
19 have had anything transcribed, other than the prior
20 trial itself.

21 THE COURT: I will let you take that up. We
22 will take that up as a separate matter then,
23 Mr. Starnes, as a separate funding matter.

24 If we do, I will have to order whichever
25 court reporters are involved to give priority to those

1 in order to be ready for the trial in the case. Why
2 do you want transcripts of the previous hearings
3 though?

4 MR. STARNES: Well, I want to be sure I
5 preserved the record, Your Honor. I want to make sure
6 that the legal argument that I made on Feretta and the
7 assistance of standby counsel, I need to further argue
8 that because at the time I did it, I had counsel.

9 THE COURT: I'm not following you.

10 MR. STARNES: The argument that I made when we
11 were in the old courthouse when my attorneys were
12 present -- Mr. Nettles, I believe, was absent at one of
13 them.

14 THE COURT: Yes, sir.

15 MR. STARNES: I just want to make sure that I
16 made a good Feretta argument. I just want to look at
17 what I previously argued to make sure.

18 THE COURT: I think you did because you are
19 representing yourself. Obviously you got the result you
20 wanted out of it.

21 MR. STARNES: At the time when I made the
22 argument, I wasn't representing myself. At the time
23 that we had the argument on the trial and speedy trial
24 and those type motions --

25 THE COURT: Right.

1 MR. STARNES: -- I wasn't representing myself.
2 Those were done prior to March 11th. The March 11th
3 hearing is when I went pro se. We had a hearing on
4 August 27th and one on the 18th that Your Honor even
5 mentioned in your order when you signed the order
6 granting me pro se status.

7 THE COURT: Yes, sir. Well, I really am not
8 following you because the Feretta issue obviously
9 involves, as you know, a series of questions to
10 determine whether or not you can represent yourself.

11 After we went through that Feretta procedure,
12 you were allowed to represent yourself. I don't know
13 what else we can do beyond that.

14 MR. STARNES: So you are denying me the
15 transcripts?

16 THE COURT: I am trying to find out what you
17 want them for. You are saying you want them for the
18 Feretta procedure, right?

19 MR. STARNES: For that and to look back at
20 what I already argued because I didn't take notes of
21 everything that was done in the courtroom. I want a
22 copy of the record from what we did back.

23 THE COURT: You have a list of the dates of
24 the hearings?

25 MR. STARNES: Yes, sir, I do.

1 THE COURT: You have them written down?

2 MR. STARNES: Yes, sir.

3 THE COURT: Hand them up to me, okay?

4 MR. STARNES: There are some other issues on
5 here. I will need that back, Your Honor.

6 THE COURT: Can you make a copy of it,
7 officer. You knew that was coming, didn't you? Let me
8 take that under advisement. I might be able to do that.
9 That is something we don't normally do, Mr. Starnes. Go
10 ahead. What do you have next?

11 MR. STARNES: He has got my other half page of
12 notes, but I think one of the issues that we visited on
13 September the 3rd was the issue about the State exhibits
14 and the evidence in the case.

15 I wanted to review all the State exhibits that
16 they introduced at the trial. In addition, I would like
17 to review all the evidence that the State has.

18 THE COURT: You want to review all the
19 exhibits that they had in the first trial?

20 MR. STARNES: Right.

21 THE COURT: Why? What would that have to do
22 with this trial?

23 MR. STARNES: Trial preparation, and it would
24 aid me when I read the transcript. Because when I read
25 the transcript, the transcript doesn't pick up the

1 documents that was entered into the record. They were
2 certain things, certain phone records and stuff that
3 were entered. The record doesn't pick that up.

4 THE COURT: Solicitor, what is your position
5 on that?

6 MR. HUBBARD: I am just checking the status of
7 what we have.

8 MR. STARNES: It's my understanding, Your
9 Honor, that the Sheriff's Office has all that, that
10 Mr. Mason has all that.

11 I believe Ms. Frick said that it was released
12 in June of 2001, I believe, and that the exhibits are
13 over at the Sheriff's Office. I believe the evidence
14 and stuff is over there, too.

15 MR. HUBBARD: Your Honor, we don't have a
16 problem maybe setting up a date where he can go and
17 review whatever is over there.

18 Your Honor, also in addition, we will look to
19 see if we have anything ourselves. We don't have a
20 problem with him looking at that. We will do whatever
21 we need to do, Your Honor.

22 THE COURT: Easy enough. Well, it's not easy
23 because I'm sure it's going to be a lot of work to get
24 all that done. It makes it easy for me.

25 MR. STARNES: I have sent Mr. Tate letters on

1 this. I believe I have copied the State with them, and
2 I haven't got a response. So I am assuming that we are
3 going to do this within the next 30 days if we are going
4 to trial here soon.

5 THE COURT: Obviously, I will let y'all get
6 together as soon as you can. We have got a bunch of
7 other things to go through here.

8 MR. STARNES: Yes, sir.

9 THE COURT: I will let you both get together
10 as soon as you can.

11 MR. STARNES: I will need my investigator
12 there with me also.

13 THE COURT: That's fine.

14 MR. STARNES: The other matter, Your Honor, is
15 funding. This is a unique case. I'm not a bar member.
16 I spoke to Mr. Lee on the telephone before he left the
17 Office of Indigent Defense.

18 Mr. Lee had sent a letter to Your Honor, I
19 believe, and copied Mr. Nettles and Mr. Delgado with the
20 letter. I spoke to Mr. Nettles on the phone. He said
21 he didn't receive a copy of the letter.

22 I've got a copy in my file of how the funding
23 is going to be handled. Because it's Mr. Lee's position
24 the way that they want to handle the funding is to do it
25 the way they did it in Johnny Brewer.

1 In Brewer's case the funding was handled
2 through Mr. John Hendrix and another attorney. I don't
3 know -- because I have to pay the investigators -- how
4 that matter is going to be handled.

5 I spoke to Mr. Nettles on the phone about
6 this, and he sent me an e-mail saying that he was not
7 willing to handle the funding. If that's the way the
8 State wants to do it, I have another option.

9 A gentleman that is on the Office of Indigent
10 Defense board, Mr. Harry Dest, D-E-S-T. He is the
11 chairman. I believe he is located up in York County,
12 and he may be willing to do this. Basically I guess
13 what I'm asking is how you want the funds channeled.

14 THE COURT: Mr. Nettles, I understand, you
15 don't want to do that; is that right?

16 MR. NETTLES: That's correct.

17 THE COURT: I understand.

18 MR. NETTLES: In order to maintain the
19 continued employment of my paralegal, that was the
20 concession I had to make.

21 THE COURT: Mr. Delgado, what is your
22 position?

23 MR. DELGADO: I'm with Brother Nettles on
24 this.

25 THE COURT: You don't want to do it either.

1 MR. DELGADO: It's so complicated, Your Honor.
2 It's just something that we don't feel, under our
3 responsibility as now articulated by the Courts, that we
4 ought to have to do.

5 THE COURT: I understand. I realize,
6 Mr. Starnes, it appears to be a fairly simple thing. It
7 really does get a lot more complicated than just that.
8 Sometimes the checks from Indigent Defense don't come in
9 exactly the same amounts.

10 You have to piece them together and see what
11 goes to whom. It becomes a bit of a problem. It takes
12 a substantial amount of time. You say Harry Dest has
13 indicated he is willing to do it?

14 MR. STARNES: One moment, Your Honor.

15 (Pause).

16 MR. STARNES: Your Honor, my investigator
17 tried to call him a couple of times, and he's not been
18 able to get in touch with him. He feels that he will,
19 but that's not solid yet. In the event that he doesn't
20 do it, how are we going to do it?

21 THE COURT: The only other way to do it is
22 just to have Indigent Defense issue a check directly to
23 the individual person. That's the only thing I can
24 think of.

25 MR. STARNES: Mr. Lee's position is that they

1 don't do that. That is done through attorneys because
2 of the ethics rule on it.

3 THE COURT: I understand. It normally is.

4 MR. DELGADO: Your Honor, if I may interject.

5 THE COURT: Yes, sir.

6 MR. DELGADO: My understanding of the Office
7 of Indigent Defense is they are undergoing some changes
8 in their staffing.

9 THE COURT: They have.

10 MR. DELGADO: It might need to be something
11 that you present directly to them.

12 THE COURT: What I can probably do if I have
13 to, I imagine I can structure an order that they would
14 abide by, which basically would say that they are to
15 just take each one individually and say they are to pay
16 so and so amount to an individual person and just let
17 them pay it directly that way.

18 We will work out a way on doing that though,
19 Mr. Starnes. We won't keep you from getting the
20 funding.

21 MR. STARNES: Right. The problem is I have
22 issued subpoenas and some of the records I can't get
23 because the people, the institutions that I have issued
24 the subpoenas on, are concerned about getting the
25 funding.

1 THE COURT: Why don't you do this. Send me a
2 letter saying who they are. I will send them an order
3 ordering them to give you the information, whether they
4 have got funding or not. Then we will do an order
5 seeing that they get a check from Indigent Defense. Of
6 course, it's going to have to be something reasonable
7 also in terms of the case.

8 MR. STARNES: I understand, Your Honor.

9 THE COURT: What is next?

10 MR. STARNES: We are going to take up the
11 housing order on our next hearing?

12 THE COURT: Tell me what you are asking for.
13 Is that something you need to do ex parte or is it
14 something we can do now or do you want to do it in the
15 next hearing?

16 MR. STARNES: We are going to have the next
17 hearing in two weeks?

18 THE COURT: We will probably do one the week
19 after next. We will start having some regular hearings
20 so we can be getting ready for trial.

21 MR. STARNES: We will just take it up then. I
22 will send Mr. Tate a letter and see if they are going to
23 release some of this stuff to me. If they are not, then
24 we will have to take it up then.

25 THE COURT: Okay.

1 MR. STARNES: In the event they move me, I
2 have spoke to different facilities around the State.
3 Did you want me housed in the Eleventh Judicial Circuit
4 or possibly Richland County?

5 THE COURT: Are you making arrangements with
6 these different jails?

7 MR. STARNES: No, sir, I haven't. I am just
8 doing my homework ahead of time, Your Honor, in case we
9 get into that situation.

10 THE COURT: I was going to say, I would have
11 been surprised because I don't think they take prisoners
12 by request.

13 MR. STARNES: No, no, sir.

14 THE COURT: Mr. Tate, do you want to comment
15 on that?

16 MR. TATE: Your Honor, generally in a
17 safekeeping situation, the Governor of the State of
18 South Carolina's Office makes the decision. If we
19 arrange it through another facility, that is purely an
20 executive function.

21 THE COURT: Right.

22 MR. STARNES: Mr. Tate had brought up the
23 issue about me being housed. He said he had no problem
24 giving me the information, but I could be housed in a
25 different county jail -- Calhoun County, Orangeburg, and

1 I think he named a couple of other counties.

2 THE COURT: Right. There is also S.C.D.C. if
3 necessary. I think the Governor's Office would make
4 that decision. That's correct.

5 MR. STARNES: Beg the Court's indulgence.

6 THE COURT: That may be some of the best
7 advice you have gotten.

8 MR. NETTLES: I've been to Orangeburg. I
9 don't want to go back.

10 MR. STARNES: The reason that I was calling, I
11 didn't know if I was going to be moved, if Mr. Tate had
12 a position on it. Because if he didn't, then I was
13 going to try to go somewhere that would be economical
14 for the officers to come pick me up.

15 I know Richland County is close and, Your
16 Honor, you are over there quite often hearing cases over
17 there. It would be more economical for the Court to go
18 over there and pick me up.

19 THE COURT: I don't have a problem. I think
20 Mr. Tate is right. I think the Governor's Office makes
21 the decision on it. I guess it's who gets the least mad
22 at it when they send somebody over.

23 MR. STARNES: I don't want the Governor mad at
24 me. I got enough people mad me at. I don't want the
25 Governor mad at me.

1 THE COURT: I don't think I make that decision
2 actually.

3 MR. TATE: Thank you, Your Honor. I will
4 speak with my client regarding the housing issue.

5 THE COURT: All right. We will take that up
6 at the next hearing, Mr. Starnes.

7 MR. STARNES: Thank you.

8 THE COURT: What else do you have?

9 MR. STARNES: I have got two other motions. I
10 don't know if Your Honor would want to hear them because
11 it's kind of just preserving the record. It's a motion
12 for bond.

13 THE COURT: I don't mind you doing something
14 to preserve the record.

15 MR. STARNES: Okay. This is a motion for
16 bond.

17 THE COURT: Again, remember, I don't have a
18 problem with it, never have a problem with you
19 preserving the record. But the problem is I don't want
20 to preserve the record just to say there is a record and
21 then keep it open.

22 What I want to do is make a decision on it
23 when we do it. If preserving the record involves making
24 a decision, I'm fine. Go ahead.

25 MR. STARNES: Kind of bear with me.

1 THE COURT: No problem.

2 MR. STARNES: This is my first day in the pool
3 hall.

4 THE COURT: If that is something, if you'd
5 rather not read all that and you want to give it to the
6 court reporter, you can do that if you want to make it
7 as an exhibit. But if want to read it for the record,
8 you can do that.

9 MR. STARNES: It's a motion for bond, Your
10 Honor.

11 THE COURT: Just read it slowly now so the
12 court reporter can keep up with you.

13 MR. STARNES: I make this motion pursuant to
14 South Carolina Constitution, Article 1, Section 3, 14
15 and 15, in addition to the U.S. Constitution, Fifth
16 Sixth, Eighth, and Fourteenth Amendment.

17 I would move the Honorable Court to grant the
18 Defendant bond in this case. In doing so, on May 8,
19 2000, the South Carolina Supreme Court reversed this
20 case as Your Honor is aware of.

21 On May 22, 2001, a bond hearing was held for
22 the Defendant in Richland County. The State was
23 represented by Mr. Donald Myers. At the May 22, 2001,
24 hearing, Mr. Myers on record advised the Court that he
25 was ready to retry the Defendant any time.

1 THE COURT: Talk a little bit slower.

2 MR. STARNES: The Court denied the Defendant a
3 bond. On March 11, 2004, the Defendant exercised his
4 right to proceed pro se. The Defendant has in writing
5 and on record made several pleas to this Court for
6 legal assistance pursuant to Lewis versus Casey, 518
7 U.S. 343.

8 In addition, the Defendant's motion for
9 funding for legal assistance in the past have been
10 denied or have been unanswered. The Defendant is
11 without legal assistance whatsoever.

12 The Defendant's incarceration pretrial has
13 impaired the Defendant his constitutional right to
14 prepare for trial. The denial of legal assistance has
15 impaired the Defendant of his constitutional right to
16 proceed for trial.

17 The State's unjust delay has impaired the
18 Defendant of his constitutional right to prepare for
19 trial. Wherefor, I would move for this Court to grant
20 the Defendant bond.

21 Citing the case of State versus Hill, I
22 believe there's two things that the Court rules on, and
23 that's flight risk and danger to the community. I was
24 arrested on May 27, 1996, Your Honor.

25 This homicide happened on January the 8th of

1 1996. Certainly if I was going to run at any time or
2 flight, take off running, I would have did so then.

3 I don't have any prior criminal convictions
4 for violent crimes, and I don't feel that I'm a danger
5 to the community. Anyway, I wanted to preserve the
6 record on the bond motion and get your ruling from the
7 bench, Your Honor.

8 THE COURT: I note that for the record.
9 Again, I would have to deny the motion for bond.

10 MR. STARNES: Thank you, Your Honor, for
11 hearing it.

12 THE COURT: Does the State want to make any
13 comment on that?

14 MR. HUBBARD: No, sir, Your Honor.

15 THE COURT: Go ahead.

16 MR. STARNES: The second motion is a writ of
17 habeas corpus. On May 27, 1996, the Defendant was
18 arrested in Lexington County, South Carolina and charged
19 with two counts of murder.

20 Eleven months later on April 25, 1997, the
21 Defendant was sentenced to die on both murder charges.
22 A direct appeal was taken and heard in the South
23 Carolina Supreme Court.

24 On May 8, 2000, that Court reversed both
25 convictions and sentences. The Defendant has been held

1 without bail for nearly five years since this case was
2 overturned.

3 On August 18, 2003, the Defendant on record,
4 among other things, asserted his constitutional right to
5 a speedy trial. In addition, the defense renewed his
6 request for the State to provide all discovery material.

7 The State has continued to withhold discovery
8 material and refuses to move forward on a trial date,
9 notwithstanding the Defendant's plea on record and in
10 writing.

11 The Defendant is under restraint under an
12 indictment for two counts of murder and is housed in the
13 Lexington County jail. The State has gave no reason for
14 withholding evidence and not retrying the Defendant.

15 The Defendant has been incarcerated for 55
16 months waiting for a retrial. The Defendant has clearly
17 asserted his constitutional rights on all of the above.

18 A speedy trial is part of the due process of
19 law to which every person accused of a crime is entitled
20 to under South Carolina Constitution, Article 19 and 14
21 and under the Fourteenth Amendment to the Federal
22 Constitution, Wheeler versus State, 147 S.E.2d 627.

23 In addition, State versus Roberson, 518 S.E.2d
24 269, the State has on record misrepresented to the Court
25 relating to discovery and trial.

1 On May 22, 2001, Mr. Myers stated on record
2 before Your Honor that he was ready to retry the
3 Defendant any time. No trial date has been set.

4 On September 3rd, 2004, Mr. Rick Hubbard
5 stated he had no problem protecting the Defendant's
6 constitutional rights in the disclosure process. The
7 State continues to withhold discovery material.

8 Wherefor, I would respectfully move this
9 Honorable Court to issue a writ of habeas corpus and
10 order the Defendant released from custody until the
11 State retries the Defendant.

12 The Defendant further moves for an order
13 compelling the State to comply with the disclosure rule.

14 THE COURT: I note that for the record. I
15 would also deny that motion, the motion for habeas,
16 Mr. Starnes.

17 Again, did the State wish to comment on that?

18 MR. HUBBARD: No, sir, Your Honor.

19 MR. STARNES: May I ask the Court to inquire
20 to the State why they have taken so long to retry me. I
21 think under Roberson that that has to be on record.

22 MR. HUBBARD: Your Honor, I actually object to
23 the question. We have been going through this process
24 just like him. If anything is slowing us down, it's the
25 man on the other side of the aisle.

1 We are digging up stuff that occurred in the
2 last trial rather than preparing for trial on this one.
3 As Mr. Starnes know, he is not only the person charged
4 with capital murder, much less all the other crimes that
5 we are having to deal with, all the other defendants.

6 But we are here today to determine a trial
7 date. So I think all these issues he is asking for or
8 talking about are going to be resolved today before we
9 leave with a trial date.

10 THE COURT: Anything else, Ms. Starnes, on
11 that?

12 MR. STARNES: I'd just like to cite a couple
13 more cases.

14 THE COURT: Okay.

15 MR. STARNES: State versus Brazell, 480 S.E.2d
16 at page 70, where the Court noted that a three year and
17 five month delay was sufficient to trigger a review.

18 State versus Waites, 240 S.E.2d 651. That's a
19 1978 opinion, a two year and four month delay in
20 prosecution was sufficient to trigger a speedy trial
21 analysis.

22 State versus Smith, 415 S.E.2d 411, a three
23 year delay was sufficient to trigger a speedy trial
24 review.

25 Prior to me moving pro se and relieving my

1 attorneys, the State did nothing. They sat on the
2 discovery request for three years. I have been asking
3 for a trial date, and that's why I don't have my two
4 attorneys now.

5 We went back and forth over this. We had
6 heated arguments at the jail over it. I asked them to
7 get the State to please release the discovery material
8 and schedule a hearing so we could be heard to get this
9 stuff and so we could move forward on a trial date.

10 They didn't push the State to do anything.
11 That's why I am pro se. That's why I now ask why the
12 State has taken so long.

13 THE COURT: Again, I note the motion for the
14 record. I have denied the motion.

15 MR. STARNES: Thank you, Your Honor.

16 THE COURT: Any others, Mr. Starnes?

17 MR. STARNES: I believe that covers it, Your
18 Honor. So we are going to reconvene and come back in
19 two weeks?

20 THE COURT: The week after next is, I believe,
21 the week of the 7th. Solicitor, what if we set it on
22 Friday morning of that week? How would that work with
23 your schedule?

