

VOLUME FOUR OF FOUR

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

Howard P. King, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

RECORD ON APPEAL

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1 on the venue issue.

2 It is my view that the Shepherd case from a
3 factual standpoint is very similar. That did, as I
4 understand it, involve the death of an officer and there
5 was a motion to change venue on the basis of pretrial
6 publicity as this has been. And the basic holding of the
7 Shepherd case is that even though there was intense
8 pretrial media coverage, there was no indication the trial
9 court's voir dire failed to produce an impartial jury.

10 When a trial judge bases a denial of a motion to
11 change of venue because of pretrial publicity from an
12 adequate voir dire examination of the jury, his decision
13 will not be disturbed absent extraordinary circumstances.

14 And I would deny the motion for change of venue
15 at this time. I don't think there's been a showing --
16 while there has been a showing of intense pretrial
17 publicity and the Court is aware of intense pretrial
18 publicity, I don't think there has been any showing made
19 that an impartial jury can't be obtained, so I would deny
20 the motion at this time, subject to it being made again if
21 we get into the jury selection process and we're unable to
22 get --

23 MR. BABB: Judge, just for the record, I'd just
24 raise the point that in terms of meeting that burden of
25 proof for a due process argument you really almost have to

1 have the jury selected before we're in a position to do
2 so.

3 THE COURT: It's not an absolute set-in-stone
4 ruling. If it proves as we get into voir dire or we get
5 into the jury selection process that we're unable to get a
6 jury, then we can revisit it at that time.

7 MR. BABB: Your Honor, one last thing. Since we
8 mentioned it, I would submit a copy of the affidavit for
9 the purposes of this hearing.

10 THE COURT: Yes, sir, go ahead and have the
11 court reporter take that as well as Defense Exhibit No. 2.

12 All right. What's the next motion, Mr. Babb?

13 MR. BABB: Your Honor, I believe that's --

14 THE COURT: That's all you've got. All right.

15 Let me review my notes and see if there's
16 anything further that we need to talk about or discuss
17 today?

18 Anything else on behalf of the State that you
19 know of?

20 MR. JACKSON: Your Honor, one additional item to
21 bring to the Court's attention.

22 Your Honor, Ms. Peggy Kubala is in court with us
23 today. She was Charlie Kubala's mother.

24 Yesterday evening at her home, two white females
25 came to her home asking her questions. They would not

1 identify themselves. They said that they were
2 investigators. She was very distraught, very unnerved,
3 she called me immediately, and we sent a representative
4 from the police department out to take a report from her.

5 She was not harmed in any way or even threatened
6 in any way, but there were two white females who came to
7 her residence.

8 We don't know who they work for, we don't know
9 who they are, we don't know why they were there other than
10 they told her that they would be in the courtroom today.
11 And she identified two white females that were in the back
12 of the courtroom this morning.

13 We still do not know who they were and I thought
14 they would be here when I brought this up, but we would
15 ask the Court to inquire of defense counsel if they've
16 sent anybody over there or whether these folks work for
17 them, or if they know who they were, to try to put a stop
18 to it.

19 THE COURT: Any response, Mr. Littlejohn?

20 MR. LITTLEJOHN: Yes, your Honor. These are two
21 mitigation specialists that are working for the defense
22 team, Ms. Graham and Ms. Carr who are in the courtroom
23 today. They went to see Ms. Kubala.

24 Ms. Kubala is a witness in this case. They
25 wanted to talk to her. Apparently Ms. Kubala did not want

1 to talk to them. They were as nice as they could be and
2 they left.

3 THE COURT: All right. Now we know who they
4 are.

5 They should identify themselves and make their
6 purpose known if they're going to be talking with any
7 witnesses in this case, Mr. Littlejohn. Make sure that
8 they understand that they need to tell who they are and
9 what they're doing and who they're working for and what
10 their purpose is if they're going to talk to any witnesses
11 in this case.

12 They absolutely have the right to talk to
13 witnesses, but at the same time they also need to
14 understand that they need to tell what their purpose is in
15 the case and who they're talking with and what they're
16 there for, and they also need to understand that if the
17 witness indicates they don't want to discuss it with them
18 that they're not to press the matter.

19 MR. LITTLEJOHN: Your Honor, it's my
20 understanding they clearly identified themselves and told
21 who they were working for. If that was a
22 misunderstanding, I'm sorry, but apparently Ms. Kubala did
23 not want to talk to them and they left and that was that.

24 THE COURT: All right. Thank you.

25 Let me say for the record, too, that while we're

1 discussing this matter with Ms. Kubala and her name has
2 come up, and I want defense counsel to know this, I am a
3 Sumter resident and have lived in Sumter for the last 38
4 years, and like you have brought out, Mr. Babb, know the
5 Kubala family. I did not know Deputy Kubala, but I am
6 acquainted with his mother and father. We are not social
7 friends. Mrs. Kubala is the aquatics director at the Y.
8 My wife is a part-time aerobics instructor at the Y.

9 I do not consider that a conflict, and I don't
10 consider that I had any -- I've never represented them in
11 any kind of legal matters when I was practicing law, and I
12 can be fair and objective and I do not have any or
13 consider that a conflict, but I do want to disclose that
14 to all parties for your consideration, and if there is any
15 problems with that, I won't ask for a decision on that
16 right now, but let me know.

17 Let me look at my notes to see if there's
18 anything else that I want to go over with you.

19 Yes. Defense may not want to do this at this
20 time or you may not have any objection to it, but since
21 this case is in a little bit different posture than it is
22 normally in, statutory mitigating circumstances. You all
23 like to reveal what those are going to be at this time or
24 do you have anything? I assume that the two that were
25 submitted to the jury last time the defense would expect

1 them to be submitted again as well as the one that Judge
2 Dennis did not allow that the Supreme Court addressed?

3 MR. LITTLEJOHN: Your Honor, at a minimum we
4 would propose to submit those. We don't know of any
5 others, but we're not sure what the record will be at the
6 time that we go before the jury.

7 THE COURT: I understand. It looks like the
8 only loose end, then, Counsel, that we need to probably get
9 into next week is going to be getting Dr. Staberow in to
10 find out the status of Ms. Griffith and whether her
11 ability to testify.

12 Is the State available about any time to address
13 that?

14 MR. JACKSON: Your Honor, we were discussing
15 that. Monday would be the absolute best for us with the
16 way court's going on in the county next week. I know
17 that's quick, but if we could get Staberow Monday.

18 THE COURT: What's y'all's schedule status on
19 that?

20 MR. LITTLEJOHN: Judge, we could do it Monday
21 afternoon.

22 THE COURT: Well, I really need to do it Monday
23 afternoon. I've got Common Pleas actually scheduled to
24 start Monday morning and I need to qualify a jury in
25 Common Pleas Monday and at least get a case ready to go

1 and then I can adjourn that and then we can address it if
2 Dr. Staberow is available Monday afternoon.

3 Mr. Jackson, Mr. Saleeby, since you're the ones
4 that have presented the Court with Dr. Staberow's
5 statement, can you all contact Dr. Staberow's office and
6 see if he can be available Monday afternoon?

7 MR. JACKSON: We'll do that, your Honor. We'll
8 check and see if there's some other time he'd rather do it
9 depending on his schedule as well.

10 THE COURT: Well, let's find out what it is and
11 try and do it Monday afternoon if possible, if that suits
12 both of you all.

13 All right. I think that takes care of the
14 matters that we need to tend to today. And subject to
15 resolving the matter of Dr. Staberow's availability next
16 week, we'll be prepared to go forward on the morning of
17 the 22nd at 10 o'clock, assuming that we don't run into
18 any other hitches. So I will be available.

19 I will be here in town next week doing Common
20 Pleas here, so I'm available for consultation and to get
21 together if we need to do anything.

22 MR. JACKSON: Your Honor, we may anticipate
23 needing your help to get the doctor here because I know
24 what his schedule is like.

25 THE COURT: I think I can handle that. I will

1 get him here wherever it's available to you all.

2 Anything else on behalf of the State at this
3 time?

4 MR. JACKSON: Nothing from the State, your
5 Honor.

6 THE COURT: Defense at this time?

7 MR. LITTLEJOHN: No, your Honor.

8 THE COURT: Thank you. We are in recess and we
9 are adjourned.

10 (WHEREUPON, Defendant's Exhibits Nos. 1 AND 2
11 were marked for identification only.)

12 (The proceedings were concluded.)
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25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)
6 COUNTY OF SUMTER)
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 8th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Sumter County, South Carolina, on the 11th day of
15 February, 2005.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 August 30, 2005
20

21 
22

23 CAROL M. THUEME, RPR, Court Reporter

24 My Commission Expires: 06-04-2007
25

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) 1996-GS-43-00698
 —)

STATE OF SOUTH CAROLINA)
)
) vs.) TRANSCRIPT OF RECORD
)
BOBBY WAYNE STONE)
) DEFENDANT
 —)

February 11, 2005
Sumter, South Carolina

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE.

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

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JAMES BABB, ESQ.
Attorneys for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

INDEX OF WITNESSES

(There was no examination of witnesses offered.)

DEFENDANT EXHIBITS

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COURT EXHIBITS

NO	DESCRIPTION	ID	EV
1	Jury list	78	

1 THE COURT: All right, Counsel. This is the
2 matter of the State versus Bobby Wayne Stone.

3 Mr. Stone is present. I have not yet brought
4 him into the courtroom, but he has arrived in the building
5 and is down the hall.

6 Also, I want to find out, are there any jurors,
7 potential jurors that have been summoned for this term of
8 court that are present in the courtroom at this time?

9 (There was no response.)

10 THE COURT: It appears that there are none.

11 And it is my intention that there are some
12 jurors, Counsel, that are in the jury room and I had them
13 stay there. And I do understand from the conversations
14 with my clerk that you wish to -- if any jurors -- if
15 anything is done with the jurors in Mr. Stone's presence,
16 that you want to make sure that his clothes are changed;
17 is that correct?

18 MR. BABB: Yes, sir, that's correct.

19 THE COURT: All right. What I propose to do,
20 Counsel, is to have the Clerk call the roll of Jurors 1
21 through 250, and what I'm going to ask her to do is to
22 indicate that she has received a return, which would mean
23 that those would be the ones that we would be expecting to
24 report on the 22nd; that she has no return and what
25 efforts have been made to find those on which there are no

1 returns; those that have been excused by the Clerk because
2 of an exemption or disqualification and we'll talk about
3 each one of those; and then the last thing we do, the
4 fourth thing that she would acknowledge to the Court is
5 that they are present. Those would be the ones that are
6 down in the jury room and had excuses that they wished to
7 present to the Court. So we'll go right straight down the
8 list of one through 250.

9 Any objection to that procedure, Mr. Jackson?

10 MR. JACKSON: No, your Honor.

11 THE COURT: Mr. Littlejohn?

12 MR. LITTLEJOHN: No, your Honor.

13 Is there an extra copy we can have?

14 THE COURT: Yes, sir.

15 All right, Madame Clerk.

16 THE CLERK: No. 1, William F. -- Reverend
17 William F. Albert, resident of Florida.

18 THE COURT: Any objection to his being excused,
19 Mr. Jackson?

20 MR. JACKSON: No, your Honor.

21 THE COURT: Mr. Littlejohn?

22 MR. LITTLEJOHN: No, your Honor.

23 THE CLERK: No. 2, Douglas Alexander, a resident
24 of Clarendon County.

25 THE COURT: Any objection to his being excused,

1 Mr. Jackson?

2 MR. JACKSON: None, your Honor.

3 THE COURT: Mr. Littlejohn?

4 MR. LITTLEJOHN: No, your Honor.

5 Your Honor, excuse me. I'm not so sure we
6 shouldn't have our client in here during this.

7 THE COURT: Yes, I guess so. I'm sorry, I meant
8 to do that. Go ahead and have Mr. Stone brought in.

9 I'm sorry, I meant to do that. You're right.
10 Thank you, sir.

11 Good morning, Mr. Stone. Have a seat right
12 there by Mr. Littlejohn.

13 My name is Judge Howard King. I have been
14 assigned for the retrial of this sentencing portion of
15 your case. And we are addressing matters today that are
16 pretrial matters that need to be done before we start the
17 retrial of this matter on February 22nd.

18 We are now going through the roll call of the
19 jurors who have been summoned. The jurors are not here,
20 but this is simply the Clerk's roll call and what her
21 response or what the response has been to the Clerk's
22 office of these jurors.

23 Let's start back over with Juror No. 1 again.

24 THE CLERK: Juror No. 1, Reverend William F.
25 Albert, resident of Florida.

1 THE COURT: Any objection to his being excused,
2 Mr. Jackson?

3 MR. JACKSON: No, sir.

4 THE COURT: Mr. Littlejohn?

5 MR. LITTLEJOHN: No, your Honor.

6 THE CLERK: No. 2, Douglas Alexander, resident
7 of Clarendon County.

8 THE COURT: Any objection to excusing him,
9 Mr. Solicitor?

10 MR. JACKSON: No, sir.

11 THE COURT: Mr. Littlejohn?

12 MR. LITTLEJOHN: No, your Honor.

13 THE CLERK: No. 3, Martha G. Allen Cardullo,
14 over 65 years of age.

15 THE COURT: All right. She requested to be
16 excused?

17 THE CLERK: Yes, sir.

18 THE COURT: All right. It does appear that she
19 has a statutory exemption.

20 Any objection to excusing her, Mr. Solicitor?

21 MR. JACKSON: No, your Honor.

22 THE COURT: Mr. Littlejohn?

23 MR. LITTLEJOHN: No, your Honor.

24 THE CLERK: No. 4, Marion Archie, medical
25 excuse.

1 THE COURT: Tell me about the medical excuse
2 that you have.

3 All right, Counsel. For the record, the medical
4 excuse that was sent by Deli Wang, W-A-N-G, M.D., from
5 Sumter OccuMed, and you're welcome to look at this is:
6 Mr. Marion Archie is under my care for his multiple
7 medical conditions. He has no education, he can't read.
8 He is not mentally capable of performing jury duty.

9 Any objection to his being excused, Mr. Jackson?

10 MR. JACKSON: No, sir.

11 THE COURT: Mr. Littlejohn?

12 MR. LITTLEJOHN: No, your Honor.

13 THE COURT: All right.

14 THE CLERK: No. 5, Virginia A. Ayers, reporting
15 on the 22nd.

16 No. 6, George M. Baker, IV, resident of Florida.

17 THE COURT: To be excused.

18 Any objection, Mr. Solicitor?

19 MR. JACKSON: No, sir.

20 THE COURT: Mr. Littlejohn?

21 MR. LITTLEJOHN: No, your Honor.

22 THE COURT: All right.

23 THE CLERK: No. 7, Leslie E. Barkley, unable to
24 locate by deputy.

25 THE COURT: Any objection to excusing him,

1 Mr. Solicitor?

2 MR. JACKSON: No, sir.

3 THE COURT: Mr. Littlejohn?

4 MR. LITTLEJOHN: No, your Honor.

5 THE CLERK: No. 8, Marty L. Barnes, has a
6 criminal conviction and he is present.

7 THE COURT: All right. We will talk with him in
8 a little bit to find out whether his conviction is one
9 that is statutorily excused.

10 No. 9.

11 THE CLERK: No. 9, Richard P. Barnett, Jr.,
12 unable to locate by deputy.

13 THE COURT: To be excused.

14 Any objection, Mr. Solicitor?

15 MR. JACKSON: No, your Honor.

16 THE COURT: Mr. Littlejohn?

17 MR. LITTLEJOHN: Your Honor, I guess our only
18 question is if there's some ongoing attempt to contact
19 these jurors.

20 THE COURT: All right. There was, and I can get
21 the sheriffs over here. We did not just do like is done
22 many times on jurors that don't send in a return. The
23 ones that did not send in a return, the names were
24 actually given to the sheriff's department and they have
25 been looking for them. Isn't that right?

1 THE CLERK: Yes, sir.

2 THE COURT: And these are the ones so far that
3 they've not been able to locate.

4 THE CLERK: They have completed the list. And
5 the ones I'm reading out as unable to locate they could
6 not locate.

7 THE COURT: It wasn't just a question of mailing
8 them a return. They were actually given to the sheriff's
9 office to go look for them.

10 MR. LITTLEJOHN: All right. As of this point
11 they've been unable to -- I mean, they visited the homes
12 and taken some affirmative step other than the mail to
13 contact these jurors?

14 THE COURT: Yes, sir. And they have completed
15 that. They have either been to the homes, have been
16 unable to see them or unable to visit with them.

17 As I say, we didn't just rely on the mail. The
18 ones that the Clerk did not get returns in on, the names
19 were actually given to the sheriff's office to go look for
20 them.

21 MR. BABB: Court's indulgence.

22 THE COURT: Yes, sir, Mr. Babb.

23 MR. LITTLEJOHN: Your Honor, I guess our concern
24 is this: Due to the nature of this case and the
25 occupation of the victim, the sheriff's department is the

1 one who has been given authority to go out and search for
2 these jurors, and I think to preserve the record, there
3 should be some sort of affidavit or some sort of statement
4 about the attempts that were made. Otherwise it's just a
5 triple hearsay statement that they're unable to locate.

6 THE COURT: I have no problem with that. And we
7 will -- rather than those -- when we come to those that
8 she's now got as unable to locate, we'll make a note of
9 those and get the appropriate individual from the
10 sheriff's office over here to find out further about it.
11 And I won't ask you to agree to excuse on those at this
12 time.

13 MR. LITTLEJOHN: All right. Your Honor, if we
14 could, that being the case, could we back up to No. 7,
15 Mr. Barkley?

16 THE COURT: Yes, sir.

17 MR. LITTLEJOHN: If we could do the same with
18 Mr. Barkley.

19 THE COURT: No. 7 is an unable to locate, and
20 we'll come back with further inquiry into those on all of
21 them. Thank you.

22 All right. Starting with the first one we had
23 that's unable to locate is No. 7 and then No. 9.

24 THE CLERK: Marty L. Barnes. He has a criminal
25 conviction and he's present. That is No. 8.

1 No. 9, Richard Barnett, unable to locate.

2 No. 10, James L. Barno, and he was notified by
3 deputy.

4 THE COURT: All right.

5 THE CLERK: No. 11.

6 THE COURT: So we expect him to appear?

7 THE CLERK: Yes, sir.

8 No. 11 is Myra O. Barton, and she will be
9 reporting.

10 No. 12, Lucille Battle, over 65 years of age.

11 THE COURT: Any objection to excusing
12 Ms. Battle?

13 MR. JACKSON: No, sir.

14 THE COURT: Mr. Littlejohn?

15 MR. LITTLEJOHN: Not as long as she requested to
16 be excused, your Honor.

17 THE COURT: She did. The instructions to the
18 Clerk were not just to excuse those over 65, but only
19 those that made a request.

20 MR. LITTLEJOHN: I understand. Thank you.

21 THE CLERK: No. 13, Donald A. Beard, reporting.

22 No. 14, Gary M. Benenhaley, reporting.

23 No. 15, Shyrle M. Benjamin, reporting.

24 No. 16, Dennorris L. Bennett, unable to locate
25 by deputy.

1 THE COURT: We'll inquire further into that.

2 THE CLERK: No. 17, Harold L. Bennett, unable to
3 locate by deputy.

4 THE COURT: We'll inquire further into that.

5 THE CLERK: No. 18, Earl P. Berry, Jr.,
6 reporting.

7 No. 19, Sandra A. Blanchette, reporting.

8 No. 20, Linda M. Blue, reporting.

9 No. 21, Betty Bolden, reporting.

10 No. 22, Elissa D. Boonstra, resident of
11 Mississippi.

12 THE COURT: Any objection to excusing No. 22,
13 Mr. Solicitor?

14 MR. JACKSON: No, sir.

15 THE COURT: Mr. Littlejohn?

16 MR. LITTLEJOHN: No, your Honor.

17 THE CLERK: No. 23, Mary E. Boyle, full-time
18 student.

19 THE COURT: All right. What I do normally on
20 the full-time students, as the statute allows we don't
21 excuse them and they will have to appear at another time.
22 But as far as this court, the Court would propose to
23 transfer her to another term of court.

