

VOLUME VII OF VIII

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Horry County

Apr 26 2021

Honorable Robert E. Hood, Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JEROME JENKINS, JR.

APPELLANT.

APPELLATE CASE NO. 2019-001280

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INDEX**VOLUME I**

INDEX	i
TRANSCRIPT OF TRIAL HELD MAY 6-16, 2019	1
VOIR DIRE	10
VOIR DIRE FOR LATE JURORS.....	93
QUALIFYING OF JURORS INDIVIDUALLY	
ANGELA WEIDNER (JUROR #386)	
Examination by the Court	121
Direct Examination by Mr. Wilson.....	128
Juror Disqualified by the Court.....	134
MELINDA MARRIOTT (JUROR #210)	
Examination by the Court	136
Direct Examination by Ms. Williams	143
Cross-Examination by Mr. Hixson	145
Re-direct Examination by Ms. Williams	148
Juror Disqualified by the Court.....	150
THOMAS MUNN (JUROR #240)	
Examination by the Court	151
Direct Examination by Mr. Wilson.....	158
Cross-Examination by Mr. Richardson.....	161
Re-direct Examination by Mr. Wilson.....	164
Re-cross Examination by Mr. Richardson	164
Re-Examination by the Court	164
Juror Disqualified by the Court.....	169
SANDI ARROVO-MARTINEZ (JUROR #14)	
Examination by the Court	170
Direct Examination by Mr. Williams.....	177
Juror Disqualified by the Court.....	178
ROBERT RODDY (JUROR #298)	
Examination by the Court	180
Direct Examination by Mr. Wilson.....	187
Cross-Examination by Mr. Richardson.....	192
Re-direct Examination by Mr. Wilson.....	194
Juror Qualified by the Court	195

YVONNE JORDAN (JUROR #168)	
Examination by the Court	199
Direct Examination by Ms. Williams	209
Cross-Examination by Mr. Hixson	211
Re-direct Examination by Ms. Williams	212
Juror Qualified by the Court Over Defense Objection	215
SCOTT CALLAHAN (JUROR #55)	
Examination by the Court	216
Direct Examination by Mr. Wilson.....	227
Cross-Examination by Mr. Richardson.....	229
Juror Disqualified by the Court.....	232
ANGELIA SHAW (JUROR #328)	
Examination by the Court	233
Direct Examination by Ms. Williams	243
Juror Disqualified by the Court.....	246
DEFENSE OBJECTION TO THE CONTINUED USE OF THE STATE’S	
3 TYPES OF JURORS FORM.....	247
COURT’S RULING OVERRULING OBJECTION.....	249
STEVEN NATHAN (JUROR #244)	
Examination by the Court	250
Direct Examination by Mr. Wilson.....	257
Juror Disqualified by the Court.....	259
KIMBERLY BOURNE (JUROR #36)	
Examination by the Court	259
Direct Examination by Ms. Williams	266
Cross-Examination by Mr. Hixson	269
Juror Disqualified by the Court.....	272
HARRY JOHNSON, JR., (JUROR #161)	
Examination by the Court	273
Direct Examination by Ms. Williams	280
Cross-Examination by Mr. Richardson.....	282
Juror Qualified by the Court Over Defense Objection	283

May 7, 2019

QUALIFYING OF JURORS INDIVIDUALLY

HAROLD KOHLMAN (JUROR #179)

Examination by the Court	309
Direct Examination by Mr. Wilson.....	316
Cross-Examination by Mr. Hixson	333
Juror Qualified by the Court Over Defense Objection	337

CYNTHIA THIBODEAU (JUROR #364)

Examination by the Court	340
Direct Examination by Ms. Williams	350
Cross-Examination by Mr. Hixson	353
Re-direct Examination by Ms. Williams	355
Re-Examination by the Court	358
Juror Disqualified by the Court.....	361

CHRISTINE MCGINLEY (JUROR #220)

Examination by the Court	362
Direct Examination by Mr. Wilson.....	369
Cross-Examination by Mr. Richardson.....	374
Juror Qualified by the Court	381

ASHLEY WATTS (JUROR #384)

Examination by the Court	385
Direct Examination by Ms. Williams	392
Juror Disqualified by the Court.....	396

CRYSTAL JORDAN (JUROR #166)

Examination by the Court	396
Direct Examination by Mr. Wilson.....	403
Cross-Examination by Mr. Hixson	406
Juror Qualified by the Court	407

GLENDA MCCULLOCH (JUROR #219)

Examination by the Court	409
Direct Examination by Ms. Williams	415
Cross-Examination by Mr. Hixson	418
Juror Disqualified by the Court.....	420

DENISE EDGE (JUROR #101)

Examination by the Court	421
Direct Examination by Mr. Wilson.....	428
Cross-Examination by Mr. Richardson.....	430
Juror Qualified by the Court	432

CHRISTOPHER JOHNSON (JUROR #160)	
Examination by the Court	433
Juror Disqualified by the Court.....	439
JAMES PAYNE (JUROR #270)	
Examination by the Court	439
Direct Examination by Ms. Williams	446
Juror Qualified by the Court	453
JONATHAN GINAC (JUROR #122)	
Examination by the Court	455
Direct Examination by Mr. Wilson.....	463
Juror Disqualified by the Court.....	479
BROOKE BAKER (JUROR #15)	
Examination by the Court	491
Juror Disqualified by the Court.....	492
LOUISE STEWART (JUROR #351)	
Examination by the Court	493

VOLUME II

CONTINUED - TRANSCRIPT OF TRIAL HELD MAY 6-16, 2019	501

INDIVIDUAL JURY VOIR DIRE (CONTINUED)

LOUISE STEWART (JUROR #351) (CONTINUED)	
Re-Examination by the Court	493
Direct Examination by Ms. Williams	505
Juror Disqualified by the Court.....	508
SANDRA NEY (JUROR #253)	
Examination by the Court	509
Juror Disqualified by the Court.....	512
NICOLE YOUNG-CLINE (JUROR #400)	
Examination by the Court	512
Direct Examination by Mr. Wilson.....	519
Cross-Examination by Mr. Hixson	521
Juror Disqualified by the Court.....	522
ROBERT JONES (JUROR #164)	
Examination by the Court	522
Direct Examination by Ms. Williams	529
Juror Disqualified by the Court.....	535

JERRY HARPER (JUROR #135)	
Examination by the Court	535
Direct Examination by Mr. Wilson.....	541
Juror Qualified by the Court	545
JOHN ARCHIBALD (JUROR #13)	
Examination by the Court	546
Direct Examination by Ms. Williams	553
Juror Qualified by the Court	556
LAUREN STEVENS (JUROR #350)	
Examination by the Court	558
Direct Examination by Mr. Wilson.....	564
Cross-Examination by Mr. Richardson.....	566
Re-Examination by the Court	567
Re-direct Examination by Mr. Wilson.....	570
Re-cross Examination by Mr. Richardson.....	571
Juror Qualified by the Court Over Defense Objection	573
JACK BODMER (JUROR #32)	
Examination by the Court	576
Juror Disqualified by the Court.....	582
LINDA LONG (JUROR #202)	
Examination by the Court	582
Juror Disqualified by the Court.....	587
STEVEN PORTER (JUROR #277)	
Examination by the Court	589
Direct Examination by Mr. Wilson.....	595
Cross-Examination by Mr. Hixson	596
Juror Disqualified by the Court.....	598
ROBERT PICKERING (JUROR #273)	
Examination by the Court	598
Juror Disqualified by the Court.....	606
JENNIFER FAVALE (JUROR #108)	
Examination by the Court	607
Direct Examination by Ms. Williams	616
Re-Examination by the Court	620
Direct Examination by Ms. Williams (continued).....	621
Juror Qualified by the Court	622

CHRISTINA TENNY (JUROR #363)	
Examination by the Court	625
Direct Examination by Mr. Wilson.....	635
Juror Disqualified by the Court.....	639

VALERIE GRASSI (JUROR #128)	
Examination by the Court	640
Juror Disqualified by the Court.....	645

May 8, 2019

JAMES TRUETT (JUROR #128)	
Examination by the Court	647
Juror Disqualified by the Court.....	647

ROBERTA SLOAN (JUROR #334)	
Examination by the Court	648
Direct Examination by Mr. Wilson.....	654
Re-Examination by the Court	655
Direct Examination by Mr. Wilson (continued)	656
Cross-Examination by Mr. Hixson	658
Juror Qualified by the Court	658

LORRAINE CLAYTON (JUROR #65)	
Examination by the Court	661
Juror Disqualified by the Court.....	667

CECILIA MABRY (JUROR #205)	
Examination by the Court	669
Juror Disqualified by the Court.....	678

JACOB SCHUSTER (JUROR #319)	
Examination by the Court	679
Direct Examination by Ms. Williams	684
Juror Qualified by the Court	687

BARBARA MCNEESE (JUROR #223)	
Examination by the Court	689
Direct Examination by Mr. Wilson.....	696
Juror Disqualified by the Court.....	698

FREDERICK BRIGGEMAN (JUROR #38)	
Examination by the Court	699
Direct Examination by Mr. Wilson.....	710
Juror Disqualified by the Court.....	713

DONNA HUGUENIN (JUROR #148)	
Examination by the Court	713
Direct Examination by Ms. Williams	718
Juror Disqualified by the Court.....	722
WILLIAM GUY (JUROR #133)	
Examination by the Court	723
Juror Disqualified by the Court.....	728
SHANNON DAGROSSA (JUROR #77)	
Examination by the Court	729
Direct Examination by Ms. Williams	738
Juror Qualified by the Court	742
MIRIAM RODRIGUEZ (JUROR NO 299)	
Examination by the Court	745
Direct Examination by Mr. Wilson.....	754
Cross-Examination by Mr. Richardson.....	757
Juror Qualified by the Court	758
NICOLE LOAN (JUROR #201)	
Examination by the Court	762
Direct Examination by Mr. Wilson.....	769
Juror Qualified by the Court	775
CARL ROBBINS (JUROR #294)	
Examination by the Court	777
Direct Examination by Ms. Williams	783
Cross-Examination by Mr. Hixson	787
Re-direct Examination by Ms. Williams	791
Re-Examination by the Court	792
Juror Qualified by the Court	796
TAMMY MONTGOMERY (JUROR #234)	
Examination by the Court	799
Direct Examination by Mr. Wilson.....	804
Cross-Examination by Mr. Hixson	806
Re-Examination by the Court	808
Juror Disqualified by the Court.....	811
STEPHEN STANCIL (JUROR #345)	
Examination by the Court	812
Direct Examination by Ms. Williams	817
Juror Qualified by the Court	823

TERRY GARTNER (JUROR #119)	
Examination by the Court	824
Direct Examination by Mr. Wilson.....	830
Juror Qualified by the Court	834
JAMES BELLAMY, JR., (JUROR #23)	
Examination by the Court	837
Direct Examination by Ms. Williams	845
Cross-Examination by Mr. Richardson.....	848
Juror Qualified by the Court	851
STEPHEN MILLS (JUROR #229)	
Examination by the Court	853
Direct Examination by Mr. Wilson.....	859
Juror Qualified by the Court Over Defense Objection	868
DOUGLAS PALMER (JUROR #267)	
Examination by the Court	870
Direct Examination by Mr. Wilson.....	876
Cross-Examination by Mr. Richardson.....	879
Juror Qualified by the Court	885
WILLIAM RIMM (JUROR #293)	
Examination by the Court	887
Direct Examination by Ms. Williams	894
Juror Disqualified by the Court.....	897
TIMOTHY SEMONES (JUROR #325)	
Examination by the Court	898
Direct Examination by Mr. Wilson.....	903
Re-Examination by the Court	904
Direct Examination by Mr. Wilson (continued)	904
Juror Qualified by the Court Over Defense Objection	909
ROSE MARIE BARBOUR (JUROR #18)	
Examination by the Court	911
Direct Examination by Ms. Williams	916
Juror Disqualified by the Court.....	918
KIMBERLY DECKER (JUROR #86)	
Examination by the Court	918
Direct Examination by Mr. Wilson.....	924
Re-Examination by the Court	929
Juror Qualified by the Court Over Defense Objection	933

AMANDA FINERAN (JUROR #110)	
Examination by the Court	937
Direct Examination by Ms. Williams	944
Juror Qualified by the Court	949
HANNAH OLIVERAS (JUROR #257)	
Examination by the Court	951
Direct Examination by Mr. Wilson.....	957
Juror Qualified by the Court	960
JESSICA LEESON (JUROR #190)	
Examination by the Court	963
Direct Examination by Ms. Williams	971
Juror Qualified by the Court	974
MELANIE ANDERSON (JUROR #10)	
Examination by the Court	978
Direct Examination by Mr. Wilson.....	983
Cross-Examination by Mr. Hixson	988
Juror Qualified by the Court Over Defense Objection	991
JESSIE GUTIERREZ (JUROR #132)	
Examination by the Court	992

VOLUME III

CONTINUED - TRANSCRIPT OF TRIAL HELD MAY 6-16, 2019	1001

INDIVIDUAL JURY VOIR DIRE (CONTINUED)

JESSIE GUTIERREZ (JUROR #132) (CONTINUED)	
Re-Examination by the Court	1001
Direct Examination by Ms. Williams	1003
Juror Disqualified by the Court.....	1005

May 9, 2019

JENNIFER GEE (JUROR #120)	
Examination by the Court	1007
Direct Examination by Mr. Wilson.....	1015
Cross-Examination by Mr. Richardson.....	1017
Juror Qualified by the Court	1022

ARISBET GONZALES (JUROR #124)

Examination by the Court	1024
Direct Examination by Ms. Williams	1030
Juror Disqualified by the Court.....	1032

KEITH NEGRI (JUROR #246)

Examination by the Court	1032
Direct Examination by Mr. Wilson.....	1038
Juror Disqualified by the Court.....	1040

CASEY OWENS (JUROR #262)

Examination by the Court	1042
Direct Examination by Mr. Wilson.....	1050
Juror Disqualified by the Court.....	1052

FERN DANIELS (JUROR #79)

Examination by the Court	1053
Direct Examination by Ms. Williams	1062
Juror Qualified by the Court	1066

TERENCE BRISTER (JUROR #40)

Examination by the Court	1068
Direct Examination by Mr. Wilson.....	1072
Juror Disqualified by the Court.....	1074

DONALD ECKLER (JUROR #100)

Examination by the Court	1075
Direct Examination by Mr. Wilson.....	1080
Juror Disqualified by the Court.....	1082

ANDREA DAVIS (JUROR #81)

Examination by the Court	1082
Direct Examination by Ms. Williams	1088
Re-Examination by the Court	1090
Direct Examination by Ms. Williams (continued).....	1091
Cross-Examination by Mr. Hixson	1098
Juror Disqualified by the Court.....	1103

ROBERT SWEET (JUROR #357)

Examination by the Court	1104
Direct Examination by Ms. Williams	1110
Juror Qualified by the Court	1115

ROBERT SMITH (JUROR #338)	
Examination by the Court	1118
Direct Examination by Mr. Wilson.....	1123
Juror Qualified by the Court	1127
MICHELLE LANNI (JUROR #184)	
Examination by the Court	1130
Juror Disqualified by the Court.....	1134
DIANE RANDLE (JUROR #286)	
Examination by the Court	1135
Direct Examination by Ms. Williams	1143
Juror Qualified by the Court Over Defense Objection	1150
ERIC MCCOY (JUROR #218)	
Examination by the Court	1152
Direct Examination by Mr. Wilson.....	1159
Re-Examination by the Court	1161
Direct Examination by Mr. Wilson (continued)	1162
Juror Disqualified by the Court.....	1165
SUSAN SUNDAY (JUROR #356)	
Examination by the Court	1166
Direct Examination by Ms. Williams	1174
Cross-Examination by Mr. Hixson	1182
Re-Examination by the Court	1185
Juror Disqualified by the Court.....	1190
WENDY WILSON (JUROR #392)	
Examination by the Court	1191
Direct Examination by Mr. Wilson.....	1196
Cross-Examination by Mr. Richardson.....	1199
Juror Qualified by the Court	1200
ELROY VAUGHT (JUROR #378)	
Examination by the Court	1202
Direct Examination by Mr. Wilson.....	1208
Cross-Examination by Mr. Richardson.....	1210
Juror Qualified by the Court	1212
LISA ODLE (JUROR #256)	
Examination by the Court	1214
Direct Examination by Ms. Williams	1221
Juror Disqualified by the Court.....	1222

MARCELLO MILONE (JUROR #231)

Examination by the Court	1223
Direct Examination by Mr. Wilson.....	1232
Juror Disqualified by the Court.....	1236

CHERI SATTERFIELD (JUROR #314)

Examination by the Court	1244
Direct Examination by Ms. Williams	1251
Cross-Examination by Mr. Hixson	1255
Re-Examination by the Court	1257
Juror Qualified by the Court	1259

KEVIN ROSCOE (JUROR #301)

Examination by the Court	1261
Direct Examination by Mr. Wilson.....	1269
Cross-Examination by Mr. Hixson	1272
Juror Disqualified by the Court.....	1273

CURTIS STRICKLAND (JUROR #352)

Examination by the Court	1274
Direct Examination by Ms. Williams	1280
Juror Qualified by the Court	1284

LOURDES LIMPASUVAN (JUROR #198)

Examination by the Court	1285
Direct Examination by Mr. Wilson.....	1291
Re-Examination by the Court	1293
Cross-Examination by Mr. Hixson	1296
Juror Qualified by the Court	1297

MATTHEW BALILES (JUROR #16)

Examination by the Court	1299
Direct Examination by Ms. Williams	1304
Cross-Examination by Mr. Hixson	1308
Juror Qualified by the Court	1311

IKESHIA HARRINGTON (JUROR #137)

Examination by the Court	1312
Direct Examination by Mr. Wilson.....	1318
Juror Qualified by the Court	1319

PATRICIA BROWN (JUROR #43)

Examination by the Court	1321
Direct Examination by Ms. Williams	1326
Juror Qualified by the Court	1329

DAVID CHESTERFIELD (JUROR #61)	
Examination by the Court	1330
Juror Disqualified by the Court.....	1339
PATTI JACKSON (JUROR #155)	
Examination by the Court	1340
Direct Examination by Mr. Wilson.....	1345
Cross-Examination by Mr. Hixson	1350
Juror Qualified by the Court	1350
JOSHUA WASHINGTON (JUROR #383)	
Examination by the Court	1351
Direct Examination by Ms. Williams	1357
Cross-Examination by Mr. Hixson	1359
Juror Qualified by the Court	1360
MIRACLE KEITH (JUROR #174)	
Examination by the Court	1361
Direct Examination by Mr. Wilson.....	1366
Juror Qualified by the Court	1370
MICHAEL LAVEGLIA (JUROR #185)	
Examination by the Court	1378
Direct Examination by Ms. Williams	1386
Juror Disqualified by the Court.....	1387
JURY SELECTION.....	1431
DEFENSE <u>BATSON</u> CHALLENGE TO JURY SELECTION.....	1439
<u>BATSON V. KENTUCKY</u> HEARING.....	1440
COURT’S RULING DENYING <u>BATSON</u> MOTION	1454
OPENING STATEMENT BY MR. RICHARDSON	1483
OPENING STATEMENT BY MR. WILSON.....	1490
TESTIMONY	
JIMMY MCZEKE	
Direct Examination by Mr. Richardson	1495

VOLUME IV

CONTINUED - TRANSCRIPT OF TRIAL HELD MAY 6-16, 2019	1501

TESTIMONY (CONTINUED)

JIMMY MCZEKE (CONTINUED)

Direct Examination by Mr. Richardson (Continued).....	1501
Cross-Examination by Ms. Williams.....	1502

DOCTOR EDWARD PROCTOR

Direct Examination by Mr. Richardson.....	1504
Cross-Examination by Mr. Wilson	1509

JILL DOMOGAUER

Direct Examination by Mr. Hixson.....	1512
Cross-Examination by Ms. Williams.....	1539

CASEY CANTERBURY

Direct Examination by Mr. Richardson	1543
Cross-Examination by Mr. Wilson	1547

BERNARD GRATE

Direct Examination by Mr. Hixson.....	1548
Cross-Examination by Mr. Wilson	1555

PETER CESTARE

Direct Examination by Mr. Hixson.....	1561
Cross-Examination by Mr. Wilson	1570

SUZANN CROMER

Direct Examination by Mr. Hixson.....	1575
Cross-Examination by Mr. Wilson	1582
Re-direct Examination by Mr. Hixson.....	1584

GREGORY LENT

Direct Examination by Mr. Hixson.....	1586

RENEWED <u>JACKSON V. DENNO</u> MOTION	1592

COURT DENIES MOTION.....	1592

TESTIMONY CONTINUED

GREGORY LENT (CONTINUED)

Direct Examination by Mr. Hixson (Continued)	1593

RENEWED MOTION THAT DEATH PENALTY STATUTE, S.C. CODE § 16-3-20(B), IS UNCONSTITUTIONAL.....	1598
COURT REPEATS DENIAL OF MOTION.....	1599
TESTIMONY CONTINUED	
GREGORY LENT (CONTINUED)	
Cross-Examination by Mr. Wilson	1600
Re-direct Examination by Mr. Hixson.....	1623
THE STATE RESTS	1625
RENEWED DEFENSE TRIAL AND PRETRIAL MOTIONS.....	1626
MOTION FOR A DIRECTED VERDICT	1626
COURT’S RULING DENYING MOTIONS	1627
COLLOQUY WITH DEFENDANT ON HIS RIGHT TO TESTIFY	1628
THE DEFENSE RESTS	1631
CLOSING ARGUMENT BY MR. HIXSON.....	1643
CLOSING ARGUMENT BY MS. WILLIAMS	1647
JURY CHARGE	1649
VERDICT	1672
RENEWED DEFENSE TRIAL MOTIONS	1679
MOTION FOR A NEW TRIAL	1679
COURT’S RULING DENYING MOTION	1680
PENALTY PHASE OF TRIAL.....	1681
PRETRIAL MOTIONS	1681
OPENING STATEMENT BY MR. HIXSON	1710
OPENING STATEMENT BY MR. WILLIAMS	1723

TESTIMONY

BARBARA MCDOWELL

Direct Examination by Mr. Richardson	1728
Cross-Examination by Mr. Wilson	1735

NICHOLAS SHANE OWENS

Direct Examination by Mr. Richardson	1737

PETER CESTARE

Direct Examination by Mr. Hixson	1751

JILL DOMOGAUER

Direct Examination by Mr. Hixson	1783

MOTION TO ADOPT ALL EVIDENCE

FROM GUILT PHASE OF TRIAL	1783

COURT'S RULING GRANTING MOTION	1784

TESTIMONY CONTINUED

JILL DOMOGAUER (CONTINUED)

Direct Examination by Mr. Hixson (Continued)	1784
Cross-Examination by Ms. Williams	1793

SUZANN CROMER

Direct Examination by Mr. Hixson	1794
Cross-Examination by Ms. Williams	1798
Re-direct Examination by Mr. Hixson	1799

STIPULATION 147B ON CAUSE OF DEATH READ TO JURY	1799

TESTIMONY CONTINUED

NATALIE STEVENS

Direct Examination by Mr. Hixson	1801
Cross-Examination by Ms. Williams	1804

GREGORY LENT

Direct Examination by Mr. Hixson	1805
Cross-Examination by Mr. Wilson	1814
Re-direct Examination by Mr. Hixson	1837
Re-cross Examination by Mr. Wilson	1844

TOM FOX	
Direct Examination by Mr. Richardson	1846
MOTION FOR A MISTRIAL	1849
COURT’S RULING DENYING MOTION	1850
TESTIMONY CONTINUED	
TOM FOX (CONTINUED)	
Direct Examination by Mr. Richardson (Continued).....	1853
Cross-Examination by Ms. Williams.....	1853
VISWESWARA CHEEDIPUDI	
Direct Examination by Mr. Richardson	1854
COURT’S RULING ON VIDEO EVIDENCE DEFERRED	1863
COURT’S RULING ALLOWING TESTIMONY OF SCDC OFFICERS OVER SAFEKEEPER OBJECTIONS.....	1870
MOTION TO ADMIT EVIDENCE OF LETTER	1870
COURT’S RULING ALLOWING ADMISSION OF LETTER.....	1872
RENEWED MOTION FOR A MISTRIAL	1872
COURT’S RULING DENYING MISTRIAL MOTION	1874
TESTIMONY CONTINUED	
MICHAEL STOBBE	
Direct Examination by Mr. Hixson.....	1877
SEKOU BOLDEN	
Direct Examination by Mr. Richardson	1879
RENEWED MOTION FOR A MISTRIAL	1882
COURT’S RULING DENYING MOTION	1882
TESTIMONY CONTINUED	
SEKOU BOLDEN (CONTINUED)	
Direct Examination by Mr. Richardson (Continued).....	1883
Cross-Examination by Mr. Wilson	1885

DAMON GREENE	
Direct Examination by Mr. Hixson.....	1888
Cross-Examination by Mr. Wilson	1890
JASON FIELDS	
Direct Examination by Mr. Richardson	1895
Cross-Examination by Mr. Wilson	1899
VANESSA FOX	
Direct Examination by Mr. Hixson.....	1900
Cross-Examination by Mr. Wilson	1903
Re-direct Examination by Mr. Hixson.....	1906
THOMAS COMMANDER	
Direct Examination by Mr. Hixson.....	1907
RENEWED MOTION FOR A MISTRIAL	1910
COURT’S RULING DENYING MOTION	1910
TESTIMONY CONTINUED	
THOMAS COMMANDER (CONTINUED)	
Direct Examination by Mr. Hixson (Continued)	1912
Cross-Examination by Mr. Wilson	1912
MOTION TO ADMIT TESTIMONY REGARDING LEE PRISON RIOT.....	1913
PROFFERED TESTIMONY	
THOMAS COMMANDER	
Cross-Examination by Mr. Wilson	1916
COURT’S RULING ON TESTIMONY REGARDING LEE PRISON RIOT	1926
TESTIMONY CONTINUED	
THOMAS COMMANDER (CONTINUED)	
Cross-Examination by Mr. Wilson (Continued).....	1927
DOCTOR BEVERLY WOOD	
Direct Examination by Mr. Hixson.....	1929
Cross-Examination by Mr. Wilson	1933
Re-direct Examination by Mr. Hixson.....	1938
Re-cross Examination by Mr. Wilson.....	1939

JANE TYLER	
Direct Examination by Mr. Hixson.....	1940
Cross-Examination by Mr. Wilson	1944
CHRISTINE SNYDER	
Direct Examination by Mr. Hixson.....	1947
THE STATE RESTS	1950
ALL TRIAL MOTIONS RENEWED AND	
RENEWED MOTION FOR A MISTRIAL	1951
COURT’S RULING DENYING MOTIONS	1951
COLLOQUY WITH DEFENDANT ON HIS RIGHT TO TESTIFY	1953
BREAK IN TRANSCRIPT FOR MAY 14, 2019 PROCEEDINGS TAKEN BY A	
DIFFERENT COURT REPORTER (pp. 2367-2457 BELOW)	1956
STATE’S MOTION TO EXCLUDE CODEFENDANTS’ SENTENCING	
INFORMATION.....	1958
COURT’S RULING GRANTING MOTION	1962
RENEWED MOTION THAT STATUTE, S.C. CODE § 16-3-20(B),	
IS UNCONSTITUTIONAL.....	1966
COURT’S RULING DENYING MOTION	1968
DEFENSE TESTIMONY CONTINUED	
LONICE GRANT	
Direct Examination by Ms. Williams	1969
JEROME JENKINS, SR.	
Direct Examination by Mr. Wilson.....	1981
CHELA WILSON	
Direct Examination by Mr. Wilson.....	1993
RASHOEM GRANT	
Direct Examination by Mr. Wilson.....	1998

VOLUME V

CONTINUED - TRANSCRIPT OF TRIAL HELD MAY 6-16, 2019	2001

DEFENSE TESTIMONY CONTINUED

RAHEEM RAY

Direct Examination by Ms. Williams	2010
Cross-Examination by Mr. Hixson	2023

MARSHA TENNANT

Direct Examination by Mr. Wilson.....	2024

ETTA CARTER

Direct Examination by Mr. Wilson.....	2033

SHERIL JORDAN JOHNSON

Direct Examination by Ms. Williams	2037

KIM ANDRAYSHAK

Direct Examination by Mr. Wilson.....	2043
Cross-Examination by Mr. Hixson	2050

DOMINIQUE HASTIE (*IN-CAMERA*)

Direct Examination by Mr. Wilson.....	2050

COURT'S RULING LIMITING TESTIMONY	2064

PROFFERED TESTIMONY

DOMINIQUE HASTIE

Direct Examination by Mr. Wilson.....	2054

DEFENSE TESTIMONY CONTINUED

DOMINIQUE HASTIE (CONTINUED)

Direct Examination by Mr. Wilson (Continued)	2064
Cross-Examination by Mr. Hixson	2065

MOTION FOR A MISTRIAL	2066

COURT'S RULING DENYING MISTRIAL MOTION	2068

DEFENSE TESTIMONY CONTINUED

DAVID LAZARUS

Direct Examination by Mr. Wilson.....2069

DOCTOR ARLENE BOWERS ANDREWS

Direct Examination by Ms. Williams 2071

Cross-Examination by Mr. Hixson 2138

Re-direct Examination by Ms. Williams 2148

STATE’S MOTION TO EXCLUDE EXPERT TESTIMONY OF DOCTOR SCHWARTZ-
MADDOX REGARDING ADMISSION BY THE CO-DEFENDANT.....2151

COURT’S RULING EXCLUDES CO-DEFENDANT’S ADMISSION.....2192

DEFENSE TESTIMONY CONTINUED

DOCTOR DONNA SCHWARTZ-MADDOX

Direct Examination by Mr. Wilson.....2194

Cross-Examination by Mr. Hixson 2255

Re-direct Examination by Mr. Wilson.....2277

THE DEFENSE RESTS 2279

ALL TRIAL MOTIONS RENEWED 2280

COURT’S RULING DENYING MOTIONS.....2280

CLOSING ARGUMENT BY MR. RICHARDSON.....2303

CLOSING ARGUMENT BY MR. WILSON 2315

JURY CHARGE 2327

VERDICT 2346

MOTION TO SET ASIDE VERDICT AND

ALL TRIAL MOTIONS RENEWED 2361

COURT’S RULING DENYING MOTIONS.....2361

SENTENCING 2363

INTERVENING TESTIMONY FROM TRIAL DATE OF MAY 14, 2019	2367
DEFENSE TESTIMONY	
ITINA RAY JENKINS	
Direct Examination by Ms. Williams	2372
FRANCENA WASHINGTON	
Direct Examination by Ms. Williams	2406
ISSAC BAILEY	
Direct Examination by Mr. Wilson.....	2416
DOCTOR JOHN CHANACA	
Direct Examination by Mr. Wilson.....	2429
Cross-Examination by Mr. Hixson	2440
Re-direct Examination by Mr. Wilson.....	2441
SUSAN SAFFORD	
Direct Examination by Mr. Wilson.....	2444
Cross-Examination by Mr. Hixson	2446
Re-direct Examination by Mr. Wilson.....	2447
TRANSCRIPT OF PRE-TRIAL HEARING HELD AUGUST 4, 2015.....	2460
REQUEST FOR SAFEKEEPING CERTIFICATE	2462
COURT’S RULING GRANTING SAFEKEEPER MOTION	2469
MOTION TO COLLECT BIOLOGICAL SAMPLE FROM DEFENDANT.....	2469
TESTIMONY	
GREGORY LENT	
Direct Examination by Mr. Hixson.....	2470
TRANSCRIPT OF PRE-TRIAL HEARING HELD APRIL 27, 2016	2474
ORDER AUTHORIZING CLERK TO PULL ADDITIONAL JURORS	2477
ORDER ADMONISHING AGAINST UNNECESSARY PRE-TRIAL COMMUNICATIONS	2477
ORDER THAT ALL MOTIONS BE IN WRITING.....	2478

MOTION FOR STATE TO FILE ALL DISCOVERY WITH COURT	2485
COURT’S RULING ON DISCOVERY AND DEFERRING A NEED FOR <i>IN CAMERA</i> INSPECTION	2487
TRANSCRIPT OF PRE-TRIAL HEARING HELD SEPTEMBER 16, 2016	2499
VOLUME VI	
CONTINUED - TRANSCRIPT OF PRE-TRIAL HEARING HELD SEPTEMBER 16, 2016.....	2501
STATUS CONFERENCE IN THE CASE OF <u>STATE V. MCKINLEY DANIELS</u>	2501
MOTION FOR DISCOVERY REGARDING JAILHOUSE INFORMANT	2502
STATUS CONFERENCE IN THE CASE OF <u>STATE V. JEROME JENKINS, JR.</u>	2524
TRANSCRIPT OF PRE-TRIAL HEARING HELD SEPTEMBER 28, 2016.....	2529
EX PARTE REQUEST FOR FUNDING BY DEFENSE.....	2532
TRANSCRIPT OF PRE-TRIAL HEARING HELD AUGUST 2, 2017	2563
DISCUSSION OF REQUEST FOR FUNDING BY DEFENSE	2566
TRANSCRIPT OF PRE-TRIAL HEARING HELD AUGUST 15, 2017	2606
MOTION FOR PRESERVATION OF NOTES OF EXPERT WITNESSES	2611
MOTION TO BE PROVIDED WITNESS LIST AT THE TIME OF JURY SELECTION.....	2611
MOTION FOR MENTAL COMPETENCY, MENTAL DISEASE, OR DEFECT.....	2612
COURT’S RULING GRANTING MOTIONS	2614

MOTION TO PREVENT STATE FROM SEEKING DEATH SENTENCE OR TO QUASH INDICTMENT FOR FAILURE TO ALLEGE STATUTORY AGGRAVATORS (DEFENSE MOTION #1)	2618
COURT’S RULING DENYING MOTION	2620
MOTION TO BAR THE DEATH PENALTY AS A SENTENCING OPTION (DEFENSE MOTION #2).....	2621
COURT’S RULING DENYING MOTION	2623
MOTION TO STRIKE DEATH PENALTY AS POTENTIAL PUNISHMENT OR FOR A HEARING ON CONSTITUTIONALITY OF ADMINISTRATION OF LETHAL INJECTION (DEFENSE MOTION #3)	2624
COURT’S RULING DENYING MOTION	2625
MOTION TO PRESERVE ALL EVIDENCE AND TO PRECLUDE ANY ADDITIONAL STATE TESTING OR EXAMINATION OF EVIDENCE (DEFENSE MOTION #4)	2626
COURT APPROVES ORDER NOT TO DESTROY EVIDENCE	2629
MOTION TO REQUIRE INVESTIGATIVE AGENCIES TO PRESERVE NOTES ON ALL INTERVIEWS AND ACTIONS (DEFENSE MOTION #5)	2630
COURT’S RULING GRANTING MOTION	2631
MOTION FOR DISCLOSURE OF FAVORABLE INFORMATION (DEFENSE MOTION #6)	2634
COURT’S RULING THAT IT WILL INTERVENE IF NECESSARY	2635
MOTION TO REQUIRE THE STATE TO DISCLOSE INFORMATION FAVORABLE TO THE DEFENSE AT THE PENALTY PHASE (DEFENSE MOTION #7)	2637
COURT’S RULING GRANTING MOTION	2638
MOTION TO COMPEL DISCLOSURE OF CONFIDENTIAL INFORMANTS (DEFENSE MOTION #8)	2638

COURT DEFERS RULING	2643
MOTION TO DIRECT THE STATE TO PROVIDE DATES OF BIRTH AND SOCIAL SECURITY NUMBERS FOR STATE WITNESSES (DEFENSE MOTION #9)	2645
COURT’S RULING FOR STATE TO PROVIDE CRIMINAL HISTORIES ONLY PRIOR TO TRIAL	2648
MOTION TO DIRECT PROSECUTION TO CERTIFY ALL DISCOVERY HAS BEEN PRODUCED PURSUANT TO RULE 5 (DEFENSE MOTION #10)	2649
COURT’S RULING ON CONTINUED DUTY TO DISCLOSE.....	2650
MOTION TO COMPEL DISCOVERY NECESSARY TO PROPORTIONALITY REVIEW AND OTHER STATUTORY AND CONSTITUTIONAL ISSUES (DEFENSE MOTION #11)	2655
COURT DEFERS RULING	2655
MOTION FOR DISCOVERY OF EXCULPATORY AND IMPEACHMENT EVIDENCE (DEFENSE MOTION #12)	2655
STATE CONSENTS TO MOTION	2656
MOTION FOR DISCOVERY OF DNA-RELATED DATA AND INFORMATION (DEFENSE MOTION #13)	2657
COURT’S RULING THAT EVIDENCE NOT BE DESTROYED.....	2658
MOTION REQUIRING PRODUCTION OF ALL MATTERS INVOLVING VICTIM IMPACT EVIDENCE AND SCHEDULING PRETRIAL HEARING (DEFENSE MOTION #14).....	2658
COURT’S RULING DENYING MOTION	2666
MOTION FOR DISCLOSURE ON ANY ALLEGED PRIOR BAD ACTS (DEFENSE MOTION #15).....	2667
STATE CONSENTS TO MOTION	2670

MOTION FOR DISCLOSURE OF PSYCHIATRIC HISTORY OF STATE WITNESSES (DEFENSE MOTION #16)	2670
STATE CONSENTS IN PART TO MOTION.....	2671
MOTION TO COMPEL HEIGHTENED SCRUTINY (DEFENSE MOTION #23)	2675
COURT’S RULING IT WILL INTERVENE IF NECESSARY	2676
MOTION FOR COMPLETE RECORDATION AND TRANSCRIPT OF ALL PRETRIAL AND TRIAL PROCEEDINGS (DEFENSE MOTION #26)	2678
COURT DEFERS RULING	2678
MOTION FOR COURT REPORTER’S TAPES AND NOTES TO BE MADE A PART OF THE RECORD (DEFENSE MOTION #27)	2678
COURT’S RULING GRANTING MOTION	2679
MOTION FOR ALL EVIDENTIARY MATTERS TO BE HEARD <i>IN CAMERA</i> (DEFENSE MOTION #28)	2679
COURT’S RULING THAT <i>IN CAMERA</i> HEARINGS WILL BE GRANTED WHEN NECESSARY	2680
MOTION REQUIRING DEFENDANT BE ALLOWED TO EXAMINE CRITICAL EVIDENCE IN STATE’S POSSESSION (DEFENSE MOTION #29).....	2681
COURT’S RULING THAT EVIDENCE IS AVAILABLE FOR INSPECTION	2681
MOTION FOR A GAG ORDER.....	2681
COURT’S RULING AGREEING TO SUCH AN ORDER.....	2683
MOTION TO PREVENT PREJUDICIAL SECURITY MEASURES (DEFENSE MOTION #31)	2684
COURT DEFERS RULING	2687
MOTION REGARDING JUROR HANDWRITTEN NOTES (DEFENSE MOTION #32).....	2688
COURT’S RULING THAT IT DOES NOT ALLOW JUROR NOTE TAKING	2689

MOTION FOR INSTRUCTION TO REFRAIN FROM SHOWING EMOTION (DEFENSE MOTION #33)	2689
COURT’S RULING THAT IT WILL INTERVENE IF NECESSARY	2690
MOTION REGARDING JAIL VISITATION LOGS (DEFENSE MOTION #36)	2694
COURT’S RULING THAT IT WILL ISSUE A PROPER ORDER	2698
MOTION TO PREVENT EX PARTE COMMUNICATIONS BETWEEN STATE AND COURT (DEFENSE MOTION #37)	2700
STATE CONSENTS TO MOTION	2701
MOTION FOR DEFENSE TO OCCUPY COUNSEL TABLE NEAREST JURY BOX (DEFENSE MOTION #38)	2701
COURT’S RULING DENYING MOTION	2702
MOTION FOR HEARING TO DETERMINE ADMISSIBILITY OF ALL SCIENTIFIC EVIDENCE TO BE OFFERED BY THE STATE (DEFENSE MOTION #39)	2703
COURT DEFERS RULING	2704
MOTION TO NOT SEQUESTER THE JURY (DEFENSE MOTION #40)	2704
COURT’S RULING DENYING MOTION WITH LEAVE TO RESTORE	2709
MOTION FOR PROSECUTION TO DISCLOSE JUROR CRIMINAL HISTORY (DEFENSE MOTION #41)	2710
COURT DEFERS RULING	2715
MOTION ASSERTING DEFENDANT’S FIFTH AND SIXTH AMENDMENT RIGHTS (DEFENSE MOTION #42)	2721
STATE CONSENTS TO NO DISCUSSIONS	2721
MOTION TO ENGAGE IN OR PRESERVE COMPARATIVE JUROR ANALYSIS (DEFENSE MOTION #43)	2721
COURT DEFERS RULING	2723

MOTION TO MAIL DEFENDANT’S PROPOSED JUROR QUESTIONNAIRE WITH JUROR SUMMONS (DEFENSE MOTION #44)	2723
STATE CONSENTS TO THE TIMING OF THE MAILING	2724
MOTION TO ENSURE JURORS UNDERSTAND LIFE SENTENCE WILL MEAN LIFE WITHOUT PAROLE (DEFENSE MOTION #45)	2725
STATE CONSENTS	2726
MOTION FOR JURY TO VIEW EXECUTION TOOLS AND PROCESS (DEFENSE MOTION #46)	2732
COURT’S RULING DENYING MOTION	2738
MOTION TO PRECLUDE USE OF ANY PRELIMINARY JURY QUALIFICATION QUESTIONS (DEFENSE MOTION #47)	2739
COURT DEFERS RULING	2741
MOTION TO PREVENT LAW ENFORCEMENT MEMBERS FROM INFLUENCING JURY (DEFENSE MOTION #48)	2743
COURT RULES IT WILL CONTROL AS NECESSARY JUROR INTERACTION	2744
MOTION FOR SPECIAL VENIRE REPRESENTING CROSS SECTION OF COMMUNITY (DEFENSE MOTION #50)	2745
COURT DEFERS RULING AS PARTIES AGREE THE MOTION IS PREMATURE	2746
MOTION TO DISCLOSE PAST AND PRESENT RELATIONSHIPS BETWEEN SOLICITOR’S OFFICE AND PROSPECTIVE JURORS (DEFENSE MOTION #51)	2749
COURT’S RULING IT WILL CONDUCT PROPER VOIR DIRE ON THE SUBJECT	2751
MOTION TO DIRECT ALTERNATE JUROR NOT BE PUBLICLY IDENTIFIED UNTIL DELIBERATION PROCESS BEGINS (DEFENSE MOTION #52)	2752
COURT’S RULING DENYING MOTION	2754

MOTION <i>IN LIMINE</i> FOR PRETRIAL JURY INSTRUCTIONS CONCERNING USE OF ELECTRONIC TECHNOLOGY (DEFENSE MOTION #53)	2755
COURT’S RULING IT WILL GIVE JURY ADMONITION ON THIS SUBJECT	2755
MOTION TO PROHIBIT ANY CONTACT WITH POTENTIAL JURORS OR JUROR FAMILIES (DEFENSE MOTION #56)	2757
COURT’S RULING IT WILL GIVE A PROPER ADMONITION ON REPORTING ANY IMPROPER CONTACT	2759
MOTION TO DISQUALIFY PAST OR PRESENT CORRECTIONAL OFFICERS FROM JURY (DEFENSE MOTION #58)	2761
COURT’S RULING DENYING A PER SE BAN	2763
MOTION TO PREVENT ASKING IF JURORS CAN FOLLOW COURT’S INSTRUCTIONS (DEFENSE MOTION #59)	2764
COURT’S RULING DENYING MOTION	3767
MOTION FOR HEARING TO DETERMINE WHETHER CERTAIN PHOTOGRAPHIC EVIDENCE SHOULD BE SUPPRESSED (DEFENSE MOTION #62)	2770
COURT DEFERS RULING ON THE SUBJECT	2770
MOTION TO BAR PROSECUTION JURY ARGUMENT CONCERNING GENERAL DETERRENCE (DEFENSE MOTION #63)	2771
STATE ASSERTS IT WILL NOT ARGUE DETERRENCE	2771
MOTION TO PRECLUDE EVIDENCE OR ARGUMENT CONCERNING CONDITIONS OF CONFINEMENT (DEFENSE MOTION #64)	2772
STATE ASSERTS IT WILL NOT OFFER SUCH EVIDENCE	2772

MOTION TO PROHIBIT COMPARISONS OF VICTIMS’ LIVES TO DEFENDANT’S (DEFENSE MOTION #65)	2772
STATE ASSERTS IT WILL NOT OFFER SUCH EVIDENCE	2772
MOTION TO PROHIBIT IMPROPER PROSECUTORIAL ARGUMENTS (DEFENSE MOTION #66)	2772
STATE ASSERTS IT WILL NOT MAKE ANY SUCH ARGUMENT	2773
MOTION <i>IN LIMINE</i> TO PRECLUDE TESTIMONY OF VIOLENT ACTS BY OTHERS (DEFENSE MOTION #67).....	2773
STATE ASSERTS IT WILL NOT OFFER SUCH EVIDENCE	2775
MOTION <i>IN LIMINE</i> TO LIMIT EVIDENCE OF NON-STATUTORY AGGRAVATING CIRCUMSTANCES DURING SENTENCING PHASE (DEFENSE MOTION #68)	2775
STATE ASSERTS NOTICE OF AGGRAVATING CIRCUMSTANCES HAS ALREADY BEEN PROVIDED	2775
MOTION AND MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO EXCLUDE EVIDENCE OF DEFENDANT’S PRIOR CONVICTIONS PURSUANT TO RULE 608, SCRE (DEFENSE MOTION #69).....	2776
COURT’S DEFERS RULING UNLESS AND UNTIL THE DEFENDANT TESTIFIES.....	2776
MOTION TO APPOINT IMPARTIAL WITNESS MONITOR (DEFENSE MOTION #70) WITHDRAWN	2777
MOTION TO INVOKE RULE OF SEQUESTRATION OF WITNESSES PRIOR TO VOIR DIRE (DEFENSE MOTION #71)	2777
PARTIES AGREE ON SEQUESTRATION.....	2780
MOTION TO TAKE JUDICIAL NOTICE OF INHERENT UNRELIABILITY OF ALLEGED JAILHOUSE INFORMANTS’ TESTIMONY, AND TO PROHIBIT SUCH TESTIMONY (DEFENSE MOTION #72)	2780
COURT’S RULING DENYING MOTION	2782
DISCUSSION OF JURY QUESTIONNAIRE.....	2782

EX PARTE DEFENSE IN CAMERA MOTION.....	2793
TRANSCRIPT OF PRE-TRIAL HEARING HELD OCTOBER 5, 2017	2806
DISCUSSION OF JURY QUESTIONNAIRE.....	2808
DISCUSSION OF VOIR DIRE.....	2853
DISCUSSION OF COMPETENCY EVALUATION FOR DEFENDANT	2855
CONTINUANCE OF TRIAL DATE	2878
TRANSCRIPT OF PRE-TRIAL HEARING HELD OCTOBER 12, 2017.....	2888
EX PARTE HEARING.....	2891
TRANSCRIPT OF PRE-TRIAL HEARING HELD JUNE 7, 2018	2923
EX PARTE HEARING.....	2925
MOTION REQUESTING ADDITIONAL FUNDING	2927
COURT’S RULING	2950
TRANSCRIPT OF PRE-TRIAL HEARING HELD JULY 26, 2018	2956
DISCUSSION OF DSS RECORDS	2958
TRANSCRIPT OF PRE-TRIAL HEARING HELD JANUARY 8, 2019	2988
MOTION TO RESCIND SAFEKEEPING ORDER AND RELEASE DEFENDANT TO COUNTY DETENTION CENTER	2990

VOLUME VII

CONTINUED - TRANSCRIPT OF PRE-TRIAL HEARING HELD JANUARY 8, 2019	3001
TRANSCRIPT OF PRE-TRIAL HEARING HELD JANUARY 12, 2019	3022
EX PARTE HEARING.....	3023
DISCUSSION OF DSS RECORDS	3025

TRANSCRIPT OF PRE-TRIAL HEARING HELD JANUARY 22, 2019 3042

TESTIMONY

WILLIE DAVIS

Direct Examination by Mr. Hixson.....	3050
Cross-Examination by Mr. Wilson	3054
Re-direct Examination by Mr. Hixson.....	3066
Re-cross Examination by Mr. Wilson.....	3072
Re-direct Examination by Mr. Hixson.....	3074
Re-cross Examination by Ms. Williams	3076

DISCUSSION OF JURY QUESTIONNAIRE.....	3099

COURT’S RULING ON SAFEKEEPING ISSUE.....	3134

TRANSCRIPT OF PRE-TRIAL HEARING HELD MARCH 7, 2019 3140

STATUS CONFERENCE	3142

EX PARTE HEARING.....	3156

TRANSCRIPT OF PRE-TRIAL HEARING HELD APRIL 12, 2019 3174

DISCUSSION OF JURY QUALIFICATION AND SELECTION	3221

TRANSCRIPT OF PRE-TRIAL HEARING HELD APRIL 25-26, 2019.....3237

<u>JACKSON V. DENNO</u> HEARING.....	3240

TESTIMONY

GREGORY LENT

Direct Examination by Mr. Hixson.....	3241

MARK ELLIOTT

Direct Examination by Mr. Hixson.....	3254
Cross-Examination by Mr. Wilson	3255
Re-direct Examination by Mr. Hixson.....	3259
Re-cross Examination by Mr. Wilson.....	3260

PAUSE IN <u>JACKSON V. DENNO</u> HEARING.....	3261
TESTIMONY	
PHILLIP THOMPSON	
Direct Examination by Mr. Hixson.....	3262
Cross-Examination by Mr. Wilson	3268
MONTY COATS.....	3273
<u>JACKSON V. DENNO</u> HEARING RESUMED.....	3291
TESTIMONY CONTINUED	
GREGORY LENT (RECALLED)	
Cross-Examination by Mr. Wilson	3291
Re-direct Examination by Mr. Hixson.....	3304
ARGUMENT BY MR. HIXSON	3308
ARGUMENT BY MR. WILSON.....	3310
REPLY ARGUMENT BY MR. HIXSON	3311
COURT’S RULING ON ADMISSION OF STATEMENTS	3318
MOTION TO SUPPRESS LETTER FROM DEFENDANT	3326
TESTIMONY CONTINUED	
TOM FOX	
Direct Examination by Mr. Hixson.....	3329
Cross-Examination by Mr. Wilson	3337
Re-direct Examination by Mr. Hixson.....	3344
Re-cross Examination by Mr. Wilson.....	3346
CHRISTINE SNYDER	
Direct Examination by Mr. Hixson.....	3347
Cross-Examination by Mr. Wilson	3354
Re-direct Examination by Mr. Hixson.....	3364
JANE TYLER	
Direct Examination by Mr. Hixson.....	3370
ARGUMENT BY MR. HIXSON	3371
ARGUMENT BY MR. WILSON.....	3374

REPLY ARGUMENT BY MR. HIXSON	3377
COURT’S RULING THAT LETTER IS ADMISSIBLE	3384
STATE’S MOTION PURSUANT TO RULE 705, SCRE FOR UNDERLYING FACTS OR DATA	3385
DISCUSSION REGARDING RECIPROCAL DISCOVERY	3385
TRANSCRIPT OF PRE-TRIAL HEARING HELD APRIL 26, 2019	
DISCUSSION OF PENALTY PHASE EVIDENCE	3401
MOTION TO EXCLUDE DEATH PENALTY BASED ON DEFENDANT’S YOUNG AGE	3423
COURT’S RULING THAT DEFENDANT IS DEATH PENALTY ELLIGIBLE	3428
MOTION TO FIND S.C. CODE §16-3-20(B) UNCONSTITUTIONAL, AND ALLOW DEFENDANT TO PLEAD GUILTY AND HAVE JURY SENTENCING	3428
COURT’S RULING DENYING MOTION	3434
COURT DEFERS RULING ON RULE 705, SCRE MOTION	3447
TRANSCRIPT OF POST-TRIAL HEARING HELD JULY 8, 2019.....	3465
MOTION REGARDING DISPROPORTIONALITY OF DEFENDANT’S DEATH SENTENCE	3467
COURT DEFERS RULING PENDING A WRITTEN ORDER WHICH WAS FILED ON JULY 29, 2019	3478
WRITTEN MOTIONS, ORDERS, AND EXHIBITS	
NOTICE & MOTION TO FIND SC CODE 16-3-20(B) UNCONSTITUTIONAL AND ALLOW DEFENDANT TO PLEAD GUILTY & BE SENTENCED BY JURY OF HIS PEERS (FILED APRIL 22, 2019)	3480
ORDER GRANTING POST-CONVICTION RELIEF IN THE CASE OF JERRY BUCK INMAN V. THE STATE, 2012-CP-39-918 (FILED APRIL 21, 2020)	3481

VOLUME VIII

ORDER GRANTING POST-CONVICTION RELIEF IN THE CASE OF <u>JERRY BUCK INMAN V. THE STATE</u> , 2012-CP-39-918 (FILED APRIL 21, 2020) (CONTINUED)	3501
DEFENDANT’S EXHIBIT #12 (EVALUATION BY DR. MADDOX, 3-19-19) (FROM THE MAY 6-16, 2019 TRIAL)	3544
DEFENDANT’S PRE-TRIAL MOTION #58, TO DISQUALIFY PAST OR PRESENT CORRECTIONAL OFFICERS FROM THE JURY (FILED APRIL 21, 2017)	3558
JUROR QUESTIONNAIRE FOR JUROR #161, HARRY JOHNSON, JR., ...	3562
JUROR QUESTIONNAIRE FOR JUROR #350, LAUREN STEVENS	3574
COURT’S EXHIBIT #2 (SAFEKEEPING EXTENSION ORDER ON MCKINLEY DANIELS) (FROM THE JANUARY 22, 2019 PRE-TRIAL HEARING)	3583
DEFENDANT’S SCDC SUMMARY ATTACHED TO EXHIBIT	3584
MOTION TO RESCIND SAFEKEEPING ORDER AND RELEASE DEFENDANT TO COUNTY DETENTION CENTER (FILED OCTOBER 17, 2018)	3587
SAFEKEEPING PACKET PRESENTED TO THE HONORABLE R. FERRELL COTHRAN, JR., AT THE AUGUST 4, 2015 HEARING	3600
STATE’S EXHIBIT #F (SAFEKEEPING PACKET) (FROM THE APRIL 25-26, 2019 PRE-TRIAL HEARING)	3637
COURT’S EXHIBIT #1 (DISCIPLINARY RECORDS) (FROM THE JANUARY 22, 2019 PRE-TRIAL HEARING)	3653
STATE’S EXHIBIT #153 (SCDC DISCIPLINARY REPORT) (FROM THE MAY 6-16, 2019 TRIAL)	3731
INDICTMENTS (MURDER, ATTEMPTED MURDER, ARMED ROBBERY)	3733

THE FOLLOWING DOCUMENTS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #51 (PHOTO), STATE'S EXHIBIT #52, (DVD 905 SUNHOUSE), STATE'S EXHIBIT #75 (DVD STATEMENT NO. 2), STATE'S EXHIBIT #76 (DVD STATEMENT NO. 3), STATE'S EXHIBIT #106 (DVD – ARROWHEAD ROBBERY), STATE'S EXHIBIT #114 (DVD OAK ST.), STATE'S EXHIBIT #144 (DVD-JENKINS STATEMENT 2), STATE'S EXHIBIT #145 (DVD-JENKINS STATEMENT 3), AND STATE'S EXHIBIT #146 (DVD-JENKINS STATEMENT 4).

1 know what Mr. Jenkins' security status is in the
2 Department of Corrections, he said no. That's internal to
3 the Department of Corrections on why they do that. So
4 I do not have an answer to that question.

5 I know that I provided some of the updates that have
6 come to me from -- about Mr. Jenkins's conduct while in
7 safekeeping. They were my understanding is it was based
8 on his conduct. I cannot support that.

9 I got -- as Your Honor is aware, Mr. Wilson, I asked
10 for the warden's jacket since the last discovery packet.
11 We received it last week, and we got all the
12 correspondence back in, but we don't have any substantive
13 information about why and what all those moves were about.

14 So I got all the orders and the court orders and
15 everything else, but I don't have any of the substance. I
16 just have all the correspondence, and I got it last week.

17 THE COURT: Okay.

18 MR. HIXSON: So I don't have an answer to Your
19 Honor's question but we're trying to get it.

20 THE COURT: Okay.

21 MR. WILSON: Your Honor, just so I'm clear, I'm not
22 really complaining about the first -- the initial order.
23 And I'm -- because there was, in fact, a hearing.

24 THE COURT: Well, I mean, in theory you're
25 complaining about that. You don't think the Governor has

1 the authority or the S.C.D.C. have the ability to create
2 regulations.

3 MR. WILSON: I don't --

4 THE COURT: So you don't think unconstitutional.

5 MR. WILSON: That is correct.

6 THE COURT: I am following you.

7 MR. WILSON: In theory, I am saying that the
8 Department of Corrections couldn't -- they couldn't
9 interpret the Governor's order more liberal than what the
10 governor put in the order.

11 THE COURT: I got you.

12 MR. WILSON: And create guidelines which are,
13 therefore, inconsistent with what he put in the order.
14 And I take the order at its literal reading, and you can't
15 do that and rectify that with what the Department of
16 Corrections is doing.

17 And as I said, one of the things is, which I think is
18 paramount in this case is that the whole purpose of
19 putting notice in that for the attorney of the defendant
20 is so that the defendant's rights can be protected and
21 preserved.

22 Well, I can't that if they don't notify me. And, you
23 know, for the last three-and-a-half years, they haven't
24 notified me of anything.

25 You know, the other thing that really is, you know,

1 really appalling here is that this defendant hasn't been
2 convicted of anything. He is on death row -- and even
3 when he was at that Lee -- even when he was at Lee, he was
4 in Supermax.

5 THE COURT: Right.

6 MR. WILSON: Not just maximum security, Supermax.

7 THE COURT: I guess one of my question is was he in
8 Supermax immediately, or did Supermax come after the big
9 incident that occurred at Lieber happened?

10 MR. WILSON: The first time I went to see him, he was
11 there.

12 THE COURT: Okay.

13 MR. WILSON: Every time I've been to visit him, he
14 was in Supermax.

15 THE COURT: Okay.

16 MR. WILSON: From the jail to Supermax.

17 THE COURT: Okay.

18 MR. WILSON: And my point is, Your Honor, that
19 certainly has to be cruel and usual punishment when you're
20 a pretrial detainee.

21 It's one thing to say that you're going to punish
22 somebody by revoking their telephone privileges or not
23 letting them go out for canteen once a week or something.
24 It's a whole different thing when you put that person in
25 Supermax for years, which is what happened to this

1 defendant.

2 He has literally been in Supermax and death row for
3 years without ever having been convicted of --

4 THE COURT: When did he get transferred to Kirkland?

5 MR. WILSON: About three months ago, September 28th.

6 THE COURT: Okay. And Mr. Jenkins, you can tell your
7 lawyers this information. You don't need to answer me,
8 but was he given any reason as to why he was moved there?

9 MR. WILSON: No, sir. He was not.

10 THE COURT: Okay. That's not uncommon. You're not
11 the first person in SCDC custody to tell me that, you
12 know, I wasn't given any explanation as to why I was
13 moved. I'm just seeing, asking if they did give you any
14 explanation, okay.

15 Okay. Well, I mean, I think at this point the
16 information that I need is -- needs to come from SCDC, and
17 I think we need to get somebody from SCDC in here, not
18 necessarily today, but that can pull whatever files they
19 keep on these people and come in here almost like a
20 30(b)(6) deposition in a civil case and have the authority
21 to answer for us what is going on.

22 If we need to close off the hearing or make it a
23 sealed hearing or that type of thing to protect this kind
24 of information, but I mean, him being at Lee is one thing.

25 Him being on death row as a pretrial detainee, for

1 me, is a whole new issue, and I understand things happened
2 at Lee. I have no knowledge of what was involved or who
3 wasn't involved at Lee, but we all, obviously, know.

4 I think the majority of the country knew about the
5 things that happened at Lee during the year 2018, so I'm
6 sure that changed the whole tenor of things inside the
7 facility. I've been in that facility more times than I
8 care to remember.

9 I mean, it was already a fairly secure and locked
10 down place that was very dangerous to begin with, but once
11 that incident occurred, I'm sure things got tweaked up
12 even more, but I think we need to get somebody from SCDC
13 that can come to court that has had the ability to review
14 his file, to talk to who they need to talk to and can come
15 in and explain to us, you know, what they're -- what's
16 going on with him and why he is where he is, and if there
17 is an option.

18 I'm not saying I'm going to do this, but is there an
19 option, is there a facility he can be moved to that is
20 closer to Horry County, especially as we get closer and
21 closer to a trial date, the amount of time that his
22 counsel and the different people that are working on his
23 case are going to need to have access to him is really,
24 you know -- you can almost reach point where your -- I can
25 envision a point in time where you're almost seeing the

1 client every single day moving up and into it.

2 Him being in Columbia -- him being in Lee is a
3 stretch. Him being in Columbia is a logistical nightmare
4 for all of that to happen. So that being said, I go on
5 official leave tomorrow morning that I cannot change. I
6 will not be back to work until the 22nd of January. That
7 is official leave. It's not even vacation, and it's not
8 something that I at this point in time have any ability to
9 move anything on. So what do you all look like for the
10 week of 22nd?

11 MR. HIXSON: Perhaps just as -- I believe I have a
12 discovery obligation relating to the contents of the
13 warden's jacket and all of this stuff relating to
14 mitigation and everything else --

15 THE COURT: Right.

16 MR. HIXSON: -- if it advances to the second phase of
17 the trial, so I've got to get this stuff.

18 THE COURT: Well, and that's the one thing I have to
19 say. Whoever comes, you need to tell whoever comes,
20 Mr. Hixson, that I'm ordering that SCDC bring whatever
21 they have on Mr. Jenkins.

22 So I mean, I think all that stuff is more than likely
23 discoverable if you make it into a second phase of the
24 trial, but I mean, I think we, you know...

25 MR. HIXSON: The two potential work arounds, Your

1 Honor --

2 THE COURT: Okay.

3 MR. HIXSON: As in codefendant's James Daniels'
4 trial, there was a point getting close to trial time that
5 this young man has to be in Horry County to get ready for
6 this trial. That's a given. It's going to happen.

7 The question is how far back from the calender will
8 that happen, and if the hearing date is getting out there
9 at some point in time, these fellows are going to
10 intersect.

11 THE COURT: Right.

12 MR. HIXSON: I've got to get the information, got to
13 get it from Ralph. So my initial thought is as soon as we
14 get it out of here, I'm going to make phone call to my
15 investigator, say I was talking to Judge Hood. He wants
16 the stuff now, follow up with the order.

17 We already have an order to give, and if that doesn't
18 get a reaction within the next two days to get the
19 document, and it's going to get to working it out at some
20 point in time, too.

21 THE COURT: Okay.

22 MR. HIXSON: Just a couple of thoughts.

23 THE COURT: Right.

24 MR. WILSON: And, Your Honor, at this point, I need
25 as much time with the defendant as I can, and I'm not

1 sure -- to be completely candid with the court, there is
2 no way literally for me to get to see him -- I'll give you
3 an example. I was trying to get up here before Christmas,
4 and I called and asked if I could see him. They said no.
5 We're having something going on at the prison.

6 Well, it was the only date that I could get away to
7 come. They wouldn't let me see him. So then I couldn't
8 come again for another couple of weeks. I can't always
9 just get away and come.

10 THE COURT: I know.

11 MR. WILSON: And it takes planning, and unless he is
12 moved closer to me, I mean, it -- it's going to be a
13 nightmare for me to even think about trying to get ready
14 for a trial.

15 THE COURT: The other thing I would ask of the State
16 is the second phone call be that whoever is running the
17 jail now and say to the sheriff -- and every county does
18 things differently, and I don't know how Horry does
19 things. But maybe at this point with us looking at, you
20 know, a trial date sooner rather than later, maybe it's
21 time to have the discussion if the jail thinks they have
22 -- the local jail thinks they have some kind of facility
23 or some type of set up because James should be out it. He
24 should be out by now, right? I mean, he should be in SCDC
25 permanently by this point?

1 MR. HIXSON: That's correct, Your Honor.

2 THE COURT: Right. And then so I mean that may --
3 you know, maybe it's time to have that pow-wow. We can
4 bring him back and none of the other two are here and know
5 that we need keep a watchful eye under the situation.
6 That being said, what do you all look like the week of the
7 22nd? The 22nd is a Tuesday. Monday is a holiday.

8 MR. HIXSON: Your Honor, our understanding is maybe
9 we have a tentative date for, Your Honor, to be there on
10 the 22nd.

11 THE COURT: Right.

12 MR. HIXSON: So we're at Your Honor's disposal for
13 the 22nd.

14 THE COURT: Okay. Could you do that on the 22nd,
15 Mr. Wilson?

16 MR. WILSON: January?

17 THE COURT: Yes, January, in the afternoon. I have
18 to qualify the jury in Richland County that morning, so I
19 could probably be there by one o'clock or so and then we
20 can take up whatever we need to at that time.

21 Does that work for everybody? Can you tell SCDC that
22 they need to be there?

23 MR. HIXSON: Yes, indeed. I guess my general idea,
24 I'll be happy to. I guess we will just try to come to an
25 agreement on a time that he's coming back.

1 THE COURT: Then we can --

2 MR. HIXSON: Right, make the need for a substantive
3 hearing on that, but if you want to protect the record if
4 it comes to an appellate process for cruel and unusual.

5 THE COURT: Okay.

6 MR. HIXSON: Tell me if you want a hearing on it to
7 establish something down the road .

8 MR. WILSON: Judge, have we set a date yet for the
9 trial?

10 THE COURT: The last date we set was April 1st.

11 MR. WILSON: That's going to be a tall order, but we
12 will -- if you tell me to try to be ready, I'll do
13 everything in my power to be ready. But you know, as I
14 said, especially if things stay the way they are -- if
15 they stay the way they are, and I have to come to Columbia
16 or go to Lee, there is literally, it's going to be
17 impossible.

18 Even if the Court grants me 60 days where I'm --
19 where I don't have to do any other trials or things, even
20 with that, it's going to be a tall order but without that,
21 I mean, it's nearly impossible.

22 THE COURT: Do you have anything major scheduled?

23 MR. WILSON: No, sir.

24 THE COURT: Between now and then?

25 MR. WILSON: No.

1 THE COURT: Okay.

2 MR. WILSON: Well, I have two -- I take that back. I
3 wouldn't call them major. I've done dozens of them
4 because it's not major to me, but I have two murder trials
5 which are scheduled between now and then. One in
6 Georgetown, one in Horry.

7 And obviously, I don't need to get sidetracked trying
8 to do those two trials if I'm going to try to be meeting
9 an April 21st deadline. That gives us basically 70 some
10 days to get ready.

11 What I was going to say, we discussed, Your Honor, if
12 that's the date we're going to use -- if the Court decides
13 that's the date we're going to use, then I need him back
14 certainly before the end of January.

15 THE COURT: Right.

16 MR. WILSON: Yes.

17 THE COURT: Well, why don't you see where you make it
18 on these issues over the next couple of weeks. Let's get
19 -- let's tell SCDC they need get us the stuff, and we need
20 it all for real because regardless of what happens with
21 this safekeeping, you're going to need that information.

22 Mr. Wilson may -- both sides may potentially need
23 that information if we're in a sentencing phase to begin
24 with. So let's tell them they need to get that done. You
25 want me to sign something that says that? Have I already

1 signed something?

2 MR. HIXSON: You already have. We have the packet
3 back about general counsel signing off on it. There was
4 no meat on the bone.

5 THE COURT: Tell them I want some meat on the bone.
6 Is Sally Elliott over there now?

7 MR. HIXSON: I don't recall, Christine Cato.

8 THE COURT: Okay. Sally Elliott was over there at
9 one point. She was -- she usually was pretty on top of
10 things, but we need to get that stuff. If we need to do
11 some kind of disclosure order or some kind of protective
12 order over it where it does -- I mean, I'm sure they don't
13 want all that information in SCDC in that facility, but we
14 can certainly do some kind of protective order that
15 protects it where, you know, they can show to it
16 Mr. Jenkins, but they can't distribute it to him.

17 They can see it. I mean, we can certainly craft some
18 kind of order to protect whatever regulations SCDC needs
19 cover themselves on, but we have that information.

20 MR. HIXSON: Just for clarification, we have given
21 the jacket to these clients in the past, but that's been a
22 year or so ago. We provided that in discovery.

23 THE COURT: Okay.

24 MR. HIXSON: And they're generating more paper right
25 now.

1 THE COURT: All right. So right now let's
2 tentatively plan on the afternoon of the 22nd and see
3 where we make it on these other issues, and then one way
4 or the other whether we do a hearing on the 22nd or you
5 get it resolved, I'll make a ruling that day so we have
6 some kind of ruling in place if we need one, okay. And
7 then let's be prepared. Let's plan on getting together on
8 the 22nd regardless of all of this stuff. If you get this
9 issue worked out, great. If you don't, let's plan on
10 getting together on the 22nd, and that way we can just
11 have a big pow-wow on the record, obviously, about where
12 we are, where things are, the time, any other
13 miscellaneous -- I don't want to go through 60 or 70
14 pretrial motions, but I think we -- you know, we probably
15 need take up some things like signing an order, getting
16 the Chief Admin. in the 15th Circuit to sign an order of
17 protection for Mr. Wilson and Ms. Williams and, you know,
18 other things like that for a trial date. I think we have
19 a lot of little housekeeping things we could work on that
20 day regardless. All right. Is everybody with me?

21 MR. WILSON: Yes, sir.

22 MR. HIXSON: Yes, sir.

23 THE COURT: All right. Where are my guys that
24 brought him in?

25 MR. HIXSON: I have a more issues I'd like take up.

1 THE COURT: Go ahead, yeah.

2 MR. HIXSON: I have filed housekeeping matters
3 relating to mental health, my mental health motions filed
4 sitting there. I want to talk about that for a second. I
5 had a motion for taking a handwriting exemplar. That has
6 been filed and served.

7 THE COURT: Okay.

8 MR. HIXSON: The other thing is discussion about a
9 questionnaire. After our last meeting in preparation for
10 this, we had on the record hearings concerning the
11 questionnaire.

12 THE COURT: Right.

13 MR. HIXSON: And maybe before we get to the
14 questionnaire, I'll do this. I just did a real cursory
15 discussion over the supplemental scheduling order with
16 basic changes to have a sheet of music to talk off of.

17 THE COURT: Okay.

18 MR. HIXSON: If I can hand it up to the Court --

19 THE COURT: Of course.

20 MR. HIXSON: -- to look at, and this is assuming an
21 April 1st trial date, backing off some dates to see what
22 you think.

23 THE COURT: All right. Okay.

24 MR. HIXSON: We can talk more about it, January, but
25 just general ideas. The issue one, that's a time crunch.

1 There's concern with a questionnaire.

2 THE COURT: Right.

3 MR. HIXSON: And after I took all the notes and once
4 the continuance occurred, there's a little lull in it. I
5 went back through and drafted, combined -- my
6 understanding is your rulings that you had on the
7 questionnaire provided that, emailed a copy and provided a
8 copy and hand that up, hand up a copy if there's
9 additional concerns or objections. At least we could
10 start working on getting those questionnaires submitted.

11 THE COURT: Okay.

12 MR. HIXSON: Now, this effort is just me word
13 processing. I'm documenting what I have filed an
14 objection to, what you sustained and what you allowed in.

15 MR. WILSON: And, Judge, just so the Court is aware,
16 I received this questionnaire this morning.

17 THE COURT: Okay.

18 MR. HIXSON: Yeah.

19 MR. WILSON: So I --

20 THE COURT: I'm not going to hold you to it right
21 now.

22 MR. WILSON: And I appreciate it.

23 MR. HIXSON: I e-mailed it.

24 THE COURT: All right. So on the 22nd --

25 MR. WILSON: Yes, sir.

1 THE COURT: -- we'll take this issue up.

2 MR. WILSON: If I have any objection, I will have it
3 at that time.

4 THE COURT: Okay. All right. All right. What about
5 the handwriting exemplar?

6 MR. WILSON: We have no objection to the handwriting
7 exemplar.

8 THE COURT: Okay.

9 MR. HIXSON: I have -- my order on the word
10 processer.

11 THE COURT: Okay.

12 MR. HIXSON: So I have to get you an order and have
13 SLED come take it.

14 THE COURT: Okay.

15 MR. WILSON: Certainly. We don't have any objection
16 to it?

17 THE COURT: Mr. Jenkins, someone is going to come to
18 wherever you are housed and take some handwriting
19 examples. I assume SLED is going to do that or Horry
20 County.

