

1 discuss potential defenses?

2 A. Yes, sir.

3 Q. And did you make him aware whenever you or
4 Mr. Scott had motions to file in his case?

5 A. Yes.

6 Q. Was he made aware of the hearings so that he
7 could attend?

8 A. Yes.

9 Q. Okay. And I take it he did attend?

10 A. Yes, sir.

11 Q. Did you discuss with Mr. Hicks tactics and
12 strategy and witnesses you-all might call, what sort of
13 defense you might offer at trial?

14 A. Yes, sir.

15 Q. Did he participate in all of those discussions
16 with you?

17 A. Yes, sir.

18 Q. During the trial itself, both you and Mr. Scott
19 continued to represent the defendant during the entire
20 trial; is that correct?

21 A. That's correct.

22 Q. And as the trial progressed -- I know you
23 talked about before the trial started, but while the
24 trial was going on did you and Mr. Scott also discuss,

1 when you had a chance - breaks and lunch, end of the
2 day - with the defendant how the trial was progressing
3 and any adjustments to strategy, tactics, witness
4 calling?

5 A. Yes.

6 Q. Did you do your best to represent the defendant
7 in his trial?

8 A. Yes.

9 MR. KORNISH: That's all the questions I have for
10 him.

11 THE COURT: There was some question of whether or
12 not -- who conducted the voir dire in this case. Do you
13 remember? Was it you or Mr. Scott?

14 THE WITNESS: Me.

15 THE COURT: Mr. Bullman, are you going to ask
16 anything? Who is going to ask Mr. Gibson?

17 MR. BULLMAN: I guess I will, Judge.

18 THE COURT: All right.

19 CROSS-EXAMINATION

20 BY MR. BULLMAN:

21 Q. Good afternoon, Mr. Gibson.

22 A. Good afternoon.

23 Q. I'm Ed Bullman. You and I spoke on the phone.

24 A. We did.

1 Q. The judge was asking you about voir dire. It's
2 my understanding that you conducted the voir dire; is
3 that right?

4 A. Yes.

5 Q. Okay. You're local counsel and more likely to
6 know who is married to who and things like that.

7 A. Well, I'd conducted the jury research, too.

8 Q. Okay. Do you recall a juror that indicated she
9 needed to leave - be done - by the end of the week?

10 A. Vaguely.

11 Q. Vaguely? And that's as much as you can tell
12 me? Is there any point in me asking you anything else
13 about it? I understand it's been awhile; you've been
14 sick.

15 A. I really don't know. I don't even know if she
16 sat on the case.

17 Q. All right. Do you recall any jurors that
18 indicated any concern being on the panel, either because
19 of fear of the victim's family or Mr. Hicks and his
20 family?

21 A. I read that in your petition. I just met the
22 gentleman, Larkin -- whatever his last name.

23 Q. Larkin Rippeth.

24 A. Yes. But I really don't have any independent

1 recollection of the statements he made or when he made
2 them.

3 Q. We don't have a transcript to read to see what
4 he said, do we?

5 A. No, as far as I know, we don't.

6 Q. Were you and Mister -- I'm drawing a complete
7 blank on -- Mr. Scott -- Mr. Scott. Were you -- did you
8 assign responsibilities in any way? I mean, "I'll do the
9 voir dire, you do the direct," or anything like that?

10 A. We did. I mean, I don't know that we had
11 any -- I mean, just sort of informally.

12 Q. And this is something you and I have discussed
13 and I discussed with Mr. Scott, there don't appear to
14 have been any plea negotiations take place in this case.

15 A. I don't specifically recall any plea
16 negotiations, but what I do recall, as a matter of course
17 and having practiced down here, and I think I told you
18 this --

19 Q. Right.

20 A. -- on the telephone, that when a case is
21 scheduled for trial, it's my understanding that -- I
22 mean, it's my recollection that, along with other things,
23 Judge Stephens will generally ask counsel are there any
24 plea negotiations or is this going to go to trial. And

1 it was my understanding it was already -- it was going to
2 trial.

3 Q. Do you remember trying to negotiate any type of
4 plea?

5 A. I did not specifically. Or if I did, I don't
6 remember.

7 Q. Okay. Do you remember sitting down with
8 Mr. Hicks and saying, "Look, I know you paid us a bunch
9 of money for a trial, but you never know what 12 people
10 who can't get off jury duty are going to do. Maybe we
11 ought to go see if there is something short of going to
12 trial on this"?

13 A. We probably did, but I don't have any specific
14 recollection at this point.

15 Q. You'd agree with me that's part of what a
16 defense attorney does?

17 A. Absolutely.

18 Q. And maybe your experience is the same as mine,
19 even if they don't tell you to do it, or even if they
20 tell you do not engage in plea negotiations, you still at
21 least look and see if there's something there.

22 A. The client, you mean?

23 Q. Yes.

24 A. Oh, absolutely.

1 Q. Clients will crack when you start to pick the
2 jury sometimes and say please get me --

3 A. Oh, absolutely. There could be multiple
4 reasons why they might want to initially concede points.

5 Q. So that's a part and partial of what a criminal
6 defense attorney does. Would you agree with that?

7 A. That has been my experience.

8 Q. And any reasonably experienced defense lawyer
9 would look into plea negotiations, would you agree with
10 that?

11 A. I would.

12 Q. Okay. But you don't recall if that was done in
13 this case?

14 A. I do not. But let me add, it's not to say it
15 wasn't done; I just don't recall.

16 Q. Okay. And I apologize while I keep you
17 waiting.

18 A. Oh, that's all right.

19 Q. Who argued the jury instructions? Did you do
20 that or do you recall if there was any argument?

21 A. I think we both did.

22 Q. Do you remember --

23 A. But I think we had a set of approved jury
24 instructions that this court uses.

1 Q. well, and I've come across those, too, the
2 general charge --

3 A. Yes, that's what I'm referring to.

4 Q. -- that tells you, you know, what evidence is
5 and what their job is and your job is and the judge's
6 job. But sometimes it can get down to, for example,
7 instructions on the effect of a coconspirator or
8 codefendant who has entered a plea agreement.

9 A. Yes, sir. I mean, there are a multitude.

10 Q. So do you recall there being anything that
11 occurred during jury instructions?

12 A. I tried to find my jury instructions -- or my
13 copies of jury instructions, and I can't find them. And
14 I don't have any specific recollection of it.

15 Q. And they weren't transcribed --

16 A. No.

17 Q. -- so we can't figure out.

18 Do you remember your paralegal, Carla Falletti,
19 being involved in this case?

20 A. She's actually Tom's paralegal.

21 Q. I'm sorry. But she came up with him to help
22 try the case -- or I guess she was an intern, not really
23 a paralegal.

24 A. She was in law school in his classes.

1 Q. Do you remember her indicating any concern
2 about some comment the judge made about, "You'll stay in
3 there until you're done," to the jury?