24 Would there be any objection to that on behalf
25 of the State?

1 MR. JACKSON: No objection, your Honor.

2 THE COURT: Mr. Littlejohn?

3 MR. LITTLEJOHN: No, your Honor.

4 THE COURT: All right.

5 THE CLERK: No. 24, Jack E. Brode, reporting.

6 No. 25, Gregory N. Brodman, unable to locate by
7 deputy.

8 THE COURT: We'll inquire further into that.

9 THE CLERK: No. 26, David L. Brooks, reporting.

10 No. 27, Chauscer N. Brown, medical excuse.

11 THE COURT: Let me see his excuse, please,
12 ma'am.

13 This is a letter from James R. Cain, M.D., who
14 indicates that this juror has a severe medical condition
15 with kidney failure that requires dialysis three times a
16 week at four hours at each time, and I believe that would
17 prevent him from serving on the jury.

18 Would there be any objection to excusing him,
19 Mr. Solicitor?

20 MR. JACKSON: No, sir.

21 THE COURT: Mr. Littlejohn?

22 MR. LITTLEJOHN: No, your Honor.

23 THE COURT: All right. You all just keep your
24 seats.

25 THE CLERK: No. 28, Wayne Brown, military,

1 stationed in Iraq.

2 THE COURT: Any objection to excusing No. 28,
3 Solicitor?

4 MR. JACKSON: No, your Honor.

5 THE COURT: Defense?

6 MR. LITTLEJOHN: No, your Honor.

7 THE CLERK: No. 29, Lucy M. Brunson, reporting.

8 No. 30, Robin S. Budd, reporting.

9 No. 31, Eugene Burgess, reporting.

10 No. 32, Kenny L. Burroughs, unable to locate by
11 deputy.

12 THE COURT: We will inquire further.

13 THE CLERK: No. 33, Michael Cabbagestalk,
14 reporting.

15 No. 34, Mark K. Carr, reporting.

16 No. 35, Wash Chapman, unable to locate by
17 deputy.

18 THE COURT: We will inquire further.

19 THE CLERK: No. 36, Mary L. China, reporting.

20 No. 37, Shakita N. China, full-time
21 student/transfer.

22 THE COURT: Any objection to transferring No.
23 37?

24 MR. JACKSON: No, your Honor.

25 THE COURT: Defense?

1 MR. LITTLEJOHN: No, your Honor.

2 THE COURT: All right.

3 THE CLERK: No. 38, Patricia A. Christmas,
4 reporting.

5 No. 39, Isaac D. Cocklin, reporting.

6 No. 40, Wayne C. Coker, reporting.

7 No. 41, Harry Copeland, III, reporting.

8 No. 42, Harvin L. Council, reporting.

9 No. 43, Leroy Cowell, reporting.

10 No. 44, Roger D. Cox, reporting.

11 No. 45, Annette B. Croft, reporting.

12 No. 46, Judy A. Culbertson, reporting.

13 No. 47, William E. Cummings, deceased.

14 THE COURT: That matter is taken care of.

15 THE CLERK: No. 48, Som J. Dalamon, reporting.

16 No. 49, James M. Day, reporting.

17 No. 50, Annie Bell Deas, over 65 years of age.

18 THE COURT: Any objection to the excuse,

19 Mr. Solicitor?

20 MR. JACKSON: No, sir.

21 THE COURT: Defense?

22 MR. LITTLEJOHN: No, your Honor. I assume that
23 the juror requested it?

24 THE COURT: Yes.

25 THE CLERK: No. 51, Edgar F. Debosky, resident

1 of North Carolina, and that was per his ex-wife, a
2 telephone conversation.

3 THE COURT: Any objection to excusing Juror No.
4 51?

5 MR. JACKSON: No, sir, your Honor.

6 THE COURT: Defense?

7 MR. LITTLEJOHN: No, your Honor.

8 THE CLERK: No. 52, Rosalinda A. Diamond,
9 reporting.

10 No. 53, Shannon L. Dinapoli, unable to locate by
11 deputy.

12 THE COURT: We will inquire further.

13 THE CLERK: 54, Albert Dinkins, Jr., unable to
14 locate by deputy.

15 THE COURT: Inquire further. Further inquiry.

16 THE CLERK: No. 55, Aleyia R. Dixon, unable to
17 locate by deputy.

18 THE COURT: Further inquiry.

19 THE CLERK: No. 56, Randy E. Dow, reporting.

20 No. 57, Sandra Drayton, reporting.

21 No. 58, Joseph R. Edwards, reporting.

22 No. 59, Sherran F. Evans, unable to locate by
23 deputy.

24 THE COURT: Further inquiry.

25 THE CLERK: No. 60, Tracy L. Fisher, unable to

1 locate by deputy.

2 THE COURT: Further inquiry.

3 THE CLERK: No. 61, Scott A. Fitzgerald,
4 reporting.

5 No. 62, Thomas F. Fraley, unable to locate by
6 deputy.

7 THE COURT: Further inquiry.

8 THE CLERK: No. 63, Gloria B. Freshour, unable
9 to locate by deputy.

10 THE COURT: Further inquiry.

11 THE CLERK: No. 64, Jenifer S. Fulwood, notified
12 by deputy.

13 THE COURT: And expected to report?

14 THE CLERK: Yes, sir.

15 THE COURT: Okay.

16 THE CLERK: No. 65, Bertha Gallishaw, over 65
17 years of age.

18 THE COURT: Any objection to the excuse on the
19 requested exemption over 65, Mr. Solicitor?

20 MR. JACKSON: No, sir.

21 THE COURT: Mr. Littlejohn?

22 MR. LITTLEJOHN: No, your Honor.

23 THE COURT: All right.

24 THE CLERK: No. 66, Christopher L. Gamble,
25 unable to locate by deputy.

1 THE COURT: We'll make further inquiry into what
2 steps were taken to locate him.

3 THE CLERK: No. 67, Dasie M. Gamble, medical
4 excuse.

5 THE COURT: Let me see that, please, ma'am.

6 According to the written excuse from an M.D.,
7 this juror has diabetes and has difficulty with the
8 diabetes.

9 Any objection to excusing her, Mr. Jackson?

10 MR. JACKSON: No, sir.

11 THE COURT: Mr. Littlejohn?

12 MR. LITTLEJOHN: No, your Honor.

13 THE COURT: All right.

14 THE CLERK: No. 68, Patricia E. Gardner, unable
15 to locate by deputy.

16 THE COURT: We'll check into that further.

17 THE CLERK: No. 69, Kwan D. Garner, criminal
18 conviction.

19 THE COURT: And he's here?

20 THE CLERK: He's present.

21 THE COURT: All right. We'll inquire into that
22 in a little bit.

23 THE CLERK: No. 70, Renee M. Gaskin, unable to
24 locate by deputy.

25 THE COURT: We'll check on that further.

1 THE CLERK: No. 71, John P. Gibson, Jr., medical
2 excuse.

3 THE COURT: All right. Let me see that, please.

4 All right. Counsel, this is from an M.D. whose
5 name I do recognize, Dr. Williams, and indicates that this
6 individual has severe medical problems which include
7 chronic depression and anxiety.

8 What is the State's position, Mr. Jackson?

9 MR. JACKSON: No objection to him being excused,
10 your Honor.

11 THE COURT: All right.

12 MR. LITTLEJOHN: No objection, your Honor.

13 THE COURT: All right. He'll be excused.

14 THE CLERK: No. 72, Hubert S. Glover, and he's
15 in a nursing home and I have a statement.

16 THE COURT: All right. This is a certification
17 from Carriage House of Sumter that he's a resident of
18 Carriage House and has been since November of '04. He's
19 not able to handle any personal business for himself
20 except personal grooming.

21 I would propose to excuse him.

22 Any objection, Mr. Solicitor?

23 MR. JACKSON: No, sir.

24 THE COURT: Mr. Littlejohn?

25 MR. LITTLEJOHN: No, your Honor.

1 THE COURT: All right.

2 THE CLERK: No. 73, Sharon J. Golden, reporting.

3 No. 74, Harold T. Gonzales, full-time

4 student/transferred.

5 THE COURT: Any objection to transferring Juror

6 74 as a student, Mr. Jackson?

7 MR. JACKSON: No objection, your Honor.

8 THE COURT: Mr. Littlejohn?

9 MR. LITTLEJOHN: No objection, your Honor.

10 THE COURT: All right.

11 THE CLERK: No. 75, Hannah J. Graham, reporting.

12 No. 76, Robert H. Graham, unable to locate by

13 deputy.

14 THE COURT: We'll inquire further.

15 THE CLERK: No. 77, Mark A. Grant, unable to

16 locate by deputy.

17 THE COURT: We'll check further.

18 THE CLERK: No. 78, Christina Green, unable to

19 locate by deputy.

20 THE COURT: Check further.

21 THE CLERK: No. 79, Esaw Green, unable to locate

22 by deputy.

23 THE COURT: We'll check further.

24 THE CLERK: No. 80, Keith A. Griffin, unable to

25 locate by deputy.

1 THE COURT: We'll check further.

2 THE CLERK: No. 81, Chloe A. Gross, reporting.
3 No. 82, Clarence J. Gullledge, over 65 years of
4 age.

5 THE COURT: Any objection to the requested
6 excuse for over 65 on the State?

7 MR. JACKSON: No, your Honor.

8 THE COURT: Defense?

9 MR. LITTLEJOHN: No, your Honor.

10 THE CLERK: No. 83, Christopher D. Hall, medical
11 excuse.

12 THE COURT: All right. Let me see that, please.

13 All right. This is a letter from Dr. Whaley, an
14 M.D. here in town, who indicates that this defendant has a
15 serious medical condition that I can either put on the
16 record or you all can look at the letter if you would
17 like.

18 Any objection to excusing him, Mr. Jackson?

19 MR. JACKSON: No objection, your Honor.

20 THE COURT: Mr. Littlejohn?

21 MR. LITTLEJOHN: No, your Honor.

22 THE COURT: All right. He can be excused.

23 THE CLERK: No. 84, Tamara J. Hall, housewife
24 with a child under the age of seven.

25 THE COURT: Let me -- all right. Has she

1 requested to be excused?

2 THE CLERK: Yes, sir.

3 THE COURT: Any objection? That is a statutory
4 exemption if the juror wishes to exercise that.

5 Any objection to excusing the juror,

6 Mr. Jackson?

7 MR. JACKSON: No, sir.

8 THE COURT: Mr. Littlejohn?

9 MR. LITTLEJOHN: No, your Honor.

10 THE COURT: All right.

11 THE CLERK: No. 85, Dana H. Hardin, unable to
12 locate by deputy.

13 THE COURT: All right. We'll look further into
14 that.

15 THE CLERK: No. 86, Brent E. Harsch, reporting.

16 No. 87, James C. Haskins, unable to locate by
17 deputy.

18 THE COURT: We'll check into that further.

19 THE CLERK: No. 88, Ozeta L. Herriott,
20 reporting.

21 No. 89, Robert Heyward, Jr., resident of
22 Maryland.

23 THE COURT: Any objection to excusing 89,
24 Solicitor?

25 MR. JACKSON: No, sir.

1 THE COURT: Defense?

2 MR. LITTLEJOHN: No, your Honor.

3 THE CLERK: No. 90, Quinton A. Hodge, unable to
4 locate by deputy.

5 THE COURT: Will be checked into further.

6 THE CLERK: No. 91, George H. Holladay, unable
7 to locate by deputy.

8 THE COURT: Further inquiry.

9 THE CLERK: No. 92, Katherine P. Holloway, over
10 65 years of age.

11 THE COURT: Any objection to excusing
12 Ms. Holloway, Mr. Jackson?

13 MR. JACKSON: No, sir.

14 THE COURT: Mr. Littlejohn?

15 MR. LITTLEJOHN: No, your Honor.

16 THE CLERK: No. 93, Jonathan T. Holmes, unable
17 to locate by deputy.

18 THE COURT: Check further into that.

19 THE CLERK: No. 94, Towatha M. Howard,
20 reporting.

21 No. 95, Beverly D. Hudson, unable to locate by
22 deputy.

23 THE COURT: We'll check further into that.

24 THE CLERK: No. 96, Sharon L. Hunter, reporting.

25 No. 97, Taria D. Hutchinson, housewife with a

1 child under the age of seven.

2 THE COURT: Has she requested to be excused?

3 THE CLERK: Yes, sir.

4 THE COURT: All right. Any objection,
5 Mr. Jackson?

6 MR. JACKSON: None, your Honor.

7 THE COURT: Mr. Littlejohn?

8 MR. LITTLEJOHN: No, your Honor

9 THE CLERK: No. 98, Dennis L. Jackson,
10 reporting.

11 No. 99, Paul James, over 65 years of age.

12 THE COURT: Any objection to excusing 99 for
13 age, Mr. Jackson?

14 MR. JACKSON: No objection, your Honor.

15 THE COURT: Mr. Littlejohn?

16 MR. LITTLEJOHN: No objection. I'm assuming
17 Mr. Paul requested it?

18 THE COURT: He did request it?

19 THE CLERK: Yes, sir.

20 THE COURT: They would be coming if they hadn't
21 requested it.

22 MR. LITTLEJOHN: Thank you.

23 THE CLERK: No. 100, Derrick d. Jasper,
24 reporting.

25 No. 101, Cristy Lynn Johnson, reporting.

1 No. 102, Diana D. Johnson, reporting.

2 No. 103, Mary A. Johnson, reporting.

3 No. 104, Sylvia F. Johnson, deceased.

4 THE COURT: Go ahead. That's fine.

5 THE CLERK: No. 105, Willie Johnson, unable to
6 locate by deputy.

7 THE COURT: All right. We'll put 105 down for
8 further inquiry to check on what they did to locate him.

9 THE CLERK: No. 106, Bernice R. Jones, over 65
10 years of age, requested.

11 THE COURT: Any objection, Mr. Jackson?

12 MR. JACKSON: No, sir.

13 THE COURT: Mr. Littlejohn?

14 MR. LITTLEJOHN: No, your Honor.

15 THE COURT: All right.

16 THE CLERK: No. 107, Edward Jones, criminal
17 conviction and he should be present.

18 THE COURT: Yes, I think we're going to inquire
19 with him.

20 Those that are shown as highlighted on here,
21 those we expected to be here this morning, and I think
22 they are down in the jury room.

23 No. 108.

24 THE CLERK: No. 108, Edward J. Jones, reporting.

25 No. 109, Melvin L. Jones, reporting.

1 No. 110, Mickey E. Jones, reporting.

2 No. 111, Anita J. Kearns, unable to locate by
3 deputy.

4 THE COURT: All right. We'll inquire further
5 into that.

6 THE CLERK: No. 112, Albert Kelly, reporting.

7 No. 113, Colette M. Knox, no longer resides in
8 the state of South Carolina.

9 THE COURT: Objection to excusing 113,
10 Mr. Jackson?

11 MR. JACKSON: No objection, your Honor.

12 THE COURT: Mr. Littlejohn?

13 MR. LITTLEJOHN: No, your Honor.

14 THE CLERK: No. 114, Kathleen A. Kreipe,
15 reporting.

16 No. 115, Ricky A. Labruno, reporting.

17 No. 116, Patricia A. Lee, medical excuse.

18 THE COURT: Let me see that, please.

19 All right. This is a letter to the Court from
20 Dr. Reynolds, Internal Medical Associates here in town,
21 who indicates that she has multiple medical conditions
22 that would prevent her from serving.

23 Any objection to her being excused, Mr. Jackson?

24 MR. JACKSON: None, your Honor.

25 THE COURT: Mr. Littlejohn?

1 MR. LITTLEJOHN: No, your Honor.

2 THE COURT: All right. She will be excused.

3 That's Ms. Lee.

4 THE CLERK: No. 117, James C. Little, unable to
5 locate by deputy.

6 THE COURT: All right. We'll look further into
7 that.

8 THE CLERK: No. 118, Shakema Mara R. Logan,
9 unable to locate by deputy.

10 THE COURT: We'll check further into that.

11 THE CLERK: No. 119, Tammy G. Lowder, unable to
12 locate by deputy.

13 THE COURT: Further inquiry.

14 THE CLERK: No. 120, Traci A. Lynch, housewife
15 with a child under the age of seven.

16 THE COURT: Any objection to excusing Ms. Lynch
17 for her exemption, Mr. Jackson?

18 MR. JACKSON: No, sir.

19 THE COURT: Mr. Littlejohn?

20 MR. LITTLEJOHN: No, your Honor.

21 THE CLERK: No. 121, Timothy A. Maggard,
22 deceased.

23 No. 122, James P. Mahoney, reporting.

24 123, Steven Maple, reporting.

25 124, Sarah C. Martin, unable to locate by

1 deputy.

2 THE COURT: Further inquiry.

3 THE CLERK: 125, Bonnie Mathis, over 65 years of
4 age and in a nursing home.

5 THE COURT: Any objection to excusing
6 Ms. Mathis, Mr. Jackson?

7 MR. JACKSON: No, sir.

8 THE COURT: Mr. Littlejohn?

9 MR. LITTLEJOHN: No, your Honor.

10 THE CLERK: No. 126, Maria Mazurek, over 65
11 years of age.

12 MR. JACKSON: Your Honor, may I approach just a
13 moment?

14 THE COURT: Yes, sir.

15 (A bench conference was held with the judge and
16 attorneys.)

17 THE COURT: Mr. Herring, get me the name when
18 they come around so that I'll know who it is.

19 THE BAILIFF: Okay.

20 THE COURT: All right. The last name called,
21 let's start with 122.

22 THE CLERK: I think we ended with 126.

23 THE COURT: Okay, 126, go ahead. 126, the
24 indication was that that juror is over 65 and appears to
25 be and has requested an exemption.

1 Any objection, Mr. Jackson?

2 MR. JACKSON: No, sir, your Honor.

3 THE COURT: Mr. Littlejohn?

4 MR. LITTLEJOHN: No, your Honor.

5 THE CLERK: No. 127, Frank J. McCauley,
6 reporting.

7 No. 128, Shalon R. McConico, unable to locate by
8 deputy.

9 THE COURT: We'll check further.

10 THE CLERK: 129, Wilbur McConico, reporting.

11 No. 130, William McCormick, over 65 years of age
12 and a medical excuse.

13 THE COURT: Can I see the medical excuse,
14 please, ma'am?

15 All right. Counsel, this particular request is
16 not from a doctor but is from the wife of the juror that
17 says: Please excuse Mr. William McCormick from jury duty
18 as he is disabled and unable to serve. He has lost
19 partial vision, can only see shadows, and has dialysis
20 three days a week, Monday, Wednesday, and Friday. If at
21 all possible could you remove Mr. McCormick from your
22 active jury list.

23 Does the State wish for the Clerk to inquire
24 further and require a medical excuse or is the State
25 willing to accept this statement from his wife?