24 MR. HUBBARD: What date is that, Your Honor?

25 THE COURT: It would be the week of

1 February 7th. I guess that day would be February 11.

2 MR. HUBBARD: I know on the 10th we have our
3 first appearance under this new system that we are going
4 to.

5 THE COURT: Right.

6 MR. HUBBARD: Your Honor, we will certainly do
7 the best we can.

8 THE COURT: Would it better to do it the
9 following week?

10 MR. HUBBARD: That might be good. I know
11 that's a court week. We will definitely pull out of
12 whatever we are doing and try to get up here if that's
13 what we decide.

14 THE COURT: Mr. Delgado.

15 MR. NETTLES: Mr. Delgado had a family court
16 hearing at noon.

17 MR. DELGADO: I'm here.

18 (Pause).

19 MR. DELGADO: Your Honor, in speaking with
20 Mr. Nettles, he starts a death trial the 7th.

21 MR. NETTLES: Correct.

22 MR. DELGADO: The week of the 14th, except for
23 Friday of that week, I will change everything around.

24 THE COURT: Friday is the only bad day for
25 you?

1 MR. DELGADO: Yes, sir.

2 THE COURT: What about Thursday of that week?

3 MR. HUBBARD: We can do that, Your Honor.

4 THE COURT: That is Thursday the 17th, I
5 guess. Is that all right?

6 Mr. Starnes, what about that?

7 MR. STARNES: That will be fine, Your Honor.
8 I don't object if they are absent. If that's going to
9 hinder us having the hearing, they last two hearings
10 we've had they have been absent.

11 THE COURT: You will waive your standby
12 attorneys for that hearing?

13 MR. STARNES: That will be fine.

14 MR. HUBBARD: You just want to do it on the
15 Friday then or is Thursday better for Your Honor?

16 THE COURT: Mr. Delgado indicated Friday was a
17 bad day for him, that any other day he could work with
18 it except Friday.

19 MR. HUBBARD: Will that be at 9:30, Your
20 Honor?

21 THE COURT: Yes, sir. Let's set it on
22 Thursday, the 17th, at 9:30. How about that?

23 MR. STARNES: I'm sorry?

24 THE COURT: Thursday, January 17th -- I mean,
25 February 17th at 9:30.

1 MR. STARNES: On the speedy trial motion, Your
2 Honor, you mentioned an April date.

3 THE COURT: Yes, sir.

4 MR. STARNES: Is there any way we can do it
5 within six to seven months from today or from six months
6 from the time they release -- that I get all this
7 discovery?

8 THE COURT: Are you abandoning the speedy
9 trial motion?

10 MR. STARNES: No, sir, I am not abandoning the
11 speedy trial. In other words, I don't want -- I don't
12 know that I will be prepared. It will take me at least
13 six months to prepare this case because I don't have
14 anything.

15 I filed the discovery requests to try to take
16 care of this on March the 24th of last year. They have
17 held this stuff for so long. Now they are going to give
18 it to me and say: He has got it. Let's go to trial.

19 I need time to prepare. If they would have
20 give this stuff to me in March when I asked for it, I
21 would have no problems going in April. That is just
22 kind of rushing it.

23 THE COURT: Let me clarify if I might. My
24 understanding is that a great deal of this stuff, maybe
25 even most of this stuff, is actually stuff that they

1 gave to the defense after the first trial. But somehow
2 you are saying your lawyers just didn't give to you when
3 you took over the trial. Is that not correct?

4 MR. STARNES: No, sir. Mr. Salley had the
5 file.

6 THE COURT: Right.

7 MR. STARNES: When Mr. Nettles took over and
8 Mr. Delgado, it was absent then. The stuff was missing
9 before I got it. That supplemental discovery request
10 they filled on the 21st of August, 2001, they let the
11 State and the Court be aware that the discovery was
12 missing then. All this stuff was missing before I got
13 it.

14 THE COURT: Yes, sir.

15 MR. STARNES: I don't know if Mr. Salley lost
16 it. He says possibly Mr. Banks lost it. I know
17 Mr. Banks is suspended and doesn't practice anymore.

18 THE COURT: My point is that you are saying
19 that you now are going to need another six months or
20 something, and you are saying it's because the State is
21 just now giving you the stuff?

22 My point and my understanding is that it's not
23 the State's fault that the stuff was missing. They are
24 basically just giving you stuff in essence a second
25 time. Is that not right?

1 MR. STARNES: I understand that.

2 THE COURT: I'm not worried about who is at
3 fault. I am just talking about in terms of the actual
4 trial date is all. So you want to put it off then?

5 MR. STARNES: I would like -- if they give me
6 all this stuff in two weeks, I would like a trial date
7 in six months.

8 THE COURT: That wouldn't be until what,
9 August or September, October?

10 MR. STARNES: October.

11 THE COURT: So you are not -- you don't want a
12 speedy trial?

13 MR. STARNES: Yes, sir, I do want a speedy
14 trial. I want one in six months. I just want time to
15 prepare.

16 MR. HUBBARD: Your Honor, I don't mean to
17 interject.

18 THE COURT: Yes.

19 MR. HUBBARD: Obviously he is trying to hold
20 us accountable for what he doesn't have, even though he
21 acknowledges at one time we provided it.

22 He wants to hold us accountable for a speedy
23 trial and yet slow the process down. We are ready to go
24 mid April or in May if he really wants to speed things
25 up.

1 Obviously he is asking for a continuance. If
2 he wants to renew a speedy trial motion after however
3 many months, that's fine; but it sounds like he is
4 taking it off the table now.

5 He certainly shouldn't be able to hold our
6 feet to the fire and say: I want a speedy trial, but at
7 the same time I am not going to let you try it in a
8 speedy fashion and then come back here and say yet again
9 we violated his rights. I mean, he's talking out of
10 both sides of his mouth.

11 MR. STARNES: He is holding me responsible for
12 the file getting missing. It's not my fault either. I
13 can't help that Mr. Salley or Mr. Banks lost the file.
14 The State wants to hold me accountable for that, and
15 that's not fair to me.

16 MR. HUBBARD: It's not our fault that his
17 attorneys lost his file.

18 THE COURT: I guess it's nobody's fault in
19 this room. At lease we can agree on that.

20 MR. NETTLES: That's why I stayed.

21 THE COURT: Including Mr. Nettles.

22 MR. NETTLES: I think it's Mr. Delgado's
23 fault.

24 THE COURT: We will wait until he leaves and
25 then blame him. I understand your point on it,

1 Mr. Starnes. All I'm saying is I guess my concern is
2 you are saying now you don't want the speedy trial
3 because it's the State's fault you didn't get this, but
4 this was stuff that they had already given in the first
5 place.

6 I can understand where what has happened is to
7 get a lot of stuff to you a second time, they have had
8 to send staff people back through their whole file to
9 find it.

10 I think what I am hearing them complain about
11 is they can't prepare for the case either because they
12 are having to respond to all this. I gather -- are you
13 objecting to the April time? I gather you are not
14 objecting.

15 MR. HUBBARD: Actually I guess what I would
16 ask for right now is why don't we set it for either mid
17 April or May. If he needs to make a continuance motion
18 again at that time, that's fine. But let's go ahead and
19 bear down and see what we can do and get ready for trial
20 in the interim and go ahead and set that target date.

21 The reason why I picked those dates is one of
22 our witnesses that I'm sure Mr. Starnes will want to
23 talk to or cross examine is the pathologist. I know
24 from probably about April 11th on through May, he is
25 available.

1 He was kind enough to send us a list when he
2 is not available. That's most of June and a good chunk
3 of July and parts of March and April. So I am thinking
4 either late April or any time in May.

5 If Your Honor wants to go ahead and set a date
6 and see if we can be ready. If we can't be, let's see
7 if Mr. Starnes -- if he needs more time, certainly he
8 can request that of the Court. Then he might be able to
9 articulate exactly why he needs a continuance.

10 THE COURT: There are a couple of things that
11 are going to be a little bit of a problem for me in
12 terms of scheduling early May. Later in May we might do
13 it. What about that? What about May the 30th? That is
14 even later on. What about that?

15 MR. HUBBARD: May the 30th?

16 THE COURT: The 30th.

17 MR. STARNES: Your Honor, I will try to be
18 ready, but I don't think I will be ready by then. They
19 have waited five years to get to this point. Why would
20 they complain or not want to go in six months? Why rush
21 me in a couple of months? Why not give me six months?

22 They have held me for five years. The Court
23 has not granted me bond. I have been arguing for this
24 stuff. I've had it with the attorneys. That's why they
25 are gone. I am pro se. This is a unique case.

1 I don't have the legal knowledge and
2 experience that they have. They are going to have four
3 attorneys sitting over there trying this case. I am
4 doing this by myself. I don't think that's too much to
5 ask for, Your Honor, for me to do it in six months.

6 THE COURT: Let me clarify now. You are doing
7 it by yourself because you wanted to do it by yourself.

8 MR. STARNES: I understand.

9 THE COURT: And you are doing it against my
10 advice. I am not your advisor and you don't have to
11 take my advice.

12 MR. STARNES: I understand Feretta.

13 THE COURT: As you recall, I thoroughly
14 advised you not to do this.

15 MR. STARNES: Right.

16 THE COURT: And went over in great painstaking
17 detail with you what the situation was. So you
18 understand that's the way it worked out. Because you
19 had what I believe are, if not the two best, two of the
20 best capital defense lawyers in the State.

21 I don't pick on that, you understand. I am
22 not giving you a hard time. I'm just saying that it's
23 not fair for you to say that: Well, it's all them
24 against you because that is what you chose to do.

25 As far as the other, the delays again,

1 everybody has had something to do with the delay. I
2 don't think any one party in all this is particularly
3 responsible for the delay. I'm not going to try to pin
4 a blame on anybody as such.

5 But I don't think it's such a clear-cut thing
6 that you can say that they kept you there for five years
7 waiting for trial. Everybody has had a little bit to do
8 with it.

9 What I will do is this. I will set a trial
10 date for May 30th. Now, if something comes up and it
11 gets to be a problem, I will give you the opportunity
12 later on to make a motion to continue it.

13 MR. STARNES: Right.

14 THE COURT: But as I understand, the only
15 thing in play at this point that is new, that has not
16 been there before, are these basically 275 pages, and
17 these issues that you brought up today; is that right?

18 MR. STARNES: Correct.

19 THE COURT: Okay.

20 MR. HUBBARD: Your Honor, the only question I
21 have about May 30th, Dr. Sexton comes back -- that will
22 give him two weeks. He will be coming back the tale end
23 of that second week. I know he is generally the last
24 witness in any penalty phase.

25 That's the only thing about the 30th. If we

1 had -- and I don't know what Your Honor has on his
2 schedule. If Your Honor could go back to the 23rd,
3 May 23rd, that might give us a little bit more of a
4 window. Again, I don't know what Your Honor has that
5 month.

6 THE COURT: The 23rd is the week that I am
7 scheduled to be in York. My travel out of the circuit
8 is kind of difficult to rearrange. We can rearrange
9 travel in the circuit a little bit, but outside of the
10 circuit is a little bit difficult to rearrange.

11 It appears the way they have got my schedule
12 set is that any time during that, there are not two
13 weeks that I am not able to really totally be in the
14 circuit.

15 Those, in fact, are the only two weeks that I
16 am in the county consecutively. We can probably do it
17 the week of June 6th, which means we have got to
18 readjust McCormick for the 13th, but I can probably do
19 that easier than I can York.

20 MR. HUBBARD: Again, we have Dr. Sexton and I
21 don't know exactly what he has got. I just know he has
22 told us when he is unavailable. We did ask because he
23 is often gone all over the place. I have no idea what
24 he is doing.

25 I know from June 9th to the 26th, he says he

1 is out of pocket. Then July 1st through the 17th, he is
2 out of pocket. It sounds like mid April through May, he
3 is fine.

4 I have no idea what is good after July 17th.
5 He didn't put anything. Maybe his calendar hasn't been
6 formulated up to that point.

7 MR. STARNES: Your Honor?

8 THE COURT: Yes, sir.

9 MR. STARNES: Is it possible we could do it
10 after July or the end of July? That will give me two
11 extra months. I think I can be prepared by then. Can
12 we come to an agreement on that?

13 THE COURT: What about in the month of July?

14 MR. HUBBARD: That will be fine, Your Honor.
15 Again, I am taking that that is not holding us to any
16 speedy trial motion then. Obviously we are stating we
17 are ready from mid April.

18 THE COURT: Right. I think the six months
19 schedule for next year is not in play or for the next
20 six months is not in place yet. I can notify Court
21 Administration of that, I think.

22 You say the doctor is not available through
23 the 17th; is that correct?

24 MR. HUBBARD: Yes, sir. We would like a
25 little time, whenever he gets back, to sit down and say:

1 What do we have? And then go over what we have.

2 THE COURT: Well now, he has testified before;
3 didn't he?

4 MR. HUBBARD: Yes, sir. It shouldn't take us
5 long.

6 THE COURT: Right.

7 MR. HUBBARD: But I'd hate for him to come in
8 from a trip and put him on the stand without having a
9 chance to even talk to him. It won't take us long, Your
10 Honor.

11 THE COURT: What is the Monday after that? Is
12 the 17th a Monday?

13 MR. HUBBARD: I was trying to look and see.
14 The 18th is a Monday, Your Honor.

15 THE COURT: What about July 18th?

16 MR. STARNES: That will be fine.

17 MR. HUBBARD: We can do that.

18 THE COURT: That gives you five of those
19 months.

20 MR. STARNES: Yes, sir.

21 THE COURT: Yes, sir, Mr. Starnes.

22 MR. STARNES: Your Honor, what I have read in
23 the law library while I was at Leiber, I don't know that
24 the Supreme Court has defined a certain time line for a
25 speedy trial.

1 If the State can cite a case that they can
2 tell me that defines how many days a speedy trial is,
3 they have left that open to the trial courts. I don't
4 think there is a case that they've actually defined a
5 speedy trial.

6 I'm sure Your Honor gets letters from inmates
7 at the jail all the time saying they are supposed to get
8 180 days. I don't know of a case that --

9 THE COURT: A capital case is not included in
10 that 180 day rule though. But at the same time I think
11 this will avoid everybody's problem if we go July 18th
12 and just start there, plan to start on that date.

13 MR. STARNES: Yes, sir.

14 THE COURT: We will also be back together the
15 17th, I think. From this point, from today's point,
16 that will give you really just about almost six months,
17 Mr. Starnes.

18 MR. STARNES: Yes, sir.

19 THE COURT: Okay.

20 MR. STARNES: I appreciate the Court's time
21 for hearing me today. See you folks the week after
22 next.

23 THE COURT: Madame Court Reporter, seal this
24 as a Court's exhibit, please.

25 (Court's Exhibit Number 1 is marked for

1 purposes of the record).

2 (Whereupon the proceedings were concluded for
3 January 28, 2005).

4 (The following proceedings were reported on
5 March 23, 2005)

6 THE COURT: This is in the matter of the State
7 versus Norman Starnes. Present is Mr. Starnes, pro se,
8 with Mr. Delgado, who is standby counsel, and the
9 Solicitor with accompanying staff on behalf of the
10 State. As I recall, we have some motions to be heard.
11 There are some related to discovery.

12 Mr. Myers, have y'all been able to make any
13 progress with some of the discovery? I know there were
14 some things apparently that Mr. Starnes and his
15 attorneys actually received, as I recall, during the
16 first trial; and for lack of a better word, they just
17 got lost.

18 I think you have given him or your folks have
19 given him, as I recall, a rather substantial amount of
20 material. Was there supposed to be anymore or have we
21 pretty well covered all that?

22 SOLICITOR MYERS: There is some more stuff
23 that Shawn is familiar with.

24 THE COURT: Okay. Mr. Graham.

25 MR. GRAHAM: Thank you, Your Honor. If I can

1 approach, Your Honor.

2 THE COURT: Yes, sir.

3 (Hands to Court).

4 MR. GRAHAM: You asked for a written request.
5 Mr. Starnes had filed two documents, missing discovery
6 material and another one called supplemental discovery
7 request. That's our written response to that.

8 Accompanying that, Your Honor, there are 517
9 pages, some of which he has received before, some of
10 which are in evidence at the Sheriff's Department that
11 he specifically asked for copies of. There are also
12 photographs and a videotape which he had asked for.

13 THE COURT: Okay.

14 MR. GRAHAM: That should take care of those
15 two discovery documents that he requested. Also, Your
16 Honor, it's my understanding that he had requested, when
17 he was viewing the evidence, I believe some of the
18 exhibits were missing that we had introduced during the
19 first trial when he was over at the Sheriff's Department
20 viewing the items that they are holding onto. Here is
21 our letter in response to that, Your Honor.

22 (Hands to Court and Mr. Starnes).

23 MR. GRAHAM: That, Your Honor, is containing
24 two videotapes, which was State's Exhibit Number 32,
25 which was an interview with Jody Fogle; and State's

1 Exhibit 59 from the first trial, which is an interview
2 with Gwen Ott. There was also photographs that were
3 State's Exhibit 26 and State's Exhibits 36 through 41.

4 In addition, Your Honor, there are three items
5 that were State's exhibits in the first trial that we
6 are unable to locate, either in our possession or in the
7 possession of the Sheriff's Department, which were
8 State's Exhibit Number 20, which is a diagram; State's
9 Exhibit Number 66, which is a photograph; and State's
10 Exhibit 100, which is a photograph.

11 Of course, we will continue to look for those
12 items, Your Honor. If and when we find those items, we
13 will provide a copy of those to Mr. Starnes.

14 The other additional matter that you wanted us
15 to address, Your Honor, was Mr. Starnes had made a list
16 of numerous documents that he stated that were either
17 missing or that he couldn't read.

18 We have attempted to make him a better copy of
19 all of those documents. The yellow sticky notes are the
20 tabs that relate to Mr. Starnes' request on that. We
21 have the original documents with us here in court if he
22 wants to look at them today.

23 THE COURT: Okay. Anything else?

24 MR. GRAHAM: I think as far as discovery, Your
25 Honor, that's all that we are aware of.

1 THE COURT: Mr. Starnes, do you acknowledge
2 receipt of those? It's a pretty good many documents
3 given to you there.

4 MR. STARNES: Yes, sir. If I could, I would
5 like to -- I don't want to tie the Court's time up; but
6 if I could, if they could put me in a cell or something
7 so I can review this just to make sure it's legible.

8 What I don't want to do is take this stuff
9 back to the jail, look at it, and find something
10 illegible; and then the State say that they give it to
11 me.

12 I don't have any discovery with me. I didn't
13 bring any from the jail over here. Before I leave here,
14 I would just like to make sure the stuff that they are
15 giving me is legible so I can see it and it's there.

16 THE COURT: Well, let's go on with the
17 hearing, and we might give you a chance to do that
18 afterward.

19 MR. STARNES: Your Honor, is it possible I can
20 get these taken off so I can write?

21 THE COURT: Yes, sir. Deputies, how about go
22 ahead and take them off of him.

23 (Pause).

24 THE COURT: What else do you have,
25 Mr. Starnes?

1 MR. STARNES: Well, Your Honor, I'm not really
2 sure what all he has given me. The stuff that we went
3 over at our last hearing on the copies and stuff that
4 Your Honor has and the State has, all of this stuff is
5 provided today? That is what Mr. Graham is telling me?

6 THE COURT: Yes. I think he is telling you
7 they have provided as much as they can, as much as they
8 can find. Apparently the copies that you were concerned
9 as to their, I guess their lightness for lack of a
10 better word, apparently have been improved to help you
11 be able to read them.

12 MR. STARNES: The bank and financial card
13 information, all that is in there?

14 THE COURT: I don't know. We are not going to
15 go through it. When you get a chance, I will let you go
16 through it. You can send me a letter and tell me what
17 you are missing, okay?

18 We are not going to be able to go through
19 this, just picking pieces apart right now. If you will
20 do that and send me a letter telling me what you feel
21 like you are missing, okay?

22 MR. STARNES: Okay. Your Honor, could I get
23 the State's position on the Defendant subpoenaing
24 documents from the State Law Enforcement Division and
25 from Dr. Sexton. Some of that stuff wasn't in there.

