

No. _____

In the Supreme Court of the United States

STACEY IAN HUMPHREYS,

Petitioner,

v.

ERIC SELLERS, Warden, Georgia Diagnostic and Classification Prison,

Respondent.

Appendix

Appendix A

Humphreys v. Sellers, Warden, Application No. 17A446

Order of Justice Thomas extending the time to file a petition for writ of certiorari to and including December 22, 2017

October 26, 2017

Appendix B

Humphreys v. Chatman, Warden, Case No. 2011-V-160

Order of the Superior Court of Butts County, Georgia denying a petition for writ of habeas corpus

March 10, 2016

Appendix C

Humphreys v. Chatman, Warden, Case No. S16E1799

Order of the Supreme Court of Georgia, denying the application for certificate of probable cause to appeal the denial of habeas corpus relief

August 28, 2017

Appendix D

Humphreys v. State, 287 Ga. 63 (2010)

Opinion of the Supreme Court of Georgia on direct appeal affirming Mr. Humphreys's convictions and death sentences

March 15, 2010

Appendix E

State v. Humphreys, Case No. 04-9-0673-05
Order of the Superior Court of Cobb County, Georgia denying Mr. Humphreys's
motion for new trial
February 19, 2009

Appendix F

Testimony of Susan Barber in the Superior Court of Butts County, Georgia
February 25, 2013

Appendix G

Deposition testimony of trial counsel, Jimmy Dodd Berry, in the Superior Court of
Butts County, Georgia
November 15, 2012

Appendix H

Juror questionnaire of Linda A. Chancey in *State v. Humphreys*
September 2007

Appendix I

Voir dire testimony of juror Linda A. Chancey in *State v. Humphreys*
September 2007

Appendix J

One-page excerpt of defense team's jury selection notes, *State v. Humphreys*
September 2007

Appendix K

Affidavit testimony of juror Susan Barber in the Superior Court of Butts County,
Georgia, with attachments
February 24, 2013

Appendix L

Memo from defense investigator regarding interview with juror Linda A. Chancey
November 3, 2007

Appendix M

Post-trial statement of juror Darrell Parker
November 4, 2007

Appendix N

Affidavit testimony of juror Tara Newsome in the Superior Court of Butts County,
Georgia
February 24, 2013

Appendix O

Affidavit testimony of juror Darrell Parker in the Superior Court of Cobb County
September 23, 2008

Appendix P

Affidavit testimony of defense investigator Kimbert Frye in the Superior Court of
Cobb County, regarding interview with juror Linda A. Chancey
August 11, 2008

Appendix Q

Transcript excerpts from the capital sentencing phase of *State v. Humphreys*
September 28-30, 2007

Appendix A

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 26, 2017

Mr. J. David Dantzler, Jr.
Troutman Sanders LLP
600 Peachtree Street NE
Suite 5200
Atlanta, GA 30308-2216

Re: Stacey Ian Humphreys
v. Eric Sellers, Warden
Application No. 17A446

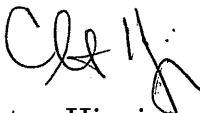
Dear Mr. Dantzler:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on October 26, 2017, extended the time to and including December 22, 2017.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by 

Clayton Higgins
Case Analyst

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

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Appendix B

IN THE SUPERIOR COURT OF BUTTS COUNTY

STATE OF GEORGIA

STACEY IAN HUMPHREYS)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO.
)	2011-V-160
BRUCE CHATMAN,)	
)	HABEAS CORPUS
Warden, Georgia Diagnostic)	
and Classification Prison,)	
)	
Respondent.)	

FINAL ORDER

COMES NOW before the Court Petitioner’s Amended Petition for Writ of Habeas Corpus as to his conviction and sentence in the Superior Court of Cobb County. Having considered Petitioner’s original and Amended Petition for Writ of Habeas Corpus (hereinafter “Amended Petition”), the Respondent’s Answer and Amended Answer, relevant portions of the appellate record, evidence admitted at the hearing on this matter on February 25-28, 2013¹, the arguments of counsel and the post-hearing briefs, this Court makes the following findings of fact and conclusions of law as required by O.C.G.A. § 9-14-49.² As explained in detail in this Order, this Court DENIES the writ of habeas corpus as to Petitioner’s conviction and sentence.

¹ The Court notes that Petitioner waived his right to be present at the evidentiary hearing on this matter. (HT, Vol. 1:27-38). After conducting an inquiry into Petitioner’s understanding of the nature and consequences of his waiver, the Court found that Petitioner’s decision was made knowingly, intelligently, and voluntarily. (HT, Vol. 1:37-38). See Brooks v. State, 271 Ga. 456 (2)(1999)(finding a defendant’s right to be present may be personally waived by the defendant).

² The following abbreviations are used in citations throughout this order:
 “R”-Record on appeal
 “TT”-Trial transcript (followed by volume number)
 “ST”-Sentencing transcript (followed by volume number)
 “HT”-Habeas transcript (followed by volume number)

Filed 3/10/16 at 10:00^A M.
Morgan Verelone
 Deputy Clerk, Butts Superior Court

I. PROCEDURAL HISTORY

Petitioner, Stacey Ian Humphreys, was indicted by a Cobb County grand jury on February 12, 2004, on two counts each of malice murder, felony murder, aggravated assault, kidnapping with bodily injury, and armed robbery, and one count of possession of a firearm by a convicted felon. The State filed its notice of intent to seek the death penalty on February 12, 2004. Jury selection in Petitioner's trial began on September 4, 2007. On September 25, 2007, Petitioner was found guilty of malice murder, felony murder, aggravated assault, kidnapping with bodily injury and armed robbery. Petitioner pled guilty to possession of a firearm by a convicted felon on September 26, 2007. On September 30, 2007, Petitioner was sentenced to death for the murders, and the felony murder convictions were vacated by operation of law. Malcolm v. State, 263 Ga. 369, 371-372 (4) (1993). Petitioner was further sentenced to a consecutive life sentence for each count of kidnapping with bodily injury and armed robbery, concurrent twenty year sentences for each count of aggravated assault, and a concurrent five year sentence for possession of a firearm by a convicted felon.

Petitioner's motion for new trial, as amended, was denied on February 19, 2009. The Georgia Supreme Court affirmed Petitioner's convictions and death sentences on March 15, 2010. Humphreys v. State, 287 Ga. 63 (2010). Petitioner's motion for reconsideration was denied April 9, 2010. Petitioner filed a petition for writ of certiorari in the United States Supreme Court, which was denied on November 15, 2010. Humphreys v. Georgia, 562 U.S. 1046, 131 S.Ct. 599 (2010). Petitioner filed a petition for writ of habeas corpus on February 14, 2011, and an amendment on September 26, 2012. An evidentiary hearing was

"[date of hearing] PT"-Pretrial motions hearing transcript
"PB"-Petitioner's post-hearing brief
"RB"-Respondent's post-hearing brief

held on February 25-28, 2013 wherein Petitioner tendered 134 exhibits and Respondent tendered 119 exhibits.

II. STATEMENT OF FACTS

The Georgia Supreme Court summarized the facts of Petitioner's crimes as follows: The evidence, construed in the light most favorable to the jury's verdicts, showed the following. At approximately 12:40 p.m. on November 3, 2003, Humphreys, a convicted felon who was still on parole, entered a home construction company's sales office located in a model home for a new subdivision in Cobb County. Cindy Williams and Lori Brown were employed there as real estate agents. Finding Ms. Williams alone in the office, Humphreys used a stolen handgun to force her to undress and to reveal the personal identification number (PIN) for her automated teller machine (ATM) card. After calling Ms. Williams's bank to learn the amount of her current balance, Humphreys tied her underwear so tightly around her neck that, when her body was discovered, her neck bore a prominent ligature mark and her tongue was protruding from her mouth, which had turned purple. While choking Ms. Williams, Humphreys forced her to get down on her hands and knees and to move into Ms. Brown's office and behind Ms. Brown's desk. Humphreys placed his handgun at Ms. Williams [sic] back and positioned a bag of balloons between the gun and her body to muffle the sound of gunshots. He then fired a shot into her back that went through her lung and heart, fired a second shot through her head, and left her face-down on her hands and knees under the desk.

Ms. Brown entered the office during or shortly after Humphreys' s attack on Ms. Williams, and he attacked her too. Ms. Brown suffered a hemorrhage in her throat that was consistent with her having been choked in a headlock-type grip or having been struck in the throat. Humphreys also forced Ms. Brown to undress and to reveal her PIN, called her bank to obtain her balance, and made her kneel with her head facing the floor. Then, while standing over Ms. Brown, Humphreys fired one gunshot through her head, this time using both a bag of balloons and Ms. Brown's folded blouse to muffle the sound. He dragged her body to her desk, took both victims' driver's licenses and ATM and credit cards, and left the scene at approximately 1:30 p.m. Neither victim sustained any defensive wounds.

When the builder, whose office was located in the model home's basement, heard the door chime of the security system indicating that someone had exited the sales office, he went to the sales office to meet with the agents. There he discovered Ms. Brown's body and called 911. The responding police officer discovered Ms. Williams' body.

After interviewing the builder and canvassing the neighborhood, the police released to the media descriptions of the suspect and a Dodge Durango truck seen at the sales office near the time of the crimes. In response, someone at the job site where Humphreys worked called to advise that Humphreys and his vehicle matched those descriptions and that Humphreys did not report to work on the day of the crimes. The police began to investigate Humphreys and made arrangements through his parole officer to meet with him on the morning of November 7, 2003. Humphreys skipped the meeting, however, and eluded police officers who had him under surveillance.

Humphreys was apprehended in Wisconsin the following day. Police there recovered from the console of his rental vehicle a Ruger 9- millimeter pistol, which was determined to be the murder weapon. Swabbings from that gun revealed blood containing Ms. Williams's DNA. A stain on the driver-side floormat of Humphreys's Durango was determined to be blood containing Ms. Brown's DNA. After the murders, the victims' ATM cards were used to withdraw over \$3,000 from their accounts. Two days after the murders, Humphreys deposited \$1,000 into his account, and he had approximately \$800 in cash in his possession when he was arrested. Humphreys claimed in a statement to the police that he did not remember his actions at the time of the crimes. However, when asked why he fled, he said: "I know I did it. I know it just as well as I know my own name." He also told the police that he had recently taken out some high-interest "payday" loans and that he "got over [his] head with that stinking truck."

Humphreys, 287 Ga. at 63-65.

III. SUMMARY OF RULINGS

Petitioner's Amended Petition enumerates twenty one (21) claims for relief. As stated in further detail below, this Court finds: (1) some claims asserted by Petitioner are procedurally barred due to the fact that they were litigated on direct appeal; (2) some claims are procedurally defaulted, as Petitioner failed to timely raise the alleged errors and failed to satisfy the cause and prejudice test or the miscarriage of justice exception; (3) some claims are non-cognizable; and, (4) some claims are neither procedurally barred nor procedurally defaulted and are therefore properly before this Court for habeas review. To the extent Petitioner failed to brief his claims for relief, the Court deems those claims abandoned. Any claims made by Petitioner that are not specifically addressed by this Court are **DENIED**.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. CLAIMS THAT ARE RES JUDICATA

Many of Petitioner's grounds for relief in the instant action were rejected by the Georgia Supreme Court on direct appeal. Issues raised and litigated on direct appeal will not be reviewed in a habeas corpus proceeding. See Elrod v. Ault, 231 Ga. 750 (1974); Gunter v.

Hickman, 256 Ga. 315 (1986); Hance v. Kemp, 258 Ga. 649(6) (1988); Roulain v. Martin, 266 Ga. 353 (1996). This Court finds that the following claims are not reviewable based on the doctrine of *res judicata* as the claims were raised and litigated adversely to Petitioner on his direct appeal in Humphreys v. State, 287 Ga. 63 (2010).

That **portion of Claim I**, wherein Petitioner alleges that his death sentence was sought and imposed in arbitrary, disparate and discriminatory manner. Humphreys, 287 Ga. at 85 (11);

That **portion of Claim I**, wherein Petitioner alleges that his death sentence is disproportionate. Humphreys, 287 Ga. at 85 (12);

That **portion of Claim III**, wherein Petitioner alleges that the pool from which his grand jury was drawn was unconstitutionally composed and discriminatorily selected in violation of his constitutional rights. Humphreys, 287 Ga. at 65-69 (2) and (3);

Claim IV, wherein Petitioner alleges that the trial court erred in not excusing for cause unspecified potential jurors who were biased against Petitioner and/or whose views regarding the death penalty would have substantially impaired their ability to fairly consider a sentence less than death and to fairly consider and give weight and meaning to all proffered mitigating evidence. Humphreys, 287 Ga. at 71-72 (5);³

Claim V, wherein Petitioner alleges that the trial court erred in excusing for cause unspecified jurors whose views on the death penalty were not extreme enough to warrant exclusion. Humphreys, 287 Ga. at 71-72 (5);⁴

That **portion of Claim XII**, wherein Petitioner alleges that the trial court erred in denying several defense pretrial motions, including the motion to suppress Petitioner's post-arrest statement and the motions to suppress evidence obtained during allegedly illegal searches and seizures. Humphreys, 287 Ga. at 72-77 (6) and (7);⁵

That **portion of Claim XII**, wherein Petitioner alleges that the trial court erred in failing to strike for cause several unspecified venire persons whose attitudes towards the death

³ To the extent that this claim refers to jurors not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

⁴ To the extent that this claim refers to jurors not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

⁵ To the extent that this claim was not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

penalty would have prevented or substantially impaired their performance as jurors. Humphreys, 287 Ga. at 71-72 (5);⁶

That **portion of Claim XII**, wherein Petitioner alleges that the trial court erred in its rulings on motions to challenge prospective jurors for cause based on their attitudes about the death penalty and stated biases. Humphreys, 287 Ga. at 71-72 (5);⁷

That **portion of Claim XII**, wherein Petitioner alleges that the trial court erred in allowing fair and impartial jurors to be struck for cause. Humphreys, 287 Ga. at 71-72 (5);⁸

That **portion of Claim XII**, wherein Petitioner alleges that the trial court erred in improperly removing a juror on the grounds that she was a convicted felon. Humphreys, 287 Ga. at 69-71 (4);

That **portion of Claim XII**, wherein Petitioner alleges that the trial court erred in admitting various items of prejudicial, unreliable, unsubstantiated and irrelevant evidence tendered by the State at either phase of trial. Humphreys, 287 Ga. at 72-77 (6) and (7);⁹

That **portion of Claim XII**, wherein Petitioner alleges that the trial court erred in failing to declare a mistrial and impose a sentence less than death after multiple, unambiguous declarations of deadlock by the jury in the sentencing phase. Humphreys, 287 Ga. at 77-82 (8) and (9);

Claim XIV, wherein sentence, and actively misled jurors regarding the consequences of a deadlock as to Petitioner alleges that the trial court erred in its modified Allen instruction by failing to instruct the jury that unanimity was not required to impose a life sentence. Humphreys, 287 Ga. at 80-82 (9) (b);¹⁰

⁶ To the extent that this claim refers to jurors not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

⁷ To the extent that this claim refers to any jurors who were not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

⁸ To the extent that this claim refers to any jurors not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

⁹ To the extent that this claim refers to evidence which was not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

¹⁰ Petitioner's allegations of trial court error during the sentencing phase charge to the jury are addressed below on

Claim XV, wherein Petitioner alleges that the trial court's Allen charge was unduly coercive and misleading under the facts and circumstances of Petitioner's case and denied him due process of law and a reliable determination of punishment. Humphreys, 287 Ga. at 77-82 (8) and (9);¹¹

Claim XVII, wherein Petitioner alleges that the statutory aggravating circumstances as defined in O.C.G.A. §17-10-30(b)(2) and (b)(7), and as applied in this case, are unconstitutionally vague and arbitrary. Humphreys, 287 Ga. at 83-85 (10);¹² and

Claim XIX, wherein Petitioner alleges that his death sentence is disproportionate. Humphreys, 287 Ga. at 85 (12).

As these claims were raised and rejected by the Georgia Supreme Court on direct appeal, they are barred under the well-established doctrine of *res judicata* and are not properly before this Court for review.

B. CLAIMS THAT ARE PROCEDURALLY DEFAULTED

Claims Petitioner failed to raise on direct appeal are procedurally defaulted absent a showing of cause and actual prejudice, except where their review is necessary to avoid a miscarriage of justice and substantial denial of constitutional rights. Black v. Hardin, 255 Ga. 239, 336 S.E.2d 754 (1985); Valenzuela v. Newsome, 253 Ga. 793, 325 S.E.2d 370 (1985); O.C.G.A. § 9-14-48(d); Hance v. Kemp, 258 Ga. 649(4), 373 S.E.2d 184 (1988); White v. Kelso, 261 Ga. 32, 401 S.E.2d 733 (1991). Petitioner's failure to enumerate alleged errors at trial or on appeal operates as a waiver and bars consideration of those errors in habeas corpus proceedings. See Earp v. Angel, 257 Ga. 333, 357 S.E.2d 596 (1987). See also Turpin v. Todd, 268 Ga. 820, 493 S.E.2d 900 (1997)(a procedural bar to habeas corpus review may be overcome

page 84.

¹¹ Petitioner's allegations of trial court error during the sentencing phase charge to the jury are addressed below on page 84.

¹² To the extent that this claim was not addressed by the Georgia Supreme Court on direct appeal, this claim is procedurally defaulted and Petitioner has failed to show cause and prejudice or a miscarriage of justice to overcome the procedural default.

if Petitioner shows adequate cause for failing to raise an issue at trial or on direct appeal and actual prejudice resulting from the alleged error or errors. A habeas petitioner who meets both prongs of the standard enunciated in Strickland v. Washington, 466 U.S. 668 (1984), has established cause and prejudice sufficient to overcome the procedural bar of O.C.G.A. § 9-14-48(d)).

This Court concludes that the following grounds for habeas relief, which were not raised by Petitioner at trial or on direct appeal, have been procedurally defaulted. This Court is barred from considering any of these claims on their merits due to the fact that Petitioner has failed to demonstrate cause and prejudice, or a fundamental miscarriage of justice sufficient to excuse his failure to raise these grounds:

That **portion of Claim I**, wherein Petitioner alleges that Georgia's death penalty process provides no uniform standard for seeking and imposing the death penalty;

Claim II, wherein Petitioner alleges that the Unified Appeal Procedure is unconstitutional;

That **portion of Claim III**, wherein Petitioner alleges that the pool from which his traverse jury was drawn was unconstitutionally composed and discriminatorily selected in violation of his constitutional rights;

Claim VI, wherein Petitioner alleges that death qualification process is unconstitutional;

Claim VII, wherein Petitioner alleges that the State impermissibly struck a disproportionate number of jurors based on racial and/or gender bias;

Claim IX, wherein Petitioner alleges prosecutorial misconduct in that:¹³

- a) the State made allegedly improper and prejudicial remarks during its argument at the guilt and sentencing phases of the trial;
- b) jury bailiffs and/or sheriff's deputies and/or other State agents who interacted with

¹³ To the extent Petitioner relies on his ineffectiveness claim to establish cause to overcome the procedural default, this claim fails. As explained below, Petitioner's ineffective assistance of counsel claims are denied in their entirety. Further, Petitioner has also failed to show prejudice to overcome his procedural default. See Turpin v. Todd, 268 Ga. 820 (1997).

jurors engaged in allegedly improper communications with the jurors;

- c) the State suppressed unspecified information allegedly favorable to the defense at both phases of the trial;
- d) the State took advantage of Petitioner's ignorance of the allegedly undisclosed favorable information by arguments it knew or should have known were false and/or misleading;
- e) the State allowed its witnesses to convey a false impression to the jury; and
- f) the State knowingly or negligently presented allegedly false testimony in pretrial and trial proceedings;

Claim X, wherein Petitioner alleges that the trial court erred in admitting gruesome and prejudicial photographs of the crime scene and victims, a prejudicial crime scene video and other unreliable and prejudicial evidence;¹⁴

Claim XI, wherein Petitioner alleges that the trial court erred in permitting the prosecution to introduce inflammatory and prejudicial victim impact testimony;

That **portion of Claim XII**, wherein Petitioner alleges trial court error in that:

- a) the trial court erred by phrasing her voir dire questions in a manner which suggested to jurors who gave neutral responses that they were or should be in favor of the death penalty;
- b) the trial court engaged in improper voir dire;
- c) the trial court erred in excusing unspecified potential jurors or moving them to the back of the venire for improper reasons under the rubric of "hardship;"
- d) the trial court erred in allowing the prosecution to introduce improper, unreliable and irrelevant evidence in aggravation at sentencing, as well as evidence of which the defense had not been provided adequate notice and which had been concealed from the defense;
- e) the trial court erred in failing to require the State to disclose certain items of evidence of an exculpatory or impeaching nature to the defense; and
- f) the trial court erred in denying Petitioner's motion for a new trial;

That **portion of Claim XIII**, wherein Petitioner alleges that the trial court's guilt phase

¹⁴ To the extent Petitioner alleges that the trial court erred in admitting Petitioner's police statement and the evidence seized from Petitioner's vehicle following his arrest, this claim was addressed and decided adversely to Petitioner on direct appeal. Humphreys, 287 Ga. at 72-77 (6) and (7).

instructions to the jury were erroneous, insufficient and confusing. Specifically, Petitioner alleges the trial court's instruction regarding intent allowed the jurors to resolve facts through presumptions and inferences;

Claim XVI, wherein Petitioner alleges juror misconduct, including:

- a) improper consideration of matters extraneous to the trial;
- b) false, misleading and/or incomplete responses on voir dire;
- c) improper biases which were not revealed on voir dire and which infected the deliberations;
- d) false and misleading extra-judicial information provided to other jurors during deliberations in an effort to obtain a death verdict;
- e) direct undue coercion, harassment, pressure and threats at the other individual jurors in order to obtain a death verdict;
- f) consideration of the prejudicial opinions of third parties;
- g) lack of candor with the trial judge in each of the notes which announced a deadlock and sought guidance from the court;
- h) improper communications with third parties and improper communications with jury bailiffs;
- i) improper deliberation without all twelve jurors present;
- j) improper deliberation before the close of the evidence;
- k) prejudgment in the sentencing phase of Petitioner's trial; and
- l) exposure to improper and prejudicial outside influences and bias, which included bias and prejudice against Petitioner created by the extensive media attention, by the actions of a juror who was excused for misconduct prior to deliberations, and by the actions of their fellow juror(s); and

Claim XX, wherein Petitioner alleges that capital punishment is cruel and unusual punishment.

C. CLAIMS THAT ARE NON-COGNIZABLE

This Court finds the following claims raised by Petitioner fail to allege grounds which would constitute a constitutional violation in the proceedings that resulted in

Petitioner's convictions and sentences, and are therefore barred from review by this Court as non-cognizable under O.C.G.A. §9-14-42(a).

Claim XVIII, wherein Petitioner alleges that lethal injection is cruel and unusual punishment; and

Claim XXI, wherein Petitioner alleges cumulative error.¹⁵

D. CLAIMS THAT ARE PROPERLY BEFORE THIS COURT FOR REVIEW

1. Ineffective Assistance of Counsel

Petitioner alleges in **Claim VIII**, various other claims and in various footnotes to claims, that he received ineffective assistance of counsel at the guilt/innocence and sentencing phases of his trial as well as on his motion for new trial and direct appeal.¹⁶ Petitioner was represented at trial by Jimmy Berry and Deborah Czuba.¹⁷ Mr. Berry represented Petitioner on direct appeal as well. Petitioner's allegations of ineffective assistance of trial counsel, which were neither raised nor litigated adversely to Petitioner on direct appeal, nor procedurally defaulted, are properly before this Court for review on their merits. Additionally, Petitioner's allegations of ineffective assistance of appellate counsel are properly before this Court for review on their merits.

Standard of Review

In Strickland v. Washington, the United States Supreme Court adopted a two-pronged approach to reviewing ineffective assistance of counsel claims:

First, the [petitioner] must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.

¹⁵ Alternatively, this claim is without merit as there is no cumulative error rule in Georgia. Head v. Taylor, 273 Ga. 69, 70 (2000). However, the Court has considered the combined effects of trial counsel's alleged errors in evaluating Petitioner's claims of ineffective assistance of counsel. Schofield v. Holsey, 281 Ga. 809, 812 (2007).

¹⁶ Petitioner's claims of ineffective assistance of appellate counsel are addressed on page 84 below.

¹⁷As discussed in detail below, multiple attorneys with the Georgia Capital Defender's Office worked on Petitioner's case.

Second, [the petitioner] must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

466 U.S. 668, 687 (1984). The Strickland standard, which requires that a petitioner satisfy both the performance and prejudice prongs to demonstrate ineffectiveness, was adopted by the Georgia Supreme Court in Smith v. Francis, 253 Ga. 782, 783 (1985). See also Jones v. State, 279 Ga. 854 (2005); Washington v. State, 279 Ga. 722 (2005); Hayes v. State, 263 Ga. 15 (1993). Therefore, the Strickland standard governs this Court's review of Petitioner's ineffective assistance of counsel claims.

As to the first prong, Petitioner must show that counsel's representation "fell below an objective standard of reasonableness," which is defined in terms of "prevailing professional norms." Wiggins v. Smith, 539 U.S. 510, 521 (2003) (citing Strickland, 466 U.S. at 688). In Strickland, the Court established a deferential standard of review for judging ineffective assistance claims by directing that "[j]udicial scrutiny of counsel's performance must be highly deferential...[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689.

The prejudice prong requires that Petitioner establish that the outcome of the proceedings would have been different, but for counsel's errors. Smith v. Francis, 253 Ga. at 783. The Georgia Supreme Court has relied on the Strickland test for establishing actual prejudice which requires Petitioner to "demonstrate that there is a reasonable probability (i.e., a probability sufficient to undermine confidence in the outcome) that, but for counsel's unprofessional, errors,

the result of the proceeding would have been different. Smith, 253 Ga. at 783. See also Head v. Carr, 273 Ga. 613, 616 (2001).

As explained in detail below, this Court has applied the guiding principles set forth in Strickland and its progeny, as adopted by the Georgia Supreme Court, and finds that Petitioner failed to establish that trial counsel's performance "fell below an objective standard of reasonableness." Strickland, 466 U.S. at 688. This Court also finds that Petitioner failed to establish that, but for alleged errors or omissions by counsel, there is a reasonable probability that the result of the proceeding would have been different. Id. at 694.

Qualifications of Defense Team

In reviewing claims of ineffective assistance of counsel, the United States Supreme Court has held that "[a]mong the factors relevant to deciding whether particular strategic choices are reasonable are the experience of the attorney, the inconsistency of unpursued and pursued lines of defense, and the potential for prejudice from taking an unpursued line of defense." Strickland, 466 U.S. at 681. The presumption that trial counsel rendered adequate assistance is therefore, "even greater" when trial counsel are experienced criminal defense attorneys. Williams v. Head, 185 F.3d 1223, 1228-1229 (11th Cir. 1999) (citing Provenzano v. Singletary, 148 F.3d 1327, 1332 (11th Cir. 1998)). This Court finds trial counsel were experienced criminal defense attorneys and has given their investigation and presentation the appropriate deference.

1. Jimmy Berry

Petitioner was represented at trial by Jimmy Berry and various attorneys from the Georgia Capital Defender's office. Mr. Berry had previously represented Petitioner on unrelated charges and following Petitioner's arrest in 2003, Petitioner's family retained Mr. Berry again. (HT, Vol. 1:45). Mr. Berry filed an entry of appearance of counsel in Petitioner's case on November 24, 2003, three weeks after Petitioner's arrest. (R. 33; HT, Vol. 1:45; HT, Vol.

38:14099, 14102-14103, 14109; HT, Vol. 40:14690). Petitioner's family paid Mr. Berry \$1,500 to handle the probable cause hearing. (HT, Vol. 40:14690). Following the probable cause hearing, Petitioner's family lacked the funds to continue paying Mr. Berry; however, he continued as retained counsel. (HT, Vol. 40:14690-14691). Mr. Berry was subsequently appointed by the court and served as lead counsel on Petitioner's case. (HT, Vol. 40:14696).

Mr. Berry became a member of the State Bar of Georgia in 1971. (HT, Vol. 1:40). Following law school, Mr. Berry spent five years practicing real estate law. (HT, Vol. 38:14096). Afterwards, his practice focused exclusively on criminal defense. (HT, Vol. 1:40; Vol. 38:14096). At Petitioner's March 26, 2004 pretrial hearing, Mr. Berry told the court that he had been practicing law for 32 years, had handled over 40 death penalty cases, and had attended and taught at a number of death penalty seminars. (3/26/04 PT, 3; see also HT, Vol. 42:118; Vol. 38:14097-14098). A significant number of Mr. Berry's death penalty cases went through both guilt-innocence and sentencing phases, and in those cases Mr. Berry performed the mitigation investigation. (HT, Vol. 1:41, 47; Vol. 38:14097).

2. Multi-County Public Defender: Mike Mears and Chris Adams

On February 12, 2004, the State filed its notice of intent to seek the death penalty. (R. 27-28). Mr. Berry then spoke with the Director of the Multi-County Public Defender¹⁸, Mike Mears, who agreed to join Mr. Berry on Petitioner's case. (HT, Vol. 40:14690). Subsequently, Mr. Mears left the Multi-County Public Defender and on April 23, 2004, Chris Adams filed an entry of appearance in Petitioner's case. (R. 43-44; HT, Vol. 32:11800-11801; Vol. 40:14844-14845). Mr. Adams served as co-counsel with Mr. Berry for the next 21 months.

¹⁸ The Court notes that Multi-County Public Defender and Georgia Capital Defender are both used on documents within the record. Legislation created the Office of the Capital Defender which "took over and expanded" the obligation of the Multi-County Public Defender. (HT, Vol. 40:14692). (See also HT, Vol. 1:49-50; Vol. 32:11800-11801).

Chris Adams graduated from Georgetown University Law School in 1992 and started out as a public defender in South Carolina. (HT, Vol. 32:11800). In 2000, Mr. Adams accepted a job in Atlanta with the Southern Center for Human Rights, where he focused on capital litigation. (HT, Vol. 32:11800). Prior to his representation of Petitioner, Mr. Adams served as lead or co-counsel in numerous death penalty trials. (6/1/04 PT, 19-20). Specifically, Mr. Adams handled three capital cases to verdict and over 30 capital felony trials to verdict. (6/1/04 PT, 20).

In 2004, Mr. Adams was appointed to serve as the first director of the Georgia Capital Defender (hereinafter "GCD"), officially starting his new role on January 1, 2005. (HT, Vol. 32:11800, 11803). While at GCD, Mr. Adams taught at death penalty seminars, including defender trainings sponsored by state defender agencies. (HT, Vol. 32:11803; Vol. 40:14851-14855). On January 25, 2006, Mr. Adams formally withdrew from Petitioner's case, as he felt he needed to focus on his responsibilities as Director of GCD. (R. 2588-2589; HT, Vol. 32:11801). Mr. Adams testified that Petitioner's case was "one of the easier cases to transition off of given [Berry's] prior and continuing role as lead counsel." (HT, Vol. 32:11801). Mr. Adams filed a substitution of counsel on January 25, 2006, replacing himself with GCD attorney Teri Thompson.¹⁹ (R. 2588-2589; HT, Vol. 32:11801).

3. Teri Thompson

Teri Thompson graduated from John Marshall Law School in 1991 and became a member of the Georgia State Bar in 1992. (HT, Vol. 4:862; Vol. 38:14162-14163). After graduating law school, Ms. Thompson worked as a sole practitioner focusing primarily on

¹⁹ However, the record shows that Ms. Thompson was actively involved in Petitioner's case as early as May 4, 2005, when she arranged a neurological examination of Petitioner at the Cobb County jail by Dr. Shaffer. (HT, Vol. 36:13535-13540). Additionally, the Cobb County jail records reflect that Ms. Thompson had her first meeting with Petitioner on January 14, 2005. (HT, Vol. 11:2668-2672).

criminal defense work. (HT, Vol. 4:862-863; Vol. 38:14162-14163). As a sole practitioner, Ms. Thompson handled between eight and ten murder cases, although none of them were death penalty cases. (HT, Vol. 4:863-864; Vol. 38:14163).

In 2005, Ms. Thompson joined GCD as a trial attorney. (HT, Vol. 4:864). Ms. Thompson was death penalty qualified and assigned to represent capital defendants while a GCD staff attorney.²⁰ (HT, Vol. 4:864-865; Vol. 38:14164-14165). By May 11, 2005, Ms. Thompson had reached the position of Senior Staff Attorney at GCD. (HT, Vol. 18:5479). From 2005 to 2007, Ms. Thompson worked on 14 or 15 capital cases, none of which resulted in a death sentence. (HT, Vol. 38:14166-14168). Ms. Thompson also attended death penalty seminars prior to, and during her employment at GCD. (HT, Vol. 1:868; Vol. 4:868; Vol. 38:14165). These seminars covered information on mental health, mental health experts, and trends in death penalty cases. Id.

On August 20, 2007, Ms. Thompson withdrew from Petitioner's case. (R. 2787). In her motion to withdraw, Ms. Thompson stated that on June 2, 2007, she personally informed Petitioner of her resignation from GCD, and that Petitioner had no objection to her withdrawal. (R. 2787). Although Ms. Thompson informed Petitioner of her withdrawal from the case on June 2, neither Ms. Thompson nor any other member of Petitioner's defense team informed the trial court, which signed an order on June 6, 2007, setting Petitioner's trial for September 4, 2007. (R. 2750). This order listed Mr. Berry, Ms. Czuba and Ms. Thompson as Petitioner's counsel. (R. 2751). Additionally, Ms. Thompson's name appears on several subsequent orders regarding trial matters which were issued by the court in July and August of 2007.²¹ (R. 2753,

²⁰ During the evidentiary hearing before this Court, Ms. Thompson testified that she was certain that she was second-chair qualified and believed that she was first-chair qualified as well. (HT, Vol. 4:865).

²¹ Ms. Thompson testified during the evidentiary hearing before this Court that she left GCD in June of 2007 to return to private practice. (HT, Vol. 4:866). Ms. Thompson explained that at that time, she had two young children

2760, 2771, 2774).

4. Deborah Anne Czuba

On January 31, 2006, less than one week after Teri Thompson became an official member of Petitioner's trial team, GCD attorney Deborah Anne Czuba also filed an entry of appearance in the trial court as Petitioner's counsel. (R. 2590-2591; HT, Vol. 40:14848-14849). Ms. Czuba graduated from Cornell University Law School in 1995 and became a member of the New York State Bar in January of 1996. (HT, Vol. 2:234, 297; Vol. 38:14213). Initially, Ms. Czuba worked for the New York Capital Defender as a mitigation specialist and staff attorney.²² (HT, Vol. 2:234, 297, 408-409; Vol. 38:14213). In 1999, Ms. Czuba became a Deputy Capital Defender and was responsible for her own cases as a "full member of the trial team." (HT, Vol. 2:297; Vol. 38:14213). During her time at the New York Capital Defender, Ms. Czuba worked on approximately 35 capital cases. (HT, Vol. 2:406-407; Vol. 38:14214). In those cases, Ms. Czuba conducted investigation for both guilt-innocence and sentencing phases of trial, and handled motions and preliminary hearings. (HT, Vol. 2:243, 407, 409; Vol. 38:14226). Ms. Czuba also served as co-counsel on a murder case that went to verdict. (HT, Vol. 2:242-243, 409). Ms. Czuba explained that this case was originally a death penalty trial, but was subsequently de-capitalized when New York abolished the death penalty. (HT, Vol. 2:242-243). Ms. Czuba conducted voir dire and witness examination in this case. Id.

In June or July of 2005, Ms. Czuba began working at the Georgia Capital Defender. (HT, Vol. 2:234; Vol. 38:14213, 14219). Initially, Ms. Czuba was not allowed to work as an attorney as she was not a member of the Georgia Bar. (HT, Vol. 2:298; Vol. 38:14213). However, while

and her cases were scattered around Georgia, requiring extensive travel. Id. After leaving GCD, Ms. Thompson stayed connected to GCD and continued to assist with the Moody case. (HT, Vol. 4:866-867). In 2009, Ms. Thompson returned to GCD where she worked until November 2012. Id.

²² The New York Capital Defender was responsible for handling capital cases at the trial level. (HT, Vol. 38:14214).

waiting to be admitted to the Georgia Bar, Ms. Czuba reviewed mitigation in Petitioner's case and provided ideas to the defense team, including Mr. Berry, Mr. Adams, Ms. Thompson and GCD investigator Alysa Wall. (HT, Vol. 2:241, 298-299; Vol. 38:14219, 14221-14222). After waiving into the Georgia Bar that summer, Ms. Czuba worked as a GCD staff attorney and handled capital cases at the trial level. (HT, Vol. 2:235-236, 297; Vol. 38:14213-14215). Ms. Czuba worked on approximately ten cases as a staff attorney and conducted mitigation investigation. (HT, Vol. 38:14215-14216, 14226).

Around September of 2005, Ms. Czuba became GCD's Deputy Director of Mitigation and Investigation, replacing Pamela Blume Leonard. (HT, Vol. 2:236; Vol. 38:14214). As Deputy Director of Mitigation and Investigation, Ms. Czuba was responsible for the supervision of GCD's entire mitigation and investigative staff, which included 17 mitigation experts and investigators. (HT, Vol. 2:236-237; Vol. 38:14215, 14221). This required Ms. Czuba's regular contact with the staff, and her assistance and consultation with their cases. (HT, Vol. 2:236-237). Ms. Czuba also handled budgetary and personnel matters, kept track of the office's case statistics, planned annual GCD conferences, and ensured that the attorneys and mitigation staff met their CLE requirements. (HT, Vol. 2:237; Vol. 38:14215). During her representation of Petitioner, Ms. Czuba also attended and instructed at death penalty seminars in Georgia, Washington D.C., New York, South Carolina, and California. (HT, Vol. 38:14218; Vol. 40:14857-14862). In return for her performance of administrative duties at the GCD, Ms. Czuba was assigned a smaller case load.²³ (HT, Vol. 40:14860-14862).

5. Christopher Murell

²³ Ms. Czuba's notice of leave to courts and opposing counsel that she filed on January 26, 2006 in order to teach and attend death penalty seminars, indicates that Ms. Czuba was involved in three capital cases, including Petitioner's. (HT, Vol. 40:14860-14862).

On August 15, 2007, GCD attorney Christopher Murell filed an entry of appearance as counsel for Petitioner. (R. 2784-2785). Mr. Murell, a graduate of the New York University School of Law, worked as a fellowship attorney with GCD, and Ms. Czuba indicated that his role was primarily to conduct legal research for the trial team. (HT, Vol. 2:370-371).

The record reflects that Petitioner's trial counsel were death penalty qualified and Petitioner's case was handled according to the Unified Appeal Procedure.²⁴ This Court finds Petitioner's trial counsel were experienced criminal defense attorneys, whose experience supports a finding of effective assistance of counsel. See Chandler v. United States, 218 F.3d 1305, 1316 (11th Cir. 2000) and Fugate v. Head, 261 F.3d 1206, 1216 (11th Cir. 2001) (finding presumption in favor of effective assistance is greater when trial counsel is experienced).

Reasonable Investigation

In Claim VIII of his Amended Petition, Petitioner alleges that his attorneys were ineffective in the pre-trial investigation conducted by his defense team. An attorney "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary" and what investigations are reasonable "may be determined or substantially influenced by the defendant's own statements or actions." Strickland, 466 U.S. at 691. See also Schriro v. Landrigan, 550 U.S. 465 (2007) (finding defendant's demand that counsel undertake or refrain from a particular investigation bears upon the reasonableness of the investigation). As explained in detail below, this Court finds that trial counsel conducted a reasonable and competent investigation of Petitioner's case.

Following their appointment to Petitioner's case, Mr. Berry and Mr. Adams agreed that

²⁴ During the proceedings before this Court, Mr. Berry testified that Petitioner's case was handled according to the Unified Appeal Procedure, which requires that two attorneys are provided each defendant in a capital case; among other requirements, co-counsel must have previously served as either lead or co-counsel in at least one (non-death penalty) murder trial to verdict, or in at least two felony jury trials. (HT, Vol. 1:42-43; Unified Appeal Procedure (II)(b)(2)).

Mr. Berry would handle voir dire and the guilt-innocence phase and Mr. Adams would handle the sentencing phase. (HT, Vol. 1:51). Mr. Berry explained that Mr. Adams' office had "the mitigation people" and "had the ability to be able to get the experts." Id. In addition to trial counsel, Petitioner had investigators and other staff from GCD working on his case. GCD interns also assisted in the mitigation investigation by organizing Petitioner's GCD file, locating and interviewing witnesses, and obtaining records. (HT, Vol. 4:807; Vol. 92:27761, 27766, 27768).

A. GCD Investigators

Alysa Wall was the initial mitigation investigator assigned to Petitioner's case in 2004 at the Multi-County Public Defender and she continued to work on Petitioner's case through much of 2005 at GCD. (HT, Vol. 86:26076). As early as August 11, 2004, Ms. Wall requested Petitioner's employment records from Cleveland Electric, where Petitioner worked as an apprentice at the time of the crimes. (HT, Vol. 52:17892). On January 21, 2005, Ms. Wall accompanied Mr. Berry and Mr. Adams to a deposition of Detective Eddie Herman, the lead detective on Petitioner's case, who interviewed Petitioner shortly after his arrest in Wisconsin. (1/21/05 PT, R. 5566-5609). On May 23, 2005, Ms. Wall sent Petitioner a copy of his "entire prison file" and asked him to read through it and highlight or note any sections that he thought "could be helpful...i.e. good work evaluations, positive guard notes, etc." (HT, Vol. 86:26076). Additionally, Ms. Wall's thorough interview notes, timelines and memos show that she was coordinating with Mr. Adams, Ms. Thompson, and Pamela Blume Leonard, and worked extensively on Petitioner's case. (HT, Vol. 91:27537).

After Alysa Wall, Laura Switzer took over as the GCD mitigation investigator for Petitioner's case. (HT, Vol. 1:67; Vol. 4:786, 831; Vol. 38:14172-14173). Ms. Switzer was

employed as a mitigation specialist at GCD starting in 2005.²⁵ (HT, Vol. 4:782, 784-785). Previously, Ms. Switzer interned at the Southern Center for Human Rights, where she also investigated mitigation. (HT, Vol. 4:782-784). At the time of Petitioner's case, Ms. Switzer had both Bachelor's and Master's degrees in Social Work, and was working towards certification as a Licensed Clinical Social Worker (LCSW).²⁶ (HT, Vol. 4:780-782). Ms. Switzer worked on the mitigation investigation by gathering records and interviewing witnesses. (HT, Vol. 2:248; Vol. 38:14129). Additionally, Ms. Switzer acted as a liaison between trial counsel and the mental health experts. Id.

B. Document Requests

During their investigation, counsel requested numerous records pertaining to Petitioner and his family. (HT, Vol. 71:22477-22721). As early as May 2004, counsel had begun requesting Petitioner's records, including his family records, financial records, legal records, medical records, social services records, psychological records, school records, employment records, and prison records. Id. On May 27, 2004, Mr. Adams obtained Petitioner's authorization for release of all records regarding adoption, correctional, educational, employment, foster care, medical, law enforcement criminal history (including GCIC and NCIC), psychological, psychiatric, rehabilitation, and all records maintained by federal, state, or local governments or subdivisions, to Mr. Adams, Mr. Berry, mitigation specialist Pamela Leonard, and investigator Wall. (HT, Vol. 52:17894). Counsel received extensive records relevant to Petitioner's background in response to their requests. (HT, Vol. 72-84; Vol. 86:26077-26108; Vol. 88:26675-26687).

²⁵ Ms. Switzer testified that Alysa Wall was no longer working at the Georgia Capital Defender when Ms. Switzer's employment began in 2005. (HT, Vol. 4:785-787).

²⁶ Ms. Switzer received her LCSW in 2010. (HT, Vol. 4:781).

After Mr. Adams, Mr. Berry, Ms. Leonard, and Ms. Wall requested declassification of Petitioner's entire institutional and central administrative records and probation records on file with the Georgia Department of Corrections, Mr. Adams secured a declassification order from the Commissioner's Office of the Department of Corrections on June 9, 2004. (HT, Vol. 15:4333). On March 11, 2005, Mr. Adams sent a subpoena for the production of evidence to Petitioner's former employer, Cleveland Electric, requesting all records of Petitioner's "hiring, employment, and termination, including his application, dates of employment, positions held, employment locations, time sheets, payroll records, tax records, salary, supervisor notes and evaluations, probation or disciplinary reports, and all other written or recorded records." (HT, Vol. 52:17878-17879).

At the February 12, 2007 ex parte hearing, Ms. Czuba told the trial court that the sentencing phase investigation "had been ongoing since the day the case started. That is the process of working and working and working to gather this information." (HT, Vol. 40:14734). Ms. Czuba stated that counsel were still in the process of obtaining Petitioner's records that they had been requesting for the past three years, including Petitioner's North Carolina prison records, his juvenile incarceration records, and school records, and she explained the difficulty in obtaining some records that were "old and archived." (HT, Vol. 40:14733-14734). Regarding the older records, Ms. Czuba stated, "[w]e have requested them a dozen times, Your Honor. It is a process of working with the agencies to get these records. It is not you send a request to an agency and three weeks later they give you a record. It is a dynamic, difficult process." (HT, Vol. 40:14734).

On June 1, 2007, Ms. Czuba sent an authorization for release of confidential records to Merit Construction Company, where Petitioner worked between November 4, 2002 and February 9, 2003. (R. 2871; HT, Vol. 53:18038, 18039). The release authorized Mr. Berry, Ms.

Thompson, Ms. Czuba, and Ms. Switzer to receive the information. (HT, Vol. 53:18039).

Counsel compiled all of the information they received during the investigation and prepared Petitioner's family tree, social history, prison disciplinary timeline, "attorney mitigation witness strategy," and "aggravation and bad mitigation." (HT, Vol. 86:26069-26075, 26110-26112, 26118-26127; Vol. 87:26489-26523).²⁷

C. Communication with Petitioner

The record shows that all members of the defense team visited Petitioner at the Cobb County Jail. After being retained by Petitioner's family, Mr. Berry visited Petitioner for purposes of introduction. (HT, Vol. 1:45; Vol. 38:14110). At that time, Mr. Berry explained the procedure to Petitioner and told Petitioner not to talk to anyone at the jail about his case. (HT, Vol. 1:46; Vol. 38:14110). Regarding his relationship with Petitioner, Mr. Berry stated:

I felt like I had a good relationship with him, but [Petitioner] would never open up. He was not one to converse with you. He didn't want to talk about it, he didn't want to deal with it. He was just very difficult to shake anything out of. So pretty much from the beginning to end, he was not helpful to himself or to us.

(HT, Vol. 38:14111). Mr. Berry also thought that it was "fairly obvious" Petitioner had psychological issues:

Well, he was very withdrawn. Just in talking with him, you could tell that he, you know, he just was—really didn't want to talk about it too much. He really didn't want to get his family involved, he really didn't want, you know, it was like I just want to be off in a cell by myself reading. I don't want to have any interaction with anybody else. And he just was kind of aloof about the whole matter. And it's not typically some—typically in these people that commit these crimes. He acted a little differently than I've normally seen with a lot of people.

(HT, Vol. 38:14122).

²⁷ The Court notes that the indexes to the information that counsel compiled alone are 53 pages long. (HT, Vol. 41:14865-14918).

The attorneys and mitigation specialists from GCD also met with Petitioner in the jail. (HT, Vol. 1:65; Vol. 2:388, 397; Vol. 4:788, 895; Vol. 36:13562-13574; Vol. 38:14111, 14177, 14230-14232; Vol. 91:27549; Vol. 92:27762). Describing her relationship with Petitioner, Ms. Thompson stated that it was a “very pleasant” relationship. (HT, Vol. 4:895; Vol. 38:14177). Ms. Czuba also testified that she had a “very cordial, pleasant” relationship with Petitioner. (HT, Vol. 38:14231).

Additionally, Ms. Thompson and Ms. Czuba both questioned Petitioner about his social history. (HT, Vol. 4:895; Vol. 38:14232). During meetings with counsel, Petitioner was cooperative and forthcoming with information; however, trial counsel claim that Petitioner’s mental health issues prevented them from getting necessary information. (HT, Vol. 2:396-397; Vol. 38:14232-14233). Ms. Czuba explained that there were “a lot of places that I’m not sure he was capable of going with me, just because we didn’t have a trust relationship. Not that he was trying to be uncooperative. It’s just that he wasn’t able to go there.” (HT, Vol. 38:14233). Additionally, Ms. Czuba stated that Petitioner had “a lot of deep kind of mental impairments and trauma that inhibit him from really forming a good trust relationship with anyone.” (HT, Vol. 38:14231). Ms. Thompson also stated that she recognized Petitioner’s mental health issues during their initial interview. (HT, Vol. 4:900; Vol. 38:14177).

Ms. Switzer testified that she and Petitioner developed a good rapport; however, there were always “walls” when dealing with Petitioner. (HT, Vol. 4:789). Ms. Switzer explained that during conversation, Petitioner “would share information up to a point and then that-that was sort of that’s where the wall was.” (HT, Vol. 4:789-790). Ms. Switzer asked Petitioner about the crime, Petitioner’s life, and his criminal history. (HT, Vol. 4:791, 849-851; Vol. 86:26111). In speaking with Ms. Switzer, Petitioner claimed that he was unable to remember some periods of his life. (HT, Vol. 4:791). Ms. Switzer also spoke with Petitioner about his family and asked if

he was physically abused; however, Petitioner had no recollection of abuse. (HT, Vol. 4:792). Ms. Switzer attempted to jog Petitioner's memory about any alleged physical abuse by giving him information that she had heard from others, but Petitioner still did not remember any alleged abuse. Id. Additionally, Ms. Switzer questioned Petitioner about sexual abuse; however, Petitioner had no recollection of being sexually abused. (HT, Vol. 4:792-793).

Ms. Switzer testified during the habeas proceedings that when she attempted to obtain the names of potential witnesses, Petitioner told her, "I don't want you going to talk to these people, it's not safe, and so I'm not telling you." (HT, Vol. 4:791). Ms. Switzer explained to Petitioner that she needed the information regarding the identity of certain individuals; however, Petitioner refused to provide her with that information. Id. Regarding Petitioner's lack of cooperation, Ms. Switzer testified:

I would try and pull whatever I could pull. If he — if I had a first name, I would try and look through records and see if I can — and this is what I would do on any case, try and look and see if I could find any other information that would get me there. But I — he — it was just too vague; I could never get to — there were certain areas I just couldn't get to.

(HT, Vol. 4:792).

The record also shows that Ms. Wall met with Petitioner numerous times in 2004 and 2005 and obtained information from Petitioner including: Petitioner's family history, employment history, school history, special education, and medical history; and information regarding his prior incarcerations, his alcohol and drug use, alleged physical abuse, and his estrangement from his mother. (HT, Vol. 86:26065-26068; Vol. 87:26524-26533, 26536-26538, 26544-26545, 26551-26553, 26557, 26560, 26562-26572).

D. Discovery Provided by the State

During their investigation, counsel received extensive discovery from the State. (HT, Vol. 1:55, 59; Vol. 2:306-307; Vol. 41-57:14919-19014). Trial counsel testified during habeas

proceedings that the State turned over discovery “fairly quickly,” and neither Mr. Berry nor Ms. Czuba had concerns that the State withheld discovery. (HT, Vol. 1:59; Vol. 2:306-307; Vol. 38:14114). Upon receipt of the State’s discovery, Mr. Berry testified that he provided copies to GCD. (HT, Vol. 1:55).²⁸

E. Investigation of Potential Mitigation Witnesses

The record shows that the defense team also attempted to locate and interview Petitioner’s family members, friends, co-workers, and teachers. The defense team interviewed multiple members of Petitioner’s family, including his father, stepmother, sister, brother-in-law, paternal grandmother, aunt, uncle, and stepfather. (HT, Vol. 1:133-134; Vol. 2:322-324; Vol. 4:793-795, 877-879; Vol. 38:14174, 14180, 14238-14241; Vol. 87:26541-26543, 26546-26550, 26554-26556, 26558-26559, 26561; Vol. 93:27882). Ms. Czuba described everyone in Petitioner’s family as having “mental health issues” and stated that they were a “family that needed time.” (HT, Vol. 38:14241-14242). Ms. Czuba questioned Petitioner’s family about Petitioner’s mental health history and received information regarding “very odd behaviors.”²⁹ Id.

Approximately one month after Petitioner’s arrest, Petitioner’s father, Walter Humphreys, provided background information to Mr. Berry. (HT, Vol. 1:132-133; Vol. 67:21649-21652; Vol. 91:27403-27410). Trial counsel also interviewed Petitioner’s father; however, Ms. Czuba testified that she only had superficial discussions with Petitioner’s father because he was uncooperative. (HT, Vol. 38:14239). Additionally, Ms. Thompson’s notebook indicates that she met with Walter Humphreys on September 12, 2006. (HT, Vol. 93:27882).

Trial counsel also spoke with Petitioner’s stepmother, Janie Swick. Ms. Czuba testified

²⁸ Additionally, the certificates of service indicate that the Cobb County District Attorney served copies of the discovery to both Mr. Berry and Mr. Adams. (HT, Vol. 45:16023-16024, 16026; Vol. 48:16683, 16747, 16865).

²⁹ After hearing the behaviors described by Petitioner’s family, Ms. Czuba believed “the thing that fit the best was Asperger’s.” (HT, Vol. 38:14242).

in her deposition that Ms. Swick was “as responsive as she could be,” but she had “her own mental health issues going on.” (HT, Vol. 38:14238). Ms. Czuba explained that there was significant domestic violence between Petitioner’s father and stepmother, which was difficult for Ms. Swick to discuss. Id.

Members of Petitioner’s defense team also met with Petitioner’s sister, Dayna Knowles,³⁰ who was “very cooperative.” (HT, Vol. 4:793-794; Vol. 38:14240). Ms. Switzer testified during habeas proceedings that she met with Petitioner’s sister at least four or five times, including one occasion in which Ms. Switzer traveled to Texas. (HT, Vol. 4:793-794). Ms. Switzer questioned Ms. Knowles regarding both physical and sexual abuse. (HT, Vol. 4:794-795). Ms. Knowles reported that she witnessed a significant amount of physical abuse, and that she had been sexually abused. (HT, Vol. 4:795). However, Ms. Knowles never reported that Petitioner had been sexually abused. (HT, Vol. 4:794-795; Vol. 38:14302). In speaking with Petitioner’s sister, trial counsel felt that she was “very profoundly traumatized by her childhood.” Id.

Additionally, the defense team utilized Accurant and Lexis to locate potential witnesses. (HT, Vol. 4:804-807; Vol. 66:21265-21434; Vol. 67:21437-21684; Vol. 68:21687-21934; Vol. 69:21937-22184; Vol. 70:22187-22466). The record shows that Petitioner provided the name of Roger Jones to his defense team, who was one of his former teachers. (HT, Vol. 66:21204). Counsel ran an Accurant search on Mr. Jones in January and June 2006 in an attempt to locate him. (HT, Vol. 70:22265-22289). Despite their efforts, trial counsel could not locate Mr. Jones. (HT, Vol. 70:22261). On June 29, 2006, Ms. Czuba also submitted a request to the Cobb County School District for assistance locating Petitioner’s former teachers. (HT, Vol. 71:22472).

³⁰ The Court notes that Petitioner’s sister went by her married name of Knowles at the time of Petitioner’s trial. However, her last name has since been changed to Lee. (HT, Vol. 3:627-628).

Trial counsel's files also contain witness folders and other evidence of the interviews conducted by the defense team. (HT, Vol. 66:21265-21434; Vol. 67:21437-21684; Vol. 68:21687-21934; Vol. 69:21937-22184; Vol. 70:22187-22466). The defense team prepared a witness grid, which included the names of potential witnesses for both the guilt-innocence and sentencing phase. (HT, Vol. 66:21187-21264). The initial version of the witness grid was prepared on December 20, 2004; it was subsequently revised on August 15, 2005, January 9, 2006, and June 8, 2006. *Id.* Additionally, one of the revised witness grids contains notes on attempted and completed witness interviews. (HT, Vol. 66:21221-21245). During their investigation, the defense team also spoke with individuals who were in contact with Petitioner during the weekend before the crime. (HT, Vol. 38:14128). Mr. Berry testified that they "contacted whoever [they] could that might have any involvement with him that might be able to say, you know, give any indication as to what was going on with him at the time." (HT, Vol. 38:14128).

Ms. Switzer also interviewed Kelly Korey Nagle, a middle school friend of Petitioner's, for approximately one hour in the spring of 2006. (HT, Vol. 2:438-439, 443; Vol. 68:21725-21727). At that time, Ms. Nagle lived in California and was pregnant with her second child. (HT, Vol. 2:438, 443). In speaking with Ms. Nagle, Ms. Switzer learned that Ms. Nagle was Petitioner's best friend in middle school and that she had talked Petitioner out of suicide in the eighth grade. (HT, Vol. 2:439; Vol. 68:21726-21727). Ms. Switzer asked Ms. Nagle if she would testify at Petitioner's trial; however, Ms. Nagle was unable to travel.³¹ (HT, Vol. 2:439).

F. Guilt-Innocence Phase Experts

i. Jeffrey Martin

³¹ Ms. Nagle offered to provide a statement to counsel. (HT, Vol. 2:439).

In an ex parte motion dated March 21, 2005, counsel requested \$3,000 for the expert assistance of Jeffrey Martin to investigate the grand and petit jury venires of Cobb County. (HT, Vol. 40:14631-14649). Counsel stated Mr. Martin's assistance was needed to "analyze, compile and present [] data on underrepresentation." (HT, Vol. 40:14646). The court granted the motion in an order signed on March 23, 2005. (HT, Vol. 40:14628-14629).

On August 22, 2007, counsel filed another ex parte motion for funds for expert assistance to investigate the Glynn County petit jury venires. (HT, Vol. 39:14429-14438). Counsel requested \$3,000 from county funds for the services of Jeffrey Martin, once again, for what counsel estimated would be thirty hours for Mr. Martin's review and analysis. Id. The trial court granted the motion the same day. (HT, Vol. 39:1443).

ii. Teresa Ward, Ph.D

At the June 7, 2005 hearing in which Mr. Berry and Mr. Adams challenged the composition of the grand and traverse juries of Cobb County, counsel informed the court that they would need to present the testimony of an additional witness in support of their motions. (6/7/05 PT, 315-331). Trial counsel then presented Dr. Teresa Ward as an expert in anthropology to testify regarding the cognizability of Hispanics in Cobb County at the hearing held on September 14, 2005. (9/14/05 PT, 11-12). Dr. Ward, who had received her Ph.D in anthropology from Georgia State University, worked as a research associate at Georgia State University and taught anthropology classes at Kennesaw State University. (9/14/05 PT, 11-12). The court signed counsel's proposed order paying Dr. Ward \$1,200 for her testimony on August 25, 2006. (R. 2594-2595). However, despite Dr. Ward's testimony, the court denied counsel's motions in an order filed on November 21, 2006. (R. 2608-2617).

iii. Robert Tressel

Counsel also received \$2500 for an investigator, Robert Tressel, to assist in the crime

scene evaluation and to analyze blood spatter. (HT, Vol. 1:55; Vol. 38:14230; Vol. 40:14707-14708). At the March 23, 2005 ex parte hearing, Mr. Berry stated that Mr. Tressel “is an expert in crime scene evaluation, blood spatter expert, expert in a number of areas that would be important in this crime scene.” (HT, Vol. 40:14707). Mr. Berry had used Mr. Tressel before in five or six murder cases, and testified that he was the “best investigator that [he had] dealt with over the years that [he had] practiced.” (HT, Vol. 1:55; Vol. 40:14708-14709). Trial counsel provided Mr. Tressel with the entire box of the State’s discovery and Mr. Tressel prepared a “crime scene work up.”³² (HT, Vol. 32:11808; Vol. 38:14115).

iv. Kelly Fite

In an ex parte motion dated March 21, 2005, trial counsel requested funds to hire Kelly Fite, an independent ballistics and firearms expert, to properly evaluate all aspects of the weapon used in the murders.³³ (HT, Vol. 39: 14592-14611). Trial counsel argued that Mr. Fite would provide assistance to counsel regarding “firearms identification (fired bullets, expended shells or cartridges matched to specific weapons), distance or range determinations (from gunshot residue on clothing or skin); firearms design, operability, defects, accidental discharge, modifications, conversions, etc.” (HT, Vol. 40:14620). During the March 23, 2005 ex parte hearing, Mr. Berry told the court that counsel had reviewed the reports provided by the State, including ballistics reports, and the only weapon used in the crimes was the pistol recovered in Wisconsin. (HT, Vol 40:14699-14700). The court granted counsel’s motion on March 23, 2005. (HT, Vol. 39:14588-

³² Mr. Tressel’s billing records show that he charged \$3,500 for “Case Review, Evaluation, Trial Prep.” (HT, Vol. 100:29623).

³³The Court notes that this motion is labeled “Defense Ex Parte Motion #2”; however, there is another Motion For Funds to Hire an Independent Ballistics and/or Firearm Expert dated January 19, 2005 and stamp filed on March 23, 2005, which is labeled “Ex Parte Pleading Number 5.” (HT, Vol. 40:14618-14627). During the March 23, 2005 ex parte hearing, Mr. Berry testified “[t]he newly filed Motion Number 2 is the same as our previously filed Motion Number 5.” (HT, Vol. 40:14699).

14590).

G. Sentencing Phase Experts

At the February 12, 2007 ex parte hearing, trial counsel requested funds for a psychiatrist, a trauma expert, a prison adaptability expert, and a victim outreach specialist. (HT, Vol. 40:14730-14736). During the hearing Ms. Czuba explained to the court that although counsel had previously submitted a “neuropsych request,” that request and a request for a psychiatrist were “vastly different things.” (HT, Vol. 40:14732). Trial counsel indicated that there could be a mental health issue, but at that point they were unsure, stating: “[o]bviously, we haven’t completely determined whether that will be presented at trial.” (HT, Vol. 40:14732-14733). When questioned by the trial court as to why a mental health expert had not been sought earlier, Ms. Czuba stated:

Well, there is a great deal of mitigation work that needs to go on before you’re even in the position to get a mental health person involved. It is the same way with any other science such as fingerprinting or DNA, you need to have all the relevant documents, you need to have all the relevant interviews before you can even remotely start identifying, narrowing what experts you’re going to use.

(HT, Vol. 40:14733). Trial counsel were hesitant to lay out their penalty phase for the court; however, Ms. Czuba stated it would involve trauma and PTSD before the court stopped her. (HT, Vol. 40:14735).

i. Dr. Robert Shaffer

Two years prior to the February 2007 ex parte hearing, in an ex parte motion dated March 21, 2005, trial counsel requested funds to retain Dr. Robert Shaffer, a neuropsychologist, to aid in the preparation of Petitioner’s defense. (HT, Vol. 39:14549-14575). In support of their motion, counsel stated “[t]here is a history of psychological or mental impairment in Mr. Humphreys’ family. The mental health community now knows that significant evidence suggests a strong genetic component or predisposition to certain types of psychological illnesses

or disorders.” (HT, Vol. 39:14566). Trial counsel explained that an expert in psychology was needed “to interview [Petitioner] and his family, to review records and data regarding the existence and history of any present or past illnesses, general medical history, history of substance use, psychosocial and developmental history, social history, occupational history, and family history, to perform or order a review of systems, physical examination, mental status examination, functional assessment, appropriate diagnostic tests, and to review all other relevant information derived from medical and social records, and to order appropriate diagnostic tests.” (HT, Vol. 39:14566). Trial counsel indicated that Dr. Shaffer would: review medical, school, and institutional records; interview Petitioner’s family members; conduct an evaluation and a physical and neurological examination of Petitioner; prescribe the appropriate psychological testing to determine the existence of any disabilities and, if they exist, to document them; express an opinion with a reasonable degree of medical certainty as to any causal connection between Petitioner’s impairments, or environmental or genetic predispositions, and the antisocial behavior of the crimes charged; assist counsel in understanding and presenting evidence of Petitioner’s mental impairments to the jury; and, testify regarding his findings and conclusions. (HT, Vol. 39:14566-14567).

During the March 23, 2005 ex parte hearing, the court questioned trial counsel regarding their knowledge of Petitioner’s mental health history and the following colloquy ensued:

Mr. Berry: Next is Motion Number 3. We’re asking for clinical psychologist Robert Shaffer. We attached also his CV to the back of our motion. This, Judge, basically is more for mitigation than anything else. I think this is one of the more important ex parte motions that we have.

The court: Is there any history, to your knowledge, of prior problems in that area in regard to the Defendant?

Mr. Berry: Yes, there is, Judge. In the past the family has indicated to us and so has Mr. Humphreys, there have been occasions where he had blackouts. There was one occasion he didn’t know how he ended up in another state. He just came

to the realization he was somewhere he didn't know how he got there and when he got there. So certainly I think those things are very important to follow up on and see if we can get to the root of that problem.

The court: Was he ever cared for by a psychiatrist or a psychologist? Those records would be important it would appear.

Mr. Adams: He has not been, your Honor. There are a number of mental health records from his earlier incarceration. He always has something that frankly we don't really know what it means. He was given some IQ scores in school and we've gotten those records. With most of us our performance and verbal are pretty close together on those type tests, and his are, one is much greater than the other. There is a big spread. And we're not sure exactly what that means. And we were hoping a neuropsychologist can do testing to help us identify what the cause, if the brain is malfunctioning in any sort of way, what that might mean, and we might be able to present that to the jurors in a compelling way.

The court: In regards to what type of condition you're bringing to the attention of the Court in regard to blackouts, are we talking about something involving drugs or alcohol?

Mr. Berry: No, your Honor.

The court: Consumption?

Mr. Berry: No. In other words, this was not a drug-induced blackout or alcohol-induced blackout.

(HT, Vol. 40:14701-14702). The court granted counsel's motion in an order filed on March 24, 2005. (HT, Vol. 39:14546-14548).

Subsequently, Dr. Shaffer was retained to conduct a neuropsychological evaluation of Petitioner. (HT, Vol. 1:56, 100; Vol. 4:892-894; Vol. 38:14120-14121, 14133-14134, 14178; Vol. 39:14567). Prior to evaluating Petitioner, Dr. Shaffer consulted with counsel and reviewed records.³⁴ (HT, Vol. 36:13542; Vol. 89:26835; Vol. 93:27862; Vol. 100:29624). Trial counsel provided Dr. Shaffer with Petitioner's family tree, social history chronology, birth records,

³⁴ In his notes from his consultation with trial counsel, Dr. Shaffer indicates that he was specifically instructed to evaluate "Neuro Only Not Personality." (HT, Vol. 89:26898).

medical records, correctional records, school records, the birth and death certificates of Petitioner's mother, and marriage and divorce records of Petitioner's parents. (HT, Vol. 38:14247; Vol. 89:26924-27032).

On May 20, 2005, Dr. Shaffer conducted a neuropsychological evaluation of Petitioner, which he scored on May 25, 2005. (HT, Vol. 36:13542; Vol. 89:26835; Vol. 100:29624). The record is unclear as to Dr. Shaffer's findings from the neuropsychological evaluation of Petitioner and the record indicates he was instructed by counsel to "no written report."³⁵ (HT, Vol. 93:27863). However, on July 6, 2006, Dr. Shaffer sent Ms. Switzer a copy of his file on Petitioner. (HT, Vol. 36:13551).

On July 16, 2007, trial counsel again consulted with Dr. Shaffer and requested that he conduct another evaluation of Petitioner.³⁶ (HT, Vol. 2:271-272; Vol. 36:13547; Vol. 100:29624). The record shows that between July and September, 2007, Dr. Shaffer met with trial counsel numerous times, reviewed records, interviewed multiple witnesses, attended meetings at the jail, reviewed case information, and on August 23, 2007, conducted a psychological evaluation of Petitioner. (HT, Vol. 36:13547-13548). Following his evaluation, Dr. Shaffer diagnosed Petitioner with Posttraumatic Stress Disorder (hereinafter PTSD), Dissociative Disorder, and Asperger's Syndrome. (HT, Vol. 90:27070-27071).

ii. Dr. Bhushan Agharkar

³⁵ Ms. Czuba testified during the evidentiary hearing in this case that it was common in death penalty cases not to receive a written report from an expert. (HT, Vol. 2:400). She explained, "[i]f you-you know, you don't know what's going to go on or how a case is going to morph or how an expert's, you know, earlier statement, then he does more work and changes his mind, then that can be exploited. So, in general, until you're positive where you're going, you don't have a written report, -per se written." *Id.* Additionally, the record reflects that on January 18, 2005, Petitioner's trial counsel filed notice that they had elected to apply reciprocal discovery rules, and requested timely disclosure of any results or reports of physical or mental examinations. (R. 2115-2118).

³⁶The record shows that on August 29, 2007, the court granted trial counsel's ex parte motion authorizing up to \$8,000 for Dr. Shaffer's additional expenses to complete his evaluation and testimony, pending the court's review of his itemized billing at the conclusion of the case. (HT, Vol. 39:14428).

Additionally, trial counsel requested funds to hire Dr. Bhushan Agharkar, a psychiatrist, to aid in the preparation of Petitioner's defense. (HT, Vol. 39:14448-14461). In their motion, counsel argued they needed the assistance of Dr. Agharkar to "render an opinion as to the trauma and abuse which has presented as a theme throughout [Petitioner's] developmental history." (HT, Vol. 39:14453). Counsel stated that Petitioner's educational records revealed a history of special education and psychological evaluations while in the Cobb County school system, and Petitioner's "cumulative social history [] revealed instances of dissociation, which is an indicator of trauma." (HT, Vol. 39:14453). As explained by counsel:

Among others, some of the predictors of trauma and post traumatic stress disorder are early separation from a parent, history of child abuse, parental separation prior to age ten, and witnessing violence between parents-these indicators have surfaced during the mitigation investigation in Mr. Humphreys' case. The responses of the individual to trauma and post traumatic stress disorder can include defensiveness, aggressiveness (against self or others), hyperalertness, hypervigilance, and uncontrolled rage-it is clear that these factors would be critical to convey to any jury deciding whether there is any basis to give Mr. Humphreys a sentence less than death.

