

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Marion Bowman, Jr.,

Petitioner,

vs.

Bryan P. Stirling, Commissioner, South Carolina,
Department of Corrections, and The State of South Carolina,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

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****CAPITAL CASE****

QUESTION PRESENTED

Marion Bowman's capital trial counsel predicated his defense upon, and repeatedly injected, odious racial stereotypes about Bowman, a black man, and his relationship with the victim, Kandee Martin, a white woman. While Bowman maintained his innocence, and the State's case was built on incentivized testimony from others charged in Martin's murder, trial counsel pressured him to plead guilty because he believed any jury would convict him based on race. Despite that surety, trial counsel conducted no voir dire into the prospective jurors' biases. While introducing evidence in sentencing that Bowman sold drugs to support his family, trial counsel eschewed evidence in either the trial or sentencing documenting that Martin exchanged her possessions and sex for drugs – which would have undermined the most inculpatory evidence in the state's case – because he did not want to slander the “little white girl.” Instead, trial counsel told the jury that *the prosecution* was trying to inflame them by suggesting a sexual relationship between a black man and a white woman – a notion he considered so provocative that he apologized for even mentioning it. As trial counsel's subsequent post-conviction testimony established, these arguments were informed by his own racialized preconceptions, which left him unable to believe that Bowman's interactions with Martin on the day of her death could have any explanation other than his murdering her. The Supreme Court of South Carolina nevertheless ratified these failures as trial strategy.

The question presented is:

Did trial counsel provide prejudicially deficient assistance of counsel by repeatedly introducing and amplifying noxious racial stereotypes about Bowman, as

condemned by this Court in *Buck v. Davis*, 580 U.S. 100, 121-22 (2017), and in contravention of this Court’s precedents seeking the eradication of racial prejudices in the criminal justice system.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

This petition arises from a petition for a writ of habeas corpus proceeding in which Marion Bowman, Jr., was the petitioner before the Supreme Court of South Carolina in its original jurisdiction. The Respondents are Bryan P. Stirling, Commissioner of the South Carolina Department of Corrections, and the State of South Carolina. There are no additional parties to this litigation.

State v. Bowman, 2001-GS-18-00348 & 2001, Dorchester County, South Carolina, sentenced on May 23, 2002.

State v. Bowman, No. 26,071, South Carolina Supreme Court denial of direct appeal relief on November 28, 2005.

Bowman v. South Carolina, No. 05-10282, U.S. Supreme Court denial of a petition for writ of *certiorari* on June 12, 2006.

Bowman v. State, 2006-CP-18-00569, Dorchester County, South Carolina, denial of state post-conviction relief on March 12, 2012.

Bowman v. State, No. 2012-213468, South Carolina Supreme Court denial of petition for writ of *certiorari* on April 15, 2016.

Bowman v. Stirling, CA 9:18-287-TLW, U.S. District Court for the District of South Carolina, denial of petition for writ of habeas corpus issued on March 26, 2020.

Bowman v. Stirling, No. 20-12, U.S. Court of Appeals for the Fourth Circuit, opinion and order affirming the District Court issued on August 16, 2022, and order denying rehearing *en banc* issued on September 13, 2022.

Bowman v. Stirling, No. 22-6722, U.S. Supreme Court denial of a petition for writ of *certiorari* on May 22, 2023.

Bowman v. Stirling, No. 2024-002113, South Carolina Supreme Court denial of petition for writ of *certiorari* on January 16, 2025.

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Marion Bowman, Jr., a South Carolina prisoner under sentence of death, respectfully petitions this Court for a writ of certiorari to review the Supreme Court of South Carolina’s denial of his petition for writ of habeas corpus in its original jurisdiction.

OPINION BELOW

The decision of the Supreme Court of South Carolina in its original jurisdiction is unreported but is attached in the Appendix to this petition. App. A, 1a.

JURISDICTION

The state court issued its opinion on January 16, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Sixth Amendment to the Constitution, which provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.

This case also involves the Eighth Amendment’s prohibition against “cruel and unusual punishments” and Section 1 of the Fourteenth Amendment to the Constitution, which provides in relevant part:

No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Marion Bowman, Jr. was convicted of murder and arson in Dorchester County, South Carolina, for the death of Kandee Martin, who had been shot to death and – hours later – placed in the trunk of her car, which was then set on fire. All confidence in his convictions and death sentence was undermined by the deficiencies of Bowman’s trial counsel, who filtered his

professional judgments through a presumption of racial bias by Bowman's jury, only to repeatedly introduce and assign pernicious and prejudicial racial stereotypes to Bowman and Martin. The injection of trial counsel's biases into the proceedings, as well as counsel's failure to adequately represent Bowman in both the trial and sentencing phases, was the result of his own racism and biases, and thereby embedded arbitrary factors into the proceedings in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

In advance of trial, the solicitor made multiple offers to allow Bowman to receive a life sentence in this case in exchange for Bowman's guilty plea. App. B, 8a, *Bowman v. State*, No. 2012-213468 (S.C.). Bowman's lead counsel was well-known for routinely trying to convince clients to plead guilty in criminal cases or settle in family court cases even when they had a triable case. App. C, 11a, Investigator Robert Minter Affidavit. And, true to form, Bowman's counsel in this case focused the bulk of their energies on trying to force a plea from Bowman starting at their first meeting up until the time of trial.¹ Indeed, Bowman informed the trial court early in his case that counsel was advising him to plead guilty, even without significant aspects of discovery, because Bowman was black, and Martin was white, and white jurors would convict him solely based on the differences in their race as a matter of racial prejudice. App. E, 15a, Undated Letter to Judge Goodstein.

Specifically, in a letter sent to trial judge Diane S. Goodstein, Bowman, who was only 20 years old at the time of his arrest, wrote:

Dear Honorable Judge Goodstein:

¹ Although he was a very experienced investigator retained by counsel, Minter was never given any direction or "investigative tasks" on the case. App. D, 13a, Robert Minter 2018 Affidavit. He was so underutilized that he did not recall meeting with Bowman or any fact witnesses. *Id.* Instead, he was tasked with "meet[ing] with Marion's mom about a plea offer." *Id.*

I Marion Bowman Jr. am well aware of the offer Mr. Bailey has gave me [sic]. However, I'm so confused I don't what to do. Mr. Bailey is offering me a plea bargain of life without the possibility of parole, but is still giving me information concerning the case. And the fact that is an [sic] substantial amount of discovery I do not have it is very difficult to understand what is going on. My attorney is trying to convince me to accept this plea because he said and I quote "These white jurors whose skin is whiter than his is going to see a Black male verses, a white female victim, are going to convict me because of my skin color, and not based upon evidence."

Id. (Errors in Original). Then on November 5, 2001, he again wrote to Judge Goodstein alerting her again that he was unwilling to plead guilty, even in exchange for a life sentence:

Dear Judge Goodstein:

Nov. 5, 2001

I Marion Bowman Jr am writing to ask you may I see you while you are here in Dorchester County. Reason for this meeting is that I'm scared for my life and I'm aware of the offer Mr. Bailey has offered, which I refused to accept. I understand that Mr. Bailey has all of his facts to try this case, so I would like to request a evidential hearing AS SOON AS POSSIBLE. . . .

App. F, 17a, Letter to Judge Goodstein (Nov. 5, 2001). Judge Goodstein responded by informing Bowman that his counsel could request a hearing on the issue, which never happened. App. G, 18a, Goodstein Response Letter. He also wrote to the Governor and the South Carolina Bar seeking assistance. App. H, 19a, Governor & Bar Letters.

Despite warning Bowman that any jury would be racially biased against him, when the case proceeded to trial, lead counsel conducted no voir dire to even attempt to identify jurors with racial prejudices. Trial counsel stood mute during the state's case-in-chief, failing to object to the admission of prejudicial and minimally probative evidence. Finally, trial counsel affirmatively and repeatedly introduced and ratified racial stereotypes before the jury. The sole expert that trial counsel called in mitigation in sentencing rated his performance the worst by any capital defense counsel in all of the 29-30 capital cases he had worked on. App. I, 21a, Jeffrey Yungman.²

² Yungman was shocked by "the lack of communication and trial preparation" by counsel. App. J,

Competent counsel would have found much to challenge in the state's case, which was circumstantial and predicated upon incentivized testimony. The primary witnesses implicating Bowman were James ("Tawain") Gadson and Travis Felder, both of whom were charged in the case and testified in exchange for plea agreements to greatly reduced sentences.³ The State's evidence that was not reliant on Gadson and Felder was merely circumstantial. That evidence revealed Martin's body was recovered from the trunk of her burning car in a rural area alongside Nursery Road in the early morning hours of February 17, 2001. *State v. Bowman*, 623 S.E.2d 378, 380, 382 (S.C. 2005). An autopsy established that she was shot to death and deceased prior to the fire. *Bowman*, 45 F.4th at 743. Shell casings, a fired bullet, blood evidence, and the victim's shoe were recovered at the crime scene. *Id.* at 746. Bowman's DNA was identified from vaginal swabs taken during Martin's autopsy.⁴ *Id.* at 744.

22a, Jeffrey Yungman 2018 Affidavit. "From my experience in 30 death penalty cases, they neglected to do any of the routine tasks attorneys regularly performed throughout their representation of capital clients." *Id.* Investigator Robert Minter, who was retained by Bowman's counsel, also noted that counsel was "not aggressive in represent[ing] his clients" and "did not like to try cases." He was lackadaisical to the extent that he did not care if his investigators did not complete their assigned tasks. He was also deliberately obstructive to Bowman's mitigation investigator because counsel "strongly disliked" her and "considered her too pushy and headstrong." Rather than assist her by issuing subpoenas and assisting her with other tasks, counsel "refused and resented her for trying to do her job." App. C, 11a, Investigator Robert Minter Affidavit.

³ In the hours following the discovery of Martin's body, the police arrested Bowman on an outstanding warrant for an unrelated charge of receiving stolen goods. App. K, 24a-26a. The police subsequently arrested Gadson, Bowman, Felder, and numerous others, including Bowman's wife, sisters, and father for principal or accessory involvement in the crimes against Martin. The state subsequently manipulated all these witnesses to change their pretrial statements and to testify against Bowman by entering into plea agreements to reduce their charges, or sentences in exchange for their testimony against Bowman. *Bowman v. Stirling*, 45 F.4th 740, 756 (4th Cir. 2022).

⁴ A defense witness in sentencing testified that Bowman and Martin had been alone together in his bathroom for a while and then left his home together earlier that day. *Id.* at 746. Likewise, multiple witnesses testified that Bowman and Martin were friends, who were often seen together. App. L, 27a-29a. The forensic pathologist for the state acknowledged that the seminal fluid from which

At trial, the state presented evidence that Bowman had a pistol at a party on the afternoon of the murder. Later that day, according to Bowman's sister – who was also testifying pursuant to a plea agreement after being charged – and two other state witnesses, Bowman saw Martin in conversation and attempted to speak with her because she owed him money. They testified that when she rebuffed him, Bowman cursed at her and said she would be dead that night. *Id.* at 743-44.

That evening, Bowman was seen after midnight in the parking lot of a rural nightclub where Felder and others had gathered. Around 3:00 a.m., after all had departed from the club and returned to town, Bowman asked Felder for a ride home. This request came thirty minutes before Martin's burning car was discovered, but seven hours after it was first seen on the side of the road and the neighbor, who ultimately discovered it, first heard gunshots. When arrested, Martin's wristwatch was found in the pocket of the pants Bowman reportedly had worn the previous night. *Id.* at 745-46.

Given this circumstantial evidence, the State relied heavily on the testimony of Gadson and Felder, its primary witnesses; both of whom were testifying pursuant to plea agreements. Gadson provided the only purported eyewitness account of Martin's shooting and the aggravating circumstances found by the jury in sentencing: kidnapping and larceny while armed with a weapon.

Gadson – who testified pursuant to a plea agreement that allowed him to avoid the death penalty in this case – offered a lurid account of Martin driving up to the outdoor party with Bowman, who told Gadson to get in the car before directing Martin to a remote rural location.

the DNA evidence was taken could have been present for as much as 48 hours prior to Martin's death. App. M, 30a-31a. The jury rejected the alleged aggravating factor of criminal sexual conduct during their sentencing deliberations. App. N, 33a-34a.

Gadson claimed that once out of the car Bowman announced his intention to kill Martin “because she was wearing a wire.” *Id.* at 744. According to Gadson, Martin approached them and told Bowman she was scared. Gadson described the three hiding in the woods as a car drove by and then, as they walked back towards her car, Bowman abruptly shot at Martin five times, hitting her twice. Between the shots, Gadson claimed that Martin pleaded with Bowman not to shoot her anymore because she had a child to take care of. After Martin fell to the ground, Gadson claimed Bowman dragged Martin’s body into the woods. As they drove back to town in Martin’s car, Gadson claimed Bowman bragged about shooting Martin in the head and threatened to “blow [Gadson’s] brains out” if he reported what he had seen. *Id.*

Felder provided the only purported eyewitness testimony for the events surrounding the arson. Felder claimed that after Bowman asked him to help park Martin’s car around 3:00 a.m., they drove – with Bowman driving Martin’s car and Felder following in his own car – to Nursery Road where Bowman dragged Martin’s body from the woods, placed it in the trunk of her car, confessed to her murder, and lit the car on fire. During the guilt phase of the trial, Felder testified that he followed Bowman straight to the place where Martin’s body was, but when confronted by a security video during sentencing, he admitted that on the way out of town *he* stopped at the EZ Horizon Store and purchased the gasoline that was used to set fire to Martin’s car and body. *Id.* at 745.

During the state’s case, counsel failed to object to the admission of evidence of Bowman’s DNA in seminal fluid taken from vaginal swabs obtained from Martin during her autopsy. This despite there being no dispute that Bowman and Martin knew one another and had been together in the hours before her death, and in spite of the fact that Bowman was not charged with any sexual offense. In closing arguments during the trial, the Solicitor’s only mention of DNA evidence was

that it proved that blood recovered from the road where the murder was committed was Martin's. App. M, 30a.

When trial counsel rose to give closing argument during the guilt-innocence phase, there had not yet been any mention of race during jury selection, the trial evidence, or the Solicitor's argument. Nonetheless, trial counsel offered arguments that presumed and applied a prejudicial gloss to the evidence. Trial counsel tried to contest Gadson's testimony that Martin had hidden in the woods to avoid being seen by a passing car, arguing that Martin would instead have flagged down the car occupied by "white people" because, after all, she was "a young, white lady and she's out there with two young, black males." App. O, 49a.⁵ Trial counsel then turned to the DNA evidence – the admission of which he had not challenged:

[L]et's look at the DNA. It showed sometime that Miss Martin, who was friends with Mr. Bowman, Miss Martin who was friends with Mr. Gadson, Miss Martin who was friends with a lot of these folks in this community in Branchville, sometime Mr. Bowman and her had relations. Sometime. Do you think that was put there to try to poison you to get you angry? Do you think that was presented to want to get you to lash out? Do you think there was a reason? How can you tie that into this case? How?

App. O, 59a. Trial counsel also referred to Martin as a "little girl." App. O, 63a.

In sum, trial counsel accused the state of trying to prejudice the jury with evidence of "a

⁵ The complete argument on that point is as follows:

Gadson accordingly testifies that Miss Martin is so frightened that she jumps in the woods. That's Mr. Judy. They're white people. I hate to say this, and, again, please, don't hold this against Mr. Bowman, if anybody was frightened, why did they jump in the bushes? Why not flag the car down, jump the car? Does that make any sense to you? What is the reason why anybody would jump in the bushes if they're afraid?

Especially Miss Martin is a young, white lady and she's out there with two young, black males. . . .

Id.

black man and white woman having sex.” App. R, 180a. This argument necessarily rests on the assumption that the jury would be infuriated by such a relationship – which again invites the question of why trial counsel did not object to the admission of this evidence at trial, and why trial counsel would himself introduce make this argument. This would not have happened unless trial counsel’s assessment of both the relevance and prejudicial impact of this evidence was filtered through that very same racial bias.

Trial counsel continued in this vein during sentencing. The defense, through Bowman’s African-American second chair counsel, presented testimony that on the afternoon before her death, Bowman was alone with Martin in a bathroom for a while before leaving the home with her. App. P, 68-69a. During closing argument, she then argued that this was a consensual sexual encounter.

Let’s look at the facts. Murder was committed while in the commission of criminal sexual conduct. Did Mr. Bowman intend to commit CSC and a murder occurred? What did you hear? You heard from Frankie Martin, he was on that stand, he said Randee Martin was at his apartment. Mr. Fogle. And who came up? Marion Bowman and Mr. Fogle. They went into the bathroom together, Kandee and Marion. What do people do in the bathroom? Have consensual sex? Because if they didn’t, they did come out of the bathroom. Frankie Martin was able to tell you nothing looked different to him, both of them looked okay, they went in her car. You would have heard something from Frankie Martin if anything was different. And they drove away.

App. Q, 71a. Lead trial counsel, however, barely acknowledged the topic.

What was Miss Martin doing over at Frankie Martin’s house? I don’t know. Mr. Martin testified they were alone.

App. Q, 96a.⁶ Trial counsel then returned to the argument that the state was trying to introduce racial prejudice by himself introducing racial prejudice.

⁶ Lead trial counsel acknowledged during post-conviction testimony that he wanted to get away from this topic as quickly as possible rather than just arguing that Bowman and Martin had consensual sex – as his black co-counsel did. App. R, 180a.

Why is there an aggravating factor in here about criminal sexual conduct? Has anybody testified to you in here of nonconsensual relations between a human being and another human being? It doesn't matter whether Miss Martin *who is shown in that picture*, Mr. Bowman *there as seated* there happen to be friends.

App. Q, 96a (emphasis added). These explicit invitations for the jury to contemplate Martin's picture and Bowman's appearance as he sat in court was clearly a head-nod to Martin being a "little [white] girl" with blonde hair, App. Q, 63a, App. S, 181a, and Bowman being a very dark-skinned black man with a cornrow hairstyle at the time of arrest,⁷ App. T, 185a, News article from time of arrest with Bowman's picture; App. U, 186a, Recent News article with the same picture of Bowman in color.⁸ Trial counsel then returned to his surety that the jury was offended by this relationship.

That is not to anger you, that's not for me to anger you and I apologize. And I raised my voice for a moment to point something out and that is this: You've got to prove, the State has to prove to you folks there was nonconsensual sex. Other than that we just muddy up the water.

Counsel attempted to justify his approach during his testimony during the post-conviction relief ("PCR") evidentiary hearing, but only corroborated the racialized lens through which he viewed the case and his client. Even though Gadson's prior statement about events at the crime scene included information that Martin was smoking crack in the vehicle at the crime scene, App. Y, 202a, counsel did not present that information in sentencing – when Bowman had already been

⁷ "[C]ornrows . . . are . . . most closely associated with Black people. NYC Commission on Human Rights, Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, available at <https://www.nyc.gov/site/cchr/law/hair-discrimination-legal-guidance.page#:~:text=While%20a%20range%20of%20hair,closely%20associated%20with%20Black%20people> (last visited on December 14, 2024).

⁸ Bowman was picked on growing up "because his skin is so dark, darker than everyone else's." App. V, 190a, Kendra Bowman Affidavit. People nicknamed him "Black" so much that he and his family finally just accepted it and started using "Black" as a nickname. *Id.* See also App. W, 195a-196a, Bowman (aka "Black") picture from sentencing; App. X, 198a-202a.

convicted of the offenses. When asked why he did not present available evidence during sentencing that Martin was known to prostitute herself for drugs with Bowman and others, even while counsel affirmatively presented evidence of Bowman dealing drugs to support his family, counsel said:

What I'm saying is, it does no good, I tried that Gardner case up here where they tried to portray that white girl being with five African American men and, Mr. Brown, you *slander* a victim, you know the little girl is dead, they got those nasty pictures in there in this penalty phase with her burned body, the statement allegedly, "Black, please don't shoot me, I got a baby." Marion would have known she had a child, he grew up with her. I tried to stay away from hurting Miss Martin in any way because all the evidence and all the facts show she got shot in the back.

App. R, 113a-114a. Trial counsel's response is revealing. He did not offer an explanation for evidence that inculpated his client because stating that a "white girl" had sexual relationships with "African American men" is "slander." He then justifies his omission by voicing his own revulsion at the crime and reciting specious reasons – e.g., Bowman's knowledge that she had a child – to accept the incentivized testimony of the state's witnesses.

Trial counsel next argued that he would not "portray my guy as the reason why she's dead, dope, sex, drugs" and was "making, the State prove their case," ignoring that Ms. Martin's drug use and sexual relationship with Mr. Bowman was all that could undermine the State's case for death. App. R, 115a. Finally, while being questioned in this line, counsel spontaneously confessed his true views, which he addressed directly to Bowman:

Marion, what are you doing on Nursery Road at that time of the morning with a white female and African American males in Dorchester County? Really. This is 2001 but what good are you doing out there on a dirt road? . . .

App. R, 116a.⁹ When PCR counsel noted that Bowman might have been out on that dirt road at

⁹ According to Jim Brown, Bowman's counsel during state post-conviction relief proceedings, counsel was looking at Bowman and speaking directly to him. It was so shocking that everyone in the courtroom was stunned and there was a long silence before the questioning continued. App. Z, 205a, Jim Brown Affidavit.

that time of the morning so that the victim could "smoke crack," App. R, 118a, or potentially prostitute herself in exchange for crack – which would be consistent with Bowman being innocent and Gadson being the killer – trial counsel responded nonsensically that most people would use drugs by “stay[ing] inside,” App. R, 118a-119a. Trial counsel also confessed his own personal view of the case, which – overrode his professional judgment – was that Bowman and Gadson “planned to bring this girl out there and dispose of her.” App. R, 119a.

Trial counsel next acknowledged that Ms. Martin’s autopsy showed that she had cocaine in her system but testified that he wanted to keep that information from the jury, along with any information “about whether or not people had ever touched Miss Kandee Martin in a certain way, degrading, sexual way.” App. R, 122a-123a.¹⁰ While counsel conceded that he knew of the victim’s general reputation as a drug user who prostituted herself for drugs, her prior conviction for drug possession, and “an indecent exposure case involving sex on the town square of Branchville,” App. R, 162a,¹¹ trial counsel asserted that presenting that truthful evidence would only be “hurting the victim.” App. R, 123a-124a. He did not even want to suggest that Bowman had her watch because she pawned it to him for drugs, despite viewing Bowman’s possession of the watch as “tremendously” hurting Bowman’s innocence defense. App. R, 158a.¹²

¹⁰ Again, counsel clearly assumed that Martin was sexually assaulted while alive or dead rather than even considering the possibility that she engaged in consensual relations with Bowman. Thus, counsel’s view was that he was simply trying to avoid argument by the solicitor that a “young African American male wanted to go play with a dead [white] girl, oh, my God, think about that.” App. R, 179a.

¹¹ Dale Davis, the mitigation specialist retained by counsel, also provided evidence that during her investigation, she learned that Martin “was known in the Branchville law enforcement community to have been involved in loitering/prostitution activities in the area of Highway 78.” App. AA, 209a.

¹² And, inexplicably, whether to present this evidence, per counsel's thinking, was also tied to the fact that Bowman’s jury was “twelve people . . . that don't look like him,” App. R, 165a, presumably meaning that it would only be acceptable for counsel to argue that Bowman dealt drugs

[H]urting the victim I think would have hurt Marion more, maybe helped him a little bit evidentiary wise that she did dope. What I was worried about, I guess, where she got her dope from, and everybody in the world knew, and it came out in the penalty phase also, that Marion lived on the street, he was self supporting, he tried to find ways to support himself and he sometimes delved into something he shouldn't have delved into.

But I also had the horrible experience dealing with the Missy McLaughlin trial where that lady was also accused of using her body for drugs, and believe me, it didn't sit well with that jury.

App. R, 124a.¹³ Although counsel affirmatively presented evidence in mitigation that Bowman “was basically kicked to the curb at a young age and he would do what he had to do to survive,” *id.*, including dealing drugs,¹⁴ trial counsel again did not want to “hurt” the victim more by presenting evidence that she was prostituting for drugs and sometimes getting those drugs from Bowman, App. R, 124a.

In short, counsel’s racialized view of the case and his client distorted his judgment. Presenting evidence explaining the DNA evidence and the presence of the watch, including evidence of the victim’s addiction to crack, would be an “attack [on] the victim,” *id.*,¹⁵ or pitting

in mitigation in order to survive and to truthfully argue that Martin prostituted herself for drugs if the jurors were people of color.

¹³ McLaughlin was the murder victim in the Joseph Gardner case previously mentioned in counsel’s testimony as one of his former clients. <https://murderpedia.org/male/G/g1/gardner-joseph.htm>; App. R, 113a-114a. While counsel clearly disbelieved the evidence presented that McLaughlin initially was voluntarily engaging in sexual acts with multiple men at the same time, it is notable that the South Carolina Supreme Court found that information as a matter of undisputed fact. *State v. Gardner*, 505 S.E.2d 338, 339 (S.C. 1998).

¹⁴ He did this despite counsel’s later admission that he viewed evidence of drug dealing, regardless of the reason, as evidence of Bowman’s lack of “social redeeming value.” App. R, 163a.

¹⁵ PCR counsel was very clear that he was talking only about truthful evidence and not slanderous allegations. *See, e.g.*, App. R, 129a (“I’m not talking about attacking her, I’m talking about being truthful.”)

“the white girl versus the black young man,” App. R, 130a,¹⁶ or “black versus white, white with a black man [sexual relations],” which counsel viewed as “dirty.” App. R, 172-73a.¹⁷ Presenting evidence that the victim was a drug user was saying she “should die for the use of dope.” App. R, 132a. Presenting evidence in sentencing that the victim prostituted herself for drugs and had cocaine in her system at the time of her death was somehow opening the door or admitting that it was true that Bowman killed her “because she was going to rat him out for selling dope.” App. R, 132a-133a.

This issue was raised in the court below. The state court interpreted this evidence not as trial counsel exhibiting racism, but as trial counsel executing “valid strategic decisions . . . in an attempt to defuse any racial animus the jury may have had against Bowman, [a black man,] who was indicted for murdering a white woman.” App. A, 5a. Per the lower court, this was consistent with his concern “that the jury might view the circumstances of the murder through a racial lens.” *Id.* Because it was trial counsel who viewed this case through a racial lens, and who performed in a prejudicially deficient manner as a result, certiorari should follow.

REASON FOR GRANTING THE WRIT

Certiorari is warranted in this capital case because the state court committed egregious error in “decid[ing] an important federal question in a way that conflicts with relevant decisions

¹⁶ Counsel’s bias against his own client is evident even in counsel’s references to Martin as a “little white girl,” and Bowman as a “man” or a “young man” several times, App. R, 172a (“I wanted to show that this man would not hurt that little girl); *see also* App. R, 130a, 155a-156a; when Bowman was 20 years old, App. BB, 212a, and Martin was 21 years old at the time of her death, App. CC, 218a.

¹⁷ Again, counsel clearly viewed the suggestion that Martin had consensual sex with black men as demeaning, dirty, and hurting her, even though Martin was known as a person that “did not see race” and who dated black guys. App. V, 191a, Kendra Bowman Affidavit. Indeed, counsel, but perhaps not the jury, was aware that her son Tyler is biracial. App. DD, 219a-220a.

of this Court.” Sup. Ct. R. 10(c). Specifically, Bowman’s convictions and death sentence must be vacated under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution due to trial counsel’s prejudicially deficient performance in insisting that Bowman plead guilty despite maintaining his innocence and by counsel’s injection of odious racial prejudice into the case. Additionally, trial counsel rejected substantiated mitigating evidence and arguments because his own biases led him to assume his black client’s guilt and to eschew Martin’s documented history of drug addiction and pawning personal items or prostituting herself to pay for drugs as degrading and slandering a “little white girl.”

In denying this claim, the South Carolina Supreme Court sanctioned trial counsel’s preoccupation with these racist tropes by deeming his presumption of bias by the jury and injection of malignant stereotypes as trial strategy. This holding inverts this Court’s case law, which recognizes that the introduction of such “powerful racial stereotype[s]” and “particularly noxious strain[s] of racial prejudice” is prejudicial, as “[s]ome toxins can be deadly [even] in small doses.” *Buck v. Davis*, 580 U.S. 100, 121-22 (2017). “When a defendant’s own lawyer puts in the offending evidence,” moreover, “it is in the nature of an admission against interest, more likely to be taken at face value.” *Buck*, 580 U.S. at 122.

Defense counsel, like the prosecutor in a capital case, must refrain from making racially biased arguments. *McCleskey v. Kemp*, 481 U.S. 279, 309 n.30 (1987) (It is beyond dispute that “[t]he Constitution prohibits racially biased prosecutorial arguments”); *Id.* at 309 (quoting (quoting *Batson v. Kentucky*, 476 U.S. 79, 85 (1986)) (This Court has “engaged in ‘unceasing efforts’ to eradicate racial prejudice from our criminal justice system.”); *Turner v. Murray*, 476 U.S. 28, 35 (1986) (plurality opinion) (Courts cannot avert their eyes from the risk that “racial prejudice infect[ed] a capital sentencing proceeding ... in light of the complete finality of the death

sentence.”); *California v. Ramos*, 463 U.S. 992, 998-99 (1983) (“[T]he qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination.”); *Rose v. Mitchell*, 443 U.S. 545, 555 (1979) (“Racial prejudice, “odious in all aspects, is especially pernicious in the administration of justice.”).

While this Court has taken great pains to eliminate racism from the criminal justice system, studies of juries confirm that defendants remain vulnerable to racial bias, which they are “more likely” to face during trials for murder, assault, and robbery – offenses associated with a “black criminal stereotype.” Mikah K. Thompson, *Bias on Trial: Toward an Open Discussion of Racial Stereotypes in the Courtroom*, 2018 Mich. St. L. Rev. 1243, 1246 (2018) (citing Samuel R. Sommers & Phoebe C. Ellsworth, *How Much Do We Really Know about Race and Juries? A Review of Social Science Theory and Research*, 78 Chi.-Kent L. Rev. 997 (2003)). Tragically, these “stereotypes about Black men are a part of the American tradition,” and implicate “a set of interrelated but unsubstantiated stereotypes as the myth of the Bestial Black Man, a myth ‘deeply imbedded in American culture, that black men are animalistic, sexually unrestrained, inherently criminal, and ultimately bent on rape.’” Thompson, at 1250 (quoting N. Jeremi Duru, *The Central Park Five, The Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 Cardozo L. Rev. 1315, 1320 (2004)). This Court has recognized this “potent” and “powerful racial stereotype – that of black men as ‘violence prone,’” and has recognized the danger that such “a particularly noxious strain of racial prejudice” risks the jury “making a decision on life or death on the basis of race.” *Buck*, 580 U.S. at 121. The state court below, however, not only failed to condemn trial counsel’s introduction of these stereotypes, but ratified it as trial strategy. This finding cannot be reconciled with this Court’s condemnation of such racialized arguments or its precedent protecting a defendant’s right to the effective assistance of counsel.

The South Carolina Supreme Court's determination that trial counsel's repetition and amplification of racist tropes, which reflect our national history of devaluing the lives of black men, denied Marion Bowman the right to effective, conflict-free counsel, and a fair trial and sentencing and this Court should grant the writ of certiorari to review this issue because this type of acceptance – and even approval of the injection of racism in the criminal justice system is a dangerous and slippery slope to allow odious and impermissible arguments in capital sentencing proceedings.

This Court has repeatedly emphasized the fundamental role of counsel in ensuring a defendant a fair trial. *See, e.g., Gideon v. Wainwright*, 372 U.S. 335, 343-44 (1963). Counsel, the Court has stated, is the means through which all other rights of the person on trial are secured. *United States v. Cronin*, 466 U.S. 648, 653 (1984); *see also United States v. Ash*, 413 U.S. 300, 307 (1973) (counsel serves as a “guide through complex legal technicalities”). This core component of our adversary system is meaningless, however, if counsel performs incompetently. Thus, the Court has held that the right to counsel necessarily encompasses “the right to the effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Id.*

In determining whether trial counsel provided ineffective assistance of counsel, pursuant to the Sixth and Fourteenth Amendments, the courts must apply the standards set forth in *Strickland*. The *Strickland* standard is satisfied if a petitioner establishes both that his attorney’s representation “fell below an objective standard of reasonableness,” *id.* at 688, and that the petitioner was “prejudiced” by his attorney’s substandard performance, *id.* at 692. *See also Williams v. Taylor*, 529 U.S. 362 (2000); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Porter v. McCollum*, 558 U.S. 30 (2009) (per curiam); *Sears v. Upton*, 561 U.S. 945 (2010) (per curiam); *Hinton v. Alabama*, 571 U.S. 263, 274 (2014) (per curiam);

Buck v. Davis, 580 U.S. 100 (2017); *Andrus v. Texas*, 590 U.S. 806 (2020) (per curiam). The *Strickland* “standard is necessarily a general one,” *Bobby v. Van Hook*, 558 U.S. 4, 7 (2009) (per curiam), that requires a case-by-case examination of the facts, *Williams*, 529 U.S. at 391. At minimum, however, counsel has a duty to conduct an “independent examination of the facts, circumstances, pleadings and laws involved.” *Strickland*, 466 U.S. at 693.

Marion Bowman made clear that his objective to trial counsel was to be found innocent. *McCoy v. Louisiana*, 584 U.S. 414, 417 (2018) (“a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty”). Trial counsel failed to pursue a reasonable trial strategy to achieve this objective. Instead, trial counsel expressed concerns about potential juror racial bias. Rather than asking jurors to put aside any bias they may have, trial counsel pursued a trial strategy that inflamed potential bias.

Counsel admitted in PCR that he believed a white 21-year-old female would not voluntarily be with two similarly-aged black males in a remote area in the early hours of the morning under any circumstances. App. R, 116a. Thus, the black males – including his client – must have been there to commit sexual and violent crimes against the “little white girl.” Similarly, counsel believed that evidence the victim was known to prostitute herself for drugs was just an attack on the victim, slandering her, pitting “the white girl versus the black young man,” and saying that she deserved to die because of her drug use instead of presenting this evidence as a non-inculpatory explanation for why Bowman was in possession of her watch. And, worse, counsel imputed his racist views to the jurors.

While counsel did not make as many racist statements during the trial as he did during the PCR proceedings, he still clearly made the racist argument that the victim was “a little [white]

girl” and that the jury would be angered by the suggestion that she had consensual sexual relations with Bowman, a 20-year-old black male, who was also known to be her friend. This argument was made during both the guilt phase and sentencing closing arguments with counsel even apologizing for suggesting that there was a consensual sexual relationship between the two. App. Q, 96a (“That is not to anger you, that’s not for me to anger you and I apologize.”). There is no question that this argument was prejudicial during both the guilt phase and sentencing of Bowman’s trial.

“Because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected.” *Turner*, 476 U.S. at 35. Indeed, “[t]he risk of racial prejudice infecting a capital sentencing proceeding is especially serious in light of the complete finality of the death sentence.” *Id.* at 36. Specifically, in *Turner*, this Court recognized a number of ways that racial prejudice could be in play in a capital sentencing proceeding.

[A] juror who believes that blacks are violence prone or morally inferior might well be influenced by that belief in deciding whether petitioner’s crime involved the aggravating factors specified . . . [of future dangerousness or a crime that was “outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim”]. Such a juror might also be less favorably inclined toward petitioner’s evidence of mental disturbance as a mitigating circumstance. More subtle, less consciously held racial attitudes could also influence a juror’s decision in this case. Fear of blacks, which could easily be stirred up by the violent facts of petitioner’s crime, might incline a juror to favor the death penalty.