4 A. I think so, but, in all honesty, I think that
5 was Judge Stephens just --

6 Q. Being Judge Stephens?

7 A. -- for lack of a better term, clowning around.

8 **THE COURT:** Thank you. Thank you. I needed that
9 today.

10 **THE WITNESS:** Yes, sir. Sorry.

11 (Laughter.)

12 **BY MR. BULLMAN:**

13 Q. Do you remember an issue coming up over -- they
14 had a suppression hearing or I guess a pretrial hearing,
15 like June 6, a couple -- before the trial. Do you
16 remember that?

17 A. I think so.

18 Q. On the 404(b) evidence --

19 A. Yes.

20 Q. -- and different things came up.

21 Do you remember anything coming up about permitting
22 Lulabelle Webb to testify?

23 A. No, sir, I don't.

24 Q. You do not? Do you remember a witness -- or a

1 potential witness named Billy Horn?

2 A. The name's familiar, but honestly, I don't
3 remember what he was going to say or not going to say.

4 Q. Let me ask you this: Where would you have
5 gotten your information regarding what witnesses that you
6 needed to talk to? The police report, I guess?

7 A. I don't recall -- I don't have a copy of the
8 police report, so I did not review that in anticipation
9 of this hearing, but probably it would have come from
10 investigators.

11 Q. And maybe my experience is different, but,
12 generally, you'll get a police report that will have all
13 the names and --

14 A. Oh, yeah.

15 Q. -- statements. Maybe you'll send your
16 investigator out to reinterview someone?

17 A. Absolutely.

18 Q. And maybe those persons will -- you'll see a
19 name in those statements?

20 A. I did have a copy of the police report, but I
21 didn't in anticipation for this hearing.

22 Q. All right. Do you remember coming across the
23 name of Tommy Dean Mullins?

24 A. The name's familiar, but I just -- I don't

1 recall what that person would have said.

2 Q. Apparently by the time trial rolled around, he
3 couldn't say anything, because he passed away, but he was
4 a relative of Mose Mullins and lived across the road from
5 him.

6 You don't remember anything about that?

7 A. I'm sorry --

8 Q. That's all right.

9 A. -- I can't.

10 MR. BULLMAN: Mr. Gibson, thank you for your time.

11 MR. KORNISH: No further questions. I ask that he
12 be excused.

13 THE COURT: You're excused to leave. Thank you.

14 THE WITNESS: Thank you.

15 (witness excused.)

16 THE COURT: Does anybody need a recess?

17 MR. KORNISH: I think I need about five minutes, if
18 I could.

19 THE COURT: Let's take a ten-minute recess. We'll
20 be in recess for ten minutes.

21 (Court recessed at 1:27 p.m.; court resumed at
22 1:41 p.m., all parties being present.)

23 THE COURT: Call your next witness.

24 MR. KORNISH: Call Mr. Bell. Sidney Bell.

1 THE COURT: This is out of turn. Any objection?

2 MR. BULLMAN: No, Your Honor.

3 (witness sworn.)

4 **THE COURT:** Have a seat in that green chair.

5 You may proceed.

S I D N E Y H. B E L L

7 was thereupon called as a witness by the Respondent, and
8 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

10 *BY MR. KORNISH:*

11 Q. Sir, for the record, would you state your name
12 for the record, please?

13 A. Sidney H. Bell.

14 Q. And you are, and were during the time of this
15 trial and during the investigation, a licensed attorney
16 in the state of West Virginia and a member of the bar in
17 good standing; correct?

18 A. Yes.

19 Q. Can you give us some idea of, prior to 2008,
20 what your experience had been in prosecuting or defending
21 criminal cases, the number of cases you've been involved,
22 approximate number of trials?

23 A. I was admitted to practice in May of 1983 and I
24 went to work for Wade Watson as an assistant prosecuting

1 attorney, and I remained in that position under him for
2 about a year and a half, and then under Harry Camper, Jr.
3 for four years.

4 I left the prosecutor's office for four years and
5 served as a criminal defense attorney and a personal
6 injury lawyer.

7 I was elected to Prosecuting Attorney of McDowell
8 County in 1992 and took office January 1, 1993 and I
9 continued in that position until the end of December of
10 2012. And, of course, during that time I handled a lot
11 of criminal cases of all types and child abuse and
12 neglect cases and other duties of the prosecuting
13 attorney.

14 Q. While you were the prosecutor and involved in
15 this case -- well, there were other people prosecuted
16 related to this case before Mr. Hicks; is that correct?

17 A. Yes.

18 Q. Who else was prosecuted?

19 A. Mose Douglas Mullins, who was the actual
20 shooter in the case, and James Rusty Waldron.

21 Q. Can you give us an idea of who the
22 investigators were, primarily, that you worked with in
23 those prosecutions and also this one?

24 A. In the underlying homicide case, Jason Cooper,

1 state policeman, and John Pauley, another state
2 policeman, were the main officers I worked with.

3 And later on when we decided to present this case to
4 the grand jury, Mike Spradlin was my main investigator,
5 working along with Aaron Yoh, Y-o-h, who is a federal
6 ATF agent.

7 Q. And Mr. Spradlin, the investigator for the
8 prosecutor's office, he's an experienced investigator, in
9 fact, retired state trooper with 20-some years'
10 experience, maybe 30-some years' experience?

11 A. I think actually had 35 or 36 years'
12 experience. The last part of his career he focused on
13 what are referred to as cold cases.

14 Q. Was it your practice during this time with
15 Mr. Spradlin to have him do additional investigations
16 above and beyond what the assigned investigators had done
17 on serious felony cases, including this case?

18 A. Yes.

19 Q. Can you give us some idea about how you got
20 from Mose Mullins being the shooter and the killer to
21 Mr. Hicks and how the investigation and evidence
22 progressed to the point that you felt it was appropriate
23 to present that case to the grand jury and then to try
24 Mr. Hicks on the murder charges?

1 A. Well, in the beginning of the case, we worked,
2 not only law enforcement workers -- law enforcement
3 officers, I'm sorry, but we also had frequent contact
4 with the victims' families. They were very actively
5 involved in following up on the case, making sure we
6 didn't forget about the case.

7 And from the very beginning, they indicated that
8 they believed that Mr. Hicks - Amos Gabriel Hicks - was
9 behind these shootings. They were aware that Chantel
10 Webb and Jeffrey Mullins, and I think the other lady is
11 Melissa Coleman, were accused of breaking into Mr. Hicks'
12 mobile home over in Virginia, stealing some guns and
13 other items from him, so they felt from the beginning
14 that that was the motive.

