App. 1

IN THE SUPERIOR COURT OF JACKSON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	
	)	
vs.	)	Case No.
	)	M-98-CR-0000036
DONNIE CLEVELAND LANCE,	)	
	)	
Defendant.	)	

* * *

JURY TRIAL

VOLUME IX of XI

The following proceedings were heard before the HONORABLE DAVID MOTES, Judge, Piedmont Judicial Circuit, Jackson County Superior Court, and a jury of twelve, and were reported by Debbie Seymour, Certified Court Reporter in the State of Georgia, on the 14th through the 19th of June, 1999, and the 21st through the 23rd of June, 1999, at the Walton County Judicial Annex, Monroe, Georgia.

[1876] JUROR WHITLOCK: Yes, sir.

THE COURT: Is that your verdict now?

JUROR WHITLOCK: Yes, sir.

THE COURT: Are there any other matters that we need to take up immediately with the jury?

MR. MADISON: No, sir.

THE COURT: Ladies and gentlemen of the jury, the Court is going to permit you to take a lunch break at this time, and we will resume with the next phase of this case at 1:30 this afternoon. You're excused until that time. Let me caution you and instruct you not to discuss the case among yourselves after this point in time until you're instructed to do so again by the Court. Don't discuss this case with the alternate jurors. Don't allow anyone to discuss the case with you or in your presence.

And, Mr. Bailiff, you may take custody of the jury at this point in time for them to eat lunch.

(Whereupon, the jury exited the courtroom at 11:20 a.m.)

SENTENCING PHASE

THE COURT: We'll be going into the second phase of this trial at 1:30 this afternoon. Mr. Brannon, you've read the Unified Appeal and are familiar with the procedures that will be followed in the second phase of [1877] the trial?

MR. BRANNON: Yes, sir, I am.

THE COURT: And you understand that the Court's limitations as to evidence in the first part of the trial are not necessarily the same in the second part of the trial, that there is a greater – a relaxation of some evidentiary rules in the sentencing phase?

MR. BRANNON: I understand that. I intend to, of course, oppose similar transactions and prior difficulties going in. But, yes, I understand what the Court has done.

THE COURT: Of course, you understand, Mr. Brannon, that the relaxation of those evidentiary rules works primarily to the benefit of the Defendant. The Court will simply inform you that the Court's previous rulings adverse to you may not necessarily be applicable in the sentencing phase.

MR. BRANNON: I understand.

THE COURT: Evidence that the Court prohibited you from introducing in the guilt-innocence phase may be admissible in the sentencing phase. And the Court will not at this point in time – the Motions in Limine that the Court granted in favor of the State are no longer applicable, and we will handle each item of evidence that might be presented on an individualized basis.

[1878] Do I – I understand that at some point in the past during the hearings in this case the defense counsel has been notified – the Court, at least, has been notified and has copies of victim impact evidence. Does the State intend to introduce any victim impact evidence?

MR. MADISON: Yes, sir.

THE COURT: Has the Court previously ruled on the admissibility of that?

MR. MADISON: I'm not sure if you have or not.

MR. BRANNON: I was under the impression it hadn't been ruled on.

MR. MADISON: I think you – we'll have to check.

THE COURT: I honestly cannot recall. Two other things that the Court would like to at least if not address at this point make both counsel aware of: The Court has read the proposed jury instructions by the State and the verdict form, and the Court has some concern with the verdict form and the use of the word "recommend." The verdict form states as to each of the three possible penalties, I believe, "We recommend a 'blank' sentence be imposed."

As I understand Georgia law, the jury is not really making the recommendation. They're, in fact, fixing a sentence. The Court's charge book suggests perhaps the wording "fix:" We, the jury, "fix" a sentence or some [1879] word other than recommend. The Court would not want the jury to believe that their determination as to sentencing is only a recommendation, and the Court feels that that might be reversible error.

MR. BRANNON: I agree with that, Judge. I think that is proper, because they do "fix."

MR. MADISON: We have no opposition to changing the word to "impose." I think that may be more appropriate. Those verdict forms were approved and used in other death penalty cases in the State of

Georgia, in particular in Cobb County, Your Honor. They used that language, and since it's been approved before, we used it, also. If you wish to change the word to "impose," we would have no opposition to that.

THE COURT: The remainder of the list of the alleged statutory aggravating circumstances and the finding of the jury as to alleged statutory aggravating circumstances in the verdict form itself appear in all other respects correct. Does the defense have any objection to those forms that it would like to raise at this time?

MR. BRANNON: To the verdict as to sentence form?

THE COURT: The verdict and the list of alleged statutory aggravating circumstances and the finding of the jury as to alleged statutory aggravating [1880] circumstances.

MR. BRANNON: First as to the verdict form as to the sentence, the only opposition I have – and it sounds like I don't have opposition – is that where it says "recommend" at each place it should be changed to say "impose."

THE COURT: All right. And there are no other objections to the form of those three documents that will go out to the jury. I also understand –

MR. BRANNON: I'm sorry. I wasn't finished. I was talking only about the one-page verdict as to sentence.

THE COURT: The one-page verdict form?

MR. BRANNON: Yes, sir.

THE COURT: Do you have other objections?

MR. BRANNON: Yes, I do. Let me go next to a list of alleged statutory aggravating circumstances and address that with the Court.

The first one in the list is, "The offense of murder of Sabrina Joy Lance was committed while the Defendant was engaged in the commission of another felony, the murder of Dwight G. Wood." And Number 2 reverses that order and says, "The murder of Dwight G. Wood, Jr., was committed while the Defendant was engaged in the commission of another capital felony, to wit: the [1881] murder of Sabrina Joy Lance."

I think the law is that you can't do that. You can't use both of those simultaneously at the punishment phase of a death penalty trial in a dual homicide case. Let's see if I can find that cite for the Court. I think I have it with me. I do. It's called the Doctrine of Mutually Supporting Aggravating Circumstances, and it precludes the simultaneous use. The case is *Wilson v. the State*, 250 Ga. 630. Also *Burden v. the State*, 250 Ga. 313.

THE COURT: Does the State have a response?

MR. MADISON: Yes, sir. We believe that the jury may find, of course, multiple aggravating circumstances and may impose more than one death penalty

in their verdict form. However, the Court can only impose one death sentence. And I think that's the distinction those cases make, Your Honor, so when the case is reviewed by a higher court, they may look and see how many aggravating circumstances were found, if the evidence supported one but not another. And for that reason I think that the jury should be permitted to find as many of those and impose that sentence wherever they feel it is appropriate. The Court, of course, when it goes to give its sentence, will impose one and one time.

THE COURT: I'll reserve ruling on that objection [1882] until I've had an opportunity to study those two cases, *Wilson* and *Burden*.

MR. BRANNON: All right, sir. My next objection under the list of alleged statutory aggravating circumstances is objection to Number 4. Number 4 is the one that reads, "The offense of murder of Sabrina Joy Lance was outrageously or wantonly vile, horrible and inhuman in that it involved torture of the victim before death."

One, this is not in the case. What's in the case is that she was struck with a blunt object, and, according to Dr. Hellman, was probably rendered unconscious and not to ever come back to life at that point with the severity of that blow. And, so, torture would not be a part of this case.

Also, I would argue to the Court that the legislative intent of that Code Section, which I call B.7 – the legislative intent of that Code Section is not to fit the parameters of this type of murder case. This is not a

case where there was torture or physical abuse and these things going on before death. This is a case where both people, particularly Ms. Lance, were struck, and apparently never knew what happened after that.

So, therefore, I think Number 4 is out for two [1883] reasons: that it violates legislative intent and I also think it's a vague, catch-all statute, which I believe violates the tenets of the Eighth Amendment to the United States as applied to the states through the Fourteenth Amendment due process clause.

Those are my arguments, but most particularly the torture simply isn't in the case.

MR. MADISON: Your Honor, I would disagree with that. That's a matter for the jury's interpretation based on testimony from Dr. Hellman. He does not know which blow was the death blow. He indicated that the blow to the chin would not have been the type of blow that would cause unconsciousness. The State's position is that she was grabbed out of the bed in fear of her own life after she had heard the gunshots and heard Mr. Wood being murdered. She was thrown into the door, still conscious at that time, still aware of what was going on. Injuries were inflicted to her arms and her hand where she tried to defend herself, and multiple blows occurred to her face and her body before she was rendered unconscious. That's a question for the jury as to whether or not that is, in fact, torture.

I think if you couple that along with the long history and pattern of violence that this woman was

subjected to, the jury could find evidence of torture [1884] beyond a reasonable doubt.

MR. BRANNON: Your Honor, just a quick response to that. Under B.7 is it clear about torture, that there must be proof that there was torture by physical abuse, sexual abuse, aggravated battery prior to the death or to the deceased being in touch with the fact that those things are happening to them. The legislative intent of the statute was for the worst type of crime, where you keep somebody alive deliberately and harm them. This just goes beyond the legislative intent of that statute and the constitutional intent of the statute.

