

No. 24-

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2024

JOHN ESPOSITO,

Petitioner,

-v-

SHAWN EMMONS, WARDEN

Georgia Diagnostic Prison,

Respondent.

THIS IS A CAPITAL CASE

**APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF GEORGIA**

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IN THE SUPERIOR COURT OF BUTTS COUNTY
STATE OF GEORGIA

Morgan V. Ward
Morgan V. Ward, Clerk
Butts County, Georgia

JOHN ANTHONY ESPOSITO,
PETITIONER,

v.

SHAWN EMMONS, Warden,
Georgia Diagnostic and
Classification Prison,

RESPONDENT.

* CIVIL ACTION NO.
* 2022-SU-HC-0003

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* HABEAS CORPUS

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FINAL ORDER

STATEMENT OF THE CASE

A. Facts of the Crimes

The Georgia Supreme Court summarized the facts established at trial regarding Esposito's crimes:

The evidence adduced at trial, including testimony recounting Esposito's confession to federal authorities, showed that on September 19, 1996, Esposito's co-conspirator, Alicia Woodward, persuaded Lola Davis to give her a ride from a parking lot in Lumberton, North Carolina. Woodward directed Davis to a nearby location where Esposito entered Davis' automobile. Esposito and Woodward then forced the elderly Davis, without the use of any weapons, to drive to a nearby parking lot and to move to the passenger seat of her automobile. Esposito removed one thousand dollars and Davis' checkbook from her purse, and Woodward drove Davis' automobile to a local bank where she cashed a check for three hundred dollars that she and Esposito had forced Davis to write. Woodward and Esposito then drove Davis to a remote location in Morgan County, Georgia, where Esposito led Davis into a hayfield, forced her to kneel, and beat her to death with tree limbs and other

debris. Esposito and Woodward then drove in Davis' automobile to Alabama where they disposed of Davis' automobile and purse. Davis' automobile was shown at trial to contain fingerprints, palm prints, and footprints matching Esposito's and Woodward's. Saliva on a cigarette butt found in the automobile was shown to contain DNA consistent with Esposito's DNA.

Evidence presented during the sentencing phase showed that, after murdering Davis, Esposito and Woodward traveled to Oklahoma, abducted an elderly couple, illegally obtained money using the couple's bank card, and then drove the couple to Texas where Esposito beat them to death with a tire iron. An FBI agent also testified during the sentencing phase that Esposito had described his and Woodward's plan to abduct and murder yet another elderly woman for money.

Esposito v. State, 273 Ga. 183, 183-84 (2000).

B. Trial Proceedings

The Morgan County grand jury indicted Esposito on December 10, 1996, for one count of malice murder, one count of felony murder, one count of armed robbery, and one count of hijacking a motor vehicle. *Esposito*, 273 Ga. 183, 183 n.1. Following a jury trial from September 23, 1998 through October 2, 1998, Esposito was convicted of all four counts. *Id.* Esposito was sentenced to death and was also sentenced to life imprisonment for armed robbery and twenty years for hijacking a motor vehicle, to be served consecutively. *Id.*

C. Motion for New Trial and Direct Appeal

Esposito filed a motion for new trial on October 29, 1998, which was denied on September 16, 1999. *Id.*

On direct appeal, the Georgia Supreme Court affirmed Esposito's convictions and sentence on October 30, 2000. *Id.*; *cert. denied*, *Esposito v. Georgia*, 533 U.S. 935, 121 S. Ct. 2564 (2001), *rehearing denied*, 533 U.S. 970,

122 S. Ct. 15 (2001). Esposito did not raise a challenge to the jury's conduct on direct appeal. *See id.*

D. State Habeas Proceedings

Esposito filed a state habeas petition in this Court on May 3, 2002 and his amended petition on November 6, 2006. The Court denied relief on April 5, 2011. Esposito filed a notice of appeal in the Superior Court of Butts County on May 6, 2011, and an application for a certificate of probable cause to appeal ("CPC") in the Georgia Supreme Court on June 30, 2011. On March 19, 2012, the Georgia Supreme Court issued a summary denial of Esposito's CPC application. Esposito did not file a petition for writ of certiorari in the United States Supreme Court.

E. Original Federal Habeas Proceedings

Esposito filed his federal petition for writ of habeas corpus on May 8, 2012. On December 10, 2014, the district court denied relief and determined Esposito's juror misconduct claim was abandoned for failure to brief. The Eleventh Circuit Court of Appeals, in an unpublished decision, denied relief on June 23, 2020. *Esposito v. Warden*, 818 F. App'x 962 (11th Cir. 2020). Esposito sought certiorari review in the Supreme Court, which was denied on June 7, 2021. *Esposito v. Ford*, 141 S. Ct. 2727 (2021).

F. Successive Federal Habeas Proceedings

On December 29, 2021, Esposito filed a Federal Rule of Civil Procedure 60(b)(6) motion to reopen his 28 U.S.C. § 2254 proceeding based upon the juror misconduct claim he has currently pending before this Court. On March 30, 2022, the district court dismissed Esposito's motion as an improperly filed

successive federal habeas petition because he failed to acquire permission to file from the Eleventh Circuit Court of Appeals. Esposito filed a notice of appeal in the Eleventh Circuit on May 5, 2022, and the action was stayed pending the resolution of the petition currently before this Court.

G. Second State Habeas Proceeding

Esposito filed his second state habeas petition on March 7, 2022, which was corrected on March 31, 2022. The petition raised a claim of juror misconduct based upon alleged new information from juror Janice Lane. An evidentiary hearing was held on May 10, 2023, and July 14, 2023. Following post-hearing briefing, the parties filed proposed orders on January 23, 2024.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Esposito's juror misconduct claim is procedurally defaulted.

Esposito alleges that juror Janice Lane committed misconduct when she sought counseling from her pastor regarding her service as a juror in his trial. Esposito argues that Ms. Lane's contact with the pastor, which resulted in her reading Bible passages from the book of Romans, was an "improper extraneous influence" that kept her from being an impartial juror. Pet. at 11. However, Esposito's juror misconduct claim is procedurally defaulted because he failed to raise the claim on direct appeal. Because Esposito has failed to prove prejudice to overcome the default, this Court dismisses Esposito's claim as procedurally defaulted.

A. Standard of Review

“[C]laims that could have been raised on direct appeal but are raised for the first time in habeas corpus proceedings are procedurally defaulted, unless the petitioner meets the ‘cause and prejudice’ test.” *Schofield v. Meders*, 280 Ga. 865, 865 (2006) (citing OCGA § 9-14-48 (d); *Turpin v. Todd*, 268 Ga. 820 (1997)). “O.C.G.A. § 9-14-48 (d) places the burden on [Esposito] to show *both* ‘cause’ and ‘actual prejudice.’” *Todd*, 268 Ga. at 836 (emphasis added) (quoting *Black v. Hardin*, 255 Ga. 239, 240 (1985)). Cause “requires a showing that some objective factor external to the defense impeded counsel’s efforts to raise the procedurally-defaulted claim.” *Meders, supra* (citing *Chatman v. Mancill*, 280 Ga. 253, 254 (2006)). Prejudice “is satisfied only where the omission or waiver resulted in actual and substantial prejudice, infecting the entire trial with error of constitutional dimensions.” *Id.* at 866 (citing *Schofield v. Palmer*, 279 Ga. 848, 851 (2005)).

B. Esposito has failed to prove prejudice to overcome the procedural default of his claim.

Assuming, arguendo, that Esposito has shown cause to overcome the default, he has not met his burden of proving prejudice, which requires “showing ‘not merely that the errors at his trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.’” *Ballinger v. Watkins*, 315 Ga. 369, 378-79 (2022) (quotation marks omitted) (quoting *Todd*, 268 Ga. at 828)). Thus, this Court dismisses Esposito’s claim as procedurally defaulted.

1. Esposito bears the burden of proving actual prejudice.

Esposito argues that prejudice should be presumed, and Respondent bears the burden of overcoming the alleged prejudice. But this argument has been rejected by the Georgia Supreme Court. In *Todd*, the trial court ignored the procedural default prejudice test and instead, “cited *Battle v. State*¹ for the proposition that, when improper communications occur between a bailiff and jurors, *a presumption of prejudice* arises that must be rebutted by the State.” *Todd*, 268 Ga. at 830 (emphasis added). The Georgia Supreme Court reversed explaining:

The rule of *Battle v. State*, however, applies on direct appeal, and does not apply when a defendant is procedurally barred from raising an issue of improper communications between the bailiff and the jurors. Because of the procedural bar in this case, *Todd had the burden to establish actual prejudice, and the habeas court erred in placing the burden on the State to show that any error was harmless and in applying the presumption of prejudice.*

Id. (emphasis added).

The Georgia Supreme Court reaffirmed that actual prejudice must be proven by a petitioner for a procedurally defaulted claim in *Watkins*, a case relied upon by Esposito. The Court held that “[t]he habeas court’s determination that Watkins must prove actual prejudice would seem to be well grounded in a habeas petitioner’s typical burden to show both cause and actual prejudice to overcome the procedural bar for claims raised in habeas proceedings.” *Watkins, supra.* “As [the Court] explained in *Greer v. Thompson*, [], ‘[e]ven if the law presumes prejudice for certain errors when they are timely

¹ *Battle v. State*, 234 Ga. 637, 639 (1975).

raised, a convicted defendant who ... is seeking to overcome a procedural bar ... does not have the benefit of that presumption of prejudice, and must instead meet the actual prejudice test.” *Id.* (citation omitted) (quoting *Greer v. Thompson*, 281 Ga. 419, 421-22 (2006)).

Therefore, the Court finds Esposito is not entitled to a “presumption of prejudice” but instead must show that “that the alleged error actually prejudiced the sentencing phase of his trial.” *Todd*, 268 Ga. at 830.

2. Esposito has failed to prove misconduct.

Esposito argues that Juror Lane visited her pastor after voir dire began and after the trial court informed the jurors not to “discuss the case with anyone,” thereby committing misconduct by allegedly violating the court’s instructions and allegedly seeking information from an extraneous source regarding Esposito’s case. HT:151. Regarding the burden of proof argument made by Esposito, the Court notes that even if Esposito’s “presumption” applied in this case, the *presumption arises only when a juror engages in misconduct*. See, e.g., *Henry v. State*, 265 Ga. 732, 738 (1995) (“[t]here is a presumption of prejudice to the defendant *when an irregularity in the conduct of a juror is shown*”) (emphasis added). Thus, even under Esposito’s arguments, he bears the burden of first proving misconduct.

In Juror Lane’s 2022 affidavit obtained by Esposito in this proceeding, she states that she sought counsel from her pastor after being questioned “during the voir dire process.” HT:127, ¶5 (emphasis added). However, when Juror Lane testified live before this Court, she admitted she could not recall if she spoke with her pastor *before* being called for voir dire or *after* voir dire

commenced. HT:51-52 (emphasis added). Juror Lane also admitted during the hearing that she had informed counsel for Respondent that she visited her pastor *before* voir dire began and thus before she was instructed by the trial court not to “discuss the case with anyone.” HT:151 (emphasis added). Additionally, she explained in her direct examination by counsel for Esposito that she had a “stroke in 2000,” which affected her memory. *Id.* at 47. The Court finds that based on Juror Lane’s testimony her memory was impaired on the timing of her visit with her pastor in 1998. *See id.* at 40-51.

Esposito urges the Court in his post-hearing briefing to disregard Juror Lane’s contradictory live testimony and find her 2022 affidavit admitted by the Court as the most credible testimony from Juror Lane.² *See, e.g.*, Pet. Post-Hearing Brief at 16. But the record shows that Juror Lane gave three different versions of her memory of a meeting that occurred over two decades ago—i.e. she testified in an affidavit that she met with the pastor *during* voir dire, she testified live before this Court and admitted that she informed counsel for Respondent that she met with her pastor *before* voir dire commenced, and she testified live that she did not recall when she met with her pastor. Consequently, the Court is unable to find that Esposito has proven that Juror Lane visited her pastor after voir dire commenced based on this contradictory record and thus has failed to prove Juror Lane committed misconduct.