15 And we also worked with the United States attorney's
16 office. And for several years we believed that they were
17 going to prosecute Mr. Hicks in federal court, because
18 they had a large amount of evidence that he was engaged
19 in massive drug trafficking. And that's how Aaron Yoh
20 came to -- or why Aaron Yoh came to me because he was
21 frustrated that he couldn't get the U.S. attorney to act
22 on the case, even though they had evidence that Mr. Hicks
23 was sending a thousand dollars a week or more out to
24 California or Mexico, and they were shipping oxycodone,

1 OxyContin, back to his home in Whitewood, Virginia.

2 So there was -- there was a tremendous amount of
3 evidence that he was involved in the drug trade --
4 illegal drug trafficking. And with this case involving
5 alleged murder for hire and a gun that was, I guess,
6 transferred across state lines, we thought the United
7 States attorney would take the case. But finally after
8 several years, it became apparent they weren't going to
9 take the case, so that's why we decided to present it to
10 the grand jury.

11 Q. At the time that this happened, was it the
12 practice -- your practice, and the practice of your
13 office, if the U.S. attorney's office might pursue a
14 federal prosecution in a case, to defer to them until
15 they made a decision, based on the ability of the federal
16 government in many cases to secure a longer sentence?

17 A. Yes.

18 Q. And you were just following what would have
19 been normal practice for this case, as well as others at
20 the time?

21 A. Yes.

22 Q. But that would account for some of the delay
23 prior to Mr. Hicks being indicted once the evidence was
24 developed?

1 A. Yes.

2 Q. Now, if I understand right -- I wasn't involved
3 in the trial, but Mose Mullins was -- would you consider
4 him one of the principal witnesses in the trial of
5 Mr. Hicks?

6 A. He was the principal witness, yes.

7 Q. Can you give us some idea of how the
8 investigators were able, if they were, to corroborate
9 any of the information that Mr. Mullins had provided
10 initially during the investigation implicating Mr. Hicks?

11 A. Yes. As you're aware, I believe that Doug
12 Mullins, in connection with his own case, his own
13 prosecution, his guilty pleas and his plea hearing, he
14 had given conflicting stories about what happened. But
15 we received word that he wanted to give us a truthful
16 account of what happened, and that's mainly what
17 Mr. Spradlin and Mr. Yoh were involved in was trying to
18 corroborate what Doug Mullins said had taken place.

19 And just as an example, they went to Mr. Hicks and
20 asked him about the murder weapon, which was a Ruger
21 pistol that had been recovered in the woods by the state
22 police. And Mr. Hicks actually volunteered that he had
23 sold that gun, the murder weapon, to Doug Mullins and had
24 his girlfriend go in the house and produce a receipt

1 showing the make and model and serial number of that
2 weapon, which corroborated what Doug Mullins said. He
3 said he had been provided that Ruger pistol by Mr. Hicks.

4 In addition, after Doug Mullins was arrested,
5 Mr. Hicks allegedly sent his sister-in-law with a bagful
6 of cash, I think about \$10,000 in cash, to go hire a
7 lawyer for Doug Mullins.

8 And Doug Mullins told us about his relationship with
9 Mr. Hicks, and we had obtained photographs that showed
10 that he and Mr. Hicks traveled together to the big
11 motorcycle rally in South Dakota, and that corroborated
12 the fact that they did have a relationship.

13 Q. Is that the Sturgis Rally out there?

14 A. Yes, sir.

15 Q. I'm sorry. Go ahead.

16 A. Really what it came down to, we had Doug
17 Mullins come down here and appear before the grand jury,
18 because we wanted to be satisfied ourselves that he was
19 at last giving a truthful account of what had happened.
20 And he appeared before the grand jury and we were
21 satisfied -- the investigators were satisfied that he was
22 giving a truthful account.

23 Another thing that stands out in my memory now is
24 that it was very clear that Mr. Hicks believed that

1 Chantel and Jeffrey had been involved in breaking into
2 his home and stealing his property, and actually came
3 over to McDowell County and recovered some of the stolen
4 property and made threats against the people involved in
5 that, so ...

6 Q. It was into Mr. Hicks' home?

7 A. That's what I meant to say. They broke into
8 Mr. Hicks' home over in Virginia.

9 Q. I think you did. I'm just clarifying to make
10 sure I heard right.

11 A. I'm sorry.

12 Q. Was it your practice when you were prosecutor
13 then in cases where you had critical witnesses and you
14 wanted to lock in their testimony to have them personally
15 appear before the grand jury to be questioned so that
16 they would be under oath when they made a statement?

17 A. I give Mike Spradlin credit for that. He told
18 me early on that he thought that was a good practice to
19 have these witnesses come in and testify under oath, have
20 a record of their testimony so we would have them locked
21 in to what they said actually had taken place.

22 Q. So Mose Mullins had done that. Do you recall
23 if -- is it Melissa Coleman?

24 A. Melissa Coleman was involved in the case.

1 Q. Did she testify -- did you have her testify
2 before a grand jury or do you recall?

3 A. I think so. I'm not sure. I think so.

4 Q. And do you remember, I guess it was her
5 ex-husband, Stevie Coleman, being a potential witness?

6 A. I do remember him, yes.

7 Q. Can you tell us, and this is a little more
8 specific, you had him subpoenaed, I think, for the trial?

9 A. Probably.

10 Q. Okay. Do you recall if he actually showed up
11 when you tried the case?

12 A. My recollection is he was a very unreliable
13 person and when he did show up he appeared to be high or
14 under the influence of something. And I think that's why
15 we decided not to call him as a witness because he was
16 clearly under the influence of something.

17 Q. And that would have been when the trial was
18 getting ready to go, you would have called him?

19 A. That's my belief -- recollection, I guess I
20 should say.

21 Q. Do you recall after -- I mean, the witnesses in
22 that murder trial were sequestered; correct?

23 A. Yes.

24 Q. Do you recall, after you excused him, even

1 though he was apparently potentially a defense witness as
2 well, that Mr. Coleman actually sat in on part of the
3 trial?

4 A. I don't recall that independently, no.

5 Q. When you were prosecutor, did you try a number
6 of cases here in Judge Stephens' court?

7 A. Yes.

8 Q. After he gives all the instructions at the end
9 and he says go back, sign the verdict forms, is there
10 another customary comment that he makes, kind of in jest?

11 A. He usually tells them if they don't knock on
12 the door -- they have to select a foreman, of course -- a
13 foreperson. If they don't knock on the door, then they
14 will remain there for eternity. I think it's something
15 like that.

16 Q. And, in your experience, is that something he
17 commonly says just kind of to break the ice?

18 A. Yes. It's just a lighthearted comment.

19 Q. Do the jurors typically chuckle a little bit
20 when he says that?

21 A. They do.

22 Q. Do you remember if that was said in this case?

23 A. I don't remember it independently, no.

24 Q. Oh, just one question on Mr. Coleman. Did you

1 get different statements from him?