1 MR. JACKSON: Your Honor, the State is willing
2 to accept the statement from the wife.

3 THE COURT: All right.

4 MR. LITTLEJOHN: We are, too, your Honor.

5 THE COURT: Thank you.

6 THE CLERK: No. 131, Stacey V. McDonald,
7 reporting.

8 No. 132 --

9 THE COURT: Let me catch up. We'll go back to
10 this one with Mr. McCormick.

11 THE CLERK: No. 131, Stacey V. McDonald,
12 reporting.

13 THE COURT: All right. Good.

14 THE CLERK: No. 132, Adam L. McFadden, Jr.,
15 reporting.

16 No. 133, Adam L. McFadden, over 65 years of age.

17 THE COURT: Any objection to the requested
18 exemption of 133, Mr. Jackson?

19 MR. JACKSON: No, sir.

20 THE COURT: Mr. Littlejohn?

21 MR. LITTLEJOHN: No, your Honor.

22 THE COURT: Thank you.

23 THE CLERK: No. 134, Margaret A. McGee,
24 reporting.

25 No. 135, Joseph P. McIntyre, resident of North

1 Carolina.

2 THE COURT: Any objection to excusing 135 from
3 the State?

4 MR. JACKSON: No, sir.

5 THE COURT: Defense?

6 MR. LITTLEJOHN: No, your Honor.

7 THE COURT: Thank you.

8 THE CLERK: No. 136, Mciver McKenzie, Jr.,
9 unable to locate by deputy.

10 THE COURT: We'll inquire further into that
11 situation.

12 THE CLERK: No. 137, Neal J. McKnight,
13 reporting.

14 No. 138, Hazel M. McLean, reporting.

15 No. 139, Albert McLeod, incarcerated in RCI.

16 THE COURT: All right. I'm not sure what RCI
17 is.

18 THE CLERK: Richland County.

19 THE COURT: Richland County. All right.

20 Any objection to excusing No. 139, Mr. Jackson?

21 MR. JACKSON: None, your Honor.

22 THE COURT: Mr. Littlejohn?

23 MR. LITTLEJOHN: No, your Honor.

24 THE COURT: All right.

25 THE CLERK: No. 140, John E. McLeod, reporting.

1 No. 141, Willie M. McQuilla, reporting.

2 No. 142, Marcus L. Melvin, unable to locate by
3 deputy.

4 THE COURT: We'll inquire further into that.

5 THE CLERK: No. 143, Jennifer A. Menning,
6 resident of Columbia, South Carolina.

7 THE COURT: Any objection to excusing 143,
8 Mr. Jackson?

9 MR. JACKSON: No, sir.

10 THE COURT: Mr. Littlejohn?

11 MR. LITTLEJOHN: No, your Honor.

12 THE CLERK: No. 144, Sharon M. Merritt, unable
13 to locate by deputy.

14 THE COURT: Further inquiry.

15 THE CLERK: 145, Orlando J. Mickens, unable to
16 locate by deputy.

17 THE COURT: Further inquiry.

18 THE CLERK: 146, Lee E. Miller, unable to locate
19 by deputy.

20 THE COURT: Further inquiry.

21 THE CLERK: 147, Sylvia J. Miller, reporting.

22 148, Viola Miller, over 65 years of age.

23 THE COURT: Any objection to the age request
24 excuse, Mr. Jackson?

25 MR. JACKSON: No, sir.

1 THE COURT: Mr. Littlejohn?

2 MR. LITTLEJOHN: No, your Honor.

3 THE CLERK: 149, Willie B. Miner, over 65 years
4 of age.

5 THE COURT: Any objection to excusing him for
6 age, Mr. Jackson?

7 MR. JACKSON: No, sir.

8 THE COURT: Mr. Littlejohn?

9 MR. LITTLEJOHN: No, your Honor.

10 THE COURT: Thank you.

11 THE CLERK: 150, William J. Montalbono,
12 reporting.

13 151, Cheryl D. Montgomery, unable to locate by
14 deputy.

15 THE COURT: We'll inquire further into that.

16 THE CLERK: 152, Trevin R. Montgomery,
17 reporting.

18 153, Carla P. Moore, resident of Georgia.

19 THE COURT: Any objection to excusing 153,
20 Solicitor?

21 MR. JACKSON: No, sir.

22 THE COURT: Defense?

23 MR. LITTLEJOHN: No, your Honor.

24 THE COURT: Thank you.

25 THE CLERK: 154, Leroy Moore, should be present,

1 less than sixth grade education.

2 THE COURT: I understand he is here and we'll
3 inquire of him.

4 THE CLERK: 155 should also be present, Wendell
5 F. Moore, and he has a criminal conviction.

6 THE COURT: We will inquire of him.

7 THE CLERK: 156, Renata S. Mullins, unable to
8 locate by deputy.

9 THE COURT: We'll inquire further into that
10 situation.

11 THE CLERK: 157, Lucille M. Myers, reporting.
12 158, Denise M. Nelson, unable to locate by
13 deputy.

14 THE COURT: We'll inquire further into that.

15 THE CLERK: No. 159, Shirley E. Nelson,
16 reporting.

17 No. 160, Ramon C. Newkirk, reporting.

18 161, Lynne B. Newman, reporting.

19 No. 162, William H. Nock, III, reporting.

20 163, William M. Norman, over 65 -- military
21 overseas.

22 THE COURT: Do you have some documentation of
23 that?

24 THE CLERK: Yes, sir.

25 THE COURT: All right. Any objection to

1 excusing 163 for military service?

2 Let's see what he has.

3 All we've got, and we don't know who it came
4 back from, let me see. It's got his military orders
5 attached to it: Report to Fort Benning, Georgia, 6th of
6 January, 2004, ordered to active duty. So he is on active
7 duty.

8 Any objection, Mr. Jackson?

9 MR. JACKSON: No, sir.

10 THE COURT: Mr. Littlejohn?

11 MR. LITTLEJOHN: No, your Honor. Sounds like
12 he's got plenty to worry about.

13 THE COURT: It does sound like he's got plenty
14 to worry about. Thank you.

15 THE CLERK: No. 164, Terina I. Nowlin, unable to
16 locate by deputy.

17 THE COURT: All right. We'll look further into
18 that.

19 THE CLERK: No. 165, Sharon H. O'Harra, resident
20 of New York.

21 THE COURT: Any objection to excusing 165,
22 Mr. Solicitor?

23 MR. JACKSON: No, sir.

24 THE COURT: Mr. Littlejohn?

25 MR. LITTLEJOHN: No, your Honor.

1 THE CLERK: No. 166, Donald L. Oliver, Jr.,
2 resident of New Jersey.

3 THE COURT: Any objection to excusing 166,
4 Mr. Solicitor?

5 MR. JACKSON: No, sir.

6 THE COURT: Mr. Littlejohn?

7 MR. LITTLEJOHN: No, your Honor.

8 THE CLERK: 167, Mark J. Oliver, unable to
9 locate by deputy.

10 THE COURT: We'll check on him.

11 THE CLERK: No. 168, Elvin T. Osteen, reporting.
12 No. 169, James E. Patmore, resident of Texas.

13 THE COURT: Any objection to excusing 169,
14 Mr. Solicitor?

15 MR. JACKSON: No, sir.

16 THE COURT: Mr. Littlejohn?

17 MR. LITTLEJOHN: No, your Honor.

18 THE CLERK: 170, Pauline H. Pearson, over 65
19 years of age.

20 THE COURT: Any objection to honoring the
21 request for over age on, Mr. Jackson?

22 MR. JACKSON: No objection, your Honor.

23 THE COURT: Mr. Littlejohn?

24 MR. LITTLEJOHN: No, your Honor.

25 THE COURT: Thank you.

1 THE CLERK: 171, Alonzo D. Person, reporting.
2 172, Michael A. Pettus, unable to locate by
3 deputy.

4 THE COURT: We'll check further on that.

5 THE CLERK: 173, Cathy A. Phillips, reporting.
6 174, Darryl R. Pitts, unable to locate by
7 deputy.

8 THE COURT: We'll check further on that.

9 THE CLERK: 175, John Price, reporting.
10 176, Jayne M. Pritchard, over 65 years of age.

11 THE COURT: Any objection to excusing him for
12 age upon his request, Mr. Jackson?

13 MR. JACKSON: No, sir.

14 THE COURT: Mr. Littlejohn?

15 MR. LITTLEJOHN: No, your Honor.

16 THE COURT: Thank you.

17 THE CLERK: 177, Isiazetta Rajah Harris,
18 reporting.

19 178, Michael A. Ransome, criminal conviction and
20 he should be present.

21 THE COURT: All right.

22 THE CLERK: 179, John E. Ray, unable to locate
23 by deputy.

24 THE COURT: Further inquiry.

25 THE CLERK: 180, Edward W. Rewis, unable to

1 locate by deputy.

2 THE COURT: Further inquiry.

3 THE CLERK: 181, Ann T. Reynolds, over 65 years
4 of age.

5 THE COURT: Any objection to excusing her for
6 age, Mr. Jackson?

7 MR. JACKSON: No, sir.

8 THE COURT: Mr. Littlejohn?

9 MR. LITTLEJOHN: No, your Honor.

10 THE COURT: Thank you.

11 THE CLERK: 182, Erin M. Richardson, full-time
12 student/transfer.

13 THE COURT: Any objections to transferring
14 Ms. Richardson, Juror No. 182, Mr. Jackson?

15 MR. JACKSON: No objection, your Honor.

16 THE COURT: Mr. Littlejohn?

17 MR. LITTLEJOHN: No, your Honor.

18 THE CLERK: 183, Edwina Y. Richie, housewife
19 with a child under the age of seven.

20 THE COURT: And has requested to be excused?

21 THE CLERK: Yes, sir.

22 THE COURT: Any objection, Mr. Jackson?

23 MR. JACKSON: No, sir.

24 THE COURT: Mr. Littlejohn?

25 MR. LITTLEJOHN: No, your Honor.

1 Your Honor, for the record, I'm assuming all the
2 ladies who indicated they are housewives and have children
3 under seven have requested to be exempt?

4 THE COURT: Yes, sir. All of these -- they were
5 the requests that came in and I think they'll be
6 documented, but she's followed up on it and they're based
7 on requests and we would have no way of knowing they even
8 had children under seven or anything if they had not made
9 a request.

10 MR. LITTLEJOHN: I understand. I'm just making
11 that statement for the record. Thank you.

12 THE COURT: Yes, sir.

13 THE CLERK: 184, Hazel T. Ridgeway, reporting.
14 185, Willis Rodgers, over 65 years of age.

15 THE COURT: Any objection to excusing
16 Mr. Rodgers for age, Mr. Jackson?

17 MR. JACKSON: No, sir.

18 THE COURT: Mr. Littlejohn?

19 MR. LITTLEJOHN: No, your Honor.

20 THE CLERK: 186, Cindy M. Rodriguez, full-time
21 student/transfer.

22 THE COURT: Again a student has requested a
23 transfer.

24 Any objection, Mr. Jackson?

25 MR. JACKSON: No objection, your Honor.

1 THE COURT: Mr. Littlejohn?

2 MR. LITTLEJOHN: No, your Honor.

3 THE COURT: Okay.

4 THE CLERK: 187, Ruby M. Ross, deceased.

5 188, Heather R. Rowland, reporting.

6 189, Gwendolyn E. Sanders, reporting.

7 190, George Scott, Jr., reporting.

8 191, Gregory A. Scott, reporting.

9 192, Cheryl S. Seruya, resident of New Jersey.

10 THE COURT: Any objection to excusing 182 -- I'm
11 sorry, 192, Mr. Jackson?

12 MR. JACKSON: No, sir.

13 THE COURT: Mr. Littlejohn?

14 MR. LITTLEJOHN: No, your Honor.

15 THE COURT: Thank you.

16 THE CLERK: 193, Jerome E. Shannon, reporting.

17 194, Ernest C. Sikes, unable to locate by
18 deputy.

19 THE COURT: All right. Further inquiry.

20 THE CLERK: 195, Vincent F. Sims, reporting.

21 196, Cora N. Singleton, over 65 years of age.

22 THE COURT: Any objection to excusing 196 for
23 age, Mr. Jackson?

24 MR. JACKSON: No objection, your Honor.

25 THE COURT: Mr. Littlejohn?

1 MR. LITTLEJOHN: No, your Honor.

2 THE COURT: Thank you.

3 THE CLERK: 197, Courtney E. Sinner, reporting.

4 198, James E. Slater, reporting.

5 199, Carla N. Smith, reporting.

6 200, Lauren A. Smith, unable to locate by
7 deputy.

8 THE COURT: Further inquiry.

9 THE CLERK: 201, Louis Smith, III, unable to
10 locate by deputy.

11 THE COURT: Further inquiry.

12 THE CLERK: 202, Ronald H. Smith, reporting.

13 203, Letisha D. Solomon, reporting.

14 204, Oneal Solomon, reporting.

15 205, Kelly M. Spann, incarcerated in Wateree
16 Correctional Institution.

17 THE COURT: Any objection to excusing Juror No.
18 205, Mr. Jackson?

19 MR. JACKSON: No objection, your Honor.

20 THE COURT: Mr. Littlejohn?

21 MR. LITTLEJOHN: Reluctantly, your Honor.

22 THE CLERK: 206, Loretta Spann, reporting.

23 207, Patricia B. Starr, over 65 years of age.

24 THE COURT: Any objection to excusing Juror No.
25 207 for age, Mr. Jackson?

1 MR. JACKSON: No, sir.

2 THE COURT: Mr. Littlejohn?

3 MR. LITTLEJOHN: No, your Honor.

4 THE COURT: Thank you.

5 THE CLERK: 208, Melissa Stuckey, unable to
6 locate by deputy.

7 THE COURT: Further inquiry.

8 THE CLERK: 209, Angela Y. Sumpter, unable to
9 locate by deputy.

10 THE COURT: Further inquiry.

11 THE CLERK: 210, Josh Sumpter, reporting.

12 211, Shontrell M. Sutton, full-time
13 student/transfer.

14 THE COURT: Any objection to transferring Juror
15 No. 211, Mr. Jackson?

16 MR. JACKSON: No objection to a transfer, your
17 Honor.

18 THE COURT: Mr. Littlejohn?

19 MR. LITTLEJOHN: No, your Honor.

20 THE COURT: Thank you.

21 THE CLERK: 212, Amy R. Swisher, unable to
22 locate by deputy.

23 THE COURT: Further inquiry.

24 THE CLERK: 213, Tony C. Taylor, unable to
25 locate by deputy.

1 THE COURT: Further inquiry.

2 THE CLERK: 214, Taryn M. Teigue, unable to
3 locate by deputy.

4 THE COURT: Further inquiry.

5 THE CLERK: 215, Audra J. Thompson, unable to
6 locate by deputy.

7 THE COURT: Further inquiry.

8 THE CLERK: 216, Haston M. Timmons, resident of
9 Tennessee.

10 THE COURT: Any objection to excusing 216,
11 Mr. Jackson?

12 MR. JACKSON: No, sir.

13 THE COURT: Mr. Littlejohn?

14 MR. LITTLEJOHN: No, your Honor.

15 THE COURT: Thank you.

16 THE CLERK: 217, Teresa A. Tisdale, reporting.

17 218, Gerald J. Tomlin, reporting.

18 219, Bonnie J. Traymum, reporting.

19 220, Kenneth C. Trivette, reporting.

20 221, Tim W. Truett, reporting.

21 222, Emerenciana T. Ulery, reporting.

22 223, Maryann H. Van Dorn, unable to locate by
23 deputy.

24 THE COURT: We'll make further inquiry.

25 THE CLERK: 224, Maria Varela, reporting.

1 225, Walter Vaughn, reporting.

2 226, Leighanne M. Waddell, housewife with a
3 child under the age of seven.

4 THE COURT: Any objection to granting Juror No.
5 226 a requested exemption, Mr. Jackson?

6 MR. JACKSON: No, sir.

7 THE COURT: Mr. Littlejohn?

8 MR. LITTLEJOHN: No, your Honor.

9 THE COURT: Thank you.

10 THE CLERK: 227, Michael J. Walker, unable to
11 locate by deputy.

12 THE COURT: Further inquiry.

13 THE CLERK: 228, Pinky Louise Walker, reporting.

14 229, LaToya D. Walters, reporting.

15 230, Annie D. Washington, notified by deputy and
16 expected to report.

17 231, Patrice L. Washington, unable to locate by
18 deputy.

19 THE COURT: Further inquiry.

20 THE CLERK: 232, Thomas J. Washington, unable to
21 locate by deputy.

22 THE COURT: Further inquiry.

23 THE CLERK: 233, Angela M. Weeks, reporting.

24 234, Roddregus A. Wells, unable to locate by
25 deputy.

1 THE COURT: Further inquiry.

2 THE CLERK: 235, Juanita B. Weston, reporting.

3 236, Linda F. Wherry, reporting.

4 237, Gayle Y. White, over 65 years of age.

5 THE COURT: Any objections to honoring the
6 requested exemption, Mr. Jackson?

7 MR. JACKSON: None, your Honor.

8 THE COURT: Mr. Littlejohn?

9 MR. LITTLEJOHN: No, your Honor.

10 THE CLERK: 238, Minnie M. Whitley, over 65
11 years of age.

12 THE COURT: Any objection to honoring the
13 requested exemption, Mr. Jackson?

14 MR. JACKSON: No, sir.

15 THE COURT: Mr. Littlejohn?

16 MR. LITTLEJOHN: No, your Honor.

17 THE CLERK: 239, Shawn A. Wigsмоen, II, unable
18 to locate by deputy.

19 THE COURT: All right. We'll look into that
20 further.

21 THE CLERK: 240, Robin G. Wiles, over 65 years
22 of age.

23 THE COURT: Any objection to honoring the
24 requested exemption, Mr. Jackson?

25 MR. JACKSON: None, your Honor.

1 THE COURT: Mr. Littlejohn?

2 MR. LITTLEJOHN: No, your Honor.

3 THE COURT: All right.

4 THE CLERK: 241, Albert K. Williams, Jr.,
5 military, stationed in California.

6 THE COURT: Any objection to excusing him,
7 Solicitor?

8 MR. JACKSON: None, your Honor.

9 THE COURT: Mr. Littlejohn?

10 MR. LITTLEJOHN: No, your Honor.

11 THE COURT: Thank you.

12 THE CLERK: 242, Cynthia M. Williams, reporting.

13 243, Donna S. Williamson, reporting.

14 244, Matthew B. Williamson, full-time
15 student/transfer.

16 THE COURT: Any objection to transferring Juror
17 No. 244 with full-time student status, Mr. Jackson?

18 MR. JACKSON: No objection to transfer, your
19 Honor.

20 THE COURT: Mr. Littlejohn?

21 MR. LITTLEJOHN: No, your Honor.

22 THE CLERK: 245, Chauncey W. Wilson, unable to
23 locate by deputy.

24 THE COURT: Add that to our list for further
25 inquiry.

1 THE CLERK: 246, David C. Wilson, reporting.
2 247, Debra A. Wilson, reporting.
3 248, David J. Winston, Jr., unable to locate by
4 deputy.

5 THE COURT: We'll add that to our list.

6 THE CLERK: 249, Mary Wynn, deceased.
7 250, Glenn A. Young, unable to locate by deputy.

8 THE COURT: We'll add 250 to the list of
9 inquiries.

10 THE CLERK: And, your Honor, I have had this
11 brought to my attention. No. 44, Roger D. Cox, has
12 brought in a medical excuse.

13 THE COURT: Mr. Cox has originally indicated --
14 sent a return in and we were expecting him. There is an
15 excuse from an M.D., E. McDonald deBoas, indicating that
16 he has a medical condition that I will be glad to share
17 with Counsel if they would like to see it or accept it as
18 valid and having been excused.