Yet even assuming Juror Lane did speak with her pastor *during* voir dire, the Court still finds she did not commit misconduct. The trial court informed

² Esposito also relies on juror Lane’s unsworn affidavit but that affidavit, as conceded by Esposito, is inadmissible. *See* O.C.G.A. § 9-14-48 (a), (c).

the jurors prior to voir dire that they were not “to discuss the case with anyone.” HT:151. Juror Lane testified that she did not discuss the case with her pastor. *Id.* at 52. Instead, she only asked her pastor if she could serve as juror in a capital trial under her Christian faith. *See, e.g., id.* at 53. Juror Lane was clear that her pastor did not suggest any sentence for the crimes and did not provide any testimony that suggested she asked her pastor what sentence should be imposed. *Id.* at 53.

Consequently, as the record does not show that Juror Lane discussed the case with her pastor and the record is unclear as to when Juror Lane visited the pastor—either *before* or *during* voir dire—Esposito has not carried his burden that Juror Lane committed misconduct.

3. Even assuming juror Lane committed misconduct in speaking with her pastor, Esposito still has not shown actual prejudice.

“[S]pecific to juror misconduct, [the Georgia Supreme Court has] explained that a court assessing prejudicial impact properly considers ‘the type of extrajudicial information at issue (e.g., whether the information concerned sentencing or the underlying substantive law),’ ‘how the extrajudicial ... information might have been relevant to the issues decided by the jury,’ and ‘whether the record evidence suggested that this ... information would affect the jury’s decision on guilt or innocence.’” *Watkins*, 315 Ga. at 378-79 (quoting *Harris v. State*, 314 Ga. 51, 53 n.4 (2022)). Applying these principles, considering the record, and assuming Juror Lane committed misconduct, the Court finds Esposito has failed to meet his burden of proving prejudice.

Prior to her visit with her pastor, Juror Lane testified that: "I knew that I believed in the death penalty, but as a Christian, I wanted to know what the Bible said about the death penalty." HT:29. Regarding her visit to her pastor, Juror Lane provided the following testimony on direct examination:

Q: And when you went to see the pastor, what did you ask him?

A: I asked him to tell me if the Bible indicated that it was okay to issue the death penalty.

Q: And what did he tell you?

A: He referred me to the book of Romans. I cannot tell you what scripture he referred me to. I don't remember that, but that's basically all he said. He never gave me his opinion or anything.

Q: And, after you met with him, did you read the passages that he recommended?

A: I don't recall.

Q: Do you remember the gist of what the passage said? Could you describe it for the Court?

A: I just remember what he paraphrased for me. He said that there was a law made that man was supposed to abide by, and if you did not abide by it, then the law was set up to take care of people's offenses.

HT:29-30.

After counsel for Esposito then suggested Romans, Chapter 13, Verse 1, was the Bible passage Juror Lane's pastor mentioned during the meeting, Juror Lane read the passage: "Let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God." HT:33. Esposito

requested that Juror Lane read further but Respondent objected as Juror Lane had not testified that she recalled any other passage, and the Court sustained the objection. Moreover, Juror Lane testified that she did not recall if she read a Bible passage after she met with her pastor, but only that she thought her pastor "paraphrase[d] it." *Id.* at 32.

Juror Lane was asked again about which passage she read, and the following colloquy occurred:

Q: At some point in time, however, did it come to you -- your recollection that you had been referred to Romans 13?

A: No, it did not. All I knew was it was in the book of Romans.

HT:44.

On cross-examination, juror Lane provided the following testimony regarding her visit with her pastor:

Q: During this [pastoral] meeting, did you discuss anything about Esposito's case?

A: No, I did not.

Q: Did you discuss any of the facts in Esposito's case?

A: No, I did not.

Q: Did you discuss what the appropriate sentence was in Esposito's case?

A: No, I did not. I simply asked what the Bible says about the death penalty.

Q: And was the purpose of that to determine whether or not you could give a death sentence, based up on your faith?

A: Correct.

Q: And that's as opposed to not being able to give a death sentence based upon your faith?

A: Correct.

Q: Okay. Did the pastor, at any time, suggest to you the appropriate sentence in this case?

A: No, he did not.

Q: Did the pastor read the verse and chapter in Romans?

A: No. He just said there was a verse in Romans that talked about the laws being created for this type of situation.

Q: And what was your understanding of what the pastor was telling you to read?

A: That it was appropriate to give the death penalty in extreme cases.

Q: Is another way to say that is that it's appropriate to give a death sentence based upon your Christian faith?

A: Yes.

Q: But, your Christian faith does not -- is it fair to say that your Christian faith does not mandate any particular sentence?

A: Correct.

HT:51-53.

Juror Lane also provided the following testimony regarding her recollection of Romans on cross-examination:

Q: When -- from what you recall, your reading in Romans, did that influence your decision to sit on this jury -- Mr. Esposito's jury?

A: I felt it was appropriate to choose to sit on the jury after I had been told that there were laws in Romans.

Q: Was there anything that you recall in reading Romans that suggested to you what an appropriate sentence was in Mr. Esposito's case?

A: No, there was not.

Q: Was the sole purpose of you seeking advice from your pastor to determine whether or not, as a Christian, you could sit on a death penalty case?

A: Absolutely.

HT:58.

Esposito argues that Juror Lane's meeting with her pastor unduly influenced her sentencing decision. But to get to that conclusion, Esposito speculates, attributes interpretations of Bible passages not given by Juror Lane, and largely ignores Juror Lane's actual testimony. Juror Lane plainly testified that she did not seek guidance on what sentence should be imposed and that nothing she was told by the pastor or that she read in the Bible suggested a particular sentence. The Court finds Esposito failed to prove that the alleged extrajudicial communication between Juror Lane and her pastor affected her sentencing decision. *Watkins*, 315 Ga. at 378-79.

Additionally, the Georgia Supreme Court has held, even under the *presumptive standard* that Esposito asks this Court to apply, that even where a juror has improper communication with a third party the error may be harmless. In *State v. Clements*, 289 Ga. 640 (2011), a juror discussed her selection with her husband, who requested that she not serve on the jury because it may affect how he would be treated at his place of employment. The

Court determined the “irregularity ...was inconsequential in light of the uncontradicted evidence that juror Henderson and her husband did not discuss the merits of the case but only her selection for the jury.” *Id.* at 643. *See generally Lamons v. State*, 255 Ga. 511, 512 (1986) (even where prejudice is presumed on direct appeal, the Court “also recognized that some irregularities are inconsequential”); *Henry v. State*, 265 Ga. 732, 738 (1995) (sequestered juror had unauthorized contact with girlfriend but no harm where facts established conversation did not involve discussion about the merits of the case); *Sims v. State*, 266 Ga. 417, 420 (1996) (no reversible error arising out of juror misconduct by violating court orders not to discuss the case because the substance of the communication was established without contradiction and the statements “did not involve extrajudicial information, or demonstrate that they were deliberating the case prior to the close of evidence, or that one juror was attempting to persuade another on any issue or testimony in the case”). Here, even assuming there was an irregularity, the communication between Juror Lane and her pastor was even more inconsequential, as the pastor made no suggestion whether Juror Lane should serve or what sentence should be given in Esposito’s case. Nor was there any discussion whatsoever about the merits of the case between Juror Lane and her pastor.

In a recent case, *Monroe v. State*, 315 Ga. 767, 776-77 (2023), a juror spoke with his spouse and relayed a message to other jurors that there would be “trouble” when the jury rendered its verdict. However, the jurors testified that the “information they heard would not affect their ability to remain fair and impartial.” *Id.* at 776. Again, under the *presumptive standard*, the Court held

that “the trial court was authorized to conclude that the State had carried its burden in establishing beyond a reasonable doubt that [the juror’s] alleged misconduct was harmless.” *Id.* at 777. The Court came to this conclusion “[b]ecause ‘no evidence was presented that the juror’s conduct contributed to the conviction such that the verdict is inherently lacking in due process.’” *Id.* at 778 (quoting *Hodges v. State*, 302 Ga. 564, 569 (2017)). Likewise, here, Juror Lane testified that her meeting with her pastor did not contribute to her sentencing decision, and nothing in the record suggests otherwise. *See, e.g.*, HT:58. Rather, the record shows that the only information she gathered from the meeting was merely that serving on a capital trial did not conflict with her Christian faith.

Esposito does not cite to any binding precedent that holds an exchange similar to Juror Lane’s and her pastor’s meets the *actual prejudice* test. And the Court rejects Esposito’s arguments that the Court should attribute specific meaning to Juror Lane’s understanding of Bible passages from Romans or her exchange with her pastor that are not reflected in the record. The Court also finds Esposito’s distinguishment of the cases above fails to show they do not provide guidance on the issue of prejudice.

As stated above, under the actual prejudice test, Esposito must show “the alleged error actually prejudiced the sentencing phase of his trial.” *Todd*, 268 Ga. at 830. Juror Lane provided no testimony that suggested her meeting with her pastor was to determine Esposito’s sentence or to seek guidance on whether she should impose a particular sentence, and Esposito’s arguments to the contrary are conjecture, especially when compared to Juror Lane’s live

testimony before this Court. Instead, the Court finds Juror Lane's testimony, taken as a whole, shows she spoke with her pastor to determine whether her Christian faith allowed her to consider imposing a death sentence.

This Court holds Esposito has failed to prove actual prejudice and **DISMISSES** his juror claim as procedurally defaulted and **DENIES** state habeas relief.

SO ORDERED, this 22nd day of February, 2024.



JUDGE Robert L. Mack, Jr
Superior Court of Butts County
Sitting By Designation

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SUPREME COURT OF GEORGIA
Case No. S24E0818

July 2, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JOHN ESPOSITO v. SHAWN EMMONS, WARDEN.

Upon consideration of Esposito's application for a certificate of probable to appeal the dismissal of his claim of juror misconduct as procedurally barred, with that bar not being excused for several independent reasons, and upon consideration of the resulting denial of his second state habeas petition, the application is denied as lacking arguable merit. See Supreme Court Rule 36; *Redmon v. Johnson*, 302 Ga. 763 (809 SE2d 468) (2018).

All the Justices concur, except Warren, J., not participating and Pinson, J., disqualified.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

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

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

 , Clerk

1 IN THE SUPERIOR COURT FOR THE COUNTY OF MORGAN
2 (CHANGE OF VENUE TO BALDWIN COUNTY)

3 STATE OF GEORGIA

4 VS.

5 JOHN ANTHONY ESPOSITO

6 CASE NUMBER 96CC349

7 COUNT ONE: MALICE MURDER
8 COUNT TWO: FELONY MURDER
9 COUNT THREE: ARMED ROBBERY
10 COUNT FOUR: HIJACKING A MOTOR VEHICLE

11 ***** VOLUME ONE OF EIGHT *****

12 DEATH PENALTY CASE

13 TRIAL HELD BEFORE HONORABLE WILLIAM A. PRIOR, JR., JUDGE AND
14 A JURY - - SEPTEMBER 23, 24, 28, 29, 30, 1998 & OCTOBER 1, 2, 1998

15 Ap p e a r a n c e s :

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COPY

Res. Ex. No. 14
Case No. 5:12-CV-163

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Certificate of Court Reporter

5 Please be seated.

6 THE COURT: Thank you, Mr. Sheriff.

7 Have we got our Clerk here? Is the Clerk
8 with us, Captain Combs?

9 BAILIFF COMBS: Sir?

10 THE COURT: Is the Clerk -- we need
11 the Clerk, please, sir.

13 (Whereupon, there is a brief pause in the
14 proceeding.)

16 THE COURT: Ms. Phillips, call the
17 roll of the Traverse Jurors, please, ma'am.

18 CLERK: Beverly J. Rayford.

19 (No re

20 CLERK:

21 (No response.)

23 CLEERK:

(No response.)

24 CLERK.

25 WILSON SIMMONS 1965

11. *What is the primary purpose of the following statement?*

1 CLERK: Okay. Just say here,
2 okay?
3 JUROR SIMMONS: Here.
4 CLERK: Yes, sir. Thank you.
5 Marie A. Bonner?
6 JUROR BONNER: Here.
7 CLERK: Thomas W. Aycock, Sr.
8 JUROR AYCOCK: Here.
9 CLERK: Laura L. Thomas.
10 JUROR THOMAS: Here.
11 CLERK: Sallye G. Frady.
12 JUROR FRADY: Here.
13 CLERK: Estelle J. Layfield.
14 JUROR LAYFIELD: Here.
15 CLERK: Robert L. Dorton.
16 (No response.)
17 CLERK: James H. Veal.
18 JUROR VEAL: Here.
19 CLERK: John E. Veal.
20 JUROR VEAL: Here.
21 CLERK: James D. Bray.
22 JUROR BRAY: Here.
23 CLERK: John M. Mazzanti.
24 JUROR MAZZANTI: Here.
25 CLERK: Curtis Devero, Sr.