Id. at 34-35. Because of these concerns, the Court held that “a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias” during voir dire. *Id.* at 36-37.¹⁸

¹⁸Notably, counsel’s own bias was also on display during jury selection as he failed to avail himself on Bowman’s behalf of the opportunity to conduct voir dire to determine whether any of Bowman’s jurors were racially biased. Nonetheless, one honest juror disclosed upon simply being asked about “any bias or prejudice” without reference to race in the question that he didn’t “get

This Court has also made it clear generally that racial arguments with no actual bearing on the crimes or the issues in a capital case are improper. *See Dawson v. Delaware*, 503 U.S. 159, 168 (1992) (admission of evidence in sentencing that the defendant was a member of a white racist prison gang was erroneous where the victim in the case was white, the evidence was not relevant to any issue before the jury in sentencing, and the evidence could not “be viewed as relevant ‘bad’ character evidence in its own right”). Similarly, the state court has condemned racist arguments that “inflame the passions or prejudices’ of the jury.” *State v. Bennett*, 632 S.E.2d 281, 288 (S.C. 2006); *see also State v. Vasquez*, 698 S.E.2d 561, 567 (S.C. 2010) (In a similar context involving a solicitor’s arguments in a capital case based on religion, the court condemned the “religious prejudice” inherent in a solicitor’s “inflammatory” references to domestic terrorism and the 9/11 terror attacks in a capital case that did not involve terrorism but involved a Muslim defendant as these arguments “served only to inflame the passions and prejudice of the jury.”).

Likewise, this Court has specifically held that it is improper and amounts to ineffective assistance of counsel for defense counsel in a capital sentencing to present expert evidence and arguments that rely simply on racist stereotypes that a black defendant is “predisposed” to violent conduct simply because of his race. *Buck*, 580 U.S. at 119. While “[i]t would be patently unconstitutional for a State to argue that a defendant is liable to be a future danger because of his race,” it is also improper for defense counsel to present such evidence and argument about his own client. *Id.* Indeed, it is more harmful when defense counsel makes the racist arguments because jurors expect to evaluate and question the state’s evidence, but “[w]hen a defendant's own lawyer puts in the offending evidence, it is in the nature of an admission against interest, more likely to be taken at face value.” *Id.* at 122; *see also Ingle v. State*, 560 S.E.2d 401, 403 (S.C. 2002)

along with people of color too well” meaning both “[b]lacks, mixed.” App. EE, 221-22a.

(recognizing that the impact of prejudicial evidence is heightened when “it came as part of what was supposed to be petitioner’s defense.”). In short, “[n]o competent defense attorney would introduce such evidence about his own client.” *Buck*, 580 U.S. at 119; *see also People v. Sanders*, 182 N.E.3d 151, 153-56 (Ill. Ct. App. 2020) (holding that defense counsel’s racist arguments for a black client, including his own personal racial biases and arguments that a “black man belongs in a squad car” and he would be scared in an “all-black area,” in an aggravated battery case involving a white victim was ineffective assistance of counsel as “[t]he introduction of race into an argument is not permissible” where “[n]one of the racial comments were based on the evidence”); *State v. Davis*, 872 So.2d 250, 252 (Fla. 2004) (emphasis omitted) (holding that defense counsel’s explicitly racist arguments in a capital case involving the rape of a white woman by a black man that he was “a white southerner” and did not “like black people” who “make me mad just because they’re black,” even when made allegedly to get jurors to admit their own racism, were “racist . . . expressions of prejudice” that “cannot be tolerated” and amounted to ineffective assistance of counsel); *Miller v. State*, 728 S.W.2d 133, 135 (Tex. Ct. App. 1987) (holding that defense counsel’s racist arguments that the state’s primary witness and the burglary victim in the case were both from Nigeria and likened them to “a man swinging from limb to limb with a banana or coconut in one hand” was a “damag[ing]” argument that amounted to ineffective assistance of counsel).

Also in 2017, in *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017), this Court once again recognized that “[t]he duty to confront racial animus in the justice system is not the legislature’s alone.” *Id.* at 222. Thus, this Court again addressed the problem of racial bias in our justice system. The Court acknowledged that racial discrimination “odious in all aspects, is especially pernicious in the administration of justice.” *Id.* at 222 (quoting *Rose v. Mitchell*, 443 U.S. 545, 555 (1979)).

The Court identified the jury as a criminal defendant's “fundamental ‘protection of life and liberty against race or color prejudice.’” *Id.* (quoting *McCleskey v. Kemp*, 481 U.S. 279, 310 (1987)). The Court stated that, based on this principle, the justice system must identify methods to ferret out racial prejudice among jurors. Otherwise, the integrity of the jury trial system will be compromised. The Court noted that racial bias is a “familiar and recurring evil that, if left un[checked], would risk systemic injury to the administration of justice.” *Id.* at 224.

The *Pena-Rodriguez* Court recognized “that there are standard and existing processes designed to prevent racial bias in jury deliberations.” *Id.* at 228.

These safeguards include voir dire examination regarding racial bias, jury instructions addressing racial bias, observation of juror demeanor and conduct that might demonstrate racial bias, reports of racially biased comments or actions by jurors during trial, and non-juror evidence of racial bias after trial. The Court acknowledged that these safeguards may be insufficient at times and therefore added an additional one, holding that the Sixth Amendment requires trial courts to review evidence suggesting that racial bias was a motivating factor in a juror's decision to convict a criminal defendant even when the evidence of bias rears its head during otherwise non-impeachable jury deliberations.

Thompson, at 1243.

Here, the state court sought to excuse trial defense counsel's conduct as trying to defuse racism. This runs directly counter to *Pena-Rodriguez* and this Court's prior efforts to weed out racism wherever it exists in the criminal justice system. This also ignores that the state court offered no explanation or finding for why trial counsel paired his references to Martin as a “little girl” or “little white girl” with references to Bowman as an “African American” or black “man.” App. R, at 172a (“I wanted to show that this man would not hurt that little girl”); *see also* App. R, at 130a, 155a-156a. This is especially suspect since Martin was 21 years old at the time of her death, App. CC, 218a, and Bowman was only 20, App. BB, 212a.

Trial counsel's inversion of their ages, and his constant harping on their different races

during his PCR testimony, echoes the ugliest and oldest of racist tropes: black men sexually preying on young white girls, which has been used to invoke fear and hatred and to justify violent punishment for centuries. The state court simply ignored all of trial counsel’s “racially loaded”¹⁹ references to Bowman’s race or Martin’s, and his distinctions between them as “little girl” and “man.” *Cf. United States v. Runyon*, 707 F.3d 475, 493 (4th Cir. 2013) (Officer’s comments about Runyon’s race, “ethnicity and religion,” had no proper place in capital sentencing proceeding); *State v. Tomlin*, 384 S.E.2d 707 (S.C. 1989) (prosecutor referred to black juror having “shucked and jived” when he walked to the microphone when called as one of several reasons to use a peremptory strike against him; “[t]he use of this racial stereotype is evidence of the prosecutor’s subjective intent to discriminate” against black jurors). “The Constitution cannot control such prejudices but neither can it tolerate them.” *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (holding that concern that a white child might be subjected to “pressures and stresses” caused by living with a black stepfather was an improper consideration in deciding which of the child’s white biological parents should have custody of the child); *see also Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 208 (2023) (quoting several prior cases) (“Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.”).

Moreover, this is not strictly a run-of-the-mill ineffective assistance of counsel claim under *Strickland*. It also involves a clear conflict of interest where counsel encouraged Bowman to plead

¹⁹ For example, referring to a black defendant as King Kong and his girlfriend as the “blond lady” was a “racially loaded” reference to the movie King Kong that “involved a giant ape who escaped from captivity, kidnapped a white woman, and went on a murderous rampage.” *Bennett v. Stirling*, 170 F. Supp. 3d 851, 865 (D.S.C.), *aff’d*, 842 F.3d 319 (4th Cir. 2016). These references unconstitutionally injected race in Bennett’s capital sentencing, warranting reversal of his death sentence. *Id.*

guilty despite his assertion of innocence simply because counsel believed that Bowman would be convicted on the basis of his race alone. Likewise, in trial and sentencing, counsel refrained from making trial and sentencing arguments on Bowman's behalf because of his own racist opinions and beliefs that he did not want to "hurt[] the victim." App. R, 123a-24a.

This Court has long recognized that "[w]here a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest." *Wood v. Georgia*, 450 U.S. 261, 270 (1981); *see also Rubin v. Gee*, 292 F.3d 396 (4th Cir. 2002). When a conflict of interest is established that "adversely affected . . . counsel's performance," a petitioner is entitled to relief. *Mickens v. Taylor*, 535 U.S. 162, 174 (2002); *see also Cuyler v. Sullivan*, 446 U.S. 335, 348-49 (1980) (holding that, absent objection at trial, a defendant must demonstrate that "a conflict of interest actually affected the adequacy of his representation").

Appointed counsel "owes the client a duty of loyalty," *Strickland*, 466 U.S. at 688, which is "perhaps the most basic of counsel's duties," *id.* at 692. And, "an attorney who abandons his duty of loyalty to his client may by so doing create a conflict of interest." *Fraser v. United States*, 18 F.3d 778, 782 (9th Cir. 1994).

In fact, an attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition.

Id. (quoting *United States v. Swanson*, 943 F.2d 1070, 1975 (9th Cir. 1991)); *see also Nance v. Ozmint*, 626 S.E.2d 878, 883 (S.C. 2006) (where counsel "abandoned his role as defense counsel and bolstered the state's argument in capital case that the defendant was "a sick man" who had done "sick things," counsel was "not acting as defense counsel and failed 'to function . . . as the Government's adversary'").

Prejudice is presumed is when “counsel is burdened by an actual conflict of interest” because in that instance counsel has “breach[ed] the duty of loyalty.” *Id.* (citing *Sullivan*, 446 U.S. at 345-50). *See also Gonzales v. State*, 795 S.E.2d 835 (S.C. 2017) (finding an actual conflict of interest that adversely affected counsel’s representation where counsel represented the juvenile defendant in a drug trafficking case and simultaneously represented the defendant’s mother’s boyfriend on other drug-related charges); *State v. Gregory*, 612 S.E.2d 449, 450-51 (S.C. 2005) (holding that where counsel represented the defendant and the assistant solicitor who was prosecuting him simultaneously in a separate divorce action, counsel “owed duties to a party whose interests were adverse” to his criminal defendant client and, thus, there was an actual conflict of interest which required no additional showing of prejudice in order for counsel’s motion to be relieved to be granted); *Commonwealth v. Dew*, 210 N.E.3d 904, 913 (Mass. 2023) (holding that counsel’s demonstrated bias against black people and Muslims, where his client was black and Muslim, was a conflict of interest whose affect “on the attorney’s representation of the defendant is likely to be pervasive and unpredictable”).

Nothing could present a clearer cut case of a conflict of interest than refraining from making arguments for Bowman because of counsel’s own racist beliefs and concern for the victim’s reputation rather than his client’s defense. As this Court has long recognized, “The risk of racial prejudice infecting a capital sentencing proceeding is especially serious in light of the complete finality of the death sentence.” *Turner*, 476 U.S. at 35. Moreover, “the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination.” *Id.* (quoting *California v. Ramos*, 463 U.S. 992, 998-99 (1983)). This Court should grant the writ of certiorari, address the merits of the claim, and vacate Bowman’s convictions and sentences.

CONCLUSION

Certiorari should be granted.

Respectfully Submitted,

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January 23, 2025

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Marion Bowman, Jr.,

Petitioner,

vs.

Bryan P. Stirling, Commissioner, South Carolina,
Department of Corrections, and The State of South Carolina,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

The Supreme Court of South Carolina

Marion Bowman, Jr., Petitioner,

v.

**Bryan P. Stirling, Commissioner, South Carolina
Department of Corrections, Respondent.**

Appellate Case No. 2024-002113

AND

The State, Respondent,

v.

Marion Bowman, Jr., Appellant.

Appellate Case No. 2025-000013

ORDER

Marion Bowman, a death-sentenced inmate, seeks a writ of habeas corpus in this Court's original jurisdiction (Case No. 2024-002113) and seeks a stay of his January 31, 2025 execution pending this Court's resolution of the petition (Case No. 2025-0013).

We recently visited the issue of habeas corpus relief in the matter of Freddie Eugene Owens, another inmate who was sentenced to death. *See State v. Owens*, S.C. Sup. Ct. Order dated September 12, 2024 (denying habeas relief). As we explained, habeas corpus relief is available to prisoners in South Carolina in this Court's original jurisdiction. *See S.C. Const. art. I, § 18*. Writs of habeas corpus are used only when necessary to ensure fundamental constitutional rights. A writ

of habeas corpus will issue "only under circumstances where there has been a 'violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.'" *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting *State v. Miller*, 84 A.2d 459 (N.J. Super. 1951)); see also *Moore v. Stirling*, 436 S.C. 207, 218–19, 871 S.E.2d 423, 429 (2022) ("[T]wo components are needed to meet the standard articulated in *Butler* and other cases. The petitioner must prove (1) the existence of a constitutional violation; and (2) the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice."); *McWee v. State*, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004) (stating a writ of habeas corpus will be granted only under "unique and compelling circumstances"). This Court has noted that "[a]t some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice." *Williams v. Ozmint*, 380 S.C. 473, 480, 671 S.E.2d 600, 603 (2008).

Bowman contends he is entitled to a writ of habeas corpus based upon: (1) *Brady* violations on the part of the State; (2) his lead trial counsel's prejudice against black people; and (3) his contention that carrying out his execution would be shocking to the universal sense of justice in light of his personal growth since he was sentenced. Citing *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996), Bowman also contends the pendency of his habeas petition constitutes "exceptional circumstances warranting the issuance of a stay." For the reasons stated below, we deny the petition for a writ of habeas corpus, and we deny the motion for a stay as moot.

Brady Violations

Bowman argues the State withheld evidence that would have impeached the credibility of key witnesses against him—co-defendant James Gadson and Hiram Johnson—in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) (holding the prosecution's suppression of evidence favorable to the accused violates due process where the evidence is material either to guilt or punishment). This evidence includes: (1) a memorandum prepared by an investigator for the solicitor's office based on an interview with Bowman and Gadson's fellow inmate, Ricky Davis (the Sam Memo); (2) Gadson's mental health records (the Gadson Report); and (3) unindicted criminal charges that were pending against Johnson. Bowman asserts the Court must consider the cumulative impact of the undisclosed impeachment evidence in determining materiality under *Brady*, and he claims the withheld evidence was material to the jury's sentencing decision.

In his 2008 PCR hearing, Bowman raised the same three *Brady* violations but alleged the withheld evidence was material to the issue of guilt. The PCR court found the Sam Memo was neither favorable to the defense nor material to the issue of guilt because the defense already had inmate Davis' note stating co-defendant Gadson told him he killed the victim, and Bowman did not call Davis to testify at trial. The PCR court further ruled there was not a reasonable probability that the outcome of the guilt phase would have been different had trial counsel possessed the Sam Memo.

The PCR court further found: (1) the Gadson Report was a public record and could have been accessed by trial counsel, who should have known the report existed because Bowman had a similar evaluation performed; (2) Bowman failed to establish the report was favorable or impeaching, as it did not support his theory that Gadson was unable to recall events; (3) the report was not material because there were no allegations that Gadson suffered memory issues because of seizures or marijuana use the *day of* the murder; and (4) Gadson's credibility was impeached by testimony that he had been drinking alcohol the day of the murder.

As to Johnson's unindicted charges, the PCR court found Bowman failed to establish the materiality of this evidence under *Brady* in light of the overwhelming evidence of his guilt. For the same reason, the PCR court found the impeachment value of the unindicted charges was limited, primarily because the charges were unrelated to the underlying case and trial counsel impeached Johnson on other grounds.

The PCR court did not rule on cumulative materiality; rather, it found each individual piece of allegedly withheld evidence was not material. After the PCR court denied Bowman's claim for relief, he raised these issues in his petition for a writ of certiorari to this Court, and this Court denied certiorari as to the *Brady* issues. *Bowman v. State*, S.C. Sup. Ct. Order dated April 15, 2016 (granting the petition on one question and denying the petition as to the remaining questions).

The federal courts have also addressed Bowman's *Brady* arguments. The United States Court of Appeals for the Fourth Circuit held the Sam Memo and, ostensibly, Davis' statements about Gadson would have harmed, not helped, Bowman's case because they were cumulative to Davis' note, which the defense already had, and contained multiple levels of hearsay. *Bowman v. Sterling*, 45 F.4th 740, 754 (4th Cir. 2022). Further, Davis testified at the PCR hearing that he never spoke with Gadson, and he testified he wrote the note at Bowman's insistence using information Bowman provided, which would have been damaging to Bowman. *Id.* The Fourth Circuit further held the impeachment value of the Gadson Report

would have only been slight, as there was no evidence Gadson suffered a seizure or consumed marijuana the day or night of the murder, and the report would have even bolstered Gadson's memory and sanity in some respects. *Id.* at 755. Further, Gadson's memory was impeached through testimony that he had been drinking all afternoon before the murder and was drunk later that night. *Id.* Lastly, the Fourth Circuit held Johnson's unindicted charges would have had impeachment value and could have led a jury to infer that he was motivated to curry favor with the State. *Id.* at 756. However, the court determined the information would have had a limited effect because other evidence at trial—including testimony from witnesses who were explicitly testifying pursuant to plea agreements with the State—corroborated Johnson's "ancillary" account of events. *Id.* Considering the cumulative materiality of these three pieces of undisclosed evidence, the Fourth Circuit held there was overwhelming evidence of Bowman's guilt, and the withheld evidence was insufficient to undermine confidence in the jury's verdict *or recommended sentence of death.* *Id.* at 758.

The only distinction between Bowman's previous arguments and the argument he now raises is that he emphasizes the *Brady* evidence prejudiced him during the *sentencing* phase instead of the *guilt* phase. Thus, in Bowman's view, the *Brady* materiality analysis differs, and he contends the Court must consider whether his sentence was appropriate considering all aggravating and mitigating evidence presented during the sentencing phase.

We reject Bowman's argument that these pieces of evidence would have affected the outcome of his sentencing. First, the Fourth Circuit has already determined this issue. *See id.* at 758 (holding the withheld evidence was insufficient to undermine the confidence in the jury's recommended sentence of death). Second, even construing the withheld evidence as potentially mitigating at the sentencing phase, we conclude the evidence did not create a reasonable probability that at least one juror would have decided upon a sentence other than death. To this end, Bowman concedes in his petition that trial counsel presented extensive mitigating evidence on his behalf, while the State offered little evidence in aggravation. *Cf. Wiggins v. Smith*, 539 U.S. 510, 537 (2003) (holding the defendant's "excruciating" life history presented a reasonable probability that at least one juror would have struck a different balance where the only mitigating factor present was that defendant had no prior convictions). Therefore, we find the State's allegedly improper withholding of the Sam Memo, the Gadson Report, and Johnson's unindicted charges is not "shocking to the universal sense of justice." *Butler*, 302 S.C. at 468, 397 S.E.2d at 88.

Trial Counsel's Racial Prejudice

Bowman is a black man and trial counsel is white. Bowman argues his "convictions and death sentence must be vacated under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3, 14, and 15 of the South Carolina Constitution due to the ineffective assistance of counsel inherent in trial counsel's insistence that Bowman plead guilty despite maintaining his innocence and counsel's racist arguments that injected odious racial prejudice into the case[.]" Bowman cites comments and arguments made by trial counsel during trial that Bowman contends supports this allegation. Bowman also cites several instances during the PCR hearing in which he claims trial counsel displayed racism. We flatly disagree. There is no evidence trial counsel exhibited racism during his representation of Bowman or during the PCR hearing.

Bowman has fashioned a meritless narrative by taking trial counsel's testimony during the PCR hearing completely out of context. During his PCR testimony, trial counsel articulated valid strategic decisions he made during the trial, decisions he made in an attempt to defuse any racial animus the jury may have had against Bowman, who was indicted for murdering a white woman. He also testified he made Bowman aware of his fear that the jury might view the circumstances of the murder through a racial lens. The comments and conduct of which Bowman now complains were in no way indicative of racism. *See Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) ("[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992))).

Even if there were evidence to support Bowman's claim, the claim would fail because Bowman (1) could have raised the issue of trial counsel's conduct during trial in his PCR proceeding, (2) has presented no reason for not raising the issue then, and (3) fails to demonstrate conduct on the part of trial counsel that was shocking to the universal sense of justice. *See Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (holding habeas corpus is available only when the petitioner alleges sufficient facts to show why other remedies are unavailable or inadequate).

Renewed Proportionality Review

Bowman contends his death sentence would be shocking to the universal sense of justice in light of his personal growth in the twenty-two years he has been imprisoned. He further contends his growth and character as it stands now should

be considered in determining whether his sentence is appropriate under section 16-3-25(C)(3) of the South Carolina Code (2015). Bowman essentially requests a renewed proportionality review.

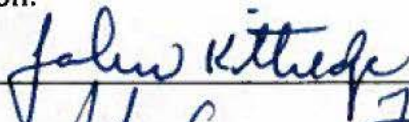
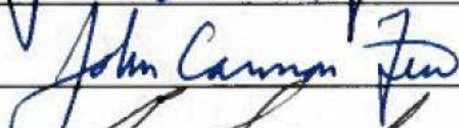
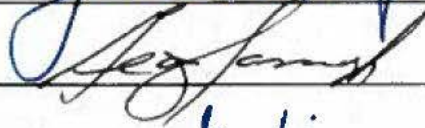
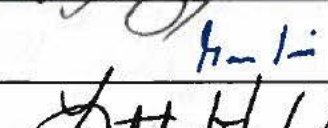
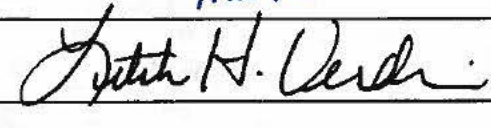
S.C. Code Ann. § 16-3-25(C)(3) requires this Court to determine in a death penalty case "[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." The statute does not permit the Court to engage in a proportionality review considering character and prison adaptability evidence that accrues over the course of twenty years after the defendant's sentencing.

In any event, Bowman cannot prove the existence of a constitutional violation in this Court's refusal to consider a defendant's character at the time he seeks this Court's exercise of original jurisdiction to determine whether the death penalty is appropriate. Simply put, that constitutional right does not exist. *See Moore*, 436 S.C. at 218-19, 871 S.E.2d at 429 ("[T]wo components are needed to meet the standard articulated in *Butler* and other cases. The petitioner must prove (1) the existence of a constitutional violation; and (2) the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice." (emphasis added)).

For the foregoing reasons, we reject Bowman's argument that we must consider evidence of his personal growth during his time in prison.

Conclusion

Bowman has not met his burden of showing a constitutional violation that, in this setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. We, therefore, deny his petition for a writ of habeas corpus and deny as moot his motion for a stay of execution.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
January 10, 2025

cc:

Lindsey Sterling Vann
S. Boyd Young
Teresa L. Norris
Donald J. Zelenka,
Melody Jane Brown
William Joseph Maye

APPENDIX B

State vs. Bowman Volume I

1 MR. BAILEY: After the death penalty notice
2 was served on the defendant in this case, I'd
3 extended an offer to allow Mr. Bowman to plead
4 to a life without parole sentence. I gave them
5 a period of time, I don't recall specifically
6 how long it was, they did not accept it. I then
7 withdrew the offer.

8 When we got the evaluation back saying
9 that he was competent and so forth and ready to
10 go to trial, I renewed the offer one more time
11 and he again rejected that. I don't have any
12 idea that they're going to accept that offer
13 now, I'm not going to leave that open
14 indefinitely because we're going to be starting
15 some intensive preparations and I don't like to
16 prepare a case for trial and then plead at the
17 last minute.

18 THE COURT: I understand that, Mr. Bailey.

19 MR. BAILEY: But I am going to go ahead and
20 open that offer up one final time for a two-week
21 period starting today, and the same offer I made
22 previously. If it's not accepted, then I'm
23 going to irretrievably revoke that offer and it
24 will not be made again.

25 THE COURT: All right. Let us all be very

1 or the paragraph ten deals with the fact he is not
2 able to omit facts or any way give benefit to
3 himself --

4 A Excuse me, sir. That is the contract he
5 signed with the State.

6 Q That's right, and that didn't come out until
7 after the trial, did it?

8 A From what you showed me and what I have read
9 and what I have learned through this case, yes,
10 sir.

11 Q And then on July 17th of '02, that's the date
12 of his sentence, if he gets the benefit of the deal
13 despite that omission, then that is something of
14 interest?

15 A Yes, sir. It's unfair.

16 Q And it's unfair that -- it is unfair you
17 weren't able to reveal that to Marion Bowman's
18 jury, isn't it?

19 A It is unfair totally. I didn't want Marion
20 to ever face that, much less, you know, be to face
21 death, much less be sentenced to death. And I know
22 Mr. Bailey had offered life to us, Mr. Brown, and
23 even on the record gave him two weeks to reconsider
24 it. Life was offered seven times to my client and,
25 you know, begging, I begged him to take it and even

1 clerk for a year and of course I try to learn what
2 is being presented and what the judges are ruling
3 on and try to keep up with them.

4 Q You had alluded to this earlier, but Mr.
5 Bailey the Solicitor in this case made a plea offer
6 to your client. Is that correct?

7 A Yes, sir. And again I say this and it really
8 hurt my feelings, life was on the table seven times
9 for Marion and I begged him to take it. Of course
10 the other she is if the man is not guilty why would
11 he plead to life? But looking at the facts in the
12 totality of this case, I begged that kid, I really
13 did. I know that is not my role as a lawyer today
14 for a PCR but I really begged him to save his own
15 life, I did, and I brought every offer to him every
16 time, and I had witnesses, brought his mama back,
17 "For God's sake, beg him."

18 Q I'm going to show you what has been marked as
19 Respondent's 15, or what will be.

20 A Defendant's Exhibit 18.

21 Q Ready?

22 A Yes, sir.

23 Q I show you what has been marked as
24 Defendant's Exhibit 18, which is a letter from Mr.
25 Bailey to you dated August, 2001?

APPENDIX C

AFFIDAVIT OF ROBERT L. MINTER

STATE OF SOUTH CAROLINA

)

COUNTY OF CHARLESTON

)

AFFIDAVIT

I, Robert Minter, being first duly sworn, swear and affirm that the following is true to the best of my knowledge:

1. I worked as an investigator for the Charleston County Sheriff's Office. Upon my retirement, I began working as a private investigator. I have worked in that capacity for 29 years.
 2. Norb Cummings and Marva Hardee-Thomas hired me to investigate the capital murder case for which Marion Bowman was charged and facing the death penalty.
 3. I previously worked two other death penalty cases with Norb Cummings, and worked a number of cases with him in family court. In my experience, Norb was not aggressive in his representation of clients. Norb did not like to try cases and would push his clients to plead guilty or otherwise settle their cases, even when they had strong cases that supported a finding of innocence or an issue they could win on in court.
 4. It is my overall experience working as an investigator for Norb that Norb was very hands off and did not direct the work of the investigator, even to such an extent that he would not be dissatisfied if the investigator did not get their job done.
 5. In Mr. Bowman's case, in particular, I know that Norb very strongly disliked the mitigation specialist hired to work on Marion Bowman's case, Dale Davis. Norb considered her too pushy and headstrong. She asked him for subpoenas for records and assistance with other tasks which were necessary in order for Ms. Davis to successfully
-

complete her task of developing mitigation for Mr. Bowman. These requests were reasonable and should have been met with action on the part of Norb but he refused and resented her for trying to do her job.

6. Mr. Bowman's other attorney, Marva Hardee-Thomas, was a lackluster attorney and I don't believe that she adequately represented Mr. Bowman.
7. I believe that if Mr. Bowman had different trial attorneys, then his case may have resulted in a different outcome.

Further affiant sayeth naught.

Robert L. Minter
ROBERT L. MINTER

Sworn to and subscribed before
me this 6th day of December, 2024.

Sherry C. Omi
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Sept 6, 2029

APPENDIX D

AFFIDAVIT OF ROBERT L. MINTER

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

)
)
)

AFFIDAVIT

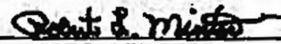
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 4. It is my overall experience working as an investigator for Norb that Norb was very hands off and did not direct the work of the investigator, even to such an extent that he would not be dissatisfied if the investigator did not get their job done.
 5. In Mr. Bowman's case, in particular, I know that Norb very strongly disliked the mitigation specialist hired to work on Marion Bowman's case, Dale Davis. Norb considered her too pushy and headstrong. She asked him for subpoenas for records and assistance with other tasks which were necessary in order for Ms. Davis to successfully
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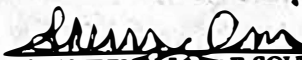
complete her task of developing mitigation for Mr. Bowman. These requests were reasonable and should have been met with action on the part of North but he refused and resented her for trying to do her job.

6. Mr. Bowman's other attorney, Marva Hardee-Thomas, was a lackluster attorney and I don't believe that she adequately represented Mr. Bowman.
7. I believe that if Mr. Bowman had different trial attorneys, then his case may have resulted in a different outcome.

Further affiant sayeth naught.


ROBERT L. MINTER

Sworn to and subscribed before
me this 6th day of December, 2024.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Sept 6, 2028

APPENDIX E

W/D

Dear Honorable Judge Goodstein:

I married Bowman. I am well aware of the offer Mr. Bailey has gave me. However, I'm so confused I don't what to do. Mr. Bailey is offering me a plea bargain of life without the possibility of parole, but is still giving me information concerning this case. And the fact that is an substantial amount of discovery I do not have it is very difficult to understand what is going on.

My attorney is trying to convince me to accept this plea because he said and I quote "These white jurors whose skin is whiter than his is going to see a Black male verses a white female victim, are going to convict me because of my skin color, and not based upon evidence."

This in mind that I would like to request and evidential hearing as soon as possible in your presence. I am aware that you will be here in Dorchester county on the week of the 26th of Nov. and would like to speak with you. I have in my possession a letter from Mrs. Hardee-Thomas dated September 13, 2001 requesting interrogation policy and procedures of both DCSD and DCSD and she has not complied to my Request. I am not trying to act as if know alot about the law, but I would certainly like to understand the law that ~~Hardee-Thomas~~ Exhibits D. 99 attorney whose willing to fight this case →

with their ability and knowledge of the law.

[REDACTED]

APPENDIX F

Dear Judge Goodstein:

Nov. 5, 2001

I Marion Bowman JR am writing to ask you may I see you while you are here in Dorchester County. Reason for this meeting is that I'm scared for my life and I'm aware of the offer mr. Bailey has offered, which I refused to accept. I understand that mr. Bailey has all of his facts to try this case, so I would like to request a evidential hearing AS SOON AS POSSIBLE, because the police getting people to change or add things to their statements months later.

I am not trying to be wise or smart about this, but I do want to know what I'm trying to defend my self against. My Attorney has informed me the on Sept. 17, 2001 signed a EX Parte Order (authorizing Expert and Investigative services) in my case, in which my attorneys said have not started working because they have not received their checks. you ordered an urgency on October 18, 2001 when I was in front of you. I had some issues then that I wanted to bring to you attention, but was told it was not that type of conference.

I'm very concerned about my future, please find the time to spare to see me as soon as schedule will permit.

Thanks very much

Marion Bowman JR

APPENDIX G



State of South Carolina
The Circuit Court of the First Judicial Circuit

DIANE SCHAFER GOODSTEIN
JUDGE

212 DEMING WAY, BOX 3
SUMMERVILLE, SOUTH CAROLINA 29483-4707
PHONE: (843) 832-0388
FAX: (843) 832-0389

November 14, 2001

Marion Bowman, Jr.
100 Sears Street
St. George, South Carolina 29477

Dear Mr. Bowman:

I am in receipt of your recent correspondence. Please be advised that this is considered ex parte communication. Judicial ethics do not allow a judge to have any form of communication with a party in an action outside of the proper setting (which is in the courtroom with all necessary parties present).

I can not consider anything unless it is on the record and the opposing party is present. If a hearing needs to be scheduled, the attorneys that have been appointed can arrange that for you. I am hereby forwarding this correspondence to your attorneys. Please direct any further communications to the attorneys that have been appointed to represent you.

Sincerely,

Diane Schafer Goodstein
Chief Administrative Judge
First Judicial Circuit

DSG:tkh

cc: Marva Hardee-Thomas, Esquire
Norbert Cummings, Esquire
Walter Bailey (w/o enclosure)

APPENDIX H



State of South Carolina
Office of the Governor

JIM HODGES
GOVERNOR

OFFICE OF EXECUTIVE
POLICY AND PROGRAMS

May 25, 2001

Mr. Marion Bomen
Dorchester County Detention Center
100 Sear Sreet
St. George, South Carolina 29477

Dear Mr. Bomen:

This is in receipt of your letter to Governor Jim Hodges concerning your judicial problem. While The Governor is sympathetic, this office does not and can not interfere with judicial matters. However, if you wish to lodge a formal complaint against your attorney I suggest you contact the following:

Commission on Lawyer Conduct
Office of Disciplinary Counsel
Post Office Box 11330
Columbia, South Carolina 29211

I am sorry we can not provide you with direct assistance in this matter but hope that the information provided will be useful to you.

Sincerely,

A handwritten signature in black ink that reads "Andrew G. Dial".

Andrew G. Dial



950 Taylor Street
PO Box 608
Columbia, SC 29202-0608
803-799-6653 Phone
803-799-4118 Fax
www.scbar.org

June 6, 2001

ADVANCING JUSTICE,
PROFESSIONALISM
AND UNDERSTANDING
OF THE LAW.

Mr. Marion Bowman, Jr.
D.C.D.C.
100 Sears St.
St. George, SC 29477

Dear Mr. Bowman:

I am in receipt of your letter. My job here is to mediate disputes between clients and their own attorneys.

Please know that the Public Defenders are appointed to many clients and are very busy. I will, however notify your Public Defender, Ms. Hardee-Thomas, of your concerns.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely yours,

Jill C. Rothstein
Counsel,
Client Assistance Program

cc: Ms. Hardee-Thomas

APPENDIX I

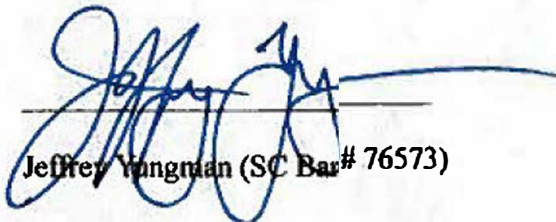
COUNTY OF ORANGEBURG
STATE OF SOUTH CAROLINA

AMENDED AFFIDAVIT OF JEFFREY YUNGMAN

Comes now JEFFREY YUNGMAN, sworn before the undersigned officer duly
licensed to administer oaths and swears or affirms as follows:

1. My name is Jeffrey Yungman. I live in Mount Pleasant, South Carolina and I am over the age of eighteen. The information contained in the affidavit is within my personal knowledge and I am competent to testify to the matters herein. *Hy*
2. In December 2018 I submitted an affidavit regarding the caliber of the work done by the attorneys who represent Marion Bowman. *Hy*
3. I have recently reviewed my affidavit. I believe that in my affidavit I made it clear that the efforts of the attorney's representing Marion Bowman were well below the standards of attorneys in any of the other 29 death penalty cases I have been involved with. *Hy*
4. It is also my belief that if the attorneys for the defendant in this case had performed at a same level of professionalism as other attorneys in similar cases, Marlon Bowman would not be facing the death penalty. *Hy*

Further affiant sayeth naught.


