NO. AP-77,053

IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS

ERIC LYLE WILLIAMS
Appellant

VS.

THE STATE OF TEXAS
Appellee

APPEALING THE TRIAL COURT'S CAPITAL JUDGMENT ASSESSING THE DEATH SENTENCE BASED ON JURY VERDICT OF GUILTY AND ANSWERS TO SPECIAL ISSUES IN CAUSE NUMBER 32021-422 FROM THE 422ND JUDICIAL DISTRICT COURT OF KAUFMAN COUNTY, TEXAS THE HONORABLE MICHAEL R. SNIPES, JUDGE PRESIDING

BRIEF FOR APPELLANT

JOHN TATUM
990 SOUTH SHERMAN STREET
RICHARDSON, TEXAS 75081
(972) 705-9200
BAR NO. 19672500

BRADY THOMAS WYATT III
3300 OAK LAWN, STE. 600
DALLAS, TEXAS 75219
(214) 559-9115
BAR NO. 24008313

ATTORNEYS FOR APPELLANT ON APPEAL ONLY

ORAL ARGUMENT IS REQUESTED

IDENTITIES OF PARTIES AND COUNSEL

HONORABLE MICHAEL R. SNIPES	JUDGE PRESIDING 422ND JUDICIAL DISTRICT COURT OF KAUFMAN COUNTY, TEXAS
ERIC LYLE WILLIAMS TDC#00999598 Polunsky Unit 3872 FM 350 South Livingston, Texas 77351	APPELLANT
HONORABLE MATTHEW SEYMOUR P.O. Box 2097 Lubbock, Texas 79408 SBOT#24046823	ATTORNEY FOR APPELLANT
HONORABLE JOHN E. WRIGHT P.O. BOX 2097 Lubbock, Texas 79408 SBOT# 22048500	ATTORNEY FOR APPELLANT
HONORABLE DOUGLAS PARKS 321 Calm Water Lane Holly Lake Ranch, Texas 75765 SBOT# 15520000	ATTORNEY FOR APPELLANT
HONORABLE MAXWELL PECK, III P.O. BOX 2097 Lubbock, Texas 79408 SBOT# 24034619	ATTORNEY FOR APPELLANT
HONORABLE JOHN TATUM 990 S. Sherman St. Richardson, Texas 75081 SBOT# 19672500	ATTORNEY FOR APPELLANT ON APPEAL

HONORABLE BRADY THOMAS WYATT III — ATTORNEY FOR APPELLANT ON APPEAL
3300 Oak Lawn, Ste. 600
Dallas, Texas 75219
SBOT# 24008313

HONORABLE ROBBIE McCLUNG — CONTRIBUTING ATTORNEY ON APPEAL
2150 S. CENTRAL EXPRESSWAY
SUITE 200
McKINNEY, TEXAS 75070
SBOT#007897720

HONORABLE WILLIAM WIRSKYE — ATTORNEY FOR THE STATE
100 Mulberry
Kaufman, Texas 75142
SBOT#00788696

HONORABLE TOBY SHOOK — ATTORNEY FOR THE STATE
100 Mulberry
Kaufman, Texas 75142
SBOT#18293250

HONORABLE JERRI SIMS — ATTORNEY FOR THE STATE
100 Mulberry
Kaufman, Texas 75142
SBOT#18425300

HONORABLE D. MILES BRISSETTE — ATTORNEY FOR THE STATE
100 Mulberry
Kaufman, Texas 75142
SBOT#50511628

TABLE OF CONTENTS

C. The Defense on Punishment

GUILT/INNOCENCE TRIAL ISSUES

MOTION FOR NEW TRIAL ISSUES

PUNISHMENT TRIAL ISSUES

PUNISHMENT JURY TRIAL INSTRUCTIONS ISSUES

INDEX OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATEMENT OF THE CASE

By an indictment filed on the 27th day of June, 2013, Appellant was charged in trial court cause number 32021-422 with the capital murder of Cynthia McLelland by shooting her with a firearm in the course of committing and attempting to commit the offense of the burglary of the habitation of the deceased or the murder of more than one person, Michael McLelland, and Cynthia McLelland during the same criminal transaction.(C.R. Vol. 1 p. 32) The jury found the Defendant guilty of capital murder. (RR: Vol. 47 p. 58)

On December 17, 2014 the jury answered Special Issue No. 1 "Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant Eric Lyle Williams would commit criminal acts of violence that would constitute a continuing threat to society", as "Yes." The jury answered Special Issue No.2 "Do you find from the evidence, taking into consideration all the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, Eric Lyle Williams, that there is a sufficient mitigating circumstance or circumstances to warrant a sentence of life imprisonment rather than a death sentence be imposed" as "No." (Reporter's Record Vol. 55 p. 5) In accordance with the previous verdict of guilty and answers to the

special issues, the trial court entered a judgment and assessed Appellant's punishment at death. (Reporter's Record Vol. 55 p. 6)

On January 16, 2015, Appellant timely filed a Motion for New Trial that was subsequently denied by the court. (Clerk's Record P. 4367;4404). Notice of appeal was appeal to this Court is automatic. *See* Tex. Code Crim.Proc.Ann. art. 37.071,§ 2(g)(Vernon Supp. 2001).

STATEMENT REGARDING ORAL ARGUMENT

Appellant's counsel is requesting oral argument which would aid the Court's decisional process in regard to the issues involving the capital murder guilt/innocence jury charge request for two separate verdict forms, the trial court's denial of sufficient time to develop mitigation evidence for the punishment stage of the trial and to explain the issue claiming a violation of due process from the trial court's bias against the defense as developed in the motion for new trial hearing.

ISSUES PRESENTED

I. JURY SELECTION ISSUES

APPELLANT'S ISSUE NO. 1

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON NO. 14A JAMES FREEMAN

APPELLANT'S ISSUE NO. 2

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON # 31 DANIEL CHAPMAN

APPELLANT'S ISSUE NO. 3

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #66, JERRY WASLER

APPELLANT'S ISSUE NO. 4

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #71, BRYAN CAMPBELL

APPELLANT'S ISSUE NO. 5

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #122, KELLY SHIVERS

APPELLANT'S ISSUE NO. 6

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #174, BROOKE PADACHY

APPELLANT'S ISSUE NO. 7

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #253, NICOLE VANWEY

APPELLANT'S ISSUE NO. 8

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #273, LARRY HOLLIFIELD

APPELLANT'S ISSUE NO. 9

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #309, SCOTT HOOPER

APPELLANT'S ISSUE NO. 10

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #374, SALLY WILLIAMS

APPELLANT'S ISSUE NO. 11

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #435 , DAVID PHILLIPS

APPELLANT'S ISSUE NO. 12

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON # 498, JERRY BOLTON

APPELLANT'S ISSUE NO. 13

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON # 493A, LESLI MUTSCHLER

APPELLANT'S ISSUE NO. 14

THE JURY AS CONSTITUTED WAS BIASED OR PREJUDICED WHICH DEPRIVED APPELLANT OF A FAIR TRIAL (FEDERAL CONSTITUTIONAL ISSUE)

APPELLANT'S ISSUE NO. 15

THE JURY AS CONSTITUTED WAS BIASED OR PREJUDICED WHICH DEPRIVED APPELLANT OF A FAIR TRIAL (STATE CONSTITUTION ISSUE)

II. GUILT/INNOCENCE TRIAL ISSUES

APPELLANT'S ISSUE NO. 16

THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUESTED JURY VERDICT FORM THAT ALLOWED THE JURY TO MAKE A DETERMINATION OF GUILT/INNOCENCE ON EACH ALLEGED MANNER AND MEANS OF COMMITTING THE ALLEGED OFFENSE RATHER THAN A GENERAL VERDICT

APPELLANT'S ISSUE NO. 17

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO EVIDENCE OF EXTRANEOUS OFFENSES

APPELLANT'S ISSUE NO. 18

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO THE STATE PRESENTING EVIDENCE OF AN EXTRANEOUS OFFENSE; TO-WIT: THE MURDER OF MR. MARK HASSE IN THE GUILT/INNOCENCE STAGE OF THE TRIAL

APPELLANT'S ISSUE NO. 19

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO STATE'S EXHIBIT 155, A PHOTOGRAPH OF AN IMPROVISED INCENDIARY DEVICE NOT LISTED IN THE STATE'S RULE OF EVIDENCE 404 (b) NOTICE TO THE DEFENSE

APPELLANT'S ISSUE NO. 20

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO THE EXPERT TESTIMONY OF STATE'S WITNESS, MR. JAMES JEFFRESS, AS AN EXPERT WITNESS ON BALLISTIC EVIDENCE

APPELLANT'S ISSUE NO. 21

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO "IN COURT IDENTIFICATION"

APPELLANT'S ISSUE NO. 22

THE EVIDENCE IS LEGALLY INSUFFICIENT TO SUPPORT THE CONVICTION FOR CAPITAL MURDER

III. MOTION FOR NEW TRIAL ISSUES

APPELLANT'S ISSUE NO. 23

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR NEW TRIAL AS TO THE FAILURE OF THE TRIAL COURT TO PERMIT A CAPITAL DEFENDANT FROM PROPERLY INVESTIGATING, DEVELOPING AND PRESENTING MITIGATING EVIDENCE IN THE PUNISHMENT STAGE OF THE TRIAL

APPELLANT'S ISSUE NO. 24

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR CONTINUANCE TO INVESTIGATE AND DISCOVER THE MITIGATING EVIDENCE PRESENTED AT THE MOTION FOR NEW TRIAL HEARING

APPELLANT'S ISSUE NO. 25

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR NEW TRIAL ARGUING HE WAS DENIED DUE PROCESS OF LAW BECAUSE OF JUDICIAL BIAS IN HOW THE TRIAL WAS CONDUCTED

IV. PUNISHMENT TRIAL ISSUES

APPELLANT'S ISSUE NO. 26

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO STATE'S EXHIBIT NO. 528, A VIDEO OF THE MARK HASSE CRIME SCENE

APPELLANT'S ISSUE NO. 27

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO VICTIM IMPACT EVIDENCE OF A VICTIM NOT NAMED IN THE INDICTMENT

APPELLANT'S ISSUE NO. 28

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO THE STATE'S CROSS EXAMINATION OF THE DEFENSE'S EXPERT WITNESS , FRANK AUBUCHON, ABOUT CONDUCT OF OTHER INMATES IN THE PUNISHMENT HEARING

APPELLANT'S ISSUE NO. 29

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO STATE'S EXHIBIT NOS. 333-342, 344-415, 415b, 416, 416b, 531, 534, 535, 566, 567, 568, 569, AND 570

APPELLANT'S ISSUE NO. 30

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR MISTRIAL WHEN THE STATE PRESENTED TO THE JURY A DISPLAY OF WEAPONS SOME OF WHICH WERE NOT IN EVIDENCE

APPELLANT'S ISSUE NO. 31

THE TRIAL COURT ERRED IN SUSTAINING THE STATE'S OBJECTION TO A PARTIAL TRANSCRIPT OF THE ERIC WILLIAMS TRIAL FOR THEFT PROSECUTED BY MR. McLELLAND

APPELLANT'S ISSUE NO. 32

THE TRIAL COURT ERRED IN SUSTAINING THE STATE OBJECTION TO THE DEFENSE'S PROFFER OF EVIDENCE OF THE TESTIMONY OF WITNESS, MR. RICK HARRISON

APPELLANT'S ISSUE NO. 33

THE TRIAL COURT ERRED IN SUSTAINING THE STATE'S OBJECTION TO THE DEFENDANT'S PROFFER OF EVIDENCE DEFENSE EXHIBIT NO. 47

APPELLANT'S ISSUE NO. 34

THE TRIAL COURT ERRED IN SUSTAINING STATE'S OBJECTION OF LACK OF RELEVANCE TO THE DEFENSE'S PROFFERED TESTIMONY OF THE WITNESS, CATHY ADAMS

APPELLANT'S ISSUE NO. 35

THE TRIAL COURT ERRED IN SUSTAINING STATE'S OBJECTION OF LACK OF RELEVANCE TO THE DEFENSE'S PROFFERED TESTIMONY OF THE WITNESS, ANDREA JONES

APPELLANT'S ISSUE NO. 36

THE TRIAL COURT ERRED IN SUSTAINING STATE'S OBJECTION OF LACK OF RELEVANCE TO THE DEFENSE'S PROFFERED TESTIMONY OF THE WITNESS, HEATHER JONES

APPELLANT'S ISSUE NO. 37

THE TRIAL COURT ERRED IN SUSTAINING STATE'S OBJECTION OF LACK OF RELEVANCE TO THE DEFENSE'S PROFFERED TESTIMONY OF THE WITNESS, MARK CALABRIA

V. PUNISHMENT JURY TRIAL INSTRUCTIONS ISSUES

APPELLANT'S ISSUE NO. 38

THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUEST INSTRUCTIONS TO THE JURY DURING PUNISHMENT

APPELLANT'S ISSUE NO. 39

THE TRIAL COURT ERRED IN DENYING APPELLANT'S OBJECTIONS TO THE COURT'S JURY CHARGE IN PUNISHMENT

APPELLANT'S ISSUE NO. 40

THE EVIDENCE IS LEGALLY INSUFFICIENT TO SUPPORT THE JURY'S ANSWER TO SPECIAL ISSUE NO. 1 IN THE PUNISHMENT STAGE OF TRIAL

STATEMENT OF FACTS

This case involves the shooting deaths of Cynthia McLelland and Michael McLelland in the course of attempting to commit and or committing burglary of a habitation or in the alternative the killing of two people.

TRIAL ON THE MERITS

State on Guilt/Innocence

1) Testimony of the Honorable Judge Michael Chitty: Judge Chitty, the presiding judge of the 422nd District Court in Kaufman County, testified the victims, Michael McClelland was the elected district attorney in Kaufman County and his wife, Cynthia McLelland was a mental health nurse. (RR: Vol. 44 p. 69-70) He knew Eric Williams since the early 1990's when he served as coordinator of the 86th District Court. (RR: Vol. 44 p. 71) He knew that Mr. Williams had been a police officer and had gone to law school and obtained a law degree. (RR: Vol. 44 p. 71-72) In 2010, Mr. Williams was elected as Justice of the Peace in Kaufman County. (RR: Vol. 44 p. 73)

The witness testified that in June, 2011, six months after Mr. Williams became judge, he signed an arrest warrant for his arrest. (RR: Vol. 44 p. 74) He said he presided over the trial in March, 2012 in which Mike McLelland was one of the two lawyers representing the State. (RR: Vol. 44 p. 74-75) He said a jury convicted Eric Williams of a felony offense and he assessed punishment. (RR: Vol. 44 p. 76) Once Mr. Williams

was convicted, he was removed from the bench and from practicing law. (RR: Vol. 44 p. 76)

2)Testimony of Charles Tomlinson: Charles Tomlinson, a Dallas Police Officer, testified that the McLellands lived on Blarney Stone Way in southeast Forney. (RR: Vol. 44 p. 80) Mr. Tomlinson testified that Cynthia McLelland was in the early stages of Parkinson's which made it difficult for her to walk.

On March 30th 2013, Easter weekend, he was working on his home when he phoned the McLellands who did not answer. (RR: Vol. 44 p. 85) At approximately 4:00 p.m. his mother went to the house, but did not get any answer and then called him and his father. (RR: Vol. 44 p. 85) He and his father went to the McLelland house where he found the front door unlocked. (RR: Vol. 44 p. 86-87) He saw shell casings inside the front door. (RR: Vol. 44 p. 87) He saw Cynthia McLelland laying on the living room floor. (RR: Vol. 44 p. 88)

3) Testimony of William Rudolfo Flores: Rudy Flores testified that he was the team leader for Crime Scene Team. (RR: Vol. 44 p. 106) On March 30th he and his team were called to process a scene on Blarney Stone Way. (RR: Vol. 44 p. 108) He said it took them 12 to 16 hours to process the scene. (RR: Vol. 44 p. 109) He did not find any signs of forced entry to the house. (RR: Vol. 44 p. 114).There were 16 cartridge casings on

the floor of the foyer. (RR: Vol. 44 p. 115) A videotape taken of the crime scene was played for the jury while the witness narrated. (RR: Vol. 44 p. 142-146)

The witness testified that on August 2, 2013 he was asked to process a secondary crime scene in this case, an underpass of a bridge off Highway 175. (RR: Vol. 44 p. 149) He searched for some firearm related evidence. (RR: Vol. 44 p. 150) He recovered several fired .223 shell casings, 5.7 caliber shell casings, some 9 millimeter handgun ammunition, and one unfired pistol cartridge. (RR: Vol. 44 p. 153-154) He said there was evidence of numerous bullet strikes. (RR: Vol. 44 p. 155-156)

4)Testimony of Dr. William McLain: Dr. Mclain, a medical examiner for Dallas County at the Southwestern Institute of Forensic Sciences, testified that he performed an autopsy on Cynthia McLelland on April 1st, 2013. (RR: Vol. 44 p. 164-165) He said there were eight gunshot wounds on her body. (RR: Vol. 44 p. 168) He said the gunshot which entered the top of her scalp and exited beneath her chin was immediately incapacitating and fatal. (RR: Vol. 44 p. 171-172)

5) Testimony of Dr. Reade Quinton: Dr. Reade Quinton, a medical examiner with the Southwestern Institute of Forensic Sciences, testified that he performed the autopsy of Michael McLelland on April 1st, 2013 and described the wounds he suffered and the manner of death. (RR: Vol. 44 p. 172- 206)

6) Testimony of Edward Cole: Edward Cole testified that he owned a white 2004 Crown Victoria. (RR: Vol. 44 p. 213) . (RR: Vol. 44 p. 214) He said Richard Greene ,who he identified as the Defendant came to his house and bought the car with cash. (RR: Vol. 44 p. 216-222)

7) Testimony of Barton Roger Williams, Jr.: Mr. Williams testified he knew Eric Williams through his membership in the Texas State Guard. (RR: Vol. 44 p. 233- 234) The witness testified that in November, 2012 Eric asked him to help him get a storage unit because his in-laws were moving to Texas. (RR: Vol. 44 p. 238) Eric told him that he didn't want the unit in his name because his conviction would allow anyone to search the unit. (RR: Vol. 44 p. 238-242)

8)Testimony of Larry Mathison: Larry Mathison testified that he ran Gibson's Self Storage (RR: Vol. 44 p. 257) and that when customers use the access codes to come in and out of the facility, it is recorded on the PTI system. (RR: Vol. 44 p. 261) He said Eric Williams was listed on the lease as another person that had access to the unit. (RR: Vol. 44 p. 264) On April 13th, 2013 he met with deputies and Texas Rangers and printed out the records concerning unit 18. (RR: Vol. 44 p. 266) He said the records showed that on March 30th someone entered with code 2072 at 6:06 a.m., returned at 7:07 a.m. and then left the property at 7:24 a.m. (RR: Vol. 44 p. 272)

9) Testimony of Robert Washington: Robert Washington testified about a security system at 9389 Blarney Stone Way in Kaufman, County. (RR: Vol. 45 p. 8)

10) Testimony of Andrew Shedd: Andrew Shedd, service manager with ADT Security Services, testified that in April, 2013 law enforcement officers executed a search warrant at his office for the records for the McLelland residence, (RR: Vol. 45 p. 17-18) which showed that on March 30th at 6:40 a.m. the back screen door was opened from the outside. (RR: Vol. 45 p. 21) He said at 6:40 a.m. the actual door was opened and then the screen door and door were then closed. (RR: Vol. 45 p. 21-22) The records showed that there was no more motion within the room after 6:42 a.m. until 6:04 p.m. (RR: Vol. 45 p. 23) He said that the back screen door and the front screen door were mislabeled in this incident. (RR: Vol. 45 p. 25)

11) Testimony of David Scott Hunt: David Hunt testified that he is a teacher and was a member of the Texas State Guard. (RR: Vol. 45 p. 27) He said he knew Eric Williams from the Texas State Guard. (RR: Vol. 45 p. 30-31) On December 27th, 2012 he received an email from Eric Williams in which he asked him if he would meet him for lunch because he had a favor to ask. (RR: Vol. 45 p. 32) He met with Eric on January 4th at the Angry Dog on Commerce Street in Dallas, Texas. (RR: Vol. 45 p. 33) He said their conversation turned to firearms competition and Eric asked him about what he knew about the glass penetrating capabilities of a 5.7 round. (RR: Vol. 45 p. 35) He did

not think the conversation was odd because a lot of people asked him questions about firearms and ballistics. (RR: Vol. 45 p. 36) Eric told him that he had gotten rid of all his guns, which made sense to him because he had been convicted of a felony. (RR: Vol. 45 p. 37)

He said he asked Eric what favor he wanted and was told that he needed help getting rid of an AR upper. (RR: Vol. 45 p. 37) He said Eric eventually asked him that if he gave him an upper, could he make it disappear. (RR: Vol. 45 p. 38) He said this made him uncomfortable, so he didn't respond. (RR: Vol. 45 p. 39) After learning that the police were searching Eric's house after the murders, he contacted Roger Williams and decided to contact the police. (RR: Vol. 45 p.42- 42)

12) Testimony of Diana Strain: Special Agent Diana Strain of the FBI testified that she was team leader of the Evidence Response Team or ERT based in Dallas, Texas. (RR: Vol. 45 p. 57) She stated that she and her team searched the home of Eric Williams and a storage unit. (RR: Vol. 45 p. 58) They seized three laptop computers. (RR: Vol. 45 p. 62) Using the photographs taken at the house, the witness described the search. (RR: Vol. 45 p. 63-65) He said a Desert Eagle . 44 caliber automatic was found in the garage. (RR: Vol. 45 p. 64-65) She identified a photograph of a tax receipt with a series of letters and numbers on it with the website of TipSubmit. com. (RR: Vol. 45 p. 65) She

said they found a title to a Crown Victoria with the transfer from Edward Cole to Richard Greene . (RR: Vol. 45 p. 67-68)

The witness testified that the next day they searched Unit 18, a storage unit, in which they found a Crown Victoria. (RR: Vol. 45 p. 71-72) This vehicle was towed and processed. (RR: Vol. 45 p. 73) She said they found approximately 30 weapons. (RR: Vol. 45 p. 75) She said that the name Eric Williams was found on numerous items in the unit. (RR: Vol. 45 p. 81) She said a bomb technician was called out when a bottle of lighter fluid with a cigarette lighter attached to it was found. (RR: Vol. 45 p. 82) She identified a photograph of a box of boot covers with a couple of pairs missing addressed to Eric Williams. (RR: Vol. 45 p. 83-84) The witness identified a 5.7 caliber AR upper that was located in the storage unit and a Rock River Arms lower with an AR 5.7 caliber upper attached. (RR: Vol. 45 p. 87-88)

13) Testimony of Matthew Johnson: Matthew Johnson, a special agent with the Bureau of Alcohol, Tobacco and Firearms, demonstrated the operation of a AR15/M16 type weapon. (RR: Vol. 45 p. 103-104)

14) Testimony of James Jeffress: James Jeffress, a forensic scientist in the firearm and toolmark section of the Texas Department of Public Safety Crime Lab in Garland, Texas, testified he issued seven reports in this case concerning firearm evidence. (RR: Vol. 45 p. 125) He said he was given 16 spent shell casings and seven bullets and

fragments for examination. (RR: Vol. 45 p. 125) He concluded that all of the cartridge cases were fired from the same unknown firearm, a firearm capable of chambering and firing a 5.56, 5.45 millimeter or a .223 Remington caliber cartridge. (RR: Vol. 45 p. 125) All were fired from the same weapon. (RR: Vol. 45 p. 126) He was given the weapons recovered from the storage unit, but the cartridges did not match back to any of these weapons. (RR: Vol. 45 p. 129)

He said he examined a live cartridge found at the storage unit and found that it had been cycled in the same firearm that fired all the cartridge cases from the crime scene. (RR: Vol. 45 p. 130) He said he examined evidence of spent cartridge cases found under a bridge underpass and found that some of these were identified as having been fired in the same firearm that was used in the crime scene, as well as the unfired cartridge that was recovered in the storage unit. (RR: Vol. 45 p. 137-138) He said the spent 5.7 caliber cartridge cases from the same scene were found to have been fired from the Rock River Arms rifle and the upper receiver AR-5.7 brand found in the storage unit. (RR: Vol. 45 p. 138)

15) Testimony of Robert Keith Ramsey: Robert Ramsey, a deputy with the Kaufman County Sheriff's Office, testified that he knew Eric Williams as a defense attorney and a Justice of the Peace who signed arrest warrants for him. (RR: Vol. 45 p. 155-156) On the day of the murders, He arranged to meet with Mr. Williams at a Denny's restaurant.

(RR: Vol. 45 p.157- 158) He and three other deputies met at the Denny's parking lot where he consented to a GSR test of his hands. (RR: Vol. 45 p. 159) He said Mr. Williams told him that he had spent the day at home tending to his in-laws. (RR: Vol. 45 p. 159) He said Mr. Williams told them that he had not shot a weapon since his last arrest. (RR: Vol. 45 p. 160) He said he agreed to have his cell phone examined and they agreed to let them examine his wife's phone which was at their house. (RR: Vol. 45 p. 161-162)

16) Testimony of Adam King Myers: Adam Myers, testified that he was part of the team of deputies that located Eric Williams on March 30, 2013 and conducted the Gunshot Residue Test. (RR: Vol. 45 p. 65)

17) Testimony of William Reese: William Reese, a retired United States Postal Inspector, testified that the postage on the envelope addressed to Edward Cole was traced to a meter licensed to the office of Eric Williams. (RR: Vol. 45 p. 171- 173)

18) Testimony of Bryan Beavers: Bryan Beavers, Chief Deputy of Kaufman County Sheriff's Department, testified that he was the liaison between the Crime Stoppers tips and the investigation. (RR: Vol. 45 p. 176-177) He said every tip is assigned a number and the names are unknown. (RR: Vol. 45 p. 177-178) He traced the email communication with tip 196 which was received on the day after the murders at 10:00 p.m. (RR: Vol. 45 p. 184) He said the email appeared to be coming from a group of

people and asked if they had their attention now. (RR: Vol. 45 p. 184) The email said they wanted a response from Judge Bruce Wood, the main county chief executive officer, within 48 hours. (RR: Vol. 45 p. 184)

The witness testified that the next day they replied that they have our attention and asked how the county judge could contact them. (RR: Vol. 45 p. 185) He said at 10:15 p.m. they received a response ".... Your act of good faith will result in no other attacks this week." (RR: Vol. 45 p. 186) He said the email said that Judge Wood must offer a resignation of one of the four main judges in Kaufman. (RR: Vol. 45 p. 186-189)

19) Testimony of Dewayne Dockery: Texas Ranger, Major Dewayne Dockery testified that on April 11th, 2011 he interviewed Eric Williams. (RR: Vol. 45 p. 193) He said Mr. Williams told them that he had sold all of his guns except for one .44 automatic pistol. (RR: Vol. 45 p. 195) He said Mr. Williams told them that on the morning of the murders he had received a text at 9:15, the spoke with the person who sent the text and then went to his in-law's house. (RR: Vol. 45 p. 196) He said Mr. Williams denied making any internet searches on Mike McLelland. (RR: Vol. 45 p. 197)

20) Testimony of Thomas Rusk White: Thomas Rusk, a trace evidence analyst with the Texas Department of Public Safety Crime Laboratory Service, testified that he analyzed a gunshot residue kit submitted in this case. (RR: Vol. 46 p. 10) He said the results were consistent with the person having recently either fired a weapon, been near a weapon

when it was fired or handled some object that had gunshot residue on it. (RR: Vol. 46 p. 22)

21) Testimony of Jennifer Briggeman: Jennifer Briggeman, a Special Agent with the FBI, testified that she assisted in the search of the home and garage of the Defendant. (RR: Vol. 46 p. 29-32)

22) Testimony of Jack Flanders: Jack Flanders, a latent fingerprint examiner for the Texas Department of Public Safety Crime Laboratory, testified that he compared the latent prints from the Crown Victoria to the known fingerprints of the Defendant and found sixteen matching points of comparison in one print and ten matching points of comparison in another. (RR: Vol. 46 p. 43-44)

23) Testimony of Mark Wild: Mark Wild, a latent fingerprint examiner with the Texas Department of Public Safety, testified that he examined several weapons and found two latent prints on a Rock River Arms LAR-15. (RR: Vol. 46 p. 48-49) He identified these prints as belonging to Eric Williams. (RR: Vol. 46 p. 49-50)

24) Testimony of Steven Tippett: Steven Tippett, a state trooper with the Texas Department of Public Safety, testified that he was also a part of the DPS dive and recovery team. (RR: Vol. 46 p. 57- 60) He said from August, 2013 to March, 2014 they dove in the area of Two Mile Bridge over Lake Tawakoni. (RR: Vol. 46 p. 61-62) They

recovered numerous firearms that had nothing to do with the murders in this case. (RR: Vol. 46 p. 64)

25)Testimony of Rhona Wedderien: Rhona Wedderien testified that she prepared a summary of some search records from Lexis Nexis in this case by looking for variations of the names Michael and McLelland which she found on the search dated January 6th, 2013. (RR: Vol. 46 p. 70-71;76) She found that this account was assigned to the Kaufman County Law Library. (RR: Vol. 46 p. 76)

26) Testimony of Jeff Rich: Jeff Rich, a police officer with the Plano Police Department, testified that he conducts computer investigations.(RR: Vol. 46 p. 81-82) His role in the search of Eric Williams' home was to preview the computers and assess any evidence that may be on them. (RR: Vol. 46 p. 83-84) He said there were several entries on the browser history showing Kaufman County Crime Stoppers or TipSoft Online.com. (RR: Vol. 46 p. 96) He stated that he found searches being done on Crown Victoria. (RR: Vol. 46 p. 101)

27) Testimony of Fred Kingelberger: Fred Kingelberger, a captain with the Kaufman County Sheriff's Officer, testified that he was a forensic computer and mobile device examiner. (RR: Vol. 46 p. 104) He used a tool called a Forensic Toolkit to examine computer evidence and identified State's Exhibit No. 313 as the report generated by this tool on four laptops seized at the Defendant's home. (RR: Vol. 46 p. 105) He said the

report showed a 2011 list or inventory of weapons owned by Eric Williams. (RR: Vol. 46 p. 108) He said that all most all of the items on the list were recovered from the search of the storage unit. (RR: Vol. 46 p. 108) He said the report shows a response to a Craigslist ad on February 13, 2013 for a Crown Victoria. (RR: Vol. 46 p. 109) He said there was a receipt from PayPal for blue bootie covers. (RR: Vol. 46 p. 111)

He said he analyzed a Samsung phone which was recovered next to the title of the Crown Victoria in the Defendant's home. (RR: Vol. 46 p. 111) He determined that the phone number was the same phone number that the owner of the Crown Victoria, Edward Cole, was using with a man he knew as Richard Greene. (RR: Vol. 46 p. 113)

28) Testimony of Mark Porter: Mark Porter, a video analyst assigned to the Technical Services Unit for the Tarrant County Criminal District Attorney, testified that he examined all the video collected for evidentiary value. (RR: Vol. 46 p. 123) He prepared a DVD of the excerpts which was played for the jury in part. (RR: Vol. 46 p. 126) He concluded that a Ford Crown Victoria or a Mercury Grand Marquis were in the four videos and a Ford Sport Trac was in two videos. (RR: Vol. 46 p. 138)

The jury found the Defendant, Eric Williams, guilty of capital murder. (RR: Vol. 437 p. 58)

The State on Punishment

29) Testimony of Justin Lewis: Justin Lewis testified that he was formerly employed at the District Attorney's Office in Kaufman, County and worked with Assistant District Mark Hasse as his investigator. (RR: Vol. 48 p. 21) Mark Hasse was Mike McLelland's top assistant district attorney. (RR: Vol. 48 p. 23-24)

On January 31st, 2013 he was at work when he looked up and saw two detectives running towards the parking lot. (RR: Vol. 48 p. 26) He learned there was a shooting at the courthouse, went to the scene ad then drove around the neighborhoods looking for a silver Ford Taurus. (RR: Vol. 48 p. 27) He was driving through the neighborhoods when he learned that Mark Hasse was dead. (RR: Vol. 48 p. 28) Using photographs taken from the scene, the witness described the area of the shooting. (RR: Vol. 48 p. 32)

30) Testimony of Patricia Luna: Patricia Luna, a mail clerk at the Kaufman County Courthouse, testified that on January 31, 2013 she was in the workout room of the courthouse when she heard a weird noise. (RR: Vol. 48 p. 37) She turned off the music, lifted up the blinds on the window and saw a person walking slowing, shooting into the air. (RR: Vol. 48 p. 37-38) She said the man was wearing a mask, a vest and Army boots. (RR: Vol. 48 p. 39) She saw him go to the passenger side of a car in the street and then drove away. (RR: Vol. 48 p. 40)

The witness testified that she waited a moment and then walked to the area and saw Mark Hasse was dead. (RR: Vol. 48 p. 41) She said there was a girl there performing CPR. (RR: Vol. 48 p. 42) On cross examination the witness testified that she could not determine if the shooter was a man or a woman. (RR: Vol. 48 p. 51)

31) Testimony of Lenda Bush: Lenda Bush testified that she was an attorney working in Terrell, Texas and knew Mark Hasse and Eric Williams. (RR: Vol. 48 p. 55) On January 31st, 2013 she had business at the courthouse and when she was driving toward the courthouse parking lot, she saw a larger man coming from the courthouse walk up to a man who was walking in from the parking lot. (RR: Vol. 48 p. 56-57) She described the larger man as wearing a black coat and a hood that covered his face. (RR: Vol. 48 p. 61) She was a block away when she saw the men in a shoving match and the larger man put the gun to Mark Hasse's neck and shoot down three times.(RR: Vol. 48 p. 62) She said the shooter then ran to his parked car as she turned in front of the car. (RR: Vol. 48 p. 62-63)

The witness testified that she chased the car, but because she couldn't communicate with the sheriff's office. (RR: Vol. 48 p. 63) She stated that the shooter ran and got into the driver's seat of the light colored four door car. (RR: Vol. 48 p. 65) She said she followed the car for two and a half blocks, but then drove back to the

parking lot. (RR: Vol. 48 p. 65) When she returned to the parking lot she found Mark Hasse and began chest compressions. (RR: Vol. 48 p. 67)

She testified that she counted three shots but heard additional shots after that. (RR: Vol. 48 p. 70) She said she was asked about Eric Williams and told the police that the person she saw was too big to be Eric Williams. (RR: Vol. 48 p. 71-76) The witness testified that she had on occasion worked with Eric Williams on ad litem cases.

