

VOLUME NINE OF NINE

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Senior Appellate Defender

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

Attorneys for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Senior Assistant Attorney General
Office of Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

HAROLD W. GOWDY, III
Solicitor, Seventh Judicial Circuit
180 Magnolia Street, 3rd Fl
Spartanburg, SC 29306-2335
(803) 596-2575

Attorneys for Respondent

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

1 be no problem that we could terminate it. I can
2 certainly understand that. And I can certainly
3 understand the State's position on that.

4 Your Honor, I would just ask for -- to be
5 allowed to at least see the voir dire and the guilt
6 or innocence part just a couple days of that. As
7 far as security, I'll do whatever security wants.
8 I'll sit wherever they want me to sit and I'll do
9 whatever this Court asks of me, Your Honor.

10 **THE COURT:** Yes, sir.

11 **MR. HUBBARD:** Your Honor, I'll be very brief,
12 one final thought. Your Honor, he's got standby
13 counsel. Standby counsel can explain a lot of the
14 things that he wants to learn from observing what's
15 going on in this courtroom, the how to.

16 Your Honor, he's not in this position because
17 he's been put in this position, he's chosen to
18 represent himself. You take the pit falls of self
19 representation when you make that choice. He's made
20 that choice. He just goes beyond what's reasonable
21 for us.

22 **THE COURT:** I have no doubt that perhaps the
23 safest place in Lexington County will be this
24 courtroom when this trial takes place and that will
25 be with or without Mr. Starnes being present because

1 I'm certain that law enforcement will be able to
2 provide a safe and secure place for us all.

3 I'm going to allow Mr. Starnes to be present
4 during the voir dire of this case. I think that
5 the, aside from jury selection, a capital case is
6 about the same as most other cases as far as the
7 trial procedure and I don't believe that any special
8 benefit will be gained by him being present during
9 the guilt or innocence phase. He's not going to
10 learn how to be a lawyer by watching a trial, but I
11 believe that it would benefit the process if he were
12 allowed to observe the jury selection of this case.

13 I also think it's a good idea that he be in
14 civilian clothes. I believe that law enforcement
15 should be able to secure that.

16 As to which side of the courtroom belongs to
17 one side or the other, beyond the rail, you know,
18 it's just a courtroom. It's not -- no one has a
19 claim on the left side or the right side where the
20 audience sits, but I think that law enforcement can
21 choose a discrete location to sit in the back with
22 him and should be able to sit in the back with him,
23 you know, if there was a plain clothes officer or a
24 uniform officer. We just have to see how that goes.
25 But I think if he has a belt on that you all would

1 generally use for someone, that would make it so
2 that it would not be apparent that he's an inmate,
3 that would be discrete.

4 Obviously it may be a concern if someone on
5 jury duty spots Mr. Starnes and wonder why he's in
6 the courtroom, but that occurs. People spot people
7 in the courtroom that they know. And I think that
8 there will be enough on the jurors' minds than
9 worrying about Mr. Starnes and why he's here if they
10 happen to recognize him.

11 There will be no reference to him at all by any
12 of the parties because he has nothing to do with
13 this case. He simply would be present in the
14 courtroom for the jury selection, which should not
15 last more than two or three days I would think.

16 If there is any problems or issues relating to
17 the details of having Mr. Starnes present, then
18 whoever is in charge of security can bring that to
19 my attention and we'll address it. As to the
20 particulars of it, my thought is that he should be
21 able to sit back over in there somewhere and nobody
22 will notice at all. He should come, however,
23 without his lap top and all of that because I don't
24 believe that's essential.

25 Anything else on that issue, Mr. Starnes?

1 **MR. STARNES:** No, sir, Your Honor. If you
2 would like, I can draft an order that would probably
3 be amenable to security. If Your Honor would
4 require me to do that, I'll be glad to draft it.

5 **THE COURT:** You can do it if you like. My
6 order from the bench should be sufficient, but you
7 can draw it up and send it to me, let's see how it
8 looks.

9 **MR. STARNES:** Thank you, Your Honor. And I
10 appreciate you hearing me today.

11 **THE COURT:** Yes, sir, you're welcome.

12 (Mr. Starnes leaves the courtroom.)

13 **MR. SOLTIS:** Judge, it has nothing to do with
14 this hearing, but why couldn't he go in the back
15 room where the glass windows are?

16 **MR. HUBBARD:** Well, Your Honor, I was
17 addressing that with Sergeant Anderson. She, I
18 think, wanted a little time because --

19 **SERGEANT ANDERSON:** Just trying to consider
20 logistics, how to get him through the --

21 **MR. HUBBARD:** It's not a secured area. They
22 have to bring him in and out. So that's the only
23 thing, it's logistical as opposed to whether it's
24 possible.

25 **THE COURT:** What kind of room is that?

1 **SERGEANT ANDERSON:** It's a press room, Your
2 Honor. Voice is fed through there. It's actually
3 the place that the media is supposed to set up,
4 although they've never used it that I am aware of
5 other than Court TV, to where everything that we're
6 saying in the courtroom now is fed live into the
7 courtroom there. You can see through the glass to
8 the proceedings that are going on in the courtroom.

9 **THE COURT:** So do you think you can have him in
10 there?

11 **SERGEANT ANDERSON:** I think that's a viable
12 option if His Honor would consider it.

13 **THE COURT:** I'm amenable to options, that's why
14 I asked you earlier who's the chief in charge who
15 would speak for the department regarding the
16 particulars of that and, of course, you chose to
17 speak through the Solicitor, but that's fine,
18 whatever we can work out to make it as amenable to
19 the situation, that suits me fine.

20 I'm not lobbying for him to be sitting in the
21 courtroom. If he's there in a discrete place,
22 that's fine. I think that even though if he's in
23 there, he probably should be in street clothes just
24 out of an abundance of caution.

25 **SERGEANT ANDERSON:** Yes, sir. And it was my

1 understanding he's agreeable to wear our remote
2 control belt -- shock belt, so that is another tool.

3 **THE COURT:** That'll be the best -- of course,
4 my concern is, more than anything, is the argument
5 by the defense that Mr. Finklea would feel
6 uncomfortable about Mr. Starnes being present
7 thinking that the jury may draw some association
8 with him based on observing Mr. -- knowing
9 Mr. Starnes, but -- and that would take care of that
10 concern as well.

11 Now I'm waiting for Mr. Starnes' order. He
12 actually sent a pretty good letter to me, made a
13 good argument.

14 So we have an ex parte matter to talk about
15 with counsel, then I guess we're through, except
16 that we need to set a date for this next get
17 together again. I'm thinking Thursday after next.

18 **MS. KIMBROUGH:** July 26th, Your Honor, 10:00
19 a.m.?

20 **THE COURT:** What's going on here during that
21 day? I'm sure y'all are going to have some courts
22 going on.

23 **MR. HUBBARD:** Actually, I don't know that we
24 do. We have civil court, but I don't know how many
25 terms -- or how many courts, but, no criminal.

1 **THE COURT:** All right. Well, we'll do it
2 Thursday after next at 10:00 a.m., the 26th, did you
3 say?

4 **MS. KIMBROUGH:** Yes, Your Honor.

5 **THE COURT:** Now, that's the hearing where
6 you'll have your forensic folks and you'll deal with
7 this competency issue and any other issues that
8 might come up in the interim including dealing with
9 any other juror issues that might pop up.

10 Regarding the order involving DNA and all the
11 samples --

12 **MR. GRAHAM:** I know that Monday this week we
13 turned it over. I don't know whether it's been
14 drawn or not.

15 **MS. KIMBROUGH:** It was drawn Tuesday.

16 **MR. GRAHAM:** It's been drawn Tuesday. I will
17 follow up and make sure that it's gone to SLED and
18 that they're acting on it as timely as they can.

19 **THE COURT:** All right. Very good.

20

21

22

END OF PROCEEDINGS

23

24

25

C E R T I F I C A T E

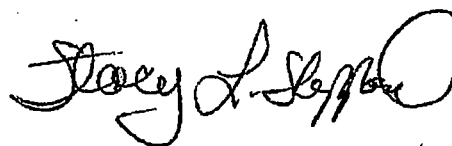
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 13th of July, 2007.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 1, 2007



Stacy L. Sheppard
Circuit Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)

State of South Carolina,)
)
PLAINTIFF,) HEARING
) 96-GS-32-3339
-VS-)
)
Norman Edward Starnes,)
)
DEFENDANT.)
_____)

BEFORE THE HONORABLE LEE S. ALFORD, JUDGE

AUGUST 21, 2007

LEXINGTON, SOUTH CAROLINA

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

Harold "Trey" W. Gowdy III, Esq.
Robert P. Coler, Esq.
For the State

Norman Edward Starnes, Pro Se
William N. Nettles, Esq.
Standby Counsel for the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

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E X H I B I T S

PAGE NO.

Court's Exhibit Number One, Questionnaire for Jury 121

1 (The defendant, together
2 with standby counsel, was personally present in the
3 courtroom.)

4 THE COURT: Good morning, everybody. I
5 called this conference on this case to determine
6 where we are, trying to finalize everything and get
7 it ready for trial, and make sure we've got
8 everything done, answer any questions and the
9 general things that have to be done to be ready for
10 trial..

11 Now, Mr. Starnes, where are you as
12 far as trial is concerned?

13 MR. STARNES: Your Honor, as far as trial
14 is concerned, if we can go in November, I've only
15 got one problem. As I indicated in a prior e-mail,
16 Your Honor, there's a defense witness that's going
17 to be out of the country.

18 I believe I've got something worked
19 out with another expert. But I don't know if this
20 other expert will be ready by November. And if the
21 Court wants to hear that, I'll be glad to make that
22 argument. I'll have to disclose who this expert is
23 to the State.

24 THE COURT: Well, let me tell you where I
25 am as far as continuance is concerned. And I'll be

1 glad to hear from the State with regard to
2 continuance. I'm sure they are opposed to it.

3 I've had this case, what, a couple of
4 years now, close to a couple of years now. And
5 we've had some delays in it simply because of your
6 motions to recuse. Of course, the Solicitor's
7 Office here in Lexington County, they recused
8 themselves.

9 So then, of course, the Solicitor's
10 Office in the Sixteenth Circuit was asked by the
11 Attorney General to prosecute the case, and they
12 were prosecuting it. And the jail inadvertently
13 sent materials that were not to be sent to the
14 Solicitor's Office, supposedly trial material.

15 And you made a motion there for them
16 to be recused from the case. And I reluctantly
17 granted that motion, and they didn't oppose the
18 motion. And they were relieved. Then it goes back
19 to the Attorney General's Office, and they then
20 asked the Seventh Circuit Solicitor's Office if they
21 would prosecute the case, and they agreed to do
22 that.

23 Of course, in the meantime, Judge
24 Westbrook was assigned to hear the case, and he was,
25 of course, killed in an accident. And it was

1 reassigned to me. So we've had a lot of delays in
2 the trial.

3 But there's absolutely no reason now
4 why, in the Court's mind, that we can't be ready to
5 go in November. Part of the problem is this, that
6 I've been working with the Lexington County -- with
7 the Judges here and the Solicitor's Office here --
8 with starting scheduling. And they have a number of
9 death penalty cases pending down here, and they've
10 had trouble getting them all scheduled.

11 Now, in death penalty cases, you have
12 to set aside a couple of weeks for those trials.
13 And there's a whole lot of things that have to be
14 done for a death penalty trial that are not done in
15 most other trials. And so, for that reason, you
16 have to get your trial booked, and that's basically
17 what it amounted to.

18 And we went back and forth with the
19 others to reschedule, and we've been locked in the
20 first two weeks in November. That's the ones they
21 allotted to us, and that's the plan, is for us to go
22 those two weeks.

23 Now, there are other death penalty
24 cases that are going to be tried between now and
25 then, there are going to be other death penalty

1 cases tried after that, that are already locked in.

2 So it would be very hard for us now
3 to not go with those two weeks that we've been
4 locked in for, because we'd have to move on into
5 2008 somewhere and try to find a time that was
6 available then. So I'm not inclined to continue
7 this case again.

8 And I'm sure you want to go forward
9 with it because at every hearing we've had, you made
10 a motion for a speedy trial, even though it wasn't
11 going forward basically because of your motions.
12 But the fact remains I know you want to go forward
13 with it, and we want to go forward with it, and get
14 it done.

15 And so, like other defendants in a
16 case where you are represented by attorneys in the
17 case, they would be told, "You find you an expert
18 and just ready for November, because that's when
19 we're going forward with it."

20 MR. STARNES: Yes, sir.

21 THE COURT: And basically that's what I'm
22 telling you. If you're going to have expert
23 testimony, you'll need to be able to find expert
24 testimony that's going to be available to be able to
25 testify.

1 MR. STARNES: Yes, sir.

2 THE COURT: I guess one other possibility
3 that might be if you have an expert to take a
4 deposition -- a video deposition. I don't know what
5 the State's position would be on that anyway. And
6 that might be a possibility. But if you're going to
7 need that expert here for the trial, then you need
8 to be able to find an expert that's going to be
9 available.

10 You were talking about an expert when
11 you e-mailed me -- and I don't know who the expert
12 is, but you said he was going to be out of town for
13 months -- out of the country for months. Well, we
14 can't deal with that. We've got to have somebody
15 that's going to be available.

16 MR. STARNES: Yes, sir. May I make a
17 brief argument on that, Your Honor?

18 THE COURT: Yes, sir.

19 MR. STARNES: The expert -- when I e-
20 mailed Your Honor, I didn't disclose to you who the
21 expert was. And if I could just give you a
22 background of where I'm going with this, because,
23 actually, the expert that I intended to use, when I
24 received your e-mail to find another expert, I
25 didn't use him and didn't do what needed to be done.

1 Very briefly, on January 8, 1996,
2 Your Honor, I shot and killed Bill Welborn and Jerry
3 Chapman in my home. There was one individual there
4 who witnessed this shooting.

5 After the shooting happened -- the
6 lady who was living with me at the time in Pelion in
7 my house -- the bodies were taken from my house in
8 Pelion, and they were transported to Aiken County.
9 The bodies were laid out on the ground, and I buried
10 them the next day.

11 This individual who testified back in
12 1996 was an individual by the name of Gwen Ott. Her
13 testimony was that the night that their bodies was
14 on the ground in Aiken County that I walked over to
15 the bodies, and I urinated on them, which, other
16 than her testimony, there was no evidence that that
17 act ever happened.

18 I have asked and Judge Westbrook give
19 me funding for a DNA expert so the clothing and that
20 -- so the testing can be done. And I think it's
21 adequate to my defense. It is something that is
22 very, very damning in my trial.

23 When this testimony come about in the
24 first trial, Judge Westbrook had to give the jury a
25 curative instruction on the prejudice of this

1 evidence. Of course, the State argued that it's res
2 gestae and it's all intertwined with what happened
3 on January the 8th.

4 My defense attorneys at my first
5 trial did not do any DNA testing, did not consult
6 with an expert. Why, I don't know. But that's
7 exactly why I'm asking for a continuance.

8 Now, the DNA testing, there are two
9 different types of testing that they do. And the
10 company that -- the individual that I originally had
11 was local. I've tried to keep all my experts close
12 to keep the funding down for travel.

13 And, of course, that does get kind of
14 expensive, because experts, they charge for travel
15 time, for lodging, for meals, and so forth so. But
16 I cannot have an expert here to rebut this evidence,
17 and this evidence is very, very crucial to this
18 trial, Your Honor.

19 Her testimony saying that I urinated
20 on these bodies is very, very dramatic for a jury to
21 hear. And I believe under Agee (PH) versus Oklahoma
22 that I'm entitled to independent testing. SLED has
23 not, to my knowledge, unless they've done it within
24 the last month, have conducted any testing for any
25 trace evidence testing on any of the clothing. So

1 that's where I'm at with this motion, Your Honor.

2 THE COURT: Let me ask the State whether
3 they're aware of any testing that's been done.

4 MR. GOWDY: No, sir, Your Honor, not with
5 respect to the clothing, not for the presence of
6 this defendant's DNA. I would hasten to add that,
7 Your Honor, of course, you could have a team of DNA
8 experts testify that his DNA was not on the
9 clothing, and that would not prevent that witness
10 from testifying that she saw him urinate on them.

11 So, I mean, the bodies were
12 deteriorating. I mean, portions of the bodies were
13 missing. So I'm not aware of any testing. Frankly,
14 I'm not aware that the testing can be done on urine.
15 But I'll leave that to the defendant's experts. I'm
16 not aware of any that was done and not aware of any,
17 frankly, that can be done 11 years later.

18 THE COURT: What effort have you made to
19 determine whether the test can be made at this date?

20 MR. STARNES: Your Honor, the expert that
21 I originally had, when I knew this individual
22 couldn't go forward in November because they're
23 going to be out of the country, I searched for
24 another expert. And I contacted him this weekend.

25 You had asked me to see if I could

1 find another expert, and there's no been any
2 funding. I have no used any funding out of the
3 expert account to pay for the previous expert,
4 because there was nothing done. But from what I
5 talked to this individual, he said that he wanted to
6 communicate with standby counsel.

7 I explained to him that I'm not
8 represented by attorneys, but he said he wanted to
9 have my attorneys' input in it. He didn't know if
10 the testing could be done, because he would have to
11 review all the documents and everything. I'm not a
12 DNA expert. But it is a very, very important issue
13 in this case, Your Honor.

14 THE COURT: Well, but, Mr. Starnes, we've
15 been going back and forward on this case for -- I
16 can't remember exactly when I got appointed on it,
17 but I think it's been certainly over a year and a
18 half.

19 And you're not telling me that for a
20 year and half you've known that you were going to
21 get DNA testing, and you have not gotten any of it
22 done, at this late stage, knowing that we were going
23 to trial in November?

24 MR. STARNES: No, sir, I did not know that
25 we were going -- absolutely going to trial, because

1 the trial date was tentative.

2 THE COURT: But I told you we were -- I
3 had told you earlier when we communicated when we
4 were down here before that we were looking at those
5 two weeks and probably going with those two weeks.
6 It was tentative at that point because I wanted to
7 be sure that everybody was going to be ready.

8 And, really, the Solicitor's Office
9 got seven or eight boxes of materials that I had in
10 my office turned over to them after they got
11 appointed. And I needed to make sure they're going
12 to be able to go through all of that stuff and be
13 prepared for trial.

14 I was not as concerned about you,
15 because you've been working on this for, what, three
16 years. But I was concerned about making sure they
17 were able to go through all these materials and
18 assimilate them and get ready for trial. And that
19 was really the issue that I had, to be sure that
20 they were going to be ready. I thought for sure you
21 would be ready --

22 MR. STARNES: Yes, sir.

23 THE COURT: -- because it's been three
24 years, and you've been making motions for a speedy
25 trial -- several motions for speedy trial. And so I

1 assumed you were well on the way to be ready. And
2 so we had to get locked in at some point.
3 Everything was tentative until everybody took their
4 two weeks.

5 And I think there's a trial coming up
6 here in probably September or October. They've got
7 a death penalty trial coming up, and ours is
8 scheduled for early November. And then they've got
9 some I don't know when, maybe December.

10 But that's the weeks we've been
11 given, the weeks we're locked into. And so we need
12 to be able to go forward. But what have you done
13 insofar as the DNA testing? Have you gotten anybody
14 to say that it could be done? And if it could be
15 done, what's going to have to be done in order for
16 them to do the testing and that sort of thing?

17 MR. STARNES: Yes, sir. The testing can
18 be done. It's got to be taken to a laboratory. I
19 mean, I don't know as far as the timeline how long
20 it takes. I know Mr. Nettles is familiar with DNA
21 testing, and he's handled a lot of cases.

22 And I didn't wait till the last
23 minute to do this. But when I was advised by the
24 Court that we were going to -- we were definitely
25 going to go forward in November, then it's created a

1 problem for me, because this expert can't be
2 available.

3 THE COURT: Well, here's the thing.
4 That's not a problem for the Court. You've still
5 got -- this is August. This is not scheduled till
6 November. Still, that's more time than some people
7 would have to get it done anyway.

8 And so, even though you've had all
9 this time to get it done, you've still got
10 September, October. You've got over two months to
11 get it done now, still. And so you should be able
12 to get it done within that period of time.

13 And you knew we were going to trial
14 at some point. We've been looking at November --
15 the two weeks in November -- we've been looking at
16 that for several months. And we locked it in a
17 while back to those two weeks.

18 And so you've known when we were
19 going to trial. And we can't -- we're not going to
20 be able to just keep pushing this back when this is
21 something you could have done months ago.

22 MR. STARNES: Yes, sir.

23 THE COURT: It doesn't matter when we're
24 going to trial. If we were going to trial this
25 week, November, February of next year, you still

1 knew you needed this evidence. That's what I'm
2 trying to say to you. And you can't wait till
3 right up to two months before trial and say, "I knew
4 I needed this, but I haven't done anything to get it
5 ready."

6 MR. STARNES: Yes, sir. That's not -- the
7 issue is the expert that I had cannot be here then.
8 I mean, if this expert that I'm talking to now can
9 go forward in November, it's not a problem. I don't
10 have a problem with it. I want to go to trial -- I
11 have been screaming for a speedy trial since Your
12 Honor has had this case.

13 THE COURT: Yes.

14 MR. STARNES: And I've been incarcerated
15 for 11 years. I do want to go to trial. But also I
16 want to present a complete defense.

17 THE COURT: And I want you to be able to
18 complete your defense.

19 MR. STARNES: Yes, sir.

20 THE COURT: I want you to get a fair trial
21 and be able to present your case. But at the same
22 time, you've got to balance that against getting
23 this case disposed of and to get it locked in and to
24 get those weeks locked in.

25 And now to be able to get a

1 continuance, we're probably talking about moving
2 back several months into 2008. And that's just not
3 reasonable in the Court's mind. So we need to --
4 I'll work with you to get whatever you need done.

5 MR. STARNES: Yes, sir.

6 THE COURT: But we need to get it done.
7 And so I'm not inclined to continue it. But
8 understand that, with a death penalty case, we've
9 got to get some things in place. And that's the
10 reason I'm having this hearing today, is we've got
11 to decide on the number of jurors who are going to
12 be summoned.

13 They need to be summonsed in the next
14 probably two or three weeks, because the summons has
15 got to go out, and they have a return to come back
16 in so we'll know how many jurors we're actually
17 going to have to come to court for the voir dire
18 process.

19 So, see, that needs to be done. That
20 needs to -- you have to give them a reasonable
21 amount of time to send to send their returns back
22 in, once they're summonsed. And they have to fill
23 out questionnaires. We have to agree on the
24 questionnaire to be sent out.

25 And they have to send those

1 questionnaires back with the information. And so
2 all of these things have to be done, and there are
3 other matters we need to decide on. We need to
4 decide on whether we're going to sequester the jury
5 or not, and, if so, what kind of people are
6 involved, and we'll have to secure it in that kind
7 of way.

8 So there are a lot of issues that
9 have to be in place, and we need to start getting
10 those in place now. And that's one of the reasons I
11 set this hearing for today, to make sure we'll on
12 target to go in November and get everything done,
13 because I have to notify the Clerk shortly about the
14 number of jurors, and I can go ahead and start
15 summonsing some of them.

16 MR. STARNES: Yes, sir.

17 THE COURT: So if you're going to have
18 somebody, I have no problems with you getting
19 whoever you want to get. But if get it ready and
20 done in two and a half months, when you've had all
21 this time to get it done before, and you can't get
22 it done in two and a half months, I think that's
23 plenty of time. I wouldn't give anybody else --

24 If your attorneys were sitting here
25 making this making, Mr. Nettles, you know, of

1 course, what the answer would be. You're not going
2 to get a continuance, so you need to get it ready.

3 Mr. Nettles can help you. He's
4 standby counsel, but I'm sure he'll help you with
5 regard to that as far as getting the testing done
6 and your expert. I'm sure he'll be glad to advise
7 you if you want him to advise you --

8 MR. NETTLES: Yes, sir.

9 THE COURT: -- and give you information
10 about that. And I would urge you to utilize him for
11 that purpose. But we need to get ready for this and
12 go on trial.

13 MR. NETTLES: That's just something I'd
14 like to put on the agenda at some point, is get out
15 my role in the trial. I mean, I don't really need
16 to talk about it now. I just wanted to make sure it
17 got put on the agenda for today, if you'll allow it.

18 THE COURT: Yes, we'll --

19 MR. NETTLES: If not today, at some point
20 --

21 THE COURT: Well, I'd like to do as much
22 as we can today because I'm here. It's hard to get
23 us all together because --

24 MR. NETTLES: And I apologize for being
25 late.

1 THE COURT: That's okay.

2 MR. NETTLES: But I got over here as quick
3 as I could from Federal Court.

4 THE COURT: That's all right. Well, it's
5 hard to get us all together when we're all in court.
6 The Solicitor's up there, and I'm in court almost
7 every single week.

8 To try to get us all together is not
9 easy to do, and so I want to do as much as I can
10 today. So we'll have that on the agenda, and we'll
11 address that in a few minutes --

12 MR. NETTLES: Thank you.

13 THE COURT: -- counsel, thank you. So you
14 understand I want you to be ready for trial in
15 November, whatever it takes.

16 MR. STARNES: Yes, sir.

17 THE COURT: If you don't get an expert and
18 you can't present it, then that's the way it is. I
19 want you to be able to present whatever you've got
20 or whatever you want to present. But if you can't
21 get it ready by November, then you're not going to
22 have it, okay. So, like I say, Mr. Nettles' role is
23 limited in this. He's probably not sure about what
24 that role is, and we'll talk about it.

25 MR. STARNES: Yes, sir.

1 THE COURT: But I'm sure he can share some
2 information with you about DNA and who you might can
3 get to do that. And I'll work with you. I'll fund
4 a reasonable amount, authorize funding, to get DNA
5 testing done, if it can be done -- if I'm assured
6 that they can in fact get it done and it can
7 reasonably be done.

8 MR. STARNES: Yes, sir.

9 THE COURT: But I would have thought you
10 would have known that long before now. That causes
11 me a problem. I'll give you an opportunity to do
12 that, and you can communicate with me, as you
13 usually do, by e-mail, and ask me for authorization
14 of funds for it, and explain why you think it can be
15 done.

16 MR. STARNES: Yes, sir.

17 THE COURT: But we're not wasting any
18 money. And I'll fund it for you. I think you're
19 entitled to bring whatever you want on that issue at
20 your trial. And I'll make sure the funding's
21 available to do it if it's feasible. It's got to be
22 feasible.

23 MR. STARNES: Yes, sir.

24 THE COURT: And if you don't know an
25 expert, maybe Mr. Nettles will know somebody that

1 can do DNA testing, and maybe he can communicate
2 with them. But we'll talk more about his role in
3 just a minute. I'm sure he's very uneasy about
4 that.

5 MR. STARNES: Yes, sir.

6 THE COURT: All right, now, what else do
7 you want to present to me today? That's the main
8 thing, is let's make sure that we're going forward,
9 because I'm going to move into week to get the jury
10 questionnaire done and get the Clerk to go ahead and
11 send the summons.

12 MR. STARNES: Your Honor, I just had a
13 couple of questions to inquire to the State. During
14 the last hearing that we had, the State was
15 represented by Mr. John Willingham.

16 We covered the issue about my mail
17 being photocopied in the detention center. Mr.
18 Willingham stated that he wanted to be notified if I
19 contact any state witnesses. I'm not relying on any
20 alibi defense or anything.

21 Pursuant to State versus Miller, it
22 would be a violation of my constitutional right to
23 have to disclose to him any witnesses that I
24 communicate with. I've got a copy of State versus
25 Miller I'll be glad to provide to the Court and to

1 the State at this time, Your Honor.

2 THE COURT: Hand it to the deputy, and
3 he'll hand it up to me.

4 MR. STARNES: The Miller case was
5 revisited in the only capital case that I know of
6 was State versus Ted Benjamin Power. And Powers, of
7 course, was a capital case tried here in Lexington
8 County where the defense was required to turn over
9 to the Court a defense witness list so the Court
10 could qualify the jurors.

11 And that is completely
12 understandable. And that is not my argument. I
13 don't have an objection to turning over the witness
14 list to the Court to qualify this jury, so long as
15 the Solicitor doesn't get a copy of it and they know
16 who my defense witnesses is.

17 But the gist of this motion is, Your
18 Honor, as we covered before, is the fact that they
19 want me to notify them of any State witnesses that I
20 communicate with. And State versus Miller directly
21 says that I do not have to do that. I do not have
22 to provide them with any reciprocal discovery as to
23 who I communicate with.

24 The Miller case quotes United States
25 versus Labie (PH) It's a case out of the District

1 Court of California that the South Carolina Supreme
2 Court used in upholding that ruling. I'll do
3 whatever the Court orders me to do, but I have no
4 intentions to tell the State of any witnesses,
5 whether it's defense or State witnesses, I
6 communicate with. However, if the Court orders me
7 to do that, I will certainly do whatever the Court
8 orders.

9 THE COURT: Let me hear from the State
10 with regard to that. What he's saying is that Mr.
11 Willingham wanted him to notify the State if he
12 contacted any of the proposed State's witnesses.

13 MR. GOWDY: Your Honor, I don't have the
14 benefit of having been here for the previous motions
15 hearing, and I have not discussed that matter with
16 now Judge Willingham. I'm not interested in who Mr.
17 Starnes talks to, with the caveat that I don't want
18 him threatening any State witnesses.

19 I'm sure he understands that he's not
20 to do that. I could care less who he talks to, who
21 he contacts. I am interested in his complying with
22 his reciprocal discovery obligations. And we have
23 not received any discovery from Mr. Starnes. I
24 haven't received any reports from any experts,
25 haven't received the names of any experts, don't

1 know whether he's relying on any mental defenses.

2 I appreciate his not relying on
3 alibi. But the issue of reciprocal discovery we are
4 entitled to. I could care less who he talks to as
5 he prepares for trial. And to the extent that the
6 State asked for that, I'll withdraw the request.

7 THE COURT: All right. So they're not
8 asking now, Mr. Starnes, for you to be required to
9 let them know if you talk to a State's witness.
10 They emphasize the fact -- and I will emphasize it
11 to you as well -- that you can't do anything with
12 regard to a State's witness which might be
13 considered intimidation.

14 And that doesn't mean threatening
15 directly but any other conversation which might be
16 considered as an intimidation of that particular
17 witness with regard to their testimony. And I think
18 that's the only concern that they have expressed.

19 MR. STARNES: Yes.

20 THE COURT: And you understand that you're
21 not allowed to do that. You can talk to them. You
22 cannot threaten them nor try to intimidate in any
23 way with regard to their testimony.

24 MR. STARNES: I'm very aware of that, Your
25 Honor. Your Honor, as far as the reciprocal

1 discovery, I have not received from the State --
2 from any of the Solicitors that's been involved in
3 this case, and there have been three Solicitor's
4 Offices involved in it, I have not received any
5 communication from Mr. Gowdy's office asking for
6 reciprocal discovery.