2 A. I don't remember. I don't remember.

3 | Q. Do you --

4 A. I remember that he was very unreliable, in my
5 opinion. Kind of erratic.

6 Q. Do you think that would have gone to his
7 credibility or lack thereof?

8 A. Yes.

9 Q. Did you, specifically with Mr. Coleman,
10 threaten him in any way to get him to come in and say
11 what you wanted him to say?

12 A. No. I definitely did not do that.

13 MR. KORNISH: Thank you. That's all the questions.

14 THE COURT: Mr. LaCaria.

15 | MR. LACARIA: Yes.

16 | CROSS-EXAMINATION

17 *BY MR. LaCARIA:*

18 Q. Mr. Bell, do you remember talking with me a
19 couple of years ago out in front of the courthouse about
20 this case, just briefly, in passing?

21 A. Yes.

22 Q. Did I not ask you whether or not any of the
23 defense lawyers in the trial came to you, which I believe
24 is customary from defense lawyers, and asked if the State

1 would be willing to make some sort of a bargain, a plea,
2 if you would make an offer?

3 A. You did ask me that, yes.

4 Q. Did that happen in this case?

5 A. No.

6 Q. Neither Mr. Gibson or Mr. Scott came to you,
7 called you, wrote you, grabbed you by the collar out on
8 the street, nothing?

9 A. Not about a plea. Now, we did discuss
10 discovery issues, things like that.

11 Q. Did you find that to be a bit unusual?

12 A. In this type case, I think that is unusual.

13 Q. You also mentioned to me that you had thought
14 about this - apparently you thought about it for years,
15 since Doug was convicted, I think, in 2001 or '02 or
16 something like that and this case was not heard until
17 2009, so there was plenty of time - and that you would
18 have offered Mr. Hicks a plea of voluntary manslaughter?

19 A. I did tell you that and we probably would have.
20 It was a very difficult case, and, of course, we would
21 have had to ask the victims' families, but I did tell you
22 that.

23 Q. Certainly hindsight is better than foresight.

24 A. Yes, sir.

1 Q. You did not know whether you would get a
2 conviction or not in this case?

3 A. No. No. It was like any case is.

4 Q. You said that Mose was the triggerman. He was
5 the actual fellow who pulled the trigger, killed Chantel
6 and shot Mr. Mullins.

7 A. Yes.

8 Q. And Mr. Ball, I guess.

9 A. Yes.

10 Q. Did it come to your attention through any of
11 the investigating officers, the state police, or this
12 Yoh, federal agent, that Mose Mullins may have had
13 another reason to kill these people?

14 A. Well, that defense was made early on in the
15 case. The allegation was that they had allegedly stolen
16 from him -- from him, but then the flip side of that is
17 that he told us that all the drugs he got came from
18 Mr. Hicks. That Mr. Hicks fronted him the drugs.

19 But that was a defense that they made that Doug
20 Mullins was mad at them because they had stolen from him.

21 Q. But your investigators advised you about that,
22 that there was some possibility that that could have
23 happened?

24 A. We were made aware of that, yes.

1 Q. Did you bring that to the attention of the
2 defense team at any time, that you can recall, as an
3 exculpatory type evidence?

4 A. Well, my recollection is they brought -- they
5 brought that to my attention.

6 Q. I see.

7 A. I think that's a defense that they made,
8 Mr. LaCaria.

9 Q. It is. It is. I just wondered if you were
10 aware of that before you went into trial.

11 A. I was aware of it and they were aware of it --
12 the defense was aware of it, too. Yes, sir.

13 Q. When Douglas Mullins pled -- pleaded guilty
14 to -- I think you let him plead guilty to second degree
15 murder, I believe, and I think there were some lesser
16 charges he pleaded to as well back in 2001 or '02,
17 whenever it was. Were you aware of the possibility that
18 he had carried this out on his own because he was mad
19 because Chantel had stolen his drugs a day or so before
20 he shot her? Do you recall any of that?

21 A. Well, my recollection is we were aware of that,
22 but we were -- we were convinced that the plea agreement
23 was in the best interest of justice and also would lead
24 us in the direction we wanted to go in trying to find out

1 who really was behind these shootings.

2 Q. Of course, you were focused just on him at that
3 point, and certainly I understand that.

4 A. And he was a person who had no prior criminal
5 record at all. He had no record, as I recall, at the
6 time he did these shootings.

7 Q. Had you ever had any discussions with the feds
8 about why they didn't prosecute Mr. Hicks?

9 A. Well, Monica Schwartz was the assistant United
10 States attorney I dealt with primarily, and she had to be
11 off for maternity leave for a while. And then, as they
12 sometimes do, they just drag their feet.

13 And Aaron Yoh came to us and said, you know, "I'm a
14 federal agent and I think this case ought to be
15 prosecuted and they just don't seem to be moving forward
16 on it."

17 And so that's why we just decided to take it
18 ourselves.

19 Q. That would have been in southwest Virginia
20 federal court, I guess? Not West Virginia.

21 A. Yes. I think I even had a meeting with Dennis
22 Lee once. He's a Commonwealth attorney in Tazewell, but
23 he's also a special United States attorney who handles
24 that whole southwest Virginia area. We even went over

1 and met with him about the case, and he seemed to be very
2 interested in it, too, but then it just never went any
3 further than that.

4 Q. So you-all decided to go pursue this murder
5 charge, then, against --

6 A. Yes. Yes.

7 MR. LaCARIA: Thank you, sir.

8 MR. KORNISH: Just a couple follow-up.

9 REDIRECT EXAMINATION

10 BY MR. KORNISH:

11 Q. You don't recall Mr. Scott or Mr. Gibson asking
12 for a plea offer on Mr. Hicks; correct?

13 A. I don't recall that, Mr. Kornish.

14 Q. If you had wanted to offer a plea agreement or
15 made a plea offer, would it have stopped you at the time
16 simply because they hadn't asked?

17 A. Well, I think, really, during the time I was
18 prosecutor I usually -- I usually didn't initiate it. I
19 usually waited for defense attorneys to initiate plea
20 discussions.

21 And the victims felt so -- their feelings were so
22 strong in this case that Judge Stephens actually rejected
23 a plea in the Rusty Waldron case based on the victims'
24 families' objections to it.

1 But I rarely made an offer without having some kind
2 of a communication from the defense attorney.

3 Q. And is your recollection that the victims'
4 family was opposed at that time before you tried to make
5 a plea offer to Mr. Hicks?

6 | A. oh, yes. Yes.

7 THE COURT: Anything further, Mr. LaCaria?

8 MR. LaCARIA: Just a minute, Judge, please.

RECROSS-EXAMINATION

10 *BY MR. LaCARIA:*

11 Q. Mr. Bell, in preparing for this hearing today I
12 noticed that apparently there were three appearances
13 before the grand jury: Mr. Mullins and Melissa Coleman
14 and I believe another. Why was that? And Mr. Hicks had
15 already been indicted when you had Melissa Coleman, as I
16 understand it, testify before the grand jury.