(***32) Testimony of Martin Cerda:*** Martin Cerda testified that he works at Gomez Paint and Body which is located close to the courthouse parking lot. (RR: Vol. 48 p. 83) On January 31st, 2013 he got to work at 8:00 a.m. and opened up the shop. (RR: Vol. 48 p. 84) At 8:40 a.m. he heard a gunshot that sounded close by so he looked through the door and saw a person with a gun in his hand and the other person saying "I'm sorry, I'm sorry, I'm sorry. (RR: Vol. 48 p. 85) He said the man with the gun then pointed the gun to the chest and fired. (RR: Vol. 48 p. 85-86) He described the man with the gun as tall and wide. (RR: Vol. 48 p. 86) He said the tall man grabbed the shorter man by the jacket and shot him in the chest. (RR: Vol. 48 p. 86) He said the man fell down and the taller man fired again. (RR: Vol. 48 p. 87) He said the man emptied the gun on him, pulled out another gun and started firing again. (RR: Vol. 48 p. 87) He said the man walked behind some pickups and fired the gun two or three times up in the air. (RR: Vol. 48 p. 87-88)

33) Testimony of Jason Stastny: Jason Stastny, an officer with the Kaufman Police Department, testified that he and his partner were processing a crime scene at 8:40 a.m. when they heard five gunshots and then three additional gunshots. (RR: Vol. 48 p. 97) As they started toward the area of the gunshots. (RR: Vol. 48 p. 99) When they arrived at the parking lot, he saw a female giving a person CPR so he took over administering CPR on the victim. (RR: Vol. 48 p. 100)

34) Testimony of Tara Wright Barry: Tara Barry, a registered nurse, testified that she has special training in the field of evidence collection. (RR: Vol. 48 p. 112) She was working at Texas Health Resources Presbyterian of Kaufman on January 31, 2013 in the emergency department when they received a dispatch that a male gunshot patient was in route. (RR: Vol. 48 p. 114) She said when the patient arrived, he was not breathing on his own and when they saw a badge on his right hip, they looked for and found a weapon on him. (RR: Vol. 48 p. 116) She said he was ventilated and was getting air into his lungs. (RR: Vol. 48 p. 117-119)

35) Testimony of Michael Adcock: Michael Adcock, a Texas Ranger, testified that he was called to process the scene where Mark Hasse had been shot. (RR: Vol. 48 p. 126)

36) Testimony of Jeffrey Barnard: Dr. Jeffrey Barnard, chief medical examiner for Dallas County, testified that he performed the autopsy on the body of Mark Hasse. (RR: Vol. 48 p. 142-147) and described the injuries. He recovered fragment of the bullet from

the left side of the brain. (RR: Vol. 48 p. 148) He said this wound was fatal. (RR: Vol. 48 p. 148-153)

37) Testimony of Jeffrey Harold Reynolds: Jeffrey Harold Reynolds testified that on January 27th, 2013 he sold a silver 2001 Sable he had advertised on eBay classifieds and on Craigslist to a white man, he could not identify. (RR: Vol. 48 p. 163-169)

38) Testimony of Glen Scott Walker: Glen Scott Walker testified that on January 31, 2013 he was working as a contractor in Kaufman when he heard sirens coming from the area of the town square. (RR: Vol. 48 p. 173) He said he heard a vehicle that sounded like it was going fast drive by the house in which he was working. (RR: Vol. 48 p. 174) He saw a black SUV coming at a high rate of speed. (RR: Vol. 48 p. 177) He said he heard brakes squeal when it stopped. (RR: Vol. 48 p. 177) He stepped outside the house and saw law enforcement officers arrived a house on Overlook. (RR: Vol. 48 p. 177) He said Shawn Mayfield, the constable, was knocking on the doors. (RR: Vol. 48 p. 178) He then saw a white man wearing a sling on his arm answer the door. (RR: Vol. 48 p. 179)

39) Testimony of Barry Dyson: Barry Dyson testified that he had worked with Mark Hasse at the Dallas County D.A.'s office and was currently assigned to the Department of Justice Drug Enforcement Administration. (RR: Vol. 48 p. 182) He said when he heard of the shooting he went to the hospital and spoke with Sheriff Byrnes and Mike

McLelland and who directed him to find Eric Williams. (RR: Vol. 48 p. 184-185) He said he knew that Mr. Williams had been tried by Mike McLelland and Mark Hasse. (RR: Vol. 48 p. 185) He went back to the crime scene and enlisted Lieutenant Whatley and Constable Mayfield who, along with Constable Hutchinson, went to the home of Eric Williams. (RR: Vol. 48 p. 185-186) He said they arrived at 10:15 a.m. and Eric Williams came to the door. (RR: Vol. 48 p. 187) He said Mr. Williams had his left arm in a sling and appeared to be shocked that Mark Hasse had been shot. (RR: Vol. 48 p. 189) Mr. Williams told him that he had just gotten back to the house after picking up some medicine at a pharmacy for his wife who was bedridden and in a coma. (RR: Vol. 48 p. 189) He said he collected a gunshot residue kit from Mr. Williams which probed to be negative. (RR: Vol. 48 p. 190) Mr. Williams allowed Shawn Mayfield to enter his home because he knew him and he was inside the house two or three minutes. (RR: Vol. 48 p. 191)

40) Testimony of Larry Mathis: Larry Mathis was recalled and testified that his records show that someone accessed the storage facility using the code for unit 18 on two occasions on January 30th, 2013. (RR: Vol. 48 p. 196) He said on January 31st, someone accessed the unit at 9:12 .m. and left at 9:30 a.m. (RR: Vol. 48 p. 196-198)

41) Testimony of Steve Tippett: Trooper Steve Tippett was recalled and identified State's Exhibits 418 and 419 as the two weapons he recovered from the black bag he

recovered from Lake Tawakoni. (RR: Vol. 48 p. 210) He identified the black mesh bag as actually being a hoodie grim reaper type Halloween mask. (RR: Vol. 48 p. 211)

42) Testimony of Bryan Beavers: Chief Bryan Beavers was recalled and identified State's Exhibit No. 293 as a unredacted version of the tip claiming credit for the murders. (RR: Vol. 48 p. 213) The tip and the response was read to the jury. (RR: Vol. 48 p. 214-215) He said they received a tip after the Hasse murder but before the McLelland murders in which the tipster said he overheard someone talking about the murder and giving a description of the assailant. (RR: Vol. 48 p. 217) He said he traced this tip number was found on a document taken from Eric Williams house. (RR: Vol. 48 p. 217)

43) Testimony of James Jeffress: James Jeffress was recalled and testified he was the lead firearms analyst in the Mark Hasse case and issued five reports with the evidence in that case. (RR: Vol. 49 p. 9) He examined a fired bullet that came from the crime scene and concluded the bullet was consistent with being loaded into a .38 special or .357 magnum caliber cartridge and fired from a firearm of either Ruger or Smith and Wesson. (RR: Vol. 49 p. 11-12) He analyzed the autopsy bullet from Mark Hasse and determined that it was fired from the same gun. (RR: Vol. 49 p. 12) He analyzed the bullet picked up from the floor of the emergency room and found that it also was fired from the same firearm. (RR: Vol. 49 p. 13)

The witness testified that on April 17 he was given three weapons found at the storage unit to analyze but was not able to identify any of the firearms as having fired the bullets. (RR: Vol. 49 p. 14) On March 10th, 2014 he was given a Ruger .357 and a .38 special caliber Smith and Wesson Airweight recovered from Lake Tawakoni and determined that all three bullets had been fired from the Ruger revolver. (RR: Vol. 49 p. 14-15)

44)Testimony of Jennifer Briggeman: Special Agent Jennifer Briggeman was recalled and testified that she processed a 2001 Mercury Sable automobile.(RR: Vol. 49 p. 23)

45) Testimony of Jack Flanders: Jack Flanders was recalled and testified that he examined some items for fingerprints that were collected from the Mercury Sable that were matched to the previous owner. (RR: Vol. 49 p. 31-35)

46) Testimony of Diana Strain: Special Agent Diana Strain was recalled and testified that a document entitled Christopher Dorner's manifesto was found in the Defendant's home. (RR: Vol. 49 p. 39-40) Christopher Dorner was a L.A. police officer that was invovled in a series of shootings. (RR: Vol. 49 p. 41) He identified state's exhibits which included magazines from a weapon and other items that were recovered from the home. (RR: Vol. 49 p. 42)

47) Testimony of Dewayne Dockery: Major Dewayne Dockery was recalled and an audio recording, State's Exhibit No. 532, of his conversation with the Defendant while

he was looking around his home was played for the jury. (RR: Vol. 49 p. 59-60) The Defendant told him that he had sold all of his weapons and the only one he had left was the Desert Eagle. (RR: Vol. 49 p. 63) The Defendant told him that he was at his house until he left at 10:00 a.m. to go to his in-laws. (RR: Vol. 49 p. 65)

48) Testimony of Matthew Johnson: Special Agent Matthew Johnson was recalled and described the weapons and ammunition that were recovered from the storage unit number 18 and from Lake Tawakoni. (RR: Vol. 49 p. 89-98) There was a backpack in the storage shed which contained bolt cutters, crossbow bolts, a hunting knife, goggles, sunglass case, crossbow tips and black gloves. (RR: Vol. 49 p. 99-101) He recovered two mason type jars which contained a napalm type substance from the backpack. (RR: Vol. 49 p. 102)

An anonymous tip was received in the case in which the caller talked about a three inch barrel .357 +P 147 grain Hydra-Shok bullet. (RR: Vol. 49 p. 103) He said that this was consistent with the evidence recovered from Lake Tawakoni and the storage unit. (RR: Vol. 49 p. 103) A trace was done on the ownership of the Smith and Wesson that came from Lake Tawakoni and it was purchased by Kim Lene Johnson on March 8th, 1997. (RR: Vol. 49 p. 108) He said Kim Johnson was the maiden name of the Defendant's wife. (RR: Vol. 49 p. 108)

49) Testimony of Amber Moss: Amber Moss, a forensic scientist at the Texas Department of Public Safety Crime Lab, testified that a former analyst, Kimberly Mack, examined items for DNA taken from the 2001 Mercury Sable. (RR: Vol. 49 p. 120) DNA was detected on a set of earplugs and was consistent with the DNA profile of Eric Williams. (RR: Vol. 49 p. 121) Eric Williams could not be excluded as a contributor to the DNA mixture from the swabbing from the headrest of the driver's seat. (RR: Vol. 49 p. 122-123) Eric Williams was the source of DNA found on the right glove and goggles from the backpack. (RR: Vol. 49 p. 124-125) They found that the DNA profile of Jeff Reynolds was on a toothpick and driver's side door panel. (RR: Vol. 49 p. 127)

50) Testimony of Fred Klingelberger: Captain Fred Klingelberger was recalled and testified about the activity on the computer taken from the Defendant's home. (RR: Vol. 49 p. 138-140) He said the search warrant for the McLelland's home which had been leaked by the press and was publicly available was found on the computer. (RR: Vol. 49 p. 140) The witness read an email sent to Sandra Harwood in which the Defendant threatened harm. (RR: Vol. 49 p. 143)

51) Testimony of Jeff Rich: Jeff Rich, an officer with the Plano Police Department, testified he processed the computer found at 1600 Overlook for investigative leads using his software, OS Triage. (RR: Vol. 49 p. 149) He looked at the search history and found the name of Mark Hasse after his murder, but before the McLelland murders.

(RR: Vol. 49 p. 151) There was search on the Kaufman County DA on April 8th, a week after the McLellands murders. (RR: Vol. 49 p. 152-154) He said the search history showed numerous visits to news sites and news stories dealing with the murders. (RR: Vol. 49 p. 157)

52) Testimony of Matt Woodall: Matt Woodall, an investigator with the Kaufman County Sheriff's Department, testified that on May 24th, 2011 he inventoried the Defendant's car after Mr. Williams was taken into custody that day on the charge of burglary of a building. (RR: Vol. 49 p. 188-189)

53)Testimony of Janice Marie Gray: Ms. Gray testified she met Mr. Williams in 1991 or 1992 at a conference in Huntsville, Texas when she was a coordinator in Coryell County and he was a coordinator in Kaufman County. (RR: Vol. 50 p. 10) They had a relationship for a brief time, but she called if off when she met someone closer to home. (RR: Vol. 50 p. 12) It was an amicable breakup and she had no problems with Mr. Williams. (RR: Vol. 50 p. 13)They both attended another conference in June of the same year and she saw Mr. Williams in the hotel lobby. (RR: Vol. 50 p. 13) He asked her to dinner, but she told him that she was going to be with her girlfriends. (RR: Vol. 50 p. 13-14) He then pulled out a gun and showed it to her, telling her that the gun was new. (RR: Vol. 50 p. 14) Later that night he tapped her on the shoulder at a local sports bar and asked to talk to her. (RR: Vol. 50 p. 14) She stepped aside from her friends and

had a conversation with him and told him that she didn't want to have a relationship with him. (RR: Vol. 50 p. 17) When she told him that she was going back to her group of friends, he reached behind him and told her that he had a gun and if she walked away, he would use it, because he didn't have anything to lose. (RR: Vol. 50 p. 17) She began to cry and two of her friends came and escorted her away. (RR: Vol. 50 p. 17-18)

The witness testified that she went back to the conference and reported the incident to the head of conference and the Huntsville Police Department were called. (RR: Vol. 50 p. 18) The next day she saw Mr. Williams at a class and pointed him out to her police escort. (RR: Vol. 50 p. 19) He was arrested, but no charges filed. (RR: Vol. 50 p. 20-22)

54)Testimony of Dennis Jones: Dennis Jones testified that in 2010 he was practicing law in Kaufman County and had an office in the same building as Eric Williams. (RR: Vol. 50 p. 31) He said he heard Mr. Williams refer to lawyer, Jon Burt saying "I'm just gonna kill him. I'm gonna kill him, kill his wife, his kids, I'm gonna burn his house down, stab him." (RR: Vol. 50 p. 32-33) On cross examination the witness testified that no harm ever came to Jon Burt or his family as a result of this threat. (RR: Vol. 50 p. 33-34)

55)Testimony of Jon Burt: Jon Burt testified that in September, 2010 he had a case with Mr. Williams that involved a mediation. (RR: Vol. 50 p. 37)

Defense on Punishment

56)Testimony of Jenny Parks: Jenny Parks, an attorney in Kaufman County, testified that she met Eric Williams when he was the court coordinator for Judge Ashworth in the mid to late 1990's. (RR: Vol. 50 p. 70) She said he was very reliable and had a good work ethic. (RR: Vol. 50 p. 70) When Mr. Williams became an attorney, she recommended him to several different people over the years. (RR: Vol. 50 p. 70) She sought his advice and he was always helpful. (RR: Vol. 50 p. 71) She thought he was happily married and knew that he cared for his wife Kim because she had health problems. (RR: Vol. 50 p. 71)

She thought the prosecution of Mr. Williams was ridiculous and he should never have been brought to court. (RR: Vol. 50 p. 74) She said that it didn't make a lot of sense to her or many attorneys in the county. (RR: Vol. 50 p. 74-75) She knew that Mark Hasse was an aggressive prosecutor and thought Mr. Williams was wrongfully convicted with evidence that wasn't factual. (RR: Vol. 50 p. 75-76) The witness testified that she was surprised at Mr. Williams' arrest for the murders. (RR: Vol. 50 p. 76) She described him as being quiet, reserved and shy. (RR: Vol. 50 p. 77) She recalled Mark Hasse bragging about destroying the lives of people he had prosecuted. (RR: Vol. 50 p. 83)

57) Testimony of Larry Traylor: Larry Traylor testified that he was involved a jail ministry in Rockwall, Texas and conducts bible studies for the inmates. (RR: Vol. 50 p. 89) He said Mr. Williams was very attentive in the class and he never feared being with Mr. Williams. (RR: Vol. 50 p. 90-93) He thought Mr. Williams would be a good example to other inmates as to the saving grace and forgiveness of Jesus Christ. (RR: Vol. 50 p. 93-94)

58)Testimony of Mark Reamy: Mark Reamy testified that he ministers to the inmates in the Rockwall County Jail and knew Eric Williams from bible class. (RR: Vol. 50 p. 102) He never had any concern for his safety while with Mr. Williams on over twenty occasions. (RR: Vol. 50 p. 105)

59)Testimony of Kevin Dewayne Brown: Kevin Brown, a sergeant with the Rockwall County Sheriff's Office, described courthouse security and how inmates are transported. (RR: Vol. 50 p. 110-115) He stated that there have been no incident reports on Eric Williams. (RR: Vol. 50 p. 116) He said Mr. Williams has been responsive to verbal commands, has not used threats, physical force or attempted to escape. (RR: Vol. 50 p. 116-117)

60)Testimony of Robert Guzik: Robert Guzik, the jail administrator for Rockwall County Jail, described the jail for the jury. (RR: Vol. 50 p. 126-129) He stated that Mr. Williams had no previous serious offense history or escape history. (RR: Vol. 50 p.138-

139) Mr. Williams had no rule violations and had not been disciplined. (RR: Vol. 50 p. 139) He stated that this new reassessment score placed Mr. Williams in medium custody. (RR: Vol. 50 p. 140)

61)Testimony of Carla Stone: Carla Stone, jail administrator of Kaufman County Detention Center, testified that Eric Williams was placed in administrative separation due to the high profile case. (RR: Vol. 50 p. 171) Mr. Williams did not have contact with other inmates so he was not allowed religious services with other inmates. (RR: Vol. 50 p. 172) She stated that he was initially placed on suicide watch. (RR: Vol. 50 p. 173) She recalled an incident where Mr. Williams was found unconscious in his cell and was taken to the hospital. (RR: Vol. 50 p. 178) There was one incident where Mr. Williams fell and injured his nose. (RR: Vol. 50 p. 178)

The witness testified that on one occasion an officer went into Mr. Williams' cell and failed to lock it behind him. (RR: Vol. 50 p. 180) It was discovered unlocked by the next shift, several hours later. (RR: Vol. 50 p. 181) Mr. Williams did nothing to escape or exit his cell during this time. (RR: Vol. 50 p. 181)

62)Testimony of Lori Compton: Lori Compton testified that she is the assistant jail administrator for the Kaufman County Sheriff's Department and was responsible for Mr. Williams' and the jury's security in the courtroom. (RR: Vol. 50 p. 197-198) She

stated that during the eight weeks of voir dire and the jury trial, there had been no incidents to report about Mr. Williams' behavior. (RR: Vol. 50 p. 199)

63)Testimony of James Evans Aiken: James Aiken testified he was a correctional consultant and was experienced in implementation, evaluation and modification of the classification systems. (RR: Vol. 51 p. 28) The witness explained the classification system and the factors involved in classifying an inmate. (RR: Vol. 51 p. 28-29) He said an inmate is reevaluated from six months to one year throughout the United States. (RR: Vol. 51 p. 29) He said the system works very well to insure a better safety level for inmates. (RR: Vol. 51 p. 30)

The witness reviewed the records of Eric Williams and interviewed him. (RR: Vol. 51 p. 32-33) He said an inmate's age is very important because an older person is more complacent an abides by the rules and regulations more readily. (RR: Vol. 51 p. 34) He said a medical condition also plays a large role and because Mr. Williams has type 1 diabetes, he would have to be monitored. (RR: Vol. 51 p. 34) He said the institutional behavior is a better predictor of future institutional behavior. (RR: Vol. 51 p. 36) He believes that prison programs cause people to reflect and as an inmate ages, they help them cope with issues they confront. (RR: Vol. 51 p. 37)

The witness stated that he was of the opinion that Mr. Williams could be adequately keep and secured in a correctional environment for the remainder of his life

without causing undue harm to staff, inmates or the general public. (RR: Vol. 51 p. 39) He said Mr. Williams would be vulnerable in prison because he had been a peace officer, did not have an extensive criminal history and was not a member of gang. (RR: Vol. 51 p. 39-40)

64)Testimony of Frank G. AuBuchon: Frank AuBuchon testified that worked 26 years in the Texas Department of Criminal Justice, Institutional Division and was involved with the classification system. (RR: Vol. 51 p. 63) He was involved as an administrator for unit classification where it was his job to see that the classification plan, policies and procedures were accurate and revised as necessary. (RR: Vol. 51 p. 64) The witness described the types of prisons for the jury. (RR: Vol. 51 p. 66-72) He further described the custody levels inside the prisons. (RR: Vol. 51 p. 72-88) He stated that Mr. Williams would be designated as a high profile offender. (RR: Vol. 51 p. 88) He explained to the jury the two categories of administrative segregation. (RR: Vol. 51 p. 89) He stated that after listening to the previous witnesses concerning the behavior of Mr. Williams in their jails, he thought Mr. Williams would be classified as general population Level 3 with some considerations for safekeeping type housing. (RR: Vol. 51 p. 92) He said that Mr. Williams could never be classified lower that a G3. (RR: Vol. 51 p. 92)

65)Testimony of Lavon Humphries: Lavon Humphries testified that Eric Williams was her nephew and she was 80 years old and had stage 4 lung cancer. (RR: Vol. 51 p. 127)

She gave the testimony about his family history and dynamics and stated that they held family gatherings in Waxahachie and had a family reunion at least once a year. (RR: Vol. 51 p. 129-137)

66)Testimony of Alvin Graham: Alvin Graham testified that he was a scout master to Eric Williams thirty years ago. (RR: Vol. 51 p. 139) He remembered Eric as being a very smart young man who was very polite and eager to learn. (RR: Vol. 51 p. 141) He said his son Kent was friends with Eric. (RR: Vol. 51 p. 141) He helped Eric become an Eagle Scout and be inducted into the Order of the Arrow, an honorable order in scouting. (RR: Vol. 51 p. 142)

67) Ian Lyles: Ian Lyles, a cousin of Eric Williams, testified that he and Eric were commissioned into the Army on the same day in 1989. (RR: Vol. 51 p. 159) He was currently a colonel and a faculty instructor at the United States Army War College. (RR: Vol. 51 p. 160-161)

The witness testified that he and Eric went through reserve officer training program together at Texas Christian University. (RR: Vol. 51 p. 165) He said Eric was commissioned as a military policeman and his degree was in criminal justice. (RR: Vol. 51 p. 165) He said Eric served as a policeman in various small departments, as a bailiff in a court and then earned a law degree. (RR: Vol. 51 p. 165) He met Kim Williams and

it appeared to him that they were happy. (RR: Vol. 51 p. 166) He said the family was devastated by Eric's case. (RR: Vol. 51 p. 167)

68)Testimony of Miguel Gentolizo: Miguel Gentolizo testified he was an old high school friend of Eric Williams. (RR: Vol. 51 p. 175) He said they did things in high school such as the physics olympics and stated that Eric was very good in math. (RR: Vol. 51 p. 175-176) He said there was a group of boys in high school that hung out together and took advance courses in physics and calculus. (RR: Vol. 51 p. 176)

69)Testimony of Billy Wayne Scheets: Billy Scheets, a Tarrant County Deputy Sheriff, testified that he and Eric Williams were very good friends in high school. (RR: Vol. 51 p. 184) He said they were on the math and science team and in the Junior Engineering Technical Society. (RR: Vol. 51 p. 185)

The witness was shocked to hear of the charges against Eric and difficulty reconciling the person he knew in high school to someone who would commit this offense. (RR: Vol. 51 p. 190) He said he still cares about Eric. (RR: Vol. 51 p. 197)

70)Testimony of David Houpt : David Houpt testified that he went to Azle high school with Eric Williams and were friends with similar interests in science fiction and computer games. (RR: Vol. 51 p. 205) He and Eric were in the high school band where he played the trombone and Eric played the trumpet. (RR: Vol. 51 p. 205) He said Eric

was not rebellious. (RR: Vol. 51 p. 211) It didn't surprised him that Eric received a degree from TCU and went to law school and passed the bar. (RR: Vol. 51 p. 212)

71)Testimony of Dorothy Spears: Dorothy Spears testified that she was a retired teacher and counselor and testified about Eric's relationship with her son. (RR: Vol. 51 p. 219-224)

72) Testimony of Sergeant Woodall: Sergeant Woodall was recalled and testified about the arrest of Eric Williams on a burglary charge. (RR: Vol. 51 p. 228-229)

73) Testimony of Matthew Johnson: Matthew Johnson was recalled by the State after the trial court granted their motion to reopen their case and Defense counsel had no objection. (RR: Vol. 52 p. 10) He testified that some of the weapons shown to the jury did not belong to the Defendant and were not found in the storage unit. (RR: Vol. 52 p. 11) He said 52 weapons belonged to Eric Williams but others did not. (RR: Vol. 52 p. 14) Thirteen weapons were withdrawn from evidence. (RR: Vol. 52 p. 14)

74) Testimony of Jesse Spears: Jesse Spears testified that he went to high school with Eric Williams and played in the band together. (RR: Vol. 52 p. 17)

75) Testimony of James Cummings: James Cummings stated that he was a friend of Eric Williams and was involved in the math and science club and boy scouts with him. (RR: Vol. 52 p. 29) He traveled from Colorado to testify on behalf of his longtime friend. (RR: Vol. 52 p. 29)

76) Testimony of Chris Spears: Chris Spears, a high school friend of Mr. Williams, testified that Eric spent a lot of time at his family home and was in the math and science club with him. (RR: Vol. 52 p. 42-43) He said Eric was older and would drive him to school so he wouldn't have to ride the bus. (RR: Vol. 52 p. 44) He said Eric looked after him at school and was friendly and good natured. (RR: Vol. 52 p. 45)

77) Testimony of Tamara Maas: Tamara Maas testified that she knew Eric Williams during high school and had been on the math team with him. (RR: Vol. 52 p. 51) She said that he treated her with respect and was kind to her. (RR: Vol. 52 p. 51)

The witness testified that her family owned Twin Points Beach and Eric would work as a security guard, removing people who were disruptive. (RR: Vol. 52 p. 55) He began working for them when he got his driver's license at sixteen until early 2000 when he would take time out of his busy schedule to help out. (RR: Vol. 52 p. 55) She said when they ended their relationship, there was never any anger or resentment. (RR: Vol. 52 p. 56)

78) Testimony of Casie Acevedo: Casie Acevedo testified that when she was 13 years old Eric Williams served as her guardian ad litem during her parents divorce. (RR: Vol. 52 p. 70) She wanted to live with her father and Mr. Williams listened and advocated on her behalf. (RR: Vol. 52 p. 72)

79)Testimony of Ronnie Fudge: Ronnie Fudge testified that Eric Williams represented him in his contested divorce for over two years. (RR: Vol. 52 p. 75) He sought custody of his young child and Mr. Williams was able to obtain that for him. (RR: Vol. 52 p. 76) He said that when he couldn't pay any more lawyer fees, Eric quit charging him. (RR: Vol. 52 p. 78)

80)Testimony of Michelle Stephens: Michelle Stephens testified that she had been buying a house from Mr. Williams and when she got behind in the payments, he would carry her until she could catch up with the money she owed. (RR: Vol. 52 p. 84-85)

81)Frank Elliott: Frank Elliott, professor law and dean emeritus of the Texas A&M University School of Law in Ft. Worth, Texas, testified about the law school which Mr. Williams attended. (RR: Vol. 52 p. 91)

82)Ruth Blake: Ruth Blake, a retired district judge for the 321st District Court in Tyler, Texas, testified that on occasion she sat in family law matters in Kaufman County, Texas and recalled one case in which Eric Williams was involved. (RR: Vol. 52 p. 102-103) She stated that Mr. Williams did quality work. (RR: Vol. 52 p. 108)

83)Testimony of Andrew Jordan: Andrew Jordan testified that he was presently an attorney in Kaufman, Texas and knew the Defendant. (RR: Vol. 52 p. 110) He said that at one point Eric Williams was being appointed ad litem on a lot of cases on the docket.