19 MR. JACKSON: No objection with him being
20 excused, your Honor.

21 THE COURT: Any objection to No. 44?

22 MR. LITTLEJOHN: No, your Honor.

23 THE COURT: Thank you, Counsel.

24 Now, let's talk a minute about those who the
25 department, the sheriff's department has not been able to

1 locate so that we can get the necessary people over here
2 to put on the record whatever might be necessary to show
3 what was done. And I understand the defense position.

4 Tell me what was done on those that you
5 initially got no return on. You gave those names to the
6 sheriff's department and what?

7 THE CLERK: I have a stack here that was
8 returned by mail that we don't send to the sheriff's
9 department and we mark "unable to locate."

10 The list that I gave you, the highlighted list,
11 are the ones that were sent over there and they made an
12 effort to locate them. Some they did, some they couldn't.

13 THE COURT: I guess my question is, those that
14 come back from the mail, how do they compare? Are they
15 the same names?

16 THE CLERK: No, sir.

17 THE COURT: Okay.

18 THE CLERK: In the past we have sent these over
19 before and the only thing they would do is mark them off
20 because the mailman wasn't able to locate them so they
21 couldn't find the addressee because they no longer lived
22 there. So these are just marked as "unable to locate."

23 This stack here that was actually returned by
24 mail did not -- they didn't try to go get addresses on
25 them.

1 THE COURT: Okay. How did you determine which
2 ones, the names you would give to them to try to locate?

3 THE CLERK: The ones that I received nothing
4 back on.

5 THE COURT: The ones you received nothing back
6 on. All right. Okay.

7 So what the Clerk tells me now, Mr. Littlejohn
8 and Mr. Jackson is, the ones that were returned by the
9 postal service that they had no address for them were not
10 sent to law enforcement to locate. The ones that did not
11 come back in the mail were the names that were sent over
12 and those are the ones that were attempted to be located
13 by the sheriff's department. Those are shown on this
14 highlighted list here.

15 Tell me what your thinking is on it. Do you
16 want further inquiry, Mr. Jackson or -- and I'll hear from
17 Mr. Littlejohn.

18 MR. JACKSON: Your Honor, the State wouldn't
19 request any further inquiry at this time.

20 MR. BABB: Court's indulgence for just a moment.

21 THE COURT: Yes, sir, you all go ahead.

22 Counsel, while you're talking and this may
23 factor into your discussions and you might need to know
24 that we have approximately 110 that we're expecting.
25 Okay. So that you'll know that as well.

1 You all go ahead and talk.

2 MR. BABB: Your Honor, I want to be sure I
3 understood that. That rather voluminous stack is in
4 addition to the 250 on this sheet?

5 THE COURT: No, sir. It's part of it. 250 is
6 the total number that was sent out.

7 MR. BABB: So some of these that say unable to
8 locate by deputy, there was never an attempt to locate by
9 deputy? Is my understanding --

10 THE COURT: That's probably correct. It
11 probably just means that they came back in the mail.

12 Unable to locate by deputy means either unable
13 to locate in one of two ways: Unable to locate because
14 the postman returned it or it was unable to locate because
15 the deputy went out and couldn't find anybody.

16 And apparently the procedure that we have used
17 here in the county is that if they come back from the
18 mailman, we don't send it to the sheriff. If we get
19 nothing back, then those are the names that are sent to
20 the sheriff to try to locate.

21 THE CLERK: And I do make an effort when they
22 come back in returned by mail to find a new address on
23 them, and if I'm unable to do that, then they're marked
24 unable to locate.

25 THE COURT: Okay. You all go ahead.

1 Counsel, again for information in knowing what
2 the situation was, 37 came back from the post office that
3 they were not able to locate them. And the Clerk's office
4 made no further attempts beyond that maybe except to get
5 another address but they were not turned over to the
6 sheriff.

7 Fifty-four were turned over to the sheriff, and
8 that's this list that's highlighted in yellow, some of
9 which were notified and show up on that list as having
10 been notified and we expect them to be here and then some
11 of which they couldn't find and I can get somebody from
12 the sheriff's office to tell what they did with regard to
13 these 54 if you all would like to have that information.

14 MR. LITTLEJOHN: Your Honor, I think for the
15 record perhaps we should have some sort of showing about
16 what was done in regards to the 54 that were turned over
17 to the sheriff's department.

18 THE COURT: All right, sir.

19 MR. LITTLEJOHN: In regard to the 37 that the
20 postal service couldn't find, I don't know exactly what we
21 can do with those.

22 THE COURT: All right, sir. Thank you. We will
23 go through those again and get to those in a few minutes.

24 Who were you dealing with over at the sheriff's
25 office, do you know?

1 THE CLERK: Well, sir, I take them to Judy Kelly
2 and she distributes them.

3 THE COURT: All right. Well, when we break
4 here -- I mean not when we break but when we finish with
5 this information on the jury in a few minutes, we've got
6 some other things that we're going to do before the day is
7 out and I'm going to excuse you and allow you to make some
8 calls and find out from the sheriff's office who needs to
9 come over here and tell us what they've done.

10 THE CLERK: Captain Hobbs.

11 THE COURT: Captain Hobbs, okay.

12 Mr. Clerk, if you would have someone from your
13 office see if he's available to come over here and discuss
14 this matter with us.

15 Now, Counsel, the next thing that we need to do
16 is to address the six individuals who are here. I believe
17 there are six individuals who are here who have requested
18 an exemption or an excuse or disqualification and we need
19 to talk to each one of those individually.

20 Let me ask Counsel to come up just a minute and
21 let's decide how we want to do this.

22 (A bench conference was held with the judge and
23 attorneys.)

24 THE COURT: All right. The next matter to
25 address is the six jurors here, and because they may serve

1 on the jury in this case, Mr. Littlejohn, I propose that
2 we do this in chambers on the record with Counsel being
3 present and no witnesses or spectators or the defendant
4 not being present.

5 Any objection to that procedure, Mr. Jackson?

6 MR. JACKSON: No objection, your Honor.

7 THE COURT: All right. Mr. Littlejohn?

8 MR. LITTLEJOHN: Just a moment, your Honor.

9 THE COURT: Yes, sir.

10 MR. LITTLEJOHN: If you'll give me just a
11 moment, your Honor.

12 THE COURT: Yes, sir.

13 MR. LITTLEJOHN: Your Honor, I've discussed it
14 with Mr. Stone. He has no problem with it.

15 THE COURT: All right. So Mr. Stone waives his
16 presence to the interviewing of these six jurors who are
17 requesting to be excused and we will do that in chambers
18 and then come back in open court and announce what the
19 results of that are. So we'll take a few minutes and do
20 that at this time.

21 Madame reporter, I'm going to ask that you come
22 into my office, please, ma'am, and we'll take care of
23 that.

24 Thank you.

25

1 (A conference was held with the judge and the
2 attorneys in the judge's chambers.)

3 THE COURT: Mr. Herring, bring in Marty Barnes,
4 Juror No. 8.

5 THE BAILIFF: Okay. Marty Barnes?

6 THE COURT: Yes, sir.

7 You all are aware that the questionnaires have
8 been returned and the Clerk's got them and you've got your
9 copies of those.

10 My name is Howard King and I am the judge that's
11 going to be handling this term of court that's coming up.

12 This is Mr. Jackson, the solicitor; Mr. Saleeby,
13 the assistant solicitor; Mr. Littlejohn and Mr. Babb who
14 are both representing the defendant in this case. And you
15 have been summoned as a juror.

16 And, Mr. Jackson, do you have any information on
17 what the situation is?

18 MR. JACKSON: I do, your Honor.

19 THE COURT: And we want to inquire about this
20 because it may be that you are or may not be qualified.

21 First of all, before I do that, let me just ask
22 you, one of the things we always have to ask, have you
23 ever been convicted of any kind of a crime for which you
24 could have gotten more than one year in prison?

25 THE JUROR: I'm an ex-con, your Honor. I was

1 convicted of some felonies back in the '80s and I spent
2 over 14 years in prison.

3 THE COURT: All right. Do you need any further
4 inquiry from the State?

5 MR. JACKSON: None from the State, your Honor.

6 THE COURT: Any further inquiry from the
7 defense?

8 MR. LITTLEJOHN: No, your Honor.

9 THE COURT: All right. Thank you for coming in,
10 Mr. Barnes.

11 Any objection to excusing this witness, Mr.
12 Jackson?

13 MR. JACKSON: None from the State, your Honor.

14 THE COURT: Defense?

15 MR. LITTLEJOHN: No.

16 THE COURT: You will be excused and you will not
17 have to report on the 22nd. Thank you for coming.

18 We need Mr. Garner.

19 Have a seat right there. And don't be
20 intimidated at all.

21 My name is Howard King and I am the circuit
22 court judge that's assigned to this case that's going to
23 be coming up on the 22nd that you've been summoned as a
24 juror for.

25 This is Mr. Jackson, the solicitor; Mr. Saleeby,

1 the assistant solicitor; defense counsel, Mr. Littlejohn
2 and Mr. Babb.

3 Let me ask you to swear this juror for me,
4 please.

5 We need to ask you some questions concerning
6 your qualifications to serve on the jury and I'm going to
7 ask the Clerk to swear you in.

8 THE CLERK: Raise your right hand, please.

9 KWAN D. GARNER, after being duly sworn,
10 testified as follows:

11 THE COURT: One of the things that I need to ask
12 you, Mr. Garner, is have you ever been convicted of a
13 crime for which you could have received more than one year
14 in prison?

15 THE JUROR: Yes, sir.

16 THE COURT: What was that?

17 THE JUROR: Possession of cocaine.

18 THE COURT: Possession of cocaine. And when was
19 that?

20 THE JUROR: I was 18 and I'm 27, nine years ago.

21 THE COURT: Okay. Was that here in Sumter?

22 THE JUROR: Yes, sir.

23 THE COURT: Is that what his NCIC shows, Mr.
24 Jackson?

25 MR. JACKSON: That's correct, your Honor. There

1 may be some additional charges as well, but it was at
2 least that.

3 THE COURT: All right, sir.

4 Any questions of this witness, Mr. Littlejohn?

5 MR. LITTLEJOHN: No, your Honor.

6 THE COURT: All right. Any objection to this
7 witness being excused under the statutory exemption for
8 the conviction of a crime on behalf of the State?

9 MR. JACKSON: No objection, your Honor.

10 THE COURT: On behalf of the defense?

11 MR. LITTLEJOHN: No, your Honor.

12 THE COURT: All right. You are excused. Thank
13 you for coming in. You will not need to report on the
14 22nd. Thank you very much.

15 THE JUROR: All right. Have a nice day.

16 THE COURT: Come in, Mr. Jones. Have a seat.
17 Don't be intimidated by this group.

18 You have been summoned as a juror to report on
19 the 22nd of February and we need to ask you some questions
20 concerning your qualifications to serve on that jury.

21 My name is Howard King and I am the judge who's
22 going to be presiding over the trial.

23 This is Mr. Jackson, the solicitor; Mr. Saleeby,
24 also of the solicitor's office; defense counsel, Mr.
25 Littlejohn and Mr. Babb.

1 One of the things that we need to know by way of
2 information is have you ever been convicted of a crime for
3 which you could have received more than one year in
4 prison?

5 THE JUROR: Yes, I have, sir.

6 THE COURT: Tell me about that. What was that?

7 THE JUROR: I had a first degree charge. I'm on
8 parole for that right now.

9 THE COURT: First degree what?

10 THE JUROR: Burglary.

11 THE COURT: Okay. About how long ago was that?

12 THE JUROR: Probably --

13 THE COURT: When did you go to court on it?

14 THE JUROR: About '95. It was in Horry County.

15 THE COURT: In Horry County?

16 THE JUROR: Yes.

17 THE COURT: Did you serve time on that?

18 THE JUROR: Yes. I got a 25-year sentence.

19 THE COURT: So you're out on parole now?

20 THE JUROR: Yes.

21 THE COURT: All right, sir.

22 Is that what your records show, Mr. Jackson?

23 MR. JACKSON: That's correct, your Honor.

24 THE COURT: All right, sir. Any objections to
25 this witness being excused under the statutory

1 disqualification, Mr. Jackson?

2 MR. JACKSON: No objection, your Honor.

3 THE COURT: Mr. Littlejohn?

4 MR. LITTLEJOHN: No, your Honor.

5 THE COURT: All right. Thank you for coming in,
6 Mr. Jones. That does disqualify you from serving on the
7 jury. You are excused. You will not have to come in on
8 February 22nd. Thank you very much.

9 THE JUROR: Thank you very much.

10 THE COURT: Come in, Mr. Moore. How are you,
11 sir?

12 THE BAILIFF: Raise your right hand.

13 LEROY MOORE, after being duly sworn, testified
14 as follows:

15 THE BAILIFF: Have a seat in the chair right
16 there, sir.

17 THE COURT: Mr. Moore, don't be intimidated by
18 this group.

19 My name is Howard King and I am the judge of
20 this county and I'm assigned to preside over this trial
21 that's supposed to begin on February 22nd and you've been
22 summoned as a juror for that trial.

23 This is Mr. Jackson, and he is the solicitor or
24 the prosecutor; and Mr. Saleeby, he is also with the
25 solicitor's office as a solicitor and prosecutor; Mr.

1 Littlejohn and Mr. Babb who represent the defendant in
2 this case.

3 I need to ask you some questions to help
4 determine your qualifications to serve on the jury this
5 week, so I need for you to answer these questions clearly
6 for me so that this lady can take it down and we can
7 determine your qualifications.

8 One of the questions that I need to ask you I
9 think is how far did you go in school?

10 THE JUROR: Third grade.

11 THE COURT: Third grade?

12 THE JUROR: Yeah.

13 THE COURT: And what kind of work have you done
14 during your lifetime?

15 THE JUROR: Just work on the farm.

16 THE COURT: Okay. Worked on the farm?

17 THE JUROR: Yeah.

18 THE COURT: Did you get married?

19 THE JUROR: Yes, I get married.

20 THE COURT: Are you still married?

21 THE JUROR: Yes, sir, I'm married.

22 THE COURT: One wife?

23 THE JUROR: One wife.

24 THE COURT: How long you been married?

25 THE JUROR: I got married in '56.

1 THE COURT: '56 and been married ever since?

2 THE JUROR: Yes, sir.

3 THE COURT: Have any children?

4 THE JUROR: Two.

5 THE COURT: And I guess they're grown now?

6 THE JUROR: Yes, sir.

7 THE COURT: And you raised and supported those
8 children?

9 THE JUROR: Yes, sir.

10 THE COURT: All right. Are you able to read and
11 write at all?

12 THE JUROR: No.

13 THE COURT: All right. Can you sign your name?

14 THE JUROR: Yes, I can sign my name.

15 THE COURT: If you were to pick up a newspaper
16 would you be able to read any of it?

17 THE JUROR: No.

18 THE COURT: What about if you went into a store
19 and bought something and gave them a \$10 bill, would you
20 know if they gave you the right change back?

21 THE JUROR: Well, I'd look on the ticket, on the
22 little thing up there where that corner's at.

23 THE COURT: Let's say you went into the store
24 and bought something that costs \$4.35. Would you know how
25 much change they're supposed to give you back?

1 THE JUROR: No, not right off the moment. I
2 might in a little bit on but not right off the moment I
3 can't.

4 THE COURT: All right. Mr. Jackson, any
5 questions you'd like to ask the witness?

6 MR. JACKSON: I don't have any questions, your
7 Honor.

8 THE COURT: All right. Mr. Littlejohn?

9 MR. LITTLEJOHN: Your Honor, I don't have any
10 questions.

11 THE COURT: All right. Mr. Moore, I'm going to
12 ask you to step outside for just a minute and let me
13 discuss matters with the attorneys with regard to your
14 status as a juror, all right? Thank you, sir.

15 Gentlemen, the statute says a sixth grade
16 education or its equivalent. I'm not sure this gentleman
17 even has the equivalent of a sixth grade education.

18 What's your position, Mr. Jackson?

19 MR. JACKSON: I would agree with your Honor.

20 THE COURT: What do you all feel?

21 MR. LITTLEJOHN: We agree, your Honor.

22 THE COURT: All right. No objection then to
23 excusing the witness or the juror, excuse me?

24 MR. JACKSON: No objection, your Honor.

25 MR. LITTLEJOHN: No, your Honor.

1 THE COURT: All right. Mr. Herring, if you'd
2 have Mr. Moore come back in, please.

3 All right. Mr. Moore, we thank you for coming.
4 After discussing your status with the attorneys, we do
5 believe that you have a statutory exemption or statutory
6 disqualification and so I am going to excuse you from any
7 further service on this jury. You need not report back on
8 February 22nd. Thank you for coming.

9 THE BAILIFF: State your name.

10 THE JUROR: Wendell Moore.

11 WENDELL MOORE, after being duly sworn, testified
12 as follows:

13 THE BAILIFF: Have a seat right here.

14 THE COURT: Have a seat, Mr. Moore.

15 This is Juror No. 155, Mr. Wendell Moore.

16 And don't feel intimidated by this crowd.

17 My name is Howard King and I am the judge that's
18 scheduled to preside over this trial that is to begin on
19 February 22nd when you were supposed to appear, but we had
20 some matters that we needed to discuss with you regarding
21 your qualifications to serve on the jury and that's why we
22 asked if you'd come in today.

23 This is Mr. Jackson, the solicitor; Mr. Saleeby,
24 the assistant solicitor; Mr. Littlejohn and Mr. Babb who
25 are representing the defendant in this case.

1 One of the questions that I need to ask you is
2 whether you have been convicted of a crime for which you
3 could have gotten more than one year in prison?

4 THE JUROR: Yes.

5 THE COURT: Tell me about that.

6 THE JUROR: Well, I've been convicted of second
7 degree burglary.

8 THE COURT: Second degree burglary?

9 THE JUROR: Yes.

10 THE COURT: And how long ago was that?

11 THE JUROR: Two separate occasions, around --
12 the last one was in '99 and I received eight years.

13 THE COURT: Okay. And you served how much of
14 that?

15 THE JUROR: Four and a half.

16 THE COURT: Okay. Then you were convicted
17 again?

18 THE JUROR: No, that was the last one. I got
19 attempted second degree burglary.

20 THE COURT: All right.

21 THE JUROR: I served three years and two months.
22 I maxed that out.

23 THE COURT: And you have not been pardoned by
24 the governor or given amnesty on those charges; is that
25 correct?

1 THE JUROR: No.

2 THE COURT: Is that what your records show, Mr.
3 Jackson?

4 MR. JACKSON: That's correct, your Honor.

5 THE COURT: All right. Any objection to
6 excusing the witness I mean the juror for the statutory
7 disqualification, Mr. Jackson?

8 MR. JACKSON: No objection, your Honor.

9 THE COURT: Mr. Littlejohn?

10 MR. LITTLEJOHN: No, your Honor.

11 THE COURT: All right. Thank you, Mr. Moore.
12 That would be a disqualifying matter, and so I am going to
13 excuse you from any service on this case and it will not
14 be necessary that you report back on February 22nd. Thank
15 you for coming.

16 THE JUROR: Thank you.

17 THE COURT: Mr. Ransome.

18 THE BAILIFF: Mr. Ransome, raise your right
19 hand.

20 MICHAEL RANSOME, after being duly sworn,
21 testified as follows:

22 THE BAILIFF: Have a seat right there.

23 THE COURT: Have a seat, Mr. Ransome, and don't
24 be intimidated by this crowd.

25 My name is Howard King and I am the judge of the

1 court.

2 This is Mr. Jackson, the solicitor; Mr. Saleeby,
3 the assistant solicitor; Mr. Littlejohn and Mr. Babb who
4 are the defense counsel.

