IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1-150	VOLUME 3_of 7
	EXHIBIT
	ELECTRONIC DISK
	Case #2003-DP-00457-SCT
COURT APPEALED FROM : Circuit Co	ourt
COUNTY: Adams	
TRIAL JUDGE: Forrest A. Johnson	Jr.
Jeffrey Keith Havard v. State of M	isșissippi
Betty W. Sep	ohton, Clerk

TRIAL COURT #: 02-KR-0141-J	•

VERSUS

CAUSE NO. 0141

JEFFREY KRITH HAVARD, Defendant

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE APPOINTMENT OF ATTORNEYS AND ARRAIGNMENT IN THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE HONORABLE FORREST A. JOHNSON, JR., CIRCUIT JUDGE, SOLE PRESIDING, ON THE 18TH DAY OF JUNE, 2002.

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THE COURT: The Court is going to call as the first arraignment Case Number 02-KR-141 in the matter of the State of Mississippi versus Jeffrey Keith Havard. Would you come forward and be sworn please? (Mr. Clark, Mr. Sermos, and the defendant approach bench.) JEFFREY KEITH HAVARD, having been duly and legally sworn by the Clerk, answered questions on his oath as follows,

THE COURT:

- Q. Your full name is Jeffrey Keith Havard?
- A. Yes, sir.

to-wit:

Q. All right, Mr. Havard, you've been indicted by the Adams County Grand Jury on a charge of Capital Murder. Mr. Clark, I believe you were appointed in the lower court to represent Mr. Havard; is that correct?

MR. CLARK: Yes, sir, that's correct, Your Honor.

THE COURT:

- Q. Mr. Havard, do you have the money or funds to hire an attorney to represent you?
 - A. No, sir.

THE COURT: Let the record show that the Court finds that the defendant is indigent. The Court is going to confirm the previous appointment of the Honorable Robert Clark.

Also, due to the nature of this case that it is Capital Murder and would be subject to a potential penalty of death by lethal injection, the Court is

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going to appoint another attorney to assist in the representation of this defendant, specifically one who the Court is familiar with who has experience in this area. The Court is going to appoint the Honorable Gus Sermos also as additional counsel. Both of said attorneys will be appointed to represent this defendant in the Circuit Court of Adams County until further order.

All right now, first of all let the record show that this defendant has received a copy of the indictment; he's been served with a copy of the indictment prior to this arraignment.

Mr. Havard at this time the Court is going to read for you the indictment: "The indictment of the Adams County Grand Jury charges that Jeffrey Keith Havard, late of the county aforesaid, in said county on or about the 21st day of February, 2002, did wilfully, unlawfully, and feloniously kill and murder one Chloe Madison Britt, a human being, with or without design to effect death while engaged in the commission of the crime of Sexual Battery on/or Felonious Abuse and/or Battery of a Child in violation of Subsection 2 of Section 97-35-39, contrary to the form of the statute in such cases made and provided against the peace and dignity of the State of Mississippi. It's a charge of Capital Murder."

All right, does the defendant enter a plea of not guilty to this charge?

MR. CLARK: Yes, sir.

THE COURT: Let the record show that a plea of not guilty will be entered in this matter.

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The Court is going to continue this case and set it for trial starting on Monday, October the 28th.

That will be the trial date in this case, Monday, October 28th, 2002, at 9:00 o'clock a.m. That's the last Monday of October.

The Court is going to also allow a reasonable period of time to file any and all motions in this matter. The Court will allow up to sixty days from date to file any and all necessary motions in this matter. The Court will further order -- it will be a standard order in all these arraignments -- that any motion not filed and scheduled for hearing with the Court within ten days prior to trial will be deemed to have been abandoned.

But that's going to be the order of the Court.

A plea of not guilty will be entered. It will be continued and set for trial starting on Monday,

October 28, 2002, at 9:00 o'clock a.m.

Due to the nature of this charge, the Court is going to order that the defendant continue to be held without bond in this case.

You'll be committed back to the custody of the Sheriff of Adams County.

Mr. Clark and Mr. Sermos, the Court will be available to hear motions whenever you get ready to have those heard.

MR. CLARK: Yes, sir, thank, you.

MR. SERMOS: Thank you, Your Honor.

COURT REPORTER'S CERTIFICATE

I, Judith W. Brown, Official Court Reporter for the Sixth Circuit Court District of Mississippi, do hereby certify that to the best of my skill and ability I have reported the proceedings had and done in a hearing for appointment of attorneys and arraignment in STATE OF MISSISSIPPI VERSUS JEFFREY KEITH HAVARD, being Cause Number 02-KR-0141 on the docket of Adams County, Mississippi, and that the above and foregoing five (5) pages contain a true, full, and correct transcript of my stenographic notes and tape taken in said proceedings.

This is to further certify that I have this date filed the original and one copy of said transcript with the Clerk of the Circuit Court of Adams County, Mississippi, and have notified the attorneys of record, the Circuit Clerk, and the Supreme Court Clerk of my actions herein.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the _____ day of _______, 2003.

Judith W. Brown, CSR 1015 Official Court Reporter Sixth Circuit Court District 48 Melanie Road Natchez, MS 39120

1	IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI
2	·
3	STATE OF MISSISSIPPI
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.5	VERSUS CAUSE NO. 02-KR-141
6	
7	JEFFREY HAVARD, DEFENDANT
8	
9	* * * * * * * * * * * * * * * * * * * *
10	TRANSCRIPT OF THE MOTIONS HAD AND DONE IN THE ABOVE STYLED
11	AND NUMBERED CAUSE BEFORE THE HONORABLE FORREST A.
12	JOHNSON, JUNIOR, JUDGE OF THE COURT AFORESAID, SOLE
13	PRESIDING, ON THE 5TH DAY OF SEPTEMBER, 2002, IN THE
14	COUNTY COURTROOM OF THE ADAMS COUNTY, MISSISSIPPI
15	COURTHOUSE.
16	* * * * * * * * * * * * * * * * * * * *
17	
18	APPEARANCES:
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28	Vidalia, LA 71373

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BY THE COURT: The Court is going to call Case Number 02-KR-141 in the matter of the State of . Mississippi versus Jeffrey Keith Havard. Let the record show that there have been a number of motions filed by the defense in this case that were noticed for hearing this morning which the Court is going to take up. Preliminarily before we get to that point, the Court would note that it has received correspondence of counsel for the defendant concerning the privacy of their meetings at the jail with the defendant. The Court is going to order that pursuant to law that the Adams County Sheriff's office provide a private environment, place. It could be a small closest or whatever to meet with the defendant, but without question, under the law, the defense counsel is entitled to meet with the defendant in a private setting, and I don't know what the set up is now, but clearly I know there is certainly rooms that this can be done and accomplished. So that's going to be the order of the

BY MR. SERMOS: Thank you, Your Honor.

court. All right.

BY THE COURT: There's a lot of these motions.

So we'll take these one at the time. The first motion is to preclude the State from introducing victim's impact statement. You may proceed with that motion.

The first motion --

BY MR. SERMOS: Your Honor, in this motion what we're obviously getting at in a filed motion is

during the trial of this as far as the guilt phase, we do not want to have any victim impact evidence, and we realize in this case that the main victim is the deceased infant, but as far as any evidence to come in from other persons during the guilt phase about how that loss has affected his or her life or anything like that. And we just don't see that there is any reason or relevance for any of that type of information during the phase of this trial, the guilt phase, where the jury needs to listen and pay attention to evidence regarding whether or not the defendant committed the act that he's charged with.

BY THE COURT: So this is limited to what's referred to as the guilt phase?

BY MR. SERMOS: Yes, Your Honor.

BY THE COURT: What says the State?

BY MR. ROSENBLATT: Your Honor, when the State received a motion, we didn't know that it was limited to the guilt phase. So our response --

BY MR. SERMOS: Well --

BY THE COURT: It was hard for me to ascertain that also.

BY MR. ROSENBLATT: The State is clearly permitted -- I'll go ahead and address that. The State is clearly permitted under Hanson and under Statute 99-19-157 to introduce victim impact during the sentencing phase. The State would certainly abide by the rules of evidence during the guilt phase, and we would understand the limitations we

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have in introducing irrelevant impact evidence for the guilt phase.

BY THE COURT: The Court is going to grant this motion in principle. As I read the motion, what is commonly known as victim impact evidence would have very little relevance, if any, in the guilt phase, and, therefore, the motion will be granted with reserving the right to revisit this if there's something unusual, but generally this would not be permissible in the guilt phase of the trial.

BY THE COURT: The next motion is motion for twenty-four hour cooling off period between conclusion of the guilt phase and the start of any sentencing phase of the trial.

BY MR. SERMOS: Yes, sir. Your Honor, as to this motion, we would state that -- and it's certainly up to the Court's discretion, and we realize the Court has many considerations. However, during this circumstance, we feel that there should be a time for, as the motion states, for cooling off or thought by the jurors to pause between the time they enter a verdict. In this case, it would obviously have to be a verdict of guilty to some charge or as charged before the sentencing phase started. One reason would, number one, to give the defense time to prepare any last minute items for mitigation, and, additionally, we feel that system would allow the jury to have a time of reflection and not just go straight into a sentencing phase while

they were in -- shall we say in the heat of thought of just having a guilty verdict.

BY THE COURT: Is counsel aware of any case in the State of Mississippi where a death penalty or any sentence has been set aside for failure of the Court to allow such a twenty-four hour cooling off period?

BY MR. SERMOS: No, Your Honor. I am not.

BY THE COURT: Does the State have any response to that?

BY MR. ROSENBLATT: The State would agree with the counsel for the defendant only insofar as this matter is within the discretion of the Court, and we think the Court is amply able to determine when to start the various phases of the trial.

asking the Court to order that there be a twenty-four hour cooling off period, the Court is going to deny that motion. The Court will handle this matter as it deems appropriate at the time. Clearly, if there is -- it depends on the circumstances of where we're at in the case. In the event that the defendant is found guilty of the crime, and it's going to be necessary to proceed with a sentencing phase. Clearly, under the law, this has to be the same finder of fact. Also there will be clearly sequestration of the jury. That's one of the considerations. If the guilt phase ends with a verdict against the defendant near the end of the weekend, that's very clearly -- may be more than

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twenty-four hours, but the Court clearly has to have the discretion to make that call at the time. this will be denied to the extent that it asked the Court to order that there be a required twenty-four hour cooling off period before we ever get to that All right. The next motion is demand for victim impact notice.

BY MR. SERMOS: Yes, Your Honor. What we're asking for here, we're asking the Court to instruct the district attorney that any victim impact evidence that is to be introduced that we have notification in advance of what that evidence would be.

BY THE COURT: I perceive this is a discovery request. Does the State have any opposition to this motion?

BY MR. ROSENBLATT: No, Your Honor. would just request that it certainly be made reciprocal.

BY THE COURT: That it be made what?

BY MR. ROSENBLATT: Made reciprocal in terms of mitigation.

BY THE COURT: Certainly. This is a discovery The Court will grant this motion for type motion. victim impact notice, but the Court will note that there are a number of discovery requests, and very clearly under the law, this calls for reciprocal discovery by the defense. So I want to caution counsel that failure to abide by that, will endanger any evidence that the defense may seek to use without

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proper notice to the State also.

BY MR. SERMOS: Thank you, Your Honor. We understand.

BY THE COURT: The next motion that has been filed is motion to limit the number of uniform officers in the courtroom. Let the record show that the Court has reviewed this motion and the authorities cited. Again, the Court will take this up at the time of the trial. I will reserve the right on the Court's own initiative to limit this or at the request at any time of the defense counsel to do this, but to order a set number or do anything at this point would be premature. So essentially, I'll take this motion under advisement, and we'll address it as requested by defense counsel or on the Court's own initiative if I see that there is a problem with this situation.

BY MR. SERMOS: Thank you, Your Honor.

BY THE COURT: The next motion is to enjoin the victim's family and friends from sitting directly before the jury and showing emotion in the courtroom during the trial. Let the record show that the Court has reviewed this motion. This is a very clear -- fairly clear body of law. First of all, there are no seating, as such, directly in front of jury. They'll be allowed to sit just like anyone else in the courtroom as long as they get there and take up their seat. There will be no reserved seats in the courtroom for defendant's family, victim's family, or

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anyone else. It's first come, first serve seating. As with all the situations, there will be no -- the Court cannot allow shows of emotion in the courtroom such as could influence the jury, and the Court as it does in all the cases will deal with that if and when that situation arises. So that will be the Court's ruling on that, and the Court will enforce this if it becomes necessary during the trial.

BY MR. SERMOS: Thank you, Your Honor.

BY THE COURT: The next motion is a motion to adjourn at a reasonable time. The Court has reviewed this motion and authorities, and it's not necessary to hear any argument from either side. Again, this is something that comes within the sole discretion of the Court. Again, the Court is trying to conduct the court's business with a trial. I will certainly hear from either side during the course of the trial at any time as to what's reasonable as far as adjournment, but very clearly, this is something that the Court has to have the right to determine at what time we will recess each day, and that will be done, given due consideration to the matters that are set out in the motion. So essentially, I'll take that under advisement also to be enforced at the trial.

BY MR. SERMOS: Thank you, Your Honor.

BY THE COURT: The next motion is a motion to invoke the rule prior to voir dire and to enjoin the district attorney from advising the witnesses of previous testimony. It's not necessary to proceed

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with a hearing on this. That will be granted. will be noted that the rule will be invoked in the Well, this will essentially be -- it states prior to voir dire. So neither side should be allowed to have their witnesses in the courtroom once we start with the voir dire and the opening statements unless there is a reason for it at which time the Court may direct. Sometimes the Court likes for the witnesses to be there on voir dire so that someone can see the individual to see if they know So that will be granted and will be noted that the rule is being invoked ahead of time. Also, Mr. Rosenblatt, y'all are not out to be running out and telling the other witnesses what the witnesses said in the courtroom. We're not going to have any of that.

BY MR. ROSENBLATT: Certainly be --

BY THE COURT: That's a rule of court with all.

Once the rule is invoked, that applies to both sides about anybody telling the witnesses what they -- what other witnesses say in the courtroom. That will be granted.

BY MR. SERMOS: Thank you, Your Honor.

BY THE COURT: All right. Motion to exclude evidence of prior bad acts. You may proceed with this motion.

BY MR. SERMOS: Your Honor, obviously, the motion, we would understand that the rules of evidence obviously apply in all these things, and to

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our knowledge, Your Honor, there's -- really the only prior bad act is a misdemeanor, and I would ask the State -- this is obviously under the discovery rules. I realize that, but I would ask the State with the Court's permission if the State knows of any other charges or convictions that Mr. Havard has in the past. Mr. Rosenblatt, do you know of any other than the misdemeanor two or three years. Alleged misdemeanor?

BY MR. ROSENBLATT: Your Honor, with regard to the motion, the State would assure the Court that it will abide by the rules of evidence such as 404 B. The motion alleges no particular act in question. It's not our intent to try this case on prior bad acts, and we will certainly supply full discovery with regard to any --

BY THE COURT: All right.

BY MR. ROSENBLATT: -- such acts. And, of course, the rule is not to limited prior convictions.

BY THE COURT: That's correct.

BY MR. ROSENBLATT: I am not aware at this time of any such evidence that we would introduce.

BY THE COURT: All right. First of all, the State has no prior convictions that it seeks to use for general impeachment purposes in the event the defendant takes the witness stand and testifies?

BY MR. ROSENBLATT: That's my understanding.

BY THE COURT: All right. Now, the Court would require that if the State does intend to use any such

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evidence of any prior acts that it notify the defense of such in an ample period of time for the Court to take this up at a further hearing. So, in other words, if the defense receives no notice of such, then you can rest assured that will not be used or will not be allowed to use that at trial.

BY MR. SERMOS: Thank you, Your Honor.

BY THE COURT: All right. The next motion is motion for special venire. That is a right that the defendant has. So that will be noted that the defense has requested a special venire. Now, the Court has reviewed all the motions filed, and I note that there is no motion for a change of venue. It's this Court's understanding that the defense does not intend to file a motion for change of venue.

BY MR. SERMOS: That is correct, Your Honor. We do not intend to file a motion for a change of venue.

BY THE COURT: Mr. Havard, you're here present. You're hearing all this. Have your attorneys spoken with you about this because this is a kind of a critical --

BY THE DEFENDANT: Yes, sir.

BY THE COURT: -- matter, and they have conferred with you about this?

BY THE DEFENDANT: Right.

BY THE COURT: Is that your desire also?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: Let the record show that a

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special venire will be allowed, will be granted as provided by law and is requested by the defense. All right. The next motion is a motion in limine. As I understand this motion, this is to prevent any type of prejudical argument at any point during the trial or interjection by the prosecutors concerning crime or it's -- I very clearly get the gist of this motion, and I'm sure the State does also. The Court will grant this motion in limine. This will be granted, and I want to caution the State not to try to interject any improper prejudical such arguments or matters in this trial. So that motion will be granted.

BY MR. SERMOS: Thank you, Your Honor.

BY THE COURT: All right. The next motion is motion to allow the defendant to wear civilian clothes while the State seeks his execution. It won't be necessary to proceed with a further hearing on this motion. This will be allowed. This is customary and has always been allowed in this district. The only caveat to that would be that the family or whoever needs to make sure those clothes are at the jail available in plenty of time for the defendant to change into those clothes prior to trial. So that will be granted with whatever clothing is made available to the defendant.

BY MR. ROSENBLATT: Your Honor, I would object to the styling of the motion.

BY THE COURT: Okay.

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BY MR. ROSENBLATT: I don't care what he wears while he's being executed. BY THE COURT: I understand. I understand that. It will be granted to allow him to wear civilian clothes.

BY MR. SERMOS: Thank you, Your Honor.

BY THE COURT: The next motion is defendant's motion to compel disclosure of aggravating circumstances and information relating mitigating circumstances. I think the motion is very clear as written. What says the State to this?

BY MR. ROSENBLATT: The State intends to comply, Your Honor.

BY THE COURT: This does appear to be a proper statement of the law, and this will be granted. is in nature of discovery, and the Court will require the State to disclose any aggravating circumstances and information relating mitigating circumstances to the defense. So this will be ordered. The motion to compel disclosure. All right. The next motion is motion for funds for investigative assistance. better proceed with a hearing on this motion.

BY MR. SERMOS: Yes, Your Honor. One moment, please, Your Honor.

BY THE COURT: Certainly.

BY MR. SERMOS: Let me get that out. that, Your Honor. May I state to the Court the reasons --

> Yes, sir. BY THE COURT:

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BY MR. SERMOS: -- Your Honor? Your Honor, first off, sometimes it's necessary to file this motion and sometimes it's not. In this case, Your Honor -- and, there again, I would ask the Court to allow Mr. Rosenblatt to interject anything at any time he would like to about this. One of the main considerations here is we feel we need an investigator. I mentioned a person named Don Evans. In any case, but we feel we do, Your Honor, because number one, there's allegations in the discovery or there's actual statement in the discovery that a prisoner named Michael Ferry, I believe is his name. F-e-r-r-i-e, I believe.

BY MR. CLARK: Yes.

BY MR. SERMOS: Made a statement, and, in fact, he was on video -- pardon me.

(Mr. Sermos consults with Mr. Clark.)

BY MR. SERMOS: F-e-r-r-y. Made a statement on video about some -- a comment or statement, statement or statements that the defendant, Mr. Havard, made while in the jail, and one of the critical issues that we're asking the Court to allow us to have an investigator for is to speak with some of the other prisoners that are either one, in the jail now or some of them got out of the jail, to get their testimony, if you will, or to interview them regarding any statements that may or may not have been made by Mr. Havard. And also there may be another witness or two. For example, the deceased

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infant's mother, Rebecca, for the investigator to talk to because she is certainly a witness for the State, but there may be also things that she would be a witness for the defense, Your Honor, and we would need to find that out, and I would state to the Court that certainly if the Court grants this motion, we would not be trying to use Mr. Evans, if he were the investigator in this, excessively. He would have specifically targeted goals and people for him to talk to, and we feel that it's very critical to our information, especially if the State intends to allow any statement by either Mr. Ferry or someone else that was up in the jail at that time when Mr. Havard is alleged to have made a statement regarding the All right. deceased infant.

BY THE COURT: All right. What says the State?
BY MR. ROSENBLATT: Your Honor, the State would
just remind the Court of the guidelines set forth in
Butler at 608, 314 and Harrison, 635, 894 that an
investigator is proper when a specific, valid, and
compelling need is shown. It sounds as though the
defense basically wants to dig up dirt on our
witnesses and put them on trial. We can't compel
these people to cooperate with this investigator. We
have no authority, and the Court has no authority to
even make them talk, and we don't feel like that what
they've alleged warrants the hiring of a special
investigator. Counsel is certainly free to conduct
interviews of anyone they want to, and it doesn't

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sound like it's that large a number or people are not that hard to find.

BY THE COURT: Does the State intend to present some what I would refer to jailhouse snitch type testimony in this case?

BY MR. ROSENBLATT: Your Honor, as far as what will actually come in, of course, that remains to be seen, but that evidence is certainly out there and could well be used.

BY MR. SERMOS: May I respond one moment, Your Honor?

BY THE COURT: Yes, sir.

BY MR. SERMOS: Your Honor, to even more directly, if the State intends to use the person, Mr. Ferry, to testify as to what he heard, which would be an admission based on the rules of evidence, then we have other people up there that we believe would testify that Mr. Havard, the defendant charged in this case, never made the statement that Ferry said he made.