Id. Counsel stated Dr. Agharkar would: conduct a psychiatric evaluation of Petitioner so that any evidence of trauma could be related to the jury; express an opinion with a reasonable degree of medical certainty regarding the connection between the trauma and the crimes; assist counsel in understanding and presenting evidence of trauma as a mitigating factor to the jury; and testify regarding his findings and conclusions. Id. On February 21, 2007, the trial court granted counsel's motion and ordered the county to disburse \$6,000 for these expenses. (HT, Vol. 39:14446).

According to Dr. Aghakar's billing statements, he met with trial counsel on March 2, 2007, June 8, 2007, June 19, 2007, and July 13, 2007. (HT, Vol. 36:13544-13545). Dr. Aghakar also had several consultations either in person or over telephone with defense team members, including Ms. Switzer and Ms. Loring. Id. Additionally, Dr. Aghakar spent a significant amount

of time reviewing Petitioner's records. Id.

On June 28, 2007, Dr. Aghakar conducted a psychiatric examination of Petitioner. (HT, Vol. 36:13545; Vol. 100:29622). Following his evaluation, Dr. Aghakar informed trial counsel that he disagreed with a diagnosis of Asperger's Syndrome. (HT, Vol. 2:267-269). Trial counsel subsequently decided that Dr. Aghakar would not testify at Petitioner's trial as his evaluation did not support their sentencing phase theory. (HT, Vol. 2:266-267; Vol. 4:840-841; Vol. 38:14251-14252).

iii. Marti Loring

On February 21, 2007, the court granted trial counsel's motion for funds to retain Dr. Marti Loring, a Licensed Certified Social Worker. (HT, Vol. 39:14501-14502). Ms. Thompson and Mr. Berry had previously used Ms. Loring in a number of death penalty cases as she had "substantial experience as an expert in trauma issues in capital cases." (HT, Vol. 39:14509; Vol. 40:14757). In their motion, counsel stated that they had "conducted interviews with numerous members of [Petitioner's] family and gathered voluminous records regarding [Petitioner's] social history" and it had "become clear that there are underlying issues regarding trauma that permeate [Petitioner's] family history and social development." (HT, Vol. 39:14507). Counsel argued that a Licensed Certified Social Worker was needed to "further document and explore the trauma and abuse which ha[d] presented as a theme throughout [Petitioner's] developmental history." (HT, Vol. 39:14508-14509).

Counsel stated Dr. Loring would: review medical, school, and institutional records; interview members of Petitioner's family with regards to trauma or post-traumatic stress disorder; interview Petitioner to develop additional evidence of trauma or post-traumatic stress disorder which could be related to the jury; express an opinion to the connection between Petitioner's trauma history and his crimes; assist counsel in understanding and presenting

evidence of trauma as mitigation to the jury; and testify regarding her findings and conclusions. (HT, Vol. 39:14508). Ms. Thompson explained: Dr. Loring “specifically knows what questions to ask when interviewing people, interviewing teachers, former school teachers. Mr. Humphreys was incarcerated before. She knows exactly what types of questions to ask that a lay person, an attorney, an investigator from my office simply could not do because we are not trained in that particular area.” (HT, Vol. 40:14757-14759).

As part of her work on the case, Dr. Loring interviewed sixteen individuals and reviewed records relating to Petitioner including medical, school, jail, police, divorce, and work records. (HT, Vol. 87:26457). Additionally, Dr. Loring met with Petitioner numerous times. (HT, Vol. 4:856; ST, Vol. 2:209). Dr. Loring also met with Ms. Czuba and Ms. Switzer during the investigation to discuss Petitioner’s family history and mental health diagnosis. (HT, Vol. 4:798, 827-828; Vol. 38:14245). Following her evaluation, Dr. Loring diagnosed Petitioner with PTSD and Asperger’s Syndrome. (ST, Vol. 2:229-230).

iv. James Aiken

In an ex parte motion dated February 21, 2007, trial counsel requested funds to hire James Aiken, a prison adaptability expert with experience in various Departments of Corrections across the United States. (HT, Vol. 39:14464-14477). In their motion, counsel asserted it was important to present a prison adaptability expert to the jury to provide an opinion as to the prison’s ability to safely confine Petitioner. (HT, Vol. 39:14469). Additionally, counsel argued that expert testimony on this matter was required “[a]s a result of the complicated nature of prisons, the way in which certain inmates react to conditions of confinement, and many other considerations outside the scope of a layperson’s knowledge.” (HT, Vol. 39:14469). The court granted counsel’s motion on February 21, 2007 and ordered the county to disburse \$6,000 for these expenses. (HT, Vol. 39:14463).

The record reflects that Mr. Aiken spent an extensive amount of time reviewing “documents and materials” provided to him by counsel, including “various materials pertaining to [Petitioner’s] incarceration history and criminal activity.” (HT, Vol. 36:13549-13550; Vol. 100:29626-29627). Additionally, Mr. Aiken met with trial counsel on September 26, 2007, prior to his testimony at Petitioner’s trial the following day. *Id.* As explained in detail below, Mr. Aiken concluded that Petitioner could be safely confined in prison and would not be considered a risk in terms of future dangerousness. (ST, Vol. 1:92-93, 101).

v. Teaching Expert on Asperger’s Syndrome

In July of 2007, Petitioner’s defense team contacted Dr. Donna Schwartz-Watts, a leading expert on Asperger’s Syndrome. (HT, Vol. 2:272; Vol. 36:13584). Trial counsel was looking to obtain a “teaching expert” on Asperger’s Syndrome and Dr. Schwartz-Watts was recommended by several people. (HT, Vol. 2:273; Vol. 38:14253). In a letter to Dr. Schwartz-Watts, Ms. Switzer states that she has enclosed relevant information from Petitioner’s records as well as “historical information from witnesses regarding [Petitioner] and observations from members of the defense team and experts.” (HT, Vol. 36:13584). Dr. Schwartz-Watts; however, never performed any work on Petitioner’s case. At the evidentiary hearing before this Court, Ms. Czuba explained:

My recollection at this point is that we tried to get her involved and that she kind of sort of led us on a little bit, like, oh, for sure, I’m going to be able to help you with this, I’m going to do this. And then -- and this was all happening pretty rapidly, but we weren’t able to get in touch with her, and then we finally got -- heard from her assistant or secretary or someone that worked in her office that she simply was not going to have time to do the case and couldn’t do it.

(HT, Vol. 2:273).

Around September 6, 2007, Ms. Switzer contacted Diane Wilkes regarding her willingness to testify at Petitioner’s trial as a “teaching witness” on Asperger’s

Syndrome. (HT, Vol. 4:846; Vol. 90:27072). Initially, Ms. Wilkes agreed to testify on Petitioner's behalf. Id. Several days after their initial contact, the defense team met with Ms. Wilkes to discuss Petitioner's case. Id. During this meeting, Ms. Wilkes reiterated that she would be happy to testify for the defense. (HT, Vol. 90:27073). Shortly thereafter, Ms. Wilkes contacted Ms. Switzer and stated that she no longer wanted to testify for the defense. Id. Ms. Wilkes explained that she changed her mind after receiving information about the case that was not public knowledge, from a family member who was in law enforcement.³⁷ Id.

vi. Defense Initiated Victim Outreach Specialist

In a motion dated February 21, 2007, trial counsel requested funds for \$1200 to retain a defense initiated victim outreach specialist. (HT, Vol. 39:14481-14498). Counsel argued that a victim outreach specialist, "who by training and experience knows how to approach and develop a relationship with survivors with appropriate respect for their plight, their suffering, and their fears," was necessary to enable trial counsel to reach out to victims' families. (HT, Vol. 39:14485). According to counsel, a victim outreach specialist would contact the victims' families in an attempt to "diffuse a lot of anger they are feeling and hopefully make the courtroom a more neutral, accessible place for all and educating them better about the court system and what the prosecutor's office might be doing." (HT, Vol. 40:14731, 14751). Additionally, a victim outreach specialist would inquire as to whether the family was agreeable to a life without parole sentence as opposed to the death penalty.³⁸ (HT, Vol. 2:319-321).

³⁷In her memorandum, Ms. Switzer noted that Ms. Wilkes was initially more than happy to act as a teaching expert and "did not appear uncomfortable with the facts and details of the case and at no time did she question that [Petitioner] had Asperger's Syndrome." (HT, Vol. 90:27073).

³⁸Ms. Czuba testified in the proceedings before this Court that she had utilized a victim outreach specialist in the past with success. (HT, Vol. 2:319-321).

In their motion, counsel argued that survivors have a need to know why their loved one was murdered, what their loved one experienced during their murder, and what their loved one said and did before death came. (HT, Vol. 39:14483). Ms. Czuba explained “[i]f [the victims’ families] want more information, often we as defense attorneys have information to give that the State doesn’t, and if we are in a position that we can give that information without breaching confidentiality, we can.” (HT, Vol. 38:14254-14255).

Counsel attached to the motion three pages of a blog written by victim Lori Brown’s mother in which Ms. Brown expressed her grief and frustration with the pace of the trial. (HT, Vol. 39:14495-14497). According to Ms. Czuba, it was the fault of the District Attorney, and not Petitioner, that the victims’ families had been “incredibly polarized” and the defense team had no assurances that Petitioner’s written plea offer had been “appropriately and properly conveyed” to the victims’ families by the District Attorney. (HT, Vol. 39:14486). Counsel also attached the CV of Cynthia East, a “defense initiated victim outreach specialist” to the motion. (HT, Vol. 39:14487, 14489-14492).

The court granted counsel’s request for \$1200 to hire a victim outreach specialist on February 21, 2007. (HT, Vol. 39:14480). However, Ms. Czuba testified in the proceedings before this Court that Ms. Brown’s family was not interested in engaging in a “dialogue with the defense about anything....[t]hey didn’t want anything to do with it.” (HT, Vol. 2:320-321; Vol. 38:14255). Additionally, Ms. Williams’ family was supportive of the death penalty and did not want any information from trial counsel. Id.

H. Investigation of Childhood Sexual Abuse

The record before this Court establishes that trial counsel investigated the possibility that Petitioner was sexually abused as a child. At the evidentiary hearing before this Court, Ms. Switzer testified that she suspected Petitioner was sexually abused and searched for collateral

information. (HT, Vol. 4:792-793). However, during counsel's numerous interviews with witnesses, including Petitioner and his family members, no one reported that Petitioner had been sexually abused. (HT, Vol. 2:362; Vol. 4:794-795). Further, counsel asked Petitioner specifically about sexual abuse, but he reported no recollection of any sexual abuse. (HT, Vol. 1:148; Vol. 4:792-793).

Nevertheless, Ms. Thompson's notes indicate that the defense team discussed presenting the testimony of Dr. Beggs, an expert on male sexual abuse and dissociative states.³⁹ (HT, Vol. 36:13557). Additionally, the notes discussed how much Dr. Beggs' testimony would cost, how the defense team would secure money for his testimony, and what documentation Dr. Beggs would need regarding dissociative disorder. *Id.* Ms. Thompson's notes also indicate that the defense team knew Dr. Beggs had significant experience with grief and trauma, including trauma as a result of sexual abuse. (HT, Vol. 36:13557). Additionally, these notes suggest that the defense team considered using Dr. Beggs with regard to false memories and dissociative identity disorder.⁴⁰ *Id.* Ultimately, Dr. Beggs did not testify.⁴¹

Reasonable Attempt to Negotiate a Plea

This Court finds that trial counsel engaged in reasonable attempts to negotiate a plea in Petitioner's case. As evidenced by a letter written to the District Attorney, trial counsel informed the State orally of Petitioner's willingness to plead guilty to the entire indictment in exchange for a sentence of life without parole. (HT, Vol. 36:13559-13560). In addition to this

³⁹ The Court notes that the month and date of this discussion is identified as January 9; however, there is no year listed. (HT, Vol. 36:13557).

⁴⁰ Counsel's notes also indicate that on March 2, 2006, the defense team held a meeting with Ms. Czuba, Ms. Switzer, and Ms. Thompson; and at that meeting, they discussed Dissociative Identity Disorder (hereinafter DID). (HT, Vol. 93:27854). The note indicates that as of this date, Jeffrey Klopper is the proposed expert on DID. *Id.*

⁴¹ Ms. Thompson's notes indicate that the defense team questioned whether the testimony of Dr. Beggs would fit in with their mitigation strategy. (HT, Vol. 36:13557).

conversation, trial counsel provided District Attorney Head with a written plea offer. Id. In the proceedings before this Court, Mr. Berry testified that he wanted to negotiate a life without parole plea as early on in the case as possible and had discussed a plea with Mr. Head prior to sending the letter.⁴² (HT, Vol. 1:62-63). However, trial counsel's offer was rejected by the State in a letter dated June 6, 2006. (HT, Vol. 36:13561).

The Georgia Supreme Court has held that a trial attorney who pursues a plea negotiation, but is unsuccessful because the State will not agree to a deal, is not deficient. Franks v. State, 278 Ga. 246, 258-259 (2004). This Court finds Petitioner has failed to show trial counsel were deficient in attempting to negotiate a plea with the State.

Pre-Trial Motions

Initially, Mr. Berry and Mr. Adams "sat down and agreed on what...each one of us was going to do" and decided that Mr. Berry would be responsible for the majority of the pre-trial motions. (HT, Vol. 1:51). The record shows that on September 28, 2004, Mr. Berry and Mr. Adams filed 116 motions and four ex-parte pleadings. (R. 104-936). A review of the list of motions demonstrates that many of the motions addressed issues pertaining to both the guilt-innocence and sentencing phases of trial, including motions that attempted to limit aggravating evidence; such as similar transaction evidence, autopsy photos, courtroom displays of emotion by the victims' families, and victim impact testimony. (R. 929-936).

In an ex parte motion filed on March 23, 2005, trial counsel requested funds to hire TrackNews, a media research specialist, so that Petitioner could effectively raise and litigate the issue of a venue change. (HT, Vol. 39:14521-14543). Counsel argued that the amount and

⁴² In a letter to District Attorney Head, dated May 23, 2006, trial counsel stated "[a]lthough defense counsel in this case has verbally communicated these wishes to your office, out of an abundance of caution that we have not communicated Mr. Humphreys' wishes clearly enough we now do so again in writing." (HT, Vol. 36:13559).

frequency of media coverage was an issue in the case and that extensive media coverage could affect their decision to change venue. (HT, Vol. 39:14540). Counsel included correspondence between GCD investigator Alyssa Wall and the president of TrackTV, Inc., which discussed the cost of retrieving a written media report outlining the television broadcast materials pertaining to the case, including information from local newscasts between November 3, 2003 and January 19, 2005. Counsel stated that TrackNews would document television coverage from certain stations and provide information such as the airdate and airtime of the local broadcast, approximate length of the broadcast on Petitioner, and text of the actual broadcast when available by the station. (HT, Vol. 39:14540-14541).

At the March 23, 2005 ex parte hearing, counsel argued that this specialist was needed because of the time that had elapsed between the incident and initial flurry of media coverage. (HT, Vol. 40:14704-14707). Counsel explained that if they simply sent subpoenas to the stations, the only information they would learn would be the dates of the coverage, and not the actual content of the coverage. Id. On March 24, 2005, the trial court filed an order granting counsel's motion for a media research specialist. (HT, Vol. 39:14518-14520).

Additionally, the record shows that, prior to trial, trial counsel filed a motion seeking to close the courtroom to the press during the testimony of Petitioner's stepmother. (R. 5262-5276). In this motion, trial counsel represented that Petitioner's stepmother's testimony would cover "sensitive and traumatic subject matter" and she was afraid to testify in front of the media due to her "previous personal violent experiences" with Petitioner's father. (R. 5263). Petitioner's stepmother feared retaliation by Petitioner's father for her testimony. (R. 5263-5265). Trial counsel argued that Petitioner's stepmother would not be an effective witness if forced to testify in front of the media in that she may "struggle to tell certain stories or be hesitant to reveal certain details." (R. 5265).

Trial counsel also filed a motion to close the courtroom to the media during the testimony of Petitioner's sister. (R. 5277-5292). In this motion, trial counsel asserted that Petitioner's sister would testify as to "sensitive and traumatic subject matter." (R. 5278-5279). Petitioner's sister consulted with a doctor who opined that she might be harmed by testifying about those subject matters in front of the media. Id. Trial counsel argued that Petitioner's sister would not be an effective witness if forced to testify in front of the media and might "struggle to tell certain stories or be hesitant to reveal certain details."⁴³ (R. 5279-5280). The trial court denied both of these motions; however, they instructed the media that they were not allowed to photograph the faces of Petitioner's stepmother and sister. (ST, Vol. 1:68).

Reasonable Strategy

Mr. Berry testified at the proceedings before this Court that counsel's strategy for the guilt-innocence phase was tethered to their sentencing phase strategy: "a lot of times in the guilt-innocence phase what you want to try to do is set up your mitigation. You want to also kind of condition the jury." (HT, Vol. 1:126-127). Mr. Berry explained:

It's been asked why sometimes you don't just plead guilty and have the penalty phase. But the reality is you want to try to get the jury to know the worst part of the case in the guilt-innocence, and then when they get to the penalty phase it's not so much of a shock...you want to try to deal with as many of those kinds of factors in the guilt-innocence phase as you can.

(HT, Vol. 1:127). Mr. Berry felt the case came down to the mitigation and stated "[i]f you know you're going to—pretty much assured that you're going to lose the guilt/innocence, you want to try to bring out a few things that will be helpful in the second phase of the trial, and I think we tried to do that as much as we could." (HT, Vol. 1:46; Vol. 38:14113). Regarding counsel's sentencing phase strategy, Ms. Czuba explained as follows:

⁴³ Trial counsel attached a copy of the doctor's letter confirming the traumatic impact Petitioner's sister might have if forced to testify in an open courtroom to the motion. (R. 5290).

[Petitioner] was an individual suffering from Asperger's syndrome, and to show how he and his sister had been subject to the same trauma growing up, and then with proper intervention his sister was able to diverge from the course she was on, whereas [Petitioner] never had that and stayed on this path, and the combination of what he had gone through as a child and his Asperger's syndrome leading to this event, the event.

(HT, Vol. 38:14236). This Court finds that trial counsel formulated a reasonable strategy after completing their investigation and, as explained in detail below, presented evidence consistent with this theory at Petitioner's trial.

Guilt-Innocence Phase Presentation

As discussed above, trial counsel's guilt-innocence phase theory involved the presentation of mitigation as the evidence of Petitioner's guilt was overwhelming. In their guilt-innocence phase opening statements, trial counsel informed the jury that Petitioner's childhood was characterized by "violence, trauma and instability" and that Petitioner was raised by a dysfunctional, abusive family. (TT, Vol. 13:66). Trial counsel went on to explain that Petitioner's parents divorced when he was two years old and Petitioner lived with his mother for a period of time. (TT, Vol. 13:66-67). While living with his mother, Petitioner received a head injury that resulted in a concussion. (TT, Vol. 13:67). Thereafter, Petitioner's father gained custody of Petitioner. Id. About one year later, Petitioner and his sister were kidnapped by their mother. Id. They were subsequently located and sent back to Cobb County. Id.

Following the divorce from Petitioner's mother, Petitioner's father had three failed marriages and there was "violence and disruption" in the home. (TT, Vol. 13:67). In school, Petitioner was placed in special education due to behavioral problems. Id. At age sixteen, Petitioner left home and moved in with a friend. Id.

Trial counsel then provided the jury with information regarding Petitioner's criminal

history.⁴⁴ (TT, Vol. 13:68). Trial counsel informed the jury that during his incarcerations, Petitioner obtained his GED, tutored other students who were trying to obtain their GED, received one thousand hours of training as an electrician, successfully completed a program called Think Smart where he tutored younger people, and was involved in outreach ministries where he spoke with troubled youth. (TT, Vol. 13:68-69).

Trial counsel then spoke about mental health symptoms that were present in Petitioner. Specifically, Petitioner experienced dissociative episodes which started when he was a teenager. (TT, Vol. 13:69). Additionally, Petitioner exhibited obsessive/compulsive behavior and his co-workers described “very bizarre and odd things.” Id. For example, Petitioner cleaned his truck all of the time and he would not wear a dirty t-shirt or shoes in his truck. Id.

Trial counsel also informed the jury that there was evidence of Petitioner being non-violent and non-confrontational. At the time of his arrest, Petitioner was “very polite and very cooperative, was very concerned over the fact that no one was hurt in this chase.” (TT, Vol. 13:70). Petitioner told the officer that he did not want anyone to be hurt in the police chase. (TT, Vol. 13:70-71). The following day, Petitioner told Detective Herman that “he did not want to have to face the families of these two young women, that he just wanted to plead guilty.” (TT, Vol. 13:71).

Trial counsel also told the jury that although he claimed he lacked memory of the crime, Petitioner believed that he committed the crime. (TT, Vol. 13:71). Petitioner tried to recall the crime but “every time he tries to think about it, his mind shoots off to something else and he can’t concentrate and he can’t think about it.” (TT, Vol. 13:72). During his police interview,

⁴⁴ According to handwritten notes contained in trial counsel’s files, Mr. Berry provided information regarding Petitioner’s criminal history as “the jurors will hear it anyway—and the more they hear it the less impact it has.” (HT, Vol. 94:28115).

Petitioner spoke with the detective about “episodes of memory loss, about dissociative times when he would leave, not know where he was, not know how he got there.” (TT, Vol. 13:71).

Although trial counsel did not call any witnesses during the guilt-innocence phase of Petitioner’s trial, they were able to verify many of the claims asserted in opening statements through cross-examination of State witnesses. Trial counsel elicited testimony that Petitioner kept his vehicle clean and that he changed shoes before entering the vehicle. (TT, Vol. 13:177-178; Vol. 14:167-168, 192-193, 218; Vol. 15:95). Trial counsel also brought out that Petitioner was cooperative at the time of his arrest and that he repeatedly stated that he hoped he did not hurt anyone. (TT, Vol. 16:215-218, 227-229, 243-245, 254-255).

During their guilt-innocence phase closing arguments, trial counsel told the jury that there were a number of facts in the case that were not in controversy; however, there were some unanswered questions. (TT, Vol. 19:29-30). Trial counsel then pointed out several areas where the State’s case was lacking. Trial counsel argued that the State only presented evidence regarding two spent projectiles despite the fact that there were three wounds. (TT, Vol. 19:30). There was no testimony offered regarding the whereabouts of the third projectile, whether it was fired from the same type gun or whether there was a ballistics match. *Id.* As to the phone calls made to the banks during the crime, trial counsel asserted that the State failed to present any evidence regarding who made those phone calls or what happened during those phone calls. (TT, Vol. 19:31). In addition, the State did not present any evidence regarding the movement of the people inside the model home or the time of death of each victim. (TT, Vol. 19:32-33). Trial counsel also asserted there was no evidence of sexual assault and there were questionable identifications of Petitioner through photo line-ups. (TT, Vol. 19:34-37).

After reviewing the record as a whole, this Court finds that trial counsel were neither deficient nor was Petitioner prejudiced by their reasonable guilt/innocence phase investigation

and presentation. Accordingly, this portion of Petitioner's claim of ineffective assistance of counsel is DENIED.

Sentencing Phase Presentation

This Court finds that trial counsel made a reasonable presentation during the sentencing phase based on their strategy and the information discovered during their investigation. As previously discussed, trial counsel's theory for the sentencing phase of Petitioner's trial was to present evidence of Asperger's Syndrome and Petitioner's traumatic childhood. Regarding the selection of the sentencing phase witnesses, Ms. Czuba stated:

I think there was (sic) two considerations. The first was telling Stacey's kind of story, his childhood developmental story, in a meaningful kind of narrative manner, and then the other being - - allowing the jury to have some empathy with some of the family members who cared about him, to perhaps, you know, spare Stacey's life based on not wanting to cause more pain to some of his family members.

(HT, Vol. 38:14248). Trial counsel utilized six lay witnesses and three experts to present this information to the jury. The record reflects that trial counsel also met with the witnesses prior to trial and prepared them for their testimony.⁴⁵ (HT, Vol. 1:98-101; Vol. 2:287-288; Vol. 4:821; Vol. 38:14126, 14132; Vol. 100:29625).

With regard to the mitigation evidence, trial counsel told the jury they would present evidence showing that Petitioner had Asperger's Syndrome. (TT, Vol. 20, T. 94-95). In their sentencing phase opening argument, trial counsel explained that evidence of this disorder would be presented to show that Petitioner might react differently to certain situations and was not being presented as an excuse for the crimes committed by Petitioner. Id.

The first witness presented by trial counsel was James Aiken. Mr. Aiken, who was

⁴⁵ Additionally, Ms. Czuba provided Mr. Berry with the notes that she had taken during the witness interviews. (HT, Vol. 1:100).

qualified as an expert in classification, corrections, and penology, testified that he reviewed numerous institutional records regarding Petitioner's incarceration within the Georgia Department of Corrections. (ST, Vol. 1:91). Mr. Aiken informed the jury that the performance evaluations contained in those records showed that Petitioner "adjusted very well to a confinement setting." (ST, Vol. 1:92). Specifically, Petitioner complied with the prison rules and participated in "programmatic activities." Id. Additionally, Petitioner received certificates of completion from the Georgia Department of Corrections for the following programs: victim impact; vocational assessment; substance abuse; electrician; repairman; confronting self concepts; heating and air conditioning; family violence; and, corrective thinking. (ST, Vol. 1:112-113).

Mr. Aiken also testified regarding Petitioner's disciplinary violations. Mr. Aiken explained that it was not unusual for an inmate to receive disciplinary reports during incarceration and that Petitioner did not have "chronic continuous dangerous violation of rules and regulations within the facility." (ST, Vol. 1:97-98). Mr. Aiken testified regarding an incident in December of 1995 where Petitioner was charged with escape after failing to return to prison following his release on a holiday furlough.⁴⁶ (ST, Vol. 1:94-95). Mr. Aiken stated that Petitioner's escape was "at the lowest common denominator as it relates to the security of an institution and endangerment of the public." (ST, Vol. 1:97).

In regards to future dangerousness, Mr. Aiken opined that Petitioner did not fall into the "predator category" and would not "present an unusual risk of harm to staff, inmates, as well as the general community as long as he is confined within a high security status." (ST, Vol. 1:93,

⁴⁶ Mr. Aiken also informed the jury that Petitioner's escape charge was dismissed on November 15, 1996. (ST, Vol. 1:95).

101). Mr. Aiken explained that an individual convicted of murder would be placed in a maximum security prison where there would “always be a gun between that individual and the public.” (ST, Vol. 1:100). He further stated that Petitioner would be incarcerated for the remainder of his life as a result of his behavior in the community. (ST, Vol. 1:93-94).⁴⁷

The next witness that trial counsel called was Robert Rader, who was employed at the Cobb County Adult Detention Center. (ST, Vol. 1:116). Mr. Rader, who had frequent interactions with Petitioner for three and one-half years, described Petitioner as a respectful, cooperative, and non-violent inmate. (ST, Vol. 1:117-119). Mr. Rader also testified that aside from one altercation with another inmate, Petitioner did not cause any problems at the jail. (ST, Vol. 1:118-119). Additionally, Mr. Rader told the jury he had only testified on behalf of an inmate one other time, in the seven years he had worked at the Cobb County Jail. (ST, Vol. 1:119).

Trial counsel also called John Mowens, who was involved in the homeless and jail ministries at Glynn Haven Baptist Church. (ST, Vol. 1:124-125). Mr. Mowens testified that Petitioner participated in both the homeless ministry and the jail ministry working with juveniles. (ST, Vol. 1:127). As part of the jail ministry, Petitioner spoke with juvenile inmates about his experience in the penal system. (ST, Vol. 1:127-128, 136). Mr. Mowens opined that Petitioner’s presentation to the troubled juveniles had an impact on their lives. (ST, Vol. 1:129). Additionally, Mr. Mowens informed the jury that Petitioner was always “very respectful” towards him and his family. (ST, Vol. 1:132).

Trial counsel then presented Petitioner’s stepmother, Janie Swick. Ms. Swick testified

⁴⁷ Petitioner now claims that the testimony of Mr. Aiken should not have been presented at trial as the State used that testimony to argue that imposing a sentence of life without parole would be “the equivalent of sending [Petitioner] to his room.” Petitioner’s claim fails as Mr. Aiken’s testimony was presented as part of trial counsel’s reasonable strategy and the Supreme Court has found evidence of adaptability to prison life relevant and mitigating in a capital sentencing hearing. (See Skipper v. South Carolina, 476 U.S. 1 (1986)).

that she married Petitioner's father in 1978, after three or four months of dating. (ST, Vol. 1:140, 157). Petitioner was five years old when Ms. Swick married his father. (ST, Vol. 1:142). Ms. Swick and Petitioner's father had two children together, Julia and Kristin. (ST, Vol. 1:139).

During their marriage, Petitioner's father was responsible for taking care of the children. (ST, Vol. 1:143). Ms. Swick explained that she worked during the day, and Petitioner's father worked at night as a park ranger.⁴⁸ Id. Petitioner's father did not want anyone else taking care of the children and he did not allow family or friends to visit the house. Id. Although Petitioner's father was responsible for taking care of the children, Ms. Swick testified that she went to all of the children's school conferences and took them to church. (ST, Vol. 1:144, 149-150).

Ms. Swick also told the jury that Petitioner's father was verbally and physically abusive towards her. (ST, Vol. 1:144-145). Ms. Swick discussed an incident that occurred when she and Petitioner's father told the children about their plans to get divorced. (ST, Vol. 1:145). During this conversation with the children, Petitioner's father pinned Ms. Swick in a chair and head-butted her in the face, which resulted in a black eye.⁴⁹ Id. Petitioner pulled his father off Ms. Swick. Id. Ms. Swick also told the jury that Petitioner's father followed her from work and ran her off the road on the day that their divorce was final. (ST, Vol. 1:152-153).

Additionally, Ms. Swick described physical abuse that Petitioner was subjected to by his father. (ST, Vol. 1:145). Ms. Swick explained that Petitioner was bullied by his father, which

⁴⁸ Ms. Swick also testified that in 1982, Petitioner's father lost his job as a park ranger. (ST, Vol. 1:144, 147). Ms. Swick explained that Petitioner's father was asked to resign after it was discovered that he was returning home at night to sleep. (ST, Vol. 1:144). Following his resignation, Petitioner's father was unemployed for nine months. (ST, Vol. 1:147). Ms. Swick testified that during this time, Petitioner's father refused to look for a job and was a "maniac." Id.

⁴⁹ The record reflects that Petitioner's half-sister, Julia Humphreys, also provided testimony regarding this incident. (ST, Vol. 2:168). Additionally, Dr. Loring testified regarding the incident and told the jury that Petitioner was struck by his father because he tried to pull his father off his stepmother. (ST, Vol. 2:224-225)

caused Petitioner to run away in fear. (ST, Vol. 1:145-146). Ms. Swick recalled one incident wherein Petitioner's father struck him in the arm with a broom. (ST, Vol. 1:146). During this incident, Ms. Swick tried to get between Petitioner and his father; however, Petitioner's father was in a rage and tossed Ms. Swick out of the way.⁵⁰ Id. Afterwards, Ms. Swick took Petitioner to the hospital as she was concerned his arm was broken.⁵¹ (ST, Vol. 1:146-147).

Ms. Swick also told the jury that Petitioner's father treated him differently than his sister. (ST, Vol. 1:148-149). She explained that when they got into trouble, Petitioner's sister would receive a verbal reprimand whereas Petitioner would get whipped. (ST, Vol. 1:149). Ms. Swick stated that Petitioner's father was "very rough" on Petitioner. Id.

In addition to testimony regarding Petitioner's father, Ms. Swick informed the jury that Petitioner did not have many friends growing up and was in special education for a behavior disorder. (ST, Vol. 1:149-150). Ms. Swick stated Petitioner was hyper and could not sit still. (ST, Vol. 1:149). In high school, Petitioner was involved in the ROTC program. (ST, Vol. 1:150). Ms. Swick testified that Petitioner was "very prideful" of his involvement with ROTC, and he took "great pride in keeping his brass polished and his shoes polished and his appearance and his clothes." Id.

In concluding her testimony, Ms. Swick asked the jury to spare Petitioner from the death penalty as he did not receive a "fair shake growing up" and had "mental problems." (ST, Vol. 1:154-155). Ms. Swick expressed regret for failing to get Petitioner psychological help. (ST, Vol. 1:155). She also regretted leaving Petitioner with his father following the divorce. (ST,

⁵⁰ Ms. Swick also told the jury that following the incident, when she told Petitioner's father that she was taking Petitioner to the hospital, Petitioner's father grabbed her by the hair on her head and pulled her head back. (ST, Vol. 1:146).

⁵¹ At the hospital, Ms. Swick reported that Petitioner had fallen down. (ST, Vol. 1:147).

Vol. 2:164). Ms. Swick explained that she took Petitioner's sister following the divorce as she thought the girls should be with her, and that Petitioner should remain with his father.⁵² Id.

Trial counsel also presented the testimony of Petitioner's half-sister, Julia Humphreys, who testified to the abuse inflicted upon them by Petitioner's father. Ms. Humphreys stated that all of the children were disciplined by their father; however, the abuse inflicted upon Petitioner was "very bad." (ST, Vol. 2:166). Ms. Humphreys explained that they were disciplined with switches and belts. Id. Regarding Petitioner, Ms. Humphreys recalled an incident wherein their father challenged Petitioner to a fight. (ST, Vol. 2:167). During this incident, Petitioner was repeatedly punched in the head before he escaped through a sliding glass door in the den. Id.

Ms. Humphreys then asked the jury to consider mercy for Petitioner as he had a difficult life and "had to deal with a lot of things that children shouldn't have to deal with." (ST, Vol. 2:171). Ms. Humphreys also asked the jury to spare Petitioner's life as his execution would deprive her of the opportunity to "fill that piece of my life that's been missing." (ST, Vol. 2:170-171).

Trial counsel then presented the testimony of Jeffrey Knowles, Petitioner's brother-in-law. (ST, Vol. 2:174-175). Mr. Knowles testified that he and Petitioner had a good relationship and described Petitioner as "very witty," "knowledgeable in a lot of subjects," and a "voracious reader." (ST, Vol. 2:177-178, 186). Mr. Knowles also told the jury that his relationship with Petitioner changed his previously held beliefs that all incarcerated individuals were bad. (ST, Vol. 2:176-177).

Mr. Knowles testified about the family dynamic and stated there was very little interaction between the family members during gatherings. (ST, Vol. 2:179-180). The family

⁵² Trial counsel also tendered into evidence a letter written by Petitioner to Ms. Swick wherein he expressed his love for her and thanked her for being his mother. (ST, Vol. 1:151).

gatherings usually involved them having a meal and watching television, and there were limited discussions about things happening in each other's lives. Id. Mr. Knowles informed the jury that Petitioner's father had a temper and he described an incident in which Petitioner's father was told he was not allowed to park in a certain area. (ST, Vol. 2:180-181). In response, Petitioner's father became very angry and wanted to fight the parking attendant. (ST, Vol. 2:181-182). For about one hour after the incident, Petitioner's father was "beet red and sweating and still thinking of it." (ST, Vol. 2:182).

Additionally, Mr. Knowles testified that Petitioner was a "very, very meticulous and neat" person and his truck and clothing were always immaculate. (ST, Vol. 2:183-184). On occasion, Petitioner would housesit for his sister and brother-in-law. (ST, Vol. 2:182). Upon returning home, they found their home to be "immaculate" and looked as though "30 maids went through the house and scrubbed it from top to bottom." (ST, Vol. 2:183). Mr. Knowles also testified that Petitioner read books on a variety of subjects and explained that when Petitioner liked an author, he would read every single book in that particular series prior to moving on to another subject. (ST, Vol. 2:186-187). Additionally, Mr. Knowles told the jury that Petitioner suffered from insomnia, migraines, and memory lapses. (ST, Vol. 2:185-186, 189).

In asking the jury to spare Petitioner's life, Mr. Knowles testified that he would be devastated if Petitioner were sentenced to death as they had a very close relationship. (ST, Vol. 2:190). Mr. Knowles acknowledged that Petitioner committed a horrible crime and deserved to be in prison; however, he stated that Petitioner had a lot to offer the world even behind bars. (ST, Vol. 2:190-191). Mr. Knowles explained "I know his kindness. I know what a sweet person he is...how intelligent he is." (ST, Vol. 2:190).

Trial counsel then presented Dr. Marti Loring.⁵³ Dr. Loring, who was qualified as an expert in social work and trauma, testified that she was retained by trial counsel to perform a social history. (ST, Vol. 2:208-209, 217). Dr. Loring met with Petitioner on four occasions to gather information and each session lasted approximately three hours. (ST, Vol. 2:209). Dr. Loring testified that, during her interviews with Petitioner, she had a difficult time “getting the kind of information that [she] needed from [Petitioner].” (ST, Vol. 2:210). Dr. Loring explained that Petitioner reported he was unable to remember information in certain areas. (ST, Vol. 2:210-211).

Dr. Loring also interviewed sixteen individuals “to get their perceptions, their experiences,[and] their observations.”⁵⁴ (ST, Vol. 2:209-210, 215-216). In interviewing these other individuals, Dr. Loring was seeking information that she was unable to obtain from Petitioner. (ST, Vol. 2:211). In addition to conducting interviews, Dr. Loring reviewed extensive records including police records, school records, jail records, divorce records, work records, and hospital records. (ST, Vol. 2:213-214, 217).

The social history compiled by Dr. Loring, and to which she testified about at trial, revealed that Petitioner’s childhood was marked by abuse. Petitioner and his sister spent their early childhood living with their mother in a home where drugs were bought and sold. (ST, Vol. 2:217, 219). During this time period, it was reported that Petitioner’s mother would leave

⁵³ Trial counsel testified in the proceedings before this Court, that the purpose of Dr. Loring’s testimony was to “set up the social history and to provide a duplicative diagnosis.” (HT, Vol. 38:14246). Ms. Czuba stated “[s]o Dr. Shaffer was going to testify this was what [Petitioner] was suffering from, then Loring - - Marti Loring would provide a complimentary, that’s-correct kind of moment.” Id.

⁵⁴ The individuals Dr. Loring interviewed included: Kathy Kitner, Dayna’s therapist; Vic Humphreys, Petitioner’s uncle; Janie Swick, Petitioner’s stepmother; Dayna Knowles, Petitioner’s sister; Martha Gravitt, a former wife of Petitioner’s father; Steven Olds, Petitioner’s mother’s former husband; Petitioner’s Grandma Jordan; Phillip Strath, Petitioner’s supervisor at his most recent job; Paige Durham, Petitioner’s friend; Julia Humphreys, Petitioner’s stepsister; Walter Humphreys, Petitioner’s father; Tim Melon; Darlene Smith, Petitioner’s aunt; Nylene Brewster; and, Kelly Nagel. (ST, Vol. 2:216).

Petitioner and his sister at daycare and would not return for periods of time. (ST, Vol. 2:219).

Dr. Loring also testified regarding an instance wherein Petitioner and his sister were left at DFCS by their mother. (ST, Vol. 2:220).

Dr. Loring also testified that Petitioner was subjected to extensive physical abuse. Specifically, cigarette burns were discovered on Petitioner's body by DFCS. (ST, Vol. 2:220). At age two, Petitioner's entire body was bruised following a beating by his father, who admitted that he had "lost it and beaten [him]." (ST, Vol. 2:221). At age three, Petitioner was taken to the hospital for a fractured skull. (ST, Vol. 2:220). Petitioner's mother initially told the emergency room staff that Petitioner had fallen off the counter; however, she later told the treating physician that Petitioner had fallen out of a chair. (ST, Vol. 2:220-221). Prior to the completion of treatment for the skull fracture, Petitioner's mother took him home against medical advice. (ST, Vol. 2:221). At age four, Petitioner's shoulder was dislocated as the result of a violent shaking by his father. (ST, Vol. 2:222). Petitioner was also hit on the arm with a broom handle by his father when he was thirteen years old. (ST, Vol. 2:223). Following the incident, Petitioner's father threatened to kill his stepmother if she tried to take Petitioner to the hospital for treatment. Id. Petitioner was also severely beaten by his father at age sixteen because he had gotten into a car accident. (ST, Vol. 2:225). Additionally, Dr. Loring testified regarding an incident wherein Petitioner's father sat on his "private parts, holding [Petitioner's] hands above [Petitioner's] head and continually beating him in the head and the chest."⁵⁵ (ST, Vol. 2:224).

Dr. Loring explained to the jury that Petitioner's father would "fly into a rage as a matter of pattern, not just one time or two, and he would whip or beat [Petitioner]." (ST, Vol. 2:224).

⁵⁵ In addition to the physical abuse, Dr. Loring testified that there were several occasions where Department of Family and Children Services gave Petitioner and his sister back to their father. (ST, Vol. 2:222).

In an attempt to protect his sister from the abuse by their father, Petitioner would take the blame for incidents so that he would receive the beating instead of his sister. (ST, Vol. 2:228). The abuse by Petitioner's father was "not only explosive physically, where they would get slapped and punched, thrown across the room, indeed, but there was a very remarkable emotional component to the abuse that Walter committed upon [Petitioner and his sister]." (ST, Vol. 2:228). Dr. Loring told the jury that this was "ritualistic emotional abuse," meaning there were a series of steps leading up to the physical abuse. (ST, Vol. 2:228-229). Dr. Loring stated "the children's hair might be grabbed, they may be -- they were pulled across the room, they were pushed into a corner, and then pulled into a bedroom and the door shut when the beatings could be heard. That would be one example of steps one through five before the physical abuse actually took place." Id. Dr. Loring explained that "the nature of that ritualistic kind of emotional abuse is that the children feel terrified the minute step one starts because they know, you know, what the other steps are going to be that are going to be followed."⁵⁶ (ST, Vol. 2:229).

Dr. Loring also testified that, growing up, Petitioner was in special education and was described as having "odd classroom behavior, inappropriate behavior, that was marked by a lack of focus, being hyper, [and] a lack of concentration." (ST, Vol. 2:223). Dr. Loring explained that these symptoms were often seen in children who are traumatized and abused. Id. Additionally, while living with his father, Petitioner was not allowed to leave the house for social gatherings and would "stare blankly ahead as if he was checked out." Id.

Dr. Loring also told the jury that as a result of his abusive upbringing, Petitioner had a

⁵⁶ In addition to the testimony regarding physical abuse by Petitioner's father, Dr. Loring also testified that there were numerous occasions where Petitioner's mother took him and his sister away to other states, and Petitioner's father had to search for her to get Petitioner and his sister back. (ST, Vol. 2:222).

tendency to wander off. (ST, Vol. 2:225). Dr. Loring described an occasion where Petitioner, who was sixteen years old, walked from Kennesaw to Dunwoody, Georgia and hid under his grandmother's bed all night. Id. In addition, Dr. Loring testified that there was evidence of dissociation. Specifically, she testified that there were two incidents where Petitioner traveled to different states and could not recall these trips until he discovered evidence of it such as a newspaper from that particular state. (ST, Vol. 2:225-226).

Dr. Loring diagnosed Petitioner with PTSD and Asperger's Syndrome. (ST, Vol. 2:229-230). Regarding the PTSD diagnosis, Dr. Loring testified that Petitioner suffered from PTSD due to the trauma he experienced during his childhood and teenage years. (ST, Vol. 2:229). Petitioner suffered from "incredible amounts of trauma during his childhood, more than he can manage." (ST, Vol. 2:234). As a result, there was evidence of memory loss associated with his PTSD. (ST, Vol. 2:229-230, 234). Dr. Loring explained that this memory loss, or disassociation, was part of the reason she struggled to get information from Petitioner. (ST, Vol. 2:229-230). Petitioner did not remember significant times and behavior in his life and did not recall much of the abuse he endured. (ST, Vol. 2:229-230). In contrast to the reports from other individuals of an abusive upbringing, Petitioner told Dr. Loring that he had a great childhood. (ST, Vol. 2:232). Dr. Loring explained to the jury that this was not uncommon in that an abused person tends to dissociate from the abuse and deny it so that they can continue to move forward in their life. Id. Dr. Loring also testified that it was not unusual for someone to have interaction with a person who traumatized them. (ST, Vol. 2:233). Dr. Loring explained that this "traumatic bonding" is where kids, and even teenagers and adults, continue trying to create a relationship with an abuser. Id.

Regarding her diagnosis of Asperger's Syndrome, Dr. Loring told the jury that a person with Asperger's Syndrome was "very impaired in their ability to be close or intimate with

another person” and severely suffered from a “sustained impairment in social interaction.” (ST, Vol. 2:230). A person with Asperger’s might exhibit aggression or violence. Id. In support of her diagnosis of Petitioner, Dr. Loring testified that there were reports that Petitioner quickly ate meals and had no interaction with his family. (ST, Vol. 2:230). Dr. Loring also stated that Petitioner was a “very lowly man” who was unable to have a “fulfilling sexual loving relationship with a girlfriend, can’t connect up warmly with anybody, including the people at work who see him in his stories as unbelievable, do not see themselves as his friend.” (ST, Vol. 2:234-235). Additionally, Dr. Loring testified that Petitioner did not have any friends, and his “reactions, partly because of the Aspergers [sic], may be way out of what one would normally expect in the way of normal reactions to abnormal events in his life.” (ST, Vol. 2:235). Petitioner’s reactions to his life experiences resulted in him “having a real impaired ability to relate to people and to empathize with them” and caused him to be “much more involved with objects or cleaning or a kind of ritual of what you do at what moment in time.” (ST, Vol. 2:226). These rituals became very important to Petitioner. Id. Dr. Loring concluded by telling the jury that despite the awareness of a number of family members that Petitioner was “very disturbed,” Petitioner never received treatment for these disorders. (ST, Vol. 2:234).

Trial counsel then presented testimony from Dr. Robert Shaffer, a clinical psychologist. (ST, Vol. 2:266). Dr. Shaffer explained that he performed a psychological evaluation of Petitioner. (ST, Vol. 2:273). As part of his evaluation, Dr. Shaffer interviewed approximately six individuals regarding their observations of Petitioner. (ST, Vol. 2:275). Dr. Shaffer also spoke with Dr. Marti Loring regarding the social history she prepared on Petitioner and reviewed police reports, hospital records, school records, and prison records. Id. Based upon his evaluation, Dr. Shaffer opined that Petitioner suffered from PTSD, Dissociative Disorder, and Asperger’s Syndrome. Id.

Dr. Shaffer explained to the jury that Asperger's Syndrome is a disturbance "manifested by odd and repetitive stereotyped patterns of behavior and interests" and "impairment in social functioning" and "social relationships." (ST, Vol. 2:276). A person with Asperger's might also have "very unusual patterns of cleanliness and compulsive behavioral routines." (ST, Vol. 2:280). Notably, Asperger's Syndrome included a high number of individuals who functioned in the superior range of intelligence.⁵⁷ (ST, Vol. 2:277). Depending on their history, a person with Asperger's might suffer from dissociation. Id.

In support of his diagnosis of Asperger's Syndrome, Dr. Shaffer testified that Petitioner had very unusual cleaning routines. (ST, Vol. 2:280). For example, Petitioner cleaned his floor several times a day and made his bed "compulsively with tight corners." (ST, Vol. 2:280-281). Petitioner would become very upset if the mattress was not exactly centered. (ST, Vol. 2:281). When vacuuming the floor, Petitioner would arrange the "pile of carpet all in one direction." Id. After vacuuming, Petitioner would become very agitated when someone walked on the floor. Id. If there was a rug with tassels, Petitioner would comb out the tassels in a specific direction. Id. Petitioner also cleaned his car on a daily basis, folded his clothing in a particular manner, and lined up Coca-Cola cans with the labels facing the same direction. (ST, Vol. 2:281-282). Dr. Shaffer explained that Petitioner would become uncomfortable and agitated if his routine was disturbed. Id.

Petitioner also met the criteria for Asperger's in that he had an "extreme interest" in reading science fiction and would constantly talk about these books for hours with different people. (ST, Vol. 2:282). Family members reported Petitioner would "relate these stories of science fiction as if they really could be true." (ST, Vol. 2:283). This behavior was considered

⁵⁷ Dr. Shaffer also testified that Petitioner was in the "very superior range of intellectual functioning." (ST, Vol. 2:274).

“odd and peculiar” as the books were clearly fiction, yet there was a “juvenile or boyish excitement about the possible reality of these things.” Id. Dr. Shaffer testified that Petitioner was also “intensely and extremely involved” in reading about martial arts experts. Id. In studying these experts, Petitioner would become excited in a “childlike way.” Id. Dr. Shaffer explained that this “type of fascination with one narrow interest” was one of the diagnostic criteria for Asperger’s. Id.

Additionally, Petitioner demonstrated evidence of social impairment. (ST, Vol. 2:283-284). Dr. Shaffer explained that there was a lack of the “emotional give and take that you normally see in a young person and a child, or in his adult life as well.” (ST, Vol. 2:284). Petitioner fantasized about being connected with interesting and popular people in school; however, his sister reported that she never knew Petitioner to be involved with these individuals. Id. In addition, it was reported that Petitioner exhibited “odd and embarrassing” behavior in public. Id. Dr. Shaffer testified that individuals with Asperger’s “tend not to know how to talk socially” and might “get all excited and worked up and talk loudly and embarrass people in public.” Id.

Regarding his diagnosis of Dissociative Disorder, Dr. Shaffer testified that Dissociative Disorder involved an individual who “will split off from their normal state of awareness” and experience “periods of productive and active behaviors, and then later, have no recollection of that.” (ST, Vol. 2:279). An individual with memory lapses usually had a “traumatic situation at the root of that, usually early in childhood.” (ST, Vol. 2:279-280). Dr. Shaffer explained to the jury that Petitioner suffered from Dissociative Disorder as a result of the “violence in his home and battering on his person, causing him at certain times to relate out of maybe one pocket of his personality.” (ST, Vol. 2:280). In that state, Petitioner would be unaware of the “normal judgement and thoughts and memories that he has to bring to bear to a situation.” Id.

Dr. Shaffer stated that Petitioner's background was marked by physical abuse inflicted by his father and explained that Petitioner had no memory of this abuse, which was not unusual in situations of abuse. (ST, Vol. 2:278). Dr. Shaffer further explained that Petitioner's report of having a good family and childhood was not uncommon and was consistent with families where abuse was present. (ST, Vol. 2:278-279). Dr. Shaffer stated that Petitioner exhibited a "pattern of behavior that is somewhat idealistic in the sense that he wants to see only the best and he has some very compulsive behaviors about maintaining neatness and cleanliness that are consistent with this." (ST, Vol. 2:279).

Dr. Shaffer also told the jury that Petitioner met all of the diagnostic criteria for PTSD. (ST, Vol. 2:284). There was not a significant amount of evidence in the first category, re-experiencing the traumatic stress; however, Dr. Shaffer explained that this lack of evidence was partially due to the fact that some of the trauma occurred prior to Petitioner's "earliest age of memory." (ST, Vol. 2:284-285). Dr. Shaffer then explained to the jury that there was "pretty strong evidence that there was significant abuse before his age of earliest memory." (ST, Vol. 2:285). Specifically, there was information about cigarette burns on Petitioner's body and a skull fracture. Id. Dr. Shaffer testified that Petitioner did experience "intrusions" in the form of disassociation and provided the jury with several examples of Petitioner lacking any memory of wandering off and traveling to other states.⁵⁸ (ST, Vol. 2:278, 285-287). There was also evidence that Petitioner scratched his face during the night, which suggested that he was having disturbing nightmares. Id.

Dr. Shaffer then explained that the second category of diagnostics for PTSD is avoidance of the memories. (ST, Vol. 2:287). Dr. Shaffer testified that there was "clear evidence of a great

⁵⁸ Dr. Shaffer also testified that this was a typical pattern of a person with Dissociative Disorder, and it was usually the result of serious trauma in the person's life. (ST, Vol. 2:287).

deal of denial.” (ST, Vol. 2:288). Petitioner was an “individual for whom the world is always just right, it’s always rosy.” Id. Petitioner maintained a neat and clean environment, and he viewed himself as “flawless and without problems to an extreme degree.” Id. Dr. Shaffer explained that this denial was Petitioner’s attempt to “avoid re-experiencing the problems and horrors” that occurred in his life. Id.

The final witness presented by trial counsel was Petitioner’s sister, Dayna Knowles.⁵⁹ Ms. Knowles testified that she and Petitioner had a “rather difficult” early childhood. (ST, Vol. 2:309). As a young child, Ms. Knowles and Petitioner were taken to daycare by their biological mother and were left there for an extended period of time. Id. After the daycare closed, Ms. Knowles and Petitioner would frequently go home with a woman who watched them until their mother arrived. Id.

Ms. Knowles described their father as an unhappy man who was hard on them and showed very little affection. (ST, Vol. 2:310). Their father did not handle stress well and would become angry and violent. Id. Ms. Knowles told the jury that she and Petitioner were physically abused by their father throughout their childhood. (ST, Vol. 2:310-312). Ms. Knowles stated that they would both receive a whipping from their father with a large belt or stick when he was upset; however, the whippings received by Petitioner were worse. (ST, Vol. 2:311). Ms. Knowles explained that their father would use his fist to whip Petitioner.⁶⁰ Id.

In addition to the physical abuse, Ms. Knowles testified that she was sexually abused by her father. (ST, Vol. 2:312). Ms. Knowles explained that her father used drugs and described an

⁵⁹ During the testimony of Ms. Knowles, trial counsel tendered into evidence five photographs of Petitioner and his family. (ST, Vol. 2:306-307).

⁶⁰ In addition to the violence inflicted upon Ms. Knowles and Petitioner, trial counsel elicited testimony of the incident where their stepmother was head-butted by their father. (ST, Vol. 2:315-316). Ms. Knowles testified that in response, Petitioner pulled their father off their stepmother. (ST, Vol. 2:316).

incident in which he called her into the bathroom. Id. Ms. Knowles recalled entering the bathroom and finding her father sitting naked on the toilet. Id. Ms. Knowles complied with her father's request and sat on his lap, and her father then pulled down her shorts. Id. During this testimony, Ms. Knowles became emotional and no further testimony was elicited regarding the sexual abuse. (ST, Vol. 2:313).

Additionally, Ms. Knowles told the jury that growing up, she and Petitioner were not allowed to have friends over, leave the yard, or go to a friend's house. (ST, Vol. 2:313-314). Ms. Knowles testified that Petitioner talked about having friends, but she never saw any of them. (ST, Vol. 2:313-314). Petitioner also frequently talked about several families with whom he seemed very attached. (ST, Vol. 2:315). Ms. Knowles explained that Petitioner would refer to these friends' parents as "mom and dad," which she found to be bizarre. Id. Ms. Knowles stated that she always wondered if the people that Petitioner talked about were really his friends. (ST, Vol. 2:314).

Following the divorce of her father and stepmother, Ms. Knowles went to live with her stepmother and Petitioner stayed with their father. (ST, Vol. 2:316-317). At some point, Petitioner moved out of their father's house. (ST, Vol. 2:317). Ms. Knowles then decided to move back in with her father as he was alone and was "having a complete breakdown," which she acknowledged was a poor decision. Id. During her senior year of high school, Ms. Knowles decided to join the Navy. (ST, Vol. 2:320). Ms. Knowles testified that the Navy was the most positive experience for her as it was the first time in her life that she had self-confidence. (ST, Vol. 2:320-321).

Trial counsel also elicited testimony from Ms. Knowles that Petitioner tried to reconnect with his father. Specifically, Ms. Knowles testified that Petitioner tried to reconnect with his father after he got out of prison in 2002. (ST, Vol. 2:321). Petitioner's father; however, did not

show any excitement about Petitioner getting out of prison.⁶¹ (ST, Vol. 2:321-322).

In concluding her testimony, Ms. Knowles expressed sadness over the crime and “unbelievable sadness for the families involved.” (ST, Vol. 2:323). In asking the jury to spare Petitioner’s life, Ms. Knowles explained that she and Petitioner had “come through sort of a battle,” and they “always made it to the other side,” albeit in different ways. (ST, Vol. 2:324). Ms. Knowles testified that she loved Petitioner and that he was her “connection to what was real in [her] life, as horrible as it was.” *Id.* Ms. Knowles stated that Petitioner had a good heart, and she could not imagine being deprived of the ability to communicate with Petitioner given everything that they had been through in their life. *Id.*

A. No Deficiency

This Court finds that trial counsel’s presentation of evidence in mitigation was reasonable and Petitioner was not prejudiced by trial counsel not presenting the additional mitigation evidence presented to this Court, particularly in light of trial counsel’s thorough investigation and strategic decisions. Trial counsel is not required to present all mitigation evidence and “[c]onsidering the realities of the courtroom, more is not always better....[g]ood advocacy requires ‘winnowing out’ some arguments, witnesses, evidence, and so on, to stress others.” *Chandler v. United States*, 218 F.3d 1305, 1319 (11th Cir. 2000) (citing *Rogers v. Zant*, 13 F.3d 384, 388 (11th Cir. 1994)). The record reflects that the evidence submitted during habeas proceedings is largely cumulative of the evidence presented at trial. Further, the only substantial “new evidence” concerns Petitioner’s past sexual abuse, of which Petitioner failed to disclose to trial counsel, or anyone else, prior to habeas proceedings. As explained below, this

⁶¹ The Court notes that Dr. Marti Loring testified during Petitioner’s trial regarding “traumatic bonding” and explained that “at some point later in life, as with Walter Humphreys, there’s a kind of backing off and more of a state of ignoring.” (ST, Vol. 2:233).

Court finds that Petitioner has failed to demonstrate deficient performance or resulting prejudice.

During the proceedings before this Court, Petitioner introduced the testimony of seven lay witnesses and three expert witnesses in an attempt to demonstrate deficient performance of Petitioner's trial counsel. Petitioner introduced the testimony of Kelly Gosselin and her brother, Michael Boudreau. Ms. Gosselin testified that her father, Dennis Boudreau, was married to Petitioner's mother, Becky, from around September of 1977 through the beginning of 1980.⁶² (HT, Vol. 1:193, 212, 214). During that time, Petitioner's mother verbally and physically abused Ms. Gosselin and Mr. Boudreau, as well as their younger sister. (HT, Vol. 1:196-198, 200, 217-220).

For a period of approximately two weeks, Petitioner and his sister, Dayna, lived in the apartment with Ms. Gosselin and Mr. Bourdreau. (HT, Vol. 1:200-201, 212). Regarding that two week period, Mr. Boudreau recalled one incident in which he and his two sisters fought each other in front of Petitioner and his sister, Dayna. (HT, Vol. 1:222). Additionally, Mr. Boudreau testified that one night Petitioner punched him in the face and gave him a black eye "for no reason." *Id.* Ms. Gosselin, however, did not remember any details from that period of time. (HT, Vol. 1:201-202).⁶³

Petitioner also presented testimony from Roger Jones, who was Petitioner's ROTC teacher for two years in high school, and his son, Thomas Jones.⁶⁴ (HT, Vol. 2:449-450). Roger Jones testified that Petitioner was in special education for a behavioral disorder and was an

⁶² Ms. Gosselin testified that she was between eight and ten when her father married Petitioner's mother. (HT, Vol. 1:193, 212).

⁶³ Ms. Gosselin also testified that her father has been in long-term care facilities in Massachusetts since 1981 for "mental problems." (HT, Vol. 1:206).

⁶⁴ The record shows that trial counsel searched for Roger Jones; however, none of the addresses and phone numbers listed for Mr. Jones were correct. (HT, Vol. 2:461-462; Vol. 37:13975).

average student. (HT, Vol. 2:451). Petitioner followed the rules in his class and was “always respectful.” (HT, Vol. 2:451-452). Roger Jones also testified that he never met Petitioner’s parents and opined that Petitioner would have done well in the military. (HT, Vol. 2:454).

Thomas Jones testified that he met Petitioner “briefly” in the early 90s when Petitioner was in his father’s ROTC class. (HT, Vol. 1:186). Thomas Jones worked for the Cobb County Sheriff’s department and, at the request of his father, visited Petitioner “a few times” while Petitioner was incarcerated in the Cobb County Detention Center. (HT, Vol. 1:187).

Kelly Kory Nagel, who was Petitioner’s friend from fifth to ninth grade, also testified during the evidentiary hearing before this Court. Ms. Nagel testified that Petitioner was a “wonderful friend, a great listener,” and “her protector.” (HT, Vol. 2:433). Ms. Nagel never visited Petitioner’s house and never met Petitioner’s family. (HT, Vol. 2:435-436). Ms. Nagel also described an incident in which Petitioner told her he was going to commit suicide.⁶⁵ (HT, Vol. 2:437). Trial counsel contacted Ms. Nagel in the spring of 2006; however, Ms. Nagel was living in California and unable to travel at the time. (HT, Vol. 2:438-439). Although Ms. Nagel moved back to Georgia in October of 2006, she never contacted anyone from Petitioner’s defense team to inform them of her move to Georgia. (HT, Vol. 2:439, 443-444).

Additionally, Petitioner presented testimony from Brenda Dragoone, who lived across the street from Petitioner and his family for approximately one to three years.⁶⁶ (HT, Vol. 2:419, 427-428). Ms. Dragoone did not have a relationship with Petitioner’s family aside from conversing with his stepmother, Janie, while walking their children to and from the bus stop. (HT, Vol. 2:420). However, Ms. Dragoone testified that Petitioner and his sister were not

⁶⁵ Ms. Nagel estimated this incident occurred when she and Petitioner were in the seventh grade. (HT, Vol. 2:437-438).

⁶⁶ Ms. Dragoone stated that Petitioner was in second or third grade when his family moved into the home across the street. (HT, Vol. 2:420).

allowed out of the yard to play and that their father yelled at them often. (HT, Vol. 2:420-421). Ms. Dragoone also described an incident in which Petitioner's father spanked him in the yard because he "soiled his underwear" and "flushed it down the toilet and backed up the plumbing." (HT, Vol. 2:423-424). Ms. Dragoone opined that Janie was afraid of Petitioner's father and when questioned as to why she believed this she stated "I'm a woman and I would know—you know, you can tell when women are intimidated by men." (HT, Vol. 2:422).

Petitioner presented the testimony of his sister, Dayna Lee, who also testified during the sentencing phase of Petitioner's trial.⁶⁷ The record shows that Ms. Lee's testimony at the evidentiary hearing before this Court was largely cumulative of her testimony at trial. During habeas proceedings, Ms. Lee opined that trial counsel could have asked her more questions on the stand at Petitioner's trial and explained "I feel like maybe everybody felt sorry for me and so they stopped asking me questions, and I—I just feel like they could have asked more." (HT, Vol. 3:638). However, the record reflects that Ms. Lee became emotional while giving testimony regarding sexual abuse she endured by her father and no further testimony regarding the sexual abuse was elicited. (ST, Vol. 2:313).

Additionally, Petitioner introduced the testimony of two expert witnesses, Dr. Julie Rand Dorney and Dr. Victoria Reynolds.⁶⁸ Dr. Dorney, an expert in forensic psychiatry, performed a psychiatric examination of Petitioner at the request of Petitioner's habeas counsel. (HT, Vol. 3:666). In conducting her examination, Dr. Dorney met with Petitioner on two occasions for a total of approximately seven hours. (HT, Vol. 3:674). In addition, Dr. Dorney reviewed the trial

⁶⁷ The Court notes that at the time of Petitioner's trial, Petitioner's sister's name was Dayna Knowles. However, her last name has since been changed to Lee. (HT, Vol. 3:627-628).

⁶⁸ Petitioner also presented the testimony of Dr. Bhushan Agharkar, a psychiatrist who evaluated Petitioner on June 28, 2007, at the request of trial counsel. (HT, Vol. 3:732, 748). The record shows that Dr. Agharkar was not asked to testify at Petitioner's trial because his evaluation did not support trial counsel's strategy. (HT, Vol. 3:758-759).

transcript, Dr. Shaffer's testing materials, Petitioner's school records, and Petitioner's prison records. (HT, Vol. 3:669-670). Following her examination of Petitioner, Dr. Dorney spoke with Dr. Reynolds and Petitioner's sister, Dayna.⁶⁹ (HT, Vol. 3:670).

Dr. Dorney diagnosed Petitioner with obsessive-compulsive disorder and depressive disorder NOS. (HT, Vol. 3:705, 709; Vol. 4:914-915). Additionally, Dr. Dorney found that Petitioner has many symptoms of both PTSD and bipolar disorder; however, Petitioner did not meet all of the criteria for a diagnosis. (HT, Vol. 3:705-706; Vol. 4:914-915). Regarding PTSD, Dr. Dorney explained:

[Petitioner] is almost 40 years old and he doesn't reenact the trauma anymore in his mind, which means that—you know, typically if someone is traumatized they may have flashbacks from an event or nightmares or they may have intrusive thoughts about it. But if you've been many years away from it and you have learned other ways to cope with it, you may not show that reenactment as much. So because he didn't meet that criteria, I couldn't make the diagnosis. He met all the other—other criteria, except for that.

(HT, Vol. 3:668-669).

Additionally, Dr. Dorney testified that in her second meeting with Petitioner he told her that he was sexually abused by his great-grandmother, Jewel, from the age of five or six until age fourteen. (HT, Vol. 3:680, 682). Dr. Dorney also connected Petitioner's OCD to the sexual abuse and explained:

[W]hen you pull together all the sexual trauma, it makes sense as to why psychologically he does what he does, because oftentimes with sexual abuse, with sexual trauma, patients tend to be come (sic) obsessive; they tend to basically – you know, it's a way to stay clean, it's a way to stay in control, it's a way to control your environment.

(HT, Vol. 3:687). When asked why a sexual abuse victim would not report it, Dr. Dorney explained “[m]en have a harder time disclosing situations that are vulnerable. And I think, too,

⁶⁹ Dr. Dorney testified that she met with Dr. Reynolds both before and after conducting her examination of Petitioner. (HT, Vol. 3:670).

he was—he's ashamed; he's humiliated; he, you know, feels very conflicted about it, you know, embarrassed about it." (HT, Vol. 3:704).

Petitioner also presented the testimony of Dr. Reynolds, an expert in trauma and its impact on trauma victims. (HT, Vol. 2:463, 467). The majority of Dr. Reynolds's testimony reiterated the testimony that was presented at trial; however, Dr. Reynolds also testified regarding the sexual abuse Petitioner reported to Dr. Dorney during habeas proceedings. Dr. Reynolds stated "[w]hen I - - when I talked to him about Jewel, he did not reveal the sexual abuse. I suspected it, but he did not - - he just wasn't going to say it or it wasn't there and available to him; I'm not sure which." (HT, Vol. 3:522).

Although Petitioner did not tell her about the sexual abuse, Dr. Reynolds stated that she suspected Petitioner had been sexually abused based on his level of dissociativeness, his level of compartmentalization, and his sexual activity. (HT, Vol. 3:528). Regarding Petitioner's sexual activity, Dr. Reynolds explained that Petitioner and his sister, Dayna were found "kissing and touching" when they lived with their father and Janie. (HT, Vol. 3:527). Additionally, Petitioner told Dr. Reynolds that he had "sexual relations with little girls" in his neighborhood and had sexual relations with two women in "semi-parental roles." (HT, Vol. 3:529).

In fact, Petitioner never told anyone about the sexual abuse, which Dr. Reynolds explained is called dissociation. (HT, Vol. 3:523). Dr. Reynolds further explained that this is a "compartmentalization where they - - the experience gets put in - - out of awareness, but it is still there and available to them." Id. When questioned as to why Petitioner never told anyone about the sexual abuse, Dr. Reynolds stated that sexual abuse is "very stigmatizing for a boy" and that "it's double jeopardy for a child to report on the people he needs to depend on" (HT, Vol. 3:525-526). Dr. Reynolds explained that sexual abuse is almost always a very severe trauma for a child or adult. (HT, Vol. 3:507).

Dr. Reynolds described the trauma Petitioner endured growing up including a skull fracture, instability, and physical abuse. (HT, Vol. 3:508-509, 511-512, 515). Dr. Reynolds also discussed the incident in which Petitioner got into a car accident at age 16 and was beaten by his father after getting home from the hospital. (HT, Vol. 3:525-526). Dr. Reynolds explained the effects of this abuse at different times in Petitioner's life. (HT, Vol. 3:519). Dr. Reynolds stated that this trauma caused Petitioner to become dysregulated and explained that he went back and forth between mood and behavioral states. (HT, Vol. 3:519-520). Dr. Reynolds also discussed the trauma in Petitioner's parental history, including Becky Humphreys's psychiatric and medical problems, and stated that both Petitioner's mother and father had been sexually abused. (HT, Vol. 3:508-510).

Dr. Reynolds also discussed Petitioner's OCD and how his trauma history and adaptations impacted him around the time of the crimes. (HT, Vol. 3:552-553). Dr. Reynolds explained that he was living with his grandmother, on parole, he had lost his money, and his truck had been hit and when the "finishing line for paying off that money got farther and farther away, well, that—that kicks up more anxiety for him." (HT, Vol. 553).

As the United States Supreme Court has held, counsel's performance is considered in light of the circumstances as they existed at the time of trial, and "every effort must be made to eliminate the distorting effects of hindsight." Strickland, 466 U.S. at 688-689. The record shows that trial counsel thoroughly investigated Petitioner's background, including interviewing numerous family members; had Petitioner evaluated by two mental health professionals and a social worker; and, specifically asked Petitioner about any sexual abuse he experienced during his childhood. Although Petitioner did not inform trial counsel of his past sexual abuse, his

defense team was suspicious and continued to investigate further.⁷⁰ (HT, Vol. 4:792-793). “[R]easonable attorney performance includes investigating mitigating evidence to the extent feasible given the defendant’s willingness to cooperate.” Perkins v. Hall, 288 Ga. 810, 815 (2011). When evaluating the reasonableness of trial counsel’s investigation, the Court “weigh[s] heavily the information provided by the defendant.” DeYoung v. Schofield, 609 F.3d 1260, 1288 (11th Cir. 2010) (citing Newland v. Hall, 527 F.3d 1162, 1202 (11th Cir. 2008)). Furthermore, Petitioner has not provided this Court with any evidence of sexual abuse that would have been available to trial counsel. Trial counsel “does not render ineffective assistance by failing to discover and develop evidence of childhood abuse that his client does not mention to him.” Williams v. Head, 185 F.3d 1223, 1237 (11th Cir. 1999). Therefore, trial counsel’s performance is not deficient for not presenting evidence that Petitioner withheld from them.