Jeffrey Yungman (SC Bar # 76573)

Sworn to me this 25th day of

November, 2024.

Shelene Dorell

Notary Public *South Carolina*

My commission expires: *11/20/25*

APPENDIX J

COUNTY OF ORANGEBURG
STATE OF SOUTH CAROLINA

AFFIDAVIT OF JEFFREY YUNGMAN

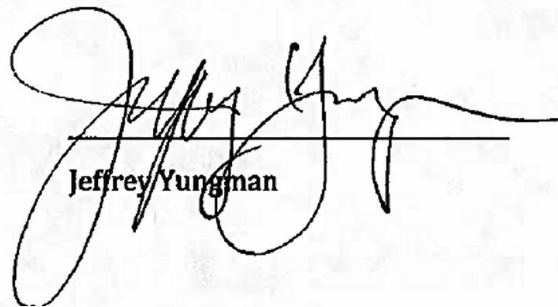
Comes now JEFFREY YUNGMAN, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Jeffrey Yungman. I live in Mount Pleasant, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein. JY
2. A funding order was signed for my services as a forensic social worker for Marion Bowman's trial on March 13, 2002 and the case proceeded to trial on May 3, 2002. JY
3. At the time I joined Mr. Bowman's defense team, Dale Davis, an experienced mitigation specialist, had been working on the team since July 2001. Ms. Davis and I communicated regularly about the case - Interviews we conducted, records that were collected, and Marion's family dynamics. Unfortunately, we were unable to speak with trial counsel about our findings and seek direction for our investigation, despite numerous requests for meetings. In fact, I only recall all of us meeting together one time prior to the start of the trial, which was very unique in my experience with prior capital cases. In my prior experience on capital cases, there were numerous strategic planning meetings before trial to discuss what evidence was going to be presented and how. That never happened in Marion's case. JY
4. At one point, I was so concerned about the lack of communication and trial preparation by Marion's lawyers that I reached out to other attorneys I had worked with and it was obvious that Mr. Cummings and Ms. Hardee-Thomas were not taking the necessary steps

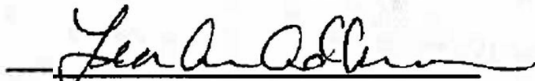
to adequately prepare for a death penalty trial. Most notably I had no idea what the lawyers' trial strategy was and there was zero preparation done for my testimony. From my experience in 30 death penalty cases, they neglected to do any of the routine tasks attorneys regularly performed throughout their representation of capital clients. There was simply no direction given and a serious lack of communication between the attorneys and the experts. *JA*

5. It was clear to me that they did not know what they should be asking us to do, but I cannot say if they did not know what they should be doing or knew and just were not doing it. It appeared that the information Ms. Davis and I were able to gather was not reviewed or followed up on in a timely fashion and was often entirely overlooked. *JA*

Further affiant sayeth naught.


Jeffrey Yungman

Sworn to me this 27th day of
December, 2018.



Notary Public

My commission expires: 11-26-2023

APPENDIX K

Guillie B. Walters - Direct Exam

321

1 goods against Marion Bowman, Jr.?

2 A. Yes, sir.

3 Q. All right, sir. Do you recall how you became
4 aware of the existence of that warrant?

5 A. It came from the -- Orangeburg County and I had
6 information that a warrant was out from them. In fact,
7 I had a copy of the warrant.

8 Q. All right, sir. And I want to hand you a
9 certified copy of an arrest warrant and ask if this is
10 a certified copy you had of the warrant back in your
11 office in February 2001?

12 A. Yes, sir.

13 MR. BAILEY: If I could have it marked for
14 identification.

15 MR. CUMMINGS: Mr. Bailey is showing that to
16 him for ID only.

17 THE COURT: Yes. I think that was the
18 request, just for ID as well.

19 (Marked for identification was State's Exhibit 5,
20 warrant.)

21 Q. Okay, Chief. I want to call your attention to the
22 morning of February 17th, 2001 and ask whether or not
23 you went to an address on Church Street in Branchville
24 along with a deputy from Orangeburg County and some
25 Dorchester County deputies for the purpose of arresting

1 Marion Bowman, Jr. pursuant to that warrant?

2 A. Yes, I did. But that address is not Church
3 Street. It used to be Church Street before 911 came
4 along.

5 Q. All right.

6 A. The trailer faces Evans Street, sits on the corner
7 of Evans Street and another street called Carry Street.

8 Q. Was that the home of Marion Bowman, the home of
9 his wife Dorothy May Bowman?

10 A. It was the home of his wife.

11 Q. All right. Now, is that home located in the town
12 limits of Branchville, within your jurisdiction?

13 A. Yes, sir.

14 Q. Do you recall what happened when you approached
15 the residence of Marion Bowman's wife?

16 A. I knocked on the door and it took a while for his
17 wife, Dorothy, to answer the door. And anyhow, when
18 she finally answered the door she invited me to come
19 inside. Came inside and I told them I was looking for
20 Marion. She said she didn't know where he was at, it
21 was all right to look around.

22 There was an Orangeburg County deputy with me
23 and there was also a couple officers from Dorchester
24 County.

25 Q. All right, sir.

-026a-

Not Applicable
to this Affidavit
2004-12-12

ARREST WARRANT

G-428029

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

THE STATE 2000021724
against

MARION JR BOWMAN

Address: BRANNOVILLE, SC 29432

Phone: SSN: Height: 6 2 Weight: 170

DL State: DL #:

DOB: Agency ORI #:

Prosecuting Agency: SHERIFF'S DEPARTMENT

Prosecuting Officer: DET. KENNY KINSEY

Offense: RECEIVING STOLEN GOODS, 16-13-180 2

Offense Code: 0423

Code/Ordinance Sec. 16-13-180 2

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be

dealt with according to law.

The accused

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant MARION JR BOWMAN

on

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

Personally appeared before me the affiant DET. KENNY KINSEY who
being duly sworn deposes and says that defendant MARION JR BOWMAN
did within this county and state on 10/28/00 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
in the following particulars:
DESCRIPTION OF OFFENSE: RECEIVING STOLEN GOODS, #1000 TO #3000

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

BASED ON AN INVESTIGATION BY OCSO, THAT ON OR ABOUT OCTOBER 28,
2000, THE DEFENDANT MARION BOWMAN, JR., ANG WITH A CO-DEFENDANT
DID VIOLATE SECTION 16-13-180 OF THE SC CODE OF LAWS, RECEIVING
STOLEN GOODS, IN THAT HE DID SELL 4 GUNS THAT WERE STOLEN IN THE
BURGLARY OF JEWELL PROCTOR'S RESIDENCE, 822 BANNING ST., COPE, SC
THIS INCIDENT TOOK PLACE IN ORANGEBURG COUNTY, STATE OF SOUTH
CAROLINA.

Sworn to and subscribed before me
on 12/01/00

Signature of Affiant

Affiant's Address: 0. RON 12400
ORANGEBURG, SC 29112

Affiant's Telephone: 803 531-4600

Signature of Hearing Judge

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affiant that there are reasonable grounds to believe the

defendant MARION JR BOWMAN

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of

DESCRIPTION OF OFFENSE: RECEIVING STOLEN GOODS, #1000 TO #3000

as set forth below

Signature of Hearing Judge

Judge Code: 721

CERTIFIED COPY
2004 FEB 12 AM 1:12

Signature of Affiant
Affiant's Address: 0. RON 12400
ORANGEBURG, SC 29112
Affiant's Telephone: 803 531-4600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affiant that there are reasonable grounds to believe the

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DESCRIPTION OF OFFENSE: RECEIVING STOLEN GOODS, #1000 TO #3000

as set forth below

Signature of Hearing Judge

Judge Code: 721

AUDIT COPY

APPENDIX L

3748

Yolanda S. Bowman - Cross-Exam

1 you to answer my questions and there's an important
2 reason to answer these questions in here.

3 Ms. Bowman, you stopped there. There's how
4 many other people at Fralix's house?

5 A. I don't remember how many people was there. I
6 seen some people, though.

7 Q. Yes, ma'am. Did you see anybody drinking there?

8 A. No. I wasn't paying that close attention what
9 they was doing.

10 Q. You didn't see anybody walk out to the cars with
11 beer cans or anything?

12 A. No.

13 Q. You didn't see anybody out there that you
14 remember today? I mean, this is very important
15 today.

16 A. Did I see anybody that I remember?

17 Q. Yes.

18 A. I saw Charlie and Kandee.

19 Q. Okay.

20 A. And I seen other people, but I don't remember
21 who they was.

22 Q. Your brother and Kandee were friends; were they
23 not?

24 A. Kandee was everybody's friend.

25 Q. Yeah. And then that day, the first statement

4033

James T. Gadson - Cross-Exam

1 Q. Okay. Did not see Miss Martin?

2 A. No.

3 Q. Then it's your testimony, and I want to ask you
4 this, how did it come to be that Miss Martin was in
5 your presence?

6 A. How was she in my presence?

7 Q. Yeah.

8 A. When I seen her at 7:30.

9 Q. Where did you see this lady?

10 A. Driving the car.

11 Q. Where was she?

12 A. In the projects.

13 Q. In the projects?

14 A. Yes.

15 Q. Miss Martin was friends with all of you, right?

16 A. Yes.

17 Q. Okay. When you see Miss Martin everybody got in
18 the car, everybody went to the EZ Shop was it,
19 Horizon gas station?

20 A. Marion Bowman was already in the car when he
21 came in the project.

22 Q. Okay. Went up there, went to the station, got
23 some gasoline?

24 A. Yes.

25 Q. Drove off without paying for the gasoline?

4079

Hiram Johnson - Cross-Exam

1 told this man that he stole the car; isn't that true?

2 A. April the 5th.

3 Q. April the 5th of 2001; isn't that true,

4 Mr. Johnson? I can't give you the answer. You've
5 got to look at me and look at those nice folks over
6 there.

7 A. I don't have to look at them.

8 Q. Okay. It wasn't until then, was it?

9 A. Yes, sir.

10 Q. I'm just going to ask you politely now. Kandee,
11 Miss Martin and Mr. Bowman were friends, weren't
12 they?

13 A. Yes, sir.

14 Q. They all went to school together?

15 A. Yes, sir.

16 Q. Friends with you?

17 A. Yes, sir.

18 Q. And you'd see Marion around Miss Martin a lot,
19 wouldn't you?

20 A. Yes, sir.

21 Q. And you'd see Miss Martin around, seeing the
22 other fellows at the apartments and other places,
23 too, wouldn't you?

24 A. Yes, sir.

25 Q. So it was not uncommon for Marion to be around

APPENDIX M

3953

Janice E. Ross - Cross-Exam

1 or objects that might contain lead or other
2 composites were found inside this young lady?

3 A. No bullets, right.

4 Q. Okay. And did you find, Doctor, with any care
5 or concern an issue about a leg injury to Miss
6 Martin? I mean, I know this lady was burned, but I
7 mean any particular broken bone, leg there, or bent
8 leg, or anything like that, Doctor?

9 A. I don't -- we did not find one at the time. I
10 believe afterwards we found that there had been some
11 leg injury, but there was -- there wasn't enough
12 there to help identify the body on the x-ray that we
13 took.

14 Q. Okay. And the reason I asked that is because
15 that was before the issue there, not as a result of
16 how the body was presented to you, that's exactly how
17 you found it, correct, ma'am?

18 A. That's correct.

19 Q. All right. And, Doctor, Mr. Bailey asked you a
20 question about the swabs that you did. And you
21 checked for seminal had fluid; is that correct,
22 ma'am?

23 A. Yes.

24 Q. And again, Doctor, with the highest respect to
25 you, you can't say as a professional and as a

3954

Janice E. Ross - Cross-Exam

1 qualified doctor of when the seminal fluid could have
2 been placed in there; is that correct?

3 A. That's correct.

4 Q. And there's no way to determine when seminal
5 fluid had been placed inside a body cavity?

6 A. Within days, I mean.

7 Q. Right. So it's within some time. From your
8 findings, Doctor, did it appear that it had been over
9 several days?

10 A. I didn't find any sperm, that doesn't -- that
11 means that there weren't -- there may have been
12 somebody who had a vasectomy, for instance.

13 Q. Yes, ma'am. I'm not asking whether it was --

14 A. So there was nothing there to tell me, document
15 the time of the seminal fluid.

16 Q. Could have been placed there, yes, ma'am.

17 A. Yes, sir.

18 Q. And then, Doctor, one of the most important
19 things I care to ask you about is when you --

20 obviously when you did the work that you did and

21 thoroughly did your examination of this young lady,

22 Doctor, you did not find any carbon dioxide or CO₂ in
23 her lungs when you examined her; is that correct?

24 A. That's correct.

25 Q. So in other words for us layman in particular,

Closing Argument by Mr. Bailey

1 over here, right here to about that front row
2 over there to him, spun around and said, "Black,
3 please don't shoot me, I've got a child to take
4 care of."

5 What happened then? It's dark, a
6 distance away, he says that gun fires two more
7 times. He can't see where she's hit, it's dark.
8 But after that Marion Bowman says, "I shot that
9 bitch in the head. Did you hear her head hit
10 the ground?"

11 This is State's 67 in evidence. Blood
12 in the road in the same general location we're
13 talking about. That blood is swabbed by the
14 SLED man, Mr. Porter, carried to the SLED lab.
15 And you heard the DNA man say that that blood
16 matched Kandee Martin's profile from blood from
17 the autopsy. So that backs up what Taiwan
18 Gadson said, again, about her hitting the road
19 there.

20 Now, you recall Dr. Ross's testimony.
21 Dr. Ross is the pathologist, she did the autopsy
22 on Kandee Martin's body. She said there are two
23 fatal shots. One shot to the back of the head,
24 one shot in the back, said both of those are
25 potentially fatal shots.

APPENDIX N

5021

Jury Charge

1 offense occurred. However, if you find the
2 existence of a statutory aggravating
3 circumstance, please list that circumstance on
4 the form entitled "Aggravating Circumstance" and
5 all 12 will sign. That is this form. In that
6 event, the jury simply lists the statutory
7 aggravating circumstances that it found and
8 there's a place there for each and every one of
9 you to sign.

10 Now, Madam Foreperson and ladies and
11 gentlemen, as you will recall the four statutory
12 aggravating circumstances submitted to you for
13 your consideration in this case are: Murder
14 while in the commission of criminal sexual
15 conduct, murder while in the commission of
16 kidnapping, murder while in the commission of
17 robbery with a deadly weapon which we call armed
18 robbery, and murder while in the commission of
19 larceny with the use of a deadly weapon.

20 First of all, criminal sexual conduct
21 is defined as the defendant engaging in a sexual
22 battery with the victim. Sexual battery is
23 nonconsensual sexual intercourse, cunnilingus,
24 fellatio, anal intercourse, or any intrusion,
25 however slight, of any part of a person's body

State vs. Bowman - Volume XXIV

1 THE CLERK: Thank you.

2 THE COURT: All right. I have reviewed the
3 verdict of the jury and find that the verdict
4 upon review of it is in due form and would note
5 for the record that the jury has used two forms,
6 that the jury has used the "Aggravating
7 Circumstances" form and has filled in the
8 aggravating circumstances on the "Aggravating
9 Circumstances" form. It is the same as the
10 other form which I will publish and I will do
11 that now.

12 State of South Carolina, County of
13 Dorchester, in the Court of General Sessions,
14 indictment 01-GS-18-348, we, the jury, in the
15 above-entitled case, having found beyond a
16 reasonable doubt the existence of the following
17 statutory aggravating circumstances, to-wit:
18 Murder was committed while in the commission of
19 kidnapping, murder was committed while in the
20 commission of larceny with the use of a deadly
21 weapon, now recommend to the Court that the
22 defendant, Marion Bowman, Jr. be sentenced to
23 death. Signed by the foreperson, Ms., I believe
24 it's Lianne Luisi, and the other signatures
25 likewise here attached.

APPENDIX O

4481

Closing Argument by Mr. Bailey

1 We went through a grueling process
2 that lasted a week. Y'all were picked out of
3 350 people that were originally drawn by both
4 sides as being 12 intelligent, decisive people
5 that could decide this case based on the facts
6 in an intelligent, fair, non-biased manner and
7 we put the State of South Carolina -- on behalf
8 of the State of South Carolina we put this case
9 in your hands and all I can ask is that y'all
10 come back and bring back a verdict that speaks
11 the truth. Thank you.

12 THE COURT: Thank you, Mr. Bailey.

13 MR. BAILEY: Yes, ma'am.

14 THE COURT: Mr. Cummings.

15 MR. CUMMINGS: Your Honor, Mr. Bailey.

16 Ladies and gentlemen, I come before
17 you this afternoon as I told you in my opening
18 argument with a heavy heart. And I make this
19 with no statements other than complete candor.
20 There's been a loss of life and there's no
21 question of that. There's been a loss of a
22 young life, Miss Kandee Martin. And it's easy
23 for each of you good ladies and gentlemen to
24 want to seek out and say there is a price to pay
25 for taking somebody's life, it's easy.

4482

Closing Argument by Mr. Cummings

1 And I told you that in opening
2 argument revenge, motive, all the reasons in the
3 world for you folks sitting as jurors and
4 listening to this to lash out by saying
5 somebody's got to pay for this horrible
6 incident. And somebody has to pay.

7 And then I have the burden. But I
8 have the privilege also of standing before you
9 today because this is how the system works, and
10 it is a privilege. Anybody who wants to take
11 this job, anybody who wants to come before good
12 citizens like you and ask you to, please, keep
13 an open mind after -- and, ladies and gentlemen,
14 proverbially you've been slapped in the face,
15 you've been taken away from your family, your
16 friends, your loved ones and you've been asked
17 to do something which is rare and that is to sit
18 in judgment of a fellow human being.

19 And you've heard what appears to be a
20 loss of a life of another person at least so far
21 based all on him, Mr. Marion Bowman, Jr. You
22 know why that says that? Because if they have
23 not proven that, the State has not proven that
24 beyond a reasonable doubt, then we're not here.
25 And you know why? Because they've got to say

Closing Argument by Mr. Cummings

1 Marion Bowman did that now because everybody
2 else has cut a deal. The person who went to
3 trial in this case is Mr. Marion Bowman, Jr.
4 His fate is in your hands after Her Honor gives
5 you the law and the charge.

6 It's easy to prejudge, isn't it? It
7 is easy. You've got one more issue here that
8 you have to make a promise to yourself through
9 your integrity and your fellow jurors, you have
10 promised to give this citizen a fair trial, you
11 have promised from your oath.

12 And you have also promised that you'll
13 take the law from Her Honor. And like I said,
14 remember, she's the boss. Sometimes you see Mr.
15 Bailey and I jump up, back and forth with each
16 other. And, again, if I've done anything to
17 offend you in my speech or mannerism or how I've
18 tried this case, please don't hold that against
19 Mr. Bowman. I'm what he got. I've been Court
20 appointed to represent this gentleman and I'm
21 doing everything I can in my power to present
22 Mr. Bowman to you for a fair trial.

23 We don't have the luxury -- and you
24 don't see me running over to the teleprompter,
25 I'm looking at this and everybody wants you to

4484

Closing Argument by Mr. Cummings

1 understand this, that only bad things have been
2 presented to you based on Mr. Bowman, only
3 certain parts in this closing argument by Mr.
4 Bailey. And I don't mean that directly at him.
5 The State, okay? He gave the closing argument
6 like I'm trying to give a closing argument for
7 Mr. Bowman. They've only showed you what they
8 believe should be shown. And that's why I
9 always wondered why sometimes when Her Honor
10 tells the ladies and gentlemen of the profession
11 to stand up and give an opening or a closing
12 argument and then everybody at the end says,
13 but, please, whatever the lawyers say is not
14 evidence. You wonder why we do it.

15 And why we do it, folks, is so you'll
16 understand that the system is balanced. So you
17 understand that it is the State's job to try to
18 show you every bad thing they can, so all of a
19 sudden it goes like this. Because if it doesn't
20 do that, then they haven't proved beyond a
21 reasonable doubt.

22 And believe me, folks, it is easy to
23 close an eye. It is easy to take everything in
24 one short perspective, hear horrible words said
25 about a human being, it is so easy to close your

Closing Argument by Mr. Cummings

1 mind. And then I, or any lawyer, have to come
2 back before you and ask you to, please, open
3 your mind up. Because, ladies and gentlemen,
4 Mr. Bowman is charged with two crimes here, and
5 only two. He's charged with two. He has pled
6 not guilty to those charges. And you're right,
7 we have spent a solid week asking you good
8 citizens, and you've made your oath to your God
9 saying you would be fair and impartial and give
10 any citizen a fair trial.

11 And, you know, you look, you look at
12 each other, you look out here, you paid close
13 attention to this evidence, you've paid close
14 attention to a lot of things in here. And one
15 of the issues is let's go back and look at the
16 beginning of this. There was a clean slate.
17 You didn't know anything about the facts other
18 than all of a sudden when you showed up here in
19 court that day there's a lot of you folks up
20 there, a lot of people, a lot of policemen
21 around here, a lot of people who look like
22 they're sad, a lot of people that look like they
23 don't want to be up here. A lot of people, but
24 only 12 of you good citizens, and of course four
25 alternates that were here, only you sit in

Closing Argument by Mr. Cummings

1 judgment of this fellow human being.

2 And here's what they've asked you to
3 do, they've asked you to listen to evidence.
4 And some of it has been back and recreated
5 evidence. And you've got to take that into
6 consideration, whether you like it or not you
7 have to do it.

8 And I'll start with the very first
9 one, okay? Mr. Waters. If you're going to put
10 any weight on Mr. Waters' testimony, please do
11 it twofold. The first one is when something is
12 fresher in your mind, would you submit to each
13 other that if you learned something today it
14 would probably be in your mind a lot more today
15 than it would be four or five months later?

16 How about when a police officer goes
17 back to a citizen and asks them to change their
18 statements or testimony and only then do you
19 come back and say, yeah, I think he might have
20 said.... And, of course, you saw the flash card
21 on the screen. Do you know why we ask you to
22 weigh the evidence? Because you judged the
23 credibility of Mr. Waters when he first took
24 that stand.

25 What happened when I cross-examined

closing Argument by Mr. Cummings

1 him? Did he have a reason to want to go back
2 and change his testimony? Sure. Do you know
3 why? A friend was lost. Does not anger dwell
4 within, inside anybody if you've lost somebody,
5 or if you really, really feel the police need
6 something from you are you trying to help them?
7 That's your speculation. That is your province.
8 I'm asking you to submit that.

9 What was said the first go around?
10 And that's important. If you'll please ask each
11 other back in that room what was important. Why
12 did the State go back months later and ask him
13 to reconsider what he told them when it was
14 first fresh in his mind? That's why, ladies and
15 gentlemen, you put your minds together, not bits
16 and pieces that are recreated at the end to try
17 to convince you to vote one way or the other.

18 Now, I had some nice compliments paid
19 to me a few moments ago by the State's
20 representative by anticipating what we may do.
21 That's speculation, but obviously to think ahead
22 of time about what I might propose in a case is
23 exactly what I'm going to do. Anybody's who's
24 been around a long time, they've got a little
25 gray hair, anybody that's been around a long

Closing Argument by Mr. Cummings

1 time is going to submit to you issues of
2 contention, issues of reasonable doubt for a
3 reason.

4 And that's your weight, ladies and
5 gentlemen. Because after Mr. Waters, when you
6 look at the family, Mr. Bowman's family,
7 Yolanda, that lady appeared to be angry at me,
8 she didn't want to answer my questions. She cut
9 a deal with the State. And I know this is
10 horrible, I'm going to sit here and my client's
11 going to be angry with me and I got to sit down
12 with him in the next few moments. His sister
13 was angry about being up here. They're angry.
14 How can you expect somebody to answer back in a
15 truthful way?

16 Again, you weigh that credibility.
17 Because if they don't cut a deal with the State
18 they lose their deal. Please remember that.
19 There's a reason why somebody wants to cut that
20 deal. And the truth of these people, folks, I'm
21 not going to insult your intelligence, you weigh
22 the truth for what you saw up there, did they
23 have a reason.

24 And when you listen to Her Honor's
25 charges, ladies and gentlemen, I promise you she

Closing Argument by Mr. Cummings

1 doesn't waste two or three pages per issue here
2 for a reason. And you listen to that, see if
3 it's made any sense from us on behalf of
4 Mr. Bowman, or any sense from this witness chair
5 as to the importance of weighing why somebody
6 has something to say.

7 Again, it's easy to close your mind.
8 You've heard probably enough to make you
9 disgusted about what happened on a night in
10 February back in 2001, but you promised. You
11 not only promised Mr. Bowman, you promised the
12 citizens of this county and this state that you
13 would do your job. And you know something, I'll
14 know you'll do it.

15 The other issue I'm going to say now
16 as we go through people is Kendra. Appears to
17 be a very simple, very polite lady, didn't want
18 to testify, had her head hung down the whole
19 time. Again, if she didn't keep up with her
20 deal, prosecuted. Look when these deals were
21 cut, please, that's a very important factor.

22 And, again, it's easy to sit back and
23 say, okay, so they cut a deal, so what? I
24 haven't got to the good stuff yet and I hope I'm
25 not losing you yet and I'll tell you why,

Closing Argument by Mr. Cummings

1 because the most important witness in this case
2 and probably the nicest guy in this case at
3 least as far as laypeople goes is Mr. Judy, what
4 a nice man. And it looks like he was scared to
5 death of me or anybody about asking him a
6 question. And I know I'm kind of big and I told
7 you like a bull in a china shop.

8 Mr. Judy was only up for what, to say
9 about five minutes to 8:00 when his wife, his
10 bride is telling him to get home, they've got
11 family in town, they want to get home. His
12 bride is asking him to go home, get there, don't
13 stop.

14 Mr. Judy said he stops and looks at a
15 dark colored car there. Now, is that important?
16 Yes, because everybody else is trying to say
17 something different than what Mr. Judy said.
18 Now, did he see anybody around at all? No.
19 You've got to take that at Mr. Judy's testimony
20 if that's what you find, good ladies and
21 gentlemen. Mr. Judy leaves, then the world
22 explodes for everybody, Mr. Bowman, and every
23 other person that's ever been connected with
24 Mr. Bowman, friends, family, you name it, Miss
25 Martin, everything has exploded after that.

Closing Argument by Mr. Cummings

1 We know that Mr. Judy was on that road
2 at night and we know what he saw. And we know
3 that from that man coming back the next day, he
4 said, oh, my goodness, all these police cars are
5 down there, fire department, ambulances, let me
6 go back there and find out what happened,
7 because he heard in the community what happened.
8 Are you ready? He heard and went back.

9 Is that significant to you folks? It
10 sure is. Because if I submit to you, ladies and
11 gentlemen, that one person hears this and by the
12 end of the line it gets down to here you're
13 going to hear something different, or if you
14 hear something that's exactly how you're going
15 to report it back. Did you hear the accident
16 happen outside the building sitting here, or did
17 you watch the accident happen? That was just an
18 old basic thing a long, long time ago. Did you
19 hear the tires screech? Did you hear the metal
20 clang, or did you tell the officer you saw the
21 accident? It's easy to do that.

22 You might have heard something, then
23 turned around and glanced and saw the cars
24 bouncing off of each other. Did you see the
25 accident, though? Did you see what happened

Closing Argument by Mr. Cummings

1 that night? No. They got to come in here and
2 prove to you beyond a reasonable doubt what
3 happened. Is there any doubt the crime scene
4 was messed up?

5 Now, it's easy to say -- again,
6 shutting that thing off, it's easy to say you
7 don't care about it, a young girl has died and
8 somebody must pay. My question to you is, is
9 the right somebody paying? That's where I have
10 the toughest job along with Ms. Thomas on behalf
11 to Mr. Bowman to submit to you to keep an open
12 mind.

13 You 12 good folks are going to go back
14 there in a little bit, you're going to put your
15 minds together and you're going to judge based
16 on the law and the evidence as Her Honor gave
17 you, the facts and circumstances that cause you
18 to vote guilty or not guilty as to Mr. Bowman as
19 to two charges.

20 But I want to submit a couple things
21 to you that are going to make you think as we
22 speak now. Is it so important for the State to
23 have Mr. Gadson to say that Mr. Bowman fired
24 three times? And why is that? Because
25 Mr. Gadson told you. And, again, you weigh what

Closing Argument by Mr. Cummings

1 you heard. If I am different from what Mr.
2 Bailey stated or he's different from what I
3 state, that's why you good ladies and gentlemen
4 remember what was said on the stand. I submit
5 to you he said he heard three shots, saw three
6 flashes I think were his exact words based on my
7 notes.

8 Dr. Ross testified to you, and folks
9 this is vital. As I go over here to grab this
10 thing, I'm going to stand it up in just a
11 moment, Dr. Ross is a medical doctor, nobody,
12 nobody asked her anything other than what she
13 heard from her own mind about what she found
14 that day when she did her examination. And her
15 testimony is, ladies and gentlemen, a shot to
16 the back of the head on Miss Martin and a shot
17 to the back of Miss Martin. What did Mr. Gadson
18 say to you good folks?

19 And, again, you may not put any weight
20 on this, you may ignore what I say, you may
21 ignore anything about what we present to you,
22 but you can't ignore the fact of what was said.
23 And it was said by Mr. Gadson. He was facing
24 Black, he was facing Mr. Bowman and he shot her
25 front on. And I asked him that deliberately

Closing Argument by Mr. Cummings

1 because he saw three shots. He says he saw
2 Mr. Bowman shoot her in the front. He didn't
3 see that. This poor girl was shot in the back,
4 she was shot in the back of the head.

5 And he just happened to be up at the
6 stop sign looking at the stars? That was my
7 cross-examination question, looking at the
8 stars, not doing nothing. That's kind of
9 important because if he admitted doing it he
10 would be in trouble, he would be facing trial.

11 Folks, he has pled to a maximum
12 sentence of two charges of 20 years. Do you
13 think he has a motive of bias or reason to want
14 to testify at the last moment? What date did
15 that gentleman cut that deal? That deal was cut
16 so that this man would face the ultimate charge,
17 you can't dispute that. It's not nice, you
18 don't want to hear it, but it's the truth. It
19 is the truth of what he did signing that plea
20 agreement on the 13th.

21 It's easy to shut me off and I'm going
22 to ask you on behalf of Mr. Bowman to, please,
23 not do that yet. There's no rush to judgment
24 and I'm going to ask you to please keep that
25 open mind a little bit longer, please.

Closing Argument by Mr. Cummings

1 Gadson accordingly testifies that Miss
2 Martin is so frightened that she jumps in the
3 woods. That's Mr. Judy. They're white people.
4 I hate to say this, and, again, please, don't
5 hold this against Mr. Bowman, if anybody was
6 frightened, why did they jump in the bushes?
7 Why not flag the car down, jump the car? Does
8 that make any sense to you? What is the reason
9 why anybody would jump in the bushes if they're
10 afraid?

11 Especially Miss Martin is a young,
12 white lady and she's out there with two young,
13 black males. That's what you want Mr. Gadson --
14 if that's what you believe his testimony is, you
15 weigh that credibility issue. Does that make
16 common sense? If it does, ladies and gentlemen,
17 I defer to your judgment and your wisdom.
18 You're on this earth like we are, you use your
19 good common sense, don't leave it behind that
20 back door. Look at that issue. Was there three
21 shots fired?

22 Mr. Newsome's sitting at his house and
23 he thinks it's night hunting. He drives down
24 the road, got another vehicle coming down the
25 road. If Mr. Gadson was so afraid or so worried

Closing Argument by Mr. Cummings

1 about this mean guy blowing his brains out,
2 okay, if you want to read that little prompter
3 that was up on the screen, then he was out there
4 flagging down Mr. Newhouse running down the
5 roadway coming out there saying, oh, please, get
6 me away from this guy, get me away from this
7 guy. And, oh, by the way, let me show you this.
8 Call the police. Does that make common sense?
9 If it does, ladies and gentlemen, I defer to
10 you.

11 We know if you want to count and you
12 want to look at this crime scene as evidence and
13 you want to say it was not messed up and you
14 want to say that all the lawyer was doing was
15 trying to put up smoke and mirrors, there's six
16 casings out there, six. At least six. Because
17 who knows what really happened that day, who
18 knows. Is that a reasonable doubt? How do you
19 go from three shots to six casings? If you put
20 that much credibility and weight on Mr. Gadson's
21 testimony, then tell me and tell yourselves in
22 that room where the other three came from.

23 Because remember now you're going to
24 be asked in a few moments, again, to remember
25 that Mr. Collins says he can say there's a

Closing Argument by Mr. Cummings

1 breech scratch or marks on this firearm that can
2 match five out of six shells out of this weapon.
3 Wow. Do you think Mr. Gadson would have
4 remembered five shots especially? Saying it's
5 six to show more, to show, my goodness, all
6 these shots fired at Miss Martin.

7 Miss Martin is gone, folks, she is
8 deceased, I am truly sorry for that. I don't
9 stand before you looking like I don't care,
10 because I do. I try to be as humble, polite,
11 not only to you folks, but every witness in here
12 other than the witnesses that wouldn't even
13 answer my questions. And that's not a fair
14 trial. Her Honor even had to tell people to
15 answer my questions. But you look at
16 Mr. Gadson's statement, that doesn't add up. It
17 adds up to a great deal. And I know it's not
18 something you want to talk about, it isn't.
19 May 13th when we start calling you folks up here
20 a deal's cut, it's cut in a back room.

21 I don't know what to tell you about
22 Hiram Johnson other than I'm going to cover it
23 right real quick. Mr. Johnson, Hiram Johnson,
24 shot in the back of the head by police. I asked
25 him about questions, asked him about jury

Closing Argument by Mr. Cummings

1 preparation, any lawyer talks to people ahead of
2 time, there's no shame in that. Why we ask the
3 question is to point out to you people and say,
4 oh, my goodness, they're going to ask me
5 questions about that. Yeah, Hiram Johnson. The
6 only thing he knows is what? He knows enough to
7 go back and tell the wife of Mr. Bowman there's
8 a gun in the couch.

9 The police search that couch twice.
10 And, ladies and gentlemen, if you want to
11 believe that when they have control of a
12 situation, they got control of a human being,
13 Mr. Bowman's arrested on the 17th. Mr. Coker
14 stated that he got on his knees and looked under
15 that couch. They don't do anything other than
16 tear things apart.

17 Now, use your common sense on that.
18 And there's no question about that. If you want
19 to believe that they overlooked that gun in the
20 couch, then so be it, that is your province.
21 You notice why that rail is there? Nobody can
22 invade your province. The sanctity of the jury
23 box is exactly that. And Her Honor protects
24 that and you've seen that. Not one of us is
25 going to be allowed to be near you. If we see

Closing Argument by Mr. Cummings

1 you in the hallway we've got to back up politely
2 and go, right? Because that's how important it
3 is that you folks have your privacy and
4 protection.

5 I'm asking you look at this, look at
6 what was said by Mr. Johnson. He went and told
7 Ms. Bowman there's a gun in the couch. The back
8 door of that trailer couldn't be secured. And
9 everybody wants to make a big deal about when
10 she found the red spatter there. Hold it,
11 you're missing the picture.

12 First picture is when Mr. Johnson
13 being the good cooperative citizen that he is,
14 tells the police. Does he tell the police that
15 he told Ms. Bowman where the gun was? No. It
16 looks like somebody's planted something there in
17 the couch. The problem is it didn't grow fast
18 enough and for whatever reason Ms. Dorothy
19 Bowman, the wife, is told about this gun and she
20 finds it.