1 There's photographs that Dr. Sexton has, some
2 audiotapes and stuff like that. The State's position
3 on that?

4 MR. GRAHAM: Your Honor, a lot of those
5 documents are contained in there. He needs to look
6 through it and read, but we have requested -- the
7 photographs that are there, we requested the Sheriff's
8 Department and requested S.L.E.D. to give us a copy of
9 every photograph related to this case. We gave him over
10 there what we have got.

11 As far as the S.L.E.D. file, we requested
12 S.L.E.D. to give us every document they have related to
13 this case. What they gave us, we have turned over to
14 Mr. Starnes. We requested the Coroner's Office to give
15 us everything they had. What they gave us, we have
16 turned over.

17 As far as Dr. Sexton's office, Dr. Sexton has
18 provided -- his office has provided basically two bills.
19 He said: If you want the information, you need to get
20 funding and you need to pay us. Once you do that, we
21 will make a copy. Because Mr. Starnes is requesting
22 copies of X-rays and a lot of other documents that they
23 just can't provide for free. So that information is
24 addressed in there as well.

25 THE COURT: All right.

1 MR. STARNES: So it's my understanding that
2 the State's position is if I subpoena this stuff, they
3 are not going to fight it?

4 THE COURT: Is that what you are saying,
5 Mr. Graham?

6 MR. GRAHAM: Not from Dr. Sexton, Your Honor.

7 MR. STARNES: From S.L.E.D. or any other State
8 agencies?

9 MR. GRAHAM: Your Honor, we have given him
10 everything that S.L.E.D. says they have.

11 THE COURT: I would say just try the subpoena
12 with S.L.E.D. and see what they say. If there is
13 something they have already turned over to the
14 Solicitor, then they are not going to be required to
15 give it to you again.

16 MR. STARNES: Right, I understand that. Your
17 Honor, I would ask the State's position or ask -- I
18 guess it's kind of a judicial question. Is Mr. Charles
19 D. Riddle going to be prosecuting for the State?

20 THE COURT: I'm sorry?

21 MR. STARNES: Is Mr. Dayton Riddle going to be
22 prosecuting for the State?

23 THE COURT: I'm not going to ask them that.
24 That is the Solicitor's duty to decide who does that.
25 That is something the Court doesn't need to be getting

1 into that. I'm not going to do that.

2 MR. STARNES: I have a motion if Your Honor
3 will allow me to be heard on it?

4 THE COURT: Yes, sir.

5 MR. STARNES: It's a motion for change of
6 prosecution and prosecutorial misconduct. If I could,
7 Your Honor, possibly have a hearing on that.

8 THE COURT: Let's do that now. Go ahead.

9 MR. STARNES: I am not prepared to do it now
10 because I don't have everything.

11 THE COURT: You can make the motion later on
12 if you want to.

13 MR. STARNES: Right. I had no idea I was
14 coming over here today. They woke me up 6:30 and said:
15 You are going to court. So I am kind of not really
16 prepared today.

17 THE COURT: As you know, from what I have
18 understood, that has always been the policy of the
19 Sheriff's Department. The Department of Corrections has
20 the same policy, too, for security purposes.

21 MR. STARNES: Yes, sir.

22 THE COURT: They don't try to give a lot of
23 notice.

24 MR. STARNES: They have always notified me.
25 Every time I've been notified. Well, the last time the

1 captain come to my cell and explained that Mr. Tate had
2 an e-mail from the Solicitor's Office so I could be
3 prepared and have everything so it wouldn't delay them.

4 I have never given them, in transportation,
5 I've never given them any problems or anything like
6 that. Beg the Court's indulgence for just a minute. I
7 am really not prepared.

8 THE COURT: I think the best thing to do,
9 Mr. Starnes, is just take that material with you. When
10 you have got time, go through it. If you feel like
11 there is anything that you are still missing, just send
12 me a letter detailing what it is. Wouldn't that be the
13 easier way to do it?

14 MR. STARNES: Yes, sir, that would be fine.
15 There were three other motions that I would like to be
16 heard on, but I'm not prepared to do that today because
17 I haven't even filed the motions and haven't done the
18 legal research on it. Is there any way possible that
19 the Court could afford me a hearing the week of
20 April 25th?

21 THE COURT: Solicitor, do you see a problem
22 with hearing the motions on the week of the 25th? I
23 don't know what I have then.

24 SOLICITOR MYERS: I think that is a court
25 week, Your Honor.

1 THE COURT: Sir?

2 SOLICITOR MYERS: I think that's a term of
3 court. If we can do it when we don't have court going
4 on.

5 THE COURT: If you don't have any problem, I
6 will see if we can schedule it then, if all of us can
7 work it in. We will set a hearing. Let me check the
8 schedule. We will work something out.

9 MR. STARNES: All right. Also, Your Honor, I
10 understand you have an imagining system here in the
11 courthouse that various lawyers use to do PowerPoint and
12 all. I'm not familiar with it. I have been
13 incarcerated for the last nine years.

14 What I would like to do is I plan on doing a
15 PowerPoint presentation, and I would like to be
16 familiarized with your system that you have here.
17 Because it's my understanding I will have to have a
18 computer to do this or a laptop.

19 Possibly Mr. Delgado's equipment might hook up
20 to it, so I can be prepared for trial, doing closing
21 arguments and stuff. Is there any way possible to do
22 that?

23 THE COURT: Is Mr. Delgado going to be your
24 assistant at the table to do these things?

25 MR. STARNES: I haven't asked him that yet,

1 Your Honor. But if not, I will just -- if he won't let
2 me use his computer, I have got access to a laptop.

3 THE COURT: I know. I believe I have gotten
4 some e-mails from you.

5 MR. STARNES: Yes, sir, I have an e-mail
6 address. My mother actually transmits those e-mails. I
7 tell her over the telephone and she transmits them. I
8 will need to be familiarized with the imagining system
9 and how it works.

10 THE COURT: Are you talking about the system
11 here in the courtroom?

12 MR. STARNES: Yes, sir.

13 THE COURT: Oh, sure. We don't have imagining
14 in here, but we have various technological capabilities.
15 Certainly whatever is here, there is nothing wrong. We
16 have a person who is supplied by the county who can help
17 you with some of the technical aspects of it. That is
18 his job.

19 MR. STARNES: Yes, sir. It's okay or could
20 you have the jail bring me over here within a reasonable
21 amount of time? I will not ask them when to do it. I
22 understand security purposes.

23 THE COURT: Sure, we can have them do it
24 sometime when there is no court. We will make the
25 courtroom available to you. If you want to schedule it

1 with Mr. Delgado to come and help, that's okay, too.
2 You can do that.

3 MR. STARNES: The subpoena that I issued to
4 the jail, Mr. Tate is here today. Could I get the
5 jail's position on those?

6 MR. TATE: We reduced that to writing. Some
7 of the documents, Your Honor, we provided. Some cannot
8 be provided while he is in the facility. I filed those
9 with the Clerk's Office. I left those on Ms. Frick's
10 desk laying there.

11 Some of the others I responded that were Rule
12 5 material. I understand that has already been provided
13 in my conversations with Mr. Graham this morning. It's
14 some photographs or something on another site visit
15 during the original investigation of the State's case in
16 chief, Your Honor. I have that written response. I
17 have put a copy in Ms. Frick's envelope, and it is in
18 Mr. Starnes' envelope on his table.

19 THE COURT: Okay.

20 MR. STARNES: Your Honor, I guess I will go
21 over what they have. It seems like it's a lot of stuff.
22 If there is something that I feel like I need, we will
23 take that up at another time?

24 THE COURT: Yes, sir. As I said a moment ago,
25 Mr. Starnes, I think the problem is if you try to do it

1 in a hurried atmosphere this morning, you are going to
2 miss some stuff.

3 It's better just to let you go back, take your
4 time, and go through it and peruse it as you need to and
5 then make a determination if there is anything else.

6 I don't see how there could be much missing
7 because they seem to have given you a pretty good bit
8 there. If there is anything, just send me a letter and
9 tell me what it is.

10 MR. STARNES: Yes, sir. I have a problem with
11 the funding, Your Honor. I believe you may be aware.

12 THE COURT: Okay. I am trying to work that
13 out with the Indigent Defense folks now. They don't
14 want to just pay the money directly to -- they are used
15 to going through an attorney's escrow account.

16 That's what they are wanting to do. They have
17 asked me to put some heat on Mr. Delgado or Mr. Nettles
18 to use their account. I have declined to do that so
19 for.

20 MR. DELGADO: The operative word being so far;
21 is that right?

22 THE COURT: That is the problem. They are
23 going to provide it. The problem will be just the
24 vehicle, but they will provide it though.

25 MR. STARNES: The problem I am having is I

1 can't get experts, I can't get the investigator to move
2 forward because normally they pay -- from what I
3 understand, the attorneys submit vouchers and pay these
4 experts and investigators and stuff. It's got me at a
5 standstill. There are certain experts and stuff that I
6 want to explore, and I am unable to do that.

7 THE COURT: Yes, sir.

8 MR. DELGADO: Your Honor, let me do this. I
9 feel I have got to earn my big money here. As a
10 conciliation to, I guess my client of sorts and the
11 Court, should I call O.I.D.?

12 I would be willing to stand ready to assist in
13 this way. It's time consuming and difficult, but if
14 that's what we have to do to assist and move this case.
15 Should I call the O.I.D. folks, Mr. Adams? Is that who
16 it is?

17 THE COURT: Yes, sir, that will actually help.
18 Lisa Barfield, I think, was working with it.

19 MR. DELGADO: Barfield?

20 THE COURT: Lisa Barfield. I think she may be
21 new over there.

22 MR. DELGADO: Why don't I attempt to see if I
23 can cut through it and then report back to the Court.

24 THE COURT: Yes, sir. If you will do that,
25 Mr. Delgado, that actually would help a good bit.

1 MR. DELGADO: This is going to a problem.
2 There is going to be an auto accident the third part of
3 July.

4 THE COURT: As you know, that's one of the
5 problems. That's one of the myriad of problems with pro
6 se cases is that their funding mechanisms are set up to
7 be handled in a certain way.

8 When they get somebody pro se and want to do
9 all sorts of -- the problem is different people doing it
10 pro se want to do it different ways. I recall Johnny
11 Brewer insisted on having it paid it to him. There was
12 no way they were going to do that.

13 But the problem is it throws them for a loop,
14 as you know, when they have to do something different.
15 As I explained to Mr. Starnes when he first decided to
16 go pro se, these things happen with somebody who is pro
17 se.

18 MR. DELGADO: Again, Your Honor, I am not
19 trying to facilitate anymore pro se clients, but I
20 really think that he deserves this. If we can
21 facilitate that, I will try to cut through it.

22 There may be some other problems. If so,
23 Norman, I will come to you and explain that to you. I
24 will see what I can do with it to eliminate problems
25 with it.

1 THE COURT: Thank you, Mr. Delgado. I
2 appreciate that.

3 Mr. Starnes, let's see what we can do with
4 that, and that may take care of some of the problems.

5 MR. STARNES: All right.

6 THE COURT: In fact, it probably will.

7 MR. STARNES: Your Honor, I had some ex parte
8 motions that I would like to take up with Your Honor,
9 the State not being present. But before I do that,
10 there's a few other motions. I have not served the jail
11 or the State with these actually.

12 THE COURT: Do you have them with you?

13 MR. STARNES: Yes, sir, I do.

14 THE COURT: Mr. Tate, can you take them now?

15 MR. TATE: I would be more than happy to
16 accept service on the part of the institution.

17 THE COURT: I'm sure you don't want to hear
18 them, but at least he has got them. Do you want to hear
19 them over in April, Mr. Starnes? Is that all right?

20 MR. STARNES: It's very, very brief. What it
21 is, Your Honor, is I am having to contact and speak with
22 my investigator. I have to contact experts and stuff
23 like that in this case. This was an issue that was
24 handled in Johnny Brewer.

25 The phone system at the jail is monitored and

1 recorded. Anything I say on there, it's got a
2 disclaimer. It says it's monitored and recorded for
3 security purposes. Any time I call my investigator or
4 an expert, they can hear it.

5 In addition, if I am on the phone and they
6 wasn't monitoring it, the inmate next to me can hear my
7 conversation. Basically he can tell what I'm talking
8 about. He can hear everything.

9 What I moved for, Your Honor, is at my expense
10 would the jail provide me a land line or a cell phone at
11 my expense? It wouldn't be no expense to the Court.
12 They did this for Mr. Brewer.

13 I am going to have to interview witnesses. I
14 am sure that you will not open the jail for me to bring
15 a bunch of witnesses in there and interview them. I
16 could do this over the telephone.

17 In addition, sometimes it's very difficult for
18 me to get on the phone to talk to my investigator
19 because sometimes I have to wait for an hour and a half
20 to get on the phone.

21 THE COURT: Yes, sir. Mr. Tate, what is your
22 position on it?

23 MR. TATE: Your Honor, I have just seen this.
24 I would like to have a chance to meet with the jail
25 administration and discuss this prior to commenting on

1 the record.

2 THE COURT: All right. Let's let him have a
3 chance to talk with them, Mr. Starnes, and then we will
4 hear it.

5 MR. STARNES: All right. There is another
6 motion, Your Honor. Actually it's ex parte relating to
7 certain experts and stuff that would be --

8 THE COURT: We can take ex parte in just a
9 minute. Did you have any other motions that will
10 involve the State?

11 MR. STARNES: Weekend consultation with my
12 investigator and paralegal only.

13 THE COURT: I'm sorry?

14 MR. STARNES: I need access to my investigator
15 and my paralegal on the weekend. Will they facilitate
16 that? They do it for attorneys, and I would ask that
17 they do that.

18 THE COURT: Are your investigator and
19 paralegal willing to do it on the weekend?

20 MR. STARNES: It's easier for them to do it on
21 the weekends.

22 MR. TATE: Your Honor, that's not a problem
23 for us. I explained to Mr. Starnes and I think I have
24 explained to the investigators, they are professional
25 visitors.

1 We will give them the status like a lawyer
2 would, with a private room. Any time a professional
3 visitor can visit under the jail's rules, Mr. Starnes'
4 defense team is more than happy to come into the
5 facility.

6 THE COURT: Can they do it on the weekends? I
7 don't know how it really works.

8 MR. TATE: Certainly, it's not a problem.

9 THE COURT: Okay.

10 MR. STARNES: Thank you. One other motion
11 relating to the jail, Your Honor, and this would again
12 be at my expense is having access to a photocopier.

13 When I went pro se back in March of last year,
14 my mother went out and purchased a photocopier because
15 at the time Your Honor said you wasn't going to provide
16 me a paralegal.

17 So I had my mother and grandmother go out and
18 buy a photocopier. They provide me access to a
19 television and a V.C.R. so I can see this stuff. If
20 they would allow me access to a photocopier, it would
21 save the State money.

22 I could photocopy it for free, to where my
23 paralegal is going to charge me for time and for
24 photocopying because there's a lot of documents I need
25 to photocopy.

1 THE COURT: What is your position on that?

2 MR. TATE: I will have to talk with the jail.

3 THE COURT: Do you know how much -- any idea
4 how many pages you are talking about photocopying? Are
5 you talking about a few, a hundred or 10,000 or what?

6 MR. STARNES: Five thousand.

7 THE COURT: Five thousand?

8 MR. STARNES: Yes, sir. The original
9 transcript was 3,579 pages. I am sure I will have to
10 copy that.

11 THE COURT: That gives you an idea, Mr. Tate,
12 of what he is thinking about. He said about 5,000
13 pages.

14 MR. TATE: Your Honor, I just don't know if
15 they have a place to put a photocopier inside of a
16 secure housing area.

17 THE COURT: Right.

18 MR. TATE: There could be a lot of problems
19 with the metal and plastic.

20 THE COURT: It's probably better to actually
21 let the paralegal or the investigator do it. I know it
22 takes more money to do it.

23 MR. STARNES: I don't object. I was thinking
24 of the funding aspect, saving the State money.

25 THE COURT: The funding is going to work a

1 little more smoothly, I think, if Mr. Delgado works with
2 it. It will go more smoothly.

3 MR. TATE: Your Honor, if I could on the
4 visitation issue, perhaps with Monday through Friday,
5 eight to ten at night, except for meals, if the
6 investigators could call and give us a little advance
7 notice of when they need their weekend visits, we will
8 work with them.

9 MR. STARNES: That won't be no problem.

10 MR. TATE: I think that is reasonable. Thank
11 you, Your Honor.

12 MR. STARNES: Your Honor, the rest of it is
13 pretty much ex parte related to funding. I would like
14 to look over this stuff and hear these other motions in
15 April or towards the end of April.

16 THE COURT: Yes, sir, we will set a time.

17 MR. STARNES: I very much appreciate it.

18 THE COURT: Solicitor, do you have anything
19 else?

20 SOLICITOR MYERS: Yes, sir. On the thing
21 about subpoenaing records from Dr. Sexton and S.L.E.D.
22 or other agencies, if we can just request that we be
23 sent a copy of the subpoena, too, so there is no
24 duplication.

25 In other words, if S.L.E.D. says they have

1 something that they have not given to us, we can take
2 care of that. But if S.L.E.D. says: We have given the
3 Solicitor all that, there is no use to copy all that
4 again.

5 THE COURT: Right. Do you have any problem
6 with that, Mr. Starnes?

7 MR. STARNES: No, sir. It's my understanding
8 some of the stuff that S.L.E.D. released was done by fax
9 according to Mr. Salley. Everything that S.L.E.D.
10 released, is it Bate stamped and numbered?

11 THE COURT: All he is asking is just you send
12 him a copy of the subpoena. When you subpoena S.L.E.D.,
13 send him a copy of it.

14 MR. STARNES: Sure, no problem.

15 THE COURT: Mr. Myers.

16 SOLICITOR MYERS: Then we will be filing some
17 motions on him prior to the next hearing. We will take
18 care of that.

19 THE COURT: Okay.

20 SOLICITOR MYERS: Your Honor, we have handed
21 up to you a subpoena that was sent to my office by
22 Mr. Starnes.

23 It's dated January 17, '05, and it says:
24 Copies of all letters and written opinions relating to
25 all death investigations in Lexington County that you or

1 any solicitor in your office opined were justified
2 killings pursuant to the self-defense laws of South
3 Carolina from January the 1st, 1995, until the present.

4 I don't issue opinions, and this is not
5 relevant to begin with, whatever happened in another
6 case. I don't recall having issued any opinions like
7 that.

8 If there was something issued by my office,
9 it's no longer present. These files have been
10 destroyed. It's just not relevant. So we move to quash
11 this subpoena.

12 THE COURT: What about that, Mr. Starnes?

13 MR. STARNES: Your Honor, Mr. Myers says he
14 didn't issue any opinions. It's my understanding
15 Mr. Riddle had wrote some opinions when a deputy had
16 killed an individual.

17 There was a shooting over in the Moss Creek
18 subdivision where an officer shot a man inside of his
19 house. I believe that is public record.

20 When his office investigates and issues an
21 opinion or ruling whether the shooting was justified,
22 whether they are going to bring charges against the
23 officer, I believe that is public record.

24 THE COURT: I'm not sure I understand what the
25 relevance of that is though.

1 MR. STARNES: Work product education.

2 SOLICITOR MYERS: Work product is excluded.

3 THE COURT: Yes, sir. Work product is
4 excluded anyway.

5 MR. STARNES: Sir, I can't use it for
6 educational purposes? What is the State's position on
7 that?

8 THE COURT: No, sir. If you can get it from
9 the public records, certainly you can. But you can't
10 require the Solicitor to provide you with an education
11 on it.

12 MR. STARNES: Okay.

13 THE COURT: I am going to have to quash the
14 subpoena. Anything else, Solicitor?

15 SOLICITOR MYERS: That's all we have.

16 THE COURT: Anything else, Mr. Starnes, other
17 than ex parte matters?

18 MR. STARNES: Ex parte, I believe that's it.

19 THE COURT: Thank you. Mr. Graham.

20 MR. GRAHAM: I'm sorry, Your Honor. One thing
21 that we did want to clear up and be done with it today
22 and mark off as done was Mr. Starnes has made arguments
23 that a lot of documents were missing or illegible.

24 You asked us to bring those original
25 documents. We did. After you are done with your ex

1 parte or before, whenever he wants to do it, we would
2 like to sit down and give him an opportunity to look at
3 the better copy we provided him.