1 JUROR DEVERO: Here.
2 CLERK: James C. Hogan, Sr.
3 JUROR HOGAN: Here.
4 CLERK: Tamica L. Ford.
5 (No response.)
6 CLERK: Minnie L. Reeves.
7 JUROR REEVES: Here.
8 CLERK: Ed Menger, Jr.
9 JUROR MENGER: Here.
10 CLERK: Theresa D. Fortner.
11 JUROR FORTNER: Here.
12 CLERK: Wanda E. McKnight.
13 JUROR MCKNIGHT: Here.
14 CLERK: Billy J. Dixon.
15 JUROR DIXON: Here.
16 CLERK: Alethea C. Barlow.
17 (No response.)
18 CLERK: Bennett C. Duru.
19 JUROR DURU: Here.
20 CLERK: Janice L. Seagraves.
21 JUROR SEAGRAVES: Here.
22 CLERK: Teri A. Bradshaw.
23 JUROR BRADSHAW: Here.
24 CLERK: John C. Calkins.
25 JUROR CALKINS: Here.

1 CLERK: Willie L. Hodges, Jr.
2 (No response.)
3 CLERK: Sandra D. Daniels.
4 (No response.)
5 CLERK: Amanda D. Smith.
6 JUROR SMITH: Here.
7 CLERK: Jerry N. Cleveland.
8 (No response.)
9 CLERK: Jeanette Nelson.
10 JUROR NELSON: Here.
11 CLERK: Aaron Kelsey.
12 JUROR KELSEY: Here.
13 CLERK: Andrew P. Doyle.
14 (No response.)
15 CLERK: Anderson Bentley, Jr.
16 JUROR BENTLEY: Here.
17 CLERK: Angela G. Horton.
18 JUROR HORTON: Here.
19 CLERK: Joe B. Taylor.
20 JUROR TAYLOR: Here.
21 CLERK: Joyce E. Swint.
22 (No response.)
23 CLERK: Earnest James.
24 JUROR JAMES: Here.
25 CLERK: Cassie F. Hargrove.

1 (No response.)
2 CLERK: Ona T. Degrandis.
3 JUROR DEGRANDIS: Here.
4 CLERK: William C. McRae.
5 JUROR MCRAE: Here.
6 CLERK: Scott S. Stoner.
7 JUROR STONER: Here.
8 CLERK: Mary E. Vinson.
9 JUROR VINSON: Here.
10 CLERK: Michelle M. Bell.
11 JUROR BELL: Here.
12 CLERK: Elizabeth T. Cooper.
13 JUROR COOPER: Here.
14 CLERK: Bobby L. Lango.
15 JUROR LANGO: Here.
16 CLERK: Ronda H. Trawick.
17 (No response.)
18 CLERK: Helen M. Ray.
19 JUROR RAY: Here.
20 CLERK: Anthony D. Liggins.
21 JUROR LIGGINS: Here.
22 CLERK: Patrick J. Donovan.
23 JUROR DONOVAN: Here.
24 CLERK: Angela Waller.
25 JUROR WALLER: Here.

1 CLERK: Debra A. Causey.
2 JUROR CAUSEY: Here.
3 CLERK: Bruce L. Manley.
4 (No response.)
5 CLERK: Emory W. Tharpe.
6 JUROR THARPE: Here.
7 CLERK: Jonah Arnold, Jr.
8 JUROR ARNOLD: Here.
9 CLERK: Donna L. Anderson.
10 JUROR ANDERSON: Here.
11 CLERK: Robert L. Turner.
12 (No response.)
13 CLERK: Charles R. Miller.
14 JUROR MILLER: Here.
15 CLERK: Winston H. Sibley.
16 JUROR SIBLEY: Here.
17 CLERK: Arnold Wade.
18 JUROR WADE: Here.
19 CLERK: Harold D. Brock, Jr.
20 (No response.)
21 CLERK: Freddie Mason, Jr.
22 (No response.)
23 CLERK: Cariad E. Reese.
24 JUROR REESE: Here.
25 CLERK: Katrina Freeman.

1 JUROR FREEMAN: Here.
2 CLERK: Charlie H. Ross.
3 JUROR ROSS: Here.
4 CLERK: Monica D. Baymon.
5 JUROR BAYMON: Here.
6 CLERK: Susanne M. Hodell.
7 JUROR HODELL: Here.
8 CLERK: Maxine F. Foster.
9 (No response.)
10 CLERK: Christina Jeffries.
11 JUROR JEFFRIES: Here.
12 CLERK: Tonya F. Ezelle.
13 (No response.)
14 CLERK: Donald E. Blount, Jr.
15 (No response.)
16 CLERK: Susan B. Bentley.
17 JUROR BENTLEY: Here.
18 CLERK: Angelyn B. Weaver.
19 JUROR WEAVER: Here.
20 CLERK: Janice P. Worsham.
21 JUROR WORSHAM: Here.
22 CLERK: Eleanor M. Ethier.
23 JUROR ETHIER: Here.
24 CLERK: Virgil B. Lawrence.
25 JUROR LAWRENCE: Here.

1 CLERK: Teressa L. England.
2 (No response.)
3 CLERK: Carl B. Allen.
4 (No response.)
5 CLERK: Frederick Morgan.
6 JUROR MORGAN: Here.
7 CLERK: Rosa L. Ross.
8 JUROR ROSS: Here.
9 CLERK: Barry L. Martin.
10 JUROR MARTIN: Here.
11 CLERK: Ashley C. Wright.
12 JUROR WRIGHT: Here.
13 CLERK: Anthony T. Hogan.
14 JUROR HOGAN: Here.
15 CLERK: Menia L. Chester.
16 (No response.)
17 CLERK: Benny F. Warren, Jr.
18 (No response.)
19 CLERK: Ralph D. Beasley, III.
20 JUROR BEASLEY: Here.
21 CLERK: James H. Vaughn.
22 JUROR VAUGHN: Here.
23 CLERK: Jeffrey W. Glenn.
24 (No response.)
25 CLERK: Walter Lattimore.

1 JUROR LATTIMORE: Here.
2 CLERK: Ernest L. Hurt.
3 JUROR HURT: Here.
4 CLERK: Andre S. Thomas.
5 (No response.)
6 CLERK: Betty J. Land.
7 JUROR LAND: Here.
8 CLERK: Tonya M. Samuels.
9 (No response.)
10 CLERK: And Marcina C. Lee.
11 JUROR LEE: Here.
12 CLERK: Sixty-eight, Judge.
13 THE COURT: How many?
14 CLERK: Sixty-eight.
15 THE COURT: Sixty-eight?
16 CLERK: Uh-huh (affirmative).
17 THE COURT: Ladies and gentlemen, all
18 Traverse Jurors please stand and raise your right
19 hand.
20 You shall well and truly try each case
21 submitted to you during the present term and a
22 true verdict give according to the law as given
23 you in the charge and the opinion you entertain of
24 the evidence produced to you to the best of your
25 skill and knowledge, without favor or affection to

1

either party, provided you are not discharged from
consideration of the case submitted, so help you

God.

3

Lower your hand and be seated, please.

4

All bailiffs, please stand and raise your
right hand. All bailiffs.

5

You shall take all juries committed to your
charge during 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.

6

You shall make no communication with them
yourself, nor permit anyone to communicate with
them except by leave of the Court.

7

You shall discharge all other duties which
may devolve upon you as bailiffs to the best of
your skill and power, so help you God.

8

Thank you.

9

Ladies and gentlemen, I'm going to ask you
not to carry on any conversations in the courtroom
while court is in session, including whispered
conversations. This is very distracting and makes
it difficult to conduct court.

10

There will be no smoking in the courthouse at
any time whether or not court is in session by

11

10.

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1 order of the State Fire Marshall.

2 Mr. Bright, call your first case for trial.

3 MR. BRIGHT: May it please the Court,
4 the State calls for trial Case Number 96CC-349,
5 The State of Georgia versus John Anthony Esposito,
6 charged as follows: Count I with the offense of
7 Malice Murder, Count II with the offense of Felony
8 Murder, Count III with the offense of Armed
9 Robbery and Count IV is with the offense of
10 Hijacking a Motor Vehicle.

11 The State of Georgia announces ready.

12 MR. KELLY: Your Honor, we announce
13 ready subject to some motions I think the Court
14 needs to hear outside the presence of the jurors.

15 THE COURT: None of these motions
16 will prevent us from proceeding at this time, is
17 that correct?

18 MR. KELLY: I do not think so, Your
19 Honor, but I'd like for you to hear those motions
20 prior to --

21 THE COURT: Approach the bench,
22 gentlemen.

23
24 (Whereupon, the following bench conference is
25 held between Court and counsel:)

11.

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12 MR. KELLY: Okay. That's fine.

14 MR. KELLY: But subject to that, we
15 are ready, Your Honor.

16 THE COURT: Thank you. Thank you.

17 (Whereupon, the bench conference is
18 concluded.)

20 THE COURT: Ladies and gentlemen,
21 it's necessary that I administer yet another oath
22 to you. Please stand and raise your right hand.

23 You shall give true answers to all questions
24 that may be asked by this Court or its authority,
25 including all questions asked by the parties or

1 their attorneys concerning your qualifications as
2 jurors in the case of The State of Georgia versus
3 John Anthony Esposito, so help you God.

4 Lower your hand and be seated, please.

5 Ladies and gentlemen, at this time I'm going
6 to give you certain very brief preliminary
7 instructions on the procedure that we will follow
8 in this case from this point forward.

9 This first part of the trial is known as the
10 voir dire. And in a moment I'm going to ask our
11 District Attorney, Mr. Fred Bright, to propound,
12 that is, to ask, what are known as the statutory
13 voir dire questions. This is a series of
14 questions that will be asked while you are seated
15 in your present seats in the courtroom. If you
16 have a yes answer to any of the questions please

17 raise your hand and keep your hand up until either
18 Mr. Bright or I can get to you and discuss your
19 answer with you.

20 When the statutory voir dire questions have
21 been completed, that is, questions that are
22 required to be asked by law, you will be called
23 into the witness box located to my right one at a
24 time and both the District Attorney, acting for
25 the State, and the Defendant's attorneys, acting

1 for the Defendant, will have an opportunity to ask.
2 you questions relating to your qualifications in
3 this particular case.

4 Ladies and gentlemen, if you feel any of the
5 questions asked by the attorneys are improper in
6 any way or are too personal, do not hesitate to
7 ask me if you are required to answer the
8 attorney's questions. You must, however, answer
9 the questions unless you're excused from doing do
10 so by the presiding judge.

11 As I have stated to you, the case that is to
12 be tried is the case of The State of Georgia
13 versus John Anthony Esposito. In this case the
14 State of Georgia is seeking the death penalty.

15 Ladies and gentlemen, the procedure that we
16 follow in death penalty trials is different in
17 some respects from that followed in other criminal
18 trials. The trial is a bifurcated trial or a two-
19 part trial.

20 The first part of the trial will be what is
21 known as the guilt-innocence phase. In this phase
22 of the trial, which is conducted like any other
23 criminal trial, the jury will determine the guilt
24 or innocence of the Defendant.

25 If the jury finds the Defendant not guilty of

1 the offense of murder, that will end the trial
2 insofar as the jury is concerned.

3 On the other hand, if the jury finds the
4 Defendant guilty of the offense of murder, the
5 trial will move into the next phase, Phase Two,
6 which is known as the sentencing or punishment
7 phase of the trial.

8 In this phase of the trial the State may
9 introduce evidence in aggravation and the
10 Defendant may introduce evidence in extenuation or
11 mitigation of the punishment to be imposed. Both
12 the State and the Defendant will present arguments
13 and the jury will then retire in this second phase
14 to consider the sentence and determine the
15 punishment that is to be imposed.

16 The penalty must be within limits which are
17 set by law. The possible sentences in this phase
18 of the trial will be death or life imprisonment
19 without parole or life imprisonment with a
20 possibility of parole. The jury is not authorized
21 to impose a sentence of life imprisonment without
22 parole or death unless the jury first finds beyond
23 a reasonable doubt and designates in its verdict
24 in writing at least one or more are what -- of
25 what are known as statutory aggravating

2 You will be instructed at the proper time on
3 what the possible aggravating circumstances are in
4 this case. If you find that one or more statutory
5 aggravating circumstances exists, you would then
6 be authorized, but not required, to return a
7 verdict of death or life imprisonment without
8 parole.