7 And I'm certainly not going to
8 prosecute myself. I think the Fifth Amendment says
9 that I don't have to do that. And I have not
10 received any motions from their office whatsoever as
11 far as reciprocal discovery. And I don't think it's
12 fair to me just to take it upon myself to anticipate
13 what they want.

14 MR. STARNES: Well, let's ask them.

15 Have you all made a motion for
16 reciprocal discovery?

17 MR. GOWDY: Deputy Solicitor Brackett made
18 one, Your Honor, when he had the case. If that's
19 the only thing keeping Mr. Starnes from giving us
20 the information, is a piece of paper, we'll be happy
21 to have it delivered to him today.

22 MR. STARNES: That's fine, if they'll do
23 that. I never received anything from Mr. Brackett
24 as far as reciprocal discovery. Your Honor, we did
25 discuss it on record, and that's when the process of

1 them being recused, so I never received anything.
2 And I did make the motion to Mr. Willingham when we
3 was in court the last time.

4 THE COURT: Okay.

5 MR. STARNES: So if they would serve me
6 with whatever they're asking for under the rule and
7 cite it with authority, I don't have any problem
8 complying with it, Your Honor.

9 THE COURT: All right. You set forth your
10 rule and what you're entitled to in a notice to him
11 or motion to him.

12 MR. GOWDY: Yes, sir.

13 THE COURT: All right, what else?

14 MR. STARNES: Your Honor, since we're
15 dealing and discussing Rule 5 right now, I would
16 request at this time -- and I will reduce it into
17 writing and get it sent to Mr. Gowdy's office -- the
18 case that I would rely on, Your Honor, is Evans
19 versus State. And I believe it's a case that Your
20 Honor is very aware of.

21 It's cited at 611-SE-Second-510.

22 Evans deals with State Grand Jury empanelment
23 documents, Court Reporter transcripts, and things of
24 that nature. I believe Your Honor was the presiding
25 judge over that PCR. The Supreme Court wrote in the

1 opinion in Evans that not only does the ruling apply
2 to State Grand Jury, it applies to County Grand Jury
3 as well.

4 I also have a copy of Evans. I would
5 just like to put them on notice that I'm going to be
6 asking for any empanelment documents, anything that
7 falls under the purview of evidence dealing with the
8 Grand Jury. They did reindict me.

9 I received an indictment a few months
10 ago from one of their investigators in the
11 Solicitor's Office. And I would ask for all the
12 information they have that falls under the purview
13 of evidence, if they would please provide that to me
14 in a timely manner.

15 THE COURT: That's with your most recent
16 indictments, because there was a reindictment,
17 correct?

18 MR. GOWDY: It was, Your Honor. And that
19 was here in Lexington County. Of course, our office
20 doesn't have any control over Lexington County, but
21 I'll make sure we reply to that.

22 THE COURT: Okay. Of course, the State
23 Grand Jury is a little bit different than the County
24 Grand Jury, their operations, in that proceedings
25 before a State Grand Jury, the transcript of those

1 can be made available. But that's not available as
2 far as the County Grand Jury, as I understand. But
3 it is for the State Grand Jury some specific rules
4 on that.

5 Now, the empanelment documents, you
6 may very well be entitled to that. That's not what
7 I'm referring to. I'm referring to the actual
8 proceedings themselves. And the County Grand Jury
9 indictments are not recorded. I don't think they're
10 recorded.

11 I'm pretty sure they're not. And so
12 those are not available. In State Grand Jury
13 proceedings, they are. And those have to be made
14 available to the defense.

15 MR. STARNES: Yes, sir.

16 THE COURT: And so whatever else you'd be
17 entitled to as far as information about the Grand
18 Jury -- I'm guessing makeup of the Grand Jury and
19 that kind of thing; I think that's probably what
20 you're looking at -- that information can be made
21 available to you. So what else?

22 MR. STARNES: A couple of other things,
23 Your Honor. There was a CD-ROM, a disk that Mr.
24 Brackett was going to provide to Mr. Gowdy's office.
25 He sent me an e-mail communication saying that they

1 did not want any digital discovery, any of the disks
2 or anything. They just wanted the paper evidence.

3 Mr. Brackett stated that he would
4 turn the disk over to you. Also, there was a CD
5 that contained my previous transcripts. And the
6 reason I'm asking for that, I've e-mailed Mr.
7 Nettles. I did speak with him this morning about
8 it, but he's not sure if he has it or not. If I
9 could get a copy of that disk, I need to make
10 another copy --

11 THE COURT: What is on the disk? What's
12 the subject of it?

13 MR. STARNES: It is my previous
14 transcripts. And I've got to get --

15 THE COURT: As far as hearings before that
16 I presided over?

17 MR. STARNES: No, sir, the original trial
18 --

19 THE COURT: Oh.

20 MR. STARNES: -- the '96 trial, '97 trial.

21 THE COURT: Okay.

22 MR. STARNES: The appellate record.
23 Actually, it's what went to Appellate Defense. And
24 if I could get that disk, my mother has a printer,
25 and she can print some pages, because I need to have

1 another copy of the transcript made so I can give
2 witnesses for Mr. Gowdy for cross-examination
3 purposes.

4 And I guess what I'm saying is rather
5 than ask for additional funding to get the
6 transcripts recopied, my mother doesn't have a
7 photocopier machine that will feed the photocopy.
8 She's got a printer, and if she's got that disk, she
9 can print that stuff for me, and I wouldn't have ask
10 for any funding to get it sent to a printing shop
11 and get it printed again.

12 THE COURT: I'm not sure if I have that or
13 not. I will certainly go back and check through the
14 materials that I've got to see what we've got.

15 That information was not sent to your
16 office. You all don't have that CD -- or do you?

17 MR. GOWDY: I think we do. I think we do
18 have a CD of the transcript, Your Honor. I've been
19 looking at the hard copy, but I think we do have a
20 CD of the transcript. I haven't seen it really.

21 MR. COLER: I think we do, Your Honor. I
22 looked at a CD, and it had some of the transcript on
23 it. I don't know how complete it is.

24 THE COURT: Okay. If you all can check
25 and see if in fact you have it. I'm not sure I've

1 got it. I turned over everything except that which
2 could not be turned over, after both sides agreed
3 when we had the hearing in York and went through all
4 the materials.

5 I may have it, but I do not recall
6 having it. But I could have it. And I'm going to
7 check all those materials as soon as I get back to
8 the office, which will be later in the week, because
9 I'm down here for the rest of the week in
10 conference. As soon as I get back, I'll check on
11 that and see.

12 If not, then I may have to check with
13 Mr. Brackett or his paralegal to see where they
14 understand it is. If I've got any disk at all, I'll
15 check on it, and I'll let you know. If I have it, I
16 can make it available to you.

17 MR. GOWDY: If we have it, we're happy to
18 give our copy to the Court.

19 THE COURT: Yes, if you could do that, or
20 if you want to send a copy directly to him, Mr.
21 Starnes, will be fine and just send me a copy of the
22 letter where you sent it. And so that might speed
23 things up rather than send it to me and I've still
24 got to send it to him.

25 MR. GOWDY: Certainly.

1 THE COURT: So maybe you can do that.

2 MR. GOWDY: Yes, sir.

3 THE COURT: All right, what else?

4 MR. STARNES: During our last hearing,
5 Your Honor, there was the issue of some videotapes
6 that were in possession of the FBI. Mr. Willingham
7 said he would review the tapes and provide them to
8 me. I have not heard from his office, and I would
9 ask the State's position on that.

10 The videotapes, the FBI would not
11 provide them to me. The Federal Government has a
12 rule against that. What they said they would do --
13 and I have a letter from Agent O'Neill from the FBI
14 -- that they would provide that to the Solicitor's
15 Office, and then I would have to get it through the
16 course of discovery.

17 Now, I'm not sure and I can't really
18 say that this would be Rule 5 material. I'm not
19 sure that it is. However, Your Honor, evidence that
20 is out there that they're not entitled to give me
21 that I know exists and is equally available to me,
22 I'm entitled to have that information. In other
23 words --

24 THE COURT: But they're not required to
25 provide it to you, are they? If it's equally

1 available to you, I think the rule is if it's
2 equally available to you as it is to them, then
3 you're required to get it yourself, if it's not
4 something that they already have or something that
5 you can't otherwise obtain.

6 MR. STARNES: I can't otherwise obtain it,
7 because the FBI will only send it to them, and they
8 said I have to get it through them.

9 THE COURT: So it's not equally available
10 to you?

11 MR. STARNES: That's what I'm saying.

12 THE COURT: All right, okay.

13 MR. STARNES: It is, but it isn't.

14 THE COURT: Do you know if Mr. Willingham
15 contacted them on that?

16 MR. GOWDY: I don't know if Mr. Willingham
17 had a chance to speak to the federal authorities or
18 not. I can find out, and if they have something
19 that is available, we'll be glad to get it for him.

20 THE COURT: And why do you need that
21 material?

22 MR. STARNES: There's polygraph, there's
23 video evidence of -- there were some polygraphs that
24 were taken. What happened, back in 19 --

25 THE COURT: They're not admissible. So

1 why do you need those?

2 MR. STARNES: Because they're statements
3 that are made through the course of investigation.

4 MR. GOWDY: And, Judge, if he can give me
5 some guidance what I'm looking for where I can call
6 the authorities, I'll be glad to look for them.

7 But I don't know what you're asking
8 for.

9 MR. STARNES: Mr. Tate knows, because when
10 we were at the last hearing, Mr. Tate got the
11 videotapes back from the FBI and supposedly provided
12 them to Mr. Willingham. So the Lexington County
13 Sheriff's --

14 THE COURT: Check on that. Mr. Tate would
15 know. You know Mr. Tate?

16 MR. GOWDY: Yes, sir.

17 THE COURT: He's the legal adviser here
18 for the Sheriff's Department --

19 MR. GOWDY: Yes, sir.

20 THE COURT: -- at the detention center.
21 So he may know.

22 MR. GOWDY: I'll check with Mr. Tate, just
23 using the phrase "the FBI tapes." But if I can have
24 some more information, that might help me.

25 MR. COLER: Polygraphs of who?

1 MR. STARNES: I don't know.

2 THE COURT: Are these yours or somebody
3 else's?

4 MR. STARNES: Your Honor, this is a motion
5 I served on Mr. Gowdy's office. It is clocked and
6 filed on March 5, 2007. I provided all this
7 information in detail in writing. The polygraphs
8 are of a Leroy Jones, he was a federal inmate who
9 testified against me the State brought back; Jodie
10 Fogle, he was an individual who witnessed this
11 shooting; Roger Crook; Jim Kyzer; Karen Craft; and a
12 Donna Benson. Those were the -- and all of these
13 individuals are directly related to the case.

14 What happened, in 1996, there was an
15 illegal videotaping that happened at the Lexington
16 County Sheriff's Office that we're all aware of.
17 The FBI come in, and they seized all the videotapes
18 through the course of their investigation.

19 And then they returned all of them to
20 Mr. Tate, and these are -- it is in detail. If he
21 needs another copy of this, Your Honor --

22 THE COURT: Why is that relative to this
23 case, Mr. Starnes?

24 MR. STARNES: It's --

25 THE COURT: If he's got videotapes of some

1 people who are in jail down there, what's that got
2 to do with your case?

3 MR. STARNES: These are videotaped
4 statements.

5 THE COURT: Given in your case?

6 MR. STARNES: Yes, sir.

7 THE COURT: Oh, okay.

8 MR. STARNES: They are directly asking
9 questions dealing with the shooting, dealing with
10 what they seen, saw, or what have you. These are
11 videotaped statements directly related to this case,
12 Your Honor. And they appear in the discovery.

13 MR. GOWDY: And they weren't available at
14 the first trial?

15 MR. STARNES: They weren't available, and
16 they never were asked for.

17 MR. GOWDY: We'll be happy to look into
18 that, Judge.

19 THE COURT: Okay.. All right, we're
20 getting kind of on short time, now. That's one
21 reason I wanted to have this hearing today, because
22 we're going to need to get all these things done if
23 we're going to be ready for trial in November.

24 MR. STARNES: Two other quick things while
25 we're here, Your Honor. During the last hearing,

1 Mr. Willingham and I believe Mr. Coler was here for
2 the State. When we met in York County on November
3 3, 2006, I served on them an original Rule 5, a
4 Brady request, a supplemental discovery request, and
5 a motion to quash the indictment.

6 On March 27, 2007, when we had the
7 last hearing over here, I re-raised that motion and
8 provided them, I believe, another copy of this
9 supplemental discovery request. And I would ask the
10 State's position on that. I've not received any
11 responsive documents or anything relating to that
12 request.

13 THE COURT: Let me be sure what you're
14 asking before they respond. Of course, you have
15 been reindicted as far as the indictment is
16 concerned, and they're going with the new
17 indictment, is that correct?

18 MR. GOWDY: Yes, sir.

19 THE COURT: So in the motion, you're not
20 seeking to quash the new indictments. I take it at
21 this point you're not?

22 MR. STARNES: No, sir. I haven't even
23 investigated that part.

24 THE COURT: I understand. But what you're
25 asking today is you had made a motion for

1 supplemental discovery and to be sure that they have
2 complied with that request, is that correct?

3 MR. STARNES: Yes, sir.

4 THE COURT: That's what I was asking.

5 MR. GOWDY: Any discovery we have that he
6 hasn't got I'll make sure he's got, Your Honor. But
7 as far as I understand, we don't have anything new
8 that's in addition to what was available at the
9 first trial. If there is anything, we'll be glad to
10 certainly make sure it's provided to him.

11 THE COURT: All right. And you need to do
12 that as early as possible.

13 MR. GOWDY: I'm not aware of anything
14 else, but I'll be glad to check.

15 THE COURT: If you'll go back and make
16 sure, just double-check --

17 MR. GOWDY: Yes, sir.

18 THE COURT: -- and be sure you haven't got
19 any information that's not otherwise available to
20 Mr. Starnes.

21 MR. GOWDY: Yes, sir.

22 MR. STARNES: During the course of when
23 the Eleventh Circuit Solicitor's Office had the
24 case, there were some notes during the course of
25 investigation that Detective Amick had taken and

1 some other information that they had. I'm not sure
2 if they turned that information over to Judge
3 Westbrook or whatever when we were supposed to have
4 a hearing to determine whether that material was
5 discoverable or not.

6 However, tragically, Judge Westbrook
7 was killed. And thereafter, the Eleventh Circuit
8 Solicitor's Office was recused from prosecuting the
9 case. And that's basically what I'm asking for in
10 this supplemental discovery request. And just for
11 the record, Your Honor, it's clocked in on April 29,
12 2005.

13 THE COURT: And what is it, now, that
14 you're wanting?

15 MR. STARNES: It's various materials.
16 There is Sections A through R. If they would just
17 please provide me a written communication if they
18 have the materials.

19 THE COURT: You said it was clocked in to
20 the --

21 MR. STARNES: Clerk's Office.

22 THE COURT: -- Clerk's Office --

23 MR. STARNES: Yes, sir.

24 THE COURT: -- as part of the record in
25 this case?

1 MR. STARNES: Yes, sir. And I've argued
2 it into the record several times, Your Honor. And
3 also I've provided them on two occasions with this
4 document. If they would just please be kind enough
5 to give me a written reply, and then if we need to
6 have a hearing to determine --

7 THE COURT: Are you familiar with what
8 he's talking about, or you want to look at what he's
9 got?

10 MR. GOWDY: I remember this coming up at
11 the last hearing. He, I think, is specifically
12 asking for Detective Amick's handwritten notes from
13 January 16th through May 29th of 1996.

14 Is that what you're asking for?

15 MR. STARNES: That's Section E. That's
16 one part of it.

17 MR. GOWDY: Is he saying that those were
18 provided to the Eleventh Circuit and then
19 subsequently provided to the Seventh Circuit?

20 MR. STARNES: The Court may have them.
21 I'm not sure -- because there was never a final
22 ruling on it.

23 THE COURT: But if it's in these files,
24 I'll have to go through here and see what's in here.

25 MR. GOWDY: If we've got them in our boxes

1 of discovery, Your Honor, I'll make sure we get a
2 copy to him.

3 THE COURT: Well, I'm not sure you do
4 necessarily have them. You may, or you may not.
5 But we'll go through these shortly. I'll go through
6 these files. We've got several files here, and I'll
7 go through them to see if it's in there.

8 And it was filed when, please?

9 MR. STARNES: This document was filed on
10 April 29, 2005. And, Your Honor, if the State does
11 not have them, if they would just comply with Tower
12 versus Whitley, they have a duty to learn and a duty
13 to find this information.

14 The Sheriff's Office is not going to
15 give it to me, of course. But under Tower versus
16 Whitley, they have a duty to learn and provide this
17 information to me upon request. I believe Mr.
18 Brackett even cited that case when we had a previous
19 hearing regarding this. And this issue was before
20 Mr. Brackett's office, but they recused themselves,
21 and so --

22 THE COURT: All right. Did Judge
23 Westbrook take it under advisement, or it wasn't
24 ruled on, or what?

25 MR. STARNES: We were going to take it up

1 at another hearing, but, tragically, he was killed
2 in an accident.

3 THE COURT: All right. Well, I'll see
4 what's in here. We'll look at it. Let's make sure
5 you all have a copy of it.

6 Can you show them what you're talking
7 about now, just so there won't be any question about
8 it?

9 MR. GOWDY: Judge, I've had a minute to
10 look over Mr. Starnes' request. We'll certainly
11 provide him anything we have and anything that's
12 available to us. But we're not going to go and
13 investigate the case for him. If there's things in
14 here that he thinks that he's entitled to and can
15 get, our position would be that he needs to get
16 those. But anything we have, we would certainly be
17 glad to make sure we turn over to him.

18 THE COURT: I think the other position
19 he's taking is that if it's something you don't
20 really have in your file, that the police have it,
21 and it's available to you, and they really won't
22 turn it over to him, that he may be entitled to it.
23 I'm not sure what he's talking about, whether he's
24 entitled to it or not.

25 But I understand his position is that

1 there are some notes that they may have they have
2 not provided to you, that he's entitled to them. I
3 don't know particularly if they won't provide them
4 to him. I don't know if he's entitled to them or
5 not. I'm just saying that's his position.

6 MR. GOWDY: Yes, sir, I agree with that.
7 We have not met personally with the agency that
8 investigated the case, the Lexington County
9 Sheriff's Office. When we do, we'll make a
10 determination. We'll find out whether they've got
11 it and certainly provide to him, if it's
12 discoverable.

13 THE COURT: Okay. All right, what else,
14 Mr. Starnes?

15 MR. STARNES: One final thing, Your Honor.
16 And we covered at the last hearing that there was a
17 video statement given by Ms. Gwen Ott, and it was
18 transcribed. It was actually a Court Exhibit Number
19 Four, I believe.

20 You visited that issue with Mr.
21 Willingham about redacting the video statement.
22 There was a transcript made of it. There was things
23 in the video that is clearly not admissible. There
24 was a part --

25 THE COURT: Was it shown at the first

1 trial?

2 MR. STARNES: Part of it was. But when we
3 were in the middle of the trial, they tried to
4 redact the videotape then. And one of my family
5 members, I believe, redacted the tape at 4:00 in the
6 morning. It was not professionally done, and this
7 was something that was done in the middle of the
8 trial, that shouldn't have been. It should have
9 been done pre-trial and far in advance.

10 THE COURT: As long as it's done so that
11 it can be looked at pre-trial and a determination
12 made at pre-trial would be ample time.

13 Do you understand what he's talking
14 about?

15 MR. GOWDY: I think what he's saying, Your
16 Honor, is his lawyers redacted it. I don't think
17 the State introduced the videotape. I think she
18 called Gwen Ott. I think they used the videotape to
19 impeach.

20 But I've only read the transcript one
21 time. But I can't imagine how the State would be
22 able to put in a videotape of one of their own
23 witnesses.

24 THE COURT: I wouldn't think so either.
25 Apparently, this was used to impeach her, is that

1 right? Was this put up by the defense to impeach
2 her?

3 MR. STARNES: Yes, sir, it was.

4 THE COURT: Well, that would be your
5 responsibility, then. I think it wouldn't be the
6 State's responsibility to redact it, although if
7 it's an issue of whether it's properly redacted or
8 not, then we could take that up pre-trial in camera,
9 out of the presence of the jury, and we'll get that
10 and see if it's properly redacted.

11 But if you plan to use the tape and
12 you say parts of it should be redacted -- or the
13 State may be the one who's going to insist on some
14 redaction. I don't know. But that's something you
15 all can do pre-trial if you get the tape itself, and
16 you all can look at it, and then try to agree on
17 what should be redacted. And, obviously, if you
18 can't agree, then let the Court decide at pre-trial.

19 MR. STARNES: Yes, sir. I'm not saying
20 they have a responsibility to redact it. I sent Mr.
21 Gowdy's office a written communication on March 2,
22 2007. I sent them -- actually, it was in Mr.
23 Brackett's file -- a copy of the transcript of the
24 videotape.

25 And I explained to them the portions

1 that I would be moving to redact and to get their
2 position on it, to take care of as much of this as
3 possible without having to do it in court and having
4 a hearing, to play the videotape. The videotape is
5 an hour and a half long, and that's why I wanted to
6 see if they would agree to redacting certain
7 portions of this, or if we could come to an
8 agreement --

9 THE COURT: Do they have a copy of the
10 videotape?

11 Do you all have a copy, do you know?
12 You do?

13 MR. GOWDY: Apparently, we do have the
14 videotape, Your Honor.

15 THE COURT: All right. So if you all
16 could respond. He's saying he also has the
17 transcription, and he has highlighted the portions
18 which he says should be redacted from the tape. And
19 if you all can review and get back to him on that
20 and see about that. So you'll have to resolve that
21 before we get to trial.

22 MR. STARNES: Yes, sir.

23 THE COURT: We can do that.

24 MR. STARNES: Appreciate it.

25 THE COURT: All right, what else, Mr.

1 Starnes?

2 MR. STARNES: Your Honor, I think that's
3 it for the defense, unless the State has anything.
4 Just for the record, they -- I don't think they were
5 obligated to do so, under State versus Jones, which
6 is a capital case from Anderson County, but Mr.
7 Gowdy was nice enough to serve me an additional
8 notice to seek the death penalty this morning.

9 So I'd just like the record to
10 reflect that. I guess I'm kind of doing their job
11 for them, but I don't think under State versus Jones
12 they even have to serve me another notice.

13 THE COURT: Well, you've been reindicted,
14 so I think that may be out of an abundance of
15 caution they're serving you with a notice. But
16 you've been reindicted, and we're going under the
17 reindictment.

18 MR. STARNES: Yes, sir.

19 THE COURT: What other information are you
20 going to seek with regard to the Grand Jury that
21 rendered the most current indictment? We need to
22 move forward with that as well to get information
23 that you say you're entitled to. We may need to
24 resolve that at another hearing.

25 MR. GOWDY: Is the Court asking us to

1 contact the Lexington County --

2 THE COURT: No, I'm not. I'm saying to
3 him if he wants information concerning the current
4 Grand Jury that indicted him -- I think he's
5 entitled to certain information about that -- then
6 he needs to make that request known to see if you
7 all can accomplish that.

8 I think, in fact, the Clerk's Office
9 may have the information that he's needing with
10 regard to the Grand Jury. I'm not sure.

11 But whatever you're seeking about
12 that, you need to make that request, because if it's
13 something that they say you're not entitled to, the
14 Clerk doesn't feel comfortable in releasing, then
15 the Court may have to ultimately resolve that. But
16 you need to make your specific request with regard
17 to the current Grand Jury. Have you done that?

18 MR. STARNES: No, sir. I was doing it to
19 them today. The Evans case says that I make it to
20 them.

21 THE COURT: Okay.

22 MR. STARNES: That I make it to the State,
23 not the Clerk of Court's Office. I mean, if Your
24 Honor wants me to make it --

25 THE COURT: No, that's fine. I'm just

1 saying that the Clerk is the one who may have the
2 information you want. And I know they're not going
3 to have it, or the Solicitor's Office here may have
4 it, because it was a Grand Jury from Lexington
5 County --

6 MR. STARNES: Yes, sir.

7 THE COURT: -- that rendered the
8 indictments. Now, while we're on that point, what
9 I'm saying is they'll probably have to try to get
10 the information from the Solicitor's Office. But,
11 ultimately, if it's about the makeup of the Grand
12 Jury, the Clerk's Office may have that information
13 that would be available to both the State and the
14 defense with regard to the makeup of the Grand Jury,
15 who's on there and that kind of thing.

16 And so if there's a transcript of the
17 selection process, then that would have to come from
18 whoever transcribed it, whoever the Court Reporter
19 was that transcribed it. So you need to move on
20 that right away.

21 Now, while we're on the subject of
22 the new Grand Jury indictments, do we need to --

23 MR. GOWDY: Arraignment?

24 THE COURT: -- have a subsequent
25 arraignment and provide a copy for that?

1 MR. GOWDY: Yes, sir. Unless he wants to
2 waive it, yes, sir.

3 MR. STARNES: No, sir, I don't waive it.

4 THE COURT: All right. Then why don't we
5 do that today so we'll have that out of the way?

6 MR. GOWDY: Your Honor, it may take us a
7 moment to give him the indictments.

8 THE COURT: Now, we're going to discuss,
9 counsel as well as standby counsel, in a moment.
10 But if you want to discuss this with him, you're
11 welcome to do it.

12 MR. STARNES: With Mr. Nettles?

13 THE COURT: Yes.

14 MR. STARNES: We've already had plenty of
15 discussions on this.

16 THE COURT: On the arraignment?

17 MR. STARNES: On any consultation or any
18 discussion. Your Honor, may I beg 30 seconds from
19 the Court?

20 THE COURT: Absolutely. If anybody else
21 needs 30 seconds, go ahead.

22 MR. NETTLES: Sir, my involvement might be
23 something better to be done ex parte. And while
24 they're running around doing all that, we can maybe
25 do that now, if that's okay with you.

1 THE COURT: Okay. Why don't we do this,
2 then? We'll be ex parte, and you all take a few
3 minutes, and we'll take it up --

4 MR. STARNES: Do you want to let one of
5 the Bailiffs know when it's fit --

6 THE COURT: Yes, sir.

7 MR. STARNES: -- for us to come back in?

8 THE COURT: Absolutely, yes, sir.

9 MR. STARNES: All right, thank you.

10 THE COURT: Why don't we go ahead and take
11 that up now, then, with regard to Mr. Nettles' role.

12 How do you see that, Mr. Starnes?

13 MR. STARNES: Well, Your Honor, we've had
14 -- prior to Your Honor getting involved in this
15 case, when Judge Westbrook was involved in it, there
16 come a point there where Mr. Nettles and Mr. Delgado
17 was firmly adamant about not having any.

18 I mean, they pretty much said on the
19 previous record with Judge Westbrook that I haven't
20 had any contact with Mr. Delgado in over two years.
21 Mr. Nettles' role in this case is implementing the
22 funding, because originally they didn't even want to
23 do that.

24 But I believe there was an
25 intervention by the Court Administration that pretty

1 much compelled them, since they're Bar members, that
2 they have to implement the funding of things in this
3 case. So pretty much for the last couple of years
4 that I've been representing myself, I've had no
5 contact with my standby counsel. They made it clear
6 to me that they have no role, other than coming to
7 the courtroom and pretty much watching this trial.

8 THE COURT: Well, let me explain
9 something, and I'll be glad to hear from Mr. Nettles
10 about it, his position. But, of course, you
11 understand that they have been available to you, and
12 you waived their presence at some of these hearings.

13 But they've been available to you.
14 And the Court would have required that one or both
15 of them be there at these other hearings, if you
16 needed them there. But you didn't -- you waived
17 their presence at these hearings -- really didn't
18 need them there, was your position.

19 MR. STARNES: Right.

20 THE COURT: Huh?

21 MR. STARNES: That's correct, Your Honor.
22 I didn't need them there.

23 THE COURT: And so that's where we are on
24 that. Now, let me say my understanding of what is
25 standby counsel. And they really don't want you to

1 conduct the defense, ostensibly getting some advice
2 from them in preparation of a defense and that sort
3 of thing, and then have you come in and try a case
4 and let them get the blame for things that you don't
5 do or you say that they told you to do, or something
6 like that, let them take the blame for it when
7 they're not involved -- because you can't really try
8 a case piecemeal. In other words, they can't be
9 involved in a small portion and not the rest of it
10 and get credit for the whole thing. You understand
11 what I'm saying?

12 MR. STARNES: I understand exactly what
13 you're saying.

14 THE COURT: And so they don't want to be
15 held accountable for the conduct of the defense in
16 the case when they don't have any decision-making
17 powers or they're not responsible for what you
18 actually do do and present. And that's
19 understandable.

20 And I don't want them to be
21 responsible for that, because you're going to simply
22 swim on your own, okay? That's your decision. Once
23 we get to trial, though -- and, of course, it's not
24 too late yet to involve them in your defense if you
25 want to involve them in your defense.

1 But you have a right to represent
2 yourself. You have a constitutional right to
3 represent yourself. My advice is that's a mistake,
4 and I hope there's somebody that went over that with
5 you and that you -- because they are, of course,
6 more knowledgeable about courtroom procedures, and
7 the law, and the rules, and that sort of thing, and
8 they've had a lot of experience in these kind of
9 cases.

10 I know Mr. Nettles has had a number
11 of these death penalty cases. Be that as it may,
12 you have a right to represent yourself and make your
13 own decision in that regard. They don't want to be
14 held accountable, however, if you do something they
15 don't agree with and ultimately it doesn't work out.

16 Having said that, the way I see
17 standby counsel is they don't advise you as you go
18 through the trial necessarily, because you go
19 through preparing your defense, because they have no
20 say-so. But they are there to answer a question, a
21 legal question. They're there to answer that
22 question.

23 When you get to the trial, they would
24 be standby counsel. And we're going to discuss that
25 in just a minute. They would be standby counsel.

1 Therefore, if you start into the trial and there's
2 some procedural thing you don't understand, they
3 would be available to answer your questions about
4 that.

5 They're not going to take over your
6 defense, though. Once you get started with it,
7 they're not going to take it over. So if you got in
8 the middle of the trial thinking "I'm in over my
9 head" -- I don't think you're going to do that.

10 I think you have given enough thought
11 to this that you're not going to be caught in that
12 situation, like someone who might just suddenly
13 decide to represent themselves. You've obviously
14 given a lot of thought to preparation.

15 But you couldn't in the middle of
16 trial say, "Well, I'm lost. You all take over."
17 That's not going to happen. But what I do see is
18 them sitting back, and if there's a question that
19 comes up you don't understand, if it's a procedural
20 thing you don't understand, something like that,
21 then they would be able to answer the question that
22 you had.