B. No Prejudice

This Court finds that trial counsel’s investigation and presentation of mental health and mitigating evidence was reasonable. Furthermore, this Court finds that Petitioner has failed to show prejudice as the additional evidence presented in habeas would not have created a reasonable probability of a different outcome.

A comparison of the trial record and the habeas record shows the majority of the evidence presented in habeas reiterated the testimony presented at trial. The testimony of Roger Jones regarding Petitioner’s behavioral disorder and participation in ROTC is cumulative of evidence presented at trial and trial counsel is not ineffective for not introducing cumulative evidence. See Holsey v. Warden, Ga Diagnostic Prison, 694 F.3d 1230, 1260-1262 (11th Cir. 2012); see also Sochor v. Sec’y Dep’t of Corr., 685 F.3d 1016, 1032 (11th Cir. 2012); Rose v.

⁷⁰ Notably, Petitioner’s self-report to Dr. Dorney is the only evidence of Petitioner’s past sexual abuse that has been provided to this Court.

McNeil, 634 F.3d 1224, 1243 (11th Cir. 2011); Schofield v. Holsey, 281 Ga. 809, 814 (2007); see also ST, Vol.1:149-150; 2:223. Similarly, the majority of Ms. Dragoone's testimony is cumulative as numerous witnesses at trial testified that Petitioner's father was abusive. (ST, Vol. 1:144-147, 152-153; 2:166-167, 220-225, 228-229, 278-280, 284-285, 309-312). Further, Ms. Dragoone's opinion regarding the relationship between Petitioner's father and stepmother is unpersuasive as she gave no factual basis for her beliefs.

The testimony of Ms. Gosselin and Mr. Boudreau regarding the abuse they endured by Petitioner's mother is also unpersuasive as Petitioner only lived within the same household for two weeks. Furthermore, the record shows that testimony was presented to the jury regarding the abuse and neglect Petitioner endured while in his mother's care. (ST, Vol. 2:217, 219-221, 309). Similarly, the testimony of Thomas Jones that he met Petitioner "briefly" when Petitioner was in high school and visited Petitioner a few times while he was incarcerated is unpersuasive and weak. The testimony of Ms. Nagel describing Petitioner as being protective is also cumulative of the testimony elicited from numerous witnesses at Petitioner's trial. (ST, Vol. 1:145; 2:224-225, 228). Although the testimony of Ms. Nagel regarding Petitioner's suicide attempt is new, the Court finds that this testimony is weak.

Additionally, the majority of the expert testimony presented during habeas proceedings is also cumulative and trial counsel is not ineffective for not introducing cumulative evidence.⁷¹

See Holsey, 694 F.3d at 1260-1262; see also Sochor, 685 F.3d at 1032; Rose, 634 F.3d at 1243;

⁷¹ The Court notes that Petitioner's habeas experts diagnosed Petitioner with OCD whereas trial counsel's experts diagnosed Petitioner with PTSD, Dissociative Disorder, and Asperger's Syndrome. However, the habeas experts and trial counsel's experts based their diagnosis on the same behaviors and "symptoms" exhibited by Petitioner. While OCD might be one possible diagnosis, "it is not the only reasonable diagnosis that could be made from the information contained in the materials." Card v. Dugger, 911 F.2d 1494, 1513 (11th Cir. 1990). Furthermore, trial counsel are "not required to 'shop'" for a mental health expert "who will testify in a particular way." Id. Therefore, to the extent Petitioner alleges trial counsel were ineffective in failing to present a diagnosis of OCD to the jury, this claim fails.

Schofield, 281 Ga. at 814. Furthermore, the only potentially mitigating “new evidence” presented during habeas proceedings concerns Petitioner’s past sexual abuse, of which Petitioner did not disclose to trial counsel, or anyone else, prior to habeas proceedings. As discussed above, trial counsel cannot be found ineffective for failing to discover and present evidence of abuse that their client does not mention to them. DeYoung v. Schofield, 609 F.3d 1260, 1288 (11th Cir. 2010); Newland v. Hall, 527 F.3d 1162, 1202 (11th Cir. 2008). Furthermore, even if this Court were to find trial counsel’s investigation and presentation of Petitioner’s sexual abuse deficient, which the Court does not, Petitioner has still failed to demonstrate a reasonable probability in the outcome of the proceedings if this evidence had been presented at trial. This evidence would have had little, if any, mitigating weight at Petitioner’s trial. See Callahan v. Campbell, 427 F.3d 897, 937 (11th Cir. 2005) and Grayson v. Thompson, 257 F.3d 1194, 1227 (11th Cir. 2001)(finding the fact that none of defendant’s siblings had committed violent crimes reduced the value of abuse as mitigating evidence).

This Court finds that there is no reasonable probability that the outcome of the proceedings would have been different based on the additional evidence Petitioner presented during habeas proceedings. The United States Supreme Court has held that a proper prejudice analysis under Strickland requires a court “to evaluate the totality of the available mitigation evidence – both that adduced at trial, and the evidence adduced in the habeas proceeding – in reweighing it against the evidence in aggravation.” Williams v. Taylor, 529 U.S. 362, 397-398 (2000); Strickland, 466 U.S. at 694; see also Humphrey v. Nance, 293 Ga. 189, 218 (2013) (“In assessing prejudice, we ‘must consider the totality of the evidence before the judge or jury.’”).

At the evidentiary hearing before this Court, the mitigating evidence presented by Petitioner was largely cumulative of the evidence of presented at trial. The additional evidence presented by Petitioner was weak and unpersuasive. Weighing the totality of the aggravating

evidence against the totality of the mitigating evidence, this Court finds that any additional mitigating testimony would not have created a reasonable probability of a different outcome. Accordingly, Petitioner's ineffective assistance of counsel claims pertaining to trial counsel's investigation and presentation of evidence at Petitioner's trial are DENIED.

Trial Counsel Not Ineffective for Failing to Strike Juror Chancey

In **Claim VII**, Petitioner alleges that trial counsel were ineffective for failing to strike or challenge prospective juror Linda Chancey, which Petitioner argues resulted in "direct prejudice" to the outcome of his trial. (PB 145). Specifically, Petitioner contends Ms. Chancey should have been stricken when she revealed information during voir dire that: she had been the target of an attempted rape by an escaped mental patient, who she described as a murderer on her juror questionnaire and that she had a close friend who was a real estate agent, the same occupation as the victims in this case. (PB 146; HT, Vol. 36:13916). This Court finds that trial counsel's performance was not deficient with regard to the conduct of voir dire, and that, even if deficient, Petitioner has failed to demonstrate actual prejudice.

The record shows that Ms. Chancey responded to her summons and reported to the courthouse on Wednesday, September 5, 2007. (TT, Vol. 11:39). At that time she filled out a juror questionnaire, was sworn, instructed not to discuss the case or watch media reports, and told to return with her panel on September 10th at 9:00 a.m. (TT, Vol. 11:39-40). Ms. Chancey's juror questionnaire indicated that she had been the victim of an armed robbery and attempted rape in October, 1976, by a defendant who had been twice convicted of rape and murder and had escaped from a mental hospital. (HT, Vol. 36:13916).

On Saturday, September 8, 2007, Ms. Chancey flew to Las Vegas for a trade show for travel agents. (TT, Vol. 11:40). Ms. Chancey was absent when her panel was read the indictment on Tuesday, September 11, 2007. (TT, Vol. 7:287). On Wednesday, September 12,

2007, there was a discussion regarding Ms. Chancey's absence, and Mr. Berry stated that, from his reading of her juror questionnaire, Ms. Chancey had indicated that she had to travel somewhere. (TT, Vol. 8:215). A bailiff stated that Ms. Chancey had called and discussed her travel plans, and informed the bailiff that she was travelling to Las Vegas on September 8 and would not be back in time. (TT, Vol. 8:215).

Ms. Chancey was present for voir dire on Saturday, September 15, 2007 and was questioned about her absence and read the indictment. (TT, Vol. 11:39-49). Ms. Chancey affirmed that she had not formed or expressed an opinion in regard to the guilt or innocence of the defendant regarding the charges. (TT, Vol. 11:49). Ms. Chancey also affirmed that she was not related to the defendant, that her mind was perfectly impartial between the State and the accused, and that she had no prejudice or bias either for or against the defendant. (TT, Vol. 11:49-50). Ms. Chancey denied that she was conscientiously opposed to the death penalty, and when asked whether she would always vote to impose the death penalty where a defendant was found guilty of murder, Ms. Chancey replied "[n]ot at all." (TT, Vol. 11:53). Asked whether she would be able to consider and vote for the imposition of life with the possibility of parole, Ms. Chancey responded "[d]epending upon the evidence, I would be." Id. She also indicated that she would be able to consider voting to impose a sentence of life without parole. Id. Ms. Chancey denied that she would always vote for the sentences of life or life without parole regardless of the evidence, and indicated that she would be able to vote for any of the three sentencing options, depending upon the evidence. (TT, Vol. 11:54).

When questioned by the State, Ms. Chancey indicated that she knew nothing about the case and had not overheard any information about the case while at the courthouse. (TT, Vol. 11:55). Ms. Chancey reaffirmed that she would be able to consider all three sentencing options if the defendant was found guilty of murder, and would regard the verdict and mitigating

circumstances as two separate matters. (TT, Vol. 11:56-57). Ms. Chancey indicated that if the instructions were to fairly consider all three sentencing options “that is precisely what [she] would do.” (TT, Vol. 11:57-58). Ms. Chancey denied that she had leanings towards any particular sentence and stated that “we all err and there is a sanctity of life and only God gives that life” and that “contemplation for remorse is appropriate.” (TT, Vol. 11:58-59). Ms. Chancey stated she “absolutely” could consider the defense evidence in mitigation and would vote for whichever sentence she felt was right. (TT, Vol. 11:59-60). She indicated that she understood her responsibility as a juror to hear and consider the views of the other jurors regarding guilt-innocence and sentencing. (TT, Vol. 11:60). Finally, Ms. Chancey indicated that she would vote the way she felt after considering the other jurors’ views. Id.

When questioned by Mr. Berry regarding her views on the death penalty, Ms. Chancey stated “[t]here is a certain finality with it. I think we are rather predisposed to give a defendant a fair sentence.” (TT, Vol. 11:61). Ms. Chancey further stated that there was a “certain sanctity of life,” and she thought that “every human being has the right to that sanctity.” (TT, Vol. 11:61). She stated that one must “make sure that justice is dealt and in such a manner that would be applicable to the situation and the crimes or the mitigating circumstances.” (TT, Vol. 11:62). Ms. Chancey stated that her views on the death penalty were “flexible,” and that there was “no retribution once the lives of others that are innocent have been taken.” (TT, Vol. 11:65). Ms. Chancey also stated that whether she could consider a life sentence for someone she had found guilty of malice or felony murder was a matter of hearing the mitigating circumstances. Id. Ms. Chancey indicated that if she were in the minority, she would be able to stand up for what she thought was the right thing to do. (TT, Vol. 11:65-66). She affirmed that she would give the defendant the benefit of the doubt, and stated that she was more of a fact-based than emotion-based person. (TT, Vol. 11:66). Ms. Chancey also affirmed that if she had a loved one on trial

for his or her life, she would be satisfied with a juror of like attitudes as herself on the jury. Id. Mr. Berry ended his questioning at that point, and after Ms. Chancey left the courtroom, the trial court ruled that she was eligible to be considered for further questioning. (TT, Vol. 11:67).

After discussing her employment history, Ms. Chancey freely admitted that she had been the victim of a crime that had happened some time ago in her home in Washington, D.C. (TT, Vol. 11:272-273). Ms. Chancey stated that she did not know the attacker, a convicted murderer who escaped from a mental hospital in Washington, D.C. Id. Ms. Chancey stated that the man had been recaptured and “actually didn’t do [her] any physical bodily harm. [She] was able to escape before he ever actually physically entered the dwelling, so it was preempted...they were able to capture him and to place him where he should be.” (TT, Vol. 11:273-274). Ms. Chancey affirmed that she did not feel that this experience would keep her from sitting as a fair juror if she were chosen for the jury, and that she would “absolutely” listen to and follow the law as given to her by the judge. (TT, Vol. 11:274).

Mr. Berry asked Ms. Chancey whether she had been employed as law enforcement and Ms. Chancey stated she had been a research analyst, and that she never had police powers. (TT, Vol. 11:289-290). Mr. Berry stated that from his review of her juror questionnaire, he noticed that Ms. Chancey was friends with a real estate agent and he asked whether that would cause her any problems sitting on Petitioner’s case. (TT, Vol. 11:290). Ms. Chancey explained that she had known the woman for twenty years and that she had been a realtor for the last two years, but that it would not cause Ms. Chancey any problems hearing the case. Id.

On Monday, September 17, the jury was struck and Ms. Chancey was selected. (TT, Vol. 12). On Tuesday, September 18, 2007, before the trial began, the court questioned jurors to determine whether they had heard any information about the case since the time that they received their jury summons. (TT, Vol. 13:8-30). Ms. Chancey indicated that she had not heard

any information since receiving her jury summons and had not read anything on the internet. (TT, Vol. 13:20). Although Ms. Chancey had taken a trip to Las Vegas with a friend who was a realtor and had spoken to her that Saturday night to confirm each other's safe return from Las Vegas, Ms. Chancey stated that they had not spoken about the case. (TT, Vol. 13:20-21).

A. No Deficiency

Petitioner has failed to show that trial counsel's performance "fell below an objective standard of reasonableness" because they did not use their strikes to remove Ms. Chancey from the jury. Strickland, 466 U.S. at 688. Mr. Berry, an experienced attorney, had picked hundreds of juries over his career and taught voir dire at numerous death penalty seminars. (HT, Vol. 1:117-118, 140). Additionally, according to the notes taken by the defense team during voir dire, Ms. Chancey "worked with the CDC related to HIV" and had been the victim of a crime in which the defendant had "previously murdered someone" and escaped from a mental health facility. (HT, Vol. 36:13751, 13775). In other juror selection notes, beside Ms. Chancey's name the words "very good" are crossed out and replaced with "very bad b/c of history[y]." (HT, Vol. 36:13773). According to these notes, which describe other potential jurors as "killers" if they were perceived to be leaning toward the death penalty, Ms. Chancey "believes in the sanctity of life but would adhere to law" and "had flexible views[,] just wouldn't want them back in society." Id.

As the Georgia Supreme Court has held, "trial counsel's conduct of voir dire and the decision on whether to interpose challenges are matters of trial tactics." Head v. Carr, 273 Ga. 613, 623 (2001). The record shows that Petitioner's defense team participated in voir dire and took detailed notes throughout.⁷² (HT, Vol. 1:138-139; Vol. 36:13751-13776). The defense

⁷² Although Petitioner claims Mr. Berry handled voir dire without the assistance of co-counsel, the notes in trial counsel's files indicate that other members of Petitioner's defense team were present and assisting. (See HT, Vol.

team also met following voir dire to compare notes and discuss the potential jurors. (HT, Vol. 1:139). Although Ms. Chancey had been a victim of a crime, she stated numerous times during voir dire that she could impose a life sentence.

Moreover, trial counsel is not deficient for not challenging Ms. Chancey as there were no grounds to warrant such a challenge. The standard for determining when a prospective juror may be excluded for cause because of his or her views on the death penalty is “whether the juror’s views would ‘prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.’” Wainwright v. Witt, 469 U.S. 412, 424 (1985) (quoting Adams v. Texas, 448 U.S. 38, 45 (1980)). The record shows that Ms. Chancey’s views on capital punishment did not meet the standard to be excluded for cause.

Petitioner has failed to show that trial counsel’s decisions regarding the extent of voir dire, as well as whether to challenge Ms. Chancey, were not reasonable and strategic. Therefore, Petitioner has not carried his burden of showing that trial counsel’s performance during voir dire fell outside the “wide range of reasonable professional assistance.” Strickland, 466 U.S. at 689; Williams v. State, 258 Ga. 281, 289 (7)(1988).

B. No Prejudice

Furthermore, even if this Court were to find trial counsel’s performance deficient in failing to strike Ms. Chancey, this claim still fails as Petitioner has not demonstrated a “reasonable probability (i.e. a probability sufficient to undermine confidence in the outcome) that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Smith v. Francis, 253 Ga. 782, 783 (1985). Petitioner states that Ms. Chancey was “settled on a death sentence from the outset;” however, as discussed above, Ms. Chancey

repeatedly affirmed that she was open to a life sentence. Petitioner argues that Ms. Chancey was not qualified to serve on Petitioner's jury because she: prejudged Petitioner's guilt and what the appropriate sentence should be; was only willing to only consider a death sentence; and, failed to reveal relevant details about her own experience as a victim of a crime, which allegedly biased her against Petitioner. (PB 160). Petitioner claims that there is a reasonable probability that the jury would have returned a unanimous sentence of life without parole if "an unbiased, qualified juror" had been seated in Ms. Chancey's place. (PB 149).

In support of these allegations, Petitioner presented the testimony of two jurors from Petitioner's trial, Susan Barber and Tara Newsome.⁷³ O.C.G.A. §§ 9-10-9 and 17-9-41 provide that "[t]he affidavits of jurors may be taken to sustain but not to impeach their verdict." This statutory prohibition is deeply rooted in Georgia law and serves important public policy considerations. See, e.g., Oliver v. State, 265 Ga. 653, 654(3) (1995); Bowden v. State, 126 Ga. 578 (1906) (holding "[a]s a matter of public policy, a juror cannot be heard to impeach his verdict, either by way of disclosing the incompetency or misconduct of his fellow-jurors, or by showing his own misconduct or disqualification from any cause."). Moreover, the Supreme Court of Georgia has explicitly applied this statutory prohibition against juror impeachment of the verdict to death penalty cases. See, e.g., Spencer v. State, 260 Ga. 640, 643(3)(1990); Hall v. State, 259 Ga. 412, 414(3)(1989).⁷⁴ Exceptions are made to this rule in cases where "extrajudicial and prejudicial information has been brought to the jury's attention improperly, or where non-jurors have interfered with the jury's deliberations." Spencer v. State, 260 Ga. 640,

⁷³ Petitioner submitted affidavits from both Ms. Newsome and Ms. Barber; however, Ms. Barber also testified during the evidentiary hearing in this case. (HT, Vol. 1:165-179).

⁷⁴ This Court notes that the trial court declined to consider juror affidavits submitted on Motion for New Trial as the proposed affidavits did not fall within any exception to O.C.G.A. §17-9-41, which was upheld by the Georgia Supreme Court on direct appeal. Humphreys, 287 Ga. 63, 81.

643 (1990) (citing Hall v. State, 259 Ga. 412(3)(1989)). However, the affidavits in this case do not fall within any exception to O.C.G.A. § 17-9-41 and are therefore, inadmissible.

Furthermore, even if this Court were to consider the juror testimony presented during these proceedings, Petitioner has still failed to show prejudice. Petitioner alleges that Ms. Chancey “harassed, intimidated, and bullied” other jurors who disagreed with her, which constituted misconduct. (PB 165). Petitioner argues that “[o]ver the course of three days of deliberations, [Ms. Chancey] adamantly voted for death, with her behavior becoming increasingly hostile. She segregated herself from the other jurors, called them names, and often refused to engage in the deliberations.” (PB 149). Petitioner’s allegations of pressuring behaviors indicate the “normal dynamic of jury deliberations, with the intense pressure often required to reach a unanimous decision.” United States v. Cuthel, 903 F.2d 1381, 1383 (11th Cir. 1990). See also Sears v. State, 270 Ga. 834, 839 (1999)(Testimony by juror that the other jurors yelled at her, insulted her character, and made her change her mind because she was “ostracized” indicated that she finally voted in favor of the death penalty because she felt pressure “only as the result of the normal dynamic of jury deliberations.”). Furthermore, the jurors were polled after the verdict was read and all stated that they were not pressured during deliberations as to the penalty. (ST, Vol. 3:466-474).

Petitioner also alleges that Ms. Chancey changed the wording of a note to the court “which had the effect of misleading the court into thinking that the jury was merely struggling as part of the normal course of deliberations, when in fact deliberations had devolved into a tension-filled impasse.” (PB 165). Ms. Barber, who served as the foreperson of the jury in Petitioner’s trial, testified that the jury collectively drafted a note to the judge asking for direction because they could not agree on a unanimous decision for sentencing. (HT, Vol. 1:166; Vol. 37:13980). The note that the court received read:

We, the jury, have agreed on statutory aggravating circumstances on both counts, but not on the penalty. *Currently*, we agreed that life imprisonment with parole is not an acceptable option, we are *currently* unable to *form* a unanimous decision on either death or life imprisonment without parole as a sentence. Please advise.

(HT, Vol. 37:13986) (emphasis added). In her affidavit, Ms. Barber stated that after drafting the note, “[o]ne of the other jurors added the word ‘currently’ and then [Ms. Barber] re-wrote the note and sent it to the judge.” (HT, Vol. 37:13980-13981). Additionally, Ms. Barber testified at the evidentiary hearing before this Court that the jury all agreed on the language used in the letter. (HT, Vol. 1:167). Petitioner has failed to demonstrate any juror misconduct regarding the juror note.

Petitioner further argues that the use of the word “currently” was “decisive for both the trial court and the Supreme Court of Georgia on review, in determining that that (sic) it was not an abuse of discretion to instruct the jury to continue to deliberate.” (PB 169). Although the Georgia Supreme Court did mention that “currently” was used twice in the note, the Court also noted that “after a lengthy trial, the jury had been deliberating for less than nine hours.” Humphreys, 287 Ga. 63, 79. Furthermore, the Court noted that “[a]fter being instructed to continue, the jury deliberated for about three more hours. The jury foreperson then sent a note to the trial court requesting that the jurors be allowed to rehear Humphreys’s taped statement to the detectives.” Id. Therefore, the Court finds that Petitioner’s claim fails.

Additionally, Petitioner’s allegation that Ms. Chancey failed to reveal relevant details about her own experience as a victim of a crime is unpersuasive. The record reflects that Ms. Chancey, in fact, did reveal that she had been a victim of a crime. (HT, Vol. 36:13916; TT, Vol. 11:272-274). Furthermore, Ms. Chancey affirmed that she did not feel that this experience would keep her from sitting as a fair juror if she were chosen for the jury, and that she would “absolutely” listen to and follow the law as given to her by the judge. (TT, Vol. 11:274).

Accordingly, this portion of Petitioner's ineffective assistance of counsel claim is DENIED in its entirety.

2. Appellate Counsel

In **Claim VIII** and footnotes to various other claims, Petitioner alleges he received ineffective assistance of counsel at his motion for new trial and on direct appeal. Specifically, Petitioner alleges appellate counsel were ineffective in failing to raise a claim of juror misconduct at either Petitioner's motion for new trial proceedings or in his direct appeal to the Georgia Supreme Court. In his brief, Petitioner argues that appellate counsel should have "compel[led] the testimony of the jurors themselves." (PB 183).

Even if this Court were to find that appellate counsel were deficient in failing to raise a claim of juror misconduct at either Petitioner's motion for new trial proceedings or on direct appeal, this claim still fails as Petitioner has failed to show resulting prejudice. The record shows that motion for new trial counsel attempted to submit juror affidavits in support of their claim regarding the court's *Allen* charge; however, the court ruled that the juror affidavits were inadmissible as they did not fall within any exception to O.C.G.A. §17-9-41. The Georgia Supreme Court upheld the trial court's ruling that the affidavits were inadmissible on direct appeal. Therefore, trial counsel is not deficient for failing to present inadmissible evidence. As Petitioner has failed to provide this Court with any admissible evidence in support of this claim, he has also failed to show resulting prejudice. Accordingly, this claim is denied.

3. Sentencing Phase Jury Instructions

In **Claims XIII, XIV, and XV**, Petitioner alleges that the trial court erred in its sentencing phase jury instructions. As errors in the sentencing phase charge to the jury are "never barred by procedural default," this claim is properly before this Court for review on the merits. Head v. Ferrell, 274 Ga. 399, 403 (2001). Petitioner alleges that the trial court incorrectly and

improperly instructed the jury on the principle of unanimity in capital sentencing. (PB 170-178).

In his brief, Petitioner acknowledges that the Georgia Supreme Court previously reviewed and rejected this claim; however, Petitioner alleges that the Georgia Supreme Court erred in its legal conclusions. Issues raised and litigated on direct appeal will not be reviewed in a habeas corpus proceeding. See Elrod v. Ault, 231 Ga. 750 (1974). As Petitioner has failed to provide this Court with any changes in law, this claim is precluded from this Court's review as the Georgia Supreme Court previously reviewed and rejected this claim.⁷⁵ See Humphreys v. State, 287 Ga. 63, 77-82 (8) and (9) (2010); see also Tucker v. Kemp, 256 Ga. 571, 573 (1987) (“[T]here is an exception to the res judicata rule in that habeas would likely be allowed if the law changed which might render a later challenge successful.” Citing Bunn v. Burden, 237 Ga. 439 (1976)).

V. CONCLUSION

After considering all of Petitioner's allegations made in the habeas corpus petition and at the habeas corpus hearing, this Court concludes that Petitioner has failed to carry his burden of proof in demonstrating any denial of his constitutional rights as set forth above.

WHEREFORE, it is hereby ORDERED that the petition for a writ of habeas corpus is denied and that Petitioner be remanded to the custody of Respondent for the service and execution of his lawful sentence.

The Clerk is directed to mail a copy of this Order to counsel for the parties.

SO ORDERED, this 7th day of March, 2016.

⁷⁵ Petitioner's allegation of ineffective assistance of motion for new trial counsel for failing to present juror testimony on this issue also fails. The Georgia Supreme Court found that the juror affidavits were inadmissible as they did not fall within any exception to O.C.G.A. §17-9-41, therefore Petitioner is unable to show deficient performance or prejudice in counsel's failure to present these affidavits. Humphreys v. State, 287 Ga. 63, 80-82.

Robert L. Russell
HONORABLE ROBERT L. RUSSELL, III, Judge
Superior Court of Butts County
Sitting by Designation

Appendix C



SUPREME COURT OF GEORGIA
Case No. S16E1799

Atlanta, August 28, 2017

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

STACEY IAN HUMPHREYS v. BRUCE CHATMAN, WARDEN

This Court has thoroughly reviewed Humphreys’s application for a certificate of probable cause to appeal the denial of his petition for habeas corpus, the Warden’s response, the habeas court’s order, and the entire trial and habeas records. In doing so, we note that, in its analysis of Humphreys’s claim that appellate counsel were ineffective in omitting a juror misconduct claim in his motion for new trial and on direct appeal, the habeas court found Humphreys’s new juror affidavits and testimony, which he presented for the first time in the habeas court, inadmissible, and thereby disposed of both prongs of this claim, by relying exclusively on the fact that on direct appeal this Court upheld the trial court’s ruling that other juror affidavits that were submitted with Humphreys’s motion for new trial were inadmissible because they “d[id] not fall within any exception to [then controlling] OCGA § 17-9-41.” Humphreys v. State, 287 Ga. 63, 81 (9) (b) (694 SE2d 316) (2010). See Order, p. 84 (HR, p. 2,167). However, because Humphreys submitted new and different juror affidavits and testimony in his habeas proceeding to support this claim, a proper analysis would address whether these new juror affidavits and testimony fell within any of the exceptions to former OCGA §17-9-41, which was the law at the time of Humphreys’s motion for new trial and direct appeal. See Williams v. Rudolph, 298 Ga. 86, 89 (777 SE2d 472) (2015) (holding that a habeas court properly addresses a petitioner’s ineffective assistance of appellate counsel claim “from a perspective and state of the law” at the time of the petitioner’s direct appeal); Butler v. State, 270 Ga. 441, 444 (2) (511 SE2d 180) (1999)

(stating that whether an affidavit falls within an exception to former OCGA § 17-9-41 must be determined by the circumstances of the case).

Nevertheless, in its evaluation of the prejudice prong of Humphreys's claim that trial counsel were ineffective in not removing Juror Chancey from the jury, the habeas court carefully considered the new juror affidavits and testimony presented in the habeas proceeding before correctly determining that the juror affidavits and testimony "in this case" did not fall within any exception to former OCGA § 17-9-41. Order, pp. 81-84 (HR, pp. 2,164-2,167). See Glover v. State, 274 Ga. 213, 215 (3) (552 SE2d 804) (2001). Our independent review of the habeas court's factual findings regarding the new juror affidavits and testimony that were made in relation to Humphreys's allegations of juror misconduct shows that those findings are supported by the record. Applying the law to those same factual findings leads us to conclude that Humphreys also failed to establish the prejudice prong of his claim that appellate counsel were ineffective, because, even had appellate counsel raised a juror misconduct claim in Humphreys's motion for new trial and on direct appeal based on the new juror affidavits and testimony that he submitted in the habeas court, there is no reasonable probability that the outcome of those proceedings would have been different. See Humphrey v. Morrow, 289 Ga. 864, 866 (II) (717 SE2d 168) (2011) (explaining that this Court adopts the habeas court's findings of fact unless they are clearly erroneous but applies the facts to the law de novo in determining whether counsel performed deficiently and whether any deficiency was prejudicial). Because Humphreys failed to establish the prejudice prong of his claim that appellate counsel were ineffective by omitting a juror misconduct claim, the habeas court did not commit reversible error by denying him relief on this claim. See Hall v. Lewis, 286 Ga. 767, 769-770 (II) (692 SE2d 580) (2010); Lajara v. State, 263 Ga. 438, 440 (3) (435 SE2d 600) (1993). Accordingly, we conclude that this issue is without arguable merit. See Supreme Court Rule 36.

Because Humphreys's claim that appellate counsel were ineffective by omitting a claim of juror misconduct in his motion for new trial and on direct appeal lacks merit, he also fails in his claim that appellate counsel's ineffectiveness in this regard satisfies the cause and prejudice test to overcome

the bar to his independent juror misconduct claim arising out of procedural default. See OCGA § 9-14-48 (d); Lewis, 286 Ga. at 769 (II). Therefore, the habeas court did not commit reversible error by concluding that Humphreys “failed to demonstrate cause and prejudice, or a fundamental miscarriage of justice sufficient to excuse his failure to raise” his juror misconduct claim in his motion for new trial and on direct appeal and that the claim therefore remains procedurally defaulted. Order, pp. 8, 10 (HR, pp. 2,091, 2,093). See Head v. Ferrell, 274 Ga. 399, 402 (II) (554 SE2d 155) (2001) (“The only circumstance where the ‘cause and prejudice’ test is not applied is where granting habeas corpus relief is necessary to avoid a ‘miscarriage of justice,’ and an extremely high standard applies in such cases.”). Accordingly, we conclude that this issue is without arguable merit. See Supreme Court Rule 36.

While we do not find a need to discuss our reasoning in detail, our review of the record similarly reveals that the other claims *properly* raised and argued by Humphreys are without arguable merit. See Supreme Court Rule 36.

We treat as abandoned Humphreys’s unsupported claims, which he presented to this Court by mere reference to all of the other claims that he raised in the habeas court. See Supreme Court Rule 22 (“Any enumerated error not supported by argument or citation of authority in the brief shall be deemed abandoned.”); Perkins v. Hall, 288 Ga. 810, 831 (708 SE2d 335) (2011) (deeming claims raised “in summary fashion” in a granted application for a certificate of probable cause to appeal abandoned under Supreme Court Rule 22); Whatley v. Terry, 284 Ga. 555, 573 (VI) (668 SE2d 651) (2008) (same regarding claims “incorporate[d] by reference”). Accordingly, Humphreys’s renewed motion for consideration of all claims for relief raised in the habeas court but not briefed and supported by argument and citation of authority in his application for a certificate of probable cause to appeal is denied. Furthermore, to the extent that that motion requested, in the alternative, a 270-page expansion of this Court’s 30-page limit for applications for certificates of probable cause to appeal, that request is denied. In this regard, we note that this Court granted a 45-page expansion of the 30-page limit on April 5, 2016, and then, on March 20, 2017, denied Humphreys’s previous request for a 270-page expansion but authorized him to file a substitute application of 75 pages and explained that

“any claims not supported by argument and citation of authority w[ould] be deemed abandoned.” Nevertheless, Humphreys chose to ignore this opportunity and warning and simply renewed his motion, attaching his original application.

In light of the foregoing and upon consideration of the entirety of the application for a certificate of probable cause to appeal the denial of habeas corpus, it is hereby denied as lacking arguable merit. See Supreme Court Rule 36.

All the Justices concur, except Hines, C. J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk’s Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 Clerk

Appendix D



KeyCite Yellow Flag Negative Treatment

Distinguished by [Huettt v. State](#), Ga., October 20, 2014

287 Ga. 63
Supreme Court of Georgia.

HUMPHREYS

v.

The STATE.

No. S09P1428.

|

March 15, 2010.

Synopsis

Background: Defendant was convicted following jury trial in the Superior Court, Cobb County, [Dorothy A. Robinson](#), J., of two counts of malice murder and related offenses and was sentenced to death. Defendant appealed.

Holdings: The Supreme Court, [Nahmias](#), J., held that:

[1] convictions were supported by sufficient evidence;

[2] defendant failed to establish that grand jury list violated Sixth Amendment fair cross-section requirement;

[3] a person who has been placed on probation or sentenced to a term of confinement pursuant to the First Offender Act is not incompetent, either before or after being discharged without an adjudication of guilt, to serve as petit juror;

[4] trial court did not abuse its discretion in disqualifying three prospective jurors based upon their views on capital punishment and in refusing to disqualify six other who expressed a leaning toward death penalty;

[5] defendant's in-custody statement was voluntary;

[6] police had requisite particularized basis for investigatory stop of defendant's rental vehicle;

[7] impoundment and inventory search of rental vehicle were reasonable;

[8] instruction that unanimous verdict was required, as contained in modified *Allen* charge given at penalty phase, did not render the charge impermissibly coercive, though better practice would be to omit that language from *Allen* charge, overruling *Legare v. State*, 250 Ga. 875, 302 S.E.2d 351;

[9] evidence did not support alleged statutory aggravating that murders were committed to avoid lawful arrest, but did support other alleged aggravating circumstances; and

[10] death sentences were not disproportionate punishment.

Affirmed.

Carley, P.J., concurred specially and filed a statement.

Attorneys and Law Firms

****322** Geerdes & Kim, Holly L. Geerdes, Duluth, Mitchell D. Durham, Jimmy D. Berry, Marietta, Carl P. Greenberg, Thomas H. Dunn, Atlanta, for appellant.

Patrick H. Head, Dist. Atty., Dana J. Norman, Asst. Dist. Atty., Thurbert E. Baker, Attorney General, Theresa M. Schiefer, Assistant Attorney General, Richard A Malone, Atlanta, for appellee.

NAHMIAS, Justice.

***63** A jury convicted Stacey Ian Humphreys of two counts of murder and related offenses. After finding beyond a reasonable doubt multiple statutory aggravating circumstances, the jury recommended death sentences for the murder convictions, and the trial court entered judgment accordingly. See OCGA §§ 17 10 30, 17 10 31(a). Humphreys's motion for new trial was denied, and he appeals his convictions and sentences. For the reasons set forth below, we affirm.

Sufficiency of the Evidence

[1] 1. The evidence, construed in the light most favorable to the jury's verdicts, showed the following. At approximately 12:40 p.m. on November 3, 2003, Humphreys, a convicted felon who was still on parole, entered a home construction company's sales office located in a model home for a new subdivision in Cobb County. Cindy Williams ***64** and Lori Brown were employed there as real estate agents. Finding Ms. Williams alone in the office, Humphreys used a stolen handgun to force her to undress and to reveal the personal identification number (PIN) for her automated teller machine (ATM) card. After calling Ms. Williams's bank to learn the amount of her current balance, Humphreys tied her underwear so tightly around her neck that, when her body was discovered, her neck bore a prominent ligature mark and her tongue was protruding from her mouth, which had turned purple. While choking Ms. Williams, Humphreys forced her to get down on her hands and knees and to move into Ms. Brown's office and behind Ms. Brown's desk. Humphreys placed his handgun at Ms. Williams back and positioned a bag of balloons between the gun and her body to muffle the sound of gunshots. He then fired a shot into her back that went through her lung and heart, fired a second shot through her head, and left her face-down on her hands and knees under the desk.

Ms. Brown entered the office during or shortly after Humphreys's attack on Ms. Williams, and he attacked her too. Ms. Brown suffered a hemorrhage in her throat that was consistent with her having been choked in a headlock-type grip or having been struck in the throat. Humphreys also forced Ms. Brown to undress and to reveal her PIN, called her bank to obtain her balance, and made her kneel with her head facing the floor. Then, while standing over Ms. Brown, Humphreys fired one gunshot through her head, this time using both a bag of balloons and Ms. Brown's folded blouse to muffle the sound. He dragged her body to her desk, took both victims' driver's licenses and ATM and credit cards, and left the scene at approximately 1:30 p.m. Neither victim sustained any defensive wounds.

When the builder, whose office was located in the model home's basement, heard the ****323** door chime of the security system indicating that someone had exited the sales office, he went to the sales office to meet with the agents. There he discovered Ms. Brown's body and called 911. The responding police officer discovered Ms. Williams's body.

After interviewing the builder and canvassing the neighborhood, the police released to the media descriptions of the suspect and a Dodge Durango truck seen at the sales office near the time of the crimes. In response, someone at the job site where Humphreys worked called to advise that Humphreys and his vehicle matched those descriptions and that Humphreys did not report to work on the day of the crimes. The police began to investigate Humphreys and made arrangements through his parole officer to meet with him on the morning of November 7, 2003. Humphreys skipped the meeting, however, and eluded police officers who had him under surveillance.

Humphreys was apprehended in Wisconsin the following day. *65 Police there recovered from the console of his rental vehicle a Ruger 9 millimeter pistol, which was determined to be the murder weapon. Swabbings from that gun revealed blood containing Ms. Williams's DNA. A stain on the driver-side floormat of Humphreys's Durango was determined to be blood containing Ms. Brown's DNA.

After the murders, the victims' ATM cards were used to withdraw over \$3,000 from their accounts. Two days after the murders, Humphreys deposited \$1,000 into his account, and he had approximately \$800 in cash in his possession when he was arrested. Humphreys claimed in a statement to the police that he did not remember his actions at the time of the crimes. However, when asked why he fled, he said: "I know I did it. I know it just as well as I know my own name." He also told the police that he had recently taken out some high-interest "payday" loans and that he "got over [his] head with that stinking truck."

The evidence presented at trial and summarized above was easily sufficient for a rational jury to find Humphreys guilty beyond a reasonable doubt of the crimes charged. *Jackson v. Virginia*, 443 U.S. 307, 319(III)(B), 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

Pre Trial Issues

2. Humphreys asserts that the trial court erred in failing to quash the indictment against him because the jury administrator improperly and arbitrarily excused potential grand jurors, thus vitiating the array.²

[2] (a) *The jury administrator's authority.* Humphreys contends that the jury administrator was without authority to grant excusals and deferments, because the 1984 standing order adopted by the Cobb County Superior Court authorizing her to do so was repealed by the adoption of the Uniform Rules of Superior Courts and was never re-adopted. Humphreys asserts that the Uniform Rules were adopted in 1994. In fact, the Uniform Rules were originally adopted by order of this Court in accordance with the directive of [Art. VI, Sec. IX, Par. I, of the 1983 Constitution of the State of Georgia](#) and became effective on July 1, 1985. See 253 Ga. 800, 800 (1985).

While Rule 1.1 of the original Uniform Rules provided that "[a]ll *66 local rules of superior courts in effect as of the effective date of these rules are hereby repealed[.]" [Rule 1.2](#) provided that, "[t]he above provisions notwithstanding, each superior court may retain or adopt without specific Supreme Court approval ... an order establishing guidelines governing excuses from jury duty pursuant **324 to OCGA § 15 12 1.0[sic]."³ [OCGA § 15 12 1\(a\)\(1\)](#) provides in relevant part that any person who shows "good cause why he or she should be exempt from jury duty may be excused by ... [a] person who has been duly appointed by order of the chief judge to excuse jurors" where "guidelines governing excuses" have been established by court order. The Code section further provides for the excusal or deferment of specifically described persons. See [OCGA § 15 12 1\(a\)\(2\)](#) through (c)(2).

Among the evidence presented at the pre-trial hearing were two orders signed by the chief judge of the Cobb County Superior Court. The first order, which was entered in April of 1984, "appointed and empowered" the court administrator and the deputy court administrator/jury manager "to receive requests for jury deferments and make determinations as to deferments and excusals" in accordance with guidelines contained within the order. While the order does not cite

OCGA § 15 12 1, it tracks that statute's language. The second order, which was entered after the original adoption of the Uniform Rules “[p]ursuant to Rule 1.2,” provides for the retention of “the local court rules establishing guidelines governing excuses from jury duty pursuant to OCGA 15 12 1.0.” That order became effective on July 1, 1985.

In 1994, Rule 1.1 was amended to provide that “[a]ll local rules of the superior courts,” except those relating to jury pool selection, would expire effective December 31, 1994. However, Rule 1.2 continued to provide that “[t]he above provisions notwithstanding, each superior court may retain” without specific approval of this Court “an order establishing guidelines governing excuses from jury duty.” See Rule 1.2(D).⁴ There is no evidence that the Cobb County Superior Court did not retain its 1984 and 1985 juror excusal and deferment orders, and indeed we are aware of no authority for the proposition that such orders automatically become invalid when the Uniform Rules are amended. See *67 *English v. State*, 290 Ga.App. 378, 382(3) (a), 659 S.E.2d 783 (2008) (noting lack of authority for the proposition “that such an order becomes invalid when the chief judge who signed it retires”). We therefore reject Humphreys's contention that the jury administrator was without authority to excuse or defer potential grand jurors for his case.

[3] (b) *The jury administrator's grounds for excusals.* We also do not find reversible error in the manner in which potential grand jurors were excused from service. At the pre-trial hearing, the jury administrator testified that she summoned 65 potential grand jurors for the term of court during which Humphreys was indicted, that seven of those potential jurors were excused, and that two potential jurors were deferred. A review of the testimony and evidence presented at the hearing shows that the jury administrator investigated the juror excusals and deferments and that they were authorized under the guidelines in the 1984 standing order, under statutory provisions, or under both. While the jury administrator did not obtain a notarized affidavit in every situation, she did obtain written confirmation in each case. Under our precedent, there clearly was not “such disregard of the essential and substantial provisions of the statute as would vitiate the array [.]” *Franklin v. State*, 245 Ga. 141, 145 147(1), 263 S.E.2d 666 (1980) (finding no reversible error where court administrator and his secretary excused potential grand jurors for statutory and hardship reasons based on telephone calls without conducting investigations into excuses).

[4] [5] [6] (c) *Sixth Amendment claim.* Humphreys also claims that his Sixth Amendment fair cross-section right was violated, because eight of the nine excusals or deferments were granted to female potential jurors. The fair cross-section requirement does not require that juries mirror a community, and a state may provide reasonable exemptions for its jurors so long as the lists **325 from which the jurors are drawn are representative of the community. *Taylor v. Louisiana*, 419 U.S. 522, 538(VII), 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). See also *Sanders v. State*, 237 Ga. 858, 858(1), 230 S.E.2d 291 (1976) (applying this doctrine to grand jurors).

The Constitution requires only that the State not deliberately and systematically exclude identifiable and distinct groups from jury lists; hence, in order to prevail on a constitutional challenge to the composition of the grand and petit juries in his case, a criminal defendant must establish prima facie that a distinct and identifiable group in the community is substantially under-represented on the jury venire.

Torres v. State, 272 Ga. 389, 391(4), 529 S.E.2d 883 (2000).

*68 Humphreys offered nothing to contradict the evidence in the record showing that the absolute disparity between females in the population of Cobb County and females on the grand jury list was 0.06 percent. Nor did he present any evidence purporting to show the effect the excusals and deferments of eight females had on the final grand jury list. Consequently, Humphreys has failed to carry his burden of establishing a prima facie case of grand jury discrimination. See *Sanders v. State*, 237 Ga. at 858(1), 230 S.E.2d 291 (2% differential in women and 2.5% differential in black persons are “too slight to establish a prima facie case of purposeful discrimination”).

3. Humphreys contends that the trial court erred in certifying the grand jury certificate pursuant to the Unified Appeal Procedure (U.A.P.), because white persons and Hispanic persons were allegedly under-represented on the Cobb County grand jury list.

[7] (a) *U.A.P. claim.* The U.A.P. prohibits a variation between the community and the grand jury list of five percent or more of any cognizable group. Humphreys contends that we should reverse his death sentences based on a violation of this rule. See U.A.P. II(E). We have held, however, that it is beyond this Court's power to require the quashing of an indictment that was procured in a manner consistent with Georgia statutes and the state and federal constitutions, even if under-representation of a cognizable group on the grand jury list violates the U.A.P.'s five percent limit. See *Edwards v. State*, 281 Ga. 108, 110, 636 S.E.2d 508 (2006). Humphreys has not presented any reason to reconsider this precedent, and we see no basis for reversing a death sentence on this ground when we would not require the quashing of the underlying indictment.

(b) *Sixth Amendment claim.* Humphreys also contends that the trial court erred in denying his Sixth Amendment challenge to the grand jury array on the grounds that white persons and Hispanic persons were under-represented on the Cobb County grand jury list. In order to show a Sixth Amendment violation, Humphreys must show the group's cognizability, under-representation, and systematic exclusion. See *Morrow v. State*, 272 Ga. 691, 692(1), 532 S.E.2d 78 (2000). Because we find that Humphreys failed to show any actual under-representation of either group, we need not address the other requirements of his claim. See *Rice v. State*, 281 Ga. 149, 149(1), 635 S.E.2d 707 (2006).

[8] (i) *Hispanic persons.* Humphreys urges this Court to reconsider its use of citizenship statistics in reviewing the alleged under-representation of Hispanic persons on grand juries. See *Smith v. State*, 275 Ga. 715, 721(4), 571 S.E.2d 740 (2002). We decline that request, but in any event, he has failed to show constitutionally significant under-representation. According to his own expert's testimony, the grand jury pool had an absolute disparity of less than *69 five percent both before and after adjusting to account for the citizenship rate of Hispanic persons. This is well within constitutional requirements. See *Cook v. State*, 255 Ga. 565, 571(11), 340 S.E.2d 843 (1986) (holding that, in general, absolute disparities under ten percent satisfy constitutional requirements).

Humphreys also urges this Court to take both absolute and comparative disparity into account when considering smaller population groups such as Hispanic persons. However, we have consistently rejected the use of comparative disparity, see *Al Amin v. State*, 278 Ga. 74, 79(4), 597 S.E.2d 332 (2004); **326 *Cook*, 255 Ga. at 571 574(11), 340 S.E.2d 843, and we see no reason to reach a contrary conclusion in this case. The trial court did not err in denying Humphreys's challenge on this ground.

[9] (ii) *White persons.* We need not address Humphreys's contention that the trial court erred in finding that the jury commissioners used the correct United States census figure in determining the total population for white persons in Cobb County. Even the 7.06 percent disparity that he alleges would be insufficient to establish a constitutional violation. *Cook*, 255 Ga. at 571(11), 340 S.E.2d 843.

Jury Selection Issues

[10] 4. Humphreys asserts that the trial court erroneously disqualified for cause a prospective juror who was serving a probationary sentence for two felonies under the First Offender Act. See OCGA § 42 8 60 et seq. Contrary to the State's contention, Humphreys has not waived this claim. Humphreys opposed the State's motion to have the prospective juror excused for cause, and, once the trial court issued a ruling, he did not need to "further object or 'except' to the trial court's ruling in order to preserve the issue for appeal." *Davie v. State*, 265 Ga. 800, 802(2), 463 S.E.2d 112 (1995).

[11] The question is whether a prospective petit juror serving a sentence under the First Offender Act has been “convicted” within the meaning of [OCGA § 15 12 163\(b\)\(5\)](#), which provides that, in jury trials in felony cases, either the State or the accused may object to the seating of a juror who “has been convicted of a felony in a federal court or any court of a state of the United States and the juror's civil rights have not been restored.”⁵ This appears to be a question of first impression for the appellate courts of this State.

Prior to the enactment of this statutory provision, “[i]n disqualifying jurors for offenses involving moral turpitude, our courts *70 follow[ed] common-law principles.” [Turnipseed v. State](#), 54 Ga.App. 442, 443, 188 S.E. 260 (1936). Under the common law, a person who was found guilty of a felony or other offense involving moral turpitude was considered “‘infamous,’ and, by reason of that infamy, he was disqualified from jury service,” because “at common law one accused of crime was entitled to a trial by twelve upright [jurors].” [Williams v. State](#), 12 Ga.App. 337, 338 339, 77 S.E. 189 (1913). Under both the common law and this State's case law, however, “in order to disqualify a juror by reason of his conviction of a crime involving moral turpitude, his guilt must be shown by a judgment.” [Turnipseed](#), 54 Ga.App. at 443, 188 S.E. 260. “[I]t is the judgment that disqualifies.’... [H]ence the use of the word ‘conviction’ as denoting final judgment.” *Id.* (citation omitted). Accord [Turnipseed v. State](#), 53 Ga.App. 194, 185 S.E. 403 (1936) (holding that a juror was not incompetent to serve while his petition for certiorari to review his conviction was pending).

[12] “The common-law rules are still of force and effect in this State, except where they have ‘been changed by express statutory enactment or by necessary implication.’” [Fortner v. Town of Register](#), 278 Ga. 625, 626(1), 604 S.E.2d 175 (2004) (citation omitted). We see no indication that the General Assembly intended to change the common law in this regard. Instead, over a quarter-century before the legislature amended [OCGA § 15 12 163](#) to expressly provide for the excusal for cause of potential jurors who have been “convicted” of a felony, see Ga. L. 1995, p. 1292, § 11, the General Assembly defined the term “conviction” in the Criminal Code as “a *final judgment* of conviction entered upon a verdict or finding of guilty of a crime or upon a plea of guilty.” See Ga. L. 1968, p. 1249, § 1 (emphasis supplied). This definition remains the same today. See [OCGA § 16 1 3\(4\)](#).

The First Offender Act permits the trial court, “[u]pon a verdict or plea of guilty or a plea of nolo contendere, but *before an adjudication of guilt*,” to place the first offender **327 on probation or to sentence the first offender to a term of confinement “*without entering a judgment of guilt*.” [OCGA § 42 8 60\(a\)](#) (emphasis supplied).⁶ Accordingly, we have held that “[a] first offender's guilty plea does not constitute a ‘conviction’ as that term is defined in the Criminal Code of Georgia.” [Davis v. State](#), 269 Ga. 276, 277(2), 496 S.E.2d 699 (1998). Furthermore, a first-offender probationer is automatically discharged upon the successful completion of the *71 terms of the sentence without the necessity of any subsequent certification of that successful completion in the records of the trial court. See [State v. Mills](#), 268 Ga. 873, 875, 495 S.E.2d 1 (1998); [OCGA § 42 8 62\(a\)](#).

While the legislature has amended the Code to restrict a first offender's liberties in certain respects, see [OCGA § 16 11 131\(b\)](#) (prohibiting first offenders from possessing a firearm); [OCGA § 42 1 12\(a\)\(8\)](#) (requiring first offenders charged with sex crimes and certain crimes against children to register as sexual offenders), it has not done so with respect to a first offender's eligibility for jury service. For these reasons, we conclude that a person who has been placed on probation or sentenced to a term of confinement pursuant to the First Offender Act is not incompetent to serve as a petit juror under [OCGA § 15 12 163\(b\)\(5\)](#) either before or after being discharged without an adjudication of guilt. The trial court therefore erred in disqualifying for cause the prospective juror solely on the ground that she was a first offender on probation.

[13] Nevertheless, “‘[t]he erroneous allowing of a challenge for cause affords no ground of complaint if a competent and unbiased jury is finally selected.’” [Wells v. State](#), 261 Ga. 282, 282 283(2), 404 S.E.2d 106 (1991) (citation omitted). Compare [Harris v. State](#), 255 Ga. 464, 464(2), 339 S.E.2d 712 (1986) (erroneous *denial* of a challenge for cause, which allows an incompetent juror to serve, requires reversal without a showing of actual prejudice). Because Humphreys has

not shown that the 12 jurors who actually were selected to decide his case were incompetent or biased, this error is not a basis for reversal.

[14] [15] 5. Humphreys argues that the trial court erred by refusing to excuse six prospective jurors because they were biased in favor of the death penalty. Conversely, Humphreys complains that the trial court erred by excusing three prospective jurors based on the court's determination that they evidenced an inability to consider a death sentence. Humphreys cites *Allen v. State*, 248 Ga. 676, 286 S.E.2d 3 (1982), for the proposition that a prospective juror "must make it 'unmistakably clear' that he or she would automatically vote against the death penalty in any and all cases" in order to be disqualified. *Id.* at 679(2), 286 S.E.2d 3 (quoting *Witherspoon v. Illinois*, 391 U.S. 510, 516 n. 9, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968)). His reliance on *Allen* is misplaced.

[16] [17] [18] [19] [20] [21] Since *Allen* and *Witherspoon* were decided, this Court, following the United States Supreme Court, has explained that "[t]he proper standard for determining the disqualification of a prospective juror based upon his views on capital punishment 'is whether the juror's views would " 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.' " ' " *Greene v. State*, 268 Ga. 47, 48, 485 S.E.2d 741 (1997) *72 (quoting *Wainwright v. Witt*, 469 U.S. 412, 424(II), 105 S.Ct. 844, 83 L.Ed.2d 841 (1985) (citation omitted)). "This standard does not require that a juror's bias be proved with 'unmistakable clarity.' " *Id.* (citation omitted). Instead,

[t]he relevant inquiry on appeal is whether the trial court's finding that a prospective juror is disqualified is supported by the record as a whole. An appellate court ... must pay deference to the trial court's determination. This deference encompasses the trial court's resolution of any equivocations and conflicts in the prospective jurors' responses on voir dire. Whether to strike a juror for cause is within the discretion **328 of the trial court and the trial court's rulings are proper absent some manifest abuse of discretion.

Id. at 49 50, 485 S.E.2d 741 (citations omitted). "The same standard applies to a court's decision to qualify a prospective juror over defendant's objection." *Tollette v. State*, 280 Ga. 100, 102(3), 621 S.E.2d 742 (2005).

A review of the record shows that the responses of prospective jurors Weaver, Hudson, and O'Quinn regarding their ability to impose a death sentence were equivocal and contradictory. The trial court was authorized to find from the totality of their responses that they could not meaningfully consider all three sentencing options and, accordingly, that they would be substantially impaired in the performance of their duties as jurors in a capital case. See *Greene*, 268 Ga. at 50, 485 S.E.2d 741.

By contrast, a review of the voir dire transcript of prospective jurors McCollum, Goodbread, Buckley, Parker, Burkey, and Beckham shows that, while each of these jurors expressed a leaning toward the death penalty, they all stated that they would listen to and consider mitigating evidence and that they could give fair consideration to and vote for each of the three sentencing options. We therefore conclude that the trial court did not abuse its discretion by denying Humphreys's motions to disqualify these six prospective jurors. See *Tollette*, 280 Ga. at 102(3), 621 S.E.2d 742. See also *Pace v. State*, 271 Ga. 829, 834(7), 524 S.E.2d 490 (1999) (holding that a prospective juror is not subject to excusal for cause for merely leaning toward a death sentence).

Guilt/Innocence Phase Issues

[22] [23] [24] 6. Humphreys contends that, after a hearing pursuant to *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964), the trial court erred by failing to exclude his statement to police officers *73 made while he was in custody, because the State failed to show that he made a knowing and intelligent waiver of his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

In ruling on the admissibility of an in-custody statement, a trial court must determine whether, based upon the totality of the circumstances, a preponderance of the evidence demonstrates that the statement was made freely and voluntarily. Unless clearly erroneous, a trial court's findings as to factual determinations and credibility relating to the admissibility of the defendant's statement at a *Jackson v. Denno* hearing will be upheld on appeal.

Harvey v. State, 274 Ga. 350, 351 352(1), 554 S.E.2d 148 (2001) (citations and punctuation omitted).

The evidence at the *Jackson v. Denno* hearing showed the following. On November 9, 2003, Cobb County Detectives Herman and Sears arrived at the Waukesha County, Wisconsin, Sheriff's Department, where Humphreys had been in custody for 27 hours. Waukesha County officers checked Humphreys out of the jail and escorted him to the nearby investigations office for the interview, which began shortly after 3:00 p.m. and ended at approximately 4:45 p.m. Humphreys was handcuffed and shackled at the ankles when he arrived at the interview room. Before the interview began, however, the handcuffs were removed, and Humphreys was offered something to eat and drink and an opportunity to use the restroom.

Herman testified that he introduced himself and Sears to Humphreys as officers from Cobb County, explained that they had an arrest warrant from that county charging Humphreys with two counts of murder, and told him that the detective needed to advise him of his *Miranda* rights. Humphreys responded by stating that he was not going to sign anything, but he continued to talk about the case. Herman then stopped Humphreys and read the *Miranda* warnings to him from a card that the detective carried with him. Herman asked Humphreys whether he understood the rights that had just been explained and whether, having those rights in mind, he wished to talk to the detectives. Humphreys responded affirmatively to both questions and subsequently agreed to allow the interview to be audiotaped. Thus, Herman's advising Humphreys of the *Miranda* rights was not recorded on the audiotape. **329 However, Humphreys twice acknowledged near the beginning of the tape that he had previously been advised of and understood his rights.

At the time of the interview, Humphreys was 30 years old and had a high school degree and additional education, as well as prior experience as a criminal defendant. Herman testified that Humphreys's *74 general demeanor was "very sullen," explaining that "his shoulders were slumped" and "his head [was] hung." But Herman also testified that Humphreys appeared to be awake and alert, that he appeared to understand Herman's questions regarding his rights, that he did not appear to be under the influence of drugs or alcohol, and that he had no concerns about Humphreys's mental state. Herman further testified that Humphreys never indicated that he did not want to talk with the officers, that no promises or threats were made to Humphreys, and that both detectives were unarmed during the interview and did not touch Humphreys except to shake his hand at the end of the interview.

[25] A review of the taped statement shows that Humphreys told the detectives that he was on blood pressure medicine but that he did not abuse drugs or alcohol. It also supports Herman's testimony that, although Humphreys was not crying when the interview began, he "broke down" a couple of times during his statement. The fact that Humphreys became emotional during his statement is not sufficient to render it involuntary. See *Estes v. State*, 224 Ga. 687, 688(2), 164 S.E.2d 108 (1968).

[26] [27] Nor does Humphreys's refusal to sign a *Miranda* form render his statement involuntary and inadmissible. *Kelly v. State*, 250 Ga.App. 793, 794, 553 S.E.2d 175 (2001). See also *North Carolina v. Butler*, 441 U.S. 369, 373, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979) ("An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver."). It is certainly the better practice for law enforcement officers to record the reading of *Miranda* rights to a defendant and the subsequent waiver of those rights, particularly in a case such as this where the defendant refuses to sign a waiver form. Nevertheless, given the testimony of the detective who interviewed Humphreys and the audiotape of his statement submitted as evidence at the *Jackson Denno* hearing, we cannot say that the trial court erred in finding

that Humphreys was properly advised of his *Miranda* rights and that his statement was given voluntarily. The statement was, therefore, properly admitted at trial. See *Harvey*, 274 Ga. at 351–352(1), 554 S.E.2d 148.

[28] [29] 7. Humphreys argues that the trial court erred in denying his motion to suppress evidence seized as a result of the warrantless search of the vehicle he was driving at the time of his arrest. The evidence at the motion to suppress hearing showed that, after the Cobb County police determined that Humphreys had left his home on foot on the morning of November 7, 2003, they learned that he had rented a vehicle and departed the area. Subsequently, police arranged with the U.S. Marshals Service for the issuance of a *75 nationwide “Attempt to Locate” (ATL) lookout notice for Humphreys and his rental vehicle.

Officer Paul Schmitt of the Brookfield, Wisconsin, Police Department testified that he was on patrol when he received the lookout notice at 5:16 a.m. on November 8, 2003. The lookout was for a silver Jeep Grand Cherokee with a Budget rental car company license-applied-for or “paper” tag. It identified Humphreys by name as the driver of the Jeep, gave his date of birth, and described him as a white male, six feet three inches tall, 295 pounds, and bald. The lookout also stated that, according to the U.S. Marshals Service, Humphreys was a suspect in a double homicide in Georgia, was considered to be armed and dangerous, was possibly attempting to flee the country, was being tracked by his cellular telephone signal, and was last known to be near Schmitt’s vicinity traveling on Interstate 94.

Schmitt drove to Interstate 94 to observe the passing traffic, which was light because it was an early Saturday morning. At approximately 5:30 a.m., the officer observed a silver **330 Jeep Grand Cherokee with a paper tag pass his vehicle, and he began to follow it from a distance of four to five car lengths. Schmitt notified Waukesha County communications that he was following the suspect vehicle, and other officers were dispatched to assist him. A few minutes later, the officers activated their blue lights and sirens. In response, the Jeep rapidly accelerated, leading to a 35 minute high-speed chase before Humphreys’s vehicle finally crashed and he was apprehended.

Humphreys contends that the police officers’ initial attempt to stop his rental vehicle pursuant to the lookout was illegal because the officers relied solely on the description of the vehicle as the basis for the stop. Humphreys asserts he was therefore justified in accelerating his vehicle and attempting to flee from the officers and that all items seized subsequent to his arrest should have been suppressed.

[30] “A vehicle stop pursuant to a police lookout requires specific and articulable facts which, together with rational inferences drawn therefrom, reasonably warrant the intrusion.” *Brown v. State*, 278 Ga. 724, 727(2), 609 S.E.2d 312 (2004). At the time of the attempted stop of Humphreys’s vehicle, the police had a description of its make, model, color, and paper temporary rental vehicle tag. They knew that the vehicle was being tracked by a cellular telephone signal to the area and highway where it was first sighted. The light traffic during the early morning hours and the short time between the transmission of the lookout and Officer Schmitt’s spotting the vehicle made it even more likely that the vehicle he saw was in fact the vehicle described in the lookout. Accordingly, the trial court did not err in finding that the police had sufficient information to provide them *76 “with the requisite particularized basis to warrant the investigative stop.” *Thomason v. State*, 268 Ga. 298, 301(2)(a), 486 S.E.2d 861 (1997). The officers were not required to await the commission of a traffic offense in their presence before conducting an investigative stop. See *id.* at 301–302(2)(a), 486 S.E.2d 861.

[31] [32] It is undisputed that, when the police activated their lights and sirens, Humphreys accelerated and attempted to flee, traveling at up to 110 miles per hour, driving recklessly through residential areas, running stop signs, and swerving off the road. His vehicle came to a stop only after running over multiple sets of “stop sticks” set out by law enforcement and after the police rammed the vehicle in a “pit” maneuver, pushing it into a concrete edifice in a medical center parking lot. Humphreys’s commission of the offense of fleeing and attempting to elude police, during which he also violated numerous traffic laws, provided the officers with ample probable cause for his arrest. Moreover, once Humphreys was stopped, the information contained in the lookout also provided sufficient probable cause for the officers to detain him on the Cobb County charges. See *Burgeson v. State*, 267 Ga. 102, 105, 475 S.E.2d 580 (1996) (explaining that probable

cause for arrest “can rest upon the collective knowledge of the police when there is some degree of communication between them”). Thus, the trial court did not err in finding that Humphreys's arrest was lawful.

The trial court also concluded that, because Humphreys was a recent occupant of the Jeep at the time of his arrest, the search of the vehicle's contents was valid under *New York v. Belton*, 453 U.S. 454, 460, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981) (holding that when police have “made a lawful custodial arrest of the occupant of an automobile, [they] may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile”). Humphreys claims that the trial court's finding was erroneous in light of the subsequent decision of the United States Supreme Court in *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). In *Gant*, the Supreme Court significantly limited its decision in *Belton* by holding that police officers are authorized “to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search” or “when it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle,’ ” which will often not be the case when the arrest is **331 for traffic violations. *Id.* at , 129 S.Ct. at 1719 (citation omitted).

[33] [34] We need not determine whether the search of the Jeep after Humphreys's arrest was valid under *Gant*, however, because it is apparent that the evidence seized from the vehicle would have been discovered during the subsequent inventory of the vehicle and that it *77 was therefore admissible under the inevitable discovery rule. See *Mathis v. State*, 279 Ga. 100, 102(3)(a), 610 S.E.2d 62 (2005) (explaining that “[w]e will affirm a trial court's ruling if it is right for any reason”).

[35] The State presented uncontradicted testimony at the suppression hearing establishing that an inventory search of the Jeep was conducted in connection with its impoundment by the Waukesha County Sheriff's Office. “The state may inventory the contents of a car that has been lawfully impounded.” *Sams v. State*, 265 Ga. 534, 535(3), 459 S.E.2d 551 (1995). The test is whether, under the circumstances, the officer's conduct in impounding the vehicle was reasonable within the meaning of the Fourth Amendment. *Wright v. State*, 276 Ga. 454, 461(5), 579 S.E.2d 214 (2003).

Here, Humphreys was the sole occupant of an out-of-state rental vehicle in which he was suspected of attempting to flee the country, there was a lookout for him in connection with a double homicide in a state hundreds of miles away, and he had been arrested and taken into custody after an extended high-speed chase through multiple jurisdictions. The evidence at the hearing also showed that every one of the vehicle's tires had been damaged or destroyed during the pursuit, rendering the vehicle unsafe if not impossible to drive, and that it remained at the drive-through entrance to a medical facility, where the vehicle had jumped the curb and had come to rest with its right front wheel on the sidewalk. In short, the vehicle was clearly connected to Humphreys's arrest; it was a rental vehicle in which Humphreys had been the sole occupant; and it was unsafe to drive, illegally and dangerously parked, and a hazard to traffic. Under these circumstances, the inventory search and impoundment of the Jeep were entirely reasonable and the evidence seized during the search was properly admitted. See *Goodman v. State*, 255 Ga. 226, 229(13), 336 S.E.2d 757 (1985) (upholding search of a defendant's automobile where he had been arrested and his car impounded pursuant to a radio lookout); *Pierce v. State*, 194 Ga.App. 481, 481 482(1), 391 S.E.2d 3 (1990) (upholding inventory search where the defendant, who had been arrested for driving with a suspended license, was the sole occupant of an out-of-state rental vehicle).

Sentencing Phase Issues

[36] [37] 8. During the sentencing phase, the jury had deliberated for approximately eight hours over a period of two days when the jury foreperson sent the trial court a note stating:

We, the jury, have agreed on statutory aggravating circumstances on both counts, but not on the penalty. Currently we *78 agreed life imprisonment with parole is not an acceptable option. We

are currently unable to form a unanimous decision on death or life imprisonment without parole. Please advise.

The trial court informed the parties of the note, summarizing its contents as follows:

[The jurors have] indicated that they have reached a verdict in regard to some of the issues that have been submitted to them, but have not yet reached a decision on other issues that were submitted to them.

The court then informed counsel of its intention to instruct the jury to continue deliberations. The trial court later placed the note in the record.

(a) We find no merit to Humphreys's contention that, by its denial of defense counsel's request to disclose the contents of the note verbatim, the trial court deprived Humphreys of "a full opportunity to suggest an appropriate response." *Lowery v. State*, 282 Ga. 68, 76(6), 646 S.E.2d 67 (2007). The trial court's summary of the note enabled Humphreys's experienced defense counsel to infer that the jurors had agreed on at least one statutory aggravating circumstance but had not agreed as to the sentence; had the jury agreed on any other issue it was considering (the absence of a statutory aggravating circumstance **332 or the sentence), there would have been no need for further deliberations. Consequently, Humphreys was not meaningfully hindered in formulating a response. Furthermore, while Humphreys objected to the trial court's intention to instruct the jury to continue deliberations, he has not shown what different or further action he would have taken had the trial court read the note verbatim. See *Carson v. State*, 241 Ga. 622, 626(3), 247 S.E.2d 68 (1978) ("The burden is on the appellant to show harm as well as error.").

[38] [39] (b) We also find no merit to Humphreys's contention that, after receiving this note, the trial court erred in failing to discharge the jury and sentence him to life without the possibility of parole. See OCGA § 17 10 31.1(c) (requiring the trial court to impose either a sentence of life or life without parole where a death penalty sentencing jury has unanimously agreed on at least one statutory aggravating circumstance but is unable to reach a unanimous verdict as to sentence) (repealed by Ga. L. 2009, p. 223, § 6, effective April 29, 2009); *Hill v. State*, 250 Ga. 821, 821, 301 S.E.2d 269 (1983). Whether a jury is hopelessly deadlocked is a sensitive determination best made by the trial court that has observed the trial and the jury. It will *79 be reversed on appeal only for an abuse of that discretion. *Romine v. State*, 256 Ga. 521, 525(1)(b), 350 S.E.2d 446 (1986). Here, after a lengthy trial, the jury had been deliberating for less than nine hours, and the language twice used in the note that the jurors "currently" were not able to agree indicated that deliberations were ongoing. Under the circumstances, we cannot say that the trial court abused its discretion in requiring further deliberations.

9. After being instructed to continue, the jury deliberated for about three more hours. The jury foreperson then sent a note to the trial court requesting that the jurors be allowed to rehear Humphreys's taped statement to the detectives. After listening to the statement, the jurors resumed their deliberations. About two hours later, Humphreys moved for a mistrial. The trial court denied the motion, noting that there had been no indication from the jury that it was deadlocked.