THE COURT: I believe it would be a jury question to determine whether the physical and mental pain inflicted on Joy Lance prior to her death amounted to torture. The Court will overrule that objection to the verdict form.

MR. BRANNON: All right, Your Honor. The next objection would be on the list of alleged statutory aggravating circumstances Number 5, which states that "[t]he offense of murder of Sabrina Joy Lance was outrageously or wantonly vile, horrible, and inhuman in that it involved depravity of the mind." The argument is the same, that B.7, which is the statute that allows some aggravating circumstances, goes beyond the scope of the Eighth Amendment and beyond the scope of the [1885] Fourteenth Amendment, that it's being used as a catch-all statute, and that depravity of mind and wantonness is not in this case.

Generally, if you read the cases surrounding B.7 on depravity of mind, you'll see that they're cases where the person was generally subjected to torture or subjected to terrible physical abuse prior to death. And based on Dr. Hellman's testimony on direct and under cross, I don't think it's in the case. I'll go further than that: it's not in the case. And I oppose it.

MR. MADISON: We would make the same argument, Your Honor. That's a jury question.

THE COURT: The Court will permit the jury to determine depravity of mind, since they may, I believe, make a finding of that based upon what occurred to the body of Joy Lance after her death.

MR. BRANNON: All right, sir. The next objection to the list of alleged statutory aggravating circumstances will be Paragraph 6, which reads, "The offense of murder of Sabrina Joy Lance was outrageously or wantonly vile, horrible, and inhuman in that it involved an aggravated battery to the victim before death."

Cases in the State of Georgia concerning that – I'll cite *Phillips v. State*, 250 Ga. 336; also, Judge, [1886] *Godfrey v. State of Georgia*, 446 U.S. 420. Basically what those cases say is this concerning B.7 and aggravated battery: that it only applies if the victim before death was deprived of a member of her body or if the victim before death had a member of her body rendered useless or if the victim before death was seriously disfigured by the aggravated battery.

Once again, I'm going to argue that the first blow in this case rendered the victim unconscious and unable to survive because of the damage done to the brain, the swelling of the brain. I think that's called an arachnoid hematoma, which is the deepest inside the brain. So I would oppose it, also, on the grounds of the Eighth and Fourteenth Amendments, and I also oppose it on the grounds that it is volitive of Georgia's legislative intent when they passed this statute.

And I would like to say, if you read *Godfrey* and if you read *Phillips*, they talk a lot about that, that B.7 has been used as a catch-all in cases where it really shouldn't have, and cases have been reversed because there simply wasn't sufficient evidence of torture before death, of aggravated battery which rendered some limb useless before death, or wantonness or vileness. It simply wasn't there but that it's used to reach the death penalty in the punishment phase with juries in [1887] Georgia, and it's been wrongfully used. And that's been the concern about that statute, not only by the Georgia Supreme Court, but by the United States Supreme Court.

THE COURT: As I recall the testimony in the case, the forensic doctor testified that the first blow would have rendered Joy Lance unconscious, but he didn't testify that I recall that it would have caused her death. I think it would be for the jury to determine whether an aggravated battery occurred prior to Ms. Lance's death. The Court will overrule that objection.

MR. BRANNON: Judge, if we could take a look at the next document, which is entitled "Finding of the Jury," as to alleged statutory aggravating circumstances. On the first paragraph – really the first two. The first one reads, "We, the jury, find beyond a reasonable doubt that the offense of murder of Sabrina Joy Lance was committed while the offender was engaged in the commission of another capital felony, the murder of Dwight Wood, Jr." The second paragraph is just basically the first one reversed. It says, "We, the jury, find beyond a reasonable doubt that the offense of murder of Dwight G. Wood, Jr., was committed while the offender was engaged in the commission of another capital felony, the murder of Sabrina Joy Lance."

[1888] Once again, that's simultaneous use of those two counts. And I think that that is not proper, and I think it's volitive of the Doctrine of Mutually Supporting Aggravating Circumstances. And I will cite in support of that *Wilson v. State*, 250 Ga. 630; *Burden v. State*, 250 Ga. 313. It's basically the same objection I made earlier.

THE COURT: Yes, sir. You would have the same argument on the finding of the jury as to alleged statutory aggravating circumstances that you had on the list regarding both your mutual exclusivity argument and your arguments that no torture or depravity of mind or aggravated battery can be shown by the evidence.

The Court will permit you to incorporate all of your arguments on the list of alleged statutory

aggravating circumstances to the document entitled "Finding of the Jury" as to alleged statutory aggravating circumstances and will overrule the three objections regarding torture, depravity of mind, and aggravated battery and will reserve the ruling on the mutual exclusivity objection and make that ruling sometime later.

MR. BRANNON: The last document I have is a charge to be given to the jury, Page 1, the second paragraph, partway down, where it says, "[U]nless the Court has [1889] previously instructed you to consider certain evidence introduced for a limited purpose, in which event such evidence shall not be considered by you in determining the punishment." I just wanted to inquire of the Court the meaning of that so I'll be on all fours with that.

THE COURT: As I understand it, during the guilt-innocence phase the Court instructed the jury that they were to consider the similar transaction evidence only to show bent of mind and course of conduct, and that's all that they can consider it for.

MR. BRANNON: At the punishment phase?

THE COURT: Sir?

MR. BRANNON: That's all they can consider it for at the punishment phase?

MR. MADISON: The State's position, Your Honor, is it's admissible for all purposes during the punishment phase. It's actually a non-statutory aggravating circumstance.

THE COURT: I'm not sure why it wouldn't be – why wouldn't that similar transaction evidence be admissible as an aggravating circumstance?

MR. BRANNON: My position, my argument is if it's admissible it's admissible for the same purpose it was at the guilt-innocence phase. I think based on the Court's ruling – and I opposed that ruling at the [1890] guilt-innocence phase and the pretrial, also. But if it's going to be allowed for that limited purpose at the punishment phase, then I certainly want to argue that it be allowed just for that limited purpose and we don't go beyond the bent of mind and the course of conduct in the punishment phase with similar transactions and prior difficulty evidence.

Let me – while I'm saying this to the Court, let me cite one case for the Court, which is out of the Northern District of Georgia. It's a 1989 case, *Devier v. State*, which is D-e-v-i-e-r. In that case, they reversed the death sentence, finding a due process violation in the admission of prior unadjudicated bad acts at the penalty phase of that trial. And that's what you have with these similar transactions is prior unadjudicated bad acts.

THE COURT: The Court will reserve ruling on that issue. And I would assume that you would oppose anything in the charge to the jury that has to do with torture, depravity of mind, and aggravated battery on the victim for the reasons that you've already enumerated?

MR. BRANNON: Yes, sir, for the reasons I've already enumerated.

THE COURT: And, also, anything regarding the [1891] murder of one of the victims during the commission of the murder of another one because of the mutual exclusivity doctrine?

MR. BRANNON: Yes, sir. That argument would apply to that.

THE COURT: Is there anything other than that?

MR. BRANNON: I need to look through here, Judge, for just a second. I don't believe you said this. If you did, I'm sorry. But I do want to – even in the charge, I take issue with the aggravated battery, which is the B.2 section, I think, of the punishment phase, for the same reason that I have cited. I think it goes to prior-to-death arguments and with the same cases I have cited to the Court just a few minutes ago concerning the aggravating circumstances.

THE COURT: That objection is overruled.

MR. BRANNON: Let me look at the rest of them, Judge. On Page 3, down near the bottom of the page, not the last sentence, but in the paragraph just previous to that, the last sentence in the previous paragraph, it says, "Aggravated assault is a felony as defined as an attempt to commit a violent injury to the person of another with a deadly weapon." Is that meant to be aggravated battery as opposed to

aggravated assault, or did the Judge intend to charge that charge on aggravated [1892] assault?

THE COURT: Didn't the indictment say aggravated assault?

MR. MADISON: Yes, sir.

MR. BRANNON: I'm sorry. I thought it said aggravated battery.

THE COURT: I believe the indictment said aggravated assault.

MR. MADISON: It did.

MR. BRANNON: Those are my objections to the charge on the other document, Your Honor.

THE COURT: The Court, of course, will return at 1:30 and permit both counsel an opening statement regarding the penalty phase. And then we'll permit the introduction of evidence and closing arguments before the Court instructs the jury. At some time prior to the Court's instructions to the jury, we'll go over the charge and verdict forms again – well, prior to your arguments.

With that, we're – well, first of all, the Court will ask the Bailiffs to escort Mr. Lance back to his holding cell before I release the audience.

(Whereupon, the Defendant was escorted out of the courtroom.)

MR. BRANNON: How long are we going to be recessed [1893] to? 1:30?

THE COURT: 1:30. We're in recess until 1:30.

(Whereupon, a lunch break was taken.)

THE COURT: Mr. Brannon, if I'm not mistaken, the Court asked you a few minutes ago if you had reviewed the Unified Appeal checklist regarding this stage in the proceedings, and I believe you responded that you had.

MR. BRANNON: I have.

