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IN THE CIRCUIT COURT OF
THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY,
FLORIDA

CASE NO. 87-1347-CF-A-01
and 88-262-CF-A-01

STATE OF FLORIDA,

Plaintiff,

v.

JAMES AREN DUCKETT,

Defendant.

V O L U M E X I

AUG 11 2 47 PM '88
CLERK OF CIRCUIT
AND JOSEPH J. DUKETT
LAKE COUNTY
TAVARES, FLORIDA

Case: 1987 CF 001347



00081365171
Dkt: CFTRANS

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135.12

1 THE COURT: Bring the Jury back, please, Mr. Bailiff.

2 (WHEREUPON, JURY ENTERS COURTROOM AT 8:02 P. M.)

3 MR. EDMUND: Don't forget the alternates.

4 THE COURT: We don't have enough bailiffs to do it all at
5 once. We will bring them...

6 While these folks are coming in, Mr. Bailiff, would you
7 retrieve the alternates, too, and bring them back to the
8 courtroom?

9 MR. CORBETT: Yes, sir.

10 THE COURT: Welcome back, folks. You all can be seated.
11 Wait with us just a minute if you would, while we get the
12 alternates. We want to talk to you all at once for just a
13 second.

14 (WHEREUPON, ALTERNATE JURORS ENTER COURTROOM AT 8:05 P. M.)

15 THE COURT: Welcome back, folks. If you will take your
16 seat up there with the other jurors for the purpose of this
17 short discussion.

18 Folks, I have determined that at this time we are going
19 to take the evening recess. For those of you serving, including
20 the alternates, that means you will be sequestered.

21 I have entered an Order today regarding and regulating
22 sequestration. I want to go over with you so there will be
23 no question what the rules are. Of course, both of the
24 bailiffs that will be with you have a copy of the rules, both
25 of the attorneys have a copy of the rules, but I would like to

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1 explain them to you at this time.

2 While court is in recess, and that includes this evening,
3 the jurors shall not disband and shall be transported by the
4 Bailiff to the lodging accommodations as chosen by the Court.
5 Those reservations have been made and are available at this
6 time.

7 The Jury shall eat all meals as a group and under the
8 supervision of a Bailiff. That a male and female member of the
9 Bailiffs' staff shall reside with the Jury during the duration
10 of their sequestration. One male and one female bailiff will
11 be at the motel with you.

12 The jurors shall be housed two to a room as far as
13 practical without unduly infringing upon any individual juror's
14 privacy. Obviously, we have planned for two men to a room and
15 two women to a room. If you have a problem with that, if for
16 some particular reason you request to be in a single room, you
17 bring that to Mr. Corbett's attention and I am going to leave
18 that in his sound discretion as to whether or not to authorize
19 that, but if that creates any particular personal problem for
20 any person on this jury, I can assure you we will do everything
21 we can to accommodate them, even if that requires more rooms.
22 Hopefully, that won't be necessary. Obviously, it expands our
23 expense.

24 Jurors will be allowed to watch television and listen to
25 the radio, except news broadcasts. If you are listening to

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1 television or the radio and anything comes to your attention
2 concerning this case, I order and direct you you must turn
3 it off immediately.

4 Newspapers may be read after review by the Supervising
5 Bailiff with all reference to this case being redacted. That
6 means taken out. If you choose to read a newspaper this
7 evening or in the morning or any time during the course of
8 this case, you must not do so until that newspaper has been
9 submitted to the Bailiff. Any and all articles in their
10 entirety, Mr. Bailiff, including headlines relating to this
11 case, will be removed.

12 Jurors will be allowed to contact family members by
13 phone. You will be allowed to do that, but will not be allowed
14 to discuss any matters concerning the case. You will not
15 discuss in any way this case with any family member you might
16 contact by telephone.

17 Any materials brought to the jurors by friends, family
18 members, et cetera, shall be reviewed by the Supervising
19 Bailiff to insure no inappropriate material is given to any
20 juror. So if anyone brings you anything while you are
21 sequestered, a book or anything else, that must be cleared
22 through the Bailiff before you receive it.

23 No juror shall have personal contact with any non-juror
24 except Supervising Bailiff unless authorized by these rules or
25 by the Court. Obviously, common sense exceptions: You can

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1 speak to the waitress at the restaurant when you place you
2 order or about the order and things like that, but in general
3 and except with regard to calling your family, you will have
4 no contact with any non-juror.

5 Alternate jurors shall be sequestered with other jurors
6 and shall not be released from jury duty until all other
7 jurors are released. So you will stay with us in terms of
8 sequestration just as though you are serving.

9 In the event of a penalty phase, the alternate jurors
10 shall remain sequestered. You will stay with us should that
11 become necessary.

12 We have another instruction written in. Jurors will not
13 discuss the case in the presence of the alternates and in
14 order to be more specific, I want to suggest to you that while
15 we are on recess, as soon as we leave here and until you come
16 back at 9:00 o'clock tomorrow morning, do not discuss the
17 case at all. Not even among yourselves. Don't talk among
18 yourselves about the case or with your roommate about the case.
19 The better practice and the practice I require is you discuss
20 that case when you are back in that jury room and no other
21 time with anybody else. Are we all clear on that?
22 That is clearly the better practice.

23 When court reconvenes, I am going to inquire of the
24 jurors and the Supervising Bailiff as to compliance with these
25 rules. Simply ask you to assure me as we have and the Bailiff,

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1 that you have complied by these rules and advise you as I
2 think I implicitly have already with regard to these rules,
3 that while you are in recess you will not discuss the case
4 among yourselves or with anyone else. You will not read any
5 newspaper accounts about the case. You will not watch any
6 television or listen to any radio accounts about the case.
7 And you couldn't if you wanted to at this point, but you will
8 not attempt to visit the scene of the alleged occurrence.
9 Are we all straight with regard to the rules for sequestration?

10 Alright, we are going to see you back here at 9:00
11 A. M. We will convene court formally at that time, but the
12 only purpose for doing that will be to assure you all are
13 here. We will take our alternates and sequester them as we
14 have throughout today, under the supervision of a Bailiff.
15 Then you will just commence your deliberations at 9:00 o'clock.

16 Madam Clerk, I am going to charge you to obtain all the
17 evidence in the jury room and lock it in the evidence vault.
18 Madam Clerk has assured me the only person that has a key to
19 the evidence vault in this room is herself. No maintenance
20 people. Nobody else. She has the only key to that evidence
21 vault.

22 Alright, any objections to my procedure or suggestions?

23 MR. HOGAN: No, sir.

24 MR. EDMUND: No, Your Honor.

25 THE COURT: I'll see you back at 9:00 o'clock in the

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1 morning. Jurors first, please, Mr. Bailiff.

2 (WHEREUPON, JURY LEAVES COURTROOM AT 8:14 P. M.)

3 (WHEREUPON, DEFENDANT IS REMOVED FROM COURTROOM AT
4 8:15 P. M.)

5 THE COURT: Attorneys, I will advise you while we are
6 here that I have a full day of civil hearings planned for
7 tomorrow and as soon as I come back and reconvene this court,
8 I am going to start a hearing then in the other courthouse
9 in chambers. I will be available, Mr. Bailiff, of course,
10 in my chambers over there should you need me.

11 Alright? See you at nine o'clock tomorrow.

12 (WHEREUPON, COURT IS IN RECESS AT 8:16 P. M.)

13 May 10, 1988, 9:00 A. M.

14 (WHEREUPON, COURT CONVENES AT 9:29 A. M.)

15 (WHEREUPON, DEFENDANT ENTERS COURTROOM AND IS PRESENT
16 WITH COUNSEL, MR. EDMUND)

17 (WHEREUPON, ALTERNATE JURORS ENTER COURTROOM AT 9:29 A. M.)

18 THE COURT: Good morning, folks. How are you today?
19 Can you assure us you did abide by the admonitions and the
20 rules of sequestration?

21 JURORS: Yes, sir.

22 THE COURT: I appreciate it very much. If you would bring
23 in the other jurors, please, Mr. Bailiff.

24 (WHEREUPON, JURY ENTERS COURTROOM AT 9:30 A. M.)

25 THE COURT: Good morning, folks. Be seated, please.

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1 Sorry we are so late getting started. I got tied up next
2 door. Can you all assure me you did abide by the admonitions
3 of yesterday and the rules of sequestration?

4 JURORS: Yes, sir.

5 THE COURT: Mr. Bailiff, can you assure me that all were
6 adhered to?

7 MR. CORBETT: Yes, sir.

8 THE COURT: Gentlemen, do we have anything further before
9 we allow the Jury to retire to deliberate?

10 MR. HOGAN: No, Your Honor.

11 MR. EDMUND: No, Your Honor.

12 THE COURT: Alright, if you would, please, Mr. Bailiff.
13 We will send the evidence right back with you in just a minute.

14 (WHEREUPON, JURY LEAVES COURTROOM TO DELIBERATE AT
15 9:31 A. M.)

16 (WHEREUPON, ALTERNATES LEAVE COURTROOM AT 9:31 A. M.)

17 THE COURT: I appreciate your patience, folks.

18 Gentlemen, while we have the Defendant in the courtroom,
19 I want the record to be completely clear that throughout the
20 course of this trial, the Bailiff who has been in charge of
21 the Jury, Mr. Corbett, has been dressed each and every day as
22 he is today, in a plain gray suit, white shirt, black tie and
23 an identifying badge showing that he is a Bailiff of this
24 court. The two alternate jurors are in the charge of a woman
25 bailiff from Lake County Sheriff's Office, who works with us,

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1 who is wearing civilian clothes and has since she has been in
2 charge of the two alternate jurors.

3 Anything before we recess?

4 MR. EDMUND: No, Your Honor.

5 MR. HOGAN: No, sir.

6 THE COURT: I appreciate your rounding up those jury
7 instructions we discussed. Bring them on over. Ms. Patz,
8 I'll need you available in the other building in chambers and
9 we will get to them just as quickly as I can work you in
10 this morning.

11 Thank you.

12 (WHEREUPON, COURT IS IN RECESS AT 9:33 A. M. AND
13 DEFENDANT IS REMOVED FROM COURTROOM)

14 (WHEREUPON, JURY KNOCKS ON DOOR AND ADVISES THEY HAVE A
15 VERDICT AT 10:55 A. M.)

16 (WHEREUPON, COURT RECONVENES AT 11:20 A. M.)

17 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
18 COUNSEL, MR. EDMUND AND ALTERNATE JURORS ARE PRESENT ALSO)

19 THE COURT: Anything before we bring the Jury out?

20 MR. HOGAN: No, Your Honor.

21 MR. EDMUND: No, Your Honor.

22 THE COURT: I am advised, Mr. Bailiff, the Jury has
23 reached a verdict?

24 MR. CORBETT: Yes, sir.

25 THE COURT: Alright. Bring the Jury back, please.

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1 (WHEREUPON, JURY ENTERS COURTROOM AT 11:22 A. M.)
2 THE COURT: Welcome back, folks. Be seated, please.
3 I understand, Mr. Foreman, the Jury has reached its verdicts?
4 JURY FOREMAN: Yes, sir.
5 THE COURT: Would you hand them to the Bailiff, please.
6 (WHEREUPON, VERDICTS ARE HANDED TO THE BAILIFF BY
7 THE JURY FOREMAN, MR. DE CLERK)
8 (WHEREUPON, BAILIFF HANDS VERDICTS TO THE COURT AND THE
9 COURT HANDS TO THE CLERK OF THE COURT)
10 THE COURT: Madam Clerk, I am going to ask you to publish
11 the verdicts at this time.
12 Ladies and gentlemen, for the spectators in the courtroom,
13 I advise each and every one of you that the Court will abide
14 no outbursts or excited exclamations on the publishing of the
15 verdicts. I ask the Defendant to rise, please, sir.
16 (WHEREUPON, DEFENDANT RISES WITH HIS COUNSEL)
17 CLERK OF THE COURT: In the Circuit Court of the Fifth
18 Judicial Circuit, of the State of Florida, in and for Lake
19 County. Case No. 82-262 and 87-1347-CF-A.
20 THE COURT: Excuse me, ma'am. That is 88-262.
21 CLERK OF THE COURT: Sorry. 88-262-CF-A.
22 The State of Florida versus James Aren Duckett.
23 We, the Jury, find as follows as to the Defendant in the
24 Information in this case: The Defendant is guilty of Capital
25 Sexual Battery as charged in the Information.

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1 So say we all, dated this the 10th day of May, 1988.

2 Joseph DeClerk, Foreman.

3 We, the Jury, find as follows as to the Defendant in the
4 Indictment in this case: The Defendant is guilty of Murder
5 in the First Degree as charged in the Indictment.

6 So say we all, dated this the 10th day of May, 1988.

7 Joseph DeClerk, Foreman.

8 THE COURT: Counsel for either party wish the Jury to be
9 polled?

10 MR. EDMUND: Yes, Your Honor.

11 THE COURT: Madam Clerk, poll the Jury, please.

12 CLERK OF THE COURT: Ms. Stroud, is this your verdict?

13 THE COURT: You have to say, "Are these your verdicts,
14 ma'am". I realize this is an unusual case.

15 CLERK OF THE COURT: Mr. Hall, are these your verdicts?

16 MR. HALL: Yes.

17 CLERK OF THE COURT: Dr. Emerson, are these your
18 verdicts?

19 DR. EMERSON: Yes.

20 CLERK OF THE COURT: Ms. Warren, are these your verdicts?

21 MS. WARREN: Yes.

22 CLERK OF THE COURT: Ms. Gries, are these your verdicts?

23 MS. GRIES: Yes.

24 CLERK OF THE COURT: Mr. Schlager, are these your
25 verdicts?

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1 MR. SCHLAGER: Yes.
2 CLERK OF THE COURT: Ms. Rhodes, are these your verdicts?
3 MS. RHODES: Yes.
4 CLERK OF THE COURT: Mr. Barry, are these your verdicts?
5 MR. BARRY: Yes, ma'am.
6 CLERK OF THE COURT: Mr. DeClerk, are these your verdicts?
7 MR. DE CLERK: Yes.
8 CLERK OF THE COURT: Ms. Stephens, are these your
9 verdicts?
10 MS. STEPHENS: Yes.
11 CLERK OF THE COURT: Ms. Gray, are these your verdicts?
12 MS. GRAY: Yes.
13 CLERK OF THE COURT: Mr. Martin, are these your verdicts?
14 MR. MARTIN: Yes.
15 THE COURT: To return to Mrs. Stroud, ma'am, I am not
16 picking on you, but she didn't come back to you. Are these
17 your verdicts?
18 MS. STROUD: Yes, sir.
19 THE COURT: Thank you, ma'am.
20 Mr. Edmund, do you have any reason to be heard prior to
21 judgment only being imposed at this time?
22 MR. EDMUND: No, Your Honor.
23 THE COURT: James Aren Duckett, based upon the verdict
24 of the Jury finding you guilty of the offense charged in the
25 Information filed against you in Criminal Case Number

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1 88-262, the Court now adjudges you guilty of the offense
2 charged therein, to-wit: Capital Sexual Battery.