After approximately two more hours, the trial court received a note from a juror asking to be removed from the jury "[d]ue to the hostile nature of one of the jurors." After reading the note to the parties, the trial court informed counsel that it intended to give the jury a modified *Allen* charge. See *Allen v. United States*, 164 U.S. 492, 501(9), 17 S.Ct. 154, 41 L.Ed. 528 (1896). Based on this last juror communication, Humphreys renewed his motion for mistrial, which again was denied.

After reading the juror's note to the jury without identifying from whom it came, the trial court gave a modified *Allen* charge.⁷ *80 **333 The jury resumed its deliberations at 8:40 p.m. and retired for the evening at 10:20 p.m. After deliberating for two hours the following morning, the jury returned death sentences for the two murders.

[40] (a) *Motions for mistrial*. Humphreys contends that the trial court erred in denying his requests that it find the jury deadlocked and his subsequent motions for a mistrial on that ground. Given the length of the trial in relation to the time the jury had been deliberating and the fact that the jurors had recently requested to rehear evidence, indicating that they were actively deliberating, the trial court did not abuse its discretion in denying Humphreys's motions. See *Sears v. State*, 270 Ga. 834, 837(1), 514 S.E.2d 426 (1999) (upholding a modified *Allen* charge given after the jury had been deliberating for nine hours and had twice informed the trial court that it was deadlocked).

[41] (b) *Allen charge*. While the trial court made a few inconsequential slips of the tongue and harmless additions, the *Allen* charge given in this case substantially followed the pattern charge. See Suggested Pattern Jury Instructions, Vol. II: Criminal Cases, § 1.70.70 (3d ed. 2005). Humphreys nevertheless contends that two portions of the trial court's *Allen* charge rendered it unduly coercive. There is no merit to Humphreys's argument that the trial court coerced the jury to reach a verdict by injecting its personal feelings into the deliberations, in charging that “[a] proper regard for the judgment of others will greatly aid us in forming our own judgment” (emphasis supplied). While unfortunately colloquial for such an important and often-used instruction, this passage, when read in context, clearly refers to the judgment of the jurors, not the trial court, and in any event it does not suggest what judgment, if any, the court had at the time. Compare *McMillan v. State*, 253 Ga. 520, 523(4), 322 S.E.2d 278 (1984) (requiring reversal where, after its *Allen* charge, the trial court stated, “I feel like there is enough evidence in this case for you to reach a verdict one way or the other”).

Humphreys also maintains that the instruction, “[i]t is the law that a unanimous verdict is required,” is an incorrect statement of the law in the sentencing phase of a death penalty case, because Georgia's death penalty statute provides that, if the jury considering the death penalty cannot reach unanimity as to which of the three *81 sentencing options to recommend, the trial court is required to dismiss the jury and to sentence the defendant to either life or life without parole. See OCGA § 17 10 31.1(c) (repealed by Ga. L. 2009, p. 223, § 6, effective April 29, 2009).

[42] [43] With regard to this issue, Humphreys submitted with his motion for new trial the affidavits of one juror and of two investigators who interviewed a second juror, which allege that the jury misunderstood the law. However, because the proposed affidavit of the juror does not fall within any exception to OCGA § 17 9 41 (providing that jurors' affidavits “may be taken to sustain but not to impeach their verdict”), the trial court correctly declined to consider it. See *Gardiner v. State*, 264 Ga. 329, 332(2), 444 S.E.2d 300 (1994) (holding that the limited exceptions to OCGA § 17 9 41 do not include jurors' misapprehension regarding the law). Likewise, the trial court did not err in disregarding the two investigators' affidavits, because “ ‘if a verdict may not be impeached by an affidavit of one or more of the jurors who found it, certainly it cannot be impeached by affidavits from third persons, establishing the utterance by a juror of remarks tending to impeach his verdict.’ ” *Washington v. State*, 285 Ga. 541, 544(3)(a)(iv), n. 11, 678 S.E.2d 900 (2009) (citation omitted).

[44] Our task is to determine whether the *Allen* charge in Humphreys's case, considered as a whole, was “so coercive as to cause a juror to ‘abandon an honest conviction for reasons other than those based upon the trial or the arguments of other jurors.’ ” **334 *Mayfield v. State*, 276 Ga. 324, 330, 578 S.E.2d 438 (2003) (citation omitted). Humphreys maintains that the instruction misled the jurors into believing that, if they were unable to reach a unanimous verdict, Humphreys would receive a life sentence or could even be released and that such a misunderstanding of the law coerced one or more jurors into abandoning their honest convictions in order to reach a unanimous verdict of death.

[45] [46] This Court has previously considered the same “a unanimous verdict is required” instruction given as part of an *Allen* charge in the sentencing phase of a death penalty trial. In *Legare v. State*, 250 Ga. 875, 302 S.E.2d 351 (1983), we stated that “it is true that any ‘verdict’ rendered [in the sentencing phase] must be unanimous and thus also true, stated in isolation, that it is ‘the law that a unanimous verdict is required.’ ” *Id.* at 876(1), 302 S.E.2d 351. As we later explained in a related context, in Georgia a unanimous verdict is required even in the sentencing phase of a capital case because under our death penalty law, “[w]here a jury is unable to agree on a verdict, that disagreement is not itself a verdict.”

Romine, 256 Ga. at 525(1), 350 S.E.2d 446(b). The jury's deadlock may lead to a sentence of life with or without parole imposed by the trial court, but it does not result either in a mistrial *82 subject to retrial (as in other contexts where a jury deadlocks) or an automatic verdict (as occurs under the death penalty law of other states). *Id.*⁸ Moreover, we have repeatedly held that a trial court is not required to instruct the jury in the sentencing phase of a death penalty trial about the consequences of a deadlock. See *Jenkins v. State*, 269 Ga. 282, 296(26), 498 S.E.2d 502 (1998).

[47] For these reasons, the “a unanimous verdict is required” instruction is technically a correct statement of the law even in the context of the sentencing phase of a death penalty trial. Nevertheless, because this charge may lead to claims of jury confusion that require detailed analysis of the full circumstances of the jury instructions given, the better practice is to omit this language from *Allen* charges given during the sentencing phase of death penalty trials. To the extent that *Legare*, 250 Ga. at 876(1), 302 S.E.2d 351, suggests that this instruction will always survive such review, it is overruled.

Turning to that broader review, we note that the complained-of charge was a small portion of the extensive *Allen* charge given. As we have emphasized before, that charge also

cautioned the jurors that the verdict was not to be the ... “mere acquiescence [of the jurors] in order to reach an agreement,” that any difference of opinion should cause the jurors to “scrutinize the evidence more [carefully and] closely” and that the aim was to keep the truth in view as it appeared from the evidence, considered in light of the court's instructions.

Mayfield, 276 Ga. at 330(2), 578 S.E.2d 438(b) (citation and punctuation omitted). In addition, following the publication of the verdicts, the jury was polled, and each of the jurors affirmed that the verdicts announced were the verdicts that he or she had reached and that each juror had reached those verdicts without any pressure from anyone during his or her deliberations. *Id.* In light of these circumstances and the full course of the jury's deliberations in this case, “[w]e conclude that, because the [a unanimous verdict is required] language constituted but one small portion of an otherwise balanced and fair *Allen* charge, it did not render the charge impermissibly coercive,” *Burchette v. State*, 278 Ga. 1, 3, 596 S.E.2d 162 (2004), and it does not require reversal of Humphreys's death sentences.

*83 Sentence Review

[48] [49] 10. The jury recommended a death sentence for Cindy Williams's murder based on the following five statutory aggravating **335 circumstances: the murder was committed while the defendant was engaged in the commission of kidnapping with bodily injury, a capital felony; the murder was committed while the defendant was engaged in the commission of armed robbery, a capital felony; the murder was committed for the purpose of receiving money or any other thing of monetary value; the murder was outrageously or wantonly vile, horrible, or inhuman in that it involved torture and an aggravated battery to the victim before death and involved the depravity of mind of the defendant; and the murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest. See *OCGA § 17 10 30(b)(2), (7), (10)*. The jury recommended a death sentence for Lori Brown's murder based on its finding of these same five statutory aggravating circumstances. This Court is required to review each statutory aggravating circumstance and to determine if it is supported by the evidence. See *OCGA § 17 10 35(c)(2)*. As part of this review, we conclude that the (b)(10) statutory aggravating circumstance found as to each victim is not supported by the evidence, although this conclusion does not affect the death sentences imposed.

OCGA § 17 10 30(b)(10) provides that the death penalty may be imposed where the evidence authorizes the jury to find beyond a reasonable doubt that “[t]he murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.” The State contended at trial that killing a witness to a crime is a means of avoiding, interfering with, or preventing lawful arrest and that the evidence

showed that, once Humphreys obtained the victims' ATM cards and PINs, he murdered the victims because he knew that he would be apprehended if he left them alive.

[50] The broad reading of the (b)(10) statutory aggravating circumstance that the State advocates would permit it to apply in almost any case in which a defendant is accused of committing a murder in close connection with another crime a very typical murder case. In all such cases, it could be said that the elimination of an eyewitness the murder victim would help the defendant avoid arrest, and argued that such a purpose may be inferred. While the language of the statute may be susceptible to that reading, such a broad construction would be inconsistent with the purpose of statutory aggravating circumstances, which is to provide a “meaningful basis for distinguishing the few cases in which (the death penalty) is imposed from the many cases in which it is not.” *84 *Furman v. Georgia*, 408 U.S. 238, 313, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (White, J., concurring). We do not doubt that killing a witness to a crime may be done, under certain circumstances, clearly for the purpose of avoiding, interfering with, or preventing lawful arrest. But the circumstances of this case do not establish such a clear purpose behind the murder of the two victims.

[51] We note that our cases to date have upheld the (b)(10) circumstance only where the evidence supported a finding that the defendant was, at the time of the murder, in immediate peril of being lawfully arrested, placed in custody, or confined in a place of lawful confinement by a law enforcement officer. See *Brannan v. State*, 275 Ga. 70, 70, 85(28), 561 S.E.2d 414 (2002) (finding sufficient evidence to support the (b)(10) circumstance where the defendant murdered a police officer who stopped him for speeding); *Holsey v. State*, 271 Ga. 856, 857, n. 1, 858(1), 524 S.E.2d 473 (1999) (finding sufficient evidence where the defendant fled after robbing a food store and then shot a police officer who was approaching his vehicle to arrest him); *Speed v. State*, 270 Ga. 688, 688, 690(1), 512 S.E.2d 896 (1999) (finding sufficient evidence where the defendant, a known drug dealer, shot an officer who had threatened to “catch him dirty” in the back of the head while the officer was frisking another suspect); *Henry v. State*, 269 Ga. 851, 851, 853(1), 507 S.E.2d 419 (1998) (finding sufficient evidence where the defendant murdered an officer to avoid a search of his bag, which he feared would reveal his pistol and lead to his arrest for being a felon in possession of a firearm); *Collier v. State*, 244 Ga. 553, 572, 261 S.E.2d 364 (1979) (finding sufficient evidence where the defendant **336 killed a police officer while fleeing a “pat down” after he committed a robbery), overruled on other grounds by *Thompson v. State*, 263 Ga. 23, 25(2), 426 S.E.2d 895 (1993); *Willis v. State*, 243 Ga. 185, 185, 191(17), 253 S.E.2d 70 (1979) (finding sufficient evidence where the defendant abducted and murdered an officer who attempted to arrest him and his companions after they committed an armed robbery). Compare *Stevens v. State*, 247 Ga. 698, 708 709(22), 278 S.E.2d 398 (1981) (reversing the jury's finding of the (b)(10) circumstance where the defendant killed a police officer who had stopped him for questioning but where the State “did not prove a technically lawful arrest of the offender”). While such cases fall clearly within the scope of the (b)(10) statutory aggravating circumstance, we reiterate that the Code section is not limited to that situation. We hold today only that the (b)(10) circumstance does not extend as far as the situation presented in this case, and therefore we must set aside the (b)(10) circumstances with respect to the murders of both victims here.

[52] We need not reverse Humphreys's death sentences, however, because they both remain supported by at least one valid statutory *85 aggravating circumstance. See *Colwell v. State*, 273 Ga. 634, 642(11)(d), 544 S.E.2d 120 (2001). Viewed in the light most favorable to the jury's verdict, we conclude that the evidence, as summarized in Division 1 above, was clearly sufficient to authorize a rational trier of fact to find beyond a reasonable doubt the existence of the remaining statutory aggravating circumstances as to each victim in this case. See *Jackson v. Virginia*, 443 U.S. at 319(III) (B), 99 S.Ct. 2781; OCGA § 17 10 35(c)(2).

11. Upon a review of the trial record, we conclude that Humphreys's death sentence was not imposed under the influence of passion, prejudice, or any other arbitrary factor. See OCGA § 17 10 35(c)(1).

[53] 12. In reviewing the proportionality of the death sentences in Humphreys's case as required by OCGA § 17 10 35(c) (3), we have considered “whether the death penalty is ‘excessive per se’ or if the death penalty is ‘only rarely imposed ... or substantially out of line’ for the type of crime involved and not whether there *ever* have been sentences less than

death imposed for similar crimes.” *Gissendaner v. State*, 272 Ga. 704, 717(19), 532 S.E.2d 677 (2000) (citations omitted; emphasis in original). The cases in the appendix support the imposition of the death penalty in this case in that all involved a deliberate murder committed for the purpose of receiving money or any other thing of monetary value or involved an armed robbery, kidnapping with bodily injury, the (b)(7) statutory aggravating circumstance, and/or evidence that the defendant murdered multiple persons. See [OCGA § 17 10 35\(e\)](#). Thus, the cases in the appendix show the willingness of juries in Georgia to impose the death penalty under such circumstances. We find that, considering the crimes and the defendant, the sentences of death in this case are not disproportionate punishment.

Judgment affirmed.

HUNSTEIN, C.J., BENHAM, THOMPSON, and MELTON, JJ., and Judge JOHN J. ELLINGTON concur.

CARLEY, P.J., concurs specially.

HINES, J., not participating.

APPENDIX.

O'Kelley v. State, 284 Ga. 758, 670 S.E.2d 388 (2008); *Rivera v. State*, 282 Ga. 355, 647 S.E.2d 70 (2007); *Lewis v. State*, 279 Ga. 756, 620 S.E.2d 778 (2005); *Perkinson v. State*, 279 Ga. 232, 610 S.E.2d 533 (2005); *Sealey v. State*, 277 Ga. 617, 593 S.E.2d 335 (2004); *Braley v. State*, 276 Ga. 47, 572 S.E.2d 583 (2002); *Terrell v. State*, 276 Ga. 34, 572 S.E.2d 595 (2002); *Arevalo v. State*, 275 Ga. 392, 567 S.E.2d 303 (2002); *Fults v. State*, 274 Ga. 82, 548 S.E.2d 315 (2001); *Butts v. State*, 273 Ga. 760, 546 S.E.2d 472 (2001); *Colwell v. State*, 273 Ga. 634, 544 S.E.2d 120 (2001); *86 *King v. State*, 273 Ga. 258, 539 S.E.2d 783 (2000); *Esposito v. State*, 273 Ga. 183, 538 S.E.2d 55 (2000); *Morrow v. State*, 272 Ga. 691, 532 S.E.2d 78 (2000); *Bishop v. State*, 268 Ga. 286, 486 S.E.2d 887 (1997); *Jones v. State*, 267 Ga. 592, 481 S.E.2d 821 (1997); **337 *McClain v. State*, 267 Ga. 378, 477 S.E.2d 814 (1996); *McMichen v. State*, 265 Ga. 598, 458 S.E.2d 833 (1995).

CARLEY, Presiding Justice, concurring specially.

I concur fully in the majority's affirmance of the convictions and death sentences. I also concur in the majority's opinion with the exception of Division 9(b), which I cannot join because I do not believe that there was any error whatsoever in the giving of the modified *Allen* charge. See *Allen v. United States*, 164 U.S. 492, 501(9), 17 S.Ct. 154, 41 L.Ed. 528 (1896). Therefore, I do not join in the overruling of *Legare v. State*, 250 Ga. 875, 302 S.E.2d 351 (1983) to any extent.

All Citations

287 Ga. 63, 694 S.E.2d 316, 10 FCDR 732

Footnotes

1 The crimes occurred on November 3, 2003. On February 12, 2004, a Cobb County grand jury indicted Humphreys on two counts each of malice murder, felony murder, aggravated assault, kidnapping with bodily injury, and armed robbery, and one count of possession of a firearm by a convicted felon. On the same date, the State filed written notice of its intent to seek the death penalty. Jury selection began on September 4, 2007. On September 26, 2007, Humphreys pleaded guilty to possession of a firearm by a convicted felon, following his convictions by the jury on all other counts of the indictment the previous day. The jury recommended death sentences for the malice murder convictions on September 30, 2007. The trial court imposed death sentences for the murders, and the felony murder convictions were vacated by operation of law. *Malcolm v. State*, 263 Ga. 369, 371 372(4), 434 S.E.2d 479 (1993). The trial court also imposed a consecutive life sentence for each count of kidnapping with bodily injury and armed robbery, concurrent 20 year sentences for each count of aggravated assault, and a concurrent five year sentence for possession of a firearm by a convicted felon. Humphreys filed a motion for new trial on October 10,

2007, which he amended on October 1, 2008, and which the trial court denied on February 19, 2009. Humphreys filed a notice of appeal on March 20, 2009, which he amended on March 23, 2009. The appeal was docketed in this Court on May 7, 2009, and was orally argued on September 21, 2009.

2 In its order denying Humphreys's motion for new trial, the trial court cited this Court's denial of the petition for interim review in this case, see [OCGA § 17 10 35.1](#); U.A.P. II(F) (H), as the basis for denying this claim, as well as some of Humphreys's other claims. We remind trial courts and parties in death penalty cases that the failure of this Court to grant interim review of any question that could be raised under the interim review procedure does not constitute an adjudication of that question. See [OCGA § 17 10 35.1\(h\)](#); U.A.P. II(H)(5). See also *Harper v. State*, 283 Ga. 102, 107(3), 657 S.E.2d 213 (2008) (declining to address on interim review an issue not set forth in this Court's order granting review and noting that the failure to do so did not “ ‘waive the right to posttrial review ’”).

3 The citation should have read simply “[OCGA § 15 12 1](#), as there was no subsection “1.0.

4 Apparently when the Uniform Rules were amended in 1994, the decimal point was omitted from the citation to OCGA § “15 12 1.0 in [Rule 1.2\(D\)](#). That was clearly a typographical error, as the remainder of [Rule 1.2\(D\)](#) remains the same as that portion of the original [Rule 1.2](#) and [OCGA § 15 12 10](#) concerns delinquent jurors and is obviously inapplicable.

5 The qualifications of grand jurors are set forth in [OCGA § 15 12 60](#), which similarly excludes as incompetent for service “ ‘any person who has been convicted of a felony and who has not been pardoned or had his or her civil rights restored. [OCGA § 15 12 60\(b\)\(2\)](#).”

6 We also note that a plea of nolo contendere “shall not be deemed a plea of guilty for the purpose of effecting any civil disqualification of the defendant to ... serve upon any jury. [OCGA § 17 7 95\(c\)](#).”

7 The trial court's charge was as follows, with the two specific portions challenged by Humphreys emphasized:

The Court deems it advisable at this time to give you some instruction in regard to the manner in which you should be conducting your deliberations in the case. You've been deliberating upon this case for a period of time. The Court deems it proper to advise you further in regard to the desirability of agreement, if possible.

The case has been exhaustively and carefully tried by both sides and has been submitted to you for decision and verdict, if possible, and not for disagreement. *It is the law that a unanimous verdict is required.*

While this verdict must be the conclusion of each juror independently, and not a mere acquiescence of the jurors in order to reach an agreement, it is nevertheless necessary for all the jurors to examine the issues and the questions submitted to them with candor and with fairness and with a proper regard for in sic] deference to the opinion of each other.

A proper regard for the judgment of others will greatly aid us in forming our own judgment. Each juror should listen with courtesy to the arguments of the other jurors with the disposition to be convinced by them.

If the members of the jury differ in their view of the evidence, the difference of opinion should cause them all to scrutinize the evidence more carefully and closely and to reexamine the grounds of their own opinion.

Your duty is to decide the issues that have been submitted to you if you can consciously sic] do so. In conferring, you should lay aside all mere pride of opinion and should bear in mind that the jury room is no place for hostility or taking up and maintaining in a spirit of controversy either side of the cause.

You should bear in mind at all times that, as jurors, you should not be advocates for either side of the case. You should keep in mind the truth as it appears from the evidence, examined in the light of the instructions that the Court has given to you.

You may, again, retire to the jury room for a reasonable time, examine your differences in a spirit of fairness and candor and courtesy, and try to arrive at a verdict if you can conscientiously do so. At this time, you may return to the jury room.

8 For this same reason, the Court in *Legare* held that the charge, “This case must be decided by some Jury, was error in the context of the sentencing phase of a death penalty case, because if the jury is deadlocked, there is no mistrial and new sentencing trial held before a new jury. See 250 Ga. at 876 877(1), 302 S.E.2d 351. The trial court in this case properly did not give that incorrect instruction.

Appendix E

J. C. Stephenson (Signature)
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

STATE OF GEORGIA)
)
v.)
)
STACEY IAN HUMPHREYS,)
)
Defendant.)
_____)

CRIMINAL ACTION FILE
NO. 04-9-0673-05

**ORDER: DEFENDANT'S
MOTION FOR NEW TRIAL**

ORDER

Defendant's Motion for New Trial and Amended Motion for New Trial having come before this Court for consideration, and the Court having heard argument and reviewed the record, finds the following:

Defendant's Motion for New Trial raises the following grounds: (1) verdict contrary to evidence and without evidence to support it; (2) verdict decidedly and strongly against the weight of the evidence; and (3) verdict contrary to law and the principles of equity and justice. Upon review of the record, the Court finds sufficient evidence to support the verdict and denies the Motion as to these grounds. The Amended Motion for New Trial claims error in ten additional grounds: (1) admission of Defendant's statements; (2) denial of motion to suppress stop and seizure of Defendant's vehicle; (3) improperly excusing prospective juror Pinkney; (4) allowing prosecutor to exercise peremptory strikes in a racially discriminatory manner; (5) allowing prosecutor's improper closing argument during penalty phase; (6) improperly qualifying prospective jurors Blocker, McCollum, Goodbread, Parker, Buckley, Burkey, and Beckam; (7) improperly excusing prospective jurors Weaver, Hudson, and O'Quinn; (8) certifying the Cobb County Grand Jury when

whites and Hispanics were underrepresented due to systematic exclusion; (9) allowing unauthorized excusals of grand jurors; and (10) instructing the jury during the penalty phase that it must reach a unanimous decision as to sentence.

At the hearing on the Motion, the State asked the Court to specifically inquire of Defendant whether he was waiving the issue of ineffective assistance of counsel, in that said ground was not raised in the motion. Defendant responded to the Court's inquiry by asserting the position that the issue could not be waived at this point, due to the assistance of trial counsel in the pending Motion for New Trial and potential appeal of Defendant's conviction. Defendant relied upon O.C.G.A. § 17-12-12(d) in support of his position: "The Georgia capital defender division or appointed counsel's defense of a defendant in a case in which the death penalty is sought shall include all proceedings in the trial court and any appeals to the Supreme Court of Georgia." The parties then proceeded to argue the Motion and Amended Motion.

The Court shall consider each of the grounds raised by Defendant seriatim:

Ground 1: Defendant's Statements

Inasmuch as this issue has been considered by the Supreme Court of Georgia upon the Petition for Interim Review, which was denied on April 24, 2007, Ground 1 of Defendant's Amended Motion for New Trial is denied.

Ground 2: Defendant's Stop, Search, and Seizure

Inasmuch as this issue has been considered by the Supreme Court of Georgia upon the Petition for Interim Review, which was denied on April 24, 2007, Ground 2 of Defendant's Amended Motion for New Trial is denied.

Ground 3: Improper Excusal of Prospective Juror Pinkney

Defendant argues that the Court improperly excused prospective juror Pinkney. The Court excused Pinkney for cause after being made aware that she was serving a probation sentence.¹ Defendant asserts that Pinkney was under a first offender sentence and therefore was not yet a convicted felon.

O.C.G.A. § 15-12-163(b)(5) provides that the seating of a juror who has been convicted of a felony may be objected to by either party. In Griffith v. State, 286 Ga. App. 859 (2007), the Court of Appeals considered the status of a prospective juror who had been convicted of a felony charge, but had completed probation and received first offender status. The court determined that the statute governing first offender treatment, O.C.G.A. § 42-8-62(a), provides that discharge will occur only after completion of the terms of probation, and at that point the defendant shall not be considered to have a criminal conviction. Id. at 862. Because the prospective juror in Griffith had completed his probation and received first offender status, he was entitled to discharge and his conviction was cleared from his record. Id.

In the instant case, prospective juror Pinkney was still serving her probated sentence and had not been discharged pursuant to O.C.G.A. § 42-8-62(a). Her status was still that of a convicted felon. Accordingly, the Court was within its discretion to strike Pinkney for cause, and Ground 3 of Defendant's Amended Motion for New Trial is denied. See Paige v. State, 281 Ga. 504, 505 (2007).

Ground 4: Prosecutor's Use of Peremptory Strikes in Racially Discriminatory Manner

Defendant does not point the Court to any particular strike as error; therefore, the Court

reviews the record as a whole.² To show a Batson violation, a defendant must make a *prima facie* case that the State purposefully used its peremptory strikes in a racially discriminatory manner. Garcia v. State, 290 Ga. App. 164, 167 (2008). The State can overcome any such presumption of racial discrimination by articulating a reason that is concrete, tangible, race-neutral, and neutrally applied. Id. The Court finds from the record that the State was able to articulate a racially neutral reason for each of the strikes to which Defendant objected. Accordingly, Ground 4 of the Motion is denied.

Ground 5: Prosecution's Closing Argument

Prior to closing argument in the sentencing phase, the Court advised defense counsel that the Unified Appeal provides that objections not raised during closing argument are waived, unless permission has been obtained from the Court to reserve objections until the conclusion of the argument.³ Defense counsel did request permission to reserve objections, which was granted by the Court. The Court also advised counsel that if a problem arose during argument, the Court would expect the defense to object. No objections were made during the State's argument. During Defendant's argument, defense counsel took the opportunity to comment on and argue against several statements made by the prosecution. Following closing arguments, Defendant made a number of objections.

In his Amended Motion for New Trial, Defendant submits that the State's argument was improper, misleading, and prejudicial. "[A]t the sentencing phase of a death penalty case, a jury is entitled to consider issues broader than a defendant's guilt or innocence, and a prosecutor must

¹ Death Penalty Proceedings, Vol. 6 of 21, pp. 263-267; Vol 7 of 21, pp. 5-9.

² Death Penalty Proceedings, Vol. 12 of 21, pp. 40-48.

therefore be entitled to present argument on these broader issues.” Walker v. State, 254 Ga. 149, 158 (1985). Reversal of Defendant’s sentence would only be warranted if the statements made by the prosecution both were improper and in reasonable probability changed the sentencing verdict. Walker v. State, 282 Ga. 774, 780 (2007). This issue was submitted on the record. The Court has reviewed the prosecution’s closing argument, as well as Defendant’s closing argument, and finds that the State’s closing argument was proper and within the limits of Georgia law.

Grounds 6 and 7: Qualification/Disqualification of Certain Prospective Jurors

Defendant contends that the Court qualified prospective jurors who indicated that they could not consider all three sentencing options. Defendant also contends that some prospective jurors were disqualified in error. During *voir dire*, the Court explained to each prospective juror the nature of a bifurcated trial and the three possible sentencing options: death penalty, life imprisonment without the possibility of parole, and life imprisonment with the possibility of parole. Each prospective juror was then asked whether he or she could consider each of the sentencing options. Counsel for the State and the defense were then permitted to question each prospective juror at length.

Counsel for both parties explained to the prospective jurors that people’s views on capital punishment tend to fall into four categories. The first category consists of those who would vote to impose the death penalty whenever the guilt/innocence phase resulted in a finding of guilt. The second category consists of those who are conscientiously opposed to the death penalty. The third category consists of those who could consider the death penalty and life imprisonment

³ Transcript of Trial Sentencing Phase, Vol. Three of Three, beginning p. 360.

without the possibility of parole, but could not consider life imprisonment with the possibility of parole. The fourth category consists of those who could consider all three sentencing options.

Based upon the responses to the questions asked of them, Defendant challenges the qualification of prospective jurors Blocker, McCollum, Goodbread, Parker, Buckley, Burkey, and Beckam. Defendant challenges the disqualification of prospective jurors Weaver, Hudson, and O'Quinn. The standard to be used in disqualification of a prospective juror based upon his views of the death penalty is whether the juror's views would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." O'Kelley v. State, 284 Ga. 758, 761 (2008) (citing Nance v. State, 272 Ga. 217, 222 (2000)). A juror may be disqualified for cause if it can be established that his opinion "was so fixed and definite that it would not be changed by the evidence or the charge of the court upon the evidence." Brown v. State, 268 Ga. App. 629, 634 (2004). If a juror states that he can lay aside his opinion and render a verdict based only upon on the evidence presented in court, that is sufficient to remove the disqualification. Id.

(a) Prospective Juror Blocker.⁴ Throughout *voir dire*, Mr. Blocker repeatedly stated that he would be able to consider and vote for all three options, and would have to wait until he heard all evidence before he made up his mind. When asked if he could keep his mind open at the end of the guilt/innocence trial and wait to consider all of the options until he had heard all of the evidence, he responded that he thought he could. The Court noted that Mr. Blocker's responses fluctuated on the issue of life with the possibility of parole, but that by the end of the

⁴ Death Penalty Proceedings, Vol. 6 of 21, beginning p. 28.

questioning he strongly believed that he could consider all three sentencing options. The Court then found that Mr. Blocker was qualified.

(b) Prospective Juror McCollum.⁵ Mr. McCullum told the Court that he could consider all three options. He then stated that he thought he might be in the first category. Mr. McCollum was questioned extensively by the defense. When asked if he was predisposed to voting for the death penalty upon a finding of guilt, he answered that it would depend upon all of the evidence he heard. He acknowledged that it would be difficult for him to vote for a sentence of life imprisonment with the possibility of parole, but that if the other jurors could convince him that it was the right thing to do he could vote for it. The Court found that his responses overall indicated that he would be able to consider all three options and qualified Mr. McCollum.

(c) Prospective Juror Goodbread.⁶ Mr. Goodbread told the Court that he could consider all three options. He initially told the defense that he would be in the third category, but repeatedly stated that he could consider all three options, including life imprisonment with the possibility of parole. The defense asked that he be excused in an abundance of caution, but the Court found that Mr. Goodbread had expressed the opinion that he could consider all possible sentences and could vote for any of the possible sentences, and was therefore qualified.

(d) Prospective Juror Parker.⁷ Ms. Parker told the Court that she could consider all three options. When questioned by the State, she originally placed herself in the third category and was not sure that she could consider life imprisonment with the possibility of parole. After being questioned by the defense, Ms. Parker decided that she could definitely consider all three

⁵ Death Penalty Proceedings, Vol. 7 of 21, beginning p. 201.

⁶ Death Penalty Proceedings, Vol. 8 of 21, beginning p. 55.

options. The Court then qualified Ms. Parker, after observing that Ms. Parker's opinions had become more discernible throughout the questioning and finding that Ms. Parker had indicated that she could consider all sentencing options before making a decision.

(e) Prospective Juror Buckley.⁸ Ms. Buckley was questioned extensively by both sides and originally placed herself in the third category. As she was being questioned, her opinion changed and she placed herself in the fourth category. The Court asked Ms. Buckley to assume that a guilty verdict had been reached and that the evidence had been presented in the sentencing phase of the trial. When asked if she could consider that evidence with an open mind with regard to the three sentencing options, Ms. Buckley answered affirmatively. The Court noted her hesitation in answering that she could consider the sentence of life with the possibility of parole, and asked her again if her final opinion was that she could consider all of the options. Based upon her responses to questioning by counsel and by the Court, Ms. Buckley was qualified.

(f) Prospective Juror Burkey.⁹ Mr. Burkey told the Court that he could vote for any of the three sentencing options. He placed himself in the fourth category. The defense expressed concern because Mr. Burkey indicated that he would favor the death penalty if he found a person to be 100 percent guilty, but acknowledged that it was not clear what, in Mr. Burkey's opinion, that standard meant in comparison to the reasonable doubt standard. The Court found that Mr. Burkey was able to clarify his opinion during the course of the questioning, and that he was

⁷ Death Penalty Proceedings, Vol. 9 of 21, beginning p. 55.

⁸ Death Penalty Proceedings, Vol. 9 of 21, beginning p. 129.

⁹ Death Penalty Proceedings, Vol. 11 of 21, beginning p. 67.

qualified because his opinion was that he would want to hear all of the evidence before making a decision and would consider all of the sentencing possibilities.

(g) Prospective Juror Beckam.¹⁰ Mr. Beckam told the Court that he could consider all three options. In response to questioning, Mr. Beckam stated his opinion that no one had the right to take a life without forfeiting their own life and indicated that his decision would be influenced if he believed that the accused had committed a cold-blooded, premeditated murder. He believed that he could be in the first category ("eye for an eye"), but he also believed that he could be in the fourth category. He repeatedly stated that it would depend upon the evidence presented and that he would consider all of the evidence. Based upon his responses as a whole, the Court found that he was qualified.

(h) Prospective Juror Weaver.¹¹ Ms. Weaver told the Court that she was opposed to the death penalty. She placed herself in the third category and stated that she would not be able to consider life with the possibility of parole. In response to questioning, she stated that she could possibly consider the death penalty for something outrageous. After considerable rehabilitation by the defense, she stated that she could consider life with the possibility of parole. She then told the State that she was totally against the death penalty, and told the Court that she was always inclined to give life without the possibility of parole. In disqualifying Ms. Weaver, the Court considered her responses to the questions asked of her as a whole and found that she would not be able to consider all three sentencing options.

¹⁰ Death Penalty Proceedings, Vol. 11 of 21, beginning p. 297.

¹¹ Death Penalty Proceedings, Vol. 3 of 21, beginning p. 148.

(i) Prospective Juror Hudson.¹² Ms. Hudson originally told the Court that she could consider all three options, but her hesitation about answering questions about the death penalty was noted by both sides. She told the State that she did not believe in the death penalty, and told the defense that she did not think that she could consider the death penalty. The Court considered all of her responses and her overall demeanor and concluded that Ms. Hudson was opposed to the death penalty and would not be able to impose it.

(j) Prospective Juror O'Quinn.¹³ Ms. O'Quinn told the Court that she would have a hard time sentencing anyone to the death penalty. When asked by the State if she could actually vote to impose the death penalty, she answered that she was not sure if she could. She expressed that her religious beliefs partially formed the basis of her opinion. The Court considered her body language, expression of religious beliefs, and inability to say definitively that she could vote for the death penalty in determining that Ms. O'Quinn should be disqualified.

After review of the record, the Court finds that the views on capital punishment expressed by prospective jurors Blocker, McCollum, Goodbread, Parker, Buckley, Burkey, and Beckam did not impair their ability to perform their duties as a juror in accordance with the Court's instructions and the jurors' oath. The Court further finds that the views on capital punishment expressed by prospective jurors Weaver, Hudson, and O'Quinn did substantially impair their ability to perform their duties as a juror in accordance with the Court's instructions and the jurors' oath. Accordingly, Grounds 6 and 7 of Defendant's Amended Motion are denied.

¹² Death Penalty Proceedings, Vol. 5 of 21, beginning p. 170.

¹³ Death Penalty Proceedings, Vol. 10 of 21, beginning p. 197.

Ground 8: Certification of Grand Jury

Inasmuch as this issue has been considered by the Supreme Court of Georgia upon the Petition for Interim Review, which was denied on April 24, 2007, Ground 8 of Defendant's Amended Motion for New Trial is denied.

Ground 9: Excusal of Grand Jurors

Inasmuch as this issue has been considered by the Supreme Court of Georgia upon the Petition for Interim Review, which was denied on April 24, 2007, Ground 9 of Defendant's Amended Motion for New Trial is denied.

Ground 10: The Court's Instructions to the Jury

Defendant submits as error the Court's instruction to the jury during the penalty phase with regard to the necessity of a unanimous decision. Although the defense submits that the jury was deadlocked, the record does not support this conclusion. The jury sent out the following note:

We, the jury, have agreed on statutory aggravating circumstances on both counts, but not on the penalty. Currently we agreed life imprisonment with parole is not an acceptable option. We are currently unable to form a unanimous decision on death or life imprisonment without parole. Please advise.¹⁴

Counsel was called to court and informed of the substance of the note.¹⁵ Counsel was told that the Court would instruct the jury that they were to continue with deliberations. Defense counsel argued that further deliberation would be improper if the jury had indicated that they were at an impasse, and the Court advised counsel that the jury had not indicated that they were at an

¹⁴ Juror Notes to Death Penalty Proceedings, unnumbered, dated 9/29 @ 10:53.

¹⁵ Transcript of Trial Sentencing Phase, Vol. Three of Three, beginning p. 443.

impasse. After instructing the jury to continue with deliberations, the Court informed counsel that the Court would consider an Allen charge if it became necessary.

Later that day, Defendant moved for mistrial on the basis that the jury was deadlocked.¹⁶ The Court denied the motion. Approximately two hours later, an additional note was delivered to the Court in which a juror was asking to be removed from the jury due to the hostile nature of one of the other jurors.¹⁷ The Court advised counsel that it would be giving a modified Allen charge in order to guide the jury in the manner in which they should carry on their deliberations.

Within the Allen charge, the Court gave the following instruction:

The Court deems it proper to advise you further in regard to the desirability of agreement, if possible. The case has been exhaustively and carefully tried by both sides and has been submitted to you for decision and verdict, if possible, and not for disagreement. It is the law that a unanimous verdict is required. . . . You may, again, retire to the jury room for a reasonable time, examine your differences in a spirit of fairness and candor and courtesy, and try to arrive at a verdict if you can conscientiously do so.¹⁸

Shortly thereafter, the Court recessed until the next morning. The jury returned in the morning and deliberated approximately two hours before returning its verdict.

Defendant argues that the jury erroneously believed that they were required to reach a unanimous verdict or that Defendant would be eligible for release on parole. Defendant submits the affidavit of Juror Darrell Parker in support of his argument, as well as the affidavits of Sara Forte and Kimbert Frye, investigators for Defendant, regarding their interview of Juror Linda Chancey.

¹⁶ Transcript of Trial Sentencing Phase, Vol. Three of Three, beginning p. 450.

¹⁷ Transcript of Trial Sentencing Phase, Vol. Three of Three, p. 457.

¹⁸ Transcript of Trial Sentencing Phase, Vol. Three of Three, p. 459-61.

“Affidavits of jurors may be taken to sustain but not to impeach their verdict.” O.C.G.A. § 17-9-41. Exceptions to the rule are allowed “where extrajudicial and prejudicial information has been brought to the jury’s attention improperly, or where non-jurors have interfered with the jury’s deliberations.” Gardiner v. State, 264 Ga. 329, 332 (1994).

What goes on in the jury room is a complicated weighing process, in which the final unanimous verdict is merely the resultant of numerous competing forces. . . . The purpose of the statute is plainly to prohibit after-the-fact picking at the negotiating positions of the jurors and of their attempts to persuade one another.

Aguilar v. State, 240 Ga. 830, 832 (1978).

The affidavits put forth by Defendant do not offer any evidence of extrajudicial prejudicial information that was improperly brought to the jury’s attention, nor do they allege that any non-juror interference occurred. As such, the affidavits do not fall within any exception to the statutory prohibition against “after-the-fact picking” at the jury’s deliberations.


Regarding Defendant’s contention that the Court erred by instructing the jury that a unanimous verdict was required, the Court looks to the decision of the Supreme Court of Georgia in Walker v. State, 281 Ga. 157, 165 (2006). In Walker, the defendant contended that the trial court committed error in the sentencing phase by charging, “Your verdict as to penalty must be unanimous,” and by directing the jury to continue deliberating after the jury told the trial court that they could not reach a unanimous verdict. The Supreme Court held that the defendant’s argument was without merit, inasmuch as Georgia law expects a jury to consider all evidence and attempt to reach unanimity on the issue of sentence, and if possible to unanimously recommend a sentence. Id. See also Wilder v. State, 280 Ga. 675 (2006); Cargill v. State, 255 Ga. 616, 647 (1986), *overruled on other grounds*, Manzano v. State, 282 Ga. 557 (2007).

Defendant also argues that the Court improperly withheld the note from counsel and did not inform counsel that the jurors had stated that they were deadlocked. As discussed above, the jurors did not at any point indicate that they were deadlocked. Additionally, appellate decisions hold only that the Court should provide counsel with the material contents of a deliberating jury's communication. See Youmans v. State, 270 Ga. App. 832, 832 (2004)(upheld where trial court read material contents of note in open court). For the reasons stated above, Ground 10 of Defendant's Amended Motion for New Trial is denied.

JUDGMENT

Accordingly, after consideration of all grounds raised, IT IS HEREBY ORDERED AND ADJUDGED that Defendant's Motion is **DENIED** and **OVERRULED** on each and every ground thereof.

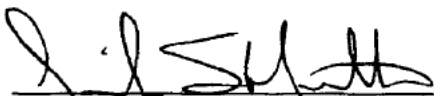
SO ORDERED this 19th day of February, 2009.


Dorothy A. Robinson
Judge, Superior Court
Cobb Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that I have this day served the parties in the foregoing matter with a copy of the attached **ORDER ON MOTION FOR NEW TRIAL** by depositing in the United States mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 19th day of February, 2009.


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Appendix F

BEFORE THE SUPERIOR COURT OF BUTTS COUNTY

STATE OF GEORGIA

STACEY IAN HUMPHREYS,

Petitioner,

v.

CARL HUMPHREY, Warden,
Georgia Diagnostic and
Classification Prison,

Respondent.

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CIVIL ACTION FILE NO. 11-V-160

**EVIDENTIARY HABEAS CORPUS HEARING
VOLUME 1 (Pages 1 - 231)**

Heard before the Honorable Robert L. Russell III
at the Georgia Diagnostic and Classification Prison,

Jackson, Butts County, Georgia,

February 25 through February 28, 2013

W. Stephen Walker, CCR
Official Court Reporter, Atlantic Judicial Circuit
P.O. Box 785, Brunswick, Georgia 31521

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INDEX

I.	Preliminaries	21
II.	Petitioner's Evidence:	
	1. Stacey Ian Humphreys:	
	Direct Examination by Mr. Dantzler	27
	Cross-Examination by Ms. Schiefer	38
	2. Jimmy Berry:	
	Direct Examination by Mr. Dantzler	40
	Cross-Examination by Ms. Schiefer	174
	3. Susan Barber:	
	Direct Examination by Ms. Klein	165
	Cross-Examination by Ms. Schiefer	174
	Redirect Examination by Ms. Klein	179
	Recross-Examination by Ms. Schiefer	180
	4. Thomas Jones:	
	Direct Examination by Ms. Klein	184
	Cross-Examination by Ms. Schiefer	190
	5. Kelly Gosselin:	
	Direct Examination by Mr. Hutchins	191
	Cross-Examination by Ms. Schiefer	208
	6. Michael Boudreau:	
	Direct Examination by Mr. Hutchins	214
	Cross-Examination by Ms. Schiefer	226
	7. Deborah Czuba:	
	Direct Examination by Mr. Dantzler	234
	Cross-Examination by Ms. Schiefer	294
	Redirect Examination by Mr. Dantzler	407
	8. Brenda Dragoone:	
	Direct Examination by Mr. Dantzler	418
	Cross-Examination by Ms. Schiefer	426
	9. Kelly Kory Nagel:	
	Direct Examination by Ms. Klein	432
	Cross-Examination by Ms. Schiefer	440
	Redirect Examination by Ms. Klein	445

INDEX

Petitioner's Evidence (continued from previous page):

10.	Roger Jones:	
	Direct Examination by Ms. Klein	446
	Cross-Examination by Ms. Schiefer	461
11.	Dr. Victoria Reynolds:	
	Direct Examination by Mr. Hutchins	463
	Direct Examination by Mr. Hutchins (Cont. 2/27)	505
	Cross-Examination by Ms. Schiefer	556
	Redirect Examination by Mr. Hutchins	611
	Recross-Examination by Ms. Schiefer	618
	Further Redirect Examination by Mr. Hutchins	625
12.	Dayna Lee:	
	Direct Examination by Ms. Klein	627
13.	Dr. Julie Rand Dorney:	
	Direct Examination by Mr. Hutchins	662
	Cross-Examination by Ms. Schiefer	706
	Redirect Examination by Mr. Hutchins	721
	Recross-Examination by Ms. Schiefer	723
	Further Redirect Examination by Mr. Hutchins	727
13.	Dr. Bhushan Agharkar:	
	Direct Examination by Mr. Hutchins	732
	Cross-Examination by Ms. Schiefer	761
	Redirect Examination by Mr. Hutchins	772
	Recross-Examination by Ms. Schiefer	773
III.	Respondent's Evidence:	
	1. Laura Switzer:	
	Direct Examination by Ms. Schiefer	779
	Cross-Examination by Mr. Dantzler	829
	Redirect Examination by Ms. Schiefer	856
	Recross-Examination by Mr. Dantzler	858
	2. Teri Thompson:	
	Direct Examination by Ms. Schiefer	859
	Cross-Examination by Mr. Dantzler	896
IV.	CERTIFICATES OF REPORTER	231, 502, 777, 910

1 by other members of the jury was found inadmissible.

2 There are numerous other Georgia Supreme Court cases,
3 all that have ruled that this type of testimony is simply
4 not admissible. It's being used solely for the purpose of
5 impeachment of the jury.

6 THE COURT: I am going to deny the motion in limine
7 and allow Ms. Barber to testify.

8 Proceed, Ms. Klein.

9 MS. KLEIN: Thank you, Your Honor.

10 **SUSAN BARBER**

11 having been duly sworn, was examined, and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MS. KLEIN:

15 Q Can you please state your name and spell it for the
16 record?

17 A Susan Barber, S-U-S-A-N B-A-R-B-E-R.

18 Q And were you a juror in the 2000 murder trial of
19 Stacey Humphreys?

20 A Yes, I was.

21 (Discussion off the record.)

22 Q Sorry, 2007?

23 A Yes.

24 Q And were you selected as the foreperson?

25 A Yes.

1 Q I have placed in front of you Petitioner's Exhibit
2 131. If you could please flip to Exhibit A.

3 A Yes.

4 Q And is that a note that you wrote, Ms. Barber?

5 A Yes, yes.

6 Q Okay. And do you remember at what point during the
7 sentencing deliberations that you wrote this note?

8 A The morning -- the second morning, Saturday.

9 Q Okay. And can you tell me the circumstances around
10 why you wrote this note?

11 A Basically we could not come up with a unanimous
12 decision, and it was our thought that we had to have a unanimous
13 decision in order to finish with the sentencing portion.

14 Q And I would like to look at Exhibit B real quick.

15 A Yes.

16 Q And it looks like an edited version of --

17 A Yes.

18 Q -- what's in Exhibit A. Can you explain to me what
19 that is?

20 A Yes, we -- this was -- when we could not come up with
21 a mandatory -- unanimous decision, we kind of got together
22 collaboratively as a group and decided we would ask for some
23 help or direction or what we needed to do next with the Judge,
24 so we drafted this note for the Judge, and then it was after
25 that further edited.

1 Q Okay. On the note that you wrote --
2 A Yes.
3 Q So, from my understanding, some of the handwriting on
4 this edited version is not your handwriting; --
5 A Correct.
6 Q -- is that right?
7 A Correct.
8 Q So can you explain to the Court why some of this is
9 not your handwriting?
10 A Because, we did it collaboratively and the person --
11 the other person's writing, they must have, when we brought it
12 around, felt that they needed to correct it or edit it or use a
13 different -- different word.
14 Q Okay. In looking at Exhibit B of your affidavit, what
15 words on here are words that you did not initially write?
16 A Currently, currently, and form.
17 Q Currently -- the first currently, --
18 A Yes.
19 Q -- the second currently, and --
20 A And form.
21 Q -- form? Now, did the jury all agree to those words?
22 A Yes. That's my recollection.
23 Q Okay. And prior to this do you remember what the
24 split was on the jury before you sent out this note saying that
25 you couldn't reach a unanimous decision?

1 A Originally the split, as I remember it, was nine to
2 three. At this point it was probably ten-two.

3 Q Okay. When you say originally nine to three, how many
4 people were --

5 A Oh, I'm sorry, nine for the death, three for life
6 without parole. At one point - and I can't remember which part
7 of the day; it's been a while - there was a time where it was
8 eleven-one the opposite, 11 for life without parole and one for
9 the death. So I'm -- again, I can't remember the timeframes.

10 Q Okay.

11 A But there was -- there were changes basically.

12 Q And the one juror that was -- that was -- that
13 continued to stay with the death penalty, can you talk briefly
14 about your experiences with that juror?

15 A Yes. She was very much not a part of the jury social
16 life, I guess. She was very standoffish. She was very vocal at
17 times. But then towards the end she would shut right down and
18 she would have little -- there was very little that she would
19 talk to us about why she felt her verdict was necessary, what
20 her feelings were, and she was oftentimes confrontational.

21 Q Do you remember the name of that juror?

22 A Yes, Linda -- well, we -- she was called L.A., L.A.
23 Chancey.

24 Q And did you have -- was she one of the people that
25 ever switched her vote?

1 A No, she never switched her vote.

2 Q And did you --

3 A Nor would she really discuss much about her vote.

4 Q After you sent ultimately which was Exhibit A to the
5 Judge, --

6 A Yes.

7 Q -- do you remember what happened?

8 A We were instructed by the Judge to -- we went out to
9 the jury room and were instructed by the Judge that we needed to
10 just continue and come up with a unanimous decision. That's my
11 recollection.

12 Q If you could look at Exhibit C.

13 A Yes.

14 Q Is that your handwriting, Ms. Barber?

15 A Yes.

16 Q And do you remember when you sent this note to the
17 Judge?

18 A Yeah, later that evening, 7:52. That's about right.

19 Q Do you know why you sent this note to the Judge?

20 A Yes, because at this point I felt that the jury had
21 stopped -- we had stopped really discussing the Humphreys trial
22 and suddenly there had been a change and a switch where there
23 was attack on me that I would not move forward.

24 Many of the people had things going on at home or at
25 work and they did not want to be at the trial any longer. And

1 it was just very -- and one in particular was kind of -- I -- I
2 wouldn't call it the leader, but she was at the -- at the point
3 of not being willing to discuss or talk about anything at that
4 point.

5 And I just felt that the trial part was over; they
6 didn't want to discuss that; they wanted to discuss going home;
7 and for me to do whatever was needed, as the foreman, to
8 accomplish that goal.

9 Q And so when you sent this note were you called back to
10 talk to the Judge?

11 A The group was, yes.

12 Q The entire jury was?

13 A Yes.

14 Q And do you remember what the Judge told you at that
15 point?

16 A I think it was pretty much the same situation where
17 you needed to go back and try to form a verdict, a unanimous
18 verdict.

19 Q And when the Judge instructed you that you had to have
20 a unanimous verdict, what did you think that meant?

21 A Everybody had to agree on the same -- on the same
22 sentence.

23 Q And what did you think would happen if you couldn't
24 reach a unanimous verdict?

25 A Well, that was -- there was discussions about that.

1 We didn't know. We thought there was a chance that he would be
2 -- could even be let free, that the -- that the trial would have
3 been stopped and they said he'll get whatever, or that he would
4 be allowed to have parole or -- we really didn't have any idea.

5 It was kind of wild at that time. It was at the point
6 where, I think, people weren't thinking very straight. We had
7 been sequestered -- I think that was the end of the second week
8 and --

9 Q And after --

10 A But --

11 Q -- you got that instruction --

12 A Uh-huh (affirmative).

13 Q -- from the Judge, the jury went back to deliberate?

14 A Yes.

15 Q And what happened that night?

16 A Again the hostilities continued. There was little
17 discussion - as I remember, I don't really remember any about
18 the trial, per se - about the needs of people needing to go home
19 and their family lives and on and on.

20 I was extremely distraught. And we left -- that was
21 the night we -- we got no supper. We had no supper. I think we
22 had -- I don't know what we did, but I noted it. We went back
23 to the -- late back to the hotel and -- and we were supposed to
24 come back the next day, which we did.

25 Q And the next day what happened?

1 A Well, I had that night tried to come up again with
2 reasons I felt the way I felt, and I --

3 Q And, just for the record, what was the way you felt?

4 A I felt he needed -- I wanted life without parole.

5 Q Okay.

6 A And I had a list. I again had my list of things and
7 tried to think about different ways of going about talking to
8 people about why I felt the way I felt and I presented it first
9 thing in the morning.

10 A And again the personal attacks came to me, and the
11 trial was like not even -- I don't even remember it being
12 discussed. Again it was just a matter of why I couldn't -- why
13 I couldn't move forward and get the trial over with.

14 A There was one other person, by the way, who -- who was
15 still -- it was still two of us, but she pretty much told me
16 that she would do whatever I -- I did.

17 Q And so, if I'm understanding correctly, you said there
18 were two of you --

19 A Uh-huh (affirmative).

20 Q -- that were --

21 A For life without parole.

22 Q And then one in particular that was --

23 A For the death penalty.

24 Q And the other jurors?

25 A For the -- they were saying they were for the death

1 penalty at that point.

2 Q At that point?

3 A Yeah.

4 Q And did the Judge's instruction that the jury had to
5 be unanimous -- did that impact your vote?

6 A Yes, it made all the difference in the world because
7 at this time I -- as the foreman I had great feelings of
8 responsibility and accountability and I did not see how sitting
9 in the rooms for that day, two weeks, two months, anybody who is
10 going to do anything different, because the one person who was
11 not going to change was not going to change, and these other
12 people have kind of crumbled into I just need to get home, I
13 can't stay at this trial any longer. And they looked to me more
14 than anybody to do something about that.

15 Q And at the time the jury returned a death verdict --

16 A Uh-huh (affirmative).

17 Q -- for Mr. Humphreys, did you believe that was the
18 appropriate punishment?

19 A No.

20 Q So help me understand why you changed your vote.

21 A Because of the responsibility I felt as a foreman and
22 needing to move forward, I didn't know what else to do. I
23 felt --

24 Q And by -- I'm sorry. And by "move forward" you mean
25 be unanimous?

1 A Well, get the trial over with basically. And to me
2 that only meant I had -- we had to have a unanimous decision. I
3 had thought I had asked all I could ask. I wasn't get any
4 answers. So I thought that that was the reality of life, a
5 unanimous decision.

6 Q Okay. And I have in front of you your affidavit.

7 A Yes.

8 Q And you reviewed this affidavit?

9 A I did.

10 Q And you believe everything in it to be true to your
11 personal knowledge?

12 A Yes.

13 Q And you signed it, correct?

14 A Correct.

15 MS. KLEIN: That's all the questions I have, Your
16 Honor.

17 THE COURT: Ms. Schiefer.

18 MS. SCHIEFER: Yes, sir.

19 CROSS-EXAMINATION

20 BY MS. SCHIEFER:

21 Q Good afternoon, Ms. Barber.

22 A Good afternoon.

23 Q Were you contacted by someone in my office named Cindy
24 Ormerod; does that sound familiar to you?

25 A No.

1 Q Do you recall anyone from the Attorney General's
2 Office calling --

3 A Calling --

4 Q -- to talk with you?

5 A No.

6 Q Did they e-mail you?

7 A No.

8 Q Have you had contact with Petitioner's counsel prior
9 to today?

10 A Yes.

11 Q I'm sorry, Mr. Humphreys' counsel.

12 A Yes.

13 Q How many times have you spoken with someone from them?

14 A Six, seven -- now, you say speaking. Is one day
15 speaking, or is it multiple times in a day speaking?

16 Q Either.

17 A Okay. I think we had three telephone conversations
18 and I met with them yesterday --

19 Q Okay. And was it --

20 A -- twice.

21 Q Was it yesterday that you put together this affidavit
22 that is in front of you there?

23 A Yes.

24 Q Okay. And who was present when you put together that
25 affidavit?

1 A I don't know everybody's last name, I'm sorry.
2 Kristy, Lindsey, and Jill.

3 Q Okay. And did you actually type up that affidavit
4 yourself?

5 A No.

6 Q Who physically typed the affidavit?

7 A Kelly.

8 Q Okay. And was the affidavit typed up while you were
9 sitting there or was it presented to you --

10 A Well --

11 Q -- and changes made or --

12 A Both. The -- the final draft, I was there present
13 while they were typing it.

14 Q Okay. But there were a couple of drafts before that
15 you-all talked about --

16 A Yes.

17 Q -- and you made some changes?

18 A Yes.

19 Q Okay. Ms. Barber, you've never -- you had never sat
20 on a juror -- a jury prior to Mr. Humphreys' case, correct?

21 A Correct.

22 Q Okay. So you have never been part of any juror
23 deliberations; you don't know what goes on inside a jury room,
24 correct?

25 A Correct.

1 Q And during your -- do you recall during your -- it's
2 called voir dire, but during the jury --

3 A Yes.

4 Q -- questioning process --

5 A Yes.

6 Q -- the Court asked you and you indicated that you
7 could consider all three --

8 A Yes.

9 Q -- possible sentencing options, correct?

10 A Correct.

11 Q Okay. And then do you recall, after the verdict was
12 read, that the Court again asked questions of each of you?

13 A No, I don't really remember that.

14 Q Okay. So you don't recall the -- well, I guess it was
15 originally the -- well, the Court asked were you able to reach a
16 verdict in the case and you responded: I was?

17 A Yes.

18 Q And the Court asked: And what was your verdict?

19 And you responded: Death?

20 A Yes.

21 Q And the Court asked: Did your verdict agree with the
22 verdict of all the other jurors?

23 And you responded: Yes?

24 A Correct.

25 Q And the Court asked: Is that your verdict now?

1 And you answered: Yes?

2 A Correct.

3 Q And the Court asked: Did anyone bring any pressure to
4 bear upon you during your deliberations as to the penalty?

5 And you answered: No?

6 A Correct.

7 Q Did you perjure yourself when you answered no on that
8 question?

9 A I did not feel I did, no.

10 Q Okay.

11 THE COURT: I'm sorry, what's that answer? I
12 didn't --

13 THE WITNESS: I did not feel I did perjure myself.

14 THE COURT: At that time?

15 THE WITNESS: At that time.

16 Q (By Ms. Schiefer) Now, you were approached right or
17 fairly soon after the trial by some people that were part of the
18 defense team; do you recall that?

19 A I did know that -- who these people were. I have only
20 recently found out who those people were.

21 Q Okay. And you refused at the time to speak to whoever
22 they were that approached you?

23 A Right. It was mainly due to their presentation. I
24 was working in the yard and two women came up walking from down
25 the road, no car, no nothing. I was still pretty traumatized

1 from the whole jury process and I was home alone and I did not
2 feel comfortable with these women. But later I found out who
3 they were, much later.

4 Q Okay. And why did you now feel that you wanted to
5 talk about this?

6 A Because, it's the first time, I feel, I had been
7 contacted by the defense.

8 MS. SCHIEFER: That's all I have.

9 MS. KLEIN: I just have a couple of quick follow-ups.

10 THE COURT: Go right ahead, Ms. Klein.

11 REDIRECT EXAMINATION

12 BY MS. KLEIN:

13 Q Susan, when you reviewed this affidavit that wasn't
14 typed by you, did you make changes to it?

15 A Yes.

16 Q And those changes reflected -- you made those changes
17 so that this document reflected your personal knowledge --

18 A Correct.

19 Q -- and your experience?

20 A Correct.

21 MS. KLEIN: That's all I have, Your Honor.

22 THE COURT: Anything else, Ms. Schiefer?

23 MS. SCHIEFER: No, Your Honor.

24 THE COURT: May Ms. Barber be excused for the duration
25 of this habeas corpus hearing, Ms. Klein?

1 MS. KLEIN: Yes, Your Honor.

2 THE COURT: Ms. Schiefer?

3 MS. SCHIEFER: Yes.

4 THE COURT: Ms. Barber, you are free to go or you
5 may --

6 THE WITNESS: Thank you.

7 THE COURT: -- stay in the courtroom if you'd like.

8 THE WITNESS: Thank you.

9 THE COURT: We'll just -- we'll let y'all -- you and
10 your husband get out, unless you want us to keep him for
11 you.

12 THE WITNESS: Okay.

13 MS. SCHIEFER: Your Honor, I'm sorry. Before you do
14 that --

15 THE COURT: Well, go ahead.

16 MS. SCHIEFER: -- I do have a couple more. I'm sorry.

17 THE COURT: Go ahead. That's --

18 MS. SCHIEFER: I'm sorry.

19 THE COURT: No problem. Go right ahead.

20 MS. SCHIEFER: I apologize. I'm sorry.

21 THE WITNESS: That's okay. That's okay.

22 RECROSS-EXAMINATION

23 BY MS. SCHIEFER:

24 Q I did just want to ask you a couple of just real
25 general questions about the actual process. Did you discuss

1 with anyone outside of the jury room your deliberations at all?

2 Did you deliberate anywhere except in the jury room?

3 A No.

4 Q And were there any outside influences on your verdict,
5 such as someone bringing in a Bible --

6 A No.

7 Q -- or things --

8 A No.

9 Q -- like that?

10 A No.

11 Q Okay. And did you base your decision, your guilt
12 phase decision, on what was presented, the evidence that was
13 presented?

14 A I did.

15 Q And did you base your opinion on sentencing --
16 whichever one you were thinking, were you basing that on the
17 evidence that was presented?

18 A Yes.

19 Q And the Judge instructed you on the law and that you
20 were to follow that, correct?

21 MS. KLEIN: Objection, Your Honor. She doesn't know
22 if the Judge instructed her on the law.

23 THE COURT: I'll -- I'll overrule your objection and
24 let her answer to the best of her ability.

25 THE WITNESS: I'm sorry, repeat the question.

1 THE COURT: Ask it again, Ms. Schiefer.

2 Q (By Ms. Schiefer) Okay. Before you were sent back
3 into the jury room --

4 A Yes.

5 Q -- the Judge instructed you on some things that you
6 needed to consider and to follow the -- instructed you on the
7 law that you were supposed to follow, correct?

8 A She gave us instructions, yes.

9 Q Okay. And did you feel that you followed those
10 instructions?

11 A Yes.

12 MS. SCHIEFER: That's all.

13 THE COURT: Ms. Klein, any further questions?

14 MS. KLEIN: Nothing.

15 THE COURT: Now, may Ms. Barber and Mr. Barber be
16 excused now?

17 MS. SCHIEFER: Yes.

18 THE COURT: Y'all are free to go or you are free to
19 stay in the courtroom.

20 THE WITNESS: Thank you.

21 THE COURT: What are you going to do?

22 THE WITNESS: I'm going to go.

23 THE COURT: Okay, that's fine.

24 THE WITNESS: Thank you.

25 THE COURT: Go ahead. Leave that there.

CERTIFICATE OF REPORTER

STATE OF GEORGIA
COUNTY OF GLYNN

I, W. STEPHEN WALKER, CCR B-572, being a Certified Court Reporter in and for the State of Georgia at large, certify that the foregoing transcript of the proceedings of February 25th, 2013, held in my presence, is a true, correct and complete transcription of said proceedings heard in the Georgia Diagnostic and Classification Prison, Jackson, Butts County, Georgia.

This certification is expressly withdrawn and denied by the undersigned Certified Court Reporter upon the disassembly or photocopying of the foregoing transcript of the proceedings or any part thereof, including exhibits, unless disassembly or photocopying is executed by the undersigned Certified Court Reporter.

I FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties, nor a relative nor an employee of such attorney or counsel, nor financially interested in the action.

IN WITNESS WHEREOF, I hereby affix my hand and seal on this the 8th day of April 2013.

 (SEAL)
W. STEPHEN WALKER, CCR B-572

Appendix G

Deposition of JIMMY DODD BERRY

IN THE SUPERIOR COURT OF BUTTS COUNTY
STATE OF GEORGIA

-----)
STACEY IAN HUMPHREYS,)

Petitioner,)

vs.)

CARL HUMPHREY, Warden,)
Georgia Diagnostic and)
Classification Prison,)

Respondent.)
-----)

COPY

Civil Action File
No.: 2011-V-160

The deposition of JIMMY DODD BERRY, taken at the instance of the Respondent, pursuant to the stipulations contained herein; the reading and signing of the deposition reserved, before Barbara J. Jackson, Certified Court Reporter, at 236 Washington Avenue, Marietta, Georgia, on the 15th day of November, 2012, commencing at 1:00 p.m.

ATLANTA PEACH REPORTERS, LLC
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Deposition of JIMMY DODD BERRY

Page 2

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Deposition of JIMMY DODD BERRY

Transcript Legend

(sic) - Exactly as said.

(phonetic) - Exact spelling unknown.

-- Break in Speech Continuity.

. . . Indicates halting speech, unfinished sentence or omission of word(s) when reading.

Quoted material is typed as spoken.

C O N T E N T S

WITNESS

PAGE

JIMMY DODD BERRY

Examination by Ms. Schiefer

4

EXHIBITS

(None)

Deposition of JIMMY DODD BERRY

Page 4

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

2 - - -

3 (Whereupon, the witness was duly sworn)

4 - - -

5 MS. SCHIEFER: This is the deposition of
6 Jimmy Berry. Present here, I'm Theresa Schiefer
7 for the Respondent, the Warden in this case, Carl
8 Humphrey. Also present are David Dantzler and
9 Jill Benton for the petitioner, Stacey Humphreys.
10 This is a Civil Action Number 11-V-160.

11 - - -

12 Whereupon,

13 JIMMY DODD BERRY

14 was called as a witness herein, and having been
15 previously duly sworn, was examined and testified as
16 follows:

17 EXAMINATION

18 BY MS. SCHIEFER:

19 Q Mr. Berry, if you could, please state your
20 full name for the record.

21 A It's Jimmy Dodd, D-O-D-D (spelling), Berry,
22 B-E-R-R-Y (spelling).

23 Q And your address of employment.

24 A It's 236 Washington Avenue. And that may be
25 the reason that you didn't find it.

Deposition of JIMMY DODD BERRY

Page 5

1 Q Okay. And do you have your own -- is this
2 your own firm?

3 A Yes. This is my building.

4 Q Okay. Could you just describe briefly for
5 us your educational background?

6 A I have a double major in business and
7 history. And I have a law degree, a JD degree.

8 Q Okay. And a little bit, if you could,
9 describe a little bit of your professional
10 background.

11 A I've been practicing for 42 years. About
12 the first five years, I did real estate, primarily.
13 And then I focused on criminal law and I've been
14 doing criminal cases ever since.

15 Q And is that primarily what you do here in
16 this firm?

17 A Primarily what I do. I don't do domestics.
18 They generally turn into murder sometimes anyway, so
19 -- but I don't do any domestics. I don't do any
20 civil litigation. Every now and then I'll do a civil
21 case, but few and far between.

22 Q Okay. And have you done death penalty cases
23 before?

24 A I have.

25 Q Approximately how many?

Deposition of JIMMY DODD BERRY

Page 6

1 A Over 50.

2 Q I won't ask you to go through every single
3 one then.

4 A Thank you very much.

5 Q Do you recall how many actually received the
6 death penalty?

7 A There have been three. One of which, Jack
8 Potts, he represented himself, I was just there to
9 aid and assist him. I got the death penalty in the
10 Humphreys case, which I think technically was the
11 first death penalty that I've gotten from all the
12 cases I've handled. And the second one I got was the
13 Silver Comet Trail over in Paulding County. I was
14 second chair on that case.

15 Q And of those 50, about how many would you
16 say went, that we talked about, through the entire
17 trial, through the sentencing phase?

18 A I really haven't kept up with all of those,
19 but a fairly large number had gone through.

20 Q Okay. And obviously to be an attorney on
21 those cases, you are death penalty qualified then?

22 A Right.

23 Q Okay.

24 A For the Supreme Court you have to be, so --

25 Q Right. Have you attended death penalty

Deposition of JIMMY DODD BERRY

Page 7

1 seminars, then?

2 A I have taught at them and I have attended
3 them.

4 Q Okay. Obviously then prior to 2003 you had
5 attended seminars?

6 A Oh, yeah.

7 Q Okay. Have you been involved in habeas
8 appeals before?

9 A I have.

10 Q Have you ever been found ineffective?

11 A No.

12 Q Generally, in your cases, the death penalty
13 cases, how have you become involved in those cases?

14 A The majority of the cases have been assigned
15 to me through the courts. I have been hired on a few
16 cases in the past. Matter of fact, I have one right
17 now in Fulton County that I've been retained on. But
18 the majority of the cases have been assigned. Back
19 years ago, they used to assign them through the
20 County. The County would do that before they started
21 the Capital Defenders group.

22 So I would get them through the County, and
23 some of the counties would ask me to do death
24 penalties if they didn't have anybody qualified in
25 that County. So that generally is the way that I

1 would get involved in a case.

2 In the Humphreys's case I got involved
3 fairly early on, before they noticed it for the death
4 penalty.

5 Q And I saw a note -- or actually I think it
6 was the brother-in-law's testimony mentioned
7 something about contacting you. Jeff Knowles?

8 A Uh-huh (affirmative).

9 Q So is that something -- did he contact you
10 first, or was the Humphreys's case also
11 court-appointed?

12 A The Humphreys's case was court-appointed.
13 But I got contacted by the family first. I had
14 represented Stacey in his previous case where he was
15 impersonating a police officer. And so I handled
16 that for him and knew him, and the family knew me.
17 And so once he was arrested, I got contacted by the
18 family. Of course, that was before we had any idea
19 that he would be -- that a notice would be done on
20 the death penalty.

