

In the
Supreme Court of the United States

Brian Duane Brookins,
Petitioner,

v.

State of Georgia,
Respondents.

On Petition for Writ of Certiorari to the
Georgia Supreme Court

BRIEF IN OPPOSITION

Christopher M. Carr
Beth A. Burton
*Deputy Attorney General
Counsel of Record*
Sabrina D. Graham
Senior Assistant Attorney General
Office of the Georgia
Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3570
bburton@law.ga.gov

CAPITAL CASE

QUESTIONS PRESENTED

At Brian Duane Brookins' trial, the Sheriff testified to an uncontroverted matter and gave very limited and general testimony about Brookins' mental health. The Sheriff was also in charge of the logistics of handling the jury. Brookins did not object to the Sheriff's testimony. On appeal, the Georgia Supreme Court held that the issue was waived and, based on its plenary sentence review, the court also found that the testimony did not affect the sentence.

- 1) Should this Court grant certiorari review on a claim that was denied on a state law basis?

- 2) Based on the limited testimony and the non-personal nature of the contacts with the jury, did the state court decision holding there was no constitutional error conflict with *Turner v. Louisiana*, 379 U. S. 466, 471-474 (1965)?

TABLE OF CONTENTS

QUESTIONS PRESENTEDi

INTRODUCTION.....1

STATEMENT2

 A. Factual Background2

 B. Proceedings Below3

REASONS FOR DENYING THE PETITION5

 I. There is no federal constitutional issue before the Court.....5

 II. The Georgia Supreme Court’s decision does not conflict
 with *Turner* or any other decisions.6

CONCLUSION 11

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Barral v. State</i> , 353 P.3d 1197 (Nev. 2015)	10
<i>Boylan v. United States</i> , 898 F.2d 230 (1st Cir. 1990)	9
<i>Brookins v. State</i> , 315 Ga. 86 (2022)	2, 3, 4, 5, 7, 10
<i>Cummings v. Martel</i> , 796 F.3d 1135 (9th Cir. 2015)	10
<i>Enriquez v. State</i> , 429 S.W.2d 141 (Tex. Crim. App. 1968)	9.
<i>Gonzales v. Beto</i> , 405 U.S. 1052 (1972)	8
<i>Harris v. Reed</i> , 489 U.S. 255 (1989)	5
<i>Hudson v. State</i> , 250 Ga. 479 (1983)	5
<i>Jenkins v. State</i> , 825 A.2d 1008 (Md. 2003)	10
<i>Johnson v. Wainwright</i> , 778 F.2d 623 (11th Cir. 1985)	9
<i>Majors v. State</i> , 252 P.3d 435 (2011)	9
<i>Martin v. State</i> , 298 Ga. 259 (2015)	2
<i>McNeil v. State</i> , 2019 Ida. App. Unpub. LEXIS 293 (Ct. App. Oct. 8, 2019)	9
<i>Mills v. Commonwealth</i> , 170 S.W. 3d 310 (2005)	8

<i>People v. Cummings</i> , 850 P.2d 1 (Cal. 1993)	9
<i>People v. Williams</i> , 641 N.E.2d 296 (Ill. 1994)	9
<i>Ex parte Pierce</i> , 851 So.2d 606 (Al. 2000)	10
<i>Remmer v. United States</i> , 347 U.S. 227 (1954)	8
<i>Satterwhite v. Collins</i> , 1993 U.S. App. LEXIS 39656 (4th Cir. July 8, 1993)	9
<i>Shepherd v. Wingo</i> , 414 F.2d 274 (6th Cir. 1969)	10
<i>State v. Kelley</i> , 451 S.E.2d 425 (W.Va. 1994)	9
<i>State v. Martinez</i> , 641 P.2d 1087 (N.M. 1982)	9
<i>State v. Soto</i> , 513 P.3d 684 (Utah 2022)	9
<i>Turner v. Louisiana</i> , 379 U. S. 466 (1965)	1, 4, 5, 6, 7, 8, 9, 10
<i>United States v. Chicarelli</i> , 445 F.2d 1111 (3d Cir. 1971)	10
<i>United States v. Olano</i> , 507 U.S. 725 (1993)	8
<i>Williams v. Thurmer</i> , 561 F.3d 740 (7th Cir. 2009)	9

INTRODUCTION

Petitioner Brian Duane Brookins killed his wife and 15-year-old stepdaughter by shooting them both in the head. He was rightfully convicted—indeed, he did not contest his guilt—and he now seeks, at most, alleged error correction regarding an issue that involves no split of authority.

At Brookins’ trial, the Sheriff testified about speaking with Brookins immediately after the crimes, trying to persuade Brookins to turn himself in to law enforcement. The Sheriff also testified generally that he had known Brookins for years and had never had problems communicating with him. Brookins did not object to this testimony.

The record also shows that during the trial the Sheriff was responsible for the logistics of handling the jury during their sequestration, including transportation and meals. There was no evidence that the Sheriff had any close or personal interaction with the jury.

Brookins raised a claim (for the first time on appeal) that the Sheriff’s role as custodian of the jury and as a witness violated *Turner v. Louisiana*, 379 U. S. 466 (1965), on the theory that the jury could not be impartial. The Georgia Supreme Court determined that Brookins had failed to preserve this issue for review and the claim was waived based on state law.

The Georgia Supreme Court then, as part of its review in ensuring the sentence was not imposed based on passion, prejudice, or other arbitrary factor,¹ also found, regardless, the sentence was not unconstitutionally

¹ “This form of review in death penalty cases arises not from any ordinary appellate review principle; instead, it arises from the statutory mandate for this Court to ensure that no death sentence is ‘imposed under the influence of

imposed because the nature of the testimony and the Sheriff's interaction with the jury was limited. This holding does not conflict with other courts' rulings, is correct, and there is no reason to grant review.