THE COURT: I'm not sure if the Court inquired of the Defendant. At this point in time, Mr. Lance, you have an opportunity to state any objections that you have to your attorney or the way in which he's handling your case. Do you have any objections that you'd like to state?

THE DEFENDANT: No, sir.

THE COURT: And, Mr. Brannon, do you have – before we begin this phase of the trial, do you have any motions that you'd like to make?

MR. BRANNON: Yes, sir, I do. First is in anticipation of Mr. Madison submitting the prior conviction of Donnie Lance which he has at the punishment phase. I would argue to the Court that before that can be done that there would need to be a short hearing concerning whether or not he was [1894] represented by an attorney and whether or not the plea was freely

and voluntarily given in court. And I think a United States Supreme Court case concerning that is *Boykin v. Alabama*, and the Georgia case which follows that is *Pope v. State* at 256 Ga. 195, a 1986 case, if they tender the prior conviction at the punishment phase. And generally a Boykin hearing or Pope hearing should be required to show that it was a voluntary plea and that all of his rights have been protected and he was represented by counsel. That's my first motion that we should have that hearing.

THE COURT: Let me take those one at a time. Does the State have a response to that?

MR. MADISON: I don't intend to introduce that.

THE COURT: Okay. The State is not going to introduce the prior conviction.

MR. BRANNON: All right. Next would be concerning victim impact. Let me address this motion with the Court. I don't believe the Court ever entered an order, although we did, as I recall, have a hearing surrounding victim impact and victim impact evidence. We have all our orders and our pleadings here, but I do not see a final order on that. So if one was issued, I do not have it.

Be that as it may, my argument will remain the same [1895] as it was then, which is a fourfold type of argument. Historically, as I'm sure the Court's aware, you could not introduce victim impact evidence at the end of a trial such as this. The original Supreme Court

case is *Booth v. Maryland.* That was a 5-4 decision in favor of not allowing to do it because it violated the Eighth Amendment to the United States Constitution. Then when *Payne v. Tennessee* was decided sometime later, they allowed victim impact evidence. But, still, that was a 5-4 decision the other way. At that point in time, one of the Justices who had voted in the opposite position on *Booth* was gone.

The only Georgia – or, at least, the Georgia case, I think, was the Sermons case. Since then there has been the legislation passed, which 17-10-1.1, I think, is the Code Section which allows the victim impact evidence at this point. However, I would be amiss if I didn't continue to object to this when the whole basis of victim impact evidence has tilted on 5-4 decisions before the United States Supreme Court, one going one way earlier and one going the other way later.

My arguments about it, Judge, as to each one, are this: One, it does violate the Eighth Amendment to the United States Constitution. Even though by a 5-4 decision what I'm saying is not the law, we all know [1896] that when the Justices are deciding things with that close of a balancing scale, that could change. So I'd be remiss in not pointing out that. I still think that the present law is bad law and the old law, by one decision different, is what ought to be in place.

Secondarily, I think the Georgia Constitution also has a cruel and unusual punishment clause. And I think I'm right about this. In the Sermons case, which I'm sure addresses 17-10-1.1, *Sermons* did not address

that in terms of the Georgia cruel and unusual punishment statute, which is somewhat parallel to the Eighth Amendment. The Georgia case in *Sermons* only addressed it from the standpoint of was that Code Section something that they would allow. They didn't address it in terms of Georgia's parallel Eighth Amendment provision. So I would object to it on that grounds.

Thirdly, the victim impact evidence really puts me in a position as the counsel for Donnie. If they put up the witnesses and I'm kind of – what I call the Hobson's Choice. I'm stuck between a rock and a hard place. If I cross-examine family members, well, of course they're going to be upset and of course they're going to cry. And that impacts the jury. So it leaves the defense counsel with saying, you know, good common sense is you don't cross-examine the victim's family [1897] when the jury has found in favor of the prosecution and believe that the Defendant committed the murder.

On the other hand, you feel compelled to do something on behalf of your client. So being stuck between this rock and a hard place, my decision is that I will not cross-examine the family members, because I think it will be more prejudicial and hurt Donnie's chances worse on punishment than if I did just the opposite. And I interpose that as an objection. I'm stuck. If I do my job, I'll probably hurt his chances to receive a life sentence as opposed to the death penalty. And that's one of the things that I dislike about the victim impact evidence. It leaves you stuck on that position of cross-examination, which, of course, is our Sixth Amendment right to confrontation in the United

States Constitution and Georgia's parallel provision. And so I can't utilize them and be effective as his lawyer. And so I also raise that grounds before the Court.

THE COURT: Well, of course, that's a trial strategy decision that you have there. Mr. Madison, what is the victim impact evidence the State plans to offer?

MR. MADISON: Your Honor, our proffer on that will be from three members of Mr. Butch Wood's family. His [1898] father will testify and talk about the impact it has had since he's lost his son. That will be very brief. His mother will testify about the loss that they have suffered since Butch was murdered. And I will present Towana Moore, who's his ex-wife, to talk about the impact on her raising the children without the father being around.

Then I'll introduce Shirley Love's testimony and Jackie Martin's testimony. Shirley is the mother of Joy, and Jackie is her sister. They will talk about some of the activities they engaged in with Joy while she was alive and the loss their family has suffered since her murder.

And I'll introduce David Cochran. He will introduce photographs and the paddle that was seized during one of the searches that has the name of Joy on that paddle. I will then tender at that time all the evidence that was introduced in the case in chief. And that will be our evidence we will proffer during this phase of the trial, Judge.

THE COURT: The Court finds that that is proper victim impact evidence, and the Court will permit the State to go into that evidence over objection to the victim impact nature of the evidence. Of course, defense counsel may have other objections to the [1899] evidence, which the Court will rule on if those objections are made.

If you'll bring the jury in, Mr. Bailiff.

(Whereupon, the jury entered the courtroom at 1:45 p.m.)

THE COURT: Would counsel approach the bench for just a minute?

(Whereupon, a bench conference ensued as follows:)

THE COURT: Mr. Brannon, I forgot to tell you this. What I'm planning to do is to put all 15 jurors back in there. And, of course, they're not going to be talking among one another. But if one of the jurors in the original 12 falls ill, then we may have to replace one with an alternate.

MR. BRANNON: I don't disagree with that decision.

(Whereupon, the bench conference was concluded.)

THE COURT: Good afternoon. Ladies and gentlemen of the jury, under the procedure followed in Georgia, criminal trials are in two stages in certain felony cases. In the first stage, the jury determines the

guilt or innocence of the Defendant. If the jury determines that the Defendant is guilty, then the State and the Defendant both have a right to submit additional [1900] evidence in aggravation or in extenuation and mitigation of the punishment to be imposed.

After hearing any such evidence and argument of counsel, if any, the jury then goes back to consider the sentence and determine the punishment to be imposed. The penalty set, of course, must be within the limits which are set by law and which I will give you at the appropriate time.

Mr. Madison, would you like to make an opening statement?

MR. MADISON: Yes, sir.

OPENING STATEMENT FOR THE PROSECUTION

MR. MADISON: Good afternoon, ladies and gentlemen. We're at the last phase of the trial. When we met Monday – it seems like a long, long time ago – we talked about this being a two-part trial. The first part would be to decide the guilt or innocence of the Defendant, and the next part is for you to set the punishment, ladies and gentlemen.

What we will introduce during this next part of the trial will be something known as statutory aggravating circumstances. You will have an opportunity to consider seven different statutory aggravating circumstances. And those that we intend to introduce will be

reflected in the verdict that you have already returned, ladies [1901] and gentlemen.

One statutory aggravating circumstance is that the murder of Butch Wood was committed during the murder of Joy Lance. That's a statutory aggravating circumstance.

The second statutory aggravating circumstance is that the murder of Joy Lance was committed during the murder of Butch Wood. The third one is that the murder of Butch Wood was committed during the commission of the crime of burglary; a third statutory aggravating circumstance.

The fourth is that the murder of Joy Lance was committed during the crime of burglary. The fifth one is that the murder of Sabrina Joy Lance was outrageously, wantonly vile, horrible, or inhuman in that it involved torture to the victim before her death.

The sixth one is that the offense of murder of Sabrina Joy Lance was outrageously, wantonly vile, horrible or inhuman in that it involved depravity of mind on the part of the Defendant.

And the last one, ladies and gentlemen, is that the offense of murder of Sabrina Joy Lance involved the offense of aggravated battery, which the Judge will tell you is rendering a member of the body useless or causing serious disfigurement of the body.

And I will ask you to consider those seven [1902] statutory aggravating circumstances. If you find the

presence of seven statutory aggravating circumstances, one or more, then you, ladies and gentlemen, can fix the punishment in this case. You will have an opportunity to assess the most severe penalty, which is death; the second most severe penalty, which is life imprisonment without possibility of parole; or a life sentence. You may find statutory aggravating circumstances and reject the death penalty. That choice is yours, ladies and gentlemen, and only yours. No one will quarrel with what you do in this case.