21 So once I got initially involved in the
22 case, the Circuit Defender here appointed me. And at
23 that point, if my memory serves me, of course, it's
24 been a while, if my memory serves me, after the
25 County appointed me, the Capital Defenders talked to

Deposition of JIMMY DODD BERRY

Page 9

1 me about it and said, you know, since you're already
2 in it, Capital Experience (sic) would like for you to
3 stay on, but you can't stay on as lead counsel, you
4 have to be second chair, because of the way they do
5 things there. I think the way they set it up through
6 the Supreme Court, they have to be lead counsel. And
7 then whoever they appoint has to be second chair. So
8 basically, what I was was second chair.

9 Q And how would you go about then submitting
10 bills? Would that be directly to the County?

11 A That would be -- well, it varied during that
12 time because the Capital Defenders, during that
13 period of time, they were going through some
14 financial situations. Their budget was not good,
15 they didn't have the money to hire experts that they
16 needed to in some cases. They were having to wait to
17 get funding for various and sundry things. And I
18 can't really remember -- I know that I submitted the
19 bills through the County, but I can't remember what
20 part the County paid.

21 I think at that point in time back then, the
22 County would pay a certain percentage and then the
23 Capital Defenders would pay a certain percentage. So
24 I believe that what I did was filed that with the
25 County. The County should have a record of, you

1 know, the bills that I submitted. But I didn't
2 submit them right away. It was quite some time, I
3 think, before I -- and it may have been at the end of
4 the case, after the case was over before I submitted
5 them. I simply can't remember.

6 Q Okay. Did you keep -- maintain a file in
7 the Humphreys's case?

8 A I did, but I don't have it any longer. I've
9 turned the file over to the appellate counsel after
10 everything was completed with it. I aided and
11 assisted in that appeal, but then, I guess, my main
12 file they took, so I haven't had an opportunity to
13 look at it since then, so if I'm a little hazy on
14 some things, it's because I haven't been able to look
15 back at it.

16 Q And by appellate counsel, are you talking
17 about direct appeal counsel?

18 A Uh-huh (affirmative). Direct appeal
19 counsel, right.

20 Q Okay.

21 A Not this process --

22 Q Okay.

23 A -- but the original direct appeal.

24 Q And I actually just received an invoice from
25 present counsel that apparently you had found on your

Deposition of JIMMY DODD BERRY

Page 11

1 computer?

2 A Uh-huh (affirmative).

3 Q Is that correct? Do you have anything else
4 here other than that?

5 A No, we looked. We didn't have anything
6 else. Everything else got turned over.

7 Q Okay. So you obviously have not looked
8 through your file in preparation for this deposition?

9 A No. I have not.

10 Q Have you done anything to prepare for the
11 deposition?

12 A I got here.

13 Q Okay. That's better than me.

14 A That was important, so.

15 Q Being on time.

16 A But I live here, you don't.

17 Q Have you spoken with present habeas counsel?

18 A I have.

19 Q Okay. And you're aware of the issues that
20 have been raised?

21 A Some of them. We haven't been through
22 everything.

23 Q Okay. Okay. Let's talk about now the
24 specifics of your involvement. You mentioned that
25 you were appointed early on and even before the death

Deposition of JIMMY DODD BERRY

Page 12

1 penalty was noticed.

2 A Right.

3 Q Okay. Do you recall a date of that?

4 A Lord, no. I don't, I'm sorry.

5 Q Okay. That's fine.

6 A I can't really remember. I'm 70 so you've
7 got to give me a little break here.

8 Q Sure.

9 A I can't remember what I did last week,
10 actually.

11 Q And when you were initially appointed on the
12 case, was the Georgia Capital Defender -- were they
13 already on the case or then that happened later, once
14 it was the death penalty?

15 A That happened later. They don't generally
16 get involved in the case until after the notice. And
17 they do it a little bit differently now. But back
18 then, once a notice was done, supposedly the clerk
19 was to send them a copy of that notice, and then they
20 would decide, you know, what to do from that
21 standpoint. And historically, what they would do,
22 you have to have two people on a death penalty case,
23 and they would have two people from their office that
24 would do it. But also, because of their funding,
25 they didn't really have very many people that were

1 death penalty qualified.

2 And so the reality was, most of the people
3 there at the Capital Defenders office had way more
4 cases than they should have had under the Supreme
5 Court guidelines. So those of us who do death
6 penalty work, many times would get cases that they
7 just couldn't handle or didn't want to handle or
8 whatever, so --

9 Q And did you then have any involvement in
10 which attorneys from the Capital Defender were
11 representing Humphreys?

12 A None whatsoever. I wish that I could, but
13 even now we have no input at all. I've got two cases
14 that I'm doing for them right now. Actually, three.
15 They're involved in the one in Fulton County that I
16 got hired on because we have to have two lawyers.
17 But even now they don't give you any, you can't
18 request somebody, in other words. Obviously, we'd
19 like to request somebody that's got experience, but
20 they give us whoever they want to, and sometimes
21 that's kind of bad, because if they think a lawyer's
22 got some experience they would want to put somebody
23 maybe, doesn't have that much experience so that they
24 can gain some experience, which doesn't help us that,
25 you know, need help, while we're doing these things.

Deposition of JIMMY DODD BERRY

Page 14

1 But that's just the way they do their system. But we
2 have no input at all, and didn't back then.

3 Q And going through the transcripts, I noticed
4 that there was -- Chris Adams was on the case,
5 initially. Is he from the Capital Defenders?

6 A Chris was head of the Capital Defenders
7 group at one time, and then he left, and I think he
8 went to South Carolina, I can't remember exactly
9 where Chris went. But his involvement in the case
10 was very short-lived. I don't remember him ever
11 really doing anything specifically in the case at
12 all. I don't even -- I don't think he argued any of
13 the motions that I remember. He may have, but I
14 don't -- I'm not sure. But he was involved, Terry
15 Thompson was involved. I think there was another
16 person that they talked with me about that may get
17 involved in it, but never did, and then ultimately I
18 got Deb Shuba (phonetic) who was there for the trial.

19 Q Okay. Do you have any knowledge of why
20 there were different attorneys, why there was any
21 switching involved of those attorneys?

22 A Well, my understanding was that because of
23 the funding and all the other things that were going
24 on there, Chris was the -- at that time I believe he
25 was head of the Capital Defenders group before Gary

Deposition of JIMMY DODD BERRY

Page 15

1 Word (phonetic) took over. And so he had a lot of
2 things going on with a lot of other cases and a lot
3 of other places. And so I think he just felt
4 somewhat overwhelmed and therefore, he put Terry
5 Thompson in it. Terry didn't have very much
6 experience at that point in time. She then left the
7 Capital Defenders group, which left them a void.

8 And from my remembrance, there were two or
9 three different people that worked on the mitigation
10 part, so we didn't really have any, didn't really
11 have a whole lot of continuity, you know, because
12 things seemed to -- about the time you get started
13 with something, you find they're not there anymore or
14 somebody's going to switch over or they don't have
15 funding for this, that, or the other. And it was
16 kind of a tough, you know, my -- and I've argued this
17 to people for a long time. If the Supreme Court's
18 going to have a Capital Defender, then they need to
19 fund the thing, you know, and have enough money
20 available and have the lawyers available that can do
21 these cases. Otherwise, might as well do away with
22 it and let the separate counties deal with it, which
23 I think probably would be the better way to do to it,
24 anyway. But nobody listens to me.

25 Q Did you have anyone in your office helping

1 you work on the case?

2 A No. The only other person I had in the
3 office at the time that I did this was, Vic Reynolds,
4 who is now the DA, as a matter of fact, here in Cobb.
5 He just won. But he was the only other person in the
6 office and he had his own cases and I had mine. And
7 I don't think Vic had ever done a death penalty and
8 ended up doing the Lynn Turner case with me, but I
9 think that was the first death penalty he had ever
10 done, so he never had really any involvement in it at
11 all.

12 Q I saw a name, I think Tonya, on some
13 documents. Was Tonya a secretary, or --

14 A Tonya's my paralegal.

15 Q Okay. Did she do any sort of tasks for you
16 for the Humphreys's case? What would be her role?

17 A Well, her role as a paralegal -- basically,
18 we filed all of the motions; they were not done by
19 the Capital Defenders. We filed all of those; she
20 typed all those up. And basically she kept up with
21 the court dates, she kept up with the calendars and
22 those kind of things, but she didn't do any research
23 or anything like that at all. Just basically she was
24 -- she had at that point who knows how many other
25 cases to keep up with that weren't death penalty, so

1 her involvement was nothing more really than a
2 paralegal might do.

3 Q So did she contact any witnesses?

4 A No.

5 Q Okay.

6 A If she did, it would be basically calling
7 them to see when I could talk with them or something
8 of that nature. It would be something fairly
9 incidental. She didn't, to my remembrance, give any
10 notes from any witnesses or anything of that nature.

11 Q Okay. How did you go about generally
12 interacting with opposing counsel or, not opposing
13 counsel, I'm sorry, with the counsel, the Georgia
14 Capital Defender?

15 A Was my involvement with them?

16 Q No. How you interacted with them -- I'm
17 sorry, as far as, did you meet with them in person,
18 did you e-mail, that kind of thing?

19 A I'm really not very good at e-mailing. I'm
20 not a big computer guy. So if there were any e-mails
21 they would have been sent to me and then I'd call
22 them on the phone and respond. I don't think I sent
23 too many e-mails back. If I did, I'd tell Tonya,
24 e-mail them and tell them this, that, or the other.
25 Most of the conversations were over the telephone and

1 in person. They would come out here.

2 I argued probably, better than 90 percent of
3 the motions. I can't remember Terry arguing
4 anything, specifically. I don't think Deb argued
5 anything. I may have argued all the of them now that
6 I think about it. I just really can't remember. So
7 their involvement in the motions really was -- was
8 not that great that I remember. But I don't think
9 they had too much experience in arguing motions.

10 Q So you mentioned that most of your meetings
11 then were in person or you spoke with them on the
12 phone. So would it be fair to say that there's not a
13 written record of every time you met?

14 A No. There's not. I doubt that there's much
15 of a paper trail. If it is, it would be in the file,
16 because anytime we get an e-mail in a case we put it
17 in the file. So if there's not anything in the file,
18 then there's not any e-mails. And I just learned how
19 to text last year, so there wouldn't be any of those
20 around, so --

21 Q You mentioned before that, you had
22 represented Mr. Humphreys in a previous case.

23 A Right.

24 Q So you had met with him prior to this crime?

25 A Sure. Yeah, I knew him before this case and

Deposition of JIMMY DODD BERRY

Page 19

1 didn't know too many of the family members. I
2 believe I talked with his sister in the past, but
3 that was all I really remember having connection
4 with.

5 Q And how did the first meeting go when you --
6 when you were asked to work on this particular case?

7 A Since he already knew me, I went out to the
8 jail, spoke to him as I normally do, and I would
9 imagine I did this with him. Told him I didn't want
10 him to tell me any of the evidence at this point. I
11 just wanted him to know that I was going to be
12 working on the case, and what the procedure was going
13 to be at that point. We didn't know that it was
14 going to be noticed.

15 I told him we needed to do a preliminary
16 hearing, so that we would try to start gathering
17 facts and information. And for God's sake, not to
18 talk to anybody. Don't talk to anybody in jail,
19 because even though you might think they're your
20 friend, they're not. They're looking for a way to
21 get out, so for God's sake, don't say anything to
22 anybody. Only person you needed to be talking to is
23 me. And that's normally what I do in the first
24 meeting.

25 Q And did you feel that he was cooperative

Deposition of JIMMY DODD BERRY

Page 20

1 with you? Did you have a good relationship with him?

2 A I felt like I had a good relationship with
3 him, but Stacey would never open up. He was not one
4 to converse with you. He didn't want to talk about
5 it, he didn't want to deal with it. He was just very
6 difficult to shake anything out of. So pretty much
7 from the beginning to the end, he was not helpful to
8 himself or to us.

9 Q When you met with him then other times
10 throughout the trial, did the other attorneys come
11 with you, or did you normally meet with him alone?

12 A There were times when they would come, but I
13 think he felt, as he expressed to me, he felt a
14 little disjointed, because he didn't really know who
15 was going to be involved in it other than me. He
16 didn't know, you know. That trust level kind of goes
17 down when you start getting this lawyer and that
18 lawyer and that lawyer. And mitigation, you know,
19 not knowing who the mitigation experts were going to
20 be. And I think that he began to open up a little
21 bit to the mitigation experts towards the end, in
22 trying to put the mitigation together.

23 But from the guilt/innocence standpoint,
24 which was basically going to be my responsibility,
25 and the mitigation was going to be the responsibility

1 of the Capital Defenders, because they had all the
2 experts and they had the funding, they had the money,
3 you know, they were the ones that were going to have
4 to put that together, because I didn't have the
5 funding. I didn't know who they could afford.
6 Suggestions that I made, they didn't have enough
7 money to pay them, we've got to get our own people.
8 So I think Stacey felt probably a little bit
9 disjointed in that he didn't know who was going to be
10 representing him at any given time, so --

11 Q At some point, did you discuss the crime
12 with him?

13 A I tried to. But he never really opened up
14 to me about what happened.

15 Q Okay.

16 A Still don't know exactly. You know, the
17 only thing we had to deal with was the physical
18 evidence. We had to try to put it together from
19 that. And many times that's enough, you know, having
20 the physical evidence, we can pretty much trace what
21 has transpired.

22 I think timing was a little bit critical in
23 this case, as to who came in first and second and,
24 you know, how the whole thing played out, but I never
25 really was able to get that out of him.

1 Q From the beginning then, did you come up
2 with essentially a strategy that you were going to
3 pursue in the guilt/innocence phase?

4 A Well, in the guilt/innocence phase, it's
5 hard to have a strategy as you probably know. Most
6 death penalty cases are locked on the
7 guilt/innocence. The primary thing on a death
8 penalty case, if you're going to get what I consider
9 a win in most of those cases, is to get a life or a
10 life without parole. The strategy in the
11 guilt/innocence stage; basically, was to make them
12 prove it. You know, there wasn't any alibi, there
13 wasn't any, you know, some other person did it. You
14 know, it was just nothing that we had from a defense
15 -- defensible standpoint.

16 So, you know, the only thing we could do is
17 just kind of poke holes in what they had. And a lot
18 of times, what I try to do in these cases, too, is
19 try to do things during the guilt/innocence that will
20 help in the second phase. If you know you're going
21 to -- pretty much assured that you're going to lose
22 the guilt/innocence, you want to try to bring out a
23 few things that will be helpful in the second phase
24 of the trial, and I think we tried to do that as much
25 as we could.

Deposition of JIMMY DODD BERRY

Page 23

1 Q Did you ever have any plea discussions with
2 the DA?

3 A Oh, yeah. They would never, never agree to
4 anything.

5 Q Okay. Do you recall if the DA had what we
6 call an open file policy?

7 A They did not have what, I think -- some
8 counties have open files. You can go over there and
9 you can look at the file anytime you want to. They
10 didn't really have that. We pretty much played by
11 the unified appeal. You know, we filed a motion for
12 all of the discovery and they provided it to us. We
13 were never able to go over and look in the file,
14 so --

15 Q Did you ever have any concerns that there
16 was anything in particular that was kept from you?

17 A Never really had any concerns that --
18 everything was fairly straightforward. So I really
19 don't recall anything specific that I had any issues
20 with from a discovery standpoint.

21 Q Let's talk a little bit generally about the
22 guilt/innocence phase, kind of the investigation.

23 A Uh-huh (affirmative).

24 Q What types of things did you do as far as to
25 investigate that phase?

Deposition of JIMMY DODD BERRY

Page 24

1 A Well, normally you read the file; that's the
2 first thing you want do to. Read all the police
3 reports. If you've got any concerns over anything,
4 talk to the officers which is, you know, generally,
5 at least with me, they're pretty open with discussing
6 it, talking about it. In this particular case, we
7 wanted to look at the crime scene because that was,
8 you know, a concern in trying to put it together
9 exactly, how the crime scene fit together. So we did
10 an investigation into that particular area. Of
11 course, you do background, you know, to see. And I
12 knew that I represented him on one case, but couldn't
13 remember if he had anything else working out there or
14 not so, you want to be sure that there's nothing
15 that's going to bite you from that standpoint. And
16 that's pretty much, you know, what we do from an
17 investigation standpoint. We didn't have an
18 investigator for guilt/innocence other than a crime
19 scene person. And he did the crime scene work up and
20 that was basically it that I remember.

21 Q Do you recall who that was?

22 A I think Bob Trussell (phonetic) was the one
23 that did that for us, if I'm not mistaken. And Bob
24 is now with the DA's office.

25 Q You mentioned doing a little background of

Deposition of JIMMY DODD BERRY

Page 25

1 Mr. Humphreys, so at some point you became aware that
2 there was quite a lengthy criminal record.

3 A Uh-huh (affirmative).

4 Q How did you approach that as far as how were
5 you going to play that in front of the jury?

6 A Well, we really weren't going to have to
7 play it in front of the jury in the guilt/innocence,
8 unless we put him up and we did not plan to do that.
9 So, you know, that was more of a mitigation issue
10 really, than it was a guilt/innocence issue. So, you
11 know, we really didn't do much on it from a
12 guilt/innocence standpoint.

13 Q You had mentioned that you handled most of
14 the pretrial motions.

15 A Uh-huh (affirmative).

16 Q Do you -- what would guide you on the
17 motions to file?

18 A Well, I had been doing them for a long time.
19 I've handled death penalty down in Florida, and a ton
20 of them here, and just from experience. We generally
21 have -- I generally found anywhere from a hundred to
22 a 135 motions. Some of them I have picked up from
23 other states and adopted them for our purposes here.
24 But just through experience in doing these cases.

25 Q Do any stand out as far as -- well, let me

1 back up. If you're filing that many, a lot of them,
2 would you say, are they kind of typical motions that
3 you would file in any death penalty case?

4 A Yeah. A lot of them are somewhat standard.
5 But they're necessary, because you never know when
6 the Supreme Court is going to change their mind. If
7 you don't file it, then sometimes you waive it. So
8 obviously, you want to try and file as many things as
9 you can and, you know, hopefully at some point, you
10 know, the Supreme Court will look at and say, well,
11 maybe this is an issue after all. So even though a
12 lot of it is perfunctory, you still have to do it.
13 But there are some motions that I think are getting a
14 lot more attention now than they ever have. Like the
15 proportionality issues and, of course, the lethal
16 injection issues. You know, some things that we've
17 been filing for years that nobody's paid much
18 attention to, they're now beginning to do and look at
19 things a little differently, and then just dealing
20 with your individual county, whether the jury makeup
21 is appropriate. We've always felt like that's, you
22 know, you have to wait ten years before you change
23 that demographics of your jury, and it's amazing how
24 demographics have changed even in our county over the
25 last ten years. And so, you know, these are all the

1 issues that you want to have a hearing on, so that
2 you can preserve any problems.

3 Q I came across two motions. First, the
4 motion to change a venue.

5 A Uh-huh (affirmative).

6 Q Can you talk a little bit about why that was
7 important in this case?

8 A Well, the case got an awful a lot of
9 publicity. And historically, if you get a case that
10 -- and it gets a lot of publicity, a lot of people
11 know about it, they form an opinion about it. So you
12 want to try to get it out of that jurisdiction.
13 Because a lot of times jurors want to, they want
14 people to think that they can be fair, but in
15 reality, they've probably already formed an opinion,
16 and that opinion's going to be hard to change. And
17 if a judge says, can you set that aside and fairly
18 decide the case, they're not going to tell a judge,
19 no, I can't set it aside. So you get, a lot of
20 times, if it's got a lot of publicity, people that
21 are already kind of entrenched in what their
22 position's going to be. So in this particular case,
23 the amount of publicity that it got, we felt that it
24 was necessary to move it to another location. We
25 didn't particularly want to send it to that location,

1 but through another location.

2 Q And ultimately, it was, the venue was
3 changed. It wasn't -- the jurors weren't brought in
4 here to Cobb County.

5 A No. Everybody moved out to the Brunswick
6 area, and we picked jurors from down there, which is
7 a tough jurisdiction because you have the -- you have
8 the law enforcement academy that's down there. They
9 have a lot of -- a lot of law enforcement people that
10 lived in that area. So it's a -- you know, in doing
11 the research about -- which is something that you
12 always want to do, is look at, you know, look at the
13 area you're being moved to. Their conviction rates
14 down there were pretty high. You've got pretty
15 conservative juries down there. So that was a big
16 concern that we had. Because picking the jury is,
17 you know, in a death penalty case, is probably the
18 most or one of the most important things to do. So
19 it's important to know what you're looking at.

20 Q Did you have any input in where you'd be
21 going? Or how did that come about?

22 A The judge made that determination.

23 Q Okay.

24 A We wanted to go to Athens.

25 Q You mentioned that picking the jury is, you

Deposition of JIMMY DODD BERRY

Page 29

1 know, a very important thing. Did you request any
2 funds? Did you have any juror experts?

3 A No. We talked about getting somebody, but
4 they're pretty expensive and so we were never able
5 to, you know, get anybody to do that.

6 Q Okay.

7 A And the money was being controlled by the
8 Capital Defenders. You know, they were the ones that
9 ultimately -- I didn't get to make any decisions
10 about that, you know, about who they got, when they
11 got them. You know, that was pretty much internal
12 that they dealt with all of that.

13 Q And was that a case for, kind of, for all of
14 the experts?

15 A During that time period, I think so. And
16 even now, they reserve the right to, you know, if I
17 make a suggestion about a psychiatrist that I think
18 we ought to get, they don't have to. They can use
19 their own people. They have certain people that they
20 use because they can get them cheaper. And they use
21 them on a number of cases. Which is kind of the case
22 here. We got somebody that they used a lot, and --

23 Q Would that be Dr. Shaffer? Is that who
24 you're talking about?

25 A Uh-huh (affirmative). Yeah, Dr. Shaffer.

1 Q Okay.

2 A And so that's basically how we ended up with
3 him. It's somebody that they used a lot, not
4 somebody I particularly would've wanted in this case,
5 but like I said, my input was limited.

6 Q Let's go in to talk a little bit about that
7 then, about the mitigation investigation. You
8 mentioned before that in, you know, the
9 guilt/innocence phase in this type of case that,
10 you're kind of trying to figure out ways to put
11 mitigation out there in the guilt/innocence phase.

12 A Sure.

13 Q Do you recall anything specifically in Mr.
14 Humphreys's case?

15 A I'm trying to remember. The arrest itself,
16 you know, we wanted to talk about how cooperative he
17 was, you know, during the time of the arrest. How
18 nonviolent and non-confrontational, and that sort of
19 thing. I can't remember really anything else right
20 off the top of my head, specifically. But anytime in
21 any of these cases that you get to show something
22 good, you know, you want to try and point that out,
23 but don't -- I just can't put my finger on anything
24 specifically.

25 Q Okay.

1 A It's been a while.

2 Q As far as -- well, let's talk a little bit
3 about then, the mitigation investigation. Did you
4 have in the initial theory that you were trying to
5 present to the jury, in the sentencing phase?

6 A Well, my thought was to deal with it more
7 from a psychological standpoint, because it was
8 fairly obvious that Stacey had some psychological
9 issues and some problems.

10 Q And what types of things are you talking
11 about that you observed?

12 A Well, he was very withdrawn. Just in
13 talking with him, you could tell that he, you know,
14 he just was -- really didn't want to talk about it
15 too much. He really didn't want to get his family
16 involved, he really didn't want, you know, it was
17 like I just want to be off in a cell by myself
18 reading. I don't want to have any interaction with
19 anybody else. And he just was kind of aloof about
20 the whole matter. And it's not typically some --
21 typically in these people that commit these crimes.
22 He acted a little differently than I've normally seen
23 with a lot of people.

24 And frankly, many of them do have
25 psychological issues. But Stacey just seemed to be

1 out there. And you wonder right away, okay, why did
2 this happen? If it's not for a robbery, if you're
3 not there to take a lot of money or, you know, and
4 you're not there to rape the person, then what's the
5 deal, you know, what are you there for? So, you
6 know, you've got to wonder just from the crime
7 itself, what's going on psychologically that he did
8 this, you know. Did he know one of these people?
9 One of these girls? Did she put him down? Did she
10 make him feel bad? He came back to get revenge? I
11 mean, what's the real, you know, thing here. And if
12 it is revenge, then psychologically, what's going on
13 with him that would make him want to exact that kind
14 of revenge with somebody that didn't want to go out
15 with him or whatever. So, you know, you just kind of
16 get a feel sometimes that something isn't right, and
17 so that was basically my thought processes.

18 The problem that we had was that from the
19 beginning, you know, you have this feeling, you say
20 this is what we need to do, but if you don't have any
21 continuity, you don't have -- you tell this person
22 that's doing the case, this is what we need to do,
23 and then they leave and you tell the next person,
24 well, this is what we need to do, and they leave.
25 You tell the next person this is what we need to do,

1 and then sometimes it never gets done. You know,
2 it's basically what I told them, that I thought the
3 best thing to do when we started this thing was, I'll
4 do the guilt/innocence phase, I'll do all the
5 investigation, I'll get it all ready, I'll do the
6 guilt/innocence. You guys have the money, you know,
7 you have the ability to be able to get the experts to
8 do the mitigation. You have the mitigation experts
9 that work in your office, I don't. You know, I'll
10 converse with you and, you know, we'll talk about
11 these things, but you all are the ones that have to
12 control that part of the case, because I don't have
13 any control of it. And so that's basically what we
14 kind of set up. That I did all the motions, I did
15 the guilt/innocence and then my understanding was,
16 they were going to do, you know, the mitigation part.
17 Which in reality is probably the most important part,
18 of picking the jury. So that's kind of the way we
19 had it set up.

20 Q So with the mitigation then, would you -- I
21 think you were saying they did most of the
22 mitigation?

23 A Right.

24 Q Okay. Did you talk to any of the mitigation
25 witnesses?

1 A Oh, yeah, yeah, most of them. I ultimately
2 had to. If you saw the transcript, then you know
3 that I ended up doing every one of the witnesses
4 except for two. I did all of the voir dire, the
5 State had four DAs down there doing all of this and
6 it ultimately ended up that, Deb Shuba had never
7 tried a case. My understanding, when we went down
8 there was that, we were going to split it up. And
9 that she was going to do part of it, and I would do
10 part of it. Because doing two weeks of voir dire,
11 where you're standing up every day asking people,
12 it's tiring and it wears you out. She didn't feel
13 comfortable doing any of it, and I didn't really know
14 that until we got down there. And so I couldn't get
15 her -- she didn't feel comfortable doing any of the
16 witnesses. You know, we'd meet in the afternoon and
17 I'd say, well, why don't you do Joe Blow, he's an
18 easy witness. No, I don't want to do that.

19 So basically, I ended up trying the whole
20 case by myself. The State had four people down
21 there, I didn't really have anybody that I thought
22 was going to be able to help out. She did two
23 mitigation witnesses, which made me very nervous.
24 And ultimately -- and then I don't want to say
25 anything bad about anybody, but she didn't do a very

Deposition of JIMMY DODD BERRY

Page 35

1 good job on those two. So I think Deb is more set --
2 is better off at doing appeals and that sort of
3 thing. She just was not somebody that needed to be
4 doing litigation. It scared her to death and she
5 wasn't willing to jump in there and try. So it was
6 probably the most tiring case that I've ever done.
7 Not the most complicated, but the most tiring,
8 because I had to do it all, and I wasn't really
9 prepared to do it all. I thought that I would have
10 some help in doing some parts of it and especially
11 the mitigation. And some of the mitigation, you
12 know, that they had been working on, since I didn't
13 know I was going to do it, I didn't really spend that
14 much time talking with anybody about it, and then
15 ultimately I'd have to do the witness. So the night
16 before I'd have to get in touch with them and say
17 okay, you know, what are you going to say? Which
18 makes it difficult, too.

19 I think when I got back from my case, my
20 wife told me that I looked more haggard than any case
21 I ever had. I don't know whether she was being nice
22 or not. I don't think so. But it was very tiring.
23 It was a tough situation. And I would not want to be
24 in that situation again where I wasn't getting really
25 the assistance of another lawyer.

1 Q Let's talk a little bit about the actual
2 investigation for the mitigation.

3 A Uh-huh (affirmative).

4 Q Did you go out and gather records on Mr.
5 Humphreys's background?

6 A I didn't, but I was aware that they were
7 gathering, you know, the things that we historically
8 do. And you want to get all of his school records,
9 you want to get any hospital records, any psychiatric
10 records. Any kind of record that you can put your
11 hands on that might show that, when he was in grammar
12 school, he was withdrawn or he had to go to the
13 psychiatrist when he was nine years old, or that he
14 tortured baby birds or, you know, anything that we
15 can find that might help us from the mitigation
16 standpoint. Try to see why he ended up, you know,
17 doing what he did.

18 So those records were not gathered until
19 much later in the case, even though we had talked
20 about doing it early on. I can't remember exactly
21 when those of records were obtained, but it was, you
22 know, pretty far into the case before we ever started
23 getting things, and I think it was because of all the
24 shifts, you know, in people and not having the
25 funding. And it was just so much going on there at

1 that time that it became a little disheartening, you
2 know, that we couldn't know, you know, who we were
3 going to get and what experts we were going to have
4 and whether we were even going to have any experts,
5 because, I think at one point, they just didn't have
6 any money for anything. And like I said, I don't
7 think I submitted a bill until the end of it, so I
8 worked on the case for several years without getting
9 any money. And of course, they don't pay us that
10 much anyway to do these cases. I think now it's
11 like, \$95 an hour, so --

12 Q Who would guide you as to witnesses to
13 contact for the mitigation? Was that something that
14 Mr. Humphreys did, or --

15 A No. The mitigation people usually will go
16 through the family and they'll find out, you know,
17 who were his friends, you know. Who were the people
18 who knew him. What was he doing? We contacted some
19 people that he had been with the weekend before. He
20 had a girlfriend that we brought up and testified.

21 So we had people that knew him. And so, you
22 know, we just contacted whoever we could that might
23 have any involvement with him that might be able to
24 say, you know, give any indication as to what was
25 going on with him at the time. And even at that, we

1 really never developed -- when I talked to his
2 girlfriend, she said that he seemed okay, you know,
3 but the weekend before that, they had had a
4 relationship. He always was nice to her, but was not
5 very, just not a very talkative person. He wasn't a
6 very open-type person.

7 But those were the kinds of witnesses, you
8 know, that we got the mitigation people to look at.
9 But frankly, he didn't have a whole lot of friends.
10 And, you know, the people the he worked with, he
11 didn't know that well, he just didn't make friends
12 very easily. So somewhat limited in that. And
13 that's why I was concerned more with the
14 psychological. I wish that we would have been able
15 to afford, been able to get, you know, some
16 experienced -- not -- not that Bob's not experienced,
17 but somebody that was a little more in tune to what
18 was going on with Stacey.

19 Q You mentioned the mitigation people. Do you
20 recall any names?

21 A You know, I really don't.

22 Q Were they people from the Capital Defender?

23 A They were all Capital Defender. They all
24 worked at the Capital Defender's office. They have
25 their own mitigation people. And that's why you have

Deposition of JIMMY DODD BERRY

Page 39

1 to rely on them basically to do that, because they
2 say, we got our own people, we'll deal with that.
3 I'm second chair, anyways -- you know, I have to kind
4 of rely on what they tell me they can do and what
5 they can't do.

6 I didn't have the ability to go out and hire
7 who I wanted to. If I did, you know, like in a
8 normal murder case that's not a death penalty, if I
9 thought that the client needed, you know, somebody
10 out of California that was an expert in that
11 particular field, we'd be able to get them,
12 court-appointed, or have the family pay for them to
13 get them here if we need them.

14 But I really didn't have that ability in
15 this situation, because they were in total control of
16 the money and the people that we got, and what was
17 going on with mitigation. Now, I made suggestions.
18 What one of the big things that I remember -- I don't
19 know whether you want me to just start talking about
20 something that I remember or not.

21 Q Yeah. Absolutely.

22 A They had hired this guy named Atkins or
23 Akins, I can't remember.

24 Q James Akins?

25 A Yeah. He was a prison expert. I didn't

Deposition of JIMMY DODD BERRY

Page 40

1 want to put him up. They had paid him money. I did
2 not want to put him up. I said, look he's going to
3 hurt us. They're going to kill us with this guy. I
4 really don't want to put him up. Well, we paid for
5 him. We paid money, he's here, we want to put him
6 up. It killed us, because the State, they just
7 played right into the State's hands. Generally,
8 jurors don't want to know that a person's going to be
9 comfortable in jail, they want them to suffer. You
10 know, if they killed somebody, they want him to
11 suffer.

12 Well, this guy -- the crux of his testimony
13 not only would -- that he would be okay in jail, but
14 jail was a great thing for him. He loved it; that's
15 what he wanted to be. He wanted to be in isolation,
16 he didn't want to be around anybody. So, you know,
17 the State then was able to argue about putting him
18 up. This is a great thing for this guy. You know,
19 you're giving Stacey what he really wants, so you're
20 not punishing him. And it came back to bite us, like
21 I was afraid that it would, but I didn't have the --
22 I didn't have the last say in that, you know. The
23 only thing I could do was suggest that we not do it.

24 But I think that Deb was afraid -- she was
25 trying, I guess, to placate the people at the Capital

1 Defenders because they had spent the money and she
2 didn't want to go back and say, well, we decided we
3 don't want him, you know, even though you paid money
4 to have him here, and he's here, we're not going to
5 use him. So I think she was trying to walk a thin
6 line, too. But I don't think she was there at the
7 Capital Defenders much longer after Stacey's case,
8 she left. But that was just an example of expert --
9 and what basically happened in that situation.

10 Q Do you recall Marty Loring being involved?

11 A Uh-huh (affirmative).

12 Q And what was her role?

13 A Marty was a psychologist also. Marty, I
14 think I met Marty there. I did not have -- and I
15 can't remember whether I'd ever met her before or
16 not, whether I'd ever used her in a case before. But
17 the only involvement that I had with Marty, I think,
18 I had talked with her the night before, two nights
19 before, something like that. She was supposed to be
20 a witness that Deb was going to do from what I
21 remember. So, you know, basically, I didn't really
22 have a whole lot of involvement with her other than
23 talking with her about how I was going to
24 cross-examine her or direct-examine her in the
25 mitigation.

1 Q Do you recall what the purpose of her
2 testimony was? What you were intending it to be?

3 A I'm trying to remember exactly why they
4 thought that she would be necessary, because
5 historically, from talking with her, she did mostly
6 the battered syndrome-type cases. And I wondered why
7 we were going to use her, because this certainly
8 didn't fit any battered syndrome that Marty had
9 testified, I think, from talking with her, on a
10 number of those battered syndrome-type cases. So I
11 can't remember right off the top of my head why they
12 felt that she was necessary to put up. I just can't
13 remember.

14 Q Okay. Did you have involvement with Dr.
15 Shaffer before trial?

16 MR. DANTZLER: With respect to this trial?

17 BY MS. SCHIEFER: (Resuming)

18 Q Yes.

19 A I can't remember when I talked with him. I
20 would imagine that it, I probably talked to him after
21 they engaged him.

22 Q So he was also someone through the Capital
23 Defender?

24 A Right. I had known Bob before. As a matter
25 of fact, I believe that I had used him in a murder

1 case here in Cobb. And -- where he had testified.
2 And I think that case was before -- before we went
3 down there on Stacey's. So I -- but I knew him from
4 -- anyway, from other cases. And I'm sure I probably
5 talked with him after he had been hired in the case,
6 but probably didn't talk to him again until we got
7 down to Brunswick, that I remember. It's a
8 possibility I could have, but it's been a long time.

9 Q Sure. Was that something then that if you
10 weren't doing it, was it -- were you aware that the
11 Capital Defender was doing it, or was that part of
12 what you were talking about with the separation, kind
13 of, in your roles?

14 A Yeah -- well, the separation.

15 Q Okay.

16 A They were the ones who hired him, because he
17 -- they use him a lot. And so they were the ones
18 that engaged him and I think I had conversations
19 after they engaged him. I don't think I had any
20 before and didn't have any input as to who they were
21 going to get. I'm not even sure they even told me
22 they were going to get Bob until after they got him.
23 I think my thing basically -- initially was, we've
24 got to have psychiatric; it will be an issue here.
25 We've got to get some good people to try to deal with

1 that.

2 Q Do you recall what his diagnoses were or
3 what the general --

4 A Lord, no. I don't really remember. It
5 should be, I can't really remember what his diagnosis
6 was for Stacey. He had one, he always has one, but I
7 can't remember off hand what that was.

8 Q Okay.

9 A I always wondered about Asperger's, too,
10 whether there may be some issue with that, but --

11 Q Let's talk a little bit about the jury.
12 Were you involved in the motion for new trial?

13 A I was involved in the motion for new trial.
14 I didn't -- I worked on helping with the brief. But
15 after that, I really didn't have any involvement
16 after that.

17 Q Did you go out and speak to any of the
18 jurors after the trial?

19 A No.

20 Q Okay.

21 A I'm aware of some of the issues with the
22 jury, and especially the one juror.

23 Q And what is that that you're talking about?

24 A There was a real estate woman that I'd put
25 on the jury. Normally, I would not put somebody on a

1 jury that has the same occupation as the deceased,
2 because both of these young women were real estate
3 agents. This woman gave all the appropriate answers,
4 but she was a little crazy. But I kind of felt like
5 she would be crazy for us rather than crazy for them.
6 And it turned out she was just crazy. And I think I
7 made a mistake, obviously, in putting her on. If I
8 had it to do over again, I would not have put her on
9 there.

10 And that was after doing all of the voir
11 dire myself for two weeks. I was tired. If I had
12 thought through it a little bit more clearly, I think
13 I would not have put her on, just because of her
14 occupation. But I took a chance and put her on
15 there. I think, had I not put her on there, we'd
16 have a different result, I'm pretty sure of it.

17 Q Do you recall her name?

18 A I don't. I should remember that, but I
19 don't.

20 Q Okay. Do you recall there being any issues
21 with the jury throughout the trial?

22 A There were -- she was making everybody mad.
23 She was doing all kinds of crazy things. And the
24 judge got notes from the jury. But the interesting
25 thing that I remember was that Judge Robinson would

1 not let us see the notes. Which I've never in 42
2 years practice ever had a judge that would not let us
3 read the notes that are being sent back from the
4 jury. Because in reality her paraphrasing it's not
5 good enough. You know, you want to know exactly what
6 they said, and be able to formulate what you want the
7 judge to tell them about that note or what motions
8 you might want to file. And she didn't do it.

9 I was very concerned about the fact that she
10 would not let us -- and I don't know why she decided
11 to do that, because I had cases with her in the past
12 and she had always let people read the notes. So I
13 wasn't really sure what the heck she was doing by not
14 letting us do that, which was very concerning. I
15 didn't think that was a very good thing to do. But I
16 know this woman was causing a lot of disturbance, not
17 only in court, but I heard later from some of the
18 jurors that, you know, when they were in the motel
19 she was acting crazy and some really weird stuff,
20 so --

21 Q You just said that you heard from some of
22 the jurors about how she was acting in the motel.
23 Was that something that you asked them questions or
24 they came to talk to you, or --

25 A No. That was after the trial.

1 Q Okay.

2 A Right after the trial I went down there and
3 I was -- that was the first case that I'd ever lost
4 and so I wasn't real happy. It's a sad thing to lose
5 a death penalty case. A lot of -- you put so much
6 time and effort, and your own heart and soul into it,
7 that you -- morally, I think it's wrong and that's
8 why I keep doing this. I don't do it for the money,
9 that's for sure.

10 So I was upset, you know, that I'd lost. So
11 I talked to some of the jurors and they were very
12 kind about my representation of him, but they made
13 some mention of this particular woman and how crazy
14 she was acting, and the fact that they were going the
15 opposite direction. You know, the consensus was,
16 they didn't like he might get a life without parole.
17 Apparently she told some of them that he would only
18 be in there a very short period of time, and he'd
19 come out and kill them all, or something to that
20 effect, which, you know, to me is criminal in and of
21 itself that she would do something like that. So,
22 basically, that's where I heard it. I don't remember
23 specifically which one of the jurors told me that,
24 but I remember getting that information.

25 Q Was that something that was raised then in

1 motion for new trial or on appeal?

2 A I believe that there was some issues with
3 that juror that were raised, and I think it was to do
4 with her shenanigans while she was in with the jury.
5 And of course, the judge is -- well, anyway.
6 Sometimes I'm a little too worrying, I'm sorry.

7 Q You're fine. Did you ever talk with Mr.
8 Humphreys about any physical or sexual abuse in his
9 childhood?

10 A Mitigation, I'm sure, talked with him about
11 that. I don't remember specifically what -- I don't
12 think he really talked much about anything, to be
13 honest with you. I can't remember anything,
14 specifically. But I know that that's a question that
15 is always asked.

16 Q Do you recall an expert, Dr. Avocar
17 (phonetic)?

18 A Uh-huh (affirmative).

19 Q Was that someone that was referenced through
20 the Capital Defender program?

21 A Right.

22 Q Okay.

23 A Yeah. I had no involvement with any of the
24 experts. They contacted and hired all the experts
25 and paid them directly. So I really didn't have any

1 involvement in who to get, who they thought they
2 ought to get, or anything much.

3 Q So any of the names, the experts that are
4 throughout the file, those would have been people
5 that they had suggested?

6 A Right.

7 Q Okay.

8 A And my involvement with them would have been
9 talking to them at some point about what their
10 testimony was going to be.

11 Q Okay.

12 A After they had done their work up.

13 MS. SCHIEFER: Okay. That's all I have.

14 MR. DANTZLER: I don't think we have
15 anything.

16 - - -

17 (Whereupon, the deposition was concluded at
18 2:32 p.m.)

19 - - -

20

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23

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25

E R R A T A S H E E T

I have read the within and foregoing pages
numbered 4 through 49, and no changes are required.

This, the ____ day of _____ 201__

Jimmy Dodd Berry

I have read the within and foregoing pages
numbered 4 through 49, and the following changes are
required as a result of the transcription thereof:

Page ____ Line _____

Reason: _____

Page ____ Line _____

Reason: _____

Page ____ Line _____

Reason: _____

Page ____ Line _____

Reason: _____

This, the ____ day of _____ 201__

Jimmy Dodd Berry

Sworn to and subscribed before me this,

the ____ day of _____ 201__

Notary Public
My commission expires: _____

ADDENDUM TO SWORN TESTIMONY

I have read the within and foregoing pages numbered 4 through 49, and having executed the Errata Sheet in the appropriate space, desire to submit the following as an addendum thereto:

(Indicate page and line numbers applicable and reason)

This, the ____ day of _____ 201__

Jimmy Dodd Berry

DISCLOSURE

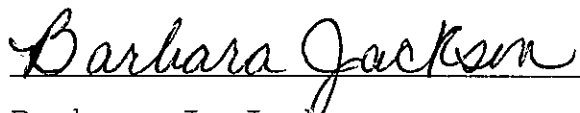
STATE OF GEORGIA)
COUNTY OF GWINNETT)

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This, the 24th day of November 2012.



Barbara J. Jackson

Certified Court Reporter

Certificate 2824

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STATE OF GEORGIA)
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I hereby certify that the foregoing deposition was taken down, as stated in the caption, and the questions and the answers thereto were reduced to typewriting by me; that the foregoing pages represent a true, correct, and complete transcript of the evidence given by the deponent, who was first duly sworn by me; that I am not a relative, employee, attorney, or counsel of any of the parties; am not a relative or employee of attorney or counsel for any of said parties; that I have no contract with either party nor am I financially interested in the action.

This, the 24th day of November 2012

Barbara Jackson
Barbara Jackson, CCR
Certificate 2824

(SEAL)

Deposition of JIMMY DODD BERRY

<p style="text-align: center;">A</p> <p>ability 33:7 39:6,14 able 10:14 21:25 23:13 29:4 33:7 34:22 37:23 38:14 38:15 39:11 40:17 46:6 Absolutely 39:21 abuse 48:8 academy 28:8 acted 31:22 acting 46:19,22 47:14 action 1:7 4:10 53:15 actual 36:1 Adams 14:4 addendum 51:1,5 address 4:23 adopted 25:23 affirmative 8:8 10:18 11:2 23:23 25:3,15 27:5 29:25 36:3 41:11 48:18 afford 21:5 38:15 afraid 40:21,24 afternoon 34:16 agents 45:3 ago 7:19 agree 23:3 aid 6:9 aided 10:10 Akins 39:23,24 alibi 22:12 aloof 31:19 amazing 26:23 amount 27:23 answers 45:3 53:6 anybody 7:24 19:18 19:18,22 29:5 31:19 34:21,25 35:14 40:16 anymore 15:13 anytime 18:16 23:9 30:20 anyway 5:18 15:24 37:10 43:4 48:5 anyways 39:3 apparently 10:25 47:17 appeal 10:11,17,18 10:23 23:11 48:1</p>	<p>appeals 7:8 35:2 appellate 10:9,16 applicable 51:6 appoint 9:7 appointed 8:22,25 11:25 12:11 approach 25:4 appropriate 26:21 45:3 51:4 Approximately 5:25 area 24:10 28:6,10 28:13 argue 40:17 argued 14:12 15:16 18:2,4,5 arguing 18:3,9 arrest 30:15,17 arrested 8:17 Article 52:4 aside 27:17,19 asked 19:6 46:23 48:15 asking 34:11 Asperger's 44:9 assign 7:19 assigned 7:14,18 assist 6:9 assistance 35:25 Assistant 2:12 assisted 10:11 assured 22:21 Athens 28:24 Atkins 39:22 Atlanta 1:24 2:6,13 2:21 52:9 attended 6:25 7:2,5 attention 26:14,18 attorney 2:12,12 6:20 53:11,13 attorneys 13:10 14:20,21 20:10 available 15:20,20 Avenue 1:19 4:24 Avocar 48:16 aware 11:19 25:1 36:6 43:10 44:21 awful 27:8</p> <p style="text-align: center;">B</p> <p>b 52:13 baby 36:14 back 7:18 9:21 10:15 12:17 14:2</p>	<p>17:23 26:1 32:10 35:19 40:20 41:2 46:3 background 5:5,10 24:11,25 36:5 bad 13:21 32:10 34:25 Barbara 1:17 52:23 53:20 basically 9:8 16:17 16:20,23 17:6 20:24 22:11 24:20 30:2 32:17 33:2 33:13 34:19 39:1 41:9,21 43:23 47:22 battered 42:6,8,10 began 20:20 beginning 20:7 22:1 26:18 32:19 believe 9:24 14:24 19:2 42:25 48:2 Benton 2:18 4:9 Berry 1:14 3:10 4:6 4:13,19,21 50:6 50:20 51:22 best 33:3 better 11:13 15:23 18:2 35:2 big 17:20 28:15 39:18 bill 37:7 bills 9:10,19 10:1 birds 36:14 bit 5:8,9 12:17 20:21 21:8,22 23:21 27:6 30:6 31:2 36:1 44:11 45:12 bite 24:15 40:20 Blow 34:17 Board 52:5 Bob 24:22,23 42:24 43:22 Bob's 38:16 break 3:4 12:7 brief 44:14 briefly 5:4 bring 22:22 brother-in-law's 8:6 brought 28:3 37:20 Brunswick 28:5 43:7</p>	<p>budget 9:14 building 5:3 business 5:6 BUTTS 1:1 B-E-R-R-Y 4:22</p> <p style="text-align: center;">C</p> <p>C 1:23,23 2:1 3:8 4:1 calendars 16:21 California 39:10 call 17:21 23:6 called 4:14 calling 17:6 Capital 7:21 8:25 9:2,12,23 12:12 13:3,10 14:5,6,25 15:7,18 16:19 17:14 21:1 29:8 38:22,23,24 40:25 41:7 42:22 43:11 48:20 Capitol 2:13 caption 53:5 Carl 1:8 4:7 Carolina 14:8 case 4:7 5:21 6:10 6:14 8:1,2,10,12 8:14,22 10:4,4,7 12:12,13,16,22 14:4,9,11 16:1,8 16:16 18:16,22,25 19:6,12 21:23 22:8 24:6,12 26:3 27:7,8,9,18,22 28:17 29:13,21 30:4,9,14 32:22 33:12 34:7,20 35:6,19,20 36:19 36:22 37:8 39:8 41:7,16 43:1,2,5 47:3,5 52:15,16 52:19 cases 5:14,22 6:12 6:21 7:12,13,13 7:14,16,18 9:16 13:4,6,13 15:2,21 16:6,25 22:6,9,18 25:24 29:21 30:21 37:10 42:6,10 43:4 46:11 causing 46:16 cell 31:17 Centennial 2:19</p>	<p>certain 9:22,23 29:19 certainly 42:7 Certificate 52:25 53:1,22 Certified 1:18 52:8 52:24 53:21 certify 53:4 chair 6:14 9:4,7,8 39:3 chance 45:14 change 26:6,22 27:4,16 changed 26:24 28:3 changes 50:3,8 charge 52:18 cheaper 29:20 childhood 48:9 Chris 14:4,6,9,24 Circuit 8:22 civil 1:7 4:10 5:20 5:20 Clairmont 1:24 Classification 1:9 clearly 45:12 clerk 12:18 client 39:9 Cobb 16:4 28:4 43:1 come 18:1 20:10,12 22:1 28:21 47:19 Comet 6:13 comfortable 34:13 34:15 40:9 commencing 1:20 commission 50:25 commit 31:21 complete 53:8 completed 10:10 complicated 35:7 computer 11:1 17:20 concern 24:8 28:16 concerned 38:13 46:9 concerning 46:14 concerns 23:15,17 24:3 concluded 49:17 connection 19:3 consensus 47:15 conservative 28:15 consider 22:8 contact 8:9 17:3</p>
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Deposition of JIMMY DODD BERRY

37:13 contacted 8:13,17 37:18,22 48:24 52:10 contacting 8:7 contained 1:16 continuity 3:4 15:11 32:21 contract 52:12 53:14 contractor 52:9 contract/agreeme... 52:14 control 33:12,13 39:15 controlled 29:7 conversations 17:25 43:18 converse 20:4 33:10 conviction 28:13 cooperative 19:25 30:16 copy 12:19 correct 11:3 53:8 Council 52:6 counsel 9:3,6 10:9 10:16,17,19,25 11:17 17:12,13,13 52:16 53:11,13 counties 7:23 15:22 23:8 county 1:1 6:13 7:17,20,20,22,25 8:25 9:10,19,20 9:22,25,25 13:15 26:20,24 28:4 52:3 53:3 course 8:18,23 24:11 26:15 37:9 48:5 court 1:1,18,24 6:24 9:6 13:5 16:21 26:6,10 46:17 52:5,8,10 52:15,24 53:21 courts 7:15 Court's 15:17 court-appointed 8:11,12 39:12 crazy 45:4,5,5,6,23 46:19 47:13 crime 18:24 21:11 24:7,9,18,19 32:6 crimes 31:21	criminal 5:13,14 25:2 47:20 critical 21:22 cross-examine 41:24 crux 40:12 customary 52:18 <hr/> D <hr/> D 4:1 DA 16:4 23:2,5 Dantzler 2:4 4:8 42:16 49:14 DAs 34:5 date 12:3 dates 16:21 David 2:4 4:8 david.dantzler@t... 2:7 day 1:20 34:11 50:4 50:18,22 51:18 52:20 53:16 DA's 24:24 deal 15:22 20:5 21:17 31:6 32:5 39:2 43:25 dealing 26:19 dealt 29:12 death 5:22 6:6,9,11 6:21,25 7:12,23 8:3,20 11:25 12:14,22 13:1,5 16:7,9,25 22:6,7 25:19 26:3 28:17 35:4 39:8 47:5 Deb 14:18 18:4 34:6 35:1 40:24 41:20 deceased 45:1 decide 12:20 27:18 decided 41:2 46:10 decisions 29:9 Defender 2:19 8:22 12:12 13:10 15:18 17:14 38:22,23 42:23 43:11 48:20 Defenders 7:21 8:25 9:12,23 13:3 14:5,6,25 15:7 16:19 21:1 29:8 41:1,7 Defender's 38:24 defense 22:14 defensible 22:15	degree 5:7,7 demographics 26:23,24 deponent 53:9 deposition 1:14,17 4:5 11:8,11 49:17 52:11,12 53:5 describe 5:4,9 desire 51:4 determination 28:22 developed 38:1 diagnoses 44:2 diagnosis 44:5 Diagnostic 1:9 different 14:20 15:9 45:16 differently 12:17 26:19 31:22 difficult 20:6 35:18 dire 34:4,10 45:11 direct 10:17,18,23 direction 47:15 directly 9:10 48:25 direct-examine 41:24 disclosure 52:1,7 discovery 23:12,20 discuss 21:11 discussing 24:5 discussions 23:1 disheartening 37:1 disjointed 20:14 21:9 disqualified 52:16 disturbance 46:16 documents 16:13 Dodd 1:14 3:10 4:13,21 50:6,20 51:22 doing 5:14 13:14,25 14:11 16:8 24:25 25:18,24 28:10 32:22 34:3,5,10 34:13,15 35:2,4 35:10 36:17,20 37:18 43:10,11 45:10,23 46:13 47:8 domestics 5:17,19 double 5:6 doubt 18:14 Dr 29:23,25 42:14 48:16	duly 4:3,15 53:10 D-O-D-D 4:21 <hr/> E <hr/> E 1:23,23,23 2:1,1 3:8 4:1,1 50:1,1,1 early 8:3 11:25 36:20 easily 38:12 easy 34:18 educational 5:5 effect 47:20 effort 47:6 either 53:14 Email 2:7,15,22 employee 53:11,12 employment 4:23 ended 16:8 30:2 34:3,6,19 36:16 enforcement 28:8,9 engaged 42:21 43:18,19 entire 6:16 entrenched 27:21 Errata 51:4 especially 35:10 44:22 Esq 2:4,11,18 essentially 22:2 estate 5:12 44:24 45:2 everybody 28:5 45:22 evidence 19:10 21:18,20 53:9 exact 3:3 32:13 exactly 3:2 14:8 21:16 24:9 36:20 42:3 46:5 Examination 3:11 4:17 examined 4:15 example 41:8 executed 51:3 EXHIBITS 3:13 expensive 29:4 experience 9:2 13:19,22,23,24 15:6 18:9 25:20 25:24 experienced 38:16 38:16 expert 39:10,25 41:8 48:16	experts 9:15 20:19 20:21 21:2 29:2 29:14 33:7,8 37:3 37:4 48:24,24 49:3 expires 50:25 expressed 20:13 e-mail 17:18,24 18:16 e-mailing 17:19 e-mails 17:20,23 18:18 <hr/> F <hr/> fact 7:16 16:4 42:25 46:9 47:14 facts 19:17 fair 18:12 27:14 fairly 6:19 8:3 17:8 23:18 27:17 31:8 family 8:13,16,18 19:1 31:15 37:16 39:12 far 5:21 17:17- 23:24 25:4,25 31:2 36:22 Fax 1:25 2:7,14,22 Federal 2:19 feel 19:25 32:10,16 34:12,15 feeling 32:19 felt 15:3 20:2,13,13 21:8 26:21 27:23 42:12 45:4 field 39:11 figure 30:10 file 1:7 10:6,9,12 11:8 18:15,17,17 23:6,9,13 24:1 25:17 26:3,7,8 46:8 49:4 filed 9:24 16:18,19 23:11 files 23:8 filing 26:1,17 financial 9:14 52:17 financially 53:15 find 4:25 15:13 36:15 37:16 fine 12:5 48:7 finger 30:23 firm 5:2,16 first 5:12 6:11 8:10 8:13 16:9 19:5,23
--	--	--	---	--

Deposition of JIMMY DODD BERRY

21:23 24:2 27:3 47:3 53:10 fit 24:9 42:8 five 5:12 Florida 25:19 focused 5:13 following 50:8 51:5 52:6 follows 4:16 foregoing 50:2,7 51:2 53:4,7 form 27:11 formed 27:15 formulate 46:6 found 7:10 10:25 25:21 four 34:5,20 frankly 31:24 38:9 friend 19:20 friends 37:17 38:9 38:11 front 25:5,7 full 4:20 Fulton 7:17 13:15 fund 15:19 funding 9:17 12:24 14:23 15:15 21:2 21:5 36:25 funds 29:2	give 12:7 13:17,20 17:9 37:24 given 21:10 53:9 giving 40:19 go 6:2 9:9 17:11 19:5 23:8,13 28:24 30:6 32:14 36:4,12 37:15 39:6 41:2 44:17 God's 19:17,21 goes 20:16 going 9:13 14:3,23 15:2,14,18 19:11 19:12,14 20:15,19 20:24,25 21:3,9 22:2,8,20,21 24:15 25:5,6 26:6 27:16,18,22 28:21 32:7,12 33:16 34:8,9,22 35:13 35:17 36:25 37:3 37:3,4,25 38:18 39:17 40:2,3,8 41:4,20,23 42:7 43:21,22 47:14 49:10 good 9:14 17:19 20:1,2 30:22 35:1 43:25 46:5,15 gotten 6:11 grammar 36:11 great 18:8 40:14,18 group 7:21 14:7,25 15:7 guess 10:11 40:25 guide 25:16 37:12 guidelines 13:5 guilt/innocence 20:23 22:3,4,7,11 22:19,22 23:22 24:18 25:7,10,12 30:9,11 33:4,6,15 guy 17:20 39:22 40:3,12,18 guys 33:6 GWINNETT 52:3 53:3	handle 13:7,7 handled 6:12 8:15 25:13,19 hands 36:11 40:7 happen 32:2 happened 12:13,15 21:14 41:9 happy 47:4 hard 22:5 27:16 hazy 10:13 head 14:6,25 30:20 42:11 heard 46:17,21 47:22 hearing 19:16 27:1 heart 47:6 heck 46:13 help 13:24,25 22:20 34:22 35:10 36:15 helpful 20:7 22:23 helping 15:25 44:14 high 28:14 hire 9:15 39:6 hired 7:15 13:16 39:22 43:5,16 48:24 historically 12:21 27:9 36:7 42:5 history 5:7 holes 22:17 honest 48:13 hopefully 26:9 hospital 36:9 hour 37:11 Humphrey 1:8 4:8 Humphreys 1:5 4:9 6:10 13:11 18:22 25:1 37:14 48:8 Humphreys's 8:2 8:10,12 10:7 16:16 30:14 36:5 hundred 25:21 hurt 40:3	Indicate 51:6 Indicates 3:5 indication 37:24 individual 26:20 ineffective 7:10 information 19:17 47:24 initial 31:4 initially 8:21 12:11 14:5 43:23 injection 26:16 input 13:13 14:2 28:20 30:5 43:20 instance 1:15 intending 42:2 interacted 17:16 interacting 17:12 interaction 31:18 interest 52:17 interested 53:15 interesting 45:24 internal 29:11 investigate 23:25 investigation 23:22 24:10,17 30:7 31:3 33:5 36:2 investigator 24:18 invoice 10:24 involved 7:7,13 8:1 8:2,21 12:16 13:15 14:14,15,17 14:21 20:15 31:16 41:10 44:12,13 involvement 11:24 13:9 14:9 16:10 17:1,15 18:7 37:23 41:17,22 42:14 44:15 48:23 49:1,8 isolation 40:15 issue 25:9,10 26:11 43:24 44:10 issues 11:19 23:19 26:15,16 27:1 31:9,25 44:21 45:20 48:2	40:14 James 39:24 JD 5:7 Jeff 8:7 Jill 2:18 4:9 jill_benton@fd.org 2:22 Jimmy 1:14 3:10 4:6,13,21 50:6,20 51:22 job 35:1 Joe 34:17 JR 2:4 judge 27:17,18 28:22 45:24,25 46:2,7 48:5 Judicial 52:6 jump 35:5 juries 28:15 jurisdiction 27:12 28:7 juror 29:2 44:22 48:3 jurors 27:13 28:3,6 40:8 44:18 46:18 46:22 47:11,23 jury 25:5,7 26:20 26:23 28:16,25 31:5 33:18 44:11 44:22,25 45:1,21 45:24 46:4 48:4
G				K
G 4:1 GA 2:6,13,21 gain 13:24 Gary 14:25 gather 36:4 gathered 36:18 gathering 19:16 36:7 general 2:12,12 44:3 generally 5:18 7:12 7:25 12:15 17:11 23:21 24:4 25:20 25:21 40:7 Georgia 1:2,9,19,24 12:12 17:13 52:2 52:6,8 53:2 getting 20:17 26:13 29:3 35:24 36:23 37:8 47:24 girlfriend 37:20 38:2 girls 32:9	H 1:23 50:1 habeas 7:7 11:17 haggard 35:20 halting 3:5 hand 44:7	I		keep 10:6 16:25 47:8 kept 6:18 16:20,21 23:16 kill 40:3 47:19 killed 40:6,10 kind 13:21 15:16 16:22 17:18 20:16 22:17 23:22 26:2 27:21 29:13,21 30:10 31:19 32:13 32:15 33:14,18 36:10 39:3 43:12 45:4 47:12 kinds 38:7 45:23 knew 8:16,16 18:25 19:7 24:12 37:18 37:21 43:3 know 9:1,18 10:1 12:20 13:25 15:11 15:16,19 19:1,11
		J		
		J 1:18 2:4 52:23 53:20 Jack 6:7 Jackson 1:18 52:23 53:20 jail 19:8,18 40:9,13		

Deposition of JIMMY DODD BERRY

<p>19:13 20:14,16,16 20:18 21:3,5,9,16 21:16,19,24 22:5 22:12,13,14,16,20 23:11 24:4,8,11 24:16 25:9,11 26:5,9,10,16,22 26:25 27:11 28:10 28:12,17,19 29:1 29:5,8,10,11,16 30:8,16,17,22 31:13,16 32:3,5,6 32:8,8,11,15,19 33:1,6,9,10,16 34:2,13,16 35:12 35:13,17,21 36:7 36:14,16,22,24 37:2,2,2,16,17,22 37:24 38:2,8,10 38:11,15,21 39:3 39:7,9,19 40:8,10 40:16,18,22 41:3 41:21 46:5,5,10 46:16,18 47:10,15 47:20 48:14</p> <p>knowing 20:19 knowledge 14:19 Knowles 8:7 known 42:24 knows 16:24</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>L 1:23,23,23 large 6:19 law 5:7,13 28:8,9 lawyer 20:17,18,18 35:25 lawyers 13:16 15:20 lawyer's 13:21 lead 9:3,6 learned 18:18 leave 32:23,24 left 14:7 15:6,7 41:8 Legend 3:1 lengthy 25:2 lethal 26:15 letting 46:14 let's 11:23 23:21 30:6 31:2 36:1 44:11 level 20:16 life 22:9,10 47:16 limited 30:5 38:12</p>	<p>line 41:6 50:10,12 50:14,16 51:6 listens 15:24 litigation 5:20 35:4 little 5:8,9 10:13 12:7,17 20:14,20 21:8,22 23:21 24:25 26:19 27:6 30:6 31:2,22 36:1 37:1 38:17 44:11 45:4,12 48:6</p> <p>live 11:16 lived 28:10 LLC 52:10 LLP 2:5 location 27:24,25 28:1 locked 22:6 long 15:17 25:18 43:8 longer 10:8 41:7 look 10:13,14 23:9 23:13 24:7 26:10 26:18 28:12,12 38:8 40:2 looked 11:5,7 35:20 looking 19:20 28:19 Lord 12:4 44:4 Loring 41:10 lose 22:21 47:4 lost 47:3,10 lot 15:1,2,2,11 22:17 26:1,4,12 26:14 27:8,10,10 27:13,19,20 28:9 28:9 29:22 30:3 31:23 32:3 38:9 41:22 43:17 46:16 47:5</p> <p>loved 40:14 Lynn 16:8</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M 2:11 mad 45:22 main 10:11 maintain 10:6 major 5:6 majority 7:14,18 makeup 26:20 making 45:22 Marietta 1:19 2:20 Marty 41:10,13,13 41:14,17 42:8</p>	<p>material 3:6 matter 7:16 16:4 31:20 42:24 mean 32:11 meet 17:17 20:11 34:16 meeting 19:5,24 meetings 18:10 members 19:1 memory 8:23,24 mention 47:13 mentioned 8:6 11:24 18:10,21 24:25 25:13 28:25 30:8 38:19</p> <p>met 18:13,24 20:9 41:14,15 mind 26:6 mine 16:6 mistake 45:7 mistaken 24:23 mitigation 15:9 20:18,19,21,22,25 25:9 30:7,11 31:3 33:8,8,16,20,22 33:24 34:23 35:11 35:11 36:2,15 37:13,15 38:8,19 38:25 39:17 41:25 48:10</p> <p>money 9:15 15:19 21:2,7 29:7 32:3 33:6 37:6,9 39:16 40:1,5 41:1,3 47:8</p> <p>morally 47:7 motel 46:18,22 motion 23:11 27:4 44:12,13 48:1 motions 14:13 16:18 18:3,7,9 25:14,17,22 26:2 26:13 27:3 33:14 46:7</p> <p>move 27:24 moved 28:5,13 murder 5:18 39:8 42:25</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 1:23 2:1 3:8,8 4:1 45:17 named 39:22 names 38:20 49:3</p>	<p>nature 17:8,10 NE 2:5 necessary 26:5 27:24 42:4,12 need 13:25 15:18 32:20,22,24,25 39:13 needed 9:16 19:15 19:22 35:3 39:9 nervous 34:23 never 14:17 16:10 20:3 21:13,24 23:3,3,13,17 26:5 29:4 33:1 34:6 38:1 46:1 new 44:12,13 48:1 nice 35:21 38:4 night 35:15 41:18 nights 41:18 nine 36:13 nobody's 26:17 nonviolent 30:18 non-confrontatio... 30:18 normal 39:8 normally 19:8,23 20:11 24:1 31:22 44:25 Notary 50:24 note 8:5 46:7 notes 17:10 45:24 46:1,3,12 notice 8:19 12:16 12:18,19 noticed 8:3 12:1 14:3 19:14 November 1:20 52:20 53:16 number 4:10 6:19 29:21 42:10 numbered 50:3,8 51:3 numbers 51:6 NW 2:20</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 1:23 3:8 4:1 observed 31:11 obtained 36:21 obvious 31:8 obviously 6:20 7:4 11:7 13:18 26:8 45:7 occupation 45:1,14</p>	<p>office 2:12 12:23 13:3 15:25 16:3,6 24:24 33:9 38:24 officer 8:15 officers 24:4 Oh 7:6 23:3 34:1 okay 5:1,4,8,22 6:20,23 7:4,7 10:6 10:20,22 11:7,13 11:19,23,23 12:3 12:5 14:19 16:15 17:5,11 21:15 23:5 28:23 29:6 30:1,25 32:1 33:24 35:17 38:2 40:13 42:14 43:15 44:8,20 45:20 47:1 48:22 49:7 49:11,13 old 36:13 omission 3:5 once 8:17,21 12:13 12:18 ones 21:3 29:8 33:11 43:16,17 open 20:3,20 23:6,8 24:5 opened 21:13 open-type 38:6 opinion 27:11,15 opinion's 27:16 opportunity 10:12 opposing 17:12,12 opposite 47:15 original 10:23 ought 29:18 49:2 overwhelmed 15:4 O.C.G.A 52:13,17</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 1:23,23 2:1,1,4:1 page 3:9 50:10,12 50:14,16 51:6 pages 50:2,7 51:2 53:8 paid 9:20 26:17 40:1,4,5 41:3 48:25 paper 18:15 paralegal 16:14,17 17:2 paraphrasing 46:4 parole 22:10 47:16 part 9:20 15:10</p>
--	--	---	---	--