3 Based upon the verdict of the Jury finding you guilty
4 of the offense charged in the Indictment filed against you
5 in Criminal Case Number 87-1347, the Court now adjudges you
6 guilty of the offense charged therein, to-wit: First Degree
7 Premeditated Murder.

8 At this time, we will fingerprint the Defendant with
9 regard to both cases and Mr. Bailiff, then I intend to take
10 a recess until 1:00 this afternoon, at which time, I intend
11 to begin the penalty phase as to Case 87-1347. After the
12 recess, I am going to need to see you all in chambers with
13 Madam Patz, to go over the Jury Instructions for the Penalty
14 Phase, if you will.

15 I am going to ask everyone to remain seated in the
16 courtroom at this time.

17 (WHEREUPON, DEFENDANT, JAMES AREN DUCKETT, IS FINGERPRINTED
18 IN OPEN COURT)

19 THE COURT: Remove the Jury, please, Mr. Bailiff. We
20 will be in recess as to the Jury until 1:00 P. M. We will
21 feed them in today.

22 MR. CORBETT: Yes, sir.

23 (WHEREUPON, JURY LEAVES COURTROOM AT 11:28 A. M.)

24 (WHEREUPON, ALTERNATE JURORS LEAVE COURTROOM AT 11:29 A. M.)

25 THE COURT: Folks, as alternates, you will remain with

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1 us and you will remain sequestered.

2 (WHEREUPON, DEFENDANT IS REMOVED FROM COURTROOM AT
3 11:30 A. M.)

4 (WHEREUPON, FAMILY MEMBERS OF MR. DUCKETT ARE REMOVED
5 FROM THE COURTROOM AT 11:31 A. M.)

6 MR. CORBETT: Judge, with your permission, we have
7 agreed to leave the McAbee family in here for a few minutes.

8 THE COURT: Yes, sir, I think that is wise.

9 Gentlemen, I will see you all upstairs. Ms. Patz, please.

10 (WHEREUPON, COURT IS IN RECESS AT 11:32 A. M.)

11 (WHEREUPON, COURT CONVENES IN CHAMBERS AT 11:35 A. M.)

12 THE COURT: I thought, given the case and the publicity
13 and what have you, I thought that everybody tried a clean case.
14 A fair case. We have got a few issues for appeal.

15 MR. EDMUND: Your Honor, the only one that I have, if I
16 could ask you all to type it in for me.

17 MR. HOGAN: Sure.

18 MR. EDMUND: It is the only one I have, is A.

19 MR. HOGAN: Which one is it?

20 MR. EDMUND: The only one I have is A. Has no significant
21 history of prior criminal activity. I don't think anything
22 else is applicable and I think I am limited to the Statutes.

23 MR. HOGAN: Well, you can bring up anything else you
24 want.

25 MR. EDMUND: Right, but I mean as far as typing into the

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1 instructions are concerned.

2 MR. HOGAN: Don't you want us to type in any other aspect
3 of the Defendant...

4 THE COURT: What I want to do is start at page one and go
5 right through the total thing. Okay?

6 MR. EDMUND: Oh, I'm sorry.

7 THE COURT: Alright, my page one is the Preliminary
8 Instruction, which we are going to give them at one o'clock.

9 Any objection to the first page?

10 MR. EDMUND: No, Your Honor.

11 THE COURT: The second page, still Preliminary Instructions.

12 MR. EDMUND: No objection, Your Honor.

13 THE COURT: Now, I have reached the third page, which is
14 really the second portion of the Instruction. Any objection
15 to that page?

16 MR. EDMUND: No, sir.

17 THE COURT: Let me show my total ignorance, but I am
18 not going to mess this up by not doing it. After the first
19 two pages, the preliminary instructions, then we take evidence
20 from the State and take evidence from the Defense. Then we
21 do a final argument in effect, before we get to the second
22 set of instructions?

23 MR. EDMUND: Yes, sir.

24 MR. HOGAN: Yes, sir.

25 THE COURT: Alright.

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1 MR. EDMUND: Well, wait a minute now. No.

2 MR. HOGAN: Let's go to the book. It would be in the
3 sample, the model sample.

4 MR. HURM: Yes, give after the taking of evidence and
5 arguments.

6 MR. HOGAN: The last word you should say ... let's see..

7 THE COURT: On page two.

8 MR. HURM: And then after taking of evidence and argument,
9 you give page three.

10 THE COURT: That is what I thought. We are just going to
11 give the first two pages. Then we take testimony. Then you
12 give arguments. Then I read all the rest of these instructions.

13 MR. HOGAN: Right.

14 THE COURT: And where is the introduction to your
15 arguments? We have a form I use regularly.

16 MR. HOGAN: There is no introduction that is provided.
17 You read these first two pages and then you say, "Does the
18 State have any witnesses?", at which time we plan to stand up
19 and say, "Judge, we rely on the evidence imposed in the guilt
20 portion of this case and we have nothing to present." and then
21 we will sit down and then Defense...

22 MR. EDMUND: I will have four.

23 THE COURT: Okay, and then I will just say, "Counsel will
24 now present their argument with regard to the Penalty Phase.
25 You will go. Is there any first and last in this thing?

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1 MR. HOGAN: No, sir. I go first.

2 THE COURT: (To Mr. Edmund) You go last and that is that?

3 Okay. Then we read the rest of the instructions and then

4 send them back to deliberate. Okay.

5 So I am on page three now. Any objection to page three?

6 MR. EDMUND: No, sir.

7 THE COURT: Now, we are listing the aggravating...

8 are these the ones you have selected from the list?

9 MR. HOGAN: Not necessarily.

10 MR. EDMUND: I think they are the ones that I would have

11 expected the State to include, Your Honor.

12 THE COURT: You only read the ones that the evidence

13 supports, don't you? You just don't go randomly reading all

14 of them.

15 MR. HOGAN: What we are requesting, Judge, is not... these

16 are roughed out before the trial started for everybody just to

17 have to go over. We do request, obviously, that it was

18 committed during the commission of Sexual Battery.

19 THE COURT: Alright, your number one.

20 MR. HOGAN: And if there is any argument on that. Then

21 number two, we do request it was a particularly heinous ...

22 I think that the words now are heinous, cruel and atrocious.

23 MS. ALBON: I have taken this out of the book.

24 MR. HOGAN: Okay, they may have changed ...

25 THE COURT: Where do you find that?

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1 MR. HOGAN: It is on page seventy-eight.
2 MR. EDMUND: Heinous, atrocious or cruel.
3 MR. HOGAN: I think they have changed it.
4 MS. ALBON: These were done by the computer.
5 MR. HOGAN: This may be what it used to say, but now
6 I believe it is heinous...
7 MR. HURM: This says right here on page seventy-nine,
8 a crime especially wicked, evil, atrocious or cruel.
9 MR. HOGAN: It is the same one. At some point, I think
10 they re-worded it.
11 MR. EDMUND: The new Statutes have been re-worded so they
12 now read...
13 MR. HOGAN: This is October of '85.
14 MR. EDMUND: It is especially heinous, atrocious or cruel.
15 MR. HOGAN: We do request that one. We do not request
16 cold and calculated.
17 MS. ALBON: Could you spell heinous?
18 MR. HURM: H E I N O U S.
19 THE COURT: I understand as to the proposed aggravating
20 circumstances, number one, which the State proposed, they
21 continue to propose. Do I have any objection to that?
22 MR. EDMUND: I can't object to that, Your Honor.
23 THE COURT: Number two, they propose to be re-worded and
24 state your exact re-wording of number two.
25 MR. HURM: Was especially... the crime for which the

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1 Defendant is to be sentenced was especially heinous, atrocious
2 or cruel.

3 THE COURT: That is the new Statute?

4 MR. EDMUND: Yes, Your Honor.

5 THE COURT: Heinous, atrocious or cruel. Any objection
6 to that as re-worded?

7 MR. EDMUND: Yes, Your Honor, objection for the record.
8 No argument, Your Honor.

9 THE COURT: You are withdrawing your cold, calculated
10 and premeditated?

11 MR. HOGAN: Yes, sir.

12 THE COURT: So you are asking for two aggravatings? Any
13 others?

14 MR. HOGAN: If I could have one minute. We are also going
15 to ... we would also request ... number five, which is the
16 crime for which the Defendant is to be sentenced was committed
17 for the purpose of avoiding or preventing a lawful arrest or
18 making an escape custody. Obviously, the escape from custody
19 is not the pertinent point, but we feel the evidence supports
20 the fact that this little girl could identify him and when
21 after the Sexual Battery was committed, which is supported by
22 the Medical Examiner, that she was then murdered. We think
23 the facts support that.

24 THE COURT: What do you say, Mr. Edmund?

25 MR. EDMUND: To which the Defense objects, Your Honor, on

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1 the grounds that that is merely a supposition not based upon
2 any facts presently before the Court.

3 THE COURT: I think out of an abundance of caution, I am
4 not going to give that. I understand your position, but I
5 don't think that applies in this case. You would have to
6 speculate in this case. You have to speculate in a lot of
7 First Degree Murder cases, I understand that.

8 Alright, so you will have two.

9 MR. HOGAN: Yes, sir.

10 THE COURT: Then I am gone to the next page, which is the
11 general language, "If you find the aggravating circumstances.."

12 Take it one step at a time. Bear with me, gentlemen.
13 I am on the page that begins, "If you find the aggravating
14 circumstances...". Any objection to that page?

15 MR. EDMUND: No objection to the page, Your Honor. I
16 ask that 6A, 921.141(6A), which is, "The Defendant has no
17 significant history of prior criminal activity." be inserted
18 after the colon as number one.

19 MR. HOGAN: In the Jury Instruction Book, that would be
20 Mitigating Number One.

21 THE COURT: Alright, any objection to that by the State?

22 MR. HOGAN: No, sir.

23 THE COURT: Defendant has no significant history of prior
24 criminal activity.

25 MR. HURM: We should change the language of the early

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1 paragraph and get the noun ... the object of the sentence...

2 MR. HOGAN: I think we are going to have to have another
3 one.

4 THE COURT: We are going to have to go further than this.
5 We are not going to limit him to this one, unless you want to
6 have another sentencing hearing next year.

7 MR. HOGAN: Absolutely not.

8 THE COURT: We want it to stay plural in that paragraph.
9 Let's go through the rest of the instruction and make a
10 mental note we probably have to come back to make darn sure
11 that that Hitchcock problem is not here and that we let them
12 consider everything.

13 MR. HOGAN: I think what we can do if I might suggest at
14 this point, now would be to also include paragraph number
15 eight, which is in the Jury Instruction, that they may
16 consider any other aspect of the Defendant's character or
17 record in any circumstance of the offense. If we include that,
18 I think we will be covered.

19 THE COURT: Why don't we put that in, too, as number two.
20 We may even want to do more than that, but let's go through
21 the rest of this and then come back. Alright?

22 I am on the page now that starts, "Each aggravating
23 circumstance...".

24 MR. HOGAN: It should be "in reaching" and not "in
25 reading". Mine says, "In reading your decision".

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1 THE COURT: Where are you?

2 MR. HOGAN: The second paragraph, it says, "as you feel
3 it should receive in..."

4 THE COURT: Reaching, that is a typo. Second full
5 paragraph. Any problem with that page?

6 MR. EDMUND: No, Your Honor.

7 THE COURT: I have reached the page that begins, "If
8 the majority of the Jury determine..."

9 MR. EDMUND: No objections.

10 THE COURT: Alright. I have reached the Advisory
11 Sentence, which gives the majority vote to impose the death
12 penalty and advisory sentence goes the other way.

13 MR. EDMUND: No objections, sir.

14 THE COURT: Alright, now to return to our mitigating
15 circumstance instruction. We have agreed to give number one
16 and number eight, renumbered as number two. I would propose
17 a number three that says: Any other circumstance in
18 mitigation.

19 MR. HOGAN: Judge, we would object to that, because we
20 feel that number eight which is now number two, certainly
21 covers that, because that is exactly what it says. I any
22 other circumstance.

23 THE COURT: It says any aspect of the Defendant's
24 character or record and any other circumstance of the offense.

25 MR. HOGAN: We would request that it say, "Any other

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1 circumstance of the offense, or ...".

2 THE COURT: I don't see why we don't just want a number
3 three that says any other circumstance in mitigation.
4 That is the law, isn't it? Hitchcock says you can consider
5 anything.

6 MR. HOGAN: Yes, sir, that is the law, but I believe
7 that is what number eight is intended to...

8 THE COURT: I don't. It is too narrow. It talks about
9 the Defendant's character, or record, and any other circum-
10 stance of the offense. There might be other things that you
11 could bring in in mitigation that go beyond his character or
12 record or circumstance of the offense.

13 MR. HOGAN: Do we have a comma there then and have it
14 say, "Or any other aspect of his character that you find...
15 or any other thing established that you find to be in
16 mitigation.