21 MR. HIXSON: And Lee County, whichever one.

22 THE COURT: Okay. All right. And maybe contact
23 Ms. Williams and Mr. Wilson first so -- when they're going
24 and where. You understand that? They don't ask you to do
25 anything that's intrusive that impacts your rights, write

1 some things down. Okay.

2 MR. HIXSON: Man, that was fast. So that, talk about
3 the questionnaire, the general timing, getting the
4 questionnaire moving, at some point in time I told Madam
5 Clerk of Court that maybe January 22nd she needs to sit in
6 on that and start talking about framework of the jury,
7 questionnaire.

8 THE COURT: I agree.

9 MR. HIXSON: The timing.

10 THE COURT: Okay. So do this supplemental order and
11 add in the January 22nd date.

12 MR. HIXSON: I will. I will.

13 THE COURT: All right. Okay.

14 MR. HIXSON: And I'll send it out to everybody. I
15 know I have a conflict the week of the 29th, but I
16 think -- I think that's okay if we're going to meet on the
17 22nd anyway. We don't have a problem with it, Your Honor.

18 THE COURT: Okay. What else, Mr. Wilson?

19 MR. WILSON: That's all.

20 THE COURT: Okay. Everybody good?

21 MR. HIXSON: Yes.

22 THE COURT: Okay. Thank you all for coming to
23 Columbia. I'm sorry. With my leave, I can't do anything
24 about it or otherwise we'd jump on these things faster.
25 We'll get them done them all right.

1 MR. ATTY1: Thank you, Your Honor.

2 MR. WILSON: Thank you, Your Honor.

3 MR. HIXSON: Oh, I do have one other thing. I
4 apologize.

5 THE COURT: Okay. Go ahead.

6 MR. HIXSON: I apologize. If you recall during our
7 major motions day -- this is one of most important things,
8 I had to file several motions to have this defendant
9 evaluated.

10 THE COURT: Right.

11 MR. HIXSON: Have a competence evaluation, something
12 like that.

13 THE COURT: Right.

14 MR. HIXSON: Your Honor, to paragraph, please,
15 correct me -- and I know you will, but you basically took
16 those under advisement as you were doing some ex parte
17 stuff, appropriately, with Mr. Wilson concerning some of
18 his defense work. I need to know what I have to do, and I
19 need -- I guess some commitments because now if I have to
20 do a formal evaluation on him --

21 THE COURT: We're going to do -- if the State is
22 going to do an evaluation on him, that order needs to be
23 signed.

24 MR. HIXSON: Yes. I don't know that it's necessary
25 because I just was trying to get some commitment from --

1 one of the foundational basis for me is there's a
2 possibility it's going to be done. It's going to be
3 brought up in the trial of the case. I'm not talking
4 about the penalty phase, but the trial of the case. At
5 this rate, if we need to have a State evaluation on him,
6 if I know we're not going to argue that stuff, so I guess
7 I'm asking for commitment.

8 MR. WILSON: I'm not --

9 MR. HIXSON: I need some guidance if I have got to
10 get this done.

11 MR. WILSON: I am not arguing -- and I'm not arguing
12 insanity.

13 THE COURT: Okay. Is competency an issue?
14 Competency in this moment?

15 MR. WILSON: No, sir.

16 THE COURT: In the present?

17 MR. WILSON: No, sir.

18 THE COURT: Okay.

19 MR. HIXSON: Competency to stand trial.

20 MR. WILSON: There is no issue about competency to
21 stand trial to stand trial.

22 THE COURT: Okay.

23 MR. HIXSON: There is no Adkins issue?

24 THE COURT: No Adkins issue.

25 MR. WILSON: No Adkins issue and no issue as to the

1 McNaughton standard.

2 THE COURT: Knowing right from wrong at the time of
3 the incidents.

4 MR. WILSON: Right.

5 MR. HIXSON: And then specifically, I understand that
6 you're leaving open any mitigation related to mental
7 health.

8 THE COURT: Right. We're not talking about the
9 second half. We are talking about the first half.

10 MR. WILSON: For the trial purposes.

11 THE COURT: Jury -- yeah for.

12 MR. WILSON: Guilt phase.

13 THE COURT: Guilt phase, right. The word was
14 escaping me.

15 MR. HIXSON: Okay.

16 THE COURT: All right. Everybody good with that?

17 MR. WILSON: Yes, sir.

18 THE COURT: Where are my guys that brought him?
19 Thank you all very much for being here and being on time.
20 I know that is a serious haul in one day. Be safe going
21 back. I thank you very much for being here on time and
22 having him here. Truly, that makes my life move a lot
23 easier, so thank you very much.

24 MR. HIXSON: Thank you, Your Honor.

25 (Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Horry County, South Carolina, on the 8th day of January,
2019.

October 7, 2019

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

2 COUNTY OF HORRY CASE NO: 2015-GS-26-1757, 1758

3 EX PARTE HEARING

4 **B E F O R E:** The Honorable Robert Hood
5 January 12, 2019

5 B E F O R E: The Honorable Robert Hood
January 12, 2019

5 January 12, 2019

7 STATE OF SOUTH CAROLINA,

8 Plaintiff,

9 || VS.

10 JEROME JENKINS, JUNIOR,

11 Defendant.

12 | -----

13 | APPEARANCES:

14 Kelly Galley, Esq.
15 Attorneys for the Plaintiff.
(Department of Social Services)

15 Attorneys for the Plaintiff.
(Department of Social Services)

(Department of Social Services)

17 Ralph Wilson, Senior, Esq.
 Brana Williams, Esq.
18 Attorney for the Defendant.

18 Brana Williams, Esq.
Attorney for the Defendant.

18 Attorney for the Defendant.

19

20

21 Natalie Dahl, RPR
Court Reporter:

23

24

25

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: On the record in the State of South
3 Carolina versus Jerome Jenkins, couple indictment
4 numbers for the record: 2015-GS-26-1758, 1767. The
5 defendant is present.

6 Good morning, Mr. Jenkins; you doing okay?

7 MR. JENKINS: Doing all right.

8 THE COURT: All right, good. And he's here with
9 his attorneys, Ralph Wilson and Brana Williams, who
10 have been appointed to represent him.

11 For the record, this is an ex parte hearing, so
12 we'll go around the room and everyone state your name
13 for the hearing. Mr. Bobby, you can start.

14 MR. ROPP: Bobby Ropp.

15 THE COURT: In the back?

16 MR. GRATE: Captain Grate.

17 MS. GALLEY: Kelly Galley.

18 MS. SWITZER: Danielle Switzer.

19 MR. JORDAN: Rodney Jordan.

20 MR. TROXEL: Tim Troxel.

21 MR. HENDRICK: Grainger Hendrick.

22 MS. DAVIS: Amelia Davis.

23 MS. STEVENS: Natalie Stevens.

24 COURT REPORTER: Natalie Dahl.

25 THE COURT: So if you said your name or you are

1 an attorney in this matter, you are not allowed to
2 discuss anything that happens in here without my
3 expressed permission. If you cannot hold to that,
4 then you need to exit the courtroom.

5 Mr. Galmore, this is an ex parte hearing, so we
6 need you to slide out. You have orders?

7 MR. GALMORE: Yes, sir.

8 THE COURT: Mr. Galmore walked in and he has
9 orders on another case, which he'll hand to me and
10 slide out. How do you want me to get them back? Give
11 them to Natalie?

12 MR. GALMORE: Yes, sir, please.

13 THE COURT: All right. So tell me your name.

14 MS. GALLEY: Kelly Galley. I'm an attorney with
15 Horry County Department of Social Services.

16 THE COURT: Okay. So the Horry County Department
17 of Social Services filed a motion on or about
18 December 21st of 2017 to amend an order, or in the
19 alternative, for a protective order, notice of their
20 objection to the disclosure of confidential
21 information.

22 All right. So walk me through -- do you want to
23 tell me what we're looking for and then we'll go to
24 them what the objection is? I guess that is the
25 easiest way to do it.

1 MR. WILSON: Yes, sir. If it pleases the Court.
2 What we're actually looking for, we have sent a list
3 of names of individuals that we wanted information
4 from DSS regarding. These individuals are all related
5 to Jerome Jenkins, and these are family members, for
6 the most part, or -- and what I did was actually
7 prepare a little chart.

8 THE COURT: Okay. Do you have a copy for me?

9 MR. WILSON: I don't have a second one.

10 MS. WILLIAMS: I have one.

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

12 MR. WILSON: It shows the connection of these
13 individuals. What we're trying to establish, Your
14 Honor, is -- is -- is the type of environment in which
15 the defendant grew up in and what was going on in the
16 home during the time of his youth leading up to his
17 arrest and incarceration. We also need to understand
18 the level of poverty, if any, that he was in during
19 his youth and how that might have affected him. This
20 information is -- and I know what one of the things
21 that DSS might say is you could probably get that
22 information -- some of it -- from other individuals.
23 That is true. The problem is that the ABA rules
24 require that we verify this information when we get
25 it.

1 We do have information from witnesses, but we
2 need to be able to verify whether that information is
3 true and/or correct. The other thing is that when --
4 and I apologize, I have a severe sinus infection so
5 I'm struggling.

6 THE COURT: Okay. There is some water. It may
7 be Monday's water, but -- Mr. Jenkins, is the only one
8 that got the joke (laughing). I said it may be
9 Monday's water. He's the only one listening to me.

10 MR. WILSON: (laughing) I apologize.

11 Our experts also requested this -- our social
12 worker has requested this information, and our
13 mitigation expert requested it, because they believe
14 it will help them better describe to the Court and to
15 a jury as we go through this process the manner in
16 which he grew up, the level of poverty that existed in
17 his home, whatever kinds of problems that might have
18 occurred financially and/or socially as he grew up.
19 That is what we are trying to accomplish by getting
20 this information.

21 As I said, we have some information from
22 witnesses, but what we don't have is we don't have
23 records to verify that those things actually did
24 occur, and that is what we're trying to accomplish.

25 THE COURT: Okay. So as I read through some of

1 these regulations, let's all keep awareness of the
2 obvious, I'm not a family court judge, nor have I ever
3 been one, so some of these are new to me. Is there
4 anything about adoptions that you believe you need?

5 MR. WILSON: No, sir.

6 THE COURT: Okay. Because that is a whole
7 different area. As I processed through the things
8 that have been cited, that is an area that you have to
9 go back to the original court judge, and I don't do
10 that stuff. But is there anything that you know of,
11 any adoptions or anything?

12 MR. WILSON: No, sir. There are not any that I'm
13 aware of. Even if there is, I don't know that that
14 would have a bearing on what we're doing. What we're
15 interested in is -- more than anything -- any abuse
16 that might have gone on in the home or homes in which
17 he lived regarding him and/or his siblings. We're
18 interested to know whether or not there is any -- what
19 the level of poverty was that he grew up in, whether
20 or not DSS was intervening in the family situation
21 over an extended period of time; and if so, why?
22 Those are the kinds of things we're interested in, not
23 whether or not somebody in the family was adopted or
24 not adopted. That is not --

25 THE COURT: Okay. So my second question is this:

1 Basically, do you want the DSS files on these people,
2 is that what you are essentially requesting?

3 MR. WILSON: Yes. We would like any other
4 information other than adoption information on these
5 individuals.

6 THE COURT: On the individuals listed on this
7 list?

8 MR. WILSON: Yes.

9 THE COURT: Ms. Galley, walk me through -- and I
10 understand you are not interested in violating the law
11 and all of that, but walk we through what is easy and
12 what is not easy -- go ahead, Mr. Wilson.

13 MR. WILSON: I apologize. One of the things I
14 wanted to point out is Section 63-7-1990.

15 THE COURT: Hold on. Let me -- go ahead.

16 MR. WILSON: Which is actually the DSS regulation
17 for child abuse and neglect. Paragraph 11 says: The
18 parties to a court proceeding in which information in
19 the records is legally relevant and necessary for the
20 determination of an issue before the Court, if before
21 the disclosure the judge reviewed the records in
22 camera, has determined the relevancy and necessity of
23 the disclosure, and his limited disclosure to legally
24 relevant information under the protective order, then
25 it would be allowed to be released.

1 THE COURT: All right. Ms. Galley, walk me
2 through your issues and what you are proposing.

3 MS. GALLEY: Thank you, Your Honor. May it
4 please the Court. Your Honor, up until the time the
5 Department received this ex parte order, the only
6 information that had been requested was in the form of
7 a letter to the Department seeking information -- and
8 this was from someone with the Justice 360, which I
9 now learned is somehow involved with these attorneys
10 and in this case. They had requested the information
11 as to Mr. Jenkins and his biological mother, Ms. Itina
12 Faye Ray.

13 When we received this ex parte order of the
14 court, we saw that there are now 19 -- 19 different
15 individuals, plus an A and B, that they were
16 requesting information of. Now, the information as to
17 Mr. Jenkins himself and the biological mother, Itina
18 Faye Ray, has been provided to Mr. Wilson and
19 Ms. Williams in this case.

20 THE COURT: Is that right?

21 MR. WILSON: That is correct.

22 THE COURT: Okay. So those two are done.

23 MR. WILSON: And, I apologize, let me say this.
24 We received a report, and I think it is 13 pages -- 14
25 pages. Whether that is a complete report, I'm not

1 saying that to the Court at this point. I'm just
2 saying that we received a report; it was 14 pages.

3 MS. GALLEY: That is correct, Your Honor. That
4 was an unfounded case, ultimately, that the Department
5 looked into. There was one sheet for food stamps --
6 or, excuse me, for SNAP benefits that was attached to
7 that as well. But in our review of these other names,
8 the ones that we could establish, because some of
9 these names up until this morning -- where I was just
10 handed the sheet -- in the Department's CAPS records,
11 which is a state-wide database of every case that has
12 ever come or any allegations that have ever been made
13 in the State of South Carolina, and I'm assuming there
14 is a cut-off date in there and I'm not sure what it
15 was, or a beginning date, but there was no identifying
16 information as to any of these other individuals that
17 are named.

18 Now, in our search of our CAPS records, the only
19 case that comes up that has Ms. Itina Ray's name
20 involved, which is apparently Mr. Jenkins' biological
21 mother, and Mr. Jenkins is the one case that we
22 already handed over -- or the dictation from that one
23 allegation that they had originally requested.

24 Now, as far as these other individuals are
25 concerned, the ones that we could identify, as they

1 had different names, were his biological children.
2 We've already established there are no records
3 involving those other individuals.

4 THE COURT: So there is no records on who?

5 MS. GALLEY: No records that the Department could
6 find as to Mr. Jenkins' biological children, G. [REDACTED]
7 [REDACTED], Jm.J. [REDACTED].

8 THE COURT: Okay.

9 MS. GALLEY: Daquan Devonte Ray, Raheem Jaquan
10 Ray and Shawn Steven Ray were also subject children of
11 interest in Mr. Jenkins and biological mother's case.
12 In our review of CAPS records, there is no other cases
13 involving those individuals either, as well as Devonte
14 Malik Simmons. He was a subject child of interest.
15 That was produced in those records. For a Mr. Jerome
16 Jenkins, Senior, there are no records in CAPS.

17 As far as the other individuals on the list,
18 without identifying information, I can't tell this
19 Court if, in fact, there is any information in CAPS
20 dictation as to those other individuals or not. Your
21 Honor, quite frankly, we don't understand -- and we
22 are bound by the confidentiality regulations -- for
23 disclosing any of this information. I realize they
24 believe it is relevant information to their case;
25 however, as I already explained to the Court,

1 Mr. Jerome Jenkins' name is not involved with any of
2 these other individuals. He hasn't been named in any
3 other cases involved in our CAPS system; therefore, he
4 may have stayed with some of these individuals at some
5 point in time, but I can't say if he did or not.

6 I can tell you in our records there is nothing
7 involving Mr. Jerome Jenkins and the other individuals
8 that we found in our system. Because when we do a
9 research for Jerome Jenkins, any case that had him
10 listed would have come up in our system. The only
11 case that came up with his name associated to him is
12 that one case that we've already provided.

13 THE COURT: So have you done a search for these
14 other people?

15 MS. GALLEY: We have with the individuals that we
16 could identify. Assuming, of course, Your Honor, that
17 these are the correct individuals -- because, again,
18 we don't have any identifying information about these
19 other individuals. The name of Shawn Wilson and
20 William Wilson, as you can imagine, there is hundreds,
21 if not thousands of people with that name in our CAPS
22 system.

23 However, again, Your Honor, that being said, when
24 we do a search for Jerome Jenkins --

25 THE COURT: I got it the first time.

1 MS. GALLEY: Okay. Thank you, Your Honor.

2 THE COURT: So at this point, you turned over the
3 documents that you have, that have the name "Jerome
4 Jenkins" in them; is that correct?

5 MS. GALLEY: Correct.

6 THE COURT: And you turned over the documents
7 that you have that have "Itina Faye Ray" in them; is
8 that correct?

9 MS. GALLEY: That is correct.

10 THE COURT: You have no documents or files -- and
11 when I say -- I assume there is some system where you
12 can go in and put in "Jerome Jenkins," this is his
13 date of birth, social, this is his race, this is his
14 sex, what does it find; I assume that exists?

15 MS. GALLEY: That is correct.

16 THE COURT: So when you do that, there is no
17 record for Jerome Jenkins, Senior, or G. [REDACTED]
18 or Jm.J. [REDACTED] -- did I say that right, Mr. Jenkins?

19 MR. JENKINS: Jm.J. [REDACTED].

20 THE COURT: Jm.J. [REDACTED]. And as to Shawn
21 Steven Ray, Dequan Ray, Raheem Jaquan Ray and Devonte
22 Malik Simmons, they are referenced in Itina Ray's
23 report; is that right?

24 MS. GALLEY: That is correct.

25 THE COURT: And they have no other records?

1 MS. GALLEY: No, sir.

2 THE COURT: Here is what I need DSS to do. Based
3 upon this information that you have given today, I
4 need Lonice Grant, with a date of birth -- is that a
5 woman or --

6 MR. WILSON: A female.

7 THE COURT: A female. Is she African-American or
8 what?

9 MR. WILSON: Yes.

10 THE COURT: Lonice Grant, an African-American
11 female, date of birth is [REDACTED] [REDACTED] [REDACTED] Sheree
12 Donte Ray, D.S. [REDACTED] [REDACTED] [REDACTED], Travon Cheatum,
13 Shawn Wilson, William Billings, William Wilson,
14 Kentrell Andre Simmons, Francine Washington, Annie Mae
15 Grate and Sharonda Sherrod -- are any of those people
16 white, is my next question?

17 MR. WILSON: No. All African-American.

18 THE COURT: I need them to know so they can run
19 it.

20 So I want DSS to run all of those names through
21 their system.

22 Now, on Shawn Wilson, we have a date of birth and
23 a social, so that should narrow down that common name;
24 is that correct?

25 MS. GALLEY: Correct.

1 THE COURT: And on William Wilson, is that date
2 of birth right? [REDACTED]?

3 MR. WILSON: Yes, sir, it is.

4 THE COURT: Okay. So that should narrow that
5 down. So there is only a couple that do not have
6 socials and dates of birth. So if you pull something
7 on those individuals.

8 How are they going to be able to figure out
9 whether or not it is related, is my question?

10 MR. WILSON: Well, I think what we --

11 THE COURT: I mean, even if they gave it to me, I
12 don't know how I would know whether or not it is
13 related; does that make sense?

14 MR. WILSON: Yes, sir. And what I would ask is
15 if she finds anything at all, that she brings that to
16 the Court. The Court can review it, and we can tell
17 you what we're looking for, and then the Court can
18 decide whether that fits.

19 THE COURT: Okay. So I guess the plan should be
20 let's run all of these other names, see if anything
21 exists. If anything exists, get it, okay. Whatever
22 county it is in, whatever county it is from, get it.
23 We can get back together, and you can have Ms. Vann
24 here, y'all bring the records in here and I can sit
25 here and go through it. They can help me with if that

1 matters or doesn't matter, or that woman grew up, this
2 person is in Estill and has no connection to this case
3 in any way, shape or form, or whatever it is. So we
4 can sit down and go through it together and pow-wow
5 and parse through it and determine whether it has any
6 relevance without the whole world knowing what the
7 records are.

8 If we end up turning over any other records, and
9 you need some kind of protective order in place, we
10 can get a protective order in place where those aren't
11 disseminated in the public, for attorney's eyes only,
12 or whatever it may be.

13 I'm going to tell you, and I know this is hard to
14 -- just a hard concept to grasp if you don't live in
15 this death penalty world why these matter, but they
16 matter. I understand you have confidentiality to
17 protect and there is statutes and regulations and
18 everything else, but some of these can make a
19 significant difference in a case. We may see them all
20 and they may mean nothing and no one needs them, but
21 Mr. Wilson has not only -- he has an ethical
22 obligation to attempt to get all of this stuff, and we
23 need to facilitate that as much as possible, keeping
24 in mind all of the protections that are in place for
25 these types of records. But there is not going to be

1 any dissemination, you know, unless I approve it or
2 we'll put a protective order in place.

3 How long do you need to run the rest of these
4 names, Ms. Galley?

5 MS. GALLEY: We can have them run by the end of
6 the day today, Your Honor.

7 THE COURT: So why don't you run them today and
8 tell us, yes, we have a file on this person -- or you
9 can tell me. E-mail me at Rhood -- you are not going
10 to be here next week, are you?

11 MS. BAILEY: On my computer.

12 THE COURT: E-mail me directly at
13 RhoodJ@sccourts.org. "Courts" with an "S." Dot,
14 O-R-G. Say, yes, I found files, or, no, I didn't.
15 Then we can set up a time to get together and pow-wow
16 through them, okay.

17 I'll be back in this county the last week of
18 January, so if we need time to pull stuff, that will
19 give you a few weeks to pull it.

20 MR. WILSON: Your Honor, would that include all
21 information other than --

22 THE COURT: If they find these people's names, I
23 want them to print it. So we're -- so Ms. Galley is
24 not under this-matters-or-doesn't or
25 this-is-affected-or-isn't-affected. She's not the

1 gatekeeper of it, per se. She's the finder. She will
2 bring it to me, and we can parse through it. I'm back
3 in Horry the last week in January and the first week
4 in February. So sometime in between, if there is
5 something that exists, we can get Ms. Vann and get you
6 all in here and stop normal court for a hearing and go
7 through it.

8 MS. GALLEY: If I may ask, as I've stated, we
9 have the printout on the computer, however, those are
10 not the actual case files. The actual case files may
11 be in storage in Columbia, or depending on how old
12 these cases are, they may have been destroyed, I don't
13 know. Would Your Honor like me to print out the CAPS
14 information at this point, or try to get all of the
15 files?

16 THE COURT: Why don't you get the CAPS
17 information and send it to me, and then, you know, we
18 can go from there.

19 MS. GALLEY: Thank you, Your Honor. Would you
20 like me to e-mail you all of the -- I can tell you, we
21 started pulling some of them. They are significant.
22 Would you like me to make copies, or e-mail them? I
23 know you said e-mail, but it may be a lot.

24 THE COURT: That is just the cap stuff?

25 MS. GALLEY: Just some of the CAPS stuff. We

1 haven't been able to find others.

2 THE COURT: Pull all the CAPS stuff and then mail
3 it to me in Columbia. We'll plan on getting back
4 together in the last week in January, first week of
5 February, and then if something is too old to pull
6 like a paper file, go ahead and figure it out. If
7 there is a paper file somewhere, we can make that
8 determination at that point and then get the paper
9 file if we need it. Is that good?

10 MR. WILSON: Yes, sir, it is. Yes, sir. Yes,
11 sir.

12 THE COURT: You think that works? That will get
13 it done in the next 30 days or so. That way, we're
14 moving through it instead of it just sitting.

15 MR. WILSON: Yes, sir, that works.

16 MS. GALLEY: Your Honor, I do apologize. They
17 are asking for statewide search of all of these
18 individuals; is that correct?

19 THE COURT: Oh, yeah. Yeah. Absolutely.

20 MS. GALLEY: Because that is a delay in getting
21 the paper files if they are in another county.

22 THE COURT: Right. I understand that. That is
23 why I'm not saying you have to have the paper files.
24 Let's get the CAPS report, see what's in there, and
25 then we can make a determination, and then the paper

1 files, if we need them, can come in at whatever time
2 it takes to get them, okay.

3 MS. GALLEY: Thank you, Your Honor.

4 THE COURT: Everyone good?

5 MR. WILSON: Yes, sir.

6 THE COURT: Do you need anything else while I'm
7 here?

8 (A brief pause in the proceedings.)

9 MR. WILSON: Is this one-page a summary or....

10 MS. GALLEY: It is the CAPS report, not the
11 actual paper file.

12 THE COURT: I mean, you all needed to pull the
13 file on Mr. Jenkins and his mama. I mean, go ahead
14 and pull those files. That is definitely, you know --
15 go ahead and pull those files and have them with you
16 when we get back together.

17 MS. GALLEY: Again, Your Honor, this is a 2001
18 case, so I have to do a little research on that.

19 THE COURT: See what exists or doesn't exist.
20 You know, keep us abreast of what you are finding or
21 not finding.

22 MS. WILLIAMS: I think we're good.

23 THE COURT: You good? All right. Have a good
24 day. Thank you.

25 (Whereupon, the proceedings concluded.)

1
2 CERTIFICATE OF REPORTER
3

4 State of South Carolina)

5 County of Horry)
6

7 I, Natalie Dahl, Official Court Reporter for the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate Transcript of Record of
10 the proceedings of the trial and the evidence
11 introduced in the hearing of the above-captioned case,
12 relative to appeal, in the Court of General Sessions
13 for Horry County, South Carolina, on the 12th day of
14 January, 2019.

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

18 September 4, 2019

19
20 

21 Natalie Dahl, RPR

22 Court Reporter
23
24
25

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Horry	)	2015-GS-26-01757
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JEROME JENKINS,	)	
	)	
DEFENDANT,	)	

January 22, 2019
Conway, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

SCOTT HIXSON, SOLICITOR
Attorney for the State

BRANA WILLIAMS, ESQ.
RALPH WILSON, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
INDEX OF WITNESSES:

WILLIE DAVIS

Direct By Mr. Hixson	.9
Cross By Mr. Wilson	13
Redirect By Mr. Hixson	25
Recross By Mr. Wilson	31
Further Redirect By Mr. Hixson	33
Further Recross By Ms. Williams	38
> > > < < <	
CERTIFICATE OF REPORTER	98

COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Disciplinary records	5	
2	Safekeeping order	6	

1 THE COURT: All right. We're on the record in the
2 State of South Carolina vs. Jerome Jenkins. Mr. Jenkins
3 is present.

4 Good afternoon, Mr. Jenkins.

5 THE DEFENDANT: Good afternoon.

6 THE COURT: How are you?

7 THE DEFENDANT: All right. How about you?

8 THE COURT: Doing good. Thanks. Appreciate it.

9 He is present with his attorney, Ms. Branna Williams
10 and Mr. Ralph Wilson. The State is also present
11 represented by Deputy Solicitor Scott Hixson and Solicitor
12 Jimmy Richardson. We were together a couple of weeks ago
13 taking up some housing issues, some scheduling issues, so
14 we're back together today to continue down through those
15 issues.

16 So Mr. Hixson, where would you like to start?

17 MR. HIXSON: A brief recap, perhaps, on procedurally
18 where I understood ourselves to be. As Your Honor is well
19 aware, counsel through Mr. Wilson filed a motion
20 challenging the safekeeping. Just as a factual basis, Mr.
21 Jenkins has been held in safekeeping by petition of the
22 sheriff of Horry County and the South Carolina Department
23 of Corrections for a period of time now based on a showing
24 by the sheriff of a certain criteria.

25 Apparently, during that period of time -- well, as

1 Your Honor is well aware, during ex parte hearings, the
2 trial was continued by defense motion to continue
3 preparations for this trial.

4 We bring ourselves toward an April trial date or
5 projected April trial date in this matter, so Mr. Jenkins
6 had been in safekeeping for a period of time based on that
7 motion for continuance by the defendant.

8 Since that time, he has been moved to several
9 different locations inside South Carolina Department of
10 Corrections. It's our understanding, I believe that
11 Mr. Jenkins is currently being housed in the safekeeping
12 unit in Kirkland Correctional.

13 Mr. Wilson filed a motion based on that for a better
14 understand, I guess, and, perhaps, have a finding of
15 safekeeping process maybe vital of his constitutional
16 rights. That was the basis for our hearing in Richland
17 County. I believe that was on January of 2019.

18 And at that time, Your Honor asked or request that we
19 get documents from the South Carolina Department of
20 Corrections relating to their disciplinaries or thought
21 process on why he's moved or what decisions were made to
22 put Mr. Jenkins in the situation he is in currently. And
23 in lieu of the documents to make sure someone from the
24 Department of Corrections was present to testify and have
25 that discussion.

1 Warden Willie Davis from Kirkland Correctional is
2 present in court and prepared to testify. In addition to
3 that, Your Honor, we have received quite a bit of
4 disciplinary records from the Department of Corrections.
5 I have a copy of that for the Court. I provided two
6 copies for defense counsel. I'd like to hand that up to
7 the Court if it's appropriate.

8 THE COURT: Okay. Thank you.

9 MR. HIXSON: And we would like to make this a Court's
10 Exhibit for the purposes of this hearing, Your Honor, for
11 the record. These are duplicate copies.

12 THE COURT: Okay. Does Mr. Wilson has a copy.

13 MR. HIXSON: Yes, sir.

14 THE COURT: Let's make that Court's Exhibit No. 1 for
15 the purpose of this hearing.

16 MR. HIXSON: In addition to that, I'd like to enter
17 Court's 2.

18 THE COURT: Hold on a minute.

19 (WHEREUPON, Court's Exhibit No. 1 was marked for
20 identification only.)

21 THE COURT: All right. Now, go ahead. Court's
22 Exhibit No. 2.

23 MR. HIXSON: Yes. This is a copy of the current
24 safekeeping order signed by Governor McMaster and we're
25 like to make this Court's 2.

1 THE COURT: All right. Mr. Wilson, have you seen
2 this?

3 MR. WILSON: I have, Your Honor.

4 THE COURT: All right. Great. Thank you.

5 Let's mark is as Court's Exhibit No. 2, please.

6 (WHEREUPON, Court's Exhibit No. 2 was marked for
7 identification only.)

8 THE COURT: Okay.

9 MR. HIXSON: And I just point to the Court's
10 attention, that was executed, looks like, January 10th of
11 2019 was the signature date on the one that you're
12 currently looking at, so it's good for 90 days of the date
13 of issuance.

14 THE COURT: All right.

15 MR. HIXSON: As it relates to the documentary support
16 for this, Your Honor, I'll just bring the Court's
17 attention to the packet that I handed counsel, as well, as
18 the Court.

19 There is, for lack of a better term, a list of the
20 disciplinary actions that Mr. Jenkins has been accused of
21 doing while under safe-keeper. All tolled, since he went
22 into a safekeeping August 8th of -- excuse me,
23 December 31st of 2015 is the last entry, he has 35
24 convicted disciplinary actions. And all of those
25 individual disciplinaries are contained in the packet that

1 I provide the Court.

2 It's a little difficult initially to understand, but
3 first page is a bit of a table of contents that shows the
4 date and time of the disciplinaries. Some were
5 convictions and some were dropped because he, basically,
6 in an administrative hearing bled to other ones or was
7 found guilty of other ones, and two were ultimately
8 charged criminally.

9 I guess with the media present, I don't want to go
10 exhaustively through a lot of this related to recordation
11 of some of these, but as Your Honor is well aware,
12 multiple possessions of weapons, striking employees,
13 threats to inflict death or bloodily harm to staff in
14 safekeeping. And they're individually documented in the
15 packet provided to the Court.

16 THE COURT: Okay. All right. Let's hear -- where is
17 Mr. Davis?

18 Hi, Mr. Davis, can you come on up? Do you have one
19 of these packets or do you need it?

20 MR. HIXSON: I can give you my copy if you want.

21 THE COURT: All right. Let's swear him in. Where do
22 the witnesses go in this big courtroom here?

23 Raise your right hand.

24 WILLIE DAVIS, after being duly sworn,
25 testified as follows:

1 THE COURT: So this is going to be a little different
2 than a normal kind of courtroom witness situation because
3 the lawyers are -- don't always know what's in my mind,
4 okay.

5 So I'm going to let them kind of -- we're going to
6 kind of go round robin here where everybody has an
7 opportunity to kind of get to the different things they
8 want to get to.

9 If you need to refer to anything, that's perfectly
10 fine. You know, when you refer to something, just tell us
11 where you're looking so we can kind of find where you are.

12 I'll let Mr. Hixson start.

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. What I'm trying to gather is,
15 I understand how Mr. Jenkins was moved from Horry County
16 into SCDC, okay.

17 THE WITNESS: Yes, sir.

18 THE COURT: My question is how we got to where he is
19 being housed now?

20 THE WITNESS: Yes, sir.

21 THE COURT: Are you following me?

22 THE WITNESS: Yes, sir.

23 THE COURT: I'll let Mr. Hixson jump off and then
24 we'll kind of --

25 And Mr. Wilson, of course, you'll have the

1 opportunity to question this witness and all these good
2 things as we go through it, okay.

3 Go ahead, Mr. Hixson.

4 DIRECT EXAMINATION:

5 BY MR. HIXSON:

6 Q Please tell us what you do for a living, sir.

7 A I'm currently a warden at Kirkland Correctional
8 Institution in Columbia.

9 Q And based on that position, are you familiar with the
10 nature of safe-keeper, a county pretrial detainee and
11 SCDC's process through that?

12 A Yes, sir.

13 Q Are you familiar, just generally speaking, with the
14 defendant in this particular case, Jerome Jenkins?

15 A Yes, sir.

16 Q Can you just briefly describe what the role of SCDC's
17 role in safe-keeper itself in a normal case?

18 A Usually, it's -- it's usually high profile case or a
19 troublesome inmate at a county facility. And the county
20 usually goes to the governor's office and asks for
21 permission for SCDC to accept responsibility for this
22 inmate.

23 Usually, we house them at Lee Correctional
24 Institution, but when the inmate becomes troublesome,
25 assaultive towards staff, there's only really one other

1 place SCDC can house these guys and keep them separated
2 and it's in our old supermax building, which is at
3 Kirkland.

4 Currently, we have 36 death row inmates back in the
5 building, but we also house other troublesome inmates
6 back in the building, also. It's a 50 bed unit.

7 Q Now, you mentioned the words death row. And there's
8 much discussion at a hearing you weren't here for. Can
9 you please describe for the Court those terms mean things.
10 So coming from Lee to Kirkland, describe what that means
11 for the Department of Corrections.

12 Why -- let's just start talking about this case
13 instead of generals. Break it up for me, why was Mr.
14 Jenkins moved and where is he and why?

15 A Disciplinary reasons, various assault. He has an
16 extensive assault history. I actually was at Lee when he
17 came to Lee as a safe-keeper. I was social of operations,
18 but since I've left, I've seen the disciplinary troubles
19 that is this guy possessing. I've seen -- when I've
20 looked through the documents before I accepted him at
21 Kirkland, before he was moved there, you know, he had
22 assault -- various assaultive on staff and we needed to
23 deter that type of behavior, so he was moved up there to
24 Kirkland.

25 Q Specifically, when you're referring to assaultive

1 behavior, let me hand up, I believe it's the only copy I
2 have to provided up to you. I believe I gave the Court a
3 copy of this in the packet.

4 It's like a table of contents, I guess, that
5 summarizes some of those points. And then the booklet
6 itself is the details of each individual incident, I
7 believe. Is that safe to say?

8 A Yeah, that's safe to say.

9 Q Could you please describe what you're referring to
10 assaultive behavior. Is that use of a weapon or a
11 homemade knife or something at the Department of
12 Corrections?

13 A Yes, it is. Also, throwing bodily fluids on an
14 employee, striking an employee. He has -- he has five
15 striking employees in the year 2018. He has one, two,
16 three assault and battery on employees, 2016 -- I mean,
17 2018, and he has a bunch of throwing and exposure of
18 bodily fluids on an employee. All this occurred at Lee.

19 Q All right. Can you describe a little bit more while
20 we're talking about death row, too, what that means for
21 the Department of Corrections? From a layperson, it
22 sounds kind of shocking. Can you describe what the
23 reality of that is?

24 A As you know, we have inmates in the State of South
25 Carolina on death row. They were housed at Lieber

1 Correctional Institution until September 26th of 2017,
2 which they was moved to Kirkland. We had -- there was an
3 incident that happened at Lieber that caused the move, for
4 them to move where we put them. And the building that we
5 put them is in a more secure area than it was at Lieber.

6 We couldn't afford to have that high profile inmate
7 escape because we had an escape at Lieber back around
8 July 4th or 2017, where an inmate escaped and went all the
9 way to Texas.

10 So the decision was made since we had an empty
11 building at that time to move them to a more secured area,
12 plus it was well staffed. And we put them back there, but
13 we also had 12 inmates that was very troublesome to the
14 system, high escape risks, various assaultive on staff.
15 We kept them housed also in that building.

16 THE COURT: At Kirkland?

17 THE WITNESS: At Kirkland.

18 BY MR. HIXSON:

19 Q All right. Was the decision to move Mr. Jenkins from
20 Lee based on Mr. Jenkins' conduct?

21 A Yes. His disciplinary history.

22 Q Was it based on any other arbitrary factors or other
23 factors other than his interaction with staff?

24 A No, sir.

25 MR. HIXSON: Your Honor, I have no more specific

1 questions other than, perhaps, responding based on their
2 questions.

3 THE COURT: Okay. Mr. Wilson.

4 MR. WILSON: Thank you, Your Honor.

5 CROSS-EXAMINATION:

6 BY MR. WILSON:

7 Q All right. Mr. Davis, is there some procedure or
8 some process by which you decide to transfer him from Lee
9 to Kirkland?

10 A Those decisions are made by division operation which
11 oversees all the prison, and they make the administrative
12 decisions about whether to keep him or move him.

13 Q Okay. And so while he was at Lee and he had some
14 infractions, those would have been what we call
15 administrative infractions?

16 A Those would be in-house infractions, but at the same
17 time, if it's -- if it warrants a street warrant, that was
18 a little bit more serious.

19 Q Okay. Did he have any street warrants?

20 A I have no -- I don't know on that one.

21 Q So you have no idea whether he had a street warrant
22 while he was at Lee?

23 A No, sir.

24 Q Okay. And so if there was no street warrant, then
25 the infractions would be considered what we call

1 administrative infractions, correct?

2 A We have something called a disciplinary system, which
3 we have our --

4 Q Okay.

5 A -- disciplinary hearing officer. And when an inmate
6 receives an infraction, they go to see that person, but
7 when you have a person as troublesome as Mr. Jenkins,
8 that --

9 Q Well, we --

10 A We got -- we've got a mission statement. Our mission
11 statement is to protect public, staff and inmates. If we
12 can't protect them in that order, then we fail in the
13 system.

14 Q Okay. Just so I understand, when you say
15 troublesome, you mean a person that has multiple
16 infractions or serious infractions --

17 A Multiple, as well as serious.

18 Q Multiple, as well as serious?

19 A Yes.

20 Q And again, if a person is bad enough or they do
21 something that's bad enough, you can get a warrant to
22 charge them and bring them to court for that particular
23 offense, is that not correct?

24 A Yes, correct.

25 Q And if Mr. Jenkins had done something while he was at

1 Kirkland that warranted getting an arrest warrant for him
2 and charging him criminally for that violation, you would
3 have certainly done that, would you not have?

4 A Yes, we would have.

5 Q So what that would mean is that in your handling of
6 this situations at Lee -- and you said you were at Lee for
7 a period of time when Mr. Jenkins was there?

8 A For a period of time, yes.

9 Q And as far as you know, there was never any criminal
10 warrant issued for Mr. Jenkins while he was at Lee,
11 correct?

12 A Correct.

13 Q And while he is at Kirkland and you're now at
14 Kirkland, there has not been a criminal warrant issued for
15 any conduct on his behalf that you're aware of?

16 A Like I said earlier in my statement, we are a more
17 secured place than they are at Lee.

18 Q Okay. And he's been with you now at Kirkland for how
19 long?

20 A August, September, somewhere around there.

21 Q Okay. And is there any -- has he been convicted of
22 any violation since he's been at Kirkland? And I use the
23 word convicted, administratively, have you found him
24 guilty of any violation since he's been at Kirkland?

25 A I don't see.

1 Q Okay. So he is at Kirkland and he's been there since
2 September, mid-September?

3 A Yes.

4 Q Okay. And there's been no conviction for any
5 violation since he's been there?

6 A Not according to this document.

7 Q Okay. Now, when he was brought into Kirkland, where
8 was he housed? You said that he was in supermax. What
9 does that mean? Is that death row, supermax?

10 A It's considered our death row building now, but it's
11 our old maximum security unit.

12 Q Okay. So -- but when he came into it in September,
13 it was considered death row?

14 A Yeah, it is now the death row building.

15 Q Okay. And do you put other pretrial detainees in
16 death row?

17 A That is the only other place besides Lee that we can
18 house --

19 Q Okay.

20 A -- pretrial detainee.

21 Q So a person who has not been convicted of any crime
22 whatsoever, if he comes in to you for safekeeping, you can
23 put him on death row?

24 A We have troublesome inmates as well as death row
25 inmates back in that area.

1 Q Okay. Well, can you help me understand what the
2 difference is between a pretrial inmate that you're
3 housing and an inmate who's been sentenced, say, to life
4 without parole? Is that there any difference? I mean, do
5 you see them any difference in how you handle them?

6 A We handle it according to behavior.

7 Q Okay. So you handle people based on their behavior,
8 not on whether they are either pretrial detainee or
9 whether they are a convicted criminal of a very serious
10 offense, is that what you're saying?

11 A We -- we house inmates according to their behavior.

12 Q Okay.

13 A We give them the opportunity. You're talking about
14 the prehearing detainee. You give them an opportunity to
15 be at Lee, which is our designated area for our prehearing
16 detainees.

17 Q Okay.

18 A Once they become too much for Lee, then we put them
19 in a more secure area. That's what we did.

20 Q Let me ask you this. At any point in time, knowing
21 that he was a pretrial detainee and not an inmate at SCDC,
22 did you ever contact Horry County and say to Horry County,
23 look, we've got a problem here with your inmate. You guys
24 need to come and get him and take him back and y'all house
25 him and you deal with him?

1 A That's not up to me.

2 Q Okay. Well, who would that be up to?

3 A Division operations.

4 Q And -- well, did anybody from division operations do
5 that as far as you know?

6 A I have no idea.

7 Q All right. And now, explain to us what the
8 difference is in being in general population and being on
9 death row? What is the difference in privileges and in
10 how an inmate is treated?

11 A Death row -- well, I'm trying to understand your
12 question because you're saying general population.

13 Q General population meaning individuals who are on
14 your campus, but they are allowed to go freely out into
15 the yard or they're allowed to eat in the cafeteria or
16 whatever it is that they do there?

17 A Our death row inmates, we house them together. And
18 most of their services are brought them as far as they're
19 feeding, their canteen. We give them rec. It's very
20 restrictive.

21 Q What about, how often do they get to go outside, say,
22 to get in the sunlight?

23 A Death row?

24 Q Yes, sir.

25 A Monday, Wednesday, Friday.

1 Q Monday, Wednesday, Friday. For how long?

2 A An hour.

3 Q One hour three days a week?

4 A Yes.

5 Q What about those people who are in what we call
6 general population, that is those inmates who are just
7 there and they're not causing infractions, how often do
8 they get wreck time or get out to be out and about?

9 A Can I ask a question, please?

10 THE COURT: Not normally in court, but if you want
11 clarification.

12 THE WITNESS: I'm trying to figure out why we're
13 talking about general population inmates.

14 THE COURT: I think his confusion -- and I'm going to
15 let you jump back in if you need to. There's no jury in
16 the room, so we're all trying to discuss this.

17 I think his confusion is that Mr. Jenkins was never
18 in the general population --

19 THE WITNESS: He was never -- yeah.

20 THE COURT: -- because of the way he came in, he was
21 never part of general population. But are you asking him
22 to compare what a real general population person is like?

23 MR. WILSON: Yes.

24 THE COURT: So even though Mr. Jenkins was never in
25 general population, what Mr. Wilson is saying is tell us

1 what a normal person who is at Kirkland or Lee who has an
2 SCDC sentence is like compared to someone who's housed on
3 death row?

4 Did I say that --

5 MR. WILSON: That is correct, yes, sir.

6 THE COURT: I understand you're like he was never in
7 general population, but don't worry about that right now,
8 we're going to go down this path for a little bit and see
9 where it leads us. Make sense?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay.

12 THE WITNESS: A general population inmate, it all
13 depends on his programming, going to the cafeteria, going
14 to the cafeteria for all three meals. Like I said attend
15 program in education. They get canteen. They get to go
16 to the canteen. They get recreation every day,
17 presumably, when they finish doing their work. That's a
18 job in the cafeteria, commissary, outside detail,
19 horticulture, anywhere.

20 BY MR. WILSON:

21 Q Okay.

22 A Usually, these are your more well-behaved inmates.

23 Q And so they get greater privileges?

24 A Yeah, they get greater privileges, of course.

25 Q Now, when Mr. Jenkins came to Lee --

1 A Uh-huh.

2 Q -- from Horry County, he was immediately put in lock
3 up; is that correct?

4 A That's the process.

5 Q So there was never a time when he wasn't in lock up
6 from the time he got to Lee?

7 A Correct.

8 Q All right. And when I say lock up, I mean, he was
9 in -- I guess at Lee, that would have been the most secure
10 place you had at Lee?

11 A Restricted housing, yes.

12 Q From day one?

13 A Yes.

14 Q And he stayed in that restricted facility until you
15 shipped him off to Kirkland, which was even more
16 restrictive?

17 A Correct.

18 Q Correct?

19 A Correct.

20 Q And he's now at Kirkland on the most restrictive of
21 all restrictive areas, which is death row?

22 A Yes, correct.

23 Q And it's your understanding that because he is a
24 safe-keeper that you can treat him just like you would any
25 other inmate. Is that what you're saying?

1 A No, it's not. It says that he has some behavior
2 issues that will need to be addressed.

3 Q Okay.

4 A And our job is to protect our staff. And by moving
5 him, that was protecting our staff.

6 Q Okay. Well, what about his rights as a pretrial
7 detainee? I mean, are you saying that pretrial detainees,
8 if they have discipline problems, then they lose all their
9 rights? They don't have any, is that what --

10 A No, I'm not saying that. He still has all his
11 privilege that he would have if he was at Lee. As a
12 matter of fact, he probably has more because of the
13 staffing issues than they have at Lee.

14 Q Okay.

15 A Meaning, recreation, probably never received any at
16 Lee. We give them rec.

17 Q Okay.

18 A Access to the law library, access to the phone. He
19 has all that.

20 Q Okay. So he has that now on death row?

21 A Yes.

22 Q So, and that's on Monday, Wednesday and, what did you
23 say? You said three days?

24 A No, he doesn't. He has it twice a week. For our
25 non-death row inmates that's housed in that unit, they

1 receive rec on Tuesdays and Thursdays.

2 Q Okay. All right. All right. So now, let me ask you
3 this, in regards to Horry County, have you had contact
4 with Horry County about his safekeeping?

5 A No, I haven't.

6 Q You have not?

7 A Not me.

8 Q All right. When he was transferred from Lee -- well,
9 let me back up. When he was transferred -- well, after he
10 got to Lee, was there ever a time when you were there at
11 Lee that we were contacted? That is, his lawyers about
12 his safekeeping status that you know of?

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

14 Q All right. Since he's been at Kirkland, has there
15 ever been a time that you participated in a process where
16 his lawyers were notified that he was being transferred
17 from Lee to Kirkland?

18 A No, sir, not me.

19 Q All right. And how long has he been at Kirkland now?

20 A Like I said, I believe he got there around August,
21 September, somewhere around that area.

22 Q All right.

23 MR. WILSON: Your Honor, will you bear with me one
24 second?

25 THE COURT: Of course. Yes.

1 (Pause.)

2 BY MR. WILSON:

3 Q Let me ask one other question, can he have family
4 visits when he's on death row?

5 A He is considered a RHU/safe-keeper. He can have
6 immediate family members only.

7 Q He can have immediate family members only?

8 A For visits.

9 Q I'm sorry?

10 A For visits.

11 Q For visits?

12 A Yes.

13 Q And how often is that?

14 A I would have look at the policy, but he has to write
15 a request and get his family to call and set up an
16 appointment. And I don't know how many visits he can have
17 per month.

18 Q All right. And that's just --

19 A I'm not sure. That's within the policy.

20 Q And that's just for adult visitors?

21 A Yes.

22 Q No children?

23 A No, sir.

24 MR. WILSON: I don't have any other questions, thank
25 you.

1 MR. HIXSON: Yes, sir.

2 (Pause.)

3 REDIRECT EXAMINATION:

4 BY MR. HIXSON:

5 Q Mr. Davis, can I refer you to -- I believe I'm
6 referring to part of Court's Exhibit 1, which is this
7 document that's kind of the records summary report. That
8 one.

9 A Yes, sir.

10 Q Let's spend some time going through that, okay?

11 A Yes, sir.

12 Q It's a three-page document, and it's broken up into
13 subdivisions, I believe, isn't it?

14 A Yes.

15 Q And let's start with -- get some dates and times
16 stamped down. Let's go to the last page, page three,
17 under the category that says history of movements.

18 A Uh-huh.

19 Q Do you recognize this item, you use it in the
20 ordinary course of your business?

21 A Yes, sir.

22 Q All right. Looks like -- you see where it says
23 September 20th of 2018?

24 A Yes, sir.

25 Q Looks like Kirkland max, he was sent Kirkland as a

1 safe-keeper on September 20th of 2018; is that right?

2 A Yes, sir.

3 Q Okay. So prior to that, all those dates prior to
4 that, he was at Lee, right?

5 A Yes, sir.

6 Q And it shows movements in and out, there's a lot of
7 detail. The Court has a copy of that. So from August 6th
8 of 2015, South Carolina Department has got Mr. Jenkins as
9 a safe-keeper and kept him at Lee until September 20th of
10 2018; is that right?

11 A Yes, sir.

12 Q And then you guys got him on the 20th at Kirkland, so
13 he has been to Kirkland to this day, correct?

14 A Yes, sir.

15 Q Okay. Thank you. So we're talking September 20th,
16 which is pretty much -- that's exactly what -- you said
17 September, August. You weren't really sure of the dates,
18 but now we have some documentations relating to that.

19 Now, if we have go to the first page, it shows
20 criminal charges on Mr. Jenkins over the period of time
21 that he was in the Department of Corrections; is that
22 right?

23 A Yes, sir.

24 Q First one being, January 19th of '16 and January 11th
25 of '16, he was charged criminally for throwing bodily

1 fluids on a corrections employees; is that right?

2 A Correct.

3 Q Now, below are assaultive disciplinaries. And that
4 goes December 31, 2015?

5 A Yes, sir.

6 Q And those are assaultive convictions. And what are
7 we up to, 22 of those; is that right? And if you look at
8 your booklet if you need to refer to more detail, the
9 booklet I provided. And all those documents came from
10 your office, so I'm sure you're used to it?

11 A Yes, sir.

12 Q Throwing, exposing bodily fluids on a corrections
13 employee, convicted. Now, if my dates are correct, from
14 December of '15 to September 20th of '18, this all
15 happened when he was at Lee before a decision was made to
16 move him; is that correct?

17 A Correct.

18 Q So he was convicted of throwing bodily fluids,
19 exposing or throwing bodily fluids. And the bodily fluid
20 we're talking about has actually been urine; is that
21 right?

22 A Yes, sir.

23 Q Striking an employee with a -- that was dropped,
24 excuse me. Striking another employee, possession of a
25 weapon on January 17th, June 21st, possession of a weapon.

1 And we're talking about homemade knives or shanks; is that
2 right?

3 A Yes, sir.

4 Q So one, two, three, four, five, convictions, January
5 17th, July 21st, August 28th, December 30th, April 24th,
6 all those were major assaultive convictions for possessing
7 a weapon while at Lee; is that correct?

8 A That's correct.

9 Q Right. You have an assault and battery of an
10 employee, throwing bodily fluids on an employee,
11 possession of a weapon and striking an employee, all on
12 June 13th of 2018. He was convicted of four of those and
13 two of them were dropped; is that correct?

14 A That's correct.

15 Q On July 25th of 2018, he was possessing another
16 weapon. And then if we go to the detailed packet, I don't
17 want to do this on all of these, but on July 25th -- I'll
18 refer you to -- this is the June 13th of 2018, agent --
19 isn't it true that agents were removing -- I mean,
20 officers from the Department of Corrections were removing
21 Jerome Jenkins from the cell because he threw urine on
22 another officer who was attempting to pass out food trays.

23 During the attempt, he struck another through the
24 flap. After trying to remove a white towel tied around
25 the flap so it couldn't close, Jenkins pushed the flap

1 open and cut Sergeant Trapp on his left hand with a sharp,
2 metal object that was one of two shanks removed from his
3 cell. That happened June 13th of 2018, correct? That's
4 one of 12 we've gotten so far. And I'm referring to the
5 incident dated June 13th, 2018. That's a possession of a
6 weapon and assault on an employee conviction?

7 A Correct.

8 Q Then we go to July 25th of 2018, that's an
9 administrative conviction for possession of a weapon,
10 another shank and another striking of an employee. He was
11 convicted of that, as well as throwing bodily fluids --
12 excuse me, that's through September.

13 September 13th, three on that same day of throwing
14 bodily fluids. Two were convicted, two were not guilty.
15 September 17th of '28 [sic], assault and battery of a
16 corrections employee, possession of a weapon, striking an
17 employee and throwing bodily fluids on an employee,
18 assault, those were all --

19 Now, let's clarify that. Can you see on those
20 specific dates, I believe, that the administrative hearing
21 on determining whether he did this was on January 17th of
22 2019, so that was just last Thursday when this court
23 hearing was supposed to be on these pending offenses; is
24 that correct?

25 A Correct.

1 Q Okay. Now, if we go down to the bottom of the page,
2 I want to just bring a small point to your attention. All
3 of those occurred in Lee, is that correct, before ever
4 making it to Kirkland?

5 A Correct.

6 Q Would that serve as a substantial basis on why you
7 want to move Mr. Jenkins into a more restrictive
8 environment so your correction employees will not be
9 stabbed by metal objects?

10 A Right.

11 Q Now, the non-assaultive disciplinaries, that's the
12 bottom of the first page and into the second page. Those
13 are two threatening the life of correctional employees, I
14 believe. It says threatening to inflict harm. That is
15 December 30th of 2018 and December 28th of 2018. Those
16 occurred while this inmate was in Kirkland; is that
17 correct?

18 A Correct.

19 Q And then on September 20th of 2018, the day that
20 Mr. Jenkins was transported to Kirkland or still at Lee,
21 he has a major pending violation for damage or destroying
22 property, as well; is that right?

23 A Yes.

24 Q And then finally, you'll see top of the third page,
25 prior to movement one, two, three, four, five, six, seven,

1 eight, 12 more possessing contraband, possessing cell
2 phones and various -- evading security devices, refusing
3 to obey; is that correct?

4 A Correct.

5 Q And did all of these serve as a basis for violations
6 at Lee of why you believed that upgraded security status
7 would be appropriate for this Defendant and moved him into
8 Kirkland?

9 A Correct.

10 MR. HIXSON: I have no further questions.

11 THE COURT: Mr. Wilson.

12 MR. WILSON: Just briefly, Your Honor.

13 RE CROSS-EXAMINATION:

14 BY MR. WILSON:

15 Q In moving him to Kirkland -- and I think I kind of
16 touched on this already, in moving him to Kirkland, did
17 you notify -- based on -- there has to be some policy and
18 procedure that you use in order to transfer people, I
19 would assume that; is that correct?

20 A Correct.

21 Q And that policy and those procedures, do they not
22 require that you notify his attorney and give them an
23 opportunity to be heard before you transfer them when
24 there's a safe-keeper?

25 A I'm not sure about that. I'd have to look at the

1 policy itself to see. I'm not sure.

2 Q I'm one other question, when you're a safe keeper
3 like Mr. Jenkins was when he came into Lee, it's my
4 understanding that from listening to you that he was in
5 maximum -- supermax before he had the first violation,
6 correct?

7 A Not correct.

8 Q Okay. Where was he?

9 A He was housed in the restrictive housing unit.

10 Q All right.

11 A And that's not our maximum security.

12 Q Okay. At Lee?

13 A At Lee.

14 Q All right. So what's your maximum security at Lee?

15 A We don't a maximum security at Lee.

16 Q Well, is the restrictive unit the most restrictive
17 unit that you have at Lee?

18 A It's the most restrictive unit that we have --

19 Q All right.

20 A -- at Lee, but it's not maximum security.

21 Q Okay.

22 A Where he's at now is what we consider maximum
23 security.

24 Q I'm with you. So what you're saying is that was the
25 most secure place at Lee?

1 A Yes.

2 Q That he could have possibly been?

3 A Yes.

4 Q Okay. And my point is simply this, that when he came
5 to you originally, he had no violations at that point and
6 you had already put in the most restrictive place that you
7 had, correct?

8 A At Lee.

9 Q At Lee?

10 A Yes, correct.

11 MR. HIXSON: Just a brief --

12 FURTHER REDIRECT EXAMINATION:

13 REDIRECT EXAMINATION:

14 BY MR. HIXSON:

15 Q When you received an order from the governor in this
16 case, it's Henry McMaster, I believe. Initially, it was a
17 prior governor who ordered -- I want to show you a copy of
18 what's been marked as Court's 2.

19 MR. HIXSON: Your Honor, may I hand that to the
20 witness?

21 THE COURT: Sure.

22 MR. HIXSON: I believe as a refresher.

23 BY MR. WILSON:

24 Q And describe for the Court what directives the
25 governor has given the office of the Department of

1 Corrections to do as it relates to this inmate? In other
2 words, are you supposed to -- what directive does the
3 governor tell you'll relating to this safekeeping?

4 I'll just get right to the point, I guess. You
5 exercise your judgment in determining protecting the
6 general public, as well as the well-being of the officers
7 involved?

8 A Yes, that's on there.

9 Q So how you do it is up to your discretion as given to
10 you by the governor of the State of South Carolina?

11 A Correct.

12 Q Let's also ask about your general idea of
13 safekeeping. I'm not going to ask you the details because
14 you probably have never filled out a safe-keeper
15 petitioner before you get them, you don't --

16 A Yeah, I get them, I don't fill them out.

17 Q But your general idea, is it safe to say a
18 safe-keeper petition means that a county is saying we're
19 having a hard time dealing with the security requirements
20 of this person and we have done the necessary requirements
21 to let the governor say we agree with you, Horry County.
22 This guy is a problem, let the Department of Corrections
23 try to secure this person. Is that correct?

24 A Correct.

25 Q So you know coming in the front door, a safe-keeper

1 has already jumped through that?

2 A Correct.

3 Q And the governor says it is a problem, South
4 Carolina, help Horry County out by housing this person?

5 A Correct.

6 Q And that's what you did?

7 A That's what we did.

8 MR. HIXSON: No further questions.

9 THE COURT: All right. Now that he is in Kirkland,
10 one of the biggest concerns I have is his access to his
11 attorneys. So he is in a pretrial state. He has not been
12 convicted of anything. And we could probably debate for
13 hours over how many infractions or what type of
14 infractions lead to somebody being put there. But one of
15 my major concerns at this point in time -- and I
16 understand what yours are and I'm not disagreeing with
17 you, but one of my major concerns is his ability to have
18 access to his attorney, okay.

19 THE WITNESS: Yes, sir.

20 THE COURT: Now, keep in mind, I'm asking this
21 question as somebody who spent years of my life
22 representing people and I've been in almost every prison
23 in the State. I've been on death row. I mean, I
24 represented people that are in Supermax at Lee. I've been
25 present at Lee more times than I care to remember. I've

1 been at Kirkland more times than I care to remember.

2 So I've been inside facilities, and I know for an
3 attorney to go in a normal facility just to visit someone
4 who's already in, you've got to call, you've got to make
5 an appointment, you've got to get there, you've got to
6 wait.

7 I mean, I've been inside of McCormick in the control
8 room when all the white shirts came running in and they
9 were covered in red. And they said you better leave right
10 now, or we're about to lock down and you're not going
11 anywhere until we finished the lock down, right.

12 So, I mean, I don't want you to think I'm saying this
13 as somebody who hasn't been inside a facility and met with
14 people. But what I'm concerned about is between now and a
15 trial date, Mr. Jenkins having access to his attorneys.
16 Tell me how that works with him being housed where he is
17 housed now?

18 THE WITNESS: Just like if he was at Lee, the
19 attorney would make the call, set up the appointment and
20 we fulfill the request. We have a schedule. It always
21 depends on how the schedule looks. You know, I don't
22 think there's any difference.

23 THE COURT: Is there a way to prioritize them or is
24 there a time that they could be told they couldn't come as
25 long as they make it --

1 THE WITNESS: We have -- back there, everything is
2 hands on. Everything is brought to them. So we have to
3 have available space, for one, and make sure that we don't
4 have already too many other visits set up.

5 So, like I said, if they call and they schedule
6 prior, you know, we'll make sure he has access every time.

7 THE COURT: Okay. So you believe that the attorneys
8 can gain access to him?

9 THE WITNESS: Absolutely.

10 THE COURT: In the normal course --

11 THE WITNESS: Absolutely.

12 THE COURT: -- akin to what it's like to get a normal
13 appointment at SCDC? Like the county jail, most county
14 jails, when I practiced law, I could just show up and see
15 my client. But when I went to SCDC, I knew I had to have
16 an appointment, had to talk to somebody in the warden's
17 office, I had to send a letter saying this is who I am,
18 this is who I represent, this is who I want to meet with,
19 all those good things. And then they show up and go
20 through the normal security screenings and they're given a
21 space, some form of space in which to meet.

22 THE WITNESS: Well, since he's in that building, they
23 have to go through two screenings.

24 THE COURT: That's why I'm asking these questions.

25 THE WITNESS: As long as they call and make the

1 point, there is no reason why.

2 THE COURT: Okay.

3 THE WITNESS: Nine out of ten times, if we have a
4 lawyer that can't get appointment scheduled like they want
5 to, I talk to them directly and we'll see what we can do.

6 THE COURT: All right. Any followup on that, Mr.
7 Hixson?

8 MR. HIXSON: No, sir, I don't.

9 THE COURT: Mr. Wilson or Ms. Williams, either one?

10 RE CROSS-EXAMINATION:

11 BY MS. WILLIAMS:

12 Q Thank you, Mr. Davis. We have a concern is there
13 going to be a limit on like the number of visits, the
14 number of days, the compression of where we go? Because
15 we, certainly -- realistically, the reality of it is we've
16 gotten denied at Lee more than once when we tried to go
17 make the appointment.

18 A How about at Kirkland? Since he's been at Kirkland,
19 have you ever been denied?

20 Q No, not that, but the trial date is set. We just
21 need to know if there's a limit. Like, if we wanted to go
22 every single day.

23 A We probably could handle that, you know.

24 Q We did get denied in December at Kirkland.

25 A Whoa did you make contact with then?

1 Q When our assistant was trying to schedule, what
2 happened is we were told they could only have two attorney
3 per a day and two attorneys had already booked.

4 THE COURT: Like two attorneys for the whole --

5 MS. WILLIAMS: That's correct, for the whole --

6 THE WITNESS: Anytime you get something like that,
7 you can call general counsel and they'll call me directly
8 and we'll make it happen.

9 BY MS. WILLIAMS:

10 Q All right. And it will be the same procedure, like
11 bringing -- because our big concern is when he was at Lee,
12 we had a real issue with trying to bring in the laptop,
13 trying to bring in things --

14 A When you schedule the visit, just let them know what
15 you're trying to bring in. They will bring it to me for
16 my approval. And I do approve laptops.

17 Q How about photographs? Because, unfortunately, if
18 we're going to be at trial, it's down to the nitty gritty,
19 we've got to actually go through -- we're going to have to
20 go through every single thing we need go through with our
21 client.

22 A As long as you don't give him the photographs
23 directly. Our policy is he cannot keep them in his
24 possession. They have to go back into a secured area once
25 the attorney visit is over. But if he needs to see them,

1 we'll put him in a secured area to give him time to see
2 those photos.

3 Q Well, what I was talking about is when we're in there
4 actually going over them with him. I mean, if we bring
5 them with us, go with him and return them to us?

6 A That will be fine.

7 THE COURT: But they don't allow you to leave
8 anything with them.

9 MS. WILLIAMS: Correct.

10 THE COURT: Is that what I hear you saying, Warden?

11 THE WITNESS: Correct.

12 MS. WILLIAMS: Thank you.

13 THE COURT: Mr. Hixson?

14 MR. HIXSON: No, sir.

15 THE COURT: All right. Mr. Davis, thank you very
16 much for showing up today. I sincerely appreciate it.
17 Some of this was just educational, I think for me, too.
18 You can leave those right there. I appreciate you coming
19 and taking time out of your day. Thank you very much.

20 THE WITNESS: No problem.

21 THE COURT: All right.

22 MR. WILSON: Your Honor?

23 THE COURT: Yes, sir.

24 MR. WILSON: There is one thing that we did not ask
25 him.

1 THE COURT: Okay. Stay right there, Mr. Davis.

2 MR. WILSON: What about weekends, can we visit with
3 the defendant on weekends?

4 THE WITNESS: You'll to give -- as long as you make
5 a -- if it's -- if your trial is coming up and you really
6 need to see him, I don't have a problem with it. We have
7 -- our death row personal visits scheduled for weekends,
8 but I can make some stipulations for you to come in, but
9 you have to give me advance notice.

10 THE COURT: Okay.

11 MR. WILSON: Thank you, Your Honor.

12 THE COURT: Anything else on that issue?

13 MR. HIXSON: Not on that issue.

14 THE COURT: Okay.

15 MR. HIXSON: Just discussion, if that's appropriate.

16 THE COURT: Yeah, let's talk about it.

17 MR. HIXSON: Our goal, number one goal is to make
18 sure the process relating to safekeeping is appropriate,
19 it's not a constitutional violation. Some of the concerns
20 in the initial arguments, in the initial statements, I
21 believe we had a sufficient showing relating to the
22 documents, State's 1 and 2 -- or Court's 1 and 2, the
23 behavior that led to the transfer.

24 That's a separate issue from trial preparation,
25 getting to the point where we're gearing up with this.

1 This is protecting the integrity of the safekeeping
2 process, that that was appropriate based on this
3 defendant's conduct.

4 Having said that, step two of it is we certainly
5 understand and want to make sure we're able to facilitate
6 counsel preparing for this trial in an appropriate way and
7 sufficiently.

8 I have touched base with the sheriff and others about
9 preparing expectations for security. As Your Honor is
10 aware at the hearing in Richland County, we made the
11 statement at some point in time, Mr. Jenkins is coming
12 back to Horry County to prepare for this trial. The only
13 question is when the Court wants that to happen.

14 So I asked the sheriff -- the sheriff is present in
15 case we want to talk about it. I'm not trying to put you
16 on the spot, sir, but about understanding at some point in
17 time, the Court is going to say I'm going to protect this
18 defendant's right to a fair trial, he's coming back to
19 Horry County to get this thing ready to make sure there's
20 no issues with that. And we accept that as the way it
21 should be and want to protect his right to a fair trial,
22 as well. I guess that's more of a statement than
23 argument, Your Honor.

24 THE COURT: Okay. Yes, sir.

25 MR. WILSON: Your Honor, there's probably two issues.

1 One, initially, we were arguing the constitutional
2 violation of the 90 days, in that in and of itself, by
3 them failing to notify us each 90 -- after each 90-day
4 period that that became a violation of the governor's
5 order and of their own regulations. And they've been
6 consistently in violation of those from day one -- well,
7 not from day one, but after the first 90 days and
8 continued to do that throughout.

9 Now, the whole thing about moving him from Lee to
10 Kirkland is a whole other violation because they were
11 already holding him, at least, in my humble opinion
12 unconstitutionally by not having complied with the order
13 from the governor or from their regulations.

14 And then they transfer him to Kirkland without notice
15 again so that nobody knows. But then to put him on death
16 row when he is a pretrial inmate, I mean, really just adds
17 to the injury that this whole thing raises. That's my
18 first set of concerns.

19 The second set of concerns that I have is, if --
20 we're talking about having a trial in April of this year.
21 And I will have to have reasonably access to this
22 defendant, sometimes even in the evenings. Because
23 sometimes that's the only time I can get to go or
24 sometimes what happens is, when we're preparing, we're
25 going to have questions that we need to try to talk to him

1 about or -- and no matter what is said here today, I can
2 tell you having been -- I've been to Kirkland umpteen
3 times and I've been to Lee a zillion times over the years,
4 and we have trouble getting there more than once a week.

5 If you're trying to schedule an appointment to get in
6 there for more than once a week, it's going to be almost
7 impossible, no matter what has been said here. And that's
8 because a lot of it is not within our control.

9 If there are other lawyers out there and they're
10 trying to schedule stuff, too, because court is going on
11 in Columbia all the time, more than even Horry County. So
12 it's going to be difficult.

13 I can tell you, like, in December, we tried to go see
14 this defendant in December. They told us, well, no, we
15 can't accommodate you because, you know, we've got stuff
16 going on. I do understand that. It doesn't help me with
17 my case with this defendant, but I understand that.

18 The other thing is, I really would ask the Court, and
19 I know this is probably getting a little bit away from
20 where we were on the issue with the executive order and
21 the policy regulations, but in order for us to be
22 effective, we really need the defendant closer, if at all
23 possible. And I understand the violations, I hear all of
24 that. But from what I'm understanding, as well that now
25 since he's been at Kirkland for the last four months now,

1 there's only been, I think, one violation or two and that
2 was dismissed or something. But be that as it may, we
3 need reasonable access to him and I need to be able to do
4 it sometimes on the weekend, sometimes in the evening,
5 sometimes in the morning.

6 I don't always know, and I certainly don't have the
7 time to say okay, call and say well, you can't come until
8 next Thursday. Well, I can't always wait until next
9 Thursday because -- and we're going to also be having
10 different experts who might need to have access in
11 addition to myself and Ms. Williams. So I just ask the
12 Court to consider that in whatever decision His Honor
13 makes.

14 THE COURT: All right. Where is the sheriff?

15 MR. HIXSON: May I address one point on than and move
16 on past that? As it relates to violating the procedures
17 and things, that initial argument, I just want to make
18 sure. This is part of the record already in a prior
19 hearing.

20 Executive Order number 2011, which is the executive
21 order from the governor, I think Jim Hodges is the who
22 signed this back in 2000. Section five says safekeeping
23 orders -- the point being is there is no requirement under
24 section five of the safekeeping provisions requiring
25 notice to the attorney.

1 Notice was initially given to the attorney at the
2 time to challenge the safekeeping process. That happened,
3 and Mr. Wilson was afforded an opportunity and did
4 challenge it in court and was found to be proper. There
5 is no requirement to notice the attorney when the governor
6 renews every 90 days. And I just want to clarify that for
7 the Court.

8 MR. WILSON: I think counsel misreads that because I
9 think the regulation -- the order only required one 90-day
10 period. That's why there is no other notice in there
11 because it clearly says 90 days, and so, there's not
12 supposed to be another one. And what it does say that if
13 there is a request for an additional period, then the same
14 rules apply. And so that would mean that if there is
15 another request, then you've got to notify the attorneys
16 just as you did in the first instance.

17 THE COURT: All right. Sheriff, thank you for being
18 here. You don't need to take the witness stand. Just
19 help us with when you believe -- you know, and without
20 saying the trial date is X., just give me a ballpark of
21 where you think you really are on being able to bring him
22 back from X date, how many days?

23 THE SHERIFF: That he would be here before trial?

24 THE COURT: Yes, sir.

25 THE SHERIFF: Your Honor, obviously -- and this is

1 kind of going around trying to figure out what exactly --
2 how many days. Because we have discussed, you know, the
3 preparation portion --

4 THE COURT: Right.

5 THE SHERIFF: -- to get ready, but I don't know how
6 much time their counsel would need. Obviously, security
7 is our concern. That's why we're in the situation we're
8 in. We don't want it to get drawn out for a long period
9 of time, but my best guess would be a couple of months. I
10 would prefer less, but Mr. Wilson's argument, I understand
11 what he's saying.