21 But then it gets a little bit more
22 hairy or a little bit more cloudy here. Because
23 when somebody finds something they're scared,
24 obviously, and they call upon people for help
25 instead of doing what they should have been

4500

Closing Argument by Mr. Cummings

1 doing. And what is right? That is send it to
2 law enforcement at the time because obviously
3 he's in jail and no way -- and he had no way to
4 get to that couch.

5 They took the pants off there, and
6 that's another thing. You didn't hear any
7 objections about the trousers coming off the
8 couch by us because we knew that the trousers
9 have kerosene on them, some sort of odor of
10 kerosene on the pants and they heat their home
11 with kerosene.

12 Yolanda made a big deal, don't know
13 nothing, never went over there. She didn't want
14 nothing more to do with that gun, nothing more
15 to do with that house, nothing more to do with
16 anybody. Kendra went over a couple times,
17 didn't know, didn't want to know. Dorothy knew
18 it heated her home, she's got three babies, an
19 infant from Mr. Bowman and he has two other
20 stepchildren. It's a big deal with Mr. Layton
21 when I asked him what he found. He found
22 nothing of gasoline on my client's clothing,
23 nothing.

24 And if you want to believe that what
25 Mr. Felder said that my client gets back in the

4501

Closing Argument by Mr. Cummings

1 car, drives the car into the little tractor
2 road, lights it down with gasoline, throws a
3 match on it, if that's what you believe, ladies
4 and gentlemen, from Mr. Felder, I submit to you
5 why wasn't gasoline found on the same pants that
6 everybody's made a big point about identifying
7 here?

8 They made sure it was gasoline,
9 remember? And this is the horrible thing now,
10 and I beseech you not to punish me when I say
11 this, that little girl had gasoline poured on
12 her. And I deliberately asked a question in
13 here of Mr. Helms not as a trick, not as
14 anything else, but to get you to show that the
15 car was pulled down and pulled out tail end
16 first. Water, everything else would have been
17 going that way.

18 So there was no explosion of the gas
19 tank like the chief of the fire department
20 thought. Agent Helms got underneath that thing,
21 checks this out, the gas tank's intact. So
22 gasoline didn't come up, okay, law of physics,
23 just didn't blow up, something was poured on it.

24 The person who had gasoline on them
25 was who? You cannot -- you cannot by law in

Closing Argument by Mr. Cummings

1 this room after listening to Mr. Layton find
2 there was gasoline on my client. There was
3 nothing on his coat, only a trace of kerosene on
4 his pants. And they made a big deal out of that
5 and they called Mr. Layton in to try to tell you
6 that.

7 Where this gasoline was, ladies and
8 gentlemen, was on the person of Miss Martin
9 after, and Dr. Ross stated this, after she was
10 deceased. No carbonation in her lungs, no smoke
11 in her lungs. And I ask you, please, do not be
12 bitter at me or angry at me for saying that. I
13 had to say that to you because that's what the
14 evidence shows. And I asked Dr. Ross that
15 question for a reason.

16 What you do know, ladies and
17 gentlemen, is this: Everybody who has a reason
18 to say something in here said what they had to
19 say and it was only after we tried to pull
20 things out to establish some issues here that
21 you heard anything contrary. Did you hear, see
22 anything flash up on the screen that said
23 anything other than words to convict Mr. Bowman?
24 That's not anybody's job. Everybody's job in
25 here is to do justice and everybody wants a

4503

Closing Argument by Mr. Cummings

1 verdict that speaks the truth. Then why wasn't
2 some of the truth shown to you also?

3 I have a job to do, that's right, and
4 nobody has to do our job for us, but, ladies and
5 gentlemen, Marion has pled not guilty and Her
6 Honor will tell you the burden stays with the
7 State until they prove that guilt beyond a
8 reasonable doubt. Her Honor will give you the
9 definition of reasonable doubt. You each have a
10 right along with your right to share
11 collectively with your fellow jurors. And at
12 the end of that you and your fellow jurors reach
13 a decision.

14 Her Honor will tell you, and she'll
15 tell you about the credibility, she'll tell you
16 about when people cut deals what happens.
17 They'll tell you, ladies and gentlemen, about
18 what happens. If everybody in this jury panel
19 believes that the only motive in here was so
20 that Marion, Marion would kill this little girl,
21 what happens in here? He was charged with
22 murder and arson. He has not been charged with
23 stealing a car, but what was said? Where did
24 that come from?

25 Okay. The only problem is at the club

4504

Closing Argument by Mr. Cummings

1 everybody else testified, Valorna Smith, Carolyn
2 Brown, and believe me, and this is important
3 here, ladies and gentlemen, and I know I'm
4 getting long winded, and I apologize, Carolyn
5 Brown got called back to the stand by the State
6 because the first time they asked her questions
7 about what kind of car or anything else she
8 didn't say what they thought she would say, she
9 stuck to her guns. The second time up we went
10 over the same old, what we call, plowed ground.
11 And Her Honor sustained my objection a few times
12 and said where's the new questions.

13 If anybody looks at Ms. Carolyn Brown,
14 you look at what? She knows in her mind what
15 time the fellows were there and she knows what
16 was going on at that club because she saw them
17 in Yolanda's car, not Miss Martin's car. My
18 client has not been charged with stealing a car.
19 That's like the 15-yard penalty in football,
20 kind of like piling on. It's like piling it on
21 hoping that something sticks. It's not here for
22 you to consider, but it's easy if you don't
23 follow Her Honor's laws to go back there and
24 say, stole the car. No, he didn't. He's not
25 charged with it. Not charged with it.

4505

Closing Argument by Mr. Cummings

1 Ladies and gentlemen, big deal about
2 the watch in the pocket. There's been no charge
3 of Mr. Bowman about the watch in the pocket.
4 I'll tell you that it's a big deal, how it came
5 about was let's look at the DNA. It showed
6 sometime that Miss Martin, who was friends with
7 Mr. Bowman, Miss Martin who was friends with
8 Mr. Gadson, Miss Martin who was friends with a
9 lot of these folks in this community in
10 Branchville, sometime Mr. Bowman and her had
11 relations. Sometime. Do you think that was put
12 there to try to poison you to get you angry? Do
13 you think that was presented to want to get you
14 to lash out? Do you think there was a reason?
15 How can you tie that into this case? How?

16 There's a reason. If you look in your
17 heart, you look in your common sense you'll find
18 a reason. And I'll say this also to you. Why,
19 why would Marion want to kill her? He's told
20 you by pleading not guilty he didn't do it.
21 You've got to prove the physical evidence that
22 Marion did it.

23 Ladies and gentlemen, if this is the
24 only issue that preys to you, did Mr. Gadson fit
25 why he had to say she was shot in the front?

4506

Closing Argument by Mr. Cummings

1 Because maybe when he's up there his script that
2 he was supposed to follow did ring like it was
3 supposed to ring, because maybe he realized when
4 he had his head down the whole time, wouldn't
5 look you folks in the eye, wouldn't answer
6 questions back on cross, and maybe he knows he
7 had to cut his deal and go on. It's easy,
8 ladies and gentlemen, to cut deals. It's easy
9 to say the last guy holding the bag is going to
10 take the fall.

11 Now, what I just said to you is
12 probably going to offend you because it's not
13 the fact of cutting a deal here that you want to
14 hear. You want to know who took Miss Martin's
15 life and that is your answer, but it's not your
16 answer because the State has the burden of
17 proving who.

18 I asked if certain other tests were
19 done in this room. And, you know, it's easy for
20 you to say, come on, what's he bothering us
21 about that for, why has he asked that question,
22 I've heard enough. No, you haven't yet, please.
23 Because it's easy to shut it off. The last man,
24 holding the bag here is that kid right there.
25 And the only one holding the bag is him, so they

4507

Closing Argument by Mr. Cummings

1 want you to say that he killed Miss Bowman
2 because nobody else can be charged with it.
3 Nobody else is at stake for you to determine
4 because he pled not guilty and asked for a jury
5 panel.

6 And, ladies and gentlemen, where are
7 the statements that say anything positive about
8 where Mr. Bowman was? Where are all these
9 people? All you saw were flash cards about how
10 bad, what he could have said, what he would have
11 said. Look at the time that passed from these
12 alleged statements that were made and put up the
13 curse words for you to inflame you, to get you
14 angry, angry enough to vote this man guilty.
15 You know what it is? That's exactly what it is.
16 I don't think you're going to fall for that. I
17 don't think.

18 MR. BAILEY: Judge, I want to object to Mr.
19 Cummings expressing his own personal opinion,
20 that's clearly not allowed.

21 THE COURT: Yes, refrain, please.

22 MR. CUMMINGS: Yes, ma'am. I apologize.

23 THE COURT: Yes, sir.

24 MR. CUMMINGS: Please, don't fall for that.
25 I apologize for using the word. Marion had to

Closing Argument by Mr. Cummings

1 have the gun in this case in order for you folks
2 to be angry enough to want to convict him. Also
3 let's just go briefly on the bullets. Why do
4 you think six -- February to June all of a
5 sudden there's a box of bullets in the same
6 couch four months later and there's a mysterious
7 call upon some mysterious wind of intervention
8 to want to lead to go back to that couch. I
9 wonder who dropped that little hint about where
10 the bullets might be?

11 You're right, it's easy to say, well,
12 you know, it follows my case. No little bread
13 crumbs were followed. I feel like the little
14 story of Little Red Riding Hood going to
15 grandma's house, bread crumbs, where are bread
16 crumbs leading? It's got to point towards
17 Marion. Red spatters in the trailer there days
18 afterwards, Marion's not around. Nobody sent
19 that up here to have that gentleman do any
20 samples, the DNA guy. You want to ask him that?
21 Everything else got sent up there.

22 Were there selective issues here?
23 Were there selective charges? Were there
24 selective deals cut? Sure, there were. But is
25 that enough to convince you beyond a reasonable

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Closing Argument by Mr. Cummings

1 doubt that Marion Bowman is guilty of murder?
2 That is your province. Submitting that issue to
3 you reasonable doubt exists.

4 You have no one to reward, no one to
5 punish. Everybody feels bad about what happened
6 here. Nobody will ever question you about your
7 decisions that you make in that box or in that
8 backroom. Nobody has been allowed to go near
9 you good folks and nobody will afterwards unless
10 you want to talk to somebody about it. And
11 those questionnaires asked you about that,
12 whether you would have an impact, whether you
13 would have some pressure on you to vote your
14 conscience, to vote what you found in this room
15 and only in this room.

16 Oh, ladies and gentlemen, someone has
17 to pay for the loss of that little girl, but are
18 you so sure that the right one's going to pay?
19 And that's the question that only you can
20 determine. It's obvious, it is so obvious to be
21 angry, it is so obvious that you know that the
22 price of justice is screaming out here to find
23 somebody for this. What if the one who did cut
24 his deal and got a deal and will go on?

25 It's easy to jump. I wanted to jump

Closing Argument by Mr. Cummings

1 up several times in Mr. Bailey's closing, I
2 wanted to jump up, say, hey, come on, take the
3 words off the prompters. They left them on for
4 you to get you angry. Please don't let anger
5 close your mind to facts.

6 And as to the arson charge, the only
7 thing as to the arson charge is what? No
8 gasoline on my client's trousers? There is
9 nothing there other than Mr. Felder saying, oh,
10 Marion did it. But if he was in such shock,
11 ladies and gentlemen, when he went back after
12 this according, if you believe this man's
13 testimony, his deal cutter who's going to get
14 probation, this deal cutter goes back, gets his
15 hair either braided up or braided down. I'm
16 sorry, I apologize, I was kind of like stunned
17 when I heard that from Mr. Felder. And he's so
18 upset he goes and has a beer and goes to sleep.

19 And of course because of all his good
20 civic nature and the importance of the fact
21 he'll come in and tell you folks what his side
22 of the story is, that until May, right, the week
23 of this trial, that he tells you now, oh, this
24 is what happened.

25 Mr. Felder, the good gentleman that he

4511

Closing Argument by Mr. Cummings

1 is, he cut his deal. In order to get a deal,
2 this is what he had to testify to. There is
3 nothing, ladies and gentlemen, tying my client
4 to the car other than the deal cutters. If you
5 believe them, ladies and gentlemen, then so be
6 it. Is there reasonable doubt here some? Sure,
7 there is.

8 And you're right, we took a long time
9 looking at the pieces of evidence to try to show
10 it to you this could have happened, that could
11 have happened. I didn't put six -- excuse me,
12 nobody put six shells on the ground except what
13 happened that night and nobody is here to
14 testify to you as to the six shells, no one.

15 So you know there's a doubt about what
16 was said, you know, but you want to punish
17 somebody, that's human nature. There's no one
18 here -- if these people are so afraid of blowing
19 his brains out why did they ride to the club
20 with him? Why? You get away from people if
21 they scare you, don't you? You don't hang
22 around. Marion Bowman is the only stoop, that's
23 it. Point it at him. He got it. We got him,
24 let's say he did it. You wait, that's it.

25 No citizen can come in here and prove

Closing Argument by Mr. Cummings

1 himself innocent, you can't do that. That's why
2 our forefathers years and years and years ago
3 said to you you've got to have proof beyond a
4 reasonable doubt. If you want punishment, so be
5 it. If you want revenge, so be it. If you want
6 justice, if you want truth, then you shall seek
7 it. If you want to give Marion Bowman, Jr. a
8 fair trial you will do so. If you want to
9 follow Her Honor's law and instructions you will
10 do so. If you choose not to do that is a breach
11 of your sacred oath.

12 Ladies and gentlemen, in a moment,
13 again, I'm going to ask you to beg my indulgence
14 to walk to the table. I do not want to turn my
15 back on you. As I stand here I just want to end
16 my final words with a few words if I can,
17 please.

18 Ladies and gentlemen, this is
19 Mr. Marion Bowman, Jr., again, and I know you're
20 angry for the loss of Miss Martin, I'm asking
21 you to, please, on behalf of Ms. Thomas, myself,
22 take this case as serious as you said you would,
23 weigh the facts and the evidence as the State
24 had the burden of presenting them, and if you
25 find him not guilty, so be it. I'm asking you

4513

Closing Argument by Mr. Cummings

1 to find him not guilty.

2 If you find him guilty, ladies and
3 gentlemen, it's because each and every one of
4 you put your mind together and reached that
5 decision. There are two charges. Don't let the
6 rest of this stuff cloud everything. And that's
7 what this is. If you want to talk about smoke
8 and mirrors, there they are. Please look at
9 what was presented here today. Thank you, Your
10 Honor.

11 THE COURT: Thank you, Mr. Cummings.

12 Ladies and gentlemen, do any members
13 of our jury panel need to take a short comfort
14 break? It's going to take me about 45 minutes
15 to deliver the charge to you, so does anyone
16 need to take a short comfort break? If so don't
17 be shy, raise your hand.

18 All right then. I'll tell what you
19 I'm going to do is just stand where you are for
20 just a moment. Stand and see if you can get
21 the -- there you go. How good does that feel?
22 And, ladies and gentlemen, when you are prepared
23 to be seated, be seated.

24 THE COURT: Ladies and gentlemen, I'm going
25 to ask that you please give me your undivided

APPENDIX P

Frankie Martin - Direct Exam

1 first been duly sworn, is examined and testifies
2 as follows:)

3 DIRECT EXAMINATION

4 BY MS. HARDEE-THOMAS:

5 Q Mr. Martin, where were you on the 16th of
6 February of 2001?

7 A I just had came home from work about twelve
8 o'clock.

9 Q Okay. And you were where?

10 A At my house.

11 Q Okay. And can you tell us who else was there?

12 A Kande came by and asked me to borrow \$3.

13 Q Excuse me, do not talk about what someone said
14 to you and I'll try not to ask a question in that
15 regard. Who was at your home?

16 A Kande.

17 Q Okay. Who else later arrived at your home?

18 A Marion and Joe Fogle.

19 Q How did they get there?

20 A In Joe Fogle's car.

21 Q Okay. Who was there first?

22 A Kande.

23 Q Now, how long were they all there?

24 A A couple of minutes is all.

25 Q And where were they?

Frankie Martin - Direct Exam

1 A Well, they were in the bathroom, talked for a
2 minute, then they left out.

3 Q Okay. And where were you?

4 A I was in the room hanging up clothes.

5 Q You were in the --

6 A Hang up clothes, getting myself ready.

7 Q In one of your rooms?

8 A Yeah.

9 Q One of the backrooms, or front rooms?

10 A Yeah, backroom.

11 Q Were you able to see where they went?

12 A They were in the bathroom.

13 Q Okay. How long did they stay in your home?

14 A About a minute or two, couple of minutes.

15 Q Okay. What happened after that?

16 A Marion left with Kandee and Joe Fogle followed
17 in the car.

18 Q Okay.

19 MS. HARDEE-THOMAS: Please beg your
20 indulgence, Your Honor.

21 THE COURT: Yes.

22 (Ms. Hardee-Thomas conferring with Mr. Cummings
23 and Mr. Bowman.)

24 Q You indicated what time of day was that?

25 A About 12:00 or 1:00, something like that.

APPENDIX Q

Closing Argument by Mr. Bailey

1 appropriate case I can bring back the death
2 penalty. Ladies and gentlemen, on behalf of
3 Dorchester County, State of South Carolina, I'm
4 asking you to have the courage in this case to
5 do your full duty, your verdict whatever it is
6 must be unanimous, all 12 of you must agree.
7 Thank you.

8 THE COURT: Thank you, Mr. Bailey.

9 Yes, ma'am.

10 MS. HARDEE-THOMAS: May it please the
11 Court.

12 THE COURT: Ms. Hardee-Thomas.

13 MS. HARDEE-THOMAS: Ladies and gentlemen of
14 the jury, you have spoken. You have found
15 Mr. Marion Bowman guilty of murder and arson
16 third. But, ladies and gentlemen, we're talking
17 about aggravating circumstances. We're talking
18 about murder was committed while in the
19 commission of CSC, murder was committed while in
20 the commission of kidnapping, murder was
21 committed while in the commission of larceny
22 with the use of a deadly weapon, and murder was
23 committed while in the commission of robbery
24 while armed with a deadly weapon. Mr. Bowman
25 hasn't been charged with any one of those

Closing Argument by Ms. Hardee-Thomas

1 charges; criminal sexual conduct, kidnapping,
2 larceny, or robbery. You found him guilty of
3 murder and arson.

4 Let's look at the facts. Murder was
5 committed while in the commission of criminal
6 sexual conduct. Did Mr. Bowman intend to commit
7 CSC and a murder occurred? What did you hear?
8 You heard from Frankie Martin, he was on that
9 stand, he said Kandee Martin was at his
10 apartment. And who came up? Marion Bowman and
11 Mr. Fogle. They went into the bathroom
12 together, Kandee and Marion. What do people do
13 in the bathroom? Have consensual sex? Because
14 if they didn't, they did come out of the
15 bathroom. Frankie Martin was able to tell you
16 nothing looked different to him, both of them
17 looked okay, they went in her car. You would
18 have heard something from Frankie Martin if
19 anything was different. And they drove away.

20 What did you hear about kidnapping?
21 Murder was committed while in the commission of
22 kidnapping. Start off with Frankie Martin.
23 They were together at his apartment, they left
24 together in his car. You even heard from
25 Gadson, he got in the back of a car when he saw

Closing Argument by Ms. Hardee-Thomas

1 them, was riding with them. He told you that
2 Marion was telling her where to go to make you
3 think that she was held without her will. What
4 happened when they actually got to the
5 destination? They both got out of the car, a
6 car came by in the dark, everybody went in the
7 woods. Everybody. That's the perfect aspect to
8 find out if somebody's really kidnapped. A car
9 is coming, that car can help me. There was no
10 information with regards to her running towards
11 the car when the lights came down. But what
12 happened? The car went past, she came out of
13 the woods and walked towards her car.

14 You've heard murder was committed
15 while in the commission of larceny. What have
16 you heard? You've heard a watch was found on
17 Mr. Bowman. A watch. How did it get there?
18 That's what the State wants you to see. How did
19 it get there? Well, they were together during
20 the day at Frankie Martin's house, they were
21 riding around, you heard that. Did Mr. Bowman
22 intend to get a watch, or to get a car and then
23 a murder occurred? That's what the State wants
24 you to believe.

25 You've heard from Mrs. Bowman if you

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Closing Argument by Ms. Hardee-Thomas

1 want to believe her, I'm talking about Marion's
2 mother. They've seen Kandee. He's rode in her
3 car before several times, and on this particular
4 date he was riding in the car again. If someone
5 is killed and a watch or a car is taken is that
6 an afterthought of murder? The intent has to be
7 simultaneously.

8 MR. BAILEY: Objection, Your Honor. She's
9 misstating the law to the jury.

10 THE COURT: I sustain the objection. Be
11 mindful.

12 MS. HARDEE-THOMAS: You have four
13 aggravating circumstances. You do not have
14 Mr. Bowman having an intent to do any four of
15 them. You have Mr. Bowman who's 21 years of
16 age, you've heard that he's committed two
17 burglaries which is not significant of anything,
18 you've heard that he has family problems and had
19 family problems throughout his life. We ask
20 that you consider that the mitigating
21 circumstances that the State has shown he
22 deserve -- Mr. Bowman deserves your
23 consideration with regards to these and to give
24 him life without the possibility of parole in
25 prison. Thank you.

Closing Argument by Mr. Cummings

1 THE COURT: Thank you, Ms. Hardee-Thomas.

2 Mr. Cummings.

3 MR. CUMMINGS: May it please the Court,
4 Judge, Mr. Bailey, Madam Forelady and ladies and
5 gentlemen of the jury. The last time I spoke
6 before you the opening statement here I told you
7 I had a heavy heart, today it doesn't get any
8 lighter. And neither shall your job get any
9 lighter as we speak here and get right down to
10 the closing.

11 If you want to look at just two
12 photographs, to take another human being's life
13 that's your option. This is the remains of Miss
14 Martin. She was a lovely, beautiful young lady,
15 no question. And I have not in anything in this
16 case done anything to try to get you to hate me,
17 to hate the defense trying to insult Miss
18 Martin. And if I have done that in any way I
19 apologize to the Martin family and I apologize
20 to you good ladies and gentlemen.

21 Miss Martin is not on trial in here.
22 Mr. Bailey is absolutely correct, he's a
23 colleague an adversary against me and I'm an
24 adversary against him in the courtroom today, we
25 all come in here to do a job, hopefully. And in

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Closing Argument by Mr. Cummings

1 doing our job we look and sometimes we talk so
2 hard, so fast, so glancing over issues that we
3 forget how important it is to remain human.
4 It's going to take me some time to talk to you.
5 You were so kind and so polite both in the
6 closing argument and in the first phase and then
7 in the opening statement here to pay attention
8 to me, and I've asked you to do that. It's easy
9 to shut your mind off. You've heard some
10 horrible things in here. But will you, please,
11 keep your mind open long enough to remember that
12 we have lost a human being and yet we are
13 dealing with another human being.

14 And, ladies and gentlemen, it's
15 everybody's job in here to do justice. This is
16 not a personal case on behalf of anybody against
17 Mr. Bowman. It's called the State of South
18 Carolina against Mr. Bowman. And because of
19 that, ladies and gentlemen, justice is left to
20 you. You are the buffer between anybody
21 allowing any group, mob, vigilante, you know,
22 whatever to go out there and administer justice.
23 We asked you not to leave your good common sense
24 behind when you came in that door and you
25 haven't. You've not done that, you've listened

Closing Argument by Mr. Cummings

1 in here.

2 As a matter of fact I want to point
3 this out real quick, while all us in here in our
4 clothing and everything else, in our jobs, we're
5 in here, we argue, we legally challenge, we look
6 like we inconvenience the heck out of you. And
7 when you went back to your jury room the other
8 day, and this is why I call this to the
9 attention of you good folks again, we sent back
10 the evidence, the evidence that Your Honor had
11 allowed in after fighting, after yelling,
12 after -- and I mean yelling politely as you all
13 know, we don't yell in here at each other, but
14 there was something left.

15 And when you folks sent your note out
16 to us there were three things in here. You
17 wanted an easel, that was something easy we
18 could do; number two, you wanted a transcript
19 which is not possible. We take everything down,
20 but this poor lady could never do everything
21 back instantaneously, science has not yet caught
22 up to how fast the human mouth can speak or
23 think.

24 But the one thing that you were sure
25 of sitting in here paying attention was that you

Closing Argument by Mr. Cummings

1 wanted something that was done on the side by a
2 peace officer to show you a particular thing
3 about Nursery Road. So there was a mistake made
4 in here, in this room. Not by you folks, not by
5 anyone in here intentionally, it was a mistake
6 made, an error, a human error. You're that
7 buffer. Did you see the importance of that a
8 moment ago? Because if it sounds like I'm only
9 talking about a piece of paper, I'm not. It's
10 called humanity. We make mistakes.

11 Ladies and gentlemen, justice is
12 tempered with mercy. The only way anybody can
13 have mercy is if others show it. It sounds
14 like, that's right, the defense is going to get
15 up here and beg for his life and that, you know,
16 the reward-a-prison. And I'm quoting the
17 prosecutor, I'm not going to use Mr. Bailey's
18 name unless it slips out of my tongue because of
19 our relationship as adversaries over the years.

20 The State, the State prosecutor, it
21 could be anybody, is going to come before you
22 and say the ultimate crime is the right crime
23 and punishment in this case based on the nature
24 of the offense. And bingo we can shut that
25 right off because that's exactly what they want.

Closing Argument by Mr. Cummings

1 The legislature in here has asked you
2 to consider both. The people of the state of
3 South Carolina have asked you to consider both.
4 Why? Because not everybody has to be put to
5 death. If that was automatic we'd have a murder
6 trial, take them out in the backyard and hang
7 them. Is that what you're considering today?
8 I'm asking you to consider justice with mercy.
9 It takes a bigger person to give mercy. It
10 takes a human being to show compassion and
11 mercy.

12 Ladies and gentlemen, I make no excuse
13 for any wrongdoing or criminal conduct. And I
14 want to say this out quickly right now because I
15 feel like maybe I was inadequate in doing
16 something in this room the other day, or in
17 doing something on behalf of Mr. Bowman and that
18 was Mr. Youngman, the professional gentleman who
19 came in here, former cop, NOPD, that's New
20 Orleans Police Department, that's a rough
21 neighborhood.

22 He then goes to work helping homeless
23 people and works in a crisis ministry. Okay.
24 We got advanced degrees, we got the ability, you
25 got to answer our questions in here. You can

Closing Argument by Mr. Cummings

1 tear him up all you want like you could anybody
2 in here. I tore up Mr. Felder, I tore up
3 Mr. Waters, I even yelled back at Mr. Marion
4 Bowman's family. I did. Because I'm trying to
5 emphasize here answer the questions, please.
6 These folks need to hear the whole truth, you
7 need to hear everything and not selective stuff
8 just to be able to convict Mr. Bowman, which he
9 has been convicted, or now to make sure that you
10 want to hate him enough to take his life.

11 MR. BAILEY: Your Honor, I object to that.

12 THE COURT: Sustained.

13 MR. CUMMINGS: Excuse me, be angry enough
14 to take his life.

15 MR. BAILEY: I object to that, Your Honor.

16 THE COURT: Sustained.

17 MR. BAILEY: Your Honor, I'd ask for a
18 curative instruction at the appropriate time
19 based on Mr. Cummings' comments, inappropriate
20 comments.

21 THE COURT: Very well. Ladies and
22 gentlemen, it is incumbent upon you, of course,
23 to follow the instructions of the Court and I
24 will give those to you. Those decisions are to
25 be made without the emotion, certainly, that

Closing Argument by Mr. Cummings

1 counsel is speaking of. I will instruct you
2 more of that, that's the reason for the
3 objection, hatred and anger. The decisions that
4 you will make will be made on -- absent those
5 kinds of emotion and I will instruct you to
6 that. And that's the purpose of the instruction
7 as well as -- or the objection as well as my
8 sustaining the objection.

9 Thank you, gentlemen. You may
10 proceed, Mr. Cummings.

11 MR. CUMMINGS: Thank you, Judge.

12 As the solicitor told you earlier to
13 not show sympathy, not to come into
14 consideration. You define how, and when, and
15 why, and where we can ever talk about mercy.
16 I'm asking you, ladies and gentlemen, to go back
17 a little bit here now and ask you to go down
18 into your life and going back and talking to you
19 about Mr. Youngman. He told you it was not an
20 excuse. He just tried to paint a picture of
21 Mr. Bowman's upbringing so you could have some
22 idea of the person. Because that's all we do.
23 We tried to give you a picture of Miss Martin,
24 not we personally of the defense, again, not
25 attacking this lady, she was presented to you in

Closing Argument by Mr. Cummings

1 the light by her family. Mr. Bowman has the
2 right to present himself to you with his family
3 and through Mr. Youngman.

4 He told you what he found. Is that an
5 excuse? No. There are plenty of people who are
6 successful in this world who are raised in a
7 one-parent household. There are plenty of
8 people who dig themselves out of the gutter,
9 pick themselves up and never hurt another human
10 being. There are plenty of people who can mount
11 that challenge, top the hill, live a good life,
12 there are plenty of people that can. Why
13 Mr. Bowman has not reached that, why he has not
14 followed anything according to the testimony
15 presented in this courtroom is in your province.
16 But I do state that it is unfair for us to take
17 any witness, especially people who come in and
18 just try to do something and they try and try to
19 leave you with an image that they're trying to
20 tell you something that's not correct.

21 You are the judge of the credibility,
22 you are the judges of the evidence that comes to
23 you. Her Honor is the one who rules on the
24 evidence, that is the law. A few moments ago
25 you heard her when the whistle was blown she

Closing Argument by Mr. Cummings

1 made the call.

2 Ladies and gentlemen, I just want to
3 go down again with you about the importance of
4 things as I see them and as the defense would
5 see them on behalf of this gentleman. And,
6 ladies and gentlemen, it takes a while and it
7 takes a long time. And as Mr. Bailey asked you,
8 you promised to do one of two things here today.
9 And there are only two choices. So even if you
10 want to discount Mr. Youngman coming in here at
11 all and trying to explain to you about some
12 horrible things and tragedies, you're right,
13 absolutely, let's stop it, that's a sympathizer,
14 that's a guy looking for excuses, that's a guy
15 looking for reasons, that's a guy who could
16 explain something to probably put some decency
17 back into how and why a human being is the way
18 he is. Are we not now the product of our
19 environment? Has that not been shown?

20 In doing this case and presenting it
21 to you, again, using your good common sense, if
22 anybody were to go to a home and not see a
23 photograph of a child, do you not think that
24 child does not count? If people have to get a
25 picture out of a yearbook at a school and

Closing Argument by Mr. Cummings

1 present that to you as the only showing of
2 Mr. Bowman, you come to your own conclusions.
3 Mrs. Bowman, his mom, who I have the greatest
4 respect for and sympathy for today, is sitting
5 here today and she's being cast aspersion upon
6 her which is not correct and not fair.

7 Mr. Bowman is the one in your hands
8 and that is correct. Mr. Bowman is in your
9 hands for punishment, justice, mercy, whatever
10 you shall find, whatever you choose not to find.
11 Mr. Bowman is the person that we point the
12 finger at. But I ask you was he discarded, was
13 he not cared for to where we never, never would
14 be here today because of that?

15 I did not grow up in Branchville, nor
16 did the defense team, nor did Mr. Bailey or
17 anybody else. We did not grow up in
18 Branchville. I did not grow up in Mrs. Bowman's
19 home, nor did anybody else other than the
20 children of Mrs. Bowman. And the testimony came
21 in here today about it.

22 Do I blame Mr. Marion Bowman, Sr. for
23 anything? No, I do not. I blame the
24 surroundings, I blame me. I blame us. I blame
25 the fact that nobody took an interest in this

Closing Argument by Mr. Cummings

1 kid. At 17 he is convicted of two burglaries.
2 You think that's pretty important in somebody's
3 life to know what age somebody's in trouble.
4 Nobody cared. Mr. Bowman can read the charges.
5 And this is where -- and that only comes in for
6 his character, okay, not an aggravating factor,
7 his character. Again, that's to get you to
8 think, present Mr. Bowman in a bad light to you,
9 ladies and gentlemen, and to get you to vote a
10 certain way.

11 He got a shock incarceration sentence.
12 That's what he got. You do a certain amount of
13 time like in a boot camp and you're put back
14 out. You may not consider this or you may
15 consider this. He paid restitution back to the
16 two victims himself. He did that. Not a big
17 deal because it shows some responsibility and
18 maybe that would go towards something for you to
19 consider about character. Not a big deal, not
20 anything else, you can take it, you can throw it
21 out. That alone would not be the reason to vote
22 to have capital punishment imposed on
23 Mr. Bowman. It's like I told you earlier,
24 piling on. If you pile on enough it's easy to
25 lose a person.

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Closing Argument by Mr. Cummings

1 Ladies and gentlemen, are we so sure
2 in this case that we would vote to find
3 aggravating factors beyond a reasonable doubt?
4 I'm going to jump ahead a little bit and go back
5 and ask your kind permission to allow me to
6 continue speaking for a while. This is a
7 person's life and I'm going to ask you to grant
8 us the mercy, the kindness, the consideration
9 that you've shown throughout this trial a little
10 bit longer. We don't take this task light and
11 you have not taken this task light either.

12 If Mr. Bowman in your opinion right
13 now is the one who done all these horrible
14 things and you cannot show him mercy, all 12 of
15 you folks will sign that form and he will be put
16 to his death some day. That will be followed
17 out.

18 If you find mercy or find any reason
19 not to find any aggravating factors because you
20 didn't see the evidence here, and I'm going to
21 go back and talk about the evidence here, then
22 so be it. He will spend the rest of his life
23 without the possibility of parole and that is a
24 fact.

25 There's a lot of testimony here

Closing Argument by Mr. Cummings

1 yesterday against Mr. Aiken. And, please, look
2 at Mr. Aiken in the totality of what he says.
3 Again, if you're seeking a certain punishment,
4 if you're seeking that certain punishment it's
5 easy to try to paint prison as a reward. All
6 right. The line forms back there if anybody
7 wants to spend the rest of their life behind
8 bars. If you think that's the place to be, you
9 think people want it, do we put the gate on the
10 outside or do we put the gate on the inside to
11 make sure nobody's getting in?

12 I try to say that to you with the most
13 polite candor that I can. That if you think
14 that is a reward, then that is a wrong and that
15 is an injustice. The death penalty, ladies and
16 gentlemen, is the ultimate penalty. And I
17 submit to you that there is no way unless you
18 are convinced beyond a reasonable doubt, all 12
19 of you collectively putting your minds together
20 that's the appropriate punishment of a now
21 21-year-old young man, that is your province.

22 You can, you can vote and sign your
23 names to that. Mr. Bailey, again, on behalf of
24 the State, the prosecutor, I apologize, has
25 asked you to do that. He's asked you to do that

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Closing Argument by Mr. Cummings

1 because you're so sure, you are so sure that
2 this is the appropriate punishment. But are we
3 so sure today after hearing Mr. Felder testify
4 that he didn't tell you everything? That was
5 the deal; was it not? Folks, there's always
6 more, there's always questions, there's always a
7 mistake. We're human.

8 MR. BAILEY: Your Honor, may we approach?
9 I have an objection.

10 THE COURT: Yes.

11 (Whereupon, a bench conference was held
12 off the record in the presence of the
13 jury but out of the hearing of the jury.)