4 If he is not happy with any of these, we have
5 the originals here for him to look at today so we can
6 move past that issue.

7 THE COURT: You want to just do that
8 afterwards, Mr. Starnes?

9 MR. STARNES: Yes, sir, that would be great.

10 THE COURT: We will do that.

11 MR. DELGADO: Your Honor, may I just ask one
12 question. Is the case still set for July?

13 THE COURT: Eighteenth, July 18th.

14 MR. DELGADO: Thank you, sir.

15 THE COURT: I think everybody else can go
16 ahead and leave the courtroom. We will take up the ex
17 parte matters at this time.

18 MR. TATE: Thank you, Your Honor.

19 THE COURT: Thank you, sir.

20 (All attorneys and parties for the State leave
21 the courtroom at this time).

22 THE COURT: These are ex parte matters.
23 Anyone who is in the courtroom now is forbidden from
24 discussing these outside of the courtroom.

25 Deputies, be sure because there is a room back

1 there that's the press room. Be sure that nobody comes
2 in that room because the sound from here goes into that
3 room. Be sure that nobody gets into that room.

4 Okay, Mr. Starnes.

5 MR. STARNES: Beg the Court's indulgence just
6 one minute.

7 THE COURT: Yes, sir.

8 (Pause).

9 (Hands to Court).

10 MR. STARNES: Your Honor, I have got these in
11 order. Do you want to hear me on each one of them
12 individually and make a brief argument? How does Your
13 Honor want to do this?

14 THE COURT: Let me look them other first,
15 okay?

16 (Pause).

17 THE COURT: The first is to disburse funds, I
18 think, for a D.N.A. expert. I think the operative
19 paragraph is that you want them to disburse funds
20 directly to the expert for advance payment.

21 Again, remember, that's what they are not
22 going to do. They just don't want to do it directly to
23 them. If we can get with Mr. Delgado, we will get
24 something worked out on that.

25 MR. STARNES: Yes, sir.

1 THE COURT: Is there a particular amount you
2 are talking about though?

3 MR. STARNES: I believe the amount is in
4 there.

5 THE COURT: Oh, I see, not to exceed \$3,000.

6 MR. STARNES: Yes, sir. I'm not sure, but
7 actually what I would like to do is consult with an
8 expert. I'm not sure that the D.N.A. testing can be
9 done because the clothes was washed, and I don't know if
10 any D.N.A. can be retrieved, if they can do it.

11 THE COURT: What I will do is I will go ahead
12 and sign the order.

13 MR. STARNES: Yes, sir.

14 THE COURT: If you get an expert who can do
15 it, then fine. You will have the order as a mechanism
16 to get the funding for them.

17 What I am going to do is change the language.
18 Instead of saying directly to the expert, I am just
19 going to leave that out and disburse funds listed below
20 for the advance payment. They are listed in here.

21 We don't have to specify the mechanism in the
22 order here. We can get that worked out. But with that
23 in mind, I will sign that order.

24 MR. STARNES: I can have the order rewritten
25 if you want to.

1 THE COURT: No. It's a matter of just
2 striking through about three words. It's really not a
3 problem.

4 MR. STARNES: Your Honor, the next motion, as
5 you may recall in the original trial, we built a mockup
6 of the house.

7 THE COURT: Right.

8 MR. STARNES: I have contacted the engineer
9 who built the mockup, and I spoke to him two weeks ago.
10 He is trying to locate it. He says it has been in
11 storage, and he doesn't know if he can get it, if it
12 still exists or if it's been destroyed.

13 I am making every attempt to get that. In the
14 event that he cannot retrieve that, that's one of the
15 things that I would like to do is build another mockup
16 of the house and walk through it, kind of like we did
17 the first time.

18 THE COURT: I assume that whoever supplied it
19 the first time was paid for it, right?

20 MR. STARNES: I'm sure, yes, sir.

21 THE COURT: So then it's really not his
22 property. It's the property of the defense anyway.

23 MR. STARNES: Right, but Mr. Salley give it to
24 him.

25 THE COURT: Sir?

1 MR. STARNES: Ms. Frick didn't want to keep it
2 because it was so big.

3 THE COURT: Oh, I understand that.

4 MR. STARNES: She turned it over to
5 Mr. Salley. Mr. Salley didn't save it. He give it back
6 to the engineer to put in storage on the engineer. I
7 don't know if he still has it.

8 THE COURT: All I'm saying is I will sign this
9 which will provide the funds if you have to have another
10 one built. But if you have to have another one built,
11 you can do this. But if you don't, if there is one
12 there, you shouldn't have to pay for it again.

13 MR. STARNES: Right. If it's there, I won't
14 need to effect this funding order. I don't know if he
15 will charge me for coming in and testifying as far as
16 the dimensions and stuff like that.

17 THE COURT: That can be handled by a separate
18 order.

19 MR. STARNES: Right. I am making every
20 attempt to save as much money as I can.

21 THE COURT: I understand.

22 MR. STARNES: I am even asking my
23 investigators not to bill me for phone calls and for
24 food and things like that.

25 THE COURT: Okay. The next is for an

1 audio/video expert. What is that?

2 MR. STARNES: The videotape, the V.H.S. tape
3 that they took of Ms. Ott -- she was a witness for the
4 State -- the audio of it is real poor.

5 I consulted with an audio/video technician.
6 What they could do is redo that tape and put it in a
7 D.V.D. format so that I can use it for impeachment
8 purposes.

9 It was very -- the audio quality on it's very
10 poor. What they can do is remix the audio and put it in
11 a digital format. In addition, that would help me to
12 use it with the imagining system that you have here at
13 the courthouse.

14 THE COURT: Right.

15 MR. STARNES: I don't think the dollar amount
16 on that, I don't think it's going to be that much.

17 THE COURT: I will grant that and I signed
18 that. Next is for an expert in toxicology?

19 MR. STARNES: Yes, sir. I haven't seen the
20 toxicology report. I read in the prior transcript that
21 I don't think Mr. Salley was provided or he may have
22 been provided it late. These individuals were under the
23 influence of drugs and alcohol at the time this incident
24 happened.

25 THE COURT: Yes, sir.

1 MR. STARNES: I don't even know if they can go
2 back and do the testing, but I would like to consult
3 with a toxicologist and see if the testing can be done.

4 THE COURT: Okay. Next is for an expert in
5 firearms?

6 MR. STARNES: Yes, sir. It's undisputed, Your
7 Honor, that I shot and killed these individuals. I did
8 so in self-defense. I would ask for a firearms expert
9 to testify as an expert on my behalf and at my defense.

10 THE COURT: Is it something about the nature
11 of the firearms or something? I'm not sure.

12 MR. STARNES: Yes, sir, the nature of the
13 firearm and using the firearm, the use of the firearm.

14 THE COURT: Okay.

15 MR. STARNES: We are about at the end here.

16 THE COURT: I will grant it, but I'm not sure
17 how much you can do. But obviously he will have to let
18 you know that. Next is a qualified video animation
19 expert?

20 MR. STARNES: Yes, sir.

21 THE COURT: What is that?

22 MR. STARNES: There's three or four cases that
23 this has been used in in South Carolina. The house
24 where -- my house where I shot these individuals at has
25 burned.

1 What I would like to do is have a video
2 animation done to explain the shooting and how it
3 happened. I know this is used in civil cases a lot.
4 There is a case on this, State versus Frazier. I do not
5 have the opinion number in front of me.

6 THE COURT: You don't have to convince me. I
7 have allowed animation in my trials before.

8 MR. STARNES: And I've consulted with a
9 gentleman.

10 THE COURT: I will grant it. I will let you
11 do it. I understand the relevance. As I recall the
12 facts of the shooting and what happened, I can
13 understand where it could be relevant.

14 MR. STARNES: Yes, sir.

15 THE COURT: Next was for a post traumatic
16 syndrome expert?

17 MR. STARNES: Yes, sir. Your Honor, on
18 September the 17th of 1995, just a few months before I
19 shot these individuals, I was a victim. I was shot in
20 the neck and spent a week in intensive care. I was
21 interviewed -- excuse me just one second.

22 THE COURT: Sure.

23 MR. STARNES: I submitted to some tests back
24 in 1996 before my original trial. I believe this may
25 have been done. I'm not sure. I am trying to get in

1 contact with the doctor who performed all these tests.

2 I don't know if the post traumatic stress
3 syndrome test was done. She performed so many tests on
4 me. This was like 18 or 19 hours in the attorney room I
5 spent with this lady doing these tests.

6 If she did these tests, all I would need her
7 to do is come in and testify. This may have already
8 been done. I'm not sure. The medical file is not in
9 the file. That was lost.

10 THE COURT: Yes, sir.

11 MR. STARNES: But I'm thinking this doctor who
12 did this may still have my medical records, and she may
13 not have to do the evaluation and all over. If she has
14 still got the records, she can just read the records.

15 THE COURT: Okay.

16 MR. STARNES: In addition, I might not use her
17 because it might trump a 404 card and bring my character
18 in issue. I'm not sure I want to do that. That's
19 something I'm still doing legal research on.

20 THE COURT: I understand. If the trial gets
21 to the second phase, it could impact that phase.

22 MR. STARNES: It sure would.

23 THE COURT: Yes, sir. I will give you a
24 chance to do that. The next is a qualified forensic
25 pathologist expert. What is the relevance of that?

1 MR. STARNES: The relevance, Your Honor, is
2 one of these individuals was supposedly shot in the
3 back. There is a discrepancy to how many times he was
4 shot. Dr. Sexton testified that one of the individuals
5 was shot three times and that the second individual was
6 shot once.

7 THE COURT: That's a potential second phase
8 issue. I will grant it.

9 MR. STARNES: The next one, Your Honor --

10 THE COURT: It's a jury selection expert. I
11 will let you have that. Do you have somebody in mind?

12 MR. STARNES: Mr. Delgado.

13 THE COURT: He is probably -- I tell you,
14 Mr. Delgado is probably as good at picking juries as any
15 expert you will ever find to be honest.

16 MR. DELGADO: I've had such a wonderful
17 success rate here in Lexington County. It speaks for
18 itself, yes, sir.

19 THE COURT: Not many do, as you know.

20 MR. STARNES: I contacted two individuals and
21 their schedule is tied up. I am kind of searching for
22 them. I may not need a jury selection expert. It
23 depends on what standby counsel is going to do, and we
24 haven't discussed all that yet.

25 THE COURT: Obviously that is appropriate.

1 That is commonly done in these trials.

2 On the transcript thing, let's go back to
3 that. We will talk about that in just a minute. Well,
4 that's what both of them are. One is transcripts of the
5 hearing relevant to the matter of Gwen Ott and Jody
6 Fogle.

7 MR. STARNES: Yes, sir.

8 THE COURT: In an amount not to exceed what is
9 reasonable and customary. Do I understand, is Mr. Fogle
10 dead?

11 MR. STARNES: No, sir, that was a different
12 Fogle from what I understand.

13 THE COURT: There was a Fogle that somebody
14 told me had died. I thought they said Jody Fogle. It
15 may not have been.

16 MR. STARNES: It was a different Jody Fogle
17 from what I understand. I haven't talked to him.

18 THE COURT: Anyway you are asking in one
19 motion for transcripts of, I guess, the testimony of
20 Gwen Ott and Jody Fogle, and in there other transcripts
21 of all proceedings from May of 2001. You want
22 transcripts of everything; is that right? Are those not
23 already done?

24 MR. STARNES: No, sir, the transcripts --

25 THE COURT: They weren't done for the appeals?

1 MR. STARNES: Yes, sir. Are you talking about
2 my trial transcripts?

3 THE COURT: Yes, sir.

4 MR. STARNES: Yes, sir, those transcripts were
5 done.

6 THE COURT: You have those, right?

7 MR. STARNES: I'm sorry?

8 THE COURT: Those are available to you, right?

9 MR. STARNES: I have those. The transcripts
10 relating to Gwen Ott and Jody Fogle were the transcripts
11 of when they pled.

12 THE COURT: Right.

13 MR. STARNES: I did not have those. As a
14 matter of fact, I don't even have the dates. Mr. Walker
15 is still doing some research on that. Also, Your Honor,
16 the transcripts -- beg the Court's indulgence just one
17 moment, please.

18 (Pause).

19 THE COURT: As I recall, Ms. Ott and Mr. Fogle
20 later pled to charges that were related to this case.
21 Was that not right?

22 MR. STARNES: Yes, sir.

23 THE COURT: Obviously that would be relevant,
24 possibly. I guess you have a right to take a look at
25 it. What I will do is I will go ahead and authorize it.

1 But you understand you will have to arrange to get in
2 contact with the court reporters and get the transcripts
3 and so forth.

4 MR. STARNES: Yes, sir. I have just two or
5 three more, Your Honor.

6 THE COURT: This is on Mr. Walker or the
7 investigation he has done?

8 MR. STARNES: Which one are you on, Your
9 Honor, his payment order?

10 THE COURT: Payment of paralegal service fees.

11 MR. STARNES: Yes, sir.

12 THE COURT: This appears to be an appropriate
13 bill from him.

14 MR. STARNES: He is coming to visit me once a
15 week since the Court appointed him. He is a very good
16 help to me.

17 THE COURT: I'm going to strike out the word
18 directly again. They will need to work that payment
19 through. If we can work it out with Mr. Delgado's
20 office through him, okay?

21 MR. STARNES: Yes, sir.

22 THE COURT: Mr. Delgado, by the way, I don't
23 know exactly how much involvement your time will be, but
24 I think you probably have got a right to bill also for
25 your time and what you are doing on this, too, even

1 though you are standby. I don't know how they have
2 handled that in the past.

3 MR. DELGADO: Your Honor, they better. One of
4 the things Norman and I talked about, just because there
5 is going to be some problems -- I mean, this is a
6 capital case. There is going to be some time that I may
7 need or Mr. Nettles and I may need to coordinate with
8 him before the trial.

9 I'm not trying to ask for protection, but I
10 think I may have to ask for protection as standby
11 counsel. If O.I.D. is not going to -- let me say this
12 to you between us folks. If O.I.D. is going to not pay
13 for our time, then we have a real serious problem about
14 being present.

15 THE COURT: Absolutely.

16 MR. DELGADO: I am not desirous of -- I have
17 got other capital cases.

18 THE COURT: Have they indicated any opposition
19 to paying?

20 MR. DELGADO: I don't think they know -- well,
21 Judge, that's a good question. How about this. Since I
22 may be willing to coordinate with them about the funding
23 problems, maybe I can use that as a carrot to explain to
24 them our financial situation and explain to them we love
25 paying the government in the middle of April. They seem

1 to call on us about that time. Let me talk to them. If
2 there is a problem, I may have to bring it back to you.

3 THE COURT: If there is any problem, just let
4 me know. I will be glad to do what I can to help, too.

5 MR. DELGADO: Yes, sir.

6 MR. STARNES: Your Honor, there was a letter
7 when Mr. Lee was the Director. He had sent me a letter,
8 and I believe at the bottom he indicated that he copied
9 Your Honor, Mr. Delgado, and Mr. Nettles with it.

10 He referred to Johnny Brewer's case saying
11 that I think Mr. Hendrix, John Hendrix, was the attorney
12 that handled the funding in that case.

13 THE COURT: He was one of them.

14 MR. STARNES: Additionally he even said in the
15 letter they paid Mr. Hendrix for his time for handling
16 the funding.

17 THE COURT: Right.

18 MR. STARNES: I sent my mother over there with
19 the order that you signed for payment, and they would
20 not honor it. They said they would not pay them
21 directly.

22 THE COURT: Right. I am afraid it's going to
23 have to come through an escrow account. That's the only
24 way they are going to do it, I think. With
25 Mr. Delgado's help, we may be able to get that worked

1 out.

2 MR. STARNES: Yes, sir.

3 THE COURT: The only other ones I have here --
4 I have signed these couple here. The other ones I have
5 are orders related to records requested from Mr. Sexton,
6 Mr. Harmon, and various folks. You just want them, the
7 office, to make payment within 15 days of receipt of the
8 invoice by them.

9 MR. STARNES: Well, when we drafted these,
10 that was the way that Your Honor said that they would do
11 it, direct billing. When I drafted these orders for Tim
12 to type up --

13 THE COURT: That's right.

14 MR. STARNES: -- that's why I put that
15 language in there. I can have them redone.

16 THE COURT: No, that language is okay. I am
17 just trying to be sure and verify that is what you
18 wanted to do with it.

19 MR. STARNES: Right. Because when I sent
20 these subpoenas out, the folks are really hesitant about
21 sending the information without having the money.

22 THE COURT: People are funny that way.
23 Mr. Starnes, I am going to -- obviously on each of these
24 orders I have signed, I have got to make a copy for my
25 files. But obviously I am sure you realize that they

1 will be kept sealed in my office, and they won't be made
2 available to anybody else.

3 MR. STARNES: Your Honor, will I be provided a
4 copy of those?

5 THE COURT: Do you want us just to make you a
6 copy?

7 MR. STARNES: Yes, sir, for my records. What
8 I have been doing is sending them over here to the Clerk
9 of Court and have my mother come over here and file
10 them.

11 THE COURT: We will do it.

12 CLERK: Do you want them under seal, Your
13 Honor?

14 THE COURT: Yes, they should be when they are
15 filed. You want to go ahead and just let us file the
16 originals with the clerk now?

17 MR. STARNES: Yes, sir, and if I can have a
18 copy.

19 THE COURT: Yes, ma'am, they will all be filed
20 under seal.

21 MR. STARNES: Your Honor, there was one other
22 motion.

23 THE COURT: Wait one second. Mr. Delgado, do
24 you want a copy of these, too?

25 MR. DELGADO: No, Your Honor.

1 THE COURT: In the event these things start
2 coming through your office, these ex parte orders, these
3 funding orders.

4 MR. DELGADO: I probably ought to knowing that
5 if I get involved in this, that I paid out what has been
6 directed by the Court. I think that is probably smart.
7 Yes, sir, I would like that to make sure our record is
8 complete.

9 MR. STARNES: There was one order that we
10 didn't cover. That was the West Law research.

11 THE COURT: I just signed it.

12 MR. STARNES: It would save money than having
13 Tim going all the way to U.S.C. library.

14 THE COURT: I understand. I signed it also.

15 MR. STARNES: I believe that would pretty much
16 cover all of the funding, with the exception of later my
17 investigator is going to go out of state to interview
18 two witnesses. Would it be a problem doing an
19 additional funding order?

20 THE COURT: If that's what they have got to
21 do, that's what they have got to do.

22 MR. STARNES: I am trying to keep it as low as
23 possible.

24 THE COURT: I understand. As I recall, there
25 were some people who testified that were involved in

1 parachuting or something like that?

2 MR. STARNES: Yes, sir.

3 THE COURT: Sky divers or whatever.

4 MR. STARNES: Yes, sir.

5 THE COURT: There were several of them from
6 out of state as I recall.

7 MR. STARNES: Yes, sir.

8 THE COURT: Sure. If he has got to do it, he
9 has got to do it. There is nothing you can do about it.

10 MR. STARNES: During the penalty phase, can
11 the same investigator do the penalty phase also? I
12 mean, the mitigation.

13 I have to go back because they lost my school
14 records and all those things that we had in the penalty
15 phase. All that stuff was lost. I need to go back and
16 get my school records and some medical records and stuff
17 like that.

18 THE COURT: Right. You can have somebody do
19 that as a mitigation expert. Of course, the only thing
20 I will tell you is that if you were to put them on the
21 stand as some sort of mitigation expert, they may not
22 qualify as an expert under the rules of evidence.

23 If you take, for example, a simple
24 investigator and let that person do your mitigation
25 work, that person probably will not qualify as a

1 mitigation expert.

2 There are some people who actually do
3 mitigation expert work. So you probably would want to
4 actually use a real mitigation expert. If you want
5 somebody to do all that and collect that for you, they
6 can certainly do it, sure.

7 MR. STARNES: I was thinking of maybe getting
8 a different investigator that was local that maybe would
9 be less expensive to go get my school records and stuff
10 like that.