12 THE COURT: Right.

13 THE SHERIFF: I just don't want this thing to come
14 back and it get delayed and delayed and delayed.

15 THE COURT: What you're worried about is we bring him
16 back and then the case gets delayed and then y'all are in
17 the position where you're just not staffed and have the --
18 I don't mean this derogatory, it's just a different skill
19 set that the people at SCDC have and the different level
20 of training than just the average officer who's working at
21 J. Reuben Long.

22 THE SHERIFF: Ideally, no more than 30 days, but...

23 THE COURT: And how long do you think you need to be
24 prepared.

25 THE SHERIFF: We can get prepared. That won't be a

1 long drawn out.

2 THE COURT: All right. Okay.

3 THE SHERIFF: That shouldn't be a problem.

4 THE COURT: That shouldn't be a hold up?

5 THE SHERIFF: No.

6 THE COURT: All right. Thank you, Sheriff. I
7 appreciate that.

8 THE SHERIFF: Thank you.

9 THE COURT: Okay. With all that in mind, let's talk.
10 Let's talk about a trial date.

11 MR. HIXSON: Interrupt me if I misrepresent anything,
12 I know you will. In a conversation with Madam Clerk of
13 Court in trying to get the questionnaire done and all that
14 together, 60 days after the questionnaire, if we can get
15 some resolution on that today, on where we're going with
16 the questionnaire, having the questionnaire mailed out
17 February 1st. Usually, we're looking at 90 days on a
18 questionnaire. The time table is roughly 45. That was
19 the basis for some of our consent discussions about,
20 perhaps, shooting for August 22nd and August 29th, those
21 are the two Mondays --

22 MR. WILSON: Excuse me, April.

23 MR. HIXSON: I apologize if I said August. April
24 22nd, April 29th. That would give nearly 90 days for the
25 questionnaire and then put the sheriff in a position to

1 develop a plan back out 30 or -- you know, I'll let you
2 argue the time back. Then that's looking at the middle of
3 March or something to get Mr. Jenkins back locally to
4 prepare.

5 Is that, Ralph, what you were talking about?

6 Somewhere and that's what we would have been talking
7 about in the hallway, so to speak.

8 MR. WILSON: Oh, you were waiting on me. I'm sorry.

9 THE COURT: I mean, if you want to talk. So right
10 now, what we're scheduled for is April 1st and April 8th.
11 And what Mr. Hixson is suggesting is April 22nd,
12 April 29th.

13 Now, just big picture because I have all y'all to
14 deal with and then I have all these people in Columbia
15 called court administration to deal with, so April 29th is
16 a chambers week, which would mean some court reporter
17 would have to work.

18 Hopefully, not you, Karen.

19 So I don't know that's a big deal. I would have to
20 get permission from the chief justice to miss an entire
21 conference. And the week of April 22nd, I would be in
22 Richland, so we would have to switch that out, obviously.

23 Do we think it's really two weeks? That's question
24 number one.

25 MR. HIXSON: It could be a little more. The question

1 was less because some of the pretrial motions were already
2 with the sheriff to go out to follow up with the
3 questionnaires who didn't respond, and that's the
4 compressed timetable we were really worried about.

5 And Madam Clerk is very concerned about making sure
6 there's no reason -- it was too short a period of time.
7 Couple weeks makes a big difference in that. As Your
8 Honor is well aware, you may to come down for jury
9 excusals, perhaps --

10 THE COURT: Right.

11 MR. HIXSON: And maybe a motion time, so maybe it's
12 the 29 and the next week. I was just trying to hit April
13 because Your Honor mentioned it, just generally speaking.

14 MR. WILSON: I'm good with that. I agree that the
15 clerk is going to have a difficult time getting those
16 notices out and getting responses back in a timely manner
17 within 45 days. That's really pushing it.

18 MR. HIXSON: Additionally, the solicitor pointed out
19 that week of the 22nd is coming off Good Friday, Easter
20 and spring break.

21 THE COURT: Right.

22 MR. HIXSON: And that 22nd, maybe the 29th and the
23 following week, simply because with people responding to
24 questionnaires and followup and with everything, it may
25 be -- if that aids the Court in any way, just pointing it

1 out for the Court.

2 THE COURT: Okay. Now, I'm currently scheduled for
3 the first two weeks in Horry here, so would you all want
4 me to keep those two weeks and we can do all the normal
5 stuff that we do while I'm here?

6 MR. HIXSON: Yes.

7 THE COURT: I say that with a smile on my face. My
8 assistant solicitor in the back of the room who like to
9 work me to death.

10 MR. HIXSON: I don't want to be too greedy. We'd
11 love to have you.

12 THE COURT: We could use that time, also, to take an
13 afternoon or take a morning to take up issues that we have
14 and kind of weave into the week, too.

15 What do you think about that, Mr. Wilson?

16 MR. WILSON: Yes, sir, that's --

17 THE COURT: That way, we've got some designated time
18 where we know I'm here. It's not an issue. I can block
19 it out.

20 MR. HIXSON: The second week would be good. I think
21 it's perfect. The reason I would push back from that
22 first week in April to the second is because the more
23 response to questionnaires we have, the more complete that
24 pool is, the more work we can get done otherwise. So I
25 would think later in April just because it doesn't help if

1 we meet and there's only half the questionnaires back.

2 THE COURT: Okay. And then -- at this point, we're
3 saying April 29th and May 6th?

4 MR. WILSON: That's fine with us.

5 MR. HIXSON: Do you see any conflict? Yes, sir, and
6 then, at least, holding onto the week of May 8th. And
7 that way that gives the clerk -- that's the point of more
8 time so the clerk can get questionnaires back, get
9 through, make notebooks if that's what Madam Clerk wants
10 to do so it can be more functional toward the end of that
11 second week, Wednesday, Thursday. Otherwise, we'll have
12 to meet again.

13 THE COURT: Okay. So you're okay with that,
14 Mr. Wilson?

15 MR. WILSON: Yes, sir.

16 THE COURT: Are you okay with that, Mr. Jenkins?

17 THE DEFENDANT: Yeah.

18 THE COURT: All right. This is why God gave me law
19 clerks. May 10th is a State holiday. Now, I don't have
20 any problems working on a State holiday, my problem is I
21 don't have the power to make the court reporter show up on
22 a designated State holiday. So it's not an issue of me --
23 and I just don't know that we're going to be --

24 MR. HIXSON: I would hate to be presumptive, but I
25 would like to think that we would be completed by then.

1 THE COURT: Well, Mr. Hixson, you do talk a lot.

2 MR. HIXSON: I know. I know. I know.

3 THE COURT: I'm just kidding.

4 MR. HIXSON: You're absolutely right, Your Honor.

5 THE COURT: I'm kidding. I'm kidding. I mean, if we
6 start on April 29th -- of course, I assume we would be
7 working on Saturday.

8 MR. HIXSON: If the jury is sequestered, Your Honor.

9 MS. WILLIAMS: Your Honor, did you say the 10th is a
10 holiday?

11 THE COURT: Yeah, it's a State holiday.

12 MS. WILLIAMS: The 8th or the 10th?

13 THE COURT: The 10th. Do you know what the 10th is,
14 Ms. Williams?

15 MS. WILLIAMS: Flag Day.

16 THE COURT: I'm embarrassed to say it out loud.
17 What if we did May 13th and May 20th?

18 MS. WILLIAMS: Your Honor, that's good with us.

19 MR. HIXSON: We don't see any problems with that.

20 MR. WILSON: We're good.

21 THE COURT: You're good.

22 MR. WILSON: Yes.

23 THE COURT: Ms. Williams?

24 MS. WILLIAMS: Yes.

25 THE COURT: Okay. May 13th and May 20th?

1 MR. WILSON: Yes.

2 THE COURT: Mr. Jenkins. You doing all right?

3 THE DEFENDANT: Doing all right.

4 THE COURT: Okay, good. So right now, your trial is
5 scheduled for April the 1st and April the 8th. And what
6 we're discussing is moving your trial to the week of May
7 13th and May 20th, which is about, we'll call it five or
8 six weeks after we originally had it scheduled? Are you
9 okay with that?

10 THE DEFENDANT: I'm ready to get it over with.

11 THE COURT: But are you okay with me -- your
12 attorneys would like the extra time to be prepared and I
13 want -- but you're the one who it affects the most, so I
14 want to make sure you understand what we're doing.

15 THE DEFENDANT: Yes, sir, I understand what we're
16 doing.

17 THE COURT: You're okay with that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Thank you very much.

20 All right. Let's do that. All right. So let's -- I
21 know this isn't -- there are more issues than this
22 involved, but let's have him back in Horry County by
23 March 11th. Okay.

24 MR. HIXSON: And then I'll talk to counsel about
25 developing a little bit of doing some motion work the week

1 of April 8th.

2 THE COURT: Okay.

3 MR. HIXSON: And see if we can get the questionnaire
4 and all that going and have that maybe a little bit later
5 in the week.

6 THE COURT: The one caveat to all this is -- we're
7 going to play like those dates are real. I still have to
8 contact multiple people at Court Administration and say I
9 need you to create these terms of court or I need you to
10 move these people or I need you to find me a court
11 reporter.

12 There's a lot of moving parts that even I don't
13 always see that go into -- me, I just can't magically
14 create terms of court on my own, even though I wish I
15 could, but all this is contingent upon me getting the
16 blessing of Court Administration to do it. I mean, I'll
17 email them and call them, kind of give them the big
18 picture of what's going on.

19 And that may mean -- well, the week of May -- the
20 week of May 20th, there's no criminal court anyway, so
21 even if they assign me here, you're not losing criminal
22 court that week.

23 The week of May 13th, you have Judge Brown and then
24 you have Judge Culbertson for two or three days. So you
25 may end up losing one of those terms. I don't know that's

1 what they're going to do, but just in preparation, I don't
2 know what the rest of the Horry County trial docket looks
3 like.

4 Okay. Let's keep in mind that -- let's keep with our
5 May 13th date, how far back from that do you want
6 protection?

7 MR. WILSON: I really would like 90 days.

8 THE COURT: And what is that? Do you know of any
9 other major trials that that interferes with?

10 MR. WILSON: I have -- well, I'm trying to think if I
11 have any other.

12 MS. WILLIAMS: I do. I know they were wanting to set
13 me on -- one is a mob assault. It was a Facebook live
14 stream big media mess, for lack of a better legal term.

15 THE COURT: Okay.

16 MR. HIXSON: That's projected for the April term of
17 court, Your Honor.

18 MS. WILLIAMS: There's multiple defendants on mine,
19 so even if they go forward, I just can't go with mine.

20 MR. WILSON: I think I have two major trials on their
21 short term list for the next six months, Jordan Hodge and
22 I think -- what's the -- there's one, which is a murder
23 case, and there's another murder case I know that's on
24 there.

25 MS. WILLIAMS: Mine is.

1 (Whereupon, there was an off-the-record discussion).

2 MR. WILSON: There are three, Alex Gordy, that's who
3 I'm trying to think of. So I know there are three that I
4 have.

5 THE COURT: What's the plan on that?

6 MR. HIXSON: We'll, you protect them and we'll move
7 them around per your order.

8 THE COURT: All right.

9 MR. HIXSON: What we have to do to keep this one on
10 track.

11 THE COURT: All right. And same for Ms. Williams for
12 her one on the short list, okay. All right.

13 You need to tell me anything?

14 MS. WILLIAMS: We were just making sure the 90 days
15 will put us like February 13.

16 THE COURT: So, Mr. Jenkins, what I'm going to do is
17 there's an order that I can sign that keeps your attorneys
18 from being, essentially, brought into other court cases
19 between 90 days prior to your trial. Does that make
20 sense?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So I'm going to make up an extreme
23 example, but let's say they had a trial scheduled every
24 single week between now and --

25 THE DEFENDANT: You just clearing the road.

1 THE COURT: Yeah, clearing the road so that when it
2 comes to crunch time, they're protected from having to do
3 any other trials. Does that make sense?

4 THE DEFENDANT: I understand.

5 THE COURT: So that they can stay focused on you.
6 You with me?

7 THE DEFENDANT: I understand.

8 THE COURT: That's what we're talking about. That's
9 normal. I mean, that's usually what happens in these
10 style cases and I want to make sure it happens here so
11 that during that crunch time when you get closer and
12 closer to trial that they have -- you have each other's
13 undivided attention as opposed to worried about them being
14 hauled off to court somewhere else. Make sense?

15 THE DEFENDANT: That's understandable.

16 THE COURT: All right. Good. Okay.

17 Let's talk about this juror questionnaire.

18 MR. HIXSON: I'm going to hand up a copy.

19 THE COURT: I think I have a copy. I'll assume it's
20 the latest copy.

21 MR. HIXSON: I think, if I'm correct, there's some
22 misspellings.

23 MS. WILLIAMS: Your Honor, I hate to interrupt, but
24 may we take like a five-minute break?

25 THE COURT: Sure. Let's take about a five-minute

1 break, ten-minute break. Everybody use the facilities and
2 we'll pop back on the record.

3 MS. WILLIAMS: Thank you, sir.

4 (WHEREUPON, a short break was taken.)

5 THE COURT: All right. So here's where I made it
6 with Court Administration. This is probably more
7 information than anybody cares to know. So the week of
8 May the 20th is two terms of civil court, so they cannot
9 add another term of court that week.

10 Now, if there are no date certainties and Judge Hymen
11 agrees, we can remove one of those weeks of civil court
12 and add us in and then have the 13th and the 20th.
13 Otherwise, we'll have to do the 6th and the 13th. If we
14 do the 6th and the 13th, y'all will lose one of those
15 criminal judges those two weeks. Does that makes sense?

16 Now, the other thing about the 6th and the 13th is
17 the only person who has the authority to make the court
18 reporter work on May the 10th is the Chief Justice. So I
19 have to get on the phone with the Chief Justice and say
20 are you willing to make the court reporter work on
21 May 10th in the interest of getting the trial done in an
22 efficient manner. Of course, we can schedule that
23 May 10th around that 24-hour period, that would be too
24 much to ask for, too much good timing.

25 So let's see about creating the new term on the 20th

1 first before I call the Chief Justice. I don't know how
2 soon dockets go out in the circuit just because I haven't
3 done enough civil court here to know.

4 All right. So let me make sure this is off. Sorry,
5 I was literally on the phone with Court Administration.

6 Okay. All right. So let's jump back into this
7 questionnaire. Okay.

8 MR. HIXSON: My general understanding, just cursory
9 comments, as Your Honor is aware, I think it was August
10 and October maybe, I don't remember the dates, we had gone
11 through the questionnaire and, Your Honor, through our
12 notes, we tried to recall what the Court had instructed us
13 to do.

14 You had made some rulings on some of them. And the
15 document that you're looking at is my best recollection of
16 what you objected to, stuff was in, stuff was out,
17 combined some questions.

18 I met with Mr. Wilson last week. I guess it was last
19 Thursday, and shared this to see -- I'm not going to speak
20 for Ralph now. We would ask that Your Honor adopt this
21 questionnaire in the trial of this case and flesh this out
22 on the record.

23 THE COURT: All right.

24 MR. HIXSON: I believe this complies with all the
25 Court's rulings.

1 THE COURT: Okay. Mr. Wilson.

2 MR. WILSON: I'm in general agreement. There are
3 some things that I'm not certain. Like one of the things
4 I was looking at was if you've ever served in the
5 military. I'm trying to see if that was --

6 THE COURT: That's question number 30. I just
7 happened to be on that page. Have you ever served in the
8 armed services, including national guards or reserve,
9 branch, specialty, dates of service, type of discharge.

10 MR. WILSON: Okay.

11 MR. HIXSON: Yes, that was a question in defense's
12 initial proposed questionnaire, so I just kept it in
13 there.

14 MR. WILSON: Your Honor, I know we had submitted back
15 when all this process started -- and the solicitor is
16 correct. You know, we started going through this list
17 trying to consolidate it and figure out which questions
18 were going to be permissible and which were not. I don't
19 know that we ever completed it. I know we started that
20 process, and I think we got pretty well through it, but I
21 don't know that we completed it a hundred percent.

22 The problem that I'm having now is, like I said, I
23 haven't gotten a copy of the transcript of that particular
24 hearing, and so I'm not real sure if all the things that
25 we agreed on or disagreed on were either cut out or added

1 in, that's my dilemma. And so I'm having some difficulty
2 with that.

3 THE COURT: I thought we made it through the whole
4 thing, but I'm just going off of memory. Do you remember
5 when specifically that was?

6 MR. HIXSON: Yes, I have contemporaneous notes with
7 it as well as Sarah Holmes keeping me out of her ditch
8 with her notes as well. August 15th, 2017, there were --

9 THE COURT: Hold on one second. Is there more than
10 one page?

11 MR. HIXSON: Yes, sir.

12 THE COURT: Okay. Go ahead.

13 MR. HIXSON: August 15th was initial motion date. We
14 started talking about the questionnaire. And on that day,
15 you instructed us Mr. Hixson and Mr. Wilson will meet
16 prior to the September hearing to discuss and agree on
17 questions.

18 Judge Hood will rule on questions that aren't
19 agreeable. And at that time, there was talk about check
20 on closer housing facilities for cost purposes for the
21 safe-keeper discussion. And then the final substantive
22 hearing was October 25th, 2017. And the majority of that
23 hearing date was concerning juror questionnaire.

24 There were two separate proposed revisions, one --
25 Mr. Wilson sent one, I responded to that. Then Mr. Wilson

1 sent another one and we responded to that with a second
2 one we discussed. And I can show the contemporaneous
3 notes that we went through on those questions or however
4 the Court would like to proceed, or I can talk about some
5 of them.

6 I would just -- you indicated that you rule to leave
7 off driver's license, Social Security information and
8 could ask to revisit that information. Okay with
9 questions three through 14. Page four not applicable.
10 Page six, question 34 and 37 were one of the more
11 challenging ones, Your Honor.

12 Your Honor, I wanted this question to be made
13 reciprocal, that Mr. Wilson wanted an example of kinds of
14 organizations and that we would redraft and combine 34 and
15 37 into one question. That's the one relating to victim's
16 rights, groups, as well as prisoner rights groups.

17 THE COURT: Right.

18 MR. HIXSON: That question, and I think that was
19 combined. Thirty-one and 34 says Judge Hood wants these
20 made to be reciprocal. Those are the ones, you ever been
21 the victim of a crime or do you know a family member that
22 was ever charged with a crime, those type of things.
23 Thirty-four, 35, that initial question. Now, the numbers
24 are off on the ones that Your Honor is looking at because
25 when we combine the questions, it changed the numbering.

1 Those were -- list all the internet sites, list all
2 the applications, list everything that you have done.
3 Your Honor, the notes from that said the State sees this
4 as a profile violation.

5 Judge Hood asked to create a question asking for them
6 to list anything that they had done, they participated in
7 such. Have you ever used or do you use social media sites
8 and if you do, please list them. I believe that's what
9 the questionnaire -- that Your Honor is looking is not an
10 exhaustive list of everything, but do you and if do you,
11 list them yourselves.

12 Fifty-two, 53 --

13 MR. WILSON: Before you go to -- I'm sorry, I don't
14 mean to cut you off. While you're on 43, on 43 where it
15 says do you have or have you ever had a social media
16 account, but it doesn't ask to list the accounts so that
17 you know which social media accounts, if any, they've had.

18 MR. HIXSON: If it doesn't, it should. I'll put
19 please list if you do. Not list all, but a list.

20 THE COURT: There's no list on there.

21 MR. HIXSON: Okay. Your Honor, the next page.

22 THE COURT: Maybe on the next page. It just wasn't
23 in 43.

24 MR. WILSON: I'm sorry.

25 THE COURT: No, I don't see anywhere where it says

1 the list.

2 MR. HIXSON: All right. That should have been there,
3 sorry, Judge.

4 THE COURT: Okay.

5 MR. WILSON: Your Honor, the other thing that we're
6 interested in, and I don't know how the Court sees this,
7 but what we would like is if they have social media, if we
8 knew what their user name was, not their password so that
9 we can get into it. That's not what we're trying to find.

10 And I'll tell you, Judge, what we're looking for is
11 if the guys says, you know, I'm racist.com, you know, then
12 I would want to know that. I mean, if that's his user
13 name on Facebook or whatever, I mean, I would want to know
14 that. That's why I'm asking that. I'm not asking for his
15 email address or anything like that where I can --

16 MR. HIXSON: I apologize, Your Honor. The Court has
17 made it clear that the purpose of a juror questionnaire is
18 to search for bias not, it's not to develop personality
19 profiles that would chill a juror who is a citizen of the
20 community from participating in this process.

21 So any of those probative questions, personal
22 identifying questions have always been disfavored by the
23 Court. I didn't bring authority for that, as we talked
24 about before, but those personality profile questions have
25 been ruled as improper in juror questionnaires. That's

1 why instead of list everything that you've ever done,
2 including questions about the names of your children,
3 you're searching for the bias pursuant to the statute
4 versus -- I mean, I don't have access to user names
5 either.

6 THE COURT: I'm fine with them listing the social
7 media websites they use, but we're not getting into user
8 names. You know, if somebody has chosen to make their
9 social media public, then that's on them, but I'm not
10 going to ask them for their user names.

11 MR. WILSON: Thank you, Your Honor.

12 MR. HIXSON: Your Honor, if I may proceed just on
13 this topic in the order that they're in.

14 THE COURT: I found my notes, too, so you're fine.
15 Keep going.

16 MR. HIXSON: Okay. I have 52. The old one said
17 leave out, Judge Hood will address questions, so I'm not
18 exactly sure what that is. I took 52 off. I'm not sure
19 what that was. Fifty-three was a question of the graphic
20 crime scene evidence and specifics of the crime. You
21 ordered that out. Fifty-four out. Fifty-five is a good
22 thing to talk about now.

23 That is the preliminary qualification questions,
24 ABC-type jurors. And meeting with Mr. Wilson and counsel
25 on Thursday --

1 And please help me out, Ralph.

2 We both consent and agree that an ABC-type juror
3 question is an appropriate question, but not in the
4 questionnaire in the time of Your Honor's voir dire of the
5 panel or the individual qualifying. It's okay to ask that
6 question there, but not to include it in the questionnaire
7 before they get the instructions. And that's kind of
8 substantiated in the statute.

9 MR. WILSON: I would agree that, Your Honor, that it
10 would be more appropriate for the Court to present that to
11 them.

12 THE COURT: Right.

13 MR. WILSON: Either -- at the time of selection.

14 THE COURT: Okay.

15 MR. WILSON: And I know in the past, sometimes, we'll
16 put it in the jury room so that when they went in, they
17 could read it and Your Honor asked them about when they
18 come out.

19 MR. HIXSON: The last one, really, that I have is the
20 60 -- well 56, 59, the old ones was fair game for folks to
21 ask in active voir dire, but not on the questionnaire.
22 57, it says want number 57 out, the Court ordered that
23 out, and then 60 was a catchall leave in. And then
24 finally, we talked about 400 jurors would be the
25 appropriate number separate from a normal panel. So

1 that's the notes I have on the questionnaire that I think
2 are reflected in the document that Your Honor is looking
3 at.

4 THE COURT: All right.

5 MR. WILSON: Your Honor, one other thing in regards
6 to -- and I know we were checking to determine this, but
7 the Social Security number is not listed on the form that
8 the solicitor has presented to the Court, and I don't
9 know -- I know we get those jury -- little jury cards that
10 we normally get from the clerk's office. I'm not sure if
11 that information on there or not either.

12 Yes, ma'am.

13 THE CLERK: The Social Security number.

14 MR. WILSON: And, Your Honor, my concern is that the
15 Solicitor, obviously, does not have a duty to give me that
16 information regarding jurors, and I understand that, but
17 in order for me to be able to check, I have to have that
18 information. I need date of birth and a Social Security
19 number in order to be able --

20 THE COURT: Correct.

21 MR. WILSON: -- to find out the background.

22 THE COURT: Yes, sir.

23 MR. WILSON: Okay. So I would just ask the Court to
24 include it on one of those forms, probably on this
25 questionnaire.

1 THE CLERK: Your Honor, may I?

2 THE COURT: Yes, sure.

3 THE CLERK: So if your counsel to the parties, if
4 you'll just email us, we'll send you that information via
5 email.

6 MR. WILSON: What information, the Social Security
7 number?

8 THE CLERK: Uh-huh. And the date of birth.

9 THE COURT: Not for public dissemination.

10 THE CLERK: Exactly.

11 MR. WILSON: Right.

12 THE COURT: So the clerk's office can provided them
13 that information?

14 THE CLERK: Yes, sir.

15 THE COURT: About how about?

16 MR. WILSON: That will be more than satisfactory.

17 THE COURT: Is that okay?

18 MR. WILSON: Yes, sir.

19 MR. HIXSON: Now is the time to address this, also.

20 It's appropriate -- it would be appropriate -- we would
21 ask at some point in time to protect that information.

22 Currently, I'm going through jurors calling me from a
23 historical trial and that personal identifying information
24 was transmitted from the attorney's files to the appellate
25 file to the public interest law firm file, and they don't

1 understand how their personal identifying information now,
2 investigators are coming to their house six or seven years
3 later.

4 I said it must be coming from the continued
5 information coming down the path. So the State's position
6 is I need to protect the integrity of the information to
7 the citizens, perhaps, a protective order. Obviously,
8 Mr. Wilson needs it to serve his client. That's not the
9 concern.

10 It's if this thing is reviewed years from now and a
11 citizen that served on a jury, social and date of birth
12 and everything has been disseminated. Anyway, I did want
13 to bring that to the Court's attention, protective orders
14 or however to control that.

15 MR. WILSON: And, Your Honor, I don't have any
16 objection to a protective order. I think it's
17 appropriate, especially with this personal information,
18 but in regards to what the solicitor is indicating, the
19 thing is we have the address, so seven years later, you
20 still have the address because you got that on the
21 information form. And the jury list when it comes out has
22 all that information on it, which is public record.

23 THE COURT: Right.

24 MR. WILSON: I mean, you can find it simply by going
25 to the clerk's office.

1 THE COURT: Well, we do need to do a protective order
2 that states neither side is to disseminate, you know,
3 other than --

4 MR. WILSON: Exactly.

5 THE COURT: -- you know, basically, for internal
6 office purposes for the purposes of doing criminal
7 backgrounds investigations. Other than that, the
8 information doesn't need to be disseminated out or used.
9 Just some kind of short order that can be stuck in the
10 file that all the parties or attorneys are to control that
11 information.

12 MR. HIXSON: Yes, sir, Your Honor.

13 THE COURT: Are you okay with that?

14 MR. WILSON: Yes, sir.

15 THE COURT: All right. What else?

16 MR. HIXSON: Go ahead.

17 MR. WILSON: Well, I'll just ask this, you know, just
18 for clarification purposes, Your Honor. I spoke with
19 Mr. Hixson, he is going to give me a copy of the
20 transcript in the James Daniels, from the James Daniels
21 trial so that we don't need to purchase it.

22 Now, there's an issue of the juror information and
23 whether we're going to have to purchase it or whether or
24 not we're going to get it from the State. If they're not
25 going to get it from us, then I need to ask for funds for

1 it. So I wanted to bring that up to the Court so we can
2 address it before we get into --

3 THE COURT: Well, let's take the easy one of those
4 two up. Is the James Daniels transcript done?

5 MR. HIXSON: No, I've requested it.

6 THE COURT: Okay.

7 MR. HIXSON: And it's been ordered. I guess, Dixie
8 Eubanks was the court reporter on than one. She's
9 retired, but we've been working -- I haven't heard an
10 update since last week. It's been requested from Court
11 Administration. That's we understand at this point in
12 time.

13 THE COURT: Somebody needs to make sure we tell Court
14 Administration sooner rather than later. And then I
15 appreciate the solicitor's willingness to give the defense
16 a copy of that, however, there are court reporter rules,
17 and so I will need to sign an order authorizing you the
18 funds to buy a copy of it from Ms. Eubanks.

19 MR. WILSON: All right, sir.

20 THE COURT: And I understand the State turning that
21 over and I sincerely appreciate that and I'm sure the
22 defense does, too, but we have protections in place --

23 MR. WILSON: Yes, sir.

24 THE COURT: -- to protect our court reporter's work
25 and they all do good work and they're all great people and

1 so there's protections in place for them to be paid. So
2 to keep those in perspective, I'll be happy to sign an
3 order. You just need to ask Dixie whatever the cost for a
4 copy is and I'll sign an order so that you can have access
5 to that. But I do appreciate your willingness to give
6 that over.

7 The court reporter statute mandates that they be
8 paid, and lawyers just can't get one copy and hand it out
9 to everybody. I understand why you do, but I'm happy to
10 sign an order for that.

11 Where are y'all on getting them copies of the rap
12 sheets? Do you want to give them copies of rap sheets
13 or -- here's my problem with me making them give you
14 copies of the rap sheets, is it kind of puts this undue
15 burden on the solicitor -- and, of course, you've been a
16 solicitor, Mr. Wilson, so you follow me. I mean, you get
17 these -- or, at least, the way we used to do it was, you
18 know, there's some staff person going through all the rap
19 sheets and she may see assault and battery third dismissed
20 and may put down, you know, whatever the code is for this
21 person has no record. While that may matter to you, it
22 may not matter to them. So instead of them making the
23 judgment call --

24 We're going to get the number narrowed down at some
25 point; is that right?

1 MR. HIXSON: Yes, I guess my thought was the State's
2 official position is going with precedent and is not
3 required to show criminal history. So I'll just put that
4 on record.

5 My hope is like the week of April 8th when we start
6 getting questionnaires back, that's when we start
7 developing NCIC's and start developing a pool of
8 information and know kind of where we are. And the Court
9 can facilitate that because we don't have them to provide,
10 even if Your Honor wants us to or orders us to until we
11 know who the jurors are and start pulling them. Perhaps,
12 we can know where we are.

13 THE COURT: Okay. Perhaps -- and then if we need to
14 sign an order. I don't know that we need to do it on the
15 400 until we see the responses that we get. But I would
16 hate for some employee in the Solicitor's Office, you
17 know, to be like the judgment call on it.

18 MR. WILSON: I understand.

19 THE COURT: Because you can -- sometimes read those
20 things is like reading Greek. I mean, it's another
21 language, especially if it's out of state. Is it the
22 right person? Is it not the right person?

23 As opposed to -- you know, maybe if we put them all
24 in one room and y'all all can look at them. Maybe that's
25 one way to do it. I'm not saying we're going to do it

1 like that. I'm just saying let's get the number down and
2 I'll sign an order to give you the ability to run all
3 those or we can work out something with the State.

4 MR. WILSON: Thank you.

5 THE COURT: We can make that happen.

6 MR. HIXSON: Your Honor his the nail on the head. We
7 did suggest reviewing them and not providing personal
8 identifying information. We talked about that in the
9 process, as well.

10 THE COURT: All right. Good. What else?

11 MR. HIXSON: Two little housekeeping things. In the
12 order, there was -- Your Honor ordered us to provide a
13 letter to law enforcement. I have a copy for the Court.
14 I just want to make sure that we're good.

15 I don't know that the Court needs to mandate the
16 language necessarily because it's just a letter from our
17 office. That's completely for your edification.

18 There's also an order in law enforcement that Your
19 Honor asked us to do. I know that Ms. Williams had
20 drafted a copy of it. We had some discussion on the
21 record about the order of law enforcement. I drafted one
22 based on Ms. Williams. And so, I guess that is an order
23 for Your Honor's signature.

24 They provided a copy, so there may be some discussion
25 on what that document ultimately looks like. I'm going to

1 hand both of those up to the Court. This one is -- I
2 guess these will be couched as proposed orders, perhaps,
3 is the best way to describe those.

4 THE COURT: Is everybody good with me signing these?

5 MR. HIXSON: When the State -- they're competing
6 proposals. So my only understanding of the difference is
7 I took Branna's language that she used to write that and I
8 thought some of the language in there tried to parallel
9 what we had talked about in the hearing concerning
10 proposed order to law enforcement and it was excessive of
11 what the statute requires relating to disclosure.

12 And probably the best way to describe it is, the
13 language and the one that's not written -- I don't know
14 what the caption is, the caption is the same. In other
15 words, we have to disclose all potential witnesses.
16 There's some language I thought was in excess of what the
17 statute required, I guess. But it parallels the language
18 and what Your Honor talked about.

19 THE COURT: Which one is yours?

20 MR. HIXSON: One that I believe has a caption, like a
21 motion --

22 MS. WILLIAMS: Mine is in Arial font. I'll show it
23 to you. It's different font, doesn't have feet.

24 THE COURT: Is that yours? Okay. Got it, Arial
25 font.

1 MS. WILLIAMS: It is. It doesn't have feet.

2 THE COURT: So you want to address what Mr. Hixson is
3 talking about?

4 MS. WILLIAMS: Your Honor, what I actually tried to
5 do, I get what the Solicitor is saying, but when we had
6 our hearing and we had a discussion, I took the language
7 that the Court actually used and I used part of the
8 verbiage to make sure that it was restricted and make sure
9 that there was, as I interpreted it, what the Court
10 actually said.

11 And I tried to make it in plain Jane so that when it
12 was read, there was no -- so it couldn't be
13 misinterpreted. I want it to be very plain.

14 THE COURT: What paragraphs are the real differences
15 in?

16 MR. HIXSON: I'll give you just a small example. I
17 handed you my copy, Your Honor. Example of disclosure to
18 the defense of any testing that may tend to reduce the
19 amount available for testing. I don't know what standard
20 I can instruct law enforcement what tend is. As a small
21 example.

22 If it's the last sample you test, then that's fine to
23 say hey, we're going to burn this sample, solicitor, so
24 make sure you put the defense on notice that they're going
25 to want to try to block the testing.

1 Another one is, in any way related to or the kind of
2 extended language that's in any way related to a potential
3 juror. I don't know how to instruct law enforcement or
4 how the Court can tell them when you're interpreting
5 attenuated language like that.

6 So that's why the -- that's an example and a lot of
7 sections were like that. It's beyond the standard and
8 it's required under Rule Five. And so that's why I, too,
9 tried to parallel the language the Court asked for. We're
10 trying to reach the same goal.

11 MS. WILLIAMS: Your Honor, the reality of it is what
12 we would anticipate by giving them more strict as -- maybe
13 as we want to say more broader terms, then, quite frankly,
14 if there's any question whatsoever, then they would
15 contact the solicitor and discuss it with them.

16 And I'm certain the Solicitor knows what the Court
17 intended and how we're proceeding in here. They're not
18 going to talk to us as the defense lawyers to begin with.

19 We just need to make sure -- and I think if there's a
20 broader language in there and more restrictive, then they
21 will be much more hesitant in any actions that they take
22 and if they had some hesitation and needed to run it by
23 them, certainly, then maybe be even more cautious and
24 maybe run a little bit more by the Solicitor.

25 THE COURT: All right. You don't have your copy?

1 MR. HIXSON: You have --

2 THE COURT: Okay.

3 MR. HIXSON: Mine's in Times New Roman.

4 THE COURT: All right. So in paragraph number one,
5 your paragraph that's numbered one, I want some kind of
6 language added where if they get to the point where they
7 think they're testing the last or the only piece of the
8 physical or biological specimens that they cannot go
9 forward with that testing until they put the solicitor,
10 who then has a duty to put defense on notice.

11 MR. HIXSON: So it's a restriction in your order do
12 not test it until?

13 THE COURT: So if they get to something where this is
14 the last we have or to test this, it's going to make
15 whatever is left of it be gone forever, not only do they
16 have to tell you, they have to not do it until you know
17 and the defense knows and everybody has -- they can't just
18 send an email that says hey, we're going to test this and
19 it's going to be gone and then the next day test it and
20 they haven't heard back from anybody. Does that make
21 sense?

22 MR. HIXSON: Yes, sir.

23 THE COURT: So y'all can all get together if that
24 situation occurs and have a decision about it, or I can
25 get involved at some point in time, but I don't want them

1 just to say well, we sent an email, nobody responded
2 because y'all were in trial and then they go and test it
3 and poof, it's gone. Does that make sense?

4 MR. HIXSON: Yes, sir.

5 THE COURT: All right. Let me read the second
6 paragraph.

7 So in your paragraph number three, where it says
8 favorable to the defendant.

9 MR. HIXSON: Yes, sir.

10 THE COURT: I want it to say favorable and/or
11 potentially favorable to the defendant. Okay. I think
12 that encompasses everything we're trying to encompass.
13 There's three or four typos in there.

14 All right. What else?

15 MR. HIXSON: Your Honor, in the notes you mentioned
16 about counsel and myself getting together to talk about
17 potential -- we would agree upon potential questions,
18 qualification questions that the Court would ask and think
19 of some proposals, perhaps.

20 I did that, but all I did was pull out the Capital
21 Trial Manual for the capital litigation. The Court could
22 provide something, but I made copies right out of the book
23 to hand to the Court just to satisfy that. And that will
24 be, of course, when the full panels come in, the questions
25 that Your Honor would ask and some proposed ideas. That's

1 it. That's all.

2 MR. WILSON: Your Honor, I got that Thursday. I have
3 not had -- really had an opportunity to really look over
4 it, so I can't really -- I'm not saying that I'm against
5 it, I'm just saying that I'm not really at this moment
6 prepared to answer whether I'm okay with everything that's
7 in it, but I intend to read it and then I will know what
8 my feelings are about it.

9 THE COURT: Okay.

10 MR. WILSON: I'm not objecting necessarily to at this
11 point. I'm just saying I need more time to look at it.

12 MR. HIXSON: This is the time of the jury selection,
13 so there's time on this. May I hand this up?

14 THE COURT: Please.

15 MR. HIXSON: Just for resource material, I guess,
16 standard stuff. But that does not include the ABC
17 question that we're going to follow, State vs. Stanco on
18 our proposal, ABC juror, always vote death, never vote
19 death, would take the facts and circumstances, and
20 Mr. Wilson and I will work on those language on those.

21 MR. WILSON: That's correct.

22 THE COURT: Anything else?

23 MR. HIXSON: I believe that's it.

24 MR. WILSON: Your Honor, there were a couple of
25 things. At the last hearing, I think -- not at the last

1 hearing, but I think this was back in August. First, we
2 need -- and I guess we'll do it closer to trial, but we
3 have obviously some pretrial issues that needs to be taken
4 care of.

5 One of those, I know we talked about premarking
6 exhibits and we talked about a security briefing that the
7 Court had described for law enforcement and those people
8 who were going to be in control of the jury once they are
9 impaneled. And we also talked about a Jackson hearing and
10 we also talked I think about the State giving us specific
11 acts or allegations that they intend to offer in
12 aggravation. We talked about that, too.

13 So I think those things -- and I don't know that we
14 have to do those things today, but those are things that
15 obviously we have to do at some point probably prior to
16 the institution of trial.

17 Now, one of the other things was, is that the State
18 was supposed to provide us some information on misconduct
19 of any of the officers who were involved in this matter or
20 who had anything to do with this matter. We've not
21 received that information. So I don't know whether that
22 means that it doesn't exist or they just haven't given it
23 to us as of yet.

24 The other issue was they were going to also give us
25 the information about any informants who had provided

1 information to the State regarding the defendant, our
2 defendant. And we've not received that as of today, as
3 well.

4 And lastly, I think there was also an order that they
5 give us the mental health records of the codefendant. And
6 in this case, specifically speaking of -- well, I guess we
7 would like to have both -- for instance, I know there are
8 records regarding James -- I'm sorry.

9 THE COURT: McKinley.

10 MR. WILSON: Regarding McKinley. I know there are
11 records regarding McKinley. I'm not sure if there are
12 regards regarding James, but I know there are regarding
13 McKinley. And we haven't received those either. So I
14 would ask the Court to set a timeframe for that because
15 once I get the information, then I've got to determine
16 what I need to do with it, if anything.

17 And the closer we get to trial, the less time I'm
18 going to have to try to get those things done. So I would
19 just ask the Court to look into those matters and set a
20 timeframe for which I'm to get that information.

21 THE COURT: Mr. Hixson.

22 MR. HIXSON: To get them an order -- in our
23 discussions, I was under the impression that the mental
24 health history relating to the codefendant was impeachment
25 information in the event the codefendants testify. They

1 are not testifying. They're not cooperating in the
2 prosecution.

3 If James Daniels does and, by all indications, he has
4 no intention of doing so, but that is the issue. It will
5 fall into the Giglio issue, as well, which is -- the
6 Giglio is not a discovery right, it's an impeachment right
7 at trial. And as such, if I intend to call one of the
8 issues, for instance, Allen Large, if Your Honor notices,
9 the warrants are signed by Detective Allen Large. He's
10 passed on. He will not testify.

11 So as it relates to the materiality of impeachment
12 information at trial when he doesn't testify. And as it
13 relates to the only other, the only other one is Todd Cox.
14 I've had that discussion with Todd Cox. Todd Cox will
15 likely be available to testify, but he was indicted along
16 with some of the other Horry County police officers and
17 we've had discussions with that. But I'll provide
18 impeachment information for him at the time of trial, but
19 it's not a discovery right. And by that, I mean, 30 days
20 out or whatever Your Honor wants to. But at this point in
21 time, as to the Jackson vs. Denno hearing, he will not
22 testify at trial.

23 I will do whatever the Court wants me to do and,
24 obviously, be sure he is equipped with whatever
25 information he needs to cross-examine Mr. Cox with

1 impeachment information for his trustworthiness at the
2 time of trial.

3 THE COURT: All right. Let's get that turned over
4 within 45 days.

5 MR. HIXSON: As it relates to the confidential
6 informant information, I provided a copy of that under
7 seal to Your Honor several -- probably a year ago. A lot
8 of that concern was relating to McKinley Daniels and James
9 Daniels with people who were incarcerated in the
10 Department of Corrections at J. Reuben in safekeeping and
11 then providing that information to defense counsel and
12 trying to figure out a way to protect them.

13 Obviously, unfortunately, imputing a benefit to them
14 to try to keep them safe when all they did was give
15 statements. I told Mr. Wilson that I would provide that
16 information if they're going to testify plenty ahead of
17 time. And most of information was towards McKinley and
18 James and not Mr. Jenkins. But I told him I would provide
19 that information and I have provided that to the Court. I
20 didn't know how else to handle it since it was --

21 So my intention is to review it, what we intend to
22 use, if any, give it to Mr. Wilson in time to review it,
23 perhaps, the Court will rule on the admissibility of
24 additional information or -- I don't know how else to
25 handle it because I don't want to turn them off and not

1 use them, then these people are serving time in Department
2 of Corrections and having another security situation.

3 THE COURT: Okay.

4 MR. WILSON: And, Your Honor, if the solicitor is
5 stating that he has -- that he will not use the
6 codefendants in the trial of the case and/or in the
7 sentencing phase of the case, then I'm good with that. I
8 just need to know because my point is, if he's going to
9 use them in either phase, then I would want the
10 information. And if he's not -- if he's committing that
11 he's not, then I'm good.

12 THE COURT: I don't know that he's committing like on
13 his life that he's not, but at this point in time, he's
14 not. And if that changes --

15 MR. HIXSON: Yes, sir.

16 THE COURT: -- that stuff needs go out immediately.

17 MR. HIXSON: Yes, sir. And we have --

18 THE COURT: I mean, people change their mind all the
19 time, you know. But if that's going to be a lot
20 different -- that's going to be a lot different
21 conversation if you ask me to let all that in two days
22 before court.

23 MR. HIXSON: Oh, yes, I can't imagine.

24 THE COURT: Thirty or 45 days before court.

25 MR. HIXSON: Your Honor is more familiar with

1 McKinley's situation and heard what he had to say in
2 court. He does not have an intention to testify. I've
3 never -- no conditional -- it's straight-up done. But if
4 we use him, obviously, we'll provide pursuant to the rules
5 of impeachment information across the board.

6 THE COURT: Okay.

7 MR. HIXSON: I think there was one other -- oh, the
8 sequestration briefing, is that the last --

9 THE COURT: That's fine.

10 MR. HIXSON: I think there was some question, but
11 just to clarify for the record, the Court's intention is
12 to sequester this jury? My notes were there were two
13 different motions pertaining to that.

14 THE COURT: We had a fairly long discussion about it,
15 but my significant leaning at this point is to sequester
16 them.

17 MR. HIXSON: And as such, I'll get a sequestration
18 team contacted and a time. Maybe that's towards April,
19 that period. Let their team notify the sheriff to talk
20 about security procedures. Maybe that's a good time to do
21 that.

22 THE COURT: Mr. Wilson.

23 MR. WILSON: And, Your Honor, just to add to that,
24 that would be my hope, if the Court is going to do the
25 security briefing with law enforcement, that they would do

1 it with the SLED agents or whoever is going to -- and the
2 bailiffs and whoever else is going to --

3 THE COURT: Yeah, my goal for that would be whoever
4 is going to be hands-on. I don't want like a supervisor.
5 I want like legitimately the people who are going to be
6 here.

7 MR. WILSON: Yes, sir.

8 THE COURT: And going to the hotel with them and
9 coming back with them in the back room to where, you know,
10 and then kind of us -- when I say us, like, us get
11 together ahead of time and kind of outline this is what I
12 need to say and this is the manner in which I need to say
13 it to where us, as in solicitor, defense and court are
14 singing from the same sheet of music on exactly what I'm
15 going to tell them.

16 Because there may be things that are important to you
17 all that I'm looking at from a different perspective. And
18 we've all done this before and we've all had our own
19 personal experiences with sequestration teams.

20 So I mean, what I would like to do is make sure the
21 three entities that are represented in the courtroom right
22 now are all on the same page with exactly what I'm going
23 to tell them.

24 I don't want to just tell whoever is going to be
25 sitting in Columbia and we never see, I want to look at

1 these people face-to-face and say this is what is
2 expected.

3 These are the rules. This is the way this is going
4 to work. And if you don't believe you can follow these
5 rules, we need to find somebody else to work on it. And
6 I'm not saying that any of these people are evil or bad or
7 anything else, I just think it means lot more when it
8 comes from me.

9 MR. HIXSON: Yes, sir.

10 THE COURT: And I don't mean that in any way to blow
11 up my own head. I just think it means more when they hear
12 it directly from me and I can look at them face-to-face
13 and eye-to-eye and tell them that information.

14 MR. HIXSON: As a proposal, what if I get the
15 sequestration team leader and the sheriff and the one
16 responsible to set the security policy the end of the week
17 of the eighth. And then a week prior when we do jury
18 disqualification, the sheriff can have the people who are
19 going to be in the courtroom and for Your Honor to tell
20 them what the plan is. Is that okay?

21 THE COURT: That's great with me.

22 MR. HIXSON: Yeah.

23 THE COURT: Is that okay with you?

24 MR. WILSON: Yes, sir.

25 THE COURT: Okay.

1 MR. HIXSON: An evidentiary hearing, a Jackson v.
2 Denno, review photographs, all that will be later on.

3 THE COURT: What else?

4 MR. HIXSON: Nothing from the State, Your Honor.

5 THE COURT: Okay.

6 MR. WILSON: Nothing further.

7 THE COURT: Okay. All right. So let's do kind of a
8 recap of where we are. I did learn from the clerk of
9 court that there is -- there are two dates certain civil
10 trials set the week of May the 20th. So that being said,
11 we're going to need to move back a week to May the 6th and
12 May the 13th.

13 The only -- I have been told I can have those two
14 weeks, so the only catch in that at this point in time is
15 I have to contact the Chief Justice and ask him if it is
16 okay for a court reporter to work on May 10th, which is a
17 State holiday.

18 I'm going to tell him that I have no issues working
19 and I'm happy to be here. I want to get the case
20 resolved. Mr. Jenkins is entitled to his day in court and
21 we're not -- I'm not going to postpone the trial because
22 of a State holiday. So --

23 And you're working.

24 I can make her work, okay. And then so -- but I will
25 make -- I will go ahead and send an email today and say I

1 need to have a conversation. And as soon as I hear back,
2 Katherine will email y'all that and you'll see the orders
3 come out to create the terms of court, okay.

4 So that being said, we would need to move -- if all
5 that goes into place, we would need to move Mr. Jenkins
6 back to Horry County March 4th as opposed to March 11th.

7 MR. HIXSON: Okay.

8 THE COURT: Okay. And then we're going to do two
9 protection orders for Mr. Wilson and Ms. Williams 90 days
10 back from trial.

11 And Katherine, make a note that I need to call Judge
12 John and tell them what I'm doing just so he understands
13 when they come through that I'm not trying to usurp his
14 authority.

15 Any police officer misconduct, Giglio information
16 needs to be turned over, at least, 45 days prior to court,
17 same thing for any confidential informant information for
18 people that are going to be used. At this point in time,
19 the codefendants are not testifying, so the mental health
20 records do not need to be turned over. However, if that
21 changes for some reason, we need to know about that sooner
22 rather than later.

23 Who can draft a protective order for the jurors'
24 Social Security information and date of birth?

25 MR. HIXSON: I can.

1 THE COURT: Can you do that, Mr. Hixson?

2 MR. HIXSON: Yes, sir.

3 THE COURT: Just something short that will apply to
4 both the State and the defense about the dissemination or
5 lack thereof of that information.

6 And Mr. Wilson, I'll need -- once you get a price
7 from Ms. Eubanks and you can send me a funding order for
8 that transcript.

9 I need whoever is requesting that transcript to call
10 Court Administration and tell them we need it sooner
11 rather than later so that we can have access to that.

12 Okay. Now, let's talk about this -- and then the
13 juror questionnaire, we're going to add in the list of
14 social media on the thing and then get that to the clerk
15 so we can get that out. Okay. All, assuming the Chief
16 Justice grants us this blessing.

17 Okay. Now, let's talk about --

18 Go ahead, Ms. Williams.

19 MS. WILLIAMS: I just have a question, just making
20 sure the order of protection, are we to prepare that and
21 send that to you?

22 THE COURT: Yes.

23 MS. WILLIAMS: And then you'll sign it and let Judge
24 John know.

25 THE COURT: I'm going to call Judge John and say,

1 this is what we're doing. This is what's going on.
2 They've work out their issues with the solicitor's office
3 as far as trials on the docket, but I need them to be up
4 to speed and running at full pace and not be drug around
5 the magistrate's court and family court and all those
6 other kind of things.

7 You can certainly go do those things as you need to
8 maintain your practice of law. I'm not trying to shut
9 down your practice of law, but what I don't want you to be
10 is to be forced to be in a two-week long family court case
11 or a five-day long drug trafficking trial or something
12 like that when you're trying to get ready for this.

13 MS. WILLIAMS: Okay.

14 THE COURT: Okay. And I'll contact Judge John and
15 kind of get him up to speed. He may want to sign --
16 which, if he wants to sign it, that's fine with me. But
17 I'll reach out to him.

18 Now, at this point in time, I'm going find that
19 Mr. Jenkins being housed in safekeeping is appropriate and
20 has been appropriate and continues to be appropriate based
21 upon the information that was provided today and the
22 information that was provided at the last hearing.

23 At this point in time, I do not find that his
24 constitutional rights have been violated. And that based
25 upon things that have occurred, which are out of all of

1 our control, his being in safekeeping is appropriate.

2 Now, I'm going to give one caveat to that, that
3 statement, and number one, he's coming back to Horry
4 County -- assuming we have a trial on May the 6th, he's
5 coming back on March the 4th.

6 So my one caveat to this, what I heard from Warden
7 Davis today was that he knows who Mr. Jenkins is. He is
8 aware of his circumstances and he is now aware of the
9 Court's serious concern about his attorneys having access
10 to him, okay.

11 So what I heard from him today -- and one of reasons
12 I wanted somebody here from SCDC is there's a big
13 difference on going to meet with somebody on their
14 appellate issues or their PCR issues and preparing
15 somebody for trial. And I know that from practicing law,
16 and I appreciate that.

17 And one of the reasons I wanted somebody from SCDC
18 here today is so that I can look at that person and
19 explain to them that that's very important to me, is your
20 all's ability to have access to Mr. Jenkins. So my
21 recommendation is to open up a nice line of communication
22 with him.

23 I think we all had a very good conversation today.
24 Nobody was attacking anybody. It wasn't a -- I mean, I
25 think he left with the understanding that he knows that

1 it's important to me that Mr. Jenkins have access to his
2 lawyers between now and his trial date. And that while I
3 understand why he was put in safekeeping and I certainly
4 don't have the skill set to question that decision on
5 their part, while I understand that, we've got to be able
6 to balance that with you all having access to him. So, I
7 mean, he said today you can bring your laptops.

8 He said today you can bring all the discovery and you
9 can show it to him just as long as you take it back with
10 you. He said today if you need meet with him on the
11 weekends, we can make happen.

12 So, you know, in all your great southern charms and
13 graces, I would be as sweet to Warden Davis as humanly
14 possible and see how far that gets you. But I say that
15 with this caveat, is that if over the next two or three
16 weeks you're not saying that kind of cooperation, okay,
17 then you need -- somebody needs to let me know so I can
18 get on the phone -- I know Director Sterling very well.

19 We used to work together years ago when I was a State
20 employee. So I feel like I have a connection to be able
21 to get on the phone and say hey, this is where we are.
22 This is the situation we're in. I need these individuals
23 to have more access to Jerome, Mr. Jenkins, and, you know,
24 I really do need the cooperation.

25 My impression of Mr. Davis is you're going to get

1 that cooperation, but if for some reason you're not
2 getting it, then y'all need to let me know and I can start
3 making other phone calls to try to make that happen. But
4 I think -- I mean, I think he got it today and I think he
5 understands it. And I mean, there's certainly things that
6 you need to be able to sit down and go over with him and
7 go through with him to be properly prepared for court.
8 Okay.

9 Yes, sir, Mr. Hixson.

10 MR. HIXSON: The sheriff's department asked me to
11 request the Court if you could change your order somewhat
12 in that he would be moved sometime during the week of the
13 4th for security purposes so there's not a specific date
14 or time. It would help them --

15 THE COURT: He needs to be moved here by that Friday.

16 THE SHERIFF: Got it.

17 THE COURT: When you decide to do it, that is y'all's
18 decision, just needs to happen by Friday of that week. So
19 instead of giving you a specific date, I'm just going to
20 give you an end date. However you want to work back is
21 fine with me.

22 THE SHERIFF: Thank you, sir.

23 THE COURT: Does that make sense?

24 THE SHERIFF: Yes, sir.

25 THE COURT: All right. Mr. Wilson, anything else?

1 MR. WILSON: No, sir, nothing else on the record.

2 THE COURT: Okay. Mr. Hixson.

3 MR. HIXSON: No, sir.

4 THE COURT: Okay. Thank you very much.

5 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Horry	)	2015-GS-26-01757
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JEROME JENKINS,	)	
	)	
DEFENDANT,	)	

March 7, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

SCOTT HIXSON, SOLICITOR
Attorney for the State

BRANA WILLIAMS, ESQ.
RALPH WILSON, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

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CERTIFICATE OF REPORTER 34

COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Note/indictment	32	

1 THE COURT: All right. We're on the record in the
2 State of South Carolina vs. Jerome Jenkins, Jr. This is
3 an Horry County case out of the 15th Circuit. The 15th
4 Circuit Deputy Solicitor, Scott Hixson, is here present
5 and representing the State. Mr. Jenkins is here.

6 How are you doing?

7 THE DEFENDANT: Doing all right, sir.

8 THE COURT: Good.

9 He's also with his attorneys, Ralph Wilson and Brana
10 Williams of the Horry and Georgetown County private bar.

11 The Court called this status conference. We're about
12 60 days out, so there's a couple of things I want to
13 accomplish today. I want to make sure things are on track
14 and moving in the right direction and anything that y'all
15 need help with that I can help with. Second thing is I
16 have one ex parte matter that I need to take up with
17 counsel and Mr. Jenkins after that.

18 So where are from your -- as far as the timeline
19 goes, Mr. Hixson?

20 MR. HIXSON: We're right on track. My understanding
21 is the last status conference we had with Your Honor, you
22 indicated several timelines, specifically bringing
23 Mr. Jenkins back more locally for counsel to confer with
24 him. I believe that's happened. He is back in Horry
25 County now per your order, so that's right on schedule. I

1 have given a proposed supplemental scheduling order. I
2 handed it to your law clerk, I believe, just a couple of
3 ideas on there moving forward.

4 THE COURT: Okay.

5 MR. HIXSON: Our Clerk of Court has issued the jury
6 questionnaire. The deadlines have passed on those, so if
7 you see, I included some past guidelines on here that
8 convey what the Clerk of Court has done.

9 It is past -- the time where the sheriff's department
10 has been going out and talking to individuals that have
11 not returned any questionnaires. And I think that's
12 probably important to have a discussion on the record
13 making sure counsel is familiar with what they're doing as
14 it relates to those.

15 THE COURT: Okay.

16 MR. HIXSON: I'll be frank with the Court. I am
17 somewhat concerned because in the packet, in the
18 instructions sheet with the map of the courtroom and
19 everything else. They placed a notice in there that said
20 kind of be aware that this case may last two weeks.

21 As a result of that, as you can imagine, when they
22 get the juror questionnaire that says this may tie you up
23 for two weeks, we have not gotten as many responses, not
24 as much as I would be happy to get. As a matter of fact,
25 the sheriff's department has gotten about 140, 150

1 nonresponses after the deadline, about 200 back already.

2 So they have asked for my advice on what to do there.
3 I said I have to meet with the judge here on Thursday, so
4 let's just make sure we're on the same page on what I
5 currently advised them to do was a normal panel with this
6 pool.

7 We're going to make contact with those who have not
8 responded at all. There's a large number of folks who
9 have asked for excuses because they're 65 and older. I've
10 instructed the Clerk of Court you cannot excuse anybody.
11 We're going to have to have a hearing date on the record
12 for the Court to excuse anybody, but I figure we will work
13 through that. That's on like April 16th projected.

14 THE COURT: Okay.

15 MR. HIXSON: Maybe meet there, so the clerk can call
16 and say you don't have to meet on May 6th for statutory
17 excuses, things like that. So it might be good to talk a
18 little bit about that. Otherwise, we're on track for
19 May 6th.

20 THE COURT: So at this point, is the sheriff's
21 department trying to reach those people?

22 MR. HIXSON: Yes, they have been given a list. How
23 Madam Clerk has been doing it is e-mailing. I don't know
24 if the Court has been privy to those packets, been CC'd on
25 them or not.

1 THE COURT: I have.

2 MR. HIXSON: So you've seen when they come in, we're
3 running NCICs as we get them, and of course, we'll talk
4 about criminal history, you know, with Mr. Wilson there.
5 And then past the deadline, they've been going out and
6 trying to contact -- and they're doing an affidavit if
7 they're unable to contact them for change of address and
8 things like or they're able to contact them.

9 THE COURT: Okay.

10 MR. HIXSON: Now, the question that I think we need
11 to address is how -- sometimes the Court has given
12 instructions to the sheriff's department on what you
13 expect, how you expect them to conduct themselves.

14 Do you want them to drop the packet off and leave?
15 Do you want them to stand there and wait until they fill
16 out the packet? We had one lady, apparently, that was
17 served in an affluent neighborhood and saw it, said, I'm
18 not going there for two weeks. I ain't coming, threw it
19 back in the deputy's face and left.

20 So she has to show up. I don't know if the Court can
21 compel her to fill out anything. It's obviously a reason
22 to strike people like that. If there's any particular
23 instructions or anything that Mr. Wilson -- I think now is
24 the time to make sure the sheriff's department is properly
25 instructed on how you expect them to conduct themselves on

1 these.

2 THE COURT: Do you want to be heard on that,
3 Mr. Wilson?

4 MR. WILSON: Well, I mean, I agree with Mr. Hixson in
5 the sense that I don't know that we can require them to do
6 anything when the officer takes it out there to them.
7 Obviously, we can require them to come before the court
8 and explain why they didn't do it at a later time.

9 THE COURT: Right.

10 MR. WILSON: And so I think that would be
11 appropriate. That's really the only feeling I have about
12 the service of the summonses on the jurors.

13 THE COURT: Okay. I mean, in a perfect world, I
14 would feel like envision a scenario where they make a
15 reasonable effort to find the people once they've
16 determined, you know, this is who we're supposed to be
17 contacting.

18 You know, they, in a polite, nice and respectful
19 manner, say, You know, you need to fill this out, turn
20 this in. It needs to be done today, and if you don't,
21 then you're required to appear on this date. If you do
22 not come to that court hearing, you know, we're going to
23 have a hearing why you shouldn't be taken into custody.

24 MR. HIXSON: Yes, sir, Judge.

25 THE COURT: I mean, that's the -- you know, I'm sure

1 some people don't want to fill it out, but there's got to
2 be some kind of repercussions for people that are just
3 going to refuse to participate in the process if they're
4 residents and citizens of Horry County and meet the
5 statutory qualifications for jury service, and I think
6 everybody has a right to know that.

7 I think the thing that's probably the most important
8 to me is that the sheriff's department is documenting
9 their interaction with these individuals so that we all,
10 meaning, really, more than anything else, you all can see
11 that for the purposes of jury selection because it may
12 provide a reason for a strike or, you know, whatever it
13 may be. But some form of documentation that came in
14 contact with this person at this location and, you know,
15 they told me to go pound the sand or whatever the people
16 said or whatever their reaction was.

17 MR. WILSON: And, Your Honor, I assume we would also
18 get a copy of whatever that document --

19 THE COURT: Yeah, that's exactly what I would want,
20 yeah. I think that would be crucial for the jury
21 selection process, that's why I would want them to
22 document it. I think they need to document their
23 interaction, and I think they need to be prepared to tell
24 a person this is when and where you need to be when and
25 where and if you fail to show, you know, then the judge

1 has the authority to send me back out here to take you to
2 the county jail.

3 MR. WILSON: Your Honor, since this is a status
4 conference, I think there's one other issue. I know we
5 had some discussion early on about getting the information
6 regarding any CIs or confidential informants or jailhouse
7 witnesses or whatever the State might be using in the
8 trial of the case, and I still don't think I have all of
9 that information.

10 MR. HIXSON: That's correct.

11 THE COURT: Where are we on that?

12 MR. HIXSON: Your last order that you indicated, Your
13 Honor, was the 45 days. I reviewed it last week. I was
14 tied up with some issues in Horry County with SLED
15 investigations, but I've got that packet and I'd actually
16 like to meet with Ralph next week, bring it over, show him
17 a fair amount when -- from my recollection, I think all
18 tolled are like six. And I provided a sealed packet to
19 the Court earlier in the process.

20 THE COURT: Right.

21 MR. HIXSON: There's going to be several
22 codefendants, and a lot of information where individuals
23 that were more in line with introducing evidence against
24 the codefendants, not Mr. Jenkins. So that makes a lot of
25 that moot. There are two individuals still. One

1 individual is represented by Mr. Wilson's son, Ralph
2 Wilson, Jr., which I assume that's not a conflict because
3 I wouldn't call that person as a witness if that caused a
4 problem. But that is something --

5 THE COURT: I don't know the status of y'all's legal
6 relationship.

7 MR. WILSON: None.

8 THE COURT: Okay.

9 MR. WILSON: Haven't been for four years.

10 MR. HIXSON: I think my intention, even if I don't
11 intended to use them, let Mr. Wilson and Ms. Williams see
12 that in case they can devise some exculpatory impeachment
13 information out of it.

14 Even if I don't intend to use, I just want to make
15 sure that that's covered, and there's two I may end up
16 using, would probably not be in the penalty phase -- it
17 would be in the penalty phase, if we got to a penalty
18 phase, for some interactions they've had with Mr. Jenkins.

19 THE COURT: Okay.

20 MR. HIXSON: But I would like to meet with Ralph next
21 week and let you see it.

22 MR. WILSON: The only other question that I would
23 have is in regards to victim's impact statements, do you
24 have those?

25 MR. HIXSON: Victim impact?

1 MR. WILSON: The Victim Impact Statement forms that
2 they normally file.

3 MR. HIXSON: Oh, you mean the victims -- the family
4 members of the decedents? I do, and I have not provided
5 that because that's not discoverable, but I will let you
6 see them. I don't have a problem letting you see them. I
7 just -- you know, I'll certainly let you see them.

8 MR. WILSON: That's fair.

9 THE COURT: Okay.

10 MR. HIXSON: Yeah, victim impact stuff is -- but I do
11 intend to introduce victim impact evidence at the penalty
12 phase if we get there, and we served notice of that under
13 our notice of intent for evidence of aggravation.

14 MR. WILSON: And that's my reason for wanting to see
15 it. If he's going to introduce it at trial, I'd like to
16 know what's there.

17 THE COURT: You want to examine, sure.

18 MR. HIXSON: I'll tell you now, generally speaking
19 with the family members, talking about that, if we get
20 there, as you are well aware, I told -- Mr. Wilson knew
21 this because it's somewhat mitigation, the family member
22 of Mr. Parachuri, the first decedent, her religious
23 beliefs are such that she is opposed, religiously
24 opposed -- now, privately she has said things, but she
25 would never -- I would not want her in a position to have

1 to do that.

2 I think I told Mr. McGuire that and family members
3 for some of the DV stuff they'd like to do. The defense
4 initiated a victim outreach that she is -- her religious
5 beliefs are such that, you know, she would not be an
6 advocate for anybody ever dying. That's just from...

7 THE COURT: Okay.

8 MR. HIXSON: But as far as the others, the other
9 family members are diametric full opposite of that, and
10 then the victim impact stuff also relating to his conduct
11 in the jail concerning stabbings and cuttings.

12 There's a lot of things, some disciplinary records
13 relating to some of that conduct. That's outside of
14 victim impact, that's future dangerousness.

15 THE COURT: Has that discovery been turned over?

16 MR. HIXSON: Yes.

17 MR. WILSON: It has.

18 THE COURT: So discovery was the next topic on my
19 list. So any other discovery issues that we need right
20 now?

21 MR. HIXSON: I don't think so.

22 THE COURT: And you've -- y'all got your order of
23 protection.

24 MR. WILSON: Yes, sir.

25 THE COURT: Is that right?

1 MS. WILLIAMS: Yes, sir. Thank you.

2 THE COURT: I had a conversation with Judge John and
3 his main concern was if they needed the meat about the
4 case or try to do some long-term scheduling for a case
5 that y'all be available to come to that, but, otherwise,
6 you should be good to go?

7 MR. WILSON: Yes, sir.

8 THE COURT: All right. Good.

9 Anything else you want to take up, Mr. Hixson?

10 MR. HIXSON: I think I'd like to have some more
11 clarification so I'm instructing the sheriff's department
12 correctly on what they should do. I wrote it down in my
13 notes to make sure the Court and Mr. Wilson is aware of
14 this. Apparently, about 20 people, the sheriff's
15 department went out to talk to them after the
16 application -- they returned the applications, but they
17 were incomplete.

18 THE COURT: All right.

19 MR. HIXSON: And I think Madam Clerk of Court asked
20 them to go back out and get it complete and I felt like
21 that was not -- it's up for the juror -- we can't compel
22 them to complete it.

23 THE COURT: Right.

24 MR. HIXSON: They returned it. That's enough to say
25 here's what they returned. It's incomplete, and I felt

1 like it was probably, at a bare minimum, take care of the
2 ones that have not returned anything yet.

3 THE COURT: I would agree with that statement. We
4 need to be focused on the people who have not responded.

5 MR. HIXSON: Yes.

6 THE COURT: As opposed to the people who may not have
7 answered all the questions.

8 MR. HIXSON: Yes. And then the language that the
9 Court would advise for me to relate to them is to say Mr.
10 Wilson, you have not returned anything in this. You must
11 fill out this packet and stand there and wait for him to
12 fill it out or --

13 THE COURT: Well, I think the instruction is you need
14 to fill out this packet. It needs to be done today. You
15 need to send it back in. And if we do not receive
16 something from you by X date --

17 MR. HIXSON: You're back.

18 THE COURT: -- then you're going to be required to
19 come to court on this date at this time to answer to the
20 Court as to why you are not participating in the process.

21 MR. HIXSON: Yes, sir. Yes, sir.

22 THE COURT: And your failure to appear at that
23 hearing will cause you to be taken into custody.

24 MR. HIXSON: They have -- I've asked them to do an
25 affidavit for everyone they're unable to locate. They're

1 doing ATL forms and that will be so there will be a piece
2 of paper one way or another supporting every juror number
3 in the pool.

4 THE COURT: Great.

5 MR. HIXSON: That's all that I can -- other than just
6 for your review.

7 THE COURT: Okay.

8 MR. HIXSON: If you'd like the general ideas of it.

9 THE COURT: I got it.

10 Anything else, Mr. Wilson?

11 MR. WILSON: No, sir.

12 THE COURT: All right. Now, I have not asked this in
13 this case, so one of the things that I need to understand
14 is are there any plea offers that are on the table? Is
15 there a plan on any plea offers? Have plea offers
16 expired? Is that not an option at all? Where is the
17 State with that?

18 And I'm not saying you have to make one because I
19 understand that you do not have to make one. What I'm
20 asking is, is there one? Was there one? Is it expired?
21 If it's still out there, does it expire? Or things of
22 that nature.

23 MR. HIXSON: There are no plea offers. There has
24 never been a plea offer in it. Once we served notice, we
25 have no intention absent an order for incompetency or

1 something by the Court to retract that notice. As such,
2 there has not been and there are none and as such, there's
3 not set to expire.

4 THE COURT: Okay. All right. I just wanted to make
5 sure that the record -- that I understood that and that
6 the record was clear about that, so I knew that going
7 forward.

8 MR. HIXSON: Now, just a clarification for
9 Mr. Wilson. I think Mr. Wilson preferences nearly every
10 conversation we have in a very pleasant way of saying, you
11 know, we can take care of this if you let him plead to
12 life and offers that in a discussion. And he has been
13 relentless in working for his client in that regard, I
14 will tell you that.

15 THE COURT: All right. At this point in time, I need
16 to essentially clear the courtroom. So I probably need,
17 you know -- I need Mr. Jenkins and his attorneys, but I
18 probably just need, you know, two or three deputies. I
19 don't need one, two, three, four, five, six, seven, eight.

20 Thank you, Mr. Hixson.

21 MR. HIXSON: Thank you.

22 THE COURT: Y'all figure out who's staying and who's
23 going.

24 (Pause.)

25 Okay. All right. This is how this is going to work.

1 So this is an ex parte hearing. What that means is this:
2 If you are in this courtroom, you are not allowed to
3 discuss what we are about to discuss with anybody without
4 my expressed permission. That means you hear it from me
5 face-to-face so.

6 So if you're staying in here, you are abiding by the
7 rules. Failure to abide by those rules will cause you to
8 have to deal with me in a very unpleasant situation, okay?
9 So everybody who's in here is going to state their name
10 out loud.

11 Mr. Parker, you start.

12 MR. PARKER: Howard Parker.

13 THE COURT: Thank you, Mr. Parker. That's a bailiff.

14 MR. BRUNER: Allen Bruner.

15 THE COURT: With Richland County.

16 MR. RICKSON: Adam Rickson.

17 THE COURT: With Richland County.

18 MR. MILLS: John Mills.

19 THE COURT: With Horry County?

20 THE BAILIFF: Lee Bowen, bailiff.

21 THE COURT: All right. All right. Jackie.

22 THE CLERK: Jackie --

23 THE COURT: Jackie, you don't have to stay in here if
24 you don't want to. You can leave.

25 THE CLERK: Oh, okay.

1 THE COURT: The Richland County Clerk of Court was
2 pleasant enough to come in here for us, but we do not need
3 her at all.

4 LAW CLERK: Catherine Hart.

5 THE COURT: And then your name, ma'am, in the back?

6 SPEAKER: Danielle Switzer.

7 THE COURT: All right.

8 So Mr. Jenkins, I received a note from you from --
9 who's the lady that's the mitigation specialist.

10 MR. WILSON: Lindsey Vann.

11 THE COURT: Lindsey Vann, that's right. Okay, got it
12 right here.

13 So I got a note from you just a couple of weeks ago
14 from Ms. Vann. It appears you had some concerns about Mr.
15 Wilson representing you. And, apparently, he was, I think
16 probably the circuit solicitor, is that right, back in
17 1994?

18 MR. WILSON: That's correct, Your Honor.

19 THE COURT: The circuit solicitor for the 15th
20 Circuit, at which time, apparently, your father was
21 prosecuted. So I didn't want to leave all that there and
22 unopened with us getting this close to trial.

23 So I wanted to give you this opportunity to discuss
24 any concerns that you may have with me about Mr. Wilson or
25 Ms. Williams representation. This is an ex parte hearing,

1 so I can't discuss it with anybody.

2 Now, the reason that I actually had the prosecutor
3 come was because a lot of times -- and I'm not saying this
4 is true in this situation, but a lot of times, people are
5 just -- they complain about their plea offers.

6 So one of the reasons I wanted him here was to get
7 the existence or nonexistence of a plea offer on the table
8 so I could understand that before you and I had this
9 conversation.