9 Whether or not you find any statutory
10 aggravating circumstances or for any reason or
11 without any reason you can set the punishment at
12 life imprisonment with a possibility of parole if
13 that is your verdict.

1 it with you. It is very important that you follow
2 those instructions from this point forward.

3 If anyone attempts to communicate with you in
4 any way concerning this case, notify me of that
5 fact immediately upon returning to court.

6 Mr. Bright, propound the statutory voir dire
7 questions.

8 MR. BRIGHT: May it please the Court,
9 ladies and gentlemen, the State is required by law
10 to ask six questions of you. In order for you to
11 be able to answer these questions you need to know
12 a little something about the case. And the way
13 that I give you that information is simply to read
14 off what this Defendant is charged with in this
15 bill of indictment.

16 This is the case of The State of Georgia
17 versus John Anthony Esposito and he is charged
18 with the four counts I have previously announced.

19 According to the indictment all four counts
20 occurred on September 19, 1996, in Morgan County,
21 Georgia.

22 Count I of this indictment charges the
23 Defendant with the offense of Malice Murder. And
24 the indictment alleges that he did unlawfully and
25 with malice aforethought cause the death of Lola

6 THE COURT: Well, I appreciate your
7 effort and I apologize to you for any
8 inconvenience. I'm -- of course, you understand
9 I'm bound by the law and --

10 JUROR DURU: Okay, sir.

11 THE COURT: Thank you very much. Be
12 here at 9 o'clock Monday morning.

12 JUROR DUBU: All right, sir.

Call Juror Janice L.

15 Seagraves. Have Juror Teri A. Bradshaw stand by.

16 Come up, please, ma'am. Come up and have a
17 seat in this witness chair.

18 You are Janice L. Seagraves?

19 JUROR SEAGRAVES: Yes, sir.

20 THE COURT: Ms. Seagraves, I'm going
21 to ask you several questions. Answer these
22 questions with a yes or no answer if you can,
23 please.

24 Ms. Seagraves, are you conscientiously
25 opposed to capital punishment, that is, the death

penalty?

JUROR SEAGRAVES: I'm really undecided on how I feel about capital punishment.

THE COURT: All right, ma'am. And I
know this is difficult for you --

JUROR SEAGRAVES: Oh, you need a yes or no answer?

THE COURT: Uh-huh (affirmative).

JUROR SEAGRAVES: Um --

THE COURT: Well, let me ask you another question that may be easier for you.

JUROR SEAGRAVES: Okay.

THE COURT: Are your reservations about the death penalty such that you could never vote to impose the death penalty regardless of the evidence and the instructions of the Court?

JUROR SEAGRAVES: No.

THE COURT: Put the other way, there are some times when you could vote to impose the death penalty, is that right?

JUROR SEAGRAVES: Yes, sir.

THE COURT: Are your convictions about capital punishment such that you would always vote to impose the death penalty no matter what the evidence was or what the instructions of

1 the Court were?

2 JUROR SEAGRAVES: No.

3 THE COURT: Thank you.

4 Mr. Bright?

5 MR. BRIGHT: Ms. Seagraves, could you
6 vote to sentence another human being to death?

7 JUROR SEAGRAVES: (No response.)

8 MR. BRIGHT: It's designed to be a
9 tough question.

10 JUROR SEAGRAVES: Yes.

11 MR. BRIGHT: When we're done with the
12 case, if you sit in one of those chairs, I'm going
13 to stand right up before you and ask you to
14 sentence a man to death. And all I -- I'm going
15 to look you in the eyes right now and all I want
16 to know is -- and I can tell you're thinking about
17 it, is this something you can do?

18 JUROR SEAGRAVES: Not without some
19 reservation.

20 MR. BRIGHT: Okay. All right. And
21 that's fine. When you say *not without some* -- I
22 -- I -- it's designed to be tough. What I'm
23 trying to find out though is this something --
24 even -- even -- not without some reservation, but
25 even considering that, because it's -- you would

1 have a vote. If you sat is one of those chairs
2 there, there would be 12 jurors and each one would
3 have a vote and you'd have one of their votes.
4 And the law says for it to be a death penalty the
5 decision must be unanimous. All I want to do is
6 look you in the eyes right now and find out is
7 this something -- and if you -- if you can do it,
8 fine, let me know. But on the other hand, if this
9 is something that it doesn't matter what the facts
10 or circumstances are, there's no way you could --
11 you could vote to sentence a defendant to death.
12 You understand why I need to know that right now?

13 JUROR SEAGRAVES: Yes, sir.

14 MR. BRIGHT: Without even hearing the
15 case?

16 JUROR SEAGRAVES: Yes, sir.

17 MR. BRIGHT: Where do you lie there?

18 JUROR SEAGRAVES: Based on the -- if -- if
19 the information showed that the person was guilty,
20 then I could sentence that person.

21 MR. BRIGHT: Okay. All I'm trying to
22 find -- don't tell me what magic formula it takes
23 to convince you --

24 JUROR SEAGRAVES: Oh, okay.

25 MR. BRIGHT: -- but I think I'm -- I'm

1 -- you're trying to -- I want to make sure that if
2 you sit on the jury that this is something,
3 without having heard any evidence in the case, you
4 could still -- you could vote -- you could be
5 convinced to sentence another human being, a
6 defendant, to death?

7 JUROR SEAGRAVES: Yes, sir.

8 MR. BRIGHT: Okay. If you voted to
9 sentence a defendant to death and it was unanimous
10 -- that's the only way it could be a death
11 penalty, all 12 jurors agreed -- the law requires
12 the jurors to be polled. You would have to stand
13 up -- they'd actually call your name out -- after
14 the verdict was announced, "Ms. Seagraves, stand
15 up." "Was that sentence of death, was that your
16 verdict in the jury room," "Was it freely and
17 voluntarily made," and, "Is that still your
18 verdict now?" And you'd be stating publicly that
19 that was your verdict, that you voted to sentence
20 the defendant to death. Could you do that?

21 JUROR SEAGRAVES: Yes, sir.

22 MR. BRIGHT: I'm trying to make it
23 tough -- I want you to realize how serious it is,
24 okay?

25 In your questionnaire, "Has any member of

1 your family or close friend ever been accused of
2 committing a crime," and you put, "A friend, two
3 weeks ago, stealing." Is -- I don't mean to pry,
4 but I -- it just -- has that friend been accused
5 of stealing?

6 JUROR SEAGRAVES: He's been accused of
7 stealing. It hasn't come to court yet.

8 MR. BRIGHT: Felony, misdemeanor, do
9 you know?

10 JUROR SEAGRAVES: I don't know. I think
11 it's a misdemeanor. I think it was something
12 stolen from a person's home like in the back of
13 someone's truck or --

14 MR. BRIGHT: Is this a close friend of
15 yours?

16 JUROR SEAGRAVES: I'm friends with the
17 mother.

18 MR. BRIGHT: Okay.

19 JUROR SEAGRAVES: Okay. But I'm not --

20 MR. BRIGHT: Is that case -- is it
21 here in Baldwin County where this is alleged to
22 have occurred?

23 JUROR SEAGRAVES: Yes, sir.

24 MR. BRIGHT: Okay. Would that affect
25 whatever the decision you would reach in this

1 case?

2 JUROR SEAGRAVES: No, sir.

3 MR. BRIGHT: Okay. The -- the case
4 hasn't come to court yet?

5 JUROR SEAGRAVES: No, sir.

6 MR. BRIGHT: They've just been
7 accused?

8 JUROR SEAGRAVES: Correct.

9 MR. BRIGHT: And your mother was a --
10 and, again, I don't mean to embarrass you, but
11 it's in your questionnaire, which we all have.
12 Your mother was assaulted when a man broke in a
13 house seven years ago?

14 JUROR SEAGRAVES: Yes, sir.

15 MR. BRIGHT: Was anybody arrested for
16 that?

17 JUROR SEAGRAVES: They did not catch him.

18 MR. BRIGHT: Was -- was that -- was
19 she harmed?

20 JUROR SEAGRAVES: Yes, sir. She was
21 hospitalized afterwards.

22 MR. BRIGHT: Okay. She was --

23 JUROR SEAGRAVES: She was pretty badly
24 beaten.

25 MR. BRIGHT: Is she all right now?

1 JUROR SEAGRAVES: She's deceased, but not
2 as a result of the crime.

3 MR. BRIGHT: Okay. Can I ask what
4 your mother's name was?

5 JUROR SEAGRAVES: Jeanette Lane.

6 MR. BRIGHT: Was there here in Baldwin
7 County?

8 JUROR SEAGRAVES: No, it was in Bibb
9 County.

10 MR. BRIGHT: In Bibb County.

11 JUROR SEAGRAVES: She was actually visiting
12 a neighbor -- her aunt.

13 MR. BRIGHT: Okay.

14 JUROR SEAGRAVES: And the house got broken
15 in there.

16 MR. BRIGHT: Was she -- you said she
17 was hospitalized. Was she assaulted badly -- I
18 don't mean all the gory details, but were there
19 any broken bones or stitches or anything like
20 that?

21 JUROR SEAGRAVES: She had some stitches and
22 she was pretty badly bruised. Facial bruises.

23 MR. BRIGHT: And they never caught who
24 did that?

25 JUROR SEAGRAVES: No, sir.

1 MR. BRIGHT: Thank you, ma'am.
2 THE COURT: Questions of this wit- --
3 juror?

4 MR. KELLY: Ms. Seagraves, my name is
5 Robby Kelly and, along with Mr. Dan Roberts here,
6 we represent John Esposito in this case.

7 I just have a few questions. You've got a
8 copy of the witness list. Did you have a chance
9 to go over that?

10 JUROR SEAGRAVES: Yes, sir.

11 MR. KELLY: Did you know anyone on
12 that --

13 JUROR SEAGRAVES: No, sir, I do not.

14 MR. KELLY: Okay. The -- it says
15 here you've never served on a criminal jury
16 before?

17 JUROR SEAGRAVES: No, sir.

18 MR. KELLY: In a -- in a criminal
19 case the State has the complete burden of proof
20 and that -- the burden is to prove guilt beyond
21 every reasonable doubt and to a moral certainty,
22 which is a very, very heavy burden of proof to
23 remove every reasonable doubt that would be in a
24 juror's mind.

25 Of course, this is a murder case, as you well

1 know, a death penalty murder case, and my client,
2 along with a Miss Alicia Woodward, who is not
3 being tried today, are accused of murdering a lady
4 from North Carolina, kidnapping and murdering her
5 here in Morgan County.

6 Because of the nature of this case or for any
7 other reason -- I know the District Attorney
8 mentioned about your mother being assaulted --
9 could you still hold the State to that heavy
10 burden of proof in this particular case?

11 JUROR SEAGRAVES: I'm not sure I understand
12 what you're asking.

13 MR. KELLY: Would you be -- could you
14 make sure that the District Attorney proved guilt
15 to your satisfaction beyond every reasonable doubt
16 before you could -- would convict Mr. Esposito?

17 JUROR SEAGRAVES: Yes, sir.

18 MR. KELLY: And the fact that your
19 mother has been assaulted, would that in any way
20 affect your decision making, you think, in this
21 case because it is a --

22 JUROR SEAGRAVES: I don't think so.

23 MR. KELLY: Okay. The -- do you --
24 what papers do you subscribe to?

25 JUROR SEAGRAVES: I don't.

1 MR. KELLY: Okay. You just read The
2 Macon Telegraph and Union-Recorder?

3 JUROR SEAGRAVES: Yes, sir.

4 MR. KELLY: Okay. Did -- when is the
5 last time you read a Union-Recorder?

6 JUROR SEAGRAVES: Saturday, I believe.

7 MR. KELLY: And when's the last time
8 you read The Macon Telegraph?

9 JUROR SEAGRAVES: Probably two weeks ago.

10 MR. KELLY: Have you heard anything
11 about this case? Do you know anything --

12 JUROR SEAGRAVES: No, sir. I couldn't even
13 remember -- I remembered the name, but that was
14 all I remembered about this case.