Deposition of JIMMY DODD BERRY

<p>33:12,16,17 34:9 34:10 43:11 particular 19:6 23:16 24:6,10 27:22 39:11 47:13 particularly 27:25 30:4 parties 52:19 53:12 53:13 party 35:10 party 52:15 53:14 Paulding 6:13 pay 9:22,23 21:7 37:9 39:12 Peach 52:9 Peachtree 2:5 penalties 7:24 penalty 5:22 6:6,9 6:11,21,25 7:12 8:4,20 12:1,14,22 13:1,6 16:7,9,25 22:6,8 25:19 26:3 28:17 39:8 47:5 people 12:22,23,25 13:2 15:9,17 21:7 27:10,14,20 28:9 29:19,19 31:21,23 32:8 34:11,20 36:24 37:15,17,19 37:21 38:8,10,19 38:22,25 39:2,16 40:25 43:25 46:12 49:4 percent 18:2 percentage 9:22,23 perfunctory 26:12 period 9:13 29:15 47:18 person 14:16 16:2,5 17:17 18:1,11 19:22 22:13 24:19 32:4,21,23,25 38:5,6 personal 52:17 person's 40:8 petitioner 1:6 2:3 4:9 phase 6:17 22:3,4 22:20,23 23:22,25 30:9,11 31:5 33:4 phone 1:25 2:6,14 2:21 17:22 18:12 phonetic 3:3 14:18 15:1 24:22 48:17</p>	<p>physical 21:17,20 48:8 picked 25:22 28:6 picking 28:16,25 33:18 placate 40:25 places 15:3 plan 25:8 play 25:5,7 played 21:24 23:10 40:7 plea 23:1 please 4:19 point 8:23 9:21 15:6 16:24 19:10 19:13 21:11 25:1 26:9 30:22 37:5 49:9 poke 22:17 police 8:15 24:2 policy 23:6 position's 27:22 possibility 43:8 Potts 6:8 practice 46:2 practicing 5:11 preliminary 19:15 preparation 11:8 prepare 11:10 prepared 35:9 present 2:17 4:6,8 10:25 11:17 31:5 preserve 27:2 pretrial 25:14 pretty 20:6 21:20 22:21 23:10 24:5 24:16 28:14,14 29:4,11 36:22 45:16 previous 8:14 18:22 previously 4:15 primarily 5:12,15 5:17 primary 22:7 prior 7:4 18:24 prison 1:9 39:25 probably 15:23 18:2 21:8 22:5 27:15 28:17 33:17 35:6 42:20 43:4,6 problem 32:18 problems 27:2 31:9 procedure 19:12 process 10:21</p>	<p>processes 32:17 professional 5:9 program 2:19 48:20 prohibited 52:13 proportionality 26:15 prove 22:12 provide 52:10,14 provided 23:12 psychiatric 36:9 43:24 psychiatrist 29:17 36:13 psychological 31:7 31:8,25 38:14 psychologically 32:7,12 psychologist 41:13 Public 50:24 publicity 27:9,10,20 27:23 punishing 40:20 purpose 42:1 purposes 25:23 pursuant 1:15 52:4 pursue 22:3 put 13:22 15:4 18:16 20:22 21:4 21:18 24:8 25:8 30:10,23 32:9 36:10 40:1,2,4,5 42:12 44:24,25 45:8,13,14,15 47:5 putting 40:17 45:7 p.m 1:20 49:18</p>	<p>read 24:1,2 46:3,12 50:2,7 51:2 reading 1:16 3:5 31:18 ready 33:5 real 5:12 32:11 44:24 45:2 47:4 reality 13:2 27:15 33:17 46:4 really 6:18 9:18 12:6,25 14:11 15:10,10 16:10 17:1,19 18:6,7 19:3 20:14 21:13 21:25 23:10,17,18 25:6,10,11 30:19 31:14,15,16 34:13 34:21 35:8,13,24 38:1,21 39:14 40:4,19 41:21 44:4,5,15 46:13 46:19 48:12,25 reason 4:25 50:11 50:13,15,17 51:7 recall 6:5 12:3 23:5 23:19 24:21 30:13 38:20 41:10 42:1 44:2 45:17,20 48:16 received 6:5 10:24 record 4:20 9:25 18:13 25:2 36:10 records 36:4,8,9,10 36:18,21 reduced 53:7 referenced 48:19 Regulations 52:5 relationship 20:1,2 38:4 relative 53:11,12 rely 39:1,4 remember 9:18,19 10:5 12:6,9 14:8 14:10,13 18:3,6,8 19:3 24:13,20 30:15,19 36:20 39:18,20,23 41:15 41:21 42:3,11,13 42:19 43:7 44:4,5 44:7 45:18,25 47:22,24 48:11,13 remembrance 15:8 17:9 Reporter 1:18 52:8</p>	<p>52:24 53:21 Reporters 52:10 reporting 1:24 52:5 52:11,15 reports 24:3 represent 53:8 representation 47:12 represented 6:8 8:14 18:22 24:12 representing 13:11 21:10 request 13:18,19 29:1 required 50:3,9 research 16:22 28:11 reserve 29:16 reserved 1:17 respect 42:16 respond 17:22 Respondent 1:10 1:15 2:10 4:7 responsibility 20:24 20:25 result 45:16 50:9 Resuming 42:17 retained 7:17 revenge 32:10,12 32:14 Reynolds 16:3 right 6:22,25 7:16 10:2,19 12:2 13:14 18:23 29:16 30:19 32:1,16 33:23 40:7 42:11 42:24 47:2 48:21 49:6 Road 1:24 robbery 32:2 Robinson 45:25 role 16:16,17 41:12 roles 43:13 Rules 52:4</p>
		<p>Q</p>		
		<p>qualified 6:21 7:24 13:1 question 48:14 questions 46:23 53:6 quite 10:2 25:2 Quoted 3:6</p>		
		<p>R</p>		
		<p>R 1:23,23,23 2:1 4:1 50:1,1 raised 11:20 47:25 48:3 rape 32:4 rates 28:13 52:19</p>		
		<p>S</p>		
		<p>S 1:23 2:1 3:8 4:1 50:1 sad 47:4 sake 19:17,21 Sanders 2:5 saw 8:5 16:12 34:2 saying 33:21 says 27:17</p>		

Deposition of JIMMY DODD BERRY

<p>scared 35:4 scene 24:7,9,19,19 Schiefer 2:11 3:11 4:5,6,18 42:17 49:13 school 1:24 36:8,12 SEAL 53:25 second 6:12,14 9:4 9:7,8 21:23 22:20 22:23 39:3 secretary 16:13 see 17:7 24:11 36:16 46:1 seen 31:22 seminars 7:1,5 send 12:19 27:25 sent 17:21,22 46:3 sentence 3:5 sentencing 6:17 31:5 separate 15:22 separation 43:12,14 serves 8:23,24 services 52:11,15 set 9:5 27:17,19 33:14,19 35:1 sexual 48:8 Shaffer 29:23,25 42:15 shake 20:6 Sheet 51:4 shenanigans 48:4 shifts 36:24 short 47:18 short-lived 14:10 show 30:21 36:11 Shuba 14:18 34:6 sic 3:2 9:2 signing 1:17 Silver 6:13 simply 10:5 single 6:2 sister 19:2 situation 35:23,24 39:15 41:9 situations 9:14 somebody 13:18,19 13:22 29:3,22 30:3,4 32:14 35:3 38:17 39:9 40:10 44:25 somebody's 15:14 somewhat 15:4 26:4 38:12</p>	<p>sorry 12:4 17:13,17 48:6 sort 16:15 30:18 35:2 soul 47:6 South 14:8 space 51:4 speak 44:17 specific 23:19 specifically 14:11 18:4 30:13,20,24 47:23 48:11,14 specifics 11:24 speech 3:4,5 spelling 3:3 4:21,22 spend 35:13 spent 41:1 split 34:8 spoke 18:11 19:8 spoken 3:6 11:17 Square 2:13 St 2:20 Stacey 1:5 4:9 8:14 20:3 21:8 31:8,25 38:18 40:19 44:6 Stacey's 41:7 43:3 stage 22:11 stand 25:25 standard 26:4 standing 34:11 standpoint 12:21 20:23 22:15 23:20 24:15,17 25:12 31:7 36:16 start 19:16 20:17 39:19 started 7:20 15:12 33:3 36:22 state 1:2 4:19 34:5 34:20 40:6,17 52:2 53:2 stated 53:5 states 25:23 State's 40:7 stay 9:3,3 stipulations 1:16 straightforward 23:18 strategy 22:2,5,10 Street 2:5 stuff 46:19 submit 10:2 51:5 submitted 9:18 10:1 10:4 37:7</p>	<p>submitting 9:9 subscribed 50:21 suffer 40:9,11 suggest 40:23 suggested 49:5 suggestion 29:17 suggestions 21:6 39:17 Suite 2:5,20 sundry 9:17 SUPERIOR 1:1 supposed 41:19 supposedly 12:18 Supreme 6:24 9:6 13:4 15:17 26:6 26:10 sure 12:8 14:14 18:25 24:14 30:12 43:4,9,21 45:16 46:13 47:9 48:10 SUSAN 2:18 switch 15:14 switching 14:21 sworn 4:3,15 50:21 51:1 53:10 syndrome 42:8 syndrome-type 42:6,10 system 14:1 S.W 2:13</p> <hr/> <p style="text-align: center;">T</p> <p>T 1:23,23,23 3:8,8 50:1,1 take 32:3 taken 1:14 53:5 talk 11:23 17:7 19:18,18 20:4 23:21 24:4 27:6 30:6,16 31:2,14 33:10,24 36:1 43:6 44:11 46:24 48:7 talkative 38:5 talked 6:16 8:25 14:16 19:2 29:3 36:19 38:1 41:18 42:19,20 43:5 47:11 48:10,12 talking 10:16 19:22 24:6 29:24 31:10 31:13 35:14 39:19 41:23 42:5,9 43:12 44:23 49:9</p>	<p>tasks 16:15 taught 7:2 technically 6:10 telephone 17:25 tell 17:23,24 19:10 27:18 31:13 32:21 32:23,25 39:4 46:7 ten 26:22,25 Terry 14:14 15:4,5 18:3 testified 4:15 37:20 42:9 43:1 testimony 8:6 40:12 42:2 49:10 51:1 text 18:19 Thank 6:4 theory 31:4 thereof 50:9 Theresa 2:11 4:6 thereto 51:5 53:6 thin 41:5 thing 15:19 17:18 21:17,24 22:7,16 24:2 29:1 30:19 32:11 33:3,3 35:3 40:14,18,23 43:23 45:25 46:15 47:4 things 9:5,17 10:14 13:25 14:23 15:2 15:12 16:22 22:19 22:23 23:24 26:8 26:16,19 28:18 31:10 33:11 36:7 36:23 39:18 45:23 think 6:10 8:5 9:5 9:21 10:3 13:21 14:7,12,15 15:3 15:23 16:7,9,12 17:22 18:4,6,8 19:19 20:13,20 21:8,22 22:24 23:7 24:22 26:13 27:14 29:15,17 33:21 35:1,19,22 36:23 37:5,7,10 40:24 41:5,6,14 41:17 42:9 43:2 43:18,19,23 45:6 45:12,15 46:15 47:7 48:3,12 49:14 Thompson 14:15 15:5</p>	<p>thought 31:6 32:17 33:2 34:21 35:9 39:9 42:4 45:12 49:1 three 6:7 13:14 15:9 time 9:12,13,21 10:2 11:15 14:7 14:24 15:6,12,17 16:3 18:13 21:10 25:18 29:15 30:17 35:14 37:1,25 43:8 47:6,18 times 13:6 20:9,12 21:19 22:18 27:13 27:20 timing 21:22 tired 45:11 tiring 34:12 35:6,7 35:22 told 19:9,15 33:2 35:20 43:21 47:17 47:23 ton 25:19 Tonya 16:12,13 17:23 Tonya's 16:14 top 30:20 42:11 tortured 36:14 total 39:15 touch 35:16 tough 15:16 28:7 35:23 Tower 2:19 trace 21:20 trail 6:13 18:15 transcript 3:1 34:2 53:9 transcription 50:9 transcripts 14:3 transpired 21:21 trial 6:17 14:18 20:10 22:24 42:15 42:16 44:12,13,18 45:21 46:25 47:2 48:1 tried 21:13 22:24 34:7 Troutman 2:5 true 53:8 Trussell 24:22 trust 20:16 try 19:16 21:18 22:18,19,22 26:8</p>
--	--	--	--	---

Deposition of JIMMY DODD BERRY

27:12 30:22 35:5 36:16 43:25 trying 20:22 24:8 30:10,15 31:4 34:19 40:25 41:5 42:3 tschiefer@law.ga... 2:15 tune 38:17 turn 5:18 turned 10:9 11:6 45:6 Turner 16:8 two 12:22,23 13:13 13:16 15:8 27:3 34:4,10,22 35:1 41:18 45:11 type 30:9 typed 3:6 16:20 types 23:24 31:10 typewriting 53:7 typical 26:2 typically 31:20,21	wait 9:16 26:22 waive 26:7 walk 41:5 want 13:7,20,22 19:9 20:4,5 22:22 23:9 24:2,14 26:8 27:1,12,13,13,25 28:12 30:22 31:14 31:15,16,17,18 32:13,14 34:18,24 35:23 36:8,9 39:19 40:1,2,4,5,8 40:9,10,16 41:2,3 46:5,6,8 wanted 19:11 24:7 28:24 30:4,16 39:7 40:15,15 wants 40:19 Warden 1:8 4:7 Washington 1:19 4:24 wasn't 22:12,13 28:3 35:5,8,24 38:5 46:13 47:4 way 7:25 9:4,5 13:3 14:1 15:23 19:20 33:18 ways 30:10 wears 34:12 week 12:9 weekend 37:19 38:3 weeks 34:10 45:11 weird 46:19 went 6:16 14:8,9 19:7 34:7 43:2 47:2 weren't 16:25 25:6 28:3 43:10 we'll 33:10 39:2 we're 13:25 41:4 we've 21:7 26:16,21 43:23,25 whatsoever 13:12 wife 35:20 willing 35:5 win 22:9 wish 13:12 38:14 withdrawn 31:12 36:12 witness 3:9 4:3,14 34:18 35:15 41:20 witnesses 17:3,10 33:25 34:3,16,23 37:12 38:7	woman 44:24 45:3 46:16 47:13 women 45:2 won 16:5 wonder 32:1,6 wondered 42:6 44:9 Word 15:1 words 13:18 word(s) 3:5 work 13:6 16:1 19:6 24:19 33:9 49:12 worked 15:9 37:8 38:10,24 44:14 working 19:12 24:13 35:12 worrying 48:6 wouldn't 18:19 would've 30:4 written 18:13 wrong 47:7	236 1:18 4:24 24th 52:20 53:16 2824 52:25 53:22 <hr/> 3 30303 2:21 30308-2216 2:6 30334 2:13 30341 1:24 3775 1:24 <hr/> 4 4 3:11 50:3,8 51:3 40 2:13 404-651-6459 2:14 404-651-6927 2:14 404-688-0768 2:22 404-688-7530 2:21 404-885-3314 2:6 404-885-3900 2:7 42 5:11 46:1 452-0303 1:25 454-0348 1:25 49 50:3,8 51:3 <hr/> 5 50 6:1,15 5200 2:5 <hr/> 6 600 2:5 <hr/> 7 70 12:6 770 1:25,25 <hr/> 9 9-11-28(c) 52:18 90 18:2
<hr/> U Uh-huh 8:8 10:18 11:2 23:23 25:3 25:15 27:5 29:25 36:3 41:11 48:18 ultimately 14:17 28:2 29:9 34:1,6 34:24 35:15 understanding 14:22 33:15 34:7 unfinished 3:5 unified 23:11 unknown 3:3 upset 47:10 use 29:18,20,20 41:5 42:7 43:17 usual 52:18 usually 37:15			
<hr/> V varied 9:11 various 9:17 venue 27:4 28:2 Vic 16:3,7 Videography 1:24 void 15:7 voir 34:4,10 45:10 vs 1:7			
<hr/> W			

Appendix H

Requested deferment via Ms. Kamonky previously.
Missed hearing for deferment due to ~~back problems~~
failure to get msg. until 5:22 on Tuesday, regarding
hearing for deferment. I have a scheduled flight
for Saturday @ 3:00 P.M. J. A. Chancey

Panel 7
Mon 9/10

194

JUROR QUESTIONNAIRE
I am a Certified Fraud Examiner with the International Fraud Examiners Association in Vegas with
my best friend Robin Fendley - Real Estate Agent -
In an effort to avoid delays in jury selection during your service as a juror, the following juror

questionnaire has been prepared for you to answer.

Still
MIA

1. Name: Linda A. Chancey

2. Date of Birth: 09.28.1956

3. Place of Birth: Blackshear, GA

4a. Current Address:
Street or route: 9 St. Andrews Court Suite 203
City: Brunswick State: GA Zip Code: 31520

4b. How long have you live at this address? 3 yrs.

4c. Do you (check one): () own your residence? () rent your residence?

4d. Do you live in a () rural area or () city area?

5. Have you ever lived outside of Georgia? () Yes () No
If yes, give location(s) and date(s): Washington DC 75-77, 83
Miami, FL 88-91

6. Your religious affiliation or church membership, if any: Methodist

7. How often do you attend church now? once a month

8. Which do you consider yourself to be: (Check one)
 African American Native American
 Asian Hispanic
 Caucasian (White) Other _____

9. Last year of school you completed: (check one and list grade completed)
() elementary/grade school grade completed: _____
() junior high/middle school grade completed: _____

9:28

QUALIFIED 51

() high school grade completed: _____

() vocational or technical school grade completed: _____

() college (undergraduate) grade completed: _____

() graduate school grade completed: Masters Public Administration

() other _____ grade completed: _____

Major area(s) of study: (if applicable) Administrative Law

10. Are you currently a student? () Yes () No

If yes, where? _____

11. Are you currently employed? () Yes () No

If yes,

What is your occupation? Telecomms Regional Portal coastalgeorgia.com

Where do you work? Netlink Comm coastalgeorgia.travel
Coastal Georgia Travelers

How many hours per week do you work? 60

Do you supervise other people? Yes

Are you supervised by someone else? No

How long have you held this job? Since 1993

Do you have a second job? Yes Since 2007

If yes, what do you do? Travel Agent

12. What previous jobs have you held? Gov't; federal - U.S. Dept. of
Commerce, Census Bureau, Centers for Disease Control,
Office of Personnel Mgmt., DEA Asset Forfeiture,
Dept. of Defense - International Security Policy

13. Please give the following information concerning your parents:

Mother's name: Myrtle Mima Walker

Mother's birthplace: Waycross GA

Mother's occupation: Homemaker

Mother's previous occupation: WWII veteran

Father's name: Kenneth S. Chancey

Father's birthplace: Osserman, GA

Father's occupation: Rancher, farmer, surveyor

Father's previous occupation: WWII vet

14. Your marital status: (please check and note the number of years where applicable)

never married

married how long: _____

separated how long: _____

divorced how long: _____

widowed how long: _____

15. The following questions relate to your spouse or to your former spouse if you are widowed or divorced:

a. Name: _____

b. Occupation: _____

c. Place of employment: _____

d. Any second job? () Yes () No

If yes, describe: _____

e. Previous occupation of Spouse: _____

f. Highest grade completed by Spouse: _____

() elementary/grade school grade completed: _____

() junior high/middle school grade completed: _____

() high school grade completed: _____

() vocational or technical school grade completed: _____

() college (undergraduate) grade completed: _____

() graduate school grade completed: _____

() other _____ grade completed: _____

Spouse's major area(s) of study in school (if applicable): _____

16. The following questions should be answered as to any children you have by birth or adoption and any children who live with you or who you have raised:

Name	Age/Sex	School (if any)	Job (if any)	City of Residence
Elijah Alexander	M	2 yrs. college	Network Security Administrator	Boulder, CO

17. The following questions should be answered as to any grandchildren you have. If the grandchildren live with you or were raised by you and were included in question #16, you do not need to repeat the information:

Name	Age/Sex	School (if any)	Job (if any)	City of Residence
------	---------	-----------------	--------------	-------------------

18. List any organization(s) to which you belong or in which you participate and state any office you have held in these organizations. (for example: church, school, fraternal, service, profession, business, sports or recreational, union, etc.)

(1) United Methodist SSB, GA (2) Lake Chapel Church, Pittsboro, GA
 (3) UGA Alumni (4) FISPA - Federated Internet Service Providers Assn.
 (5) Necta National Assn. Amusement & Travel Agents (6) CLIA - CAMISE Line Tech Assn.

19. If you are married, list organizations to which your spouse belongs and any office(s) your spouse has held:

(1) _____	(2) _____
(3) _____	(4) _____
(5) _____	(6) _____

20. Have you or your spouse ever been elected or appointed to Public Office?

(1) You: () Yes () No (2) Your Spouse: () Yes () No

If yes, list office, location, and dates of service:

You: _____

Your Spouse: _____

21. Have you ever received or applied for any of the following benefits?

Veteran's Benefits: () Yes () No *GI Bill*

Social Security: () Yes () No

Basic Education Grant: () Yes () No

Education Scholarship: () Yes () No

22. What are your hobbies, spare time activities, and outside interests?

*Genetic Anthropology, dna analysis,
raising King John Terriers, Real Estate Development,
property acquisition*

23. What newspaper do you read most often? *New York Times*

How often do you read it? *weekly*

24. What other newspaper(s) do you read most often? *Google News*

25. What TV news program(s) do you watch? (List station network and time) *Fox News*

NASNBC, ABC

26. What is your favorite TV program? *Discover Channel, History Channel*

27. What magazines and periodicals do you read? *Genetic Studies QJord, Archeology*

28. What types of books do you enjoy reading, if any? *Travel, language Arts, historical
culture*

29. Have you ever appeared as a witness before a Federal or State Grand Jury?

() Yes () No

If yes, where and when: _____

30. Have you ever been a complainant, defendant, or witness for either side in a criminal prosecution? () Yes () No

If yes, state what kind of case, where, and when: _____

31. Has any member of your immediate family ever been a complainant, defendant, or witness for either side in a criminal prosecution? (Including Court Martial)

() Yes () No

If yes, state what kind of case, where, and when: _____

32. Have you ever served on a Federal or State Grand Jury? () Yes () No

If yes, were you the Foreperson? () Yes () No

33. Have you ever served on a Federal or State Trial Jury before? () Yes () No

34. For each time you have served on a jury, answer the following:

Civil or Criminal Case? Spring of 2007 - I was Madam Foreperson.

Nature of Case? Theft by conversion - check fraud

Was the jury able to reach a verdict? Yes.

35. Have you ever served on a Court Martial? () Yes () No

If yes, what kind of case? _____

If yes, did you reach a verdict? _____

36. Have you or your spouse ever served in the military? Yes

If so, state the name of person who served, branch of service, occupation while in service,

how long, and highest rank: L.A. Chancey, USMC, Public Relations 3yrs Active
1 Reserve, Sgt. E-5

37. Do you have any physical problems which might interfere with your service as a juror?

Yes () No

If yes, explain: Lower Right Bulging disk - lower back

38. Have you ever:

a. Been a law enforcement officer? () Yes No

b. Applied for a job in law enforcement? () Yes No

c. Been involved in any other way in the criminal justice system?

(probation officer, attorney, etc.) Yes () No

If yes, explain: Project Administrator DEA, Asset Forfeiture

d. Been a member of an auxiliary or police reserve law enforcement branch?

() Yes No

If yes, state the department and the position held: _____

39. Has any member of your family or a close friend ever:

a. Been a law enforcement officer? () Yes No

b. Applied for a job in law enforcement? () Yes No

c. Been involved in any other way in the criminal justice system?

(probation officer, attorney, etc.) () Yes No

If yes, explain: _____

d. Been a member of an auxiliary or police reserve law enforcement branch?

() Yes () No

If yes, state the department and the position held: _____

40. Have you or a relative or a close friend ever been the victim of a crime?

() Yes () No

If yes, please state:

<u>Victim's Name</u>	<u>Type of Crime</u>	<u>Date</u>	<u>Was anyone arrested?</u>	<u>Was anyone convicted?</u>
Linda A. Chancey self	Armed Robbery	Oct. 1976	Yes	Escaped
Defendant	Rape, Attempted		was twice convicted of rape	murder, Mental Hospital Wash. D.C. VA area
of his victims	Escaped from	Mental hospital	where he was incarcerated	

41. Have you ever had what you would consider a bad experience with a law enforcement officer? () Yes () No

If yes, please explain: _____

42. Are you registered to vote? Yes

43. Did you vote in the election in November 2006? Yes

44. If you know or are acquainted with any person(s) listed below, circle the name(s):

Donna Acree	Shauna Chism	Dep. Michael Goldmann
Zakir Ali	John Cleveland	Lt. Steve Goodyear
Michael Andree	Calvin Cline	Glen Griesemer
John James Arminio	Cliff Cohen	J.T. Gregory
Det. Cynthia Ash	Jordan Cohen	Dane Grobnan
Leslie Atkins	Bill Conner	Det. T.T. Haas
Dep. Daniel Billington	Laura Conway	Shannon Hale
H. Bishop	Mike Cosper	Jonna Caryn Hamel
Steve Brawner	Cpl. J.L. Culver	Christine Hawkins
Nyleen Brewster	Bernadette Davy	Det. Eddie Herman
Emily Brown	Mike Doggett	Lisa Hobgood
Linda Brown	C. Dong	Mark Hodges
Wayne Brown, Jr.	Gale Dudkowski	Brad Hudson
Wayne Brown	Leslie Paige Durham	Nathan Huey
Teri Brunner	Daniel Ennis	Dana Humphreys
Gae Bryant	Rob Finlayson	Kerri Humphreys
Lt. Al Campbell	Dr. Brian Fist	Victor Humphreys
David Cannon	Lt. Kevin Flynn	Travis Hurd
Andre Carnes	Det. Steve Gaynor	Sgt. Robert Hutchinson
Cindy Carr	Stephanie Gill	Robert Izzi
Lt. Mark Casey	Tina Nicole West Gilmore	Ruth Jenny

R.C. Jones	R. Obiden	Rigo Santiago
Imogene Jordan	Trooper Dan O'Connor	Ofcr. Paul Schmitt
Jeff Knowles	Stephen Oles	Gary Schneider
Marla Lawson	Kenneth O'Neal	B. Schwister
Rosalind Ellenwood Lima	Everton Palmer	Det. Simon Sears
Ben Lindsey	P. Pankratz	Dr. Robert Shaffer
Dr. Marti Loring	Det. Richard Peluso	R.B. Smith
George Marks	Connie Pickens	Deborah Snyder
Lajuan Marks	Dawn Pierce	Tom Stokes
Inspector Brian Maxwell	Det. R.T. Plunkett	Cpl. D.G. Stone
Det. Barry McCollum	Richard Poole	Philip Strouth
Mark McDonald	C. Postulart	Janie Swick
Larry McPherson	Kathy Powell	Anne Taylor
Tim Mellen	W.L. Reese	J. Thompson
B. Metzen	Kathy Richardson	Johnnie Tuggle
Tommy Mikulski	C.A. Rogers	Det. C.R. Twiggs
C.S. Moates	Helen Rogge	Rebecca Williams
Scott Moore	Jessica Ross	Ted Williams, Jr.
Tommy Mowen	Officer W.T. Rosser	Ted Williams
John T. Mowens	Shawn Lance Russell	Catherine Wood
Mark Needham		
Sharon Lynn Taylor Newton		
Robin Nolte		

Appendix I

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IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

ORIGINAL
AND
COPY

ORIGINAL

STATE OF GEORGIA)
)
vs.) CRIMINAL ACTION,
) FILE NO. 04-9-0673
STACEY IAN HUMPHREYS,)
Defendant.)

VOLUME 11 of 21

DEATH PENALTY PROCEEDINGS

Transcript of Jury Trial Proceedings held before
the Honorable Dorothy A. Robinson, Judge, Cobb Superior
Court, Marietta, Georgia, commencing on the 15th day of
September, 2007, in Brunswick, Georgia.

APPEARANCES:

Pat Head, District Attorney
Marc Cella, Assistant District Attorney,
Eleanor Dixon, Assistant District Attorney,
on behalf of the State.

Jimmy Berry, Attorney at Law,
Deborah Anne Czuba, Attorney at Law,
on behalf of the Defendant.

PAMELA D. MUTUKU
Official Court Reporter
30 Waddell Street
Marietta, Georgia 30090-9642
(770) 528-1844

Jay C. Stephenson
Clerk of Superior Court Cobb County

Jay C. Stephenson

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ID# 2007-0177573-CR
Page 1

1 case.

2 Have Mr. Hunsucker taken to the second jury room,
3 please.

4 MR. BERRY: Your Honor, before we call the next
5 one in, we didn't have a questionnaire on
6 Mr. McCaffrey.

7 THE BAILIFF: She is doing one now.

8 MR. BERRY: Okay.

9 THE COURT: Reporting in this morning is Linda
10 Chancey who was here last Wednesday or a week ago
11 Wednesday and filled in her questionnaire.

12 She is on panel seven and has never been read the
13 charges, although she was sworn when she was here last
14 a week ago Wednesday, so...

15 MR. BERRY: The Court wants to put --

16 THE COURT: She was not here when we questioned
17 panel seven.

18 MS. DIXON: Did she have permission for deferral?
19 I didn't know if the Court gave her permission.

20 THE COURT: She somewhat deferred herself.

21 MS. DIXON: I gathered that. That is based upon
22 her writing that she was going to Las Vegas with a
23 friend who is in the real estate business and that she
24 would be back, and she is back.

25 MR. BERRY: Does the Court want to read the

1 charges at four o'clock?

2 THE COURT: No, I will read the charges now so we
3 can question her in her order drawn position.

4 THE COURT: She is number 12 on panel seven. Is
5 194 on the order drawn list.

6 (Juror enters courtroom.)

7 THE COURT: Are you Linda A. Chancey?

8 THE JUROR: Yes, your Honor.

9 THE COURT: Ms. Chancey, you were in the jury
10 assembly room a week ago, Wednesday the 5th of
11 September?

12 THE JUROR: Yes, ma'am.

13 THE COURT: At that time you were asked to fill in
14 a jury questionnaire and you did so?

15 THE JUROR: Yes, ma'am.

16 THE COURT: And you were sworn at that time?

17 THE JUROR: Yes, ma'am.

18 THE COURT: And you were instructed at that time
19 in regard to no discussions about the case or reading
20 or listening to or watching any media reports?

21 THE JUROR: Yes, ma'am.

22 THE COURT: Then were you instructed that you were
23 to return with your panel?

24 THE JUROR: Yes, ma'am.

25 THE COURT: On September the 9th I think initially

1 at nine o'clock?

2 THE JUROR: 8th.

3 THE COURT: Monday the 10th I believe, excuse me,
4 at nine o'clock.

5 THE JUROR: Correct.

6 THE COURT: Your panel was rescheduled because it
7 wasn't reached at that time and, of course, you left
8 without permission.

9 THE JUROR: I parted on the 8th.

10 THE COURT: Do you want to explain why you did
11 that without permission to do so?

12 THE JUROR: Yes, ma'am, I do.

13 THE COURT: Go ahead.

14 THE JUROR: I had transitioned from being an
15 Internet provider to a new field of business, that
16 being travel agency. This was the annual trade show in
17 Las Vegas, and I went to get the certification and
18 venture travel and it is an annual meeting and it would
19 have meant waiting another year in order to pursue my
20 new field of business.

21 THE COURT: Is there some reason you didn't follow
22 the instructions that came out with the jury summons
23 that say file your request and then appear on the 4th
24 to be heard?

25 THE JUROR: Yes, ma'am. I filed the deferment but

1 as this is --

2 THE COURT: When did you file the deferment?

3 THE JUROR: I filed the deferment August the 2nd,
4 August the 3rd after I received notice to attend the
5 jury duty.

6 THE COURT: Do you have a copy of it?

7 THE JUROR: I have a copy of it. And I also gave
8 it to Ms. Jamsky. And I have a copy of it in my
9 office. I knew when Ms. Jamsky called me to appear
10 that day my phone was malfunctioning. I didn't receive
11 the message until 5:52 that afternoon.

12 THE COURT: What date was that?

13 THE JUROR: The date prior. I believe it was on a
14 Tuesday afternoon. She called me at 2:22. I got the
15 message at 5:22 to come to court to have the deferment
16 heard. So my cell phone was not functioning and
17 didn't receive the message. I came immediately to the
18 courthouse. Of course, it was locked.

19 THE COURT: When did you come?

20 THE JUROR: The Tuesday when deferment was
21 supposed to have been heard.

22 THE COURT: You were here on Tuesday the 4th?

23 THE JUROR: At 5:22.

24 THE COURT: You came after five o'clock?

25 THE JUROR: The door was locked. I appeared

1 for -- I didn't understand.

2 THE COURT: If your phone wasn't functioning, how
3 did you know there was a message?

4 THE JUROR: I received it three hours later. She
5 called at 2:22 and I received the message at 5:22. I
6 just didn't get the message in time to appear.

7 THE COURT: So after coming in on Wednesday, you
8 were told to report but you left. That is a big issue
9 here.

10 THE JUROR: I understand. I had arranged this six
11 months ago and I had written on the top of the
12 deferment on the top of the panel inquiry that I would
13 not be able to be here. I already paid for my hotel
14 rooms and I paid for the seminar and the training and,
15 you know, I'm a single parent with no other income but
16 what I make on my own. And I would have lost about
17 \$1,500 and totally put my career on hold for a year,
18 not that it is relevant at all, but I have already
19 served jury duty this year as madam foreperson.

20 THE COURT: Well, the instructions that you
21 received --

22 THE JUROR: Right.

23 THE COURT: -- said by your request and appear.

24 THE JUROR: Yes, ma'am.

25 THE COURT: You were already told to appear on the

1 4th.

2 THE JUROR: I understand that.

3 THE COURT: So you should have been here on the
4 4th if you have, in fact, filed anything.

5 THE JUROR: It was -- I did, in fact, file it,
6 your Honor.

7 THE COURT: Why didn't you come on the 4th? That
8 was the date where you were supposed to be heard.

9 THE JUROR: Because when I originally filed the
10 deferment on the 3rd of August, I read the
11 documentation and I didn't look at it. Again, I
12 thought that the filing of the documentation sufficed,
13 and I was incorrect. I'm not a lawyer. I should have
14 reread the document.

15 THE COURT: I don't think you needed to be a
16 lawyer to read the simple instructions.

17 THE JUROR: I should have been more attentive to
18 the document. I misread it.

19 THE COURT: That is the real reason?

20 THE JUROR: Yes, ma'am.

21 THE COURT: You decided to just make this notation
22 and leave because you were going regardless of whether
23 you were heard on your request or not?

24 THE JUROR: Will I have been here for the
25 deferment, your Honor. And your Honor instructed me

1 under no circumstances were I to leave, I would not
2 have left, even though it would have been a financial
3 detriment.

4 THE COURT: You were instructed. Because on
5 Wednesday all of the panel members were told that you
6 would be excused and you would be told when you needed
7 to report.

8 THE JUROR: Well, I was here on September the 5th.
9 I informed Ms. Jamsky I had these prior arrangements
10 and I wasn't heard at the deferment because of the two
11 circumstances previously discussed as well as the fact
12 that I just hardly saw how it was possible that you can
13 put your career on hold for a single solitary year. I
14 mean, I have to have a source of income. I have
15 mortgages, and I have payments.

16 THE COURT: Because you were not here with your
17 panel, you did not have the charges in this case read
18 to you. So I am going to read them to you at this
19 time.

20 THE JUROR: Thank you, your Honor.

21 THE COURT: This is a case in which the State is
22 seeking the imposition of the death penalty as was told
23 to all the panel members on a week ago Wednesday when
24 you were there.

25 THE JUROR: Yes, ma'am.

1 THE COURT: This is Case Number 04-0673 in the
2 Superior Court of the Cobb Judicial Circuit. State of
3 Georgia versus Stacey Ian Humphreys. And the
4 indictment was returned on February the 12th of 2004
5 and it reads as follows:

6 The Grand jurors in the name and behalf of the
7 citizens of Georgia charge and accuse Stacey Ian
8 Humphreys with the offense of murder, for that the said
9 accused in the County of Cobb and the State of Georgia,
10 on the 3rd day of November, 2003, did unlawfully and
11 with malice aforethought cause the death of Cynthia
12 Williams, a human being, by shooting her with a pistol;
13 contrary to the laws of said state, the good order,
14 peace and dignity thereof.

15 And Count Two: The Grand jurors aforesaid in the
16 name and behalf of the citizen of Georgia further
17 charge and accuse Stacey Ian Humphreys with the offense
18 of murder, for that the said accused in the County of
19 Cobb and State of Georgia, on the 3rd day of November,
20 2003, did unlawfully and with malice aforethought cause
21 the death of Lori Brown, a human being, by shooting her
22 with a pistol; contrary to the laws of said state, the
23 good order, peace and dignity thereof.

24 And Count Three: The Grand jurors aforesaid in
25 the name and behalf of the citizen of Georgia further

1 charge and accuse Stacey Ian Humphreys with the offense
2 of felony murder, for that the said accused in the
3 County of Cobb an the State of Georgia, on the 3rd day
4 of November, 2003, did while in the commission of a
5 felony, to wit: Aggravated assault, did unlawfully
6 cause the death of Cynthia Williams, a human being, by
7 shooting her with a pistol; contrary to the laws of
8 said state, the good order, peace and dignity thereof.

9 And Count Four: The Grand jurors aforesaid in the
10 name and behalf of the citizen of Georgia further
11 charge and accuse Stacey Ian Humphreys with the offense
12 of felony murder, for that the said accused in the
13 County of Cobb and State of Georgia, on the 3rd day of
14 November, 2003, did while in the commission of a
15 felony, to wit: Aggravated assault, did unlawfully
16 cause the death of Lori Brown, a human being, by
17 shooting her with a pistol; contrary to the laws of
18 said state, the good order, peace and dignity thereof.

19 And Count Five: The Grand jurors aforesaid in the
20 name and behalf of the citizen of Georgia further
21 charge and accuse Stacey Ian Humphreys with the offense
22 of aggravated assault, for that the said accuse in the
23 County of Cobb and State of Georgia, on the 3rd day of
24 November, 2003, did unlawfully make an assault upon the
25 person of Cynthia Williams with a pistol, a deadly

1 weapon, by shooting her; contrary to the laws of said
2 state, the good order, peace and dignity thereof.

3 And Count Six: The Grand jurors aforesaid in the
4 name and behalf of the citizen of Georgia further
5 charge and accuse Stacey Ian Humphreys with the offense
6 of aggravated assault, for that the said accuse in the
7 County of Cobb and State of Georgia, on the 3rd day of
8 November, 2003, did unlawfully make an assault upon the
9 person of Lori Brown with a pistol, a deadly weapon, by
10 shooting her; contrary to the laws of said state, the
11 good order, peace and dignity thereof.

12 Count Seven: The Grand jurors aforesaid in the
13 name and behalf of the citizen Georgia further charge
14 and accuse Stacey Ian Humphreys with the offense of
15 kidnapping with bodily injury, for that the said
16 accused in the County of Cobb and the State of Georgia,
17 on the 3rd day of November, 2003, did unlawfully abduct
18 and steal away Cynthia Williams, a person, without
19 lawful authority and hold said person against her will
20 and cause said person to receive bodily injury, to wit:
21 A gunshot wound; contrary to the laws of said state,
22 the good order, peace and dignity thereof.

23 And Count Eight: The Grand jurors aforesaid in
24 the name and behalf of the citizens Georgia further
25 charge and accuse Stacey Ian Humphreys with the offense

1 of kidnapping with bodily injury, for that the said
2 accused in the County of Cobb and State of Georgia, on
3 the 3rd day of November, 2003, did unlawfully abduct
4 and steal away Lori Brown, a person, without lawful
5 authority and hold said person against her will and
6 cause said person to receive bodily injury, to wit: A
7 gunshot wound; contrary to the laws of said state, the
8 good order, peace and dignity thereof.

9 And Count Nine: The Grand jurors aforesaid, in
10 the name and behalf of the citizens of Georgia further
11 charge and accuse Stacey Ian Humphreys with the offense
12 of armed robbery, for that the said accused in the
13 County of Cobb and State of Georgia on the 3rd day of
14 November, 2003, with intent to commit theft, did take
15 property of another, to wit: A Bank of America bank
16 card from the person in the immediate presence of
17 Cynthia Williams with use of an offense weapon, to wit:
18 A pistol; contrary to the laws of said state, the good
19 order, peace and dignity thereof.

20 And Count Ten: The Grand jurors aforesaid in the
21 name and behalf of the citizens of Georgia further
22 charge and accuse Stacey Ian Humphreys with the offense
23 of armed robbery, for that the said accused in the
24 County of Cobb and the State of Georgia, on the 3rd day
25 of November, 2003, did intentionally -- excuse me, did

1 with the intent to commit a theft, take property of
2 another, to wit: A Wachovia bank card from the person
3 in the immediate presence of Lori Brown by use of an
4 offensive weapon, to wit: A pistol; contrary to the
5 laws of said state, the good order, peace and dignity
6 thereof.

7 Ms. Chancey, at this time I'm going to be asking
8 you some questions in regard to these charges that I
9 just read to you.

10 Have you formed or expressed an opinion in regard
11 to the guilt or the innocence of the Defendant in
12 regard to these charges?

13 THE JUROR: No, ma'am I have not.

14 THE COURT: Are you related by blood or marriage
15 to Stacey Ian Humphreys, the Defendant in the case?
16 He's seated at the counsel table to my right. He is in
17 the center of the three people there wearing the white
18 shirt. Are you related to him by either blood or
19 marriage.

20 THE JUROR: No, ma'am.

21 THE COURT: Is your mind perfectly impartial at
22 this time between the State and the accused in the
23 case?

24 THE JUROR: Yes, ma'am.

25 THE COURT: Have you any prejudice against or any

1 bias either for or against the Defendant in the case?

2 THE JUROR: No, ma'am.

3 THE COURT: Let me introduce to you counsel who
4 will be asking you some questions today and
5 participating in the trial of the case.

6 Seated the the counsel table that is closest to
7 the jury box is Assistant District Attorney, Marc
8 Cella.

9 MR. CELLA: Good morning, Ms. Chancey.

10 THE COURT: Assistant District Attorney, Eleanor
11 Dixon.

12 MS. DIXON: Hello.

13 THE COURT: Seated at the counsel table to my
14 right representing the Defendant in the case is
15 Attorney, Jimmy Berry.

16 MR. BERRY: Good morning.

17 THE COURT: And Attorney, Deborah Czuba.

18 MS. CZUBA: Good morning.

19 THE COURT: In a little while, in fact, pretty
20 soon, they have the opportunity to ask you some
21 questions. The questions that are being asked of you
22 are not intended to pry. They should not be taken as
23 such. But counsel do have a right and the opportunity
24 to ask you some questions and inquire somewhat into
25 your background before selecting a jury to try the

1 case.

2 This morning the first phase of the questioning
3 will involve issues that you may or may not have in the
4 past given much consideration to. So if when you're
5 asked a question you need to take sometime in order to
6 think your answer through, take whatever time you need
7 and then answer the question.

8 Because we are going to be asking you about
9 opinions and attitudes towards certain things, if your
10 opinion or attitude changes during the questioning,
11 feel free to state what your opinion is at the time if
12 it has, in fact, changed. There are no right answers
13 and no wrong answers to these questions because you're
14 being asked about what your attitude and opinion is in
15 the matter.

16 In a case where the State is seeking the
17 imposition of the death penalty, a trial takes place in
18 two parts: The first part of the case is a trial in
19 which the jury determines the guilt or the innocence of
20 the Defendant in regards to the charges that were just
21 read to you.

22 If during that part of the trial the jury finds
23 that a defendant is guilty of the offense of murder,
24 that is, the taking of a life of a human being without
25 justification, the case then process to the second

1 phase.

2 In that second phase the jury hears additional
3 evidence. They hear from the State in regard to
4 evidence concerning aggravation of the punishment and
5 they hear from the defense in regards to evidence
6 concerning mitigation of the punishment and then the
7 jury decides what the penalty in the case should be.

8 Under our law, if a person commits the offense of
9 murder and is convicted of that offense, a jury has an
10 option of three sentences: The first is a sentence of
11 the death penalty, the second a sentence of life in
12 prison with the possibility of parole, and the third is
13 a sentence of life in prison without the possibility
14 parole. They are not in any particular order. I just
15 numbered them, so I'm sure that I'm telling you the
16 three.

17 Those are the three issues we are going to be
18 asking you about this morning. We're not asking you
19 what you would do in a particular case because you have
20 not heard any evidence and you would not be able to
21 tell us what a sentence would be. But we are going to
22 ask you whether or not you can consider all three
23 possibilities and whether or not after considering all
24 three possibilities, you could vote for any of the
25 three depending upon actually whether or not you can

1 vote for all three, selecting the one that you believe
2 is the appropriate sentence. That is, that you would
3 be able to listen to and vote for the death penalty,
4 listen to and vote for a sentence of life in prison
5 with the possibility of parole, and listen and possibly
6 vote, if that were your decision, you would be able to
7 vote for a sentence of life in prison without the
8 possibility of role.

9 The first question that I have for you is: Are
10 you conscientiously opposed to the death penalty?

11 THE JUROR: No, ma'am.

12 THE COURT: In a case where a defendant is found
13 guilty of the offense of murder, and you're considering
14 a penalty, would you always vote to impose the death
15 sentence regardless of the evidence in the case?

16 THE JUROR: Not at all.

17 THE COURT: Would you be able to consider and to
18 vote for the imposition of a sentence of life with the
19 possibility of parole depending upon the evidence?

20 THE JUROR: Depending upon the evidence, I would
21 be.

22 THE COURT: And would you be able to consider and
23 to vote to impose a sentence of life without the
24 possibility of parole, depending upon the evidence?

25 THE JUROR: Yes, ma'am.

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THE COURT: Would you always vote for a sentence of life with the possibility of parole regardless of the evidence?

THE JUROR: No, ma'am.

THE COURT: Would you always vote for a sentence of life without the possibility of parole regardless of the evidence?

THE JUROR: No, ma'am.

THE COURT: So I believe at this point you've stated that your opinion is that you could consider all three possible sentences: The death sentence, life with parole, and life without parole, and that you would be able to vote for all three of the sentences death, life with parole, life without parole, you would vote for any one of those that you would find appropriate?

THE JUROR: Depending upon the evidence.

THE COURT: But you could vote for any of the three?

THE JUROR: Yes, ma'am.

THE COURT: All right. Questions by the State.

MR. CELLA: Thank you, your Honor.
Good morning, Ms. Chancey.

THE JUROR: Morning.

THE JUROR: My name is Marc Cella, assistant DA

1 from Cobb County DAs office. We came to try the case
2 to get away from the publicity in the Atlanta metro
3 area.

4 The first thing I wanted to ask you is whether you
5 know anything about this case, other than what you have
6 just learned from listening to the Judge read the
7 indictment?

8 THE JUROR: No, sir, I do not.

9 MR. CELLA: Okay. And I know that you've been in
10 and out of the courthouse the last couple of weeks.

11 Have you overheard anybody perhaps in the hallways
12 talking about it or learned anything about the case
13 that way?

14 THE JUROR: No, sir.

15 MR. CELLA: Okay. We have caught you up to the
16 rest of your panel as far as what they know about the
17 case and what you know about the case. But there is
18 one thing that we haven't talked to you about and that
19 is the fact that once this jury is selected, they will
20 be staying in a hotel for however long it takes to try
21 the case we think two weeks.

22 THE JUROR: Yes, sir.

23 MR. CELLA: And I wanted to make sure that, I
24 appreciate everything you said about why you had to go
25 to Las Vegas. I wanted to make sure about the next

1 couple of weeks.

2 THE JUROR: Yes, sir.

3 MR. CELLA: And whether there are any similar
4 impediments that might get in the way of your ability
5 to hear this case and give the evidence the attention
6 that it deserves?

7 THE JUROR: I do have a genetic ancestral
8 genealogy conference to attend the 19th through the
9 20th. But if the Court should select me, as a juror
10 then I would terminate those arrangements yes, sir.

11 MR. CELLA: Is that something that you prepaid a
12 flight for or no?

13 THE JUROR: No, I haven't paid for the flight, the
14 conference, but it is a nominal fee.

15 MR. CELLA: If you're asked to serve in the case,
16 you would be able to make other arrangements?

17 THE JUROR: Would be happen to do my duty, sir.

18 MR. CELLA: That you, ma'am.

19 THE JUROR: Um-hmm.

20 MR. CELLA: We anticipate if this jury finds the
21 Defendant, in fact, guilty, calling several other
22 witnesses before the jury after you find him guilty,
23 and this evidence as the Judge was describing is called
24 evidence in aggravation of punishment. It is basically
25 evidence which favors the death penalty in the case.

1 And it is only after we get done calling our witnesses
2 that the defense gets their opportunity to call those
3 witnesses that the Judge was describing to you as
4 mitigating punishment in evidence. Mitigation of
5 punishment means the evidence which favors the two life
6 sentences.

7 Do you feel like the fact that you have found
8 somebody guilty of murder, which is taking a life
9 without justification would prevent you, would it close
10 your mind off from considering any one of those three
11 possible sentences that the Judge was talking about?

12 THE JUROR: I would see them all as separate
13 matters.

14 MR. CELLA: Okay. When you say two matters, what
15 do you mean by that?

16 THE JUROR: The one being the finding of whatever
17 the verdict might be and the mitigating circumstances.

18 MR. CELLA: Okay. And so some people have told us
19 that once I find somebody guilty of murder, then I
20 would not be able to, at that point, consider all three
21 sentences. And that is what the Judge was trying to
22 get you to think about. But some people haven't been
23 doing it.

24 I want to make sure that you understand that this
25 will be after you find somebody guilty that it would be

1 your responsibility to be able to fairly consider all
2 three other sentences. Could you do that?

3 THE JUROR: Yes, sir, if those are the
4 instructions that is precisely what I would do.

5 MR. CELLA: Now, you know, you can follow the
6 instructions a lot easier if you don't have any
7 philosophical problems with it.

8 I would kind of like to take you through the
9 various groups of answers we have been getting from
10 jurors and see which group you fall into in your
11 opinion.

12 The first group of jurors that responses that we
13 get are what I call an eye for an eye and a tooth for a
14 tooth type responses. Those are people that tell us
15 once I found somebody guilty of taking a life without
16 justification, a life which they can't give back, the
17 only sentence which I would consider is the death
18 penalty because that is the only one that I think is
19 fair. So your answers don't indicate any leanings that
20 way. Do you have any?

21 THE JUROR: No, sir.

22 MR. CELLA: Another group is what I call
23 conscientious objectors. These would be people who
24 don't feel, being it is moral, for the State to be
25 taking people's lives no matter how bad their acts are.

1 Of course, these people could be fair to both sides in
2 the guilt/innocence part of the trial. They can vote
3 for guilty or not guilty. But if they can get to the
4 sentencing portion, they cannot follow the Court's
5 instructions and consider all three sentences because
6 they don't believe in the death penalty. They think it
7 is immoral. So far your answers don't indicate any
8 leanings that way. Do you have any?

9 THE JUROR: No, sir, I do not.

10 MR. CELLA: A third group of responses that we get
11 are people who say, once I found somebody guilty of
12 taking another life without justification, I could only
13 consider the death penalty and life without parole, I
14 could not consider a sentence of life with parole
15 eligibility. That is all it is, is eligible for
16 parole. Doesn't mean you're going to get it, and
17 doesn't mean you're not going to. So far your answers
18 don't indicate any leanings that way. Do you have any?

19 THE JUROR: I think the capacity of the human
20 heart and human mind is we all err and there is a
21 sanctity of life and only God gives that life. And to
22 be predisposed to taking life of another individual, I
23 think probably contemplation for remorse is
24 appropriate.

25 MR. CELLA: Is that to say that you could consider

1 this evidence in mitigation of punishment that the
2 defense may introduce with a view towards considering
3 all three of the possible sentences?

4 THE JUROR: Absolutely.

5 MR. CELLA: You will vote for whichever one you
6 feel in your heart is the right thing to do?

7 THE JUROR: Absolutely.

8 MR. CELLA: Now it is your responsibility as a
9 juror to hear and consider the views of your fellow
10 jurors about the sentencing as well as the
11 guilt/innocence.

12 THE JUROR: Yes.

13 MR. CELLA: Do you feel like you could participate
14 in conversations with your other 11 jurors about each
15 one of these three sentencing options and you,
16 yourself, would honestly consider each one?

17 THE JUROR: Yes, sir, I would and could.

18 MR. CELLA: Okay. Now, the law requires that once
19 you have heard and considered the views of your fellow
20 jurors, if you still feel the way that you do, you're
21 supposed to vote the way that you do. Can you do that?

22 THE JUROR: Yes, sir.

23 MR. CELLA: Thank you, ma'am. That is all the
24 questions that I have.

25 THE COURT: Questions on behalf of the Defendant,

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Mr. Berry.

MR. BERRY: Good morning, Ms. Chancey.

THE JUROR: Morning, sir.

MR. BERRY: My name is Jim Berry. As you can imagine, this is an important issue that we are talking about this morning, and we are going to have to ask you some more questions about that if that is all right.

THE JUROR: Yes, sir.

MR. BERRY: As the Judge said, the death penalty is not something you sit around and think about very often. It doesn't come up in conversations too much when you're with friends. Of course, today is the time that we need to kind of think about it.

As you sit here this morning, what are your thoughts on the death penalty? What do you really think about it?

THE JUROR: There is a certain finality with it. I think we are rather predisposed to give a defendant a fair sentence. I think in this country, we give every opportunity to the individual to either be proven innocent or guilty. And one must search ones heart and ones sole to determine whether or not you can invoke such penalty.

There is a certain sanctity of life, and I think every human being has the right to that sanctity. And

1 one must simply try to adhere to the truth of the
2 matter and to make sure that justice is dealt and in
3 such a manner that would be applicable to the situation
4 and the crimes or the mitigating circumstances.

5 MR. BERRY: Let me kind of go through what the
6 procedure is and what you would do in a case of this
7 nature.

8 If you were chosen as a juror, the first thing you
9 would do is you would listen to all of the evidence.

10 THE JUROR: Yes.

11 MR. BERRY: The guilt/innocence phase that is the
12 first part of the case.

13 After you would hear all of the evidence, the
14 Judge would give you the law?

15 THE JUROR: Yes, sir.

16 MR. BERRY: The law you would apply to the
17 evidence and render a fair verdict based on what you
18 have heard. If, in fact, you find the person not
19 guilty, of course, that would end it, wouldn't have to
20 go any further. If, in fact, you find the person
21 guilty, we would move into the second phase of the
22 trial that Mr. Cella indicated is the sentencing phase.
23 We call it a bifurcated trial.

24 As you probably know, normally the Judge sets the
25 sentence in a case. But when the State is asking for

1 the death penalty, they leave it up to the citizen of
2 the community to make that decision.

3 We find that at the time people come to the
4 decisions of guilt beyond a reasonable doubt and that
5 is of malice or felony murder without any defense or
6 justification, that they fall into those four groups
7 that Mr. Cella went over with you. I am not going to
8 go over all four of them again. But we find that
9 people do fall into those four groups.

10 In that sentencing phase of the case, you don't
11 really focus on the crime itself because you already
12 found the person guilty of doing exactly what the State
13 said. What you would focus on in the second part of
14 that case would be in the sentencing would be the
15 person, the person that actually committed the crime.
16 And that is what the State would bring forward to you
17 in aggravation of punishment is anything that they
18 thought would aggravate that case or make you consider
19 more of the death penalty than any of the life
20 sentences.

21 What the defense, on the other hand, would do is
22 we would present evidence in mitigation. That means
23 things that we would ask you to consider before you
24 would give a sentence of death. They can be almost
25 anything in mitigation. There are some people who

1 would say, well, after I found the person guilty beyond
2 a reasonable doubt of either malice or felony murder, I
3 don't really care about the person. I don't want to
4 hear about them. It doesn't really matter to me.

5 Do you think that you fit into that category?

6 THE JUROR: No, sir.

7 MR. BERRY: You believe that you would be able to
8 listen to all of the evidence in that phase as well as
9 the guilt/innocence phase?

10 THE JUROR: Yes, sir. But before I would render a
11 verdict, yes, sir.

12 MR. BERRY: As to the sentence?

13 THE JUROR: Yes.

14 MR. BERRY: I know that you have a background in
15 science?

16 THE JUROR: Yes, sir.

17 MR. BERRY: From looking at your questionnaire,
18 what was your degree in at Georgia?

19 THE JUROR: Actually it was political science with
20 a minor in anthropology and journalism.

21 MR. BERRY: Okay. And now you have done some DNA
22 analysis and genetic things with genetics?

23 THE JUROR: I am a genetic anthropologist as a
24 hobbyist following geneology.

25 MR. CELLA: Okay. And I know that you told Mr.

1 Cella that you have not heard anything about this case
2 at all until you came in here, is that correct.

3 THE JUROR: Correct.

4 MR. BERRY: Do you think that your views on the
5 death penalty are flexible or are they rigid?

6 THE JUROR: They are flexible.

7 MR. BERRY: Do you think that the death penalty is
8 more of a deterrence to crime or more of a punishment
9 or a retribution for crime?

10 THE JUROR: There is no retribution once the lives
11 of others that are innocent have been taken. You're
12 simply faced with dealing with the life of another
13 human being and to make sure that person is not present
14 in society to do further harm.

15 MR. BERRY: Okay. And that feeling that you have
16 about that, do you think it would cause you to have any
17 problem considering a life with the possibility of
18 parole for someone that you found guilty of malice or
19 felony murder?

20 THE JUROR: One must really hear the mitigating
21 circumstances I would think.

22 MR. BERRY: Okay. All right. If you found
23 yourself in the minority among your fellow jurors as to
24 how you felt about the case, do you think that you
25 would be able to stand up for what you think the right

1 thing to do would be?

2 THE JUROR: Yes.

3 MR. BERRY: Okay. Do you believe you would be
4 able to give Stacey the benefit of your individual
5 judgment in the case?

6 THE JUROR: Yes, sir.

7 MR. BERRY: Do you think of yourself as generally
8 one who gives people the benefit of the doubt?

9 THE JUROR: Yes, sir.

10 MR. BERRY: Do you think that you're more of an
11 emotion based person or a fact based?

12 THE JUROR: Facts.

13 MR. BERRY: Let me -- I did have one final
14 question.

15 THE JUROR: Yes, sir.

16 MR. BERRY: If you had a loved one on trial for
17 his or her life, would you be satisfied with a juror of
18 like attitudes as yourself to sit on a jury?

19 THE JUROR: Yes, sir.

20 MR. BERRY: Thank you, Ms. Chancey.

21 THE JUROR: You're welcome, sir.

22 THE COURT: Ms. Chancey, I'm going to ask that you
23 step outside of the courtroom. You can go through the
24 door to your left.

25 THE JUROR: Thank you, your Honor. My apologies

1 6:00, and I didn't want to disappoint the brides and
2 grooms. He did attempt to find someone to fill in, but
3 he couldn't find someone.

4 All right. We will continue at this time with the
5 individual questioning by the State.

6 MS. DIXON: Thank you, Judge.

7 Ms. Chancey, I think you and I kind of left off,
8 unfortunately, it is four o'clock on Saturday, and we
9 don't have time to discuss your hobby, but it is almost
10 more than are a hobby, but I do really find that
11 fascinating.

12 How much time would you say you spend on that per
13 week?

14 THE JUROR: Maybe three to five hours.

15 MS. DIXON: Okay. I know that you worked with the
16 federal government in various areas. In what capacity
17 were you working?

18 THE JUROR: With an MPA, I worked with CDC as
19 program administration at the Dade County Health
20 Department as an HIV back in '81, very beginning of the
21 program. We were first beginning to counsel people
22 about AIDS-related matters. And I was the personnel
23 management, I was testing administrator for anything
24 from federal law enforcement to medical doctors. It
25 was just, you know, a range, spectrum. And I have

1 worked for a contractor, and --

2 MS. DIXON: You mentioned on your questionnaire
3 that you -- I don't know that you do now, but that you
4 have in the past supervised people.

5 THE JUROR: Right. I don't currently.

6 MS. DIXON: I know you are just switching jobs.
7 How many people have you supervised at one time? What
8 is the most number of people?

9 THE JUROR: Maybe eight or nine.

10 MS. DIXON: Have you ever had to fire anyone?

11 THE JUROR: No.

12 MS. DIXON: How did you find that experience?

13 THE JUROR: No one wants to be put in charge of
14 anyone's life, but it is a matter of necessity.

15 MS. DIXON: When you say a matter of necessity,
16 what do you mean by that?

17 THE JUROR: For the good of the company.

18 MS. DIXON: Have you ever been on a jury before?

19 THE JUROR: Yes.

20 MS. DIXON: You said it was just this past spring?

21 THE JUROR: Correct.

22 MS. DIXON: What month was that?

23 THE JUROR: I believe it was March or April.

24 MS. DIXON: How did you feel about being the
25 foreperson of that jury?

1 THE JUROR: Comfortable, it was something
2 discussed among the other jurors, and I was appointed.

3 MS. DIXON: Anything negative come out that jury
4 experience for you?

5 THE JUROR: I don't think so.

6 MS. DIXON: Anything about the experience that you
7 feel would keep you from sitting as a fair juror in
8 this case?

9 THE JUROR: No.

10 MS. DIXON: I want to talk to you a little bit
11 about two other things. One is you were a victim of a
12 crime.

13 THE JUROR: Correct.

14 MS. DIXON: And that has been some time ago?

15 THE JUROR: Absolutely.

16 MS. DIXON: And I noticed that the person who
17 committed the crime had escaped from a mental
18 institution?

19 THE JUROR: Saint Elizabeth in the D.C. area.

20 MS. DIXON: Was that somebody that you had had any
21 type of connection with through your work?

22 THE JUROR: No, did not know the person.

23 MS. DIXON: Did this happen in your home?

24 THE JUROR: It did.

25 MS. DIXON: Were you living by yourself at the

1 time?

2 THE JUROR: No. I had a roommate.

3 MS. DIXON: Was the roommate home at the time?

4 THE JUROR: No.

5 MS. DIXON: Now, I want to make sure I'm reading
6 this correctly, just like I have sort of misread
7 somebody else's. He was a murderer, he had been
8 convicted of murder?

9 THE JUROR: He had been.

10 MS. DIXON: And I'm assuming he was serving time
11 in the mental hospital?

12 THE JUROR: Correct.

13 MS. DIXON: Okay. Was he prosecuted for the crime
14 he committed on you?

15 THE JUROR: I don't believe so. And the reason I
16 say that is because he was captured. He actually
17 didn't do me any physical bodily harm. I was able to
18 escape before he ever actually physically entered the
19 dwelling, so it was preempted.

20 MS. DIXON: Obviously, you called the police.

21 THE JUROR: I did.

22 MS. DIXON: How did you feel about the way they
23 responded to you?

24 THE JUROR: They were able to, you know, do --
25 what would you say -- they were able to capture him and

1 to place him where he should be.

2 MS. DIXON: Did you ever have to go to any type of
3 court regarding that?

4 THE JUROR: No.

5 MS. DIXON: Is there anything about that that you
6 feel would keep you from sitting as a fair juror if you
7 were selected in this?

8 THE JUROR: No.

9 MS. DIXON: Could you listen to the law that the
10 Judge would give you and follow that law?

11 THE JUROR: Absolutely.

12 MS. DIXON: I know you have some back issues.

13 THE JUROR: I'm better.

14 MS.. DIXON: Well, these chairs seem pretty
15 comfortable. Have you had any problems sitting in
16 these chairs?

17 THE JUROR: No.

18 MS. DIXON: Would you have any problem being on a
19 jury as long as you were able to get up -- we take
20 regular breaks, obviously.

21 THE JUROR: Right. On occasion I may lay down and
22 just -- but --

23 MS. DIXON: Well, we will take a break.

24 THE JUROR: Yeah. But not into the courtroom.

25 MS. DIXON: Okay. I wanted to make sure. Thank

1 you, ma'am.

2 Ms. Lewis, I just have a couple questions for you.

3 Tell me about your daughter. How old is she?

4 THE JUROR: I don't have a daughter.

5 MS. DIXON: Sorry, I wrote that down on the wrong

6 one. I am sorry about that.

7 I notice that you have been living here for how

8 many years?

9 THE JUROR: I moved here in '92.

10 MS. DIXON: What brought you down to Brunswick?

11 THE JUROR: My husband's job.

12 MS. DIXON: You're a butler. Tell me about that.

13 THE JUROR: Well, we are busy, and the hours are

14 bad, and we are on our feet a lot, but it is a good

15 job.

16 MS. DIXON: When I think of a butler, I think of

17 sort of the English system. Is that what you're doing?

18 THE JUROR: There are seven butlers.

19 MS. DIXON: What's the difference?

20 THE JUROR: We speak with drawls.

21 MS. DIXON: You work at The Cloister?

22 THE JUROR: Yes.

23 MS. DIXON: You have done that for 11 years?

24 THE JUROR: I've worked at The Cloister for 11

25 years, been a butler for a year and a half.

1 more questions for you at this time.

2 Thank you, Your Honor.

3 THE COURT: Individuals questions by the defense.

4 MR. BERRY: Thank you, Your Honor.

5 I'm going to go fast so we can get out of here.

6 Ms. Chancey, you showed on your questionnaire that
7 you lived in Washington, D.C. I assume when you lived
8 there, that is when you were the international security
9 police. Is that when you did that?

10 THE JUROR: No, sir. I was an assistant to the
11 assistant secretary of defense for international
12 security policy for negotiations council.

13 MR. BERRY: You were there for about a year?

14 THE JUROR: Yes, sir.

15 MR. BERRY: And then moved to Miami?

16 THE JUROR: Correct.

17 MR. BERRY: And is that where you were
18 international security police?

19 THE JUROR: No, no, that was in Washington, D.C. I
20 wasn't any kind of enforcement officer at all. I was
21 simply --

22 MR. BERRY: An assistant?

23 THE JUROR: -- research analyst.

24 MR. BERRY: All right. So you didn't have any
25 police powers or powers or anything like that at all?

1 THE JUROR: No.

2 MR. BERRY: All right. Thank you. One other
3 thing I forgot to ask you. I think that you indicated
4 that you knew someone in real estate?

5 THE JUROR: She has been a realtor for the last
6 two years. We have been friends for 20 years.

7 MR. BERRY: The two victims in this case were both
8 real estate agents. Do you think that might cause you
9 any problems sitting on a case?

10 THE JUROR: No, sir.

11 MR. BERRY: Real estate agents.

12 Mr. Hunsucker, I think you indicated also that you
13 either had close friends or relatives in real estate?

14 THE JUROR: I have a friend here in the area that
15 is a real estate agent.

16 MR. BERRY: Do you think that would cause you any
17 problem if the victims in the case were in the real
18 estate business?

19 THE JUROR: No.

20 MR. BERRY: Thank you.

21 Mr. Burkey, you originally are from Maryland. And
22 what brought you down here, just the cold?

23 THE JUROR: I retired. Well, it was cheaper
24 living down here, and also the fishing and the area and
25 get out of the winter.

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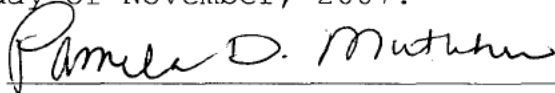
C-E-R-T-I-F-I-C-A-T-E

I, Pamela D. Mutuku, Certified Court Reporter for the State of Georgia, do hereby certify that previous to the commencement of the examination, the witness or witnesses were duly sworn; that the said proceedings were taken in machine shorthand by me at the time and place aforesaid and were thereafter reduced to typewritten form under my direction; that the foregoing is a true, correct and complete transcript of said proceedings.

I further certify that I am not employed by, related to, or of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

This certification is expressly withdrawn and denied upon the disassembling or photocopying of the foregoing transcript or any part thereof, including exhibits, unless said disassembling or photocopying is done by the undersigned court reporter and original signature and seal attached thereto.

IN WITNESS WHEREOF, I have affixed my signature and seal this 16th day of November, 2007.



Pamela D. Mutuku,
Certified Court Reporter
(B-1869) - Exp. 3/31/08

Appendix J

Panel 10:

Chris O'Donnell

judge

Keith Hunsucker

Dangerous

morally DP is not good idea but could vote for it
religious beliefs against DP

DP is not deterrent

gleeful about sending ppl back to their country to be executed
it's ok to kill someone on the street as law enforcement

Linda Chancey

~~very bad~~
very bad bc of
histor

believes in sanctity of life but would adhere to law
minor in Anthropology

flexible views

just wouldn't want them back in society

James Berkeley

Killer

if he is 100% sure guilty, DP should be imposed

Nathan Brock

Killer

in favor of DP

Auto
Excuse

if evidence shows guilt - couldn't do Life w/

DP is default sentence for murder

Crystal Thrauer

Auto
Excuse

DP should be used in extreme situations (as she defines

this & would get DP)

Kathleen Durham

Auto
Excuse

Can't consider DP

James Ford

Auto
Excuse

No DP

Albert McCaffrey

Auto
Excuse

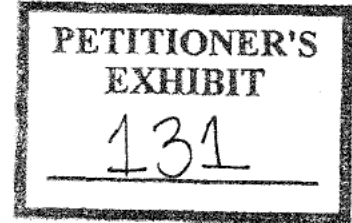
wife is real estate agent - concerned for her safety

was staring at & during indictment

wife wants & to get DP - she knows of case

Appendix K

State of Georgia
County of Fulton



Affidavit of Susan Barber

COMES NOW Susan Barber, being duly sworn by an officer authorized to administer oaths, and hereby states the following:

1. My name is Susan Barber. I am over the age of 18 and competent to make this affidavit. This affidavit is based upon my personal knowledge.
2. I served as a juror in the 2007 murder trial of Stacey Ian Humphreys. The other jurors selected me as their foreperson. I found it to be one of the most difficult and trying experiences of my life.
3. After the jury was selected and the trial began, I was quite surprised to find that many of the jurors already knew one another. In fact, they all broke up into cliques: one group of nurses, one group knew one another from church, one group of young people. I believe that one of the jurors was another juror's cousin. Each group seemed to have an informal "leader."
4. The juror who stands out most in my memory was L.A. Chancey, a thin, middle-aged white woman with long blonde hair. She was not part of any of the cliques. In fact, she did not engage with any of the rest of us at all. When we were given free time in the evenings, she did not spend time or speak with the rest of us. She stayed in her room. She made it clear that she believed that she knew more and understood more about what was going on than the rest of us did: she told us that she had been on a jury before and that she had some kind of background in DNA analysis. She was the only one with any kind of significant experience with court proceedings. From day one, she had her mind made up: early in the trial – before the end of the

first phase – she said something along the lines of he’s guilty and he deserves to die. I simply could not figure out how she ended up on any jury, let alone this jury.

5. Early on one of the male jurors was kicked off for making a gesture out the window. I was sad to see him go, and I felt a new sense of unease about the rules.

6. I found Mr. Humphreys’ attorney (I only remember one defense attorney, a man) to be very likeable and persuasive, particularly at first, but I eventually found myself frustrated with him. By the end of the sentencing phase of the trial, I found myself thinking, “that’s all? You don’t have anything more to give us?” When the sentencing phase began, it felt like a bunch of people talking to us. The defense team did not seem to have energy to focus on Mr. Humphreys’ background. On the whole, the District Attorneys were far more dynamic.

7. I listened intently to all of the evidence presented at trial, the arguments made by the lawyers, and the instructions given by the judge. After the close of the guilt phase of the trial, the jury was dismissed into a deliberation room. All the jurors, including myself, readily agreed that Mr. Humphreys was guilty of the crimes with which he had been charged. We unanimously agreed to return guilty verdicts without any dissension or much discussion among ourselves.

8. After convicting Mr. Humphreys, I listened carefully to the evidence presented at the sentencing phase of the trial, the arguments made by the lawyers, and the instructions given by the judge. The sentencing phase of the trial lasted three days, and then we were sent to decide on the appropriate punishment.