10 Mr. Hixson is currently not here and he was not --
11 and he will not be party to this conversation. So this is
12 an opportunity for you and I -- or you to share anything
13 you want to with me about what's going on with your
14 lawyers so that I can evaluate the situation.

15 THE DEFENDANT: I mean, I feel like Ms. Brana, she
16 doing all right, but Ralph is like -- I feel as though he
17 feels since I'm guilty he going to do the bare minimum. I
18 mean, he's a paid lawyer. I know if I paid him my money,
19 I'm pretty sure he would work hard, so why can't he work
20 hard like that since this is my freedom.

21 THE COURT: Okay. And you covered a bunch of
22 different things in there. So let's kind of take them one
23 at a time. The first thing is that while he's -- I don't
24 know what somebody would charge privately to do a death
25 penalty case, but I know what Mr. Wilson is being paid

1 because I'm the one who's approving it. You know, it's
2 not a small amount of money.

3 THE DEFENDANT: Well, it's not large either.

4 THE COURT: Well, no, it's more -- he's going to end
5 up making more money than the average person in South
6 Carolina makes in one year off one case.

7 So we're not talking about a couple thousand dollars
8 that he's getting paid. You know, they're being
9 compensated. They're not being compensated at their
10 normal hourly rate or the hourly rates that they would be
11 entitled to, but they're being compensated above and
12 beyond what State Court appointed lawyers are historically
13 paid in South Carolina. So I don't have any concerns
14 about his, you know, financial incentive, if there is such
15 a thing --

16 THE DEFENDANT: Well, I ain't worried about the
17 financial.

18 THE COURT: -- to assist you. Now, I kind of see the
19 situation as completely different because the interactions
20 that I'm having with Mr. Wilson and Ms. Williams are
21 people that are really on top of the forefront of death
22 penalty defense right now.

23 I mean, I just approved an expert last week or the
24 week before for an issue, you know, that I think most
25 people wouldn't even have known exist or that those issues

1 exist in any way, shape, or form.

2 I mean, we, you know, we probably spent, I don't know
3 how much money, but a whole lot of money on a whole bunch
4 of experts from all over the place to meet with you, to
5 talk to you, to meet with your family, to meet with
6 your -- you know, the people you grew up with. I mean,
7 you know, all the things that I see them doing are in line
8 with what I think they should be doing.

9 Is your issue the amount that he's coming to see you?

10 THE DEFENDANT: No, no.

11 THE COURT: Tell me what your issue is specifically.
12 Like, is there a witness that you told him about that he's
13 not willing to go talk to?

14 THE DEFENDANT: Okay. Say, for instance, the letter,
15 okay.

16 THE COURT: Which letter?

17 THE DEFENDANT: The letter that somebody wrote my
18 mom. I told him I didn't write the letter, but last time
19 we spoke, he was like, Oh, I don't recall you saying this.
20 And I was like, Why would I write my name, my Facebook
21 name and all this if I'm writing my mom?

22 THE COURT: Okay. See, I don't know what that is, so
23 you've got to give me a little bit more information about
24 it.

25 THE DEFENDANT: Okay. Somebody wrote a letter, like

1 2015, '16, 2015 saying that oh, I killed the woman, I
2 killed the lady and all this right here and I don't show
3 no remorse and stuff like that. But I mean, I gave the
4 handwriting analysis, my handwriting. Okay, it says
5 probable cause.

6 THE COURT: Is it a handwritten letter?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay.

9 THE DEFENDANT: Okay, it says probable on mine, but
10 to my codefendants it says identified. I looked at the
11 sheet, it says identified and says something else is
12 probable and it goes on down like -- but it says something
13 about the switched handwriting and all that. It's a lot.
14 I wish I would have brought the paperwork.

15 THE COURT: Okay. What else is going on that you're
16 concerned about?

17 THE DEFENDANT: I think he should have told me that
18 he prosecuted my daddy, like, I found that out. Like, my
19 daddy sent me the paper. I wrote you the letter and sent
20 it --

21 THE COURT: I got it right here, yeah.

22 THE DEFENDANT: I mean, like, I spoke to Lindsey.
23 Lindsey said me and Ralph had this conversation, but to my
24 knowledge, I don't remember.

25 THE COURT: Okay. And that was back in the 90s?

1 THE DEFENDANT: Yeah, like nine --

2 THE COURT: Ninety-four.

3 THE DEFENDANT: Ninety-three, something like that.

4 THE COURT: Ninety-three, '94, okay. And how much
5 contact do you have with your dad?

6 THE DEFENDANT: My daddy got out 2015. I mean, like,
7 I just got a little like relationship with him.

8 THE COURT: Okay. So prior to that, you didn't much
9 relationship with him?

10 THE DEFENDANT: No. He was incarcerated before I was
11 born.

12 THE COURT: Say that again.

13 THE DEFENDANT: He was incarcerated before I was
14 born.

15 THE COURT: Okay. Got you. All right. So what
16 issue do you have with that?

17 THE DEFENDANT: I mean, I don't have an issue. I
18 just want to know that he is going to fight for me because
19 this is my life. Other than that, I ain't got nothing
20 else to say.

21 THE COURT: Okay. All right. Is there anything else
22 you want to bring to my attention?

23 THE DEFENDANT: No, that's it.

24 THE COURT: Did you get moved back to Horry County?

25 THE DEFENDANT: Yeah.

1 THE COURT: Yeah. Why are you laughing?

2 THE DEFENDANT: I'd rather be back in prison. That
3 shit is whack.

4 THE COURT: It's what?

5 THE DEFENDANT: Whack.

6 THE COURT: It's whack?

7 THE DEFENDANT: Yeah.

8 THE COURT: But you did get moved back?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, Mr. Wilson and Ms. Williams, it
11 should be a lot easier for them to come see you. And, you
12 know, we're kind of in this, what I would call crunch
13 time, you're about 60 days out from trial.

14 So one of the reasons I wanted you back wasn't to
15 make anything any worse on you, it was so they could have
16 more access to you. Does that make sense? Because I got
17 the impression you were locked down pretty good at SCDC
18 there at the end.

19 THE DEFENDANT: I have a question. Is it legal for
20 them to make me go to trial?

21 THE COURT: Make you go to trial?

22 THE DEFENDANT: Basically, they made me go to trial.
23 I didn't get no plea or nothing. So is it legal?

24 THE COURT: I mean, you have the right to plead
25 guilty if you want to plead guilty.

1 THE DEFENDANT: Plead guilty to the death sentence?

2 THE COURT: Right. I mean, we both are kind of
3 smiling at each other as we say that, but I mean, there
4 are some people that believe criminal defendants do not
5 have a right to plead guilty. You know, I don't think you
6 can stop somebody from pleading guilty as charged. But,
7 you know --

8 THE DEFENDANT: So if I plead guilty to the death
9 sentence, I would be on death row?

10 THE COURT: Yeah.

11 THE DEFENDANT: Not a chance.

12 THE COURT: Right. So, you know, you say can they
13 make me. The issue with plea negotiations and judges is
14 this, is that I can't make -- this morning, I taught a
15 fourth grade class government, okay.

16 So let's go back to fourth grade. Fourth grade
17 government is the way I look at things, right. In the
18 fourth grade government, it says the legislative branch is
19 over here; the executive branch is over here, and the
20 judicial branch is over here.

21 Your prosecutors are in the executive branch of
22 government. I don't -- the law does not allow me the
23 power to make them give you a plea offer.

24 THE DEFENDANT: No, I understand that. I was just
25 asking was it legal --

1 THE COURT: Yeah, they don't have to offer --

2 THE DEFENDANT: -- to refuse.

3 THE COURT: As long as they have the statutory notice
4 in place for the death penalty, they don't have to offer
5 you any -- make you any plea offer at all, yeah. There's
6 nothing I can do to stop them from doing that. Does that
7 make sense?

8 Now, they can change their mind. You know, I don't
9 know that they're going to. I doubt that they are. But I
10 promise you that Mr. Wilson has probably asked them to
11 more times than he cares to remember.

12 THE DEFENDANT: Oh, I know that. I can say that
13 because he's asked me will I take a life sentence.

14 THE COURT: Right. Okay. What else? What else you
15 want to talk to me about?

16 THE DEFENDANT: That's it.

17 THE COURT: All right. Good. Now, are you able to
18 see your children at Horry County.

19 THE DEFENDANT: It's been a bit of a dilemma with
20 that, because Horry County says that I'm SCDC's property
21 in that I'm back in the jail. I told them in order to
22 have a P.C.R., I would have to be convicted. So I don't
23 get to see nobody.

24 THE COURT: So you're not seeing anybody?

25 THE DEFENDANT: No.

1 THE COURT: Do you know what's going with that,
2 Mr. Wilson?

3 MR. WILSON: No, sir, I do not. And I have not been
4 to see him since he was moved to Horry County because I
5 knew this hearing was coming up, and I didn't want to
6 influence him one way or the other prior to coming in
7 here.

8 THE COURT: Would one of you check into what the
9 issue is with him having visitors? And I'm not saying
10 there's not a legitimate one. We need to figure that out.
11 One thing that I've always done with you when you've come
12 to hearings and we've been in Horry County is I've allowed
13 you to see your children. I think that's an important
14 part of, you know, being a dad and being a parent and just
15 being the basic rights of a human being.

16 So they've always -- you've always asked me or your
17 attorneys have always asked me, you know, if you can see
18 your kids when we're in Horry County, and I've always
19 allowed that to happen. Number one, because your behavior
20 in court has always been excellent; but number two,
21 because I think that's just part of basic human dignity.
22 A parent wants to see their child. I know you were in
23 SCDC for a long, so that was important to me.

24 I'm going to ask Mr. Wilson and Ms. Williams to
25 figure out what's going on with that. Okay?

1 THE DEFENDANT: Yeah.

2 THE COURT: Anything else you want to talk to me
3 about right now?

4 THE DEFENDANT: Not right offhand.

5 THE COURT: Mr. Wilson, do you want to talk about any
6 of these representation issues?

7 MR. WILSON: Yes, sir. Your Honor, first, let me
8 address the letter. The letter that he is referring to is
9 a letter that was written that was confiscated by the
10 jail. Exactly how they confiscated it is a question, but
11 we have addressed that, and we continue to address that in
12 two ways. One, there is a Supreme Court case that
13 specifically says that in order for them to get the letter
14 in, the State had to go through certain processes in order
15 to acquire the letter.

16 What happened here is that letter was confiscated by
17 the jail --

18 THE COURT: You're talking about the letter that's in
19 evidence --

20 MR. WILSON: The letter --

21 THE COURT: Not this letter?

22 MR. WILSON: Not this letter. The letter that he's
23 referring to where he's saying that there were some
24 allegations about him killing --

25 THE COURT: Got it. I'm with you now.

1 MR. WILSON: We're dealing that. I didn't really
2 want to get into it, but what's happening with that is
3 this, is that there is a case -- how the solicitor got
4 that letter is a problem for them, for the State.

5 THE COURT: Okay.

6 MR. WILSON: And I have a case that I think is on
7 point with that, and this very issue was litigated in
8 Horry County, actually by my daughter in another criminal
9 case where they did exactly the same thing.

10 So we're trying to deal with it in that way, but
11 secondly, the letter has been examined by SLED. There has
12 already been handwriting exemplars done by SLED on the
13 letter.

14 THE COURT: Okay.

15 MR. WILSON: So that's done anyway.

16 The other issue his father. I have absolutely no
17 recollection of his father, so after I got the letter, I
18 called the Solicitor's Office and had them check back to
19 see if, in fact --

20 THE COURT: It was assigned to you or not assigned to
21 you?

22 MR. WILSON: Right. I have never prosecuted his
23 father personally. His father did come through the office
24 on three separate occasions while I was the Solicitor. So
25 yes, my name would be on each of those indictments. That

1 is true. I never personally handled a case involving his
2 dad.

3 THE COURT: Okay.

4 MR. WILSON: In fact, I met his dad about year ago.
5 I guess it was maybe a year, maybe a year-and-a-half ago,
6 his father and mother came to see me, which is the first
7 time I had ever met his father ever.

8 THE COURT: Are the mom and dad participating --

9 MR. WILSON: They are.

10 THE COURT: -- in the case?

11 MR. WILSON: In fact, they're together now. They're
12 back together. At least when I talked to them a
13 year-and-a-half ago, they had gotten -- recently gotten
14 back together as a couple and were living together.

15 THE COURT: Okay. But you're able to communicate
16 with them and get in touch with them?

17 MR. WILSON: Yes, sir.

18 THE COURT: And all those good things?

19 MR. WILSON: Yes. They both indicated that they're
20 more than willing to cooperate and help in any way they
21 can.

22 THE COURT: All right. Anything else you want to
23 tell me about?

24 THE DEFENDANT: That's it.

25 THE COURT: Ms. Williams, do you need to add

1 anything?

2 MS. WILLIAMS: No, sir, I don't think so.

3 THE COURT: All right. I wanted to -- what I didn't
4 want to do is us get closer and closer and then
5 Mr. Jenkins feel like his issues haven't been addressed or
6 that I haven't heard you.

7 It's a lot of moving parts to get a hearing out of
8 the normal box into place, but I think it was important to
9 do this and to let you be heard on those issues.

10 Yes, sir.

11 MR. WILSON: One last thing that I think is important
12 to put in the record is that this issue was raised about
13 his father actually by J.J. -- by Jerome to me. I didn't
14 even realize that I had represented his father. This is
15 three years ago.

16 THE COURT: Right.

17 MR. WILSON: He told me at a meeting because he was
18 telling me that Ms. Brana had represented him and that I
19 had prosecuted his dad. This was several years ago. And,
20 you know, I didn't think any more about it at that point
21 until this all came up and then I wanted to obviously
22 address it.

23 THE COURT: Okay. But at this point in time, you're
24 able to communicate with the mom and dad?

25 MR. WILSON: Yes, sir.

1 THE COURT: And there's none of this about I'm not
2 going to talk to you or anything like that?

3 MR. WILSON: No, sir.

4 THE COURT: All right. Mr. Jenkins, anything else
5 you want to tell me?

6 THE DEFENDANT: No, sir.

7 THE COURT: Let's mark his original note and the
8 indictment that is attached and the letter from Ms. Vann,
9 which has the stamped date on it when I received it.
10 We'll mark all that as Court's Exhibit No. 1 under seal
11 for the purposes of this hearings.

12 COURT REPORTER: How do you want to go about getting
13 it back to Horry County? Do you want me to get Jackie and
14 go through the Richland County Clerk's Office? You want
15 me to sign it over to them?

16 THE COURT: Yeah. Let's sign it over to Mr. Wilson.
17 He can take it to Natalie and tell her she needs to seal
18 it. That way, it's protected in the Horry County records.

19 MR. WILSON: Will do.

20 (WHEREUPON, Court's Exhibit No. 1 was marked for
21 identification only.)

22 THE COURT: All right. Mr. Jenkins, thank you very
23 much. Have a great day.

24 Once they talk to him, he's free go.

25 Thank you all for being here and being on time. I

1 sincerely appreciate that.

2 All right. Thank you, guys.

3 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Horry County, South Carolina, on the 7th day of March,
2019.

October 7, 2019

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF HORRY) IN THE COURT OF GENERAL SESSIONS

3

4 THE STATE OF SOUTH)
CAROLINA) TRANSCRIPT OF RECORD
5) 2015-GS-26-01767
-vs-) 2015-GS-26-01758
6) 2015-GS-26-01750
JEROME JENKINS, JR.,) 2015-GS-26-01751
7) 2015-GS-26-01757
DEFENDANT.) 2015-GS-26-01759
8) 2015-GS-26-01760
9) 2015-GS-26-01768
10)
11) APRIL 12, 2019
12) CONWAY, SOUTH CAROLINA

11

12

13 B E F O R E:

14

THE HONORABLE ROBERT E. HOOD, JUDGE.

15

16

17

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

18

SCOTT HIXSON, CHIEF DEPUTY SOLICITOR
ATTORNEY FOR THE STATE

19

20

RALPH WILSON, SR., ESQUIRE
ATTORNEY FOR THE DEFENDANT

21

22

BRANA WILLIAMS, ATTORNEY AT LAW
ATTORNEY FOR THE DEFENDANT

23

24

25

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

26

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
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25

WITNESSES

PAGE

(NO WITNESSES CALLED)

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3		(NO EXHIBITS MARKED)		
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1 (PROCEEDINGS, April 12, 2019).

2 THE COURT: All right, good morning.

3 We are on the record in the State of South
4 Carolina versus Jerome Jenkins.

5 The State is present represented by Deputy
6 Solicitor Scott Hixson.

7 Mr. Jenkins is present, good morning, and
8 represented by Ralph Wilson.

9 All right, what do we need to accomplish this
10 morning?

11 MR. HIXSON: Did you have a Bigger's Motion you
12 wanted to --

13 MR. WILSON: No.

14 Your Honor, it's my understanding that we were
15 going to go over the list of jurors with the NCIC --

16 THE COURT: Okay.

17 MR. WILSON: -- that we did not complete.

18 I received a list actually from the solicitor's
19 office of the individuals that they indicated they had NCIC
20 records for. We went through those records and, you know,
21 and decided which of those we felt like needed to be excused
22 and which of those, based on their criminal history, did
23 not, so we are prepared to go forward with that and put that
24 in the record.

25 I have a couple of other things which are not

1 related to that. For instance, there is one issue. I
2 received -- and I hadn't really had a chance to talk to
3 Scott about this, as I just got this yesterday, we had
4 requested some information from the jail on some -- on some
5 video visits that the defendant had had out at the jail and
6 we got the information, but it's on a disc that we can't
7 unlock. We can't get into it to determine what's in it.
8 There is no app that is available that I know of that will
9 allow me to get into it, so I assume it's some kind of
10 encrypted --

11 THE COURT: Okay.

12 MR. WILSON: -- and I need to be able to access it
13 if it's going to be of any benefit to me.

14 MR. HIXSON: Yes, sir. We certainly can take care
15 of that. There's a nice segway in it.

16 Specifically we were going through the NCIC
17 review. Brana and Ralph came over to the office to go
18 through the NCIC. During the course of that Mr. Wilson
19 indicated that he wanted kind of visitation logs and all
20 that video information and I asked my investigator Steve
21 Brown to go get it. We did and we got a copy of it,
22 provided it, so we haven't looked at it, don't know what it
23 is, so we will certainly go to the jail together and figure
24 out it what we have to do to make sure that Mr. Wilson can
25 see it.

1 The reason I'm talking so long is because going
2 through these past motions I realized back a year or two ago
3 there was a motion filed by Mr. Wilson that talked about
4 sealing the visitation logs and now we are participating and
5 trying to get them for him. I don't want to run afoul of
6 anything with the court about that, so I just want to
7 clarify that.

8 MR. WILSON: We -- what happened is we actually
9 filed a -- we issued a subpoena, actually, which is not
10 really the technical way to do it, but we issued a subpoena
11 simply because we didn't really want to let the State know
12 exactly what we were doing. Unfortunately the jail called
13 the solicitor's office and said "hey, look, we got a
14 subpoena here. We are not -- should we honor it?" And, of
15 course, they chose not to honor it, but the solicitor agreed
16 to get the information for us. Otherwise, I would have come
17 and gotten an order from the court, but he is correct. We
18 did ask that, and the reason we asked that early on was that
19 we were in the process of paring our defense and this was
20 specifically when the defendant was at Leath. That was
21 really what --

22 THE COURT: I understood the purpose.

23 MR. WILSON: -- we were concerned about and that
24 was the purpose of pursuing that at that time.

25 THE COURT: I assumed the purpose --

1 MR. WILSON: But we are no longer concerned about
2 that.

3 THE COURT: Okay.

4 MR. HIXSON: We will help in any way we can with
5 that, judge.

6 Are you okay with Steve pressing open and --

7 MR. WILSON: Yeah, absolutely. Absolutely.

8 THE COURT: Okay. Great.

9 MR. WILSON: Absolutely.

10 THE COURT: Okay. Good.

11 MR. WILSON: And, Your Honor, in regards to the
12 clerk, there was two --

13 MR. HIXSON: Make sure about one point before we
14 change our minds?

15 MR. WILSON: Okay.

16 MR. HIXSON: Jody said that your subpoena was for
17 everything back in 2015, but in our conversation you said
18 just since Mr. Jenkins has been back.

19 MR. WILSON: Just since he's been here in Horry.

20 THE COURT: Just since he's been in Horry, since
21 he came out of SCDC?

22 MR. WILSON: Yes.

23 THE COURT: Okay, got it.

24 MR. HIXSON: Okay.

25 MR. WILSON: Your Honor, there are -- and

1 switching subjects, there were -- in going through these
2 juror questionnaires, there were two that we did not have or
3 which were not completed, where was 313 and 330, Ms. Clerk,
4 and I don't know if we have those, 313 and 330, before we
5 get started?

6 THE CLERK: I do not have 313.

7 THE COURT: Does that mean they didn't respond?

8 THE CLERK: And I do not have 330.

9 I believe those were ones that did not respond,
10 and I have given them to the sheriff's office to go out. I
11 have not gotten anything back from the sheriff's office.

12 THE COURT: Okay.

13 THE CLERK: On 330 there should be an affidavit.

14 MS. WILLIAMS: A sheriff's affidavit?

15 THE CLERK: Yes.

16 313 from the sheriff's office has not responded.

17 "330, we were unable to locate the juror.

18 Numerous attempts. Cards left".

19 THE COURT: Okay. Was that an affidavit?

20 THE CLERK: Yes, sir.

21 THE COURT: We need to get Mr. Wilson a copy of
22 that.

23 THE CLERK: Okay. I'll make sure we get you a
24 copy.

25 MR. WILSON: Thank you.

1 THE COURT: Okay.

2 THE CLERK: There were a couple others that didn't
3 respond. Those are the only two that --

4 MR. WILSON: Those were the only two that we --

5 MS. WILLIAMS: They were referenced on their NCIC
6 information that we didn't have. So --

7 THE CLERK: You guys had NCIC --

8 MR. WILSON: No, they were listed on -- they were
9 listed on the NCIC information that the solicitor had given
10 us, but then we didn't have any documents, any
11 questionnaires, or anything for them.

12 THE CLERK: Right.

13 THE COURT: That's fine.

14 MR. HIXSON: Also just for clarification, just so
15 the court understands, a future court may understand if it
16 gets that far, our process has been that once we got the
17 master list from the Clerk of Court's Office, Ms. Holmes was
18 the only one that did this and she went through each one,
19 entered the information into NCIC. If nothing came up with
20 no record, she did not print out a document that showed no
21 record. The only time NCIC exists is if something existed
22 in the NCIC system.

23 THE COURT: Okay.

24 All right, what else?

25 MR. WILSON: One other issue, and I know we

1 discussed this I think ex-parte at one point and I don't
2 think that that's a secret anymore and so I don't know that
3 it's necessary to do it ex-parte because it does affect the
4 solicitor's office to some degree.

5 In my conversations with the solicitor, they
6 agreed -- they gave me a list of jurors that they had run
7 NCIC's on, which they say either had criminal records, or at
8 least had some charges which may have been criminal records,
9 and that's fine, and I went over and looked at those.

10 My concern now is that there are a number of other
11 jurors, probably maybe even 200, that I don't have any NCIC
12 information on. And even if they had it, what concerns me
13 is is that the process that I had to use was I had to go to
14 their office, because they said they couldn't give them to
15 me, so Ms. Williams and I had to go over to their office,
16 sit down with their people and go through the NCIC
17 information, which I -- you know, I don't know that I can do
18 again. And the reason for that is is that it prevents me
19 from having any discussion, any meaningful discussion, with
20 Ms. Williams while we are there about what we are seeing and
21 we can't take the documents out with us when we leave, so it
22 really inhibits me.

23 I'm even further inhibited by the fact that I
24 don't have any information about the other jurors. Now,
25 maybe they don't have criminal histories at all, and that

1 may very well be true, but I'm having to accept the word of
2 the State for that and I'm not comfortable doing that
3 either. So, I mean, that's the --

4 THE COURT: We are going to run 200 rap sheets on
5 people that don't have records?

6 MR. WILSON: I don't -- I don't know what else to
7 do. I mean, I'm -- I'm just telling you that my position
8 is, is that --

9 (Off the record).

10 (Back on the record)

11 MR. HIXSON: Your Honor, the first step I think I
12 can help that is if Your Honor gives us guidance, I
13 certainly don't mind making copies of our NCIC's that we
14 have and give them to Mr. Wilson to take back to his office,
15 as long as he gives them back afterwards so we don't have
16 that -- you know, we have the compliance issues that --

17 THE COURT: All these issues, disseminating
18 NCIC's. I have been through all that training before. I
19 understand that.

20 MR. HIXSON: If we can get them back and the court
21 order said review them, do what you got to do and give all
22 the packets back so we can shred them, then I don't
23 certainly mind so he don't have to come to the office and
24 look at them. That's the first step that we can solve that
25 problem.

1 MR. WILSON: And that would be satisfactory.

2 THE COURT: Okay.

3 MR. WILSON: That would certainly be satisfactory.

4 MR. HIXSON: Now, as it relates to -- I mean, I
5 don't want to put my staff under oath, but put them under
6 oath. You know, Sarah can add to them, or even direct the
7 court, we can have Mr. Collins to go back through every one
8 that didn't have one and print one that says it doesn't have
9 one.

10 THE COURT: It should have just been printed the
11 first time. That would have been a lot easier.

12 MR. HIXSON: Yeah.

13 THE COURT: That would have solved that problem
14 completely.

15 MR. HIXSON: All right.

16 THE COURT: Let's go back through them all and if
17 even they -- I know what it looks like when it says no
18 record found, print that sheet out. Okay.

19 MR. WILSON: Yes, sir, that would be satisfactory.

20 THE COURT: All right. Okay.

21 What else?

22 Do we have jurors that we've agreed that do not
23 qualify that we can excuse?

24 MR. WILSON: I think so.

25 THE COURT: Well, let's go through that list.

1 MR. WILSON: Do you want to do the NCIC list that
2 we talked about?

3 MR. HIXSON: You go ahead and do it, because I
4 wasn't her when Jen was privy to it, so I'll just -- I'll
5 ride along with you.

6 (Off the record).

7 (Back on the record).

8 MR. WILSON: Judge, did you want us to go through
9 the NCIC's, or do you want us to go through the entire list?

10 THE COURT: The NCIC's.

11 MR. HIXSON: The list that Solicitor Richardson
12 wrote, the letter, the cover letter?

13 MR. WILSON: Yeah, he still wants us to go through
14 them.

15 THE COURT: I mean, if they are already excused,
16 then we don't need to go through -- we don't need to
17 duplicate it, but this needs to be the people that have
18 responded that have convictions that qualify to make them
19 ineligible to serve.

20 MR. HIXSON: And, Your Honor, what we are
21 referring to is Solicitor Richardson went through the NCIC's
22 and indicated by juror number the ones that he believes are
23 disqualified. Those are the ones that the meeting with
24 Brana and Ralph focused on that confirm by review of those
25 NCIC's that they were, in fact, disqualified, so I think

1 that's a good starting point, I would think.

2 THE COURT: Okay. All right.

3 MR. WILSON: That's good.

4 THE COURT: Let's do it.

5 MR. HIXSON: I do not have that letter from Ralph.

6 MR. WILSON: You don't have a copy of it?

7 MR. HIXSON: Steve Brown is going down to get it.

8 MR. WILSON: Okay. I have an extra one.

9 THE COURT: Are you ready, Madam Clerk?

10 THE CLERK: Yes.

11 THE COURT: Okay. These are going to be people
12 that are out.

13 THE CLERK: Okay.

14 MR. WILSON: I'll start with number 1 is excused.

15 THE COURT: Because of a record?

16 MR. WILSON: I have he has a record, but -- yes.

17 THE CLERK: He has a felony in Georgia.

18 THE COURT: Okay.

19 MR. WILSON: 33 has moved, is that correct?

20 THE CLERK: Yes.

21 THE COURT: Yes.

22 MR. WILSON: 51 has moved or is unable to locate.

23 THE COURT: Correct.

24 MR. WILSON: Number 60 is excused. Has a criminal
25 record, conspiracy and drugs.

1 Number 102 is excused. Also has moved, but he has
2 an embezzlement conviction.

3 THE COURT: Okay.

4 MR. WILSON: 115 -- I'm sorry, 116 has a
5 distribution of cocaine, but has also moved or is unable to
6 locate. I think it says dead too, so that would definitely
7 excuse him.

8 121 has drugs and forgery and also is dead.

9 Number 156 has forgery and a cocaine conviction,
10 is excused.

11 168 has a cocaine conviction and is excused.

12 164, which is one of the ones that the solicitor
13 had a question about on the bottom list is excused. He has
14 an assault on female and injury to personal property.

15 Number -- I'll go back to Number 61, Your Honor.
16 That's on that question list that the solicitor had. Number
17 61 is not excused. He had multiple -- he had -- I think he
18 had a violation of an order of protection and it's my
19 understanding violation of order of protection, at least
20 here, carries one year, up to a year, so that wouldn't
21 disqualify him, if it's up to a year --

22 THE COURT: Okay.

23 MR. WILSON: -- is my understanding, so I would
24 have -- on 61.

25 And 26. I'll go back up to 26. 26 had a trespass

1 and a DUI, which would not by disqualifying, but couldn't
2 locate him.

3 THE CLERK: Moved to Seattle per deputy.

4 MR. WILSON: Okay. So then that takes me back
5 down to 158.

6 I did 164.

7 249. And 249, Your Honor, had a charge of assault
8 and battery, but no conviction, so he would not be excused.

9 MS. WILLIAMS: He was the one that had a doctor's
10 appointment in Illinois during that time and had a doctor's
11 slip.

12 MR. WILSON: Yeah, yeah, yeah, he can stay.

13 THE COURT: That's the one who has a doctor's
14 appointment?

15 MR. WILSON: Yes, sir.

16 THE COURT: Not for some medical condition he has,
17 but for some lawsuit he's in?

18 MR. WILSON: Right.

19 THE COURT: Yeah, this is -- so we got a letter.
20 You weren't here Mr. Hixson, so this is the same one I'm
21 remembering, it wasn't like I'm going to some specialty
22 hospital in Chicago and this is the only time I can get the
23 appointment. We got a letter from his Chicago lawyer saying
24 that he had a medical appointment for his case.

25 MR. HIXSON: Yes.

1 THE COURT: And so I said he needs to come in,
2 okay.

3 MR. HIXSON: I agree with that.

4 MR. WILSON: And, Your Honor, 276 has a sale of
5 heroin and is excused.

6 289, which was a question -- a juror who had who a
7 question about his -- this juror was deported by ICE in
8 2008. He had a charge of kidnapping and abduction, but he
9 has no convictions.

10 MR. HIXSON: Is he a U.S. citizen, though?

11 MR. WILSON: Right, not a U.S. citizen, at least
12 based on what I saw. Obviously he --

13 THE COURT: If he says that, I'll be surprised.

14 MR. WILSON: So would I.

15 He actually knows he did his -- he did his
16 questionnaire.

17 THE COURT: Well, tell him to come in. We will
18 question him as to whether or not he's a U.S. citizen.

19 MR. WILSON: 313 has a -- this was one that Your
20 Honor that I had some question about. He had a conviction
21 for escape, but it -- I don't know -- I couldn't tell from
22 the NCIC if it was magistrate court or whether it was
23 General Sessions, so out of an abundance of precaution we
24 probably should let him come in, if he's able to locate.

25 THE COURT: That's fine.

1 THE CLERK: We will have to hear from the
2 sheriff's office. They said they haven't been able to
3 locate him as of yet.

4 MR. WILSON: No problem.

5 MR. HIXSON: Has he done an affidavit of UTL
6 already?

7 THE CLERK: He has not given me back the
8 affidavit. I gave him a final list last week.

9 MR. HIXSON: Okay.

10 MR. WILSON: 329, convicted of bank robbery. He's
11 also over 65 and is excused.

12 330 is ABHAN conviction. That was one of the ones
13 that we didn't have a questionnaire for that we discussed
14 earlier, but he would be excused anyway because of his
15 conviction.

16 333 is 68 years of age, or older, and obviously
17 would be excused.

18 340 has malicious damage to personal property.
19 And, again, it says dead, based on what we could find, so he
20 is either moved or at least --

21 THE CLERK: The category was moved, relocated,
22 UTL, or dead.

23 MR. WILSON: Right.

24 THE CLERK: It says lives out of town per deputy.

25 MR. WILSON: So he doesn't live here, but he would

1 be -- that was another one that I had a question about
2 whether he would be excused or not, because I know that the
3 city also has malicious damage.

4 THE COURT: Yeah, I would -- somebody like that, I
5 mean, if they want to -- they need to come in. We don't
6 need to permanently excuse them.

7 This is people that is clear that they have a
8 felony conviction that carries more than one year. Anybody
9 that's in this --

10 MR. WILSON: Questionable.

11 THE COURT: -- kind of questionable, we just need
12 to bring them in --

13 MR. WILSON: Yes.

14 THE COURT: -- and question them about it. Yeah.

15 MR. WILSON: Fine. And then we go to -- he moved.

16 THE CLERK: He's out of town, per deputy.

17 THE COURT: He may not even show up.

18 MR. WILSON: He lives out of town. He doesn't
19 live here.

20 346 has multiple drug convictions, is excused.

21 354 is dead, at least that what I had. Receiving
22 stolen goods, but not with us any longer.

23 Number 370 has multiple drug convictions and
24 excused.

25 371 has a burglary second conviction and would be

1 excused.

2 374 has a B&E, but is unable to locate, as I
3 understand it.

4 THE CLERK: Yes, sir.

5 MR. WILSON: And 376 I'm showing as deceased.

6 THE CLERK: Yes, sir.

7 MR. WILSON: 391, PWID marijuana, would be
8 excused, but was also unable to locate or deceased.

9 THE CLERK: 381?

10 MR. WILSON: 391.

11 THE CLERK: I'm sorry, 391. Moved to Gastonia,
12 North Carolina, per deputy.

13 MR. WILSON: Now, Your Honor, these are the ones
14 that I had some question about.

15 MS. WILLIAMS: These are not NCIC.

16 MR. WILSON: I know.

17 That completes my NCIC, but there are three or
18 four that I had some question about that if we could talk
19 about those now, or we can --

20 THE COURT: Let's do it.

21 MR. WILSON: All right, sir.

22 Number 19 said that he lives in Rock Hill.

23 THE CLERK: He's a student at Wofford.

24 MR. WILSON: I didn't see anything verifying that
25 he was actually a student or that he lived in Rock Hill,

1 just the fact that he said that, and that was my only
2 concern about him.

3 THE COURT: So I thought what I said last time was
4 we need to figure out from him if he is in school, okay?
5 And then we also need to figure out, though we need
6 verification that he's in school, a printout of his
7 schedule, something of that nature.

8 And then we also need to figure out when his final
9 exams are, because colleges finish up about that time. He
10 could be completely and totally done before the trial starts
11 and then he would be eligible and if -- but if he's got
12 exams the first week of that trial, then I'm not going to
13 make him come down here while he has exams. He would be
14 entitled to --

15 MR. WILSON: We would agree to that, Your Honor.
16 We would not ask that.

17 THE COURT: We need more -- we need information
18 from him.

19 THE CLERK: We've asked for it, so we will ask
20 again.

21 THE COURT: Tell him he can either provide it, or
22 he can come down here, take your pick.

23 THE CLERK: Okay.

24 MR. WILSON: Now, Number 351, it says that he had
25 a wedding to go to, but that there is nothing in there about

1 the date of the wedding, or where the wedding is, or
2 anything else, and so, you know, I --

3 THE COURT: Did we have -- have we gotten any more
4 information from 351 yet?

5 THE CLERK: He did not, but he is getting married
6 I believe that Saturday before would be on his honeymoon.

7 THE COURT: It's a woman.

8 THE CLERK: He has not yet.

9 THE COURT: This is a woman. 351 is a woman.

10 THE CLERK: 351?

11 THE COURT: Louse Stewart.

12 MS. WILLIAMS: I have a family commitment out of
13 state.

14 MR. WILSON: It says it's a family commitment out
15 of state.

16 THE CLERK: It is a wedding that had been planned
17 for two years.

18 THE COURT: Yeah, that's what I had too.

19 MS. WILLIAMS: I apologize. I thought it was a
20 man.

21 THE CLERK: We'll call them again and let them
22 know.

23 THE COURT: So on 351 what I need to know is what
24 is the commitment, how long has it been planned, what is the
25 role in the wedding, if any? What is her familial

1 relationship, if any? Is she driving there? Is she flying
2 there? When exactly is the wedding? When is she leaving?
3 When is she coming back? I need all the details surrounding
4 that before she gets excused.

5 I assume that's what you want me to do, Mr.
6 Wilson?

7 MR. WILSON: Yes, sir.

8 THE COURT: Okay.

9 THE CLERK: All right, we will do that.

10 MR. WILSON: And, Your Honor, next is number 25.
11 Number 25 had a trip to Cuba, and I went through and looked
12 and he actually did send in his material showing that he had
13 booked this trip back in August of last year.

14 THE COURT: Okay.

15 MR. WILSON: I have no real objections of him
16 being excused. He's paid his money and apparently can't get
17 it back.

18 THE COURT: Okay. Mr. Hixson?

19 MR. HIXSON: Per the court I have no objection.

20 THE COURT: So 25 is out.

21 MR. WILSON: And then 332, I think he's the one
22 that said that he takes care of his mother who is 88 years
23 of age. And obviously I have no objection if he stays home
24 and he takes care of her full time, but I had the impression
25 that he worked as a gas journeyman, and I wasn't clear --

1 THE COURT: 332?

2 MR. WILSON: -- whether that's present or past.

3 THE COURT: 332 just needs to come in. This I
4 take care of my momma stuff ain't going to cut it. He may
5 cut it in the long run.

6 MR. WILSON: Right.

7 THE COURT: He may be able to convince me about
8 it, but, you know, there is no way to get that information
9 from him. He just needs to come in.

10 MS. WILLIAMS: Are we going to put on the record
11 only people that were actually excused? These are people
12 that were -- I mean, did you want that on the record or not?

13 THE COURT: We already excused the 65 or older
14 that wanted to be excused.

15 MR. WILSON: What she's saying is is that what we
16 excused them, I don't know that we went through them number
17 by number so that we know exactly which numbers that
18 include.

19 THE COURT: Okay. We can do it right now. Ready?

20 So that means number 44 is out. 48, 59, 63, 66,
21 74, 82, 88, 93, 94, 106, 107, 126, 140, 150, 154, 162, 167,
22 169, 172, 186, 193, 195, 199, 207, 217, 233, 236, 248, 250,
23 260, 264, 266, 272, 275, 285, 303, 308, 320, 329, 333, 335,
24 336, 366, 377, 382.

25 MS. WILLIAMS: We have numbers that weren't

1 called.

2 THE COURT: Those are people that are over 65 and
3 asked for the exemption, right?

4 THE CLERK: We do have some more that we called
5 and have said they wanted to --

6 THE COURT: Okay. Go ahead and give us those
7 numbers.

8 THE CLERK: Number 7, number 12, number 22, 29,
9 50, 71, 72, 73, 85, 89, 92, 98, 118, 145, 151, 157, 188,
10 206, 209, 224, 230, 280, 290, 294, 301, 302, 327, 334, 342,
11 356, 357, 358, 393, 396. That's all.

12 THE COURT: And why did we call those people?

13 THE CLERK: I'm sorry?

14 THE COURT: Why did we call those people?

15 THE CLERK: We don't have the choice. It's all
16 done by the computer.

17 THE COURT: What do you mean?

18 THE CLERK: You mean call them for jurors?

19 THE COURT: No, why didn't we call them and ask
20 them about their 65 years of age or older?

21 THE CLERK: Because they didn't check that they
22 wanted to be excused. They --

23 THE COURT: You called them?

24 THE CLERK: We called them. Some of them did want
25 to. One or two wanted to be on. Like we had an 87-year

1 old. She wants to serve.

2 THE COURT: Why did we call the people that didn't
3 check the box?

4 THE CLERK: Because it was --

5 THE COURT: Don't call anybody else without my
6 permission.

7 THE CLERK: Okay.

8 THE COURT: All right, what else?

9 MR. HIXSON: Is this relating to the jury, Your
10 Honor? We are done with the jury stuff?

11 THE COURT: Are we done with the jurors?

12 Can somebody tell me in real number of how many we
13 have at this point?

14 MR. HIXSON: We will have to count down.

15 THE CLERK: I have had a couple of students and
16 teachers that did turn in paperwork that shows that they
17 will be in school during that time. Are they okay to be
18 excused?

19 THE COURT: What numbers are they?

20 THE CLERK: Number 5 is asking to be transferred
21 out to a different term.

22 THE COURT: Okay. And what are they, a student,
23 or what?

24 THE CLERK: She's a professor and that is exam
25 week.

1 THE COURT: Okay. Has she provided documentation
2 of that?

3 THE CLERK: She's been asked for it. I haven't
4 seen it.

5 THE COURT: Okay. She ain't getting excused until
6 I see it.

7 THE CLERK: Okay.

8 MR. HIXSON: I don't know what the UTL's are, Your
9 Honor. I have the total that were excused for 65 and over,
10 but the numbers we just called. I don't know what the UTL's
11 are.

12 MS. WILLIAMS: What's that?

13 MR. WILSON: He said he didn't know what the UTL's
14 were.

15 MR. HIXSON: The number of the UTL's. I know the
16 numbers we just called, there are 80 right there. I don't
17 know. I will have to spend some time so see what the UTL's
18 are from the master sheet, but that's 80 there.

19 MR. WILSON: I was looking at number 64 and number
20 39, which weren't called, but they both indicate that they
21 are over 65 and that they want to be excused, on their
22 forms.

23 THE CLERK: 39?

24 MR. WILSON: No, 39 and 64.

25 THE COURT: Is that information correct?

1 THE CLERK: They did strike it. I may not have
2 gotten it correctly.

3 You are correct. I just skipped over it. I'm
4 sorry.

5 THE COURT: 39 is out.

6 THE CLERK: And 64 is also 70 years old, so yes.

7 THE COURT: Okay.

8 (Off the record).

9 (Back on the record)

10 THE COURT: All right. What else?

11 MR. WILSON: Just one more. I saw number 204, and
12 number 204 is 77 and apparently is in a nursing home and
13 sent -- attached a letter saying that -- from the nursing
14 home apparently saying that she's unable to attend, so I
15 would assume that that's an excused as well.

16 THE COURT: Yeah, I already cut her. I cut her
17 last time.

18 MR. WILSON: Okay.

19 THE CLERK: I have a couple others that have moved
20 that nobody mentioned.

21 THE COURT: Okay.

22 THE CLERK: Number 49 lives in Georgetown, per the
23 deputy.

24 Number 4 -- I'm sorry, I got number 4 lives
25 Olympia, Washington. They provided their driver's license.

1 They are out for sure.

2 THE COURT: Yeah, I thought these people were
3 already excused, based off the list that was given to me
4 last time.

5 THE CLERK: Oh, I'm sorry.

6 THE COURT: Number 4 is on that list.

7 Number 49 is on that list.

8 THE CLERK: Okay. She didn't put judge by there,
9 so I didn't realize that you already knew that. I'm sorry.

10 Number 315, he moved to New Jersey. He sent his
11 driver's license.

12 THE COURT: All right. He is excused.

13 Anything further from the State?

14 MR. HIXSON: Not as it relates to jury issues,
15 Your Honor.

16 THE COURT: Anything else from the defendant?

17 MR. WILSON: Judge, I just need to make sure that
18 these other jurors that I have are excused or not excused.

19 Number 3?

20 THE CLERK: We got his commission. So he -- he is
21 a commissioned officer.

22 MR. WILSON: Okay.

23 THE CLERK: All the officers, we got their
24 commission number, so can they all be excused as one? There
25 is like five of them, I think.

1 THE COURT: Let's go through them.

2 MR. HIXSON: Are they requesting to be excused?

3 THE CLERK: Yes.

4 MR. HIXSON: If I may inquire as to the court, I
5 apologize, where are we with the total number right now?

6 THE COURT: I don't know.

7 MR. HIXSON: Okay.

8 THE COURT: I don't know.

9 MR. HIXSON: I'm just very cautious of excusing
10 anybody at this point. Just generally is what I'm going to
11 say every time. The State's preference now is to get these
12 folks in here and see if we can pull a panel.

13 THE CLERK: Okay.

14 MR. HIXSON: Anyway.

15 THE COURT: Has 3 provided his commission?

16 THE CLERK: Yes.

17 THE COURT: Okay.

18 MR. WILSON: I have number 10, which says that he
19 served on jury duty back in 2017.

20 THE CLERK: He actually served July 23rd of '18.

21 MR. WILSON: Okay.

22 THE CLERK: So he's excused, correct?

23 THE COURT: Is he requesting to be excused?

24 THE CLERK: Yes.

25 THE COURT: Okay. Then, yes, he's excused.

1 MR. WILSON: And then I have number 15 says he has
2 legal custody of a child.

3 THE CLERK: We told them to appear, because if
4 they wrote affidavits and stuff, so we told them they needed
5 to appear.

6 MR. WILSON: And number 42 said he served in
7 circuit court October of '18.

8 THE CLERK: They did, and they're also over 65, so
9 we can go ahead and excuse them as well.

10 MR. WILSON: This one says 46. Number 42 says
11 46 years of age.

12 THE CLERK: Well, they did serve October of 2018.

13 THE COURT: Are they requesting an exemption?

14 THE CLERK: Yes, they filled it out.

15 MR. WILSON: So 42 is excused?

16 THE COURT: Yes.

17 MR. WILSON: Thank you.

18 And then I have 129 served on jury duty 2018.

19 THE CLERK: May 19th of '17.

20 THE COURT: Okay.

21 THE CLERK: That's over a year. Do you want him
22 to come in?

23 THE COURT: Did they request an exemption?

24 THE CLERK: Yes.

25 THE COURT: Okay. They are excused.

1 MR. WILSON: And I have number 161, which is a
2 detention officer.

3 THE CLERK: I told him he had to serve because he
4 told me that he works for Myrtle Beach Police Department as
5 a detention officer and he did not have arresting powers, so
6 I told him to come in.

7 THE COURT: He needs to appear.

8 MR. WILSON: And number 261, another police
9 officer.

10 THE CLERK: He gave his commissioning number, so
11 he is a commissioned officer.

12 THE COURT: Is he requesting to be excused?

13 MR. WILSON: He did. He works nights.

14 THE COURT: Okay. He's excused.

15 MR. HIXSON: Can I just inquire a little bit more
16 about that? When he says he works nights, did he talk about
17 a scheduling conflict, or --

18 In what form is he requesting be excused? A
19 police officer is allowed to serve. I just didn't know what
20 additional information you had about --

21 THE COURT: How is he requesting to be excused?
22 Just let me see it.

23 I don't see in this packet where he's requesting
24 to be excused.

25 Oh, no, he does on the front sheet. Yeah. He

1 specifically requests to be excused. All right, he's out.

2 MR. HIXSON: Thank you, Your Honor.

3 MR. WILSON: And I think the last one that I have
4 is 398, Your Honor. The top portion of his application is
5 not completed, but the bottom portion says "I served in
6 circuit court in May of 2018."

7 THE CLERK: May 11th, 2018.

8 THE COURT: Is he requesting that exemption?

9 THE CLERK: Yes, sir.

10 THE COURT: They are out.

11 MR. WILSON: Judge, just --

12 THE COURT: Okay, Mr. Wilson, go ahead.

13 MR. WILSON: Judge, just for a point of
14 clarification, are there any other jurors, other than the
15 ones that we have discussed either last week or today, that
16 have been excused that's not -- that we have not discussed?
17 I mean, I guess I'm asking that more to the clerk than to
18 the court, but --

19 THE COURT: I haven't excused anybody, other than
20 what I have done here on the record.

21 Has the clerk's office excused anybody else?

22 THE CLERK: We have not told anyone they are
23 excused. We have called people and told them they needed to
24 show up or to provide proof. And if they don't provide
25 proof, they know that they are supposed to come in on that

1 day.

2 THE COURT: Okay. All right.

3 So we need to take everything that we have done
4 today and create a new list, a new master list of exactly
5 who is supposed to show up. So -- and probably need to do
6 that by -- probably by the end of the day on Tuesday that
7 needs to be e-mailed out to the attorneys so we know exactly
8 how many we have.

9 THE CLERK: Judge, who did you want to do that?

10 THE COURT: What?

11 THE CLERK: Who is going to do that?

12 THE COURT: Y'all are.

13 THE CLERK: We are? Okay.

14 End of the day on Tuesday?

15 THE COURT: Yeah.

16 And we just need a list of -- this is -- what we
17 need is a list that says this is whom we believe is -- don't
18 call and excuse anybody yet. This is a list of who we
19 believe should be showing up so the solicitor's can see it
20 and Mr. Wilson can see it and they can compare it with their
21 own notes and then we can make sure that how many ever
22 people are supposed to show up and we all agree on those are
23 the people that are supposed to show up. So everybody -- so
24 I can have two different -- three different sets of eyes on
25 it.

1 You okay with that, Mr. Hixson?

2 MR. HIXSON: Yes, sir.

3 THE COURT: Are you okay with that, Mr. Wilson?

4 MR. WILSON: Yes, sir, Your Honor.

5 THE COURT: Okay. All right.

6 What else?

7 MR. HIXSON: Are you done, Ralph?

8 MR. WILSON: Hold on one second.

9 (Off the record).

10 (Back on the record)

11 MR. WILSON: I don't have anything else right this
12 minute.

13 MR. HIXSON: Just a couple housekeeping matters,
14 Your Honor.

15 I'm pretty confident we served through discovery
16 the indictments. This is just -- I have good a copy of all
17 the indictments specifically to serve on Mr. Wilson. We
18 believe that we already did it, but, I'm just -- you know,
19 this stage of the game everything is in triplicate, so I'm
20 reading 2015-GS-26-1750, 1751, 1767, 1757, 1758, 1759, 1760,
21 and 1768, those are all indictments State of South Carolina
22 versus Jerome Jenkins, Jr.. We have served them on the
23 defendant. We know we already have, but at this stage I
24 just want to make sure he's got the indictments.

25 MR. WILSON: Just so the record is clear, these

1 indictments have previously been served.

2 THE COUR: Okay.

3 MR. HIXSON: That's a ten-day view of indictment
4 of a death penalty case, just to make sure that's taken care
5 of.

6 Also just -- we will talk about this, the
7 admissibility of some of the statements. We are
8 anticipating do a Jackson v. Denno Hearing that's coming up
9 on the 25th, if Your Honor is prepared to do that.

10 THE COURT: Okay.

11 MR. HIXSON: If it would benefit Your Honor to
12 hear some of this ahead of time. I know we are going to
13 have to do it on the record, but --

14 Ralph, do you want to help us with projecting what
15 we intend to do, we are going through some transcripts I
16 have provided. Obviously there is some discussion in some
17 of the statements that have been transcribed involving the
18 other offenses.

19 Just so Your Honor has a road map of what the
20 State's intention is so you can kind of think about what we
21 are trying to do, our intention is to call the January 2nd
22 incident. That's the death of Balla Paruchuri at the Red
23 Bluff Store on Highway 905, to try that, and that and an
24 armed robbery and potentially the possession of a weapon
25 during the commission of a violent crime. Basically the

1 murder and the armed robbery and --

2 THE COURT: That's the first incident?

3 MR. HIXSON: That's correct.

4 THE COURT: Okay.

5 MR. HIXSON: That's the first one in time and the
6 guilt phase in that.

7 If, in fact, the jury comes back as a conviction
8 in that, then we would offer the other conduct in the
9 penalty phase. So our expectation is the guilt phase the
10 first trial would be rather short.

11 THE COURT: Okay.

12 MR. HIXSON: So as it relates to Mr. Jenkins,
13 procedurally, ultimately gave four statements.

14 His first statement was given to Greg Lynn and
15 Todd Cox. During the course of that Mr. Jenkins denied any
16 involvement in any of it. He invoked his right to counsel
17 in that statement. We do not intend to play that to the
18 jury, or play any of that, because there is an invocation.
19 And so for the Jackson v. Denno purposes I didn't intend to
20 play that long statement to waste the court's time when he
21 says "no, I don't have anything to do with it, nothing"
22 there.

23 We will offer the second statement up through the
24 testimony that once Mr. Jenkins went to the bond hearing --
25 warrants were served on him at the end of that statement.

1 The other defendants were arrested and served and
2 the statement kind of supports itself, in that we would
3 offer Investigator Greg Lynn for that statement, and he
4 invokes -- he re-initiates contact with Mr. Lynn. He will
5 testify that he received a communication from the jail to
6 come back up and Mr. Jenkins wants to talk to Mr. Lynn and
7 all of that re-initiation discussion is on the recording.
8 You will hear it and you will hear another reading his
9 Miranda Rights again and then we will focus on the second
10 statement.

11 THE COURT: Okay.

12 MR. HIXSON: And that we will offer testimony
13 relating to the re-initiation. That's the basic theory and
14 the law that applies to his waiver of his rights by
15 re-initiating contact with him.

16 We actually -- there was actually an e-mail that
17 we provided counsel, defense counsel, from a Mark Elliott at
18 the jail who, according to Mr. Elliott, Mr. Jenkins
19 contacted him and said I want to talk to Greg -- "I want to
20 talk to that guy again," because it came out that McKinney
21 Daniels and James Daniels were putting it on Jerome Jenkins
22 and he wanted an opportunity to tell his side of the story
23 once he saw what they were trying to do. That's the basic
24 theory the State will offer.

25 In that statement, as Your Honor presided over

1 James Daniels trial, you are aware of there is a lot of
2 commingling in those incidents between 905, Lake Arrowhead
3 Road, and then ultimately Trish Stull's death down the road,
4 so we have redacted -- went through with great pains to
5 redact his first statement to remove any reference to the
6 other offenses in there, and I have provided a copy of our
7 proposed redactions, including redacting the audio, as well
8 as the transcript. I think Mr. Wilson reviewed it and said
9 he generally agreed.

10 Please chime in if I say anything you disagree
11 with, Ralph.

12 But one of the -- a couple of additional
13 references, in it Mr. Jenkins indicates that James Daniels
14 is part of Insane Gangsters Disciples, or IGD, and McKinley
15 does, maybe, but he's not a part of that. I left that in.
16 I think Ralph wants that out and I have no reason to not
17 take that out so the jury doesn't hear any of that
18 conversation.

19 And I hope before the 25th we will have a
20 transcript that we agree for the court to hear in that.

21 MR. WILSON: Your Honor, that's essentially
22 correct. I have gone through the redacted statement that I
23 have been provided. There are -- that is one statement that
24 I -- about the gang activity, I did want that omitted from
25 the redaction, from the redacted transcript.

1 There are a couple other things that I just have
2 not yet informed him of that I need taken out, or at least
3 that I would like to have taken out of the redacted
4 statement. Nothing earth shaking, but -- and, of course, we
5 are challenging the statement in its entirety, in the first
6 place, but --

7 THE COURT: None of this is waiving your right to
8 challenge the admissibility of the statement. My impression
9 Mr. Hixson was just saying if it is in, this is the redacted
10 version.

11 MR. WILSON: That is correct.

12 THE COURT: But you would still have the right to
13 have a Denno Hearing and challenge all that stuff.

14 MR. WILSON: Yes, sir.

15 MR. HIXSON: I'm just trying to streamline the
16 preparation.

17 THE COURT: I'm with you. No, no, I tracking you.
18 I'm not saying you agree with it being in. I'm just saying
19 if -- what he's saying is if it is in, can we come up with a
20 redacted version we can all agree with. Okay.

21 MR. WILSON: Yes, sir.

22 THE COURT: Okay. So that's statement number one
23 and statement number two?

24 MR. HIXSON: That's correct, and basically after
25 statement number two and then three or four are follow-ups

1 after statement two. They are fairly short on.

2 And, in essence, just so Your Honor is aware of
3 it, Mr. Jenkins acknowledges the conduct being there on 905,
4 as well as Lake Arrowhead, but denies having anything to do
5 with the Trish Stull's death and that.

6 THE COURT: Okay.

7 MR. HIXSON: So that's kind of some of the tension
8 in the -- of course, Your Honor has reviewed the video. You
9 have seen the nature of the evidence a little bit in the
10 prior trial.

11 THE COURT: Okay.

12 MR. HIXSON: Also related to it there are some
13 jail letters or something involved. In one of the letters I
14 prepared the microphotoed redaction for that ahead of time
15 so we can talk about it, perhaps.

16 I will hand the court -- this is not really a
17 court's exhibit, just maybe for illustrative for the court.
18 I don't know that we need to put exhibits in yet.

19 We will offer testimony relating to the sheriff's
20 department recovering this and SLED's handwriting analysis.
21 We will offer testify that this was written -- the SLED
22 agent will say that Mr. Jenkins wrote this letter.

23 You will see a gap in there about five lines down.
24 In this letter there was written to I think a family member,
25 according to the sheriff's department, that's what they are

1 telling me, it says "I wrote you momma and I did kill that
2 man and that woman." And obviously in the initial guilt
3 phase of that trial related to the 905 we've whited out that
4 section where it says "that woman" obviously because we are
5 only here for the first one.

6 And then on the back page of it you will see a
7 proposed whited out section that y'all can't see and in that
8 Mr. Jenkins talks about his affection for loved ones and
9 things like that and family members, but it says "I'm going
10 to blow her fucked head off. That's my word if I get out,"
11 or something along those lines. I think that's highly
12 prejudicial. I don't know that the jury ever needs to hear
13 that, but certainly in the guilt phase I propose to white
14 that out so the jury never hears that stuff. Perhaps in the
15 penalty phase it's a different -- if we get to the penalty
16 phase, but that's what I propose to put in the guilt phase.
17 Obviously I have to provide a foundation for it and
18 everything. I just wanted to hear from Mr. Wilson or
19 anything if I need to do something else with this before.

20 THE COURT: All right. Let's be prepared to
21 discuss that on April 25th.

22 MR. WILSON: Yes, sir.

23 THE COURT: Is that enough time?

24 MR. WILSON: Yes, sir.

25 THE COURT: Okay.

1 MR. HIXSON: Very good.

2 The last thing, just so we can finally focus a
3 little bit, I know that on several of the motions we had on
4 the master motion list, I think all toll there was 72 we
5 went through probably a year ago or so, all of them. Some
6 of them were kind of -- I just wanted to know if the court
7 would like to make sure that we are concise, that everything
8 has been addressed and that we are open field running.

9 THE COURT: Why don't y'all -- you know, by the
10 end of the next week y'all go through the motions list
11 together and determine what still needs to be heard and what
12 doesn't. E-mail me a list of what needs to be heard and
13 then we can do that on the 25th too.

14 MR. HIXSON: Thank you, Your Honor. Very good.

15 MR. WILSON: Your Honor, on the 25th, just so I'm
16 clear, for instance, like with this letter, I have a motion
17 regarding that letter and we'll probably need to call
18 witnesses. How much time are we going to have on the 25th,
19 because it's --

20 THE COURT: I'm -- I have -- I can't leave
21 Columbia until eight a.m., okay, just because of the way my
22 schedule is at home, so I plan on leaving at eight and
23 coming straight here and we can stay here all day long. Oh,
24 no, we can't stay here all day long, because I have to leave
25 by 4:30 that day.

1 Now, if we need to come back on the 26th, we can
2 do that. I can come back on the 26th. That's no big deal,
3 so do you want me to block off those two days, if we are
4 going to call witnesses?

5 MR. HIXSON: Yeah, I think certainly the
6 statements -- this is a statement-driven case. There's not
7 a lot of forensics in it --

8 THE COURT: Okay.

9 MR. HIXSON: So making sure this is precise.

10 THE COURT: Why don't we do that? I'll tell Court
11 Administration that I need to be here Thursday and Friday,
12 but Thursday I need to leave about 4:30. I have an event in
13 Columbia Thursday night. And then we will -- we can come
14 back. I can be here Friday morning, you know, by 9:30, and
15 then we can spend as much time as we need to Friday doing,
16 but here is the one thing that will make that a little bit
17 easier. If you will tell Mr. Hixson, "you know, these are
18 the witnesses that I think that need to be here."

19 MR. WILSON: Yes.

20 THE COURT: For the issues and that way he can let
21 those guys know. Then y'all kind of map out amongst
22 yourselves "we want to do this first, so these guys need to
23 be here on Thursday, and these girls need to be here on
24 Friday," or whatever it may be.

25 MR. WILSON: Very well.

1 THE COURT: Y'all come up with, you know, with
2 what order you want to attack it in. I don't have a
3 preference, but, you know, communicating about what
4 witnesses would need to be here, so when we get here, it's
5 not like "well, where is Joe Smith," and then we have got
6 to -- "no, Joe Smith just worked nights," or we can let
7 everybody know and tell them to be here Thursday morning,
8 Thursday afternoon, or Friday morning, or Friday afternoon.

9 MR. WILSON: Yes, sir.

10 THE COURT: Does that make sense?

11 MR. WILSON: Yes, sir.

12 MR. HIXSON: So to be concise about the dates we
13 are talking about, make sure we are right on the money, we
14 have a date the 25th? 25th at 10:30, right?

15 THE COURT: Yes.

16 And then we will do the 26th at 9:30. I can leave
17 earlier on Friday morning. If I can leave about seven a.m.
18 Friday morning and get here by 9:30.

19 MR. HIXSON: Okay. That's I think pretty close to
20 it. Relating to -- we're getting down to the end, so I have
21 not received -- we have invoked reciprocal discovery, of
22 course, through our -- through Rule Five. We have not
23 received anything. I don't know if there is anything
24 forthcoming from defense counsel on reciprocal discovery,
25 but we are getting to the point that if it's coming, we need

1 to get something. So I don't know if he intends to use
2 anything that's discoverable that we haven't received yet,
3 but we have not received any reciprocal discovery.

4 MR. WILSON: If I get anything discoverable, I'll
5 turn it over as soon as I can.

6 THE COURT: Okay. What else?

7 MR. HIXSON: Can you think of anything else?

8 Do you -- as it relates to the 25th, do you want
9 to probe the -- I can get the sheriff's department up here
10 on -- some of the pending motions I know involved security
11 procedures or reviewing security process Mr. Jenkins needs,
12 and things like that? Do you want to push that issue? I
13 can have the sheriff and everybody needs to be here, if we
14 are going to talk about the security plan is? That was
15 several of the motions.

16 MR. WILSON: The court had ordered a while back
17 when we were doing these initial motions that you wanted
18 these people to come in and you were going to --

19 THE COURT: We need to have a meeting about it.

20 MR. WILSON: Yes, sir.

21 THE COURT: An on-the-record meeting about it,
22 yes.

23 MR. HIXSON: So expect to have a conversation on
24 one of those two days and have staff up here?

25 THE COURT: Yeah, whatever -- if y'all think -- if

1 y'all come up with Thursday, let's tackle this and we think
2 this will take this long, and Friday let's tackle this and
3 let those people know, instead of me trying to figure out.
4 It's hard for me to say how long things are going to take.
5 Y'all figure that out and just have all those people here.

6 And y'all did get the e-mail that I have decided
7 to sequester the jury --

8 MR. HIXSON: Yes, sir.

9 MR. WILSON: Yes.

10 THE COURT: -- based upon the last hearing that we
11 had.

12 MR. WILSON: Yes.

13 THE COURT: Okay. Good.

14 MR. HIXSON: My understanding, just for the
15 court's edification, that our intention was to strike into
16 the panels, like you have a random draw into the panels and
17 then we will strike as they are qualified?

18 THE COURT: Hold on. Hold on to that thought for
19 just a second.

20 Is there anything else we need to take up? I want
21 to talk about what you are talking about, but anything else
22 that's on the list, Mr. Wilson?

23 MR. WILSON: No, sir.

24 THE COURT: Okay.

25 All right. Y'all sit down.

1 Give me -- give me what y'all -- what jury
2 selection looks like from y'all's point of view, because
3 there is not the amount of literature that's out there on
4 it. And I -- you know, I have witnessed it four times in my
5 life, but give me -- you know, I never -- you know, from the
6 judge's perspective and how the judges categorize it, all
7 this kind of stuff, but give me in your minds what jury
8 selection looks like and kind of how it goes.

9 MR. HIXSON: What we would propose to do --

10 THE COURT: Y'all can sit down.

11 MR. HIXSON: What we propose to do is have the
12 group come in and look like a normal jury selection with the
13 normal qualifications.

14 THE COURT: We determine -- in the next week or so
15 we are going to determine these "x" number of people are
16 supposed to be here and we all agree on who those people
17 are.

18 MR. HIXSON: I'm just going call them the 150,
19 because I don't know. It may be under 150, but let's say
20 the 150.

21 THE COURT: Okay.

22 MR. HIXSON: And from them that's the normal
23 non-case specific jury qualification.

24 THE COURT: Right. I'm going to ask them, you
25 know, are you a citizen, you know. You know, all those

1 normal qualification questions that we ask on Monday
2 mornings throughout the state. Most of those answers we
3 are -- most of those questions we already know the answer
4 to, but we will need to go through that on the record.

5 MR. HIXSON: And then once we achieve that
6 entire -- that you have qualified this panel to serve as a
7 jury on the circuit court, then Madam Clerk would pull
8 random -- assemble those randomly into panels of five each.
9 Now, we would think about how much time we need to deal with
10 it, but we would assemble all of those into panels of five,
11 however many per five we have, and then we will -- before
12 that time we will have developed a schedule. Let's just say
13 we need an hour apiece per panel. That -- we have done this
14 in and been three o'clock in the morning because we have
15 been so far behind by not holding to the schedule, which is
16 part of the problem. And then we tell panel A "here is a
17 piece of paper. You come back." Probably go to lunch and
18 start this afternoon. You have to start the panels right
19 away and then each panel of five is voir dired specific
20 death questions then on that where Your Honor questions
21 them, and then defense counsel questions them, and we get a
22 chance to question them, and then we say they are qualified
23 or not qualified.

24 Once they are qualified, they are death qualified
25 and they can go home and ready to be called back. Once we

1 get that -- once we realize, say we need 50 jurors and we
2 are qualifying them in a panel and maybe take three days to
3 finally get that many. Hopefully it takes a couple of days.
4 We can go through the whole panel, if you want to, or you
5 can say boys, I think -- boys and girls, I think that's
6 enough, we are done, excuse the rest, and now we pull from
7 that panel that's qualified.

8 And we would ask that we strike in order of the
9 qualification. In other words, the first one qualified,
10 death qualified, by Your Honor, you find this juror 123 is
11 qualified. That's already been randomly established by a
12 panel entry, so we know write down the order our strike. We
13 will strike from the qualification order.

14 THE COURT: So everybody knows who the first when
15 you strike.

16 MR. HIXSON: The first qualified is then the --

17 THE COURT: Is juror number one for striking?

18 MR. HIXSON: And then Ralph gets up there and says
19 we want to strike 10, 28, 39, 45.

20 THE COURT: They don't have to come back for us to
21 strike them.

22 MR. HIXSON: No.

23 THE COURT: Okay.

24 MR. HIXSON: That's what we would propose.

25 THE COURT: What's your thought?

1 MR. WILSON: I don't -- I don't -- I agree with
2 generally the process.

3 What I -- what I would like to do is once the
4 entire panel is qualified and we break them into smaller
5 groups and we have them come back every hour, every hour and
6 a half, or however we are going to do it, that we then
7 select 40 or 50 jurors and then we randomly call those 40 or
8 50, just like we would in normal court proceeding, and then
9 we strike or select that juror at that time.

10 THE COURT: But you want to -- so we will --
11 I'm -- these are made up numbers I'm making up, okay? So we
12 start with a 150. Out of that 150 we determine that 50 are
13 qualified for this case.

14 MR. WILSON: Yes.

15 THE COURT: Or death qualified, okay.

16 And then instead of taking the -- the 150 have
17 already been randomly put into the panels. So you want --
18 once we get to the 50, you want to reshuffle the 50?

19 MR. WILSON: Yes.

20 THE COURT: And then strike them that way?

21 MR. WILSON: Yes, sir.

22 THE COURT: My question is what does that matter
23 if you know who they are, as opposed to doing it blind like
24 we do in normal cases?

25 MR. WILSON: Well, for me with the defense I don't

1 know if -- like if -- say, for instance, if we are choosing
2 number one, if we are trying to decide how to use our
3 strikes on number one, I don't know who the solicitor is
4 going to strike and who he's not going to strike. So I am
5 at more of a disadvantage, whereas if we do it randomly,
6 then, you know, none of us know exactly who is going to come
7 up first. And so when I use my strikes on number 39,
8 because number 39 comes up first, you know, then I have a
9 better idea of what the solicitor is going to do with that
10 particular juror. And it also gives -- and I guess -- and
11 I'll just be --

12 THE COURT: So you are saying we --

13 MR. WILSON: I --

14 THE COURT: Hold on. You are saying you want me
15 to reshuffle the 50 and you don't want the list?

16 MR. WILSON: That I don't want the list?

17 THE COURT: No, in normal court -- listen, step
18 outside of this case. In normal court we bring in 35
19 people.

20 MR. WILSON: Right.

21 THE COURT: Out of that 35, 30 are qualified. And
22 then those 30 are in a randomly generated list that I have,
23 that nine times out of ten you don't have.

24 MR. WILSON: Right.

25 THE COURT: Right? Okay.

1 And what I hear Mr. Hixson saying is we are going
2 to take that 30 in the list that it's in and y'all are going
3 to know who is the first one that's going to be called. You
4 are going to know the randomly generated list. So how is
5 that going to be different if I reshuffle them one more
6 time?

7 If you know the order -- in normal cases you are
8 doing it blind. You don't know that I'm calling juror
9 number 129 first and juror number 1 last.

10 MR. WILSON: Right.

11 THE COURT: You don't know the order, but in this
12 scenario you would know the randomly generated order, but
13 you are going to know -- you are going to know who they are
14 going to strike, whether they are in that randomly generated
15 order or a new randomly generated order. You are going to
16 have your opinions on who they are going to strike and you
17 are going to have their rap sheets -- and you are going to
18 have their rap sheets, which virtually no other criminal
19 defense attorney in the state has it.

20 MR. WILSON: Well, you see --

21 THE COURT: You are going to know even more
22 information about who they are going to strike.

23 MR. WILSON: The thing is is that when we
24 select -- let's say we select the 40 jurors. The problem,
25 at least how I'm seeing it is is that the jurors that I may

1 like may be at the bottom of that 40 list, so we might not
2 even get there.

3 THE COURT: Right, but we have already -- the
4 computer has already randomly generated them.

5 MR. WILSON: I understand. And -- but if -- and I
6 understand -- and I know -- but what -- what I'm hearing --
7 what -- and this is what I'm hearing, if we are going to
8 voir dire until we get, say, 40 jurors. Now, of those 40,
9 the last 20 may be jurors that I like. The first 20 I may
10 not like at all, and I have to use up my strikes. If we go
11 in order of the first 20 that we selected, then I would have
12 used all my strikes before I get to any of the jurors that I
13 really like or dislike. And so what I'm saying is if we do
14 it randomly, for me --

15 THE COURT: You are saying if we reshuffle the
16 second time?

17 MR. WILSON: Yes, sir, that's what I'm saying, and
18 then -- and it still may come out --

19 THE COURT: Well, it could reshuffle to the worse.

20 MR. WILSON: That's correct. That's correct,
21 but -- but -- and either way, I mean, there is no clear --

22 THE COURT: You may change your position on this
23 once you see who the first 20 are.

24 MR. WILSON: That's true too. I may wish I
25 didn't.

1 THE COURT: You may wish you hadn't asked for
2 that.

3 MR. WILSON: That's true.

4 MR. HIXSON: The benefit of it is that voir dire
5 process is not wasted. If you reshuffle, you waste that
6 process. They are qualified, but an attorney can't make a
7 reasonable decision because now it went from random to
8 double random again. And what happens is is you actually
9 spend the time being aware of Ralph has to strike this, or
10 he's going to say Scott has got to strike that guy. And so
11 you work backwards because you actually have some
12 understanding of what order they are going to be presented,
13 so I need to strike this person. I have a feeling that that
14 person is absolutely not being forthright when they say they
15 are a life-prone juror, for instance. But if you hit the
16 button the second time, then all of that preparation goes.
17 Just the same way that Ralph has got to worry about the ones
18 he doesn't like, I got to wrestle the ones I like and it's a
19 total jump ball if you reshuffle again. I am concerned a
20 little bit -- I hope that we just continue to do it the way
21 we do it and it's been accepted around the state more than a
22 double reshuffle ultimately.

23 THE COURT: All right. I will ponder that issue.
24 We don't need to decide that right now. Okay.

25 MR. HIXSON: And one thing I think would be nice

1 to do is I don't -- is relating to the questions, if Your
2 Honor prior to the 25th, or something, if you are
3 comfortable with the voir dire questions that you have, or
4 you want submissions on the A, B, C juror, what it looks
5 like?