14 MR. CUMMINGS: Am I allowed to proceed,
15 Your Honor?

16 THE COURT: You are.

17 MR. CUMMINGS: Thank you. And I state that
18 to you because we are human. There is no
19 infallibility within these courthouse walls.
20 Ladies and gentlemen, are we seeking vengeance,
21 are we seeking retribution by the death penalty?
22 Are we seeking justice by asking that this young
23 man be executed?

24 You have every legal right and every
25 legal responsibility to consider both

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Closing Argument by Mr. Cummings

1 punishments. If you don't believe in that, then
2 everybody has failed in this room. It is easy
3 to be locked in and not keep an open mind about
4 anything. Nothing will bring Miss Martin back,
5 that is an absolute fact, that is the only thing
6 we know for certain in this room here.

7 I am not making light of that on
8 behalf of Mr. Bowman, nor am I making light of
9 any other issue. Because if you believe that
10 Mr. Bowman's life should be taken for the life
11 of Miss Martin, then that is your province.
12 That means you have not shown him mercy as the
13 statute says you can, or to listen to any
14 mitigating factors because you choose not to.
15 You choose to find the way you find in that jury
16 room.

17 And, again, Her Honor will clearly
18 tell you ladies and gentlemen of the jury that
19 no one has the right to second-guess what you
20 do. No one will ever come up to you and ask you
21 why did you do this. You are not here to
22 reward, you are not here strictly to punish, you
23 are not here in this case to do anything other
24 than justice. It just happens to be this time
25 in this particular case that you are the people,

Closing Argument by Mr. Cummings

1 the 12 of you, that meter out the punishment.
2 that deems appropriate by any and all
3 considerations you may give.

4 If you think that Mr. Bowman should
5 meet his fate, you'll vote for that. There's
6 nothing anybody else can do to stop you. If you
7 believe there's mercy in any way here or any
8 mitigating factor you may consider, I beg you as
9 Mr. Bailey said I would, I beg you for this
10 man's life.

11 I also say to you if you're so sure
12 about these witnesses that you would vote to
13 take another human being's life because it is so
14 credible, or that there is no other issue of
15 credibility as to these people, or that you've
16 gotten everything that you wanted to hear enough
17 to vote for this man's life, then so be it.

18 I've known Marion Bowman now for about
19 14 months. I've never been in his neighborhood,
20 I don't know if he's ever been in mine. You
21 hear different things from the correction
22 officers who spent time with him. Mr. Badillo,
23 nice, young, polite man and he wears a uniform.
24 You take his words from Mr. Badillo. It's awful
25 hard for those kids to come over here, testify

Closing Argument by Mr. Cummings

1 on that stand when they got other people in the
2 same color uniforms working around the
3 courtroom. They come in and tell you their --
4 what they see, what they do, how they act. If
5 you believe that there's any chance that Mr.
6 Badillo showed you some sort of human compassion
7 on behalf of Mr. Bowman, I ask you and submit to
8 you to consider that. Twenty-three hours a day
9 locked up, one hour a day out. You heard from
10 Sergeant Branch, you heard about one particular
11 issue as we got close to court. You heard that
12 was a disruption, not anything with violence.

13 Can he adapt to prison? Can any 20
14 year old, 21-year-old now person, who knows
15 they're going to be looked away the rest of
16 their life no matter what, do you think they
17 have any reason to not act up, to not hurt
18 somebody or do something? That didn't happen
19 here. You got a kid over there and you got a
20 duty to consider his age and mentality. His IQ
21 is approximately 80, 81 from the evidence
22 presented in here. You be the judge of that.

23 Is that an excuse? No. Is that
24 anything for me trying to ask you under smoke
25 and mirrors to try to get you to, oh, lessen the

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Closing Argument by Mr. Cummings

1 fact that Miss Martin is gone? No. I'm just
2 giving you a total package for you to consider
3 and that's the job. Mr. Youngman tried to give
4 you a total package for you to consider, because
5 deep down inside everybody wants to ask the
6 question, everybody wants to ask the question in
7 here, what happened?

8 You know, unfortunately pursuant to
9 issues and rules and regulations and other
10 things, the course that control everything about
11 this room, that issue is for you to determine
12 and the answer to that question is for you to
13 determine based on the facts and evidence as
14 presented in this courtroom.

15 I'm going to ask something here that's
16 probably going to anger my client at me. It's
17 easy once you realize that the rest of your life
18 is going to be behind bars to maybe want to
19 consider, well, they might as well go ahead to
20 vote and take my life anyway because I don't
21 have a life. I'm locked up the rest of my life.
22 If you look around the jury pool, the jury panel
23 today, we have an age group from young to what I
24 call a very young older person. Can you imagine
25 spending from the years of the youngest person

Closing Argument by Mr. Cummings

1 on the jury until the oldest person on the jury
2 behind bars? That's a life sentence without the
3 possibility of parole. Or, on the other hand,
4 come out of that bathroom closet as Mr. Aiken
5 stated, the bathroom area, and meet the ultimate
6 fate.

7 I'm going to ask you to do something,
8 and this is not trickery or any lawyer --
9 everybody's got opinions about lawyers. I keep
10 wondering why the heck we do this now. But you
11 know we try to help. First people come to is a
12 lawyer, they don't go to their doctor, they
13 don't go to their accountant, they usually go to
14 a lawyer. We try to help. Mr. Bailey helps on
15 behalf of the State and I help on behalf of this
16 human being charged with these crimes, charged
17 with two crimes.

18 And that help is this. You ought to
19 make Mr. Bowman for the remainder of his natural
20 days, you remember that there are some people in
21 this community that would show him mercy, you
22 ought to make Mr. Bowman know that he's got to
23 remember the memory of everything that happened
24 in this courtroom until the remainder of his
25 natural life in prison. You ought to make

Closing Argument by Mr. Cummings

1 Mr. Bowman remember the memory of Miss Martin
2 until he closes his eyes some other way.

3 If you do not want him to do that,
4 then vote to take his life. That's your
5 province. I'm not asking you to do it. I'm
6 saying to you, you can give him a death sentence
7 without sentencing him to death. And that's the
8 ironic part of this statute. That is the ironic
9 part that we come before you and argue. You
10 have the right to submit him to execution at
11 some date, some time. Sign your name, all 12 of
12 you, and that will happen if you find an
13 aggravating factor. Or you will make him
14 suffer.

15 Now, does that make it sound like a
16 reward? Does that make it sound light? Does
17 that make it equal to punishment that the State
18 is seeking, the justice? You define justice,
19 ladies and gentlemen, I've never been able to.
20 And neither have most lawyers because sometimes
21 you think you got a case or a defense, sometimes
22 you think you don't, sometimes you think you got
23 a great big lawsuit out here and the jury comes
24 back and says defendant's verdict. And you go
25 like, wow, 12 people tried and true, a jury of

4999

Closing Argument by Mr. Cummings

1 his peers have said, no, you don't get anything.

2 How about in this case a jury of his
3 peers, and that's what you are, folks, you are a
4 jury of Mr. Bowman's peers. And if I offend you
5 in any way, I apologize. We are who we are. We
6 are now asked to sit in judgment of a fellow
7 human being. It would be slight of me not to
8 ask you to make this man suffer in a way that
9 will send a message back from everything --

10 MR. BAILEY: Your Honor, I think you've
11 ruled on that previously.

12 MR. CUMMINGS: I did not say anything other
13 than send a message back of humanity. That's
14 all. A message of humanity. I apologize,
15 again, if I loose my train of thought. This is
16 what we do in here. Is it that important? Is
17 it that important that we have to have
18 Mr. Bowman put to death? Will that do anything?
19 Will that change anything today in this
20 courtroom? Vengeance is mine. If you ever --

21 MR. BAILEY: Judge, may we approach,
22 please?

23 THE COURT: Yes.

24 (Whereupon, a bench conference was held
25 off the record in the presence of the

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Closing Argument by Mr. Cummings

1 jury but out of the hearing of the jury.)

2 MR. CUMMINGS: You hold the punishment, you
3 and you alone. I'm asking you to consider both.
4 If you believe that everything that Mr. Hiram
5 Johnson said was so credible, the woman was shot
6 in the back of the head, and that he said Marion
7 said I shot and killed her, I laughed, then so
8 be it. If you believe Mr. Felder is too
9 credible to say anything along that line.

10 And I'm going to where the aggravating
11 factors are now, I'm not going back over the
12 evidence, folks, the aggravating factors. Do
13 any of these four stick? Do any of them have
14 proof beyond a reasonable doubt? He's been
15 charged with two crimes. This is piling on.
16 This is now to get the death penalty verdict.
17 Can you see it? Do you see kidnapping is a
18 pretty serious crime, isn't it? I mean it's
19 pretty darn serious you got to kidnap somebody.
20 They got to know they're being kidnapped or look
21 in the circumstances surrounding the activity,
22 that is a kidnapping.

23 Is that it? Has that been proven to
24 you beyond a reasonable doubt? If it has then
25 so be it. If it has, then you will vote the way

5001

Closing Argument by Mr. Cummings

1 that you will vote. If Mr. Bowman did not do
2 that, don't vote just because it's something you
3 think you should do. Please take your time,
4 please consider every issue here. Proof beyond
5 a reasonable doubt is our standard.

6 What was Miss Martin doing over at
7 Frankie Martin's house? I don't know.
8 Mr. Martin testified they were alone. Why is
9 there an aggravating factor in here about
10 criminal sexual conduct? Has anybody testified
11 to you in here of nonconsensual relations
12 between a human being and another human being?
13 It doesn't matter whether Miss Martin who is
14 shown in that picture, Mr. Bowman there as
15 seated there happen to be friends.

16 That is not to anger you, that's not
17 for me to anger you and I apologize. And I
18 raised my voice for a moment to point something
19 out and that is this: You've got to prove, the
20 State has to prove to you folks there was
21 nonconsensual sex. Other than that we just
22 muddy up the water. Again, another reason to
23 pile it on.

24 Robbery while armed with a deadly
25 weapon. Has anybody testified about a robbery,

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Closing Argument by Mr. Cummings

1 has anybody testified about that? Do you
2 believe these witnesses that came before you and
3 told you I'll tell you the truth, the whole
4 truth and nothing but the truth, tell you
5 everything? Well, you got a tape now to look at
6 back there, too. And you have Mr. Felder again
7 coming here again today on behalf of the
8 defense.

9 If you believe, ladies and gentlemen,
10 that there was a larceny of anything while armed
11 with a deadly weapon, when did it occur? When
12 could this criminal sexual conduct have
13 occurred? If you take the testimony and any
14 aspect of this, when could it have occurred?
15 Did you not hear Mr. Felder a few moments ago
16 come out here and say grabbed her by the ankles,
17 pulled her back out and then he set the car on
18 fire? Marion had to do it in order to get you
19 to say everything that you would vote for today.

20 I'm asking you to consider
21 inconsistencies and whether there's proof beyond
22 a reasonable doubt as to these aggravating
23 factors. I'm asking you today to go back. And
24 are we so sure, beyond a reasonable doubt, that
25 we would vote to take a human being's life? Is

5003

Closing Argument by Mr. Cummings

1 there any inconsistencies, is there any gaps in
2 the testimony, is there any reason today to
3 cause any doubt to issue the ultimate penalty?
4 That is the question. That begs the question in
5 this room. If you say no, then so about it.
6 Are we so sure? But when could this have
7 happened, when did the criminal sexual conduct
8 happen? Give me -- I don't mean me, give us
9 date, time, place, who, what, when, where, how
10 and why. Where is it?

11 The mere fact that they have been
12 friends is not enough as an aggravating factor
13 of criminal sexual conduct. The mere fact if
14 you found, and you did find the other day, Miss
15 Martin was shot by Mr. Bowman. You found that.
16 You found that and you believe that. Do you
17 think he then kidnapped her? Where was the
18 kidnapping? You've got to look at everything.

19 Take the charge as Her Honor gives the
20 law, I don't want to sit here get yelled at
21 again, I'm sitting here asking you to look at
22 everything that's presented to you as evidence,
23 not what we think might be evidence. You have
24 the right to consider what is the evidence, what
25 is not the evidence, what was presented, what

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Closing Argument by Mr. Cummings

1 was not presented to you. Her Honor's the boss
2 on the evidence.

3 Ladies and gentlemen, if there's not
4 an aggravating factor here the last thing is to
5 ask you to show mercy. You cannot bring back
6 the death penalty. You cannot consider just
7 mere character alone to execute this young man.
8 I ask you for understanding, not an excuse as to
9 his conduct. I ask you will we ever really be
10 able to understand any -- and these are just
11 some headnotes, and I promise you I'm on the way
12 down and away from this podium from you soon.

13 Before we vote for the ultimate
14 penalty, before you take this young man's
15 situation in your hands, do you think, do you
16 feel, do you believe that his young age has
17 anything to do with this? If not, so be it. Do
18 you believe, do you feel that his mentality has
19 anything to do with this? If so, I stipulate
20 that to you.

21 If you believe that there is any
22 reason to show mercy to this man, that is your
23 province. If you believe in looking at the fact
24 he has no significant history of prior criminal
25 conviction involving use of violence against

5005

Closing Argument by Mr. Cummings

1 another person, then I ask you and submit to you
2 legally that burglary third degree is not a
3 crime of violence. We don't like it, but we
4 don't execute people for stealing property. We
5 don't. I think we've gotten away from being
6 barbaric as to the death penalty for anything
7 other than the most horrific or the most serious
8 crimes.

9 You need look at the death penalty and
10 do not leave your common sense outside the door.
11 If you look at the death penalty as you see it,
12 that is what it's intended to do by the
13 legislature, to give you options. Because we
14 can't tell you what to do. We can only ask of
15 you to do what is right and just. I ask each of
16 you to look inside yourself and to make sure
17 that you find the appropriate punishment. Is
18 the victim impact issues in this area going to
19 hurt, going to do anything? Yes, it hurts. It
20 hurts the fact that Miss Martin has lost her
21 life and is gone. Mr. Bowman's life is gone,
22 it's just a question of how. Just a question of
23 humanity and how.

24 We think often, and Mr. Aiken probably
25 said it best, that prison is a dangerous place.

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Closing Argument by Mr. Cummings

1 Prison is an appropriate punishment for
2 Mr. Bowman because from 21 to whenever he closes
3 his eyes is a death sentence. If you would just
4 consider that and look at it in the totality of
5 the circumstances I'm explaining to you. It is
6 easy, ladies and gentlemen, please, to vote to
7 take a human being's life when you hear how
8 humans treat other humans. Has that ever
9 stopped in this world? Has it ever stopped 'til
10 today? Again, using your common sense, when
11 there were public executions years ago back in
12 the old days, I mean before we were even a
13 country, there were kids pickpocketing crowds as
14 they looked at the execution being carried out.

15 MR. BAILEY: It's getting off the record.
16 I would object to that.

17 MR. CUMMINGS: I apologize, Judge, I'll
18 come right back to the record.

19 You are, ladies and gentlemen, only
20 going to vote on two things today and only two.
21 I ask you today to consider both despite the
22 fact that there is every reason in the world to
23 want to set everything aside and just do what
24 you've been asked to do by one side against the
25 other. Please don't think that I'm standing up

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Closing Argument by Mr. Cummings

1 different light to you. Perhaps another day,
2 another time this young man despite all the
3 things Mr. Youngman said about him, we could
4 forget about that and just state you're right,
5 that it's not the reason to kill Miss Martin,
6 but we can just forget it and go right to the
7 heart of the matter about voting for death or
8 voting for life without the possibility of
9 parole.

10 If you're looking for any connections
11 in here, if you're looking for anything and if
12 there's one break in the chain as to anything,
13 you must with no one to promise, no one to
14 reward, no one, you're not allowed to have
15 sympathy, you're not allowed to have bias or
16 prejudice come into this case.

17 Everybody has tried to do their best
18 to present things to you for your consideration.
19 All we can do is explain that Marion could adapt
20 to a horrible situation. Yes, begging for life
21 without the possibility of parole is what is
22 being said to you right now. Begging to stop,
23 begging to stop the thing. Is justice going to
24 be served by taking his life? Is that justice?

25 All we can do is present the facts and

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Closing Argument by Mr. Cummings

1 evidence that is given to us by the State and
2 the evidence as allowed in the courtroom. I'm
3 asking -- excuse me, on behalf of Mr. Bowman
4 requesting to show mercy on his life. I'm
5 asking on behalf of Mr. Bowman to have you
6 consider both sentences. I have to state that
7 by statute. I'm asking you on behalf of
8 Mr. Bowman to spare his life.

9 Begging for his life is not just a
10 job, begging for his life, for mercy, is not
11 anything less than manhood or in light of the
12 circumstances surrounding what happened.
13 Begging for his life is the right thing to do.
14 It's the only thing to do. Begging for his life
15 to you sets aside the chances of bias,
16 prejudice, or any other reason that came up in
17 this courtroom to vote to take a human being's
18 life away. Because as we all find out, as we
19 all know, if you're not thought of, if you're
20 not important enough, you don't matter. You
21 just don't matter. I'm going to ask you to make
22 it matter. I'm asking you to make Mr. Bowman
23 matter.

24 Ladies and gentlemen, on behalf of
25 Mr. Bowman, Ms. Thomas and I, I thank you for

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Closing Argument by Mr. Cummings

1 the privilege and opportunity to appear before
2 you and I ask you, again, mercy to spare my
3 client's life. Thank you, Judge.

4 THE COURT: Thank you, Mr. Cummings.

5 MR. CUMMINGS: Ma'am, at this time could we
6 take a short break?

7 THE COURT: Yes. Very well.

8 Ladies and gentlemen, I'm going to ask
9 you to please step to your jury room. Do not
10 discuss this matter and do not allow anyone to
11 discuss it with you. Hold on one second. I'm
12 checking on to see if your lunch has arrived.

13 I'll tell you what we're going to do,
14 we're going to have a little bit of a change.
15 Ladies and gentlemen, it's going to take me
16 probably the better part of an hour to deliver
17 the charge to you. And as a result of that what
18 we're going to do is we're going to take our
19 lunch break. What I would like for you to do is
20 be mindful, of course, not to discuss this
21 matter or allow anyone to discuss it with you
22 because you've not heard the charge on the law.
23 And then I want you to have your lunch and then
24 when you've finished your lunch, and I bet some
25 folks are going to want to smoke after you've

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State vs. Bowman - Volume XXIV

1 had your lunch, when you have concluded those
2 two matters, lunch, smoke, I want you to let us
3 know because then we will -- I will deliver the
4 charge to you. But before you step out let me
5 see counsel for just a moment.

6 (Whereupon, a bench conference was held
7 off the record in the presence of the
8 jury but out of the hearing of the jury.)

9 THE COURT: All right, then. Ladies and
10 gentlemen, step to your jury room, have your
11 lunch. Thank you.

12 (Whereupon, the jury retires to the jury room at
13 12:53 p.m.)

14 THE COURT: All right. Prior to the
15 closing arguments I had asked counsel for
16 Mr. Bowman that in the event he wished to argue
17 just to introduce him, if he did not wish to
18 argue just to indicate to me that we needed to
19 take a break. And Mr. Cummings has indicated to
20 me that we needed to take a break so I take that
21 to mean that Mr. Bowman has chosen not to make a
22 final argument?

23 MR. CUMMINGS: Judge, I would like to have
24 my client stand up for just a moment, please.

25 THE COURT: Certainly. Yes, sir,

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1 Mr. Bowman. Mr. Bowman, as we talked about
2 earlier you understand, of course, your right to
3 make a closing argument?

4 MR. BOWMAN: Yes, ma'am.

5 THE COURT: And have you decided that you
6 wish not to make a closing argument?

7 MR. BOWMAN: Yes, ma'am.

8 THE COURT: All right. And are you making
9 that decision freely and voluntarily?

10 MR. BOWMAN: Yes, ma'am.

11 THE COURT: And you've discussed that with
12 your attorneys?

13 MR. BOWMAN: Yes, ma'am.

14 THE COURT: Do you have any questions with
15 me or your attorneys about your right to make
16 closing argument?

17 MR. BOWMAN: No, ma'am.

18 THE COURT: All right. And you understand
19 then that you have the right to make your
20 closing argument and you wish not to?

21 MR. BOWMAN: Yes, ma'am.

22 THE COURT: And you're doing that freely,
23 knowingly, and voluntarily?

24 MR. BOWMAN: Yes, ma'am.

25 THE COURT: Very well. Any questions on

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1 behalf of the State for Mr. Bowman?

2 MR. BAILEY: Not from the State,
3 Mr. Bowman.

4 MR. CUMMINGS: I don't have a question, but
5 I would like to make a statement and ask my
6 client to reconsider what he has just stated,
7 Your Honor, because the ultimate penalty is
8 present I would suggest and I would recommend to
9 my client, again, that he stand before these
10 good folks and have the right to ask them to
11 spare his life. And I apologize, I'm not trying
12 to cause any delay, I'm asking him to please
13 reconsider that.

14 THE COURT: Delay is of no moment to this
15 matter at all. You want to talk to him? Why
16 don't you sit and talk to him.

17 MR. CUMMINGS: Yes, Judge, for a moment,
18 please.

19 THE COURT: If you wish to change your
20 mind, Mr. Bowman, you let me know.

21 (Mr. Cummings and Ms. Hardee-Thomas conferring
22 with Mr. Bowman.)

23 THE COURT: All right, then. I think what
24 we'll do is we're going to go ahead and take our
25 break likewise for the lunch break and if he --

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1 give you all an opportunity to talk outside the
2 courtroom, it appears that that would be
3 appropriate.

4 MR. CUMMINGS: Yes, ma'am.

5 THE COURT: I do need, though, before you
6 do that to see counsel just for a moment
7 regarding the charge.

8 (Lunch recess taken from 12:57 p.m. to
9 1:45 p.m.)

10 THE COURT: All right. Now, of course
11 we've had the lunch break. And, counsel, have
12 you had an opportunity, Mr. Cummings, Ms.
13 Hardee-Thomas, to talk to Mr. Bowman?

14 MR. CUMMINGS: That is correct, Judge.

15 THE COURT: All right. And do you still
16 wish to waive arguments?

17 MR. BOWMAN: Yes, ma'am.

18 THE COURT: Very well. And you're doing so
19 freely, voluntarily, and knowingly?

20 MR. BOWMAN: Yes, ma'am.

21 THE COURT: Very well. Thank you. Let us
22 have our jury.

23 (Whereupon, the jury returns to the courtroom at
24 1:46 p.m.)

25 THE COURT: Ladies and gentlemen, in your

APPENDIX R

1 defense theory, right?

2 A Yes, sir.

3 Q All right. If Tawain Gadson is actually out
4 there buying the gas and burning --

5 A Felder bought the gas.

6 Q But if Tawain is buying the gas and burning
7 it, boy, it makes him look even worse, doesn't it?

8 A You're looking at a film of Travis Felder
9 buying the gas. I don't think I can risk a true
10 question to get something that is not correct.

11 Q Now, Darien Williams says that the gas was
12 put in a two liter coke jug by Tawain Gadson.
13 That's not inconsistent with Travis going to pay
14 for it, is it?

15 A It's not inconsistent if that's what
16 happened, sir, but I don't remember -- again, I'm
17 reading it from this guy who changed his statement
18 and then he is writing letters saying, "I'm sorry,
19 man, the police made me talk," you know.

20 Q The police forced him to change his
21 statement?

22 A Right, everybody was forced, right.

23 Q And we know in some cases that may be true?

24 A Yes, sir.

25 Q All right. You mentioned Kandee Martin. Did

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1 you find it helpful in the penalty phase that
2 Kandee knew Marion?

3 A Yes, sir.

4 Q The families had been close together?

5 A Yes, sir.

6 Q Did you know Marion worked with Kandee's
7 brother and father and uncle?

8 A Yes, sir.

9 MR. WATERS: Your Honor, again I just want to
10 object to this being a new ground.

11 THE COURT: How do we know there is a ground?

12 MR. WATERS: That is my problem. They are
13 required to disclose all the new stuff they are
14 coming up with.

15 THE COURT: He is asking what he knew about
16 the relationship of Mr. Bowman and the victim, so
17 I'm going to permit it right now.

18 BY MR. BROWN:.

19 Q I think you already said this to one of my
20 questions, I will just ask it. Kandee's mother
21 knew Marion, she testified at trial?

22 A Yes.

23 Q Tell me about the issue of the drug use by
24 Kandee.

25 A There was cocaine found in her body by the

1 toxicologist, we know that. The question is when
2 the cocaine derivative or cocaine was in her body.
3 I did not want to portray my guy as a drug dealer.
4 The only way Kandee would have gotten the drugs, if
5 it was believed what was going on here, was from my
6 fellow.

7 Now, the other thing is, trade the watch for
8 drugs. The watch is found in his pocket. Gadson
9 said she wouldn't trick, that is why she was
10 killed. My guy, you know, alleged she had a wire
11 on, she was narsing for the cops. No matter what I
12 did on that to impeach that dead little girl in
13 this courtroom, Mr. Brown, and I say it with the
14 highest candor and respect, I think would have been
15 the most egregious error I could have made, because
16 she's dead and for what reason, okay, wearing a
17 wire? Oh, that's great. Because she bought dope?
18 Because who is giving her the dope? And I did not
19 want to attack the little girl's character, I will
20 say that. If that is a flaw or mistake I'm sorry.

21 Q Let me ask you a little bit about the drug
22 issue about Marion. What came out at trial had to
23 do with a wire?

24 A Yes, sir, that was motive, why she would be
25 killed.

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1 Q Okay. And obviously it was a motive for
2 Marion to kill her?

3 A Right. Of course, as you know, sir, and
4 again with highest respect to Mrs. Bowman and
5 Marion, his own sisters, the statement was the B
6 word, be dead by dark, his own sister said that in
7 a car and testified to that, and the reason I'm
8 saying that is, the more you find out through this
9 trial, watch his whole family testify against him,
10 it hurt us, it hurt bad, and what bias, prejudice
11 or reason did she have to want to say that against
12 her own brother who she's supposed to love?

13 Q She was charged with a crime, too?

14 A Yes, getting rid of a gun, which opened up
15 another bad door. The whole family was charged
16 with getting rid of the gun.

17 Q We're going to come back to that.

18 A Yes, sir.

19 Q That is another issue I've got. Let me try
20 to stick on this.

21 THE COURT: About five minutes tie it up, as
22 for as a quitting point.

23 MR. BROWN: Yes, sir, that is what I'm trying
24 to do.

25 BY MR. BROWN:

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1 Q The jury heard a possible motive from the
2 State, possible motive for Marion to kill her was
3 that she was wearing a wire?

4 A Yes, sir.

5 Q That implies Marion deals drugs?

6 A Yes, but no proof of it because he wasn't
7 taking the stand and they didn't have any drug
8 dealing until we got to the penalty phase, where I
9 asked Jeff Yungman to talk about his youth, he sold
10 drugs for his mama.

11 Q Let me ask you about that. Tell me about the
12 introduction of the drug use during the penalty
13 phase.

14 A The only introduction about that came in from
15 the sources -- I didn't hear anything about Marion
16 selling drugs or doing anything other than from our
17 guy about how he had to grow up and how he had to
18 make money to support his family. He supported his
19 mama when she was sick.

20 Q Right. What was the strategy about not
21 portraying the complete picture of Kandee and
22 Marion's involvement in the penalty phase?

23 A I think I portrayed what I needed to portray.
24 If I'm in error again I apologize, I apologize to
25 Marion. What I'm saying is, it does no good, I

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1 tried that Gardner case up here where they tried to
2 portray that white girl being with five African
3 American men and, Mr. Brown, you slander a victim,
4 you know the little girl is dead, they got those
5 nasty pictures in there in this penalty phase with
6 her burned body, the statement allegedly, "Black,
7 please don't shoot me, I got a baby." Marion would
8 have known she had a child, he grew up with her. I
9 tried to stay away from hurting Miss Martin in any
10 way because all the evidence and all the facts show
11 she got shot in the back.

12 Q Let me ask you about Tawain discussing Kandee
13 smoking crack out on Nursery Road. Have you heard
14 that before?

15 A Yes.

16 Q Now, he didn't testify about that at the
17 trial?

18 A No, sir, and I didn't open up that door
19 because allegedly, again Mr. Brown, with highest
20 respect, they were out there to commit a burglary,
21 that's great, they paint a picture of my kid out
22 there to try and have a burglary, be a felon. Then
23 they paint a picture of they are going to do a job
24 on a house. That didn't get out.

25 Q Was Tawain given instructions?

1 A I don't know. It didn't come in.

2 Q Was he given instructions to stay away from
3 the drug use?

4 A You have to take that up with the people that
5 interviewed him other than when I got him on the
6 stand and what I did. I stayed away and I walked
7 that tight rope as tight as I could, but I have
8 learned something in these years, and again with
9 highest respect and candor, I'm not going to
10 portray my guy as the reason why she's dead, dope,
11 sex, drugs. I mean, I'm making the State prove
12 their case.

13 Q And I want to ask you about that. Tell me
14 about your understanding of the burglary and
15 Kandee.

16 A Well, the testimony was going to be that they
17 all went out there and cased the Nursery Road, go
18 out there and hit a house. A burglary in the
19 nighttime is one of the nastiest felonies we have
20 except for murder and CSC.

21 Q Sure.

22 A So, great, they're going to be out there
23 pulling a burglary.

24 Q How does that tie in with the aggravator of
25 the kidnapping?

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1 A We have the broadest kidnapping statute in
2 this state in the union, as we all know, embagle,
3 convey, decoy, any of that. If she went with them
4 by trickery or deceit that could be kidnapping if
5 the jury were to find the elements of kidnapping as
6 given by our judges.

7 Q Is that your understanding of what the
8 allegation of aggravation was here?

9 A I want to say this outloud and with Marion,
10 what are you doing on Nursery Road at that time of
11 the morning with a white female and African
12 American males in Dorchester County? Really. This
13 is 2001 but what good are you doing out there on a
14 dirt road? Okay. And we have all the homeowners
15 calling us saying they heard shots, then they come
16 out and they find a burning car. So, that's the
17 way this thing portrayed. The fire department
18 comes out, as you know. I have read this file
19 backward and forward. If he's there he's a
20 principal, if he's in the car. If he's not there,
21 how does all these facts get known, how are all
22 these facts to be told?

23 Q What I'm trying to find out is first state of
24 mind.

25 A First state of mind she's dead.

1 Q At the time -- let's back up. The aggravater
2 of kidnapping said she was embagled?

3 A Obviously if they are taking somebody out to
4 kill them and the poor kid says, at least the
5 testimony at trial, that came up from Gadson and
6 the boys, said that, "I don't like this, I feel
7 nervous, there is something wrong out here," and of
8 course there was all this kind of stuff about
9 Marion saying, "She's wired, she burned me," and
10 that's the motive why he allegedly would have
11 killed her.

12 Q A motive?

13 A Well, yes.

14 Q Okay. I want to make sure I understand.
15 Tawain never testified that they went out there and
16 tricked her to go?

17 A Right, you're absolutely correct, sir.

18 Q There was no testimony from Tawain that
19 Kandee was tricked or embagled or decoyed to the
20 road?

21 A Well, I can grasp that from the testimony but
22 he used those words, no.

23 Q Tell me what about that testimony shows that.

24 A From that testimony what was the intent of
25 bringing her out here, go case a job, do a job, do

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1 a burglary.

2 Q If Tawain believed that?

3 A If he believed it.

4 Q If he came in court and says he believed it?

5 A Then they are, they are all burglars,
6 attempted burglary or they are planning conspiracy
7 to commit a felony.

8 Q The difference is not whether a murder
9 happened, but whether a kidnapping murder happened,
10 right?

11 A Yes, sir.

12 Q Okay. I want to ask this one question on
13 this because you asked why would she be out there
14 in a desolate area, paraphrasing?

15 A Right.

16 Q Is that a place for somebody to go out there
17 and smoke crack?

18 A I wish they would have picked eight miles
19 difference, in Orangeburg County, we wouldn't be
20 here today.

21 Q But somebody who uses crack is not going to
22 go out and use it in a public place as much as a
23 private place, would they?

24 A To answer your question, that's up to the
25 people who want to do illegal drugs. I can't

1 answer that but I would say most people stay inside
2 and do it so they don't get arrested by the police.
3 A dirt road, a cop car comes down the road at that
4 time of the morning, they are going to stop to see
5 who is out there. But again, why people do things
6 that they do, we get the after effects.

7 Q But use of crack on that road by Kandee, is
8 that somewhat relevant to whether she felt embagled
9 or whether she felt she wasn't embagled?

10 A From reading all the statements and all the
11 worries that I had on this case, including I
12 believe my client's words were forced out of him,
13 it felt more like this was planned to bring this
14 girl out there and dispose of her.

15 Q And planned by who?

16 A If you believe the two statements that were
17 suppressed, by Marion and Gadson.

18 Q I want to make sure we understand. I'm going
19 to stop here, but you believe Gadson had something
20 to do with it?

21 A Yes.

22 MR. BROWN: This is kind of a stopping point.
23 That leads right into Gadson.

24 THE COURT: Okay. Now, as you know, Mr.
25 Cummings, please do not discuss your testimony,

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1 okay?

2 THE WITNESS: Yes, sir.

3 THE COURT: Have a good lunch. You all be
4 back about 2:45, hopefully I will be close to being
5 finished with my other hearing.

6 (Recessed at 1:05 p.m.).

7 (Reconvened at 4:15 p.m.).

8 THE COURT: All right. Now, yesterday Miss
9 Davis was on the stand, and because the day ended
10 we were not able to have her cross-examination done
11 and so we'll now, as soon as I get my notes to
12 where we were at we will now go with Miss Dale
13 Davis, mitigation expert. I have my notes about
14 her direct testimony yesterday and my last note was
15 where she first met Mr. Cummings in January of '02.

16 All right, Mr. Waters.

17 MR. WATERS: Thank you, Your Honor. May it
18 please the Court.

19

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25

1 Court.

2 THE COURT: Yes, sir.

3 FURTHER DIRECT EXAMINATION

4 QUESTIONS BY MR. BROWN:

5 Q I want to ask you a little bit, kind of pick
6 it up --

7 THE COURT: For my information, after we left
8 Mr. Cummings that day we had convened again and did
9 without him, we did other witnesses.

10 MR. BROWN: We did Marva Hardee-Thomas.

11 THE COURT: That is the only thing we did, we
12 did that in Dillon, didn't we, St George?

13 MR. WATERS: St. George. We did Dale Davis.

14 THE COURT: We did Dale Davis after we let
15 him off the stand?

16 MR. WATERS: Right, correct.

17 THE COURT: Okay. All right.

18 MR. BROWN: May it please the Court?

19 THE COURT: Yes, sir.

20 BY MR. BROWN:

21 Q Mr. Cummings, kind of going back do where we
22 were, putting that back in context, if we can just
23 take up where we left after a little bit, some of
24 this is in some of my notes, I kind of want to get
25 back to Kandee Martin. You had testified about the

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1 fact this was obviously a murder. One thing I
2 would ask, I want to talk about Tawain Gadson.
3 Tawain Gadson took the stand, testified, the
4 primary witness regarding the murder. Do you
5 recall the instructions that he was given about
6 testifying about Kandee Martin smoking crack on
7 Nursery Road?

8 A Instructions, no, sir, I don't remember what
9 instructions he was given other than I believe Mr.
10 Bailey starts off by saying, you know, "You're not
11 given any deals, you're here to tell the truth."
12 That is all I remember about what Walter might have
13 said. I know you will ask him that.