(RR: Vol. 52 p. 111) He described Eric's work on these cases as competent, knowledgeable, prompt and prepared. (RR: Vol. 52 p. 111)

84)Testimony of Judge B. Michael Chitty: Judge Chitty was recalled and testified that Eric Williams burglary trial he presided over involved an allegation that Mr. Williams had stolen computer monitors from the county. (RR: Vol. 52 p. 120) Mr. Williams was convicted on two counts of burglary and theft. (RR: Vol. 52 p. 120) He said there was evidence that Eric Williams took some kind of equipment from the county IT department. (RR: Vol. 52 p. 120)

85)Testimony of Rhonda Hughey: Rhonda Hughey, the Kaufman County District Clerk, testified that she knew Eric Williams since he was the coordinator the 86th District Court for Judge Glen Ashworth. (RR: Vol. 52 p. 124) She described the duties of a coordinator for the jury. (RR: Vol. 52 p. 125) She said Eric performed his duties well. (RR: Vol. 52 p. 125) She knew he was going to law school at night and when he passed the bar, it was a big event. (RR: Vol. 52 p. 126) He began to handle family cases and was friendly and approachable. (RR: Vol. 52 p. 127)

86)Testimony of Judge Howard Tygrett: Judge Tygrett, a district judge in Kaufman County, testified he would approve the compensation for Eric Williams for his work in CPS cases that the CPS judge had recommended. (RR: Vol. 52 p. 134) He appointed Mr. Williams on cases and as ad litem or a mediator was needed. (RR: Vol. 52 p. 134)

He never had any complaints about the work Mr. Williams performed. (RR: Vol. 52 p. 135)

87) Testimony of Heather Jones: Heather Jones testified that Eric Williams was her former step uncle by his marriage to Kim Williams. (RR: Vol. 52 p. 14) Jamie Johnson, Kim Williams brother, was her step father who would beat her, her mother and sister. (RR: Vol. 53 p.15) She said Kim Williams would invite them to live with them to escape her step father. (RR: Vol. 53 p. 16) Her mother trusted Eric Williams to take care of them and protect them from their step father. (RR: Vol. 53 p. 16)

88) Testimony of Andrea Jones: Andrea Jones testified that she and her sister lived with Kim and Eric Williams because their stepfather, Jamie Johnson, was an abusive man. (RR: Vol. 53 p. 24) She said he was never unkind toward them or Kim. (RR: Vol. 53 p. 28-29)

89) Testimony of Cheryl Joseph: Cheryl Joseph testified that Mr. Williams helped her stepdaughter Suzanne and her husband, Rodney Lewellen adopt her grandson Cole. (RR: Vol. 53 p. 31-33) Mr. Williams was an advocate for Cole and he was present at every hearing. (RR: Vol. 53 p. 37) She said Eric always treated her and her family with respect and kindness. (RR: Vol. 53 p. 38)

90) Testimony of Rick Harrison: Rick Harrison, a criminal defense attorney, testified that at one time he was elected District Attorney for Kaufman County and Eric Williams

helped his campaign by writing a letter on his behalf that was published in one of the local papers. (RR: Vol. 53 p. 47) He read the letter to the jury. (RR: Vol. 53 p. 48-49) He ran again against Mike McLelland who did not like him during or after the elections. (RR: Vol. 53 p. 53) He supported Mr. Williams when he ran for Justice of the Peace and was the first person to write him a check. (RR: Vol. 53 p. 53-54)

91) Testimony of Regina Fogarty: Regina Fogarty testified that she has worked for the Justice of the Peace Precinct 1 for sixteen years and had worked for Eric Williams. (RR: Vol. 53 p. 61-62) She said the Mr. Williams was diligent and took his work seriously. (RR: Vol. 53 p. 62) He tried to get WiFi into the courtroom for the attorneys and video magistration at the jail. (RR: Vol. 53 p. 63)

92) Testimony of Mark Calabria: Mark Calabria, an attorney, testified that he first met Eric Williams when he worked as the coordinator for the 86th Judicial District Court and described Mr. Williams as a capable hard worker. (RR: Vol. 53 p. 68) After Mr. Williams completed law school and passed the bar exam, his wife and law partner, Rebecca Calabria, hired him. (RR: Vol. 53 p. 69) He said Eric worked for them for two years and always got along with the clients and other lawyers. (RR: Vol. 53 p. 69) He said Eric was very proud when he was elected Justice of the Peace and he had progressive plans for the office. (RR: Vol. 53 p. 70) He thought Eric was willing to dedicate his time and make a real court out of it. (RR: Vol. 53 p. 70) He described Eric

as professional, courteous and even tempered. (RR: Vol. 53 p. 72) He stated that he wished he had reached out to Eric and felt as though he could have made a difference. (RR: Vol. 53 p. 75)

93)Testimony of William C. Martin III: William C. Martin III testified that he was a judge for many years and was now in private practice. (RR: Vol. 53 p. 81) As judge, he was assigned to sit in Kaufman County and knew that Eric Williams had been appointed by district judges on most of the CPS cases. (RR: Vol. 53 p. 82) He said Eric Williams was very thorough in his representation of a child and had empathy for them. (RR: Vol. 53 p. 85-86) He said that Eric Williams demonstrated quality service and genuinely cared about the children. (RR: Vol. 53 p.. 86)

94) Testimony of Cara Hervey: Cara Hervey testified that Mr. Williams was her cousin was quiet and shy and she never saw him fight with other kids. (RR: Vol. 53 p. 89) She said that as an adult, Eric was still quiet, shy and hardworking. (RR: Vol. 53 p. 91) She said he also took care of his parents. (RR: Vol. 53 p. 94) She stated that Eric was devastated when he lost his ability to make things right as a judge. (RR: Vol. 53 p. 94-95)

95)Testimony of Brad Pense: Brad Pense, a childhood friend of the Defendant, testified that they were in the cub and boy scouts together. (RR: Vol. 53 p. 108) They were both inducted into the Order of the Arrow, a service organization within the Boy Scouts.

(RR: Vol. 53 p. 110-111) They were both in the high school band and the math team. (RR: Vol. 53 p. 114-115) He said they were both in the ROTC program at TCU. (RR: Vol. 53 p. 120) He said he was testifying to support his friend. (RR: Vol. 53 p. 130)

96) Testimony of Andy Zapata: Andy Zapata testified that he taught at Azle High School and started a math and science team. (RR: Vol. 53 p. 135) Eric Williams was a freshman when joined the teams and was active throughout his years in the high school. (RR: Vol. 53 p. 136-137)

97) Testimony of Cathy Adams: Cathy Adams testified that she met Eric Williams when he was working as a court coordinator for Judge Ashworth and knew him when he became an attorney. (RR: Vol. 53 p. 157) She said he was always prepared, respectful of the court, cordial to other attorneys and zealous in his representation of his clients. (RR: Vol. 53 p. 157-158) She often sought his legal advice and he was always helpful. (RR: Vol. 53 p. 158) She still considers him a good friend because he was a good person (RR: Vol. 53 p. 159)

The witness testified that Eric was the primary caretaker for his wife Kim and took care of the house and did the shopping. (RR: Vol. 53 p. 160) She knew that he wanted to make changes in the Justice of the Peace office which included upgraded computer systems. (RR: Vol. 53 p.176) She stated that it was unimaginable to her that Eric had been charged with the murders. (RR: Vol. 53 p. 178) She thought that Eric

could help people in jail because he has always tried to help people. (RR: Vol. 53 p. 179)

98)Testimony of Darlia Hobbs: Darlia Hobbs testified that Eric Williams was on the math team in high school with her daughter Tammy. (RR: Vol. 53 p. 185) She said he worked for her family at Twin Points recreation park until 2007. (RR: Vol. 53 p. 187) Eric was an assistant manager because he could do anything they asked him to do. (RR: Vol. 53 p. 191) She said he was good with people and very professional. (RR: Vol. 53 p. 192)

99)Testimony of Robert A. Hobbs, Jr.: Robert Hobbs, Jr. stated that Eric dated his daughter, worked for him at Twin Points and he thought of him as a son. (RR: Vol. 53 p. 205) He said Eric performed many different jobs at the facility and did everything he was asked to do. (RR: Vol. 53 p. 205-206) He thought that given the change, Eric would help people in prison. (RR: Vol. 53 p. 208)

100) Testimony of Micah Tomasella: Micah Tomasella testified that Eric Williams represented him during his parents divorce and was sincerely interested in the judge making the best decision for him. (RR: Vol. 53 p. 211)

101) Testimony via Deposition of Jessie Ruth Williams: Jesse Ruth Williams was unable to testify on behalf of her son Eric Williams. A video taped deposition was played for the jury. (RR: Vol. 53 p. 216)

102) Testimony of Lori Dunn: Lori Dunn testified she met Eric Williams when she was 30 years old when they both worked for the White Settlement Police Department. (RR: Vol. 53 p. 219) She said his nickname was Opie because he was baby faced, quiet, shy and timid. (RR: Vol. 53 p. 219) She was going through very difficult times with her husband and children and Eric became her confidante. (RR: Vol. 53 p. 221) Eric listened to and supported her and helped her put her life back in perspective. (RR: Vol. 53 p. 221-222)

State on Rebuttal

103) Testimony of Kim Williams: Kim Williams, the wife of the Defendant, testified that she was a willing participant in the murders and knew that there was a hit list which included Erliegh Wiley and Judge Ashworth. (RR: Vol. 54 p. 9) She stated she was addicted to Oxycontin, Morphine,Valium and Provigil. (RR: Vol. 54 p. 11) She met Eric Williams in 1996 and they were married in 1998 and were very happy until 2005. (RR: Vol. 54 p. 12) She was diagnosed with arthritis in 1999 and by 2005 she was addicted to painkillers. (RR: Vol. 54 p. 17) She quit work and spent her days drugged up and in bed. (RR: Vol. 54 p. 17) In 2010 Eric was elected to be a Justice of the Peace and he worked in this and kept his law practice.(RR: Vol. 54 p. 19-20) In 2011 he was arrested for burglary of a building and theft by a public servant. (RR: Vol. 54 p. 20-28) She said he started talking about killing, but she did not think he was serious. (RR: Vol. 54 p. 29)

She described Eric at this time as drinking a lot of beer and taking prescription pills at night. (RR: Vol. 54 p. 29-30) She said this affected his diabetes, memory and moods. (RR: Vol. 54 p. 30) He became angrier and angrier and talked about killing Judge Ashworth and burying him in their flower bed. (RR: Vol. 54 p. 32) She said he began to make plans to kill Mark Hasse and when he determined to kill him in the courthouse parking lot, he wanted her to be the driver. (RR: Vol. 54 p. 33-35)

She knew of the storage unit and had been to it with Eric to see how it was set up with his ammunition and weapons. (RR: Vol. 54 p. 37) They bought a Mercury on Craiglist for the Hasse murder. (RR: Vol. 54 p. 38) She said Eric had a halloween mask, black clothing and a bulletproof vest to wear for the Hasse murder. (RR: Vol. 54 p. 40) On the day of the murder, She parked in the courthouse parking lot and put a silver sun screen visor in the window and waited for Mark Hasse to arrive. (RR: Vol. 54 p. 44-45) Mr. Hasse drove up, parked in his usual space, got out and walked behind their car. (RR: Vol. 54 p. 46) She said at this point Eric got out of the car and she heard five shots. (RR: Vol. 54 p. 46) She said Eric ran back to the car and told her to drive. (RR: Vol. 54 p. 47) They drove back to the truck and they drove both the truck and the Mercury back to the storage unit in Seagoville. (RR: Vol. 54 p. 47) When they returned home, she went to bed and Eric put a sling on his shoulder and watched the news. (RR:

Vol. 54 p. 51) She heard the police arrive, but didn't speak with them. (RR: Vol. 54 p. 52)

The witness testified that Eric planned to kill Mike McLelland. She said Eric tested guns underneath an overpass between Seagoville and Kaufman where he shot at the concrete pillars. (RR: Vol. 54 p. 55-58) The plan was for Eric to dress up like law enforcement, because he thought Mrs. McLelland would answer the door. (RR: Vol. 54 p. 59) Eric would then introduce himself as a policeman and say that there was a gunman in the area and then be let inside the home. (RR: Vol. 54 p. 59) Her part was to stay in the car as a lookout. (RR: Vol. 54 p. 59) According to the witness, Mrs. McLelland had to die because she was a witness. (RR: Vol. 54 p. 60)

On the morning of the shooting, they woke up at 5:30, dressed and then went to the storage unit to pick up the Crown Victoria. (RR: Vol. 54 p. 62) They drove to the McLelland's house in Forney, Texas. (RR: Vol. 54 p. 63) He got out of the car, rang the front doorbell and a light went on in the house. (RR: Vol. 54 p. 63-64) She said someone came to the front door, the porch light went on and Eric went inside. (RR: Vol. 54 p. 64) She heard a lot of shots and when they ceased, Eric came back out and got into the car. (RR: Vol. 54 p. 64-65) They drove back to the storage unit where Eric cleaned the car and changed clothing. (RR: Vol. 54 p. 67-68)

The night of the shooting, they drove to Lake Tawakoni where Eric threw a bag of guns off a bridge. (RR: Vol. 54 p. 70) While they were driving, Eric received a phone call from law enforcement and they met them in a Denny's parking lot where they gave Eric a gunshot residue test and turned their cell phones over to the police. (RR: Vol. 54 p. 71)

Ms. Williams testified that she knew that Eric had sent tips to the tip line, but she thought it was a bad idea, because they would catch on to it. (RR: Vol. 54 p. 74-75) She said Eric still planned to kill Judge Ashworth who lived near their house. (RR: Vol. 54 p. 78) She said he was going to kill Judge Erliegh Wiley because she didn't pay him enough when he was doing CPS cases. (RR: Vol. 54 p. 82) The witness testified that Eric also threatened to kill her and told her several times that if he decided to take everybody out, he was going to kill her and then himself. (RR: Vol. 54 p. 84)

On cross examination the witness testified that many of the things that she testified to were witnessed by only her and Eric. She acknowledged that she expected leniency for her participation in the trial. (RR: Vol. 54 p. 101-108) She said she has been writing to Eric while in prison, because she loves him and wanted him to know that she was there for him. (RR: Vol. 54 p. 109)

104) Testimony of Diana Strain: Special Agent Diana Strain was recalled and testified that there was police related apparel found in the search of the storage unit. (RR: Vol. 54 p. 112)

105) Testimony of Richard Moosbrugger: Richard Moosbrugger of the Kaufman County Sheriff's Office testified he found a key that opened the front gates and a semi trailer used for storage on Judge Ashworth's farm. (RR: Vol. 54 p.120) He said that a key to the house was located within the storage unit. (RR: Vol. 54 p. 120)

106) Testimony of Erleigh Norvelle Wiley: Erleigh Wiley, the district attorney for Kaufman County, Texas, testified that she had been the Kaufman County Court-at_Law judge from 2003 to 2013. (RR: Vol. 54 p. 124) While a judge, she took over some CPS cases and investigated some potential billing problems with certain lawyers, including Eric Williams. (RR: Vol. 54 p. 127-128)

The jury having found the Defendant guilty of the offense of capital murder answered Special Issue No. 1 as yes and Special Issue No. 2 as no which resulted in the punishment of death. (RR: Vol. 55 p. 5)

STATEMENT OF FACTS ON THE MOTION FOR NEW TRIAL

1)Testimony of William Orrison, M.D.: Dr. Orrison, a neuroradiologist, testified that he looked at a CT scan performed on June 17, 2011 and one performed on December 1, 2013. (RR: Vol. 57 p. 12) He stated he found evidence of hippocampal atrophy. (RR:

Vol. 57 p. 12) On January 9, 2015 he received an MRI scan taken of Eric Williams at the University of Texas Medical Branch in Galveston, Texas. (RR: Vol. 57 p. 13) He read the scan on his computer system, did a report and then sent it for a separate computer evaluation to NeuroQuant and MINDSET Institute. (RR: Vol. 57 p. 13) It was his opinion that Eric Williams had evidence of prior brain trauma and possible additional brain insult from either low glucose or low oxygen. (RR: Vol. 57 p. 14) MINDSET information revealed that the hippocampal abnormality was at least as bad as he thought and possibly worse, and indicated that there were additional areas of the brain that were significantly abnormal. (RR: Vol. 57 p. 14) He said two parts of Eric Williams brain appear abnormal, the limbic system or the emotional brain and the frontal lobes. (RR: Vol. 57 p. 15) There were abnormalities in the amygdala, the decision-making, memory and emotional control area of the brain. (RR: Vol. 57 p. 25) The insula, another part of the emotional brain which is involved in the development of moral integration and empathy, was smaller than normal. (RR: Vol. 57 p. 25) He said this part of the brain is atrophied. (RR: Vol. 57 p. 26) He said his review of Mr. Williams medical records reveals that he has sustained at least several head traumas. (RR: Vol. 57 p. 30) He said that Mr. Williams' diabetes has been poorly controlled and he has had multiple episodes of loss of consciousness which caused brain damage. (RR: Vol. 57 p. 35-36)

The witness testified that neuropsychological testing does not look at the emotional brain where he found most of the abnormalities. (RR: Vol. 57 p. 40) He said if Mr. Williams was within normal ranges on these tests, it would not affect his interpretation of the scans or change his opinion. (RR: Vol. 57 p. 40)

2) Testimony of Steven Lee Yount, D.O.: Dr. Yount testified he examined Mr. Williams in the Kaufman County jail and ordered tests to see if there was a brain reason for his behavior since he went from a promising career to very suddenly becoming a convicted murderer. (RR: Vol. 58 p. 9) He said Mr. Williams diabetes was out of control. (RR: Vol. 58 p. 11) He said Hyperglycemia is bad for the brain, causes psychiatric illness and if associated with depression, bipolar disease and schizophrenia. (RR: Vol. 58 p. 13) He recommended that Mr. Williams undergo brain scans. (RR: Vol. 58 p. 14) He said the report of the MRI which was read by Dr. Uribe stated that the scan was visually normal, but this doctor did not have the software to see the volumetric data. (RR:Vol. 58 p. 20) He later saw the report of Dr. Orrison which showed there was disease in the brain. (RR: Vol. 58 p. 20) He spoke with Dr. Uribe after Dr. Uribe had read Dr. Orrison's report and was told that, on closer examination, there were nonspecific areas of damage. (RR: Vol. 58 p. 24) The witness stated that he would have testified at Mr. Williams trial about his findings. (RR: Vol. 58 p. 25)

3) Testimony of Joan Mayfield, M.D.: Dr. Joan Mayfield, a neuropsychologist, testified that she administered neuropsychological battery of tests to Mr. Williams at the Rockwall County jail. (RR: Vol. 58 p. 62) These tests were primarily directed at cognitive strengths and weaknesses. (RR: Vol. 58 p. 63) She stated that his full scale I.Q. was 115 which was an above average score. (RR: Vol. 58 p. 65) She testified that Mr. Williams memory, attention, problem solving and inhibition were in the average range. (RR: Vol. 58 p. 68) However, she did not test for anything involving the area of damage in the brain involving emotions and did not talk to him about anxiety or depression. (RR: Vol. 58 p. 69) She did not see anything that would suggest Dr. Orrison was wrong in his analysis. (RR: Vol. 58 p. 70)

4) Testimony of Tomas Uribe Acosta, M.D.: Dr. Acosta, a radiologist, testified that Dr. Yount told him that a report from an outside facility showed that Mr. Williams had severe hippocampal atrophy and decreased fractional of the corpus callosum fibers. (RR: Vol. 58 p. 76) He went back and looked at the scan he had previously read and found that he did not have any major disruption of the major tracts in the brain. (RR: Vol. 58 p. 77) However, he did not have the software for a more detailed measurement. (RR: Vol. 58 p. 77) He found subtle findings in rereading the scan and thought the atopic change was nonspecific. (RR: Vol. 58 p. 78) He did not see brain injury. (RR: Vol. 58 p. 79) He said he does not use the volumetric method and didn't have the

software to do it. (RR: Vol. 58 p. 80) He stated that Dr. Orrison could be right in his findings, he just couldn't say. (RR: Vol. 58 p. 81)

The trial court denied Defendant's motion for new trial. (RR: Vol. 59 p. 41-42)

SUMMARY OF ISSUES

Appellant raises issues in this brief that are categorized into the following groups: I. Voir Dire Issues Nos.1-13 involve Appellant's argument that the trial court erred when it denied his challenges for cause; II. Guilt/Innocence Issues Nos. 17-18 in which Appellant argued that the trial court erred in overruling his objection to evidence of extraneous offenses including evidence of the murder of Mr. Mark Hasse. In issue no. 19Appellant argued that error occurred when the trial court allowed the State to present a photograph of an incendiary device that was not listed in the State's notice to the defense. In Issues No. 20 Appellant argues that the trial court erred in overruling his objection to State's witness testifying as an expert on ballistic evidence. Appellant argues in Issue No. 21 that error occurred when the trial court overruled his objection to in court identification pursuant to his pretrial motion. Appellant submits in Issue No. 22 that the evidence is legally insufficient to support the conviction for capital murder; III. Motion for New Trial Issues Nos. 23-25 involve Appellant's issue of the trial court not granting him a continuance to properly investigate mitigating evidence in the punishment stage of the trial. Appellant further argues that he was denied due process

because of judicial bias in how the trial was conducted; IV. Punishment Trial Issues which included Issue No. 26 where Appellant argues the trial court erred in overruling his objection to a video of the Mark Hasse crime scene. In Issue No. 27 Appellant argues that the trial court erred in overruling his objection to victim impact evidence of a victim not named in the indictment. Appellant submits in Issue No. 28 that error occurred when the trial court overruled his objection to the State's cross examination of the Defense's witness about conduct of other inmates. In Issue No. 29 Counsel argued that the only purpose of State's Exhibits of weapons was to inflame the jury and that some of the weapons were not connected to the case, but the trial court overruled the objection. Appellant argued in Issue No. 30 that the trial court erred in denying Appellant's motion for mistrial when the State displayed weapons which were not in evidence. Appellant argues in Issues No. 31, 32 and 33 that the trial court erred in sustaining the State's objection to a partial transcript of the Williams trial for theft, the Defense's proffer of evidence of the testimony of Mr. Rick Harrison and Defense Exhibit No. 47, a video of Appellant's graduation. Appellant argues in Issues Nos. 34 through 38 that the trial court erred in sustaining the State's relevance objection to the defense's proffered testimony of these four witnesses; V. Punishment Jury Trial Instructions Issues Appellant argues that the trial court erred in denying his requested instructions fo the jury during punishment. Lastly, Appellant argues that the evidence is

legally insufficient to support the jury's answer to Special Issue No. 1, future dangerousness.

VOIR DIRE ISSUES

(In each of the following issues involving jury selection Appellant's challenge for cause was denied by the trial court. Appellant exhausted all peremptory challenges, requested additional peremptory challenges which were denied and identified objectionable jurors that were on the jury thereby preserving Appellant's issues raised herein for appellate review. Trial counsel's objection as being 'mitigation impaired' is interpreted to mean that the juror would not give any consideration to any mitigating evidence)

ISSUES ON TRIAL COURT'S DENIAL OF APPELLANT'S CHALLENGES FOR CAUSE

APPELLANT'S ISSUE NO. 1

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON NO. 14A JAMES FREEMAN

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 10 page 136 at which defense counsel made the following objection:

MR. PARKS: Your Honor, we would challenge the juror for cause for the reason that I believe he fairly clearly stated on the record, to me at least, that he would automatically answer special issue number 1 yes if he found a person guilty of capital murder. Now, I realize that in the court's questioning he indicated that he would wait to see whether the evidence proved that he would not be a future danger, which simply shifts the burden of proof from the State to the defense. I think on a whole, from the answers that he gave, that he is an automatic yes to special issue number 1 or that he

would shift the burden to the defense to prove the negative. Submit him for cause for that reason.

The trial court denied Defendant's challenge for cause. (RR: Vol. 10 p. 136) Defense was forced to use it's first peremptory strike. (RR: Vol. 12 p. 98)

Mr. James Freeman, a former Dallas Police Officer for 36 years, testified that he had worked several homicide cases as an officer. (RR: Vol. 10 p. 71-72) Mr. Freeman ranked himself a "10" as to how strongly he believed in the death penalty. (Questionnaire page 5 No. 15) Mr. Freeman answered that he strongly agreed that if a person was convicted of capital murder, he should be assessed the death penalty. (Questionnaire p.8 No. 40L) When the State asked him if he was going to follow the rules and follow the law, Mr. Freeman responded "Yes, sir." (RR: Vol. 10 p. 99) Appellant submits that it is human nature that no person is going to say he will not follow the rules or law, especially a former police officer.

Defense counsel elicited Mr. Freeman's true feelings about assessing death if a defendant was found guilty. The following occurred at Reporter's Record Vol. 10 p. 122-123):

Q. Okay. Now, some jurors just can not accept that concept. They want to take into consideration all of the other things. Some of them you've mentioned in your visit here with me. But the law would put that aside and say you must answer that question with your head exactly the same as you answer was he guilty or not guilty in the first phase of the trial. And that question has elements to it, exactly the same as the indictment has elements. And just as a juror is bound to say not guilty if the State fails to prove any one element of the indictment, the answer to special issue number 1 is no if

the State can not prove what the legislature has placed on them to prove. Does that make sense to you?

A. Yes, sir.

Q. Okay. Now, having heard all of that, do you believe that anyone who would intentionally kill another person, without any excuse or justification, legal excuse or justification, because he wanted to, would he fit in special issue number 1 automatically, that he would be a future danger to his society?

A. I think so, yes, sir. Under those circumstances you had just described.

. . .

Q. If, after having heard all the evidence you have been convinced that he is guilty, that he is an intentional murderer, that he killed without all of that other stuff that I talked about before, he's guilty of doing it, when you come to special issue number1 and are called upon to make a decision whether this is the kind and type of person who would be a future danger to society as defined in special issue number 1, the answer to that question for you would be yes, is that a fair statement?

A. Yes, sir, it is.

Appellant submits that Mr. Freeman would not consider any mitigation. He answered question number 48 on the juror questionnaire concerning mitigation as a no, he would not consider genetics, circumstances of birth, upbringing and environment in determining punishment. (Questionnaire p. 10 No. 48) While the venireman changed his answer during individual voir dire, (RR: Vol. 10 p. 128-129) Appellant argues that the answer given on the juror questionnaire reflects his true feelings on mitigation and were not feelings influenced by the need to answer correctly as in voir dire.

Mr. Freeman also thought police officers were more believable than most witnesses. (Juror Questionnaire p. 7 No. 36. Appellant argues that having been a police officer would make Mr. Freeman more likely to believe the testimony of a police officer over other witnesses. He thought that life without parole was a burden on the taxpayer.

(Juror Questionnaire p. 9 No. 44b) He did not believe people who committed violent crimes could be rehabilitated in prison. He wrote "Most violent crimes are committed due to the time and place and what is going on giving the same circumstances, it will probably be repeated. (Juror Questionnaire p. 9 No. 45) He also thought that person would be a continuing threat to society because "has no reason not to." (Juror Questionnaire p. 9 p.46)

Appellant further argues that Mr. Freeman was unqualified because he knew several police officers who had been killed. (Juror Questionnaire p. 13 No. 71)

The trial court questioned Mr. Freeman and he indicated that he would wait to see whether the evidence proved that the Defendant would not be a future danger. (RR: Vol. 10 p. 134-135) Appellant argues that this shifts the burden from the State to the defense.

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol. 12 p. 98) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002).

It is fundamental that in all criminal prosecutions, an accused is entitled to an impartial jury composed of people who are unprejudiced, disinterested, equitable, and just who have not prejudged the merits of the case. *Shaver v. State*, 280 S.W.2d 740, 742 (Tex. Crim.App. 1955); Tex. Const. Art. I, § 10. The voir dire process is designed to insure to the fullest extent possible, that such an impartial jury will perform the duty assigned to it. *Salazar v. State*, 562 S.W.2d 480, 482 (Tex. Crim. App. 1978).

Article 35.16(c)(2) of the Texas Code of Criminal Procedure, allows the defense to challenge for cause any prospective juror who has a bias or prejudice against any law applicable to the case upon which the defense is entitled to rely, either as a defense to the offense being prosecuted or as mitigation of the punishment therefor. *Clark v. State*, 717 S.W.2d 910, 916-17 (Tex. Crim. App. 1986); Tex. Code Crim. P. Ann. Art. 35.16(c)(2) (Vernon Supp. 1992). When a prospective juror is biased against the law, or shown to be biased as a matter of law, he must be excused when challenged, even if he states that he can set his bias aside and be a fair and impartial juror. *Clark*, 717 S.W.2d at 917; *Anderson v. State*, 633 S.W.2d 851, 854 (Tex. Crim.App. 1982).

Based on the record, Appellant preserved error to complain of the propriety of the Trial Court's ruling on his challenges for cause. *Harris*, 790 S.W. 2d 581 (Tex. Crim. App. 1989). See *Hernandez v. State*, 757 S.W.2d 744 (Tex. Crim. App. 1988). These errors in the voir dire process denied Appellant his right to due process and a fair trial.

See TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, supra. See *Cumbo v. State*, 760 S.W.2d 251 (Tex. Crim. App. 1988) and *Johnson v. State,* 43 S.W.3d 1 (Tex.Crim. App. 2001).

The trial court erred in overruling the challenge for cause. *Cuevas v. State*, 575 S.W.2d 543 (Tex. Cr. App. 1979), and *Smith v. State*, 573 S.W.2d 763 (Tex. Cr. App. 1978) The appellant was forced to unnecessarily use a peremptory challenge, and having exhausted his allotment of such challenges was required to accept an "objectionable" juror on the jury. Appellant preserved his error.

Appellant submits that he is entitled to rely on the following federal law as it applies to jury selection in capital cases and that the complained of juror was biased against the law as a matter of law based on the prospective jurors voir dire examination.