6 THE COURT: Yeah, I would like to see what y'all
7 have to say about that.

8 MR. HIXSON: And I think specifically relating to
9 not allowing in a juror -- let's say we get 150 jurors,
10 they -- when they are broken up into panels they will come
11 into a waiting room here; would be a piece of paper in
12 there, Ralph, if you would agree with this process, which is
13 an A, B, and C juror. An A juror is someone who would
14 always vote for death, whichever order. It doesn't matter
15 what order. A B juror is someone always votes for life. A
16 C juror is someone that would take into aggravation and
17 mitigation and listen to the instructions and come up with
18 the right. Obviously -- and they are not allowed to take
19 that paper. They are not allowed to talk other folks
20 before they come in the courtroom. They can bring the paper
21 in and hand it to Your Honor and say did you review that?
22 What did you say that you were? And that's the beginning of
23 the discussion. I know we've talked about in the past,
24 Ralph.

25 MR. WILSON: I'm in favor of providing the jurors

1 with the A, B, C list questions. We have to agree on the
2 questions, though, and how to draft them.

3 THE COURT: Y'all work on that and see if there is
4 something everybody can agree on.

5 Are y'all -- alternates? Are you thinking about
6 four alternates?

7 MR. WILSON: Three or four, yeah.

8 MR. HIXSON: The trial itself I'm projecting is
9 not terribly --

10 THE COURT: The trial is not -- the guilt phase
11 part of it is not lengthy.

12 MR. HIXSON: That's correct, Your Honor.

13 THE COURT: Okay. So if we do four alternates and
14 we got to have 53 qualified.

15 The strikes are five and ten, and one and two on
16 each alternate.

17 Okay. What else?

18 MR. HIXSON: I think that's it, other than just
19 trying to figure out how much time we think we need times
20 five jurors for voir dire and how much to keep us from being
21 longwinded and everything else about questions, because if
22 we get off track it turns into a marathon, so I think we try
23 to do 45 minutes. And the last time we were doing two and a
24 half hours a panel, it was five in the afternoon and we were
25 at the second panel. We had seven panels to go and we were

1 at three o'clock in the morning. So we are -- I know
2 that -- well, Ralph and I will get along on that.

3 THE COURT: Okay.

4 MR. HIXSON: If we need an hour -- how many
5 minutes per person times five times all the panels, create a
6 schedule before the 25th.

7 THE COURT: Okay. All right.

8 Where did we make it on medicine?

9 MR. WILSON: Judge, actually I met with the
10 sheriff and he had already taken care of the problem. In
11 fact, we learned that the day that we had the hearing that
12 the medicine had been given to him that morning.

13 THE COURT: Okay.

14 MR. WILSON: I didn't know that until --

15 THE COURT: That's okay.

16 MR. WILSON: -- later that night.

17 THE COURT: That night. That's fine.

18 MR. WILSON: Yes, he has gotten his medicine.

19 They got the records from Kirkland and the medication in the
20 records.

21 THE COURT: Okay.

22 MR. WILSON: So that's been taken care of.

23 THE COURT: Is he still on lockdown, or what's
24 going on?

25 MR. WILSON: Yes, sir.

1 The sheriff also indicated to me that they were
2 going to do what's called a reassessment and make a
3 determination based on his behavior since he's been here and
4 since he was at Kirkland and make the decision about what
5 they were going to do, but he didn't make me any promises.
6 He said we will review it and make the decision.

7 THE COURT: All right.

8 MR. HIXSON: Like I say, and Mr. Fox brought that
9 up to me when I was working on something else and indicated
10 that they had taken the stuff down in classification to see
11 if Mr. Jenkins would respond to that. And as a result we
12 may need a court order relating to -- Ralph indicated he
13 wanted to continue to have any records, to present records
14 from Jerry Belong. We are trying to get those, if there is
15 anything else to get --

16 THE COURT: Okay.

17 MR. HIXSON: -- relating to --

18 THE COURT: All right.

19 MR. HIXSON: -- those issues. And the records
20 keep getting carried all the way up to trial sometimes.

21 MR. WILSON: And, Your Honor, just one point of
22 clarification. He says that he has been moved already --

23 THE COURT: Okay.

24 MR. WILSON: -- down to B-12?

25 THE DEFENDANT: 2.

1 MR. WILSON: B-2.

2 THE COURT: Okay. All right. Now, some people
3 grow their beard out that look good, like me, right?

4 THE DEFENDANT: Go ahead.

5 THE COURT: What I'm saying, and I don't know if
6 you have access to a razor yet or not, but if you don't and
7 you want to for trial, then we need to -- we will make sure
8 that happens. Does that make sense?

9 THE DEFENDANT: Appreciate it.

10 THE COURT: And some people don't want to shave,
11 you know? Some people are trying to hide their face, like
12 me, okay, and you may want to. But if you do, then I'm not
13 going to make you come to trial not clean shaven, unless you
14 want to be not clean shaven.

15 THE DEFENDANT: Baby face up.

16 THE COURT: Do what?

17 THE DEFENDANT: No.

18 THE COURT: Do you follow me on that?

19 THE DEFENDANT: Yes.

20 THE COURT: So, you know, some people come into
21 court and they look really rough and I know that's not what
22 they want to look like, and so I will make sure that you get
23 shaved, if that's what you want to do.

24 THE DEFENDANT: Appreciate it.

25 THE COURT: Okay.

1 And then let's plan on -- for the 25th and the
2 26th, let's plan on having him dressed out just in case
3 there is any news media here. We can have him dressed out
4 in his normal clothes.

5 For the record, there is no news media in the
6 courtroom today. Mr. Jenkins is not dressed out.

7 We have always kind of adhered to those rules, so
8 the 25th and 26th, just in case there is any news media,
9 let's have some clothes for him to wear, or somebody walks
10 in or news media walks in or catches wind of the hearing or
11 something like that. Does all that make sense?

12 MR. HIXSON: Yes, sir.

13 MR. WILSON: Yes, sir.

14 THE COURT: Everybody else good?

15 MR. HIXSON: Yes, sir.

16 THE COURT: Good. Okay. All right.

17 Thank you all very much. Have a great day.

18 Court staff, thank you for your hard week of work.

19 (Off the record).

20 (Back on the record).

21 MR. WILSON: Judge, hold on a minute.

22 Judge, what we got is a situation where we sent
23 the orders to OID in order to get the transcripts and we
24 contacted the court reporter. The court reporter's position
25 is that they will not give us a transcript until they

1 actually receive payment in advance. OID's position is that
2 they won't give us the money until we actually have the
3 transcripts, and so I'm in a bind.

4 THE COURT: How much is the bill?

5 MS. WILLIAMS: Each copy is about --

6 MR. WILSON: It's thirteen hundred and some
7 dollars, I think, total. Thirteen hundred and some dollars
8 for the copies from the court reporters.

9 THE COURT: And which court reporter is the
10 problem?

11 MS. WILLIAMS: There's two of them. Kay
12 Richardson and --

13 MR. WILSON: Kay Richardson is one and I'm not
14 sure who the other is.

15 THE COURT: All right. Circulate an e-mail with
16 all the court reporters and OID discussing the issue and put
17 me on the e-mail and I'll deal with it.

18 MR. HIXSON: Thank you.

19 MR. WILSON: Thank you.

20 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 12th day of April, 2019.

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

September 24, 2019



Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO.:2015-GS-26-1757,
3 1758, 1759

4 -----

5 April 25-26, 2019

6 **BEFORE:** The Honorable Robert Hood

7 -----

8 STATE OF SOUTH CAROLINA,

9 Plaintiff,

10 vs.

11 JEROME JENKINS, JR.,

12 Defendant.

13 -----

14 APPEARANCES:

15

16 Jimmy Richardson, Esq.

17 Scott Hixson, Esq.

18 Attorneys for the State.

19

20 Ralph Wilson, Esq.

21 Brana Williams, Esq.

22 Attorneys for the Defendant.

23

24

25

26 Official Court Reporter
27 Natalie Dahl, RPR

28

29

I N E X

JACKSON v. DENNO

WITNESSES

GREGORY LENT

Direct Examination by Mr. Hixson..... 5

Cross-Examination by Mr. Wilson..... 55

Redirect Examination by Mr. Hixson..... 68

MARK ELLIOTT

Direct Examination by Mr. Hixson..... 18

Cross-Examination by Mr. Wilson..... 19

Redirect Examination by Mr. Hixson..... 23

Recross-Examination by Mr. Wilson..... 24

PHILLIP THOMPSON

Direct Examination by Mr. Hixson..... 26

Cross-Examination by Mr. Wilson..... 32

MONTY COATS

Examination by The Court..... 37

TOM FOX

Direct Examination by Mr. Hixson..... 93

Cross-Examination by Mr. Wilson..... 101

Redirect Examination by Mr. Hixson..... 108

Recross-Examination by Mr. Wilson..... 110

CHRISTINE SNYDER

Direct examination by Mr. Hixson..... 111

Cross-Examination by Mr. Wilson..... 118

Redirect examination by Mr. Hixson..... 128

JANE TYLER

Direct Examination by Mr. Hixson..... 134

EXHIBITS

STATE'S		MARKED	ADMITTED
A	Interview 2 (digital)	4	13
B	Interview 3 (digital)	4	15
C	Interview 4 (digital)	4	17
D-F	Safekeeping Packet	4	--
G	Email	4	11
H-L	Packet of documents	4	--
M	Interview 2	4	68
N	DVD	89	--
O	Interview 3	89	--
P	Interview 4	89	--
Q	Zero tolerance	98	101
R	Inmate handbook	98	101
S	Policies & Procedures	109	--
T	Incident report	131	--
U	Reciprocal disclosure	155	--

A through E, H-L were all retained by Mr. Hixson

1 P R O C E E D I N G S

2 (State's Exhibits A through M marked.)

3 THE COURT: Good morning. We're on the record in
4 State versus Jerome Jenkins. Mr. Jenkins is present
5 and represented by Brana Williams and Ralph Wilson.
6 The State is present and represented by Solicitor
7 Jimmy Richardson and Deputy Solicitor Scott Hixson.
8 We're here today and tomorrow for pretrial motions to
9 help things move smoother during the trial week.

10 So what are we starting with first?

11 MR. HIXSON: Your Honor, we're prepared to go
12 forward with the Jackson v. Denno. We shouldn't be
13 too long, but I wasn't sure if it was time for
14 security discussions or anything, if that is
15 appropriate.

16 THE COURT: For security? I don't think he is
17 here yet.

18 THE CLERK: He's not here. He's coming as
19 quickly as he can, SLED.

20 MR. HIXSON: I can start with the testimony of
21 Greg Lent.

22 THE COURT: Are you going forward on the Denno?

23 MR. WILSON: Yes, sir.

24 (GREGORY LENT, having been duly sworn,
25 testified as follows:)

1 MR. HIXSON: May it please the Court?

2 THE COURT: Yes, sir.

3 DIRECT-EXAMINATION

4 BY MR. HIXSON:

5 Q What do you do for a living?

6 A Detective with Horry County Police Department.

7 Q Were you a detective for them back around
8 February 6th of 2015; were you working around that time
9 period?

10 A I was.

11 Q Did you have an occasion to become involved in
12 the murder of Bala Paruchuri that happened around
13 January 2nd as well as an armed robbery and
14 subsequent murder of Trish Stull on January 5, 2015?

15 A I did.

16 Q Were you tasked with investigating those crimes?

17 A I was.

18 Q Tell us about coming in contact with Mr. Jerome
19 Jenkins, or just a brief lead-up to that with your
20 interviews. Did you interview James Daniels and
21 McKinley Daniels and Jerome Jenkins?

22 A Yes. Through the course of James Daniels, who
23 was taken into custody and interviewed, after that,
24 McKinley Daniels was interviewed. He was already in
25 custody at J. Reuben Long. And then proceeding that,

1 Mr. Jenkins was taken into custody and he was
2 interviewed.

3 Q Did information from the initial interview of
4 James Daniels lead you to believe that Jerome Jenkins
5 was involved in these series of crimes?

6 A Yes.

7 Q And did you Mirandize Mr. Daniels?

8 A Yes.

9 Q And, in fact, did he indicate to you that he
10 participated in those crimes with McKinley and Jerome
11 Jenkins?

12 A Yes.

13 Q And was James Daniels taken into custody as a
14 result of the interview?

15 A Yes.

16 Q Let's go to McKinley Daniels, describe that for
17 the Court.

18 A McKinley Daniels was being held at J. Reuben Long
19 on some unrelated charges. Subsequent to the interview
20 with James Daniels, he was transported to the M.L.
21 Brown building, headquarters of Horry County Police
22 Department, and interviewed there. After that
23 interview, he was returned to J. Reuben Long Detention
24 Center and warrants were issued for him charging him
25 with the crimes this case involves.

1 Q During the course of your interview with McKinley
2 Daniels, did he give you inculpatory information
3 regarding his involvement of the crime?

4 A He did.

5 Q And how about Jerome Jenkins' involvement in the
6 crime?

7 A Yes.

8 Q Now, let's -- based on that information -- now
9 the person left is what we're here for, and that is
10 Jerome Jenkins; is that right?

11 A Correct.

12 Q Talk about when your investigation focuses on
13 Mr. Jenkins from that point forward.

14 A At that point, Mr. Jenkins was taken into custody
15 shortly after the interviews were conducted with James
16 Daniels and McKinley Daniels.

17 Q He was not already in custody. He was arrested
18 for these offenses; is that correct?

19 A Correct. Correct.

20 Q And did you have an opportunity to interview --
21 did you attempt to interview Mr. Jenkins, your initial
22 interview?

23 A Yes.

24 Q And about -- do you recall what day that was? He
25 was arrested February 6th, does that sound consistent

1 around the time of that first interview?

2 A Yes. The day -- when he was arrested, he was
3 initially interviewed shortly after.

4 Q And I'll refer to this first contact as
5 "Interview No. 1," okay?

6 A Okay.

7 Q During the course of that Interview No. 1, was
8 Mr. Jenkins in custody at that time?

9 A Yes.

10 Q And you were interrogating him at the M.L. Brown
11 building; is that correct?

12 A Correct.

13 Q And can you describe the nature of that
14 interview, generally speaking, and what happened during
15 the course of that interview?

16 A Mr. Jenkins, he didn't provide any information.
17 He didn't want to provide any information, and the
18 interview was ended shortly after.

19 Q Did he deny his involvement in the crimes?

20 A Yes. Yes. He claimed that he didn't have any
21 knowledge of anything. He didn't know why we were
22 speaking with him, why we wished to speak with him.

23 Q Now, at some point in time, during a good ways
24 into the interview, did you advise him of why you were
25 interviewing him and what you are accusing him of?

1 A Yes.

2 Q And what happened -- what did he do when you said
3 you are here for armed robberies and a potential
4 murder?

5 A He didn't want to talk to us. At that point, he
6 invoked his rights.

7 Q He invoked his right to counsel at that point?

8 A Yes.

9 Q Did you discontinue questioning him at that time?

10 A Yes. The interview was ended.

11 Q Is all of that process captured on -- was it
12 recorded?

13 A Yes.

14 Q Now, some time after that first interview, did
15 you come to know -- what happened after that?

16 A Mr. Jenkins was transported to J. Reuben Long to
17 be held for warrants to be served. I finished up my
18 workday there and returned home. That night, I don't
19 remember specifically what time, I received an e-mail
20 from a deputy that worked at the jail. That e-mail
21 stated that Jerome Jenkins told this deputy he wished
22 to speak to me, that he wanted me to come to
23 J. Reuben Long and speak with him. I contacted my
24 supervisors, let them know what was going on, got
25 dressed and drove to J. Reuben Long.

1 Q I'll show what has been marked for purposes of
2 this hearing as State's G. Let me see.

3 THE COURT: "G" as in Gary?

4 MR. HIXSON: Yes, sir. Yes, sir.

5 Q (MR. HIXSON) Do you recognize that? Can you
6 describe to the Court what you are looking at?

7 A This is an e-mail sent to me by Mark Elliott, the
8 deputy that worked at J. Reuben Long, informing me that
9 Jerome Jenkins said he would like me to come and talk
10 to him. He said on Monday, apparently he asked for my
11 number, and Mark told him he would send me an e-mail.

12 Q Can you give the date and time of that e-mail for
13 the Court?

14 A Sure. Saturday, February 7, 2015 at 3:23 p.m.

15 Q So the following day, day after the 6th, the 7th
16 at 3:23 p.m. Could you please read verbatim what that
17 e-mail states?

18 A Hey, Lent, just thought I would let you know that
19 Jerome Jenkins said he would like for you to come and
20 talk with him on Monday. He said he wanted your
21 number, I told him I would send you an e-mail.

22 Q Okay.

23 MR. HIXSON: We would admit that into evidence
24 for purposes of this hearing.

25 MR. WILSON: No objection.

1 THE COURT: Without objection.

2 (State's Exhibit G admitted.)

3 Q (MR. HIXSON) Upon receiving that, what did you
4 do next in your investigation?

5 A Got dressed and drove to J. Reuben Long Detention
6 Center to speak with Mr. Jenkins.

7 Q Did you, in fact, speak to Mr. Jenkins?

8 A I did.

9 Q Was he in custody at that time?

10 A He was.

11 Q You were interrogating him at that time?

12 A Correct.

13 Q Based on the e-mail, were you able to confirm
14 whether or not Mr. Jenkins was attempting to reinitiate
15 contact with you?

16 A Yes. We had a conversation, Mr. Jenkins and
17 myself. I explained to him that he had -- the day
18 before, in a previous interview where he invoked his
19 right to an attorney, I said from what I understand,
20 now you want to reinitiate contact, you do want to
21 speak with me? He stated that he did. He just kept
22 talking to the point that I had to interrupt him in
23 order to advise him of his Miranda rights again. I
24 told him I advised you of your rights yesterday, but
25 I'm going to advise him of them again.

1 Q Did you, in fact, advise him of his Miranda
2 rights?

3 A I did.

4 Q Did he seem to knowingly understand those rights?

5 A He did.

6 Q Did he waive those rights to you and freely and
7 voluntarily discuss that with you?

8 A I don't think he ever stopped speaking while I
9 was advising him.

10 Q Did he verbally or nonverbally acknowledge that
11 he wanted to talk to you?

12 A Nodded his head, and -- I would have to listen to
13 the interview, but I believe there was a verbal
14 acknowledgment, yes, yes, I just want to talk.

15 Q And we can call that "Interview No. 2"?

16 A Correct.

17 Q And was that recorded?

18 A Yes.

19 Q And had you had an opportunity to hear that in
20 preparation for the hearing today?

21 A I did.

22 Q Let me show you just for identification what is
23 State's A.

24 THE COURT: State's A?

25 MR. HIXSON: As in apple.

1 Q (MR. HIXSON) Take a look at that. Do you
2 recognize that?

3 A I do.

4 Q What is that?

5 A That is a digital copy of Interview No. 2 that I
6 conducted with Jerome Jenkins, and I've initialed the
7 disk.

8 Q And that specific recording is a redacted version
9 of a complete recording -- the actual complete
10 recording; is that right?

11 A Correct.

12 MR. HIXSON: We move this into evidence for the
13 purposes of this hearing. I don't want to play it
14 yet, if that is okay.

15 MR. WILSON: No objection.

16 THE COURT: Without objection.

17 (State's Exhibit A admitted.)

18 MR. HIXSON: Your Honor, just for clarification,
19 I provided Counsel and the Court with proposed
20 redacted transcripts. The way they read, when the
21 time comes, is -- the recording we're playing
22 shouldn't contain any items that are in yellow,
23 because they refer to other crimes and other things
24 for the initial guilt phase, it would be appropriate
25 for that. The remainder may be appropriate for a

1 subsequent proceeding, but that is the intent of what
2 we're trying to get through with that process.

3 THE COURT: Okay.

4 Q At the conclusion of that interview, did you have
5 an occasion to meet with Mr. Jenkins again?

6 A Yes.

7 Q Tell us about that.

8 A Following up on information that he had provided
9 and information that was provided through other
10 interviews, I might have gone back up there to speak
11 with him and question him again.

12 Q During the course of Interview No. 2, I think it
13 is contained in the recording, did he ever invoke his
14 right to counsel during the second interview?

15 A No.

16 Q He continued to talk to you freely and
17 voluntarily?

18 A Yes.

19 Q Going into the third one, did he ever invoke his
20 right to counsel again throughout the next two
21 interviews?

22 A No.

23 Q Was that third interview recorded or memorialized
24 in any way?

25 A It was.

1 Q This is State's B, as in boy. Do you recognize
2 that?

3 A I do.

4 Q What is that?

5 A It is a digital copy of the third interview I
6 conducted with Jerome Jenkins, and I have initialed the
7 disk showing that it is an accurate copy.

8 Q That is a redacted portion of an entire
9 interview?

10 A Correct.

11 Q And it says "R1" on the disk.

12 MR. HIXSON: Your Honor, that's for Redaction
13 No. 1. We move State's B into evidence for the
14 purposes of this hearing.

15 MR. WILSON: No objection for purposes of the
16 hearing.

17 THE COURT: Without objection.

18 (State's Exhibit B admitted.)

19 Q (MR. HIXSON) Did you have occasion to talk to
20 Mr. Jenkins a fourth time?

21 A I did.

22 Q Tell us about that, please.

23 A Again, following up on information that
24 Mr. Jenkins had provided, and other information
25 obtained throughout the course of the investigation, I

1 had gone up there and spoke with Mr. Jenkins a
2 fourth time.

3 Q During the course of that, did he ever invoke his
4 right to counsel or indicate that he did not want to
5 speak to you anymore?

6 A No.

7 Q Was that recording memorized in any way?

8 A Yes.

9 Q It was recorded?

10 A Yes.

11 Q Let me hand you State's C and see if you
12 recognize that item?

13 A I do.

14 Q What is that?

15 A Digital copy of the fourth interview I conducted
16 with Jerome Jenkins, and I initialed the disk showing I
17 listened to it.

18 Q That is a fair and accurate representation of the
19 interview?

20 A It is.

21 MR. HIXSON: We move State's C into evidence for
22 this hearing.

23 MR. WILSON: No objection for purposes of this
24 hearing, Your Honor.

25 THE COURT: All right, State's C.

1 (State's Exhibit C admitted.)

2 MR. HIXSON: Your Honor, if I can, may I
3 recall Mr. Lent? That is the foundation I wanted to
4 lay. I wanted to play the videos, the audio next.
5 That will take about an hour and 10 or 20 minutes. I
6 wonder if it is appropriate if I ask him to step down.
7 I have one more foundational witness, Mark Elliott,
8 who sent the e-mail, and perhaps we could then take
9 care of some housekeeping and get folks out of here
10 instead of listening for an hour and 30 minutes of
11 audio.

12 THE COURT: Is that okay?

13 MR. WILSON: Is that subject to
14 cross-examination?

15 MR. HIXSON: Sure. Sure. Sure.

16 THE COURT: Yeah. Yeah. No one is going to keep
17 you from cross-examining, just doing it in a little
18 bit different order.

19 MR. WILSON: That is fine.

20 THE COURT: Yes, sir. Come on down for right
21 now, Mr. Lent, please.

22 MR. HIXSON: The State will call Mark Elliott,
23 please.

24 (MARK ELLIOTT, having been duly sworn,
25 testified as follows:)

1 THE WITNESS: Mark Elliott, E-L-L-I-O-T-T.

2 DIRECT-EXAMINATION

3 BY MR. HIXSON:

4 Q Good morning, Mark. How are you?

5 A Good.

6 Q I understand you are medically retired now, but
7 what were you doing for a living back around
8 February 2015?

9 A Working at J. Reuben Long Detention Center, photo
10 ID section.

11 Q Were you working -- I said February 7th, do you
12 recall that time period?

13 A Not really.

14 Q Let me hand you what is admitted as State's G and
15 see if you generally recognize this item?

16 A (Witness examines document.) That is my e-mail.

17 Q Did you have a county e-mail at that time when
18 you worked at J. Reuben Long?

19 A I did.

20 Q Would it be common for you to e-mail back and
21 forth to detectives information such as what is in
22 this?

23 A Yes, sir.

24 Q Do you have a specific independent recollection
25 of a discussion with Mr. Jenkins around that time

1 period?

2 A I do not.

3 Q Your only recollection is that you worked there,
4 this is your e-mail, you recognize that?

5 A Yes, sir.

6 Q Other than what is on the written page, you don't
7 have any specific independent recollection?

8 A No, sir.

9 MR. HIXSON: Nothing further, Your Honor.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. WILSON:

13 Q Mr. Elliott, my understanding is that you would
14 have been on duty at the time that you sent this
15 e-mail?

16 A Yes, sir.

17 Q How long after the e-mail was it that you left
18 the department?

19 A I do not know the exact date.

20 Q You don't know the exact date that you left --
21 were you injured on the job? How did you come to
22 leave? You said medically retired, how did you come to
23 leave?

24 A I extended my 180-day grace period, and I
25 couldn't come back to full duty.

1 Q Okay. But I'm trying to find out what was the
2 problem? What was the medical problem which you left?

3 A I was injured on the job.

4 Q And how were you injured?

5 A Trying to escort an inmate to his cell. When he
6 resisted, I ended up getting hurt in my neck and back.

7 Q All right. And was the defendant Jenkins in any
8 way involved in that?

9 A No.

10 Q Okay. Now, let me go back to your e-mail. Is
11 that -- if a defendant wants to speak with an officer,
12 is that the way you communicate, by taking it, going to
13 your e-mail and then sending an e-mail to the officer
14 for the defendant or for the inmate?

15 A Yes, sir.

16 Q And, now, how would you have come into contact
17 with Mr. Jenkins so that he would request that you
18 contact Officer Lent, Detective Lent, and ask Detective
19 Lent to come and see him?

20 A I would imagine it was probably still in booking.
21 Some of my duties are to check on inmates, feed inmates
22 and things like that.

23 Q Did you ask Mr. Jenkins if he had a lawyer?

24 A No, sir.

25 Q So you didn't know whether he had a lawyer or not

1 at that time?

2 A No, sir.

3 Q And do you know whether or not Mr. Jenkins was
4 upset because he felt like he shouldn't be in jail, and
5 he was kicking on the door, which is why you all went
6 to see him in the first place?

7 A If that is what happened -- I'm not sure.

8 Q I'm just asking you, because you are saying, as I
9 understand it, you are saying you don't have any real
10 recollection of what happened; is that fair?

11 A Yes, sir.

12 Q And so you don't know that that is not the way it
13 occurred, that he was kicking on the door and making
14 noise and he was told at that point that the only
15 person who could do anything about that was Detective
16 Lent; do you know whether that is true or not?

17 A I do not know if that is true, but.

18 Q You don't know that it is not true?

19 A Right.

20 Q And you just don't have any real recollection of
21 what you say occurred, so it could have happened that
22 way; is that what you are saying?

23 A I don't know why someone would tell him that the
24 only person that could help him is Lent, because once
25 they are in our custody, we are responsible for them.

1 Q If they want a bond -- if he was wanting to get
2 out on bond, who would help him with that other than
3 the detective who put him there?

4 A A bondsman.

5 Q I'm talking about in law enforcement, is what I'm
6 asking you about.

7 A I would let them use the phone if they come to
8 court to see if they can contact a family member or
9 bondsman to get them.

10 Q Let's go back to when you wrote this e-mail. You
11 would have been on duty. What were your duties during
12 that time?

13 A I was working in the photo ID section.

14 Q So you wouldn't have been -- would you have had
15 an opportunity to go back to the areas where the cells
16 were in order to talk with inmates, or was the only
17 contact you had with inmates is when they came up to be
18 photographed or processed in some way?

19 A Most of my duties were in booking, but I could
20 have went down the hall for a Coke or something.

21 Q But, again, you don't remember what you did?

22 A I don't remember.

23 Q Now, you say you sent this e-mail, but you don't
24 put any details into the e-mail as to why it is that
25 Mr. Jenkins says he wants to see Detective Lent?

1 A That's correct. He didn't tell me. He just
2 wanted to see Lent, so I imagine that is what I put in
3 the e-mail.

4 Q So you put everything that you knew in the
5 e-mail?

6 A That I can recall, yes, sir. He just wanted to
7 see Detective Lent, so I sent him an e-mail.

8 Q Okay. Did you have any further conversations
9 with Detective Lent after you sent him the e-mail?

10 A I'm not sure.

11 Q You are not sure if you talked to Detective Lent
12 anymore?

13 A No, sir.

14 Q Did you talk to Inmate Jenkins anymore after you
15 sent the e-mail?

16 A I'm not sure. I may have said I sent him an
17 e-mail, but I'm not sure I even did that. I'm not
18 sure.

19 MR. WILSON: Court bear with me just one second,
20 Your Honor.

21 (A brief pause in the proceedings.)

22 MR. WILSON: I don't have any other questions.

23 REDIRECT-EXAMINATION

24 BY MR. HIXSON:

25 Q During the course of your career in booking and

1 all of that stuff, how many -- with the population of
2 J. Reuben Long for as many years as you were there, are
3 we talking about thousands and thousands of inmates you
4 had interaction with that you may have had during your
5 course there?

6 A Yes, sir.

7 Q And this is a fairly innocuous request to -- a
8 comment between two people; is that right?

9 A Yes, sir.

10 MR. HIXSON: Nothing further.

11 THE COURT: Do you want to follow up?

12 RECROSS-EXAMINATION

13 BY MR. WILSON:

14 Q I just have one question. Let me ask you this.
15 In regards to e-mails, how often did you send these
16 e-mails to Detective Lent?

17 A I'm not sure, sir.

18 Q Had you sent him any other e-mails other than
19 this particular one on Jerome Jenkins, that you know
20 about?

21 A I don't recall, sir.

22 Q So you don't recall ever having sent him an
23 e-mail, ever, except this one on Jerome Jenkins; is
24 that what you are saying?

25 A Yes, sir.

1 THE COURT: Thank you. Can he be excused for
2 today's hearing?

3 MR. HIXSON: Yes. Yes.

4 THE COURT: Any objection to that?

5 MR. WILSON: No, sir.

6 MR. HIXSON: That is our only showing but for the
7 playing of it and cross.

8 MR. WILSON: We need to do Lent first before we
9 show the video.

10 THE COURT: He is asking if you want to stop and
11 do the sheriff and security matters before I give you
12 the opportunity.

13 MR. WILSON: Whatever the Court wants to do is
14 fine.

15 THE COURT: Who all is here?

16 MR. HIXSON: Sheriff Phil Thompson, Deputy Chief
17 Tom Fox. If you want to have a discussion or put him
18 on the witness stand, or whatever, about security
19 plans.

20 THE COURT: Do we need to wait for SLED to do
21 that?

22 MR. HIXSON: The security plan is just during the
23 conduct of the trial, separate from sequestration.

24 THE COURT: Let's do that while they are here.

25 MR. HIXSON: State calls Sheriff Thompson.

1 THE COURT: Come on up here, Sheriff.

2 (SHERIFF PHILLIP THOMPSON, having been duly
3 sworn, testified as follows:)

4 THE WITNESS: Phillip Thompson.

5 DIRECT-EXAMINATION

6 BY MR. HIXSON:

7 Q Good morning. You are the sheriff of Horry
8 County?

9 A Yes.

10 Q Been doing it a little bit?

11 A Yes, sir.

12 Q Is this your first death penalty trial?

13 A No, it's not.

14 Q I know you have done a couple in the past, and as
15 a result of that, you've -- you are familiar with doing
16 death penalty procedures here in general sessions court
17 in Horry County?

18 A That's correct.

19 Q And could you just, please, tell the Court -- I
20 guess the best way is to have a conversation, just give
21 -- focus the discussion -- defense counsel filed a
22 motion, and the Court granted it, that we are not --
23 the sheriff is not to provide overly prejudicial
24 security proceedings during the course of this trial.
25 So we're trying to make sure that the security

1 proceedings are not overly prejudicial, but appropriate
2 for what you intend to do. Could you tell us what your
3 plan is, and if there is a situation you feel is too
4 sensitive, that you don't want the public to understand
5 what you are doing, please -- there are reporters and
6 folks in the room, so be aware of that.

7 A Okay. This will be held in Courtroom 3B, if I'm
8 correct.

9 THE COURT: The big courtroom?

10 A Yes, sir. We will have, obviously, uniformed and
11 plain clothes deputies in the courtroom. The setting
12 is, we would have six uniformed deputies throughout the
13 courtroom, two at the back door when you come in,
14 stationed there. We would have one deputy where the
15 media normally is. If you are looking from the bench
16 to the front doors, over where the media is, we will
17 have one deputy there in uniform. The two at the front
18 door, the entranceway from the hallway into the
19 courtroom, there is two stationed there.

20 Where the defendant is sitting, their table, we
21 would have one deputy, like, where that first chair is
22 when you come out of the lockup, and the first chair
23 we would have a uniformed deputy there. Across the
24 walkway coming through, we will have one deputy there,
25 that way you have access -- you would have two

1 deputies in uniform that would be in close proximity
2 to the defense table. We have one person stationed
3 where you come out of the lockup, that would be
4 between the lockup and the defense table.

5 On the other side of the courtroom where the
6 prosecution is and where the jury box would be, we
7 have a plain clothes deputy and a bailiff that would
8 be there. When the jury is being moved in and out,
9 the plain clothes deputy and the bailiff would be
10 assisting in helping with that. When that occurs, the
11 deputy that is back where the media is at, he would
12 step forward to where they were stationed and
13 positioned.

14 We will have SLED agents that will be in plain
15 clothes that will be working with the jury. They will
16 be stationed in the back hallways of the -- behind the
17 jury -- in the back hallway where the jury rooms are
18 at.

19 Q This back hallway behind?

20 A That's correct. They will be stationed back
21 there. That is our plan.

22 With the defendant, we would have an ankle
23 monitor on him, which is not visible, but it would be
24 placed on him at that point.

25 The deputy between where the defendant's table is

1 and the lockup, is there to assist that when there is
2 a break in the trial, and he is to be taken to the
3 lockup portion, the purpose of that person is to help
4 to assist with doing that without just a lot of
5 movement going on in the courtroom. We want to keep
6 the presence down as much as we can, but we want to
7 make really sure that we have adequate security within
8 that.

9 We'll also have deputies outside, positioned
10 outside in the parking lot in the morning hours when
11 folks are coming in. I think, from what I understand,
12 they are going to try to start around 9:30, so we will
13 have folks prior to that and a short period of time
14 afterwards. We'll have four people downstairs at the
15 security checkpoint where you come into the
16 courthouse, we will have them.

17 Once the parking lot -- we feel adequate and feel
18 good about everything outside, we'll bring that deputy
19 in and position him in front of the elevators with the
20 officer that normally sits there to handle anything
21 that may occur or may go on in the hallways, just to
22 keep noise down and to keep traffic moving. That is
23 our basic plan.

24 THE COURT: All right.

25 Q (MR. HIXSON) You mentioned an ankle monitor

1 specifically relating to passive restraints and
2 restraints that will not be visible while the
3 defendant is in the courtroom; can you discuss that a
4 little bit?

5 A Yes. The ankle monitor goes on, obviously,
6 around your ankle. Your trousers, pants leg, covers
7 it. It will be concealed. No one would know except
8 for the defendant and security personnel and court
9 staff. So it's not seen. There is a control to it
10 that one of our deputies that is positioned at the
11 defendant's close proximity, at the defendant's table,
12 will have the instrument that activates it. It is like
13 a little box with toggle switches on it, buttons on it,
14 that would activate it. But no one would be able to
15 see that or even know that it is present.

16 Q If necessary, does that ankle monitor deliver a
17 shock if that were to be necessary; is that the purpose
18 of that?

19 A That is the purpose of it, and I think it is
20 80,000 volts.

21 Q Specifically -- I'll just defer to perhaps a
22 follow-up question on -- let me temper that with this.
23 Let me get this done. You established what the
24 security procedures are. Can you talk about a specific
25 individualized threat -- do you have information that

1 gives you some concern, either his conduct at J. Reuben
2 Long or something else -- that makes you believe that
3 the security procedures are necessary?

4 A Yes, sir, I do. When he was here initially,
5 before he was transferred to the Department of
6 Corrections, we did have some discipline problems with
7 Mr. Jenkins in regards to an assault on another inmate,
8 escape attempts, a notification -- let me look at my
9 notes, if you don't mind, to make sure. There were
10 threats to assault another inmate. He was moved to
11 administrative segregation. In '15, June 15th, there
12 was a letter that was intercepted from him that he
13 threatened to kill a person if he got out. We just had
14 numerous disciplinary issues to where he was an escape
15 risk at that particular time. He had threatened
16 several people, and they had a plan for escape from
17 J. Reuben Long Detention Center.

18 Q At some point in time, several years ago in this
19 process, did you petition the Court to have Mr. Jenkins
20 taken into safekeeping at the Department of Corrections
21 prior to trial?

22 A Yes, I did.

23 Q Without detail, but the initial showing was,
24 basically, some of the facts that you just indicated to
25 the Court of security concerns of J. Reuben Long's

1 ability to hold onto him and send him to Department of
2 Corrections?

3 A That's correct.

4 Q And since that time, prior to trial, he was
5 returned back to J. Reuben Long?

6 A He has.

7 Q For trial preparation leading up to this moment?

8 A He has been returned back.

9 MR. HIXSON: No further questions.

10 MR. WILSON: Just a couple questions, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. WILSON:

13 Q Sheriff, my understanding is that you want to
14 place a uniformed officer here, one here and then one
15 here (indicates); is that what you are saying?

16 A Yes, sir.

17 Q So --

18 A To interrupt, if you don't mind. Obviously, we
19 know that that courtroom is a lot bigger, so they are
20 not spaced as close as they are in this room. There is
21 one when you come out of the lockup positioned about
22 halfway to the defense table over to the right. Then,
23 as you sit at the defense table, to your right, there
24 will be one person in that end seat.

25 MR. WILSON: Here (indicates)?

1 THE COURT: Where the walkway is for people
2 coming in?

3 A Correct. One on each side of the walkway, one
4 behind the defense table, and one behind where the
5 prosecution table is here. It is not that way in that
6 courtroom, but that's correct.

7 Q (MR. WILSON) So you're saying there is one
8 uniformed officer sitting where Ms. Brown is sitting
9 here, and then another one seated here, this side?

10 A That's correct.

11 Q And then there would be one here, and then one
12 here, so that is four?

13 A Just one between -- when you come out of the
14 lockup, just one. So you are talking three.

15 Q So there is not another one sitting where
16 Ms. Wright is sitting?

17 A That's correct.

18 Q So that is three?

19 A That's correct.

20 Q I understand. Thank you.

21 MR. HIXSON: No further questions.

22 MR. WILSON: Nothing further.

23 THE COURT: You good with all of that?

24 MR. WILSON: Yes, sir.

25 THE COURT: All right. So at this point in time,

1 the plan is for him not to be shackled, either at his
2 hands or feet, when he's in the presence of the jury?

3 THE WITNESS: That's correct.

4 THE COURT: Mr. Jenkins, you and I, we've had
5 multiple conversations over the past few years. Your
6 behavior in court has always been exemplary, okay. I
7 mean, you and I have talked, we've had conversations.
8 You have never acted up in court in any way, shape or
9 form, and I truly appreciate that. I have always done
10 by best to be respectful to you for things that happen
11 sometimes after court, people that come up to see you
12 and things, because I know the level of custody that
13 you have been in.

14 Now, as long as your behavior during the trial
15 continues the way it is, that is the way we will keep
16 things. If things progress negatively, there are
17 other things that the Court can do, you know, to kind
18 of tie you down more. I want you to be able to
19 communicate with your lawyers. I want you to be able
20 to write things down. I want you to be able to do all
21 of those things, so we need to keep you on the same
22 track we are going on and not let that be an issue;
23 you with me?

24 MR. JENKINS: Follow.

25 THE COURT: Thank you.

1 Anything else?

2 MR. WILSON: No, sir.

3 THE COURT: Thank you.

4 MR. HIXSON: We ask the Court to make a finding
5 that if this is implemented the way you heard, you do
6 not find it overly prejudicial.

7 THE COURT: Yeah. I think based on the plan in
8 place, it is not overly prejudicial. Mr. Jenkins will
9 be dressed out for the trial. At this point in time,
10 he won't be shackled at the hands or feet in the
11 presence of the jury at all. You know, I plan on
12 telling the jurors in the very beginning that the
13 courtroom security is normal, there is courtroom
14 security in almost every courtroom in the entire
15 country. I think people know that and people
16 understand that. This is a public courtroom, but we
17 still have to maintain what is going on in here. So I
18 usually say that as part of an opening charge anyway.
19 It is nothing because of anyone or anything, it is
20 just part of what we do, and that is the way we do it.
21 So I plan on addressing it in an opening charge to
22 begin with, but I do not find that to be overly
23 prejudicial.

24 I think the Sheriff's Department has done a good
25 job of putting together a plan in that it provides

1 adequate security and isn't just an overwhelming
2 process for people involved. I've been at the court
3 of appeals where I can't look anywhere and not see a
4 deputy, and sometimes that is necessary depending on
5 things that happen during trial, but at this point in
6 time, I think that plan is perfectly fine. I think
7 SLED is here, too.

8 MR. HIXSON: Yes. I just want to address the
9 Court a little bit about that. I have never in past
10 cases ever put a sequestration team under oath to have
11 a discussion about the jurors' security processes out,
12 and I'm a little uncomfortable doing that. I believe
13 SLED is available to have discussion with the Court
14 about what there is to make sure you are satisfied
15 with it, but I'm very comfortable to not have that
16 information made public for the protection of the
17 jurors.

18 THE COURT: Who all is here from SLED?

19 MR. COATS: Monty Coats from SLED.

20 MR. LANDRUM: Brandon Landrum, SLED.

21 THE COURT: What do we want to accomplish with
22 these gentlemen?

23 MR. WILSON: Your Honor, I kind of want to know
24 what, again, security measures they have in place for
25 handling jurors on a day-to-day basis and how they

1 intend to -- how they intend to implement that. If
2 they are going -- if the Court sees fit, say, to allow
3 them to have phone privileges from time to time, how
4 is that going to occur?

5 I'm also concerned about the contact, verbal
6 contact, they have with the various jurors in
7 transporting them to and from.

8 THE COURT: Monty, do you want to talk?

9 MR. COATS: I can.

10 THE COURT: Okay. Come on up here and swear him
11 in. And we won't get into the nitty-gritty of how
12 they move people and stuff. I think if you let me
13 start with basic questions, and if you all want to
14 jump in, I'll let you, of course, jump in or address
15 concerns you have, okay?

16 MR. HIXSON: Yes, sir. Yes, sir.

17 (MONTY COATS, having been duly sworn,
18 testified as follows:)

19 THE COURT: So you have two teams going on at
20 the same time, or just one? You have that death
21 penalty starting in Lexington next week, too?

22 MR. COATS: Starts Monday.

23 THE COURT: So how many people, approximately,
24 will be here to work with the jury?

25 MR. COATS: Let's say less than ten.

1 THE COURTS: The last time that I was with a
2 sequestered jury, the iPhone did not exist. I say
3 that jokingly, but that is really one of my major
4 concerns, is that I know when we did these things 20
5 years ago, we made sure they didn't have access to
6 nightly news and newspaper or they cut out the
7 articles from the newspaper before they would let the
8 jurors see them. But, now, with the cell phones, and
9 smart phones specifically, and watches and all of this
10 kind of stuff, I mean, the things you can do on your
11 Apple watch can give you more information than any
12 newspaper ever dreamed of. So how do you deal with
13 those issues with jurors having access to those types
14 of devices or laptops or iPads or tablets or anything?

15 MR. COATS: You are correct, Your Honor, in
16 what you were saying about the censoring of newspaper
17 articles, periodicals, television. We sensor all of
18 that.

19 As far as electronic devices and coming of the
20 age, the jurors will -- once you have them impaneled,
21 sworn in, and once our folks are sworn in, then we
22 will take the jurors here from the courthouse to their
23 lodging. At that time -- it is going to take a bit of
24 time, so we ask the Court's indulgence for a couple of
25 hours or so, and maybe -- depends when we get them,

1 hopefully around meal time, we can take an extended
2 time to talk to them, set guidelines. At that time,
3 if they have brought any devices, Apple watches,
4 whatever else you may have, that is confiscated. We
5 have a property sheet that they will sign. We will
6 ask them -- and maybe ask the Court and the clerk's
7 office to ask them if you are coming back to be
8 impaneled as a juror, please leave these devices at
9 your residence. We don't want to keep them, but some
10 people do, then we will take those devices, have them
11 sign a property sheet and keep that during the
12 duration.

13 The only thing with the iPhones -- and I couldn't
14 tell you right now if I needed to call someone what
15 phone number it would be. We would ask them at that
16 time when we have them fill out jury questionnaires,
17 meaning primary care physicians, what the address is,
18 if we had a medical emergency, to go ahead and copy
19 down numbers that you may not have committed to memory
20 if you need to make contact.

21 So all of that will be confiscated if they bring
22 it past the court here to the lodging.

23 THE COURT: Okay. So let's all kind of talk and
24 see this more as a circle of communication.

25 MR. COATS: Yes, sir. I do apologize, Your

1 Honor, I am stretched thin. I only have four people
2 in my shop on a full-time basis, so with everything
3 that we've got going on, and then this backing into
4 the biggest part of our time with the Bike Fest going
5 on, I'm a little stretched thin. I would have had
6 liked to have had a conversation with you. I talked a
7 great deal with Madam Clerk, so I hope she's
8 relaying -- and I think she has -- what we have going
9 on.

10 THE COURT: All right. So Monday morning, the
11 panel comes in. We determine if they are qualified.
12 That is over. At that point in time, we're going to
13 randomly sort the panel and turn them into groups of
14 five.

15 MR. HIXSON: Four or five.

16 THE COURT: One of those numbers -- and I'm not
17 talking about specifics, just ball-parking. And then
18 we'll tell these groups of five -- for what we're
19 calling them now -- give them time frames to come
20 back. So we'll say you come back at X. You come back
21 at Y. Some of those people are clearly going to be
22 coming back on Tuesday, at least; does everyone agree
23 with that?

24 MR. WILSON: Yes, sir.

25 THE COURT: Okay. And then you think Tuesday to

1 Wednesday we have our 53?

2 MR. WILSON: Probably by Wednesday.

3 THE COURT: By Wednesday. So this is all made
4 up. This is helping me wrap my brain around what this
5 looks like. So Monday, the first group of five. Out
6 of that group of five, we find two. So the other
7 three I tell to go home, you are done. Those two,
8 what am I telling those two?

9 MR. HIXSON: You'll give a number for them to
10 call back like at 5:00 p.m. tonight, or whenever, and
11 that recording will tell them when to come back for
12 the 53-strike process.

13 THE COURT: So I'll send them home, tell them not
14 to talk about the case? But so that person -- we're
15 going to call them hypothetical Juror No. 1. When
16 Juror No. 1 comes back, because they are part of the
17 53, when they come back, do they need to have all of
18 their luggage and belongings and all of that?

19 MR. HIXSON: Yes.

20 THE COURT: And bring that to the courthouse?

21 MR. HIXSON: That's right.

22 THE COURT: And then store that somewhere?

23 MR. HIXSON: Generally, leave it in their car.
24 Then they meet Monty, figure out how they are
25 caravanning and all of that.

1 THE COURT: So we'll bring back all 53, and then
2 strike them. Whether or not we reached that is a
3 different conversation, but at that point in time,
4 then we'll have our 16. Then, at that point in time,
5 we'll turn those 16 over to the SLED agents, and then
6 the SLED agents will coordinate this is how we're
7 getting them. At that point in time, Monty, that is
8 what you are telling me we need time?

9 MR. COATS: Yes, sir.

10 THE COURT: Get them there and settled and make
11 sure we're doing what we're doing, where we're doing
12 it, all of that stuff; is that fair?

13 MR. COATS: It is fair.

14 THE COURT: So do we think that is Wednesday?

15 MR. WILSON: I think Wednesday.

16 MR. HIXSON: Historically, yes. We'll see what
17 the numbers look like here. If we're drawing 30,
18 40 percent of the qualified jurors, so if we're at a
19 hundred range and drawing 53, we have to qualify
20 50 percent at that rate, and that is pretty unheard
21 of.

22 So if -- right now -- say we have a hundred
23 showing up Monday, that is only, you know, five
24 panels. We should be able to get five panels in an
25 hour on Tuesday, but we won't know until Monday after

1 the first qualification who we have in panels.

2 THE COURT: All right. So at this point in time,
3 the clerk can tell the lodging that she does not need
4 a room Monday night, and she does not need rooms
5 Tuesday night?

6 MR. HIXSON: That is nearly for certain.

7 THE COURT: Everybody comfortable with her making
8 -- her canceling rooms for Monday and Tuesday night?

9 MR. COATS: If you think you will have your jury
10 on Wednesday, we want our folks here the night before.
11 To be honest with you, I'm planning -- I'm not
12 planning you getting anything until Thursday. As many
13 as I've gone through over the years, I don't -- it is
14 really, really -- I don't see you getting a jury until
15 Thursday. I could be totally wrong, but I've been
16 through a few of these, so usually we come Wednesday
17 night, have our folks in place and set in so they know
18 the routes we'll take back and forth to the courtroom
19 and ready to go Thursday.

20 THE COURT: What do you think about that?

21 MR. WILSON: A lot of it will depend on what His
22 Honor allows us to do.

23 THE COURT: How long I let you talk?

24 MR. WILSON: Yes.

25 THE COURT: (Laughing.)

1 MR. WILSON: Depending on the amount of time and
2 what latitude you'll give us in doing the voir dire,
3 that will dictate probably the length of time it will
4 take. Now, I don't foresee us finishing before
5 Wednesday; I don't foresee that.

6 THE COURT: Here is another option. An option is
7 whatever time we finish Wednesday, we -- with
8 questioning the jurors, we finish. We just make a
9 universal decision we're stopping then and telling
10 them to come back Thursday morning for selection, and
11 that way you all have as much time as you need to
12 process through who you want to strike and who you
13 don't want to strike.

14 MR. HIXSON: That's good.

15 MR. WILSON: If we -- if we -- if we -- if we
16 have them come back on Thursday, then we'll probably
17 go into the third week; that will be the downside.

18 MR. HIXSON: Now is a good time to talk about it
19 as any. If we're going to put up panels of four
20 versus five, we have more control on how long we'll
21 talk. If our proposals for your questioning the
22 jurors, and if Your Honor questions more of them,
23 obviously the defense has an opportunity and has the
24 right to voir dire the jurors, they have to, the more
25 questions that Your Honor decides to ask controls that

1 process and shortens the amount of time we set for
2 each panel. If we're talking to each juror for 30
3 minutes, I think the last one we did they were going
4 for nearly an hour and ten minutes per juror, and we
5 were at 3 o'clock in the morning because we were so
6 far behind schedule.

7 The more the Court controls that, the more
8 precise we know how far it is. The counter of that is
9 Ralph wants to be able to obviously -- has his duty to
10 ask those questions.

11 MS. WILLIAMS: We were doing simple math. If you
12 do 30 minutes per person times four, that is 120
13 minutes, two hours per panel, and we talk to 25
14 panels, that is 50 hours.

15 MR. HIXSON: Madam Clerk's list that we went
16 through here and talked through, we looked at,
17 roughly -- and we'll talk more about this -- I thought
18 we were down 120 jurors, maybe less.

19 MS. WILLIAMS: A hundred divided by four is 25.
20 25 times -- I mean, it is just a window. There is no
21 doubt there is just a window.

22 MR. HIXSON: I agree.

23 THE COURT: You think that pushes us into a third
24 week?

25 MR. WILSON: Probably. I would assume it will

1 take the State two days to put up its case.

2 THE COURT: Guilt phase?

3 MR. WILSON: In the guilt phase. Assuming that
4 we don't offer anything during the guilt phase, and
5 I'm not saying we won't --

6 THE COURT: I'm not holding you to anything.

7 MR. WILSON: Then that will put us to Saturday.
8 And assuming, you know, the jury comes back with
9 guilty, then that is going to put us to Monday,
10 because we have a 24-hour waiting period.

11 THE COURT: Right. We were taking that Sunday
12 off anyway, because it is Mother's Day. We aren't
13 working on that.

14 MR. WILSON: Both side of the sentencing phase is
15 going to have to occur then on Monday or later,
16 depending on when the jury comes back, or if they come
17 back with guilty.

18 THE COURT: How long do you think your
19 presentation in the sentencing phase is?

20 MR. HIXSON: Two days.

21 MR. WILSON: Ours is probably two-and-a-half or
22 three.

23 MR. HIXSON: I think we can do it in less than
24 two because the evidentiary standard is somewhat less.
25 All the pretrial motions will help. If this is

1 illustrative for the Court, Your Honor presided over
2 State versus James Daniels, and that trial was more
3 complicated than this one.

4 THE COURT: We were doing all kinds of stuff in
5 that one.

6 MR. HIXSON: That was far more complicated
7 because of the nature of proof. So I think that took
8 two-and-a-half. That was bigger because of all of the
9 moving.

10 THE COURT: Yeah, there was 404(b), Lyle and all
11 of that other stuff.

12 MR. HIXSON: Yeah. And this is part of the
13 motion -- I'm not giving any trade secrets away, but
14 we've had this discussion, Your Honor is aware of the
15 State's intention in the guilt phase calling the 905
16 incident and using circumstances of the defendant
17 discussing the other ones in the penalty phase
18 presentation of the other two, so.

19 THE COURT: Right. What are your thoughts?

20 MR. COATS: I don't like not working on Sunday.
21 Just for the jury, once we get them started, they want
22 to go right on through. The down time causes --

23 THE COURT: Well, we have to take a 24-hour
24 break.

25 MR. COATS: With no waiver?

1 MR. WILSON: No.

2 MR. COATS: In pass, there have been some
3 waivers.

4 THE COURT: We could be pretty close to being
5 right on the mark for stopping Saturday and taking
6 that Sunday off.

7 MR. COATS: We will do whatever. We have things
8 in place we can do. I just know once the jury gets
9 started, they want to continue on because they are
10 away from home, out of their bed and away from
11 families, and the sooner that we can get them back to
12 normalcy, it works. But we can do whatever is needed.

13 MS. WILLIAMS: I suppose if we -- let's presume
14 the scheduling is going as we're talking. If we were
15 to start the sentencing phase on Monday and needed to
16 go through that Saturday and Sunday, surely we would
17 be finished by then. I mean, that is the second
18 weekend, which is -- I mean, courthouse personnel on
19 the weekend, we get it, but at least it doesn't roll
20 into a third work week, so to speak, if necessary.

21 THE CLERK: Are we talking about sending them
22 home that Sunday, or keeping them?

23 MR. COATS: That is up to Your Honor.

24 THE COURT: I've sent them home before. We did
25 it in Carolina Investors. Of course, that was three

1 weeks. We were in trial 22, 23 days, and at that
2 point, in the middle, Judge Johnson said, go home,
3 wash your clothes, see your family, come back. And
4 those jurors were in different counties. We were in
5 Greenville, and they were from Aiken County. They
6 were two-and-a-half hours away from home.

7 So the issue at this point in time -- tell me
8 what you all are instructing the agents as to their
9 communication with the jurors; how does that work? I
10 mean, I've witnessed it, but what are you all telling
11 the agents who are here working as far as what to
12 communicate about, what not to communicate about, all
13 of that stuff?

14 MR. COATS: The agents I use in this are
15 extremely seasoned agents. We bring -- we have
16 retirees that are still commissioned through us, and I
17 bring them back for special projects and special
18 details. They are not involved in any of the casework
19 or any of the other -- that SLED has everything they
20 do. There is no fraternization. Communication is
21 business, business only for the jury. That is the
22 best I can tell you right now, Your Honor. They would
23 be admonished not to have any extraordinary
24 conversation other than what needs to be in the
25 process of carrying out the sequestration of the

1 jury.

2 THE COURT: Do you want to talk about that at
3 all, Mr. Wilson, or ask questions?

4 MR. WILSON: I wanted to ask you whether or not,
5 for satisfaction, when they take them to eat, I mean,
6 what is the procedure? Do they sit with them when
7 they are eating, or different tables? Because that is
8 one of my concerns is if they are sitting at the same
9 table, you know, it is just almost rude not to have
10 conversation with them, and that conversation can get
11 out of hand because they ask something or say
12 something not thinking -- meaning the jurors -- back
13 to the agent, or the agent to the jurors.

14 MR. COATS: There will be casual conversation,
15 but it will not be anything that relates to what is
16 being heard here or anything of -- any mention that
17 they may have done in the past, or if it is an active
18 agent, anything that we're carrying on in the present.
19 But it will be -- I mean, I don't know how you would
20 have a casual conversation with one of your co-workers
21 or cohort there not dealing with business.

22 MR. WILSON: Let me give you an example. Say
23 they are all sitting there and eating dinner in Myrtle
24 Beach and they say -- one of the jurors says, well,
25 you know, I live here, there is a lot of crime in

1 Myrtle Beach, or the agent says that or there is some
2 conversation about it. I worry that that can have an
3 adverse impact on the jurors. That is what I'm trying
4 to avoid, is that casual conversation that generally
5 wouldn't mean anything, but because where we are, it
6 can be impactful.

7 MR. COATS: I understand your concern. Again,
8 all I can tell you is we will set strict guidelines
9 for my agents, what is appropriate and what is not
10 appropriate. Anything dealing -- you were asking
11 again about the censoring of anything. If they bring
12 books and whatnot with them, we will go through the
13 books and look kind of -- best we can to make sure
14 there is no crime novels, make sure it is nothing
15 inappropriate; and if there is, we take that into
16 property also. We do the same thing with the
17 conversation. I'm saying casual conversation, nothing
18 dealing with criminal justice, nothing dealing with
19 crime, politics, television stations. We will allow
20 them to look at sports channels, and there will be an
21 agent in their jury assembly lounge room where we
22 allow television or media players, if we allow them to
23 watch a movie or something. All of that is censored
24 prior to. So sports works good, maybe HDTV, home
25 improvement stuff works good. It is extremely limited

1 to what stimulation they get during the time of the
2 sequestration.

3 Also, you made a comment about how they sit in
4 the restaurants. We will go through a number of
5 restaurants and we will place them on a list
6 throughout the week and have conversations with the
7 staff there at what time we'll bring them in. We try
8 to -- if we have a room we can get the jurors in, we
9 will do that off from anyone else. If not, maybe a
10 section, and they will hold a section for us. They
11 will eat together.

12 Our job is to maintain the integrity of the jury,
13 and there is going to be a happenstance that someone
14 will know someone out in public, and our job is to
15 make sure that whatever conversation it is, it is,
16 hey, how are you doing, something of that nature, I'm
17 busy right now and I'll have to talk to you later, and
18 we'll keep that at that arm's length, if you will, on
19 any type of conversation.

20 MR. WILSON: Okay.

21 MR. HIXSON: No questions, Your Honor.

22 MR. WILSON: May we approach, Your Honor?

23 THE COURT: Sure.

24 (Whereupon, a bench conference was had.)

25 THE COURT: Anything else for Agent Coats?

1 MR. HIXSON: Nothing further.

2 MR. WILSON: Nothing further.

3 THE COURT: At this point in time --

4 THE CLERK: Can I ask one thing?

5 THE COURT: Yeah.

6 THE CLERK: What are you going to allow as far as
7 alcohol during dinner?

8 THE COURT: Can we go off the record?

9 COURT REPORTER: Sure.

10 THE COURT: It's a joke (laughing). It's a joke.

11 COURT REPORTER: Oh (laughing).

12 THE COURT: They are not going to let them drink
13 during dinner, are you?

14 MR. COATS: I don't know if you have seen the
15 order yet, the sample order, you can detract or add
16 to, but depending upon what you decide, it would be no
17 more than two alcoholic beverages with dinner, payable
18 by the juror, not from the government. And so no
19 tobacco, no alcohol is purchased by the government,
20 but if they want to have up to two drinks -- and I'm
21 not talking about two doubles or anything of that
22 nature -- they can.

23 THE COURT: As long as they pay for it?

24 MR. COATS: We're still off the record, right?

25 SLED agents get five or six (laughing).

1 THE COURT: (Laughing). Anything else for Agent
2 Coats?

3 MR. WILSON: No, sir.

4 MR. HIXSON: No, sir.

5 THE COURT: We'll talk through the Tuesday or
6 Wednesday thing, and we'll let you know.

7 MR. COATS: We'll be flexible. Direct
8 conversation, once you give me a notice, then we'll
9 bring our folks in and we're ready the next day.

10 THE COURT: Perfect. Let's take a short break so
11 everyone can use the restroom.

12 Detective Lent, you are not allowed to discuss
13 your testimony with anyone. When we come back, we'll
14 listen to the audio and do cross.

15 MR. HIXSON: Couple of questions, yeah.

16 THE COURT: Take a short break, five, ten
17 minutes.

18 (A recess was taken.)

19 THE COURT: Let's do Lent's cross-examination, or
20 do you want to play the recordings first?

21 MR. HIXSON: I'll call Detective Lent back to the
22 stand and we can do whatever.

23 THE COURT: Do you just want to cross-examine and
24 then listen?

25 MR. WILSON: Yes, I think that is good.

1 THE COURT: Okay. Detective Lent, you are still
2 under oath; you understand that?

3 MR. LENT: Yes.

4 THE COURT: Back on the cross-examination of
5 Detective Lent for the purposes of Jackson v. Denno
6 hearing.

7 Mr. Wilson, you're up.

8 CROSS-EXAMINATION

9 BY MR. WILSON:

10 Q Detective Lent, back in 2015, were you the
11 arresting officer? Did you actually participate in the
12 arrest of Jerome Jenkins?

13 A No.

14 Q But you got to interview him immediately after
15 his arrest?

16 A Sometime after, yes. I mean, he was taken
17 from -- I believe he was taken into custody in Loris
18 and driven to the M.L. Brown building where I
19 interviewed him.

20 Q So within an hour?

21 A Yes.

22 Q And did you read him his rights at that initial
23 interview?

24 A He was advised of his rights, yes.

25 Q What did he say?

1 A I don't recall.

2 Q Did he ultimately tell you that he wanted a
3 lawyer?

4 A Yes.

5 Q Did you ever get him a lawyer? Did you make any
6 effort to get him a lawyer?

7 A No.

8 Q Once he told you he wanted a lawyer, you didn't
9 do anything else, just put him back to the facility?

10 A I ended the interview, and he was transferred
11 back to J. Reuben Long Detention Center.

12 Q How long was it before you got the e-mail
13 after -- how long after you had that initial attempt of
14 an interview with him before you got the e-mail?

15 A It would have been -- if I recall, he was taken
16 into custody in the morning time, so if that was
17 February 6, it would have been the morning of
18 February 6th -- I would have interviewed him, like,
19 shortly after. I didn't receive that e-mail until
20 February 7th. It was sent at 3:23. I don't remember
21 when I received it -- I get e-mails on my phone -- when
22 I saw it. I want to say at that time it was dark
23 outside when I drove to J. Reuben Long to go conduct
24 the interview.

25 Q So 24 hours or more later?

1 A Yeah.

2 Q Before you got the e-mail, and then once you got
3 the e-mail, as I understood it, you contacted your
4 supervisor, and then you went out --

5 A I would have called my boss just to make sure I
6 could go out and say, hey, this is what I'm doing, I
7 want you to know that I'm signing back on duty and
8 going back to work for a little while.

9 Q Right. But, now, you got there -- he already
10 told you he wanted a lawyer, so the first thing you
11 would want to do, if he is sending for you, is to read
12 him his rights to make sure that he is still wanting to
13 communicate with you, talk with you?

14 A We had a conversation. I explained to him that I
15 was told that he wanted to speak with me and he was
16 reinitiating contact, and I advised him of his rights
17 again.

18 Q But you had a conversation with him about the
19 charges before you read him his rights the second time,
20 or at least on the second interview?

21 A On that second interview -- we can listen to the
22 interview where we ended up speaking in an interview
23 room inside the detention center. In going back that
24 long, I don't remember. Oftentimes, I stand in front
25 of the booking counter and they bring me the inmate and

1 we walk to that room. I'm sure Mr. Jenkins -- like I
2 said, he just began to speak to the point where I had
3 to cut him off in order to advise him of his rights.

4 Q So when you go out to the facility, you have him
5 brought to you, or do you go to his cell?

6 A He is brought to me. I don't go to his cell.

7 Q He's brought to you. And when he comes in the
8 door, you don't advise him of his rights at that point,
9 he starts talking, you let him continue to talk, and
10 then somewhere down the line you actually do attempt or
11 make an attempt to read him his rights?

12 A He starts to talk. I don't ask him any questions
13 about the case. I'm not engaging other than saying,
14 yes, yes, yes, let's do this, to the point where we can
15 get into that room and I can advise him of his rights.

16 Q But you show back up after he told you that he
17 didn't want to see you and that he didn't want to talk,
18 you come back, because you have the e-mail, you come
19 back, and your purpose of going back was to talk with
20 him, I assume, that is the only thing --

21 A Absolutely. If I would have gotten in that room
22 and he changed his mind again and said I don't want to
23 speak to you, I didn't tell anyone I wanted to speak to
24 you or I changed my mind, conversation would have
25 ended.

1 Q Is there any reason you wouldn't have said to him
2 at the outset when you walked back into the room, I
3 need to read you your rights before we have any further
4 conversation?

5 A If the suggestion is that as soon as his cell
6 door opens up that I'll be standing there going, You
7 have the right to remain silent, right to an attorney,
8 no, that is not going to happen. There was no
9 conversation with Mr. Jenkins. There was no back and
10 forth. There was no questioning about that case. I
11 would not have said, hey, what did you do or where were
12 you or what was your involvement prior to going through
13 a re-initiation with him and advising him of his
14 rights.

15 Q But there was some conversation between you and
16 Mr. Jenkins before you got an opportunity to read him
17 his rights, right? There was some conversation, right?

18 A Yes. Again, Mr. Jenkins had begun to talk.

19 Q Let me ask you this. This is your -- this is the
20 statement I'm looking at.

21 A I don't know what you are looking at.

22 Q I know. This is a transcript of the second
23 interview, which is the one you went back out to the
24 jail to have with Mr. Jenkins.

25 A Correct.

1 Q You asked -- Jerome says: I seen my co-defendant
2 today and, shit, he talking about he ain't tell, but --
3 telling me to stick to story, but he told --

4 And then you say: Jerome, you know he did,
5 right? I mean --

6 So you were asking him something. And then you
7 ask him -- and he says: Which one, man? Just be
8 honest with me. You know I'm not going to bullshit
9 you. I don't want to bullshit me.

10 Then you say: Who did you see today?

11 So you are actually questioning him, and then you
12 go on -- go ahead.

13 A I would suggest -- if we listen to the interview,
14 you will hear the context and the rate of speech
15 Mr. Jenkins is using. At that point, I'm not
16 interviewing Mr. Jenkins. That is a fast rate of
17 speech as he's throwing things at me, and I'm trying to
18 say, hey, no more. No more. Let's get to this point.

19 Q There is two pages of transcript testimony before
20 you read Mr. Jenkins his rights. You go on, and the
21 next -- let me show you this statement. Take a look.

22 MR. HIXSON: Your Honor, I have a copy also for
23 the witness, exact same copy.

24 MR. WILSON: I'm familiar with it. I don't need
25 it.

1 MR. HIXSON: If it helps facilitate the
2 discussion.

3 A So I read this, and I do see from Line 1 to 35
4 there is some conversation. At Line 37 I say: Well,
5 here, let's do this, because I know we spoke a little
6 bit yesterday -- and obviously we -- yesterday was
7 difficult for both of us, all right. They call me up
8 here today and they say you want to speak with me, that
9 you want to at least reinitiate contact and stuff,
10 right? Um. So we'll talk.

11 This is how it started.

12 Well, here, before you say any -- because, you
13 know, I read your rights yesterday, I want you to know
14 you still have your rights, right? Let me just read
15 them so that we're clear so --

16 And he interrupts me and says: So, if I told you
17 everything, what am I looking at?

18 Well, you don't know -- what I can do, you
19 know -- you know me, I'm just a cop.

20 He goes on. Again, I'm continuing to try to get
21 to a point where I can read him his rights and he will
22 quit speaking to listen to what I'm saying.

23 On the first page, I begin to go through the
24 re-initiation with him. And, again, I'll say I
25 understand this is a transcript, but without the

1 context of that conversation where you can hear it,
2 there is no doubt that I'm not interviewing -- that
3 I'm not questioning Mr. Jenkins and I'm trying to get
4 to a point where I can read him his rights.

5 Q (MR. WILSON) You don't deny that that transcript
6 that you are holding in your hand is accurate? Is
7 there any dispute about whether or not it is accurate
8 or not?

9 A No. No, there is no dispute.

10 Q And that is, in fact, the conversation you had
11 with him for that second interview?

12 A It is. It is.

13 Q And there is no question about the fact that you
14 don't read him his rights until you enter the second or
15 third page of that transcript; no question about it?

16 A No question that I do not see the "right to
17 remain silent," but I will argue that you can tell in
18 the first page that that is exactly what I'm trying to
19 do with Mr. Jenkins, but it is difficult when I'm being
20 interrupted.

21 Q Do you dispute the fact that you actually do ask
22 him questions in the first page?

23 A In the very first second, as he walks up to me in
24 the jail, and we can listen to that interview, and I'm
25 sure -- now, I believe that you'll hear as we're moving

1 through, because I know that as they brought him to me,
2 I had the recording on in case he said anything, okay.

3 If he walks up and says, I saw Baldy or I saw
4 that, you know, I'm not going -- it would be
5 unreasonable, I think, to sit there and say,
6 Mr. Lent -- you don't say anything, or the first words
7 out of my mouth are, You need to stop, you have the
8 right to remain silent. We're going into a room.
9 That recorder was probably in my pocket at that time
10 to capture that conversation.

11 There is no doubt he's going to come out and say
12 something to me. If he just spoke to a booking
13 officer and said I want Mr. Lent here, he's coming out
14 and going. You can see, I'm doing everything I can to
15 get to a point where I can do the re-initiation.

16 Q Where did the -- Detective Lent, where did the
17 conversation for the second interview take place?

18 A It would have been -- if I recall, it was in the
19 interview room at J. Reuben Long right behind the
20 booking counter.

21 Q And that would mean that either you went back to
22 the cell area and brought him up front, or the guards
23 went and got him and brought him up front?

24 A I don't recall where he was, if he was still in
25 the booking cells, or if he was in one of the pods in

1 the back; I don't recall.

2 Q Let's assume for the sake of argument that he was
3 in the booking cell and up front. Even if he was up
4 front, someone would have had to get him out of the
5 cell, brought him over to you to the interview room
6 where you were?

7 A No. They would have brought him to the booking
8 counter where I was.

9 Q So you got him from the booking counter, and then
10 took him to the interview room?

11 A Correct.

12 Q And then this conversation that we have on the
13 transcript ensued. Now, whatever happened between the
14 time you were at the booking counter, and the time you
15 got him to the room, is there any conversation in there
16 that would not have been recorded on that transcript?

17 A No.

18 Q So there were no words exchanged between you and
19 J.J., not even how are you doing today?

20 A No. I would have had that recording on prior to.

21 Q And so then when you take him into the room, you
22 sit down and he says something to you, and then you
23 immediately ask him -- can I have the transcript back,
24 please? Thank you, sir. You start then questioning
25 him.

1 Detective Lent: Jerome, you know he did, right?

2 I mean -- and you don't think that is a question
3 to him?

4 A I think that what -- at that point in the
5 interview, I think that is when we are standing -- as
6 we're walking from the booking counter to the interview
7 room. There was no interview. It was a walk for
8 20 feet going to the room to get to a point.

9 Q All right. Then he says -- he says to you: I saw
10 Baldy -- McKinley.

11 You say: All right.

12 And then he says: I got a feeling McKinley told
13 because his brother got caught, and then I got caught.

14 And you say: Well, I can tell you, I spoke with
15 both of them.

16 Then he says: Don't bullshit me.

17 There is this whole colloquy between the two of
18 you about what he saw and what he did and who else --

19 A No. No. There was an exchange about what he had
20 seen that day at court or that day in the jail. There
21 was no questioning as to what went on in reference to
22 the crime, investigation going on. None of those
23 questions took place until after Miranda was provided,
24 and there was -- well....

25 Q Go ahead, sir.

1 A Whatever prompted Mr. Jenkins to ask Mr. Elliott
2 to contact me or to get my contact information to
3 contact me himself, to have me come up and speak with
4 him, obviously there was something that occurred at
5 that jail that day. All three of them were there. I
6 don't know what happened, but I do know that,
7 obviously, whatever it was, had some type of effect on
8 Mr. Jenkins.