STATEMENT

A. Factual Background

On October 14, 2005, Brookins shot and killed his wife, Suzanne Brookins, and his fifteen-year-old stepdaughter, Samantha Giles. *Brookins v. State*, 315 Ga. 86, 87 (2022). At that time, Brookins and Suzanne were separated and not living together. "The couple had been having marital difficulties, and they had started divorce proceedings that were later stopped." *Id.*

Nine days before the murders, Brookins was released from jail on bond following his arrest for stealing four-wheelers. His release from jail caused Suzanne to be concerned for her safety because Brookins was angry at her and believed that she told the police that he stole the four-wheelers. At the time of his release, a stay-away order had been issued and Brookins was informed that he was not allowed to have any contact with Suzanne.

On the day of the murders, Brookins went to the victims' home and waited for Suzanne and Samantha to arrive. *Id.* at 88. Once they did, he approached the two and shot Suzanne in the head. *Id.* He then kicked Suzanne, who was lying on the ground, and shot her a second time. *Id.* at 88-89. As Samantha ran toward a neighbor's house, Brookins shot her in the back of the head. *Id.* at 89. Neighbors of the victims who observed the

passion, prejudice, or any other arbitrary factor." *Martin v. State*, 298 Ga. 259, 278 (2015) (citing OCGA § 17-10-35 (c) (1)).

murders identified Brookins as the shooter and reported he left the scene in Suzanne's car. *Id.*

Soon after, the police learned that Brookins had traveled to his mother's residence. *Id.* at 96. The Sheriff went to the mother's home and talked with Brookins attempting to defuse the situation and keep Brookins from killing himself. *Id.* Brookins surrendered and was taken into custody. *Id.*

B. Proceedings Below

In October 2007, Brookins was convicted and sentenced to death for the murders of Suzanne and Samantha.² At that trial, the Sheriff testified to his interactions with Brookins at Brookins' mother's house. *Brookins*, 315 Ga. at 96.³ He also "gave two responses indicating that Brookins had appeared coherent and lucid in the Sheriff's past conversations with him and that the Sheriff 'never had a problem communicating with him.'" *Id.*; see also Respondent's Appendix ("RA"), pp. 19-21.⁴ In addition to this testimony, throughout trial the Sheriff was responsible for the logistics of the jurors' transportation, sequestration, and meals. *Brookins*, 315 at 96.

Following several hearings on motions for a new trial (the motions were denied), Brookins filed a notice of appeal with the Georgia Supreme Court on January 18, 2022. As part of that appeal, Brookins claimed for the first time that the Sheriff "impermissibly served both as a key witness and as a

² He was also convicted of aggravated stalking of Suzanne, cruelty to children in the third degree with regard to Samantha, and possession of a firearm by a convicted felon. (R. 19-21).

³ Brookins did not contest his guilt, but did claim to be intellectually disabled, which Georgia law requires to be proven in the guilt phase of trial. O.C.G.A. § 17-7-131.

⁴ Corresponding numbers are in the upper right hand corner of the exhibits.

caretaker of the jury in violation of his constitutional rights to an impartial jury and to a fair trial” in contravention of *Turner. Brookins*, 315 Ga. at 96.

In denying relief, the Georgia Supreme Court found that the record established that throughout the trial the Sheriff was “responsible, at least ultimately, for arranging the jurors’ transportation, for arranging their meals, and for logistical matters such as their access to telephones, televisions, and computers.” *Id.* The court further found that “[t]o no one’s surprise, the Sheriff was called to testify,” but Brookins “raised no objection at trial to his testimony or to his service with regard to the care of the jury.” *Id.* As a result, the court concluded, as an initial matter, that “[b]ecause Brookins failed to raise an objection as to this issue, it is waived for the purposes of ordinary appellate review.” *Id.* (citing *Martin*, 298 Ga. at 278-279; *Hudson v. State*, 250 Ga. 479, 484-485 (5) (1983) (determining that no reversible error existed where no objection was made to the trial court’s “sending the jury to lunch with the Sheriff”)).

The Georgia Supreme Court then, as part of its review to ensure that the death penalty was not “imposed under the influence of passion, prejudice, or any other arbitrary factor,” OCGA § 17-10-35 (c) (1), also examined the testimony given by the Sheriff and found that it “was largely focused on the details of the standoff” at the home of Brookins’ parents. *Brookins*, 315 Ga. at 96. The court also noted that “the Sheriff, who knew both the victims and Brookins, gave two responses indicating that Brookins had appeared coherent and lucid in the Sheriff’s past conversations with him and that the Sheriff ‘never had a problem communicating with him.’” *Id.* (emphasis added). The court held that, based on this testimony being limited, taken in conjunction with the fact that Brookins was not contesting his guilt, “the sentence of death in this case was not imposed under the influence of passion, prejudice, or any other arbitrary factor.” *Id.* at 114.

REASONS FOR DENYING THE PETITION

Nothing in the Georgia Supreme Court’s decision warrants this Court’s review. *First*, the court denied the claim based on state law—the failure to preserve the objection for appeal. *Second*, the Georgia Supreme Court’s decision does not conflict with any holding of this Court or any other courts. Brookins seeks only error correction, and futile error correction at that.

I. There is no federal constitutional issue before the Court.

“This Court long has held that it will not consider an issue of federal law [] from a judgment of a state court if that judgment rests on a state-law ground that is both ‘independent’ of the merits of the federal claim and an ‘adequate’ basis for the court’s decision.” *Harris v. Reed*, 489 U.S. 255, 260 (1989). In denying Brookins’ claim that the Sheriff was allowed to testify and have custody of the jury in violation of *Turner*, the Georgia Supreme Court relied on state law and concluded that Brookins waived this claim for ordinary appellate review based on his failure to object at trial. *Brookins*, 315 Ga. at 96.