11 THE COURT: Sure, you can use the same one to
12 do that.

13 MR. STARNES: I am just trying to save the
14 Court money.

15 THE COURT: I understand. You didn't have all
16 those school records and things from the first trial?

17 MR. STARNES: It was lost, Your Honor. All
18 the medical records and all that, it's not there.

19 THE COURT: What else?

20 MR. STARNES: Your Honor, I believe that's it.
21 If at all possible, if you could afford me a hearing so
22 I could be heard on these other motions. I will file
23 some additional motions that I have drafted up. If you
24 could allow me to be heard possibly the last week in
25 April.

1 THE COURT: We can do that. Just one second.
2 (Pause).

3 THE COURT: Anything else, Mr. Starnes? I'm
4 sorry, you can go ahead and talk to Mr. Delgado. Go
5 ahead.

6 (Pause).

7 MR. STARNES: Your Honor, I believe that's it,
8 everything on the ex parte. If I could get copies of
9 what Ms. Frick has.

10 Also, Your Honor, there is one other thing I
11 had asked Ms. Frick before the hearing started. There
12 was some warrants and stuff that I was trying to locate.
13 I guess it's okay to tell you this.

14 THE COURT: You don't have your warrants?

15 MR. STARNES: I have them but some of the
16 warrants on some of the State's witnesses does not
17 coincide with the booking sheets. So what I am trying
18 to do is locate the warrants.

19 THE COURT: How would you know that if you
20 hadn't seen the warrants? I'm not sure I understand
21 that.

22 MR. STARNES: Because the warrant number is on
23 the booking sheet. On the police reports, it goes
24 warrant number such and such; and it doesn't coincide
25 with the warrants in the actual discovery.

1 THE COURT: I'm not sure what you are talking
2 about. When you say some of the State's witnesses, are
3 you talking about prior records?

4 MR. STARNES: No, sir. Ms. Ott and Mr. Fogle
5 were both charged and my uncle was charged. All of
6 those warrants were pulled, from what I understand from
7 looking at it, were all pulled at the same time. But
8 there is a gap in the warrants.

9 From where all warrants were pulled, there is
10 like four spaces missing there. When they pulled the
11 warrants; all the warrants are in sequence. The
12 warrants that were -- that aren't there are the ones
13 that I am seeking.

14 I have the warrant numbers. What I wanted to
15 do was obtain the warrants. What I'm thinking is -- and
16 I guess I will have to tell you why I need this.

17 THE COURT: Yes, sir, because I am really not
18 following you.

19 MR. STARNES: I believe that when Mr. Amick
20 done the affidavits and got the warrants that he
21 destroyed some of the warrants because I believe that he
22 charged Mr. Fogle with this also.

23 Then at a later time, those warrants were
24 voided because the warrant numbers that are on his
25 booking sheet does not coincide with the warrants that

1 he was charged with, the warrants that I have in his
2 discovery. Because he was charged with accessory after
3 the fact or it might have been accessory before the
4 fact.

5 THE COURT: Right.

6 MR. STARNES: So I'm thinking at some point in
7 time when he was in the jail, that the warrants that he
8 had on Mr. Fogle, he destroyed and redid them.

9 Instead of charging him with murder, he
10 charged him with an accessory. It's impeachment because
11 Mr. Amick will probably testify for the State; and if he
12 did that, then that is favorable to me.

13 THE COURT: What I will do is I will let you
14 make a motion if you want to. If you are going to ask
15 for public records from the Clerk's Office, I
16 understand.

17 You have a right to contact the Clerk's Office
18 and ask them for copies of the records. There is some
19 fee involved with doing it, but the clerk has to provide
20 public records if a citizen asks for it.

21 MR. STARNES: She said she wouldn't do it
22 because I'm an inmate. She said she has people that
23 writes from the Department of Corrections, and she
24 doesn't provide that because it has got personal
25 information.

1 I am not seeking these records to harass or,
2 you know, to cause any disruptions. I am seeking this
3 stuff for impeachment, to impeach the State's case.

4 THE COURT: Why don't you do this. In our
5 April hearing, why don't you just include that among
6 your motions. Make a motion on it, and we will take it
7 up then; okay?

8 MR. STARNES: All right.

9 MR. DELGADO: Your Honor, may I bring up
10 something? I haven't discussed this with Norman.

11 THE COURT: Yes, sir.

12 MR. DELGADO: There is in the General Assembly
13 some legislation pending in the Senate about an
14 equalization of peremptory challenges. It doesn't
15 relate to a capital case.

16 But Senator Knotts was talking about one of
17 the things that will happen with folks that represent
18 themselves in capital cases is that they may have to,
19 under the way the legislation is proposed now, get a
20 copy of a jury questionnaire that may be sent.

21 Senator Knotts was very concerned, and I think
22 it's a realistic concern, about an individual possibly
23 involved in a capital case, as is this one, who
24 represents himself being able to have information about
25 jurors.

1 I think it might behoove Norman and the Court
2 and to resolve any prejudice to any client -- I mean,
3 not prejudice -- but any concern by any juror that when
4 Norman sees those types of things, maybe that is done
5 here in this courtroom with either Mr. Nettles or myself
6 and that then goes back to us for our keeping.

7 So, in other words, with all due respect,
8 Norman, I think that is the reasonable way to take this.
9 He can have the jury questionnaire information but not
10 take it back to write down names, numbers, addresses.

11 Because Senator Knotts is very concerned about
12 these fellows will write jurors from prison, and I think
13 that is a genuine concern.

14 THE COURT: We have already had a problem with
15 that here. A Mr. Stogner was convicted of armed robbery
16 of a bank, and after being convicted -- of course, he
17 represented himself -- and, of course, had the jury
18 list.

19 After the trial he basically wrote the jurors
20 asking what went on in the jury room and why they did
21 what they did, that sort of thing.

22 MR. DELGADO: I didn't know that.

23 THE COURT: Of course, the jurors were pretty
24 upset.

25 MR. DELGADO: I bet. I bet. Your Honor, in

1 that regard, something again that I didn't -- I will say
2 this. If we have to go over this jury questionnaire
3 with Norman -- and you know how these things go, Your
4 Honor. You will have two, maybe three big notebook, a
5 lot of jurors summoned.

6 It may be necessary that we propose --
7 Mr. Nettles and I propose -- a protection order to you
8 so we can meet with Norman without having the beck and
9 call of another court, another judge, a guilty plea in
10 Lancaster, something like that.

11 But I want to say to you as an officer of the
12 Court, that Mr. Nettles and I will make certain that
13 jury information we have, we will share it with Norman
14 but take it back from Norman so that that problem that
15 the Senator was concerned about, which I think is a
16 realistic problem, and I think if it's already
17 occurred --

18 THE COURT: Yes, sir, it has already happened
19 here.

20 MR. DELGADO: -- I don't want it to occur
21 again.

22 THE COURT: Mr. Starnes, you understand that
23 is not directed against you personally, but it is a
24 problem, an issue, that has come up over in the
25 legislature apparently from that particular bill.

1 MR. STARNES: I understand.

2 THE COURT: I don't think I have talked with
3 Senator Knotts about it. Somebody else told me he had
4 that concern, and some of the others have that concern,
5 too.

6 MR. STARNES: Yes, sir.

7 THE COURT: The truth is you hate for
8 something to blow up in this and basically kill what
9 could be some good parts of that bill. I don't know
10 what they are.

11 MR. DELGADO: Yes, sir.

12 MR. STARNES: I understand. I don't have a
13 problem with that, Your Honor. I can understand it. I
14 certainly understand that.

15 THE COURT: Okay. What else? We were talking
16 about the warrants. Why don't you just make a motion
17 and let us hear that and let the State state their
18 position.

19 That is public record. So the State does
20 have a right to be involved in that. You don't have to
21 state why, but you can say what you want basically; and
22 we will probably take it up more with the Clerk's
23 Office.

24 MR. STARNES: Your Honor, getting ready for
25 trial and prepping, I will have to interview certain

1 witnesses and certain experts and stuff like that. In
2 doing so I have to let the jail know.

3 THE COURT: Right.

4 MR. STARNES: And I understand that is for
5 security purposes of who's going to be coming and seeing
6 me. Could I get protection from the Court that the
7 State doesn't get -- I understand for security purposes
8 the jail needs it, but I don't want the prosecution to
9 have it. In turn what I would be doing is giving them a
10 witness list.

11 THE COURT: Right.

12 MR. STARNES: It wouldn't be fair to me,
13 unless they want to exchange a witness list; and I
14 wouldn't be really willing to do that.

15 THE COURT: Let's do this. Make a motion on
16 that and let's take it up in April so the Solicitor is
17 here and they are notified of what is going on with it.

18 MR. STARNES: Yes, sir.

19 THE COURT: But I agree. I don't think the
20 Solicitor is going to want the jail to give them that
21 list anyway.

22 MR. STARNES: Yes, sir. The motion for the
23 housing and all, we are going to take that up in
24 April also?

25 THE COURT: Yes, sir.

1 MR. STARNES: I believe that's it.

2 THE COURT: We will set a day in April, and we
3 will set aside adequate time to be able to take care of
4 everything.

5 If you will just wait a few minutes,
6 Mr. Starnes, we will get copies of all this to you, and
7 they can take you back after that, unless you need to go
8 over anything with Mr. Delgado while you are here.

9 MR. STARNES: A couple of minutes, five
10 minutes, would that be okay?

11 THE COURT: You can take a little longer. We
12 basically reserved the time all morning for it. You've
13 probably got another -- deputies, I don't want to hold
14 you up too much, but let's give him a little bit of time
15 to talk with Mr. Delgado while he can right now.

16 MR. STARNES: I'm sorry I wasn't a little more
17 prepared.

18 THE COURT: No problem.

19 MR. STARNES: I was in shock this morning when
20 they told me that I was coming to court. I had no idea.
21 I had spoke with Ms. Havird last week. She didn't have
22 no idea that I would be here this week.

23 THE COURT: That's all right. We will work
24 with you on it. Again, that's why I wanted you to have
25 time to look over the documents later on so that you are

1 not rushed through them right now.

2 MR. STARNES: Yes, sir.

3 THE COURT: The Solicitor was going to --
4 wasn't Mr. Graham going to go over something with him if
5 he wanted to, the light copies? They were going to let
6 him look over those and if he needed to see originals of
7 any of them, he could.

8 MR. DELGADO: I think that's right. He needs
9 to look these over first.

10 THE COURT: Good. Go ahead and do that then.
11 We will stand in recess, and they can give you those
12 copies in a few minutes, Mr. Starnes.

13 (Whereupon there was a recess).

14 THE COURT: Mr. Graham.

15 MR. GRAHAM: Yes, Your Honor. My
16 understanding is Mr. Starnes had an opportunity to look
17 through the copies of documents that we provided him
18 regarding the previous hearing that he said there were
19 pages that were missing or pages he couldn't read.

20 It's my understanding, I believe, except for
21 one or two pages that we don't have, that we can't find,
22 that he would acknowledge that he has no more complaints
23 about that. I just wanted to put something on the
24 record very briefly.

25 THE COURT: Is that correct, Mr. Starnes?

1 MR. STARNES: That is correct. They are very
2 legible. They did an excellent job, and I appreciate
3 it.

4 THE COURT: That takes care of the discovery
5 issue.

6 MR. GRAHAM: Can you state for the record,
7 Mr. Starnes, what pages you don't have, just for the
8 record.

9 MR. STARNES: Just one minute. The documents
10 that was released on March 25th of '97, number 62 and
11 63, those were missing.

12 THE COURT: So all discovery has been given to
13 you then?

14 MR. STARNES: Yes, sir, from what I see.
15 There is not a cover letter that follows -- all the
16 dates that I got discovery has a cover letter. I am
17 assuming this is all of it because there is no cover
18 letter that followed this date.

19 In other words, when they released the
20 discovery years ago, they would do a cover letter
21 identifying how many documents was with that. There was
22 no cover letter with this certain date.

23 So I don't know how many pages was released
24 then. I just know what I have got in my file, but I
25 have no idea if there's more pages that was released,

1 and I don't have it because there was no cover letter
2 that followed that.

3 THE COURT: I understand that. I think there
4 is no way at this point for us to know that. We can
5 only go on what we have.

6 MR. STARNES: There is no more, other than the
7 dates that are on this document that we went over,
8 there's no other dates that any other discovery was
9 released?

10 MR. GRAHAM: I don't know if he is asking me a
11 question or telling me something.

12 THE COURT: I don't know either.

13 MR. STARNES: I am asking the Court to inquire
14 of the State: Is there any other dates that discovery
15 material was released, other than the ones that I
16 provided them?

17 THE COURT: Do you know of any, Mr. Graham?

18 MR. GRAHAM: I don't know, Your Honor. All I
19 know is he asked to see what was missing or illegible.
20 I don't know whether that covers every date they had
21 discovery or not.

22 MR. STARNES: Can I just put the dates on the
23 record -- it's very few -- to protect the record?

24 THE COURT: Yes, sir.

25 MR. STARNES: I'm not trying to tie the

1 Court's time up.

2 THE COURT: Yes, sir.

3 MR. STARNES: The dates that I have were:
4 October 23, 1996, there was 423 pages. The second date
5 was March 5, 1997. There was 35 pages. The next date
6 was March 10, 1997, 46 pages.

7 March 24, 1997, 638 pages. March 25, 1997, I
8 don't know how many pages was released on that date
9 because that was the date we didn't have the cover
10 letter.

11 The next date was April 4, 1997. There was 14
12 pages released on that date. The final date was
13 April 11, 1997. There was four pages that was released
14 on that date.

15 Mr. Salley did tell me when the penalty phase
16 of the trial started that Mr. Myers gave him a stack of,
17 I guess stuff that they were going to use in aggravation
18 and things that came in at the penalty phase; and I
19 don't have any of that.

20 I don't know what those documents are that
21 Mr. Salley was referring to. Evidently, when we started
22 the penalty phase, he received a bunch of documents.

23 I know there was evidence the State introduced
24 that I supposedly attempted to defraud an insurance
25 company by burning a motor vehicle. That was one of the

1 things.

2 I do remember seeing some photographs of my
3 truck that was burnt, and none of that stuff is in the
4 discovery that I have.

5 THE COURT: It sounds like you are wanting to
6 start all over now.

7 MR. STARNES: No, sir.

8 THE COURT: I'm not sure I understand what you
9 are saying.

10 MR. STARNES: I am asking is there anymore
11 discovery that they are going to introduce into this
12 trial that I don't have.

13 THE COURT: I don't see how there could be. I
14 don't know. Mr. Graham, do you know of anything else?

15 MR. GRAHAM: Your Honor, I don't know. I
16 haven't gone through and checked every date of what he
17 said against every date that we have got.

18 The only thing I knew we were going to do
19 today was go back -- he gave us a list of things that
20 were missing and things he said he couldn't read.

21 We brought those and can deal with those. If
22 there are some other issues he wants, let him do another
23 motion and tell us specifically what he wants.

24 THE COURT: I don't know that we can keep
25 doing that. The problem is do we need to get Mr. Salley

1 in here and find out -- I gather we have never really
2 had his side.

3 Are you saying, Mr. Starnes, he has lost all
4 this thousands of pages of material that was given to
5 him?

6 MR. STARNES: Somebody lost it. I can't say
7 Mr. Salley did it, but part of the file was missing when
8 I got it.

9 Basically what I'm trying to do, Your Honor,
10 is I don't want to get in the middle of trial and them
11 come over and say: Here is discovery material when I am
12 in the middle of a trial, especially doing this pro se.

13 THE COURT: I understand that. But I think it
14 is certainly fair for them to assume that you have got
15 the material if they gave it to Mr. Salley before.

16 I don't think it's appropriate for them to
17 have to say: Well, we need to give him all this again
18 because we don't know what Mr. Salley kept or didn't
19 keep.

20 I say that, understanding that we haven't had
21 Mr. Salley's side of it. Mr. Salley may well say he
22 gave you everything. I don't know. I haven't heard
23 what his side of all this is.

24 MR. STARNES: I subpoenaed him to come in, but
25 I didn't know I was going to be here today or I would

1 have notified him. I sent him and Mr. Soltis a subpoena
2 to come in here because I figured this would arise.

3 THE COURT: Mr. Hubbard, do you have anything?

4 MR. HUBBARD: Your Honor, as far as the
5 motions that were supposed to be heard today, I think we
6 satisfied what we were supposed to do. I will represent
7 to Your Honor that we understand a Rule 5 has been
8 served upon us. We have to comply with Brady as well.
9 Those are continuing duties.

10 Your Honor, if we get something else or
11 discover something else, he is not even going to have to
12 ask for it. We are going to be giving it to him.

13 I just want Your Honor to know and I want to
14 be on the record that we understand what our obligations
15 are. We will comply with them.

16 It probably is time that we get to that point
17 where we start preparing for a trial rather than
18 reconstructing one that we tried in the past. I don't
19 know that we will try it the same way.

20 THE COURT: My problem though, from a
21 logistical standpoint, from the Court's standpoint, is
22 this basically, theoretically we could be in a position
23 where we continue to go with this every time we come
24 back where he says: I don't have this because
25 Mr. Salley didn't give it to me.

1 You are talking about thousands of pages of
2 documents, and I can't assume that Mr. Salley lost
3 everything that was given to him. We continue to be in
4 that position.

5 It may be that we need to get Mr. Salley in
6 here and find out what his position is on it.
7 Otherwise, we are forced to take Mr. Starnes' word.
8 Then that is going to keep you all the way up to trial
9 continuing to have to furnish stuff to him that you have
10 already furnished once.

11 MR. HUBBARD: Yes, sir.

12 THE COURT: Mr. Starnes, I guess what I'm
13 saying is we can't keep doing that. We have got to make
14 some determination.

15 The problem is, as I am sure you well know and
16 as you know, you are protected in a sense in that they
17 can't have somebody go in and go through all your
18 records to see what you've got or you haven't got.

19 From a management standpoint, I am just
20 concerned that we will continue to have these problems.
21 I can see us now coming into June and you making another
22 motion to continue again. I am trying to avoid that
23 very frankly.

24 I am trying to get us in a position to get
25 this case tried. We have been working for months now to

1 get in a position to get it tried. I am not picking on
2 you.

3 But the problem is every time we come up and
4 the solicitor gives you something, then you say: Well,
5 I have got something else now. That could go on forever
6 if we keep doing that. At some point there has got to
7 be an end to it. We have just got to bring it to a
8 conclusion.

9 Let's arrange to get Mr. Salley in here next
10 time we meet, and I will find out from him. It may be
11 that -- Mr. Nettles and Mr. Banks were involved in your
12 trial, too, I think; weren't they?

13 MR. STARNES: Yes, sir.

14 THE COURT: I known Mr. Banks is not
15 practicing now.

16 MR. HUBBARD: Yes, sir.

17 THE COURT: Mr. Nettles is obviously involved
18 here, and he can go through what was supplied, what he
19 supplied or didn't supply.

20 I assume, as I recall, Mr. Salley was lead
21 counsel. I assume he had all the documents and
22 everything. I certainly hope he's not going to come in
23 here and tell me he lost the whole file. I don't think
24 so. Anyway, we will get him in here for next time.
25 Anything else?

1 MR. HUBBARD: No, sir, Your Honor.

2 THE COURT: We will stand in recess then.

3 (Whereupon the proceedings were concluded for
4 March 23, 2005).

5

6 (Whereupon the proceedings were concluded for
7 March 23, 2005).

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1 (The following proceedings were reported on
2 April 29, 2005).

3 THE COURT: In the matter of the State versus
4 Norman Starnes, present is Mr. Starnes. Mr. Salley, I
5 note, is present also.

6 Mr. Graham, you are present on behalf of the
7 State with friends there with you, Officer Paavel and
8 Mr. Tate.

9 Mr. Starnes, I believe we had set this for
10 motions to be made by you today; is that correct?

11 MR. STARNES: Yes, sir, that's correct, Your
12 Honor.

13 THE COURT: Go ahead.

14 MR. STARNES: Beg the Court's indulgence just
15 one moment.

16 THE COURT: Yes, sir.

17 (Pause).

18 MR. STARNES: Your Honor, at the last hearing
19 we had, we covered the discovery matter. The issue
20 arose of some penalty phase stuff I had mentioned toward
21 the end of the hearing. Your Honor had stopped me and
22 said at some point we will have to stop this.

23 Prior to that we had a hearing -- I'm not
24 familiar with exactly what date it was. I don't have it
25 wrote down in front of me -- but I give the Court and

1 Mr. Graham and Mr. Hubbard a list of stuff. It was not
2 filed with the Clerk of Court. In that supplement
3 discovery request, I had requested some of the stuff
4 that was brought out in the penalty phase.