17 My point is, I don't think that we are required ... we
18 should be required to have a third, a number three. I think
19 that this is close enough that with a little bit of
20 modification we could certainly work in...

21 THE COURT: I understand your position. I am going to
22 give another three that reads: Any other circumstance in
23 mitigation. That is to me nothing more than a plain and
24 clear statement of the law. The cases I read say you can put
25 on anything.

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1 MR. HURM: We are also going to have to give the
2 instruction after number one that says conviction of previous
3 crimes are not aggravating circumstances.

4 MR. EDMUND: What is this now?

5 MR. HURM: If you offer evidence of no prior criminal
6 history, it has an additional instruction in here, conviction
7 of previous crimes.

8 MR. EDMUND: He didn't have it in ...

9 MR. HURM: He does with the checks.

10 MR. EDMUND: No, he doesn't. That was on nolle prosequi.

11 MR. HURM: Okay, never mind.

12 MR. CORBETT: I believe it will be 1:30 before we can
13 get lunch accomplished.

14 THE COURT: Okay.

15 Do we have any other objections or suggestions or
16 additions?

17 MR. EDMUND: No significant history, number eight, and
18 any other circumstance in mitigation. No.

19 THE COURT: Besides your objection to my third one there,
20 do you have any other objections?

21 MR. EDMUND: No, sir. Oh, you mean him.

22 MR. HOGAN: No, sir.

23 THE COURT: Okay, I'll see you back at 1:30. It does
24 take longer to bring lunch in. We all know that. Are you
25 going to be ready, Jack, based on Tom's representation he is

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1 not going to put any evidence on?

2 MR. EDMUND: Yes, sir.

3 THE COURT: You are really it at 1:30.

4 MR. EDMUND: Yes, sir.

5 THE COURT: Four people, you anticipate?

6 MR. EDMUND: Yes, sir. Again, guys, you tried a nice
7 case.

8 MR. HOGAN: Thank you very much. Appreciate it.

9 THE COURT: To reiterate, that no matter what the Jury
10 recommends and I presume we will get a recommendation today,
11 with only four people at 1:30, I am going to stop at that
12 point and order a P. S. I. on both these charges and set the
13 sentencing date roughly in thirty days. I may have Robin
14 get in touch with the two of you to match your calendars on
15 the exact sentencing date. The three of you, four of you.
16 But it will take them a good thirty days to do a P. S. I.
17 It always does.

18 MR. EDMUND: Thanks, Judge.

19 THE COURT: Thank you all.

20 (WHEREUPON, WE ARE IN RECESS AS TO THE CHARGE CONFERENCE)

21 (WHEREUPON, COURT RECONVENES AT 1:40 P. M. IN CHAMBERS)

22 THE COURT: Alright, let's look at our jury instructions.
23 We have just a couple of retypes as I recall for the Penalty
24 Phase. First sheet, second sheet, no retypes. Third sheet,
25 none. Fourth sheet, aggravating circumstances. Let's review

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1 the retyped.

2 MR. EDMUND: No objection, sir.

3 THE COURT: Alright, we will insert that. We have a
4 retype on the next page, which is the mitigating.

5 MR. EDMUND: That is what Your Honor directed. Yes, sir.

6 THE COURT: Then the page that starts, "Each aggravating
7 circumstance" just had a typo, changing the word "reading"
8 to "reaching". The second paragraph.

9 MR. EDMUND: Yes, sir.

10 THE COURT: Any objection to that retype?

11 MR. EDMUND: No, sir.

12 THE COURT: I don't believe we retyped anything else,
13 did we?

14 MR. EDMUND: No, sir.

15 THE COURT: Any objections or corrections to the Jury
16 Instructions other than previously noted?

17 MR. HOGAN: How do you spell his middle name?

18 MS. ALBON: A R E N.

19 MR. EDMUND: No, Your Honor.

20 THE COURT: Alright, from the State?

21 MR. HURM: No, nothing other than previously noted.

22 THE COURT: We are not wasting time, by the way. The
23 Jury just started eating. They are not quite ready for us,
24 in any event.

25 I am waiting for the Channel 2 Cameraman to come back.

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1 Did he find you?

2 MR. MC DANIEL: Apparently, we got our paths crossed.
3 I was downstairs and he was up here and he went looking for
4 me and I came up the stairs.

5 THE COURT: They are looking for him.

6 (WHEREUPON, CAMERAMAN ENTERS ROOM)

7 THE COURT: Come in, sir. How are you?

8 Alright, I want to put on the record with counsel for
9 both parties present, that my office, through my secretary,
10 Ms. Robin York, has been contacted by an attorney who says
11 that he represents Channel 2.

12 He advises Ms. York and she advises me that Channel 2 has
13 taken certain video pictures of our sitting jury in this
14 action and that it is possible they intend to publish those
15 video pictures on the evening news.

16 He has requested a hearing with the Court with regard
17 to that issue. I have advised Ms. York to tell him I will
18 have a hearing with regard to that issue as soon as I take a
19 break in this case during the Penalty Phase.

20 I am going to specifically advise both of you here from
21 Channel 2, unless and until that hearing is held and a final
22 determination is made, it is this Court's Order at this point,
23 based upon a general concern for the security of the sitting
24 jurors, that if that tape is played to the public, showing the
25 identities of these jurors, I will use the power of this

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1 Court through the power of Contempt, to enforce my Order that
2 you will not publish those pictures to the public.

3 Is there any question about that?

4 MR. MC DANIEL: No.

5 CAMERAMAN: No.

6 THE COURT: Now, I say to you specifically, you will be
7 two of the people from Channel 2 that will be involved in
8 that hearing. I want you both to cite your names on the
9 record, please, sir, you first.

10 MR. MC DANIEL: Dave McDaniel.

11 THE COURT: And you are the reporter?

12 MR. MC DANIEL: Yes.

13 MR. NICHOLS: Richard E. Nichols.

14 THE COURT: And you are the cameraman?

15 MR. NICHOLS: Right.

16 THE COURT: You both clearly understand the status of my
17 Order at this time?

18 MR. MC DANIEL AND MR. NICHOLS: Yes, sir.

19 THE COURT: I don't have anything further. Thank you
20 very much.

21 (WHEREUPON, WE ARE IN RECESS AS TO THIS)

22 (WHEREUPON, COURT CONVENES AT 2:25 P. M.)

23 (WHEREUPON, THE DEFENDANT ENTERS COURTROOM AT 2:25 P. M.)

24 THE COURT: Anything further, gentlemen, before we bring
25 the jurors and the alternate jurors back in the courtroom?

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1 MR. HOGAN: No, sir.
2 MR. EDMUND: No, Your Honor.
3 THE COURT: Jury, please, first Mr. Bailiff.
4 (WHEREUPON, JURY ENTERS COURTROOM AT 2:26 P. M.)
5 THE COURT: Welcome back, folks. Be seated, please.
6 (WHEREUPON, ALTERNATE JURORS ENTER COURTROOM AT 2:27 P.M.)
7 THE COURT: Welcome back, folks.
8 For the record, the alternate jurors are also present in
9 the courtroom.
10 Ladies and gentlemen, these are your jury instructions
11 with regard to the Penalty Phase of this case.
12 You have found the Defendant guilty of Murder in the First
13 Degree.
14 The punishment for this crime is either death or life
15 imprisonment without the possibility of parole for twenty-five
16 years. Final decision as to what punishment shall be imposed
17 rests solely with the Judge of this Court; however, the law
18 requires that you, the Jury, render to the Court an advisory
19 sentence as to what punishment should be imposed upon the
20 Defendant.
21 The State and the Defendant may now present evidence
22 relative to the nature of the crime and the character of the
23 Defendant. You are instructed that this evidence when
24 considered with the evidence you have already heard is presented
25 in order that you might determine, first, whether sufficient

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1 aggravating circumstances exist that would justify the
2 imposition of the death penalty and, second, whether there are
3 mitigating circumstances sufficient to outweigh the aggravating
4 circumstances, if any. At the conclusion of the taking of
5 the evidence and after argument of counsel, you will be
6 instructed on the factors in aggravation and mitigation that
7 you may consider.

8 Is the State prepared?

9 MR. HOGAN: Your Honor, the State intends to rely on the
10 testimony, exhibits and evidence introduced in the guilt
11 portion of the trial and we are not choosing to introduce
12 any further evidence in these proceedings.

13 THE COURT: Thank you, sir. For the Defense, Mr. Edmund?

14 MR. EDMUND: Your Honor, if it please the Court, the
15 Defense intends calling two family members, a friend of the
16 family and the Defendant. The testimony will be directed
17 towards the Defendant's past history and his general association
18 with society.

19 THE COURT: Yes, sir.

20 MR. EDMUND: If Your Honor please, may the Bailiff call
21 Donald Jordan.

22 THE COURT: Donald Jordan. The Defense is aware you are
23 allowed to put on any evidence in mitigation which you choose.

24 MR. EDMUND: We understand, Your Honor.

25 (WHEREUPON, DONALD JORDAN IS CALLED AS WITNESS FOR THE

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1 DEFENSE, AND IS DULY SWORN BY THE CLERK OF THE COURT)

2 DIRECT EXAMINATION

3 BY MR. EDMUND:

4 Q. State your name, please?

5 A. Donald Wayne Jordan.

6 Q. What is your business occupation or profession?

7 A. I am a Finance Manager.

8 Q. Alright, sir, and are you related by blood or
9 marriage to the Defendant, James Duckett?

10 A. Related by blood.

11 Q. Is he the person in the courtroom who has been
12 identified by a number of witnesses as James Duckett? Is he
13 present in the courtroom now, Donald?

14 A. Yes, sir, that is my brother.

15 Q. How old are you?

16 A. I am thirty-five.

17 Q. How old is Jimmie?

18 A. Thirty.

19 Q. Did you all spend your young years together as
20 children and grow up together?

21 A. Yes, sir, all our life.

22 Q. Would you tell the Jury as you observed as his older
23 brother, Jimmie's general attitude and relationship with the
24 society that surrounded him when he was a youngster and a
25 youth?

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1 A. Jimmie has always been very highly thought of where
2 we lived. We primarily grew up over in Sumter County and in
3 an area called Croom-a-Coochee. Jimmie was known there by
4 all the people around the area as the Mayor of Croom-a-Coochee,
5 because everybody thought so highly of him.

6 Q. What has been his relationship with his mother?
7 Over the years, Donald?

8 A. Always taking care of her. Always been there when
9 she needed him.

10 Q. How about with the other members of the family?

11 A. Just a good brother, is all I can say.

12 Q. Alright, now, over the years, have you ever observed
13 any unusual actions or activities with regards to Jimmie and
14 younger girls or younger boys?

15 A. No, sir.

16 Q. What has been in his relationship as far as dating
17 and girlfriends are concerned, as you recall it as his
18 brother, Don? And tell the Jury?

19 A. Well, I don't really ever remember Jimmie having a
20 girlfriend, you know, when you are growing up, when you are in
21 grade school, you have your first little girlfriend and I
22 guess he had one, but I don't never remember that. It has
23 always been Carla that I have associated him with in every
24 manner.

25 Q. And when did this start and what was their association

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1 and how was he thought of in the community, Don?

2 A. Well, they started as friends, as playmates. In
3 that area out there, there was a lot of children that everybody
4 got to know everybody, because there was one specific location
5 where we all swam. We called it the park, in Croom-A-Coochee,
6 but that is where they met as just mates and groups of kids
7 that everybody swam with and generally had a good time with.

8 Q. Have you ever observed anything about your brother
9 that would indicate any sort of deviancy at all as far as
10 his relationship with women or girls are concerned?

11 A. No, sir, he is not possible to do that.

12 Q. Now, during the course of this investigation and the
13 course of Jimmie's incarceration, have you seen him and
14 visited him regularly?

15 A. Yes, sir.

16 Q. Have you had occasion to discuss this case with him
17 from time to time?

18 A. Yes, sir, on many occasions we have talked about it,
19 but the main thing that I spoke with Jimmie about was when we
20 first found out about the case, that he was a suspect at that
21 time. I heard through the radio and he had just found out
22 about the same time and at that time, you know, you always have
23 that question, you know, if somebody is possible that they
24 could be involved in something like this, so I went to him and
25 talked to him at that time and point blank asked him, because

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1 I wanted his reaction more than anything else. I wanted his
2 eyes on me, and he point blank looked me in the eyes and
3 said without any hesitation whatsoever and I do believe him.

4 Q. And what did he say?

5 A. He said that just basically what his testimony here
6 was, that the girl was at the store. He did take out
7 information on her and the young fellas that were there, but
8 as for any involvement into her death, there was no way that
9 he was involved in that.

10 Q. What was your aim through that conversation, Donnie?
11 Had he made any sort of admissions to you?

12 A. Well, we grew up together and I feel that on a
13 brother to brother situation, I don't think someone can look
14 someone in the eyes and not blink an eyelash and not give
15 that concern over something that would be bothering him, and
16 I felt that I had to ask that question to satisfy myself and
17 to satisfy him that I was behind him all the way. I don't
18 think nobody would take it relevant that I wouldn't ask him
19 a question like that, because I was the one that was going to
20 have to work with the family and help him.

21 Q. And in that regard, have you sustained financial
22 costs as a result of your brother's incarceration and
23 prosecution in this case?

24 A. Yes, sir, about \$40,000.00 so far.

25 Q. Would you tell this Jury whether or not you would

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1 have participated in something like that if you had any
2 inkling whatsoever that your brother had been involved?

3 A. No, sir.

4 Q. And when you talked to him, was it your purpose then
5 to, if you made a determination of guilt, to get him a lawyer
6 or to do what?

7 A. Well, if he would have indicated to me that he was...
8 there was guilt there, then I really don't know what my
9 reactions would have been at first, but I do know, I do think
10 that he would have been up front with me at that point in time,
11 you know. Once he was up front with me and handled it in such
12 a manner that I could accept, then I told him there was nothing
13 that I wouldn't do, just as anyone would do for their family
14 member.