9 Q Well, you specifically were talking about the
10 co-defendants in this case: Baldy, which would be
11 McKinley, and James. That is who you were having the
12 conversation with him about, his co-defendants.

13 A If he walks up and says, I see Baldy today, and I
14 said, well, who did you see -- at that point, I mean,
15 Baldy was a nickname. I knew McKinley as McKinley. I
16 am sure I probably assumed who he was speaking about at
17 that point. But, again, if we're having a conversation
18 from where I get him to the interview room, to a point
19 where I can get him, I wish I could have told your
20 client don't say another word until we get in there and
21 able to read you your rights.

22 Q So all of this conversation --

23 A But I didn't have that much control over him.

24 Q So all of this conversation, on Page 1, Page 2
25 and top of Page 3, that all occurred from your walking

1 with him from the booking counter to the interview
2 room?

3 A No. I'm not saying that. What I'm saying is the
4 initial start of that recording would be at the booking
5 counter as we were walking over. No doubt that at that
6 point -- it is only 20 feet to the interview room. I'm
7 sure we were in that room at some point. I said to
8 listen to the interview and you'll hear -- there is no
9 doubt that you will hear that I'm trying to get
10 Mr. Jenkins to slow down so I can speak to him and
11 advise him of his rights, which I begin to try to do on
12 the first page.

13 Q Did you ever ask him why he sent for you? Did
14 you get into why he sent for you, or if he sent for
15 you, for that matter?

16 A I don't recall so. I believe his demeanor, when
17 I went up there, the fact that he wouldn't stop
18 speaking and clearly wanted to discuss what had
19 occurred, there wasn't any need. I was told that he
20 wanted to speak to me, and when I got there, he was
21 brought to me, and we went to the interview room and he
22 was very motivated to speak. He wouldn't stop
23 speaking.

24 MR. WILSON: No other questions. Thank you.

25 REDIRECT-EXAMINATION

1 BY MR. HIXSON:

2 Q Can I hand you, Detective Lent, State's M? This
3 is State's M for purposes of this hearing. Do you
4 recognize that?

5 A This is a transcript of the interview conducted
6 with Jerome Jenkins. It says, "Interview 2
7 Transcript." "Interview 2 Transcript."

8 MR. HIXSON: We admit that into evidence for
9 purposes of this hearing.

10 MR. WILSON: No objections for the purposes of
11 this hearing.

12 (State's Exhibit M admitted.)

13 Q (MR. HIXSON) Line 31, can you read that into the
14 record specifically?

15 A Line 31, first page?

16 Q Yeah.

17 A Man, look, I said I.

18 Q And then you said?

19 A I say: Jerome.

20 And he says: Brought you here to tell you the
21 truth.

22 Q Is that an admission by Mr. Jenkins that he said,
23 hey, I brought you here to tell you the truth?

24 A To me, it is an admission that that was the
25 reason why I was there.

1 Q And, quickly, I think you said you weren't really
2 sure, but was there an appearance made by all three
3 defendants who were under arrest in magistrate, it
4 wasn't a bond hearing because it has to be set by a
5 circuit court judge, but are you aware if there is a
6 court appearance?

7 A They had some type of hearing. I know that it
8 probably wasn't too long on the 6th, after I spoke with
9 Mr. Jenkins, that -- I hadn't gone home and tried to
10 sleep, because it was 20-hour days for the last 30 days
11 prior.

12 Q So you are not sure if they ever saw each other
13 in court that morning?

14 A I don't -- I don't remember.

15 Q Fair enough.

16 MR. HIXSON: Your Honor, at this time we would
17 like to play the audio recording of Interview No. 2.

18 THE COURT: Okay.

19 (Audio published to the Court.)

20 MR. HIXSON: As it relates to the second
21 statement, I don't have any additional questions. I
22 think it stands for itself.

23 THE COURT: All right.

24 MR. WILSON: I don't have any other questions.

25 THE COURT: Okay. Do you want to keep going?

1 MR. HIXSON: Just argument. While we're thinking
2 about it right now, just some comment on the record
3 relating to the redactions, if the redactions are
4 appropriate, that type of thing.

5 THE COURT: I think we need to make it a Court's
6 exhibit of the un-redacted and redacted versions so
7 that the record is clear that there is -- a lot of
8 that statement that is taken out. So, you know, I
9 assume -- I'm not saying you are agreeing to the
10 admissibility of the statement, but the parts that are
11 redacted, you certainly don't have any issues with
12 those being redacted?

13 MR. WILSON: I'm not sure yet, Your Honor. Let
14 me try to explain that in some way. I don't -- let me
15 put it this way. I don't have any problems with the
16 redacted statement that he has provided me. I'm not
17 agreeing that this other stuff should not be added in
18 at some point. I'm not agreeing to that part. I'm
19 just saying I don't have a problem with the State's
20 case with them only offering the redacted portion.

21 THE COURT: Fine. You are not saying it is out
22 altogether, but to the extent that I determine whether
23 or not the statement is admissible, if I determine
24 that it is, you do not have an objection to the
25 redactions as proposed by the State in their

1 presentation of their case in chief?

2 MR. WILSON: That is correct.

3 THE COURT: Is that a fair statement?

4 MR. WILSON: Yes, sir.

5 THE COURT: And, of course, you can get up there
6 and cross-examine Detective Lent on the other stuff he
7 says, that won't hurt my feelings, but for the State's
8 presentation of it --

9 MR. WILSON: Yes, sir.

10 THE COURT: To the extent, if I determine it is
11 admissible, you -- there is nothing else you believe
12 that needs to be redacted?

13 MR. WILSON: No, sir.

14 MR. HIXSON: Thank you. That is exactly....

15 THE COURT: Is that what you were looking for?

16 MR. HIXSON: Yes, sir.

17 THE COURT: But I do think we need to create as a
18 Court's exhibit -- and not at this very moment -- but
19 a redacted transcript or the -- kind of the way I have
20 it, the redacted with the highlights.

21 MR. HIXSON: Yes.

22 THE COURT: And then the audio recordings of
23 both.

24 MR. HIXSON: Complete and redacted?

25 THE COURT: Yes. Just for any further other

1 courts review. But I think, you know, what Detective
2 Lent went on and said on the witness stand, we can
3 read all of this until we're blue in the face, but the
4 tenor and pace of the conversation -- the pace of the
5 conversation, I mean, that is why I wanted to be sure
6 that I listened to it.

7 I know you were trying to say that in your
8 testimony, Detective Lent, but I knew I would listen
9 to it, so.

10 Let's do arguments on Statement No. 2.

11 MR. HIXSON: To close the loop on this, and
12 specifically why I wanted the Court to have the
13 highlighted redacted and listen to the redacted
14 version is to be sure that inadmissible evidence would
15 not be played by the jury, because this is the exact
16 physical copy I intend to put to the jury.

17 THE COURT: Okay. Great.

18 MR. HIXSON: As it relates to the arguments
19 specifically on this. I believe the record is -- it's
20 not controverted. He was in custody, subject to
21 interrogation on Statement No. 1. He invoked once he
22 was confronted with the allegations and they
23 scrupulously honored that.

24 THE COURT: So at this point, there is no
25 intention to go into any of that in the State's case

1 in chief?

2 MR. HIXSON: That's correct. And the reason why
3 is I believe there is nothing admissible. He denies
4 it, and I believe it is a dual violation for me to
5 highlight his invocation, and I don't think I can.

6 THE COURT: I agree. I just want to be sure that
7 we all said that out loud.

8 MR. HIXSON: Yes, sir.

9 As it relates to this, I think the record is
10 replete with testimony. Unfortunately, Mr. Elliott
11 does not remember the circumstances surrounding the
12 e-mail, but he acknowledges that is his e-mail
13 address. Testimony by Detective Lent specifically
14 supporting the documentation that he received this
15 e-mail, and then we have an admission by Mr. Jenkins
16 on Line 31 of this transcript where he said: Listen,
17 man, look, I brought you here to tell you the truth.

18 In fact, it would be difficult to see what
19 Mr. Lent could have done better in repeatedly
20 attempting to say let's take care of this first, let's
21 take care of this first. Not only does he
22 specifically say I want to hear -- I reinitiated it on
23 the record, but he certainly waives through his
24 initial conduct, after specifically saying I brought
25 you here to tell you the truth. I think the record is

1 sufficient for the Court to find that this is
2 admissible because he did reinitiate contact with
3 Mr. Lent by his own freewill, that it was voluntary
4 statement.

5 MR. WILSON: Yes, sir. I'm not sure that he
6 actually reinitiates contact. First of all,
7 Mr. Elliott's testimony is, one, he doesn't remember
8 ever sending the e-mail. He says, yeah, that is my
9 e-mail address, but he has absolutely no recollection
10 of having sent it; that is the first thing.

11 He absolutely has no recollection of ever having
12 spoken to Jerome about sending an e-mail. There is no
13 question there is an e-mail. Where it came from and
14 how it got to this officer, I don't know. But,
15 certainly, Officer Elliott did not establish that,
16 because he has absolutely no recollection.

17 The other thing I think is important is he
18 couldn't remember when he left the department, so we
19 don't even know that he was actually an officer at the
20 time the e-mail was sent, because he didn't know when
21 he left on his medical leave.

22 In addition to that, when Detective Lent meets
23 with him -- I would submit to the Court that initially
24 when he first encounters him, it is incumbent upon him
25 at that point, since the defendant told him that he

1 did not want to talk and that he wanted a lawyer, and
2 he admits he made no effort to get him a lawyer or
3 have him contact a lawyer, but that he just ceased
4 having contact with him and sent him back to his cell.

5 Then, when he comes back a day later, you know,
6 he has this drawn-out conversation with him and he
7 says, well, we were walking from the booking counter
8 to the room, so he was talking and I couldn't stop him
9 from talking. Well, when he asked the officer, who is
10 now talking to an incarcerated defendant that is in
11 custody, that he brings out of the cell, he should
12 have told him at that point you have a right to remain
13 silent immediately upon having new contact with him.
14 He doesn't do that.

15 I would submit to the Court that if the Court
16 decides that it is not going to suppress the entire
17 statement, at least that portion of the statement from
18 initial contact until after he is read his Miranda,
19 should be -- should be suppressed.

20 THE COURT: All right. Mr. Hixson, anything
21 else?

22 MR. HIXSON: The jury has to establish the
23 voluntariness of the statement, that is their duty as
24 well. I have to prove that beyond a reasonable doubt
25 as part of my burden. It is clear this is a

1 contemporaneous discussion, you could hear on the
2 video -- or the audio that it sounds like a Doppler
3 affect of walking to the room to get to that point.
4 That context is what Mr. Lent was talking about, and
5 it shows that he is clearly excited about being here,
6 it is voluntary, that is a contemporaneous record
7 without being questioned by Mr. Lent. Specifically,
8 his motivation for talking the second day, showing
9 absence of any coercion saying I saw my co-defendant
10 today, and that tells the Court that it is appropriate
11 to hear for the jury. It is not infirm in any way for
12 the admissibility of the statement.

13 MR. WILSON: I know this may be a little out of
14 order, but let me ask the Court this -- can I ask
15 Detective Lent another question, and the question is:
16 Did he tell Jerome at the various interviews that he
17 was going to get him a lawyer?

18 THE COURT: Okay.

19 MR. WILSON: Did you?

20 MR. LENT: No.

21 MR. WILSON: What about Todd Cox, who was with
22 you, did he tell him that?

23 MR. LENT: I don't recall. But I don't think
24 that Detective Cox would say that. That is not
25 something in our normal course of business that we

1 would do.

2 MR. WILSON: Give me one second. Let me get the
3 transcript.

4 MR. HIXSON: While we have a little pause, I
5 object to that line of questioning as it relates to
6 relevance, because that is not the standard for
7 Jackson v. Denno. They are under no obligation of any
8 kind other than to scrupulously respect his right to
9 remain silent. They do not have to facilitate any
10 efforts to get counsel on the part of him. As a
11 matter of fact, it perhaps may be overreaching for a
12 detective to try to arrange counsel for a defendant.
13 I think we would be here on an objection if Mr. Lent
14 got an attorney for him, accusing him of being biased
15 towards the prosecution for getting him his own
16 attorney. So I just object as to relevance.

17 MR. WILSON: The point is --

18 THE COURT: I'll let you ask the question. I'll
19 let you ask your follow-up. Let's create a record. I
20 understand what the law is as it relates to how far
21 they have to go or how far they don't have to go, but
22 let's let him create the record of what they did or
23 did not do.

24 (A brief pause in the proceedings.)

25 MR. WILSON: On Page 38, this is 001312 of the

1 discovery information that we received from the State,
2 is a transcript, which is the transcript of the
3 initial interview that you and Detective Cox had with
4 Mr. Jenkins; do you recall that?

5 MR. LENT: I do recall that myself and Detective
6 Cox conducted an interview with Mr. Jenkins.

7 MR. WILSON: And let me go to -- I can't see the
8 line number on this.

9 Your Honor, this is the first transcript, which
10 would have been the first interview, and I'm beginning
11 at Page 18 and Line 40, and it goes over to Page 19
12 down to, I think it is, Line 6. And if -- I'll read
13 it into the record.

14 Detective Cox: You know why we didn't do that?
15 Jerome says: Why?

16 Detective Cox: We got them right in the other
17 room. The reason that we didn't do it, to give you a
18 chance to help yourself. That's fine that you didn't
19 take it. You have -- you have every right to an
20 attorney, and you're going to be provided an attorney.
21 You may even be provided two attorneys because you are
22 a special person, J.J. We'll do everything we can to
23 see if you can be appointed two attorneys; how does
24 that sound?

25 And Detective Cox says: Cause we're good guys.

1 We'll be right back with your warrants, okay. You're
2 right -- you sit tight, and we'll come back with the
3 warrants and we will get the ball rolling.

4 Then it goes on to say -- Detective Cox again --
5 Jerome says: Can I still smoke a cigarette?

6 Detective Cox says: No, we'll get the ball
7 rolling and see if we can get you two attorneys
8 appointed.

9 And that was -- that was after he -- that is
10 Jerome -- asked (sic) them that he invoked his right
11 to counsel, and that was their response to him at that
12 time. None of that occurred between the time that
13 they last talked to J.J. and the time that they came
14 back on the following day -- Detective Lent -- to have
15 an additional conversation with him. None of that had
16 been provided to him in the interim, as they had said
17 that they were going to do.

18 THE COURT: Where is the law that says it has to
19 be?

20 MR. WILSON: I don't think that the law says they
21 have to do it. What I'm suggesting is this, Your
22 Honor, that they can't tell him basically we're going
23 to get you a lawyer, they don't do it and then come
24 back and say, okay, we just want to talk to you some
25 more.

1 THE COURT: That is not what they said. That is
2 a mischaracterization of the transcript.

3 MR. WILSON: Well, they didn't say -- what they
4 said, though, is -- they tell him they are going to
5 get him a lawyer, which they did not do.

6 THE COURT: They don't even have the ability to
7 do it.

8 MR. WILSON: Well, but then -- but then.

9 THE COURT: No. No. Don't say well. They don't
10 have the ability to get him a lawyer, period.

11 MR. WILSON: But then -- but then that would mean
12 the only reason to tell him that is to lie to him to
13 convince him to give them some kind of statement or
14 information.

15 THE COURT: And there is no evidence in the
16 record of what you just said, at all.

17 MR. WILSON: That?

18 THE COURT: That they told him all of that to lie
19 to him to get him to come back and say something else;
20 that is made up.

21 MR. WILSON: What I'm saying is this, Your Honor.
22 They clearly told him that, because it's in the
23 transcript --

24 THE COURT: I don't dispute they told him they
25 would get him two attorneys.

1 MR. WILSON: What I'm saying is they didn't do it
2 and they came back. So, obviously, what they said
3 wasn't true. They did not do it.

4 THE COURT: The United States Supreme Court has
5 authorized law enforcement officers to lie to subjects
6 in order to get them to give statements.

7 MR. WILSON: I'm not saying they can't lie to
8 them, I'm just saying they did.

9 THE COURT: They told him they would get him two
10 attorneys, but everything you just said is based upon
11 the assumption that Detective Lent went back the next
12 day on his own volition with no prompting from your
13 client, which there is no evidence of that in the
14 record.

15 The evidence in the record is that Detective Lent
16 received an e-mail saying that Mr. Jenkins wanted to
17 talk to him. He went to the jail to talk to him, and
18 that information is confirmed by Mr. Jenkins' very own
19 words where he said I brought you here to tell you the
20 truth.

21 MR. WILSON: I don't dispute, Your Honor, that he
22 received -- that Detective Lent received an e-mail. I
23 don't dispute that at all. What I am concerned about
24 in this is how that e-mail originated, and who
25 originated it, because I don't think we know that. I

1 don't think we know that. Certainly, that has not
2 been established.

3 THE COURT: Detective Lent has testified that he
4 received the e-mail from Mr. Elliott. The fact that
5 Mr. Elliott can't remember sending it is not the
6 issue. Detective Lent testified I received on my work
7 e-mail, on my phone, an e-mail from someone that works
8 at Horry County Detention Center that said Mr. Jenkins
9 wanted to respond -- wanted to talk to me, and then he
10 went to the jail after he contacted his supervisor,
11 and then Mr. Jenkins confirms that in his own words.

12 So, I mean, I understand -- I understand what you
13 are arguing, I just think -- I don't think we're
14 creating an accurate record of -- of -- I think we're
15 taking a bunch of steps down the road that haven't
16 occurred yet.

17 All right. What else, Mr. Hixson?

18 MR. HIXSON: That is it, other than two other
19 statements to play that are shorter than that, but it
20 is the same admissibility fact pattern. This is the
21 critical issue of re-initiation after invocation.
22 Mr. Lent -- I think we have to play them for the
23 record for potential trial, if they are found
24 admissible, but the arguments are identical.

25 THE COURT: All right. All right. I find these

1 statements to be admissible, and I'm going to allow
2 them to come in, and this is why: Clearly, law
3 enforcement has a conversation with Mr. Jenkins on the
4 day that they arrest him. Clearly, at that point in
5 time, Mr. Jenkins is informed of his Miranda warnings
6 and invokes his right to an attorney. At that point
7 in time, yes, law enforcement says, yes, we'll get you
8 two attorneys, but, clearly, the questioning of him
9 stopped at that point in time by law enforcement and
10 he was not asked any questions that would lead to
11 inculpatory responses.

12 The testimony before the Court today is -- let's
13 start with Mr. Elliott. Mr. Elliott confirms he
14 worked at the Horry County Detention Center. He
15 worked in booking, that he had contact with inmates,
16 had contact with thousands of inmates, and that he
17 would routinely go back in the cell areas where the
18 inmates are.

19 Mr. Elliott also confirmed that the e-mail
20 address that was used to communicate with Detective
21 Lent was his e-mail address while he was employed by
22 the J. Reuben Long Detention Center, or whoever you
23 were employed by when you worked there, county or
24 whoever.

25 Detective Lent testifies that he is basically at

1 home minding his own business and trying to recover
2 from work when he receives this e-mail from
3 Mr. Elliott on his work e-mail, at which point in
4 time, he contacts his supervisor and goes back to see
5 Mr. Jenkins.

6 Now, I want to go through the beginning of this
7 interview because, number one, you cannot just read
8 this transcript and say this is what happened or this
9 is what did not happen. You've got to listen to the
10 recording, because when we all read something, we can
11 all read it and put whatever we want to it, and that
12 is why I'm very thankful that law enforcement is
13 getting more towards recording interviews as opposed
14 to not. If we were in Richland County, there would be
15 no recording of this at all, and it would be very
16 difficult to process. But, thankfully, the recording
17 device was on and it was recording.

18 Mr. Jenkins' first line -- I mean Mr. Jenkins
19 starts the conversation. Detective Lent asked him:
20 Who did you see today? So at the moment that
21 Detective Lent asked this question, the crimes that
22 occurred have already occurred, you know. There is no
23 crime that has occurred in the jail this morning that
24 detective -- the question of who did you see today is
25 some form of admission of guilt or inculpatory or

1 anything else. I mean, Mr. Jenkins replies he saw
2 McKinley. I mean -- and then Mr. Jenkins says: I
3 brought you here to tell you the truth.

4 Now, Lent obviously knows -- I'm talking about
5 you like you are not in the room, but Lent obviously
6 knows that he's invoked, that he invoked the day
7 before. That is why he immediately goes into: You
8 want to reinitiate contact, you want to talk, so we'll
9 talk. Then Jerome starts off -- before he can say
10 anything else, Jerome said: This is how it started.
11 And then Lent goes into it again: You know, I read
12 you your rights yesterday. You know you still have
13 your rights, right, question mark? Let me just read
14 them so that we're clear. Mr. Jenkins ignores --
15 completely and totally blows past that statement and
16 says: So if I tell you everything, what am I looking
17 at?

18 Right? I mean, again, Detective Lent says, you
19 know, I'm just a cop. Mr. Jenkins says: I'm not
20 trying to get life. I'm not trying to get lethal
21 injection. I have children, you know. I'll tell you
22 what they did, meaning Jerome (sic) and McKinley.
23 What they told me they did previous, which stores they
24 hit and everything.

25 And then Detective Lent goes in: That's the best

1 thing you can do. That sounds like good information.

2 At this point, he hasn't said anything. He still
3 hasn't said anything.

4 He says: I know I read you your rights
5 yesterday. I've got to get through with this. There
6 is rules, all right. So you understand that --

7 Mr. Jenkins cuts him off again and says: What is
8 a preliminary hearing? So, basically, Detective Lent
9 gives him, what I would call, the textbook version of
10 what a preliminary hearing is.

11 And then Mr. Jenkins starts going into: What is
12 the evidence?

13 Then they start talking about DNA, right? Not
14 saying that his DNA is there, or anything else. They
15 are just talking about the different ways, you can
16 give someone a hug, you can urinate. These are about
17 DNAs. I mean, this conversation -- you know, at this
18 point in time Detective Lent has made one, two, three
19 attempts to read Mr. Jenkins his rights, which
20 Mr. Jenkins already clearly knows his rights, because
21 the day before he invoked his right to remain silent.

22 So we're not dealing with someone who didn't know
23 or understand what his rights were because, clearly,
24 the day before he said I want an attorney. So he is
25 already on notice what his rights are and that all he

1 has to say to activate his rights so they stop
2 questioning him.

3 So based upon all of that information -- then, on
4 Page 3, he goes through his rights again. At no point
5 in time in this is it, Where is that lawyer you were
6 going to get me? Where is the two lawyers you were
7 going to get me? Remember, I told you I wanted a
8 lawyer? None of that is in here. You know, I talked
9 on the phone last night to my girlfriend and she said
10 lawyer so-and-so is coming to see me. None of that
11 occurs. None of that in this transcript. This
12 transcript and audio recording is void of any of that
13 conversation about I need a lawyer or I want a lawyer
14 or anything else.

15 It could not be any more clearer than Mr. Jenkins
16 was ready, willing and able to talk to Detective Lent,
17 and he wanted to tell his story. He wanted to tell
18 his side of it.

19 I'm going to find that the statement is freely,
20 voluntarily, knowingly and intelligently given. He
21 understands what his Constitutional rights are.
22 Mr. Jenkins did invoke his right to an attorney the
23 day before, however, he voluntarily reinitiated
24 contact with law enforcement and gave the statement
25 after he was advised of his Constitutional rights

1 again, and I'll find the entire transcript -- the
2 recording is admissible.

3 I do find that the redactions that are
4 highlighted are appropriate and should be removed, at
5 least for the State's case in chief in the guilt
6 phase. So, therefore, based upon that ruling, I would
7 deem the Interview No. 3 and Interview No. 4 are also
8 admissible with the proposed redactions.

9 Anything else on that issue, Mr. Hixson?

10 MR. HIXSON: No, sir. I provided the Court and
11 I'll make copies of the transcript for the Court
12 record. Does the Court need to hear the recordings?

13 THE COURT: No, I'm comfortable.

14 Let's take a lunch break. It is 1:30. The court
15 staff has been going for awhile now.

16 Detective Lent, you may step down. Thank you
17 very much.

18 MR. LENT: Am I excused?

19 THE COURT: Do we need him for anything else
20 today?

21 MR. HIXSON: State does not.

22 MR. WILSON: Yes, sir.

23 THE COURT: So you can go to lunch, but come back
24 this afternoon.

25 MR. LENT: Yes, sir.

1 THE COURT: Is 2:15 enough time to grab something
2 to eat and come back? 2:15. 2:15. 2:15.

3 MR. HIXSON: State's B is Interview 3, and
4 State's C is Interview 4.

5 THE COURT: Thank you.

6 (A lunch recess was taken.)

7 (State's Exhibits N through P marked.)

8 THE COURT: We're back on the record. What do we
9 need to take up next?

10 MR. HIXSON: I think, Your Honor, I'll get right
11 into it. The case in chief, two different aspects.
12 In the guilt phase, the State intends to introduce a
13 letter that was purported to be written by Mr. Jenkins
14 during the mail sorting process. Christine Snyder
15 from the Sheriff's Department opened that envelope and
16 read it, and as a result -- we'll get the details.
17 She asked a nurse to check on Mr. Jenkins' welfare
18 because there was allegations of a suicide attempt in
19 it as well, and an admission of, quote, I killed that
20 man and that woman on the letter itself. Then, on the
21 back page of the letter, the basic tenor of the letter
22 was discussion over, I guess, concerns of infidelity
23 or something, and he indicated that if he got out, he
24 would blow someone's head off.

25 The State intends to introduce the redacted

1 letter in the guilt phase where he says he killed that
2 man and delete the portion where it says "and killed
3 that woman," and also take off the threat in the back
4 of the page because we feel it is highly prejudicial
5 and not probative to the guilt phase.

6 Just so Your Honor is aware of the
7 prejudicial/probative value of it, if we get to the
8 guilty phase and we play Statement No. 2 by Mr.
9 Jenkins, he admits to the conduct, as you heard,
10 relating to the 905 shooting. He admits to the Lake
11 Arrowhead robbery where Barbara McDowell was the
12 victim. She was not hurt in any way, but he denies --
13 consistent discussion through that part of that
14 statement is that James Daniels and McKinley Daniels
15 dropped him off, and someone named Candy Cane -- they
16 must have elicited someone named Candy Cane, who is
17 the one that was in the Trish Stull -- the Cultra Road
18 and Oak Street shooting where the female clerk lost
19 her life on January 25th.

20 So that letter is an admission of "I killed that
21 man and that woman" to carry our burden of
22 preponderance to admit that in the penalty phase as
23 the characteristics of the defendant is relevant for
24 the jury to discuss. That is the general road map
25 we're talking about. Obviously, Mr. Wilson filed a

1 motion to suppress that letter.

2 THE COURT: What is the intent? I think you said
3 guilt phase -- you may have said them backwards. So
4 the intent for the guilt phase is to enter, what?

5 MR. HIXSON: The intent for the guilt phase is to
6 enter the letter, have it redacted. At the last
7 hearing, I provided a copy of the proposed redactions,
8 but we'll do it again; that is to introduce the letter
9 and then the quote -- I'm reading it, and it says: I
10 love you, Mama, and I did kill that man and that woman
11 and I ain't sorry for what I did, but I wish I could
12 take it back. That's the most probative paragraph in
13 there. Obviously, we cannot admit it where it says
14 "and that woman," so the proposed redaction would take
15 out "and that woman," and it would read: I love you,
16 Mama, and I did kill that man.

17 THE COURT: Okay.

18 MR. HIXSON: And then the back page, so it is
19 clear, Your Honor, there is a statement in here that
20 says: Cuz if I get out soon on Sandy, Marcus and
21 G. [REDACTED], I'm going to blow her F'ing head off, that's
22 my word, but I love you. The letter is written to his
23 grandmother, so we would want that taken out for the
24 guilt phase, also. But for the penalty phase, we
25 would assert under Green, and I think we'll have

1 arguments later, that we'll admit that under Shaw
2 about evidence of other acts, other crimes that
3 reflect on the character, individualized character of
4 the defendant. It's probative for the jury's
5 decision.

6 THE COURT: So we need to take testimony?

7 MR. HIXSON: I believe you want to suppress it,
8 so we have to take testimony on how we got it.

9 THE COURT: Let's do it.

10 MR. HIXSON: I'll just make one legal argument.
11 I have State versus Glenn to hand up. It is a simple
12 concept, and that is the standard admissibility on
13 uniquely identifiable items, it's a non-fungible item,
14 and as such, identification is all necessary for
15 authentication. We don't have to have a whole chain
16 of custody on a uniquely identifiable item, so I just
17 hand Green up for that propositional law.

18 THE COURT: Okay. Thank you. Who is first?

19 MR. HIXSON: State would call Christina -- let's
20 call Deputy Sheriff Tom Fox.

21 (TOM FOX, having been duly sworn, testified as
22 follows:)

23 THE WITNESS: Tom Fox, F-O-X.

24

25 DIRECT-EXAMINATION

1 BY MR. HIXSON:

2 Q How are you?

3 A Good.

4 Q What do you do for a living?

5 A I'm currently employed at the Horry County
6 Sheriff's Office as a chief deputy.

7 Q Back in June, around June 11th of 2015, how were
8 you employed?

9 A Director of Detention at J. Reuben Long Detention
10 Center.

11 Q As part of your responsibilities as Director of
12 Detention, was it to establish policies relating to
13 mail at the jail, as well as overall security at the
14 jail?

15 A Yes.

16 Q I'll try to speed things along. At some point in
17 time, did Mr. Jerome Jenkins become an inmate, a
18 pretrial detainee at your facility?

19 A Yes, he did.

20 Q During that period of time, prior to June 11th of
21 2015, were you aware of any potential or security risks
22 to Mr. Jenkins to other inmates, or risks to folks
23 outside of the detention center, did any information
24 come to your attention in that regard?

25 A Yes, it did.

1 Q Could you please describe that to the Court? Let
2 me aid this a little bit.

3 MR. HIXSON: Exhibit F, that is the copy I gave
4 you.

5 MR. WILSON: Okay.

6 MR. HIXSON: This is the identical copy for
7 Exhibit F for Court's edification.

8 Q (MR. HIXSON) I'll show you State's F and see if
9 you recognize that packet?

10 A Yes, I do.

11 Q What is it that I'm showing to you?

12 A It's a safekeeping packet that I prepared for the
13 sheriff to submit to the Department of Corrections.

14 MR. HIXSON: I'll move that into evidence. That
15 helps aid you.

16 Q (MR. HIXSON) At some point in time, describe
17 what came to your attention concerning potential
18 security threats with Mr. Jenkins.

19 A In regards to Mr. Jenkins, in March 30, 2015, I
20 received a copy of a report where he attempted to
21 interfere with a head count. In that incident, he
22 tried to block a window in one of the units where the
23 officer couldn't have a clear vision to count the
24 number of people in there. Interfering with head count
25 is obviously a security violation.

1 Q For our lay people, why? What does that mean?

2 A Throughout the shifts, the officers are required
3 to perform head count of all of the inmates inside that
4 unit, so they go to each cell and look for living,
5 breathing flesh. They have to identify the person is
6 in there and they are counted in. They do that in one
7 of two ways. In the unit he was in, the cells are
8 four-man cells and have two windows, a door window and
9 side window. When they attempted to look in the door
10 window, he blocked their vision into the window. They
11 wouldn't get a clear view through the side window to do
12 an accurate head count.

13 Q What is that an indicator of as the director of
14 the detention center?

15 A Attempt to block a head count could be for
16 someone to propose a scheme to see how diligent we are
17 and accurate in our counts. It's typically used in
18 escape schemes. If we're off by one and don't report
19 it, and there is not a response by a particular unit to
20 search that unit to pull everyone out of the cells and
21 do a body count, putting hands on flesh, to make sure
22 you have the number that is supposed to be in there, if
23 you didn't do that, the inmate trying to deter the head
24 count would know we're not doing our job and it can be
25 used in an escape scheme.

1 Q Subsequent to that report, was there -- what else
2 occurred during this time period we're referring to?

3 A We also received reports and information
4 regarding possible escape schemes with co-defendants.

5 Q At the time Mr. Jenkins was incarcerated there,
6 were his co-defendants that are accused of these same
7 series of crimes, were they incarcerated also?

8 A Yes.

9 Q Do you recall their names?

10 A McKinley Daniels, and I believe James.

11 (A brief pause in the proceedings.)

12 Q (MR. HIXSON) So you were aware at that
13 particular time that the three co-defendants were
14 housed together in your facility. Were there any
15 indications that perhaps any of the co-defendants were
16 acting in concert or attempting any kind of policy
17 violations inside the detention center?

18 A We did intercept -- McKinley and James Daniels
19 were trying to pass various papers back and forth, and
20 as a result of that, we searched their cells and
21 recovered documents that contained an escape plan.

22 Q Did you, in fact, recover any specific documents
23 concerning instruction on how to pass hacksaw blades
24 into cells to facilitate an escape?

25 A We received a letter that had instructions how to

1 insert hacksaw blades into mail and have it mailed into
2 the detention center.

3 Q Is a copy of the letter in Packet F, marked
4 Court's F, for the record?

5 A Yes, it is.

6 Q Obviously, it is safe to say that uncovering
7 physical evidence of an escape attempt through escape
8 plans creates a heightened sense of awareness of the
9 detention center?

10 A Correct.

11 Q Do you have some screening mechanism as
12 individuals are initially put into J. Reuben Long to
13 determine if they have any gang affiliations or known
14 potential risk assessment type when they are initially
15 taken into J. Reuben?

16 A Yes, we do.

17 Q Tell us about that.

18 A Classification does a risk assessment. We have a
19 full-time gang officer that keeps an ongoing list of
20 all gang and gang affiliates or persons of interest
21 affiliated with gangs. As people come and go into the
22 detention center, they are identified as either a
23 member of a gang or a person of interest that could be
24 a member of a gang.

25 Q To your knowledge, in this situation, was

1 Mr. Jenkins kind of considered a security threat such
2 that required additional scrutiny?

3 A Yes.

4 Q In other words, would you have probable cause or
5 reasonable suspicion to be concerned about passing
6 contraband or threatening inmates, or anything of that
7 nature?

8 A Yes.

9 Q Now, let's go to your mail policy a little bit.
10 Generally speaking, do you recall the nature of your
11 mail policy at that time relating specifically for
12 outgoing mail?

13 A Well, whenever an inmate comes in, they are
14 orientated. During orientation, they are advised that
15 all mail is the property of the detention center and
16 could be expected, ingoing and outgoing. They sign a
17 form indicating that they've been instructed and
18 acknowledge that they understand the instructions in
19 the handbook, that it states in the inmate handbook
20 that all mail can be inspected, with an exception of
21 privileged mail, which is normally legal mail, mail to
22 the Court.

23 (State's Exhibit Q & R marked.)

24 Q I'll show you State's Q and see if you recognize
25 that document. Generally, what is it, and specifically

1 what that document is?

2 A It is an Inmate Orientation Acknowledgment Form
3 that every inmate has to sign after they have been
4 orientated.

5 Q And who specific signature is on that document,
6 and when is it dated?

7 A It states Jerome Jenkins, Junior. The date is
8 February 11, 2015.

9 Q And the probative part, the reference of the
10 paragraph above, is that acknowledgment that
11 Mr. Jenkins has read the policy manual when he
12 initially arrived; is that what that says?

13 A Basically. It says verbatim: Orientation was
14 held and the rules and regulations of J. Reuben Long
15 Detention Center were explained to me to include zero
16 tolerance for assaults of any type. I have been
17 informed of all the rules and regulations that includes
18 the Prison Rape Elimination Act and are posted in
19 housing as to how to report the type of assaults that
20 may occur in the detention center. Furthermore, I have
21 reviewed video entitled "PREA" on what you need to
22 know, and I have no questions regarding the rules and
23 regulations at this time. I fully understand and do
24 not need or want anyone to read or explain the contents
25 of this document to me. I understand the entire Inmate

1 Handbook is posted in the housing units.

2 Q Let me show you State's R and see if you
3 recognize that?

4 A It is a copy of the Inmate Handbook.

5 Q Can I direct your attention to Page 60?

6 A Yes. It is the mail section.

7 Q Can you read to the Court what Mr. Jenkins
8 acknowledged that he understood in the Inmate Handbook
9 as it relates to the search of his mail.

10 A You want me to read the whole thing?

11 Q Relating to the outgoing mail. I'm trying to get
12 to the expectation of privacy, whether he knew it would
13 be searched or what would keep it from being searched.

14 A Basically, the last paragraph: Please be advised
15 that any mail sent to you or by you, not identified as
16 privileged mail, is subject to being monitored. Any
17 mail that contains information or contraband that may
18 pose a threat to the public, others or to the detention
19 center may be confiscated and withheld from delivery.
20 Any mail that contains information regarding the
21 commission of a crime, threats of blackmail, extortion
22 or bodily harm, or plans to commit a crime may be
23 turned over to law enforcement authorities for
24 investigation and possible prosecution.

25 Q And that -- that specific standard was in place

1 at the time of Mr. -- just prior to June 11th of 2015?

2 A Yes.

3 MR. HIXSON: We move Q and R into evidence.

4 MR. WILSON: No objection to the documents
5 admitted for purposes of this hearing.

6 (State's Exhibits Q and R admitted.)

7 Q (MR. HIXSON) So in addition of being aware of
8 search and expectation of privacy, what happens if you
9 have identified -- for your policy, if you have
10 identified a specific inmate that poses a heightened
11 security risk or gang affiliation or something as it
12 comes to mail sorting?

13 A All mail, incoming and outgoing, is monitored.

14 Q So that is a step above if you have developed
15 probably cause to search, based on the conduct inside
16 the jail prior to that?

17 A Correct.

18 Q Did Mr. Jenkins, prior to June 11th of 2015, fall
19 into that category for mail search?

20 A Yes, he did.

21 MR. HIXSON: No further questions for Mr. Fox.

22 CROSS-EXAMINATION

23 BY MR. WILSON:

24 Q The letter that you are referring to, that letter
25 was -- that letter was found on June 11; do you recall?

1 A Yes.

2 Q And it was found by Officer Snyder?

3 A Correct.

4 Q Who was a corporal at that time?

5 A Yes.

6 Q And that letter was not being censored by the
7 jail for any particular reason, was it?

8 A I was not opening the mail.

9 Q Well, did you read the report that Officer Snyder
10 wrote to his supervisor indicating how he came into
11 possession of the letter?

12 A Yes.

13 Q And how he came into possession of the letter is
14 that he was doing a routine mail inspection, and he had
15 another letter, which was totally unrelated to Jerome
16 Jenkins, that he put down and he reached back to grab
17 it, and he grabbed the wrong letter. So there was
18 absolutely no reason for him to open Jerome's letter,
19 other than the fact he picked up the wrong letter; that
20 is what he says in his statement, is it not?

21 A That is what it says in the statement, but he did
22 not have to have any reason at that point.

23 Q And he takes the letter at that point -- you said
24 something earlier about having a gang officer at the
25 jail, or somebody who acts as a gang officer; that

1 person's role is to do, what?

2 A Is to interview possible gang members, identify
3 them and to check the mail for any gang affiliations.

4 Q Are they detention officers?

5 A Yes.

6 Q And so they are hired by the Sheriff's Department
7 for the sole purpose of going through mail in order to
8 determine if people are gang members?

9 A No.

10 Q Explain to me what happens.

11 A That is part of the role. That is an additional
12 function of them being a correctional officer.

13 Q What are the other functions?

14 A Transferring inmates, escorting inmates, any
15 things inside the facility is an additional role they
16 do.

17 Q So, now, whenever you find a letter that you
18 think has information in it that is helpful to the
19 State, you take that information from pretrial
20 detainees and turn it over to the State; is that what
21 you do?

22 A Yes.

23 Q So once you -- so in looking through the mail, if
24 you determined that there is something in there that
25 might be helpful for the State in any case, then you

1 take that information and you transfer it to the State?

2 A Correct.

3 Q And who (sic) do you do that, and how do you do
4 that?

5 A The gang officer does that.

6 Q So the gang officer gets the information. Does
7 it matter whether or not the inmate who is -- whose
8 mail is being processed, does it matter whether or not
9 that inmate has any violations, or just something that
10 you just do randomly every day? When you come in, you
11 go through the mail, and if you happen to pick up a
12 piece of mail, you just go through it, or does there
13 have to be a reason, I guess is what I'm asking? Does
14 there have to be a reason to examine a particular
15 inmate's mail, or do you just wholesale, go through all
16 the mail every day and happen -- even if it is
17 random -- pick out mail you wanted to look through?

18 A We couldn't go through all of the mail because of
19 the number of inmates. If they have been identified as
20 a security risk or a member of a threatening group,
21 such as a gang, we'll monitor it. It is clearly stated
22 in the handbook all mail is subject to being monitored.

23 Q Let's talk about that. What information did you
24 have back on June 16th or 15th when this happened --
25 what information did you have, or that the jail have,

1 that Jerome Jenkins was involved in a gang?

2 A I'm not a gang investigator, I can't testify to
3 that.

4 Q You testified earlier that you thought Jerome
5 Jenkins -- you were talking -- let me clear this.

6 As I understand it, what you were saying is that
7 there has been some activity of trying to escape, or
8 at least writing letters indicating that they might
9 try to escape? What I'm asking you is: Did you have
10 any indication that Jerome Jenkins was a part of that
11 plot or process, or whatever it was that was
12 happening?

13 A Not directly, other than their direct affiliation
14 of the commission of a crime.

15 Q So there was nothing you were aware of back on
16 June 15 that would indicate to you that, one, he was in
17 a gang that you knew about? I'm not talking about your
18 investigator now, your gang person, I'm asking what you
19 specifically knew. As far as you knew, there was no
20 information about him being involved in a gang, and as
21 far as you knew, there was no information that he was
22 connected to this escape plot or plan, correct?

23 A We did -- he was placed -- as far as his conduct
24 in trying to obstruct the view for the count, put him
25 at a heightened security environment. I can't speak to

1 his gang affiliation.

2 Q When did that violation occur, the violation
3 where you say he blocked the window?

4 A March 3, 2015.

5 Q So three months earlier?

6 A Right.

7 Q A little over three months earlier that that
8 happened?

9 A Correct.

10 Q Any other violations that you know of from that
11 point until the time you discovered the mail that would
12 cause him to have heightened security?

13 A On June 7th, Jenkins threatened to assault
14 another inmate and is moved to another administrative
15 segregation level.

16 Q I apologize.

17 A On June 7, Jenkins threatened to assault another
18 inmate and was moved to another level of administrative
19 segregation.

20 Q On June 7th?

21 A Right.

22 Q Now, let me go back to the gang officer. Who was
23 that at that time?

24 A Christine Snyder.

25 Q The Corporal Snyder that wrote the report is

1 different than the gang --

2 A She could have listed it as Lance Corporal
3 Schneider.

4 Q That is what I'm saying, is that a different
5 Lance Corporal Snyder?

6 A No. Same person.

7 Q So this report -- this letter was actually
8 confiscated by the gang officer?

9 A Correct. Who also opens the mail, is another
10 function of the job.

11 Q So that is another one of her functions, is to
12 open mail?

13 A To inspect, yep.

14 Q And just so I'm clear, when she opens the mail to
15 look for gang information, what is it that she's
16 looking for and what does she do with the information?

17 A She basically looks on the outside of the
18 envelope to see if there is any gang identifying
19 symbols or language, and when she opens the letter, she
20 tries to identify any gang activity or any other things
21 related to criminal activity.

22 Q Fair enough. So she's not only looking for gang
23 activity, she's looking for criminal activity in
24 general?

25 A Yes. Or anything that could be a threat within

1 the facility.

2 MR. WILSON: I don't think I have anything else.

3 Thank you.

4 REDIRECT-EXAMINATION

5 BY MR. HIXSON:

6 Q Take a look at State's F again. As you refer to
7 the allegations of assault, did the target of that
8 assault actually ask to be taken into protective
9 custody based on the threats coming from Mr. Jenkins on
10 June 7, 2015?

11 A Yes.

12 Q And the fact that the inmate requested please
13 help me because of the threat he felt that was being
14 pushed upon him by Mr. Jenkins, that occurred or
15 June 7, correct?

16 A Correct.

17 Q In addition, I think it is the second page of
18 this April 11 of 2015, you all ordered constant
19 supervision of the Daniels brothers and Mr. Jenkins
20 because of the escape plot that you uncovered that same
21 day; is that correct?

22 A That's correct.

23 Q Let's see if we can clear this up for a second.

24 (State's Exhibit S marked.)

25 Q Previously, you gave some information what Mr.

1 Jenkins may be made aware of on State's R, that is the
2 inmate handbook book concerning policies. Let me show
3 you State's S, which is purported to be J. Reuben
4 Long's mail policies; do you recognize that?

5 A Yes.

6 Q Those are the policies that you, as director of
7 the jail, were familiar with concerning what is the
8 basis to protect privileged mail that should not be
9 served, such as stamped legal mail, with searching mail
10 purportedly coming from someone that may have a threat;
11 is that right?

12 A Correct.

13 Q Is there another standard in there for a reason
14 to search, such as no return address on mail, when
15 someone does not pose a threat?

16 A Correct.

17 Q Tell us about that.

18 A Any mail -- and they are advised of this in
19 orientation about mail and how it is supposed to be
20 labeled, they are told they have to have a return
21 address on it, which includes their name, inmate
22 number, address to the jail and their housing number.
23 Any mail that doesn't have a return address is
24 confiscated and opened and inspected.

25 Q Under your policies in place at that time, is it

1 safe to say you are not searching every piece of mail
2 willy-nilly that comes out of the detention center?

3 A Correct.

4 Q You are searching it if it does not have a return
5 address or poses a security threat?

6 A Correct.

7 Q And you are not searching legal mail?

8 A No.

9 MR. HIXSON: No further questions.

10 MR. WILSON: One follow-up.

11 RECROSS-EXAMINATION

12 BY MR. WILSON:

13 Q The letter that is identified as the letter that
14 Jerome Jenkins wrote, that letter did, in fact, have a
15 return address; did it not?

16 A I never saw the return envelope or the actual
17 envelope. The only thing I reviewed is the actual
18 letter.

19 Q Let me show what the State has marked for
20 identification purposes as State's Exhibit K. Take a
21 look at that.

22 A (Witness examines document.)

23 Q Is there a return address there?

24 A Yes, it is.

25 MR. WILSON: No other questions.

1 THE COURT: You may step down. Does he need to
2 be kept around, or free to go?

3 MR. HIXSON: Not for our purposes.

4 MR. WILSON: No, sir.

5 THE COURT: Thank you, Chief Deputy Fox.

6 MR. HIXSON: We call Ms. Snyder.

7 (CHRISTINE SNYDER, having been duly sworn,
8 testified as follows:)

9 THE WITNESS: Christine Snyder, S-N-Y-D-E-R.

10 DIRECT-EXAMINATION

11 BY MR. HIXSON:

12 Q What do you do for a living?

13 A I'm the gang investigator for the Sheriff's
14 Office.

15 Q Are you currently assigned to any other task
16 force in the area?

17 A I'm assigned to the FBI Safe Streets Gang Task
18 Force.

19 Q Go back to June of 2015. What were you doing
20 back then?

21 A I was the gang intelligence officer.

22 Q Were you employed at J. Reuben Long Detention
23 Center? Is your office there?

24 A Yes.

25 Q And tell us about your duties at that time for

1 the sheriff at J. Reuben Long.

2 A My job was to identify and document any known or
3 any gang members coming into the facility.

4 Q Did you have occasion to do any other tasks while
5 there?

6 A Part of my duties was to monitor the incoming and
7 outgoing mail for security threats.

8 Q Were you asked to do that just on certain
9 occasions, or was that an ongoing side task that you
10 would have to do?

11 A It was sometimes a full-time job. I did it every
12 day.

13 Q Did you have an occasion during that period of
14 time to come in contact or come to know an inmate named
15 Jerome Jenkins was at the detention center?

16 A Yes.

17 Q Tell us about that intake process or how you came
18 to understand that information.

19 A It is part of my duties. Any time an inmate
20 comes in, I check to make sure to see if they have any
21 gang affiliation. Him and his co-defendants seem to be
22 affiliated with a gang, and so I started looking into
23 it and opened up an investigation on him.

24 Q As it relates to his co-defendants, do you recall
25 what specific gang affiliation you are aware of?

1 A Insane Gangster Disciples.

2 Q Is it a determination, say, for instance, Mr.
3 Jenkins is or is not in fact in a gang, is that to
4 determine whether to exercise additional safety or
5 caution in dealing with housing situations and things
6 like that? In other words, if he's a gang member, yes;
7 if not, no; is there a middle ground anywhere?

8 A As far as housing goes, no. As far as heightened
9 security, yes, because a lot of gangs have arguments, I
10 guess you could say, beefs with other gangs. If there
11 is an inmate that comes in with co-defendants, that
12 also heightens security because we have to prevent them
13 from corresponding with each other while they are
14 incarcerated.

15 Q So prior to screening the mail on June 11, 2015,
16 could you describe the totality of the information you
17 knew concerning this particular defendant, Mr. Jenkins?

18 A I was aware of him being sent up to the
19 disciplinary unit, and I already started looking into
20 him as a potential gang member.

21 Q As such, are you familiar with J. Reuben Long
22 mail policies that were in place around June of 2015?

23 A I am.

24 Q And did you follow those policies in this
25 particular case, as far as you are concerned? I won't

1 ask your opinion, but.

2 A Yes.

3 Q As it relates to screening mail without a return
4 address or with a heightened security screen, what is
5 your policy for those two fact patterns?

6 A If it doesn't have a return address, we have to
7 send it back to the inmate. But if it doesn't have a
8 return name, we don't know which inmate, so we have to
9 open it up to see what their name is so we can send it
10 back to them so they can fill it out correctly. For
11 inmates that are security threats, we will scan their
12 mail. I won't read the letter entirely, I'll just scan
13 it for certain key words that is gang related or
14 anything that is a potential threat to the facility.

15 Q If there is an explicit threat concerning blowing
16 an individual's head off, that fact pattern, or if
17 there is a threat -- there was a suicide attempt on --
18 the inmate attempted to commit suicide, what would you
19 do in those circumstances?

20 A Definitely notify the shift supervisor. And as
21 far as any criminal activity, I would send that up my
22 chain of command.

23 Q Let's take it to June 11 of 2015, the specific
24 day in question, and describe what you did that day
25 when you came across Inmate Jenkins' mail; what

1 happened?

2 A I grabbed certain letters that I put to the side
3 that I needed to open up, and his was stuck to the back
4 of another one. When I opened it up and saw the
5 contents of it, I immediately called the corporal that
6 was on shift, because in the letter he stated that he
7 had cut his throat and he was talking about suicide.
8 So I contacted the corporal, and she checked for marks
9 on his neck and stated that there were none. And then
10 I contacted medical and let them know he had suicidal
11 thoughts and told them about the letter so that they
12 would go down and talk with them.

13 Q Let's start at the beginning. You mentioned you
14 were sorting, and two letters were stuck together; is
15 that what you said?

16 A Yes.

17 Q Describe that in more detail for the Court.

18 A Whenever I go through the mail, I put to the side
19 the ones I need to go through and open up. There was a
20 letter that had no name, no return address and I put it
21 to the side to open it later and send it to the proper
22 inmate. The letter that I had opened up was stuck to
23 the back of that, and I opened it up and looked at it
24 and it had his name on it. When I read it, I seen the
25 contents of it and notified medical and the corporal.

1 Q Let's be clear. The letter that you grabbed and
2 intended to open had no return address on it?

3 A That's correct.

4 Q And per your policy, you opened that up to see
5 who to send it back to?

6 A Yes.

7 Q Because you don't know who it goes to if there is
8 no return address?

9 A There was no name on it.

10 Q And, in fact, you opened up Jerome Jenkins'
11 because it was stuck to that letter; is that what your
12 testimony is?

13 A Yes.

14 Q If Mr. Jenkins' letter was not stuck to the back,
15 and you saw Mr. Jenkins' name on the envelope, and I'll
16 show you -- see if you recognize this. This is State's
17 K. Take a look at that and tell me what that is.

18 A This is the outgoing envelope from Jerome
19 Jenkins.

20 Q And what was the return address?

21 A 4150 JRL Avenue.

22 Q And so if you had seen that by itself, not being
23 stuck to another one, under your policies and
24 procedures relating to risk assessment, would you have
25 been able to open that?

1 A Yes.

2 Q Why is that again?

3 A Several reasons. One, him being under
4 investigation for a security threat, a gang member.
5 Another one is because he had co-defendants in the
6 facility and I had to make sure that he wasn't trying
7 to correspond with them.

8 Q Were you aware of the letters being sent
9 concerning mailing hacksaw blades into the facility by
10 his co-defendants?

11 A Yes.

12 Q Now, let's move forward a little bit. I think
13 you got the testimony in there, but upon receiving that
14 letter, what did you do with that physical letter
15 itself?

16 A It stayed in my office, which was secured. I was
17 the only one with a key.

18 Q What is the nature of your office being a gang
19 investigator?

20 A My office houses all of the gang intelligence
21 folders, all the gang members that are documented into
22 our database.

23 Q You also mentioned a nurse. Tell us about that.
24 You got it in the record, but let's flush it out a
25 little bit more. Is your protocol for a suicide

1 threat -- what do you do with that information?

2 A Notify medical.

3 Q What should they be doing?

4 A Assessing the inmate.

5 Q Without talking about what they said, what is
6 your understanding of -- did that, in fact, happen?

7 Did an assessment take place?

8 A Yes.

9 Q At some point in time, did you forward that
10 letter to anyone else concerning safekeeping?

11 A I forwarded it to my captain.

12 Q And as it relates to this specific letter, does
13 that end your involvement on the letter issue?

14 A Yes.

15 MR. HIXSON: No further questions, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. WILSON:

18 Q Let me ask you, how do you make the determination
19 that somebody is a gang member? How do you make that
20 determination when they come in?

21 A Through investigation.

22 Q Help me understand. I understand that, but what
23 do you do specifically to determine that they are or
24 are not a gang member?

25 Let me be more specific. Tell me what you did

1 and how you determined that Jerome Jenkins was a gang
2 member.

3 A Normally, I would go through tattoos, social
4 media, cell searches, interviews with other inmates,
5 other people, stuff like that.

6 Q And so you are saying -- and let me be clear.
7 Are you saying to me that you did these particular
8 things in relationship to Jerome Jenkins, and you then
9 gathered information which satisfied you that he was a
10 gang member or affiliated with a gang; is that what you
11 are saying?

12 A Possible affiliation.

13 Q Well, I mean -- so when you say "possible," I'm
14 not clear.

15 A At the time, he was not documented.

16 Q I'm sorry?

17 A At the time, I didn't document him, so he was
18 what I considered a person of interest, a possible gang
19 member.

20 Q So without any information, he becomes a person
21 of interest, but you don't have any evidence, is what
22 you're saying, that he is, in fact, a gang member, but
23 he is a person of interest, why?

24 A The co-defendants were gang members. On
25 Facebook, he had gang stuff on his Facebook, social

1 media accounts.

2 Q What stuff did he have on his social media which
3 would indicate to you that he might be a gang member?

4 A I can't recall at this time; it's been several
5 years.

6 Q And you would have stored that information
7 someplace, correct?

8 A Yes.

9 Q And it would still be on some kind of hard drive
10 or disk or something?

11 A If he was documented, it would be on Gang Net.

12 Q You would have been the one doing the
13 documenting, right?

14 A I have documented hundreds of people.

15 Q I know. But we're talking about Jerome Jenkins,
16 that is the only person I'm concerned about at this
17 moment. What I'm simply asking you is that you are
18 saying that he became a person of interest, and that
19 you went and found information, which led you to make
20 him a person of interest, and what I'm asking you is
21 that information that you gathered which convinced you,
22 or caused you to believe that he is a person of
23 interest, is that information documented someplace?

24 A It should be if I documented him. What makes him
25 a person of interest is the fact he was affiliated and

1 committed crimes with known gang members.

2 Q So is that the extent of it? All I'm trying to
3 find out --

4 A That is just part of it.

5 Q What is the other part, that's what I'm trying to
6 find out? What information did you have?

7 A Like I said, going through social media, doing
8 cell search, his co-defendants being gang members,
9 interviews with other inmates. I don't have his gang
10 file with me, so I couldn't tell you exactly what it
11 was that I used.

12 Q Now, you have a database out at the jail?

13 A South Carolina Gang Net.

14 Q And you deposit whatever information you have in
15 that database?

16 A If they meet the criteria.

17 Q So if they are a person of interest, do they meet
18 the criteria?

19 A Not to be documented, no.

20 Q So then there wouldn't be any file any place of a
21 person you are saying that it is a person of interest,
22 but you would use that knowledge that they are a person
23 of interest to go through their mail, is that what you
24 are saying?

25 A Yes.

1 Q So are you telling me that you don't have any
2 records or any evidence or information that Jerome
3 Jenkins back in 2015, June 2015, was, in fact, involved
4 in any gang activity, other than the fact that you
5 thought that he might be a person of interest?

6 A I don't have anything with me. That was back in
7 2015.

8 Q When did you know that you would come here?

9 A Couple days ago.

10 Q And the database is available to you, without
11 question, right?

12 A Yes.

13 Q And you can go in any time you want and find out
14 -- and you knew you were coming specifically about
15 Jerome Jenkins?

16 A Yes.

17 Q Did you say that you had a file outside of the
18 database?

19 A No.

20 Q At your office?

21 A No.

22 Q You do not?

23 A No.

24 Q So the only data that exists is in that database
25 file? There is no other file?

1 A The only files we have is I have a file that has
2 information with the letter in it.

3 Q Okay. Let's talk a minute about the letter. As
4 I understand it, is the report you sent to your
5 supervisor, you were going through the mail and you
6 found a letter that did not have an address on it or
7 return address on it?

8 A Didn't have the name on it, didn't have a name or
9 return address on it.

10 Q Right. Didn't have a name or return address, and
11 because of that, you wanted to open that letter?

12 A Uh-huh.

13 Q And in the process of doing that, there was
14 another letter you are saying that was stuck to the
15 back of it, which happened to be Jerome Jenkins'
16 letter?

17 A Yes.

18 Q Now, Jerome Jenkins did have some kind of return
19 address on there; did he not?

20 A He did.

21 Q And he had the address of the person he was
22 sending it to?

23 A Yes.

24 Q Which was outside of the facility?

25 A Uh-huh.

1 Q And so what reason -- if you had taken Jerome
2 Jenkins' letter by itself, what reason would you have
3 had to open it?

4 A I was investigating him as a potential gang
5 member. He had co-defendants in the jail that had
6 already been having an investigation with the hacksaw
7 incident, and that would make -- I wouldn't read it all
8 the way through, but just to make sure that he wasn't
9 trying to contact his other co-defendants.

10 Q But you knew from looking at the envelope that it
11 wasn't going inside the jail, it was going actually
12 out. It was in the outgoing mail?

13 A I have had a lot of instances where co-defendants
14 inside the jail will write to each other sending it out
15 of the jail to outside third-parties and have it sent
16 back into the jail.

17 Q Yeah, but you wouldn't know that without opening
18 it and looking inside?

19 A That's correct.

20 Q My point to you is that the letter, as it
21 presents to you, had all of the proper facial things on
22 it, that is a return address, his name, everything is
23 on there, so ordinarily there would be no reason to
24 look at it, unless you specifically were targeting him
25 in order to get it to look at, right?

1 A If there is co-defendants, more than one
2 co-defendant inside the jail, I will sometimes look at
3 the letters to make sure that they are not trying to
4 write their co-defendants by sending it to
5 third-parties outside.

6 Q Let me ask you about the co-defendants, then.
7 Let me back up and ask it this way. If an inmate,
8 Jerome Jenkins or any other inmate, a pretrial detainee
9 is sending out a letter to his mama because he wants
10 his mama to hire a lawyer, in order to know that, you
11 would have to actually read the entire letter or read
12 down to where it says that is what he wants?

13 A You can scan a letter for key words.

14 Q What do you mean scan? Visually?

15 A Visually.

16 Q If you are scanning it visually, the whole letter
17 is there for you in front of you for you to see?

18 A Uh-huh.

19 Q And once you see something, you can't unsee it.
20 So if you are in the process of scanning, you look and
21 see that he says, I'm going to blow somebody up, or
22 whatever it is that you say he said, then, in your
23 mind, you would have reason to hold on to the letter.
24 But that is not my question. My question is about
25 initially going -- looking at letters that an inmate

1 writes. My question really is when inmates -- and I
2 don't know if you are the right person to ask. Maybe I
3 should have asked Mr. Fox, but when inmates write these
4 letters to their mamas or girlfriends or significant
5 others, and your policy is that if -- as I understand
6 it, just so I'm clear, if he came in with two other
7 members or co-defendants who were members of a gang,
8 whether there is any proof he is in a gang or not, that
9 that makes him under suspicion and, therefore, subject
10 to have his mail opened?

11 A Yes.

12 Q That is a fair statement, right? And that is for
13 any pretrial detainee who got arrested with another
14 person who may be a gang member?

15 A Yes.

16 Q So under your policy, under your jail policy, it
17 doesn't matter whether that person was, in fact, a gang
18 member, or you had any proof that he's a gang member,
19 just the fact he was arrested for committing a crime
20 with people who are gang members is enough to go
21 through their mail?

22 A Yes.

23 Q You don't -- just so I'm clear. I think you
24 answered me, but if I'm belaboring the point, I
25 apologize. You already said you don't have any file --

1 there is no file on Jerome Jenkins that you have, other
2 than what is in the database?

3 A The only file I have is -- has the letter in it.
4 I don't know if he's been documented. If he had been
5 documented, then it would have been uploaded to Gang
6 Net.

7 Q You have to help me. What does that mean, "if he
8 had been documented"?

9 A If there was enough evidence to document him as a
10 gang member.

11 Q Who would do that?

12 A I would have back then.

13 Q Okay. Are you still the gang person?

14 A No. Not inside the jail I'm not.

15 Q You're not? When did you leave?

16 A I left two years ago.

17 Q What do you do now?

18 A Assigned to a task force.

19 Q What kind?

20 A The FBI gang task force.

21 Q So you left in 2017?

22 A Yes.

23 Q Now -- so you don't have any contact with the
24 jail's database?

25 A I have contact with the person that is doing the

1 job there, yes.

2 Q Let me ask this, because this is all new to me,
3 so I'm trying to figure my way here. Does the jail,
4 the detention facility, keep records independently? As
5 you have already said to me, that is a South Carolina
6 database, so I understand that, but what I'm trying to
7 find out is would the Horry County Detention Center,
8 J. Reuben Long, have a separate file on Jerome Jenkins
9 indicating whether there is gang activity with him, or
10 not?

11 A If he was documented.

12 Q That means that if they found something?

13 A Yes.

14 Q And that would be -- who is the new person?

15 A Officer Don Hugh.

16 MR. WILSON: I'm through. Thank you.

17 REDIRECT-EXAMINATION

18 BY MR. HIXSON:

19 Q Are you aware of the fact that a safekeeping
20 packet with a lot of these security concerns were
21 prepared and presented to the Court for Mr. Jenkins to
22 be taken into safekeeping?

23 A Yes.

24 Q Including reports such as the one you wrote, and
25 I think a lot of those documents are contained in

1 State's F, the allegations of threats of concerns. I
2 think you have been consistent from the very beginning
3 that you have never testified that Mr. Jenkins is a
4 gang member. Is it common for gang members to deny to
5 you that they are in a gang?

6 A Yes.

7 Q Is it common for inmates that are trying to
8 develop an escape intent to deny they are involved in
9 an escape intent?

10 A Yes.

11 Q Is it an indicator to you as a gang investigator,
12 if a defendant is accused of multiple homicides and
13 robberies, all of them the allegations being together,
14 that that would be an indication of their propensity to
15 act in concert for other purposes?

16 A Yes.

17 Q Is all of that information you had taken in
18 determining if you believe not to get a search warrant,
19 but to protect the integrity of the other inmates and
20 the institution and the officers of that institution?

21 A Yes.

22 Q Is that what you did in this particular case?

23 A I didn't know his charges at the time, but I know
24 they were violent, and I took that into consideration.

25 Q And let's clear this up for the record. Gang Net

1 is, generally speaking, a database that is accessible
2 by investigators around the state. It is an
3 exaggeration to call it an NCIC system, but you have
4 access to it, and it relies on the efforts of a gang
5 investigator to make sure the information going in
6 there is correct?

7 A Yes.

8 Q It is similar to a CODIS system like for a
9 fingerprint?

10 A Yes.

11 Q Is there a lot of pressure on a gang investigator
12 to make sure the information in Gang Net is accurate
13 and a hundred percent true, because other officers are
14 relying on that information?

15 A Absolutely.

16 Q So when we are talking about the standard of
17 documented, that is not just you need a fair amount to
18 make sure, yes, he is documented and ask for other
19 people to rely on that information; is that correct?

20 A There is criteria that has to be met.

21 Q In other words, indices that are irrefutable that
22 this person is documented?

23 A Yes.

24 Q Because "documented" is a term of art, it means
25 something in Gang Net?

1 A It does.

2 Q There is reference to letters you might -- please
3 take a look at State's L. Take a look at that and see
4 if you recognize that item.

5 A I do.

6 Q What is that?

7 A This is the letter that Mr. Jenkins wrote.

8 MR. HIXSON: Do you believe it is necessary to
9 read the contents of the letter in there?

10 THE COURT: I don't think so.

11 (State's Exhibit T marked.)

12 Q (MR. HIXSON) And, specifically, as it relates to
13 the unique characteristics of the letter, let me show
14 you State's T and see if you recognize that?

15 A I do.

16 Q Could you read the description of the letter? It
17 is only a short paragraph, so just read T into the
18 record on the characteristics of the item you
19 discovered.

20 A On 6/11/2015, while processing inmates' outgoing
21 mail, I came across an envelope that did not have a
22 return address. When I pulled it out to open it, I
23 pulled out a different letter instead and opened it.
24 The letter I opened was from inmate Jerome Jenkins and
25 stated that he was on suicide watch because he cut his

1 throat with a razor and that before he took his life,
2 he wanted his mom to know that he did kill that man and
3 that woman and that he wasn't sorry for it. I flipped
4 the envelope over and realized I grabbed the wrong
5 envelope. The rest of the letter stated he was tired
6 and giving up and that he never thought he would take
7 his own life over a female. At the end of the letter,
8 it is stated that if he gets out, he is going to blow
9 her F'ing head off and for his mom to get her church
10 clothes ready. Inmate Jenkins was moved to B1 on
11 6-7-2015 for threatening Inmate Cory Brown. I called
12 B1 and spoke to Corporal B. Jones and asked if she saw
13 any marks on Inmate Jenkins' throat. She stated that
14 she did not see any marks. I spoke to Nurse Jane about
15 the letter and she stated she would talk to him.

16 Update: At 1400 hours that day, I spoke to Nurse
17 Jane and she stated that Inmate Jenkins was not
18 suicidal and no marks on his neck. She stated that he
19 informed her that he was just trying to get his family
20 to send him money for canteen.

21 Q That was written by you?

22 A Yes.

23 Q What date did you write that?

24 A June 11, 2015.

25 Q Same day you recovered the letter?

1 A Yes.

2 Q And as we described the unique characteristics of
3 the letter -- without reading the entire letter -- are
4 those the same unique characteristics that you
5 described that are contained in that letter itself?

6 A Yes.

7 Q So that is a uniquely identifiable letter based
8 on the face of the letter?

9 A Yes.

10 Q Thank you.

11 MR. HIXSON: I think that is it.

12 MR. WILSON: Could you bear with me one second,
13 please?

14 (A brief pause in the proceedings.)

15 MR. WILSON: I don't think I have any other
16 questions.

17 THE COURT: May Ms. Snyder be excused?

18 MR. WILSON: Yes, sir.

19 THE COURT: Thank you. Have a nice day.

20 MS. WILLIAMS: May we approach?

21 THE COURT: Sure.

22 (Whereupon, a bench conference was had.)

23 MR. HIXSON: We'll call Jane Tyler.

24 THE COURT: Let him go to the restroom real
25 quick.

1 (JANE TYLER, having been duly sworn, testified
2 as follows:)

3 THE WITNESS: J-A-N-E, T-Y-L-E-R.

4 DIRECT-EXAMINATION

5 BY MR. HIXSON:

6 Q Good afternoon. What do you do for a living?

7 A I'm a nurse.

8 Q Were you a nurse back in 2015?

9 A Yes.

10 Q Were you employed or affiliated with J. Reuben
11 Long Detention Center?

12 A Yes.

13 Q What was your role back in June of 2015 for
14 J. Reuben Long?

15 A I was a psychiatric nurse for J. Reuben Long.

16 Q At some point in time, would you respond if there
17 was a concern over suicides or some type of concern
18 manifested by a particular inmate?

19 A Yes.

20 Q Did you have occasion to have a discussion with
21 Mr. Jerome Jenkins around June 11 of 2015?

22 A Yes.

23 Q Tell us about that.

24 A I was approached with a letter that he had
25 written and it said that he had actually harmed himself

1 and that he was on suicide watch. He was not on
2 suicide watch. So I did go to see him, and whenever I
3 went to talk with him, we talked about it at length,
4 and he denied being suicidal. He said that he had
5 written that letter, I think to his grandmother, I'm
6 thinking it was, because he wanted money on his
7 canteen.

8 Q So the specific question I ask of you is: Did
9 Mr. Jenkins acknowledge he was the author of that
10 letter?

11 A Yes.

12 MR. HIXSON: No further questions.

13 MR. WILSON: No questions.

14 THE COURT: Can she be excused?

15 MR. WILSON: Yes, sir.

16 THE COURT: Have a nice day.

17 MR. HIXSON: That is our only showing, other than
18 arguments regarding the search and seizures of that
19 letter.

20 THE COURT: All right. Do you want to call any
21 witnesses?

22 MR. WILSON: No, sir.

23 THE COURT: Let's hear it.

24 MR. HIXSON: The admissibility of the letter,
25 first, it's the standard or review of the Court's

1 need. That is why we handed Glenn up. Specifically,
2 it is the basic foundational concept of the
3 admissibility of it, doesn't require a chain of
4 custody for every person that ever handled that
5 letter. It requires a showing that the item has been
6 identified and is what it is purported to be by the
7 proponent of it, and that is Ms. Snyder recognizes
8 that writing, she gave a contemporaneous record of
9 that writing that was uniquely identifiable, the
10 suicide threats, that's why State introduced her
11 report that was written that day. It is the same
12 letter she identified on the record. We don't have to
13 prove a chain.

14 The next process is the search and seizure.
15 Actually, the defense replies on Ellefson, State
16 versus Ellefson. We believe this fact pattern is
17 distinguishable from that. In that particular case,
18 the accusations are that the detective picked up the
19 phone and would call the detention center and say I
20 want you to go over there and open up that guy's mail.
21 There was no reasonable suspicion, no articulable
22 anything on why that person -- his mail should be
23 looked at. We would rely more on Stroud, State v.
24 Stroud, but that just establishes that there is no
25 expectation in privacy in mail coming and going from

1 the detention center.

2 Now, we would concede that that standard probably
3 has shifted a bit. It's not so concrete of that. It
4 is more in the Matthews area where if the institution
5 is able to articulate a threat to the institution and
6 a threat to inmates, that withstands that
7 Constitutional scrutiny that maybe there is some
8 privacy expectation, but that is absolutely
9 extinguished by the articulation of the danger and the
10 harm that has been posed by Mr. Jenkins prior to them
11 opening the letter.

12 The testimony by Mr. Fox, as well as Ms. Snyder,
13 says he was concerned that he may be a potential gang
14 member because of his co-defendants. A hacksaw plot
15 had already been established, already reviewed a
16 substantial danger. There was a threat to an inmate
17 who asked, please, take me into protective custody
18 because I'm concerned about the threat that occurred
19 to me on June 7th. All of that came from
20 Mr. Jenkins. So there is ample evidence in the record
21 to show that J. Reuben Long was acting with scrutiny
22 on Mr. Jenkins for the threats to the facility,
23 threats to himself and threats to other inmates.

24 Now, interestingly enough, the letter was not
25 opened intentionally for Mr. Jenkins. The testimony

1 in the record indicates that the letter was opened for
2 -- the letter was picked because it didn't have a
3 return address, and that was an error. But, Your
4 Honor, the policy is clear. It was testified to there
5 was no error for opening that letter with no return
6 address. So had Mr. Jenkins not had a return address
7 on it, it would have been fine. There is nothing
8 improper about that process. It is minimally tailored
9 to protect his Constitutional rights to converse with
10 who he wants, but there is also a substantial state
11 interest in folks protecting what they knew was
12 potential plots going on by scrutinizing Mr. Jenkins'
13 mail on its face.

