

VOLUME FIVE OF SIX

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

VOLUME FIVE
2001 - 2500

Appeal from Greenville County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

RECEIVED

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BRAD KEITH SIGMON,

S.C. SUPREME COURT

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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1 cocaine use, in that people do repetitive behaviors.
2 From my understanding, he hit both of those people
3 number -- a number of times, more than he needed to.

4 Q Right.

5 A And so it's almost like once he started, he did not
6 stop, and that is something you see with animals that
7 are being studied with cocaine. You see it with
8 patients that have taken too much cocaine, not violence,
9 but I have also seen it in three patients that I've
10 worked with that have stabbed people. They didn't stab
11 them once or twice, but they stabbed them over 100
12 times. So they -- once they started they did not stop.

13 MR. ABDALLA: Thank you. One moment, please.

14 BY MR. ABDALLA:

15 Q Is that phenomenon called overkill?

16 MR. ARIAIL: I would object to him -- unless he's
17 qualified in the area of overkill, the pathological
18 area.

19 THE COURT: Do you want to try to lay a foundation?

20 BY MR. ABDALLA:

21 Q Did you do any -- Dr. Martin, did you do any --
22 talk to anybody in the field of psychiatry that have any
23 expert knowledge the theory -- in overkill, or do you
24 have any personal knowledge of overkill?

25 A I have some knowledge of overkill, where ---

1 Q What would that be?

2 A Yes.

3 Q What would your knowledge be, personal knowledge?

4 A I have knowledge that in certain crimes, the people
5 that commit the crimes go beyond the behavior that it
6 would take to immobilize someone, or stop someone, and
7 once they start, they continue to the point that it
8 would be way over done.

9 MR. ABDALLA: I have no further questions.

10 THE COURT: Cross-examination?

11 MR. ARIAIL: Just a couple.

12 CROSS-EXAMINATION

13 BY MR. ARIAIL:

14 Q Dr. Martin, how long did you visit with Brad Sigmon
15 on May the 10th of 2002?

16 A It was about an hour and 30 minutes.

17 Q So everything you ever testified about that you
18 learned from talking to Mr. Sigmon occurred on May the
19 10th, during that one hour and 30 minutes?

20 A What I learned from him I spent an hour and 30
21 minutes with him, but I also learned a great deal ---

22 Q I understand.

23 A --- from other records.

24 Q Just from him an hour and 30 minutes?

25 A Yes, sir, an hour and 30 minutes.

1 Q And did he tell you that prior to this incident
2 that -- or even the day before, he's driving a truck,
3 that he's climbing up and down trees, and sawing them
4 down with a chain saw and he's running a business?

5 MR. ABDALLA: Objection, Your Honor. I don't know
6 of anything in the railroad that reflects a day or two
7 earlier.

8 THE COURT: Overruled.

9 BY MR. ARIAIL:

10 Q Making out -- running a business, putting his
11 advertisements in a telephone book, and otherwise
12 functioning otherwise as a normal human being?

13 A He did not tell me that.

14 Q Did you ask him that?

15 A No, that would not surprise me, because 80 percent
16 of alcoholics are at work, and 70 percent of cocaine
17 addicts work, maybe not as effectively as they could,
18 but most people with these disorders work.

19 Q But you didn't diagnose him, or have any
20 information he's an alcoholic?

21 A I didn't make the diagnosis, no.

22 Q All right. So that would not be a responsive
23 answer. He's not an alcoholic based on any information
24 that you have?

25 A Based on the information I got from the doctors

1 currently treating him, Dr. Martin says he does have a
2 problem with alcohol, and Dr. Schwartz Watts says that
3 he does have a problem with alcohol, cocaine and
4 marijuana.

5 Q Did they tell you he was an alcoholic?

6 A They did not say he was specifically an alcoholic.
7 They said specifically he had a problem.

8 Q So beside that -- just one last question here.
9 There are obviously millions of Americans going around
10 each day who are suffering the aftereffects of crack
11 cocaine?

12 A Yes, sir.

13 MR. ARIAIL: All right. Thank you.

14 THE COURT: All right. Thank you, sir, step down.

15 THE WITNESS: Thank you.

16 THE COURT: Next witness.

17 MR. EPPES: Excuse me. Jim Aiken, please, Your
18 Honor.

19 THE COURT: Jim Aiken?

20 MR. EPPES: Yes, sir.

21 THE CLERK: Place your left hand on the Bible,
22 please, sir, and raise your right hand.

23 JAMES AIKEN

24 Having been first duly sworn, testified as follows:

25 THE CLERK: State your name for the record, please,

JIM AIKEN - Direct by Mr. Eppes

1 sir.

2 THE WITNESS: James Evans Aiken, A-i-k-e-n.

3 THE CLERK: Thank you. Be seated.

4 DIRECT EXAMINATION

5 BY MR. EPPES:

6 Q Hi, Mr. Aiken.

7 A Hello.

8 Q Where are you presently employed?

9 A I'm president of James E. Aiken and Associates,
10 Incorporated.

11 Q And what does James E. Aiken and Associates,
12 Incorporated do?

13 A It is a correctional slash prison slash jail
14 consulting firm.

15 Q And did we, Brad Sigmon's defense team retain you
16 to consult with us concerning Mr. Sigmon?

17 A That's correct, sir.

18 Q Okay. We're paying you to do that, aren't we?

19 A That's correct, sir.

20 Q How much are we paying you?

21 A One hundred and twenty-five dollars an hour.

22 Q Now, the consulting work we -- we're having you do
23 is only a small part of your business, is that correct?

24 A That's correct.

25 Q Okay. Describe the main function of your business,

1 please?

2 A My main focus of the business is to provide
3 technical assistance, expert assistance in relationship
4 to the management of inmate population, not only in the
5 United States, to include most of the states and
6 jurisdictions within the United States, but also Alaska,
7 Hawaii, Canada, Costa Rica, the Dutch Kingdom, Puerto
8 Rica, and the United States Virgin Islands, I have
9 provided technical assistance.

10 Q Okay. Now, your career has had a long and winding
11 trail, so I'm going to ask you a few questions, and the
12 judge wants me to ask questions, you know, every now and
13 then. I don't want you just to ramble on, but I want to
14 ask you, tell me about your education starting when you
15 grew up?

16 A I grew up in Kershaw County, South Carolina.

17 MR. ARIAIL: Your Honor, we would stipulate to
18 having heard his testimony previously he would qualify
19 as an expert.

20 THE COURT: In what area?

21 MR. ARIAIL: In the area of his consulting firm.

22 THE COURT: All right. What ultimately are you
23 claiming him an expert in?

24 MR. EPPES: Prison adaptability, Your Honor, and
25 the condition of prisons.

1 THE COURT: Okay. I don't want to cut you short
2 anything you want to do, but he's stipulated he's an
3 expert.

4 MR. EPPES: Thank you, Your Honor, I'm still
5 going ---

6 THE WITNESS: Thank you, Your Honor. Thank you.

7 BY MR. EPPES:

8 Q Mr. Aiken, go through briefly your education, and
9 then if you would summarize your employment career,
10 please.

11 A I will do it as briefly as possible. I was born,
12 raised in Kershaw County, South Carolina, as I stated
13 before. I received an undergraduate degree from
14 Benedict College, Columbia, South Carolina. I received
15 a Master's Degree in criminal justice from the
16 University of South Carolina. I was employed with the
17 Manning Correctional Institution with South Carolina,
18 Department of Corrections, initially in the capacity of
19 a social worker. From there I was promoted to
20 Administrative Assistant to the Warden of that facility.

21 And from there I became Deputy Warden of that
22 facility. Manning Correctional Institution is what is
23 known as a medium custody facility for younger felony
24 convicted individuals. These are people that require
25 the level of custody and supervision to include gun

1 towers and security fences, et cetera.

2 From there I became Deputy Warden of the CCI, the
3 Central Correctional Institution, better known as the
4 penitentiary in South Carolina. This facility housed
5 1800 of the most predator, violent individuals in the
6 state of South Carolina. They are people that are not
7 only predator and violent within the community, but
8 after being convicted they also demonstrate repetitive
9 organized violence within the facility to try to control
10 the operations of the facility. From Deputy Warden of
11 that facility -- and also it housed death row
12 population, as well as those individuals that had
13 forensic psychiatric problems.

14 From there I became the warden of the women's
15 prison in South Carolina, which was somewhat identical
16 to CCI, but only there you deal with the female
17 population.

18 From there I went back to CCI as the Warden, that
19 is the chief administrator of that facility. And up to
20 this time I was involved with classification.
21 Classification means putting the right inmate in the
22 right place for the right supervision and the right
23 security. I was the individual that made the final
24 decision. We took the psychiatric records. We took the
25 security records. We took the medical records. We took

JIM AIKEN - Direct by Mr. Eppes

1 all of the officer reports, et cetera, and that decision
2 was placed with me, and I made the final decision and I
3 had to put my name, write my signature to it saying that
4 those are my decisions.

5 From there I took over as a Deputy Regional
6 Administrator, where I was the chief administrator and
7 supervised approximately 14 wardens of various prisons
8 within the midlands correctional region in South
9 Carolina. From there I became Commissioner of
10 Corrections for the State of Indiana. I was the chief
11 executive officer as well as the chief policy developer
12 and interpreter, as well as I did in South Carolina,
13 doing classification for that facility -- those
14 facilities, approximately 46 facilities, and that
15 included a male, female adult as well as juvenile
16 facilities. I -- if I remember correctly I had about
17 10,000 employees.

18 From there I took over the United States Virgin
19 Island's correctional system, where I ran the jail
20 operations, as well as the prison operation, pretrial as
21 well as post-trial inmate population. Again,
22 classification runs through all of this. And then I of
23 course was doing my consulting work which I started in
24 1986, with the United States, Department of Justice,
25 National Institute of Corrections and the National

1 Academy of Corrections, where I teach wardens how to be
2 wardens of prison. I teach wardens of super-maximum
3 security prisons how to be wardens. I update existing
4 and veteran wardens of prison. I teach classification
5 and help, internal as well as external classifications.
6 I also teach in relationship to gang management,
7 security threat group management, as well as leadership
8 development within correctional facilities, as well as
9 to assist people, wardens, as well as institutions, to
10 avoid critical incidents, such as escapes, such as
11 riots, and things of that nature that can occur within a
12 correctional environment.

13 Q Thank you, sir. What do you look at when you
14 determine the adaptability of a person to prisons?

15 A I look at a number of issues. I look at the
16 criminal record of the individual while in the
17 community. I look at the person's age. I look at the
18 person's size. I look at the person's involvement with
19 security threat groups, or gangs, predatorial behavior.
20 I look for patterns as it relates to that. I also look
21 at substance abuse history. I look at social history..
22 I look at psychological history. I look at education.
23 I look at a number of factors in that particular area.

24 Q What is a security threat group?

25 A A security threat group is also known as a gang,

1 and we're not talking about something in which people
2 join. It is group, a collective group of individuals in
3 a correctional environment that their sole purpose is to
4 control that environment. They control it through
5 intimidation. They also control it through violence,
6 and threats of violence within the facility, and that
7 violence can be personified through staff, as well as
8 other inmate population. These people are predators.
9 These people are systemically gathering other people as
10 well as to perpetrate violence as a way of controlling
11 their environment.

12 Q Did you have occasion to receive records concerning
13 Brad Sigmon?

14 A Yes, I did.

15 Q What did you receive?

16 A I received his South Carolina, Department of
17 Corrections records, his Greenville County Detention
18 Center records, as well as indictments and other
19 pertinent documents of that nature.

20 Q By documents, you mean records concerning this
21 case, correct?

22 A That is correct.

23 Q Are these records of the type that an expert in
24 your field would reasonably rely upon to determine
25 things about an inmate's adaptability, or

1 classification?

2 A That is correct, sir. Like I have stated before, I
3 have classified thousands of inmates and this is typical
4 of an evaluation that I would take in classifying inmate
5 population.

6 Q So prison adaptability, an examination of that
7 would be similar to the prison classifications that you
8 used to do for the South Carolina, Department of
9 Corrections?

10 A As far as I'm concerned, it's interchangeable. It's
11 putting the right inmate in the right level of
12 supervision, in the right level of management and the
13 right level of security and custody.

14 Q Okay. That's what goes into classification,
15 correct?

16 A That is classification.

17 Q Okay. Now, there are certain parameters that you
18 automatically get for certain inmates, is that correct?

19 A That is correct, in relationship to community
20 behavior, yes.

21 Q Okay. What -- let's talk about -- a little bit
22 about the South Carolina prison system. What sort of
23 classifications are the prison divided up into?

24 A Well, you have maximum security. You have medium
25 security, and you have minimum security. And then you

1 have a separate classification system for the female
2 population. And minimum security where people are at
3 the lowest level of incarceration that would cause a
4 risk of harm to the public as well as other inmates and
5 staff.

6 Q What kind of inmates go to minimum security?

7 A Those individuals that have been convicted of
8 non-violent offenses, individuals that the Department of
9 Corrections is doing everything within its purview to
10 re-integrate individuals back into society.

11 Q That re-integration, would that be rehabilitation?

12 A Rehabilitation is a commonly used word, yes.

13 Q What does that mean?

14 A That means a person coming in in a state and going
15 out in a better state that would make them a more
16 constructively engaged individual as it relates to the
17 laws and the mores of the society.

18 Q What sort of inmates are housed in medium security
19 facilities?

20 A These are individuals -- and this is not to be
21 confused with the jail situation, but medium security
22 are people that need a higher level of separation from
23 the community, however attempts are being made to
24 re-integrate these individuals. However these people
25 are under security, gun towers, fences, detection

1 systems, and things of that nature.

2 Q Okay. What kind of inmates would be classified for
3 a maximum security facility?

4 A A maximum secured environment is one in which you
5 have the highest level, or a higher level of
6 supervision, and custody, and management, or control of
7 the inmate in relationship to his behavior in the
8 community, as well as the possible behavior within the
9 correctional environment. However, you must understand
10 that sometimes in some instances their community
11 behavior will cause them to be in maximum custody no
12 matter what their behavior is within the correctional
13 environment.

14 Q I think you anticipated my next question.

15 A I'm sorry.

16 Q That's okay. That's fine. Where would an inmate
17 that was sentence to life without parole be housed?

18 A He would be housed in a maximum security
19 environment and will remain there.

20 Q And that would be regardless of what his
21 classification, or what the records showed, correct?

22 A He will be behind gun towers and fences for the
23 remainder of his life because of his community
24 behavior.

25 Q Tell me a little bit about the way the day is

1 structured in a maximum security facility?

2 A One of the things that you have to understand is
3 that a maximum security environment is not like the
4 environment in a community. Number one is that you are
5 under constant evaluation and constant security from
6 staff. That everything you do that is out of the
7 ordinary, to include not eating, is documented, and it
8 is evaluated by individuals in a higher chain of
9 command. You're constantly monitored. Number two is
10 that you are around violent people continuously. These
11 people resolve their issues through violence, whether
12 you are violent or not. These people have the potential
13 to inflict bodily harm and victimize you at any time.
14 Number two (sic) is that you do not enjoy the right that
15 you and I enjoy. If someone of a law enforcement
16 decided to go to your home and go through your home,
17 they would have to get a search warrant signed by an
18 approving judicial authority. In a prison, that's not
19 the case. I can have you disrobe at any time. I can
20 search your body cavities. I can search your personal
21 belongings. I can tell you what to do, when to do it
22 and how to do it. On top of that, I have full authority
23 to enforce rules and regulations, whether it's
24 administratively or whether it's taking out of a warrant
25 against you, or in some circumstances using lethal force

1 and killing you for the protection of the society, the
2 staff and the other inmates. A regiment is that you are
3 counted at least three or four times a day. What we
4 mean when we say counting, we count living, breathing
5 bodies. You are told who you can talk to you, who you
6 can visit. You are told when you can go to church and
7 when you can't go to church. You are told -- and your
8 whole life is completely structured.

9 Q Do you have a concern about escape from maximum
10 security facilities?

11 A A concern?

12 Q Is there a concern there?

13 A There is always a priority with jail prison
14 administrators to prevent escapes, and obviously we have
15 the equipment, we have the technology, we have the
16 staff, we have the training, we have the experience, and
17 we have the classification system in place to bring that
18 to the lowest level of probability. And also we can use
19 lethal force.

20 Q What sort of things do you do in a maximum security
21 facility to prevent escapes?

22 A Well, number one is that we always count you. We
23 know where you are and what you are doing. Number two
24 is that we give you a uniform that you must wear,
25 whether that uniform is red, or orange, or whatever,

1 it's a uniform. Number three is that you are properly
2 identified coming in and properly identified when you go
3 to point A to point B within the facility. Also we
4 have, as necessary, use restraints. Restraints being
5 leg irons, belly chains. We also have other technology
6 to restrain you from possible escape as well as being
7 disruptive. One example being of technology that's out
8 there, we put a belt on an individual and the individual
9 begins to act out, I press a button and it sends an
10 electrical charge through that individual and renders
11 that individual helpless. Also within our
12 classification system, we look at the background of this
13 individual. We look at and make assessments as to
14 escape potential. And obviously increase the level of
15 security and management of an individual.

16 Q Thank you. Now, you said you made an assessment of
17 Brad Sigmon. Would you tell the jury what that
18 assessment is?

19 A My assessment of him as a prison inmate is that he
20 can be incarcerated in a prison setting for the
21 remainder of his life without causing an undue risk of
22 harm to staff, inmates, as well as to the general
23 community.

24 Q And you've reviewed his records to reach that
25 conclusion?

1 A That is correct, sir.

2 Q Tell me what your analysis was of his previous
3 prison record?

4 A Well, my analysis is this. The things that I would
5 look for that will cause me to have a different opinion
6 were not there. I don't see where he's a gang member,
7 or as they call it in a prison setting, a signal caller,
8 like the Arian Brotherhood, or the Order, or the Clan,
9 or the Gangster Disciples, or the Black Disciples, or
10 the Latin Kings. These are security threat groups that
11 are very organized and sophisticated within the prison
12 environment. These people cause other people to be hurt
13 and victimized within a prison setting. I don't see
14 anything in his record where he has assaulted staff,
15 that is pulled out a knife and tried to attack staff. I
16 don't see where, disappointed with something such as
17 going to red pod, I see where he goes on a hunger
18 strike, where I know other inmate population what they
19 do and the staff reduces their availability to get to
20 weapons, et cetera, that these inmates throw body waste
21 on staff. I mean, feces and urine. I'm sorry to be so
22 graphic, but when you're dealing with a predator, when
23 you're dealing with a dangerous, continuously disruptive
24 inmate, these are some of the things that -- that they
25 do.

1 Q Did you look at his records from the Greenville
2 County Detention Center?

3 A Yes, I did.

4 Q And what did you determine from a review of those
5 records?

6 A I determined that with very few minor exceptions,
7 that this individual adjusted very well to his
8 confinement for approximately 15 months.

9 Q Did you see the records concerning the
10 investigation of some sort of plot with another inmate
11 and the pink visitation card?

12 A Yes, sir. You're talking about the professional
13 visitation card and the allegation that -- that he was
14 contracting?

15 Q Yes, sir.

16 A Yes, sir.

17 Q What were your conclusions regarding that?

18 A I concurred with -- with the jail administrator in
19 that, after a complete evaluation, that there was no
20 substantive connection between him getting the visitor
21 pass and having a validated escape attempt, as well as
22 to look at him contracting anyone else to do harm to
23 innocent people in the community. And the reason for
24 that exactly is what I just laid out to you. I can't
25 find the pattern, I can't find the diagnosis. I can

1 find the telltale things that I have considered over the
2 last 30 years that would indicate that he would be
3 involved in something like that.

4 Q Now, were you in here this morning for the
5 testimony of various employees of the Greenville County
6 Department of Corrections?

7 A Yes, sir.

8 Q Did you change your evaluation any based upon that
9 testimony?

10 A Without hearing their testimony until today, but
11 having to review the records, it just basically
12 reinforced what I have just shared with you.

13 Q Would you have any problems with Mr. Sigmon in the
14 South Carolina, Department of Corrections?

15 A Yes.

16 Q What would the problem be?

17 A My biggest problem would be keeping him from being
18 harmed by predator inmates.

19 Q Why is that?

20 A Because people in a maximum security environment,
21 as I explained earlier, are -- are very methodically ---

22 MR. ARIAIL: Your Honor, I'm going to object at
23 this juncture. I think he's gone beyond adaptability.

24 THE COURT: I will sustain the objection.

25 BY MR. EPPES: Thank you, Your Honor.

1 BY MR. EPPES:

2 Q Mr. Aiken, did you reach a conclusion as to any
3 potential threat that Mr. Sigmon might have to either
4 inmates, staff, or as an escape risk in the maximum
5 security facility of the South Carolina, Department of
6 Corrections?

7 A My assessment is that he would be at the lowest
8 level of probability in adapting to the prison system,
9 causing any of these things to happen.

10 Q Have you ever taken part in an execution?

11 A I have killed two inmates in an execution.

12 Q Have you ever had any other inmates killed?

13 A I have ordered an inmate killed in a hostile
14 situation. He was killed by a sniper, per my orders.

15 Q You're authorized to do that in a penitentiary?

16 A Yes, sir.

17 MR. EPPES: Mr. Aiken, thank you very much. Answer
18 any questions the Solicitor has.

19 THE WITNESS: Yes, sir.

20 THE COURT: How long is your cross-examination,
21 Solicitor?

22 MR. ARIAIL: Just a minute or two.

23 THE COURT: All right. Go ahead and do it then.

24 CROSS-EXAMINATION

25 BY MR. ARIAIL:

1 Q Okay. Mr. Aiken, just to reiterate, an individual
2 who receives a life without parole sentence in South
3 Carolina, Department of Corrections presently -- when
4 were you last with the Department of Corrections?

5 A Well, in an official capacity, drawing a paycheck,
6 was 1989, sir.

7 Q Okay. But in today's environment, that individual
8 is still going to have visitation available to him every
9 weekend?

10 A Yes, sir, he would have regularly scheduled
11 visitors, and it would be at the purview of the
12 Department of Corrections, whether it's a weekend or
13 not.

14 Q And he's got the availability to watch television?

15 A Yes, sir. As I explained to you earlier, it's not
16 in relationship to what you and I would do to look at
17 television, you will look at television with some
18 predators around.

19 Q All right. He would have recreation, that is an
20 area to go to to recreate, various things provided by
21 the Department of Corrections?

22 A Yes, sir, not only provided by the Department of
23 Corrections but the United States Constitution.

24 Q All right. And that would also apply as well as
25 to go a library, the right to go to a library to work

1 on law materials, or to check out books and read
2 books?

3 A That's correct, sir, as guaranteed by the United
4 States Constitution.

5 Q Telephone, he would have the right to certain
6 telephone access to call -- call home, call friends,
7 call whoever he wanted to, call as long as it was a
8 collect call?

9 A Well, it's approved by the administrator. I have
10 the flexibility to cut off your telephone as well as to
11 listen to your conversation, as long as it's not with
12 your lawyer.

13 Q Sure. And all of these are subject to being cut
14 off for disciplinary (sic). But if he's no disciplinary
15 problem, he gets all of these?

16 A If he's no disciplinary problem, or potential
17 threat to the security of the institution, you're
18 correct, sir.

19 Q Canteen, he gets to go the canteen and buy what's
20 available in the canteen and it's done by debit card
21 where he has credit in there, that sort of thing?

22 A Yes, but please understand it's in the same context
23 of looking at the television, you're in a very hostile
24 dangerous environment.

25 Q All right. And he gets to shower every day if he

1 wants to?

2 A Not necessarily so. Sometimes in certain locations
3 of a prison, I think you're allowed to shower three
4 times a week.

5 Q All right. But if -- you're certainly required to
6 shower three times a week, but you can shower more based
7 on availability of the facility?

8 A Well, not necessarily so. We have standard
9 operation procedures, and certain inmate population
10 under certain levels of security and custody are only
11 allowed three showers a week.

12 Q I understand, but as a life without parole person
13 in general population ---

14 A That's correct, sir.

15 Q --- he'd be -- and he'd get to go to school if he
16 wanted to, take educational classes?

17 A Well, we're not going to deny him that. We can't
18 deny him that, but please keep an understanding that
19 we're not here to rehabilitate him. We are here to
20 incapacitate him.

21 THE COURT: That's not responsive.

22 THE WITNESS: I'm sorry.

23 THE COURT: The question was, was education
24 available to him.

25 THE WITNESS: Yes, he could have education, but he

1 would be at the lowest priority.

2 BY MR. ARIAIL:

3 Q And he can get mail, and receive mail, send mail,
4 subscribe to magazines, Sports Illustrated, whatever he
5 wants?

6 A Not whatever he wants, but he can receive mail and
7 we will review that mail and it has to be approved.

8 Q And he gets to go to church, or religious services
9 are provided in the institution?

10 A Yes, sir, as provided by the Constitution also.

11 Q And he has his own personal locker in his bunk area
12 where he can keep his own personal effects if he wants
13 to?

14 A Yes, sir, and many times due to over crowded
15 conditions he's with other inmates during that living
16 area time (sic).

17 Q And if a family members dies, he gets to go to the
18 funeral?

19 A Not necessarily so.

20 Q But that -- the service is provided?

21 A To inmates in which their custody level would
22 approve such, him being in maximum security for life
23 without parole, I would never approve it myself.

24 Q But he gets contact visitation?

25 A He can have contact visitation or non-contact

1 visitation, and that's at the discretion of the
2 administrator.

3 MR. ARIAIL: That's all I have. Thank you.

4 THE COURT: Anything on redirect?

5 REDIRECT-EXAMINATION

6 BY MR. EPPES:

7 Q Has any inmate sentenced to life without parole
8 ever escaped from an institution in South Carolina?

9 MR. ARIAIL: I will object to that question, Your
10 Honor, there is no way he would possibly know that,
11 other than to speculate.

12 MR. EPPES: Can I lay a foundation, Your Honor?

13 THE COURT: Yeah. Go ahead.

14 BY MR. EPPES:

15 Q Do you have knowledge, personal knowledge
16 concerning the escape record of life without parole
17 inmates in the State of South Carolina?

18 A I have had the opportunity to discuss this issue
19 with the chief administrator over all maximum security
20 institutions within the last several months.

21 Q Within the last several months, to your knowledge
22 has there been an escape from -- by a life without
23 parole inmate?

24 MR. ARIAIL: Same objection.

25 THE COURT: All right. Sustain the objection. It

1 would be -- clearly be hearsay. I mean, he said he
2 learned it from somebody else.

3 MR. EPPES: Is this something you ---

4 THE COURT: I mean -- go ahead.

5 MR. EPPES: Can I try again, Your Honor?

6 BY MR. EPPES:

7 Q Is this something you, as an expert in prison
8 systems and prison adaptability, would need to keep up
9 with as part of your expertise?

10 A Yes, sir. In my relationship of teaching wardens
11 to be wardens of prisons, teaching super-maximum
12 security wardens, I've had the opportunity to tour and
13 go through, personally, a maximum security prison here
14 in South Carolina within the last several months, as
15 well as to converse with those administrators over those
16 facilities.

17 Q Based on that, do you know whether there has ever
18 been an escape ---

19 THE COURT: Sustain the objection.

20 MR. EPPES: Thank you, Your Honor.

21 THE COURT: All right. You can step down.

22 THE WITNESS: Thank you, sir.

23 THE COURT: All right. Now, Mr. Foreman, ladies
24 and gentlemen, we'll take about a 15 minute break.
25 We've gone a little bit longer than I anticipated, but I

1 wanted to get through with that witness? While you're
2 back in the jury room, don't discuss this case. We'll
3 be with you shortly.

4 (The jury exited the courtroom at 3:50 p.m.)

5 THE COURT: All right. All right. For the record,
6 on the last question Mr. Eppes would not have laid the
7 proper foundation under 703 as far as forming the
8 opinion in this particular case as to Mr. Sigmon. All
9 right. Anything before we break? Okay. We had a
10 side-bar about Mr. Ariail's objection when Mr. Abdalla
11 was trying to lay the foundation under 703. I think the
12 proper foundation was ultimately laid, and in any event,
13 Mr. Ariail withdrew the objection.

14 MR. ARIAIL: I did.

15 THE COURT: Is there anything else we need to put
16 on the record as to that side-bar?

17 MR. ABDALLA: Nothing from us.

18 THE COURT: Nothing from the State or the defense.
19 We'll take a 15 minute break. How many more witnesses
20 you got?

21 MR. EPPES: Two shorts ones.

22 THE COURT: It's now 10 minutes 'til 4:00, y'all
23 got two short witnesses, we'll start back, you know, at
24 10 after, what is -- you will be done with this
25 testimony by ---

1 MR. ABDALLA: 4:30 I would imagine.

2 THE COURT: 4:30, 4:45?

3 MR. ABDALLA: I would think they wouldn't be more
4 than five minutes or so, 10 minutes.

5 THE COURT: You need five minutes to get ready for
6 arguments, is that what ---

7 MR. EPPES: No, no, no.

8 MR. ABDALLA: No, no, no, no.

9 THE COURT: What did you say?

10 MR. EPPES: No, we said 5 or 10 minutes each.

11 THE COURT: All right. So we're at 4:30.

12 MR. ABDALLA: Yeah.

13 THE COURT: What do y'all want to do?

14 MR. ARIAIL: Take a break to ---

15 THE COURT: I mean, do y'all want to plow on?

16 MR. ARIAIL: --- 5:30, argue and charge.

17 THE COURT: How long is your argument, 30 minutes?
18 How long is your argument, 30 minutes? Mine is 30. We
19 start at 5:30, they got it at 7:00. Is that what y'all
20 want to do?

21 MR. EPPES: Suits me.

22 MR. ARIAIL: Well, do you want to ask them?

23 THE COURT: I will ask them.

24 MS. STROM: We can always have supper brought into
25 them.

1 THE COURT: Yeah, we're going to order pizza.

2 (A short recess was taken, after which, the trial
3 continued as follows:)

4 THE COURT: All right. Anything before I bring the
5 jury in? Bring the jury. I tell you what, Mr. Eppes,
6 have you decided whether you -- has your client decided
7 whether he's going to testify in this stage?

8 MR. EPPES: No, sir, Your Honor.

9 THE COURT: He has not decided?

10 MR. EPPES: No, he's not going to testify, no, sir.

11 THE COURT: I want you to hold them just a minute.
12 I'm sorry. I apologize. Just hold them in the hallway
13 right there. All right. My question is, have you
14 decided whether or not you're going to testify from the
15 witness stand on this stage?

16 MR. SIGMON: No, sir.

17 THE COURT: All right. If you would, raise your
18 right hand.

19 MR. EPPES: Can I have a moment, Your Honor?

20 THE COURT: All right. Mr. Sigmon, if you'd raise
21 your right hand.

22 BRAD SIGMON

23 Having been first duly sworn, testified as follows:

24 THE COURT: All right. You can have a seat. You
25 don't need to stand. Again, we're in the stage of this

1 proceeding, in this penalty phase where you have the
2 right to present evidence which you are doing. You also
3 would have the right to testify yourself at this stage.
4 Do you understand that?

5 MR. SIGMON: Yes, sir.

6 THE COURT: And again, you understand the decision
7 whether or not to testify at this stage would be yours
8 and yours alone. You understand that? I'm talking
9 about testifying as a witness from the witness stand.
10 You understand that?

11 MR. SIGMON: Yes, sir.

12 THE COURT: All right. Your lawyer says that you
13 have decided not to testify at this stage, is that
14 correct?

15 MR. SIGMON: Yes, sir.

16 THE COURT: All right. Have you had enough time to
17 make up your mind to testify?

18 MR. SIGMON: Yes, sir.

19 THE COURT: All right. You've had enough time to
20 talk with your lawyers, your family members and anyone
21 else you want to talk to about that decision?

22 MR. SIGMON: Yes, sir.

23 THE COURT: All right. You don't need any more
24 time to talk with them about it?

25 MR. SIGMON: I don't reckon I do.

1 THE COURT: Okay. All right. I just wanted to put
2 that on the record. Bring the jury.

3 (The jury entered the courtroom at 4:20 p.m.)

4 THE COURT: All right. Call your next witness,
5 please, sir.

6 MR. ABDALLA: Call Ronnie Wooten -- I'm sorry,
7 Ronnie Sigmon.

8 THE COURT: Come up please, sir. Before you get in
9 your chair, if you would stop at the Bible, place your
10 left hand on the Bible and raise your right hand.

11 RONNIE SIGMON

12 Having been first duly sworn, testified as follows:

13 THE CLERK: State your name for the record, please.

14 THE WITNESS: Ronnie Gordon Sigmon.

15 THE CLERK: Thank you. Be seated.

16 THE COURT: As make yourself comfortable, please
17 pull your chair close up to that microphone, speak right
18 into it.

19 THE WITNESS: Thank you, sir.

20 DIRECT EXAMINATION

21 BY MR. ABDALLA:

22 Q Good afternoon.

23 A Would you please tell the jury who you are?

24 A I'm Brad Keith Sigmon's father.

25 Q And what is your name, please?

1 A I'm Ronnie Gordon Sigmon.

2 Q And how many children do you have?

3 A I have five children and three step-children.

4 Q And who are your -- tell me who your children are?

5 A Brad, Mike, Startlett, Davey and Kelly. My
6 step-children is Annette, Debbie and Patrick.

7 Q And who are the children -- the five children with,
8 which wife?

9 A That was Virginia.

10 Q Okay. Is she in the courtroom today? No, she's
11 not.

12 A She's in the next room, sir.

13 Q And how long were you married to Virginia?

14 A Seventeen years.

15 Q And were you in the military during that time?

16 A Yes, sir.

17 Q Did you move around a good bit during that time,
18 Mr. Sigmon?

19 A I think approximately 10 air bases, sir.

20 Q And where did you basically live during that time,
21 do you remember?

22 A The first seven years was Big Springs, Texas.

23 Q And after that?

24 A I left and went to the Philippine Islands for two
25 years.

1 Q Did you go anywhere after that?

2 A Yeah, came back to Arizona; Atlanta, Virginia;
3 Tampa, Florida; Udor (phonetically) Thailand; and back
4 to Shaw Air Force Base, South Carolina. There were
5 several TDs in between there, extra schools, and I would
6 have to leave the family for these schools. You
7 couldn't take your family.

8 Q Mr. Sigmon, I have a couple of photos that are
9 marked for identification. I have Defendant's Exhibit
10 Number 16 that I will show you first. Can you identify
11 this?

12 A Yes, sir, that's Brad, the one on your left.

13 Q All right.

14 A The mother, Virginia. That's Kelly, Starlett,
15 David, Mike and myself.

16 Q All right.

17 A That was made at our home in the Philippines, off
18 base, back in the city.

19 MR. ABDALLA: I've previously shown this to the
20 prosecution, I would like to now move this into
21 evidence.

22 THE COURT: All right. Without objection.

23 (Defendant's Exhibit Number 16 was marked and
24 filed.)

25 MR. ABDALLA: I'd like to publish this to the jury,

RONNIE G. SIGMON - Direct by Mr. Abdalla

1 Your Honor.

2 BY MR. ABDALLA:

3 Q I now hold Defendant's Exhibit Number 17 as marked
4 for identification, and ask if you can identify that?

5 A That's Brad on the right and Mike on the left
6 there. That's when we just had two children.

7 Q Okay.

8 A Prior to going overseas.

9 Q Thank you.

10 THE COURT: Without objection?

11 MR. ABDALLA: Is this without objection?

12 MR. ARIAIL: Without objection.

13 THE COURT: Without objection.

14 MR. ABDALLA: Defendant's Exhibit Number 17.

15 (Defendant's Exhibit Number 17 was marked and
16 filed.)

17 MR. ABDALLA: Now, ask to publish this to the jury
18 as well?

19 THE COURT: Yes, sir.

20 BY MR. ABDALLA:

21 Q After retirement, where else did you work, Mr.
22 Sigmon?

23 A Well, I managed and owned a restaurant in Sumter
24 for 10 years.

25 Q Is that --- you?

1 A Until ---

2 Q Oh, I'm sorry.

3 A Until I sold that business. Then I went into the
4 Department of Corrections for five years. I retired a
5 year ago this August 15th.

6 Q South Carolina, Department of Corrections?

7 A Yes, sir.

8 Q I'd like you to tell me about Brad, just describe
9 him, what kind of person he was?

10 A He was my first son, of course, and he always went
11 out of his way to please me. I was very proud of him,
12 still am. Well, he's made a mistake of course. He was
13 always the peace maker. That's what's so shocking about
14 all this. He's the one that stopped the fights. He's
15 the one that would run from a fight. I used to think he
16 might be a coward, but he just didn't want the trouble.
17 Had many good characters. Became an excellent hunter,
18 fisherman, in all sports, tremendously good in soccer.
19 Even after I left the military I went -- we traveled all
20 the way to Seattle. He's even spent weekends with
21 Canadian families in soccer clubs and stuff. If he were
22 to stay with sports, he would probably have been famous,
23 I feel, but things change in life. We just moved too
24 much.

25 Q How did you feel about your son, Mr. Sigmon?

1 A I love him like any father would love a son. I
2 didn't believe this thing. I feel as bad for the Larke
3 family as he does. And this has never been in our
4 family on either side as far back as I can study, and
5 understand all the other families speaking to me.
6 Something pushed his buttons, sir. And we'll carry this
7 all to our graves, and I'd give my life for him if this
8 would take this away from him today.

9 MR. ABDALLA: Thank you, Mr. Sigmon. Answer any
10 questions the Solicitor might have.

11 MR. ARIAIL: No questions, Your Honor.

12 THE COURT: Thank you, sir. You can step down.

13 MR. EPPES: Your Honor, we call Virginia Wooten.

14 THE COURT: Come up here, Ms. Wooten.

15 THE CLERK: Place your left hand on the Bible,
16 please, ma'am, and raise your right hand.

17 VIRGINIA WOOTEN

18 Having been first duly sworn, testified as follows:

19 THE CLERK: State your name for the record, please.

20 THE WITNESS: Virginia Wooten.

21 THE CLERK: Thank you. Be seated.

22 DIRECT EXAMINATION

23 BY MR. EPPES:

24 Q Ms. Wooten, where do you live?

25 A Taylors.

1 Q When were you married?

2 A Pardon me?

3 Q When were you married?

4 A I married Donnie, June the 30th, 1978.

5 Q And when were you married to your first husband?

6 A January the 11th, 1956.

7 Q Brad is your oldest child, correct?

8 A Yes.

9 Q When was he born? When was he born?

10 A November the 11th.

11 Q What year?

12 A November the 12th, I'm sorry. November the 12th,
13 1959.

14 Q Yes, ma'am. Where did you meet Ronnie Sigmon?

15 A In Danville, Virginia.

16 Q How old were you?

17 A I was 15 when I met him.

18 Q How old were you when you married?

19 A Sixteen.

20 Q Where were you married?

21 A Columbus, New Mexico.

22 Q After you got married, where did you move?

23 A We went to Amarillo, Texas, Big Springs, Texas,
24 Wichita Falls, Texas. We lived in the Philippines. We
25 went to Arizona. We were in Virginia. We were in

1 Florida.

2 Q Over the course of that time, while you were moving
3 over that five and a half years, you had five children,
4 correct?

5 A Right.

6 MR. EPPES: Okay. I'm going to show you some
7 photos that have been previously marked as exhibits.
8 Would you talk about each -- Your Honor, to save time,
9 the Solicitor has already stipulated that they can be
10 moved into evidence.

11 THE COURT: All right. So they're in evidence now?
12 Have you got the numbers? Okay.

13 (Defendant's Exhibit Numbers 18 through 22 were
14 marked and filed.)

15 BY MR. EPPES:

16 Q Ms. Wooten, if you would, would you describe each
17 photo, and after you describe it, I'm going to hand it
18 over to the jury.

19 THE COURT: Let me get you to do this before you
20 start, would you look at the back and tell us the number
21 you're talking about when you're talking about it.
22 That's right. That's number 22. See the number on it?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. That's number 22. Okay.
25 Go ahead.

1 THE WITNESS: This is a picture of my five kids
2 when they were small.

3 BY MR. EPPES:

4 Q Okay. Which one is Brad?

5 A This one.

6 Q He's ---

7 A He's ---

8 Q --- in the upper right, right here?

9 A He's the oldest.

10 THE COURT: Be upper left, wouldn't it?

11 MR. EPPES: Yep.

12 THE COURT: Okay.

13 MR. EPPES: Thank you, Your Honor.

14 BY MR. EPPES:

15 Q Okay. Now, this is exhibit 21.

16 A This is Brad. It was taken in Texas. He was 22
17 months old.

18 Q Thank you. This is -- this one is 20.

19 A This was taken in Wichita Falls, Texas. He was
20 about three and a half here.

21 Q And it's Brad?

22 A It's Brad.

23 Q Okay. This one? It's 19.

24 A This is his school picture when he was in
25 elementary school.

1 Q And this is number 18.

2 A This was taken by me at my house, Christmas of --
3 day of 2000.

4 Q Who's in that picture?

5 A Brad and Becky.

6 MR. EPPES: Thank you. Your Honor, I'm going to
7 give the jury time for those picture to get around.

8 THE WITNESS: I love you.

9 THE COURT: Go ahead.

10 BY MR. EPPES:

11 Q You eventually divorced Ronnie Sigmon and married
12 Donnie Wooten, is that correct?

13 A That's right.

14 Q And at that time you moved to Greenville?

15 A I was already living here. The children and I were
16 already living in Greenville. He was in -- stationed in
17 Thailand.

18 Q Ronnie was stationed in Thailand?

19 A He was in the military.

20 Q Okay. We've heard testimony about periods of
21 separation between you and Brad and the other children
22 in their childhood. In recent years, how often have you
23 been able to see Brad?

24 A Two, three, four times a week, sometimes as much as
25 two or three times a day. Since we moved to Greenville,

1 he would be -- he lived up here too, and he would be in
2 and out of the house.

3 Q Describe your relationship with him?

4 A It's a good relationship. He was a loving son.

5 Q How did you hear about the murders of David and
6 Gladys Larke?

7 A I -- I had gone to the grocery store that morning,
8 and I had taken a little bit longer than they thought I
9 should, I guess, and I didn't come home, and Kelly
10 called me, and -- my daughter and -- my youngest
11 daughter, on the car phone and asked me where I was, and
12 I told her I was -- just pulled out of the shopping
13 center and I was headed home, and she kept on trying to
14 pin me down. And I asked her what was wrong and she
15 just said she wanted to meet me, could I -- how long
16 before I could get to the Exxon station, which is about
17 a mile or a mile and a fourth from the house. And I
18 told her. And she said, I'll meet you there, pull in.
19 And I said okay. And so when I pulled in, she was
20 already there, and there was an awful lot of police cars
21 there. And Kelly got out and run over to my car and she
22 told me that she had to tell me something before I got
23 home. And I asked her what and she told me that Brad
24 had shot Becky, that he had took her and somehow or
25 another he had shot her and that's all she knew right

1 then. She tried to get me to park my car and get in the
2 car with her to go home, and I wouldn't because I had
3 told her I had drove my car and I was going to drive it
4 home, and I had groceries in the car. And I knew that
5 if Becky was shot, I had to have transportation. So I
6 got home and I -- Donnie had to meet me at the driveway
7 to get the police to move so I could get in the
8 driveway, because there was so many police cars out
9 there. And I didn't understand why. Kelly and Donnie
10 met me at the trunk of my car, and I was trying to get
11 the groceries out, and I guess I was in denial about
12 Becky really being shot. I don't know. I just -- it
13 was such a shock to me. And we got the -- started
14 taking the groceries in and we went -- all three of us
15 carried in a load, and they told me not to go back out,
16 to stay inside, because there was the police and the
17 media, and just to start putting the groceries up, and I
18 did.

19 Q Ms. Wooten, take as long as you need.

20 A Donnie brought in the second load of groceries, and
21 he come over to me, and I was trying to put something in
22 the refrigerator, and I don't remember if I did or not,
23 I may not, and he took hold of my hands and my arms and
24 put them down by my side and he put his arm around me,
25 and he said, I've got to tell you something, it's going

1 to be hard on you. And I said, no, I don't want to hear
2 it, because it's going to be Brad, and I can't take it.

3 THE COURT: We're going to need to try get through
4 this, so you're going to need to ask her questions,
5 please, sir.

6 BY MR. EPPES:

7 Q Ms. Wooten, what happened next?

8 A He told me that it was Brad.

9 Q Okay.

10 A That Brad had shot and killed Becky's parents, and
11 I couldn't -- I collapsed. I couldn't move. And he was
12 like, Mr. and Mrs. Larke, he told me over and over, and
13 he said -- he said they were good people.

14 Q When did you talk to Brad after this happened?

15 A He called me the next day.

16 Q Okay. What did you do after he called you?

17 A I tried to tell him to turn hisself in, to let me
18 know -- to tell me where he was and I'd come get him,
19 and I'd take him in. He didn't want to do this. He
20 didn't want to run. And he told me he didn't want to
21 live, and he done an awful thing. He didn't know he --
22 he didn't realize he had killed Mr. and Mrs. Larke, I
23 don't think. He said he wanted to die and he was going
24 to. And I begged him not to do something, please tell
25 me where he was, and he wouldn't, and he hung up the

1 phone.

2 Q Did he call again over the next several days?

3 A Yes.

4 Q And each time he called, did you ask him to turn
5 himself in?

6 A I begged him to. I begged him to tell me where he
7 was, to let me come get him, or let Donnie come get him.
8 He wouldn't tell us.

9 Q And did the police ask to put a tap on your phone?

10 A Yes. Mr. Silvaggio called and I don't know who he
11 is by sight, only by name, and he called and asked if he
12 could put a tap on my phone, and would I agree to put --
13 to it, and I told him yes, that I didn't know how to do
14 it myself, and he said just for me to stay on the line,
15 that it would connect me to the phone company and he
16 would stay on the line with me, and the three of us
17 would go through the procedure to get it, and I said
18 okay.

19 Q And so y'all did that?

20 A Yes.

21 Q And after that, did Brad call?

22 A Yes.

23 Q And what happened when he called?

24 A Well, he called. I told him that -- I asked him if
25 he was all right, and he said yes, and I told him that I

1 loved him, and he said he loved me. And I told him that
2 his brothers and sisters were all concerned about him,
3 to please let me come get him or turn himself in. And
4 he said no. And I told him, I said, son, I said, I put
5 a -- I allowed the law to put a tap on my phone, and
6 I'll call them every time you call me, and I said,
7 they'll trace this call and they'll trace every call, so
8 please let me come get you or turn yourself in, and he
9 told me no, and that he loved me and to tell everybody
10 else in the family that he loved them, and he would hang
11 up. And he would call me several times, and every time
12 he would call me I told him the same thing.

13 Q Okay. Then they caught him, right?

14 A Yes.

15 Q Okay. Ms. Wooten, how did you feel about your son?

16 A He's my first born. I lost my first child. And
17 the doctor told us that we would never be able to have
18 any, that I was too small to carry children, but God
19 gave us Brad, and then he gave us Mike, and Startlett,
20 and David and Kelly, and then I lost the last one. And
21 I love my children. I would give my life for them. And
22 if I could give my life for Becky and all of the Larke
23 children's parents to come back, I would let them end my
24 life right now, but it's impossible for me to give my
25 life for theirs, and it's impossible for Brad to, but he

1 would if he could bring them back.

2 MR. EPPES: Thank you, Ms. Wooten.

3 MR. ARIAIL: No questions.

4 THE COURT: All right. Thank you, ma'am. You can
5 step down. Next witness.

6 MR. EPPES: Defense rests, Your Honor.

7 THE COURT: All right. Any reply witnesses?

8 MR. ARIAIL: No.

9 THE COURT: Okay. All right. Mr. Foreman, ladies
10 and gentlemen, that concludes the testimony in this
11 case. What I need for you to do is to go back and
12 decide if you want to proceed tonight or to wait until
13 tomorrow, and I thought we would get into this, and I
14 just simply miscalculated, and I apologize for that. We
15 would have to wait until at least 5:30 to begin
16 arguments. In all fairness to both sides, I need for
17 them to collect their thoughts, go through the
18 testimony, and -- and decide what their arguments will
19 be. I will anticipate, but I certainly would not hold
20 either side to any length, but I would anticipate that
21 each argument would be about 30 minutes. My charge will
22 be longer than my original charge. So it will be about
23 30 minutes. So that's about an hour and a half. That
24 would put y'all beginning your deliberations at 7:00.
25 We can order supper about six o'clock and get it here

1 about 7:00, and you can, you know, at least begin your
2 deliberations tonight, or we can start this whole
3 procedure at nine o'clock in the morning. You don't
4 need to tell me now. And if you begin at 7:00, you can
5 deliberate for an hour and come back in the morning.
6 You can cease deliberations at any time, just depending
7 on what your mental level is and tiredness level, and
8 things like that. So I'm going to leave it to you, if
9 you want to start tonight. Again, if we do start, you
10 know, we would go -- you wouldn't even get it until at
11 least 7:00 or 7:30. All right. So y'all go back and
12 talk about that. If you would let Doris know, the
13 bailiff, and she'll inform me and we'll go from there.
14 While you're back there don't talk about the case.

15 MR. THAMES: Yes, sir.

16 (The jury exited the courtroom at 4:47 p.m.)

17 THE COURT: All right. Is there anything before we
18 break and hear from the jury? I will probably get an
19 answer as quick as I can. Anything from the State?

20 MR. ARIAIL: Nothing, Your Honor.

21 THE COURT: All right. I don't even know, do you
22 need to make motions at this time on the issue of beyond
23 a reasonable doubt as an aggravating circumstance to
24 preserve anything? I don't know if you do or not.

25 MR. EPPES: That's just like with our other two

1 motions.

2 THE COURT: I'm talking about preserving the
3 record. I'm not talking about winning on the motions.
4 I mean, I don't -- it's been a while since I have been
5 involved in one, I don't know if you have to make a
6 motion on the ---

7 MR. EPPES: Your Honor, we'd like to make a motion
8 that the State has not proven its case regarding
9 aggravating circumstances.

10 THE COURT: All right. That's denied.

11 MR. EPPES: Thank you.

12 THE COURT: All right. Don't go far, because we're
13 going to get an answer from them real quick. Okay.
14 We'll be at ease pending an answer from the jury.

15 (A short recess was taken, after which, the trial
16 continued as follows:)

17 THE COURT: Mark that as a Court's exhibit please.

18 (Court's Exhibit Number 16 was marked and
19 filed.)

20 THE COURT: All right. They have requested -- they
21 want to hear the closing arguments and charge tonight,
22 but don't begin deliberations until tomorrow, come back
23 in the morning to deliberate. I don't know if I should
24 make them deliberate just a little bit or -- anybody got
25 any position on that?

1 MR. ARIAIL: My position would be that the two
2 ought not be separated.

3 THE COURT: Okay.

4 MR. ARIAIL: But my -- and if they have seriously
5 sort of convinced themselves that they don't want to
6 deliberate, then I would say we start in the morning.

7 THE COURT: Okay. I agree with you. All right.
8 That means I'm going to have to bring them, explain that
9 and then send them back out for an answer. Bring them
10 in.

11 (The jury entered the courtroom at 4:55 p.m.)

12 THE COURT: All right. Mr. Foreman, ladies and
13 gentlemen, I did not make myself clear, because I don't
14 want the break up the arguments from the charge, or even
15 the charge -- arguments and charge from at least some
16 deliberations. So if you want to stay for arguments and
17 charge, then you need to be prepared to stay and
18 deliberate at least some tonight. I'm not going to keep
19 you here late, but you know, if we got through at 7:00
20 with arguments and charge, then I would expect you to
21 deliberate, you know, some tonight, at least until 8:00
22 or 9:00, or something like that, and then break at any
23 time. But again, I'm not going to force anything on
24 you. So with that in mind, I still need to know if you
25 want to come back in the morning and do all the

1 arguments and charge and deliberations, or if you want
2 to go ahead and argue and charge and deliberate some
3 tonight and get started, and again, have supper ordered
4 in. Can you tell me now or do you want to go back and
5 talk about it some more. I'll be glad to send you back.
6 Y'all talk about it.

7 MR. THAMES: I think we'll stay.

8 THE COURT: Okay. All right. Now, with that, let
9 me just -- let me let y'all take a break. It's going to
10 be a lengthy break, I mean more lengthy than unusual.
11 Go ahead and -- you know, we'll handle the smokers, get
12 you some Cokes, crackers, whatever you need like that,
13 and we'll reconvene in about 40 or 45 minutes, okay.
14 Follow the bailiff. While you're out, don't talk about
15 this case.

16 MR. THAMES: Yes, sir.

17 (The jury exited the courtroom at 4:57 p.m.)

18 THE COURT: All right. Before we break,
19 aggravating circumstances. Got a pending motion to
20 strike physical torture. Anything else you want to be
21 heard on that?

22 MR. EPPES: Your Honor, I think the motion speaks
23 for itself.

24 THE COURT: All right. Anything the State wants to
25 respond?

1 MS. STROM: Your Honor, you have heard the
2 testimony here.

3 THE COURT: All right. The issues as I understand
4 it, does the record support any evidence of that upon
5 which the jury could base their verdict, so I will
6 charge -- I will allow that to go in as an aggravating
7 circumstance. All right. Mitigating circumstances,
8 statutory mitigating circumstances. Any objection to
9 the one, two, three, four, five, six I've got listed? I
10 guess specifically three? Any objections to any of
11 them?

12 MR. ARIAIL: Objections to three, and four, five,
13 and six, object to all of those.

14 THE COURT: All right. All right. Number three,
15 the defendant acted under duress or under the domination
16 of another person. Are you talking about his estranged
17 wife being the dominating person?

18 MR. EPPES: No, I'm talking about just stress, Your
19 Honor, duress and stress.

20 THE COURT: Well, it would be duress from another
21 person.

22 MR. EPPES: Well, I didn't -- yes, Your Honor.

23 THE COURT: Yes what?

24 MR. EPPES: Under duress from the other person.

25 THE COURT: And the other person being?

1 MR. EPPES: Rebecca Barbare.

2 THE COURT: Okay. I don't find that there is any
3 evidence in the record that that's why he committed
4 these murders. So I'm going to strike that as a
5 statutory mitigating. That evidence is in, but I'm
6 just not going to charge it as a statutory
7 mitigating circumstance. It is another mitigating
8 circumstance that you can certainly argue, do you
9 understand that?

10 MR. EPPES: Yes, sir.

11 THE COURT: All right. The capacity of the
12 defendant to appreciate the criminality of his conduct,
13 form his conduct to the requirements of law. I would
14 allow age and mentality. I mean, what -- why is his age
15 a mitigating factor as opposed to ---

16 MR. EPPES: His age is not a mitigating factor,
17 Your Honor. Mentality was there because there's been
18 testimony about his mental state.

19 THE COURT: Okay. That would be covered by four.
20 I've always thought mentality would be like education
21 level, or mental retardation, or something like that.

22 MR. EPPES: Yes, Your Honor, I understand. That's
23 fine.

24 THE COURT: All right. I'm going to scratch number
25 five. Defendant was provoked by the victim in

1 committing the murder, I'll leave. I find there is
2 sufficient evidence in the record. And the reason is
3 the action of Mr. Larke saying he was going to get his
4 gun, that would be a mitigating factor as opposed to --
5 you know, that might have been an impulse to have him do
6 something, so I would leave that. I assume you want
7 that left in?

8 MR. EPPES: Yes, sir, Your Honor.

9 THE COURT: All right. I'm scratching three and
10 five. I need these statutory instructions to be cleaned
11 up also. Okay. Anything else? We're going to
12 reconvene -- yes, sir.

13 MR. ARIAIL: Bible.

14 THE COURT: Whether it's in or not?

15 MR. ARIAIL: Yes, the issue about it being in,
16 withdrawing it.

17 THE COURT: Okay. And your position is what?

18 MR. ARIAIL: Our position is the same, that it's
19 injecting religion into the -- into the argument
20 which -- into the case which is specifically prohibited
21 under the statutory -- or under the case law.

22 THE COURT: Well, under the case law?

23 MR. ARIAIL: Under the case law in that as it
24 stands right now I would be on probably thin, thin ice
25 to argue that, but what I'm concerned is if when we get

1 to the argument phase with that in, it's just an easy
2 cross-over to the religion being brought in.

3 THE COURT: Well, as I understand the law, a
4 witness cannot get on the stand and give religion --
5 religious reasons for either imposing the death penalty
6 or not imposing the death penalty. That's a far cry
7 from saying as to this defendant's character, he is a
8 religious man, and as proof of that he had a Bible for
9 his -- it's not like a profit, he's -- you know,
10 recently fabricated, he had a Bible in his suitcase, you
11 know, while he was on the run. So for that reason it's
12 admissible. Now, there is no evidence in the record as
13 to who did the underlining or anything like that, so I
14 don't know what your argument is going to be as far
15 as -- I mean, you're going to have to be careful not to
16 argue outside the record is what I'm saying. The Bible
17 is in, as like 9A or whatever. Now -- and as it stands
18 now through the end of arguments the suitcase is in, and
19 the only thing I'm going to withdraw -- I don't need a
20 bunch of dirty underwear and stuff going back to the
21 jury, you know, unless after arguments I think it's
22 relevant, so I'm going to withdraw -- I'm going to talk
23 to y'all about withdrawing everything out of number 9
24 except for what is relevant during the arguments, or
25 made relevant during the arguments, that was my intent

1 of my ruling all along. All right. Anything else? You
2 can stand up, Ms. Strom.

3 MS. STROM: I'm sorry, Your Honor. The defendant's
4 right -- I didn't know if you wanted to go over that
5 with the defendant, his right to give a closing
6 statement.

7 THE COURT: Thank you very much. All right. You
8 understand that -- and I think you said you're going
9 to making a closing statement to this jury, is that
10 right?

11 MR. SIGMON: Yes, sir.

12 THE COURT: All right. What's the order of
13 arguments going to be from the defense, Mr. Eppes?

14 MR. EPPES: Your Honor, we haven't made a final
15 decision, but it appears that I will go first and Mr.
16 Sigmon will go second.

17 THE COURT: Okay. All right. All right. Okay.
18 All right. You understand you have a right to address
19 this jury, and as I understand it you're going to
20 exercise that right?

21 MR. SIGMON: Yes, sir.

22 THE COURT: Okay. Anything else? All right.
23 Reconvene at a quarter 'til. That doesn't mean start
24 coming in at a quarter 'til, we're going to shut these
25 doors at quarter 'til and we're going to rock and roll.

1 We'll be at ease until a quarter 'til.

2 (A short recess was taken, after which, the trial
3 continued as follows:)

4 THE COURT: All right. Anything before we bring
5 the jury, from the State?

6 MS. STROM: Your Honor, just one matter in
7 accordance with State versus Wilbert Davis, I know the
8 defendant has indicated that he is going to make a final
9 statement to the jury, and I just wanted the Court to
10 instruct he cannot give unsworn testimony. He can argue
11 the facts. He can make a plea for mercy, but he cannot
12 give unsworn testimony.

13 THE COURT: Okay. I think he understood that, and
14 I don't think he went beyond the record on his first
15 argument. But you understand that you can certainly
16 plead for mercy and you -- if you want to talk about
17 the facts you can certainly talk about the facts that
18 are in the record, but you cannot argue or talk about
19 anything that would not be part of the record in this
20 case?

21 MR. SIGMON: Yes, sir, I understand.

22 THE COURT: Okay. All right. All right. No going
23 in or out during arguments or charge. Bring the jury.

24 (The jury entered the courtroom at 5:54 p.m.)

25 THE COURT: All right. Mr. Foreman, ladies and

1 gentlemen, you have heard all the testimony and received
2 all the evidence you are in this phase of this trial.

3 It's now time for the arguments by the attorneys. The
4 State will make the first argument, then the defense
5 will make an argument. Mr. Sigmon will also have an
6 opportunity to address you if he chooses. After that,
7 you will have my charge on the law, and then we will
8 begin deliberations tonight. Again, there is no set
9 hour to suspend, it really just depends on how y'all as
10 a group feel.

11 After the charge on this stage, I will segregate
12 the three alternates again, and this segregation will be
13 a little bit different in that you will have to ride in
14 separate cars from the rest of the jury. If you're at
15 breakfast, you'll have to sit at a separate table, so
16 don't anybody get their feelings hurt or anything like
17 that, but I will keep you completely segregated until a
18 sentence has been imposed in this case, but I do need to
19 keep you in case you're needed. So with that we'll have
20 the State's argument. Solicitor.

21 MR. ARIAIL: Thank you, Your Honor. We have now
22 come to the end of the evidence and the final stage of
23 this case. I moving this podium, because I did
24 something in my last argument that I have never done in
25 my entire career and that was to stand behind a podium,

1 and I want to address you a little bit differently at
2 this stage, because what we're talking about now is
3 dealing with the final appropriate punishment that ought
4 to be imposed in this case. And to do that, you need
5 some common sense guidelines about how to resolve what
6 is going to be an unusual issue and probably a very
7 difficult issue for you to deal with. I want to talk to
8 you about some common sense about how to go about it and
9 what we think is the proper resolution.

10 But first let me talk to you that Betty told you,
11 Ms. Strom told you in the beginning that the first step
12 is when you go back to your jury room, and the judge
13 will give you an appropriate paper to do this, but
14 before you can even talk about punishment, you have to
15 talk about and resolve the issue of the aggravating
16 circumstance. Because as you recall, when we went
17 through the voir dire, we talked about this in the
18 beginning, the law only allows the State to seek the
19 death penalty in those cases in which a jury finds an
20 appropriate aggravating circumstance. You will go back
21 and not talk about punishment, but the first thing you
22 need to talk about is, did the State prove the
23 aggravating circumstance, and there is one of three, and
24 actually you already found two of them. The first is
25 the aggravating circumstance of the murder of more than

1 one person. That will be an aggravating circumstance,
2 and by your previous verdict you have already found
3 that.

4 Secondly, the aggravating circumstances is that
5 there was a murder committed during a burglary. And you
6 have already found that by your previous verdict also.
7 The judge will submit to you a third one, and that is
8 that there was a murder and during the course of the
9 murder there was torture of the people involved, or the
10 victims. That will be the third. But any one of those,
11 finding of any one of those, or all of those, or two of
12 the three, whatever, that entitles you at that time to
13 then move forward to determine what is the appropriate
14 punishment in this case, life imprisonment without
15 parole, or the death penalty. And that's what this case
16 is about.

17 Now, the State has asked for the death penalty and
18 we think it's appropriate in this case. But I'll submit
19 to you that I believe that you will hear, before the
20 arguments after me by the defendant and by the defense
21 concludes, there will be words used in an effort to put
22 this decision in a context that will be bothersome to
23 you. I want to try to put you at ease a little bit
24 about this, because we are not killing someone. And we
25 are not doing anything that is wrong. What we are doing

1 is carrying out the lawful and constituted function of
2 our government. The government has entrusted you,
3 through legislation and judicial decisions to make this
4 decision. It is not only entrusted you, but it's thrust
5 it upon you. It is has said in its wisdom, the courts
6 and the Legislatures have said in their wisdom that the
7 best people to make this decision are the citizens of
8 the local community. And that is you.

9 So what you are doing is in essence becoming a
10 judge and you will sit where the judge normally sits in
11 sentencing. The judge is the person who normally
12 sentences in every other case in our law except the case
13 of the State seeking the death penalty. And in that
14 case you carry out the function of the judge. So if
15 someone suggests to you that we are doing something
16 wrong or that you're getting it on a personal basis, or
17 that you're killing someone, that's not what we're
18 doing. What we're doing is assessing under our law
19 whether or not it is an appropriate penalty to impose
20 the death penalty in this particular case. This
21 particular case only.

22 Now, the case that we are going talk about is also
23 not about Brad Sigmon living or dying. That's another
24 way it may be phrased to you. This case is about
25 appropriate punishment for the crime committed and the

1 person who committed it. This case is not about Brad
2 Sigmon. Brad Sigmon is the defendant, but it's not
3 about whether or not the individual Brad Sigmon should
4 live or die. It is about whether or not it is an
5 appropriate punishment for the crime that Brad Sigmon
6 committed in killing Gladys and David Larke.

7 Now, I understand that this will be a tough
8 decision for you to have to make. It's a tough decision
9 for juries to have to make, but as I told you, it is a
10 responsibility that the government places upon its
11 citizens. And you will fulfill that just as you're
12 entrusted to do so, just like you gave me your oath that
13 you would be able to carry it out in the beginning of
14 this case, and I trust that you will carry it out
15 through the rest of this process.

16 But every serious decision you make in life is
17 difficult. You make serious decisions and difficult
18 decisions and family life every day regarding children,
19 regarding your job, regarding a number of instances,
20 including those in your marriage. Those are serious and
21 difficult decisions and you make it in a very thoughtful
22 and honest way. And you go through it logically, and
23 you weigh the alternatives and give consideration, and
24 you do it lacking emotion for one side or the other,
25 and you make a decision that you think is best. And

1 the State of South Carolina, who is represented
2 through me and my staff, are certainly rest assured
3 that if you take the same deliberate course that you
4 make in your every day lives, making serious decisions
5 about your business, and apply it to making the
6 decision in this case, that you will reach the
7 appropriate decision.

8 And we'll talk a little bit about -- I want to talk
9 a little bit about the appropriate decision later. But
10 first I want to talk about mercy, because I can assure
11 you you will hear mercy. You will hear mercy being
12 begged and -- mercy to spare the life of Brad Sigmon.
13 Mercy to show mercy in this case, to give mercy, and
14 the law allows mercy, and mercy, and you will hear
15 mercy. The only thing that I remind you is when you hear
16 mercy, you remember that mercy belongs to those who
17 deserve it.

18 Now, I want you to remember that when the defendant
19 gets up here and asks you to give him mercy, ask him
20 back in your mind, what mercy did you show to Gladys and
21 David? What mercy do you deserve? What mercy have you
22 earned as a result of the acts you have committed?
23 Mercy is an appropriate human nature response, but mercy
24 belongs to those who deserve it.

25 Now, when we asked for the death penalty, it's a

1 fair and appropriate question for you to say back to me,
2 Solicitor Ariail, why do you think that the death
3 penalty is an appropriate punishment in this case? And
4 I can best summarize it by a response that I got from a
5 juror in another case on voir dire, and that juror said,
6 as to her response in her argument for the death
7 penalty, that they're are mean and evil people who live
8 in this world, who do not deserve to continue to live
9 with the rest of us, regardless of how confined they
10 are. And that's what the basis of our request for the
11 death penalty is. There are certain mean and evil
12 people that live in this world that do not deserve to
13 continue to live with us.