5 From what I understand, the file from the
6 penalty phase was some speeding ticks, I believe there
7 was an allegation that I had burned or attempted to burn
8 a truck to defraud the insurance company, and some other
9 stuff that Mr. Myers had brought out in the penalty
10 phase.

11 Your Honor, Mr. Salley is here today. It's my
12 understanding, and I will let him address the Court,
13 that during -- when the jury returned a guilty verdict,
14 the State at that time released a stack of material that
15 was related to the penalty phase.

16 I do not have any of that stuff. It's my
17 understanding that it's lost. I will let Mr. Salley
18 address the Court on that, Your Honor.

19 THE COURT: Mr. Salley, do you want to address
20 that?

21 MR. SALLEY: Yes, Your Honor. Do I need to be
22 sworn?

23 THE COURT: No, you don't have to be.

24 MR. SALLEY: Judge, after Mr. Starnes was
25 convicted, we were delivered a large stack of material

1 relating to the penalty phase. As the Court is aware,
2 basically I tried the guilt phase of the case, and Leon
3 Banks and Bill Nettles tried the penalty phase.

4 I delivered to Bill Nettles all the materials
5 in my possession which related, you know, to the guilt
6 phase. It's my understanding that Leon Banks and Bill
7 Nettles, and specifically I believe Mr. Banks, retained
8 control of the penalty phase materials. They were using
9 those materials to prepare for the next day of trial and
10 things like that.

11 I don't think I ever had those in my
12 possession. I reviewed them at counsel table with
13 Mr. Banks and Mr. Nettles, but they were using that as
14 trial preparation material, and I never had custody of
15 that.

16 THE COURT: You don't know what happened after
17 Mr. Nettles got them?

18 MR. SALLEY: Actually what I think happened
19 was that when it was delivered, Leon and Bill took it
20 back to their office to review it for the next day of
21 trial.

22 I retained custody of the penalty phase -- I
23 mean, I retained custody of the guilt phase material,
24 which I delivered to Bill Nettles; and I think Leon
25 Banks actually had the penalty phase materials with him.

1 THE COURT: Yes, sir. I think what you are
2 saying is the Solicitor's Office did give that material
3 to you; is that correct?

4 MR. SALLEY: Yes, they did.

5 THE COURT: Anything else you want to add?

6 MR. SALLEY: That's all I have got, Your
7 Honor.

8 THE COURT: Mr. Starnes, anything else?

9 MR. STARNES: Yes, Your Honor. I would move
10 to have them, whatever stuff they haven't given me, to
11 give me so I can prepare for trial. I never had that
12 stuff, the penalty phase.

13 THE COURT: I think they have actually given
14 it, as I understand. Mr. Salley says they gave it
15 during the first time. Have you contacted or have you
16 asked Mr. Nettles if he had that material, if he gave
17 the material to you?

18 MR. STARNES: He doesn't have it.

19 THE COURT: Have you talked with Mr. Banks?

20 MR. STARNES: I have no way of contacting him,
21 Your Honor.

22 THE COURT: Somebody must be able to contact
23 Mr. Banks.

24 MR. SALLEY: If it please the Court, Your
25 Honor. I believe Mr. Banks no longer practices law.

1 THE COURT: Right. He has got to be somewhere
2 though.

3 MR. SALLEY: I can't say that it would be any
4 hardship for the State to reproduce that material.

5 THE COURT: I'm sorry?

6 MR. SALLEY: I can't say that it would be any
7 hardship for the State to reproduce that material.

8 THE COURT: One of the problems is -- and I
9 certainly don't have to state their position. They can
10 do that, Mr. Salley. You understand that they have
11 already re-reproduced hundreds of pages for Mr. Starnes
12 that were supposed to have been given by you to him.

13 Mr. Starnes say it was not given, that you
14 didn't give it to him. They had to basically -- and I
15 don't mean this to sound the wrong way, and I guess the
16 way he has been putting it, is they had to do your job
17 to get those materials to him.

18 He is right, in the last hearing on this, I
19 just said at some point this has got to come an end
20 because every hearing Mr. Starnes comes back and says:
21 Now I want this or I want that.

22 The State has been -- for several hearings,
23 the State came up with it. Then we come to the next
24 hearing, he says: Now I want this or I want that.
25 There has to be an end to it. That's what we are trying

1 to do is get to an end.

2 I think Mr. Starnes just needs to check
3 with -- and we need to have something from Mr. Nettles
4 on the record, I guess, to determine if he did something
5 with it. Then we need to find out about Mr. Banks, see
6 if anybody has contacted Mr. Banks to see if he has got
7 those records.

8 Again, I am trying to be balanced for both
9 sides, but the State, like you, is trying to get ready
10 for this case, Mr. Starnes. They are constantly having
11 to come up with the stuff that they have already given
12 once.

13 It's a little unfair frankly. Again, I don't
14 need to take their position on it. They can state their
15 own position. It's just we have got -- again, this has
16 got to come to an end. That's just the way it is.

17 MR. STARNES: Yes, sir, I understand. Your
18 Honor, I had just served them today because -- I just
19 got this motion last night. Mr. Walker come to see me
20 at the jail last night -- and I had just gotten this
21 motion.

22 THE COURT: What motion is that?

23 MR. STARNES: It's a motion to suppress
24 further evidence. The problem -- what it is, Your
25 Honor, is I stated on the record the material that I did

1 have.

2 On page 2 of that motion, Your Honor, at the
3 bottom, it reflects all of the material that I have.
4 And what they did when they released this material, it
5 was dated and Bate stamped. It has the pages that
6 identify the documents that I have.

7 The documents that I have is what is reflected
8 on page 2 of this motion. The problem, Your Honor, is
9 that the penalty phase stuff, I don't have. I can't --
10 I'm not blaming the State because they did their duty,
11 and I am sure they relied on the stuff the first go
12 round.

13 THE COURT: Let the record reflect that
14 Assistant Solicitor Delgado is now with us.

15 MR. DELGADO: Good morning, Your Honor.

16 THE COURT: Mr. Delgado, good morning. Go
17 ahead, Mr. Starnes.

18 MR. STARNES: The problem I have, Your Honor,
19 is trial preparation. I am doing this pro se from a
20 jail cell, and I have very limited time to do this. I
21 need the material.

22 We are just a little over two months away from
23 trial, and I don't have this stuff to prepare. I guess
24 what I'm asking the State, are they going to give it to
25 me or how are we going to resolve this?

1 THE COURT: On this motion what you have
2 listed is basically what they have furnished to you; is
3 that correct?

4 MR. STARNES: Yes, sir, that is correct, Your
5 Honor.

6 THE COURT: When I said hundreds, I think I
7 was actually wrong. If I read this right, actually it
8 looks like somewhere between 1,500 and 2,000 pages of
9 what they have provided.

10 MR. STARNES: Yes, sir, that's possible.

11 THE COURT: All this is what your lawyers are
12 supposed to have lost before?

13 MR. STARNES: No, sir. The stuff on page 2,
14 all of that they did provide. A lot of it I had. Some
15 of it was illegible that I had. A lot of documents I
16 had they had to recopy from their original documents
17 because the ones I had, part of it was illegible. Some
18 of that stuff I had. All of this they didn't have to
19 reproduce because I did have a good, fair amount of it.

20 THE COURT: Well, even if it's a thousand
21 pages, I guess -- and this isn't your fault. One of the
22 parts that bothers me, and I am not picking on you,
23 Mr. Salley, is how could lawyers lose a thousand pages
24 worth of a file? I don't understand that. Mr. Salley,
25 can you explain that?

1 MR. SALLEY: Your Honor, as I stated to the
2 Court, I had the guilt phase material. That was
3 furnished to Mr. Starnes. Leon Banks and Bill Nettles
4 were doing the penalty phase.

5 THE COURT: Some of this is guilt phase stuff,
6 I think; wasn't it?

7 MR. SALLEY: Everything I had in the guilt
8 phase, I believe Mr. Starnes received.

9 THE COURT: Are you telling me he asked the
10 State to provide hundreds of pages of stuff that you had
11 already given him?

12 MR. SALLEY: I provided it to Bill Nettles,
13 Your Honor. It's my understanding that all the guilt
14 phase material he received.

15 THE COURT: What about that, Mr. Starnes?

16 MR. STARNES: Your Honor, when the file was
17 turned over to Mr. Delgado and Mr. Nettles, when they
18 went and picked it up from Mr. Salley, they filed a
19 sworn affidavit with this Court identifying the pages
20 that were missing and made aware to the State and the
21 Court that there was over 275 pages of documents that
22 were missing.

23 This was before I even got the file. When
24 they picked it up from Mr. Salley, these pages were
25 missing; and they filed that with the Court. I believe

1 the last hearing we had, Mr. Nettles was here. He even
2 brought that up on the record, Your Honor. That was
3 before I even got the file. Before I even decided to
4 move pro se, they made the Court and the State aware of
5 that.

6 THE COURT: What is it you are asking for this
7 time?

8 MR. STARNES: Whatever they have that I don't,
9 and everything that I have got is listed on page 2.

10 THE COURT: How are they going to determine
11 what they have that you don't? I don't understand that.

12 MR. STARNES: They have a list of what -- I'm
13 sure they keep a list of all that stuff. They Bate
14 stamp all that stuff.

15 THE COURT: Let me see if I can get this
16 straight. In essence you are asking the State to go
17 through their files and check what they have got and
18 also check these -- what has turned out to about 2,000
19 pages that they have given you that you have got, and
20 somehow compare the two and see what they have got that
21 you haven't got?

22 MR. STARNES: No, sir.

23 THE COURT: It would seem to me that that
24 would take an innumerable amount of hours for somebody
25 to do that.

1 MR. STARNES: When they released this stuff,
2 Your Honor, it was Bate stamped. Those documents are
3 identified. When they released this stuff, the
4 documents, when they released it, they Bate stamped it.
5 All those documents are identified by date and by page
6 number.

7 In essence what I'm saying is what I have in
8 this motion is the material that I have got. Any other
9 material that they have, that is Bate stamped or page
10 numbers that is not listed on this, they should give me.

11 THE COURT: Yes, sir. Mr. Graham, do you want
12 to say anything about this?

13 MR. GRAHAM: Your Honor, really I don't know
14 what to say. I received these about ten or twelve
15 minutes ago. I read them through. I haven't had a
16 chance to really look at them. Nobody else in my office
17 has had a chance to look at them.

18 I am not really prepared to give any kind of
19 response. It was my understanding we were going to have
20 motions today, but it was my understanding that he was
21 going to do his paperwork and get it to us a long time
22 ago.

23 When we responded last time to the discovery
24 motions, the letter in there states: Yes, we are still
25 looking through some things, but we have given him

1 everything we know that is discoverable. We know what
2 Brady is. We know what Rule 5 requires us to do, and we
3 are doing that. I don't know what else to say.

4 THE COURT: I think I am kind of in a
5 predicament myself. I don't know basically what to ask
6 you to do or even order you to do. I get the
7 impression, Mr. Starnes, you are just saying whatever
8 they have got, you want them to give it to you again; is
9 that right?

10 MR. STARNES: No, sir, Your Honor. I am not
11 asking them to recopy and give me what they have already
12 given me. On page 2 of the motion, Your Honor, it lists
13 what I have.

14 THE COURT: Right.

15 MR. STARNES: In their file they Bate stamped
16 everything, and they should know what I don't have. I
17 am letting them know in this motion what I have got.

18 THE COURT: Okay. Let me ask this.
19 Mr. Graham, have you had anybody go through the records
20 basically to determine what you have given Mr. Starnes
21 or what has not been given to him?

22 MR. GRAHAM: No, I think -- I'm sorry, Your
23 Honor. Mr. Starnes has given us in the past at
24 different times, he has mentioned certain days. This is
25 the probably the first time that we have actually seen a

1 list of what he says he doesn't have. We have not gone
2 through to compare what he says he has to see if there
3 are things that we have date stamped that is not on this
4 list.

5 THE COURT: Right.

6 MR. GRAHAM: We have not done that. We just
7 got this list.

8 THE COURT: I notice, Mr. Starnes, on this
9 that one thing it shows, it says on October 23, 1996,
10 they gave you 0001 through 0423. Then, for example, on
11 the next one, let's say go to number 4, March 24, 1997,
12 they gave you Number 1 through 638. That was back
13 during the first trial, before the first time. Is that
14 the same stuff? Are those the same numbers or are those
15 working from some other different files or something?

16 MR. STARNES: No, sir, that's the same. It's
17 from the original.

18 THE COURT: Then according to this there are
19 some documents they have given you eight times if I read
20 this right. Because every time it says 1 through 423,
21 then 1 through 35, the next one is 1 through 46. For
22 example, does that mean they have given you, say, 1
23 through 35 eight different times?

24 MR. STARNES: No, sir, that's different
25 material, Your Honor.

1 MR. GRAHAM: What we do, Your Honor, is the
2 date stamp, I believe, was used for all of these; and it
3 actually has a page number and a date. It says
4 something like: O.C.T. for October 23rd, 1996, 01, 02,
5 03. It's unique to the date and the page number. Each
6 one of those would be different documents.

7 THE COURT: I guess the point I am trying to
8 make, and I am not making it very well, is that I don't
9 know how the State is going in essence to determine all
10 this without literally having somebody go through the
11 entire file page by page. That is the only way they
12 could do that; is that not right?

13 MR. STARNES: Your Honor, I don't know because
14 I don't know how they keep their file. I can't answer
15 that.

16 THE COURT: Mr. Graham, what about that?

17 MR. STARNES: I give Mr. Graham a copy of
18 this. This is the first time I filed this with the
19 Court. But on the pages that Your Honor had, on the
20 yellow pages and the pages that we had photocopied when
21 we were over in Richland County, all these dates were on
22 there, Your Honor.

23 THE COURT: Well, we are certainly not going
24 anywhere with this at this point. What we need to do is
25 somebody needs to contact -- does anybody know where

1 Mr. Banks might be or how he can be contacted? If I
2 have to, I will contact him and find out what is going
3 on. We have got to get to the bottom of this.

4 MR. DELGADO: That might be a little more
5 difficult, Your Honor. I know he is not practicing law,
6 and I don't even think he is in the State now. Let me
7 do this if it's all right with you. Mr. Nettles is
8 involved with another death penalty case, a hearing on a
9 mental retardation issue.

10 I literally haven't seen him in over a week.
11 Let me see if I can get Stephanie in our office, for
12 whom we work basically, and see -- Stephanie will know
13 where the last communication was about Mr. Banks, and
14 let me see if I can provide that to your clerk, maybe by
15 today.

16 THE COURT: If you would do that, that would
17 help. Before you came in, Mr. Delgado, Mr. Salley
18 indicated that all these materials that Mr. Starnes
19 wanted, he actually got from the State back just before
20 the penalty phase of the first trial. He gave them to
21 Mr. Nettles, and he thinks Mr. Nettles gave them to
22 Mr. Banks. We are just trying to track this down.

23 MR. DELGADO: Absolutely.

24 THE COURT: I'm sure you heard my concern a
25 minute ago. I'm bothered in essence that the sum total

1 of what they are telling me here is that lawyers lost
2 somewhere between 1,500 and 2,000 pages worth of
3 documents.

4 That frankly is unfathomable that lawyers
5 would actually lose that much without some -- I would
6 hope there would be some good reason attached to that.
7 Obviously we all agree there is no reason for a lawyer
8 to lose that kind of material if they, in fact, lost
9 it. It may be around somewhere in some file. I don't
10 know.

11 MR. DELGADO: I will try my darnedest to try
12 to at least find Mr. Banks.

13 THE COURT: I appreciate it. I will defer
14 ruling on this, Mr. Salley -- excuse me, I'm sorry --
15 Mr. Starnes, until we find out something from Mr. Banks.

16 MR. STARNES: Yes, sir. And I'm not picking
17 on the State or nothing. I just want the stuff to be
18 prepared, Your Honor.

19 THE COURT: Right.

20 MR. STARNES: I don't want to get in the
21 middle of the trial or in the middle of voir dire, and
22 they hand me stuff and I have to have that to prepare.
23 I am not trying to be hard on the State. I want them to
24 know that.

25 THE COURT: I certainly understand that. I

1 don't blame you. I don't have any problem with that. I
2 am sure you understand our problem. We can't get to
3 these other motions. We can't seem to get things off
4 track or on track because every time we come to a
5 hearing, we are spending a lot of time taking up things
6 like this.

7 Basically it's on your assertion that lawyers
8 have lost somewhere between 1,500 and 2,000 pages worth
9 of documents. That is the only conclusion I can come to
10 from it.

11 Anyway, we will try to find some contact with
12 Mr. Banks and see what we can find out. It appears that
13 I am just going to have to have my staff do it because
14 we are not getting anywhere this way. What is your next
15 motion?

16 MR. STARNES: Your Honor, I guess we can take
17 up the motion and matters concerning the jail.

18 THE COURT: Is that's the one to order
19 separate housing for you?

20 MR. SALLEY: Your Honor, is the Court finished
21 with me?

22 THE COURT: Sir?

23 MR. SALLEY: Is the Court finished with me?

24 THE COURT: Mr. Starnes, do you know of
25 anything else Mr. Salley will be need to be involved in?

1 MR. STARNES: No, sir, I think that it's.

2 THE COURT: Thank you, sir.

3 MR. SALLEY: Thank you, Your Honor.

4 THE COURT: Mr. Tate, do you want to address
5 that?

6 MR. TATE: I'm not sure exactly because I have
7 a lot of paper from Mr. Starnes. I would assume we are
8 talking about the order entitled ex parte order that he
9 handed me at the close of our last hearing. I don't
10 know what he wants to talk about, Your Honor.

11 THE COURT: Is that the one, Mr. Starnes?

12 MR. STARNES: I believe. Could I see that?

13 MR. TATE: Sure.

14 (Pause).

15 MR. STARNES: Yes, sir.

16 THE COURT: Tell me, what is it exactly that
17 you are asking? You are asking for a cell just to
18 yourself; is that right?

19 MR. STARNES: The cellmate I have now, Your
20 Honor, I don't detect that he is going through my stuff
21 or bothering anything. And, again, I'm not trying to
22 make it hard on the jail or anything, but I'm trying to
23 prepare for a capital case.

24 One of the problems I'm having is
25 communication. I have no way to contact and communicate

1 with experts and consult with them. The phone system at
2 the jail is monitored and recorded.

3 In addition, sometimes it's very difficult to
4 get on the telephone. We have got approximately 90
5 inmates, and 45 is out at any given time or when they
6 allow us to come out. We have got four telephones.

7 Also, Your Honor, if I make a call to talk to
8 an investigator or to standby counsel, to consult with
9 an expert, I have inmates within inches of both sides of
10 me that can hear my conversation, not to mention the
11 jail being able to monitor and record it.

12 Your Honor, I believe this was granted in
13 Brewer. Like I say, I'm not doing this to cause the
14 jail a hard time or anything; but I am having a very
15 difficult time preparing without effective
16 communication.

17 What I would move the jail to do, if at all
18 possible, is to provide a land line or a cell phone at
19 my expense. I am sure they can take security measures
20 and allot me time to use the phone. We have got a
21 multipurpose room that is monitored by the pod officer.
22 In addition, it has video surveillance.

23 A cell phone would be of good benefit to me.
24 It would help me because I'm having -- I can't contact
25 and I haven't contacted any experts because I simply

1 can't communicate with them on the phones that we have
2 got.

3 I am not making that motion for no escape or
4 no security threat or anything like that. I make the
5 motion, Your Honor, because I am having a very difficult
6 time preparing for trial without being able to consult
7 with these people.

8 THE COURT: Mr. Tate.

9 MR. TATE: May it please the Court, Your
10 Honor. I am familiar with the pod housing arrangement.
11 The area that Mr. Starnes is referring to that was used
12 in the Brewer trial simply were the attorney/client
13 interview rooms that we were in. Those are no more.
14 They are now closets, if you will.

15 Also back then with Mr. Brewer in 1999, Your
16 Honor, we had 400 inmates in our facility. Now, Colonel
17 Paavel tells me we are at 830 this morning. That area,
18 there is just no way to supervise that area. There is
19 not officers walking back and forth like they were.