23 That's all they're going to do, is
24 sit there and answer questions that they can answer.
25 They'll help you out if you get in a bind insofar as

1 a rule or procedure and that sort of thing and to
2 try to provide you some advice when you request it
3 from them.

4 The Court, in a serious case like
5 this, wants standby counsel, wants somebody there,
6 to be able to answer your questions, because the
7 Court can only do so much because the Court has to
8 be neutral. And the Court certainly can try to
9 explain a rule as we go along, but the Court can't
10 represent you, take your part and to argue for you
11 and that sort of thing.

12 So you'll have to do that on your
13 own. But they would be there to answer a question
14 if you get stymied about a procedural rule or some
15 other rule and that sort, or a procedure in the
16 courtroom during the trial, answer those kind of
17 questions for you.

18 So that is, as I see, their role, so
19 you'll have something to fall back on. If you get
20 to trailing off somewhere or get into something you
21 clearly don't understand, they'd be able to answer
22 your question briefly -- or not so briefly
23 necessarily, but be available for that purpose.

24 That's how I see that role. But at
25 the same time, Mr. Nettles -- and I'll hear from you

1 on it -- my thoughts are if there's something that
2 he doesn't know, if there's some information that
3 you can impart to him with regard to who an expert
4 might be that you know or what an expert might be
5 able to do for him, that you would be able to at
6 least provide that information to him -- not contact
7 an expert and make arrangements for an expert or
8 anything like that.

9 But if you knew John Smith at a
10 medical university can do this and testify in these
11 kind of cases, and you're aware of that, and he
12 didn't have that resource or know about it, if it's
13 something you can at least provide him, then it's up
14 to him to contact him and make the arrangements,
15 because that's not your role.

16 But I do not see why, counsel, if you
17 have information like that, that would assist him as
18 far as an expert witness or something, he can make
19 his own decision whether he's going to involve him
20 in the case or not. But if you had that resource
21 and knew about him and he didn't know, that would be
22 helpful --

23 MR. NETTLES: Yes, sir.

24 THE COURT: -- in the case.

25 MR. NETTLES: We can certainly do that.

1 THE COURT: Yes. And I see that role but
2 not the role where you secure the expert, nor ask
3 the expert to testify or anything like that. That's
4 going to be up to him to do that.

5 MR. NETTLES: And just as a great example,
6 and one that I was thinking through, this is the
7 first I've heard that there would be a problem with
8 the expert. I know I have tried a whole bunch of
9 DNA cases, so I can give him a list of experts.

10 Am I correct in what I'm hearing, the
11 Court has to make sure that I understand my role, my
12 -- is that, for instance, on this DNA issue, there
13 are two ways you can go about that for the test.
14 One is sort of a proactive defense, which would be
15 get the clothes, get them tested, all of that.

16 The other way is sort of a reactive
17 response to it, which would be have an expert come
18 in and say, "Yes, it could have been tested. They
19 weren't tested." There's two ways the defense could
20 give --

21 THE COURT: Absolutely.

22 MR. NETTLES: -- evidence.

23 THE COURT: Absolutely.

24 MR. NETTLES: And am I clear that what the
25 Court is telling me is that it's not my duty to

1 discuss with him the relative merits of either one
2 of those avenues at this issue but merely, when he
3 comes to me and asks me if I've got experts to give
4 him, for instance, what I've got.

5 THE COURT: Well, that and -- yes, that's
6 walking kind of a fine line -- I see where you are -
7 - because sometimes you might do testing and get
8 results you don't want.

9 MR. NETTLES: Right.

10 THE COURT: And it might be a better
11 strategy to not do the DNA testing and just use that
12 against the State at the trial.

13 MR. NETTLES: Right.

14 THE COURT: And there are two ways to look
15 at it, and there's two schools of thought. It's
16 just trial strategy. And I think that's strategy
17 he's going to have to make, although I don't see
18 anything that would prevent you from discussing that
19 with him and pointing that out to him if you want
20 to. Again, that's kind of a close question. But I
21 don't see any problems with at least making him
22 aware of his choice in that regard.

23 MR. NETTLES: See -- because then that --

24 THE COURT: But that's his decision.

25 MR. NETTLES: Right. See, and that's what

1 kind of concerned me, because if -- in my mind,
2 there is a difference -- in my mind, if you're going
3 to represent somebody, then those are the sorts of
4 decisions that you think through as the lawyer and
5 then get across to the client about it. And then
6 you give your advice on what you think.

7 THE COURT: I don't think it's your
8 responsibility to give advice in this case. But to
9 make him aware -- if he says, "I need a DNA expert
10 to testify on this," and to let him know that there
11 are two approaches to using an expert giving
12 testimony. And one of them might work just as well
13 or better depending on the facts of the case and
14 what his theory of the case is and what defense he's
15 going to present.

16 And that is, if the State doesn't
17 present it, you can use that in argument to the jury
18 that they failed to present or get DNA testing done.
19 I think that's the kind of thing that you wouldn't
20 be prohibited from at least telling him about.

21 MR. NETTLES: Yes, sir.

22 THE COURT: But you don't advise him "I
23 think you ought to do it this way." He's got to
24 make that decision. He's chosen that. So he's got
25 to make the decision "I'm going to use DNA," "I'm

1 not going to use DNA. I'm going to use it in the
2 way that the State didn't present it." So it's kind
3 of a fine
4 line --

5 MR. NETTLES: Yes, sir.

6 THE COURT: -- but I think you can use
7 some common sense there.

8 MR. NETTLES: Yes, sir.

9 THE COURT: I'm not asking you to advise
10 him one way or the other.

11 MR. NETTLES: Yes, sir.

12 THE COURT: You say, "These are two
13 possibilities. My advice would be to go this way."

14 MR. NETTLES: Right.

15 THE COURT: That's not a legal thing.
16 You're not obligating him --

17 MR. NETTLES: Yes, sir.

18 THE COURT: -- because he's made the
19 decision himself to represent himself and make those
20 decisions.

21 MR. NETTLES: Yes, sir.

22 THE COURT: With the DNA test, if he says,
23 "I need to get a DNA expert to testify on this," and
24 you say, "Well, have you considered this whenever
25 you go to trial" --

1 MR. NETTLES: Yes, sir.

2 THE COURT: -- "but it's up to you." I
3 don't think that it's your responsibility to advise
4 him which way to go on any of this or what to
5 present or how to present his defense. I think
6 that's solely up to him.

7 MR. NETTLES: Yes, sir.

8 THE COURT: But to make him aware of
9 something he might not be aware of so he can make
10 his decision, if you're aware of it, standby counsel
11 I think should be able to do that.

12 MR. NETTLES: Yes, sir.

13 THE COURT: To the extent that he'll allow
14 you to do that.

15 MR. NETTLES: Yes, sir.

16 THE COURT: Okay. Do you understand what
17 I'm saying, Mr. Starnes?

18 MR. STARNES: Yes, sir.

19 THE COURT: Okay. You'd be foolish not to
20 see or be open to what they tell you. You can make
21 your own decision, but you'd be foolish not to be
22 open to what they might say to you about it.

23 MR. STARNES: I certainly don't have a
24 problem like that.

25 THE COURT: Something with DNA, and this

1 might be something else next time, but that kind of
2 thing. They're not going to tell you which way to
3 go or recommend one way or another. If they tell
4 you, "You've got these choices; you have two
5 choices," then it's up to you to make a decision
6 which way you want to go.

7 MR. STARNES: Yes, sir.

8 THE COURT: Depending on how you want to
9 present your case. Other than that, unless you have
10 a question for them, if they provide some DNA
11 experts for you, you'll have to make your own
12 contacts in that and make your arrangements.
13 They're not going to do that for you. You
14 understand that?

15 MR. STARNES: I very much understand.

16 THE COURT: They can make a list available
17 to you, and then you can talk with them about the
18 feasibility and that kind of thing.

19 MR. STARNES: Yes, sir.

20 THE COURT: But I'm not going to be
21 delaying this thing. I'm putting everything in
22 motion, and as of within a week, we're going to have
23 most of what I need to get done for this trial as
24 far as getting it ready for trial, scheduling juries
25 and that kind of stuff, security and how it's going

1 to be done.

2 So we're not going to back up off of
3 that, unless somebody dies in the process or is
4 hospitalized during the process. That's about the
5 only way it's going to be delayed.

6 MR. STARNES: Yes, sir.

7 THE COURT: And so you need to be aware of
8 that. So if you're going to use expert testimony,
9 you need to get a hold of somebody, and you need to
10 do it right away, to give them the time they need to
11 get it done.

12 MR. STARNES: So what I'm hearing today is
13 that if I contact Mr. Nettles and ask him for
14 assistance in contacting a DNA expert --

15 THE COURT: No, no. He's not going to
16 contact somebody for you.

17 MR. STARNES: Well, I understand. I do
18 that.

19 THE COURT: Yes. He'll give you -- if he
20 has several people that he has used or knows about
21 that you could contact, he would provide you with
22 that, then it's up to you.

23 And at the same time, I'm saying to
24 him to let you know with regard to presentation of
25 DNA evidence there's two ways you might proceed at

1 trial.

2 MR. STARNES: I understand.

3 THE COURT: One would be to try to get
4 your own DNA evidence to present. The other is to
5 point out that the State failed to get DNA testing.
6 And if they failed to get DNA testing, they're not
7 presenting anything to prove what this witness is
8 saying, and they could have done that. It's
9 strategy.

10 MR. STARNES: I understand.

11 THE COURT: But that's not up to them to
12 do the strategy. You'll have to make your own
13 decisions.

14 MR. STARNES: I completely understand.

15 THE COURT: For them to provide you with
16 that information I think would be helpful.

17 Any other questions or guidance that
18 the Court can give you, Mr. Nettles?

19 MR. NETTLES: Yes, sir, and just along
20 those lines. Is it incumbent upon me -- for
21 instance, let me back up and say this. Let me ask
22 this question, which may help with it actually. Is
23 the Court expecting standby counsel to have read --
24 I mean, I read it when I tried it in '94, but my
25 memory isn't what it used to be.

1 THE COURT: No.

2 MR. NETTLES: Okay. So --

3 THE COURT: I'm not expecting you to do
4 that.

5 MR. NETTLES: Rediscovery and that sort of
6 thing?

7 THE COURT: I'm not expecting you to do
8 that. If you wanted to do that, or if he wants to
9 show you something and ask you about it --

10 MR. NETTLES: Okay.

11 THE COURT: -- to be able to do it. I'm
12 not asking you to go back and reread the transcript
13 and all that kind of stuff. That's not what you're
14 required to do, because that's not going to be your
15 role in this case.

16 MR. NETTLES: Yes, sir.

17 THE COURT: He needs to ask you for
18 information if he wants it, and he can show you what
19 he's talking about.

20 MR. NETTLES: Yes, sir.

21 THE COURT: But I'm not expecting you to
22 go back and reread everything on this case --

23 MR. NETTLES: Okay.

24 THE COURT: -- because you're not trying
25 the case.

1 MR. NETTLES: Yes, sir.

2 THE COURT: The only thing I would ask you
3 to do is be able to answer his questions as best you
4 can.

5 MR. NETTLES: Yes, sir.

6 THE COURT: And if he has a question about
7 something that went on at the prior trial, then he
8 may have to show you what he's --

9 MR. NETTLES: Yes, sir.

10 THE COURT: -- talking about at that time.

11 MR. NETTLES: I get you.

12 THE COURT: But I'm not expecting you to
13 refamiliarize yourself at all with that.

14 MR. NETTLES: Yes, sir.

15 THE COURT: So if he has some questions,
16 he needs to show you what he's talking about with
17 regard to discovery in the record, something like
18 that.

19 MR. NETTLES: Yes, sir.

20 THE COURT: You understand?

21 MR. STARNES: Yes, sir. May I inquire
22 about a few things, Your Honor --

23 THE COURT: Yes, sir.

24 MR. STARNES: -- regarding this?

25 THE COURT: Okay.

1 MR. STARNES: Suppose we're in the middle
2 of a trial, and the jury is not present, and make a
3 motion or an argument, just say, for another entry
4 issue, and I can't overcome it. Can he address the
5 Court?

6 THE COURT: No. He can address you.

7 MR. STARNES: Okay.

8 THE COURT: He is not going to be able to
9 take part in this trial. We're not going to --

10 MR. STARNES: I understand that.

11 THE COURT: This state doesn't recognize
12 hybrid representation. So if you're going to
13 represent yourself, you have to represent yourself.
14 Standby counsel answers questions for you.

15 They do not get involved in the case.
16 They do not argue your motions. They don't examine
17 a witness, and they don't argue motions for you.

18 MR. STARNES: Right.

19 THE COURT: For instance, though, if you
20 said, "Evidentiary Rule 609 applies to this case,
21 and I blah, blah, blah," and the other side takes a
22 different position, and the Court asks you a
23 question about it, and you're not sure what 609
24 stands for, you could ask him that, okay?

25 MR. STARNES: Yes, sir.

1 THE COURT: "My understanding of Rule 609
2 is this, and I'm entitled to this. What is your
3 understanding of Rule 609?" He can tell you that.

4 MR. STARNES: Yes, sir.

5 THE COURT: That's what standby counsel
6 does. But he's not going to stand up and argue that
7 motion to the Court.

8 MR. STARNES: No, sir. What I was asking
9 about, Your Honor, is the U.S. Supreme Court's
10 decision in McCaskill versus Wiggins. It's a case
11 out of California that the U.S. Supreme Court wrote
12 an extensive opinion on, and they applied the
13 reasonings of Faretta in the role of standby
14 counsel.

15 And it's my understanding of the
16 reading of that, that outside of the jury's presence
17 that he has -- he could help me as far as an
18 evidentiary issue. I mean, McCaskill versus
19 Wiggins --

20 THE COURT: I'm telling you what I'm going
21 to rule. And I think that's the South Carolina
22 rule, not California rule, and not the federal rule.
23 South Carolina does not recognize hybrid
24 representation.

25 MR. STARNES: Right.

1 THE COURT: So your lawyer is not going to
2 argue for you --

3 MR. STARNES: Right.

4 THE COURT: -- okay? He can answer your
5 questions and allow you to argue what he tells you
6 is the law, okay?

7 MR. STARNES: Yes, sir.

8 THE COURT: But it's up to you to do it.
9 He's going to be sitting there, and he's going to
10 answer your questions. If the Court asks him a
11 question or allows him to address the Court, that's
12 fine.

13 But for the most part, that's not his
14 role. His role is to advise you what his
15 understanding of the rule is, and you can argue that
16 to the Court. But, for instance, if we're sitting
17 here, whether the jury is present or not, and you
18 have an issue and you're just stymied about a rule,
19 what you can under the rule or the procedure, you
20 can lean back to him and ask him, "What will I do
21 procedurally at this point?" or "What's your
22 understanding of the rule?" And I think you can do
23 that. That's what standby counsel does, okay?

24 MR. STARNES: Yes, sir, I understand.
25 I've read a lot of the South Carolina Supreme

1 Court's, and they do not allow hybrid
2 representation. However, I would just ask the Court
3 to just note for the record my objection under
4 McCaskill versus Wiggins.

5 I did not know we were going to argue
6 this today or that we were going to entertain this,
7 or I would have been a lot more prepared. There was
8 motions argued before Judge Westbrook, and this has
9 been covered extensively with him.

10 Unfortunately, he was killed in a car
11 accident. We all know that. So I don't know that
12 his rulings are still binding.

13 THE COURT: Well, what's your
14 understanding of his ruling, because I'm not aware
15 of it.

16 MR. STARNES: That if the jury is not
17 present and I have an evidentiary problem trying to
18 -- in other words, if Mr. Nettles is sitting over
19 there, and he knows that I'm not quoting a certain
20 rule or I'm not saying exactly the right thing, and
21 the jury is not present to where they know --

22 THE COURT: Well, he can speak for you on
23 the rule. I don't think that's a problem. I don't
24 think would be a problem, if that's what you're
25 talking about.

1 MR. STARNES: That's what I'm talking
2 about.

3 THE COURT: I'm saying if the Court
4 allowed him to do that, that's fine.

5 MR. STARNES: Yes, sir.

6 THE COURT: Okay.

7 MR. STARNES: And my understanding of the
8 McCaskill is that when the jury is not present, if
9 I'm making a motion or an argument that he can speak
10 for me as long as the jury's not present -- in other
11 words, so it doesn't appear -- they don't perceive
12 the conflict of hybrid representation, that I'm
13 represented by myself and counsel.

14 THE COURT: Well, that's a matter that's
15 up to the Court. The Court can allow him to speak
16 if he can more eloquently discern the rule better,
17 understanding the rule better, than you can present
18 it to the Court. If he presented it to the Court, I
19 don't see that that would be a problem.

20 MR. STARNES: Yes, sir. And I completely
21 understand the Sixth Amendment's out the window and
22 the rule in Strickland versus Washington that I
23 can't come back -- if we end up in another Appellate
24 Court, that I can come back and claim an ineffective
25 claim on either standby counsel.

1 I realize that Judge Westbrook -- he
2 adamantly went over that with me, that the Sixth
3 Amendment is out the window when it comes to that,
4 and I completely understand that. I'm not going to
5 ask him to be held responsible for something that
6 I've waived in court.

7 THE COURT: Well, if the Court thinks he
8 could be helpful in presenting your view on a rule,
9 I'm sure the Court can allow him to do that out of
10 the presence of the jury.

11 MR. STARNES: Yes, sir.

12 THE COURT: And even when the jury is
13 present, you can lean back and ask him if you're
14 lost procedurally at some point or something about a
15 rule

16 -- lean back and talk to him confidentially --

17 MR. STARNES: Yes, sir.

18 THE COURT: -- not loud enough for the
19 jury or anybody else to hear. Let me ask you this
20 while we're on that. Mr. Delgado has requested that
21 he not be required to be here for the trial itself
22 in November so he could schedule other things.

23 And I have not ruled on his request
24 to be recused. His thing is that Mr. Nettles would
25 be sufficient. What are your thoughts about that,

1 Mr. Starnes?

2 MR. STARNES: Beg the Court's indulgence
3 just a minute, please. Your Honor, I've got a copy
4 of Mr. Delgado's letter that I believe he addressed
5 to the Court. It's my understanding in reading this
6 letter that he's not asking to be relieved as
7 standby counsel.

8 He did mention about Judge
9 Westbrook's prior ruling. Also, I have a
10 communication from Mr. John Delgado that is dated
11 August 9, 2007. I don't believe, just looking at
12 this, that the Court was given a copy of this. I
13 have a copy, and, Your Honor, you're welcome to
14 review it.

15 THE COURT: Well, what is it about? It
16 doesn't matter.

17 MR. STARNES: It says that he's not asking
18 to be relieved. He just would ask -- he wanted the
19 Court's position on him being standby counsel.

20 THE COURT: Well, that's the same thing.
21 If he's saying "You're not going to require me to be
22 there," that's the same thing as being relieved.
23 What's your position on it? Would you like to have
24 Mr. Delgado here as ordered by Judge Westbrook?

25 MR. STARNES: Yes, sir. If we go in

1 November, yes, sir, I would like both standbys.

2 THE COURT: That's going to be the end of
3 it, then. I'm going to require him to follow Judge
4 Westbrook's order.

5 MR. NETTLES: As long as it's clear that I
6 stayed out of that cat fight.

7 THE COURT: I will notify him. And I
8 wanted to wait till after this hearing and we could
9 discuss it, to see what your position is. But if
10 you would prefer to have Mr. Delgado here as standby
11 counsel, he will be here, and he would be here for
12 any other hearings you want him here for, if we have
13 other hearings. And I will so advise Mr. Delgado.

14 MR. STARNES: Thank you, Your Honor.

15 THE COURT: Now, any further
16 clarification, Mr. Nettles? We can do this as we
17 get closer to trial.

18 MR. NETTLES: Thank you, Judge. I guess
19 the only other thing that I wanted to bring up, and
20 I guess the way I framed the questions I asked the
21 Court I think makes my third answer -- I mean, the
22 third question axiomatic, or rhetorical, I guess --
23 is that so then I have no affirmative duty to spot
24 issues, that if he brings the issue to me, you would
25 like for me to share -- the example we used was the

1 DNA -- but that I have no duty to spot issues and
2 alert him to them?

3 THE COURT: Well, I'm not going to go that
4 far now --

5 MR. NETTLES: Okay.

6 THE COURT: -- Mr. Nettles. I'm going to
7 say that you would be standby counsel. But I think
8 if you see something, a mistake that he's making, or
9 if you see an issue that you think that he ought to
10 consider, I certainly think that you could make him
11 aware of that, would want to make him aware of it.

12 Whether he chooses to see it as an
13 issue or not is up to him. But you are not required
14 to advise him how to proceed.

15 MR. NETTLES: Yes, sir.

16 THE COURT: But I think if you see there's
17 a pitfall there on something, and you become aware
18 of it, that you could let him know that. But
19 ultimately it's his decision what he's going to do
20 with it.

21 MR. NETTLES: Yes, sir.

22 THE COURT: But it's not your
23 responsibility to pick out every pitfall and
24 problem. You may not see it yourself, and I don't
25 want to put you in that position. Hindsight is

1 20/20. Somebody can look back at it and say, "Well,
2 Mr. Nettles should have called this to his
3 attention."

4 I'm not putting you in that position.
5 What I am saying, though, is that you are primarily
6 there to answer his questions. But I certainly
7 think you could make him aware of an issue or
8 something that you think he's making a mistake
9 procedurally or otherwise, to let him know what you
10 think, but not to advise him on how to proceed or
11 what to do.

12 I was trying to make the difference
13 is that your job is not to advise him. Your job,
14 though, is if there's something that he needs to be
15 aware of that he may not be aware of that you could
16 do that, and particularly answer any questions he
17 had somewhere along the way if he gets stumped --

18 MR. NETTLES: Yes, sir.

19 THE COURT: -- or needs your input.

20 MR. NETTLES: Yes.

21 THE COURT: It's a fine line that we draw.
22 I understand that. But I think if it's something
23 that's obvious that you become aware of that you
24 think you ought to let him know, then I think you
25 should let him know. Ultimately, what he does do is

1 his business. It's his trial strategy.

2 MR. NETTLES: Yes, sir.

3 THE COURT: And I'm not asking you to
4 advise or be responsible for what he does. I'm not
5 making you responsible to comb through everything
6 and see whatever issue you can pick out and make him
7 aware of it. That's not your role in this case.

8 I think your role is something that
9 if it's something obvious, then I certainly think
10 you ought to make him aware of it. Now, it's his
11 decision what to do with it.

12 MR. NETTLES: Yes, sir.

13 THE COURT: Okay.

14 MR. NETTLES: So I guess the reason I
15 wanted to ask that -- and the Court has answered my
16 question -- in other words, if I'm hearing the Court
17 correctly, anything -- the Court is not putting me
18 under an overt duty to go out and like read his
19 discovery, understand all the evidence, you know, go
20 review all the evidence and all that stuff pre-
21 trial.

22 But if I'm sitting in here or if
23 something's happening, and I see something either
24 while I'm sitting in the courtroom that's
25 transpiring during the course of the trial, and you

1 think that I might be able to share some information
2 with him, you'd like me to do that?

3 THE COURT: Yes.

4 MR. NETTLES: But -- I mean, the main -- I
5 mean, if you want me to go read all the discovery,
6 then I'll do that. I just wanted to know --

7 THE COURT: No, sir, I'm not -- let me do
8 this. I'm going to leave that up to you. If you
9 want to read this stuff and submit for a
10 reimbursement for your time on that, I'm perfectly
11 happy to see that you get reimbursed for the time
12 that you spend doing that.

13 MR. NETTLES: Yes, sir.

14 THE COURT: I'm perfectly willing to do
15 that. I was saying I'm not holding you to that
16 accountability, because he's made a decision to
17 represent himself.

18 MR. NETTLES: Right.

19 THE COURT: But, on the other hand, if you
20 wanted to read the transcript and read the discovery
21 issues and that so you'll be better equipped to be
22 in a position to respond, if you wanted to do that,
23 I have no problems with that. And I have no
24 problems with seeing that you get reimbursed by the
25 State for the time that you spend doing it.

1 MR. NETTLES: Yes, sir.

2 THE COURT: I'd be more than happy to do
3 that. So if you want to spend the time to do that,
4 I'll make sure you're reimbursed for that if you'll
5 submit it to me.

6 MR. NETTLES: Obviously, that's one, yes,
7 because I have to pay people. But the other
8 concern, though, is, is that it seems to me that if
9 I do too much of that -- and I know Mr. Starnes is
10 standing here right now and saying that he's going
11 to try it, and he's going to try it, he's going to
12 try.

13 THE COURT: So you're going to have to be
14 discretionary about that. But if there could be --

15 MR. NETTLES: It could be too much.

16 THE COURT: But there could be some --
17 yes, you don't want to do too much of that, because
18 then you're taking over the trial of the case. I
19 think you have a duty to, if you know about it, to
20 let him know if you think he's making an obvious
21 mistake --

22 MR. NETTLES: Okay.

23 THE COURT: -- or there's something --
24 he's going to pick his own strategy, and I'm sure
25 he's got his mind made up on how he's going to do

1 that.

2 MR. NETTLES: Yes, sir.

3 THE COURT: It may not work as well as he
4 thinks it's going to work --

5 MR. NETTLES: Yes, sir.

6 THE COURT: -- when we actually get into
7 the trial. And he may get very frustrated if the
8 Court rules against him on something, so that's
9 where you could come in --

10 MR. NETTLES: Yes, sir.

11 THE COURT: -- and maybe advise him about
12 that.

13 MR. NETTLES: Yes, sir.

14 THE COURT: It's like playing in a golf
15 match. I can see myself shooting an even par out
16 there looking at it and how I'm going to play every
17 hole. But when I get out there playing and that
18 ball goes a little bit right or left --

19 A trial doesn't necessarily go the
20 way you've got it planned. And that's why standby
21 counsel is there, to answer some questions for you
22 and explain things to you procedurally and about the
23 rules. And if you have some issue, I would
24 encourage you to consult with me, each of you.

25 I'm going to let Mr. Delgado know and

1 make sure he's available, too, as well. But they
2 are not going to try this case or plan the case, the
3 trial of the case, because you can't have two people
4 doing it. They can advise you.

5 If you've got a question about what
6 the rule says or what procedurally you can do, then
7 I would encourage you to ask them about it. And as
8 we get close to the trial, they'll probably be more
9 valuable to you in that regard.

10 MR. STARNES: Yes, sir.

11 THE COURT: But they're not going to
12 advise you on every single aspect of the case,
13 because once you start doing that, he's going to get
14 frustrated anyway, because he's got his own ideas
15 and his own plan, and he's entitled to do that. And
16 if he doesn't do it very well, he has nobody to
17 blame but himself.

18 MR. NETTLES: Thank you, Your Honor.

19 THE COURT: All right Yes, sir?

20 MR. STARNES: Your Honor, could I address
21 two minor little things here while we're in camera?

22 THE COURT: Yes.

23 MR. STARNES: The detention center has
24 been kind enough to allow me access to this laptop.
25 Originally, I requested to use it from 11:00 at

1 night till 6:00 in the morning, when all the other
2 inmates are locked down.

3 Captain O'Neill is in charge of the
4 detention center now, and he said that I couldn't do
5 that. He said, "You have to use the laptop whenever
6 you go in and do your studies." I explained to the
7 captain I do that between 11:00 and 6:00 at night --
8 11:00 at night till 6:00 in the morning.

9 He didn't know that Captain Quigg had
10 already implemented certain procedures and stuff for
11 me and certain hours to study my case. So they let
12 me use the laptop from 11:00 at night till 6:00 in
13 the morning.

14 Preparing this case and we're going
15 to have hearings coming up, there's no way that -- I
16 have anything on this thing. My discovery is
17 digital. Everything is on there -- jury
18 instructions -- and I do everything from my WESLAW
19 CDs.

20 It's impossible for me to study this
21 case from 11:00 at night to 6:00 in the morning and
22 appear here in court the next day. And I guess what
23 I'm asking is for an order from the Court that they
24 would allow me access to this during the daytime.

25 THE COURT: When we get to court, when we

1 get into trial?

2 MR. STARNES: Well, we're two months away.
3 So, I mean, I'm going to start really hard preparing
4 for this thing, probably 18 hours a day.

5 THE COURT: Well, I'm not going to do
6 that. I think you can pick your hours. You can
7 only do it from eleven to six, but I think that's
8 plenty of time to study. You've got two and a half
9 months between now and the trial, and you've been on
10 it and preparing it. That's plenty of time to
11 prepare. And, listen, I can assure you that
12 Lexington Detention Center has allowed you a lot
13 more room --

14 MR. STARNES: Sure.

15 THE COURT: -- than they've allowed other
16 even people representing themselves in cases. So
17 they have bent over backwards at the Court's urging
18 and allowed you to do a lot of these things. To get
19 more than seven hours on the computer and allow you
20 to do that to prepare your case, I think that's
21 plenty of time. And they're already putting
22 themselves out there to allow you to do it. And the
23 problem is when they do it for you, they may have to
24 do it for somebody else --

25 MR. STARNES: Yes, sir.

1 THE COURT: -- for somebody else to be
2 given a chance. So once you set the precedent, it's
3 hard to do it for somebody and not do it for the
4 next guy that comes along. And so I think that's
5 plenty of time. When we get close to the trial --

6 MR. STARNES: Right.

7 THE COURT: -- we might can make an
8 adjustment when we get into the trial or something
9 if you need some additional time to work on it. And
10 during the trial, I don't expect you to work on it
11 during the night.

12 MR. STARNES: Right.

13 THE COURT: So we can address that when we
14 get to it. But in the meantime, I think that's
15 plenty of time -- seven hours a day to work on it.

16 MR. STARNES: I wasn't asking for
17 additional time.

18 THE COURT: Well, what are you asking?

19 MR. STARNES: To be able to use it during
20 the day, because I --

21 THE COURT: Well, that's what I'm saying.
22 That's additional time.

23 MR. STARNES: Well, I won't need it at
24 night. I'll be asleep -- because I interview
25 witnesses, I call experts, and --

1 THE COURT: You're talking about during
2 the trial?

3 MR. STARNES: No, sir, before the trial.

4 THE COURT: Now?

5 MR. STARNES: Yes, sir. I mean, I can't -
6 - if I'm up 11:00 at night till 6:00 in the morning
7 --

8 THE COURT: You want to make a change in
9 the hours, is that what you're saying?

10 MR. STARNES: Yes, sir. I'm not asking
11 for additional time.

12 THE COURT: Oh, I thought you were, all
13 right.

14 MR. STARNES: No, sir, it's just --

15 THE COURT: They don't want to give you
16 during the day? I thought that was your request to
17 do it at night.

18 MR. STARNES: It was, until we get close
19 to trial. But now I'm going to be interviewing
20 witnesses during the day. We're going to have
21 hearings. I'm going to be on the phone talking to
22 experts. And it's impossible for me to be up all
23 night and then be up during the day interviewing a
24 witness for three or four hours or consulting with
25 an expert.