9. Unlike at the guilt phase, from the outset, there was much dissension among the jurors, with some of us voting life and some others voting death. However, many of the jurors were very wishy-washy, and, after being sequestered for two weeks, I felt like their primary goal

was to go home. Many of them talked about how they were losing money and missing their families, and I felt like they would vote either way just to be able to go home. The various cliques seemed to vote as a block, taking cues from the unofficial leader.

10. We deliberated a long time the first day. When we took the first vote, nine members voted for death, and three of us voted for life without parole. We could not reach agreement, and the deliberations got very hostile. Although we originally decided to go late, we ended up asking the judge if we could stop deliberations as soon as possible, and she released us.

11. L.A. Chancey was set on death from the outset. She was very detached from the group and would not participate in the deliberations. Instead, she sat in a corner by herself and did yoga. She deliberately segregated herself from the group. She would not engage in conversation and was only interested in her solution, which was that we all vote for death. It was really frustrating. I remember thinking that she is most likely to be voted most difficult and eccentric.

12. The second day of deliberations continued to be very hostile. After a lot of heated discussion and some negotiation, we decided we could all be comfortable with life without parole as a resolution and render a unanimous verdict. We took a vote: it was 11 to 1 for life without parole. L.A. Chancey refused to change her vote.

13. At that point it was obvious we were going to be deadlocked, so on the second day of deliberations, we sent a note to the judge, attached hereto as Exhibit A. The note explained that we could agree on aggravating factors but couldn't agree on the sentence. However, when I originally drafted the note with input and agreement from the rest of the jurors, it did not include the word "currently". One of the other jurors added the word "currently" and

then I re-wrote the note and sent it to the judge. What I believe to be an accurate copy of the original note is attached hereto as Exhibit B.

14. After we sent the note, I recall the judge calling us into the courtroom. To my surprise, she advised us to continue deliberations.

15. We continued to deliberate. The other jurors recognized that L.A. Chancey was not going to change her vote so the jurors tried to convince everyone to vote for death. Things got very heated. During that time, we had angry debates about what would happen if we continued to be deadlocked. I thought that if we could not reach a unanimous decision that Mr. Humphreys could get life imprisonment with parole or possibly go free. So did many of the other jurors. We believed that if we could not be unanimous, Mr. Humphreys would walk and the entire trial would have been in vain. One of the male jurors was very aggressive and domineering. I also recall that L.A. Chancey made personal attacks on everyone.

16. That night I sent a second note to the judge, attached hereto as Exhibit C. The note said: "Due to the hostile nature of one of the jurors, I am asking to be removed from the jury." I was very nervous about sending this note. L.A. Chancey was set on death, and I knew that we would never reach a unanimous decision with both of us on the jury. On the one hand I felt confident that life without parole was the correct sentence, and on the other hand, I felt a lot of anger from many of the other jurors. I also felt a lot of responsibility as the foreperson, and I was very frustrated that the other jurors did not seem focused and did not take their responsibility very seriously. I felt that it would be better for everyone if an alternate took my place with fresh ears and a fresh perspective.

17. I thought that my note would be communicated privately to the judge, and I would get an opportunity to talk with her. Instead of dismissing me or asking about what was

happening, the judge called us back in to the courtroom and told us that the law required us to reach a unanimous verdict. I was really surprised and uncomfortable. I thought that everyone knew it was me that sent the note and I felt very awkward and uncomfortable. I didn't feel that the judge ever addressed my concerns that one of the other jurors was behaving inappropriately. I did not feel like there was anything else I could do as the foreperson.

18. After I sent the note to the judge, the judge called the jury back and told us we had to be unanimous. I don't recall the exact words, but the message was clear: there was no other option but a unanimous verdict. This was really difficult for me and the other jurors to wrap our heads around: what if we could *never* be unanimous? How long would we be there? Would Mr. Humphreys go free if we couldn't decide? We were desperate for guidance. I was upset that the judge wouldn't tell us, and even more upset with Mr. Humphreys' lawyer that he had not told us, what would happen if we couldn't agree.

19. We resumed deliberations first thing in the morning on the third day. I had been berated so much by the other jurors to come to a unanimous vote, but I went into that day ready to fight for life without parole. Alma Pogue and I were the only people who were not voting for death. I felt like everyone else just wanted to go home, and they would have voted either way just to get out of there, except L.A. Chancey. I'm a very empathetic person and the fact that they were upset and missing their families weighed on me.

20. I articulated my reasoning and really tried to be reasonable and fair and listen to everyone. L.A. Chancey wanted to be controversial and would not articulate her reasons for voting for death and would not engage in debate at all. I knew that she would never change her mind. I was extremely distressed and locked myself in the bathroom and cried.

21. After the judge's instructions, we sincerely believed that if we were deadlocked Mr. Humphreys would get life imprisonment with the possibility of parole or that he could walk. I did not think that was the appropriate outcome. I also didn't think it was an option to send another note to the judge to tell her we still couldn't decide. The judge had made clear that it didn't matter: we didn't have a choice other than to be unanimous. The only option was to stand my ground.

22. The other jurors did not even bother pressuring L.A. Chancey because they knew they would never change her mind. I had a horrible night the night before, and a horrible day. I thought that unanimity was our only choice, and I felt that Alma Pogue would defer to me on whether we wanted to stick it out. I did not think that we had the option of sending another note to the judge informing her that we could not reach a unanimous decision. I had absolutely no other option. I didn't want Mr. Humphreys to go free so I changed my vote to death. I cried the entire time. It was one of the hardest things I have ever done because I was not true to my own belief about what the proper sentence should be. I felt like my actual vote didn't count at all. Looking back, I do not know why or how I could've said that my vote was death when that is not what I believed.

23. If I had known that not being unanimous meant a sentence of life without parole in this case, it would have been easy to stand my ground as long as I needed to. I think this would have made a difference for many of the other jurors as well. I feel very cheated and misled by the judge telling us we **had** to be unanimous and frustrated by L.A. Chancey's single-minded nature. I just kept thinking "what if that's not possible for us to be unanimous?" I really didn't want Mr. Humphreys to go free, so I finally gave up.

24. About a month after the trial ended, two women came to my house unannounced. They did not call in advance, but instead just walked up as I was doing yardwork and started asking me questions about the trial. They had no vehicle that I could see, and I was home alone. I did not know who they were or what their intentions were. I did not have any meaningful conversations with them, and I never saw them again. At around the same time, I received a letter from the District Attorney's office, attached hereto as Exhibit D. I received another letter from the District Attorney's office in March 2010, attached hereto as Exhibit E.

25. The next time I heard anything about the trial was when I received a letter in February 2012 from Theresa Schiefer, attached hereto as Exhibit F. After that I was telephoned by Mr. Humphreys' current lawyers and asked to share my memories of what happened at trial.

26. I have not been pressured or coerced into signing this affidavit. I have been given an opportunity to review it carefully and make any changes, deletions, and additions I choose. This affidavit is true and accurate to the best of my memory.

FURTHER AFFIANT SAYETH NAUGHT.



SUSAN BARBER

Sworn to and subscribe before me,
this the 24th day of February, 2013.



NOTARY PUBLIC

MY COMMISSION EXPIRES DEC. 30, 2013



13984

EXHIBIT A

We, the jury, have agreed
on statutory aggravating circumstances
on both counts, but not on the
penalty.

Currently we agreed life imprison-
ment with parole is not an acceptable
option. We are currently unable to
form a unanimous decision on death
or life imprisonment without parole.

Please advise,

Arnan Barber

9/29 @ 1053

EXHIBIT B

13987

We, the jury, have agreed on
statutory aggravating circumstances
on both counts, but not on the
penalty.

Consequently, we request that life
imprisonment with parole is not for an
adequate option, we are unable to
make a unanimous decision as to whether
death is life imprisonment without parole
or not.

Please advise,
Dean Baker,
9/29/92 10:40

EXHIBIT C

13989

Due to the hostile nature of one
of the jurors, I am asking to be
removed from the jury.

Thank you,

Dean Barber

9/29/07 @ 7:52

EXHIBIT D

13991



OFFICE OF THE DISTRICT ATTORNEY

PATRICK H. HEAD
DISTRICT ATTORNEY
COBB JUDICIAL CIRCUIT
10 EAST PARK SQUARE
MARIETTA, GA. 30090
Telephone (770) 528-3080
Facsimile (770) 528-8926

Eleanor Dixon
ASSISTANT DISTRICT ATTORNEY

Lori Dodson
LEGAL ADMINISTRATIVE ASSISTANT

November 26, 2007

Ms. Susan Barber
105 N. Windward Drive
St. Simons Island, GA 31522

Dear Ms. Barber:

As a juror in the case of State of Georgia v. Stacey Humphreys, you may be contacted by the defendant's attorney as part of his appeal process. This is allowed under the law; however, it is your choice as to whether you speak with them. You have the right to speak with them concerning jury matters. You also have the right to refuse to speak with them. The defense attorneys should not continue to contact you if you choose not to speak with them.

If you have any problems or questions, you may contact me at the following number:
770-528-3034

Sincerely,

Eleanor A. Dixon
Senior Assistant District Attorney
Cobb Judicial Circuit

EAD/ld

13992

EXHIBIT E

13993

OFFICE OF THE DISTRICT ATTORNEY



PATRICK H. HEAD
DISTRICT ATTORNEY
COBB JUDICIAL CIRCUIT

10 EAST PARK SQUARE, MARIETTA, GA. 30090
Telephone (770) 528-3080 - Facsimile (770) 528-3030

MARTHA HUNTER

JUDICIAL ADMINISTRATIVE SPECIALIST

March 16, 2010

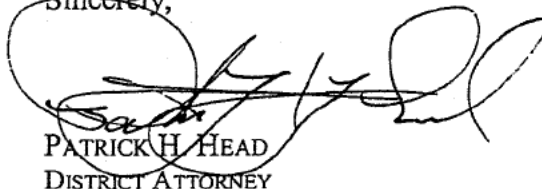
Ms. Susan Barber
105 N. Windward Drive
St. Simons Is., GA 31522

Dear Ms. Barber:

For virtually the entire month of September, 2007 you served as a juror in the case of the State of Georgia vs. Stacey Ian Humphreys. I know that it was an imposition on your time and family but as expressed then, it is one of the duties of our citizenship and our system of justice could not function with you. Once a verdict has been reached and the sentence imposed it is not unusual for jurors to never learn the final outcome with respect to the appeals handled within the state judicial system.

For that reason, I thought you would like to know that on March 15, 2010, the Georgia Supreme Court affirmed the conviction and sentences imposed. If you have any questions about this or any other matters relating to the trial, please do not hesitate to contact me at your convenience.

Sincerely,



PATRICK H. HEAD
DISTRICT ATTORNEY

PHH/ms

13994

EXHIBIT F



Department of Law
State of Georgia

SAMUEL S. OLENS
ATTORNEY GENERAL

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

Writer's Direct Dial:
404-651-6927
Fax 404-651-6459

VIA CERTIFIED MAIL

February 25, 2011

Ms. Susan Barber
105 N. Windward Drive
Saint Simons Island, Georgia 31522

RE: STATE V. STACEY IAN HUMPHREYS, Superior Court of Cobb County

Dear Ms. Barber:


Court records indicate that in September of 2007, you may have served as a juror or alternate juror in Cobb County in the death penalty trial of Stacy Ian Humphreys. Attorneys representing Mr. Humphreys have recently filed a challenge to his conviction and death sentence.

As a result, attorneys or investigators working for Mr. Humphreys are likely to contact you, if they have not already, about the trial and your jury service. You are not legally obligated to talk with anyone or to answer any questions.

You should be aware that if you choose to discuss anything about yourself, your jury service or the trial, it may be used at a court hearing in the case. Also, you may be asked to sign a statement, an affidavit or notes concerning your discussion. You do not have to sign anything. Even if you do sign something, you still may be subpoenaed to appear as a witness in court.

At this point in Mr. Humphreys's appeals, the Attorney General's office, rather than the District Attorney's office, defends against Mr. Humphreys's challenge to his death sentence. I am the Assistant Attorney General assigned to this case. If you have been contacted or if you have any questions, please call me at (404) 651-6927.

Sincerely,


THERESA M. SCHIEFER
Assistant Attorney General

TMS/cjo

13996

Appendix L

**CONFIDENTIAL & PROTECTED BY THE 6TH AMENDMENT
ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT PRIVILEGES**

MEMORANDUM

To: Therese Day
From: Sarah Forte
Re: 2007.11.03 interview with Linda Chancey, descriptive

**PETITIONER'S
EXHIBIT**

117

**Linda Chancey
9 St. Andrews Court, Suite 203
Brunswick, GA**

At around 3:00 p.m. on Saturday, November 3, 2007 Georgia Capital Defender investigator Kimbert Frye and I interviewed Stacey Humphreys juror Linda Chancey. We arrived at her residence, 9 St. Andrews Court, Suite 203 in Brunswick, GA, and parked in the lot. We walked between buildings 9 and 10 to the back of building 9, then up the stairs to the second floor.

We knocked on the glass door and a middle-aged, white woman with chest-length blond hair walked over. She asked for us to show identification, so Kimbert and I pulled out our driver's licenses and held them up for her to see. After she looked at our licenses, the woman opened the door. We confirmed that she is Ms. Linda Chancey, and explained that we wanted to speak with her about her experience serving as a juror during Stacey Humphreys' capital murder trial.

Ms. Chancey is very thin and wore jeans and a button-down blouse. I wore a black skirt, purple heels, and a purple, pink and black sleeveless blouse. [I don't remember what Kimbert wore that day]

Ms. Chancey acted exasperated at first, saying that she knew that someone would probably come and talk to her about this. She invited us into her home, and Kimbert and I sat on bar stools at her kitchen counter. For most of the interview, Kimbert and I sat on these stools while Ms. Chancey stood on the other side of the counter. She has a beautiful loft overlooking the water and two dogs. At one point, Ms. Chancey brought me and Kimbert upstairs into the bedroom area to show us the notes and journals she had kept from her jury service.

At no point did she seem uncomfortable with our presence, and she was very detailed when describing her experience. It was clear that she enjoyed telling us about her jury service, and that she was proud of how seriously she took the responsibility and of the verdict the jury reached at her direction. Although she mentioned that she was supposed to be driving to her parent's farm, she never asked us to leave or indicated that she was in a hurry. She received a few phone calls while we were at her loft, and she briefly explained that she was busy talking about her juror service and would call the person back.

As we began our conversation about her experience serving on the Humphreys jury, Ms. Chancey suggested that we audio record her memories so that she won't have to describe

***CONFIDENTIAL & PROTECTED BY THE 6TH AMENDMENT
ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT PRIVILEGES***

them in such great length again in the future. Ms. Chancey got out an audio recorder, tested it, and began recording.

Kimbert and I spoke with Ms. Chancey for at least two hours. Instead of taking a written statement, Kimbert decided to have Ms. Chancey e-mail him the audio recording of our conversation. Ms. Chancey took us downstairs, to her travel agency office, and she and Kimbert exchanged business cards. We thanked Ms. Chancey for her time and willingness to talk with us. We left on friendly terms.

Ms. Chancey struck me as incredibly smart, and probably very manipulative. She realized that she was smarter than the other jurors and was pleased with the way she was able to control what went on in the jury room.

13881

**CONFIDENTIAL & PROTECTED BY THE 6TH AMENDMENT
ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT PRIVILEGES**

MEMORANDUM

To: Therese Day
From: Sarah Forte
Re: 2007.11.03 interview with Linda Chancey, Substantive

Linda Chancey
9 St. Andrews Court, Suite 203
Brunswick, GA

INTERVIEW CONTENT

Voire Dire

As Ms. Chancey told the court, she has previously served as foreperson of a jury. Also, Ms. Chancey was the victim of a sexual assault by a stranger several years ago. A strange man had come in through the window of her apartment, robbed her and tried to rape her. The man had broken out of a nearby mental hospital.

She was in the military for a few years. Ms. Chancey is a travel agent, but has recently become very interested in DNA and genealogy. She had plans to attend a genealogy convention in Las Vegas during the final days of jury selection, and went despite being selected for the jury.

Guilt Phase

Ms. Chancey thought it was silly and unnecessary to bring in all of the police officers from Wisconsin to testify.

One of the first days of the trial, Ms. Chancey remembers that the jurors were all waiting in the jury room for things to get started. There was a window in the jury room. One of the male jurors, Craig, was standing by the window and saw the guards bringing Mr. Humphreys to the courthouse. Mr. Humphreys was wearing handcuffs. Ms. Chancey remembers that Craig gave the guards a "thumbs up" sign, then encircled one of his wrists with the other hand to symbolize handcuffs. One of the guards must have told the judge, because he brought a bunch of the jurors into the courtroom one by one to ask them about the incident. Ms. Chancey thinks that the other jurors probably lied, especially Craig, but that she told the judge the truth about what she saw and Craig was kicked off the jury.

During the guilt phase deliberations, Ms. Chancey asked if the jurors could hear the tape of Mr. Humphrey's confession again. She wanted to listen to it very carefully to make sure it didn't sound like he was being forced to confess. After listening to it again, Ms. Chancey was convinced that Mr. Humphreys made the confession voluntarily.

13882

**CONFIDENTIAL & PROTECTED BY THE 6TH AMENDMENT
ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT PRIVILEGES**

Ms. Chancey said that she has a Master's degree, and that she was the smartest member of the jury. She took her responsibility as a juror far more seriously than the other jurors, so she didn't like to associate with them. Whenever the jurors went out to restaurants for meals, Ms. Chancey preferred to sit by herself. Ms. Chancey also didn't like that one of the other jurors, a young black woman, always sucked her thumb. She thought it was embarrassing and that it made all of the other jurors look bad, so she told the juror that.

Some of the jurors liked to hang out and watch tv in the evenings at the hotel, but Ms. Chancey preferred to be alone in her room. She did yoga, read books, and wrote in her journal. She had some books about spirituality with her, and the bailiffs tried to take some of them away because they said they were religious books. Ms. Chancey doesn't think that they're really religious books at all, but there was nothing she could do.

Penalty Phase

The jurors retired to the jury room to deliberate again after the penalty phase of the trial. Their deliberations took several days. Ms. Chancey remembers that they took a preliminary vote, and only two jurors voted for life without parole. The other ten jurors voted for death.

The two jurors who voted for life without parole were the jury forewoman and a fat, red-headed female juror. Ms. Chancey remembers that the jury forewoman was a nurse. Ms. Chancey thinks the jury forewoman should never have been put on the jury in the first place because she told the other jurors that she could not consider sentencing Mr. Humphreys to death for religious reasons. The jury forewoman wrote a note to the judge asking to be taken off the jury. When the jury forewoman wrote the note, Ms. Chancey insisted on seeing it before it was given to the judge. Ms. Chancey edited it and re-wrote it, then the jury forewoman copied it in her handwriting and gave it to the judge. Ms. Chancey had to edit and re-write it because the way the forewoman had written it they might have gotten a mistrial. Ms. Chancey wasn't going to let that happen. Ms. Chancey still has the original notes. Instead of there being a mistrial, the judge called the jurors back into the courtroom and basically told them to be nice to each other.

It became clear that the two female jurors could not be convinced to change their votes to death, so two of the male jurors began trying to convince everyone else to change their votes to life without parole. Eventually everyone except Ms. Chancey agreed to vote for life without parole. Ms. Chancey refused to change her vote to life without parole. All of the jurors thought that their sentencing vote had to be unanimous, so they grew very angry with Ms. Chancey and tried to convince her to change her mind and vote for life without parole. They wanted to leave, and because they thought their vote had to be unanimous it meant they couldn't leave unless they could all agree on a sentence.

Because the deliberations were so intense, Ms. Chancey felt like everyone needed a little comic relief when they returned to the hotel one evening during the penalty phase deliberations. She put on a pair of boxer shorts she had purchased in Las Vegas when she went to a showing of "Spam-A-Lot." "I fart in your general direction," a quote from Monty Python, was printed on the rear of the boxer shorts. Ms. Chancey put these shorts

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on under a dress and put on some high heels. She walked into the common room where many of the other members of the jury were sitting around, relaxing, and danced around while holding up her dress so they could read the printing on the boxer shorts. Ms. Chancey thinks that everyone needed a laugh and appreciated this gesture.

Ms. Chancey refused to change her vote. She sat in the back of the jury room either reading a book or doing yoga while the other jurors argued. Ms. Chancey requested to hear the tape of Mr. Humphrey's confession for a third time. This time, she wanted the other jurors to be reminded of how horrible the murder was.

All of the other jurors were very angry with Ms. Chancey for refusing to change her vote. According to Ms. Chancey, the fat, read-headed juror tried to punch her but missed, punching a hole in the wall of the jury room.

Eventually, the other jurors all changed their votes to death. Ms. Chancey thinks that they did the right thing, and is glad that she took her responsibility as a juror so seriously.

Miscellaneous

Ms. Chancey has a lot of friends who are real estate agents. She remembers that members of the victims' families came to Brunswick and caused a fuss at a real estate agents' meeting.


13884

Appendix M

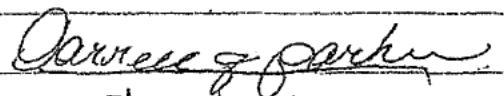
PETITIONER'S
EXHIBIT

116

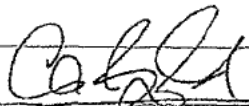
This is the statement of Darrell
Parker, DOB 7/17/1940, taken on
November 4th 2007 at 304 Bushoan
Road in Brunswick, Georgia by ^{DSP}
paralegals
Caroline Boddie and Anne Bello ^{SJA}
for Therese M. Day, attorney for Stacey Humphreys.
My name is Darrell Parker. I ^{DSP}
served on the jury for the
capital trial of Stacey Tan Humphreys.
When I recieved the summons to
be on the jury, I remember
hoping not to get picked. I have
been summoned a few times in
my life to serve on a jury.


witness

1
page

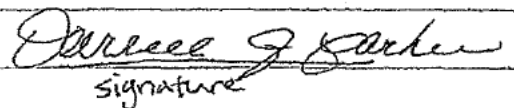

signature 13843

I don't remember this summons being any different. I had no idea what trial I was ~~asking~~^{off} to being asked to serve on. I had not seen or read any news about this trial. My husband also had no idea what trial I was being summoned for. My husband had not read anything or seen anything in the news about this trial. I think my husband was just happy he was not summoned to serve. My



witness

2
page


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13844

husband is 70 years old. When you turn 70 years old, you can decide you don't want to be called to serve on juries anymore.

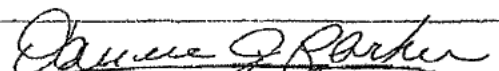
When I came to court the attorneys asked us questions in groups. The attorneys for both sides also asked us questions individually. I had no problems with any of the questions that the attorneys asked. The

attorneys wanted to get to know




witness

off
pg 3
page

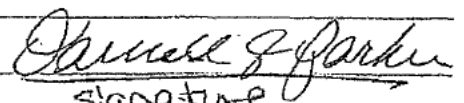

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13845

about who we were. I told the attorneys that I could choose the death penalty. I believe in the death penalty. I also told the attorneys that if a man was found guilty, I could choose life with the possibility of parole or life without the possibility of parole. I still feel this way. I was surprised that that I was picked to be on the jury. Sometimes during trial my knees hurt. I'd have to walk


witness


4
page


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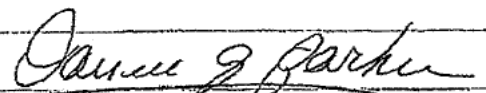
13846

around a bit once we, the jury, would be excused to get my knees to feeling better. I thought I was going to have problems with my knees after the trial. I do not have any problems with my knees now.

We, the jury, were sequestered for the duration of the trial. We, the jury were sequestered at the Holiday Inn. We, the jury, were all on the fourth floor. Each juror had their own room.


Witness

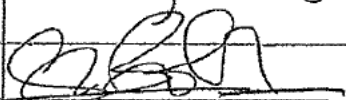
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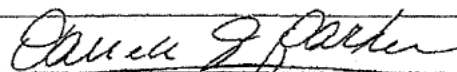
The Bailiffs and the deputy sheriff's stayed on the fourth floor also.

The Bailiffs were very nice. The deputy Sherriffs were very nice to us. I thought I would remember the deputy's names, but right now I don't.

There was a hospitality room at the hotel. We, the jury, spent time in the hospitality room after dinner until curfew. We, the jury, had a curfew of 9:30 pm every night. Each juror had their


witness

6
page



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13848

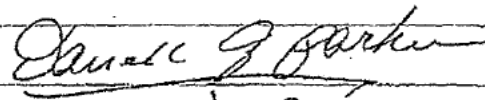
own room. No one was allowed
~~to~~ ^{to} visitors in their rooms. We, the
jury, were allowed to visit with
each other in the hospitality
room. ~~So~~ ^{So} We ~~did~~ ^{did} played card
games in the hospitality room.

Rummy is one of the card games
that we played. We also had a
monopoly game. Some of the jurors
would knit. ^{To my knowledge, ~~did~~} None of us on the
jury spoke about the trial ~~once~~ ^{once}
after we left the courthouse.

We, the jury, were not allowed to



Witness

7
page

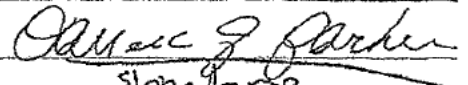

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13849

talk at all about anything to do with the trial once we left the jury room at the courthouse. We all on the jury took that very serious. I never heard anyone on the jury talk about the case or anything about the trial outside of the jury room. No one ever talked to me about the trial outside of the jury room. ^{DISP} During the trial, we the jury ~~was~~ laughed and sang in the van on our way ~~became a kinda rule that we~~ back to the hotel to take our minds off the trial. Later on, during ~~the jury, would be quiet while~~ deliberations, we, the jury, would be quiet while driving in the van ~~driving in the van back to the hotel~~ back to the hotel. ^{DISP}


witness

8
page

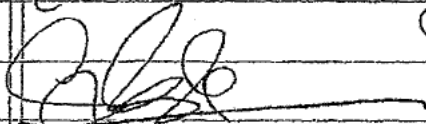

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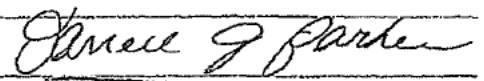
None of the Bailiffs talked to me about the trial. None of the deputy Sheriffs talked to me about the trial or any evidence in the trial.

To my knowledge,
DJP

We, the jury, never asked questions about the trial of the Bailiffs or Deputy Sheriffs. The Bailiffs and Deputy Sheriffs would accompany jurors on the elevators and in the gym of the hotel. There was a small room at the back of the hospitality room. We, the jury, could call our family in that room. The


witness

9
page


signature

13851

Deputy Sheriffs would listen in on our conversations to family members.

The Deputy Sheriffs could listen in on a different phone while we, the jury members, made phone calls. The Deputy Sheriff's phone would be on

mute. We, the jury members, could also have visits from family on

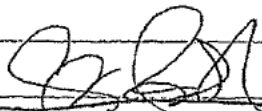
Sundays. The visit with family

would be in the hotel. The visit

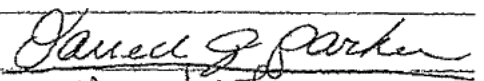
was only 20 minutes. The door to

the room ^{was} had _{to} be open during

visits with family. A deputy or


witness

10
page


signature

13852

Bailiff would stand by the door.

The Bailiff or deputy would be close during family visits so that they

could hear what we talked about with

our family members. We, the jury,

could not watch television. We,

the jury, had to have reading materials

brought into the hotel approved by

the judge. We, the jury, could not

have or read Bibles. We on the jury

^{did} take this responsibility seriously.

There were deputy sheriffs or Bailiffs

on the fourth floor of the hotel at night.

One would be on either end of the floor.

[Signature]
WITNESS

11
PAGE

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13853

Once, someone ^{from} ~~on~~ the jury opened the door to their hotel room early in the morning.

That person on the jury saw the deputy and went right back into their room.

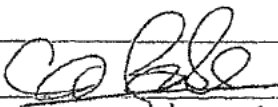
I don't know what that juror was going to do. That juror

probably wanted to get something to drink. ^{from} Glynn County. The ~~bailiffs~~ kept

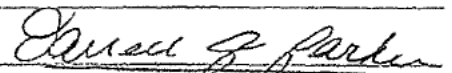
coolers for us on the jury filled with drinks. It was very nice.

The judge seemed to be very nice.

The judge was stern. The judge was strict. Every time that the judge


witness

12
page


signature

13854

talked to us on the jury, the judge
^{DJP} ~~was~~ brought us into the courtroom.

When the judge talked to us, the
jury, she had us in the courtroom.


The lawyers on both sides were
there when the judge talked to us.

The judge did pull some of us ^{or} the jury

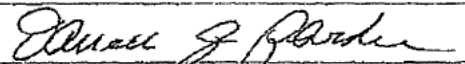
back to talk to her one. The judge
^{DJP} pulled ^{everyone on the jury one at a time} some folks back to talk to

her after one of the jury members
^{DJP} asked to leave was kicked off. Craig never came

back. Everyone on the jury wondered
what happened to Craig. By the end of


witness

13
page


signature

13855

the day, everyone ^{DSP on the jury} knew Craig had

been dismissed. I did not know until

after the trial why Craig had been

asked to leave.

~~DSP~~ ~~kicked off~~ the jury. My husband said

it had been in the paper. My

husband read in the paper that

Craig was dismissed for ~~to~~ some kind

of hand gestures. During trial

when the judge asked us back to

talk to her one by one, the

judge asked us some questions. I

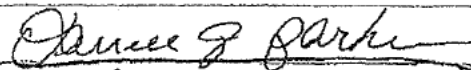
do not know what the ^{DSP} ~~judge~~ judge

asked the other jury members.



witness

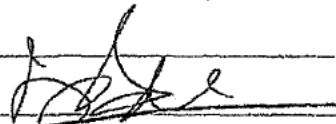
14
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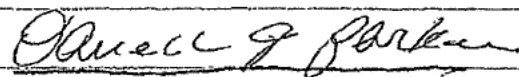
13856

The judge asked me if I had looked out the window that day. The judge asked me what I saw out the window that day. After the judge talked to me, the judge asked me not to discuss what the judge had asked me with any other jury ^{DJP} ~~members~~ members. I did not discuss the judge's questions or my answers with anyone.

During the 1st trial when we, the jury, had to decide on guilt or innocence after the first few hours of deliberations + reviewing evidence it kinda seemed that everyone already


witness

15
page


signature

13857


knows that Stacey was guilty. When
^{Mr. Jimmy Berry}
~~I say everyone, I mean~~ Even Jimmy,
^{Dis}

the defense attorney didn't try to
say that Stacey was not guilty.

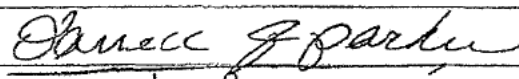
All of the witnesses that saw Stacey
near the crime scene, the phone call

Stacey Humphreys made from the
crime scene, the gun, and the
confession of Stacey all came
together to me. All of the evidence
put on in this 1st trial all prececd
together and made sense to me.

The evidence made it clear to me that


witness

16
page


signature

13858

Stacey Humphreys was guilty. Stacey
confessed like fifteen times on the
confession tape. We, the jury,

listened to the confession tape 3
times. The crime scene photos were

^{DSP} When especially ^{DSP} had hard for me.

Seeing those girls ^{DSP} ^{bodies} was really difficult.

When we, the jury, went back to

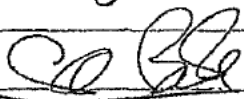
the jury room to deliberate ^{after} the 1st ^{DSP}

trial, we, the jury, picked a foreperson.

Each member on the jury wrote a name on

a piece of paper to nominate who they

thought would be the best foreperson.



witness

17
page



signature

13859

Terry Depratten, Susan Barber, and
Goodbread DSP Cawley DSP
Kip, and Patrick, ~~She~~ were nominated.

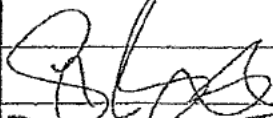
There may have been one other girl.

Susan Barber got the most votes.

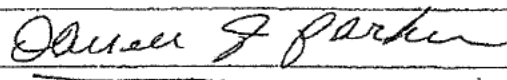
I think Susan was nominated for
her heart. Susan works with children.

Susan is a school nurse. I thought
one of the men would be good as
a foreperson. A strong foreperson is
what we, the jury, would need to
keep things on track. I nominated

Patrick Cawley. Linda Chauncey
was always contrary. Linda Chauncey


witness

18
page


signature

13860


was even contrary when we, the jury,
were nominating our foreperson.

Linda Chauncey said that she would
not write the name because she could
tell us who she nominated. Linda
did decide later to write her nomination.


Susan Barber was ~~not~~^{not} chosen as the
foreperson.

The deliberations on guilt or innocence
took about 6 hours. We, the jury,
thoroughly discussed each charge.

We, the jury, sent out a note about
kidnapping. The judge explained kidnapping.


witness

19
page


signature

13861

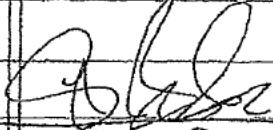
There were no heated debates or arguments during the first deliberations.

We, the jury, found Stacey guilty on all charges. When the judge's clerk read our verdict I felt pain for Stacey. I knew Stacey

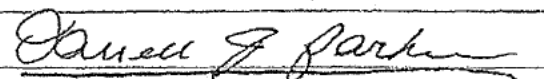
was guilty. I knew we ~~were~~^{Dis} were right. In my heart, I wished ~~to~~^{Dis} Stacey wasn't guilty and everything could be light. It was not.

In the second trial, I felt a lot of pain for everyone involved.

I felt pain for those girls and their


Witness

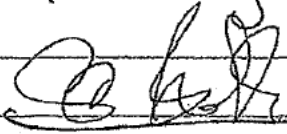
20
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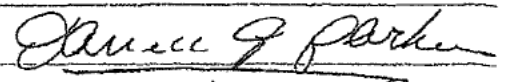
13862

families. I also felt pain for
Stacey. The 2 doctors that the
defense attorneys put on talked
a lot about Stacey Humphrey's
background. The doctors told us
about ~~as be~~^{DSP} Stacey having
asbergers. That part was hard for
Susan I think because Susan
Barber has worked with children
with autism. One of the lady
doctors spoke very clearly and
was very easy to understand.

This lady doctor talked to Stacey


witness

21
page



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Humphrey's family. The doctor's testimony and Stacey's sister, Dana's, testimony really stuck with me.

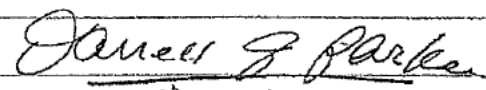
Dana and Stacey were close in age.

Stacey and Dana were abused by their dad. I felt for the ^{DAD} ^{STEP} ~~mom~~ mom

also. Stacey's mom felt she could have done more for this child. That is so sad. We all wonder if we could have given more at some point in our lives. I cried a lot during this trial. I cried a lot in the first and second part of the trials. Each


witness

22
page


signature

13864

night when I was alone in my
hotel room I would have a good
cry.

When we, the jury, went back to
deliberate on the second phase of
the trial it got very heated.

We, the jury, deliberated for
2 and a half days. We, the
jury, began deliberation on a Friday
and we came to our ~~decision~~^{decision} after
about 16 hours deliberation on
Sunday. After we, the jury, talked
on the first day we all decided that

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witness

23
page

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13865

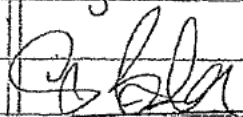
life with the possibility for parole
^{did not}
was an option for Stacey Humphreys.

On our first vote, we, the jury,
voted 9 to 3 in favor of the
death penalty. Alma Pogue,
Susan Barber, and Terra Newsome

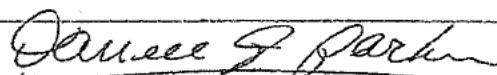
voted for life without the
possibility of Parole. Alma ^{did} Pogue ^{said}
that she could go either way.

Alma Pogue said that she wanted
to give Stacey Humphreys the
worst punishment possible. Alma

Pogue ^{did} ~~lett~~ said that for her, life


witness

24
page


signature

13866

without the possibility of Parole
would be worse than Death.

Alma Pogue said that other inmates
would probably kill Stacey Humphrey's
anyway. Terra Newsome also
voted for life without the possibility
of parole. Terra said that she
needed to think about it more.

I told Terra that Friday night
to pray on it. ~~Sos~~^{asp} by pray on
it, I meant pray on what
vote she wanted to make.

Susan Barber said that she

witness

25
page

signature

13867

voted for life without the possibility of parole because the doctor's testimonies weighed very heavy on ~~her~~^{us} Susan Barber.

I think that this experience was most difficult for Susan Barber.

Susan Barber works with children.

The next day, very early into deliberations, Terra Newsome said that she wanted to speak. Terra said that she had thought about her vote the night before. Terra

Newsome told us, the jury, that


she, Terra, wanted to change her

A. Bell
witness

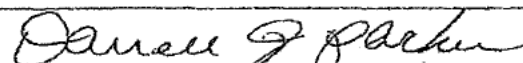
26
page

James J. Parker
signature

vote to death. Now we, the jury,
took another vote. The vote was
now 10-2 for death. Alma Pogue
still voted for life without the
possibility of parole. Alma Pogue
still believed that life without
the possibility for parole was the
worst punishment. Susan Barber
still felt strongly about voting
for life without the possibility
of parole. The debates and
arguments got very heated. There
was a lot of yelling. Linda Chauncey


witness

27
Page


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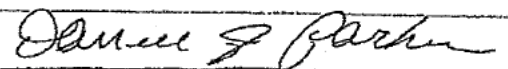
13869

was very exaggerated and theatrical. Linda was theatrical like an attorney. Linda Chauncey was very much for death. Linda stuck to wanting death. Linda wanted to vote for death. Linda yelled at Susan Barber. It got very heated. Melissa^{Odum}, one of the gangster girls, yelled back at Linda^{Chauncey}. Susan Barber^{was} seemed uncomfortable. Melissa Odum got so angry at Linda

Chauncey that Melissa Odum punched


witness

28
page


signature

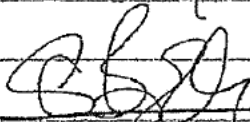
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the wall. I believe that Melissa
Odum's fist, ^{DSP} ^{print} may still be on the
wall ^{DSP} in that jury room. Linda

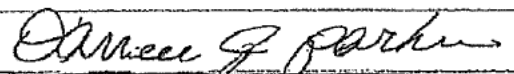
Chauncey was always trying to
tell people what to do. ^{DSP} None of us
on the jury appreciated the way Linda Chauncey tried
didn't bother me as much that

to control everything. The younger girls on the jury, Melissa
Linda ~~intend~~ to control everything,
Odum, Jeanine Osbourne + Terra Newsome showed
that control is just how Linda
the strongest emotion ^{about it.} Melissa Odum, Jeanine Osbourne +
Chauncey is. ^{DSP} The younger girls
Terra Newsome did not like Linda Chauncey telling them
on the jury, Melissa Odum, Jeanine
what to do. ^{DSP}
Osbourne, ^{and} Terra Newsome did not

like Linda Chauncey telling them
everyone what to do. ^{DSP} Terra The


witness

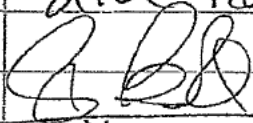
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Signature

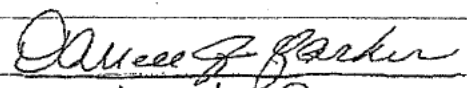
13871

younger girls on the jury rebelled against Linda Chauncey trying to control things. Linda Chauncey yelled at us, the rest of jury, and said that we needed to vote unanimously on death or

Stacey Humphreys would get the lesser punishment. We, the jury, believed that if we did not come to a unanimous decision then we would be a hung jury. We, the jury believed that if we, the jury, did not come to a unanimous


witness

30
page


signature

13872

decision we would be a hung jury.

We, the jury, believed that if

we were a hung jury, Stacey ^{off} ~~off~~ _{penitent}

Humphrey's would get the lesser

of life with the possibility of

parole. We, the jury, also

believed that if we were a hung

jury because we could not come

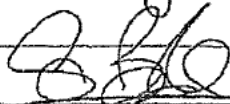
to a unanimous decision that Stacey

Humphrey's would get a mistrial.

~~Linda Chewney~~ ^{off} None of us on

the jury wanted Stacey Humphrey's

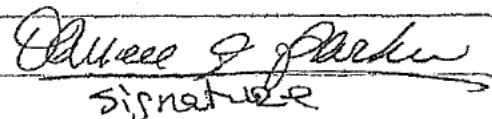
to get life with the possibility of



witness

31

Page


signature

13873

parole. The judge only advised us that we had to continue deliberating until we, ^{the jury did} reached a unanimous decision. After a lot of discussions and arguments, it became clear that Susan Barber did not want to vote for death. We, the jury, decided we could all vote for life without the possibility of parole. We, the jury, realized that if Susan Barber did not want to vote for death we would never get a

Q. B. S.
witness

32
page

Queen of Bees
signature

13874


unanimous vote. We the jury
did not want Stacey Humphrey's
to get life with the possibility of
parole because we the jury ~~set~~^{did} did
not come up with a unanimous
decision. We, the jury, voted again.

This time the vote was ~~was~~^{was} 11-1.

11 of the jurors voted for life
without the possibility of parole.

1 of the jurors voted for death
this time. Linda Chauncey voted
for death. Linda always wanted


death. Linda Chauncey snapped



witness

33

page



signature

13875

Linda Chauncey started yelling and cossing, using bad words,

Linda Chauncey threw the pictures across the table of the girls

bodies. Linda was yelling and

using bad words asking us, the

other jurors, if we needed to

see those girls bodies again.


It was very uncomfortable.

~~Deb~~

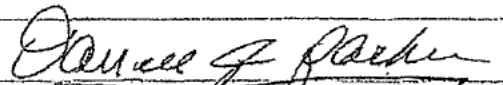
to Susan Barber sent a note out to the judge asking to be removed

from the jury. Susan^{Barber} wrote in the

note to the judge that one of the


witness

34
page


signature

13876

jurors was hostile. ^{DAB} ~~We, the jurors,~~

Many of us on the jury told Susan Barber that we did not want her to be removed.

Many of us on the jury told Susan Barber not to feel pressured.

I told Susan Barber to not feel pressure and to vote ^{her convictions} ~~what she felt~~ best. Susan Barber wanted to be removed from the jury. Susan Barber said she did not want to be the reason that the jury was a hung jury. Susan Barber did not want to hold us on

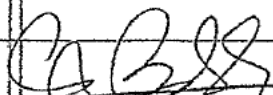
Carroll
witness

35
page

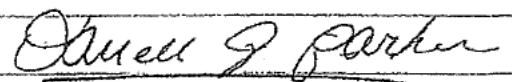
Dancee J Barber
signature

13877

the jury back from coming to a unanimous decision. Susan Barber said that maybe if an alternate replaced Susan, that the alternate would help us on the jury to get a unanimous vote. The judge did not remove Susan Barber. Susan Barber was surprised that the judge did not remove her. When we, the jury, came back the next day we deliberated for a few more hours. The discussions were not as heated.


Witness

36
page


signature

13878

On the last days, Susan Barber
changed her vote to death.

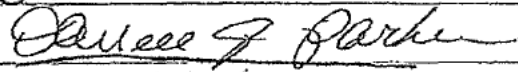
We, the jury, unanimously voted
for death as punishment for
Stacey Humphreys.

I have read and have had read to me this
38 page statement. I have had the
opportunity to make any deletions,
additions, or changes that I please.
I have told everything I know and
have left nothing out.



witness

38
Page



signature 11-4-07

Date

13879

Appendix N

COUNTY OF GLYNN)
)
STATE OF GEORGIA)

PETITIONER'S
EXHIBIT
132

AFFIDAVIT OF TARA NEWSOME

Personally appeared before me, the undersigned officer duly authorized to administer oaths, Tara Newsome, who deposes and states as follows:

1. My name is Tara Newsome and I am over the age of eighteen and competent to testify to the matters contained herein. My address is 4779 Highway 82, Brunswick, Georgia 31523. This affidavit is based upon my personal knowledge.
2. In 2007, I served as a juror in the trial of State v. Stacey Humphreys. Shortly after trial, I was interviewed at my home about my jury service.
3. After the interview, one of the ladies who interviewed me prepared a handwritten statement containing all the information that I had provided to them. I reviewed the statement, confirmed that the information was accurate and signed each page. A copy of that statement is attached to this affidavit as Attachment A.
4. I recently reviewed the statement again in its entirety at the request of Mr. Humphreys' attorneys to determine if it is consistent with what I remember about my jury service.

Tara 5.

The information contained in my attached statement is true to the best of my memory. In fact, because I gave the information close in time to my service, it refreshes my memory of the long trial and difficult deliberations. I hereby swear to and affirm each of the statements contained in my attached 2007 statement.

Tara

6. I was subpoenaed to testify to the matters contained in my statement at a hearing in Mr. Humphreys' legal case in Butts County, Georgia. However, I cannot currently travel that distance from home because I am caring for two children and am pregnant with my third child. I do not own a car and do not know how I would obtain transportation to Butts County.

Tara

7. I have provided this affidavit freely and completely on my own. I was given the opportunity to change any part of this affidavit or my attached statement. I can confirm that all parts are true and accurate to the best of my knowledge and recollection.

FURTHER AFFIANT SAYTH NAUGHT.

Tara E. Newsome
TARA E. NEWSOME

Sworn to and subscribed before me
This the 24 day of February,

Melanie Goodwill
NOTARY PUBLIC



13998

ATTACHMENT A

This is the statement of Tara Newsome, DOB 3/10/77, taken by Caroline Boddie this 3rd day of November 2007. This statement is being taken at 500 Mauney St, Brunswick, Georgia.

This is the home of Ms. Newsome's parents.

My name is Tara Newsome. I live at 501 Mauney St. Brunswick, GA.

I was a juror on Stacey Dan Humphrey's capital murder case.

~~to~~ Stacey Humphrey's trial started September 17th, 2007 and ended

September 30th, 2007.

Car Boddie
witness

1

Tara Newsome
signature

14000

I remember that when I was summoned to be on the jury I hoped to not get picked. I had not heard anything about the case. I had not heard anything on the news about the case. My family did not know anything about the case.

My family had not seen or heard anything ~~or~~ on the news about the case. My family hoped I would not get picked.

Between being summoned to

14001

be on the jury and coming to
~~the~~ 2. Jan. F. Newsome

Court I did not read or hear anything about Stacey Humphrey's case.

I remember the lawyers asking us questions in court to see if we were going to serve on the jury. I did not think the questions were too personal.

The only thing that bothered me a little was when they the lawyers asked about me being separated. I am separated from my husband. My husband

and I separated about a year ago.

Carol Ball

3

JUNE 14 2002
JUNE 14 2002

The lawyers asked me about my separation in front of the group.

That was the only question the lawyers asked me in front of the group. I thought I would not be picked because I knew

people on the jury. I was picked anyway. I've known Melissa Odum since elementary school.

I also knew Jeanine Osbourne.

My best friend's Pam Baker now Pam Neal, sister Elaine was Jeanine's

Jeanine Osbourne's best friend. I

14003

did not know Cathy Lawder before this
Case ~~Edwards~~ witness 4
Jane E. Newsome

Cathy Lawder and I became close during this trial. Cathy Lawder worked in South East Georgia Health Systems. Cathy Lawder, Jeanine Osbourne, Alma Pogue, and Kim all work at the Hospital together. Cathy Lawder, Jeanine Osbourne, Alma Pogue and Kim all work for the South East Georgia Health Systems. Cathy Lawder, Jeanine Osbourne, Alma Pogue, and Kim knew each other before the Stacey Humphrey

trial. I don't remember Kim's last

14004

name. Kim was a little woman. Kim

Charles B. Balle
witness

S
PCL

JANE Newsome

was short and skinny. Kim wore glasses. Kim's hair was blonde. Kim just turned 50. Kim and Linda Chancy had a birthday. Deputy Chubby Underwood brought Kim and Linda a cake. We ate the cake

at dinner. Deputy Chubby Underwood and Deputy Kim ~~was~~ ^{were} very nice.

Deputy Chubby Underwood is from here. Deputy Kim was from

Atlanta. I do not remember

Deputy Kim's last name. Deputy

Kim was a middle aged Black

14005

woman-

Barbara
witness

Deputy Kim looked like

6
page

Jane E. Newsome

the little girl named Olivia on
the Cosby Show.

We were sequestered for 2 week.

We, the jury, were sequestered
at the Holiday Inn on Golden

Isles Parkway. The alternates

were sequestered with the jury

at the Holiday Inn. Susan Yates.

and Heidi Fore and Crystal were

alternates. Heidi is a school

teacher. Heidi is 39 years old.

Heidi does not look her age Heidi

looks very young. Heidi wears

glasses. Heidi is blonde. Er I

Cass Ball
WITNESS

6
PAGE

14006
JANIE NEWSOME

do not remember Heidi's last name. Crystal works at rent-a-center. I do not remember Crystal's last name. Crystal is 24 years old Black woman.

~~th~~ Crystal has short black hair. Crystal was the only Black woman on the jury.

Linda Chauncey called Crystal out one night at dinner for Crystal sucking her thumb. Crystal sucked her thumb. Everyone has their flaw.

I smoko. Melissa Odum got into her, Linda chauncey, (w) 14007
it with A for talking about Crystal.
Cous Aldo F Jana E. Newsome
10/20/05 FIVE

It was very uncomfortable. Linda Chauncey called Crystal out at dinner in front of everyone on the jury. When I say ~~eye~~ Linda Chauncey called Crystal out, I mean ~~she so~~ Linda Chauncey yelled "why are you sucking your thumb?" to Crystal. Linda Chauncey told Crystal we, the jury, were all gonna be in a picture in the newspaper with Crystal sucking her thumb. Melissa Odum yelled at Linda Chauncey

for calling Crystal out. I know

Chris Babbie
witness

8
PAGE

JANA E NEWSOME

14008

~~Crystal~~ Crystal felt uncomfortable
after Linda Chancey called her
Crystal out.

When we, the jury and the alternates,
were sequestered at the Holiday
Inn on Golden Isles Parkway in
Brunswick, GA. we did not talk
about Stacey Humphrey's case.

We, the jury, were only allowed
to talk about Stacey Humphrey's
case in the jury room at the
courthouse. It was freezing in
the jury room. I guess it was

14009

Kept cold because the courtroom

Quillette
witness

9
page

JANE NEWSOME

was so packed. We, the jury, did not discuss the ~~case~~ Stacey Humphrey's case at all when we were at the hotel. We, the jury, were at the courthouse for so long every day. We would leave the stuff about the case at the courthouse. When we got to the hotel, we, the jury, just wanted to rest. We ate dinner together. There were some ~~cliques~~ cliques at dinner because some people already knew each other. No one talked about the case outside of the courthouse jury room.

Bob Boddie

10

14010
Jana E. Newsome

At the hotel, there was a room where everyone could hang out. We did not discuss Stacey Humphrey's case. We just talked and played games.

We played Monopoly and Rummy and bingo. Those were really the only three games we played.

When I say Rummy, I mean a card game. Rummy is a bit different than Gin Rummy.

There was a little room in the back of the game room. People on the

jury could call their families in that

14011

little room. There were two phones in
Carol Giddis 11 MAE Newsome
CSPSP

that little room. When someone called their family, a bailiff had to be in the room.

The Bailiff would be on one phone. The Bailiff could hear your conversation. The Bailiff's phone would be on mute. Your family could not hear the Bailiff because the Bailiff was on mute.

Usually you were only allowed to talk to your family for ~~5~~ five minutes. Everyone had to be in their rooms ^{by} 9:30 p.m.

14012

Everyone on the jury had their
Car Gallo 12 Ma E. Newsome
WITNESS PAGE

own room. No one was allowed in
your room ever. Everyone on the
jury obeyed the rules. No one had
people in their rooms. We, the
jury, hung out and talked in the
big room. The big room is where
we played games. If we got on
the elevator a deputy went with
us. The deputys and bailiffs
were very nice to us. Only a
deputy or bailiff could ride on
the elevator with us. The deputy
would explain to people in the hotel
that we were on a jury. Then the

Casey L. Ladd
... 11/25

13
PAGE

Mae Nussme

14013

deputy would ask the people from the hotel to take another ~~one~~ elevator.

The Most of the deputy's and bailiffs stayed on the same floor of the hotel with the jury.

The Bailiffs and deputy's that had their wives with them stayed on a different floor of the hotel.

There was a deputy or a Bailiff on each end of the floor at night. If someone came out of their room, the deputy or Bailiff would ask what the person needed.

Casey Baddis
witness

14
page

14014

JANA E. Newsome

The deputys and Bailiffs would sometimes check our rooms. I know because, I had a yellow pages phone book in my room one day. One day later I noticed that the yellow pages phone book was gone. A Bailiff or deputy had taken the yellow pages phone book out of my room.

I never talked with the deputy or bailiffs about the case. The judge seemed very stern and by the book. I never spoke with

14015

the judge, Judge Robinson, one on one.

Carroll
Witness

15
PAGE

MAE Newsome

Judge Robinson, ~~and~~ Dorothy

Robinson and I never spoke alone.

I do not remember Judge Robinson

ever coming back to the jury room to

talk to us. If we, the jury, had a

question Judge Robinson would

address it in the question

courtroom.

In the first part of the trial

Detective Hermans testimony stood out

to me. Detective Hermans stood out

to me because that is when they

played Stacey Humphrey's confession.

14016

It seemed odd to me when Detective

Caraldo

16
page

MAE Newsome

Hermans asked Stacey Humphreys on the tape about 2 whares. Detective

Hermans asked, "What about the 2 whares you had on Thursday?"

That seemed odd to me because there was no follow up to that.

I wondered what the point was.

I wondered if something had happened to those girls. The evidence that made up my mind that Stacey Humphrey's was guilty was the gun. The gun was found in Stacey Humphrey's car. The gun found

14017

in Stacey Humphrey's car had DNA -
JANE Newsome

Askelo

17

from one of the girls on it. That gun
and DNA on the gun ⁱⁿ ~~is~~ Stacey Humphrey's
~~car~~ car did it for me. The gun and
DNA from the girl made up my mind
because there was no other evidence.

on CSI there are always foot
prints and finger prints. There
were no foot prints or finger prints
from Stacey Humphrey's at the
crime scene. There was no evidence
putting Stacey Humphrey's at the
crime scene. The fact that they
found that gun is Stacey Humphrey's

Carroll
Witness

18
page

14018

MAE-Newsome

car made me know he was guilty.

I did not believe the people that said they saw Stacey's Black

Durango in the neighborhood where the crime happened. I did not

believe them ~~been~~ about the Black

Durango because they talked about

it a day or days later. People

had already heard on the radio

what was going on. I also didn't

believe the 15 year old girl that

gave the ~~descript~~ description of

Stacey Humphreys. I did not believe

[Signature]
witness

19
page

14019

Jana E. Newsome

The 15 year old girl because that was days later and it had been in the news.

After the 1st part of the trial, we, the jury went back to the jury room to deliberate. We, the jury, had to vote on a foreperson.

3 people were nominated to be a foreperson. Susan Barber, Patrick Cawley, and a lady with the last name of DePretter were the nominees for to be the foreperson.

I nominated Susan Barber. I

14020
nominated Susan Barber because
C. Galdo 20 JANE Newsome
witness PRSR

st Susan Barber is a school nurse.

Barber ^(u)

I also nominated Susan ~~Baker~~ because

she ~~was~~ an elderly woman. Susan

~~Barber~~ ^(u) ~~Baker~~ could speak in front of

people. I think people on the

jury thought Susan ~~Baker~~ ^(u) was

fair and stern. I think that

Patrick was nominated to be

foreperson just because Patrick

Cawley is a man. I don't know

why Ms. DePratter was nominated.

Maybe Ms. DePratter was nominated

because Ms. DePratter was older.

14021

Ms. Depratter was about 45. Ms.

~~Case~~ ~~Barber~~ ^(u)

21
page

Jana E. Newsome

Depratter had reddish-brown hair.

Ms. Depratter wore glasses ~~for~~ I
could tell that Ms. Depratter's hair
was dyed. I do not remember
Ms. Depratter's first name.

Susan Barber was chosen to be
our foreperson. In our, the jury's
first deliberations there were
no arguments. Susan Barber had
forms to fill out. Susan Barber
filled out what everyone on the jury
said about each charge. We, the
jury, wanted to be very careful and

[Signature]
Witness

22
page

14022
Janae Newsome

thorough. We, the jury, would discuss each charge and then vote on guilty or innocent.

It was unanimous on each charge that Stacey Humphreys was guilty.

The only question we, the jury, had was about kidnapping. We, the jury, sent out a note about kidnapping.

We, ^{some of} the jury, did not know it was kidnapping if you don't take someone and run. We, ~~also~~ the jury, also sent a note asking to hear Stacey

Humphrey's confession tape. We, the jury,

Cox
witness

23
page

14023

Jane Newsome

listened to the confession tape 3 times.

We, the jury, deliberated 8 hours

in the first part of the trial.

I do not think ^{remember} we ~~sent~~ out any other notes.

There was no break between the first part and second part of the trial.

The judge explained to us that in the

2nd part of the trial we, the jury,

would hear from the families of the

victims and the ~~family~~ Stacey

Humphrey's family. The judge also

explained to us, the jury, that

after we heard all of those witnesses,

we would have to decide on

Stacey Humphrey's punishment. 14024
~~Carroll~~ ²⁴ ~~page~~ Jana E. Neussme

The judge told us, the jury, that we would have to choose life, with or without the possibility of parole, life without the possibility of parole, or death. When the lawyers asked me before they picked me for the jury if I could choose life with parole, life without parole, or death. I said that I could choose life with parole, life without parole, or death as a sentence. I still feel that way. ~~I feel good about it~~

The witness I really remember Stacey

Humphrey's elder sister. Stacey 14025
Co Balde 25 MAE Newsome

Humphrey's older sister talked about
Stacey Humphrey's older sister had
how ~~she'd~~ been beaten by her and

Stacey's dad. Stacey Humphrey's older
sister also talked about being
sexually molested by her and Stacey

Humphrey's dad. Stacey Humphrey's
older sister also said that Stacey
took most of the beatings for

her. It really stood out in my mind
that Stacey took beatings for his

older sister. ~~It~~ All of the abuse
also stuck out in my mind. I do not

remember Stacey Humphrey's older sister's

[Signature]
Witness

26
Page

14026
Jana E. Newsome

Now that I think about it, I cannot remember whether Stacey Humphrey's sister was older or younger. name. The victims family et read letters in this part of the trial.

The victim's families could only read what they had written on their letters. No lawyers from either side asked any of the victims any questions. Most people on the jury cried when the victims family read their letters. I cried when the victim's family read their letters. I also cried when Dana read talked about being molested by her and Stacey Humphrey's dad.

B. B. B.
witness

27
page

14027

Dana E. Newsome

Now I remember. ~~Stacey~~

Humphrey's older sister's name is Dana.

After the second part of the trial we, the jury, went back to the jury room to deliberate. We deliberated the second time for 2 1/2 hours.

~~This~~ ^{The} second deliberations got very hostile. The second time we, the jury, deliberated there were arguments.

We, the jury, voted four times.

The only note we, the jury, sent out was about it being hostile in the jury room.

One juror felt that it was hostile and

Bluff
Witness

28
page

Ma E. Winsome

14028

asked to be removed from the jury.

It was Susan Barber, the foreperson,
that asked to be removed. Susan

Barber asked that she be replaced
by an alternate. We the jury tried

to talk her Susan out of asking to

be removed. Susan could not

believe that the judge did not

remove her. Susan felt it was getting

hostile when we, the jury, were

discussing our votes. Linda Chauncy

was yelling at Susan when we, the

jury, were supposed to be talking.

Boyle
witness

29
Page

MAE. Newsome
- 14029

Linda Chauncey was yelling that if the jury did not get a unanimous vote on death, that the jury would be a hung jury. Linda Chauncey yelled at Susan Barber saying that if ~~that~~ the jury did not unanimously vote for death, then Stacey Humphrey's would get life with the possibility - of parole.

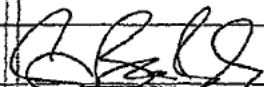
Linda Chauncey yelled that if Stacey Humphreys got life with the possibility of parole, Stacey would come to kill Linda first.

[Signature]
Witness

30
page

14030
Jana E. Newsome

later, ~~lit~~ In the second part of jury deliberations, Linda Chawncay told us, the jury, that Linda had been attacked in her bed in her apartment. Linda was naked in her bed and a man ~~came~~^{broke} in and attacked her. Linda ran into the halls of her apartment and finally someone opened the door. We, the jury, asked Linda if she had told the attorneys that Linda said she hadn't thought about it. I don't think that ~~lit~~ the lawyers.


witness

31
page

14031
Jana E. Newsum

would have put Linda on the jury
if the lawyers knew that.

We, the jury, believed that if we did
not come to a unanimous decision

that Stacey Humphrey's would get

the lesser. When I say get the

lesser, I mean that we, the jury,

~~thought~~ thought that Stacey Humphrey's

would get life with the possibility

of parole if we did not come to

a unanimous decision. We, the jury,

understood this to be true from what

the judge explained. The first vote

Blair
witness

32
page

Jane E. Newsome

14032

in the 2nd deliberations was 9 to 3.

9 ^{jury members} ~~for~~ voted for death. 3 jury

members voted for life without the

possibility of parole. We, the jury,

had already decided that life

with the possibility of parole was not

an option. We, the jury, decided that

Stacey Humphrey's should get life

without the possibility of parole or

death. I was one of the three

jury members that voted for life

without the possibility of parole.

Susan Barber and Alma were the

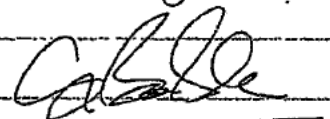
B. Barber
witness

33
page

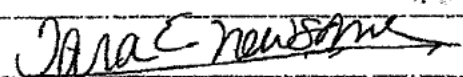
14033
JMAC Newsome

other 2 votes for life without the possibility of parole. I kept thinking about ~~what~~ the two doctors that testified. The doctors talked to Stacey and ~~to~~ Stacey's family members. The doctors talked about Stacey Humphrey's being abused as a child. Susan Barber and I also were thinking about ~~st~~ Stacey Humphrey's sister Dana's testimony. Susan Barber and I remembered Dana talking about the abuse she and Stacey suffered.

14034


witness

34
page


signature

Alma said that she voted life without parole because it was a worse sentence than death. Alma wanted the worse possible sentence. Alma said she could vote death if everyone else voted death. Alma had a son in prison. Alma said it's really bad in prison. I don't know what her son did. That night we, the jury went back to the hotel. I thought a lot about Dana's testimony. I also thought about the doctor's testimony.

14035

Caballe
witness

35
page

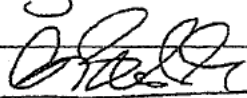
Dana E. Newsome

The next day we talked more in
the jury room before our 2nd vote.

~~The~~ We, the jury, still did not
discuss Stacy Humphrey's case
outside of the jury room in the
courthouse. This time the vote was

10 - 2. Susan Barber still voted
for life without parole for Stacy
Humphrey's. Susan said she was
still stuck on the abuse and
everything the doctors talked about;

Alma voted for life without parole
again because Alma thought that



witness

36
page

Mae Newsome

Signature

14036

life without the possibility of parole

was a worse sentence than death.

This 2nd vote in the 2nd phase of deliberations, I voted death.

After seeing the letter that from

Stacey Humphrey's attorneys

asking for life without the

possibility of parole, I thought

of life without parole as a ~~win~~

victory for Stacey Humphrey's.

I did not want to do that to

the victim's families. I also

thought that the doctor only talked

Castro

witness

37

page

John Newsome

signature

14037

to Stacey Humphreys for like 16 hours.

The doctor did not know Stacey

Humphreys. I wondered if Stacey

Humphreys had just put on a show

for the doctors. I also was thinking

about the fact that there was

no documentation of Stacey Humphreys

going to the doctor or being

treated of anything before.

The 3rd vote was 11-1. On this

vote, we, the jury, decided that we

would all vote for life without parole.

We, the jury, did not want Stacey

Bob Ball

witness

38
page

JANA E. Newsome
signature

14038

Humphreys to get life with the possibility of parole because we did not come up with a unanimous vote.

We all agreed to vote on life without parole on the 3rd vote.

The vote was 11-1, because Linda voted for death and everyone else on the jury voted for life without the possibility of parole. I believe

that Linda Chauncey voted for death because Linda Chauncey liked to be the center of attention. Linda Chauncey liked for everything to be about ^{her} ~~about~~ about


Carla
witness

39
page

JANE NEWSOME
signature

14039

Linda. Before the vote, we all agreed to have a unanimous vote for life without the possibility of parole. We wanted to have a unanimous vote so that Stacey Humphrey would not get Life with the possibility of parole. It was only in the 2nd deliberations that it got really heated. All of the jurors except Linda did not yell at each other. The arguments and yelling always had to do with Linda Chauncey. Linda Chauncey would yell at someone and we, the jury, the rest of


witness

40
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JANE E. Newsome
signature

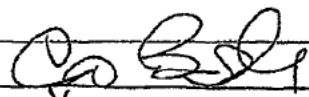
14040

us in the jury would tell her that we were supposed to talk and not yell.


It was on the 2nd day of deliberations in the 2nd phase, on Saturday, that the judge explained to us that we needed to do

everything possible to come to a ~~unanimous~~ unanimous decision.

On the third day we, the jury, knew that we had to come to a unanimous decision at some point. We would be deliberating until we were able to come to a unanimous decision.


witness

41
page


signature

14041

On the third day, we voted unanimously for death. There was a lot of emotion. Everyone was emotional. Susan Barber cried when she voted for death. I do not know what she was thinking. When the clerk asked each one of us if we voted for death and if we felt pressured, many of us were crying. We cried because it is very serious to sentence a man to death. I remember feeling that this was a very hard and emotional thing to do.

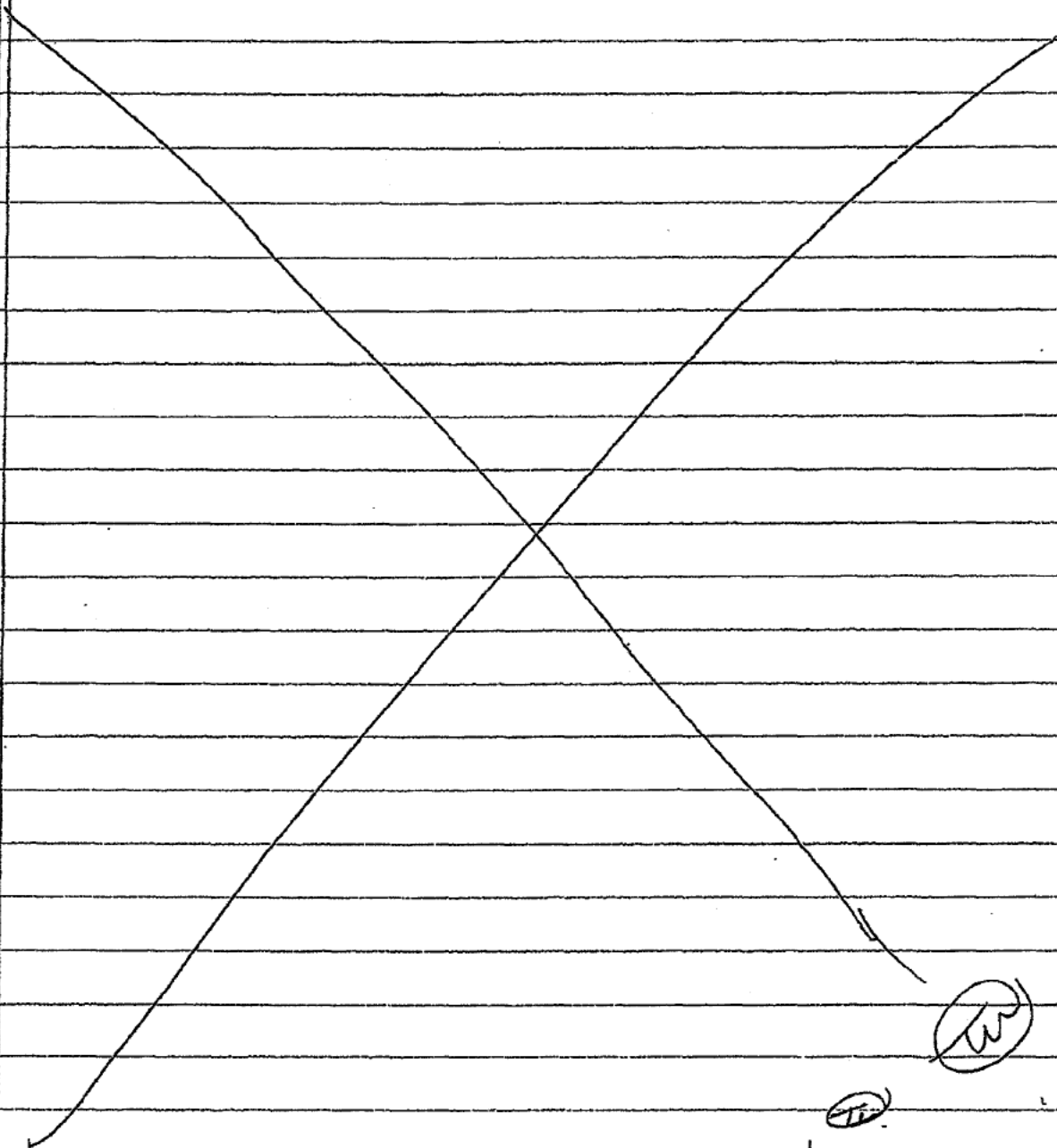
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~~Witness~~ witness

42
page

Jana E. Newsome
signature

14042

tw



tw

tw

I have read and have had read ^{to} ~~to me~~ this
43 page statement. I have had the
opportunity to make any deletions,
additions, or changes that I please. I
have told everything I know and have
left nothing out.