Although Brookins claimed in state court that he had preserved this issue by filing a motion for an order appointing an impartial *witness* monitor, Pet. at 40, the Georgia Supreme Court dismissed this argument holding that “in response to Brookins’ motion for an ‘impartial witness monitor,’ the State agreed that bailiffs in plain clothes and not sworn Sheriff’s deputies would monitor the *witnesses*. However, we do not regard this motion as constituting any objection to the Sheriff’s testimony or his role in caring for the *jury*.” *Brookins*, 315 Ga. at 96 n. 5 (emphasis in original).

Because there is no federal constitutional issue, this Court should deny the request for review.

II. The Georgia Supreme Court's decision does not conflict with *Turner* or any other decisions.

In *Turner v. Louisiana*, 379 U.S. 466 (1965), relied on by Brookins, this Court held that Turner's Fourteenth Amendment rights were violated by the State's two principal witnesses in the case also acting as custodian and caretakers of the jury throughout the trial. The Court found "it would be blinking reality not to recognize the extreme prejudice inherent in this continual association throughout the trial between the jurors and these two key witnesses for the prosecution." *Id.* at 473.

The facts here are nothing like *Turner*, and this Court need not wade into the dispute. Turner's jury was sequestered during his three-day trial and "placed in charge of the Sheriff by the trial judge." *Id.* at 467-68. During that time, the jury was "continuously in the company of deputy sheriffs." *Id.* at 468. "The deputies drove the jurors to a restaurant for each meal, and to their lodgings each night. The deputies ate with them, conversed with them, and did errands for them." *Id.* Two of the deputies performing these functions were the State's *principal* witnesses. *Id.*

When the deputies testified at trial, Turner's attorney made motions for a mistrial. *Id.* The hearings on these motions showed that both deputies "had in fact freely mingled and conversed with the jurors in and out of the courthouse during the trial." *Id.* The trial court denied the motions for mistrial because "there was no showing that either deputy had talked with any member of the jury about the case itself." *Id.* at 468-69.

On review, this Court first held that the trial testimony of the deputies "was not confined to some uncontroverted or merely formal aspect of the case for the prosecution." *Id.* at 473. The deputies were critical witnesses for the prosecution. *Id.* Second, this Court held that the deputies' interactions with the jury was not a "brief encounter," but a "continuous and intimate

association throughout a three-day trial.” *Id.* at 473. This Court reversed Turner’s convictions. *Id.* at 474.

Unlike the critical testimony given in *Turner*, the Sheriff in this case testified to uncontroverted facts and stated very briefly and generally that he never had a problem communicating with Brookins. When asked by the prosecutor whether those previous communications were logical, lucid conversations, the Sheriff said, “yes.” *See* RA, pp. 19-21. The state court’s finding that this brief testimony was not key to the case is supported by the fact that the Sheriff’s testimony was very short in contrast to the lay and expert testimony given by both sides concerning Brookins’ mental health and intelligence. *See Brookins*, 315 Ga. at 89-95 (summarizing the extensive testimony from both sides concerning IQ scores, adaptive functioning, and various mental health diagnoses).

As to the Sheriff’s association with the jurors, the record shows that the jury was introduced to the Sheriff, and the court informed them that they would be under his direction, which included the availability of their internet and television access. RA, pp. 3-6. The trial court also asked the Sheriff if he wanted to address the jury, but Brookins did not establish that the Sheriff actually did so. RA, pp. 5-6. The record also shows that during the trial the Sheriff made arrangements for the jurors’ meals and had supervisory control of their entry and exit of the courtroom as noted by the Georgia Supreme Court. *Brookins*, 315 Ga. at 96. However, nothing in the record even implies that the Sheriff had any one-on-one contact with the jurors or interacted with them at all beyond the ministerial and logistical duties of ensuring: there were no outside media influences; they received meals; and their transportation. Instead, the record reflects that bailiffs were sworn to take charge of the jurors, with additional bailiffs being added during the trial, and

assisting throughout trial. *See, e.g., RA*, pp. 1-18.⁵ In fact, Brookins does not even set forth any instances of personal interactions or familiarity between the jurors and Sheriff, much less interactions rising to the level of *Turner*.

Although Brookins argues that neither this Court nor any state court has required a defendant to show actual prejudice and infers such errors are structural, Pet. at 12, that is plainly not correct. Justice Stewart noted in his concurrence in *Gonzales v. Beto*, 405 U.S. 1052 (1972), *Turner* did not establish a “per se rule automatically requiring the reversal of any conviction whenever any Government witness comes into any contact with the jury.” *Gonzales* at 1054-55. Justice Stewart explained that a witness who testified about an “uncontroverted or merely formal aspect of the case for the prosecution would hardly present a constitutional problem.” *Id.*

Brookins cites *United States v. Olano*, 507 U.S. 725, 739 (1993), Pet. at 12, but that opinion did not even address the issue, it simply said there *may* be circumstances where prejudice can be presumed. And even if it were the case that prejudice were presumed, it would be a rebuttable presumption. *Remmer v. United States*, 347 U.S. 227, 229 (1954).

The holding of the Georgia Supreme Court is also in line with other state courts. For example, in *Mills v. Commonwealth*, 170 S.W. 3d 310, 338

⁵ The bailiff oath as given by the trial court is as follows:

You shall take all juries committed to your charge in the present term to the jury room or some other private and convenient place where you shall keep them without meat or drink, water excepted, unless otherwise directed by the Court. You shall make no communication with them yourself nor permit allow anyone to communicate with them expect by leave of the Court. You shall discharge all other duties which may devolve upon you as a bailiff to the best of your skill and power, so help you, God.