1 THE COURT: Well, put your request in to
2 the current officer in charge there at the detention
3 center about when you want to be able to do it and
4 maybe let Mr. Tate know as well. And put it in
5 writing to them what you want to do, and let's see
6 if they will agree to it. And if not, then you can
7 bring it to my attention --

8 MR. STARNES: Yes, sir.

9 THE COURT: -- and we'll see what we can
10 do.

11 MR. STARNES: I've already put it in
12 writing. I had already done that, and Captain
13 O'Neill said no. Of course, I haven't addressed it
14 to Major Tate. I haven't asked him. I mean --

15 THE COURT: You didn't send me a copy of
16 it?

17 MR. STARNES: No, sir. This is just a
18 regular inmate request that you generate internally
19 through the jail.

20 THE COURT: Well, send me a copy of it,
21 either on e-mail or send it to me by letter.

22 MR. STARNES: Yes, sir. I didn't --

23 THE COURT: And I'll look at it.

24 MR. STARNES: Captain O'Neill don't like
25 me to contact Major Tate. He wants me to contact

1 him for everything. He don't like --

2 THE COURT: Well --

3 MR. STARNES: -- me going over his head,
4 and I understand.

5 THE COURT: -- that's understandable.

6 MR. STARNES: Yes, I understand that.

7 THE COURT: That's understandable.

8 MR. STARNES: But I'm not asking for
9 additional time. I'm just asking for --

10 THE COURT: Well, send it to me and let me
11 look at it.

12 MR. STARNES: Yes, sir. One other thing,
13 Your Honor, I have a few funding matters here if
14 Your Honor would address it. Since we're here on
15 record, I could address it.

16 I had -- I requested, and I
17 understand I don't have carte blanche with the
18 State's check book. I'm just trying to keep this
19 cost down as low as possible. If the State's going
20 to provide me a copy of the disk, I won't need
21 additional funding.

22 But I have brought to the Court today
23 an additional funding order to get copies made. The
24 Copy Shop in Columbia was the cheapest place, and
25 they do the copies for five cent a page, which was

1 cheaper than Office Depot. And I was requesting
2 some additional funding to get -- if I needed an
3 additional copy of the transcript made, funding for
4 that.

5 Also, I have a minimal funding order
6 for postage for serving subpoenas and stuff. Rather
7 than having Mr. Skidmore or another investigator go
8 out and serve subpoenas, I tried to do most of these
9 subpoenas by Certified Mail. And that's what the
10 funding -- those are the funding --

11 THE COURT: I'll be glad to sign those, if
12 that's what you need. I'm somewhat concerned about
13 the copies. Why do you need all these copies?

14 MR. STARNES: If I have to get an
15 additional copy of the transcript from the previous
16 trial for impeachment purposes when these witnesses
17 -- because I'm sure the State's going to call
18 witnesses from the original trial -- because I will
19 have to -- if I use it for impeachment, I'll have to
20 provide the witness a copy of it, and I've only got
21 one copy of it.

22 If the Court or the State is going to
23 provide that CD-ROM, I can -- my mother will print
24 it. It won't cost anything.

25 THE COURT: All right. Well, we'll see

1 about getting that. If we don't get it, then I'll
2 allow you to fund a copy.

3 MR. STARNES: Okay. The final funding
4 request, Your Honor, was originally Judge Westbrook
5 had approved funding -- you may have done it, I'm
6 not sure, because I don't have the order in front of
7 me -- funding for Access Multimedia.

8 What Access Multimedia is, is they're
9 a company in West Columbia that takes VHS tapes and
10 converts them to DVD format. My mother was kind
11 enough to buy me one for Christmas, so I really
12 don't need the funding for Access Multimedia,
13 because I tape the tapes, and I convert them myself.

14 But I would ask the Court if I could
15 transfer that funding to -- there is an account that
16 was set up for supplies and things of that nature
17 for trial, for exhibits and stuff, for Office Depot
18 that I'm going to need for getting stuff blown up.
19 My mother does all my printing for me, and she
20 doesn't charge anything.

21 THE COURT: What's the amount of that
22 account?

23 MR. STARNES: It's four hundred and ninety
24 dollars.

25 THE COURT: I'll allow you to transfer.

1 Just send me an order.

2 MR. STARNES: I've got it.

3 THE COURT: All right, hand it up. All
4 right, anything else?

5 MR. STARNES: No, sir, Your Honor. I
6 believe that's it.

7 THE COURT: Okay.

8 MR. NETTLES: I was looking at the
9 computer. I've got a time back from 2004. Could I
10 submit the Court an interim voucher?

11 THE COURT: I beg your pardon?

12 MR. NETTLES: I've got time on this case
13 from 2004 that I haven't been paid for. Could I
14 submit the Court an interim voucher?

15 THE COURT: Is it part of the new trial?

16 MR. NETTLES: Oh, yes, sir. Yes, sir. I
17 got paid for the original trial.

18 THE COURT: Yes, just send it to me.

19 MR. NETTLES: I will. Thank you, I
20 appreciate it. And I suppose Mr. Delgado can do the
21 same.

22 THE COURT: Yes, sir.

23 MR. NETTLES: That'll soften the blow.

24 THE COURT: Right.

25 MR. NETTLES: All right, thank you.

1 THE COURT: Well, I'm going to be writing
2 him a letter -- not about the voucher. You can tell
3 him about that.

4 MR. NETTLES: I will. Yes, sir, I will.
5 Thank you.

6 MR. STARNES: Your Honor, my mother is
7 here, and I can send her down to the Clerk of
8 Court's Office and file those.

9 THE COURT: If there's somebody down
10 there. They're on short staff.

11 CLERK OF COURT: There'll be somebody at
12 the window where she can get it filed.

13 THE COURT: Okay, all right. I know most
14 of them are at some kind of seminar or something. I
15 did find the supplemental discovery request. It is
16 in the Court's file. Of course, I think they saw
17 your copy today, and we do have it.

18 MR. STARNES: Yes, sir.

19 THE COURT: Anything else?

20 MR. STARNES: Yes, sir, you may want the
21 State here. There were two subpoenas that I sent,
22 one to SLED --

23 THE COURT: Let me point out one other
24 thing to you. On the subpoenas --

25 MR. STARNES: Yes, sir.

1 THE COURT: -- my understanding is that
2 maybe somebody has received a subpoena that was
3 bearing a date of more than a year ago. The
4 subpoenas need to be more current than that. So my
5 suggestion is they ought to be within about 90 days.

6 So if you're planning on subpoenaing
7 somebody now and you've got some subpoenas that are
8 dated months back, you need to get some new ones
9 issued. Even if they're issued they need to be
10 issued, but with a date that's fairly current. If
11 somebody else gets it from 2006, they're going to
12 question and litigate it. So you need current --

13 MR. STARNES: Yes, sir.

14 THE COURT: -- I'd say within the last 90
15 days or need to be within 90 days of when you plan
16 to -- well, from the time they're issued until you
17 get them.

18 MR. STARNES: Yes, sir. I sent one to
19 SLED. We covered at the last hearing toxicology,
20 serology, firearms, trace, and crime scene units,
21 some of the protocols and policies that not only I
22 needed to review for impeachment purposes but for my
23 experts also. And I never heard back from them.

24 THE COURT: Were they admitted at the
25 previous trial, do you know --

1 MR. STARNES: No, sir.

2 THE COURT: -- those reports from SLED?

3 MR. STARNES: Not the protocol and stuff
4 like that. They never answered.

5 THE COURT: Well, I don't think they're
6 going to send you any protocol. We probably need to
7 get the State in here and see what they say about
8 that.

9 MR. STARNES: Yes, sir.

10 THE COURT: They probably can get that for
11 you. I wouldn't expect SLED to respond to anything
12 about their protocol and that, so we'll see. Now,
13 they might to your lawyers, but they're not going to
14 do it, particularly if they didn't understand you
15 represent yourself.

16 MR. STARNES: Yes, sir.

17 (State comes back in.)

18 THE COURT: We've been taking up some ex
19 parte matters he's allowed to go into and matters
20 about Mr. Nettles. He had an additional motion that
21 he wished to make, and I think you all need to be
22 here for that.

23 I think basically he served subpoena
24 on SLED to provide him with protocols on running
25 their tests down there, so he could provide that to

1 his experts and then to make a determination
2 addressing that. He said they haven't responded to
3 the subpoena. What is your understanding of SLED's
4 position with regard to such a request?

5 MR. GOWDY: Generally, Your Honor, if he
6 will give -- if he will let me know. When we ask
7 SLED, they will provide them to us, and then we will
8 give them to the defendant. I don't know what tests
9 he wants done. But if he'll give me whatever he
10 gave SLED, then I'll ask them for it. And then
11 they'll give it to me, and I'll give it to him.

12 THE COURT: Have you got a copy of your
13 subpoena, or at least let them see the subpoena so
14 they'll see what you requested from SLED?

15 MR. STARNES: Your Honor, this case
16 discusses this issue directly. It's a Supreme Court
17 case from 2004 titled State versus Proctor. It's
18 cited at 595-SE-Second-476, and it deals with DNA
19 testing, proficiency testing, and things of that
20 nature.

21 The Supreme Court was direct on it
22 that the defendant is entitled to this information
23 upon a timely request. It's my understanding of the
24 reading of Proctor that this information doesn't
25 come filtered through the Solicitor's Office but is

1 available directly to the defense.

2 THE COURT: Well, it might be. But
3 sometimes SLED works through perhaps the Solicitor's
4 Offices. But they also probably would probably
5 normally work with the defense to provide
6 information but may not understand that you're
7 representing yourself in the case and not to an
8 individual defendant.

9 Nevertheless, the State says that
10 they can contact them and get them to release the
11 protocol to you or send them to them, and they'll
12 send them to you so you can use them. But we need
13 to do that fairly timely. If you're going to get
14 some experts, they need to have an opportunity to
15 look at them.

16 In addition to that, I know when a
17 SLED expert testifies, normally there might be a
18 question concerning proficiency of the test, rate of
19 errors, etc., when they're testing and what tests
20 they use. So they would be available for that
21 purpose at trial. That's not an unusual question to
22 be asked.

23 MR. STARNES: Yes, sir.

24 THE COURT: Anything else, Mr. Starnes?

25 MR. STARNES: No, sir, I believe that's it

1 at this point, Your Honor.

2 THE COURT: All right.

3 Anything from the State that we need
4 to take up?

5 MR. GOWDY: We want to take up the
6 arraignment issue.

7 THE COURT: She's gone to get some
8 indictment copies.

9 MR. GOWDY: Yes, sir.

10 THE COURT: Certified copies.

11 MR. GOWDY: Your Honor, from a calendaring
12 standpoint, do you like the litigants to meet ahead
13 of time to see whether or not they can agree on
14 jurors who want to be excused? Do you want to do
15 all of that yourself? How do you -- here's what I'm
16 asking. Whatever your preference is on excusing on
17 the jurors.

18 THE COURT: I think we probably need to
19 get together on that, I would guess. Here's the
20 thing. We could possibly do it through some kind of
21 e-mail thing or that, if we get a request by a juror
22 to be excused for whatever reason.

23 Some, we probably won't have any
24 trouble agreeing on. Others, we might not so easily
25 agree. The only thing I could suggest is maybe we

1 need to get together to do that, or maybe once we
2 get the request from the jurors to be excused, we
3 might could do a conference call that maybe you all
4 could originate at your office. If they would
5 cooperate with us at the jail, we might could do a
6 conference call and discuss that --

7 MR. GOWDY: Yes, sir.

8 THE COURT: -- and see if we can agree on
9 that, or, if not, then we can get together.

10 MR. GOWDY: Some are easy, like if
11 somebody asserts their over-65 exemption. I don't
12 know whether the Court wants them to still show up
13 on voir dire day and reassert it or whether you
14 excuse -- however you normally do it --

15 THE COURT: If they were to be excused
16 when they're 65, then I probably excuse them, and we
17 would answer them knowing that.

18 MR. GOWDY: Okay.

19 THE COURT: But what we're saying is with
20 regard to jurors, there are some statutory
21 exemptions if they would choose to observe them. So
22 if you, say, had somebody that was 65 and they
23 request to be excused, they're automatically
24 entitled to be excused under the law.

25 So that would just be a decision that

1 could be made. Others might be somebody with
2 children under seven years of age who don't have
3 anybody to keep them and that kind of thing. And we
4 still question them about that to make sure that's
5 the case. Some of them might be a medical excuse.

6 Some of them might be going on a trip
7 out of the country or something and going to be gone
8 during that time or part of that time and ask to be
9 excused. So there are a number of things that might
10 come up. Some, we might can agree on. If they're
11 65 years of age or older and if both sides agree,
12 that is the law that they're entitled to be exempted
13 if they request it.

14 We would just exempt them upon their
15 request to be exempted, and that is, excuse them and
16 not require them to come in. What somebody who
17 makes a request that they've got children under
18 seven years of age and they have to take care of
19 them? Do you want them brought in?

20 MR. GOWDY: Judge, in the past I've seen
21 Judges that would make them complete the affidavit
22 in the presence of the Judge.

23 THE COURT: Well, maybe we need to require
24 them to come in. We can excuse the ones that are 65
25 years of age or older. And if we've got somebody

1 that worked as a guard with a correctional facility,
2 I think they're entitled to be excused upon their
3 request.

4 MR. GOWDY: Yes, sir.

5 THE COURT: But they have to make the
6 request. But under the law, they're entitled to be
7 excused if they make that request. What are your
8 suggestions, Solicitor?

9 MR. GOWDY: Your Honor, if the defense and
10 the State gets the -- does the Court send out
11 questionnaires in capital cases?

12 THE COURT: Yes, we're going to go over a
13 questionnaire. We need to look at a questionnaire
14 and decide about that. And maybe if we have time to
15 do that, we'll do that today.

16 MR. GOWDY: If there are a lot of requests
17 for excuses and you want us to meet you wherever
18 you're holding court, or do it telephonically, we'll
19 do it however you want to do it. Judge Cleary used
20 to make the litigant sit down and do it before he
21 got involved, and then I've had Judges that want to
22 be there for every part of it.

23 And it doesn't matter to me. I'll do
24 whatever your standard protocol is. Given the
25 nature -- given the fact that it is a pro se case, I

1 would probably feel more comfortable if you were --

2 THE COURT: Present?

3 MR. GOWDY: -- presiding over it.

4 THE COURT: Well, why don't we do this?

5 We'll try to come up with a date, and I'll get with

6 the Clerk, and we'll just try to get together.

7 Either we can come down here and do it, or we'll

8 have to do it up there somewhere. I haven't got the

9 schedule in front of me. I may be over in

10 Spartanburg. I'm only there maybe one or two more

11 weeks between now and the trial.

12 MR. GOWDY: You're certainly the last week

13 of October. I know that.

14 THE COURT: Okay. Well, maybe we can do

15 it then. That might be a good week to do it, if we

16 could do it over there and just have Mr. Starnes

17 brought up to us. And definitely, of course, we can

18 copies of those sent to us by the Clerk.

19 MR. GOWDY: Yes, sir.

20 THE COURT: And then we can sit down and

21 go over them. Then we can sit down and go over them

22 with all of us present.

23 MR. STARNES: Your Honor, Mr. Nettles, he

24 uses a proposed jury questionnaire sheet in various

25 capital cases. I have a copy of it that I brought

1 with me to Court. If Your Honor or the State wants
2 to take a look at it, I'll be glad to provide them a
3 copy.

4 THE COURT: I think the Clerk has one that
5 they are using here in cases, too. We could look at
6 both of them maybe and decide.

7 MR. STARNES: I only have one copy of
8 this, so if the Clerk will be nice enough to run a
9 copy of it, if you've got a photocopy machine here.

10 THE COURT: Do you have a copy of the
11 questionnaire that you all have been using?

12 CLERK OF COURT: The standard that's been
13 approved by the Supreme Court, yes, sir, I've got it
14 downstairs.

15 THE COURT: Okay. If it's not too much
16 trouble, could you make copies of that for the
17 Court, for Mr. Starnes, and also for the Solicitor's
18 Office?

19 CLERK OF COURT: Yes, sir, I can go down -
20 -

21 THE COURT: A copy for them, and also take
22 -- Mr. Nettles has one that he uses. Could you make
23 a copy of that as well for everybody?

24 CLERK OF COURT: Yes, sir.

25 THE COURT: Mr. Starnes, hand it up, if

1 you would, please, sir. Just hand it to the Clerk,
2 please, sir.

3 And if you can make copies for
4 everybody on those and bring it back to us.

5 CLERK OF COURT: Yes, sir.

6 THE COURT: And just hand those
7 indictments to the Solicitor, and we can arraign Mr.
8 Starnes.

9 CLERK OF COURT: Absolutely. You wish to
10 go forward with the arraignment right now, Your
11 Honor?

12 THE COURT: Yes, ma'am.

13 Solicitor, let's go forward with the
14 arraignment at this time.

15 MR. COLER: Yes, sir, may it please the
16 Court. Your Honor, this is Case 96-GS-32-3339.
17 That is a true billed indictment charging Norman
18 Starnes with several counts. Count one, the charge
19 is murder; count murder, the charge is murder; and
20 count three, the charge is possession or display of
21 a firearm or a knife during the commission of a
22 violent crime. That was true billed by the
23 Lexington County Grand Jury on April 30, 2007. Does
24 Your Honor wish me to read the indictments?

25 THE COURT: I don't think you need to read

1 it. I think it probably has basically the same
2 allegations as in the previous indictments.

3 You don't desire to have them read to
4 you? You're familiar with the allegations in the
5 indictments?

6 MR. STARNES: I believe I am, Your Honor.

7 THE COURT: All right, sir. Then you've
8 heard them, Mr. Starnes. They have indicted you.
9 How do you plead to these charges, guilty or not
10 guilty?

11 MR. STARNES: Not guilty.

12 THE COURT: And how will you be tried on
13 these charges?

14 MR. STARNES: Trial by a jury of my peers,
15 Your Honor.

16 THE COURT: Thank you, sir.

17 All right, if you'll provide me with
18 certified copies of the indictments as required.

19 MR. COLER: We provided them previously,
20 Your Honor, but we'll do it again here on the
21 record.

22 THE COURT: Well, I don't think the Clerk
23 had notes on them.

24 MR. COLER: Yes, sir.

25 THE COURT: But if you have them, just go

1 ahead and present them, please.

2 CLERK OF COURT: Do you want an extra copy
3 for a Court's Exhibit, Your Honor, on this --

4 THE COURT: Please, ma'am.

5 CLERK OF COURT: -- at this time?

6 THE COURT: Well, I don't think we want to
7 do that --

8 CLERK OF COURT: Right.

9 THE COURT: -- because we haven't made it
10 an exhibit.

11 CLERK OF COURT: Not at this time, okay.
12 I shall return.

13 THE COURT: I think they have been
14 summonsing 325 jurors for capital cases here, so I
15 think that should be reasonable. We can go ahead
16 and summons 325 jurors and then see what we wind up
17 with. The last case that they just sent them out
18 and got them back, and they wound up with about 125
19 prospective jurors to be put in the pool.

20 MR. STARNES: Yes, sir.

21 THE COURT: So I think 325 would be
22 enough.

23 MR. STARNES: Yes, sir. No objection,
24 Your Honor.

25 THE COURT: Let me ask you, counsel. It's

1 discretionary privilege, and I understand that. But
2 the Court is considering not sequestering the jury
3 in this case. My understanding is they probably
4 haven't sequestered the last three capital juries
5 here in Lexington County.

6 This case is an old case. I think
7 the incident involving the allegations in this case
8 occurred probably, what, 11 or 12 years ago. And so
9 it's not something that's going to be currently on
10 the front burner. The media may get involved in it.
11 As we get close to trial, there may be something
12 about it.

13 But it's not something that there's
14 been anything in the media about it any time
15 recently. And they have not had any problems, as I
16 understand from the Clerk's Office, with
17 sequestration, with non-sequestration of the jury
18 panel. And so I'm concerning it. Your thoughts?

19 MR. GOWDY: My thoughts simply would be,
20 Your Honor, that I would defer to the discretion of
21 the Court. I have no position. Whatever you're
22 comfortable with, we're comfortable with.

23 THE COURT: What are your thoughts, Mr.
24 Starnes?

25 MR. STARNES: Your Honor, the case is 11

1 years old. Here's the concern that I have with it.
2 If the media reports this and these jurors read
3 what's in the newspaper -- because we know how
4 things get reported in the newspaper. I'm more in
5 favor of sequestering the witnesses.

6 I'm more in favor of sequestering the
7 jury. Of course, whatever the Court's ruling is,
8 you know, we'll go by that. But my concern is that
9 if a juror is reading the newspaper, seeing it on TV
10 --

11 THE COURT: Let me tell you, though, this.
12 Of course, before they ever get here for the first
13 time, there could be a story, there some be
14 something in the paper about the trial coming up or
15 something like that. And there's no way we can
16 avoid that in any event, if they've read something
17 come into court.

18 We simply will have to question them
19 about that in voir dire to determine, if they've
20 read anything, whether that would affect their
21 ability to be fair in the case and whether they
22 could put that aside or not. Now, once they are
23 qualified by the Court, they'll be instructed not to
24 read, listen to, or watch any kind of media account
25 of the case, nor view anything on the Internet about

1 it.

2 They'll be advised on that. And so
3 that's what we would do. Now, of course,
4 sequestration requires putting them in a motel,
5 putting SLED agents in, and that kind of thing. And
6 you would normally do that with a somewhat
7 substantial risk of somebody talking to them and
8 getting to them.

9 And I just don't think that we have
10 that in this case. It's just not that. Most
11 defense attorneys request non-sequestration. They
12 don't want them to be sequestered, okay -- because
13 when you sequester a jury, it makes the case to the
14 jury that much more serious --

15 MR. STARNES: Yes, sir.

16 THE COURT: -- and so that much worse of a
17 case. You understand what I'm saying?

18 MR. STARNES: I understand.

19 THE COURT: So if they're sequestered,
20 it's more like -- the defense usually does not want
21 them sequestered. Usually, the State wants them
22 sequestered, I can tell you from my past
23 experiences. And then the Court has to make a
24 decision. But the usual concerns I'd have about
25 sequestration are not present in this case.

1 MR. STARNES: Your Honor, let me ask the
2 Court this, if I may. Will the Court inquire to the
3 jurors each day before we commence daily --

4 THE COURT: Absolutely.

5 MR. STARNES: -- whether they've done that
6 or not?

7 THE COURT: Absolutely. And particularly
8 if there's been any stories, I always ask them first
9 thing.

10 MR. STARNES: Yes, sir.

11 THE COURT: Of course, they're admonished
12 a number of times. Every day we admonish them not
13 to read, listen to, or watch any account before
14 they're excused for the day. And when they come in
15 in the morning, if there's been a newspaper account,
16 I always question them about whether they listened
17 to or watched any media account.

18 MR. STARNES: Yes, sir.

19 THE COURT: And so we do that. We are
20 very carefully.

21 MR. STARNES: If the Court will -- you
22 know, if the Court would follow that, I wouldn't
23 object to, you know, not sequestering them. I just
24 -- you know, by me representing myself, I don't know
25 what The State newspaper is going to do.

1 THE COURT: They'll be advised about that
2 once we get them in here. First of all, at the
3 qualification process where we qualify the jury, we
4 determine if they had any knowledge about your case
5 before they ever came to court.

6 And then we ask, if they have, can
7 they put that aside, whatever they might have heard
8 or read about it. So that's all handled at the
9 qualification process. And if they know something
10 about the case that affects their ability to judge
11 the case fairly, then they're dismissed at that
12 point.

13 MR. STARNES: Yes, sir.

14 THE COURT: And then we move on with the
15 voir dire, questioning individually the jurors. And
16 then once they're qualified, they'll be instructed
17 not to read, listen to, or watch any media account.
18 And then once the jury is actually selected, they'll
19 be advised about that every single day and
20 questioned about it every single day. So I don't
21 really think it's necessary to do that in the case.

22 If I had a small town in a small
23 county where we were trying this case and everybody
24 knew about the case, I'd have a lot more concerns.
25 But I just don't have that in this case. And I

1 would point out the last three cases in Lexington
2 County they have not sequestered the jury, including
3 one coming up. They're not sequestered. And I
4 think that would probably be well and good.

5 Now, we'll probably have set out a
6 timeline and everything. While that's cumbersome,
7 we don't have to worry about getting the jury back
8 and forth and that kind of thing.

9 MR. STARNES: I understand, Your Honor.

10 THE COURT: All right, sir, we'll do that.
11 Anything else that you can think of that we can
12 address at this hearing?

13 MR. GOWDY: Your Honor, do you provide --
14 do you bring the jury back in panels of five or six?

15 THE COURT: Well, what I normally do --
16 but, now, we may keep two or three to four panels
17 around while we're doing it, depending on how we're
18 doing. Yes, I usually bring them back. You're
19 talking about like if we've got a hundred, bring
20 them back in panels in 20 or something like that, or
21 30 or whatever?

22 MR. GOWDY: Well, I was more thinking
23 about how you brought them back for the individual
24 voir dire.

25 THE COURT: Usually about five at the

1 time.

2 MR. GOWDY: Do you show them a witness
3 list at that point, for them to see whether or not
4 they recognize any names, or do you have a general
5 voir dire and have it covered in general voir dire?

6 THE COURT: I really think it would be
7 better to do it in general voir dire.

8 MR. GOWDY: In terms of striking the jury,
9 do you qualify -- do you expect the defendant and
10 the State to strike as they're qualified? Do you
11 qualify a group of 35 and then --

12 THE COURT: I don't usually do it that
13 way, but I'm open to suggestions.

14 Mr. Nettles, do you want to talk to
15 Mr. Starnes about that? I don't know if he
16 understands.

17 MR. STARNES: I understand, Your Honor.
18 My position is that we strike as we go.

19 THE COURT: What's the position of the
20 State?

21 MR. GOWDY: I've never done it that way.
22 I'll do it however the Court wants to do it. I
23 guess I've done it six times, and I've seen Judges
24 qualify --

25 THE COURT: Well, honestly, I usually get

1 a group together and then strike once we get the big
2 panel, call them one at a time and strike them.
3 That's what I normally do. But I know some Judges
4 do it the other way.

5 MR. GOWDY: I've seen Judges qualify 35,
6 and then you go and you order that they're
7 qualified, which would be what the defendant is
8 talking about.

9 THE COURT: Right, that's correct.

10 MR. GOWDY: I've also seen Judges put all
11 the names of the qualified jurors back in the mix
12 and then reorder them or reshuffle the deck and have
13 them brought back out. I don't care, however the
14 Court wants to do it.

15 I don't know that it makes that much
16 difference. I'm not familiar with striking them as
17 we go. I'm more familiar with qualifying a group
18 and then deciding to strike at the end of
19 qualification. But I'll do whatever you want to do.

20 THE COURT: Mr. Starnes, you want to
21 comment on it?

22 MR. STARNES: My position is we strike as
23 we go, Your Honor. If the State doesn't object to
24 that, I'd move the Court to do it that way. But
25 however Your Honor wants to do it, I certainly --

1 THE COURT: When you say strike as we go,
2 you mean if the juror is found qualified, you have
3 to exercise a strike right then?

4 MR. GOWDY: I think that's what he's
5 talking about. What I'm saying is the six or seven
6 that I have participated in, we've never it done it
7 that way. Now, that's not to say it can't be done
8 that way. But what I have seen is you can get your
9 35 or your 40 that are qualified, and you either
10 strike them in that order, which is essentially what
11 he's talking about, but you don't do it as you go.

12 You have a little bit of time to see
13 whether or not you want to strike this person or
14 strike that one. What he's discussing is the
15 federal way of doing it, which -- or maybe the civil
16 way of doing it, the civil practice. It is more
17 difficult, I think, on the litigants to be able to
18 know whether or not you want to strike the first
19 juror when you don't know whether or not you want to
20 strike the 27th juror.

21 But, you know, it's the same for both
22 sides, and I don't -- it's not that I object; it's
23 not that I don't object. Whatever your way of doing
24 it is, is fine with me. I don't know why we would
25 change it. There are four or five different

1 permissible ways to do it. I was just inquiring how
2 you wanted to do it.

3 MR. STARNES: My position is, Your Honor,
4 it takes less time. I understand the Supreme
5 Court's ruling in Bailey versus State where they say
6 it's not unusual to take a week to pick a capital
7 jury, and that is not unreasonable. I realize I
8 can't explore the jurors on the voir dire. State
9 versus March says you just can't go on a fishing
10 expedition with juries. But I believe doing it that
11 way would maybe save us some time. However, however
12 Your Honor wants to do it would be fine.

13 THE COURT: I'm thinking it through. What
14 I've always done is qualified 35 or so and then call
15 them back or bring them back -- call them forward
16 one at a time as they were selected -- in other
17 words, as they were qualified and ask the voir dire.
18 In other words, if Juror Number Ten is the first one
19 that is qualified, then that would be the first
20 person called.

21 Like I say, that's what I've done in
22 the past, and we go back through them like that.
23 Then you exercise your strikes one way or the other.
24 That's what I've typically done.

25 MR. STARNES: Your Honor --

1 THE COURT: But the way you're talking
2 about doing it is if we get Juror Number Ten as the
3 first one up, and the Court finds that they're
4 qualified, the Court would not disqualify them.
5 Then the State has to exercise a strike or the
6 defense has to say that's a strike. And a strike is
7 not exercised, that person is in the pool, and we go
8 right down that way.

9 MR. GOWDY: And I feel quite certain,
10 Judge, if I had ten strikes, I'd probably prefer to
11 do it that way, too. But given the fact that the
12 State only has five and the State -- there's no way
13 for the State to balance who they want to strike
14 until they've seen the group, which is like every
15 Judge except one that's done a capital case has done
16 it the way you've just described.

17 I've never had a Judge strike as you
18 go. I don't doubt it's been done, but I've never
19 had it done. And when you only have five strikes, I
20 would think in the interest of fairness, I think the
21 State would like to see what the panel looks like.

22 I don't know whether I want to strike
23 the 27th juror or the first one. And I won't have
24 any way of knowing that unless we get the whole
25 group together, which I think every Judge I've been

1 in front of has done it that way.

2 THE COURT: That's the way I've done it,
3 and that's what I think I'm going to do in this
4 case. That's what I'm going to do. That's fair to
5 both sides. And the defense gets ten strikes, and
6 so the State gets five strikes.

7 But I think if you select a pool and
8 then call them forward one at a time as they were
9 qualified, then you don't really have a reason to
10 complain, because you're getting a call forward and
11 exercise strikes based on the way they were first
12 qualified, in the order they were qualified.