I'm going to ask you to listen to the evidence that we have already tendered and presented to you that you discussed at length over yesterday and today. You took a lot of notes; you paid careful attention, ladies and gentlemen. This is the part of the trial that no one likes. I don't like it as the District Attorney, the defense attorney doesn't like it, and I know you don't like it, either, as jurors. But this is the only way that our justice system works in America, ladies and gentlemen, is whether or not people that commit this type of crime of murder are held accountable fully under the law. And it's a touch choice, but you folks were selected to do that, ladies and gentlemen.

You will hear during this part of the trial from [1903] Mr. and Mrs. Wood. They're the mother and father of Butch. They will tell you what their family has been like since they lost their son. You will hear from Mrs. Love. She will tell you what her family has been like since she lost her daughter. You will hear from Jackie. That's Joy's sister. She will tell you what it's been like and what kind of mom she was. She'll tell you

that Joy had a very troubled life and she sometimes sought safety and sanctuary in the wrong places. But she'll also talk about what kind of mom she was and about those two children she did her best job as she could to raise.

We'll also introduce a paddle, ladies and gentlemen, that was found during one of the search warrants. This paddle is about this big (indicating) and has Joy's name written on it, ladies and gentlemen.

I'm going to ask you to consider all of that evidence, and once you've considered that evidence, ladies and gentlemen, then I'm going to ask you to return with a verdict that speaks the truth and that holds that man sitting over here fully accountable for what he did to that woman on November 8th and 9th as he beat her face off and when he stole her personality and her identity.

One verdict will do that, ladies and gentlemen.

THE COURT: Mr. Brannon, would you like to make an [1904] opening statement?

MR. BRANNON: We'll reserve the concluding statement at the end of the punishment phase, Your Honor.

THE STATE'S CASE

THE COURT: Mr. Madison, you may call your first witness.

MR. MADISON: Your Honor, we'll call Mr. Wood as our first witness.

(Witness previously sworn)

Whereupon,

DWIGHT G. WOOD, SR.,

having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MADISON:

Q Mr. Wood, you're still under oath. You took the oath, I believe, during the first phase of the trial; is that correct, sir?

A Yes, sir.

Q And I'll just remind you you're still under oath.

A Yes, sir.

Q Would you reintroduce yourself to the jury.

A My name is Dwight Wood, Sr. I'm the father of Butch.

Q Mr. Wood, I want to ask you if you could tell the [1905] jury what your family has suffered since you lost your son back in November of 1997.

A I don't know if there are words to describe this. It's – unless you've done it, you just can't imagine the loss. He was the only son I had. I had two children, one

daughter and one son. He was the younger. He was always the baby. He'll always be the baby. The impact – unless you've done it, you just can't imagine the impact.

(Whereupon, State's Exhibit Numbers 421A, 421B, 421C and 421E were marked for identification purposes.)

Q (BY MR. MADISON:) I want to show you a photograph, sir, that's marked State's Exhibit Number 421A and ask you if you recognize what's shown in the picture, sir.

A That's Butch, his son, and his two daughters. And you might note that his younger daughter is in his arms.

Q Is that a true and accurate picture of Butch and his children?

A Yes, it is.

MR. MADISON: I would tender State's 421A into evidence at this time.

MR. BRANNON: Your Honor, we would oppose it on the grounds already argued during the victim impact [1906] motion.

THE COURT: It's admitted over objection.

MR. MADISON: No further questions of Mr. Wood, Your Honor.

THE COURT: Mr. Brannon.

MR. BRANNON: I have no questions for Mr. Wood.

THE COURT: You may come down, sir.

MR. MADISON: We call Mrs. Wood, please.

(Witness sworn)

Whereupon,

ESTELLE WOOD,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MADISON:

Q First of all, tell us your name.

A Estelle Wood.

Q Where do you live, Ms. Wood?

A [redacted].

Q Is your husband Dwight Wood, Sr.?

A Yes, he is.

Q How many children did the two of y'all have?

A I had two.

Q And their names?

A Tammy and Dwight, Jr.

Q I want to ask you to tell the jury about the effect [1907] and the impact that the loss of Butch has had on your family, ma'am.

A There's no earthly way to tell you. It changed everything. It took a piece of my heart, and I can't get it back. He played a special part in my life. I had a relationship with him a lot of mothers aren't fortunate enough to have. There's an empty place at my table. He always had his own place when he was there. I miss him so bad. Sometimes I go to my closet where I've got some of his stuff stored just to smell him. I cannot visit his grave because I can't leave him there. I still wait for him to call me and watch for him to go by. And to listen to his little girl cry sometimes – if you haven't been there, you don't know what I'm feeling. I can't express what I'm feeling.

MR. MADISON: Thank you, Mrs. Wood.

THE COURT: Any questions, Mr. Brannon?

MR. BRANNON: No, sir, no questions.

THE COURT: You may come down, ma'am.

MR. MADISON: Towana Moore Wood.

(Witness previously sworn)

Whereupon,

TOWANA WOOD,

having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

[1908] BY MR. MADISON:

Q I believe you took the oath the other day when you testified, Towana.

A Yes, I did.

Q I'll just remind you you're still under oath. You and Butch have several children together; is that correct?

A We have three.

Q And their names and ages now?

A Brandon Wood, 18; Christy, 16; and Hannah, 7.

Q Can you tell the jury the kind of relationship that Butch had with his children and what impact and effect the loss of Butch has had on your children?

A They love their dad. It's really been hard for them. There's not a night that goes by that my 7-year-old don't say, "I miss him, and I love my daddy." That's every night. It's been real hard on them. They miss him terribly.

Q Are you doing the best you can to raise them without a father?

A Yes, I am.

MR. MADISON: No further questions.

THE COURT: Mr. Brannon.

MR. BRANNON: No questions.

THE COURT: You may come down.

MR. MADISON: We call Shirley Love.

(Witness previously sworn)

[1909] Whereupon,

SHIRLEY LOVE,

having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MADISON:

Q Ms. Love, I believe you testified earlier, and I gave you an oath then. I'll just remind you you're still under oath.

I'd like you to tell the jury what effect and impact the loss of Joy has been to you and to her children and to your family.

A It's been so devastating. My family has been so devastated. How he brutally, brutally – how he messed up her beautiful face. My grief knows no bounds. My beautiful daughter's gone forever. The children she left behind – there was a special bond Jessie had for his mother. He called her the best mom in the whole wide world.

Q During her funeral service, did her son place a letter he had written in her grave, in her casket?

A Yes.

Q And you had an opportunity to see that?

A Yes.

Q (BY MR. MADISON:) I believe you've also seen some photographs that I've marked as State's Exhibit Number 421E. Do you recognize the pictures that are shown here, Ms. Love?

[1910] A Yes.

Q Are those true and accurate representations of the way Joy and her children appeared?

A Yes.

MR. MADISON: I'd offer that into evidence at this time, Your Honor.

THE COURT: It's admitted over prior objection.

Q (BY MR. MADISON:) I'll also show you now a copy of the letter that Jessie wrote. Do you recognize that?

A Yes, I do.

Q Would you share that, please, ma'am, with the jury.

A This is to his mother. "I love you very much. I'll get to heaven as soon as I can. You're the best mom in the whole world. I'll see you in heaven. I love you very, very, very much. Mom, sing good in heaven. Love you very much. Love, your best son, Jessie Clayton Lance.

P.S. I'll be looking for you in heaven, and make Jesus and God happy."

Q That was a letter written by her son?

A By Jessie.

Q I'll show you another letter that Jessie wrote. Will you take a look at State's 421B, ma'am?

A (Witness complies.)

Q Do you recognize that? And would you share that with the jury.

MR. BRANNON: Your Honor, before she reads that, [1911] may Mr. Madison and I approach the bench just briefly?

THE COURT: You may.

(Whereupon, a bench conference ensued as follows:)

MR. BRANNON: I think I would be remiss if I didn't make a hearsay objection at this point. I did not make that objection previously, but since they're reading letters from persons who are not here, I'm going to do that so the record will reflect I made a hearsay objection.

THE COURT: I don't believe that they're offered to show the truth of anything contained in there, are they?

MR. MADISON: No, sir. And I don't think either side wished to put that little boy through this

trial, Judge. That's why we're not calling him. I know Rich didn't, and I didn't.

THE COURT: That objection is overruled.

MR. BRANNON: All right, sir.

(Whereupon, the bench conference was concluded.)

Q (BY MR. MADISON:) Can you make out Jessie's handwriting in that one, Ms. Love?

A Maybe I can, some of it.

Q Would you share that with the jury, please.

[1912] A Yes. "My name is Jessie Lance – July 19th, 1998 – and Mom died on November 9, '97. I miss her when I have dreams about her, Christmas, her birthday, Mother's Day, Father's Day, and Valentine's Day, too, when we talk about her, when I see pictures of her, when I go to sleep and wake up, and my birthday, my sister's birthday. Slow songs, even her best happy songs, them 2 songs make me cry when I hear them, and them 2 songs are, 1, 'Go Rest on That Mountain' and 2, 'Broken Wing'. Love, Jessie Lance. I miss her every second."