14 The death penalty is about accountability. It is
15 about accountability for bad choices. Brad Sigmon made
16 bad choices. Brad Sigmon, evidence through his bad
17 choices that he is an evil person. And Brad Sigmon
18 deserves the ultimate punishment in this case, because
19 he made those bad choices, and because he showed no
20 mercy, and because his crimes were so brutal, and that's
21 why the State is asking that you hold Brad Sigmon
22 accountable, and the death penalty is the proper
23 punishment.

24 Now, Brad Sigmon had opportunity to make a
25 different choice than what he made. And he made a

1 choice, an intelligent choice as to what he wanted to
2 do. And our punishment that we put forth in this case
3 should meet that -- that act that he made it out, and it
4 should hold him accountable for it.

5 Now, a number of you in the course of voir dire
6 expressed some reservation, which is a normal response,
7 about the imposition of the death penalty, particularly
8 in cases where you were not absolutely 100 percent
9 beyond a show of a doubt certain of the defendant's
10 guilt. That's no longer an issue in this case. This is
11 the perpetrator. This is the person. There is going to
12 be no DNA in years to come that says that Brad Sigmon
13 did not kill Gladys and David Larke. He's admitted
14 that. That's a guilt factor, and that no longer is an
15 issue in this case. He is guilty of these acts. There
16 are no excuses. There are no excuses for it.

17 There are no excuses put forward, even though Ms.
18 Furtick and Mr. Morton tried to say there were excuses,
19 or wanted to say there were excuses. I call that the
20 Flip Wilson. I don't know if any of you are old enough
21 to remember that comedian Flip Wilson. Flip's response
22 was always, the devil made me do it. The devil made me
23 do it. And I said that in my closing to you at the
24 guilt phase, that somewhere along the way you were going
25 to here somebody else was responsible. Was it going to

1 be the cocaine? Was it going to be the alcohol? What
2 was it going to be? Was it going to be his bad
3 parenting, or bad parents that brought him up, or his
4 bad upbringing? What was the excuse going to be to
5 justify or get some leniency out of you?

6 Well, I can tell you it was not his bad parents.
7 Because those two people got on this witness stand and
8 you could tell from his natural father, his natural
9 mother, and his step-father, that those are genuine good
10 people who are genuinely concerned about their son. And
11 they are sorry for what has happened. So it's not his
12 bad parents. His parents did not cause his problem,
13 like Ms. Furtick would want to suggest to you. And it
14 wasn't the cocaine. It wasn't the alcohol. It was a
15 mean and evil person who committed a heinous act.

16 This is not a case for life imprisonment. If you
17 wanted to simply give the easiest and most -- least
18 difficult decision, then life imprisonment is the way to
19 go. But that's not what this is about. Your role in
20 this function is to portion the appropriate sentence to
21 the crime and the individual who made -- or committed
22 it.

23 Let me tell you why life imprisonment is not the
24 appropriate sentence in this case. Brad Sigmon is a
25 manipulator. I said that in my earlier statement. I

1 knew that Ms. Tomberlin was going to testify in this
2 portion of the case. I knew what she was going to say.
3 I knew what his whole life was about. He's a
4 manipulator. He's a controller. He's an intimidator.
5 He's a smoozer, and that's why he doesn't deserve life
6 imprisonment. He would simply become a part of the
7 power structure. He would become the inmate's advisor,
8 their lawyer. He would become that person in the prison
9 setting that would be a leader.

10 And we may think life imprisonment is serious
11 business, but you still have your visitation with your
12 family. You still have your mail. You still have your
13 TV. You still eat three meals a day. Somebody washes
14 and takes care of your clothes. You get all the
15 benefits of health care, and recreation. All of those
16 things are provided for you.

17 Sure, your life is limited. Your life is limited
18 to a smaller confinement in that you don't have the
19 freedom to move about. Life in prison carries a lot of
20 benefits with it and that's why it's not proper in this
21 case. He would still have the freedom to see his
22 children, something that these children of Gladys and
23 David Larke will never have the opportunity to do.

24 And I said to you earlier that this is serious
25 business for serious people. And it's serious

1 consideration time for serious punishment. And the
2 State has asked you and I told you in the beginning we
3 were going to ask you to impose the death penalty. And
4 we think that is the result of an individualized
5 assessment of this crime. Brad Sigmon has been
6 controlling, intimidating, beating, and working his way
7 through intimidation and manipulation through life as
8 his ex-wife testified throughout. And now is the time
9 to stop him. It's time for this to be over.

10 Gladys and David Larke were brutally murdered. As
11 I told you earlier, and I say this not in a bad way
12 because I got some criticism from my wife for saying
13 that they were elderly at 59 when I'm 55, and that we're
14 not far from 59. I didn't mean in that way. I meant it
15 in the sense that they were beyond a certain age that
16 entitles you to be and obtain a certain status where you
17 have certain privileges in life, and they had the
18 privilege of retirement. They had the privilege of
19 enjoying their retirement, even though Gladys was still
20 working during the night, sitting and taking care of an
21 elderly lady.

22 But they were two people living and breathing human
23 beings who underwent what had to be the most horrific
24 death that I could ever imagine, of seeing someone
25 coming at you with a baseball bat. And it keeps going

1 back, and I mentioned it in my earlier statement, that
2 Gladys went to that chair security, that Lazy-boy
3 recliner in that living room, where she sat and watched
4 TV, and put her hands over her head, probably begged for
5 mercy, and was brutally assaulted with a baseball bat.
6 And you saw the pictures, and you understand the force
7 that had to be used, and the smashing, and the sounds
8 that went on throughout that entire event, had to be
9 beyond human belief as to the brutality of what took
10 place, to kill those two people, and move back and
11 forth, and then to leave them. Cover them for dead, and
12 leave them. Leave them and run and hide. That's why he
13 deserved the ultimate punishment. He was malicious, and
14 he deserves that punishment.

15 Now, Ms. Strom told you this yesterday morning,
16 that it is your responsibility as the voice of this
17 community, and that's what this process is about,
18 bringing together 12 people who are the consensus, or to
19 draw the consensus of the community as to what is the
20 appropriate case in which to apply the death penalty.
21 And this is the only way it can be applied. It can
22 only be applied by you, through a consensus of talking,
23 and reasoning, and listening, and thinking, and
24 putting on record what you believe is the appropriate
25 punishment for each crime. And it is a function of

1 government.

2 It is a function of our government, and you have
3 been entrusted with that, and your decision will ring
4 like a bell in this community as what is the standard
5 for appropriate conduct and when the death penalty is
6 proper. And there are people, there are people who will
7 argue that the death penalty is not a deterrent. But my
8 response as the Solicitor of this circuit is, it is a
9 deterrent to this individual and that is what we are
10 asking, is to deter Brad Sigmon and send the message
11 that this type of conduct will not be tolerated in
12 Greenville County, or anywhere in this State. And let
13 that decision that you reach ring like a bell from this
14 courthouse, that people will understand that we will not
15 accept brutal behavior such as this. Thank you.

16 THE COURT: Mr. Eppes?

17 MR. EPPES: Let me get a drink of water. Excuse
18 me. Is death necessary? Ms. Strom asked you when we
19 started (inaudible).

20 COURT REPORTER: I cannot hear you, Mr. Eppes.

21 MR. EPPES: I'm sorry. Is this death necessary,
22 that's what Ms. Strom asked you when we started this
23 portion of the case. Now the Solicitor has asked if you
24 it's appropriate. He said that the government trusts
25 you to be judge and jury. The only way Brad Sigmon dies

1 is if all 12 of you decide that that is the appropriate
2 punishment.

3 I have seen a half dozen of these trials, read
4 transcripts, and I will tell you one thing that all
5 always happens. Every time these trials take place, the
6 Solicitor stands up and says, he's going to ask you for
7 mercy, don't give it because he didn't give any to the
8 victims, to Gladys and David Larke. I'm going to tell
9 you right now he only dies if all 12 of you say he dies.
10 I ask you to look in your heart. If you find mercy
11 there, you give it, and that's all I'm going to say
12 about mercy.

13 Now, is this the appropriate punishment, that's
14 what the Solicitor started with. And I want start with
15 this. Is this the proper punishment for a love-sick
16 idiot that snapped, and in less than two minutes ended
17 of lives of two people? Destroyed one family and shook
18 his own to the foundation. Because that's what Brad
19 Sigmon is. I don't think any of you have any doubt
20 about that. I don't think that of any you doubt that
21 he was not crazed by his relationship with Rebecca
22 Larke.

23 Now, the Solicitor in the beginning said, follow
24 the ball. He said, follow the ball. And I was
25 interested to see how his case was going to play out.

1 We don't swap a lot of information before a trial
2 starts. And I looked at the first five witnesses, Mr.
3 Goodson. Remember Mr. Goodson ran the garage. And Mr.
4 Creehan, I think he was the fireman. I get them mixed
5 up. But it was Mr. Goodson, Mr. Creehan, Mr. Wendell,
6 Mr. Steadman, who was the first person on the scene.
7 And then Mr. Richardson, who followed Mr. Sigmon,
8 followed him into that street. Now, what do all those
9 five witnesses have in common? They saw a man and a
10 woman. They saw a man and a woman, with the man pulling
11 the women to him, and threatening her, and her running
12 away. That relationship is what this case is all about.
13 Rebecca Larke ended her relationship with Brad Sigmon.
14 Brad Sigmon did not want that relationship to end. He
15 went nuts, bonkers, whacko, out of his mind. He did the
16 most horrible thing a person can do. He did it twice
17 and killed two people.

18 Now, I spoke before about a trigger. And I told
19 you I was looking at all this evidence, over and over
20 again, trying to remember, trying to find something, and
21 I found the trigger. I found it, I'm convinced of it.
22 I want to show it you because I think it's important.
23 Now, you saw today, two of the people we put up, Mr.
24 Barbare, who is Ms. Barbare's second husband, and Mr.
25 Merrill, who is Ms. Barbare's husband. This is Brad's

1 confession. Remember, I talked about it before. I said
2 there's two and a half pages in here about him and
3 Becky, him and Becky, him and Becky, him and Becky.

4 I want to read you a little bit of that. Okay. I
5 lived in my mom's house, Becky lived across the street.
6 She would look at me and smile with those pretty eyes.
7 The first time we went out, Christmas Eve, 1997. This
8 is the second paragraph of this confession. For about
9 the next month we had a relationship that took place
10 primarily over the phone. Then I told Becky that if she
11 wanted us to continue, I wanted to be with her. They
12 got together. Becky left. Becky came back -- well,
13 okay, the next day she came to my job in the morning and
14 told me she was moving out. So she moved out. They
15 stayed together for three months. Not that it does
16 anything to defend what he did, to mitigate what he did,
17 nothing happened when Rebecca Larke left him the first
18 time. Then she came back, and they were together for
19 three long years. Okay.

20 Now, listen to the second and third paragraphs of
21 this confession. Then you go to the second page, the
22 disintegration of the relationship. I found a business
23 card with Keith Merrill's name and phone number. Every
24 night I went to Becky's parents house and she was on the
25 phone talking to Keith. He believed he should still be

1 with her. He saw her on the phone with another man. He
2 knew that his relationship had started while she was
3 married, on the phone with another man. That was the
4 trigger. That was what snapped in his head. He saw
5 that his relationship, that his relationship had begun
6 when her relationship with Troy Barbare ended, and he
7 saw a recurrent pattern in this relationship. His life
8 is all about patterns.

9 Now, he hatched his plan. He hatched his plan,
10 what his plan was. And I'll tell you what shows to me
11 how ridiculous it was. He packed. He packed. Look at
12 this thing. You're going to find his clothes, his
13 Bible, massage oil, woman's underwear. He packed like
14 he was going away for a romantic trip. He was naive.
15 Who in their right mind would pack a suitcase for doing
16 what he did? Even his plan to tie them up and talk to
17 Becky. He packed that suitcase.

18 Now, I told you that when we talked about Brad
19 Sigmon, the master manipulator, the leader, the soon to
20 be tough guy in the prison, according to the Solicitor,
21 I have two words, two words to tell you what I thought
22 about that, and I'll tell what they are, Gene Strube.
23 What master manipulator, what planner, what great
24 leader of man thinks that Gene Strube could help you
25 out of a paper bag? Y'all saw Gene Strube testify,

1 read his testimony, you remember the way he came in
2 here.

3 And what did Gene Strube tell you? He said there
4 was a plan. He told there was a plan. And the plan was
5 to take these cords, to take this duct tape, wherever
6 it wound up, to take that pantyhose, to put a mask over
7 Gene Strube, to tie up the Larkes, so Brad could get
8 with Becky. And Gene Strube bailed. He got good sense.
9 He got good sense. And Brad didn't. Brad told the
10 officers that. And that's what happened. Where is your
11 sense located? It's located in your brain. Brad
12 Sigmon's brain lost good sense.

13 In two minutes the Larkes were dead. It took less
14 than two minutes. They were dead, and Brad was on the
15 run. Everybody runs. There are evil people that run.
16 There are good people that run. Everybody runs. He
17 knew that his acts would result in the consequence of
18 life in the penitentiary. He had no doubt about that.
19 He ran. While on the run he didn't hurt anybody else.
20 He didn't try to hurt anybody else. He took that van.
21 He left a pair of pants. He did not, you know, leave
22 the \$7, or if he left them \$7, it was gone. That's the
23 only thing in his statement that anybody found wasn't
24 true. He ran. He ran. He ran. He got caught and his
25 mom turned him in. He got caught in Gatlinburg,

1 Tennessee. Officer McCarter and Officer Williams caught
2 him. He gave up peacefully.

3 During the time he was gone, his mama told him to
4 come back. His brother turned him in. Family members
5 called his cell phone trying to get him to come back.
6 He was caught. He confessed. He confessed to Carrie
7 Harbin. He confessed to her while he was on the
8 telephone with his mother crying. He confessed to
9 Officer Williams and Officer McCarter. He did that
10 crying. He showed remorse. There is no question about
11 it, they believed it. He confessed to Officer McNamara.
12 Officer McNamara took his confession, drove him back to
13 Greenville, took him to the jail.

14 Rosa Jones checked him into the detention center.
15 And he sat in the detention center. He was remorseful
16 with Rosa Jones. He sat in the detention center for the
17 next year. He had a couple of infractions. He went red
18 pod. Otherwise, he was housed in medium security the
19 whole time. He's not a danger to anyone. He's not a
20 threat to anyone. He is where he needs to be. He's in
21 the penitentiary.

22 Do you know why he's in the penitentiary? He's in
23 the penitentiary because he deserves to be. But do you
24 know what else is good about Brad Sigmon being in the
25 penitentiary? No more relationships. No more

1 relationships. His relationship is him and his cell
2 guard, and a cell, and that's the way it needs to be.
3 Because he cannot handle relationships in our society.

4 The Solicitor says, follow the ball. Solicitor
5 says, follow the ball. Now, you're going to hear about
6 statutory mitigation factors. Statutory reasons, that's
7 reasons that the Legislature has said that you should
8 consider giving a life sentence. There are two -- there
9 are three that you're going hear about. Two of them
10 kind of blend together in my mind. So I'm going to talk
11 about the other one first.

12 The defendant has no significant history of
13 violence. His criminal record was put into the record.
14 It's here. You can look at it. You can study it.
15 Here's his criminal record. The Legislature said no
16 significant criminal history of violence. Prior
17 criminal conviction. You're going to hear from the
18 judge the defendant has no significant history of a
19 prior criminal conviction involving the use of violence
20 against another person. What you have on here is a
21 liquor charge, two driving charges -- three driving
22 charges, unlawful use of the telephone, and shoplifting.
23 The Solicitor -- one of the things the Solicitor wants
24 you to consider in taking Brad Sigmon's life is
25 shoplifting.

1 Now, this mitigating factor is significant for
2 another reason. The Legislature told you about it. The
3 Legislature said, the defendant has no significant
4 history of prior criminal conviction involving use of
5 violence against another person. Now, the Solicitor
6 wanted to tell you all about Cheryl Tomberlin and the
7 violence against her. Cheryl Tomberlin gained her
8 independence prosecuting Brad Sigmon one time for
9 unlawful use of the telephone for threatening her for
10 not seeing her kids. She says she prosecuted him after
11 he kicked down the door. I've got one thing to say
12 about that. He kicked down the door. He kicked down
13 the door but he woke up the kids when he stepped on
14 their hands? The kids would have been awake when he
15 kicked down the door. He never kicked down that door.
16 His son Ronnie testified he felt a foot on his hand. He
17 looked up, said, daddy, his father turned to him, and he
18 heard three pops. He testified he never got on his
19 back.

20 You might want to say, okay, Ronnie is trying to
21 help his father. What son wouldn't? Well, let me tell
22 you something about that. You couldn't convict him for
23 it. There's reasonable doubt. That relationship was
24 horrible. That relationship between Brad Sigmon and
25 that woman was absolutely horrible. No question about

1 that. There's absolutely no question about it.

2 They had a bad relationship and look at what it
3 was. He married her when he was 19 and she was 16, just
4 like his parents got married when the mother was 16,
5 just like his grandfather married his grandmother when
6 his grandmama was 16. That is significant. That is the
7 path that Brad Sigmon's life took. Some of it -- most
8 of it -- all of it as far as responsibility for this
9 crime goes, all of it, but it was all a part of who he
10 was.

11 Now, the other statutory mitigation factor I want
12 you to consider, and I want you to kind of consider
13 these two together, a murder was committed while the
14 defendant was under the influence of a mental or
15 emotional distress. You've heard the testimony from Ms.
16 Furtick. You've heard the testimony from -- I forgot
17 his name, Dr. Melvin, the tall blond guy, I hope I'm
18 right about his name -- Morton, sorry. Dr. Morton.
19 You've heard the testimony from the two of them. You
20 know these things, you're going on put the weight on it
21 that you think it deserves. Put the weight on it that
22 you think it deserves. It's an important part of who
23 Brad Sigmon is.

24 I'll tell you the thing that impressed me the most
25 about their testimony, drug use. Everybody wants to say

1 they're an addict and that explains behavior, that, you
2 know, is where the blame lays. Look at that. Look at
3 it. It's in evidence. You can look at it. They moved
4 around like a jumping bean. They hopped all over the
5 United States. They went to the Philippines. His
6 family was wrenched apart, put pack together, wrenched
7 apart, put back together. And every time it was, that
8 twisted a little more heartache into Brad Sigmon's
9 life.

10 Now, what happened now that made him take up these
11 as the tools of his frustration, these as the tools of
12 his anger? There was one other thing that we didn't
13 talk about much in this case that I think is important.
14 He knows he's ending the years of his vitality. He
15 knows that he was getting into the -- he knew at the
16 time he was getting into the last years, that he was
17 going to have a chance to start a family and have a
18 meaningful family relationship he always craved. I
19 think as each year passed, his frustration and anger
20 grew. When this relationship ended, it was devastating
21 to him. He called Keith Merrill and begged him to leave
22 her along. Keith Merrill wasn't even a factor then.
23 But as soon as he saw that business card, Brad Sigmon
24 started reacting, because he knew his relationship was
25 in trouble.

1 Now, I talked about how short the time of this
2 crime was. And I want to talk about it again for just a
3 second, because I think it is important. I think it
4 plays into the fact that Brad Sigmon was frustrated and
5 angry and did not have the tools to deal with it. The
6 Solicitor told you in both his opening and closing
7 charge about malice aforethought. And he said, I'm
8 going to repeat it again, not for days, not for minutes,
9 not for months, just the intent to strike the fatal
10 blow. Why do you think he was arguing about that? He
11 was arguing that because he knows, he knows Brad Sigmon
12 was walking towards that house with no intent. He knows
13 that when Geno Strube was strolling across that lawn
14 with Brad Sigmon that his intent was to tie the Larkes
15 up. And he wants me -- he was worried that I was going
16 to argue that was his intent, so who cares. If he
17 didn't intend to do it, it's not murder. Well, it's
18 murder. It's murder if you have that intent for even
19 the shortest amount of time that Brad Sigmon had it, the
20 time it took to walk across the porch and walk in the
21 door. That is the time it took Brad Sigmon to make this
22 decision. It's not enough time to decide where to sit
23 down to tie your shoes, and yet he made a decision like
24 that. Why? He has poor decision skills.

25 Ladies and gentlemen, the devil made me it do is

1 not the answer. I don't know the answer. I do not know
2 the answer. I know this, I know the question that
3 solves this case in your minds, the question that helps
4 you to reach your resolution, the question that has been
5 important for you to decide since the first day you
6 walked in here, the question that we have asked you to
7 think about for every day, every minute, every second of
8 the time you've been here, is why. Because there is a
9 why here. And when you get to the bottom of the why,
10 you're going to decide the appropriate punishment.

11 Now, I want to stop -- I want to close with two
12 more points. And these two points are pretty simple.
13 The first one is, Brad Sigmon is not a very bad
14 individual. He's not a very bad prisoner. His role in
15 life may be -- well, his role in life is to end his days
16 as a prisoner, and he is pretty accomplished at it.
17 He's polite. He treats the officers with respect. He's
18 not a threat to anyone. You heard from Mr. Aiken, he's
19 not going anywhere. He's going to be in maximum
20 security with the meanest, nastiest people in the State
21 of South Carolina. He's going to be there until he
22 draws his last breathe.

23 The Solicitor talks about how nice the pen is. I
24 can't talk to that. Anybody who thinks that the
25 penitentiary is a nice place has never been there. I

1 will tell you this, think about your freedom that's been
2 restricted for the last five days -- four days. Your
3 freedom has been restricted just a little bit. You
4 haven't been able to call home when you wanted to. You
5 haven't been able to talk to your loved ones. You
6 haven't been able to go where you wanted when you
7 wanted. You hadn't been able to do what you wanted.
8 You've been around pleasant people. You've been around
9 people that wanted you to be comfortable, that wanted
10 you to eat what you wanted to eat. They wanted you to
11 sleep the way you wanted to sleep. They wanted your
12 scheduled to be what you wanted your schedule to be.
13 Prison ain't like that. They tell you when to eat.
14 They tell you when to sleep. They tell you when to get
15 up. They tell you when to go to sleep. You go in a
16 room with 20 people and they change the television to
17 whatever they want. I don't know, maybe I don't watch
18 enough television, but I don't see television privileges
19 and law libraries as being a great benefit.

20 Brad Sigmon is not going to be a leader. He's 44
21 years old. People that go to jail are young and they
22 are mean and strong. Every day he spends in jail his
23 vitality decreases. Every day he spends in jail he gets
24 worse. He becomes prey for the predators.

25 Now, in closing the Solicitor wanted you to have

1 your verdict ring like a bell. The verdict against this
2 man who made a horrible mistake in the blink of an eye,
3 a verdict against this man who became so caught up in
4 this relationship, this relationship that was over, that
5 he did the most horrible thing a man can do, he wants
6 you to take that verdict and ring like a bell. Ring
7 like a bell as a deterrent. Let me tell you what you're
8 verdict is going to do to deter if you vote for the
9 death penalty. Let me tell you it's going to deter
10 three things. It's going to deter peaceful surrender.
11 Brad Sigmon surrendered as peaceful as a lamb. It's
12 going to deter confessions. He confessed three times.
13 And the most important thing of all, it's going to deter
14 mothers, and families, and brothers and sisters from
15 trying to get their relatives to turn themselves in.
16 This family turned this boy in. They turned him in.
17 They sent him to the authorities, because they were
18 concerned about him. They love him. They don't want
19 anything to happen to him.

20 Ladies and gentlemen, I want to thank you for your
21 service. It's -- it's been an honor to have been before
22 you. And I appreciate your fair consideration of this
23 verdict. And I believe now Mr. Sigmon is going to speak
24 to you briefly.

25 THE COURT: Mr. Sigmon

1 MR. SIGMON: From the (inaudible).

2 THE COURT: We got to hear you.

3 MR. SIGMON: From the very beginning, when I was
4 out in the mountains, hiding out, I had a little Bible.
5 And I read Matthew 5:25, and it says -- it said to me,
6 tell the truth. It said, tell the truth, Brad.

7 Your Honor, may I get something out of this? It's
8 already been brought up.

9 I would like to -- may I hand these to them to see?

10 THE COURT: No, sir, not at this time.

11 MR. SIGMON: It was introduced into evidence.

12 THE COURT: Yes, sir.

13 MR. SIGMON: May I show them and explain to them?

14 THE COURT: You can hold up anything you want.

15 MR. SIGMON: These are pictures. These are
16 pictures of Becky and me. This is my photo album.
17 Picture after picture. Was I obsessed with her? Yes.
18 Did I love her? I loved her more than anything in this
19 world. And I didn't want to lose her. You want the
20 truth? You deserve the truth. The family deserves the
21 truth.

22 What set me off? What set me off? Go back three
23 years. The second time Becky left Troy for me, she
24 couldn't let Troy go, because that's her heart. She
25 loves him. She loved that man more than anything in

1 this world. And I could see it, and it tore me up,
2 because she didn't love me that way. So I left her a
3 note. Let her quit work. I paid the bills. Let her do
4 what she wanted to do. I left her a note saying, I just
5 can't deal with you not letting Troy go anymore. I
6 can't -- I can't live this way, wanting your love and
7 you're wanting to give it to Troy and -- and -- and I
8 know how you feel. I left her that note, and I went
9 home. And I cried my eyes out.

10 She picked the kids up from school about three
11 o'clock, I guess. She showed up at the house about
12 3:30. The kids had no knowledge of me at that time
13 still. And she walked in the house and told the kids,
14 sit down and watch TV, and she brought me in the back
15 bedroom. I love you. And Troy is a piece of shit, and
16 I'm through with him. And then she proceeded to make
17 love to me. Okay.

18 I'm going to jump back now to -- to the day before,
19 on that Thursday. I called her up, got off work, left
20 Chuck, I pushed nine on my cell phone ---

21 MS. STROM: Your Honor, I have to object.

22 THE COURT: All right. Is any of this in the
23 record? Do you contend that any of this is in the
24 record?

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

1 THE COURT: Okay. All right. You have to argue
2 the facts that are in the record.

3 MR. SIGMON: I'm trying to tell the truth, Your
4 Honor.

5 THE COURT: You cannot bring in facts that are not
6 in the record. You can argue anything that's in the
7 record, or you can ask for mercy.

8 MR. SIGMON: May I look through it? I believe it's
9 in here what I'm getting ready to say.

10 THE COURT: I'm not going to limit you.

11 MR. SIGMON: Your Honor, I don't know if it's in
12 here or not. It's just one sentence that I'd like to
13 say, so everybody would know the truth. May I say it,
14 please?

15 THE COURT: If it's in the record you can say it.
16 If not, the Solicitor may object.

17 MR. SIGMON: Push nine. It was automatic caller at
18 work. It was 4:30. It was Thursday. She answered the
19 phone, and I said, hey, baby, what you doing. I'm on
20 the phone with Keith, you piece of shit. All I can see
21 was what she did to Troy three years before that. All I
22 could see was her in bed with the man she's married to
23 now. I don't hate her. I hate what I did. My family
24 raised me to be better than that. They raised me to do
25 right. And it ain't the drugs. It ain't the alcohol.

1 It ain't her. It was me.

2 I realized through all these -- all these trained
3 professionals what they said about me is true. I don't
4 know how to let go. Every girl, I look back in my past,
5 and I couldn't let go. I wanted to take care of them.
6 I wanted to provide for them. I never wanted a woman
7 that was content. I told Paige and Dr. Swartz Watt when
8 they were talking to me one day, I said, women like
9 y'all, I'm not attracted to, because you're independent,
10 and you can take care of yourself, but a woman that
11 needs a man makes me strong. It makes me want to do
12 what's right. When they need me I can do strong -- I
13 can do what's right. And every relationship I've ever
14 had, after -- sometimes after five months, sometimes
15 after a few years, I guess my personality is so
16 dominating to them that -- that it pushes them away.
17 I'm not saying it's her fault. It's not her fault.
18 It's my fault. I didn't know what was wrong with me. I
19 didn't what -- I loved David and Gladys. I was part of
20 their family for three years with Becky. Took David
21 golfing. He told me, Brad, I hate -- I hate what's
22 going on ---

23 MS. STROM: Objection, Your Honor.

24 THE COURT: Sustain the objection. You cannot
25 argue outside the record.

1 MR. SIGMON: Yes, sir. Troy Jr. is her son, and I
2 loved Troy Jr. I loved Gwen. I tried to be a father
3 figure for them. I tried to love them and treat them
4 like they were my own children. If you were to ask
5 them, if you asked Troy if he loved me right now, I
6 believe he would say he did.

7 Do I deserve to die? I probably do. I probably
8 do. I don't want to die. It would kill my mom, and my
9 brothers and sisters, and my children. I have two sons
10 and one daughter. I have no relationship with my
11 daughter and my baby son, because of my wife -- my
12 ex-wife. And all the lies that she sat up there and
13 told, my son told the truth. She hates me for taking my
14 son because I could raise him. She hates my mom for
15 taking him and -- when he ran away from her. And that
16 was enough reason for her to be vindictive. Our
17 investigator asked me, she said Brad, what's she going
18 to say. I said, she shouldn't say nothing because we
19 had a good life, there wasn't no problem. I had no idea
20 she had so much hatred built up inside her.

21 I don't envy none of you. I don't envy none of
22 you. I wouldn't want to be in your shoes. I just would
23 like to live for my family's sake.

24 The last thing I want to say is that I am a born
25 again Christian. And I do talk to people about Christ

1 now. And I'm living for the Lord. That's all I got
2 left. I got nothing else. That's all I have. I pray
3 you give me the opportunity to do that where the State
4 ends up putting me. Thank you.

5 THE COURT: All right. Mr. Foreman, ladies and
6 gentlemen, we'll take a break at this time, and come
7 back for my charge. While you're back there, do not
8 discuss this case. We'll only take about a five minute
9 break. Everybody else remain seated while the jury
10 leaves.

11 (The jury exited the courtroom at 6:47 p.m.)

12 THE COURT: You got another copy of that charge? I
13 can't find it. I've looked around all my -- on ---

14 MR. EPPE: Okay.

15 THE COURT: Having to go to trial as far as ---

16 MR. EPPE: Yes, sir.

17 THE COURT: Having to have a jury trial, having a
18 jury trial at this stage.

19 MR. EPPE: Yes, sir, it's downstairs. I can
20 have ---

21 THE COURT: Is it attached to the motion?

22 MR. EPPE: I thought it was.

23 THE COURT: Maybe I ---

24 MR. EPPE: No, it was not attached to that motion,
25 I'm sorry. I know where it is downstairs though.

1 THE COURT: All right. Why -- do you mind getting
2 that for me?

3 MR. EPPES: No, sir.

4 THE COURT: All right. We're going to take a
5 break, but I'm telling you, we're going -- we're going
6 to start back in about three or four minutes. So if you
7 leave, you stand a chance of not getting back in.

8 (A short recess was taken, after which, the trial
9 continued as follows:

10 THE COURT: Did we ever make a copy of the page --
11 we did? Of the phone book?

12 COURT REPORTER: Not of the phone book.

13 THE COURT: Okay. You would go do that?

14 COURT REPORTER: Um-hm.

15 THE COURT: Or get somebody to do that so we can
16 substitute that. I will charge the first sentence of it
17 and then -- all right. Let's clean up a few things.
18 I -- as far as the exhibit of the phone book, I'm
19 having a copy of just that one page made and then
20 substituted. Is it your intent that the whole suitcase
21 go back now?

22 MR. EPPES: It's up to you, Your Honor.

23 THE COURT: No, I'm ---

24 MR. EPPES: Your Honor, I'd like the photo album,
25 the massage oil, the Bible.

1 THE COURT: The Bible is in as a separate ---
2 MR. EPPES: There was something else. That's all
3 THE COURT: All right. So the photo album, and the
4 massage oil?
5 MR. EPPES: The photo album and the massage oil.
6 THE COURT: And the Bible is in.
7 MR. EPPES: And some clothes. Yeah, just ---
8 THE COURT: Well, some of the clothes, I can't just
9 start picking out clothes.
10 MR. EPPES: I ---
11 THE COURT: I can send the whole thing back.
12 MR. EPPES: Just send the whole thing back.
13 THE COURT: Then I'm going to take off the property
14 and evidence sheets. Would you do that, Ms. Strom,
15 please?
16 MS. STROM: Yes, sir.
17 THE COURT: Caroline has got some of the things we
18 took out of that that need to stay with that property
19 and evidence sheet, I guess.
20 MS. STROM: Yes, sir.
21 THE COURT: So you need to get those from the her.
22 THE CLERK: She can get those later.
23 THE COURT: You can get those later.
24 MS. STROM: All right.
25 THE COURT: All right. My charge will take again

1 30, maybe a few minutes more, 30 minutes or more. So no
2 moving around. No going out. Bring the jury.

3 (The jury entered the courtroom at 6:55 p.m.)

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen, that's the testimony and the evidence and the
6 arguments of the State and the defendant at this stage
7 of this proceeding. It's now incumbent upon me to tell
8 you the law that applies in this case.

9 And tell you, first of all, section 16-3-20 of the
10 South Carolina code of laws states that a defendant is
11 only entitled to a jury trial as to sentence if he has a
12 jury trial concerning his guilt. So in other words, to
13 exercise his Constitutional rights to have a jury trial
14 in this stage, he has plead not guilty and he has to
15 have a jury trial at the trial phase, or the guilt phase
16 as it is sometimes called, otherwise if he pleads guilty
17 then it's up to the judge to determine guilt.

18 Now, under our Constitution and code of laws -- let
19 me just start off by saying, a lot of this is -- I've
20 already charged you in the first stage. So a lot of
21 this is going to be the same charge that I gave you
22 before, but I am required by law to tell you some of
23 these things in duplication.

24 Under our Constitution and law of South Carolina
25 you are the finders of fact in this case. I don't have

1 the right to pass upon any of the facts, or even to
2 express any opinion I might have as to the facts, nor
3 may I intimate in any way what I think the appropriate
4 sentence is in this case.

5 You are also the judges of credibility, or the
6 believability of the witnesses who have testified at
7 this stage. In passing upon credibility, you may take
8 into consideration several things, such as the manner --
9 the demeanor or the manner of the testifying of the
10 witness, whether the witness had reason to be biased or
11 prejudiced, whether a witness' testimony was
12 contradicted on one hand or supported or corroborated on
13 the other hand. You don't determine credibility or
14 believability by counting the number of witnesses who
15 testified for one side or the other. You can believe
16 a small portion of what a witness said, or disregard the
17 larger portion, or vice versa. You may believe one
18 witness as against many, or many as against one. All
19 these things you will consider bearing in mind that you
20 should give the defendant the benefit of any reasonable
21 doubt.

22 Now, the rules of evidence ordinarily do not permit
23 a witness to testify about their opinions, or
24 conclusions. An exception, however, to the rule does
25 exist as to people we call expert witnesses. Expert

1 witnesses are witnesses who by education, or experience,
2 or training have become an expert in a particular art,
3 science, profession or calling. These witnesses may
4 state their opinion in that field based upon the facts
5 of a matter, and they also may state their conclusions
6 and the reasons for their conclusions and their
7 opinions. You should consider expert opinions received
8 in evidence in this phase and give it such weight as you
9 may think it deserves. If you should decide that the
10 opinion of the expert witness is not based upon
11 sufficient education or experience, or if you should
12 conclude that the reason given in support of their
13 opinions are not sound, or if you feel that it is
14 outweighed by the other evidence, then you may disregard
15 that testimony entirely.

16 The same Constitution and law that makes you the
17 finders of the fact and evidence as I've just discussed
18 with you, makes me the judge, which makes me the sole
19 and only instructor of the law. Under your oath you
20 must accept as correct the law that I charge and apply
21 it to the evidence as you reach your decision of
22 sentence in this case.

23 Now, I tell you that there are two types of
24 evidence that are generally presented during a trial,
25 direct evidence and circumstantial evidence. Direct

1 evidence is the testimony of a person who asserts or
2 claims to have actual knowledge of a fact, such as an
3 eye witness. Circumstantial evidence is proof of a
4 chain of facts and circumstances that indicate the
5 existence of yet another fact. The law makes absolutely
6 no distinction between the weight or value to be given
7 either to direct or circumstantial evidence, nor is a
8 greater degree of certainty required of circumstantial
9 evidence than of direct evidence. In other words, you
10 should weigh all the evidence in this case.

11 Now, I further charge you that evidence of a prior
12 criminal history of this defendant should not be
13 considered and may not be used as proof of any statutory
14 aggravating circumstance. And I'll tell you about
15 statutory aggravating circumstances in just a minute.
16 You may consider such evidence only as to the
17 defendant's character, his characteristics, but not as
18 proof of a statutory aggravating circumstance.

19 Mr. Foreman, I tell you -- and ladies and
20 gentlemen, I tell you, and instruct you, and emphasize
21 to you the fact that a defendant did not testify is not
22 a factor to be considered by you in any way in your
23 deliberation and in your consideration of the question
24 of what sentence to impose. It must not be considered
25 by you in any manner whatsoever. The defendant has the

1 Constitutional rights to remain silent, and the
2 assertion of this right must not be considered by you in
3 your deliberations. I repeat, under your oath you are
4 to draw no conclusions whatsoever from the fact that the
5 defendant did not testify at this phase. Again, Mr.
6 Foreman, the fact that the defendant did not testify
7 should not be discussed in the jury room.

8 Now, Mr. Foreman, and members of the jury, it now
9 becomes your duty to decide what sentence that this
10 Court shall impose upon the defendant, Brad Keith
11 Sigmon. There are two verdicts that you are to consider
12 in this case. One is the death penalty, which in the
13 State of South Carolina is by electrocution or by lethal
14 injection. And the other is life imprisonment without
15 any possibility of parole. Again, every now and then I
16 will use the term recommendation, but I tell you it is
17 not a recommendation. Whatever you impose is the
18 sentence I will impose.

19 Now, I must tell you about each of these sentences.
20 The order in which I explain these two sentences is in
21 no way a recommendation by the Court as to which
22 sentence you should choose to recommend. It's simply
23 that I must start with one.

24 Mr. Foreman, Doris is going to hand you a folder.
25 There are five things in that folder. There are four

1 forms that I will discuss with you. I think I've put
2 them in the order that I discuss them. The last thing
3 is a copy of my statutory instructions so you will have
4 a copy of what I have charged you, except I'm not
5 including homicide and burglary, which I'm going to
6 charge you like I did in the prior one. If you want a
7 copy of those charges, I'll be glad to give them to you,
8 but I will give you the statutory charge -- or excuse
9 me, I will give you the charge with regard to sentencing
10 options.

11 Now, by the sentence of death form that's provided
12 to you, and that should be the first form that's in
13 there, you the jury may sentence the defendant to death.
14 Please observe that below the body of this form are 12
15 lines. This is where, should you decide to impose the
16 death penalty, each one of you would sign your name. It
17 is law in this state, Mr. Foreman, and members of the
18 jury, that the imposition of the death penalty be a
19 unanimous sentence and that each and every juror sign
20 his or her name to the sentencing form.

21 Now, the second form that's in there are the --
22 should be the statutory instructions. For the sentence
23 of death to be made, you must first find that a
24 statutory aggravating circumstance existed beyond a
25 reasonable doubt. What is a statutory aggravating

1 circumstance? It is a fact, an incident, a detail, or
2 an occurrence that the South Carolina General Assembly
3 has declared by statute would make worse, that is to
4 aggravate the offense of murder when the two occur
5 together. In other words, it is something this
6 increases the enormity or adds to the injurious
7 consequences of the offense.

8 Now, the second form should be the statutory
9 instructions. You will have this paper with you in the
10 jury room during deliberations. The body of this form
11 states, in determining whether the defendant, Brad Keith
12 Sigmon, be sentenced by the Court to life imprisonment
13 or death you must consider the following statutory
14 aggravating circumstances. One, two or more persons
15 were murdered by the defendant by one act, or pursuant
16 to one scheme, or course of conduct. Two, the murder
17 was committed while in the commission of burglary. And
18 three, the murder was committed while in the commission
19 of physical torture.

20 I need to stop at this time and tell you again
21 briefly what those elements contain. First of all, as
22 to murder. The defendant -- one of the statutory
23 aggravating circumstances is two or more murders. The
24 State would have to prove to you, or would have had to
25 prove to you beyond a reasonable doubt that the

1 defendant killed two people in this case with malice
2 aforethought. Again malice is hatred, ill will, or
3 hostility towards another person. It is an intentional
4 doing of a wrongful act without just cause or excuse and
5 with intent to inflict an injury or under circumstances
6 that the law will infer an evil intent.

7 Again malice aforethought does not require that
8 malice exist for any particular length of time before
9 the act is committed, but malice must exist in the mind
10 of the defendant before or at the time the act is
11 committed. Therefore there must be a combination of the
12 previous evil intent and the act.

13 Malice aforethought may be expressed or inferred.
14 These terms, express or inferred, don't mean two types
15 of malice, but merely two manners in which malice may be
16 shown. That is either by direct evidence or by
17 inference from the facts and circumstances that have
18 been proved. Express malice is shown when a person
19 speaks the words -- some words which express hatred or
20 ill will for another, or when the person prepared
21 beforehand to do the act which was later accomplished.
22 For example, lying in wait for a person, or any other
23 act of preparation going to show that the deed was
24 within the defendant's mind. That would be forms of
25 express malice.

1 And again, the other type of malice would be
2 inferred. Malice may be inferred from conduct showing a
3 total disregard for human life. Inferred malice may
4 also arise when the deed is done with a deadly weapon.
5 Again, deadly weapon is any article, instrument or
6 substance which is likely to cause death or great bodily
7 harm. Whether the instrument has been used as a deadly
8 weapon depends on the facts and the circumstances of the
9 case.

10 Following are examples of instruments which might
11 be deadly weapons, pistol, shotgun, rifle, or a knife.
12 But I also tell you that ordinary objects may become
13 deadly weapons when facts show that they have been used
14 to inflict serious bodily harm or death.

15 There is another instance of inferred malice when
16 one intentionally kills another during the commission of
17 a felony. The inference of malice may arrive -- arise
18 if facts are proved beyond a reasonable doubt from any
19 of those methods of inferred malice. Sufficient to
20 raise that inference of malice for your satisfaction,
21 this inference would simply be an evidentiary fact to be
22 taken into consideration by you along with all the other
23 evidence in the case, and you would decide what weight
24 it should receive.

25 Now, the second aggravating circumstance besides

1 the two or more persons were murdered, was the murder
2 was committed while in the commission of a burglary. So
3 it's incumbent upon me to tell you what burglary is
4 again. Under 16-11- -- 16-11-311 of the South Carolina
5 code of laws, burglary in the first degree is defined as
6 the entering of a dwelling house of another person
7 without consent and with the intent to commit a crime
8 therein. As I will -- I will define those four elements
9 to you, plus another circumstance.

10 When entering or while in the house, or while
11 fleeing from the house, the defendant causes physical
12 injury to another that is not a -- participant in the
13 crime. So there are four essential elements that must
14 be required to be shown beyond a reasonable doubt to
15 prove entering in the dwelling house of another without
16 consent, with the intent to commit a crime. There must
17 be an entering. The State must prove that there was
18 entering, that is the defendant actually went inside the
19 house or some part of the house. The entry must be
20 without consent. Third thing is the place entered must
21 be a dwelling house. Again, a dwelling house means any
22 building inhabited by a person or person in which they
23 customarily sleep. And fourth, the defendant must have
24 the intent to commit a crime. The mere entry into a
25 dwelling house without consent is not a violation of the

1 burglary statute, it's only when there is an intent to
2 commit a crime that is either a felony or misdemeanor.
3 And again, I told you the crime does not have to be
4 complete. So those are the four elements plus the
5 defendant must have, while in the house, or fleeing, or
6 upon entering, have caused physical injury to someone
7 who was not a participant in the crime.

8 The last circumstance, ladies and gentlemen, is
9 that the murder was committed while in the commission of
10 physical torture. Physical torture is the intentional
11 infliction of serious, vile, horrible or inhumane abuse
12 upon the body of another before death. The
13 instantaneous death of the victim does not constitute
14 torture. Physical torture may include the malicious
15 infliction of bodily harm to another rendering a member
16 of his body useless, that's like an arm or a leg or
17 something, seriously disfiguring the victim, or the
18 intentional and unmerciful prolonging of the severe pain
19 and abuse to the body of another, or the intentional and
20 unmerciful infliction of serious and extensive physical
21 abuse to the body of another. Those are the three
22 statutory aggravating circumstances that are submitted
23 to you in this state -- in this case.

24 Let me emphasize to you that these are the only
25 circumstances that you may consider as statutory

1 aggravating circumstances. Should you find, and it must
2 be a unanimous finding, that is a finding by each and
3 every one of you, that the State has proven beyond a
4 reasonable doubt the existence of one or more of those
5 aggravating circumstances listed on that sheet of paper,
6 then you would be authorized, that is to say you would
7 be permitted to consider the defendant be sentenced to
8 death.

9 What does the term proven beyond a reasonable doubt
10 mean? A reasonable doubt again is the kind of doubt
11 that would cause a reasonable person to hesitate to act.

12 Now, ladies and gentlemen, you are never required
13 to impose the death penalty. Even if you find statutory
14 aggravating circumstances, or one statutory aggravating
15 circumstance existed at the time of the offense, you
16 would still not be required to impose the death
17 penalty.

18 However, if you find the existence of a statutory
19 aggravating circumstance, please list that circumstance
20 on the form entitled, aggravating circumstances. That's
21 the third form that you have. And again, all 12 of you
22 would have to sign that form. So you would to fill out
23 the aggravating circumstance on that third form and
24 using the statutory instructions so you can put the
25 exact words down, okay. And then you -- that would be

1 the first thing you would do, determine if there was
2 statutory aggravating circumstances proven beyond a
3 reasonable doubt. Okay. Because if you don't find
4 those then, as I'm going to tell you in a minute, you don't
5 even impose sentence, I will impose sentence. So the
6 first thing you determine is whether a statutory
7 aggravating circumstance exists in this case beyond a
8 reasonable doubt. If they do, then you would fill out
9 that form and all 12 you would sign your name to that
10 form. Okay.

11 Now, I instruct you further should you find that
12 the State has not proven that the -- that any of those
13 circumstances exists, that is to say you find that
14 they -- you still have a reasonable doubt as to the
15 existence of such a circumstance, then you would not be
16 authorized to impose the death penalty and you would not
17 sign either form. The fourth form in there is the life
18 sentence form. But if you don't fill out the third
19 form, the aggravating circumstances, you would not
20 impose sentence. I would be the one to impose sentence.
21 The Court will impose sentence to the defendant if you
22 cannot find a aggravating circumstance beyond a
23 reasonable doubt.

24 Now, should you find beyond a reasonable doubt that
25 one of the aggravating circumstances listed on the

1 statutory instructions existed at the time of the
2 murder, and should you then decide, after considering
3 the elements in favor of a sentence of life
4 imprisonment, that the proper sentence of the jury is to
5 be that the defendant be sentenced to death, then it
6 would be your duty, Mr. Foreman, to write on the
7 sentence of death form, that's the first form, the
8 statutory aggravating circumstances, or circumstance
9 that you found. And each and every juror would sign
10 that form. So if you reach a death sentence in this
11 case, then you would fill out the statutory aggravating
12 circumstances form, that's the third one down, filling
13 in the aggravating circumstances, all 12 of you sign it,
14 then you would reaffirm that on the sentence of death
15 form by again filling out the statutory aggravating
16 circumstances, and then signing all 12 names.

17 All right. Now, as to a life sentence. You the
18 jury can also impose on this defendant a sentence of
19 life imprisonment. And that's the fourth form. The
20 sentence of life imprisonment form states the following,
21 we, the jury, in the above titled case now sentence the
22 defendant, Brad Keith Sigmon, to life imprisonment
23 without parole. Please note that although you must
24 unanimously agree to a life sentence, only you as
25 foreman would sign that form.

1 Now, you may consider the following in making your
2 decision as to which sentence to recommend -- recommend,
3 or to impose. As previously instructed, if you find the
4 existence beyond a reasonable doubt of a statutory
5 aggravating circumstance, then you're permitted but not
6 required to sentence the defendant to death. There are
7 three conditions you should consider in reaching your
8 decision, whether the existence of a statutory
9 mitigating circumstance was supported by the evidence,
10 whether the existence of any non-statutory mitigating
11 circumstance was supported by the evidence, and whether
12 for any reason you think, or for no reason at all the
13 defendant should be sentence to life imprisonment.

14 What is a statutory mitigating circumstance?
15 Again, it is a fact, an incident, a detail, or an
16 occurrence that the South Carolina General Assembly has
17 declared by statute would reduce the severity of the
18 offense of murder. In other words, it is a circumstance
19 recognized by statute as one which in fairness and mercy
20 must be considered as extenuating or as reducing the
21 degree of moral culpability for the commission of the
22 act of murder. And again, you've got your statutory
23 instructions and those four -- the four statutory
24 mitigating circumstances that I'm submitting are on
25 those instructions.

1 Now, a mitigating circumstance is neither a
2 justification or an excuse for the murder. It's simply
3 lessens the degree of one's guilt. That is it makes the
4 defendant less blameworthy, or less culpable.

5 So what are the statutory mitigating circumstances
6 that you should consider in this case? If you look at
7 those instructions, you will see immediately below the
8 statutory aggravating circumstances that I read to you
9 earlier, the text continues, you must also consider the
10 following mitigating circumstances. One, the defendant
11 has no significant history of criminal -- prior criminal
12 convictions involving the use of violence against
13 another person. Two, the murder was committed while the
14 defendant was under the influence of a mental or
15 emotional disturbance. Three, the capacity of the
16 defendant to appreciate the criminality of his conduct,
17 or conform his conduct to the requirements of law was
18 substantially impaired. And fourth, the defendant was
19 provoked by the victim into committing the murder. You
20 must also consider any non-statutory mitigating
21 circumstances.

22 So what is a non-statutory mitigating circumstance?
23 A non-statutory mitigating circumstance is one that is
24 not provided for by statute, but it is one which the
25 defendant claims serves the same purpose. That is to

1 reduce the degree of his guilt in the offense. While
2 there must be some evidence that supports the finding
3 by you that the statutory or non-statutory mitigating
4 circumstance exists, it does not necessary -- it is not
5 necessary for you to find the existence of a statutory
6 mitigating circumstance or non-statutory mitigating
7 circumstance beyond a reasonable doubt. In other words,
8 the reasonable doubt burden does not apply to the
9 defense mitigating circumstances, either statutory or
10 non-statutory.

11 In reaching your decision as to which sentence to
12 impose, you will consider the aggravating and the
13 mitigating circumstances. While an aggravating
14 circumstance must be found before you can even consider
15 the death penalty, once such a finding is made beyond a
16 reasonable doubt, you may recommend a death sentence,
17 even though you find the existence of a statutory
18 mitigating circumstance or a non-statutory mitigating
19 circumstance. In other words, just because a statutory
20 mitigating circumstance or a non-statutory mitigating
21 circumstance exists, that is not a bar to the death --
22 imposition of the death penalty.

23 Now, the third element that you may consider if you
24 should conclude that a statutory aggravating
25 circumstance exists, is whether the defendant should be

1 sentenced to life imprisonment for any reason, or for no
2 reason at all. This is what has been traditionally
3 referred to as a recommendation of mercy. And should
4 such be your decision, you would so indicate by
5 returning to the Court the sentence of life imprisonment
6 form, which again, would be signed by you alone, Mr.
7 Foreman. In other words, you may choose a sentence of
8 life imprisonment if you find a statutory or
9 non-statutory mitigating circumstance, or you may choose
10 a sentence of life imprisonment as an act of mercy. In
11 any instance should you choose a sentence of life
12 imprisonment, your decision must be unanimous again, and
13 again, you would sign the form itself.

14 Let me try to summarize this. You have in front of
15 you, and you will have in your jury room, four forms.
16 You have a sentence of life imprisonment form. You have
17 a sentence of death form. You have statutory
18 instructions. And you have an aggravating circumstances
19 form. Statutory instructions state the only aggravating
20 circumstances that you can consider in this case.
21 Should you fail to find beyond a reasonable doubt that
22 at least one of these aggravating circumstances existed
23 at the time of the murder, then you would not sign
24 either sentencing form. The Court would impose a
25 sentence in this case.

1 Should you find beyond a reasonable doubt the
2 existence of an aggravating circumstance, you would then
3 be authorize to consider the death penalty. In your
4 deliberations you will consider any statutory or
5 non-statutory mitigating circumstances that are
6 supported by the evidence. You will consider the
7 aggravating circumstances -- or circumstances you
8 found, and the mitigating circumstances, and you will
9 then decide whether the proper sentence is death or
10 life imprisonment. You may also consider any other
11 factor in mitigation of the offense and you can impose
12 a sentence of life imprisonment again for no reason at
13 all.

14 If you decide to impose the death penalty, you will
15 complete the proper form. You must write out the
16 aggravating circumstance or circumstances that you
17 found, and all 12 jurors must sign the sentencing form.

18 Should you decide to impose a life sentence, again,
19 only the foreman would sign that sentencing form. And
20 no reason needs to be given for your decision.

21 Whatever your sentence is in this case, whether
22 it's death or life without parole, your verdict must be
23 unanimous.

24 I tell you again, the sentence will be followed by
25 this Court, and it must be the decision of each and

1 every juror.

2 In considering whether to sentence the defendant to
3 death or to life imprisonment, I charge you that as
4 jurors you must decide these issues involved in this
5 proceeding without bias and without prejudice to any
6 party. You have been selected as fair and impartial
7 jurors, sworn to impartially try and determine the facts
8 of this case, and when you have complied with your oath
9 to do so, then no one will have the right to criticize
10 your verdict and you will have fully discharged your
11 duty as jurors.

12 You are to decide this case according to the
13 testimony that you have heard from the lips of those
14 sworn witnesses, along with the evidence that has be
15 introduced.

16 I charge you that as jurors you must decide the
17 issues in this proceeding without bias and without
18 prejudice to any party. You cannot allow yourself to be
19 governed my sympathy, by prejudice, by passion, by
20 public opinion, or any other arbitrary factor. Both the
21 State and the defendant have the right to expect that
22 each of you will carefully and impartially consider all
23 of the evidence in this case and that you will follow
24 the law as I have explained it to you.

25 Now, with that, Mr. Foreman, ladies and gentlemen,

1 I'm going to send the 15 of you back to jury room. If
2 you would leave those forms up here on railing, or hand
3 them to Doris, either one. Whatever you do, don't talk
4 about this case. I'm going to talk to the attorneys
5 very quickly, then I will bring all 15 of you back in.
6 Okay?

7 (The jury exited the courtroom at 7:22 p.m.)

8 THE COURT: Hand me that envelope. Any exceptions
9 from the State?

10 MR. ARIAIL: None, Your Honor.

11 THE COURT: From the defense?

12 MR. ABDALLA: Yes, Your Honor. I just request that
13 you instruct the jury that if they don't reach a
14 unanimous verdict that life would be the sentence.

15 THE COURT: No, sir.

16 MR. ABDALLA: Thank you.

17 THE COURT: Do you have any authority for that? Or
18 is that just something you hoped I would do?

19 MR. EPPES: We really hoped you would do it.

20 THE COURT: Well, I mean, my job is to direct them
21 to reach a unanimous verdict, and I will tell them that
22 until they tell me they can't. I don't think it's my
23 job to -- to -- to do otherwise. All right. Without
24 any authority I deny to do that. Any other exceptions
25 besides that?

1 MR. ABDALLA: No, sir.

2 THE COURT: All right. Bring all 15 jurors back
3 in, please. Tell -- when you bring the 15, tell the
4 three alternates to go ahead and bring any personal
5 belongings they have with them to get them out of that
6 room, okay?

7 (The jury entered the courtroom at 7:25 p.m.)

8 THE COURT: All right. That concludes my
9 instructions. Madam Bailiff, if you would hand that
10 folder to the foreman. Now, if you would take the three
11 alternates out and secure them in a separate place,
12 please, ma'am. If the three alternates would follow the
13 bailiff.

14 (The three alternates exited the courtroom at
15 7:26 p.m.)

16 THE COURT: You got -- I'm ready to send them if
17 you got enough escorts.

18 SLED AGENT: Yeah, we're ready.

19 THE COURT: All right. Now, again, I need to have
20 the attorneys go through the exhibits, make sure we've
21 got them all, and you can go ahead and begin your
22 deliberations. Dinner is not here yet, but about 20
23 minutes ago they said they were on their way with it.
24 So you are perfectly welcome to deliberate while you eat
25 dinner. All 12 of you need to be in the room while

1 you're deliberating so you can hear the exchange of
2 ideas. So if someone is in the rest room or on a smoke
3 break, we'll be glad to accommodate those, but you just
4 need all 12 to be there, and again, you can do that
5 while you eat dinner. Okay. You can begin your
6 deliberations.

7 (The jury exited the courtroom at 7:27 p.m. and
8 began their deliberations.)

9 THE COURT: All right. We're still in session, but
10 at this time I want the attorneys to come up and go
11 through the exhibits, please.

12 (The exhibits were checked.)

13 THE COURT: All right. State agrees those exhibits
14 are correct?

15 MS. STROM: Yes, Your Honor.

16 THE COURT: As does the defense?

17 MR. ABDALLA: Yes, Your Honor.

18 THE COURT: Anything before we recess? All right.
19 We'll be at ease pending either a verdict or an
20 instruction by the jury that they want to suspend for
21 the night.

22 MR. EPPES: Thank you, Your Honor.

23 MR. ABDALLA: Thank you.

24 (A recess was taken while the jury deliberated.)

25 (The jury had a question at 7:50 p.m.)

1 (Court's Exhibit Number 17 was marked and filed.)

2 (The jury sent out a note for a break at 8:47 p.m.,
3 at which time they suspended their deliberations.)

4 (The jury resumed deliberating at 9:00 p.m.)

5 (Court's Exhibit Number 18 was marked and filed.)

6 THE COURT: All right. Bring the alternates,
7 please.

8 (The three alternate jurors entered the courtroom
9 at 10:00 p.m.)

10 THE COURT: All right. The jury has not reached a
11 verdict, but I -- it just dawned on me, and it probably
12 dawned on y'all sooner than it dawned on me. We don't
13 need to keep you sequestered here. I'm going to go
14 ahead and send y'all to the motel. They may want to
15 deliberate further, which is fine, or they may follow
16 your shortly, I don't know. Two admonitions, don't talk
17 about the case amongst yourselves. And also I'm going
18 keep you segregated from the other jurors until the
19 conclusion of the case. So we'll just -- that probably
20 means y'all won't be able to use that day room. They
21 will make some sort of other accommodations for you, or
22 whatever. All right. Y'all have a good evening, we'll
23 see you in the morning.

24 (The three alternates left for the evening at
25 10:02 p.m.)

1 THE COURT: All right. I need the main panel,
2 please. All right. I sent for the main panel just to
3 tell them if they want to keep deliberating that's fine,
4 if they want to go to the hotel, that's fine. I hadn't
5 heard from them for a while.

6 (A discussion was held off the record.)

7 THE COURT: They said they wanted a few more
8 minutes. Don't go far.

9 (A recess was taken while the jury continued
10 deliberating.)

11 THE COURT: All right. We have a verdict. It's
12 going to be just a minute before we bring Mr. Sigmon
13 in.

14 (A pause in the trial took place, after which, the
15 trial continued as follows:)

16 THE COURT: All right. Bring him in. All right.
17 Now, ladies and gentlemen, I understand that we have a
18 verdict. I know this has been a troubling case, and an
19 emotional case for both sides. I will tell you that I
20 will not allow any displays of emotion. I will treat
21 any displays of emotions as contempt of Court, and I
22 will incarcerate anyone who shows any displays of
23 emotion. And that's going to be tough for some of you,
24 so my suggestion is if you think you're going to have
25 any problems, go ahead and leave now. Bring the jury

1 in.

2 (The jury entered the courtroom at 10:11 p.m.)

3 THE COURT: All right. Mr. Foreman, have you
4 reached a sentence in this case?

5 MR. THAMES: Yes, Your Honor, we have.

6 THE COURT: Would you please hand the verdict forms
7 to Madam Bailiff?

8 MR. THAMES: Yes, sir.

9 THE COURT: All right. This is 2001-GS-23-7629,
10 7630 and 7631. As to the aggravating circumstances, we
11 the jury in the above entitled case find beyond a
12 reasonable doubt the following statutory aggravating
13 circumstances, number one, two or more persons were
14 murdered by the defendant by one act or pursuant to one
15 scheme or course of conduct, number two, the murder was
16 committed while in the commission of burglary. Number
17 three, the murder was committed while in the commission
18 of physical torture. Signed by each juror. And then
19 the same indictment numbers, the sentence of death has
20 been imposed. We, the jury, in the above entitled case,
21 having found beyond a reasonable doubt the existence of
22 the following statutory aggravating circumstances,
23 listing the same aggravating circumstances, and signed
24 by each juror.

25 Ladies and gentlemen, I need to pole -- have Madam

1 Clerk pole the jury on two questions. The first
2 question is, do you as a jury each find beyond a
3 reasonable doubt the aggravating circumstances that are
4 listed. Was that your verdict in the jury room and is
5 this your verdict now? If you would please call the
6 roll?

7 THE CLERK: William H. Thames, Foreman?

8 MR. THAMES: Yes.

9 THE CLERK: Robert A. Wharton?

10 MR. WHARTON: Yes.

11 THE CLERK: Rebecca A. Hembree?

12 MS. HEMBREE: Yes.

13 THE CLERK: Christina Sullivan?

14 MS. SULLIVAN: Yes.

15 THE CLERK: Sandra Norris?

16 MS. NORRIS: Yes.

17 THE COURT: Douglas Johnson?

18 MR. JOHNSON: Yes.

19 THE CLERK: Leanne Flack?

20 MS. FLACK: Yes.

21 THE CLERK: Herman McDuffee?

22 MR. McDUFFEE: Yes.

23 THE CLERK: Brenda K. Hillman?

24 MS. HILLMAN: Yes.

25 THE CLERK: Tracy N. McCarthy?

1 MR. MCCARTHY: Yes.

2 THE CLERK: John D. Powell?

3 MR. POWELL: Yes.

4 THE CLERK: Nathan A. Turner?

5 MR. TURNER: Yes.

6 THE COURT: All right. Ladies and gentlemen, the
7 second question is, is the sentence of death the
8 sentence that you are going to impose in this case, and
9 was that your sentence in the jury room and is that your
10 sentence now? If you would pole the jury, please,
11 ma'am.

12 THE CLERK: William H. Thames, Foreman?

13 MR. THAMES: Yes.

14 THE CLERK: Robert A. Wharton?

15 MR. WHARTON: Yes.

16 THE CLERK: Rebecca A. Hembree?

17 MS. HEMBREE: Yes.

18 THE CLERK: Christina W. Sullivan?

19 MS. SULLIVAN: Yes.

20 THE CLERK: Sandra L. Norris?

21 MS. NORRIS: Yes.

22 THE COURT: Douglas L. Johnson?

23 MR. JOHNSON: Yes.

24 THE CLERK: Leanne O. Flack?

25 MS. FLACK: Yes.

1 THE CLERK: Herman S. McDuffee?

2 MR. McDUFFEE: Yes.

3 THE CLERK: Brenda K. Hillman?

4 MS. HILLMAN: Yes.

5 THE CLERK: Tracy N. McCarthy?

6 MR. MCCARTHY: Yes.

7 THE CLERK: John D. Powell?

8 MR. POWELL: Yes.

9 THE CLERK: Nathan A. Turner?

10 MR. TURNER: Yes.

11 THE COURT: Now, Mr. Foreman, ladies and gentlemen,
12 let me tell you verbally and then I will give each of
13 you a letter. I will step back to the jury room in just
14 a minute. Your service in this trial has concluded.
15 You have the right to either refuse to discuss this
16 verdict that you have rendered, or to discuss this
17 verdict to the extent you desire. So if anybody
18 contacts you, you can refuse to discuss it or if you
19 want to discuss it, that's fine, but then you can cut
20 off any discussion. If you choose to discuss the
21 verdict you are free to terminate such discussion at any
22 point. If the person with whom you are speaking
23 continues to pursue a discussion of the verdict after
24 you have communicated a desire to terminate that
25 discussion, or if a person continues to harass you after

1 you've refused to discuss the verdict, you should report
2 that person to me. I'm going to give you a letter with
3 these instructions on it. That has my address and phone
4 number, and I can assure you that I will take action if
5 that occurs.

6 Now, is there anything before I dismiss this jury,
7 from the State?

8 MR. ARIAIL: No, Your Honor.

9 THE COURT: Anything from the defense?

10 MR. ABDALLA: No, Your Honor.

11 THE COURT: All right. I'm going to send you back
12 to your jury room. Let me thank you for your service in
13 this case.

14 (The jury exited the courtroom at 10:15 p.m.)

15 THE COURT: All right. Everybody is going to
16 remain right here. This Court is in session. I'm going
17 to leave the bench and talk to them, and then I'm going
18 to let the jury leave the building. Anything?

19 MS. STROM: Yes, sir, if I may have my investigator
20 go across to the office to get sentencing sheets if you
21 think you need them.

22 THE CLERK: I have them.

23 THE COURT: Okay.

24 MS. STROM: We have some here.

25 THE COURT: I will need one only for the burglary.

1 MS. STROM: We have one here, I'm sorry.

2 THE COURT: All right.

3 (The Court exited the bench, after which, the trial
4 continued as follows:)

5 THE COURT: Okay. Y'all ready for sentencing? Do
6 you want to come forward?

7 MR. EPPES: Mr. Sigmon would like to speak for one
8 second, Your Honor.

9 THE COURT: All right. Anything from the State
10 prior to imposition of sentence?

11 MR. ARIAIL: No, Your Honor.

12 THE COURT: All right. Anything you want to tell
13 me before I hear from Mr. Sigmon?

14 MR. ARIAIL: No, sir.

15 THE COURT: All right. Yes, sir.

16 MR. SIGMON: I'd like to tell the Larke family that
17 again I am sorry, and I know I got a fair trial. And
18 like I said, I probably do deserve to die, but I am
19 saved and going to heaven now. And I love y'all, and
20 I'm sorry for your loss. And Darryl, I don't have no
21 idea your loss from him (sic), but I know the love that
22 you have for your dad, and I pray one day that y'all
23 will be able to forgive me. Thank you.