5 And you've been summoned as a juror to appear on
6 February 22nd for a trial on a matter here and I need to
7 ask you some questions regrading your qualifications to
8 serve.

9 The question that I need to ask you is whether
10 you've ever been convicted of or pled guilty to a crime
11 for which you could have gotten more than one year in
12 jail?

13 THE JUROR: Yes, sir.

14 THE COURT: And tell me about that.

15 THE JUROR: It was taking some medication. It
16 was in New Haven, Connecticut and I was convicted of a
17 drug charge.

18 THE COURT: What kind of a drug charge? Some
19 drug charges are fairly insignificant and some are more
20 serious than the others.

21 THE JUROR: Possession of crack cocaine.

22 THE COURT: Do you know how much you could have
23 gotten under New Jersey law for that?

24 THE JUROR: New Jersey?

25 THE COURT: Where were you?

1 THE JUROR: Connecticut.

2 THE COURT: Connecticut. How much could you
3 have gotten under Connecticut law for that?

4 THE JUROR: I think it was 15 years to 30.

5 THE COURT: So you'd get more than a year in
6 South Carolina, too.

7 What was your sentence?

8 THE JUROR: Three years probation.

9 THE COURT: Have you been pardoned or given
10 amnesty by the governor of Connecticut for that offense or
11 is it still open and on your record?

12 THE JUROR: It's still open and on my record.

13 THE COURT: Any questions of the witness?

14 Does that agree with what your records show, Mr.
15 Jackson?

16 MR. JACKSON: Your Honor, we didn't have
17 anything from Connecticut. We had some South Carolina
18 charges that would not disqualify him, but we were not
19 aware of the Connecticut charge.

20 THE COURT: All right. Do you want to inquire
21 further of these charges that he has talked about today?

22 MR. JACKSON: No, sir, your Honor.

23 THE COURT: All right. Mr. Littlejohn, anything
24 you'd like to ask him?

25 MR. LITTLEJOHN: Just briefly.

1 Mr. Ransome, the crime you pled guilty to, you
2 think you could have gotten a 15-year sentence, that's
3 what you were looking at?

4 THE JUROR: No, I think that's what the judge
5 said. I don't know.

6 MR. LITTLEJOHN: Was it like possession with
7 intent to distribute?

8 THE JUROR: Yes, sir.

9 MR. LITTLEJOHN: Okay. It wasn't just
10 possession?

11 THE JUROR: No, sir. It was -- I don't know.
12 It was like maybe three or four charges because I was in a
13 school, not a school zone but --

14 THE COURT: Within the proximity of a school,
15 close to a school?

16 THE JUROR: A church.

17 THE COURT: A church, okay. How much -- it was
18 crack or powder?

19 THE JUROR: It was crack.

20 THE COURT: How much was it? Do you recall the
21 weight?

22 THE JUROR: No, ma'am. I mean no, sir. It was
23 maybe a couple of pieces. It wasn't a very large amount.

24 THE COURT: But you got something suspended on
25 three years probation?

1 THE JUROR: Yes, sir.

2 THE COURT: Do you remember what the sentence
3 was before it was suspended? In other words, if you
4 hadn't gotten the suspended sentence and you hadn't been
5 able to keep your probation, what would you have been
6 looking at to go to jail for?

7 THE JUROR: I think it was, like I said, 15
8 years, I think.

9 THE COURT: Anything else, Mr. Littlejohn?

10 MR. LITTLEJOHN: No, sir.

11 THE COURT: All right. Any objection to this
12 excusing him as statutorily disqualified, Mr. Jackson?

13 MR. JACKSON: No objection, your Honor.

14 THE COURT: Mr. Littlejohn?

15 MR. LITTLEJOHN: No, your Honor.

16 THE COURT: All right. You are excused. That
17 is a disqualifying matter, Mr. Ransome, and so you will be
18 excused from this jury panel and you will not have to
19 report back on February 22nd. Thank you for coming.

20 That's all that we have on the jurors that have
21 reported today.

22 And so for the record, then, just to make sure
23 there's no question about it, Juror No. 8, No. 69, No.
24 107, 154, 155, and 178 have all been excused as
25 statutorily disqualified.

1 That's all we need to do on the record right
2 here.

3 (Proceedings resumed in the courtroom.)

4 THE COURT: Even though it was done on the
5 record, I want to affirm in open court what the matters
6 were that we took up in chambers, and that is that Juror
7 Juror No. 8 was dismissed because of a statutory
8 disqualification, Juror No. 69 was excused for statutory
9 disqualification, Juror No. 107 also excused because of
10 statutory disqualification, 154 excused because of
11 statutory disqualification, 155 excused for statutory
12 disqualification, and 178 disqualified for statutory
13 disqualification.

14 Anything further that the State wishes to say
15 with regard to that issue, Mr. Jackson?

16 MR. JACKSON: Nothing further from the State,
17 your Honor.

18 THE COURT: Mr. Littlejohn?

19 MR. LITTLEJOHN: No, your Honor.

20 THE COURT: All right. Now, the next matter
21 that I would like to ask the Clerk to do is just by
22 numbers only, those that we indicated were unable to
23 locate when we went through the first jury roll call, I
24 want the numbers of those jurors whose jury summons was
25 returned by the post office department and were not turned

1 over to the sheriff, because it's my understanding that
2 neither the State nor the defense has any objection to the
3 excusing of those jurors.

4 Is that correct, Mr. Jackson?

5 MR. JACKSON: That's correct, your Honor.

6 THE COURT: Mr. Littlejohn?

7 MR. LITTLEJOHN: Yes, your Honor.

8 THE COURT: Okay. Let's get those numbers on
9 the record, please, Ms. Griffin.

10 These are the numbers of the ones whose summons
11 were sent out and were undelivered by the post office
12 department and returned to the Clerk's office as
13 undeliverable.

14 THE CLERK: No. 16, No. 17, No. 53, No. 54, No.
15 55, No. 59, No. 63, No. 66, No. 68, No. 70, No. 76, No.
16 78, No. 79, No. 80, No. 85, No. 87, No. 91, No. 105, No.
17 111, No. 117, No. 118, No. 128, No. 136, No. 142, No. 144,
18 No. 151, No. 158, No. 167, No. 179, No. 201, No. 213, No.
19 223, No. 231, No. 234, 239, 245 and 250.

20 THE COURT: All right. Those are the jurors
21 numbers for the summons that were sent out and returned by
22 the post office department to the Clerk's office and no
23 further investigation was made other than what the post
24 office department tried to do to deliver summons.

25 The Court proposes to excuse those jurors

1 without any further matters.

2 Any objection to that, Mr. Jackson?

3 MR. JACKSON: No, sir, your Honor.

4 THE COURT: Mr. Littlejohn?

5 MR. LITTLEJOHN: No, your Honor. It's my
6 further understanding the Clerk did attempt to find a
7 subsequent address if possible and for these 37 that was
8 unsuccessful.

9 THE COURT: Is that correct?

10 THE CLERK: Yes, sir.

11 THE COURT: Thank you.

12 Now, that leaves us some other jurors whose
13 names and numbers were turned over to the sheriff's
14 department to try to locate those, and we do have the
15 individual from the Sumter County Sheriff's office here
16 prepared to testify what he did on that behalf.

17 Come around, please, sir, and if you would swear
18 him, please.

19 THE CLERK: Place your left hand on the Bible.

20 GENE HOBBS, after being duly sworn, testified as
21 follows:

22 THE CLERK: Have a seat up there, please, sir.
23 Watch your step.

24 THE COURT: State your name and spell your last
25 name for the record, please, Captain.

1 THE WITNESS: Captain Gene Hobbs, H-O-B-B-S.

2 THE COURT: Mr. Hobbs, where are you employed?

3 THE WITNESS: I'm employed with the Sumter
4 County Sheriff's office. I have been employed there for
5 the last 20 years.

6 THE COURT: And what is your current rank?

7 THE WITNESS: I am a captain of patrol.

8 THE COURT: How long have you been in that
9 position?

10 THE WITNESS: That would be 45 days.

11 THE COURT: All right. Captain Hobbs, at some
12 point in time were you given a list of names by the Clerk
13 of Court's office to try to locate certain individuals,
14 and if so, tell us what list you got and what you tried
15 and what you did and what the department's policy on that
16 was and how it was handled.

17 THE WITNESS: Yes, sir. I received this
18 particular list from my desk, from my door. I have a mail
19 drop there. As soon as I got the list I went ahead to get
20 started on it.

21 I designated all the ones that were marked that
22 we had them notified as deputies. And the county is split
23 into 10 districts and I marked the location for each
24 district, the responsibility for that district to check.

25 When I was finished with that, Sergeant Carter

1 was the on-duty supervisor. I called him into my office.
2 That was a period of time, there was no rush on that, but
3 when he did respond, I personally handed him the list with
4 copies made for deputies to give out to the shift to start
5 checking. I handed that out. And also in this particular
6 case there was a cover sheet that reminded us that there
7 was a questionnaire that needed to be answered that was
8 different than other jury trials, and I briefed him on
9 that, Sergeant Carter, and he responded by getting started
10 on it.

11 THE COURT: All right, sir. When you say "get
12 started on it," what did they do? What's the standard
13 operating procedure?

14 THE WITNESS: The SOP on jury summons is to go
15 to the address we have, knock on the door, make contact if
16 anyone's home.

17 There is a couple of things that can happen. If
18 no one's home, a card is supposed to be left with the
19 contact number for the deputy who is trying to serve the
20 jury summons. If someone's home, to ask for the person
21 that's on the jury summons sheet. If he's moved, then we
22 usually do mark on that.

23 Normally we don't -- there's not information.
24 In this case I have scanned it and like there's one that's
25 known to have went to college. Some people did know that

1 they'd moved. There was one from Shaw Air Force base
2 where you check with headquarters there for the housing
3 and they show moved.

4 So if there's no answer, the other officer,
5 there is a return trip and that's SOP also. Some of these
6 are three trips. There's been cases where people have
7 been on vacation the two or three days that we were
8 checking and that's happened before. But these are
9 physically contacted at the house.

10 THE COURT: Is there any policy with regard to
11 talking to the particular juror rather than some member of
12 the household there?

13 THE WITNESS: We don't like -- it shouldn't be
14 counted completed unless you've made at least a personal
15 contact with the individual that it's with. In other
16 words, if a wife is there or a son is there, it's almost
17 like leaving a card, we still give a number to call, we
18 ask them to contact us. We have asked when's a good time
19 to see this person. Sometimes it's done by phone, but
20 most of the time it's the return trip back to see the
21 person.

22 THE COURT: And do some of them call you back?

23 THE WITNESS: Yes, sir. I've received many
24 calls over the years that I've done these.

25 THE COURT: And as best you know and as best you

1 can tell from your being in charge of this responsibility
2 at the sheriff's office, was that procedure followed in
3 this matter?

4 THE WITNESS: To the best of my knowledge. And
5 I talked to Lieutenant Prince, Sergeant Carter's immediate
6 supervisor, and we talked about this jury sheet and what
7 the process was at one point and let them know it needed
8 to be done this week.

9 THE COURT: And is this your jury sheet?

10 THE WITNESS: This is a copy of what I was given
11 where I marked my districts on it.

12 THE COURT: Are these your notes and things on
13 the sides?

14 THE WITNESS: To the left is my handwriting,
15 your Honor.

16 THE COURT: All right. And what about the notes
17 on the right-hand side?

18 THE WITNESS: Those are the deputies that
19 actually went to the homes and that's the notes that they
20 put on there.

21 THE COURT: All right. I'm going to make this
22 Court Exhibit No. 1 for purposes of this hearing and make
23 it a part of the record. I'll give it back to you for
24 reference.

25 Mr. Jackson, any questions of this witness?

1 MR. JACKSON: I don't have any questions, your
2 Honor.

3 THE COURT: Mr. Littlejohn?

4 MR. LITTLEJOHN: Just briefly, your Honor.

5 Captain Hobbs, do you records indicate that a
6 deputy attempted to make contact with every one of the
7 jurors that you were given names of?

8 THE WITNESS: Yes, sir. My records show the
9 names that I was given, that each one had notes about some
10 kind of explanation.

11 MR. LITTLEJOHN: Okay. And how many in all were
12 you given for this particular jury venire?

13 THE WITNESS: With your permission, I would go
14 with the information that I was given. I was told it was
15 54, I believe.

16 MR. LITTLEJOHN: That's all I have, your Honor.

17 THE COURT: All right. Thank you. You may step
18 down.

19 Let me give this to the court reporter.

20 Madame, if you'll make that Court's Exhibit No.
21 1 and make it a part of the record.

22 THE WITNESS: May I be excused, your Honor.

23 THE COURT: Yes. Stay with us just a few
24 minutes and I will let you know.
25

1 (WHEREUPON, The Court's Exhibit No. 1 was marked
2 for purposes of the record.)

3 THE COURT: All right. Counsel, it would be my
4 view that every attempt has been made, every reasonable
5 attempt has been made to find those jurors who did not --
6 whose returns were not returned by the mail or whose
7 summons were not returned by the mail and their names were
8 given to the law enforcement to try to locate them. I
9 would propose to excuse those jurors on the basis that
10 every reasonable attempt has been made to make sure that
11 they're here.

12 And I would state for the record that some of
13 them will likely show up on the 22nd . We always have
14 some that show up that have not returned their
15 questionnaire or their summons, but some of them will
16 likely show up on the 22nd. But the Court would propose
17 to excuse all of those at least as far as any further
18 contact is necessary on the part of the Court and the
19 Clerk's office and the sheriff's office, not excusing them
20 of course if they do show up on the 22nd when we go to
21 qualification.

22 Is there any objection to that procedure,
23 Mr. Jackson?

24 MR. JACKSON: No objection your Honor.

25 THE COURT: Mr. Littlejohn?

1 MR. LITTLEJOHN: Your Honor, we have no
2 objection.

3 Just for the record, do I understand that this
4 is the typical percentage of non-returns for Sumter
5 County?

6 THE COURT: Yes, sir. And I will let the Clerk
7 address this, but my experience has been here that we
8 normally summon about 125 jurors for a term of court and
9 generally get around 40 to 45 out of 125, so I would think
10 that this may be even a little higher. If we've gotten
11 110 out of 250, it may be a little bit higher than we
12 usually get, but it would be very typical of what Sumter
13 County would get.

14 MR. LITTLEJOHN: Thank you, sir.

15 THE COURT: All right. Those jurors will be
16 excused or no further attempt will be made to locate them.
17 If they show up, any of these jurors on the list do show
18 up on the 22nd, they will be subjected to the
19 qualification process.

20 MR. LITTLEJOHN: Your Honor, would they also --
21 excuse me.

22 THE COURT: Yes, sir.

23 MR. LITTLEJOHN: Would they also be given a
24 questionnaire to fill out, too?

25 THE COURT: Yes, sir. That would be one of the

1 first things that will be asked of all of the jurors on
2 the 22nd would be if they have returned their
3 questionnaires, and if they haven't, we'll give them an
4 opportunity to complete that questionnaire and make sure
5 that you all get a copy of it.

6 MR. LITTLEJOHN: Very good. Thank you.

7 THE COURT: Okay. All right. In chambers we
8 also discussed, and I just want to go on the record,
9 although I'm not going to put all the information on the
10 record because I don't think it needs to be generally
11 broadcast, but the jury in this case will be sequestered.
12 Lieutenant Rick McCloud, a retired SLED agent, is in
13 charge of the jury sequestration detail.

14 The SLED agents will be sworn as is customary in
15 handling the jury. The bailiffs will also be sworn.

16 The SLED agents, the SLED detail will handle the
17 jury from the time that they are excused in the afternoon
18 until they are returned to court in the morning, at which
19 point the Clerk of Court's bailiffs will be responsible
20 for the jury from the time that they are here in the
21 courthouse until they are released to the SLED agents in
22 the afternoon.

23 Counsel, I also have, and I don't know that I
24 have given to you but I have and will give to you and make
25 copies the three types of juror forms that the deputy will

1 have a copy of and that will be given to the jurors.

2 Let's discuss the selection process for just a
3 minute before we get into the motions because that is the
4 next matter that I want to do.

5 Any objection at this point to excusing Captain
6 Hobbs, Mr. Jackson?

7 MR. JACKSON: No, your Honor.

8 MR. LITTLEJOHN: No, your Honor.

9 THE COURT: You are excused. Thank you for
10 coming, sir.

11 My thoughts would be, and I will be glad to hear
12 from you all, panels of four in one-hour intervals and
13 proceed like that after we get them qualified.

14 What's your feeling, Mr. Jackson or Mr. Saleeby?

15 Mr. Saleeby, you've probably had more experience
16 with this than I have.

17 MR. JACKSON: Your Honor, I would just suggest
18 doing a panel of six.

19 THE COURT: In an hour?

20 MR. JACKSON: Yes, sir.

21 THE COURT: All right. What's your thinking?

22 MR. LITTLEJOHN: Your Honor, we can start off
23 like that and see how it goes.

24 THE COURT: All right. Well, we'll probably try
25 then to do maybe panels of six and do it in an hour.

1 Let me ask you, Counsel, and you may not want to
2 make this decision right now but be thinking about whether
3 or not when we get to a certain point, assuming that we
4 are successful in doing that, like 35 or 36 jurors, I
5 would propose that we stop the qualification process at
6 that point because we won't need any more jurors.

7 Any objection to that on behalf of the State,
8 Mr. Jackson?

9 MR. JACKSON: No objection, your Honor.

10 THE COURT: Mr. Saleeby?

11 Basically what we're going to need is 29
12 qualified jurors.

13 MR. LITTLEJOHN: Your Honor, I'm assuming you go
14 random selection to begin the voir dire process, so it
15 would be a random selection anyway?

16 THE COURT: Yes, sir. Right. Random selection
17 to get the panels and then those 36 or 37 will then go
18 back in and there will be a random selection from there,
19 so you'll have two random selections, yes.

20 MR. LITTLEJOHN: Yes, sir, we have no problem
21 with that.

22 THE COURT: All right.

23 MR. LITTLEJOHN: Your Honor, might I ask, does
24 the Court intend on doing some limited individual voir
25 dire as the jurors come up?

1 THE COURT: Oh, yes, sir. What I intend to do
2 is to go through with the entire panel the general
3 qualification questions like we do with all jurors and get
4 those questions with maybe a little bit of addition to the
5 fact that this is going to be different from the regular
6 jury because it will be sequestered and things like that.
7 So there will be some questions there as the entire panel
8 and we'll ask them to come up. And then of course when we
9 get down to the panels, they'll brought in on an
10 individual basis and both the State and the defense will
11 be allowed to question them on the individual panels.

12 MR. LITTLEJOHN: I guess what I was asking is
13 when the individual jurors come up for voir dire from the
14 attorneys whether the Court was going to do some limited
15 background --

16 THE COURT: I'm sorry. I'll do some first and
17 then I'll give it to the State and then to you all.

18 MR. LITTLEJOHN: Thank you.

19 THE COURT: And I will go over that with you
20 when we're ready to do it.

21 All right. I guess that brings us then to any
22 motions that need to be done. If that is the case, do any
23 of you all know of anything else we need the Clerk's
24 office for at this time? We can excuse the folks from the
25 Clerk office.

1 (No response.)

2 THE COURT: All right. Thank you.

3 What about motions on behalf of the State? Are
4 there any motions that the Court needs to consider at this
5 time?

6 MR. SALEEBY: Your Honor, I will address those.

7 We have not changed the motions that we have
8 filed since we had this matter originally scheduled. I
9 will -- do you have that motion in front of you, Judge?
10 I'm delighted to read it, but I think you could probably
11 follow it easier.