13 And you can either exercise a strike
14 or not exercise it as to each one. So neither side
15 is at a disadvantage that way. So I think that's
16 the way I'll do it.

17 MR. GOWDY: Thank you, sir.

18 THE COURT: All right, anything else that
19 we need to discuss in preparation? I'm trying to
20 anticipate as much as I can, is the reason I've had
21 this hearing, because I don't want to be doing this
22 a couple of days before trial.

23 MR. GOWDY: This is getting into a bit
24 heavy detail, but since we're all here, do you
25 prefer one side to examine the potential jurors

1 first? Do you prefer that we alternate? Do you
2 prefer that the defense go first?

3 THE COURT: Alternate.

4 MR. GOWDY: You want us to take a juror,
5 and then go first, and then he goes first on the
6 next juror?

7 THE COURT: Right.

8 MR. GOWDY: Okay.

9 THE COURT: That's the way I've always
10 done it.

11 All right, everybody gets a copy of
12 this.

13 CLERK OF COURT: I have extras, if you
14 need them.

15 THE COURT: Has everybody had a chance to
16 look at it?

17 Mr. Gowdy?

18 MR. GOWDY: My initial reaction is I'm
19 surprised about saving time. We propose
20 questionnaire that will take as long to complete,
21 will generate more questions than it will answer.
22 This is nothing but an opportunity take longer time
23 to voir dire jurors.

24 There was a recent federal death
25 penalty case -- I know the Court is familiar with it

1 -- and there was tremendous backlash because of a
2 questionnaire as invasive as this one. In
3 particular, "Who has most influenced your" -- this
4 is jury service. We're not looking for a life
5 partner or a husband or a wife.

6 I mean, "Who has most influenced your
7 life?" may be a great question to ask in a different
8 setting but not when you're about to serve on a
9 jury. Some of the questions are redundant. There
10 are five or six different questions about which
11 television shows you watch.

12 "Has anybody close to you who has
13 died? Has it had an impact on you?" I don't know
14 that that question needs to be asked. I mean, who
15 could have somebody close to them and it not have an
16 impact on them somehow or another? They're
17 invasive. Some of them are staking out.

18 When you ask whether or not you trust
19 psychologists and psychiatrists, you might as well
20 just ask, "Are you going to believe our mental
21 defense?" So it's staking out. It's overly
22 invasive. It's going to -- this is sufficient.

23 If the Court wanted to add some
24 questions to this, it'd be sufficient. This is the
25 MMPI. There are psychological tests that aren't as

1 long as this one and aren't as invasive as this one.
2 And it's staking out jurors, and it's going to
3 result in a ten-day jury selection process and not a
4 three- or four-day.

5 THE COURT: Well, I think this shorter
6 form is one that's recommended by Court
7 Administration or by the -- yes, it comes from Court
8 Administration, and I think it's recommended by them
9 and one that's been used, I think, that they use
10 regularly here in the county, this short, two-page
11 version.

12 I think there has been some
13 substantial criticism from the public at large about
14 these long, hundred-page questionnaires, about a lot
15 of things that they have, are more about staking a
16 person out one way or the other or profiling,
17 character profiling and that kind of thing, than it
18 is with whether a person can be fair in a case or
19 why it might affect it. And I have no intention of
20 submitting this form.

21 MR. STARNES: Okay.

22 THE COURT: I'm not going to be that
23 invasive and submit and require jurors to sit down
24 and answer 14 pages of questions. I'm just not
25 going to do that. I don't think it's necessary in

1 this case. You have them on voir dire, and that
2 would be the purpose, to get more into some of these
3 issues that you want to, to ask them.

4 But I think the general information
5 that we need in a jury questionnaire is -- what I
6 might be willing to do is add a few questions to the
7 one that they're currently using here, a good
8 questionnaire. I might be willing to do that.

9 But I'm not -- if you want to pick a
10 few and submit to me and submit to the other side,
11 I'll take a look at it. But I have no intention of
12 having jurors complete a 14-page questionnaire. And
13 I certainly would not require them to answer some of
14 the questions that are on this questionnaire.

15 So I would be willing to listen to
16 you if you want to take this form, the recommended
17 form, and make some suggestions about some
18 additional ones. I'll consider them, but there
19 shouldn't be too many, because it's not necessary
20 for the purpose of getting general information from
21 a juror.

22 MR. STARNES: Your Honor, when would we be
23 able to take that up?

24 THE COURT: Well, you can submit it to me
25 in writing, what your position is, if you want to do

1 that.

2 MR. STARNES: Can I wait a month --

3 THE COURT: The final decision is mine. I
4 think that if you want to submit some additional
5 questions, you submit that to me and also to the
6 Solicitor's Office. Likewise, if they have a few
7 more they'd like to see, I'd ask that they do the
8 same thing. Send them to you and send them to me.

9 And I'll make the final decision on
10 it. I think the Clerk's Office would probably like
11 to use the standard form that they've been using.
12 And maybe that's what we've got. It's really just
13 got the basic information. I might be willing to
14 extend it a few questions, if I thought they were
15 appropriate.

16 MR. STARNES: Mr. Nettles will use this
17 questionnaire -- I understand. It's 13 or 14 pages,
18 but he's used this questionnaire in the last three
19 death penalty cases that he's done. Actually,
20 that's where I got the questionnaire from. His
21 paralegal e-mailed it to me.

22 THE COURT: Yes.

23 MR. STARNES: And they've used it in the
24 last three capital cases that he's tried.

25 THE COURT: Well, some of this is just

1 plain staking out.

2 MR. STARNES: Your Honor, let me ask would
3 the State be amenable to this. Since there's some
4 things that they may say that's staking out, would
5 he submit to me in writing if we could come to an
6 agreement on the questions that he doesn't want on
7 the questionnaire that I proposed to the Court?

8 I believe the one that the Clerk of
9 Court has here, it's not binding by the Supreme
10 Court, and there's not an opinion written that this
11 is absolutely what we've got to go by.

12 THE COURT: Oh, I realize that. You know
13 who makes that decision?

14 MR. STARNES: Your Honor does.

15 THE COURT: You're looking at him.

16 MR. STARNES: Yes, sir, I agree.

17 THE COURT: So that's where the discretion
18 lies. This is only a recommended form. But the
19 reason they came out with a recommended form -- why
20 do you think they came out with it?

21 MR. STARNES: To save time.

22 THE COURT: No, because of these. Jurors
23 don't want to fill these out, and some have
24 difficulty filling them out.

25 MR. STARNES: Yes, sir.

1 THE COURT: And they're complaining about
2 it. There are a lot of complaints about it. And
3 it's a lot more information than you need to get
4 general information about jurors.

5 MR. STARNES: Okay.

6 THE COURT: So I have no intention of
7 sending this questionnaire out, okay. I'd be
8 willing to send this one out, which I think has all
9 the information you really need. You might want to
10 study it. But if you want to request a few
11 additional questions, I'll consider adding to this
12 form.

13 I'm not going to submit this 14-page
14 questionnaire to the jury and require them to read
15 and study and fill those things out. I don't think
16 it's necessary.

17 MR. STARNES: I understand. Will Your
18 Honor please make it a part of the record, please?

19 THE COURT: Yes, absolutely.

20 MR. STARNES: Thank you, sir.

21 (Court's Exhibit Number
22 One, Questionnaire for Jury, was entered in
23 evidence.)

24 MR. STARNES: One other question, if I
25 could ask the State's position on it. As I

1 mentioned earlier, Bailey versus State said it's not
2 unreasonable for attorneys to take a week to select
3 a capital jury. Is that unreasonable?

4 THE COURT: Well, here's the thing. I
5 don't know how long it's going to take. It's going
6 to depend on how many questions we get, how many
7 jurors are disqualified, and how soon it takes us to
8 get a pool. That's what it's going to take, and I
9 can't tell you how long that's going to take.

10 A lot of it depends on the questions
11 that are asked and how many questions are asked of
12 prospective jurors, and I can't say. My experience
13 is probably about four days, if you work long days
14 to get it done. That's my experience.

15 And I'm not saying you couldn't
16 finish a little sooner than that. It could take a
17 little longer than that. So it's probably going to
18 take a minimum of three and maybe a maximum of five
19 days to select a jury. And that's working a good
20 many hours, because previously I've worked probably
21 on average ten to 12 hours a day with jury
22 selection.

23 MR. STARNES: Will Your Honor require that
24 we -- once we get to trial and start examining
25 witnesses, will we be going on the weekend? Back in

1 '97 with Judge Westbrook, we run all the way through
2 the weekend, and additionally we did it on Sunday.
3 But he left it up to the jurors as to go on Sunday.

4 If the Court is inclined to go on the
5 weekends, I would like to prepare a motion. I would
6 object to that, for the simple fact I'm representing
7 myself, and that's my choice. But I will need a
8 break.

9 THE COURT: Well, everybody needs a break
10 during a trial. Your attorneys would need one just
11 as badly as you, if they were representing the case.

12 MR. STARNES: Yes, sir.

13 THE COURT: But the thing is that if the
14 jury is not sequestered, it's a little easier not to
15 work on the weekends. And we may not work on the
16 weekends, depending on how things go.

17 MR. STARNES: Yes, sir.

18 THE COURT: Okay. Now, I typically leave
19 it up to the jury whether they want to work on
20 Sunday or not and when they want to start on Sunday,
21 if we're going to do it on Sunday. But it may very
22 well be that we won't work on Saturday and Sunday.
23 And if the jury is not sequestered, we maybe able to
24 do that and still get it in within the two weeks.
25 But we'll just have to see.

1 What I would prefer to do is to wait till we
2 see how fast we can get a jury selected and then go
3 from there. And if we can do it without working on
4 Saturday and Sunday, we'll try to do that. And
5 particularly, even if we worked on Saturday, we
6 could probably take Sunday off.

7 MR. STARNES: Yes, sir.

8 THE COURT: But we might be able to take
9 Saturday and Sunday. What I'd prefer to do is wait
10 and see how we're going. I understand your request,
11 and I'll seriously consider that request, and we'll
12 do what we can.

13 MR. STARNES: Yes, sir.

14 THE COURT: You've got to remember, too,
15 that the jurors are taking time off from work,
16 families, and that kind of stuff to do this. And so
17 we want to finish it as soon as we can. But at the
18 same time, we want to give everybody a full chance
19 to present their case, both the defense and the
20 State.

21 And so we'll look at it. I'll
22 consider your request. And if I believe we can
23 plead the case in a reasonable time without using
24 weekend time, we'll do that.

25 MR. STARNES: Yes, sir. May I ask, would

1 it be possible that we could ask them that on this
2 questionnaire, get their position on that?

3 THE COURT: Well, I'd just as soon wait
4 till we get the jury. You're only going to have --
5 I don't think that's an appropriate question to ask
6 them at the outset of when you summon them for jury
7 duty. Once we get the jury -- we've got 13 or 14
8 jurors, 15 jurors, whatever we wind up with,
9 whatever we decide to get -- we can ask them,
10 because they would be the ones who would be
11 affected.

12 MR. STARNES: Yes, sir.

13 THE COURT: I understand your request, and
14 I will seriously consider it. I'm not going to bind
15 myself to anything at this point, until I see, once
16 we get started at trial, how it's progressing, to be
17 able to make a decision. We should really make that
18 decision after the jury is selected.

19 We'll be in a good position then.
20 And if I think we can get around working on the
21 weekend, we'll do that. But we also have to keep in
22 mind we're tying jurors up away from where their
23 jobs, where they need to be. And so for some of
24 them, it's a real sacrifice. So we've got to
25 consider them as well.

1 MR. STARNES: Thank you, Your Honor.

2 THE COURT: Anything else that you can
3 think of?

4 MR. GOWDY: Not from the State, Your
5 Honor.

6 THE COURT: All right. Let me tell you
7 what my plans are. We're going with the first two
8 weeks of November. You've got to be ready.
9 Whatever you're going to do, be ready, okay. It's
10 already been locked in.

11 I'm going to go ahead and instruct
12 the Clerk to send out the summonses so that we can
13 get them back in and know how many we're going to
14 have returned. Obviously, all of them won't return.
15 We're probably doing good if we get about 40 percent
16 of them returned.

17 A lot of them move to a different
18 address, move out of the county, whatever, and we
19 don't get them back in. Some of them, we just won't
20 be able to get them served, because they're based on
21 a driver's license. A lot of times, people are
22 pretty mobile, and they're just not around.

23 So, anyway, we'll see what we wind up
24 with. Once we get those back in, we can consider
25 any requests to be excused from the case. And we'll

1 probably get together and do that.

2 MR. STARNES: Yes, sir. Your Honor, one
3 more thing. Is it possible after we adjourn today
4 that I could have maybe ten minutes, if Ms. Anderson
5 would allow me the courtroom? I would like to plug
6 this thing up, the laptop, and see how it looks on
7 the screen. I've never used it in court, and this
8 is the first time I've had it, if they would allow
9 me to do that.

10 CLERK OF COURT: Your Honor, I don't know
11 anything about the technical system.

12 THE COURT: Do you know how to hook it up?

13 MR. STARNES: If they'll show me the port
14 where it hooks up.

15 CLERK OF COURT: I wouldn't even begin to
16 know where to show you that was.

17 Your Honor, I've never touched it. Only
18 the Solicitor's Office are the ones that have been
19 touching it. I'm sorry -- no touch, no break.

20 CLERK OF COURT: Technology??

21 THE COURT: Well, usually, somebody --

22 MR. STARNES: Your Honor, we can, I guess,
23 take it up. I'll contact Mr. Tate. I believe he
24 said on a previous occasion that they would bring me
25 over here. I was just trying to save them a little

1 time.

2 THE COURT: And I think that would be
3 fine, if we had somebody that could do it. I think
4 we're in a down time this week, because the judicial
5 conference is this week and we're in chambers. I'm
6 trying to take advantage of the chambers time to
7 schedule this hearing, because otherwise I'm in
8 court every week.

9 Normally, there's somebody with the
10 Solicitor's Office, or else you'll have to get
11 somebody from IT, to come over and show you how to
12 hook it up. You'll have to get somebody that's
13 familiar with it. And the Solicitor's Office
14 usually is, because they use it a lot.

15 CLERK OF COURT: Yes, sir, they're the
16 ones that usually do it.

17 THE COURT: And if the defense uses it,
18 usually, they find out from the Solicitor's Office
19 how to hook it up. They help them with it.

20 CLERK OF COURT: They usually the same
21 thing.

22 THE COURT: All right. Well, see what you
23 can do about that. We don't have anybody here who
24 knows how to hook it up.

25 CLERK OF COURT: Plus, another thing, too,

1 Your Honor, you won't be trying the case in this
2 courtroom. It will be tried upstairs. So it really
3 won't matter whether it works with this system or
4 not. It's the one upstairs.

5 THE COURT: I think he was just wanting to
6 see how it looks on the screen.

7 CLERK OF COURT: Oh, okay, I didn't know.

8 THE COURT: She was saying that the trial
9 would be in a bigger courtroom --

10 MR. STARNES: Yes, sir.

11 THE COURT: -- and it may be a little bit
12 different. But he just wants to see how the
13 pictures are going to look on the screen, I think.

14 CLERK OF COURT: Oh, I see.

15 MR. STARNES: Your Honor, will we be
16 having a hearing in the next month or so? I know
17 Your Honor wanted to get us all together somewhere
18 maybe up in Spartanburg or maybe up in your area or
19 whatever.

20 THE COURT: We can. Stay in touch with me
21 and let me know if there's something that needs to
22 be taken care of. We'll get together if we have to.

23 MR. STARNES: Yes, sir.

24 THE COURT: If need be, we'll get
25 together. So if you'll let me know, then I'll try

1 to schedule something. The jury questionnaires,
2 once we get those ready and send them out -- we have
3 to make a decision on that pretty quick.

4 So if you want to submit any
5 requests, any additional requests, if you'd do that
6 pretty quick and get those to me -- additional
7 questions to add to this form -- I'll consider that
8 -- the same way the Solicitor's Office. And we need
9 to get that finished up and make a final decision on
10 what we're going to put there and let the Clerk have
11 it so she can go ahead and send it out.

12 MR. STARNES: Yes, sir.

13 THE COURT: And we need to do that pretty
14 quick.

15 MR. STARNES: I will do that tonight, Your
16 Honor. I'll do that tonight.

17 THE COURT: And if you'd send that to my
18 office. I'm going to be in Columbia the rest of the
19 week at a conference there, but I'll be back and
20 pick it up on Friday. We'll have them sent and get
21 a reply.

22 MR. STARNES: Yes, sir.

23 CLERK OF COURT: Your Honor, do you have
24 any idea how many you're planning to be drawn?

25 THE COURT: Initial summons, you mean?

1 CLERK OF COURT: Yes, sir.

2 THE COURT: Three hundred and twenty-five.

3 CLERK OF COURT: Three twenty-five?

4 THE COURT: Yes.

5 CLERK OF COURT: That way, we can go ahead
6 and pre-number the inner and outer envelopes that
7 are returned.

8 THE COURT: Right. And we'll just have to
9 decide on exactly what we're going to place in
10 there.

11 MR. STARNES: Thank you, Judge.

12 COURT REPORTER: Your Honor, do you have
13 that Court's Exhibit?

14 THE COURT: Yes, it's right here. I need
15 a copy of that, though.

16 CLERK OF COURT: I've got more, Judge,
17 yes, sir.

18 THE COURT: No, not mine, theirs.

19 CLERK OF COURT: Yes, sir.

20 THE COURT: Have you got it?

21 CLERK OF COURT: Yes, sir, I made plenty,
22 because I didn't know how many more we'd need.

23 Do you need another one? She needs
24 one of each, though, for the Court's Exhibits,
25 correct?

1 COURT REPORTER: I'm going to put it as
2 one.
3 --End of Transcript of Record--

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR 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 EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON AUGUST 21, 2007, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE TWENTY-SIXTH DAY OF JANUARY, 2008.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

2006-GS-32-3339

THE STATE of SOUTH CAROLINA

-vs-

NORMAN STARNES,

Defendant.

TRANSCRIPT OF RECORD

September 19, 2007

Spartanburg, South Carolina

Ordered: November 29, 2007

Delivered: March 1, 2008

B E F O R E:

THE HONORABLE LEE S. ALFORD, Presiding Judge.

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

MR. ROBERT COLER, Esquire
Assistant Solicitor for the State

MR. TREY GOWDY, Esquire
Seventh Judicial Circuit Solicitor

MR. NORMAN STARNES, Defendant
Appearing on his own behalf.

MR. JOHN DELGADO, Esquire
Attorney for the Defendant

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

I N D E X

State's Witnesses:

(None)

Defendant's Witnesses:

(None)

State's Exhibits:

Marked:

Received:

(None)

Defendant's Exhibits:

Marked:

Received:

(None)

Court's Exhibits:

Marked:

Received:

(None)

Reporter's Certification.....73

September 19, 2007 P R O C E E D I N G

9:54 A.M.

(Off-the-Record Comments)

THE COURT: Have you got your paperwork that you need?

MR. STARNES: Yes, sir, I do. Your Honor, is it possible just to be released?

THE COURT: Please, sir, if you'll release -- take the cuffs off his hands, so, that he can get to his paperwork and that.

(Brief pause while handcuffs are removed.)

THE COURT: He's representing himself in this case, and he needs to be able to get to his paperwork.

(Brief Pause)

THE COURT: Those are basically administrative orders, Mr. Starnes, with regards to the summons of the jury and that.

(Brief Pause)

MR. STARNES: Good morning, Your Honor.

THE COURT: Morning.

MR. STARNES: Your Honor, I have a few matters that I need to take up with the Court.

THE COURT: All right. Let me -- let me kind of control it, if you will, please, sir. And I'm going to give you an opportunity to present whatever you want to present.

But let me -- I want to take it in the order I wish to take it in, so, I can make sure that we get everything covered.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 Let me say for the record first that you've sent me a
2 number of emails. I think altogether I have about twenty (20)
3 emails, from the solicitor's office and Mr. Starnes, and back
4 from Mr. Tate (phonetic) regarding requests of the detention
5 center there.

6 And I was trying a case last week working about ten (10)
7 hours a day trying to finish it. It didn't look like we were
8 going to finish it last week. And, so, I really didn't get a
9 chance to -- to check on those.

10 I did get an email back from your mother indicating that
11 she had not been able to contact you and you were not able to
12 get emails there because of some power problem at the
13 detention center. So, I'm not sure what that was about.

14 So, you really didn't get emails, a couple of emails I
15 think I sent back to you or sent to you; had not gotten them
16 when -- when she sent me that email.

17 So, let me tell you what my primary concern today and
18 what I want to get done is my concern is we're only probably a
19 little less than six weeks from trial.

20 And we want to be sure that everything is done not to
21 hold up the trial because the jury summons are being sent out
22 and everything is set up for those two weeks, locked in, those
23 two weeks of court down there.

24 And they have a very busy capital case schedule down
25 there. So, you have to get in line down there to try these

1 cases.

2 And, so, ours has been set up for -- for those two weeks
3 in November, been allotted to us. So, it's essential that we
4 go forward with that. Plus, we've summoned three hundred and
5 twenty-five (325) jurors; we're going to send summons to three
6 hundred and twenty-five (325).

7 So, we need to go forward with this case when it's
8 scheduled. And I don't intend to -- to continue it. I intend
9 to try it that week.

10 The only thing that would prevent me from trying it, or
11 beginning the trial that week, would be if there's a death or
12 something would be the only way I'm not going forward with
13 this case. And I want you to understand that.

14 Now, understanding that, we need to take care of what we
15 need to take care of to make sure it's done in time for the
16 trial.

17 And, so, now, one of the concerns I got, and one reason I
18 scheduled this hearing, is to take up the questions concerning
19 the testing that's done for DNA, et cetera, to make sure that
20 we do what we need to do to get that done and prior to the
21 trial or be able to get it ready for trial.

22 And, Mr. Starnes, you had sent me a proposed order to
23 release the clothing materials for William Welborn (phonetic)
24 and Jared Chaplain (phonetic). And, frankly, I didn't think
25 that order was proper because it made all kinds of allegations

1 about the charges against you and you were saying you are
2 innocent and all that kind of stuff.

3 And that's not necessary for these kinds of orders and it
4 really shouldn't be in there. And what I have done instead is
5 prepared an order similar but taken out the extraneous
6 material. And I have that today.

7 But -- and we'll let both sides look at it. The concern
8 I've got, though, is what we would do -- and I had sent you an
9 email asking how you plan to take care of the chain of custody
10 on this case to make sure somebody was signing, each person
11 that handled it, and when they handled it and -- and a chain
12 of custody set up, so, that we don't have any concerns about
13 the admission of the evidence when we get to trial.

14 And so, that -- and I thought maybe the solicitor can --
15 can help us out on that if we released these materials. And
16 what I understand, from Mr. Starnes is, that LabCorp is
17 delivering a plastic container, from which these clothes could
18 be placed in, and then, shipped to them; is that correct?

19 MR. STARNES: Yes, sir, Your Honor.

20 THE COURT: Is that your plan? And, then, they would
21 take them and -- and run whatever tests. We want to make sure
22 that whoever handles them, including whoever ships them,
23 whoever picks them up and whoever receives them and whoever
24 handles them, signs off.

25 And we can do a little sheet. And maybe the Solicitor

1 can help me in that regard, get something prepared to go with
2 the clothing, when it goes up there, to make it sure it comes
3 back and we have a complete chain of custody when it gets
4 back.

5 MR. STARNES: Yes, sir.

6 THE COURT: All right. And that was the concern I had.
7 Now, you -- you can look at this proposed order, Solicitor, if
8 you want to look at it and show it to Mr. Starnes.

9 And let me know if -- if you have any concerns about that
10 order or -- or how it might be changed.

11 (Document retrieved from the Court.)

12 (Brief pause while document is reviewed.)

13 MR. GOWDY: We have no objections to the order, Your
14 Honor.

15 THE COURT: Please, show it to Mr. Starnes.

16 (Document shown to Mr. Starnes.)

17 (Brief pause while document is reviewed.)

18 MR. STARNES: No objection, Your Honor.

19 THE COURT: All right. Okay. If you'll hand that back
20 up, Solicitor, and I'll -- I'll sign this order then. And
21 this will be the order on that. And we will provide copies of
22 that, to the detention center, before you leave and copies to
23 all the parties and file the original.

24 (Document handed back up to the Court.)

25 THE COURT: Now, my next concern is that Mr. Starnes be

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 able to get whatever sample he needs to get to whomever to --
2 to examine his DNA. I'm -- I'm assuming you need, for
3 comparison purposes, some way to have your DNA tested; is that
4 correct, for comparison purposes?

5 MR. STARNES: That's correct, Your Honor.

6 THE COURT: All right, sir. And, now, the detention
7 center medical staff had declined to participate in that. So,
8 you -- you would need to do it another way. And how are we
9 going to deal with that? Have you come up with a solution to
10 that?

11 MR. STARNES: Yes, sir. I contacted the chemist at
12 LabCorp. And what they're going to do is, once they receive
13 the clothing, if they cannot get -- extract a cell, there
14 would be no need to take an DNA known from me. So, they kind
15 of want to do that first before we get in -- getting a DNA
16 known from me.

17 The only alternative that I have, Your Honor, is to have
18 the detention center or sheriff's office transport me, to a
19 medical facility outside of the detention center, so, a DNA
20 known sample can be taken, if it comes to that point, Your
21 Honor.

22 THE COURT: Mr. Tate, do you have any other
23 alternatives?

24 MR. TATE: The center -- and I have already spoken with
25 the detention center administrator and they don't -- and we

1 don't have a problem allowing any licensed medical personnel
2 come into -- into the center and visit with Mr. Starnes.

3 THE COURT: All right. So, if -- if there's somebody
4 you can get to come in and do that. Now, I'm not sure what --
5 whoever is going to test, you know, requires. Now, you can do
6 it, as I understand it, from really a saliva swab or you can
7 do it obviously, with drawing a little blood or something like
8 that, whatever amount they require.

9 I think they can really do it from, you know, any kind of
10 pierce -- you can take a little from the ear or something like
11 that to be able to do it or even a saliva swab maybe would be
12 sufficient; I'm not sure. Do you know?

13 MR. STARNES: Yes, sir, a saliva swab kit is what
14 LapCorp uses, Your Honor.

15 THE COURT: All right. So, if -- if you had someone --
16 if you can come someone to come in, and the detention center
17 will allow them to come in and take the swab and package it.

18 Now, I would tell you, again, that -- that there is going
19 to need to be a chain of custody on that. And, so, you'll
20 need to attach -- we need to attach a form to it.

21 And let everybody who -- who handles it, sign and date it
22 when they handled it, when they had it in their custody. So,
23 there needs to be a complete custody of that when it goes to
24 LabCorp.

25 MR. STARNES: Yes, sir, I understand, Your Honor.

1 LabCorp did indicate to me that they -- a chain of custody
2 paperwork follows all of their containers. In addition, they
3 say, when they receive evidence, a lot of the police agencies
4 require their chain of custody.

5 So, not only does LabCorp have their chain of custody
6 documents, Your Honor, the facilities or the detention center,
7 the sheriff's office, or whatever they receive evidence, those
8 agencies usually have a chain of custody documents that follow
9 the evidence too, Your Honor.

10 THE COURT: All right. Well, I'm going to ask the
11 solicitor's office to -- to help me out on this and -- and
12 maybe come up with -- and maybe hopefully before Mr. Starnes
13 leaves today that he can take that with him, just -- just a
14 form.

15 It doesn't have to be anything specific, just a form with
16 several blanks on it, which will allow them to sign and
17 initial -- sign and date the times that they had the material.
18 If you could do that, and then, it could be shipped, along
19 with the clothing, to them and filled out.

20 The police may have a form that they use. And, so, you
21 can -- and that would be sufficient. If you -- maybe they
22 already have the forms that somebody can provide to him.

23 MR. GOWDY: We'll have that -- we'll have that in less
24 than an hour.

25 THE COURT: All right, sir. That'll be good. Now, I

1 believe that addresses the issue with regard to the DNA sample
2 of the clothing of Mr. Welborn (phonetic) and Chandler
3 (phonetic) and also with regard to being able to provide a
4 sample by Mr. Starnes' testing.

5 Now, what next, Mr. Starnes, with regard to any testing
6 that's going to have to be done? I want to address that, make
7 sure we get that addressed today, so, that time-wise, it can
8 be done.

9 MR. STARNES: Yes, sir. Thank you, Your Honor. Your
10 Honor, I sent -- had sent a subpoena that was handed over to
11 the State Law Enforcement Division on August the 9th of two
12 thousand, seven (2007).

13 Your Honor, what I requested in the subpoena was the
14 location of certain tissue sample, blood samples. I believe,
15 when Dr. Sexton (phonetic) did the autopsy on these three
16 individuals, that there were hair samples that were taken.

17 And I what I would like to do is to do toxicology
18 testing. When Judge Westbrook was hearing this case, he
19 provided certain funding for toxicology testing.

20 There was certain toxicology testing that the State Law
21 Enforcement Division did do in this case; there was some they
22 didn't do. And, Your Honor, I would like to be able to
23 present independent toxicology testing to allow the testing to
24 be done for my defense, Your Honor.

25 And what I would need, I would need SLED to let me know

1 where this evidence is, if they, in fact, still have it; the
2 location, the nature of the samples, the amounts of the
3 samples, because all of this information has to be given to a
4 toxicologist.

5 An example, Your Honor, the SLED evidence -- evidence
6 inventory sheet only reflects that there is hair samples from
7 Welborn and Chaplain. It does not say the size of the sample,
8 and I believe they need anywhere from fifty (50) to a hundred
9 (100) milligrams of hair to do hair follicle testing to
10 determine if there were drugs in their system. And that's --
11 that's exactly where this is going, Your Honor.

12 THE COURT: Solicitor?

13 MR. GOWDY: Your Honor, if there is sample available,
14 and it won't consume the entire sample, we don't have any
15 objection to him having independent testing. SLED has already
16 tested it; they're going to retest it again before November.

17 If he wants to have his own lab do it, and it doesn't
18 consume the entire sample, I don't have a problem with it.

19 THE COURT: All right. My -- my -- all right, let me
20 tell you what my concern is. We're getting close to trial,
21 and I don't want anything to delay the trial.

22 So, if you could facilitate that, I would appreciate it.
23 Apparently, they don't res -- SLED doesn't respond to Mr.
24 Starnes.

25 And, so, if you could check into that for me, have

1 somebody in your office check into it, and see what they have
2 in the way of sample, if they're going to have enough to
3 sample, or how that can be released. Or sometimes people go
4 there and test it themselves, to SLED and test it. But they
5 may just want to release it to do it, provide it, and we'll
6 have to decide how it's going to be done.