BY MR. ROSENBLATT: Your Honor, that gets back to the old joke about bringing one person who heard something. Well, I'll bring in a thousand that didn't hear it. I mean, where do you stop with that kind of evidence?

BY MR. SERMOS: Your Honor, this is -(Mr. Sermos confers with Mr. Clark.)

BY MR. SERMOS: Right. Obviously, Your Honor, it's limited to people that are up there in the cell

block.

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BY THE COURT: This is going to be the Court's ruling on this motion, and I want you to listen very carefully. The basic status of the law is you have no right to an investigator as a matter of right just to simply go and fish for what you can that's there in a case as far as evidence. The cases mentioned do generally refer to specific matters or specific requests. Mentioning here \$32.00 an hour and .32 a That's pretty doggone strong for an investigator. What the Court is going to do, I am going to allow you up to a total of up to \$1,000.00 for investigative work in this case. I caution the defense to use that money wisely. To secure any services at a lower price as you can and limit it to only what you feel like is absolutely necessary because that's going to be it. And that's the total for -- that's the total. I will reimburse or order payment for up to a total of a thousand dollars for investigative services. It's the Court's opinion and discretion that that's more than adequate than what's been presented to the Court. So that's what you got to work with. Use it wisely, and apply where it's needed, and this is not -- this is a capital murder case, but I find that there's no basis to just turn an investigator loose at \$32.00 an hour with basically no limitations.

BY MR. SERMOS: Thank you, Your Honor.

BY THE COURT: The next motion is a motion for

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full recordation. The Court has reviewed this motion. This will be granted. This is essentially to make certain that everything that takes place in the trial will be placed on the record including any bench conferences or meeting with respective counsel with the Court. I will caution counsel to make certain that this is complied with. In other words, if you have something to present, let's make certain that we have the court reporter present when this is being done because in the heat of a trial, I know it's -- it often happens. Both counsel may be back with the Court in chambers and something may be addressed. If you want it on the record, let's make sure we stop, and the Court will be more than happy to make sure the court reporter is secured at any time to get anything on the trial. So that will be granted. The next motion is motion to sequester jurors during the trial of this case.

BY MR. ROSENBLATT: I think the rules provide --BY THE COURT: I think that's pretty clear. So that will be granted. It has been requested. is a capital murder case. As long as it remains a capital murder case with a potential death penalty involved, this will be granted. I will state this. The Court -- I have no idea how long voir dire will take place, but the Court is not going to order sequestration during voir dire. Generally and typically, this is done once a jury is selected at the voir dire process, but voir dire involves a very

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large juror pool, and there is no -- it's not necessary under the law that from the very moment all the potential jurors arrive at the courthouse, that they be sequestered. So other than that, it will be granted once a jury is selected in a case.

BY MR. SERMOS: Thank you, Your Honor.

BY MR. CLARK: We would like the Court to -- if that issue comes up to please to the members of the voir dire who are there to be cautioned not to discuss the matter --

BY THE COURT: Certainly.

BY MR. CLARK: And to talk --

BY THE COURT: Certainly. The Court will be very cautious of that, but what I am saying is that like all the jurors appear, once we get to a lunch break, I'm not going to try to keep all this which is potentially a 100, 150 jurors together at lunch time, but I'll caution them very clearly, but once the jury is actually selected, they will be sequestered at that point. And if we do that at the end of the first day, they will not be allowed to go back home by themselves, even if we don't start in on the actual trial until the next day. So that is well taken, Mr. Clark, and I will caution the potential jurors very clearly that they're not to discuss the matters with anyone. All right. The next motion is a motion to enjoin the prosecution for utilizing his pre-emptory challenges to exclude persons conscientiously opposed to the death penalty not

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excusable for cause under Witherspoon. All right. What is the defense basis for this motion?

BY MR. SERMOS: Well, Your Honor, we would just -- to put it bluntly, we would just ask that --I realize that the prosecutor has pre-emptory challenges, and we would ask that their challenges only if they are appropriate challenges, that they just don't -- the Court doesn't allow them to excuse a potential juror merely because the juror says, "Well, I really don't like the death penalty, but I won't refuse to sentence somebody to death" or as in Witherspoon which the case was the jury wouldn't automatically sentence someone to death. So we would just ask the Court to make room or have the State make room on the jury for someone that could, in other words, be opposed to the death penalty but that doesn't necessarily commit to himself or the State or the defense that he would absolutely not give the death penalty.

BY THE COURT: Now, there are a lot of US
Supreme Court rulings in regard to juror service that
have recognized that even though they are pre-emptory
challenges that they may not be used on the basis of
the person's race or religion or age. Certain
recognized categories where, essentially, the juror
has a constitutional right to serve. Are you telling
this Court that a person who says that they have
objections to the death penalty that they have a
constitutional right to be placed on the jury panel

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and should be free from pre-emptory challenges of the State?

BY MR. SERMOS: I don't think there's any case law on that exact point, Your Honor, and I think the district attorney would like to have people like that excused from the jury. We would simply in the motion ask the Court to -- essentially if there is an objection to that by the defense to the State's pre-emptory exercise, we would just ask the Court to consider that at the time and to find some other reason perhaps.

BY THE COURT: What says the State?

BY MR. ROSENBLATT: Your Honor, the State would agree with the Court that there's no authority for such a proposition and would also note in paragraphs two and three of the motion that the counsel for the defense has accused the prosecutor in this county of routinely utilizing our pre-emptory challenges to systematically exclude the jury panel in capital cases those people who expressed conscientious scruples. Your Honor, I have been with this office five years, and we haven't had a capital case that I recall. So I don't think there's any pattern of systematic exclusion that forms the basis of this motion, and I think that the jury selection process and our compliance with Batson would adequately address any concerns that they have. I don't think they can show any pattern that we've engaged in, and it's certainly not our intention to be unfair to any

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defendant.

BY THE COURT: Let the record show that jury selection will be as provided by law. There is a very clear body of law regarding in capital murder case what jurors are subject to challenge for cause, which jurors are not, but to the extent that this motion seeks to enjoin the prosecution from utilizing pre-emptory challenges in the manner stated, the Court is going to deny that motion. All right. next motion is a motion of discovery of information necessary to receive a fair trial. Does the defense have anything that it desires to present?

BY MR. SERMOS: Your Honor, if I may state, I realize that the letter requested under Rule 9.04, and I basically would honestly state to the Court that we filed this motion to make sure that we had everything covered that we may possibly need and knew that the able counsel for the State would read all of this, and if there's anything in here that remind the State prosecutor of something else that we needed to provide, that's the reason I filed this motion, and we wanted to make sure we covered all the basis, not just what it says exactly in Rule 9.04.

BY THE COURT: Does the State have anything in regard to this motion?

BY MR. ROSENBLATT: Your Honor, I would agree that we have been in fairly close communication with counsel for this defendant. They've done a good job of coming to us and reviewing the evidence that we

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have that we not able just to hand over to them. The only thing we're waiting on now, I think I was -- I'm printing up some color photographs so that they can have actual color copies of the photographs involved in this case. I can't think of anything that we're still holding up on. I would ask the Court to be willing to conduct any further hearings if it becomes necessary. I would note for the Court that I don't belief we've received anything at this point and that discovery obligation is reciprocal.

BY THE COURT: Let the record show that the Court will order that discovery be provided pursuant to Rule 9.04, and this will include the provisions of the rule for reciprocal discovery also. I would caution the State that this is a capital murder case, and that if there's any late disclosure of evidence, it will be very carefully reviewed by the Court because the Court will more strictly scrutinize any late disclosure of evidence in this particular case than it normally does because this is a capital murder case. So discovery will be ordered pursuant to Rule 9.04. The next motion is to preclude the sheriff's department from bringing the defendant into court in shackles. It won't be necessary for the Court to hear anything further. This is routinely complied with, and I will just caution the State to make sure this is complied with again in this case, but that is the Court's standing order that any shackles be removed before the defendant is brought

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into the courtroom, and that the jury not be exposed to see this in any manner at all. This will be ordered, but it's noted that this is the normal customary policy of the Adams County Sheriff's Department and also the Court in all cases. All The next motion is motion for permission to right. You can file additional file additional motions. motions, but file all the motions that you're aware of at this time. Again, don't come with the Court with a barrage of motions the morning of trial that there's no reason why these couldn't have been filed before that.

BY MR. CLARK: Your Honor?

BY THE COURT: Yes, sir.

In conjunction with that, I had a BY MR. CLARK: couple of things in mind --

BY THE COURT: All right.

BY MR. CLARK: Such as a motion for an independent evaluation of the autopsy report that was done by the State's expert, Dr. Hayne. Neither co-counsel nor myself are medically inclined, and we don't have a complete understanding of everything that's contained in the autopsy report. So we're going to need some guidance from someone probably at some point in time as to exactly what all that means and what it says and to give us a lay person's interpretation of that so that we can present that part of it to the jury from our perspective, and also maybe a motion to obtain the medical records of the

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baby prior to this date, from birth up until the date the baby's death, in case there was any other problems that the baby may have had that possibly contributed to this particular situation. So that's just a couple of things that we have in mind, and those would be filed within a very short period of time.

BY THE COURT: The Court will address those when they're filed, and the Court will be certainly willing to issue any orders that maybe necessary to obtain any prior medical records of the alleged victim. Clearly, that's something that should be obtained and will be necessary to be obtained. So the Court will be willing to assist in --

BY MR. CLARK: Yes, sir.

BY THE COURT: -- any orders that may be necessary in order to do that. Would those be from a local health care provider?

BY MR. CLARK: If the Court would consider an expert, we don't really --

BY THE COURT: Well, I mean as far as these medical records?

BY MR. CLARK: Oh, yes. The baby was tended to here locally for the six months that she was on this earth as far as I am aware of unless the district attorney's office is --

BY THE COURT: I'll address any other motions as they're filed. The next motion is a motion to suppress gruesome photographs and evidence offered at

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the culpability phase. Mr. Sermos.

BY MR. SERMOS: Yes, Your Honor. I realize the motion in and of itself is relatively long, and it covers a lot of space, and I realize the rules of evidence are going to apply during the trial. However, specifically in this case, the State has shown us and willingly shared, of course, some photographs that Dr. Hayne would probably be shown and testify to of the child with the head with the skull opened and the brain exposed and pools of blood shown against the surface. In other words, Your Honor, one of the sequelae or evidences of shaken baby syndrome and those things that follow is blood essentially between the brain and the skull, and so we would ask that the Court suppress the showing of the photographs with the open skull of the child to the jury. Dr. Hayne can testimony to that appropriately with words rather than have to pass around a photograph of the child with the top of the cranium removed. So that's the specific thing that we want suppressed here.

BY THE COURT: Mr. Rosenblatt.

BY MR. ROSENBLATT: Your Honor, we have shared photographs with the defense counsel. We haven't specifically identified those pictures that we intent to use. We would ask the Court to entertain at a further hearing rulings particular photographs, although with regard to the autopsy photographs, we certainly understand that normally autopsy

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photographs aren't admissible because they have limited probative value and just inflame the jury which is the standard the Court applies. However, in the shaken baby case as Mr. Sermos himself noted, it would be critical to show the blood accumulating in the brain area because one of conditions of the shaken baby syndrome is the tearing of the blood vessels between the skull and the brain, and Dr. Hayne would do an inadequate job testifying without being able to use a visual aid about this particular baby and how the pattern of injury to this brain fits with that classic syndrome. So we would urge the Court In this case that the autopsy photograph be admitted. We don't feel it's unduly gruesome, and it would be very clinical in its presentation.

BY THE COURT: All right. Let the record show that the law is pretty clear here. There is some discretion on the Court. To the extent that this motion is to suppress the photographs at this time, the Court is going to deny that motion, but the Court will direct that before any photographs are used that they be presented to the Court so that the Court can make a determination. There are limitations to the use of photographs dealing with relevance, with overly gruesome or inflammatory type of photographs. So the Court will make a ruling at a later time as to what photographs the State be allowed to use, but to the extent that this is a motion to suppress, that will be denied, but it will subject to further ruling

by the Court prior to any use of such photographs at the trial. I believe that's all the motions that I show in the file as having been filed at this time. So that will conclude this hearing, and this case remains set for trial as scheduled on October the 28th at nine o'clock a.m.

BY MR. SERMOS: One moment, please, Your Honor.

May I confer with the defendant --

BY THE COURT: Yes, sir.

BY MR. SERMOS: -- right here so I can double check --

BY THE COURT: Certainly.

BY MR. SERMOS: -- one thing before you leave the bench.

(Mr. Sermos, Mr. Clark and the defendant confer.)

BY MR. CLARK: May we ask you, do you have any dates open to hear additional motions that the Court is allow us to --

BY THE COURT: Sure. One is September the 18th, I know. That will be a motion day that I will have here in Natchez, and I will be in Amite County the first two weeks of October. So if you have anything I could probably hear it there. I do know I have that date that you're certainly welcome to use.

BY MR. CLARK: Thank you.

BY MR. SERMOS: I have nothing further, Your Honor.

BY THE COURT: This hearing will be in recess.

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COURT REPORTER'S CERTIFICATE

I, Melanie G. Murray, Official Court Reporter in and for the Sixth Circuit Court District of Mississippi, do hereby certify that the within and foregoing thirty (30) pages contain a full, true, and correct transcription of my notes and tapes, to the best of my skill and ability, of the proceedings had and done in the aforestyled and numbered cause heard in the Circuit Court of Adams County,

Mississippi, Courthouse on September 5, 2002.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

WITNESS my signature, this the 7th day of April, 2003.

Melanie G. Murray 9 Primrose Lane Natchez, MS 39120

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Motions 9-5-02
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        IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI
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    STATE OF MISSISSIPPI
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   VERSUS
                                         CAUSE NO. 02-KR-141
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   JEFFREY HAVARD,
                                             DEFENDANT
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    TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN MOTIONS IN
    THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE HONORABLE
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    FORREST A. JOHNSON, JUNIOR, JUDGE OF THE COURT AFORESAID,
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    SOLE PRESIDING, ON THE 25TH DAY OF SEPTEMBER, 2002, IN THE
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    CHANCERY COURTROOM OF THE ADAMS COUNTY, MISSISSIPPI
    COURTHOUSE.
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    APPEARANCES:
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    Present and Representing the State:
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    HONORABLE TOM ROSENBLATT
    Assistant District Attorney
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    Sixth Circuit Judicial District
    Natchez, MS 39120
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The Court is going to call Case BY THE COURT: Number 02-KR-141 in the matter of the State of Mississippi versus Jeffrey Keith Havard. Let the record show that the defendant is present with both counsel who have previously been appointed by the Court to represent the defendant. The Court previously had a hearing on a number of motions. This cause comes before the Court today on two additional motions that have been filed with the Court, one of which is a motion for independent evaluation of the autopsy report, and also there is a motion for production of medical records. So these are the two motions that the Court has that have been set for hearing today. All right. The Court is going to allow the defense to proceed with any of these motions. Y'all want to take these one at the time or --

BY MR. CLARK: Yes, sir. I mean --

BY THE COURT: All right. Go ahead with anything additional you have. Let's take the first one -- the first one I have is motion for independent evaluation of autopsy report or really you can address both of them at the same time because --

BY MR. CLARK: Well, they sort of go together, Your Honor --

BY THE COURT: Yes.

BY MR. CLARK: -- to try to us complete the medical picture of this tragic incident. We are asking the Court to appoint someone who's qualified

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to advise not only me but also my co-counsel, Mr. Sermos, concerning exactly what the autopsy report says. As I am sure the Court is aware and there have been -- there was a lengthy autopsy that was done, and it was an initial report that was filed. was a supplemental report that has been filed, and I believe yesterday I received a fax from the DA's office, and there were some additional matters that had been submitted to the crime lab that needed further analysis, and we would think that it would be proper for the Court to have someone appointed to assist us in pretty much trying to explain to us what exactly the autopsy says concerning the baby's death. And in conjunction with that, we would also ask the Court to given us copies of the baby's medical The baby was only six months old, and I don't imagine had too many medical records at that point, but whatever those were, we would like to have that information. We've couched this in language to either have the State produce these through its subpoena power or through the Court's power, whichever way the Court wants to do that. We have no objection either way. All we would like to do is have that information. Based upon information that I and Mr. Sermos have read and looked over, there are situations where shaken baby syndrome can be other things, and vice versa, of course, and to have those medical records would give us an indication as to whether or not there could be additional things or

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situations that may have caused the baby's death. So based on those two arguments, we would ask the Court to grant our two motions.

BY THE COURT: Does the State have any response to that?

BY MR. ROSENBLATT: Your Honor, with regard to the medical records, I would just point out the medical records aren't in the custody and control of the State, and if the Court sees fit to order the production of those records, we will respectfully request that the Court order the records be furnished to the Court for an in camera inspection prior to any release of the records to both parties, both sides in There is a, I guess, a slight question of this case. privilege in that the baby's medical records, the baby is not a party to the case. So technically, the privilege rules may apply. We would certainly have no objection to that. In fact, we would ask that we would certainly appreciate the chance to view those records also if the Court finds they are the appropriate subject of this case and don't contain any extraneous matters that aren't relative to the case and may cause either harm or embarrassment to any time unrelated to this case. As I say, I can't imagine right now what that might be, but just, for example, some genetic testing or whatnot that may have been done for some non-probative reason. And so I would offer either to draft an order to submit to the Court for the Court's signature, or if the Court

Motions 9-25-02 would wish to draft its own order for the production 1 of those records. 2 BY MR. CLARK: Might I add something in 3 4 conjunction with that --BY THE COURT: Sure. 5 6 BY MR. CLARK: -- and not to dispute anything, 7 but I would think that Ms. Britt, the baby's mother, could possibility sign the waiver that would assist 8 9 us in that regard, too. 10 BY THE COURT: All right. BY MR. CLARK: I don't know that. That's just 11 something I thought of --12 13 BY THE COURT: For the record, how old was the alleged victim? 14 BY MR. CLARK: Six months old. 15 BY THE COURT: Six months old. And what was the 16 relationship, if any, between the defendant and the 17 alleged victim's mother? I mean --18 They were living together in a 19 BY MR. CLARK: trailer that was owned by his grandparents. 20 BY THE COURT: For this six-month period of time 21 22 when this baby was --BY MR. CLARK: No, sir. No, sir. 23 They had been together there for approximately two to three weeks. 24 BY THE COURT: So he wouldn't have knowledge 25 about who all the baby had been to? 26 BY MR. CLARK: 27 No, sir.

What doctors necessarily?

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BY THE COURT:

BY MR. CLARK: No, sir.

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BY THE COURT: All right. All right. Let the record show that the Court has very carefully considered these two motions and the arguments that are made -- excuse me.

BY MR. ROSENBLATT: Please forgive me. If I could just address the second motion just for this point of clarification.

BY THE COURT: Yes. I'm sorry.

BY MR. ROSENBLATT: I am not real clear on exactly what the defense would be asking for. They're just wanting someone to basically advise them in the nature of investigator, or are they asking for someone that's going to testify at trial as an expert I don't think -- just for example, the State is not medically trained either and when we want to know what the autopsy report says or seek an explanation, we call Dr. Hayne and he discusses it Dr. Hayne is not an agent for us, and Dr. Hayne is certainly available to the defense also to explain or discuss the report. And I am just not real clear on what role that this person that they seek to have appointed would fill. And then also additionally with the medical records, that even if the medical records are obtained, the State wouldn't be conceding admissibility of those records at this point, but merely for the purpose of trial preparation. The admissibility of those records would be a separate question. Thank you, Your Honor.

BY THE COURT: Let the record show that the

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Court has very carefully considered both these motions. One is a motion for independent evaluation of autopsy report. The motion specifically reads that the Court is requested to appoint a qualified medical expert to review and evaluate the autopsy report prepared by Dr. Steven T. Hayne, pathologist, and in support hereof would respectfully show to-wit: Defense counsel could not have any medical training and need assistance in interpreting the autopsy in order to adequately prepare a defense for Jeffrey The other motion for the production of Havard. medical records of alleged victim, the deceased child, Chloe Madison Britt, date of birth, August 29th, 2001. All right. Again, let the record show the Court has very carefully considered both of these motions in addition to what counsel for each side has argued to the Court. First of all, concerning the medical records, the Court finds that the motion is well taken concerning any medical records. Clearly this is something that there's clearly a need for these by defense counsel. So the Court is going to first order that notwithstanding any privilege as set out in the law, the child, one Chloe Madison, date of birth, 8-29, 2001, is the alleged victim in this She's deceased. Very clearly any records, medical records, should be subject to production in this case, and, therefore, the Court is going to order that any and all medical records of this minor child who was approximately six months of age at the

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time of the alleged death will be ordered to be produced by whoever has them to counsel of record for the defendant. The Court will prepare an order to that effect. This is not a situation where you have a living victim where there needs to be a medical This is deceased alleged victim, and the Court is going to order that these records be made available. Now, in connection with that, the Court will order that any copies of any records obtained be immediately provided to the district attorney's office so that both sides will have these available. The Court will further order that any expenses in connection with these records or charges for them will be incurred by Adams County, and the Court will be available to order immediate reimbursement to counsel if any costs are incurred or to order payment for these records if there's any charge for these. It will further be ordered that any records obtained, they will still be subject to any and all objections. That is not before the Court, but simply this is to obtain the records. Now, the Court realizes that the defense may be somewhat limited in ascertaining or finding out what medical providers had treated this child. There should not be a lot because of the age of the child, but the Court is going to order this. I am going to order that the State ascertain from the victim's mother within seven days to provide to the best of her ability to the prosecutors for the State where the child was born at and what doctors, if any,

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saw this child prior to the events that are before this Court, and that once that's done, Mr.