20 Those interview rooms that Mr. Brewer used
21 that Mr. Starnes referred to were at that time right in
22 the middle of where everybody was. Now they are closets
23 off of a hallway with the new facility.

24 I believe Mr. Starnes in his motion is asking
25 the Court to take control. He wants a table so many

1 feet long, the inmate telephones. He is asking the
2 Court to take control of his stay at the detention
3 center.

4 Unless he can allege that something the
5 detention center is doing is violating his
6 constitutional rights, we would think that such would be
7 improper.

8 We do have other possible housing. We had
9 made arrangements for single celling, as well as a
10 locked cabinet for his material. It just can't be done
11 in his current housing unit.

12 On the way out of the courtroom, one or two
13 hearings ago, Mr. Starnes told me not to broach that
14 subject. He didn't want to live in that particular area
15 of the facility.

16 Your Honor, we can provide him a single cell
17 in the old part of the jail with a locked cabinet.
18 Captain Williams, before his retirement, had already
19 planned for these things.

20 There is also, the way inmates move on those
21 halls, he could have use of a phone. I don't think
22 there are any other inmates out. If not, there is only
23 one or two at the time. There is not the confusion
24 there is otherwise.

25 THE COURT: So what you are saying is you can

1 make arrangements to do what he needs to do but not in
2 the way he wants it.

3 MR. TATE: He asked me to not do it the last
4 hearing is what I understood. He didn't want to live in
5 that part of the jail. Your Honor, we are doing the
6 best we can under the circumstances.

7 As far as communication, I think I have spoken
8 with Mr. Delgado to get experts in, to get various other
9 people to come to the facility. We have extended to
10 Mr. Starnes what we extend to every lawyer in Lexington
11 County, and that is they can use the private visitation
12 rooms in the pod.

13 I do know they have made use of those. I
14 don't know the role of various people who have come in,
15 but all sorts of folks have been added to the visitation
16 list and are being treated as professional visitors and
17 to give him that privacy when they visit. I have got a
18 laundry list of private investigators in and out.

19 THE COURT: Excuse me one minute if you will.

20 (Pause).

21 THE COURT: Mr. Tate, did you have anything
22 else?

23 MR. TATE: Nothing further, Your Honor. Just
24 in summation, we can address some of these concerns
25 administratively by moving Mr. Starnes. While we are on

1 the topic, I have also -- some of the discovery
2 Mr. Starnes has asked for we believe creates care,
3 custody, control, and security concerns, such as
4 information about who he may be housed with. He is
5 asking for a lot of inmate files.

6 I filed those under seal with the Clerk of
7 Court, without commenting whether they are relevant or
8 not. But if Mr. Starnes is going to want those at some
9 point, we will have to house him in another facility
10 apart from those inmates, as well as he has asked for
11 security policies for the facility and all sorts of
12 other stuff.

13 If we are going to have to move him anyway, if
14 he represents to the Court he needs this material in
15 preparation of his defense, I might as well go ahead and
16 see if S.C.D.C. can take him, which would kind of moot
17 the issue, I don't know.

18 THE COURT: Mr. Starnes, anything you want to
19 say?

20 MR. STARNES: Yes, sir. If I have to go into
21 that, I would need to do it ex parte because I will have
22 to go into defense matters and explain why I would need
23 this stuff.

24 THE COURT: Why you would need what now, the
25 special housing?

1 MR. STARNES: Some of the stuff I subpoenaed.
2 Excuse me just one second. Mr. Tate is a lot quicker
3 than I am. He is used to doing this stuff.

4 THE COURT: What I'm trying to do is
5 determine: Are you saying that's why you need ex parte
6 to explain why you need special housing and the cell
7 phone?

8 MR. STARNES: No, sir. We were there. Now we
9 are at some of the policies and stuff and inmate files
10 and stuff that he is asking for. Can we --

11 THE COURT: Let's stay on this one first.

12 MR. STARNES: I agree with you.

13 THE COURT: I will get back to the other in
14 just a minute.

15 MR. STARNES: Your Honor, as far as the phone,
16 the housing area that I'm at now, I have access to the
17 telephone two and a half hours in the morning and three
18 and a half hours in the afternoon.

19 The phones are monitored and recorded. The
20 purpose of it is for effective communications with
21 experts and investigators, standby counsel to present a
22 complete defense.

23 To present a defense, I cannot talk to these
24 individuals that I need to talk to on their telephone
25 system because it's monitored and recorded. The

1 investigators for the Sheriff's Office, they can listen
2 to them.

3 There is a disclaimer when you make the calls,
4 the calls are monitored and recorded. I have to make
5 collect calls. I cannot call experts and certain people
6 because the phone accounts have to be prepaid and a lot
7 of these are State agencies and stuff.

8 If I call, for instance, to S.L.E.D. or I call
9 the Department of Corrections, they are not going to
10 take a collect call from me because that's their policy.
11 They don't do that. They don't accept collect calls
12 from inmates.

13 I'm sure that they can facilitate and
14 implement something that we can all come to an agreement
15 on to allow me effective communication. It's impossible
16 for me to do it, for me to go forward and represent
17 myself.

18 I understand that being incarcerated at a
19 detention center is to ensure my appearance at trial.
20 It's not to hamper my defense. I'm not trying to be
21 unreasonable, and I have not asked for a whole lot.

22 The only thing I am asking for, Your Honor, is
23 for access to either a land line or a cell phone so I
24 have effective communication and to have a table where
25 can -- a table and a chair -- where I can prepare for

1 this defense. That's all I'm asking from the jail as
2 far as housing.

3 THE COURT: What about this? Mr. Tate says
4 they offered you that before in another section, and you
5 didn't want to move to another section.

6 MR. STARNES: If I've got to and if they will
7 give me a table I can work at, they can move me. That's
8 fine. But the only problem is the area that he is
9 talking about moving me in is the special management
10 housing unit where lockup is at.

11 We had an inmate this morning at breakfast
12 attack an officer. He is down there right now. I'm
13 sure he's kicking the door and hollering. The inmates
14 that are housed in this area are unruly. It is very
15 loud and disruptive.

16 The reason I didn't want to move to that area
17 is because it's hard for me to concentrate and work in a
18 hostile environment. Moreover, Captain Quig was nice
19 enough to allow me to leave my cell light on after
20 12:00 o'clock at night when it gets quiet.

21 Officer Novak, he is here. He has worked the
22 housing area. I work at night. When they go to sleep
23 is usually when I'm up working. In the area that I'm at
24 now, they can leave the light on at night. In the area
25 they want me to move to, I can't have the light to work

1 at night, but it's a disruptive area.

2 I'm not trying to choose where I'm housed at.
3 I don't make that decision, but I'm just trying to do
4 this the most -- I guess the most comfortable way
5 possible and the way that I can do it. It's just
6 difficult to prepare this case in lockup. That's the
7 area they are talking about, Your Honor.

8 If they will give me a table, I will do my
9 best to adapt to that environment. I will have to. If
10 that's what I have got to do and I have no choice, I
11 will have to do that. But the other thing is the access
12 to the telephone.

13 Even if I could use their telephone and it
14 wasn't monitored and recorded, I'm still stuck with
15 having to make collect calls. And being housed in that
16 area, I am only out one hour a day. During that time I
17 have to shower and make telephone calls.

18 It takes me 15 to 20 minutes to take a shower,
19 and I have to wash my clothes because I have to wash my
20 clothes in the shower. They do laundry service for
21 these uniforms, but all white clothes -- underwear,
22 socks, and T-shirts -- we have to wash them ourselves.

23 MR. TATE: We can get him some more time out,
24 Your Honor. As to the telephone conversations, of
25 course, his investigators have telephones. They can

1 call and they can come in. We have extended his
2 visiting hours, I think 8:00 a.m. to 10:00 p.m. or
3 something like that.

4 We would have no problem at all with this
5 Court gagging our employees to not repeat or to not
6 listen to any of Mr. Starnes' calls with investigators
7 or anybody he is talking to, not to repeat anything
8 heard for any reason to anybody, punishable by contempt.
9 We are certainly amenable to that.

10 THE COURT: Here's what I'm going to do. What
11 I will do is basically order that the jail arrange such
12 housing and communication and work facilities for
13 Mr. Starnes as would fit within the management and
14 security requirements of the jail.

15 Obviously there are some things I think you
16 can do. But I certainly understand, I don't want you to
17 have to literally change everything around for 800 other
18 people to do one. That is not going to work. If you
19 would make whatever arrangements, how about send me sort
20 of a letter. Of course, send a copy to Mr. Starnes also
21 saying what you have done.

22 MR. TATE: I will sit down with the captain
23 and the colonel this afternoon.

24 THE COURT: Okay. What is your next motion,
25 Mr. Starnes?

1 MR. TATE: Thank you, Your Honor.

2 MR. STARNES: I'm kind of lost here as to what
3 we are doing.

4 THE COURT: That motion is taken care of. The
5 motion to suppress further evidence, I guess that's the
6 one, is deferred until we can hear something or find out
7 something about Mr. Banks or hear from Mr. Nettles, and
8 see if they can account for these 2,000 pages they are
9 supposed to have lost.

10 MR. STARNES: Yes, sir.

11 THE COURT: What is your next motion then?

12 MR. STARNES: Well, I have another motion, and
13 I just got this last night to Mr. Walker. He come at
14 7:30 last night and I haven't provided it to the jail
15 yet.

16 What it is, Your Honor, is in '96, '97, the
17 defense attorneys had a mock-up built of my living room.
18 It's my understanding that the mock-up still exists. I
19 believe the engineer who put it together still has it.

20 I'm not going to make a motion like Mr. Salley
21 did to transport me to the house so I can show certain
22 experts how this shooting occurred, but what I would
23 propose to do, if they could facilitate it, is have my
24 investigators and some of the experts bring that mock-up
25 into the jail.

1 They have got a housing area, a pod, that is
2 open, so that I can put that together and recreate it
3 for a certain expert that I do not want to disclose to
4 them.

5 THE COURT: At some point you may have to
6 disclose the expert, but obviously I won't go into that
7 issue right now.

8 MR. STARNES: They know who my expert is.

9 THE COURT: Is it still built and altogether
10 or is it just pieces or something?

11 MR. STARNES: No, sir, it's like a puzzle.

12 THE COURT: You need to have it put together?

13 MR. STARNES: Right.

14 THE COURT: And be able to see it and go
15 through it with them or something?

16 MR. STARNES: Right.

17 THE COURT: What about that, Mr. Tate?

18 MR. TATE: Your Honor, I will have to talk to
19 my client if we are going to rebuild a pod into a living
20 room. I have no clue, sir.

21 THE COURT: Let me tell you, during the last
22 trial I recall them during it. We actually if you'll
23 remember were in the old courthouse. We actually did it
24 in the small courtroom, as I recall. It's not a real
25 big thing, as I recall. It would actually -- you would

1 have to move the tables a little bit in here, but it
2 would actually fit somewhere in here.

3 MR. TATE: We are talking about like pieces of
4 furniture?

5 THE COURT: Plywood.

6 MR. STARNES: I've got pictures of it. I
7 don't have it here, but I will be glad to provide it to
8 you. It's just a small mock-up. It's not -- the walls
9 are not built all the way. They are built probably this
10 high (indicating).

11 MR. TATE: I think if you will have your
12 investigator just come see me and bring the pictures and
13 tell me what he wants, I am sure we can arrange some
14 spot inside a secured area where he can put this
15 together. We are talking about one day, right? We are
16 not talking about leaving it?

17 MR. STARNES: It will take just a couple of
18 hours. I just have to go through, and I would like the
19 investigator -- he needs to videotape it.

20 THE COURT: Try to work with him on that.

21 MR. TATE: If you will get the investigator to
22 call me, I will be glad to discuss it with him.

23 MR. STARNES: Your Honor, the next issue has
24 to deal with the subpoenas. Beg the Court's indulgence
25 just one moment, please.

1 THE COURT: Let me note by the way, you had
2 sent me a file of stuff a few days back, and I have not
3 done anything. I was going to take some of that up with
4 you today. I think most of it is -- most of this would
5 be ex parte stuff. There is something to do with
6 subpoenas in here. I don't know if it's the same thing
7 or not.

8 MR. STARNES: I have no idea what that is
9 because Mr. Walker did that. I don't know. That was
10 something that I didn't know if we were going to address
11 a little later.

12 THE COURT: Again, this is ex parte stuff, I'm
13 sure. I will go over it with you after we get through
14 with this part of it.

15 MR. STARNES: Your Honor, there were several
16 inmates that the State called at the original trial to
17 testify against me. I subpoenaed the records to --
18 well, all of these individuals:

19 One was Terry Wayne Lamineck, Robert Weedow
20 (phonetic), a female, Teresa Holland, and another
21 individual by the name of Keith Hartley, and another
22 individual by the name of Leroy Jones, Jr.

23 I am going to have to have this stuff or would
24 they be willing to give it to my investigator if they
25 don't want me to have it?

1 THE COURT: I don't understand. What stuff
2 are you talking about now?

3 MR. STARNES: These different inmate files. I
4 subpoenaed --

5 THE COURT: You want inmate files?

6 MR. STARNES: Sir?

7 THE COURT: You want files of other inmates?

8 MR. STARNES: Other inmates that have
9 testified against me that the State will probably call
10 again me as witnesses. Yes, sir, I need that stuff.

11 MR. TATE: Your Honor, he has asked me for
12 inmate files. What I have done, I believe -- and I'm
13 not sure because I have got a lot of discovery for
14 Mr. Starnes. I don't know which inmates he is talking
15 about -- but in general terms I will tell him that he
16 can't have files on the guy living down the hall or
17 somebody in the facility.

18 There is medical information, there is
19 disciplinary information, there's private contact
20 information, private to other inmates. If Mr. Starnes
21 would like to limit his request somewhat, I would not
22 have a problem providing that to his investigator, with
23 specific instructions from the Court that they are not
24 to bring that stuff and introduce it into the facility.
25 I don't need to start a pipeline and end up with an

1 inmate hurt or killed over the release of private
2 information in the facility. I can't take that chance.

3 MR. STARNES: None of these individuals are
4 incarcerated in Lexington now. Some of them are in the
5 Department of Corrections. Three of them are out of
6 state from what I understand. They are not in the jail.

7 THE COURT: I can imagine if I granted that,
8 Mr. Starnes, I would have -- they would all go straight
9 to a federal court, I'm sure, over their privacy rights
10 and the rights of their file.

11 What I will do is this. I will deny the
12 motion. But as Mr. Tate indicated, there may be some
13 things that they may be able to give to you. If you
14 will be a little more specific about it, you can check
15 with them and see.

16 But I can't obviously -- I'm sure you
17 understand -- I can't say: Here is so and so's file.
18 You can take it and go through it. Nobody would ever be
19 able to do something like that.

20 MR. STARNES: I understand. It was just like
21 inmate movement and things like that.

22 THE COURT: They may be able to work with you
23 on something like that.

24 MR. TATE: Part of that, I believe, are things
25 like pass-on books, which a floor officer keeps as to

1 what is going on on his floor. That, again, it has
2 everything from suicide attempts to other inmates'
3 doctor visits, to blah, blah, blah. I can't release
4 that back.

5 THE COURT: I'm not going to order something
6 like that. I would be in front of a federal judge if I
7 did that probably.

8 MR. STARNES: They did it the first time.

9 THE COURT: They gave your attorneys all the
10 inmate files?

11 MR. STARNES: Not all of them but some of
12 them.

13 THE COURT: Is that right, Mr. Graham? Do you
14 know?

15 MR. GRAHAM: I do not know, Your Honor.

16 MR. STARNES: Some of the log reports and
17 stuff like that.

18 THE COURT: Specific stuff. They didn't just
19 give your attorney the whole file and say: Go through
20 it.

21 MR. STARNES: No, sir, I don't believe they
22 did that. It's just like Mr. Tate was just mentioning,
23 daily log reports and stuff like from the housing
24 officer.

25 THE COURT: He is saying some of that may be

1 okay. What you need to do is you need to make it
2 specific and tell him what you want from it.

3 MR. STARNES: Your Honor, I did that in this
4 subpoena.

5 THE COURT: You specifically said exactly what
6 you wanted from a file, from each file?

7 MR. STARNES: No, sir.

8 MR. TATE: All mine say the complete inmate
9 file on James Maurice Riles -- and you can substitute
10 that name -- the complete inmate file on Frank Edward
11 Parker, Jr., the complete inmate file on George Allen
12 Washington. That's what my attachment says, Your
13 Honor.

14 MR. STARNES: I wasn't talking about inmate
15 files. I thought your ruling was I couldn't have that
16 stuff. What I'm talking about is log reports from the
17 daily logs.

18 THE COURT: That's what I just said. If you
19 ask him for specific things, they may be able to give
20 you some specific things.

21 MR. STARNES: They said, no, they couldn't
22 give it to me, that it's under seal. This is why I'm
23 asking for it, Your Honor. The reason I am asking is
24 because it's my understanding that someone -- I don't
25 know if it's from the Solicitor's office or from the

1 investigators -- that have been fishing in the jail
2 trying to get inmates as witnesses.

3 They have interviewed these inmates. There
4 are inmate movements. There was an inmate that was
5 taken off the third floor that was taken through the
6 booking area, over through the admin building and
7 interviewed by a narcotics officer relating to my
8 case.

9 I haven't put the motion together, but I am
10 doing the research now to have a motion to be heard
11 to not allow jailhouse testimony under Henry and
12 Messiah.

13 In addition, there is a motion to recuse the
14 Eleventh Circuit Solicitor's Office that I haven't put
15 together. All this is intertwined together. At the
16 original trial, there was allegations that Mr. Riddle
17 had talked to one of my cellmates, had called him down,
18 spoke to him, and asked him to lie.

19 THE COURT: If you want to make this motion,
20 you need to put it together so we can hear it. What is
21 your next motion?

22 MR. STARNES: Maybe I'm not making myself
23 clear, Your Honor. The reason I needed the log reports
24 and this stuff for the inmate movement is so when I have
25 this motion heard, then I have got those documents with

1 me.

2 THE COURT: Can you give him log reports?
3 Inmate movements seems one of those security issues.
4 I'm not sure they want to give you access to that.

5 MR. TATE: Your Honor, I don't even know which
6 one of his subpoenas he is talking about. If he could
7 give me a date or possibly the date of my response
8 letter, I will be glad to reference and clarify it. But
9 without knowing specifically which one he is talking
10 about, I don't know.

11 MR. STARNES: The second one, the first and
12 second one.

13 MR. TATE: What would have been the date on my
14 response when I wrote you a letter?

15 MR. STARNES: March 3, 2005.

16 MR. TATE: And the specific numbers in that
17 subpoena, sir?

18 MR. STARNES: Ten.

19 MR. TATE: I'm sorry, ten. Daily log report
20 of A. pod, which is the current housing unit of
21 Mr. Starnes, would should anything any officer wrote
22 down about any inmate in that pod on that day.

23 If he wants to say any inmate log entry for
24 inmate John Tate, I don't have a problem providing a
25 redacted copy to him in a courtroom but not to go back

1 into the facility.

2 THE COURT: Mr. Starnes, what about that?

3 It's sounds to me like, unless I am just missing it, it
4 sounds to me like some of the things you are wanting to
5 get, you can get. But you are going to have to tell
6 them specifically what it is you are wanting to get.

7 I understand that you are not wanting to
8 reveal some part of your defense or something in doing
9 it, but -- and I don't want you to have to do that --
10 but some of these things you want from them, you have
11 got to specifically say: I need so and so about so and
12 so on a specific date and be specific about it.

13 They may be able to give you that. Write
14 everything down that you want. I can see us having a
15 full day hearing somewhere just on those, and we will do
16 it; but you need to write it down specifically.

17 Now, if you are concerned about that they are
18 going to take it and go back to that inmate and say:
19 Starnes wants so and so on you, I don't think -- you are
20 not going to do that, are you?

21 MR. TATE: Your Honor, I'm not even involved
22 in the prosecution of the case. That's for the very
23 capable attorneys of the Eleventh Circuit. But the
24 things is many of these materials, if there is -- and I
25 don't know anything about the State's case in chief

1 really -- but if there is an informant out at the jail,
2 that is Rule 5, Brady material that those lawyers have
3 assured this Court they are complying with.