24 THE COURT: All right. Anything before I pass
25 sentence?

1 MR. ABDALLA: No, sir.

2 THE COURT: On 2001-GS-23-7629, the indictment for
3 burglary, the sentence of the Court is that Brad Keith
4 Sigmon be committed to the State Department of
5 Corrections for a period of 30 years. As the trial
6 judge in the above entitled action and prior to the
7 imposition of the death sentence upon this defendant,
8 Brad Sigmon, I find as an affirmative fact that the
9 evidence of the case warrants the imposition of the
10 death penalty, and this imposition is not as a result of
11 prejudice, passion or any other arbitrary factor.

12 The defendant, Brad Keith Sigmon, having been found
13 by the jury to be guilty of the offense of murder, the
14 jury has recommended that you, Mr. Sigmon, should be
15 sentence to death. It is therefore the judgment and the
16 law and the sentence of the Court that the defendant be
17 taken to the State Department of Corrections henceforth
18 to be kept in close and safe confinement until the
19 30th day of August, 2002, upon which day, between the
20 hours of six o'clock p.m. and six o'clock a.m., or upon
21 order of execution issued by the South Carolina Supreme
22 Court, the defendant, Brad Keith Sigmon, shall suffer
23 death by electrocution or by lethal injection in the
24 manner provided by law. May God have mercy on your
25 soul.

1 (The defendant exited the courtroom.)

2 THE COURT: All right. Anything else from the
3 State or the defense?

4 MR. ARIAIL: No, Your Honor.

5 THE COURT: If y'all would have a seat, please?
6 All right. Now, what I'm going to do is, I'm sure there
7 is not going to be any problem, but I'm going to ask the
8 Sigmon family and friends if they would go ahead and
9 vacate now, and if you would, go ahead and go all the
10 way out of the courthouse. But y'all need to leave at
11 this time. Thank you very much.

12 (The Sigmon family and friends exited the
13 courtroom.)

14 THE COURT: Yeah, you can leave if you want to. I
15 hate to keep y'all waiting but I would like y'all to
16 wait about five minutes before -- before y'all vacate.
17 I think I probably ought to go ahead and mark the life
18 sentence form I used and the statutory instructions as
19 exhibits in case there's some issue about that. And
20 also the statutory instructions that I submitted to the
21 foreman, I need to have marked as an exhibit, as Court's
22 ID. Let's go ahead and mark my jury letter. Let the
23 record reflect that pursuant to the statute I have gave
24 an oral instruction as well as a written instruction to
25 the jury as far as being contacted by outside forces,

1 outside people regarding their verdict.

2 (Court's Exhibit Numbers 19 through 23 were marked
3 and filed.)

4 (A discussion was held off the record.)

5 THE COURT: All right. Thank y'all for your
6 patience. You're free to go.

7 - - -END OF TRANSCRIPT OF RECORD- - -

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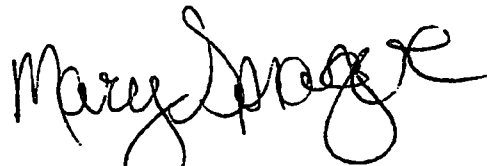
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C E R T I F I C A T E

I, the undersigned Mary E. Sprague, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 15th through the 21st days of July, 2002.

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

June 19, 2003



Mary E. Sprague

Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
02-GS-23-7627, 28, 29, 30, 31, 32

STATE OF SOUTH CAROLINA,)
VS.) COURT TRANSCRIPT
BRAD KEITH SIGMON.)
_____)

DATE: TUESDAY, FEBRUARY 26, 2002

LOCATION: GREENVILLE COUNTY COURTHOUSE
305 East North Street
Greenville, South Carolina 29601

PRESIDING JUDGE: THE HONORABLE JOSEPH J. WATSON

APPEARANCES: GREENVILLE COUNTY ASSISTANT SOLICITOR
Greenville County Solicitor's Office
305 East North Street
Greenville, South Carolina 29601
Attorney for the Plaintiff

JOHN P. ABDALLA, Esquire
FRANK EPPES, Esquire
64 Lake Forest Drive
Greenville, South Carolina 29609
Attorney for Defendant

REPORTED BY: DEBORAH SCHMIDT, CVR
Circuit Court Reporter

ORIGINAL

DEBORAH SCHMIDT, CVR
13th Judicial Circuit, Greenville County
Greenville, South Carolina

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E X H I B I T S

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None marked or admitted

DEBORAH SCHMIDT, CYR
13th Judicial Circuit, Greenville County
Greenville, South Carolina

1

PROCEEDINGS

2

THE COURT: All right. These are you all's motions, Mr.

3

Eppes?

4

MR. EPPES: Yes, Sir, Your Honor.

5

THE COURT: All right. Any particular you want to handle them?

6

7

MR. EPPES: Your Honor, we have -- a lot of them we have an agreement. Mr. Abdalla's going to address several of them.

8

9

THE COURT: All right.

10

MR. EPPES: Pretty quickly I believe.

11

MR. ABDALLA: Your Honor, do you want me to start going down the list?

12

13

THE COURT: Sure.

14

MR. ABDALLA: Okay. Thank you. The State's response to our motion to have a list on the certificate of service, I don't know if you've got a copy of that before you.

15

16

17

THE COURT: Are you talking about the motions -- their responses.

18

19

MR. ABDALLA: Well, yes, Your Honor. I was just going to go in that order. Number two -- beginning with number two, their motion to view -- I mean, their response to our motion to view the crime scene.

20

21

22

23

THE COURT: All right. That's not the order I've got them in, but that's fine.

24

25

MR. ABDALLA: With regard to the motion to view the crime

1 scene, they essentially consent. They just, of course, want
2 to make certain that law enforcement -- they don't lose any
3 security issues.

4 And we, of course, have no problems with that. So we do
5 agree with -- I think we have a consent there. We want the
6 opportunity to go out there with our client. The only thing I
7 would like, Judge, is to make certain we can do this in a
8 timely fashion because this case is closing down quickly.

9 THE COURT: All right. How many crime scenes are there?
10 I don't know anything about the case. So -- all right. So
11 tell me what crime scenes you're talking about. Do I need to
12 get involved in what parameters I set on these things,
13 Solicitor, or --

14 MR. ABDALLA: Well, the other parameter that we're always
15 are concerned about would be the fact that the home is the
16 victim's home. And so we've addressed that somewhat. It's
17 not no longer in the same condition that it was.

18 It's certainly, as the Court can obviously understand,
19 somewhat offensive to the victims to have the Defendant
20 rummaging around in the crime scene. But as long as that
21 security is -- make sure that things aren't touched or moved,
22 just for observation purposes, photographic purposes, we have
23 no objection, and we know the Court would grant that.

24 THE COURT: All right. Then my question is do I set
25 those parameters in an order that they are not to touch

1 anything or is there something that --

2 MR. ABDALLA: We'll do a consent order, Your Honor. We
3 have no desire to disturb anything. We're just going to
4 review it.

5 THE COURT: All right. So --

6 MR. ABDALLA: We're sensitive to the needs of the victim
7 and the desires and --

8 MR. ARIAIL: Then we shouldn't have a problem.

9 THE COURT: All right. And then what about the
10 timeliness of it? I mean, can that be set up within a week?

11 MR. ABDALLA: We'll try to set that up with the
12 Solicitor's office. And, if there's a problem -- and I don't
13 think there will be.

14 THE COURT: Okay. All right. And that's just a house,
15 and you said there are two crime scenes.

16 MR. ABDALLA: The other scene is where the incident is
17 with the -- his -- with -- the shooting took place. But I
18 don't know. We don't need my the client taken out there. But
19 that doesn't involve any third parties other than the police
20 department.

21 THE COURT: Okay. All right.

22 MR. ABDALLA: And they should -- I would assume we could
23 take care of them on the same trip, Your Honor.

24 THE COURT: Okay.

25 MR. ABDALLA: As far as our motion to produce incidents

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1 and supplemental reports, they constructively consented with
2 that, giving us the information that they have an open file.
3 And, of course, we are happy to take advantage of that. I
4 understand they don't have to do it that way --

5 THE COURT: Have you filed discovery in this case?

6 MR. ABDALLA: Pardon?

7 THE COURT: Have you filed discovery?

8 MR. ABDALLA: I believe I filed a Brady motion, Your
9 Honor.

10 THE COURT: You've not filed discovery?

11 MR. ABDALLA: We didn't file anything under -- based on
12 that. We did file anything beyond Brady --

13 THE COURT: Okay.

14 MR. ABDALLA: -- based on they would consent to an open
15 file, that they were going to go ahead and have an open file
16 that they were reviewing it now. The only thing that I'd ask
17 is that this be made available in a timely fashion. And,
18 again, I'll have to get together with the Solicitor and make
19 sure we can do this in a timely manner because, of course,
20 it's worthless if it's made available but it happens days
21 before the trial instead of months before the trial.

22 THE COURT: Well --

23 MR. ABDALLA: I don't see that as --

24 THE COURT: Well, that's fine. I mean I'm not going to
25 submit that to any sort of order. If they want to give it to

1 you, that's their prerogative. If they don't want to give it
2 to you, that's prerogative. In other words, there is no
3 discovery beyond discovery.

4 So, you know, I guess, in essence, I am denying that
5 motion. What private arrangements you all have are fine.
6 But, beyond that, I'm not involved in it.

7 MR. ABDALLA: The next order, Your Honor, is with regard
8 to complete recordations, recording all of the hearings. And
9 they've consented on that.

10 THE COURT: All right. What we'll need to do -- and
11 that's obviously excluding ex-parte matters.

12 MR. ABDALLA: Yes, Your Honor.

13 THE COURT: And we'll just need to make sure that we
14 don't have any bench conferences that are not recorded in the
15 course of the -- in all proceedings.

16 MR. ABDALLA: Well, I don't want to rule out any
17 sidebars.

18 THE COURT: Well -- I mean, that begs a question. I
19 don't -- I don't think we can have a sidebar without being
20 recorded.

21 MR. EPPES: We agree with that, Your Honor.

22 THE COURT: Okay.

23 MR. ABDALLA: The next one is (inaudible) request is
24 Brady. And, again, that goes back to the other. They said
25 they would have an open file policy, and I'm taking them at

1 their word on that.

2 THE COURT: All right. Solicitor, have you complied with
3 Brady to this point as far as you are aware?

4 MR. ARIAIL: As far as we're able to determine, there's
5 nothing exculpatory in this file. To that extent, yes. But
6 we also received some -- a few additional items today that we
7 need to look at before we give the whole file to them. We
8 made our first brush at it, and I think we can comply.

9 THE COURT: Okay.

10 MR. ABDALLA: The next one is involving the request for
11 reveals of grants of immunity, and Mr. Eppes is going to
12 address that one.

13 MR. EPPES: Your Honor.

14 THE COURT: All right. Yes, Sir.

15 MR. EPPES: I've been reading some of the Solicitor's
16 trial work lately, and he does a really good job with
17 witnesses that are alleging co-defendants and explains how
18 he's never been -- he never promised them anything and they've
19 never had any discussions about promising them anything. And
20 then the Defendant that's on trial and will be convicted and,
21 thereafter, the co-defendant, who is not on trial and had not
22 been promised anything, will be let go.

23 And, Your Honor, you know, there's one thing to have an
24 agreement with the Defendant, but I think it also rises to the
25 level of information that we're entitled to under Brady or

1 otherwise when there's a co-defendant and they keep him in
2 jail, and they keep him in jail, and they keep in jail, and
3 they don't promise him anything but they tell his lawyer once
4 your boy testifies we're going to take care of him.

5 And the lawyer knows it, and, presumably, the lawyer's
6 telling the client you got to get on that stand and tell the
7 truth or you're going to have a big problem, and the client
8 goes and does that.

9 Well, if they have a plan to dismiss all counts against a
10 co-defendant -- and this case is absolutely right for that.
11 There's a fellow whose name I can't even pronounce, Gene
12 Saboro or something. He's been in jail since this incident on
13 a charge of accessory before the fact. He's facing a
14 potential life sentence. To my knowledge, there's been no
15 talk with the Solicitor's office about either prosecuting him
16 or anything else. He's just been sitting in jail.

17 Well, if they have a plan to use his testimony at trial
18 and then it's going to be over or something, I need to know
19 it. It's fair that I know that for cross-examination of him.
20 And that's what this motion is about.

21 We'd like -- you know, on that, if we're going to talk to
22 these sort of co-defendants about releasing them after the
23 fact or if they're going to tell their lawyer it, we need to
24 know. And it rises above a written down negotiated plea deal,
25 I means, it's standard practice, and we just -- it's fair that

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1 we know that.

2 And that's what the motions about.

3 THE COURT: All right, Solicitor.

4 MR. ARIAIL: I appreciate Mr. Eppes -- I don't know if
5 it's compliment or --

6 MR. EPPES: It was a compliment.

7 MR. ARIAIL: -- criticism.

8 I don't know too many people I'd just turn loose. We
9 don't have any objection to telling them if we have made a
10 deal or had discussions with him in writing or otherwise with
11 an individual or his attorney that we're going to let someone
12 loose. But, as to going beyond that as to what my intentions
13 may be down the road, I can't -- I can't tell you that. I
14 couldn't tell him that.

15 It may be that somebody does cooperate and, in the course
16 of cooperation, testifies, we make a decision based on that.
17 So all I can say now is that Defendant/co-defendant is charged
18 with accessory before the fact which you well know in this
19 state the consequence (inaudible) principal.

20 So he's in, essentially, the same boat. I've never met
21 with him, never talked to him or talked to his lawyer.

22 THE COURT: Who is his lawyer? Do we know that?

23 MR. ARIAIL: Chris Posey. Mr. Posey. And Mr. Posey may
24 have talked to somebody like Betty or somebody else from my
25 staff.

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1 At this point, everybody is contingent to be a witness.

2 And so very probable, he'll be a witness.

3 THE COURT: Well, obviously, any negotiations go beyond
4 any kind of written negotiations.

5 MR. ARIAIL: Sure.

6 THE COURT: And you agree with that?

7 MR. ARIAIL: Yes, Sir.

8 THE COURT: And so any kind of direct or indirect offer
9 of leniency, you need to let them know.

10 MR. ARIAIL: I will.

11 THE COURT: And that would include -- you know, we'll
12 take you -- if all you're saying is we will take any
13 cooperation into consideration and that's the extent of it,
14 then you need to let them know that. But, beyond that, I
15 don't know what I can give you Mr. Eppes. I mean --

16 MR. EPPES: Your Honor, if you want me to put that in an
17 order, that's fine.

18 THE COURT: That's fine.

19 MR. ARIAIL: Then we have no problem with that.

20 THE COURT: Any negotiations, you know, do not need to be
21 reduced to any kind of written plea agreement. You know, any
22 type of offers of consideration or leniency, the State has to
23 let you know.

24 MR. EPPES: Thank you, Your Honor.

25 THE COURT: All right. I'm going to just mark that one

1 as granted subject to seeing what you put in your order.

2 MR. ARIAIL: Just one clarification on that. That
3 doesn't include offers made and not accepted. In other words,
4 you're talking about arrangements made with the witness so
5 that we can examine his credibility, so they can examine his
6 credibility.

7 THE COURT: Right.

8 MR. ARIAIL: For example, I make him offer of something
9 and he refuses to cooperate and refuses to testify.

10 THE COURT: What are you saying, Mr. Eppes? I mean, I
11 can --

12 MR. EPPES: Your Honor, if he makes -- if he's
13 uncooperative and he refuses to testify, I don't --

14 THE COURT: You're not going to be cross-examining him --

15 MR. EPPES: I'm not going to be cross-examining him
16 anyway.

17 THE COURT: All right.

18 MR. EPPES: Well, if he -- you know, if he's going to
19 take the stand and plead the Fifth Amendment or something, I
20 believe I'd be entitled to the information, but maybe not.

21 THE COURT: Well, we'll see if that happens.

22 MR. EPPES: Okay.

23 THE COURT: I've never seen it in, you know, dozens of
24 years as a judge or prosecutor or defense attorney. All
25 right. What's your next one?

1 MR. ABDALLA: Your Honor, the next one is our request
2 that they file written responses. They consented, but they
3 want twenty days. I'd ask the Court to limit it to ten days
4 unless they just needed more time for that.

5 THE COURT: Again, this assumption -- this is something
6 that is not required by the rules. If they want to respond,
7 that's fine. But I'm not going to require them to do that.
8 And if -- I mean, if there is a particular motion you think
9 that you really need to have, their position on, you know,
10 some days prior to an actual hearing, then the remedy is you
11 can ask me at that time to require them to respond five days
12 before the hearing, three days before the hearing.

13 Your other remedy is move for a continuance until you've
14 seen their written response if I'm going to require a written
15 response. But, you know, whatever they agree to beyond what's
16 required in the rules, that's up to them, and I'm not going to
17 require --

18 MR. ABDALLA: So, I can draft an order that's consistent
19 with what they responded to, say, twenty days; is that
20 correct? And they said they'd apply for more time if the
21 needed it. Have I stated that correctly, Mr. ARIAIL?

22 MR. ARIAIL: Uh-huh.

23 MR. ABDALLA: Our motion requiring extra judicial
24 statements. They've agreed to that pretty much, and they can
25 cite any exceptions they have. I'd like the Court to rule on

1 that saying that extra judicial statements should be barred
2 during this case as we get close to trial time.

3 THE COURT: This is sending somebody into a cell to talk
4 to him?

5 MR. ABDALLA: No, no. No, no.

6 THE COURT: I'm sorry. Are you talking about a gag
7 order?

8 MR. ABDALLA: A gag order essentially, Your Honor.

9 THE COURT: All right. What's -- let me just ask you
10 this. Were you all subject to a gag order in the last case?

11 MR. ARIAIL: We were -- the last case -- the last two,
12 Judge Floyd took the position it was covered by the rules of
13 ethics, and we all complied. Judge Kitterage issued a similar
14 order to this. Either one is fine with us.

15 THE COURT: All right. Why don't you all do this. Why
16 don't you all look at Judge Kittredge's last order. If that
17 suits you all, then send it to me and I'll sign it. I don't -
18 - did this case get a lot of publicity when it happened?

19 MR. ABDALLA: Yes, Your Honor.

20 MR. ARIAIL: Yes, Your Honor.

21 THE COURT: Okay. Then that's fine. I'll look at
22 anything that you consent to to submit to me.

23 MR. ARIAIL: The only caveat we have is in paragraph 4,
24 our response where prior counsel in some of the cases has made
25 a habit of litigating the positive aspects or potential

1 negative aspects. However, you want to look at it in the
2 pleadings that are subject to being published.

3 And we have requested, and I think the general practice
4 has been on the last several occasions, that that sort of
5 unnecessary pleading and statement of facts and allegations
6 should not be part of any motion.

7 THE COURT: That goes both ways. I mean, you could file
8 a twenty-page notice of evidence and aggravation. Now, I can
9 make you all file those things under seal. I can just -- you
10 all can have a gentlemen's agreement. You can address any
11 problems that come up when they come up.

12 You know, the other thing is is you can stand up in
13 hearings like this with all kinds of charts and bloody
14 pictures, I mean, you all -- you know, you're all going to
15 decide -- you're going to have to decide how you're going to
16 do this case if you're going you know be gentlemen about it or
17 not. But --

18 MR. ABDALLA: Your Honor, I don't see any problem with
19 having a gentlemen's agreement. I think Mr. ARIALL will -- we
20 can work out something.

21 THE COURT: All right. So, you're not going to submit
22 any kind of gag order to me. Is that what you're telling me?

23 MR. ABDALLA: We want the gag order. But, as far as his
24 request to any motions we have, if he had a problem with them
25 at that time, we'll maybe do a --

1 THE COURT: Well, it may be too late.

2 MR. ABDALLA: No, we won't do it after the fact. I won't
3 blind side him. I'll have an agreement with him when knows --
4 if I blind side him, it will only happen once and then my
5 credibility will (inaudible). I'm not going to (inaudible).

6 THE COURT: All right. Then submit whatever kind of gag
7 order you consent to, and I'll be glad to sign it, and we'll
8 go from there.

9 MR. ABDALLA: Thank you, Judge. The last issue is
10 regarding the sealing of the visitation log. The only
11 difference we have as far as our position from the State's, as
12 I understood their response, is we want that being sealed.
13 They want the option to have it handed to them at the time of
14 trial so that they can cross-examine witnesses.

15 I take it a step finer than that. I think if a witness
16 takes the stand and this becomes a relevant issue, at that
17 time, I would want the Court to review it and then just turn
18 over to the State those pertinent parts that may reflect on an
19 impeachable situation.

20 For instance, a witness saying, I visited Mr. Sigmon
21 fourteen times and --

22 THE COURT: I'm not going to get into the process of
23 reviewing the credibility of logs and stuff during the course
24 of the trial. What's wrong with just giving it to them?

25 MR. ABDALLA: Your Honor, I -- only witnesses we call.

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1 We don't think it's relevant otherwise. Why would they need
2 it if we're not calling a witness? Why would they need an
3 entire log?

4 THE COURT: I understand that. So what you're saying is
5 -- I assume we're talking about penalty phase witnesses, for
6 the most part?

7 MR. ABDALLA: For the most part.

8 THE COURT: All right. So what are you saying -- at what
9 point in time are you willing to give them the visiting logs -
10 -

11 MR. ABDALLA: I think before we call a witness. If we're
12 -- when we know we're going to call a witness to say, Here you
13 go. We're going to call Fred Smith, and here's the visitor's
14 log in regard to Fred Smith, not with regard to other
15 witnesses.

16 THE COURT: Okay.

17 MR. ARIAIL: That would be fine.

18 THE COURT: Hold on. Let me make some notes. Hold on.
19 Are you going to put this in an order?

20 MR. ABDALLA: Yes, Sir.

21 THE COURT: All right. Hold on a minute.

22 MR. ARIAIL: Ms. Strom is an excellent (inaudible).

23 MS. STROM: Thank you.

24 MR. ARIAIL: She takes very copious notes.

25 MS. STROM: Thank you, Solicitor.

1 THE COURT: All right. What's the next one?

2 MR. ABDALLA: That's it, Your Honor.

3 THE COURT: All right.

4 MR. ARIAIL: Police operatives.

5 THE COURT: What's that?

6 MR. ABDALLA: Oh, I'm sorry. I missed one. I apologize.

7 THE COURT: I assume you're not going to send anyone in
8 the cell with him? He's not under investigation for any other
9 crimes, is he? Is he under investigation for any other
10 crimes?

11 MR. ARIAIL: Could I make my response on this basis, that
12 there are no police occupants or undercover operatives in the
13 vicinity of the Defendant from this time forward. This
14 motion. I'm not agreeing to anything prior to this that's
15 already been done. You know, I don't know how I could agree -
16 - I mean, I would stop that.

17 Secondly, as long as it only relates to this crime,
18 subject to this crime. If it relates to -- if his conduct
19 becomes a subject of another crime, then we would reserve the
20 right to investigate that.

21 THE COURT: I'm trying to read between the lines,
22 Solicitor, but I don't know what you're talking about.

23 MR. ARIAIL: Well, let's assume -- let's assume that he
24 makes a threatening communication inside the jail that he's
25 going to kill one of the witnesses. That's another crime, and

1 we wouldn't want -- we don't want to be hindered from
2 investigating those sorts of allegations.

3 THE COURT: All right.

4 MR. ARIAIL: For the protection of the eyewitness.

5 MR. ABDALLA: Obviously, the State as a right to
6 investigate any crimes ongoing or otherwise. My position --
7 our position is that the State can do that without sending a
8 mole in or investigator to investigate this crime because the
9 Court and we have no way of knowing -- and I'm not accusing
10 them of wrongdoing -- but circumventing the spirit of this rule
11 by saying, We're going to send somebody in there because we
12 think there's something more --

13 THE COURT: Then it would be a violation of my rule if
14 they try to use it in this particular case. And the evidence
15 would not be -- you're protected even if they violate it is
16 what I'm saying.

17 MR. ABDALLA: Okay, Judge. What I want to make sure of
18 is if they're investigating a crime B, not to get any
19 statements relating to crime A.

20 THE COURT: Okay. All right. That motion is granted
21 subject to the very limited possible exception that the
22 Solicitor wants protected.

23 MR. EPPEES: Your Honor, can I just state on the record
24 that to my knowledge there's no evidence of my client making
25 any threats at this time? There may be, but I don't know

1 about it.

2 THE COURT: Sure. You can say it on the record. You've
3 said it on the record. All right. The State has filed
4 request for alibi and insanity defense that was filed February
5 25th. Are you going to respond to that in a timely fashion?

6 MR. EPPES: I'll respond to it right now, Your Honor.

7 THE COURT: All right.

8 MR. EPPES: There is -- after several meetings with my
9 client, there's no reason to think that we need to do that in
10 writing.

11 THE COURT: All right. Well, you need to do that in
12 writing. Even though you put it on the record go ahead and --
13 all right. We need to, while we've got everybody here, talk
14 about when we're going to have jury -- when we're going to
15 decide jury issues.

16 Carolyn, when are we going to send out notices in this
17 case? Is this set for June 17th --

18 MR. ARIAIL: July 15th.

19 THE COURT: Is it July?

20 MR. ARIAIL: 15th.

21 THE COURT: July 15th. When do you send them out? Six
22 weeks ahead? Four weeks ahead? Say the first of June. All
23 right. So sometime towards the end of May we need to resolve
24 questionnaire. I'd like to go ahead and resolve how we're
25 going to pick the jury.

1 And I like to use the three-phase letter. I don't know
2 if other Judges -- have you all been doing that lately? But
3 when the jury comes in, I get -- there's nothing in the voir
4 dire that's sent to them that's death penalty related? Is
5 there -- have you all done any kind of death penalty related
6 voir dire ahead of time?

7 In other words, the questionnaire you send to the jury,
8 any kind of death --

9 MR. ARIAIL: The questionnaire. We have a questionnaire
10 that I've used with Ms. Mauldin the last four. We pretty well
11 -- we agree on it.

12 THE COURT: All right. Have you had time to look at
13 that, Mr. Abdalla, or do you want to --

14 MR. ABDALLA: I haven't seen it.

15 THE COURT: Okay.

16 MR. ARIAIL: We can give them a copy of that.

17 THE COURT: All right.

18 MR. ARIAIL: We can get them a copy of the -- if you
19 like, the last couple of Judges' letters that went out with
20 that. And we can then -- you know, the last case we used,
21 strike as you go.

22 THE COURT: Well --

23 MR. ARIAIL: It saved us about a day.

24 THE COURT: That's only because -- saved you about a day
25 compared to the one you did before that or --

1 MR. ARIAIL: The pool. No, the pool generally seems to
2 take a day longer than strike as you go. That's our
3 experience, but we can talk about all those details later. I
4 assume that's what you mean by that.

5 THE COURT: All right. Here's what I'd like you to do.
6 Let's say, by the 1st of April, you all see if you can agree
7 on the questionnaire that goes to the jury. See if you can
8 agree on my cover letter that will go, too, with that.

9 See if you can agree on what I give them when they come
10 in, which I've got a three-page letter if you want to look at
11 that or it's maybe a two-page letter explaining that's it's a
12 death penalty case. So, the first time they know it's a death
13 penalty case is when they come in on the 15th.

14 And, also, decide if you want to strike blind or use the
15 struck system, blind being as you go and struck getting a pool
16 of thirty-five.

17 There are no racial issues in this case?

18 MR. ARIAIL: Not as far as we know.

19 MR. EPPES: No, Sir.

20 THE COURT: All right. So, if you all can decide on that
21 by, you know, the first of April, then we'll have a head start
22 on those issues.

23 All right. Anything else we need to cover here today?

24 All right. Mr. Sigmon, are you getting access to your
25 attorneys as you need to in the jail?

1 DEFENDANT: Yes, Sir.

2 THE COURT: All right. Mr. Abdalla and Mr. Eppes, is
3 there anything I need to address as far as your access to him,
4 his availability to you?

5 MR. EPPES: No, Sir, Your Honor. The jail has been very
6 cooperative.

7 THE COURT: Any medication issues, anything like that?

8 THE DEFENDANT: Yes.

9 THE COURT: Getting medications as you need them, things
10 like that?

11 MR. EPPES: Your Honor, we're going to talk to our client
12 about that, and we'll get back to you.

13 THE COURT: Okay. Anything else I can address while
14 we're all here? Solicitor?

15 MR. ARIAIL: No, Your Honor.

16 THE COURT: Okay. Thank you very much. Ms. Strom if you
17 would draft an order, please, ma'am?

18 MS. STROM: Yes, Sir.

19 THE COURT: All right.

20 MR. EPPES: Your Honor, can I ask you to write about
21 (inaudible) security?

22 THE COURT: Sure. Ms. Strom, if you would do a second
23 order just setting the trial date, July the 15th. That way we
24 can use that to notify SLED and everybody else.

25 MS. STROM: Yes, Sir.

1 THE COURT: How many jurors you all want? How many do
2 you all usually summons? Three hundred?

3 MR. ARIAIL: No. We've been doing four hundred because
4 of the turn rate. Because we only have -- that was another
5 benefit of strike as you go. We had a 160-something last
6 time. The time before we only got 138.

7 THE COURT: 138. How many are you all losing?

8 MR. ARIAIL: How many do we lose?

9 THE COURT: Yeah. I don't lose many.

10 THE ARIAIL: Well, the last two have -- the last two have
11 done good jobs, and we didn't lose many, and that was very
12 helpful.

13 MS. STROM: If we don't get initial response, then --

14 MR. ARIAIL: We lose so many on initial response. We
15 only get about thirty-five percent.

16 THE COURT: All right. Four Hundred then.

17 MR. ARIAIL: Four Hundred has been plenty. And how many
18 did you say, thirty-five? I thought I heard thirty-five?
19 That's the number?

20 THE COURT: It's either thirty-five or forty-two. It's
21 forty-two.

22 MR. ARIAIL: Forty-two. And --

23 THE COURT: It's thirty-five plus eight for the
24 alternates, right?

25 MR. ARIAIL: The reason it goes a little quicker is you

1 can't -- you don't use all those strikes.

2 THE COURT: Well, I have to think about it because I
3 can't imagine ending up with a batching issue on number.

4 MR. ARIAIL: We figured out how to do that.

5 THE COURT: Well, I try to understand Judge Kittredge's
6 system. But, I mean, quite frankly, I prefer the stuck
7 system.

8 MR. ARIAIL: I don't mean either one.

9 THE COURT: It's a double advantage to you because you
10 can have as many strikes. At least, you know, you can look at
11 it ahead of time.

12 MR. ARIAIL: There's no question it's an advantage to me.
13 I mean, we're at the will of the Court to speed things -- as
14 easy as possible.

15 THE COURT: As a general rule, if you all agree to
16 something, I'm not going to not do that. But you've all have
17 got to decide how you want to pick the jury.

18 MR. ABDALLA: We'll talk about it among ourselves.

19 THE COURT: All right.

20 (PROCEEDING CONCLUDED)

CERTIFICATE OF REPORTER

I, Deborah Schmidt, CVR, Official Circuit Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript is a true, accurate, and complete transcript of record in the trial/hearing of the herein captioned case, relative to appeal, in the Circuit/Family Court for Greenville County, on the 26th day of February, 2002, to the best of my ability.

I further certify that I am neither related to nor counsel for any party to this case or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 18th day of March, 2002, at Greenville, Greenville County, South Carolina.



Deborah Schmidt, CVR
Official Circuit Court Reporter,
Notary Public in for the
State of South Carolina at Large
My Commission expires
January 20, 2008.

DEBORAH SCHMIDT, CVR
13th Judicial Circuit, Greenville County
Greenville, South Carolina

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF GREENVILLE

4
5 STATE OF SOUTH CAROLINA, :

6 :

7 -vs-

:

TRANSCRIPT OF RECORD

8 :

9 BRAD KEITH SIGMON :

:

10
11 June 26, 2002

12 Greenville, South Carolina

13 B E F O R E:

14 HONORABLE JOSEPH J. WATSON, Judge.

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

16 BOB ARIAIL, ESQ.

17 BETTY STROM, ESQ.

18 MINDY HERVEY, ESQ.

19 LORI REESE, ESQ.

20 Attorneys for the Plaintiff

21 FRANK EPPES, ESQ.

22 JOHN ABDALLA, ESQ.

23 Attorneys for the Defendant

24 MARY E. SPRAGUE

25 Court Reporter

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Charge of the Court N/A

1 THE COURT: All right. We're here for the purpose of
2 hearing about 25 or 30 motions, and then to handle jury
3 matters. I suggest we go through the motions, everything,
4 the Jackson v. Deno, see how far we get. Do the Jackson v.
5 Deno last. Have y'all talked about a ---

6 MR. ARIAIL: No.

7 MR. EPPES: No.

8 MR. ARIAIL: Could I just suggest for purposes of the
9 fact that we have four officers here from Gatlingburg,
10 Tennessee, who drove down this morning, that would relate
11 partially to the Jackson v. Deno, that I would like to, if
12 at all possible, do them so we could put them back on the
13 road, back to their jobs if ---

14 THE COURT: Do you want to do them first, is that what
15 you're saying?

16 MR. ARIAIL: I would like to do this first. I think
17 we need to arraign him first, go ahead and get that out the
18 way, and then do the Jackson v. Deno. Of course I will do
19 what Your Honor directs, but ---

20 THE COURT: All right. You got any preference, Mr.
21 Eppes? Mr. Eppes, y'all got any preference on the method,
22 what goes first? Are y'all prepared to do Jackson v. Deno?

23 MR. EPPES: Your Honor, we are prepared for the
24 Jackson v. Deno, I just -- I don't know if I want to go
25 first. I'm sitting here thinking about it. I apologize

1 for that.

2 THE COURT: If there's no compelling reason at this
3 junction ---

4 MR. EPPES: I'm looking for my compelling reason, Your
5 Honor, as I sit here.

6 THE COURT: Are you just trying to find a reason to be
7 contrary to the Solicitor? Are we going to start the case
8 like that, or ---

9 MR. EPPES: Your Honor, I'm not contrary to the
10 Solicitor. We had been contemplating sending an
11 investigator up to Tennessee to talk with those people, and
12 while they're here, we would think it might be an
13 opportunity for our investigator to talk to them while
14 they're here, and I have ---

15 THE COURT: Is your investigator here now?

16 MR. ABDALLA: We'll have him come down.

17 MR. EPPES: He told me he was going to be here about
18 nine o'clock, but he's not here yet. What I would like to
19 do is try to get in touch with him and see if we could get
20 him over here, but other than that, I have no objection to
21 beginning with the Jackson v. Deno hearing regarding ---

22 THE COURT: Somebody call him while we're arraigning
23 him, see if he's on his way. I may give you 30 minutes to
24 talk to him before we do it.

25 MR. EPPES: Thank you.

1 THE COURT: All right. All right. Here's what we're
2 going to do. I'm going -- we're going to do the
3 arraignment, we're going to do jury matters, so I can get
4 her back down to the jury that's here this week, and then
5 we'll decide how we're going to proceed. All right. If
6 you would bring your client forward, Mr. Eppes. Y'all
7 talked with him about the arraignment and his responses?

8 MR. EPPES: Yes, sir, Your Honor.

9 THE COURT: Okay. Madam Clerk ---

10 MS. STROM: Your Honor?

11 THE COURT: Madam Solicitor?

12 MS. STROM: Yes, sir, Your Honor. Under the statute,
13 we are required to serve the defendant with certified
14 copies of his indictments, at least three days prior to
15 trial. I have copies of -- certified copies of these
16 indictments, from which I will serve on the defendant at
17 this time.

18 THE COURT: All right. If you would.

19 MS. STROM: 2001-GS-23-7632, the State versus Brad
20 Keith Sigmon, indictment for grand larceny;
21 2001-GS-23-7627, the State of South Carolina versus Brad
22 Keith Sigmon, indictment for assault and battery with
23 intent to kill; indictment 2001-7628, the State versus Brad
24 Keith Sigmon, indictment for kidnapping and possession of a
25 weapon during the commission of a violent crime;

1 2001-GS-23-7629, the State of South Carolina versus Brad
2 Keith Sigmon, indictment for burglary first degree;
3 2001-GS-23-7630, the State versus Brad Keith Sigmon,
4 indictment for murder; 2001-GS--23-7631, the State of South
5 Carolina versus Brad Keith Sigmon, indictment for murder.
6 Those are all certified copies of the indictments.

7 THE COURT: All right. The record will reflect
8 they've been served on Mr. Sigmon. All right. Madam
9 Clerk, if you will please arraign Mr. Sigmon.

10 THE CLERK: Brad Keith Sigmon, hold up your right hand
11 if you answer to that name.

12 THE COURT: You can put it down.

13 THE CLERK: Indictment number 2001-GS-23-7632 for --
14 charges you with the offense of grand larceny. That Brad
15 Keith Sigmon did, in Greenville County, on or about the 3rd
16 of May, 2001, feloniously take and carry away the personal
17 property of Theresa Horton, of the value of more than
18 \$5,000, described as follows, the 1991 Lazy Days Motorhome
19 with the intent to deprive the owner permanently of such
20 property. This is in violation of 16-13-30 of the South
21 Carolina code of laws, 1976, as amended, sign Betty C.
22 Strom, Solicitor. Do you understand the charges against
23 you?

24 MR. SIGMON: Yes, ma'am.

25 THE CLERK: How did you plead, guilty or not guilty?

1 MR. SIGMON: Not guilty.

2 THE CLERK: Are you ready to come to trial?

3 MR. SIGMON: Yes, ma'am.

4 THE CLERK: How will you be tried?

5 MR. SIGMON: By a jury.

6 THE CLERK: Indictment number 7627 charges you with
7 assault and battery with intent to kill. That you, Brad
8 Keith Sigmon, did, in Greenville County, on or about the
9 27th day of April, 2001, willfully, unlawfully and with
10 malice of forethought commit an assault and battery upon
11 Rebecca Barbare with the intent to kill the said victim.
12 This is in violation of 16-3-620 of the South Carolina code
13 of laws, 1976, as amended, signed Betty C. Strom,
14 Solicitor. Do you understand those charges against you?

15 MR. SIGMON: Yes, ma'am.

16 THE COURT: How did you plead, guilty or not guilty?

17 MR. SIGMON: Not guilty.

18 THE CLERK: Are you ready to come to trial?

19 MR. SIGMON: Yes, ma'am.

20 THE CLERK: How will you be tried?

21 MR. SIGMON: By a jury.

22 THE CLERK: Indictment number 2001-GS-23-7628 charges
23 you with kidnapping and possession of a weapon during the
24 commission of or the attempt to commit a violent crime.
25 Count one, kidnapping, that Brad Keith Sigmon did, in

1 Greenville County, on or about the 27th day of April, 2001,
2 unlawfully seize, abduct, confine, inveigle, decoy or carry
3 away Rebecca Barbare, without the authority of law. This
4 is in violation of section 16-3-910 of the South Carolina
5 code of laws, 1976, as amended. Count two, possession of a
6 weapon during the commission of or the attempt to commit a
7 violent crime. That Brad Keith Sigmon did, in Greenville
8 County, on or about the 27th day of April, 2001, possess or
9 visibly display a revolver during the commission or
10 attempted commission of a violent crime, to wit,
11 kidnapping. This is in violation of section 16-23-490 of
12 the South Carolina code of laws, 1976, as amended, signed
13 Betty C. Strom, Solicitor. Do you understand the charges
14 against you?

15 MR. SIGMON: Yes, ma'am.

16 THE CLERK: How do you plead, guilty or not guilty?

17 MR. SIGMON: Not guilty.

18 THE CLERK: Are you ready to come to trial?

19 MR. SIGMON: Yes, ma'am.

20 THE CLERK: How will you be tried?

21 MR. SIGMON: By a jury.

22 THE CLERK: Case number 2001-7629 charges you with
23 burglary first degree. That Brad Keith Sigmon did, in
24 Greenville County, on or about the 27th day of April, 2001,
25 willfully and unlawfully enter the dwelling of David and

1 Gladys Larke, located at 948 East Darby Road, without
2 consent, with the intent to commit a crime therein, and
3 cause physical injury to persons who were not participants
4 in the crime. This is in violation of 16-11-311 of the
5 South Carolina code of laws as amended, signed Betty C.
6 Strom, Solicitor. Do you understand the charges against
7 you?

8 MR. SIGMON: Yes, ma'am.

9 THE CLERK: How did you plead, guilty or not?

10 MR. SIGMON: Not guilty.

11 THE CLERK: Are you ready to come to trial?

12 MR. SIGMON: Yes, ma'am.

13 THE CLERK: How will you be tried?

14 MR. SIGMON: By a jury.

15 THE CLERK: Indictment number 2001-7630 charges you
16 with murder. That Brad Keith Sigmon did, in Greenville
17 County, on or about the 27th day of April, 2001, unlawfully
18 and with malice of forethought kill David Larke by means of
19 beating him about the head, back, arms and legs, and that
20 David Larke died as a proximate result thereof. This in
21 violation of section 16-3-10 of the South Carolina code of
22 laws as amended, signed Betty C. Strom, Solicitor. Do you
23 understand the charges against you?

24 MR. SIGMON: Yes, ma'am.

25 THE CLERK: How do you plead?

1 MR. SIGMON: Not guilty.

2 THE CLERK: Are you ready to come to trial?

3 MR. SIGMON: Yes, ma'am.

4 THE CLERK: How will you be tried?

5 MR. SIGMON: By a jury.

6 THE CLERK: Case number 2001-GS-23-7631 charges you
7 with murder, that Brad Keith Sigmon did, in Greenville
8 County, on or about the 27th day of April, 2001, unlawfully
9 and with malice of forethought kill Gladys Larke by means
10 of beating her about the head, back, arms and legs, and
11 that Gladys Larke died as a proximate result thereof. This
12 is in violation of code 16-3-10 of the South Carolina code
13 of laws as amended, signed Betty C. Strom, Solicitor. Do
14 you understand the charges against you?

15 MR. SIGMON: Yes, ma'am.

16 THE CLERK: How did you plead, guilty or not guilty?

17 MR. SIGMON: Not guilty.

18 THE CLERK: Are you ready to come to trial?

19 MR. SIGMON: Yes, ma'am.

20 THE CLERK: How will you be tried?

21 MR. SIGMON: By a jury.

22 THE COURT: All right. Thank you, ma'am. You can
23 have a seat. All right. The next thing as I understand
24 it, there are several jurors where the State and defense
25 cannot agree. These are jurors that have requested to be

1 excused, is that correct?

2 MS. PLUMLEY: Yes, sir.

3 THE COURT: We'll just take them one at a time. The
4 numbers are in the right-hand corner?

5 MS. PLUMLEY: Yes, sir.

6 THE COURT: All right. Number 143 looks like is
7 Alexis Hanna. All right. This juror requests to be
8 excused because she's got a child 7 and 10 cannot get -- or
9 does not know if she can get baby-sitters for them, in
10 addition to that, she has vacation scheduled for July 21st
11 through 26th. All right. The State's position is that we
12 go ahead and let her be excused, is that correct?

13 MS. HERVEY: Yes, Your Honor.

14 THE COURT: And the defense does not want her to be
15 excused?

16 MR. EPPES: Your Honor, we've gone through dozens of
17 these so far, and most of the time that is when they have a
18 vacation they give us something, you know, we have plane
19 tickets, it's not this vague, you know, a trip to Keowee.
20 In addition, I would note she works from 8:30 to 2:30 which
21 would seem to me she would have child care during that
22 period, she could get it for the rest of the day. When we
23 -- when we received this request, Your Honor, we really
24 hadn't decided how to go on vacations, because you know,
25 given the weeks of the trial, there is is no way for

1 avoiding interfering with people's vacations.

2 THE COURT: Right.

3 MR. EPPES: And because of that, we didn't excuse her
4 on the first blush.

5 THE COURT: All right. And you still don't want to?
6 I mean, yes, or no, I'm not trying to force you.

7 MR. EPPES: Your Honor, we don't want to.

8 THE COURT: Okay. I agree with you. I don't think
9 that's sufficient. If you will tell her she has to come.
10 You can tell her that, you know, depending on whether she's
11 picked or not, she may be able to make the vacation, but
12 that does not rise to the level of being excused.

13 Number 162. All right. Just the opposite, the State
14 does not want to excuse and the defense wants excused. Are
15 y'all like picking and choosing based on their background,
16 or ---

17 MS. HERVEY: The State will consent, Your Honor.

18 THE COURT: Beg your pardon?

19 MS. HERVEY: The State will consent.

20 THE COURT: Well, I don't think if -- if y'all both
21 agree, then I'll excuse him, but I don't think this rises
22 to the level that I would excuse him.

23 MS. HERVEY: There is a statutory exemption that it
24 will shut down your business. My recollection is that
25 could -- at fist blush it may or may not rise to that level

1 which is why we ---

2 THE COURT: As it stands now, it doesn't rise to that
3 level, but if you want to -- if you say you want him
4 excused, at this point in time I'm going to excuse him.
5 What's your position?

6 MS. HERVEY: Excuse him.

7 THE COURT: All right. This juror is excused. And
8 for the record, y'all agree to that, is that correct?

9 MR. EPPES: Yes, sir, Your Honor.

10 THE COURT: All right. Number 163. All right. Why
11 would she not be entitled to be excused? She's a school
12 administrator on -- she's a school employee, is that not
13 what I'm reading?

14 MS. PLUMLEY: Yes, sir.

15 THE COURT: She'd be entitled to a transfer, not to be
16 excused.

17 MS. HERVEY: Even a -- well, but she's a full-time
18 administrator, I'm not sure she'd even transfer her out of
19 the school year. This is -- she's not a teacher teaching,
20 she is ---

21 THE COURT: She's a school related employee. Tell her
22 to come and I'll hear her when I go do general voir dire,
23 I'll hear her request at that time.

24 All right. Number 173. All right. You don't agree
25 to excuse him, is that correct, Mr. Eppes?

1 MR. EPPEES: No, Your Honor.

2 THE COURT: Or you agree to excuse him?

3 MR. EPPEES: We do agree.

4 THE COURT: All right. I can't imagine that this
5 rises to the level where he should be excused, so I would
6 deny. Tell him to show up, please, ma'am.

7 All right. Number 218. All right. He's showing up.
8 I don't find that that's even close to a reason to be
9 excused. Number 249 -- let me go back to that last one.
10 Does anyone want to put anything on the record as to that
11 last one? What number was that?

12 MS. PLUMLEY: Two eighteen.

13 MS. HERVEY: No, Your Honor.

14 MR. EPPEES: (Shook his head.)

15 THE COURT: Okay. All right. Anybody want to put
16 anything on the record on 249? All right. That does not
17 give -- rise to any level of being excused, so number 249
18 needs to show up.

19 All right. We're on 265, and I don't have what
20 y'all's responses are.

21 MS. PLUMLEY: I'm sorry. On 265, defense agrees,
22 State denies it.

23 THE COURT: All right. Why -- tell me what your
24 position is, Madam Solicitor.

25 MS. HERVEY: We'll withdraw. We'll consent.

1 THE COURT: Okay. All right. I agree she ought to be
2 excused. She's got -- all right. She'll be excused. And
3 y'all agreed to that, correct?

4 MR. EPPES: Yes, sir, Your Honor.

5 THE COURT: All right. Number 347. Did you ask her
6 to give a medical -- any kind of medical justification
7 or ---

8 MS. PLUMLEY: No, sir.

9 THE COURT: All right. All right. Anything the
10 defense wants to say as to this?

11 MR. EPPES: Your Honor, this was, again, one of the
12 earlier ones that we did, and we didn't know how the
13 pattern was going to develop. It just ---

14 THE COURT: Have we got a pattern yet?

15 MR. EPPES: Well, honestly looking at it, I'm inclined
16 to agree with it. I just -- it seems like there ought to
17 be something more from the medical side. I think that's
18 what we're looking for.

19 THE COURT: All right. I agree, if they can present
20 something from the doctor confirming the state of care or
21 the state of the deterioration of health of the
22 grandmother. We're going to hold that one in obedience, ask
23 them to send something from the grandmother's doctor as to
24 her.

25 MS. PLUMLEY: I didn't look at the doctors first, I

1 was looking at the income, because she was going ---

2 THE COURT: Yeah, the income is not an excuse. The
3 taking care of the grandmama is -- would be an excuse if
4 they can confirm it. All right. That's all we got
5 contested at this time.

6 MS. PLUMLEY: I had one that I gave them this morning,
7 which was the first time. I don't know if they want to do
8 that one now or wait.

9 THE COURT: What do you want? What have you got?

10 MS. HERVEY: Well, I got that -- I thought we
11 disagreed on 127? Did we agree and not agree? That was
12 originally on Andrea's list, and I didn't know if we
13 skipped one or not.

14 MS. PLUMLEY: What number, 127?

15 MS. HERVEY: Yeah.

16 MS. PLUMLEY: He pulled his request.

17 MS. HERVEY: Oh, that's the one. Okay. Fifty-six, I
18 agree, he's got travel plans.

19 THE COURT: Fifty-six?

20 MS. HERVEY: Um-hm.

21 THE COURT: Is that the one you had this morning?

22 MS. HERVEY: The one she handed us this morning.

23 THE COURT: Okay. Have y'all ---

24 MR. EPPES: I'm looking at it right now, Your Honor.
25 He appears to have ticket from July 28th, and since that

1 may ---

2 THE COURT: Did he send copies of them?

3 MR. EPPES: There's a copy on the second page.

4 THE COURT: All right. What y'all's position on 56,
5 Madam Solicitor?

6 MS. HERVEY: We'll consent.

7 MR. EPPES: We'll consent.

8 THE COURT: All right. He's excused. All right.
9 Now, is your investigator here or coming?

10 MR. EPPES: He's on his way.

11 MR. ABDALLA: Should be here within about 30 minutes
12 is my understanding, Your Honor.

13 THE COURT: All right. How long do you think he's
14 going to need to talk to these witnesses?

15 MR. EPPES: Half hour.

16 THE COURT: Okay.

17 MR. ARIAIL: Your Honor, it seems to me from a
18 practical standpoint, that it would be a whole lot easier
19 for him to talk to these people, and a whole lot more
20 intelligent conversation if I put them on the witness stand
21 and ask them the questions and relate the scenario, so at
22 least he'll know what areas to talk to them about, rather
23 than spending time just wondering around fishing as to what
24 they may know.

25 THE COURT: I'm going to defer to the defense on this.

1 If they want to talk ahead of time, that's fine.

2 MR. EPPES: Your Honor -- Your Honor, we would like an
3 opportunity to have our investigator here to speak with
4 them briefly ahead of time then perhaps more after.

5 THE COURT: Okay. Then assuming he gets here by
6 10:15, I'm going to do that. And whoever the witnesses
7 are, I apologize, but I'm going -- that's my ruling.

8 Yes, ma'am.

9 MS. HERVEY: Can I just briefly report to the Court
10 two things? There is a juror, number 382, who indicated he
11 had a record, and he's currently an inmate in SCDC. We've
12 confirmed that, and I will provide documentation of the
13 same to the Court. Also, number 339 ---

14 THE COURT: We can transport him up here. He can
15 serve. Go ahead.

16 MS. HERVEY: Well, considering I put him there, I'm
17 not sure we'd want him out of jail.

18 THE COURT: Go ahead.

19 MR. EPPES: Your Honor, we'll stipulate he's okay.

20 MS. HERVEY: Number 339, Jerome Sweeney, also
21 indicated he had a CDV fourth. He also has a burglary
22 charge and numerous other offenses that would exclude him.

23 THE COURT: Convictions?

24 MS. HERVEY: Yes, Your Honor.

25 THE COURT: All right. If you would, what you're

1 going to have to do is provide them to the defense, and if
2 they agree then sign off on it, and I don't even need to
3 look at it. If you don't agree then bring it to me.

4 MS. HERVEY: All right. There is one, Jeremy -- Jamie
5 Sherman that indicates he has a drug charge. Our records
6 indicate ---

7 THE COURT: Indicates what?

8 MS. HERVEY: Has a drug -- a felony drug charge is
9 what a post-it note affixed to it says. Our records
10 indicate he does not. So I don't know if we need to get
11 clarification, if that's pending. His wrap sheet does not
12 indicate, he indicates. He once had a charge, but it was
13 nolle prossed. So I do not know the status of that. I will
14 provide all three copies of documentation to Andrea by the
15 end of the day.

16 THE COURT: Well, we can probably handle -- go ahead
17 and if you can't agree, just go ahead and have him come in
18 and we'll handle it on Monday the 15th. Okay. Anything
19 else?

20 MS. HERVEY: No. That's it.

21 THE COURT: All right. You're excused. All right.
22 What I intend to do, folks, is I'm going to do them
23 chronologically. This is the way I organized them, since
24 the defense got their motions to me first, is go in order
25 of y'all's letter dated June the 7th, 1, 2, 3, and I've

1 numbered my motions that way. The first motion is -- the
2 first motion is to choose a jury via the strike system.
3 Mr. Eppes?

4 MR. ABDALLA: Your Honor, I'll take that as far as the
5 strikes.

6 THE COURT: Okay. Mr. Abdalla.

7 MR. ABDALLA: First of all ---

8 THE COURT: Let me just -- I've read your motions. I
9 know the reasons you want to do it. Tell me how -- and I
10 expressed to both sides in our last meeting my concerns
11 about Batson issues. And I understand there's less of a
12 chance having Batson issues in this case, but how -- if you
13 strike as you go and I know y'all did this, or Mr. Mauldin
14 and the Solicitor did this with the last death penalty
15 case. As I understand what you did was you voir dired
16 them, assuming they were qualified, they then stepped out,
17 and then you struck at that time. Yes or no?

18 MR. ABDALLA: Correct.

19 THE COURT: And then you made a preliminary Batson
20 motions at that time, I guess, and then that juror did not
21 know if they were going to sit or not?

22 MR. ABDALLA: That's correct, Your Honor. My
23 understanding, if I could just explain, as I understand it,
24 and of course they were there with Mr. Mauldin.

25 MR. ARIAIL: They did know they were going to sit.

1 THE COURT: They knew they were going to sit? All
2 right. And so the one -- my question is, the ones that
3 were struck, what were they told? In other words, if one
4 side struck somebody, you've got to preserve them for the
5 pool in the future, so how did you do that?

6 MR. ARIAIL: They were told they were still qualified
7 and that we would be back with him.

8 THE COURT: Were they told they were struck?

9 MR. ARIAIL: No.

10 MR. ABDALLA: They were held in limbo in essence, Your
11 Honor, as I understand it.

12 THE COURT: But the ones that were actually chosen
13 were actually told at that time?

14 MR. ARIAIL: Yes. And that was the problem -- that's
15 the problem I had with it, because the increased potential
16 for outside influence and just all matters of other things,
17 because they know they're on the jury. We objected to that
18 portion of it, but Judge Kittredge went ahead with that
19 sort of ---

20 THE COURT: All right. And so let's say that you got
21 a jury in less than 35 jurors, okay? You know, and lets
22 say then that there's a legitimate Batson problem. In
23 other words, you pick a jury not using all your strikes,
24 and then there is a legitimate Batson issue. What do y'all
25 propose we do? Just keep qualifying? I mean, but you --

1 there's nothing to say you can only -- say the defense only
2 used seven strikes the first time and we've got to
3 restrike, they would be entitled to use 10 next time, I
4 don't have enough jurors, so what do you do about that?

5 MR. ABDALLA: Are you saying the jury panel has
6 already been selected, and we've already got the 12 jurors?
7 Or am I misunderstanding?

8 THE COURT: We've got 12 jurors.

9 MR. ABDALLA: Correct.

10 THE COURT: You make a Batson motion, or the State
11 does, and I sustain it.

12 MR. ABDALLA: All right.

13 THE COURT: So we restrike, and then we restrike and
14 each side uses -- or one side uses more strikes than they
15 did before, then we don't have enough jurors.

16 MR. ABDALLA: No, as I understand it, Your Honor,
17 let's just say there was one juror that was going to be at
18 issue, and I think in this case you're going to have few
19 Batson challenges, but just for the sake of argument, we've
20 gone through and juror number five was accepted by the
21 defense and stricken by the prosecution, and we -- after
22 the juror leaves, we say we have a Batson issue.

23 THE COURT: Right.

24 MR. ABDALLA: That juror could be brought back in and
25 told they're part of the panel. They're a qualified juror.

1 All qualified jurors, I don't see a reason why they can't
2 be together. Now, once we get to the 12th juror, we have
3 to settle the issue or we have to replace that 12th juror,
4 and exempt them. I see no point in having to go through
5 the other 11, because there's only one juror that's going
6 to be a different juror.

7 THE COURT: So you're -- wait a minute. So you're
8 saying that -- you have to restrike the whole thing,
9 according to Jones, don't you? I thought you had -- I
10 thought the procedure was -- Mr. Mauldin, Mr. Ghent, y'all
11 want to help us here? Do you want to participate in the
12 hybrid system, Mr. Ghent or Mr. Mauldin?

13 MR. ARIAIL: There's one other problem too.

14 THE COURT: Well, let's handle this problem first.

15 MR. ARIAIL: Related to this problem.

16 THE COURT: All right. What's that?

17 MR. ARIAIL: And that is if they take their usual
18 tactic and strike specific categories of people, that leads
19 to a broad number of people that have been stricken, that
20 raises a Batson motion. So not only do you have one juror
21 but you have about 10 or 12 that have been stricken for the
22 wrong reason, and then you've got to include them back in
23 the pool. That was ---

24 THE COURT: Well, the whole point is, I don't think
25 you just replace that one juror.

1 MR. ARIAIL: That's right.

2 THE COURT: I think you restrike the whole thing. And
3 there's nothing that requires either side to take the same
4 ones. I mean, you just completely restrike. Now, you
5 can't -- you would be prohibited from striking that one
6 juror that I rule one in the Batson, but you could then go
7 back and strike others, could you not? Mr. Mauldin?

8 MR. MAULDIN: Just as a friend of the Court, Your
9 Honor. The way that you would solve that is that even
10 those who were struck and not -- if you're talking about
11 the ones that were struck but not challenged, you know,
12 they, in our trial, were sent home and ---

13 THE COURT: They weren't qualified to come back?

14 MR. MAULDIN: They were qualified as jurors. They
15 were struck by one side or the other and there was no
16 preliminary Batson made, that juror was essentially excused
17 and allowed to go home. Now, that I think does tread
18 somewhat of a danger.

19 THE COURT: I agree.

20 MR. MAULDIN: All right. That is easily solved. If
21 the juror is qualified by you and struck by either side,
22 they are brought back into the courtroom and told you are
23 qualified to be in the panel from which the trial jury will
24 be chosen. You can tell that to every single one of the
25 jurors.

1 THE COURT: Right.

2 MR. MAULDIN: And that way you retain that group.

3 THE COURT: I understand that.

4 MR. MAULDIN: And then ---

5 THE COURT: But then ---

6 MR. MAULDIN: --- with regard to running out of
7 jurors ---

8 THE COURT: Right, that's the problem.

9 MR. MAULDIN: No, that's not a problem either.

10 THE COURT: Why?

11 MR. MAULDIN: Because when you get your qualified
12 group and your striking along, and let's say you good to
13 the point where you have your 12 jurors, you still have got
14 all of those panels still yet to come in that ---

15 THE COURT: That's what I'm -- I understand that. I
16 understand that. But what I'm saying, I sustain a Batson
17 motion, and then there are not enough jurors to pick. Then
18 we have to have -- then we have to restrike, and let's say
19 people use more, then we have to stop and start qualifying
20 again.

21 MR. MAULDIN: But that -- in a strike as you go,
22 that -- that would take a moment.

23 THE COURT: No, it wouldn't.

24 MR. MAULDIN: Yeah, it would, because you -- you have
25 sustained a Batson, you sustained the Batson challenge.

1 THE COURT: Right.

2 MR. MAULDIN: You say we're going to restrike. We're
3 going to restrike right now.

4 THE COURT: So we're going to restrike right now.

5 MR. MAULDIN: All right.

6 THE COURT: And then -- and so we do that and then we
7 don't have enough jurors, so we set the whole system aside
8 and go back to our panels and start requalifying to get to
9 the number we need.

10 MR. MAULDIN: Oh, I see. I see. The -- so the
11 solution -- well, but the strikes have to be acted upon as
12 the juror is presented. So that really does -- I mean,
13 that's the way it would be anyway. That's the ---

14 THE COURT: But -- but it doesn't matter because I
15 then have -- I know I've got enough in the panel if I do it
16 under the struck method.

17 MR. MAULDIN: Let's say -- let's say you went through
18 the first system, you sustained a Batson strike, and then
19 you went back through and only had 9 trial jurors.

20 THE COURT: Right.

21 MR. MAULDIN: All right. And then you -- you've got 9
22 trial jurors. You bring in the next panel, and you strike
23 them as you go. That's why you call it that.

24 THE COURT: All right. Like I said, I thought there
25 were going to be problems. All right. Let me hear from

1 you, Mr. Abdalla.

2 MR. ABDALLA: Your Honor, I think for the reasons that
3 Mr. Mauldin stated much more eloquently than I was able to,
4 there's no reason not to go strike as you go. It's been
5 fine with the Solicitor, as has been induced in the prior
6 motions hearing and gone along with it. I understand this
7 is within your discretion, and for those reasons, since we
8 have all of the problems solved, I believe we do, I don't
9 see that there's any reason we can't select ---

10 THE COURT: I don't -- all y'all have done is confirm
11 that we could have some -- some problems.

12 MR. ABDALLA: Judge, how could that be any different
13 than using the whole panel? It would still take much less
14 time.

15 THE COURT: I don't know if it's going to take less
16 time. I mean, why not qualify 35 or 39 and then strike,
17 and that way you know you've got enough? All right.
18 Anything else y'all want to say to that issue?

19 MR. ABDALLA: Let me have one more moment, Your Honor.
20 Only thing I'd say, Your Honor, is that every time striking
21 as you go has been used, it's gone more quickly and there's
22 no problem with the preservation of appeal issues, because
23 I know that was mentioned in chambers. There's no
24 appellate issues from the defendant because the defendant
25 is waiving anything to go forward this way. This is by the

1 defendant's -- under the defendant's motion.

2 THE COURT: Yeah. I'm not worried about that issue.
3 All right. Anything the State wants to add?

4 MR. ARIAIL: I just concur with you. We've done it
5 both ways. We've thought the later try as you go would be
6 more effective in time reduction, that's truly a function
7 of the judge, whether or not he is handling it, and it's
8 not that -- it's not that much more effective in time
9 reduction.

10 THE COURT: Let me ask this. How many -- how many
11 jurors did y'all qualify doing -- how many strikes did
12 y'all use in the last case, do you have any idea? How many
13 strikes did the State use?

14 MR. ARIAIL: We each had one left. I think we used,
15 about -- my recollection is about 35.

16 THE COURT: Okay. So you actually qualified the same
17 number?

18 MR. ARIAIL: About. Except some judges want it run on
19 up to the -- to 35, 36 including the alternates.

20 THE COURT: Thirty-five would include two alternates.

21 MR. ARIAIL: We had four.

22 THE COURT: Thirty-nine would include three.

23 MR. ARIAIL: We had four. For whatever reason we were
24 able to do it a little bit quicker, but a lot of that also
25 had to do with the fact that the judge was a little bit

1 quicker in the way we did things than has done in the
2 previous. So as a result of that, I'm not -- and we've
3 received the same sentence under both methods. So it's not
4 that we are prejudiced one way or the other. We just think
5 in looking at it, particularly in light of experience, we
6 think you better go with the panel.

7 THE COURT: Okay. Anything else? All right. I'm
8 going to -- I'll take this one under advisement. I'll let
9 you know. I'll talk with Judge Kittredge. If anybody
10 wants to submit anything to me, if the defense wants to
11 submit anything to me as far as -- as this not being
12 discretionary, or you know, that it somehow violates your
13 client's rights, then you need to do that. Let's do that
14 within a week.

15 All right. Allow the defendant to present evidence in
16 penalty phase regarding relative cost of a jury trial and
17 incarceration for life without possibility of parole. Is
18 that you?

19 MR. EPPES: Yes, sir, Your Honor. Your Honor, that
20 argument is very -- is very simply. As I believe Your
21 Honor is familiar with the study in the State of North
22 Carolina, which indicates that the relative cost of -- of
23 pursuing a death penalty vis-a-vis life without parole is
24 approximately 2.1 million dollars per inmate.

25 Your Honor, before we went to the effort of finding an

1 expert and making a proffer on that, we were seeking a
2 ruling from the Court based upon what we believe would be
3 our expert's legal research on that. We've submitted an
4 executive summary of that research. The paper itself is
5 104 pages long. I'll be happy to get that to you if you
6 would like to see it. The issue is very simple, Your
7 Honor. Under the holdings of the United States Supreme
8 Court in Lockeden (phonetically) and elsewhere, we have a
9 right to put in any non-statutory mitigating damage that is
10 relevant to the decision of the jury.

11 As Your Honor is well aware, jurors look at many
12 things when they go through their decision on whether or
13 not to give the death penalty, and one of the things that
14 has come up time and again in jury research and elsewhere
15 that the jurors say is, well, if we kill him it wouldn't
16 cost as much money as leaving him in prison. In fact, that
17 belief by jurors is completely wrong. In order to correct
18 that, we believe that we are entitled under Lockeden as
19 progeny to put in evidence that it is in fact cheaper to
20 keep somebody in prison than the overall costs of appeals,
21 and care, and everything for execution.

22 It's a very simple issue, Your Honor, and frankly we
23 would like to submit it to the Court this way rather than,
24 you know, with a proffer, which frankly would cost more as
25 well.

1 THE COURT: When you talk about death penalty costs,
2 are you talking about the cost of trial, the cost of
3 appeals, how ---

4 MR. EPPES: The cost of everything, trial, appeals,
5 everything.

6 THE COURT: Well, we're going to have a trial and
7 appeals anyway. So I mean, unless he's found not guilty,
8 there wouldn't be an appeal. So how's that's going to ---

9 MR. EPPES: Well, life without parole is cheaper.
10 It's just in fact cheaper.

11 THE COURT: Well, but -- all right. You're saying
12 that it costs 2.16 million dollars?

13 MR. EPPES: More.

14 THE COURT: All right. You're going to have a trial
15 anyway, so what part of that 2.16 million is the trial --
16 are you going to have under either scenario, is what I'm
17 saying? How are you going to break them apart? Not that
18 I'm going to let you do it, this is just ---

19 MR. EPPES: Well, Your Honor, that's why we want to
20 submit an expert to testify about it, because I believe the
21 evidence is relevant. We believe you could break it apart.