7 MR. STARNES: Yes, sir.

8 THE COURT: And whether there's enough and not going to
9 consume the sample.

10 MR. GOWDY: If he wants to provide the name of the
11 independent lab that he wants to use, I'm sure SLED is
12 familiar with them, I think it's easier for SLED to transport
13 it to that lab and leave the Defendant out of the mix.

14 MR. STARNES: I'll do that.

15 THE COURT: All right. Could you, please, check into
16 that or have somebody in your office check into it. And let
17 Mr. Starnes and myself know about that?

18 MR. GOWDY: Yes, sir.

19 THE COURT: I would appreciate it. All right.

20 MR. STARNES: Okay. Your Honor, that -- I don't have a
21 problem with that; that's fine. I did receive an email from
22 Mr. Gowdy on September 5th saying that SLED did not work for
23 him or have the power to order them to release evidence.

24 We're getting real close to trial, and as long as it's
25 not a problem communicating, if they want to compel them to

1 get them to release it to the laboratory, that's fine.

2 THE COURT: I don't think anybody can compel them except
3 the Court.

4 MR. STARNES: I understand.

5 THE COURT: And I -- and -- and he's right. The only
6 reason I'm prevailing upon them is because you're representing
7 yourself for one reason.

8 The other thing is we're getting close to trial and I
9 want to try to get this done. And I'm -- you know, it's not
10 their responsibility, to get it done for you, but I'm asking
11 them to help the Court out in this case. And, if I need to
12 sign a Court order, I will.

13 But, what I'm asking them to at least communicate with
14 SLED and -- and -- and relay back to the Court what they --
15 what they say.

16 MR. STARNES: Yes, sir.

17 THE COURT: All right. And I -- I would appreciate you
18 doing that.

19 MR. STARNES: Your Honor, will they communicate with me
20 by email ---

21 THE COURT: Well, you -- you'll be communicating --
22 you'll receive the communication either from Mr. Gowdy, when
23 he notices me -- when he notices me or -- or, when I get it, I
24 will notify you.

25 (Brief Pause)

1 THE COURT: It is not -- it is not their responsibility;
2 he's correct. But I'm asking them, to work with the Court in
3 this instance, so, we can -- we can go forward with this
4 trial. I don't want anything to delay it further.

5 All right. What else, Mr. Starnes? Now, I'm interested
6 in what we need to do right now for trial.

7 MR. STARNES: Your Honor, there are two other subpoenas:
8 One to the South Carolina Department of Corrections and one to
9 the Greenville Police Department.

10 The South Carolina Department of Corrections was hand
11 delivered a subpoena in reference to some records; actually,
12 my inmate records and some other inmate records on some
13 individuals that testified as State witnesses against me.

14 And I requested those records from the Department of
15 Corrections and I have received no response from them -- from
16 them whatsoever, Your Honor.

17 THE COURT: What kind of records are you seeking or --

18 MR. STARNES: Well ---

19 THE COURT: --- is that something you can reveal?

20 MR. STARNES: I've asked for -- I'm sure, you know,
21 prison adaptability may become an issue if, in fact, we get to
22 the penalty phase. Skipper v. South Carolina (phonetic)
23 permits me to explore that issue. My inmate records, my
24 conduct while incarcerated certainly has become an issue, mine
25 of course.

1 There are records on a Keith Allen Hartley (phonetic)
2 that I've requested. He was a State's witness that testified
3 for the State. Robert Wegows (phonetic), Danny Gleaton
4 (phonetic), Mr. Chaplain (phonetic), an individual Jody David
5 Fogle (phonetic), Karen Pratt, and a Terry William Laminette
6 (phonetic). All these are individuals that have directly
7 affected this case, Your Honor.

8 **THE COURT:** All right. And what is it that you're
9 seeking, from the detention center, with regard to records?
10 What is it you're seeking?

11 **MR. STARNES:** The Department of Corrections, Your Honor.

12 **THE COURT:** Oh, the Department ---

13 **MR. STARNES:** Inmate records, disciplinary records, and
14 things of that nature. Medical records and stuff that's
15 personalized, I certainly wouldn't ask the Department of
16 Corrections to -- to provide that to me. I understand I
17 cannot get that; material that would go for impeachment.

18 **(Brief Pause)**

19 **THE COURT:** Insofar as the present time, does the State
20 still plan to call those witnesses to your knowledge?

21 **MR. GOWDY:** Some of them, yes, Your Honor. Some of
22 them, no. And, if I heard it correctly, Mr. Chaplain
23 obviously was one of the victims; he's deceased.

24 I know the threshold for discover ability is exceedingly
25 low. I was sitting here trying to imagine an scenario in

1 which Karen Pratt could be impeached with her Department of
2 Corrections disciplinary record, and I can't come up with the
3 scenario, but if that -- if he feels like he has to have that,
4 to prepare himself for trial, some of those witnesses are
5 going to be called. Some of them are not.

6 And some of them may be called on rebuttal depending on
7 what he says. So, I have -- the discover ability of it is one
8 issue. The admissibility of it, if we get to trial, is a
9 whole different issue and I -- if the Court is willing to
10 order the Department of Corrections to produce those
11 disciplinary files, I have no objection to that. I don't ---

12 THE COURT: Well, I think he may be entitled to it, and
13 I think that disciplinary records can be used to impeach.
14 It's been done by the State before in cases before me, and so,
15 I don't know why it couldn't be done at -- at -- at the -- in
16 a -- in a trial by the -- by the Defendant.

17 And, so, I'm -- what I would suggest, then, Mr. Starnes,
18 is you prepare me a proposed order, to the South Carolina
19 Department of Corrections, a proposed order, in which you put
20 in there what inmate records, copies of what records you need,
21 with regard to an inmate, with regard to any disciplinary
22 proceedings against them, okay?

23 MR. STARNES: Yes, sir.

24 THE COURT: And I will -- I'll take a look at that order
25 and send a copy of it to Mr. Gowdy or his office the same time

1 you send it to me. And — and send it to me and I'll look at
2 it and — and see about signing it and getting it back to you,
3 so, you can get those — that information made available to
4 you.

5 MR. STARNES: Yes, sir. Your Honor, with ---

6 THE COURT: Well, your order should say that it's to be
7 used solely for the purpose of this trial and no other
8 purpose.

9 MR. STARNES: Yes, sir.

10 THE COURT: For your trial and for no other purpose, not
11 to be released to anyone else.

12 MR. STARNES: Yes, sir.

13 THE COURT: Okay.

14 MR. STARNES: And I will not — I will not release it to
15 anybody else.

16 THE COURT: But, in the order, it should so provide.
17 All right.

18 MR. STARNES: Do you think it would be unreasonable if I
19 ask them to turn it over —

20 THE COURT: I don't think so.

21 MR. STARNES: --- anywhere in the next two weeks? I
22 mean —

23 THE COURT: Well, why don't we just make it two weeks?
24 We've got time. Just make it two weeks.

25 MR. STARNES: Okay. Yes, sir.

1 THE COURT: All right. Anything else? What else for
2 trial?

3 MR. STARNES: Your Honor, the State's position on the
4 video tapes that I asked for. There were some tapes that the
5 FBI seized, from the Lexington County Sheriff's Department,
6 during an illegal video taping. When they seized those video
7 tapes, they were audio graph [sic] tapes that involved
8 witnesses in this case, video statements that the State's
9 witnesses made on camera. And I would ask the State's
10 position on that, Your Honor.

11 MR. COLER: Judge, we've got three additional tapes that
12 we believe Mr. Starnes does not have. And he got every other
13 tape. And we're ready to turn those over to him today. We
14 still have to have service for those, so, those are ready.

15 THE COURT: All right.

16 MR. STARNES: Okay.

17 THE COURT: He says there's only three that you haven't
18 received, and they're willing to turn those over to you today.

19 MR. STARNES: Yes, sir.

20 MR. COLER: Just, for the record, I believe they're the
21 video taped interviews with Karen Pratt, Jody Fogle, and Leroy
22 Jones. I believe he's gotten everything else. Correct me if
23 I'm wrong, Mr. Starnes. Is that a fair recitation?

24 MR. STARNES: I'm not -- what I've asked for in the
25 request -- have you got a copy of the request?

1 MR. COLER: I gave it to ---

2 (Brief Pause)

3 MR. COLER: My understanding, Judge, in the request he
4 asked for Donna Benson, Karen Pratt, Jim Kiser, Roger Crook,
5 Jody Fogle, and Leroy Jones. Is that correct, Mr. Starnes?

6 MR. STARNES: Let me see if I can ---

7 (Brief pause while document is reviewed.)

8 (Off-the-Record Comments)

9 MR. COLER: It looks like he also has a video taped
10 interview of Donna Benson. So, he's getting Donna Benson,
11 Karen Pratt, Leroy Jones, and Jody Fogle. And anything else
12 he's asked for, I believe he's gotten.

13 THE COURT: All right. If you'll receipt for those,
14 please, sir, when you get them.

15 MR. STARNES: Yes, sir.

16 MR. COLER: If we -- If we can go back to one other
17 thing? Mr. Starnes had asked for -- or mentioned a -- a
18 subpoena he served on the Greenville City Police Department.
19 I think we skipped over that.

20 After he served the subpoena, Judge, they forwarded that
21 request to us just to verify the discover ability of it. When
22 I got that, I contacted the solicitor's office in Greenville
23 and spoke to their Deputy Solicitor. And she informs me that
24 their file, regarding the information Mr. Starnes requested,
25 has been destroyed. It was almost twenty (20) years old.

1 If there's something else the Court wants me to do to
2 verify, or follow up on that, I'll be glad to do that. But
3 it's -- as far as I understand it, the documentation has been
4 destroyed as result of the age of the case.

5 And this -- this is regarding an -- an arrest of one of
6 the victims in the case, of Mr. Chaplain, back in 1988.

7 THE COURT: All right. Would there be -- this is just
8 with regard to an arrest, not a disposition?

9 MR. COLER: There was a prosecution and he was -- he was
10 prosecuted and convicted of a strong armed robbery.

11 THE COURT: All right. Would it -- are there no records
12 regarding his -- his record then? That he was convicted of
13 that?

14 MR. COLER: His rap sheet. I mean, we can certainly
15 provide a copy of his NCIC report that would show the
16 disposition on it, Your Honor. We could get that over to him.
17 I'm sure there's a certified copy of the conviction in the
18 clerk's office -

19 THE COURT: Yeah.

20 MR. COLER: --- if that's sufficient.

21 THE COURT: Would that be sufficient?

22 MR. STARNES: Your Honor, the records I'm asking for is
23 not from the solicitor's office. Actually, the records do
24 exist and the Greenville Police Department has them.

25 They keep the records of all -- most of this is really

1 public record. It's in reports and police reports. I'm sure
2 the solicitor's office doesn't need them. But the police
3 department has these records.

4 MR. COLER: I'll be -- if the Court wants me to, Your
5 Honor, I'll be glad to check, with the city police department
6 over there, and see if they still have a file.

7 The other thing I would ask Mr. Starnes to do, then, is
8 be more specific in his request because he cites the -- the
9 prosecution of the case, and he gives case numbers. Who are
10 those case numbers referring to, Mr. Starnes?

11 MR. STARNES: Mr. Jerry Chaplain (phonetic).

12 MR. COLER: All right. You referred to case number 88-
13 10-897 and case number 88-10-886 and case 88-91716 (phonetic).

14 MR. STARNES: Yes, sir.

15 MR. COLER: Those all regarding Mr. Champlain?

16 MR. STARNES: That's correct. Those are cases from the
17 Greenville Police Department.

18 MR. COLER: Your Honor, to speed things up, I'll -- I'll
19 go to the city police and see what they got.

20 THE COURT: If you can do that, I would appreciate it
21 and if they can make copies available. If they need an order
22 from me, for them to release copies of it, then, I'll -- I'll
23 sign it unless there's some objection by the State.

24 MR. COLER: Yes, sir.

25 (Brief Pause)

1 **THE COURT:** So, let's -- if we can, please, if we can
2 follow through, with this as quickly as we can, because I
3 don't want to -- I want to keep everything on a time line, so,
4 that there's no delay in getting this case to trial.

5 **MR. STARNES:** Your Honor ---

6 **THE COURT:** Yes, sir?

7 **MR. STARNES:** I'm not being hyper technical, but ten
8 (10) working days, is that unreasonable to ask them to get
9 this to me?

10 **THE COURT:** Well, let the solicitor's office check into
11 it. What I would ask is they make it available, copies
12 available, as soon as possible, if they, in fact, have those
13 records.

14 And, if they do not have them, then, we want to hear from
15 them. But I need something in writing from them if they say
16 they do not have them.

17 **MR. COLER:** I'll go over there this week. I don't know
18 how quickly they can make copies, but I'll -- I'll go over
19 this week.

20 **THE COURT:** All right, sir. We'll get them to you as
21 quick as we can, Mr. Starnes.

22 **MR. STARNES:** Thank you, Your Honor.

23 **THE COURT:** Now, if they do not have them, what I would
24 ask them to do is somebody who can -- is responsible for those
25 records to -- to give us something in writing saying that they

1 do not have them or they're not available or whatever.

2 MR. COLER: Yes, sir.

3 MR. STARNES: Your Honor, I have a few other matters I
4 need to take up. I'm receiving email ---

5 THE COURT: Is there anything else that we got done for
6 trial that's on a time line?

7 MR. STARNES: Yes, sir.

8 THE COURT: What?

9 MR. STARNES: There are records that the detention
10 center has in reference to -- well, let me back up just a
11 little -- just a minute. If possible, there is a hearing that
12 I would like to have if we can possibly have it.

13 There is some reciprocal discovery that I'm going to have
14 to provide to the State. And, in doing so, I believe I'm
15 going have to take some testimony on this.

16 THE COURT: How so? Why -- why would that be?

17 MR. STARNES: To get the evidence. We can do it at
18 trial. We don't have to do it pre-trial, but if we do it
19 during trial, it's going to take probably, Your Honor, half a
20 day.

21 (Brief Pause)

22 THE COURT: Are you talking about admissibility of -- of
23 it --

24 MR. STARNES: Admissibility --

25 THE COURT: --- or whether they're entitled to it, or

1 what -- what are you saying?

2 MR. STARNES: They're -- they're entitled to it, and I
3 believe I have to turn it over to them in a timely manner. I
4 really don't want to disclose it to them at this time because
5 it's -- it's still being worked on.

6 And I should receive this within probably two (2) weeks;
7 two (2) to three (3) weeks, three (3) at the most. And I'm
8 going to have to turn it over to them.

9 I would ask to have a -- a hearing in camera before we
10 pick this jury because certainly I don't want to get, in the
11 middle of a trial, and have to take several hours out and have
12 the jury out and have a hearing on the admissibility of
13 evidence.

14 But, or me to put forth this evidence, I have to put some
15 testimony on the record. The Supreme Court requires it.

16 THE COURT: I'm not -- well, I guess I'm not following
17 you. Can -- can you, without revealing exactly what it is you
18 say you don't want to turn over just yet, can you tell me what
19 it's about?

20 MR. STARNES: Yes, sir. Beg the Court's indulgence just
21 one minute, Your Honor.

22 (Off-the-Record Discussion)

23 MR. STARNES: Your Honor, it deals with expert
24 testimony.

25 THE COURT: Well, now, here's the -- here's the problem

1 with that, it's, if it deals with expert testimony, then, they
2 need to know and have a report from any expert, so, that they
3 can get their own expert to come in and testify. So, that's
4 the purpose of that discovery rule on that.

5 MR. STARNES: Yes, sir.

6 THE COURT: So, they would need that, in enough time to
7 be able to take that information and provide that information,
8 to an expert of their own choosing, to see if they want to
9 have an expert testify ---

10 MR. STARNES: Yes, sir.

11 THE COURT: --- themselves in response. So, it - it'll
12 have to be timely made. Any suggestions, Solicitor? Maybe we
13 can ---

14 MR. GOWDY: I'm going to be honest with you, Your Honor,
15 I don't have a clue what he's talking about. I don't know if
16 he's got an accident re-constructionist; I don't know whether
17 he's got a mental health expert, mitigation expert. I don't
18 know what he's talking about.

19 So, I -- I can't provide any assistance to the Court.

20 THE COURT: Now ---

21 MR. GOWDY: And I don't know why he's taking testimony
22 to -- to determine whether or not he needs to tell the State.

23 THE COURT: Let me ask you this, Mr. Starnes, do you
24 want to determine whether it's going to be admissible before
25 you turn it over? Is that what you want to do? Or do you

1 want to ---

2 MR. STARNES: Your Honor, that's -- that's part of it.
3 Part of it is the reason I would like to do this pre-trial,
4 again, is so we don't have the jury out, to take half a day
5 testimony, for this matter. And it deals with an expert.

6 In addition, Your Honor, I would ask for a hearing
7 pursuant to Jackson v. Denno on the admissibility of some
8 statements. That's an issue that I believe we should take up
9 pre-trial.

10 We can do it during the trial, whatever the Court orders;
11 we'll do that. But, what I'm trying to do is take care of
12 most of this stuff before we get, in the middle of the trial,
13 and start having hearings on the admissibility of evidence and
14 certain things that -- that may or may not come in.

15 And these hearings will have -- I'll just take testimony.
16 I'll just put testimony on the record.

17 THE COURT: Well, certainly, for a Jackson v. Denno
18 we'll have to take testimony, but -- yes, sir, Solicitor?

19 MR. GOWDY: Your Honor, I'm not aware of any post-arrest
20 interrogation or statements that this defendant gave. I know
21 he gave statements, during the course of the investigation,
22 but that doesn't implicate Jackson v. Denno.

23 I'm not aware of any statements that he gave to law
24 enforcement after he was arrested. So, if there are some, the
25 State doesn't have them.

1 I mean, that's the only Denno that I'm familiar with.
2 And he invoked his right, so, there are no statements.

3 (Brief Pause)

4 MR. STARNES: Your Honor, I'm not a lawyer and I
5 apologize.

6 THE COURT: That's all right.

7 MR. STARNES: I'll go ahead and tell. It doesn't
8 matter, Your Honor. I did receive an email from Mr. Gowdy
9 that there were numerous letters that I wrote to a female
10 inmate while I was incarcerated.

11 I believe that the letters are inadmissible. I believe
12 it is a violation of Messiah (phonetic) and Henry (phonetic).
13 This individual that I wrote is going to have to come in and
14 testify.

15 There is a video statement that I'm going to have to turn
16 over to them, but I haven't gotten it transcribed. This is
17 part of the reciprocal discovery, and I really didn't want to
18 tell them all this now.

19 This individual is incarcerated in Georgia, and she's
20 going to have to come in and testify; as to these writings,
21 these letters that I wrote to her.

22 That's -- that's exactly what it's about because I don't
23 -- I don't believe any of the letters are admissible. I
24 believe it was obtained in violation of my Sixth Amendment
25 right.

1 Of course, I'm pro se now; back then I wasn't. I'm going
2 to need testimony from her. I'm going to have to ask that
3 Darren Amick (phonetic), the lead detective, who worked this
4 case, he's going to have to come in and put testimony on the
5 record.

6 And I'd like to do this pre-trial. And, again, Your
7 Honor, if you want to do it, during the trial, we can do it
8 during the course of the trial, when they attempt to bring
9 this evidence in.

10 When they attempt to bring this evidence in, or they
11 refer to any letters that I wrote to this individual, we're
12 going to ask the jury to be excused.

13 We're going to have bring an inmate from Georgia in to
14 testify. And it's going to be very time consuming because I
15 am going to object to it, and I want to be able to preserve
16 this record on this issue.

17 **THE COURT:** Well, I have no -- no problems with taking
18 this up pre-trial. We would -- you know, the biggest -- the
19 biggest problem I've got, as I -- as I've told you before, Mr.
20 Starnes, is you're -- you're down, in the detention center,
21 working full time on your case.

22 I'm in court every single week. And, you know, so, it's
23 -- scheduling is the problem, trying to get it done. So, I'm
24 -- between now and the time we start your case, I'm in court
25 virtually every single week.

1 And, so, we'll try to come up with a time. We'll --
2 we'll try to come up with a time when we can do that.

3 Now, when will you be ready to do it? That's the next
4 question because I'll have to -- to make some time available
5 out of -- out of my other court schedule.

6 MR. STARNES: Yes, sir. That was one of the questions I
7 was going to inquire of the Court. If we can set up a -- a
8 date we can do it. If the State doesn't object, the week
9 before we start picking a jury.

10 (Brief Pause)

11 THE COURT: All right. Solicitor, it looks like I'm
12 going to be here holding General Sessions Court the week
13 before the trial.

14 MR. GOWDY: Yes, sir.

15 THE COURT: And we possibly could do it that week. If
16 we were to schedule it here in Spartanburg, I'm scheduled to
17 be here doing criminal court that week.

18 The solicitor will be here. If we have him transported
19 up, and -- and we decide -- we'll try to decide on what day
20 we're going to do it and take a day to do it, just block that
21 out of that General Sessions schedule for that week.

22 It will probably be better to do it the latter part of
23 the week, maybe, so, we can get something done the earlier
24 part of the week. Does that suit you?

25 MR. STARNES: Your Honor, I don't have an objection to

1 it. It's just -- there are several witnesses that's going to
2 travel up here. I don't know how that's going to
3 inconvenience them.

4 THE COURT: Where are they -- are they incarcerated?

5 MR. STARNES: No, sir -- well, one of them is, yes, sir.
6 One of them is incarcerated I believe in Georgia.

7 THE COURT: Oh, that's a problem there. That's a big
8 time problem there because we don't have any control over an
9 inmate in Georgia.

10 MR. STARNES: Well, the State issued a subpoena and flew
11 a federal inmate back from Oklahoma to testify against me.

12 THE COURT: Well, that's something that they do, but
13 they -- they have to work it out. They have to work it out
14 through the appropriate channels. And it's very hard to do.

15 And I'm not going to ask them to do that for you to get a
16 witness up here that you want up here. That's something
17 you're going to have to do on your own if you want that
18 witness here. And that's not easy to do.

19 And, so, I'm -- I'm not going to require the State to
20 produce a witness that you say you would like to have for a
21 hearing or a trial. So, that's something that you would have
22 to be able to work out yourself.

23 Now, I don't mind -- I'm not sure how we could work out
24 the transportation. What normally happens on the
25 transportation of a out-of-state inmate?

1 MR. GOWDY: Your Honor, if she is actually in custody, I
2 would imagine that there would have to be an -- an agreement
3 between GBI (phonetic) and SLED.

4 There has to be a writ in place where a judge allows her
5 to be temporarily in the custody of SLED. We would have to
6 transport her here. She would have to be housed here while she
7 were here.

8 I absolutely -- frankly, I think it's easier to get a
9 federal inmate than it is to get another state. I know the
10 process of how -- how to get a federal inmate. I don't know
11 the process of how to get somebody out of another state prison
12 system here.

13 I don't have the power. I mean, a subpoena wouldn't be
14 worth the paper it's written on. So, with an order from the
15 Court -- I would imagine you would have to a court of ---

16 THE COURT: A court order wouldn't be of any help either
17 because I don't have any jurisdiction in Georgia. So, I can
18 sign an order citing the need to have the person here, but
19 that's not going to -- I don't have any jurisdiction over
20 Georgia either.

21 And, so, no order that I issue is going to be effective
22 with regard to -- to an inmate in Georgia. That's something
23 that just has to, I think, be coordinated.

24 And I would be glad to sign an order requesting
25 assistance, or whatever from them, or, if something is set in

1 place to -- to request assistance, but that's -- that's all I
2 can do. I don't have any jurisdiction in Georgia.

3 MR. STARNES: Your Honor, beg the Court's indulgence
4 just one minute, please.

5 (Off-the-Record Discussion)

6 MR. STARNES: Your Honor, as long as they don't object,
7 I have a video tape of this -- this inmate. I have a video
8 tape and I'm having it converted to DVD and it's getting
9 transcribed on paper right now.

10 I believe we could probably get through this hearing
11 maybe without calling her in here to testify. The problem is,
12 are they going to object to it.

13 Now, if they're going to agree not to object to the
14 contents of the video, then, I don't have a problem with it.

15 THE COURT: Are you willing to -- to provide that to
16 them and let them observe it and see if they're going to
17 object to it before -- before we have the hearing ---

18 MR. STARNES: Yes, sir.

19 THE COURT: --- the next hearing on it?

20 MR. STARNES: I believe I have to, Your Honor. The
21 detention center is making arrangements, so, I can convert
22 this from a tape to a DVD. It's on an eight millimeter tape
23 actually, and I have a machine I can convert it to on a DVD.
24 And I'll -- I'll Federal Express it to them.

25 THE COURT: Well, I don't know if they'll agree to it or

1 not because they didn't have any chance to ask any questions.
2 I don't know how this was done.

3 So, if they didn't have any chance to ask any questions,
4 I doubt they're going to agree to it coming in. But,
5 depending on what it is, if you'll send it to them, they can
6 look at it and see.

7 Other than that, I -- I think it's going to be your
8 responsibility, if you want a prisoner, just to come up here
9 to testify about letters, I think that's -- that's going to be
10 your responsibility.

11 The Solicitor may have a suggestion, or your attorney may
12 have a suggestion, about the procedure to get that done. But
13 I can tell you it's not easy.

14 And I cannot order it to be done because I don't have any
15 jurisdiction over a detention facility in Georgia.

16 MR. STARNES: Yes, sir.

17 THE COURT: I'm sure it can be done. But I'm sure also
18 that there has to be some arrangements made. And it can only
19 be done if they're willing to cooperate from Georgia.

20 MR. STARNES: Judge Westbrook signed an order to bring
21 an inmate from Oklahoma. It was a jailhouse snitch that they
22 had to testify against me, and Judge Westbrook signed ---

23 THE COURT: I'm -- I'm sure they worked the arrangements
24 out before Judge Westbrook signed the order. Okay? And, so,
25 that's what I'm saying. That's your responsibility to work it.

1 out.

2 And, if you can work the arrangements out, I'll sign an
3 order for SLED to take that person into custody, when they
4 reach the state line, and bring them in. I'll do that.
5 But I can't force them to turn a prisoner over from Georgia.
6 I have no -- no jurisdiction or authority to do that.

7 If that arrangement is made, and they agree to it, then,
8 I'll sign an order approving the arrangement or authorizing
9 SLED to take custody of the person and bring them in and take
10 them back.

11 MR. STARNES: Yes, sir. I'd like to put them on notice,
12 I object to any of those letters coming in, without that
13 inmate coming in and testifying. I'm going to object to it.

14 THE COURT: Well, we'll hear that and determine whether
15 they're admissible or not; whether you have somebody to
16 testify concerning those letters, that's your responsibility,
17 Mr. Starnes.

18 You chose to represent yourself, and that's your
19 responsibility to present your case or whatever you want to
20 present. Now, you can certainly -- we'll have a hearing on
21 the admissibility of them.

22 But, if you want somebody to come in and testify or you
23 want to prove to the Court why they're not admissible, based
24 on another witness, that's your responsibility to do, not
25 theirs. Okay?

1 MR. STARNES: Yes, sir, Your Honor.

2 THE COURT: Okay. What else? Now, we'll -- we'll
3 schedule -- we'll try to figure out a time and we'll schedule
4 another hearing that week of -- the last week in October that
5 I'm here.

6 MR. STARNES: Yes, sir. In relation to this, this
7 inmate down in Georgia, I served a subpoena on Mr. Tate, at
8 the detention center, back in two thousand, four (2004), I
9 believe it was. And the detention center objected to giving
10 me inmate records and -- and so forth.

11 There was some material in there that I requested that
12 dealt with this inmate being moved in certain areas of the
13 detention center. I did not go into detail and tell Mr. Tate
14 or the detention center why I needed those records, but that's
15 exactly what I need it for.

16 And they objected to giving me the records, and I can
17 understand that. Would they be willing to allow me to review
18 these records, provide them to me. They can put me in a room,
19 count the pages, and let me review this material because I'm
20 going to need it for this hearing.

21 THE COURT: What is it that you want? Now, I think you
22 got discipline records or something like that, you probably
23 can get that. What else do you want?

24 MR. STARNES: Well, Your Honor, the detention center,
25 they took this inmate and they placed this inmate in various

1 cells of other female inmates to steal mail.

2 She was directed -- by an investigator, she was directed
3 by three agents, of the detention center, to go into other
4 inmates' personal belongings and steal their mail. The
5 records that I need is to show her movement in the detention
6 center.

7 She was placed in a housing unit where male inmates are
8 housed. She was directly -- directly across the hall from me
9 where I could see her. I could see her shower.

10 THE COURT: Well, I don't -- that's as far as we need to
11 go with that. We'll just -- whether you're entitled to
12 information and what you need to know, is what we need to
13 know.

14 You know, I think you can -- he can get that information
15 insofar as her housing is concerned while she was there. If
16 she was moved around, I think they're entitled -- she's --
17 he's entitled to get that information.

18 Now, whether we have to -- whether he would have to
19 subpoena somebody, from the detention center, to come in and
20 -- and bring the records with them, is -- is -- is a matter
21 that -- but I think he probably would be entitled to that
22 information if he can show that it's relevant to his case.

23 MR. TATE: If -- if Mister -- If I understand Mr. Starnes,
24 and I never -- I don't know what issues were going to be
25 raised today, but please, understand that --

1 THE COURT: Well, neither did I, Mr. Tate. But, go
2 ahead.

3 MR. TATE: I'll do the best I can.

4 THE COURT: All right, sir.

5 MR. TATE: He wants housing assignments, who was living
6 on -- and we used to call them floor logs, who -- or not floor
7 logs, but housing assignment logs, who was living where when,
8 if those are available.

9 Now, keeping in mind, I believe the original trial, Your
10 Honor, would have been 1997. If this would pre-date that --

11 THE COURT: Is that correct, Mr. Starnes, would it pre-
12 date 1997?

13 MR. STARNES: No, sir, 1997, the dates of the records
14 would be -- I provided them this in a subpoena. I believe the
15 records go from September -- correction -- September of '96 to
16 April of '97 I believe it goes.

17 THE COURT: All right. Well, see, that's prior to the
18 trial. So, that's what he's saying. If these records go all
19 the way back to 1996 and '97, they may not have housing inmate
20 records that go back that far. I don't know how long ---

21 MR. TATE: I'll have to check the document retention
22 schedule and see if we have the records. If Mr. Starnes would
23 be so kind to re -- to forward me a copy of whatever he had --
24 he has sent me before, then, if we have them -- if they're
25 available, then, I will pull those documents.

1 But I'll be glad to -- I'll look for it. And, if they're
2 simply limited to who lived what, when, and where, I don't
3 have a problem. If it's in there, I don't have a problem in
4 producing that.

5 THE COURT: All right. Well -- and it's a question of
6 whether they're there or not. I mean, I don't know how long
7 the detention center keeps housing records of exactly where
8 they were housed. But, if they have that information, keep
9 those information, then, I think he would be entitled to get
10 that information.