Paul [unclear]
witness

43
page

11/3/2007
date

Jana E. Neusme

signature

14043

Appendix O

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GROTHY A. ROBINSON

COBB COUNTY GA.
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08 OCT '1 PM 3:22

OCT - 1 2008

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

J. C. Stephenson
COBB SUPERIOR COURT CLERK

STATE OF GEORGIA,

INDICTMENT # 04-0-673-05

v.

STACEY IAN HUMPHREYS,
Defendant.

AFFIDAVIT OF WITNESS

COMES NOW, Defendant Stacey Ian Humphreys, by and through his undersigned attorneys, and files the following affidavits in support of his Amended Motion for New Trial.

In filing, Defendant shows as follows:

The attached witness affidavit is made by juror Darrell Parker, in regards to her jury service in the above-styled matter.

Respectfully submitted:



MITCH DURHAM,
Georgia State Bar No. 235532
301 Washington Avenue
Marietta, GA 30060

JIMMY D. BERRY
Georgia State Bar No. 055500
236 Washington Avenue
Marietta, GA. 30060

AFFIDAVIT

I, Darnee G. Parker, being duly sworn, depose and state as follows:

1.

My name is Darnee G. Parker. I am an adult female/male over the age of eighteen (18) years and am competent to give affidavits and other forms of sworn testimony. I swear under oath that the information set forth herein is true and correct to the best of my knowledge, information and belief.

2.

I am a United States citizen and a resident of the State of Georgia.

3.

I am making this statement of my own free will, to the best of my ability, with the knowledge I have of the Incident.

4.

On Sept. 23rd, 2008 at 2:44pm I was present at the following location;
304 Bushoan Rd. Brunswick, GA. 31525

My name is Darnee G. Parker. My date of birth is July 17, 1940. I am a resident of the State of Georgia. In 2007 I served as a juror in the case of State of GA. VS Stacey Humphreys. During the jury deliberation of the initial guilt or innocence phase of the trial things went OK, there were no heated debates or arguments as I recall. The jurors asked the question about the definition of kidnapping. After hearing the definition of kidnapping we were all in agreement of that guilt of that charge. During the penalty phase portion of the trial emotions got more heated up. During our deliberation we decided that

BJ Roberts 9-23-08

AFFIDAVIT

Charles J Parker
Sept 23, 2008
page 2

Life with the possibility of parole was not an option. on our first vote we the jury, voted 9-3 in favor of the death penalty. We the jurors thought that we had to reach a unanimous verdict of the Death penalty or life without parole. We felt if we did not do this we would have a hung jury and possibly allow Stacey Humphreys to go free or get life with parole. Because we did not want him to be released on parole we continued to discuss the case to reach a unanimous decision.

During this discussion one juror asked to be removed from the jury. She was crying, tension was high. The discussion heated to the level that she went to restroom & cried. During one time of heated discussion one juror Melissa Odum got so angry at Linda Chaucer that she actually punched the wall at this time. All jurors except Linda Chaucer without agreed to life without parole. Because the foreperson could not agree to the death penalty.

During the most heated discussion there was a quiet period of discussion among groups when all of a sudden it was as if an evil force took over Linda Chaucer. She jumped from her seat, cussing using language that made my face turn red. She removed the pictures of the 2 murdered young women and threw them on the table.

B.J. Roberts 9-23-08

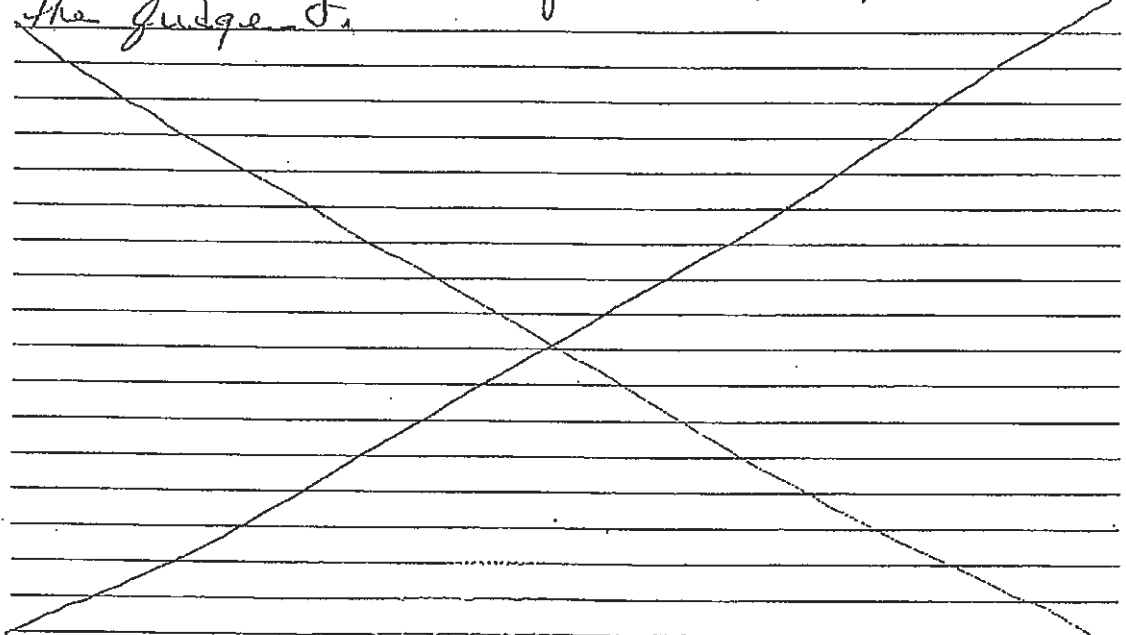
AFFIDAVIT

Darius J Parker
Sept 23, 2008
page 3

Yelling "Do you want this man to possibly walk or even get life with possibility of parole" "I sure don't WANT that man I'll stay here till forever if it takes it for him to get death." She stated while showing pictures "do you want this to happen to someone you know?"

The following morning Susan Barber changed her vote to the death penalty. At this point, all jurors changed back to the death penalty.

The fore person Susan Barber wrote the note to the judge. Linda Chancey then marked through parts of the note and reinserted or reworded it. Susan Barber then copied the note in her handwriting and passed the note to the judge.



B. J. Roberts
September 23rd 2008
My Commission Expires Nov. 7, 2008

Darius J Parker
Sept 23, 2008

Appendix P

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OCT - 1 2008

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

J. C. Stephenson
COBB SUPERIOR COURT CLERK

STATE OF GEORGIA,

INDICTMENT # 04-0-673-05

v.

STACEY IAN HUMPHREYS,
Defendant.

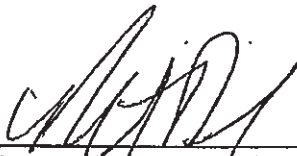
AFFIDAVIT OF WITNESS

COMES NOW, Defendant Stacey Ian Humphreys, by and through his undersigned attorneys, and files the following affidavits in support of his Amended Motion for New Trial.

In filing, Defendant shows as follows:

The attached witness affidavit is made by investigator Kimbert L. Frye, in regards to her interview with juror Linda Chancey discussing Ms. Chancey's jury service in the above-styled matter.

Respectfully submitted:



MITCH DURHAM,
Georgia State Bar No. 235532
301 Washington Avenue
Marietta, GA 30060

JIMMY D. BERRY
Georgia State Bar No. 055500
236 Washington Avenue
Marietta, GA. 30060

Affidavit of Interview with Linda A. Chancey

On Saturday November 3, 2007, I, Kimbert L. Frye, Investigator, Georgia Capital Defenders Office, along with Sarah Forte, Investigator, Southern Center for Human Rights, interviewed Linda A. Chancey at her residence located at 9 Saint Andrews Court, suite 203, Brunswick, Ga.

Ms. Chancey is a middle-aged white woman with long blond hair and a thin build. She wore glasses during the interview. She appeared to be somewhat educated and after requesting identification from myself and Sara Forte, she agreed to the interview.

The interview took place in the early afternoon approximately 2:00 pm. Ms. Chancey's residence is located in what appears to be a mixed use residential /commercial area on the waterfront in Brunswick, Ga. The interior of the residence is a two-story townhouse with a loft overlooking a deck with a water view. The home appeared to be fully furnished at the time of the interview.

The focus of the interview with Ms. Chancey was to ascertain her perspective on serving on the jury in the case of The State of Georgia vs. Stacey Humphreys. Ms. Chancey consented to the interview, however, there was one caveat: Ms. Chancey wanted to audio record the interview in an effort to eliminate any contextual errors or misquotes. I agreed to this condition and allowed the recording of the interview. After initially agreeing to provide the Georgia Capital Defender a copy of the audio, Ms. Chancey refused to provide a copy.

During the course of the interview, Ms. Chancey stated that the State vs. Stacey Humphreys was the second time she has served as a juror in 2007. Earlier in 2007, Ms. Chancey served as jury foreperson in an unrelated case. Ms. Chancey felt that this experience better equipped her to serve on the jury, whereas, the other jurors were not able to handle a case of this magnitude. Ms. Chancey said that early in the guilt phase of the trial a male juror "Craig" was removed from the pool as a result of him giving the "thumbs up" to Sheriffs' deputies transporting Mr. Humphreys to court. Ms. Chancey believes one of the deputies informed the judge and as a result, the judge summoned the jurors into court. The male juror was removed from the jury pool.

Ms. Chancey stated that the deliberations in the guilt/innocent phase of the trial were relatively uneventful. Ms. Chancey asked to hear the tape of Mr. Humphreys confession again to ensure that he was not being forced to confess; she is convinced that the confession was voluntary. After some deliberations, the jury reached a consensus of guilty in the Guilt/Innocence phase.

The deliberations in the penalty phase, however, were much more extensive and volatile. At one point, the jury foreperson sent a note to the judge asking to be removed from the case; also a couple of the jurors were seen crying when summoned into court by the judge. There was screaming and raised voices that could be heard, coming from within the jury room.

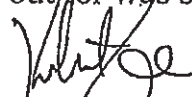
Ms. Chancey stated that the initial vote amongst the jurors was 8 to 4 in favor of life without parole. The deliberations then became more intense and voices raised and a vote of 10 to 2 in favor of life without parole was reached. The jury appeared to be deadlocked according to Ms. Chancey. Ms. Chancey stated that at this time the two male jurors remaining, Patrick Cawley and Kenneth Goodbread went around the room and talked to the jurors and decided that the jurors should vote unanimously for life without parole so the jurors could go home. The final vote was 11 to 1 in favor of LWOP.

Ms. Chancey stated that she was the lone person opposing the sentence of LWOP. Ms. Chancey then showed the photos of the victims at the crime scene to the jurors and stated that she told the jurors they had to reach a unanimous decision or he would be paroled. Ms. Chancey stated that she put her feet up on the table and said that she was digging in and she would not change her vote. This caused extreme tension among the jurors, so much so that a red-headed female juror, Melissa Odom, took a swing at Ms. Chancey and punched a hole in the jury room wall.

Chancey felt as though the other jurors did not take their participation as jurors in a capital case as serious as she did. Ms. Chancey stated that the jury foreperson was not mentally strong enough to handle such a role. Chancey stated that as a result, she edited all the notes from the jury foreperson to the judge.

I asked Ms. Chancey why she felt compelled to edit all notes from the jury foreperson to the Judge. Ms. Chancey stated that the foreperson's notes

unedited or in raw form would cause a mistrial and they would have to do it over again or the defendant would get parole and hunt the jurors down. Ms. Chancey stated that she would show the jurors favoring LWOP the crime scene photos and evidence in that case to reaffirm that this person deserved to die and what would happen to them if he got parole. Chancey stated that she would only vote for death and was willing to do it again if she had to. She felt that what she was doing was the right thing to do and that she had the full powers of the State of Georgia supporting her. Chancey stated that the relationship between the other jurors and her became so volatile, that she had to be transported separate from the other jurors and had to eat alone. Ms. Chancey subsequently was able to convince the other jurors they had to be unanimous in order to resolve the case, and the only verdict that she felt was right for the defendant was death. Ms. Chancey stated that she would hold out for what she thought the defendant deserved.



Kimbert L. Frye
Investigator
Georgia Capital Defender

Sworn to and Subscribed before me
this 11 day of August, 2008.



Notary Public

Notary Public, Fulton County, Georgia
My Commission Expires October 17, 2008

Appendix Q

ORIGINAL

IN THE SUPERIOR COURT FOR THE COUNTY OF COBB

STATE OF GEORGIA

STATE OF GEORGIA

vs.

STACEY IAN HUMPHREYS

Defendant.

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*
*
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*
*
*

INDICTMENT NO. 04-9-00673-05

Heard before the Hon. Dorothy A. Robinson,
Judge, Cobb Judicial Circuit, and a Jury, in the
Glynn County Courthouse, Brunswick, Georgia on the
27th, 28th, 29th and 30th day of September, 2007.

TRANSCRIPT OF TRIAL SENTENCING PHASE

VOLUME THREE OF THREE

APPEARANCES:

FOR THE STATE:
Filed In Office Nov-08-2007 08:43:58
ID# 2007-0166675-CR
Page 1

Jay C. Stephenson TW
Jay C. Stephenson
Clerk of Superior Court Cobb County

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District Attorney
ELEANOR A. DIXON, ESQ.
MARK D. CELLA, ESQ.
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Cobb Judicial Circuit
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Marietta, Georgia 30060

FOR THE DEFENDANT:

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236 Washington Avenue
Marietta, Georgia 30060

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REPORTER:

William C. Burke, C.C.R.
Post Office Drawer 497
Darien, Georgia 31305
(912) 437-4080

ORIGINAL

I N D E X

VOLUME THREE:

REBUTTAL WITNESS FOR THE STATE:

PHILLIP BREWSTER

5	DIRECT EXAMINATION BY MS. DIXON	PAGE 328
6	CROSS-EXAMINATION BY MR. BERRY	334
7	CHARGE CONFERENCE	341
8	CLOSING ARGUMENT BY MR. HEAD	363
9	CLOSING ARGUMENT BY MR. BERRY	401
10	CHARGE OF THE COURT	425
11	EXCEPTIONS TO THE CHARGE OF THE COURT	437
12	MOTION FOR MISTRIAL	449
13	RECHARGE OF THE COURT	459
14	VERDICT OF THE JURY	462
15	POLLING OF THE JURY	467
16	SENTENCE OF THE COURT	475
17	<u>EXHIBITS:</u>	
18	C-1 NOTES FROM JURY TO THE COURT	479
19	S-232 WARE COUNTY, NORTH CAROLINA INDICTMENT,	
20	PLEA AND SENTENCE, 90 CRS 59486	480
21	S-234 AERIAL PHOTOGRAPH	481
22	D-2 DRIVER'S LICENSE, STACEY IAN HUMPHREYS	482
23	D-3 LETTER TO MOTHER FROM STACEY	483
24	D-4 LETTER TO HEAD FROM BERRY, 5/23/2006	484
25	D-5 PHOTOGRAPH	485

1		<u>I N D E X</u>	
2	D-6	PHOTOGRAPH	486
3	D-7	PHOTOGRAPH	487
4	D-8	PHOTOGRAPH	488
5	D-9	PHOTOGRAPH	489
6	CERTIFICATE OF REPORTER, VOLUME THREE		490

1 and you may write those in in that portion of the verdict.

2 And then, you would continue on if you find
3 aggravating -- statutory aggravating circumstances, and
4 fill in that portion of the verdict that says, "We the
5 jury fix the sentence at life imprisonment, life
6 imprisonment without parole, or death." And there again,
7 you would mark which of those is your verdict, and cross
8 out the others that you do not find. And then there's a
9 place on the verdict for you to date it and your foreman
10 or forelady sign it, and then it will be returned and
11 published in open Court.

12 At this time, you may retire to the jury room. And
13 I will be sending you all of the evidence that has already
14 been received in the case. I will send you these forms in
15 regard to the alleged aggravated -- statutory aggravated
16 circumstances and the explanations of those, as well as
17 the findings that you make in regard to statutory
18 aggravating circumstances or not, and then the verdict
19 itself as to penalty. You can step down to retire to the
20 jury room.

21 DEPUTY: All rise for the jury.

22 (JURY WITHDREW - 4:18 P.M.)

23 EXCEPTIONS TO THE CHARGE OF THE COURT:

24 MR. BERRY: Judge, we do have some questions on the
25 charge.

1 THE COURT: Well, let's look at this first. Those
2 are the alleged aggravated circumstances and these are the
3 definitions that the Court read. It's just that portion
4 of the -- of the charge where the explanation of the
5 aggravated circumstances is. These are the same on both
6 counts. This is the form where the jury can fill in the
7 -- its findings in regard to whether or not there are or
8 not statutory aggravated circumstances. And then this is
9 the verdict setting the sentence in the case. The verdict
10 form is the same for count two. And I'll be sending, of
11 course, the indictment out with it. I want these to go
12 out in that order.

13 MR. HEAD: The State has no objection to the forms,
14 Your Honor.

15 MR. BERRY: Your Honor, we do have an objection. If
16 the Court's going to send out part of the charge that you
17 gave to the jury, we feel that you should send the entire
18 charge out which included mitigation, aggravation. So, we
19 would ask the Court to send the entire charge rather than
20 portions of it.

21 THE COURT: I think the Court is authorized to do
22 that at this point, and I have a copy of the entire
23 charge.

24 MR. BERRY: We would ask that that go.

25 THE COURT: I just want to make sure all the pages

1 are there. Is there a staple -- do you have a staple gun,
2 Bill?

3 COURT REPORTER: No, ma'am.

4 THE COURT: All right. Are there any other
5 exceptions?

6 MR. BERRY: Yes, Your Honor. We would except to the
7 Court not putting in the charges that we had filed, number
8 one. Number two, I did not hear that the Court added in
9 the mercy aspect. And I missed also the mitigating
10 factors part.

11 THE COURT: You mean an explanation of what
12 mitigating factors are?

13 MR. BERRY: Correct.

14 THE COURT: Okay. It's on the first page of the
15 charge.

16 MR. BERRY: The mercy -- the part that the Court was
17 going to add in, I didn't hear that. I wasn't sure where
18 that was.

19 THE COURT: It's in the third paragraph of the
20 charge.

21 MR. BERRY: All right.

22 THE COURT: Third sentence down, it says, "That the
23 mitigating and extenuating facts and circumstances are
24 those that you, the jury, find do not constitute a
25 justification or an excuse for the offense in question,

1 but that in fairness and mercy may be considered as
2 extenuating or reducing the degree of moral culpability or
3 blame.

4 MR. BERRY: I thought that the Court was going to add
5 in that one -- we had asked for the one charge on mercy.
6 I don't know what I did with it.

7 THE COURT: No, what the Court announced was that
8 there would be a reference to mercy in regard to the
9 charge.

10 MR. BERRY: Very well, Your Honor.

11 THE COURT: All right. Any others?

12 MR. BERRY: We would just take exception to those,
13 and that would be it.

14 THE COURT: All right. Any exceptions -- excuse me
15 -- on behalf of the State?

16 MR. HEAD: No, Your Honor.

17 THE COURT: We'll be in recess until we hear from the
18 jury.

19 (RECESS FROM 4:24 P.M. TO 6:36 P.M.)

20 THE COURT: I want to bring the jury in, and ask if
21 they're interested in having dinner brought in or what
22 their desires are in that regard at this point. Bring the
23 jury in, please.

24 DEPUTY: Lets all rise for the jury, please.

25 (JURY PRESENT - 6:37 P.M.)

1 DEPUTY: Be seated, please. Please be seated.

2 THE COURT: Jurors, I've had you brought in to the
3 Courtroom because I want to inquire as to whether or not
4 you wish to have some dinner brought in at this point, or
5 what your desires might be in regard to eating this
6 evening, if you're wanting to have dinner or any other
7 matters that you might want to address to the Court. If
8 you would, I'm going to ask you to go back to the jury
9 room and discuss it amongst yourselves as to what you
10 might want to do, and send me a note.

11 DEPUTY: All rise for the jury, please.

12 (JURY WITHDREW - 6:38 P.M.)

13 THE COURT: I'll be in shortly. You can be at ease,
14 and see what their note says. The jury's note says, "Yes,
15 we would want dinner brought in." So, I can go ahead and
16 excuse counsel in the case for probably an hour. Well,
17 it's a quarter until seven. I can excuse you until 8:00.

18 (RECESS FROM 6:42 P.M. TO 9:33 P.M.)

19 THE COURT: I knocked on the door and asked the jury
20 if they were wanting to retire for the evening, and they
21 seemed to have mixed responses. So, I said, "Discuss it,
22 vote on it." They sent me out a note that says, "We would
23 like to stay until 11:00." So, that's where we are right
24 now.

25 MR. BERRY: Can we go eat again?

1 THE COURT: If you'd like.

2 (RECESS FROM 9:34 P.M. TO 10:22 P.M.)

3 THE COURT: All right. The, "We'd like to stay until
4 11:00" note has changed to, "If possible, we'd like to
5 leave as soon as possible." So, I'll bring them in and
6 send them back to the motel for the evening.

7 MR. BERRY: And Your Honor, I don't have any problems
8 if the Court just wants to step in the jury room, and give
9 them the instructions and send them home, rather than
10 bring them back in here.

11 THE COURT: Well, I'd prefer to go ahead and do it on
12 the record.

13 MR. BERRY: Okay.

14 DEPUTY: All rise for the jury.

15 (JURY PRESENT - 10:23 P.M.)

16 DEPUTY: Be seated, please. Please be seated.

17 THE COURT: All right. Jurors, I have received your
18 latest note, and I'm sure we can all use a good night's
19 sleep at this point. So, we will be recessing at this
20 time until tomorrow morning. Cease all deliberations. Do
21 not discuss the case with anyone over the evening break.
22 Do not resume any deliberations in the case until you
23 return in the morning to the jury room. With those
24 instructions, you are excused at this time. And we'll
25 resume at 8:30 in the morning. You may step down.

1 DEPUTY: All rise for the jury.

2 (JURY WITHDREW - 10:24 P.M.)

3 (RECESS FOR THE EVENING - 10:24 P.M.)

4 RECONVENE - 8:24 A.M., SEPTEMBER 29, 2007:

5 (JURY DELIBERATING)

6 (COURT IN RECESS UNTIL 11:00 A.M.)

7 THE COURT: Good morning. The jury sent out a
8 question to the Court, basically summing it up rather than
9 all the details contained in it, they've indicated that
10 they have reached a verdict in regard to some of the
11 issues that have been submitted to them, but have not yet
12 reached a decision on other issues that were submitted to
13 them. So, I'm going to ask that the jury be brought in,
14 and I'll simply instruct them that they are to continue
15 with their deliberations.

16 MR. BERRY: Your Honor, before they're brought in,
17 I'm not sure -- of course, not having seen the note, I'm
18 not sure what they indicated in the note. If they --

19 THE COURT: Well, I don't think it's appropriate to
20 go into the details of the note at this time.

21 MR. BERRY: I'm sorry, Your Honor?

22 THE COURT: It is not appropriate to go into the
23 details of the note at this time.

24 MR. BERRY: It puts us somewhat into a -- into a
25 quandary because --

1 THE COURT: Well, what is the quandary?

2 MR. BERRY: Well, the quandary is that they have
3 indicated that they are having trouble with that or
4 they're not able to reach a decision on certain things.

5 THE COURT: It's very early on in the deliberations
6 actually --

7 MR. BERRY: Well --

8 THE COURT: -- considering the length of the trial.

9 MR. BERRY: And I understand that. But certainly, if
10 they've indicated that they are at an impasse, I think in
11 a death penalty case, it would be improper to require them
12 to go further.

13 THE COURT: Excuse me.

14 MR. BERRY: It would be improper to ask them to go
15 further if they've indicated that they've reached a
16 impasse.

17 THE COURT: No, they did not use the term "impasse."
18 Bring the jury in, please.

19 DEPUTY: All rise for the jury.

20 (JURY PRESENT - 11:03 A.M.)

21 DEPUTY: Be seated, please. Please be seated.

22 THE COURT: All right. Jurors, you've sent a note
23 indicating that you have been able to reach a decision on
24 certain issues that were submitted to you, and that you
25 have not yet reached a decision in the remaining issues.

1 And the Court -- I guess you've been deliberating now
2 about eight hours in the case. And the case was a lengthy
3 trial, and there are a lot of issues. And you need to
4 continue with your deliberations, and address the
5 remaining issues. All right. You can step down and
6 return to the jury room.

7 DEPUTY: Lets all rise for the jury, please.

8 (JURY WITHDREW - 11:04 A.M.)

9 THE COURT: If the Court receives a further note from
10 the jury and it indicates that they are unable to continue
11 further, then the Court will certainly consider an Allen
12 charge in the case. But it's too early in the
13 deliberations to do that at this time.

14 MR. BERRY: And Your Honor, of course, we would
15 object to an Allen charge. I don't think the Allen charge
16 is appropriate in a death penalty case.

17 THE COURT: There are many cases where there's been
18 one given.

19 MR. BERRY: Of course, we would object on the record.
20 Basically, what the Court indicated was you're going to go
21 back and stay there until you get a verdict.

22 THE COURT: No, I said go back and continue your
23 deliberations. That's what they're doing.

24 MR. BERRY: Just for the record, we would object to
25 that, as far as not being able to see the note.

1 THE COURT: All right. We'll be in recess again
2 until we hear from the jury.

3 (RECESS FROM 11:05 A.M. TO 2:19 P.M.)

4 THE COURT: All right, the jury sent out a note:
5 "Judge, may we hear -- may we listen to Stacey's
6 confession with Lieutenant Herman?"

7 MR. BERRY: I'll assume they'll get the transcript
8 again.

9 THE COURT: Are the transcripts here?

10 MS. DIXON: Yes, Your Honor. We have them.

11 THE COURT: The Clerk should also have a copy of the
12 transcript for the file. I don't -- I don't think she
13 has.

14 MR. BERRY: There's some writing on, writing on some
15 of these that apparently the jurors have made that went
16 through so we'll have to take that writing off there.

17 THE COURT: Is it in pencil?

18 MS. DIXON: Pen.

19 MR. BERRY: No, it's in pen.

20 THE COURT: How many copies do you have? Do you have
21 12?

22 MS. DIXON: That are clean, let me check. We have 13
23 clean copies, Your Honor. We could use one that we've
24 been -- the State's clean copy. That makes 14 clean
25 copies.

1 THE COURT: Are the markings on all the pages or can
2 you interchange some of the pages?

3 MR. BERRY: There's one that's completely written all
4 the way through.

5 MS. DIXON: Your Honor, is there a copy machine
6 available for your use? We could make --

7 THE COURT: I don't know if the clerk's office is
8 open.

9 COURT REPORTER: Ed Zacker's office is open and they
10 have a copy machine there but it's not an automatic. I
11 don't know how many pages -- how many pages is there?

12 MS. DIXON: Forty-nine.

13 THE COURT: Is there a written on copy that has only
14 maybe one or two pages that have notations on it so that
15 those pages can just be substituted?

16 MR. BERRY: I think there are two that only have --

17 MR. HEAD: This one only has just a small amount on
18 it.

19 MS. DIXON: And this one has a -- well --

20 MR. HEAD: It's got some underline.

21 MS. DIXON: How long will it take to make copies?
22 Does anybody know?

23 COURT REPORTER: I don't think it will take too long.

24 MS. DIXON: It may be faster just to do that, Your
25 Honor, to make copies. I apologize.

1 MR. BERRY: Can we be excused for about five minutes?

2 THE COURT: Yes.

3 Did you get a copy? Mr. Burke, did you get a copy?

4 COURT REPORTER: I have not.

5 THE COURT: All right. Are we ready to proceed,
6 then?

7 MS. DIXON: Yes, Your Honor.

8 MR. BERRY: I think so, Judge. Only one thing. One
9 of the copies that I got that was in the stack of the
10 State's has a lot of underlining in green, and I don't
11 think any of the jurors had any green underlining.

12 MS. DIXON: That might have been mine. Let me see
13 that. I wondered where mine went. Oh, that's mine. Do
14 you want to trade?

15 MR. BERRY: Yes. I just wanted to be sure that it
16 wasn't the one that the jury got at some point, looking at
17 things that had been underlined.

18 THE COURT: Bring the jury in, please.

19 DEPUTY: All rise for the jury.

20 (JURY PRESENT - 2:42 P.M.)

21 DEPUTY: Be seated, please. Please be seated.

22 THE COURT: Jurors, I have your note, "Please may we
23 listen to Stacey's confession with Lieutenant Herman."
24 And I believe it's setup to be played, and will be turned
25 on at this time. You're receiving transcripts again of

1 the -- of the tape. And the Court just reminds you that
2 you're to take any conflicts, if there are any, between
3 the tape and the transcript -- take your evidence from the
4 tape itself.

5 (WHEREUPON, THE AUDIOTAPE OF THE
6 INTERVIEW BY DETECTIVE HERMAN WITH
7 THE DEFENDANT WAS PLAYED FOR THE
8 COURT AND JURY)

9 THE COURT: All right. Jurors, again, when you
10 return to the jury room to continue with your
11 deliberations, recall all the evidence that you've heard
12 in the case, in both phases of the trial, and all the
13 instructions that the Court has given to you in both
14 phases, and recall the arguments of counsel as you
15 continue to deliberate. You may step down at this time.
16 And the transcripts need to be turned in.

17 DEPUTY: Lets all rise for the jury, please.

18 (JURY WITHDREW - 4:13 P.M.)

19 THE COURT: We will be in recess again until we hear
20 from the jury.

21 (RECESS FROM 4:14 P.M. TO 6:34 P.M.)

22 THE COURT: All right. I believe there's been a
23 motion filed on behalf of the Defendant. I'll hear from
24 the movant at this time.

25 MOTION FOR MISTRIAL:

1 MR. BERRY: Thank you, Your Honor. At this time we
2 are moving for a mistrial in the case. As the Court
3 knows, we started the sentencing phase of this case on
4 Wednesday, September 26th about 11:26 a.m.. The
5 sentencing phase was completed on Friday, September 28th
6 at about 4:20 a.m.. The jury, then, deliberated until
7 about 10:39 last night. They've been deliberated since
8 8:30 this morning, which is a little over 10 hours.

9 During that time -- they had planned to go until
10 11:00 -- they sent a note out, and said that they needed
11 to immediately leave. From the demeanor of the jurors,
12 that we could see, obviously that they were -- that they
13 were very -- a number of them were very upset.

14 The same is true of today. After they had sent a
15 note out to listen to this statement that Mr. Humphreys
16 had made, several of them also were obviously tearful and
17 obviously were having a difficult time.

18 The Court received a note about 10:30 a.m. this
19 morning. The exact contents of that note, we don't know.
20 But obviously, they had informed the Court as to some
21 number that they had as to the split.

22 THE COURT: No, they did not.

23 MR. BERRY: Well, obviously not knowing the content
24 of the note, I'm not sure exactly what was said in the
25 note. But the problem, I think, that we've been going for

1 quite a long period of time at this point, and after the
2 note was sent out and after they have re-listened to this
3 statement again --

4 THE COURT: But they've not indicated since they
5 listened to additional evidence that they're deadlocked.

6 MR. BERRY: Well, it's been quite some time since
7 they had done that.

8 THE COURT: But this is not your everyday kind of
9 case.

10 MR. BERRY: Well, I understand that, Judge. But, of
11 course, we're approaching the same number of hours of
12 deliberation that it took to do the sentencing phase,
13 which I think is significant to -- you know, to look at.

14 THE COURT: But they can consider all of the other
15 evidence that took a week to present.

16 MR. BERRY: Well, they were suppose to consider all
17 of that evidence in the guilt/innocence phase too, and it
18 didn't take them --

19 THE COURT: But they can also consider it in the --
20 this phase of the --

21 MR. BERRY: I understand, Judge --

22 THE COURT: -- trial.

23 MR. BERRY: -- that they can do that. But I think
24 that it's incumbent upon us to do that. I think, also
25 it's incumbent upon us to ask that the jury be polled to

1 make the determination as to whether at this point --
2 they've certainly been going an awful long time today,
3 since 8:30 this morning.

4 THE COURT: An hour and a half of that was listening
5 to the evidence replayed.

6 MR. BERRY: I understand, Judge. But, still, that's
7 in Court time. That's things that they're having to
8 concentrate on having to do. 10 hours of in Court time
9 obviously is a lot of time, and so we're concerned about
10 that. And we request the Court to grant either a mistrial
11 or the polling of the jurors as we outlined in our motion.
12 Thank you, Judge.

13 THE COURT: I don't think it's appropriate to poll
14 the jury unless they indicate that they are deadlocked.
15 I can ask them if they're making progress in a note and to
16 inform the Court as to how they might be split without
17 asking which way they're split.

18 MR. BERRY: And, of course, we're a -- we're a little
19 concerned at the time of the Court -- when the note came
20 out and the Court gave them an instruction. I think that
21 -- that instruction might be able to be construed as
22 somewhat of an Allen charge, because in reality what the
23 Court told them was go back and get the verdict. But not
24 --

25 THE COURT: I told them to go back and continue

1 deliberations. It had not been long that they had been
2 deliberating.

3 MR. BERRY: But the problem is that under case law
4 there is a number of other things that should be told to
5 them. We feel that that's what the Court was indicating,
6 based on a note that you had received. So, I just wanted
7 to put that on the record as well.

8 THE COURT: Well, I didn't -- did not consider it at
9 all to be an Allen charge. It was simply an instruction
10 to return and continue deliberations. Does the State wish
11 to be heard?

12 MR. HEAD: Just briefly, Judge. We would ask you to
13 deny it. Interestingly, since he said seven hours, they
14 also took lunch. And as the Court observed, they also sit
15 in here for an hour and a half listening to the
16 confession. I find it notable for the record the fact
17 that they asked to hear the confession is evidence they
18 are -- that they are continuing in active and substantial
19 deliberations and discussions, or they would not have
20 wanted to come back in.

21 And since that confession replayed, it's only been
22 about an hour, two hours I suppose, two hours and a half.
23 And during that time, I understand they have taken some
24 breaks. So, they are taking breaks on a regular basis, is
25 what I have been informed. And, therefore, whether or not

1 they are tired, when they get to a point they need a break
2 apparently the Court is allowing them to go out and get
3 air, and for those who smoke, smoke cigarettes.

4 I also find it of interest that they've indicated
5 that the jurors were tearful today when they were leaving,
6 and that was not the observation by the State or any of
7 the State's counsel, or those that were in the audience
8 that I've been able to inquire about since I was just
9 briefly handed that. They came in, they listened to the
10 confession. Once it was played, they left, and they
11 seemed to be in the same spirits they were when they came
12 into the Courtroom.

13 Based upon that and the fact -- Mr. Berry says it
14 seems they are struggling. Well, during voir dire, I
15 remember him saying specifically that they should
16 struggle. This is a difficult decision for anybody to
17 make regarding somebody's life. And it is not something
18 that should be made in a brief matter of time. And until
19 the jury indicates that they believe they have reached a
20 point of stopping, we think it would be improper to grant
21 his motion. Thank you, Judge.

22 MR. BERRY: Just one other thing, Judge. My
23 understanding was that they got lunch in and worked
24 through lunch. So --

25 THE COURT: I don't know whether they worked through

1 lunch or whether they stopped. They could do that on
2 their own.

3 MR. BERRY: Correct. So , I don't know that that --

4 THE COURT: And there was also dinner last night.

5 MR. BERRY: Right. So, I -- I don't know whether we
6 should put on the record that they didn't deliberate
7 during the lunch hour, because we really don't know the
8 answer to that. So, but we would stand on our motion --

9 THE COURT: Nor should we say that they did
10 deliberate, because we don't know the answer.

11 MR. BERRY: Unfortunately, we don't know whether
12 they're deliberating now. They may just be sitting back
13 there, so -- but they're in the room together, so -- but
14 we would just stand on the facts and circumstances of our
15 motion.

16 THE COURT: These are emotional cases, and it's not
17 unusual to see jurors cry. They were crying during
18 portions of the evidence presented by the State; they were
19 crying during portions of the evidence presented by the
20 defense. The jury has not been shy or reluctant to send
21 notes to the Court asking for breaks. They've been doing
22 that about every hour and a half, and they've been allowed
23 to take breaks.

24 There's been no complaint from the jury that they're
25 wearing down or anything of that nature. The fact that

1 they asked for some of the testimony to be read back is an
2 indication that they are continuing in deliberation.

3 Appellate decisions have held that even if a jury
4 notifies the Court after only six hours of deliberation
5 that it is deadlocked, and again after three hours, that
6 -- it can not be said that the trial court abused its
7 discretion in requiring the jury to continue further,
8 which is all this Court did.

9 It did not give an Allen charge. And there are cases
10 where a jury was held not to be deadlocked after
11 deliberating seven days, or four days which, at that time,
12 in the Hope vs. The State case, was more time than it had
13 taken to try the case. This case has taken two weeks to
14 try and two additional weeks to select the jury. We are
15 in the end of the fourth week.

16 The Court's denying the motion for mistrial at this
17 time. I will send a note to the jury to ask them what
18 their last -- the result of their last vote was, without
19 indicating which way the vote was going, just the numbers.

20 Because of the fact that we've not heard anything
21 indicating that there is a deadlock amongst the jurors --
22 they're not requesting to be excused because of any
23 deadlock, the Court is going to allow them to continue
24 their deliberations in the case.

25 Are both sides agreeable that the Court request the

1 jury to give the results of its latest vote if they've had
2 one, without -- just a numerical vote, not indicating
3 which way the case was going in the jury room? If not, I
4 won't, because we really haven't been deliberating all
5 that long in the case.

6 MR. BERRY: I think possibly, at this point, it
7 probably would not be prudent to do that. Just one other
8 question, Judge. And it may be a little premature. But
9 if in fact they don't come back tonight, does the Court
10 plan to go tomorrow or do you know?

11 THE COURT: Yes.

12 MR. BERRY: Starting at 8:30 in the morning?

13 THE COURT: Yes.

14 MR. BERRY: Okay. I just wanted to be sure. I've
15 got a -- I'm being kicked out of my house tomorrow, so I
16 need to find somewhere to stay.

17 THE COURT: All right. Well, the motion for mistrial
18 is denied for the reasons that have been stated on the
19 record.

20 (RECESS FROM 6:46 P.M. TO 8:33 P.M.)

21 THE COURT: A note has come out from the jury -- or
22 from a juror. "Due to the hostile nature of one of the
23 jurors, I am asking to be removed from the jury." What
24 the Court is intending to do at this time is to give the
25 jury basically the Allen charge, but toward the view of

1 instructing them as to how should they -- how they should
2 be conducting deliberations.

3 I'm including language in regard to, "Each juror
4 should listen with courtesy to the arguments of the other
5 jurors," and language that, "In conferring you should lay
6 aside all mere pride of opinion, and should bear in mind
7 that the jury room is no place for hostility, or taking up
8 and maintaining in the spirit of controversy." Before I
9 give them that instruction, I will be telling them that I
10 am giving them this instruction in order to give them
11 guidance in the manner in which they should carry on their
12 deliberations.

13 MR. BERRY: Is the Court going to also tell them that
14 should not give up any firmly held opinions?

15 THE COURT: That's part of the charge, yes.

16 MR. BERRY: Okay. And just for the record, we would
17 renew our motion for mistrial basically based on the last
18 note that came out.

19 THE COURT: I think there should be first an
20 opportunity to give them some direction in regard to the
21 manner in which they are deliberating. If it resolves the
22 issue that the juror who complained had, then that's fine.
23 If it doesn't, I suspect I will hear again from that
24 juror. All right. Any other matters before we bring the
25 jury in?

1 MR. HEAD: No, Your Honor.

2 MR. BERRY: No, Your Honor.

3 THE COURT: All right. Bring the jury in, please.

4 DEPUTY: All rise for the jury.

5 (JURY PRESENT - 8:37 P.M.)

6 DEPUTY: Be seated, please. Please be seated.

7 THE COURT: Jurors, I received a note from one of
8 your members, and the note reads as follows, "Due to the
9 hostile nature of one of the jurors, I am asking to be
10 removed from the jury."

11 RECHARGE OF THE COURT:

12 The Court deems it advisable at this time to give you
13 some instruction in regard to the manner in which you
14 should be conducting your deliberations in the case.
15 You've been deliberating upon this case for a period of
16 time. The Court deems it proper to advise you further in
17 regard to the desirability of agreement, if possible.

18 The case has been exhaustively and carefully tried by
19 both sides and has been submitted to you for decision and
20 verdict, if possible, and not for disagreement. It is the
21 law that a unanimous verdict is required.

22 While this verdict must be the conclusion of each
23 juror independently, and not a mere acquiescence of the
24 jurors in order to reach an agreement, it is nevertheless
25 necessary for all the jurors to examine the issues and the

1 questions submitted to them with candor and with fairness
2 and with a proper regard for in deference to the opinion
3 of each other.

4 A proper regard for the judgment of others will
5 greatly aid us in forming our own judgment. Each juror
6 should listen with courtesy to the arguments of the other
7 jurors with the disposition to be convinced by them.

8 If the members of the jury differ in their view of
9 the evidence, the difference of opinion should cause them
10 all to scrutinize the evidence more carefully and closely
11 and to reexamine the grounds of their own opinion.

12 Your duty is to decide the issues that have been
13 submitted to you if you can consciously do so. In
14 conferring, you should lay aside all mere pride of opinion
15 and should bear in mind that the jury room is no place for
16 hostility or taking up and maintaining in a spirit of
17 controversy either side of the cause.

18 You should bear in mind at all times that, as jurors,
19 you should not be advocates for either side of the case.
20 You should keep in mind the truth as it appears from the
21 evidence, examined in the light of the instructions that
22 the Court has given to you.

23 You may, again, retire to the jury room for a
24 reasonable time, examine your differences in a spirit of
25 fairness and candor and courtesy, and try to arrive at a

1 verdict if you can conscientiously do so. At this time,
2 you may return to the jury room.

3 DEPUTY: Lets all rise for the jury, please.
4 (JURY WITHDREW, 8:40 P.M.)

5 THE COURT: All right. We'll be in recess until we
6 hear further from the jury.

7 MR. BERRY: And just for the record, Judge, we would
8 object to the charge.

9 THE COURT: All right. That's noted.
10 (RECESS FROM 8:41 P.M. TO 10:20 P.M.)

11 DEPUTY: All rise for the jury, please.
12 (JURY PRESENT - 10:20 P.M.)

13 DEPUTY: Be seated, please. Please be seated.

14 THE COURT: All right. Jurors, we are going to be
15 retiring for the evening. Just reminding you of the
16 instruction to cease all deliberations at this time, and
17 do not continue with any deliberations until you return to
18 the jury room in the morning. Do not discuss the case
19 either amongst yourselves or with anyone else. With those
20 instructions, we'll recess until 8:30 in the morning.

21 DEPUTY: Lets all rise for the jury, please.
22 (JURY WITHDREW - 10:21 P.M.)

23 (RECESS FOR THE EVENING - 10:21 P.M.)

24 RECONVENE - 8:25 A.M., SEPTEMBER 30, 2007:
25 (JURY DELIBERATING)

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(COURT IN RECESS UNTIL 10:20 A.M.)

THE COURT: All right. Good morning. The jury has sent out a note. And the note reads, "The jury has reached a verdict as to penalty." All right. Bring the jury in, please.

DEPUTY: Lets all rise for the jury, please.

THE COURT: At this point, just the main jury of 12.

(JURY PRESENT - 10:22 A.M.)

DEPUTY: Be seated, please. Please be seated.

THE COURT: Jurors, you sent a note to the Court indicating that you have reached a verdict on the issue of the penalty. Would you hand the verdict to the bailiff, please, at this time, all of the pages.

(COMPLY)

THE COURT: The form of the verdict appears to be in order and the Clerk will publish the verdict.

VERDICT OF THE JURY:

THE CLERK: In the Superior Court for the Cobb Judicial Circuit, tried in the Brunswick Judicial Circuit, Glynn County, state of Georgia. The State of Georgia versus Stacey Ian Humphreys, Criminal Indictment Number 04-9-0673-05.

Count One, findings of the jury as to alleged statutory (b)2 aggravating circumstances. We the jury find beyond a reasonable doubt that the offense of malice

1 murder was committed while the offender was engaged in the
2 commission of another felony, to wit: kidnaping with
3 bodily injury. We the jury find beyond a reasonable doubt
4 that the offense of malice murder was committed while the
5 offender was engaged in the commission of another felony,
6 to wit: armed robbery. This the 29th day of September,
7 2007. Signed: Susan M. Barber, Foreperson.

8 As to Count One, findings of the jury as to alleged
9 statutory (b)4 aggravating circumstances. We the jury
10 find beyond a reasonable doubt that the offense of malice
11 murder was committed for the purpose of receiving money or
12 any other thing of monetary value. This the 29th day of
13 September, 2007. Signed: Susan M. Barber, Foreperson.

14 As to Count One, findings of the jury as to alleged
15 statutory (b)7 aggravating circumstances. We the jury
16 find beyond a reasonable doubt that the offense of malice
17 murder was outrageously or wantonly vile, horrible, or
18 inhumane in that it involved torture of the victim before
19 death. We the jury find beyond a reasonable doubt that
20 the offense of malice murder was outrageously or wantonly
21 vile, horrible, or inhumane in that it involved depravity
22 of mind of the Defendant. We the jury find beyond a
23 reasonable doubt that the offense of malice murder was
24 outrageously or wantonly vile, horrible, or inhumane in
25 that it involved aggravated battery of the victim before

1 death. This the 29th day of September, 2007. Signed:
2 Susan M. Barber, Foreperson.

3 .Count One, finding of the jury as to alleged
4 circumstance -- Excuse me. I'll begin over. Count One,
5 finding of the jury as to alleged statutory (b)12
6 aggravating circumstances. We the jury find beyond a
7 reasonable doubt that the offense of malice murder was
8 committed for the purpose of avoiding, interfering with,
9 or preventing a lawful arrest. This the 29th day of
10 September, 2007. Signed: Susan M. Barber, Foreperson.

11 Verdict as to penalty Count One. We the jury find
12 beyond a reasonable doubt that a statutory aggravating
13 circumstance does exist as to Count One in this case, to
14 wit: capital felony, kidnaping with bodily injury, and
15 armed robbery for the purpose of receiving money or other
16 thing of monetary value, torture, depravity of mind, or
17 aggravated battery, avoiding, interfering with, or
18 preventing lawful arrest. We the jury fix the sentence at
19 death. This the 30th day of September, 2007. Signed:
20 Susan M. Barber, Foreperson.

21 Count Two, findings of the jury as to alleged
22 statutory (b)2 aggravating circumstances. We the jury
23 find beyond a reasonable doubt that the offense of malice
24 murder was committed while the offender was engaged in the
25 commission of another capital felony, to wit: kidnaping

1 with bodily injury. We the jury find beyond a reasonable
2 doubt that the offense of malice murder was committed
3 while the offender was engaged in the commission of
4 another felony, to wit: armed robbery. This the 29th day
5 of September, 2007. Signed: Susan M. Barber, Foreperson.

6 Count Two, finding of the jury as to alleged
7 statutory (b)4 aggravating circumstances. We the jury
8 find beyond a reasonable doubt that the offense of malice
9 murder was committed for the purpose of receiving money or
10 any thing of monetary value. This the 29th day of
11 September, 2007. Signed: Susan M. Barber, Foreperson.

12 Count Two, finding of jury as to alleged statutory
13 (b)7 aggravating circumstances. We the jury find beyond
14 a reasonable doubt that the offense of malice murder was
15 outrageously or wantonly vile, horrible, or inhumane in
16 that it involved torture of the victim before death. We
17 the jury find beyond a reasonable doubt that the offense
18 of malice murder was outrageously or wantonly vile,
19 horrible, or inhumane in that it involved depravity of
20 mind of the Defendant. We the jury find beyond a
21 reasonable doubt that the offense of malice murder was
22 outrageously or wantonly vile, horrible, or inhumane in
23 that it involved aggravated battery of the victim before
24 death. This the 29th day of September, 2007. Signed:
25 Susan M. Barber, Foreperson.

1 Count Two, findings of the jury as to alleged
2 statutory (b)10 aggravating circumstances. We the jury
3 find beyond a reasonable doubt that the offense of malice
4 murder was committed for the purpose of avoiding,
5 interfering with, or preventing a lawful arrest. This the
6 29th day of September, 2007. Signed: Susan M. Barber,
7 Foreperson.

8 Verdict as to penalty Count Two. We the jury find
9 beyond a reasonable doubt that a statutory aggravating
10 circumstance does exist as to Count Two in this case, to
11 wit: capital felony, kidnaping with bodily injury, and
12 armed robbery for purpose of receiving money or other
13 thing of monetary value, torture, depravity of mind, or
14 aggravated battery, avoiding, interfering with, or
15 preventing lawful arrest. We the jury fix the sentence at
16 death. This the 30th day of September, 2007. Signed:
17 Susan M. Barber, Foreperson.

18 THE COURT: Does counsel wish to inspect the verdict
19 before the Court polls the jury?

20 MR. BERRY: No, Your Honor.

21 MR. HEAD: No, Your Honor.

22 THE COURT: When your name is called, jurors, please
23 stand and then respond to the questions that the Court
24 will be asking you.

25 POLLING OF THE JURY:

1 THE CLERK: Jeanine Osburn.
2 THE COURT: Were you able to reach a verdict in the
3 case as to penalty?
4 JUROR OSBURN: Yes, ma'am.
5 THE COURT: And what was your verdict?
6 JUROR OSBURN: Death.
7 THE COURT: Did your verdict agree with the verdict
8 of all the other jurors?
9 JUROR OSBURN: Yes, ma'am.
10 THE COURT: Is that your verdict now?
11 JUROR OSBURN: Yes, ma'am.
12 THE COURT: Did anyone bring any pressure to bear
13 upon you in regard to your deliberation in the case?
14 JUROR OSBURN: No, ma'am.
15 THE COURT: You can have a seat.
16 THE CLERK: Susan Barber.
17 THE COURT: Were you able to reach a verdict in the
18 case?
19 JUROR BARBER: I was.
20 THE COURT: And what was your verdict?
21 JUROR BARBER: Death.
22 THE COURT: Did your verdict agree with the verdict
23 of all the other jurors?
24 JUROR BARBER: Yes.
25 THE COURT: Is that your verdict now?

1 JUROR BARBER: Yes.

2 THE COURT: Did anyone bring any pressure to bear
3 upon you during your deliberations as to the penalty?

4 JUROR BARBER: No.

5 THE COURT: You can have a seat.

6 THE CLERK: Terry DePratter.

7 THE COURT: Were you able to reach a verdict in the
8 case?

9 JUROR DePRATTER: Yes, ma'am.

10 THE COURT: And what was your verdict?

11 JUROR DePRATTER: Death.

12 THE COURT: Did your verdict agree with the verdict
13 of all the other jurors?

14 JUROR DePRATTER: Yes, ma'am.

15 THE COURT: Is that your verdict now?

16 JUROR DePRATTER: Yes, ma'am.

17 THE COURT: Did anyone bring any pressure to bear
18 upon you during your deliberations in the case?

19 JUROR DePRATTER: No, ma'am.

20 THE COURT: You can have a seat.

21 THE CLERK: Patrick Cawley.

22 THE COURT: Were you able to reach a verdict in the
23 case?

24 JUROR CAWLEY: Yes, ma'am.

25 THE COURT: And what was your verdict?

1 JUROR CAWLEY: Death.

2 THE COURT: Did your verdict agree with the verdict
3 of all the other jurors?

4 JUROR CAWLEY: Yes, ma'am.

5 THE COURT: Is that your verdict now?

6 JUROR CAWLEY: Yes.

7 THE COURT: Did anyone bring any pressure to bear
8 upon you in regard to your deliberation in the case?

9 JUROR CAWLEY: No, ma'am.

10 THE COURT: You can have a seat.

11 THE CLERK: Melissa Odom.

12 THE COURT: Were you able to reach a verdict in the
13 case?

14 JUROR ODOM: Yes, ma'am.

15 THE COURT: And what was your verdict?

16 JUROR ODOM: Death.

17 THE COURT: Did your verdict agree with the verdict
18 of all the other jurors?

19 JUROR ODOM: Yes, ma'am.

20 THE COURT: Is that your verdict now?

21 JUROR ODOM: Yes, ma'am.

22 THE COURT: Did anyone bring any pressure to bear
23 upon you during your deliberations?

24 JUROR ODOM: No, ma'am.

25 THE COURT: You can have a seat.

1 THE CLERK: Katherine Lowder
2 THE COURT: Were you able to reach a verdict in the
3 case?
4 JUROR LOWDER: Yes, ma'am.
5 THE COURT: And what was your verdict?
6 JUROR LOWDER: Death.
7 THE COURT: Did your verdict agree with the verdict
8 of all the other jurors?
9 JUROR LOWDER: Yes, ma'am.
10 THE COURT: Is that your verdict now?
11 JUROR LOWDER: Yes.
12 THE COURT: Did anyone bring any pressure to bear
13 upon you during your deliberations in the case?
14 JUROR LOWDER: No.
15 THE COURT: You can have a seat.
16 THE CLERK: Kenneth Goodbread.
17 THE COURT: Were you able to reach a verdict in the
18 case?
19 JUROR GOODBREAD: Yes, ma'am.
20 THE COURT: And what was your verdict?
21 JUROR GOODBREAD: Death.
22 THE COURT: Did your verdict agree with the verdict
23 of all the other jurors?
24 JUROR GOODBREAD: Yes, ma'am.
25 THE COURT: Is that your verdict now?

1 JUROR GOODBREAD: Yes, ma'am.

2 THE COURT: Did anyone bring any pressure to bear
3 upon you during your deliberation?

4 JUROR GOODBREAD: No, ma'am.

5 THE COURT: You can have a seat.

6 THE CLERK: Linda Chancey.

7 THE COURT: Were you able to reach a verdict in the
8 case as to penalty?

9 JUROR CHANCEY: Yes, ma'am.

10 THE COURT: And what was your verdict?

11 JUROR CHANCEY: Death.

12 THE COURT: Did your verdict agree with the verdict
13 of all the other jurors?

14 JUROR CHANCEY: Yes, ma'am.

15 THE COURT: And is that your verdict now?

16 JUROR CHANCEY: It is.

17 THE COURT: Did anyone bring any pressure to bear
18 upon you during your deliberations?

19 JUROR CHANCEY: No, ma'am.

20 THE COURT: You can have a seat.

21 THE CLERK: Darrell Parker.

22 THE COURT: Were you able to reach a verdict in the
23 case --

24 JUROR PARKER: Yes, ma'am.

25 THE COURT: -- as to penalty? And what was your

1 verdict?

2 JUROR PARKER: Death.

3 THE COURT: Did your verdict agree with the verdict
4 of all the other jurors?

5 JUROR PARKER: It did.

6 THE COURT: And is that your verdict now?

7 JUROR PARKER: Yes, ma'am.

8 THE COURT: Did anyone bring any pressure to bear
9 upon you during your deliberation?

10 JUROR PARKER: No, ma'am.

11 THE COURT: You can have a seat.

12 THE CLERK: Alma Poque.

13 THE COURT: Were you able to reach a verdict in the
14 case?

15 JUROR POQUE: Yes.

16 THE COURT: And what was your verdict?

17 JUROR POQUE: Death.

18 THE COURT: Did your verdict agree with the verdict
19 of all the other jurors?

20 JUROR POQUE: Yes, ma'am.

21 THE COURT: Is that your verdict now?

22 JUROR POQUE: It is.

23 THE COURT: Did anyone bring any pressure to bear
24 upon you during your deliberation?

25 JUROR POQUE: No, ma'am.

1 THE COURT: You can have a seat.
2 THE CLERK: Kim Buckley.
3 THE COURT: Were you able to reach a verdict in the
4 case?
5 JUROR BUCKLEY: Yes, ma'am.
6 THE COURT: And what was your verdict?
7 JUROR BUCKLEY: Death.
8 THE COURT: Did your verdict agree with the verdict
9 of all the other jurors?
10 JUROR BUCKLEY: Yes, ma'am.
11 THE COURT: Is that your verdict now?
12 JUROR BUCKLEY: Yes, ma'am.
13 THE COURT: Did anyone bring any pressure to bear
14 upon you during your deliberation?
15 JUROR BUCKLEY: No.
16 THE COURT: You can have a seat.
17 THE COURT: All the jurors have been polled.
18 MR. HEAD: I think you missed Ms. Newsome, Your
19 Honor.
20 THE COURT: Tara Newsome. Were you able to reach a
21 verdict in the case?
22 JUROR NEWSOME: Yes, ma'am.
23 THE COURT: And what was your verdict?
24 JUROR NEWSOME: Death.
25 THE COURT: Did your verdict agree with the verdict

1 of all the other jurors?

2 JUROR NEWSOME: Yes, ma'am.

3 THE COURT: Is that your verdict now?

4 JUROR NEWSOME: Yes, ma'am.

5 THE COURT: Did anyone bring any pressure to bear
6 upon you during your deliberation?

7 JUROR NEWSOME: No, ma'am.

8 THE COURT: You can have a seat. Anyone else that
9 has not been polled?

10 (NO RESPONSE)

11 THE COURT: Does the State or the defense wish to be
12 heard in regard to the sentencing of the remaining counts
13 other than counts one and two in the indictment?

14 MR. HEAD: In light of the sentence, Judge, I would
15 just simply ask that the -- if the Court is going to
16 impose it today and I know it doesn't seem to make a lot
17 of sense, but we would ask that any sentence imposed on
18 the other offenses, the remaining seven I think it is, we
19 had two mergers and then there was one, I believe that's
20 seven -- if they could be consecutive to the other
21 sentence just for the administrative purposes at some
22 future date.

23 THE COURT: Defense wish to be heard?

24 MR. BERRY: No, Your Honor.

25 THE COURT: I'd ask the Defendant and counsel to come

1 forward at this time, to about center of the arena.

2 (COMPLY)

3 SENTENCE OF THE COURT:

4 THE COURT: All right. Mr. Humphreys, as to the
5 Court's sentence, in regard to Counts One and Two of the
6 Bill of Indictment; whereas, the jury in the above
7 captioned matter has found one or more statutory
8 aggravating circumstances to exist, and having recommended
9 a death sentence be imposed; now therefore, it is hereby
10 ordered, considered, and adjudged by the Court that the
11 Defendant, Stacey Ian Humphreys, be taken from the bar of
12 this Court to the common jail of Cobb County or to some
13 other safe and secure place under such guard and
14 protection as may be deemed necessary, where he shall be
15 safely kept and securely kept until his removal therefrom
16 to the custody of the Director of the State Department of
17 Corrections for the purpose of the execution of the
18 sentence in the manner provided by law.

19 It is further ordered and adjudged by the Court that
20 during the seven day time period beginning at noon on the
21 22nd day of October, 2007, and ending at noon on the 29th
22 day of October, 2007, the Defendant, Stacey Ian Humphreys,
23 shall be executed by the Director of the State Department
24 of Corrections at such penal institution as may be
25 designated by said Director, to be witnessed only by those

1 persons authorized by law.

2 It is further ordered that the Sheriff of Cobb
3 County, together with other deputies as he may deem
4 necessary, the number of guards to be approved by the
5 presiding Judge of the Court or the Probate Judge of the
6 County shall convey and deliver the said Defendant, Stacey
7 Ian Humphreys, into the custody of the Director of the
8 State Department of Corrections at such penal institution
9 as may be designated by the Director, not more than 20
10 days, nor less than two days, prior to the time period
11 fixed herein for the execution of the Defendant, Stacey
12 Ian Humphreys, or as otherwise provided by Official Code
13 of Georgia annotated 17-10-33.

14 And it is further ordered that said Defendant, Stacey
15 Ian Humphreys, during the time period fixed herein be put
16 to death by the Director of the State Department of
17 Corrections in the manner provided by law. And may God
18 have mercy on your soul.

19 Certified copies of this sentence are to be served by
20 the Clerk of this Court as provided in Official Code of
21 Georgia annotated 17-10-33. So ordered this 30th day of
22 September, 2007 as to each count.

23 As to the remaining counts in the Bill of Indictment,
24 Counts Three and Four are vacated by operation of the law.

25 On Count Five, the Court sets a sentence of 20 years

1 to run concurrent with Count One.

2 On Count Six, a sentence of 22 years to be served
3 concurrent with Count Two.

4 Count Seven, a sentence of life in prison consecutive
5 to Count One.

6 Count Eight, a sentence of life in prison consecutive
7 to Count Two.

8 Count Nine, a sentence of life in prison consecutive
9 to Count One.

10 Count Ten, a sentence of life imprisonment
11 consecutive to Count Two.

12 And on Count Eleven, a sentence of five years to be
13 served concurrent with Counts Seven and Eight.

14 And the Defendant is informed that there is an
15 automatic appeal of the death sentence in every case where
16 the death sentence is returned, and you'll be furnished
17 with counsel in order to pursue that appeal. Those
18 sentences will be entered by the Court.

19 Jurors, this completes your service in the case and
20 you'll be discharged in the case. I would ask the jury to
21 report back to the jury room, and I'll be there shortly to
22 discharge you. You can step down.

23 DEPUTY: Lets all rise for the jury.

24 (JURY WITHDREW - 10:47 A.M.)

25 THE COURT: For purposes of making the record

1 complete, the first note that had been sent out by the
2 jury, which the Court did not read at the time -- and this
3 was sent out on September 29th at 10:53 -- the question --
4 I mean, the -- what was sent out is this, "We the jury
5 have agreed on statutory aggravating circumstances on both
6 counts, but not on the penalty. Currently, we agreed life
7 imprisonment with parole is not an acceptable option. We
8 are currently unable to form a unanimous decision on death
9 or life imprisonment without parole. Please advise." And
10 that's why the Court instructed them to continue with
11 their deliberations. Any matters that need to be brought
12 up at this time by the State?

13 MR. HEAD: No, Your Honor.

14 THE COURT: By the defense?

15 MR. BERRY: I think we've perfected the record,
16 Judge, as to our objections during the different phrases
17 and the charges that you gave -- that the Court gave, so
18 we will just stand on those prior.

19 THE COURT: All right. Then, this case is concluded
20 at this point.

21 MR. HEAD: Thank you, Your Honor.

22 MR. BERRY: Thank you.

23 (ADJOURNED - 10:50 A.M.)

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COURT EXHIBIT 1
NOTES FROM JURY TO THE COURT

I went to our monthly Realtor breakfast
last Friday morning & the topic of discussion
was supposed to be ^{the} St. Simons Land Trust.
Then our President introduced Laurie Brown's
daughter & she began to speak about the murder.
~~Upon real~~ After it registered I immediately got
up & left the room.

Winnie Skarp. ~~Winnie Skarp~~

May we please
have another
10 minute break?

THANKS

May we take a
10 minute break?

Thanks

May we please
take a ~~10~~ minute

break?

Thanks

My seniors take
a 10 min. break
outside.

Thank You!

Could the wonderful
alternatives seniors take
a break outside to get
some fresh air.

"Sharkas

Please call my parents
let them know Im still
at Court House

Frank's
Missa

HM 264-1149

Emil Cell 996-0472

Parents: Juice & Carol Adam

Ms we have
a D mtr

break, please

Thanks!


Will you please let
my parents know
that I'm still at
the court house.

Me's Mas EARL or Janice Adam

HM-264-1149

franks
McLure Adam

May we take a
10 minute break
please?

franks


Coke or

A Dr. Pepper

~~Get out of the way~~

~~with~~

THANKS

May we please

have a 10

minute break?

THANKS

313 Edmond Jackson
Called. His father told him
the Sheriff came looking for
him last week. I explained
why & told him I would let
him know when to report.
His panel is # 12

Judge Robinson

State v Lucas.

~~2:15 - 3:45~~

1:45

State v Hinson

2646a682

State Jac

2586a762

2686a286

15 Stripes - State

15 Stripes - A

30

12 Jam

42 (4 alternates)

46 Stripes re

8 alternates

54

I HAVE TO OVERSEE THE DAILY OPERATIONS OF 16 EMPLOYEES IN A SMALL BRANCH OFFICE.

PLEASE CONSIDER ALLOWING ME TO BE ABLE TO DISCUSS FULLY OPERATIONS OF THE COMPANY WITH ONE EMPLOYEE IN A ROOM WITH A BALIF.

KRS

9/17/07

Gordon
Appleton

Judge Can

You have

the JURY

to go out

where we can

see what wrong

of defendant

IF POSSIBLE PLEASE LET MY
WIFE KNOW THAT WE ARE
STILL DETROITERS SINCE
I HAVEN'T BEEN ABLE TO
CALL.

DORVA GOODREAS
261-2671

THANKS,
KIP GOODREAS

Will you please call
and let my parents know
that I am still at the
Covethouse.

264-1149

ASK FOR JANCE
OR EARL ODOM

Thanks
Melina Odom

To The Court:

Would it be ok to have
Maure Ostbaum (my mother) bring
a cheese cake to the hotel for
dessert?

Thank you,
Jeanine Ostbaum

Mr.

J. Robinson

Honorable Judge Robinson,

If I may request you
review my books as soon
as you can. I had no
reading material approved
initially and it can make
for a very long day. I'd
like to thank you in advance
for your consideration.

Thank you,

Patrick T. Gaultney

Mr.

J. Robinson

September 187
2587

From: The Jury

To: The Honorable the Court

Subject: Frank die

The Jury respectfully
requests leaving the State
Hall grounds if @ all possible
during the funeral hour.
The jury feels this will cause
the small and crowded over
preceptions.
Sincerely Submitted with greatest respect

Alma Rogie

Christie Davis

Bever Park

Mildie Sweet

Wm. L. Smith

Lucian Spats

John B. Smith

William Smith

Thomas Smith

John Smith

Patricia Anderson

John Anderson

Judge.

Please may we listen
to Stacey's confession

with Lt. Herman

Thank you

Jury

From:

The Group

To:

Ken Horner & The Court

Subject:

Request for extended evening social hour following dinner

1. The group respectfully requests the evening social time post-dinner be extended from 9:30 P.M. to 11:00 P.M. for the purpose of phone calls, work-out facilities use and swimming.

2. This request is made explicitly for Saturday 22 Sept, 2007 only.

PS: The group appreciates that

Very respectfully, The Group

From:

The Group

To:

Ken Horner

Subject:

Dietary supplementation

Would the court please provide fresh fruit (apples, grapes, oranges, bananas), granola bars, yogurt, trail mix in lieu of, or in addition to the over abundance of candies, chips and sodas?

The group greatly appreciates the variety of snacks available but would appreciate juices over sodas and low sugar food items.
Sincerely, The Group

Sept. 20th 2007

To: Mr. Horner
From: J. H. Munnery
Sept. 23, 2017

Re: The Horner
Agency: Finances

1. My position at Netlink IP
for the previous eighteen
months has been one of
sole operator contracting
outside IT technicians on an
as needed basis. Netlink IP
began in 1995 as a privately
owned ISP. My third month of
begin a drastic decline due to
the advent of monopolistic
RBOC (Reginal Bell Operating Co.) deployment
of broadband and cable services in 2002.
As of this date I am responsible
as owner of the servers

of this business - set up,
DSL & wire communications,
with approximately 2158
customers.

Monie to finance the
downloading database come
from submitting billings - typically
e-mailed to handlers mailed
in the 21st of each month
preceding each consecutive
month. Billings for the 8th
should have been generated
on the 21st of September.
These monies are used to
pay for bandwidth, (T-1, DSL,
dialup) power, phone and other
telecomm related expenses.
Monies also pay for 3 months
of which are business related.

I have borrowed \$3500
from my father to carry
forward obligations
through the end of September

2. It is requested a leave-
of-absence be approved
for the following Sunday
from the place of registration
to attend to billing and
financial matters relevant
to the old business. The
leave is vacant with the receipt
of visits by my sister, Amy.
So shed the above mail, e-mail
and postal mailing.

3. Access is requested to a
2007 MacBook Pro containing

Quickbooks, Microsoft Access
 spreadsheets, customer file
 records, web administrator
 customer account and
 receipt print-out server
 files. Accounting the
 billing would also require
 checking company email
 files: billing@netlinkip.com
 sales@netlinkip.com
 lac@netlinkip.com
 I bill my credit cards for monthly customer list
 & invoice to generate billing
 will result in a personal
 financial default, a cessation
 of corporate funds coming
 the termination of internet
 connectivity of customer & termination
 of ability to call towers, activation
 of facilities etc.

5. These are located @
984. Andrews Court, 2
blocks from the courthouse
on the interstate waterway.
There is adequate space
for an over-the-shoulder
observing officer.

6. Should this dipnetation
be considered, an alternate
solution would be to
rent the evening hours
after court till 8:30 p.m.,
proposing the evening meal.
It can be stronger to
handship nor food and
and would be greatly appreciate
of any alternate considerations
very respectfully,
Gloria J. J. Curney

(10)
anticipated that the
case will be completed
by Sunday.
A. Robinson

Can we have a clarification
on the charge of kidnapping with
bodily injury?

Ann Bates
9-25-07 @ 5:25

Could we have a key for the
evidence?

Frankson,
Ann H Bates
9-25-07 @ 1:50

John

Could we please review ^{the} steps
with transcripts?

Ann M. Baker
18-9-25-07 p 149

Could we have lunch, please?

Thank you
Ann Baker
9/27 12:00:00

Yes, we want dinner brought in.

Ann M. Bank
9/2

We would like to stay until 11 PM

Ann Bank
9/27

If possible, we'd like to leave
as soon as possible.

Thank you,
QuamBalle

May we have a short break?

(QuamBalle)
9/29 @ 9:50

While, the jury, have agreed on statutory aggravating circumstances on both counts, but not on the penalty.

Currently we agree life imprisonment with parole is not an acceptable option. We are currently unable to form a unanimous decision on death or life imprisonment without parole.

Please advise,

Arnan Baker

9/29 @ 1053

Due to the hostile nature of one of the jurors, I am asking to be removed from the jury.

Thank you,

Arnan Baker

9/29/07 @ 75a

The jury has reached a verdict
as to penalty.

Prison Barber
9/30/07 @ 10¹⁰