22 THE COURT: All right. State's position?

23 MR. ARIAIL: Let -- my first reaction is that here's
24 one these bootstrap arguments. You know, he says, okay,
25 the jury is over here speculating that it's cheaper to

1 execute this person, so therefore we'll -- we're cost
2 conscientious tax-payers, so therefore we execute him. I
3 don't know a factual basis for that, and I have
4 interviewed, and discussed, and questioned, and talked, and
5 presented questionnaires to every death penalty jury I've
6 had and that issue has never been discussed.

7 THE COURT: You're allowed to do that?

8 MR. ARIAIL: Yes, I am.

9 THE COURT: All right.

10 MR. ARIAIL: But beyond that, the issue is if that's
11 what he's concerned about, then all of this evidence is not
12 doing anything but injecting that exact point in front of
13 the jury, you need to consider what's the cheapest and best
14 way. That's what he wants to argue. It's cheaper to keep
15 him alive -- or it's cheaper to keep him alive than it is
16 to execute him, you're not saving any money. And that's
17 injecting into the record the exact issue that he bases his
18 whole argument on, what's wrong with the system, and so I
19 say what they're doing is we are -- we are allowing the
20 jury to review a legislative decision.

21 The Legislature has considered these matters and
22 determined that it's Constitutional and it's appropriate to
23 have the death penalty in this state. Cost is not an
24 issue. The Legislature has said, regardless of what the
25 cost is, the State believe that's an appropriate

1 punishment. So I would submit that, one, it's not
2 relevant. It's a Legislative matter. And three, you're
3 cluttering this record with irrelevant and I believe highly
4 prejudicial material. If I had stood up and suggested that
5 I was going to put that -- I believe they would come out of
6 their chair, because that's not the kind of evidence you
7 want in a trial.

8 THE COURT: All right. Anything else anybody wants to
9 add to this issue?

10 MR. EPPES: Your Honor, the Solicitor's response
11 underlies the problem we have. We have jurors who are
12 layman. Layman's decisions go -- cover the gammet of
13 everything that people can consider in a case. If we have
14 layman in Greenville County, they worry more about taxes
15 than anything in the world. If we have layman that are
16 going to worry about how much it's going to cost, we ought
17 to be able to pacify that concern. If the Solicitor wants
18 to just do a charge that the jury is not allowed to concern
19 themselves with that, I would withdraw this and take a
20 charge that just said the jury is not allowed to consider
21 the costs, and for their purposes the costs of life in
22 imprisonment and the cost of execution is comparable.

23 THE COURT: All right. Anything else? All right.
24 I'm going to respectfully deny your motion to present such
25 testimony. I'm going to find that it is irrelevant to the

1 decision making process of the jury if we get to the
2 penalty phase. If you want to submit a proposed charge on
3 that issue, I'll consider it, but send it to the Solicitor
4 too and we'll take a look at it. I assume that you're not
5 going to argue anything as far as cost, Solicitor?

6 MR. ARIAIL: No, sir. Never have.

7 THE COURT: All right. Let me -- I'll make part of
8 the order that you can't argue that. All right. The third
9 motion is a motion for production, produce any and all
10 information in possession of the State regarding
11 expressions by members of the public regarding the
12 prosecution of this defendant. Who's going to argue that?

13 MR. EPPES: Your Honor, it's a very simple motion. As
14 we go look through the jury voir dire we have concern that
15 there has been correspondence with the Prosecutor with the
16 police, from people that say, I know that guy, he needs to
17 die, things like that. The Solicitor has said they would
18 -- they would let us know if that person -- if somebody
19 wrote something like that that was part of venire. We
20 believe that it's broader than that. We believe that if
21 there are people that have been expressed an interest in
22 the case, expressed concern in the case to the Prosecution,
23 that we're entitled to look to it to make sure they're not
24 related to anybody on the venire, and to make sure they
25 don't have any relationship with them, and we believe we're

1 entitled to that information.

2 THE COURT: All right. So you're saying if somebody
3 on venire contacted you, you're going to give it to them
4 obviously? Is that what you're saying they said?

5 MR. EPPE: Yes, sir. Yes, sir, that's what they're
6 saying.

7 MR. ARIAIL: I thought we already agreed we would have
8 an obligation to someone on the venire. I don't know about
9 this other.

10 THE COURT: All right. I'm just confirming that.
11 So then the issue is if you've been contacted like in a
12 case -- a prior case, when there were petitions passed
13 around, we want you to seek the death penalty, stuff like
14 that, you're asking to have a list of all these people who
15 signed, who made any kind of contact with the Solicitor's
16 office?

17 MR. EPPE: Yes, sir, Your Honor.

18 THE COURT: All right. And what's y'all's position on
19 that?

20 MR. ARIAIL: I guess the simple answer is that I don't
21 know of any.

22 THE COURT: All right.

23 MR. ARIAIL: I don't know that the issue is an issue.

24 THE COURT: Well, have y'all gotten any kind of -- has
25 there been any kind of large public -- any meetings in the

1 community, anything like that, associated with this case?

2 MR. ARIAIL: Not that I'm aware of. We've received no
3 letters, no petitions, no ---

4 THE COURT: All right. Other than contact with the
5 family, are you aware of any contact from neighbors,
6 anything like that? I mean ---

7 MR. ARIAIL: Contact of?

8 THE COURT: From the family of the victims, other than
9 contacts from family of the victims, have you had any kind
10 of contact?

11 MR. ARIAIL: Contact to me or my office?

12 THE COURT: Right.

13 MR. ARIAIL: Unsolicited contact? I mean, I'm not
14 sure ---

15 THE COURT: Okay. Right, I'm not talking about you
16 going out and finding witnesses, unsolicited contacts about
17 this case?

18 MR. ARIAIL: Well, let me give you an example of the
19 other kind of contact.

20 THE COURT: Okay.

21 MR. ARIAIL: I go -- I go to a function and somebody
22 says, you know, glad to see you back out, you're color
23 looks good, what you going to do next, you know, one of
24 those comments. And I say, well, I'm going to try a case
25 on July 15th, it's a death penalty case, and you know.

1 THE COURT: That's not the kind of contact we're
2 talking about.

3 NR, ARIAIL: And then that person says, what's the
4 case about. And I say, it's the one that occurred so and
5 so. And they say, oh, yeah, I remember that one. Okay.
6 That kind of contact ---

7 THE COURT: No, we're not talking about casual social
8 contact. We're talking about contact initiated by somebody
9 on the outside with expressing an interest in this case.

10 MR. ARIAIL: I know of none. We know of none.

11 THE COURT: All right. If you get some in the future,
12 what's your position on telling the defense, we got a
13 letter from Joe Shmoe (phonetically), who's a neighbor in
14 the neighborhood where this happened, who says go get them,
15 Solicitor, you know?

16 MR. ARIAIL: As long as it's mutual, I got no
17 objection to giving it to them, as long as they got -- you
18 know, every petition they get, or every card they get, you
19 know, how Ms. Nwangaza will -- not in this type of case,
20 she has selective cases she works in, in those types of
21 cases, if there's cards coming in from professors from
22 Furman University opposed to the death penalty, I get a lot
23 of those, you know, saying you're going to hell for seeking
24 the death penalty, and quote ---.

25 THE COURT: From Furman professors?

1 MR. ARIAIL: Yes, sir.

2 THE COURT: My alma mater?

3 MR. ARIAIL: Yes, your alma mater.

4 THE COURT: I thought they were pretty conservative
5 out there.

6 MR. ARIAIL: But if they agree to give ---

7 THE COURT: All right. What's your position on being
8 reciprocity?

9 MR. EPPES: Your Honor, if somebody called or writes
10 and says I have information that's relevant to the case, I
11 don't believe we have an obligation. If somebody calls or
12 writes and says, boy, I really don't like the death
13 penalty, I'm going to help you any way I can, I'll turn it
14 over to them.

15 THE COURT: All right. Then we'll make it -- have you
16 gotten any so far?

17 MR. EPPES: No, sir, we have not.

18 THE COURT: Then I'll make it recipicol. Both sides
19 are -- unsolicited contacts, outside of family members, and
20 outside of, you know, fact witnesses, then both sides agree
21 they're going to turn those -- notify the other side of
22 those contacts.

23 To disqualify all potential jurors who knew or are
24 acquainted with the victims or the family. Anything you
25 want to put on the record as to that motion?

1 MR. EPPES: Your Honor, this -- this motion, as Your
2 Honor is well aware, there's two families involved here.
3 They both live in the same community. It's a small
4 community. It's near where I grew up. And Your Honor, the
5 best way to say it is, up there there in that community
6 virtually everybody has an opinion about the case, and we
7 just -- I had concerns personally because I know that these
8 families stretch over into acquaintances of mine, and I've
9 heard of it somewhat, and I can't keep track of all the
10 family relations. I know we haven't been able to track
11 them all down, but we believe that we should -- that we
12 should have an opportunity to make sure that there's nobody
13 on the jury that has that sort of family relationship or
14 close relationship with the victims, just like the State
15 should have the same right as far as the defendant. And we
16 made that motion, as I said, because of the intertwined
17 nature of these families and this community, and we would
18 request that you considerate granting it.

19 THE COURT: All right. I'm going to respectfully deny
20 that motion. Now, you know, I'll cite as an authority,
21 State v. Joan which is a case where, you know, a juror
22 actually knew the murder victim personally and that was not
23 an automatic disqualification. I think voir dire will take
24 care of any of your worries. If you want to submit any
25 specific questions for me to ask the jury panel in my voir

1 dire, you know, about knowledge of the case, about
2 knowledge of the families, then I will consider that, but
3 to blanket disqualify anybody who knows a family member, or
4 is acquainted with the family would be over broad.

5 All right. Recognizing this case is a life without
6 parol case, anybody need to be heard on that?

7 MR. EPPES: Your Honor, I believe the Solicitor has
8 consented.

9 THE COURT: I mean, I think that's the law. I mean,
10 I've got -- all right. That motion is granted.

11 All right. Prevent death qualification of the jury in
12 the innocence phase of the trial. You want to empanel a
13 new jury after the first one?

14 MR. EPPES: Your Honor, yes.

15 THE COURT: Okay. Anybody -- do you want to put
16 anything on the record on that one?

17 MR. EPPES: Your Honor, we believe that the way the
18 system is set up -- Your Honor, could I join this with our
19 motion to quash? It would be easier for me to argue.

20 THE COURT: Quash what?

21 MR. EPPES: The death penalty notice of this case.

22 THE COURT: All right. What number is that?

23 MR. EPPES: Thirteen.

24 THE COURT: All right. Hit me with it.

25 MR. EPPES: Your Honor, it's -- the problem that both

1 of these motions as well -- as well as motion number 15 for
2 a jury instruction regarding the defendant's right to a
3 jury trial for sentencing, is a problem with the statute.
4 The South Carolina Legislature has created this two tiered
5 statute, and they've tinkered with it and gerry-rigged
6 (phonetically) it a little bit to a way that -- that makes
7 it unfair to the defendant.

8 And Your Honor, what we have is we have a situation
9 where the statute requires that there be an adjudication or
10 a conviction for guilt, and then it says in the statute,
11 upon conviction or adjudication of the guilt of a defendant
12 of murder, the Court shall conduct a separate sentencing
13 proceeding. That's the first sentence of 16-3-20.

14 Now, what they've set up is they've set up a situation
15 where guilt is over here and then the sentence is over
16 here, and it's always been troubling, because you have one
17 set of facts for the guilt, and as Your Honor knows, all
18 the elements of the crime charges my client is charged
19 with, that's five or six, and he's confessed to every one
20 of them, as we're going to talk about in Jackson v. Deno
21 later today. He's confessed to every one of them. So the
22 defense is put in this quandary where we have a guilt
23 phase, and we have a sentencing phase. They're recognized
24 by the Legislature. They're two completely separate
25 phases, and to get to the sentencing phase you've got to go

1 through the guilt phase. Now, the Legislature was tricky
2 in that, and this is probably the place where the problem
3 occurs. The Legislature says, well, if you concede your
4 guilt, if you say you're guilty ---

5 THE COURT: Right.

6 MR. EPPES: --- then the judge decides the sentencing
7 phase. And it's always been troubling, and I know Mr.
8 Mauldin has fought motions on this on every death penalty
9 case he had to. It's troubling. We've asked to quash the
10 notice because of that. And we asked to not qualify the
11 jury because of that quandary. And Monday, the United
12 States Supreme Court in Ring v. Arizona identified the
13 quandary and ruled that it was wrong, that it was unfair.
14 Your Honor, I don't know if you've seen the case yet.

15 THE COURT: I have not.

16 MR. EPPES: Well, here's a copy. Your Honor, this is
17 Ring v. Arizona. Ring v. Arizona was decided Monday.
18 Ruined my vacation a day early. And I read it yesterday,
19 Your Honor, and the holding of the Court, which is found on
20 page 4 of that. It's actually at the least sentence before
21 Roman Number I. It says, capital defendants, no less than
22 non-capital defendants, are entitled to a jury
23 determination of any fact on which the Legislature
24 conditions an increase in their maximum punishment.

25 Now, the Supreme Court, in Arizona, Arizona has a

1 little different situation. In Arizona you have a guilt
2 phase, and then the jury decide whether you're guilty or
3 innocent. Then you go to the penalty phase and the judge
4 decides whether or not ---

5 THE COURT: Completely different.

6 MR. EPPE: --- there's statutory -- yeah, whether or
7 not there's statutory aggravating circumstances.

8 THE COURT: Right.

9 MR. EPPE: That is what the Supreme Court struck down
10 in Ring v. Arizona. They also struck down four other
11 states that had similar systems. In addition to that,
12 Justice O'Connor in her dissent, she and Justice Ringuist
13 (phonetically) dissented, she said that it has implications
14 for four other states where the jury provides an advisory
15 sentence for the judge. But what they missed in that, and
16 I don't know exactly how they missed it, but the place in
17 that is the implications for the South Carolina system
18 where if the defendant pleads guilty to the crime, which is
19 a conviction, it is a conviction as Your Honor knows, and I
20 think the statute is 17-23-80. It says, a conviction is
21 either had by a jury determination, by determination by the
22 Court, or by a guilty plea. That's a conviction. Okay.

23 Well, once that conviction is in place, that's one
24 crime he says he's guilty. That is identical to the
25 Arizona system. We have a phase where a conviction takes

1 place, whether it's a guilty plea or otherwise. Then we go
2 over to the sentencing phase. Well, what the Supreme Court
3 said, Your Honor, in the Ring case is that the finding of
4 an aggravated factor -- they said it's not a -- it's not a
5 sentencing consideration. It's not an enhancement. What
6 it is is it's a separate factual finding, and you are
7 entitled to a jury trial on that separate factual finding.

8 Now, I believe that this decision calls into question
9 the -- the South Carolina statute because of the way the
10 South Carolina statute is situated to force one to plead
11 guilty to the underlying crime of murder, which doesn't
12 have to carry a death sentence. In fact, it doesn't until
13 the second tier of the -- of the statute is gone to. The
14 Solicitor provides notice and there is a hearing at which
15 aggravating factors are found, and if you look at the
16 statute, Your Honor, let me see, I think -- Your Honor, if
17 you look at the statute, there is -- you've got to find --
18 if you look at the statute in part B, it's on the fourth
19 page of what I'm giving you, the last page of what I'm
20 giving you. The first line is, the statutory aggravating
21 circumstance or circumstances have to be found beyond a
22 reasonable doubt.

23 The Legislature has created a situation where this
24 statutory enhancement has to be found beyond a reasonable
25 doubt, and now the Supreme Court has said in Ring v.

1 Arizona that my client is entitled to a jury trial to that
2 issue, even if he pleads guilty, and I believe that that
3 decision, frankly it -- it really has strong ramifications
4 for the way I was going to handle this case, as Your
5 Honor ---

6 THE COURT: What's the quandary? Why don't you get up
7 in your opening statement on the trial phase and say, you
8 know, the only way he can get a trial -- he's entitled to a
9 trial on the penalty phase. The only way he can do it is
10 have a trial on the first stage. I tell you right now he
11 is guilty of these crimes. You will see very little
12 cross-examination by me on the facts. You know, and I give
13 the jury charge that you're requesting in number 13. That
14 takes the quandary away, does it not?

15 MR. EPPES: Well, it takes the quandary away in the
16 hearing now, but it puts us in a box regarding the
17 Legislature statute. It takes an option away from my
18 client that the Legislature says my client has.

19 THE COURT: Which is?

20 MR. EPPES: It takes away the option of pleading
21 guilty and having a jury trial.

22 THE COURT: But in essence you are. You're saying --
23 you're saying, you know, in essence we would plead guilty
24 if we could. We could -- I mean, what's -- what's the --
25 what's the prejudice to your client if he wants to stand

1 up, and he has the right to make an argument in the -- in
2 the trial phase to say, I'm guilty.

3 MR. EPPES: The prejudice to my client is that he has
4 to make a decision that the Supreme Court has said is
5 wrong, that is the prejudice to my client. I understand
6 the curative ---

7 THE COURT: Say that again.

8 MR. EPPES: The Legislature of South Carolina has
9 created a situation where if he chose to plead guilty in
10 the guilty phase ---

11 THE COURT: Right.

12 MR. EPPES: --- he is required to have the judge
13 decide his sentence.

14 THE COURT: I understand that.

15 MR. EPPES: But the United States Supreme Court said,
16 and I'm going back to this opinion, and I point you to page
17 13, and it says, if the defendant preferred to -- wait a
18 minute. If the defendant preferred the common sense
19 judgement of a jury to the more tutored or perhaps less
20 sympathetic reaction of a single judge he was to have it.
21 That's from ---

22 THE COURT: And he's getting it.

23 MR. EPPES: Cited ---

24 THE COURT: He's getting a jury trial in the penalty
25 phase. So the only thing that he is losing is his right to

1 plead guilty, is what you're saying?

2 MR. EPPES: But Your Honor, that's an unfair -- yeah,
3 that's exactly what I'm saying. I'm saying that it's an
4 unfair choice that the Legislature wants ---

5 THE COURT: I think the real quandary is, and has been
6 a quandary for years, is you sort of have to make a choice
7 as to whether you're going to contest the facts and
8 vigorously try to get something less than murder, and then,
9 assuming you get convicted of murder, going back in front
10 of the same jury that you've sort of mislead, or lied to,
11 or whatever, and that's your quandary, and then say, okay,
12 believe all of this penalty phase, and the resolution of
13 that quandary is to have separate juries, but that's not
14 what this case says. The case says, he's entitled to have
15 a jury trial in the penalty phase, and he's getting a jury
16 trial in the penalty phase. And the way you're presenting
17 it to me is there is no prejudice. He can -- you can stand
18 up, he can stand up, and I will even charge this, if -- if
19 that's what you want me to do, and if the -- in the trial
20 phase this is what you do, say we're guilty, and this whole
21 thing is about punishment. Anything else you want to add?

22 MR. EPPES: Your Honor, you've got the exact crux of
23 the argument.

24 THE COURT: I understand the crux. I've done plenty
25 of these.

1 MR. EPPES: And there is nothing I can add at this
2 point, but I would like to reserve the right to raise this
3 issue again. This case is 48 hours old. Hold -- Your
4 Honor, excuse me a second.

5 THE COURT: All right.

6 MR. EPPES: Your Honor, someone in the gallery, who
7 shall remain nameless, points out to me that a good way to
8 say this, this is a practical remedy to a defective
9 statute, and I believe that our colloguy on that has shown
10 that's both of our understanding.

11 THE COURT: Well, yeah, but the quandary is picking a
12 strategy to try the case from the beginning. And there's
13 no question the statute places you in that, I agree with
14 that.

15 MR. EPPES: And I would like to stress that I -- I
16 believe that the Legislature has created an unfair quandary
17 and that's -- but in light of Ring v. Arizona something
18 that other Courts are going to resolve as well as this
19 Court.

20 THE COURT: Okay.

21 MR. EPPES: Thank you.

22 THE COURT: You -- all right. Number 15, motion
23 to ---

24 MR. ARIAIL: Could I respond to that one before you go
25 too far, because I'm not sure I can remember it.

1 THE COURT: Put anything on the record you want.

2 MR. ARIAIL: Well, it's not really on the record, I
3 think it's -- I mean, I'll put it on the record, but I
4 think the issue is premature, because what he's arguing
5 with the recent Supreme Court opinion is that the first
6 phase of the South Carolina statute may be in violation of
7 this opinion, because it does not give the defendant, upon
8 a guilty plea, the right to have a jury make a factual
9 finding. So that may be in violation. That issue is not
10 before this Court until that defendant pleads guilty. So
11 here we are again bootstrapping a fake argument. He's not
12 pleading guilty. He stood right there and he plead not
13 guilty. They want to argue that he's ---

14 THE COURT: But they're saying he had to do that to
15 get a jury trial on the penalty phase.

16 MR. ARIAIL: But the way to cure that then he pleads
17 guilty. If he wants to plead guilty, he pleads guilty and
18 he argues to you under Ring versus Arizona that that
19 section of the State statute is unconstitutional, he's
20 entitled to a jury trial. And that makes that---

21 THE COURT: That's like saying, you know, wait until
22 you strap him in the electric chair before you say that the
23 electric chair is unconstitutional. I mean, that's ---

24 MR. ARIAIL: If he ---

25 THE COURT: I understand what you're saying.

1 MR. ARIAIL: It's a premature ---

2 THE COURT: All right. What's your position if he
3 pleads guilty? What if I say, okay, I'm going to violate
4 the statute, and I'm going to give him a jury trial,
5 what's your position?

6 MR. ARIAIL: I would like to -- I'd like to -- I'd
7 like to read this a little deeper, and I'm not sure ---

8 THE COURT: Let me ask you this. If I say I'll give
9 you a jury trial on the penalty phase, is he going to plead
10 guilty?

11 MR. EPPES: Your Honor, I'd have to consult with him,
12 but he very well might.

13 THE ARIAIL: And it may very well be that the State
14 would acknowledge that we may have a Constitutional issue
15 here if that factual scenario, that defendant gets up in
16 front of this Court and says, I want to plead guilty, not
17 Frank Eppes, but that defendant, Brad Sigmon, and says, I
18 want to plead guilty, then I say we've got a different
19 issue. But until he steps up there and says, hey, I want
20 to plead guilty, and tell this jury I'm guilty of all of
21 this, because we're going to have the same evidence
22 regardless of whether he pleads guilty or not guilty, it
23 doesn't matter, the same stuff is coming in so the jury can
24 decide it. And it may be that we have a Constitutional
25 flaw based on the logic of this opinion that the State

1 would concede. Judge would say, the jury is going to hear
2 it, then we go about our business.

3 THE COURT: We'll plow new ground if you want to do
4 that.

5 MR. EPPES: Can I raise one point, Your Honor?

6 THE COURT: Yes, sir.

7 MR. EPPES: Because I had actually considered the
8 Solicitor's point, and I'd like to point the Court to State
9 v. Patterson, 295 SE Reporter 2nd 264, and State v.
10 Truesdale, 296 SE 2nd 528, in both of those cases the judge
11 has done that. The circuit judges did that and the Supreme
12 Court, Justice Gregory, writing in Patterson, and then
13 procuring in Truesdale, said that you can't do that.
14 That's -- that's part of the quandary.

15 THE COURT: They plead guilty and then the judge let
16 them have a jury trial?

17 MR. EPPES: They plead guilty and then the judge
18 allowed them to have a jury trial, and in both cases the
19 Supreme Court reversed and said if they plead guilty they
20 must have a decision made by the judge. So that's the
21 problem. The Legislature, the South Carolina Supreme Court
22 work sideways with the ---

23 THE COURT: But what he's saying is we can -- if he
24 wants to plead guilty we can -- we can -- well, the Ring
25 case may change that is what he's saying.

1 MR. EPPES: Yes, sir, I understand that. That's the
2 problem we have to talk about with our client, because
3 frankly, I think it's something that might need to be
4 resolved before this case gets tried.

5 THE COURT: Well, anything anybody else wants to --
6 all right.

7 MR. ARIAIL: We may have some additional responses on
8 that.

9 THE COURT: All right. The motion to quash, which is
10 motion 13 is denied. Motion to have a new jury selected
11 for the penalty phase, which is motion 6, is denied.
12 Number 15, the motion for the charge to the jury, I'll hold
13 in abeyance depending on what y'all do during -- I mean, it
14 would be hard for me to give that charge if he gets up and
15 he contests guilt vigorously during the first trial, but
16 I'll consider giving that trial (sic) depending on how
17 y'all present your first case.

18 MR. EPPES: Thank you, Your Honor.

19 MR. ARIAIL: All right. Mr. Ravan (phonetically) is
20 here. Let's -- we don't need to take a break in here.
21 Would you introduce, Mr. Ariail, your witnesses from out of
22 state to Mr. Ravan and let him -- have you talked to them?

23 MR. RAVAN: No, sir.

24 THE COURT: Okay. So we can start that process.

25 MR. ARIAIL: And we have given the normal instruction

1 to those witnesses, it is their decision, and I want to
2 make that clear on the record.

3 THE COURT: Well, I'm going to make clear on the
4 record, they're witnesses for whoever wants to talk to
5 them, and they're not your witnesses.

6 MR. ARIAIL: That's right. There are four of them
7 here, one, two, three -- we're missing one. There's one
8 outside.

9 THE COURT: All right. Is there a head officer here,
10 somebody in charge?

11 MR. ARIAIL: Well, they're all kind of head.

12 THE COURT: Who's the most senior person? Stand up
13 and tell me your name, please, sir.

14 MR. WILLIAMS: Tim Williams.

15 THE COURT: All right. Mr. Williams, this is Mr.
16 Ravan, a former law enforcement officer. He's a private
17 investigator for the defense in this case. If y'all would
18 step out, he'd like to meet you, talk to you briefly. Do
19 y'all need a break or ---

20 MR. ARIAIL: Well, Mr. Eppes represented to the Court
21 that it would take no more than 30 minutes. I don't know
22 if Mr. Ravan is aware of the time limitation put on him,
23 but I'd like to start ---

24 MR. EPPES: I just told him.

25 THE COURT: We're going to start this Jackson v. Deno

1 hearing by -- we're going to try to get them done by lunch.
2 So we're going to start them by 11 o'clock, a little bit
3 after 11:00.

4 MR. EPPES: Your Honor ---

5 THE COURT: Yes, sir.

6 MR. EPPES: If it's okay, could we take about a five
7 minute break and let me introduce myself to the witnesses
8 as well?

9 THE COURT: Sure. All right. We'll take a five
10 minute break.

11 (A short recess was taken, after which, the hearing
12 continued as follows:)

13 THE COURT: Y'all ready to go with the Jackson v.
14 Deno?

15 MR. EPPES: Your Honor ---

16 THE COURT: Let's wait until everybody is in here.

17 MR. EPPES: Your Honor, if I can have 10 seconds to
18 talk to my investigator, I think we're ready to go.

19 THE COURT: All right. Y'all ready?

20 MR. EPPES: Yes, sir.

21 THE COURT: All right. Tell me, please, how many
22 statements we're talking about, and if you would sort of
23 identify the different statements, and let's take them in
24 the order that we're going to have the hearings -- or let's
25 do it this way, let's take them chronologically as to when

1 the defendant gave them. Did he hear a word I said?

2 MR. ARIAIL: I apologize, Your Honor, but you've got
3 to realize I'm still in a state of recovery. Sometimes my
4 brain is not ---

5 THE COURT: All right. Tell me the different
6 statements.

7 MR. ARIAIL: I agree with you. I want to go
8 chronologically.

9 THE COURT: And what I want to do is make some notes
10 as to when he made them, where he made them, who the
11 witnesses are, and then ---

12 MR. ARIAIL: Let me give you the sequence. We'll
13 start with the -- we'll start with Officer Mr. McCarter.
14 And Officer McCarter is going to start -- along with
15 Officer Williams, they're going to be together, but I'm
16 going to cover it with just one at a time, and that's going
17 to be at a campsite called, Camping in the Smokies, or
18 something to that effect. And that is where he is
19 arrested. At that juncture there are some spontaneous
20 utterances made and his rights are then given to him orally
21 as they're arresting him.

22 THE COURT: All right. Is that one statement or
23 actually be two statements?

24 MR. ARIAIL: Well, there's going to be some
25 utterances, probably doesn't even fall into the category of

1 custodian interrogation, but we're going to put it in.

2 THE COURT: All right. But then he was read his
3 rights, did he give any further statements at the
4 Campground of the Smokies after his rights?

5 MR. ARIAIL: He made some other utterances that we'll
6 get them to tell you about.

7 THE COURT: All right. Now, tell me the date of that?

8 MR. ARIAIL: All right. That's going to be on May the
9 9th.

10 THE COURT: Of -- what year did this happen?

11 MR. ARIAIL: 2001.

12 THE COURT: All right.

13 MR. ARIAIL: He's then transported from there to the
14 law enforcement center in Gatlinburg -- or the police
15 department, and he's booked in the jail in a booking
16 process. The booking process is -- I have two officers
17 here who are going to talk about the booking process.
18 They're booking officers. At that point ---

19 THE COURT: Tell me who those officers are.

20 MR. ARIAIL: Those officers are going to be Mr. -- Ms.
21 Harbin and Mr. Walker.

22 THE COURT: All right.

23 MR. ARIAIL: Bob Walker and Carrie Harbin.

24 THE COURT: Is this the tape I reviewed?

25 MR. ARIAIL: It is a tape of the booking process, yes.

1 THE COURT: Just Ms. Harbin and Mr. Walker?

2 MR. ARIAIL: That's right. Bob Walker and Carrie
3 Harbin. They are booking officers. There is no custodial
4 interrogation in the State's position, but we're going to
5 present this so that if something comes up later, we don't
6 have any problem with it. But during the booking process,
7 he makes certain statements, but they're after he asked to
8 use the telephone to call his mother. And he calls his
9 mother on the telephone from the booking location, and they
10 simply make notes about what he talks about. It's a
11 conversation with his mother, right in the middle of the
12 room.

13 Then after that, Mr. Williams, who you have met, then
14 comes back to read him his written rights wavier form to
15 ask him questions about the event. So Mr. Williams will
16 then go through what I call the classic Miranda and
17 interrogation process, and out of that will be a written
18 statement handwritten by Mr. Sigmon, that he gave to the
19 officers advising him. Now, all that occurred on May the
20 7th.

21 On May the 8th, officers for the Greenville County
22 Sheriff's Office, McNamara in particular, have arrived the
23 night before, and they then went to remove him from the
24 detention center at Seveirville, which is Seveir County,
25 Tennessee, brought him back to the Gatlinburg Police

1 Department, and at that point they were headed back to
2 Greenville, and he indicated to them from the very
3 beginning that he wanted to talk them and tell them about
4 what had occurred. So when they leave Seveirville headed
5 back to Greenville, they stop off at the Gatlinburg Police
6 Department, and at that location Mr. McNamara also gives
7 him his written wavier of rights, reads it and goes over
8 the process, and then takes a very detailed seven and a
9 half page typed statement from the defendant.

10 THE COURT: That's the second written statement?

11 MR. ARIAIL: That's correct, the second written
12 statement.

13 THE COURT: All right.

14 MR. ARIAIL: That would be my sequence.

15 THE COURT: No statements in Greenville?

16 MR. ARIAIL: No statements in Greenville.

17 THE COURT: Okay. All right.

18 MR. ARIAIL: No statements of custodial interrogations
19 of law enforcement officers in Greenville.

20 THE COURT: Okay. Any statements by the defendant in
21 Greenville that you intend to introduce? Any utterances to
22 anybody that you intend to introduce? Did he say anything
23 to the media? Did he say anything to -- yes or no? I'm
24 not asking ---

25 MR. ARIAIL: Not in the guilt phase.

1 THE COURT: Okay. All right. Y'all ready to proceed?

2 MR. EPPES: Your Honor, if they've got statements for
3 the penalty phase, why wouldn't he ---

4 THE COURT: I assume -- I assume that it's not -- it's
5 not to police during the interrogation is what they're
6 saying.

7 MR. EPPES: Okay.

8 THE COURT: Call your first witness.

9 MR. ARIAIL: Call Gary Mr. McCarter.

10 THE COURT: Are you going to have any exhibits during
11 this? I assume you will.

12 MR. ARIAIL: We will.

13 THE CLERK: Put your left hand on the Bible and raise
14 your right hand.

15 GARY McCARTER

16 THE CLERK: State your name for the record, please.

17 THE WITNESS: Gary McCarter.

18 THE CLERK: Thank you. Be seated.

19 THE COURT: Your witness.

20 DIRECT EXAMINATION

21 BY MR. ARIAIL:

22 Q Would you state your name, please, sir.

23 A Gary Mr. McCarter.

24 Q Mr. McCarter, by whom are you employed?

25 A Gatlinburg Police Department.

1 Q And how long have you been with the Gatlinburg Police
2 Department?

3 A Approximately 15 years.

4 Q And what is your present capacity, or actually your
5 capacity on May the 7th of 2001? What position did you
6 hold?

7 A I'm a detective.

8 Q And in regard to this particular case involving Mr.
9 Brad Sigmon, tell the Court how you first became involved
10 with Mr. Sigmon as a member of the Gatlinburg Police
11 Department?

12 A Dispatch said that I had a phone call, and when I
13 answered the phone, the gentleman on the other line was an
14 authority from the South Carolina Sheriff's Department here
15 from Greenville, and he told me that there was a double
16 homicide, kidnapping suspect that had made a phone call
17 from our area, from Twin Creeks Campground.

18 Q All right. And had made a phone call from Twin Trees
19 Campground in Gatlinburg?

20 A It's Twin Creeks.

21 Q Twin Creeks?

22 A Yes, sir.

23 Q Did you know the person on the other end of the line?

24 A The -- I did not know him but he knew me.

25 Q Okay. And y'all had a conversation about how he knew

1 you?

2 A Very briefly.

3 Q Okay. As a result of that conversation, were you able
4 also to obtain any kind of identification of this
5 individual?

6 A Well, yes, he said, you know, there's several things
7 we could do, but we got a faxed picture of Mr. Brad Sigmon.

8 Q All right. After receiving that photograph, or
9 picture, what did you do and who went with you?

10 A Officer Williams went by himself to the campground
11 that Mr. Sigmon reportedly had made the phone call from,
12 and I stayed at the police department continuing to try to
13 get more information about this suspect and basically just
14 to wait on Detective Williams until he came back.

15 Q All right. And did Officer Williams then report back
16 to you after going to the Twin Creeks Campground?

17 A Yes, he did.

18 Q And what did he report to you?

19 A That Mr. Sigmon had in fact been at the campground
20 just moments earlier, and that he was driving a camper some
21 beige and white in color with some damage to it, and that
22 he had been there and used the phone, and that he had left.

23 Q Okay. And as a result of that information, did you
24 then leave the police department?

25 A Yes. Detective Williams and I both gathered our

1 strategy, put our minds together very briefly, and we --
2 knowing the town like we do, we knew that it was the first
3 campground that he had stopped at, so we went to the next
4 campground, and sure enough, we saw the vehicle parked
5 there.

6 Q Where did you see the vehicle?

7 A It was parked in the -- in the very corner of the
8 campground. Business was kind of slow in the area at that
9 time, so there weren't very many customers in the
10 campground at all.

11 Q All right. What was the name of this campground?

12 A It had changed names. We knew it by Trout Creek
13 Campground. It's something like Camping in the Smokies
14 now. It's -- it's just changed names.

15 Q All right. And when you arrived there, where was the
16 vehicle, or camper visible to you?

17 A You can see basically the whole campground from our
18 main road that goes by it, from Highway 321. So we did
19 turn into the campground, but we immediately spotted the
20 camper and exited the campground and parked across the
21 street up on a hill.

22 Q All right. Are you in a marked car or unmarked car?

23 A Ford Focus, totally unmarked.

24 Q All right. And the two of y'all then exited the
25 campground and went across the street?

1 A Yes, sir.

2 Q Across the road, highway?

3 A That's correct.

4 Q And how long did you stay up there observing the
5 activity surrounding this camper?

6 A I think approximately five minutes.

7 Q Then what did you see? What made you move from that
8 location?

9 A Mr. Sigmon came from the camper, and we saw that it
10 was him, and he was coming to the bathhouse, and we could
11 see him and it was pretty safe for us at this time because
12 of the way he was dressed, in jeans and his shirt was very
13 tight. So we could see that it was safe for us to move in
14 at that time.

15 Q All right. Did you so move in?

16 A Yes, we did.

17 Q And tell us how you did that and what occurred at that
18 time?

19 A We drove into the campground and Mr. Sigmon was going
20 to the bathhouse area where they have the washing machines
21 and things, and just about the time he was next to the
22 building we both arrived, and Detective Williams was
23 driving, he gets. Of course we draw our guns on him, and
24 Mr. Sigmon just put his hands up and gave up at that point.

25 Q All right. And did he remain upright, or did he go on

1 the ground?

2 A We asked him to get on the ground and he -- he obliged
3 and immediately got on the ground.

4 Q And was he handcuffed?

5 A He was handcuffed shortly thereafter.

6 Q Okay. And during the course of this process of
7 detaining him, handcuffing him, did he make any statements
8 to you?

9 A He -- he was basically, the phone call is what got me
10 in trouble, something to that effect.

11 Q He said that.

12 A Some small -- yeah, he said some things to us.

13 Q All right. And one that you remember as being the
14 phone call, let me ask you before he made these statements
15 to you, did you ask him any questions, or make any
16 statement to him regarding the need for him to talk to you?

17 A No, sir.

18 Q What did you do tell him?

19 A We were just asking him to lie on the ground and, you
20 know, that we were the police, and just basically placing
21 him under arrest.

22 Q All right. Now, other than the statement regarding
23 the phone call is what got me, what else did he say that
24 you remember at that time?

25 A I can't remember the exact words, but it was something

1 like, my God, what have I done, something to that effect.

2 Q As a result of those statements, did you advise him of
3 his rights?

4 A Yes, I told Mr. Sigmon at that point that he needn't
5 talk any more, that he had the right to remain silent, and
6 that I basically went over the Miranda as best I could.

7 Q All right. And did you have a written form?

8 A No, sir.

9 Q Well, best you could, recite for us what you recall
10 telling Mr. Sigmon at that time?

11 A I said -- I said, Brad, you've got the right to remain
12 silent. Anything that you say can and will be used against
13 you in court. You have the right to an attorney. If you
14 cannot afford one, one will be provided for you, and I
15 encouraged him to exercise his rights.

16 Q And did he so exercise his rights and become ---

17 A Mr. Sigmon was very cooperative with us. He just
18 basically complied with everything that we needed him to
19 do.

20 Q All right. And -- and thereafter was he removed from
21 that location and transported to the Gatlinburg Police
22 Department?

23 A Yes. We then called for a marked unit to transport
24 Mr. Sigmon, and they did arrive on the scene and did take
25 him from us.

1 Q Okay. And he then was out of your presence?

2 A Yes, sir.

3 Q At the time -- from the time you read him his rights,
4 or orally instructed him about his rights, to the time he
5 left the scene, did he make any additional statements to
6 you of any substance regarding the event?

7 A No, sir.

8 Q All right.

9 THE COURT: Did he make any statement that you intend
10 to introduce?

11 MR. ARIAIL: I'm going to ask him one more question.

12 BY MR. ARIAIL:

13 Q In addition to anything about the event, did he make
14 any statements to you at all?

15 A Not that I recall.

16 Q All right. You thereafter had additional contact with
17 him down at the police department itself, after he was
18 booked?

19 A Yes, that's correct

20 MR. ARIAIL: Okay. I'm not going to go into that at
21 this time, but I'll bring you back up and we'll go into
22 that when we get to that point. That's all I have of this
23 witness at this time.

24 THE COURT: Talk to your lawyer first.

25 MR. ARIAIL: Okay.

1 BY MR. ARIAIL:

2 Q Did at any time he communicate to you that he wanted
3 to exercise his -- any of his rights, particularly that as
4 to wanting an attorney?

5 A No, sir.

6 MR. ARIAIL: That's all I have. Thank you.

7 THE COURT: Any questions?.

8 CROSS-EXAMINATION

9 BY MR. EPPES:

10 Q Detective, do you remember before the Miranda, when
11 you took Mr. Sigmon into custody, do you remember exactly
12 what you said to him?

13 A As far as when I Mirandized at the scene?

14 Q No, sir. I'm talking about right when you got there.
15 Let's start with that. Y'all pulled the car up. Was he in
16 the bathhouse or was he walking across the parking lot or
17 something?

18 A He was walking across the parking lot almost in the
19 bathhouse area.

20 Q Okay. So was -- if he was walking between here say
21 and the jury box, where -- and he was walking in a straight
22 line, parallel to the center -- perpendicular to the center
23 of the jury box, where did you pull the car up to?

24 A Right straight in front of him.

25 Q Just right straight in front of him, like where ---

1 A We drove in. We just pulled right in front and he was
2 just looking straight at us.

3 Q And who was in the driver's seat?

4 A Detective Williams.

5 Q You were in the passenger seat?

6 A That's correct.

7 Q Did you both get out?

8 A Yes, sir, we did.

9 Q And who spoke first, you or Detective Williams?

10 A Detective Williams and I were both out of the car. I
11 don't recall who spoke first. I know Detective Williams
12 was -- was saying, get your hands up, things of that
13 nature.

14 Q Did you raise your -- did you draw your guns?

15 A Yes, we did.

16 Q And did he put his hands in the air?

17 A Yes, he did.

18 Q Did he say anything as he put his hands in the air?

19 A Just at some point in time he was talking about the
20 phone call, but that was after we had got close to him.
21 Right then he just did exactly what we said. He just
22 raised his hands up.

23 Q But -- so the first thing you recall him saying was
24 the phone call, the business about the phone call?

25 A Yeah, probably was the phone call that got me in

1 trouble.

2 Q Okay. Now, you said something about, oh, my God, what
3 have I done?

4 A Yeah.

5 Q Did that came before he said something about the phone
6 call or after?

7 A I don't know exactly which one was first. They both
8 were right there at that time.

9 Q Okay. So you don't know what he was talking about
10 when he said, oh, my God, what have I done?

11 A Well, I knew because I had been told what had happened
12 over here, that was the reason why we were arresting him.

13 Q So what was he talking about?

14 A That he had committed the two homicides and the
15 kidnapping over here, is what I assumed.

16 Q Did he say I'm sorry for it?

17 A Well, I mean, oh, my God, what have I done, well yeah.

18 Q Now, when you got him on the ground, did he say
19 anything?

20 A Like I say, the -- he talked about the phone call
21 being that's what got me, and we didn't respond, and then
22 he uttered the, oh, my God, and other than that, you know,
23 we were just making the arrest. He was, like I say, very
24 cooperative with us.

25 Q And after -- after you Mirandized him, he didn't say

1 anything else, is that correct?

2 A Not to me right then.

3 Q Not right then, we've got this other issue coming up
4 later.

5 A No.

6 Q Okay. Then you put him in the patrol car?

7 A I don't think that I left him, but I don't remember
8 putting him in the patrol car.

9 Q Okay.

10 A But when the uniform officers have arrived, it would
11 be normal for me to go with him and put him in the patrol
12 car, because Detective Williams was tending to some other
13 things at that time, and I stayed with Mr. Sigmon the whole
14 time.

15 Q Did y'all interview any witnesses while you were up
16 there at that time?

17 THE COURT: That's beyond the scope of what we're
18 doing.

19 MR. EPPES: Okay. Your Honor, I have no further
20 questions.

21 THE COURT: Anything on redirect?

22 MR. ARIAIL: Nothing.

23 THE COURT: All right. You can step down at this
24 time.

25 MR. ARIAIL: We'll call Carrie Harbin.

1 THE COURT: Are we moving to the second one?

2 MR. ARIAIL: We're going to the detention center.

3 THE COURT: Let's -- before Ms. Harbin comes up, just
4 have a seat, Ms. Harbin, do you intend to put up any
5 evidence as to the statements at the campground, the
6 defense, as to the phone got me caught, oh, my God, what
7 have I done? Do you intend to put up any evidence as to
8 whether those statements should be admitted or not?

9 MR. EPPES: Your Honor, no, we do not.

10 THE COURT: Okay. Do you want to be heard on whether
11 those statements should be admitted or not? Do you have
12 any position as to whether they should be admitted? In
13 other words, I want to go ahead and take one statement at a
14 time.

15 MR. EPPES: I understand, Your Honor. Your Honor, we
16 have no objection.

17 THE COURT: All right. All right. Well, I find
18 that the statements, and we're limited to these two
19 statements -- well, let me ask you this, would Mr.
20 Williams, if he testified as to these statements, say that
21 he made any other statements besides those two? We're
22 talking at the campground.

23 MR. ARIAIL: I don't believe so.

24 THE COURT: All right. Your witness is back there
25 saying no, so ---

1 MR. ARIAIL: Right.

2 THE COURT: All right. And would he agree that no
3 statements were made after Miranda at the campground,
4 before we get to the LEC? Okay. He's agreeing to that.
5 All right. All right. Then I find -- and since you're not
6 offering any other witnesses on this, I find that the two
7 statements are admissible. They were not made -- he was in
8 custody but they were not made pursuant to any
9 interrogation, therefore Miranda was not necessary. So I
10 would admit those two statements.

11 All right. Now, the next statement we're going to is
12 at the law enforcement center ---

13 MR. ARIAIL: Correct.

14 THE COURT: -- where I -- where I -- the tape I looked
15 at? For the record there was a tape made at the law
16 enforcement center, so we didn't -- by consent of both
17 parties, I went ahead and reviewed that tape prior to this
18 hearing, so I wouldn't have to take three or four hours
19 today looking at that tape. All right. Ms. Harbin, you
20 may come up now.

21 THE CLERK: Put your left hand on the Bible, please,
22 ma'am, and raise your right.

23 CARRIE HARBIN

24 Having been first duly sworn, testified as follows:

25 THE CLERK: State your name for the record.

1 THE WITNESS: Carrie Harbin.

2 THE CLERK: Thank you. Be seated.

3 DIRECT EXAMINATION

4 BY MR. ARIAIL:

5 Q Ms. Harbin, if you would, state your name for the
6 record again.

7 A Carrie Harbin.

8 Q And by whom are you employed?

9 A Gatlinburg Police Department.

10 Q And in what capacity were you employed with the
11 Gatlinburg Police Department on May the 7th of 2001?

12 A I'm a jailer and a dispatcher.

13 Q And how long have you been with the Gatlinburg Police
14 Department?

15 A Almost three years.

16 Q On May the 7th, did you have occasion to come in
17 contact with a prisoner to be booked, Mr. Brad Sigmon?

18 A Yes, I did.

19 Q And do you remember approximately what time it was and
20 where you were located? Just describe for us the booking
21 area?

22 A Okay. The booking area is a small room about the size
23 of the jury seats there, with a small table in the middle
24 with a phone, and my paperwork, and so on. It was
25 somewhere around three o'clock, a little after. I had not

1 been on duty long. And at the table, we sit something like
2 this, and he would have been at the end of the table to my
3 right.

4 Q All right. Anybody else in the room with you at the
5 time?

6 A To start with there were quite a few people in the
7 room before the booking process actually took place,
8 including the Chief, and detectives, and myself, and once
9 the booking started, it was myself and Officer Walker.

10 Q All right. Officer walker is also a booking officer?

11 A He's a patrolman who was called in by the Chief to
12 have another presence in the booking room with me.

13 Q All right. Now, in the booking area, it's my
14 understanding that there is a video camera. And is that a
15 normal part of the booking process that that camera
16 operates?

17 A Yes, it is. It's on a -- a -- a lapse, a motion
18 lapse. When there is no one in the room, after 10 minutes
19 the camera cuts off. As soon as someone walks back in the
20 room, the camera is turned on. It's on for every booking.

21 Q All right. So that's a standard operating procedure
22 of the Gatlinburg Police Department?

23 A Yes, sir.

24 Q And it's not a manually operated camera, but in fact a
25 motion operated?

1 A Correct.

2 Q You can't control it, it just operates itself?

3 A Correct.

4 Q All right. What type of information generally were
5 you attempting to get, or did you get from Mr. Sigmon at
6 the time that he was going through the booking process?
7 What were the questions that you asked?

8 A We start out by simply asking their name and if they
9 have any aliases, nicknames, anything that anybody calls
10 them, their date of birth, address, telephone number,
11 Social Security number.

12 Q All right. And do you have a form that you complete,
13 that's a standard form?

14 A Yes, I do.

15 Q Does that form have on it a place, a question related
16 to the substance of any crime that the defendant may be
17 charged with?

18 A Yes, it does. It has charging.

19 Q And do you ask the defendant anything about the crime,
20 or is that information given to you by someone else, as to
21 what the charge is?

22 A That information comes from the arresting officer.

23 Q All right. And did you in fact ask Mr. Sigmon
24 anything about the charges that were -- the information
25 that had been given to you about that charges that were

CARRIE HARBIN - Direct by Mr. Ariail

1 brought against him in Greenville, South Carolina?

2 A No, I did not.

3 Q And did he at any time have any -- up until the
4 completion of the paper work, did he make any statements to
5 you, or make any statements out into the room in regard to
6 those crimes, and the nature of those crimes in Greenville,
7 South Carolina?

8 A No.

9 Q Okay. So up until the completion of the paperwork,
10 you had had only a factual conversation with him as name,
11 rank and serial number type information?

12 A Correct.

13 Q All right. At the end of the booking paperwork
14 process, you were still there and Mr. Walker was still
15 there?

16 A Um-hm.

17 Q Anyone else come into the room at that time?

18 A No, not that I recall.

19 Q Did Mr. Sigmon make a request of you then?

20 A He requested to use the telephone, make a phone call.

21 Q And where was the telephone?

22 A It's positioned right at the left of the desk, to my
23 left.

24 Q And did he indicate who he was going to call, or what
25 information, number, anything of that nature?

1 A He requested -- he advised that he was going to call
2 his mother, and I had already previously asked a
3 relationship, that's one of the things on the booking, name
4 and relationship of a relative or friend I can contact in
5 case of an emergency, and he advised me his mother's name
6 and her telephone number.

7 Q All right. Did you -- and he indicated he wanted to
8 call that person?

9 A Um-hm, yes.

10 Q Did he at that point dial the number, or did you dial
11 the number for him?

12 A I picked up the phone, told him we needed to dial 9.
13 I pushed the line, and pressed the 9 for him and he
14 continued to dial -- he did not dial direct to the number
15 because he had to make a collect phone call, because of the
16 long distance policy, and I don't recall if he dialed
17 1-800-collect, or which way he went, but he did call
18 collect.

19 Q And the call was at his expense, or someone else's
20 expense, not the Gatlinburg Police Department's?

21 A Correct.

22 MR. EPPES: Your Honor, if I could interject, I notice
23 her looking down at her notes, and there's nothing wrong
24 with her notes, but it's unclear to me as to whether she's
25 testifying from memory or from refreshing her recollection

1 with her report, and I'd ask that the Solicitor either take
2 the notes away from her, or make it clear some other way.

3 MR. ARIAIL: That's all right. You can hang onto your
4 notes.

5 THE COURT: All right. Why don't you just close the
6 file. If you need to refer to them, we'll go from there.
7 All right.

8 BY MR. ARIAIL:

9 Q All right. Up until this point, have you referred to
10 your file in any -- in regard to any of this information?

11 A No, I have not. It's just in my lap.

12 Q Testifying from memory?

13 A Yes.

14 MR. ARIAIL: And for the record, Your Honor, the file
15 that she has has been fully duplicated and furnished to the
16 defense. They've been -- fully able to ask -- to ask her
17 about it.

18 BY MR. ARIAIL:

19 Q Now, at the time the telephone call is made, is there
20 anyone else in the room, other than you, and Mr. Walker,
21 and Mr. Sigmon?

22 A No.

23 Q Did you, or Mr. Walker, or anyone else in your
24 presence ask Mr. Sigmon any questions about the events that
25 had transpired in Greenville, South Carolina, for which he

1 was being charged -- which he was being charged?

2 A No, sir.

3 Q When he began the conversation with the person he had
4 dialed, did you actually know who he had called, other than
5 what he told you?

6 A Other than what he told me, no.

7 Q All right. And he told you he was calling his mother?
8 Did he have a conversation with someone on the phone?

9 A Yes, he did.

10 Q How long was this conversation?

11 A I couldn't tell you by the minute. It was quite
12 lengthy though.

13 Q All right. And in that conversation did he relate the
14 substance, or details relating to the crimes in Greenville?

15 A Yes, he did.

16 Q How far were you sitting from him when he began and
17 carried this conversation on?

18 A We probably were -- he would have been sitting about
19 right here to me, just very close.

20 Q Almost next to you?

21 A Correct.

22 Q How about Mr. Walker, where he was?

23 A Directly across from me.

24 Q Across the table that's how wide?

25 A Well, probably out to about here.

CARRIE HARBIN - Direct by Mr. Ariail

1 Q About three feet?

2 A Yeah, I can clearly reach to the other end of the
3 table.

4 Q All right. So the three of y'all were sitting around
5 this table, he's talking on the telephone. Is Mr. Walker
6 uniformed?

7 A Yes, he is.

8 Q And are you uniformed?

9 A Yes, I am.

10 Q Do you either of you carry sidearms?

11 A Well, I do not. I do not carry any type of weapon.
12 He does carry a weapon, but they're all locked up outside
13 the jail. No weapons are allowed.

14 Q So at the time that he was in the room with you,
15 during the booking process, there were no firearms?

16 A No.

17 Q In the room? Now, as Mr. Sigmon talked to the person
18 he represented to you was his mother, did you take notes of
19 what he was saying?

20 A Yes, sir. Once he started talking, I did, yes.

21 Q All right. And was it your plan to take notes in the
22 beginning, or something that just materialized as you
23 realized what he was doing?

24 A Right. As he started talking and going through a
25 description of what happened, I thought I probably should

1 write this down.

2 Q All right. And did you write down as -- in note form?

3 A Yes, just scratches here and there on a small piece of
4 paper.

5 Q Did you have a form to put it on, or how did you write
6 it out?

7 A I had a piece of paper that I had sitting on the
8 booking table, and I flipped it over and just started
9 jotting down things.

10 Q All right. Was he present, watching you? Could he
11 see you writing these things down?

12 A Oh, yes.

13 Q Did he -- did you or Mr. Walker, or anyone with law
14 enforcement indicate to him that this phone call would be a
15 private matter?

16 A No.

17 Q That he would be able to talk -- did you give him any
18 expectation that he would be able to talk in private
19 without -- not being overheard?

20 A No, nothing of that was discussed.

21 Q All right. And did Mr. Walker take notes, or do you
22 know?

23 A I don't recall whether he did or not. I believe that
24 he may have been jotting down, you know, some of the things
25 that he said. I don't recall clearly.

CARRIE HARBIN - Direct by Mr. Ariail

1 Q When the telephone conversation ended, what
2 happened -- or what did you do with Mr. Sigmon?

3 A When he was through talking on the phone, I had him
4 stand up and we walked out to the holding cell, which is
5 probably about from me to you, and I put him in the holding
6 cell and shut the door and locked it per policy and
7 procedure, and told him we would be back with him in a few
8 minutes.

9 Q Okay. Now, after that, did you then reduce your notes
10 and what you had heard to a written report?

11 A Yes, I did.

12 Q How long after the event -- the conversation ended
13 would you say that you created your written report?

14 A Probably about 30 minutes, long enough for me to
15 finish my paperwork up front with the booking, and then
16 went on to type my report.

17 Q All right. And you typed your report up yourself?

18 A Right. I wrote it out in full format then I typed it
19 up myself.

20 Q All right. At any time during the conversation with
21 you -- or any time in the meeting with you, during the
22 booking process, prior to the telephone conversation, did
23 he exercise any rights of his Miranda rights and indicate
24 to you that he wanted the services of an attorney?

25 A No, he did not.

1 Q Did he indicate to you he didn't want to talk about
2 any of the case, or was any of that discussed?

3 A No, he did not.

4 Q All right. If you would, I want you to refer to your
5 report, and you can open that up now, and I want to go
6 through what in substance your report says as to your
7 recollections and your notes as to what he said in the
8 telephone conversation with the person he represented to
9 you was his mother. All right. Start with ---

10 THE COURT: Let me ask you something, why do we need
11 to go into the substance of the statements?

12 MR. ARIAIL: Well, I don't need to, but you had
13 indicated earlier that you wanted -- about these specific
14 statements, so I was going to do that for your ---

15 THE COURT: Well, that's -- I just wanted to know
16 about the reports, because I didn't want any surprises at
17 trial. I want -- if -- the only question I would want
18 answered, unless y'all want to go into the substance of it,
19 is, is there anything outside those notes that he said that
20 you intend to offer?

21 MR. ARIAIL: Right, and I'll go into that.

22 BY MR. ARIAIL:

23 Q There is one area in this report though that I want to
24 go over with you. During the conversation with the -- with
25 his mother, did he discuss with her an attorney's name?

1 A Yes, he did.

2 Q All right. Tell us what he said regarding an
3 attorney?

4 A Okay. He had asked his mother, he said to make sure
5 and get Mr. Barnes to represent him.

6 Q Mr. Barnes?

7 A That's how he referred to him. He said that Mr.
8 Barnes takes some cases with them and said that if he could
9 do the State representation, for her to tell him to help
10 him out, and that he would make it worth his while.

11 Q All right. And did he indicate that he had any prior
12 relationship with Mr. Barnes?

13 A Yes, he did. He said that they had -- he had been
14 charged with an aggravated robbery and that Mr. Barnes
15 helped him get off that even though everyone knew that he
16 had done it.

17 Q All right. And it -- and did he give further
18 instructions to his mother regarding the attorney, as to
19 what she was to do in regard to hiring Mr. Barnes?

20 A He just -- he had told her that Mr. Barnes wanted to
21 get ahead no matter what and they -- then I assume she was
22 speaking to him because he was kind of quiet for a moment,
23 and then he said, no, I won't talk to anybody anymore, and
24 that was pretty much the end of the conversation.

25 Q And that was his response to whatever she said during

1 the process?

2 A Um-hm.

3 Q All right. At any time did he mention to you, or
4 instruct you, I want to talk to Mr. Barnes?

5 A No, he did not.

6 Q All right. Did he indicate to you in any way he
7 wanted to get an attorney?

8 A No, he did not.

9 Q Other than those statements we talked about, Mr.
10 Barnes and then the statements that are recorded in your
11 report that he made, are there any other statements he made
12 during the course of the time that you were with him from
13 when he came in the booking area until he was put in the
14 holding cell?

15 A No.

16 Q Those are all -- that's the extent of the statements
17 you're aware of?

18 A Yes.

19 MR. ARIAIL: Your Honor, for the record, I would like,
20 if you wish, to put a copy of that in so we'll have it.

21 THE COURT: A copy of her notes and her supplement?

22 MR. ARIAIL: Um-hm.

23 THE COURT: Go ahead and do that.

24 MR. ARIAIL: Okay. I'll have to make an extra copy.

25 THE COURT: We'll do that in just a minute. Are you

1 through with this witness as far as direct?

2 MR. ARIAIL: Let me check with my lawyer.

3 (A discussion was held off the record.)

4 MR. ARIAIL: Yes, sir.

5 THE COURT: All right. Let me ask you this, do you
6 intend to offer through this witness at trial the statement
7 about he represented me on an aggravated robbery?

8 MR. ARIAIL: No, no.

9 THE COURT: Okay.

10 MR. ARIAIL: And I'll so instruct her. She's been so
11 instructed we won't go into that.

12 THE COURT: And Mr. Walker, if he's going to testify
13 he needs to be instructed to that also. All right.

14 Cross-examination?

15 MR. EPPES: Your Honor, when y'all say trial, you mean
16 guilt phase?

17 THE COURT: I can't hear you.

18 MR. EPPES: When they say trial, they mean the guilt
19 phase, not the penalty phase, or do they mean both phases?

20 THE COURT: Well, they can -- it would not be relevant
21 in the penalty phase unless he's been convicted of it, and
22 you can put it in through another method. You're talking
23 about the statement as to the aggravated robbery?

24 MR. EPPES: Yes, sir.

25 THE COURT: Why would the fact that he'd been charged

1 with an aggravated robbery ever be relevant unless he's
2 been convicted? Let's do it this way, has he ever been
3 convicted of aggravated robbery?

4 MR. ARIAIL: I don't think it's necessary that he be
5 convicted to bring up charges of aggravated robbery. I
6 think that's admissible -- at least my understanding of the
7 law, that's admissible in the penalty phase.

8 THE COURT: That he's been charged with it?

9 MR. ARIAIL: That he's been charged with it.

10 THE COURT: Well, let me back up. He does not have to
11 be convicted of it, you would have to prove that it
12 occurred.

13 MR. ARIAIL: Exactly, exactly.

14 THE COURT: Okay. But his statement, he represented
15 me on an aggravated robbery, would not be proof, his
16 statement that he was charged would not be proof. You
17 would have to have substantive evidence that did he it,
18 confessed to it or something.

19 MR. ARIAIL: Yes, yes.

20 THE COURT: So my question is, do you intend to put up
21 this statement, Mr. Barnes represented me on an aggravated
22 robbery at any time during the trial?

23 MR. ARIAIL: No, no.

24 THE COURT: Okay. Well, that answers that question.
25 It was a five minute answer, but -- all right.

1 MR. EPPES: So that part of the statement is not going
2 to be used at the trial?

3 THE COURT: At any point in the trial.

4 MR. EPPES: Penalty or guilt phase?

5 THE COURT: At any stage of the trial.

6 MR. EPPES: Thank you, Your Honor.

7 THE COURT: You know, you can't limit them -- I guess
8 if he states he was never -- I mean, if he got on the stand
9 and said I have never been charged with aggravated robbery,
10 that could be used impeach him or something like that.

11 MR. EPPES: I understand, Your Honor.

12 THE COURT: So it's not to be offered in chief at
13 either stage of the trial.

14 MR. EPPES: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. EPPES:

17 Q Ms. Harbin, did you go to the police academy?

18 A No, I did not.

19 Q Do you have a badge?

20 A Yes, I do.

21 Q When you introduced yourself to Mr. Sigmon, what did
22 you say to him?

23 A As I recall I don't introduce -- you know, normally in
24 the booking process I just say I need to ask you a few
25 questions, personal information.

1 Q So you don't identify yourself as an officer?

2 A No, I'm in full uniform.

3 Q But you do not identify yourself as an officer?

4 A No.

5 Q And you asked questions about name and address and --
6 as the Solicitor said, name, rank and serial number
7 questions, correct?

8 A Right.

9 Q Did you ask Mr. Sigmon any personal questions? How
10 are you doing today?

11 A We do -- we do have to ask if there are any injuries
12 that need to be treated due to the arrest, if they're
13 diabetic, epileptic, or if they're on any medication.

14 Q So you expressed a concern for their well-being, is
15 that correct?

16 A Yes.

17 Q You stated that you wrote out this full statement,
18 hand wrote it before you typed it up?

19 A Yes.

20 Q Do you still have a copy of those handwritten notes?

21 A Yes.

22 Q Do you have them in that file?

23 A Yes, I do.

24 Q Could I look at them?

25 A This is the booking form.

1 THE COURT: You need to speak up for me to hear and
2 the court reporter to hear.

3 THE WITNESS: Okay. And this is the notes that I
4 wrote. This is what I wrote while I was back there. I was
5 also jotting down, before I grabbed the piece of paper, on
6 my hand.

7 BY MR. EPPES:

8 Q Okay. So this is from your record, the first page is
9 the intake -- what you call the intake information?

10 A Yes.

11 Q And the second page is the back side of ---

12 A That a release.

13 Q --- some release form. These are your handwritten
14 notes that you took simultaneously with his conversation?

15 A Correct.

16 Q And then after that there is a one, two, three, four,
17 a four page statement that is handwritten?

18 A Yes.

19 Q Now, does it match up word for word with your typed
20 statement, or are there some discrepancies in it?

21 A It -- for the most part, yes, it should be about word
22 for word, unless I changed some grammar perhaps, that sort
23 of thing, to my written statement.

24 Q I note, for example, in here that you have -- you have
25 a sentence, I'm reading from the handwritten notes, he had

1 a companion that he really knew as Gino, then you put up in
2 the top, in parenthesis ---

3 A I believe it says add glasses, because he said he's --
4 he had given me -- given his mother a brief description of
5 him?

6 Q Okay. Add glasses?

7 A Um-hm.

8 Q He told his mother and you documented he wore glasses,
9 so you did sort of change it a little bit. Okay. Did
10 you -- did you tell Mr. Sigmon he was being taped?

11 A No, it's not -- it's not practice to tell them, but
12 the video cameras are visible in the room.

13 Q The video -- I'm sorry, I didn't understand what
14 you're saying.

15 A The video cameras are visible in the room.

16 Q They are visible in the room?

17 A They were very visible at that point because we have
18 recently gotten a new video system, but before it was a
19 good size camera in the corner. Now it's just a diskette
20 on the wall.

21 Q So when Mr. Sigmon was there, it was good size camera
22 in the corner?

23 A Um-hm.

24 MR. EPPES: Okay. Can I consult with Mr. Ariail's
25 lawyer for a second?

CARRIE HARBIN - Cross by Mr. Eppes

1 THE COURT: Going straight to the top, huh?

2 MR. EPPES: Your Honor, I realize -- can I see your
3 notes again, ma'am? I'm sorry. I'm not 100 percent
4 certain that I have this handwritten draft of this
5 statement, and I believe since the history of the statement
6 went that way, that I may be entitled to it if she has made
7 some changes between that and this note. I would just ask
8 that we get a chance to check on that before we release
9 this witness today.

10 THE COURT: To your knowledge, have you given it to
11 him?

12 MS. STROM: Your Honor, to my knowledge, I have given
13 that to him.

14 THE COURT: Okay.

15 MS. STROM: I am having that checked.

16 THE COURT: It doesn't matter. As long as y'all are
17 voluntarily giving it to him, then you can give him a
18 second copy.

19 MS. STROM: Sure.

20 THE COURT: All right. Is anybody -- do you intend to
21 introduce these as trial, the handwritten notes?

22 MS. STROM: No.

23 THE COURT: And do you ---

24 MR. ARIAIL: I would only -- I would only intend to
25 introduce it if some credibility issue was raised that, you

1 know, she went off somewhere and created some story.