15 Q. Did you observe him in this courtroom throughout this
16 trial, Don?

17 A. Yes, sir.

18 Q. Did the emotion or lack of emotion that he displayed,
19 indicate anything different to you than the Jimmie you had
20 known all through your life?

21 A. No, sir, Jimmy always had a very calm attitude
22 toward everything. Even as youngsters, when we would get in
23 trouble, he never really got that excited about it. I am a
24 little bit of a hot head sometimes, but he was always the type
25 that never got upset about anything.

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1 Q. You know this Jury is to make a decision on the
2 recommendations to this Court with regard to whether your blood
3 lives or dies. What will you say to the Jury with regard to
4 any request you might have of them at this time, Donnie?

5 A. The only thing that I can ask of you, you found him
6 guilty. I don't hold you in any way in contempt for that,
7 because that was your feelings at that time. I do know that
8 he is innocent. He is not guilty and I just ask that you
9 consider that point, because he does not need to die for
10 something he didn't do.

11 Q. If it please, Your Honor.

12 THE COURT: From the State?

13 CROSS EXAMINATION

14 BY MR. HOGAN:

15 Q. Mr. Jordan, you say that you can tell when your
16 brother has done something wrong by looking him in the eye?

17 A. I feel like I can, yes, sir.

18 Q. Did you ever question him about the money that was
19 stolen from the insurance claims?

20 A. He didn't steal the money, sir. See, there was no
21 evidence introduced about that other than you stating that.
22 The truth of the matter is that ... the truth of the matter is
23 that the books were kept prior to him going on vacation and
24 somebody else ran his debits. When he came back, because they
25 were his books, they were checked two weeks later and the

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1 money was gone.

2 Q. You looked him in the eye and he told you he didn't
3 do that? He didn't take that money?

4 A. He didn't take the money, sir.

5 Q. You looked him in the eye...

6 A. He did not take the money, sir.

7 Q. My question, sir, is did he look you in the eye and
8 tell you that?

9 A. Certainly.

10 Q. Thank you. Now, what is the worst thing he has
11 looked you in the eye and admitted doing?

12 A. I don't remember anything that he has done, you know,
13 such as that.

14 Q. My question was what is the worst thing he has ever
15 looked you in the eye and admitted doing?

16 A. I can't answer that. I have no idea what you are
17 trying to get to.

18 Q. Well, you are saying you can look him in the eye
19 and tell whether he is lying?

20 A. I feel I can. There is a lot of love in our family.

21 Q. You love your brother?

22 A. Absolutely.

23 Q. And you don't believe he is guilty of this crime?

24 A. I know he is not guilty, sir.

25 Q. And that is based on looking him in the eye?

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1 A. No, sir, that is based on the evidence that you
2 have presented here.

3 Q. And you looked at that in an unbiased manner?

4 A. Yes, sir. And listened to all the testimony every
5 day.

6 Q. Did you ask him about Mrs. Fowler Ruetz?
7 Did you look him in the eye on that question?

8 A. Well, I have not had an opportunity to talk to him.
9 When we talk, it is over the telephone, and in front of a
10 window for the last six months.

11 Q. So that may or may not be true? She may or may not
12 be lying? You don't know about her?

13 A. I have no knowledge of her whatsoever, but if he
14 says that is a lie, that is a lie.

15 Q. But you haven't had a chance to look him in the eye
16 on that one yet?

17 A. I sat right there and watched his whole testimony,
18 sir.

19 Q. My point is, Mr. Jordan, that you weren't sure if
20 your brother was involved in the death of Teresa McAbee or not
21 until you looked him in the eye?

22 A. I am positive now though, after you presented your
23 case.

24 Q. Okay. Thank you very much.

25 THE COURT: Mr. Edmund?

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1 MR. EDMUND: Thank you, Your Honor. May the witness
2 be excused?

3 THE COURT: Yes, sir, you can step down.

4 Next witness, sir?

5 MR. EDMUND: Yes, Your Honor, may the Bailiff call
6 Mary Jean Melissa.

7 (WHEREUPON, MARY JEAN MELISSA IS CALLED AS NEXT WITNESS
8 FOR THE DEFENSE AND IS DULY SWORN BY THE CLERK OF THE COURT)

9 DIRECT EXAMINATION

10 BY MR. EDMUND:

11 Q. State your name, please, ma'am?

12 A. Mary Jean Melissa.

13 Q. Ms. Melissa, are you related by blood or marriage
14 to James Duckett?

15 A. No.

16 Q. Are you related by blood or marriage to any member
17 of his family?

18 A. No.

19 Q. Would you tell the Jury if you recognize and if you
20 know James Duckett?

21 A. Yes.

22 Q. How long have you known him?

23 A. Twenty something years... twenty-five years.

24 Q. Have you known him in the capacity as a neighbor
25 and a friend?

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1 A. Yes.

2 Q. Do you also know Carla?

3 A. Yes.

4 Q. How long have you known her?

5 A. I can't ever remember not knowing them. I guess we
6 must have met ten or eleven years old... always.

7 Q. Could you tell the Jury what has been your association
8 with Jimmie and with Carla over the years?

9 A. They are my friends, but it was a very close group.
10 My parents and my house was the kind of ... like a lot of
11 neighborhoods have it, where you hang out. Where all the
12 kids come. My parents would take us swimming all night or
13 they were with us doing something fund and safe.

14 My dad ran a hayride for years every Saturday night, so
15 we were just a group who went to church together and school
16 together and stayed together every weekend. We were just
17 very close.

18 Q. Has there ever been any time you noticed anything
19 about Jimmie of the deviant nature whatsoever? Sexually or
20 physically for that matter?

21 A. I couldn't say this about all my friends, but of all
22 of us, Jimmie was the most laid back. There is just no
23 violence in him of all us kids, he was the least trouble.
24 Always helpful and always there when you needed him.

25 Q. Have you ever known him to abuse anyone younger than

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1 him?

2 A. No.

3 Q. Have you ever known him to abuse anyone older than
4 him?

5 A. No. I know him like anyone could know their sibling.
6 We know this, and I would trust him with myself or my child.
7 I am pregnant now, and if this is a little girl, I would have
8 no question leaving her with Jimmie. No doubt ever.

9 Q. Have you had occasion to sit through any of this
10 trial?

11 A. Yes.

12 Q. About how many days or hours have you sat through
13 this trial, Ms. Melissa?

14 A. I heard the last of the prosecution's day, the last
15 day, and all the defense.

16 Q. All of it since that time?

17 A. Yes, I guess Wednesday or Thursday of last week.

18 Q. Including the rebuttal witnesses?

19 A. Yes.

20 Q. Have you been told by anyone who sat through the
21 trial the hours and days that you weren't present, the
22 accusations that the three girls have made with regard to
23 sexual advances Jim was alleged to have made to them?

24 A. I know of it.

25 Q. Now, what has been the relationship he has had with

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1 Carla as you observed it as relates to their younger life
2 and their married life?

3 A. More wholesome than anyone I know.

4 Q. Would you tell this Jury if in the time you have
5 known Jimmie, there has ever been even the rumor of any sort
6 of affair or sexual advances with someone other than his
7 wife, ma'am?

8 A. Not to my knowledge, no. We don't live in the
9 same town and I don't see him on a daily basis, but I feel
10 as close to him as to my brother and I think I might have
11 heard those things when we grew up, when we, you know, when
12 we were dating back and forth and things are confusing. There
13 was never that problem with Jimmie or any of us girls. I
14 am sure I would have known that.

15 Q. Have you ever had any conversation with Carla with
16 regard to the happiness or unhappiness of their married life?

17 A. I don't think it ever came up before. It is not the
18 kind of thing you have to ask about. I knew they had a happy
19 marriage. Since then, she has told how hard it is to be
20 without him this long.

21 Q. How close were you to Carla?

22 A. Carla...? Jimmie was two years younger than I was
23 and Carla was two years younger than that, so she was kind of
24 really fitting in with us when I was, you know, getting older
25 and starting to date more seriously and going off to college

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1 and stuff. Carla and I never had the relationship that
2 we were friends other than through Jimmie and her relationship.

3 Q. Did that continue on through your adult life?

4 A. Yes.

5 Q. Did you develop any closer relationship than that
6 with Carla as you both became adults?

7 A. Just only through this last year, when I felt like
8 they needed me, we had gotten closer. Other than that, it
9 was like, you know, well, I guess I would compare her to
10 my sister-in-law, as Jimmie to my brother. That kind of
11 relationship.

12 Q. During this past year, based upon what you have said
13 and what you observed, did you form any sort of picture of
14 what their married life was like prior to Jimmie having been
15 incarcerated? As to whether it was good or bad?

16 A. I think it was very good.

17 Q. Now, you know, of course, what the next step in this
18 trial is and that is this Jury's recommendation to this Court
19 with regard to whether Jimmie lives or dies.

20 A. Yes.

21 Q. We know that you are a close friend of Jimmie's and
22 certainly, conclude from that what your reaction would be
23 and any request you might make, but would you tell the Jury
24 what your thinking is on what has happened to this point and
25 where we go from here?

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1 A. I guess this is just my suggestive opinion. I think
2 that it has been an experience for all of us and that something
3 good needs to come out of this and it hasn't to this point.
4 I think probably everyone here, prosecution and I am sure
5 the McAbee family, and all of us and all of you have done what
6 you thought was right. The best you could do based on thus
7 far. I know, in my heart, and after listening to what has
8 gone on here, Jimmie is innocent. You have got to do what
9 you feel is right. You have got to make something good come
10 out of this.

11 Q. Thank you, ma'am. If it please, Your Honor.

12 CROSS EXAMINATION

13 BY MR. HOGAN:

14 Just briefly, Your Honor.

15 Q. Mrs. Melissa?

16 A. Ms. Melissa. Mary Jean.

17 Q. Mary Jean? Ms. Melissa, you were only here for the
18 last day of the State's case and the Defense' case?

19 A. Yes.

20 Q. Ms. Melissa, when did you move away from Sumter
21 County?

22 A. I went to Lake Sumter Community College two years,
23 so my Junior year of college.

24 Q. Where did you live then? In Tavares?

25 A. When I left?

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1 Q. When you went to Lake Community?

2 A. No, I still lived in Sumter County.

3 Q. Then you went to Tallahassee, is that correct?
4 Florida State?

5 A. Yes.

6 Q. Where do you live now?

7 A. Winter Park.

8 Q. You moved away from Sumter County in 1977 to go to
9 college?

10 A. '77 - '78.

11 Q. Now, you live in Winter Park?

12 A. Yes.

13 Q. You have gotten back in touch with the Duckett family
14 or James Duckett's family over the past year, since last
15 October?

16 A. Yes.

17 Q. Thank you very much, ma'am.

18 THE COURT: Mr. Edmund, anything further?

19 MR. EDMUND: No, Your Honor.

20 THE COURT: You can step down, ma'am. Please watch your
21 step.

22 MR. EDMUND: May the Bailiff call Carla Duckett, Your
23 Honor.

24 THE COURT: Yes, sir.

25 (WHEREUPON, CARLA DUCKETT IS CALLED AS NEXT WITNESS FOR

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1 THE DEFENSE AND IS DULY SWORN BY THE CLERK OF THE COURT)

2 DIRECT EXAMINATION

3 BY MR. EDMUND:

4 If it please, Your Honor.

5 Q. State your name, please?

6 A. Carla Ann Duckett.

7 Q. And you are Jimmie's wife?

8 A. Yes, sir.

9 Q. Carla, you testified at some length on direct
10 examination and I think somewhat in cross examination in this
11 trial with regard to your life with Jimmie. Is there anything
12 that you have testified to that you would tell the Jury now
13 that is any different than you told us when you were on the
14 stand before?

15 A. No, we always had a wonderful marriage and a wonderful
16 life together.

17 Q. Would you tell the Jury in more detail at this point
18 in time how Jimmie has conducted himself with you all's sons
19 over the years of their lives?

20 A. He is a wonderful father. He spends a lot of time
21 with them.

22 (WHEREUPON, WITNESS IS IN TEARS)

23 THE COURT: Take your time, ma'am.

24 A. Other men, on their days off, that is their day off.
25 That is never with Jimmie. On his days off, was always

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1 devoted to the boys and I. We spent all the time together.
2 We done everything together.

3 Q. Was Jimmie the type of husband that would disappear
4 at night from time to time?

5 A. Never.

6 Q. Was he the type of husband upon whose clothing you
7 had ever found traces of lipstick or rouge or face powder or
8 anything like that?

9 A. Never.

10 Q. Has there ever been an occasion that you had to
11 suspect him of having a brief liaison with some other woman?

12 A. No, sir.

13 Q. Tell the Jury how he would react to the younger
14 girls around that might be around you all's area or in
15 whose company you all came?

16 A. He was just friends. Both of us friends with every-
17 one around us.

18 Q. Has there ever been anything about your life with
19 Jimmie, your private life with Jimmie, that on any occasion
20 had ever led you to believe that Jimmie had done anything
21 other than what a husband would be expected to, as regards
22 being true to you and the children?

23 A. Nothing. Never.

24 Q. Now, you know the verdict and you know what we are
25 here for at this time. And you know that one of the reasons

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1 we are here is because Jimmie became a police officer. Would
2 you tell the Jury what he had to go through in order to
3 get through camp or standards or training or whatever you
4 call it to become a police officer, Carla?

5 A. He worked so hard. He was overweight, so we both
6 agreed to go on a diet. He jogged, and every day and he
7 never quit working. Even our little boy, he used to say,
8 "Daddy, can I jog with you?" and Jimmie would say, "Darling,
9 you can't stay up with Daddy", and he would say, "Oh, Daddy,
10 I can", and one day he said, "If you will just get me tennis
11 shoes like you and Mommy make me a headband like you, I can
12 do it.", so one day, Jimmie wsaid, "Okay", so Justin put on
13 that headband and I put his tennis shoes on him, and they
14 started jogging, and I rode the bike along, so if Justin got
15 tired, I could take him back home. But Justin never got
16 tired, because Justin made it all the way around that block
17 just like his Daddy did.