17 A. I don't recall the order, Mr. LaCaria, other
18 than -- I don't recall the order in which they appeared
19 before the grand jury, but we wanted to make sure that
20 she testified under oath so we had a record of what she
21 said actually took place.

22 Q. So it was more of a tactical thing for the
23 State --

24 | A. Yes.

1 **Q.** -- than anything else?

2 **A.** Yes.

3 **Q.** Nothing directed directly against the
4 defendant, other than tactics?

5 **A.** We just wanted to preserve her testimony.

6 **MR. LaCARIA:** Okay. Thank you, sir.

7 **MR. KORNISH:** No further questions. I'd ask that
8 Mr. Bell be excused.

9 **THE COURT:** Any objection?

10 **MR. LaCARIA:** No objection, Your Honor.

11 **THE COURT:** You're excused to leave. Thank you.

12 **THE WITNESS:** Thank you, Your Honor.

13 (witness excused.)

14 **THE COURT:** Well, let's go to lunch. Let's break
15 for lunch now. We'll be back at 3:00.

16 **MR. KORNISH:** Thank you, Judge.

17 **THE COURT:** We're in recess until 3:00.

18 (Court recessed at 2:03 p.m.; court resumed at
19 3:02 p.m.)

20 **THE COURT:** Were there any preliminary matters
21 before we get started back?

22 **MR. LaCARIA:** No, Your Honor.

23 **MR. KORNISH:** No, Your Honor.

24 **THE COURT:** Call your next witness.

1 MR. LaCARIA: Larkin Rippeth.

2 *THE COURT:* Come right here. Raise your right hand.

3 (witness sworn.)

4 **THE COURT:** Please sit in that green chair over
5 there.

LARKIN RIPPETH

7 was thereupon called as a witness by the Petitioner, and
8 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

10 *BY MR. LaCARIA:*

11 Q. What is your name, sir?

12 A. Larkin Rippeth.

13 Q. Mr. Rippeth, were you on jury duty around 2009
14 when Mr. Hicks' case was tried?

15 A. Yes.

16 Q. Were you called as an alternate juror that day
17 because they'd run out of prospective jurors?

18 A. Yes. They called me from work and asked me if
19 I would --

20 Q. But you had been on the jury panel?

21 A. Yes.

22 Q. Were you taken back into the room and
23 questioned specifically by the lawyers?

24 *A.* Yes.

858
1 Q. Can you remember what you said or what you told
2 the lawyers?

3 A. I just explained to them that I knew pretty
4 much everybody involved in the case, except Mr. Hicks.

5 Q. Did you express any kind of an opinion as to if
6 Mr. Hicks were to be let off that the Webb family would
7 be dangerous to be around or anything like that?

8 A. Not that I know of. I could have. I don't
9 remember saying anything like that.

10 Q. You just don't remember saying it?

11 A. Yeah.

12 MR. LaCARIA: That's all.

13 THE COURT: Any questions from the respondent?

14 CROSS-EXAMINATION

15 BY MR. KORNISH:

16 Q. Your comments were in the jury room away from
17 all the rest of the jurors?

18 A. Yes, sir.

19 Q. Just you, and the lawyers, Mr. Hicks, and the
20 judge, and the court reporter?

21 A. Yes.

22 MR. KORNISH: That's all.

23 THE COURT: Is he excused?

24 THE WITNESS: Thank you.

1 *THE COURT:* Is he excused to leave?

2 Wait. He has one more question for you,

3 Mr. Rippeth.

4 *THE WITNESS:* Okay.

5 | *THE COURT:* Have a seat back there.

6 | **REDIRECT EXAMINATION**

7 | BY MR. LACARIA:

8 Q. When you were questioned by the lawyers, it was
9 just the lawyers and you. None of the other jurors were
10 with you, were they?

11 A. No.

12 Q. Had you talked to any other jurors before that
13 about your concerns?

14 | A. NO.

15 | *MR. LaCARIA:* Thank you, sir.

16 **MR. KORNISH:** No further questions. Ask that he be
17 excused.

18 *MR. LaCARIA:* Yes, sir.

19 | *THE COURT:* You're excused to leave. Thank you.

20 | *THE WITNESS:* Thank you.

21 | **THE COURT:** Call your next witness.

22 (witness excused.)

23 **THE COURT:** Will you get me a cup of water when you
24 get a chance? Appreciate it. Make sure there are no

1 bubbles in it. See if anyone around here knows anything
2 about bibulous water.

3 Raise your right hand for me.

4 (witness sworn.)

5 **THE COURT:** Have a seat in that green chair right
6 there.

7 You may proceed.

8 **J I M M Y W A Y N E P A Y N E**

9 was called as a witness by the Petitioner, and having
10 been first duly sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. LaCARIA:**

13 **Q.** What is your name, sir?

14 **A.** Jimmy Wayne Payne.

15 **Q.** Mr. Payne, where do you live?

16 **A.** Jolo.

17 **Q.** Have you lived there for a while, sir?

18 **A.** I lived there about all my life, on and off.

19 At the time, I lived in Tazewell County.

20 **Q.** You live in Tazewell County now?

21 **A.** No. At the time of this, I lived in Tazewell
22 County.

23 **Q.** Oh, okay. Do you recall the day that

24 Chantel --

1 **THE COURT:** Are there any other witnesses in this
2 room?

3 **MR. LaCARIA:** No. There's none.

4 **THE COURT:** Oh, okay.

5 **BY MR. LaCARIA:**

6 **Q.** -- that Chantel was killed?

7 **A.** Yeah, I know a little bit about it.

8 **Q.** Why don't you tell us what you know.

9 **A.** Well, I went to Doug's that morning.

10 **Q.** When you say "Doug," is that Doug Mullins?

11 **A.** Yeah, that's Doug Mullins and Pam.

12 **THE COURT:** What's the purpose of this witness? He
13 wasn't called as a witness and should have been? Is that
14 where you're going with this?

15 **MR. LaCARIA:** Basically, Your Honor.

16 **THE COURT:** Huh?

17 **MR. LaCARIA:** Yes, Your Honor.

18 This is very brief, Your Honor.

19 **THE COURT:** All right. Go ahead.

20 **BY MR. LaCARIA:**

21 **Q.** Go ahead, sir.

22 **A.** I went there to Doug's to get something and Pam
23 told me at the door there wasn't nothing there.

24 **MR. KORNISH:** Judge, I would object to what somebody

1 told him.

2 **THE COURT:** Sustained.

3 No hearsay. Just rephrase the question.

4 **BY MR. LaCARIA:**

5 Q. Were you able to talk with Doug that day or
6 meet with him?

7 A. No. I didn't see Doug that day. I seen his
8 nephew, Tommy Dean Mullins.

9 Q. So you did talk with Tommy Dean, but he's gone
10 now?

11 A. Yeah, he's dead --

12 Q. He's dead.

13 A. -- and gone now.

14 When I went there, Pam said there wasn't nothing
15 there, there wouldn't be nothing there, and I was getting
16 ready to leave.