2 THE COURT: All right. But -- and are you intending
3 to introduce her type-written version? I mean, you said
4 something about marking them, I didn't know if we wanted to
5 go ahead and just mark everything.

6 MR. ARIAIL: I don't intend to introduce the
7 typewritten notes, unless, there again, they bring into
8 question that she really did it, but no, I would just have
9 her testify as to what -- but she would be testifying from
10 those notes, because you can see it's right extensive.

11 THE COURT: I understand. Okay.

12 MR. ARIAIL: Your Honor, I don't have a problem with
13 making him a copy. I'll give him ---

14 MR. EPPES: We got a copy.

15 THE COURT: They got a copy. They found it.

16 MR. ARIAIL: Okay. Good.

17 MR. EPPES: Thank you, Your Honor. Your Honor ---

18 THE COURT: Any other questions of this witness?

19 MR. EPPES: No, sir.

20 TH COURT: Any redirect?

21 MR. ARIAIL: No.

22 THE COURT: All right. You may step down. Thank you
23 very much.

24 THE COURT: All right. I don't know if he's through
25 with witnesses on this issue. Are you making a motion? Do

CARRIE HARBIN - Cross by Mr. Eppes

1 you have any other witnesses as to the conversation at the
2 LEC? Do you have any other witnesses on this particular
3 statement, Mr. Ariail?

4 MR. ARIAIL: Could you indulge me just one moment.

5 THE COURT: Do you intend to call Mr. Walker? All
6 right. Can you tell me if you have any other witnesses on
7 this issue, Solicitor?

8 MR. ARIAIL: No, we don't see a need to put Mr. Walker
9 up. I will offer him to the Court if you wish to
10 cross-examine him, or if the defense wishes to
11 cross-examine him on any of the substance. He has his
12 written report. It as been provided it is almost verbatim
13 with hers. So I would not call him.

14 THE COURT: All right. Do you have any witnesses on
15 this issue?

16 MR. EPPES: Your Honor, I would like to cross-examine
17 Officer Walker.

18 THE COURT: All right. Mr. Walker, if you would,
19 please come up and been sworn.

20 THE CLERK: Put your left hand on the Bible and raise
21 your right hand.

22 ROBERT WALKER

23 THE CLERK: State your name for the record, please.

24 THE WITNESS: Robert F. Walker, Jr.

25 THE CLERK: All right. Thank you. Be seated.

1 THE COURT: Mr. Eppes.

2 CROSS-EXAMINATION

3 BY MR. EPPES:

4 Q Patrolman Walker, are you a patrolman, is that your
5 title?

6 A Yes, sir, it is.

7 Q And who are you employed by?

8 A The Gatlinburg Police Department, City of Gatlinburg.

9 Q How long have been there?

10 A A little over six years.

11 Q Do you recall this incident?

12 A Yes, sir, I do.

13 Q Okay. You've got a statement regarding this incident.
14 Did you take notes in the interrogation room?

15 A To a degree, yes, sir.

16 Q What do you mean, to a degree?

17 A I jotted down what I call memory prompts, just certain
18 words or phrases as it was going along.

19 Q What did you jot it down on?

20 A One of our FBI fingerprint cards.

21 Q Could I see that card?

22 A I'm not sure that I have it, but I'll check.

23 Q Okay.

24 A Yes, sir.

25 Q Okay. Are these the notes you're talking about on the

1 front of that fingerprint card?

2 A Yes, sir.

3 Q There's a note on the back of the card. What does it
4 say?

5 A It merely says the Chief wants a written statement.

6 Q When did you write -- did you write that note?

7 A Yes, sir, I did.

8 Q When did you write it?

9 A During the course of the booking procedure.

10 Q Before you started taking the notes or after you
11 started taking the notes?

12 A I don't recall the exact sequence.

13 Q Okay. So sometime in that booking procedure you knew
14 that your Chief wanted a written statement?

15 A Yes, sir.

16 Q Is that a written statement from you or a written
17 statement from the defendant?

18 A A written statement from myself and Dispatcher Harbin.

19 Q Okay. All right. Did you speak with Mr. Sigmon when
20 you walked in the room?

21 A To best of my knowledge, sir, I had no verbal contact
22 with him at all.

23 MR. EPPES: Okay. I have no further questions, Your
24 Honor.

25 THE COURT: All right. Has that been provided to you?

1 I mean, is it something -- okay.

2 MR. EPPES: Your Honor, I don't think I've ever seen
3 that before. I would like a copy of that.

4 THE COURT: They're saying they already gave it you,
5 but we'll -- they'll give it to you if you don't have a
6 copy.

7 MR. EPPES: Okay. Thank you.

8 THE COURT: All right. Now, do you have any questions
9 of this witness?

10 MR. ARIAIL: No.

11 THE COURT: All right. You can step down. Thank you.
12 Do you have any other witness on this issue? We're into
13 your phase, Mr. Eppes. Do you ever any other witnesses on
14 this statement?

15 MR. EPPES: No, sir, Your Honor.

16 THE COURT: All right. Any argument?

17 MR. EPPES: Yes, sir, Your Honor.

18 THE COURT: All right. Let me hear your arguments.

19 MR. EPPES: Your Honor, this witness just stated on
20 the record that he went in there intending to take notes on
21 his conversation with Mr. Sigmon from the instructions from
22 his Chief. I have notes on that conversation. That's an
23 interrogation, Your Honor. They went in there knowing they
24 were trying to get information from him, and that's an
25 interrogation. He should have been advised of his rights

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1 at that point regardless of what they were doing,
2 regardless if he was calling his mother or anything else.

3 THE COURT: All right.

4 MR. EPPES: That's an interrogation.

5 THE COURT: All right. Any arguments beyond that?

6 MR. EPPES: Your Honor, he did not know the camera was
7 in the room. They took him in there. They asked him about
8 his health, and they started helping him talk, whether they
9 helped him talk to them or helped him talk to his mom, it
10 was not a knowing waiver of his rights. He talked to
11 officers who had intentions of writing down everything he
12 said, and using it against him in court. He should have
13 been advised of that fact.

14 THE COURT: All right. All right. Anything else?
15 All right. I find that the statement that is being offered
16 from the State, that is the statements from the defendant
17 as he had a conversation with who is purported to be his
18 mother, were not subject to any interrogation, and were not
19 subject to Miranda. So I would admit them.

20 I specifically find as to Mr. Walker, I did not
21 interpret his testimony as you said. As I recall he said
22 he didn't know if he made the note about the Chief wants a
23 statement before or after he made the notes on the other
24 side of the -- of the card. So I'm going to admit that
25 statement.

1 Now, Is there anything in that statement that would be
2 subject to objections for some other reason, other than the
3 aggravating robbery statement? In other words, I don't
4 want -- is there anything else in that statement that might
5 have some other reason to be objected to?

6 MR. EPPES: Your Honor, the mention of the aggravated
7 robbery is repeated in Patrolman Walker's statement. I
8 would again just ask to confirm that ---

9 THE COURT: All right. Mr. Harbin and -- excuse me,
10 Ms. Harbin and Mr. Walker, you know that when you're on the
11 stand during the trial, we're not going to say anything
12 about the aggravated robbery, unless the Court gives you
13 permission?

14 MR. WALKER: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. EPPES: Your Honor, in addition I would note that
17 I have a copy of Patrolman Walker's notes here and that
18 back page that includes that statement concerning the Chief
19 is not here, and I would request ---

20 THE COURT: That means he wrote it afterwards then.
21 I'm just teasing. All right. So you want -- you want a
22 copy of the other side. We'll provide you a copy of other
23 side. All right. Anything else?

24 MR. ARIAIL: There is an additional part, since you're
25 instructing, in Ms. Harbin, it relates to Quinta

1 (phonetically) Young, who he had always bought his
2 marijuana from, introduced him.

3 THE COURT: Okay. That needs to be stricken also.

4 MR. ARIAIL: That would also be stricken.

5 THE COURT: All right. Everybody understands that.
6 All right. Specifically are you -- you haven't said
7 anything, I assume you're not contending the fact that he
8 talked to his mother about an attorney is an indication of
9 his right to have an attorney?

10 MR. EPPES: Your Honor, he knew he had an attorney.
11 It is clear that he did not contemplate that anything that
12 was being said in that room was going to be held against
13 him. He was not advised of his rights on that. If you
14 look at -- if you look at Patrolman Walker's statement,
15 which is very good, he makes editorial comments that --
16 that really imply that he was in there to get this
17 statement. These admissions were given as spontaneous
18 utterances, and while talking to a third party on the
19 telephone. It sounds like the Solicitor was there coaching
20 him.

21 THE COURT: It just means he's a good officer.

22 MR. EPPES: I don't disagree with that, Your Honor, at
23 all.

24 MR. ARIAIL: Thank you, Judge.

25 THE COURT: All right.

1 MR. EPPES: I just believe that they took him in there
2 to get a statement. They didn't advise him of his rights,
3 and they got a statement.

4 THE COURT: And you're protected on the record for
5 that. All right. We're going to move to the third
6 statement where his -- my notes say his rights were given
7 and he gave a handwritten statements. Is Mr. Williams your
8 witness?

9 MR. ARIAIL: Call Mr. Williams.

10 THE COURT: All right.

11 THE CLERK: Put your left hand on the Bible, please,
12 sir, and raise your right hand.

13 TIM WILLIAMS

14 THE CLERK: State your name for the record.

15 THE WITNESS: Tim Williams.

16 THE CLERK: You may be seated.

17 DIRECT EXAMINATION

18 BY MR. ARIAIL:

19 Q State your name, please, sir.

20 A Tim Williams.

21 Q And Mr. Williams, by whom are you employed?

22 A Gatlinburg, Tennessee, Police Department.

23 Q How long you been with the Gatlinburg, Tennessee,
24 Police Department?

25 A About 15 years?

1 Q And what -- on May the 7th of 2001, what was your
2 employment capacity with the Gatlinburg City Police
3 Department?

4 A Detective.

5 Q On that date, did you -- you've heard Mr. McCarter
6 testify. Did you have an occasion to become involved in
7 the search for Mr. Brad Sigmon?

8 A Yes, sir, I did.

9 Q All right. How did you first become aware of that?

10 A Detective McCarter told me of the conversation he had
11 had with the Greenville, South Carolina, authorities.

12 Q All right. And you went to the first mobile -- I
13 mean, the first campsite?

14 A Yes.

15 Q Reported back to him as he testified?

16 A Yes.

17 Q Went to the second site also with him?

18 A Yes.

19 Q And made the arrest as he talked about?

20 A Yes.

21 Q Did you at that time then go back to the law
22 enforcement center?

23 A Yes, sir.

24 Q Did you have any conversation with Mr. Brad Sigmon
25 while at the second campsite, other than to instruct him to

1 get his hands up, or get down on the ground?

2 A No, sir.

3 Q All right. When you went back to the law enforcement
4 center, did you participate in the -- or police department,
5 did you participate in the booking process?

6 A No, I did not.

7 Q Where were you during the booking process?

8 A I was in and out of the booking area a couple times,
9 but I was basically back and forth in my office.

10 Q Doing normal stuff?

11 A Yes, sir. I was filling out a warrant for Mr. Sigmon,
12 charging him with being a fugitive from justice, and doing
13 some other paperwork.

14 Q All right. Did you have occasion later on, on May the
15 7th, to talk with Mr. Sigmon in the booking or cell area?

16 A Yes, I did.

17 Q Tell us how that came about? What brought you to come
18 back to the cell area and what you did?

19 A Well, myself and detective McCarter discussed it, and
20 we felt that Mr. Sigmon would be willing to talk to us
21 about this, although we did not know the details of the
22 crime, other than the basic facts. Detective McCarter
23 contacted the authority that he spoke with from Greenville,
24 and asked if they would like for us to speak with Mr.
25 Sigmon and take a statement from him. They indicated that

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1 they would like for us to do that.

2 Q Did you so do that?

3 A Yes, we did.

4 Q All right. Prior to talking -- where was Mr. Sigmon
5 at the time you went to talk to him?

6 A He was in the holding cell in the jail.

7 Q Same one that Ms. Harbin testified about?

8 A Yes.

9 Q All right. And in that holding cell was anyone else
10 with him?

11 A No.

12 Q Did you go -- you and Detective McCarter go to that
13 holding cell?

14 A Yes, we did. We went back there and I believe
15 officer -- or Carrie Harbin got him out of the cell for
16 us and brought him to booking.

17 Q When you got him out of the jail, where did he --
18 where you go with him?

19 A To the same table he had sat during the booking
20 process.

21 Q Back in the booking room?

22 A Yes.

23 Q All right. And when you went back in the booking
24 room, that's the same area that he had been in before?

25 A Yes.

1 Q Was there anyone in there other than you, Detective
2 McCarter and Mr. Sigmon?

3 A No.

4 Q Were you dressed in uniform or plain clothes?

5 A Plain clothes.

6 Q And were you armed?

7 A No, sir, I was not.

8 Q And where was your -- your armory you normally carry?

9 A It was locked up in a gun safe outside of the jail
10 area.

11 Q Is that standard operating procedure?

12 A Yes, it is.

13 Q There are no side firearms carried into the jail area?

14 A Correct.

15 Q All right. Prior to discussing anything with -- well,
16 between the booking -- the holding cell and the booking
17 area, as you moved with Mr. Sigmon, was there any
18 conversation as to what you were doing there, or where you
19 were going, or anything such as that?

20 A None that I recall, no.

21 Q Just walked from one to the other?

22 A Yes.

23 Q Now, prior to having any discussion with him, did you
24 give him the standard Miranda rights that we're aware of?

25 A Yes, sir. We have a form statement and rights form

1 which has the Miranda warnings on it. I read that directly
2 to him.

3 Q All right. Prior to reading that standard form to
4 him, was there any conversation that you recall?

5 A No.

6 Q Was anybody else in the room during this time?

7 A Just myself and Detective McCarter.

8 Q Same people?

9 A Yes.

10 Q Nobody came in or ---

11 A No.

12 Q All right. Let me show you this and ask you if this
13 is the form that you read to Mr. Sigmon?

14 A Yes, it is.

15 Q All right. And that's a standard form issued by the
16 Gatlinburg -- or used by the Gatlinburg Police Department?

17 A Yes, it is.

18 MR. ARIAIL: Your Honor, we'd like to mark this as
19 Court's Exhibit 1 or ---

20 THE COURT: Why don't we go ahead and mark it as a
21 State's Exhibit for ID at this time, and then -- is that
22 the original?

23 MR. ARIAIL: This is a copy of the ---

24 THE COURT: Is that what you're going to introduce at
25 trial, or are you going to ---

1 MR. ARIAIL: I'm going to introduce the original at
2 trial.

3 THE COURT: Whatever. However you want to do it.

4 MR. ARIAIL: I would prefer to keep the original until
5 we get there, just in case.

6 THE COURT: You don't trust the court reporter or the
7 Clerk's office

8 MR. ARIAIL: I do trust the court reporter.

9 THE COURT: Court's Exhibit Number 1.

10 (Court's Exhibit Number 1 was marked and filed.)

11 BY MR. ARIAIL:

12 Q If you would, Mr. Williams, let me ask you a little
13 bit about the form first before you read it. Is this --
14 down here on the bottom left is a witness blank. Is that
15 your signature?

16 A Yes, sir.

17 Q And below that is another witness blank with a
18 signature. Whose signature is that?

19 A Detective Gary McCarter's.

20 Q And below that is a time, 1716. What does that mean?

21 A It's 5:16 p.m.

22 Q All right. And what does that indicate -- that mean?

23 A That is the time that this form was read to him and
24 the time he signed it.

25 Q Okay. Let me ask you, if you would then, there's a

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1 blank at the top right that has been filled in. Is that
2 your handwriting?

3 A Yes, sir.

4 Q And it says Gatlinburg Police Department?

5 A Yes, sir.

6 Q And there's another blank where it's been signed, and
7 it's signed -- it appears to be Brad Sigmon. Who signed
8 that?

9 A Mr. Sigmon signed that.

10 Q Okay. And then these other three spaces is place,
11 date and time. Who filled those in?

12 A I did.

13 Q Okay. So those are your initials. All right. Tell
14 us before the conversation then, read to us exactly what
15 you read to Mr. Sigmon?

16 A Before we ask you any questions, you must understand
17 your rights. You have the right to remain silent.
18 Anything you say can be used against you in court. You
19 have the right to talk to a lawyer for advice before we ask
20 any questions, and have him with you during questioning.
21 If you cannot afford to hire a lawyer one will be appointed
22 to represent you before any questioning if I wish one. If
23 you decide to answer any questions now without a lawyer
24 present, you'll still have the right to stop answering at
25 any time. You also have the right to stop answering at any

1 time until you talk to a lawyer.

2 Q All right. Now, after reading him those rights, did
3 he indicate to you that he wanted to exercise any right to
4 be represented by an attorney?

5 A No, sir. I asked him if he would be willing to speak
6 with us and he said yes.

7 Q Did he indicate to you then that he was willing to
8 talk to you?

9 A Yes, he did.

10 Q During that process of reading him these rights, and
11 prior to talking with him, did anyone make any threats
12 against him, any threats of harm, or threats of
13 incarceration, or threats of deprivation of any life
14 necessities, any threats made to him?

15 A No, sir, not at all.

16 Q Anybody promise him anything such as leniency, or --
17 for his cooperation for giving a statement?

18 A No, sir.

19 Q Anybody physically touch the defendant during any of
20 this process?

21 A Other than normal routine processing at the jail, no,
22 sir.

23 Q All right. During the time that you're sitting around
24 the table specifically, did anyone reach over and
25 physically abuse him, or squeeze his arm, or bend his

1 fingers, or anything of that nature?

2 A No, sir.

3 Q All right. After you read his rights to him, did he
4 appear to -- in your view, to understand those rights?

5 A Yes, sir. I asked him if he understand his rights and
6 if he'd be willing to speak with us, and he said yes. I
7 then read to him the wavier of rights part of this form.

8 Q All right. Read to -- exactly how you read that to
9 him.

10 A I have read this statement of my rights and I
11 understand what my rights are. I'm willing to make a
12 statement and answer questions. I do not want a lawyer at
13 this time. I understand what I am doing. No promises or
14 threats have been made to me. No pressure or coercion of
15 any kind has been used against me.

16 Q All right. What did you do once you read that to him?

17 A I said if you agree with that, then sign the form.

18 Q And did you give the form to him?

19 A Yes.

20 Q And did he so sign it?

21 A Yes, he did.

22 Q All right. And at any time during this process, prior
23 to his signature, did he indicate to you that he wanted a
24 lawyer to be present with him?

25 A No.

1 Q Did he want to consult with a lawyer over the
2 telephone, or in any way involve a lawyer in this process?

3 A No.

4 Q Okay. Did he indicate to you at any time from this
5 point forward that he did not want to talk to you?

6 A No.

7 Q Okay. Did he in fact talk to you?

8 A Yes, he did.

9 Q All right. And based on your observation at that
10 point, did you believe that his talking to you was
11 voluntary and of his own freewill and accord?

12 A Yes.

13 Q And at any time during this process, had you observed
14 any threats, promises, coercion, any actions on behalf of
15 law enforcement to overcome his freewill to talk to you or
16 to in any way inhibit his ability to exercise his rights?

17 A No.

18 Q Okay. Would you describe his behavior, demeanor, or
19 how was he acting at this time?

20 A He was very cooperative, very emotional, seemed
21 remorseful, and it's just like he wanted to talk, wanted to
22 get it off his chest.

23 Q All right. And did you in fact then talk to him --
24 how -- at that time?

25 A Yes, we did. Actually he initiated it before we ever

1 asked him a question. I never asked him the first
2 question, he just said before he started, let me say this.
3 I have never -- not exactly, but while I'm in your state I
4 did not commit any crimes. Then he just started talking
5 from there and kept going.

6 Q Did you know anything about the case in Greenville in
7 order to ask him any questions?

8 A Very little. I didn't know any of the details.

9 Q Now, when he began talking, did you -- how long did
10 the talking go on?

11 A Best guess, hour and a half.

12 Q Of his conversation?

13 A Yes.

14 Q And in that hour and a half, did you ask any questions
15 that you recall?

16 A I'm sure I did. Exactly what they were, I don't know.
17 I think at one point when he was telling me about the
18 crime, I asked him why he brought -- drove back to the
19 scene if it was his intention not to hurt anybody. That's
20 the one I recall, but there were probably others.

21 Q All right. Anything other than that that you recall
22 to prompt the conversation to go in any particular
23 direction or ---

24 A As he would talk, I mean, he would start crying. I
25 would pat him on the back or something, I mean just --

1 but ---

2 Q During this period of time, did you offer him food, or
3 deprive him of food, offer him drink, deprive him of drink?

4 A He was eating during this conversation.

5 Q He was? Is this something you had brought -- that you
6 had thought to bring to him?

7 A Yes.

8 Q Okay. You provided him food. How about something to
9 drink?

10 A Yes, food. I think it was a cheeseburger, fries and a
11 Coke, I believe.

12 Q Okay. And as the -- as to -- did he ask to smoke a
13 cigarette, if you recall?

14 A I'm pretty sure he did, yes.

15 Q Okay. Now, you say this conversation -- that the
16 talking went on for about an hour and a half. At the end
17 of that -- did you make notes about what he was saying?

18 A No, sir.

19 Q All right. Did you file a report about what he was
20 saying?

21 A A summary, yes?

22 Q I'm sorry?

23 A Just a summary.

24 Q A summary. And a summary -- in addition to that
25 summary report, at the end of the time that he gave -- or

1 talked to you, did you ask him if he was willing to put
2 that statement in writing?

3 A Yes.

4 Q How did you go about doing that?

5 A I just asked him if he would put in writing what he
6 just told me, which is a very lengthy conversation.

7 Q And what did he say?

8 A He said, yes, he would.

9 Q And did you provide him a form to do that?

10 A Yes, sir, it was the same form that he had signed, the
11 rights wavier. On the other side is his statement.

12 Q All right. So on the back side of that form is a
13 place for him to do a statement?

14 A Yes.

15 Q Okay. So what we're looking at is Court's Exhibit
16 Number 1, which is the rights wavier form, and on the back
17 is also a statement that he gave you?

18 A Yes.

19 Q All right. Now, in viewing the statement, you'll note
20 that the top portion of the first paragraph is scratched
21 out. Who did that scratching?

22 A Mr. Sigmon.

23 Q All right. Who wrote the words to this piece of
24 paper? Mr. Sigmon.

25 Q This is not something that you, or Detective McCarter,

1 or anyone with law enforcement did?

2 A No.

3 Q I'm going to show you another document and ask you
4 what this is?

5 A That is page two. He ran out of room on this page.
6 We provided with him a second page.

7 Q All right. So this would be page two to Court's
8 Exhibit Number 1, which is his statement?

9 A Yes.

10 Q All right. And looking at the statement, explain how
11 it occurred that the first paragraph was marked out?

12 A As I remember, he got upset with himself for
13 misspelling a word, and we just told him it was okay, just
14 continue on, that it was all right.

15 Q Did he write the words underneath the squiggly lines?

16 A Yes, he did.

17 Q All right. And did he write the words -- the rest of
18 the words there?

19 A Yes, he wrote everything on there.

20 Q And when you got through at the end, did he sign -- is
21 that his signature over the May 7, 2001, date?

22 A Yes.

23 Q On the left side it says, God forgive me. Is that his
24 writing or your writing?

25 A That is Mr. Sigmon's.

1 Q All right. Do you have any writing on either one of
2 these documents?

3 A Just the back.

4 Q The wavier?

5 A Yes.

6 Q The front page?

7 A My signature and the date and time stuff.

8 Q Okay. Now, during the course of him writing the
9 statement, did you or anyone make any threats against him,
10 promise him anything, or in any way coerce him?

11 A No.

12 Q Anybody come into the room?

13 A No, sir, I don't believe they did.

14 Q Any change in the environment?

15 A No.

16 Q Did he at any time during the process indicate that he
17 wanted to talk to a lawyer?

18 A No.

19 Q Did he in any way indicate he wanted to talk to a
20 lawyer before he signed the statement?

21 A No.

22 Q And did he in fact sign it?

23 A Yes.

24 Q Did he have an opportunity to read back over what he
25 had written before he signed it, or exactly how did y'all

1 do that?

2 A Yes, I'm pretty sure he did go over it himself.

3 Q But he had written it himself?

4 A Yes.

5 Q Did you have to ask him to sign it, did he sign it of
6 his own decision?

7 A I think I asked him to sign it.

8 Q Okay. During any of this process, did you observe Mr.
9 Sigmon -- or did you form the belief or -- based on
10 anything that occurred, that he did not understand what he
11 was doing?

12 A No.

13 Q Or that his will -- freewill and volition was being
14 overcome?

15 A No.

16 Q The first part of the statement that was scratched
17 through, before he wrote that, had he discussed that with
18 you in the conversation, or the narrative he gave you
19 early, that he recited those events?

20 A In much greater detail, yes.

21 Q In much greater detail. But the summary he gave you,
22 when he talked about what he had written here, talking
23 about his intentions with a friend to go into Mr. And
24 Mrs. Larkes and tie them up, had he told you that
25 before?

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1 A Yes.

2 Q And then he said then to kidnap Becky so I could talk
3 to her?

4 A Yes.

5 Q Then he mentions the name Gino and I started into the
6 back door?

7 A Yes.

8 Q He told you about Gino before?

9 A Yes.

10 Q All right. Did he at any time indicate when he was
11 scratching this out that this portion of the statement was
12 not true and accurate?

13 A No, sir. As I said, I think the rest, as best I can
14 remember, he scratched that out because he got upset that
15 he had misspelled something. I don't remember exactly what
16 it was then.

17 Q He didn't say to you, I -- this is not my statement?

18 A No, he did not.

19 MR. ARIAIL: Okay. That's all we have, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. EPPES:

22 Q Detective Williams?

23 A Yes, sir.

24 Q The scratching out, that's -- that's an expression of
25 frustration on -- on Mr. Sigmon's part, correct?

1 A Yes, sir.

2 Q He was frustrated that he hadn't spelled a word
3 correctly?

4 A I think that was the reason, yes, either a misspelling
5 or -- I'm pretty sure it was a misspelling.

6 Q And he started scratching thinking maybe he could
7 start over, have a do-over and y'all ---

8 A I believe I told him we couldn't spell either, just to
9 go ahead and finish.

10 Q Okay. Before you sat down with him, were you aware
11 of -- of the telephone conversation he had had?

12 A I'd been a witness to part of that, yes.

13 Q So you had heard -- had you talked to Officer Harbin
14 or Patrolman Walker about it?

15 A I'm sure I had.

16 Q Prior to going in the room?

17 A Yes.

18 Q So in fact you did know a little something about the
19 details of the crime before you started talking to him
20 about it?

21 A Just generally.

22 Q Did you tell him about the video tape?

23 A I think he asked us if we were going to record this.

24 Q Um-hm.

25 A And I'm pretty sure I pointed out that there was a

1 camera in the room.

2 MR. EPPES: Your Honor, bear with me one second.

3 BY MR. EPPES:

4 Q What condition was Mr. Sigmon in when you got there?

5 Was he -- did he look like he had been eating well or ---

6 A He told he was hungry.

7 Q Okay. Y'all brought him food?

8 A Yes.

9 Q Did you let him eat, or did you talk to him and just
10 have the sandwich waiting until he was ---

11 A He was eating while we were talking.

12 Q At some point did he stop eating?

13 A I think he finished his food. I don't recall.

14 MR. EPPES: Everything -- can I see that Exhibit 1?

15 BY MR. EPPES:

16 Q Okay. The two pages that are not the admonition and
17 the waiver on the back, on those two pages is there
18 anything on those pages that was not written by Brad
19 Sigmon?

20 A No, sir.

21 MR. EPPES: Okay. That's all.

22 THE COURT: Anything on redirect?

23 MR. ARIAIL: No, Your Honor.

24 THE COURT: All right. When you were talking to him,
25 other than the -- than he cried and seemed emotional, did

1 he seem to be in control of his faculties?

2 THE WITNESS: Yes.

3 THE COURT: Did you have to repeat things to him to
4 get him to understand thing, and did he repeat things to
5 you as if he did not understand things?

6 THE WITNESS: No, sir.

7 THE COURT: All right. Solicitor, are you offering
8 anything other than the written statement through this
9 witness? In other words, are there going to be verbal
10 responses? I don't really need to know what they are,
11 other than I just want to make sure there's nothing that
12 would be otherwise objectionable. In other words, did he
13 say anything about prior robberies? Did he say anything
14 about marijuana, or drug use? Is there anything like that
15 that I need to be aware of that's ---

16 MR. ARIAIL: Either in the statement or ---

17 THE COURT: That the defense -- yeah. Well, I assume
18 if they were in the written statement I'd hear something on
19 them, but I want to make sure there's nothing verbal that
20 the defense is not aware of that might be otherwise
21 objectionable, other than, you know, freely, voluntarily
22 and intelligently given.

23 MR. ARIAIL: No.

24 THE COURT: All right. Thank you. You can step down.
25 All right. Any other witnesses from the State on this

TIM WILLIAMS - Cross by Mr. Eppes

1 statement?

2 MR. EPPES: Your Honor ---

3 MR. ARIAIL: No.

4 THE COURT: Anything from the defense on this
5 statement?

6 MR. EPPES: I just -- I would like to make sure, you
7 know, we got this video tape lurking in the background, and
8 I don't know if they are going to try to admit the video
9 tape, or how they're going to ---

10 THE COURT: Are you going to offer it, or what's
11 the ---

12 MR. ARIAIL: No, sir.

13 THE COURT: All right. Are you intending to put that
14 video in?

15 THE COURT: Or ---

16 MR. ARIAIL: Well ----

17 THE COURT: --- do you want to say now? I mean,
18 I'm ---

19 MR. ARIAIL: I just don't want to disclose everything
20 I'm going to do. Not that that's any big secret, but you
21 know, I understand your interest in knowing. It's not --
22 it's certainly not my intention put it in.

23 THE COURT: Okay.

24 MR. ARIAIL: But ---

25 THE COURT: Well, let me do it this way. Say --

1 assuming they are intending to put it in, is there anything
2 that you object to in the video?

3 MR. EPPES: Right now, no, Your Honor.

4 THE COURT: Well, right now is the time.

5 MR. EPPES: Your Honor, obviously the video -- and the
6 reason I asked the question, obviously the video overlaps
7 what the -- the testimony that we've received from these
8 witnesses concerning the lawyer Barnes, the aggravating
9 assault, the marijuana, and the implications of that.
10 Obviously the video overlaps what his statement, and what
11 this officer heard. As a matter of fact, you know,
12 obviously he didn't know he was going to videoed and
13 because of that all, if they're going to use it, there are
14 some issues in it that would be addressed, but they really
15 tract quite well with what's going on with the witnesses
16 here. I just -- I believe that we ought to know if
17 they're going to put the video in as a statement, it ought
18 to be addressed at this hearing. If they're not going to
19 put the video in as a statement, it doesn't need to be
20 addressed.

21 THE COURT: Well, I disagree with you. I'm not going
22 to compel the State to tell me -- I guess, here's what I'm
23 going to do, if you intend to put it in, or you think that
24 you might put it in, then you need to edit it to edit out
25 anything that -- that I have ruled on, or that you think

1 has potentially got a problem. So I'm not going to compel
2 them to tell you at this time.

3 MR. EPPES: Okay.

4 THE COURT: But my question to you is, is there any --
5 other than the things you've touched upon, is there
6 anything objectionable in there? I can't imagine you want
7 to sit there and watch a four hour video.

8 MR. EPPES: No, sir, Your Honor.

9 THE COURT: It was hard enough for me the first time.
10 All right. All right. Any witnesses on this statement?

11 MR. EPPES: No, Your Honor.

12 THE COURT: All right. Any -- any arguments you want
13 to make?

14 MR. EPPES: Your Honor -- Your Honor, as to the
15 written statement we have no contention. We believe it to
16 have been freely and voluntarily made.

17 THE COURT: All right. For the record, the Court,
18 having considered the evidence as been presented,
19 specifically the evidence of Mr. Williams, make the
20 following findings by the preponderance of the evidence.
21 Before the alleged statement was obtained from the
22 defendant, he was fully advised of his rights under the
23 5th -- under the 5th and 6th Amendments to the
24 Constitution, specifically he was given his Miranda rights,
25 specifically he was advised prior to any interrogation that

1 he had the right to remain silent. The defendant was
2 advised prior to any interrogation that if he waived his
3 right to remain silent and made a statement, such a
4 statement would be used against him in a court of law.

5 The defendant was advised prior to any interrogation
6 that he had a right to employ or select an attorney of his
7 own choice. If he didn't have the resources to employ an
8 attorney, the Court would appoint him one to represent him
9 without any cost or expense to him.

10 He was advised prior to any interrogation that he had
11 the right to consult with an attorney. He had the right
12 also to interrupt and terminate the interrogation at any
13 time. In other words to stop answering questions.

14 I find that he -- the defendant knowingly and
15 intelligently waived his rights under the 5th and 6th
16 Amendments to the Constitution of the United States, and
17 also he waived his Constitutional safeguards provided in
18 Miranda v. Arizona. I find that the statement was freely
19 and voluntarily given, without duress, without coercion,
20 without undue influence, without reward, without promise or
21 hope of reward, without any kind of promise of lenience.
22 So I would admit the statement. Here you go.

23 MR. EPPE: Your Honor, I would obviously reserve any
24 objections that we've made on the record concerning
25 testimony that is reflective of the tape to apply to the

1 tape as well should it be introduced. We would at this
2 time not want to waive any right we might have to present
3 the tape as evidence at a later time.

4 THE COURT: That y'all present the tape?

5 MR. EPPES: If we have a right to do so, I don't want
6 to waive it.

7 THE COURT: Okay. All right. Now, does that -- the
8 next statement would be to the Greenville Sheriff's
9 officer. McNamara is going to be your witness?

10 MR. EPPES: Yes.

11 THE COURT: Is there any reason at this time not to
12 allow the witnesses from Gatlinburg to leave from the
13 state?

14 MR. ARIAIL: No, sir.

15 THE COURT: From the defense?

16 MR. EPPES: Your Honor, we would like for Mr. Ravan to
17 be able to talk to them again briefly.

18 THE COURT: All right. What's -- okay. Very briefly
19 I'll allow Mr. Ravan to -- to talk to them. Let me thank
20 McCarter, Williams, Harbin and Walker for coming. Did I
21 miss anybody? See you on July the 15th or thereafter.

22 MR. EPPES: Your Honor, may I speak to Mr. Ravan
23 briefly?

24 THE COURT: Yeah. Y'all just step outside and then
25 wait for Mr. Ravan. We'll just take a short break at this

1 time. Well, let me ask you this, do you want to go ahead
2 and break for lunch now and come back? Does that suit
3 y'all?

4 MR. ARIAIL: I would -- I would prefer, if I have any
5 say in it, to go forward, because I would like to -- I got
6 rehab at 1:30, because I missed it this morning.

7 MR. EPPES: We can step out for five minutes.

8 THE COURT: Okay. We'll take a five minute break. Do
9 you want to go to 1:30 and then come back after that?

10 MR. ARIAIL: I need to be there at 1:30, so I say go
11 to 12:00, five after 12:00. I don't believe Mike is going
12 to take that long.

13 THE COURT: You mean 1:00 or 1:15?

14 MR. ARIAIL: Yeah.

15 THE COURT: Take a five minute break.

16 (A short recess was taken, after which, the hearing
17 continued as follows:)

18 THE COURT: All right. The next statement is to
19 Sheriff's Office in Greenville. Mr. McNamara is your
20 witness?

21 MR. ARIAIL: Yes, sir.

22 THE COURT: All right. Come on up.

23 THE CLERK: Put your left hand on the Bible, please,
24 and raise your right hand.

25 MICHAEL McNAMARA

1 Having been first duly sworn, testified as follows:

2 THE CLERK: State your name for the record, please,
3 sir.

4 THE WITNESS: Michael McNamara.

5 THE CLERK: Thank you. Be seated.

6 DIRECT EXAMINATION

7 BY MR. ARIAIL:

8 Q State your name, please, sir.

9 A Michael McNamara.

10 Q And Mr. McNamara, by whom are you presently employed?

11 A Greenville County Sheriff's Office, sir.

12 Q And on May the 8th of 2001, were you also employed
13 with the Greenville County Sheriff's Office?

14 A Yes, sir, I was.

15 Q And what is the capacity of your employment?

16 A I'm an investigator and was so at that time in the
17 violent crimes unit of the Sheriff's Office.

18 Q And the violent crimes unit of the Sheriff's Office,
19 in that capacity did you have occasion to become involved
20 in the investigation of the murder of Gladys and David
21 Larke and the attempt to locate a suspect by the name of
22 Brad Sigmon?

23 A Yes, sir, I did.

24 Q As part of that investigation -- let me, how long have
25 you been in law enforcement?

1 A In law enforcement, 17 years, sir.

2 Q And with the Greenville County Sheriff's Office for
3 how long?

4 A Seven

5 Q Now, as part of your investigation, did you have
6 occasion to go to Gatlinburg, Tennessee, on May the 7th?

7 A I did.

8 Q And what was the purpose of -- and how did it come
9 about that you went to Gatlinburg, Tennessee, on May the --
10 the evening of May the 7th?

11 A I was head investigator on the case concerning Gladys
12 and David Larke.

13 Q Let me ask you to do me a favor. Turn that
14 microphone ---

15 THE COURT: I cut it down when I was talking. I cut
16 it back up. Go ahead.

17 BY MR. ARIAIL:

18 Q I apologize. I can't -- my hearing is gone. All
19 right. Go ahead.

20 A I was the head investigator in the case concerning
21 Gladys and David Larke. And we had gotten information from
22 Tennessee on the 7th of May that our suspect in that case,
23 Mr. Sigmon, had been apprehended by the Gatlinburg Police
24 Department in Tennessee.

25 Q All right. And what time did go to Gatlinburg?

MICHAEL McNAMARA - Direct by Mr. Ariail

1 A In the late afternoon, early evening hours of May 7th,
2 2001.

3 Q Were you accompanied by anyone?

4 A Sergeant Mike Brown went with me.

5 Q And did you and Mr. Brown spend the evening, or when
6 you get to Gatlinburg did you have a meeting with Mr.
7 Sigmon at that time?

8 A We did not meet with Mr. Sigmon on the 7th. We spent
9 the night in a hotel there in Gatlinburg.

10 Q And were you informed on the 7th that Mr. Sigmon was
11 in fact not in Gatlinburg?

12 A Yes, sir.

13 Q All right. Where were you informed -- and who
14 informed you where he was?

15 A Investigator -- Detective Gary McCarter from the
16 Gatlinburg Police Department told me that he was at the
17 Seveirville County Detention Facility in Seveirville.

18 Q How far is Seveirville from Gatlinburg?

19 A About 15 minutes, 20 miles.

20 Q And you and Mr. Brown spent the night in Gatlinburg?

21 A Yes, sir.

22 Q And then went -- did you go to Seveirville the next
23 morning to -- to meet with Mr. Sigmon?

24 A We did.

25 Q What was the initial purpose of going to meet with Mr.

1 Sigmon?

2 A Was to bring him back to Greenville.

3 Q Were you aware whether or not he had waived
4 extradition when you went up there?

5 A When we got to that detention facility, we were
6 informed that he had indeed waived extradition and had
7 attended a hearing and was prepared to come back to
8 Greenville.

9 Q Did you make preparations to bring him back to
10 Greenville?

11 A Yes. Yes, sir, we did.

12 Q Did you secure him and put him in your custody?

13 A Yes, sir.

14 Q Put him in your vehicle and begin to drive back to
15 Greenville?

16 A Yes, sir.

17 Q All right. At the time you began the drive back, or
18 got him in the car, prior to that had he made any
19 statements to you?

20 A The first contact I had with him that morning was at
21 the Seveirville -- Seveir County Detention Facility. When
22 we went into the area where they had him, where he was
23 awaiting us, he said -- introduced himself, told me who he
24 was, said hello, said he was glad to see us, glad we were
25 there.

MICHAEL McNAMARA - Direct by Mr. Ariail

1 Q He was glad to see you, glad you were there?

2 A Yes, sir.

3 Q All right. And did he say anything else to you?

4 A Said he wanted to talk to us, tell us what had
5 happened.

6 Q All right. And did you talk to him at that time?

7 A No, sir, not at that time.

8 Q Did you ask him any questions?

9 A No, sir.

10 Q Other than those statements, did he make any other
11 statements to you? First, did he make any statements to
12 you, and secondly, did he make any statements regarding the
13 crimes for which he is charged?

14 A He talked rather constantly from the time we first
15 met, over various different things, not pertaining to the
16 specifics of the case though, about the fact that he was
17 glad to be going back to Greenville, again, he was glad we
18 were there, wanted to get it over and done with, but did
19 not make any specific remarks or statements as to what had
20 happened back in Greenville.

21 Q All right. And you put him in the car at the Seveir
22 County Detention Facility. What was the reason that you
23 didn't interview him there?

24 A They were not equipped -- basically two reasons. They
25 were not equipped, first of all, for an interview. They

1 didn't feel that what we had was a sufficient room or
2 facility for us to sit with him for any length of time and
3 conduct an interview (sic). And second of all, it was
4 their concern, from the Sheriff himself, to remove him from
5 that facility as soon as they possibly could. They
6 apparently had been inundated with media trucks and
7 personnel from South Carolina to cover the event as they
8 called it, and were eager to have him removed from their
9 custody, and have that whole thing over and done with there
10 in Seveir.

11 Q And that was communicated to you by the Sheriff?

12 A The Sheriff himself, yes, sir.

13 Q And based on that you left there with the intention to
14 go back to the Gatlinburg Police Department to interview
15 Mr. Sigmon?

16 A Yes, sir.

17 Q Okay. Did you do that?

18 A Yes, we did.

19 Q Who rode in the car with you?

20 A Sergeant Mike Brown drove the vehicle. I rode in the
21 backseat next to Mr. Sigmon.

22 Q And Mr. Sigmon. Anyone else in the vehicle?

23 A No, sir.

24 Q And you're in plain clothes?

25 A Yes, sir.

1 Q Mr. Brown is in plain clothes?

2 A Yes, sir.

3 Q All right. Did you -- was there any conversation
4 about either the substance of the crimes for which Mr.
5 Sigmon was charged, or any other conversations from the
6 time you left the Seveirville Detention Facility until you
7 got to the Gatlinburg Police Department?

8 Q Yes, sir. Again, there was no substance of the
9 conversation -- I'm sorry, no substance of what had
10 occurred. No conversation concerning that, what had
11 occurred in Greenville. He had indicated to me up there at
12 the detention facility that he wanted to talk, he wanted to
13 give a statement, he wanted to let me know what had
14 happened. I said to him, we'll do that. We are not
15 prepared to do this right this moment at this time, give us
16 some time and we'll do that. So he, the best I can
17 understand, was aware that we were not going to take any
18 statement or discuss that at that point, but other than
19 that his -- he was very, very talkative. It was basically
20 constant conversation from the time we picked him up until
21 and including the time we spent at the Gatlinburg Police
22 Department.

23 Q All right. Are there any statements that he made
24 during that time that would be relevant to the trial of
25 this case as to the substance of the event?

1 A Not -- not at the point that we took him from
2 Seveirville to Gatlinburg detention facility -- to the
3 Gatlinburg City Police Department, sir.

4 Q All right. When you got to the Gatlinburg Police
5 Department, what area did you go in for the purpose of
6 taking that statement?

7 A The area where the detectives offices are located.

8 Q All right. Describe that for us, for the Court?

9 A The area where the detective's offices are located
10 goes through a solid entry door in the middle of the police
11 department in Gatlinburg. It's an area roughly twice the
12 size of the jury box, and contains at least four offices
13 for the detectives, with a large common area outside of
14 those officers, several couches with seating areas, some
15 cabinets along a wall, and then a table not -- not unlike
16 that table right there in front of the jury box.

17 Q This one?

18 A Yes, sir.

19 Q All right. And at that table has a computer and a
20 keyboard and space to work?

21 A Yes, sir.

22 Q And a printer?

23 A Yes, sir.

24 Q All right. Now, did you have -- what area did you and
25 Mr. Sigmon and Mr. Brown go sit in?

MICHAEL McNAMARA - Direct by Mr. Ariail

1 A I sat with Mr. Sigmon at the table.

2 Q Side by side?

3 A Side by side. We were both on the same side of the
4 table, yes, sir.

5 Q Where did Mr. Brown sit?

6 A He sat -- his position would have been behind us on
7 the couch, five to seven feet or so from where we were
8 sitting.

9 Q And would you say that the area that we're talking
10 about, if the table is here and you're seated here, the
11 area that is the waiting -- or sort of the lobby area is
12 probably as far from here back to that door there, to that
13 wall?

14 A To include the detective's offices, yes, sir.

15 Q All right. And then there's a sort of widened out
16 area out here where the table was?

17 A Yes, sir.

18 Q Now, from that -- from that location were there people
19 that came in that area during the time that you were there?

20 A There were.

21 Q And who were those people?

22 A Detective McCarter and Detective Williams had their
23 offices in that open area and they came and went as they
24 needed to during the course of whatever they were doing at
25 that point, and several other personnel from the Gatlinburg

1 Police Department came in and outside or talk to or see one
2 of the two detectives from time to time.

3 Q So there were people passing back and forth from the
4 detective offices out through the lobby area, out the door.
5 Were any of those people involved in the questioning of Mr.
6 Sigmon?

7 A No, sir.

8 Q Okay. Now, prior to questioning Mr. Sigmon, from the
9 time that you had secured custody of him at the Seveirville
10 Detention Facility until the time you sat down and read him
11 his Miranda rights, had you or anyone in your presence
12 threatened him in any way, or made any promises of leniency
13 to him in any way?

14 A No, sir.

15 Q Did he at any time indicate to you through his
16 actions, or speech, or mannerisms that he did not have full
17 possession of his faculties and his ability to understand
18 what was going on?

19 A No, sir. He appeared to understand any conversations
20 that we had.

21 Q Did he make responsive answers?

22 A Yes, sir.

23 Q All right. And did he have a conversation with you
24 that was intelligent?

25 A Yes, sir, he did.

MICHAEL McNAMARA - Direct by Mr. Ariail.

1 Q Now, prior to taking his statement, did you advise him
2 of his rights?

3 A Yes, sir, I did.

4 Q And let me show you what we'll mark as Court's Exhibit
5 Number 2, and ask you if you recognize that particular
6 form?

7 A Yes, sir, I do.

8 Q And where did you obtain that form?

9 A From Detective McCarter or Williams, one or the other,
10 I don't remember which one at the Gatlinburg Police
11 Department.

12 Q All right. And that is what appears to be a standard
13 wavier or standard admonition of rights form with the
14 wavier attached?

15 A Yes, sir, very similar to the one we use here in
16 Greenville.

17 Q All right. Tell the Court how you advised Mr. Sigmon
18 of the contents of that particular document?

19 A As I said before, we sat at that table side by side
20 and the paper -- this form, the original form was in
21 between us. I read the form out loud to Mr. Sigmon. As I
22 moved my finger across the line as I read to indicate where
23 I was reading, he looked closely at the document and to me
24 appeared to be following along as I read the document.

25 Q If you would, just read to us what you read to him?

1 A Before we ask you any questions you must understand
2 what your rights are. You have it right to remain silent.
3 Anything you say can and will be used against you in court.
4 You have the right to talk to a lawyer for advice before we
5 ask you any questions and have him with you during
6 questioning. If you cannot afford to hire a lawyer, one
7 will be appointed to represent you before any questioning
8 if you wish one. If you decide to answer any questions
9 without a lawyer present, you will still have the right to
10 stop answering at any time. You also have the right to
11 stop answering at any time until you talk to a lawyer.
12 After reading that I read the next paragraph which is
13 titled, wavier of rights.

14 Q All right. Read that.

15 A I have read the statement of my rights. I understand
16 what my rights are. I'm willing to make a statement and
17 answer questions. I do not want a lawyer at this time. I
18 understand and know what I am doing. No promises or
19 threats have been made to me and no pressure or coercion of
20 any kind has been used against me.

21 Q All right. Now, after reading that to him, you say he
22 was seated -- was he seated on your right hand side?

23 A My right hand side, yes, sir.

24 Q And the paper was in between the two of you?

25 A Yes, sir.

1 Q Did he appear to you to follow along?

2 A Yes, he did.

3 Q All right. Now, after you read him that, did you give
4 him the opportunity to read it on his own?

5 A He had the opportunity to look at it as it sat in
6 front of him, yes, sir.

7 Q All right. Now, did you ask him to do anything else
8 with that form?

9 A I asked him to sign the form.

10 Q All right. How about any initialing on the form?

11 A Yes, sir, I ask him if he would initial each line or
12 paragraph all the way down the form.

13 Q And did he do that?

14 A He did so.

15 Q All right. And what was the purpose that you asked
16 him to do that?

17 A I said by initialing this form it indicates that you
18 understood each line that you initialed, that you've read
19 it, that you know what it means and you understand it.

20 Q and did you also request of him that he read any
21 portion of that wavier of rights or admonition form?

22 A Yes, sir.

23 Q Which portion?

24 A If I may read it, sir, the line that says, you have
25 the right to talk to a lawyer for advice before we ask you

1 any questions, and have him with you during questioning.

2 Q And did he read that out loud?

3 A He read that out loud, yes, sir.

4 Q So he was able to read and -- read that to you?

5 A Yes, sir.

6 Q During this process of reading these rights to him,
7 was any threats or coercion exercised against him by you or
8 anyone in your presence?

9 A No, sir.

10 Q Did he at any time indicate to you that he wanted to
11 exercise his rights to an attorney, or that he wished to
12 talk to ---

13 A No, sir.

14 Q Did he appear to understand what he had read, and what
15 he had read to you, and understand his rights and the
16 significance of the wavier?

17 A Yes, he did.

18 Q Did anything he did during the course of the -- of
19 this time indicate to you that he was -- his freewill and
20 volition had been overcome, or that he was being forced, or
21 coerced, or promised, or lead into doing something he
22 didn't want to do?

23 A No, sir.

24 Q Okay. And he appeared to be in full control of his
25 faculties?

MICHAEL McNAMARA - Direct by Mr. Ariail

1 A Yes, sir.

2 Q And understanding?

3 A Yes, he did.

4 Q All right. And did he in fact execute that form?

5 A He signed it, and signed his name at the bottom, and
6 initialed every place, indicating he understood the form.

7 Q All right. And did you witness that signature?

8 A I did.

9 Q That's your witness on there. And it's got some time
10 markings on there, who put the time markings on it?

11 A The 4:10 p.m. time mark was done by Mr. Sigmon. The
12 4:12 p.m. time marking was done by myself.

13 Q All right. And the 4:10 and the 4:12 means 4 -- it's
14 not military time, it was 4:10 and 4:12 p.m.?

15 A Four in the afternoon, yes, sir.

16 MR. ARIAIL: All right. Your Honor, we'd like to
17 offer this as Court's Exhibit 2.

18 THE COURT: All right.

19 (Court's Exhibit Number 2 was marked and filed.)

20 BY MR. ARIAIL:

21 Q All right. After Mr. Sigmon executed the form,
22 State's Exhibit -- Court's Exhibit 2, did you in fact take
23 a statement from him?

24 A Yes, sir, I did.

25 Q And tell me how -- how this took place?

1 A The folks at Gatlinburg Police Department had a
2 computer, a desk top computer, monitor, printer and a
3 keyboard. We determined the best way to take this
4 statement, and the way I prefer to take it is on a
5 computer. It's much quicker than simply having it written
6 out. So as Mr. Sigmon spoke the words to me, I typed them
7 directly into the computer, in a word processor sort of
8 program that simply kept track of it on the computer
9 screen.

10 Q All right. Could he see the computer screen from
11 where he was?

12 A Yes, sir. It sat between us on the desk.

13 Q All right. And was he able to follow along with you?

14 A Yes, sir.

15 Q Okay. How long was this -- how long did this process
16 take for getting the statement then reducing it to typed
17 form, printing it out, having it reviewed by him, and
18 signing it?

19 A The whole process took about four hours.

20 Q You were there at the Gatlinburg Police Department for
21 four hours?

22 A Yes, sir, we were.

23 Q Now, the end product of all that was a seven and a
24 half page typed statement, is that correct?

25 A That's correct.

MICHAEL McNAMARA - Direct by Mr. Ariail

1 Q All right. Now, at any time during the taking of the
2 statement -- well, not at any time. How did this take
3 place? Did you ask him specific questions or was this a
4 narrative pretty much by him?

5 A It was a narrative by Mr. Sigmon. As I indicated
6 before, he wanted to talk and tell us what had happened.
7 We just asked him to hold off until we were in a situation
8 or were in a position to be able to do that and document
9 it, and the only thing I asked him initially taking the
10 statement was, okay, tell me what happened, and he began to
11 speak, and I began to type.

12 Q Did you have to direct him at any time towards a
13 particular time frame, or put it in an order, or
14 chronologically or anything like that?

15 A The only thing I directed him to do or asked him to do
16 was start at the beginning when his relationship began with
17 Becky, and go chronologically from there.

18 Q Okay. Were you aware of what had -- had you had any
19 idea of the substance of what the statement would be about?
20 Had you received any information from other sources what he
21 might say?

22 A Yes, sir.

23 Q And those sources were who?

24 A Family members from both sides of the case.

25 Q All right. How about from Detectives McCarter or

1 Williams, had you discussed with him what the conversation
2 they had had with him the night before?

3 A Briefly, yes, sir.

4 Q All right. So you were aware basically of what he
5 told them?

6 A Yes, sir.

7 Q Okay. Now, as this was being typed on the word
8 processor, is there any part of this statement, any part of
9 what he told you that you're aware of that was left out of
10 the typed form?

11 A Yes, sir.

12 Q And what part is that?

13 A At one point during the statement he told us -- or
14 told me what he had done with the gun that he had taken
15 from the Larke home, and that -- what he had done with that
16 gun is not in that statement.

17 Q All right. And what is the reason that you believe
18 it's not in this statement?

19 A He told us where it was. We stopped the interview
20 process briefly. I spoke with Mike Brown briefly to make
21 communications back to Greenville to send somebody to go
22 find the weapon. I did not want the weapon to stay where
23 it was, first for evidentiary purposes, and second for
24 safety purposes. The interview was stopped very briefly.
25 We stayed in the room, made arrangements for the folks in

1 Greenville to go and get the weapon, and resumed taking the
2 statement, and I simply left out -- when I started to take
3 the statement again, I neglected to put it in there that
4 that's the point we were at that he told me where he had
5 put the gun. We just continued on from there with that
6 statement.

7 Q All right. But at that time you did call back to
8 Greenville to convey that information for a search to be
9 undertaken to locate the weapon?

10 A Yes, sir.

11 Q All right. Other than that, is there anything else
12 that's not in the written statement?

13 A No, sir.

14 Q Let me show you this document, which is a copy of the
15 original and ask you if this is the document you produced
16 as a result of your interview with Mr. Sigmon?

17 A Yes, that's it.

18 Q All right. And at the end of -- or at the end of this
19 document, is there a signature over the name Brad Keith
20 Sigmon, another signature over Investigator Michael
21 McNamara's name, and then in the left-hand margin of each
22 of these pages for each paragraph are the initials BS?
23 Would you explain how all those came to exist on that
24 document?

25 A Yes, sir, it's similar to the admonition and wavier.

1 Once the statement was completed on the computer and I had
2 print it out -- printed it out, I gave it to Mr. Sigmon,
3 and I told him to read it. I said, take your time, I know
4 it's a lengthy statement. Read it in its entirety. If
5 there's anything in there that needs to be changed, it's
6 just a matter of going back into the computer, doing some
7 few key strokes and changing what needs to be changed. If
8 it's not right, if it's not accurate, if it's not exactly
9 what you want your statement to read, tell me and I will
10 change it. He read the entire statement. It took some
11 time to go through the entire statement. He said that that
12 was fine the way it was.

13 Q All right. Then as a result of that, what did you ask
14 him to do?

15 A I asked him to sign the statement first of all, which
16 he agreed to do, and did sign it. That is his signature on
17 the back page just above his typed name. And again we went
18 through and I asked him, if you agree with each paragraph
19 that's on there, I want you to initial beside each
20 paragraph. And again, I told him the initialing beside
21 each paragraph indicates that that paragraph is accurate,
22 that that is your statement, that is the truth, and that is
23 what you want it to say.

24 Q All right.

25 A And he went back and initialed each paragraph.

1 Q All right. After signing it?

2 A Yes, sir.

3 Q And then you witnessed his signature?

4 A Yes, sir.

5 Q All right. At any time during this process, did
6 anybody make any promises to him of leniency, did anybody
7 make any threats, exercise any sort of coercion, or
8 physical abuse towards Mr. Sigmon?

9 A No, sir.

10 Q Was he allowed to take food and drink during this
11 course ever this event?

12 A Yes, sir. If he was hungry he asked for food, we
13 immediately had somebody go out. We did not say, well,
14 let's finish this first and then we'll get you some food.
15 If he was hungry, we got food for him right away. If he
16 was thirsty, we had -- there was a soda machine there at the
17 PD, we got sodas for him. If he needed to use the
18 bathroom, we simply stopped what we were doing and he was
19 escorted to the bathroom and we came back. Smoke
20 cigarettes, we allowed him to do that right there at the
21 table while we did the statement just for time sake.

22 Q And did he do all of those, eat, drink, smoke and go
23 to the rest room?

24 A Yes, sir.

25 Q All right. During the course of this ---

1 COURT REPORTER: Hold on one second.

2 (Court reporter turned her tape over.)

3 BY MR. ARIAIL:

4 Q During the course of taking the statement, did he at
5 any time indicate to you he wanted to stop talking?

6 A No, sir.

7 Q Did he indicate at any time to you that he wanted to
8 consult with a lawyer, or he wanted the services of an
9 attorney?

10 A No, sir.

11 Q Did he in any way indicate to you that he did not
12 understand what was going on or that he had lost control of
13 his faculties?

14 A No, sir.

15 Q Was his statement coherent and intelligently ---

16 A Yes, sir.

17 Q --- given to you?

18 A Yes, it was.

19 Q And from all appearances, did you -- were you -- did
20 you -- could you form an opinion as to whether or not you
21 felt that he was giving this statement freely and
22 voluntarily, of his own freewill?

23 A Yes, sir. He expressed to me many times that that was
24 what he wanted to do, he wanted to talk, get it off his
25 chest, tell us what happened and moved forward from there.

1 Q And did you have to question him about the details and
2 say things like, well, we know this, and tell us about
3 that, or was he free and forthcoming of all of this
4 information on his own?

5 A He was free and forthcoming with all the information.
6 There was very little actual questioning that had to be
7 done, it was simply listening to what he said and typing it
8 in the computer as he went along.

9 Q During the course of the taking of this statement, did
10 he become emotional?

11 A Yes, he did.

12 Q From time to time?

13 A Yes, sir.

14 Q Was he emotional throughout the entire time, or just
15 at different parts?

16 A At various points in the statement he became
17 emotional.

18 Q All right. And do you remember what parts those were?

19 A The most significant one I do, yes, sir.

20 Q Which one was that?

21 A When he described how the Larkes were killed.

22 Q How the Larkes were killed?

23 A Yes, sir.

24 Q All right. During the course of that emotional
25 display, or display of emotion, did he indicate to you he

1 had lost control of his faculties, or in some way was no
2 longer in control of his ability to -- to rationally think
3 and -- and reveal these events?

4 A No, sir, I simply gave him some time to recover,
5 which took maybe several minutes at that point and it might
6 have -- it happened on more than one occasion, once or
7 twice he became emotional, I gave him whatever time he
8 needed to recover, just let him be, get his emotions out,
9 and he indicated to me that he was ready to continue. We
10 went forward from there.

11 Q All right. That decision would be up to him?

12 A Yes, sir.

13 Q When to continue?

14 A It didn't matter how long it took.

15 Q All right. Now, after you completed the signature,
16 the signing of the statement, did you then leave Gatlinburg
17 that night?

18 A Yes, sir, we did.

19 Q And how did you travel?

20 A By the same vehicle we came up in. Sergeant Mike
21 Brown drove the vehicle. I again sat in the backseat with
22 Mr. Sigmon. We drove directly back to Greenville, South
23 Carolina.

24 Q And what length of time would you estimate that drive
25 was?

1 A Two and a half, two hours and 45 minutes. We stopped
2 once to get some food for Mr. Sigmon again, but that was
3 the only stop we made along the way. We came directly
4 back.

5 Q During the travel back, did Mr. Sigmon continue to
6 talk with you?

7 A Yes, sir, he did.

8 Q Talk about events?

9 A He certainly did, yes, sir.

10 Q Did he make any statements in regard to the events
11 that he had previously related to you, the events of the
12 crimes themselves?

13 A Yes, sir.

14 Q Did he talk about things not related to the crime?

15 A Yes, sir.

16 Q All right. Let's talk first, do you recall what
17 statements he made in regard to the events themselves as
18 you were riding down the road back to Greenville?

19 A Yes, sir.

20 Q What did he say?

21 A He said that he should -- he felt he should have
22 killed Becky, that things would be better off if he had
23 managed to kill Becky when he shot her.

24 Q All right. In addition to that, do you recall any
25 other statements he made in regard to the events?

1 A Not -- not in regards to the events, sir.

2 Q All right. How about in regard to other aspects,
3 either incidental to the events, or other things he wanted
4 to talk about?

5 A There again, there was general conversation from him
6 the entire time we drove back down to Greenville, South
7 Carolina, relationships he had been in before he met Becky,
8 relationships with an ex-wife, where an incident had
9 occurred between him and her. He went into that in great
10 detail. And in -- and the detail about the relationship he
11 and Becky had had, but nothing that amounted more than what
12 he had told me in the taking of that seven and a half page
13 statement.

14 Q Okay. And in regard to -- in regard to the statement
15 he gave to you, the oral conversation -- well, first, were
16 you at that point trying to elicit a statement from him, or
17 was this just chatter that he was going down the road?

18 A This was just chatter. He wouldn't stop talking. We
19 didn't ask him any further questions or actively try to
20 engage him in any more conversation. He just wouldn't stop
21 talking.

22 Q All right. And in regard to the ex-wife, what did he
23 relate to you in regard to that?

24 A That she had shot him some years back over an incident
25 where he apparently had went into her home, for whatever

MICHAEL McNAMARA - Direct by Mr. Ariail

1 reason some sort of altercation ensued and he had gotten
2 shot by her.

3 Q All right. Now, when you got back to Greenville, who
4 was there -- well, who was there to meet you?

5 A We got back to the law enforcement center, we were
6 informed that Mr. Abdalla from the public defenders office
7 was there and wished to meet with Mr. Sigmon briefly.

8 Q All right. Did he or -- were there any members of the
9 press there?

10 A Yes, sir, there were.

11 Q All right. And how about after he met with Mr.
12 Abdalla, did you have any conversation, or did Brad ask you
13 any questions in regard to the press?

14 A Yes, he asked me if he should speak to them. He
15 informed me that he had spoken to them in Gatlinburg. He
16 asked me what I thought he should do with regard to this
17 subject again, because he was informed they would indeed be
18 there as we took him from the law enforcement center the
19 short walk to the detention center across the driveway.

20 Q What did you tell him to do?

21 A I told him that my advice was not to say anything to
22 them at all. I understood that he had spoken to them at
23 length in Gatlinburg or in Seveirville, and I advised him,
24 if I were you, I'd just keep your mouth shut and walk
25 across the parking lot and go into the detention center.

1 Q Did take that advice?

2 A He did not.

3 Q Did he talk to the press as he walked?

4 A He did and his attorney, Mr. Abdalla, walked along
5 side and continuously tried to admonish him to be quiet but
6 he just kept on talking.

7 Q All right.

8 THE COURT: Why is this ---

9 MR. ARIAIL: I don't know.

10 THE COURT: Is this not beyond the scope of ---

11 MR. ARIAIL: It may be but I just figured I was here,
12 I would just go get it done and then get it over with.

13 THE COURT: All right.

14 BY MR. ARIAIL:

15 Q Did he attempt to make contact with you thereafter?

16 A Did Mr. Sigmon?

17 Q Yes.

18 A He did.

19 Q And how many times did he attempt to contact you?

20 A He called me on numerous occasions.

21 Q And he would call you where?

22 A He would call my office phone at the law enforcement
23 center in the violent crimes office.

24 Q While he was in the detention center?

25 A Yes, sir.

MICHAEL McNAMARA - Cross by Mr. Abdalla

1 Q Did you take any of those calls?

2 A I did not.

3 Q Did you talk to him any more thereafter?

4 A I brought him out one time after that.

5 Q All right. Did you have a conversation with him?

6 A Not to the specifics of the incident. No further
7 questioning was conducted at that point. We had obtained
8 everything we felt we needed previously, so there was no
9 need to speak to him about the incident any longer.

10 MR. ARIAIL: Okay. That's all I have. Answer any
11 questions that Mr. Abdalla may have or Mr. Eppes.

12 THE COURT: Why did you get him out that one last
13 time?

14 THE WITNESS: It was an attempt to -- his mom wanted
15 to see him. He wanted to have some time alone just he and
16 his mother, and we tried to coordinate a meeting at the law
17 enforcement center. It did not pass but that's what we
18 tried to do then.

19 THE COURT: Okay. Mr. Abdalla.

20 7MR. ABDALLA: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. ABDALLA:

23 Q Detective McNamara.

24 A Yes, sir.

25 Q Is it safe to say Mr. Sigmon was cooperative?

1 A Very much so, yes, sir.

2 Q Okay. We've spoken on several occasions about this,
3 and I know you have -- you've been very cooperative with me
4 and with our office, but I need to ask you one thing. I'm
5 kind of unclear on the events of May 7th, the evening of
6 May 7th and the morning of May 8th, leading up to the
7 interrogation of Mr. Sigmon at four o'clock in the
8 afternoon. There was an awful lot of time that elapsed. I
9 would assume you were roughly 24 hours -- or you had left
10 Greenville maybe 24 hours before you finally sat down to do
11 an interview with Mr. Sigmon. Am I close to being
12 accurate there?