RA, p. 7.

(2005), the Supreme Court of Kentucky addressed a similar claim of error based on the fact that the deputies that had initially arrested Mills also served as juror bailiffs at trial. Mills claimed that *Turner* applied and there was error. In conducting its review, the state court conducted a prejudice analysis and denied relief. *Id.* Likewise, the Wyoming Supreme Court in *Majors v. State*, 252 P.3d 435, 440 (2011), conducted the same analysis in determining that the defendant did not suffer any prejudice from an investigating officer in the case also acting as a bailiff. Numerous other state courts have analyzed *Turner* claims under the same harmless error standard. *See, e.g., People v. Williams*, 641 N.E.2d 296, 326 (Ill. 1994) (same); *McNeil v. State*, No. 45766, 2019 Ida. App. Unpub. LEXIS 293, at *22 (Ct. App. Oct. 8, 2019) (“McNeil’s allegations do not raise a credible risk of having affected the jury’s guilty verdict.”); *State v. Kelley*, 451 S.E.2d 425, 426 (W.Va. 1994) (applying harmless error analysis); *State v. Soto*, 513 P.3d 684, 705 (Utah 2022) (noting rebuttal presumption of prejudice based on the facts); *People v. Cummings*, 850 P.2d 1, 37 (Cal. 1993) (finding no prejudice from deputy acting as a bailiff and a witness because contact was “minimal” and “professional” association with jurors and he was the “principal” witness); *Enriquez v. State*, 429 S.W.2d 141, 143 (Tex. Crim. App. 1968) (prejudice analysis); *State v. Martinez*, 641 P.2d 1087, 1092 (N.M. 1982) (same).⁶

⁶ This same analysis is also applied in the federal courts. The First Circuit Court of Appeals has presumed prejudice “only where there is an egregious tampering or third party communication which directly injects itself into the jury process.” *Boylan v. United States*, 898 F.2d 230, 261 (1st Cir. 1990). The Eleventh Circuit Court of Appeals has held “[w]hen either the individual’s official contact with the jury or his participation in the prosecution is so minimal in the jurors’ eyes as to have a *de minimis* impact on the jury’s deliberations for all apparent purposes, some showing of actual prejudice must be made.” *Johnson v. Wainwright*, 778 F.2d 623, 627 (11th Cir. 1985)). *See also Williams v. Thurmer*, 561 F.3d 740, 745 (7th Cir. 2009); *Satterwhite v. Collins*, Case No. 91-1767, 1993 U.S. App. LEXIS 39656, at

Brookins cites three state cases, none of which conflict with the Georgia Supreme Court's decision here. First, in *Ex parte Pierce*, 851 So.2d 606, 612 (Al. 2000), the Alabama Supreme Court found error based on the facts that the sheriff had been a "key" witness in the prosecution and had "close and continual contact with the jurors." These are not the facts before this Court. Similarly, in *Jenkins v. State*, 825 A.2d 1008, 1027-29 (Md. 2003), the court held that it would only presume prejudice in cases of "egregious juror and witness misconduct." *Id.* at 1028, 1034-35 (emphasis in original). The Nevada Supreme Court in *Barral v. State*, 353 P.3d 1197, 1198-99 (Nev. 2015), cited by Brookins, did not concern juror and witness interactions. Instead, in *Barral*, the court found structural error based on the court's failure to administer an oath to the jury. Again, that has nothing to do with the facts here.

The facts in *Brookins* are not comparable to those in *Turner* or the other decisions Brookins identifies; there was no close interaction between the Sheriff and the jurors, Brookins' guilt was uncontested, and the Sheriff's communication experience with Brookins was hardly critical to Brookins' defenses. The Georgia Supreme Court correctly found there was no prejudice. *Brookins*, 315 Ga. at 96-97. This Court should deny review.

*13-14 (4th Cir. July 8, 1993); *United States v. Chicarelli*, 445 F.2d 1111, 1114 (3d Cir. 1971); *Shepherd v. Wingo*, 414 F.2d 274 (6th Cir. 1969); *Cummings v. Martel*, 796 F.3d 1135, 1145 (9th Cir. 2015) (review under AEDPA).

CONCLUSION

For the reasons set out above, this Court should deny the petition.

Respectfully submitted,

Christopher M. Carr

Attorney General

Beth A. Burton

Deputy Attorney General

Counsel of Record

Sabrina D. Graham

Senior Assistant Attorney General

Office of the Georgia

Attorney General

40 Capitol Square, SW

Atlanta, Georgia 30334

(404) 458-3570

bburton@law.ga.gov

Counsel for Respondent

RESPONDENT'S APPENDIX

IN THE SUPERIOR COURT OF BALDWIN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)	
)	
v.)	CASE NO: 06CR45776
)	
BRIAN DUANE BROOKINS,)	VOLUME 1 of 8
)	Pages 2-168
Defendant.)	Day 1, October 8, 2007

JURY TRIAL

HEARD BEFORE THE HONORABLE HUGH V. WINGFIELD, III
JUDGE, SUPERIOR COURTS
OCMULGEE JUDICIAL CIRCUIT
BALDWIN COUNTY COURTHOUSE
MILLEDGEVILLE, GEORGIA
OCTOBER 8 - 16, 2007

APPEARANCES OF COUNSEL:

For the State:	FREDRIC BRIGHT, D.A. and STEPHEN BRADLEY, A.D.A. Baldwin County DA's Office 121 N. Wilkinson Street Suite 305 Milledgeville, GA 31061
For the Defendant:	DENNIS FRANCIS, ATTY AT LAW D. TODD WOOTEN, ATTY AT LAW Georgia Capital Defender Office 225 Peachtree Street Suite 900 Atlanta, GA 30303 and ANDRE SAILERS, ATTY AT LAW Sailers & Associates, P. C. P. O. Box 311011 Atlanta, GA 31131