15 MR. KELLY: And you remember the name
16 from where?

17 JUROR SEAGRAVES: Just because it sounded
18 familiar.

19 MR. KELLY: Okay. Mr. Bright has
20 asked you -- said at some point in this case if
21 you are selected as a juror that he's going to ask
22 you to give the Defendant, Mr. John Esposito, the
23 death penalty. Could you also consider a life
24 sentence even if someone is convicted or a life
25 without parole sentence --

1 JUROR SEAGRAVES: Yes, sir.
2 MR. KELLY: -- as well as the death
3 penalty?
4 JUROR SEAGRAVES: Yes, sir.
5 MR. KELLY: I mean, you told him you
6 could consider the death penalty, but can you --
7 could you equally consider those two?
8 JUROR SEAGRAVES: I could.
9 MR. KELLY: And you realize that you
10 never have to give anyone the death penalty under
11 any circumstances, but you must consider it? Do
12 you understand that?
13 JUROR SEAGRAVES: Yes, sir.
14 MR. KELLY: Okay. That's all the
15 questions we have.
16 THE COURT: Ms. Seagraves, you heard
17 my instructions this morning about not watching
18 television, listening to the radio, reading the
19 newspapers, --
20 JUROR SEAGRAVES: Yes, sir.
21 THE COURT: -- talking to anybody or
22 letting anybody talk to you about this case? You
23 understood those?
24 JUROR SEAGRAVES: Yes, sir.
25 THE COURT: I'm going to give you

1 additional instructions at this time. I want you
2 to be back here in this courtroom at 9:00 a.m., on
3 Monday morning, the 28th of September. That's
4 this coming Monday at 9 o'clock in the morning.

5 Bring with you, but leave in your car, enough
6 clothing and personal effects for six days. Do
7 you understand those instructions?

8 JUROR SEAGRAVES: Yes, sir.

9 THE COURT: Be here at 9 o'clock
10 Monday morning. Thank you very much. You're free
11 to leave the courthouse.

12 Call Juror Teri A. Bradshaw. Have Juror John
13 C. Calkins stand by.

14 Ms. Bradshaw, come forward. Come up and have
15 a seat in the witness chair, please, ma'am.

16 You are Teri A. Bradshaw?

17 JUROR BRADSHAW: Yes.

18 THE COURT: Ms. Bradshaw, I'm going
19 to ask you several questions. Answer my questions
20 yes or no if you can.

21 Are you conscientiously opposed to capital
22 punishment, that is, the death penalty?

23 JUROR BRADSHAW: No.

24 THE COURT: Are your convictions
25 about capital punishment such that you would

1 IN THE SUPERIOR COURT FOR THE COUNTY OF MORGAN
2 (CHANGE OF VENUE TO BALDWIN COUNTY)

3 STATE OF GEORGIA

4 VS.

5 JOHN ANTHONY ESPOSITO

6 CASE NUMBER 96CC349

7 COUNT ONE: MALICE MURDER
8 COUNT TWO: FELONY MURDER
9 COUNT THREE: ARMED ROBBERY
10 COUNT FOUR: HIJACKING A MOTOR VEHICLE

11 ***** VOLUME TWO OF EIGHT *****

12 DEATH PENALTY CASE

13 TRIAL HELD BEFORE HONORABLE WILLIAM A. PRIOR, JR., JUDGE AND
14 A JURY -- SEPTEMBER 23, 24, 28, 29, 30, 1998 & OCTOBER 1, 2, 1998

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Res. Ex. No. 15
Case No. 5:12-CV-163

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11 (Whereupon, court reconvenes, Thursday,
12 September 24, 1998, 9:00 a.m.)

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IN THE SUPERIOR COURT OF BUTTS COUNTY

STATE OF GEORGIA

JOHN ANTHONY ESPOSITO,)
GDC# 986823)
Plaintiff,) Civil Action File No.
vs.) 2022-SU-HC-00003
ANTOINE CALDWELL, Warden,)
Defendants.)

HABEAS CORPUS

ROBERT MACK, Presiding Judge

May 10, 2023

Butts County Courthouse

825 West Third Street

Jackson, Georgia

Susan M. Breedlove, CCR

APPEARANCES:

For the Plaintiff: ANNA ARCENEAUX, Attorney

MARCI A. WIDDER, Attorney

Georgia Resource Center

For the Defendant: SABRINA GRAHAM, Attorney

Office of Attorney General

I N D E X

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REBECCA COHEN	61	72	72	--
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THE COURT: This 2007 affidavit -- not really, I guess the 2022, if I'm not mistaken, did that have the 2007 attached to it?

MS. WIDDER: It does, Your Honor. And the 2021 as support.

THE COURT: And the purpose of the 2022 was?

MS. WIDDER: So, in 2021, Ms. Harris signed an unnotarized statement because the people that were interviewing her were qualified to serve as notaries in Georgia, but not in Florida, where Ms. Harris, at the time, was living, and so, they didn't think they would have time to get a notary in order to get a notarized statement and took an unsworn statement.

THE COURT: Alright.

MS. WIDDER: And the 2022 affidavit endorses the 2021 unsworn statement as well as providing additional information that Ms. Harris remembered before the time of the 2021 statement and the 2022 affidavit.

THE COURT: I'll let it in for that limited purpose. Okay?

(Plaintiff Exhibit 1 was marked for
and admitted into evidence.)

THE COURT: Alright. Call your first witness.

MS. WIDDER: Can we call Janice Lane to the stand.
Janice Lane is Ms. Harris, but she's gotten divorced and

1 changed her name.

2 THE CLERK: Is your microphone on?

3 (Short discussion concerning microphones)

4 THE COURT: There you go. Thank you.

5 MS. WIDDER: Can we call Janice Lane to the stand?

6 That's Ms. Harris' maiden name. She's returned to her
7 maiden name.

8 THE COURT: Okay, ma'am, will you please raise your
9 right hand?

10 THE WITNESS: Yes, Sir.

11 THE COURT: Take your time. Take your time. Please
12 raise your right hand.

13 THE WITNESS: (Complying)

14 THE COURT: Do you swear or affirm the testimony
15 you give in this proceeding will be the truth, the whole
16 truth, and nothing but the truth, so help you God?

17 THE WITNESS: Yes, sir, I do.

18 THE COURT: Please lower your hand, and please
19 state your name for the record.

20 THE WITNESS: My name is Janice Lane.

21 THE COURT: And how do you spell your last name?

22 THE WITNESS: L-a-n-e.

23 THE COURT: Alright. Thank you, Ms. Lane. Okay.
24 Attorney Widder, you may proceed.

25 MS. WIDDER: Hi, Ms. Lane. My name is Marcia

Widder. I'm an attorney at the Georgia Resource Center, and one of John Esposito's lawyers.

JANICE LANE

was called as a witness, and having first
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WIDDER:

Q Until recently, did you use your former married name, Janice Harris?

A I did.

Q At the time of Mr. Esposito's trial in 1997, did you have a different name?

A I did. It was Seagraves.

Q Did you serve as a juror in Mr. Esposito's capital trial in September of 1997?

A I did.

Q And were you one of twelve jurors who ultimately voted to sentence Mr. Esposito to death?

A I was.

Q You and I spoke for the first time yesterday. Is that correct?

Q Is it fair to say that you would prefer not to be here today?

A Absolutely.

1 Q I know it can't be very pleasant being called into
2 court to testify, but we certainly appreciate you coming here
3 today to perform your civic duty just as you did many years
4 ago when you served on Mr. Esposito's jury.

5 We are here today to discuss the visit you made to
6 your pastor seeking counsel about the Bible's view of the
7 death penalty, and the Bible passages he referred you to
8 before you were selected to serve as a juror in Mr.
9 Esposito's case.

10 So, with that in mind, I'd like to ask you some
11 questions about your views on the death penalty at that time
12 you were summoned to court and how your views prompted you to
13 seek counsel from your pastor.

14 A You just want me to ad lib; tell you what I think?

15 Q Yes.

16 A At the time.

17 Q Take yourself back to 1997, when you realized that
18 you might be a juror in a capital case, what were you --

19 A I knew that I believed in the death penalty, but,
20 as a Christian, I wanted to know what the Bible said about
21 the death penalty.

22 Q And that's what prompted you to --

23 A Correct.

24 Q Could you tell the Court the name of your pastor
25 and the church that you attended at that time?

1 A His name was John Dubose, First Christian Church,
2 Milledgeville, Georgia.

3 Q And when you went to see the pastor, what did you
4 ask him?

5 A I asked him to tell me if the Bible indicated that
6 it was okay to issue the death penalty.

7 Q And what did he tell you?

8 A He referred me to the book of Romans. I cannot tell
9 you what scripture he referred me to. I don't remember that,
10 but that's basically all he said. He never gave me his
11 opinion or anything.

12 Q And, after you met with him, did you read the
13 passages that he recommended?

14 A I don't recall.

15 Q Do you remember the gist of what the passage said?
16 Could you describe it for the Court?

17 A I just remember what he paraphrased for me. He said
18 that there was a law made that man was supposed to abide by,
19 and if you did not abide by it, then the law was set up to
20 take care of people's offenses.

21 Q I think I asked you yesterday what interpretation -
22 - what translation --

23 A NIV.

24 Q NIV. And I have a brand new copy -- my copy at
25 home, it's not the NIV, so I wanted to be able to show you

1 the section I believe you probably were referred to.

2 MS. WIDDER: May I approach?

3 THE COURT: Yeah. Is this King James version?

4 MS. WIDDER: This is not the King James version.

5 This is the --

6 THE COURT: Okay. Does she have the King James
7 version?

8 MS. WIDDER: It's the International version.

9 THE WITNESS: I have the NIV.

10 THE COURT: NIV. Okay.

11 THE WITNESS: The New International.

12 THE COURT: And you want to --

13 MS. GRAHAM: Objection, Your Honor. She
14 specifically stated she didn't recall what verse it was
15 that she was given to read.

16 THE COURT: I can let her use it to refresh her
17 recollection. So, she doesn't remember the exact
18 passage, but she does remember the book. I mean, you
19 know, there's only 66 books and she picked the right
20 one.

21 MS. WIDDER: So, I brought up the passage that I
22 think it was and which I have --

23 THE COURT: You can show her and see if that will
24 refresh her recollection.

25 BY MS. WIDDER:

1 Q So, it might be hard to read the print on this, but
2 it's the passage that starts with 13 -- and if you need help
3 seeing it -- because I can't read it very well.

4 THE COURT: Could I see a copy of it too, please.

5 MS. WIDDER: Oh sure, Your Honor. Here you go.

6 THE COURT: Thank you.

7 MS. WIDDER: Do you have --

8 MS. GRAHAM: Yes.

9 THE COURT: This, you say, is the NIV version?

10 MS. WIDDER: Uh-huh (affirmative).

11 THE COURT: Okay. I'll stick with the KG, King
12 James.

13 (Laughter)

14 BY MS WIDDER:

15 Q Did you get a chance to read through that?

16 A I did.

17 Q And does that refresh your recollection as to
18 whether that was the passage?

19 A It seems to be that verse, and I actually read it
20 after we talked yesterday.

21 Q Oh. Okay. But you don't recall today whether you
22 read it at the time?

23 A I do not. I think I just heard him paraphrase it
24 when I was in his office.

25 Q And can you identify what verse from the Bible that

1 is? Can you tell me --

2 A You said it was verse one, chapter 13.

3 Q Okay. Do you mind reading that into the record for
4 me?

5 A "Let everyone be subject to the governing
6 authorities, for there is no authority except that which God
7 has established. The authorities that exist have been
8 established by God."

9 Q Did you read any further in that, do you think?
10 Because I actually think that whole paragraph is pretty --

11 A I think I --

12 MS. GRAHAM: Objection, Your Honor.

13 THE COURT: Yeah. She said that's all she read,
14 verse one.

15 MS. WIDDER: Okay. Your Honor.

16 BY MS. WIDDER:

17 Q Did your conversation with your pastor and your
18 review of the Bible passage, if at that time you did review
19 it, address your concerns about sitting on a capital jury?

20 A It did.

21 Q So, at the time that you appeared in court and were
22 questioned, is it your recollection that all your
23 reservations about the death penalty had been resolved?

24 A Correct. And, in addition to that, I distinctly
25 remember Mr. Esposito's attorney questioning me, and asking

1 me should the evidence present that would allow me not to
2 give him the death penalty, I said, yes, I could change my
3 opinion.

4 Q Do you recall the prosecutor asking you questions
5 about the death penalty as well?

6 A Yes.

7 Q Do you remember what you told him?

8 A I told him that I believed in the death penalty.
9 That's why he asked me the question I just told you.

10 Q Well, luckily, we have your transcript here. It is
11 Exhibit 3, I believe. May I approach the witness?

12 THE COURT: You may. Oh, show opposing counsel,
13 too.

14 MS. WIDDER: She has a copy.

15 THE COURT: Alright. You may approach.

16 (Plaintiff Exhibit 3 was marked
17 for identification.)