18 Q. Did you all continue that type of relationship
19 together, Carla?

20 A. Yes, sir.

21 Q. Did Jimmie continue in his physical fitness after
22 he became an officer?

23 A. Yes, sir.

24 Q. Did he continue to try to do the same things he was
25 doing before to maintain himself properly?

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1 A. Yes, sir.

2 Q. Now, Carla, on the morning of the 12th of May of
3 1987, how long had you and Jimmie been married at that time?

4 A. Ten years.

5 Q. Had there ever been a time you were separated or
6 contemplating divorce or anything like that?

7 A. No, sir.

8 Q. Had there ever been a time in your life when either
9 of you became cold toward the other and wouldn't participate
10 in a loving way with one another?

11 A. Never.

12 Q. Then tell the Jury again if you will, what happened
13 when Jimmie came in that morning and what you observed about
14 him and I am talking about more his emotions and his reaction
15 and relationship to you and the children than I am about the
16 way he looked in his clothing or anything, Carla?

17 A. He was just the same Jimmie. The same Jimmie who
18 always comes home.

19 Q. Now, Carla, you weren't in the courtroom during the
20 testimony of of ... I think Ms. Dow and Ms. Upshaw and Ms.
21 Ruetz, were you?

22 A. I was only in on two girls.

23 Q. But you are generally aware of the testimony of the
24 three women?

25 A. Yes, sir.

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1 Q. Now, would you tell the Jury what your reaction was
2 to that testimony as to what effect it has on your feelings
3 for Jimmie and what effect it has on whether or not you believe
4 in Jimmie and believe what Jimmie had to say to you and this
5 Jury?

6 A. Yes, I believe Jimmie. That testimony has no effect
7 on me. None whatsoever, because I know that's not how he
8 really is.

9 Q. Has there ever been an occasion in your married life
10 you even suspected he might have had some sort of sexual
11 encounter with some other woman?

12 A. Never.

13 Q. Has there ever been an occasion in your life when
14 there was even the slightest difference in his attitude
15 towards you that caused you any concern or that you had to
16 question him about anything?

17 A. No, sir.

18 Q. What would your times together be like? Were there
19 occasions when Jimmie would just want to say, make an excuse
20 or something to go off by himself and not take you and the
21 children along?

22 A. No, sir, on Jimmie's days off, he always spent all
23 his time with us. He never would say, "Well, today is my
24 day off. I want to go fishing". He would always just say,
25 "Well, where do you all want to go or what do you want to do?"

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1 And so we would decide on where we was going to go or what
2 we were going to do and everybody would get their baths and
3 their showers and all and then I was always the last one to
4 get ready and instead of him sitting back and waiting for me
5 to get the boys dressed, I always got in there and got ready
6 and he always took care of that. He always dressed them to
7 go off and everything.

8 Q. Have you ever seen him show any sort of streak of
9 violence in the years you have known him, Carla?

10 A. No, sir, he doesn't get mad.

11 Q. Have you known him to be in fights?

12 A. No, sir, never.

13 Q. Have you ever known him to, in any way, abuse someone
14 younger or smaller than he?

15 A. No, sir.

16 Q. Now again, getting back to you knowing why we are
17 here, Carla, I want you to speak to the Jury with regard to
18 what the Jury knows you want them to do, but tell them in your
19 words why you feel they should listen to the pleas of a wife.

20 A. I know he is not guilty. He would never ever do
21 anything.

22 (WHEREUPON, WITNESS IS IN TEARS)

23 Q. If it please, Your Honor.

24 THE COURT: Any further questions, Mr. Edmund?

25 Gentlemen, approach the bench for a moment, please.

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1 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

2 THE COURT: I am not at all suggesting you would,
3 Mr. Hogan, but I don't want her picked at at all.

4 MR. HOGAN: I am not going to ask her any questions.

5 THE COURT: Alright.

6 (WHEREUPON, BENCH CONFERENCE ENDS)

7 THE COURT: Ma'am, the State has no questions for you.
8 You can step down. Thank you.

9 CARLA DUCKETT: Jimmie, I love you.

10 THE COURT: Next witness, Mr. Edmund?

11 MR. EDMUND: Your Honor, if it please the Court, may
12 I call my client, James Duckett.

13 THE COURT: Yes, sir.

14 (WHEREUPON, JAMES DUCKETT IS CALLED AS NEXT WITNESS BY
15 THE DEFENSE, AND IS DULY SWORN BY THE CLERK OF THE COURT)

16 DIRECT EXAMINATION

17 BY MR. EDMUND:

18 Q. State your name, please?

19 A. James Duckett.

20 Q. Jim, I am not going to ask questions. I want you
21 to talk to this Jury with regard to how you feel about their
22 verdict; how you feel about your future; and anything you have
23 to say to the Jury with regard to what effect they may have
24 on your future, son.

25 A. Well, I don't know really where to start at.

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1 I don't know how you start pleading for your life. You
2 all did the best you could. I realize that. You all had a
3 hard job, and I think each and every one of you did your
4 best to prove it one way or the other, whether it went
5 innocent or whether it went guilty, and no way will I ever
6 hold you to a decision like that, and I hope that personally
7 myself, I would never want to be in you all's shoes to have
8 to make a choice of whether a person lives or dies.

9 The State has put on their case. They said the best,
10 their case. They told you from the start that there was going
11 to be a lot of unanswered questions and in my opinion, there
12 still is a whole lot of unanswered questions. The biggest one
13 I have got, I know for a fact I didn't do this. They have not
14 proved to me that I done this and I don't see how they proved
15 to you all that I done this.

16 I have got all the case testimony that they have taken
17 over the year, over at my cell. I have read it, reread it
18 and I don't see, like I say, I don't see how you all came to
19 a decision on that evidence. It is just not there. It is
20 not there to me and from what I can tell from other people
21 it is not there also.

22 You all heard my family. I am up here to ask you to not
23 make a double wrong here. Like I said, I did not do this.
24 I am sorry and God knows I am sorry for the little girl, but
25 I did not do what was done to that little girl, and don't put

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1 another nail in the coffin as the saying goes, by sentencing
2 me to die, because I will show that I did not do this crime.

3 Q. Jim, if you will, tell the Jury if you have ever been
4 in a situation where someone was pleading to you for their
5 life?

6 A. No, sir.

7 Q. Tell the Jury whether you were ever in a situation
8 where Teresa was pleading with you for her life?

9 A. No, sir, I was never in that situation with her.

10 Q. Tell the Jury whether you ever made the choice whether
11 another living human being lived or died?

12 A. No, I have never made that choice.

13 Q. Tell this Jury whether you made the choice whether
14 Teresa lived or died on the night of the 11th of May, 1987?

15 A. No, I was never in a position to make that choice.

16 Q. Tell this Jury if you ever committed a double wrong
17 such as a rape and then killing of Teresa?

18 A. Never. Like I said in my testimony, I had her in my
19 presence at the Circle K and that was the last time I had
20 seen the girl.

21 MR. EDMUND: May I have a moment, Your Honor?

22 THE COURT: Yes, sir.

23 MR. EDMUND: Thank you, Your Honor. No further questions.

24 THE COURT: Alright, from the State?

25 MR. HOGAN: No questions.

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1 THE COURT: Any further witnesses, Mr. Edmund?

2 MR. EDMUND: That concludes it, Your Honor.

3 THE COURT: Anything further from the State?

4 MR. HOGAN: No, Your Honor.

5 THE COURT: Alright, we will entertain argument at this
6 time. From the State?

7 CLOSING ARGUMENT

8 BY MR. HOGAN:

9 Ladies and gentlemen, this is the part of the trial,
10 of course, we talked about in voir dire. This is the part,
11 another part that is going to be a very tough decision for you
12 to make. This is the part of the trial where we ask you to
13 follow the law just as in the first part of the trial.

14 Obviously, there has been a lot of emotion displayed in the
15 last hour in this courtroom. I don't doubt that it is true
16 emotion for a minute. In fact, I submit to you that that
17 family over there is just as much a victim of James Duckett
18 as the family over here. Their lives have been touched by
19 his crime also. The problem is and the point is that is not
20 what this part of this trial is about and that is not what
21 your decision is to be based on. Your decision is a legal
22 decision and not an emotional decision.

23 This part of the trial is where you weigh the aggravating
24 factors against the mitigating factors and we have heard from
25 his family. We have heard from his brother, who, by the way,

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1 had to look him in the eye before he knew whether or not
2 James Duckett had done it. He wasn't sure. Didn't know him
3 well enough to know right away he couldn't have done it.

4 You have heard from Ms. Melissa. Mrs. Melissa. She hasn't
5 known the family since 1977 when she moved away to Tallahassee.

6 We have heard from his wife. We have heard from him.
7 Pretty emotional. What you have to ask yourself, those
8 mitigating factors, the mitigating factors about the defendant,
9 they outweigh the aggravating factors.

10 The Judge is going to tell you that two aggravating
11 factors to consider in this case are, one, the crime for which
12 the Defendant is to be sentenced was committed while he was
13 engaged in the commission of the crime of Sexual Battery. You
14 just found him guilty of Sexual Battery. You know that to be
15 the case. Now, this Murder was committed during the commission
16 of Sexual Battery. That aggravating factor has been proven
17 beyond a reasonable doubt. That is one of the aggravating
18 factors that you will weigh against the emotional testimony
19 you have heard just now.

20 The second aggravating factor is the crime for which
21 the defendant is to be sentenced was especially heinous,
22 atrocious or cruel, and certainly the taking of an eleven
23 year old girl down to an orange grove; putting his hands around
24 her neck and choking her unconscious; throwing her into the
25 lake, is bad enough and certainly heinous and certainly cruel,

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1 But before he did that, he sexually battered her. This is not
2 an adult. This little girl was eleven years old. Someone
3 with no sexual experience, if that, in some way, could make
4 it better, but here is a girl that had absolutely no idea what
5 was happening to her. In the dark and in a burned out orange
6 grove.

7 Dr. Shutze testified it took her a minute to two minutes
8 to lose consciousness based on his examination. Now, that
9 situation of being in the orange grove, having just been raped,
10 and now being strangled is certainly heinous, cruel and
11 atrocious. I don't think there is any doubt about that.
12 The two aggravating factors have been proved.

13 Now, what you have to do is weigh them against the
14 mitigating factors. The mitigating factors are, number one,
15 the Defendant has no significant history of prior activity.
16 We know he has been in trouble for checks. We know he has
17 been in trouble for the insurance money. Now that may or may
18 not to you be significant, but I submit to you that it certainly
19 is worth considering.

20 Now, that mitigating factor may not have been shown to
21 you, but even if it was, does it outweigh the fact that he
22 did this murder during the course of a rape and he committed
23 this murder in a cruel, heinous, atrocious manner.

24 The second mitigating factor is any other aspect of the
25 Defendant's character or record in any other circumstance of

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1 the offense and the third mitigating factor, which follows up
2 on that, is entitled any other circumstance in mitigation.

3 Now, all that has been shown to support those is the fact
4 that he was a police officer and the fact that he has a
5 family. Well, many, many of these criminals of history have
6 had a family. And what you have to do is you have to weigh
7 one against the other, because that is the instructions go
8 on to say. I realize this may be difficult in light of the
9 emotional situation we have on both sides, but what you have
10 got to do is you have got to go take this evidence back with
11 you one more time and you have got to remember... you have got
12 to remember Teresa McAbee. She didn't testify at this
13 hearing. You have got to remember Teresa McAbee down by
14 Knight Lake. See, and not for the emotional impact of this
15 at all, but for the heinous, cruel, atrocious manner, which
16 is what you are supposed to consider and how she was killed.
17 And you have got to weigh the fact that an eleven year old
18 girl wasn't grabbed off some sidewalk and forced into a car.
19 What happened to her was that a police officer, who was
20 supposed to be someone she could trust, got her in the car;
21 get in this car, take you home. He is wearing the badge of
22 authority; wearing that badge and that is why this is relevant.
23 Not for the emotional impact of that. Don't consider the
24 emotional impact of it, just like I am asking you or telling
25 you that any emotional impact you get from that, does not

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1 outweigh this. This is heinous, cruel and atrocious. Take
2 that girl in a police car down to that lake and rape her and
3 then strangle her and throw her into that lake.

4 Mr. Duckett took an oath. I, James A. Duckett, do
5 solemnly swear or affirm that I will support, protect and
6 defend the Constitution of the United States and the State of
7 Florida against all enemies, domestic, and foreign; that I will
8 bear true, faithful, loyal pledge of allegiance to the same;
9 that I will faithfully perform all duties of the office of
10 police officer upon which I am about to enter. So help me
11 God.

12 Now, that is how... that is the method that he used to
13 get eleven year old Teresa McAbee in the police car. This is
14 heinous, cruel and atrocious and this outweighs the other
15 victims in this case, and I am talking about Carla Duckett.
16 That is the other victim in this case. That's right. That's
17 true. I don't dispute that, but what he did outweighs the
18 mitigation and that is the process that you have to go through.

19 Ultimately, this is the way the girl ended up and you
20 have seen these pictures in the jury room. And that fact,
21 the fact it was heinous of this murder; the fact that an
22 eleven year old girl, whose fears and hopes should revolve
23 around empty lipstick tubes and pieces of a key chain bent
24 into a ring and high top tennis shoes. Those should have been
25 her concerns at eleven years of age. She should not have to

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1 have feared a man wearing a badge and driving a police
2 car. That is the atrociousness of this.

3 If you will recall back during argument, in the guilt
4 phase of this trial, Mr. Edmund said whoever did this
5 deserves the electric chair, and I agree. I am telling you
6 that... I am telling each one of you that the aggravating
7 factors in this case, the cruel, heinous and atrocious use
8 of that badge and that police car, outweigh the emotional
9 mitigation that we have in this case. Each of them, and I
10 am asking each of you to recommend capital punishment.