12 THE COURT: It's in the notebook here. Find it
13 for me.

14 All right. The Court then has before it now the
15 State's motion -- no, that's not it.

16 MR. SALEEBY: It's dated November 1, 2004. I
17 have it right here and can very quickly run you all a
18 copy.

19 THE COURT: All right. Let me have the Clerk
20 make a copy of it.

21 MR. SALEEBY: Your Honor, to not delay things,
22 let me go ahead and start.

23 THE COURT: Go ahead.

24 MR. SALEEBY: The first motion was basically a
25 request for direction. As it reads, it was requesting

1 that the Court instruct the jury about the unique nature
2 of this proceeding, that guilt has been adjudicated.

3 Most of the capital punishment cases I have been
4 involved with for the second time, we have had to try the
5 whole thing.

6 It's a different situation for everybody and I
7 heartily propose, we don't propose to try to put words in
8 your mouth, but at some point in time the 12 or 14 people
9 who are sitting on the panel need to be advised from the
10 very beginning what their responsibility is and what the
11 nature of the proceedings is, particularly since it's so
12 unique and that they don't determine guilt or innocence.
13 In essence, they would be told that if it was the same
14 panel that had decided the first case, ladies and
15 gentlemen, you're not here to adjudicate guilt; that
16 matter has been determined. You're to determine
17 punishment.

18 So you're going to do that in the manner that
19 you find most appropriate and we just wanted to get that
20 on the record at this point in time so that you could
21 develop whatever you're going to do. You've got plenty of
22 time for you to do it.

23 THE COURT: I already have it, Counsel. If
24 you'll step up here, there's a copy for each of you as to
25 what I plan to tell them initially.

1 MR. SALEEBY: And this is after they're sworn?

2 THE COURT: Yes, sir, this is the jury that's on
3 this case.

4 MR. SALEEBY: Your Honor, I won't further
5 address this. I think the proper thing to do would be for
6 us to ponder it and the same thing for defense counsel.
7 If at a later point in time we want to make a suggestion,
8 if you would entertain them, we'd appreciate it.

9 THE COURT: That's right. That's exactly what I
10 will do. This is just a brief statement that my clerk and
11 I prepared as to what we plan to tell them without going
12 into too much detail. And that's not set in concrete.
13 You all can look at it and give me any suggestions you
14 might have at a later time.

15 MR. SALEEBY: Your Honor, I think that's
16 probably going to take care of it.

17 Items No. 2 and 3 have to do with complying with
18 the law in terms of reintroducing to the jury the
19 testimony and exhibits introduced in the original trial,
20 and that's physical evidence and testimony.

21 And just for the record for the court reporter,
22 the authority for that would be State versus Huggins,
23 Opinion No. 24993, decided in August of 1999, and where
24 the Court made clear that the statute, and I'm going to
25 quote, The statute does not exclude from consideration of

1 the sentencing authority any evidence received at the
2 guilt determination stage. To the contrary, the
3 sentencing authority is required to consider all the
4 evidence received at the guilt determination stage
5 regarding the circumstances of the crime and the
6 characteristics of the individual defendant together with
7 additional evidence, if any, in extenuation, mitigation,
8 or aggravation of punishment.

9 And it goes on and says, Although it is
10 customary for the State to formally reintroduce the guilt
11 phase evidence at the beginning of the sentencing phase,
12 this formality is not required by statute of law.

13 We're trying to do it as a matter of formality.
14 And although we do not intend to use all of the same --
15 even though we're going to use the same witnesses, we hope
16 not to have to use all of the same witnesses.

17 We're trying to comply with what our
18 understanding is the law says is preferred procedure.
19 We'll have to put the witnesses back up, but all these
20 things have already been ruled on.

21 THE COURT: Let's address first the physical
22 exhibits. I think that's the easiest thing to do at this
23 point.

24 What you're doing is moving the admission of all
25 the physical exhibits in the way of documents and anything

1 else that was introduced at the prior trial at this time?

2 MR. JACKSON: Yes, sir.

3 THE COURT: Any objection to that,
4 Mr. Littlejohn and Mr. Babb?

5 MR. BABB: Your Honor, I would address this
6 portion.

7 We do not have an objection. We don't want to
8 waive any that we've previously raised.

9 THE COURT: Right. I understand that. Without
10 waiving any objections previously raised, and apparently
11 I'm sure those would have been raised on appeal had there
12 been any that came up at that time.

13 But be that as it may, that is not the issue,
14 is it? As far as them waiving or moving the admission of
15 the physical exhibits to be introduced at the last trial,
16 there is no objection to that?

17 MR. BABB: No, sir. My understanding of the law
18 is very similar to theirs, what's admissible, anything
19 that's admissible in the trial in chief.

20 THE COURT: Now, I understand, and I will come
21 back to this, Mr. Saleeby, because that's why I wanted to
22 separate this, between testimony and physical exhibits
23 because I understand that there may be -- well, I know
24 there's situations on a couple of witnesses. Mr. Taylor
25 is now deceased as I understand it and Ms. Griffith may

1 not be able to.

2 MR. SALEEBY: Yes, sir. And I think I can go
3 down and address those now.

4 Obviously this jury having not heard, they're
5 going to have to hear a lot of testimony that would be
6 what we would call phase one testimony of necessity. I
7 mean, those witnesses are going to have to get up and
8 testify and be subject to cross-examination. We were not
9 in any way asking the Court or defense counsel to
10 stipulate to that, but once again, complying with the
11 formality.

12 THE COURT: Right.

13 MR. SALEEBY: Now, in terms of unavailable
14 witnesses, and calling the Court's attention to Rule 804
15 on hearsay exceptions, we have two people who are
16 unavailable, one of whom -- and your Honor, this is Rule
17 804(a)(4) -- one is unable to testify because of death,
18 that is Mr. Andrew Taylor, and the other because of
19 physical or mental infirmity, and we would submit to the
20 Court the testimony of each would be admissible under
21 exception (b)(1) in as much as they actually testified at
22 the first trial and was subject to cross-examination. I
23 know the Court would want to handle them separately.

24 This came in just a couple of days ago. I asked
25 the doctor to give us an updated medical statement, and I

1 would advise the Court and Counsel, if you compare it to
2 the previous one, I believe what the good doctor did was
3 just change the date.

4 Of course, I'm not a doctor, I can't make any
5 representations, but I would advise the Court that early
6 on when I went about back in the fall of '04 of trying to
7 get in touch with Ms. Griffith, that I was told that she
8 had problems and indicated to her through her daughter
9 that she would have to do something, but I would say that
10 the first thing to do I would submit is to rule on
11 Mr. Taylor.

12 THE COURT: That's the easiest one to deal with.

13 Mr. Andrew Taylor, who did testify at the last
14 hearing, the last trial of this matter and is now
15 deceased, and the State is moving to be allowed to present
16 his previous testimony under Rule 804(b) (1).

17 What is the defense position?

18 MR. BABB: No objection, your Honor.

19 THE COURT: All right. That takes care of
20 Mr. Taylor.

21 And they're moving to present the testimony of
22 Ms. Griffith also under 804(b) (1) as an unavailable
23 witness due to her medical condition.

24 What is the State's -- I mean what's the defense
25 position with regard to Ms. Griffith?

1 MR. BABB: Your Honor, Ms. Griffith has some
2 pretty strong views about what she thinks should happen in
3 this case and she has executed an affidavit to that
4 effect. We'd have no objection to her not testifying if
5 the prosecution agrees to enter that affidavit.

6 THE COURT: Well, okay. What would be the basis
7 for the admission of an affidavit? I know what the basis
8 for the admission of her testimony is: It's former
9 testimony where there was an opportunity to cross-examine
10 under 804(b) (1), but I'm not sure what the basis is.

11 MR. BABB: Your Honor, there are ways if they
12 want to cross-examine her as to the affidavit that can
13 certainly be done before the trial. She's alive, she's
14 living here in Sumter. We could go to her and that can be
15 done by video. There's any number of ways.

16 I would tell them that the affidavit was signed
17 in front of a notary with an investigator and in the
18 presence of her daughter.

19 THE COURT: Well, I understand that. That
20 doesn't meet the rules of admissibility. Let me find out
21 from the State what their position is on the affidavit.

22 MR. SALEEBY: Your Honor --

23 THE COURT: I assume you've seen it?

24 MR. SALEEBY: Yes, I saw it this morning for the
25 first time.

1 I'd like to first of all address what our motion
2 was.

3 I think we clearly fall within the ambient of
4 the rule here because we do have the medical documentation
5 and she did testify and that would make her -- that of
6 course would qualify her.

7 They had the opportunity to cross-examine her.
8 I look at paragraph number three where the affidavit which
9 says, I have never believed that Bobby should be given the
10 death penalty and executed. Of course if that were a
11 permissible question, and we submit it's not a permissible
12 question, they could have, should have asked it at the
13 first trial or at least done it to make a proffer of
14 evidence, although we would submit to the Court there's
15 ample authority that that sort of inquiry either from a
16 State's witness or a defense witness would be improper.
17 But her testimony in and of itself should be admissible.

18 Unfortunate or fortunately, however, there is no
19 rule that states this affidavit submitted some eight years
20 after the fact saves its admissibility. It's admissible.
21 The Court probably had an opportunity to address it in
22 Rule 804(a) and did not.

23 Thank you, sir.

24 THE COURT: Thank you.

25 MR. BABB: Your Honor, I would raise the point

1 that our client here regardless of Rule 804, respectfully
2 he has the right to confront the witnesses against him.
3 There's an opportunity where he can do that in this
4 proceeding.

5 THE COURT: But he had that opportunity as far
6 as former testimony is concerned and as far as Rule 804 is
7 concerned, did he not?

8 MR. BABB: Yes, sir, he was in court. I'm just
9 trying to state for the record that he objects on
10 constitutional grounds to the confrontation of a witness
11 who lives here in Sumter and is available to call.

12 THE COURT: Well, you tell me. You challenge
13 the doctor's certification regarding her --

14 MR. BABB: We do, sir.

15 THE COURT: -- condition?

16 MR. BABB: And, your Honor, if I may not disturb
17 the Court, but I'm trying to go through my memory. I
18 think Ms. Griffith only testified in the guilt phase. I'm
19 not sure that she testified.

20 THE COURT: I've read the transcript and I don't
21 know either, but I can look that up.

22 Well, it looks like that we've got two different
23 issues here. And the first issue is whether or not the
24 former testimony is admissible under 804(a), subparagraph
25 four, that a witnesses is unable to be present and to

1 testify at the hearing because of death and then existing
2 physical or mental illness or infirmity.

3 If the Court finds that she is unavailable, it
4 would seem that under the rules that the former testimony
5 is admissible under 804(b) (1) as an exception.

6 The second issue is the issue of the
7 admissibility of the affidavit. And I'll have to look at
8 the rules and rule on that based upon whether an affidavit
9 as such is admissible.

10 The third question that would come up would have
11 to do with whether or not there's any way of presenting
12 her testimony other than through the way of affidavit, and
13 I'm not aware of any under the criminal rules that there
14 is any discovery.

15 But I understand everybody's position. And it
16 is very likely, and I will tell Counsel right now, that it
17 is very likely that I'm going to schedule a hearing next
18 week in which I'm going to require Dr. Staberow to be
19 here.

20 Dr. Staberow is the doctor who has indicated
21 that she is not able to testify, and it may be that I will
22 just have to have Dr. Staberow come in and make a
23 determination after I have heard his testimony and
24 Counsel's opportunity to question him.

25 What else, Mr. Saleeby?

1 MR. SALEEBY: Your Honor, since we're down
2 there, I believe the Court advised us early on that we
3 should renotify statutory aggravated circumstances, and we
4 did that in motions, Item No. 7, which is the same grounds
5 that were the basis of the original aggravated
6 circumstances, that being murder of a law enforcement
7 officer during or because of the performance of his
8 official duties and murder committed while in the
9 commission of a crime or act of burglary.

10 THE COURT: Right. I'm aware of that, and I do
11 appreciate you advising me of that, and I understand those
12 are the statutory aggravated circumstances that the State
13 is relying upon as it did in the last trial.

14 Under Riddle, Mr. Saleeby, and I'm sure you're
15 aware of this, but I just want to make sure that we don't
16 have any problems with this, is it the State's intention
17 to prove both offenses in order to prove the statutory
18 aggravating circumstances and not to try to prove those
19 just by previous convictions; is that right?

20 MR. SALEEBY: That's correct, sir. Absolutely.

21 THE COURT: Because Riddle I don't think allows
22 you to do it by the previous convictions.

23 MR. SALEEBY: No, sir.

24 THE COURT: Okay.

25 MR. SALEEBY: Your Honor, the only item left was

1 item number four and that was just sort of in the nature
2 of making disclosure early on.

3 Ordinarily in an opening statement they're
4 fairly abbreviated in the state of South Carolina and
5 we're not asking the Court for great license or liberty,
6 but we just have a different sort of hearing and we wanted
7 to advise the Court and Counsel that ordinarily in a stage
8 two case, a phase two case, the jury's heard it all and
9 you don't have to give them a fact capsule and say this is
10 about punishment.

11 In this case you've given them the law but we
12 need to give them a fact capsule before we proceed. It
13 might not have even been a matter of a motion, but we
14 didn't want to get in the middle of things and catch
15 anybody offguard.

16 THE COURT: Well, I will tell them, of course,
17 that they're here only for the sentencing phase; that the
18 defendant has already been found guilty; and as I have
19 indicated in this opening statement, that the question of
20 guilt or innocence is not the issue that is before them
21 but the appropriate punishment. But I do also and I will
22 tell them and I think you have the right to tell them also
23 that what you intend to prove as far as aggravating
24 circumstances and things like that are concerned.

25 And I guess I'm going to hear from the defense

1 in a few minutes as to what they think I should tell them.

2 And I'm going to tell you that I'm not going to
3 tell them all of those things. I don't know think they
4 need to know the legal reasons and all of what happened in
5 the previous case and the reason it was reversed. I don't
6 think the jury needs to know that.

7 MR. SALEEBY: Judge, thank you. Those are all
8 our motions.

9 THE COURT: All right. Mr. Littlejohn or Mr.
10 Babb.

11 MR. BABB: May it please the Court, your Honor.

12 Let me address the latter point with the Court.
13 We do appreciate you giving us this.

14 What we don't want to have is just two closing
15 arguments, one at the beginning and one at the end.

16 THE COURT: I think the rules and the actual
17 procedure as we're all familiar with it says that both
18 sides have a right to make an opening statement and a
19 closing argument. And it is exactly that: It is a
20 statement, it is not an argument in opening.

21 MR. BABB: But this case is a little different
22 than the normal, although we're back here trying this, and
23 this in part goes to the motion we made for a change of
24 venue. And since the statute does require that, I did
25 prepare a supplemental affidavit that I would submit as

1 far as the reasoning on that.

2 Essentially this began way back when as a very
3 high profile case. There was state-wide press, there was
4 a lot of feelings about it, and every Sumter attorney that
5 was approached about possibly having to handle the case
6 had the good sense aside from me possibly to find some
7 sort of conflict and that's partly how Mr. Littlejohn came
8 to me.

9 Every time anything happens in this case there
10 is a fair amount of press. In July of 2002 when it came
11 back it was in the Item on the front page. July 31,
12 there's a letter to the editor talking about my comments,
13 glad that he may have a hope or a chance at life as being
14 asinine.

15 The Item wrote an editorial, took it upon itself
16 to write an editorial and say justice delayed is justice
17 denied in this case. That was again in 2002.

18 Then another article beginning on the front page
19 of the Item on July 19, 2002, talking about the reopening
20 of old wounds.

21 And then somewhat disturbing and surprising to
22 the defense, your Honor, is on the 12th appears pictures
23 of the casket, the flag, the 12th of January of this year,
24 and it's an article again talking about the case,
25 mentioning the solicitor putting out some sort of written

1 statement to the press on it, a very lengthy apparent
2 interview from Gary Meetze at the Sumter County Police
3 Department who was a witness in this case discussing all
4 these matters with the press. And, your Honor, it just
5 aggravates individuals.

6 The Kubala family is a very well known, very
7 well loved and deservedly so family. People in Sumter
8 County have a golf tournament annually that raises money
9 for the family and for the families of officers who are
10 killed.

11 In his statement, the solicitor mentions he is
12 bringing it for all the police officers. So now we have
13 Bobby Stone being a way for the Sumter County jury to take
14 out this anger for every police officer that's been gunned
15 down or shot or died in the line of duty in this state.

16 For those reasons and for those that we've
17 raised before and because the sheriff's department frankly
18 in this county, your Honor, has a history and a pattern
19 and practice of leaking information to the press, they
20 have done so illegally at least in two instances that I'm
21 aware of because it's illegal in this state to release the
22 names of juvenile defendants except under certain
23 circumstances. Our current sheriff has put out press
24 releases naming juveniles. I believe it would be, if the
25 truth be known, it would be Mr. Meetze who released the

1 last names by faxing a incident report with the juvenile's
2 names to Luke Reynolds at the Item.

3 THE COURT: What's the relevance of that to this
4 case?

5 MR. BABB: The relevance is that they engage in
6 a pattern and practice of using the press intentionally to
7 impact criminal cases.

8 THE COURT: But it is also true that after that
9 and I also read that article and I'm going to allow you of
10 course to put those matters, make them a part of the
11 record as exhibits in just a minute, but as soon as that
12 article appeared in the press, this Court issued an order
13 that there would be no further discussions regarding this
14 case with the press until after the case was tried, and as
15 far as I know there's been nothing else in the press about
16 it, at least not that has been generated or brought about
17 by either the solicitor's office or the sheriff's office.

18 MR. BABB: That's right. Or the defense, your
19 Honor.

20 THE COURT: Or the defense.

21 MR. BABB: And we haven't used the press. And
22 we appreciate that very much. I must say, though, it's a
23 bit like a throwing a skunk in the room and then telling
24 the jury they should all just pretend they don't smell it.

25 THE COURT: Well, can't voir dire take care of

1 that? Can't we find that out on voir dire at least?

2 MR. BABB: Some courts agree we can, your Honor,
3 some certainly have.

4 THE COURT: Okay. Go ahead.

5 MR. BABB: But we feel compelled given the
6 history, the interest in the community, the pattern and
7 practice that I've mentioned with the Sumter County, the
8 adversarial nature of the press. I mean, here you have
9 the Item itself saying it's justice denied because our
10 Supreme Court followed the constitution, maybe
11 begrudgingly so at least in one instance, but because they
12 followed that that is justice denied.

13 The Item has a circulation over this entire
14 county. As I was saying, there is an annual golf
15 tournament. At Christmas people put in blue light bulbs
16 in their candles in the windows in honor of officers.

17 It's a tragic event that has a lot of memories
18 and this appears to be a conscious effort to make money.
19 Now the Court has ordered that it not happen, but that
20 doesn't mean it didn't happen or that the impact doesn't
21 continue.

22 That would be our case, your Honor.

23 THE COURT: All right. Do you want to introduce
24 those at this time?

25 MR. BABB: I will, your Honor. These are the

1 originals and I've paperclipped them together, so if this
2 is just one exhibit that would be fine.

3 THE COURT: Those will be marked as a group,
4 Madame Reporter. You don't need to mark each one
5 separately but as a group as Defendant's Exhibit 1 for
6 purposes of a change of venue motion.

7 Mr. Jackson, Mr. Saleeby, any response?

8 MR. SALEEBY: Your Honor, just that this is
9 clearly addressed as the Court has referred to before by
10 voir dire. The most recent example I was able to come up
11 with was Shepherd versus South Carolina, Opinion 25796
12 from March of 2004.