* * * * *

JENNIFER S. AVERY, CVR, CCR, B-2173
OFFICIAL COURT REPORTER
OCMULGEE JUDICIAL CIRCUIT
P. O. BOX 293
MILLEDGEVILLE, GEORGIA 31059
(478) 445-4270

FILED IN OFFICE THIS
17th DAY OF December, 2007
J. Abery
DEPUTY CLERK SUPERIOR COURT
BALDWIN COUNTY, GEORGIA

1 she'll include in the envelope an excuse for work in the
2 event you need that. But it could take several days for
3 you to get a check, so I'd ask you just to continue to
4 show the patience that you have this past week. I do want
5 to sincerely thank each and every one of you for your
6 service as jurors today and last week. I appreciate you
7 being here. I appreciate your patients. I particularly
8 appreciate you being on time each time you were asked to
9 come. Now, I do apologize for any convenience that you
10 suffered. I know that a lot of this process seems
11 cumbersome, hurry up and wait. But there's simply no way
12 around it, ladies and gentlemen. There are a lot of
13 inefficiencies built into our jury system.

14 In any event, we do all thank you again for your
15 patience. You are now free to go. If you have any
16 questions or need anything, the Sheriff will be outside
17 the door. Thank you very much.

18 (Potential jurors excused.)

19 (Selected jurors seated in jury box.)

20 THE COURT: All right. Ladies and gentlemen, if I
21 can have your attention for just a few more minutes. In
22 just a moment, I'm going to turn all of you over to the
23 Sheriff of Baldwin County and he'll give you further
24 instructions as needed. He'll meet with you here in the
25 courtroom.

1 In general, though, we will retrieve your suitcases
2 from your automobiles. You'll be given directions on
3 where you should park, and that won't take very long.
4 You'll be allowed to make phone calls or whatever else you
5 need to do to let someone know that you're on this jury.

6 If you need to make some arrangements for somebody to
7 pick up your car, you'll be instructed on how that should
8 be done.

9 Now, ladies and gentlemen, from this point forward,
10 you're going to be under the control of the Sheriff of
11 Baldwin County. You'll be housed in the Holiday Inn
12 Express in Milledgeville. That's the city where this case
13 will be tried. Each of you will have an individual room.
14 You'll only be allowed to make phone calls at the
15 direction of the Sheriff.

16 You're going to be allowed to watch television,
17 except you'll not be allowed to watch any news programs
18 whatsoever or certain other stations. You'll receive
19 further instructions on that from the Sheriff.

20 You may bring with you any books and magazines that
21 you wish. If you find that you like a book or magazine
22 that you didn't bring this morning, if you'll let the
23 Bailiffs know, when you get to Milledgeville, I'll try to
24 take care of that for you if I can.

25 Ladies and gentlemen, you may not have in your

1 possession any communication device, that includes pages,
2 cell phones and so forth, except as approved by the
3 Sheriff.

4 You may bring a computer with you -- I remember last
5 week a few of you asked if you could bring computers. You
6 may do that, except you may not connect to the internet
7 except under the instructions established by the Sheriff.
8 Other than that, you're free to use both of them, phones
9 and computers as you wish.

10 You'll generally eat as a group. If you require a
11 special menu, just you need to let the bailiffs know that
12 and they'll take care of you. And aside from the time
13 that you're in court, you'll be under the control -- or
14 under the direction of the Sheriff.

15 Now, ladies and gentlemen, as soon as all your
16 personal effects and so forth have been loaded, you'll be
17 taken to the hotel and we'll commence the trial early this
18 afternoon.

19 I'll assure you I will do nothing that will waste
20 your time in any way. This trial has been carefully
21 planned and we'll move forward as efficiently as our
22 justice system allows.

23 I want to thank you in advance for your patience and
24 cooperation.

25 Now, I'm going to ask you, again, at this time not to

1 discuss the case among yourselves, or at any time, until I
2 authorize you to do that. That would include at all times
3 during the trial. Do not allow anyone to communicate with
4 you concerning this case, that includes conversations
5 during any phone calls you make.

6 Ladies and gentlemen, do not talk to any witnesses or
7 anyone you think is a witness. No matter how innocent
8 that is, it causes a lot of problems and it certainly
9 would cause us some delays.

10 So remember, the simple rule is, from now until the
11 end of this trial, is that you're jurors. And you need to
12 just bear that in mind at all times.

13 Now, what I just told you, ladies and gentlemen, is
14 going to remain throughout the trial, whether I remember
15 to remind you or not.

16 I think the best rule is simply don't talk to anyone
17 except the bailiffs and myself.

18 Now, with those instructions in mind, I'm going to
19 introduce you and turn you over to the Sheriff of Baldwin
20 County, Mr. Bill Masee. He's going to meet with you in
21 here. I think that will be much easier and he'll tell you
22 what to do at that point. And I will see you in
23 Milledgeville as soon as that can be arranged.

24 Sheriff Masee, if you want to address the jury.

25 And gentlemen, we will adjourn now and meet back in

1 Milledgeville and begin no earlier than 1:00.

2 MR. FRANCIS: Thank you.

3 THE COURT: Thank you.

4 (Whereupon, the foregoing matter was adjourned for
5 the morning.)

6 -oOo-

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Whereupon, *voir dire* having been conducted
2 and a jury duly empaneled in Morgan County, Georgia,
3 and Counsel for the State and the Defendant having announced
4 ready, with Defendant Brookins being present,
5 the proceedings began at 2:05 p.m., in Baldwin County, Georgia,
6 outside the presence of the jury.)

7 THE COURT: All right, at this time, ladies and
8 gentlemen, I'll ask all bailiffs who have not been sworn to
9 raise their right hands, please.