14 Q Did you all reach an agreement that the crack
15 smoking was not supposed to be talked about?

16 A The best of my recollection --

17 THE COURT: When you are referring to the
18 crack smoking --

19 Q I'll give a little basis. She had been using
20 drugs?

21 A There was stuff found in in her body at the
22 forensic autopsy.

23 Q The jury never heard that information?

24 A The best of my information, no.

25 THE COURT: Not even in the autopsy?

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1 MR. BROWN: It was revealed in the autopsy
2 but not in the trial.

3 THE COURT: I'm saying the autopsy never came
4 in in front of the jury as for as the findings?

5 THE WITNESS: No, sir.

6 MR. BROWN: No, sir.

7 THE WITNESS: I did want to keep parts of
8 that out, you know, what the condition of the body
9 was as well as there was an issue that I was very
10 cautious of, Mr. Brown, about whether or not people
11 had ever touched Miss Kandee Martin in a certain
12 way, degrading, sexual way.

13 BY MR. BROWN:

14 Q Let's talk about that a little bit. I think
15 we had -- well, we're going to get into that. Let
16 me back up. The jury never heard anything about
17 Kandee Martin being a drug user?

18 A The best of my recollection that's correct.

19 Q All right. But you knew about it?

20 A Yes, sir.

21 Q And in fact, gosh, I late to speak ill of the
22 deceased but she, there was some general reputation
23 information she used drugs and/or prostituted
24 herself or a combination of the two?

25 A Yes, sir, and again this is as an officer of

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1 the court to you, sir, and everybody in here is
2 officers of the court, hurting the victim I think
3 would have hurt Marion more, maybe helped him a
4 little bit evidentiary wise that she did dope.
5 What I was worried about, I guess, where she got
6 her dope from, and everybody in the world knew, and
7 it came out in the penalty phase also, that Marion
8 lived on the street, he was self supporting, he
9 tried to find ways to support himself and he
10 sometimes delved into something he shouldn't have
11 delved into.

12 But I also had the horrible experience
13 dealing with the Missy McLaughlin trial where that
14 lady was also accused of using her body for drugs,
15 and believe me, it didn't sit well with that jury.

16 Q And let me, I want to probe a little bit of
17 that. The jury actually found out before they
18 issued their sentence that Marion Bowman sold
19 drugs?

20 A In the penalty phase everything comes in, we
21 all know, character, bad character. The trial
22 flowed the way it flowed.

23 Q But the information that Marion dealt drugs
24 came out through you all's witnesses on direct, you
25 asked --

1 A Yes.

2 Q -- Jeff Yungman about it?

3 A How Marion lived.

4 Q How Marion made money, he said candidly he

5 had dealt drugs?

6 A The only way to get his background in at that

7 point in mitigation was to try and show that, you

8 know, for lack of a better word, he was basically

9 kicked to the curb at a young age and he would do

10 what he had to do to survive.

11 Q Right. So, here is my point. Outside of the

12 guilt phase, because I don't really know that Miss

13 Martin's drug use had anything to do with guilt or

14 lack thereof.

15 A I have never heard it in the guilt phase,

16 ever.

17 Q We're not talking about a self defense case

18 where we are saying somebody was aggressive and had

19 used drugs?

20 A Right.

21 Q In the penalty phase the jury actually hears,

22 in your openings, in your case in chief that, not

23 opening statement, excuse me, but in your case in

24 chief they hear that Marion deals drugs?

25 A Right.

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1 Q And, so, my question is why didn't it come
2 out that Kandee Martin also used drugs?

3 A I didn't want to add another felony or bad
4 character to my client, that he was selling drugs
5 to Kandee. I did what I chose to do at that time.

6 Q Was there any question that Tawain Gadson
7 would have said she was using drugs on Nursery
8 Road?

9 A I didn't believe a thing Tawain Gadson said,
10 personally. I have been doing this a long time.
11 Everybody in the room, you know, the people that
12 cut deals are people guilty or guiltier. I have
13 learned that a long time ago.

14 Q Now, one of the things that a prosecutor can
15 bring out in the penalty phase, fair game is victim
16 impact?

17 A Absolutely.

18 Q One thing they indicated was that the impact
19 upon the family of Miss Martin was the loss of her
20 as a mother to her child?

21 A Yes, sir.

22 Q And in fact they traumatized the fact that he
23 killed her just before her child's third birthday?

24 A Right. "Black, please don't kill me, I'm got
25 a baby." I remember that word.

1 Q It was right before the birthday?

2 A Right.

3 Q That according to Tawain Gadson she made that
4 statement?

5 A Yes.

6 Q My question is this. Does it not present a
7 forward context of her mothering to show that she
8 was a crack addict?

9 A Again, I guess I could sit back and play
10 Monday morning quarterback now and say, you know,
11 attack the victim, the jury has already found him
12 guilty, you know, I could sit here and say that.
13 If I made an error I apologize. If I didn't
14 vigorously cross-examine to help Marion, then I
15 made a mistake and I apologize, but I flowed with
16 the case the way I thought I should have done it.
17 Whether our courts want to call it strategy or a
18 choice not to attack the victim any more than we
19 did, she's dead.

20 We also learned she had another child
21 somewhere that was given away or done something
22 else with.

23 Q Well, let me ask you about that. You did
24 hear that information?

25 A Yes, we heard it. I couldn't get any help

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1 from anybody to prove it. We did our own street
2 stuff around, had investigators go to try to find,
3 you know, where the child might have been, who was
4 raising it, and that is what you do, you just try.

5 Q And bear with me a little bit. Now, this
6 child was about three years old, right?

7 A I'm trying to remember. Seven years back, I
8 would say whatever you tell me the age is, it
9 sounds about right.

10 Q The record speaks for itself.

11 A Right.

12 Q And at the time of her death she was --

13 A A young mom. I don't remember Kandee's age
14 off the top of my head.

15 Q About twenty years old?

16 A Right.

17 Q And she had been pregnant for a year, so
18 we're talking about somewhere around the age
19 sixteen that she would have been pregnant?

20 A At the very beginning, the first time in her
21 life, yes, and as a minor she should have been
22 protected.

23 Q Let me keep going with this. This other
24 child that was given away --

25 A If that is what really occurred. I know she

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1 didn't have physical possession.

2 Q But there was no question she had another
3 child?

4 A In my opinion, no, sir, there was no
5 question, plus I believe Marion or the family told
6 me she might have had another baby, one of his
7 sisters maybe.

8 Q By the time she's twenty we're talking about
9 two children?

10 A I would say at least to my personal
11 knowledge, yes, sir.

12 Q Okay. Which -- and again I want you to
13 understand when I talk about this evidence coming
14 in to provide a picture about the victim impact I
15 want to make sure you're aware I'm not talking
16 about attacking her, I'm talking about being
17 truthful because it is unusual that victim impact
18 goes to a jury, in fact it is only in capital cases
19 that I'm aware of?

20 A That is the only time.

21 Q In sentencing?

22 A Right.

23 Q That actually was a change in the law however
24 many decades and a half ago that allowed this?

25 A Yes, sir.

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1 Q This type evidence, the State wants it in
2 because it allows them to give a factor to impose
3 death?

4 A Correct.

5 Q Because when they weigh the appropriateness
6 of death as a punishment they can consider all of
7 those facts, including the impact that the victim's
8 loss of life has?

9 A That is what the Legislature decided, yes.

10 Q So, what it was, logically if the impact of
11 the loss of the victim's life was not as great it
12 may weigh less toward the appropriateness of a
13 death sentence?

14 A And it is almost like you're pitting
15 witnesses, or pitting their value of their lives,
16 the white girl versus the black young man who
17 allegedly shot her, and that is what you try to
18 hopefully avoid but that is what occurs 90 percent
19 of the time.

20 Q Well, let me ask you, you were a prosecutor
21 at one time?

22 A Yes, sir.

23 Q And in murder cases one of the things that,
24 that is, the victim's character, for lack of a
25 better word, is that not something that is weighed

1 when you decide to file death notice?

2 A Back when I did it --

3 MR. WATERS: Your Honor, I object to this. I
4 don't see how that is relevant, what he would have
5 done as a prosecutor.

6 THE COURT: I'll let him answer.

7 A Personally it goes against everything I
8 believe in about the death penalty. I'm an old
9 Irish Catholic, I tell people all the time I'm a
10 sinner. The first thing is one human being's life
11 is no better than anyone else. I also was a cop a
12 long time ago. I know when people kill a police
13 officer there is no redeeming value because that is
14 the last line of defense, or a judge, or one of us
15 guys doing our jobs, or lady, because that is the
16 last bastion of society or decency we have left.

17 Just like, you know, do you believe in it?
18 No but yes I understand the rationale behind it.
19 And so, yes, I have done death penalty
20 prosecutions. The issue there is should one person
21 be valued greater than the other. It happens every
22 day. The guy on the corner holds up a sign says
23 will work for food, we call him a bum. We don't
24 know the circumstances behind it. The young --

25 THE COURT: Do you want to ask a question or

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1 go farther?

2 MR. BROWN: I didn't want to stop him. In
3 another hearing I was told not to.

4 A I think it is horrible to do that but I think
5 society does it. Again I think it is unfair and I
6 hope it did not prejudice Mr. Bowman at all in his
7 case.

8 Q But again, those are two facts, one fact she
9 had used drugs even if it is a minimum, there is no
10 question that she had used drugs?

11 A No question but again, and here is the
12 throwback on that, what you have to weigh. Do you
13 think somebody deserves to die, I'm not asking you
14 this question, sir, but a rhetorical question, do
15 you think somebody should die for the use of dope?

16 Q I understand.

17 A Now, there was also one underlying thing
18 here. Again this is in response to your question.
19 If you believed everybody in this case, including
20 Mr. Bowman's sister and family, that she was going
21 to be dead by dark because she was going to rat him
22 out for selling dope, so that was the biggest
23 landmine that this lawyer wanted to avoid. So, if
24 you mentioned dope it might have opened up the door
25 if I had mentioned that she was using. Who did she

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1 get it from? And of course --

2 Q How about in the penalty phase, though? You
3 only get there if he has been convicted.

4 A Oh, yes, and you're absolutely correct on
5 that but in the penalty phase I still didn't want
6 to portray Mr. Bowman as being the drug dealing kid
7 that nobody cared about, that would take a life
8 because somebody ratted him out for selling dope.

9 Q Now, let me ask you, would the drug use not
10 be relevant to the issue of her state of mind in
11 the penalty phase, for the kidnapping aggravator,
12 right, it wasn't actually a grabbing kidnapping?

13 A Yes, sir. We have the broadest kidnapping
14 statute in the country as I'm aware of.

15 Q Sure.

16 A And further, if you want to argue the state
17 of mind, they were going there to do a job, that is
18 another thing that was coming out, so-called
19 burglary, you have got people burglarizing houses
20 in the neighborhood in Dorchester County. Any way
21 I turned on this thing I was stepping on a
22 landmine, and I knew that.

23 But again, if I made an error I apologize, I
24 tried that case and in the penalty phase the best I
25 thought I could get out of the mileage with what

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1 was happening, every time we turned around, even
2 before Jeff Yungman got killed on the stand.

3 Q Now, let me, before I get into the other
4 penalty phase issues I want to go back and talk
5 about -- well, we talked about Ricky Davis just for
6 a second and I think it is clear, did you have any
7 conversations with Marion Bowman about Ricky Davis
8 being represented by Marva Hardee-Thomas?

9 A No, sir. I never learned of that one bit
10 until I read that in your petition.

11 Q Okay.

12 A And further, I found out, you know, we'll go
13 through the cases, you know, we talked about Mr.
14 Mood, it was Cameron Marshall, Assistant Solicitor
15 out of the Ninth Circuit at one time, it didn't
16 ring a bell until fifteen minutes after I leave the
17 courtroom, but that is where Mr. Mood came into
18 play, Cameron Marshall was trying to get him to cut
19 a deal for time on the sentence. His client was
20 willing to help.

21 Q And he would have testified in fact Mr.
22 Bowman was involved in the killing but in fact Mr.
23 Gadson was involved?

24 A Yes, sir, whatever he was going to proffer,
25 right.

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1 Q Now let me transition, I think that is a
2 great lead into Tawain Gadson. I want to talk to
3 you about a couple things. First of all Mr. Gadson
4 was represented by Gene Dukes?

5 A Yes, sir.

6 Q All right. And he was a Public Defender?

7 A Yes, sir.

8 Q Did you ever talk to Marion about his status
9 as a Public Defender versus Marva Hardee-Thomas'
10 status as a Public Defender?

11 A I think without ever, God rest his soul,
12 okay, but without hurting someone else's opinion,
13 Gene was very ill, he was having a hard time with
14 life at that time, he was basically living by
15 himself, he had the little office across the
16 corner. Gene was having a hard time.

17 And I don't know, they were all independent
18 contractors, the way I understood the PD's office
19 at that time. Gene was part-time or maybe
20 full-time by pay but only really worked whatever
21 hours we had court. Marva, the same thing, had a
22 contract with the county. So, I did not know what
23 they did or who they talked to. Normally the
24 lawyer tells you, "Oh, by the way, I have a
25 conflict."

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1 Q Right. And on that note did you ever talk to
2 Marion about that situation, either way, anything?

3 A I'm trying to remember off the top of my
4 head. The best of my recollection, sir, I don't
5 believe that that came up but if I did I would tell
6 him whatever I learned.

7 Q Okay.

8 A I wouldn't hide anything from that young man.

9 Q There is no specific recollection about --

10 A No, sir.

11 Q Okay. There is no recollection about him
12 waiving any conflict, if one existed?

13 A No. I would have had that in writing, number
14 one. Number two, I would have brought it to the
15 court's attention. The only person can appoint on
16 a death penalty case is a judge after they qualify.

17 Q What did you ever know about the mental
18 health evaluation of Tawain Gadson?

19 A I don't think I -- the best of my
20 recollection, I don't recall that. I might have
21 received a report and read it but I don't think I
22 would have been privy to that because he was
23 represented by counsel.

24 Q All right.

25 A I don't believe his competency came into play

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1 as a witness.

2 Q Well, let me ask you to take a look at his,
3 what has been marked and entered as Plaintiff's
4 Exhibit 8, which is his mental health evaluation,
5 and let me ask you if you recall ever finding out,
6 I'm going to just hit a couple things, that he
7 smoked marijuana all the time, every day, and I'm
8 kind of generalizing on that, and that he also
9 suffered from blackouts and had verbal memory
10 impairment or heard beeping noises or a voice?

11 A I'm trying to remember if Marion told me
12 about him being a doper, for lack of a better
13 word, you know, to make it quick and easy, and I
14 thought Marion told me he basically wasn't all
15 there.

16 Q And let me ask you, have you ever -- well,
17 let me --

18 A You had a question about this document. I
19 don't remember seeing this document.

20 Q Okay.

21 A All right.

22 Q Or receiving it in discovery?

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

24 Q Now, again, there is no question Tawain
25 Gadson is the sole claimed eyewitness to this

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1 killing?

2 A Yes, sir. And in the car allegedly.

3 Q Okay. The deceased?

4 A Marion.

5 Q Mr. Gadson, he and Mr. Bowman?

6 A Yes, sir.

7 Q And, so, he testified, in keeping with that,
8 to the jury and tells them what he recalls from the
9 killing?

10 A Yes, sir, as a principal, right.

11 Q So, his recollection and credibility is
12 crucial?

13 A Yes, sir.

14 Q And if he's hearing a voice or beeping noises
15 or consumes amounts of drugs that would impair his
16 ability to recall, such as having a verbal memory
17 impairment, or his ability to recall that date
18 would have been clouded by drug use that would be
19 of some relevance regarding his credibility?

20 A Yes, sir.

21 Q Okay. Or having blackouts?

22 A Yes, sir.

23 Q All right. And, so, the decision not to
24 present that is not a strategy decision?

25 A I think I cross-examined that gentleman, as I

1 think I testified to this the first time I talked
2 to you, I tried to examine him the best I could.
3 If I failed to do that and if that is what our
4 Supreme Court says, then I apologize to Mr. Bowman.

5 Q But to be very specific, I appreciate that,
6 what I'm trying to find out, you didn't make a
7 strategy call not to use that bit of information
8 that was contained in Plaintiff's Exhibit 8?

9 A No, that would not be strategy, no, sir. You
10 are in the heat of verbal argument in there and you
11 ask questions, sometimes you wonder why you ask
12 that question, sometimes you wonder why you didn't
13 remember to ask the other one.

14 Q But you would have asked him about blacking
15 out, hearing voices?

16 A I would hope and pray I would, okay? I don't
17 know what else to say.

18 Q I just want to make clear, and I apologize,
19 Your Honor, for asking it a couple ways, I'm going
20 to make clear that he didn't make a strategy call.
21 He didn't have Number 8.

22 A I didn't.

23 THE COURT: Strategy call about what?

24 MR. BROWN: About not asking, impeaching Mr.
25 Gadson about the information contained in Exhibit

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1 8, which is Mr. Gadson's DMH report.

2 THE COURT: Mental Health?

3 MR. BROWN: Yes, sir.

4 THE WITNESS: Do you want that, Your Honor?

5 It deals with Mr. Gadson, his own claim that he
6 hears voices, blacks out, I can't remember. It's
7 in the report.

8 THE COURT: Mr. Cummings made a choice not to
9 bring that up?

10 MR. BROWN: Just the opposite.

11 THE WITNESS: I hadn't seen the document. I
12 hope I would have brought that up.

13 THE COURT: You didn't know about it?

14 THE WITNESS: No, sir.

15 THE COURT: Did the State have it?

16 MR. BROWN: We finally got it from the State.

17 THE COURT: Your argument is the State should
18 have given him something that is exculpatory?

19 MR. BROWN: Yes. That is raised in our
20 third, impeaching, not exculpatory, borderline
21 exculpatory.

22 THE COURT: Why not use it to impeach him
23 rather than exculpatory?

24 MR. BROWN: In this case it would be used for
25 both, to impeach his general credibility and his

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1 credibility regarding recall of that incident, so
2 it follows both prongs of Brady.

3 THE COURT: Go ahead.

4 MR. BROWN: Of course I believe we have also
5 alleged, with all due respect to Mr. Cummings, it
6 was ineffective assistance of counsel not to use it
7 but if he didn't have it or know about it I don't
8 know how he would use it.

9 THE COURT: Let me ask you, how did the State
10 have Mr. Gadson -- this is back in 2001?

11 MR. BROWN: Yes, sir.

12 THE COURT: This was done regarding his other
13 charge?

14 MR. BROWN: This murder, he was charged with
15 this murder, too.

16 THE COURT: And, so, Mr. Dukes had him
17 evaluated?

18 MR. BROWN: And Mr. Bailey knew about it and
19 of course Mr. Cummings was not a party to that
20 case. I mean, he was counsel for a co-defendant.

21 THE COURT: Okay.

22 BY MR. BROWN:

23 Q And you had testified before that what you
24 got had a Rule 5 stamp on it?

25 A Everything I would have would have a Rule 5

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1 stamp, plus it also would have my office saying
2 what we got.

3 Q You don't recall this one?

4 A No, sir, not to the best of my recollection,
5 no, sir, I do not, plus I have never seen one of
6 those on a witness.

7 Q And I would concede there probably are some
8 rules, not constitutional rules, but rules
9 regarding privilege of medical records, which gets
10 into kind of a legal issue, I don't want to debate
11 it with a witness.

12 A That is what we do.

13 Q I would concede that there are rules that
14 protect the privacy of mental health records and I
15 think it would be a later question for the courts
16 whether if there were, whether a constitutional
17 duty to turn over medical records trumps Mr.
18 Gadson's right to privacy. I will leave that with
19 you. That is consistent with you not getting it?

20 A I didn't.

21 Q That's right. Okay. Have you ever seen
22 Tawain Gadson's plea agreement or indictment?

23 A Yes, sir, I saw the indictment. I'm also
24 privy to his plea, Walter sent out everybody,
25 "There is this proffer."

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1 Q I will show you, that is Plaintiff's 1, which
2 is the indictment. For the Court's record, the
3 Clerk's office does not have a copy of this
4 indictment, Your Honor.

5 A Yes, sir, I have seen, I don't know if this
6 is the actual original indictment that went to
7 Madam Clerk, I remember getting an indictment from
8 Mr. Bailey of course on my client and of course the
9 other client by Brady, but again it would be in my
10 file.

11 Q And I'm going to let you keep that and look
12 at Plaintiff's 3, which is a plea agreement.

13 A Okay.

14 Q And Plaintiff's 4, which is a warrant.

15 A Plaintiff's Exhibit Number 3 signed May 13th
16 by Mr. Bailey, Mr. Gadson and Mr. Dukes, as I see
17 their signatures.

18 Q So, we're in the heat of trial?

19 A Right.

20 Q You have picked a jury at this point?

21 A Yes, and how -- this is where Marion probably
22 lost a lot of faith in me because I dragged him
23 back there along with family members, big Walt
24 Mitchell, and begged him to plead to save his life,
25 I did, I will tell you that. We took time, the

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1 judge gave us extra time to go back in the back
2 room and --

3 THE COURT: What are you looking at here?

4 A I'm looking at the Plaintiff's Number 3, sir.
5 It's an agreement by Mr. Gadson to testify against
6 my client. He had not been willing to do that up
7 until the stage of trial, the eve of trial, if you
8 want to call it that way.

9 Q So, you believe you were actually provided a
10 copy of that plea agreement?

11 A Right, I'm sure Walter had it delivered to
12 the office, which is what they used to do.

13 Q Just for the record, it is in the transcript,
14 on May 13th you all are actually doing jury
15 qualification on that day?

16 A Yes, we were working.

17 Q So, you all were in the trial doing the jury
18 selection part, qualification, and Walter at the
19 same time, not simultaneously, but he goes that day
20 and strikes a deal with Mr. Dukes and Mr. Gadson?

21 A However he did it.

22 Q According to the dates on that document?

23 A Yes, sir.

24 Q Okay. But do you believe you got that? I
25 mean --

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1 A Oh, yes. I mean, I had to have gotten the
2 plea deal or at least notice he was going to flip
3 and testify against my client. The best of my
4 recollection --

5 Q Bear with me, because there is a difference,
6 I understand, because you did cross-examine Gadson
7 about cutting a deal?

8 A Yes.

9 Q My question is did you actually receive a
10 copy of that plea agreement?

11 A Seven years later.

12 Q I understand that.

13 A I don't ever want to make a mistake with this
14 man's life in peril. I don't remember if Walter
15 handed me a package or walked across like you and
16 Mr. Waters would do, "Here, he's going to testify."
17 That might show up without a Rule 5 stamp. If it
18 does, then how I got it, whether or not it's in my
19 file, it would be either handed to me in the
20 courtroom or in the back room, which we commonly
21 call it, as you walk out the back way at St.
22 George, the Solicitor's office had a little office
23 back there, might hand me that and I got to go talk
24 to Marion.

25 Q Would you do me a favor at some point after

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1 you have testified, look through your file to see
2 if you can locate a Rule 5 copy?

3 A You gentlemen have everything I ever had on
4 this case from what I had in my file.

5 Q But it's been returned, let's make sure the
6 record is clear.

7 MR. WATERS: Your Honor, we dispute that.
8 Remember again they kept the file and Mr. Cummings
9 did not get it back until shortly before we began
10 this hearing and I have never had a copy of Mr.
11 Cumming's file.

12 THE COURT: You mean this hearing today?

13 MR. WATERS: No, when we first began. If you
14 remember --

15 THE COURT: You had it for a while.

16 MR. WATERS: He has had it but the State has
17 never had a copy of Mr. Cummings' file.

18 MR. BROWN: I understand that. We don't have
19 a copy of Mr. Cummings' file at this point, Mr.
20 Cummings took his file back.

21 THE COURT: You gave it back?

22 MR. BROWN: That's correct.

23 THE COURT: He didn't take it back, you all
24 gave it back.

25 MR. BROWN: All I'm asking is if he can look

1 to see if he can find a Rule 5 copy in there.

2 THE WITNESS: Yes, Jack, Mr. Sinclair on the
3 way home, I kept it right by the back of my office,
4 he is welcome to go by and get those plastic bins
5 and copy them for posterity.

6 MR. BROWN: Let me put it in context. We
7 assert we never got a copy of that plea agreement,
8 that is in our claim and it is not a question, I'm
9 trying --

10 MR. WATERS: I would object to that.

11 MR. BROWN: It is not a question, I'm trying
12 to, I have asked if he would have a chance at some
13 point in time after he leaves the stand to look to
14 see if that is in there.

15 THE COURT: If what?

16 MR. BROWN: That plea agreement.

17 THE WITNESS: Plaintiff's 3, sir.

18 THE COURT: But you said you were aware.

19 THE WITNESS: Yes, they cut a deal. Now they
20 ask me whether I'm sure I saw the paper. I might
21 have just been told by Walter he's going to flip.

22 THE COURT: But did you say that your
23 knowledge of this caused you to get Mr. Bowman and
24 take him back, you wanted him to take a plea?

25 THE WITNESS: Absolutely, sir. That was in

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1 writing to the gentleman and everybody there, but
2 Marion turned it down. I had his family go back,
3 his mama went back.

4 THE COURT: If you look in the file, whether
5 you find it or not, you are aware Mr. Gadson made a
6 deal to testify for the State?

7 THE WITNESS: Oh, yes, sir.

8 MR. BROWN: We concede that, because I asked
9 him about a deal, Your Honor.

10 BY MR. BROWN:

11 Q Here is where I want to try to go into a
12 little bit on that. What did Tawain, what was your
13 understanding, what did Tawain Gadson do to merit a
14 charge of murder?

15 A Well, number one --

16 Q To serve as a factual basis?

17 A Number one, if everything was true he was
18 clearly a principal, he was there.

19 Q Besides being there --

20 MR. WATERS: Your Honor, I object to --

21 THE COURT: I'll let him answer the question.

22 MR. BROWN: I'm trying to get --

23 THE COURT: If he answers it wrong, then he
24 answers it wrong.

25 BY MR. BROWN:

1 Q Besides being there, let me get this long
2 question here in, obviously being present is not
3 guilt.

4 A And involved in the allegations.

5 Q Being present at the scene of a crime is not
6 guilty in South Carolina?

7 A Mere presence isn't.

8 Q Mere presence with knowledge that a crime is
9 going to occur is not guilty?

10 A For that offense, it could be misprison of a
11 felony.

12 Q Bingo. So, more than knowledge of a murder
13 and more than presence with knowledge of a murder.
14 What did Mr. Gadson do that served as a legitimate
15 basis for prosecution as a murderer, not just in
16 February of '01, but all the way through the
17 signing of that plea agreement on May 13th, 2002,
18 during Mr. Bowman's trial?

19 A Either, A, he shot Kandee, or B, he was there
20 and helped Mr. Bowman shoot Kandee and helped
21 dispose of the body.

22 Q Okay.

23 A That is the best of my recollection.

24 Q That would be like after the fact, which is
25 basically what he pled to?

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1 A Yes, sir.

2 Q It was a reduced charge. Okay, how did he
3 help him shoot her if he didn't do the shooting?
4 There is one gun, right, the ballistics suggest
5 from the State's side that there was only one gun.

6 MR. WATERS: Your Honor, I object to this
7 question. First of all he's asking him how did he
8 do it. That is asking of his on personal
9 knowledge. He can't answer. If he wants to ask,
10 "What do you believe," could you prove or not prove
11 that it is one thing.

12 THE COURT: Are you just trying to make a
13 point that Mr. Gadson not only should have been
14 examined about whether he did the murder or not,
15 but also that he had maybe obstructed justice or
16 something by holding things back? What are you
17 saying?

18 MR. BROWN: I don't know the answer, Your
19 Honor.

20 THE COURT: Ask him about --

21 MR. BROWN: Here is the gamut, to run the
22 logical gamut here, either Mr. Gadson was being
23 improperly coerced into testifying under threat of
24 death penalty for murder, because he testified --

25 THE COURT: Or?

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1 MR. BROWN: Or he actually was actively
2 involved in the murder, which makes his trial
3 testimony false.

4 THE COURT: That is your viewpoint of it.
5 Does Mr. Cummings believe that? Are you asking Mr.
6 Cummings do you believe that?

7 BY MR. BROWN:

8 Q That is an even more complicated question but
9 I'll try. If Mr. Gadson testified truthfully at
10 trial that he didn't have anything to do with the
11 killing, was merely there, there with knowledge, or
12 as he said, knowledge when the bullets are fired,
13 "That is when I find out that this killing is
14 happening," otherwise he doesn't know about it,
15 then how can the State say that if he doesn't
16 testify truthfully they're going to go after him
17 for murder?

18 MR. WATERS: Your Honor, I object to that
19 question.

20 MR. BROWN: Well, I'm trying to follow up the
21 Judge's suggestion.

22 THE COURT: I'm not suggesting anything, I
23 don't guess. I hadn't said anything. Anyway, is
24 your question how could they have done what?

25 MR. BROWN: How did they --

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1 THE COURT: How did they, meaning how did the
2 State?

3 MR. BROWN: How did the State, and it is in
4 this agreement, Plaintiff's Exhibit 3, paragraphs
5 eight and nine, it says here testify truthfully or
6 cooperate and if he fails to do that that they will
7 re-instate the murder charge and seek the death
8 penalty and that Mr. Gadson waives objection to
9 death.

10 THE COURT: All right. That is something in
11 that document?

12 MR. BROWN: Yes.

13 THE COURT: So what is your question? I
14 assume that you actually have read the document.

15 MR. BROWN: I studied this document and my
16 point is this.

17 THE COURT: No, what is your question?

18 BY MR. BROWN:

19 Q Okay, let me back up. What did you believe
20 was Mr. Gadson's actions that allowed the State to
21 threaten him with murder prosecution and death
22 penalty?

23 MR. WATERS: Your Honor, I object to that. I
24 just don't see how that's the a question or
25 relevant, what he thinks the State --

1 THE COURT: As for as what he thought, he
2 thought the State thought what Mr. Gadson thought.
3 Why don't you ask him what he decided to do on his
4 own?

5 MR. BROWN: Because I don't know what he
6 believed. Well, I will ask it two ways, here we
7 go.

8 THE COURT: Ask what he did. The question
9 really is what he did and whether what he did was
10 or was not ineffective assistance of counsel.

11 MR. BROWN: Fair enough.

12 BY MR. BROWN:

13 Q If Mr. Gadson did nothing and that's true but
14 he was threatened with death without objection, I'm
15 going to put that in quotes, without objection --

16 THE COURT: You're not making argument now,
17 are you, you're asking him?

18 MR. BROWN: No, I'm asking him.

19 THE COURT: You're not trying to make a point
20 to me?

21 MR. BROWN: I'm making a point to --

22 THE COURT: Why don't you wait to argue?

23 MR. BROWN: I'm trying to do it through his
24 question and answer here.

25 THE COURT: That means you're going to do it

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1 again.

2 When you saw that, Mr. Cummings, what did you
3 say? Were you aware of this? How did it affect
4 your representation of Mr. Bowman, your decisions
5 regarding examining Mr. Gadson?

6 THE WITNESS: The way I looked at it, Judge,
7 Mr. Gadson was going to testify that my client shot
8 this lady, all he was out there doing under threat
9 of Marion Bowman hurting him was either, A, and I
10 say this openly, that he either helped Marion or he
11 would be dead, too, I remember words like that.

12 BY MR. BROWN:

13 Q And you knew --

14 A I can't speculate why Mr. Bailey cut him a
15 deal, what he did there. I don't like that, I got
16 caught on the eve of trial, here we go, a guy has
17 flipped against my kid, he's the only one now that
18 is going to face the death penalty.

19 Q Did Tawain Gadson deserve the death penalty
20 for being threatened and for being there?

21 MR. WATERS: Your Honor, I object.

22 THE COURT: Sustained.

23 MR. BROWN: Okay.

24 BY MR. BROWN:

25 Q Would it not impeach the credibility of Mr.

1 Gadson to show that the State was threatening him
2 with death penalty murder but he didn't do
3 anything?

4 A The way you ask that question, yes, sir.

5 Q Because like if I threatened to do something
6 to somebody but they didn't do anything wrong it is
7 just a flat threat, isn't it, it is not a deal,
8 it's a threat?

9 A It is a threat. Hopefully Mr. Dukes would
10 have -- I don't know, I don't know why Mr. Dukes
11 let him sign the sheet. I know why, it saved his
12 life, to get away from being in the possibility of
13 death penalty.

14 Q So, if he testified at trial he didn't do
15 anything --

16 A If the jury believed that, that is the next
17 thing.

18 Q But if Mr. Gadson says, "I'm just there," but
19 he did something that made him liable for murder,
20 than the fact he says, "I was just there and didn't
21 participate," that is not true, is it?

22 A You're asking me again in that arena whether
23 or not the jury is going to believe him. No, you
24 know what they believed, they believed that little
25 white girl was dead and then burned and somebody

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1 did it and they wanted that somebody. That is what
2 I believe and it was horrible, it was a horrible,
3 horrible trial and I wanted to save a young man's
4 life as well as try that case, and then everybody
5 testified against Marion.

6 Q Is there not residual, then, even in the
7 penalty phase to show that Mr. Gadson was, says he
8 didn't do anything but he was threatened with death
9 murder and Mr. Bowman is going on trial for death
10 murder and Mr. Gadson is going to be in effect
11 eligible for parole in five years and gets out less
12 than five?

13 A Whatever I said in that trial, Mr. Brown,
14 again I cross-examined him, whatever I did in the
15 penalty phase I did. I don't know how to explain
16 it to you. Do I wish I would have done a better
17 job? Probably. Do I think I did a bad job? I
18 hope I didn't.

19 Q Did you know that, did you know that he was
20 threatened with re-installing the murder charge and
21 seeking death and waived objections to death? Did
22 you know all that?

23 A I'm used to proffers, I'm used to the federal
24 system, that if you change one iota they pull the
25 deal out from under you and you're back to square

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1 one. The answer to that is yes, I know that. But
2 I can't sit here today and tell you as an officer
3 of this court that that document, you know, I had
4 it in my hand when I met with Marion, I just know
5 that I was told on that date or when we were
6 picking a jury that the last person is going to
7 testify against him. There was nobody else to
8 testify against Mr. Bowman, they got his family,
9 they got everybody, the only one wasn't testifying
10 against him was me.

11 Q We'll get to the family's testimony. Now,
12 you read some of the plea agreements?

13 A Absolutely, yes, the ones that were given to
14 me prior to here we are picking a jury.

15 Q Okay. The agreements, for lack of a better
16 word, with the family of Mr. Bowman all have
17 polygraph provisions, right, they required them to
18 be subject to a polygraph?

19 A Yes. And we all know about how I felt about
20 the polygraph given by the Sheriff's Department
21 down here. That is one reason why Her Honor I
22 think suppressed a lot of the statements.

23 Q Let me ask you, we know Travis Felder and Mr.
24 Gadson both failed polygraphs?

25 A Well, you pointed that out to me, yes.

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1 didn't have gasoline on his clothes and the pants
2 they found had kerosene on them and I got his wife
3 to admit, "We heat the home with kerosene." That's
4 what I used it for.

5 BY MR. BROWN:

6 Q Let me make sure we get the context right.
7 You didn't call this witness to show it was not him
8 with the gasoline?

9 A I used the State's witness to show that those
10 pants, okay, which were found, the watch and all
11 the other stuff that I believe hurt our case
12 tremendously, that the gasoline used for the
13 accelerant to burn the body in the car was not on
14 his pants, so --

15 Q Let me ask in a different way. If Mr. Bailey
16 would not have called Mr. Layton because he didn't
17 find any probative value to his testimony would you
18 have called him?