13 THE COURT: I've got the exact cite of it rather
14 than the opinion number. I have it in front of me.

15 MR. SALEEBY: Well, if you'll give me the exact
16 cite I'll write it right now.

17 THE COURT: 357 SC 646, 594 SE2nd 462.

18 MR. SALEEBY: 357 what now?

19 THE COURT: 357 SC 646.

20 MR. SALEEBY: Yes, sir.

21 THE COURT: 594 SE2nd 462.

22 MR. SALEEBY: I don't need to say any more.

23 MR. BABB: Your Honor, the last of our motions
24 is discovery.

25 THE COURT: All right. Let me go ahead and rule

1 on the venue issue.

2 It is my view that the Shepherd case from a
3 factual standpoint is very similar. That did, as I
4 understand it, involve the death of an officer and there
5 was a motion to change venue on the basis of pretrial
6 publicity as this has been. And the basic holding of the
7 Shepherd case is that even though there was intense
8 pretrial media coverage, there was no indication the trial
9 court's voir dire failed to produce an impartial jury.

10 When a trial judge bases a denial of a motion to
11 change of venue because of pretrial publicity from an
12 adequate voir dire examination of the jury, his decision
13 will not be disturbed absent extraordinary circumstances.

14 And I would deny the motion for change of venue
15 at this time. I don't think there's been a showing --
16 while there has been a showing of intense pretrial
17 publicity and the Court is aware of intense pretrial
18 publicity, I don't think there has been any showing made
19 that an impartial jury can't be obtained, so I would deny
20 the motion at this time, subject to it being made again if
21 we get into the jury selection process and we're unable to
22 get --

23 MR. BABB: Judge, just for the record, I'd just
24 raise the point that in terms of meeting that burden of
25 proof for a due process argument you really almost have to

1 have the jury selected before we're in a position to do
2 so.

3 THE COURT: It's not an absolute set-in-stone
4 ruling. If it proves as we get into voir dire or we get
5 into the jury selection process that we're unable to get a
6 jury, then we can revisit it at that time.

7 MR. BABB: Your Honor, one last thing. Since we
8 mentioned it, I would submit a copy of the affidavit for
9 the purposes of this hearing.

10 THE COURT: Yes, sir, go ahead and have the
11 court reporter take that as well as Defense Exhibit No. 2.

12 All right. What's the next motion, Mr. Babb?

13 MR. BABB: Your Honor, I believe that's --

14 THE COURT: That's all you've got. All right.

15 Let me review my notes and see if there's
16 anything further that we need to talk about or discuss
17 today?

18 Anything else on behalf of the State that you
19 know of?

20 MR. JACKSON: Your Honor, one additional item to
21 bring to the Court's attention.

22 Your Honor, Ms. Peggy Kubala is in court with us
23 today. She was Charlie Kubala's mother.

24 Yesterday evening at her home, two white females
25 came to her home asking her questions. They would not

1 identify themselves. They said that they were
2 investigators. She was very distraught, very unnerved,
3 she called me immediately, and we sent a representative
4 from the police department out to take a report from her.

5 She was not harmed in any way or even threatened
6 in any way, but there were two white females who came to
7 her residence.

8 We don't know who they work for, we don't know
9 who they are, we don't know why they were there other than
10 they told her that they would be in the courtroom today.
11 And she identified two white females that were in the back
12 of the courtroom this morning.

13 We still do not know who they were and I thought
14 they would be here when I brought this up, but we would
15 ask the Court to inquire of defense counsel if they've
16 sent anybody over there or whether these folks work for
17 them, or if they know who they were, to try to put a stop
18 to it.

19 THE COURT: Any response, Mr. Littlejohn?

20 MR. LITTLEJOHN: Yes, your Honor. These are two
21 mitigation specialists that are working for the defense
22 team, Ms. Graham and Ms. Carr who are in the courtroom
23 today. They went to see Ms. Kubala.

24 Ms. Kubala is a witness in this case. They
25 wanted to talk to her. Apparently Ms. Kubala did not want

1 to talk to them. They were as nice as they could be and
2 they left.

3 THE COURT: All right. Now we know who they
4 are.

5 They should identify themselves and make their
6 purpose known if they're going to be talking with any
7 witnesses in this case, Mr. Littlejohn. Make sure that
8 they understand that they need to tell who they are and
9 what they're doing and who they're working for and what
10 their purpose is if they're going to talk to any witnesses
11 in this case.

12 They absolutely have the right to talk to
13 witnesses, but at the same time they also need to
14 understand that they need to tell what their purpose is in
15 the case and who they're talking with and what they're
16 there for, and they also need to understand that if the
17 witness indicates they don't want to discuss it with them
18 that they're not to press the matter.

19 MR. LITTLEJOHN: Your Honor, it's my
20 understanding they clearly identified themselves and told
21 who they were working for. If that was a
22 misunderstanding, I'm sorry, but apparently Ms. Kubala did
23 not want to talk to them and they left and that was that.

24 THE COURT: All right. Thank you.

25 Let me say for the record, too, that while we're

1 discussing this matter with Ms. Kubala and her name has
2 come up, and I want defense counsel to know this, I am a
3 Sumter resident and have lived in Sumter for the last 38
4 years, and like you have brought out, Mr. Babb, know the
5 Kubala family. I did not know Deputy Kubala, but I am
6 acquainted with his mother and father. We are not social
7 friends. Mrs. Kubala is the aquatics director at the Y.
8 My wife is a part-time aerobics instructor at the Y.

9 I do not consider that a conflict, and I don't
10 consider that I had any -- I've never represented them in
11 any kind of legal matters when I was practicing law, and I
12 can be fair and objective and I do not have any or
13 consider that a conflict, but I do want to disclose that
14 to all parties for your consideration, and if there is any
15 problems with that, I won't ask for a decision on that
16 right now, but let me know.

17 Let me look at my notes to see if there's
18 anything else that I want to go over with you.

19 Yes. Defense may not want to do this at this
20 time or you may not have any objection to it, but since
21 this case is in a little bit different posture than it is
22 normally in, statutory mitigating circumstances. You all
23 like to reveal what those are going to be at this time or
24 do you have anything? I assume that the two that were
25 submitted to the jury last time the defense would expect

1 them to be submitted again as well as the one that Judge
2 Dennis did not allow that the Supreme Court addressed?

3 MR. LITTLEJOHN: Your Honor, at a minimum we
4 would propose to submit those. We don't know of any
5 others, but we're not sure what the record will be at the
6 time that we go before the jury.

7 THE COURT: I understand. It looks like the
8 only lose end, then, Counsel, that we need to probably get
9 into next week is going to be getting Dr. Staberow in to
10 find out the status of Ms. Griffith and whether her
11 ability to testify.

12 Is the State available about any time to address
13 that?

14 MR. JACKSON: Your Honor, we were discussing
15 that. Monday would be the absolute best for us with the
16 way court's going on in the county next week. I know
17 that's quick, but if we could get Staberow Monday.

18 THE COURT: What's y'all's schedule status on
19 that?

20 MR. LITTLEJOHN: Judge, we could do it Monday
21 afternoon.

22 THE COURT: Well, I really need to do it Monday
23 afternoon. I've got Common Pleas actually scheduled to
24 start Monday morning and I need to qualify a jury in
25 Common Pleas Monday and at least get a case ready to go

1 and then I can adjourn that and then we can address it if
2 Dr. Staberow is available Monday afternoon.

3 Mr. Jackson, Mr. Saleeby, since you're the ones
4 that have presented the Court with Dr. Staberow's
5 statement, can you all contact Dr. Staberow's office and
6 see if he can be available Monday afternoon?

7 MR. JACKSON: We'll do that, your Honor. We'll
8 check and see if there's some other time he'd rather do it
9 depending on his schedule as well.

10 THE COURT: Well, let's find out what it is and
11 try and do it Monday afternoon if possible, if that suits
12 both of you all.

13 All right. I think that takes care of the
14 matters that we need to tend to today. And subject to
15 resolving the matter of Dr. Staberow's availability next
16 week, we'll be prepared to go forward on the morning of
17 the 22nd at 10 o'clock, assuming that we don't run into
18 any other hitches. So I will be available.

19 I will be here in town next week doing Common
20 Pleas here, so I'm available for consultation and to get
21 together if we need to do anything.

22 MR. JACKSON: Your Honor, we may anticipate
23 needing your help to get the doctor here because I know
24 what his schedule is like.

25 THE COURT: I think I can handle that. I will

1 get him here wherever it's available to you all.

2 Anything else on behalf of the State at this
3 time?

4 MR. JACKSON: Nothing from the State, your
5 Honor.

6 THE COURT: Defense at this time?

7 MR. LITTLEJOHN: No, your Honor.

8 THE COURT: Thank you. We are in recess and we
9 are adjourned.

10 (WHEREUPON, Defendant's Exhibits Nos. 1 AND 2
11 were marked for identification only.)

12 (The proceedings were concluded.)
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4 CERTIFICATE OF REPORTER

5 STATE OF SOUTH CAROLINA)

6 COUNTY OF SUMTER)

7
8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 8th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Sumter County, South Carolina, on the 11th day of
15 February, 2005.

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

18
19 August 30, 2005

20
21 
22

23 CAROL M. THUEME, RPR, Court Reporter

24 My Commission Expires: 06-04-2007
25

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

v.)

BOBBY WAYNE STONE,)

DEFENDANT.)

TRANSCRIPT OF RECORD
C/A #: 1996-GS-43-0698

SUMTER COUNTY COURTHOUSE
February 14, 2005

BEFORE:

HONORABLE HOWARD P. KING, PRESIDING JUDGE.

APPEARANCES:

Solicitor C. Kelly Jackson, Esquire
Attorney for The State

James H. Babb, Esquire
Cam Littlejohn, Esquire
Attorney for Defendant Bobby Wayne Stone

TAKEN BY MELISSA R. WINFIELD
CERTIFIED VERBATIM REPORTER

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HEARING

3

1 **THE COURT:** All right. The is the matter of The State v.
2 Bobby Wayne Stone. At the hearing that we had last
3 Friday, it became known, of course, through a motion
4 from the State that they indicated a desire to use the
5 testimony of Ms. Griffith, Ms. Ruth Griffith, from a
6 prior trail, under Rule 804, as a hearsay exemption
7 because she was unavailable. At that time, I had a
8 letter from Dr. Stavrou indicating something about her
9 medical condition, that I felt in order to make a
10 decision on whether her testimony was admissible under
11 the hearsay exception, that I would need for the State
12 to present testimony regarding her unavailability, and
13 that's what we're here for today, Mr. Jackson. So you
14 may call Dr. Stavrou.

15 **MR. JACKSON:** Thank you, Your Honor, if it please the Court,
16 the State calls Dr. Stavrou to the stand.

17 **THE COURT:** All right.

18 (Witness is sworn)

19 **DR. WILLIAM SRAT STAVROU**, being duly sworn, testifies as
20 follows:

21 **DR. STAVROU - DIRECT EXAMINATION BY MR. JACKSON:**

22 Q: Dr. Stavrou, where do you live, sir?

23 A: 2770 Hoykin.

24 Q: And that's here in Sumter?

25 A: Sumter.

HEARING

4

1 Q: And what is your occupation?

2 A: Cardiologist.

3 Q: What is your educational background that led you to
4 cardiology?

5 A: Bachelor's degree from Wofford College, MD degree from
6 the Medical University of South Carolina in Charleston,
7 internal medicine fellowship at the University and
8 cardiology, cardiovascular disease fellowship and the
9 University of South Carolina.

10 Q: Any other additional training?

11 A: I have some extra training at Harvard and the
12 University of Michigan for pacemakers, and every year
13 during the year, we have additional training called CME
14 credits that we are required to keep up with.

15 Q: And that's annual?

16 A: That's annual.

17 Q: How long have you been practicing cardiology?

18 A: Since 1980.

19 Q: 1980?

20 A: Yes.

21 Q: In your practice and in your experience, have you also
22 participated in teaching, educating, giving lectures or
23 training other physicians in cardiology?

24 A: Yes, sir, at the hospital giving talks on various
25 treatments for congestive heart failure, coronary

HEARING

5

1 disease and also have been a speaker for different
2 meetings for treatment of those various entities with
3 coronary disease.

4 Q: And where are you licensed to practice?

5 A: In South Carolina.

6 Q: Board certified?

7 A: Board certified in cardiology and internal medicine.

8 Q: Cardiology and internal medicine?

9 A: Yes.

10 Q: Your includes both diagnosis and treatment?

11 A: Yes, sir.

12 Q: What range of disease or medical problems do you treat
13 and diagnose?

14 A: From anxiety induced chest pain to in-stage congestive
15 heart failure.

16 Q: Have you testified in depositions or courts in other
17 parts of South Carolina as an expert in cardiology?

18 A: I've done depositions but never reached court.

19 Q: All right, sir.

20 **MR. JACKSON:** Your Honor, at this point, I would offer him
21 as an expert in cardiology, cardiovascular disease,
22 internal medicine, unless there are questions from the
23 defense.

24 **THE COURT:** Voir dire as to qualifications, Mr. Littlejohn?

25 **MR. LITTLEJOHN:** None, Your Honor.

HEARING

6

1 **THE COURT:** All right. The Court will find Dr. Stavrou as
2 an expert in the field of cardiology and internal
3 medicine. You pay proceed, Mr. Jackson.

4 **MR. JACKSON:** Thank you, Your Honor.

5 **Q:** Dr. Stavrou, are you familiar with Ms. Ruth Griffith?

6 **A:** Yes, sir.

7 **Q:** And Ms. Ruth Griffith would be how old?

8 **A:** Seventy.

9 **Q:** Seventy years old?

10 **A:** Yes, sir.

11 **Q:** Is she a patient of yours?

12 **A:** Yes, sir.

13 **Q:** And how long has she been a patient?

14 **A:** Since 1988.

15 **Q:** 19?

16 **A:** '88.

17 **Q:** '88. When she first came to see you, was it on a
18 referral?

19 **A:** Yes, sir.

20 **Q:** And who was that from?

21 **A:** Dr. Lea Givens.

22 **Q:** And how did she come about getting to Dr. Lea Givens
23 and getting to you?

24 **A:** She had had a previous heart attack and was evaluated
25 in Columbia and lived in Sumter and was referred to me

HEARING

7

1 here in Sumter.

2 Q: So her first visit to you was because of a heart
3 attack?

4 A: Follow-up of a heart attack, yes, sir.

5 Q: And when is the most recent time that you saw her?

6 A: In November.

7 Q: Of which year?

8 A: 2004.

9 Q: From the time that you began treating her in February
10 of '88 until she came to see you in November of 2004,
11 have her heart conditions improved or have they
12 declined?

13 A: She has declined in her overall condition. In the last
14 two years, her heart function has deteriorated from
15 around 35% to 40% of measurement function to 20%. The
16 nature of that decline is a congestive (inaudible)
17 picture. The nature of that is not known.

18 Q: The percentage that you used, which was 20%?

19 A: Yes, sir. Normal function is 55% or greater, so 20%
20 action is very, very low. You would find it hard to
21 survive with it much less than that. 10% would
22 probably be the lowest I've ever seen and living.

23 Q: What types of medication is she on?

24 A: Various medications for lung disease and strengthening
25 of her heart.

HEARING

8

1 Q: Are you familiar with her ability to recall, recollect
2 or memory loss?

3 A: Yes, sir.

4 Q: And what is that?

5 A: She has a, she's a very high strong, young, well, she's
6 not young, that does have a lot of anxiety, and at one
7 point, she was having some trouble with some memory and
8 had an MRI done back in I think it was January 2004.
9 She was found to have multiple small strokes, but her
10 impairment is not severe.

11 Q: Does she require oxygen or carrying around an oxygen
12 tank?

13 A: Yes, sir.

14 Q: Have you treated other patients with similar medical
15 conditions?

16 A: Yes, sir.

17 Q: What types of things would increase her anxiety?

18 A: Any confrontation or just anticipation. This lady,
19 even when I question her at the office sometimes, has
20 increased stress levels trying to make sure she gives
21 me the right answer. She's one of these people that
22 authority figures are very important, and she must
23 answer a proper question, do it appropriately, and then
24 sometimes she will get under a lot of stress trying to
25 make sure she answers the question to the best of her

HEARING

9

1 ability.

2 Q: When she came to see you last November, that would be
3 November 2004, you would have been treating her
4 approximately seventeen years. She should be
5 comfortable with you, but her anxiety level is up some
6 just from coming to see you?

7 A: Yes, sir. It would be.

8 Q: About how many times a year would you say you normally
9 see her?

10 A: Three to four times.

11 Q: Did Ms. Griffith come see you last fall?

12 A: Yes, sir.

13 Q: In response to a subpoena that she got from the
14 Solicitor's Office to testify in a trial?

15 A: Yes, sir.

16 Q: And when did she come and see you about that?

17 A: September.

18 Q: Would that have been a regularly scheduled visit or did
19 she come because of the subpoena and the possibility of
20 testifying?

21 A: That was a visit that was set up after she contacted
22 our office concerning about the trial being reopened
23 and would she be able to testify.

24 Q: And what did she express to you during the visit about
25 her ability to testify?

HEARING

10

1 A: That she would have a lot of difficulty trying to do
2 it.

3 Q: What else did you discuss?

4 A: Her underlying heart problems right now, and I asked,
5 like I said, I asked her do you think you can get
6 through this, and she says she didn't think she could,
7 and in my opinion, I don't think she could either.

8 Q: All right, sir. Did you ... well, as a result of
9 meeting with her and discussing the possibility of
10 testifying, what action did you take on her behalf?

11 A: Wrote a note that outlined briefly her current
12 condition and I thought she would not be able to
13 testify.

14 Q: All right, sir.

15 MR. JACKSON: Your Honor, if I can approach the witness?

16 THE COURT: Yes, sir.

17 MR. JACKSON: And Judge, let me add, in our motions last
18 November that we filed with the Court when we thought
19 we were going to try these in November, we had attached
20 the original letter. It's already a part of the
21 Clerk's file, and I don't know if the Court would like
22 me to mark it as a State's exhibit, even though it's
23 already in the file.

24 THE COURT: Yes, I think it ought to be marked as a State's
25 exhibit and made a part of this record for this hearing

HEARING

11

1 today.

2 **(State's Exhibit Number One was marked for identification**
3 **purposes.)**

4 Q: Tell us what this is right here?

5 A: That's my letter requesting that she not be responsible
6 to testify.

7 Q: All right, sir. And would you read that letter into
8 the record?

9 A: Ms. Griffith has severe congestive cardiopathy,
10 coronary disease, (inaudible) disease, respiratory
11 problems with broncho-spasms and previous cerebral
12 vascular accident. She also suffers from a significant
13 anxiety. Because of all these problems, it would not
14 be advisable for her to be placed in a highly stressed
15 situation such as a courtroom with the possibility of
16 intense cross-examination. She is on multiple
17 medications for her conditions that are taken at
18 various times throughout the day also.

19 **MR. JACKSON:** Thank you. Your Honor, at this time, we move
20 this letter into evidence.

21 **MR. LITTLEJOHN:** No objection.

22 **THE COURT:** Be admitted into evidence as State's Number One
23 for the purposes of this hearing.

24 Q: Dr. Stavrou, at the time that you sent that letter in
25 October of 2004, what would your opinion be to a degree

HEARING

12

1 of medical certainty concerning whether or not she
2 would be able to testify at a trial or hearing because
3 of then existing physical or mental illness or
4 infirmity?