18 MS. WIDDER: So I have handed the witness a copy of
19 what's been marked as Exhibit 3. It is a portion of the
20 voir dire transcript from the first day of Mr.
21 Esposito's trial, and a little bit of the second.

22 Specifically, it has the cover page for the first day of
23 voir dire, which was Wednesday, September 3, 1997. The
24 opening portion of that day, Ms. Lane's, or Ms. Harris'
25 voir dire testimony, actually she was Mrs. Seagraves at

1 the time, and the cover page for the next day, Thursday,
2 September 24, 1997, to establish that her examination
3 took place on the first day of trial.

4 BY MS. WIDDER:

5 Q Could you please turn the page that has at the
6 bottom page number 212, and read the Court's question at the
7 bottom of that page and continue through your answer.

8 A At Ms. Seagraves?

9 Q At "Ms. Seagraves, are you conscientiously opposed
10 to capital punishment, that is, the death penalty?" And what
11 was your response?

12 A "I'm really undecided on how I feel about capital
13 punishment."

14 Q Now, if you would turn to the next page, page 214,
15 There, Mr. Bright asked you, "Ms. Seagraves, could you vote
16 to sentence another human to death," and what was your
17 response?

18 A I said yes.

19 Q Is that what the transcript says?

20 A Yes. On page 214, it is.

21 Q At the top of page --

22 A I said, no, and then it says, could you vote to
23 sentence another person to death, and I said yes.

24 Q No. You said no response.

25 A And then he said, "It's designed to be a tough

1 question," and I said yes.

2 Q But, you agreed that it was a tough question.

3 A Oh. Well, who knows, it was twenty-five years ago.

4 Q Oh, I'm not expecting you to remember the exact
5 details of something that happened that long ago.

6 A But did you read what's on page 213?

7 Q Well, if I could ask the questions first. If we go
8 to the bottom of that page, Mr. Bright explained at the end
9 of the trial, he'd be looking at you in the eye and asking
10 you to sentence a man to death, and he asked you if that was
11 something you could do. What was your response? That's on
12 lines 18 through 19.

13 A "Not without some reservation."

14 Q So, when you told the trial lawyers that you had
15 misgivings about the death penalty, did you tell them that
16 you had been so troubled that --

17 A No. I did not.

18 Q -- you went and saw your pastor about it?

19 A I did not.

20 Q Wouldn't that have been an appropriate time to be
21 forthcoming about that?

22 A It might have, but I didn't do it.

23 Q So, having refreshed your memory, I take it, about
24 your attitude at the time that you were questioned in voir
25 dire, is it possible that you are mistaken today about your

1 recollection that you didn't see your pastor --

2 A No, I was not.

3 Q Regardless of when you visited your pastor, were
4 you ultimately able to serve on Mr. Esposito's jury because
5 the pastor's guidance had resolved your concerns about the
6 death penalty?

7 A Ask the question again in a different way.

8 Q Sure. Regardless of when it happened, were you able
9 to serve on Mr. Esposito's jury because your reservations had
10 been resolved by your visit to your pastor?

11 A Yes.

12 Q And had your pastor told you something different,
13 such as that your Christian faith was incompatible with
14 imposing the death penalty, what would you have done?

15 A I would have shared that.

16 Q Now, over the years, you have signed several
17 statements documenting what you said to Mr. Esposito's
18 representatives. Do you recall how many statements you have
19 signed?

20 A One in '07, one in '21, and one in '22.

21 Q And do you recall the circumstances surrounding the
22 statement you signed on September 27, 2007? Where were you
23 living at the time?

24 A I was living in Maine at the time.

25 Q Do you remember who came to speak to you?

1 A Only because I met her today. Rebecca.

2 Q Rebecca Cohen? Yeah, she came down from Maine.

3 A She didn't remember me either.

4 Q I know. I mean, I don't remember things from
5 yesterday these days.

6 Do you remember that the person that you spoke with
7 drafted up an affidavit for you to sign and that you reviewed
8 it and then ultimately signed it?

9 A Yes.

10 Q Did you, in fact, help get it notarized and send it
11 to my office -- the lawyer who preceded me in Mr. Esposito's
12 case?

13 A Not the one in '07, I don't.

14 Q You don't remember? Just to refresh your
15 recollection about the events that happened, I have this
16 document. This is an e-mail chain that you were a part of.
17 It's like in reverse order. And that shows what happened in
18 2007.

19 MS. GRAHAM: Actually, I don't have that.

20 MS. WIDDER: Sorry about that. And, Your Honor, do
21 you want a copy?

22 THE COURT: Yes, please. Thank you, ma'am.

23 Appreciate that.

24 THE WITNESS: I don't recall any of this.

25 BY MS. WIDDER:

1 Q Okay. Well, if we had -- Do you recognize
2 theclanofHarris as your e-mail address?

3 A That's not my e-mail address. That's my ex-
4 husband's e-mail address, which I don't know why y'all sent
5 it to him because I have my own e-mail address. I've always
6 had it.

7 Q Do you have any doubt that when you said you
8 were --

9 A I told you. I don't have a clue. I don't remember
10 this.

11 Q Okay. Fair enough. Well, let's fast forward several
12 years to 2021. I'd like to turn to your handwritten statement
13 that you signed on July 9, 2021.

14 (Plaintiff Exhibit 2 was marked
15 for identification.)

16 BY MS. WIDDER:

17 Q Could you tell me -- tell us where you were living
18 in July, 2021?

19 A I was living in Dowling Park.

20 Q Is that where the Advent Christian Village is?

21 A Florida. Yes.

22 Q In Live Oak?

23 A In Dowling Park, Florida.

24 Q Okay. I haven't been down there. Is that a
25 retirement community?

1 A It is.

2 Q Were you also working for Advent?

3 A I was working at the communications center.

4 Q Do you recall meeting with representatives of Mr.
5 Esposito's in early July of 2021? Their names were Rachel
6 Chmiel, who I think you pointed out today, an investigator at
7 our office at the time, and Kaylee Brilhart, who was a law
8 student intern.

9 A I recall them. Yes.

10 Q Did you recognize Ms. Chmiel, Rachel, when you saw
11 her today?

12 A No, I did not.

13 Q Did you talk to them about your service as a juror
14 on Mr. Esposito's case and other matters?

15 A Yes.

16 Q Did they tell you that they would like to write
17 about things that you had told them, and --

18 A Yes.

19 Q And do you remember signing a handwritten statement
20 --

21 A Yes.

22 Q -- in 2021? And do you remember what you all
23 discussed at the time?

24 A No.

25 Q Do you recall talking to them about talking to your

1 pastor?

2 A No, I don't.

3 Q Did you tell them -- do you recall telling them
4 that you had gone to speak with your pastor about concerns
5 you had regarding the reconciling --

6 A I don't remember, but I probably did.

7 Q And, at the time, you had told them that this
8 happened after you were questioned in voir dire and prior to
9 being selected as a juror?

10 A I'm going to tell you for the last time, I do not
11 remember the sequence of events, when I talked to my pastor,
12 but it was prior to being selected as a juror. That is a
13 fact.

14 Q Okay. Thank you. Could I --

15 A It doesn't matter if I read it. I don't remember.

16 Q I just want to validate this, just to make sure.
17 So, this is Exhibit Number 2, which are Ms. Harris'
18 statements, statement of April 8, 2022. You can take a look
19 at it. Perhaps it will refresh your memory, but even if it
20 doesn't --

21 A Those are my initials, yes.

22 Q And, on the second page, is that your signature?

23 A That's my signature.

24 Q And do you mind reading the final paragraph,
25 paragraph 6, of that statement into the record please?

1 A "All the thoughts and memories in this statement
2 are true and correct to the best of my knowledge, and they
3 are all my own. I have not been coerced to state any of them,
4 nor promised anything in return for them."

5 Q And did you sign the statement, because you
6 believed it to be true accurate at the time?

7 A As far as I know.

8 Q I beg your pardon?

9 A As far as I know.

10 Q I think, at the time of the 2021 statement, you did
11 not recall that the pastor had suggested reading Romans 13.
12 Is that correct?

13 A (No response)

14 Q If you don't know, it's alright. After your visit
15 from Ms. Chmiel, did you recall --

16 MS. GRAHAM: Actually, Your Honor, could we get
17 a --

18 Are you withdrawing that question because she
19 didn't answer your question? You asked her a question
20 and you seemed to answer it, so just --

21 MS. WIDDER: I asked her a question that was
22 predicated on her remembering what happened in 2021.

23 MS. GRAHAM: But, then you answered the question,
24 and she didn't get the opportunity to answer. If you
25 could just ask the question --

1 MS. WIDDER: Oh, sure. I'm happy to ask it.

2 BY MS. WIDDER:

3 Q I think that, at the time you were interviewed in
4 July of 2021, you did not recall any of the Bible verses that
5 your pastor directed you to.

6 MS. GRAHAM: Objection, Your Honor, that's leading
7 and, I mean, that's just leading.

8 THE COURT: I guess it's sort of not leading, she
9 asked she basically asked if she recalled any passages
10 of scripture her pastor gave her in 2021. That's not
11 leading. That's not suggesting what scriptures or
12 anything.

13 MS. GRAHAM: It suggested to her that she did not
14 recall the scripture in 2021, and that's not in the
15 affidavit or in the second affidavit.

16 THE COURT: Oh. Why don't you just ask her that, if
17 she recalled something?

18 MS. WIDDER: I may ask the question or I may not?

19 THE COURT: You can ask her if she recalls any.

20 MS. WIDDER: My question is whether she recalls
21 that she didn't recall, so --

22 THE COURT: Okay. So, she said she didn't recall.

23 THE WITNESS: Correct.

24 THE COURT: Alright.

25 BY MS. WIDDER:

1 Q At some point in time, however, did it come to you
2 -- your recollection that you had been referred to Romans 13?

3 A No, it did not. All I knew was it was in the book
4 of Romans.

5 Q Only the book of Romans. Alright. Let's fast
6 forward again to April 8th, or April 7th of 2022. So, I think
7 you have a copy of the -- of the full affidavit in front of
8 you. Do you recognize the signed -- the first few pages which
9 are the, I think it's --

10 A Yes, ma'am.

11 Q In April of 2022, were you still living in the
12 Advent Christian Village in Live Oak?

13 A Yes.

14 Q Not Live Oak. You said it was a different township?

15 A Yes.

16 Q Do you know a man named John Morledge who works as
17 an investigator in my office?

18 A Yes.

19 Q In fact he picked you up today, right? He brought
20 you to the court today?

21 A Right.

22 Q Do you recall meeting Mr. Morledge for the first
23 time in the retirement community where you were living in
24 April?

25 A I do.

1 Q Did Mr. Morledge explain that he was following up
2 regarding a handwritten statement you had signed in July of
3 2021?

4 A Yes.

5 Q Do you recall whether you met with Mr. Morledge
6 both on April 7th and April 8th? And if you don't remember
7 the exact dates, do you remember that you met with him on two
8 separate dates?

9 A I don't remember two separate dates, but I do
10 remember one of them.

11 Q Do you recall telling Mr. Morledge that you
12 remembered that passage that the pastor referred to you was
13 in the book of Romans, and dealt with the idea that man's
14 laws have been ordained by God?

15 A I don't remember that, but I'm sure I did.

16 Q When you met with Mr. Morledge, did he provide you
17 a draft affidavit that essentially repeated what you had
18 signed in July of 2021?

19 A Yes.

20 Q Did Mr. Morledge give you the opportunity to review
21 it?

22 A I don't recall, but I'm sure he did.

23 Q Did you sit down with Mr. Morledge at his computer
24 and make edits to the document together?

25 A I don't remember.

1 Q Did you sign the document in the presence of a
2 notary, the one that you're looking at now?

3 A No. We did it over the phone.

4 Q You did what over the phone?

5 A He called a notary and the notary read it to me,
6 and I signed it as the result of the notary talking to us.

7 Q Over the phone?

8 A Over the phone.

9 Q And is the document in Exhibit 3 -- Exhibit 2
10 rather, the document that you finalized with Mr. Morledge?

11 A To my knowledge.

12 Q Could you please check page 3 of the exhibit. Is
13 that your signature at the bottom of the page?

14 A It is.

15 Q Could you please read a couple of paragraphs for
16 the record, specifically paragraph 5 and paragraph 7.

17 A "After being questioned as a potential juror during
18 the process in 1998, I sought counsel from my church pastor,"
19 after being -- "about being a juror in a capital trial. I
20 attended First Christian Church in Milledgeville at that
21 time. I had questions for my pastor about reconciling my
22 civic duty with being a Christian. After reading Bible
23 passages he recommended, I fulfilled my role as a juror in
24 the State versus John Esposito case. I attended church the
25 Sunday before the trial started, but I made a separate visit

1 to talk to my pastor about the jury service to that Sunday. I
2 recall my pastor directing me to a verse in the book of
3 Romans, which dealt with following man's laws because they
4 are governed by God. I looked this verse up after my visit
5 with my pastor. If my pastor had advised me that serving as a
6 juror in the capital trial was inconsistent with my faith, I
7 would have told the judge that I could not serve. My
8 conversation with my pastor gave me peace of mind after
9 serving -- about serving as juror."