13 A Close to, yes, sir. I couldn't tell you the exact
14 time, but that's close, yes, sir.

15 Q And when you left Greenville on Friday afternoon, you
16 said you first went to Gatlinburg and learned that Sigmon
17 was in fact already taken to Seveirville?

18 A Yes, sir.

19 Q You met with the police authorities in Gatlinburg, is
20 that correct?

21 A Yes, sir.

22 Q So it was a person to person meeting?

23 A Yes, sir.

24 Q And at that time, or at any time thereafter, did you
25 have an opportunity to talk to, I forget the names now,

1 Officers McCarter, Williams, and -- which officers did you
2 speak to, that might make it better?

3 A Both.

4 Q Both McCarter and Williams?

5 A Yes. Are you still talking about May 7th, the night
6 of our arrival to Gatlinburg?

7 Q Correct.

8 A Yes, both of them.

9 Q And did you ever have an opportunity to view the video
10 tape?

11 A At that point, no.

12 Q When did you get to view the video tape?

13 A After it was brought back to Greenville.

14 Q Okay. Did you see the statements that he had written?

15 A I did.

16 Q And what time was it by the time -- that you went over
17 to the Seveir County jail?

18 A On the morning of May 8th, I'd say roughly 10, 11
19 o'clock in the morning, 9 or 10 o'clock.

20 Q This is roughly a 30 minute drive, is that accurate?

21 A Roughly, yes, sir.

22 Q You picked him up, you said, and Mr. Sigmon got in the
23 car with you and was quite talkative on the return trip in
24 the backseat with you?

25 A Yes, sir.

1 Q And did you go over his rights, I forgot what you said
2 about that, in the car? Did you ever talk to him either in
3 the jail or in the car about his rights?

4 A Not about his rights, we didn't initiate any
5 questioning at that point.

6 Q All right. Then you got back to the -- were you at
7 the booking area?

8 A In Gatlinburg?

9 Q Yes.

10 A No, sir, in the detective offices, a separate area
11 from that.

12 Q Now, why would you go there instead of the booking
13 area? Any reason you used that room instead of the booking
14 room?

15 A No, when I asked Detective McCarter and Williams where
16 I could take a statement, they said in our office, in the
17 detective's common area is a computer we could use, and
18 that's what we decided to do.

19 Q By any chance is there either an audio or video tape
20 of this statement?

21 A No.

22 Q Okay. Now, you said he went into the events of what
23 happened, and he pretty much methodically went through it,
24 didn't he?

25 A Yes, he did.

MICHAEL McNAMARA - Cross by Mr. Abdalla

1 Q And at any time when he was going through it -- I'm
2 sorry, at what time, as he was going through it, did you
3 say he got emotional? You said he got emotional a good
4 bit, do you remember?

5 A Not a good bit, on several occasions. Are you asking
6 me for a time, a clock time, or a point in the statement?

7 Q A point in the statement, I'm sorry.

8 A Point in the statement, when he referred how the
9 Larkes were killed.

10 Q And tell me a little bit about that.

11 A What exactly do you want to know about it?

12 Q All right. What did he say and what was his reaction?

13 A What exactly did he say in his statement?

14 Q As you recall it. I don't need it verbatim but ---

15 A He explained how when went into the home Mr. Larke was
16 there, and he immediately tried to get his wife to get his
17 gun, or call the police, and he struck him on the head
18 several times with a baseball bat, and he went into the
19 living room and found Mrs. Larke in the chair, and struck
20 her several times with the baseball bat.

21 Q All right.

22 A He indicated that after he had done this he went back
23 to Mr. Larke, who was still somehow moving, alive or making
24 sounds, hit him some more with the baseball bat. He
25 indicated he went back and did the same ---

1 THE COURT: Let me just stop you. What has this got
2 to do with the free ---

3 MR. ABDALLA: What I wanted to know where ---

4 THE COURT: --- and voluntariness? Okay. We don't
5 need to know what he said. If you want to get into what
6 his emotions are, that's fine.

7 MR. ABDALLA: I do want to get into his emotions.

8 BY MR. ABDALLA:

9 Q And what were his emotions like at that time?

10 A He began to cry.

11 Q Pardon me?

12 A He began to cry.

13 Q All right, sir. So would you say was he remorseful?

14 A He was upset. To me he didn't indicate -- he didn't
15 say the words, that indicated remorse to me. At that point
16 he simply began to cry and stopped talking at that point,
17 sobbed profusely and cried over the course of maybe two
18 minutes or so. I gave him sufficient time after that to
19 calm down and we continued.

20 Q Oh, so you did stop and allow him to get his composure
21 back?

22 A Sure, yes, sir.

23 Q And then what happened as he went back on with -- did
24 this happen again during the interview at all?

25 A Maybe one other occasion as he continued to talk about

1 Mr. and Mrs. Larke and what happened to them.

2 Q So would you say this was a crime of passion from your
3 understanding, from what you observed?

4 THE COURT: That's -- you don't have answer that.
5 That's way beyond the scope of whether this statement was
6 given freely and voluntarily and intelligently.

7 BY MR. ABDALLA:

8 Q All right. You continued the interview, and how
9 many times did you have to stop the interview, would you
10 say?

11 A Probably on two occasions.

12 Q All right.

13 A That would be about it.

14 Q And what -- one thing I never finished asking about,
15 the time frame it -- what happened between 10:00 and 4:00?
16 Why did it take that long to start the interview?

17 A Ten a.m. on the 8th?

18 Q Yes, sir?

19 A The process of getting him out of the detention
20 facility took a little bit of time, as well as trying to
21 coordinate how to get him out of there quickly. The media
22 was out there with a lot of cameras. Before we even did
23 that though we had to meet for some length of time with the
24 District Attorney's office in an attempt to secure a search
25 warrant for the motor home that they recovered when they

1 arrested -- when they arrested Mr. Sigmon. That process
2 took easily an hour or more. We had to go to the judge to
3 get it signed, and by the time we had all that finished and
4 had him ready to go from the detention center and into the
5 car, stopped on the way back to get him some cigarettes I
6 believe on the way back to Gatlinburg, by the time we got
7 back to Gatlinburg, find a room, get the computer ready,
8 it's four o'clock, or in the area of four o'clock.

9 Q Okay. All right. How long did it take to get the
10 statement?

11 A To get the statement, sir?

12 Q Um-hm.

13 A About four hours.

14 Q The whole statement took about four hours to take?

15 A From start to finish, with stops for food,
16 cigarettes -- not necessarily cigarettes, bathroom breaks,
17 anything that occurred during the course of taking the
18 statement, start to finish, by the time I started until the
19 time we were ready to pack up and leave and go back to
20 Greenville, about four hours.

21 Q Any reason you took the statement up there instead of
22 in Greenville?

23 A He wanted to tell us what happened. We could not get
24 him to stop talking. I didn't really want to hear it any
25 more but he wanted to tell us what happened. He continued

1 to talk, and I said, well, it doesn't make any sense to
2 tell him to shut up, be quiet, we're going to take you
3 back to Greenville and then we're going to do it. He was
4 fully prepared to disclose each and every thing that
5 happened there in Gatlinburg and it just made sense to do
6 it there.

7 MR. ABDALLA: Let me have one moment, Your Honor.

8 BY MR. ABDALLA:

9 Q When did you leave Seveirville, do you have any idea
10 about the time you left there?

11 A I would say probably between 3:15 and 3:30, between
12 the time that it took to stop at one store and make our way
13 back, about half an hour, 45 minutes it took.

14 Q Wait, one thing I'm confused about, I didn't even ask
15 this. I sort of know where Seveirville is, but I'm not
16 real clear on this, it seems like it's next to Knoxville,
17 if I'm not mistaken, I may be wrong.

18 A I wouldn't -- I'm not familiar with exactly how far it
19 is from Knoxville. It is not, to my knowledge, in the same
20 proximity of Knoxville. It's on 441, going to Gatlinburg
21 to Pigeon Forge and right into Seveirville. The cities or
22 towns are kind of lined up.

23 Q Which I thought was near Knoxville, but I could be
24 mistaken on that. But my concern is, I can't understand
25 why you didn't come directly from Seveirville to

1 Greenville? Why stop off in Gatlinburg?

2 A Again, because he just wanted to tell. He wanted to
3 talk. He wanted to give a statement. I hadn't experienced
4 anything like that before. He wanted to do it, so we said,
5 okay, we'll do it.

6 Q Okay. And when did you find out that I was in
7 Greenville waiting for him?

8 A Not until we got back -- either when we got back or
9 shortly before as we got back into cellular telephone
10 range, I know Sergeant Mike Brown made some phone calls.
11 Just before we pulled into the law enforcement center is
12 when they said that there was a gentleman there from the
13 Public Defender's office, we were allowing him some time to
14 meet with Mr. Sigmon.

15 Q But are you -- is it your testimony that nobody from
16 the Sheriff's Office ever notified you that the Public
17 Defender's Office would be representing Mr. Sigmon before
18 you went or while you up there, on the evening of the 7th
19 or the morning of the 8th?

20 A Before we went to Gatlinburg?

21 Q Before or during that time, before you met Mr.
22 Sigmon?

23 A No time until we got back to Greenville were we
24 advised that there was any legal representation for him
25 whatsoever.

1 Q Okay. On the way back you said he was continuing to
2 talk?

3 A Yes, sir.

4 Q He volunteered some stuff. Did you talk about Gino at
5 all on the way back?

6 A No.

7 Q You didn't ask him, tell me about Gino?

8 A I didn't ask him to tell me anything.

9 Q But ---

10 A He simply volunteered information and the subject of
11 Gino did not come up on the ride back to Greenville.

12 Q Not to be argumentative, but in the course while he
13 was volunteering stuff, you never even connected two dots
14 and said, well, tell me about that?

15 A No. He already talked about that up in Gatlinburg.
16 And again, we felt -- I thought -- felt that I had
17 sufficient information in that statement, it wasn't
18 necessary to try to elicit any more information. I just
19 sat there and listened to what he had to say the whole way
20 back.

21 Q All right. And I want to go back one more time to
22 this statement. What's your procedure when you have a
23 defendant go through the statement initially when -- is
24 this typical of how you take a statement?

25 A It is, sir.

1 Q Generally on a computer?

2 A Yes, sir.

3 Q And about how long did it take him to go over this
4 after it was written?

5 A I would have to make a guess for you, I can't remember
6 how long it took him to go over the statement. If I had to
7 guess, as he read the seven and a half pages, it probably
8 took 20 minutes or more.

9 Q And he initialed it and signed it?

10 A Yes, sir, he did.

11 Q When did you sign it?

12 A Right after he signed it.

13 Q Did you make a copy of the statement?

14 A Sir?

15 Q Did you make a copy of this statement at that time?

16 A I don't recall making any copies at that point. I
17 took the original statement with us.

18 Q The reason I'm concerned, and I have a copy of the
19 statement here that does not have your signature on it. It
20 seems to be the same -- is this the State's -- I'm sorry,
21 Court's Exhibit 2 ---

22 THE COURT: You need to speak up, Mr. Abdalla.

23 BY MR. ABDALLA:

24 Q I'm sorry. Court's Exhibit Number 2 has Brad Sigmon's
25 signature as well as Detective McNamara's, and the copy I

1 have, which appears to be the same thing, does not have
2 Investigator McNamara's signature, and I was just curious
3 to know why there are two different statements, or why
4 there could be a photocopy of the statement without your
5 signature?

6 A I couldn't answer that directly why that is there
7 without my signature. My only explanation could be that in
8 coping or making a copy to provide to Mr. Sigmon, we done
9 that before I had actually signed my name to that piece of
10 paper.

11 Q So this wasn't signed later on in Greenville or
12 anything?

13 A Oh, no, sir, it was up in Gatlinburg.

14 MR. ABDALLA: If I could have one moment, Your Honor?
15 Thank you very much.

16 MR. EPPES: Your Honor, can we have one moment?

17 THE COURT: Well, let me ask you this while -- are you
18 saying that the copy you have has the initials on the
19 paragraphs and has the signature of the defendant but not
20 this witness's signature?

21 MR. ABDALLA: That's correct.

22 THE COURT: Okay. I'm just trying to make the record
23 clear.

24 MR. ABDALLA: Thank you, Your Honor.

25 THE COURT: And are you done, or are you still

1 contemplating?

2 MR. ABDALLA: Still contemplating, Your Honor. Beg
3 the Court's indulgence.

4 BY MR. ABDALLA:

5 Q Mr. McNamara, one more question, or one more series of
6 questions. In interviewing Brad as you said, before you
7 even started interviewing, he was volunteering information
8 to you is what you told us, is that correct?

9 A Yes, sir.

10 Q And after you -- during the course of the interview
11 you said you didn't really interview or interrogate him,
12 you merely asked what happened, and he pretty much went
13 with a run-on series of sentences, am I mistaken in that?

14 A No. The only thing we did is I would have to stop him
15 on occasion at the beginning of the statement to tell him
16 I'm not -- let met catch up, just wait a minute, but with
17 the printer and the monitor -- the monitor I should say,
18 right in front of us both, where he could see the monitor,
19 it got to the point where he could see where I was at, he
20 could see where I was at typing, and he knew if he was
21 getting ahead of me and he simply waited on his own, looked
22 at the monitor, saw when I was caught up and then would
23 start talking again.

24 Q Did you have any opinion as to why he talked so
25 freely?

1 A I have no idea.

2 Q Did he ever tell you why he talked so much?

3 MR. ARIAIL: Your Honor, I would object to that. He's
4 not an expert in why ---

5 MR. ABDALLA: Your Honor, I'd assert that he doesn't
6 have to be an expert. He can have an opinion about
7 witnesses. God knows he's an expert to an extent at -- he
8 certainly has a lot of experience and he has opinions, as a
9 police officer, as to what a defendant is saying.

10 THE COURT: Well, for this hearing I'll allow it. I'm
11 not -- I'm not sure I'll allow it at trial. Go ahead.

12 THE WITNESS: Honestly, I don't have any idea why.

13 BY MR. ABDALLA:

14 Q Have you run into other clients who have done so, or
15 is this pretty much a rarity, or -- I have no idea?

16 A Certainly I've had other defendants who have confessed
17 to what they were charged with, but to the degree that he
18 was so eager to tell us without any prompting or interview
19 from us, I haven't experience that. I have no idea why
20 after doing what he did he would be eager to tell us about
21 that.

22 Q Do you have opinion as to his honesty?

23 MR. ARIAIL: Objection.

24 THE COURT: I would sustain the objection. Any other
25 questions?

1 MR. ABDALLA: That's all, Judge. Thank you, Mr.
2 McNamara.

3 THE WITNESS: Yes, sir

4 THE COURT: Anything on redirect?

5 MR. ARIAIL: No.

6 THE COURT: All right. Step down. Any other
7 witnesses on this statement?

8 MR. ARIAIL: No, sir.

9 THE COURT: Any witnesses from the defense on this
10 statement or ---

11 MR. EPPE: No, sir.

12 MR. ABDALLA: No, sir, Your Honor.

13 THE COURT: All right. You're going to offer
14 obviously the written statement?

15 MR. ARIAIL: Yes, sir.

16 THE COURT: Is there anything in that written
17 statement that is objectionable outside whether it was
18 freely and voluntarily and -- made, and whether there was
19 an intelligent waiver of his rights?

20 MR. ABDALLA: Your Honor, I would respectfully ask the
21 Court's indulgence in this? Could we have until tomorrow?
22 My client really wants to read over the statement again. I
23 apologize for that.

24 THE COURT: No. You know, we've had -- these motions
25 have been filed. There is absolutely no reason not go

1 ahead and rule on this right now.

2 MR. ABDALLA: Thank you, Your Honor.

3 THE COURT: It's -- you've read the statements I'm
4 sure many, many times. Is there anything in it, and I
5 haven't read it, I don't know, I'm just -- I'm not -- while
6 they look at it. I'm sure you're offering the entire
7 written statement?

8 MR. ARIAIL: We are.

9 THE COURT: All right. While one of the defense
10 lawyers is looking over the written statement, let me ask
11 you, are you offering -- what oral statements are you
12 offering -- are you offering any of the oral statements he
13 made on the way home?

14 MR. ARIAIL: Yes, sir.

15 THE COURT: All right. Are you offering the statement
16 he thinks it would have been better if he would have killed
17 Becky?

18 MR. ARIAIL: Yes, sir.

19 THE COURT: All right. Are you offering any statement
20 regarding his relationship with his ex-wife, that he had
21 been shot when he went to her home?

22 MR. ARIAIL: Probably not.

23 THE COURT: Well, I need to know now. Go talk to your
24 co-counsel.

25 MR. ARIAIL: No, it's not a matter of talking to my

1 co-counsel. It -- we're back to trial strategy again.

2 THE COURT: Well ---

3 MR. ARIAIL: You're pinning me down. You're pinning
4 me down. I got to tell them everything I'm going to do in
5 in advance.

6 THE COURT: No, I'm just ---

7 MR. ARIAIL: Yes, sir.

8 THE COURT: You are intending to offer the -- the
9 incident with the ex -wife?

10 MR. ARIAIL: Yes, sir.

11 THE COURT: Becky is not the ex-wife, I assume?

12 MR. ARIAIL: No, not the ex-wife.

13 THE COURT: All right. Let me go to the written
14 statement. Is there an objection -- is there anything
15 other than my ruling on the voluntariness of this statement
16 that's objectionable?

17 MR. ABDALLA: Your Honor, of course we -- I don't want
18 to go on the record saying I have no problem with the
19 statement coming in. I don't want to waive my client's
20 rights on that, but ---

21 THE COURT: That's what I said, is ---

22 MR. ABDALLA: Nothing objectionable as to the contents
23 of the statement, other than the fact that in it's entirety
24 it's all objectionable.

25 THE COURT: All right. Now ---

1 MR. ARIAIL: Can -- can we just point one thing out.
2 Just to keep this record clean? Do you have a copy in
3 front of you?

4 THE COURT: I do.

5 MR. ARIAIL: The third page of the statement.

6 THE COURT: What paragraph?

7 MR. ARIAIL: One, two, three, four, five, six. I
8 asked him if he would go with me. I told him that I was
9 going to go tie Becky's parents up, kidnap her and kill her
10 and myself. He asked what was in it for him. I told him
11 that I would buy him \$200 worth of crack. I went and
12 bought the crack, gave Gino a little bit at a time. We
13 left there and went to Lowe's to buy something.

14 THE COURT: All right.

15 MR. ARIAIL: That's his statement.

16 THE COURT: All right.

17 MR. ARIAIL: Gino is going to have a different version
18 about whose crack.

19 THE COURT: I don't know if it's true or not. That
20 would be part of the res gestae of the whole act, would it
21 not?

22 MR. ARIAIL: Right.

23 MR. EPPES: It's also a jury issue, we recognize that,
24 that Gino will have a different account. This is Brad's
25 account.

1 THE COURT: Okay. So there is a real Gino that is
2 involved?

3 MR. ABDALLA: Yes, sir.

4 MR. ARIAIL: Yes. And Gino is going to have a
5 different version of who was smoking crack.

6 THE COURT: It doesn't matter. Okay.

7 MR. ARIAIL: Which, that's why it's going to lead to
8 his testimony on the same subject matter.

9 THE COURT: Okay. All right.

10 MR. ABDALLA: Your Honor, am I allowed to be heard on
11 the two statements?

12 THE COURT: No, not yet. All right. Because they are
13 totally separate issues.

14 MR. ABDALLA: I understand.

15 THE COURT: As to the written statement that was taken
16 by Mr. McNamara on May the 8th at the Gatlinburg City
17 Police Department, detective division. I've considered the
18 evidence of Mr. McNamara that has been presented by the
19 State, and I make the following findings, by a
20 preponderance of the evidence before the alleged statement
21 was obtained from the defendant, the defendant was fully
22 advised of his 5th and 6th Amendment Constitutional rights.
23 Specifically he was advised of his rights under Miranda v.
24 Arizona. He was advised prior to the interrogation -- let
25 me stop. Let me see the wavier. He was advised that he

1 had a right to remain silent.

2 "He was" advised prior to any interrogation that if he
3 waived his right to remain silent and made a statement that
4 such statement would be used against him. He was advised
5 that he had the right to employ an attorney, or have an
6 attorney present. If he did not have the funds or
7 resources to hire an attorney that one would be provided to
8 him without cost. He was advised that he had the right
9 prior to any interrogation to consult with an attorney. He
10 had the right to stop, to interrupt, or terminate the
11 interrogation at any time. In other words, he could stop
12 answering questions.

13 That -- I find that he knowingly, intelligently waived
14 his rights under the 5th and 6th Amendments to the
15 Constitution and also his constitution safeguards, via
16 Miranda v. Arizona. I find that the statement was freely
17 and voluntarily given, without duress, without coercion,
18 without undue influence, without any reward or promise of
19 reward, or promise of leniency.

20 All right. Now, as to the statements on the way home.
21 Let me hear from the defense.

22 MR. ABDALLA: Your Honor, I would ask that those
23 statements be excluded. First of all, let me go to the
24 second statement first, I believe it was the second one.
25 Do I understand that the Solicitor doesn't even attempt to

1 offer the statement regarding the shooting by the ex-wife
2 on my client?

3 THE COURT: I think he says he does intend to offer
4 it.

5 MR. ABDALLA: He does? I'm sorry.

6 THE COURT: He does.

7 MR. ABDALLA: Are these the only statements that were
8 made that they're intending to offer?

9 THE COURT: Well, my only inquiry -- I mean, my
10 inquiry is, is there anything that's going to come up
11 later that is going to be objectionable for some other
12 reason, other than whether it was freely, voluntarily
13 given, or subject to Miranda or not, and I don't know
14 that?

15 MR. ABDALLA: Well, I would like to know at this
16 time if they are going to offer other statements
17 regarding ---

18 THE COURT: Other than the relationship with the
19 ex-wife and the relationship with Becky, are there any
20 other statements on the ride home that you intend to
21 offer?

22 MR. ARIAIL: None other than what he just testified
23 to.

24 THE COURT: Okay.

25 MR. ARIAIL: Obviously there were three hours ---

1 THE COURT: That you're going to offer, I said?

2 MR. ARIAIL: That I'm going to offer? Those are the
3 only two.

4 THE COURT: Okay. And I guess in what -- obviously
5 you're going to offer it in more specificity than he
6 testified to, I assume? All he said was he talked about
7 his relationship with his -- with Becky. Are you going to
8 go into details of that relationship as to what he said?
9 I'm not asking you to reveal anything, I'm just -- yes or
10 no? I mean, all Mr. McNamara said was he talked about his
11 relationship with his ex-wife.

12 MR. ARIAIL: Two aspects are, as I recall his
13 testimony, Mr. Sigmon said, I wish I had killed her, I
14 should have killed her, I'd been better off, talking about
15 Becky.

16 THE COURT: Right.

17 MR. ARIAIL: Secondly, that he related the event that
18 his ex-wife shot him as a result of a domestic event in
19 which he broke into the residence, or something to that
20 effect.

21 THE COURT: Okay.

22 MR. ARIAIL: Those are the only two.

23 THE COURT: Okay.

24 MR. ARIAIL: I'm not intending to go into their
25 relationship, Becky or the ex-wife, or any of that, just

1 two those statements.

2 THE COURT: Okay. All right. So let's take them one
3 at a time. Things would have better off if I had killed
4 Becky, any objection to that?

5 MR. ABDALLA: Of course, Your Honor. That is so
6 prejudicial, out of context, and it's something that's
7 offered with -- I'd say it was not a knowing and
8 intelligent waiver of his rights. I understand they were
9 read at an earlier time, but I think riding home, the State
10 reminded my client at all that he was just blurting out
11 things like that. And again if you then take it to the
12 next step, if the Court concludes that this was a knowing
13 and intelligent waiver, I think the idea that it's just an
14 out of context remark, is prejudicial out of context, and I
15 think ---

16 THE COURT: Well, here's -- have you interviewed Mr.
17 McNamara?

18 MR. ABDALLA: I have spoken to him ---

19 THE COURT: Have you interviewed him about this
20 specific statement?

21 MR. ABDALLA: No, I have not.

22 THE COURT: Okay. Well, here's my ruling at this
23 point in time, is that it's admissible. It was not taken
24 subject to any interrogation. It was an -- it was a
25 spontaneous statement by your client. So it's admissible.

1 Now, I'm going to make Mr. McNamara available to you. And
2 if you determine that this statement is out of context, we
3 can revisit this issue, or certainly you can cross-examine
4 him and put into the context it was, if it's taken out of
5 context. In other words, I'm not going to leave that out
6 there as a prejudicial statement if -- if -- in all
7 fairness to your client, you know, that -- that it was
8 made -- what the Solicitor is offering is out of context
9 with the overall conversation. Do you understand my
10 ruling?

11 MR. ABDALLA: I do.

12 THE COURT: It's admissible, but Mr. McNamara,
13 you're going to have to be available to them to talk to
14 them.

15 MR. McNAMARA: Yes, sir.

16 THE COURT: All right. As to the relationship with
17 the ex-wife, let me just cut straight to it. What's the
18 relevance of that, Solicitor? I mean, this is what we're
19 here for. I'm not -- you know, why are you offering it?

20 MR. ARIAIL: I mean, there again, we're down to I need
21 to tell you what my trial strategy is.

22 THE COURT: No, we are down to determining -- you
23 know, and I guess, you know, you said you wanted to do
24 these things close to trial, maybe -- maybe I missed
25 something, maybe the reason you wanted to do it close to

1 trial was, you know, not to reveal strategy. I don't know,
2 but the whole point is not just the Jackson v. Deno as far
3 as whether they're admissible as freely, voluntarily made.
4 I want to go ahead and determine if they're relevant and if
5 we're going to admit them.

6 MR. ARIAIL: Well, the statement probably in and of
7 itself, I would concede, would have some questionable
8 relevance. And my co-counsel are corroborating here.
9 Okay. However, with -- depending on what is elicited by
10 them during cross-examination, such as a crime of passion,
11 comments like that, what was his willingness to cooperate,
12 or the other things they asked, if the -- if the idea
13 communicated to this jury during cross-examination, or
14 through direct testimony by the defense is that this is a
15 man who -- this is an isolated event, he just went and lost
16 it, then I think that the other event is going to become
17 highly relevant. It may be that they don't take that
18 route, but if they take that route, it's our intention,
19 since we're going to talk about trial strategy, that that
20 event becomes relevant to the issue as much as this is a
21 similar stalking type of event that lead ---

22 THE COURT: I understand what you're saying. Okay.
23 Well, he -- that can happen to almost anything that happens
24 at trial. I mean it came up earlier with one of the
25 witnesses from Gatlinburg, but my ruling is that as part of

1 your case in chief, absent something coming up that makes
2 it relevant, at this point in time it's irrelevant and I
3 would not admit it. And my instructions to you are don't
4 proffer that statement without giving the Court forewarning
5 that you think the door has been opened.

6 MR. ARIAIL: And I would abide by that directive.

7 THE COURT: All right. Now, you've missed your
8 appointment, because it's two o'clock, and that's all as
9 far as Jackson v. Deno, is that correct?

10 MR. ABDALLA: Your Honor, does that apply to guilt and
11 penalty phase, that statement? I can't see why it would be
12 more relevant at one than the other.

13 THE COURT: Well, actually I could see where it would
14 be relevant in the penalty phase, but I don't think the
15 statement itself could be introduced without some evidence
16 of the crime itself. So if they put up -- if they put up
17 the ex-wife, or some witness, or something that -- that
18 establishes that that did happen, then that statement may
19 be relevant in the penalty phase.

20 MR. ABDALLA: And then Mr. McNamara's statement may
21 be relevant to put up the wife. We would have very
22 little ---

23 THE COURT: Okay. Well, yeah, I guess I'll make my
24 ruling apply to the penalty phase, but I can see where it's
25 going to be a lot more relevant in the penalty phase than

1 it would be in guilt phase, or the trial phase, or the
2 innocence phase. All right. We'll come back at three
3 o'clock and finish motions.

4 MR. ARIAIL: Your Honor, can I make one motion before
5 we go and I'll be glad to look into it? I can't understand
6 a word they are saying.

7 THE COURT: Okay. I agree, and I didn't realize
8 y'all had such soft voices, but both Mr. Eppes and Mr.
9 Abdalla, I have a hard time hearing you, and when we get up
10 here and starting having personal conversation with
11 witnesses, and that may be a part of y'all's strategy,
12 which is fine, but you're going to talk loud enough for the
13 State to hear you and for me to hear you. If we need to
14 put a microphone up there and a podium up there, we'll do
15 that, but ---

16 MR. ARIAIL: Can we get them some mobile, clip on tie
17 microphones?

18 THE COURT: So that you can hear conversations,
19 private conversations?

20 MR. ARIAIL: Yes, sir. Well, It would have an on and
21 off switch.

22 THE COURT: Three o'clock.

23 MR. EPPES: Thank you, Judge.

24 MR. ARIAIL: Thank you, Your Honor.

25 (A lunch recess was taken, after which, the hearing

1 continued as follows:)

2 (Court's Exhibit Number 3 was marked and filed.)

3 THE COURT: All right. The last motion was 6. That
4 would put us on number 7. I know we did a few of them
5 further down, but let's go to number 7, which is a motion
6 to prohibit jury's exposure to victims' family and friends.
7 All right. I think this is resolved.

8 The way we'll select the jury is in courtroom 8. The
9 jury panelists that we -- when they arrive at the
10 courthouse individually to be part of the little
11 mini-panel, they will be given cone parking on the first
12 floor, on the deck. They will be met by a bailiff. They
13 will be brought up the back way. They will be put in
14 courtroom 7 through the back hallway. No one else will be
15 in 7. They will be brought in here for questioning, or in
16 courtroom 8 for questioning. They will be taken -- if
17 they're qualified, they will be taken out and back to their
18 car. They will be instructed not to talk to anyone at that
19 time. And certainly during the course of the trial there
20 will be no exposure. They'll be going in and out the
21 elevator and through the garage. We have a single van that
22 will be taking them back and forth.

23 What other concerns are there?

24 MR. EPPES: Your Honor, the only other concern I have
25 is, you know, the first day as -- as Your Honor is well

1 aware, a lot of the Larkes' family and friends have showed
2 up for every hearing so far. I have no reason to believe
3 it will be any different at trial. I just want to make
4 sure that there is no inappropriate discussions in the
5 hallways that potential jurors might overhear, things of
6 that nature. And it sounds like the security measures you
7 have in place are as good as we can do. The first day of
8 trial -- the first day of proceeding, I don't -- I doubt
9 very much that there would be any interaction that would be
10 prejudicial.

11 THE COURT: Well, the first day, I mean, when they
12 come in, they won't know what it's about until they come
13 in. When they come in, once I excuse them into their
14 groups, I will admonish them to leave quickly and -- and
15 the risk of lingering is -- they could hear somebody --
16 overhear some talk about it, but you know, then there will
17 be general admonitions, and I will question them when they
18 come back. We'll do everything we can. But I think 7 is
19 taken care of. So that is granted to the extent that we --
20 to the extent we can. We'll work on that first day.

21 All right. Number 9 -- excuse me, number 8. The
22 motion to restrict the word murder. Tell me about that
23 one.

24 MR. ABDALLA: Your Honor, we see no reason why during
25 the course of the trial the word murder has to be used by

1 the prosecution witness, because obviously it is the -- the
2 State asserts in its response to us -- of course their
3 angle is it's going to be talked about in every which way,
4 but then they're being stopped from using the word murder.
5 It's almost as if, unless I misunderstood it, everybody
6 knows what they're talking about. Well, unfortunately, as
7 those of us who are lawyers try to remember, the word
8 murder didn't have the same meaning to a lot of us before
9 we became lawyers. We thought of a killing often times as
10 a murder. The word is thrown around loosely. I don't see
11 how it's going to prejudice anybody just not use the word
12 murder.

13 When Mr. McNamara and some other police witnesses were
14 on the stand, I could be wrong, when we were discussing the
15 case, they didn't even use the word murder. That was
16 fortunate I thought, and I realized, yeah, that could be --
17 everything could be taken from a witness' testimony, every
18 bit of information could be used in the same manner, and
19 let the State go ahead and prove its case of murder which
20 is their duty. I don't see how they have a viable argument
21 against it.

22 Well, then they want to argue about that the judge
23 will instruct the jury what murder is, but I don't want the
24 jury to have to be to thinking through the thing --
25 throughout the course of the trial -- subconsciously the

1 word murder is used, if it's repeated and repeated, it
2 becomes part of their ingrained thought, and until they
3 render a verdict that it's murder, it's not.

4 THE COURT: Okay. Anything -- any response from the
5 State?

6 MS. STROM: I'll be glad to respond if you need me to,
7 Your Honor.

8 THE COURT: Well, anything you want to put on the
9 record?

10 MS. STROM: No, sir, Your Honor, you have our
11 response.

12 THE COURT: All right. I'm not going to restrict the
13 word. I think that -- you know, it's -- they might say
14 it's a homicide investigation. The witness might say it's
15 a murder investigation. Certainly if some lay witness
16 wants to, you know, try to classify this as a murder, that
17 would be objectionable at the time, but I'm not going to --
18 I'm not going to grant the motion up front that nobody can
19 use the word murder during the course of their testimony,
20 but that does not prevent you from objecting at the time.
21 All right.

22 MR. ABDALLA: If I could be heard one -- just quickly,
23 Your Honor?

24 THE COURT: Yes, sir.

25 MR. ABDALLA: It's not that I'm saying the word murder

1 should never be used, but when they're characterizing the
2 crime and saying it's a murder and making a legal judgment
3 on that, I don't see what harm would come if they were just
4 saying it's a homicide. They're investigating a homicide.

5 THE COURT: You're protected.

6 MR. ABDALLA: Thank you.

7 THE COURT: To reduce juror information is number 9,
8 NCIC records. I have not read the State's response.

9 MS. STROM: Your Honor, just to summarize. Normally
10 what we do is give them to the Court, allow the Court to
11 give them to the defense. Because of our contract with
12 SLED, that doesn't allow us to release those to anyone
13 other than the Court. But ordered by the Court, we would
14 of course release those.

15 THE COURT: All right.

16 MR. ABDALLA: We have no objection to that, if
17 that's ---

18 THE COURT: If you would provide a -- get them to
19 provide -- are you going to do them all at once?

20 MS. STROM: Yes, sir.

21 THE COURT: Provide them to my clerk and at that time
22 we'll provide them to the defense. So number 9 is granted.

23 Number 10 to bar electronic broadcasting. You're
24 talking about TV cameras?

25 MR. ABDALLA: Yes, Your Honor.

1 THE COURT: All right. Wouldn't by any radios in
2 here. And what about still photos, is that something
3 that's included in your ---

4 MR. ABDALLA: Yes, Your Honor.

5 THE COURT: Okay. All right. Tell me the basis of
6 this motion.

7 MR. ABDALLA: Well, Your Honor, I don't see what
8 purpose it's going to serve to have the electronic medium
9 in the courtroom. This is a public courtroom and anybody
10 who so wishes can come by. The idea that it should be
11 extended to the convenience of everybody who can't be here,
12 or doesn't wish to be here, I would -- so I don't think
13 it's sufficient to warrant them in here. I think it just
14 sensationalizes the proceeding. And I believe we've been
15 conducting murder cases in this case (sic) well enough
16 without the need of television.

17 THE COURT: Tell me the prejudice to your client? I
18 mean, certainly -- certainly the public has access and
19 certainly TVs are in courtrooms all the time. Tell me
20 the -- tell me if you think there's a prejudice to your
21 client, and if you could, articulate what you think the
22 prejudice would be so I can---

23 MR. ABDALLA: Well, some of the prejudice could be,
24 and this is a bit removed, if the case were ever to be
25 appealed all the facts that have been already out may not

1 come in in a subsequent proceeding, and then as far as the
2 sensationalize ---

3 THE COURT: Are you talking about a re-trial years
4 down the road?

5 MR. ABDALLA: That's possible.

6 THE COURT: Okay. That's stretching.

7 MR. ABDALLA: Another argument, Your Honor, is that I
8 think with the cameras here, people, lawyers, everybody may
9 tend to behave differently.

10 THE COURT: I'll keep the behavioral -- I'll keep the
11 decorum, don't worry about that. Go ahead.

12 MR. ABDALLA: And you wouldn't have to worry about
13 those arguments if we didn't have the cameras. And I think
14 also, of course if you're inclined to reject our motion,
15 which seems to be the case, I would ask you at least limit
16 the cameras from never showing the families, because that's
17 something that would do nothing but embarrass people that
18 are involved, involved whether directly or indirectly.
19 I don't see where that would help in any way. But I do
20 believe that it would be best to keep the cameras out of
21 the courtroom.

22 THE COURT: All right.

23 MR. ABDALLA: And I think it is prejudice to my
24 client.

25 THE COURT: You mean showing the family?

1 MR. ABDALLA: Oh, definitely, showing the family.
2 Well, that's more to the family, but I think it's just the
3 whole sensational nature of the idea of cameras in the
4 courtroom.

5 THE COURT: All right. Well, here's -- I deny this
6 motion. What I am going to do is, I'm going to require one
7 camera -- if I get a request from more than one media
8 outlet, then they will -- there will be one camera. They
9 will pool -- it will be a pool camera. As I understand
10 from past trials, they cordoned -- loosely cordoned off the
11 end of the hallway up in -- on the 8th (sic) floor. They
12 put partitions up. The feed goes directly to the various
13 media outlets that are there, and from there they, I guess,
14 feed into their station. But -- and as far as a still
15 photo, I'm -- I don't know what kind of requests I'm going
16 to have. I might limit that just because of my bad
17 experience with them as far as their moving around a lot,
18 clicking a lot, things like that. I'll just see what kind
19 of request I get and what kind of admonitions I can give
20 them.

21 All right. Number 10 is denied, except to the extent
22 that I will limit it to one pool television camera.
23 Anything else on that from the State or from the defense?

24 MS. STROM: No, sir, Your Honor.

25 THE COURT: Number 11 is a motion to bar introduction

1 of autopsy photographs of the victims. Is this yours, Mr.
2 Eppes?

3 MR. EPPES: Yes, sir, Your Honor. Your Honor, these
4 photos are horrific, to the point that they -- I don't
5 believe that we're going to have a lot of dispute as to
6 what happened. There's certainly no dispute that the
7 Larkes are dead. These photographs reflect their death in
8 such a way as to be beyond the pale of anything you need to
9 show guilt or innocence, or anything needed to show
10 aggravating circumstances for the death penalty. I believe
11 that the photos are such that they would just inflame the
12 jury and render a part of their verdict a result of passion
13 and prejudice, and I would like to have them excluded.

14 THE COURT: All right. Are you making this motion as
15 to trial phase or penalty phase?

16 MR. EPPES: Sir?

17 THE COURT: Does this motion apply to the trial phase
18 and the penalty phase?

19 MR. EPPES: Yes, sir.

20 THE COURT: All right. Do you intend to offer autopsy
21 photographs during the trial phase?

22 MS. STROM: We do not intend to offer them in our case
23 in chief at the guilt phase of this proceeding. However,
24 we would like to reserve the right, depending upon what
25 cross-examination occurs there -- it may become necessary

1 to introduce the photograph to corroborate that witness'
2 testimony, depending on what cross-examination reveals. At
3 that time we would have the photographs available to the
4 Court for your review at that time.

5 THE COURT: All right. But as far as your ---

6 MS. STROM: In general we do not.

7 THE COURT: All right. What about at the sentencing
8 phase?

9 MS. STROM: Yes, sir, we intend to introduce
10 photographs of the victims at sentencing phase. I believe
11 that goes to the nature of the crime, which they can
12 properly consider, as well as the aggravating circumstance
13 of commission of torture.

14 THE COURT: All right. Is that one of the aggravating
15 circumstances?

16 MS. STROM: We are alleging that in our notice of
17 aggravation.

18 THE COURT: All right. The -- do you have the
19 photographs here for my review?

20 MS. STROM: No, sir, not today we do not.

21 THE COURT: Okay. Well, I can't rule on it until I
22 see the photographs. The probative value in the penalty
23 phase is much broader.

24 MR. EPPES: Yes, sir.

25 THE COURT: And so -- but I can't make any ruling

1 until I see them. So what -- what I will need for you to
2 do is provide to me any photographs that you think you may
3 offer so that we don't have to delay the trial if it comes
4 up, and I can go ahead and make my ruling.

5 You know, I don't know if they are going to need to
6 illustrate the forensic testimony, I don't know if they're
7 going to need to show the circumstances of the crime, you
8 know those are issues that may or may not come up. You
9 know, on the one hand you're telling me you admit this is a
10 murder case and you're ready to plead guilty, on the other
11 hand you're saying, you know, we don't ever want to use the
12 word murder. So I don't know what your trial strategy is.
13 I don't want to know what it is, but I'm just going to rule
14 that this motion is premature. I will handle it at the
15 time they're offered, but I do want to look at them ahead
16 of time so I can at least get a feel for the prejudicial
17 value, and I'll have to weigh it against the probative
18 value whenever any probative value arises.

19 MR. EPPES: Your Honor, I would ask that we be allowed
20 to get a copy of the photographs at the same time the Court
21 does?

22 THE COURT: Have you filed discovery? Okay. You have
23 not?

24 MR. EPPES: I have not.

25 THE COURT: Okay. Then why do think you're entitled

1 to them?

2 MR. EPPES: Your Honor, the only way that I could
3 argue about an evidentiary motion relating to them is to
4 see them. The only way that I can see them is if they tell
5 me. There's 150 photographs in this case, at least.

6 THE COURT: Well, if you haven't seen them, how do you
7 know they're so horrific?

8 MR. EPPES: I mean, I've seen 150 of them, but I don't
9 want to argue about every one of them. I would like to ---

10 THE COURT: So you have seen the photographs in this
11 case? Okay. I thought you said you had not.

12 MR. EPPES: I have not seen which ones they were.

13 MS. STROM: Your Honor, we have provided them copies
14 of the contact sheets that would show every photograph that
15 was taken.

16 THE COURT: Okay. Well, what's your position on
17 providing him the ones that you're going to submit to me?

18 MS. STROM: I would allow them to look at those, Your
19 Honor. And when would you like those by?

20 THE COURT: Before July the 15th. It doesn't really
21 matter, I'm not going to dwell to them. Probably the --
22 actually probably closer to the trial would better, so just
23 sometime the week before the 15th.

24 MS. STROM: Yes, sir.

25 THE COURT: All right. Number 12, to bar prosecution

1 from suggesting responsibility for imposing death sentence
2 lies elsewhere than with the jury. Tell me what this
3 motion is all about.

4 MR. EPPES: Your Honor, this is a motion to keep the
5 prosecution from somehow implying to the jury that -- that
6 you know, things were in motion that they have no control
7 over, that the defendant's actions led to the imposition of
8 the death penalty, rather than their decision, and I
9 believe that the solicitor's response is sufficient for our
10 purposes.

11 MS. STROM: It may not be, Your Honor.

12 THE COURT: I know, that's not what I read the motion
13 to mean. Yes, ma'am.

14 MS. STROM: Are you ready to hear from me? It is
15 absolutely inappropriate for the Solicitor or anyone to get
16 up there and tell this jury that this decision is going to
17 be reviewed by any appellate court, or that their decision
18 is merely a recommendation that may be followed or may not
19 be followed. That is absolutely improper. We would never
20 do that, and we would submit that defense counsel would
21 never do anything such as that.

22 THE COURT: Well, they contend you can't say he's
23 responsible for his own actions. What is your contention?

24 MS. STROM: Exactly. We can allege that the reason
25 that we are here is because of his actions and his actions

1 led to this.

2 THE COURT: All right. Anything else?

3 MR. EPPES: Your Honor, the only thing we want is for
4 them to say -- I don't want them to say anything that
5 changes the fact that the jury has the ultimate decision,
6 that's all.

7 THE COURT: Okay. And they understand the law and
8 they are going to abide by that law, but certainly ---

9 MR. EPPES: Responsibility for the action ---

10 THE COURT: They can't intimate that anybody but they
11 are going to make the decision, but they can certainly say
12 that the defendant is responsible for what he did. All
13 right. So that motion is granted to the extent we all
14 understand.

15 Number 15, to prohibit introduction of pictures of the
16 victims and scenes of the crime.

17 MS. STROM: Your Honor, I would submit that would be
18 the same as the autopsy photographs. I will provide any of
19 those photographs to you as well.

20 THE COURT: Well, scene of the crime, are you talking
21 about the scene of the crime with -- because it would be
22 prejudicial, there's some gruesome things, not relevant
23 because -- I don't know what ---

24 MR. EPPES: Scene of the crime, they have a series of
25 photographs of the victims still at the scene of the crime,

1 that's what I'm referring to, Your Honor.

2 THE COURT: Okay. If you would, then -- and the
3 purpose of the motion is that the probative value is
4 outweighed by the prejudicial effect because of the
5 gruesomeness of it?

6 MR. EPPES: Yes, sir.

7 THE COURT: All right. Then my same ruling would
8 apply to number 14, that is, that it's denied at this
9 point. You need to submit what photographs you might
10 introduce, and I'll review them, and we'll go from there.

11 MR. EPPES: Your Honor, I believe the Solicitor has
12 agreed to provide them to me when they provide them to you.

13 THE COURT: That's correct.

14 MR. EPPES: Is that correct?

15 MS. STROM: I'll show them to him, yes, sir.

16 THE COURT: All right. Now, 15 was handled before.

17 Sixteen, to exclude video tapes of victims' bodies
18 during sentencing phase. Are you intending to show ---

19 MS. STROM: No, sir.

20 THE COURT: --- the video at either phase?

21 MS. STROM: No, sir.

22 THE COURT: Okay. Is there any way it might come up?
23 I mean, can I just rule absolutely on that, or do you ---

24 MS. STROM: Well, as Your Honor said, we never know
25 what might come up during cross-examination. It is not our

1 intention to offer it in our case in chief at either phase.

2 THE COURT: Okay. All right. Then I will grant this
3 motion, and if you think that it becomes relevant or that
4 you're going to offer it, then you -- we need to have an
5 in-camera hearing before you offer it.

6 MS. STROM: Yes, sir.

7 THE COURT: Number 17, to produce evidence of in
8 aggravation with specificity. Did you y'all give me a copy
9 of -- yeah, here it is. All right. Tell me -- who's
10 arguing this?

11 MR. EPPES: I will argue it, Your Honor. Your Honor,
12 this is a -- this is a long running dispute about the
13 interpretation of this statute. The Solicitor's office has
14 basically said that we're going to present the evidence
15 that the statute allows in aggravation. The statute itself
16 calls for indication of what that evidence is. I know the
17 Solicitor is going to stand up and say they've given me all
18 their documents, and to my knowledge that's absolutely
19 true. They've given every documentary thing to me they
20 have, Your Honor, but I've been through ---

21 THE COURT: Let me just stop you. I'm looking at a
22 notice of evidence in aggravation in the Wood case. Have
23 you filed a notice of evidence of aggravation in this case?

24 MS. STROM: Yes, Your Honor, it is attached to our --
25 it is attached to our written response.

1 THE COURT: Okay. I'm sorry, I got it now.

2 MR. EPPES: Your Honor, I attached that as an example
3 to my motion that's why it was ---

4 THE COURT: All right.

5 MR. EPPES: Your Honor, my problem is very simple. I
6 have taken time to go through the case file on this
7 material. I have come up with something along the lines of
8 100, 120 witnesses on a variety of subjects. Mr. Sigmon
9 has lived all over the country, actually over all the
10 world. He lived in the Philippines for a time when he was
11 a child. We have no way to narrow the scope of what we
12 have to investigate.

13 We would just like some sort of notice, if they're
14 going to call somebody from 10 years ago, they've mentioned
15 today, an ex-wife, if they're going to call somebody from
16 10 years ago, 15 years ago, to talk about something in his
17 life in the penalty phase, we ought to know who that person
18 is. We ought to have some direction to go in. We
19 shouldn't have to just say to him, tell us every bad thing
20 that's ever happened in your life or every bad thing you've
21 ever been accused of, and just have to send our
22 investigator out to try to uncover it. We want to -- if
23 they're going to put in evidence of his supposed bad
24 character in the penalty phase, we ought to know what
25 witnesses they're going to put in.

1 If they're going to put in victim impact evidence
2 among the two dozen people that were clearly severely
3 impacted by the death of Larkes, if they're going to put
4 that in, we ought to have an idea of who it is. I know the
5 Solicitor has told me he generally only puts in one or two
6 victim impact witnesses. If that's the case, tell us who
7 the two are, so we don't have to concern ourselves with 25
8 people. That's the purpose of the motion and that's what
9 we would request. We'd request an identification of
10 witnesses and identification of any evidence that's not
11 been produced to us concerning aggravating factors in this
12 case.

13 THE COURT: Well, is victim impact evidence of
14 aggravation?

15 MR. EPPES: It's evidence that's introduced -- yeah, I
16 would argue it was, Your Honor.

17 THE COURT: Well, I think the law is contrary to that.
18 Madam Solicitor or Mr. Solicitor?

19 MS. STROM: Yes, sir, Your Honor. As stated in our
20 response, there is case law out there that states that,
21 number one, we don't even have to notify them that we
22 intend to use victim impact evidence, but we go ahead and
23 do that. We go farther than what is required by statute.
24 That should not then open us up to be required to go even
25 further. And in fact, we have turned over our entire case

1 file to the defense counsel, and there is case law out
2 there that states that when that is done, the State doesn't
3 even have to set forth in writing its evidence of
4 aggravation that it intends to produce.

5 THE COURT: Well, certainly there could be evidence,
6 not in aggravation, but evidence that you would produce in
7 the penalty phase that would not be in the case file.
8 Victim impact evidence would be in the case file but that
9 would be evidence that you would use at the penalty phase.

10 MS. STROM: But -- but there again, we are not
11 required to by law to inform them specifically as to which
12 witnesses we're going to call, as to what their testimony
13 would be, or the questions that we would ask them.

14 THE COURT: All right. Let me just take them one at a
15 time. The -- the prior criminal history, you've given them
16 that, of the defendant?

17 MS. STROM: Yes, sir.

18 THE COURT: Prior criminal record?

19 MS. STROM: Yes, sir.

20 THE COURT: All right. All right. Mr. Eppes, I
21 understand your frustration, but as I understand the law
22 they are not required to do this, so I don't think I have
23 the legal authority to require them to specific any more
24 than they have as to any character evidence, or prior acts
25 of misconduct that aren't on a criminal history, as far as

1 conviction or victim impact testimony. So I would deny
2 this motion.

3 I will tell you, I don't know if y'all have compared
4 what y'all do with other places, but other places have
5 gotten into the habit of doing these with a lot more
6 specificity. I don't know if the law is going to -- to go
7 that area, but on your own you might consider doing it with
8 more specificity. All right. But I'm not going to make
9 you.

10 Number 18, motion to change venue or extend the number
11 of preemptory challenges. I think that would be premature
12 at this time, but I'll be glad to hear from you.

13 MR. ABDALLA: Well, if it's premature, Your Honor, I'm
14 not sure what we're going to accomplish, but I guess it's
15 set forth in both the motion, I wasn't being smart with the
16 Court, and the memorandum in support. Just that so much
17 happened during the 10 days Mr. Sigmon was on the lam, and
18 a lot of potential jurors must have heard a lot of
19 information, and we think for that reason that there should
20 be a change of venue. In the alternative, if the Court
21 isn't going to rule on that, and I realize we're going to
22 make that decision after interviewing the jury, the panel,
23 then we'd ask for extra preemptory strikes to make sure
24 that nobody gets seated in the jury that has any knowledge
25 of the case.

1 THE COURT: Do you have any -- do you have anything to
2 offer on this motion other than just your statement that
3 there was a whole lot of publicity for 10 days?

4 MR. ABDALLA: No, Your Honor.

5 THE COURT: Okay. I would deny that motion.

6 MR. ABDALLA: Well, I mean, other than what's stated
7 in here, the fact that it happened, the newspaper articles,
8 the news media coverage, which are all part of the record,
9 but ---

10 THE COURT: What part of the record?

11 MR. ABDALLA: Well ---

12 THE COURT: --- in Gatlingburg?

13 MR. ABDALLA: Part --- no, none of the Gatlingburg
14 stuff, there's news media here. Part of our discovery
15 they've given us I should say, instead of part of the
16 record.

17 MR. EPPES: Your Honor, we would that ask you defer a
18 decision on this until we interview ---

19 THE COURT: I'm not deferring it, I'm denying it, but
20 that doesn't mean you can't renew it. Okay. It just puts
21 the burden back on you, instead of remembering I hadn't
22 ruled on something. All right. That motion is denied, but
23 it can be brought up later.

24 Number 19, in opposition to a jury charge regarding
25 evidence of flight. Are you going to ---

1 MS. STROM: Your Honor, we agree that the Court should
2 not charge that flight is evidence of guilty knowledge, but
3 we are still allowed to present evidence of flight, and
4 we're still allowed to argue flight.

5 THE COURT: All you're saying is you don't want me to
6 charge it?

7 MR. EPPES: That's all we're saying, Your Honor.

8 THE COURT: Okay. That's the law. That's granted.

9 Number 20 is a motion in limine to prohibit testimony
10 regarding alleged suffering of the victims. Did you say
11 physical torture is an aggravating circumstance?

12 MS. STROM: I believe I did.

13 THE COURT: I mean, I don't know.

14 MR. EPPES: She did, Your Honor.

15 THE COURT: And is it in there?

16 MR. ARIAIL: Yes.

17 THE COURT: Well, why wouldn't suffering be relevant
18 to that aggravating circumstance?

19 MR. EPPES: Your Honor, it's more prejudicial than
20 probative.

21 THE COURT: All right. Well ---

22 MR. EPPES: Your Honor ---

23 THE COURT: I mean, without hearing the evidence, I
24 don't know if it's -- how probative it is or how
25 prejudicial. Obviously it's probative if it's an

1 aggravating circumstance. Are you talking about -- are you
2 going to offer evidence of suffering in the trial phase?

3 MS. STROM: Not in the guilt phase, no, sir.

4 THE COURT: Okay. She's not going to -- she's not
5 going to say ---

6 MR. ARIAIL: We're not going to change.

7 THE COURT: Go ahead.

8 MR. EPPES: Your Honor ---

9 THE COURT: You notice I'm trying though.

10 MR. EPPES: I appreciate it, I really do. All the
11 evidence in the trial is going to be that this -- that this
12 crime happened in a matter of minutes. The -- the
13 killings, murders if you will, happened in a matter of
14 minutes, and the victims were dead almost instantly. We
15 would contend that any evidence that stretches out this
16 crime to make it seem as if they were tortured, or anything
17 other than just killed quickly is more prejudicial than
18 probative and would give the jury reason to kill them was
19 unnecessary (sic).

20 THE COURT: Well, they're not offering it in the trial
21 phase.

22 MR. EPPES: I understand.

23 THE COURT: So in the penalty phase, I guess I can
24 have an in-camera hearing at that time to hear what it is,
25 but it seems like it would also go to character and would

1 be probative for that value. You know, I'm going to deny
2 the motion at this time. If you want to move at the trial
3 though, to have a motion in limine -- excuse me, to have --
4 for me to hear it outside of presence of the jury, I will
5 consider it at that time.

6 MR. ABDALLA: May I have one moment, Your Honor?

7 THE COURT: Yeah.

8 MR. EPPEES: Thank you, Your Honor.

9 THE COURT: All right. Now, let me -- just so -- you
10 got a pathologist that's going to testify?

11 MS. STROM: Yes, sir.

12 THE COURT: Is he going to testify as to in his
13 opinion whether death was instantaneous or prolonged or ---

14 MS. STROM: He'll talk about in his experience and
15 expertise the probable amount of time that it took before
16 the victims died as a result of this.

17 THE COURT: Okay. All right. My ruling would not
18 effect that testimony. Certainly he cannot testify as to
19 any suffering they had. He might testify they could be
20 conscious, be feeling, or whatever, but my ruling would not
21 effect that testimony in the trial phase. And he would be
22 the only one who would be testifying to that?

23 MS. STROM: Yes, sir.

24 THE COURT: I mean, I don't know anything about this
25 case. Y'all have been living this case. Is somebody going

1 to come in and say, I -- you know, they were moaning on the
2 floor, or anything like that?

3 MS. STROM: Well, there will be -- there will be
4 testimony in the record as to that based upon Brad Sigmon's
5 statement he gave.

6 THE COURT: Okay.

7 MS. STROM: He talks about that in his statement. We
8 are not going to put up an additional witness to say, I
9 heard them moan, I heard them scream, anything like that.
10 We're going to put up a pathologist to talk about the --
11 how long it would have taken for them to ---

12 THE COURT: All right. So my ruling doesn't apply to
13 Mr. Sigmon's statement or to the pathologist.

14 Number 21, access to exhibit -- access to exhibits.
15 All right. They have -- all right. Does the court
16 reporter or the clerk control the exhibits during the
17 trial, is that all this is?

18 MS. STROM: For them to be able to have access to them
19 during that time, and we have no objection to that.

20 THE COURT: All right. Well, here's what I'm going to
21 do. I'm going to have a bailiff in here at all times that
22 will be responsible for the exhibits during breaks.
23 Whoever that's going to be, I will advise him that the
24 attorneys, and only the attorneys -- do you think your
25 client is going to want to be looking at them during the

1 breaks?

2 MR. EPPES: As of now we don't expect that, Your
3 Honor.

4 THE COURT: All right. My ruling is the attorney can
5 look at them during breaks. If you want anybody else to,
6 if you want to know -- I don't want anybody beyond that bar
7 without my permission. So if you want some expert you've
8 got or some other witness to review them, you have to do it
9 with my permission. You have to ask.

10 MR. ABDALLA: Thank you, Your Honor.

11 THE COURT: Number 22, seeking all records concerning
12 psychological treatment and evaluation of the victim
13 Rebecca Barbare Merrill. What's the State's position?

14 MR. ARIAIL: The State's position is, we don't have
15 it. I guess the simple -- and I don't know how -- what
16 business they would have for requiring us to go out and get
17 psychological records on any witness, or alleged victim, or
18 deceased victim. We don't have them. We haven't gone to
19 get them, and so therefore we can't give them. Law
20 enforcement doesn't have them. That's our response.

21 THE COURT: All right. So -- well, are you -- would
22 you seek an order of the Court requiring they be turned
23 over?

24 MR. ABDALLA: Yes, sir, at the time ---

25 THE COURT: Let me ask you this, do you know who the

1 doctors are?

2 MR. ABDALLA: Yeah, we know one of the doctors.

3 THE COURT: And so I can't make the State produce them
4 because they don't have them. So your request is that I
5 give you a Court order requiring the doctor to turn them
6 over?

7 MR. ABDALLA: Yes, Your Honor.

8 THE COURT: All right. Then I'm going -- my ruling is
9 that you're going to have to give notice to Ms. Merrill and
10 have Ms. Merrill have an opportunity to be heard with
11 counsel, if she wants, on this, but this is really not
12 between you and the State, it's between you and Ms.
13 Merrill. So is Ms. Merrill in the courtroom?

14 MS. STROM: No, sir.

15 THE COURT: Then I'm going to postpone this to a later
16 time. I'm going to require -- whenever I reset it, I'm
17 going to require the State to have Ms. Merrill here, if you
18 would tell her what this motion is about, and tell her that
19 she can be represented by counsel if she wants to, to state
20 her position on the record as to whether or not I should
21 release these records or not.

22 MS. STROM: Yes, sir.

23 THE COURT: All right.

24 MR. EPPES: Your Honor, do we need to provide any
25 notice to her beyond ---

1 THE COURT: No, I'm going to make the -- I will have
2 the State get her here and tell her what it is about, give
3 her sufficient -- give her sufficient notice. She may
4 consent, You know, she may give me a medical release form.
5 I don't know.

6 Tell me the probative value of this, while we're just
7 on this one?

8 MR. EPPES: Ms. Merrill's psychological case?

9 THE COURT: Yes.

10 MR. EPPES: Your Honor, we're entitled to inquire into
11 this relationship. It's clear that this relationship
12 ultimately led, I'm not placing any blame on Ms. Merrill,
13 but it ultimately led to the reason that we're all here,
14 and one of the -- one of the key components of the
15 relationship was Rebecca Barbare Merrill, and we believe
16 that her psychological condition could come into to play
17 under the mitigating factor of whether or not the victim
18 had some causal involvement, and we believe that her
19 psychological profile could be part of that. We -- it's
20 potentially exculpatory. I really wish I could put my arms
21 around it better than that, but at this time I cannot.

22 THE COURT: Are you looking for records only during
23 their relationship, or are you ---

24 MR. EPPES: Prior records.

25 THE COURT: Period?

1 MR. EPPES: Yes, sir.

2 THE COURT: Well, when did their relationship start?

3 MR. EPPES: Their relationship started in
4 approximately 1998.

5 THE COURT: And so how old is Ms. Merrill
6 approximately?

7 MR. ABDALLA: Thirty-seven.

8 MR. EPPES: Thirty-seven.

9 THE COURT: Are you saying she saw a psychiatrist as a
10 teenager, at age 17?

11 MR. EPPES: No, sir, we're not saying that. We're
12 talking about more of her adult life. For example, you can
13 see the date on the motion that's attached, the
14 correspondence that's attached thereto.

15 THE COURT: I don't see anything. Well, I guess ---

16 MS. STROM: We didn't get the attachment either.

17 MR. EPPES: Your Honor, it might not have been
18 attached. We've some correspondence from her first divorce
19 that she got a MMPI done in relationship to her first
20 divorce.

21 THE COURT: When would that have been?

22 MR. EPPES: I believe it was 1996, but I can't -- I
23 can't put my thumb on it right now.

24 THE COURT: Okay. All right.

25 MR. ARIAIL: There's an additional legal issue here

1 that before you go -- I mean, with all due respect to the
2 Court, what they are looking at and where they're headed, I
3 believe is the defendant was provoked by the victim into
4 committing murder. Now, Ms. Barbare is not the victim of
5 the murders. So what we are -- the ground I think they're
6 going to try to cross without much under them to hold them
7 up before they fall through is this idea that somehow some
8 other third party provoked this defendant into killing two
9 people.

10 THE COURT: What's the relationship between
11 Ms. Merrill and the two deceased?

12 MR. ARIAIL: It is her parents.

13 THE COURT: That's what I thought. Okay.

14 MR. ARIAIL: But there's no legal basis for that
15 transfer. Couldn't be any legal basis ---

16 THE COURT: Well, I don't know that and you're --
17 you're arguing relevance at trial as opposed to -- you
18 know, I don't know how I'm going to rule on it, but ---

19 MR. ARIAIL: Just ---

20 THE COURT: The point is, the main person that needs
21 to be here is not here, because they're her records and she
22 needs to have the right to be heard on that issue. All
23 right. We're going to hold that one off.

24 Number 23, defendants motion and memorandum of law
25 regarding the scope and nature of the appropriate voir dire

1 in a capital case. Whose argument is this one?

2 MR. EPPES: Your Honor, let me speak to that one.
3 I'll be honest with you, I got that 20 page motion from the
4 death penalty advocacy center. I read through it, I said
5 you know ---

6 THE COURT: It's a 26 page ---

7 MR. EPPES: Twenty-six, I'm sorry. You know, this
8 looks pretty good.

9 THE COURT: It isn't.

10 MR. EPPES: Well, okay, and I put it in. I just
11 wanted it in there as part of the record for the voir dire.

12 THE COURT: Well, the crux of this basically is that
13 you want to be able to individually voir dire -- you want
14 to be able to voir dire on the specific mitigating
15 circumstances and perhaps specific aggravating
16 circumstances. Is that your position?

17 MR. EPPES: Yes, sir, Your Honor.

18 THE COURT: Okay. Am I missing anything else in this
19 motion?

20 MR. EPPES: (Shook his head.)

21 THE COURT: Okay. All right. As I understand the law
22 is clear, that is not permitted. I don't I think -- and
23 quite frankly, I've seen this motion before out -- outside
24 of this case, so -- and as I recall my research, this
25 motion and memorandum don't support that contention. So I

1 do not intend to allow, you know, testing jurors on
2 aggravating circumstance or mitigating circumstances
3 specific to this case.

4 Now, I will tell you that I have gone ahead and
5 changed my two page letter I'm going to give to the jury to
6 take out any aggravating circumstances that might be
7 specific to this case, so that y'all can't use that as an
8 excuse to start specifically asking about this case.

9 All right. I think this memorandum and motion
10 protects your position, but I'm going to deny Number 24 --
11 23.

12 Number 24, to place toxic terms commonly used in the
13 trial of a capital case -- replace toxic terms. And I'm
14 trying my best. All right. Let me just say, I'm going to
15 deny this motion. I'm not going to dictate to the State
16 that they can't use the word murder, or guilt phase, but to
17 the extent I can, I will try to use terms like trial phase
18 and penalty phase, is that what you ---

19 MR. ABDALLA: Yes, Your Honor.

20 THE COURT: Any other toxic terms?

21 MR. EPPES: Those are the main ones, Your Honor.

22 THE COURT: All right.

23 MR. ABDALLA: No.

24 THE COURT: All right. Then this motion is denied,
25 but I will just tell you I will try my best to be

1 neutral ---

2 MR. ABDALLA: We appreciate that.

3 THE COURT: --- in the use of terms. All right.
4 Twenty-five, motion to suppress all statements. We've done
5 that. Is there any other statements? That's it.

6 MS. STROM: That's it.

7 THE COURT: Number 26 -- Number 26, the two that came
8 in late, compelling the State to release the '94 Camaro
9 automobile, which was seized as a part of their
10 investigation. What's your position?

11 MS. STROM: Well, Your Honor, I did know this motion
12 was coming. I didn't respond in writing to this, it came
13 late, but the State is not holding it. It's my
14 understanding we have said months ago that the vehicle
15 could be released. It has to do with an issue of a storage
16 bill between the victim -- I mean the defendant's family
17 and the place where it is being presently housed.

18 THE COURT: All right.

19 MS. STROM: It's not a question of our saying it can't
20 be released.

21 THE COURT: Okay. What efforts have you had to get it
22 back and what's the ---

23 MS. ABDALLA: Well, Your Honor, pretty much since day
24 one, Ms. Strom has been pretty cooperative with me about
25 their trying to get the facts on the Camaro, but it quite

1 frankly took a long time. I'm not faulting her on this,
2 but it was one of those things, she was busy with another
3 death penalty case, however I think the unintended
4 consequences are the victims in this matter are Brad's
5 family, because they went over there to get the car and
6 they wouldn't release it to them without paying the money.
7 Well, while the Solicitor and I were in our negotiation
8 that was very seldom occurring, just a little bit of phone
9 tag here and there, intermittent contact, the price of the
10 vehicle kept increasing. So I think that it's totally
11 unfair to the family to have to pay that money.