11 And, so, if -- so, if you could -- they would like you to
12 send another copy of whatever you sent. Just send to Mr. Tate
13 or give it to Mr. Tate saying exactly what you want in that
14 regard.

15 MR. STARNES: Yes, sir.

16 THE COURT: All right. And the dates, we need the
17 dates, the period of time you're talking about.

18 MR. TATE: Inmate dates and inmate name, and if you know
19 the housing unit; the floor, the dorm, tell me that
20 information.

21 THE COURT: So, it would make it easier to find.

22 MR. TATE: Right.

23 MR. STARNES: I can't tell him all the housing units,
24 because they -- they moved this inmate around to different
25 cells ---

1 THE COURT: Well, what ---

2 MR. STARNES: --- and different housing units.

3 THE COURT: What -- what you do know, you can tell them.
4 Like you said, you could see her taking a shower one time in a
5 unit. Well, you know what that unit is, so, whatever you
6 have, if you can, try to make it easier for them to check
7 their records to see.

8 MR. STARNES: Yes, Your Honor.

9 THE COURT: But this goes back -- this goes back more
10 than ten (10) years ago. So, hopefully, they'll have it.
11 But, they very well may not.

12 MR. TATE: We will make a diligent search, Your Honor.

13 THE COURT: All right, sir. All right.

14 MR. STARNES: And, Your Honor, one of the things, her
15 inmate records. Now, I -- I don't want anything dealing with
16 medical, but anything that would be in her inmate jacket as
17 far as -- that may reflect any movement and -- and things of
18 that nature.

19 MR. TATE: Who are we talking about?

20 MR. STARNES: Teresa -- Teresa Holland (phonetic).

21 MR. TATE: Okay. So, Teresa Holland?

22 MR. STARNES: That's correct.

23 MR. TATE: Okay.

24 MR. STARNES: I've got one of her booking sheets, and
25 I'll email it to Mr. Tate tonight. I'll get emailed to you

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1 tonight.

2 MR. TATE: Okay. I will -- Your Honor, I'll be more than
3 happy to take a look at the booking -- the booking records
4 that were microfilmed back then. And, if there's nothing as
5 far as medical or anything that would otherwise invade her
6 personal privacy, I don't mind giving them to him.

7 I -- I -- what I'll do -- when I raised the issue with
8 Judge Westbrook prior, there was a large net cast of various
9 inmate records and we could be -- the detention center will
10 continue to object to any -- to Mr. Starnes having records of
11 existing inmates that are in the facility with him.

12 THE COURT: Okay.

13 MR. STARNES: I completely understand that, Your Honor,
14 and I wouldn't ask for no records for an inmate that's housed
15 with me.

16 THE COURT: All right.

17 MR. STARNES: Most of these records that I'm asking for
18 are for -- for inmates that are -- they're in prison right
19 now.

20 THE COURT: All right. Well, again, he's going to check
21 on that. But, if there's more information he needs, please,
22 provide that to him to be sure he knows exactly what to look
23 for.

24 MR. STARNES: Yes, sir.

25 THE COURT: Okay.

1 MR. TATE: Thank you, Your Honor.

2 THE COURT: And if you -- once you've done that, if you
3 could notify everybody, Mr. Starnes and Mr. Gowdy's office and
4 the Court, what you've --

5 MR. TATE: Right.

6 THE COURT: If you were able to find it and what you
7 provided to him, I would appreciate it.

8 MR. TATE: I'll take of it, Your Honor. Thank you.

9 THE COURT: Yes, sir.

10 MR. STARNES: I believe I have two more matters, Your
11 Honor. One, the supplemental discovery request that I served
12 on Solicitor Mox (phonetic), I did receive some material from
13 them. It was just a few pages of some telephone records.

14 And they were nice enough to provide me a CD rom that
15 does have the transcript of the previous trial in this case.
16 I believe there are some -- there is some other material that
17 exists.

18 There was a hearing before Judge West -- before Judge
19 Westbrook, and the solicitor of the 11th Circuit Solicitor's
20 Office did indicate that there were some notes and things, but
21 they were unsure whether it Brady material and they were --
22 were going to turn them over to Judge Westbrook and let him
23 review that material to determine if it actually is Brady
24 material.

25 Of course, unfortunately, Judge Westbrook was killed and

1 I'll ask the Court to review this material to -- to determine
2 if it actually is Brady material and I'm entitled to it.

3 THE COURT: I don't know what material we're talking
4 about, that's the problem.

5 MR. STARNES: The material that we're talking about is,
6 this was a missing person's case from January the 8th, 1996,
7 all the way up to May the 27th, of the following year -- or the
8 same year. I'm sorry.

9 Detective Amick's (phonetic) notes and his report begin
10 on the 10th and end at the 15th. There is simply nothing in
11 discovery that mentions any investigation after January 15th.
12 And there are a lot of ---

13 THE COURT: January 15th of what year?

14 MR. STARNES: Ninety-six ('96). And there was no way
15 that Detective Amick investigated this case for two weeks and
16 quit. There's -- there's more discovery out there. And they
17 just -- they just won't turn it over to me, Your Honor.

18 THE COURT: Solicitor, do you know anything about it?

19 MR. GOWDY: I don't have a clue about what he's talking
20 about. He has everything that we have. Detective Amick is
21 here.

22 If Detective -- Detective Amick turned something over to
23 Judge Westbrook, and Judge Westbrook had it in chambers, I
24 don't know about it.

25 This Defendant has everything that we have. The fact

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1 that it was a two-week investigation, Detective Amick is here.
2 If the Court wants to inquire whether or not it lasted longer
3 than that, whether there is other material, I -- I -- he's got
4 everything that I have.

5 THE COURT: Detective Amick is here. Sir, are there
6 notes and -- do you know what he's talking about? Were you --
7 did you turn anything over to Judge Westbrook?

8 DETECTIVE AMICK: I recall a scenario. I think the 11th
9 Circuit Solicitor's Office, which was still in charge of the
10 retrial at that time ---

11 THE COURT: Yes, sir.

12 DETECTIVE AMICK: --- I was questioned about it through
13 Amy Whitfield (phonetic). As for what was turned over, I'm
14 not sure. It would have come out of my file that they had at
15 that time; what particular documents, I do not know, no, sir.

16 THE COURT: All right. Do you -- and I'm not saying
17 that they should be turned over, at this point, but do you
18 have any investigative notes, after January 15th, 1986 [sic],
19 in your file?

20 DETECTIVE AMICK: Everything that I have has been turned
21 over.

22 THE COURT: To the Solicitor's office?

23 DETECTIVE AMICK: Even the stuff that was turned over --
24 yes, sir. It's dated by the solicitor's office, as per
25 discovery, by number. I -- I believe, at one point in time,

1 when it was originally turned over, included some of my notes
2 that they hadn't gone through yet.

3 But basically everything in my file is stamped, by the by
4 -- by the 11th Circuit Solicitor's Office.

5 THE COURT: Okay. All right. All right, do you all
6 know if you've received that, Solicitor? Or they -- the
7 Solicitor's Office in the 11th Circuit might still have
8 something?

9 MR. GOWDY: One moment, please, Your Honor.

10 THE COURT: All right, sir.

11 (Off-the-Record Discussion)

12 MR. GOWDY: Your Honor, the -- the best I can do for the
13 Court is I am told that we have -- we made the request of the
14 the 11th Circuit that they give us everything that they had;
15 this Defendant has everything that we have received from any
16 source.

17 So, whether or not it existed and where it is now, I
18 cannot answer, of course, for them. I can tell you we made
19 inquiry of the 11th Circuit, and the 11th Circuit says they've
20 given us everything. And we've given everything to this
21 Defendant that we have.

22 THE COURT: Do you know, off the top of your head,
23 whether there are any investigative notes after January 15th,
24 1986 [sic] or do you need to check on that?

25 DETECTIVE AMICK: Just one second, Your Honor.

1 (Off-the-Record Discussion)

2 MR. GOWDY: One moment.

3 (Brief Pause)

4 MR. GOWDY: Your Honor, Detective Amick brought his
5 investigative file. Everything that is in that file has been
6 given to this Defendant except notes he took which concern
7 voir dire.

8 With his consent, his written consent, I have no
9 objection to turning that entire file over to you. I don't
10 want to turn it over to this Defendant because he already has
11 it all.

12 I mean, we will vouch that he has everything in this box
13 (indicating). If there is something that is in a -- a file
14 somewhere that Judge Westbrook had separated out, when he was
15 presiding over the case, I can't speak to that because I -- I
16 don't know.

17 That is Detective Amick's file (indicating). He tells me
18 that he's given us everything; we have given him everything
19 that's in that box (indicating).

20 (Brief Pause)

21 THE COURT: In other words, there -- there are no
22 investigative notes that you all have that have not been
23 already been turned over to him from him?

24 MR. GOWDY: No, sir.

25 THE COURT: All right. They say they've turned it all

1 over what they had, everything they have, including the
2 Detective's notes.

3 MR. STARNES: Yes, sir. Your Honor, I guess what I'm
4 asking, it's my understanding, from Detective Amick, there was
5 no investigation past January 15th? Is that -- is that what
6 Detective Amick is stating on the record?

7 THE COURT: I think what they're saying is that -- that
8 any notes that were made, as a result of any investigation,
9 have been turned over.

10 MR. STARNES: All right.

11 THE COURT: Is that what you're saying? I'm not ---

12 MR. GOWDY: Yes, sir.

13 THE COURT: I know they're not going so far as to say
14 there was no investigation. I think what he's saying is that
15 all the notes that were made, in the investigation, by
16 Detective Amick, had that he has, has been turned over in
17 discovery.

18 I'm not saying, you know, they couldn't have done -- he
19 hadn't completed other discovery and didn't have notes
20 regarding that; I'm saying the investigation and not made
21 notes concerning that investigation. I'm not saying that
22 because I don't have any way of knowing.

23 But I'm just saying, that's not what they're saying, that
24 they didn't -- there was no more investigation after January
25 15th. What they're saying is, all of Detective Amick's

1 investigative notes have been turned over, whether it be
2 before or after January 15th, made after January 15th.

3 But that's not as far as -- that does not go as far as to
4 say he conducted no other investigation after January 15th.

5 MR. STARNES: I got you. Your Honor, Mr. Gowdy, it
6 appears that I have all of this information from this file
7 that the State has. Does the State have any objection to me
8 looking at it?

9 THE COURT: Well, they do. They -- they said that --

10 MR. STARNES: It appears to me they have something to
11 hide, Your Honor. They're -- I mean ---

12 THE COURT: Well, I don't know their reasons why they
13 don't want to just turn over everything in -- in Detective
14 Amick's file. There may be something that he made personally
15 for trial or something that's not discoverable. Work product
16 for trial or -- or that sort of thing. So, I don't know.

17 MR. GOWDY: I'll tell you what I will be happy to do,
18 Judge, and that is to sit down with Detective Amick today, the
19 investigators' paralegal in my office and triple check that
20 this Defendant has received everything that he's entitled to.
21 I'll be happy to do that again today for him.

22 THE COURT: All right, sir. All right, sir. And, if
23 you will, make him aware and the Court aware after you've done
24 that.

25 (Brief Pause)

1 MR. STARNES: Two more matters, Your Honor. The jury
2 questionnaire that we went over, at our last hearing that we
3 had, I submitted an email to the Court and to Mr. Gowdy.

4 There were some additional questions that I requested be
5 asked when -- when the jury questionnaire was sent out. And
6 I've communicated this to Mr. Gowdy and the Court.

7 Does the State have any objections to me asking them
8 these additional questions -- questions during the voir dire
9 process?

10 MR. GOWDY: Your Honor, I can't tell him whether or not
11 I'm going to object to a question he asks during voir dire
12 until I hear it. I mean ---

13 THE COURT: I don't think -- I don't think they have to
14 commit themselves to that now, nor do you, as far as any
15 questions they might want to ask.

16 But it is something that we maybe can discuss before we
17 get started with voir dire to see exactly what we -- we can
18 agree to or not before we actually start voir dire any -- you
19 individually voir dire the prospective jurors.

20 We can discuss that then. But he's not prepared, at this
21 point, to say that he has no objection to any. I doubt he
22 ever remembers what they are at this point.

23 But we can discuss that before we actually voir dire any
24 jurors to see. We can go over some of those and see if
25 everybody is in agreement or not in agreement. And, then, the

1 Court will have to rule on them if you're not in agreement.

2 Does that answer your question?

3 MR. STARNES: Yes, pretty much.

4 THE COURT: We -- you still can -- can -- we can still
5 broach that, but we can do that when we get closer to trial or
6 at -- just before trial before we start voir dire.

7 MR. STARNES: Yes, sir.

8 THE COURT: All right.

9 MR. STARNES: Your Honor, I'll provide Mr. Gowdy today
10 again -- I don't know if he's got a copy; it's Court's Exhibit
11 Number 4, and this is a video statement that Gwen Ott
12 (phonetic) had made to Detective Farr (phonetic) and Nair
13 (phonetic).

14 And inside of this I have a proposed redaction on
15 material that is contained in this transcript that's not
16 admissible and has nothing to do with my charges or anything.

17 I would ask Mr. Gowdy to look over this and to respond to
18 it, if he would, please, by e -- by email.

19 MR. GOWDY: Your Honor, I already have, in an email that
20 I sent to Mr. Starnes on Monday. I've already seen -- I've
21 already been through it.

22 I can't agree to any redactions, at this point, because
23 the exhibit itself may or may not be admissible. It -- it --
24 again, the difficulty with dealing with somebody, other than
25 Mr. Delgado, is that I don't know whether or not she is going

1 to testify consistently to her statement, inconsistently with
2 her statement.

3 This would not be admissible as her prior consistent
4 statement. It may or may not be admissible as a prior
5 inconsistent statement. So, for me to go through and decide
6 what I'm going to object to and what I'm not, she has to
7 testify first.

8 THE COURT: Okay.

9 MR. GOWDY: Once she testifies, then, we know whether
10 it's inconsistent, whether it's relevant, whether it's
11 hearsay. I did go through it, and I said to him, just to put
12 him on notice, some of the things he wants redacted we think
13 are relevant.

14 Some of the things he doesn't want redacted, we want --
15 we do want redacted such as Jody Fogle's criminal history as
16 reported by a third party. That's clearly hearsay.

17 But we can't even have that conversation until the
18 witness testifies.

19 THE COURT: All right, sir. Do you understand, Mr.
20 Starnes?

21 MR. STARNES: I understand.

22 THE COURT: And you may not completely understand, but
23 you understand we're not going to deal with that until we get
24 to trial?

25 MR. STARNES: I understand. We can deal with that at

1 trial and that will be fine, Your Honor.

2 (Brief Pause)

3 MR. STARNES: Your Honor, I believe that's it. I just
4 -- if you'll let me know when we're going to have this
5 hearing, so, I can contact the experts.

6 THE COURT: We can talk about that now. Of course, if
7 you want to think about it a little bit first, Solicitor,
8 or ---

9 MR. COLER: Yes, sir.

10 THE COURT: --- we're scheduled that week, we could --
11 we could probably -- the best time to do it may be on Friday
12 of that week, so, that we can free up as much as the rest of
13 the week for regular court schedule.

14 MR. GOWDY: Yes, sir. This is a hearing on the
15 admissibility or the authenticity of the -- the handwritten
16 letters to the inmate in Lexington County?

17 MR. STARNES: That's correct.

18 MR. GOWDY: Well, that was actually a question. Is it
19 the admissibility or the authenticity of the letters?

20 MR. STARNES: Both.

21 MR. GOWDY: So, you are denying authorship of those
22 letters?

23 MR. STARNES: What letters are you talking about?

24 MR. GOWDY: The ones that we have that you wrote to
25 Teresa Ott (phonetic).

1 MR. STARNES: You'll have to -

2 MR. GOWDY: The ones that have been produced to you in
3 discovery.

4 MR. STARNES: Sure. If those are my handwriting, yeah.

5 MR. GOWDY: Well, I guess that's my question. Is -- is
6 he contesting that -- that those letters are not authentic;
7 that they have been doctored? That police engaged in
8 misconduct and wrote those letters? Or is he saying they ---

9 THE COURT: I wrote the letters, but they're not
10 admissible.

11 MR. GOWDY: But they're not admissible because of police
12 misconduct or they were planted or whatever Sixth Amendment
13 violation he alleges. I need to know what to prepare for if
14 we're going to have a hearing.

15 MR. STARNES: As long as he shows me exactly what
16 letters he's talking about, or identifies them, I don't have a
17 problem with that.

18 THE COURT: Authenticity. Your question is about
19 admissibility?

20 MR. STARNES: Yes, sir.

21 THE COURT: All right. And particularly what -- what do
22 you object as to the admissibility or the ground you say
23 they're not admissible?

24 MR. STARNES: Under Henry and Messiah, two United States
25 Supreme Court cases.

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1 THE COURT: Which is what?

2 MR. STARNES: Violates my Sixth Amendment, dealing with
3 jailhouse snitches. I'm not prepared to make that argument
4 today, Your Honor, because she -- the video statement and the
5 transcript is going to have to come in, if she's not going to
6 testify, if they're going to agree that the statements come in
7 without her testimony, then, we don't need her.

8 We don't need her to come in and testify, if they're
9 going to agree with that. But they may not like what they see
10 because, when they see this video, and they read this
11 transcript, they're not going to like it.

12 And they're going to want to bring her in or send
13 Detective Amick down there to rehabilitate her and promise
14 her, you know, time stuff or whatever.

15 MR. GOWDY: Your Honor, it's really not going to matter
16 whether the State likes it or not. The Court has to make a
17 decision on whether or not someone is credible or not.

18 And I don't know that the Court can make that
19 determination off a video tape. If she is going to testify
20 she's an agent of law -- of Lexington County Law Enforcement,
21 and Lexington County Law enforcement is going to say she's
22 not, then, that is a credibility issue that the Court -- it's
23 got nothing to do with me; the Court has to resolve it.

24 And I don't know how the Court can do that off of a video
25 tape. I -- I would ---

1 THE COURT: I don't either. I think she would have to
2 be personally present in order to -- to do that. And I also
3 think she has to be subject to cross examination on -- on any
4 information she's going to provide. I don't know what's on
5 the tape.

6 MR. GOWDY: And I don't either.

7 MR. STARNES: I'm going to make a copy of it, Your
8 Honor, this weekend, if the detention center will allow me
9 access to the DVD machine. I'll make them a copy and I'll
10 send it to them Federal Express Next Day Air.

11 THE COURT: Okay. They'll look at it. I -- this is
12 something that we're probably going to have to address and, if
13 it's all right with you, we can schedule this to begin say at
14 from ---.

15 MADAM CLERK: Friday?

16 THE COURT: Okay. Is that -- yeah, this would be
17 Friday, the last Friday before trial. It'd be Friday, October
18 the 2nd ---

19 MADAM CLERK: November the 2nd.

20 THE COURT: November the 2nd, I beg your pardon, November
21 2nd. And we -- we can start around ten o'clock (10:00) to
22 allow him to be brought up that morning.

23 MR. GOWDY: We have not -- we have not published a
24 docket for that week yet. If the Court needs more time, then,
25 I will publish a docket that ends your duties on Wednesday;

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1 whatever you decide.

2 THE COURT: Well, I just want to try to get as much done
3 as we can that week and still have time for this. I just --
4 if -- if we thought -- maybe we ought just schedule it for
5 Thursday and, so, we can make sure we have a full day.

6 MR. GOWDY: Yes, sir.

7 THE COURT: So, that would be November the 1st. And we
8 can start about ten o'clock (10:00) ---

9 MR. GOWDY: Yes, sir.

10 THE COURT: --- and that way he can be transported up
11 that morning. Do they usually transport in the morning or at
12 night; do you know? Does anybody know?

13 DEPUTY: Either way, Judge.

14 THE COURT: Okay. Well, I mean, just to make it easier.
15 If he -- if ten o'clock (10:00) will allow them to transport
16 him up that morning, fine. If they're going to transfer him
17 -- transfer him, up the night before, we can start about 9:15
18 or so.

19 MR. GOWDY: Okay.

20 MR. STARNES: Your Honor, also, during this hearing,
21 there are witnesses coming from the area of Lexington that's
22 going to have to testify, so, they're going to have to travel.

23 THE COURT: All right. Why don't we just start it at
24 ten (10:00). That will give them time to get here.

25 And they can either bring Mr. Starnes that morning or the

1 night before, whatever is their policy; whatever they do.

2 All right. Now, is there anything else we need to address?

3 MR. STARNES: No, sir. I have an ex parte matter.

4 THE COURT: All right. I'll -- I'll talk to you about
5 that then. And I've -- I've gotten -- I think I had eleven
6 (11) emails from you, Mr. Starnes.

7 Some of them covered the same subject, but in any event,
8 I think we've addressed all of those now, right?

9 MR. STARNES: Yes, sir, I believe so, Your Honor.

10 THE COURT: All right. Is there anything the State
11 needs to be addressed at this point?

12 MR. GOWDY: No, sir, Your Honor. On the issue, of -- of
13 the authenticity of the letters, we think we have enough known
14 handwriting samples from Mr. Starnes to allow SLED to compare
15 the letters. If we do not, then, at some point, I'll -- I'll
16 contact Mr. Delgado and Mr. Starnes and ask him to write a
17 handwriting sample.

18 I don't think we're going to be there and that's
19 certainly not going to delay anything. I think we can do it
20 with what we've got now.

21 THE COURT: All right, sir.

22 (Brief Pause)

23 THE COURT: All right. If there's nothing else, then, I
24 think that -- that will conclude the hearing.

25 Now, there's a matter he wishes to take up ex parte, so,

1 we can do that out of the Solicitor's presence.

2 MR. GOWDY: Thank you, Judge.

3 THE COURT: Thank you all. I appreciate your
4 cooperation and help on this.

5 MR. GOWDY: Thank you, Judge.

6 MR. COLER: Judge, we have the video tapes. We're
7 serving him with the video tapes.

8 THE COURT: Let -- let him sign for them, please, sir.

9 (Brief pause while Mr. Starnes signs documents.)

10 (Off-the-Record Discussion)

11 MR. COLER: Your Honor, Mr. Starnes has been given four
12 of the video taped interviews he's -- he's asked for. They
13 are Karen Pratt's interview, Jody Fogle's interview, and Leroy
14 Jones' interview.

15 He's asked for two additional video taped interviews of
16 June Kiser (phonetic) and Roger Cooke (phonetic).

17 At this point, it's my knowledge, he's not been given to
18 us. The Lexington County's Sheriff's Office has not located
19 those as of now and are diligently searching and have
20 diligently searched for them.

21 If, at some point, they find them -- find those tapes,
22 we'll certainly turn them over. But, at this point, to my
23 knowledge, they just don't exist any more.

24 THE COURT: All right, sir.

25 MR. COLER: We'll continue to look for them.

1 THE COURT: All right. The record will so reflect.

2 MR. COLER: Thank you.

3 MR. STARNES: Thank you, Your Honor.

4 (Brief Pause)

5 MR. COLER: Thank you, Your Honor.

6 THE COURT: Yes, sir. Thank you, Solicitor.

7 (Off-the-Record Comments)

8 (Parties from the solicitor's office and other

9 representatives from the State exited the courtroom at 11:09
10 a.m.)

11 THE COURT: Okay. Mr. Starnes?

12 MR. STARNES: Your Honor, I sent Your Honor an email.

13 It was a -- one was a transfer order to transfer money from
14 Access Multimedia (phonetic).

15 THE COURT: Yeah, did I -- did I not send those to you?

16 MR. STARNES: I'm not -- I never received anything, Your
17 Honor.

18 THE COURT: Let me see them.

19 MR. STARNES: I sent the email on the sixth (6th) of
20 September and I never received anything.

21 I have another copy of the order here.

22 THE COURT: All right. If you'll hand it up, I'll sign
23 it.

24 MR. STARNES: Yes, sir.

25 THE COURT: I thought I had signed that, but maybe ---

1 MR. STARNES: Can we just hand -- I got have some more
2 also, Your Honor.

3 THE COURT: All right. Just -- just -- just hand them
4 all up, and I'll -- and, then, you go over them or go over
5 them now and then, hand them up.

6 MR. STARNES: Because I've only got one copy. The
7 second one was the additional funding for the -- for the DNA
8 testing. I don't know -- if LabCorp can't extract a cell from
9 the clothing, then, they're not -- they're -- they're going to
10 try to do it from one piece of clothing.

11 If they don't, then, there's no need to do any of the
12 testing. So, we'll only be charged for -- for doing one test
13 rather than doing all of them.

14 So, if they can't do it, this money, I will not need it.
15 But I would like to have it on hand in case ---

16 THE COURT: All right, sir.

17 MR. STARNES: --- it is needed. That is for the DNA
18 testing.

19 Also, Your Honor, I have one more order. I did the
20 motion order all together in -- in one document.

21 During the original trial, we had to bring a witness from
22 Pennsylvania to testify. She was a material witness, observed
23 the alleged victims' character, demeanor, activities.

24 She was one of only four defense witnesses I think Mr.
25 Sally (phonetic) called. She resides in Periopolis,

1 Pennsylvania. And I would ask the Court for funding for her
2 air travel.

3 I called the Comfort Inn in Lexington, which is the
4 closest motel to the Lexington Courthouse. And they're
5 seventy-nine dollars (\$79) a night. That was the cheapest
6 motel I could find.

7 THE COURT: I don't have a problem with that. She can't
8 drive down?

9 MR. STARNES: No, sir. But I didn't think it was going
10 to cost eighty dollars (\$80) for a motel room. It was like
11 twenty-nine dollars (\$29) back in '96.

12 THE COURT: Well, I started to say, Mr. Starnes, you
13 haven't tried to stay at a motel lately.

14 MR. STARNES: No, sir, just the Lexington County ---

15 THE COURT: They've gone up. They've gone up.

16 MR. STARNES: And, Your Honor, those are the three (3)
17 orders. Also, Your Honor, I have a proposed petition. I have
18 not been able to get a notary inside of the detention center.

19 My mother doesn't have her notary seal. She's a notary,
20 but I believe this has to have a seal on it because it has to
21 go out of state.

22 Originally, during the first trial, we sent a petition in
23 and Judge Westbrook, his certificate to certify to allow her
24 appearance from Pennsylvania, and there was an order that I
25 proposed, for a judge in Pennsylvania, to sign that would

1 allow her to come down here.

2 I just -- basically, what I did was I took the documents,
3 from the original trial, the petition and certificate, the ex
4 parte money order for travel and the order ---

5 THE COURT: Well, let me -- let me see what you got. If
6 you can, hand that up.

7 (Documents handed up to the Court.)

8 (Brief pause while Court reviews documents.)

9 MR. STARNES: The funding orders are in the green file,
10 Your Honor.

11 (Off-the-Record discussion between Judge Alford and his
12 law clerk.)

13 (Brief pause while copies are being made.)

14 THE COURT: Well, Mr. Starnes, we have new indictment
15 numbers that were served on you at the last hearing. Have you
16 got copies of those indictments served on you with the
17 indictment numbers?

18 MR. STARNES: Yes, sir, I do.

19 THE COURT: So, you would need to start putting those in
20 these pleadings. You got warrant numbers, but it really
21 should be the indictment numbers.

22 MR. STARNES: You want the indictment number in the
23 caption?

24 THE COURT: Right.

25 MR. STARNES: Right.

1 THE COURT: Exactly. So, it will be easier to keep up
2 with. And we use the new indictment numbers. See, you've
3 been re-indicted, and so, it's the new indictment numbers that
4 count.

5 MR. STARNES: Yes, sir. I believe it's the same
6 indictment numbers, it's just an addendum ---

7 THE COURT: I don't think so.

8 MR. STARNES: 96-GS-32-3339?

9 LAW CLERK: They dropped the "A" on it I believe.

10 MR. STARNES: I'm sorry?

11 LAW CLERK: They dropped the "A" on it.

12 MR. STARNES: I didn't ever even know there was an "A"
13 on it.

14 THE COURT: It still has the '96?

15 LAW CLERK: Uh-huh (affirmative). They took out an "A."

16 MR. STARNES: Maybe I missed it, but I thought it was
17 the same indictment number, 96-GS-32-3339. And that was three
18 counts.

19 LAW CLERK: 1996-GS-32-3339.

20 THE COURT: All right. I'm going to need to talk with
21 the Solicitor about that. We'll -- we'll have to come back on
22 the record for that.

23 LAW CLERK: You want me to go get him?

24 THE COURT: Yeah, let him know I'm going to need to see
25 him.

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1 (Judge Alford's law clerk steps out to summon a
2 solicitor.)

3 THE COURT: All right. What's -- what's next?

4 MR. STARNES: That's everything, Your Honor, just --
5 just the funding --

6 THE COURT: Is that the only order you needed signed?

7 MR. STARNES: Yes, sir. And there's ---

8 THE COURT: Are there several in here?

9 MR. STARNES: There's three (3) I believe. One was the
10 transport order.

11 THE COURT: Okay.

12 MR. STARNES: For media tapes and the correctional
13 billing for the phone calls --

14 THE COURT: Okay.

15 MR. STARNES: --- for two hundred and fifty (\$250). And
16 the other one was the travel order for Claudette Harper
17 (phonetic).

18 THE COURT: I got that. I signed that. Okay.

19 MR. STARNES: The other one was for the DNA testings. I
20 believe there may -- I'm not sure, Your Honor, but I believe
21 there is enough for the toxicology.

22 I know it only takes seventy-two (72) hours -- 72 hours
23 to do the toxicology testing, but I believe there should be
24 sufficient funds in the toxicology account to -- to cover
25 that. I'm not sure.

1 THE COURT: All right.

2 MR. STARNES: If that becomes an issue, I will -- I will
3 send Your Honor an email or communicate with you in some way.

4 The documents, for the petition to have Ms. Harper come
5 testify, the petition and the certificate, does that look
6 sufficient to the Court, Your Honor?

7 THE COURT: Yes, sir. Now, I -- let me say, if she is
8 going to come voluntarily, that's fine.

9 MR. STARNES: Yes, sir.

10 THE COURT: If she's not coming voluntarily, then, you
11 have to go through the Court up there to get her ordered to
12 come down here.

13 And that's a procedure your attorney can acquaint you
14 with that, but there's a procedure you have to go through for
15 that. Now, if she's willing to come voluntarily, you don't
16 have to go through that.

17 MR. STARNES: Yes, sir.

18 THE COURT: If she's not, then, you're going to have to
19 probably get some documents for me to sign and send to a judge
20 up there and let the judge bring her in and determine that
21 she's a material witness and order her to come if she doesn't
22 want to come on her own.

23 If she's willing to come on her own, you don't need to do
24 that. But ---

25 MR. STARNES: The petition -- I'm sorry. The petition

1 and certificate, is that sufficient because there's a ---

2 THE COURT: No, not -- I don't think so, not what you've
3 given me. Let me look back over it.

4 (Brief pause while Court examines documents.)