MR. MADISON: Thank you, Ms. Love. No further questions for this witness, Your Honor.

THE COURT: Mr. Brannon.

MR. BRANNON: I have no questions for Ms. Love.

THE COURT: You may come down.

MR. MADISON: We call Jackie Martin as the next witness, please.

(Witness previously sworn)

Whereupon,

JACKIE MARTIN,

having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MADISON:

Q You testified in an earlier part of the trial, Ms. Martin, and I'll just remind you you're still under oath; [1913] okay?

A Okay.

Q Could you tell the jury a little bit of the effect that the loss of your sister has been to you. If you could share with the jury any of the times that you and she shared together where y'all were spending time with your children and your families. Could you speak to that, please.

A Yes, sir. Joy was my sister, and I loved her very much. She was so pretty. Y'all saw her picture. She was so – she was so kindhearted to everybody. She got killed when she was 39. Her birthday was in April, and we didn't even get to celebrate her 40th birthday. She was a t-ball coach for her little boy. She was a good

mom. She always recognized her kids' birthdays. Sometimes she would have skating parties for them, and we'd go to Gainesville.

My son, he's going to get married in July of this year. She won't be there for that. And she would have – I'm sorry.

Q That's okay, Jackie.

A I'm sorry. Christmas, it's the worst time. We always got together, all of our family. It's so bad; it's still bad. We've had two Christmases without her. And her tombstone, when we got ready for it, Jessie always called her Best Mom. And when you drive up – it was his idea to put Best Mom on it, when you drive up, that you could see it. So [1914] we done that for Jessie. Now we have to go to the grave to recognize Joy's birthday.

And me and Joy was going to – my daddy worked all his life, and he retired in the summer of '98, last summer. And we'd already talked about having a big celebration down at my house. And after Joy got murdered, Daddy – he didn't even want to talk about it. He wouldn't even hear of it. Donnie Lance cheated me out of that.

And I miss Butch. He had a Post Office box over there where I work. And he would come in, and he would throw his hand up, and he would wave. He was friendly; he'd always wave no matter where he was at. And Butch loved Joy, and Joy loved Butch. I know she loved Butch. She told me a lot of times.

I miss her so bad. Y'all don't know. You have no idea. And it's not really – I mean – they should have gotten killed in a car wreck. It would have been different. Her face got beat off, and we didn't even get to open her –

Q Is there anything else you'd like to say, Jackie?

A She was a good mother. She always brought the kids down trick-or-treating. I love her very much. I still love her. And I miss her terribly to this day. Oh, I just wish she was here. You don't really realize how you miss somebody until you don't have them anymore.

MR. MADISON: No further questions, Your Honor.

[1915] THE COURT: Mr. Brannon.

MR. BRANNON: No questions for this witness.

THE COURT: You may come down, ma'am.

MR. MADISON: We call David Cochran.

(Whereupon, State's Exhibit Numbers 270 and 270A were marked for identification purposes.)

(Witness previously sworn)

Whereupon,

DAVID COCHRAN,

having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MADISON:

Q David, I'm going to show you what's marked as State's Exhibit Numbers 270A and 270. Do you recognize State's 270A and 270, please?

A Yes, sir, I do.

Q And what are those, please, and where were those items photographed and seen?

A These photographs and the paddle were during a June 15th, 1998, search warrant at the Donnie Lance shop.

Q When did you first see the photograph – or, first, the paddle at his shop?

A We first seen and photographed the paddle during [1916] the December the 5th, 1998, search warrant – or, excuse me – '97 search warrant.

A After interviewing the similar transaction witnesses and finding out about some of the beatings that had been inflicted, did you go back and seize that paddle pursuant to a search warrant?

Q Yes, sir. After we had interviewed some witnesses during the investigation, we went back on June 15th and seized the paddle.

MR. MADISON: I'd tender those two items into evidence at this time, Your Honor.

MR. BRANNON: I've already made my objection at the hearing, Your Honor.

THE COURT: They're admitted over objection.

MR. MADISON: I have no further questions of this witness, Your Honor.

THE COURT: Mr. Brannon.

MR. BRANNON: No questions for Mr. Cochran.

THE COURT: You may come down.

MR. MADISON: Your Honor, that would conclude our victim impact evidence. We would re-tender at this time all the evidence and testimony that was offered during the first phase of this trial, which was the guilt-innocence phase. And with that proffer and that re-tender of that evidence, we will rest our case during [1917] the sentencing phase of the trial.

THE COURT: Mr. Brannon.

MR. BRANNON: Judge, we oppose the evidence for reasons I highlighted to the Court in the hearing we had before. But, other than that, I have no further objection.

THE COURT: All right.

MR. BRANNON: I'm talking about the tendering of all the guilt-innocence phase evidence.

THE COURT: Yes, sir. That objection is overruled. Anything else, Mr. Brannon?

MR. BRANNON: No, sir.

THE COURT: Ladies and gentlemen, let me excuse you to the jury room for just a minute.

(Whereupon, the jury exited the courtroom at 2:20 p.m.)

THE COURT: I'm sorry. Do I understand correctly, Mr. Brannon, that the defense does not intend to offer any evidence at this phase?

MR. BRANNON: No, sir. We're not going to call in the family members for the reason that if we put them on the stand and they tell about Donnie, he's a good guy, and the things that they know about him and then subject to cross-examination the specific bad acts that would be allowed, we'd be all afternoon hearing the same negative [1918] similar transaction and prior difficulty hearing that we've heard for three days. So I'm not going to call family members to the stand.

THE COURT: The Court has researched and read the cases cited by defense counsel and believes that the evidence of prior similar transactions, all of which are unadjudicated bad acts, are not inadmissible in the sentencing phase of the trial, and in instructing the jury will permit the jury to consider those prior similar transactions for the purposes of imposing punishment and will permit the State to argue that point.

The Court rejects the defense contention that the mutually supporting or dependent offenses has to – the Court has to make that determination at this time, and the Court will submit both the statutory aggravating circumstances 1 and 2 to the jury for their determination.

The Court is going to bring the jury in. Are there any other matters we need to take up?

MR. MADISON: May we approach, Judge?

THE COURT: Yes.

(Whereupon, a bench conference ensued as follows:)

MR. MADISON: Are we getting ready to do [1919] arguments?

THE COURT: I guess so.

MR. BRANNON: Yes.

MR. MADISON: That's what I wanted to ask. I want to take a quick break before we do that. That's one thing I wanted to approach about, to use the bathroom and that sort of stuff. The other thing: What is the order?

THE COURT: Do what?

MR. MADISON: The order of argument.

THE COURT: Mr. Brannon goes last.

MR. MADISON: I was afraid you were going to say that. I want to object to that.

THE COURT: He's offered no evidence.

MR. MADISON: But it seems like since I have such a tremendous burden in a case like this I ought to get the last word. Don't you agree, Rich?

MR. BRANNON: I think I'll go last.

THE COURT: The –

MR. MADISON: I was thinking – and we're going to check, and it may be it doesn't matter whether he puts evidence up. I'm not sure. They may always get the last word in a death penalty case.

THE COURT: I'm not sure, but I know that if Mr. Brannon goes last, he has no grounds to complain. But, [1920] more importantly, I believe because he's offered no evidence at all he would have the right to go last. And, quite frankly, I am concerned about this torture remaining in the case and how it may infect also the jury's verdicts in finding depravity of mind.

MR. MADISON: Well, I would submit, Your Honor, based on the evidence from the doctor, from the autopsy about her injuries to her arm and to her hand, that that's a proper argument for me to make. That she was – had an awareness of what was going on; otherwise, there would not be the injury to her hand. We also have circumstantial evidence –

THE COURT: Got hit in the hand?

MR. MADISON: Yes, sir. There's more than sufficient evidence to argue that, and that's a count that should go to the jury for their consideration and for our argument. And Rich can come back and talk about the first blow knocked her out. And that's fine; he can argue that, and he's got the last word.

THE COURT: All right.

MR. MADISON: Can we take 15 minutes before we start?

(Whereupon, the bench conference was concluded.)

THE COURT: Could I ask counsel approach the bench [1921] one last time – one other time.

Mr. Brannon, could I ask you to approach for just a moment?

MR. BRANNON: Yes, sir.

(Whereupon, a bench conference ensued as follows:)

THE COURT: Let's see. The State's just furnished me a new list of alleged statutory aggravating circumstances that talks about the murder of Dwight Wood and the murder of Joy Lance while in commission of a burglary being two aggravating circumstances rather than one. And the jury will just be making a determination of sentence as to murder or as to both murder and felony murder?

MR. BRANNON: My understanding of that is this: I don't think they can. I think they can make a finding as to both, but he can only be sentenced as to one.

MR. MADISON: Yeah, I think they can find it in all instances. But when you go to sentence, you can only sentence one should they return a death verdict.