Appellant argues that the Court's ruling in regard to this juror violates the holdings of *Morgan v. Illinois*, 504 U.S. 719 (1992) because general questions do not comply with the duty to ensure that the juror is unbiased. The Supreme Court has explicitly held that these questions are insufficient to ferret out bias:

"Can you follow the law?" "You can be fair, can't you?" " You can follow the Court's instructions, can't you?" A capital juror must be willing and able to accept and apply the statutory presumption of life. A death sentence cannot be automatic. *Woodson v. North Carolina*, 428 U.S. 280 (1976). Additionally, the law requires that a

capital juror be able to consider and give effect to mitigating evidence. *Eddings v. Oklahoma*, 455 U.S. 104 (1982). That juror must be able to consider an individual defendant's mitigation. *Tennard v. Dreke*, 124 S.Ct. 2562 (2004) Thereby, a capital juror must be able to consider any relevant mitigating evidence from the defense. *Payne v. Tennessee*, 501 U.S. 808 (1991). Any potential juror who would automatically vote for the death penalty is challengeable for cause. *Morgan v. Illinois, supra*. See also *Wainwright v. Witt*, 469 U.S. 412 (1985). See also *Ross v. Oklahoma*, 4897 U.S. 81 (1988)

Since mitigation can be anything under *Lockett v. Ohio*, 438 U.S. 586 (1978) a prospective capital juror must be able to consider any mitigation evidence the defense seeks to rely upon. Additionally, Appellant submits that the overall voir dire responses from this prospective juror showed an implied bias and a general prejudice against the defense in regard to (1) he would automatically answer special issue no.1 yes based on a finding of guilt, (2) he would automatically believe a police officer's testimony over a lay witness, and he would place the burden of proof on the defense contrary to the law. See *Feldman v. State*, 71 S.W.3d 738 Tex. Crim. App. 2002) and *Hernandez v. State*, 563 S.W.2d 947 Tex.Crim. App. (1978). More importantly Appellant argues that the rationale and logic expressed in Judge Baird's dissent in *Jones v. State*, 998 S.W. 2d 386 (1998) should be considered in determining jury selection error.

APPELLANT'S ISSUE NO. 2

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON # 31 DANIEL CHAPMAN

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 11 page 66 at which defense counsel made a challenge for cause that the juror had formed an opinion about the defendant's guilt contrary to Art. 35.16(a)(10) C.C.P. and that he would be biased against the defendant.

The trial court denied Defendant's challenge for cause. (RR: Vol. 11 p. 66) The defense exercised peremptory strike number 2 on this juror. (RR: Vol. 15A p. 79)

Defense counsel questioned Mr. Chapman on his knowledge of the facts in this case. Mr. Chapman had heard about the case prior to his jury service. He was of the opnion that the killings of Mike and Cynthia McLelland were intentional and had been planned in advance. (RR: Vol. 11 p.45) He knew that they were killed in their home and that Mr. McLelland was the Kaufman County District Attorney at the time he was killed. (RR: Vol. 11 p. 46) He knew that Cynthia McLelland was Mike McLelland's wife and that they died of gunshot wounds. (RR: Vol. 11 p. 46) Mr. Chapman also stated that he saw a news report of a storage unit with a white automobile in it. (RR: Vol. 11 p. 47) He knew that Mr. Williams wife, Kim, was arrested in connection with

the deaths of the McLellands. (RR: Vol. 11 p. 48) Appellant submits that these statement show that Mr. Chapman has detailed knowledge of the offense and would be biased against the Defendant and assume he was guilty since he was brought to trial for this offense.

Appellant further argues that Mr. Chapman would automatically assess the death penalty if the defendant was found guilty of capital murder. In answering question number 1 of the juror questionnaire, Mr. Chapman wrote that he was in favor of the death penalty "for those that have committed deliberate and premeditated murder, equal punishment is warranted." (Juror Questionnaire p. 1 No. 1) See (RR: Vol. 11 p. 61)

He wrote "The death penalty is warranted for those murder cases where premeditation and heinous act. Life in jail would not be equal punishment." (Juror Questionnaire p. 3 No.10) He thought that "Premeditation and deliberate murder can warrant death penalty regardless of previous record" when answering the question "Do you think there are some crimes which call for the death penalty solely because of their severe facts and circumstances, regardless of whether or not the guilty person has committed prior violent acts. (Juror Questionnaire p. 4 No. 13) He ranked himself a "10" in how strongly he believed in using the death penalty. (Juror Questionnaire p. 5 No. 15) He again wrote that the premeditation and deliberateness were the issues that were important to him in assessing a death sentence. (Juror Questionnaire p. 5 No. 18)

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) & (10) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol. 13 p. 206) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 3

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #66, JERRY WASLER

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 15A page 154 at which defense counsel made the following challenge for cause:

MR. PARKS: ... would consequently challenge the juror on the basis that he has a bias or prejudice against the law of the State of Texas that defendant's entitled to rely upon in that he will not fully and fairly consider and assess a minimum five year sentence for the lesser included offense of murder. I believe it's pretty clear from his voir dire that he could not do that. ... We would further submit him that he has a bias or prejudice against a law that the defendant is entitled to rely upon in that he would not hold the State of Texas to its burden of proof on the individual elements of the indictment. ... We would further submit the juror for the reason that his answers

clearly show that he is mitigation impaired and could not fully and fairly consider the defendant's background in answering special issue number 3, which is a requirement for a juror to be qualified to sit in a case of this kind ...

The trial court denied Defendant's challenge for cause. (RR: Vol. 15A p.157) The defense exercised a peremptory strike. (RR: Vol. 15A p. 157)

During the State's voir dire of Mr. Wasler, Mr. Wasler vacillated on the prospect of assessing a five year sentence to someone found guilty of murder. He told the State, "I don't know about a five year sentence, but." (RR: Vol. 15 p. 95) After the State told him that the Judge needed to know if he had an open mind, Mr. Wasler replied "If I thought it was appropriate" and "Possibly, yes." (RR: Vol. 15 p. 95-96) He further stated "I think I can. Five years seems to be awfully light to me." (RR: Vol. 15 p. 97)

Mr. Wasler also demonstrated a bias for law enforcement. He testified that his job is providing security consulting for major corporations for the last 41 years. (RR: Vol. 15 p. 116)

Appellant further argues that this juror has or prejudice against a law that the defendant is entitled to rely upon in that he would not hold the State of Texas to its burden of proof on the individual elements of the indictment. See RR: Vol. 15 p. 118:

After a lengthy explanation and numerous examples, the State finally had Mr. Wasler agree that he could follow the law and find a person not guilty if the State did not prove each element of the indictment.

During defense voir dire examination, Mr. Wasler continued to state his extremely strong support of the death penalty. His answer to question 6 of the questionnaire's question, "The best argument for the death penalty is the taking of another's life with premeditated thoughts and actions." (Questionnaire p. 3 No.6) When questioned about this answer, Mr. Wasler said " Okay. Well, I think the death penalty is very appropriate when somebody has premeditatedly thought and done whatever actions they took to kill somebody, take somebody else's life. I think the death penalty is appropriate. (RR: Vol. 15 p. 134) He answered question number 8 , for what crimes do you think the death penalty is the proper punishment, as "the death of another individual." (RR: Vol. 15 p. 135) He agreed that this was his honest answer when he filled out the questionnaire and that nothing has changed his opinion. (RR: Vol. 15 p. 136) Mr. Wasler further stated in court about the death penalty "I think it would stop a lot of things that go on in this country." (RR: Vol. 15 p. 136)

Appellant argues that Mr. Wasler would not consider mitigation. He answered Juror Questionnaire p. 10 No. 48 concerning genetics, circumstances of birth, upbringing and environment as a simple "No." (Juror Questionnaire p. 10 No. 48) He thought that if a person was convicted of capital murder and was found to be a continuing danger to society, the death penalty should be assessed. (RR: Vol. 15 p. 143, 146-147)

Mr. Wasler believed that the death penalty should be used because it would "prevent further criminal acts." (Juror Questionnaire p. 4 No. 11) He circled "10" as his answer in how strongly he believed in the death penalty. (Juror Questionnaire p. 5 p. 15) He answered "strongly agree" when asked if a person convicted of capital murder should be assessed the death penalty. (Juror Questionnaire p. 8 p. 40L)

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol. 16 p. 76) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 4

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #71, BRYAN CAMPBELL

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 12 page 85 at which defense counsel made the following objection:

MR. SEYMOUR: Judge, we'll challenge the juror. Mr. Campbell expressed unequivocally that he - - finding someone guilty beyond a reasonable doubt and special issue number 1 beyond a reasonable doubt, that death would be the only option. ... I believe he's mitigation impaired.

The trial court denied Defendant's challenge for cause. (RR: Vol. 12 p. 86) The defense exercised a peremptory strike on this juror. (RR: Vol. 15B p. 5)

Appellant argues that Mr. Campbell could not give meaningful consideration to any mitigation evidence presented by the defense. See RR: Vol. 12 p. 53-61):

Appellant argues that this testimony shows Mr. Campbell was mitigation impaired and would not give meaningful consideration to any mitigation evidence presented by the defense. He believed in an eye for an eye, writing that this was the best argument for the death penalty. (Juror Questionnaire p. 3 question 6) He stated that he chose this answer because that was the way it had always been presented to him. (RR: Vol. 12 p. 82) He said that this was the kind of family environment in which he was raised. (RR: Vol. 12 p. 82) He ranked himself a "10" in how strongly he believed in

using the death penalty. (Juror Questionnaire p. 5 No. 15) He thought that the death penalty was used too seldom in Texas. (Juror Questionnaire p. 5 No. 22) He thought the criminal justice system was too lenient and this was the biggest problem in the system today. (Juror Questionnaire p. 6 Nos. 29 & 30)

When answering the question concerning whether genetics, etc., should be considered when determining punishment for someone convicted of capital murder, Mr. Campbell wrote " I think if someone can kill another person there is not much chance for that person. It doesn't matter what made them that way." (Juror Questionnaire p. 10 No. 48) This clearly shows Mr. Campbell's bias that he would not consider any mitigation evidence.

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol. 15B p. 5) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 5

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #122, KELLY SHIVERS

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 15B page 77-80 at which defense counsel made the following challenge for cause:

MR. WRIGHT: The defense will challenge this juror on several grounds. First of all, I do not believe that she can actually presume that Eric Williams is innocent in this case.

Secondly, and maybe more importantly or just as important, I think she has strong beliefs that special issue number 2 should not be part of our law. That mitigating circumstances ought not to be considered. ...

Doug, anything else? Did you want to add something to it?

(Mr. Parks stood)

MR. PARKS: . . .Your Honor, we would also submit her on special issue number 1, the issue of probability. My notes at least reflect that she indicated to her probability in the context of that question meant any chance at all. And any chance at all, in common language, means possibility. And so I submit that she would see a probability as a mere possibility, which our law is clear would disqualify her, bias and prejudice against that law.

... And finally, on page 9 of the questionnaire, when asked about a person convicted of capital murder, and her feelings about it carrying the death penalty, she states the death penalty should be used for anyone convicted of capital murder.

I submit to the court that's the way she feels. She's mitigation impaired and would be an automatic death sentence. ...

The trial court denied Defendant's challenge for cause. (RR: Vol. 15B p. 82) The defense exercised a peremptory strike against this juror. (RR: Vol. 15B p. 82)

When filling out the juror questionnaire, Ms. Shivers knew the case involved killing attorneys. On question 168 on page 25 of the juror questionnaire, Ms. Shivers answered that yes, there was something she wanted the court and parties to know about her that was not mentioned in the questionnaire. She wrote "I don't like people who kill attorneys, my brother is one, okay." During voir dire she explained that her brother was an attorney in San Antonio when Federal Judge John Woods was assassinated and he had to have protection. She further stated that Assistant District Attorney Jimmy Kerr was a family friend and had an attempt on his life. She said that these incidents affected their family. (RR: Vol. 15B p. 57)

Appellant submits that Ms. Shivers knew a great deal about the case and even stated that a couple was murdered in their home, that Mr. Williams name was mentioned and was a former county employee. (RR: Vol. 15B p. 58-59) She knew that his wife was also involved in the crime. (RR: Vol. 15B p. 59) Ms. Shivers had knowledge of the case that would influence her deliberations. While she stated that this knowledge did not influence her answers to the questions on the questionnaires (RR: Vol. 15B p. 61) , she answered question number 13 page 4 of the juror questionnaire that premeditation was a reason that some crimes called for the death penalty, regardless of whether or not the guilty person committed prior violent acts. She stated that "I would try my best" not to let her prior knowledge of the case influence her deliberations. (RR: Vol. 15B p. 62)

When asked if she has heard about the case, Ms. Shivers answered "yes" and wrote "T.V. coverage and I read the articles in the Dallas Morning News and listened to radio news updates on the case." (Juror Questionnaire p. 4 No. 12)

Appellant argues that Ms. Shivers would not consider any mitigation. When asked question 48 p. 10 on the questionnaire what she thought about genetics, circumstances of birth, upbringing and environment being considered in determining punishment, she wrote "No - You do the crime, there needs to be a punishment." She testified that "If you break the law, and you're convicted of that, there should be a punishment." (RR: Vol. 15B p. 66) See RR: Vol. 15B p. 66-67:

Ms. Shivers eventually stated that she would consider mitigating circumstances, but when asked if this would cause any tension between her core beliefs, she stated " I don't know how to respond. I don't know." (RR: Vol. 15B p. 72)

Ms. Shivers also thought the death penalty was used too seldom and wrote "Too seldom- horrible crimes happen every day. Not a day goes by in this area that you don't read or hear about a murder." (Juror Questionnaire p. 5 No. 22) She wrote that the death penalty should be used when asked to state the best description of her own personal feeling about the death penalty following a conviction for capital murder. (Juror Questionnaire p. 9 No. 44(a)) Appellant submits that Ms. Shivers has shown through voir dire and her answers on the questionnaire that she was a mitigation

impaired juror and was unqualified as she had formed an opinion about the guilt of the defendant as argued by defense counsel.

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) &(10) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol. 20 p. 226) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 6

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #174, BROOKE PADACHY

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 17 page 134 at which defense counsel made the following objection:

MR. PARKS: Your Honor, we'd challenge the juror for the reason she has a bias or prejudice against the law the defense is entitled to rely upon. She would automatically answer yes to special issue number 1 if she found someone guilty of capital murder. She'd answer yes every time. She said so.

. . .

She said that if she found someone guilty of intentionally killing another person, and she's told us that again, and again, and again in her questionnaire, if a person intentionally meant to kill another person, they should get the death penalty. I feel that if they had intent to kill a person, they should get the death penalty. What is important to you in rendering a death sentence? Whether they meant to kill the person on purpose. She's told us plainly in her questionnaire and she told us here that if she found someone guilty of intentionally killing another person, she'd answer the question yes every time.

The trial court brought the juror back for further questioning. (RR: Vol. 17 p. 137) The State asked the juror "Could you follow that, that rule of law and require the State to prove it beyond a reasonable doubt?" to which the juror replied "Yes." (RR: Vol. 17 p. 40) She told defense counsel that she would follow the law regardless of her feelings but she hasn't changed her feelings. (RR: Vol. 17 p. 142)

The defense further challenged the juror (RR: Vol. 17 p. 143):

The trial court denied Defendant's challenge for cause. (RR: Vol. 17 p.144) Defense counsel was forced to use a peremptory strike on this unqualified juror. (RR: Vol. 17 p. 144)

When asked by the State how she felt about the death penalty, Ms. Padachy stated "In my opinion, I think that if a person takes somebody else's life, that they maybe should have their life taken as well, so." (RR: Vol. 17 p. 82) She answered the question on page one of the juror questionnaire as to why she was in favor of the death penalty as "in most cases, when a person takes someone' else's life on purpose, they are a threat to others." See RR: Vol. 17 p. 129:

Ms. Padachy answered question number one of the juror questionnaire that she was in favor of the death penalty and wrote "In most cases, when a person takes someone elses life on purpose. They are a threat to others." (Juror Questionnaire p. 1 No. 1) Appellant submits that this answer succinctly shows that she would automatically answer special issues in order to find a person convicted of capital murder to be a future danger.

The answers given on the juror questionnaire and the testimony of voir dire show that Ms. Padachy was substantially impaired in her ability to follow the law. Her answers show that she would not give Appellant a fair hearing on special issue number 1.

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol. 26 p. 341) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 7

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #253, NICOLE VANWEY

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 22 page 86 at which defense counsel challenged the juror for cause:

THE COURT: The defendant's challenge for cause will be denied. Now, Mr. Parks.

MR. PARKS: Your Honor, this is going to tie in with Mr. Seymour's objections, but I'm going to submit the woman because she would automatically and categorically impose the death penalty; and that's in violation of Morgan versus Illinois, for starters. And tying back into Morgan versus Illinois, just as Mr. Seymour said, the rote recitation of I will or can you follow the law or I can or will you be fair and impartial, I can or will you keep an open mind, I can or will you listen to the evidence are all inadequate under Morgan versus Illinois to qualify a person in a death penalty jury. ...

The trial court denied Defendant's challenge for cause. (RR: Vol. 22 p. 90) The defense was forced to exercise a peremptory strike.

Ms. Vanwey thought that people have a choice in life to be good or bad, regardless of their upbringing, circumstances or genetics. (RR: Vol. 22 p. 52) Ms. Vanwey's responses to questions showed that she was very confused as to mitigation evidence (RR: Vol. 22 p. 53).

Ms. Vanwey agreed that the death penalty should be reserved for people who are such a threat to society that even incarceration for life without parole does no remove

the probability of continuing or ongoing future violent acts, and wrote "Agree if they caused one death you never know if they will do it again." (Juror Questionnaire p. 4 No. 11) She further thought there are some crimes which call for the death penalty solely because of their severe facts and circumstances, regardless of whether or not the guilty person has committed prior violent acts and wrote "I don't think their past should have anything to do for the case they are in at present." (Juror Questionnaire p. 4 p. No. 13) She ranked herself a "10" in how strongly she believed in using the death penalty. (Juror Questionnaire p. 5 No. 15) She believes in an "eye for an eye" and wrote, "If you have caused hurt or crime, you should be punished." (Juror Questionnaire p. 8 No. 41) Appellant argues that Ms.Vanwey was mitigation impaired and would not give meaningful consideration to the mitigation evidence presented by the defense.

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol.27 p. 153) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant

adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 8

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #273, LARRY HOLLIFIELD

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 25 page 81 at which defense counsel made the following objection:

MR. SEYMOUR: ... I believe that he probably is mitigation impaired, and I would challenge him on that basis under the 6th, 8th, 14th Amendments of the U.S. Constitution and their state cognates.

The trial court denied Defendant's challenge for cause. (RR: Vol. 25 p. 82) Appellant was forced to use a peremptory strike. (RR: Vol. 25 p. 82)

Appellant argues that Ms. Hollifield would automatically answer the special issues in which the death penalty resulted if the defendant was found guilty of capital murder. When asked by the State if he had a problem with sentencing someone to life without parole, he replied " Only thing I worry about on the life without parole was having to pay to keep that person. You know, the, the burden on society to have that person fed and clothed for the rest of their life." (RR: Vol. 25 p. 43) He stated that he would not let this thought overcome what the law says. (RR: Vol. 25 p. 43)

Mr. Hollifield's testimony shows that he would automatically assess death if a defendant killed a public official. See discussion at RR: Vol. 25 p. 59-60:

Q. All right. Well, you know when Mr. D'Amore asked you about the publicity question, you had said that believed or that you had heard that a D.A. had been murdered and a judge and his wife had been murdered. Do you believe that either of those are public officials in your mind, either a D.A. or a judge?

A. Yeah.

Q. Okay. So someone who commits that kind of crime is the kind of person who deserves to die for that crime in your mind, is that right?

A. Yeah.

Q. I mean and that's because it's just the way, like you said, you've felt that way for a long time and that's just who you are, and you're not making any, you know, bones about it. That's just what you think. I mean is that fair?

A. Yeah.

Appellant argues that Mr. Hollifield would not consider mitigation . While Mr. Hollifield kept asserting that he would "keep an open mind", Appellant submits that this statement is not adequate in making a juror qualified for a death case. He wrote in the juror questionnaire page 2 that he was in favor of the death penalty and "a life for a life." He agreed that this was his gut reaction. (RR: Vol. 25 p. 53) He thought the best argument for the death penalty is "an eye for an eye." (Juror Questionnaire p. 3 No.6) He answered that he believed in "an eye for an eye" and wrote "In terms of murder. I don't believe in cutting hands off of thieves." (Juror Questionnaire p. 8 No. 41) He thought the death penalty was used too seldom in Texas. (Juror Questionnaire p. 5 No. 22) He believed that the testimony of a police officer was more believable than most witnesses.(Juror Questionnaire p.7 No. 36) Mr. Hollifield answered question number

48 page 10 of the juror questionnaire concerning genetics, circumstances of birth, upbringing and environment when determining punishment as "only a person's actions should be used." He thought that someone's upbringing should not be considered as a preposition to commit murder. (RR: Vol. 25 p. 49) He thought that the circumstances which led to the person committing murder was important. (RR: Vol. 25 p. 50) He stated that there's not any, as far as I know yet, any scientific evidence that shows that genetics is what causes someone to be predispositioned to commit murder." (RR: Vol. 25 p. 50)

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol.28 p. 133) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 9

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #309, SCOTT HOOPER

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 27 page 104 at which defense counsel made the following objection:

MR. PARKS: If it please the Court, your Honor, we would challenge the juror for cause for the reason that he has, I think pretty clearly, told us that if he finds Mr. Williams Guilty, he'll automatically answer special issue number 1 yes. ... It's the only option. ... I just believe that he has a bias and prejudice against the law that we're entitled to rely upon, and he is disqualified.

The trial court denied Defendant's challenge for cause. (RR: Vol. 27 p. 107) Appellant was forced to use a peremptory strike on this unqualified juror. (RR: Vol. 27 p. 107)

Appellant argues that Mr. Hooper believed the only option in punishment was the death penalty and would automatically answer the special issues in order for a sentence of death to result. He expressed his views from the start of voir dire by the State. The following occurred at RR: Vol. 27 p. 52:

A. I'll just be honest with you, I have - - I would like to say I have a tremendous amount of faith; and just going back to the Old Testament, God gives us that authority. It's not to discount the value of human life; but it's to say that God made man in his image, and that's something that's priceless. And if, if someone chooses to take the life of someone who's made in God's image, then an appropriate recourse for that is for him to be put to death.

Appellant submits that Mr. Hooper would not consider mitigation evidence and would automatically answer Special Issue No. 3 as a "no." When asked by the State what he thought about the question in Special Issue No. 3, Mr. Hooper replied (RR: Vol. 27 p. 66):

A. Well, I think maybe I'll answer it by saying this. If - - for me, if the evidence provided that the defendant was guilty of capital murder, then the death penalty is the only option for me.

After the state told Mr. Hooper that he needed to keep an open mind, (RR: Vol. 27 pp.68) Mr. Hooper agreed that he could keep an open mind to the special issues. (RR: Vol. 27 p. 70) After agreeing to keep an open mind, Mr. Hooper was repeatedly asked by the State if he could keep an open mind and follow the rule of law. (RR: Vol. 27 p. 70, 71, 72, 73, 74, 75, 76) Appellant submits that Morgan versus Illinois clearly articulates that a juror merely saying that he could keep an open mind does not qualify him as a juror under the constitutional provisions. That he must be able to fully and fairly consider the obligation before him. The State's voir dire was not anything but a mere recitation of can you keep an open mind and be fair.

During the defense voir dire, Mr. Hooper was told that the defense counsel has never had a prospective juror say that they could not keep an open mind. (RR: Vol. 27 p. 80) To this statement, Mr. Hooper stated " I'm extremely biased, yeah." (RR: Vol. 27

p.80) The following occurred at RR: Vol. 27 p. 81 which shows Mr. Hooper's belief in punishment for a capital murder defendant found guilty:

Mr. Hooper's testimony showed that he believed in the only appropriate punishment was the death penalty. When asked why he circled "10" has to how strongly he felt about the death penalty (Juror Questionnaire p. 5 No. 15), he replied "If, if in the, if - - like the words you used, the person, if you want to use the word premeditated, planned, intentionally knew, was of sound mind, and went and committed a crime, then I think the punishment is the death penalty." (RR: Vol. 27 p. 86) Mr. Hooper thought that if there was no mental illnesses or problems, he would "absolutely" be more likely to give that person the death penalty than someone who had mental illnesses. (RR: Vol. 27 p. 87) When answering the juror questionnaire page 8, Mr. Hooper strongly agreed with the proposition that if a person is convicted of capital murder, he should be assessed the death penalty. When asked if this belief was a pretty strong belief, Mr. Hooper replied "Yes, sir." (RR: Vol. 27 p. 90)

Further evidence that Mr. Hooper would automatically answer Special Issue No. 1, the future dangerousness issue, if the defendant was found guilty of capital murder is found in the following (RR: Vol. 27 p. 94):

Q. . . .If you had found someone guilty of capital murder, being an intentional murderer, when you come to that particular special issue, knowing that you could take into consideration that evidence and could answer that question yes based on that evidence, do you believe that you would answer it yes?

A. Yes.

Mr. Hooper demonstrated that he would not consider mitigation evidence. The following occurred at RR: Vol. 27 p. 102-103):

Q. Here, here's the impression I got from you. Tell me if I'm wrong. Is that if you're placed on a jury, you can listen to the evidence, and place the burden of proof on the State to prove what they have alleged in their indictment. And if they failed to prove every element to your satisfaction beyond a reasonable doubt, you'll say not guilty or guilty of a lesser included offense in a heartbeat.

A. Absolutely.

Q. But once they've done that, if they've proved to you that the defendant is guilty, is an intentional murderer, murdered during the course of another felony, dotted every I, crossed every T, and satisfied you absolutely to your satisfaction he's guilty, you'll say so, and in your view that is a death penalty case every time.

A. Well, I can - -

Q. With the possible exception of finding something on special issue number 2.

A. And it would be a very minute possibility.

Mr. Hooper also thought police officers were more believable than most witnesses. (Juror Questionnaire p. 7 No. 36) He answered "strongly agree" to the statement "If a person is convicted of capital murder, he should be assessed the death penalty." (Juror Questionnaire p. 8 No. 40L)

Appellant has shown that by his answers on both the questionnaire and during voir dire examination, Mr. Hooper has shown that he would automatically find the Defendant to be a future danger given the circumstances of the offense and would automatically answer special issue number as yes. He would also require extraordinary

mitigation evidence to be presented in order for him to answer special issue number 3 as a "yes", thus giving the defendant a sentence of life in prison without parole.

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol. 32 p. 90) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 10

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #374, SALLY WILLIAMS

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 33 page 92 at which defense counsel made the following objection:

(BY MR. PARKS): We do have a challenge for cause, your Honor. Firstly, we challenge the juror because we believe that she would automatically answer these questions in such a way to see that the defendant got the death penalty if she found that he was guilty of capital murder and answered special issue number 1 yes. Secondly, we

would suggest to the court that this lady knows no more about the process now than she did when she walked in, ...

Lastly, we would challenge the juror for the reason that we believe that the State's voir dire of this woman is in violation of the United States Constitution in the following ways. We believe it is intended to cause the defendant to exhaust his peremptory challenges on prospective jurors who are biased in favor of the State. It is intended to send - - to seat a jury organized to return a death penalty. ... and it violates - - deprives the defendant the protection of laws under the 14th Amendment. It is in violation of the letter and spirit of Morgan versus Illinois.

I would refer the Court to a prior objection I made to the State's like voir dire and would incorporate that particular objection. I would also refer the Court to the State's voir dire for juror number 285A, Douglas Cook, who ultimately disqualified despite the State's best effort; and would urge the Court that this type of voir dire, in conjunction with the State's use of its own peremptory challenges to eliminate qualified, fair, and impartial jurors, violate the 6th, 8th and 14th Amendments of the United States Constitution and is done with the purpose of selecting a jury organized to return a death penalty.

The trial court denied Defendant's challenge for cause. (RR: Vol. 33 p. 93)

Appellant was forced to use a peremptory strike on this juror who should have been disqualified. (RR: Vol. 33 p. 93) The State's voir dire consisted of instructing Ms. Williams on how to be a qualified juror and then asking her if she could answer the special issues.

Ms. Williams believed that the testimony of a police officer was always believable. (Juror Questionnaire p. 7 No. 36). She believes this because police officers take an oath when they become officers to uphold the law and to tell the truth. (RR: Vol. 33 p. 64-65) She also disagreed with the statement "The testimony of law enforcement officers or agents is not entitled to any greater or less weight merely

because they're law enforcement officers or agents." (Juror Questionnaire page 8 No. 40) When asked about her response to this question, she stated that "they take the oath before they take the oath to come in the courtroom." (RR: Vol. 33 p. 65) She stated that police officers should be believed because of their position. (RR: Vol. 33 p. 65)

Ms. Williams was a strong proponent of the death penalty, believing that if a person was guilty of capital murder, their life should be taken. (Juror Questionnaire p. 9 No. 44) When asked how she felt about the death penalty as the only appropriate punishment for a guilty capital murderer, she replied "It should be warranted. I mean it should be carried out if, if everybody agrees to it." (RR: Vol. 33 p. 76-77)

Ms. Williams was confused as to her duty as a juror in a death penalty case. She seemed to be under the impression that she and other jurors would pick either death or life, rather than answer special issues. (RR: Vol. 33 p. 79) Appellant submits that that her answers during voir dire showed that she did not understand the concept of the special issues.

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol.42 p.

71) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 11

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON #435 , DAVID PHILLIPS

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 37 page 220-222 at which defense counsel challenged the juror for cause:

(By MR. PARKS): May it please the Court, this juror is unacceptable to the defense for the following reasons. In his questionnaire, on page 3, when asked if he was in favor of the death penalty in some cases, does he agree a life sentence without parole rather than a death penalty would be appropriate under proper circumstances, he said no. Why? Because of the cost to the State ... He reiterates on page 9, when we ask in the space below please state the best description of your own personal feelings about the life sentence without parole following a conviction for capital murder, quote, a waste of taxpayers' money, unquote.

The trial court denied Defendant's challenge for cause. (RR: Vol. 37 p. 221) Appellant was forced to use a peremptory strike on this unqualified juror. (RR: Vol. 37 p. 223)

As argued by defense counsel, Mr. Phillips showed that he would automatically answer the special issues in such a way that a sentence of death would result. He

ranked himself a “10" in how strongly he believed in using the death penalty. (Juror Questionnaire p. 5 No. 15) He thought that the death penalty was used too seldom and that wrote “ Too seldom. I think too many plea bargains are done.” (Juror Questionnaire p. 5 No. 22) Mr. Phillips wrote that life without parole rather than death was not appropriate under proper circumstances because of the cost to the State. (Juror Questionnaire p. 3 No. 5) He further stated that he thought life without parole was appropriate in noncapital cases. Appellant further argues that Mr. Phillips “strongly agreed” with the statement “If a person is convicted of capital murder, he should be assessed the death penalty.” (Juror Questionnaire p. 8 No. 40L) He wrote in the juror questionnaire, (Juror Questionnaire p. 9) that his personal feelings about a sentence of life without parole following a conviction for capital murder “a waste of taxpayers money.” His personal feelings about the death penalty following a conviction for capital murder was “they make a choice and get what they deserved.” (Juror Questionnaire p. 9 No. 44(a))

During questioning by the State, Mr. Phillips was asked if he had heard about the case and he replied that he was in Kaufman the day the assistant district attorney was “gunned down” and was only a mile away. (RR: Vol. 37 p. 156) He listened to the news that night and later learned that another man and his wife were also “gunned down.”