10 You shall take all juries committed to your charge in
11 the present term to the jury room or some other private and
12 convenient place where you shall keep them without meat or
13 drink, water excepted, unless otherwise directed by the
14 Court. You shall make no communication with them yourself,
15 nor permit anyone to communicate with them except by leave
16 of the Court. You shall discharge all other duties which
17 may devolve upon you as bailiffs to the best of your skill
18 and power, so help you, God. Please lower your hands.

19 Thank you. Mr. Bright and Mr. Francis, if I could see
20 you one second.

21 I got cross messages here. You want the alternates to
22 be identified.

23 MR. BRIGHT: It doesn't matter. If he does not
24 want to, that's fine. Whatever he wants is fine.

25 THE COURT: I'm inclined to agree with him.

1 MR. BRIGHT: That's fine.

2 THE COURT: Any other matters we need to take
3 up now?

4 MR. FRANCIS: No matters I can think of, Judge.

5 THE COURT: All right. You got witnesses
6 ready?

7 MR. BRIGHT: We do. We do. With opening, on
8 the rule of sequestration, what we agreed on --

9 MR. FRANCIS: I got some people that are only
10 gonna testify in the penalty.

11 MR. BRIGHT: That's fine. I'm fine.

12 THE COURT: Do they need to testify today?

13 MR. FRANCIS: No, they're only gone testify in
14 penalty. We had an agreement about if they could stay in
15 here.

16 THE COURT: I don't know if you got that or
17 not.

18 MR. FRANCIS: Yeah, I got that.

19 THE COURT: All right. I'll swear them in and
20 we'll get ready to go.

21 MR. BRIGHT: We're ready to go.

22 THE COURT: Any other instructions we need to
23 speak of?

24 MR. FRANCIS: Nothing else I can think of.

25 THE COURT: All right.

1 MR. BRIGHT: We're ready to rock and roll.

2 THE COURT: All right. Sheriff, if you will,
3 show the jury in, please.

4 (Whereupon, the jury entered the Courtroom at 2:07 p.m.)

5 THE COURT: Thank you. Ladies and gentlemen of
6 the jury, now that you've been seated I need you to stand
7 one more time and raise your right hands.

8 You shall well and truly try the issue formed upon this
9 bill of indictment between the State of Georgia and Brian
10 Duane Brookins, who is charged in counts one and three with
11 murder, counts two and four, with felony murder, count five
12 of aggravated stalking, and count six with cruelty to
13 children in the third degree, and a true verdict give
14 according to the evidence produced to you, so help you, God.

15 Please lower your hands and be seated.

16 I want to now, before we begin, give you some very
17 brief instructions on the procedure that we're going to
18 follow from this point forward. And ladies and gentlemen,
19 this is the same procedure that's followed in all criminal
20 cases in this circuit. All of these trials can be divided
21 into parts. The first part is what's known as an opening
22 statement. Both the State and the Defense will have the
23 opportunity to make an opening statement to you. Now, the
24 opening statement in itself is not evidence. And it may not
25 be considered by you as evidence. The purpose of the

1 opening statement is to allow each side to outline what they
2 believe the evidence will show as it develops during the
3 trial.

4 After the opening statements are completed, the next
5 part is when the State will present its case to you. This
6 will be done by witnesses who take the stand and testify
7 under oath in your presence. There may or may not be
8 certain documentary or tangible evidence offered and
9 admitted for your consideration as well.

10 Following that, the next part, after the State rests,
11 the Defendant will have an opportunity to present his case
12 to you if he chooses to do so. Ladies and gentlemen, I want
13 you to keep in mind at all times that this is a criminal
14 trial. The Defendant is under no duty whatsoever to present
15 any evidence or to testify in your presence. If the
16 Defendant elects not to present any evidence or testify, you
17 may not hold that against him in any way hurtful or harmful
18 as that is his absolute right to make that decision.

19 The burden of proof is on the State throughout this
20 trial to prove the Defendant's guilt on each charge
21 contained in the indictment beyond reasonable doubt. Now if
22 the Defendant elects to present evidence, when he rests, and
23 again, that's if he elects to present evidence, that will be
24 done though the testimony of witnesses, again, who testify
25 under oath in your presence from the witness stand and there

1 may or may not be documentary evidence.

2 When the Defendant rests, if he has elected to present
3 evidence, the State may offer what is called rebuttal
4 evidence. Rebuttal evidence is rarely given and if it's
5 offered at all, it's always very short.

6 Following that, in the next part, the attorneys will
7 have the opportunity to make what is known as a closing
8 statement to you. Now, again, the closing statements, just
9 like the opening statements, are not evidence and you may
10 not consider them as evidence. The closing statement is
11 simply a summary of the evidence that has been introduced in
12 the course of the trial. The attorneys may outline any
13 inferences they want you to draw from that evidence.

14 After those statements are completed, I'll give you
15 what we call the charge of the Court, and that is simply me
16 reading to you the law that I find applies to this case.
17 Prior to my doing that, the attorneys and I will have met to
18 discuss what that law is going to be.

19 You'll then retire to the jury room, apply the law that
20 I've given you in charge to the facts as you find them to be
21 from the evidence presented and by that process you will
22 reach a verdict that speaks the truth.

23 Now, ladies and gentlemen, I have said this a couple of
24 times already, but I repeat it now, because it's so very
25 important. I do not want you, from this point forward to

1 discuss this case among yourselves nor allow anyone to
2 discuss it with you. If that should happen I want you to
3 let me know immediately. As I told you this morning, the
4 simplest thing to do is just not talk to anybody except the
5 bailiffs or myself.