Rosenblatt, if y'all will advise counsel for the defense so they will have a basis of who to go to.

BY MR. ROSENBLATT: Yes, sir.

BY THE COURT: I assume there's going to be some pediatrician or somebody that delivered the baby locally, and that appears to the Court to be the easiest way to get it done. If you'll have the victim assistant coordinator or somebody find out from her who delivered the baby and what doctor saw the baby before these events, and so you can let them know. And then the Court is going to provide a court order so at that point they can take this court order and go get these records from whoever has them. again, I want the records, copies of them, made available to the State where they'll know what the records are, and, again, this will be subject to any objections that may arise concerning these, but that appears to be the procedure for obtaining these records. So that's going to be the Court's order in regard to the records. On the other motion concerning --

BY MR. CLARK: Judge, we have no objection to those --

BY THE COURT: Do what?

BY MR. CLARK: -- to those records being provided simultaneously to both sides by whoever the medical provider will be. I mean --

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BY THE COURT: Well, they can be, but the whole point is I am not going to order the State to do this.

BY MR. CLARK: Right.

BY THE COURT: You're the one requesting the records. So I'm going to give you the means to do it.

BY MR. CLARK: All right.

BY THE COURT: The order to order those medical providers under my signature, the Court's signature, to order them to be released, and I am ordering the State to find out who those providers may be. Mr. Rosenblatt, if you choose to go and try to move this along, y'all are certainly welcome to do that. I will put in the order where either side can obtain copies of those --

BY MR. ROSENBLATT: Yes, sir.

BY THE COURT: But let's just get this done because we have an approaching trial date of October the 26th, I believe.

BY MR. SERMOS: 28th.

BY MR. CLARK: 28th.

BY THE COURT: 28th of when this matter is set for trial. Now, concerning the motion for an independent evaluation of autopsy report. The Court finds no basis under the law or reason to so order this. Under discovery, whatever report of Dr. Stephen Hayne that he did or supplemental reports should already be provided to counsel, and also he's

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available if they see the need to go talk to him personally as the State would have, but the Court finds no basis or need on what's before the Court to seek out an independent medical expert, for the Court to do that and to appoint somebody to do that. the Court is going to deny that motion at this time. That will be the Court's ruling in this matter, and let's just get these records done so that these will be available for counsel for both sides to look at and see exactly what's there well in advance of trial.

BY MR. ROSENBLATT: Your Honor, if I may --BY THE COURT: Yes, sir.

BY MR. ROSENBLATT: -- briefly report to the Court on some discovery issues that we have. been asked to furnish photographs to the defense Rather than just leave them at a local pharmacy because these were crime scene photographs, I took them to Southern Camera in Baton Rouge, and I intend to pick those up today or tomorrow, and I will give those to defense counsel as soon as I do that.

BY THE COURT: All right.

BY MR. ROSENBLATT: Also, Your Honor, as is typical in these sorts of investigations, a large number of items were gathered up at the time of incident and submitted to the crime lab. Clarification about what tests were -- in other words, these items were submitted with the standard request to please test. As the case gets closer to

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trial, it becomes apparent that not all the items were indeed tested. Some of the sheets, some of the baby's clothing, and some other items were suspected to have human blood on them. It was not until just a few days ago that we got an official report from the crime lab which has been furnished to the defense counsel stating that it was, indeed, human blood on some of these items. Immediately upon receiving that report, we requested that the identity of that blood be determined right away so that we can furnish that to counsel for the defense. So we've tried to stay in constant communication with them about what tests are being done or what tests are being requested. I apologize to the Court for this being done at a relatively late date. We're trying to move along as rapidly as possible, and we anticipate to have final results within the next few days on our identity, and if there are any difficulties with getting that, we will come before you after notifying defense counsel.

that defense counsel is forthwith notified about any results and provided copies of anything that you have. Also let me say this as far as these medical records. These are medical records and they should not be disseminated to anyone else. In other words, they will stay within this particular legal matter that is before the Court, subject to any objections. I don't have any idea what's there or what's not there, what may sought to be used or not, but it will

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be a further provision that they not be disseminated to any outside parties in this matter.

BY MR. CLARK: Yes, sir.

hearing, and the Court will provide an order on this that I'll get right away so that these medical records can be obtained, and, again, if the State would rather have their investigator take this order and go get the records themselves and give them copies, that will be perfectly permissible because this just needs to be done. This just needs to be done. And it should not be a lot of records. It should not be a lot. We're not talking about a long time period or a person of an age where there might be a lot of medical providers. There should not be that much record, but whatever is there, clearly I want it produced and I want the defense to be able to see that.

BY MR. CLARK: Thank you, Your Honor.

BY MR. ROSENBLATT: Thank you, Your Honor.

BY THE COURT: All right. That will conclude this hearing.

OFFICIAL COURT REPORTER
SIXTH CIRCUIT COURT DISTRICT
48 MELANIE ROAD
NATCHEZ, MISSISSIPPI 39120

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THE COURT: The Court is going to call Case

Number 02-KR-141 in the matter of the State of

Mississippi versus Jeffery Keith Havard.

Let the record show that the defendant is present with both counsel and also the District Attorney and his assistant. This matter was previously set for trial scheduled to begin on Monday of this week, being October 28, 2002. The Court made known to the attorneys involved in the case that the case would be continued and reset to another date and time, being December 16, 2002, at 9:00 o'clock a.m. on a Monday.

I know there's one motion that's been pending, a Motion to Suppress Admission into Evidence of Alleged Pornographic Materials. The Court also wanted to conduct this as somewhat of a status conference of the case at this time.

THE COURT: First of all, this motion that has been pending for some time that the Court received, I believe it was filed October 21st; what says the State to this motion? Does the State intend to use sexually oriented magazines that were allegedly found at the defendant's residence?

MR. ROSENBLATT: Your Honor, there were some photographs taken of the inside of the mobile home where this incident occurred. I think what the defendant is referring to is there were some provocative magazines that were found in the house that were actually laid out and then photographed. It wouldn't be our intention to use anything of that nature that wouldn't fairly and accurately depict the scene as it occurred. We

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don't intend to try this man on the basis of that sort of material.

THE COURT: All right, is any of the sexually oriented material that is referred to in the motion, is it connected to the alleged crime in any way or the type of crime that's alleged in this case?

MR. ROSENBLATT: It's connected to it; in other words, it would be relevant to show some sort of state of mind; but I don't believe it would qualify under a 4.04(b) exception. I think it's clearly a -- I mean it's relevant to the point of showing that this a man that looks at this sort of stuff might do that sort of thing, but it wouldn't be --

THE COURT: Well, let me rephrase that. Is any of this anything that could be characterized as sexually explicit of children?

MR. ROSENBLATT: No, sir.

THE COURT: All right, that being the situation, the Court at this time will find that the Motion to Suppress this particular item of evidence is well taken, and the Court will grant that.

MR. CLARK: Your Honor.

THE COURT: Yes, sir.

MR. CLARK: To the best of my recollection, they were Playboy magazines. I mean it wasn't anything of any kind of child pornography.

MR. SERMOS: He's granted it anyway.

MR. CLARK: I just wanted to add that.

THE COURT: Well, that's what the Court was interested in.

So the Court does not see any relevancy to that, and the Court

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 will grant -- well, it's really not -- it shouldn't be a Motion to Suppress; it will be more granted as a Motion in limine is what it will be. The Court will grant -- order in limine that this not be used by the State, and if something very unusual arises, then the Court can be approached by that by way of motion during the trial. So that will be sustained by way of order in limine.

All right. Now, first of all, one of the main things the Court wanted to inquire about is the State ready to try this case? Has the State announced ready for trial?

MR. HARPER: Your Honor, I will just state for the record there are some tests that have been run or are being run at the Crime Laboratory in Jackson, and it's my understanding in conversations with the analysts at the Crime Lab the tests have been completed; the only thing that would be lacking would be a review by an outside party, which apparently is part of their protocol. They indicated to me that that review would be done on Friday Morning, and barring any unforeseen problems, would anticipate having reports on those tests by Friday afternoon by FAX and by Monday morning in the mail, so --

THE COURT: All right, these are tests on what?

MR. HARPER: This would be DNA testing on items that were found at the house or the trailer where the acts or the alleged acts took place.

THE COURT: These would be results that the State would be intending to use in this case?

MR. HARPER: Yes, sir.

THE COURT: All right, so in other words, this case wasn't
ready to be tried on Monday?

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MR. HARPER: Not to the extent that we would have had those items, Your Honor. Just for the record and for the Court's information, we had been advised and have been in constant contact with the Crime Lab about these particular things; they have continued to assure us that they would be completed within a short period of time; but every time there would be a delay from that and a delay from that. So we could have proceeded without them, Your Honor, but to use them obviously we wouldn't have had them to proceed; that's correct, sir.

THE COURT: How long have you been D.A., Mr. Harper?

MR. HARPER: Since 1996, sir.

THE COURT: I hope you don't believe what the Crime Lab tells you about when stuff is going to be ready.

MR. HARPER: Well, we -- that's one reason we kept calling them back, Your Honor.

THE COURT: All right.

MR. HARPER: And like I said, we could have proceeded without them. I thought just as an abundance of just making sure that everything -- all bases were touched, we wanted to make sure that these tests were in fact run.

MR. HARPER: Other than these results, which should be back in a test very shortly as I understand, is there anything else remaining as far as the State is concerned why this case can't proceed to trial?

MR. HARPER: No, Your Honor. We would be ready to proceed.

THE COURT: All right, what about the defense?

MR. SERMOS: Your Honor, may I address the Court?

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THE COURT: Yes, sir.

MR. SERMOS: First, concerning a newspaper article that was in The Natchez Democrat yesterday morning concerning the trial of a man charged with killing the baby postponed. Number one, we would submit that obviously this is an untimely circumstance for this to come out. And we also think -- we certainly aren't going to take Mr. Harper to task because we don't know what the sheriff's office told -- but we feel that this article is in violation of the trial publicity rule modeled from the Rules of Professional Conduct as far as Rule 3.6 -- and I brought the book with me. Let me get it out. One moment, Your Honor; I have it right here marked.

3.6, Your Honor, that rule talks about when a lawyer should not make extrajudicial statements that a reasonable person would expect to be disseminated by means if a lawyer knows or reasonably should know it will have a substantial likelihood of materially prejudicing in an adjudicative proceeding.

And then it goes on to talk about what can and cannot be stated. Basically it says on the next page of the Mississippi Rules of Court 2002 that in a criminal case that what should be basically printed is identity, residence, occupation, family status of accused, if the accused has been apprehended or not, the necessary information to aid in apprehension, the fact, time, and place of arrest, and identity of investigating and arresting officers and agencies.

Looking at that, Your Honor -- I'll have a copy of it prepared for the Court later -- that and additionally we understand that Mr. Havard has been indicted and is set to be

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ŀ arraigned on an escape charge on November 19th. And something, 2 I believe, has already been in the paper about that. And the reason I mention these things to the Court --44

THE COURT: Now wait, something is wrong about that, because I haven't set an arraignment date yet; I'd have to be the one doing that.

MR. SERMOS: Okay, somebody just told me the 19th.

MR. CLARK: That's Judge Sanders; she's got that case, Your Honor.

THE COURT: Well now that may be if it's Judge Sanders' case.

MR. CLARK: And to the best of my knowledge I've been notified that is the arraignment date.

THE COURT: All right, what is it in this article that appeared yesterday that violates this?

MR. SERMOS: Well, there again, we can't -- I'm not asking -- we can't go back and start the trial the 28th, but what I'm getting to it talks about statements, and it mentioned that the defendant changed his story.

MR. ROSENBLATT: Your Honor, the only comment attributable to the District Attorney's office was that this is a death penalty case.

MR. HARPER: And that it had been delayed from yesterday, which is why they contacted me to find out if it was going forward; and I indicated to them that it had been postponed from the 28th. In the course of that, there was some discussion about the case and whether or not it was a death penalty case, which I indicated in the affirmative that it was.

Other than that, anything else that's in that article, I

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did not give them or to my knowledge did anybody. I assume that came from previous information they had obtained prior to recent dates.

THE COURT: And the newspaper called you?

MR. HARPER: Yes, sir. Yes, sir.

MR. SERMOS: Your Honor --

MR. HARPER: To find out if that case was going forward on the 28th as it had been publicly set to do.

MR. SERMOS: The main thing I believe that we didn't obviously -- there again, I didn't know where the sources were -- but it said Havard -- it's a misprint or something -- that Rebecca, the mother performed CPR on the child, and he began shaking the child, and there was a statement he later changed.

Your Honor, in other words, the articles that were out, let's say like February or March are one thing and any statements by the sheriff or whatever that was in there, but this coupled with apparent publicity or at least something in the paper about an escape charge is causing -- in fact Mr. Clark can address the Court -- we're having to consider whether or not we do need to go ahead and do a change of venue motion to present to the Court. In fact I just got this yesterday, and I was in court all day somewhere else. But Mr. Clark and I, we're just, as far as the status of the case, we're having to make a decision, and we're going to meet with Mr. Havard later on after this court if we can do that.

THE COURT: Well, I will strongly order that the District
Attorney's office and any law enforcement agencies involved
strongly adhere to the rule of Court. There should be really

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nothing disseminated about this case; I don't know where this information came from that you recited in the article; I'm not sure where that came from, but I will order that.

MR. HARPER: Your Honor, just for purposes of the record I'd like to state into the record that I have never given any information about the factual basis for these charges or anything about the case at all to any news media or anyone else outside of law enforcement. Where they got that, I don't know. But I have not, either in this recent conversation or in any previous conversation made any statements to them involving that information. So I just want to make that abundantly clear in the record.

THE COURT: All right, and the Court -- I notice the article had some incorrect information about the date; I don't know where they got that from; that was not announced publicly to anybody. I only announced that to the attorneys about the date that I was planning on doing it, December 16th; and I think they had November 16th.

MR, CLARK: That's correct.

This case is continued until December the THE COURT: 16th, Monday, at 9:00 o'clock a.m. Now, I understand what you're saying about the change of venue, but before -- let the record show before this has been addressed on the record. The defendant himself had stated to the Court that he was in agreement with the decision not to ask for a change of venue. I will certainly allow you to revisit that, but this is something that a decision is going to have to be made. So I will give you seven days from today to make an election. you desire to file a motion for change of venue, certainly I --

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it probably won't be necessary for the Court to have a hearing on that, but I need to know so that I can make arrangements of where we're going to be on Monday, December the 16th.

MR. SERMOS: Your Honor, we understand that; and if I may state in summary: the reason that I found this most troubling yesterday when it was sent to my office is Mr. Clark and myself and the defendant, we were ready for trial on the 28th, I mean, and then -- so here's something coming out, so to speak, statements coming out when we're ready; we weren't in the courtroom, but out there on the street. And we just feel like -- I mean, I know you couldn't control it or the District Attorney, but I mean, that certainly is an inappropriate and an inconvenient and a very unsettling time to have this come about when we were ready to be here in the Court.

THE COURT: I can understand that. I'm going to do this: if there's going to be a change of venue motion filed, I want it filed within seven days. And another thing is if it is filed I want the defendant to sign off on there whether he agrees with that and consents with that or what his position is in regard to that too. If you file it, it will be subject to being ruled on by the Court without further hearing in this matter. But I do want something done because there are a lot of logistics and plans that have to be made.

The case will be continued until Monday, December the 16th, starting at 9:00 o'clock a.m.

Are there any other motions or matters that we need to take up today?

MR. SERMOS: None that I see.

THE COURT: The Court will be available for any other

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motions. Just let me know when you need those set up.

MR. HARPER: Your Honor, I would just state that if -when we get these reports on Friday, which we anticipate we'll
get, I'll certainly make those available posthaste to the
defense.

THE COURT: As soon as possible.

MR. HARPER: Yes, sir.

MR. ROSENBLATT: Your Honor?

THE COURT: Yes, sir.

MR. ROSENBLATT: At our last hearing the request for medical records for the child was addressed, and we furnished the defense all the information we had about who all had treated this child and where; and I just want to confirm while we're here in court that those records have been obtained by the defendant. We haven't either obtained them or haven't received anything from the defendant, and I just wanted to know what the status of those records --

MR. CLARK: The status of that, Your Honor, is that Mr. Rosenblatt and I have obviously been missing each other back and forth, because he's called me on that issue a couple of times and given a Dr. Dar in Vidalia, and I've called him back; but we just haven't been able to get together. I don't think it -- I'm hoping it's not going to be a problem for us to get them, but I think if we both go together to try to obtain them together.

MR. ROSENBLATT: We're at your disposal.

THE COURT: All right, that will be noted for the record.

MR. ROSENBLATT: Thank you, Your Honor.

THE COURT: Court will be in recess.

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COURT REPORTER'S CERTIFICATE

I, Judith W. Brown, Official Court Reporter for the Sixth Circuit Court District of Mississippi, do hereby certify that to the best of my skill and ability I have reported the proceedings had and done in a hearing on motions in Cause Number 02-KR-0141, styled STATE OF MISSISSIPPI VERSUS JEFFREY K. HAVARD, on the docket of the Circuit Court of the Sixth Circuit Court District of Mississippi, and that the above and foregoing eleven (11) pages, numbered 31 through 42, contain a full, true, and correct transcript of my stenographic notes and tapes taken in said proceedings.

This is to further certify that I have this date filed the original and one copy of the transcript with the Clerk of the Circuit Court of Adams County, Mississippi, and have notified the attorneys of record, the Circuit Clerk, and the Supreme Court Clerk of my actions herein.

I do further certify that my certificate annexed hereto applies only to the original and certified transcripts. undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the ____ day of April, 2003.

Judith W. Brown, CSR Official Court Reporter

Sixth Circuit Court District

48 Melanie Road Natchez, MS 39120

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Motions
             9-25-02
        IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI
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   STATE OF MISSISSIPPI
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                                         CAUSE NO. 02-KR-141
   VERSUS
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   JEFFREY KEITH HAVARD
                                                  DEFENDANT
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   TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN A TRIAL, IN
   THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE
11
   HONORABLE FORREST A. JOHNSON, JUNIOR, JUDGE OF THE COURT
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   AFORESAID, AND A JURY OF TWELVE MEN AND WOMEN, ON THE
13
   16TH, 17TH, 18TH, AND 19TH DAYS OF DECEMBER, 2002, IN THE
14
   CIRCUIT COURTROOM OF THE ADAMS COUNTY, MISSISSIPPI
15
   COURTHOUSE.
16
17
18
   APPEARANCES:
   Present and Representing the State:
   HONORABLE RONNIE HARPER
   District Attorney
   Sixth Judicial Circuit District
20
   Natchez, MS 39120
21
   HONORABLE TOM ROSENBLATT
22
   Assistant District Attorney
    Sixth Circuit Judicial District
   Natchez, MS 39120
23
   Present and Representing the Defendant:
24
25
   HONORABLE GUS SERMOS
    Attorney at Law
26
   P. O. Box 621
    Summit, MS 39666
27
    HONORABLE ROBERT CLARK
   Attorney at Law
28
    Viđalia, LA
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BY THE COURT: Have the jurors been sworn to answer questions truthfully?

BY CIRCUIT CLERK VINES: Yes, sir.

BY THE COURT: Let the record so reflect. First of all, ladies and gentlemen, under the law, as I stated even though you have been summoned to serve as jurors in the Circuit Court of Adams County, there are still certain qualifications that are set out by law that you must meet. I'm going to go through these. First of all, you must be twenty-one years of age. That is a requirement for jury duty. We try to catch this, and normally there's no problem about that, but if there's anyone that's not twenty-one years of age or older, you need to let the Court know about it. Also you must be an actual, bonafide resident citizen or freeholder of Adams County. means you can't have moved off and actually lived in some other county. So if you have become a resident of some other county and no longer live in Adams County, I need to know about that. Also you must be able to read and to write. That's the qualification set out by law for jury duty. Also you must not be a convicted felon. What the law says is an infamous crime. Now, that's any crime that carries a year or more in the state penitentiary. doesn't mean you actually went and served time in the state penitentiary, but if you have a felony conviction, no matter how old it is, under the law that would prevent you from being able to serve on jury duty. Also you must not have been convicted of the unlawful sale of intoxicating liquor within the last five years. That's a

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misdemeanor crime. That used to be a very serious matter.
 1
 2
    So if you have a conviction for that, sale of intoxicating
 3
    liquor within the last five years, under the law that
    would disqualify you also. The law also says you must not
 4
 5
    be a common gambler or a habitual drunkard. Now, we, of
    course, have legalized gambling now. I'm still required
 6
   by law to ask this question, but if you like to go down to
 7
    the boat every now and then, that's not what I am talking
 8
 9
            I wish they would change the law where I wouldn't
10
   have to ask that question anymore, but that's why that is
11
    in the law because it used to be unlawful and illegal. At
    this time, of these qualifications that I've gone through,
12
   is anybody that has any responses to these. If so, would
13
14
   you please raise your hand and let me know. Would you
15
    come forward, please, ma'am. Of these that I have just
16
    gone through. Ladies and gentlemen, at this time, I am
17
    only inquiring about the qualifications that I just went
18
          That's what I just went over. S-e-g --
         BY JUROR SEGUN: U-n.
19
         BY THE COURT: I see it. Jacqueline Segun.
20
21
         BY JUROR SEGUN: I moved to Franklin County about a
22
    month and a half ago.
         BY THE COURT: You did what, now?
23
         BY JUROR SEGUN: Moved to Franklin County.
24
25
        BY THE COURT: You moved to Franklin County?
         BY JUROR SEGUN: Uh-huh. But I have --
26
         BY THE COURT: What you need to do is go register to
27
28
    vote --
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BY JUROR SEGUN: Okay.