THE COURT: And, I guess, one other question on the verdict form: It doesn't specify – should it specify four different counts, one for the murder – well, let's see. Well, no, I suppose that's included in the aggravating circumstances –

[1922] MR. MADISON: That's correct.

THE COURT: – as to which –

MR. MADISON: Apply.

THE COURT: Because they're specific as to each victim?

MR. MADISON: Yes, sir.

THE COURT: I understand that I have to furnish the jury a copy of this charge.

MR. MADISON: I think that's right. Don't you, Rich?

MR. BRANNON: Uh-huh (affirmative). I think so.

THE COURT: And I had two different charges, one talking about the offense of murder and one, felony murder. And I suppose I should give the one charge that includes both.

MR. MADISON: Uh-huh (affirmative).

THE COURT: He's been found guilty of the offenses of murder and felony murder.

MR. MADISON: Uh-huh (affirmative). I see what you're saying here, though. This might should have – it should specify which victim. That has to be there. I think that has to be in there, Judge.

THE COURT: And maybe I should give them two verdicts, one for – or maybe four, one for each of the four counts.

[1923] MR. MADISON: That may be confusing. If there's two, that would be more appropriate, I think. A verdict as to the sentence for the murder of Joy Lance; a verdict as to the sentence for the murder of Butch Wood. I think we need to give you one for each of those.

MR. BRANNON: Yes. I think this verdict form for each victim.

MR. MADISON: Yes.

MR. BRANNON: I think that would be –

MR. MADISON: I'm going to go have another one of these made.

MR. BRANNON: – the appropriate way to do it.

(Whereupon, the bench conference was concluded.)

THE COURT: I'll ask everyone to remain in the courtroom and permit the jury to leave the courtroom for a few minutes. The Court will permit them to have a break outside the courtroom.

(Whereupon, the jury exited the courthouse at 2:25 p.m.)

THE COURT: We'll be in recess for 15 minutes.

(Whereupon, a short break was taken.)

THE COURT: Before we bring the jury out, also in the charge to the jury that the Court will be giving to [1924] the jury, the Court has made a correction to refer to two different verdict forms, one as to each victim. And I suppose with that, both counsel are ready for the closing argument.

You may bring the jury in, Mr. Bailiff.

(Whereupon, the jury entered the courtroom at 2:55 p.m.)

THE COURT: Mr. Madison, you may make your closing argument.

MR. MADISON: Thank you, Your Honor. Mr. Brannon.

CLOSING ARGUMENT FOR THE PROSECUTION

MR. MADISON: Good afternoon, ladies and gentlemen of the jury. We're now in the last part of this trial. All the evidence is in, and you still have the evidence back out with you in the jury room, ladies and gentlemen.

This is the tough part. This is the tough part for you; this is the tough part for me; this is the tough part for the Judge; and it's a tough part for the families, too. They have been living with this case since November the 8th and 9th of 1997. You've heard how it has affected their lives and their families and what losses they have suffered, when a mother and a father are taken away from their own children and what has happened to those folks.

[1925] We need to think about in this case what Donnie Lance's role was on the night of November 8th and 9th. In your verdict, ladies and gentlemen, that you sought for and found the truth of this case, your verdict spoke loudly and clearly about the actions of Donnie Cleveland Lance on November the 8th and 9th. You found him to be that evening a judge, a jury, and an executioner of two innocent people, an ex-wife that he had no claims, no rights, no control over, and another man, Butch Wood.

On that night, ladies and gentlemen, he was rageful when he destroyed Joy, but he was cold and calculating when he carried out his crime. This was not where he made a phone call and then all of a sudden took off in front of his friends and family and said, "I've

got to go do something about this." He went home, and he prepared himself. He prepared himself for an act of murder. He armed himself with a sawed-off shotgun that he kept hidden in his shop, he armed himself with 12-gauge 00 high-powered deadly buckshot, and he drove and concealed his car so that he could sneak in the dark of night over to kill those two people; two unarmed, two unsuspecting people that were in love was the only crime that those two folks had ever committed, ladies and gentlemen.

She had been divorced from that man for over three [1926] years, but Donnie will not let her go. He has never let her go, no matter how many times she has left, gone back to her family, has asked for assistance, has asked for law enforcement to be involved. He would never, ever let her go.

And that night, ladies and gentlemen, when Donnie Lance couldn't control his possession one more time, he went back over there to that house. And what we have found in this case – and when I asked y'all back last Monday about how many of you had either friends or family that had encountered family violence or domestic violence, fortunately very few folks said they had encountered that. But you know why people don't talk about that, ladies and gentlemen? Because it's a crime of shame, it's a crime of degradation, and it's a crime of humiliation.

And we all, you and I, keep certain myths in our heart about family violence and what it is or isn't. And we do that because it makes us feel safe. But the

reality of family violence has been in this courtroom for the last week and a half. And that reality is this, ladies and gentlemen: we always blame the woman. We always say, you know, if she'd just leave she'd be okay. But you have uncovered the truth of family violence in this trial. The most dangerous time for our female [1927] victims in family violence is when they try to leave and get away. That is when they get killed, ladies and gentlemen.

And Joy had gone back to Donnie for whatever reason. Maybe it was for financial reasons, maybe because the kids wanted her to go back, maybe she couldn't support herself. But she went back to him, and guess what? His promises, his flowers, his words, his conduct towards her got her back. And as soon as he got her back, he hurt her one more time when he hurt her nose and bit her nose. And she said, "That's enough. I'm out of here. I'm leaving now." And she left and got away.

That was the most violent time. And every time it's happened in the past, in the similar transactions, every time Joy left this man over here, left this monster, ladies and gentlemen, that's sitting right here at this table in this courtroom, every time she left him he got her to come back, and he hurt her and he beat her one more time. Her family couldn't save her; the law officers couldn't save her; and even Marsha Dooley, an Assistant District Attorney who did her best to prosecute and protect that woman, could not save her.

And, yet, we as a society often blame that victim. We want her to take out the warrants; we want her to [1927] press the charges; we want her to be strong. And do you know what she's like, ladies and gentlemen? She's like a prisoner of war. She is a hostage in that situation. And the only place she knows to go is back to this man, who says, I love you; I love you. And Mr. Brannon may tell you, well, you know, he loved her; he really loved her. No, he didn't, ladies and gentlemen. He loved to control that woman. He loved to inflict pain on her, and he loved to order her around and tell her what to do. And she finally left him and got away from that man.

But even a month before her death he was telling people, "If I can't have you, no one else will." And Donnie Lance is a man of his word. They were not afforded that night any representation by counsel. They were not afforded a nice, sterile courtroom in which Donnie Lance could debate their fate. He went in there, ladies and gentlemen, and made a forcible entry into another man's home, kicked in that door, and went inside there and brutalized two people. And he almost got away with it.

But you, ladies and gentlemen, saw through his scheme. You saw through what Donnie Lance was trying to do, because he did the same thing twice before in two of his other transactions where he had hurt her in the [1929] head, covered up the crime scene, fixed the windshield, made sure the weapon was hidden, just like before, when he kicked in the door of Butch Wood

back in '93 and '94 when he did that act and covered up his crime.

He thought he could get away with it one more time, ladies and gentlemen, and he went further that time than he'd ever gone. He took two people's lives that had not done one thing to him that night whatsoever. They were in their own home, safe from harm, they thought, and Donnie Lance went in there and killed them.

The Judge will charge you on aggravating circumstances in this case. He will charge you about torture. And I expect when he charges you on torture, ladies and gentlemen, he will tell you that torture occurs when a living person is subjected to unnecessary infliction of severe physical or mental pain, serious physical abuse, and you may be authorized to find that the offense of murder involved torture if you find that an act of torture intentionally, unnecessarily, and wantonly inflicted severe physical injury to that victim.

Remember Dr. Hellman's testimony when he talked about recent injuries to her hand? Remember the door that you have out there that shows the imprint where something, some object, some human being had their head [1930] thrown into that door? Remember seeing pieces of her body on that door, ladies and gentlemen?

Joy Lance had heard this man fire three shotgun blasts in the home of Butch Wood. She was inside that bedroom, had the covers pulled back over her head, hiding and cowering, probably begging for her life,

ladies and gentlemen. Because she knew who this was when he came in there and did those things to her. He pulled the covers back off. And you saw the photograph, the way the covers are arranged. Those aren't where someone had kicked them off; they're where they had been pulled off.

She had no weapons, she had no clothes on, she was in the most defenseless position that any person could ever be. Donnie Lance grabbed her up. And what's his favorite part to grab on a woman when he wants to control them? According to Towana and according to what Joy told other people, he grabs you by the hair of the head. He grabbed that poor woman and slung her into the door. She's still awake; she's still aware of what's going on, because that was not a death blow, ladies and gentlemen. He then throws her down on top of that bed, takes the butt of that shotgun, she's struck here – and Dr. Hellman says we don't know which is first or last, but this would not cause her death. The first or second [1931] blow to her face would not cause her death, ladies and gentlemen. Is that not torture? You decide when you go back in the jury room if that is not torture for that poor woman.