10 Number 7: "The contents of this affidavit, as well
11 as statements I made in 2007 and 2021, are true," and best --
12 "and accurate to the best of my knowledge. I support DNA
13 testing of evidence in this case and the equality of
14 sentencing for these two co-defendants."

15 Q Thank you. Would you agree that the statements that
16 you signed in July -- on July 9th and April 8th, 2022, were
17 pretty specific that you spoke to your pastor after you had
18 been questioned in the jury selection?

19 A I do. But I contend I don't remember the sequence
20 of events. I had a stroke in 2000 and so my memory is not the
21 best in the world. I know none of our memories are the best,
22 but I think that contributes, so I can't tell you
23 specifically which came first, and that's -- I think I've
24 said that several times to you.

25 Q Thank you. And, I -- did your recollection ever --

1 of the sequence of events change after you spoke with counsel
2 for the State, Sabrina Graham?

3 A I don't remember.

4 Q Do you remember what Ms. Graham told you when you
5 two spoke?

6 A No. I don't.

7 MS. WIDDER: We have no further questions at this
8 time.

9 THE COURT: Okay. Attorney Graham.

10 MS. GRAHAM: Thank you, Your Honor.

11 Good afternoon, Ms. Lane. Nice to see you again.

12 CROSS EXAMINATION

13 BY MS. GRAHAM:

14 Q Let me ask you something, and this is in regard to
15 the 2022 affidavit, the last affidavit that you signed. You
16 just testified that the notary was on the phone when you
17 signed it.

18 A He was not available when Mr. John finished with
19 me, so he used my phone to call him.

20 Q The notary was not in the room with you when you
21 signed the affidavit?

22 A I do not think so.

23 Q How did the notary know that it was you?

24 A I don't guess he did.

25 MS. GRAHAM: Your Honor, I understand they are

1 going to call Mr. -- that investigator in rebuttal, but
2 at this time, we would preliminary move to strike that
3 2022 affidavit that it was not properly notarized.

4 THE COURT: Any response?

5 MS. WIDDER: Well, Your Honor, we plan to show that
6 it was properly notified -- notarized by a notary who
7 got in his car somewhere in Florida and traveled to the
8 retirement home community where Ms. Harris, or Ms. Lane,
9 was living and he notarized it in person in a room that
10 was not her apartment. It was -- which Mr. Morledge can
11 describe more fully.

12 So, I think it should be provisionally admitted,
13 and if it proves, if there is proof ultimately at the
14 close of these proceedings that it's not properly
15 notarized, then I suppose we can address that then. At
16 the moment, it is a notarized document and has the
17 signature and the notary has a stamp --

18 COURT REPORTER: Ms. Widder, could you speak up or
19 talk in the microphone for us, please.

20 MS. WIDDER: I'm sorry. Should I start over?

21 COURT REPORTER: No.

22 THE COURT: Yeah. She didn't hear her. Yeah, go
23 ahead and start over, she didn't hear you.

24 MS. WIDDER: I was saying that the document -- the
25 document has a notary signature and a stamp, I believe,

1 showing that it was done at the time. It has the stamp
2 of LaVern WJ Bentz, whose commission expires in the
3 future on August 5, 2024, who signed it in ink on the
4 same page as Ms. Harris signed it, and Mr. Morledge will
5 be able to testify to the sequence of events that
6 happened. He was present and I was not. But there is
7 nothing about this document that doesn't suggest it's a
8 properly notarized document.

9 THE COURT: I guess she's saying that, the notary
10 was not present in the same room and did not know Ms.
11 Lane -- who Ms. Lane was. Did not witness Ms. Lane sign
12 it because he was not present.

13 MS. WIDDER: I understand what she is saying, but
14 we have evidence to the contrary that suggests that --

15 THE COURT: That the notary was in the same room?

16 MS. WIDDER: That the notary was in the same room.

17 THE COURT: Oh. Okay.

18 MS. WIDDER: Mr. Morledge went to great lengths to
19 get the notary to drive to the retirement community.

20 THE COURT: Okay. And Ms. Harris, or Ms. Lane, says
21 she wasn't.

22 MS. WIDDER: And I'm saying, rather than strike it
23 provisionally, we should admit it provisionally and let
24 us tie up things through rebuttal, and we're expecting
25 the testimony in question was --

1 THE COURT: I see.

2 MS. WIDDER: -- in the presence of the notary.

3 MS. GRAHAM: That's fine, Your Honor.

4 THE COURT: Alright. Next question.

5 (Plaintiff Exhibit 2 was admitted

6 into evidence.)

7 BY MS. GRAHAM:

8 Q Ms. Lane, do you recall that we spoke on the phone
9 on a couple of occasions?

10 A I do.

11 Q And I went to see you there in Macon a couple of
12 weeks ago --

13 A Yes.

14 Q Is that correct?

15 A That's correct.

16 Q At any time, did I suggest any answers or --

17 A No, you did not.

18 Q -- testimony at all? Did I say to you that all you
19 needed to do is tell the truth to the best of --

20 A Absolutely.

21 Q -- your ability? Thank you.

22 Let's -- I know you testified to this on direct so
23 I will be very brief about this. Is it your testimony here
24 today that you do not recall when you went to see the pastor
25 whether it was before you were called for voir dire or after

1 voir dire?

2 A That is my testimony. Yes, correct.

3 Q So -- and, do you recall telling me that, at the
4 time, that the best of your recollection, it was that you
5 went to see your pastor before you were called for jury
6 service?

7 A Correct.

8 Q So, are you now saying you don't recall exactly
9 when you went to see your pastor?

10 A I don't recall.

11 Q Okay. When you went to see your pastor, do you
12 recall anything -- was there anyone there, anything like
13 that?

14 A No. There wasn't. I was the only -- I was the only
15 car in the parking lot.

16 Q Okay. So, you did go see -- did you go see your
17 pastor on a Sunday?

18 A No, I did not. I went to church, but I didn't go
19 see my pastor.

20 Q Okay. And you talked some about what the pastor --
21 you and your pastor talked about during this meeting. During
22 this meeting, did you discuss anything about Esposito's case?

23 A No, I did not.

24 Q Did you discuss any of the facts in Esposito's
25 case?

1 A No, I did not.

2 Q Did you discuss what the appropriate sentence was
3 in Esposito's case?

4 A No, I did not. I simply asked what the Bible says
5 about the death penalty.

6 Q And was the purpose of that to determine whether or
7 not you could give a death sentence, based up on your faith?

8 A Correct.

9 Q And that's as opposed to not being able to give a
10 death sentence based upon your faith?

11 A Correct.

12 Q Okay. Did the pastor, at any time, suggest to you
13 the appropriate sentence in this case?

14 A No, he did not.

15 Q Did the pastor read the verse and chapter in
16 Romans?

17 A No. He just said there was a verse in Romans that
18 talked about the laws being created for this type of
19 situation.

20 Q And what was your understanding of what the pastor
21 was telling you to read?

22 A That it was appropriate to give the death penalty
23 in extreme cases.

24 Q Is another way to say that is that it's appropriate
25 to give a death sentence based upon your Christian faith?

1 A Yes.

2 Q But, your Christian faith does not -- is it fair to
3 say that your Christian faith does not mandate any particular
4 sentence?

5 A Correct.

6 Q Did you provide any of that information when you
7 gave your 2022 affidavit regarding your visit with your
8 pastor?

9 A I don't recall.

10 Q When you were, let's go back a few years. I know
11 you said you had a stroke and your memory is not the best. Do
12 you recall what questions you were asked in 2007 by Ms.
13 Rebecca Cohen?

14 A No, I don't.

15 Q Do you recall if you provided the information about
16 the pastor visit in 2007?

17 A I do not.

18 Q If -- do you recall that there was any reason why
19 you would not have provided this information in 2007 about
20 your pastor visit?

21 A I was up front. If I was asked a question, I tried
22 to answer it to the best of my knowledge.

23 Q Had you been asked a question -- an appropriate
24 question regarding your pastor visit, you would have answered
25 that in 2007?

1 A Correct.

2 Q Do you recall the judge cautioning you after --
3 after you were sworn in and voir dire began, do you recall
4 the trial court cautioning that you were not to discuss the
5 case with anyone?

6 A No. I just know that we were a sequestered jury,
7 and that we were not allowed to talk to anybody, read the
8 newspaper, or watch TV.

9 Q And after -- you're saying that was after you were
10 sequestered?

11 A Correct.

12 Q At any point, did the passage that you read in
13 Romans influence your decision in this case?

14 MS. WIDDER: Objection.

15 THE COURT: What's the objection?

16 MS. WIDDER: Ms. Graham has argued that it's
17 irrelevant what she thought about during deliberations,
18 and now the question --

19 THE COURT: Okay. Response?

20 MS. GRAHAM: I didn't say it was irrelevant, what
21 she thought about in jury deliberations, Your Honor. I
22 said those particular instances in the affidavits where
23 they asked her would she have changed her mind based
24 upon new evidence was an improper impeachment of the
25 verdict. This is about whether there was an extraneous

1 influence on her decision to sentence him to death.

2 THE COURT: Well, just ask her that way.

3 BY MS. GRAHAM:

4 Q Do you believe that your reading of Romans
5 influenced your decision, your sentencing decision in this
6 case?

7 A No. Because I already believed in the death
8 penalty.

9 MS. WIDDER: Your Honor, I believe that that's, in
10 fact, exactly what's not permitted under the statute,
11 that the things that jurors think about during
12 deliberations is off limits. So, therefore, you can
13 consider the Bible passage and whether a reasonable
14 juror would be influenced by it, but her subjective
15 thought process at the time of the deliberations is off
16 limits.

17 THE COURT: Response.

18 MS. GRAHAM: Your Honor, in this particular case,
19 they're saying that this particular Bible verse
20 influenced her decision, and we're just merely
21 responding to that.

22 MS. WIDDER: Your Honor, we have not talked about
23 what influenced her decision. We talked about the
24 decision she made to talk to her pastor, how that
25 influenced her ability to sit on Mr. Esposito's jury and

1 how it may have influenced her is something that is an
2 objective question that the Court must decide based on
3 the potential influence of Romans 13.

4 THE COURT: Okay. I'm going to sustain the
5 objection and take it up -- I heard it, and I understand
6 what she's already testified to. Okay. So, I'll sustain
7 it.

8 BY MS. GRAHAM:

9 Q Did the Romans, did the -- whatever you read in
10 Romans, did that influence your decision to sit on this jury?

11 MS. WIDDER: Objection, Your Honor.

12 MS. GRAHAM: That's exactly what she said they'd
13 argued though.

14 MS. WIDDER: But she said she didn't -- doesn't
15 recall reading it.

16 THE COURT: She said what now?

17 MS. WIDDER: Ms. Harris says she does not recall
18 reading Romans. I mean, Ms. Graham can't have it both
19 ways --

20 THE COURT: Well, no, she -- she -- you refreshed
21 her memory before of what she remembered. Right?

22 Remember, you refreshed her recollection?

23 MS. WIDDER: I did, yes.

24 THE COURT: Okay. So, that's an appropriate
25 question. I'll allow that. I'll overrule the objection.

1 THE WITNESS: I need you to ask the question again.

2 BY MS. GRAHAM:

3 Q When -- from what you recall, your reading in
4 Romans, did that influence your decision to sit on this jury
5 -- Mr. Esposito's jury?

6 A I felt it was appropriate to chose to sit on the
7 jury after I had been told that there were laws in Romans.

8 Q Was there anything that you recall in reading
9 Romans that suggested to you what an appropriate sentence was
10 in Mr. Esposito's case?