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BY THE COURT: Because that way the clerk will notify
 1
    this clerk. But you're telling me you don't live in Adams
 2
    County any more.
 3
 4
         BY JUROR SEGUN: I don't live in Adams County.
 5
         BY THE COURT: You live in Franklin County.
         BY JUROR SEGUN: Franklin County. Yes, sir.
 6
 7
         BY THE COURT: Let record show that the juror
    Jacqueline Segun, S-e-g-u-n, has advised the Court under
 8
 9
    her oath that she's no longer a resident of Adams County.
    She's a resident of Franklin County now. So she will be
10
11
    excused. I appreciate you being up here. Make sure you
12
    go register to vote over there.
13
    (Juror Segun is excused.)
14
         BY THE COURT: Yes, sir.
         BY MR. CLARK: Do you have a number on that?
15
16
         BY THE COURT: It was number two ninety-seven on the
    list, and the clerk is preparing a shorter list of those
17
    actually present, but that's juror number two
18
    ninety-seven. Who else of the qualifications I just went
19
20
    over. Yes, sir. What's your name, sir?
         BY JUROR HARRIS: Clarence Harris.
21
22
         BY THE COURT: All right. Mr. Harris, what's your
    problem?
23
24
         BY JUROR HARRIS: About the reading and spelling.
                               You're telling me under your
25
         BY THE COURT: Okay.
26
    oath that --
27
         BY JUROR HARRIS: Right.
28
         BY THE COURT: Well, I appreciate you being up here,
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and I will excuse you. That's Mr. Clarence Harris. Juror

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Jury Qualification
   number twenty, Mr. Clarence Harris, will be excused for a
    legal reason. I appreciate you being up here. You will
 2
 3
   be excused.
    (Juror Harris is excused.)
 4
         BY DEPUTY WISNER: Juror number two seventy, Mrs.
 5
 6
   Diana Smith.
         BY THE COURT: All right. Ms. Smith, what --
         BY JUROR SMITH: I don't live here any more.
 8
 9
   in Baton Rouge, Louisiana.
10
         BY THE COURT: You live in Baton Rouge, Louisiana.
    Under your oath, you have moved to Baton Rouge, Louisiana.
11
        BY JUROR SMITH: Yes.
12
        BY THE COURT: How long have you been gone?
13
        BY JUROR SMITH: About six months.
14
15
        BY THE COURT: Okay. You need to register to vote if
16
    you've not done so already. So I appreciate you being up
17
    here, but you'll be excused. Juror number two seventy,
18
    Diana Smith, is no longer a resident of Adams County, and,
    therefore, she will be excused. That's number two
19
    seventy, Diane Smith.
20
    (Juror Smith is excused.)
21
        BY THE COURT: Yes, sir. What's your name, sir?
22
        BY JUROR BLAND:
                           Maurey Bland.
23
        BY THE COURT: Mr. Bland. What's the problem.
24
25
        BY JUROR BLAND: I live in Jefferson County.
         BY THE COURT: Mr. Maurey Tra'shawn. All right.
26
27
    live in Jefferson County --
28
       BY JUROR BLAND: Yes.
29
         BY THE COURT: -- under your oath. Okay.
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BY JUROR BLAND: Right.

haven't registered to vote up there, you need to go do so.

Okay. I will excuse you, but you're telling me that's the

BY THE COURT: Juror number one sixty-four, Mr.

65

that I have just gone over?

Jury Qualification

way it is?

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(No response.)

27

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29

BY THE COURT: All right. Ladies and gentlemen,

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also under the law, I need to know if there's anyone that
 2
   has actually served on a jury within the last two years.
    Under the law if you have and as long as we have a
 3
 4
    sufficient number of jurors, you can be excused. Let me
 5
   explain what that means. That doesn't just mean you were
   called for jury duty. It means that you actually came up
 7
   here before myself or Judge Sanders and sat on a jury in
 8
   a case or you served on the grand jury within the last two
 9
   years. Also I need to know if anybody has a case of your
10
    own that is actually pending in this court. That doesn't
    mean it's in your husband's name or your wife's name or
11
12
    it's over with. If it's a case in this court that is in
   your name that is still going on, I need to know about
13
    that also. Does anybody have any response to these two
14
15
   questions? Anybody served within the last two years
16
    or have a case going on? Yes, sir.
                                       If you will --
17
        BY JUROR FORESMAN:
                              I can't remember
    if it was two years on longer.
18
        BY THE COURT: What is your name, please?
19
20
        BY JUROR FORESMAN: Tom Foresman.
        BY THE COURT: All right. Mr. Foresman, do you
21
22
   recall what case it was on?
        BY JUROR FORESMAN: It was the murder of that West
23
24
   boy.
25
        BY THE COURT:
                         I think that's been over two years.
26
    I know time will get away from you. I think I was the
27
   judge on that case. Mr. Harper, do you recall that case?
        BY MR. HARPER:
                        Yes, sir --
28
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BY THE COURT: I'm almost certain that's been over

29

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Jury Qualification
   two years. Yes, ma'am. State your name. Let me state
 1
    this, ladies and gentlemen. Seated right below me is Mrs.
   Melanie Murray. She's the official court reporter, and
 3
    it's her job to take down everything that takes place at
 4
    the trial, including this jury qualification and jury
 5
 б
    selection. So if you do have a response, let's be sure to
 7
    speak out clearly so she can hear. Yes, ma'am. What is
   your name, first of all?
 8.
        BY JUROR SMITH: Claver Smith.
 9
        BY THE COURT: Mrs. Smith, what response do you have?
10
    Did you actually serve within two years or --
11
        BY JUROR SMITH: I am not sure if it was two years
12
    ago but --
13
        BY THE COURT: What case was that on?
14
15
        BY JUROR SMITH: A young man that gotten beaten.
                  I am not sure.
16
    am not sure.
17
        BY THE COURT:
                        I tell you what, we'll check on that,
   but you're not sure how long ago that was?
1.8
        BY JUROR SMITH: No.
19
        BY THE COURT: Okay. Who else?
20
        BY JUROR ALLEN: I just wanted to know --
21
        BY THE COURT: State your name, please, ma'am.
22
        BY JUROR ALLEN: Sanquanette Allen. What kind of
23
24
    case do you mean when you have a case pending? I mean --
        BY THE COURT: It's any case that's in the Circuit
25
    Court. We deal with criminal cases, when someone is
26
27
    charged with a crime or lawsuits when someone has a car
    wreck or something like that, but there's other types of
28
    courts and everything, but unless you know of -- if you
29
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Jury Qualification
   know of a case that you have in this court, I need to know
 2
   about that.
        BY JUROR ALLEN: I don't know if it's here or not.
 3
         BY THE COURT: Okay. Anyone else on those last two
 4
 5
   qualifications? Yes, sir.
 6
         BY JUROR WHITNEY: Yes, sir. I'm Richard Whitney.
    I served on the jury for the ex-police officer who was
 7
 8
    accused of sexual battery with a minor. I am not sure --
 9
        BY THE COURT: Which case -- was that Judge Sander's
10
    case?
         BY CIRCUIT CLERK VINES: That was Judge Sanders.
11
         BY THE COURT: Was that within two years? Okay.
12
    Whitney, and you actually served on the jury on that case?
13
         BY JUROR WHITNEY: Yes, sir. I was the jury foreman.
14
         BY THE COURT: Well, I am advised that was before
15
16
    Judge Sanders and that was within the last two years.
17
    I will excuse you. Under the law, ladies and gentlemen,
18
    once you serve, you basically have a two-year grace period
    that you are not subject to being called again.
19
    you did your duty and served within the last two years, I
20
21
    will excuse you and --
        BY JUROR WHITNEY: I'm still willing.
22
        BY THE COURT: Do what?
23
         BY JUROR WHITNEY: I am still willing.
24
         BY THE COURT: You're still willing? Okay.
25
26
    Well, I appreciate that. I wish everybody had your
    attitude about that, but if you actually sat on a jury, I
27
    will excuse you at this time.
                                   You may go.
28
    (Juror Whitney is excused.)
29
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Jury Qualification
         BY MR. SERMOS: Your Honor, what was his name?
 1
 2
         BY MR. HARPER: One forty-nine, Your Honor.
 3
         BY THE COURT: That's number one forty-nine, Mr.
 4
   Whitney. Yes. Who else? Yes, sir.
         BY JUROR DAVIS: Dan Davis, Junior. The case out on
 5
    Cemetery Road, the murder earlier in the year, and I
 6
   served under Judge Sanders.
 7
         BY THE COURT: That was this year, wasn't it? And
 8
 9
   you were actually on the jury?
10
         BY JUROR DAVIS: Right.
         BY THE COURT: Okay. Mr. Davis, I will excuse you.
11
   You've certainly done your duty also. Mr. Dan Davis, did
13
   you say?
14
        BY JUROR DAVIS: Yes.
         BY THE COURT: All right. You will be excused.
15
    (Juror Davis is excused.)
16
17
        BY THE COURT:
                        That's number sixty-seven. Anyone
   else?
            Yes, ma'am.
18
         BY JUROR JOHNSON: I was at the murder trial on
19
20
   Morgantown -- I found the body in Marblestone.
21
         BY THE COURT: What's your name, please, ma'am.
        BY JUROR JOHNSON:
                            Theodora B. Johnson.
22
23
         BY THE COURT: Was this the case earlier this year
   with Judge Sanders?
24
25
         BY JUROR JOHNSON: Uh-hum.
26
         BY THE COURT: That's the same case, I believe.
27
        BY JUROR JOHNSON:
                            Yes, sir.
         BY THE COURT: And you were actually on the jury in
28
29
   that case?
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Jury Qualification
         BY JUROR JOHNSON: I was a witness.
 1
 2
         BY THE COURT: Oh, you were a witness.
                                                 Okay.
                                                        That
    doesn't count if you were a witness.
 3
    (Laughter.)
 4
         BY THE COURT: That's Mrs. Johnson. Anyone else that
 5
 6
   actually served on the jury in the last two years?
 7
    (No response.)
                         Okay. All right. Now, ladies and
 8
         BY THE COURT:
    gentlemen, there are also certain personal exemptions that
 9
    are set out by law. First of all, I am going to go
10
    through these. There's a personal exemption for anyone
11
   that's age sixty-five or older. If you're sixty-five or
12
13
    older, you have a right to ask the Court to be excused and
    that will be honored without any further explanation. You
14
15
    don't have to give any explanation at all, but I want to
    make sure that if that applies to anyone, that doesn't
16
17
    mean that you can't serve, and I want to strongly
    encourage you to stay and serve if at all possible. But
18
   if there is anyone that is sixty-five years of age or
19
   older, you have a right to ask to be excused, and that
20
    will be honored without any further explanation. Also if
21
    you have any serious medical problems that will make it
22
    difficult for you to serve on jury duty, I'll be glad to
23
   hear from you about those. Those are supposed to be done
24
    with a medical excuse. I believe it states that on the
25
    back of your summons. I know my office has handled a
26
    number of those already where people have submitted
27
    medical excuses from doctors, but if you do have any
28
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serious medical problem that you won't be able to serve on

jury duty, I'll be glad to hear from you about that. Also the one that comes up most often is if it's going to cause 2 you any serious financial hardship. Listen carefully to 3 what I've got to say about that. What that is intended for in the law is a solely run or operated business, a 5 person like a barber or beautician that has their own б 7 business and if you're not -- going to be up here on jury duty, you wouldn't be even there available to keep your 8 9 business open. That's what that is set up for. I realize it's a hardship to everybody to some extent to be up here . 10 for jury duty. I also realize it's a hardship like with 11 the school system, with the hospital, with some of larger 12 employers in the county, but that doesn't matter because 13 If it's going to cause you problems on this comes first. 14 your job and everything, I am sorry, but under the law, 15 this comes first. That's what the law is. It's so strong 16 17 that your employer cannot try to get you or pressure you 18 to try to get you to get off jury duty. If they do, they may not be realizing it, but they are actually committing 19 a crime that is in the law to prevent someone from doing 20 So when problems come up or when you have a sudden 21 that. emergency or sickness, you have to make arrangements at 22 work, your employer does, and under law, this comes first. 23 So, please, I want to tell you right now. I'm not going 24 to be able to excuse anybody for that reason just because 25 there may not be anybody else at work that can do what you 26 do and it's going to cause problems at work because that's 27 not a recognized legal excuse under the law. Let me say 28 29 this about these matters that I've just gone over.

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Ladies and gentlemen, we have the best justice system,
1
   system of justice in the world. When someone is charged
2
   with a crime, when someone has a lawsuit that they bring,
3
   we do here in open court. Anybody can come in here and
4
          It's open to everyone. We decide the case in court
5
    under our laws and system of justice, but the thing that
   makes it work are citizens such as yourself coming up here
7
   to serve as jurors. That is the backbone and heart of the
8
             We could not function. We could not dispose of
9
10
    the business of the court without citizens such as
   yourself being able to come up here and serve on jury duty
11
12
    and provide the juries that we need to decide these
13
    cases. I am going tell you something. You heard these
14
   two people that served within the last two years.
    you serve, you basically have an exemption for a two-year
15
16
   period of time.
                     That's not too much to ask for the rights
17
    and freedoms that we enjoy. We enjoy a lot of rights and
    freedoms in this nation, and everybody is glad that we do
18
   have those rights and freedoms, and there have been a lot
19
20
   of people over the years that have laid down -- that have
    given tremendous sacrifices, including laying down their
21
22
    lives, so that we all can enjoy these rights and
23
    freedoms. So that's not too much to ask of you. I realize
24
    it may be an inconvenience and a hardship, but that's not
    too much to ask of you to set aside some time and stop
25
    what you're doing and come up here every two years or be
26
    subject -- you don't have to do it every two years, but
27
28
    you have to be subject to being called every two years to
29
    come up here and serve on jury duty. So let's keep that
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Jury Qualification

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Jury Qualification
 1
    in mind. Yes, sir. You got something?
 2
         BY JUROR HUFF:
                         Yes, sir. Years ago, my second wife
 3
    had me committed to Whitfield for --
         BY THE COURT:
                         What's your name? What your name.
 4
 5
    sir?
 6
         BY JUROR HUFF:
                          My name is Louis Huff.
 7
         BY CIRCUIT CLERK VINES: Louis Huff.
         BY THE COURT: Louis Huff? Here it is. All right.
 8
    Mr. Huff, do you feel like it would be best if you were
 9
10
    excused from jury duty?
11
         BY JUROR HUFF: No, I'm all right with it. I just
12
    want to let you know where I been.
13
         BY THE COURT: Okay. How long ago was that?
14
         BY JUROR HUFF: Been about fourteen years ago or
15
    something like that.
16
         BY THE COURT: That's juror one ninety-three.
17
    you'll go have a seat then. Ladies and gentlemen, under
18
    your oaths, again, what I was getting at, ladies and
19
    gentlemen. We enjoy a lot of rights. So let's please try
20
    to keep these to an absolute minimum. I realize that
21
    sometimes there are just some situations that cannot be
22
    helped, but let's please try to keep these to an absolute
23
    minimum. Now, first of all, these matters I have gone
24
    over, sixty-five years of age or older, severe medical
25
    problems, or serious hardship. First of all, as to this
26
    group of juror over here, is anybody that has any
27
    responses under your oaths to these? Yes, ma'am. Stand up
28
    and state your name.
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BY JUROR WHITE: Roberta White.

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Jury Qualification
         BY THE COURT: What's --
 1
         BY JUROR WHITE: Roberta White.
 2
 3
         BY THE COURT: Roberta White. Mrs. White, what is --
    if you'll come forward and state your problem. What's
 4
    vour problem, Mrs. White? You can just wait there, Mrs.
 5
 6
    White. What's your problem?
 7.
         BY JUROR WHITE: It's a medical condition.
    (Several jurors get up to come to the bench.)
 8
9
         BY THE COURT: Whoa, whoa, everybody -- everybody,
    Let's just kind of stay right where they are. We're not
10
    boing to come down here and form a line. All right.
11
    Mrs. White, do you work anywhere?
12
         BY JUROR WHITE: No.
13
         BY THE COURT: What do you do during the daytime?
14
15
         BY JUROR WHITE: Nothing.
16
         BY THE COURT: You stay at home?
         BY JUROR WHITE: Uh-hum.
17
         BY THE COURT: And you feel like you would be unable
18
    to serve on jury duty?
19
         BY JUROR WHITE: Because of my medical condition.
20
         BY THE COURT: Okay. Let the record show that this
21
    juror has provided the Court with a letter from the
22
    University Internal Medicine Associates, and the Court is
23
    satisfied pursuant to letter that she will be unable to
24
    serve as a juror, and, therefore, she will be excused for
25
    this medical reason that's been provided. That's Mrs.
26
    Roberta White. Let me get her number. That's Mrs. Robert
27
28
    White, number twenty-seven. Who's next? Yes, ma'am.
    can just stand right there, ma'am. State your name.
29
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Fury Qualification
 1
         BY JUROR HARRIS: I called up here and asked for an
    excuse because I have a son with a broke hip.
 2
 3
    get up and down by hisself and there's no one at home with
    him, and got to go home and give --
         BY THE COURT: What is your name, please, ma'am?
 5
         BY JUROR HARRIS: Ruth Harris. Ruth Mae Harris.
 б
 7
         BY THE COURT: All right, Ms. Harris. How old is
    your son?
 8
 9
         BY JUROR HARRIS: My son is forty-five.
         BY THE COURT: And he has a broke hip?
10
11
         BY JUROR HARRIS: Uh-hum.
12
        BY THE COURT: And you're the only one that can care
    for him at home?
13
14
         BY JUROR HARRIS: I am the only one there.
15
    me.
         BY THE COURT: Is he confined to his bed or what?
16
17
         BY JUROR HARRIS: He's on crutches, but you have to
18
   help him get around. He can walk through the house, but
   he's scared he'll fall.
19
20
         BY THE COURT: Okay. Does either the State or the
   defense have any objection to this jury being excused for
21
    this reason.
22
23
        BY MR. HARPER: No, Your Honor.
         BY MR. SERMOS: No, Your Honor.
24
25
         BY THE COURT:
                        Then you will excused, and I
    understand that situation. I appreciate you being up
26
27
   here.
        BY JUROR HARRIS: I had already called.
28
                                                  Thank you.
```

BY THE COURT: Yes, ma'am. Who's next? All right.

```
Jury Qualification
    Mr. Reed.
1
2
         BY JUROR REED: I'm past sixty-five.
         BY THE COURT: All right. Mr. Reed, I am not going
3
    to check your ID.
4
    (Laughter.)
5
         BY THE COURT: This juror is well known to the Court,
6
    but you do wish to be excused; is that right?
7
         BY JUROR REED: Yes, sir.
8
         BY THE COURT: Well, you've earned your right to be
9
10
    excused, and I appreciate you coming up here. That's
    juror Oscar Reed, number one twenty-two.
11
    (Mr. Reed is excused.)
12
         BY THE COURT: Okay. Anybody else over here?
13
         BY CIRCUIT CLERK VINES: The next lady right here.
14
         BY THE COURT: All right. Yes, ma'am. State your
15
16
    hame.
         BY JUROR ALLEN: Sanquanette Allen.
17
         BY THE COURT: What's your name?
18
         BY JUROR ALLEN: Sanquanette Allen.
19
         BY THE COURT: Mrs. Allen, do you have any type of
20
    medical excuse or reason with you?
21
         BY JUROR ALLEN: No, sir. I don't.
22
         BY THE COURT: Why would you not be able to serve as
23
24
    a juror?
         BY JUROR ALLEN: Because I am in pain, and I don't
25
26
    think I would be able to sit as long as it might require.
    I really am.
27
         BY THE COURT: Ma'am, do you work anywhere?
28
         BY JUROR ALLEN: No.
                               I am a student.
29
```

```
Jury Qualification
 1
         BY THE COURT: What? .
 2
         BY JUROR ALLEN:
                          I don't work.
         BY THE COURT: You stay at home?
 3
         BY JUROR ALLEN: I am a student.
         BY THE COURT: You're a student. Where are you a
 5
    student at?
 6
 7
         BY JUROR ALLEN: Alcorn.
 8
         BY THE COURT: Well, ma'am, I can't excuse you for
 9
    this if you're going to be in classes and things.
         BY JUROR ALLEN: Well, classes are out this week
10
11
    until January the 9th.
         BY THE COURT: But you are a regular student?
12
1,3
         BY JUROR ALLEN: Yes, sir.
        BY THE COURT: Well, I'm going to say this.
14
    anybody gets sick or comes up during the course of this or
15
16
    if you have a problem with pain or something, we'll deal
17
    with it, but this is a serious matter, and I have
    restrictions on me as far as the law. So I'm going to
18
19
    ask, if you will, if you'll just have a seat right now,
    but we'll make a notation of that.
20
21
         BY JUROR ALLEN:
                          Thank you.
22
         BY THE COURT: Who is next? Anyone else over here?
23
         BY CIRCUIT CLERK VINES: Ms. Knowles. Well --
24
         BY THE COURT:
                         All right. Yes, ma'am.
                                                  If you can
25
    just --
26
         BY JUROR KNOWLES: I am Leotine Knowles, and I am
    willing to serve, but I am leaving in town for the
27
28
    holidays tomorrow. I can serve today but not tomorrow.
    I'll be out of town.
29
```

```
Jury Qualification
          BY THE COURT: What is your name, please, ma'am?
  1
          BY JUROR KNOWLES: Leotine Knowles.
  2
  3
          BY THE COURT: Leotine Knowles. Yes, ma'am. You're
     going out of town?
  4
          BY JUROR KNOWLES: Tomorrow.
                                        Yes. I can serve
  5
     boday. I am willing to serve.
  6.
          BY THE COURT: This is something that you've had
  7
     scheduled for awhile?
  8
          BY JUROR KNOWLES: Beg your pardon?
  9
          BY THE COURT: I say this is a trip out of town that
 10
     you've had scheduled for a while?
 11
 12
          BY JUROR KNOWLES: No. It's just something that came
     ip. It's sort of an emergency.
 13
 14
          BY THE COURT: I mean, does it involve like family or
 15
     what?
          BY JUROR KNOWLES: Yes. I don't mind serving today,
 16
     and I don't mind serving on jury duty, but I didn't know
 17
     this was coming up. If I had known, I would have called
 18
     you before now, but I didn't know it until last night.
. 19
 20
          BY THE COURT: All right.
          BY JUROR KNOWLES: And there was no way for me to
 21
 22
     hotify you.
          BY THE COURT: With that being the situation, it
 23
     sounds to the Court that this would be oppressive to keep
 24
     this juror or that her service would tend to work
 25
     oppressive hardship on her. Does either the State or the
 26
     defense have any objections to this juror being excused?
 27
          BY MR. HARPER: No, Your Honor.
 28
```

BY MR. SERMOS: No, Your Honor.

```
Jury Qualification
 1
         BY JUROR KNOWLES: Well, I can stay today. Do you
 2
    want me to stay today?
 3
         BY THE COURT: No, ma'am. It's not going to help us
 4
    if you just stay today.
 5
         BY JUROR KNOWLES: Huh?
 6
         BY THE COURT: It's not going to help us to be today.
 7
    You will be excused.
 8
         BY JUROR KNOWLES: Thank you.
 9
    (Juror Knowles is excused.)
         BY THE COURT: All right.
10
         BY JUROR DAVIS: Francis --
11
        BY THE COURT: Go ahead.
12
13
         BY JUROR DAVIS: Francis Davis. I have got a
    doctor's excuse.
14
         BY THE COURT: If you'll bring that to me and let me
15
16
    see that.
    (The Court is handed a document.)
17
        BY THE COURT: Ms. Davis, do you work anywhere?
18
19
        BY JUROR DAVIS: No, I don't.
20
        BY THE COURT: Are you just confined to your home
21
    and you stay at your home during the day?
22
        BY JUROR DAVIS: And when I sit very long, my knee
   tightens up, and I can't hardly move.
23
        BY THE COURT: Okay. Let the record show that the
24
   juror Lillian Francis Davis who's number --
25
26
        BY MR. HARPER: One seventy-eight.
27
        BY THE COURT: One eighty-seven. You live on
   Beechwood Lane; is that right? Has presented a medical
28
    excuse to the Court from a medical doctor which the Court
29
```

finds is proper and that she does not work and is not able

to work because of some medical problems, and the Court

finds that this would be a medical hardship for her to

serve and she will be excused. I appreciate you being up

80

Jury Qualification

1

2

3

4

24

25

26

27

28

29

I have a doctor's appointment. I need to go to the doctor. My hand is steady swelling. I am a diabetic. need to have it checked.

BY THE COURT: This is Ms. Annie Lyles?

BY JUROR LYLES: Yes, sir.

BY JUROR LYLES: Annie Lyles, juror two fifty-five.

```
Jury Qualification
         BY THE COURT: This is juror number two fifty-five.
 1
   When is your doctor's appointment scheduled?
 2
        BY JUROR LYLES:
                          This morning. As soon as I get back
 3
   but to sit with Mrs. C. C. Miller. I left work this
 4
 5
   morning.
              I stayed there all night. As soon as I get back
    with Dr. Leckie. He's in the office with Dr. Borum.
 6
   He's going to check my arm.
 7
 8
        BY THE COURT: Are you going to be working this week?
        BY JUROR LYLES: Well, I sit with her.
 9
                I stayed last night, but I have a doctor's
10
   caregiver.
11
    appointment on account of my arm.
        BY THE COURT: Who is your appointment with?
12
13
        BY JUROR LYLES: Dr. Charles Leckie. He's in the
14
   office with Dr. Borum.
        BY THE COURT: What time is this appointment?
15
        BY JUROR LYLES: As soon as -- I supposed to call as
16
17
   as soon as I leave here and get back this morning because
18
   my arm is swelling.
                         It's broke out real bad.
    diabetic, and I have to get something for my arm before it
19
20
   get any worser.
        BY THE COURT: All right, Ms. Lyles.
21
                                               I don't want to
   keep you from getting medical treatment, and apparently
22
    you do have a problem that you need to go see the doctor
23
   right away about. So I will excuse for that, Ms. Lyles,
24
25
    and I appreciate you being up here, and I will excuse for
    those reasons.
26
27
        BY JUROR LYLES: All right. Thank you.
                                     That's juror number two
```

fifty-five, Ms. Annie B. Lyles. 29

28

BY THE COURT: You may go.

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Jury Qualification
                                                               82
    (Juror Lyles is excused.)
 l
         BY THE COURT: Yes, sir.
 2
 3
         BY JUROR ANDERSON: Otis Ray Anderson.
         BY THE COURT: All right. Mr. Anderson, what's --
 4
         BY JUROR ANDERSON: I have an appointment scheduled
 5
    at the VA tomorrow morning.
 6
 7
         BY THE COURT: Is there any way this appointment can
 8
    be changed? Do you work anywhere?
         BY JUROR ANDERSON: No. I am retired.
 9
         BY THE COURT: You're retired. And this is a medical
10
    appointment at the VA center.
11
        BY JUROR ANDERSON: Yes.
12
13
         BY THE COURT: And those appointments are kind of
    hard to line up, aren't they? How long has this
14
15
    appointment been scheduled?
         BY JUROR ANDERSON: For about a week.
16
         BY THE COURT: All right. Mr. Anderson, since you
17
    have a medical appointment that's scheduled at the VA
18
    benter, I know how it is about getting these appointments
19
    with these doctors and things, and you are retired.
20
    you are not going to be working anywhere. I will excuse
21
    you. I do appreciate you being up here, but I don't want
22
    to interfere with you -- since you had a standing medical
23
    appointment. And that's tomorrow for the record?
24
         BY JUROR ANDERSON: Yes, sir.
25
         BY THE COURT: Well, I will excuse you. That's juror
26
    humber seven, Mr. Otis Anderson. You may go.
27
28
    (Juror Anderson is excused.)
         BY THE COURT: Yes, ma'am.
29
```

```
Jury Qualification
 1
         BY JUROR CARRADINE: How you doing? I'm Mary Ann
    Carradine.
                I am a beautician. Also my husband is taking
 2
            I have to take him to Jackson every week at the
 3
    bncology -- at Jackson Oncology clinic. I am the sole
 4
 5
    provider in my house.
         BY THE COURT: All right. And you are a
 6
    self-employed beautician?
 7
         BY JUROR CARRADINE: Uh-hum.
 8
         BY THE COURT: All right. Mrs. Carradine, under the
 9
    Law, that would qualify. That's juror number two
10
    thirty-four and you live on Washington Street?
11
         BY JUROR CARRADINE: Yes, sir.
12
         BY THE COURT: This juror number two thirty-four,
13
    Mrs. Mary Ann Carradine, will be excused for a legal
14
    reason, and I appreciate very much you being up here.
15
    (Juror Carradine is excused.)
16
17
         BY THE COURT:
                         All right. Yes, sir.
         BY JUROR GREEN: My name is James Green --
18
19
         BY THE COURT: Is James what?
         BY JUROR GREEN: -- and I'm over sixty-five.
20
         BY THE COURT: What's your last name?
21
         BY JUROR GREEN: Green. James Green.
22
         BY MR. HARPER: Number three, Your Honor.
23
         BY JUROR GREEN: Number three.
24
         BY THE COURT: Mr. Green, you are over sixty-five; is
25
    that correct?
26
         BY JUROR GREEN: Seventy.
27
         BY THE COURT: Seventy. Okay. You have live on
28
29
    Petal Lane; is that right?
```

17

22

23

24

25

26

27

28

29

else.

1

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5

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9

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11

12

1.3

14

15

16

Jury Qualification

BY JUROR GREEN: Right.

BY THE COURT: Is this your own child care facility 18 or do you work for someone? 19

BY JUROR WIMBERLY: It's family child care facility. 20 21 My sister and her husband own it.

BY THE COURT: What's the name of it?

BY JUROR WIMBERLY: Kid's College.

BY THE COURT: Well, what you're going to need to do, you're going to need to remain with us right now. We're going to get into some questions about this case a little bit later, but as far as under the law, that's not a legal reason I can because you technically work for someone

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Jury Qualification
         BY JUROR WIMBERLY: All right.
1
         BY THE COURT: I appreciate you bringing it up, but
2
    we'll get into those other questions later.
3
   attorneys understand?
4
         BY MR. SERMOS: No, Your Honor. The name?
5
         BY THE COURT: She had a question -- said she works
6
   for a brother and sister and runs a child care, and she
7
8
   really had some questions about this particular case. I
    am not going to get into that right now.
9
         BY MR. SERMOS: What's her name, please, Your Honor.
10
         BY THE COURT: It's juror number two sixty-five, Mrs.
11
   Wimberly. Amelia Laverne Wimberly.
12
13
         BY MR. SERMOS: Thank you, Your Honor.
         BY THE COURT: Ladies and gentlemen, we'll get to
14
    some questions about this case in just a moment. You can
15
   go back and have a seat. But right now I'm just doing
16
17
    these matters that I have gone over. Sixty-five or older,
    medical problems, or a serious financial hardship. What's
18
19
   your name, please, ma'am.
         BY JUROR PROFICE: Delores Profice.
20
         BY THE COURT: Okay. Ms. Profice, what's the
21
   problem?
22
                             I have a severe ankle sprain and
23
         BY JUROR PROFICE:
    I have an excuse from Dr. Passman.
24
         BY THE COURT: Do you work anywhere, Ms. Profice?
25
         BY JUROR PROFICE: Yes, I do. I have been working at
26
   home for the last week because of my sprain.
27
28
   Natchez Regional.
```

BY THE COURT: All right. That's juror number two

```
Jury Qualification
    thirty-five. You live on Gayle Avenue?
 1
         BY JUROR PROFICE: Yes, sir.
 2
 3
         BY THE COURT: Ms. Profice, I mean, if you have a
    sprain, a bad sprain, I understand, but it doesn't sound
 4
 5
   like that would prevent you from being able to serve as a
    furor. I will be glad to look at your excuse.
 6
 7
    (Juror Profice hands document to the Court.)
 8
         BY THE COURT: Let the record show that the Court
 9
   has received a letter from Dr. J. C. Passman concerning
10
    this juror. I am going to ask, if you will, if you'll
    just remain with us right now, and we're going to take
11
12
    this under consideration and look at this. Okay.
                                                        Who is
13
   next?
14
         BY JUROR CAMERON: My name is Kendrick Cameron.
15
        BY THE COURT: Yes, sir. Mr. Cameron.
                           I am work for a financial office
16
         BY JUROR CAMERON:
17
    as a sales rep for East Buick Pontiac, and my income in
18
    one hundred percent based on commission and --
         BY THE COURT: That's at what place do you work at?
19
20
         BY JUROR CAMERON: East Buick Pontiac, Mitzubishi
    Honda on John R. Junkin Drive.
21
         BY THE COURT: Do you have any family?
22
         BY JUROR CAMERON: Yes.
23
24
         BY THE COURT: Okay. So you're a strictly a
25
    commission salesman?
26
         BY JUROR CAMERON: Yes. And financial office.
         BY THE COURT: I imagine this is kind of a busy time
27
28
    of year.
29
         BY JUROR CAMERON: Yes, it is.
```

```
1
         BY THE COURT: Well, Mr. Cameron, I can understand
    that, and jurors are paid a certain amount per day. I
 2
    think it's per day, but I understand that you're looking
 3
 4
    at a pay check and what you're doing, and I understand
    this is probably a busy time of the year for you.
 5
 б
    don't want to create a financial hardship on you, and it
 7
    does sound like that could create a financial hardship.
    So I'm going to excuse you, Mr. Cameron, and I do
 8
 9
    appreciate you being up here, and maybe you'll be able to
10
    serve some other time. Okay. That's juror number one
11
    thirty-eight, Mr. Cameron. Mr. Kendrick Cameron.
    Court finds that he is strictly a commission salesman and
12
13
    this is one of their busy times of the year, and the Court
14
    finds that would create a hardship on that particular
    juror at this time.
15
16
    (Juror Cameron is excused.)
         BY THE COURT: Yes, sir.
17
      BY JUROR BLAIR: Robert Blair, number one fifty.
18
19
        BY THE COURT: All right. Mr. Blair, what --
20
         BY JUROR BLAIR: My only reason is because I have
21
    substandard hearing, and I can't hear what's going on.
22
         BY THE COURT: All right. Let me see. Mr. Blair,
    let me say this. You know your condition better than
23
24
    anybody else.
25
         BY JUROR BLAIR: Do what?
         BY THE COURT: You know your condition better than
26
27
    anybody.
28
    (Laughter.)
         BY THE COURT: Do you feel like you'd have a hard
29
```

```
Jury Qualification
                                                               88
    time sitting up here and understanding what's going on and
 1
 2
    hearing what's going on?
         BY JUROR BLAIR: Yes, sir. I do. Your voice is
 3
    pretty good, but I couldn't hear all of what you are
 4
    saying, and when roll call was going.
 5
         BY THE COURT: I'll excuse you. You've convinced
 6
 7
         You can go. That's juror number --
 8
         BY MR. HARPER: One fifty.
 9
         BY THE COURT: Number one fifty, Mr. Robert Blair.
10
    (Juror Blair is excused.)
11
         BY THE COURT: Yes, sir.
12
         BY JUROR TURPINE: I am Howard Turpine. I am
13
    seventy-two.
14
         BY THE COURT: Okay. You want to be excused. Okay.
15
    The Court finds that juror Mr. Howard L. Turpine, number
    one hundred twenty, is in entitled to a legal excuse.
16
17
    You can go and I appreciate you coming up here.
18
    (Juror Turpine is excused.)
19
         BY THE COURT: This is Mr. Brice, number two
20
    twenty-nine. What's the problem, Mr. Brice?
         BY JUROR BRICE: I'm a teacher --
21
22
         BY THE COURT: You're a student in Louisiana.
         BY JUROR BRICE: No, sir. I am a teacher. We've got
23
    semester exams this week.
24
25
         BY THE COURT: What school do you teach at?
         BY JUROR BRICE: St. Joe.
26
27
         BY THE COURT: Over at St. Joe?
         BY JUROR BRICE: Over at St. Joe?
28
29
         BY THE COURT: Okay. I know -- I guess that's kind
```

```
Jury Qualification
    of a bad time.
 1
 2
         BY JUROR BRICE: Uh-hum.
 3
         BY THE COURT: All right. Let the record show this
    is juror number two hundred twenty-nine, Mr. Brice. He's
 4
    a teacher at a local school. I have kids myself. I do
 5
    know they are having tests this week, and the Court finds
 6
    that this would create a hardship, not necessarily a
 7
    financial hardship, but this would be oppressive, not just
 8
    to him but to the other students, and the Court does not
 9
    want to interfere with the learning process of anyone, and
10
    I understand that, Mr. Brice, and if there was some other
11
12
    time of the year when a substitute could do, I might be
    inclined to do that, but I will excuse you for this
13
             That's Mr. Brice, number two hundred twenty-nine.
14
    (Juror Brice is excused.)
15
         BY THE COURT: Yes, ma'am. What's your--
16
        BY JUROR JONES:
                          I have a four-month-old sick baby at
17
18
   home.
                        What's your name?
19
        BY THE COURT:
        BY JUROR JONES: Kimberly Jones.
20
        BY THE COURT: Kimberly Jones. What's the problem,
21
    Mrs. Jones.
22
        BY JUROR JONES: I have a four-month-old sick baby at
23
    home and no one to care for him.
24
        BY THE COURT: Okay. I can certainly identify with
25
26
    that. Does either side have any objection to Ms. Jones?
    That does sound like a hardship. She has a four-month-old
27
    sick baby at home.
28
        BY MR. HARPER: No objection, Your Honor.
29
```

```
Jury Qualification
 1
         BY MR. SERMOS: No objection.
 2
         BY THE COURT: All right. Ms. Jones, you can be
 3
    excused.
              That's Kimberly Jones, number --
 4
         BY MR. HARPER: One fifty-seven.
         BY THE COURT: One fifty-seven.
 5
    (Juror Jones is excused.)
 б
 7
         BY THE COURT:
                        Yes, sir.
 8
         BY JUROR BLANKENSTEIN: Frank Blankenstein.
   mother and father are the only ones that can sign checks
 9
10
    and run our business, and they're both in New Orleans on
11
    medical appointments, and I am not sure that they'd be
12
    back before at the earliest tomorrow afternoon, and I have
13
    merchandise coming in and freight lines and --
14
                       So you're the only one left?
         BY THE COURT:
15
        BY JUROR BLANKENSTEIN: I am it. Yes, sir.
16
        BY THE COURT: And this is your family business?
17
         BY JUROR BLANKENSTEIN: Personal business. Yes, sir.
18
        BY THE COURT:
                         Okay.
                                I can understand that. Since
19
    they are out of town, and they're the only other ones and
20
    they're on medical business, as I understand.
21
    phead and excuse you, Mr. Blankenstein. I appreciate you
22
    being up here. Maybe you can serve next time.
23
    juror number one sixteen. The Court finds that would
24
    create a hardship due to the particular circumstances set
25
    but by the juror.
26
    (Juror Blankenstein excused.)
27
        BY THE COURT: Yes, ma'am.
28
        BY JUROR SINGLETON: My name Bambi Singleton.
29
    a four month old with a medical illness. I am still out
```

```
Jury Qualification
                                                              91
   of work from maternity leave.
 1
         BY THE COURT: All right. Ms. Singleton, you have --
 2
   this is Linda -- no. Excuse me. You live on Barth
 3
   Street?
 5
         BY JUROR SINGLETON: Yes, sir.
         BY THE COURT: Ms. Singleton, you have a
 6
 7
   four-month-old baby?
         BY JUROR SINGLETON: With medical condition.
8
 9
        BY THE COURT: Who's sick at home?
        BY JUROR SINGLETON: Uh-hum.
10
11
        BY THE COURT: Do you work anywhere?
12
        BY JUROR SINGLETON:
                             No.
                                   I am still on maternity
13
   leave from my job.
14
         BY THE COURT: Because of that situation, I do find
   that would be a hardship. So I will excuse you to care
15
16
   for your sick child at home. That's juror number one
17
   hundred sixty-three, Ms. Single. You'll be excused.
    (Juror Singleton is excused.)
        BY THE COURT: Yes, ma'am.
        BY JUROR HOYE: I am Cora Hoye --
        BY THE COURT: Yes, ma'am.
        BY JUROR HOYE: And I go to the therapy three times a
   week. I would like to be excused.
        BY THE COURT: What's the reason, now?
        BY JUROR HOYE: I go to therapy.
        BY THE COURT: You go to therapy. Let me see this
27
   card, please. Ms. Cora Hoye. You live on Tate Road?
28
        BY JUROR HOYE: Yes, sir.
29
        BY THE COURT: You go to therapy every week?
```

```
1
         BY JUROR HOYE:
                         Yes, sir.
 2
         BY THE COURT:
                         You don't work anywhere, do you?
 3
         BY JUROR HOYE: No, sir.
                                   I don't.
 4
         BY THE COURT:
                        And you have some serious medical
 5
    problems apparently?
         BY JUROR HOYE: Yes, sir.
                                     I do.
 б
 7
         BY THE COURT: Let the record show that the Court is
 8
    satisfied that juror number one sixty-five, Ms. Cora Hoye,
    has some serious medical problems. She's disabled, and
10
    she's required to go to these treatments every week, and
11
    the Court finds that clearly she would qualify under the
12
    law and she will be excused.
13
    (Juror Hoye is excused.)
14
         BY THE COURT: Yes, sir.
15
         BY JUROR CARROLL: I'm Mr. Herman Carroll.
16
         BY THE COURT: Mr. Carroll, is that your name?
17
         BY JUROR CARROLL: Carroll. Yes, sir. C-a-r-r-o-1-1.
18
         BY THE COURT: Mr. Herman Carroll, number one hundred
               What's the problem?
.19
20
         BY JUROR CARROLL: I got two parents in the eighties.
21
    They need constant supervision. Medical and -- you
22
    know -- meals and stuff like that. So I have to keep an
23
    eye on them pretty much all the time.
24
         BY THE COURT: I understand that. Where do you work?
25
         BY JUROR CARROLL: I don't work anywhere, sir. I
26
    also have a test report from my previous employer that I
27
    have an ear -- you know.
28
         BY THE COURT: Do you have that report with you?
29
     (Juror Carroll hands document to the Court.)
```

Jury Qualification

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Jury Qualification
         BY THE COURT: All right. And you look after your
 1
 2
   mother and father?
                            Yes, sir.
 3
         BY JUROR CARROLL:
         BY THE COURT: Do they live out near you in
 4
 5
   Broadmoor?
         BY JUROR CARROLL: I live with them on Brenham Avenue
 6
 7
        BY THE COURT: You live with them?
 8
 9
        BY JUROR CARROLL: Yeah. 46 Brenham Avenue.
10
        BY THE COURT: You don't work anywhere?
11
        BY THE COURT:
                        Yes, sir. I do.
                                          I got an early
12
    morning job as a carrier for the Democrat that takes me
13
    about two hours to run the route and -- you know -- get
    back in.
14
        BY THE COURT: What kind of care do your mother and
15
   father need? I mean, are they confined to bed or
16
17
    wheelchair or anything like that?
18
        BY JUROR CARROLL: Well, no, they're not confined to
    a bed or wheelchair, but they -- you know -- pretty shaky,
19
20
    you might say, and they -- you know -- memory kind -- you
21
    know -- of off. So -- and they -- you know -- at that
    age, they sleep a lot and sometimes don't know what time
22
23
    to take their medicine and stuff. So I just try to keep
24
    an eye on them.
        BY THE COURT: They take a lot of medicine. You're
25
26
    the one that makes sure they take their medicine.
27
        BY JUROR CARROLL: Yes, sir.
        BY THE COURT: Who cooks their meals for them?
28
29
        BY JUROR CARROLL: I either cook it or -- you know --
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Jury Qualification
   go out to the store and get it for them.
         BY THE COURT: Okay. All right. Mr. Carroll, I am
 2
 3
   going to go ahead and excuse you. I don't want them going
 4
   without any care or anything. I will accept your
 5
   statements under oath to the Court, and, for these
   reasons, I will go ahead and excuse you.
 6
 7
         BY JUROR CARROLL: Thank you, Judge.
         BY THE COURT: You will be allowed to go.
 8
 9
    (Juror Carroll is excused.)
         BY THE COURT: All right. Anyone else?
10
11
    (Circuit Clerk Vines confers with the Court about a juror
    that arrived late.)
12
13
         BY THE COURT: Where's Mr. Anderson? Mr. Anderson,
14
   would you come forward, please. You were a little bit
15
    late.
16
         BY JUROR ANDERSON: Yes, sir.
17
         BY THE COURT: You've had your oath. There's certain
    gualifications you must meet by law, and we'll run through
18
19
    these real quick. First of all, you must be twenty-one
20
    years of age older. You look like you've got that one
21
    covered.
22
         BY JUROR ANDERSON: I've got that one covered.
         BY THE COURT: You must be an actual resident citizen
23
24
    bf Adams County. You can't have moved off and lived some
25
    blace else. You must be able to read and to write, must
    hot be a convicted felon. Must not have been convicted
26
27
    with the unlawful sale of liquor within the past five
    years. Must not be a common gambler or habitual drunkard.
28
29
    You meet all those qualifications?
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Jury Qualification
         BY JUROR ANDERSON: Yes, sir.
 1
 2
         BY THE COURT: Okay. Now, also, you must not have
   actually served as a juror within the last two years.
 3
   Came up here and actually served on a jury. And you have
 4
 5
   certain medical exemptions. If you're age sixty-five or
   older, that would cover now. If you have serious medical
 7
   problems or if it's going to cause you serious financial
 8
   hardship.
         BY JUROR ANDERSON: It would cause a financial
 9
10
   hardship.
        BY THE COURT: Why -- what's your job?
11
12
        BY JUROR ANDERSON:
                             I am a bricklayer.
        BY THE COURT: Who do you work for?
13
                             Self-employed bricklayer.
        BY JUROR ANDERSON:
14
        BY THE COURT: Self-employed bricklayer. Have you
15
16
   got a job you're tending to right now?
17
        BY JUROR ANDERSON: Yes. I just got a call on the
18
   cell phone --
19
         BY THE COURT: You're a self-employed bricklayer.
   All right. Let the record show the Court finds that juror
20
   humber two hundred eighty-nine who just came in, Mr. James
21
22
   Anderson, is a self-employed bricklayer and has an ongoing
    job right now, and the Court would find that he would
23
    qualify under the law for being -- for this causing a
24
25
   serious financial hardship. So I will excuse you.
26
   can go.
27
    (Juror Anderson is excused.)
28
        BY THE COURT: Anyone else?
29
    (No response.)
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BY THE COURT: At this time, let the record show that the remaining jurors are fully competent and qualified in all respects to try issues in the Circuit Court of Adams County. I'm going to ask that these jurors be given the second oath to try issues.

(Circuit Clerk Vines administers the second oath.)

BY THE COURT: All right. Now, the jury has been qualified. Before I call the case and proceed with the seating of the jury, are there any other matters that either side has that we need to take up before that?

BY MR. HARPER: Yes, Your Honor. We have a motion pending, I think, Your Honor.

BY THE COURT: Okay. All right. I am going to need to see the court reporter back here just briefly. tend to that just briefly. Ladies and gentlemen, this is going to be about a ten-minute recess. Now, let me say this. There's some seats that's opened up. So certainly some of you upstairs may want to come down here. We're going to take about a ten-minute recess. There's a couple bf matters. First of all, you're not to talk to anybody about this case. I know you haven't heard anything really about what's been going on about this case, but you're not to talk to anybody about this case. You can talk about whatever you want to but not about this case. Also I'll tell you right now, the attorneys, they'll be introduced to you in just a little bit, but they are under strong rules of court not to talk with you because it could be something totally innocent. They won't even speak to you when they see you. They're not trying to high hat you or

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1
    anything like that, but they're under very strong rules
 2
    of court. If somebody saw it, they could take it the
    wrong way. Also Sheriff Ferrell, he will be here and be
 3
    the representative of the State and also his deputies.
 4
 5
    They're under strong rules of court not to really interact
 6
    with you in any way. So please keep that in mind. No one
    is trying to be rude to you, but if somebody saw it, they
 7
 8
    might could read something into that's not really there.
 9
   So please keep that in mind. Also I've been advised -- I
10
    know parking is a problem around here, but we do have two
11
    wehicles that I think are going to be moved.
12
    is a Toyota Corella with license tag WNB 971, and also
13
    there's a Lincoln, grayish and blue, Wilkinson County, ANJ
14
          It may not be anybody in here, but if they are, you
15
    need to see about that. It's going to be about a ten-
16
                    If you need to use the facilities, they
    minute recess.
17
    can use the facilities down at the end of the hall, but
18
    please keep in mind what I said about not having any
19
    contact with anybody. Yes, ma'am?
                          Excuse me, sir. I apologize when
20
         BY JUROR THOMAS:
21
    you were asking about everybody for the medical thing, but
22
    you never did bring up about children. Now, they're not
23
    sick and I'm their grandmother and I'm taking care of
24
    them, and they are in school, but there is no one to be
25
    there in the evening when they get home, and I have to
26
    take one to school in the morning, and one is playing
27
    basketball.
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BY THE COURT: What is your name, ma'am?

BY JUROR THOMAS: They sent the statement out in my

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JURY OUT - MOTION
    Haughter's name, Bertha Faye King, but they had Bertha
1
    Thomas, which is my last name. The first name is Irma.
 2
                                                              Ι
    think it is a mistake.
3
         BY THE COURT: Your name is Brenda Faye King?
 4
 5
         BY JUROR THOMAS:
                           No. That's my daughter, and my
    name is Irma Thomas.
 6
         BY THE COURT: Where is Brenda Faye King at?
 7
 8
         BY JUROR THOMAS:
                           She's at work.
         BY THE COURT: Well, she needs to be on up here.
 9
         BY JUROR THOMAS: Well, see, they had my name -- her
10
11
    hame scratched off and my name circled on the top of it,
12
    my last name.
                   Thomas.
         BY THE COURT: Okay.
13
         BY JUROR THOMAS: That's why I figured -- you know --
14
15
    it had been a mistake, and they needed me.
16
         BY THE COURT: All right. You weren't called for
    jury duty. Apparently, Ms. King was. Brenda Faye King.
17
    so you will be excused because you are not even really
18
    balled for jury duty. Okay. Again, we're going to take a
19
    short recess at this point. There's a couple of matters.
20
    r'all please don't go in the jury room back here because
21
    we'll be back there, but you can use the facilities down
22
23
    at the end of the hall.
    (The following was heard in the chambers of the Judge,
24
    OUTSIDE THE PRESENCE OF THE JURY, to-wit:)
25
              BY THE COURT: Let the record show that the
26
         Court is in chambers with counsel for each side.
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First of all the Court has been qualifying the jurors who have responded to the summons issued for a

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special venire in this case. Before the Court called the case, the Court asked if there were any matters to take up, and the State advised that there were. So we're going to be doing that at this time. First of all, I do want the record to show that the jurors have been properly summonsed as provided by law in this case. Specifically it was the defense desire that the summons be sent by mail which is the reason which is often given in these cases that it's better to do that than to have jurors personally summoned the jurors and run the risk of some -- of jurors being told what the case was for or about. jurors have responded, and the Court has been conducting the qualifications, and we're taking this break now before I call the case to take up any matters that either side has. Now, what does the State have?

BY MR. HARPER: Your Honor, the State has a motion to amend the indictment. As it was originally indicted, it had a disjunctive element in it in that the alleged the -- the indictment alleged that the murder of Chloe Madison Britt was done while engaged in the commission of a crime of sexual battery and/or felonious abuse of a child. We would file to amend that to delete the allegation as to the felonious child abuse which means that the underlying felony in this particular indictment would be simply sexual battery.

BY THE COURT: Okay. I think I understand

exhibit.

that.	Ι	00 y	ou have a	writ	ten mo	tio	n on	that?		
	вұ	MR.	HARPER:	Yes,	sir.	Ιt	was	filed	on	the
13th.										

BY THE COURT: Do you know if that's --

BY MR. HARPER: I have a copy of that, Judge, and it should be in the file, but I'll be happy to provide that to the Court. It's a motion with a proposed amended indictment attached to it as an

BY THE COURT: Does the defense have -- was the defense furnished with a copy of this?

BY MR. SERMOS: Yes, Your Honor. We were. On the 13th of December.

BY THE COURT: It appears to the Court that the State is simply dropping one of the underlying felony crimes as being charged. What says the defense to this motion?

BY MR. SERMOS: No objection, Your Honor, but I would state that we would have motion in limine after the Court makes a decision.

BY THE COURT: Okay. Let the record show that it appears that the indictment as originally returned has two underlying felony crimes, sexual battery and/or felony abuse and/or battery of a child.

Pursuant to law, it is not permissible to proceed or not advisable to proceed where more than one underlying crime is so stated. The Court finds that clearly the defense would be on notice as to what the charges are, and that there's -- I can perceive of no

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prejudice to the defense, and it's been stated they have no objection to this, to the State so amending. So, therefore, the amendment will be allowed, and that means that the only underlying crime charged will be that of sexual battery in this case, and let's see. I believe you have the -- is that the section that's stated? Is the section number proper?

BY MR. HARPER: Yes, sir.

BY MR. ROSENBLATT: Yes, Your Honor.

BY THE COURT: All right. And there has been a written motion. So let the record show that the Court will so amend the indictment, and Exhibit A is a copy of the indictment that has been included with this, and that will be the amended indictment, the form set out in Exhibit A in this motion, which, again, will reflect that the only underlying felony crime will be that of sexual battery.

BY MR. ROSENBLATT: Your Honor, there's one minor clerical matter. The name Jeffrey, is it spelled J-e-f-f-e-r-y or J-e-f-f-r-e-y, and those names tend to be used interchangeably in our -- I apologize for any inconsistency. I am not sure how the defendant cares to --

BY THE COURT: Mr. Havard, how do you spell your first name?

BY THE DEFENDANT: R-e-y.

BY THE COURT: J-e-f-f-r-e-y. Let the record show it will be amended to reflect that, and we'll try to correct that. R-e-y. Does the State have

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anything further at this time?

BY MR. SERMOS: Yes, Your Honor.

BY MR. CLARK: No. The State.

BY MR. SERMOS: I'm sorry.

BY MR. HARPER: No, sir. I believe that's all we have, Your Honor.

BY THE COURT: Does the defense have anything further?

BY MR. SERMOS: We do, Your Honor. I am sorry. I was thinking of something else. Yes, Your Honor. We have -- based on the Court doing that, we have a motion in limine, and here is essentially what it is, Your Honor. Since the indictment has been amended, we ask the Court to exclude introduction into evidence any testimony about the underlying cause of death of the child which is the felony child abuse. What we would include and ask the Court to find not admissible in the case in chief is any testimony by Dr. Hayne concerning shaken baby syndrome, the damage to the body of the child, any of that, and we would ask the Court based on what we're saying is any evidence other than evidence that would tend to show sexual battery or the commission thereof on the child, that evidence is inadmissible we contend in the case in chief and would have to be submitted during the sentencing phase as an aggravator because what the State has done as I read the jury instructions, they have made felony child abuse an aggravator now rather than a main underlying felony

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in the indictment, and we feel it's an absolute constitutional and even statutory issue that to go forward in the case in chief with the information about the -- anything other than the child is actually dead would be allowing the State to essentially develop two underlying felonies and essentially prove beyond a reasonable doubt or attempt to a felony child abuse which is an issue now for the sentencing phase, not the guilt phase.

BY MR. HARPER: If I may respond, Your Honor.

BY THE COURT: Yes, sir.

BY MR. HARPER: Very simply the charge is, of course, capital murder which is the commission of a murder while in the commission of another crime, in this particular case, sexual battery. It would be incumbent upon us as an element of the crime to prove that a murder resulted from that commission of that crime or while that crime was being committed or shortly there -- or in the general vicinity or at the time that that crime was committed. To follow what Mr. Sermos is suggesting would be to indicate, for example, that if someone committed an armed robbery and shot someone and killed them while in the commission of that armed robbery, then it would be inadmissible to show evidence in the case in chief that somebody got shot or that if the person shot the victim while committed that armed robbery. an element of the crime that we have to prove, and we would submit to the Court that we obviously should be

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able to and would be, in fact, required to prove
that. That the murder was committed and how it was
committed while the crime of sexual battery was being
committed.

BY MR. SERMOS: May I respond, Your Honor?
BY THE COURT: Yes, sir.

BY MR. SERMOS: Your Honor, here is the nexus in that and why I think Mr. Harper is wrong on that. it were an armed robbery, yes, you do have a body, and there was somebody that testified or where the circumstances would show that the person shot somebody else and took the money and left. In this case and the reason we feel this is different that in the fact as Mr. Harper just said there was underlying felony of armed robbery and death. In this case with essentially, and it was in the indictment with atleast two underlying felonies, the circumstances here would be -- and I will reverse it for the Court. Had the State chose to go felony child abuse, then I'd be making the same motion to keep out anything to do with sexual battery, and that would lead into the death of the child. What we're asking the Court to do is we obviously know that the child is deceased. Is that any physician that testifies, Dr. Hayne, only be allowed to say, yes. The child is deceased. child and the child died and was brought to the emergency room and died, but as far as anything other than, for example, what the State may tend to want to show about what a doctor saw at the emergency room

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regarding any sequelae or any indications of sexual battery could be admissible, but as far as anything about Dr. Hayne's testimony other than the child was brought in and he autopsied her and she's dead. Anything to do about to show the felony child abuse would only be admissible in the sentencing phase because they've already got their underlying felony. The State is not being deprived as Mr. Harper stated as would be in a robbery if you weren't allowed to show the person was dead. Of course, they can show he's dead and the method of death, but in this case. the underlying felony is different because someone can have felony child abuse and be killed, Your Honor, or die. Whereas a person can have sexual battery and then not die, or a person can be feloniously child abused and not die.

BY MR. HARPER: Somebody could commit an armed robbery and not shoot somebody in the process of it and that person not die. It's ludicrous to say that we can't show how this child was killed while this other crime was being committed.

BY THE COURT: Let the record show that the motion will be granted in part and denied in part. The Court finds that now although the indictment has been amended to provide only one underlying felony crime, that of sexual battery, the State is still required to prove the element that the defendant did kill and murder the victim with or without design to affect death. Therefore, the State will be allowed

to present any evidence of the matters referred to by defense counsel as long as they go to the manner or the cause of the death. However, if there is now any evidence of child abuse that does not go to the manner and cause of death, then the Court would sustain the motion as to that. So you are not -- you won't be allowed to go into the underlying matter that was previously set out by the indictment of the felony child abuse unless it goes to the manner and cause of death.

BY MR. HARPER: Yes, sir. That's all we would intend to do.

BY MR. ROSENBLATT: Or unless it goes to the commission of a sexual battery.

BY THE COURT: That's right, but it can't be something -- counsel is correct. That to the extent -- it doesn't go to what's now your elements, you can't bring it out.

BY MR. HARPER: Yes, sir. And we certainly wouldn't do that, Your Honor.

BY THE COURT: Is there anything further?

BY MR. SERMOS: The only thing I would add,

Your Honor, is that -- to phrase for the record is

that motion was brought under and for rights of the

defendant Mr. Havard under the Sixth, Eighth, and

Fourteenth Amendment of the United States

Constitution and its concurrent Mississippi

Constitution.

BY THE COURT: Let the record so reflect. Now,

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before we proceed with voir dire, let me get one thing on the record that I have already notified all counsel about, and the Court will conduct its own voir dire as is required. Each side, of course, will be allowed to conduct their voir dire. I will ask some questions of the jury as to views as to the death penalty as is required. What I will do will be attempt to identify who either has serious problems with maybe imposing the death penalty, who would just automatically reject it. Also with those who would automatically impose it in the event that the defendant is found guilty. What I will be attempting to do will be to identify jurors that need to be examined further. You, of course, will be allowed to in addition to your regular voir dire ask any question about death penalty views, but I don't want either side going into specific jurors about their specific death penalty views in front of the other The Court will allow ample opportunity to do that individually as to those juries who so identify that they have some belief about the death penalty one way or the other that needs to be inquired in to further. Do y'all understand me about that?

BY MR. SERMOS: Right. I do have a question, Your Honor.

BY THE COURT: All right.

BY MR. SERMOS: I just want to make sure what we're talking about it here. For example, if you asked the reverse Witherspoon question, is there

anyone who would automatically impose the death penalty if this person is convicted for the charge, and if nobody responds are you -- I just want to know -- are you going --

BY THE COURT: You can go in further and you can follow up on the Court's questions, but if somebody does raise their hand, what I'm asking is that we leave it at that and then that juror, I will allow you to examine individually in sequestered voir dire.

BY MR. HARPER: Okay, sir.

BY THE COURT: No, you can absolutely go into those questions.

BY MR. SERMOS: The one question that I'll ask you right now because you said we don't want to go into a long -- and I agree with that. However, one question that I've developed and used recently in a capital case was this and I'll then -- one of the questions especially was to the individual basis or panel, probably not in the general, but is that -- does everyone here or do you understand the law never requires you to impose the penalty of death. Do you call that an -- is that an offensive question under your point?

BY THE COURT: No. I'll allow you to question the jurors. I just don't want to get to the point of really --

BY MR. SERMOS: Right.

BY THE COURT: -- instructing them what the law is --

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BY MR. SERMOS: We don't -- no, I wasn't going to -- that's the only time I use the word "the law" about, but I just wanted to make sure.

BY THE COURT: And that is the whole basis that

BY THE COURT: And that is the whole basis that jurors are to consider it fairly under the law and the evidence. Okay. Anything further?

BY MR. HARPER: Not with the State.

BY MR. SERMOS: One thing, Your Honor. As far as the State is proposing in chambers, Your Honor, about the sheriff serving as case agent --

BY THE COURT: Yes.

BY MR. SERMOS: We would object to that, Your Honor, for two reasons.

BY THE COURT: What's the reason for that?

BY MR. SERMOS: The first reason, Your Honor, on the indictment that's been amended now by the Court, the witness John Manley, and second reason is if he were to be the case agent, we would certainly request that he be -- testify before anyone else.

BY THE COURT: Does the State intend to call him as a witness in this case?

BY MR. HARPER: Your Honor, to be perfectly frank, we hadn't made a final decision on that. We don't anticipate it. If we did, it would be for a very general purpose, but, as I said --

BY THE COURT: He's really not a really factual witness to anything --

BY MR. HARPER: No, sir.

BY THE COURT: -- as far as the investigation.

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BY MR. HARPER: He was called out the night of the offense --

BY MR. CLARK: He went to the hospital and saw the baby.

BY MR, HARPER: Yes, sir. But he was not the -- he was not the -- I mean, of course, as the sheriff, the supervisor of the investigation, but he had Major Manley was, in fact, the chief investigating officer in the case.

BY THE COURT: All right. Make a determination. If you intend to call him as a fact witness to what he went and saw as your case in chief at the hospital, then I am going to direct that he testify before he's allowed to remain in the courtroom --

BY MR. HARPER: Okay, sir.

BY THE COURT: -- as the case agent, but if you're not going to call him for that purpose, he'll be allowed to remain as the case agent with the understanding that something other than that of a general nature could come up --

BY MR. HARPER: Okay, sir.

BY THE COURT: -- later on.

(All parties returned to the courtroom and the following was made of record, IN THE PRESENCE OF THE JURY, to-wit:)

BY THE COURT: At this time, the Court is going to call Case Number 02-KR-141 in the matter of the State of Mississippi versus Jeffrey Keith Havard. What says the State at this time?

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BY MR. HARPER: Please the Court, Your Honor.
The State is ready to proceed.

BY THE COURT: What says the defendant?

BY MR. SERMOS: Ready, Your Honor.

BY THE COURT: All right. At this time, the Court is going to ask the clerk to seat the jurors. Now, ladies and gentlemen, first of all, those of you seated over here, I'm sorry. You're going to have to get up because this is where we're going to start seating the jurors. If you'll just kind of stand, we'll be -- everybody will be seated just momentarily. Ladies and gentlemen, as your name is called, if you'll come forward and have a seat in order in the jury box. We'll start back here at the far left corner. Also one of the bailiffs will have a number for you. The most important thing is that stay in the order in which you're called. So at this time, I'm going to go ahead and ask the clerk to seat the jury.

The jurors were seated with numbers as follows: 1. Judy

- 21 Ellzey, 2. Cynthia Ethridge, 3. Laurence McKnight, 4.
- 22 Lynda Simonton, 5. Joseph Johnson, 6. John W. Jackson, 7.
- 23 Bridgette Jones, 8. Homer Rouse, 9. Amanda Vestal, 10.
- 24 Donna Fiorello, 11. Brenda Hall, 12. Kimberly Vines, 13.
- 25 \$anquanette Allen, 14. Erica Williams, 15. Minnie
- 26 Nayberry, 16. Laura L. Smith, 17. Gloria Jackson, 18.
- 27 Houis Roberts, 19. Linda Blanton, 20. Georgia Dobbins, 21.
- 28 Mark Chapman, 22. Carol Black, 23. Joyce Massey, 24.
- 29 \$tephanie Partridge, 25. Dorothy Sylvester, 26. Mary

- 1 Prescott, 27. Brenda Naff, 28. Curtis Hampton, 29. Willie
- 2 Thomas, 30. Robert Montgomery, 31. Theodora Johnson, 32.
- 3 Barbara Atwell, 33. Elizabeth Johnson, 34. Nora
- 4 Pennington, 35. Oral Thomas, 36. Kenithea Hill, 37. Claver
- 5 \$mith, 38. John Bales, 39. James Overton, 40. James
- 6 Richardson, 41. Edith Dykes, 42. Sue C. Logan, 43. Charlyn
- 7 φten, 44. Kenisa McMorris, 45. Mary Whittington, 46. Peggy
- 8 McDaniel, 47. Mary Smith, 48. Ernest Cade, 49. Wharlest
- 9 Jackson, 50 Frances Brellenthine, 51. Deanne Taylor, 52.
- 10 Martha Jackson, 53. Amanda Coley, 54. Bettie Ward, 55.
- 11 Walter Johnson, 56. Bill Hammett, 57. Jeffrey Wadlington,
- 12 \$8. Margaret Smith, 59. James Shropshire, 60. Jan D.
- 13 \$carborough, 61. Yolanda Townsend, 62. Cindy Atkins, 63.
- 14 Leandro Dixon, 64. Janet Ballard, 65. Eddie Young, 66.
- 15 Willard Ray, 67. Rosa Griffin, 68. Louis Huff, 69.
- 16 Leighton White, 70. Laverne Clark, 71. John Johnson, 72.
- 17 Ninda Gibbons, 73. Erin Wisner, 74. Roger Carr, 75. Sherri
- 18 Risher, 76. Harold Bacon, 77. Dan Alexander, 78. Kirby
- 19 Watts, 79. William Russell, 80. Christine Franklin, 81.
- 20 Hinda Jackson, 82. Henrietta Whitley, 83. Deloris Profice,
- 21 44. Diane Galbreath, 85. Dorothy Bassett, 86. James
- 22 Thomas, 87. Karen Mason, 88. Gratil Knight, 89. Sacrenelli
- 23 Moore, 90. Amelia Wimberly, 91. Thomas Foresman, 92. Henry
- 24 Hoggo, 93. Debra Byrne, 94. Vernon Perry, 95. Haroka
- 25 Barnett, 96. Mary K. Jackson, 97. Christine Bates, 98.
- 26 Honald Berry, 99. Marjorie Martin, 100. Mary Berrett, 101.
- 27 Jeffrey Shell, 102. Eddie William, 103. Douglas McIlwain,
- 28 404. Kathy Blanchard, 105. Walter Davis, 106. John Isaac.)
- 29 BY THE COURT: Ladies and gentlemen, again, I know we

have a lot of people in here. So I do appreciate your 1 2 batience in bearing with us about this. We're going to get through this. Now, again, ladies and gentlemen, I 3 know it's inconvenient to everybody to some extent, but 4 this is the way our system works, and I am sorry about 5 б. I will try to make it to allow your service to be performed with as little inconvenience as possible. Now, 7 8 first of all, this is a criminal case, and we're going to 9 be proceeding at this time with the jury selection This is what's known as voir dire or voir dire. 10 it's a French term. It means to speak the truth. What 11 will happen is that I will ask you some questions of you 12 as jurors, and then the attorneys for each side will be 13 allowed to ask you further questions. These questions are 14 not intended to embarrass you in any way or to pry into 15 16 your personal affairs on business, and the Court is not going to allow that, but it is very important that these 17 questions are asked. Basically, you have been fully 18 qualified under the law as meeting all the qualifications 19 for jurors, but still there may be something about you as 20 far as who you may be related to, what you may know about 21 this case already, or something of that nature that in all 22 23 honesty would make it very difficult for you to be a totally fair and impartial juror. So that is the purpose 24 of these questions that are being asked. These question, 25 can tell you, there are absolutely no wrong or right 26 answers that you can give to these questions. The only 27 28 thing that you can do wrong is if you fail to respond penly and honestly about a question that is asked of you 29

when you should. So please keep that in mind. questions are for your benefit as much as they are for the 2 Court and for the attorneys because I can't look into your 3 4 hearts and your minds and know what's there. You have to 5 help us with this and be totally straight forward and 6 honest about these questions. So please keep that in 7 Again, it's Melanie's job, the court reporter, to 8 take down everything that takes place. We found that this 9 part of the proceeding goes a lot better if you have a 10 plumber. That's why you have a number. So if you do have a response, we're going to go slow and make sure you raise 11 12 your number high so that we can get that down for the 13 #ecord. That way she doesn't have to go back through and we get everybody's full name every time there is a 15 tesponse to one of the questions. So please keep that in 16 All right. Now, first of all, this is a criminal 17 It's a charge against the defendant, Jeffrey Reith Havard, of capital murder. He's indicted and 18 dharged with killing and murdering one Chloe Madison Britt 19 20 while engaged in the commission of the crime of sexual hattery. That's the charge. Now, first of all, ladies 21 22 and gentlemen, let me tell you this. This is the United 23 States of America, and we have the greatest legal system and system of justice on the face of the earth. And the 24 way we do things in this country is when someone is 25 dharged with a crime, we have a trial here in open court 26 27 where the evidence is brought forward in the court, and 28 jurors such as yourselves, citizens from the community, are selected to try the case. The fact that the defendant 29

Voir Dire - Court

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has been charged, that he has been indicted, is no
 I
 2
    vidence whatsoever against the defendant. That is simply
    the procedure, the mechanism, the way the case is brought
 3
    forward in the Circuit Court for trial. Does everybody
 4
 5
    understand me about that? The case is to be decided on
 б
    the basis of the evidence that's brought forward in open
 7
    court. The sworn testimony of the witness and any
 8
    exhibits that the Court allows to be introduced into
 9
    evidence. We don't try people in this country on the
    basis of what you may have heard out on the street or
    anything of that nature. The case is to be tried here in
    the courtroom. First of all, I realize that there has
    been one or more articles in the paper about this case,
    and I realize this is a fairly relatively small community,
14
    still considering other places, and, again, it's very
15
16
    important that you understand that a person is not tried
    on the basis of what may have already appeared in the
17
18
    paper or someone may have heard. First of all, I am going
    to direct my questions to this group over here where the
19
    dury box is. First of all, of those of you, the fact that
20
21
    there have been one or more articles in the paper, can
22
    each of you tell me that you will -- if you're selected to
23
    serve as a juror, that you will not let that play any part
24
    in your decision in this case. Can each of you tell me
25
    that? You understand what I said? We try the case on the
    evidence up in the courtroom. Can each of you tell me
26
27
    that?
28
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BY THE JURORS: Yes, sir.

> What about this group downstairs over BY THE COURT:

```
1
     here. Can each of you tell me that?
  2
           BY THE JURORS: Yes, sir.
  3
           BY THE COURT: That you'll disregard anything that
      may have been in the paper about this case? And then,
  4
      finally, this group up here? Can each of you tell me
  5
            This is very important, ladies and gentlemen. I
  6
      tealize it's not a whole lot in the paper, but there have
  7
2 . 8
     been a couple of articles about it and that has got
      nothing to do with trying this case. First of all, is
  9
      there anyone that already knows something about this case,
 10
 11
      other than just the nature of the charge and what may be
      in the paper? Anybody -- I don't know want to know what
 12
     you know, but is there anybody that has some information
 13
      already about this case that knows something about this?
 14
      t may be somebody involved in the case that you're
 15
      related to or close friends to, had talked to you about
 16
      the case. First of all, this group over here. Is there
 17
      anybody that already knows something about this case other
 18
      than the nature of the charge and what may appear already
 19
 20
      n the paper? Anybody over here?
 21
      (No response.)
 22
           BY THE COURT: Is there anybody in this group over
      here downstairs.
 23
 24
      Jurors raise numbers.)
 25
           BY THE COURT: Let me get your numbers first.
      call your number, you can put your number down. Number
 26
      forty-six, sixty-one, thirty-one, thirty-three,
 27
      fifty-three, thirty-four, fifty-five, thirty-eight,
  28
      $ixty-five. Did somebody raise your number over here
  29
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Voir Dire - Court

employee about this case?

after I was through? And up in the top group. Number one

<code>eighty-two, and eighty-seven. Okay. Now, first of all, I</code>

Johnson, Theodora.

don't want to know what anyone knows, but, first of all,

looking at the wrong one. Mrs. Johnson, I don't want to

know what you know, but how do you know something about

BY THE COURT: Okay. You talked to this other

BY THE COURT: Mrs. Johnson. I'm sorry.

hundred three, one hundred five, seventy-eight,

juror number thirty-one. Mrs. Atwell?

BY JUROR JOHNSON:

Voir Dire - Court

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Voir Dire - Court
                                                              118
         BY JUROR JOHNSON: Yes.
 1
         BY THE COURT: Okay. And I don't know what her name
 2
 3
    s, but I do understand that there is an employee, and
 4
    what is her name?
         BY JUROR JOHNSON:
                            Nancy Barfoot.
 5
 б
         BY THE COURT: Nancy Barfoot. Okay. So you know
 7
    that this co-employee is subpeonaed as a witness in this
 8
    ¢ase?
 9
         BY JUROR JOHNSON: Yes.
                                  Scott -- what's Scott's last
10
    hame? Scott Bandy.
         BY THE COURT: Okay. Now, Mrs. Johnson, if you're
11
    selected as a juror, can you decide this case on the basis
12
    of the evidence as brought forward in this case and not on
13
    basis of what you may have heard from this other employee?
15
         BY JUROR JOHNSON: I don't think so.
16
         BY THE COURT: If you'll just remain with us right
    now, but that's the way you honestly feel?
17
         BY JUROR JOHNSON:
                            Wh-hum.
18
         BY THE COURT:
                         All right.
                                     Juror number
19
20
    thirty-three, Mrs. Johnson. It's not necessary for y'all
    to stand up, but if you will, raise your number high and
21
    just speak out clearly. Mrs. Johnson, how do you know
22
23
    something this case already?
24
         BY JUROR JOHNSON: I go to Grace United Methodist
25
    qhurch, and I'm in a class with at least one person that's
    Heen subpoenaed, Jennifer Ishman and Amanda Goodwin.
26
27
    think she's been subpeonaed.
         BY THE COURT: Now, my questions to you.
28
    understood what I said about it's very important that this
29
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case will be decided on the basis of the evidence that's

119

Voir Dire - Court

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bouldn't.

mpartial in this case?

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Voir Dire - Court
         BY THE COURT: Ladies and gentlemen, I can assure
1
2
    you, the only thing the Court wants is just the straight,
    honest response that you have to these questions. Juror
3
    humber forty-six, Mrs. McDaniel.
 4
        BY JUROR MCDANIEL: I'm close with the sheriff's
5
 6
    department.
         BY THE COURT: And it would be about kind of -- you
 7
    Feel like because of that situation -- I believe your
8
    husband is the chief deputy. It would kind of difficult
 9
    for you to totally wipe that all out of your mind; would
10
    it not?
11
12
        BY JUROR MCDANIEL:
13
        BY THE COURT: And, for the record, I believe her
14
    husband is Bill McDaniel, deputy sheriff. Juror number
    ifty-three, I believe you raised your number. Mrs.
15
    Coley. Amanda Coley.
16
        BY JUROR COLEY: Yes, sir.
17
         BY THE COURT: Yes, ma'am. How do you know something
18
    about this case already?
19
20
        BY JUROR COLEY: I am related to the victim, Maddie.
        BY THE COURT: You're related to who?
21
        BY JUROR COLEY: To the victim, Maddie.
22
        BY THE COURT: We're going to get to that in just a
23
    hinute, but you've already heard a lot about this case
24
25
    already?
         BY JUROR COLEY: Most definitely.
26
         BY THE COURT: And because of that, you feel like it
27
    would be difficult for you to be totally fair and
28
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Voir Dire - Court

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22 talking about it. BY THE COURT: You've heard them talking about it at 23 24 school? 25 BY JUROR CURTIS: Yes, sir. 26 BY THE COURT: You don't feel like you could set that 27 aside and try this case on the basis of the evidence? BY JUROR CURTIS: I am not sure. 28 .29 BY THE COURT: You're not sure. Okay. All right.

people that are close to the baby's grandmothers are

Juror number sixty-one, I believe raised your number.

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Voir Dire - Court

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23

grandmother?

BY JUROR YOUNG: Yes, sir.

BY THE COURT: So have you heard a lot about this

case through your wife?

BY JUROR YOUNG: Yes, sir.

BY THE COURT: Your wife works with the victim's

28 BY THE COURT: You feel like that would make it

29 difficult for you to be a totally fair juror in this case?

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Voir Dire - Court
        BY JUROR YOUNG: Yes.
 1
                         Okay. Juror number seventy-eight,
 2
        BY THE COURT:
                 I believe you raised your number. How do you
 3
    Mrs. Watts.
 4
    know something about this case?
 5
        BY JUROR WATTS: I am a fellow teacher with Lynn
   Britt and Mark and Lynn's daughter, Shannon Rocco, and I
 6
 7
    know pretty much about it.
         BY THE COURT: Okay. You've heard a lot about this
 8
   case already?
 9
        BY JUROR WATTS: Yes.
10
        BY THE COURT: In all honesty, you feel like that
11
    would be kind of -- make it difficult for you to be a
    totally fair juror?
13
        BY JUROR WATTS:
                          Pretty hard.
14
        BY THE COURT: Okay. Juror number eighty-two, I
15
    believe. Ms. Whitley. Where is Ms. Whitley? How do you
16
17
    know something about the case?
        BY JUROR WHITLEY: Well, to actually really know,
18
    it's from what I read in the paper, but then I sit down
19
20
    around with friends and things, and we have discussed the
    base as -- you know -- have heard about the case -- you
21.
22
    know.
                         All right. Well, so you feel like
        BY THE COURT:
23
    that because of that, that you couldn't sit up here decide
24
25
    this case --
        BY JUROR WHITLEY: It would be probably -- it would
26
    probably be kind of difficult.
27
         BY THE COURT: It would be difficult for you?
28
         BY JUROR WHITLEY: All right. Ms. Whitley.
29
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I'm sorry.

BY JUROR MASON: I am a nurse at Natchez Regional

BY THE COURT: But, really, you haven't talked to

anybody that has any particular knowledge?

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Voir Dire - Court

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29

eighty-seven, Mrs. Mason.

details about this case?

29

Voir Dire - Court So I know about the incident that came to the 2 I was not directly involved, but I do know hospital. about the incident coming to the hospital. 3 4 BY THE COURT: Were you out there at the hospital, ma'am, or involved in any of that? 5 б BY JUROR MASON: No. BY THE COURT: But have you talked to other people 7 at the hospital about this? 9 BY JUROR MASON: No. Not really. No. BY THE COURT: Let me ask you this. Is there 10 11 anything about what you've heard or anything about that 12 that you can't set aside and decide this case on the basis 13 of the law and the evidence? BY THE COURT: You could do that? You could do that Thank you. All right. Juror one hundred three. Mrs. McIlwain, I believe. Mr. McIlwain. BY JUROR MCILWAIN: My wife works with the victim's BY THE COURT: You work with the victim's grandmother 27 BY JUROR MCILWAIN: Yes, sir. BY THE COURT: So have you heard a lot of the 28

already?

28

29

Voir Dire - Court

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BY JUROR MCILWAIN: A few.

BY JUROR PARTRIDGE: I am not really familiar with

BY THE COURT: Do you feel like that because of what

126

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ma'am.

Juror number sixty. Mrs. Scarborough.

BY JUROR SCARBOROUGH: I am friends with the baby's

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Voir Dire - Court
                                                             128
   grandmother, and I had a lengthy discussion with Mrs.
   Britt after it happened. Her children had babysat my
 2
   children all their lives, and my children were in her
 3
   daughter's wedding.
 4
 5
        BY THE COURT: So you've heard a lot about this case
 6
   already.
        BY JUROR SCARBOROUGH: I haven't talked to her
 8
   lately, but, yes. I heard a lot about it right after it
9
   happened.
10
        BY THE COURT: Do you feel like it would be difficult
   for you to sit down and be totally fair and impartial --
11
12
        BY JUROR SCARBOROUGH: Extremely difficult.
13
        BY THE COURT: Okay.
                              Who else? Juror number thirty.
14
        BY JUROR MONTGOMERY: I feel like the investigators
15
   have sort of done their job, and my mind is kind of made
   up on that. I'd like for him to get a fair trial, but I'd
   rather not -- you know.
        BY THE COURT: You feel like your mind is made up for
   what?
        BY JUROR MONTGOMERY: As to the decision I would
   make.
        BY THE COURT: Just from what you're hearing about
   the case?
        BY JUROR MONTGOMERY: Pretty much. Yes, sir.
        BY THE COURT: All right. Anyone else that knows
   something about the case. Yes, ma'am. Number
27
   forty-two --
        BY JUROR LOGAN: I am a little late raising mine, but
28
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after listening to the others, the only way I was

connected, I do work at Grace Methodist Church one night a

129

Voir Dire - Court

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office?

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1
         BY JUROR WISNER:
                           Yes, sir.
         BY THE COURT: And anyone else? Juror number twenty.
 2
 3
    Yes, ma'am.
                 That's Mrs. Dobbins.
 4
         BY JUROR DOBBINS: Yes, sir.
                                       I read it in the paper,
 5
    and because of the nature of it and I had someone in my
 6.
    family that was sexually abused, I'm not going to be a
 7
    very fair-minded person.
 8
         BY THE COURT: That's the way you honestly feel.
         BY JUROR DOBBINS: I've already made up my mind.
 9
10
         BY THE COURT: Ladies and gentlemen, let me say this
    now. The question I was asking is who has already heard
11
12
    something about the details of this case, and some people
13
    have expressed that. Ladies and gentlemen, let me say
14
           I know this is an inconvenience to everybody to
    some extent to be up here, and I know ninety-nine percent
15
    df you would rather be some place else, and you're up here
    Hecause you got a summons through the mail, but, again,
17
    ladies and gentlemen, this is the way our system works.
18
19
    Now, it's very important that this defendant receive a
    dompletely fair and impartial trial. The State of
20
21
    Mississippi is entitled to a fair trial also, but we have
22
    to do this according to law. And, you know, we have a
23
    duty as citizens to sit up here and serve on juries. So,
24
    please, let's be straight forward and honest about these
25
    questions, but let's listen very carefully to what the
26
    Court is asking. Is there anybody else that already knows
    something about this case? Yes, ma'am. Anybody else?
27
28
    Yes, ma'am.
                 Juror number ten.
29
         BY JUROR FIORELLO: Okay. I know the baby's family,
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Ms. Allen.

boyfriend.

close.

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Voir Dire - Court
                                                         131
and I believe he has been at my house before with my
children's friends.
     BY THE COURT: This is Mrs. Fiorello.
     BY JUROR FIORELLO: Right. With my daughter's
           I think they all kind of hung out, and he's
been at the house before.
     BY THE COURT: So that's kind of a close connection
to this case.
     BY JUROR FIORELLO: I know one of the girls real
     BY THE COURT: So you've heard a lot about this case
     BY THE COURT: Anybody else that has already -- juror
that are health care professionals, and I do not believe I
     BY THE COURT: Okay. That's the way you honestly
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BY JUROR ALLEN: I feel that I wouldn't be a good

juror in this case either because of sexual abuse in the

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Oir Dire - Court 132 amily and different things, and I just wouldn't be a good berson to --BY THE COURT: That's the way you honestly feel? BY JUROR ALLEN: Yes, sir. BY THE COURT: Yes, sir: Juror number eight. BY JUROR ROUSE: Judge, I know his granddaddy, I don't think I could get up there and be fair. BY THE COURT: You know the defendant's grandfather? BY JUROR ROUSE: Yes, sir. BY THE COURT: And that's pretty strong relationship? BY JUROR ROUSE: Not a relationship --BY THE COURT: Pretty close friendship? BY JUROR ROUSE: Yes. Yes. BY THE COURT: All right. Anyone else? Juror number thirty-four. This is Mrs. Pennington. Yes, sir. I haven't read dnything about it. I don't take the paper, and I don't watch TV. I have a satellite. I don't get local dhannels, and I don't know the young man, but I know the

BY JUROR PENNINGTON: No, I feel like I can do -- you

BY THE COURT: You feel like you can sit up here and

listen to the evidence and decide the case on the basis of

BY JUROR PENNINGTON: Yes. I just wanted you to 27

28 know --

29

BY THE COURT: You do know ~~

BY THE COURT: You've had quite a few come and go

I have.

BY JUROR BARNETT: Yes, sir.

BY JUROR PENNINGTON: -- I do know his grandparents.

Thank you. Anyone else that

Okay.

already knows something about this case?

133

Voir Dire - Court

BY THE COURT:

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dver the years.

BY THE COURT: You know him as being a former

BY THE COURT: Okay. Is there anything about this

BY THE COURT: Okay. Who raised your number back

BY JUROR MCILWAIN: He worked out at the plant where

Juror one hundred three. Mr. McIlwain.

that would influence your decision in any way in this

BY JUROR BARNETT: No, sir.

134

Voir Dire - Court

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¢ase?

there?

worked at.

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    teacher. Mrs. Whittington.
         BY JUROR WHITTINGTON: I work for an insurance
 2
 3
    company --
         BY THE COURT: You need to speak up.
 4
         BY JUROR WHITTINGTON: I work for an insurance
 5
    company and we have his grandparents insured, and I know
 6
    them very well.
 7
        BY THE COURT: You know his grandparents very well.
 8 -
 9
    And that's through a business relationship of working for
    an insurance company.
10
         BY JUROR WHITTINGTON: Yes, sir.
11
         BY THE COURT: Because of that, you feel like that it
12
    would be very difficult for you to be fair and sit as a
13
    uror in this case?
14
    Mrs. Whittington nods head affirmatively.)
15
16
        BY THE COURT: She's shaking her head yes.
17
        BY CIRCUIT CLERK VINES: Your Honor, number seven.
        BY THE COURT: Number seven.
18
        BY DEPUTY WISNER: Right here, Judge.
19
        BY THE COURT: I'm sorry. Yes, ma'am. How do you
20
    Hnow the defendant?
21
         BY JUROR JONES: We attended school together and we
22
    rode the same bus.
23
        BY JUROR JONES: Is there anything about that?
24
        BY JUROR JONES: Unh-unh.
25
        BY THE COURT: Okay. Who else knows the defendant or
26
27
    His family. Juror number seventy-five. Yes, ma'am.
                                                          Mrs.
    Hisher.
28
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BY JUROR RISHER: I work at Old South Federal Credit

135

Voir Dire - Court

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29

BY THE COURT: We're going to get to the other.

Het's just take these one at a time. First, who knows the

Union and both set of grandparents are members there.

would influence your decision in this case?

BY THE COURT: Is there anything about that that

136

Voir Dire - Court

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defendant or his family?

(No response.)

BY THE COURT: Any type of relationship at all --

BY JUROR PRESCOTT: I don't have a relationship, but

BY THE COURT: Anybody else that knows the defendant

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Voir Dire - Court

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LASER BOND FORMA

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know who they are.

BY THE COURT: Okay. Representing the defendant in

BY THE COURT: You know who they are.

wouldn't influence your decision just knowing who they

Right.

am going to introduce for you the attorneys in this

matter. Keep in mind, that the attorneys are

BY THE COURT: Ladies and gentlemen, at this time, I

They're up here doing their job on both

138

So that

Voir Dire - Court

professionals.

BY JUROR PRESCOTT:

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are?

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Voir Dire - Court
    this case are attorney Gus Sermos. This is attorney Gus
 1
    $ermos and Robert Clark. First of all, is there anyone
 2
    that is related by blood or by marriage to either one of
 3
 4
    these two attorneys, would you please raise your number.
    (No response.)
 5
         BY THE COURT: All right. Attorney Gus Sermos has an
 6
    office in Pike County, Mississippi. He practices in a
 7
    number of counties in this judicial district.
 8
    anyone that Mr. Sermos is either handling a legal matter
 9
    for now for you or your immediate family or has handled
10
    one in the past, would you please raise your number.
11
12
    tight.
            This is juror number eighty-seven. Okay. Mrs.
            I don't want to know what it is.
                                              Is this
13
    something that was going on now or in the past?
14
15
         BY JUROR MASON: In the past.
         BY THE COURT: Was this for you or for a family
16
17
    thember?
         BY JUROR MASON: Family member.
18
         BY THE COURT: And is there anything about that that
19
20
    would influence your decision in this case?
         BY JUROR MASON:
21
                          No.
         BY THE COURT: Anyone else as to attorney Gus
22
            All right. Attorney Robert Clark practices both
23
    in Louisiana, across the river, and over here in Adams
24
    county. Is anyone that Attorney Robert Clark is either
25
    Handling a legal matter for you or your immediately family
26
    how or has handled one in the past, would you please raise
27
    your number? Juror number sixty-eight. I don't want to
28
29
    know what this is. This is Mr. Huff. Is this something
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Oir Dire - Court
                                                              140
    that's over and done with in the past?
 1
         BY JUROR HUFF:
 2
                         Yes.
 3
         BY THE COURT: How long was that?
         BY JUROR HUFF: Eight or ten years.
 5
         BY THE COURT: It's been a number of years.
 6
         BY JUROR HUFF: Right.
 7
         BY THE COURT:
                        Is there anything about that that
    would influence your decision in this case?
 8
 9
         BY JUROR HUFF: No.
10
         BY THE COURT: Anybody else that Attorney Robert
    ¢lark --
11
12
     No response.)
13
         BY THE COURT:
                         Okay. All right. Ladies and
    dentlemen, I want you to listen to me carefully. Several
14
15
    jurors have already eluded to this matter, but this is a
16
    dharge of capital murder, and what that means is that if
    the defendant is found guilty of capital murder, then one
17
18
    df the possible penalties that may be considered in this
19
    dase would be the death penalty. Mississippi is a state
    that has a death penalty as a number of other states do
20
    and also the federal government has. It has been
21
22
    recognized as a constitutional form of punishment.
23
    this is something that we have in our law. Now, first of
    all, I want you to understand this. If the defendant is
25
    found quilty of this charge of capital murder, it's never
    instance in the law where the death penalty is mandated to
26
    something that automatically comes about. It is always
27
    something that is submitted separately to the jury to
28
29
    decide on the basis of the law and the evidence to
```

```
consider whether or not the death penalty should be
 2
    imposed in the event that the defendant is convicted and
 3
    found guilty of capital murder. Now, so it's not
    something that's automatic. First of all, it's something
 4
    that as a juror under your oath that you are to consider
 5
    on the basis of the law and the evidence. First of all, I
 6
    am going to ask this section over here. Is there anybody
 7
    that would automatically vote to impose the death penalty
 8
    if the defendant were found guilty in this case that
 9
    wouldn't fairly consider it under the evidence? So is
10
11
    there anybody that would automatically vote to impose the
    death penalty from this group over here in the event that
12
    the defendant was convicted and found guilty of capital
13
14
    hurder?
15
    (No response.)
         BY THE COURT: What about this group over here?
16
    everybody understand what I am saying? It's not something
17
18
    that is automatically imposed, and regardless of what your
    personal feelings may be, is there anybody that would just
19
20
    automatically vote to impose the death penalty if the
21
    defendant were found guilty?
22
    (No response.)
23
         BY THE COURT: What about this group up here? Juror
24
    humber one hundred five. That's the way you honestly feel
25
    about this?
         BY JUROR DAVIS: Uh-hum.
26
         BY THE COURT: And juror number one hundred three.
27
28
    Now, the other side of this, ladies and gentlemen, is that
      realize that the death penalty is something that people
29
```

```
have very strong feelings about, and the law recognizes
 1
 2
          Now, the fact that you may have strong feelings
 3
    about the death penalty, that's all right. That's all
            But it's very important that if you sit as a juror
 4
 5
    n this case that you follow the law, that you decide the
 б
    f tase on the basis of the law and the evidence, and if the
    defendant is found guilty of capital murder, that you be
 7
 8
    villing to listen to the law and the evidence and to
 9
    consider the imposition of the death penalty. Now, as I
    said, I realize that some people have some very strong
10
    eelings about this, and that's okay.
11
    understandable. Now, first of all, on this group over
12
13
    here, is there anyone that can tell me before you ever
14
    hear any evidence in this case, that you have feelings so
15
    strong against the death penalty that you cannot under any
16
    ¢ircumstances consider imposing the death penalty? Is
17
    there anybody in this group over here that has such strong
18
    feelings like that? Juror number ten, number four, number
    five, and number thirteen. Anybody else in this group
19
    over here? And just to make sure I understand you, what
20
    you're saying is regardless of what the evidence may be,
21
    you cannot under any circumstances vote to impose the
22
23
    death penalty? Is that your feelings?
24
         BY THE GROUP OF JURORS:
                                  Yes.
         BY THE COURT: This group down here at the bottom.
25
    s anybody -- who feels like that over here? Number
26
27
    twenty-two, twenty-six, thirty, thirty-two -- put your
28
    numbers down when I call them out -- thirty-five,
29
    thirty-eight, thirty-nine, forty-three, forty-four,
```

```
fifty-four, sixty-one, fifty-eight, sixty-three,
    sixty-four, sixty-five, and sixty-six. And now up at this
 2
 3
    top group. Who is it that feels like that? Under any
 4
    pircumstances you just cannot consider imposing the death
    benalty under any circumstances? Number eighty-nine,
 5
    seventy-seven, ninety-four, ninety-nine. Is there anyone
 6
 7
    else? Ladies and gentlemen, each of you raised your
    humbers, you're telling this Court under your oath that is
 8
 9
    honestly the way you feel? Each of you that raised your
    humbers? Okay. Ladies and gentlemen, it's getting close
10
11
    to twelve. We're going to be taking a break for lunch in
12
    ust a little bit. I do appreciate everybody being
13
    straight forward in your responses because I feel like
14
    everyone has. And this is a very important matter, a very
15
    serious matter. Now, as I said, we're going to get
16
    through with this selection some time this afternoon, and,
17
    again, those of you that are not selected, you'll be
18
    hrough with your jury service. Now, when we take this --
19
    we're going to be taking this break in just a moment.
20
    Again, I don't want anybody to have any contact with
21
    nybody about this. You shouldn't be talking with anybody
22
    about this case. I know some of you have indicated that
23
    because of relationships or who you are related to or know
24

ør work with, that you've already talked to somebody about

25
    his case, and that's fine, but during this recess over
    he lunch hour, I don't want anybody talking to anyone
26
    about this case. When you come back here -- first of all,
27
28
    when you leave, make sure you leave your numbers.
29
    best way would be just leave them right on your seat.
```

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Voir Dire - Court

1 to remember where you're sitting because when we come back 2 after lunch, it's going to be necessary that we do get everyone back in the same order so that we can -- so that fe can keep up with this. I can tell you, I will try to hove this along just as quickly as we can, but this is a very serious matter, and it's very important that it be done absolutely according to the law and in a completely fair and impartial manner. There are still -- the attorneys for each side will be allowed to ask you further So that's why we're just going to recess at questions. this point. I want to give you plenty of time to get something to eat. I am going to ask that everybody be back by 1:15. By 1:15. Are there any other matters we need to take up over the lunch time?

BY MR. HARPER: Not that I am aware of, Your Honor. BY MR. SERMOS: Not that I'm aware of, Your Honor.

am going to say 1:30. We're going to recess until 1:30.

Now, again, keep in mind what I said. Keep in mind that

these deputies, these attorneys, they're not going to be

speaking to you because they're under very strong rules of

court. So please keep that in mind. Also you may have 22

I have a policy I go by. I don't care for 23 noticed.

24 everybody jumping up and down every time the judge come in

or goes out of the courtroom. I just do that one time at 25

the beginning of the morning and that's because I usually 26

dpen court with a prayer. I feel like that our court need 27

lots of prayers these days. Please keep that in mind, and 28

so let's please have everybody back here at one -- yes, 29

```
ma′aπ.
 1
         BY JUROR MARTIN: What do you do if you're taking
 2
    medication?
 3
         BY THE COURT: Medication. All right. If you'll
 4
    come down here, but everybody else, let's please be back
 5
 6
    here at 1:30 so we can promptly begin at that time and
 7
    we'll move forward.
    (Jurors are excused for lunch.)
 8
         BY THE COURT: Is this Mrs. Martin?
 9
         BY JUROR MARTIN:
10
                           Yes.
11
         BY THE COURT: Yes, ma'am. You tell me you're taking
    medication?
12
13
         BY JUROR MARTIN:
                           Yes.
         BY THE COURT: What kind of medication?
14
         BY JUROR MARTIN: Diabetic pills, fluid pills, blood
15
    pressure pills, pain pills.
16
17
         BY THE COURT: Because of that, you'd feel like you'd
    have a hard time sitting up here --
18
19
         BY JUROR MARTIN: Just nauseated because I have back
20
    problems.
         BY THE COURT: Do you work anywhere?
21
22
         BY JUROR MARTIN:
                           No.
         BY THE COURT:
                       You just stay at home.
23
         BY JUROR MARTIN:
24
                           Yes, sir.
25
        BY THE COURT:
                       Who's your doctor?
26
        BY JUROR MARTIN: Dr. McArthur.
                               Ma'am, I tell you what.
27
         BY THE COURT: Okay.
28
    going to let you go. This is Mrs. Marjorie Martin, right.
```

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Voir Dire - Court

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29

You can go.

29

BY JUROR MARTIN: Thank you.

l 2 BY THE COURT: Let the record show that the Court is 3 going to excuse juror number ninety-nine. This is Mrs. Marjorie Martin. If you may recall, she raised her number 4 5 before we took the first break and said she needed to discuss with me about medication. She has come forward to 6 the bench now, and she is taking just a tremendous amount 7 8 of medication, is under a doctor's care. She doesn't 9 work. She's at home. She's having a little difficulty 10 So I am going to excuse her for medical reasons. 11 They are very clear to the Court, and she's taking all 12 kind of pills and medication. That's juror number 13 hinety-nine. (After a lunch recess from approximately 12:00 until 1:30, 14 15 the following was made of record, to-wit:) BY THE COURT: Ladies and gentlemen, as I said 16 previously, part of the voir dire process will be for the 17 18 attorneys also to ask you questions. So at this time, I 19 am going to allow that to happen. Again, I want to 20 encourage you to please answer the questions honestly. you should give a response, please give a response to the 21 question that was asked of you, and, again, hold up your 22 23 humber so that we can get it and be sure to speak out loud 24 enough so that the court reporter can take it down. 25 this time, the Court is going to allow further voir dire 26 by the State. Mr. Harper, I would ask that you try not to .27 go back through the same area that the Court covered. 28 Also, I don't want the jurors instructed on what the law

Ladies and gentlemen, the Court will do that at the

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29

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proper time. Mr. Harper, you may go ahead and proceed.
```

BY MR. HARPER: May it please the Court, Your Honor?

BY THE COURT: Yes, sir.

BY MR. HARPER: Good afternoon, ladies and gentlemen. As his Honor Judge Johnson has told you, my name is Ronnie I have the honor and privilege of serving as your district attorney, and I, along with Tom Rosenblatt, one bf your assistant district attorneys, will be representing the People of the State of Mississippi in this case today. In a criminal case, which is what we're here on today, it is the State of Mississippi, the People of the State of Mississippi versus the defendant, as they are charged with violating a law, a criminal law or criminal statute of the State. When I stood up here, there was a note on my table that said "slow." That's from the court reporter because I have a bad tendency to get in a hurry. So y all bear with me and I'll try to slow down. I'll try not to take any longer that I absolutely have to, but I do want to try to accommodate her. As the Judge told you, Mrs. Murray is the official court reporter, and it's her duty and obligation to record everything that we do here today. This is what's called a court of record which means that everything that happens in here has to be recorded. you can see, she has a tape recorder, and she also has this little machine here that she uses that I wouldn't have any idea how to operate, but at any rate, if y'all will bear with us and if you will answer out loud. If I ask questions or if you'll hold your number up so that we

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Voir Dire - Harper
    can be sure to see it and that I can slowly read them off
 1
    for her so that she'll be able to get those down.
 2
 3
    all of you do that for me?
 4
         BY THE JURORS:
                         Yes, sir.
 5
                         Speak up for me, now.
         BY THE COURT:
         BY THE JURORS:
                         Yes, sir.
 6
 7
         BY MR. HARPER:
                         Thank you. Now, the Judge has told
 8
    you a little bit about this case. I'm going to give you a
 9
    little more information. I don't want to go into a lot of
10
    Betail about it, but, this case, as the Court has told
11.
    you, is the State of Mississippi versus Jeffrey Keith
12
             He is charged with capital murder, and what he
    Havard.
13
    is, in essence, charged with is committing a murder while
14
    In the act of committing another crime, that being sexual
15
    battery. The victim in this case was a child, a
16
    six-month-old child by the name of Chloe Madison Britt.
17
    It occurred on February 21st of 2002 at somewhere between
18
    hine and 9:40 p.m. on that date. Primarily the allegation
19
    is and we would attempt to prove that it happened at 33
20
    Montgomery Road in the Cloverdale subdivision here in
21
    Adams County, Mississippi. The child was transported to
22
    the Natchez Community Hospital and was either DOA or I
23
    think they did some resuscitation attempts there, and she
    was declared to be deceased at the hospital. Having told
24
25
    you that, I know several people raised their hands if they
26
    have heard anything about it. Is there anybody that
27
    remembers now that they may have heard something about it
28
    that didn't remember before about what information they
29
          Anyone?
                     Thank you.
    have?
```

```
Voir Dire - Harper
         BY CIRCUIT CLERK VINES: Ronnie?
 1
 2
         BY MR. HARPER: Do you have one?
         BY CIRCUIT CLERK VINES: You've got two.
 3
         BY MR. HARPER: I apologize. I think this is the
 4
 5
    First time I have every tried to do this with jurors in
    the balcony. So y'all bear with me. Number eleven,
 б
 7
    number ninety-one, seventy-nine, eighty, eighty-one,
    ninety-four, and ninety-eight. Okay. Well; the Judge had
 8
    asked is anyone -- I won't go in any detail with any of
 9
    you specifically because he asked this morning about how
10
11
    people had heard about it. Is anyone that heard about it
    other than just reading about it in the paper? Anybody
12
13
    hear about it -- number one hundred five. That's Mr.
14
    Davis; is that right, sir?
         BY JUROR DAVIS:
                          Yes, sir.
15
                         How did you hear about it, Mr. Davis?
16
         BY MR. HARPER:
         BY JUROR DAVIS: From a physician.
17
                         I believe you mentioned that earlier;
         BY MR. HARPER:
18
   did you not?
19
         BY JUROR DAVIS: Yes, sir.
20
         BY MR. HARPER: Number ninety-eight. How did you
21
22
   hear it?
         BY JUROR BERRY: From my wife that works for a
23
    physician.
24
                                I know there's been a lot of
25
         BY MR. HARPER:
                        Okay.
    talk about this case and a lot of publicity.
26
27
    One hundred three. Can all of you that raised your
    numbers, and I will try not to do this and belabor this.
28
29
    Is there anyone that raised your number that feels like
```

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Voir Dire - Harper
    you can't disregard whatever you've heard about this case
 2
    and base your decision today solely on the evidence as you
 3.
    hear it from the witness stand? Anyone? Ninety-eight,
    one hundred five, and one hundred three, and number
 4
 5
    thirteen.
               I believe you -- and number sixty-one.
 6
    be getting some people that raised their number before.
 7
    Is these all new people? If you raised your number
 8
    before, I think we pretty much asked you about those.
 9
    I'll just ask if there's anyone else that had heard about
10
    it. Number ninety-eight. You're Mr. -- bear with me.
11
    Mr. Berry; is that right?
12
         BY JUROR BERRY: Yes, sir.
13
         BY MR. HARPER: And you feel like you would have a
14
    problem with that, Mr. Berry?
15
         BY JUROR BERRY: Yes, I would.
16
                        You say you talked to your wife.
         BY MR. HARPER:
17
    had talked -- was she a witness to it or did she just hear
    about it?
18
         BY JUROR BERRY: Well, my baby go to the same doctor
19
20
    that examined the baby at the hospital, and we heard --
21
    you know -- stories from that.
22
         BY MR. HARPER: You feel like based on that, you
    wouldn't be able to put that aside and base your decision
23
24
25
         BY JUROR BERRY: No, sir.
26
         BY MR. HARPER: You feel like it would cause you
27
    problems in being able to be fair and impartial.
28
         BY JUROR BERRY: Yes, sir.
```

Thank you, sir. Now, again, I am

29

BY MR. HARPER:

IN THE SUPREME COURT OF MISSISSIPPI

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· ·Ca	ase #2003-DP-00457-SCT
COURT APPEALED FROM: Circuit Court	
COUNTY: Adams TRIAL JUDGE: Forrest A. Johnson Jr. Jeffrey Keith Havard v. State of Miss	ะสรบระจะบระบะบะบะบะบะ sissippi
Betty W. Sept	nton, Clerk
TRIAL COURT#: 02-KR-0141-J	3 = X = 2 = 2 + 2 + 3 = 3 = 3 = 3 = 3 = 3 = 3 = 3 = 3 = 3