(RR: Vol. 37 p. 157) He stated that he did not know anymore details. (RR: Vol. 37 p. 158)

Mr. Phillips was resistant to the consideration of mitigation. When the State asked him if he would have an open mind to reviewing mitigation evidence, Mr. Phillips replied (RR: Vol.37 p. 174):

A. I think so; but as far as their back ground, to me you make choices in life. Whether you were raised in a perfect family or a horrible family, you, you make your own choices what you do in life; and so I have a problem sometimes with, with that.

After a lengthy explanation of Special Issue No. 3 and what the law requires of a juror, Mr. Phillips agreed that he could follow the law, the oath of a juror. (RR: Vol. 37 p. 176-177) He wrote in the juror questionnaire (Juror Questionnaire p. 10) when asked about genetics, circumstances of birth, upbringing and environment he wrote " Everyone has free will. It does not matter about their environment." The juror can certainly give lip service to the idea of keeping an open mind, but to actually change his fundamental beliefs in jury deliberations was not probable.

Appellant argues that Mr. Phillips would find a police officer more believable than other witnesses. (Juror Questionnaire p. 7 No. 36) During voir dire by the defense, Mr. Phillips showed that he would automatically answer the special issues in such a way that a death sentence was imposed. The following occurred at RR:VOl. 37 p. 197-198:

Q. The question is asking you why you believe someone should receive a death sentence rather than a life without parole in a capital murder case, and your response is they won't have another chance to commit another crime.

A. Well, they won't; but it's , it's, I guess, a punishment for their crime.

Q. And that goes along with you belief in an eye for an eye, right?

A. Yes.

Q. I mean someone commits that awful crime, they have to pay for it with their own life. That's how you feel.

A. I would think so, yes, sir.

Mr. Phillips thought the death penalty was used too seldom in Texas. (Juror Questionnaire p. 5 No. 22) He stated that " I would think maybe if it was used more, it would be more of a deterrent in crime. I would hope so." (RR: Vol. 37 p. 199)

The juror also thought that punishment was the most important objective of the criminal justice system. (Juror Questionnaire p. 9 No.43) He wrote " I don't think most people can be rehabilitated." When asked to explain this answer, the following occurred (RR: Vol. 37 p. 200):

A. I just think it's usually just in their, their person to do something like that. That I'm not sure counseling or rehabilitation can change the way someone is.

Q. So once someone's broke, in other words, they're kind of just broke and that's it?

A. For the most part, yes. I mean I believe if they can actually commit a murder, they might have the propensity to do it again one day I mean.

Mr. Phillips wrote "Nothing" when asked what if anything can change a dangerous person. (Juror Questionnaire p. 9 No. 47) When asked about his answer, he replied "Well, I'm not sure you can change a dangerous person." (RR: Vol. 37 p. 201)

He further wrote in the juror questionnaire (Juror Questionnaire p. 9 No. 46) that a person's choices makes them a continuing threat to society. He stated "There's always consequences for your choice's that you make." (RR: Vol. 37 p. 201)

Mr. Phillips further demonstrated that he would automatically assess a death sentence. The following occurred at RR: Vol. 37 p. 202-203:

Q. . . .But from reading your questionnaire, and especially those questions I just went over with you, it seems to me that you hold a belief, regardless of what this framework says, that if someone is convicted of capital murder, that's the type of person in your mind who should die. Is that true?

A. I would think so, yes.

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol. 44 p. 19) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 12

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON # 498, JERRY BOLTON

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 41 page 13 at which defense counsel challenged the juror for cause in that he arguably was a juror who would automatically answer the special issues such that the death penalty would be the result and that he would always believe police officers.

The trial court granted Defendant's request for an additional peremptory challenge and the defense used strike number 17 on Mr. Bolton because he was an unqualified juror. (RR: Vol. 41 p.14)

Appellant submits that the State qualifies a person with strong beliefs in the death penalty after lengthy instruction on what a qualified juror must do in a death penalty trial. An example of how they illicit the correct answers is found at RR: Vol. 40 p. 112:

Q. Page 8 on the questionnaire, down at the bottom, question 41. Do you believe in an eye for an eye. You checked yes that you said my beliefs in certain cases such as capital murder. We get that a lot from people, and I found that an eye for an eye means different things to different people. Sometimes people say if you take a life, you should be executed and get the death sentence every time. I don't care. And eye for an eye. Other people say no, my eye for an eye is you should face appropriate punishment, whether it's life or death you should just be punished appropriately depending on the facts. Is that how you kind of view that?

A. Yes, sir.

Appellant submits that Mr. Bolton was a strong supporter of the death penalty and thought that the death penalty was used too seldom in certain cases. (Juror Questionnaire p. 5 No. 22) He disagreed with the statement "It is better that ten guilty people go free than one innocent man suffer." He wrote in response to this statement "I believe the guilty should pay for crime." (Juror Questionnaire p. 7 No. 37) He strongly agreed that "If a person is convicted of capital murder, he should be assessed the death penalty." (Juror Questionnaire p. 8 No. 40L) He stated that "I believe in the case of capital murder the death penalty should be used." in response to how he describes his own personal feelings about the death penalty following a conviction for capital murder. (Juror Questionnaire p. 9 No. 44(a)) In answering his feelings about life without parole following the conviction for capital murder, he wrote " Should be used in less case than capital murder." (Juror Questionnaire p. 9 No. 44(b)) Clearly Mr. Bolton is saying that a sentence of death is the only appropriate punishment for capital murder.

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol.45 p. 68) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006);

Barajas v. State, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 13

THE TRIAL COURT ERRED IN DENYING APPELLANT'S CHALLENGE FOR CAUSE AGAINST VENIREPERSON # 493A, LESLI MUTSCHLER

SUMMARY OF VOIR DIRE OF VENIRE PERSON

Appellant directs this Honorable Court's attention to Reporter's Record Volume 41 page 14 at which defense counsel made the following objection:

> MR. PARKS: Your Honor, if it pleases the Court, having no peremptory challenges at this time, we would respectfully advise the Court that this juror, 493A, Lesli Mutschler, is an unacceptable juror for the following reasons. She states on page 3 that the best argument against the death penalty is a person remorseful for his or her actions in committing capital murder. She also advised on page 7 that she believes that police officers are more believable as witnesses than civilians. She also advises on page 10, and this is most concerning for the defense, that with respect to what we consider the mitigating evidence question, number 48, she states that circumstances of the case should be considered and that the rest has no bearing. We would also reurge the previous declarations of the defendant regarding unacceptable jurors and reurge that juror number 178A, Patricia Leach, number 246A, Michael Grugel, number 323A, Cheryl Daley are also unacceptable to the defense; and that it is defense's position that we have used strikes on jurors who were disqualified. Being number 14A, James Freeman, 71A, Bryan Campbell, 253A, Nicole Vanwey, and 309A, Scott Hooper.
>
> For all of those reasons we respectfully request the court to grant us an additional peremptory challenge for this juror, Lesli Mutschler.

The trial court denied Defendant's request for an additional peremptory challenge and Ms. Mutschler was seated as Juror No. 12. (RR: Vol. 41 p.15)

Ms. Mutschler was asked by the State about her comments on remorse she wrote in the juror questionnaire. (RR: Vol. 40 p. 47) She wrote for the best argument for the death penalty was "Intentional murder of another person- that was planned." (Juror Questionnaire p. 3 No. 6) Her answer for the best argument against the death penalty was "The person is remorseful for their actions, want to seek forgiveness and wants to make society better." (Juror Questionnaire p. 3 No. 7) She testified concerning her answers (RR: Vol. 40 p. 47):

A. I think what I mean by that is someone that, that killed someone, took their life, planned it out or, you know, whatever the case may be, but - - and I guess in that situation I don't feel like someone, if it, if it was planned out, and it was, you know, that was their intent that they would have remorse. And they may, but I think that I, I would want someone to feel remorseful for the acts.

Ms. Mutschler answered the question "What would be important to you in deciding whether a person received a death sentence rather than a life sentence without parol in a capital murder case?" by stating "The facts of the case, if found guilty if there is remorse - ownership of actions or lack of." (Juror Questionnaire p. 5 No. 18) Appellant argues that once again Ms. Mutschler brought up the subject of remorse as something she would have to hear from the defendant, a clear violation of the fifth amendment to the U.S. Constitution and article 9, 10 of the Texas Constitutuion.

Appellant submits that by her answers during individual voir dire and on the questionnaire, Ms. Mutschler has shown she would need to hear something from the

Defendant about being remorseful in order to answer Special Issue No. 3, the mitigation issue. This violates the Defendant's 5th Amendment right not to testify.

Ms. Mutschler also thought that police officers were more believable than other witnesses. (Juror Questionnaire p. 7 No. 36) She also answered the question concerning genetic, circumstances of birth, upbringing and environment by saying "I think the circumstances of the case should be considered. The rest should have no bearing." (Juror Questionnaire p. 10 No. 48)

For these reasons, Appellant submits that the Trial Court erred in denying Appellant's challenge for cause. Because the Trial Court erred in denying Appellant's challenge for cause (Art. 35.16(a)(9) ; Art.35.16 (c)(2) C.C.P.) based on the prospective juror's bias against the Defendant, or as a matter of law against the law as relied upon the by the Defendant, Appellant was forced to use a peremptory strike. (RR: Vol. 46 p. 34) *See* TEX.CODE CRIM. PROC. ANN. art. 35.16(b)(3) & (c)(2) (West 2006); *Barajas v. State*, 93 S.W.3d 36,39 (Tex Crim. App. 2002). Additionally, Appellant adopts and incorporates herein the argument and authorities cited in Issue No. 1 and incorporated by reference as if set out verbatim.

APPELLANT'S ISSUE NO. 14

THE JURY AS CONSTITUTED WAS BIASED OR PREJUDICED WHICH DEPRIVED APPELLANT OF A FAIR TRIAL (FEDERAL CONSTITUTIONAL ISSUE)

Appellant submits that the trial court's actions in relation to overruling Appellant's objections to the trial court's actions in reference to each juror complained about previously deprived Appellant of a lawfully constituted unbiased and non prejudicial group of jurors, all of which should have been qualified according to the law by the standards of the Sixth Amendment to the U.S. Constitution and or interpreting Federal Court opinions. Appellant submits that one or all or any combination of errors as previously complained about concerning jury selection constitute a violation of the United States Constitution.

Appellant has suffered injury by denying him due process guaranteed by the 'constitution' in applying law of jury selection to the case at bar. It is a violation of due process to provide for a wrong with no remedy (i.e. *Jones v. State*, 982 S.W.2d 386 (Tex. Crim. App. 1998).

To grant Appellant rights of voir dire, but hold that a violation of the same is not a denial of due process of the highest order is a deceit upon the citizens of this State that potentially stand accused of an offense, as it usurps each citizen's right to fair and impartial jury as in the case at bar, where the State and trial court take advantage of the

defendant having to use its peremptory challenges in a matter in an attempt to have a fair trial by correcting the trial court's errors.

APPELLANT'S ISSUE NO. 15

THE JURY AS CONSTITUTED WAS BIASED OR PREJUDICED WHICH DEPRIVED APPELLANT OF A FAIR TRIAL (STATE CONSTITUTION ISSUE)

Appellant submits that the trial court's actions in relation to overruling Appellant's objections to the trial court's actions in reference to each juror complained about previously deprived Appellant of a lawfully constituted unbiased and non prejudicial group of jurors, all of which should have been qualified according to the law. Art. 35.16 C.C. P. Appellant submits that one or all or any combination of errors as previously complained about concerning jury selection constitute a violation of Constitution of the State of Texas Article One, Section 10.

Appellant has suffered injury by denying him due process guaranteed by Art. 35.16 C.C. P. in applying law of jury selection to the case at bar. See Baird, Judge, dissenting in *Jones v. State*, 982 S.W.2d 386 Tex. Crim. App. (1998):

"Direct and controlling precedent from this Court mandates reversal when a trial judge erroneously grants a State's challenge for cause in a capital case. *Richardson v. State*, 744 S.W.2d 65 (Tex. Cr. App. 1987); and *Bell v. State,* 724 S.W.2d 780 (Tex,. Cr. App. 1986). However, the majority ignores this clear mandate and, in an act of blatant

result-oriented jurisprudence, contorts Tex.R.App.P. § 44.2 to hold implicitly that there is no constitutional right to an impartial jury and to hold explicitly that a criminal defendant does not have a substantial right to a jury selected pursuant ot the legislative scheme prescribed by Tex. Code Crim. Proc. Ann. Chapter 35."

GUILT/INNOCENCE TRIAL ISSUES

APPELLANT'S ISSUE NO. 16

THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUESTED JURY VERDICT FORM THAT ALLOWED THE JURY TO MAKE A DETERMINATION OF GUILT/INNOCENCE ON EACH ALLEGED MANNER AND MEANS OF COMMITTING THE ALLEGED OFFENSE RATHER THAN A GENERAL VERDICT

Appellant respectfully directs this Honorable Court's attention to Reporter's Record Vol. 46 p. 156 and Vol. 47 p. 7-8 at which the defense requested separate verdict forms for each manner the indicted offense was alleged. The trial court denied that request. A defendant may be convicted of the offense of Capital Murder by engaging in any one nine separate fact scenarios (Sec. 19.03) (1-9) Texas Penal Code. The indictment in this case alleged two separate fact situations of committing Capital Murder (sec.19.03 (2) or (7)). One fact situation was committing murder during the commission of burglary, the other was committing murder of more than one person during the same criminal transaction. (Clerk's Rec. Vol. P. 32). The jury was charged in the disjunctive even though the indictment was also plead in the disjunctive. (Clerk's

Rec. Vol. 11 p. 4113-4281) The jury charge in guilt/innocence had only one verdict form, despite Appellant's request for two verdict forms. Appellant's objection to only one verdict form was overruled.

Appellant submits that pursuant to cases of *Ngo v. State*, 175 S.W.3d 738 (Tex. Crim.App. 2005) and *Francis v. State*, 36 S.W.3d 121 (Tex. Crim. App. 2000) he was entitled to two separate jury verdict forms to insure jury unanimity of verdict. In one allegation, the jury had to believe beyond a reasonable doubt that the allegation of murder in the course of committing burglary was proven beyond a reasonable doubt and or that the other alleged fact situation that two separate people were murder in the same criminal transaction. With only one verdict form, there is no way of knowing if the jury was unanimous on which fact situation was proven if either was beyond a reasonable doubt. *See also Hisey v. State*, 161 S.W. 3d 502 (Tex. Crim. App. 2005). Appellant's constitutional and statutory right to a unanimous jury verdict was violated and this violation caused egregious harm to his right a fair and impartial trial. *Clear v. State*, 76 S.W.3d 622 (Tex, App.-Corpus Christi 2000, no pet.) and *Bluitt v. State,* 137 S.W.3d 31 (Tex. Crim. App. 2004).

APPELLANT'S ISSUE NO. 17

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO EVIDENCE OF EXTRANEOUS OFFENSES

Appellant directs this Honorable Court's attention to Reporter's Record Volume 44 pp. 64-68 at which the following occurred:

THE COURT: All right. Mr. Shook, if you'll attend to that, whatever that situation is. And then Mr. Seymour, I believe that you had an objection to the State's first witness, is that correct?

MR. SEYMOUR: Yes, I do, your Honor. I believe it will be Judge Chitty. I believe buy Mr. Wirskye's opening statement, Judge Chitty will make a proffer of a conviction of some type for Eric Williams. I believe that's immaterial, irrelevant. I believe it is nothing but propensity evidence that should be barred from inclusion in this case in chief. I believe on a balancing test that the probative value does not outweigh its substantially prejudicial effect. I'd like to have a running objection so that I can make this objection now outside the presence of the jury, but I do believe that we will have a hearing, a hearing is required to establish those claims.

THE COURT: Response from the State to that?

MR. WIRSKYE: Judge, I thought we had already had a hearing on the admissibility of this. I anticipate Judge Chitty will be a short witness. We believe obviously it's admissible for all of the reasons we talked about when we were here last on it. Just for the Court's - - I told counsel all I do is plan to ask about a felony conviction. I don't plan to get in on the type of charge or any sort of details past that.

THE COURT: We have previously had a hearing on this matter. At that time I ruled that the evidence was inextricably intertwined, res gestae with the charged offense. I then went further and said that if, even if I was incorrect about that, that it would be admissible under 404(b) as showing plan, motive, and propensity. I also ruled that the evidence was more probative than prejudicial. Accordingly, your objection is overruled. Your request to have a running objection is granted.

APPELLANT'S ISSUE NO. 18

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO THE STATE PRESENTING EVIDENCE OF AN EXTRANEOUS OFFENSE; TO-WIT: THE MURDER OF MR. MARK HASSE IN THE GUILT/INNOCENCE STAGE OF THE TRIAL

(Issues No. 17 and No. 18 are combined for argument as each involves similar facts and issues of law.)

Appellant respectfully directs this Honorable Court's attention to Reporter's Record Volume 9 p. 22-27 at which a sub rosa hearing was held to argue this issue. The trial court overruled Appellant's objection and allowed evidence of the extraneous offense of Prosecutor, Mr. Mark Hasse.

The complaint in this point of error was a violation of Rule 404(b) Texas Rules of Criminal Evidence which prohibits evidence of other crimes, wrongs, or acts commonly known as "extraneous transactions".

A plea of "not guilty" is not sufficient to authorize proof of extraneous offenses demonstrating that the accused is a criminal generally. An accused is entitled to the tried on the accusation made in the State's pleading and not on some collateral crime, or for being a criminal generally. *Kemp v. State*, 464 S.W. 2d 141 (Tex. Crim. App.). It should be noted that Appellant did not testify in the case at bar. *Jones v. State*, 587 S.W. 2d 115 (Tex. Crim. App. 1979) A Defendant has basic right to be tried on the indictment and not for collateral crimes. Evidence of uncharged misconduct to show

criminal propensity is inadmissible not because it is logically irrelevant, but because it is inherently and unfairly prejudicial. It deflects the jury's attention from the immediate charges and causes it to prejudge a person with a disreputable past, thereby denying that person a fair opportunity to defend against the offense that is charged. *United States v. Roark*, 924 F.2d 1426, 1434 (8th Cir. 1991). *See Laycano v. State*, 836 S.W. 2d 654 (Tex. Crim. App. - El Paso 1992)

Appellant argues that the prior extraneous was a pretext to prejudice his right to a fair trial since the extraneous offense does not disprove any defensive issue and it is and attack on the character of Appellant' which is prohibited by Rule 404(b) T.R.Evid. The extraneous prior offense does not tend to make the existence of a fact more probable or less probable due to the lack of nexus to the facts of the case at bar. See *Moreno v. State*, 858 S.W.2d 453 (Tex. Crim. App. 1993) *Saenz v. State*, 843 S.W.2d 24 (Tex. Crim. App. 1992) rev'd on remand 846 S.W.2d 572 (Tex. App. -Houston [14th Dist] 1993).

Appellant further argues that the probative value of evidence of the extraneous offense was substantially outweighed by the risk of unfair prejudice to the defendant. *Stewart v. State*, 874 S.W.2d 752 (Tex. App.-Houston [1st Dist] 1994)

Montgomery v. State set the standard for review of evidentiary rulings relating to extraneous offenses. 810 S.W.2d 372, 391 (Tex. Crim. App. 1991) (op. on reh'g); see

also *Rankin v. State*, 974 S.W.2d 707, 718 (Tex. Crim. App. 1998). Montgomery defined relevant evidence and discussed the admissibility of that evidence as well as a trial court's role in determining admissibility. *Rankin*, 974 S.W.2d at 718. Further, the court outlined the approach that a trial court should take in determining whether the prejudicial effect of relevant evidence outweighs the probative value of the evidence. The trial court must perform a two step evaluation of the extraneous evidence, the first evaluation addressing the relevancy of the evidence under Rule 404(b) and the second evaluation balancing the probative value of the evidence and the prejudicial effect of the evidence under Rule 403.

Appellant first contends that the district court erred in overruling his relevancy objections, because the extraneous offense had no relevance aside from showing appellant's bad character. As defined in Rule 401, "relevant"evidence is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable then it could be without the evidence." Tex. R. Evid. 401. If the evidence is relevant it is admissible so long as no constitutional provision, statute, or rule bars its admissibility. Tex. R. Evid. 402. Relevant evidence, however, may not be admissible for every purpose. Rule 404(b) bars evidence of "other crimes, wrongs or acts" when that evidence is admitted for the purpose of proving "the character of the person in order to show that he acted in

conformity therewith." Tex. R. Evid. 404(b). Rule 404(b) incorporates the fundamental tenet of our criminal justice system that an accused may be tried only for the offense for which he is charged and not his criminal propensities. *Owens v. State*, 827 S.W.2d 911, 914 (Tex. Crim. App. 1992)

The State failed to meet the two prong test of relevancy and overcome prejudicial vs. probative value that rendered this evidence of the extraneous offense inadmissible. The error was such that it denied Appellant due process a fair trial and was harmful as it placed evidence of bad character before the jury in a way that was wholly impermissible with the intent to prejudice Appellant before the jury which effect was to deny him a fair trial.

APPELLANT'S ISSUE NO. 19

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO STATE'S EXHIBIT 155, A PHOTOGRAPH OF AN IMPROVISED INCENDIARY DEVICE NOT LISTED IN THE STATE'S RULE OF EVIDENCE 404 (b) NOTICE TO THE DEFENSE

Appellant objected to the introduction of State's Exhibit No. 155, a photograph of an improvised incendiary device, because the defense was not given proper notice under rule 404(b) TEX. R. EVID.

In determining whether a trial court erred in admitting evidence, the standard for review is abuse of discretion. *Mozon v. State*, 991 S.W.2d 841, 846-47 (Tex. Crim.

App. 1999). "A trial court abuses its discretion when its decision is so clearly wrong as to lie outside that zone within which reasonable persons might disagree." *Foster v. State*, 909 S.W.2d 86, 88 (Tex. App.-Houston [14th Dist.] 1995, pet. ref'd)(citing *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1991)(op. on reh'g)).

Rule 404(b), which governs the admissibility of extraneous crimes and other wrongs, provides:

> Evidence of other crimes, wrongs or acts may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, *provided, upon timely request by the accused, reasonable notice is given in advance of trial of intent to introduce in the State's case in chief* such evidence other than that arising in the same transaction.

Tex.R.Evid. 404(b) (emphasis added). The purpose behind the notice provision of this rule is to adequately make known to the defendant the extraneous offense the State intends to introduce at trial. *Self v. State*, 860 S.W.2d 261, 264 (Tex. App. -Fort Worth 1993, pet. ref'd).

The lack of notice compromised defense counsel's ability to adequately cross examine the witness concerning the lack of nexus of possession of the alleged device to the 'McLelland' shooting events. The probative value was substantially outweighed by the prejudicial effect the evidence had on the jury during their deliberations.

The primary purpose of rule 404(b)'s notice provision - to inform the defendant of the State's *intent* to use extraneous evidence so that the defendant can prepare his

defense. *See* Tex. R. Evid. 404(b); *Hayden*, 13 S.W. 3d 69 (Tex. App.-Texarkana 2000); *Self,* 860 S.W.2d at 264. The Texas Court of Criminal Appeals has made it clear that the burden of compliance with this rule is on the State; *no intent is presumed. Suchanan v. State*, 911 S.W. 2d 11 (Tex. Crim. App. 1995) (reversed on remand 1996 WL 640749, 1996). Appellant was denied his constitutional right to due process and a fair trial.

APPELLANT'S ISSUE NO. 20

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO THE EXPERT TESTIMONY OF STATE'S WITNESS, MR. JAMES JEFFRESS, AS AN EXPERT WITNESS ON BALLISTIC EVIDENCE

Appellant directs this Honorable Court's attention to Reporter's Record Volume 42 pp. 5-52 , a pretrial hearing pursuant to rule 702-705 on the proffered expert testimony by the State in the field of ballistic evidence. Appellant renewed his objection; which was overruled at Reporter's Record Vol. 45 p. 121.

A 'Daubert Hearing' was conducted sub rosa to determined if the witness, James Jeffress, was qualified as an expert witness as to what he proposed to testify and what opinions he would be giving. After presenting the testimony, Appellant made the following objections:

THE COURT: Okay. All right, I'll hear argument from you, Mr. Seymour.
MR. SEYMOUR: Judge, my largest complaint is in the Kelly factors. Most assuredly the potential error rate of the technique is one of the factors the Court should consider in it's gatekeeping function. It's without a doubt Mr. Jeffress has training and

experience in this field, but this field is devoid of any statistical validation whatsoever. It is based on proficiency testing that were not designed in any way to indicate an error rate for any examiner, including him. The different techniques used by different laboratories vary across the board. There just simply isn't, and the published articles in this field show, there just isn't a statistical basis for this science at all. It is all based on the subjective observations of one person and one person only, the analyst who is testifying to those facts.

And Mr. Jeffress admitted there is no way you can establish for even him an error rate. It's an impossible thing for him to determine, and he also claims that he's been - - at least not made any technical errors that have been noted on any of his cases, so it appears that he has flawless work. That simply - - -it's just unfeasible in every way.

I also think that the clarity of which the underlying scientific theory and technique can be explained to the Court, while this is a very simple and direct powerpoint presentation, the actual science behind this shows that there is a lot of contention as to whether the way Mr. Jeffress conducts his examinations and the way other laboratories conduct their examinations, which one is correct, which one has more bearing, which one has more - - which one just simply has a greater degree of accuracy.

I think on those items alone they fail, and the Court should find that this evidence - - -well, that he can not testify to the facts in absolute terms as he has that these items all originated from the same firearms. I think that those - - -that term practical impossibility is without merit, without meaning. It is misleading and confusing to potential jurors in this case. It will give them a standard that ha no objective science behind it. It will be meaningless.

The trial court overruled the objection and allowed the testimony.

ADMISSIBILITY OF EXPERT TESTIMONY

The framework of Texas evidentiary rules requires a trial judge to make at least three separate inquiries before admitting expert testimony: (1) is the witness qualified as an expert by reason of knowledge, skill, experience, training, or education; (2) is the subject matter of the testimony an appropriate one for expert testimony; and (3) will the expert testimony actually assist the fact finder in deciding the case? *Vela v. State*, 209

S.W.3d 128, 131 (Tex, Crim. App. 2006). "These conditions are commonly referred to as (1) qualifications, (2) reliability, and (3) relevance:" *Id.*

The trial court's ruling on the admissibility of scientific expert testimony is reviewed under an abuse of discretion standard. *Weatherred v.State*, 15 S.W.3d 540, 542 (Tex. Crim. App. 2000). A trial court abuses its discretion when its ruling fall as outside "the zone of reasonable disagreement." *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990)(op. on reh'g).

There are three issues the trial court considers in an expert reliability challenge: (1) that the underlying scientific theory is valid; (2) whether the technique applying the theory is valid; and (3) whether the technique was properly applied on the occasion in question. *See Weatherred*, 15 S.W.3d at 542; *Kelly v. State*, 824 S.W.2d 568, 573 (Tex. Crim. App. 1992).

Appellant submits that pursuant to trial counsel's objection and argument presented the witness was not properly qualified and did not meet the 'Kelly' standards of proof. The trial court thereby denied Appellant a fair trial by allowing the State to present unqualified expert opinion about firearms and ballistic comparisons.

Appellant argues that this type of evidence fails to meet the heightened reliability requirement of the Eighth Amendment to the United States Constitution, because the trial court abused its discretion in performing its gate keeper function to avoid 'junk

science' being presented to juries pursuant to requirements of *Daubert, Kelly and Nenno*, principles as explained recently in *Coble v. State,* S.W.3d 330 (Tex. Crim. App. 2010)

There is no objective source material on the record to substantiate Mr. Jeffress's methodology statistical validation or error rate. The trial court abused its discretion in admitting Mr. Jeffress's testimony on this issue before the jury. (See discussion of same legal principles applied against defense expert witness in *Vela v. State*, 209 S.W.3d 128 (Tex. Crim. App. 2006) *See Coble v. State*, 330, S.W. 3d 253 (Tex. Crim. App. 2010)

Appellant argues that this error affected Appellant's substantial rights to a fair trial at guilt/innocence, because of the speculative opinions given by the witness. This complained of evidence unequivocally affected Appellant's right to a fair trial on the accusation presented in the indictment.

Appellant's substantial rights were affected by the complained of evidence because the opinion given was an unreliable conclusion based on a nonexistent methodology. The appropriate remedy is to reverse an remand for a new trial.

APPELLANT'S ISSUE NO. 21

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO "IN COURT" IDENTIFICATION

Appellant directs this Honorable Court's attention to the following references in the trial record where Appellant's counsel objected to the in-court identification of

Appellant pursuant to his pretrial motion (Clerk's Record Vol. 10 p. 3901) See Reporter's Record Vol. 44 p. 71, 221, 233; Vol. 45 p. 29, 121; Vol. 48 p. 55, 188; Vol. 49 p. 189; Vol. 50 p. 23, 37 and Vol. 54 p. 129. The trial court each time overruled the objection; which relates to the motion in limine filed by the defense (Clerk's Record Vol. 10 P. 3901). Counsel argued that any in-court identification in front of the jury should be preceded by a properly conducted pre-trial identification procedure in compliance with the United State's Supreme Court factors discussed in *Neil v. Biggers*, 409 U.S. 188 (1972). *See also Maucon v. Brathwaite*, 432 U.S. 98 (1977). Appellant submits the argument of trial counsel that the overruling of his objection violated Appellant's right to due process and any other identification procedure was substantially more prejudicial than probative under Tex. R. Evid. 403.

APPELLANT'S ISSUE NO. 22

THE EVIDENCE IS LEGALLY INSUFFICIENT TO SUPPORT THE CONVICTION FOR CAPITAL MURDER

A review of the testimony shows that the record is insufficient to show Appellant participated in the offense of Capital Murder.

Standard of Review

When an Appellant questions the sufficiency of evidence, the Appellate Court reviews the evidence in the light most favorable to the verdict. The Court must

determine whether any rational trier of fact could have found each element of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S.307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); *Butler v. State*, 769 S.W.2d 234, 239 (Tex. Crim.App. 1989). This standard of review applies to circumstantial evidence cases as well as to direct evidence cases. *Houston v. State*, 663 S.W.2d 455, 456 (Tex. Crim.App.1984).