14 So for those particular reasons, we believe there
15 is no Constitutional violations and there is no search
16 issue on the letter. We believe, as such, the ruling
17 is on its admissibility. It is potentially admissible
18 absented an evidentiary ruling by the Court, Your
19 Honor.

20 MR. WILSON: Your Honor, we rely on State v.
21 Ellefson, 266 S.C. 494, 1976 case. And, Your Honor, I
22 think the problem here is this. This letter was not
23 opened because this officer was suspicious of Jerome
24 Jenkins; that is not why the letter was opened. So
25 that never even comes into play. This was not a

1 letter where there was some policy and he violated the
2 policy and, therefore, he was going to open the letter
3 based on some violation of the policy or some
4 behavioral issue that he had created. That is not the
5 issue here. That is not what happened here. What
6 this officer has testified to is that while she had
7 suspicions about him or that he was in her mind a
8 person of interest, the letter was opened by mistake,
9 according to her. That is what she said, that this
10 letter happened to be stuck, and she thought she was
11 opening the first letter that was on top when, in
12 fact, she was opening the letter of Jerome Jenkins.
13 What she says -- if I remember her testimony
14 correctly -- is that looking at the letter on its
15 face, there would be no reason to open it because it
16 had all of the requirements. It had a return address
17 on it. It had the name of the person who had written
18 the letter. All of the information was contained on
19 the four corners of the letter. So there would be no
20 reason to open it unless she had some suspicion or she
21 had some reason to believe that J.J. was doing
22 something improper or illegal. That is not what she
23 says.

24 My position is that he is a pretrial detainee.
25 As a pretrial detainee, he is entitled to be able to

1 write to whom he desires. No, he shouldn't be able to
2 write to inmates. Even after she opened it and she
3 read the first part -- because she had to have read
4 the entire letter to the point where he makes a threat
5 or does something else. She says I was looking to see
6 if maybe he wrote this letter and he was sending it to
7 another inmate. Well, there is nothing in that letter
8 suggesting that he is sending it to another inmate.

9 My point simply is that when you consider all of
10 those things, there is no way -- and this letter is
11 obviously extremely prejudicial to this defendant. It
12 is extremely prejudicial. You heard the nurse, the
13 content of the letter wasn't even true in the first
14 instance, which is the other thing that causes me a
15 lot of concern here. The nurse just testified just a
16 couple minutes ago that when she went to see him, he
17 hadn't cut his throat, he hadn't tried to cut his
18 throat. There were no marks. He was fine. He wasn't
19 suicidal. I'm not saying it was a good idea to do the
20 prank he did, but certainly it is not -- it was
21 immediately -- she knew this immediately because she
22 says she called the nurse, the nurse called her back,
23 I think she said at 2 o'clock, or whenever. There was
24 a second call between the two of them where the nurse
25 verified to her, No. No. No, he is not suicidal. He

1 has not harmed himself in any way, whatsoever. So to
2 allow the letter to come in, it's going to be
3 extremely prejudicial to this defendant.

4 I think the other issue here is the reliability
5 of the content of the letter because we do know -- we
6 do know for a fact, because the nurse told us that,
7 that he did not try to commit suicide. There were no
8 marks on him. We know that because that is
9 uncontradicted. So I'll ask the Court to suppress the
10 letter and not allow it to be entered.

11 MR. HIXSON: I have two quick points. The first
12 sentence of the letter is: How everybody doing today?
13 Me, not so good. They got me on suicide watch because
14 I cut my throat.

15 So you don't wait until the back page.
16 Immediately there is a concern under why the screening
17 is taking place and why this needs to be addressed
18 right away.

19 Let me rephrase quickly. I guess I hate to use
20 these words, but what I'm trying to argue is
21 inevitable discovery under both theories, no return
22 address or someone with heightened security screening,
23 they are entitled to open the mail. If it was a
24 mistake and they just saw Jerome Jenkins' letter, they
25 would have opened that letter. It is inevitable

1 discovery. If it wasn't stuck, they would have opened
2 it when they saw "Jerome Jenkins" because the envelope
3 clearly said "Jerome Jenkins."

4 It is really important to remember that the
5 co-defendants involved with this, with letters they
6 recovered, with hacksaw escape attempts using the mail
7 is likely the pinnacle of the ability to have a threat
8 towards the inmates in there, and the testimony was
9 clear that they knew that threat was going on and was
10 monitoring for it. So we believe the letters are
11 admissible.

12 THE COURT: So do you intend in the guilt phase
13 introducing the part about the suicide?

14 MR. HIXSON: No, sir, I do not intend to. I
15 think what might happen is if we get to the penalty
16 phase, we're going to talk about mental health and
17 everything else.

18 THE COURT: But in the guilt phase, you do not
19 intend on introducing the part about the suicide?

20 MR. HIXSON: My initial proposal was just taking
21 out "I did kill that man" and then taking out "and
22 that woman," and then the threat about when I get out
23 of here, I'm going to blow someone's head off.

24 If the Court -- I intended to introduce that, but
25 I'll redact it per the Court's instructions. To me,

1 that is cross-examination. It doesn't go to the
2 admissibility.

3 THE COURT: I'm not saying it is not, I'm just
4 asking.

5 MR. HIXSON: I was going to put it in like that.

6 MR. WILSON: Judge, the other -- in response to
7 it, the other issue with me is this investigator for
8 gang activity is -- I understand the need for gang
9 officers, but when -- and do I have proof of this?
10 No. But she admits that she didn't have any
11 substantial proof that Jerome Jenkins was a gang
12 member, just that she had suspicions about it. She
13 looked at his Facebook page. I don't remember whether
14 she specifically said I found something in there, but
15 she said she looked at his Facebook page. My point is
16 this, Your Honor. She is an investigator who is
17 trying to gather information, and then she gathers
18 specific information about this particular case and
19 she says, look, he is a co-defendant with these two
20 guys, and because of that, he came under suspicion
21 with us, and as a result of that, then I'm concerned
22 about him as well, so he becomes a person of interest.
23 So now she is gathering information to give to the
24 State against him, against Jerome. So you have her as
25 an officer from the detention center, and I don't know

1 whether they are commissioned officers or not. I
2 don't know if all the detention officers are
3 commissioned officers or not. I don't know the answer
4 to that, but apparently, you know, she was a gang
5 officer, and she's taking that information that she
6 learned about gang activity and she's transferring it
7 to the State to help them in the prosecution of this
8 particular defendant.

9 THE COURT: What is the difference in recording a
10 phone call from the jail?

11 MR. WILSON: The difference is that how else are
12 you going to communicate with your family or with your
13 relatives in order to get help if you can't write a
14 letter that is not going to go through the hands of
15 the State to tell them I want you to go out and hire
16 me a lawyer?

17 THE COURT: That is not what the law says.

18 MR. WILSON: I agree.

19 THE COURT: That is not what the law says.

20 MR. WILSON: It does not, and I'm not saying it
21 says that, but I'm saying that the -- defendants --
22 just because they are incarcerated doesn't mean they
23 don't have certain pretrial rights. They have a right
24 to communicate with their attorneys, family members,
25 and the State doesn't have a right to interfere with

1 that.

2 THE COURT: The State records every single phone
3 call from the jail, and then they have full-time
4 people that do nothing but sit around and listen to
5 jail phone calls all day long.

6 MR. WILSON: Yes, sir. And I think that that is
7 an abridgment of a defendant's rights. Saying that
8 you can -- saying that the State, with a pretrial
9 detainee, can use everything that they have --
10 everything that they have against the defendant. So
11 if the defendant gets on the phone and talking to his
12 mother or sister or his cousin and he is saying, look,
13 I need a lawyer because I'm not guilty of this, and
14 then the State can record that and the jail can turn
15 it over to the Solicitor's Office without the
16 defendant having any way -- he can't get out of jail
17 to communicate any other way. The only two ways he
18 has is either by letter or by telephone, and the State
19 has access to both means of his communication. How
20 can a defendant ever communicate and get help for
21 himself without putting the State on notice as to what
22 he's trying to do?

23 I can't believe that the Fourth Amendment allows
24 the State that kind of intrusion on a pretrial
25 detainee, is my point. I think that is what -- that's

1 what Ellefson is saying, that there are certain
2 pretrial rights that a pretrial detainee has, unlike
3 an inmate who is in prison, who has been convicted and
4 is in prison. I think they have even less rights.
5 You know, anyway....

6 THE COURT: What else?

7 MR. HIXSON: Very quickly, I'll hand up Matthews.
8 I relied on that, and I have copies for Counsel
9 concerning there is no -- we're not asserting for a
10 second that there is no level of expectation of
11 privacy, and that is why I introduced the fact these
12 cases are generally not decided on waiver of that
13 expectation, but we introduced the fact that he knew
14 the policy was in place and that there is a procedure.
15 Legal mail, stamped legal privilege mail is never
16 searched, and that enables -- that is a reasonable
17 accommodation to facilitate his ability to discuss
18 some of those issues.

19 This is Matthews, Your Honor. Your Honor, this
20 is Stroud. The take-away for Stroud -- that is a
21 United States Supreme Court case. There was no
22 reasonable search and seizure in violation of his
23 Constitutional rights. Letters written by the
24 defendant in a penitentiary were used against him at
25 trial, that is an older case, but I think it is still

1 good.

2 THE COURT: So the information that is available
3 to the jail at the time that the letter is found is
4 that Mr. Jenkins has entered the J. Reuben Long
5 Detention Center with documented gang members as
6 co-defendants, that the co-defendants were hatching
7 some form of an escape plot through use of letters and
8 communication from the jail.

9 There is also information available to the
10 J. Reuben Long Detention Center that Mr. Jenkins had
11 allegedly threatened another inmate to the extent to
12 which that inmate wanted to be taken into protective
13 custody due to fear. The other information that was
14 available to the detention center was that he had
15 blocked a count in the cell some time earlier, and
16 based upon this, Ms. Snyder testified that he was on a
17 heightened level of scrutiny because of these issues.
18 He was under investigation as to whether or not he was
19 a gang member or was participating in gang activities
20 and, thus, she would have had the authority at that
21 point in time to read his mail, regardless if it had
22 any return address on it or not.

23 I find that the scope of the intrusion that was
24 made at this point in time was slight, and that the
25 manner in which it was conducted was reasonable and

1 that she had adequate reason for the intrusion. She's
2 not even intentionally reading the letter. Her own
3 report, which she does that day, states that she was
4 unintentionally reading the letter, and in the first
5 few lines of the letter, it immediately talks about a
6 suicide, which is not only a threat on Mr. Jenkins'
7 life, but also could be a potential danger to the
8 other correctional -- correctional officers and the
9 other inmates. Those are all very dangerous
10 situations which could cause significant concern and
11 disruptions inside the facility, to which she would
12 have known upon reading the first few lines of that
13 letter that that was an issue and needed to be brought
14 out for attention.

15 So I will allow the letter to come in. I find it
16 is admissible, that it is not a violation of his
17 Fourth Amendment rights. I do want the suicide part
18 and the other parts that the State mentioned redacted
19 from the letter for the guilt phase of the trial. I
20 don't know -- they could bear issue in the sentencing
21 phase, but as far as the guilt phase of the trial, I
22 do not think that they are okay. Thank you.

23 What else?

24 MR. HIXSON: Two quick housekeeping matters.
25 Your Honor, prior to the break, indicated you would

1 like the entire transcript of 2 placed in, that is
2 State's N, State's O, which is the transcript of the
3 third one, and State's P is the transcript of the
4 fourth. I'll enter that in.

5 THE COURT: Thank you.

6 So going down the list, we did the letter, Denno,
7 security briefing, did the sequestration team. Is
8 there anything -- what else do I want to take up
9 before we sign out of here today?

10 MR. HIXSON: I have a couple quick things on
11 State's motions. Previously, I filed a motion under
12 Rule 705. Basically, the substance of the motion --
13 and I have a copy for the Court -- is a demand for all
14 cross-examination notes, information relied on by any
15 experts intended to be called on by the defense
16 pursuant to Rule 705 for cross-examination of the
17 experts, and I have not received anything to date. I
18 will hand up a copy of that motion. And, in addition,
19 Your Honor, kind of a conjunctive motion, I mentioned
20 at the last hearing about reciprocal discovery. I
21 have not received anything on the grounds of
22 reciprocal discovery. I received a couple curriculum
23 vitas on three experts. I just bring that to the
24 Court's attention in the event we have -- we get to
25 the penalty phase and we're dealing about other

1 issues. That motion is State's C. Is there copy of
2 it? It is the motion marked "C."

3 THE COURT: Okay. All right.

4 MR. WILSON: Your Honor, in regards to what we
5 have left is we have --

6 THE COURT: I'm talking about the 705 motion,
7 your experts preserving their underlying data and
8 facts.

9 MR. WILSON: Yes, sir. I don't have any reports
10 to give him. I'm trying to generate some reports, but
11 I do not have any. I handed over the CVs of the three
12 experts that I may use. I am not going to commit I'm
13 going to use all three, but I have turned that over to
14 him so he knows who they are. As soon as I get a
15 report --

16 THE COURT: Okay. This is not so much about the
17 reports as to the experts are not destroying any
18 underlying data and facts that they are using to come
19 to their opinions.

20 MR. WILSON: Are they destroying anything; is
21 that the question?

22 THE COURT: Yeah.

23 MR. WILSON: No, sir. No, sir.

24 THE COURT: So they know they are not to destroy
25 or discard any underlying data and facts to eventually

1 formulate their opinion?

2 MR. WILSON: No, sir. No, sir. No, sir.

3 THE COURT: Does that make sense?

4 MR. WILSON: Yes, sir. Absolutely.

5 MR. HIXSON: Specifically, why I made the
6 request, just as a point, is not disclosing it, but it
7 is actually providing it to me as I have -- we have a
8 rule in this case -- that Your Honor already
9 granted -- that my experts have to provide all their
10 notes and data for meaningful cross-examination,
11 provided prior to cross-examination. So I know I can
12 explore pursuant to 705 the basis for their opinion.
13 So it is not destroying, it is a necessity to receive
14 the information enough that I'm able to cross-examine
15 three expert witnesses on their opinion.

16 MR. WILSON: Well, I take some exception to that.
17 I'm not sure that I'm required to give him my
18 mitigation information before we get to the mitigation
19 phase of the trial. When I speak of that, I am
20 obligated, I think, to tell him who my witnesses are
21 in that mitigation phase when I use experts, so if he
22 needs to get his experts, then he has the opportunity
23 to do that.

24 If he's asking me if I'm going to give him the
25 underlying basis for my mitigation defense, the answer

1 is no. I do not plan to give him that until we get
2 into the mitigation phase, providing His Honor allows
3 me to do that, obviously.

4 MR. HIXSON: I think that is an accurate
5 recitation of the rule, but, you know, one of the
6 evaluations -- one of the motions was a request for a
7 mental health examination because I anticipated mental
8 health defenses and mitigation being present in court.
9 On that, I was precluded from getting that based on
10 the representations that that would not be probative
11 in the guilt phase of the trial. I think that is
12 true, and I'm totally comfortable with that. But if
13 Mr. Wilson puts up three expert witnesses and then
14 sits down and I have a banker's box of stuff and you
15 say go ahead and cross-examine this witness -- I'm not
16 talking about mitigation and lifestyle and stuff,
17 we've done our own and provided all of that
18 information, what there is. But if I'm challenged
19 with testing the veracity of three psychiatrists
20 contemporaneous in the courtroom, that is the purpose
21 of a pretrial motion concerning developing what 705
22 information is appropriate to receive ahead of time.

23 THE COURT: You are going to be in a situation
24 where we're going to be taking day-long breaks to let
25 him look at all of the stuff.

1 MR. WILSON: I don't know that there will be
2 anything that he doesn't already have in his
3 possession anyway, other than social history stuff.
4 He would have anything that I would have. I can't
5 offhand think of a whole bunch of information that I
6 have that he doesn't have already. Most of what I
7 have provided is what I have from the State.

8 THE COURT: Okay.

9 MR. HIXSON: If we're in a situation where we do
10 not have a written report, where the doctor does not
11 cite the basis for the opinion, and Your Honor is very
12 conversant with this, that we have to develop what did
13 you use to come to this opinion that you have and to
14 see -- test the veracity of that. Perhaps there is a
15 ruling that the Court can devise if this is the type
16 of information that the witness should have relied
17 upon, but I think it is pretty clear they have to rely
18 on it. If I don't know what they relied on as a
19 foundation for why -- for instance, if we get there,
20 Mr. Jenkins poses no threat to the future based on the
21 current medication status, I hate the words
22 "fundamental and fairness," but that is why I filed
23 the motion.

24 THE COURT: If they are not going to do a report,
25 then how is he going to attack the creditability of

1 what they are saying if there is no report for anyone
2 to rely on, and they haven't turned over their notes
3 and data?

4 MR. WILSON: What I will do is this, if the Court
5 agrees with this. I will give him whatever -- I will
6 give him -- make available whatever notes they have.
7 I can tell the Court with a 100 percent degree of
8 certainty that I do not have written reports; so they
9 do not exist.

10 THE COURT: I'm not saying you have to have a
11 written report. What I'm saying is if there is a
12 written report, then everybody knows what everybody is
13 working from, and then it -- I'm not saying it
14 alleviates this issue, but it makes this issue a lot
15 easier to work around. If there is not a report and
16 the experts are going to get up here and say -- let's
17 say something crazy so everyone understands we're
18 talking about an example, but that, you know,
19 Mr. Jenkins is a registered sex offender or something,
20 then there has to be data and/or circumstances and/or
21 something that the experts have relied on to come to
22 that conclusion which the other side, regardless of
23 which side of the case it is on, is able to have
24 access to how they came to that conclusion.

25 MR. WILSON: Can I have one second?

1 THE COURT: Sure.

2 (State's Exhibit U marked.)

3 THE COURT: Now, one way that I have dealt with
4 this before is you just let the State meet with all of
5 your experts. Don't think I haven't done it; I've
6 done it. I mean, you know, the cleanest way is to put
7 everybody in a neutral environment, tell your experts
8 to bring their stuff and let Mr. Hixson interview.

9 MR. WILSON: To be fair, he has their names. I
10 can't stop him if he speaks with them anyway, if he
11 wanted to do it.

12 THE COURT: I know he can reach out to them, but
13 that is the way to go in there and say what are you
14 testifying about and where is it coming from and what
15 are you basing it on.

16 MR. WILSON: He has every right to subpoena them
17 and talk to them.

18 She says the State has to pay for their time.

19 MR. HIXSON: That does not resolve responsibility
20 to provide it under 705 because I'll get HIPAA, court
21 orders and everything else and I will not be able to
22 -- as it relates to that conversation, just for the
23 record, I marked "U," and that is our notice of
24 reciprocal discovery that we filed April 8, 2015, and
25 that is just projecting, for the record, that this is

1 just the standard discovery invoking reciprocal
2 discovery after Mr. Wilson filed his letter of rep.

3 THE COURT: You think about the 705 issue over
4 the night and we'll be prepared to talk about it
5 tomorrow.

6 MR. HIXSON: Your Honor, I'm comfortable with a
7 protective order under 5(d), I think it is, to review
8 the stuff we're talking about. Not to add another
9 task to your plate, but Counsel can provide it to the
10 Bench to take a look at to see if that is something
11 that facilitates, but that is Your Honor's
12 consideration.

13 MR. WILSON: I mean, I don't have a real problem
14 making them available to him. I don't really have a
15 big problem with that. I don't have a problem with
16 that. I mean, they are going to say what they are
17 going to say.

18 THE COURT: Right. I think that is why the rule
19 is the way it is, because at this point in the trial
20 procedure, I mean, I'm not saying, you know, down to
21 the exact word, but you are not surprised as to what
22 they are going to say either, and if we make it that
23 far in the trial, then -- I mean this was a big issue
24 in the Roof trial because there was all this stuff,
25 you know. The judge basically said, you know, if you

1 want a two-week long continuance to look at all of
2 this stuff that they just turned over, I'll give it to
3 you, which they declined. But, you know, I don't
4 think any of us want that scenario setting itself up.
5 It is nothing for the guilt phase; is that right?

6 MR. WILSON: Right.

7 THE COURT: So just talking purely sentencing
8 things.

9 MR. HIXSON: I'll give you an example unrelated
10 to this case. If you have a crash reconstruction
11 expert that says the brakes failed, I'm not entitled
12 to get the underlying information when there is five
13 MAIT team reports that says the brakes were working
14 perfectly. I can meet with that expert all day long
15 that said the brakes failed, but I will never be able
16 to cross him on the data that said you did not pay
17 attention to the four reports that said the brakes
18 were perfectly working, and that is the importance of
19 the notes and underlying data. Because I know what
20 the expert is going to say, that he poses no future
21 danger, I'm assuming, you know, because it is the....

22 THE COURT: Historically.

23 MR. HIXSON: Correct. I shouldn't assume, but.

24 THE COURT: Process through it overnight and we
25 can take it up tomorrow.

1 What else?

2 MR. HIXSON: Real quickly, I think this is quick.
3 I wanted the Court to address the issues of all of the
4 motions pending. There is 77-some motions, I believe.
5 I think they were all addressed, but I think it is
6 important because it was here and there, but either
7 the motions have been granted, denied, withdrawn, so
8 that the slate is clear.

9 MR. WILSON: I agree with that. The only ones
10 that I have that still exist is we have a motion to
11 exclude the death penalty, motion to allow jury
12 sentencing. I think those are the only two -- and we
13 asked the State to give us the specific aggravating
14 factors.

15 THE COURT: Right. I have that on my list. So
16 tomorrow we're going to take up jurors, specifically
17 aggravating factors, your other two motions, and what
18 else?

19 MR. HIXSON: We can probably do this now. I
20 provided proposed photos and video summaries of the
21 ones that I intended to use. I gave those to Ralph
22 and Brana earlier. I don't want to misrepresent,
23 because I want to create these exhibits, but my
24 understanding is that you have no objection to one --
25 an objection to one photo that has a scene of the

1 crime where Mr. Paruchuri was dead in a pool of blood
2 on the floor, I will withdraw that to facilitate.
3 Obviously you will see them prior to trial, but.

4 MR. WILSON: I consent to the other photographs
5 that are in that disk that I was provided.

6 MR. HIXSON: What do you think, that there is 40
7 of them?

8 MR. WILSON: I didn't count them.

9 MR. HIXSON: As it relates to the video
10 summaries, instead of the multiple surveillance
11 angles, Your Honor saw some of those in the Daniels
12 trial, those are the same summaries.

13 MR. WILSON: The video summaries is a little bit
14 different issue. There is an issue whether or not
15 there is sound.

16 MR. HIXSON: Oh, that's right.

17 MR. WILSON: On the death of Mr. Paruchuri. So
18 we need to revise it to include that, but other than
19 that, I'm okay with it.

20 MR. HIXSON: I'll put that off -- I will confirm
21 the audio -- I haven't heard it, so I'll correct that
22 and re-present that to Mr. Wilson.

23 THE COURT: Okay. Good.

24 MR. HIXSON: I believe that is it.

25 THE COURT: So let's -- are we thinking we're

1 going to be housing the jurors Wednesday night, or
2 Thursday night? Have you thought about it since we
3 talked about it? You think Monday start at 9:30 and
4 go until 7:00?

5 MR. HIXSON: I think one thing we can do, say
6 we're done at 2 o'clock and start the first panel
7 maybe earlier than that.

8 THE COURT: I'm fast.

9 MR. HIXSON: I know you are. Once we send those
10 jurors home, they only come back until we call them
11 back. So we could tell them to come back -- leave the
12 message Wednesday to be here first thing Thursday with
13 a suitcase and then be in an open field running then.
14 I think the Court can control when you have them come
15 back.

16 THE COURT: I agree. But do we -- Ms. Elvis
17 needs to tell the hotel people how many rooms she
18 needs for what night. We're talking about thousands
19 and thousands of dollars.

20 MR. HIXSON: So I think the first night we might
21 need them is Thursday night, because we could get a
22 whole day of trial Thursday. So the first night would
23 be Thursday night. Is that what we're talking about,
24 potentially?

25 THE COURT: Can Lent go?

1 MR. HIXSON: Ralph said he needed him.

2 MR. WILSON: I think we have it resolved, that is
3 why we wanted him, for the audio, but we have it.

4 MR. HIXSON: Don't need him?

5 MR. WILSON: We needed him to do the audio, but
6 we got it, so he can go.

7 THE COURT: Thank you, Detective Lent.

8 (Detective Lent exits the courtroom.)

9 (A discussion was had off the record.)

10 THE COURT: So let's tentatively plan on Monday
11 and Tuesday -- I only have so many hours worth of work
12 in me a day. Let's plan on Monday and Tuesday like
13 really pushing starting at 9:30, getting everyone in
14 and, you know, staying until 7:00, 7:00-ish, Monday
15 and Tuesday, to get through as many panels as we can.
16 None of us are productive -- I mean, sitting around
17 waiting on a verdict at 10 o'clock at night is one
18 thing. Questioning witnesses at 10:00, 11 o'clock at
19 night is not fun for anyone. Not fun for the court
20 staff or me. I don't think lawyers are -- I know how
21 much work happens when you stop the trial and you go
22 back to your office or go home to get ready for the
23 next day, so I think on those first couple of nights,
24 Monday and Tuesday, maybe Wednesday, we'll stay until
25 6:00 or 7:00, but during the course of the trial, you

1 know, I'll run it from 9:00, 9:15 until 6:00 each day
2 because they are sequestered. I'll make the best use
3 of the days and the best use of their times. So for
4 witness prep, think about that, that time frame.

5 I'm going to say this, and I'm saying this with a
6 smile on my face, but my last long trial down here,
7 which was a couple weeks ago, one prominent local
8 attorney, who is not in the room, liked to show up
9 about 15 minutes late every single time we started
10 court. I don't know if he was making an entrance, or
11 if he just thought that judges wouldn't show up on
12 time, but I really do -- I'm sorry I was late today,
13 the traffic in Columbia was horrific, but I promise
14 you, I will be doing my best if I say 9:15 to be
15 walking out here at 9:15. If I say 2:00, walk out
16 here at 2:00. I really do mean that. I say that not
17 to be a stickler. I never have fined anybody or --
18 you know, I know judges that did that the entire time
19 I practiced law, and I knew exactly who they were.
20 I'm not saying that to be a stickler, but we're taking
21 these jurors away from home, work, family and friends
22 and I really -- I want us to be seen -- all of us to
23 be seen making an efficient use of their time and of
24 their energy. So if everyone would do their best to
25 be here on time and be ready to go and make sure that

1 Mr. Jenkins has the clothes he needs and all of that.
2 I understand life happens, and when it happens, just
3 shoot somebody on the other side on your team or other
4 side of the case, hey, you know, I just got in the car
5 and realized I have two different colored socks on and
6 I'm on the way. That way I'm not upset or worried
7 about where you are. But, you know, once we get
8 rolling, I really want to make the most efficient use
9 of the time we have and have the witnesses here, you
10 know, and ready to go so we can use up full days.

11 At this point in time, I'm thinking we need the
12 SLED rooms Wednesday night and jury rooms starting
13 Thursday night. And that way -- I'm not going to
14 allow -- this voir dire is not a free-for-all, okay.
15 I mean, there has to be a limit and some control over
16 it. I do want us to have enough time to do what we
17 need to do.

18 The other thing we need to be prepared to talk
19 about tomorrow is jurors and where we are with those
20 jurors and who they are so we know who is walking in
21 here in a couple of weeks.

22 MR. HIXSON: As it relates to that, the numbers
23 are getting tight. I just want the Court to be aware
24 there is another jury panel coming in that has not had
25 questionnaires going out to them, that is for an

1 unrelated general sessions trial, a potential pool.

2 But the solicitor said we can cancel that trial. They

3 have not received questionnaires, but they could fill

4 them out if we get into the end of the week. I just

5 wanted the Court to be aware of that, that we can get

6 rid of the other panel, but they would have to fill

7 out questionnaires and have time for us to go through

8 those, but I don't know how many is coming in the

9 panel, just in case the panel is short. I just wanted

10 Your Honor to think about it over the evening time.

11 THE COURT: Do you want to weigh in on that?

12 MR. WILSON: No, sir.

13 THE COURT: One thing we can do is when they get

14 here Monday morning just have them fill out the

15 questionnaire, and if we reach a critical mass, bring

16 them and qualify them and put them in the panels.

17 Yeah. Okay.

18 THE CLERK: Your Honor, I don't think we'll run

19 short. According to my calculation, we still have

20 somewhere around 160.

21 THE COURT: That's better than what I was

22 expecting. We'll talk about them tomorrow.

23 Are you good for tonight?

24 MR. WILSON: I'm good, thank you.

25 MR. HIXSON: Thank you, Your Honor.

1 THE COURT: Okay.

2 (WHEREUPON, THE PROCEEDINGS FOR APRIL 25, 2019
3 CONCLUDED. THE FOLLOWING WAS HAD ON APRIL 26, 2019.)

4 THE COURT: Back on the record in State versus
5 Jerome Jenkins. The State is present represented by
6 Solicitor Richardson and Scott Hixson. Mr. Jenkins is
7 present and represented by Brana Williams and Ralph
8 Wilson. We're here to continue with pretrial motions.

9 So what do you want to start with first?

10 MR. HIXSON: I'm on the downhill side of stuff.

11 MR. WILSON: Where we can start is we asked for a
12 list of the aggravating factors, so we can start
13 there.

14 THE COURT: Okay. Hearing on aggravating
15 factors.

16 MR. WILSON: Non-statutory ones.

17 THE COURT: All right. So what is the plan for
18 that, Mr. Hixson?

19 MR. HIXSON: I provided pursuant to -- I pushed
20 back a little bit initially, which basically means we
21 provided pursuant to a statute or notice for intent to
22 use various aggravating factors. Nothing in that
23 requirement regards us to pre-try our case before the
24 defendant, it tells exactly what we're doing. I don't
25 mind sharing what our intentions are as long as it

1 doesn't preclude us to see what testimony develops.

2 In essence, we noticed specifically our intention
3 is to prove our aggravators in the course of the
4 conduct in the guilt phase itself. We're not going to
5 rely on any of the potential aggravating factors in
6 the penalty phase, and we ask for a limiting
7 instruction from Your Honor to make sure the jury
8 understands.

9 We intend to put the 905 trial to show that
10 murder occurred during the commission of a robbery or
11 grand larceny. I specifically noticed the robbery
12 part, the larceny and the robbery. I feel like it's
13 almost indistinguishable. Nonetheless, I will ask the
14 Court perhaps to charge when that time comes, larceny
15 and robbery. I almost don't know the difference. But
16 our intention is that the aggravating circumstance
17 will be proven in the guilt phase; that is our hope.

18 We would not assert that anything in the penalty
19 phase and that our -- our intention to move to there
20 would be to include additional courses of conduct,
21 that would be robbery at the Lake Arrowhead store on
22 the 25th, followed by the robbery and murder of
23 Trish Stull in the evening of 25th; that is an armed
24 robbery and a murder. We would not call those
25 indictments, so we would offer those up under Green

1 and the various -- under Shaw and various things of
2 the unique circumstances of the defendant's character,
3 not as substantive evidence of any aggravating factor
4 that the jury would have to prove, and that is what
5 the limited instruction would be for.

6 In addition, we would have discussions concerning
7 the defendant's conduct while incarcerated. There are
8 various detention officers, as well as officers in the
9 South Carolina Department of Corrections that have
10 interactions with Mr. Jenkins. Those are contained in
11 the disciplinary records we provided defense counsel.

12 THE COURT: Have those been turned over?

13 MR. HIXSON: They have been turned over, and we
14 have a new packet. Now he is at J. Reuben, so we
15 don't have to go to SCDC and get him, and so we
16 brought them back for that.

17 There is his prior criminal record, I have
18 certified copies of that. They are relating to
19 burglary, PWID, I think there is a domestic violence.
20 We would not try to do anything with uncharged conduct
21 on those, just simply certified copies of prior
22 records for that, okay. There is -- there were two
23 statements of colleagues, inmates that we have
24 interviewed and debriefed that had inculpatory
25 statements concerning Mr. Jenkins' role, whether he

1 was a ringleader, whether he was acting at the
2 direction of others. I provided that information to
3 those folks pursuant to your order. You told us if I
4 would use any of these people, you better turn them
5 over within 45 days of trial, and I did that with
6 Mr. Wilson. I'm not sure if I'll call them. We have
7 to touch base and see how good they are, or if they
8 are meaningless.

9 THE COURT: That's been turned over?

10 MR. HIXSON: Yes, including recorded interviews
11 and all of that information.

12 We would have potential presentation on victim
13 impact. One of the interesting things that I'm trying
14 to say -- so Your Honor is aware of this -- is in
15 Ms. Stull's case, as it relates to Mr. Jenkins, he has
16 never has been adjudicated, so there is not a
17 conviction of that murder; as such, that family has
18 been extraordinarily involved in the process. But as
19 that is not the tried offense, I'm concerned about
20 using any victim impact information concerning
21 Ms. Stull because, statutorily, I don't know that that
22 might be appropriate for victim impact on an uncharge
23 for character, not for guilt, when Bala Paruchuri's
24 family is present for victim impact. So I think I can
25 or do not want to talk about that because --

1 THE COURT: You mean the victim impact part?

2 MR. HIXSON: Victim impact on the uncharged one
3 versus this. This is voluminous; this is not so much,
4 if that makes sense. There is a language difference,
5 cultural difference, so they are not nearly vociferous
6 concerning their opinions about the disposition of
7 this case.

8 There are Facebook posts that we have, and I
9 provided that -- that is under "Supplement" -- we
10 provided to Mr. Wilson. Concerning conduct, it goes
11 back to the conduct while incarcerated that we talked
12 about prior with SCDC.

13 Can you think of anything else? I can't, if
14 anything else pops in my head --

15 THE COURT: As to the guilt phase, for the
16 aggravated factors, your intent is to rely on the
17 facts and circumstances of the case that will be
18 proven -- or that will be put up, I should say, during
19 the guilt phase?

20 MR. HIXSON: That is correct. Our intention is
21 to call three indictments in that phase, that would be
22 attempted murder, murder and armed robbery.

23 THE COURT: Who is the attempted murder?

24 MR. HIXSON: Prior to entry of the store, there
25 is Jimmy McZeke that was in the store that worked in

1 the store. When he was on the way walking back to the
2 bathroom -- and this is all on videotape -- and as he
3 -- folks entered the convenient store and shot, I
4 think five shots, in the bathroom where Mr. McZeke
5 will testify he was hiding behind the bathroom toilet
6 to protect from the bullets coming through. The State
7 played yesterday -- you heard testimony about firing
8 rounds at the bathroom. So the jury will see -- you
9 see him run, and then you see him running out of the
10 bathroom. Police arrive and find Mr. Paruchuri passed
11 on. That is the attempted murder and murder. So that
12 is self-contained in there.

13 I think the important distinctions, as a limiting
14 charge for the other stuff that we would offer, is not
15 -- we're not trying to offer that to prove an
16 aggravator, that is just character for sentencing
17 purposes.

18 THE COURT: In the sentencing phase?

19 MR. HIXSON: Yes, sir. That's it, and I'll look
20 through some of my stuff.

21 MR. WILSON: Your Honor, two things. One, in
22 terms of victim impact, now I have not received
23 anything in regards to victim impact. The solicitor's
24 position on that is that we're not entitled to it; of
25 course I take exception to that, and I submit we are

1 entitled to it if he is going to use it during the
2 course of sentencing and/or during the guilt phase of
3 the trial.

4 The second thing, Your Honor, is that my other
5 concern is that what -- and maybe the Court can handle
6 it in this way. I'm concerned about, during the
7 course of the trial, if the State offers either in the
8 -- either in the guilt phase or in the sentencing
9 phase, if they intend to offer prior bad conduct, but
10 not criminal acts on the part of the defendant, for
11 instance, saying that, you know, he was -- he and his
12 girlfriend didn't get along and he beat her up or that
13 they are saying that he was manipulative or he's a
14 liar in general, I don't know what kind of
15 non-statute -- and that is what I was asking for when
16 I was asking about none-statutory aggravated -- I know
17 what he's offering with the statutory aggravating
18 factors, and I have no problem with that, whatsoever.
19 I'm very clear with that.

20 THE COURT: Because sometimes in these cases you
21 just get this list of 47 things.

22 MR. WILSON: Right.

23 THE COURT: So you understand what their
24 intention is to offer in the guilt phase as to the --
25 as to the statutory aggravating factors?

1 MR. WILSON: Yes, sir, very clear on that.

2 THE COURT: Okay.

3 MR. WILSON: So I'm just asking -- because I
4 don't know how to prepare for the non-statutory
5 aggravating factors because there is a lot of leeway,
6 and I understand that, in these kinds of cases, where
7 the State can come in and they can talk about things
8 with his girlfriend or things with his mama or things
9 with his family or just him being bad in general, and
10 those things may very well be relevant and -- and
11 should be admitted during the course of the trial.
12 I'm not saying that they can't, I'm just saying that I
13 need more notice of those things.

14 MR. HIXSON: I'm not picking on the man's
15 girlfriend or his mom or anything like that.

16 THE COURT: What I've heard at this point is that
17 they plan on, in the sentencing phase, introducing
18 evidence of the other crimes, the Lake Arrowhead
19 robbery, and that is where the woman -- and, again, I
20 know you all think judges remember all of these cases,
21 and I may remember some of the H.G. Worley case for
22 the rest of my life that I would like to forget,
23 frankly, but I don't remember all of the James Daniels
24 case, I just don't. But my memory is the Lake
25 Arrowhead incident is the incident where there is a

1 female who was robbed at a gas station, but she lives.

2 MR. HIXSON: No one was hurt.

3 THE COURT: No one is hurt. And while the police
4 are in the middle of investigating that, or showing up
5 to that, they learn about this other incident, and
6 that is where Trish Stull is allegedly murdered. So
7 they plan on introducing --

8 MR. HIXSON: That's correct.

9 THE COURT: And I can't remember, and so if it
10 doesn't have anything to do with Mr. Jenkins, just
11 tell me, but I remember in Mr. Daniels' cases there
12 was evidence of bank robberies and other things, and
13 none of that pertains to Mr. Jenkins?

14 MR. HIXSON: That is correct. I noticed -- told
15 Mr. Wilson that I intended to introduce that, and we
16 got all of the witnesses for the bank robbery there.
17 The paperwork we initially had was generated from the
18 FBI in North Carolina and said that one of the tellers
19 could identify Mr. Jenkins as one of the perpetrators.
20 When we sat down with her and interviewed her, she was
21 less forthright, to be honest with you, and she said I
22 think maybe he did it, I'm not really sure, and I
23 said, well, that's enough for me, we're not even
24 touching that. So I told him we're not up to that.

25 THE COURT: So not dealing with any of that?

1 MR. HIXSON: Right.

2 THE COURT: So they are planning on introducing
3 evidence of the Lake Arrowhead robbery incident, and
4 then Trish Stull -- I can't remember the street on
5 that one.

6 MR. HIXSON: I called it Oak Street -- Cultra
7 Road and Oak Street here in Conway.

8 THE COURT: Okay. And then you are going to
9 introduce certified copies of the certified
10 convictions that he has, and then you are up in the
11 air whether or not -- what I will call -- on the
12 jailhouse informants?

13 MR. HIXSON: Yes. My inclination right now is
14 that I probably won't, simply because there is a lot
15 of group discussions that may not be necessarily
16 attributed to which one of the three said specifically
17 what, you know.

18 THE COURT: But at this point, those interviews
19 and/or recordings of interviews have been turned over?

20 MR. WILSON: They have.

21 THE COURT: So that is not a surprise?

22 MR. WILSON: It is not.

23 THE COURT: If those people show up -- I'm not
24 saying you have to call them, but if they do show up,
25 that is not a surprise, their names are known?

1 MR. WILSON: Correct.

2 MR. HIXSON: And that thrust is assuming that
3 people are going for statutorily mitigator about
4 acting at the direction of others and who is the
5 ringleader, who is not, and all of that stuff, and
6 that is probative relating to statutory mitigators.

7 THE COURT: Okay. And then there is -- we'll
8 come back to victim impact, but there is packets from
9 SCDC and J. Reuben Long, I would assume?

10 MR. HIXSON: And I'll tell you how the family --
11 there are family members that are in the Facebook
12 generation that are paying attention to any publicly
13 generated Facebook information that purportedly comes
14 from Mr. Jenkins, and they are calling all the time
15 saying look at Facebook. Greg Lent was looking at any
16 Facebook information that was probative of continued
17 conduct while incarcerated during safekeeping,
18 photographs have been provided to Mr. Wilson.

19 MR. WILSON: It has been turned over, Your Honor.

20 MR. HIXSON: There is also -- as Your Honor is
21 aware, you have been embroiled in this process, but
22 there was the security concerns earlier on while at
23 J. Reuben Long, the safekeeping process. And then
24 there are -- prior to Mr. Jenkins, I've been told by
25 SCDC that Mr. Jenkins has been a model citizen and

1 doing a great job since back from SCDC.

2 THE COURT: You were told that by J. Reuben Long?

3 MR. HIXSON: Yes. Our understanding is that
4 there hadn't been any disciplinary problems or
5 anything. My understanding is that he is on
6 prescribed -- spring of this year he was prescribed
7 Geodon, which is an antipsychotic antidepressant.
8 There is a laundry list.

9 Prior to that, I think we had a list of 52-some
10 disciplinaries, including I think six stabbings of
11 guards up there. I would ask guidance from the Court
12 when we get there, because a lot of the documents that
13 are presented refer to Mr. Jenkins on death row. I
14 think, without a doubt, that if SCDC or someone
15 mentions that, I think that is reversible error, I
16 don't think the jury can hear that, if we get there,
17 but certainly the conduct or the alleged conduct by
18 the guards in SCDC, the talk about the disciplinary
19 problems from the safekeeping is probative concerning
20 future dangerousness. I'm anticipating some of
21 psychiatrists talking about his adaptability to prison
22 life and all of those things. Future dangerousness is
23 a discussion, and where their opinions are coming
24 from, we have volumes of information that indicate
25 there is a challenge there, or there had been prior to

1 using Geodon.

2 Let me do victim impact stuff. It is
3 uncontroverted that defense counsel is not entitled to
4 victim impact information. It is a Constitutional
5 Bill of Rights standard in South Carolina. I will
6 show them, because there is nothing to hide, and I
7 have a duty to show -- it is not a discovery right, it
8 is a Constitutional Victim's Bill of Right to tell how
9 they feel about this thing. It is not evidence, but
10 having said that, you know, there is nothing to hide.
11 There is no discovery violation. Specifically, in
12 Mr. Paruchuri's case, I would bring the impact victim
13 forward and show Ralph what it said, and specifically
14 I can tell you that the family had to shut the store
15 down, the family went bankrupt. There is a lot of
16 difficulties that came from the loss of the
17 breadwinner in that, and that is clearly the impact of
18 the commission of the crime on this individual without
19 talking about -- it is not appropriate to talk about
20 what the appropriate sentence is for either side,
21 mama, or anyone to say that, but it is appropriate to
22 say what is the impact on the community by the actions
23 of the defendant, if he's convicted of these actions.

24 In addition, just so you are aware, there was
25 substantial impact by law enforcement involved in

1 this, including people working overtime shifts,
2 sitting outside of convenient stores all over the
3 county trying to figure out what was going on through
4 these series of crimes. And so there is tremendous
5 community impact to some degree that we're looking
6 into showing, but we -- all of that has been provided
7 with wanted posters and with witness Shane Owens, who
8 Your Honor -- I don't believe we called him in James
9 Daniels case because it is pretty prejudicial stuff,
10 but he was with Trish when he was called to go back to
11 the Oak Street thing -- go to Lake Arrowhead to attend
12 to that robbery, and when he was down there, he got a
13 call to go back there, and he said when I did, I knew
14 what happened, I was just there. When he showed up,
15 sure enough, the person he was watching had been
16 killed. It is impactful testimony. Although he is
17 not a statutory victim, he is law enforcement
18 protecting her, went down there, came back here and he
19 quit law enforcement because of that. That is the
20 kind of victim impact we're looking at, even though he
21 is not a victim, it is a Bill of Rights impact, if
22 that makes sense.

23 MR. WILSON: You see, Your Honor, my position is
24 that really is -- in my opinion, that is a
25 non-statutory aggravating factor, having a police

1 officer come in and testify, hey, look, this is the
2 impact this had on me. Not only did I have to see
3 this lady who got murdered, but then on top of that it
4 impacted me to the degree that I had to leave law
5 enforcement completely because of the shock and
6 whatever it is that he's claiming that he had, and if
7 I'm not provided that information beforehand, how am I
8 trying to defend it?

9 THE COURT: That is why -- that's why I just made
10 him tell you about it (laughing).

11 MR. WILSON: I appreciate that (laughing). I do.
12 I'm just saying -- that is why I raised these issues
13 about the non-statutory aggravating factors, because
14 they can get real broad and vague as to what that
15 means and what you are offering. What I would ask the
16 Court to do is this: As these issues come up, that we
17 have some kind of in-camera hearing.

18 THE COURT: I think we will have to, yeah. My
19 concern, from this point of view as to where we are,
20 is that you know about them now as opposed to later.

21 MR. WILSON: I appreciate you bringing it out,
22 because I did not know before today.

23 THE COURT: That is one of the reasons I wanted
24 to do this. There is a difference in -- there is a
25 difference in you knowing about it, and whether or not

1 it is admissible; does that make sense?

2 MR. WILSON: Yes, sir.

3 THE COURT: At this point in time, what I want to
4 make sure is that you know about it and that you are
5 aware of it, and this isn't penalty phase by surprise;
6 does that make sense?

7 MR. WILSON: Yes, sir.

8 THE COURT: But whether or not -- we'll use the
9 example of that officer who he just gave. Whether or
10 not I'll let the officer testify to all of that, I
11 think is a time where we have a hearing outside of the
12 jury's presence. We proffer the testimony. Because I
13 want to hear what he has to say, and then I can make a
14 specific ruling on whether or not I let it in or not.
15 But one of the things I want to make sure is that you
16 all are aware of what that is going to be so that you
17 can have time to put your thoughts together and legal
18 arguments, as opposed to doing so on-the-fly.

19 MR. WILSON: Thank you.

20 THE COURT: Does that make sense?

21 MR. WILSON: Yes, sir.

22 THE COURT: You follow my track?

23 MR. HIXSON: I do, Your Honor. And to clarify as
24 a predicate, Shane Owens is a first responding officer
25 to that crime scene. He is a fact witness. I don't

1 know how much further I would go because --

2 THE COURT: I'm not saying it is in or out, I'm
3 just saying if he's going to testify beyond what is in
4 his report, you know, I showed up, this is what I
5 found, this is the time, this is the date, this is the
6 location, this is the county, those basics, if he is
7 going to go down the road of this is the impact it had
8 on me, then I think when we get to that point, we just
9 need to stop and let him proffer the testimony outside
10 of the presence of the jury, and everybody can argue
11 about it and I can make a decision.

12 But at this point in time, things -- you know, I
13 think the cleanest way to do it is for information
14 that you expect that can come out in the sentencing
15 phase like that, to let them know what it is, even if
16 it's here in open court or in an e-mail or whatever.
17 Dealing with it by surprise is a lot more difficult
18 than everyone knowing and being able to process
19 through it. I don't know that he needs to write a
20 report about the impact that it had on him, but, you
21 know, you all know what it is. You have met and
22 talked with him, and so, you know, a summary, you
23 know, of that.

24 MR. HIXSON: Those guys are tough, and of course
25 when they start crying and don't want to talk about it

1 anymore, that is the extent of the information, so why
2 are you not policing? Because of this. That is it,
3 you know.

4 Let me add one other thing. In addition to
5 that -- I forgot, Jimmy reminded me -- I intend to
6 introduce the second half of that letter relating to
7 "that man and that woman." You know, we talked a lot
8 about it yesterday.

9 THE COURT: Right. Okay.

10 MR. WILSON: Your Honor, back on the victim's
11 impact statement and information. While I am aware
12 that there is a Constitutional right for victims to
13 have impact statements and to be heard, I'm very well
14 aware of that, I believe that -- and, again, I don't
15 have any law to support this, I'm telling you.
16 Because I'm taking exception on the record for them
17 not providing that information to me, and my position
18 on that is this: That that does affect the defendant,
19 because the sentencer in this case is going to be the
20 jury. So they are going to get that information, and
21 they are going to use that information in order to
22 decide the fate of the defendant, and because of that,
23 my position is, constitutionally, we ought to be
24 entitled to that information before it is presented or
25 -- and if we're not provided it before it is

1 presented, we should at least be given a copy of the
2 victim -- I know there is a form that victims fill out
3 when these things happen, that at a minimum we should
4 have been provided the forms that these victims --
5 these forms ought not be a secret document, you know.
6 If victims experience these things, which we know that
7 they do, that's fine. I'm not complaining about that.
8 I'm just complaining about the fact that we are not
9 provided it. The solicitor may very well be on solid
10 legal footing, I just disagree, and that is my
11 personal opinion.

12 THE COURT: What I heard him say today is he is
13 going to share those victim impact files?

14 MR. HIXSON: I'm going to save you, because I'll
15 show it to you in court today, and I won't provide it
16 in discovery, but look at it to your satisfaction,
17 take a look at it, but I'm trying to preserve the
18 argument to understand that it is not a discovery
19 violation.

20 THE COURT: I understand.

21 MR. WILSON: If he does that, then....

22 MR. HIXSON: We'll put it on the record that you
23 can look at it, to clean it up.

24 THE COURT: Good. Does that walk us through that
25 issue?

1 MR. WILSON: Yes, sir.

2 THE COURT: Great.

3 MR. HIXSON: Can I add one thing? After we look
4 at these and talk to witnesses and develop some
5 things, if there is anything outside of what we
6 specifically talk about, I'll make sure that Ralph is
7 aware and clean it up at pretrial.

8 THE COURT: Right. That is why I specifically
9 don't create discovery deadlines in criminal cases,
10 because the State has an ongoing, continuing
11 obligation as they learn things or as people tell you
12 something different than before, there is a continuing
13 duty to disclose that and also a continuing duty for
14 reciprocal role filed on the part of the defense. So
15 it is a little bit different than civil cases. That
16 is why I don't set hard and fast deadlines as long as
17 I believe everyone is moving in the right direction of
18 the discovery.

19 What else?

20 MR. WILSON: Your Honor, on my No. 6 on my list,
21 it says pre-marking of exhibits and any objections
22 thereto. This would include the videos that we were
23 talking about on yesterday. My understanding is that
24 we were going to add the audio to the Paruchuri video
25 that is going to be introduced, and if the Court

1 remembers, I have no objections to what was submitted,
2 it's just that we're going to add audio to it. Other
3 than that, that is fine.

4 MR. HIXSON: Yes. I have never heard the audio
5 of that. We had Pete Cestare in court yesterday. The
6 incident report says there is -- I'm going to change
7 that exhibit to make sure it is in there pursuant to
8 the defense's request. Everything else I think is
9 without objection. I haven't prepared the exhibits
10 because I don't want to burn paper, but we'll prepare
11 them and pre-mark them.

12 THE COURT: Do you want -- Natalie, do you want
13 them to get with you next week and go through
14 exhibits?

15 COURT REPORTER: I was telling them during
16 chambers I will come sometime next week.

17 THE COURT: Okay. Y'all don't need me for this,
18 but next week let's schedule a time with Natalie.
19 Natalie will be our court reporter for the trial, so
20 you can get together and go through the exhibits, and
21 at least -- even if it is an exhibit you have an
22 objection to, let's get a sticker and a number, and
23 then let her go ahead and create a list of these are
24 without objection, or this has an objection, but at
25 least it is marked, and that will keep things moving

1 smoothly.

2 MR. WILSON: You want us to do that for both
3 phases, or just trial phase?

4 MR. HIXSON: I'm marking -- that is a great
5 point. I'm putting everything together at once. I
6 have asked Natalie if we could do numbers in --
7 assuming if we get to the penalty phase, start at 200
8 for the penalty phase documents, because I don't
9 believe there will be 200 in the guilt phase. So 1 to
10 100-and-whatever will all be guilt, and 200-whatever
11 is penalty; that way when we sort them, we'll know.

12 COURT REPORTER: I was going to put different
13 color stickers on them, too.

14 THE COURT: She can do different color stickers,
15 too.

16 MR. WILSON: That's fine.

17 MR. HIXSON: One step too far, in federal court I
18 know that we've stipulated to the admissibility of the
19 non-objected to photographs to speed up the
20 admissibility of the do-you-recognize-these-items
21 things, can we stipulate to the admissibility of the
22 photographs and the video?

23 MR. WILSON: I know we can with the photographs
24 with the exception of --

25 MR. HIXSON: The body picture.

1 MR. WILSON: Correct. As far as videos are
2 concerned, yes, once the sound to Paruchuri's video is
3 fixed, yes.

4 MR. HIXSON: That will speed it up quite a bit
5 then.

6 THE COURT: All right. What's next?

7 MR. WILSON: Next, I filed two motions.

8 MR. HIXSON: I'm handing Mr. Wilson a victim
9 impact statement, so the record reflects.

10 MR. WILSON: Two motions, and I'll start with
11 this one. It is my No. 8 on my little sheet that we
12 sent in -- well, let me do No. 7, Motion to Exclude
13 the Death Penalty that I filed back on April 22nd.
14 Your Honor, the basis for this is different than the
15 original motion we filed, which was that the death
16 penalty back, I think when the Court was first hearing
17 these motions, we did a motion to exclude death
18 penalty based on unconstitutionality under the
19 Eighth Amendment. This one is different. We are
20 actually in -- and I filed a brief, which I submitted
21 to the Court with that.

22 Your Honor, our argument is that the courts have
23 basically decided that the -- the supreme court has
24 decided that defendants under the age of 18, or 18 and
25 under, cannot be executed, and the reasoning is that

1 the maturity of the defendant under those
2 circumstances is such that his brain has not been
3 developed to the point that he can appreciate all of
4 the niceties of the wrongness that he is doing and
5 that we should treat them differently than we do
6 normal, regular adults.

7 And, again, in Roper they basically say the same
8 thing. In Roper the Court held that execution of
9 juvenile defendants violates the Eighth Amendment
10 because of the severity of the punishment was
11 dis-apportionment to the offender's diminished
12 personal responsibility for the crime, again, dealing
13 with the defendant's age.

14 When they set the age of 18, that was just an
15 arbitrary age. The reason it was set at 18 is that is
16 what the defendant in that case argued to the Court.
17 The defendant in that case was 17 years of age, but
18 they were arguing that it ought to be set at 18. So
19 the Court just said, okay, fine. When they issued the
20 opinion, they set it at age 18.

21 Since that time, we've learned a lot more --
22 because I think that is 2003 -- since that time, we
23 learned a lot more about the defendant's brain
24 development and how it affects them, especially with
25 juveniles. So now the thinking is that, really,

1 before you are 21, your brain is not fully developed
2 and that -- and that most states have not been
3 executing people who are -- who are 21 or under at the
4 time of their crime.

5 So what I'm arguing to the Court is that -- and,
6 again, there is no law saying this. I'm not
7 suggesting to the Court that I have some case that
8 says that this is correct. What I'm saying is that
9 this ought to be the new normal; instead of 18, it
10 should be 21. I think the information in our brief
11 supports that, and I would ask the Court to take
12 notice of the brief and to incorporate that in our
13 argument and make it part of the record for this
14 particular motion.

15 What we're simply saying is that when you look at
16 Jerome Jenkins, who was at the time 20 years old at
17 the time of the commission of this particular crime,
18 20 years and eight months, if I make no mistake, at
19 the time of the commission of the crime. If he had
20 been a year-and-a-half younger, he would not have been
21 eligible for the death penalty. But all of the -- all
22 of the scientists basically agree that the brain
23 development of a person who is 20 years old, and one
24 who is 17 years old or 18 years old is pretty much the
25 same. It is the same. There is no rational reason

1 that the age would be set at 18, and not at 21.

2 They give a lot of examples of we don't let
3 people smoke cigarettes until they get a certain age.
4 They don't drink liquor until a certain age, and all
5 of that, because the brain development occurs as you
6 get older. You know, my argument to the Court is that
7 -- that -- that this defendant, especially when you
8 look at the facts in his school records, which the
9 solicitor provided us with, I think his IQ was like 83
10 when they provided -- is what they provided to us. So
11 when you look at his age and you look at his level of
12 intelligence at the time, his IQ, you know, I just
13 think that the combination of those two things would
14 submit that -- we would submit that he ought not be
15 held to the death penalty.

16 In addition to that, if I remember correctly,
17 when you add to that the 82 or 83 IQ, and on top of
18 that, he was in special classes while he was in school
19 for a substantial period of time, we can argue all day
20 about maybe he got in there because he was bad or
21 maybe because he had some disability, ADD or ADHD,
22 whatever it is, he was still in these classes for kids
23 who have issues or who have problems. I think when
24 you combine all of those things together. But
25 primarily I'm concerned about the fact that he was

1 only 20 years old at the time, and that is what these
2 cases are seeming to say. I would ask the Court to
3 rule that because of his age, and because of his -- I
4 won't say diminished capacity, because that is not
5 what I'm arguing, but I'm arguing that the capacity is
6 simply diminished because he is not 21 years of age at
7 the time the crime occurred. So I ask the Court to
8 find that he is not eligible for the death penalty
9 even if we go through this trial and he is found
10 guilty of all of these charges and of the aggravating
11 factors that the State has offered.

12 MR. HIXSON: There is no question -- and I
13 appreciate Mr. Wilson's position and necessity to put
14 that argument on the record, but I think there is no
15 question that that is kind of a current trend inside
16 of juris prudence, and the country as well, but that
17 is not the law of the State of South Carolina.
18 Specifically Miller -- and I've done a bunch of Aiken
19 v. Buyers cases and so I understand those statutory
20 and the case law prescriptions on that, but that is
21 not present here. Here we have a 20-year-old adult at
22 the time of the offense. Under Title 16, it clearly
23 has been repeatedly affirmed as being Constitutional
24 and the structure is Constitutional. The narrowing
25 scope of those that are capable and subject to the

1 death penalty are appropriate, and it is not the law
2 of the State of South Carolina. It is appropriate in
3 this case. Perhaps in 20 years as this continues to
4 trend, perhaps Roper will be extended, but that is not
5 where we are right now, so we ask Your Honor to deny
6 that motion.

7 THE COURT: Anything else?

8 MR. WILSON: No, sir, not on that issue.

9 THE COURT: I find that the statutes have been in
10 place in this point in time and the case law relevant
11 as to these issues. I find that the death penalty
12 charge based upon Mr. Jenkins being the age of 20
13 years at the time of the alleged offense is eligible
14 to go forward and based upon the relevant case law the
15 statutes that are in place at this time.

16 MR. WILSON: Thank you, Your Honor.

17 THE COURT: Next issue.

18 MR. WILSON: Your Honor, the next issue is I
19 filed a motion again on April 22nd, a Notice of
20 Motion to find that South Carolina Code 16-3-20(b) is
21 un-Constitutional and allow the defendant to plead
22 guilty and be sentenced by a jury of his peers.

23 My motion there, Your Honor, is this. The
24 statute, I think, is un-Constitutional in the sense
25 that it does not allow a defendant his Constitutional

1 right to have a trial by jury on the sentencing of his
2 case if he elects to plead guilty to all of his
3 charges. So, ordinarily, when a defendant pleads
4 guilty to all of the charges, he is sentenced by the
5 Court. The judge would then sentence him according to
6 whatever the Court felt appropriate. In this
7 particular case, this is a bifurcated process, and
8 because it is bifurcated, my argument to the Court is
9 that it is two separate trials. Yes, it is
10 conditioned upon finding in the first phase of the
11 trial, that is the guilt phase before you get to the
12 sentencing phase, but our position is that the reason
13 it is un-Constitutional is if this defendant decides
14 he wants to plead guilty to all of the charges that is
15 against him, he can't do that and still have his right
16 to a jury trial on the sentencing phase of this issue.

17 Our position on that, Your Honor, is that it
18 takes away a Constitutional right for the Fifth and
19 Sixth Amendments and -- Fifth and Sixth Amendment
20 right of the defendant to have a fair and impartial
21 trial and by a jury of his peers, which is what he's
22 asking for.

23 Just so that we're clear, this defendant would
24 today plead guilty to all of the charges that the
25 State has against him. He is not denying any of the

1 charges. He would plead guilty to all of those
2 charges, but he's simply saying I want to be sentenced
3 by a jury, not by the Court. I have a right to have a
4 trial -- a sentencing trial by the jury as opposed to
5 a sentencing hearing in front of the judge, and he is
6 being deprived of that, and that is our argument, that
7 that is the Constitutional violation by him being
8 denied that opportunity to have a sentencing under the
9 statute.

10 The statute is very clear, I'm not arguing that
11 the statute is not clear, because it is very clear
12 that you can't do it, and that is why we are saying it
13 is un-Constitutional.

14 THE COURT: I thought there was a case that Judge
15 Clary tried years ago where this exact issue was
16 raised.

17 MR. HIXSON: I was not familiar with that.

18 THE COURT: Maybe my memory is not correct.

19 MR. HIXSON: You learn something new on all of
20 these. Pursuant to our earlier conversations, I
21 thought that the defendant could always plead on an
22 indictment without permission from the solicitor, but
23 Rule 14 specifically says that it requires the
24 permission of the solicitor to plead on an indictment.
25 I say that because Rule 14 triggers the requirement of

1 a waiver of a jury trial in order to do that. In
2 other words, you can't straddle the fence. You can't
3 plead and not waive your jury trial rights. So
4 implicit in the statute is Rule 14, us waiving and
5 allowing him to have sentencing by a jury and not
6 allowing him to waive his right to a jury trial, as
7 such we would not to do that. In other words, we
8 believe the statute is properly applied in this case.
9 We would not allow, under Rule 14, Mr. Jenkins to
10 plead on his indictment and not waive his jury trial
11 right, and so we would not do that, and as such, we
12 ask the Court to deny.

13 MR. WILSON: One last thing.

14 THE COURT: Sure.

15 MR. WILSON: I would say -- and I think that
16 makes my point even clearer, when the solicitor says
17 that if the statute requires that the State waive the
18 right to let the defendant plead to everything he is
19 charged with, that he has no right to walk into this
20 courtroom and plead guilty to every single charge he's
21 charged with. He's not asking for any special favors.
22 He's not asking for anything. He is saying I'm guilty
23 of everything you said I have done, and here I am.
24 I'm pleading guilty. The State is saying you can't
25 even do that because we have to agree to it. And

1 that, again, is why I'm saying that this has to be
2 constitutionally not permissible, for the State to
3 have the right to determine who can plead guilty.

4 THE COURT: You're mixing two rules.

5 MR. WILSON: Yes, sir, I agree.

6 THE COURT: The rule that Mr. Hixson is referring
7 to is -- what is it, 14?

8 MR. HIXSON: Yeah, Rule of Criminal Procedure 14.

9 THE COURT: So the two issues at play is Rule 14
10 and the statute?

11 MR. WILSON: Right.

12 MR. HIXSON: The death penalty statute.

13 THE COURT: Right. And so I understand what
14 Rule 14 says now. I'm telling you this, I mean, I
15 think if someone wants to plead guilty as indicted, I
16 don't take the position that the State can stop them,
17 okay. Because they are indicted, they have a right to
18 change their plea at any time they want to as to all
19 charges, but my issue is with the statute, and the
20 statute says that if you want to plead and you are
21 charged with death penalty offenses, then the judge
22 does the sentencing. And so I would not stop him from
23 pleading guilty if he wanted to plead guilty, and I
24 understand your issue, and I understand that you are
25 putting it on the record and why you are putting it on

1 record. But I think the only way to actually create
2 that record, to create that issue, is for him to plead
3 and for me to sentence him, for you to have it -- for
4 you to have it preserved for appeal; otherwise, I
5 think, you know, if he elects to not plead guilty,
6 then I'm not sure that the issue is even preserved.
7 But I certainly would not -- this Court -- if you all
8 said we're filling out the sentencing sheets, he's
9 pleading guilty to all charges and, you know, then I
10 don't know that Mr. Hixson would stop it. I'm not
11 saying he doesn't have a right, but I'm not saying
12 that the Solicitor's Office would even stop it.

13 MR. HIXSON: To clarify, it is simply a bad
14 analogy, but a double dip analogy in that the benefit
15 to the government, the state law enforcement, the
16 victims is a speedy adjudication of the issue. So to
17 have a guilty plea, but then go through three days of
18 jury qualifications to get to that point is why a
19 waiver of the jury trial rights is part of that
20 Rule 14 discussion. It is not that we want you to
21 keep you from accepting responsibility, it is, yeah, I
22 want to get rid of this because the evidence of guilt
23 appears to be overwhelming, but I want to go through
24 all of the effort of getting capital jury, and I think
25 that is what the statute and rule contemplates.

1 THE COURT: I'm not going to declare that statute
2 un-Constitutional. I believe it is Constitutional
3 based upon the framework of the United States
4 Constitution and the South Carolina Constitution. If
5 he wants to plea, I'm not going to stop him, but we're
6 not going to have a sentencing jury that is in place.
7 That statute could not be any clearer about that. It
8 is not confusing. It is not, you know -- if that is
9 something -- you know, I just think that the statute
10 is just as clear as it can be, you know. So I don't
11 know that he has a Constitutional right to a jury
12 trial on sentencing issues.

13 MR. WILSON: Thank you, Your Honor.

14 THE COURT: What else?

15 MR. WILSON: I think that covers my issues.

16 THE COURT: Did you think anymore about the 705
17 experts notes and underlying data; where did we make
18 it on that?

19 MR. WILSON: Judge, I went back and looked at the
20 rule again, and my position is still pretty much the
21 same, that he is entitled to it. I don't argue that.
22 The question is, when? My position is that when they
23 testify, and I don't -- especially since this is a
24 death penalty case, I'm -- unless the Court orders me
25 to do it, if you tell me I have to do it, I'm going to

1 do it, obviously. But my position is that otherwise
2 I'm not giving it to them until my experts are here to
3 testify.

4 THE COURT: All right. Mr. Hixson.

5 MR. HIXSON: I understand Mr. Wilson's position.
6 I want to make it clear that it is reversible error
7 for any Court to order a production of a defense
8 report, and we're not asking the Court. I know the
9 Court wouldn't do that, but having said that, I'll put
10 it out there, I don't believe I have -- I don't
11 believe the government has to recite the specific
12 aggravators that we're doing, but out of fairness,
13 we've done that. I don't believe for a second that
14 they are entitled to a victim impact statement, and I
15 just gave that to them.

16 We have three experts that we're doing, and I do
17 not have a scrap of paper what these three experts are
18 going to say until the second week of the trial, and
19 then I'm going to find out, like everyone else in this
20 room, what that person will say. So that is the issue
21 your Honor is aware of, and I'm beating a dead horse,
22 you understand what it is.

23 To some degree, I feel I'm entitled -- I just
24 filed reciprocal discovery reminder, just to make the
25 record clear related to it. I don't want to slow

1 anything down, but I'm going to get sandbagging with
2 three experts without a piece of paper. I know on the
3 last death penalty case in the cross-examination meant
4 they were specifically instructed not to produce
5 reports so there would be no access to
6 cross-examination materials, but that was a specific
7 strategy. I don't want to impugn anybody of that
8 strategy; in fact, it's a pretty effective strategy
9 because it makes them entirely impervious to stand up
10 there and swing blindly. We'll continue to request
11 whatever information Your Honor deems appropriate.

12 MR. WILSON: Your Honor, let me be fair and say
13 the solicitor is correct in the sense that he says he
14 has been, I think, more than fair with us. I'm not
15 complaining about that. Unfortunately, the State is
16 in a whole different position than the defense is, and
17 the State has a lot more power and authority in
18 dealing with these issues than does a defendant who is
19 fighting for his life at a trial. So I don't think
20 that the two are even comparable in any way,
21 whatsoever.

22 The fact that the State gives certain information
23 to us that they don't particularly have to give, but
24 they are doing it for a self-serving reason, and that
25 reason is that if they don't do it and it determines

1 that it is some kind of error that they haven't done
2 it, then the case comes back. So this defendant is in
3 a very different posture in the sense that he's going
4 on trial for his life, or death, and so for me to give
5 them everything that I have way in advance of my trial
6 and give them an opportunity to go through and beat it
7 to death before I get to even present it, I think that
8 puts him in an even worse place.

9 THE COURT: All right. And so I hear what the
10 rule says. Rule 705: The expert may testify in terms
11 of opinion or inference and give reasons, therefore,
12 without first testifying to the underlying facts or
13 data, unless the Court requires otherwise. The expert
14 may, in any event, be required to disclose the
15 underlying facts or data on cross-examination.

16 So how does that equate to you getting that data
17 early?

18 MR. HIXSON: It is a -- case law is a
19 functionality issue; in other words, very similar to
20 the rules of discovery, our specific rules of
21 discovery indicates I don't have to provide witness
22 statements or anything until that witness testifies.
23 I'm not aware of a single court in South Carolina that
24 has allowed that to happen in the past five years, so
25 the defense has an opportunity to conduct an

1 investigation on that.

2 THE COURT: You've never been to the Lexington
3 County CDV court. They hand you the witness statement
4 after the witness testifies.

5 MR. HIXSON: That is just the general idea.
6 There is no question this will preclude our ability to
7 have an expert review that information. There will be
8 no opportunity for us to retain an expert to look at
9 whatever we get, if we get anything, in order to have
10 another psychiatrist challenge those findings to
11 preclude that. And it is under Rule 5 reciprocal
12 discovery. It is not just Rule 705. Is that
13 information discoverable under Rule 5, under that
14 reciprocal portion. I provided our notice -- I think
15 I actually took it back, gave it back to Natalie.

16 THE COURT: You did. You provided it yesterday.

17 MR. HIXSON: But revoking reciprocal discovery,
18 in essence, and the 705 motion is just focused on that
19 type of information. We're not asking for their
20 investigator's notes or mitigation specialist's notes,
21 unless they'll testify, and that type of information.

22 (A brief pause in the proceedings.)

23 THE COURT: Are these experts medical experts?

24 MR. WILSON: Yes, sir. Two of them are
25 psychiatrists, neuropsychiatrists, and the third is a

1 social history historian, social worker expert who is
2 a psychologist.

3 Your Honor, I'm not committing that I'm calling
4 all three.

5 THE COURT: I understand. I wasn't asking you to
6 commit to calling all three.

7 MR. WILSON: Your Honor, just for clarification
8 purposes, I stand corrected. I said two
9 psychiatrists. I have two psychologists and a
10 psychiatrist. A social historian psychologist and a
11 neuropsychiatrist.

12 THE COURT: How do you get around Rule 5(b) where
13 you have to give over a copy of the mental
14 examinations? That is what these people are doing.
15 It says: On request of the prosecution, the defense
16 shall permit the prosecution to inspect and copy any
17 results or reports of physical or mental examinations
18 and of scientific tests or experiments made in
19 connection with the case within the possession or
20 control of the defendant which you intend to introduce
21 as evidence -- in evidence in chief at the trial or
22 prepared by a witness whom the defendant intends to
23 call at trial when the results or the reports relate
24 to his testimony?

25 MR. WILSON: And as I said, I don't have any

1 reports, and I've been very clear. I do not have any
2 reports. None have been generated, to my knowledge.
3 But what I'm willing to do, and I said this yesterday,
4 when we were here --

5 THE COURT: It says: Copy any results or
6 reports.

7 MR. WILSON: I don't have any -- well, results.

8 THE COURT: How are your people going to testify
9 to something if they haven't drawn a result?

10 MR. WILSON: Well, I mean, that is a little
11 different --

12 THE COURT: I mean, I understand the whole idea
13 that the defense attorney tells the expert don't ever
14 do a report because we'll have to turn it over. But,
15 I mean, you intend to introduce these people as
16 evidence in the case that are going to come in here
17 and testify to their results of the examination that
18 they did of the defendant.

19 MR. WILSON: That is correct, yes, sir.

20 THE COURT: But you don't want to tell anyone
21 what any of it is, nor do you want to identify
22 anything that they base their decisions on.

23 MR. WILSON: What I am -- Your Honor, what I
24 am -- and this is where I was going with this.
25 Yesterday, I said that I would be more than willing to

1 make them available to the solicitor. Now, who is
2 going to pay for it, because I don't have any funds
3 left to pay for it, but if he wants to sit down with
4 them before trial and talk to them, I have absolutely
5 no objections to that, and he can ask anything he
6 wants to ask them.