11 Teresa McAbbe was eleven years old and she will never
12 be a day older. And that is atrocious. And there is nothing
13 that anybody can say or do that is going to change that and
14 we have laws that address this situation and those laws are
15 spelled out in these jury instructions and I want you and I'm
16 asking you to make a legal decision.

17 Thank you.

18 THE COURT: Mr. Edmund?

19 CLOSING ARGUMENT

20 BY MR. EDMUND:

21 Ladies and gentlemen, you also took an oath and you
22 took an oath to well and truly try the issues of the cause of
23 the State of Florida versus James Duckett and a true verdict
24 render according to the law and the evidence, so help you
25 God, and each of you did it.

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1 Each of you took the oath and each of you now says that
2 you did precisely what you swore you would do and that you well
3 and truly tried the case of the State of Florida versus James
4 Duckett, and a true verdict rendered according to the law and
5 the evidence, so help you God. And you took a trial that went
6 ten days with forty-seven witnesses and a hundred and three
7 pieces of evidence and three hours deliberation, during which
8 time I understand that you spent some of that time talking
9 about how hungry you were and during that time, hopefully,
10 you read over the instructions and during that time, I am sure
11 that you discussed a hundred and three pieces of evidence and
12 the testimony of forty-seven different witnesses to the point
13 that you were convinced beyond a reasonable doubt of my
14 client's guilt.

15 Now, the Judge is going to tell you this. The Judge is
16 going to tell you that you can make your recommendations
17 based upon other circumstances in mitigation and so I would
18 like to ask you to go back to that jury room now and start
19 sifting through the testimony of forty-seven witnesses and
20 start sifting through and looking at one hundred and three
21 pieces of evidence, because those are circumstances, I suggest
22 to you, that will mitigate in my client's favor. I ask you
23 to go back there this time and ask yourself, why is it that
24 there was no soil sample from the mud holes under the wheel
25 wells. I ask you, why... I ask you to go back and ask yourselves

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1 why was there a difference in opinion from experts regarding
2 the hair. I ask you to go back and ask yourselves why wasn't
3 there any indication on his clothing of any sort of ill or
4 wrong doing at that time, and then I ask you to ask yourselves
5 after you have been through at least some of this evidence,
6 ladies and gentlemen, and at least some of the testimony of
7 some of the witnesses, ladies and gentlemen, and are there
8 circumstances that say, okay, I found him guilty beyond and
9 to the exclusion of every reasonable doubt, and yes, the
10 person who committed this ought to go to the electric chair,
11 but now that we have taken into consideration all of the
12 circumstances of this case and we have applied the law that
13 Judge Lockett says we should apply, to all the facts of this
14 case and not just those that somebody just snatched out of
15 the air in possibly two hours of deliberation back there, but
16 all of the facts and circumstances of the case, and the Judge
17 is going to tell you other circumstances in mitigation and
18 those are the facts of this case, ladies and gentlemen. Are we
19 so sure right now that we send a man to the electric chair
20 after we really go through this stuff? After we really go
21 through this testimony? After we really question one another
22 or should we not? And I ask you to make a recommendation to
23 this Court that the sentence in this case be life and if you
24 can do that in three hours, fine. If it takes you ten hours,
25 fine, but work toward that goal and look at this evidence and

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1 at least try to remember the names of the witnesses that you
2 think were important in the case and upon whose testimony you
3 based your verdict.

4 Zavala, Hernandez, McAbee, Brady, Ahern, Malone, Steger,
5 and remember some of the names and discuss the testimony of
6 what they said, and see if the circumstances don't cry out
7 that at least now we go back and say, "Judge, don't kill him".

8 Thank you.

9 THE COURT: Thank you, Mr. Edmund.

10 INSTRUCTIONS TO THE JURY

11 BY THE COURT:

12 Ladies and gentlemen of the Jury, it is now your duty to
13 advise the Court as to what punishment should be imposed upon
14 the Defendant for his crime of Murder in the First Degree.
15 As you have been told, the final decision as to what punishment
16 shall be imposed is the responsibility of the Judge; however,
17 it is your duty to follow the law that will now be given you
18 by the Court and render to the Court an advisory sentence
19 based upon your determination as to whether sufficient
20 aggravating circumstances exist to justify the imposition of
21 the death penalty and whether sufficient mitigating circumstances
22 exist to outweigh any aggravating circumstances found to exist.

23 Your advisory sentence should be based upon the evidence
24 that you have heard while trying the guilt or innocence of the
25 Defendant And evidence that has been presented to you in these

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1 proceedings.

2 The aggravating circumstances that you may consider are
3 limited to any of the following that are established by the
4 evidence beyond a reasonable doubt:

5 The crime for which the Defendant is to be sentenced
6 was committed while he was engaged in the commission of the
7 crime of Sexual Battery; and

8 The crime for which the Defendant is to be sentenced was
9 especially heinous, atrocious or cruel.

10 If you find the aggravating circumstances do not justify
11 the death penalty, your advisory sentence should be one of
12 life imprisonment without possibility of parole for twenty-
13 five years.

14 Should you find sufficient aggravating circumstances do
15 exist, it will then be your duty to determine whether mitigating
16 circumstances exist that outweigh the aggravating circumstances.
17 Among the mitigating circumstances you may consider, if
18 established by the evidence, are:

19 Defendant has no significant history of prior criminal
20 activity.

21 Any other aspect of the Defendant's character or record,
22 and any other circumstance of the offense.

23 Any other circumstance in mitigation.

24 Each aggravating circumstance must be established beyond
25 a reasonable doubt before it may be considered by you in

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1 arriving at your decision.

2 If one or more aggravating circumstances are established,
3 you should consider all the evidence tending to establish one
4 or more mitigating circumstances and give that evidence such
5 weight as you feel it should receive in reaching your
6 conclusion as to the sentence that should be imposed.

7 A mitigating circumstance need not be proved beyond a
8 reasonable doubt by the Defendant. If you are reasonably
9 convinced that a mitigating circumstance exists, you may
10 consider it as established.

11 The sentence that you recommend to the Court must be
12 based upon the facts as you find them from the evidence and
13 the law. You should weigh the aggravating circumstances
14 against the mitigating circumstances, and your advisory
15 sentence must be based on these considerations.

16 In these proceedings, it is not necessary that the
17 advisory sentence of the Jury be unanimous.

18 The fact that the determination of whether you recommend
19 a sentence of death or sentence of life imprisonment in this
20 case can be reached by a single ballot should not influence
21 you to act hastily or without due regard to the gravity of
22 these proceedings. Before you ballot you should carefully
23 weigh, sift and consider the evidence, and all of it, realizing
24 that human life is at stake, and bring to bear your best
25 judgment in reaching your advisory sentence.

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1 If a majority of the Jury determines taht James Aren
2 Duckett should be sentenced to death, your advisory sentence
3 will be:

4 A majority of the Jury, by a vote of blank, and you fill
5 in the vote, advise and recommend to the Court that it impose
6 the death penalty upon James Aren Duckett.

7 On the other hand, if by six or more votes, the Jury
8 determines that James Aren Duckett should not be sentenced to
9 death, your advisory sentence will be:

10 The Jury advises and recommends to the Court that it
11 impose a sentence of life imprisonment upon James Aren Duckett
12 without possibility of parole for twenty-five years.

13 I am going to go over with you the advisory sentences
14 very quickly. These are similiar to the jury verdict form
15 that you had before and naturally these instructions and the
16 advisory sentences will go back with you when you retire to
17 deliberate.

18 The Advisory Sentences read as follows:

19 In the Circuit Court of the Fifth Judicial Circuit of the
20 State of Florida, in and for Lake County, Case No. 87-1347-CF-
21 A-01, the State of Florida versus James Aren Duckett,
22 Advisory Sentence.

23 A majority of the Jury, by a vote of blank, and under-
24 stand you simply insert the number vote. Obviously, I don't
25 want the names and how any particular person votes, if you

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1 choose to use this form, advise and recommend to the Court
2 that it impose the death penalty upon James Aren Duckett.

3 Dated this blank day of blank, 1988, with a line for the
4 Foreman's signature.

5 The other Advisory Sentence reads:

6 In the Circuit Court of the Fifth Judicial Circuit, of
7 the State of Florida, in and for Lake County. Case No.
8 87-1347-CF-A-01, the State of Florida versus James Aren
9 Duckett. Advisory Sentence.

10 The Jury advises and recommends to the Court that it
11 impose a sentence of life imprisonment upon James Aren Duckett
12 without possibility of parole for twenty-five years.

13 Dated this blank day of blank, 1988, with a line for the
14 signature of the Foreman.

15 It is obvious that you will fill out and sign and date
16 only one of these two Advisory Sentences.

17 The twelve regular jurors will now retire to consider
18 your recommendation. The alternates will still remain
19 sequestered with the bailiff. When you have reached an
20 advisory sentence in conformity with these instructions, that
21 form of recommendation should be signed by your Foreman and
22 returned to the Court.

23 Gentlemen, has the Court given all the instructions it
24 advised it would give in its instruction conference?

25 MR. HOGAN: Yes, sir.

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1 MR. EDMUND: Yes, Your Honor.

2 THE COURT: Are there any objections or corrections to the
3 instructions other than noted at the conference?

4 MR. EDMUND: No, Your Honor.

5 THE COURT: The Court intends to send these jury
6 instructions, the two Advisory Sentences, a blank yellow pad,
7 a pen, and all evidence actually admitted into evidence with
8 the Jury when they retire to deliberate. Any objections to
9 that procedure?

10 MR. HOGAN: No, Your Honor.

11 MR. EDMUND: No, Your Honor.

12 THE COURT: Alright, thank you very much. The Jury can
13 retire.

14 (WHEREUPON, ALTERNATE JURORS LEAVE COURTROOM AT 3:29 P. M.)

15 (WHEREUPON, JURORS RETIRE TO DELIBERATE AT 3:30 P. M.)

16 THE COURT: Mr. Edmund, you wish to speak with Mr. Newcomb
17 at this time?

18 MR. EDMUND: Yes, Your Honor.

19 (WHEREUPON, DEFENDANT LEAVES COURTROOM AT 3:30 P. M.)

20 THE COURT: Gentlemen, I charge counsel for both parties
21 once again to check with Madam Clerk and make sure all of the
22 evidence actually in evidence and no other evidence is submitted
23 to the Jury at this time.

24 The Court will be in recess until we hear from the Jury
25 with regard to the Advisory Sentence. I do need to see the

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1 attorneys at the bench for just a second. I apologize.

2 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

3 THE COURT: I have two things, one, presumably we do
4 not poll the Jury on this verdict.

5 MR. HOGAN: No, sir.

6 MR. EDMUND: We agree.

7 THE COURT: If that attorney from Channel Two is present,
8 when he shows up, I intend to have a hearing with him with
9 regard to this business about showing the faces of jurors.
10 You are welcome to be there.

11 MR. EDMUND: I sure would like to be.

12 MR. HOGAN: I would like to be just there as an observer.

13 THE COURT: As observers, yes, but you have a right to be
14 there and it is peripheral to this particular case. You don't
15 have to be there.

16 MR. HOGAN: I would be there and if you allowed me, I
17 would have something to say.

18 THE COURT: No, I will have enough to say for all of
19 us.

20 MR. HOGAN: Sure. I didn't mean to say that you couldn't
21 handle it.

22 (WHEREUPON, BENCH CONFERENCE ENDS)

23 THE COURT: We will be in recess, Mr. Bailiff.

24 (WHEREUPON, COURT IS IN RECESS AT 3:33 P. M.)

25 (WHEREUPON, COURT RECONVENES IN CHAMBERS FOR HEARING
WITH WESH TV 2 ATTORNEY)

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1 THE COURT: Mr. Coward. Madam reporter, do you have
2 full information on Mr. Coward?

3 COURT REPORTER: No, I don't.

4 THE COURT: Do you have a business card with you?

5 MR. COWARD: Yes, sir, I do.

6 THE COURT: For her benefit, please.

7 MR. COWARD: Yes, sir. I'll give you my card.

8 (WHEREUPON, BUSINESS CARD OF MR. COWARD IS HANDED TO
9 COURT REPORTER)

10 THE COURT: My understanding is, sir, that you represent
11 Channel 2 Television?

12 MR. COWARD: Yes, sir.

13 THE COURT: Alright. I don't even know what the hearing
14 is about, but you have the floor.

15 MR. COWARD: Thank you, Judge, I certainly appreciate
16 the Court's indulgence in allowing us this brief time.

17 I am here to seek a clarification of the Court's Order,
18 which I have just been handed a copy of, regarding taking
19 pictures of the Jury in this case.

20 I want to make clear to the Court that we are not here
21 to try to attempt to violate that Order. We are here out of
22 respect for the Court, to try to determine what, exactly, the
23 ramifications and the bounds of the Court's Order are.

24 As I understand the scenario, our photographer...

25 (WHEREUPON, TELEPHONE RINGS AND WE ARE OFF RECORD BRIEFLY

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1 WHILE THE COURT ANSWERS THE CALL)

2 THE COURT: I am sorry. Go ahead.

3 MR. COWARD: As I understand the scenario, Judge, one of
4 the editors from Channel Two talked with another attorney in
5 my office named David Evans today, while the Jury was out
6 deliberating and asked him about the propriety of taking
7 pictures of the Jury reading its verdict. Mr. Evans apparently
8 was not aware of the Court's previous order, or what the bounds
9 of that Order were, and attempted to call you, and in fact, I
10 think if you check with your secretary, you will find that he
11 left a message for you while the Jury was out deliberating.