6 Now, ladies and gentlemen, throughout the course of the
7 trial, there are going to be times when the attorneys come
8 up here and we discuss things that you can't hear and more
9 rarely there'll be times that I ask you to leave the
10 courtroom so that we can discuss things not only out of your
11 hearing, but also completely out of your presence. Those
12 conferences are perfectly normal. They're a part of every
13 trial, whether civil or criminal, and when they occur I
14 don't want you to ascribe any fault to either side, because
15 there's not any. Actually it allows us to move much more
16 efficiency through the trial.

17 Now, you should have been, or you will be, provided a
18 pad and a pencil, those are to be used by you to take notes
19 if you want to do that. You don't have to if you don't want
20 to. Put your name on the outside of the pad and leave it in
21 your chair when we retire for the night. The bailiffs will
22 give them to you early the next morning.

23 Now, ladies and gentlemen, it's my practice to take a
24 break every hour to an hour and a half, depending on how the
25 testimony is given. Sometimes it will be longer than that.

1 If any of you find you need a break sooner, get my attention
2 or one of the bailiffs and we'll certainly take a break at
3 that time. All right. Thank you.

4 Mr. Bright, you may open to the jury.

5 BAILIFF HARTRY: Should I give them pads?

6 THE COURT: Uh-huh.

7 (Whereupon, pads and pencils were given to the jury.)

8 MR. BRIGHT: May it please the Court, fellow
9 counsel. Ladies and gentlemen of the jury, two years ago on
10 Wednesday, October 5th, 2005, the Defendant, Brian Duane
11 Brookins, was released from the Baldwin County Jail. He'd
12 been accused of stealing some four-wheelers. He was
13 released on bond. And among the conditions of bond, he
14 signed a stay-away order, which means exactly what it says.
15 Mr. Brookins, the Defendant, you are to stay away completely
16 from your wife, Suzanne Brookins, and her double-wide, the
17 house at 251 Merry Drive, Milledgeville, Baldwin County,
18 Georgia.

19 Suzanne started getting worried when he was out and so
20 she went to stay with her parents. When the Defendant
21 Brookins was in the Baldwin County Jail, and he had been in
22 there for three weeks, he told other inmates that he was
23 going to kill that bitch. Those are his words. His old
24 lady, when he got out. We didn't know it at the time. We
25 found out about it afterwards.

1 MR. BRADLEY: That's all I have for Mr. Spivey.
2 Thank you.

3 MR. FRANCIS: No questions, Your Honor.

4 THE COURT: All right. Mr. Spivey, you are
5 excused with our thanks.

6 Ladies and gentlemen, that is going to conclude the
7 testimony for today. If you will, Sheriff, would you like
8 them to go into the jury room. If you would, just go with
9 Sharon Vance.

10 (Whereupon, the jury was excused for the day at 6:02 p.m.)

11 THE COURT: Mr. Francis and Mr. Bradley or Mr.
12 Bright. Mr. Francis, you've got to tender something. You
13 might want to talk to Jennifer about that.

14 MR. FRANCIS: I forgot to tender 6?

15 COURT REPORTER: Three was not tendered and he never
16 said that 6 was admitted --

17 MR. BRADLEY: Which one was 6 specifically?

18 COURT REPORTER: -- because Mr. Bradley objected to
19 it.

20 MR. FRANCIS: Well, Judge, may we tender 3 at
21 this --

22 THE COURT: Any objections to 3?

23 MR. BRADLEY: Judge, I don't remember 6, but I
24 trust you. Whatever --

25 MR. FRANCIS: Right, I remember you --

1 MR. BRADLEY: -- Mr. Francis talked about with
2 Ms. Blackwell, I have no objection.

3 THE COURT: All right, 3 and 6 are in.

4 MR. FRANCIS: Okay.

5 (Whereupon, Defendant's Exhibits 3 and 6 are
6 ADMITTED into evidence.)

7 SHERIFF MASSEE: Your Honor, we have several
8 bailiffs we need to swear in.

9 THE COURT: All right, Mr. Francis. All right,
10 folks, if you will, please raise your right hands.

11 You shall take all juries committed to your charge in
12 the present term to the jury room or some other private and
13 convenient place where you shall keep them without meat or
14 drink, water excepted, unless otherwise directed by the
15 Court. You shall make no communication with them yourself
16 nor permit anyone to communicate with them except by leave
17 of the Court. You shall discharge all other duties which
18 may devolve upon you as bailiffs to the best of your skill
19 and power, so help you, God. Thank you.

20 (Whereupon, additional BAILIFFS were duly sworn.)

21 THE COURT: Gentlemen, anything else we need to
22 take up now? Mr. Francis?

23 MR. FRANCIS: Nothing from the defense, Your
24 Honor.

25 THE COURT: Mr. Bright?

1 THE COURT: Finish up.

2 MR. BRIGHT: Yeah.

3 (Whereupon, the bench conference was concluded.)

4 THE COURT: You shall take all juries committed to
5 your charge in the present term to the jury room or some
6 other private and convenient place where you shall keep them
7 without meat or drink, water excepted, unless otherwise
8 directed by the Court. You shall make no communication with
9 them yourself, nor permit anyone to communicate with them
10 except by leave of the Court. You shall discharge all other
11 duties which may devolve upon you as bailiff to the best of
12 your skill and power, so help you God.

13 MS. MOSS: I do.

14 (Whereupon, JODY MOSS was sworn in as a bailiff.)

15 (Whereupon, a break was taken, after which
16 Court resumed at 4:13 p.m., outside the presence of the jury.)

17 THE COURT: Ladies and gentlemen, can we have
18 quiet, please. Mr. Brookins, I anticipate that the State is
19 going to rest its case tomorrow, which means that they will
20 have finished presenting all the evidence in this phase of
21 the trial and at time you're going to have the opportunity
22 to present whatever evidence you want to.