12 THE COURT: Whose name is the car registered in?

13 MR. ABDALLA: It was registered in Brad's name, but I
14 believe his mother went and paid off the balance, and they
15 were supposed to get the car, and I believe the officers
16 didn't oppose that, but for some reason, they wouldn't --
17 they, Performance Automotive, who has the car, wouldn't
18 release it to them initially. Then they kept it, and then
19 they said they wanted x number of hundred dollars, and now
20 it's gone to about the value of the car.

21 THE COURT: Okay.

22 MR. ABDALLA: And I think ---

23 THE COURT: I got a simple solution.

24 MR. ABDALLA: I'm sorry?

25 THE COURT: I got a simple solution. Prepare me an

1 order and I will direct them to release it, and you need to
2 put the person's name who's going to get it, because you
3 know they can take the position, well, he's not that
4 person, not the registered owner. I will order them to
5 release it.

6 MR. ABDALLA: Thank you, Your Honor.

7 THE COURT: All right. Number 27 is a motion to
8 prevent prejudicial security measures. Who's going to be
9 in charge of security.

10 MR. ABDALLA: Judge, I think we've somewhat resolved
11 that.

12 MS. STROM: Sergeant McCall.

13 THE COURT: Okay. He was here earlier. What's -- how
14 many uniformed deputies is he -- does he plan to have in
15 the courtroom?

16 MS. STROM: Normally he has three uniformed deputies,
17 and a plain clothed officer.

18 THE COURT: Okay. And the plain clothed officer will
19 be sitting at the defense table?

20 MR. ABDALLA: Yes, Your Honor, behind the defense
21 table.

22 THE COURT: Okay.

23 MR. ABDALLA: And they said they would have to do
24 whatever security measures are necessary if something were
25 to happen, we understand that, but I think we have a

1 gentleman's agreement, a stipulation with the State and
2 with the security officers in this matter.

3 MS. STROM: I told Sergeant McCall, as far as I'm
4 concerned, he's in charge of security and to relate that
5 with you. I had no opposition to what he had proposed,
6 which is three uniformed officers, the plain clothed
7 officer, and I believe Sergeant McCall walks through now
8 and then, and comes in from time to time. As Sergeant
9 McCall was saying, if a circumstance were to arise that
10 needed more, then that would have to be revisited.

11 THE COURT: All right. Where would the uniform sit
12 during the course of the trial?

13 DEPUTY: Your Honor?

14 THE COURT: Yes, sir.

15 DEPUTY: Generally we would have an officer sitting in
16 courtroom 8, pretty much where I am. The plain clothed
17 officer sitting where Deputy Salmaness (phonetically) is
18 sitting, another one probably in the back of the courtroom,
19 and then as I recall, we usually just have two uniforms.
20 Sergeant McCall is the third officer, he walks in and out
21 just to check on things.

22 THE COURT: Okay.

23 DEPUTY: It's very minimal presence.

24 THE COURT: Okay. Well, I can't imagine we need more
25 than that, but -- all right. Then I will just limit it to

1 three uniforms permanently in here. It sounds like you're
2 only going to have two, and to the extent that the security
3 will not be breached, keep uniforms as far away from the
4 defense table as possible. Certainly you can have -- I
5 don't know if you want a non-uniform person sitting there
6 right behind, that's fine, as far as the jury will be
7 concerned, he's can be a part of y'all's team. And I can't
8 imagine that that would be prejudicial.

9 All right. So this is granted to the extent of my
10 ruling on number 27. Any other defense motions?

11 MR. ABDALLA: None.

12 THE COURT: All right. The State had one motion and
13 that was the jury list, is that correct?

14 MS. STROM: Yes, sir.

15 THE COURT: All right. And tell me -- let me find
16 that motion.

17 MS. STROM: The witness list, I'm sorry.

18 THE COURT: The witness list. Tell me what -- how you
19 propose to do that, Madam Solicitor?

20 MS. STROM: Your Honor, may I have one second? I
21 think we have it resolved.

22 THE COURT: Y'all talk about it.

23 (A discussion was held off the record.)

24 MS. STROM: Your Honor, we've resolved it. We will
25 exchange witness lists. Both parties have agreed they will

1 exchange witness lists.

2 THE COURT: Okay. And I'm going to tell you, I
3 appreciate that, otherwise it would be sort of a nightmare
4 trying to manage it. All right. Then sometime the week
5 before the 15th, exchange lists, and then I will present a
6 list too, and I'll just read them a list to the jury during
7 general qualifications.

8 MR. EPPE: Your Honor, could I ask that it be the
9 Wednesday before or the Thursday before, just so we have a
10 date instead of everybody waiting until 5:30 on Friday?

11 THE COURT: Sure, 15th, 14th, 13th, 12, 11, 10, five
12 o'clock the 10th, that's the Wednesday before?

13 MS. STROM: Your Honor, it -- if I may address one
14 point on that? Not on the exchange of witness lists, I
15 don't have a problem with that whatsoever, but you were
16 mentioning that you were going to read out that list at
17 general qualifications. I would like to suggest to the
18 Court that we prepare a written list for the jurors to
19 review while they're back there. It seemed in the past
20 to ---

21 THE COURT: You're right.

22 MS. STROM: They have a better idea of looking at
23 them, and they may have questions about them.

24 THE COURT: That's an excellent idea. Okay. All
25 right. To the extent y'all can do full names to the extent

1 you can. I mean, if you want to, you know, need to put
2 doctors, you know, if you want to put psychiatrist that
3 might help, if you want to. If you want to, you know,
4 detective so and so, Greenville County Sheriff's Office,
5 that will help. If somebody's from Columbia, you know, you
6 might put State Law Enforcement Division dash Columbia, so
7 they know it's not a John Smith that goes to church with
8 them it's somebody from Columbia. As much detail like that
9 as you can put it will certainly help. It will cut down on
10 the confusion and having to needlessly question somebody
11 about them knowing somebody they really don't know.

12 All right. Anything else?

13 MS. STROM: Nothing from the State.

14 MR. EPPES: Nothing from the defense, Your Honor.

15 THE COURT: All right. Anything that we need to do
16 ex-parte while we're all here? From the defense? We got
17 everything ---

18 MR. EPPES: Your Honor, I have one thing I would like
19 to discuss with you.

20 THE COURT: Ex-parte?

21 MR. EPPES: Yes, sir.

22 THE COURT: Okay. All right. Is -- are y'all having
23 adequate -- seems like last time you were have trouble, or
24 having a long time to get to your client.

25 MR. EPPES: It's been a piece of cake lately, Your

1 Honor, it really has.

2 THE COURT: Okay. No problems with medications,
3 visitations?

4 MR. EPPES: Your Honor, my client has a lot of trouble
5 sleeping, and he used to -- he used to, frankly,
6 self-medicate with Valium, and he would -- he's asked us to
7 ask down at the infirmary, and we've tried and we haven't
8 made any progress, if he has Valium he sleeps better at
9 night. I don't if it's something the Court can have a role
10 in or not.

11 THE COURT: Well, I can have a role to the extent that
12 I can, you know, make the doctors down there tell me why
13 they can't do it, but I certainly can't make them do
14 something they don't think they should, unless you can give
15 me some compelling reason, like a doctor's statement saying
16 he should be having it, or he was on it and ---

17 MR. EPPES: Okay, Your Honor. We'll send you a letter
18 on that.

19 THE COURT: All right. All right. That's it.

20 MR. ARIAIL: Does that mean tomorrow and Friday are
21 off?

22 THE COURT: Well, unless you got something to do?

23 MR. ARIAIL: Okay. Well, I -- you had them set for
24 Thursday and Friday, I was going to here if you were going
25 to be here.

1 THE COURT: I'm going to be here, but I'm not going to
2 be in this courtroom unless you tell me otherwise.

3 MR. ARIAIL: I'm not going to be here.

4 MR. ABDALLA: I'm not going to be here.

5 MS. STROM: Thank you, Your Honor.

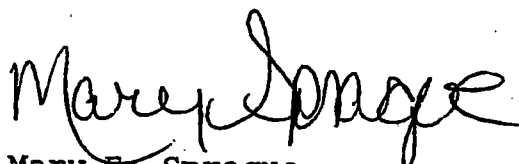
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C E R T I F I C A T E

I, the undersigned, Mary E. Sprague, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 26th day of June, 2002.

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

March 10, 2003



Mary E. Sprague

Official Court Reporter

10
2379

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

THE STATE)

VS.)

BRAD KEITH SIGMON,
DEFENDANT)

NOTICE OF INTENT TO SEEK
THE DEATH PENALTY

TO: BRAD KEITH SIGMON, DEFENDANT

PLEASE TAKE NOTICE, that at the trial of the above mentioned case to be held
at a subsequent time and date, at least thirty (30) days from the service of this Notice, of
which you will be timely notified, the imposition of the sentence of death upon you, the
Defendant, Brad Keith Sigmon, will be sought by the State.


Robert M. Ariail, Solicitor
Thirteenth Judicial Circuit

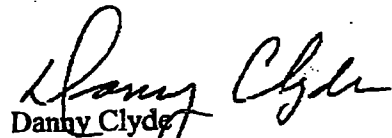
Greenville, SC
July 11, 2001

2380

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

THE STATE)
VS.) CERTIFICATE OF SERVICE
BRAD KEITH SIGMON)
DEFENDANT)

This is to certify that I have this date served a true and correct copy of the State's Notice of Intent to Seek the Death Penalty in the above referenced case on the defendant, Brad Keith Sigmon, by personal service upon him at 4 McGee Street, Greenville, South Carolina.


Danny Clyde
Investigator, Solicitor's Office

7-11, 2001

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

THE STATE)

VS.)

BRAD K. SIGMON)
DEFENDANT)

STATE'S NOTICE OF EVIDENCE
IN AGGRAVATION

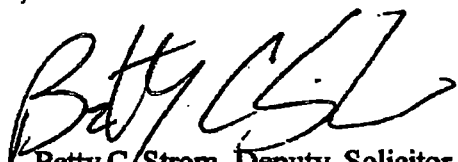
FILED
2002 JUN 24 AM 8:57
CLERK

COMES NOW THE STATE OF SOUTH CAROLINA, by and through its attorney, Robert M. Ariail, Solicitor for the Thirteenth Judicial Circuit and hereby gives notice to the defendant, through his counsel of record, John Abdalla, Assistant Public Defender, of the evidence the State may introduce as evidence of aggravation.

1. That the murder occurred during the commission of a kidnapping pursuant to 16-3-20 (C)(a)(1)(b);
2. That the murder occurred during the commission of a larceny while armed with a deadly weapon pursuant to 16-3-20 (C)(a)(1)(e);
3. That the murder occurred during the commission of a burglary pursuant to 16-3-20(C)(a)(1)(c);
4. That two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct pursuant to 16-3-20(C)(9);
5. That the murder was committed while in the commission of physical torture pursuant to 16-3-20 (C)(a)(1)(h);
6. Victim Impact testimony;
7. Defendant's prior criminal history;

8. The character/characteristics of the defendant and the circumstances of the crime; and/or
9. Defendant's propensity for future dangerousness.

Respectfully submitted this 21 day of June, 2002.


Betty C. Strom, Deputy, Solicitor
Thirteenth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

AFFIRMATION OF DEATH SENTENCE

VS

CASE NO. 2001-GS-23-7629
2001-GS-23-7630
2001-GS-23-7631

Brad Keith Sigmon.
Defendant

As the Trial Judge in the above entitled action, and prior to the imposition of the death sentence upon the defendant, Brad Keith Sigmon, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and it's imposition is not a result of prejudice, passion, or any other arbitrary factor.

The Honorable Joseph J. Watson
Circuit Court Judge

Greenville, SC
July 21, 2002

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA)

VS)

Brad Keith Sigmon)

Defendant)

IN THE COURT OF GENERAL SESSIONS

THIRTEENTH JUDICIAL CIRCUIT

SENTENCE OF DEATH

CASE NO. 2001-GS-23-7629

2001-GS-23-7630

2001-GS-23-7631

We, the jury in the above entitled case, having found beyond a reasonable doubt, the existence of the following statutory aggravating circumstance(s), to wit:

- 1) Two or more persons were murdered by the Defendant by one act or pursuant to one scheme or course of conduct
- 2) The murder was committed while in the commission of Burglary
- 3) The murder was committed while in the commission of physical force
now sentence the Defendant, Brad Keith Sigmon, to death.

William H. Tharnes Jr.
Foreperson, William H. Tharnes Jr.

Leanne O. Flack
Juror, Leanne O. Flack

Robert A. Wharton
Juror, Robert A. Wharton

Herman S. McDuffee
Juror, Herman S. McDuffee

Rebecca A. Hembree
Juror, Rebecca A. Hembree

Brenda K. Hillman
Juror, Brenda K. Hillman

Christina W. Sullivan
Juror, Christina W. Sullivan

Tracy N. McCarthy
Juror, Tracy N. McCarthy

Sandra L. Norris
Juror, Sandra L. Norris

John D. Powell
Juror, John D. Powell

Douglas L. Johnson
Juror, Douglas L. Johnson

Nathan A. Turner
Juror, Nathan A. Turner

Greenville, SC

DATE: July 21, 2002

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

SENTENCE

VS)

CASE NO. 2001-GS-23-7629

2001-GS-23-7630

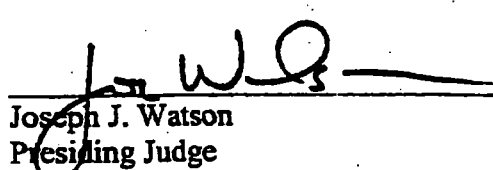
2001-GS-23-7631

Brad Keith Sigmon)

Defendant)

The Defendant, Brad Keith Sigmon, has been found by the jury to be guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is, therefore, the judgment of the law and the Sentence of the Court that the Defendant, be taken to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 30th day of August, 2002. Upon which day between the hours of six o'clock P.M. and six o'clock A.M., or upon an Order of Execution issued by the South Carolina Supreme Court, The Defendant, Brad Keith Sigmon, shall suffer death by electrocution or by lethal injection in the manner provided by law.


Joseph J. Watson
Presiding Judge

Dated: July 21, 2002

Greenville, South Carolina

G-556371

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

THE STATE

against

Brad Keith Sigmon

Address: _____

Sex: _____ Race: _____ Height: _____ Weight: _____

Prosecuting Agency: GCSO - Agency CH#: _____

Prosecuting Officer: Inv. J. Austin

Offense: Murder

Offense Code: _____

Code/Ordinance Sec. _____

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of _____The accused
to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant Brad Keith Sigmonon July 8, 2001

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

THOMPSON

☒ County/ ☐ Municipality of
Greenville

AFFIDAVIT

July 26, 1980
SCCA 518Personally appeared before me the affiant Investigator Jim Austin who
being duly sworn deposes and says that defendant Brad Keith Sigmon
did within this county and state on April 27, 2001 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)

in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts: Affiant states that on 04-27-
between the hours of 0750 and 0815, the victim, David Lark, died as a result of
trauma to the body. The victim was pronounced dead at the scene, 948 East Darby R
Taylors, SC 29687. The affiant has a statement from a family member of the victi
stating that the defendant admitted killing the victim. This incident location is
in the County of Greenville.Sworn to and subscribed before me)
on April 27, 2001)Signature of Affiant)
Affiant's Address)
Signature of Issuing Judge (L.S.))# 4 McGee Street
Greenville, SC 29601
Affiant's Telephone 467-5135

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of
Greenville)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on April 27, 2001 defendant Brad Keith Sigmon

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: MURDER

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.Judge's Address # 4 McGee Street
Greenville, SC 29601
Judge's Telephone 467-5132
Judge Code: 263Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

2386



South Carolina Court Administration

South Carolina Supreme Court
Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

MOTTE L. TALLEY
ASSISTANT DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

(803) 734-1800
FAX (803) 734-0269

September 28, 2001

The Honorable Joseph J. Watson
Suite 219, Greenville County Courthouse
Greenville, SC 29601

Dear Judge Watson:

Enclosed is a copy of an Order dated September 27, 2001 which vests you with exclusive jurisdiction over State of South Carolina v. Brad Keith Sigmon.

If you have any questions concerning this matter, do not hesitate to contact me.

Sincerely,

Motte L. Talley

MLT/jh

Enclosure

cc: The Honorable Paul Wickensimer ✓
The Honorable Robert M. Atrial
John I. Mauldin, Esq.

The Supreme Court of South Carolina

The State of South Carolina,

Prosecutor,

v.

Brad Keith Sigmon,

Defendant.

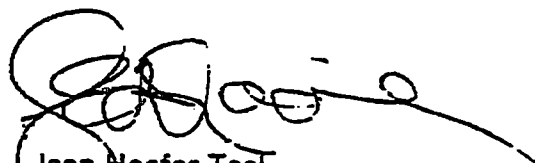
Greenville County

G-556138,G-556139,G-556140,G-556370,G-556371,G-556372,G-556373

ORDER

The Honorable Joseph J. Watson is vested with exclusive jurisdiction to hear and dispose of the above case. Judge Watson shall decide all matters pertaining to the referenced case, including motions to appoint or relieve counsel.

IT IS SO ORDERED.


Jean Hofer Toal
Chief Justice

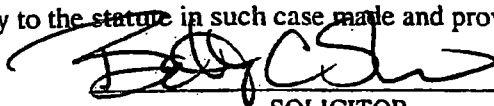
September 27, 2001
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on NOVEMBER 20, 2001 the
Grand Jurors of Greenville County present upon their oath:
That BRAD KEITH SIGMON did in Greenville County, on or about the 27th day of April, 2001,
unlawfully and with malice aforethought kill Gladys Lark by means of beating her about the head, back,
arms and legs, and that Gladys Lark died as a proximate result thereof. This is in violation of §16-3-10 of
the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

INV. M.J. MCNAMARA

CCSO

5/10/01

ARREST WARRANT NUMBER

G 556370

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

VERDICT

Guilty

Foreperson of Petit Jury

Date:

2390

BCS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2001

THE STATE

vs.

BRAD KEITH SIGMON

GUILTY

Indictment for

0116

MURDER

VIOLATION § 16-3-10

Paul B. Wick
Clerk of Court
Greenville County, SC.
Dated 6/19/03

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE .)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on NOVEMBER 20, 2001 the

Grand Jurors of Greenville County present upon their oath:

That BRAD KEITH SIGMON did in Greenville County, on or about the 27th day of April, 2001, unlawfully and with malice aforethought kill David Lark by means of means of beating him about the head, back, arms and legs, and that David Lark died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

INV. M.J. MCNAMARA

GCSO

5/10/01

ARREST WARRANT NUMBER

G 556371

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Forperson of Grand Jury

VERDICT

2392 William H. Sharp 7/19/02
Forperson of Petit Jury Date:

DOCKET NO. 2001-GS-23- **C7630**
BCS
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2001

THE STATE

vs.

BRAD KEITH SIGMON

Indictment for

0116

MURDER

VIOLATION § 16-3-10

A Certified Copy
Ex-Officio Clerk County Court
Greenville County, S.C.
Dated 6/19/03 Clerk of Court C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY
FIRST DEGREE

At a Court of General Sessions, convened on NOVEMBER 20, 2001 the

Grand Jurors of Greenville County present upon their oath:

That BRAD KEITH SIGMON did in Greenville County, on or about the 27th day of April, 2001, willfully and unlawfully enter the dwelling of David and Gladys Lark located at 948 E. Darby Road without consent with the intent to commit a crime therein, and caused physical injury to persons who were not participants in the crime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

INV. M.J. MCNAMARA

GCSO

5/10/01

ARREST WARRANT NUMBER

G 556138

ACTION OF GRAND JURY

TRUE BILL

FOREMAN

Foreperson of Grand Jury

VERDICT

guilty

Foreperson of Petit Jury

Date:

BCS
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2001

THE STATE

vs.

BRAD KEITH SIGMON

GUILTY

Indictment for

0079

**BURGLARY
FIRST DEGREE**

VIOLATION § 16-11-311

A Certified Copy
Paul S. Dick
Ex-Officio Clerk County Court
Greenville County, S.C.
Dated *6/19/03*

2394

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Joseph J. Watson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRAD KEITH SIGMON,

APPELLANT

FINAL BRIEF OF APPELLANT

ELEANOR DUFFY CLEARY
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STATEMENT OF ISSUE ON APPEAL

Does the Sixth Amendment to the United States Constitution mandate that the element or elements that increase the offense of murder to capital murder must be included in the charging document in order to comply with the requirement the accused be informed of the nature and cause of the accusation?

STATEMENT OF THE CASE

Appellant Brad Keith Sigmon was indicted at the November 2001 term of the Greenville County grand jury for two counts of murder, one count each of burglary in the first degree, grand larceny, assault and battery with intent to kill, kidnapping, and possession of a weapon during the commission of a violent crime. ROA p. 2513-2518. 6/26/02 ROA p. 2282, line 19 – p. 2283, line 6. The state served its notice of intent to seek the death penalty. ROA p. 2503.

Appellant's case was called for trial on July 18, 2002, before the Honorable Joseph J. Watson, and a jury. ROA p. 1. Frank Eppes, Jr. and John Abdalla represented appellant. The solicitors were Robert Ariail, Betty Strom, Mindy Hervey, and Lori Reese. The state elected to proceed on the two murder indictments and the first-degree burglary indictment. The jury found appellant guilty on these counts. ROA p. 1787.

After the twenty-four hour waiting period, the sentencing phase commenced. At the conclusion of the sentencing phase on July 21, 2002, the jury recommended death. ROA p. 2242.

Judge Watson then sentenced appellant to death for murder, and thirty years in prison for burglary in the first degree. ROA p. 2242.

This appeal follows.

STATEMENT OF THE FACTS

Appellant Brad Sigmon was charged with murdering the parents of his former girlfriend, Becky Barbare, in their home in Greenville County on April 27, 2001. Gladys and David Lark both died from blunt force trauma caused by a baseball bat.

In its opening statement, the defense admitted that appellant killed the Larks. ROA p. 1316, lines 7-9. The state presented evidence that appellant spent the evening of April 26, 2001 in a motel room with Eugene Strobe doing crack cocaine. ROA p. 1664, lines 14-22. The next day, appellant and Strobe went to the Lark's trailer with a plan to tie up her parents and then take Becky away to obtain "answers to the questions [he] had." ROA p. 1575, lines 17-20; pp. 1663-1665. Strobe abandoned the plan and appellant, according to his statement to police, remained at the Lark's house. He waited for Becky to leave to take her children to school. ROA p. 1577, lines 6-16.

The side door was unlocked and he went inside. ROA p. 1577, lines 21-22. David Lark was at the door and he yelled for Gladys to get his gun. ROA p. 1577, lines 22-24. Appellant hit him in the head with a baseball bat he had brought with him for intimidation purposes. Gladys ran towards the living room and was sitting in a chair when appellant hit her a couple of times with the bat. ROA p. 1578, lines 1-14. He then went back into the kitchen and hit David, who was still moving, again. Then he went back to the living room and hit Gladys, who was also still moving, again. ROA p. 1578, lines 14-17. He stated that he did not intend to kill them. ROA p. 1578, lines 7-8.

Appellant covered the Larks with blankets from the bed. He took David's gun from his bedroom and waited for Becky to return. ROA p. 1578, line 19 – p. 1579, line 22. He stayed behind the door so that Becky could not see him when she entered. He took her at

gunpoint to her car and began driving. ROA p. 1580, lines 1-15. At a stop sign, she jumped out of the car and yelled for help. ROA p. 1580, lines 17-19. He jumped out of the car and "emptied the gun at her." According to his statement, he intended to kill Becky and then himself. ROA p. 1581 lines 2-11. Becky escaped.

The state presented testimony of passersby who saw Becky jump from the car and saw a man chasing after her. ROA pp. 1327-1328; pp. 1334-1335. Becky told them appellant had her parents tied up at their home. ROA p. 1339, lines 22-24; p. 1435, lines 11-14. The Greenville County sheriff's office sent out a uniformed patrol officer who found her parents dead in their trailer. ROA pp. 1386-1387.

According to his statement, appellant hid from police and eventually stole a recreational vehicle and drove it to Tennessee. ROA pp. 1585-1586. He ended up in a Gatlinburg campground. He called his mother and the police tracked him down at the campground. Gatlinburg police arrested him on May 7, 2001. At the booking area of the jail, he called his mother and confessed to her. ROA pp. 1488 - 1490. The Gatlinburg police took a brief statement in which appellant confessed to killing the Larks. ROA p. 1534, line 19 - 1535, line 19.

Eventually he was turned over to Greenville County police. Mike McNamara, homicide investigator with the Greenville Sheriff's Department, took a more detailed statement on May 8, 2001. ROA pp. 1568-1589.

The state presented testimony and exhibits that corroborated appellant's statement. After the state rested its case, the defense presented no evidence. ROA p. 1742, lines 20-25. After closing arguments, appellant made a statement to the jury in which he admitted his

guilt and apologized. ROA p. 1765, lines 11-15. The jury found appellant guilty. ROA p. 1787, lines 15-25.

During the penalty phase, the state argued that the following aggravating circumstances justified the imposition of the death penalty: (1) the murder of two or more persons; (2) the murder was committed while in the commission of first-degree burglary; and (3) the murder was committed while in the commission of physical torture. See ROA pp. 2222 – 2228.

The defense presented evidence of the following mitigating factors: (1) the defendant has no significant history of prior criminal conviction involving the use of violence against another person; (2) the murder was committed while the defendant was under the influence of mental or emotional disturbance; (3) 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; and (4) the defendant was provoked by the victim into committing the murder. See ROA pp. 2231 – 2233.

The jury found the existence of all three aggravating circumstances and recommended the death sentence. ROA p. 2242, lines 9-18.

ARGUMENT

The Sixth Amendment to the United States Constitution mandates that the element or elements that increase the offense of murder to capital murder must be included in the charging document in order to comply with the requirement that the accused be informed of the nature and cause of the accusation.

Appellant was convicted of crimes charged in three separate indictments -- two for murder and one for burglary -- which read as follows:

That [appellant] did in Greenville County, on or about the 27th day of April, 2001, unlawfully and with malice aforethought kill David Lark by means of means (sic) of beating him about the head, back, arms and legs, and that David Lark died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

ROA pp. 2513-2516.

That [appellant] did in Greenville County, on or about the 27th day of April, 2001, unlawfully and with malice aforethought kill Gladys Lark by means of beating her about the head, back, arms and legs, and that Gladys Lark died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

ROA pp. 2515-2516.

That [appellant] did in Greenville County, on or about the 27th day of April, 2001, willfully and unlawfully enter the dwelling of David and Gladys Lark, located at 948 E. Darby Road without consent and with the intent to commit a crime therein, and caused physical injury to persons who were not participants in the crime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

ROA pp. 2517-2518.

The indictments do not allege any of the aggravating factors, found in S.C. Code Ann § 16-3-20(C) (Supp. 2004), which elevate the offense of murder to the offense of capital murder.

The Sixth Amendment to the United States Constitution provides that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. Amend. VI (emphasis added).

In order for the defendant to be informed of the nature and cause of accusation against him in accordance with the Sixth Amendment, the charging document must contain all of the elements of the crime. In Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428 (2002) and Sattazahn v. Pennsylvania, 123 S.Ct. 732 (2003), the United States Supreme Court clearly established that “aggravating factors” that make a defendant convicted of murder eligible for the death penalty are substantive elements of an offense greater than murder – that is, capital murder.

In Ring, the Supreme Court examined a Sixth Amendment challenge to the portion of Arizona’s capital sentencing procedure which permitted the trial judge, rather than a jury, to find the existence of aggravating factors necessary to render the defendant eligible for the death penalty.

The Court rejected Arizona’s contention that a meaningful distinction exists between elements of an offense and so-called sentencing factors, such that the latter are

not subject to the Sixth Amendment's jury trial guarantee, the Court explained that, "[a]s to elevation of the maximum punishment, . . . Apprendi renders the argument untenable[.]" Ring, 122 S.Ct. at 2441 (footnote omitted). The majority held that under the approach mandated by Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000), "Arizona's enumerated aggravating factors operate as 'the functional equivalent of an element of a greater offense,'" and, as such, "the Sixth Amendment requires that they be found by a jury." Ring, 536 U.S. at 609, 122 S.Ct. at 2443 (quoting Apprendi, 530 U.S. at 494, n. 19, 120 S.Ct. at 2365)).

Clearly, for the purposes of all of the protections of the Sixth Amendment, not just its trial by jury requirement, aggravating factors are elements. As Justice Scalia noted in his concurring in opinion in Apprendi, the decision in that "case turns on the seemingly simple question of what constitutes a 'crime.' Under the Federal Constitution, 'the accused' has the right (1) to be informed of the nature and cause of the accusation (that is, the basis on which he is accused of a crime), (2) to be held to answer for a capital, or otherwise infamous crime only on an indictment or presentment of a grand jury, and (3) to be tried by an impartial jury of the State and district wherein the crime shall have been committed. Apprendi, 530 U.S. at 499, 120 S.Ct. at 2367-2368 (internal citations omitted). Of those, only the "Grand Jury Clause" ¹ of the Fifth Amendment has not been held applicable to the states. Id. The other protections, including the right to be informed of the nature and cause of the accusation" apply in state prosecutions. Id. (citing Herring v. New York, 422 U.S. 853, 857, and n. 7, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975). See also Faretta v. California, 422 U.S. 806, 818, 95 S.Ct. 2525, 2532-2533

(1975.) ("Because these rights [enumerated in the Sixth Amendment] are basic to our adversary system of criminal justice, they are part of the 'due process of law' that is guaranteed by the Fourteenth Amendment to defendants in the criminal courts of the States).

Justice Scalia went on to explain that "[a]ll of these constitutional protections turn on determining which facts constitute the 'crime'--that is, which facts are the 'elements' or 'ingredients' of a crime." Apprendi 530 U.S. at 500, 120 S.Ct. at 2368. He noted that "[i]n order for an accusation of a crime (whether by indictment or some other form) to be proper under the common law, and thus proper under the codification of the common-law rights in the Fifth and Sixth Amendments, it must allege all elements of that crime . . ." Id. (internal citations omitted). Justice Scalia makes clear that since aggravating circumstances must be considered "elements," rather than "sentencing factors" then they must be included in the charging document. He states that "Courts have long had to consider which facts are elements in order to determine the sufficiency of an accusation (usually an indictment). The answer that courts have provided regarding the accusation tells us what an element is, and it is then a simple matter to apply that answer to whatever constitutional right may be at issue in a case. . ." Id. at 501, 120 S.Ct. 2368.

The constitutional right in the case at issue here is the right to be informed of the charges and accusation in accordance with due process. Since the elements that made appellant eligible for conviction for capital murder were not included in the charging document, i.e. the indictment, he was only informed of the nature and the charge of

1 No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or

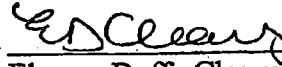
murder, and not capital murder. Therefore, the Sixth Amendment precludes his conviction for capital murder.

This Court recently noted in State v. Downs, 361 S.C. 141, 604 S.E.2d 377, 380-381 (2004) (and State v. Wood, 2004 WL 2851808 (2004) (not yet released for publication)), that "the Fourteenth Amendment has not been construed to incorporate the Fifth Amendment's Presentment or Indictment Clause" and found that aggravating circumstances need not be alleged in an indictment for murder in this state. Id. However, this Court did not address whether, in light of the Supreme Court's decision in Ring, discussed *supra*, the Sixth Amendment requires the element that increases the offense to capital murder be included in the indictment. As elements of the crime of capital murder, they clearly must be included in the indictment, as discussed *supra*.

CONCLUSION

Based on the foregoing, appellant's death sentence must be voided.

Respectfully submitted,



Eleanor Duffy Cleary
Assistant Appellate Defender

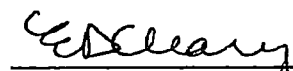
ATTORNEY FOR APPELLANT.

This 20th day of September, 2005.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

September 20, 2005



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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Joseph J. Watson, Circuit Court Judge

THE STATE,

RESPONDENT,

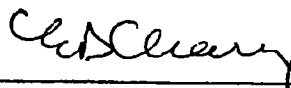
V.

BRAD KEITH SIGMON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, this 20th day of September, 2005.



Eleanor Duffy Cleary
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 20th day of September, 2005.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY

Joseph J. Watson, Circuit Court Judge

The State,

Respondent,

v.

Brad Keith Sigmon,

Appellant.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Does the Sixth Amendment to the United States Constitution mandate that the element or elements that increase the offense of murder to capital murder must be included in the charging document in order to comply with the requirement the accused be informed of the nature and cause of the accusation?

RESPONDENT'S STATEMENT OF THE CASE

On July 11, 2001, the State filed and served a Notice of Intent to Seek the Death Penalty for the murder charges to be brought against appellant, Brad Keith Sigmon. (R. pp. 2503-04 (Notice and Certificate of Service)). John P. Abdalla, Esquire, of the Greenville County Public Defender's Office, and Frank L. Eppes, Esquire, of the Greenville County Bar, were appointed to represent appellant. On September 27, 2001, the Honorable Joseph J. Watson, Circuit Court Judge, was assigned jurisdiction over the case. (R. p. 2512 (Order Assigning Judge)).

In a November 2001 term of General Sessions, the Greenville County Grand Jury returned six (6) true-billed indictments against appellant charging him with assault and battery with intent to kill (2001-GS-23-07627); kidnapping and possession of a weapon during the commission of a crime of violence (2001-GS-23-7628); burglary, first degree (2001-GS-23-07629); murder (2001-GS-23-07630); murder (2001-GS-23-07631); and grand larceny (2001-GS-23-07632).

On June 21, 2002, the State noticed defense counsel by delivery of the State's Notice of Evidence in Aggravation listing the facts or circumstances to be introduced at the penalty phase of the capital case.

On June 26, 2002, the State served certified copies of the six (6) indictments on appellant. (R. p. 2256, line 12 – p. 2257, line 8). Appellant was then arraigned and entered a plea of “not guilty” to each of the charges. (R. p. 2257, line 8 – p. 2261, line 21).

The State called the two (2) murder charges and the burglary, first degree, charge for trial on July 15, 2002. (R. p. 113, line 21 – p. 114, line 15). After extensive qualification and *voir dire*, the jury was selected and sworn on July 17, 2002. (R. p. 1243, line 1 – p. 1251, line 7; p. 1254, lines 4-5). The jury trial, guilt phase, began on July 18, 2002. On July 19, 2002, the jury

returned guilty verdicts on both murder charges and the charge of burglary, first degree. (R. p. 1787, lines 15-25).

The lower court observed the mandatory twenty-four (24) hour waiting period, S.C. Code § 16-3-20(B), and began the jury trial, penalty phase, on July 20, 2002. On July 21, 2002, the jury returned and informed the Court it had found, beyond a reasonable doubt, the presence of three statutory aggravating circumstances: 1) two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct; 2) the murder was committed while in the commission of burglary; 3) the murder was committed while in the commission of physical torture. (R. p. 2242, lines 9-18). The jury also recommended death. (R. p. 2242, lines 18-24). The judge then sentenced appellant to thirty (30) years imprisonment for burglary, first degree, (R. p. 2248, lines 2-5), and imposed the death sentence for the two (2) counts of murder. (R. p. 2248, lines 5-25).

This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

On April 27, 2001, at approximately 8:00 a.m., appellant, Brad Keith Sigmon, entered the home of sixty-two (62) year old David Larke, surprised Mr. Larke in his kitchen, and struck him repeatedly with a baseball bat. Appellant then saw Mr. Larke's fifty-nine (59) year old wife enter the kitchen. Appellant chased her back into her living room where he repeatedly struck her with the same baseball bat. He returned to the kitchen and continued beating Mr. Larke. He then went back to the living and continued beating Mrs. Larke. (R. p. 1577, line 14 – p. 1578, line 17). Mr. Larke sustained a total of nine (9) crushing blows to the skull, and bruising on his ears, left shoulder, and a defensive wound on the back of his right hand. His "skull was basically almost broken in two." (R. p. 1716, lines 9-12). Mrs. Larke also received nine (9) injuries to her skull and had defensive wounds to her forearms, wrists, and elbows. She had also inhaled blood into her lungs. The forensic pathologist testified that both victims would have died in approximately three (3) to five (5) minutes from the severity of the beatings. (R. p. 1709, line 3 – p. 1731, line 2; State's Exhibits 22a through 22i; State's Exhibits 24a through 24h; State's Exhibits 25a through 25d).

Appellant knew the Larkes through their daughter, Becky Barbare, with whom appellant had previously had a relationship. At the time of the murder, Ms. Barbare had been attempting to oust appellant from her home and was staying with her parents, who lived next door to her. (R. p. 1430, line 21 – p. 1432, line 1; p. 1569, line 5 – p. 1572, line 9; p. 1681, line 6 – p. 1685, line 5). According to appellant's statement, he waited for Ms. Barbare to take her small children to school, then entered the Larke home and attacked Ms. Barbare's parents. After killing Mr. and Mrs. Larke, and taking a gun from their home, appellant waited for Ms. Barbare to return. He captured her, and forced her into her white Nissan Pathfinder. She tried to escape

and he shot at her. (R. p. 1577, line 6 – p. 1581, line 11). Several witnesses actually saw Ms. Barbare's escape attempt and the shooting. The witnesses testified that Ms. Barbare leaped from the car while it was moving. After she tumbled out, appellant turned the car around and went back to her. (R. p. 1327, line 5 – p. 1329, line 19; p. 1334, line 17 – p. 14; 1357, lines 20-25; p. 1666, line 4 – p. 1667, line 23). Appellant stopped the car, exited, walked up to Ms. Barbare, and shot her several times. (R. p. 1335, line 15 – p. 1336, line 20). She survived and told the witnesses that appellant told her he had "tied up" or had killed her parents. (R. p. 1339, lines 21-25; p. 1346, lines 4-10). Officers were dispatched to the Larke home and found their dead bodies. (R. p. 1386, line 1 – p. 1387, line 22).

An involved manhunt ensued. (R. p. 1435, line 8 – p. 1439, line 10). Appellant was eventually located, ten (10) days later, in a campground in Tennessee, by tracing a call he made to his mother who was cooperating with the investigation. (R. p. 1450, line 8 – p. 1451, line 19). Appellant made another telephone call to his mother in front of the booking officer. The officer related the substance of the conversation in which appellant confessed to the murders. (R. p. 1495, line 5 – p. 1499, line 20). Appellant would also confess to both Tennessee officers and Greenville County detectives. (R. p. 1520, line 5 – p. 1535, line 19; State's Exhibit 11; R. p. 1556, line 17 – p. 1590, line 24; State's Exhibit 15). In the statements, appellant indicated that "Geno" was supposed to have helped him but ran out on him before appellant had entered the Larke home. (R. p. 1577, lines 1-21).

Eugene Strube testified at trial that the night before the murders, he and appellant left the home of a mutual friend, hid appellant's car, and entered a nearby trailer appellant claimed was his. (R. p. 1659, line 14 – p. 1662, line 19; p. 1665, lines 14-19). While at the trailer, appellant and Strube drank beer and smoked crack cocaine. (R. p. 1662, line 21 – p. 1663, line 1).

Appellant asserted that "he was going to get Becky for leaving him the way she did;" that he would "tie her parents up;" and, that he was going to "take care of Becky's parents, so he can get ahold of Becky...." (R. p. 1663, lines 4-9; p. 1664, lines 20-22). Appellant packed a bag with an extension cord, duct tape, stockings, and socks. He also had a baseball bat. He would later take these items with him as he left the next morning. (R. p. 1663, line 19 - p. 1664, line 3; p. 1665, lines 7-13). Mr. Strube stayed with appellant through the night and even accompanied him to the Larke home the next morning. However, he refused to enter and left before appellant entered. (R. p. 1664, line 12 - p. 1665, line 6). The trailer the two stayed in the night before was next to the Larke home, and was apparently Ms. Barbare's home. (R. p. 1664, line 23 - p. 1665, line 19; p. 1430, line 24 - p. 1431, line 18).

At trial, appellant did not contest his guilt. Defense counsel advised the jury in opening statements: "You're going to find Brad Sigmon guilty... he confessed to it. He confessed to it more than one time... [your] job is to reach the ultimate decision in this case, whether Brad Sigmon lives or dies... you may wonder, well, why are we here? Well, I'll tell you.... Because if Brad Sigmon were to plead guilty, he wouldn't have a right to a jury to determine his sentence." (R. p. 1316, line 12 - p. 1317, line 23). Appellant addressed the jury at the close of the guilt phase: "Ladies and gentlemen of the jury, I am guilty." (R. p. 1765, lines 11-15).

ARGUMENT

Appellant's issue is procedurally barred from review on direct appeal as appellant failed to present the issue to the trial judge. Even so, appellant received proper notice of the State's intent to seek the death penalty and the aggravating circumstances the State intended to use at the penalty phase as required by statute. There is no error.

Relevant Facts:

The State filed and served a Notice of Intent to Seek the Death Penalty on July 11, 2001. (R. pp. 2503-04). On June 21, 2002, the State noticed defense counsel of all the evidence in aggravation that may be introduced at the penalty phase of the capital case. (R. pp. 2505-06). The trial did not begin until July 18, 2002. On appeal, appellant argues that notice was not sufficient because the "elements that made appellant eligible for conviction for capital murder were not included in the charging document, i.e. the indictment" and that "the Sixth Amendment precludes his conviction for capital murder." (Appellant's Brief, pp. 11-12).

Discussion:

This issue is procedurally barred from review. It is well settled that to preserve an issue for review on direct appeal, a defendant must first present the issue to the trial judge and obtain a ruling. *See e.g. State v. Williams*, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991). Here, the notice issue presented in appellant's brief was not raised below. Therefore, it is not available for review. *Id. See also State v. Simmons*, 360 S.C. 33, 46, 599 S.E.2d 448, 454 (2004), *cert. denied* ___ U.S. ___, 125 S.Ct. 1068 (2005)(argument not raised below is not preserved for review on direct appeal); *State v. Moore*, 357 S.C. 458, 464-465, 593 S.E.2d 608, 612 (2004)(appellant's failure to raise argument to trial judge prevented review of argument on direct appeal).

Even so, if the argument on appeal could be considered on the merits, it would be immediately rejected as it has no support either in law or fact.

Appellant first asserts that aggravating circumstances are elements of the offense of “capital murder.” (Appellant’s Brief, p. 9). In this state, the offense of murder is defined as “the killing of any person with malice aforethought, either express or implied.” S.C. Code § 16-3-10 (2003 revised). “A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years.” S.C. Code § 16-3-20 (Supp. 2004). There is no offense of “capital murder” that sets out different elements. Murder may be punished by imprisonment or death, but the offense is still murder. Thus, a defendant is properly indicted and noticed that he will be tried for the offense of murder by indictment for the offense of murder without reference to possible sentencing options. *See State v. Butler*, 277 S.C. 452, 290 S.E.2d 1 (1982), *overruled on other grounds State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (“The punishment for a crime is not and never has been considered a part of the pleading charging a crime.”)

Appellant contends, however, that *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002), now require the inclusion of aggravating circumstances in the indictment. (Appellant’s Brief, pp. 9-11). This Court has previously rejected this exact argument, and has repeatedly held that aggravating circumstances that are part of sentencing in capital cases are not elements of the crime of murder. *State v. Downs*, 361 S.C. 141, 148, 604 S.E.2d 377, 381 (2004). *See also State v. Wood*, 362 S.C. 135, 607 S.E.2d 57 (2004); *State v. Crisp*, ___ S.C. ___, 608 S.E.2d 429 (2005). Respondent reiterates its position, as previously accepted by this Court, that neither *Apprendi* nor *Ring* affected state indictment procedure. Neither case was based on a challenge to a state indictment. *Apprendi*, 530 U.S. at 477 n.3; *Ring*, 536 U.S. at 597 n.4. “State law governs indictments for state-law crimes.” *Downs*, 361

S.C. at 147, 604 S.E.2d at 381 (citations omitted). Therefore, appellant's reliance on the cited federal cases is misplaced.

Respondent does not argue that a defendant is not entitled to notice of the aggravating circumstances the State intends to use at a defendant's trial; rather Respondent simply maintains that the circumstances need not be included in the indictment to give notice that the state is seeking the death penalty. Notice is provided by statute both for the intention to seek the death penalty, and for the aggravating circumstances.

S.C. Code § 16-3-26 (A)(2003 revised) provides that notice the State will seek the death penalty must be given: "Whenever the solicitor seeks the death penalty, he shall notify the defense attorney of his intention to seek such penalty at least thirty days prior to the trial of the case." Though appellant challenges only the inclusion of the aggravating circumstances as a notice to the State seeking a death sentence, the record shows that the notice of intent to seek the death penalty in this case was given on July 11, 2001, approximately one year before trial began on July 18, 2002. (R. pp. 2503-04). Appellant had notice this case was proceeding as a death penalty case.

Notice of the aggravating circumstances to be used at trial is also provided for, and ensured by, the statutory provision restricting the admission of evidence in aggravation to only that evidence that was noticed to the defendant, in writing, prior to trial. S.C. Code § 16-3-20 (B)(2003 revised). In accordance with this provision, the State, in this case, properly noticed appellant, on June 21, 2002, in writing, of any and all evidence in aggravation that may be used in the penalty phase, before the trial began on July 18, 2002. (R. pp. 2505-06).

"Notice is sufficient where the statutory requirements are met." *Butler*, 277 S.C. at 457, 290 S.E.2d at 4. The statutory requirements for notice that the State was seeking the death

penalty and for notice of the aggravating circumstances the State sought to present at trial were met in this case. Therefore, notice was properly effected. Yet, appellant apparently maintains, in the wake of *Ring* and *Apprendi*, that he can receive notice of the aggravating circumstances only through the indictment. (Appellant's Brief, pp. 11-12). Such a position is patently without merit.

The Fifth Amendment Indictment Clause has not been held to be applicable to the States. *See Alexander v. Louisiana*, 405 U.S. 625, 633 (1972) ("the Court has never held that federal concepts of a 'grand jury,' binding on the federal courts under the Fifth Amendment, are obligatory for the States.") *See also Downs*, 361 S.C. at 147, 604 S.E.2d at 380 ("the Fourteenth Amendment has not been construed to incorporate the Fifth Amendment's Presentment or Indictment Clause.") However, without question, due process of law entitles a criminal defendant to notice. *Cole v. Arkansas*, 333 U.S. 196, 201 (1948). The only constraint is that it be "reasonable." *In re Oliver*, 333 U.S. 257, 273, (1948). Therefore, and quite logically, an indictment is not in any way an exclusive means of constitutionally required notice. *See also Hodgson v. Vermont*, 168 U.S. 262, 272 (1897) ("[T]he words 'due process of law' in the Fourteenth Amendment of the Constitution of the United States do not necessarily require an indictment by a grand jury in a prosecution by a State for murder.") Contrary to appellant's argument, these concepts were not changed by *Ring* or *Apprendi*.

Respondent notes that other jurisdictions, having considered *Ring* and *Apprendi*, have also concluded that notice may be properly effected without inclusion of the aggravating circumstances in the indictment. For instance, the North Carolina Supreme Court found that their state statutory provisions for notice of aggravators outside the indictment process were sufficient "to satisfy the constraints of due process as dictated by the United States Constitution" and their own state constitution. *State of North Carolina v. Hunt*, 582 S.E.2d 593, 605 (N.C.

2003), *cert. denied* 539 U.S. 985 (2003). The Arizona Supreme Court likewise held that “aggravating factors essential to the imposition of a capital sentence need not be alleged in the grand jury indictment or the information in order to satisfy constitutional due process” and found that notice of aggravating factors was sufficient and adequate under state statutory provisions and criminal procedure rules. *McKaney v. Foreman ex. Rel. County of Maricopa*, 100 P.3d 18, 23 (Ariz. 2004). See also *State of Tennessee v. Davis*, 141 S.W.3d 600 (Tenn. 2004), *cert. denied* 125 S.Ct. 1306 (2005)(sufficient notice provided by adherence to statutory provisions and criminal rules); *Primeaux v. State of Oklahoma*, 88 P.3d 893 (Okla. 2004), *cert. denied* 125 S.Ct. 371 (2004)(bill of particulars gave notice of state’s intent to seek the death penalty and the aggravators factors to be relied upon).

To summarize, a defendant is entitled to notice the State will seek the death penalty and of the aggravating circumstances the State will rely upon at trial. However, notice does not require any particular method, and is certainly not restricted to an indictment process. In this case, the State served appellant with appropriate notice pursuant to state statutory provisions. The notice was, therefore, proper and sufficient. There is no error.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment, conviction, and sentence of the lower court should be affirmed.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

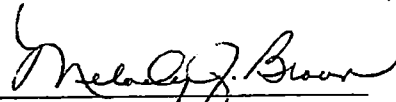
JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Assistant Attorney General

ROBERT M. ARIAIL
Solicitor, Thirteenth Judicial Circuit

BY:


MELODY J. BROWN

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

September 16, 2005.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY

Joseph J. Watson, Circuit Court Judge

The State,

Respondent,

v.

Brad Keith Sigmon,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

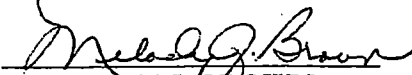
HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

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Solicitor, Thirteenth Judicial Circuit

BY: 
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ATTORNEYS FOR RESPONDENT

September 16, 2005

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY

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The State,

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Brad Keith Sigmon,

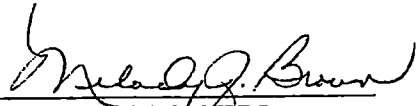
Appellant.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the Final Brief of Respondent on Appellant by depositing three (3) copies of same in the United States mail, postage prepaid, addressed to his attorney of record:

Eleanor Duffy Cleary, Assistant Appellate Defender
South Carolina Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, South Carolina 29201

This 16th day of September, 2005.


MELODY J. BROWN
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Brad Keith Sigmon,

Appellant.

ATTORNEY GENERAL'S OFFICE

RECEIVED 12/19/05

ADMINISTRATIVE INSTRUCTIONS

FILE _____ OPEN _____ E/H _____

HAVE _____ COPIES MADE

ROUTE TO _____

ORDER: _____ TRANSCRIPT

PEN RECORDS _____ CLERK RECORDS

OTHER: notice

Appeal From Greenville County
 Joseph J. Watson, Circuit Court Judge

Opinion No. 26087

Heard November 1, 2005 - Filed December 19, 2005

AFFIRMED

Assistant Appellate Defender Eleanor Duffy Cleary, of Columbia,
 for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney
 General John W. McIntosh, Assistant Deputy Attorney General
 Donald J. Zelenka, and Assistant Attorney General Melody J.
 Brown, all of Columbia, and Robert M. Ariail, of Greenville, for
 Respondent.

JUSTICE PLEICONES: This is a death-penalty case. Appellant
 Brad Keith Sigmon (Sigmon) was convicted of two counts of murder and one
 count of first-degree burglary. He was sentenced to thirty years
 imprisonment for burglary and to death for murder. Before recommending
 the death penalty, the jury found the following aggravating circumstances:

Sigmon murdered two persons by one act or pursuant to one scheme or course of conduct; Sigmon committed the murder while committing burglary; and Sigmon committed the murder while committing physical torture.¹ The jury found no mitigating circumstances. Sigmon appeals from the murder convictions only. This opinion consolidates the appeal and mandatory sentence review. We affirm.

FACTS

The material facts are undisputed. Sigmon entered the dwelling of the two victims without consent and with intent to commit a crime. While in the dwelling, Sigmon unlawfully killed the victims with malice aforethought by repeatedly striking them in their heads with a baseball bat.

Sigmon was indicted for two counts of murder and one count of first-degree burglary. Neither murder indictment included an allegation of aggravating circumstances.

Almost one year prior to trial, the state gave Sigmon written notice of its intention to seek the death penalty.² Four weeks prior to trial, the state gave Sigmon written notice that it intended to introduce evidence that Sigmon committed the murders while committing burglary; that he murdered two or more persons by one act or pursuant to one scheme or course of conduct; and that he committed the murders while committing physical torture.³

¹ See S.C. Code Ann. § 16-3-20(C)(a)(1)(b), (h) and (9) (2003).

² This notice must be given at least thirty days prior to trial. S.C. Code Ann. § 16-3-26(A) (2003).

³ Notice of evidence of aggravation must be given, in writing, prior to trial. S.C. Code Ann. § 16-3-20(B) (2003). As discussed below, Sigmon does not argue that his due-process rights were violated because the state's notice was untimely.

At his arraignment, Sigmon stated his intention to admit at trial that he was guilty of the charged offenses. He pleaded not guilty, however, because he wanted a jury to determine his punishment.⁴

The jury found Sigmon guilty on all counts. At the subsequent penalty phase of the trial, the jury found all three aggravating circumstances mentioned above and recommended that Sigmon be sentenced to death. The circuit court sentenced Sigmon to thirty years imprisonment for first-degree burglary and to death for murder.

ISSUE

Whether the murder convictions must be reversed because the murder indictments included no allegations of aggravation.

ANALYSIS

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be informed of the nature and cause of the accusations." U.S. Const. amend. VI. Because that provision is incorporated by the Due Process Clause of the Fourteenth Amendment,⁵ an accused enjoys the same right in a state prosecution.⁶ Faretta v. California, 422 U.S. 806, 818, 95 S. Ct. 2525, 2533-34, 45 L. Ed. 2d 562, 572 (1975). This right is satisfied if the notice is reasonable. In re Oliver, 333 U.S. 257, 273, 68 S. Ct. 499, 507, 92 L. Ed. 682, 694 (1948).

⁴ A jury trial on punishment is unavailable to a defendant who pleads guilty to murder. See § 16-3-20(B).

⁵ U.S. Const. amend. XIV, § 1.

⁶ The South Carolina Constitution similarly provides that "[a]ny person charged with an offense shall enjoy the right ... to be fully informed of the nature and cause of the accusation." S.C. Const. Art. I, § 14. Sigmon relies only on his right under the United States Constitution.

We agree with Sigmon that his right to reasonable notice of the charges against him encompassed the right to notice of any aggravating circumstances to be alleged at trial. Contrary to Sigmon's assertion, however, neither Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002), nor Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), mandates that such notice be given through the indictment. In fact, the United States Supreme Court "expressly noted in both Apprendi and Ring that the cases did not involve challenges to state indictments. ... More important, the Fourteenth Amendment has not been construed to incorporate the Fifth Amendment's Presentment or Indictment Clause. ... State law governs indictments for state-law crimes. ... Under South Carolina law, aggravating circumstances need not be alleged in an indictment for murder." State v. Downs, 361 S.C. 141, 147-48, 604 S.E.2d 377, 380-81 (2004) (citations omitted) (followed in State v. Crisp, 362 S.C. 412, 419-20, 608 S.E.2d 429, 433-34 (2005), and State v. Wood, 362 S.C. 135, 144, 607 S.E.2d 57, 61 (2004)). Compliance with Code sections 16-3-20(B) and 16-3-26(A) is sufficient to put an accused on reasonable notice that aggravating circumstances are alleged and that the death penalty is sought. Sigmon does not assert that the state's notice of evidence of aggravation did not comport with statutory requirements, or that he was denied due process because the notice was not given in sufficient advance of trial.

SENTENCE REVIEW

We must review Sigmon's death sentence, based on the record, to determine whether the sentence is disproportionate to the crime committed. S.C. Code Ann. § 16-3-25(A) (2003). In conducting the review, we consider similar cases in which the death penalty has been upheld. See S.C. Code Ann. § 16-3-25(E) (2003).

We conclude that Sigmon's death sentence was not the result of passion, prejudice, or any other arbitrary factor, and that the evidence supports the jury's findings of aggravation. See S.C. Code Ann. § 16-3-25(C) (2003). Further, in comparison with similar cases, Sigmon's sentence was neither excessive nor disproportionate to his crime. See State v. Vazsquez, 364 S.C. 293, 613 S.E.2d 359 (2005) (involving a double murder committed in the course of robbery); State v. Hill, 361 S.C. 297, 604 S.E.2d

696 (2004) (involving a triple murder); State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004) (involving a quadruple murder committed in the course of burglary); State v. Simmons, 360 S.C. 33, 599 S.E.2d 448 (2004) (involving a murder committed in the course of physical torture); State v. Shuler, 353 S.C. 176, 577 S.E.2d 438 (2003) (involving a triple murder committed in the course of burglary); State v. Weik, 356 S.C. 76, 587 S.E.2d 683 (2003) (involving a murder committed in the course of burglary and physical torture); State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000) (involving a double murder committed in the course of burglary).

CONCLUSION

Sigmon's constitutional right to notice of the charges against him was not violated. Further, his death sentence was proportionate to his crime. His murder convictions and death sentence are therefore

AFFIRMED.

TOAL, C.J., WALLER and BURNETT, JJ. Acting Justice Diane S. Goodstein, concur.

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FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS 462

COUNTY OF GREENVILLE)

BRAD KEITH SIGMON #00006008)

Full name and prison number (if any) of Applicant.)

v.)

ENTERED COMPUTER)

APPLICATION FOR)

State of South Carolina)

POST-CONVICTION RELIEF)

2006-CP-23- 6547

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence GREENVILLE COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2001-GS-23-7629 FIRST DEGREE BURGLARY
 - (b) 2001-GS-23-7630 MURDER
 - (c) 2001-GS-23-7631 MURDER
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JULY 21, 2002 30 YEARS

Scanned

- (b) JULY 21, 2002 DEATH
- (c) JULY 21, 2002 DEATH
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA SUPREME COURT
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED CONVICTION AND SENTENCE
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. DECEMBER 19, 2005
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. STATE V. SIGMON, 366 S.C. 552, 623 S.E.2d 648 (2005)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective assistance of counsel for failing to preserve various issues for appellate review, including but not limited to, failing to request charges relating to manslaughter and self-defense; failing to object to hearsay statements made by defendant's ex-girlfriend, who did not testify at trial; failing to object to evidence of prior bad acts and prejudicial testimony about the defendant.

(b) Counsel failed to conduct an adequate background check for evidence in mitigation and to fully develop defendant's mental distress at the time of the offenses.

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) see above

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? yes, mandatory appeal to State Supreme Court

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? Yes

(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Petition for Writ of Certiorari to United States Supreme Court

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. US Supreme Court

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. pending

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. pending

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. n/a

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) first PCR
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
 - (b) your trial, if any? yes
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Frank L. Eppes, Eppes & Plumbee, PA, P.O. Box 10066, Greenville, SC 29603 and John P. Abdalla, Greenville Cnty. Public Defender, Greenville Cnty. Courthouse, 305 E. North St., Room 123, Greenville, SC 29601
 - ii. Eleanor Duffy Cleary, Assistant Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, PO Box 11589, Columbia, SC 29211
 - iii. Robert M. Dudek, Assistant Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, PO Box 11589, Columbia, SC 29211
 - (b) the proceedings at which each such attorney represented you:
 - i. pretrial & trial
 - ii. appeal, preparing PCR application
 - iii. US Cert petition
19. State clearly the relief you seek in filing this application:
new trial
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Brad Keith Sigmon, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Brad Sigmon

SWORN to and subscribed before me this 14th
day of July, 2006.

Walter J. Ferguson (L.S.)
Notary Public

My Commission Expires: Sept. 22, 2008.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

2006 OCT 13 P 12:01

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Brad Keith Sigmon, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Brad Sigmon
Applicant

SWORN or affirmed to and subscribed before me this

14th day of July, 2006.

Walter J. Dargatzis
Notary Public

My Commission Expires: Sept. 22, 2008.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF GREENVILLE

3
4
5 BRAD SIGMON)

6) APPLICANT,)

TRANSCRIPT OF RECORD

7 V.)

06-CP-23-6547

8 STATE)
9 _____)

10 NOVEMBER 6, 2006

11 MONCKS CORNER, SOUTH CAROLINA

12
13 B E F O R E:

14 THE HONORABLE J.C. NICHOLSON, JR., JUDGE.

15
16 A P P E A R A N C E S:

17 WILLIAM H. EHLIES, II, ESQUIRE

18 TERESA NORRIS, ESQUIRE

ATTORNEYS FOR THE APPLICANT

19 MELODY J. BROWN, ASSIST. ATTORNEY GENERAL

20 ATTORNEY FOR THE STATE

21
22
23
24 STACY L. SHEPPARD, RPR
25 CIRCUIT COURT REPORTER

I N D E X

1				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3				
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5				(There were no witnesses.)
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E X H I B I T S

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NO.DESCRIPTIONID. EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on
2 November 8, 2006.)

3 **THE COURT:** Mr. Sigmon, how are you doing
4 today?

5 **MR. SIGMON:** All right, sir.

6 BRAD KEITH SIGMON,
7 having been duly sworn, testified as follows:

8 **THE COURT:** You may have a seat. And you can
9 testify from being seated. You don't have to stand.
10 All right. Ms. Brown, I understand you had
11 certain things you wanted to take up today
12 concerning the appointment and setting the case for
13 trial on the capital PCR with Brad Keith Sigmon; is
14 that correct?

15 **MS. BROWN:** Yes, sir, Your Honor. We'd like to
16 determine on the record whether Mr. Sigmon would
17 like to go forward with the PCR, whether he desires
18 counsel, and whether he prepared the application
19 that's presently pending or adopted same.

20 **THE COURT:** All right. Mr. Sigmon, I presume
21 that you want to move forward with your PCR, or do
22 you want to withdraw your PCR?

23 **MR. SIGMON:** I'd like to move forward, sir.

24 **THE COURT:** All right. Who prepared your PCR
25 application?

1 MR. SIGMON: I don't know his name, sir.

2 THE COURT: Was it an attorney?

3 MR. SIGMON: I don't even know that. I don't
4 know, sir.

5 THE COURT: You don't know who prepared this?

6 MR. SIGMON: No, sir, I don't know.

7 THE COURT: All right. And you're
8 incarcerated; is that correct?

9 MR. SIGMON: Yes, sir.

10 THE COURT: You don't have any source of
11 income?

12 MR. SIGMON: No, sir.

13 THE COURT: Okay. I had talked with Teresa
14 Norris and Mr. Ehlied about representing you. And I
15 would like the two of them to stand and give their
16 qualifications as far as having handled death
17 penalty and PCR death penalty cases.

18 I have had Teresa Norris on a prior case and
19 she did it very competent. She does a good job.

20 And Mr. Ehlied has handled numerous death
21 penalty cases. He's a practicing attorney in
22 Greenville and I have known him for many years. He
23 has extensive criminal practice.

24 Both of them are very well qualified from my
25 observations, but I'm going to let them stand and

1 put on the record their qualifications. And I'm
2 going to ask you do you have any objection to them
3 representing you, okay?

4 MR. SIGMON: Yeah.

5 THE COURT: Now, you listen to their
6 qualifications, okay.

7 Mr. Ehliies.

8 MR. EHLIES: Yes, sir. Good afternoon, Judge.
9 My name is William H. Ehliies, II, and I'm known as
10 Hank Ehliies. I graduated from the University of
11 South Carolina in 1975. I've been practicing law
12 since November the 11th, 1975, in Greenville, same
13 location, doing the same thing.

14 I've tried over a hundred felony cases I'm
15 sure. I've had -- this is my -- I've had four
16 capital murder trial, jury trials, and two capital
17 PCRs, this would be the third capital PCR, including
18 federal habeas aspects to the PCR structure process.
19 And I've also attended a number of the in-depth
20 seminars as recently as three years ago for -- that
21 is limited specifically to capital PCR litigation in
22 Nashville, and was registered in Pittsburgh, but
23 missed that because of other trials.

24 We've just concluded one capital murder case,
25 Teresa and I jointly, for Jennifer Holloway in the

1 Cockman killing, that came back with a life verdict
2 on that in June of this year. So I've done this
3 type of work before. And I believe I meet the
4 qualifications under the statutes for representing
5 an individual on post-conviction who is convicted
6 and stands sentenced to death.

7 **THE COURT:** Are you qualified on, I believe, is
8 it the Supreme Court list or the Bar --

9 **MR. EHLIES:** I am on the Supreme Court list.

10 **THE COURT:** The Supreme Court list for
11 appointment and counsel of cases?

12 **MR. EHLIES:** Yes, sir, statewide.

13 **THE COURT:** Mr. Sigmon, is there anything else
14 you would like to know from Mr. Ehlied about his
15 qualifications?

16 **MR. SIGMON:** No, sir.

17 **THE COURT:** Thank you, Mr. Ehlied.

18 Ms. Norris.

19 **MS. NORRIS:** Your Honor, it's Teresa L. Norris.
20 I graduated from the University of South Carolina
21 Law School in 1990. For the first four years of my
22 practice, I was in the Army, the U.S. Army Legal
23 Services Agency Defense Appellate Division where I
24 represented people on appeal that had been court
25 marshalled. Most of those, probably about 300 that

1 I represented during that time were serious felony
2 offenses.

3 Since that time in 1994, I joined what was then
4 the South Carolina Death Penalty Resource Center and
5 ultimately became the Center for Capital Litigation
6 where I was first a staff attorney and then the
7 director for ten years. During that time, I have
8 represented probably about 25 to 30 death sentenced
9 inmates. I have participated at the trial level.

10 Most of my experience is in capital
11 post-conviction and federal habeas proceedings. I
12 have conducted probably ten evidentiary hearings or
13 competence hearings in the capital post-conviction
14 process. And each year I attend conferences devoted
15 specifically to capital litigation, but I also teach
16 at those conferences as well usually two or three
17 times a year.

18 **THE COURT:** And you're on the approved list for
19 appointment?

20 **MS. NORRIS:** Yes, sir, I am.

21 **THE COURT:** Okay. Thank you.

22 All right. Mr. Sigmon, anything else you would
23 like to know from Teresa Norris concerning her
24 qualifications?

25 **MR. SIGMON:** No, sir.

1 **THE COURT:** All right. Do you have any
2 objections to the Court appointing these two
3 attorneys to represent you in your capital PCR case?

4 **MR. SIGMON:** No, sir, I don't.

5 **THE COURT:** Do you have any questions of the
6 Court about the appointment?

7 **MR. SIGMON:** Well, Your Honor, I have some
8 questions I had written down that I don't have with
9 me.

10 **THE COURT:** Do you remember what they were?