You also asked this question, ladies and gentlemen. The Judge will charge you on aggravated battery. That is another aggravating circumstance here. Aggravated battery occurs when a person maliciously causes either serious disfigurement or causes a body part to be rendered useless.

Aggravated battery has been proven beyond a reasonable doubt in this case, ladies and gentlemen, again, according to Dr. Hellman, the autopsy photographs, and the crime scene photographs. He obliterated one of her eyes completely, ladies and gentlemen. Can you imagine what that poor woman was thinking and feeling when she has a crushing blow to her head and she can no longer see out of one of her eyes? And she's holding up her hands and trying to struggle and fight and hang onto life as much as she can.

And did Donnie Lance stop? Did Donnie Lance stop from disfiguring that beautiful woman? And you saw what she looked like in life. She looks just like her sister that's sitting out here in the audience. She looks just like Jackie. She and Jackie could almost pass for [1932] twins, they look so close, ladies and gentlemen. And that's very eerie to realize what that man had done, because you can't tell who that person was when you look at her face.

That, ladies and gentlemen, is an aggravated battery beyond a reasonable doubt, and you may so find when you go back in that jury room. That's another aggravating circumstance.

The Judge will also charge you that when someone commits murder during the commission of a burglary that is also an aggravating circumstance. Your verdict speaks loudly that Donnie Lance committed a burglary on November the 8th and 9th when he made a forcible entry into their home.

The Judge will also charge you when you commit murder during another capital felony, murder, that, too, is an aggravating circumstance. Donnie Lance, on the night of November 8th and 9th committed a double murder, ladies and gentlemen. He took two people's lives. He destroyed those lives. And you ask yourself, ladies and gentlemen, what kind of person would do that. Was that person who beat her over and over and over again not acting in a depraved state of mind? Listen to the Judge's charge on depravity of mind: an immoral, utter disregard for another person's life. And ask yourself [1933] if Donnie Lance did not do that on November 8th and 9th.

The Judge will give you an actual copy of the aggravating circumstances in his charge. You'll have that out with you, ladies and gentlemen, for you to consider, read through, evaluate, and give careful, deliberate consideration to.

We all know this is a very tough decision for you to make, ladies and gentlemen. But I want you to ask yourself when you go back in that jury room where our justice system and where our humanity should be, and should someone not be held accountable and responsible for these – these two murders, ladies and gentlemen.

And also ask yourself this – and I was watching you, and you were watching him. When this verdict was read, "We, the jury find the Defendant guilty," there was no remorse, there was no sorrow, there was nothing shown on that man's face. The only thing

Donnie Lance regrets today in this courtroom is that you have seen through him and that you have held him accountable.

You heard his interview, his taped interview with David Cochran. Did you hear one time on there him say anything about, "Gosh, y'all need to solve this case. You need to catch the murderer of the mother of my children. And what am I going to do? How am I going to exist without her? I loved her so much." Not one time. [1934] What we heard on that tape, word after word coming out of that man's mouth was a character assassination of that poor dead woman. All he wanted to do was take her – he had smeared her blood, ladies and gentlemen, all over that house, and then he wanted to take her reputation and smear it all around in that interview with David Cochran.

Now, that's the kind of person Donnie Lance is. You can also find from the evidence in this case what his real personality is like. We've never heard one word about where he stood up to another man or had a fight with another man or a disagreement with another man. No. Do you know why, ladies and gentlemen? What kind of person shoots another man in the back? What kind of person shoots an unarmed man in his own home? What kind of person beats a woman to death where you can't even recognize her beautiful face? One kind of person does that, and that is a coward, ladies and gentlemen. And that's what Donnie Lance is is a coward who will beat and disfigure and hurt an innocent woman.

If you take Donnie's possessions, that's what upsets him. His possession was taken on November 8th and 9th. And when he got his possession taken away, then he struck out. And after he struck out, he's still cold and calculating because he covers up his tracks. [1935] He covers up the murder weapon and destroys it; he covers up his 7½ Sears Diehard shoes that he was so proud of; he covers up his bloody clothing, ladies and gentlemen. That is an act of a person who carried out a premeditated, calculating murder against two innocent people.

And that's what Donnie Lance did that night, ladies and gentlemen. He had a plan, he carried out that plan, and he concealed his murder of those two folks because he wishes to avoid responsibility and accountability for his acts of violence. And he committed the most violent acts that can be done to another human being on November 8th when he broke into Butch Wood's home.

From the evidence that came into this courtroom, ladies and gentlemen, you saw a pattern of behavior. This murder was not – it may have been completed in one night, but it took eight years to commit. It took eight years of torture of that woman, of choking her, of pistol-whipping her, of holding a gun to her head while her little son is in her lap and threatening to blow her brains out. It took eight years to carry out, and he kept his word. "If I can't have you, no one else can."

And then folks who have not seen family violence say, well, it's just family violence. It's a private matter.

And so his family said it was a private matter [1936] and "we didn't want to get involved in it." You know, ladies and gentlemen, unless you and I get involved in it, though, it does not get any better and it does not change. We still have victims that lose their eyes, that lose their arms, and that literally lose their lives.

And it only takes a space of five minutes to kill people the way Donnie Lance did that night, but it takes a lifetime of pain for the victims' families. They will never, ever get over what has happened to them that night. It's been two years, two Christmases for those families. And you saw and you heard what they're going through now. And that will never change. That will never, ever change.

In this case, ladies and gentlemen, there are seven separate aggravating circumstances that you may find to exist in this case: murder during murder, murder during burglary – both those murders were committed during a burglary; murder that involved torture; murder that involved depravity of mind; murder that involved an aggravated battery. Seven of those, ladies and gentlemen, for you to consider when you go back to decide what is the appropriate sentence for Donnie Lance. And I want you to ask yourself what mercy Donnie showed to Joy; what mercy Donnie showed to Butch; what [1937] mercy Donnie showed to their family members; what respect or dignity he gave those people when he shot an unarmed man in the back and beat his ex-wife's face off.

He was in a rage with her, and she was the object of his attack that night, ladies and gentlemen. You saw in the photographs where he had obliterated her face. He wasn't trying to cover up her identity where we wouldn't recognize her, because we all knew who that was. What he was trying to do, ladies and gentlemen, was to obliterate her personality, because a possession of his had spoken back to him and said, "I'm not going to put up with this anymore. I'm going to leave you. I'm going to find someone else that will love me and care for me and protect me."

When we spoke to all the jurors back last Monday and we questioned people about their beliefs about capital punishment – and this is where the rubber meets the road in this case, ladies and gentlemen – we asked the question: Are you in favor of or against the death penalty? A lot of folks were against it, and a lot of people said they favored it. Some said they favored it in some cases but not in all cases. And we had a couple of folks that said, "Well, I favor it, Mr. Madison, but I don't want to be the one to have to do it. I don't ever want to be the one to have to do it, and I would [1938] never vote for it even though I favor it." And you're going to have to go back and search your hearts about this part, ladies and gentlemen, because I can't help you with this. All I can do is share this story with you, and this story was told to me a long time ago.

There was a wise king that ruled many, many years ago across the ocean, and he loved to teach by example. And he wanted his kingdom and his people to be peaceful, law-abiding folks and to help and assist

one another. So one day, in his teaching by example, he put a huge stone out in the middle of the road. And he left that stone there and he got behind a tree to watch and see what would happen.

The first person that came by was a banker. He was all dressed up in his fine suit getting ready to go to work. And he walked by the stone and said, "Gosh, somebody's going to get hurt. They need to move this stone. But I'm busy, and I'm dressed up, and I can't stop." So he went on to work and paid no attention to it.

The next person that came by was a farmer, and he had a wagon loaded full of produce to go sell to the market. And he said the same thing. "Gosh, what's wrong with these people in this community? Why won't they do something about this stone? Somebody'll get [1939] hurt. It's the government's job. They ought to do something about it." He, too, kept on going and didn't stop to move that stone.

And the king watched and counted, and throughout the course of that morning and afternoon, up into the early evening hours, 27 people walked by. They all grumbled and complained, and no one did anything. And the stone stayed in the road, and it was getting almost dark.

It was about 6:00 that evening, and one lady came by who had been working all day. She'd been working at her dad's mill. And she was dusty and she was tired and she was worn out. She was going to go home and take a hot bath and get something to eat and go to bed

because she was very tired from her work. But she saw that stone in the middle of the road, and she said, "You know, if somebody doesn't do something, they're going to get hurt tonight. Somebody's either going to ride by and hit this or stumble into it and fall and get seriously hurt." So despite her being tired and worn out, she got down and started pushing with her hands, first to try and move it and push it out of the way, and she couldn't get it. So then she turned around and got on all fours and started trying to move it. And inch by inch, she stayed and she struggled with that until she [1940] had moved it out of the road.