23 MR. BROOKINS: Uh-huh.

24 THE COURT: And I understand from Mr. Francis
25 there'll be several witnesses.

1 thanks. Milledgeville is also a nice place --

2 MR. FRANCIS: That's true. I didn't mean to say
3 it wasn't.

4 THE COURT: All right. Mr. Bradley, could I
5 see you one second, and Mr. Francis. Mr. Francis.

6 (Whereupon, the following discussion was held/
7 at the bench between the Court and Counsel,
8 outside the hearing of the jury.)

9 THE COURT: Are you (inaudible) --

10 MR. BRADLEY: No. I've got Keith Thompson before
11 that but he's probably twenty minutes. I can put him up and
12 then take a break or whatever the Court's pleasure.

13 THE COURT: Let's take a break.

14 MR. BRADLEY: Okay.

15 THE COURT: And then you have what after that?

16 MR. BRADLEY: Judge, we've got a couple of
17 witnesses after Mary, but it won't be long.

18 THE COURT: Okay. All right.

19 MR. FRANCIS: Okay.

20 (Whereupon, the bench conference was concluded.)

21 THE COURT: Y'all okay over there? All I mean
22 by that is do you need a break?

23 BAILIFF: They need to take a break.

24 THE COURT: All right. We'll take about a
25 twenty minute break.

1 A I do not remember that.

2 Q You don't remember it, okay. And you made a -- you
3 referred Duane to a Mr. Mark Morris for intellectual testing.

4 A Yes.

5 Q Okay. And do you do that with all of your special
6 education students?

7 A I don't remember that I did.

8 Q You don't remember. Okay. And we talked before and
9 you told me that you thought Duane was learning disabled as to
10 all subjects.

11 A Learning disability in language art subjects, which
12 would be reading, spelling and English.

13 Q Okay. Okay. So, just tell us in general how Duane was
14 when he was in your class.

15 A What I remember is that he was respectful in my
16 classroom. We did several -- he was able to work -- he had a
17 good work relationship --

18 THE COURT: Ms. Gaines, one second.

19 BAILIFF: They can't all hear. If she could
20 speak up a little bit.

21 MR. FRANCIS: Just a little bit. Are you
22 nervous?

23 MS. BREINER: Uh-huh.

24 CONTINUATION BY MR. FRANCIS:

25 Q Okay. Speak up just a little bit.

1 A Yeah, they took him. They took him there. Yes, sir.

2 Q Right. You went --

3 A I went to GMC.

4 Q Okay. All right. To walk your daughter. Did you get
5 to do that that night?

6 A Yes, sir.

7 Q Okay. I think you've described -- anything, the
8 Defendant's demeanor during that -- sometime -- I referred in my
9 opening statement as a Mexican stand-off. His demeanor, his
10 attitude, how would you -- use whatever words you want to use.

11 A He was excitable but I was talking to him like you and
12 I are talking right now. I mean, we've known each other for
13 years. I mean, we have never had any problem communicating.

14 Q Okay.

15 A In fact, I'd seen him that week or the week before.
16 He'd come to see me and I ran into him at the courthouse and
17 spoke with him outside these doors.

18 Q All right. That's -- I'll tell you what, let's lay
19 this incident aside. That's what I was gonna ask you about. You
20 said, small town, you've known Duane a long time. You've dealt
21 with him before.

22 A Yes, sir.

23 Q When I say describe Duane, his -- does he, when you
24 talk to him, I'm talking previous occasions, let's lay Friday,
25 October 14th, 2005, to the side. Do you have -- when I say

1 normal conversations with him, does he appear coherent,
2 understand what you're saying, lucid, things of that nature?

3 A Yes, sir. Sure he does.

4 Q Describe his demeanor, I'm talking about his mental
5 capacity from what your observations are.

6 A Well, I've never had any problem communicating with
7 him. In fact, you know, I ran into him outside the courthouse
8 and he told me he was having a problem, he was going to
9 Magistrate Court and I can't remember if he -- somebody didn't
10 pay him for working on a car or somebody bought a car from him,
11 but he was going to Magistrate Court and he also told me -- asked
12 me, I mean, if I would send a deputy sheriff with him. He said
13 he needed to go get some tools and get some of his equipment and
14 I said, well -- he said and I -- he said, I'm not supposed to go
15 back to Suzanne's house.

16 And I said, well, I said I'll be glad to send a deputy
17 sheriff with you. And said I'll be glad to send a deputy sheriff
18 with you where we don't have a problem. And he said, well, I
19 don't want Steve McDade going with me. I said, Duane, don't
20 worry about that. I said we're not gone send somebody that's got
21 family issues with you. I said we'll be glad to send a deputy
22 sheriff with you where there won't be any kind of conflict,
23 nobody will get in trouble.

24 Q Could you tell there was lot of animosity between the
25 Defendant toward Steve McDade?

1 A Yeah, very much so.

2 Q Okay. You realize one of the issues in this case is
3 whether or not Defendant's mentally retarded. I'm not asking you
4 that because I know you're not a psychologist, but what I'm
5 getting at is observations you've seen and anything else you can
6 think of about his mental capacity from a lay -- a Sheriff or a
7 layperson's perspective. You said when you talked to him it's
8 normal --

9 A I've never had a --

10 Q -- lucid conversations.

11 A -- problem communicating with him. He's always
12 communicated with me whether it's an issue of him being in court
13 or the day he asked me about going to get his property from their
14 house on Merry Drive.

15 Q Are these logical, intelligent conversations that you
16 have --

17 A Yes, sir.

18 Q -- with him?

19 A Yes, sir.

20 Q Okay. And his mother -- point his mother out to me.
21 She's in the courtroom?

22 A Yes.

23 Q The lady in the purple here.

24 A Right.

25 Q In the --