5 A: I think it would be a high probability that she would
6 not be able to, both mental and physical.

7 Q: And what would that be?

8 A: Anxiety and the effects it would have on her underlying
9 medical condition.

10 Q: So your opinion in October would have been for her to
11 testify or not to testify?

12 A: Not to testify.

13 Q: All right, sir. And you're aware that the case
14 ultimately was continued?

15 A: Yes, sir.

16 Q: All right. Then when did you see her last fall after
17 you issued the letter?

18 A: In November.

19 Q: November of 2004?

20 A: Yes, sir.

21 Q: And did you again discussed this case and the
22 possibility of her testifying?

23 A: Yes, sir.

24 Q: Did she come see you recently about issuing another
25 letter?

HEARING

13

1 A: She contacted me via telephone the first of February
2 saying that could I give her another letter that would
3 provide information for the Court to be able to decide
4 whether or not she can be a witness again.

5 Q: Okay. When you issued the letter in October and the
6 letter that you've issued now, in October, did you know
7 that it was a death penalty case?

8 A: I'm not certain. I don't think I knew it was a death
9 penalty.

10 Q: Were you aware of any moral or social or religious
11 issue she had with death penalty cases?

12 A: No, sir.

13 Q: Were you aware of how long she had to testify in the
14 first trial? For instance, I believe the transcript is
15 perhaps fifty-eight pages of testimony?

16 A: I was not aware of complete details, no, sir.

17 Q: Were you aware that she would be sequestered with other
18 witnesses, not just called in to testify and let go
19 home?

20 A: No, sir.

21 Q: But you were aware that she would undergo direct
22 examination, cross-examination, redirect and possibly
23 recross?

24 A: Yes, sir.

25 Q: Knowing a little more today about the actual court

HEARING

14

1 experience that she would encounter, what is your
2 opinion to a degree of medical certainty today as to
3 whether or not she would be able to testify at a
4 hearing or trial because of an existing physical or
5 mental illness or infirmity?

6 A: Reenforces my first opinion that she could not.

7 **(State's Exhibit Number Two was marked for identification**
8 **purposes.)**

9 Q: Let me hand you up a second letter that we've marked as
10 State's Exhibit Two and tell us what this is.

11 A: This is the second letter of October 9, 2004.

12 Q: Is it the same letter simply with the date changed?

13 A: Yes, sir.

14 **MR. JACKSON:** Your Honor, at this time, we would offer this
15 letter into evidence.

16 **THE COURT:** Any objection, Mr. Littlejohn?

17 **MR. LITTLEJOHN:** Your Honor, we haven't seen that letter.
18 If we could ...

19 **THE COURT:** That's the one he had last week, I think.

20 **MR. LITTLEJOHN:** No objection, Your Honor.

21 **THE COURT:** Be admitted into evidence for the purpose of
22 this hearing as State's Number Two.

23 Q: So Doctor, is it your opinion today that she should
24 testify or she should not testify in the trial?

25 A: She should not.

HEARING

15

1 Q: And that is based on?

2 A: Her anxiety levels and her underlying health condition.

3 **MR. JACKSON:** All right, sir. That's all the questions I
4 have this time, Your Honor. Dr. Stavrou, if you would,
5 answer any questions that the defense attorneys have.

6 **THE COURT:** Cross-examination?

7 **DR. STAVROU - CROSS-EXAMINATION BY MR. LITTLEJOHN:**

8 Q: Good afternoon, Dr. Stavrou.

9 A: Hi.

10 Q: I don't believe I've seen Dr. Stavrou in about thirty-
11 three years. Dr. Stavrou, Ms. Griffith, when you saw
12 her in November, she came to your office?

13 A: Yes, sir.

14 Q: How did she get to your office?

15 A: She usually comes with her daughter.

16 Q: Okay. So she was, her daughter was able to transport
17 her to your office?

18 A: Yes, sir.

19 Q: Okay. She didn't come by ambulance or anything like
20 that?

21 A: No, sir.

22 Q: Was she in a wheelchair?

23 A: No, sir. She uses oxygen.

24 Q: Uses oxygen?

25 A: Yes, sir.

HEARING

16

- 1 Q: But she was able to transport herself ...
- 2 A: Yes, sir.
- 3 Q: ... from the place where she lives to your office?
- 4 A: Yes, sir.
- 5 Q: Okay. And she waited there at your office until you
- 6 were able to see her?
- 7 A: Yes, sir.
- 8 Q: Was there some period of wait?
- 9 A: Usually is.
- 10 Q: I thought so. Dr. Stavrou, you said she had been your
- 11 patient since 1988?
- 12 A: Yes, sir.
- 13 Q: And that was as a result of a heart attack she had had
- 14 back then?
- 15 A: She had a heart attack and was treated in Columbia.
- 16 When she finished that treatment and came back to
- 17 Sumter, her internist ask me to follow-up with her
- 18 heart condition here instead of her having to go back
- 19 up to Columbia for further treatment.
- 20 Q: And you were treating her when she testified the first
- 21 time in this case?
- 22 A: Yes, sir.
- 23 Q: Okay. And I believe she was, as far as you know, she
- 24 was able to come to the courthouse and testify?
- 25 A: As far as I know, yes, sir.

HEARING

17

1 Q: Without any difficulty that you're aware of?

2 A: Right. She didn't have any complication or have to be
3 hospitalized, no, sir.

4 Q: Okay. And she didn't come to you in stress or anything
5 after her experience up here in the courtroom?

6 A: Well, no, sir.

7 Q: Okay. Dr. Stavrou, let me ask you one thing. You were
8 talking about she had a 20% ...

9 A: (Inaudible).

10 Q: And what is that again? I didn't quite catch it.

11 A: You gauge heart function. It is a fraction of the
12 ability of the heart when it's the bottom of the heart
13 at rest, and the bottom of the heart contracts, and
14 normally, you would be able to shrink the heart about
15 55% or greater, and her's is about 20%.

16 Q: Okay. And you said that was ...

17 A: That's a severe amount of impairment.

18 Q: Okay. Now as far as you know, she is able to function
19 day-to-day? I believe she lives by herself, does she
20 not?

21 A: Her daughter watches over her very closely. Have you
22 talked to this lady?

23 Q: Not in some time.

24 A: All right. She's a very anxious lady. I mean this
25 lady, she has a lot of routine stress of going to shop,

HEARING

18

1 much less handling a situation of being an intense
2 cross-examination.

3 Q: But back where I was, you said her daughter watches out
4 after her?

5 A: The daughter watches out very closely.

6 Q: Okay. But she does live by herself?

7 A: Yes, sir.

8 Q: Okay. She tends to her day-to-day things and takes
9 care of herself?

10 A: Yes, sir.

11 Q: As far as you know?

12 A: And her daughter.

13 Q: Dr. Stavrou, you indicated that in your opinion you
14 don't think she would be able to get through it
15 mentally and physically testifying as a witness?

16 A: I think she would have a lot of difficulty handling
17 that situation, yes, sir.

18 Q: Okay. Of course, in your experience, anybody that's
19 called as a witness has difficulty with it, don't they?

20 A: I'm having difficulty right now.

21 Q: Okay. My case in point. I mean do you see any short
22 or long term effects on her health if she was to come
23 up here and testify?

24 A: I see potential, yes, sir. Any time her situation
25 where you would have an intense increase in stress

HEARING

19

1 levels that would raise blood pressure or pulse
2 response could cause her to go into heart failure, and
3 that's my biggest concern. Not dropping dead in the
4 witness stand, but develop complications of her
5 underlying heart problem causing physiologic changes
6 that occur when you're sitting in this chair and you're
7 being drilled or questioned by lawyers.

8 Q: Okay. Is it safe to say, however, you couldn't state
9 with any degree of medical certainty that there would
10 be an incident or shortly thereafter effect on her
11 health?

12 A: I couldn't guarantee that, no, sir.

13 Q: One thing I wasn't aware of, Dr. Stavrou. You say Ms.
14 Griffith called you in February, the first of this
15 month about testifying up here?

16 A: She wanted ... yes, she requested a second letter.

17 Q: Okay.

18 A: For not having to testify.

19 Q: And had she requested the first letter from you?

20 A: Yes, sir.

21 Q: Okay. So she requested both letters?

22 A: Yes, sir.

23 MR. LITTLEJOHN: If you'll indulge me just a moment, Your
24 Honor?

25 THE COURT: Yes, sir.

HEARING

20

1 Q: Dr. Stavrou, just a few final things. Is it your
2 opinion that Ms. Griffith testifying would cause
3 problems with her mentally, physically or some
4 combination?

5 A: It would cause problems with her anxiety, which I
6 consider mental condition.

7 Q: Her mental condition.

8 A: Well, it's initiated from a vortex, which is in your
9 brain.

10 Q: Okay.

11 A: And the anxiety levels which would initiate changes in
12 physiology, which would initiate changes in her
13 cardiovascular, yes, sir.

14 Q: All right. And this is something that could happen?

15 A: Yes, sir.

16 Q: And you can't state with any degree of medical
17 certainty that it would happen?

18 A: I can tell you it's a good probability of it, but not
19 tell you it's a certainty.

20 **MR. LITTLEJOHN:** That's all I have, Your Honor.

21 **THE COURT:** Mr. Jackson, anything further?

22 **MR. JACKSON:** Nothing further, Your Honor.

23 **THE COURT:** All right. Thank you, Dr. Stavrou. Thank you
24 for coming. Appreciate you being here. You are
25 excused. All right. Mr. Jackson, since under State v.

HEARING

21

1 Kinlock the burden is on you to show unavailability and
2 the doctor has now testified, I'll be glad to hear from
3 you with regard to a short argument on the issue. I
4 take it what you are proposing to do is to use the
5 testimony of Ms. Griffith at the prior trial, which
6 meets the examination, cross-examination confrontation,
7 no confrontation issues, just availability of the
8 witness, is that correct?

9 **MR. JACKSON:** That's correct, Your Honor.

10 **THE COURT:** All right.

11 **MR. JACKSON:** That's it in a nutshell.

12 **THE COURT:** All right. I'll be glad to hear from you.
13 What's your position?

14 **MR. JACKSON:** Your Honor, Rule 804, eight defines
15 unavailability as a witness, which includes a situation
16 which are declared under subsection four, is unable to
17 present or testify at the hearing because of death or
18 then existing physical or mental illness or infirmity,
19 which is what we have offered the doctor would show,
20 and the State's position is that he has shown that due
21 to physical or mental illness, she would not, she
22 should not come in here and testify and therefore, she
23 will be unavailable. Rule (b)(1) under 804, former
24 testimony, I believe will allow us to have the private
25 transcript come in. So under those two subsections of

HEARING

22

1 Rule 804 that we make this motion.

2 **THE COURT:** And just as information and all, how would you
3 propose to present that testimony, if it were allowed?
4 By using someone to take the stand as Ms. Griffith and
5 just present her testimony as we would a deposition in
6 a civil case?

7 **MR. JACKSON:** Yes, sir. Your Honor, we had discussed that.
8 We would have that, as well as Landrow Taylor's
9 testimony that we would have to offer of some sort.
10 I've never done so, but the only way I know to do it
11 would be to put somebody up there and either we read
12 the question and they read the answer or just let them
13 go. It would be laborious, but I think we would have
14 to do it.

15 **THE COURT:** All right. Mr. Littlejohn, let me hear from you
16 with regards to their proposal to have the testimony of
17 Ms. Griffith presented under the hearsay exception of
18 804.

19 **MR. LITTLEJOHN:** Thank you, Your Honor. Your Honor, as the
20 Court is aware, under 804(A)(4), the definition of
21 unavailable relates to then existing physical, mental
22 illness or infirmity, and it says, it goes on to state
23 that the witness is unable to appear. Your Honor, it
24 appears to me from the testimony of Dr. Stavrou that
25 obviously this lady was able to go to his office. She

HEARING

23

1 takes care of herself. She's mobile. It appears that
2 the first problem with that is there's not sufficient
3 evidence insofar as her being able to get here to the
4 courtroom. In regard to her physical and mental,
5 infirmity or illness that would prevent her from
6 testifying, I think the doctor says that while she is
7 anxious, that things that happen to anybody who is a
8 witness or a party or a lawyer or the judge when you're
9 dealing with things in the courtroom, especially trials
10 like this. Your Honor, I don't think he was able to
11 peg with any medical certainty that her coming to
12 testify would be injurious to her health. I believe
13 the way he put it is it might happen, it could happen.

14 **THE COURT:** I thought he said good probability of it?
15 That's what I wrote down.

16 **MR. LITTLEJOHN:** I believe he did use that exact language,
17 yes, sir. But Your Honor, I would, I guess I would
18 argue that that does not rise to the level of medical
19 certainty by any degree.

20 **THE COURT:** Okay. All right. I understand your positions,
21 counsel, and I want to think about it a little bit, and
22 I'll let you know in a couple of days after I've had a
23 chance to review the notes that I've made of the
24 doctor's testimony and also the rules. We have done
25 some research prior to today. I'm looking at it, and

HEARING

24

1 it seems to me there's very little court interpretation
2 of this rule, none in South Carolina. Perhaps we have
3 found a little bit of authority interpreting the
4 federal rules, which is the same thing basically, but
5 none in South Carolina. But I want to read those
6 matters and think about it a little bit, and I'll let
7 you know something in a couple days.

8 **MR. JACKSON:** Thank you.

9 **MR. LITTLEJOHN:** Thank you.

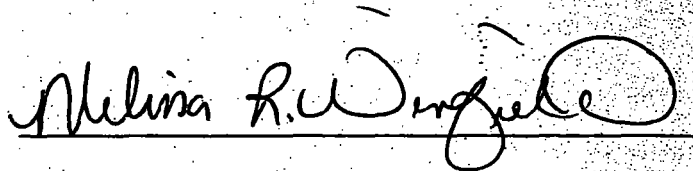
10 **(There being nothing further, the hearing concluded.)**

CERTIFICATE

This is to certify that the hearing in The State vs. Bobby Wayne Stone, consisting of Twenty-four (24) pages is a true and correct transcript of the testimony given after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 5TH day of October, 2005.

A handwritten signature in cursive script, reading "Melissa R. Winfield", is written over a horizontal line.

Melissa R. Winfield
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

December 15, 2006

FAX (803-734-1397) & mail
Ms. Karen D. Elliott
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SCCID
Division of Appellate Defense
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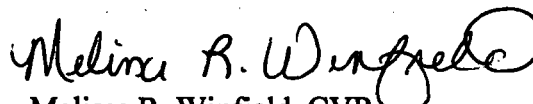
RE: The State vs. Bobby Wayne Stone
1996-GS-43-0698
Trial February 22 - February 24, 2005 Jury Selection

Dear Sharon:

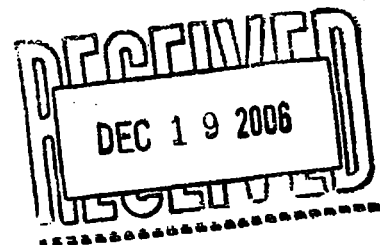
Per your request of December 1, 2006, this letter will serve to advise that during the transcribing of the above-referenced matter unfortunately there was a problem with pulling up my back up for the February 23 jury selection morning session. After taking several different avenues to attempt to recover the jury selection I had no choice but to type from my notes. Although, not verbatim, I was able to tell from my notes who was and who was not stricken from the jury selection. I can't apologize enough for this but there was nothing else I could do to have a more successful recovery. I'm just thankful that out of this long trial the a.m. portion of the 23rd jury selection was all that was not recoverable.

Wishing you and yours a safe and happy Holiday Season.

Sincerely,


Melissa R. Winfield, CVR

cc: Ms. Desiree Allen (Fax # 803-734-0269)
South Carolina Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739



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STATE OF SOUTH CAROLINA *Anna M. Prescott* In the Court of General Sessions
COUNTY OF SUMTER DEPUTY CLERK OF COURT Case Number: 96-GS-43-698
SUMTER COUNTY
SOUTH CAROLINA

State of South Carolina

v.

Bobby Wayne Stone,

Defendant.

STATUTORY INSTRUCTIONS

In determining whether to recommend that the Defendant, Bobby Wayne Stone, be sentenced by the Court to Life Imprisonment without the chance of parole or to Death, you may consider the following Statutory AGGRAVATING CIRCUMSTANCES:

- 1) The murder was committed while in the commission of a burglary in any degree.
- 2) The murder was of a local law enforcement officer during or because of the performance of his official duties.

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 capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
- 3) The age or mentality of the defendant at the time of the crime.

You may also consider any Non-Statutory MITIGATING CIRCUMSTANCES.

Sumter, SC
February 24, 2005

Howard P. King
Howard P. King
Presiding Judge

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STATE OF SOUTH CAROLINA

In the Court of General Sessions

COUNTY OF SUMTER

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Case Number: 96-GS-43-698

State of South Carolina

v.

Bobby Wayne Stone,

Defendant.

SENTENCE

We the jury, by unanimous consent, find:

 1. No statutory aggravating circumstances.

[If you check this selection, STOP AND GO NO FURTHER. Your deliberations are complete.]

—OR—

☒ 2. Find the following aggravating circumstances:

*The murder was of a local law Enforcement officer
during or because of the performance of his
official duties.*

[If you check this selection, go to question 3.]

3. We recommend that the Defendant, Bobby Wayne Stone, be sentenced:

 To life imprisonment without the possibility of parole

☒ To death by electrocution or lethal injection

Walter T. [Signature]
Foreperson

Myrtle H. Benjamin
 Ed. Wap
 Eugene Buerge
 George G. G. G.
 Parson D. M.
 Carla F. M.
 Emerenciana J. Uery
 Sandra Blawfett
 James M. M.
 Randy E. Wap
 Jean

Sumter, SC
 February 27, 2005

STATE OF SOUTH CAROLINA

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In the Court of General Sessions

Case Number: 96-GS-43-698

COUNTY OF SUMTER

Anna M. Prescott
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

State of South Carolina

v.

Bobby Wayne Stone,

Defendant.

**AFFIRMATION OF
DEATH SENTENCE**

As the Trial Judge in the above-entitled action, and prior to the imposition of the death sentence upon the Defendant, Bobby Wayne Stone, 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 arbitrary factor.

Howard P. King
Howard P. King
Resident Judge
Third Judicial Circuit

Sumter, SC
February 27, 2005

CERTIFIED TRUE COPY
OF ORIGINAL FILED

STATE OF SOUTH CAROLINA James M. Priddy In the Court of General Sessions

DEPUTY CLERK OF COURT Case Number: 96-GS-43-698

COUNTY OF SUMTER

SUMTER COUNTY
SOUTH CAROLINA

State of South Carolina

v.

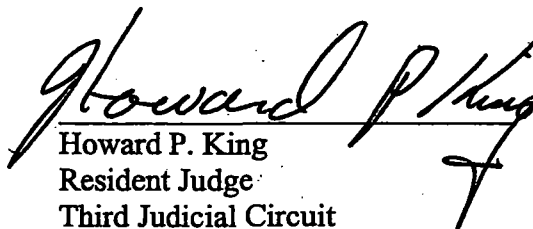
Bobby Wayne Stone,

Defendant.

SENTENCE

The Defendant, Bobby Wayne Stone, has been found guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is, therefore, the judgment of the law and the Sentence of the Court that the Defendant, Bobby Wayne Stone, be taken to the SUMTER Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 22nd day of APRIL, upon which day between the hours of six o'clock p.m. and six o'clock a.m., or upon Order of Execution issued by the South Carolina Supreme Court, the Defendant, Bobby Wayne Stone, shall suffer death by electrocution or by lethal injection in the manner provided by law.


Howard P. King
Resident Judge
Third Judicial Circuit

Sumter, SC
February 27, 2005

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.

August 17th, 2007



Joseph L. Savitz, III
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