11 **MR. SIGMON:** No, sir. He said he's going to
12 see to it --

13 **THE COURT:** What were they related to?

14 **MR. SIGMON:** They were related to the PCR and
15 to the PCR -- of the appointees to me and part of
16 the process. I don't remember, sir. I've written
17 so much down that I have forgotten.

18 **MR. EHLIES:** I think he's referencing some
19 legal papers that he has and they were taken from
20 him at Lieber in satisfaction of some sort of
21 problem they had on compliance with rules. And he's
22 looking to get those back.

23 We were going to -- if I was appointed as the
24 lawyer in the case, I was going to file some
25 requests that we get his diaries, they were legal

1 diaries, and his -- there were a couple of personal
2 items as well, there was a cooler and a radio.

3 MR. SIGMON: The main thing was, like you said,
4 I've got a lot of notes and all. I mean, I don't
5 know what's going on. I don't really understand
6 except for I do want these two to represent me.

7 THE COURT: Well, discuss it with them and I'll
8 hear any kind of motions they want to file on your
9 behalf, okay?

10 MR. SIGMON: Yes, sir.

11 THE COURT: All right. I'm assigned the case
12 and you will be -- I'm going to have the case
13 throughout, so I'm available for any motions they
14 may file. And I'll be glad to hear them anywhere
15 I'm in the state or by telephone, whatever's
16 appropriate, okay?

17 MR. SIGMON: Thank you, sir.

18 THE COURT: All right. I'm going to appoint
19 Teresa Norris and Hank Ehliens to represent you in
20 the case.

21 Now, as far as the trial is concerned, in order
22 to comply with, I believe, 180 days, I'm going to
23 set it for May the 1st. Is that agreeable with
24 everybody? Does anybody have any motions to
25 continue?

1 **MS. NORRIS:** Well, Your Honor, at this point,
2 the best we can say is that we just met Mr. Sigmon.
3 We are not familiar with his case so we don't know
4 what depth we're going to get involved in there.

5 But what we can tell you up front is that
6 Mr. Ehlied and I are appointed on a capital
7 resentencing trial that is currently set for June
8 and that is a case that also involves competence
9 issues and mental retardation issues. So a
10 substantial portion of, I think, March is when those
11 are scheduled as well. So I would anticipate that
12 we would have difficulties and that we would be
13 moving for a continuance. If we could put it on
14 into October, we don't have any difficulty with
15 that.

16 **THE COURT:** What's the State's position on
17 granting a continuance?

18 **MS. BROWN:** Your discretion, Your Honor, if
19 you're satisfied with good cause.

20 **THE COURT:** All right. I'm going to find that
21 the appointment in the other case is good cause to
22 continue it from May the 1st within the 180 days.
23 And I do not have a schedule yet for the next six
24 month's, so it will be released to set it at this
25 time. And I'm going to set it for Monday, October

1 the 29th in Greenville County. Does anybody have
2 any objection to that date?

3 MS. BROWN: No objection.

4 THE COURT: Is that far enough in the future
5 where you can work your calendars accordingly?

6 MS. NORRIS: At this point, we know of no
7 reason to object.

8 THE COURT: All right. Ms. Brown, do you have
9 any problems with that?

10 MS. BROWN: No objection, Your Honor.

11 THE COURT: Okay. Now, Ms. Norris, Mr. Ehliel,
12 once you get into the case and you need to make any
13 amendments to the PCR, I'll be glad, if Ms. Brown
14 will not consent to it, I'll be glad to hear a
15 motion on amendment. And to be perfectly blunt and
16 frank about it, I'm going to be very liberal in
17 making amendments, but I want all amendments to be
18 filed at least 60 days prior to October the 29th.
19 And I would like to have a pretrial brief from both
20 parties by October the 1st, or some time in that
21 first week of October.

22 MS. BROWN: And, Your Honor, you wanted a joint
23 appendix with that pretrial brief so you would have
24 all the documents?

25 THE COURT: Yes, ma'am, please.

1 Now, the State's indicated to that Court that
2 they would like to have the status every 60 days
3 from the attorneys. If y'all would comply with
4 that, I'd appreciate it.

5 **MS. NORRIS:** Your Honor, that's a Supreme Court
6 order, so we will certainly comply with that.

7 **THE COURT:** All right. Anything else from the
8 State? I believe you've got something about ex
9 parte funding orders, Ms. Brown?

10 **MS. BROWN:** Yes, sir. We're giving notice to
11 opposing counsel that we're going to move to
12 disallow ex parte funding request pursuant to Tims
13 v. State. We would like the opportunity to submit
14 briefs on the issue to the Court.

15 **THE COURT:** All right. If you will file a
16 motion, please, and send me a copy of the motion
17 with a memo.

18 And how much time do y'all need to reply to the
19 memo?

20 **MR. EHLIES:** Fourteen.

21 **THE COURT:** Fourteen days.

22 How soon can you get it done, 30 days?

23 **MS. BROWN:** Yes, sir, Your Honor, I can.

24 **THE COURT:** Thirty days. I mean, I won't even
25 be back in Anderson until the first week in

1 December, so why don't y'all just get all of your
2 briefs to me by December the 10th because I won't be
3 back -- I won't get a chance to look at it until the
4 first week in December anyhow, so just get both of
5 them to me by December the 10th.

6 You don't want oral arguments on that, do you?

7 MR. EHLIES: I wouldn't imagine that.

8 MS. BROWN: Only if the Court would direct it.

9 THE COURT: All right. Anything else that we
10 need to cover today or we can cover today?

11 MR. EHLIES: I don't believe so, Judge.

12 MS. BROWN: Nothing from the State, Your Honor.

13 THE COURT: Mr. Sigmon, just communicate with
14 your attorneys and anything that they need to do on
15 your behalf, I feel sure they'll do it, okay.
16 They're both very competent and capable.

17 MR. SIGMON: Yes, sir.

18 THE COURT: And I appreciate it. Who's going
19 to prepare an order?

20 MS. BROWN: I'd be happy to, Your Honor.

21 THE COURT: Please do, okay.

22 MS. BROWN: Within ten days?

23 THE COURT: That's fine.

24

25

END OF PROCEEDINGS

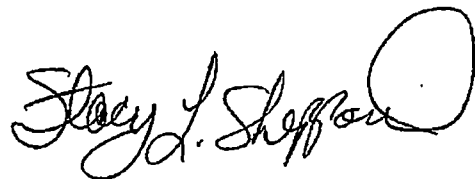
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Greenville County, South Carolina, on the 8th of November, 2006.

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

September 30, 2009

A handwritten signature in cursive script, reading "Stacy L. Sheppard", followed by a large circular flourish.

Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

BRAD KEITH SIGMON, #6008,)

C/A No.: 2006-CP-23-6547

Applicant,)

v.)

State of South Carolina,)

RETURN AND MOTION TO DISMISS
 (CAPITAL PCR)

Respondent.)

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENS

2006 NOV 15 A 11:14

Respondent, above-named, through undersigned counsel, hereby makes a return to the application for post-conviction relief filed October 13, 2006, and received by Respondent on October 19, 2006. Pursuant to the Supreme Court of South Carolina's order of August 11, 2006, the Honorable J. C. Nicholson, Jr., has continuing and exclusive jurisdiction over the proceedings in this capital post-conviction relief action regardless of assignment. On November 8, 2006, Judge Nicholson appointed Teresa L. Norris, Esquire, of Columbia, South Carolina, and William H. ("Hank") Ehliens, Esquire, of Greenville South Carolina, as counsel for Applicant in this action; therefore, Respondent will serve this return on counsel.

Respondent, under the provisions of S.C. Code § 17-27-160 (B), now makes a return to the application, and would respectfully show the Court:

Procedural History

Applicant, Brad Keith Sigmon, #6008, is currently a safekeeper at the Lieber Correctional Institution pursuant to orders of commitment of the Greenville County Clerk of Court. The procedural history of the case is as follows:

On July 11, 2001, the State filed and served a Notice of Intent to Seek the Death Penalty for the murder charges to be brought against Applicant. (R. pp. 2503-04). John P. Abdalla, Esquire, of the Greenville County Public Defender's Office, and Frank L. Eppes, Esquire, of the Greenville County Bar, were appointed to represent Applicant. On September 27, 2001, the Honorable Joseph J. Watson, Circuit Court Judge, was assigned jurisdiction over the case. (R. p. 2512).

In a November 2001 term of General Sessions, the Greenville County Grand Jury returned six (6) true-billed indictments against Applicant charging him with assault and battery with intent to kill (2001-GS-23-07627); kidnapping and possession of a weapon during the commission of a crime of violence (2001-GS-23-7628); burglary, first degree (2001-GS-23-07629); murder (2001-GS-23-07630); murder (2001-GS-23-07631); and grand larceny (2001-GS-23-07632). On June 21, 2002, the State noticed defense counsel of the facts or circumstances in aggravation to be introduced at the penalty phase of the capital case by delivery of the "State's Notice of Evidence in Aggravation." (R. pp. 2505-2506). On June 26, 2002, the State served certified copies of the six (6) indictments on Applicant. (R. p. 2256, line 12 – p. 2257, line 8). Applicant was then arraigned and entered a plea of "not guilty" to each of the charges. (R. p. 2257, line 8 – p. 2261, line 21).

The State called the two (2) murder charges and the burglary, first degree, charge for trial on July 15, 2002. (R. p. 113, line 21 – p. 114, line 15). On July 17, 2002, after extensive qualification and *voir dire*, the jury was selected and sworn. (R. p. 1243, line 1 – p. 1251, line 7; p. 1254, lines 4-5). The jury trial, guilt phase, began on July 18, 2002. On July 19, 2002, the jury returned guilty verdicts on both murder charges and the charge of burglary, first degree. (R. p. 1787, lines 15-25). The lower court observed the mandatory twenty-four (24) hour waiting period, S.C. Code § 16-3-

20(B), and began the jury trial, penalty phase, on July 20, 2002. On July 21, 2002, the jury returned and informed the Court it had found, beyond a reasonable doubt, the presence of three statutory aggravating circumstances: 1) two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct; 2) the murder was committed while in the commission of burglary; 3) the murder was committed while in the commission of physical torture. (R. p. 2242, lines 9-18). The jury recommended death. (R. p. 2242, lines 18-24). The judge then sentenced Applicant to thirty (30) years imprisonment for burglary, first degree, (R. p. 2248, lines 2-5), and imposed the death sentence for the two (2) counts of murder. (R. p. 2248, lines 5-25). Applicant filed a timely notice of intent to appeal.

Eleanor Duffy Cleary, Assistant Appellate Defender of the South Carolina Office of Appellate Defense, represented Applicant on appeal. Appellate counsel filed a Final Brief of Appellant in the Supreme Court of South Carolina on September 20, 2005, and raised the following single issue:

Does the Sixth Amendment to the United States Constitution mandate that the element or elements that increase the offense of murder to capital murder must be included in the charging document in order to comply with the requirement the accused be informed of the nature and cause of the accusation?

The State, through Assistant Attorney General Melody J. Brown, filed its Final Brief of Respondent on September 16, 2005. The Supreme Court of South Carolina heard oral arguments on the issue on November 1, 2005, and subsequently issued its opinion affirming the convictions and sentence on December 19, 2005. Applicant filed a timely petition for rehearing that was denied on January 13, 2006.

Applicant filed a petition for writ of certiorari in the United States Supreme Court on

November 8, 2004. Robert M. Dudek, Assistant Appellate Defender, represented Applicant in that portion of the direct appeal. Appellate counsel presented the following question for consideration:

Whether the South Carolina Supreme Court's holding that the aggravating circumstances necessary to render a murder defendant eligible for a sentence of death under South Carolina law do not have to be alleged in the charging document is fundamentally inconsistent with the Court's application of the Sixth Amendment in *Ring v. Arizona*.

Respondent filed a Brief in Opposition on May 22, 2006. The Supreme Court of the United States denied the petition on June 26, 2006. This action now follows.

Attached and incorporated by reference are the following relevant documents:

1. Record on Appeal (Vols. 1 through 5);
2. Final Brief of Appellant;
3. Final Brief of Respondent;
4. *State v. Sigmon*, Opinion No. 26087 (S.C. Sup.Ct. Filed December 19, 2005).¹

Respondent's Statement of Facts

On April 27, 2001, at approximately 8:00 a.m., Applicant, Brad Keith Sigmon, entered the home of sixty-two (62) year old David Larke, surprised Mr. Larke in his kitchen, and struck him repeatedly with a baseball bat. Applicant then saw Mr. Larke's fifty-nine (59) year old wife enter the kitchen. Applicant chased her back into her living room where he repeatedly struck her with the same baseball bat. He returned to the kitchen and continued beating Mr. Larke. He then went back to the living room and continued beating Mrs. Larke. (R. p. 1577, line 14 – p. 1578, line 17). Mr.

¹ Reported at 366 S.C. 552, 623 S.E.2d 648 (2006).

Larke sustained a total of nine (9) crushing blows to the skull, and bruising on his ears, left shoulder, and a defensive wound on the back of his right hand. His "skull was basically almost broken in two." (R. p. 1716, lines 9-12). Mrs. Larke also received nine (9) injuries to her skull and had defensive wounds to her forearms, wrists, and elbows. She had also inhaled blood into her lungs. The forensic pathologist testified that both victims would have died in approximately three (3) to five (5) minutes from the severity of the beatings. (R. p. 1709, line 3 – p. 1731, line 2; State's Exhibits 22a through 22i; State's Exhibits 24a through 24h; State's Exhibits 25a through 25d).

Applicant knew the Larkes through their daughter, Becky Barbare, with whom Applicant had previously had a relationship. At the time of the murder, Ms. Barbare had been attempting to oust Applicant from her home and was staying with her parents, who lived next door to her. (R. p. 1430, line 21 – p. 1432, line 1; p. 1569, line 5 – p. 1572, line 9; p. 1681, line 6 – p. 1685, line 5). According to Applicant's statement, he waited for Ms. Barbare to take her small children to school, then entered the Larke home and attacked Ms. Barbare's parents. After killing Mr. and Mrs. Larke, and taking a gun from their home, Applicant waited for Ms. Barbare to return. He captured her, and forced her into her white Nissan Pathfinder. She tried to escape and he shot at her. (R. p. 1577, line 6 – p. 1581, line 11). Several witnesses actually saw Ms. Barbare's escape attempt and the shooting. The witnesses testified that Ms. Barbare leaped from the car while it was moving. After she tumbled out, Applicant turned the car around and went back to her. (R. p. 1327, line 5 – p. 1329, line 19; p. 1334, line 17 – p. 14; 1357, lines 20-25; p. 1666, line 4 – p. 1667, line 23). Applicant stopped the car, exited, walked up to Ms. Barbare, and shot her several times. (R. p. 1335, line 15 – p. 1336, line 20). She survived and told the witnesses that Applicant told her he had "tied up" or had killed her parents. (R. p. 1339, lines 21-25; p. 1346, lines 4-10). Officers were dispatched to the Larke home

and found their dead bodies. (R. p. 1386, line 1 – p. 1387, line 22).

An involved manhunt ensued. (R. p. 1435, line 8 – p. 1439, line 10). Applicant was eventually located, ten (10) days later, in a campground in Tennessee, by tracing a call he made to his mother who was cooperating with the investigation. (R. p. 1450, line 8 – p. 1451, line 19). Applicant made another telephone call to his mother in front of the booking officer. The officer related the substance of the conversation in which Applicant confessed to the murders. (R. p. 1495, line 5 – p. 1499, line 20). Applicant would also confess to both Tennessee officers and Greenville County detectives. (R. p. 1520, line 5 – p. 1535, line 19; State's Exhibit 11; R. p. 1556, line 17 – p. 1590, line 24; State's Exhibit 15). In the statements, Applicant indicated that "Geno" was supposed to have helped him but ran out on him before Applicant had entered the Larke home. (R. p. 1577, lines 1-21).

Eugene Strube testified at trial that the night before the murders, he and Applicant left the home of a mutual friend, hid Applicant's car, and entered a nearby trailer Applicant claimed was his. (R. p. 1659, line 14 – p. 1662, line 19; p. 1665, lines 14-19). While at the trailer, Applicant and Strube drank beer and smoked crack cocaine. (R. p. 1662, line 21 – p. 1663, line 1). Applicant asserted that "he was going to get Becky for leaving him the way she did;" that he would "tie her parents up;" and, that he was going to "take care of Becky's parents, so he can get ahold of Becky...." (R. p. 1663, lines 4-9; p. 1664, lines 20-22). Applicant packed a bag with an extension cord, duct tape, stockings, and socks. He also had a baseball bat. He would later take these items with him as he left the next morning. (R. p. 1663, line 19 - p. 1664, line 3; p. 1665, lines 7-13). Mr. Strube stayed with Applicant through the night and even accompanied him to the Larke home the next morning. However, he refused to enter and left before Applicant entered. (R. p. 1664, line 12

– p. 1665, line 6). The trailer the two stayed in the night before was next to the Larke home, and was apparently Ms. Barbare's home. (R. p. 1664, line 23 – p. 1665, line 19; p. 1430, line 24 – p. 1431, line 18).

At trial, Applicant did not contest his guilt. Defense counsel advised the jury in opening statements: "You're going to find Brad Sigmon guilty... he confessed to it. He confessed to it more than one time... [your] job is to reach the ultimate decision in this case, whether Brad Sigmon lives or dies... you may wonder, well, why are we here? Well, I'll tell you.... Because if Brad Sigmon were to plead guilty, he wouldn't have a right to a jury to determine his sentence." (R. p. 1316, line 12 – p. 1317, line 23). Applicant addressed the jury at the close of the guilt phase: "Ladies and gentlemen of the jury, I am guilty." (R. p. 1765, lines 11-15).

Allegations

In his application for post-conviction relief, Applicant claims error and makes the following allegations:

- 9(a) Ineffective assistance of counsel for failing to preserve various issues for appellate review, including but not limited to, failing to request charges relating to manslaughter and self-defense; failing to object to hearsay statements made by defendant's ex-girlfriend, who did not testify at trial; failing to object to evidence of prior bad acts and prejudicial testimony about the defendant.
- 9(b) Counsel failed to conduct an adequate background check for evidence in mitigation and to fully develop defendant's mental distress at the time of the offenses.

Discussion

Applicant has failed to offer any supportive facts to show ineffective assistance. (Application, p. 3). The allegations have not been properly presented. Moreover, the bare

allegations are easily refuted by the record. Therefore, Respondent is entitled to summary judgment.

General Law of Ineffective Assistance of Counsel

To establish that counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's errors, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595-96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Id.*

"A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690. "There are countless ways to provide effective assistance in any given case," and the simple fact that trial counsel's strategy was ultimately unsuccessful does not render counsel's assistance constitutionally ineffective. *Strickland*, 466 U.S. at 689. *Bell v. Evatt*, 72 F.3d 421, 429 (4th Cir. 1995). "The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688; *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993). To effect a fair review of counsel's performance, a reviewing court must "eliminate the distorting effects of hindsight" and attempt "to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689; *Butler v. State*, 286 S.C. 444-45, 334 S.E.2d 815 (1985). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," *Strickland*, 466 U.S. at 690; *Butler*, 286 S.C. at 455, 334 S.E.2d at 815-16, and an applicant claiming error bears the burden

of showing counsel's conduct did not constitute reasonable assistance, *Strickland*, 466 U.S. at 689; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Lastly, as noted above, relief will not be granted on showing of mere error. Prejudice must also be shown. *Strickland*, 466 U.S. at 687. The standard of "prejudice" differs depending upon whether it is related to guilt phase issues or penalty phase issues. In order to prove "prejudice" in the guilt phase, an applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). In *Jones v. State*, 332 S.C. 329, 504 S.E.2d 822 (1998), this Court instructed that prejudice may be found in a capital sentencing proceeding when "there is a reasonable probability that, absent [counsel's] errors, the sentencer – including an appellate court, to the extent it independently reweighs the evidence – would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Again, "[a] reasonable probability is a probability sufficient to undermine confidence in the outcome." *Jones*, 504 S.E.2d at 823-824.

Applicant's Allegation (a)

Applicant has failed to identify any specific act or failure on counsel's part that, under the specific circumstances of his trial, would indicate ineffective assistance. Thus, Applicant has failed "to state facts sufficient to constitute a cause of action" and the allegation should be dismissed. Rule 12(b)(6), SCRPC. See also S.C. Code Ann. § 17-27-50 (requiring an applicant set out his specific grounds for relief, and that his allegations of facts be verified); S.C. Code Ann. § 17-27-80 (PCR actions subject to rules of civil procedure). Moreover, the allegation is soundly refuted by the record, and, if not dismissed for failure to properly plead, the allegation should be summarily dismissed as the record shows no dispute in the material facts, and shows Respondent is entitled to judgment as

a matter of law. S.C. Code § 17-27-70 (c) (“The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”). *See also Wood v. State*, 257 S.C. 179, 183, 184 S.E.2d 702, 704 (1971) (“dismissing the application pointed out wherein it did not allege sufficient facts or grounds to warrant a hearing or relief, and recited that the application was being dismissed, pursuant to the foregoing Code section, ‘as being without any genuine issue of material fact or law which would warrant a hearing or the relief requested.’”).

Applicant first alleges counsel was ineffective for failing to preserve the issue for appellate review of whether Applicant was entitled to charges of manslaughter and self-defense as counsel failed to request said charges. This allegation is without merit. First, the law to be charged is determined by the facts adduced at trial. *State v. Lee*, 298 S.C. 362, 380 S.E.2d 834 (1989). Nothing in this record supports a charge of manslaughter or self-defense. There is no error.

“Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation.” *State v. Byrd*, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996). “It is proper for a trial judge to refuse to charge voluntary manslaughter in a murder case where it very clearly appears there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.” *State v. Locklair*, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000). The record here shows Applicant broke into the home of his elderly victims and brutally beat them to death with a baseball bat. There is no evidence of sudden heat of passion upon sufficient legal provocation. Moreover, Applicant admitted his guilt to the jury. (R.p. 765, lines 11-15). Request of a manslaughter charge would be in conflict with this clear admission. In fact, counsel specifically

informed the trial judge, after all the evidence was in, that the defense would not be seeking a manslaughter charge. (R. p. 1747, lines 22-25). The record definitively shows counsel did not overlook consideration of the charge; rather, the record supports that counsel made an informed strategic decision. Given the record, especially of the concession of guilt of murder, even if counsel had requested the charge, the charge would have been properly rejected, and Applicant cannot show a favorable issue would have been preserved for appeal. Indeed, the phrasing of the allegation concedes an expectation that such a request would be rejected in order to create a “preserved issue.” Again, the allegation is without merit. Applicant would not be entitled to the charge and could not prove error and prejudice. *See Magazine v. State*, 361 S.C. 610, 620, 606 S.E.2d 761, 766 (2004)(counsel not ineffective in failing to request charge where there is no evidence warranting the lesser charge); *Bozeman v. State*, 307 S.C. 172, 177, 414 S.E.2d 144, 147 (1992)(same). This is also so with a self-defense charge.

As with the manslaughter charge, Applicant claims counsel was ineffective in failing to request the judge charge self-defense and to preserve the issue for direct appeal review. The record shows Applicant was not entitled to the charge. There are four elements of self-defense. First, the defendant must be without fault in bringing about the difficulty. Second, the defendant must have actually believed he was in, or actually have been in, imminent danger of losing life or sustaining serious bodily injury. Third, if the defense is based on defendant’s belief of danger, the evidence must show that a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, or, if in actual danger, the circumstances would warrant a man of ordinary prudence, firmness and courage to strike a fatal blow in order to save himself from serious injury or death. Fourth, the defendant had no other probable means of avoiding the danger. *State v. Davis*, 282 S.C.

45, 46, 317 S.E.2d 452, 453 (1984). Nothing in the evidence before the Court suggested even one of the elements. Again, even if counsel would have requested the charge, and preserved an issue for an appeal, the issue would have been without merit. However, the record shows even more. The record shows counsel specifically advised the trial judge they would not be seeking a self-defense charge. (R. p. 1748, lines 2-5). Again, the record shows counsel did not simply fail to consider a request of the charge; rather the record supports that counsel made a strategic decision not to request the charge. At any rate, the record shows Applicant was not entitled to the charge based on the facts presented, and preservation of the issue for direct appeal review would be of no consequence. Applicant can prove neither error or prejudice. *See Jackson v. State*, 355 S.C. 568, 573, 586 S.E.2d 562, 564 (2003)(petitioner failed to show the result of trial would have been different but for the failure to give a self-defense charge and was not entitled to post-conviction relief).

Applicant next alleges counsel was ineffective for failing to object to hearsay statements from “the defendant’s ex-girlfriend” to preserve the issue for appellate review. (Application, p. 3). As noted in Respondent’s Statement of Facts, the “ex-girlfriend,” Ms. Barbare, escaped from the car Applicant drove, Applicant stopped the car, walked up to her, and shot her several times. (R. p. 1335, line 15 - p. 1336, line 20). She told witnesses who stopped to help that Applicant told her he had “tied up” or had killed her parents. (R. p. 1339, lines 21-25; p. 1346, lines 4-10). As a first point, the record shows counsel did object to the statements:

Q Did you go up to this woman who was being shot at?

A Yes, ma’am.

Q What was her condition? What was her demeanor?

A She was frantic, scared, worried about her parents and her kids.

Q Was they [sic] crying?

A I believe so. I'm not real sure.

Q You said she was frantic?

A Yes, ma'am.

Q What if anything did she tell you at that time?

MR. ABDALLA: Objection, Your Honor, to hearsay.

THE COURT: All right. What is your position, why would that not be hearsay?

MS. STROM: Your Honor, excited utterance.

THE COURT: All right. I will allow it.

(R. p. 1339, lines 3-17).

Applicant is simply wrong in his assertion counsel failed to object and preserve an issue for review. Moreover, the record confirms the testimony was properly admitted.

The above referenced witness continued to recount how Ms. Barbare was worried her parents had been tied up and also worried about her children. (R. p. 1339, line 21 - p. 1340, line 2). Counsel also objected to a second witness' testimony concerning what Ms. Barbare said while frantic from the event. (R. p. 1345, lines 14-22). The judge overruled the objection and the witness testified Ms. Barbare said "her boyfriend had threatened to kill her children and told her that he had killed her parents." (R. p. 1346, lines 6-7). There could be no question that statements made under these conditions were excited utterances, and admissible, regardless of the availability of the witness. Rule

803, SCRE. *See also State v. Sims*, 348 S.C. 16, 20, 558 S.E.2d 518, 520-21(2002)(“A statement that is admissible because it falls within an exception in Rule 803, SCRE, such as the excited utterance exception, may be used substantively, that is, to prove the truth of the matter asserted.”). In fact, that is exactly the issue settled at trial. Moreover, the statements reflect statements made by Applicant which are not hearsay. Rule 801(d)(2), SCRE (party’s statement offered against party is not hearsay). There is no error. And, as noted above and specific to the allegation at hand, counsel did not fail to object. The record soundly, and completely, rebuts any contention to the contrary. There is no error.

Applicant next alleges counsel was ineffective for failing to object to evidence of prior bad acts and prejudicial testimony about the defendant to preserve the issue for appellate review. Again, Applicant fails to show what specific evidence he complains should not have been admitted. Even so, the record shows that the State entered both Applicant’s prior record, and specific instances of violence as related by his ex-wife. (See R. 1865-88). “Given that this is a capital case, the jury was required to assess” Applicant’s character. *State v. Terry*, 339 S.C. 352, 358, 529 S.E.2d 274, 278 (2000). *See also Woodson v. North Carolina*, 428 U.S. 280, 304 (1976)(Eighth Amendment requires consideration of the capital defendant’s character and record). Therefore, there could be no error in failing to object to evidence that was clearly admissible. There is no error.

Respondents are entitled to dismissal of, or summary judgment on, each and every subpart of the allegation presented.

Applicant’s Allegation (b)

Applicant has failed to identify any act or failure on counsel’s part that would indicate a valid ineffective assistance of counsel claim in regard to mitigation evidence. Thus, Applicant has failed

“to state facts sufficient to constitute a cause of action” and the allegation should be dismissed. Rule 12(b)(6), SCRCP. Moreover, the record refutes any general allegation of the failure to investigate. Therefore, Respondent is entitled to summary judgment. S.C. Code § 17-27-70.

Clearly, “counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691. And, a decision “not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. *Id.* “Judicial scrutiny of counsel's performance must be highly deferential” and “strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.” *Strickland*, 466 U.S. at 690. Moreover, an applicant does not meet his burden of showing error and prejudice if he simply shows he may now present a “fancier” case in mitigation. *Simpson*, 367 S.C. at 598, n. 2, 627 S.E.2d at 707, n.2, citing *Jones v. State*, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998). He must show real error and a reasonable probability that but for the error, the result of the trial would have been different. *Id.* *Strickland*, *supra*.

The record shows counsel presented a substantial case in mitigation. First, counsel recalled Applicant's ex-wife, who previously testified in the State's case about violent domestic difficulties with Applicant, and asked if it was true that as a result of her shooting him during a domestic disturbance, “he wore a colostomy bag” and “was sick to his stomach and had diarrhea virtually every day.” (R. p. 1931, line 13-p.1932, line 1). Counsel then called several other witnesses. Donnie Wooten, Applicant's stepfather, testified he had never seen Applicant become violent toward his ex-wife, and that he had no discipline problems growing up, and stated, “[a]s far as I know he treats everybody fine, you know, decent.” (R. p. 1934, line 25-p. 1936, line 13). Robbie Sigmon,

Applicant's son, testified that his father never abused him, never saw his parents hit each other, and that Applicant treated his girlfriend, Becky Barbare, very well. (R. pp. 1937-42). Doug Kelly, an investigator with the Greenville County Sheriff's Department testified that he recovered a suitcase from Applicant's car, that contained, among other things, "a friendship warns the heart coffee mug, a container of massage oil," and a Bible. (R. p. 1946, line 2 - p. 1947, line 5). Matt Tally, from the Greenville County Detention Center, testified he had no problems with Applicant and had seen only one instance of aggression, when Applicant confronted a guard, which Mr. Tally was able to calm down. (R. pp. 1953-54). Julia Moore, a jail counselor, testified that Applicant, while incarcerated, did not show suicidal or homicidal thoughts. (R. pp. 1958-64). Rosa Jones, a nurse at the detention center, testified that Applicant appeared sad and remorseful. (R. pp. 1966-67). Shirley Furtick, a clinical social worker, testified in detail concerning Applicant's family and social history, including the fact he was from a broken home, moved numerous times as a child, remained in high school until he was nineteen, suffered from fear of rejection and abandonment, and was subject to depression and alcohol use. (R. pp. 1989-2022). Troy Barbare, Becky Barbare's second husband, testified he and Applicant had words over Ms. Barbare's relationship with Applicant, but that Applicant later called and apologized. (R. p. 2035). Keith Merrill, Ms. Barbare's acquaintance, testified Applicant was jealous and possessive of Ms. Barbare. (R. pp. 2039-41). Valerie Putnam, a detention center officer, testified that he never posed a threat to her and was pleasant. (R. p. 2043). Terry Bradley, a volunteer at the detention center, testified Applicant "showed enthusiasm to simply learn more about God." (R. p. 2047, lines 18-21). Brenda Clerk, Applicant's aunt, testified Applicant was a "loving, carrying [sic] person" who loved life and people. (R. p. 2059). Michelle Melton, the manager of operations at the detention center, testified Applicant had no "behavioral problems while at the

center, (R. p. 2065), that Applicant had gained a pass but did not attempt to use the pass to escape, and that Applicant was basically polite and well mannered. (R. p. 2070-82). Dr. Alex Morton, who was qualified as an expert in addictions and psychopharmacy, testified that Applicant suffered from recurrent major depressive disorder, a chemical dependency on cocaine, alcohol and marijuana, and that the interaction of the chemicals with the depression “overall made that depression worse.” (R. p. 2099, line 19 - p. 2100, line 4). Jim Aiken, who was qualified as an expert in prison adaptability, testified he concluded from his assessment of Applicant that “he can be incarcerated in a prison setting for the remainder of his life without causing an undue risk of harm to staff, inmates, as well as to the general community. (R. p. 2141, lines 19-23). Applicant’s father, Ronnie Sigmon, testified that Applicant “was always the peace maker. That’s what so shocking about all this,” and that he loved his son very much. (R. p. 2160, line 8- p. 2161, line 8). Lastly, Virginia Wooten, Applicant’s mother, testified that while she was attempting to get Applicant to turn himself in, Applicant “said he wanted to die” and she begged him not to harm himself. (R. p. 2168, lines 17-25). She also testified she loved him. (R. p. 2170).

Given the detailed case in mitigation evident in the record, Respondent denies any general allegation of ineffective assistance of trial counsel regarding mitigation evidence in the penalty phase. Further, as Applicant fails to demonstrate any act or omission suggestive of error, Respondent is entitled to summary dismissal of this allegation.

Denial of All Other Allegations

Each and every allegation, or portion of allegation, not specifically addressed, qualified or denied in this pleading, is denied.

CONCLUSION

WHEREFORE, Respondent, having made its return to the initial application for post-conviction relief, respectfully requests the Court dismiss the allegations for failure "to state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRCP. Alternatively, Respondent moves for summary judgment. Rule 12 (b)(6), SCRCP ("If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment"); S.C. Code § 17-27-70. Respondent so moves.

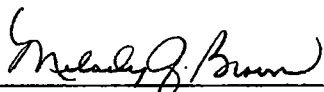
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Assistant Attorney General

By: 
MELODY J. BROWN

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Post Office Box 11549
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Telephone: (803) 734-6305

ATTORNEYS FOR RESPONDENT

November 13, 2006.
Columbia, South Carolina.

ENTERED COMPUTER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

BRAD KEITH SIGMON, #6008,)
)
 Applicant,)

C/A No.: 2006-CP-23-6547

v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
)
)
 Respondent.)

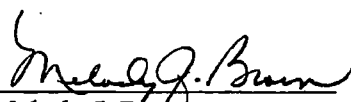
The undersigned certifies that on the 13th day of November, 2006, a copy of *Respondent's Return and Motion to Dismiss*, was served on counsel for Applicant by depositing same in the United States mail, postage prepaid, and addressed as follows:

Teresa L. Norris, Esquire
 Post Office Box 11744
 Columbia, South Carolina 29211

William H. Ehliess, II, Esquire
 310 Mills Avenue, Suite 201
 Greenville, South Carolina 29605

The undersigned further certifies that she had previously hand delivered the attachments to counsel at the Berkeley County Courthouse on November 8, 2006.

This 13th day of November, 2006.


 Melody J. Brown
 Assistant Attorney General

Served

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2008 JUN -4 P 4: 25

06-CP-23-6547

BRAD KEITH SIGMON, #6008,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

[Note: This application follows SCRCF Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCF.]

1. Applicant is detained at the Lieber Correctional Institution, Campbell Thicket Road, Ridgeville, South Carolina, 29472.

2. He was convicted and sentenced in the Greenville County Court of General Sessions.

3. Applicant was indicted on November 20, 2001, as follows:

Burglary 01-GS-23-7629

Murder 01-GS-23-7630 (David Larke)

Murder 01-GS-23-7631 (Gladys Larke)

Applicant was convicted of all charges on July 19, 2002.

4. On July 21, 2002, Applicant was sentenced as follows:

Burglary (30 years)

Murder (death)

Murder (death)

5. A finding of guilty was made after a plea of not guilty.

6. The Applicant appealed from the judgment of conviction and sentence.

7. (a) The courts to which Applicant appealed:

(i) The South Carolina Supreme Court.

- (ii) The United States Supreme Court.
- (b) The result in each court to which Applicant appealed:
 - (i) Convictions and sentences affirmed.
 - (ii) Petition for Writ of Certiorari denied.
- (c) The date of each result:
 - (i) Convictions and sentences affirmed on December 19, 2005. Rehearing was denied on January 13, 2006.
 - (ii) Petition for Writ of Certiorari denied on June 26, 2006.
- (d) Citations of any written opinion or orders entered pursuant to such results:
 - (i) *State v. Sigmon*, 366 S.C. 552, 623 S.E.2d 648 (2005).
 - (ii) *Sigmon v. South Carolina*, 548 U.S. 909 (2006).

8. Not applicable.

9& 10. **GROUND FOR RELIEF WITH SUPPORTING FACTS**

9(a) *Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution.*

10(a) During the trial and sentencing phase, Applicant's counsel failed to adequately preserve various issues for appellate review, including, but not limited to, the following:

- (i) Counsel failed to object to the improper cross-examination of James Aiken, an expert presented to testify concerning Applicant's adaptability to confinement, about the day to day circumstances of prison life, Record on Appeal (ROA) 1823-1827, 2146-49, and

improper argument about Applicant becoming part of the “power structure” in prison, ROA 2191.

(ii) Counsel failed to object to the Solicitor’s improper closing arguments expressing his personal opinions as an elected official on why he believed death was the appropriate punishment. *See* ROA 2188.

(iii) Counsel failed to adequately request a charge on the statutory mitigating circumstance of age or mentality, based on the evidence of drugs and alcohol at the time of the offenses, or to properly address the trial court’s erroneous understanding that “mentality” referred only to evidence of mental retardation or limited intellectual abilities. *See* ROA 2177, 2232.

(iv) Counsel failed to object to the trial court’s instructions defining mitigating circumstances as evidence that “simply lessens the degree of one’s guilt. That is it makes the defendant less blameworthy, or less culpable, ROA 2232, which improperly narrowed the mitigation evidence to exclude evidence of Applicant’s adaptability to confinement and other mitigation.

(v) Counsel failed to object to the trial court’s instruction that non-statutory mitigation evidence is only evidence the “defendant claims serves the same purpose” as statutory mitigating circumstances, which improperly denigrated non-statutory mitigation evidence that is equally as significant under the law as statutory mitigating circumstances.

Counsel’s omissions were both unreasonable and prejudicial. *Smith v. Robbins*, 528 U.S. 259 (2000); *Evitts v. Lucey*, 469 U.S. 387 (1985); *Strickland v. Washington*, 466 U.S. 668 (1984).

9(b) *Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution in that counsel failed to adequately present evidence of Applicant's mental state.*

10(b) During the trial and sentencing phase, Applicant's counsel failed to provide effective assistance of counsel in numerous ways, including, but not limited to, the following:

(i) Counsel sought to play the videotape made of Applicant's call to his mother shortly after his arrest during the cross-examination of Gatlinburg Police Officer Carrie Harbin, but incurred errors in playing the tape. Although the court offered to allow the playing of the tape later, counsel never addressed the issue again and the jury was never allowed to hear the actual statements or shown the very emotional nature of Sigmon's initial confession. *See* ROA 1501-12.

(ii) Counsel subpoenaed Dr. Martin, a mental health examiner for the Greenville County Detention Center who examined and treated the Applicant during pretrial confinement, but failed to call and present him as a witness to testify about Applicant's depressive disorder. *See* Record on Appeal (ROA) at 1442, 2013.

Counsel's omissions were both unreasonable and prejudicial in sentencing. *Wiggins v. Smith*, 539 U.S. 510 (2003); *Strickland v. Washington*, 466 U.S. 668 (1984).

9(c) *Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution in that counsel attempted to blame the victims, primarily the Applicant's former girlfriend, which resulted in additional aggravation evidence and prejudice to Applicant.*

(i) Counsel called the two ex-husbands and the husband of Applicant's former girlfriend, who was the daughter of the victims in an attempt to shift some of the blame for Applicant's behavior to her, which resulted only in additional aggravation evidence being presented. *See* ROA 1948-52, 2031-38, 2039-41.

(ii) Counsel requested and obtained an instruction on the statutory mitigating circumstance of provocation by the victim mitigator, ROA 2178, which only continued the prejudice of the attempt to shift blame to Applicant's former girlfriend through the testimony of her previous and current husbands.

Counsel's omissions were both unreasonable and prejudicial in sentencing. *Wiggins v. Smith*, 539 U.S. 510 (2003); *Strickland v. Washington*, 466 U.S. 668 (1984).

11 & 12. Applicant appealed directly to the South Carolina Supreme Court and petitioned the United States Supreme Court for a writ of certiorari. Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court from these convictions and sentences.

13. None of the grounds set forth in (9) has been previously presented to this or any other Court, State or Federal.

14. Not Applicable.

15. These grounds rely on additional facts outside the record which was before the previous courts.

16. Applicant was previously represented by counsel.

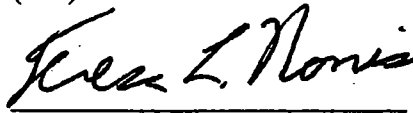
17. Applicant was represented at trial by Frank Eppes, Jr., and John Abdalla, both of the Greenville County Bar. During the direct appeal and petition for writ of certiorari, Applicant was represented by Eleanor Duffy Cleary of the S.C. Office of Appellate Defense.
18. Applicant seeks the vacation of his convictions and sentences.
19. Not applicable.

Respectfully submitted,

William H. Ehlies
310 Mills Avenue
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Teresa L. Norris
Blume Weyble & Norris, LLC
P.O. Box 11744
Columbia, SC 29211
(803) 765-1044

By:



Teresa L. Norris

June 2, 2008.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF GREENVILLE)

06-CP-23-6547

BRAD KEITH SIGMON, #6008,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

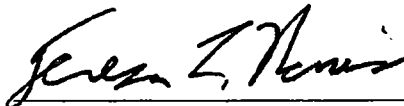
Respondent.)

CERTIFICATE OF SERVICE

I do hereby certify that I have served the Amended Application for Post-Conviction Relief, in the above-referenced case, on the attorney for the Respondent by electronic mail and by depositing a copy of same in the United States Mail, first class, postage prepaid, addressed as follows:

Melody Brown
 Assistant Attorney General
 Office of the Attorney General
 P.O. Box 11549
 Columbia, South Carolina 29211

This the 2nd day of June, 2008, in Columbia, South Carolina.


 TERESA L. NORRIS

June 2, 2008.

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 J. W. G. W. G. W. G.

2008 JUN -4 P 4:25

(3)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

06-CP-23-6547

BRAD KEITH SIGMON, #6008,)

Applicant,)

APPLICANT'S TRIAL BRIEF

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

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Ab

Applicant files this trial brief to apprise the Court of the relevant record-based facts and legal principles relevant to the grounds for relief raised in the amended application for post-conviction relief.

All of the grounds for relief involve claims of ineffective assistance of counsel, which must be examined under the standard established in *Strickland v. Washington*, 466 U.S. 668 (1984). The *Strickland* standard is satisfied if an applicant establishes both that his attorney's representation "fell below an objective standard of reasonableness," *id.* at 688, and that the applicant was "prejudiced" by his attorney's substandard performance, *id.* at 692.

In assessing whether counsel's conduct was reasonable under the *Strickland* standard, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance" and "might be considered sound trial strategy." *Strickland*, 466 U.S. at 689. Attorneys in capital cases "must be conversant with constantly new interpretations of constitutional law by not only the United States Supreme Court, but by courts of all jurisdictions, both Federal and State." *Bailey v. State*, 309 S.C. 455, 460, 424 S.E.2d 503, 506 (1992). *See also United States v. Mooney*, 497 F.3d 397, 404 (4th Cir. 2007) (Counsel in criminal cases are charged with the

responsibility of conducting “*appropriate investigations, both factual and legal*, to determine if matters of defense can be developed”).

If counsel fails to object to prejudicial legal errors at trial, a valid strategy cannot be found where “counsel . . . fail[s] to object to comments which constitute an error of law and are inherently prejudicial.” *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). *See also Von Dohlen v. State*, 360 S.C.598, 613, 602 S.E.2d 738, 746 (2004) (counsel’s conduct deficient in failing to object to improper argument asking the jurors to place themselves in the victim’s shoes); *Hall v. Catoe*, 360 S.C. 353, 364, 601 S.E.2d 335, 341 (2004) (counsel’s conduct deficient and prejudicial in failing to object to the solicitor’s improper comparison between the worth of the defendant’s life and the lives of the victims). Likewise, a valid strategy cannot be found when the professed strategy is invalid under an objective standard of reasonableness. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Finally, when counsel’s conduct is based on an erroneous understanding of the law “counsel made no tactical ‘choice.’” *Luchenburg v. Smith*, 79 F.3d 388, 392-93 (4th Cir. 1996).

A finding of prejudice under *Strickland* requires that an applicant “must show that there is a reasonable probability that, but for counsels’ unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. *Strickland* defined “reasonable probability” as a “probability sufficient to undermine confidence in the outcome” of the proceeding. *Id.* at 692. This test is not, however, an outcome determinative inquiry. In other words, “[t]he result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.” *Id.* at 694. Thus, “a defendant need *not* show that counsel’s deficient conduct more likely than not

altered the outcome in the case.” *Id.* at 693 (emphasis added). To the contrary, prejudice is established if “there is a reasonable probability that *at least one juror* would have struck a different balance” but for counsel’s errors. *Wiggins v. Smith*, 539 U.S. 510, 537 (2003) (emphasis added).

Grounds for Relief

9(a) *Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution.*

During the trial and sentencing phase, Applicant’s counsel failed to adequately preserve various issues for appellate review, including failing to object to the state’s improper evidence and argument concerning the day to day circumstances of prison life and the solicitor’s personal opinions concerning the appropriateness of the death penalty. Counsel also failed to ensure appropriate instructions to the jury in sentencing by failing to adequately request a charge on the statutory mitigating circumstance of age or mentality, by failing to object to the restrictive definition of mitigating circumstances as evidence that “simply lessens the degree of one’s guilt,” and by denigrating non-statutory mitigation evidence as only evidence the “defendant claims serves the same purpose” as statutory mitigating circumstances.

(i) Improper evidence concerning the day to day circumstances of prison life.

Prior to opening statements in the sentencing phase, defense counsel moved to limit the anticipated testimony of James Sligh, an employee of the South Carolina Department of Corrections. Record on Appeal (ROA) 1823. The state asserted an intent to have him testify concerning “the day in the life of a prisoner in – serving life without parole, what privileges, what amenities [sic], what advantages this individual will have.” ROA 1823. The solicitor even categorized prison, in argument on admissibility of this testimony, as “nothing more than a small little town that’s got a

restaurant and all that.” ROA 1825. The court expressed some doubt about the admissibility of this testimony because “aggravating circumstances are limited to statutory aggravating circumstances with the addition of character of the defendant, with the addition of victim impact.” ROA 1826-27. Nonetheless, because the court noted that defense counsel were “not objecting to it,” ROA 1826, the court restricted only the intended evidence about the day to day conditions on death row, ROA 1827.

While the state did not present the testimony of Mr. Sligh, the state pursued this line of evidence and argument in cross-examination of Jim Aiken, the defense expert on Applicant’s adaptability to confinement. During this examination, the solicitor elicited information that an individual serving a sentence of life imprisonment without parole would “have regularly scheduled visitors” and “contact visitation or non-contact visitation . . . at the discretion of the administrator.” ROA 2146, 2149-50. He would also have access to television; recreation; “a library to work on law materials, or to check out books and read books”; telephone to “call home, call friends, call whoever he wanted to, call as long as it was a collect call”; canteen; showers at least “three times a week”; “educational classes”; mail, including magazine subscriptions such as “Sports Illustrated”; and a “personal locker in his bunk area where he can keep his own personal effects.” ROA 2146-49. The solicitor also implied that “if a family member[] dies, he gets to go to the funeral.” ROA 2146. Defense counsel posed no objection to any of this testimony and had no strategic reason for the failure to do so.

The solicitor further extended this line with his closing argument asserting that “life imprisonment is not the appropriate sentence in this case.” ROA 2190.

He’s a manipulator. He’s a controller. He’s an intimidator. He’s a smoozer, and that’s why he doesn’t deserve life imprisonment. He would simply become a part of

the power structure. He would become the inmate's advisor, their lawyer. He would become that person in the prison setting that would be a leader.

And we may think life imprisonment is serious business, but you still have your visitation with your family. You still have your mail. You still have your TV. You still eat three meals a day. Somebody washes and takes care of your clothes. You get all the benefits of health care, and recreation. All of those things are provided for you.

Sure, your life is limited. Your life is limited to a smaller confinement in that you don't have the freedom to move about. Life in prison carries a lot of benefits with it and that's why it's not proper in this case. He would still have the freedom to see his children, something that these children of Gladys and David Larke will never have the opportunity to do."

ROA 2191. Still defense counsel posed no objection.

Counsel's failure to object was deficient because the evidence and argument by the solicitor violated both S.C. Code § 16-3-25(C)(1) and the Eighth and Fourteenth Amendments to the United States Constitution.

As the South Carolina Supreme Court recognized long ago:

Such determination as the time, place, manner, and conditions of execution or incarceration . . . are reserved by a statute . . . to agencies others than the jury. As we have repeatedly stated, the sole function of the jury in a capital sentencing trial is the individualized selection of one or the other penalty, based upon the circumstances of the crime and the characteristics of the individual defendant.

State v. Plath, 281 S.C. 1, 15, 313 S.E.2d 619, 627 (1984).

The Legislature committed to the jury the responsibility to determine in the first instance whether punishment should be life or death. It charged another agency with the responsibility of deciding how a life sentence shall be executed. The jurors perform their task completely when they decide the matter assigned to them upon the evidence before them. What happens thereafter is no concern of theirs.

State v. Atkinson, 253 S.C. 531, 535, 172 S.E.2d 111, 112 (1970) (quoting *State v. White*, 142 A.2d 65, 78 (N.J. 1958)).

The conditions of incarceration do not reflect the circumstances of the crime or the characteristics of the defendant. As the court said in *Plath*, “A jury does not need to know how often [the capital defendant] will take a shower or whether or not he will be lonely and withdrawn during his tenure [in prison].” 281 S.C. at 15, 313 S.E.2d at 627.

As subsequently explained in more detail:

The evidence presented in a penalty phase of a capital trial is to be restricted to the individual defendant and the individual defendant’s actions, behavior, and character. Generally, questions regarding escape and prison conditions are not relevant to the question of whether a defendant should be sentenced to death or life imprisonment without parole.

State v. Bowman, 366 S.C. 485, 498, 623 S.E.2d 378, 385 (2005). Thus, it is clearly error to elicit testimony about the “privileges” or “benefits” of an inmate given a life without parole sentence, such as “access to the yard, work, education, meals, canteen, phone, library, recreation, mail, television, and outside visitors.” *State v. Burkhart*, 371 S.C. 482, 487, 640 S.E.2d 450, 452-53 (2007). Furthermore, this type of evidence is extremely prejudicial and requires reversal because “this entire subject matter inject[s] an arbitrary factor into the jury’s sentencing considerations” in violation of S.C. Code § 16-3-25(C)(1). 371 S.C. at 488-89, 640 S.E.2d at 453. Likewise, the Eighth Amendment’s prohibition against cruel and unusual punishment is violated when a death sentence is “predicated on mere ‘caprice’ or on ‘factors that are constitutionally impermissible or totally irrelevant to the sentencing process.’” *Johnson v. Mississippi*, 486 U.S. 578, 585 (1988) (quoting *Zant v. Stephens*, 462 U.S. 862, 884-85, 887 n.24 (1983)).

While this case was tried before *Bowman* or *Burkhart*, counsel’s conduct was still deficient in failing to be familiar with the constitutionally mandated requirement and “long-standing rule that evidence in the sentencing phase of a capital trial must be relevant to the character of the defendant

or the circumstances of the crime,” *Burkhart*, 371 S.C. at 488, 604 S.E.2d at 453, as well as the clear statements in *Plath* and *Atkinson*. Prejudice is clear where much of Applicant’s case for life was his adaptability to confinement, which would have been viewed possibly as aggravating evidence in conjunction with arbitrary and irrelevant information.

(ii) Improper closing arguments expressing the Solicitor’s personal opinions.

During the solicitor’s closing argument in sentencing, the solicitor asserted that “the State has asked for the death penalty and we think it’s appropriate in the case,” ROA 2184, and reminded the jury that the State of South Carolina “is represented through me and my staff,” ROA 2187. The Solicitor went further, however.

Now, when we asked for the death penalty, it’s a fair and appropriate question for you to say back to me, Solicitor Arial, why do you think that the death penalty is an appropriate punishment in this case? And I can best summarize it by a response that I got from a juror in another case on voir dire, and that juror said, as to her response in her argument for the death penalty, that they’re [sic] are mean and evil people who live in this world, who do not deserve to continue to live with the rest of us, regardless of how confined they are. And that’s what the basis of our request for the death penalty is. There are certain mean and evil people that live in the world that do not deserve to continue to live with us.

ROA 2187-88. In addition, at the conclusion of the argument, the Solicitor added:

And there are people, there are people who will argue that the death penalty is not a deterrent. But my response as the Solicitor of this circuit is, it is a deterrent to this individual and that is what we are asking, is to deter Brad Sigmon and send the message that this type of conduct will not be tolerated in Greenville County, or anywhere in this State. And let that decision that you reach ring like a bell from this courthouse, that people will understand that we will not accept brutal behavior such as this. Thank you.

ROA 2194. Defense counsel did not object to any of this argument and did not have a reasonable strategic reason for the failure.

The Solicitor's argument was improper because it related the solicitor's private decision to seek and personal opinion that the death penalty is appropriate in this case. "Such reference could divert the attention of jurors from the evidence before them to an improper consideration of the solicitor's personal views." *State v. Smart*, 278 S.C. 515, 517, 299 S.E.2d 686, 687 (1982). In short, this argument injected an arbitrary factor in the proceedings in violation of S.C. Code § 16-3-25(C)(1) and the Eighth and Fourteenth Amendments to the United States Constitution. *State v. Woomey*, 277 S.C. 170, 175, 284 S.E.2d 357, 359 (1981); *State v. Butler*, 277 S.C. 543, 290 S.E.2d 420 (1982).

Trial counsel's failure to object to this improper evidence and argument was both deficient and prejudicial. *Strickland, supra*.

(ii) Failure to request a charge on the statutory mitigating circumstance of age or mentality.

The trial evidence established that around 8:00 p.m. on April 25, 2001, Applicant arrived at the home of his employee, Charles Hall, and Mr. Hall "could tell he had been drinking," although he "seemed coherent." ROA 1696. Applicant had also reported earlier at work that he had been drinking since 8:00 a.m. ROA 1698.

On April 26, 2001, Applicant reported that he had used approximately fifty dollars worth of crack cocaine and drank two mixed drinks and a half a bottle of Peppermint Schnapps. ROA 2105. Around 9:00 p.m. Applicant met up with Eugene Strube. The two bought some beer before going to Applicant's former home, which was next door to the victims' home. ROA 1660-61. In the house, according to Strube, Applicant "drank a six-pack" of beer, ROA 1675, and the two were "smoking some crack" ROA 1663. While Strube got sick off "the first hit," ROA 1671, they each

smoked “a couple hundred dollars worth” of crack, ROA 1676, “through the evening” until they ran out. Strube went to sleep around 1:00 a.m. while Applicant remained awake throughout the night. ROA 1664, 1675. Ultimately, Strube abandoned his agreement to assist Applicant as Applicant entered the victims’ home prior to 8:30 a.m. and the crimes ensued. ROA 1326.

With respect to the statutory mitigating circumstances to be charged, defense counsel sought a charge on “[t]he age or mentality of the defendant at the time of the crime,”¹ based only on “testimony about his mental state.” ROA 2177. The court determined, however, that this was adequately covered by an instruction for the jury to consider that “[t]he capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.”² The court’s expressed reasoning was that “mentality would be like education level, or mental retardation, or something like that.” ROA 2177. Defense counsel did not pursue the point further and conceded the issue. ROA 2177. The court, thus, did not instruct on “age or mentality,” ROA 2232, and defense counsel posed no further objection, ROA 2237.

Counsel’s failure to correct the trial court’s misunderstanding of the law and obtain the instruction or, alternatively, to preserve the issue for appeal was deficient because evidence of alcohol and drug use and intoxication requires instruction on the statutory mitigating circumstances that (1) the murder was committed under influence of mental or emotional disturbance; (2) the capacity of the defendant to appreciate the criminality of his conduct or conform his conduct to the requirements of law was substantially impaired; and (3) the age or mentality of defendant at the time

¹S.C. Code § 16-3-20(C)(b)(7).

²S.C. Code § 16-3-20(C)(b)(6).

of crime. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002); *State v. Pierce*, 289 S.C. 430, 346 S.E.2d 707 (1986).

The failure to allow the jury to properly consider this mitigating circumstance was both state law error and a violation of the Eighth and Fourteenth Amendment requirements that the jury be allowed to consider any relevant mitigating circumstances concerning the circumstances of the crime and the character of the defendant. *Lockett v. Ohio*, 438 U.S. 586 (1978). Sigmon was prejudiced by this error.

(iii)&(iv) Failure to object to the trial court's instructions improperly narrowing the scope of mitigating circumstances.

During the sentencing phase instructions to the jury, the trial court improperly charged the jury that a mitigating circumstance is one which "simply lessens the degree of one's guilt. That is it makes the defendant less blameworthy, or less culpable." ROA 2232. Likewise, the trial court instructed the jury that a non-statutory mitigating circumstance "is not provided for by statute, but it is one which the defendant claims serves the same purpose. That is to reduce the degree of his guilt in the offense." ROA 2232-33.

The trial court's penalty phase instructions impinged upon the jury's ability to properly consider all mitigating evidence offered by Applicant by erroneously suggesting that only circumstances directly related to the offense, such as Applicant's mental status at the time of the offense, were relevant to the jury's sentencing calculus. Part of Applicant's case in mitigation concerned his adaptability to confinement, his cooperation with law enforcement, and acceptance of responsibility. None of these characteristics had any relationship to Applicant's blameworthiness for the offenses for which he was tried and, thus, were precluded from consideration by the

restrictive definition of mitigation provided to the jury. Further, the court's description of non-statutory mitigators as those "not provided for by law," led the jury to believe that these circumstances did not have official sanction, thereby diminishing the weight given to these factors.

One of the most well-settled Eighth Amendment principles is that a defendant in a capital case is entitled both to present and to have considered any relevant mitigating evidence. *See Lockett v. Ohio*, 438 U.S. 586 (1978); *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *Hitchcock v. Dugger*, 481 U.S. 393 (1987). Any procedure that precludes the sentencer from giving full and fair consideration to mitigating evidence creates the unacceptable risk that the death penalty will be imposed in spite of factors warranting a lesser sentence. *Lockett, supra*. The trial court's instructions improperly precluded the jury from contemplating all relevant evidence to make an individualized sentencing decision.

Trial counsel's failure to object to these charges was deficient and prejudicial and was not based on any strategic consideration. *Strickland v. Washington*, 466 U.S. 668 (1984).

9(b) *Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution in that counsel failed to adequately present evidence of Applicant's mental state.*

10(b) During the trial and sentencing phase, Applicant's counsel failed to provide effective assistance of counsel by failing to play the videotape made of Applicant's confession call to his mother shortly after his arrest and by failing to present the available evidence that Applicant was diagnosed and treated for major depression by a consultant of the Greenville County Detention Center.

(i) Failure to play the emotional, videotaped confession.

Counsel sought, during the cross-examination of Gatlinburg Police Officer Carrie Harbin, to play the videotape made of Applicant's call to his mother shortly after his arrest but incurred errors in playing the tape. Although the court offered to allow the playing of the tape later, counsel never addressed the issue again and the jury was never allowed to hear the actual statements or shown the very emotional nature of Sigmon's initial confession. *See* ROA 1501-12.

(ii) Failure to present the testimony of Dr. Martin.

Counsel subpoenaed Dr. Eugene Martin, a mental health examiner for the Greenville County Detention Center who examined and treated the Applicant during pretrial confinement, but failed to call and present him as a witness. After learning that Dr. Martin was scheduled for vacation, counsel expressed a desire to depose him or to stipulate his testimony and the court left the matter open for discussion with the solicitor. ROA 1442. Counsel never again addressed this matter on the record, however, and did not call Dr. Martin to testify. Instead, counsel attempted to present hearsay testimony that "Dr. Martin diagnosed him as having major depressive disorders" and "it's very recurrent in nature depression." ROA 2103. The trial court sustained the state's objection "without the proper foundation," ROA 2103, which counsel never attempted to establish. Instead, counsel abandoned this line of questioning without establishing either a diagnosis of depression or an expert explanation of depression for the jury.

Counsel's conduct was deficient and not based on strategy. Counsel's conduct was also prejudicial even though the Greenville County Detention Center medical records were admitted into evidence. ROA 1969; Defense Exhibit 10. Even assuming that the jury reviewed the records, which were not even presented in the context of a witness' testimony or admitted while the jury was present

in the courtroom, the jury would have learned only that Applicant was diagnosed with “depressive disorder recurrent, currently in remission” within several weeks of the time of trial and throughout his pretrial confinement. *See, e.g., Turpin v. Lipham*, 510 S.E.2d 32 (Ga. 1998). The jury was provided no information, however, on Applicant’s previous history of depressive disorder and treatment or the significant emotional and behavioral impact of depressive disorder, which will be presented in the hearing before this Court.

Counsel’s omissions were both unreasonable and prejudicial in sentencing. *Strickland, supra*.

9(c) *Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution in that counsel attempted to blame the victims, primarily the Applicant’s former girlfriend, which resulted in additional aggravation evidence and prejudice to Applicant.*

Counsel’s conduct was deficient in presenting the two ex-husbands and the husband of Applicant’s former girlfriend, who was the daughter of the victims in an attempt to shift some of the blame for Applicant’s behavior to her, which resulted only in additional aggravation evidence being presented.

Specifically, Ricky Sims, who was Rebecca Barbare’s first husband, testified very briefly until the jury was excused following the state’s objection to testimony about “any violence” in the relationship. ROA 1950. Counsel then called Troy Barbare, who was Rebecca Barbare’s second husband, to testify briefly that she began dating Barbare while she was separated but not divorced from Sims. After a sidebar following the state’s objection about “the course” of their relationship, ROA 2032, counsel elicited no relevant information other than the fact that she had been dating Applicant during a separation from Barbare, but then continued the marriage with Barbare. ROA

2034. The State's objection to testimony about possible orders of protection or the basis for Barbare's divorce from her were then sustained. ROA 2036.

Counsel then called Keith Merrill, Barbare's third husband, to testify. This testimony included no helpful information and instead included information that Merrill was only an "acquaintance[]" of Barbare until she ended her relationship with Sigmon and Sigmon was leaving him threatening messages on his voice mail. ROA 2039-40. The threats were specific that if Barbare "didn't stay away from her" Applicant would "kill" him. ROA 2040. This testimony also included information that Merrill had taken her out of town to eat prior to the murders because "she didn't get to do a lot, because she felt like she was being watched all the time, whenever she went to work." ROA 2041.

During the course of instructions on mitigation, however, defense counsel sought and obtained an instruction on the statutory mitigating circumstance of provocation by the victim, which the court agreed to give based on "the action of Mr. Larke saying he was going to get his gun" when Applicant entered the victims' home. ROA 2178.

During closing arguments, however, counsel focused on Applicant's relationship with Rebecca Barbare as the provocation.

The relationship is what this case is all about. Rebecca Barbare ended her relationship with Brad Sigmon. Brad Sigmon did not want that relationship to end. He went nuts, bonkers, whacko, out of his mind. He did the most horrible thing a person can do. He did it twice and killed two people.

Now, I spoke before about a trigger. And I told you I was looking at all this evidence, over and over again, trying to remember, trying to find something, and I found the trigger. I found it, I'm convinced of it.

ROA 2196. Counsel then mentioned the testimony of Barbare's second and third husbands and Applicant's confession that included "two and half pages" about his relationship with her and

detailed the information from the confession. ROA 2196-98. Counsel made no mention of the provocation mitigation factor or of Mr. Larke mentioning a gun when Applicant entered his home. Thus, the jury, hearing the court's instruction to consider that "the defendant was provoked by the victim into committing the murder," ROA 2232, would have understood this to mean that Ms. Barbare provided the provocation or, in the words of defense counsel, "the trigger," ROA 2196.

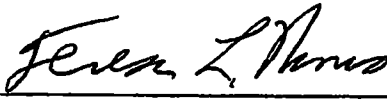
Counsel's conduct was deficient and prejudicial because blaming a victim in a capital case is "an offensive argument to the jury." *State v. Hoffman*, 768 So. 2d 542, 577 (La. 2000).

Respectfully submitted,

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June 16, 2008.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

06-CP-23-6547

BRAD KEITH SIGMON, #6008,)

Applicant,)

vs.)

CERTIFICATE OF SERVICE

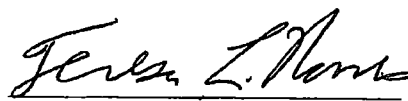
STATE OF SOUTH CAROLINA,)

Respondent.)

I do hereby certify that I have served the Applicant's Trial Brief, in the above-referenced case, on the attorney for the Respondent by electronic mail and by depositing a copy of same in the United States Mail, first class, postage prepaid, addressed as follows:

Melody Brown
 Assistant Attorney General
 Office of the Attorney General
 P.O. Box 11549
 Columbia, South Carolina 29211

This the 16th day of June, 2008, in Columbia, South Carolina.


 TERESA L. NORRIS

June 16, 2008.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2008 JUL 22 P 1:35
BRAD KEITH SIGMON, #6008,) 06-CP-23-6547
Applicant,)
vs.)
STATE OF SOUTH CAROLINA,)
Respondent.)

APPLICANT'S MOTION FOR
SUMMARY JUDGMENT

Pursuant to Rule 56(c), the applicant, Brad Keith Sigmon, a death-sentenced inmate, hereby moves for summary judgment on Grounds 9(a), 9(b), and 9(c) of the Amended Application for Post-Conviction Relief.¹

The evidentiary hearing in this case is scheduled for August 4, 2008. Both parties have filed trial briefs on the grounds for relief asserted in the Amended Application, which are all claims of ineffective assistance of trial counsel. Both trial defense counsel have been deposed on the issues. The only other possibly relevant evidence on the issues is from the trial record and exhibits and the exhibits discussed in and attached to the depositions. Thus, as set forth below, this is a case where summary judgment is appropriate.

Grounds for Relief

All of the grounds for relief involve claims of ineffective assistance of counsel, which must be examined under the standard established in *Strickland v. Washington*, 466 U.S. 668 (1984). The *Strickland* standard is satisfied if an applicant establishes both that his attorney's representation "fell below an objective standard of reasonableness," *id.* at 688, and that the applicant was "prejudiced" by his attorney's substandard performance, *id.* at 692.