19 A Yes, probably would have, and the way I would
20 have done it, I would have put him up and said,
21 "What did you find on his pants?" "Kerosene."
22 "Thank you very much," and he sat down.

23 Q Would you call him to exclude Marion as an
24 arsonist?

25 A No. You couldn't exclude him from being an

1 arsonist, he could have dropped a match in the car.
2 I didn't want to go near that. All I said was, was
3 it kerosene found on his pants, not gasoline.

4 Q Let me ask you this. Is there a chance the
5 jury was confused about that?

6 A I can't speculate what was in their minds.

7 MR. WATERS: Your Honor; I object.

8 Q Plain and simple, it would have been simple
9 to keep Mr. Layton out, right?

10 A No, sir, because it was coming in anyway.
11 The pants were in evidence.

12 Q No, we have the pants. The presence of an
13 accelerant?

14 A They had the right to use the word
15 accelerant, you're right.

16 Q Actually they don't have the right to give an
17 expert opinion.

18 A That is what you said, that is why we're
19 here.

20 Q I understand that but I would assert that
21 they have to justify an expert's opinion or it
22 doesn't come in. They have to show --

23 A He wasn't allowed to say what type material
24 it was by either alcohol or ethanol or, you know,
25 some hydrocarbon.

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1 Q Let me give you a different example. Let's
2 assume they tested the pants and they found the
3 presence of crack cocaine residue on the pants.
4 Would that have come in?

5 A No, because it was not in any way relevant to
6 the burning of this body.

7 Q What did the kerosene have to do with the
8 burning of the body?

9 A Nothing except to help exclude him. Somebody
10 burned that body in the car and the other people
11 said it was only Marion. If you am going to have
12 the other people out there and everybody is saying
13 he did it and his pants are found, her watch is
14 found in the pants, I had to show that Marion did
15 not have gasoline on his body, in my opinion. If
16 that is wrong, I apologize.

17 Q Okay.

18 A If that is an error of law, I didn't do
19 anything intentional.

20 Q No, no. It is well taken in the crack
21 scenario it is not relevant, so it is not if it is
22 not relevant we don't need it in at all, I will
23 take that point and be satisfied with it.

24 Let me ask you about the watch. We didn't
25 talk, or excuse me, in trial it never came out that

1 Miss Martin, A, at least used drugs during that
2 little window of time, and B, she had a reputation
3 of using drugs and possibly had a reputation of
4 using frequently, and C, had a reputation of
5 possibly prostituting herself for drugs, all
6 reputational evidence?

7 A Right.

8 Q Okay. The jury never heard any of that?

9 A Right.

10 MR. WATERS: Your Honor, I object, I move to
11 strike. I don't think that has ever been
12 established by anyone.

13 Q What was her reputation regarding --

14 MR. WATERS: I object. I don't think he is
15 qualified to give that reputation unless he knows
16 of his own personal knowledge.

17 MR. BROWN: He can certainly give what he
18 discovered. Reputation is not personal knowledge.

19 THE COURT: I know that but I assume he had
20 no knowledge of reputation but you did have
21 witnesses that --

22 THE WITNESS: Mainly may client.

23 BY MR. BROWN:

24 Q How about any other folks in the community?

25 A The sister knew that Marion and her were

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1 close, Kendra.

2 Q How about the State's theory she was a
3 snitch?

4 A That's the main thing that was out there.

5 Q She had a reputation she was involved in the
6 drug business?

7 THE COURT: It doesn't tie it into
8 prostitution.

9 Q Well, we'll get to that. Certainly you knew
10 she had a conviction for possession of drugs?

11 A Yes.

12 Q And that she had been involved as a witness
13 in an indecent exposure case involving sex on the
14 town square of Branchville, that came out of this
15 same courthouse we're standing in?

16 A I don't recall. I think she was a witness.

17 Q I think she was the other party in the sex
18 act.

19 MR. WATERS: Your Honor, I object.

20 THE COURT: I sustain. Let's go on to
21 something else.

22 Q Here is the point I'm getting at.

23 THE COURT: Can you just ask him questions?

24 MR. BROWN: I sure can.

25 THE COURT: Obviously, remember I'm going to

1 be hearing your closing argument, I don't need to
2 hear it two or three times.

3 BY MR. BROWN:

4 Q The watch you referenced, which is a bad
5 piece of evidence?

6 A Yes.

7 Q Okay. There is no question that the watch
8 was linked to Kandee by a receipt that Kandee's
9 mother brought in and said, "I bought it at Walmart
10 and gave it to my daughter"?

11 A Yes, sir, and I asked how many watches are
12 sold at Walmart and did all that without trying to
13 hurt that mother.

14 Q Okay, sure. And let me just ask you this.
15 If the jury would have heard about her drug use,
16 even without any reference to prostitution, if they
17 had heard about her drug use would there have been
18 a fair argument from the inference and facts then
19 before the jury that she could have traded the
20 watch for crack?

21 A Yes, you could argue that, and then who gave
22 her --

23 Q Who all were her suppliers?

24 A Or the fact maybe Marion is now, and again
25 this frightened me, and I'm going to say this, what

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1 social redeeming value would he have if he is a
2 drug dealer, too?

3 Q You brought that out in your own witness?

4 A I had to. Finally after everything comes out
5 I had to do it.

6 Q That was your first witness?

7 A It wasn't my first witness.

8 Q First witness in the sentencing phase?

9 A In the sentencing phase, yes. He is already
10 found guilty, now I'm really trying to save his
11 life.

12 Q That is my question, why can't we bring out
13 Miss Martin's a drug user in the sentencing phase?
14 Would it have been another felony on him the jury
15 had a chance to look at?

16 A You paint that lady dead, she's dead, she got
17 burned. This is, I'm telling you, Mr. Brown --

18 Q But --

19 MR. WATERS: I ask he be allowed to finish
20 his answer.

21 A I don't know how to say that, to paint that
22 picture to twelve people up there that don't look
23 like him.

24 Q You think it is good to have the witness
25 bring in the fact he is a drug dealer when there is

1 no charges or convictions for drug dealing but you
2 did?

3 MR. WATERS: Objection, argumentative.

4 THE COURT: I think it is going to be quicker
5 to keep going. You all seem to be arguing back and
6 forth.

7 MR. BROWN: I apologize.

8 THE COURT: Why can't you just ask him
9 question and he answer? You don't have to tell him
10 you agree or not.

11 BY MR. BROWN:

12 Q Okay. Again, the argument could have been
13 made if the watch was traded for crack they would
14 have known she was a crack user?

15 A Yes.

16 Q All right. That will keep it simple. Now,
17 one of your, let me get to these, tell me about the
18 testimony that came out at trial about you don't
19 put up an adaptability expert.

20 A Yes.

21 Q He talked about Mr. Bowman's opportunity to
22 adapt.

23 A It has been the same argument throughout the
24 last ten years in this state, what are his present
25 conditions, and the Supreme Court is coming out

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1 when.

2 Q Sure.

3 A But it comes out lightly and it was defeated
4 and out the window it went.

5 Q And we're talking about penalty phase, you
6 all didn't go in and charge the jury at the
7 beginning of the trial that there was an indictment
8 that had aggravators in the guilt phase?

9 A Right.

10 Q Okay. And when did the alleged sexual
11 conduct, according to notice provided to you by the
12 State's service of the aggravating circumstances,
13 when were you thinking that they had alleged this
14 criminal sexual conduct to have occurred?

15 A Either before, and of course you read the
16 suppressed statements, possibly after the death of
17 this lady.

18 Q Hold on. Criminal sexual conduct can't occur
19 to a dead body.

20 A Walter was trying to pigeonhole the sex
21 occurred before, then there might have been some
22 necrophilia afterwards.

23 Q I want to make clear, now. That can't be the
24 State's position, that there was criminal sexual
25 conduct, which is sex without consent, to a person

1 that is not alive.

2 A We understand that.

3 Q Okay. So it had to have happened before she
4 died?

5 A Right. There was semen found inside her,
6 right, DNA.

7 Q But Walter cannot -- you weren't on notice
8 that it was something that happened postmortem,
9 because that is not CSC?

10 A Our forensic pathologist ruled, as for as the
11 law you're right but our forensic pathologist
12 helped us with determining they couldn't tell when
13 or what time it was placed there and I wanted to
14 make sure that they knew that.

15 Q Okay. Let's follow with this, let's just
16 make sure you understand, and with all due respect,
17 a corpse is not a person?

18 A Correct.

19 Q And CSC can only occur with a person, it
20 can't occur with an object or an animal?

21 A And if I said something wrong --

22 MR. WATERS: Your Honor, I object to this
23 line of questioning. It seems like law school
24 exams. If he wants to ask him --

25 THE COURT: Continue.

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1 Q Again, CSC by its very nature has to be a
2 live person?

3 A To answer, yes, sir.

4 Q Okay. So, we're then talking about all that
5 postmortem allegations of postmortem sexual conduct
6 cannot serve as that basis?

7 A Correct.

8 Q All right. Now, the State, the allegations
9 that there was CSC premortem, when did the State
10 provide you notice that that occurred, because
11 obviously they are alleging it occurred during the
12 commission of a murder or it is not an aggravator,
13 right?

14 A Correct.

15 Q So, they are saying -- and when would you say
16 is the commission of the murder window?

17 A Nursery Road.

18 Q Okay. You got it. Any other time?

19 A I mean, right, because the car has been
20 burned, so the only evidence that the government
21 had would show that Kandee was shot on Nursery
22 Road.

23 Q So, the window of the murder is that Nursery
24 Road area?

25 A Correct.

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1 Q All right. And premortem, we've got time and
2 space limitation, it's got to be before her death
3 and it needs to be in the Nursery Road area?

4 A As for as the CSC, sir?

5 Q Yes.

6 A As for as the CSC aggravator, we're talking
7 about murder during the CSC. That is what makes it
8 capital, or you have somebody, kidnap them, bring
9 them out to the road, which was talked about and
10 thought about, talked about in the office and
11 everything I did the two years to fight for this
12 thing with Mr. Bailey, you know, argue academically
13 there is no way in hike this was a CSC, they were
14 friends, no way.

15 Q Well, what were you on notice of? I mean,
16 again as for as the time, space limitations were
17 put on this box, the time is premortem on one end
18 of it.

19 A Right.

20 Q And the space is the Nursery Road area, how
21 far back did it go, according to what the State
22 provided you notice of, because they don't have to
23 plead it in the indictment?

24 A Right.

25 Q So, you had to have constitutionally adequate

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1 notice of what to respond to in his trial and so
2 what were you on notice of regarding the CSC in
3 conjunction with the murder, not a rape six years
4 earlier or something?

5 A Just like we talked about.

6 Q Just Nursery Road?

7 A That was it, what we talked about.

8 Q And who does the State say was at Nursery
9 Road?

10 A Mr. Bowman, Kandee Martin and Mr. Gadson.

11 Q All right.

12 A Allegedly Mr. Felder comes back with
13 gasoline, if you believe that.

14 Q Postmortem?

15 A Right, if you believe that.

16 Q Okay. So, according to the State's theory
17 they presented, it was Miss Martin, Mr. Gadson and
18 Mr. Bowman?

19 A Correct.

20 Q Why didn't you ask Tawain Gadson about the
21 lack of sexual activity at Nursery Road?

22 A I don't know. I didn't ask it.

23 Q And if you had asked him it would have been
24 good for him to say there was no sex on that road,
25 wouldn't it?

1 A But if he did say there was sex on the road
2 it might have hurt my client more. I'm not going
3 to ask a witness a question which I don't know the
4 answer to, because the guy didn't decide to testify
5 until he flipped in that courtroom.

6 Q And let's follow up with this. And did you
7 all try to go interview him and the State deny you
8 access to their witness?

9 A No, they didn't deny access. I was going to
10 rely on what he was going to testify about, what
11 was in the statements. I talked to Gene Dukes and
12 Gene didn't want us talking to his client.

13 Q What did Mr. Dukes tell you about Gadson
14 witnessing sex on Nursery Road premortem?

15 A He didn't say. He said, "My man ain't
16 talking to you, good luck, I saved my guy."

17 Q Well, Mr. Dukes excluded you from talking to
18 a witness who was talking to the State?

19 A He told me, "My man is not going to talk."
20 He don't have to talk to me. As I understand,
21 witnesses don't have to talk to you.

22 Q Well, after they talk to the State and they
23 cut a deal, I don't know, that may be a little
24 different dynamics on that. The reason I ask, how
25 do you prepare for them?

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1 A You prepare by cross-examining by their
2 written statement and by the facts you know from
3 what you learn.

4 Q Excellent. All right, let's look at his
5 written statement. And if you would, take a look
6 at what has been marked as Plaintiff's Exhibit 5
7 and Plaintiff's Exhibit 6. Do you recognize those?
8 They have been entered in evidence.

9 A Yes, sir.

10 Q Okay. Can you show me in those statements
11 where Mr. Gadson says there was sex on Nursery Road
12 between Mr. Bowman and Miss Martin?

13 A He doesn't.

14 Q Okay. So, why didn't you ask about the lack
15 of sex, why didn't you ask Mr. Gadson about there
16 being no sex between Miss Martin and Mr. Bowman?

17 A I will say I did not ask the question but
18 here is my theory and this is what I want to show.
19 Marion and Kandee were friends, they were intimate
20 friends, if I can use the words. I wanted to show
21 that this man would not hurt that little girl
22 because he cared about her and that she was an
23 intimate friend of Mr. Bowman's. So, anything that
24 the State wanted to try to show dirty about their
25 intimate relationship was that, again, black versus

7481

1 white, white with a black male, that Mr. Bailey was
2 trying to get the ultimate penalty and yet they
3 where friends.

4 Q Hold on one second.

5 A That is what I did.

6 Q Well, now, Mr. Bowman is married to someone
7 else, isn't he?

8 A Oh, yes. We talked all about the adultery and
9 all the other stuff, and you read the transcript.

10 Q We --

11 A My partner and I, Miss Thomas and I, she is
12 chair two.

13 Q You all talked about adultery?

14 A Oh, yes.

15 Q Tell me about, to make sure it's clear, Mr.
16 Bowman is not married to Miss Martin?

17 A Not that I'm aware of. He never told us
18 that.

19 Q That would be fornication, too, wouldn't it,
20 which is another crime in South Carolina?

21 A Bigamy?

22 Q No, fornication, sex without being married.

23 A The jails would really be over populated,
24 wouldn't they? I understand.

25 Q I doubt the judge is going to concede that is

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1 not a crime. Misprison wasn't charged for 150
2 years and it is still valid.

3 THE COURT: Can we not just ask questions?

4 Q Okay. Here is what I'm trying to find out.
5 So, when information about Mr. Bowman and Miss
6 Martin having sex comes in it actually tells the
7 jury, Dorchester County jury, which I would
8 consider to be a small town jury --

9 A It is.

10 Q -- that this African American man and this
11 white lady had been having sex while Mr. Bowman is
12 married to another lady and also while he is not
13 married to Miss Martin?

14 A But they were intimate friends and the only
15 way to show that he had no ill motive or reason to
16 kill this lady was that they were intimate friends.

17 Q Well, hold on a second, now. We had some
18 family members testify about Miss Martin being
19 friends with Mr. Bowman, right?

20 A Yes.

21 Q And they could have shown they were intimate
22 friends. You're talking about sex, right?

23 A Well, intimate friends means sex, I'm sorry,
24 in that context in that courtroom that day. Again,
25 sir, I used everything I could, including the

1 family, to prove he cared about that lady. Yes,
2 maybe he committed adultery, that is God's law and
3 man's law but, again, I'm trying to be here to save
4 his life.

5 Q Let's go back to that. Now, adultery is
6 against both God's law and man's law?

7 A I understand that, God's law and man's law.

8 Q Here is why I asked. CSC is charged as an
9 aggravator and that is alleged and proceeded on in
10 the penalty phase, but the last witness the State
11 presents is a gentleman name Fitts, the last
12 witness that Mr. Bailey puts up. Why didn't you
13 object to his testimony about the DNA coming in in
14 relation to the murder?

15 A Because I wanted to show he was with her,
16 that he cared about Kandee, there was no rape, let
17 the DNA come in, my man's DNA is inside her. I'm
18 sorry, maybe we differ on this, but I wanted to
19 show that they were friends, they were intimate
20 friends. Maybe she did trade the watch for sex in
21 some jurors' mind or if you read between the lines
22 here, but Fitts, I believe, was a DNA person,
23 right?

24 Q He was.

25 A Right. And he couldn't tell when the DNA was

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1 put there.

2 Q That's correct.

3 A And I wanted that in as part of my strategy.

4 Q And how does that change your strategy when
5 you find out from Mr. Gadson that sex didn't occur
6 on Nursery Road?

7 A I didn't care about his testimony at all.
8 Gadson was a liar and I call him that today.
9 Gadson, in my theory of the case, with my client
10 was the shooter. I didn't want to believe anything
11 the man said. My cross-examination was limited of
12 him. I kept it simple so he didn't hurt me. He
13 had an agenda to prove.

14 Q The sex is relevant to what?

15 A Intimate friendship. For the last time, Mr.
16 Brown, I know what you're trying to say. I wanted
17 to show the State was trying to do over kill here,
18 they were trying to paint it dirty, I tried to
19 clean it up.

20 Q Hold on, relevant to what element of a murder
21 charge?

22 A What element of murder? He had no malice to
23 this lady, had no reason to hurt her.

24 Q Malice is whoever pulls the trigger, right?

25 A You can infer malice. I'm talking about real

7485

1 life issues here, not some piece of paper. He told
2 us he cared about her, I got the family to say he
3 cared about her. Everybody else said of course he
4 killed her --

5 Q Miss Bowman testified there was a statement
6 made by her brother?

7 A Yes.

8 A Right.

9 Q What did you get her to say about their
10 friendship?

11 A That they were friends.

12 Q So, did you need also to bring in that they
13 had sex out of wedlock?

14 A Yes.

15 Q In an adultrous manner?

16 A Yes, because other than that why is she
17 around him?

18 Q For drugs?

19 A Okay, right, now we dirty it up, you're
20 right, the whole thing was sex, drugs, rock and
21 roll, you're right.

22 Q Hold on one second, now. You indicated that
23 there was sex on Nursery Road?

24 A No, I did not. There was talk out there
25 about, "Hurry up and get some, it's getting cold,"

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1 and I darned sure wanted to be protected about
2 that. There was a statement, okay, that's right,
3 believe me, that is one of the ones I wanted to
4 stay away from, so I was prepared to argue that.

5 Q You're talking about the statement that was
6 made during the mental health examination?

7 A Oh, yes.

8 Q Now, you do realize those statements cannot
9 come in?

10 A Yes, because guess who got them suppressed,
11 me.

12 Q I don't think the U. S. Constitution allows
13 statements to come in which are made for the
14 purposes of a mental health evaluation, and in
15 South Carolina you can't introduce that in
16 evidence. That wasn't going to come in anyway.

17 A I understand. I wanted to make sure nothing
18 was going to come in. There was also going to be
19 testimony I had to worry about maybe the
20 co-defendants talking about that.

21 Q Which one?

22 A Either Gadson or whoever might have come out
23 of the woodwork next after being interviewed and
24 saying let me cut a deal.

25 Q Would it surprise you to find out that Gadson

1 Judge Goodstein in which the possibility of opening
2 the door was discussed?

3 A Yes.

4 Q As to this?

5 A Not just this, yes, anything.

6 Q Well, describe what happened.

7 A Well, again, Her Honor wanted to make sure
8 Mr. Bowman was protected, Her Honor wanted to make
9 sure that in my zealous, sometimes verbose manner
10 of attacking people or presenting things that I did
11 not open up the door. She had suppressed these
12 matters but warned me, told me, "You make a
13 mistake, it may come in." And Mr. Bailey was like,
14 was like a hawk waiting on lunch.

15 Q In fact Mr. Bailey said that?

16 A He wanted that in there so bad that that
17 young African American male wanted to go play with
18 a dead girl, oh, my God, think about that. Okay?
19 All he -- he wanted that desperately.

20 Q Your assumption if it came out?

21 A Oh, it's over.

22 Q So, your concern was if you admitted evidence
23 of a mental health nature the State could respond
24 and call Dr. Narayan and some of that report could
25 come in?

1 right?

2 A Correct.

3 Q All right. We've been over this but I want
4 to make sure the record is clear. Let's go a
5 little bit to the seminal fluid, and do you recall
6 testimony from Frankie Martin that he said that,
7 you know, this was prior to earlier in the day, on
8 the day of the incident that at one point Kandee
9 and Mr. Bowman went to the bathroom? If you don't,
10 I will be glad to show it to you.

11 A Please, I would like to refresh my memory on
12 that.

13 Q Okay. Page 4831, pretty much starting at
14 line one, you can start there.

15 A Yes, sir, Miss Thomas was asking questions
16 and she came back to the table to confer with me.
17 Like we always did before we ever sat down we would
18 talk with Marion and beg the Court's indulgence and
19 questions.

20 Q Yes.

21 A I wanted to get off the topic quick.

22 Q Right, I understand. That reflects testimony
23 earlier in the day Mr. Bowman and Kandee went to
24 the bathroom together for a few minutes?

25 A Yes, sir, they were in the bathroom, on line

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1981

1 court, he goes first.

2 Q Here is my question. What fact was that
3 relevant to?

4 A relevant to show that he and her were lovers
5 and friends.

6 Q I'm talking about Mr. Bailey.

7 A Mr. Bailey?

8 Q What was relevant for him to put it up at
9 all?

10 A I think he stepped over the line. I know
11 what he wanted, a black man and white woman having
12 sex, we both know what that is. I cleared it up,
13 in my humble opinion.

14 Q You made the best --

15 A I made the best of it.

16 Q Him playing dirty?

17 A That's right.

18 Q All right. Now let's talk about the work
19 record, and I ask you to take a look at Plaintiff's
20 Exhibit 76. Would you look at the dates on that
21 form, that work sheet?

22 A Yes, sir.

23 Q Now, generally what is the age somebody is
24 allowed to work?

25 A It varies, whether it's family, whether it is

APPENDIX S







Debbie Pettit's Family p. 112



APPENDIX T

3 arrested in burned body case

BY DELAWESE FULTON
Of The Post And Courier Staff

SUMNERVILLE-Three young men stood before a judge Tuesday charged in connection with the death of a woman whose burned body was found in the trunk of a torched car in the woods of northwestern Dorchester County.

Dorchester County Deputy Solicitor Robert Robbins urged the court to deny bail for all three men, and Magistrate Whitney Cunningham agreed.

James Tawain Gadson, 22, and Marion Bowman Jr., 20, both of Branchville, are charged with murder. Bowman also faces a third-degree arson charge.

Travis Dawit Felder, 19, also of Branchville, was charged with accessory to murder and third-degree arson, according to sheriff's office affidavits. He

was arrested Monday.

Tears welled in the eyes of Felder's parents Tuesday as they watched their son, shackled and clothed in an orange prison uniform.

The victim was found in the trunk of a torched Ford Escort on Saturday morning in Reevesville. She had been shot twice sometime between 8 p.m. Friday and 3 a.m. Saturday.

The coroner's office has not yet released her name.

Felder's attorney, Clyde Dean of Orangeburg, argued in court that his client should be given bail.

"Travis doesn't have a record," he said.

Felder would be a low flight risk because "he lives with his parents," he added.

Bowman and Felder are accused of setting fire to the car and placing the woman, who had been shot in the head and back, in the trunk. The car was registered to Cordellia or Kandee Martin of Branchville, according to sheriff's office affidavits.

The victim was killed in the Reevesville area, said Lt. Jimmy Nettles. He said she and the men charged had "known each other for quite some time."

Sheriff Ray Nash called the slaying "a horrible case."

Nash credited teamwork put forth by the Orangeburg County Sheriff's Office, Branchville Police Department and State Law Enforcement Division with expediting arrests in the case.

Bowman and Gadson's families were not at the hearing.



James Gadson



Marion Bowman Jr.



Travis Felder

**RULE 5
DISCOVERY**

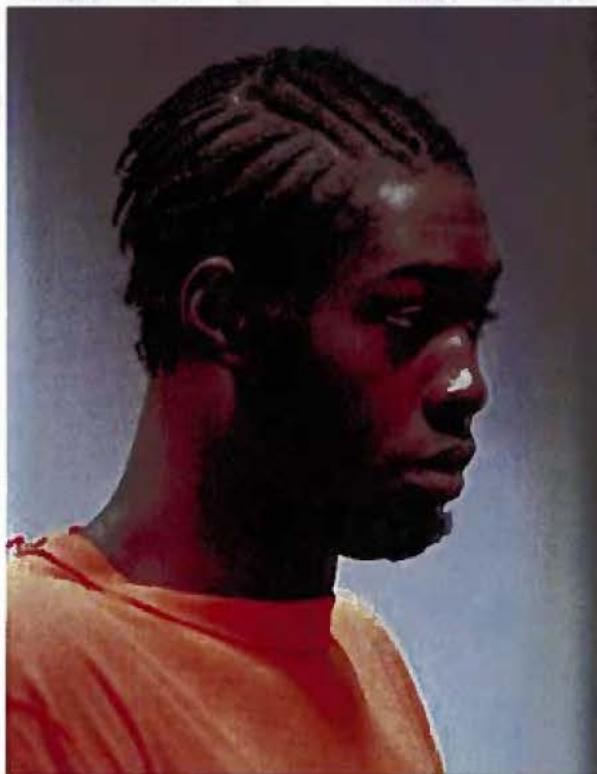
APPENDIX U

https://www.postandcourier.com/politics/sc-court-execution-inmate-marion-bowman-murder/article_116d35da-9dd1-11ef-8dob-f3a7c40a5c6a.html

SC court orders execution of inmate Marion Bowman on Jan. 31, continuing regular pace of executions

BY TIFFANY TAN TTAN@POSTANDCOURIER.COM

JAN 3, 2025



Marion Bowman, accused of murder and third degree arson in the death of a woman found in a burning car in Reevesville, was denied bond in Dorchester County, . photo/wade spees. 2/20/2001

COLUMBIA — South Carolina is slated to mark the first month of the new year with another inmate execution. The S.C. Supreme Court issued a death warrant for Marion Bowman Jr. on Jan. 3, court documents show.

His execution is scheduled to take place Jan. 31 at the Broad River correctional complex in Columbia — four Fridays from when the warrant was issued. He would be the third prisoner put to death since the state **restarted executions** in September.

Bowman, 44, has been on South Carolina's death row for more than two decades for the murder of childhood friend Kandee Louise Martin in Dorchester County in 2001.

He was found guilty of murder for shooting the 21-year-old Martin in the head and setting her car ablaze, after stuffing her body in the trunk. Martin, of Orangeburg, left behind a young child.



Kandee Martin in an undated photo included in Marion Bowman's petition papers to the S.C. Supreme Court on Dec. 16, 2024.

TERESA NORRIS/PROVIDED

A few weeks ago, Bowman **made a public statement** for the first time since his trial in 2002, speaking about selling crack cocaine to support his family and that his customers included Martin. Witnesses at his trial said Martin owed Bowman money and he suspected her of wiretapping him.

Bowman has maintained his innocence, saying someone else killed Martin. He has also been **asking for a new trial**, claiming prosecutors suppressed key evidence and staked their case on unreliable and biased witnesses.

Another reason he did not get a fair trial, according to his current defense team, was that his lead trial lawyer did not adequately represent him.

"Marion's own attorney pressured him to plead guilty instead of preparing an adequate defense, and made other poor decisions based on his racist views rather than strategic legal counsel," Lindsey Vann, Bowman's co-lead appellate attorney, said in a statement after his execution order was released.

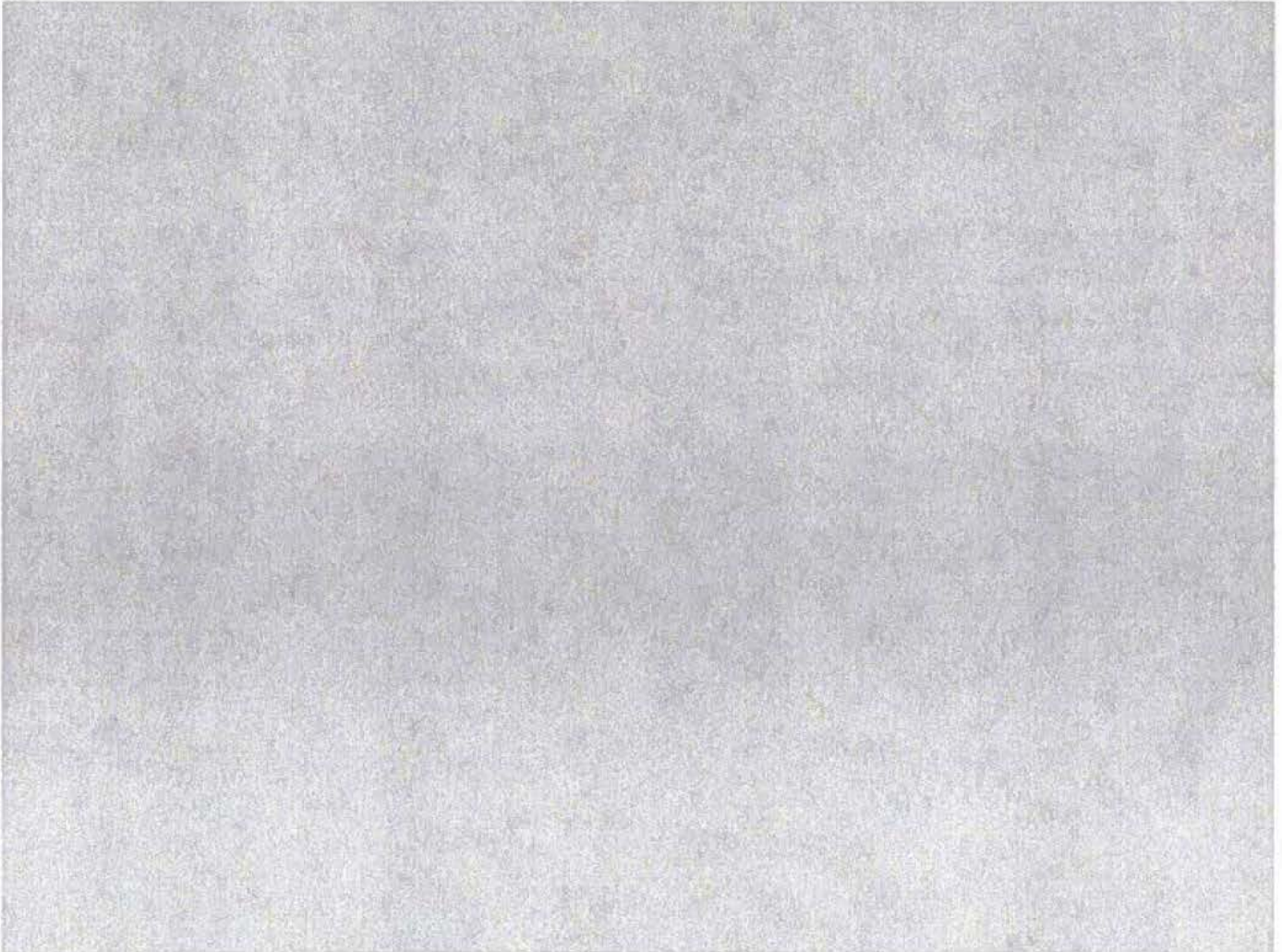
Past coverage

- SC prisoner in line for execution speaks for first time since his conviction more than 20 years ago
- Death row inmate asks SC Supreme Court to reverse murder conviction due to prosecutor misconduct
- President Biden commutes 3 SC-connected death row cases; leaves Dylann Roof's death sentence in place
- SC families and former prosecutors frustrated with Biden's decision to spare death row inmates
- Death row inmate Richard Moore executed by lethal injection in South Carolina
- South Carolina's Freddie Owens killed by lethal injection, first execution in 13 years

"Allowing this execution to proceed despite significant and unresolved doubt about Marion's conviction and the serious flaws in the original trial is unconscionable," she said.

Over the past two decades, Bowman has appealed his conviction all the way to the U.S. Supreme Court, with no success.

Besides a court reprieve, his only other hope is clemency from Gov. Henry McMaster.



Marion Bowman Jr. shown in a November 2023 photo by the S.C. Department of Corrections.

PROVIDED BY S.C. DEPARTMENT OF CORRECTIONS

Since the U.S. **reinstated capital punishment in 1976**, the state has put to death 45 prisoners, according to data from the S.C. Department of Corrections.

South Carolina restarted prisoner executions last year after a 13-year break.

The Department of Corrections had initially **run out of lethal injection drugs**. Afterward, the state courts heard challenges to a new death penalty law that offered the firing squad as an option to condemned inmates, in addition to electrocution and lethal injection.

In July, the state Supreme Court **upheld the law's constitutionality**.

On Sept. 20, death row inmate **Freddie Owens was killed by lethal injection**. Five weeks later, **Richard Moore was executed** by the same method.

The S.C. Supreme Court has released a **lineup of prisoners** who are eligible to be executed after Owens. The court also set a waiting period of at least 35 days between executions at the death chamber in Columbia.

There are currently **30 men** on South Carolina's death row, including one imprisoned in California.

Contact Tiffany at ttan@postandcourier.com

MORE INFORMATION

The order in which SC will execute the next 5 inmates has been set. 35-day waiting period issued.

Death row inmate Richard Moore executed by lethal injection in South Carolina

South Carolina's Freddie Owens killed by lethal injection, first execution in 13 years

SC Supreme Court rules death penalty methods of firing squad, electrocution are constitutional

 Marion Bowman Jr's execution notice

TIFFANY TAN

Tiffany Tan is a senior reporter at The Post and Courier in Columbia, where she covers a range of topics. She previously reported on the courts, the opioid epidemic and regional news in Vermont for VTDigger. She has also worked for newspapers and television outlets in Manila, Beijing, Singapore and South Dakota.