17 **MR. KORNISH:** Again, I would object.

18 **THE COURT:** You can't testify to what Pam told you.

19 Okay?

20 Ask your next question.

21 **MR. LaCARIA:** That's all, Your Honor.

22 **MR. KORNISH:** No questions.

23 **THE COURT:** You're excused.

24 Is he excused?

1 *MR. LaCARIA:* Yes, Your Honor.

THE COURT: You're excused to leave. You can go.

3 THE WITNESS: I guess.

4 (witness excused.)

5 **THE COURT:** call your next witness.

6 MR. LACARIA: Mr. Hicks, Your Honor.

7 *THE COURT:* All right. Come forward, raise your
8 right hand.

9 | (Petitioner sworn.)

10 *THE COURT:* Have a seat in this green chair over
11 here.

12 You may proceed.

13 AMOS GABRIEL HICKS

14 Petitioner, was thereupon called as a witness, and having
15 been first duly sworn, testified as follows:

DIRECT EXAMINATION

17 *BY MR. LaCARIA:*

18 Q. What is your name, sir?

19 A. Amos Gabriel Hicks.

20 Q. And are you the petitioner in this case, sir?

21 A. Yes, sir.

22 Q. Earlier today you heard Mr. Bell testify, the
23 prosecuting attorney; is that correct?

24 A. Yes, sir.

1 Q. Was what he said basically the truth,
2 Mr. Hicks, about what -- I mean -- I'm sorry. Let me be
3 more precise.

4 Did your attorneys ever advise you or tell you that
5 you had a right or an opportunity to seek a plea
6 agreement in your case?

7 A. No, sir. They just told me day after day:
8 "Don't worry. We got this."

9 Q. Mr. Bell --

10 **THE COURT:** Do what? What was the answer?

11 **MR. LaCARIA:** Go ahead.

12 **THE COURT:** What did you say? I had my back turned.

13 **THE WITNESS:** My attorneys told me day after day,
14 "Don't worry about this. We got this," is all they told
15 me.

16 **THE COURT:** Okay. Go ahead.

17 **BY MR. LaCARIA:**

18 Q. You heard Mr. Bell testify this afternoon that
19 he would have offered you voluntary manslaughter, which
20 was a lower included offense in the murder charge, if you
21 had consulted with him -- or your attorneys had.

22 **MR. KORNISH:** Judge, I'd object to this
23 characterization of what Mr. Bell said. There were
24 several questions and answers, and I think some years

1 after the fact he said that, in retrospect, he would.
2 But at the time, he didn't make any plea offer and said
3 that he wouldn't because --

4 **THE COURT:** Well, he didn't make any plea offers,
5 that's for sure.

6 **MR. LaCARIA:** He did not, Your Honor, but he said
7 that he would have offered voluntary manslaughter if he
8 had been given that opportunity.

9 **THE COURT:** I heard him say something like that
10 myself.

11 **BY MR. LaCARIA:**

12 **Q.** Would you have accepted a voluntary
13 manslaughter plea or at least considered it strongly?

14 **A.** Under the conditions that I was in, facing life
15 without, and the conviction rate in McDowell County is
16 way in the 90 percentile, yes, I would have had to have
17 taken it. Guilty or innocent, I would have had to have
18 taken it in order to save myself a life without sentence.

19 **Q.** Did you ever tell your lawyers that you would
20 not accept any kind of a plea?

21 **A.** A plea bargain was never discussed between me
22 and my attorneys.

23 **Q.** Mr. Hicks, we realize that a lot of the record
24 in your trial has been destroyed.

1 You understand that; right?

2 A. Yes, sir. I'm the one that brought it to your
3 attention.

4 Q. Okay. Would you tell the Court what you want
5 to tell him about your case?

6 A. Whew. It's going --

7 Q. Any points that you want to bring out, this is
8 your chance.

9 **MR. KORNISH:** Just so I don't interrupt Mr. Hicks, I
10 have a standing objection to hearsay, but I'm sure he's
11 going to say something. I'm not going to interrupt him.

12 **MR. LaCARIA:** I'll try to stop him if he starts
13 talking about hearsay, Your Honor.

14 **THE COURT:** All right. You may proceed.

15 **THE WITNESS:** In my case, I've claimed my innocence
16 from the very beginning. Everyone knows that. Doug, I'm
17 pretty sure, found his self in a hard spot and he used
18 the only avenue he knowed to get out of it. I ended up
19 being the one he used to get out of it.

20 I'm -- I heard Mr. Bell bring up the notion that
21 Doug had never been arrested before in his life, had
22 never committed a crime. At my trial -- or at a hearing
23 for my bond hearing, I've had three speeding tickets in
24 my life. There's no -- there's no criminal record to

1 speak of as far as just like Doug. There's no -- there's
2 no criminal record.

3 Q. This was your first conviction of a felony?

4 A. This is the first time I'd ever stepped foot
5 inside of a courtroom. And I -- as far as what I've told
6 Aaron Yoh, and what I've told Mike Spradlin, and what
7 I've told my attorneys, I have never denied anything that
8 I did do. I've always told the truth from day one. I
9 have no reason to lie. I didn't think I had a reason to
10 lie.

11 Mr. Bell said that the federal government in
12 Charleston and in Abingdon tried to indictment me and,
13 yes, that's true both times. And both times they come
14 back with no -- no indictment. There was no evidence.
15 So Aaron Yoh came here to Mr. Bell, as he spoke, and
16 said, "Look, this is the way we can get him off the
17 street." Or that's my paraphrasing.

18 And Mr. Bell picked it up. And my private
19 investigator has told me several times, Bill Buzzo, that
20 if -- when he was a cop, if they had handed him this
21 case, he would have laughed at them.

22 Tom Scott, when he left right there a while ago,
23 bent down and looked at me and shook my hand and he said,
24 "Big boy, you got the rawest deal I've ever seen."

1 I appreciate him saying that in hindsight. I wish
2 he'd have done more, other than tell me, "Hey, we got
3 this. Hey, we got this."

4 Michael Gibson didn't order all the transcripts.
5 You can't do a proper appeal without the transcripts.
6 You can't do a collateral appeal without the transcripts.

7 As we've seen here today, there is so many people
8 that don't remember. They just plain, simple don't
9 remember. The crime happened in 2001. Seven and a half
10 years later, I was indicted.

11 Tom and Mike and all of them asked me: why -- why
12 did you not, you know, do this, or why did you not do
13 that? And I've always told them that I had heard the
14 rumors and I had heard all this other stuff about Doug
15 getting his drugs stolen and that that was the reason,
16 and I didn't worry about it. I figured the truth would
17 come out.