5 MR. STARNES: That's what Mr. Sally did back in '96.

6 THE COURT: All right. Let's just ---

7 MR. STARNES: He did the certificate and then, they sent
8 it to a judge in Westmoreland County and he signed the order.

9 THE COURT: Let's see, I think I gave it to my clerk.
10 Let's wait till she gets -- well, wait a minute. Maybe I
11 hadn't gotten to that one yet.

12 MR. STARNES: Okay.

13 (Brief pause while Court reviews documents.)

14 THE COURT: Well, I beg your pardon, I hadn't gotten to
15 that one yet. Wait a minute, and let me look and see what
16 you've got.

17 MR. STARNES: Yes, sir.

18 (Brief pause while Court reads document.)

19 THE COURT: All right. It's your understanding that
20 she will consent to this? Is that your understanding?

21 MR. STARNES: Yes, sir.

22 THE COURT: If the judge orders it?

23 MR. STARNES: Yes, sir.

24 THE COURT: Well, I think, then, you will have to send
25 this to the judge up there. I was ---

1 MR. STARNES: I -- I have spoke with her. She'll --
2 she'll consent to it. She just -- she just doesn't have the
3 money to travel down here. And her husband is disabled.

4 (Brief Pause)

5 THE COURT: Now, I don't -- I don't think she'll be
6 required to be here from November the 5th till November the
7 23rd.

8 MR. STARNES: No, sir.

9 THE COURT: Which you've got in your petition. So --
10 so, why don't I -- and that needs to be changed really.

11 MR. STARNES: Well, in the certificate, I -- I believe
12 it's only five (5) days.

13 THE COURT: Let's see. The certificate is from November
14 the 5th to November the 23rd, which I'm not going to authorize
15 that.

16 MR. STARNES: Okay.

17 THE COURT: She won't need to be here, so -- that length
18 of time. So, she really ---

19 MR. STARNES: Actually, three (3) days probably at the
20 most.

21 THE COURT: Well, I'm -- what I'm going to do is put
22 here some time between November the 5th and November 23.

23 MR. STARNES: Yes, sir.

24

25 (Brief Pause)

1 THE COURT: All right. I -- I have signed the
2 certificate. And you need to complete the rest of this and
3 send it up there.

4 Now, if she consents to it, all she's got to do is go by
5 the judge's office and sign it. And they won't -- will not
6 have to have a hearing if she consents. If she does not
7 consent, they would have to have a hearing up there. So,
8 okay.

9 Let me see, let me make copies of all of this if you
10 don't mind. I'll get my clerk to make copies, so, we'll have
11 it in our file.

12 MR. STARNES: All right. Your Honor, as far as the
13 subpoenas, do I need to get my investigator to serve the
14 subpoenas or a process server, or -- most -- most of the
15 witnesses that I'm subpoenaing are witnesses that have
16 testified already, so, it's not going to be a secret to the
17 sheriff's office or the solicitor's office.

18 THE COURT: Well, you just get the clerk to issue the
19 subpoenas and -- and you sign them. And the clerk has to --
20 to issue them. You can't issue them yourself. The clerk has
21 to issue them.

22 MR. STARNES: Right.

23 THE COURT: So, get the clerk to issue them and you sign
24 them and, then, send them to wherever they supposed to be
25 served to the -- to the agency that has to serve them, or you

1 can do it with a -- a private process server.

2 I think you can do that as well, or you can use the
3 sheriff's department or police department, whatever -- the
4 sheriff's department.

5 MR. STARNES: I believe the sheriff's office can do it,
6 so, I don't have to find somebody independently ---

7 THE COURT: Well, you send them whatever the charge is.
8 There's probably a charge for serving them, whatever it is.
9 And I'm not -- I'm not familiar with that. You have to check
10 with the -- with the agency that's going to serve them and
11 see what the charge is.

12 (Off-the-Record Comments)

13 THE COURT: All we're going to need on that is we just
14 need to keep one copy. He gets the original of each of these.

15 (Continued off-the-record discussion regarding making
16 copies.)

17 (Mr. Coler returned to the courtroom.)

18 THE COURT: Let me ask, Solicitor, how -- and the reason
19 I asked you to come back in is, the indictment number. How is
20 it that the indictment has the same indictment number?

21 MR. COLER: I believe when we re-submitted it, we simply
22 use the exact same number. I don't think there was any ---

23 THE COURT: Well, wasn't -- wasn't he indicted in two
24 thousand, six or seven?

25 MR. COLER: Yes, sir, and the clerk's office from

1 Lexington County allowed us to simply use the same -- the same
2 number. I mean, that is just a vehicle to -- to bring this
3 case into court.

4 THE COURT: Well, I understand, but -- all right.

5 MR. COLER: And it ---

6 THE COURT: I guess the indictment has the date that he
7 was actually indicted and the foreperson's signature, though,
8 correct, on the outside?

9 MR. COLER: Yes, sir. Automatically, there's a true
10 bill signed by the foreman of the grand jury and dated the day
11 that the foreperson and his grand jurors ---

12 THE COURT: Okay.

13 MR. COLER: --- true billed the indictment.

14 THE COURT: Well, I just had some concerns about whether
15 it needed to have a new number or not. But I guess not as
16 long as they signed it and indicted him.

17 MR. COLER: Yeah. I can't think of a reason, Your
18 Honor, we couldn't re-use it. It was simply ---

19 THE COURT: Okay.

20 MR. COLER: ---- for simplicity.

21 THE COURT: All right. Well, I understand. Well, as
22 long as the -- I hadn't thought about the indictment having
23 the date that he was actually re-indicted, but it has that.
24 So, I think that takes care of it.

25 MR. COLER: Yes, sir.

1 THE COURT: All right. That's the question I had. I
2 appreciate you coming back.

3 MR. COLER: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (Mr. Coler exits the courtroom.)

6 THE COURT: All right. Anything else, Mr. Starnes?

7 MR. STARNES: No, sir, I believe that's it.

8 THE COURT: All right. Well, we covered a lot of ground
9 today. Hopefully, we'll be, in a pretty good position, at --
10 at this point to go to trial.

11 Just remember, you're your own attorney, so, whatever an
12 attorney would normally do as far as getting witnesses and
13 that are concerned, that's your responsibility; it's not
14 theirs.

15 And, so, if you -- you have a question, I'm sure they
16 would be glad to answer it for you, but that -- all of that is
17 your responsibility. So, if you get to trial and you don't
18 have what you need, you know who is to blame: Mr. Starnes.

19 MR. STARNES: Yes, sir.

20 THE COURT: Okay.

21 MR. STARNES: I believe I'll have everything. We'll
22 know ---

23 THE COURT: All right. All right.

24 MR. STARNES: I appreciate it, Your Honor.

25 THE COURT: Yes, sir. She's going to make copies. As

1 soon as she makes copies, we'll give them back to you. I just
2 like to keep a copy of everything in my file. And, of course,
3 the -- the solicitor does not get a copy of these ex parte
4 orders, obviously, but ---

5 MR. STARNES: Yes, sir. Your Honor, may I ask who the
6 court reporter is because I need to keep a record of this.

7 THE COURT: Please, ma'am, give him your name. Do you
8 have a card?

9 COURT REPORTER: No. Shakes head negatively.

10 MR. STARNES: Do you have a card?

11 THE COURT: Oh, you don't have a card with you?

12 COURT REPORTER: I don't have a card with me. It's Pam,
13 P-a-m, Pam Faucette, F-a-u----

14 MR. STARNES: It's on the website?

15 COURT REPORTER: It is.

16 MR. STARNES: Thank you. Okay. Thank you.

17 (Pause while copies are being made.)

18 (Documents handed back to Mr. Starnes.)

19 (Off-the-Record Discussion)

20 (Whereupon, the proceeding concluded at 12:00 noon.)
21
22
23
24
25

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 72, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

February 29, 2008



Pamela Faucette
Official Court Reporter
Seventh Judicial Circuit

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

WITNESSES

LCSD, AMICK

Assigned by court on
Aug 21, 2007
By Judge Alford

ARREST WARRANT NUMBER

Direct Indictment-Count Three

E-682636

TRUE BILL
ACTION OF GRAND JURY

Ch 2 Kp
Foreman

Foreperson of Grand Jury

Date: 4-30-07

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 96-GS-32-3339

AMENDED INDICTMENT

The State of South Carolina

County of Lexington

Donald v. Myers, Solicitor

COURT OF GENERAL SESSIONS

APRIL 30, 2007

TERM

THE STATE

v

Norman E. Starnes

Indictment for
COUNT ONE- MURDER
COUNT TWO- MURDER
COUNT THREE-POSSESSION OR DISPLAY OF
A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME
SC Code 16-03-0010
CDR Code 116
Class FEL-EXM

A TRUE COPY

Don
Lex. Co. C.C.G.P. G.S. & F.C.

4219

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT

At a Court of General Sessions, convened on APRIL 30, 2007, the

Grand Jurors of Lexington County present upon their oath:

COUNT ONE- MURDER

That Norman Starnes did in Lexington County on or about January 8, 1996, feloniously, willfully, and with malice aforethought, kill William C. Welborn by means of shooting the victim in the chest and/or neck resulting in perforation of the heart, aorta, and/or left lung causing massive bleeding and that the said William C. Welborn died as a proximate result thereof in Lexington County on or about January 8, 1996, all in violation of §16-3-0010, *The South Carolina Code of Laws*, (1976, as amended).

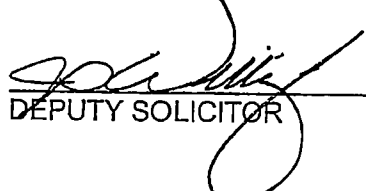
COUNT TWO- MURDER

That Norman Starnes did in Lexington County on or about January 8, 1996, feloniously, willfully, and with malice aforethought, kill Jarred Lee Champlin by means of shooting the victim in the back resulting in perforation of the left lung causing massive bleeding and that the said Jarred Lee Champlin died as a proximate result thereof in Lexington County on or about January 8, 1996, all in violation of §16-3-0010, *The South Carolina Code of Laws*, (1976, as amended).

**COUNT THREE- POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That Norman Starnes did in Lexington County on or about January 8, 1996, willfully and unlawfully have in his possession, or did visibly display, a firearm, during the commission of a violent crime or crimes as defined in §16-1-60, to wit: the murder of William C. Wellborn and/or the murder of Jarred Lee Champlin, all in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

FILED

COPY 28

2007 NOV 14 A 9:01 VOLUNTARY MANSLAUGHTER DEFINED

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

VOLUNTARY MANSLAUGHTER IS
DEFINED AS THE UNLAWFUL
KILLING OF ANOTHER WITHOUT MALICE.

S.C. Code Ann. 16-3-50 (Supp 2000)

STATE V. KNOTEN, 555 S.E.2d 391 (2001)

Norman Stine

11-13-2007

PENGAD 1-800-631-6859	COURT'S
	EXHIBIT NO. <u>42</u>
	IDENTIFICATION/EVIDENCE
	DKT. # <u>mw</u>
	DATE: <u>11-14-07</u>

FILED

OPY

29

2007 NOV 14 AM 9:01 OF PASSION AND PROVOCATION

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Voluntary manslaughter is the
unlawful killing of a human
being in sudden heat of passion
upon sufficient legal provocation.
Sudden heat of passion upon
sufficient legal provocation
that mitigates a felonious
killing to manslaughter must
be such as would naturally
disturb the sway of reason,
and render the mind of an
ordinary person incapable of
cool reflection, and produce
what, according to human
experience, may be called an
uncontrollable impulse to do
violence.

STATE V. LOWRY, 434 S.E.2d 272 (1993)

Verma Stump

11-13-2007

COURT'S
EXHIBIT NO. <u>43</u>
IDENTIFICATION/EVIDENCE
DKT. # <u>MLW</u>
DATE: <u>11-14-07</u>

4222

FILED

COPY

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2007 NOV 14 A 9:01 PROVOCATION

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

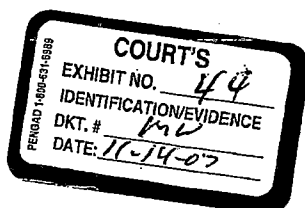
PROVOCATION CAN ARISE OUT OF
PHYSICAL AGGRESSION UPON ANOTHER
PERSON, VIOLENCE TO A RELATIVE
OR FRIEND IN THE PRESENCE OF
THE ACCUSED MAY CONSTITUTE
ADEQUATE PROVOCATION.

STATE V. GAILMAN, 60 S.E. 682 (1908)

STATE V. SMITH, 403 S.E.2d 162 (CT. APP. FLA.)

Norman Stinson

11-13-2007



4223

FILED

COPY

32

2007 NOV 14 A 9 01

MANSLAUGHTER / MALICE

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

When one is found to have
wrongfully taken the life of another
the element of malice becomes
important in determining the degree
of unlawfulness. If the unlawful
killing is without malice, the
offense is reduced to manslaughter,
if the killing is in self defense
there is no crime.

STATE V. GASKINS, 320 S.E.2d 132 (1985)

Summ Steno

11-13-2007

FENGAD 1-800-831-5889	COURT'S
	EXHIBIT NO. <u>46</u>
	IDENTIFICATION/EVIDENCE
	DKT. # <u>MW</u> DATE: <u>11-14-07</u>

FILED

COPY 33

2007 NOV 14 10:01 AM
WORDS WITH HOSTILE ACTS

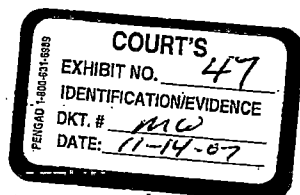
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

WHERE DEATH IS CAUSED BY
THE USE OF A DEADLY WEAPON,
WORDS ALONE, HOWEVER
OPPROBRIOUS, ARE NOT SUFFICIENT
TO CONSTITUTE A LEGAL
PROVOCATION. HOWEVER, WORDS
ACCOMPANIED BY HOSTILE ACTS
MAY, ACCORDING TO CIRCUMSTANCES,
NOT ONLY REDUCE A KILLING
FROM MURDER TO MANSLAUGHTER,
BUT MAY ESTABLISH THE PLEA
OF SELF-DEFENSE

STATE V. BYRD, 474 SE.2d 430 (1996)

Ammon Strick

11-13-2007



4225

FILED

COPY

34

2007 NOV 14 A 9:04 SUFFICIENT LEGAL PROVOCATION

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

CHARGE YOU THAT
SUFFICIENT LEGAL PROVOCATION IS
ALSO DEFINED AS AN OVERT,
THREATENING ACT OR PHYSICAL
ENCOUNTER BY THE DECEASED.

STATE V. SMITH, 446 S.E.2d 411 (1994)

Womans State

11-13-2007

PERIOD 1-400-011-000	COURT'S
	EXHIBIT NO. <u>48</u>
	IDENTIFICATION/EVIDENCE
	DKT. # <u>102 W</u>
	DATE: <u>11-14-07</u>

FILED

COPY 35

2007 NOV 14 A 9:01 PROVOCATION / SELF-DEFENSE

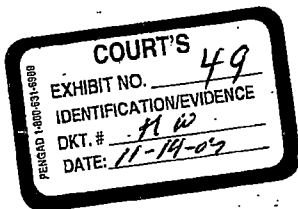
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

DEFENDANT HAS THE RIGHT
TO RELY UPON HIS PLEA OF
SELF-DEFENSE, IN ADDITION,
HE HAS THE RIGHT TO RELY
UPON PROVOCATION TO REDUCE THE
KILLING FROM MURDER TO
MANSLAUGHTER.

STATE V. RISH, 88 S.E. 531 (1916)

Norman Stines

11-13-2007



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
STATE,)
PLAINTIFF)
V)
NORMAN STARNES,)
DEFENDANT.)

COURT OF GENERAL SESSIONS

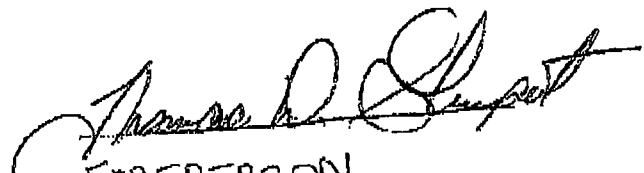
96-GS-32-3339

VERDICT FORM
WILLIAM C. WELBORN

☒ WE, THE JURY, FIND THE DEFENDANT GUILTY OF MURDER.

☐ WE, THE JURY, FIND THE DEFENDANT NOT GUILTY.

November 14, 2007


FOREPERSON

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
STATE,)
PLAINTIFF)
V)
NORMAN STARNES,)
DEFENDANT.)

COURT OF GENERAL SESSIONS

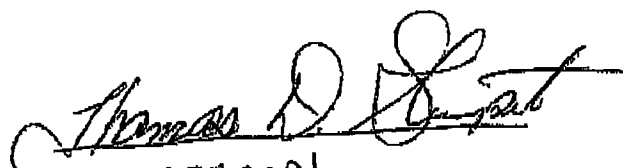
96-GS-32-3339

VERDICT FORM
JARRED LEE CHAMPLIN

☒ WE, THE JURY, FIND THE DEFENDANT GUILTY OF MURDER.

☐ WE, THE JURY, FIND THE DEFENDANT NOT GUILTY.

NOVEMBER 14, 2007


FOREPERSON

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
STATE,)
PLAINTIFF)
V)
NORMAN STARNES,)
DEFENDANT.)

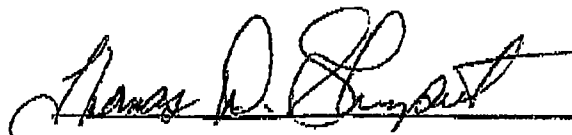
COURT OF GENERAL SESSIONS

96-GS-32-3339

VERDICT FORM

☒ WE, THE JURY, FIND THE DEFENDANT GUILTY OF POSSESSION OF A
FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

☐ WE, THE JURY, FIND THE DEFENDANT NOT GUILTY.


FOREPERSON

NOVEMBER 14, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	96-GS-32-3339
	)	
STATE,	)	
PLAINTIFF	)	
	)	STATUTORY INSTRUCTIONS
V.	)	
	)	
NORMAN STARNES,	)	
DEFENDANT.	)	

In determining whether to recommend that the Defendant, Norman Starnes, be sentenced by the Court to Life Imprisonment or to Death, you may consider the following STATUTORY AGGRAVATING CIRCUMSTANCES:

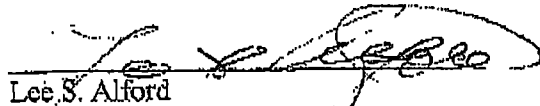
1. Robbery while armed with a deadly weapon
2. Larceny with use of a deadly weapon
3. Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct

You may also consider the following STATUTORY MITIGATING CIRCUMSTANCES:

1. The murder was committed while the defendant was under the influence of mental or emotional disturbance.
2. The defendant has no significant history of prior criminal conviction involving the use of violence against another person.
3. The victim was a participant in the defendant's conduct or consented to the act.
4. The defendant was provoked by the victim into committing murder.

You may also consider any NON-STATUTORY mitigating circumstances supported by the testimony and evidence, including:

1. The defendant's adaptability to prison life.


Lee S. Alford

Presiding Judge of the 11th Judicial Circuit

Lexington, South Carolina

November 17, 2007.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	96-GS-32-3339
STATE,	)	
PLAINTIFF	)	STATUTORY AGGRAVATING
	)	CIRCUMSTANCES
V.	)	
	)	WILLIAM C. WELBORN
NORMAN STARNES,	)	
DEFENDANT.	)	

We, the jury, in the above-entitled case, find that the State has proven beyond a reasonable doubt the existence of the following statutory aggravating circumstances:

TWO OR MORE PERSONS WERE MURDERED BY THE
DEFENDANT
ROBBERY WHILE ARMED WITH A DEADLY
WEAPON
LARCENY WITH USE OF A DEADLY WEAPON

David J. Sargent
FOREPERSON

Paula H. Mallory
JUROR

James R. Sargent
JUROR

Diana E. Sargent

JUROR

Laura B. Alexander

JUROR

Warr S. Ph. S.

JUROR

Daniel O. Wallace

JUROR

Murray S. Jeffers

JUROR

V. S. Mc Coy

JUROR

Diana F. Turbett

JUROR

Catherine A. Johnson

JUROR

Conner C. Ginst

JUROR

Lexington, South Carolina

November 17, 2007.

JUROR

Dawn B. Alexander

JUROR

Wesley A.

JUROR

Daniel O. Salazar

JUROR

Murphy E. Jaffer

JUROR

W. B. Jr. E. E.

JUROR

Diana L. Turbett

JUROR

Catherine A. Johnson

JUROR

Ernest Ernest

JUROR

Lexington, South Carolina

November 17, 2007.

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

96-GS-32-3339

STATE,)

PLAINTIFF)

RECOMMENDATION OF DEATH PENALTY

V.)

WILLIAM C. WELBORN

NORMAN STARNES,)

DEFENDANT.)

We, the jury, in the above-entitled case, having found beyond a reasonable doubt the existence of the following statutory aggravating circumstances, to wit:

Robbery while ARMED with a deadly weapon
LARCENY with use of a deadly weapon
Two or more persons were murdered by
The defendant

now recommend to the Court that the Defendant, Norman Starnes, be sentenced to death.

David L. Sargent
FOREPERSON

James H. May
JUROR

James R. Sargent
JUROR

DeAnna E. Ruess
JUROR

Laura B. Cleland
JUROR

Karaffa
JUROR

Daniel O. Wallace
JUROR

Murray E. Jefferson
JUROR

H. S. S. S.
JUROR

Diane F. Turbott
JUROR

Catherine H. Johnson
JUROR

Corbett C. Corbett
JUROR

Lexington, South Carolina

November 17, 2007.

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

96-GS-32-3339

STATE,)

PLAINTIFF)

RECOMMENDATION OF DEATH PENALTY

V.)

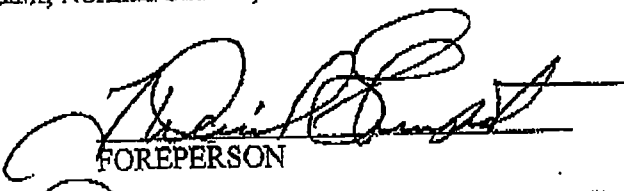
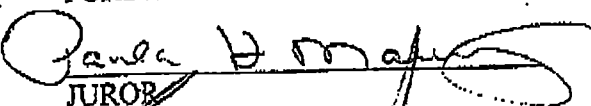
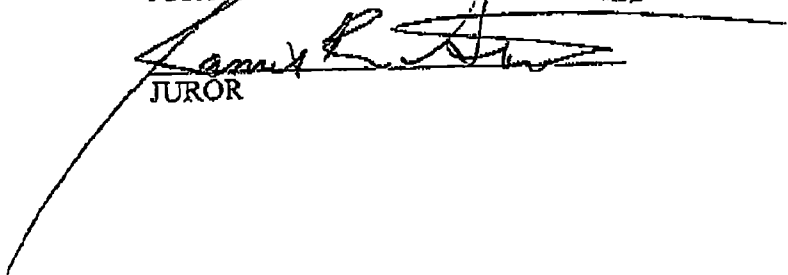
JARROD CHAMPLIN

NORMAN STARNES,
DEFENDANT.)

We, the jury, in the above-entitled case, having found beyond a reasonable doubt the existence of the following statutory aggravating circumstances, to wit:

Robbery while Armed with a deadly weapon
Larceny with use of a deadly weapon
Two or more persons were murdered by
The defendant

now recommend to the Court that the Defendant, Norman Starnes, be sentenced to death.


FOREPERSON
JUROR
JUROR

Diana E. Lucas
JUROR

Dawn B. Alexander
JUROR

Forster
JUROR

Daniel O. Walker
JUROR

Murray E. Jeffers
JUROR

H. L. McEwen
JUROR

Diana M. Herbert
JUROR

Catherine H. Johnson
JUROR

Ernest Ernest
JUROR

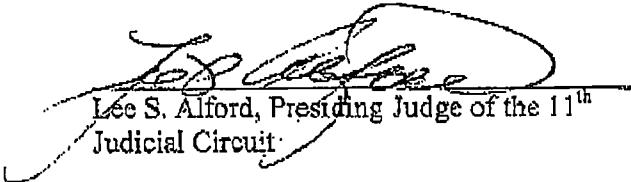
Lexington, South Carolina

November 17th, 2007.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	96-GS-32-3339
STATE,	)	
PLAINTIFF	)	SENTENCE
V.	)	<i>WILLIAM C. WELBORN</i>
NORMAN STARNES,	)	
DEFENDANT.	)	

The Defendant, Norman Starnes, has been found by the jury to be guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is therefore, the judgement of the law and the Sentence of the Court that the Defendant, Norman Starnes, be taken to the Lexington Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 12th day of JANUARY, 2008, upon which day between the hours of six o'clock P.M. and six o'clock A.M.m or upon an Order of Exccution issued by the South Carolina Supreme Court, the Defendant, Norman Starnes, shall suffer death by electrocution or by lethal injection in the ~~matter~~ provided by law.


Lee S. Alford, Presiding Judge of the 11th
Judicial Circuit

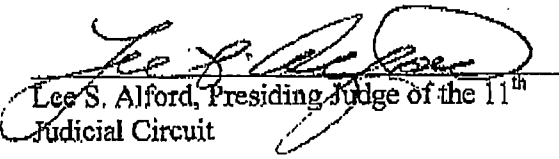
Lexington, South Carolina

November 12, 2007.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	96-GS-32-3339
STATE,	)	
PLAINTIFF	)	SENTENCE
V.	)	JAREED Champion
NORMAN STARNES,	)	
DEFENDANT.	)	

The Defendant, Norman Starnes, has been found by the jury to be guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is therefore, the judgement of the law and the Sentence of the Court that the Defendant, Norman Starnes, be taken to the Lexington Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 12th day of JANUARY, 2008, upon which day between the hours of six o'clock P.M. and six o'clock A.M.m or upon an Order of Execution issued by the South Carolina Supreme Court, the Defendant, Norman Starnes, shall suffer death by electrocution or by lethal injection in the manner provided by law.

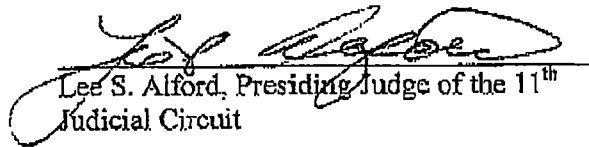

 Lee S. Alford, Presiding Judge of the 11th
 Judicial Circuit

Lexington, South Carolina

November 17, 2007.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	96-GS-32-3339
	)	
STATE,	)	
PLAINTIFF	)	AFFIRMATION OF DEATH SENTENCE
	)	
V.	)	
	)	
NORMAN STARNES,	)	WILLIAM C. WELBORN
DEFENDANT.	)	

As the Trial Judge in the above entitled action, and prior to the imposition of the death sentence upon the Defendant, Norman Starnes, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, or any other arbitrary factor.

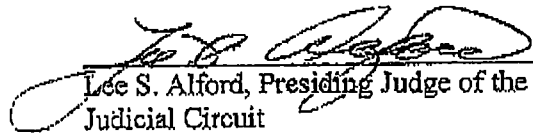

Lee S. Alford, Presiding Judge of the 11th
Judicial Circuit

Lexington, South Carolina

November 27, 2007.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	96-GS-32-3339
STATE,	)	
PLAINTIFF	)	AFFIRMATION OF DEATH SENTENCE
V.	)	
NORMAN STARNES,	)	JARROD CHAMPLIN
DEFENDANT.	)	

As the Trial Judge in the above entitled action, and prior to the imposition of the death sentence upon the Defendant, Norman Starnes, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, or any other arbitrary factor.


Lee S. Alford, Presiding Judge of the 11th
Judicial Circuit

Lexington, South Carolina

November 27, 2007.

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

THE STATE,

Plaintiff,

vs.

Norman E. Starnes

Defendant.

96-GS-32-3339

ORDER

THOMAS H. COMERFORD
CLERK OF COURT

2004 MAR 30 A 10:50

FILED

This matter is before me on a motion to relieve counsel and proceed *pro-se* by the Defendant. For the reasons set forth herein, the motion is granted.

On March 11, 2004, Norman E. Starnes, who is charged with capital murder and is being held at the Lexington County Detention Center, appeared in Lexington County to ask that he be allowed to proceed as co-counsel with hybrid representation or, in the alternative, that his appointed counsel, William N. Nettles and John Delgado, be relieved. In addition to proceeding *pro-se*, Starnes asked that Nettles and Delgado be appointed as his stand by counsel.

The March 11 appearance by Starnes followed an appearance on August 27, 2003, in which he made similar requests. At that time, Starnes indicated that he thought he would be able to get to trial more quickly if he was allowed to be a co-counsel and expressed his wishes to perform his own voir dire, opening statement and closing statement. After extensive questioning as to the knowledge, intelligence and voluntariness of his request and after being warned of the traditional benefits associated with the right to counsel and the dangers and disadvantages of self-representation in

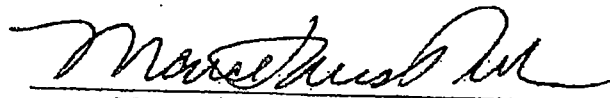
accordance with Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), Mr. Starnes decided to withdraw his motion and continue with his current representation.

In the March 11, 2004 hearing, Starnes again requested to proceed as co-counsel or *pro-se* in addition to requests regarding special housing, special access to law library materials, funds to engage in legal research and funds to hire a law clerk. Starnes was asked if he recalled the previous discussion regarding the Faretta factors and, in addition, about the limitations Starnes would face should all amenities he had requested be denied. Starnes indicated he recalled the prior discussion and still wished to represent himself. After being informed that he would not be allowed to serve as his own co-counsel in a hybrid representation, Starnes reiterated his desire to proceed *pro-se*, even within the literal and practical confines of the jail cell.

ORDER

IT IS THEREFORE ORDERED Norman E. Starnes is allowed to proceed *pro se* with Willam N. Nettles and John Delgado as his stand by counsel.

IT IS SO ORDERED!



Marc H. Westbrook
Presiding Judge

29
March 24, 2004
Lexington, S. C.

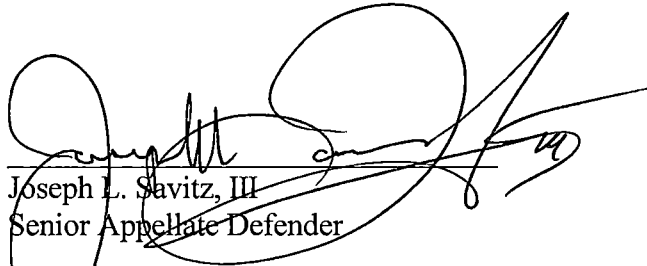
ORIGINAL

4245

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 9th, 2009



Joseph L. Savitz, III
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT