

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT
SITTING WITHIN AND FOR LINCOLN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
Plaintiff,)
v.) Case No. CF-95-104
JOSHUA D. STUMP,)
Defendant.)

T R A N S C R I P T

of
Proceedings held in the above-entitled and numbered cause on
December 20, 1995, January 19, 1996, February 23, 1996,
March 13, 1996, and April 25, 1996, in Courtroom No. 1 of
the Lincoln County Courthouse, Chandler, Oklahoma.

BEFORE: THE HONORABLE PAUL M. VASSAR
District Judge

REPORTED BY: Patricia L. Wible, RDR
District Court Reporter
Lincoln County Courthouse
811 Marvel Avenue, Suite 13
Chandler, Oklahoma 74834

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

For the Plaintiff: MILES C. ZIMMERMAN
BARNEY K. BARNETT
District Attorney's Office
Lincoln County Courthouse
811 Manvel Avenue, Suite 8
Chandler, Oklahoma 74834

For the Defendant: DAVID TIPTON BALL
Attorney at Law
503 West Fourth Street
Stroud, Oklahoma 74079

JAMES T. ROWAN
RAND C. EDDY
Capital Trial Division
Oklahoma Indigent Defense System
P.O. Box 926
Norman, Oklahoma 73073

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

Page

DECEMBER 20, 1995:

Arraignment of the defendant 4

JANUARY 19, 1996:

Defendant's motion for continuance 10

FEBRUARY 23, 1996:

Defendant's pretrial motions 22

State's application for hearing on material
witness warrant 77

MARCH 13, 1996:

Defendant's motion for continuance 79

APRIL 25, 1996:

Defendant's change of plea hearing 96

Joshua D. Stump:
Examination by the Court 99

Court's judgment and sentence 105

Court reporter's certificate 107

1 (The following proceedings were had in open court on
2 December 20, 1995:)

3 THE COURT: Is your true and correct name Joshua
4 Daniel Stump?

5 DEFENDANT JOSHUA STUMP: Yes, sir.

6 THE COURT: Mr. Stump, the district attorney has
7 filed a felony information against you that charges you with
8 the offense of murder in the first degree. Have you
9 received a copy of this felony information?

10 DEFENDANT JOSHUA STUMP: Yes, sir.

11 THE COURT: Have you read it?

12 DEFENDANT JOSHUA STUMP: No.

13 THE COURT: All right.

14 DEFENDANT JOSHUA STUMP: Oh, yes, sir. Yes, I
15 have.

16 THE COURT: Are you sure that you've read it?

17 DEFENDANT JOSHUA STUMP: Yes, sir.

18 THE COURT: Do you understand it?

19 DEFENDANT JOSHUA STUMP: Yes, sir.

20 THE COURT: In addition, the district attorney
21 has filed a bill of particulars with the request for the
22 imposition of the death penalty. Have you received a copy
23 of that bill of particulars?

24 DEFENDANT JOSHUA STUMP: Yes, sir.

25 THE COURT: Have you read that?

1 DEFENDANT JOSHUA STUMP: No, sir.

2 THE COURT: Why don't we take a minute and have
3 the district attorney read that to you.

4 MR. BARNETT: "In the District Court of the
5 Twenty-Third Judicial District sitting within and for
6 Lincoln County, State of Oklahoma.

7 "State of Oklahoma, plaintiff, v. Joshua Daniel Stump,
8 defendant. Case No. CF-95-104.

9 "Bill of Particulars, request for imposition of the
10 death penalty.

11 "Comes now Miles C. Zimmerman, the duly and regularly
12 elected, qualified and acting District Attorney for the
13 Twenty-Third Judicial District of the State of Oklahoma,
14 Lincoln County Division, and does upon his oath as District
15 Attorney give this Court to know and be informed that the
16 crime of Murder in the First Degree, as charged in the
17 Amended Felony Information on file herein, was committed by
18 the said Joshua Daniel Stump, named therein, and that the
19 said Joshua Daniel Stump should be punished by death due to
20 and as a result of the following aggravating circumstances,
21 to wit:

22 "1. The murder of the said Katharina Knight was
23 especially heinous, atrocious and cruel in that the said
24 Katharina Knight sustained wounds inflicted by blasts from a
25 12-gauge shotgun which wounds did not result in her

1 instantaneous death and that the said Katharina Knight
2 languished and suffered from said wounds before losing
3 consciousness and ultimately dying therefrom;

4 "2. The Defendant, Joshua Daniel Stump, knowingly
5 created a great risk of death to more than one person in
6 that the Defendant not only killed the said Katharina
7 Knight, but seriously wounded Hubert Moucka by shooting him
8 and causing the ultimate amputation of his hand and further
9 that the Defendant, Joshua Daniel Stump's accomplice, Robert
10 Anderson, was shot and killed during the hold-up attempt as
11 a great result of the risk created by the Defendant Joshua
12 Daniel Stump, and

13 "3. That due to the past history of the Defendant
14 coupled with his complete lack of remorse for this crime,
15 there exists a probability that the Defendant will commit
16 criminal acts of violence that will constitute a continuing
17 threat to society.

18 "Miles C. Zimmerman, District Attorney."

19 THE COURT: Do you now understand the reading of
20 the bill of particulars?

21 DEFENDANT JOSHUA STUMP: Yes, sir.

22 THE COURT: I will advise you, sir, that you are
23 presumed to be innocent of these charges until you are
24 proven guilty beyond a reasonable doubt as to each and every
25 material allegation contained in the information and in the

1 bill of particulars. Do you understand that?

2 DEFENDANT JOSHUA STUMP: Yes, sir.

3 THE COURT: You have the right to have an
4 attorney to represent you at each and every stage of these
5 proceedings. If you are without funds to employ a lawyer,
6 one will be appointed at no cost to you. You've made
7 application to the Court, and Mr. Ball has heretofore been
8 appointed for you and stands by your side now. And it's my
9 understanding that as a result of the filing of the bill of
10 particulars, Mr. Rowan appears for you, both at no cost to
11 you.

12 Is that correct, gentlemen?

13 MR. ROWAN: That's correct, Judge.

14 MR. BALL: Yes, your Honor.

15 THE COURT: I will further advise you, sir, that
16 the range of punishment on these particular offenses goes
17 from life, life without parole, or the death sentence. Do
18 you understand all of that?

19 DEFENDANT JOSHUA STUMP: Yes, sir.

20 THE COURT: How old are you, sir?

21 DEFENDANT JOSHUA STUMP: Seventeen.

22 THE COURT: What is your educational background?

23 DEFENDANT JOSHUA STUMP: Ninth grade.

24 THE COURT: Can you read and write the English
25 language?

1 DEFENDANT JOSHUA STUMP: Yes, sir.

2 THE COURT: Have you consumed any alcohol,
3 drugs, or medication within the last 24 hours that affects
4 your ability to understand these proceedings?

5 DEFENDANT JOSHUA STUMP: No, sir.

6 THE COURT: Have you ever been treated or
7 observed for any mental illness?

8 DEFENDANT JOSHUA STUMP: No, sir.

9 THE COURT: Do you feel that you're competent to
10 proceed in this particular matter?

11 DEFENDANT JOSHUA STUMP: Yes, sir.

12 THE COURT: Is that assessment shared by the
13 counsel involved in this particular case?

14 MR. ROWAN: Yes, sir. He is presently
15 competent.

16 MR. BALL: Yes, your Honor.

17 THE COURT: I will advise you, sir, that you
18 have the right to a speedy and public trial, a trial by an
19 impartial jury, the right to cross-examine the witnesses who
20 testify against you, to subpoena and present witnesses on
21 your behalf at no expense to you, to remain silent and not
22 testify, and to demand an additional day in which to enter a
23 plea. Do you understand those rights?

24 DEFENDANT JOSHUA STUMP: Yes, sir.

25 THE COURT: You have the right to enter a plea

1 of not guilty and, in so doing, exercise all of the rights
2 that I have just told you about. Do you understand that?

3 DEFENDANT JOSHUA STUMP: Yes, sir.

4 THE COURT: All right. Are you prepared at this
5 time to enter a plea to the felony information charging you
6 with the crime of murder in the first degree?

7 MR. ROWAN: Yes, sir, he is.

8 THE COURT: And how, then, do you plead, sir?

9 MR. ROWAN: He pleads not guilty to the charge.

10 THE COURT: All right. The not guilty plea will
11 be received by the Court. Your case will be set on the
12 disposition -- criminal disposition docket of this Court on
13 January 23, 1996, at 9:30 a.m. in this room, and the trial
14 of this matter will be had to a jury of your peers beginning
15 on February 5, 1996, at 9 a.m. in this room.

16 This being a capital offense, no bond will be set in
17 the matter.

18 Is there anything further to be resolved in this
19 matter today, gentlemen?

20 MR. BARNETT: Nothing on behalf of the state,
21 your Honor.

22 MR. ROWAN: No, sir.

23 THE COURT: All right. Remanded to the custody
24 of the sheriff.

25 END OF PROCEEDINGS

1 (The following proceedings were had in open court on
2 January 19, 1996:)

3 THE COURT: Let's see, Mr. Rowan. I think we're
4 here this afternoon on your motion for a continuance of the
5 trial.

6 MR. ROWAN: Yes, sir, Judge.

7 THE COURT: Please proceed.

8 MR. ROWAN: I really don't have anything to add
9 to the motion. I pretty well set out the history as I
10 gleaned it from the docket sheet in this case.

11 The main thing, your Honor, that I would want to
12 emphasize is that since I got in this case, I have worked
13 diligently toward becoming prepared, and actually, things
14 have fallen into place pretty well for my case. The only
15 thing that is really something we can't do without is an
16 independent investigation for testing of the physical
17 evidence, the shotgun and the pistol, that I'd like to have
18 a ballistics expert look at in Tarrant County, Texas. And
19 the state is not finished with those items, I don't believe,
20 at this time.

21 Also, your Honor, I've hired a psychologist to examine
22 Mr. Stump. And because of the weather yesterday, she called
23 me right before I left the house and said she wasn't going
24 to drive from Tulsa. So I have to reschedule her, and
25 sometimes their schedules are hard to -- you know, it's hard

1 to get them down here.

2 So, your Honor, I'm not sure how long the OSBI is
3 going to require the weapons in order to look at them.
4 They've had them since July of this year, or '95. My people
5 tell me that they would need them about two weeks to do the
6 tests that I have asked them to do. So, your Honor, I don't
7 think we'd be ready by February 5th.

8 THE COURT: What say you, Mr. District Attorney?

9 MR. ZIMMERMAN: Judge, certainly the state has
10 no desire to postpone the trial, not only from the
11 standpoint of the victims but, likewise, from the standpoint
12 of the defendant and his constitutional right to a speedy
13 trial. It is my understanding, your Honor, that the bureau
14 is not yet finished with these weapons. They should be at
15 any time. And certainly we'll be turning them over to Mr.
16 Rowan whenever that happens.

17 However, Judge, in all candor, I think that what Mr.
18 Rowan is asking for in terms of an independent examination
19 of those firearms is certainly within the defendant's right,
20 and I assume that it would take them approximately two weeks
21 to do the testing in Fort Worth. It's certainly taken the
22 OSBI that long.

23 In short, your Honor, I think that Mr. Rowan's motion
24 is well-founded, and I don't believe the state is in a
25 position, in good conscience, to contest that motion at this

1 time.

2 I would ask that the Court, if this case is going to
3 be passed, that the case be set as soon as practical, in
4 March or thereabouts, so that we can get on with the trial
5 and not encounter difficulties with the speedy trial
6 arguments and such as that, Judge.

7 THE COURT: Mr. Rowan, when do you believe you
8 would be ready?

9 MR. ROWAN: Your Honor, probably two weeks after
10 we get our hands on the firearms. And that's a floating
11 date, unfortunately, because the OSBI has to give them to
12 us. In order to effectate that transfer, we will present a
13 proposed protective order to make sure that while the
14 firearms are not in the district attorney's possession, that
15 certainly they'll be safely handled and given back to them
16 in the same condition that they were in when we received
17 them.

18 And if, God forbid, they were lost in the mail or lost
19 in transit from here to Fort Worth, we would certainly
20 stipulate that -- you know, to the jury that we lost the
21 firearms while they were in our possession, a protective
22 order along those lines.

23 But to answer your question as truthfully as possible,
24 I can't say until I know when the firearms will be in our
25 possession. So certainly March is open for me. I think we

1 can be ready in March.

2 THE COURT: Well, let me ask both of you this
3 question. We have summoned 250 jurors for this term of
4 court that is to begin February the 5th. We do not need
5 that many jurors normally to try a case or to try cases in
6 this county at a term of court. And they had been summoned
7 with at least the thought in my mind that this was a capital
8 case and those always present some degree of difficulty in
9 selecting the jury.

10 If I were to continue the case -- and it's my
11 understanding that the statutory law is that jurors can be
12 summoned for 16 days of service, although they can be held
13 to stay longer if they're sitting on a particular case that
14 exceeds the 16th day -- would either one of you have any
15 objection to using the same jury panel that we are summoning
16 to come in here on the 5th of February?

17 MR. ZIMMERMAN: No, I wouldn't, Judge.

18 MR. ROWAN: Judge, can I ask a few questions
19 about this panel? They have not heard a case, as I
20 understand it.

21 THE COURT: At this point in time, they have not
22 heard a case.

23 MR. ROWAN: And I'm not -- I don't take the
24 local papers or anything, as far as a subscription, but I
25 would be concerned if there was an undue amount of press

1 coverage in this case, that they may become affected by that
2 press coverage. And so certainly I'm going to talk to
3 everybody on the defense team. Mr. Ball is sort of a pro
4 bono local counsel. Mr. Rand Eddy is the second chair that
5 I've hired from Oklahoma City. Certainly, the defense will
6 not be making any statements to the press whatsoever from
7 this day forward.

8 I talked to Mr. -- Miles, also, and he's assured me
9 that there's going to be nothing but factual information
10 given to the press.

11 I'm concerned, your Honor, that if this jury stays on
12 this case too long and they know that it's because of a
13 murder case, then they'll start watching the papers for a
14 murder case and see which one it is -- and it won't take a
15 rocket scientist to figure out which case it is -- they'll
16 absorb everything they possibly can in the paper, and then
17 we'll have a problem.

18 So right now I don't have any problem with these
19 people, Judge, but I'd ask that both sides give the Court
20 assurances that there will be no interviews with the press
21 concerning this case.

22 THE COURT: Well, when anyone tells me "right at
23 this point in time," they've qualified their statement to
24 me.

25 MR. ROWAN: Yes, sir.

1 THE COURT: And to me, a jury is sacrosanct. I
2 don't -- you're entitled to a fair and impartial jury as
3 well as the state.

4 And I've read your motion where you did not wish to
5 have anyone released for the usual reasons, and no one has
6 been released from this jury pending the -- other than those
7 who are entitled to automatic, through age or infirmity,
8 entitled to automatic release. And I was going to await the
9 ruling on -- my ruling on that and hearing your argument
10 before we made any further determination along that line.

11 So it's really not fair to bring -- there has to be
12 some fairness to the jurors, and it's not fair to bring
13 these people in here if we're not going to use them. And we
14 always have a necessity of qualifying them through the
15 statutory method, and then we have a little instructional
16 film that we show them as we begin, which really is pretty
17 innocuous, just explains, basically, how our system works.

18 Insofar as the press is concerned, I've seen very
19 little coverage in it from any aspect. But, then, I'm not
20 the person to ask about that.

21 I'm going to need to know from you, Mr. Rowan, I
22 think, definitely whether this panel is all right with you,
23 because if it isn't and I grant you a continuance, I'm going
24 to have to immediately summon another panel. Is this
25 something you'd like a few minutes to think about?

1 MR. ROWAN: No, sir. This panel will be all
2 right with us, is the short answer. The only reservation I
3 have is that each county is different in their liberality in
4 accepting excuses for being off the panel. Will the lawyers
5 be allowed to be present when the excuses are presented?

6 THE COURT: Well, they come in here every day.
7 And I welcome you to my chambers and will prepare a seat for
8 you, and you can sit there and listen while my bailiff hears
9 their irate, sometimes, tales of difficulty. One lady
10 yesterday was most insistent that we were going to bankrupt
11 her.

12 And I think some of your -- and I recognize that you
13 go from county to county trying these cases. There is a
14 list of jurors available to you here today and, in fact, if
15 you will, please stop by the court clerk's office and get
16 that list before you leave. A jury questionnaire is sent
17 out and is not nearly as voluminous as that that you have,
18 and those trickle in at various points in time, sometimes as
19 late as the day that they come in here to actually begin the
20 service, which would be Monday the 5th. And that will be
21 made available to you by the court clerk, I'm sure.

22 The list of exemptions claimed is in the -- is in my
23 chambers, and you're welcome to look at those before you
24 leave here today. Most of them fall on hardship, fall
25 either through illness or, more likely, pecuniary necessity.

1 I've given some -- just thinking out loud -- given
2 some contemplation, not needing this many jurors, about the
3 possibility of drawing some from the panel and setting them
4 aside until whenever we continue it, but I'm afraid we're
5 not going to have enough. We're going to have to combine
6 both of them.

7 Let me just -- I can see the position that both of you
8 have insofar as a continuance is concerned. We're going to
9 be in a jury term in Shawnee on the 18th of March. And the
10 first date that I have which, with little effort, I could
11 accommodate a jury here -- and I presume it will take us
12 perhaps as long as a week to try this case -- would be the
13 25th of March.

14 How does that suit everyone's fancy?

15 MR. ROWAN: That's completely open with the
16 defense.

17 MR. ZIMMERMAN: That's fine, Judge.

18 THE COURT: I'm going to grant the defendant's
19 motion for continuance to the 25th of March. I think he has
20 a valid point insofar as the exhibits. He's entitled to
21 have them reviewed by his experts, and I think we just need
22 to keep that in the back of our mind.

23 And insofar as the jury is concerned at this point in
24 time, unless I hear objections now from either one of you,
25 it will be my intention to use the same jury that we call

1 here on the 5th of February. They will not have exhausted
2 the days that they have available to them. And it may well
3 be that from that group, inasmuch as we're not going to need
4 the full complement of them -- and we usually end up with
5 about 150 out of the 250. And by the time we take into
6 account people that are out of county and are past 70 years
7 of age -- it may well be that we draw 30 or so of them aside
8 and have them come in the morning of the 25th together with
9 some others from the other panel.

10 Now, if you have any objections to that, I'm going to
11 grant you -- do both of you understand what I'm saying?

12 MR. ROWAN: Yes, sir.

13 MR. ZIMMERMAN: Yes, sir.

14 THE COURT: If you have any objections to that,
15 I'm going to grant you until Wednesday to file a motion
16 objecting to that, and we'll have a hearing on that on the
17 31st. If neither one of you file a motion, I'm obviously
18 not going to have a hearing on it.

19 Now, that brings up the remaining question of when we
20 should hear the outstanding motions in the case. They're
21 set for disposition, I think, Tuesday.

22 I might alert you, insofar as the voir dire is
23 concerned, and I do this out of a sense of courtesy rather
24 than prejudging your motions, that my intention is that we
25 voir dire all of them in the presence of one another and

1 would probably call, inasmuch as each of you have nine
2 peremptories -- and that also goes to another one of your
3 motions -- that we'll probably call 30, put 12 in the box
4 and nine and nine and proceed in that particular manner.

5 And I saw your motion, of course, for the jury
6 questionnaire. I've never -- of course, I haven't been on
7 the bench very long -- sent out questionnaires other than
8 those that you'll see, which are much smaller than those.
9 If the state and the defendant can agree on questionnaires
10 to be sent via mail to the jury in advance, I have no
11 objection to that; however, I think the one that you have
12 probably goes a little too far.

13 How does Friday, the 23rd day of February at 2:30 in
14 the afternoon, look to you gentlemen for hearing these
15 motions?

16 MR. ZIMMERMAN: That's fine, your Honor.

17 MR. ROWAN: That's fine, Judge.

18 THE COURT: We'll do that then.

19 MR. ROWAN: Judge, could we have leave, in case
20 we think of some other motions, to file them sometime --
21 I've just scratched the surface. I mean, basically, Judge,
22 the district attorney has given me a large amount of
23 discovery, and so I can anticipate evidentiary motions,
24 which --

25 THE COURT: We'll grant you leave to file

1 motions beyond the date which I have originally set;
2 however, those motions must be on file by the 14th of
3 February at 9 a.m.

4 MR. ZIMMERMAN: Judge, if I may, I take it that
5 that extends to the state as well.

6 THE COURT: Right.

7 MR. ROWAN: That's an appropriate day, Judge.
8 That's Valentine's Day.

9 THE COURT: All right.

10 MR. ROWAN: I thought I'd note that for the
11 record.

12 THE COURT: Good enough.

13 Is there any other business that we need to take up?

14 We -- inasmuch as this date is going to -- to hear the
15 motions is going to be subsequent to the actual summoning of
16 the jury panel here, and inasmuch as one of your motions
17 deals with the release of jurors, may I suggest that you
18 both stop into chambers before you leave and look at the
19 requests for releases from hardship and visit with me about
20 them. And then if something needs to be done further in
21 that regard, we'll do it on the record this afternoon.

22 MR. ZIMMERMAN: May I address the Court?

23 THE COURT: Right.

24 MR. ZIMMERMAN: Earlier, Mr. Rowan had mentioned
25 a matter which I had not responded to on the record, and

1 certainly I can understand his position regarding adverse
2 pretrial publicity. And let me just assure the Court that
3 my -- in my visit with Mr. Rowan yesterday was that the only
4 thing that our office would provide to any member of the
5 news media from this point forward would be matters of an
6 official nature such as if they call me and said, "Did the
7 judge continue this case?"

8 "Yes, sir, he did.

9 "When is it going to be heard?"

10 "It will be heard March the 25th," that sort of thing.

11 A discussion of evidentiary matters, theories of the
12 prosecution or defense, witnesses' identity, that sort of
13 thing, it's just too late in the day for that, your Honor.
14 We're not going to do that anyway.

15 And so I just want to assure the Court that we had
16 absolutely no intention of trying this case in the
17 newspapers. It's going to be hard enough to try it in the
18 courtroom, much less in The Lincoln County News.

19 THE COURT: Very wise move, Mr. District
20 Attorney, because if you put it in the news, it would
21 probably be wrong anyway.

22 I think we have it all taken care of. And if there's
23 nothing further, I shall see you on the dates that we have
24 indicated.

25 END OF PROCEEDINGS

1 (The following proceedings were had in open court on
2 February 23, 1996:)

3 THE COURT: We are here in the matter of the
4 State of Oklahoma v. Joshua D. Stump, CF-95-104, pursuant
5 to notice to hear certain motions that have heretofore been
6 filed by the defendant in the case. Are the parties ready?

7 MR. BARNETT: Yes, your Honor. And, Judge, I
8 gave you this morning the state's response to those motions,
9 and I may have given you a duplicate of one set. I broke it
10 down into response and second response. I don't know which
11 ones you have. Do you have the --

12 THE COURT: I have duplicates.

13 MR. BARNETT: Which one do you have, Judge, just
14 the first one?

15 THE COURT: Yes.

16 MR. BARNETT: If I could exchange this, then it
17 might make more sense. And then again, it might not.

18 Thank you, sir.

19 THE COURT: All right. Mr. Rowan, are you
20 prepared?

21 MR. ROWAN: Yes, sir. And if the Court hasn't
22 already done so, Mr. Rand Eddy, who is with me, will be
23 cocounsel throughout the trial, Judge.

24 THE COURT: I have met him and welcome him to
25 the court.

1 MR. EDDY: Thank you, your Honor.

2 THE COURT: Now, as I went through the file, I
3 have read all the motions and have done some research on my
4 own. I show us to have, in addition to those lists of
5 motions that Mr. Rowan provided me with, the typewritten
6 list, I show that we have a defendant's motion for discovery
7 filed December the 29th, the state's motion to produce filed
8 January 3rd, a defendant's motion in limine filed January
9 12th, re: the purported qualifications of Tom Bevel, and the
10 defendant's motion to strike duplicitous aggravating
11 circumstances filed January 12, 1996. Am I correct on that?

12 MR. ROWAN: Judge, there's one more, which is
13 the defendant's motion to strike the continuing threat
14 aggravator, filed February 9, 1996.

15 THE COURT: All right. Well, I may not have
16 picked this up and may not be in a position to rule on this
17 today, because I have not read that.

18 MR. ROWAN: Okay.

19 THE COURT: Now, at one point in time I thought
20 that we had sustained the first two motions, the defendant's
21 motion for discovery and the state's motion to produce or at
22 least we've had some discussions about it. Would you-all
23 educate me on that particular process?

24 MR. BARNETT: Judge, I think that's correct. I
25 don't have my main file here, but it's my recollection that

1 as far as the basic sort of standard motions for discovery,
2 those have been confessed. I'd suggest we have some kind of
3 agreed order prepared on it. I have filed a notice of open
4 file policy in this case, and I think as far as everything
5 we have now is -- has been provided. I'll follow this up
6 with a written notice. But all of the physical evidence is
7 also ready to be examined by the defendant at their earliest
8 convenience. We just need to do the paperwork, and Mr.
9 Rowan and I are trying to work that out.

10 But I think as far as the basic discovery motions, I
11 think those are confessed for both sides, as I remember it.
12 Does that sound right to you?

13 MR. ROWAN: That sounds correct, Judge. Both
14 defendant's and state's motion to produce and discovery are
15 confessed.

16 THE COURT: All right. I'm going to sustain
17 those motions. Now, the defendant's motion to produce or
18 motion for discovery, although I presume typical in capital
19 cases, is not typical in the normal criminal case. So I
20 want you to be sure, Mr. Barnett, you understand what you're
21 getting yourself in for.

22 MR. BARNETT: Well, as I recall it, Judge, it's
23 already done as far as the items that have been requested.
24 And as far as I know, we've complied with everything in
25 there to date.

1 THE COURT: All right. And, now, just going
2 beyond the motions, having sustained them, it looks like
3 there has been some informal agreement in regards to them.
4 If I have not sustained them, are they being complied with?
5 Is there any problems that either side is having at this
6 particular point in time insofar as discovery is concerned?

7 MR. ROWAN: For the defense, no, sir.

8 MR. BARNETT: Not for the state, Judge, other
9 than we do need to make some arrangements to -- if there
10 are any physical tests to be done by the defense, we
11 probably need to get busy on those. And other than that, I
12 don't know exactly how much lead time they're going to need.
13 But other than that, I think that's the only thing I foresee
14 as a problem.

15 THE COURT: All right. That gets us, then, to
16 the defendant's motion in limine re: purported
17 qualifications of Tom Bevel. Is it anticipated that Mr.
18 Bevel will testify in this particular case?

19 MR. BARNETT: Judge, he's endorsed as a witness,
20 and it's possible that he might. At this point, though, I
21 don't know how it's going to fall out. But he is associated
22 with the Oklahoma State Bureau of Investigation and could
23 possibly testify on some of that evidence that's been
24 obtained, but I've filed a response to that. It's included
25 in my response to defendant's motions. The state's aware of

1 how to deal with qualification of experts.

2 And I think the basis of the motion was to avoid the
3 state referring to him as some sort of superstar of blood
4 splatter evidence. And we know how to qualify witnesses,
5 Judge, and we'll comply with the evidence code as to
6 witnesses. And, again, his opinion is just his opinion, as
7 far as an expert goes, and I don't think it should be the
8 subject of a motion in limine, at least at this point.

9 The defense has his -- if there are any reports that
10 he's submitted, then, certainly, they can have access to
11 those if they don't already. And I don't think it's
12 something that really is a problem at this point.

13 THE COURT: Mr. Rowan?

14 MR. ROWAN: Judge, I know Captain Bevel quite
15 well. He testifies in many capital cases. He is actually
16 employed by the Oklahoma City Police Department as head of
17 their homicide or violent crimes department. And while
18 Captain Bevel's testimony is often useful in capital murder
19 cases, he does have a tendency to puff himself by saying he
20 belongs to a couple of organizations which only he and a few
21 other people belong to, and that somehow or another makes
22 him sound more important than he really is.

23 And the science of blood spatters -- there's no "l" --
24 blood spatter, is basically the physics as applied to
25 liquids, is basically what the science boils down to. And

1 so as long as he expresses only opinions that are
2 scientifically founded, then I have no problem.

3 He also is notoriously tardy in filing reports, and
4 sometimes he never files a report and, therefore, never has
5 to be pinned down to anything. In times past, I've dealt
6 with that by going and interviewing him, and then if I feel
7 the need, I hire a blood spatter expert on my own and then
8 we try and harmonize and see where we agree and where we
9 don't agree.

10 So I'm just asking that the Court be sensitive -- and,
11 again, it's premature -- but if they get into a
12 qualification process that is not justified, then I would at
13 that point object and ask the Court to make a ruling that
14 they be required to stick to what he actually is qualified
15 to do.

16 THE COURT: Well, I will require them -- I'm
17 going to overrule your motion for the time being. Of
18 course, you'll have the right to object as they present him,
19 if, in fact, they do qualify him. And we'll require them,
20 as the district attorney has indicated, to qualify him just
21 as they would any other expert under the evidence code.

22 Now, the defendant's motion to strike duplicitous
23 aggravating circumstances. That's filed January 12th.

24 MR. ROWAN: Judge, the law in this area is --
25 there are some cases for the defense and some cases squarely

1 against us. But basically what we're asking is that the
2 Court not allow the prosecutor to use the same fact to
3 support more than one aggravating circumstance.

4 Also, I think in this case, although I have not filed
5 the motion -- I saw that as I was reviewing for this hearing
6 -- that heinous, atrocious, and cruel would not stand the
7 test of legality in this case because the woman was shot
8 with a shotgun, and she died almost instantly. I mean, she
9 was hit square in the heart with a 12-gauge shotgun. And
10 that does not fit heinous, atrocious, and cruel in Oklahoma,
11 and there are about ten cases that have come out in the last
12 two or three years, so I wanted to alert the Court to that.

13 Basically, Mr. Stump does not have a criminal history,
14 as such, as far as any adjudications or felony convictions,
15 that kind of thing. And so the state now is trying to
16 divide what little they have into two or three different
17 categories in order to show the jury that they have three
18 aggravating circumstances instead of actually only one. And
19 so I ask the Court -- it may be premature to rule at this
20 point in time, but I will try and be more specific in my
21 objections. I think the aggravators are heinous, atrocious,
22 and cruel, risk of death to more than one person, and
23 continuing threat. And they're going to use the facts of
24 the case to show that he's a continuing threat and vice
25 versa, I suppose.

1 THE COURT: Well, I think this one may be a
2 little premature. I think we probably need a little more
3 evidential basis in order to make a ruling on it. I'll
4 overrule it for the time being and give you leave to raise
5 it again upon your own initiative when and if that time
6 comes.

7 MR. ROWAN: Thank you, your Honor.

8 THE COURT: Now, before we go into the list that
9 Mr. Rowan was kind enough to supply me, there was one
10 problem that I noted. And that is that there is an
11 information and then there is an amended information, and
12 there are motions to endorse witnesses that were filed after
13 the initial information that was sustained, I think, in the
14 other lower division of the court. But there is no showing
15 that these witnesses are endorsed on the amended
16 information. And I want to get that disposed of at this
17 particular point in time before we're up here on trial.

18 MR. BARNETT: Judge, I understand. I thought I
19 had gotten that taken care of. Apparently not. I'd ask
20 leave to endorse all of the witnesses on this information --
21 and, if necessary, I'll do it in writing -- that have been
22 previously requested to be endorsed prior to the preliminary
23 hearing, I think are the ones that the Court is talking
24 about, but were not added to the amended information.

25 THE COURT: Yes.

1 MR. BARNETT: Again, I apologize for not getting
2 that done, but there are some witnesses that have been
3 added, and when we did the amended information, the
4 witnesses were apparently taken off of the information and
5 the ones that were endorsed by separate application were not
6 added. I'd ask that we be allowed to do that. I don't
7 think it's a surprise to the defense or prejudices their
8 case.

9 THE COURT: Any objection, Mr. Rowan, to that?

10 MR. ROWAN: Well, your Honor, it would be
11 helpful to have all of the witnesses listed on the amended
12 information. That way, we don't have to keep looking to
13 separate pieces of paper to find out who is and who is not
14 endorsed. That would be helpful to the defense. So we
15 would ask that that be done.

16 THE COURT: I think it would be helpful to the
17 Court as well, and I will order that before 5 p.m. Tuesday
18 next that you provide an addendum to the amended information
19 that lists all of the witnesses who have heretofore been
20 endorsed on either information or on motions to endorse
21 informations that have been sustained.

22 MR. BARNETT: I will, Judge. Thank you.

23 THE COURT: All right. That gets us, then, to
24 your list, Mr. Rowan. And inasmuch as you're the movant on
25 these, the first was your demurrer and motion to quash the

1 information.

2 MR. ROWAN: Your Honor, in a word, the amended
3 information is fatally defective for two reasons. One, is
4 the law in Oklahoma changed ten years ago, and murder cases
5 are no longer based upon premeditation but they're based
6 upon malice aforethought, is one variety. The other variety
7 are felony murders.

8 This information alleges a premeditated killing. And
9 it may be excessively picky, but premeditation and malice
10 aforethought are two separate concepts. They may be closely
11 related. So this information is fatally defective, and we
12 cannot go to trial on this information, Judge.

13 Also, I guess given this information that they think
14 that an attempted robbery was going on here, that
15 information is blended into the allegation of premeditation
16 -- well, it's not helpful to us at all, because there's no
17 allegation that there's a felony murder that's been
18 committed, that somehow or other this fits a felony murder.

19 There's a basic tenet to Oklahoma law that says you
20 can only charge one crime per count. We have one count, and
21 we have an attempt to allege two crimes, maybe three, and
22 they don't get any of those done because there's not enough
23 words in here for felony murder. They could probably pull
24 out a robbery count, and malice aforethought is not alleged.
25 So this information, your Honor, is defective.

1 THE COURT: Mr. Barnett?

2 MR. BARNETT: Judge, it may be verbose, and
3 there's probably a little more information than is normally
4 included in normal informations, but I think it meets the
5 criteria. And if not, I'd ask permission to amend. The
6 defendant was bound over on -- at preliminary hearing on
7 first-degree murder.

8 I'd ask the Court to overrule the motion.

9 THE COURT: Demurrer and motion to quash is
10 overruled.

11 That gets us to No. 2, the notice of intent to offer
12 evidence of prior government admission. This relates to the
13 original information that was filed as opposed to the
14 amended information. And in that, you have cited a federal
15 case, I believe, out of the Second Circuit; isn't that
16 correct?

17 MR. ROWAN: Yes, sir, Judge.

18 THE COURT: Did you Shepardize this case?
19 because I did not.

20 MR. ROWAN: Yes, sir, I did.

21 THE COURT: And what were the results of your
22 Shepardization?

23 MR. ROWAN: It has not been overruled, as far as
24 I know of, and I have not looked at it in the last week.

25 THE COURT: Not overruled in the Second Circuit

1 or not overruled, period?

2 MR. ROWAN: I had the benefit of a law student
3 helping me on this, Judge. And she's not here, so I cannot
4 say definitively, Judge, but I'll go back and double-check
5 it.

6 THE COURT: All right. Mr. Barnett, your
7 response to --

8 MR. BARNETT: Judge, I think, as it was stated
9 in my response, that the information has never been a part
10 of the evidence. I think what counsel wants to show is that
11 at one point state had a different theory as to who was the
12 shooter in this case. I think that could be developed by
13 other witnesses, Jackie Johnson or some of the other agents
14 involved in the case, as to what their initial theory was.

15 And I know that the Court advises the jury during the
16 initial instructions that the information is not a part of
17 the case itself, and I don't think that it would be proper
18 to introduce at least what I thought at one point was the
19 theory of the case. We're applying civil law to criminal
20 cases, admissions by parties or their attorneys. I think
21 there's another way to get at this if he wants to develop
22 that theory, that at one point we thought it was someone
23 else, without the necessity of introducing a felony
24 information that might confuse the jury.

25 I'd ask that the motion be overruled.

1 MR. ROWAN: Well, Judge, in response, he's
2 entitled to change his mind as often as he wants to, and he
3 can file as many informations as he wishes. However, we
4 have the right to point out to the jury that he is changing
5 his mind. And these are not just any kind of document.
6 This is the charging information, and it is, basically, an
7 admission by the state that these other facts, the fact of,
8 "I, Miles Zimmerman, being duly sworn, do state that I have
9 read the above and foregoing information and am acquainted
10 with the contents thereof, and that the statements contained
11 therein are true," so he swears to that.

12 And I think that the jury needs to have the benefit of
13 his insights both at the original information and the
14 amended information.

15 THE COURT: I'm going to sustain this notice
16 with two qualifications. Number one, is that you Shepardize
17 this and if there is any contrary authority in any
18 jurisdiction in the United States -- it ought to be easy
19 enough to Shepardize; I presume you have WestLaw --

20 MR. ROWAN: Yes, sir.

21 THE COURT: -- but I don't. It will be easy
22 enough to Shepardize it, but you advise me.

23 And the second qualification, which is probably of
24 more import, is that I do not -- and will stop you short if
25 this then becomes an issue where the district attorney has

1 to take the stand and we find ourselves with the district
2 attorney on the stand being examined and cross-examined and
3 that sort of thing to explain why he did this or that.

4 MR. ROWAN: All right.

5 THE COURT: So it's sustained to that limited
6 extent. And if we get into it, and sometimes these matters
7 develop and we suddenly find ourselves into it, just be
8 forewarned that that will be the end of the trek.

9 MR. ROWAN: Yes, sir. Judge, I agree and I
10 think those are wise caveats.

11 Judge, may I add one thing on the amended information?
12 I'm so concerned about this and also so sure I'm right that
13 I give the Court notice that we're going to go to the Court
14 of Criminal Appeals on this issue that this Court does not
15 have jurisdiction without a proper felony information.

16 THE COURT: All right. I take your notice to
17 heart. You're not the first person who stood up in this
18 court and said they were going to appellate courts this
19 week. And I'm requiring you before Wednesday to file a
20 brief with the Court setting out the reasons that you feel
21 that the information is defective and requiring the state on
22 or before Friday to respond to that brief.

23 MR. ROWAN: Judge, I could, perhaps -- there is
24 a Pickens case, which is a fairly recent case out of
25 Cherokee County, which talks about what an information ought

1 to have, particularly in a felony murder case or a malice
2 aforethought case. And the statute was amended from
3 premeditated murder to malice aforethought murder.

4 I just tried a case last week in Cherokee County in
5 front of Judge Jim Edmondson. And he saw the same defect in
6 that information, and I hadn't even caught it at that point.
7 And he made the amendment right after the jury was selected
8 but before they were sworn in. He allowed the state -- in
9 fact, he suggested that the prosecutor amend the information
10 to malice aforethought, and he used the phrase that "there
11 hasn't been premeditation in the last ten years."

12 I'm starting a trial, Judge, Monday in Muskogee, so I
13 may ask Mr. Eddy to prepare the brief.

14 THE COURT: He looks perfectly capable to do
15 precisely that.

16 MR. ROWAN: Well, he is. He has a life of his
17 own, though, Judge. He has a federal case coming up, but
18 I'll try and prevail upon him, Judge, to do that.

19 THE COURT: Wednesday next and Friday. And if,
20 in fact, it is defective and I find it so, I'll probably
21 just follow Judge Edmondson's procedure, because we at least
22 want to start out doing this properly.

23 MR. ROWAN: Yes, sir.

24 THE COURT: All right. That gets us to No. 3, I
25 think, on your list, Mr. Rowan, the motion in limine re:

1 physical and forensic evidence.

2 MR. ROWAN: Judge, this motion may be premature
3 in that I have not gotten a report yet, which I find that I
4 have to overcome somehow or other. There are no hair or
5 fiber linking my client to this crime at all. So at this
6 point, your Honor, this is just a motion in limine, which
7 certainly the Court is put on notice that we're concerned
8 about this kind of evidence.

9 But there's a lot of pseudoscience out there these
10 days, and it's trying to creep into murder cases. And we
11 are very alert to trying to prevent it whenever we can, and
12 that's why this motion was filed.

13 THE COURT: I was particularly interested in
14 numerical paragraph No. 3 of the motion, from what little
15 that I have learned of the case. And you cite Stouffer v.
16 State, 738 P.2d 1349. I cannot find reasoning in
17 Stouffer that supports this position that you set forth in
18 numerical paragraph No. 3. It may well be that I'm
19 overlooking the teaching in this particular case.

20 I would request that if this comes before me again,
21 that you underline and draw attention to the fact -- to the
22 point that you're trying to make out of Stouffer. And it
23 might be wise, if you had an opportunity in the next several
24 weeks, to send that over to me so that I could again read
25 Stouffer. But I've read it twice. Sometimes I overlook

1 things in my reading, but I would appreciate you doing that.

2 MR. ROWAN: Judge, you've read it more recently
3 than I have, so I will have to go back and look at it again
4 too.

5 THE COURT: All right. That gets us to No. 4,
6 the motion to prohibit jury dispersal and to prohibit jury's
7 exposure to victim's family or friends.

8 And Mr. Rowan, this, again, of course, is yours. Are
9 you asking that the jury be sequestered throughout the
10 entire proceeding?

11 MR. ROWAN: No, sir. But I think a little
12 foresight would be helpful in that jurors who, say, would
13 leave the courtroom past a roomful of people are going to
14 certainly be able to gaze upon the aggrieved victim's
15 family, who will be, you know, oftentimes crying or showing
16 their emotion, which is perfectly natural.

17 If the jury would be allowed to, say, leave by this
18 door over here and have a certain designated area where they
19 could congregate and be free to have refreshments and not be
20 interspersed among the victims and the victim's family.

21 A recent phenomena, and fortunately it's localized or
22 it hasn't gotten too out of hand, is that victim rights
23 people are becoming more and more active. And so several
24 things happen, you know. One is they pass out buttons with
25 the deceased's face on it. And that's sort of like wearing

1 a sandwich board to trial, you know, "Condemn this person,"
2 you know. It's basically expressing their advocacy.

3 And then if someone is crying uncontrollably through
4 the trial, I think the Court has the absolute authority to
5 ask the person to control themselves or leave the courtroom.
6 But the Court ought to, and I'm sure the Court will, conduct
7 the case in as detached a manner as possible. And an
8 inherently emotional case like this often brings these kinds
9 of problems.

10 So I think if the Court thinks about it ahead of time,
11 maybe there can be some procedure for separating the jury
12 from the people. If they're allowed to stand out there,
13 then, you know, if I'm the husband or wife of the victim and
14 I'm talking to my friends, and jurors happen to stand over
15 here three feet away from me, I can't help that they hear.
16 That's certainly the way I would feel.

17 And then, you know, the jurors just hate to admit that
18 they're eavesdropping, and all of a sudden they get tainted
19 and biased no matter how many instructions you give them
20 from the bench. The reality is out in the hall.

21 THE COURT: Well, I've already anticipated your
22 argument and will tell both counsel the ground rules under
23 which we will proceed insofar as the jury is concerned. The
24 jury, once seated, will exit through the door immediately to
25 my right -- that's not only for this case but is traditional

1 in this courthouse anyway -- and will proceed to the jury
2 room down the hallway to the south -- we've employed an
3 additional bailiff to assist us -- and there they will be
4 kept segregated. There are rest rooms in that particular
5 room. The bailiff will be there.

6 Some of them want to go outside, and they'll be
7 permitted to go out the south door at the end of the
8 courthouse and stand there as long as they're in a group,
9 and that is for those who are cigarette smokers. And that
10 is about the best that I know insofar as segregating them
11 from the rest of the general public at large.

12 Insofar as -- and I think it was a case that you tried
13 in Oklahoma City that involved the buttons. Insofar as that
14 is concerned, no one will be permitted to wear any buttons,
15 be they with pictures or not, any signs, placards, or
16 anything that indicates any support one way or the other.
17 The case will be conducted with dignity as befits a trial in
18 this courtroom not only of this importance but of any
19 importance.

20 And if for any reason either counsel sees that this is
21 not occurring, I am ordering you to directly approach the
22 bench and tell me about it. And I assure you that if I see
23 the same thing, an end will be quickly brought to it.

24 So I presume, basically, we've sustained your motion,
25 but at least you've brought it to my attention. And you

1 know how I propose to handle the thing.

2 Number 5, defendant's objection to verdict form re:
3 continuing threat.

4 MR. ROWAN: Your Honor, this is very closely
5 related to the larger brief I just gave to you this morning.

6 "Continuing threat" is going through a metamorphosis
7 as an aggravating circumstance that's very similar to what
8 heinous, atrocious, and cruel did with the Maynard v.
9 Cartwright case. Maynard v. Cartwright basically said
10 that -- the Supreme Court said that Oklahoma was using
11 heinous, atrocious, and cruel in every case and they
12 couldn't think of a first-degree murder case where "hac," as
13 we call it, was not -- had been ruled not to apply in any
14 murder case. And so the Supreme Court of the United States
15 remedied the situation for us by giving us some guidelines.
16 Now there has to be torture involved and that sort of
17 thing.

18 Well, the same thing is happening now to continuing
19 threat. Judge Seay in the Eastern District -- he's a
20 district judge -- basically ruled in Williamson v. -- it's
21 in my brief, Judge -- but, anyway, in the Williamson case,
22 he found that "continuing threat" was inherently vague and
23 that it gave no guided discretion to a jury. And,
24 therefore, he found that it's unconstitutional.

25 And then the Court of Criminal Appeals has made

1 reference to the Williamson decision, and I don't have the
2 name of the case right now, but it's come out in the last
3 couple of weeks in the Bar Journal that basically
4 footnotes and says, "We are aware of the Williamson
5 decision, but we're going to uphold this capital murder case
6 because there are two other good aggravating circumstances."

7 So what I'm saying, Judge, and trying to look the
8 Court to, perhaps prematurely, is that continuing threat --
9 and the brief I provided the Court, I think, cites the
10 Battenfield case -- there has to be a pattern of felony
11 convictions, unadjudicated crimes, or the callousness of the
12 case can make the person a continuing threat all by itself.
13 But some combination of that has to be present in every
14 continuing threat case. And I have a little paper clip by
15 the Battenfield decision where it's discussed in my brief.

16 But anyway, these are probably premature to be
17 discussing, but at some point I'm going to ask the Court to
18 strike "continuing threat" and not allow the prosecutor to
19 present what little evidence they have. For instance, when
20 he was a freshman in high school, he brought a gun to school
21 and was expelled for it. That, in my opinion, would not be
22 sufficient to get to a jury on whether he's a continuing
23 threat to society or not. A string of robberies might very
24 well be enough to get to a jury on a continuing threat that
25 he is progressively getting worse and worse and worse.

1 But this aggravating circumstance is now coming under
2 scrutiny by the federal courts. And I am no seer into the
3 future, but I'm hopeful that at some point in time they will
4 strike it as an aggravator or require the Court of Criminal
5 Appeals and the judiciary in Oklahoma to give it some more
6 guidance, some more instruction, that they have to find
7 certain factors before he can rule on the continuing threat.

8 To some extent or other, all of us on this earth have
9 the capacity to kill. It's just a matter of degree. And
10 psychologists and psychiatrists have been inherently poor
11 predictors. You can run a test on someone and try and
12 predict whether they're going to be a danger to society or a
13 continuing threat, and the psychiatrists can be as wrong as
14 anybody else. So there is no magic litmus paper test for
15 determining who is a continuing threat. And Texas in
16 particular has had a real problem with this aggravating
17 circumstance.

18 Anyway, your Honor, I'm just, by that motion, making
19 the Court aware of the litigation in this area. And I will
20 try and be more specific in the future.

21 THE COURT: All right. It sounds like to me
22 this is a little premature at this point in time. We'll
23 just have to see it, see how the evidence comes in and
24 evaluate that. So for the time being, we'll overrule it, of
25 course, with leave granted to you to -- to raise it again.

1 That gets us to No. 6, motion to strike unadjudicated
2 offenses alleged in support of "continuing threat"
3 aggravating circumstance.

4 MR. ROWAN: Yes, sir, Judge. In this area,
5 again, Judge Chapel on the Court of Criminal Appeals is
6 particularly concerned about this issue, but he is in the
7 minority. Oklahoma does allow unadjudicated offenses.

8 THE COURT: This is Paxton?

9 MR. ROWAN: Yes, sir.

10 THE COURT: And I have Paxton here and read
11 it. And with all due regards to you, overruled.

12 MR. ROWAN: Yes, sir. Thank you, Judge.

13 THE COURT: Now on No. 8, the motion in limine
14 in regard to the introduction of the autopsy photographs.

15 First of all, I think it would be easier -- Mr.
16 Barnett, is it anticipated that photographs of the autopsy
17 will be introduced into evidence?

18 MR. BARNETT: Not autopsy photographs, no, sir.
19 I think that we have some crime scene photos, and I'm
20 working on getting a duplicate set of those photos to
21 counsel now. I'd suggest that we take this under
22 advisement. They won't be autopsy photos, but there may be
23 some photos of the victim that we, of course, will present
24 to the Court for review prior to any attempt to introduce
25 them.

1 THE COURT: Well, I'm going to sustain it. It's
2 not a very difficult decision insofar as the autopsy is
3 concerned. I think that's what your motion spoke to.

4 Cases that I've been involved in of this type, there's
5 always the objection and the question regarding the
6 photographs. And my traditional ruling has been the fewer
7 photographs we have of this, the better we are. So I'll put
8 the district attorney on notice in regard to that, although
9 I think he's already aware of that.

10 The motion in limine re: Caldwell. Let's see. The
11 Caldwell decision is that the death sentence was imposed
12 by a jury that was led to believe by the prosecutor's
13 argument that the responsibility for determining the
14 appropriateness of the death sentence rested not with the
15 jury but with the appellate court. That's what the teaching
16 is in that case. I think that basically goes to the
17 argument, doesn't it?

18 MR. ROWAN: Yes, sir, Judge. I have never tried
19 a case against Mr. Zimmerman or Mr. Barnett before, but many
20 prosecutors wax eloquent about how the jury has a role to
21 play but not the only role. And the police officer arrests
22 the man and then the district attorney made this awesome
23 decision to seek the death penalty and that each one of
24 those are a member of a team. And the jury suddenly feels
25 like they're no longer the ultimate punisher in this case

1 but merely a part of the team.

2 THE COURT: Well, I think the jury, as we try
3 this case, will know that they are responsible for the
4 sentence that they impose.

5 Motion to allow voir dire on the cost-effectiveness
6 of the death penalty.

7 MR. ROWAN: This is an area that the Court of
8 Criminal Appeals does not allow us to get into it. But the
9 more people that know it, the better off we are as a people
10 and as a state. These death penalty cases are not cheap.
11 We have figures on Robyn Leroy Parks, who was executed a
12 couple of years ago. It cost \$3 1/2 million dollars from
13 the time he was charged until the time he was executed. It
14 would have cost about \$600,000 to warehouse him for life
15 without parole.

16 Now, I don't think a juror is thinking at his highest
17 level if he allows economic arguments to sway him in a case
18 where a man's life is on the line, but I'm a realist and
19 know that some people are persuaded by pure economic
20 arguments. So if they know that it costs seven times as
21 much or six times as much to give someone the death penalty,
22 then they may pause and think about saving the state some
23 money and sending a man away for life without parole.

24 THE COURT: Well, I decline the invitation to be
25 a pioneer in this area.

1 MR. ROWAN: Yes, sir.

2 THE COURT: I think I'll overrule this.

3 I think I've already indicated in regards to your
4 Motion No. 10, I think a part of your motion was the -- at
5 least there's some verbiage about the victim's family
6 sitting directly behind the jury or something to that
7 effect, and I'm not going to restrain where they sit in the
8 courtroom.

9 We are going to have a problem, just because this is a
10 small courtroom, as we bring the initial panel in, and
11 everyone is going to be crowded in here. And it's for that
12 arrangement -- I'll explain that a little bit later what
13 I've decided. But the buttons, any demonstration toward the
14 jury, anything that interferes with the impartiality and
15 sanctity of the jury, will not be tolerated.

16 Is there anything else you wanted to make on that, Mr.
17 Rowan?

18 MR. ROWAN: No, sir.

19 THE COURT: Now we get to the jailhouse
20 informants, and I think that was one -- whether or not --
21 which is Item No. 11, motion to endorse all "jailhouse"
22 informants.

23 And, again, Mr. Barnett, is it anticipated that any
24 so-called jailhouse informants will testify?

25 MR. BARNETT: No, your Honor.

1 THE COURT: Well, I'm going to go ahead and
2 sustain it. Sometimes those things change. And if, in
3 fact, you're going to use jailhouse informants, why, you're
4 under an obligation and know where you stand on that.

5 MR. BARNETT: Yes, sir.

6 THE COURT: We get over to Item No. 12, which is
7 the motion to invoke the rule prior to the voir dire,
8 prohibit witnesses from conversing, and to enjoin the
9 district attorney from advising of previous testimony.

10 I've read your brief. The rule of sequestration will
11 be invoked at the conclusion of the voir dire. You're given
12 exceptions in regards to that.

13 The only point that I am concerned about is to the
14 question of enjoining the district attorney from advising of
15 previous testimony. I think that -- I'm a great believer in
16 what's sauce for the goose is sauce for the gander, and your
17 client is going to be here and hear what the testimony is.
18 I don't know, of course, what your witnesses that you're
19 going to present are and that sort of thing. And if you
20 wish to advise me about -- about that at this point in time,
21 I'm willing to listen to you.

22 MR. ROWAN: Well, Judge, the only thing I'm
23 concerned about is the district attorney -- I'm not sure
24 what the factual issues are actually going to be in this
25 case yet. It's a little early to know precisely. But

1 certainly a district attorney can talk about testimony with
2 each of the witnesses. But to advise one witness that "Joe
3 Blow over here said something that you might want to
4 harmonize your testimony with" -- you know, this is a
5 hypothetical, of course -- then that's circumventing the
6 rule as completely as if the witness gets off the stand and
7 said, "I just told them this. I hope you agree with my
8 position," to the next witness in line.

9 And, of course, I would do the same thing. That's
10 unethical conduct for either a prosecutor or a defense
11 lawyer to get in a huddle with all the witnesses and
12 harmonize their testimony. So we won't do it, and I hope
13 that they won't.

14 THE COURT: Well, I read the cases that you've
15 cited, Gee and Dyke, and I don't find any support for
16 that position in either one of them. I think the best
17 admonishment that I can give both counsel, and I don't think
18 it's even necessary, is just conduct yourself in a
19 professional capacity.

20 The rule is always difficult to enforce because we
21 don't know who the witnesses are. And I will at the very
22 outset right now tell you I'm dependent on both of you to
23 assist me in enforcement of the rule.

24 The motion for the production of the jury list. I
25 think we had earlier supplied you with what jury list the

1 Court had.

2 MR. ROWAN: Yes, sir.

3 THE COURT: And I think this goes to whether or
4 not the district attorney had been following juries from
5 time to time and keeping a record of their convictions and
6 acquittals in the county. I don't know whether the district
7 attorney does that or not. I will tell you that there was
8 one criminal case tried to this jury panel that resulted in
9 a conviction two weeks ago, and that list is certainly
10 available to you in the court clerk's office. Insofar as
11 whether or not the district attorney has this available, I'm
12 not going to require him to share that with you.

13 Do you have it available, Mr. District Attorney?

14 MR. BARNETT: No, your Honor.

15 THE COURT: Well, that's moot. I should have
16 done that.

17 That gets us -- Mr. Rowan, I'm going through these
18 rather cursorily --

19 MR. ROWAN: That's fine.

20 THE COURT: -- but if I interfere with your
21 right to these, I want you to stand up and feel free to do
22 that.

23 MR. ROWAN: Thank you, Judge.

24 THE COURT: We get, then, down to the motion for
25 voir dire on the death penalty. And, Mr. Rowan, I will hear

1 you in regards to that.

2 MR. ROWAN: Judge, the law in this area has
3 evolved somewhat. The Witt case and the Witherspoon
4 cases are, you know, passe. And, basically, the jurors are
5 asked whether or not they have any scruples about imposing
6 the death penalty and whether or not they can do it in a
7 particular case or consider the death penalty. We would
8 like the opportunity to ask the reverse of that question,
9 whether or not a person who finds someone guilty of a malice
10 aforethought premeditated killing could ever consider a life
11 sentence with the possibility of parole. And a surprising
12 number of jurors say, "No way." And then when they say
13 that, then they can't follow the Court's instructions and
14 they're excused for cause.

15 And so we're asking for both sides of their attitudes
16 to be fully explored. I think that's the right motion. I
17 hope so.

18 THE COURT: Mr. Barnett?

19 MR. BARNETT: Judge, I'm not sure I understand
20 exactly what counsel has asked in this motion. It's my
21 understanding that the voir dire is controlled by the Court,
22 of course, and it can limit it or expand it in any way it
23 wants to. And I'm not sure by rereading this particular
24 motion exactly what this would accomplish.

25 And certainly counsel can, during his portion of the

1 voir dire, can ask pretty much the same set of questions. I
2 guess I just don't see -- and that worries me. I may be
3 missing something, but I don't see exactly the significance
4 of this motion that takes it outside of what would be a fair
5 question that counsel could ask jurors either individually
6 or as a panel. So I guess maybe I just missed the
7 significance of it.

8 THE COURT: Well, perhaps I should at this point
9 state the ground rules that I anticipate -- and I underline
10 anticipate -- that we will use in selecting of the jury.

11 Having given the matter some considerable thought, I
12 think we will use the strike method of calling 30 jurors
13 initially. We have room for 12 in the box, of course, and
14 set up chairs in front, two rows of equal amount of 18, 9
15 each, in order to permit us to have a full panel.

16 I did consider, Mr. Rowan -- that method, evidently,
17 is being used in Oklahoma City where they are dividing them
18 off into groups of 12. I discounted that for two reasons.
19 I don't think this case has received such publicity that
20 it's necessary to do that. And, number two, I think this
21 would probably be more expedient and more beneficial. I
22 realize you may disagree, but I did want you to know that.

23 I propose that we move first to qualify the jury in
24 accordance with the Wainwright case which is, as I
25 understand it, the definitive case that we'll move on. And

1 Wainwright is -- that standard is whether the juror's
2 views would substantially impair the performance of his
3 duties as a juror in accordance with his instructions and
4 his oath. Is that your understanding of it?

5 MR. ROWAN: Judge, that's no longer the
6 question. The trial courts have moved beyond that. I would
7 suggest the question that Judge Edmondson asked last week of
8 the jurors up in Cherokee County -- and I mean this with all
9 respect.

10 THE COURT: No, that's why I raised this. I
11 want to know it.

12 MR. ROWAN: I think the question now is: "Can
13 you" -- well, "Murder in the first degree carries with it
14 three punishments: death, life without parole, and life.
15 Can you consider all three punishments in assessing
16 punishment if the case gets to a punishment stage?" I think
17 that's -- and I'm paraphrasing a little bit. That way, you
18 don't emphasize one way or the other.

19 And jurors have problems with this concept of doing
20 violence to their conscience. That language is a little
21 stilted, and a lot of jurors don't understand exactly what
22 that language means. But they should be able to consider
23 all three punishments. And if they can't, if they can't
24 consider the death penalty, then they should volunteer that.
25 If they can't consider a life sentence, they should

1 volunteer that as well.

2 Usually we ferret it out pretty well with follow-up
3 questions.

4 THE COURT: Well, at this point I don't think
5 Wainwright has been overruled.

6 MR. ROWAN: And, again, I'm not enough of a
7 scholar in jury selection to know, but I'll try and get some
8 more information to you.

9 THE COURT: I would appreciate it, because at
10 this time it's my intention to use Wainwright. As near as
11 I could tell -- and I do see the position that you are
12 setting out in your motion, which is a -- almost a reverse
13 qualification position, if I'm correct, if I'm communicating
14 with you.

15 MR. ROWAN: Yes, sir.

16 THE COURT: At this point in time -- and I
17 intend initially -- and I solicit from you statements at
18 this point in time. It's my thought initially to move
19 directly to the death qualification issue or the life
20 qualification issue, however you want to phrase it, and then
21 go into other issues of where they live, who they work for,
22 that sort of thing, if you wish to do that.

23 At this point in time, I'm thinking strongly of your
24 numerical paragraph No. 3 as appropriate. But I'll think
25 about this and take it under advisement, and if you feel

1 that there is some refinement --

2 MR. ROWAN: Yes, sir.

3 THE COURT: -- of Wainwright, I would
4 appreciate receiving that. And if you'll give me the cites,
5 I can read them, the Oklahoma cases.

6 MR. ROWAN: Yes, sir. Judge Edmondson is on
7 this new instruction revision committee in Oklahoma City.
8 In fact, he took a day off from our trial. So he is really
9 up on court instructions, because they talk about it quite a
10 bit in that committee. But I'll get a copy of his
11 instructions and also the citations as to why he had asked
12 that question, because I thought it was fair and the
13 prosecutor thought it was fair, because it's a neutral-type
14 question. It doesn't emphasize death or life.

15 THE COURT: Well, if you would get it, I would
16 appreciate it, because I have the highest regard for him,
17 and I would be interested in seeing what he said.

18 MR. ROWAN: Yes, sir.

19 THE COURT: That gets us to the motion to allow
20 evidence re: life without the possibility of parole, which
21 is No. 15, Mr. Rowan.

22 MR. ROWAN: Judge, in that motion this week a
23 DOC officer by the name of Jim Rabon, R-a-b-o-n, testified
24 before Judge Lindley in Stephens County about the meaning of
25 life without parole, because in every -- let me see if I

1 have the right question here -- in every murder case,
2 invariably, after an hour or two of deliberation, they'll
3 send out a note asking, "What does life without parole mean?
4 What does life mean? What does death mean?" you know, one
5 of those three questions with some variation.

6 And the courts are very reluctant to get into it, and
7 they basically don't answer the question. And then the
8 jurors are left to speculate, and they're afraid that life
9 without parole means that some governor somewhere down the
10 line might let the fellow out of the penitentiary and he'll
11 go back and do it again, so they come back with the death
12 sentence.

13 The law in Oklahoma -- and I think it's a very simple
14 thing to state and the jury ought to be instructed on this
15 -- is that the governor of Oklahoma has no power to pardon
16 or commute a sentence unless the Pardon and Parole Board
17 recommends that person for pardon or parole. And then the
18 Pardon and Parole Board by statute is not allowed to even
19 docket a life without parole case for consideration by the
20 Pardon and Parole Board. So the effect is that life without
21 parole in Oklahoma means life without parole, no possibility
22 of parole.

23 The law would have to be changed. The statute would
24 have to be changed. And I think if a jury knew that, that
25 no one has ever served a life without parole sentence, has

1 ever gotten out of anything more than a medium security
2 prison, that's as far as they go, then that would help them
3 in their deliberations.

4 THE COURT: Mr. Barnett?

5 MR. BARNETT: Well, Judge, I guess I'm confused.
6 I understand what counsel is saying this time, though, that
7 he wants to emphasize, I think, or enhance the jury's
8 favoritism of life without parole as an option. And I guess
9 if they know more about it and really think that we mean it,
10 or the state means it, then they may be more inclined to do
11 that. I don't see the distinction between the defense
12 talking about what the Pardon and Parole Board does in this
13 motion and the state being prohibited from putting this off
14 on the Pardon and Parole Board in the other motion. I think
15 it confuses the jury.

16 The way this Court, I know, in the past has handled
17 questions from the jury asking for definitions and follow-up
18 instructions, I think the uniform instructions are adequate
19 to handle this. And I think that by presenting this type of
20 information or instruction to the jury, it overemphasizes
21 those options and actually puts something off on the
22 probation and parole department or the Department of
23 Corrections that is really the jury's decision. And that's
24 the way this Court held just a few moments ago when it
25 forbid the state from talking about the various roles of the

1 police officer and the Department of Corrections and the DA.

2 I'd just ask that it be overruled, and I think other
3 courts that have considered this issue have done that.

4 THE COURT: Wasn't this in a part of the -- and
5 I must say I apologize for not remembering the case I
6 alluded to earlier.

7 MR. ROWAN: Mitchell?

8 THE COURT: Yes. Wasn't this dealt with by that
9 Court?

10 MR. ROWAN: And in fairness to the Court, I
11 think that this needs to be told that there is contrary
12 authority, and Mitchell is that case and I was the trial
13 lawyer in that case.

14 However, I think, though, that in the future, and
15 perhaps even the future could start today if you want to
16 break some new ground here, but Eddings v. Oklahoma and
17 several other cases have held that it is improper to not
18 allow the jury to know all the facts as far as the sentence
19 and that they should be allowed to view as mitigating or be
20 as fully informed as possible about what they are about to
21 do. And if they have to guess what life without parole
22 means or guess whether death means death or not or how long
23 a person serves on a life sentence, then they're not being
24 told all the facts and they're making a stab in the dark in
25 a case that has the highest implications.

1 And so I think that it's eventually, maybe not today,
2 but eventually the courts will say, "Yes, we can trust
3 jurors. We can trust them with that information." And if
4 we tell them that one kind of life has a parole option and
5 one kind does not have a parole option, we can actually
6 define "parole" and define our terms and not keep them in
7 the dark, which is what's happening today.

8 THE COURT: Well, I think I'll decline to march
9 the path and follow the Mitchell case and deny that.

10 MR. ROWAN: Thank you, Judge.

11 THE COURT: The Motion No. 16, which is the
12 motion to preclude prosecution from using peremptory
13 challenges to exclude minority races or poor jurors. Of
14 course, we'll follow the Batson case. And I think that
15 everyone knows how to make a record on Batson if, in fact,
16 that comes up.

17 Insofar as poor jurors, I don't think that's a part of
18 Batson, but we have poor people that serve on juries in
19 this county all the time, and I've yet to see anyone
20 systematically remove them. If we did, sometimes we
21 wouldn't have any jurors at all. And by that, I mean
22 economically poor, not that they're poor people. Poor
23 people in the sense that they're not without tremendous
24 worth.

25 I think, perhaps, the best ruling on this is just

1 simply to tell you that I'm going to require you to follow
2 Batson. There are minorities on this jury panel and they
3 have served in some cases that this Court has tried during
4 this particular term.

5 Item No. 18 is a motion for hearing on reliability of
6 "jailhouse" informants, I'm going to go ahead and sustain
7 that, but I don't think we're going to have any jailhouse
8 informants, based upon what we've heard earlier.

9 Item No. 18, the objection to standards of counsel
10 imposed by United States Supreme Court and notice of
11 non-waiver of issues and objections. I'm going to overrule
12 that unless you have anything to present to me on that.

13 MR. ROWAN: No, sir. That's more or less a
14 notice.

15 THE COURT: A housekeeping item, I think.

16 MR. ROWAN: Well, it's just letting the world
17 know about our general angst. You know, I'm in trial most
18 of my time, and I can't read everything. And so there may
19 be issues that a good lawyer would preserve that I'm not
20 even aware of.

21 THE COURT: Well, you appear to be a very good
22 lawyer, but I understand your problem.

23 MR. ROWAN: Well, I wasn't fishing for a
24 compliment, Judge, but thank you.

25 THE COURT: Number 19, defendant's objection to

1 standard jury instructions re: evaluation of mitigating
2 evidence. I'm going to overrule that unless there's
3 something further to be presented on that.

4 Item No. 20, defendant's objection to uniform jury
5 instructions re: finding of unanimity with respect to
6 mitigating circumstances. I overrule that.

7 Item No. 21, motion for additional peremptory
8 challenges. It is my intention to overrule that.

9 MR. ROWAN: Judge, if the situation arises that
10 we get down and we've used our nine peremptory challenges
11 and there is somebody who is a mere cause-type person that I
12 almost am successful in getting off for cause but not quite,
13 at that point I'll ask the Court for an additional
14 peremptory challenge. And the reason for that is that's the
15 way to preserve the issue, for one thing. But I do think
16 that the Court has the discretion to grant additional
17 peremptory challenges in a particular case.

18 I'm also concerned, Judge, that 30 people is just not
19 going to be enough.

20 THE COURT: No, no. We'll have more than 30
21 people.

22 MR. ROWAN: Oh, I see.

23 THE COURT: I beg your pardon. Of course it's
24 not enough.

25 Number one, if you find yourself in that position, not

1 only should you approach the bench and ask for an additional
2 peremptory challenge, but I encourage you to do so. We're
3 going to go very slow in this, and it's my determination
4 that we have a fair and impartial jury for everyone involved
5 in this, and I want to know that.

6 The jury panel has of necessity, just through sheer
7 size, been divided into three different panels. The panel
8 that will be here on Monday, the 25th, as we begin, contains
9 60 some-odd-plus members. And there are two other panels of
10 roughly 30 members apiece. If we exhaust Monday and we've
11 exhausted the 60 and do not have a jury, we'll call in the
12 other two panels for the next day. So we're looking at a
13 total jury pool of about 100 to 125 people.

14 MR. ROWAN: Yes, sir.

15 THE COURT: No, I'm sorry if I misled you on
16 that.

17 MR. ROWAN: No, I was kind of -- 9 each and then
18 12, and that's --

19 THE COURT: No, we wouldn't have had a spare.
20 No, you're absolutely right.

21 MR. ROWAN: Judge, is there a list of the 60, a
22 separate list?

23 THE COURT: I think we do have a separate list,
24 and if we do not have, it will be in your hands by this time
25 next week.

1 MR. ROWAN: Thank you, Judge.

2 THE COURT: I think the district attorney says
3 that this motion for discovery of prior jury service, which
4 is really analogous to the motion we had earlier, that you
5 do not have any prior jury service or records of those
6 jurors; is that correct?

7 MR. BARNETT: That's correct, Judge.

8 THE COURT: So we'll overrule that. It's really
9 very moot.

10 On the -- when we were here before on the jury
11 questionnaire, I think I indicated my pleasure, if you
12 gentlemen would develop such a questionnaire, and wonder if
13 you've been able to do that.

14 MR. ROWAN: Judge, I have not. Could you give
15 us a guideline of how many pages? Fifteen? Twenty?

16 THE COURT: Oh, goodness. How many was the one
17 that you submitted? Do you recall?

18 MR. ROWAN: I don't recall, Judge. Here it is.

19 MR. BARNETT: I've got it.

20 Judge, what Mr. Rowan has submitted, I can advise the
21 Court I don't have very much objection to, with some minor
22 exceptions. And perhaps we could get together and present
23 something and then let you iron out some of this at your
24 discretion. But I think an expanded questionnaire for this
25 kind of case would be helpful as long as we didn't get the

1 opportunity, either one of us get the opportunity, to rehash
2 a lot of this with the individual jurors, and I know Mr.
3 Rowan doesn't want to do that any more than I do. But I
4 think we could probably work out some things, and then if we
5 have anything that we specifically want, we can agree on
6 perhaps the procedure to do that.

7 THE COURT: I'd say somewhere, gentlemen, in the
8 nature of eight to ten pages, somewhere in that
9 neighborhood. Let's don't try our case. Let's simply try
10 to get factual information that permits you not to have to
11 ask every individual juror whether they're married or single
12 or something like that, because, first of all, it gets
13 difficult and, secondly, this gives you better information,
14 I think, if we can do that.

15 MR. ROWAN: Judge, will these be mailed, then,
16 sometime before?

17 THE COURT: Yes. We'll try to mail them out
18 sometime before and have them available here.

19 We get, then -- and I presume that would be sustained
20 in part. I have not been making rulings as I've gone
21 through here, as I had hoped to. And perhaps we'd better go
22 back. Some of them have been sustained in part.

23 MR. BARNETT: The only one I have on my list so
24 far, I think, is No. 22, the one on the precluding pretrial
25 exemptions. And I've been trying to keep up. I know Linda

1 has as well, so I think we're up to date on all of them.

2 THE COURT: I think on that 22, when we were
3 here, Mr. Rowan, before, I gave you the list of the excuses
4 that we had on people. And I've excused very few people but
5 have made them part of the panel to call in, and so they are
6 theoretically available if we exhaust the first day's --

7 MR. ROWAN: Yes, sir.

8 THE COURT: And there are people on the first
9 day who have asked to be excused and have been refused too.

10 MR. ROWAN: So as I understand it, then, the 60
11 healthiest jurors are in the large panel, and the ones who
12 are in sort of a reserve status are because they have
13 economic hardships or problems. They are in the standby
14 reserve.

15 THE COURT: Baby-sitters -- and that only
16 affects half of them. Half of the second day are people
17 that have served in cases without any reservation.

18 MR. ROWAN: Yes, sir.

19 THE COURT: And I'm saying roughly half.

20 Motion in limine re: remorse is the next one, Item No.
21 26.

22 MR. ROWAN: Judge, as I understand Mr. Barnett's
23 response, he doesn't plan to comment on it unless we bring
24 it up. In other words, if we argued that Mr. Stump is
25 remorseful, then he could perhaps point to any facts that he

1 thinks aren't consistent with that.

2 So what I'm concerned about, Judge, is that the whole
3 scheme of our death penalty law is that there should be very
4 rigid guidelines as to what is an aggravating circumstance
5 and what isn't, and lack of remorse is not one of the
6 aggravating circumstances. And so the jury would be making
7 a determination based on a -- an undefinable, unauthorized
8 criteria, and that's what I'm concerned about, Judge.

9 And it does happen, I won't say routinely, but it
10 happens often that prosecutors somehow divine a lack of
11 remorse through some behavior that they can't understand.
12 And then they start talking about lack of remorse, and that
13 becomes an aggravating factor, which there is no statutory
14 authority for.

15 THE COURT: Mr. Barnett?

16 MR. BARNETT: Judge, I know that in some other
17 cases that the state's ability to comment on that has been
18 limited, and I think that's appropriate if his -- but, on
19 the other hand, if that issue is raised, I think it is fair
20 game, either through impeachment or comment. If the
21 defendant raises that issue somehow, then I think it is fair
22 comment. But as to make it a part of our case, I'm not sure
23 that that is. But I don't know if there's any real
24 authority for that in any of the cases cited by counsel in
25 his brief. I'm familiar with some of those cases, but I

1 don't recall them standing for that proposition.

2 I'd ask that this be taken under advisement, and that
3 should that --

4 THE COURT: We'll just see how it comes along,
5 gentlemen.

6 Let's see. The motion to prohibit prosecution from
7 excluding potential jurors who express reservations
8 regarding the death penalty, and you've given me a brief in
9 response to that. I presume that you're speaking in those
10 instances which would be those jurors who do not disqualify
11 themselves.

12 MR. ROWAN: Yes, sir. But they have very long
13 looks and they say that they'll really have to think long
14 and hard before they ever would consider the death penalty,
15 and everyone becomes quite aware of their reservations. And
16 I know that the prosecutor has the right to peremptorily
17 challenge people, but I think that to exclude the people who
18 have reservations about the death penalty as a class
19 deprives the defendant of a cross section of the community.

20 THE COURT: Mr. Barnett?

21 MR. BARNETT: Judge, I think the effect of
22 granting this motion would be to make the state justify
23 every peremptory challenge on sort of a Batson theory.
24 And then we'd have to show some -- in my motion, I say
25 "non-expressed reservation about the death penalty." We

1 would have to justify excluding those jurors, not because we
2 think maybe they don't want to do this death penalty but
3 because we don't like the way they're dressed, they part
4 their hair on the wrong side, in the middle. I don't know.
5 I think the state does not have to justify its peremptory
6 challenges under any other categories than Batson refers
7 to.

8 THE COURT: I overrule the motion.

9 MR. BARNETT: Thank you, your Honor.

10 THE COURT: You don't have to thank me for my
11 ruling, sir.

12 Number 28, the motion to require the state to provide
13 victim impact statements prior to trial and request for
14 evidentiary hearing and brief in support thereof. It's my
15 intention to sustain this motion, to require you to provide
16 them the written impact statements within ten days prior to
17 the trial.

18 MR. BARNETT: We will, Judge. And the only
19 question I had -- and, again, I'm a little short on my
20 research. I don't know if a motion in limine is required or
21 merely that they be provided to the Court. But we'll comply
22 with the law. I'll have to do a little more research, and
23 I'm just not --

24 THE COURT: Well, the law in this instance will
25 be that ten days prior to trial you provide them with a

1 written impact statement.

2 MR. BARNETT: Yes, sir. I meant I didn't know
3 whether we had to have a motion in limine.

4 THE COURT: Now, insofar as the evidentiary
5 hearing and the briefs in support thereof, there's a fine
6 line to walk in regards to this. And I think we'll reserve
7 ruling on that until we actually see what the impact
8 statements are going to be.

9 MR. ROWAN: Judge, may I just --

10 THE COURT: Yes. I didn't mean to cut you off.

11 MR. ROWAN: And to inform the Court, there's a
12 new case called Cargle v. State, which I'm sure the
13 Court's aware of. But in Cargle there is now a mandatory
14 victim impact statement instruction that must be given in
15 all death penalty cases. And, also, Cargle further limits
16 the prosecution's right to talk about the deceased from
17 birth until prior to the homicide. So all of that -- you
18 may not go into a complete history of the deceased as to
19 what a great person he was. It has to be limited to the
20 emotional and financial impact, those kinds of things.

21 And, also, your Honor, there's Payne v. Tennessee as
22 a footnote in the Cargle case. It's Footnote No. 2, I
23 believe. But it describes the -- there's a statute, which I
24 think is 984 of Title 22, that talks about the general
25 victim impact statements. And in those general -- in that

1 general statute, a victim or a family member of a victim can
2 ask for the death penalty, can ask for a specific crime --
3 or a specific punishment.

4 And Payne v. Tennessee and Cargle, I think, both
5 make it clear that that type of language is applicable to
6 general felonies if someone were to blind plea to the Court.
7 A victim impact statement certainly would be part of the
8 probation and parole report and you could properly consider
9 that, but not in a death case because the Eighth Amendment
10 forbids it.

11 Payne v. Tennessee -- again, I've got a copy of the
12 case here -- overruled two prior cases only insofar as
13 saying that a glimpse of the life that the defendant chose
14 to extinguish should be given to the jury. It did not
15 overrule the two prior Supreme Court cases which said that
16 the victim impact statement cannot characterize the
17 defendant. In other words, you can't call him names, you
18 can't characterize the crime as being particularly vicious,
19 heinous, atrocious, that kind of thing. They can't talk
20 about that. And they can't talk about the specific
21 punishment they want to see done.

22 And the idea is to prevent something that happened in
23 the Jeffrey Dahmer case where a progression of victim impact
24 people came in and basically lost all composure and started
25 calling him all kinds of names, and it became a real

1 circus. Of course, in that case, Illinois did not have a
2 death penalty, and so it was not as --

3 THE COURT: Do you have the citation on
4 Cargle?

5 MR. ROWAN: Judge, maybe. I do, I do.

6 THE COURT: Hold on. You've given me Payne.

7 MR. ROWAN: Cargle, your Honor, is -- well,
8 it's December 22nd, 1995, Oklahoma Crim., F-94-763.

9 THE COURT: Well, let me just have my bailiff
10 copy it before you leave today.

11 MR. ROWAN: Judge, I'll give you an extra copy
12 of the motion I filed in a different county.

13 THE COURT: All right. Because I'd have to hunt
14 it up through the OBAJ, otherwise, and that sometimes proves
15 to be futile.

16 MR. ROWAN: I was hoping that I had a copy of
17 that decision, but I don't think I do.

18 THE COURT: Well, I'll hunt it down.

19 Written victim impact statements ten days prior to
20 trial. We'll see whether or not we need to have an
21 in-camera hearing. As I indicated earlier, it's a fine line
22 to walk, and we want to be certain that we walk it.

23 I've indicated that on 29 -- as I understand it, you
24 wish to voir dire individually, and that would -- and, as I
25 understand it, out of the presence of one another, each

1 individual juror --

2 MR. ROWAN: Yes, sir.

3 THE COURT: -- much of an in-camera thing.

4 And, frankly, I understand your position. I don't
5 necessarily know that that inures to your benefit, but then
6 you're the lawyer and I'm the judge, and it's your motion to
7 raise. I'm going to deny it. I've indicated I think that
8 there's benefit from jurors being voir-dired collectively so
9 that each one of them understands in advance of any
10 deliberation what various views that the other brings to the
11 table as a result of the voir dire.

12 →MR. ROWAN: Judge, could I expand that motion to
13 also include publicity as well? I'm not sure how much
14 publicity this case has gotten. There has been some press
15 in Oklahoma City, usually one column each time there's a
16 hearing or a preliminary hearing, that type of thing. But I
17 know there is some following in this case, and it's also a
18 fairly recent case, as death penalty cases go.

19 So I'll ask the people who have heard something, and
20 maybe half of the panel may have heard something. But then
21 if you ask them any further follow-up questions, they
22 generally are in danger of blurting something out, and then
23 that may taint the entire 30 panel.

24 So I'm asking, Judge, that anyone who says, "I've
25 heard something or I read something about this case" --

1 oftentimes, the judges try and cure that by saying, "Well,
2 nothing that you heard or read would make you a biased
3 person," and nobody wants to admit they'd be a biased
4 person, and so they agree with the Court without really
5 thinking. But, actually, they know something about the case
6 that really would be maybe erroneous and prejudicial.

7 So I think that we ought to get each person who raises
8 their hand and says they know something about the case, to
9 ask them in private to search their memory. And I don't
10 think it would be burdensome to ask, Judge. But if we don't
11 do it in private and you ask them that general question,
12 "Well, you can be fair, can't you?" then they may not be
13 able to be fair but forever suppress their problems.

14 I don't know if I make myself clear.

15 THE COURT: No, I understand precisely what
16 you're saying. And, in fact, I think perhaps the first
17 inquiry that I would make is whether or not anyone has any
18 knowledge of this case. And I may not frame the question as
19 precisely as I'm going to ask it, whether or not anyone has
20 any knowledge. The second question will be how they derived
21 that knowledge. The third question would be, is any of the
22 knowledge that they have, will that interfere with them, as
23 opposed to the way that you asked the question, which would
24 be in the affirmative, "You won't permit any of that
25 knowledge to interfere." And this would be more of an

1 inquisitorial method, whether or not.

2 MR. ROWAN: Yes, sir.

3 THE COURT: My reasoning for that -- and I
4 understand your point on it and I've considered it -- is
5 just what I announced earlier. I think that the jury is
6 just exactly that, the jury. And it's 12 strangers that
7 come together for the purposes of making a decision. And
8 each of them is wondering a little about the other one. And
9 I think they each are entitled to know, at least on the
10 basis of the voir dire, where the other person comes from
11 that comes to the table.

12 Now, that -- I know that does not satisfy you, and we
13 probably are philosophically different, but that's just my
14 great belief about juries. But if we get into it and it
15 appears that we have a problem with this, why, I won't
16 hesitate to individually voir dire them.

17 I might tell you that we tried a case with a good deal
18 more notoriety here last week, a civil case, and none of the
19 jurors on the panel had ever heard of the case. So who
20 knows? ←

21 MR. ROWAN: They don't get to town often enough.

22 THE COURT: Who knows?

23 Let's see. We've dealt with Mr. Bevel.

24 MR. ROWAN: Thirty-two has already been covered,
25 as well, Judge.

1 THE COURT: And 32.

2 Well, I had your motion to strike continuing threat,
3 and somehow or another I just overlooked it.

4 MR. ROWAN: Judge, could I have my copy back?

5 THE COURT: You may indeed. I have it right
6 here. I'll just have to take that up, and we'll have to set
7 -- now, it's my understanding, and you may not be able or
8 willing or want to address this now, the question of the
9 defendant's -- the request of the State of Arkansas for the
10 defendant's presence at a criminal trial to be held in
11 Arkansas.

12 First of all, have we -- are all motions, other than
13 this motion to strike, have we disposed of those?

14 MR. ROWAN: I think that's all that I have,
15 Judge. But as we went through the motions, I thought of a
16 few others I hadn't filed yet. But I understand the Court's
17 ruling that this is the motion day, so what I would do is
18 limit any further motions to precise evidentiary issues that
19 might come up during the trial that we can anticipate, just
20 to allow you to have some prior alert, be alert to the
21 evidentiary issue.

22 THE COURT: Well, I'm not going to limit you.
23 This is an important issue, and I'm going to give you the
24 opportunity to file those and keep the record intact. And
25 we will take those up -- are you going to be available on

1 the 13th of March?

2 MR. ROWAN: Yes, sir, Judge.

3 THE COURT: We have just a regular motion day,
4 and this ought to be a rather abbreviated hearing, I would
5 think. We'll take those up on March 13th at 1:30. You'll
6 just have to wait your turn, because I'll have other things
7 going, but we'll get to them.

8 MR. ROWAN: Judge, if no motions are filed, can
9 we give notice all the way around, or do you want us here
10 anyway to have kind of a status conference?

11 THE COURT: No, that's fine. If we need a
12 status conference, why, we'll try to do it telephonically.
13 And if I don't hear -- do you want to argue this motion to
14 strike the continuing threat? Do you want to orally argue
15 that, or do you want me just to decide it on the brief?

16 MR. ROWAN: Judge, you can decide on the brief,
17 I think.

18 THE COURT: All right. I'll just decide that on
19 the brief within the next week or so. And if you file any
20 other motions, we'll take it up on the 13th. Now, don't
21 forget you were going to give me Judge Edmondson's --

22 MR. ROWAN: Yes, sir. I think I've got a copy
23 of those instructions in my office which he gave, and then
24 also I'll find out the annotated version as to why he asked
25 the questions he asked.

1 THE COURT: Well, I may go so far as to contact
2 him personally and see what he has to say about it.

3 Now, I think that takes care of the motions with the
4 exception of this request from the State of Arkansas. And I
5 do not know what the defendant's position is in regards to
6 that.

7 MR. ROWAN: Judge, we wholeheartedly support it.
8 And, in fact, I've talked to the prosecutor in Arkansas, and
9 Josh is perfectly willing to testify against his father in
10 that murder case.

11 THE COURT: When is that set, Mr. Barnett?

12 MR. BARNETT: Judge, I --

13 MR. ROWAN: March 5th, Judge.

14 THE COURT: March 5?

15 MR. BARNETT: -- I couldn't locate my copy, but
16 Mr. Rowan has that. I think they anticipate two days. Is
17 that right?

18 MR. ROWAN: I think they want to keep him as
19 long as the 9th. Now, if they want to keep him for two or
20 three weeks --

21 THE COURT: Well, that's what I was concerned
22 about. He wouldn't be available to you.

23 MR. BARNETT: The trial is the 7th and 8th, is
24 what they anticipate, Judge, but I think they want him there
25 a day early or a couple of days early.

1 MR. ROWAN: And return the 9th.

2 MR. BARNETT: March 9th. So it would be that
3 period.

4 THE COURT: Well, based upon the agreement of
5 the parties, I will grant the motion, specifically ordering
6 him to return to the State of Oklahoma within 48 hours of
7 the dates set in the motion and also specifically ordering
8 them -- because he is in custody on a capital murder case,
9 they are under obligation to provide adequate security. And
10 they should set forth that in writing, that they acknowledge
11 their obligation to provide adequate security to see that he
12 is held in safe custody with them and returned to the State
13 of Oklahoma. And that should be a part of the motion and a
14 condition upon him being transported to Arkansas.

15 Is there anything else, gentlemen?

16 MR. ROWAN: No, sir.

17 THE COURT: Anything else, Mr. Barnett?

18 MR. BARNETT: No, sir.

19 THE COURT: If it appears, as we get closer,
20 that we need a status conference, if something comes up, you
21 have but to ask and we will accommodate you.

22 MR. ROWAN: Yes, sir. Thank you.

23 END OF PROCEEDINGS

24

25

1 (The following proceedings were had in open court on
2 March 13, 1996:)

3 THE COURT: I show a defendant's motion -- a
4 demurrer and motion to quash the information; the
5 defendant's motion to strike heinous, atrocious, and cruel
6 aggravating circumstance; and a motion for continuance. Is
7 that correct?

8 MR. ROWAN: Judge, I believe you also have
9 pending the motion to strike the continuing threat
10 aggravating circumstance that the Court took under
11 advisement.

12 THE COURT: In regards to that motion and your
13 motion to strike the atrocious, I'm going to reserve ruling
14 on that, and we'll properly review that as the evidence
15 comes in. I don't know exactly what the evidence will be.
16 As it's presented to me at the conclusion of the trial, why,
17 please once again renew those and I will consider those. I
18 think that's the only fair way to do that.

19 That leaves us with your motion to quash the
20 information and the motion for continuance.

21 MR. ROWAN: Judge, which one would you like to
22 do first?

23 THE COURT: Well, let's see. If we continued it
24 -- why don't we do the continuance motion first.

25 MR. ROWAN: Judge, we filed this motion for

1 continuance, and I believe that I also filed an affidavit in
2 support of my motion for continuance, which I don't think
3 the Court has gotten yet.

4 THE COURT: I have not received the affidavit.

5 MR. ROWAN: Well, let me find a copy. Here it
6 is.

7 I served a copy just a few minutes ago on the district
8 attorney, your Honor, and I apologize for being so late with
9 that.

10 (There was a pause in the proceedings.)

11 THE COURT: All right, sir. I've read the
12 affidavit.

13 MR. ROWAN: Your Honor, without reciting the
14 history of the case, your Honor, basically we are here on
15 the 13th of March with the trial date the 25th, and the
16 defense cannot be ready for trial on the 25th, through no
17 fault of the defense at all.

18 If blame must be assessed, I think that the OSBI
19 agents have, I think, through their bureaucratic rules, have
20 thwarted the discovery in this case, because on February
21 23rd, the district attorney and I were in this court and we
22 had a motion hearing on the 23rd of February. Both sides at
23 that time said they were satisfied with discovery the way it
24 was proceeding and that we would make an agreement on the
25 transfer of the items and we'd be ready for trial. And the

1 agreement actually, I believe, was approved by yourself on
2 March 7th. I drafted the agreement and signed it on March
3 5th.

4 In between those two times, I had a capital murder
5 trial in Muskogee, which began but was mistried in Muskogee,
6 so I did have some free time there. So there's three days
7 there that I probably have to account for.

8 → But once the agreement was signed, then I began trying
9 to talk to the OSBI agents, and they informed me that they
10 have a rule that they can't talk to me about the results of
11 any tests or anything done in this case without the
12 permission of the district attorney.

13 Well, Mr. Barnett was free and told me that, yeah, I
14 could learn anything I could possibly from these OSBI
15 agents, that it's okay with him. However, he informed me
16 that there was a new round of tests being performed, that
17 the crime scene had been revisited in Oklahoma County. It
18 had been moved from the place out here south of town, and
19 that the OSBI agents employed Captain Bevel and they were
20 doing new blood tests, new ballistics tests, and that as
21 soon as the prosecutor learned the results, he would share
22 them with me. That's fine. I think that's entirely proper.

23 But it was not until 6:30 at night on the 11th of
24 March that Mary Long, the serologist, faxed her result to
25 Mr. Barnett. Mr. Barnett and I over the phone, I believe,

1 the next day, the 12th, told me that the results were
2 favorable to my case and said that there was a mixture of
3 blood there that certainly would be favorable to my case.

4 I also talked to Captain Bevel, who is not an OSBI
5 agent, and he said also that the crime scene walk-through
6 and the measuring of strings would be favorable to my case,
7 that being that Josh Stump was not the shooter in this case.

8 But I've yet to receive Mary Long's report, I've yet
9 to receive Keith Ferrell's report, who's a ballistics
10 expert. In fact, I'm told the results of that test will not
11 even be done for some several days yet. In the conversation
12 I had with the district attorney, Miles Zimmerman, he said
13 he's going to wait for the results of that test to make
14 certain decisions.

15 So basically, your Honor, I have taken possession of
16 all the physical evidence. They boxed it up and gave it to
17 me on March 11th. I immediately caused it to be transported
18 to Dallas, Texas, to a laboratory in Dallas, Texas.
19 However, I don't have the crime scene photographs or the
20 videotapes. And without that, the people who do blood
21 spatter analysis, because the blood was not -- well, without
22 scene pictures, they can't tell what happened and they can't
23 start work.

24 So, your Honor, they also have some cases down in
25 Dallas which have priority over this case. They work for

1 the prosecution primarily, and they're having a case this
2 week on a first-degree murder case in Dallas where they're
3 testifying. ←

4 So, your Honor, it's actually through no fault of
5 anyone that we're in this position where I have to come in
6 and ask for a continuance again. And I cite as my authority
7 the Frederick case. The Frederick case is a very sad
8 case. The Frederick case, the public defender, who I know
9 well, basically sat on his hands for a year in a capital
10 murder case. And he hired a psychologist, but the
11 psychologist really wasn't a specialist in the area that was
12 pertinent, and had several continuances granted, some by
13 agreement, some by the defense asking for it.

14 And finally the judge got exasperated with the defense
15 lawyer and said, "We're going to trial." And the Court of
16 Criminal Appeals said, "No, it was wrong to send the defense
17 to trial when the psychiatrist, who is an expert in multiple
18 personality disorders, had a conflict or he couldn't be
19 available. It was wrong to send that case to trial without
20 the defense expert." And I think that case is pertinent in
21 this case; I think it's controlling.

22 In my first motion for continuance back in February or
23 January 19th, I informed the Court at that time that my
24 experts down in Texas needed two complete weeks to get all
25 the testing done, and so that was optimistic. They need two

1 weeks if they have nothing else to do.

2 And this fellow named Lannie Emmanuel, who is a
3 recognized expert in several areas, said that "if we were
4 free to drop everything else, we could probably get your
5 testing done."

6 The state's had the evidence since July of 1995.
7 They've had all the time in the world to work on it. That's
8 some three-quarters of a year. We've had the evidence since
9 March 11th, Monday of this week. I think in fairness, your
10 Honor, a continuance must be granted.

11 And Mr. Stump is not happy with that. He wants to go
12 forward, but he also told me that he wants to go forward
13 with a trial team that's prepared and aware of all the
14 evidence. I have not gotten the police reports and the
15 scientific reports for the latest round of tests. I've
16 talked to Tom Bevel on the phone, and he said he's
17 unavailable until Thursday. He'll be teaching classes.

18 Mr. Barnett, I'm sure will tell you, that I've
19 pestered him night and day for weeks, asking him, "What's
20 going on? Where are the tests? What's going on? Help me
21 out with these OSBI agents." And he has. He sent them a
22 fax; he's called them on the phone.

23 There's a particular individual who thinks she's above
24 the law, Janet Halliburton. She's a lawyer for OSBI, and I
25 had a nice heart-to-heart talk with her, and she said the

1 OSBI rules are very stringent, that these agents are not
2 allowed to talk to a defense lawyer without the district
3 attorney's express approval, and it has to be in writing.
4 So I made a point not to ever call her again, but I thought
5 that the next thing I was going to do was bring her in here
6 and have her explain her rules to the Court here, because
7 she's toying with the March 25th trial date.

8 I know how important that trial date is to the Court,
9 to the orderly conduct of business in this county, and I am
10 not one to lightly move for a continuance, your Honor, but I
11 have no choice. I have Mr. Stump's life in my hands, his
12 defense, and I cannot lightly and cavalierly say, "Oh, yes,
13 we're ready for trial. Let's go," when I don't know what --
14 I think as each day goes by, the evidence gets better for
15 our side. And I hope that someday this week, maybe next
16 week, that I'll get the results of the state's test.

17 And the last paragraph of my affidavit, your Honor, is
18 that Mr. Ganstine, my boss, who approves the contracts and
19 then puts his name on the line with the people that I hire,
20 he has not given permission to spend any money in this case.
21 And I'm thinking that there's maybe five or six thousand
22 dollars' worth of work that needs to be done. We have a
23 fiscal crisis in our agency, like most other agencies in
24 this state. And until this supplemental appropriation,
25 which I don't pretend to understand, but I'm hoping that he

1 will borrow from somebody else's case to fund this one, but
2 I'd love to have him come here and testify about his
3 financial problems.

4 But anyway, your Honor, I've gone on too long. I'm
5 saying that we're stuck here. It's no one's fault. I think
6 the OSBI, in their defense, has a bunch of bureaucratic
7 regulations that they have to comply with. I don't pretend
8 to understand them, but they are the ones who, if anybody,
9 has to bear the brunt of the blame that we're in the
10 situation we're in right now.

11 Thank you, sir.

12 THE COURT: Mr. Barnett?

13 MR. BARNETT: Judge, certainly, what Mr. Rowan
14 has indicated to the Court is true. There's been some new
15 things that have come out that I don't even have -- or the
16 state doesn't even have at this point, some of the most
17 recent tests.

18 As far as the motion goes, we did reach an agreement
19 on the handling of the physical evidence as to what was
20 going to be turned over on the 5th. And then on the 6th, we
21 had the first of the motions for continuance because we had
22 not complied with that.

23 The OSBI certainly has got a lot of things they're
24 doing, not only in this case but with others, but they do
25 have a lot of the evidence. And, yes, I told Mary Long and

1 I did tell Keith Ferrell that I wanted to know before the
2 defense what the results of those tests were. Some of those
3 tests, the one that he talked about of Ms. Long, that one I
4 do have. That was faxed to me at 1830, and I did talk to
5 Mr. Rowan the next morning about it, and I do have a copy of
6 that for him today. And it is, I would at least say,
7 exculpatory. And I don't know exactly the results of Mr.
8 Ferrell's tests on gunshot residue. It's my understanding
9 that one of the machines that OSBI uses to test that or to
10 determine those results is down, and I don't have it either,
11 so I can't give what I don't have.

12 But I think they're trying to -- the OSBI is trying to
13 do what they can to assist me in this. They did go back out
14 to the crime scene at my request and we did do a laser and
15 string reconstruction. There are photographs of that.
16 We're trying to get the photographs to Mr. Rowan as early as
17 we can or as soon as we can. To be honest, though, we just
18 got -- the last I heard about the photograph deal was that
19 OSBI was waiting until they had some documentation on how
20 they were going to be reimbursed for the cost of several
21 hundred photographs that are going to be copied. And that
22 is my understanding. I told them as soon as they had that
23 worked out, give the defense whatever they want.

24 And Jackie Johnson who is the lead agent on this case
25 has been -- she is, to say the least, frustrated by some of

1 the lab work, as frustrated as I am, and I'm sure as Mr.
2 Rowan is, with getting these results.

3 I guess what I'm trying to say, Judge, is I don't
4 think it's the state's fault. The OSBI has been -- I've
5 asked them to do new things, different things, that -- to
6 get some more evidence for this case. Some of it's not even
7 available to me yet. I'm not sure what tests Mr. Rowan
8 wants to have run by this lab in Texas. Apparently, they
9 don't have the money to do anything other than just eyeball
10 it. I don't know exactly what they're going to do.

11 But at this point, there's only a few things left out
12 there. We're continuing to produce the reports and ask the
13 Court to -- there's a distinction between the physical
14 evidence, which they now have, and the reports, which I
15 don't even have. And I will certainly provide those as soon
16 as they're ready.

17 I can understand the position that Mr. Rowan is in. I
18 don't want to continue this matter unless it's just
19 absolutely necessary. The victims and the survivors in this
20 case would like to get this resolved and see some closure,
21 as I would.

22 Judge, I'm not in a position to jump up and down with
23 an objection about the continuance, but I can't agree to it,
24 and I hope the Court understands my position. It sounds
25 kind of wishy-washy to say it, but I --

1 THE COURT: Well, it certainly does. You're
2 either for it or against it, Mr. Barnett.

3 MR. BARNETT: Judge, I think in the interest of
4 justice with what's happened here with the latest
5 information we have available -- and, to be honest, it
6 changes the complexion of the case for us -- I would have to
7 concur with the recommendation for a continuance, and I'll
8 do that.

9 THE COURT: Mr. Rowan, taking into account the
10 fiscal situation that your organization finds itself in,
11 where would you be better off 30, 60, 90 days from now than
12 you are now?

13 MR. ROWAN: Well, Judge, again, we're delving
14 into areas that I can't control in my life. I'm told -- I
15 was at a division staff meeting on Monday, Monday morning,
16 and I'm told that there is some \$400,000 that is earmarked
17 for agencies to supplementally fund us until July 1st, and
18 it's supposed to be approved this week.

19 And Mr. Ganstine has never been slow in funding,
20 particularly in cases like this one where so much is at
21 stake. He's got to request to fund them, and he'll approve
22 them as soon as the money is available, but I can't tell you
23 whether it's going to be this week or next week, because the
24 vagaries of the legislature -- there may be enough money
25 there now at our agency to pay for it even without the

1 supplemental appropriation of the legislature.

2 I can certainly -- Mr. Ganstine is by his phone,
3 Judge. We could talk to him about it, but I don't happen to
4 walk in those circles of high fiscal management, so I can't
5 tell you.

6 THE COURT: Well, I almost feel irrelevant to
7 the entire proceeding. If both of you will recall when we
8 were here before and it came on for the continuance, I took
9 my calendar and very carefully asked each one of you if you
10 could be prepared and ready to go on this particular date,
11 and you both assured me that you could. And so I made
12 arrangements for the jury, we've even sent out the jury
13 questionnaires, told them to be prepared to be here on the
14 25th of March.

15 I inquire of each one of you separately now as to when
16 you think you're going to be ready to try this case. This
17 Court has other business. There are other murder cases to
18 be heard, pending.

19 When do you realistically, Mr. Rowan, think you're
20 going to be prepared to try this case?

21 MR. ROWAN: Well, Judge, I could be ready the
22 1st of May. I could probably be ready the 15th of April.

23 THE COURT: Mr. Barnett?

24 MR. BARNETT: Either one of those dates would be
25 satisfactory, Judge, if the Court has those available.

1 THE COURT: I'm sure I don't have them available
2 now. I had them available back when we set it down.

3 The first time that I have successive days sufficient
4 to dedicate to this particular case comes on the 10th of
5 June. That also is the time that we have the regularly
6 scheduled term of this court. If you were not prepared on
7 that date, the question of speedy trial would arise in my
8 mind. It would have to be waived by the defendant to
9 continue the case.

10 I'm disappointed in that if you've had difficulty
11 discovering evidence you haven't let me know in advance.
12 I'm here every day, and I'm certainly not bashful about
13 taking action to see that these cases are brought to
14 fruition.

15 What does the 10th of June look like on your calendar,
16 gentlemen?

17 MR. ROWAN: Judge, I have a trial that day. I'm
18 sorry. That was a case that I was trying on the last -- was
19 in Muskogee on the 26th. It began and mistried that week,
20 and the judge rescheduled it for the 10th of June.

21 THE COURT: What about the 17th of June?

22 MR. ROWAN: Well, the only problem I have,
23 Judge, with that is that I have a trial on the 3rd, the
24 10th, and the 17th, and I'm just not that physically able to
25 try them.

1 THE COURT: I understand that.

2 Well, you see the problem we get into with the speedy
3 trial? Are you prepared to waive the speedy trial
4 requirements for the June docket of this Court?

5 MR. ROWAN: Judge, may I have a moment to
6 discuss it with Mr. Stump?

7 THE COURT: Yes.

8 (There was a pause in the proceedings.)

9 MR. ROWAN: Your Honor, Mr. Stump is willing to
10 waive his right to a speedy trial. And he doesn't enjoy
11 being in the county jail, with all due respects to the
12 sheriff, but he is willing to waive it, your Honor. And
13 since it's a right personal to him, I'd ask that he be
14 allowed to say that personally.

15 THE COURT: Yes.

16 DEFENDANT JOSHUA STUMP: Yes, I would waive,
17 yes, sir.

18 THE COURT: Mr. Stump, you realize that we will
19 have a regularly scheduled term of this court beginning on
20 the 10th day of June of 1996?

21 DEFENDANT JOSHUA STUMP: Yes, sir.

22 THE COURT: That you have the right to have your
23 case heard at that term of court?

24 DEFENDANT JOSHUA STUMP: Yes, sir.

25 THE COURT: And that's a right that is

1 guaranteed to you by the Constitution of the United States
2 of America. Do you understand that?

3 DEFENDANT JOSHUA STUMP: Yes, sir.

4 THE COURT: And your attorney has indicated to
5 me that you're desirous of waiving that right. Do you
6 understand that?

7 DEFENDANT JOSHUA STUMP: Yes, sir.

8 THE COURT: Do you understand what that means?

9 DEFENDANT JOSHUA STUMP: Yes, sir.

10 THE COURT: That means you're giving it up.

11 DEFENDANT JOSHUA STUMP: (The defendant nodded
12 his head.)

13 THE COURT: You have to answer out loud.

14 DEFENDANT JOSHUA STUMP: Yes, sir.

15 THE COURT: And do you desire to do that?

16 DEFENDANT JOSHUA STUMP: Yes, sir.

17 THE COURT: Any question or hesitation in your
18 mind about this in any way, shape, or form?

19 DEFENDANT JOSHUA STUMP: No, sir.

20 THE COURT: You realize that it means that you
21 will continue to be incarcerated in the jail?

22 DEFENDANT JOSHUA STUMP: Yes, sir.

23 THE COURT: And that you could have had it heard
24 on the 10th of June?

25 DEFENDANT JOSHUA STUMP: Yes, sir.

1 THE COURT: What do you look like in July?

2 MR. ROWAN: Judge, my July is completely open.
3 I've not consulted my family, who likes to take a vacation
4 every once in a while, but certainly I'm open in July,
5 Judge.

6 THE COURT: Monday, the 22nd day of July. How
7 does that suit you, both of you?

8 MR. ROWAN: I can be ready that day, Judge.

9 MR. BARNETT: The state can also, Judge.

10 THE COURT: Now, let me say this to you both:

11 If there are any problems involving anything, be it
12 discovery, whatever that may come up, I expect you to
13 immediately file motions in this court to receive the
14 assistance and guidance of this Court in resolving them.
15 I'm deeply disappointed that we have to continue this case.

16 It's a small matter, but it's going to involve expense
17 to the taxpayers of this county because we're going to have
18 to summon a new jury panel and go through all of this. And
19 the frustrations that we've had with the other panel will
20 have to be duplicated again. But I will expect each of you
21 to immediately contact me. And I put you both on fair
22 notice and warning that this case will be tried on the 22nd
23 day of July unless stronger reasons can be shown to me than
24 have been presented here today. We go to trial on that
25 date, emphatically, period, positively.

1 Now, does anyone have any reservation about the 22nd
2 of July?

3 MR. BARNETT: No, your Honor.

4 MR. ROWAN: No, sir.

5 THE COURT: All right. We'll continue the case
6 upon the motion of the defendant until the 22nd day of July.
7 We will also note for the record that the defendant has
8 waived speedy trial that he had for the regular term of
9 court that comes about in June.

10 As we draw closer to the trial and the evidence
11 becomes more available to you than it has become, we will
12 set these matters down and rule on the motions that you have
13 filed and permit you to renew the motions based upon the
14 evidence that you discover.

15 But I emphatically remind each counsel in this case
16 that if something comes up that you need the assistance of
17 this Court to rectify, file your motions immediately. Do
18 not sit on your hands.

19 All right. The 22nd day of July, gentlemen.

20 END OF PROCEEDINGS

1 (The following proceedings were had in open court on
2 April 25, 1996:)

3 THE COURT: I have been advised that there is a
4 change of plea in CF-95-104, State of Oklahoma v. Joshua
5 D. Stump. The state is present by Mr. Barnett and Mr.
6 Zimmerman, and the defendant by Mr. Rowan and -- I beg your
7 pardon, sir. I continually --

8 MR. EDDY: Rand Eddy.

9 THE COURT: The parties appear before the bench.
10 Your true and correct name is Joshua D. Stump; is that
11 correct?

12 DEFENDANT JOSHUA STUMP: Yes, sir.

13 THE COURT: There has been indicated to the
14 Court that a plea bargain has been struck in your case
15 whereby an amended Felony Information of murder in the
16 second degree has been filed. Have you received a copy of
17 the amended Felony Information?

18 DEFENDANT JOSHUA STUMP: Yes, sir.

19 THE COURT: Have you read it?

20 DEFENDANT JOSHUA STUMP: Yes, sir.

21 THE COURT: Do you understand it?

22 DEFENDANT JOSHUA STUMP: Yes, sir.

23 THE COURT: I will advise you that the range of
24 punishment on this particular offense is not less than ten
25 years' incarceration and up to and including life

1 incarceration. Do you understand that?

2 DEFENDANT JOSHUA STUMP: Yes, sir.

3 THE COURT: You are presumed innocent of these
4 charges until proven guilty beyond a reasonable doubt. Do
5 you understand that?

6 DEFENDANT JOSHUA STUMP: Yes, sir.

7 THE COURT: You are represented by counsel who
8 has been court-appointed, are you not?

9 DEFENDANT JOSHUA STUMP: Yes, sir.

10 THE COURT: You understand that you have the
11 right to have an attorney to represent you throughout each
12 and every stage of these proceedings, and if you are without
13 the funds to employ a lawyer, this Court would employ one at
14 no cost to you. Do you understand that?

15 DEFENDANT JOSHUA STUMP: Yes, sir.

16 THE COURT: And that has been done in your case,
17 has it not?

18 DEFENDANT JOSHUA STUMP: Yes, sir.

19 THE COURT: How old are you, sir?

20 DEFENDANT JOSHUA STUMP: I'm 18.

21 THE COURT: And what is your educational
22 background?

23 DEFENDANT JOSHUA STUMP: Eighth grade.

24 THE COURT: Can you read and write the English
25 language without difficulty?

1 DEFENDANT JOSHUA STUMP: Yes, sir.

2 THE COURT: Have you consumed any alcohol,
3 drugs, or medication within the last 24 hours that affects
4 your ability to understand these proceedings?

5 DEFENDANT JOSHUA STUMP: No, sir.

6 THE COURT: Have you ever been treated or
7 observed for any mental illness?

8 DEFENDANT JOSHUA STUMP: No, sir.

9 THE COURT: Do you feel that you are competent
10 to proceed in this particular matter?

11 DEFENDANT JOSHUA STUMP: Yes, sir.

12 THE COURT: Mr. Rowan, do you concur in that
13 assessment?

14 MR. ROWAN: Yes, sir.

15 THE COURT: I will advise you, sir, that you
16 have the right to a speedy and public trial by an impartial
17 jury of your peers, the right to cross-examine the witnesses
18 who testify against you, to subpoena and present witnesses
19 on your own behalf at no expense to you, to remain silent
20 and not testify, and to demand an additional day in which to
21 enter your plea.

22 You have the right to enter a plea of not guilty and,
23 in so doing, to exercise all of the rights I have just told
24 you about.

25 If, in fact, a plea bargain has been struck, this

1 Court is not bound to follow it; however, I must let you
2 withdraw any plea that you make to the information. Do you
3 understand all of that?

4 DEFENDANT JOSHUA STUMP: Yes, sir.

5 THE COURT: Your attorney has handed me a
6 document that indicates that a plea bargain has been struck
7 in your case. If you will raise your right hand, the clerk
8 will swear you.

9 (The defendant was sworn.)

10 JOSHUA D. STUMP

11 the defendant, having first been duly sworn, was examined
12 and testified as follows:

13 EXAMINATION

14 BY THE COURT:

15 Q Have you seen this document entitled, "Plea of Guilty,
16 Summary of Facts"?

17 A Yes, sir.

18 Q Have you read it?

19 A Yes, sir.

20 Q Each and every question contained therein?

21 A Yes, sir.

22 Q Are the answers in your own handwriting --

23 A Yes, sir.

24 Q -- or are they in Mr. Rowan's or the other lawyer's
25 handwriting?

- 1 A Yes, sir.
- 2 Q Did you go over the questions?
- 3 A Yes, sir.
- 4 Q Any question that you did not read?
- 5 A No, sir.
- 6 Q Any question that you did not understand?
- 7 A No, sir.
- 8 Q Any answer that you did not give that was not
9 truthful?
- 10 A No, sir.
- 11 Q All of the answers are truthful; is that correct?
- 12 A Yes, sir.
- 13 THE COURT: Mr. District Attorney, what is the
14 plea bargain in this particular case?
- 15 MR. ZIMMERMAN: In return for the defendant's
16 plea of guilty, charging him with murder in the second
17 degree, the State would recommend that he be sentenced to 75
18 years in the state penitentiary.
- 19 Q (By the Court) Is that your understanding of the plea
20 bargain?
- 21 A Yes, sir.
- 22 Q Have you had the advice of counsel concerning the plea
23 bargain considered in this particular case?
- 24 A Yes, sir.
- 25 Q Are you prepared to enter a plea to the second amended

1 felony information that charges you with the crime of murder
2 in the second degree?

3 A Yes, sir.

4 Q How, then, do you plead?

5 A I plead guilty.

6 Q Is that plea made freely and voluntarily on your part?

7 A Yes, sir.

8 Q For the reason that you are guilty and for no other
9 reason?

10 A Yes, sir.

11 Q You understand that by pleading guilty, you admit each
12 and every material allegation in the second amended felony
13 information?

14 A Yes, sir.

15 Q Has anybody promised you anything in order to make you
16 plead guilty --

17 A No.

18 Q -- save and except the plea bargain?

19 A No, sir.

20 Q Has anyone coerced you in any way to enter this plea?

21 A No, sir.

22 Q Do you have any complaint to make about anyone
23 involved in this entire process, be it the sheriff, your own
24 lawyer, the district attorney, the Oklahoma State Bureau of
25 Investigation, or anyone?

1 A No, sir.

2 Q You are satisfied that you have been treated fairly;
3 is that correct?

4 A Yes, sir.

5 THE COURT: Before proceeding further, Mr.
6 District Attorney, have you consulted with the victim's
7 family and the victim of this particular crime?

8 MR. ZIMMERMAN: Yes, sir, I have, every one of
9 them. I mean, everyone that I know about.

10 THE COURT: And what response did you receive
11 from them?

12 MR. ZIMMERMAN: The family is unanimous in the
13 amended information and the terms of incarceration. That's
14 my understanding. And specifically for the record, I spoke
15 to Mr. Moucka moments ago about this matter and told him
16 that part of this negotiated plea, in addition to the 75
17 years of the prison sentence, was that we would be
18 dismissing the escape charge. And he concurred with that.
19 And as far as I know, Judge, that's everybody's wish in this
20 case.

21 THE COURT: Is Mr. Hubert Moucka present in the
22 courtroom today?

23 MR. HUBERT MOUCKA: Yes.

24 THE COURT: Mr. Moucka, would you stand?
25 Have you heard the statement of the district attorney?

1 MR. HUBERT MOUCKA: Yes.

2 THE COURT: Have you been contacted and
3 consulted about this plea bargain today?

4 MR. HUBERT MOUCKA: Yes.

5 THE COURT: And do you accept the same?

6 MR. HUBERT MOUCKA: Yes, sir.

7 THE COURT: Thank you very much.

8 Is some of the family of Katharina Knight in the
9 courtroom?

10 And who would you be, please?

11 MS. LISA WOOD: I'm her daughter.

12 THE COURT: And who are you, please?

13 MS. LISA WOOD: Lisa Wood.

14 THE COURT: Have you been consulted about the
15 plea bargain?

16 MS. LISA WOOD: Yes.

17 THE COURT: And did you hear my questions to Mr.
18 Moucka?

19 MS. LISA WOOD: Yes.

20 THE COURT: And do you accept it?

21 MS. LISA WOOD: Yes.

22 THE COURT: And you ask the Court to pass the
23 sentence accordingly; is that correct?

24 MS. LISA WOOD: Yes.

25 THE COURT: Is that the wishes of the other

1 members of your family?

2 MS. LISA WOOD: Yes.

3 THE COURT: Thank you very much.

4 I find as follows: That the defendant was sworn and
5 responded to the questions under oath; that the defendant
6 understands the nature, purpose and consequences of this
7 proceeding; that the defendant's plea of guilty is knowingly
8 and voluntarily entered and accepted by this Court; that the
9 defendant is competent for the purpose of this hearing; that
10 a factual basis exists for the plea; that the defendant is
11 guilty as charged after no prior felony convictions.

12 Q (By the Court) The question, then, is addressed to
13 you, Mr. Stump, as to whether or not you wish to be
14 sentenced instanter, which means at once, or whether or not
15 you wish a presentence investigative report.

16 A I would rather be sentenced at once.

17 Q You understand that you do have the right to a
18 presentence investigative report?

19 A Yes, sir.

20 Q And you waive that and ask me to sentence you; is that
21 correct?

22 A Yes, sir.

23 THE COURT: I think, Mr. Rowan, I may have
24 overlooked something. I don't know that he is entitled to a
25 preliminary hearing, this being a lesser included offense of

1 what was originally charged, but I expect that you waive any
2 preliminary hearing.

3 MR. ROWAN: Yes, sir. We waive all rights in
4 regard to the new information.

5 THE COURT: Based upon your plea of guilty to
6 the crime of murder in the second degree, it's the judgment
7 and sentence of this Court that you be sentenced to a term
8 of 75 years in the custody of the Department of Corrections
9 of the State of Oklahoma.

10 It is the further order of the Court that you pay the
11 costs in this particular matter. You are remanded to the
12 custody of the sheriff of Lincoln County, Oklahoma, to be
13 transported at their earliest convenience to the warden of
14 the Department of Corrections.

15 This is a final order in your case and you have
16 certain rights of appeal. Those rights of appeal must be
17 exercised within ten days from this date. It is for that
18 reason that I retain Mr. Rowan as your attorney for the next
19 ten days. If you have any desire to appeal, you should
20 contact him, and failing your ability to contact him, you
21 should contact the warden of the penitentiary. Do you
22 understand that?

23 DEFENDANT JOSHUA STUMP: Yes, sir.

24 THE COURT: You have the right to be transported
25 to the penitentiary immediately or you have the right to be

1 held in the county jail for ten days. This is something
2 that you must tell me on the record. Do you wish to be held
3 or transported?

4 DEFENDANT JOSHUA STUMP: Transported.

5 THE COURT: The sheriff is directed to transport
6 you as soon as possible. You are remanded to the custody of
7 the sheriff for transportation to the warden of the
8 Department of Corrections.

9 MR. ZIMMERMAN: Thank you, your Honor. May we
10 be excused, Judge?

11 THE COURT: Yes.

12 END OF PROCEEDINGS

13

14

15

16

17

18

19

20

21

22

23

24

25

1 IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT
2 SITTING WITHIN AND FOR LINCOLN COUNTY
3 STATE OF OKLAHOMA

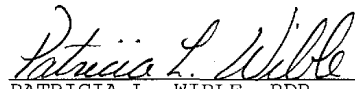
3 STATE OF OKLAHOMA,)
4 Plaintiff,)
5 v.) Case No. CF-95-104
6 JOSHUA D. STUMP,)
7 Defendant.)

8 C E R T I F I C A T E

9 I, Patricia L. Wible, certified shorthand reporter
10 within and for the State of Oklahoma, do hereby certify that
11 the above and foregoing Transcript of Proceedings was taken
12 by me in machine shorthand and thereafter reduced to
13 typewriting, and that the same were taken on December 20,
14 1995, January 19, 1996, February 23, 1996, March 13, 1996,
15 and April 25, 1996, in District Courtroom No. 1 of the
16 Lincoln County Courthouse, Chandler, Oklahoma.

17 I further certify that this is a true, correct, and
18 complete transcript of the proceedings had and that I am not
19 attorney for nor relative of any of said parties or
20 otherwise interested in the action.

21 WITNESS MY HAND this 16th day of December, 2002.

22 
23 _____
24 PATRICIA L. WIBLE, RDR

25 Patricia L. Wible
Oklahoma Certified Shorthand Reporter
Certificate No. 00403
Exp. Date: December 31, 2002