18 Aaron Yoh took an interview of Melissa Coleman in
19 two thousand -- October 30, 2002. Doug took his plea
20 bargain 23rd -- or 28th, or somewhere in that area, of
21 December, 2002. I've asked repeatedly: why did Doug not
22 have the ATF report presented at his plea hearing?

23 I've asked repeatedly: Did the victims' family know
24 that he had done this and Melissa had made a report?

1 I don't understand why that material was hidden from
2 everybody until my trial. Aaron Yoh -- Aaron Yoh came to
3 my house one day during all this interview, whatever.
4 And he told me that he had been after me for, I think he
5 said ten years. And he said, "Me and the State of West
6 virginia have finally got you, big boy."

7 And I thought it was a joke, and I told him to get
8 off, I wanted my attorney.

9 He asked me -- he asked me concerning the gun and I
10 produced a bill of sale and told him I had sold the gun
11 fifteen months before. I didn't lie. I've not lied
12 about anything.

13 Would I have took the plea bargain? Yes, because at
14 that rate, look what I got going to trial. My trial was
15 a three-ring circus. People were coming and going and
16 this -- I mean, and now people can't remember what was
17 said.

18 I don't know what else to say. I've done all I can
19 do and I just hope that this produces enough evidence to
20 get me a new trial. And next time, it will not be the
21 first time I come in a courtroom and I will know some
22 things that need to be asked and some things that need to
23 be done.

24 Q. All right.

1 A. That's all I can say.

2 MR. LaCARIA: Thank you.

3

Ed?

4 MR. KORNISH: No questions.

5 *THE COURT:* Return to your seat.

6 **PETITIONER HICKS:** Thank you.

7 (witness steps down.)

8 **THE COURT:** Does the petitioner have any further
9 witnesses?

10 *MR. BULLMAN:* No, sir.

11 *MR. LaCARIA:* No more, Your Honor.

12 **THE COURT:** Does the respondent have any further
13 witnesses?

14 MR. KORNISH: No, Your Honor.

15 *THE COURT:* All right. Mr. Bullman, Mr. LaCaria,
16 whomever, you've got five minutes, but if you want more
17 time, I'll give you more time, but five minutes to sum
18 up.

19 **MR. BULLMAN:** Your Honor, I'd like to address just
20 mainly the transcript issue and the plea bargaining
21 issue. I think that's one of the reasons -- I mean,
22 there is, like, 36, 37 different areas. Those are the
23 ones that I would tend to focus on.

24 First of all, about the transcripts, I recognize

1 that just because there is a missing portion of a
2 transcript that that's not a get-out-of-jail-free card.
3 I recognize we have to show something more, that there is
4 something missing in that transcript that is evading
5 review because it's no longer available.

6 I think we've demonstrated here today through
7 various witnesses that there are reasons to question what
8 took place during voir dire. There are reasons to
9 question what took place during jury instructions and
10 polling of the jury.

11 Can I come in and say, yes, this witness -- or this
12 juror said this or this juror indicated that or this --

13 *THE COURT:* I think the ultimate --

14 *MR. BULLMAN:* -- question was improper? I can't --

15 *THE COURT:* The ultimate question, whether you agree
16 or disagree, from the Court's standpoint for the purposes
17 of this hearing, is -- recognizing that there are
18 portions of the transcript that are missing, the ultimate
19 question is: If the full transcript had been there and
20 these things were not missing, would the fact that some
21 portions are missing -- would that have changed the
22 results of the trial?

23 *MR. BULLMAN:* I don't know about the trial, but it
24 would affect the trial being reviewed on appeal or the

1 trial being reviewed at this stage. I think if you're
2 talking about affecting the trial, then you're talking
3 about questions of ineffective assistance or evidence
4 that was kept out that shouldn't have been kept out or
5 let in that shouldn't have been let in. That's a
6 different -- that would affect the results of the trial.

7 what I'm talking about is a defendant's right to
8 have his conviction and the proceedings leading to his
9 conviction reviewed for potential error. We can't do
10 that because a big portion of the transcript of that
11 trial is gone.

12 Again, if I could point to something that occurred
13 during voir dire and say this happened --

14 *THE COURT:* Well, was the missing transcript raised
15 on appeal?

16 *MR. BULLMAN:* Sir?

17 *THE COURT:* Were portions of the missing transcript
18 raised on appeal --

19 *MR. BULLMAN:* They were not.

20 *THE COURT:* -- when he took his appeal?

21 *MR. BULLMAN:* They were not. I don't think he knew
22 at the time they were gone. But that wasn't one of the
23 issues. They didn't request those transcripts for the
24 appeal.

1 Again, that's the point, Judge. We -- for a
2 collateral review in this type of proceeding, we need to
3 be able to look at what happened. There are things that
4 may have happened, may not have happened. I think there
5 is enough that, again, if I could point to something
6 definite, then we could reproduce the record. But I
7 can't reproduce the record because it was destroyed under
8 egregious circumstances.

9 There are rules that prevent court reporters from
10 doing this again.

11 **THE COURT:** What do you and your client maintain is
12 the missing portions of the transcript?

13 **MR. BULLMAN:** The voir dire is missing.

14 **THE COURT:** Voir dire. Okay.

15 **MR. BULLMAN:** Instructions are missing and the
16 return of the jury -- the jury polling is missing. I
17 believe that's it. I don't think there was -- that's
18 what I'm talking about, argument regarding instructions
19 and giving of the instructions. All those are gone. And
20 they're not reproducible.

21 **THE COURT:** You mean when we decided on which
22 instructions to give and which --

23 **MR. BULLMAN:** Yes, sir.

24 **THE COURT:** -- ones were objected to?

1 **MR. BULLMAN:** Yes, sir.

2 **THE COURT:** Okay.

3 **MR. BULLMAN:** And, again, we've pointed out things
4 that happened during voir dire that -- can I say, "Here
5 is a slam dunk and this should be reversed"? I can't,
6 because there is no transcript to look at. If we could
7 recreate it -- Mr. Rippeth can't recall. He said that
8 may have happened as far as comments made about bias or
9 prejudice or fear of the jury or anything else. It may
10 have happened; it may not.

11 **THE COURT:** I think he even right here just
12 testified that that was an individual voir dire.

13 **MR. BULLMAN:** It was.

14 **THE COURT:** That wasn't questioning before the
15 entire jury panel. And he also testified that he -- and
16 you have to excuse me for interrupting you --

17 **MR. BULLMAN:** No.

18 **THE COURT:** -- but that's just the way I am. Okay?

19 **MR. BULLMAN:** No.

20 **THE COURT:** And he also testified that he had not --
21 if he did say what you propose he may have said, that he
22 had not shared that with any other jurors.

23 **MR. BULLMAN:** I agree that's what he said.