Texas law requires that the State establish:(1) the offense was actually committed; and (2) the accused was the person who either committed or participated in the crime. See *Johnson v. State*, 673 S.W.2d 190, 197 (Tex. Crim. App.1984). The State must prove more than just a plausible explanation of the crime. *Reeves v. State*, 806 S.W.2d 540, 543 (Tex. Crim.App.1990), cert. denied, –U.S.–, 111 S.Ct. 641, 113 L.Ed.2d 736 (1991). While the trier of fact is the sole judge of the weight and credibility of the witnesses, *Coe v. State*, 683 S.W.2d 431, 438 (Tex.Crim.App.1984); *Williams v. State*, 692 S.W.2d 671, 676 (Tex.Crim.App.1984), a guilty verdict should not be allowed to stand merely because the defendant was found to be the most likely perpetrator. A defendant, even the most likely defendant, is presumed to be innocent unless his guilty is established beyond reasonable doubt. See TEX.CODE CRIM. PROC. ANN. Art 38.03 (Vernon Supp. 1991); see also *Ardovina v. State*, 143 Tex. Crim. 43, 156 S.W.2d 983, 984(1941); *Perkins v. State*, 32 Tex. 109, 112(1869).

Appellant argues that there was insufficient evidence presented to sustain the jury's verdict of guilt. The State presented twenty-eight witnesses in its case in chief. Not one witness placed the Appellant at the scene of the murder of Cynthia McLelland. Not one witness ever heard Appellant threaten to kill the McLellands. There was no Facebook post or any social media threats by Appellant to commit the murder of Cynthia McLelland. These types of evidence, which are found in many cases, were not present in this case. There was only circumstantial evidence, and very little of that, linking Appellant in any way to the McLelland murders.

According the State's theory, good investigation of circumstantial evidence, should convince the Jury to convict Appellant. This was the State's argument due to the facts that there was no video evidence of the crime, no DNA or biological evidence at the scene of the murder, no fingerprints, no blood spatter, no crime scene recreation, and no eye witness to the murder or who placed Appellant at the scene or anywhere near the McLelland's home the day of the murders. So, the State relied on motive, emotion, fear and circumstantial evidence in a highly charged and publicized case.

The State of Texas proceeded under two theories of capital murder. First, the multiple murder theory and secondly, that the murders occurred in conjunction with a burglary of a habitation. (RR: Vol. 47, p. 14). The State argues that either way was proven. Appellant asserts neither way was proven beyond a reasonable doubt. Firstly,

there is no proof that Appellant shot and killed one person, let alone two. The forensics and physical evidence do not point to a specific person, but possibly to a place, Gibson's Self Storage, in Seagoville, Texas. The State never presented evidence of who had the keys to this storage unit or that any keys were ever found in the possession of Appellant. Appellant may have had access to that storage unit, however, two other people did also, Appellant's wife, Mrs. Kimberly Williams and the man who rented the unit, Mr. Barton Williams. (RR: Vol. 44, p. 242-243).

Secondly, there is no proof that was a burglary of any kind. No evidence was presented establishing any forced entry, entry by deception, that Appellant was using lock picks, or a disguise to gain entry into the home where the murders occurred. The State even admitted as much in closing argument, "So we proved circumstantially that yes, there's no consent". (RR. Vol. 47, p. 14). How does one circumstantially prove what was said or not said?

The State also relied on computer forensic data which supposedly linked Appellant to the crime. However, there is no proof that Appellant sent any of the messages that were attributed to him by the State. Also, certain cellular telephones were seized by police during the investigation of the murders and no evidence of calls, texts, or emails sent from the phones. There was no evidence presented of phone tracking

data, commonly known as "pings" off of cellular towers, which is used to track movements of suspects.

The Due Process Clauses of the Fifth and Fourteenth Amendments require that a criminal conviction be supported not only by proof beyond a reasonable doubt regarding every essential element of a crime, but that such determination be made by a rational trier of fact. U.S. Const. Amend. V; U.S. Const. Amend. XIV; *Laster v. State*, 275 S.W.3d 512 (Tex. Crim. App. 2009). Appellant submits that the evidence is insufficient to support the verdict of guilt.

MOTION FOR NEW TRIAL ISSUES
APPELLANT'S ISSUE NO. 23

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR NEW TRIAL WHICH CLAIMED THAT APPELLANT SHOULD BE GRANTED A NEW PUNISHMENT HEARING DUE TO THE FAILURE OF THE TRIAL COURT TO PERMIT A CAPITAL DEFENDANT FROM PROPERLY INVESTIGATING, DEVELOPING AND PRESENTING MITIGATING EVIDENCE IN THE PUNISHMENT STAGE OF THE TRIAL

APPELLANT'S ISSUE NO. 24

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR CONTINUANCE TO INVESTIGATE AND DISCOVER THE MITIGATING EVIDENCE PRESENTED AT THE MOTION FOR NEW TRIAL HEARING

Appellant had filed several sworn motions for continuance (see Clerk's Rec. Vol. 9 p. 3537, 3745,3810; Vol. 10 p. 4250, 3950; Vol. 11 p. 4283, 4304) to fully

investigate mitigation evidence and present mitigating mental health evidence from expert witnesses authorized by the trial court to conduct certain brain scan evidence before the jury. The trial court did not give the defense enough time to fully investigate and present these expert and there findings witnesses presented in the motion for new trial. Appellant began urging his motion for continuance before voir dire and continued to reurge the same. (RR: Vol. 11p. 5; Vol. 12 p. 6; Vol. 13 p. 5; Vol. 14 p. 10; Vol. 15 p. 5; Vol. 16 p. 6; Vol. 17 p. 9, 226; Vol.19 p. 7; Vol. 22 p. 92; Vol. 23 p. 5;Vol. 24 p. 4; Vol. 25 p. 5; Vol. 27 p.5; Vol. 32 p. 5; Vol. 34 p.5;Vol. 35 p. 5; Vol. 42 p. 5; Vol. 43 p. 4; Vol. 44 p. 10; punishment stage Vol. 48 p. 6; Vol 50 p. 56 and; Vol. 53 p. 7 and see Clerk's Record Vol.11 p. 4367-4402) Defense's continuance motion as reurged was denied on each occasion.

Appellant's counsel argued that they were entitled to a reasonable time to investigate this very important issue and repeatedly requested a continuance throughout the trial to preserve this issue and complaint (see brief fact statement in Brief in Support of Motion for New Trial (Clerk's Record Vol. 11 p. 4452 which is incorporated herein by reference as if set out verbatim) The Court denied the defense any additional time by its motion for continuance.

Appellant timely filed a verified motion for new trial. (CR: Vol. 11 pp. 4367) Appellant claimed that he was entitled to a new trial in the interest of justice because

even though the trial court eventually funded the necessary defense experts, the court did not give the defense sufficient time to get the necessary brain scans done and analyzed.

The defense exercised due diligence in attempting to develop the medical mitigation evidence necessary to give the defendant effective assistance of counsel at the punishment hearing during the trial. After the trial was over, the defense presented newly discovered evidence that showed how the defense's mitigation case would have been substantially improved and enhanced by the defense's experts, Dr. Orrison, Dr. Uribe, Dr. Yount and Mr. Mayfield's opinion about a number of risk factors for traumatic brain injury in the Defendant's history. (See Reporter's Record Volume 59 for evidentiary hearing on Appellant's motion for new trial.) Appellant argued to the trial court that the evidence presented during the motion for new trial hearing showed that evidence existed that there was something organically wrong with the Defendant's brain. (RR: Vol. 11 p. 22-) There was some hippocampal atrophy of the brain. Appellant refers this Honorable Court to the argument of defense counsel at the motion for new trial hearing which is incorporated herein by reference as to the efforts made by the defense team to acquire the requisite medical diagnosis of the brain that they thought was a most important and relevant piece of mitigation evidence.

Had the defense been able to present these witnesses to the jury it is arguable that at least some juror would have voted that the State had not proved the future dangerous special issue beyond a reasonable doubt. Appellant in order to receive due process of law should have been allowed sufficient time to develop and present his very relevant and important medical evidence concerning brain function in the Defendant.

The trial court eventually denied the motion for new trial.(RR: Vol. 59 p. 42) (Clerk's Rec. Vol. 11 p. 4476)

Appellant argues that the trial court abused its discretion in denying the continuance which prejudiced Appellant in that there was extensive evidence to that was not made available to the jury. Appellant has demonstrated an inability to present specific testimony as result of the denial of the delay which established harm that was prejudicial to his constitutional rights to the opportunity to fairly and effectively confront any witness produced against the defendant. *See Merritt v. State*, 982 S.W.2d 634 (Tex. App.- Houston[1st Dist.] 1998). The erroneous exclusion of constitutionally relevant mitigating evidence offered by a defendant facing a possible death sentence is analyzed for harm under Texas Rule of Appellate Procedure 44.2(a). Such error requires reversal unless the court determines beyond a reasonable doubt that it did not contribute to the punishment. *Renteria v. State,* 206 S.W.3d 689, 698 & n.7 (Tex. Crim. App. 2006) (citing *Tennard v. Dretke*, 542 U.S. 274, 284-87 (2004), and

applying a Rule 44.2(a) harm analysis to an erroneous exclusion of constitutionally relevant mitigating evidence); see also *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 240-44 (2007) and *Skipper v. South Carolina*, 476 U.S. 1, 8 (1986).

Appellant argues that Texas Due Process and due course clauses are also implicated here. Appellate review of *non-structural* federal constitutional claims is accomplished under the standard of *Chapman v. California*, 386 US 18, 23 (1967). Under *Chapman*, the presence of federal constitutional error requires reversal unless the state demonstrates that the error was harmless beyond a reasonable doubt. Additionally, the Supreme Court has consistently recognized the role of structural error. *Chapman v. California*, ibid., *Arizona v. Fulminante*, 499 U.S. 279, 309, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) (holding that "structural defects in the constitution of the trial mechanism" are per se prejudicial).

After trial has begun, a trial court may grant a motion for continuance "when it is made to appear to the satisfaction of the court that by some unexpected occurrence since the trial began, which no reasonable diligence could have anticipated, the applicant is so taken by surprise that a fair trial cannot be had." TEX.CODE CRIM. PROC. Ann. Art. 29.13. Review of a trial court's ruling on a motion for continuance for abuse of discretion. *Gallo v. State*, 239 S.W.3d 757, 764 (Tex. Crim. App. 2007).

Trial counsel argued that the trial court delayed the needed court funding to develop mitigating evidence, at a time when the evidence could be developed without a delay in the proceedings, or with only a minor delay, Appellant argues that the discretion of the court was abused by the delay in funding combined with the refusal to grant a continuance after a court-caused dely. Trial counsel claimed that the trial judge denied or delayed the initial funding application on an unreasonable basis - - that brain imaging was not needed to establish diabetes, but defense counsels considered diabetes to be a likely cause of brain damage, not the other way around. See Brief in Support of Motion for New Trial. (Clerk's Record Vol. 11 p. 4457-4458) See also argument and authorities presented in Appellant's brief in support of his motion for new trial. (Clerk's Re. Vol. 11 p. 4456-4458) Appellant argues that the trial court abused its discretion in denying the motion for continuance. *Gallo v. State*, 239 S.W. 3d 797 (Tex. Crim. App. 2007) Appellant has demonstrated how he was harmed by the jury not being able to consider the medical mitigating evidence presented in the motion for new trial. *Gonzales v. State,* 304 S.W. 3d 838 (Tex. Crim. App. 2010)

APPELLANT'S ISSUE NO. 25

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR NEW TRIAL ARGUING HE WAS DENIED DUE PROCESS OF LAW BECAUSE OF JUDICIAL BIAS IN HOW THE TRIAL WAS CONDUCTED

Appellant respectfully directs this Honorable Court to the motion for new trial (Clerk's Re. Vol. 11 p. 4451-4472) which was presented at an evidentiary hearing (RR: Vol. 59) that presented a claim of violation of due process due to judicial bias in the way the trial was conducted by the trial judge. Appellant claimed that the jury's verdict was effected by the conduct of the trial court toward the defense by denying the defense the opportunity to present medical mitigation evidence as presented in the previous issue and the favoritism toward the State, antagonism toward the defendant and the assertion of knowledge about the defendant that a judge ought not possess and negative disposition or opinion in an excessive degree were demonstrated by the video footage presented in the motion for new trial hearing. (See post trial exhibits nos. Dx 4-15) (RR: Vol. 60 part 3). The argument and authorities presented on this issue in brief in support of the motion for new trial are incorporated herein by reference as if set out verbatim. Appellant was denied a constitutional fair punishment hearing in violation of his rights under the 4th, 5th 6th and 8th amendments to the U.S. Constitution.

At the motion for new trial hearing, defense counsel itemized and categorized the acts of judicial bias that was experienced during the trial. (See; RR: Vol. 59 p. 16-20).

Trial counsel argued that there existed more than mere facial expressions and demeanor of the court. Trial counsel argued there existed a pattern of inconsistent rulings and disparate treatment between defense counsel and the prosecution. When the State had witness problems, the state was accommodated. When the defense had witness problems, it was treated differently, After the punishment verdict, the court compared the Defendant to numerous notorious nationally known murderers, which revealed the trial court's attitude to the defense's mitigation evidence. (RR: Vol. 59 p. 19)

Judicial bias is not only a federal constitutional error, but also a structural constitutional error. *Tumey v. Ohio*, 273 US 510 (1927). Under *Tumey*, the presence of judicial bias error requires reversal without a showing of harm or prejudice. Appellant argues that the Texas Rules of Appellate Procedure embrace the *Chapman v. California* rule and recognize the some errors do not require a showing of harm. See TRAP 44.2(a) and (b).

In *Ex Parte Gonzales,* 204 S.W.3d 391, 399-400 (Tex. Crim. App. 2006. citing *Wiggins v. Smith,* 539 U.S. 510, 534 (2003)) a grant of relief for failure to develop a grant of relief for failure to develop mitigating evidence is the case the Court of Appeals said:

"We believe the mitigating evidence presented at the habeas hearing is substantially greater and more compelling than that actually presented by the applicant

at his trial. We cannot say with confidence that the facts of the capital murder and the aggravated evidence originally presented by the State would clearly outweigh the totality of the applicant's mitigating evidence if a jury had the opportunity to evaluate it again. In short, we conclude that the applicant's available mitigating evidence, taken as a whole, "might well have influenced the jury's appraisal of the applicant's moral culpability. Therefore, there is at least a reasonable probability that, had this mitigating evidence been available at the applicant's original punishment hearing, a different result would have occurred, such that is undermines our confidence in the outcome."

In this case, the defense was adduced evidence of brain imaging at motion for new trial hearing that Mr. Williams has suffered brain injury to portions of the brain that involve pride, humiliation, guilty, atonement and the development of moral intuition and empathy. (RR: Vol. D. Ex. at 10) Dr. Orrison found frontal lobe injury related to loss of insight and foresight, decreased control and poor judgement. D. Ex.1 at 23. The combination of the limbic and frontal abnormalities found by Dr. Orrison are related to emotional disturbances, violent outbursts, aggression, and emotional lability, a condition of excessive emotional reactions and frequent mood changes. RR: Vol. D.Ex. 1 at 24). The Uribe opinion was based only on one form of data interpretation - - visual reading of images. Dr. Orrison employed that, and Neuroquant as something akin to a spell checker on a word processor.

Appellant recognizes that a judge's remarks during trial that are critical, disapproving, or hospital to counsel, the parties, or their cases, usually will not support a bias or partiality challenge. Although intemperate remarks may well violate a rule of judicial conduct, such a violation does not necessarily mean that the judge should be recused. *Gaal v. State*, 332 S.W. 3d 448, 454-455 (Tex. Crim. App. 2011)

The parties have a right to a fair trial. *Dockstader v. State* 233 S.W.3d 98, 108 (Tex. App.-Houston [14th dist.] 2007, pet. ref'd). One of the most fundamental components of a fair trial is a neutral and detached judge. *Id*. A judge should not act as an advocate or adversary for any party. *Id.*

Trial counsel argued that there was demonstrated in the trial record a favoritism toward the State, antagonism toward Mr. Williams and the assertion of knowledge about Mr. Williams that a judge ought not possess, and negative disposition or opinion in an excessive degree are demonstrated by the video footage adduced by the defense counsel in this case.

In this case, Honorable Judge Michael Snipes, presiding judge, allowed the media to film the trial, in both the guilt/innocence and punishment phases of trial of the Appellant. During the trial, particularly during the Appellant's punishment phase, Judge Snipes made facial expressions that Appellant's trial counsel argued in the

motion for new trial undermined the credibility of the defense and was an improper comment on the weight of Appellant's evidence.

Trial counsel presented in the motion for new trial argument that a review of video tape 'DVD's of the trial found in defense exhibits DX-4-DX15 which were admitted during the hearing on the motion for new trial show numerous instances of displeasure with the defense's presentation of mitigation evidence and a preference for the State's aggravating evidence during the punishment hearing

This is particularly disconcerting when Judge Snipes is only on camera an estimated 3-4% of the time. And yet, we see these expressions, with the jury present in the courtroom, multiple times. Support for trial counsel's claims of bias toward Appellant's counsel are found in post trial defense exhibits DX10,12,13 and are indexed as follows:

1. Disc 10, Reference to time counter on DVD 28:10-20, Mr. Peck is arguing and Judge Snipes is sneering while looking at Mr. Peck as he argues. At 29:48, Judge Snipes does the same thing again.
2. Disc 12, Reference to time counter on DVD 2:36:40, Judge Snipes dismissively waves at defense table.
3. Disc 13,Reference to time counter on DVD 26:27-51, Judge Snipes sneers at defense.
4. Disc 13, Reference to time counter on DVD 1:11-13, sideways glance and smirk toward the defense table.
5. Disc 13,Reference to time counter on DVD 6:09-21, Judge Snipes comments on evidence and derisive facial expression.
6. Disc 13, Reference to time counter on DVD 1:00:51, looks at Appellant's table with derision and shakes head.

7. Disc 13, Reference to time counter on DVD 1:01:07, finger on side of head, head cocked to the side, look of annoyance as Appellant's side speaks.
8. Disc 13, Reference to time counter on DVD 1:01:28, look of annoyance.
9. Disc 13, Reference to time counter on DVD 1:12:28-49, After telling Appellant's counsel to discontinue line of questioning, annoyed look.
10. Disc 13, 1:12:59-59, pattern of quizzical looks to Appellant's table and turns into a scowl.
11. Disc 13, Reference to time counter on DVD 1:54:04, sideways glance to Appellant's table after a sustained objection, annoyed look after Judge Snipes ASKS for objection.

12. Disc 13, Reference to time counter on DVD 2:28:47-50, looks to State's table to object, derisive look.

See Appendix for individual screen shots of trial court's demeanor toward the defense that was treated differently than the demeanor toward the State.

PUNISHMENT TRIAL ISSUES

APPELLANT'S ISSUE NO. 26

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO STATE'S EXHIBIT NO. 528, A VIDEO OF THE MARK HASSE CRIME SCENE

Appellant directs the Honorable Court to Reporter's Record Volume 48 p. 104-107 at which a sub rosa hearing was held where the trial court overruled Appellant's objections to the video evidence in State's Exhibit No. 528. Trial counsel argued that the witness, Stastny had already testified about the incident involving the shooting of Mark Hasse that the video was more prejudicial than probative and contained multiple hearsay voices.

Appellant argues that the trial court abused its discretion in admitting the video evidence as being more probative than its prejudicial value to inflame the jury. The trial court's decision is not within the "zone of reasonable disagreement" and as such denied Appellant his due process substantial right to a fair trial. *See Russell v. State,* 113 S.W.3d 530 (Tex. Cr. App.-Ft. Worth, 2003).

APPELLANT'S ISSUE NO. 27

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO VICTIM IMPACT EVIDENCE OF A VICTIM NOT NAMED IN THE INDICTMENT

Appellant respectfully directs this Honorable Court's attention to Reporter's Record Volume 48 p. 29 at which the following occurred:

> . . .
> MR. SEYMOUR: Judge, I'll object under relevance and 403.
> THE COURT: Okay. The Court concludes that the evidence is more probative than prejudicial, and the objection is overruled.
> Judge, may I, may I add an objection under, specifically under Cantu v. - - versus State, 939 S.W.2d 627, which says that a murder victim not named in the indictment, while admissible under same transaction contextual evidence, evidence of good character activities or impact of, of that individual's death on the witness is not relevant.
> THE COURT: Thank you, Mr. Seymour. It's an excellent objection, but it's overruled. You may proceed.
> Q. Let me show you another photograph that I need to show you. This has been marked for identification as State's Exhibit Number 50, and ask you to look at that and see if you recognize the, the body depicted in that photograph?
> A. I do.
> Q. Is that the body of Mark Hasse?
> A. Yes.
> . . .

This Honorable Court has stated: The danger of unfair prejudice to a defendant inherent in the introduction of "victim impact" evidence with respect to a victim not named in the indictment on which he is being tried is unacceptably high. The admission of such evidence would open the door to admission of victim impact evidence arising from any extraneous offense committed by a defendant. Extraneous victim impact evidence, if anything, is more prejudicial than the non-extraneous victim impact evidence found by this Court to be inadmissible in *Smith v. State*, 919 S.W.2d 96 (Tex. Crim. App. 1996). It has been held that such evidence is irrelevant under TEX.R.CRIM.EVID. 401 and therefore irrelevant in the context of the special issues under Art. 37.071. *Cantu v. State*, 939 S.W.2d 627, 637 (Tex. Crim. App. 1997); *Lindsay v. State*, 102 S.W.3d 223, 228 n. 1 (Tex. App.-Houston [14th Dist.], 2003, pet. filed).

Appellant submits to the trial court erred in overruling Appellant's objection and that his substantial rights were violated to such an extent it affected Defendant's right to receive a fair trial on the issue of punishment in this case. Appellant submits that the witness's testimony, singularly or cumulatively compares or makes a comparative worth analysis of the value of the victim to their families and the community compared to the defendant or other members of society contrary to *Mosely v. State*, 983 S.W.2d (Tex.

Crim. App. 1998); which effectively denies Appellant a fair trial in the punishment stage.

APPELLANT'S ISSUE NO. 28

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO THE STATE'S CROSS EXAMINATION OF THE DEFENSE'S EXPERT WITNESS , FRANK AUBUCHON, ABOUT CONDUCT OF OTHER INMATES IN THE PUNISHMENT HEARING

Appellant directs this Honorable Court's attention to Reporter's Record Volume 51 p. 103-118 at which the State continued to present evidence of other inmates in the Texas Prison System labeled as the Texas Seven as extraneous conduct of others that violated Appellant right to be individually punished and not to be punished for the conduct of others over Appellant's objections. (RR: Vol. 51 p. 103, 108, 110-111, 113 and 118).

Appellant argues that the trial court's admission of the cross examination of defense expert Frank Aubuchon's testimony violated his Eighth Amendment right to individualized sentencing because the proffered testimony had nothing to do with Mr. Williams. Other inmates' actions are not relevant to Appellant.

The Texas death penalty scheme was adjudged constitutional in *Jurek v. Texas,* 428 U.S. 202 (1976) because it required procedural guides and focuses the jury's objective consideration of the particularized circumstances of the individual offense and the individual offender before it can impose the death penalty. The U.S. Supreme Court

continues to address the Eighth Amendment requirement of individualized assessment in the death penalty process in *Lockett v. Ohio*, 338 U.S. 586 (1978) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982). The type of evidence allowed by the trial court goes beyond the requirements and teachings of these holdings in violation of the eighth amendment. Therefore, the trial court abused its discretion in allowing this prejudicial cross examination evidence of others wrongful and unlawful acts to be relevant evidence against this defendant on the issue of future dangerousness.

APPELLANT'S ISSUE NO. 29

THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO STATE'S EXHIBIT NOS. 333-342, 344-415, 415b, 416, 416b, 531, 534, 535, 566, 567, 568, 569, AND 570

Appellant directs this Honorable Court's attention to Reporter's Record Volume 49 p. 81-82 at which counsel objected to the display of weapons as being horrendous and cumulative. Counsel argued that the only purpose was to inflame the jury and that some of the weapons were not connected to the case. Counsel further objected that the display was fundamentally unfair under the 8th and 14th Amendment to the United States Constitution. Counsel reurged the defense's objection to the display the next day. (RR: Vol. 50 p. 57) (A visual image of the display is found in Motion for New Trial - Defense Exhibit 8 2:58-3:20 time reference to DVD video.)

"The presumption of innocence . . . is a basic component of a fair trial under dour system of criminal justice." To implement it, courts must be alert to factors that may undermine the fairness of the fact-finding process, and "guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt."

Appellant argues that the number of weapons as displays all at once to the jury was prejudicial to Appellant and gave undue weight to the quantity of firearms seized that were not relevant as being used in the commission of the offenses presented.

When a courtroom practice is challenged as inherently prejudicial, the question is whether the practice (1) creates an unacceptable risk that the presumption of innocence will be eroded, and (2) does not further and "essential" state policy."

Appellant argues that the display in this case impaired the presumption of innocence was a comment on the evidence by the trial court which denied Appellant due process and equal protection. This error was of constitutional dimension that denied Appellant's substantial right to a fair trial. See *Estelle v. Williams,* 405 U.S. 501 (1976)

APPELLANT'S ISSUE NO. 30

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR MISTRIAL WHEN THE STATE PRESENTED TO THE JURY A DISPLAY OF WEAPONS SOME OF WHICH WERE NOT IN EVIDENCE

(These two issues are combined as they involve the same facts and issues of law.)

Appellant directs this Honorable Court's attention to Reporter's Record Volume 52 pp. 7-15 at which the State's counsel informed the court that it had placed before the jury a number of firearms that were not recovered from the defendant and were mistakenly placed before the jury. The State recalled witness, Special Agent Matthew Johnson, who identified State's Exhibits Nos. 334, 347, 357, 361, 363, 368, 369, 372, 374, 375, 376, 379 and 382 as improperly displayed to the jury and erroneously admitted into evidence. (RR: Vol. 52 p. 7-15) Defense counsel then reurged his prior objection (see previous issue**)** and moved for a mistrial which was denied.

The decision to deny a motion for mistrial is within the discretion of the trial court. *Edwards v. State*, 106 S.W.3d 833, 838 (Tex. App.-Dallas 2003, pet. ref'd) (citing *Rousseau v. State*, 855 S.W. 2d 666, 684 (Tex. Crim. App. 1993)). An appellate court reviews a trial court's decision to deny a mistrial under an abuse of discretion standard. *Ladd v. State*, 3 S.W.3d 547, 567 (Tex.Crim. App.1999) (citing *State v. Gonzalez*, 855 S.W.2d 692, 696 (Tex. Crim. App. 1993)).

A mistrial is an extreme remedy for prejudicial events occurring during the trial process. *Bouder v. State*, 921 S.W.2d 696, 698 (Tex. Crim. App. 1996). However, a prompt instruction to disregard will ordinarily cure the prejudicial effect. *See Ladd*, 3 S. W. 3d at 567. The jury is presumed to follow the trial court's instruction to disregard improperly admitted evidence in the absence of evidence indicating the members of the jury failed to do so. *Gibson v. State*, 29 S.W.3d 221, 225 (Tex. App.-Houston [14th Dist.] 2000, pet. ref'd); *see Hinojosa v. State*, 4 S.W.3d 240, 253, (Tex,. Crim. App. 1999); *Colburn v. State*, 966 S.W.2d 511, 520 (Tex. Crim. App. 1998) (presuming jury generally follows trial court's instruction unless defendant presents evidence to rebut presumption.).

Texas Rule of Appellate Procedure 21.3(f) requires a defendant in a criminal action to be granted a new trial "when, after retiring to deliberate, the jury has received other evidence." Tex. R. App. P. 21.3(f); *see Bustamante v. State*, 106 S.W.3d 738, 743 (Tex. Crim. App. 2003). A two-prong test must be satisfied for a defendant to obtain a new trial: (1) the evidence must have been received by the jury; and (2) the evidence must be detrimental or adverse to the defendant. *Bustamente*, 106 S.W.3d at 743. If a trial court instructs a jury to disregard the other evidence and that instruction is found to be effective, it is as though the evidence was never received by the jury. *Id.*

Appellant asserts that the display affected his right to a trial before an impartial jury under the Sixth Amendment. *See* U.S. Const. Amend. VI; *State v. Morales*, 253 S.W.3d 686, 694 (Tex. Crim. App. 2008) (discussing the Sixth Amendment's "promise of 'an impartial jury'").

APPELLANT'S ISSUE NO. 31

THE TRIAL COURT ERRED IN SUSTAINING THE STATE'S OBJECTION TO A PARTIAL TRANSCRIPT OF THE ERIC WILLIAMS TRIAL FOR THEFT PROSECUTED BY MR. MCLELLAND

APPELLANT'S ISSUE NO. 32

THE TRIAL COURT ERRED IN SUSTAINING THE STATE OBJECTION TO THE DEFENSE'S PROFFER OF EVIDENCE OF THE TESTIMONY OF WITNESS, MR. RICK HARRISON

(These two issues are presented together in that the involve the same facts and issues of law.)

Appellant directs this Honorable Court's attention to Reporter's Record Volume 53 p. 45-46; 58-60. During the punishment hearing the defense sought to present evidence from the previous District Attorney to Mr. McLelland. The defense sought to present other trial transcript testimony of the Eric Williams theft trial because the State opened the door to a defense response when it presented Mr. Hesse's comments (trial prosecutor and extraneous offense victim) from the trial in a State's Exhibit. (RR: Vol. 53 p. 45)

Additionally, the defense sought to present other evidentiary circumstances that were relevant to the relationship of the Defendant to Mr. McLelland and Mark Hesse. Defense counsel make the following proffer, which the State's objection thereto was sustained:

"MR. PECK: Your Honor, if allowed to testify freely, without the relevancy objections that the court has sustained, we believe that Mr. Harrison would testify that Mike McLelland harbored a grudge towards him, towards his friends, towards people who had supported him because of the prior election. In fact, both elections were extremely polarizing. We would, would have brought out the things that McLelland had highlighted as Mr. Harrison's weaknesses and the underlying facts that made that campaign so polarizing. We would talk about the changes that, that Mr. Harrison instituted in the D.A.'s office and the changing political climate within the district attorney's office as well as Kaufman County at the time; and those changes, we believe that Mr. Harrison would testify, were significant.

We believe it's also personally relevant that Mr. Harrison has suffered a setback in his career. He testified that he received a DWI, and then he was subsequently, subsequently defeated in the, the following election. We believe that his friends and acquaintances, some of them abandoned him, much the same way that Eric Williams has been abandoned by many of his friends in the instant case; and that Mr. Harrison would further testify that that's the nature of Kaufman County. That it's somewhat insular, and that that led to or at least contributed to the following election in which he was defeated.