She got up and dusted herself off and started on her way, and she stumbled over what the stone had covered. And it was a little hole that the king had dug, and he'd put a little box in it, a little brown wooden box. And there was a note that said, "Whoever moves this stone can have what's in here." She pulled it out, and she pulled back the top, and it creaked very slowly. And inside was a box full of gold coins.

And the word spread throughout that kingdom of what she had done. Some people changed their actions; some people didn't. But the challenge for us in our society today is whether or not we're going to be like the banker and the farmer and those 27 other folks and walk by, or will we take a stand, a stand for justice, a stand for victims, a stand for verdicts that speak the truth and hold folks accountable and responsible.

There's only one verdict that will do that, ladies and gentlemen. You know what that verdict is. There's

only one verdict that will stop the Donnie Lances of this world. When I talked to you the other day in closing argument, I mentioned the unseen hand. The unseen hand is what caught Donnie Lance here. Because if you just look to the naked eye on that door you don't see much. But God does not like to see crimes like this [1941] go unpunished, ladies and gentlemen. And that unseen hand of God is what brought Donnie Lance to justice.

Now, will you impose a verdict that speaks the truth in this case that's supported by aggravating circumstances and a man that has shown no remorse, no concern, no care for anyone except himself? Will you hold that man fully accountable?

Law enforcement can't do it; judges can't do it; district attorneys can't do it. It comes down to 12 decent, law-abiding citizens, and that's you, ladies and gentlemen. Thank you.

THE COURT: Mr. Brannon.

MR. BRANNON: Thank you, Judge. Mr. Madison.

CLOSING ARGUMENT BY THE DEFENSE

MR. BRANNON: I didn't go eat anything at lunch because I was wondering what I could say to you people that would keep you from deciding that you would take Donnie Lance's life. It's been an emotional trial for both sides. Donnie's family members, of course, believe in his innocence as strongly as the other side

believes in his guilt. They're going to stand by him, all of them, because they love him and they believe him. And that's the way it is. So nobody walks away unwounded from what we've been through. Anytime you go into combat, somebody walks away hurt. And that's the way it [1942] is.

Now, what can I say to you that would convince you that maybe you shouldn't kill Donnie Lance? Well, Donnie is kind of a quiet person and a country boy, and he doesn't talk a lot. That's his personality. I don't hold that against him. That's just the way he is. I've spent a lot of time around Donnie. Donnie's got sisters, his dad, and they all love him. As a matter of fact, I've gotten to know his dad so good that I'd be lying if I didn't say it's breaking my heart to have to do this, to try this case. I like his dad. I like all his family. They treated me like I was a member of their family.

What can I say to you about why you shouldn't kill Donnie Lance? Well, I could say Donnie Lance is innocent and I disagree with your decision, but you might just get mad at me and say, "Well, I don't care. I decided it." Maybe you would. I don't know. And I do disagree, and I don't mind saying that. If you get mad at me, you'll just get mad at me.

But we need to think about this. We need to think about it for a while, because in this country in a death penalty case you are given the power to deliver death. That's a big power. A lot of times I think – I hear people talk about crime and we need to wipe out crime [1943] and we need to get them off the streets. But then I hear

people saying, "And the best way to get them off the streets is kill them. Don't feed them; don't house them. Just kill them."

You know, I really believe that people who feel that way have never been around death. I don't think they've ever inflicted it, nor do I think they've seen it happen close to them. Because if they did, they would not be so fast to say, "Let's distribute death."

Donnie's children, they love him. And you know what? I love children. I've got two. I figured out why God gave them to me. God decided he'd give me two children – and I'm the luckiest person in the world – so they could point out my character defects and my flaws with unconditional love. And that's what my children have provided me with. They have been the best blessing of my whole life.

Children don't understand killing. Children don't understand wars. If we had a child at the helm of the presidency, we'd probably wouldn't fight wars and kill people. They don't see life the way we see it. And maybe we can learn from that. I've certainly learned from mine. They have taught me more about unconditional love than any adult, any preacher, anything except maybe reading the Bible. They have taught me more.

[1944] Life is precious. When you lose life, is the answer to strike back? Is the answer always retribution? Is the answer always vengeance? Good Lord, have you never seen death? It begets more death. That's all it does. That's all it does. When the firing

quits, there's dead people on both sides. It's all it ever begets is more death.

That's a powerful thing, to take somebody's life. It will affect you forever. The only way it couldn't is if you have a denial system that's so strong in your spirit that you just can't feel it. And most people, I hope, feel it. I really do.

I know we can do things when we're angry that we won't do when we're not. During combat when they shoot your best friend, you'll kill the other guy. You don't care. If somebody came in your house and they harmed your spouse or your mom, you'd kill them right then probably. And you wouldn't care. Now, it may bother you later. You may have flashbacks of death and blood and the horror that happens when you have to be around that sort of stuff. But you would do it. But the difference is that that was personal; it was right that second it was happening to you, and you struck back.

Here, they want you to go out and make a reasoned decision to eliminate a human being. That's different. [1945] That's playing God. Now, I'm not a Bible scholar. When I was a younger man I didn't read it at all. I didn't go to church. As I got older, I learned a few lessons in life and learned a few from my children. And I did go back, and I finally have read it, the Old and the New Testament, and studied it. I'm still not a Bible scholar.

But, you know, when I was in my 20s and 30s, I never understood that the Old Testament's the Old

Testament and the New Testament is a new and better covenant. The Old Testament talks about vindictiveness, basically, and striking back and floods and drowning people, an eye for an eye and a tooth for a tooth. The New Testament doesn't talk about that. The New Testament is a testament of love. And I run into people all the time that are so angry about crime they just want to just kill them, kill them and roll them over in a ditch. And I wonder – and they go to church. Where do they go? Have they read the New Testament? Did they see Jesus condemn people and say, yeah, the woman at the well, let's execute her. And you know what? The crime she committed, by the way – she was a prostitute – was a crime for which the penalty was death. When Jesus walked up, did he say, "Let's kill her"? That's what the crowd wanted to do. "Let's do. Let's execute her." [1946] No. If you can show me where that happened anywhere in the New Testament, I'll sit down with you. I think one of y'all's a preacher. Tell me where that is. It's not there.

It's troubling to me – it truly troubles my spirit. And I really want you to think about these things. Don't think in terms of "I'm not going to give this any thought; I'm just going to run out and do it," because that's like combat. They give you an order; they hand you a rifle; they fly you out there; and they tell you to shoot. You're not under any order here.

The life or death of Donnie Lance resides within your grasp. You can decide to be the arm of retribution and you can kill him. You can decide to don the black mask yourself and throw the switch and electrocute

him. Whatever decision you make, that's a personal decision. It will be done at your direction by your verdict. Don't let yourself be the arm of vengeance. Let yourself be the arm of understanding, and let yourself be the arm of someone who wants to direct this with some thought about what we should or shouldn't do.

You know – I don't need these notes. The only thing Donnie Lance's children, Jessie and Stephanie, are ever going to know is they don't have either one of them anymore. That's all they're going to know. They don't [1947] understand us. They don't understand this trial. Children just don't get involved in affairs or domestic violence or sex or killing people. I tell you, we adults, we can learn from them. Just watch them. They love everybody. They don't care what color they are. They don't care whether they're Hispanic, Black, Caucasian, India Indian, American Indian. They don't care. My little daughter thinks everybody's the same, and you know what? That's right. That is what we are. Jesus said so.

We can learn from children. If you put this in the hands of 12 children, there is no way they would come back and say let's execute somebody. Donnie's children will lose both parents by death; and, really, by a life without parole they basically lose both parents.

If the truth is that we in America, as we profess – I hear the politicians say – if our judicial system's main goal is rehabilitation, then we don't do it when we execute people. I hear Republicans all the time think if we just execute everybody crime will stop. It never

works that way. The more people you have, the more crime you have. That's just the way it is. As a matter of fact, once again, if you read the Bible, things aren't going to clear up and go away. Jesus never said everything's going to be perfect and we're [1948] all going to live happily ever after and there's not going to be more violence. That's not what it says.

I just want you to think about this long and hard before you decide to eliminate somebody. Think about Jessie and Stephanie. If you got them in here and you yelled at them, "Jessie and Stephanie, I believe your daddy is a cold-blooded killer," they won't want you to take his life. They're not like us. They don't know what vengeance is about. They don't know what revenge is about. They don't know what anger is about, and they don't know what retribution is about.

Nothing good comes from a death. You think about that when you go out. I used to drink alcohol. And one day, I said, "You know, nothing good ever comes from this," years ago. I never got in trouble; I never got a DUI. Nothing bad ever happened to me. I just realized that nothing good ever seemed to come out of it. In my whole life, in all my life's experiences, I have never once seen anything good come out of killing somebody. Never. They're just gone.

So I ask you for Jimmy Lance and for all of them and for Stephanie and Jessie, don't go out of here and be the act of revenge for the family. I know how they feel. Death makes you feel that way. It makes you angry; it makes you want to get people; it makes you

[1949] want to strike back and make them pay. Don't do that. I know what that's like.

I ask you that you give Donnie a life sentence. Thank you.

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