APPENDIX V

COUNTY OF ORANGEBURG
STATE OF SOUTH CAROLINA

AFFIDAVIT OF KENDRA BOWMAN

Comes now KENDRA BOWMAN, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Kendra Bowman. I live in Orangeburg, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein. KB
2. I am Marion Bowman's sister. For as long as I can remember our parents did not get along. There are too many loud, violent fights to remember how any began or ended—it was a constant struggle for the two of them to be around each other. I remember my mom screaming out in pain, sobbing and crying after he would attack her. He would beat her so bad you really couldn't believe it. KB
3. After my mom finally left my dad we had absolutely nothing. We got an apartment with government help and DSS paid her money each month so we could survive. My mom worked on and off but she has rheumatoid arthritis so she was not able to do much most of my life. Marion and I had to clean, cook, and find work around the community to buy necessities like meat, shower soap, and bleach. KB
4. Growing up I did not have a strong relationship with my father because I did not ever get to spend time with him. He would often say he was coming to get us but every time we would get dressed and be waiting for him, excited, he would never show up. I remember one day he gave my brother enough money for a field trip but said mom would have to pay for mine. My brother just threw the money on the ground in front of him out of

frustration. I think we both realized that day we would never really have a dad in our lives so we would just have to take care of our family the best we could. KB

5. Because we did not have a strong relationship with our dad we also did not get to have any real relationship with his parents. He decided his "new family" with his second wife was his only family, so we did not have a close relationship with his parents or almost anyone else in his family KB
6. My mother had a few boyfriends over the years but the only one that ever lived with us was Joe Sims. He really treated us like his own kids and tried to make a difference in our lives. He did everything for us—we ate better, had help with our homework, he went to talk to our teachers, he made sure we had stuff for school, everything. He was like a savior to us; he helped get us where we are today. Without him we would have never left Orangeburg or St. George. I wish he would have stayed in our family but we have always stayed in touch and I still call him Dad. KB
7. I remember it was really hard for my brother growing up. Everyone seemed to pick on him and bully him. They called him "tar baby" and other terrible names because his skin is so dark, darker than everyone else's and he has what they call a high booty. Everyone picked on him so much and called him "Black" that he just accepted it and started calling himself Black instead of "Jr" like our family always had. KB
8. My brother really tried to do everything he could for our family. He often attended my basketball games and went to watch me cheerlead at other sporting events like I really wanted my dad do. KB
9. I was closer to my brother than anyone else. We even got an apartment together when we moved out of my mom's house. Although we were still really poor, living in housing authority apartments, we were always really close. My brother was really easy to talk to

and I always loved to be around him. I remember him giving me piggy back-rides to the store down the road when I was hungry but too lazy to walk that far. He would do everything he could to make our lives a little better, a little more normal. KB

10. I grew up with Kandee Martin and we were friends. She would even spend the night sometimes and we were so close she would sleep in my bed. She called me her black sister—Kandee did not see race, there were not two different sets of people. We were all the same in her eyes, but that is not how everyone else, especially her parents, saw it. Kandee started using drugs as a teenager and she seemed to enjoy that kind of life. She dated a few different black guys and was always around the neighborhood—she knew just about every body. I know no one at his trial understood her relationship with everyone that was involved and it would have made everything much more clear. KB
11. Everyone also knows that Hiram was sleeping with my brother's wife and he wanted to make sure my brother was taken out of the picture. They even had a paternity test done on one of her kids to see if it was his. Hiram was the only person that said he knew anything about the gun that was found in my sister-in-law's couch and that was after the police had searched it over and over with metal detectors. Hiram would do anything he had to get what he wanted. He had been running the streets with guns for years at that point and had always done whatever it took to take care of himself. KB
12. The story of who had the gun and when has gotten really mixed up. I never had the gun until my dad called and told us to go get it. I have no idea where he got it from or why he had it. It was really hard to deal with everything going on with my brother at the time and having charges pinned on me too. It made it seem like the people were trying to just get rid of our whole family. KB

13. I did not testify at my brother's trial but I would have if I had been asked. Everyone was putting us under a lot of pressure about the charges we had. I really wish my brother's lawyers had asked me to talk about him to the jury. KB

Further affiant sayeth naught.

Kendra Bowman
Kendra Bowman

Sworn to me this 20th day of
December, 2018.

Brie Russell
Notary Public South Carolina
My commission expires: 3/24/27

APPENDIX W



Na Quash + Black

Defendants
EXHIBIT
#12

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APPENDIX X

Joseph F. Fogle - Direct Exam

1

2

DIRECT EXAMINATION

3

BY MR. LAFOND:

4

Q. Good afternoon, Mr. Fogle. As you know, my

5

name's Benji Lafond and I work with Mr. Bailey here

6

at the office. Can you please tell the jury where

7

you live?

8

A. I live at [REDACTED], Branchville, South

9

Carolina.

10

Q. Do you know the defendant, Marion Bowman?

11

A. Yes, sir. I do.

12

Q. Can you, please, point him out for the jury?

13

Can you describe him, what is he wearing?

14

A. The fellow in the green, green jacket, white

15

shirt, tie.

16

Q. Okay. Does Mr. Bowman have a nickname that you

17

commonly use for him?

18

A. Yes.

19

Q. What's that nickname?

20

A. Black.

21

Q. Okay. How long have you known Mr. Bowman?

22

A. About five years.

23

Q. Are you close friends with him?

24

A. Yes.

25

Q. Okay. Do you know James Taiwan Gadson?

Keith Rivers - Direct Exam

1 A. Yes.

2 Q. And could you point him out for the record,
3 please?

4 A. Over there.

5 Q. Okay.

6 THE COURT: Remember, keep your voice up
7 for me, please.

8 Q. Okay. Just if you would, Mr. Rivers, just talk
9 loud where I can hear you, then these jurors on the
10 end can hear you, okay?

11 A. Okay.

12 Q. Can you describe him? Just for the record can
13 you point towards his table over here? How is
14 Mr. Bowman dressed?

15 A. How is he dressed?

16 Q. Yes, sir.

17 A. He has a suit and a tie on.

18 Q. Okay. All right. How long have you known
19 Marion Bowman?

20 A. I guess ten years, 11 years.

21 Q. All right. And does he have any nicknames that
22 he goes by in the Branchville area?

23 A. Black.

24 Q. Okay. Any other nickname?

25 A. J. R.

Carolyn L. Brown - Direct Exam

1 A. A green suit.

2 Q. Okay. White shirt?

3 A. White shirt, tie.

4 Q. Okay. All right. How long have you known
5 Marion Bowman?

6 A. For four years.

7 Q. Okay. Now, does Marion have a nickname?

8 A. J. R.

9 Q. J. R. Does he have another nickname?

10 A. Black.

11 Q. And people in Branchville refer to him by either
12 one or both of those nicknames?

13 A. Yes, sir.

14 Q. Okay. And how about James Taiwan Gadson, do you
15 know him?

16 A. Yes, sir.

17 Q. How long have you known him?

18 A. Four years also.

19 Q. Okay. And Travis Felder, do you know him?

20 A. Yes, sir.

21 Q. How long have you known Travis Felder?

22 A. Four years also.

23 Q. Okay. Call your attention to Friday, February
24 the 16th, 2001, and ask whether or not you were home
25 that day?

James Helms - Direct Exam

1 all those things in front of the jury.

2 THE COURT: I understand. What items are
3 we talking about?

4 MR. BAILEY: Your Honor, these are five
5 separate items, they were collected by Agent
6 Helms from the trunk of the automobile. The
7 significance of these items is they were
8 collected by Agent Helms, they were sent to the
9 SLED arson lab, Mr. Helms delivered them to the
10 SLED arson lab. I'll wait for the train.
11 (Train.)

12 MR. BAILEY: Your Honor, what they
13 consisted of was a burned pocketbook, a burned
14 shirt from the victim, some burned books from
15 the trunk, a burned belt and earring and some
16 other miscellaneous, burned debris out of the
17 trunk of the automobile. They were sent to SLED
18 and were analyzed by Alex Layton who is a SLED
19 arson chemist. Mr. Layton's on our witness list
20 and he would testify that all these items had
21 petroleum accelerants in them. Which Mr.
22 Cummings, of course, is not consenting to chain
23 of custody as we know and it's necessary for me
24 to have him identify this and get the chain of
25 custody documentation in order to lay the

Travis D. Felder - Direct Exam

1 A. I went further up the road and turn around.

2 Q. And where did you park?

3 A. I came back. As I turned around I came back and
4 parked in the middle of the road.

5 Q. Okay.

6 A. He was already up in here.

7 Q. All right. You can go ahead and have a seat
8 now.

9 A. (The witness complies.)

10 Q. Okay. After he went up in that little field as
11 you've described, you stop your car in the road,
12 what's the next thing you saw?

13 A. I seen him get out the car, he lit something,
14 threw it in the car, the car was on fire.

15 Q. Okay. What happened then?

16 A. He got in the car, we went --

17 Q. Got in what car?

18 A. He got in my car.

19 Q. Okay. You're still behind the wheel of your
20 car?

21 A. Yes, sir.

22 Q. Okay. What happened after you got in the car?

23 A. I said, "Black," I was referring to Mr. Bowman,
24 I said, "Man, I don't want nothing to do with this."

25 He said, "Travis, I ain't get you

APPENDIX Y

DORCHESTER COUNTY SHERIFF'S OFFICE INVESTIGATIVE REPORT

REPORTING OFFICER: Sgt. Alvin M. Colyer

CASE NUMBER: 01001493

Following the polygraph, James Gadson provided Maj. Stephenson with additional information concerning this case. He agreed to provide another statement to R/O and Orangeburg County Detective Jack Coleman with the additional information. Gadson stated that Terry Kelly did not have anything to do with this incident, and in fact was not there at the time of the incident.

R/O informed James Tawain Gadson again of his Miranda Rights by reading the rights from a Pocket card. James indicated that he understood his rights and agreed to provide another statement. R/O produced that statement on a computerized form as it was told by James Tawain Gadson. Once it was completed, R/O printed it out and had Gadson read the statement to assure that it was true and accurate as he had told it. R/O inquired of Gadson as to whether anything needed to be added or deleted from the statement as it was written. He indicated that it was correct and then signed the statement to which he was provided a copy. Detective Jack Coleman witnessed the statement, as did this R/O.

In his second statement, James Tawain Gadson indicated that he and Marion had gone to Grover near St. George with Yolande to purchase some meat. When they returned to Marion's house, Marion took his package inside and returned to the car with a silver and black 380 semi-auto pistol. They then went to the Villa Apartments. Marion went to apartment [redacted] where Thina West lives to help her move some furniture. James did not see Marion again until around 7:00 - 7:30 PM when Marion and Kandee drove up in Kandee's car. Marion told James he was going to pull a caper and wanted James to help him with it. He said he was going to rob someone. James got in the car with them and they went to the EZ Shop where Kandee pumped \$10.00 gas and then drove off without paying for it. They drove down Highway 78 toward St. George until they passed the new Branchville High School. They turned right on to a secondary road and followed it to McAlhany Road. When they got to the stop sign at McAlhany road, they turned left. Marion kept pointing to different houses and saying that he was going to rob them because they had money. James asks Marion where they were going and he replied that he had a caper to pull. Marion then placed his arm around the back of Kandee's seat and pointed his finger toward Kandee's head as if his hand was a gun, then made a motion as if he was shooting a gun. When they got to the end of McAlhany road, Kandee turned right and back to the left onto another road. Marion told her to stop near a yellow road sign. Marion then gave Kandee a crack rock to smoke. Marion and James got out of the car and began walking away from the car. Marion told James that he was going to kill Kandee because she had been wearing a police wire when she bought drugs from him. Kandee got out of the car and ran down the road toward them and grabbed Marion by his arm and said she was scared of the dark and did not want to be left alone. A car was heading toward them so they jumped into the woods until the car or cars could clear the area. Kandee and Marion then came out of the woods and were headed back toward the car when James came out of the woods. Marion fired at least 3 shots in the direction of Kandee. Kandee turned and ran toward James screaming and begging Marion not to shoot her again because she had a child to raise. She stopped about 15-20 feet in front of James and turned to face Marion. Again begging him not to shoot her again. Marion pointed the gun at Kandee and fired two more shots. Kandee fell to the pavement, face down. James stated that he messed (defecated) in his pants. Marion made a comment about how hard she fell. Then he garbed Kandee by her legs and pulled her into the woods. James walked or ran past them and got into Kandee's car on the passenger side. Marion returned to the car a few minutes later and they drove back to Branchville. Marion parked the car in a field next to the old coal plant. They ran down the rail road tracks back to the Villa Apartments. Marion had stated he was going to drive the car to Allen Murray's Club. When they arrived at the Apartments, Marion saw Travis Felder and told him to meet them at the head of McAlhany road after they left the club. James stated he went to apartment [redacted] where he washed and changed clothes. He spent the night at that apartment. On Saturday morning, he got up and took his soiled clothes home and washed them. He later saw Travis Felder and Travis told him not to worry about Kandee or her car, because they were burned up. Travis told James that when they left the club, he followed Marion back to where Kandee was at and they put her in the car and burned the car with her in it. James stated that he did not shoot Kandee Martin or help burn her body.

At some time while R/O and Detective Coleman were conducting the interview with Gadson, other officers had received information from Orangeburg County Sheriff's Office Major Barbara Walters, that the gun in question was suppose to be hidden in a chair in Marion Bowman's house. Officers responded to that location in an attempt to

APPENDIX Z

COUNTY OF BEAUFORT)
)
STATE OF SOUTH CAROLINA) AFFIDAVIT OF JAMES ARTHUR BROWN, JR.

I, James Arthur Brown, Jr., being duly sworn, do state:

1. I am a currently a resident of Beaufort County, South Carolina.
2. I am at least eighteen years of age.
3. I currently work as an attorney in Beaufort, South Carolina where I have lived since 1998. I have operated my own private practice in Beaufort since 2001. I have served on the board of the South Carolina Association of Criminal Defense Lawyers for more than 20 years and served as president of this organization in 2007. I have served on the CJA for the United States Court of Appeals since 2002. I have been counsel in five death penalty matters and handled criminal cases for more than 3000 clients since being licensed in 1996.
4. I have been married for 30 years and have three grown sons. One son just passed the bar in South Carolina, another son is in his second year of law school and my third son is an Emmy award winner working for Extra TV and True Crime TV in Los Angeles. My wife is a retired school teacher.
5. I am writing to ask for you to spare the life of my friend, Marion Bowman.
6. I was originally appointed as the lead attorney for Mr. Bowman's PCR case in 2007. Since that time, I have litigated his case and closed out my file more than a decade ago. He and I are close in age so we have grown through many of life's experiences together including parenting a child and losing a parent.

HIS CONTINUED EMOTIONAL VALUE TO OTHERS

7. Marion loves his daughter and now his granddaughter. Over nearly twenty years, his daughter has always been the first thing he talks about.
8. His eyes light up when he talks about their birthday and Christmas time visits together. I remember when she got her first bicycle. I remember how happy he was that he could give her a shirt for Christmas bought by others on his behalf.
9. I remember as she grew up and Marion's shame that his relationship with her was one with a plastic barrier between their humanity.
10. Marion cherishes that relationship nonetheless. Instead of despair, Marion advised his daughter to better herself and she followed this advice and moved to a better city and obtained a gainful job following that advice.

11. I remember when Marion's grandchild was born. I remember the smile on his face when he told me and my wife about the chance to see her.
12. These moments show the emotional value Marion provides by just being alive. As a fellow Christian, there is no greater trait that a human can possess than love.
13. Letting him live fosters the love of our fellow man in us. Killing him only harvests wind.

ONE OF HIS TRIAL ATTORNEYS WAS AN ABJECT RACIST

14. You should spare Marion's life because of the problems with his attorneys.
15. His lead attorney's words and actions demonstrated his uncontradicted racism. His racist remarks were made spontaneously under oath during his testimony about his work for Marion.
16. During his testimony at a PCR hearing, Marion's trial attorney interrupted the questions and answers and turned directly to Marion at the petitioner's table.
17. The trial attorney asked Marion *why a black man would be alone on a road with a white girl*. He asked what good could come out of an interracial relationship.
18. Blind to the normal, positive reasons an African American and a Caucasian American would have a relationship, the trial attorney perpetuated the trope that black men are a danger to white women.
19. Everyone in the courtroom, including the judge, was shocked that Marion's trial lawyer made such a racist remark. The courtroom went silent and there was a long pause before questioning resumed.
20. If I recall correctly, the PCR judge even tried to explore this statement to make sure he understood the racism behind it correctly.
21. But the context of this outburst is also important. The trial lawyer made these statements when being asked why he did not tell the jury about the true relationship between Marion and the deceased.
22. If the trial lawyer had not been racist he would have presented evidence of this biracial relationship and the jury would have known that Marion and the deceased grew up together and attended school together from elementary school until adulthood.
23. If the trial lawyer had not been racist, he would have presented evidence that Marion was younger than the deceased. He would not have portrayed Marion as an adult and the deceased as a child.

24. If the trial lawyer had not been racist, he would have presented evidence that Marion worked alongside the deceased's father and brother as laborers in the construction industry.
25. If the trial lawyer had not been racist, he would have told the jury of Marion's abusive dad who beat his mom with brass knuckles.
26. If the trial lawyer had not been racist, he would have told the jury of Marion's relationship with his then young daughter and how he had the capacity to develop a loving relationship with her.
27. Instead, Marion's trial lawyer fostered the unspoken theme of the prosecution - that Marion deserved the death penalty because he had a sexual relationship with a white woman and that black men prey on white women.
28. You should spare Marion's life because he was represented by a racist attorney during a death penalty trial involving the killing of a white woman by a black man. It is impossible to view this in the context of South Carolina's complicated history on race and not believe this racism infected the trial and resulting sentence of death.
29. I know about this racism through my work and I also know about this racism through my own life experiences. My father marched in the civil rights marches in the 1960's and his mother stood down the Klan in south Florence County in the 1950's. But just one generation before that, my direct ancestor wore a green robe of terror. Two hundred years before that, my family on both sides owned slaves - the largest symbol of suffering inflicted by one citizen against another in our nation's history.
30. South Carolina has grown up and past those hateful ways. Sparing Marion's life will show this growth and how we are a better state. Your grant of clemency will be proof we are not still a state full of hate.

ONE ATTORNEY WAS INCOMPETENT AND WITHHELD EVIDENCE

31. As required by state law, Marion was also represented by a second attorney at his trial. This attorney was incompetent and under investigation by the Office of Disciplinary Counsel at the time of the trial of Marion's case. It was never clearly divulged what she was being investigated for but I believe she suffered some type of suspension as a result of her conduct.
32. But the most troubling aspect of her representation of Marion is that she also represented another client who gave the prosecutor a statement questioning the extent of Marion's involvement in the killing. This information was hidden from Marion by his own lawyer and the prosecutor. The jury never heard this information.

33. This lawyer was so incompetent that she did not even ask the trial judge for guidance or a ruling about this conflict. Her efforts to conceal the statement of her other client puts her clearly on the side of the prosecution. She did not serve as any safeguard to the racism of Marion's lead attorney.
34. You should commute Marion's sentence because of this incompetent attorney.

THE PROSECUTOR WITHHELD EVIDENCE

35. You should commute Marion's sentence because of misconduct and false testimony occurring during Marion's trial. At least three witnesses committed perjury during Marion's trial or provided false statements during negotiations with the prosecutors. The prosecutor admitted he did not disclose evidence about these witnesses' lies.
36. Three persons were charged as co-defendants in Marion Bowman's case. One of these persons was his first cousin. All three of these people provided false testimony during the trial or during negotiations with prosecutors.
37. Specifically, Mr. Travis Felder repeatedly lied to the prosecutor during his efforts to negotiate his own freedom. He later admitted his trial testimony was also untruthful. However, the prosecutor hid the lies which occurred during the negotiations with Felder. The prosecutor also failed to correct the false testimony during the trial. Marion's lawyers failed to uncover the truth because there was no investigation into the statements made by Mr. Felder.
38. Likewise, Hiram Johnson lied during the trial. His deals he cut with the prosecution were not provided to the defense. The jury never heard that Mr. Johnson lied at every point in Marion's case.
39. But the biggest concealed evidence was evidence that Taiwan Gadson was the killer and not Marion or that Taiwan was at least equally culpable in the killing. Two different statements were made documenting Mr. Gadson's jailhouse confessions but the prosecutor hid this information from the court and the jury never heard about this. The concealment of one of these confessions occurred with the complicity of one of Marion's trial attorneys.
40. You should spare Marion's life for this reason.

HIS POST-CONVICTION TRIAL WAS RUSHED TO ACCOMMODATE THE ASCENSION OF A JUDGE TO AN APPELLATE COURT

41. Unlike most post conviction challenges, the PCR in this case involved testimony generated at many depositions and court hearings which spanned several weeks. However, the last week of testimony was truncated because of the Christmas and New Years holidays and because the PCR judge was ascending to the appellate bench at the

end of the year.

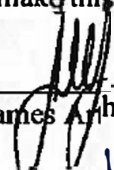
42. I know that I am human and I surely overlooked something I should have done for Marion. This last minute development in a multi-year PCR could not have inured toward's Marion's benefit.

NOT THE WORST OF THE WORST

43. You should spare Marion's life because this case is not the worst of the worst. All murders are bad but not all murders are punished by the loss of life. This penalty is reserved for the worst of the worst. While serious, the aggravating circumstance in this case was that Marion lied to the deceased to encourage her to drive to a secluded area.
44. But for this lie, this would not even be a death penalty case. In most jurisdictions, lying would not be an aggravating circumstance. While the decision to define kidnaping this broadly is left to the legislature, the power to commute a sentence allows you to serve as a check and balance in the appropriate situation.
45. This is the type of case where you should spare Marion's life because lying to the deceased does not make this case the worst of the worst.

FORGIVENESS IS THE CHRISTIAN THING TO DO

46. Finally, you should spare Marion's life because he is not the man he was at the time of this crime. We have been taught the lesson of the imperfect vessel. The power to break what was not infirm and build it back.
47. Marion's mistakes in the past do not define who is today. His incarceration exacts penalty and punishment but killing him as he lives today would serve no purpose to anyone. Instead it would demonstrate hate towards fellow man. As we have been taught, Christ's last act on Earth was not to condemn the unrepentant but instead to show mercy on the forgiven.
48. I make this statement of my own free will and accord, absent any coercion or duress.



James Arthur Brown, Jr.

12/16, 2024

On the 16th day of Dec, 2024, James Arthur Brown, Jr. appeared before me and being duly sworn executed the foregoing Affidavit.



Notary Public for the State of South Carolina
My Commission Expires: 01/08/2034



APPENDIX AA

5670

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
MARION BOWMAN, # 6006)
v.)
STATE OF SOUTH CAROLINA)
Defendant.)

IN THE COURT OF COMMON PLEAS

Case No.: 2006-CP-18-569

AFFIDAVIT OF
DALE M. DAVIS

FILED - RECORDED
JUN 20 AM 8:41
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

I, Dale M. Davis, being duly sworn, do state:

1. I perform work as a mitigation specialist in capital proceedings in South Carolina and Georgia. In that regard, I previously worked as a mitigation specialist for the defense in the trial of State of South Carolina vs. Marion Bowman.
2. During the preparation for that case, a request was made for any and all records from the Department of Social Services regarding the childhood of Marion Bowman and his siblings. This request was made to both Orangeburg and Dorchester counties. Orangeburg county referred me to Dorchester County as the last county of contact for the family.
3. Dorchester county provided me with information in response to this request; however, these records only included reports regarding assistance programs such as food stamps and welfare services provided to his mother.
4. Because of a death in my family, I was unable to attend the entire trial; I returned as the penalty phase began.
5. However, it has been brought to my attention that additional records were received from the Department of Social Services during the trial.
6. I was unaware of these records as they were not provided to me to review. Neither was I provided the opportunity to investigate any of the items contained in these records.
7. In the process, I learned that Kandee was known in the Branchville law enforcement community to have been involved in loitering/prostitution activities in the area of Highway 78.

8. Alternatively, I interviewed Kandee Martin's mother as part of this case. During this interview, I learned that Kandee had three children, not one.
9. Further, I learned that Marion and Kandee attended school together and were friends for many years before Kandee's death.
10. Finally, I spoke with Dr. Brian West during the preparation for the underlying trial of Marion Bowman. Dr. West was a neuro-psychologist who was consulted by the defense attorneys.
11. Although Dr. West gathered information indicating that Marion Bowman suffered from various difficulties including a low-average IQ of 80; Attention Deficit Hyperactivity Disorder, a Learning Disability, and a Reading Disability, Dr. West was not called to testify regarding this information because Dr. West was not contacted early enough to allow sufficient time to travel from his office in North Charleston to St. George, SC.
12. I make this statement of my own free will, absent any coercion or duress.

Dale M. Davis
Dale M. Davis

June 13, 2007

APPENDIX BB

Opening Statement by Mr. Bailey

1 that speaks justice in the case. Because that's
2 what the whole court system is about, is
3 justice. And I'll ask you, ladies and
4 gentlemen, when I finish my closing statement
5 later on in this proceeding simply for justice.
6 Thank you.

7 THE COURT: Thank you, Mr. Bailey.

8 Mr. Cummings.

9 MR. CUMMINGS: Thank you, Your Honor, Mr.
10 Bailey.

11 Madam Forelady, ladies and gentlemen
12 of the jury, first let me start by saying,
13 again, good morning to you. And it's the
14 hardest job that I ever have to do or any lawyer
15 has to do, Ms. Thomas, is help a human being now
16 remain alive.

17 Justice is tempered with mercy and
18 it's easy for any of us not to have mercy. It
19 is so easy to put our anger or to put our
20 frustration before us and it's so easy to say,
21 please, we heard this, we heard that, now we've
22 decided. It's also very difficult for a lawyer
23 to get back up after you good folks have already
24 found what you have found. We have to say so be
25 it and that is what I say this morning.

Opening Statement by Mr. Cummings

1 You have found Mr. Bowman guilty of
2 murder and arson and no one will ever invade
3 your province and your decisions. Whatever the
4 good 12 of you did back in that room with our
5 four alternates sitting in a separate room, that
6 is your total issue. No one has ever challenged
7 that. When you came back with that verdict at
8 6:29 the other night, you folks left, and we
9 continued the work.

10 We're back before you this morning
11 again to tell you that Mr. Bowman has been found
12 guilty of those two crimes. The least amount of
13 time this man will ever do is to die in prison.
14 And that is not something stated before you
15 lightly. He will never, ever walk out of a
16 prison in this case unless it is feet first
17 being carried by other people. That is the
18 least punishment that could happen to this human
19 being now, Mr. Bowman.

20 He was 20 years old when this incident
21 took place, he is now 21. Miss Martin was a
22 young lady also. If I've done anything, folks,
23 to do anything other than be polite or
24 respectful to the memories of Miss Martin I
25 apologize to each and every one of you. I've

4646

Opening Statement by Mr. Cummings

1 tried to do my job. I'm a tough old Marine. I
2 stand before you this morning saying that kid,
3 that kid, please show mercy with justice. To do
4 other than that is to do disservice to mankind.

5 In the opening statement this morning
6 we're supposed to give you a bridge now about
7 what can happen. What can happen is death.
8 Some day, some time your sentence will be
9 carried out. That is a given if you vote
10 collectively for death.

11 If you believe that the killing should
12 stop here, I ask you for mercy on behalf of my
13 client. If you believe that killing this man,
14 having a death sentence voted or would kill this
15 man and do justice in this case, then you shall
16 have found it.

17 Some day, some time, there will be
18 other, other issues in this community that you
19 will be looking at. Some day, some time we'll
20 all be considering this case again and everyone
21 will say could I have done this? Should I have
22 done that? Would this have happened? Would
23 that have been a difference? Did anybody let
24 anybody down? Did I do or did we do our best to
25 save this kid's life?

4647

Opening Statement by Mr. Cummings

1 The hardest thing for a lawyer to do
2 is tell you the greatest judgment today is today
3 for Mr. Bowman. I cast no light or dispersion
4 against the memory of Miss Martin. I'm asking
5 you as you hear this today to understand he has
6 been found guilty of two crimes, murder and
7 arson. I told you about the football analogy
8 about piling on. That's what this is, is piling
9 on now. There is no other way to call that.

10 Anybody who loses a loved one
11 suffers. The fact that Miss Martin is gone --
12 excuse me, the fact that Miss Martin is gone can
13 never, ever be returned by the taking of
14 Mr. Bowman's life. It seems that sometimes
15 people forget that, the fact that because a loss
16 has occurred we're going to probably have a
17 loss. Please take into consideration what you
18 have heard or not heard in the case in chief in
19 the guilt phase.

20 If you hear anything today you've got
21 to also listen to the fact that Mr. Bowman was
22 testified about by lots of people and that there
23 were a lot of inconsistencies and a lot of
24 anguish going on in the courtroom, and I
25 apologize to you folks. And some of the times

Opening Statement by Mr. Cummings

1 doing cross-examination it appears that because
2 of the agreements and because of other issues
3 testimony had to be a certain way. And if you
4 found that, so be it. If not, then so be that,
5 too. But the only person in this room today
6 that is facing no less than life imprisonment
7 without any possibility of parole --

8 MR. BAILEY: Judge, I object. And I would
9 like it approach the bench.

10 THE COURT: Surely.

11 (Whereupon, a bench conference was held off the
12 record in the presence of the jury but out of
13 the hearing of the jury.)

14 MR. CUMMINGS: The only person that will be
15 facing the death penalty today is Mr. Bowman.
16 Ladies and gentlemen, if you look at the
17 aggravating factors that have been presented by
18 the State for your consideration, and it's only
19 for consideration, it's an attempt to aggravate
20 the crime, it's an attempt to aggravate you in
21 here. It's an attempt. Please look at it. If
22 he was charged with kidnapping, he was not
23 indicted or presented for you for you to
24 determine whether or not he was charged and
25 presenting with kidnapping, that has not

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Opening Statement by Mr. Cummings

1 happened.

2 As to criminal sexual conduct, he has
3 not been presented to you, nor has he been
4 convicted of criminal sexual conduct. Robbery.
5 There's been no testimony of a robbery. And,
6 please, listen to what was presented and what
7 was not presented. It's easy to rush to
8 judgment. Everybody thinks what robbery may be,
9 everybody thinks what might have happened here.
10 The mere fact that this gentlemen had a watch in
11 his pocket doesn't mean he stole it. You
12 haven't heard any evidence today. Have you
13 heard any evidence that he stole the car to
14 convince you beyond a reasonable doubt?

15 Ladies and gentlemen, you will hear
16 victim impact statements. And I'm going to tell
17 you ahead of time I am sorry for the loss of
18 Miss Martin to her family. I say that to you as
19 an officer of the Court, I say that to you as a
20 gentleman. Simply the passion or prejudice
21 cannot come into your vote. I ask you within
22 your heart, I ask you within your civic duty to
23 show this community that justice can be tempered
24 with mercy. That's all we are is what we are.
25 Look at the surroundings, look at the situation

Opening Statement by Mr. Cummings

1 here and you be just, fair, and merciful jurors
2 for the sake of humanity. Thank you.

3 Thank you, Judge.

4 THE COURT: Thank you, Mr. Cummings.

5 Yes, sir. Mr. Bailey.

6 MR. BAILEY: The State would move at this
7 point to incorporate the guilt phase testimony
8 and the evidence into the penalty phase.

9 THE COURT: Very well. Of course, along
10 with all -- with the exceptions and matters
11 raised by the defense.

12 MR. CUMMINGS: Yes, ma'am.

13 THE COURT: And the rulings therein also.
14 Very well. So incorporated, Mr. Bailey.

15 MR. BAILEY: Thank you, Your Honor. Your
16 Honor, prior to calling my first witness I would
17 like to introduce four certified copies of our
18 court records that I believe have been displayed
19 to the defense.

20 MR. CUMMINGS: Correct, Judge. And with
21 the following exceptions and objections.

22 THE COURT: Over the objection of the
23 defendants they'll be marked as State's
24 Exhibits.

25 MR. BAILEY: Thank you, Your Honor. Your

APPENDIX CC

Opening Statement by Mr. Bailey

1 sheriff's office in this case. And beside him
2 is Darlene Simmons who also works for the
3 solicitor's office, she'll be helping us out.

4 I want to thank you all for your
5 patience and for being here and going through
6 this kind of grueling week-long qualification
7 process. As you all know by now Marion Bowman,
8 Jr. seated at the other counsel table is charged
9 with the murder of a young woman named Kandee
10 Martin. Kandee Martin was 21 years old, she
11 lived in Branchville, which is a few miles on
12 the other side of the Dorchester County line in
13 Orangeburg County. Marion Bowman is also
14 charged with arson in the third degree.

15 And I know a couple of you all have
16 had some previous jury service, but I can assure
17 you that this case is the most important case
18 that you will ever sit as a juror on, and indeed
19 any juror can ever sit on. So as the judge
20 says, it demands your strict attention
21 throughout the trial and I would ask you to
22 please pay close attention to everything that
23 takes place here.

24 The judge earlier read the two
25 indictments. And she explained to you the

APPENDIX DD

Cordillia Martin - Direct Exam

1 Q What year was that?

2 A He was born on [REDACTED] [REDACTED] [REDACTED].

3 Q 1999. And what was -- what is Tyler's full
4 name?

5 A His name is Tyler M. [REDACTED].

6 Q This was Kandee's son?

7 A It was her son.

8 Q All right. Did Kandee live with you when Tyler
9 was born?

10 A Yes, sir.

11 Q And continued to live with you after that; is
12 that correct?

13 A Yes, sir.

14 Q Okay. Ms. Martin, could you describe for the
15 jury Kandee's relationship with her son, Tyler?

16 A A wonderful relationship. He loved his mother
17 with all his heart. They had a relationship that you
18 just can't explain because it was so wonderful. He
19 loved her and she loved him. They played together,
20 they loved each other. They just had a bond that no
21 one could ever take from them.

22 Q And could you describe your relationship,
23 Ms. Martin, with your daughter?

24 A A wonderful relationship. She was my best
25 friend, my daughter and my best friend.

Wayne Martin - Cross-Exam

1 A No.

2 Q No other child, just that one child?

3 A Just that one child.

4 Q And the reason I ask that, sir, is obviously --
5 and, again, I'm just asking this as a gentleman now,
6 I want to make sure that I heard that correct and I
7 apologize to you, sir, for asking that.

8 Kandee, as Mr. Bailey asked, she had
9 friends in all different walks of life?

10 A All different walks of life?

11 Q Yes, sir. I mean like --

12 A She had school friends and -- you know, and
13 friends that we go places, camping or whatever. You
14 know, they make friends, you know, everybody does
15 that.

16 Q Yes, sir. What I mean by friends of all walks
17 of life, different kinds of people?

18 A Yeah.

19 Q And what is the name of the father of your
20 grandchild, sir?

21 A I don't know. I don't want to release that
22 information.

23 Q You don't know it, sir?

24 A I don't know. I'm his daddy.

25 Q Yes, sir.

APPENDIX EE

Juror 12 Harold L. Bazzle - Examination

1 Q. All right. We got the microphone. You and I
2 are talking and I am hearing you just fine, we just
3 need everybody to be able to hear you, Mr. Bazzle.

4 Now, when you were back in the jury
5 room you were given a list of potential witnesses,
6 this document. I hand it to you if you need to
7 review it again. And I would ask you, first of all,
8 did you have a chance to review that document?

9 A. Yes, I did.

10 Q. All right. And are you related by blood or
11 marriage, acquainted with, do you have a personal
12 acquaintanceship or relationship, a business
13 association or relationship, and are you connected
14 either directly or indirectly to any of the
15 individuals on that list?

16 A. No, I'm not.

17 Q. All right. Now, let me look at this.
18 Mr. Bazzle, my notes indicate that yesterday when we
19 asked whether or not you had any opinion or had seen
20 or read anything about this case, or had any bias or
21 prejudice for or against either side, that you did
22 not indicate that any of those things applied to you;
23 is that right?

24 A. Well, I had a problem with, you know, some
25 people.

Juror 12 Harold L. Bazzle - Examination

1 Q. You have a problem with some people, okay. And
2 tell me what you mean by that.

3 A. I don't get along with people of color too well.

4 Q. You don't get along with people of color too
5 well, okay. And what do you mean when you say,
6 "people of color"?

7 A. Blacks, mixed.

8 Q. All right. Black, African-Americans. When you
9 say mixed, are you talking about interracial
10 individuals, folks?

11 A. Yeah.

12 Q. All right, sir. And I think that you may have
13 actually indicated that on your questionnaire; is
14 that right?

15 A. Yes, ma'am.

16 Q. All right. So are you telling me that you have
17 concerns about having a bias or a prejudice in this
18 case because Mr. Bowman is an African-American, you
19 think that?

20 A. Yes, ma'am.

21 Q. And do you think that that opinion that you hold
22 might, or could, interfere with or substantially
23 impair your duties as a juror?

24 A. Yes, I do.

25 Q. All right, sir. Very well.