4 THE COURT: I understand.

5 MR. TATE: I'm getting a lot of stuff. I am
6 trying to be accommodating. This is really Rule 5,
7 Brady material. Mr. Starnes has sent me, I think at
8 least three, if not four, subpoenas for records or
9 asking for records of employees of the Sheriff's
10 Department.

11 Obviously the only way that would be relevant
12 is if they were to testify and if there was Brady
13 material in there. That's this gentleman's ballpark.

14 THE COURT: Again, I am back to where I was.
15 Mr. Starnes, you have got to tell specifically what you
16 want and let them either agree to it or deny it. And
17 then if they deny it, then you can come to me about it.

18 But I am the same way, I do know you can't
19 just take a broad sweep and say: I want these ten
20 inmates and I want their full files. They are not going
21 to take them and put them in front of you and let you go
22 through them. They will not do that. There are some
23 things, if you will tell them what you want, you may be
24 able to get if you will be specific about it.

25 MR. STARNES: Your Honor, I was specific. I

1 even mentioned the dates and what I needed.

2 THE COURT: Give me an example. Tell me an
3 example. What are you talking about? Maybe I am
4 missing something somewhere.

5 MR. STARNES: An example is the daily log
6 reports for D. Dorm at the annex from May 27, 1996,
7 until April 30, 1997, and the pass-on book.

8 THE COURT: No, sir, that is not specific.
9 That is not specific. That in essence is logs for over
10 a month of a whole dorm, if I heard you right. You know
11 that's not specific enough.

12 MR. STARNES: So they want to know --
13 basically I am just looking for an inmate's movement.
14 That's what they want to know?

15 THE COURT: If that is what you are looking
16 for, yes, sir. You don't have to tell him: I am
17 looking for this or I am looking for that. But if you
18 say: I want this particular document for this
19 particular date, they may be able to do it. But you
20 can't really believe that saying: I want log books for
21 a dorm for a month, that is not specific.

22 MR. STARNES: It's for an inmate's movement.
23 It's for a certain individual. I will go ahead and tell
24 them what it's for.

25 MR. TATE: Write it down and send it. I can

1 look for a name in a log book. I can look for a date.
2 I may have to use some discretion in redacting maybe
3 medical information.

4 What he is asking for strangely enough is a
5 month's worth, and if I'm not mistaken, this was taling
6 about the female dorm at the time. You know, there's
7 all sort of private information about health concerns
8 and everything else in there.

9 THE COURT: Here is what we are going to do.
10 Do that. It may be a number of things you have got to
11 enumerate, but do it and give it to him specifically.

12 Mr. Tate, what I'm going to do is I'm going to
13 order that you or nobody else in the jail provide this
14 information to the Solicitor. Do you understand?

15 MR. TATE: Yes, sir.

16 MR. STARNES: That will be great.

17 THE COURT: Give it to him directly. Later on
18 give it to him in writing, and tell him what you want;
19 okay?

20 MR. STARNES: Yes, sir.

21 THE COURT: What else do you want?

22 MR. STARNES: Your Honor, this is something
23 else, I guess, I have to take up with the jail, how I
24 can interview witnesses and stuff like that. Do they
25 need a list of the witnesses that are going to be coming

1 into the jail, experts and stuff like that?

2 THE COURT: How would you do that, Mr. Tate?

3 MR. TATE: The same we have done in the past,
4 Your Honor. Even when someone is represented by
5 counsel, generally Mr. Delgado will call me and say:
6 I'm bringing in Mr. Smith, who is a professional
7 witness; and we give them one of our private rooms.
8 It's no different than we have in the past.

9 THE COURT: Why don't you work that with him.
10 Again, the same thing will apply. You are not to take
11 the information of who he talks to and give it to the
12 Solicitor's Office.

13 MR. TATE: If Mr. Delgado's office can write
14 me and tell me who they are, like we have done in the
15 past, Your Honor, that will work fine.

16 THE COURT: Again, basically I'm sure one
17 thing you are gathering is obviously nothing that goes
18 on related to his case is to be given to the Solicitor's
19 Office.

20 There may be ways they can get it through the
21 legal process, but they need to get it through that. I
22 am sure Mr. Graham is not going to be calling every
23 morning and say: Who did Norman talk to today? I'm not
24 worried about that kind of thing.

25 As a general thing, let's have an

1 understanding, and we will do an order basically saying
2 whatever goes on, whoever he talks to, whatever he does
3 in relation to his case is not to be given to the
4 Solicitor's Office.

5 MR. STARNES: I feel a lot more comfortable
6 with that. That will be fine.

7 MR. TATE: Okay.

8 THE COURT: All right.

9 MR. STARNES: I believe that's all the matters
10 relating to the jail, Your Honor. Will they talk to me
11 before -- would Mr. Tate be willing to talk to me before
12 they do any implementing? How are they going to do
13 that?

14 THE COURT: I guess they have to because they
15 have got to find out what you are asking for.

16 MR. TATE: Yeah, I have to know what your
17 requests are. Please write them down and mail them to
18 me or send them to me by an officer. I will be glad to
19 respond. As far as the housing, I assume Captain Quig
20 who runs that unit will meet with him.

21 MR. STARNES: Your Honor, I guess these are
22 questions to the State. I would want to know: Are
23 all the prior motions in effect or are we on a clean
24 slate?

25 In other words, all the motions that

1 Mr. Salley and Mr. Nettles filed back in '96, '97, are
2 those in effect or are we on a clean slate and we have
3 got to refile them?

4 In other words, are we starting over a new
5 process or can those motions - are those motions still
6 in effect? I just need some guidance.

7 THE COURT: They would not be automatically in
8 effect. You would have to either remake them or maybe
9 you can get the Solicitor to incorporate, to agree to
10 incorporate all the prior rulings into this case if you
11 want to do something like that. Mr. Graham, do you want
12 to talk about that?

13 MR. GRAHAM: I guess I don't know specifically
14 what he is saying. I would say the safest thing to do
15 is if he had some motion, he can take the old motion and
16 refile it. I think that would be the only proper way.
17 Otherwise, there would be no way of telling what motion
18 would come up.

19 THE COURT: Do you want to do that,
20 Mr. Starnes?

21 MR. STARNES: That will be fine. That will be
22 fine. Your Honor, I guess I would ask -- again, here I
23 don't want to be surprised at trial. What is the
24 State's position or the Court's position on how I will
25 testify if I do take the stand since I am pro se?

1 THE COURT: I have done that a couple of ways.
2 In Mr. Brewer's case, which has been cited a few times
3 already, what I did was let him take the stand. In that
4 one instance, I let one of the standby attorneys
5 directly examine him and handle motions and everything
6 related to it. I did it because the standby attorney
7 was willing to do it.

8 I don't know if Mr. Delgado or Mr. Nettles is
9 willing to do that. If they are willing to do it, I
10 will probably let you do something like that. I
11 understand it would be difficult for you to worry about
12 testifying and objections and motions and everything.
13 They could take of that while you are testifying,
14 again, should you choose to testify. That is up to
15 you.

16 MR. STARNES: Could we get that question
17 answered today so I would now how to prepare.

18 THE COURT: I thought I just did.

19 MR. DELGADO: I would be glad to do that.
20 Either myself or Mr. Nettles would be glad to do that.
21 That's a good point. Norman and I, as a matter of fact,
22 had talked about that. I thought standby meant divorce,
23 but I will be glad to do that. Sure.

24 THE COURT: Mr. Graham, do you want to address
25 that at all?

1 MR. GRAHAM: No, Your Honor.

2 MR. STARNES: One more question, Your Honor.
3 I guess -- and I didn't file a motion on this. I'm not
4 trying to put the Court on the spot or anything, but
5 could you give me some guidance or define standby
6 counsel's role. In other words, if I --

7 THE COURT: The Courts have been trying to do
8 that for years.

9 MR. STARNES: There is a case on it, Your
10 Honor, and I have cited this before, McCaskill versus
11 Wiggins. It's a U.S. Supreme Court case. It's cited at
12 465 U.S. 168. It's a U.S. Supreme Court case that
13 defines the role of standby counsel.

14 In other words, when we had this hearing on
15 Feretta before, it was my understanding that Mr. Delgado
16 or Mr. Nettles couldn't make any objections or anything.
17 For instance, if I am arguing an evidentiary issue, they
18 couldn't stand up and speak and talk and assist me.

19 It's my understanding from this opinion that
20 they can do that as long as I invite them to do that. I
21 would just kind of like to get a definition from the
22 Court of how.

23 THE COURT: I don't think it's a problem with
24 that. Certainly any judge obviously would welcome in
25 some circumstances having standby counsel address it so

1 it would make issues easier to resolve. There is no
2 question about that.

3 I think the problem is though that if you are
4 sitting there and Mr. Delgado, if he is sitting beside
5 you and something goes wrong, he can't turn to you and
6 say: You have got to object. That's up to you to
7 decide.

8 MR. STARNES: Yes, sir, I understand.

9 THE COURT: He can't stand up and object. If
10 you are, for example, in oral argument on some motion or
11 something and you say: I would like Mr. Delgado to add
12 something to it, that's at your invitation.

13 Again, I think you can do that. But one thing
14 they can't do is they can't start direct and cross
15 examining your witnesses. They can't just stand up and
16 make motions for you and do things like that. They
17 can't give opening and closing arguments and so forth.

18 So sure, they can do certain things. But,
19 again, generally it has got to be -- as I understood
20 McCaskill, it's more when the defendant wants them to
21 and basically if the Court feels like it's appropriate
22 under the circumstances.

23 Obviously to keep a record clean, I would do
24 it every chance I could, very frankly to let the
25 attorneys have as much say as they can in it. Does that

1 give you an idea?

2 MR. STARNES: Yes, sir.

3 MR. DELGADO: It gave me an idea, too. Wait a
4 minute.

5 THE COURT: It's maybe more than you want to
6 do.

7 MR. DELGADO: That's exactly right.

8 THE COURT: I understand. The thing is this.
9 If we are arguing certain motions and he all of sudden
10 says: I want Mr. Delgado, you can't do that because you
11 were not prepared.

12 MR. DELGADO: Exactly. Judge, in some ways --
13 and I speak for Mr. Nettles in his absence. We want to
14 be responsible to Norman, but I also want to be
15 responsible to the Court and to the oath.

16 If we are going to get involved with this, and
17 that's what we hashed out a good several hearings ago,
18 we wanted to do it. I don't want to have to do it and
19 be drug into it and not be prepared.

20 How about this, Judge, maybe as another
21 consideration. If he asks us for our opinion, we --
22 that is Mr. Nettles and myself -- cannot tell him what
23 to do. But if he asks us, then we can consult with him
24 as to what his next move is.

25 THE COURT: Sure.

1 MR. DELGADO: We will never voluntarily or sua
2 sponte start that. Also, Your Honor, during the trial
3 while the jury is in, we are in much more of that -- I
4 don't want standby to become hybrid, which is what the
5 Reed case talks about.

6 THE COURT: That's the problem.

7 MR. DELGADO: Exactly.

8 THE COURT: This has a very severe danger of
9 being hybrid representation.

10 MR. DELGADO: Exactly. I'm not making any
11 decision about hybrid representation. I'm just saying
12 either I'm prepared for a capital case or I'm not, and I
13 am just not.

14 Such things, Your Honor, as, you know: Don't
15 stand in front of the display because the jury can't see
16 it. If he comes back and says to me: How is this
17 going? I will say: Get your butt out of the jury's
18 view. I mean, I will say things like that.

19 THE COURT: Sure, that kind of thing, I think,
20 is appropriate.

21 MR. DELGADO: Exactly.

22 THE COURT: I don't think there is any problem
23 with you giving him advice like that.

24 MR. DELGADO: Yes, sir, if he initiates it and
25 asks us.

1 THE COURT: Right. There is probably not a
2 problem -- I guess this is going back on one thing I
3 said. If you see something severe, there is probably
4 nothing with basically tapping him to object or
5 something. But then once he does it, he has got to do
6 the argument.

7 MR. DELGADO: That's correct.

8 THE COURT: You can't get up and do it all of
9 a sudden. The danger would be every time that happens,
10 he stands up and says: I object. I want Mr. Delgado to
11 address it. You can't start doing that. That's when it
12 becomes hybrid.

13 MR. DELGADO: Exactly. Thank you.

14 THE COURT: Does that give you an idea though,
15 Mr. Starnes?

16 MR. STARNES: Yes, sir. I guess we'll have to
17 wait and see how it goes at trial.

18 THE COURT: You don't have to wait. I just
19 said what they can do.

20 MR. STARNES: If I make an objection, for
21 instance, if I make an objection or I am trying to
22 introduce evidence or something or that nature and I am
23 doing it improperly and I ask Mr. Delgado or
24 Mr. Nettles: Am I doing this correct?

25 THE COURT: You can do that. You can say:

1 Wait a minute. Let me go consult with co-counsel -- not
2 a good word, not hybrid -- go over and talk with them
3 and ask them that.

4 Sure you can do that. It takes a little
5 longer to do all that. There is not a problem with
6 that. The problem is they can't come up and say to you:
7 Here is how you introduce it.

8 MR. STARNES: Right.

9 THE COURT: Does that give you an idea?

10 MR. STARNES: Yes, sir, a little bit.

11 MR. DELGADO: If we can put a gloss on: Maybe
12 it ain't standby as much as it is sit-by counsel, if
13 that makes any sense.

14 THE COURT: That's probably a good word.

15 MR. DELGADO: If you come back to us while
16 we're sitting, you come to us. We are never going to
17 stand by you while you are doing do it.

18 MR. STARNES: I understand.

19 MR. DELGADO: And come toward you. I will be
20 glad with the word sit-by counsel.

21 THE COURT: It's a new legal word.

22 MR. STARNES: If I'm in a legal argument with
23 the State, for instance, I'm arguing -- I am making a
24 legal argument with them, and I'm not totally familiar
25 with the law or the rule, can they intervene if it's out

1 of the presence of the jury?

2 If the jury is not in here, and I am making a
3 legal argument, Mr. Delgado knows: Well, he needs to do
4 this this way. He can get through it, but he needs to
5 do it this way or he needs to quote State versus such
6 and such. Can he do that if I invite it?

7 THE COURT: I think he can. But you can't --
8 if it's on something particular that you need, that's
9 fine; but I don't think you can do it as a routine
10 thing. Every time you get into something say: Wait a
11 minute. I want counsel to do this, you know. But in
12 some limited degree, yeah, you could do that.

13 Like you said, a lot of this we are just going
14 to have to see as we go very frankly.

15 MR. STARNES: Yes, sir.

16 THE COURT: I've done several of these pro se
17 cases. That's the way the work. You just kind of see
18 it as it goes, which is the danger of somebody
19 representing themselves. Because as you go, somebody
20 like Mr. Delgado has been through hundreds, at least, of
21 these cases. He knows what is coming.

22 In this case probably from one day to the
23 next, he can tell you what is coming the next day
24 because he has done this so many times. But as a pro se
25 defendant, you are not going to know all that.

1 Particularly when you come to different stages
2 of the trial, we have to take it as we go. That's the
3 way a trial is. Every trial is that way. I tell juries
4 all the time, you know, that one of the problems with a
5 trial is that we have to take things as they come.

6 I can't delay things and put it off until
7 later on. That's the nature of the trial. You take
8 things as they come up. Nobody, no matter how much
9 discovery you have, there are going to be a multitude of
10 things that you will not be able to anticipate. The
11 bottom line is a lot of things we have just got to take
12 them as they come.

13 MR. STARNES: Yes, sir. Your Honor, I believe
14 the rest of it -- excuse me just one second, please.

15 (Pause).

16 MR. STARNES: I believe the rest of it is
17 going to be relating to funding and ex parte. I would
18 like, if we possibly could, the two motions, the
19 jailhouse Messiah/Henry motion and the motion to recuse
20 the Solicitor's Office, is it possible that we could
21 take that up during the next term of court?

22 THE COURT: Mr. Graham, any problem?

23 MR. GRAHAM: Your Honor, instead of him
24 showing up the hearing and giving us these, if he wants
25 to argue something, I would request that we get it

1 beforehand so we have an opportunity to look at it so we
2 can address it properly.

3 MR. STARNES: That's no problem. I just got
4 that last night. I have explained to Mr. Graham that,
5 and I apologize. I told him I wasn't trying to sneak
6 nothing on him, but I just got that last night because
7 Mr. Walker come visit me at 7:30, from 7:30 to
8 10:00 o'clock.

9 He got it and give it to me then. As a matter
10 of fact, one of them was incorrect and wasn't copied.
11 Ms. Hope was nice enough to copy it so I could give it
12 to them. I was not trying to surprise them with
13 anything.

14 THE COURT: I understand. I know you're not.
15 Obviously the practical fact simply is that he can't get
16 a several page document just before the hearing and be
17 ready to argue it.

18 MR. STARNES: Mr. Walker got married last
19 week. So he has been tied up.

20 THE COURT: He is more tied up than he
21 realizes. Any other motions, other than those?

22 MR. STARNES: I believe that's it. The rest
23 of it is ex parte. Could I have an idea when we will --
24 I can serve them the motion probably in the next week.
25 Could we set a date or give me an idea when we can do

1 this?

2 My investigator has been tied up with
3 Mr. Nettles in Myrtle Beach on another death penalty
4 case. That's why there is some investigation that
5 needs to be done before I present this motion to the
6 Court.

7 In addition, there's a couple of witnesses
8 that he is having difficulty locating. The case is nine
9 years old, Your Honor, and a lot of people move away.
10 One of the problems I'm having is I'm having to do an
11 interstate subpoena.

12 Mr. Walker is having problems putting that
13 together because we have got to go out of state to get
14 one witness to come in and testify during this hearing
15 that I'm asking for.

16 THE COURT: Get it to them next week. We can
17 probably hear it within a week or two after that, I
18 would think. We have a chambers week. That will be
19 tied up with the judicial conference that week. I am
20 pretty well tied up with that. The following week I am
21 holding court in Greenwood, but I can probably arrange
22 to get back.

23 MR. STARNES: That's the 16th you are in
24 Greenwood, Your Honor?

25 THE COURT: The week of the 16th, yes, sir. I

1 could arrange probably to get back part of the day
2 somewhere to get ready for it, to do it. You would need
3 to go ahead and get the motion to the Solicitor fairly
4 soon so that they can go over it.

5 MR. STARNES: Yes, sir. If we could do it
6 then, I will go ahead and get the motion and get it
7 filed with the clerk and get them served a copy. Is it
8 possible we could do it the week of the 23rd?

9 THE COURT: I will be in York that week. But,
10 again, I may be able to get some time arranged. I may
11 be able to get back one day.

12 MR. STARNES: Yes, sir. The reason I was
13 saying that is we have got to get a witness from out of
14 town.

15 THE COURT: The week of the 30th, I will be
16 here in Lexington. Of course, the week of the 30th,
17 that's a month and half away from the trial date.

18 MR. STARNES: Yes, sir.

19 THE COURT: The clerk is right, we haven't
20 even started talking about the questionnaire yet. We
21 can resolve that later on. The jury notices have to go
22 out when?

23 CLERK: Your Honor, I have been requested,
24 because of the July 4th week, a lot of people being out
25 town, and this is scheduled for July 18, if it's a

1 possibility to have them mailed out somewhere near the
2 first of June to allow people going on vacation and with
3 school getting out, there will be a delay there.

4 We also have the delay with July 4th. If we
5 can have it going out at least the first of June,
6 sometime the first week of June or the second Monday in
7 June at the latest.

8 THE COURT: Do we need to look at another date
9 then for it? Mr. Graham?

10 CLERK: I have to do orders. We have to get
11 the orders done and go over the questionnaire and all of
12 that to be prepared for that.

13 THE COURT: We might have to look over into --
14 August would be difficult. Maybe early September or
15 something.

16 MR. GRAHAM: Whenever you want to do it.

17 THE COURT: What is your position on it?

18 MR. GRAHAM: We are looking at moving it out
19 because why, Your Honor? I didn't hear.

20 THE COURT: She has indicated that she
21 anticipates those probably with vacations. This is in
22 the middle of July. The notice will go out early June,
23 which means vacation problems, people having a lot of
24 other things going on during that time.

25 MR. GRAHAM: I know the Solicitor's schedule.