We believe that if allowed to testify freely Mr. Harrison would testify that D.A. McLelland was not the type of person to ever forget a grudge, and that, that the letter that he testified about was absolutely not forgotten in the prior election. And as evidence in support of that, we would offer State's - - -Defendant's Exhibit 37, which has been offered for only - - only for the purposes of the record, and the court's prior, prior ruling that we could not talk about that. That document specifically illustrates the fact that clearly Mike McLelland had not forgotten about the letter that Eric wrote in support of Rick Harrison.

We believe that Mr. Harrison would further tie - - -Testify that when Mark Hasse was murdered, he immediately suspected Eric, and he told law enforcement that that. That Mr. Harrison also has been close personal friends with Bill Wirskye and Toby Shook for over 25 years, and he personally called them and asked them to take this case. And that after Mr. McLelland was murdered - the McLellands were murdered, that he

immediately contacted them and told them that if they're looking for somebody, they needed to look at the, the trial transcript from the theft case of Eric Williams."

Appellant submits that he was denied a fair opportunity to present evidence of the parties relationship as provided by Art. 38.36 C.C.P. See also *Garcia v. State*, 201 S.W.3d 695 (Tex. Crim. App. 2006)

Appellant also submits that the Supreme Court of the United States has written:

"To provide the individualized sentencing determination required by the Eighth Amendment, however, the sentencer must be allowed to consider mitigating evidence. *Ibid.* Indeed, as *Woodson v. North Carolina,* 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976), made clear, "in capital cases the fundamental respect for humanity underlying the Eighth Amendment ... requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Id.,* at 304, 96 S.Ct., at 2991 (plurality opinion).

Our decisions subsequent to *Jurek* have reaffirmed that the Eighth Amendment mandates an individualized assessment of the appropriateness of the death penalty. In *Lockett v. Ohio,* 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978), a plurality of this Court held that the Eighth and Fourteenth Amendments require that the sentencer "not be precluded from considering, *as a mitigating factor,* any aspect of a defendant's

character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death."

In *Eddings v. Oklahoma,* 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982), a majority of the Court reaffirmed that a sentencer may not be precluded from considering, and may not refuse to consider, any relevant mitigating evidence offered by the defendant as the basis for a sentence less than death. In *Eddings,* the Oklahoma death penalty statute permitted the defendant to introduce evidence of any mitigating circumstance, but the sentencing judge concluded, as a matter of law, that he was unable to consider mitigating evidence of the youthful defendant's troubled family history, beatings by a harsh father, and emotional disturbance. Applying *Lockett,* we held that "[j]ust as the State may not by statute preclude the sentencer from considering any mitigating factor, neither may the sentencer refuse to consider, *as a matter of law,* any relevant mitigating evidence." 455 U.S., at 113-114, 102 S.Ct., at 876-877 (emphasis in original). In that case, "it was as if the trial judge had instructed a jury to disregard the mitigating evidence [the defendant] proffered on his behalf." *Id.,* at 114, 102 S.Ct., at 877.

Thus, at the time Penry's conviction became final, it was clear from *Lockett* and *Eddings* that a State could not, consistent with the Eighth and Fourteenth Amendments, prevent the sentencer from considering and giving effect to evidence relevant to the

defendant's background or character or to the circumstances of the offense that mitigate against imposing the death penalty. Moreover, the facial validity of the Texas death penalty statute had been upheld in *Jurek* on the basis of assurances that the special issues would be interpreted broadly enough to enable sentencing juries to consider all of the relevant mitigating evidence a defendant might present.

. . . .

Underlying *Lockett* and *Eddings* is the principle that punishment should be directly related to the personal culpability of the criminal defendant. If the sentencer is to make an individualized assessment of the appropriateness of the death penalty, "evidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." *California v. Brown,* 479 U.S. 538, 545, 107 S.Ct. 837, 841, 93 L.Ed.2d 934 (1987) (O'CONNOR, J., concurring). Moreover, *Eddings* makes clear that it is not enough simply to allow the defendant to present mitigating evidence to the sentencer. The sentencer must also be able to consider and give effect to that evidence in imposing sentence. *Hitchcock v. Dugger,* 481 U.S. 393 (1987). Only then can we be sure that the sentencer has treated the defendant as a "uniquely individual human bein[g]" and has made a reliable

determination that death is the appropriate sentence. *Woodson,* 428 U.S., at 304, 305, 96 S.Ct., at 2991, 2992. "Thus, the sentence imposed at the penalty stage should reflect a reasoned *moral* response to the defendant's background, character, and crime." *California v. Brown, supra,* 479 U.S., at 545, 107 S.Ct., at 841 (O'CONNOR, J., concurring) (emphasis in original)."

APPELLANT'S ISSUE NO. 33

THE TRIAL COURT ERRED IN SUSTAINING THE STATE'S OBJECTION TO THE DEFENDANT'S PROFFER OF EVIDENCE DEFENSE EXHIBIT NO. 47

Appellant directs this Honorable Court's attention to Reporter's Record Volume 53 p. 130-131 at which the following occurred:

> . . .
> MR. PECK: Your Honor, I'd offer Defendant's 38 through 48.
> THE COURT: Any objection?
> MR. WIRSKYE: No objection.
> THE COURT: They're admitted. You may publish.
> MR. PECK: Thank you, your Honor. I beg the Court's indulgence. In that sequence there was a - - there's a video, your Honor, that's on DVD that I need to also include in that series as well.
> MR. WIRSKYE: Frankly, I don't know how I can examine it right here at this moment in front of the jury. I think I'm entitled to examine the contents of the disk.
> THE COURT: What's the video about?
> MR. PECK: High school graduation, your Honor.
> THE COURT Is there a relevance objection.
> MR. WIRSKYE: There is a relevance objection.
> THE COURT Sustained.

Defense Exhibit No. 47 was admitted for record purposes.

Appellant argues that he was denied due process and his right to a fair trial to present the defense to the State's presentation of aggravating circumstances under the special issue on future dangerousness. Appellant sought to present mitigating evidence of the defendant's life and the achievements he accomplished before his life was irreversibly upended by being prosecuted for theft. The defense's strategy as evidenced by closing arguments in the punishment part of the trial was to show that Appellant's conduct was an aberration in a long life of achievement and that the triggers that set his criminal conduct in motion would not be present in prison for life without parole. The defense was denied an opportunity to complete its mitigation presentation by the trial court's sustaining the State's objection to Defense Exhibit No. 47, a video of the Defendant's graduation. He was denied an opportunity to graphically show a more normal human side of the Defendant's life.

(The next four issues are combined for presentation and argument as each involves the same or similar issues of law)

APPELLANT'S ISSUE NO. 34

THE TRIAL COURT ERRED IN SUSTAINING STATE'S OBJECTION OF LACK OF RELEVANCE TO THE DEFENSE'S PROFFERED TESTIMONY OF THE WITNESS, CATHY ADAMS

In RR: Volume 53 pp. 164-174 and Vol. 54 p. 140 the defense proffered the excluded testimony of Cathy Adams that had not been presented to the jury when the

trial court sustained multiple State's objections to relevance. See RR: Vol. 53 p. 161-165. Defendant filed a written offer of proof as to what would have been presented absent the State's sustained objection. (Clerk's Record pp. 4321-4322)

The following offer of proof testimony was excluded upon a relevance objection made by the State:

1. That Eric Williams was arrested and prosecuted on the theft and burglary charges in retaliation for his political opposition to Mike McClelland.

2. That Eric Williams had a benevolent purpose in taking the computer equipment from the IT department on the South Campus to his Justice of the Peace office in an adjoining building.

3. That purpose was to investigate the feasibility of installing the equipment in his Justice of the Peace courtroom as components of a video magistration system that would allow jail inmates to be arraigned remotely, saving the time, trouble, expense and security risk of transporting such inmates from the jail to the courtroom and back.

4. Eric Williams did not convert the county computer equipment to his own personal use.

5. The prosecution of Eric Williams for burglary and theft was done in such a way that Eric would lose his law license upon any conviction for crim of moral turpitude, such a misdemeanor theft.

6. The prosecution of Eric Williams for burglary and theft was overzealous and an abuse of prosecutorial discretion.

APPELLANT'S ISSUE NO. 35

THE TRIAL COURT ERRED IN SUSTAINING STATE'S OBJECTION OF LACK OF RELEVANCE TO THE DEFENSE'S PROFFERED TESTIMONY OF THE WITNESS, ANDREA JONES

In RR: Volume 54 pp. 139-140 the defense proffered the excluded testimony of Andrea Jones that had not been presented to the jury. The trial court had previously sustained in regard to similar testimony from witness, Heather Jones, the State's objection to relevance, RR: Vol. 53 pp. 15,20-21. Defendant filed a written offer of proof as to what would have been presented absent the State's sustained objection. (Clerk's Record pp. 4311)

The following offering of proof testimony was excluded upon a relevance objection made by the State:

1. That these witnesses traveled to Texas from Colorado and gave their testimony at great personal risk of harm from their stepfather, Jamie Johnson, the brother of Kim Williams.

2. That the safety and security of these witnesses was actually jeopardized in that Jamie Johnson appeared in the courtroom while these witnesses were also present.

APPELLANT'S ISSUE NO. 36

THE TRIAL COURT ERRED IN SUSTAINING STATE'S OBJECTION OF LACK OF RELEVANCE TO THE DEFENSE'S PROFFERED TESTIMONY OF THE WITNESS, HEATHER JONES

In RR: Volume 54 pp. 139-140 the defense proffered the excluded testimony of Heather Jones that had not been presented to the jury when the trial court sustained the State's objection to relevance, RR: Vol. 53 pp. 14-15,20-21. Defendant file a written offer of proof as to what would have been presented absent the trial court sustaining the State's objection. (Clerk's Record p. 4316-4317) The offer of proof testimony was excluded upon a relevance objection made by the State was the same in the previous issue and is adopted by reference herein.

APPELLANT'S ISSUE NO. 37

THE TRIAL COURT ERRED IN SUSTAINING STATE'S OBJECTION OF LACK OF RELEVANCE TO THE DEFENSE'S PROFFERED TESTIMONY OF THE WITNESS, MARK CALABRIA

In RR: Volume 54 p. 140 the defense proffered the excluded testimony of Mark Calabria that had not been presented to the jury when the trial court sustained the State's objection to relevance, RR: Volume 53 pp. 72-73.

Defendant filed a written proffer of proof as to what would have been presented absent the trial court's sustaining the State's objection. (Clerk's Record p. 4318-4319) The following testimony was excluded upon a relevance objection made by the State:

1. That Eric Williams was arrested and prosecuted on the theft and burglary charges in retaliation for his political opposition to Mike McClelland;

2. That Eric Williams had a benevolent purpose in taking the computer equipment from the IT department on the South Campus to his Justice of the Peace office in an adjoining building;

3. That his purpose was to investigate the feasibility of installing the equipment in this Justice of the Peace courtroom as components of a video magistration system that would allow jail inmates to be arraigned remotely, saving the time, trouble, expense and security risk of transporting such inmates from the jail to the courtroom and back;

4. That Eric Williams did not convert the county computer equipment to his own personal use.

5. That the prosecution of Eric Williams for burglary and theft was done in such a way that Eric would lose his law license upon any conviction for a crime of moral turpitude, such as a misdemeanor theft;

6. That the prosecution of Eric Williams for burglary and theft was overzealous and an abuse of prosecutorial discretion;

7. That numerous Kaufman officials have previously taken advantage of county resources, e.g., that judges have possession of county laptops but rarely keep them in the their courtrooms and/or chambers;

8. That cases in Kaufman involving politicians have been treated differently, that they have been pursued more aggressively, that they stem from political vendettas, and that they are frequently treated as headline fodder.

9. That Ray Summero would serve as a prime example of an official having been over-prosecuted in Kaufman;

10. That the alleged "threats" made by Eric Williams regarding Jon Burt signified nothing more than hyperbole and that Jon Burt himself did not take them seriously; and

11. That Eric Williams suffered social and professional isolation after the theft trial due to political pressures in Kaufman.

(These four issues are argued together as each involves similar facts and the same issue of law.)

Appellant asserts that the exclusion of this testimony from the hearing and consideration by the jury is fundamentally unfair in that the excluded evidence tends to mitigate and lessen the negative impact of the burglary and theft convictions adduced into evidence by the State, and it tends to explain, though not excuse the shooting deaths in evidence. The exclusion of this evidence offends the guarantees of the 5th, 6th 8th and 14th Amendments to the Constitution of the United States, Article 1, Sections 10, 13, 19 of the Texas Constitution, and the Texas Rules of Evidence 401-403 requiring the admission of relevant evidence.

Appellant submits that his constitutional right to present mitigating evidence in order to avoid the death penalty was violated by the State's relevance objections that were sustained by the trial court contrary to the holdings in *Eddings v. Oklahoma,* supra and *Lockett v. Ohio*, supra. Appellant was denied his right to present mitigating evidence that a juror might regard as reducing his moral blameworthiness. Art. 37.071 sec. 2(f)(4). *Hernandez v. State*, 390 S.W.3d 310 (Tex. Crim. App. 2013). This error denied Appellant his substantial and constitutional right to a fair punishment stage of trial.

PUNISHMENT JURY TRIAL INSTRUCTION ISSUES

APPELLANT'S ISSUE NO. 38

THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUESTED INSTRUCTIONS TO THE JURY DURING PUNISHMENT

APPELLANT'S ISSUE NO. 39

THE TRIAL COURT ERRED IN DENYING APPELLANT'S OBJECTIONS TO THE COURT'S JURY CHARGE IN PUNISHMENT

Appellant directs this Honorable Court's attention to Reporter's Record Vol. 54 at which Appellant objected to the Court's punishment charge and also filed requested instructions. The trial court overruled the objections and denied the requested instructions.

DEFENSE OBJECTIONS TO THE COURT'S CHARGE AT PUNISHMENT AND REQUESTED PUNISHMENT INSTRUCTIONS

Appellant directs this Honorable Court's attention to Clerk's Record 4324-4355; 4334-4350 at which trial counsel filed written objections and/or requested jury instructions, the language of which is incorporated herein as if set verbatim. Trial counsel objected to the statutory charge in Art. 37.071 C.C.P. or requested that the issues and instructions that were to be submitted be altered to provide definitions and in general greater specificity in the special issues for the jury. The Court overruled or denied all the Defense's objections or requested instructions.

Appellant's counsel on appeal believes this Court has addressed the issues raised by objection or requested instructions on appeal previously over an extended period of time. Appellant is submitting each objection or requested instruction as a separate issue on appeal under an identifying numbering system that presents each as a sub issue under Appellant's issues nos. 39 & 40. This Court has previously overruled the issues raised in a same or similar context previously as acknowledged by trial counsel. Appellant's counsel seeks to preserve each sub-issue without waiver for any potential Federal review of the issues in the future. *See Escamilla v. State*, 143 S.W.3d 814 (Tex. Crim. App. 2004), *Saldano v. State*, 232 S.W.3d 77 (Tex. Crim. App. 2007) and *Coble v. State,* supra.

APPELLANT'S ISSUE NO. 40

THE EVIDENCE IS LEGALLY INSUFFICIENT TO SUPPORT THE JURY'S ANSWER TO SPECIAL ISSUE NO. 1 IN THE PUNISHMENT STAGE OF TRIAL

Appellant argues that there was insufficient evidence of future dangerousness because he had no prior violent offense convictions and defense witnesses testified that he essentially was a low risk of future dangerousness while incarcerated. (RR. Vol. 51, p. 8)

According to the State's evidence in the instant case, the murders were motivated by revenge, pure and simple. Appellant has no juvenile arrests. Appellant was an attorney before he was convicted of a non-violent burglary of building and a theft charge, all stemming out of the same incident, regarding computer monitors. The Board of Law Examiners deemed him fit to represent people in Court. Before he was an attorney, he was a court coordinator in Kaufman County, handling Court business on a daily basis. (RR. Vol. 52. P. 68-69).

Until these isolated and factually connected incidents, Appellant lived a good, normal, law-abiding life of practicing law, taking court appointments, and helping people in the Court system. (RR. Vol. 52, p. 77). The people of Kaufman County elected him Justice of the Peace for Precinct 1, and he was diligent in his discharge of those duties. (RR. Vol. 53, p. 61-62).

While in custody, in both Kaufman and Rockwall counties, Appellant was compliant with institutional authorities. Appellant had no disciplinary infractions in either county. Appellant had no deleterious incidences with law enforcement, while being transported to or from the County jails to the courthouses.

The defense presented evidence that Appellant's actions were motivated by revenge in regards to a few politicians who ruined his life. Appellant's violent actions were not geared toward society in general, he did not rob stores and kill for money, Appellant did not commit violence for the sake of violence. These issues and people would not be in prison and no situation as unique as this would ever arise in prison thereby removing any threat of future criminal acts of violence which would constitute future dangerousness. This Court should reform the judgment to life imprisonment without parole as the evidence did not support the jury's answer of yes beyond a reasonable doubt.

Appellant argues that there was insufficient evidence of future dangerousness because he had no prior violent criminal background and the defense witnesses testified that he essentially was a low risk for future dangerousness.

In the case of *Huffman v. State*, 746 S.W.2d 212 (Tex. Crim. App. 1988) it was held that:

> "In *Roney v. State,* 632 S.W.2d 598,603 (Tex. Cr. App. 1982), this court wrote: "Although this was a senseless murder, that fact is true of every murder in the

> course of a robbery. The facts of this offense, standing alone, do not carry the marks of a 'calculated and cold-blooded crime,' such as appeared in *O'Bryan v. State*, 591 S.W.2s 464, 480 (Tex. Cr. Ap. 1979), where the defendant for months planned the candy poisoning of his own child to collect life insurance. To support a 'yes' answer to the second punishment issue, the evidence must show beyond a reasonable doubt that there is a probability appellant would commit criminal acts of violence that would constitute a *continuing* threat to society. To hold that the facts of *this* offense, standing alone, would support such a verdict, would mean that virtually every murder in the course of a robbery would warrant the death penalty. Such a construction would destroy the purpose of the punishment stage in capital murder cases, which is to provide a reasonable and controlled decision on whether the death penalty should be imposed, and to guard against its capricious and arbitrary imposition. *Jurek v. State,*522 S.W.2d 934 (Tex. Cr. App. 1975); *Jurek v. Texas*, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976)."

Benz v. State, 233 S.W.3d 847 (Tex. Crim. App. 2007). This Court should reform the judgement to life imprisonment. *Holberg v. State* 38 S.W.3d 137, 139 (Tex. Crim. App. 2000) and Art. 44.251 (a).

PRAYER

WHEREFORE, PREMISES CONSIDERED, based on the issues presented and argument and authorities cited herein, there being reversible error appearing in the record of the trial of the case, Appellant prays this Honorable Court reverse the judgment of the trial court and remand for a new trial.

Respectfully submitted,

/s/ John Tatum
John Tatum
Counsel for Appellant

/s/ Brady Wyatt, III
Brady Wyatt, III
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion has been delivered to Fredericka Sargent, c/o Criminal Appeals Division Office of the Attorney General at P.O. Box 12548 Austin, Texas 78711-2548 on this the 29th day of April, 2016.

/s/ John Tatum
John Tatum

/s/ Brady Wyatt, III
Brady Wyatt, III

CERTIFICATE OF SERVICE

The undersigned attorney for Appellant certifies that a true and correct copy of the foregoing brief was mailed , postage prepaid, to Eric Lyle Williams TDCJ # 00999598 at the Polunsky Unit 3872 FM 350 South, Livingston, Texas 77351, by U.S. Mail this the 29th day of April 2016.

/s/ John Tatum
JOHN TATUM

/s/ Brady Wyatt, III
Brady Wyatt, III

CERTIFICATE OF COMPLIANCE OF WORD COUNT PURSUANT TO APPELLATE RULE OF PROCEDURE 9.4

I certify that this document has words 38,170 pursuant to the definitions of length and content in Rule 9.4.

A. Case Name: Eric Lyle Williams v. State of Texas
B. The Court of Criminal Appeals Case Number: No. AP 77,053
C. The Type of Document: Appellant Brief
D. Party for whom the document is being submitted: Applicant
E. The Word Processing Software and Version Used to Prepare the Brief: Word Perfect X7

Copies have been sent to all parties associated with this case.

/s/ John Tatum 4/29/16
(Signature of filing party and date)

John Tatum
990 South Sherman St.
Richardson, Texas 75081
(972) 705-9200
SBOT# 19672500

NO. AP-77,053

IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS

ERIC LYLE WILLIAMS
Appellant

VS.

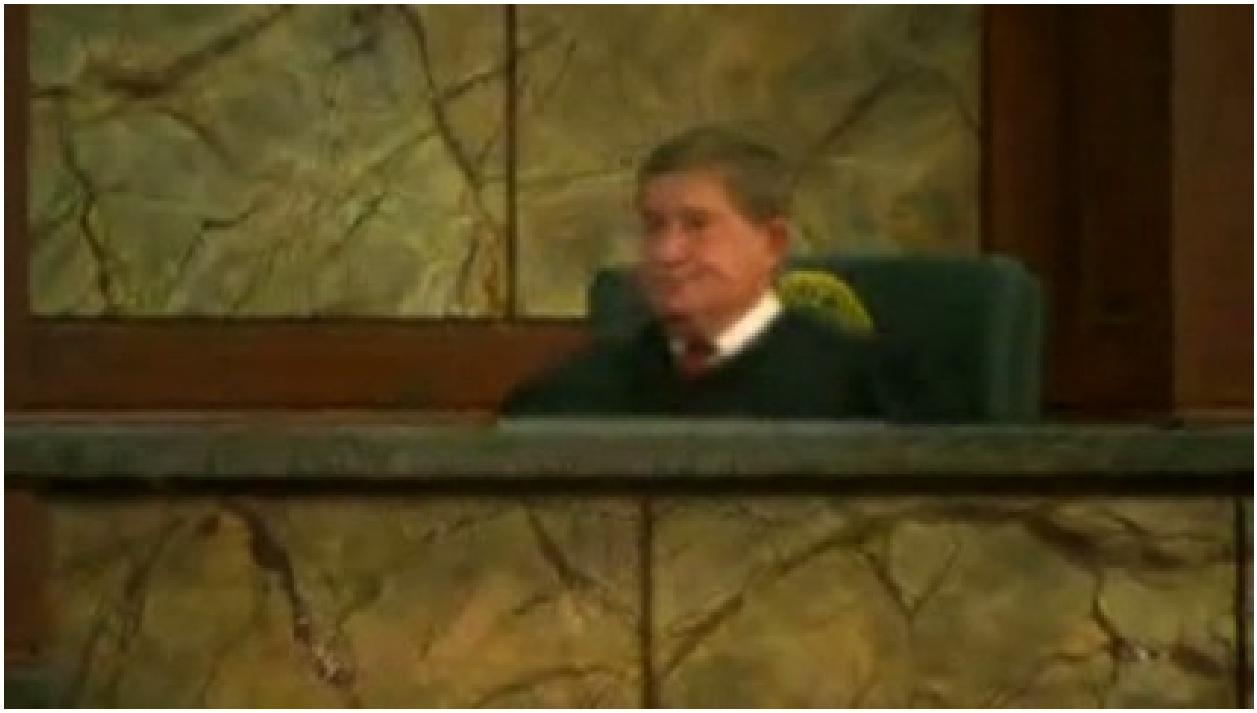
THE STATE OF TEXAS
Appellee

APPENDIX

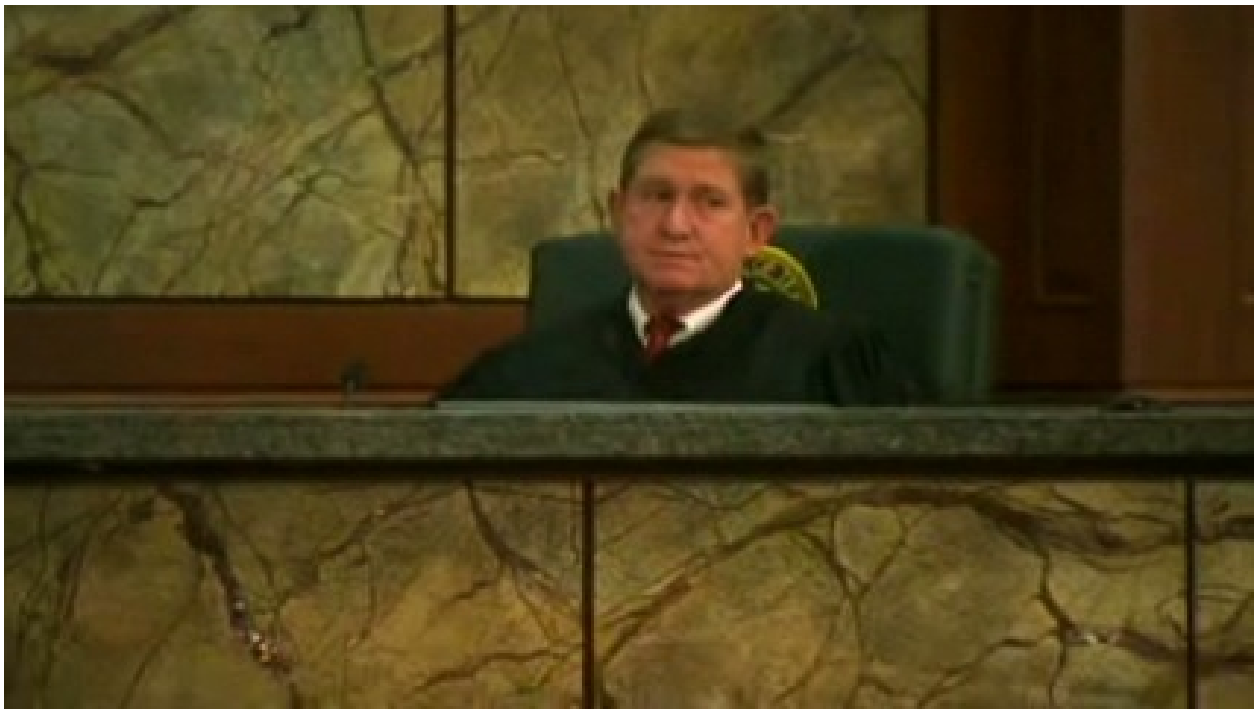
APPENDIX CONTENTS

SINGLE FRAME PICTURES FROM DVD VIDEO EXHIBITS ADMITTED IN THE MOTION FOR NEW TRIAL HEARING

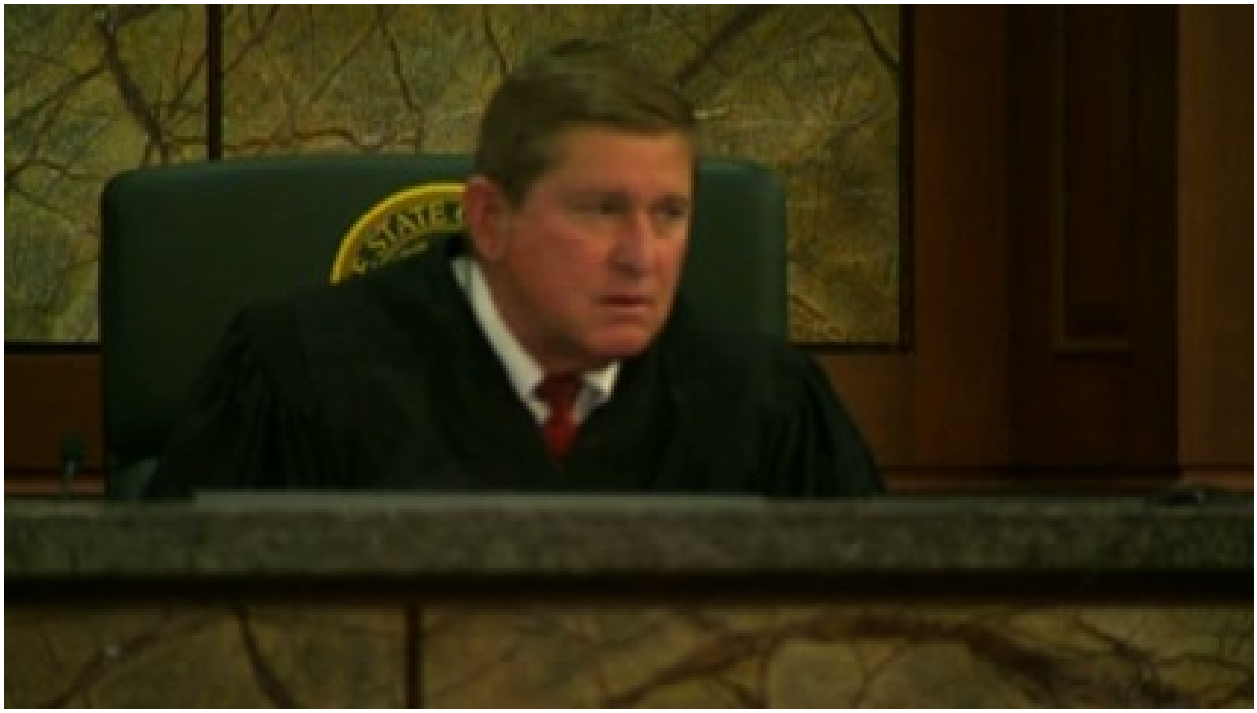
1. DX 13 Time frame reference 1:10
2. DX 13 Time frame reference 1:11
3. DX 13 Time frame reference 6:10
4. DX 13 Time frame reference 26:31
5. DX 13 Time frame reference 26:38
6. DX 13 Time frame reference 26:42
7. DX 13 Time frame reference 26:47
8. DX 13 Time frame reference 1:00:50
9. DX 13 Time frame reference 1:01:07
10. DX 13 Time frame reference 1:01:28
11. DX 13 Time frame reference 1:01:38
12. DX 13 Time frame reference 1:12:29
13. DX 13 Time frame reference 1:12:49
14. DX 13 Time frame reference 1:12:58
15. DX 13 Time frame reference 1:54:04
16. DX 12 Time frame reference 1:57:50
17. DX 12 Time frame reference 2:36:38
18. DX 12 Time frame reference 2:36:44
19. DX 10 Time frame reference 28:11
20. DX 10 Time frame reference 28.13
21. DX 10 Time frame reference 29:47