11 A No, there was not.

12 Q Was the sole purpose of you seeking advice from
13 your pastor to determine whether or not, as a Christian, you
14 could sit on a death penalty case?

15 A Absolutely.

16 MS. GRAHAM: No further questions, Your Honor.

17 THE COURT: Any redirect?

18 MS. WIDDER: Yes, please, Your Honor.

19 THE COURT: Okay.

20 REDIRECT EXAMINATION

21 BY MS. WIDDER:

22 Q Ms. Lane, is it possible that you don't remember
23 whether a notary was present or not, given that you --

24 A It's possible.

25 Q And is it possible that you could have believed you

1 were following the court's instructions not to talk about the
2 case with anyone else when you went to your pastor because
3 you did not mention anything about Mr. Esposito's case?

4 A I have no clue.

5 MS. WIDDER: I think I have no further questions.

6 THE COURT: Alright.

7 MS. GRAHAM: No recross.

8 THE COURT: I have a quick question. During voir
9 dire, did the judge give instruction not to talk or do
10 anything during voir dire?

11 MS. WIDDER: Yes. The judge instructed -- at the
12 start of voir dire, which is included in Exhibit 3, I
13 believe, the transcript.

14 THE COURT: Okay.

15 MS. WIDDER: And he also, the judge asked and said
16 do you recall my instructions about not talking about
17 it.

18 THE COURT: Okay. Thank you, ma'am.

19 Alright, Ms. Lane. Thank you for being here very
20 much, and you have a good day. Okay?

21 THE WITNESS: Thank you. Appreciate it.

22 THE COURT: You take care.

23 MS. GRAHAM: Your Honor, I apologize. Can we take a
24 five minute bathroom break. I drank a lot of water up
25 here.

STATE OF FLORIDA
COUNTY OF SUWANNEE

AFFIDAVIT OF JANICE HARRIS

EXHIBIT

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JMD 5/10/23
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Esposito

Comes now the affiant, Janice Harris, who, having been duly sworn by an officer authorized by law to administer oaths, deposes and states as follows:

1. I am over the age of eighteen and competent to testify to the matters herein.

2. On July 9, 2021, I signed a statement regarding my service as a juror on John Esposito's case, which Mr. Esposito's representatives had written up based on information I provided to them. Because that statement was not a sworn affidavit, I am providing this affidavit as a sworn endorsement of my prior statement and to provide additional details regarding my service.

3. In 2007, I was approached by representatives of John Esposito to discuss my service on his jury trial in 1998. I was one of his jurors in the trial in Baldwin County. I discussed my concerns about Mr. Esposito's sentence with his representative, and signed an affidavit about my concerns at that time. I reviewed that affidavit in July of 2021, in meeting with Mr. Esposito's representatives again. I reaffirm that affidavit now (attached).

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4. In July of 2021, I learned that additional testing of certain pieces of evidence for touch DNA is possible, even though it wasn't in 1998. Given the developments in science and technology that have occurred in the last 20 plus years, I support that testing today. Indeed, I would like to know the results of any testing that might occur. Because of my concern that Mr. Esposito was sentenced more harshly than Ms. Woodward, it matters a lot to me that the evidence be tested so that we can know as much as possible about their responsibilities.

5. After being questioned as a potential juror during the voir dire process in 1998, I sought counsel from my church pastor about being a juror in a capital trial. I attended First Christian Church in Milledgeville at that time. I had questions for my pastor about reconciling my civic duty with being a Christian. After reading Bible passages he recommended, I fulfilled my role as a juror in the State v. John Esposito trial. I attended church the Sunday before the trial started, but I made a separate visit to talk to my pastor about my jury service prior to that Sunday. I recall my pastor directing me to a verse in the book of Romans, which dealt with following man's laws because they are governed by God. I looked this verse up after my visit with my pastor. If my pastor had advised me that serving as a juror in a capital trial was inconsistent with my faith as a Christian, I would have told the Judge that I could not serve as a juror. My

Initials: JH

conversation with my pastor gave me some peace of mind about serving as a juror.

6. It is a weighty, serious decision to vote for a death sentence. It is a decision that continues to weigh on me given that, after my service as a juror, Alicia Woodward pled guilty and accepted a sentence of Life with the Possibility of Parole. The disparity between the sentences of Ms. Woodward and Mr. Esposito continues to trouble me to this day.

7. The contents of this affidavit, as well as the statements I made in 2007 and 2021, are true and accurate to the best of my knowledge and belief. I support DNA testing of the evidence in this case, and the equality of sentencing for these two co-defendants now.

Further affiant sayeth naught:

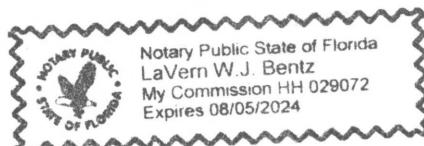
Dated this 8 day of April, 2022.

Janice Harris

Janice Harris
23740 Park Center Drive, Apt. #426
Live Oak, FL 32064
Phone: 386-209-2524

Sworn to and subscribed before me, this 8 day of April, 2022.

LaVern W.J. Bentz
Notary Public



County Suwannee
State of Florida

p10f2

Affidavit of Janice Harris JH

1. I am over the age of eighteen and competent to testify to the matters herein.
2. In 2007, I was approached by representatives of John Esposito to discuss my service on his jury trial in 1998. I was one of his jurors in the trial in Baldwin County. I discussed my concerns about Mr. Esposito's sentence with his representative, and signed an affidavit about my concerns at that time. I have had a chance to review that affidavit today, in meeting with Mr. Esposito's representatives again. I reaffirm that affidavit now (attached).
3. I have also learned today that additional testing of certain pieces of evidence for touch DNA is possible, even though it wasn't in 1998. Given the developments in science and technology that have occurred in the last 20 plus years, I support that testing today. Indeed, I would like to know the results of any testing that might occur. Because of my concern that Mr. Esposito was sentenced more harshly than Ms. Woodward, it matters a lot to me that the evidence be tested so that we can know as much

as possible about their responsibilities.

4. After being questioned as a potential juror during the voir dire process in 1998, I sought counsel from my church pastor about being a juror in a capital trial. I had questions about reconciling my civic duty with being a Christian. After reading Bible passages he recommended, I fulfilled my role as a juror in the State v. John Esposito trial.

5. It is a weighty, serious decision to vote for a death sentence. It is a decision that continues to weigh on me given that, after my service as a juror, Alicia Woodward pled guilty and accepted a sentence of Life with the Possibility of Parole. The disparity between the sentences of Ms. Woodward and Mr. Esposito continues to trouble me to this day.

6. The contents of this statement, as well as the one I made in 2007, are true and accurate to the best of my knowledge and belief. I support DNA testing of the evidence in this case, and the equality of sentencing for these two co-defendants now.

Further affiant sayeth naught

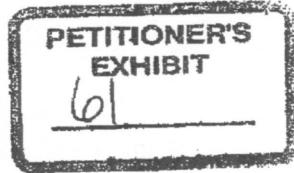
Kaylee Brilhart

witnessed 07/09/2021
Kaylee Brilhart

Janice Harris

Janice Harris

COUNTY OF ANDROSCOGGIN
STATE OF MAINE



AFFIDAVIT OF JANICE HARRIS

Comes now before the undersigned, an officer duly authorized to administer oaths, JANICE HARRIS, who, being sworn, deposes and states as follows:

1. I am over the age of eighteen and competent to testify to the matters herein.
2. In 1998, I lived in Baldwin County, Georgia. At that time my name was Janice Seagraves. In September of that year, I was chosen to serve on the jury at John Esposito's capital trial. That trial is an experience I will never forget.
3. I have recently met with a representative for Mr. Esposito's appellate attorneys. I spoke with that representative voluntarily and of my own free will. During our conversation, I learned that Mr. Esposito had taken a polygraph examination prior to the trial. I further learned that the results of that exam indicated he was not being deceptive when he said that he did not hit Mrs. Lola Davis with a tree limb or kick her in the head immediately prior to her death.
4. I would have liked for this polygraph test and its results to have been presented as evidence at Mr. Esposito's trial. I think it is very important information, and it would have made a significant difference to me when I was deliberating and voting on Mr. Esposito's sentence. It would not have changed the fact that I would have voted to convict Mr. Esposito of a crime, because he was obviously involved in what happened to Lola Davis. But, if the results of the polygraph had been presented, I would not have voted to sentence Mr. Esposito to death. I would have voted for a life without parole sentence instead.

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5. I remember that Mr. Esposito had a female co-defendant (who I was reminded was named Alicia Woodward). I never knew what happened to her with regard to this case, so I asked during my recent conversation with Mr. Esposito's attorneys' representative. I was told that Ms. Woodward did not get the death penalty like Mr. Esposito did. In my opinion, she was just as responsible for what happened as he was – and, according to the polygraph evidence, maybe even more so. It does not make sense to me or seem right for him to get so much more severe of a sentence than her.
6. All the thoughts and memories in this statement are true and correct to the best of my knowledge, and they are all my own. I have not been coerced to state any of them, nor promised anything in return for them.

FURTHER AFFIANT SAYETH NAUGHT.

Janice Harris
Janice Harris

Sworn to and subscribed before me this 1st day of September, 2007.

Lindy Fogg
Notary Public
My commission expires:

LINDY FOGG
Notary Public, Maine
My Commission Expires May 7, 2010

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Initials: JL

STATE OF GEORGIA
COUNTY OF BIBB

EXHIBIT

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AFFIDAVIT OF JANICE LANE

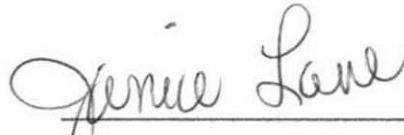
Comes now the affiant, Janice Lane, who, having been duly sworn by an officer authorized by law to administer oaths, deposes and states as follows:

1. I am over the age of eighteen and competent to testify to the matters herein.
2. I served as a juror in John Esposito's 1998 capital trial. At the time, my name was Janice Seagraves. Years after the trial, in September 2007 and April 2022, I signed affidavits regarding my service as a juror at Mr. Esposito's trial using my married name at the time, Janice Harris. I have since returned to my maiden name, Janice Lane, following my divorce from Bruce Harris.
3. Yesterday, May 10, 2023, I testified at an evidentiary hearing in Mr. Esposito's case pursuant to a subpoena. The hearing was held at the Butts County Judicial Center in Jackson, Georgia. After my testimony was concluded, I left the courthouse and was driven to my home in Macon, Georgia, by Devin Kirkland, an investigator at the office representing Mr. Esposito. I did not hear the testimony of any other witness in the case.
4. At the hearing, I testified that there was no notary present when I signed the April 8, 2022, affidavit. Upon returning home, I recalled that a notary had in fact been present to witness me signing the April 8 affidavit. I promptly called John Morledge, the investigator with whom I had spoken several times, but he did not answer the phone at that time. I wanted to apologize to him for my mistaken testimony.
5. I think I made that call around 5:30 p.m. on May 10, 2023. Mr. Morledge called me back a few hours later, but I was not available to talk to him. We texted back and forth, but finally spoke around 9:40 this morning. I told Mr. Morledge that my testimony about the notary was inaccurate and that I wanted to correct my misstatement.

6. I am providing this affidavit today because I would like to make sure that the record in Mr. Esposito's case accurately reflects that the affidavit I signed on April 8, 2022, was in fact notarized by a notary public who was present when I signed the document and witnessed me signing it. Mr. Morledge was able to facilitate this by driving to Macon this morning and providing a draft of this affidavit, which I have reviewed and approved.
7. I did not intentionally mislead the Court yesterday. I cannot really explain my lapse in memory during my testimony, other than to say that it had been a very long day, with a lengthy delay at the start of the hearing. I had skipped lunch that day in anticipation of being finished with my testimony much sooner and was tired, stressed, and hungry when I finally did testify. I regret any inconvenience my misrecollection may have caused.
8. I have voluntarily endorsed this affidavit and can verify that its contents are true and accurate to the best of my knowledge and belief.

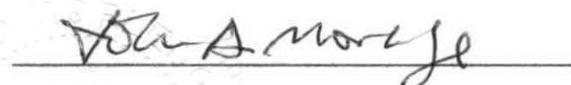
Further affiant sayeth naught:

Dated this 11th day of May, 2023.



Janice Lane
208 Pendleton Court
Macon, GA 31216
Phone: 386-209-2524

Sworn to and subscribed before me, this 11th day of May, 2023.



Notary Public