12 THE COURT: A return telephone call message?

13 MR. COWARD: Excuse me?

14 THE COURT: A phone call message to return to him?

15 MR. COWARD: Yes, sir.

16 THE COURT: His name is Evans?

17 MR. COWARD: Yes, David Evans.

18 THE COURT: It may be true. I'll find out in one
19 second.

20 (WHEREUPON, THE COURT CALLS HIS SECRETARY AS FOLLOWS:)

21 THE COURT: Ms. Robin, do we have a return telephone
22 call from an Attorney David Evans?

23 Did he ask me to return his telephone call?

24 Alright. Okay, do that while I hold, please.

25 (WHEREUPON, THE COURT WAITS ON TELEPHONE WHILE HIS

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1 SECRETARY CHECKS SO SHE MAY RESPOND TO HIS QUESTION)

2 THE COURT: You did receive a call from Attorney Evans
3 this morning.

4 Alright, and he has not left me a call back message?

5 Alright. Thank you.

6 (WHEREUPON, TELEPHONE CONVERSATION ENDS)

7 THE COURT: My secretary is available for subpoena for
8 testimony. She advises me she spoke to Mr. Evans several
9 times today. He has not left me a call-back message. She
10 checked with Judge Aulls' secretary. She has received no such
11 message. Those are the two secretaries that answer our
12 phones.

13 MR. COWARD: Okay, Judge, there may have been a mis-
14 communication between Mr. Evans and I, because I think he
15 wanted to get in touch with you, but he had another matter
16 that he couldn't come here on.

17 As I understood what he told me, he did leave you a call-
18 back message, but at any rate, even if we accept the fact that
19 he didn't, I know that he tried to get in touch with you this
20 morning before the Jury came back.

21 THE COURT: He did.

22 MR. COWARD: And he is also an attorney for WESH.
23 It is my understanding that a half hour after that phone call
24 took place, the Jury came back and at that time our
25 photographer did not quite understand, as I understand it,

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1 the terms of the Court's Order as to whether the Court's
2 Order that you had made orally, as I understand it previously,
3 in the case, regarding taking photographs and video tapes of
4 the Jury, applied only to the case before it was submitted to
5 the Jury or also to the case after the Jury came back and read
6 their verdict.

7 So one of our photographers did take a video tape of the
8 Jury as the verdict was being read.

9 THE COURT: That is interesting, because the Clerk reads
10 the verdict, not the Jury.

11 MR. COWARD: Okay, well...

12 MR. MC DANIEL: That is not exactly accurate. Since
13 you are coming in on this and I am just meeting you, I am
14 kind of uncomfortable with this, but I am going to explain
15 what exactly happened.

16 This is the first day that Rick has been in Court.

17 MR. COWARD: Just tell the Court Reporter who you are?

18 MR. MC DANIEL: I am Dave McDaniel, News Reporeter with
19 Channel Two, and my photographer is Rick Nichols, who is a
20 Photographer. He is the pool camera for today's court
21 proceeding.

22 Being here through the whole thing, I was well aware of
23 Judge Lockett's Order that we could not shoot the Jury and
24 my question on our drive up here this morning was whether or
25 not that still held true today, because in other states where

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1 I covered cameras in the courtroom trials, the Jury is
2 photographable on the last day, because they become the story.
3 Rick and I talked about it. He is more familiar with Florida
4 law. He said in his experience that the Jury is normally
5 photographable and I said, "Well, what we will do today is just
6 play it by ear and see what happens.".

7 This morning, when they were brought in to be charged
8 and then dismissed for deliberation, Rick took a couple of
9 shots of the Jury coming in and then after that proceeding,
10 I flagged down the Judge in the hallway and asked whether or
11 not the order was intact, or whether things had changed. He
12 said, "No, his Order is intact. The Jury is not photograph-
13 able.".

14 I called home base in Orlando and told them that that
15 was the situation. They were concerned by that. They thought...
16 they wanted pictures of the Jury, because the Jury, they felt,
17 was the story today. They called you, and that is why we are
18 here.

19 THE COURT: Okay.

20 MR. COWARD: yes, sir, Judge, so I guess we have a little
21 gap in communications there, but the issue then becomes, is
22 whether the question is yes, whether you decided to have that
23 Order apply also to the Jury on this last day, after the case
24 and the evidence has already been submitted to them, and after
25 they have made their decision, or whether the Order is lifted,

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1 and if it is not lifted, I would like the opportunity to
2 present some brief argument as to why I believe it should be.

3 THE COURT: Let's be specific and not nit pick. The Order
4 probably is not specific enough, and I say "probably", because
5 it has been recited orally from time to time, although Ms. Patz
6 has it in the record each and every time it has been recited.
7 It is not that the Jury was not to be photographed. I don't
8 consider that these gentlemen have done anything improper.
9 It is that any photographs will not be disseminated to the
10 public. That may be hair splitting, but just photographing
11 the Jury or recording the Jury on their camera, in and of
12 itself, in my opinion...

13 MR. MC DANIEL: And none of it has been broadcast, Your
14 Honor.

15 THE COURT: It is not a violation of my Order. My
16 Order is that for time immemorial, so it will be as clear as
17 it can be, no pictures of this Jury will ever be broadcast
18 to the public; still photographs, or television video tapes.

19 MR. COWARD: Alright, Judge, so as our reporter stated
20 here today, we have not broadcast those pictures and we do
21 not intend to violate the terms of the Court Order. I would
22 like the opportunity to present some argument as to why we
23 respectfully disagree with your position.

24 THE COURT: You may have that at this time.

25 MR. COWARD: Thank you, Judge.

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1 Judge, as I understand it, this has been a public trial
2 from day one. It is a matter of great importance to this
3 community, and the jurors in this case, along with yourself,
4 the prosecutors, the defense attorney, and the defendant, can
5 be viewed by all jurors, excuse me, by all members of the
6 public, who come into that courtroom.

7 Now, not all members of the public have the opportunity
8 to come into the courtroom and view this case, which has
9 generated so much publicity and interest in this community.

10 Video tape cameras and still cameras are the eyes and
11 ears of the community. They are the surrogate of the
12 community, just as the news reporter may be able to go in and
13 write about what happened, but in this case, the courtroom has
14 been public from day one, and anyone can go in and watch that
15 trial and look at those jurors and know who those jurors are.
16 There is no secret about who the jurors are in this case, or
17 the actions that they have listened to, or the verdict that
18 they have already reached in this case. Therefore, it is our
19 position, Judge, that you should allow Channel Two and the
20 other media, to publish these photographs, because that gives
21 the people in the community, who do not have the opportunity,
22 because they are working or for whatever reason, to determine
23 that this has been an open and fair trial, from the first day;
24 that that promotes public confidence in the jury system in our
25 society; that the public can see not only your pictures and

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1 the picture of the defendant, but they can also see the
2 picture of the Jury, who has come in, twelve people, and made
3 its decision that this defendant is guilty in this case.

4 So Judge, not only does it promote public confidence, but
5 in this case, I do not see, with due respect to the Court,
6 what possible interference that could cause with the trial of
7 this case, particularly at this point, where we are actually
8 arguing a very narrow issue. Whether those pictures of the
9 Jury, after the case was submitted to the Jury, of them coming
10 in and out as the photographer and the reporter have described
11 to you, can be shown on TV. It does not prejudice the State's
12 right to a fair trial. it doesn't prejudice the defendant's
13 right to a fair trial, and I would suggest to the Court that
14 a very similiar issue has been decided before, when this whole
15 issue of cameras in the courtroom first came up about ten
16 or fifteen years ago. I am sure the Court is aware of the fact
17 that cameras in the past were never allowed in courtrooms, and
18 there was a case involving policemen as defendant, much as
19 there were in this case; a case involving policemen who were
20 accused of Burglary, and that case was Florida versus
21 Chandler, and in that case, they tried to keep cameras out of
22 the courtroom. That was about the time that the Supreme Court
23 of Florida had decided to implement its pilot program to allow
24 cameras in the courtroom. Well, that defendant took that case
25 all the way up to the United States Supreme Court and they said

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1 that, "No, you cannot have an absolute prohibition on cameras"
2 and I would suggest that the standard for the Court to apply
3 here is what the United States Supreme Court said there, which
4 is whether allowing photographs of the Jury in this case,
5 although, of course, they didn't apply ti specifically to the
6 Jury. They applied it to the entire realm of the case, but
7 here, the narrow issue is whether allowing us to broadcast
8 pictures of that Jury will compromise the ability of the Jury
9 to adjudicate the case fairly, and I don't see how it possibly
10 can, because they had already adjudicated the case before the
11 pictures were taken.

12 THE COURT: First of all, I know the record is clear,
13 but I will make it clearer, that obviously there have been
14 television and still photography cameras in this trial from
15 the beginning. They have been pooled in accordance with the
16 applicable Florida Supreme Court Decision, that I distributed
17 on the first day of the case, and they have abided by my
18 instructions. The Court has been open. As you say, people
19 have been free to come and go.

20 My concern in this case, and in every case in general,
21 and not in this case in specific, I hasten to add, has nothing
22 to do in this issue with regard to whether or not the Jury's
23 deliberations will be affected. I frankly am concerned for the
24 safety of the jurors. Some of us in this business take that
25 as a given risk. Mr. Edmund, Mr. Nipper, Mr. Hurm, Mr. Hogan,

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1 and I all realize that our identities are to be known to the
2 public. My name is on the bench in front of me where it
3 stays. I accept my responsibility. Fourteen citizens that
4 we impress into jury service, do not voluntarily accept that
5 responsibility. My distinction between your argument and my
6 position is this: The public can come and go, but the public
7 cannot take with them any concrete image of any individual
8 juror. They can take what is in their mind, true, but they
9 don't take an image from any individual juror.

10 Suppose I was any vindictive member of the public,
11 not necessarily Mr. Duckett's family; not necessarily
12 Mrs. McAbee's family; any member of the public. You publish
13 on your news the faces of this Jury. All I have to do is
14 set up my VCR at home and tape your broadcast. I can take
15 my tape of that broadcast and have still photographs made of
16 every member of this Jury; put them up on my wall; and do to
17 those people what I think I want to do to those people. Sure,
18 I could come to the trial and try to remember who they all
19 are, but short of a photographic memory, I can't remember what
20 those fourteen people look like. I couldn't pick them out
21 of a crowd three weeks from now, but if I have their pictures
22 taped to my wall, I can pick them out anywhere I want to,
23 any time I want to. It is a concern for the safety of the
24 Jurors that prompts my decision. If you have a citation to
25 me that specifically stands for the proposition that the press

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1 has a right to publish to the public pictures of Jurors sitting
2 in a First Degree Murder case, I'll be interested in your cases.

3 MR. COWARD: Judge, I would say that I am sure you are
4 familiar with the Code of Judicial Conduct.

5 THE COURT: I have read it.

6 MR. COWARD: And Cannon, which applies to cameras in
7 the courtroom. Would you like a copy of it?

8 THE COURT: Just read it to me.

9 MR. COWARD: Okay. There is no question, Judge, that the
10 Code of Judicial Conduct is Cannon 3A7, gives the Court...
11 well, I'll just read the whole thing for the Court Reporter.

12 THE COURT: Fine.

13 MR. COWARD: "Subject at all times to the authority of
14 the Presiding Judge to (1) Control the conduct of proceedings
15 before the Court; (2) Ensure decorum and prevent distractions
16 and; (3) Ensure the fair administration of justice in the
17 pending cause, electronic media and still photography
18 coverage of public judicial proceedings in the Appellate and
19 Trial Courts of this State, shall be allowed in accordance
20 with the standards of conduct and technology promulgated by
21 the Supreme Court of Florida."

22 Judge, I would tell you that on the short amount of
23 time that I have had to receive this phone call and hop in my
24 car and come up here, I am not aware of any case off the top
25 of my head that deals with the narrow issue that you have

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1 described, however...

2 THE COURT: That is the issue before the Court.

3 MR. COWARD: Yes, sir, however, the Code of Judicial
4 Conduct clearly sets forth that those cameras shall be allowed
5 unless there are certain reasons for the Court, such as to
6 ensure decorum and to ensure the fair administration of
7 justice. Now, I am not here for one minute to try to do away
8 with the safety of the Jurors and to denigrate the duty that
9 they serve before the Court, because we all know that it is
10 one of the most important functions that any citizen can ever
11 perform and it is what makes our system work, but with all
12 due respect, Judge, their faces and their identities are a
13 matter of public record...

14 THE COURT: Not in my court.

15 MR. COWARD: Well, their faces are.

16 THE COURT: No, they are not. You are not going to
17 memorialize them.

18 MR. COWARD: Well, yes, sir...

19 THE COURT: Your client is not.

20 MR. COWARD: Yes, sir, but what I am saying is I was
21 standing out there for a half hour before the recess.
22 People came and went. Any member of the public can be allowed
23 to come in and sit there. If one of these parties in this case
24 or any case, I don't think we should limit it to this case,
25 because as I understand it, Judge, you are saying this is a

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1 blanket-type ruling in your court, is that right?

2 THE COURT: It is applied in my court, in criminal cases,
3 in every case I have ever presided over.

4 MR. COWARD: Okay, so it does not apply to this case
5 only, right?

6 THE COURT: That is correct.

7 MR. COWARD: Okay. Any criminal defendant in any case,
8 whether a First Degree Murder case or any other case, could
9 hire a hit man to come in and look at that Jury and commit
10 their faces to memory and I don't think that the Court can
11 say with any certainty that they wouldn't be able to do that
12 and go out and find those people, trace them when they left
13 this courthouse, and then kill them. And Judge, the point of
14 the matter is that in our society, for many, many years, the
15 opportunity of the public to view a criminal court and view
16 the trial, has been one of the most cherished rights that
17 exists, and if the public can go in and do that, the camera,
18 as I previously said, ought to be able to act as their
19 surrogate. The danger to the public exists in every case,
20 and if the Court makes this a blanket ruling that the Court,
21 in fact, is saying that they can come in and take these
22 pictures, but never publish them in a capital case or any
23 other kind of case, the Court's Order does violate the
24 standards set down by the United States Supreme Court in
25 Chandler versus Florida, because in that case, the United

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1 States Supreme Court said that no absolute prohibition on
2 taking pictures and publishing pictures is allowed, and I can
3 give the Court the cite on that case.

4 THE COURT: You don't have to.

5 MR. COWARD: Okay. That is all I have, Judge. I
6 certainly respect your concern for the Jury, but I think that
7 the law and the public policy of open courtrooms and if
8 someone can come in and look at that Jury, to allow a picture
9 to be taken is no different.