7 MR. HIXSON: That is always the situation. We
8 can't prevent access to either witness. We always do
9 that. I found out yesterday when they gave us the CV
10 who they were. I just found out yesterday. That is
11 not complying by any rule, we always have access to
12 each other's witnesses, whether they will be
13 responsive to us is a different story.

14 MR. WILSON: They will be responsive.

15 MR. HIXSON: That is not a normal litigation
16 practice. That is entirely outside the scope of
17 reciprocal discovery and 705. And the reason I'm
18 asking about 705 is because we certainly know that no
19 report has been generated, and that is an expectation
20 we'll get. That is why you go after the underlying
21 data, because that does exist. I know they are saying
22 don't write a report, don't write a report, but there
23 is volumes of data that has been generated that they
24 created a non-existent report for, and that is what
25 the motion goes at. That exists. The report will not

1 exist. They will testify without a report and I'll
2 cross on why they don't have a report, because it is a
3 litigation strategy, but that is why the underlying
4 data does exist.

5 THE COURT: I'm not trying to make you answer a
6 question in the void, I don't know what I don't know,
7 right, but what do you envision this underlying data
8 is?

9 MR. HIXSON: For example -- I'll get right at it.
10 The volumes of mental health care, documents that have
11 been generated that we have provided shows two years
12 of discussions with Mr. Jenkins concerning his mental
13 capacity and no -- no indication of mental disease or
14 defect of any kind. No necessity for psychotropic
15 medications, nothing.

16 After Mr. Daniels, on February 3 of -- that Your
17 Honor presided over, based on his mental condition,
18 took the intellectual disability when barred with a
19 death penalty is an appropriate sentence and
20 appropriate ruling, from that point on, you see a
21 concerted effort of trying to establish psychiatric
22 difficulty through the documents that are generated.
23 If it is the case -- at some point in time, a
24 psychiatrist, one of three, sat up there and say he
25 has an undiagnosed mental disease or defect since he

1 was five years old, it is unsupported by any document.
2 I want to see what document they have to come up with
3 that diagnosis, because it doesn't exist in anything
4 I've seen up until February when a sample trial of
5 Geodon was introduced. We're all very thankful that
6 Mr. Jenkins is doing well, but I want -- where did you
7 get that? That looks like a litigation drug effort,
8 not like mental health treatment. I won't be able to
9 know that until I know why that doctor made that
10 decision. I know what they'll say, and they're right,
11 he demonstrated a tremendous adaptability to prison
12 life because there are no disciplinaries from the time
13 of coming to J. Reuben, getting Geodon and moving
14 forward. But there is no clinical indication that he
15 needed it for the first 23 years.

16 MR. WILSON: Your Honor, the information that he
17 is requesting is already within the State's grasp.
18 The doctor at SCDC is the one who put Jerome Jenkins
19 on this medication, not my doctors, not the people
20 that I'm calling as witnesses. He was placed on this
21 medication by their doctors at SCDC.

22 MR. HIXSON: Correct.

23 MR. WILSON: So those records are readily
24 available without any doubt. Why they put him on
25 there, why their doctor decided that Jerome needed to

1 be on medication, I don't know the answer to it, but
2 the solicitor has those records, or at least they are
3 available to him without a question.

4 MR. HIXSON: I have a way of discerning. If
5 their doctor establishes the fact that they relied on
6 the SCDC records, and where their diagnosis is now and
7 they acknowledge that I relied on those records in
8 formulating my opinion, then I have the underlying
9 records. But I have to know that to cross them on
10 that. If they tell me, yes, I looked at all of the
11 records and every SCDC document that I gave the
12 defense, and that is part of what I used to formulate
13 my opinion, then we get there. But if they say I'm
14 not telling you what I relied on, I can't cross him on
15 anything other than the curriculum vitae. They have
16 to establish they reasonably relied on them.
17 Especially in a death penalty context, I just can't
18 swing around on crossing, you know, did you rely on
19 these, or not.

20 MR. WILSON: I'm a little confused, but my
21 understanding was that he was concerned about how
22 Jerome Jenkins got on medication --

23 THE COURT: That is just an example. That was
24 just an example, right? That wasn't the issue?

25 MR. HIXSON: Certainly should be one of them,

1 but.

2 THE COURT: His issue is, in theory, there is
3 going to be at least one, if not three, medical
4 experts who you all will ask me to qualify as an
5 expert in whatever specialty they are in that will
6 come up here and have formulated an opinion that
7 basically -- I don't even know what they'll say, but
8 they'll say X. That X, whatever X is, based upon the
9 data, it's based upon facts, it is based upon things
10 they reviewed, people they talked to, whatever it may
11 be, you know. If the only thing that they relied on
12 to formulate that opinion is what the State is giving
13 you in discovery, then that is one thing. But if they
14 are relying on data and information that the State
15 doesn't know about, then how is the State able to
16 cross-examine them on that or be prepared for that?

17 MR. WILSON: And what I have offered -- what I
18 have suggested is that I make them available to him.
19 He gets to ask them what they based their opinion on
20 and what their opinions are. I mean, I'm not trying
21 to keep him from doing that.

22 What they are suggesting is that I have some
23 responsibility prior to them testifying to turning
24 over every document or piece of data that they used in
25 order to come up with their opinions, and what I'm

1 saying is I'm not comfortable doing that. What I'm
2 more comfortable doing is making them available to him
3 next week, Monday or Tuesday next week, as soon as I
4 can get in touch with them and find out when they are
5 available. I will say to them answer any questions
6 that the solicitor has. I don't know what else to do.

7 MR. HIXSON: I'm just asking that Rule 5 be
8 enforced, that is it. I'm not asking for anything
9 special. I'm not asking for defense strategy. I'm
10 not -- even if they compiled a list on what they
11 relied on so I can acquire the documents myself. I'm
12 not climbing into their offices. Me being able to
13 interview a witness is a -- we're allowed to. I can't
14 keep him from that. That is meaningless. I need to
15 know what you said, because they are not going to give
16 me a laundry list of stuff when I interview them. I'm
17 going to hear HIPAA. You can assume that if the
18 defense is going to call them, that they are going to
19 be favorable to the defendant. We can all assume
20 that.

21 Normally, in a -- for instance, let's say SLED
22 does a report. You will see a list of the items that
23 were viewed that the expert relied on in reviewing
24 that opinion, that is contained in that report. That
25 is how defense counsel is able to identify and retain

1 their own experts.

2 THE COURT: The normal example is in a sex case,
3 one of these guys who is a sex doctor says I
4 administered these five tests, these are the basis for
5 these five tests and these are the five studies that
6 goes with these five tests and these are the five
7 results I got from the five tests, so everyone knows
8 what they are using as a measuring guide.

9 MR. HIXSON: That's right.

10 THE COURT: And you can either attack the
11 measuring guide or not for the test so that the guy
12 formulates his opinion and says this guy is an issue,
13 or this guy is not an issue.

14 MR. HIXSON: Exactly right.

15 THE COURT: All of that is discoverable, both
16 sides of the fence.

17 MR. HIXSON: That's right. The main thrust I
18 wasn't --

19 THE COURT: No one knows what it is in this case
20 because there is no reports. They won't do a report.
21 No one is going to make them do a report, but -- all
22 right, here is what I want to happen. I want a
23 meeting set up next week with the experts and the
24 State. I'm going to leave this motion open at this
25 point in time. If based upon that meeting you are not

1 satisfied that they are communicating with you or
2 giving you that information -- you may go into that
3 meeting and walk out and say I know what I need to
4 know and it may be a dead issue. If it is not a moot
5 issue after that meeting, then I will rule on it.
6 I'll rule on that issue so that -- one way or other.
7 But I think the cleanest way to start with it is let's
8 do a meeting next week where the experts are
9 available. I'll authorize whatever I need to
10 authorize for that meeting to occur, and let's see
11 where you take it. If you hit a roadblock, that will
12 be one of the first things I deal with, or next thing
13 I deal with in the process of this case. If you don't
14 hit a roadblock, that is fine, too.

15 MR. HIXSON: Thank you, Your Honor.

16 THE COURT: But, you know, I don't know that they
17 gain anything by walking in here and tell you -- I
18 think it makes them look bad on the witness stand.
19 You say we tried to meet with you and you looked at us
20 like we had three heads. So let's see where we meet
21 it with a meeting and we'll go from there.

22 All right. What else?

23 MR. WILSON: That completes my questions.

24 THE COURT: Let's talk about jurors. Do we have
25 lists?

1 THE CLERK: Yes, sir.

2 THE COURT: Does everyone have a copy of the
3 list?

4 THE CLERK: Yes, sir. That is the list that is
5 left.

6 THE COURT: This is who is left?

7 THE CLERK: Yes, sir.

8 THE COURT: Does everyone have this?

9 MR. HIXSON: Yes, sir.

10 MR. WILSON: Your Honor, could the defendant run
11 to the restroom for a minute?

12 THE COURT: Sure.

13 (A recess was taken.)

14 MR. HIXSON: There may be evidence in the clerk's
15 office that may have to be transferred, and we're
16 drafting an order. Hopefully you can sign it before
17 you leave.

18 THE COURT: Have you looked at the physical
19 evidence?

20 MR. WILSON: Yes, sir.

21 THE COURT: So you had an opportunity to go over
22 it or see it?

23 MR. WILSON: No, we just saw the DVD.

24 THE COURT: I don't remember if there is physical
25 evidence, but.

1 MR. HIXSON: There is not a whole lot.

2 MR. WILSON: We can go out to the jail next week.

3 THE COURT: Yeah. I just wanted to make sure you
4 have time to physically set eyes on it, or if you need
5 any experts or whatever, let's do that, too.

6 MR. HIXSON: Mr. Wilson gave me back the victim
7 impact file. Are you satisfied?

8 MR. WILSON: (Nods head.)

9 THE COURT: This list with the red and yellow,
10 that is the list of what?

11 THE CLERK: This is a list, Your Honor, of the
12 jurors that will be here on Monday.

13 THE COURT: Allegedly.

14 THE CLERK: Yes, sir. So we have 171, but I
15 believe that several of them, once they get here, are
16 going to ask you to excuse them.

17 THE COURT: And so everybody has a copy of this
18 list?

19 MR. WILSON: Yes, sir.

20 THE COURT: Does everyone have any issues with
21 anyone on this list that we need to take up now?

22 THE CLERK: Your Honor, the only one I'm real
23 concerned about is Juror No. 141. He has an ulcer on
24 his foot, diabetic ulcer, and the doctors told him to
25 stay off that foot. He informed my staff that he

1 would not be here, that he was afraid to be here, that
2 he felt he needed to take the doctor's suggestion.

3 THE COURT: Do we have anything from the doctor
4 at this point?

5 THE CLERK: We do not.

6 THE COURT: Okay. So at this point in time, your
7 office needs to inform him that he either shows up on
8 Monday, or I'm going to send a deputy to have him
9 picked up and brought to the courthouse.

10 THE CLERK: We have informed him of that.

11 THE COURT: Oh, there is a letter from the
12 doctor. There is a letter from Walker Family Care in
13 Little River, South Carolina. There is a letter dated
14 April 16th, 2019 about ten days ago. It says he is
15 a licensed physician. He is currently under my care
16 for uncontrolled diabetes and a diabetic foot ulcer.
17 He is currently being treated at a wound center for
18 his foot ulcer. He is unable to walk long distances
19 or sit for extended periods of time. It is my medical
20 opinion he is unable to serve on jury duty. Signed by
21 Dr. Walker, medical doctor.

22 What is the State's thought?

23 MR. HIXSON: I'm okay to excuse him. I think
24 he's going to get struck when he gets here.

25 MR. WILSON: I'm okay with that, too.

1 THE COURT: So we'll excuse 141.

2 Anyone else on here that we have major issues
3 with?

4 THE CLERK: 128 has a doctor's excuse for a
5 neurological condition. I believe she has MS.

6 THE COURT: All right. Can you pull that up?
7 128, Grassi. You need to tell her to come in; we
8 don't have a note. We can deal with her when she's
9 here.

10 THE CLERK: And then Juror No. 81, she's actually
11 in Missouri with her military husband who is stationed
12 there. She did send in plane tickets where she went
13 there, I believe in March, so in order to be here
14 she's going to have to fly back in.

15 THE COURT: Okay. And the defense wants her to
16 appear?

17 MR. WILSON: I looked at that one when the clerk
18 sent me the list. She's been there since March. I
19 don't have a good reason, though, that I can give you
20 for saying she shouldn't be here; that is my concern.
21 I mean, I understand that she's got to get a ticket,
22 but I don't know that if that's going to be enough
23 when I'm being reviewed a year from now.

24 THE COURT: Yeah, I think she's got to be here.
25 She's got a car, she can drive. If she doesn't show,

1 I don't know that I'm sending the deputy to Missouri,
2 but at this point in time, let's tell her she needs to
3 show up.

4 What else?

5 Okay. Everybody has the questionnaires on these
6 people who filled out questionnaires; is that right?

7 MR. WILSON: Yes, sir. Yes, sir.

8 MR. HIXSON: Yes, sir.

9 THE COURT: Do we have people on the list that
10 did not fill out their questionnaires?

11 THE CLERK: So the only ones we have are the ones
12 that are marked, I believe, in red that says "no
13 response."

14 THE COURT: That means we got no response at all?

15 THE CLERK: That's correct. There were a number
16 who were 65 years old or older at this point, and I
17 have asked that the deputies go back out and try to
18 find them just to get them -- to say whether or not
19 they want to serve. So we're still in the process of
20 that at this time, Your Honor. But I assume that
21 because they were over the age of 65, that they
22 probably didn't want to serve and that was the reason
23 they did not return it.

24 THE COURT: Okay. Yes, sir, Mr. Hixson.

25 MR. HIXSON: I'm trying to get down to what we

1 believe the core numbers are. So in the second
2 column, I guess, notations, for instance, I don't know
3 that we need to spend a lot of time on them, just kind
4 of go through them. For instance, 11 for employed,
5 another term; 15 for child, stay-at-home. That is a
6 specific exemption, I don't know that we have to go
7 through them or excuse them, but whittle some of those
8 down.

9 Do you think there are 45 or so that have things
10 besides that that would substantially cut down the
11 work or number we're expecting to see, if that makes
12 sense?

13 THE CLERK: When I looked up all of those
14 yesterday, I came up with 121 jurors left.

15 MR. HIXSON: Okay.

16 THE COURT: No. 56 it says he has a burglary
17 first offense.

18 MR. HIXSON: That is what the NCIC report showed,
19 which would be a disqualifier.

20 THE COURT: Have you reviewed that, Mr. Wilson?

21 MR. WILSON: Yes, sir. What happened when I
22 looked at it, Your Honor, was that I wasn't sure that
23 it was actually a conviction. I knew that he had that
24 charge. I didn't -- I wasn't clear that it was
25 actually a conviction.

1 THE COURT: Okay. That's fine. That's fine. So
2 you think taking each of these people in -- what I'll
3 call the "middle column" -- that puts us at 121?

4 THE CLERK: That's correct.

5 THE COURT: Ballpark.

6 THE CLERK: Yes, sir.

7 THE COURT: Now, we have some jurors that are --
8 request not be here on Monday, and as opposed to just
9 excusing them, I'm having them come in on Tuesday.
10 When those people get here, I'll go through the
11 general qualifications questions with them in whatever
12 group of people that is. Because I didn't want to
13 just -- I know it's going to take a few days. I just
14 didn't want to get rid of all of them. We will -- my
15 question is how many people is that, that is showing
16 up on Tuesday?

17 THE CLERK: Two of them and one of them is an
18 attorney, so he already knows the routine of it.

19 THE COURT: So let's take those two people -- say
20 I determine that both of them are qualified, how are
21 we going to put them in the panels; that's my question
22 that I literally just thought of?

23 MR. HIXSON: So as long as you guys are not
24 objectionable, because I can't change it, but we can
25 put them at the end.

1 THE COURT: Put them at the end.

2 MS. WILLIAMS: Yes, sir. We can put them at the
3 end.

4 THE CLERK: To tell you the truth, Your Honor,
5 they are all random pulls. Even when I pull the four
6 or five, or however many you tell me to pull, and I
7 put everyone else back in, the next five -- for an
8 example, just to tell you how that works, if I pull a
9 panel of 35 for a judge and say I find an error in it
10 and I ask my people to pull them again, take one
11 person out, I don't get the same 34 plus one. It is a
12 whole different 35.

13 MR. HIXSON: Yeah, the only issue is that -- in
14 consenting to it, it is great because the entire panel
15 will be set up before they show up the next morning,
16 unless we want to get up with them Monday afternoon.

17 THE COURT: Monday morning -- we're going to make
18 up numbers. So let's say 120 people show up Monday
19 morning, and for whatever magical reason, all 120 I
20 determine are qualified. So at that point in time,
21 we'll have to take 120 and randomly turn them into
22 groups of four and then we'll have to be able to tell
23 them before they leave on Monday when they are coming
24 back.

25 THE CLERK: I understand.

1 THE COURT: You with me? So we're going to have
2 to say give me four people randomly outside of 120.
3 I'm making this up, but they'll be Group 1 at
4 11 o'clock. Give me another four random people, they
5 will come back at 12:00; another four people, they
6 will come back at 1 o'clock; another four people until
7 we get all the way to the end of that. We're going to
8 have to be -- so when they leave Monday morning, they
9 are going to know, you know, my name is Robert hood
10 and I'm coming back Tuesday at 2 o'clock. I'm going
11 to send them home, but we have to be able to create
12 all of those groups Monday morning to tell them you
13 are coming back at 2 o'clock today, you are coming
14 back at 9:30 tomorrow morning, you are Wednesday at
15 noon. We'll send everybody home except the people in
16 the first group and start that process; does that make
17 sense?

18 THE CLERK: Yes, sir.

19 THE COURT: So if the two people that show up
20 Tuesday morning, if I determine that they are
21 generally qualified, then we're just going to pack
22 them into the last group; that is okay?

23 MR. WILSON: Yes, sir.

24 THE COURT: And we'll do that in random order.
25 So you'll put both names in a hat, and then we'll draw

1 out of the hat which ones go first and which ones go
2 second; is that okay?

3 MS. WILLIAMS: Yes, sir.

4 THE COURT: Is that okay?

5 MR. HIXSON: Perfect.

6 THE COURT: So we need to be set up Monday to
7 take whatever number we end up with and turn them into
8 groups of four randomly.

9 THE CLERK: What if it is a multiple of four?

10 THE COURT: Do groups of four, and whatever the
11 last one is, the last one is, yeah. I mean, if it is
12 one, that's fine. We'll make all of that work. It's
13 not going to be -- timing of each group is not going
14 to be an exact science. Some will take a little
15 longer than others, and some will go quicker. We're
16 trying to create a framework to keep them from just
17 sitting up here while we're doing all of that; make
18 sense?

19 THE CLERK: Yes, sir.

20 THE COURT: So if it doesn't work out, that's
21 perfectly fine, whatever is in the last group.

22 MR. HIXSON: Does the Court anticipate starting
23 the panels sometime in the afternoon?

24 THE COURT: Yeah. Yeah. I mean, I'd like to
25 start them. The sooner we can start them, the better,

1 yeah. I mean, I like to get in here Monday morning,
2 call the case, get them qualified and then, you know,
3 jump into it.

4 MR. HIXSON: If that happens during a lunch
5 break, then that is the perfect time to get the panels
6 set, you know, a little bit -- you know, give you an
7 hour to get stuff before printing panels out.

8 THE COURT: And I will want the jury
9 qualifications. We need a court reporter for that.

10 COURT REPORTER: Yeah, okay.

11 THE COURT: What else?

12 THE CLERK: How often will we have them?

13 THE COURT: We're still investigating that in our
14 heads.

15 MR. HIXSON: I would love to see an hour a piece,
16 but I know Ralph would like an hour for each person.

17 THE CLERK: Each person?

18 MR. HIXSON: I'm exaggerating, but that is a fun
19 issue. It is up to the Court to consider, but we
20 provided some voir dire language for the Court to do
21 that. We certainly ask that Your Honor develop and
22 ask a lot of those. We'll provide sample language
23 and, of course, Mr. Wilson has to have a discussion
24 and certainly wants one. The more you ask, the less
25 we ask.

1 THE COURT: So there is a cheat sheet somewhere?

2 (A brief pause in the proceedings.)

3 MR. WILSON: Can we address 296.

4 THE CLERK: He's getting married. I said to him
5 that he needed hotel reservations.

6 MS. WILLIAMS: Because his fiancée worked at the
7 police. He was getting married.

8 THE COURT: He's getting married? He might want
9 to be here (laughing). Has he provided the details of
10 the trip?

11 THE CLERK: He hasn't given me the details of the
12 trip. He sent me the wedding invitation, but has not
13 sent the --

14 THE COURT: Tell him he needs to give the details
15 of the trip or he'll show up.

16 THE CLERK: I did.

17 THE COURT: Maybe he hasn't planned one
18 (laughing). Not good.

19 (A brief pause in the proceedings.)

20 THE COURT: Have you all given me the questions
21 you want me to ask?

22 MR. WILSON: Not yet, no, sir.

23 MR. HIXSON: I provided some just out of the
24 State of South Carolina Trial Notebook the standard.
25 I can make copies. They are not specific to this,

1 but.

2 THE COURT: Just re-email a copy.

3 MR. WILSON: I'll get you mine.

4 THE COURT: I think I have about three different
5 versions right now.

6 MR. WILSON: I think we sent some, but they were
7 early on. I'll go back and send them to you.

8 THE COURT: Do we have the sheet for the jurors,
9 which type, A, B or C?

10 MR. HIXSON: I was trying to pull from the
11 Cottrell case which was upheld, and show Mr. Wilson
12 and he can agree.

13 MR. WILSON: I drafted three questions, but I
14 will submit those to you, Your Honor, on Monday.

15 THE COURT: So you all are going to send me
16 drafts of what you want me to ask them and the
17 questions?

18 MR. WILSON: Yes, sir.

19 THE COURT: What else?

20 MR. HIXSON: Nothing is coming to mind.

21 THE COURT: So the charges on the guilty phase is
22 attempted murder, murder and armed robbery?

23 MR. HIXSON: And possession of a weapon, and I'm
24 not a fan of that so I probably won't call that.

25 THE COURT: Okay. All right. Anything else from

1 the defense that we need to take up right now?

2 MR. WILSON: No, sir.

3 THE COURT: From the State?

4 MR. HIXSON: No, Your Honor.

5 THE COURT: Okay. So here is my schedule for
6 next week, just so you all know if something comes up,
7 I'll be back here Monday, because I'm speaking at the
8 Clerks of Court Conference, although I don't know what
9 I'm saying. Tuesday I will be in the office.
10 Wednesday every judge in the state has a mandatory
11 judicial CLE, so I will be out of the office from
12 Wednesday to Friday. So if you need me between
13 Wednesday and Friday, e-mail the law clerk and she can
14 find me and we can deal with whatever we need to deal
15 with if we have something come up specifically next
16 week. Tuesday I will be in and around the office.
17 Monday I'll be down here to speak at that conference,
18 and then Wednesday through Friday I'll be out of the
19 office, but if something comes up you'll be able to
20 find me.

21 MR. HIXSON: If we can transfer the exhibits from
22 the Daniels trial into this, we have a proposed draft
23 order. We haven't listed the exhibits yet, but.

24 THE CLERK: I'm trying to get the exhibit list
25 and it's not letting me, but as soon as I can get it

1 printed out.

2 THE COURT: Okay. Let me sign it and they can
3 fill it out later. You okay with those exhibits being
4 released?

5 MR. WILSON: Yes, sir.

6 THE COURT: I'll sign this order so we don't have
7 to worry about me signing it next week, and you can
8 get together and go through what you want and what you
9 don't want, and just attach it on the back of that;
10 does that make sense?

11 MR. HIXSON: Yes, sir.

12 THE COURT: So, yeah, I have some -- there it is.
13 I told you it existed (laughing). So I have some
14 potential voir dire questions from the Court, so you
15 all e-mail what you all have, and then I'll e-mail you
16 what I have. I have what I call a cheat sheet. We
17 can put our heads together and you can all look at it
18 next week and think about it; is that okay?

19 MR. WILSON: Yes, sir.

20 THE COURT: Okay. Anything else?

21 MR. HIXSON: No, sir.

22 THE COURT: All right. Thank you very much.

23 (Whereupon the proceedings concluded.)
24

25 CERTIFICATE OF REPORTER

1 State of South Carolina)
2 County of Horry)

 ORIGINAL

3
4 I, Natalie Dahl, Official Court Reporter for the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate and complete Transcript
7 of Record of the proceedings had and evidence
8 introduced in the trial of the captioned case,
9 relative to appeal, in the Court of General Sessions
10 for Horry County, South Carolina, on the 25th through
11 26th days of April, 2019.

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

14

15 September 26, 2019

16

17



18

Natalie Dahl, RPR

19

Court Reporter

20

21

22

23

24

25

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Horry	)	2015-GS-26-01758
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JEROME JENKINS,	)	
	)	
DEFENDANT,	)	

July 8, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

SCOTT HIXSON, SOLICITOR
Attorney for the State

BRANA WILLIAMS, ESQ.
RALPH WILSON, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. Good morning. We're on the
2 record in the State of South Carolina vs. Jerome Jenkins,
3 Jr., case number 2015-GS-26-01758. This is an Horry
4 County case out of the 15th Judicial Circuit, and we're
5 here for post-trial motions filed by the defense in May
6 of 2019. And Mr. Hixson is here representing the
7 Solicitor's Office. Mr. Wilson and Ms. Williams are here
8 representing Mr. Jenkins, who is also present with us
9 today. And Mr. Wilson.

10 MR. WILSON: Yes, sir.

11 THE COURT: Ready to go forward?

12 MR. WILSON: Yes, sir, I am, Your Honor.

13 THE COURT: Okay.

14 MR. WILSON: Your Honor, may it please the Court. I
15 knew at the trial, at the end of the trial, I actually did
16 talk about these issues.

17 I don't know that I went in-depth as far as I
18 probably should have with the motion about the
19 dis-proportionality of the defendant's death sentence as
20 opposed to other sentences that have been imposed for
21 similar crimes.

22 And so in order to, I guess, correct that or at least
23 to add to that, I decided to file this motion and raise
24 these issues in writing and then submit them to the Court.

25 THE COURT: Okay.

1 MR. WILSON: And so that's what we're doing.

2 THE COURT: Great.

3 MR. WILSON: And, Your Honor, let me start by saying
4 that as I understand it, the Court in reviewing death
5 sentences looked at it in terms of those sentences
6 which -- where the death sentence has been issued and
7 compare those to the death sentence that's been set as far
8 as this particular defendant is concerned, and then make a
9 judgment call as to whether or not they are
10 disproportionate as a penalty or not.

11 And our opposition to that is that the Court should
12 consider not just those sentences where a death sentence
13 has been imposed in making that dis-proportionality
14 observation, but the Court should also consider those life
15 sentences that have been given in factual situations which
16 are similar to that that the defendant has been charged
17 and convicted of.

18 In our brief and motion, we actually cited several
19 cases for the Court's consumption in that regard, and more
20 specifically, I would like to talk about the sentences
21 that were imposed on the codefendants with the defendant
22 because I think that those are good and clear examples of
23 why the defendant's sentence is disproportionate in
24 regards to the other sentences which have been imposed in
25 this particular case, for instance.

1 And I'll with James Daniels, who is 30 some years of
2 age at the time that these crimes occurred, while the
3 defendant is only -- was actually 20, hadn't even reached
4 his 21st birthday yet at that particular time.

5 And James Daniels had a substantial criminal history
6 in addition to his age being almost ten years older than
7 the defendant, more than ten years older than the
8 defendant, had an extensive prior criminal history coming
9 into this. James Daniels was given -- or received a life
10 sentence from the Court.

11 The other brother, the other Daniels brother received
12 a 45-year sentence. He was also, I think, six years older
13 than the defendant, had an extensive prior criminal record
14 in addition to that.

15 Now, the dis-proportionality, I think, comes in when
16 you look at the fact that all three of these individuals
17 are accused of exactly the same crimes. The difference
18 between them are really the ages and the criminal
19 histories, which are substantially more extensive on the
20 side of the Daniels brothers than they are on Jerome
21 Jenkins.

22 So my position would be that when you look at those
23 things that his sentence in this case would be
24 disproportionate to -- certainly, to theirs and
25 disproportionate to other defendants who were similarly

1 situated who did not receive the death penalty.

2 I'll give you another example. Right now, I have a
3 case that I'm scheduled to try in August in Horry County
4 where the defendant's accused of having killed two people.
5 Their mother -- grandmother and step-grandfather were both
6 murdered by the granddaughter.

7 The granddaughter had been offered 60 years. And not
8 only did they murder them, they stole their vehicle, drove
9 it, took their debit cards, went and depleted their funds
10 that they had in their bank accounts. And all these
11 things happened, but the State did not seek the death
12 penalty. In fact, has offered them a 60-year sentence.

13 I'm not saying they're going to take it or not. My
14 point simply is, that that's no more egregious in
15 proportionality than what has happened to Jerome Jenkins.

16 And when you look through the motion that we filed,
17 you'll see multiple examples of that, where the State
18 either gave the defendants -- where there were multiple
19 murderers, the State gave the defendants the opportunity
20 to plead to a lesser charge or gave them a sentence which
21 is life or less.

22 I would submit to the Court that that was never
23 offered to Jerome Jenkins, so he never had an opportunity
24 to accept or reject that because that was never made
25 available to him.

1 I think that's the whole purpose behind the
2 proportionality review, to make sure that these things
3 that are not appropriate considerations don't take control
4 of the case and cause a defendant to get a death sentence
5 when otherwise he might not, such things as maybe race,
6 age, mentality, all those things that we don't normally
7 just look at, but that sometimes the State might take into
8 consideration in whether they seek the death penalty or
9 not, which makes it disproportionate for that particular
10 defendant simply because of those various factors that
11 they may or may not have considered in deciding to seek
12 the death penalty. So I think that's the whole idea
13 behind the whole proportionality review.

14 So I would ask the Court -- what I'm asking the Court
15 to do is not just consider his sentence in light of his
16 codefendants, but also in light of other similarly
17 situated defendants who have not received the death
18 penalty, and not just look at those people who have
19 received it and say okay, well, this person committed five
20 murders, he got it. He committed two murders, he got it.
21 So it's proportionate.

22 Well, I'm saying I think that the review ought to be
23 a step beyond and that we really ought to be considering
24 not just those people who have been convicted and received
25 a death sentence, but those that are listed in this motion

1 where they have not received it and where the codefendants
2 in this particular case have not received it. And I
3 think -- when I talk about the codefendants, I
4 specifically believe, Your Honor, that that is one of the
5 glaring things that I think makes this case
6 disproportionate.

7 In South Carolina, we have the hand of one, hand of
8 all. And based on that law, it's our understanding that
9 all defendants are treated equally.

10 Now, yes, you have some discretion as to whether or
11 not what their role was in the hand of one and whether or
12 not you're going to -- how you're going to sentence them.
13 My point, though, is that when we're under the hand of
14 one, hand of all, everybody is equally guilty. And that's
15 what we tell the jurors and that's what we tell
16 defendants, that you are equally guilty if you come under
17 the hand of one, hand of all.

18 Well, the codefendants certainly come under that
19 rule. The Daniels brother both come under that rule
20 without question. And there's no question that their
21 sentences are substantially, substantially less than this
22 defendant's, which received the ultimate penalty. There
23 is no more egregious penalty, there is no more serious
24 penalty in our law than that of the death penalty. That's
25 what he got for his role in this, but then the

1 codefendants who were accomplices from start to finish, in
2 fact, based on all the facts and circumstances, brought
3 him into all of this with them, even though he certainly
4 participated based on the findings of the jury. My point
5 simply is that his sentence is disproportionate not just
6 to the codefendants, but it's disproportionate to other
7 sentences of other defendants who are similarly situated.
8 And as I pointed out to you, the case that I'm working on
9 right now which is scheduled for trial in August, but the
10 worst case scenario for those people -- and there are two
11 defendants in that, I represent one of them. The worst
12 case scenario is life imprisonment. That's the worst case
13 scenario.

14 And they committed two murderers, killed two people,
15 you know, robbed them, took their vehicles and then took
16 their credit cards and started using those credit cards to
17 deplete their bank account.

18 So my point is that there ought to be -- which is why
19 this whole thing with the death penalty is so difficult
20 because it's important that we treat all defendants alike
21 and that we don't do it based on some arbitrary factors.

22 And I think that in this particular case, for
23 whatever reason, I think there is some arbitrariness about
24 the fact that this defendant received the death penalty
25 when his codefendants didn't and when other defendants who

1 are similarly situated have not. And he was never offered
2 any kind of a plea bargain when, in fact, almost all other
3 defendants are.

4 So that would be my argument to the Court. I would
5 ask the Court to make this motion a part of the record,
6 you know, for any appeal that we might or might not do.

7 THE COURT: Okay. I'm assuming that this motion is
8 part of the record and that it was timely filed and that
9 it's still part of your post-trial motions. And I would
10 assume that -- my understanding is that your appeal
11 time -- time to appeal will not begin until -- and based
12 upon the arguments today, I will do a written order, so
13 when that written order is filed will start your --

14 MR. WILSON: Yes, sir.

15 THE COURT: -- official appeal time, so in between
16 now and then. I know this motion was filed in May, we
17 just had some scheduling issues with people going on
18 vacation and everybody having different trials and things
19 going on. That's the only reason we're doing it now.

20 MR. WILSON: Yes, sir.

21 THE COURT: We could have done it sooner had the time
22 been available. But I believe that all that has been
23 done, has been filed properly, has been made proper and is
24 part of the record in this case.

25 MR. WILSON: Your Honor, may I have one second?

1 THE COURT: Of course.

2 (Pause.)

3 MR. WILSON: I think that's it, Your Honor.

4 THE COURT: All right. Thank you.

5 All right. Mr. Hixson.

6 MR. HIXSON: Yes, sir, Your Honor, just to touch on a
7 couple of points. Your Honor is in a particularly good
8 position to rule on this motion as Your Honor presided
9 over the totality of this case, including the trial of the
10 codefendants. And I'll just highlight a couple points to
11 not belabor the point.

12 As Your Honor is well aware, we served notice to seek
13 the death penalty on two of the codefendants and based on
14 Atkins vs. Virginia claim on McKinley Daniels, Your Honor
15 found he was intellectual disabled and actually barred our
16 office from pursuing the death penalty as it relates to
17 Mr. Daniels.

18 Your Honor is very aware of the fact that James
19 Daniels went to trial. It is uncontroverted that he never
20 had a gun in his hand and never fired a weapon at another
21 human being, that his role was a lookout driver.

22 He actually was never in the stores when the
23 robberies and the murderers took place. And he received a
24 life sentence for that after going to trial. We did not
25 serve notice to seek the death penalty on him because of

1 the fact it was purely accomplice or trigger man liability
2 type issues as it relates to him.

3 As Your Honor knows, McKinley Daniels was present in
4 the first hearing of Mr. Paruchuri and was present in
5 there with a gun, but Mr. Jenkins was the only one 23 days
6 later after the first killing and the first cooling off
7 period, going into the second killing, that he was the
8 only one armed with a weapon and killed a second
9 individual 23 days later. That's what the jury came back
10 and found. I just wanted to clarify those issues.

11 Also, some period of time had gone by from the time
12 of the arrest until the filing of notice to seek. During
13 that time, there were conversations off the record with
14 defense counsel and stuff of Mr. Jenkins' likelihood of
15 entertaining a guilty plea, the likelihood that we were
16 going to have to try this thing, and so no offer was made.
17 That does not mean there were no conversations on where
18 this thing was going to go.

19 And as such, as Your Honor is well aware, we had
20 conversations on the record concerning pleading guilty and
21 guilty of having a sentencing in front of the jury rather
22 than the Judge.

23 And, Your Honor, I think several times on the record
24 at that point in time, that the opportunity to plead
25 guilty prior to filing notice is always available to a

1 criminal defendant if and he wants to accept
2 responsibility and be sentenced in regard -- for accepting
3 responsibility prior to filing notice of any claim like
4 that.

5 I think the record was adequately reflected through
6 the trial that you went through, Your Honor, so we would
7 just ask that you respectfully deny the defendant's
8 motion. To point out that you did make proportionality a
9 finding on the record at the end of the trial pursuant to
10 the statute, we believe that ruling was correct and we
11 would just ask that you support your ruling and deny this
12 motion.

13 THE COURT: Anything further, Mr. Wilson?

14 MR. WILSON: Just briefly. Your Honor, I think one
15 thing in regards to -- I think the Solicitor correctly
16 stated James Daniels' role in this other than the fact
17 that he was obviously appeared to be the person who was
18 planning this stuff. But McKinley Daniels actually fired
19 shots according to the video --

20 MR. HIXSON: Yes, sir.

21 MR. WILSON: -- that we saw, which struck
22 Mr. Paruchuri. As I remember the facts, Mr. Paruchuri was
23 struck by two different weapons during the course of that
24 incident. Mr. Jenkins only had one weapon, so somebody
25 else had to have shot him other than Mr. Jenkins.

1 So I would submit that he was certainly part and
2 parcel of the shooting of Mr. Paruchuri, even if he wasn't
3 part and parcel of the actual shooting of the young lady
4 who was killed.

5 THE COURT: Okay. Anything further?

6 MR. HIXSON: Yes, sir. I apologize if I misspoke on
7 that point. That's correct.

8 THE COURT: Okay. All right. I'll let y'all know my
9 decision by the end of the week and we'll do a written
10 order to that effect. And then the appeal time necessary
11 will toll once that order is actually filed.

12 MR. WILSON: Thank you, Your Honor.

13 MS. WILLIAMS: Thank you, Your Honor.

14 THE COURT: Thank you all very much.

15 MR. HIXSON: Thank you.

16 (Whereupon, the proceedings were concluded.)
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Horry County, South Carolina, on the 8th day of July,
2019.

October 22, 2019

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

DEATH PENALTY CASE

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE GENERAL SESSIONS COURT
FIFTEENTH JUDICIAL CIRCUIT

Indictments (Warrants)

STATE OF SOUTH CAROLINA)

2015GS2601767(2015A2610700105)- Murder

2015GS2601758(2015A2610900058)- Murder

v.)

JEROME JENKINS JR.,)

Defendant.)

**NOTICE & MOTION TO FIND SC CODE
16-3-20(B) UNCONSTITUTIONAL AND
ALLOW DEFENDANT TO PLEAD
GUILTY & BE SENTENCED BY JURY OF
HIS PEERS**

TO: JIMMY RICHARDSON, SOLICITOR FOR THE 15TH JUDICIAL CIRCUIT

NOW COMES the Defendant, Jerome Jenkins Jr., by and through his attorneys of record, and moves this court for an order declaring that a portion of SC Code of Laws section 16-3-20(B) which denies Defendant in a death penalty case the right to plead guilty before a trial judge and then be sentenced by a jury of his peers as unconstitutional. This motion is predicated upon the fact that every defendant is guaranteed the right to a trial by jury under both state and federal law.

WHEREFORE, the defendant prays this court will accept his plea of guilty as charged on the condition he is afforded a sentencing trial by jury.

Dated this 22nd of April 2019.

Respectfully submitted,


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FILED
2019 APR 22 PM 3:43
JEROME J. JENKINS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 Jerry Buck Inman, #5256,)
 a/k/a Jerry Buck Inmon,¹)
)
 Applicant,)
 vs.)
)
 State of South Carolina,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-39-918
 (Capital PCR Action)

ORDER GRANTING
 POST-CONVICTION RELIEF

1000 APR 21 P 2:10
 CLERK OF COURT
 SOUTH CAROLINA

INDEX TO ORDER

I.	INTRODUCTION TO ORDER.....	2
II.	PROCEDURAL HISTORY.....	4
III.	Mode of Trial Challenge and Motion to Determine Mode of Trial.....	5
IV.	THRESHOLD QUESTION.....	31
	Ground 10(d).....	33
	Ground 11(d).....	33
V.	FINDINGS OF FACTS.....	40
VI.	CONCLUSIONS OF LAW.....	54
VIII.	JUDGMENT.....	55

ATTACHMENT: 2-C, THE STATE—Columbia, S.C., Friday, Jan. 25, 1980

¹ Applicant has submitted documents to this Court with his last name spelled "Inmon." Because he was referred to in all previous proceedings as "Jerry Buck Inman," and was committed to the Department of Corrections under that name, the Court will refer to Applicant by the last name "Inman."



INTRODUCTION TO ORDER

This matter comes before the Court on the Application of Jerry Buck Inman for Post-Conviction Relief (PCR), filed June 21, 2012, as last amended on August 20, 2018. An evidentiary hearing was held August 20-23, 2018 in Pickens County, South Carolina. Applicant declined to attend but gave sworn responses to the Court via telephone. His appointed PCR counsel, Diana L. Holt, Esquire, and E. Charles Grose, Jr., Esquire, represented the Applicant, Mr. Inman. Senior Assistant Deputy Attorney General Melody J. Brown, with Assistant Attorneys General, Sherrie Butterbaugh and DeShawn H. Mitchell, represented Respondent.

At the conclusion of the hearing, the Court requested proposed orders from each party in lieu of post-hearing briefing, with the opportunity for each party to respond to the other party's proposed language. After carefully considering the pleadings, transcripts, testimony and other evidence before the Court, and having also considered the able argument of counsel and each of their thorough proposed orders, this Court finds the Applicant's post-conviction relief application must be granted and remands this case to the Pickens County Court of General Sessions for a new trial before a duly summoned, examined, qualified, selected and empaneled death penalty trial jury pursuant to S.C. Code Ann. (1976), **§16-3-20(A)(B)(C)(D)(E). Punishment for Murder; separate sentencing proceeding when death penalty sought; and §16-3-21(A)(B)(C). Jury instruction as to verdict.**

Applicant argues §16-3-20(B) is unconstitutional based upon the decision in *Hurst v. Florida*, 577 U.S. ___, 136 S.Ct. 616, 193 L.Ed2d 504 (2016), in which the United States Supreme Court held:

"The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death." 136 S. Ct. at 619.



"The Sixth Amendment protects a defendant's right to an impartial jury.² This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's fact finding. Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional." 136 S. Ct. at 624.

In *Hurst*, as it did in *State v. Inman*, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011):

"The State next argues that *stare decisis* compels us to uphold Florida's capital sentencing scheme. As the Florida Supreme Court observed, this Court 'repeatedly has reviewed and upheld Florida's capital sentencing statute over the past quarter of a century.' *Bottoson v. Moore*, 833 So. 693, 695 (2002) (*per curiam*) (citing *Hildwin*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728; *Spaziano*, 468 U.S. 447, 104 S.Ct. 3154, 82 L.Ed.2d 340). 'In a comparable situation,' the Florida court reasoned, 'the United States Supreme Court held:

'If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [other courts] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.' *Bottoson*, 833 So.2d, at 695 (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490); see also 147 So.3d, at 446-447 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989)); see also 147 So.3d, at 446—447 (case below).

We now expressly overruled *Spaziano* and *Hildwin* in relevant part.

Spaziano and *Hildwin* summarized earlier precedent to conclude that 'the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury.' *Hildwin*, 490 U.S., at 640-641, 109 S.Ct. 2055. Their conclusion was wrong, and irreconcilable with *Apprendi* [*v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)]." *Hurst*, 136 at 623.

Applicant's **REMAINING PCR CLAIMS:** Ineffective assistance of Trial Counsel, Ground 10 and 11(b) and Appellant Counsel, Ground 10 and 11(c), Challenges to Capital Sentencing Statute, Ground 10 and 11(e), Cumulative Effect of Errors, Ground 10 and 11(f), Denial of Fair Trial Due to Prosecutorial Misconduct, Ground 10(g), and Ground 10(h) Denial of

² **IMPARTIAL JURY.** Within constitutional provision is one which is of impartial frame of mind at beginning of trial, is influenced only by legal and competent evidence produced during trial, and bases its verdict upon evidence connecting defendant with the commission of the crime charged. Const. U.S. Amend. 6, *Durham v. State*, 182 Tenn. 577, 188 S.W.2d 555 (1945), 160 A.L.R. 746. Black's Law Dictionary (Rev. 4th Ed. 1968) at p.886.

Fair Trial based on Rush to Forgone Conclusion that the Sentence Would be Death, as well as the constitutionality of the capital sentencing scheme in South Carolina as it relates to the imposition and review of capital punishment, are not addressed as the further proceedings upon remand shall be consistent with the proper conduct of the trial had pursuant to this judgment of the Court. Moreover, the record of the proceedings, and the testimony received at the PCR hearing support and confirm that trial counsel diligently prepared, assiduously and aggressively represented Inman throughout the representation. Further, both trial and appellate counsel made reasoned and careful decisions to raise and present the particular issues involved at the time. Applicant's remaining freestanding claims are barred by jurisdictional limitations set out in S.C. Code § 17-27-20, accordingly, the Court denies that relief.

The Court now makes the following findings of facts and conclusions of law as required under S. C. Code (Ann.) §§ 17-27-80 and by Rules 52(a) and 71.1(a) SCRPC. *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019).

II. PROCEDURAL HISTORY

Applicant Inman is presently a safe-keeper under a sentence of death for murder, and a term of year's sentence for other charges, pursuant to orders from the Clerk of Court for Pickens County. His charges all stem from the May 26, 2006, murder of Tiffany Souers, a Clemson University student. Ms. Souers was attacked and murdered in her apartment. She had no ties to Inman prior to his admitted crimes against her.

Inman was indicted, at a November 2006 term of Pickens County General Sessions Court, on the charges of murder (2006-GS-39-2225), kidnapping (2006-GS-39-2224), criminal sexual conduct in the first degree (2006-GS-39-2223), amended in August 2008, and burglary in the first degree (2006-GS-39-2222). [R. at 1037-1044]. The State, by and through its Solicitor of the

Thirteenth Judicial Circuit, Robert M. Ariail, Esquire, timely noticed Inman of the State's Intent to Seek the Death Penalty, on August 22, 2006, pursuant to S.C. Code § 16-3-26. By order of March 13, 2007, the Supreme Court of South Carolina assigned jurisdiction over the matter to the Honorable Edward W. Miller, Circuit Court Judge.

Mode of Trial Challenge

Motion to Determine Mode of Trial.

On August 17, 2007, pursuant to the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Mr. Inman, by his trial counsel, James W. Bannister, Esquire, moved the trial court to determine the mode of trial to allow Inman to enter a guilty plea before the trial jury, in the guilt phase and, then, the court conduct the separate sentencing proceeding before the trial jury, under the bifurcated provisions of the South Carolina capital sentencing scheme, S.C. Code Ann. § 16-3-20. **Punishment for Murder; separate sentencing proceeding when death penalty sought**, which provides, [in pertinent part,] that:

(A) **A person who** is convicted of or **pleads guilty to murder** must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. **If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment.** For purposes of this section, "life" or "life imprisonment" means until death of the offender without the possibility of parole, and, when requested by the State or the defendant, **the judge must charge the jury** in his instructions that life imprisonment means the death of the defendant without the possibility of parole.

(B) **When the State seeks the death penalty, upon** conviction or **adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding.** In the proceeding, **if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years to**



life. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. [If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge.] In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of South Carolina or the applicable laws of either. (Emphasis supplied.)

Mr. Inman's motion and supporting memorandum of law relied on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Ring v. Arizona*, 536 U.S. 584 (2002), and *Blakely v. Washington*, 542 U.S. 296, 307, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004).

Mr. Inman, who did "not wish to contest his guilt," had informed his "counsel of his strong desire to acknowledge his guilt," did "not want to put the victim's family through the spectacle of a courtroom proceeding regarding his guilt," and sought "to alleviate the cruel impact the attendant media attention would have on everyone involved." R. 1202-3. See, S.C. Const., Art. I, § 24(A), Victims' Bill of Rights,³ and S.C. Code Ann. (1976), §§ 16-3-1505 & 16-3-1510.⁴

³ South Carolina Constitution of 1895, Article I, Section 24(A). "To preserve and protect victims' rights to justice and due process...victims of crime have the right to:

(12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

⁴ § 16-3-1505. Legislative intent.

"[T]o implement the rights guaranteed to victims in the Constitution of this State, the General Assembly declares its intent, in this article, to ensure that all victims of ... a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights ... extended in this article to victims of ... a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants; . . . " (Emphasis supplied).

§ 16-3-1510. Definitions.



On September 17, 2007, Judge Miller convened a hearing on Mr. Inman's motion to determine the mode of trial. Mr. Bannister, the Defense Counsel, explained:

"Mr. Inman wants to plead guilty. He has a strong desire to acknowledge his guilt in both the formal legal sense and in the moral sense. He wants to accept responsibility for what he has done, regardless of what the ultimate sentence will or will not be. The only way he can adequately show the remorse he feels and acknowledge the moral guilt that he is dealing with now is to stand at the bar and admit to the elements of the indictment, and to have Your Honor accept that guilty plea and formally acknowledge that. He also, as a subset of that, wants to alleviate what he sees would be the cruel impact that the media attention in this case has already had, that impact that it would have on the both the Souers family and his own family. He also wants to avoid what he would consider to be the spectacle and charade of a guilt-phase proceeding. In other words, he wants to plead guilty." (Emphasis supplied.) R. 800-01.

Trial counsel argued, Mr. Inman has a constitutional right to be sentenced by an impartial jury while acknowledging S.C. Code Ann. § 16-3-20(B) statutorily mandates: "If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing procedure must be conducted before the judge," (emphasis supplied). The consequence of which is that, "[w]hen the State seeks the death penalty," *id.*, and the State accepts the Defendant's guilty plea, under the South Carolina statutory capital sentencing scheme, expressly provided by S.C. Code Ann. "§ 16-3-20(B). Punishment for Murder; separate sentencing proceeding when death penalty sought," the State, by its own statutory mandate, thereby, preemptively precludes any participation in the bifurcated phases of that capital sentencing scheme — and more particularly, the sentencing phase — by a duly summoned, examined, qualified, selected and empaneled impartial trial jury, expressly provided by § 16-3-20(D)(E), and constitutionally

-
- (a) "Victim" means any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense, ..."Victim" also includes any individual's spouse, parent, child, or the lawful representative of a victim who is: Deceased; . . . (emphasis supplied).
- (b) Deceased; . . . (emphasis supplied).



required by the Sixth Amendment to the CONSTITUTION OF THE UNITED STATES, as it has been ultimately decided in *Hurst v. Florida*, *supra.*, to wit:

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...." This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to a jury beyond a reasonable doubt. *Alleyne v. United States*, 570 U.S. —, —, 133 S. Ct. 2151, 2156, 186 L.Ed.2d 314 (2013). *Apprendi v. New Jersey*, 530 U.S. 466, 494, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000).

136 S. Ct. 616, at 621 (2016) (emphasis supplied).

Moreover, the SOUTH CAROLINA CONSTITUTION, Article 1, Section 14, explicitly provides that:

"The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury;" (Emphasis supplied.)

"Inviolable means 'free from substantial impairment.' **Black's Law Dictionary** (6th Ed. 1990) at 826. It has been held that the right "*cannot be invaded or violated by either legislative act or judicial order or decree.*" *Sorrell v. Thevenir*, 69 Ohio St.3d 415, 422 (1994) (emphasis supplied).

The South Carolina statutory capital punishment scheme was enacted by the General Assembly, as Act No. 177, Section 1, 1977 Acts, "**Section 16-3-20. Punishment for Murder; Separate sentencing procedure when death penalty sought.**" Sections (A) through (E), S.C. CODE ANN. (1976). The 1977 South Carolina "Act No. 177 was patterned after the death penalty statutes of our sister state of Georgia," the constitutionality of which "was considered by the United States Supreme Court in *Gregg vs. Georgia*, 428 U.S. 153, 96 S. Ct. 2909, 49 L.Ed.2d 859 (1976)," and the Court in *Gregg* approved Georgia's death penalty statutes." *State v. Shaw*, 273 S.C. 194, 199, 202 S.E.2d 799, 802 (1979).

"Mr. Justice Stewart, speaking for the Court in *Gregg*, summarized **the procedural conditions necessary to impose the death penalty:**



In summary, *the concerns expressed in Furman [v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L.Ed.2d 346 (1972)] that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance. As a general proposition, these concerns are best met by a system that provides a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information.* [Gregg] 428 U.S. at 195, 96 S. Ct. at 2935, 49 L.Ed.2d at 887."

State v. Shaw, 273 S.C. at 202, 202 S.Ed.2d at 803.

In addressing "whether this State's statutory death penalty procedure is sufficiently similar to Georgia's procedure to pass constitutional scrutiny," the South Carolina Supreme Court noted that:

"A capital **defendant's guilt** is determined in the traditional manner, by either a **judge or jury, in the first stage of a bifurcated trial.**

Upon conviction or adjudication of guilt of a capital defendant of murder, a **separate sentence proceeding is conducted** to determine whether the capital defendant shall be sentenced to death or life imprisonment. The **sentencing proceeding is conducted before the trial jury, or if the capital defendant pled guilty** or the trial jury is waived by both the capital defendant and the State, **the sentencing proceeding is conducted before the court.** Section 16-3-20(B), Cum. Supp. 1978." *State v. Shaw*, 273 S.C. at 200.

Nevertheless, when the United States Supreme Court had compared the constitutionality of Georgia's death penalty procedure to its sister state Florida's, it found that:

"The basic *difference between the Florida system and the Georgia system is that in Florida the sentenced is determined by the trial judge rather than by the jury.* This court has pointed out that jury sentencing in a capital case can perform an important societal function, *Witherspoon v. Illinois*, 391 U.S. 510, 519, n. 15, 88 S. Ct. 1770, 1775, 20 L. Ed.2d 776 (1968), *but it has never suggested that jury sentencing is constitutionally required.* And it would appear that judicial sentencing should lead, if anything, to even greater consistency in the imposition at the trial court level of capital punishment, since a trial judge is more experienced in sentencing than a jury, and therefore is better able to impose sentences in analogous cases. *Proffitt v. State of Florida*, (emphasis supplied), 428 U.S. 242, 252, 96 S. Ct. 2960, 2966, 49 L.Ed2d 913 (1976).

After the United States Supreme Court announced "the judgment of the court" in the "opinion...delivered by Mister Justice POWELL," in *Proffitt v. State of Florida, supra*, and noted that: "*but it has never suggested that jury sentencing is constitutionally required*," *id.*, the United States Supreme Court in *Hurst v. Florida*, 136 S.Ct. 616 (2016), ultimately, in fact, did hold, in cases where the State seeks the death penalty, that:

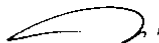
"The Sixth Amendment protects a defendant's right to an impartial jury. This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's fact finding. *Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional.*

The judgment of the Florida Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion." *Hurst*, 136 S. Ct. 616, at 624 (2016) (emphasis supplied).

Moreover, just as important here, was the judgment of the *Proffitt* Court that, "since a trial judge is more experienced in sentencing than the jury, and therefore is better able to impose sentences similar to those imposed in analogous cases." 428 U.S. at 252. This is in direct derogation of the, aforesaid, "procedural conditions necessary to impose the death penalty," that were recognized by our South Carolina Supreme Court in *State v. Shaw, supra*, to wit:

"To meet the concerns that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures the sentencing authority is given adequate information and guidance. As a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of the sentence and provided with standards to guide its use of the information." *Id.*, 273 S.C. at 202, 255 S.E.2d at 803.

Furthermore, under the South Carolina death penalty complex: S.C. Code (1976) §16-3-20. **Punishment for murder; separate sentencing proceeding when death penalty sought**, if the State seeks the death penalty," for which the jurors are selected for "an impartial jury," the statutory mandate is: "if the defendant pleads guilty," not only does the trial judge become the fact finder in the "guilt phase" of the bifurcated proceeding, but the "sentencing proceeding must be



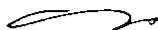
conducted before the judge," thereby conflating the "trial jury" with the "trial judge," and, even though the trial judge, necessarily, "is more experienced in sentencing than a jury," this does not, *ipso facto*, lend itself to the trial judge, necessarily, being qualified to "render a fair and impartial verdict," *infra*, in a particular case.

All potential jurors [but not the "trial judge," as Judge Hill candidly noted in his colloquy (R. at 954-55)] are asked, on their *voir dire*:

"Can you *lay aside any outside knowledge or any information received prior to this trial*, from any source whatsoever, *and, setting aside such knowledge or information render a fair and impartial verdict based solely on the law and evidence presented and received in this case?*" **The South Carolina Capital Trial**, Honorable Gary E. Clary, (emphasis supplied).

The antithetical nature of this qualification to the statutory mandate that: "if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge," § 16-3-20(B), was revealed in the very first case to consider the constitutionality of the South Carolina capital punishment scheme.

In *State v. Shaw*, 273 S.C. 194, 255 S.E.2d 799 (1979), "the first capital case reviewed under our current death penalty statutes," the South Carolina Supreme Court determined that "this State's statutory death penalty procedure is sufficiently similar to Georgia's procedure to pass constitutional scrutiny," 273 S.C. at 199, 255 S.E.2d at 802, and held: "[w]e conclude, therefore, that section 16-3-20 through Section 16-3-28, Cum. Supp. 1978, are constitutional, and a sentence of death may be lawfully imposed pursuant to the statutory complex." 273 S.C. at 205B, 255 S.E.2d 804. *State v. Shaw*, 273 S.C. 194, 202, 55 S.E.2d 799, 803 (1979), thereby, became a part of the "existing case law in South Carolina and the statutes," when, "counsel informed the judge of Inman's intent to enter a guilty plea to the crimes and demand a jury trial for sentencing. After a hearing, the judge summarily denied the motion on the ground he was constrained by the existing



case law in South Carolina and the statutes," *Inman*, 395 S.C at 35, 720 S.E.2d at 545-546, but this was prior to *Hurst v. Florida*, *supra*.

If the judge is "more experienced in sentencing than a jury," *Proffitt v. Florida*, 428 U.S. at 252, 96 S. Ct. at 2966, it is a *complete trifecta for the State*, under § 16-3-20(B), when "the State seeks the death penalty" and the defendant pleads guilty, then, it is mandated by the statute that the Trial Jury is conflated with the Trial Judge, before whom "the sentencing proceeding must be conducted," § 16-3-20(B): *first*, the State is the prosecutor—who seeks the death penalty; *second*, the judge is "the employee of the State," *Blakely v. Washington*, 542 U.S. 296, 314, 124 S.Ct. 2531, 2543, 159 L.Ed.2d 403 (2004), who conducts the proceeding, and, *third*, the judge is the jury, who decides the facts and who sentences the defendant, all without "an impartial jury" as required, not only by the Sixth Amendment to the United States Constitution, *Hurst*, *supra*, but Article I, Section 14, of the South Carolina Constitution of 1895.

In his colloquy, Judge Miller consciously inquired whether anyone had "made any promise, prediction, or prophesy to [Inman] about what they think my sentence might be," and Inman responded, "No, sir." [R. at 954]. Judge Miller further explained:

THE COURT: And I want to tell you right now that this is the first time I've been exposed to these facts, and that I have not made up my mind, and that I will listen fairly and impartially to everything that's presented to me.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: But, at the same time, you don't get the right to send me a questionnaire, and you don't get the right to question me the way you would jurors.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

R. at 954-55.



That was the sum and substance of the waiver colloquy as it pertained to the trial judge's "impartiality" during the entire course of the trial relative to assuring that the impartiality of the trial judge was maintained as the "lone" sentencing authority, notwithstanding the explicit provision that: "*in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.*" §16-3-20(D) (emphasis supplied).

Nevertheless, in order to meet the concerns expressed in *Furman v. Georgia, supra*, that the death penalty not be "imposed in an arbitrary or capricious manner," the bifurcated statutory death penalty complex approved in *Gregg v. Georgia, supra*, Act No. 177, enacted by the 1977 South Carolina General Assembly, and the protocols adopted pursuant thereto, provide that, from the time that an impartial trial jury is qualified and selected, all jurors are sequestered in appointed lodging for the duration of the entire trial, under the supervision of South Carolina Law Enforcement Division (SLED) Details of Jury Custodians, who are sworn to keep the jury sequestered and to allow no person to talk to them without leave of the court—even during the twenty-four hour respite between the bifurcated guilt phase and the sentencing phase under § 16-3-20(B), so that they are not exposed to any information about the case or any outside extrajudicial influence that might bear on their ability to serve as impartial death penalty jurors—to include any discussion of the case among themselves—before it is given to them, with proper instructions, for their deliberation and determination of each of the separate verdicts in first, the guilt phase, and then, the sentence phase, of the bifurcated proceedings. See: OATHS OF BAILIFFS, CONSTABLES, ETC. TO KEEP A JURY, ETC. *The South Carolina Capital Trial (September 1998)*, Honorable Gary E. Clary, Circuit Court Judge. *Infra at p. 31*. More, particularly, it was not addressed in the trial judge's colloquy with the accused, that the Trial Judge,

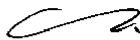


who becomes, both, the "Trier of Facts" as well as the "Sentencer," is not sequestered, even when and after Inman "pleaded guilty" and his plea was accepted by the Court.

As above noted, the trial jury is subjected to sequestration during the entire proceedings of capital trials—to protect the selected and empaneled jurors from any outside or other extra-judicial influences—under strict death sentence protocols, promulgated to protect the jurors from such extra-judicial influences that are not a part of the formal judicial process of a death penalty trial. Conversely, the trial judge is not subject to those protections afforded the trial jury. In fact, it is the duty of the trial judge to hear and determine the admissibility of all matters presented to or brought before the court for the jury's consideration, during the course of capital punishment proceedings, whether the matters are ultimately ruled admissible for the trial jury's consideration, with proper instructions, or not admitted into evidence. All such matters are to be heard and decided by the Trial Judge, and made a part of the trial record for review.

Necessarily, trial judges instruct trial juries that the duties of the jury and judge are separate and distinct, and that "it is impermissible for the judge to express his opinion to the jury, although the opinion may be based upon his experience and the best judgment," and this applies to advice to capital defendants, as well. *State v. Owens*, 362 S.C. 175, 177, 607 S.E.2d 78, 79 (2004). Furthermore, "a trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in a case." Circuit Court Judges' **Criminal Trial Bench Book, Tab. 1, Jury Instructions in Criminal Cases**, at p.34.

Inman had sought to exercise his right, once an impartial jury was empaneled pursuant to § 16-3-20(B)(C)(D), to waive his Fifth Amendment rights and plead guilty to stipulated facts upon which the jury, with proper instructions, could make an adjudication of guilt and, if its unanimous verdict was a "conviction or adjudication of guilt," § 16-3-20(B), make its unanimous finding of



any statutory aggravation for its recommendation for the sentence phase, thereby sparing the victims—the family of the decedent—a full scale trial on the facts, in the guilt phase, to protect the victim's family from the spectacle of a guilt phase proceeding, [cf. § 16-3-1505. "Legislative Intent of Victim's Rights Constitutional Amendment." Art. 1, § 24, *supra*.], and, yet, Inman would "stand at the bar and admit to the elements of the indictment, and . . . have Your Honor accept the guilty plea and formally acknowledge that," pursuant to § 16-3-20(A). Then, "upon conviction or adjudication of guilt of [the] defendant of murder," *supra*, pursuant to the Sixth Amendment and Article I, § 14, of the respective Federal and State Constitutions, have "the court...conduct a separate sentencing proceeding" pursuant to § 16-3-20(B) and (C), which "proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant." *Id.*

Notwithstanding the constitutional guarantee that an "accused shall enjoy the right to a speedy and public trial, by an impartial jury," under the United States Constitution's Sixth Amendment, and the South Carolina Constitution's Article 1, Section 14, which "right of trial by jury shall be preserved inviolate,"⁵ the South Carolina Supreme Court in *State v. Harper*, 251 S. C. 379, 162 S.E.2d 712 (1968), was compelled to consider the constitutionality of Section 17-553.4 of the S.C. Code (1962), relating to guilty pleas, enacted by the General Assembly in 1962, approximately sixty-eight years after the enactment, in 1894, of Section 16—52, , prescribing death as the punishment for murder, unless the jury found a special verdict recommending the defendant to the mercy of the court, in which event the punishment was life imprisonment. "Under Section 17—553.4, a defendant could tender a plea of guilty of murder and, if accepted with the

⁵ "Inviolable means 'free from substantial impairment.' Black's *Law Dictionary* (6th Ed. 1990) at 826. It has been held that the right 'cannot be invaded or violated by either legislative act or judicial order or decree.'" *Sorrell v. Thevenir*, 69 Ohio St.3d.415, 422. (1994).

approval of the court, such a plea had the same effect as a recommendation to mercy by a jury, with life imprisonment as the automatic punishment." 251 S.C. at 382—383, 162 S.E.2d at 713—714.

In *Harper*, the South Carolina Supreme Court had found that:

"The question to be decided in this appeal is whether the ruling of the United States Supreme Court in the recent case of the *United States v. Jackson*, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed. 138 [1968], renders constitutionally invalid the South Carolina statutory provisions relating to the imposition of the death penalty for murder. *Id.*, S.C. at 382, and S.E.2d at 713.

In *Jackson*, the United States Supreme Court had declared unconstitutional a provision of the Federal Kidnapping Act (18 U.S.C., Section 1201(a)), that was similar to the South Carolina Code (1962), Section 16—52, that prescribed capital punishment for murder, and Section 17—553.4, relating to guilty pleas, which provided that an accused who pleads guilty is a "defendant who abandons the right to contest his guilt before a jury [and] is assured that he cannot be executed," but "the defendant ingenuous enough to seek a jury acquittal stands forewarned that, if the jury finds him guilty and does not wish to spare his life, he will die." The United States Supreme Court held that: "The death penalty provisions of the Federal Kidnapping Act were, therefore, unconstitutional because the death penalty under the Act was applicable only to those defendants who assert the right to contest their guilt before a jury."

Our South Carolina Supreme Court unanimously held:

"We therefore hold that:

- (1) Section 17—553.4 is unconstitutional under the test laid down in *United States v. Jackson*, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed. 138 (1968).
- (2) Section 16—52 is constitutional and legally severable from the provisions of 17—553.4;
- (3) Hereafter, regardless of past custom and practice, the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case, in accord with Section 16—52, regardless of how the



defendant's guilt has been determined, whether by verdict of the jury or by a plea of guilty.

State v. Harper, 251 S.C. at 385, 162 S.E. at 715; *see, also, State v. Speights*, 263 S.C. 127, 134, 208 S.E.2d 43, 44 (1974), "section 16-52 remains fully operative law."

Nevertheless, in 1977, some nine years after *Harper* (1968), then *Speights* (1974), when the General Assembly of South Carolina amended "Section 16—52 of the 1962 Code of Laws, setting forth the punishment for murder," by Act No. 177 Section 1, 1977 Acts and Joint Resolutions, approved June 8, 1977, and adopted the provisions of: **"SECTION 16-3-20. Punishment for murder; separate sentencing proceeding when death penalty sought[.]"** it did so, notwithstanding the aforesaid unanimous holding of the South Carolina Supreme Court that:

"Hereafter, regardless of past custom and practice, the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case, in accord with Section 16—52, regardless of how the defendant's guilt has been determined, whether by verdict of the jury or by a plea of guilty."(Emphasis supplied).

State v. Harper, supra, and, *State v. Speights, supra*.

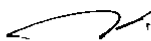
In so doing, the legislature of the State imposed its "statutory mandate," *State v. Patterson*, 278 S.C. 319, 322, 295, S.E.2d 264, 266 (1982)(emphasis supplied), into Section 16-3-20(B) that:

"If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge."

This was done in abrogation of the unanimous holding of our Supreme Court in *Harper*, and later *Speights, supra*, that:

". . . the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case, . . . regardless how the defendant's guilt has been determined, whether by verdict or by plea of guilty." *Supra*.

Moreover, the State's "statutory mandate," *State v. Patterson, supra*, nullifies the right of an accused to a trial—in the sentencing phase—"by an impartial jury," *contra, Hurst v. Florida*,



supra, as guaranteed by our founders when they adopted, in 1791, the Sixth Amendment to the Constitution of the United States that provides:

Amendment VI

"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; ... (emphasis supplied).

More importantly, the State's gratuitous *statutory mandate* of Section 16-3-20(B) vitiates the explicit provision of the South Carolina Constitution of 1895, as amended:

ARTICLE I

Declaration of Rights

(Formerly Article 1, Section 25; and Article I, Section 11, Constitution of 1868) ⁶

"Section 14. The *right of trial by jury shall be preserved inviolate*. Any person charged with an offense shall enjoy the *right to a speedy and public trial by an impartial jury*;" Article I, Section 14. (Emphasis supplied.)

Moreover, S.C. Code (1976): **SECTION 16-3-20. Punishment for murder; separate sentencing proceeding when death penalty sought,** *"without the statutory mandate here-involved, expressly and constitutionally provides, otherwise, that:*

(A) A person who...**pleads guilty to murder** must be punished by death, or a mandatory minimum term of imprisonment for thirty years to life. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt . . . and *a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment.*

* * *

(B) When the **State seeks the death penalty**, upon conviction or adjudication of guilt of a defendant of murder, *the court shall conduct a separate sentencing proceeding... The proceeding must be conducted by the trial judge before the trial*

⁶ "The South Carolina Constitution of 1868 . . . was the most democratic and equitable of the seven constitutions in the history of this state." **The South Carolina Constitutional Convention of 1868**, Nic Butler, Ph.D., March 2, 2018, Charleston County Public Library. This was reflected in its ARTICLE I, DECLARATIONS OF RIGHTS, *SECTION 11*, where it is succinctly provided: "*The right of trial by jury shall remain inviolate*;" then, in *SECTION 13*, that: "every person shall have a right . . . to have a speedy and public trial by an impartial jury;" and, in *SECTION 14*, that: "No person shall be deprived of his life . . . but by the judgement of his peers And the General Assembly shall not enact any law that shall subject any person to punishment without trial by jury;" *South Carolina Constitution of 1868*.

jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant.

* * *

(C). . . If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all members of the jury. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A).

Nevertheless, "[w]hen the State seeks the death penalty," it abrogates, by the aforesaid "mandatory statutory provision," the rights guaranteed by the Constitutions of the United States and South Carolina "to a trial by an impartial jury," and creates a *Catch 22*⁷ for a defendant, such as Inman, in that:

"If a trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing process must be conducted before judge." § 16-3-20(B) S.C. Code Ann. (1976).

In this regard, it has been held, as part of the South Carolina "case law," that "the condition that the jury determine punishment," would be "an impermissible condition under the *statutory mandate* that the trial judge alone determines punishment when a defendant pleads guilty to murder," *State v. Patterson*, 278 S.C. 319, 322, 295, S.E.2d 264, 266 (1982) (emphasis supplied), notwithstanding the Sixth Amendment and Art. 1, Section 14, of our respective Constitutions, *supra*, and, more particular, the further explicit provision of the South Carolina Constitution that:

"*The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury.* *Id.* (Emphasis supplied).

But, see, *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982), where it was held that:

"*Pleas of guilty are unconditional, and if an accused attempts to attach any condition or qualification thereto, the trial court should direct a plea of not guilty.*

⁷ "A hidden difficulty or means of entrapment: catch." Merriam-Webster Dictionary (original emphasis).

(Citations omitted). The basis for this rule is, of course, the settled doctrine that a guilty plea constitutes waiver of all prior claims of constitutional rights or deprivations thereof." *State v. Patterson*, supra; *Whetsell v. State*, 276 S.C. 295, 277 S.E.2d 891; *Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97; *Lefkowitz v. Newsom*, 420 U.S. 283, 289, 95 S. Ct. 886, 889, 43 L.Ed.2d 196 (and cases cited therein). (Emphasis supplied).

Therefore, the accused, Inman, could not freely and voluntarily waive his Fifth Amendment right to plead guilty, upon stipulated facts, before a duly qualified trial jury and the trial judge, in the guilt phase of the bifurcated proceeding, when, as above noted, it is expressly mandated under the South Carolina statutory capital sentencing scheme, that:

"SECTION 16-3-20. Punishment for Murder; separate sentencing proceeding when death penalty sought.

(A) A person who is convicted or pleads guilty to murder must punished by death, or by a mandatory minimum term of imprisonment for thirty years to life.

(B) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years to life. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, THE SENTENCING PROCEEDING MUST BE CONDUCTED BEFORE THE JUDGE. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of South Carolina or the applicable laws of either. (Emphasis supplied.)

Under the statutory mandate of Section 16-3-20 (B), then, Inman had no alternative but to involuntarily forfeit—not freely and voluntarily waive—his constitutional "right to a trial by an impartial jury," under the Sixth Amendment, and Article I, Section 14, of the Federal and State Constitutions, respectively, in the sentencing phase of the bifurcated proceeding, in order "to avoid