24 But again, Judge, we're back to we're being

1 frustrated in being able to obtain collateral review of
2 those proceedings where there is potential for error
3 because of -- through no fault of his own, because the
4 transcripts were taken home improperly by the court
5 reporter and, for whatever reason, her husband destroyed
6 the means of reproducing them, so we can't do it.

7 So he's now prejudiced. He can't get a review of
8 those portions of the proceedings.

9 As far as the plea bargaining, I think as a matter
10 of law that it is ineffective not to seek, or you're not
11 acting as a reasonable attorney if you do not engage in
12 some sort of plea practice. Apparently, Mr. Bell's
13 practice was: You've got to come to me first; I won't
14 just offer it to you. And I've seen prosecutors do that.
15 They don't want to blink first. They want to appear to
16 come from a position of strength.

17 But they had local counsel that would have known
18 that practice. And you just -- especially in a first
19 degree murder case, you just do, you seek out whether
20 there's a potential for plea bargaining. It's no
21 different than -- in this case than if there had been an
22 offer made and not been conveyed to Mr. Hicks. It was
23 there, according to Mr. Bell. It would have been
24 offered.

1 He says he would have taken it. But his lawyers did
2 not open that door. And there's plenty of law about not
3 conveying a plea agreement. I just have to show that it
4 wasn't offered, that the defendant would have accepted
5 it, and the Court would have accepted it.

6 But this is a little different, because it was there
7 to be offered but no one asked for it. But, apparently,
8 the practice here is you've got to go ask for it to get
9 it. That's the same thing as not conveying it. And it's
10 like a -- a witness or evidence that's there that all you
11 have to do is open the door, and you should at least
12 knock on the door. And they didn't do it. I think
13 that's ineffective assistance.

14 And I saw -- read the transcripts. The lawyers
15 tried a hell of a case, as far as trial attorneys. I
16 thought they did a good job, especially on Mr. Mullins.
17 It was just -- you couldn't do a better job of crossing
18 him. But this seeking out plea negotiations is part of
19 being a criminal defense lawyer also. And they didn't do
20 that. And Mister -- there's no doubt no one broached the
21 subject. There is no doubt that it was there for the
22 offering, because the State recognized they had problems
23 with their case because of Mr. Mullins.

24 And Mr. Hicks has said he would have accepted, just

1 to avoid what he's living with now. So there's the
2 prejudice from not seeking out the plea agreement.

3 **THE COURT:** Thank you.

4 Mr. Kornish, do you want --

5 **MR. KORNISH:** I was going to let all of them, Your
6 Honor.

7 **THE COURT:** Did everybody want to speak or were you
8 speaking on behalf --

9 **MR. BULLMAN:** Judge, I was speaking on the issues
10 that I was concentrating on. Mister -- there was some
11 others raised. For example, I think you heard some
12 reference made to language barrier. I think Mr. Hicks is
13 interpreting that to mean not understanding Latin. I
14 can't sit here and argue against his position, I'm just
15 not going to be the one to advance that.

16 **THE COURT:** I wasn't asking you that. I quickly
17 went to Mr. Kornish and I was saying were all three of
18 you -- did all three of you want to sum up or were you
19 summing up for the team?

20 **MR. BULLMAN:** I'm summing up for those two issues.
21 If they want something to add --

22 **THE COURT:** I will allow anybody else to speak, if
23 they want to speak.

24 **MR. LaCARIA:** I think we're finished, Judge.

1 *THE COURT:* Okay. Now, Mr. Kornish.

2 *MR. KORNISH:* Mr. Hicks, you didn't want to --

3 *PETITIONER HICKS:* I'm good. Thank you.

4 *MR. KORNISH:* Judge, the evidentiary -- evidentiary
5 issues, witnesses, alternative theories of the crimes,
6 those were all presented at the trial and hotly
7 contested. I'm not sure which of the trial -- defense
8 trial attorneys cross-examined Mose Mullins, but they --
9 whoever did it did a very good job of cross-examining
10 him.

11 *THE COURT:* It was Mr. Scott, if I remember.

12 *MR. KORNISH:* And, ultimately, the case went to the
13 jury on conflicting evidence. And in order for them to
14 find Mr. Hicks guilty, they had to revolve those
15 credibility issues in favor of the witnesses that
16 testified for the State and not for the defense. And I
17 think there is ample evidence -- was, is, to support the
18 jury's verdicts.

19 We can see that some of the transcripts are not
20 available because of unfortunate circumstances. I think
21 in the appeal -- in the direct appeal, which is included
22 on the transcripts, the Supreme Court reviewed the errors
23 that were raised, and I think they addressed that there
24 was a sufficient record for them to address the issues,

1 and the transcripts were not an issue.

2 As far as the plea offer of Mr. Bell saying, after
3 the fact, that he may have offered a plea -- may have
4 made a plea offer back then, you have to go with the
5 facts of what were available at the time back in
6 2008-2009. And the fact was that Mr. Bell did not make
7 a plea offer. I think he did testify that he would have
8 talked to the victims' family, primarily the Webb family,
9 but that they were adamantly opposed to any plea
10 agreement.

11 And he didn't -- he didn't meet with them and talk
12 with them to say, "Well, I want to offer voluntary
13 manslaughter," or get their consent. And he never made a
14 plea offer. And, I mean, even though in most cases we do
15 make plea offers, and certainly it's not the policy now,
16 the prosecutor's office to wait for defense counsel to
17 ask for a plea, some do, some don't. If we're going to
18 make a plea offer, we make it. If we're not, we don't,
19 whether they ask or not.

20 Under the law, there's no requirement to make a plea
21 offer. And in this case, one was not made and could not
22 have been accepted, and there was nothing to communicate
23 to Mr. Hicks by his competent, seasoned, experienced
24 trial attorneys that he or his family hired.

1 **THE COURT:** Thank you.

2 Do you wish to reply to his response, Mr. Bullman?

3 **MR. BULLMAN:** Just very briefly, Judge. I'm not
4 saying there is a right to a plea -- plea offer. That's
5 not the issue. I think everyone agrees that there is
6 not. what I'm saying is defense attorneys, as part of
7 their job as a reasonable defense attorney, take steps to
8 see if there is a plea offer. In this case, there was
9 one there and they didn't ask. It was there to be --

10 I mean, again, I'm back to it's no different than
11 not communicating an offer that was made, because if
12 they had asked, the offer was going to be there. My
13 interpretation of Mr. Bell's testimony was: we thought
14 we had problems with our case. we thought that Mose
15 Mullins was a problem. we waited however many years,
16 maybe the feds will take this and get him on a drug rap
17 and we don't have to deal with this.

18 But, you know, they had worries about their case and
19 they would have offered him this plea offer, if only it
20 had been asked for.

21 And he says he would have taken it. The only
22 question is would the Court have accepted it? And so
23 you're the only one that can answer the last one. I've
24 asked -- I'm not from here. I've asked local counsel