10 THE COURT: I respectfully disagree with your position.
11 My Order stands. I trust it is clear. Now, I charge you
12 with advising the Court at this time, of who, among your
13 client, that is, WESH Channel Two, if these pictures are run,
14 and if you want to test me, you can run them; I want to know
15 who will make that decision and I am going to advise you,
16 counselor, as counsel for them, the person that makes that
17 decision to run those, if they violate my Order, is going to
18 face an order to Show Cause.

19 MR. COWARD: Yes, sir, Judge. Could I confer with my
20 client here for just a minute.

21 THE COURT: Yes, sir, and I am not talking about these
22 two gentlemen. Presumably, in their line of work, they do
23 not make decisions as to what tape runs on the air.

24 MR. COWARD: I understand, Judge.

25 MR. MC DANIEL: Not in this particular example, Judge.

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1 MR. COWARD: Judge, could I just defer to the reporter
2 here and let him...
3 THE COURT: If you would tell me who makes those
4 decisions.
5 MR. COWARD: He knows the chain of command.
6 THE COURT: Please.
7 MR. MC DANIEL: The number one man in the News Department
8 is Steve Ramsey.
9 THE COURT: R A M S E Y?
10 MR. MC DANIEL: Ahum. (Affirmative response)
11 THE COURT: Alright.
12 MR. MC DANIEL: And the Executive Producer is Kenny Boles.
13 B O L E S.
14 THE COURT: B O L L E S?
15 MR. MC DANIEL: No, just B O L E S.
16 THE COURT: B O L E S. What is your address there at
17 Channel Two?
18 MR. MC DANIEL: Minnesota and Nicholet.
19 MR. NICHOLS: 1501 Minnesota Avenue, Winter Park,
20 Florida 32789.
21 THE COURT: So we are crystal clear, I understand that
22 we disagree with regard to my decision. The appropriate way,
23 in my opinion, to handle a situation where you and your client
24 disagree with my position, is to take it to the Fifth D. C. A.
25 and not violate my Order. If you violate my Order instead of

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1 appealing my Order, I will hold an Order to Show cause and
2 Mr. Ramsey and Mr. Boles will be present and I will require
3 them to be present if necessary.

4 MR. COWARD: Yes, sir.

5 THE COURT: Alright.

6 MR. COWARD: Judge, I just want to say I appreciate your
7 time.

8 THE COURT: Yes, sir, thank you very much. Thank you all.

9 We will be on standby with regard to the Jury Advisory
10 Verdict.

11 (WHEREUPON, COURT IS IN RECESS AS TO HEARING IN CHAMBERS)

12 (WHEREUPON, COURT RECONVENES IN COURTROOM AT 4:05 P. M.)

13 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM AT 4:07 P.M.)

14 THE COURT: Ms. Patz, let the record reflect the
15 Defendant is present in courtroom, the Jury is not. I have
16 received and this will be made part of the record in trial,
17 what I guess I would call is not a question from the Jury, but
18 a comment. I will read it in its entirety and file it with
19 the Clerk. It doesn't really require action in my opinion,
20 but I will hear counsel on this: "Judge, Lockett, we object
21 to the Defense Attorney saying what was said in the jury room.
22 How would he know, (1) that we were hungry; (2) that we
23 didn't consider the evidence, underlined piece by piece;
24 (3) how long we deliberated. Now, is he implying that we
25 had testimony of the witnesses? We understand that our memory

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1 is all we have to go on." Signed, the Jury.

2 I will hear counsel for either side on the comment of
3 the Jury.

4 MR. HOGAN: The only comment I want to make to to make
5 sure on the record just from the observer's point, of course,
6 I can't speak for Mr. Edmund, but from my prospective, it
7 seemed to me that his argument to the Jury in closing in the
8 penalty phase was certainly very good tactical maneuver.
9 I don't think he had too many other choices and I was impressed
10 by it. I can't speak for the Jury, but I don't think that
11 what I saw would be anything to warrant any kind of admonition
12 to Mr. Edmund, but rather a tactical decision he made, which
13 I quite frankly found to be possibly very effective.

14 THE COURT: Mr. Edmund?

15 MR. EDMUND: I have no comment, Your Honor.

16 THE COURT: I don't think the Jury's comment warrants
17 any admonition or anything else. I choose to view it as
18 trial strategy and tactics. We have all been there and we
19 all have our own style. Nothing further. I just wanted to
20 put that on the record, because that is what the Jury said.

21 MR. EDMUND: Thank you, Your Honor.

22 THE COURT: Thank you all. We will be in recess.

23 (WHEREUPON, DEFENDANT LEAVES COURTROOM AT 4:10 P. M.)

24 (WHEREUPON, COURT IS IN RECESS AT 4:10 P. M.)

25 (WHEREUPON, KNOCK ON DOOR BY JURY AT 4:14 P. M.)

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1 (WHEREUPON, COURT RECONVENES AT 4:14 P. M.)

2 (WHEREUPON, DEFENDANT IS PRESENT IN THE COURTROOM WITH
3 HIS COUNSEL, MR. EDMUND)

4 THE COURT: Madam reporter, let the record reflect the
5 Defendant is present in the courtroom. The Jury is not. I
6 have a question from the Jury. It reads, and of course, it
7 will be part of the record, "Judge Lockett. May we have a
8 large marker and butcher paper pad. The Jury."

9 I am not sure what a butcher paper pad is. I guess one
10 of those easel pads?

11 MR. HOGAN: Yes, sir.

12 THE COURT: Any objection?

13 MR. EDMUND: No, Your Honor.

14 MR. HOGAN: No, sir.

15 THE COURT: Alright, Mr. Bailiff, I will charge you to
16 find a large marker and a butcher paper pad and render it to
17 the Jury.

18 MR. CORBETT: Yes, sir.

19 THE COURT: We will be in recess.

20 (WHEREUPON, COURT IS IN RECESS AT 4:20 P. M.)

21 (WHEREUPON, COURT RECONVENES AT 6:02 P. M.)

22 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM AT 6:02 P.M.)

23 THE COURT: Alright, ladies and gentlemen, let the
24 record reflect the Defendant is present in the courtroom and
25 the Jury is not. It is just a little after 6:00 P. M.

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1 Gentlemen, my plan is to have Mr. Bailiff step into the
2 jury room, advise the Jury that we are going to bring in to
3 them pizza for dinner and drinks. If they say, "Gosh, don't
4 do that. We almost have a verdict." that is fine, too. If
5 they say, "Fine", that is what we will do. Any objections
6 to the procedure?

7 MR. EDMUND: No, Your Honor.

8 MR. HOGAN: No, sir.

9 THE COURT: Alright. That is all. Thank you all.

10 Folks, for your information, I intend to work late
11 tonight. I may not stay until two in the morning, but within
12 a reasonable hour to see if they can reach a verdict.

13 If you would, Mr. Bailiff. We will be in recess.

14 (WHEREUPON, COURT IS IN RECESS AT 6:03 P. M.)

15 MR. BAILIFF: The information seems to be not to order
16 yet. Don't order yet.

17 THE COURT: The Jury advises the bailiff not to order yet.
18 Any objection to not ordering yet, gentlemen?

19 MR. HOGAN: No, sir, since we are not included.

20 MR. EDMUND: No objection. I can't top that, Your Honor.

21 THE COURT: Alright, we will be in recess.

22 (WHEREUPON, COURT IS IN RECESS AT 6:05 P. M.)

23 (WHEREUPON, KNOCK ON DOOR BY JURY AT 6:10 P. M.)

24 (WHEREUPON, JURY REACHES VERDICT AT 6:10 P. M.)

25 (WHEREUPON, ALTERNATE JURORS ENTER COURTROOM AT 6:19 P.M.)

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1 (WHEREUPON, COURT RECONVENES AT 6:30 P. M.)

2 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
3 COUNSEL AT 6:31 P. M.)

4 THE COURT: Mr. Bailiff, I am advised the Jury has reached
5 an Advisory Sentence, is that correct?

6 MR. BAILIFF: Yes, sir.

7 THE COURT: Gentlemen, do we have anything further before
8 we bring the Jury in?

9 MR. EDMUND: No, Your Honor.

10 MR. HOGAN: No, sir.

11 THE COURT: Please, Mr. Bailiff.

12 (WHEREUPON, JURY ENTERS COURTROOM AT 6:32 P. M.)

13 THE COURT: Be seated, please, folks.

14 Mr. Foreman, I am advised the Jury has reached an
15 Advisory Sentence, is that correct?

16 MR. FOREMAN: Yes, sir.

17 THE COURT: Hand it to the Jury, please, sir.

18 (WHEREUPON, JURY FOREMAN HANDS VERDICT TO THE BAILIFF,
19 THE BAILIFF HANDS VERDICT TO THE COURT AND THE COURT READS
20 ADVISORY SENTENCE)

21 THE COURT: Counsel, approach the bench, please.

22 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

23 THE COURT: See my problem? It doesn't say eight to what.
24 We can presume eight to four, but I don't like to presume
25 anything in this case.

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1 MR. HOGAN: If you are looking for suggestions, I would
2 suggest one of two things. Either instruct them they have to
3 put the other, what the other so that it totals to twelve,
4 and send them back in or ask them here, ask him, the foreman,
5 what the vote was.

6 THE COURT: I am thinking that we just had better send
7 them back and tell them that in the blank it ought to show
8 how many to how many with a hyphen between it period.

9 MR. HOGAN: Don't you think it would make it clear if
10 you said the number needs to total twelve so that it is ...

11 THE COURT: Yes, I should tell them the numbers have to
12 total twelve. Any objection to that?

13 MR. EDMUND: No, sir.

14 THE COURT: Okay, let's do that.

15 Thank you.

16 (WHEREUPON, BENCH CONFERENCE ENDS)

17 THE COURT: Ladies and gentlemen, I am going to have to
18 ask you to retire momentarily. There is a blank in the
19 advisory sentence. Do you understand what I am talking
20 about? And you have placed a number in there. I would like
21 to have a number with a hyphen and another number that totals
22 twelve. Do you understand what I mean, so it shows how many
23 to how many voted.

24 Alright. I am going to return this to the Jury if you
25 will Mr Bailiff, and ask them to retire. Hopefully, that

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1 but a moment.

2 (WHEREUPON, DOCUMENT IS HANDED TO THE BAILIFF AND THEN
3 TO THE JURY FOREMAN)

4 THE COURT: Folks, if you would step back out, please.

5 (WHEREUPON, JURY LEAVES COURTROOM AT 6:35 P. M.)

6 (WHEREUPON, KNOCK ON DOOR AT 6:36 P. M.)

7 (WHEREUPON, JURY ENTERS COURTROOM AT 6:36 P. M.)

8 THE COURT: Be seated again, folks.

9 (WHEREUPON, ADVISORY SENTENCE IS HANDED TO BAILIFF,
10 AND BAILIFF TO THE COURT AND THE COURT TO THE CLERK OF THE
11 COURT)

12 THE COURT: Madam clerk, I am going to ask you to publish
13 the Advisory Sentence. Ladies and gentlemen, I will remind
14 you once again, we abide no outbursts while in the courtroom.

15 Have the Defendant stand, please.

16 CLERK OF THE COURT: In the Circuit Court of the Fifth
17 Judicial Circuit of the State of Florida, in and for Lake
18 County. Case No. 87-1347-CF-A-01. State of Florida versus
19 James Aren Duckett. Advisory Sentence. The majority of the
20 Jury by a vote of eight to four advise and recommend to the
21 Court that it impose the death penalty upon James Aren Duckett
22 dated this 10th day of May, 1988. Joseph DeClerk, Foreman.

23 THE COURT: Thank you, ma'am.

24 Gentlemen, with regard to both case 87-1347 and 88-262,
25 the Court chooses to defer sentencing at this time, and Orders

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1 a Pre-Sentence Investigation. I will require the Office of
2 Probation and Parole to have that completed within thirty
3 days. I intend to hold a full sentencing hearing within
4 forty-five days of today's date. I will ask that you gentlemen
5 get together with my Administrative Assistant and find a
6 time mutually convenient on your calendar and mine, but I
7 would like that done within forty-five days.

8 Do we have anything else before we recess prior to the
9 sentencing hearing?

10 MR. HOGAN: No, Your Honor.

11 MR. EDMUND: No, Your Honor.

12 THE COURT: Thank you very much.

13 Folks, you all are discharged from your duties. I am
14 going to come back and personally thank you for your service.
15 I'll only keep you for a few minutes. I know it has been a
16 long two weeks plus.

17 Folks, if you all would come on back with the other
18 folks and I would like to thank you all as well.

19 (WHEREUPON, JURY LEAVES COURTROOM AT 6:37 P. M.)

20 (WHEREUPON, ALTERNATE JURORS ALSO GO BACK IN JURY ROOM
21 WITH THE JURY)

22 (WHEREUPON, DEFENDANT LEAVES COURTROOM AT 6:38 P. M.)

23 (WHEREUPON, COURT IS IN RECESS AT 6:39 P. M.)

24 **** END OF PROCEEDINGS ****

25
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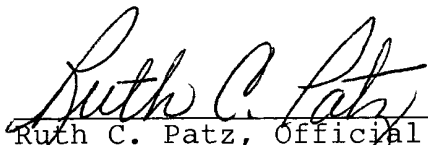
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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF LAKE)

I, Ruth C. Patz, Official Court Reporter, do hereby
certify that I was duly authorized to and did report
stenographically the testimony in the case of STATE OF
FLORIDA VERSUS JAMES AREN DUCKETT, Case No. 87-1347-CF-A-01
and 88-262-CF-A-01, and the above and foregoing pages numbered
one through two thousand ninety-two, are a true and accurate
transcript of the said Jury Trial and Penalty Phase of Jury
Trial.

IN WITNESS WHEREOF, I set my hand this 7th day of
August, A. D ., 1988.


Ruth C. Patz, Official Court
Reporter, Fifth Judicial
Circuit

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