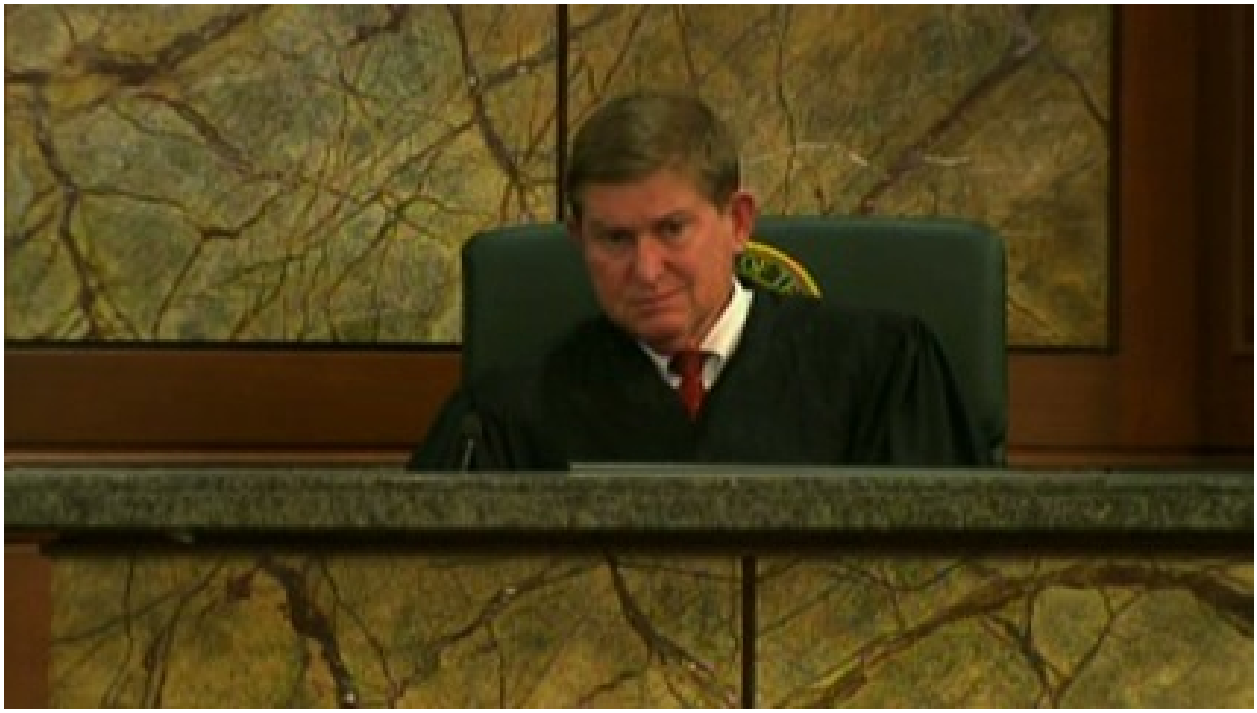
NO. 1



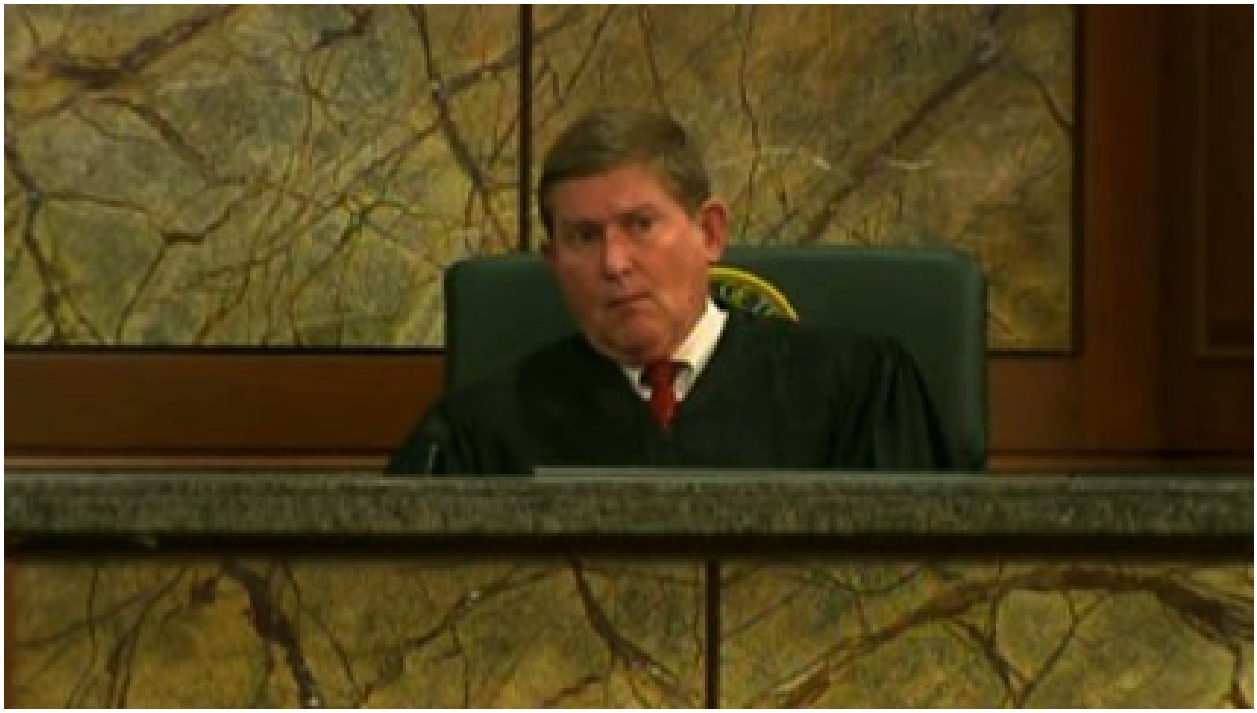
NO. 2



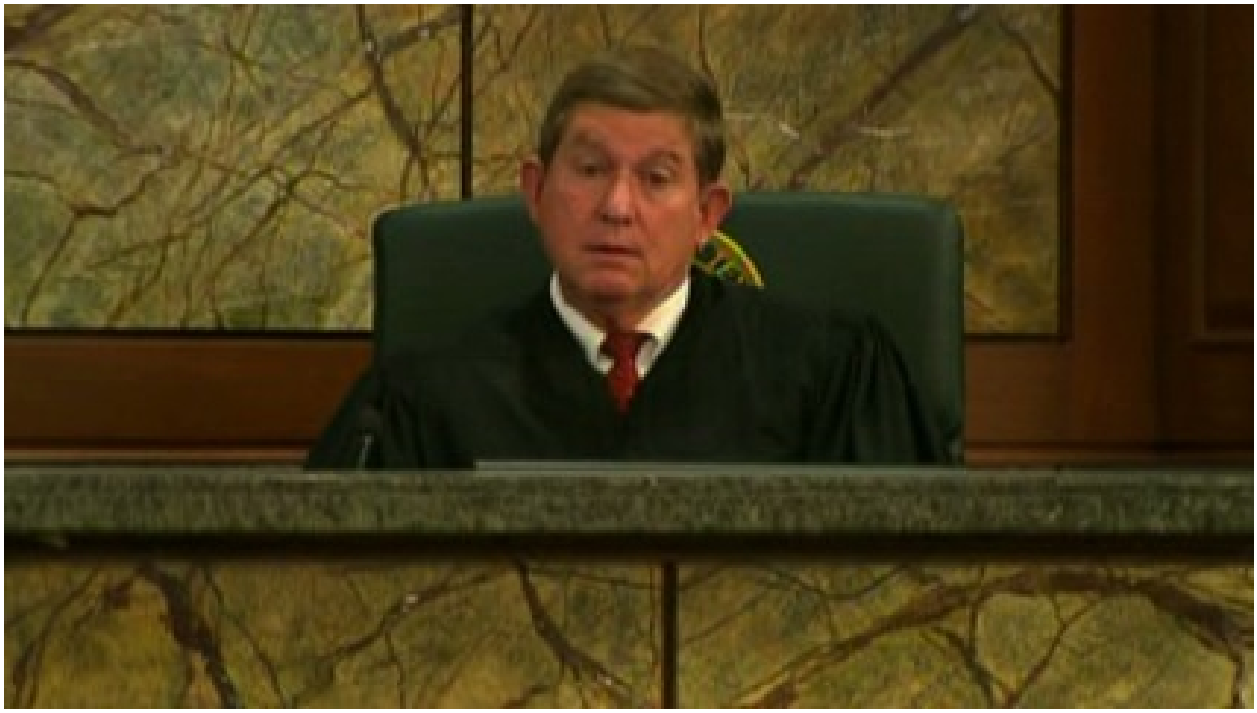
NO. 3



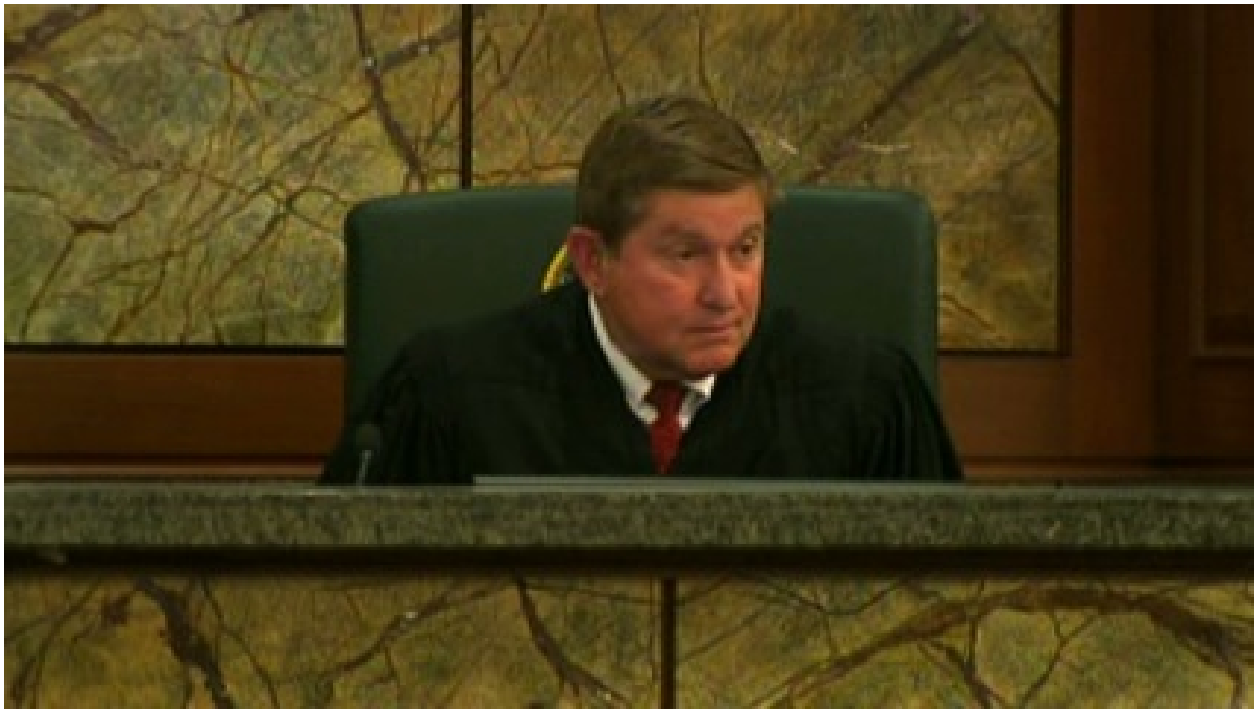
NO. 4



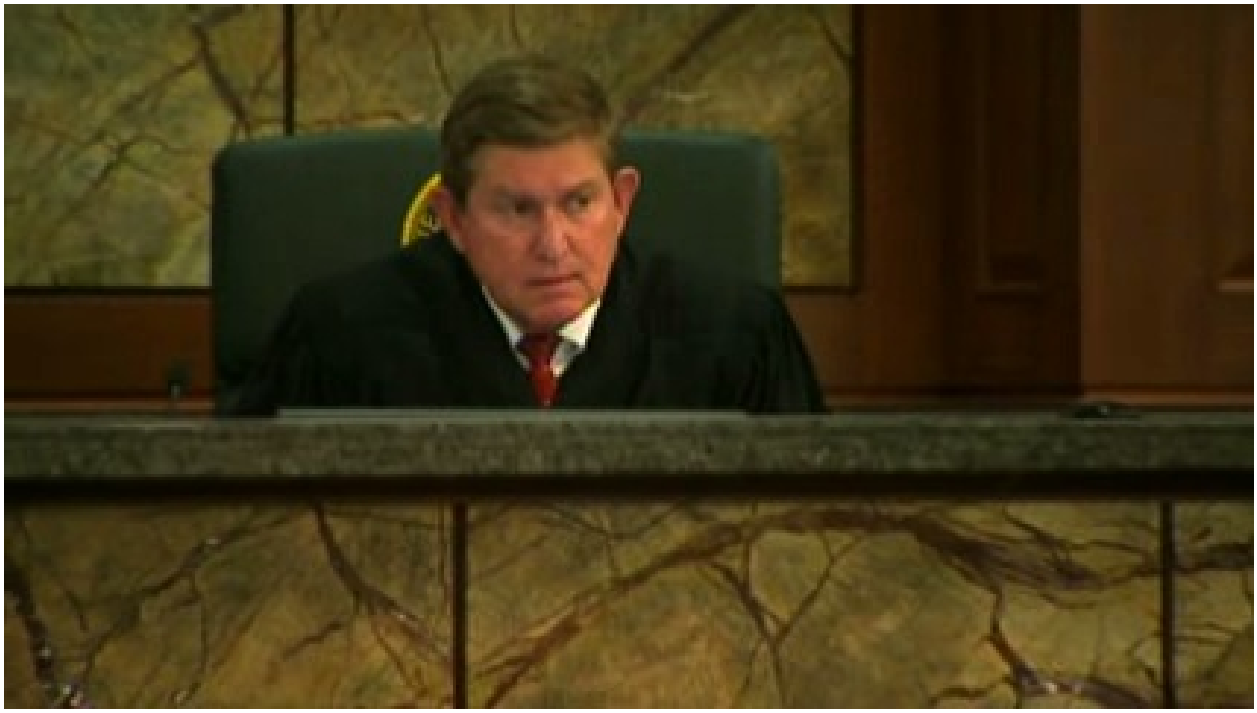
NO. 5



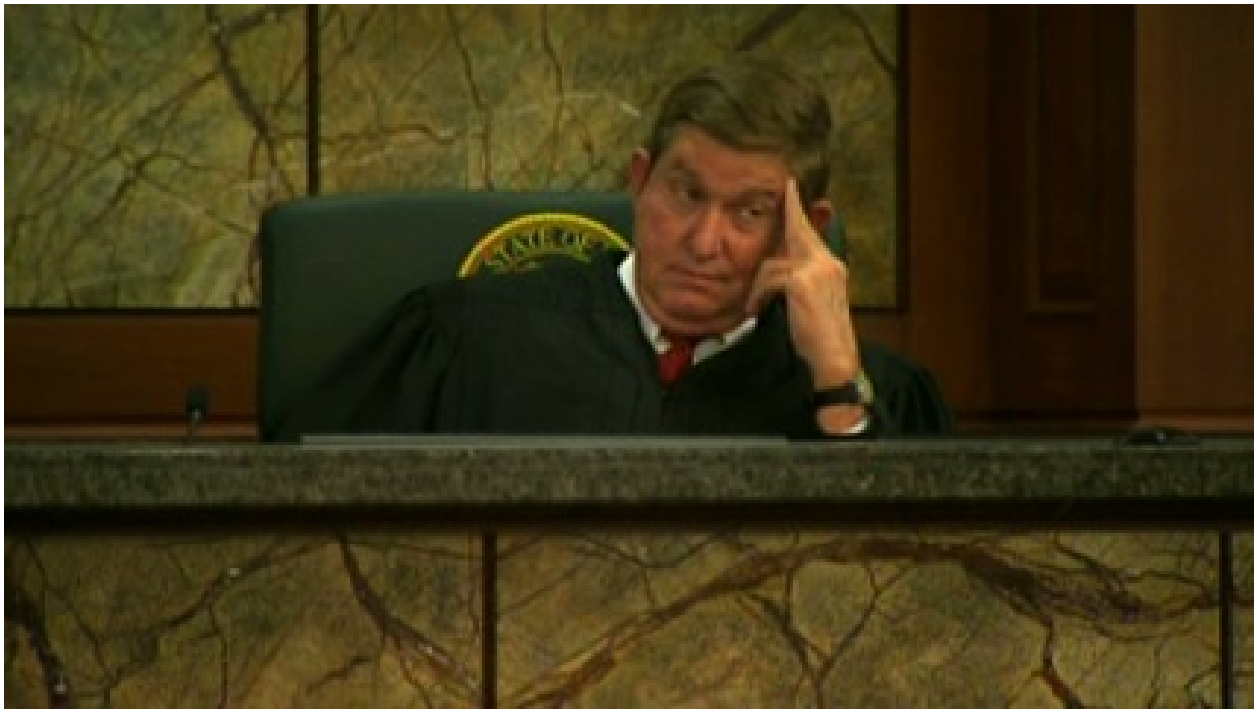
NO. 6



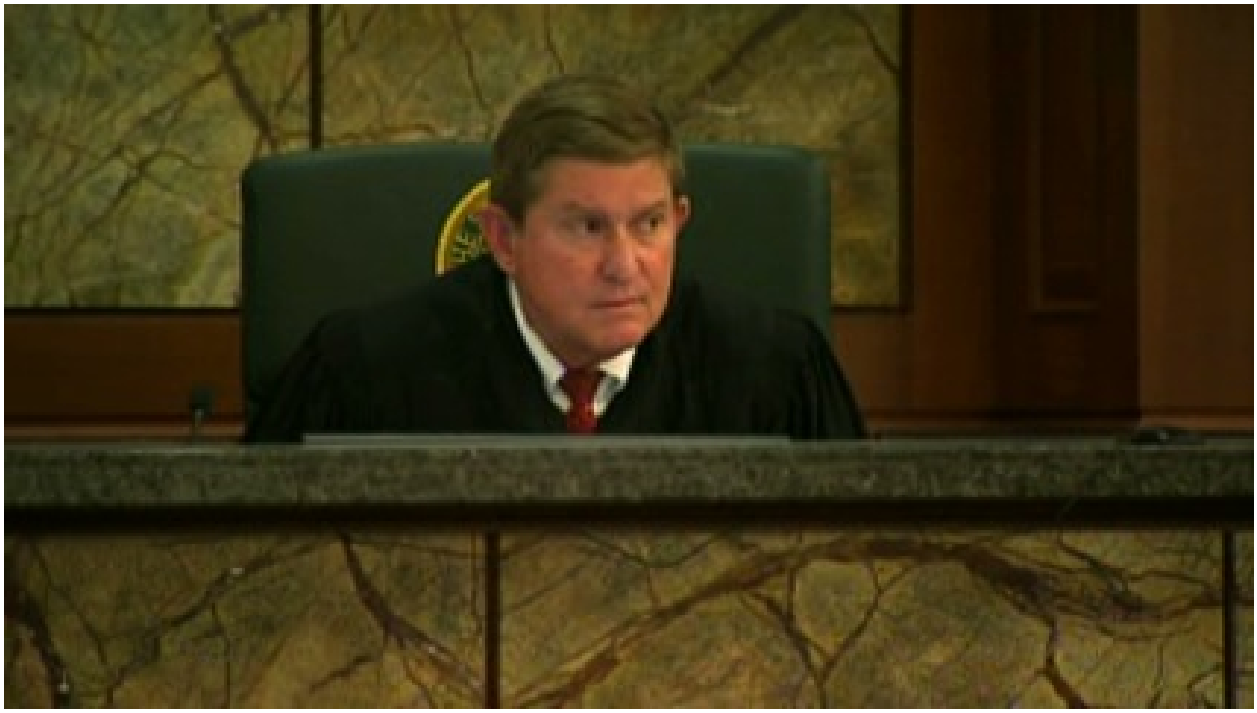
NO. 7



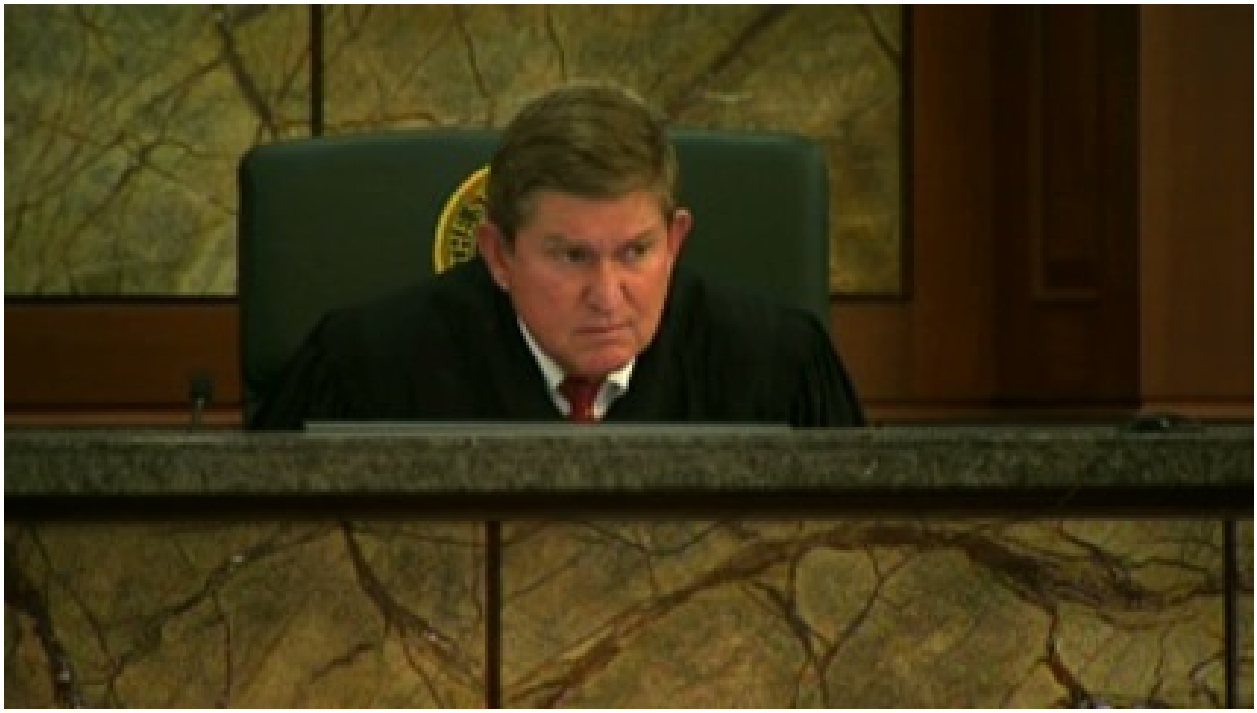
NO. 8



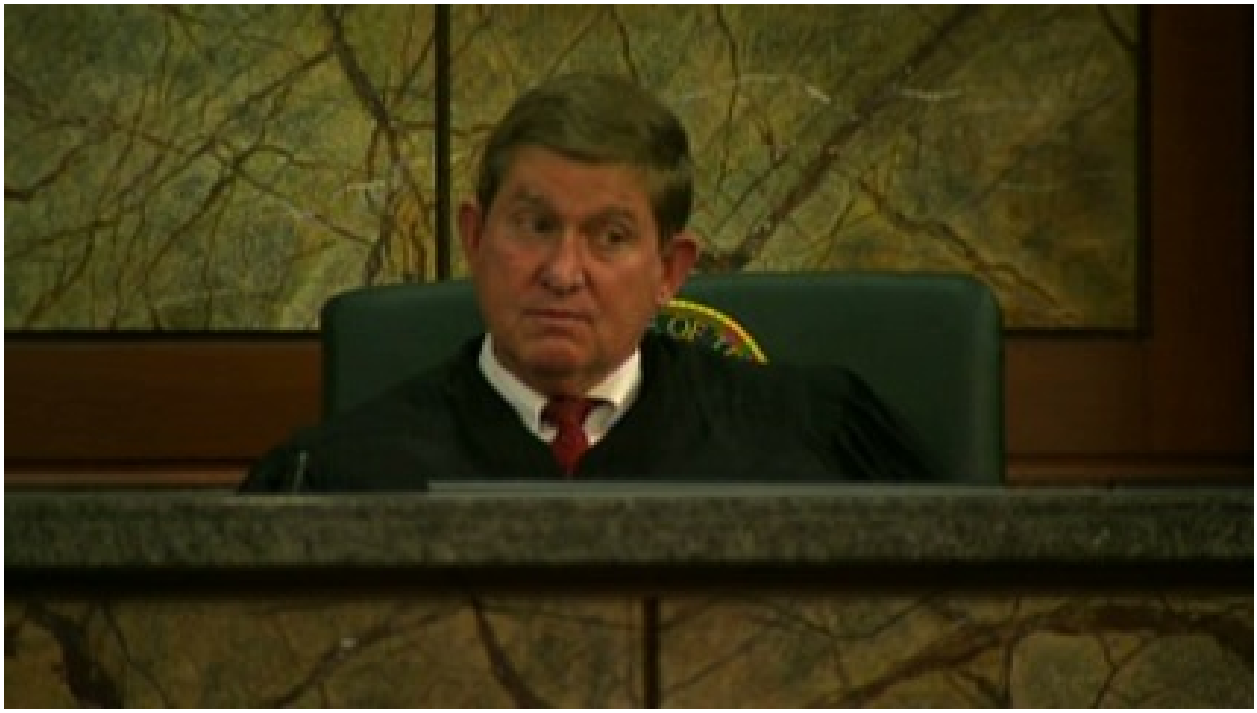
NO. 9



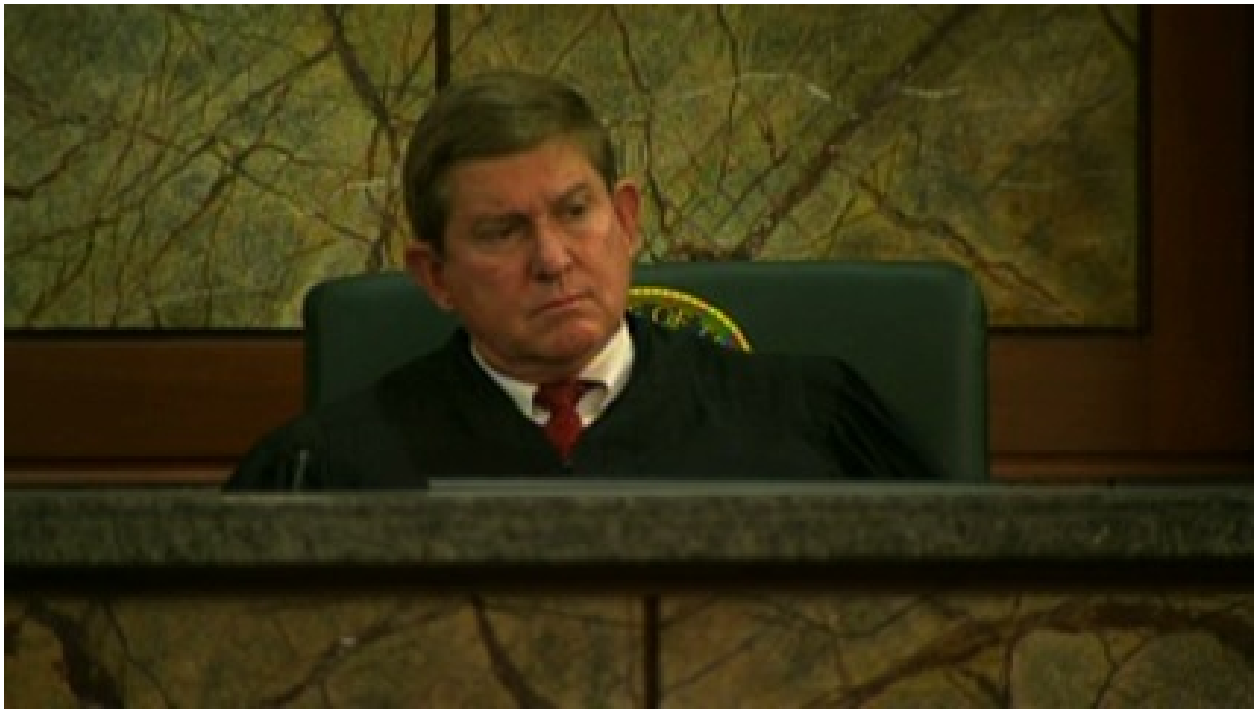
NO. 10



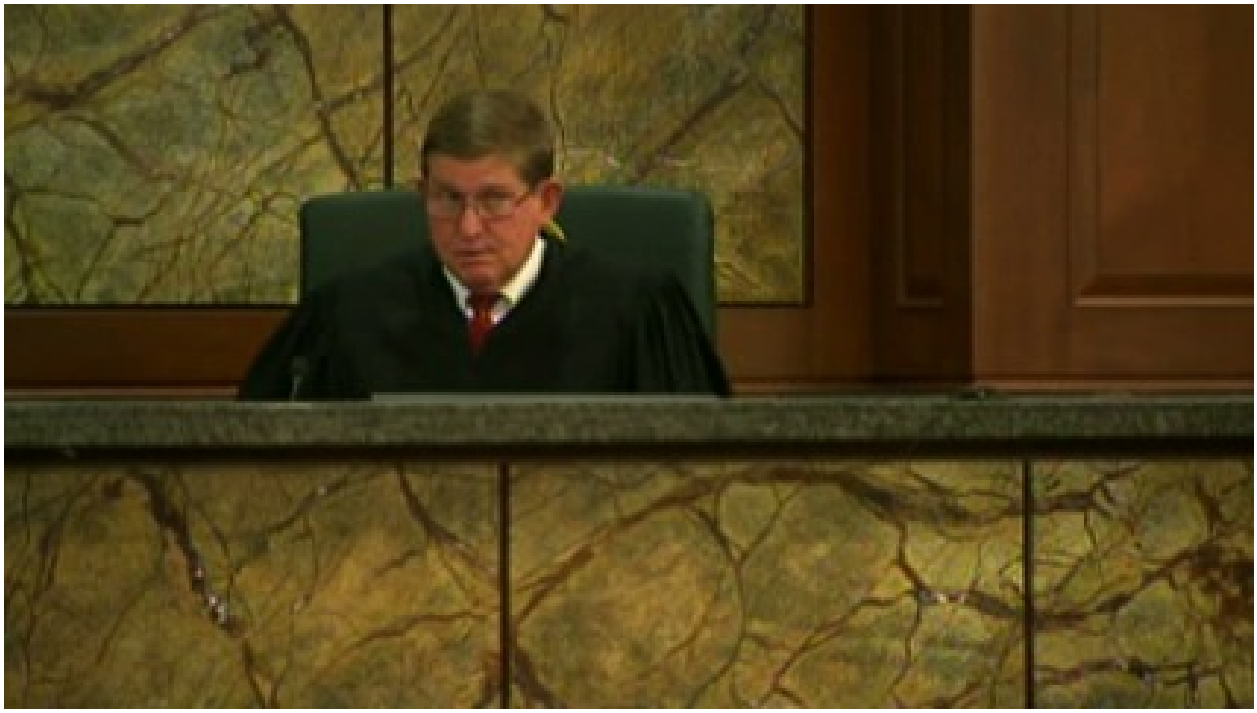
NO. 11



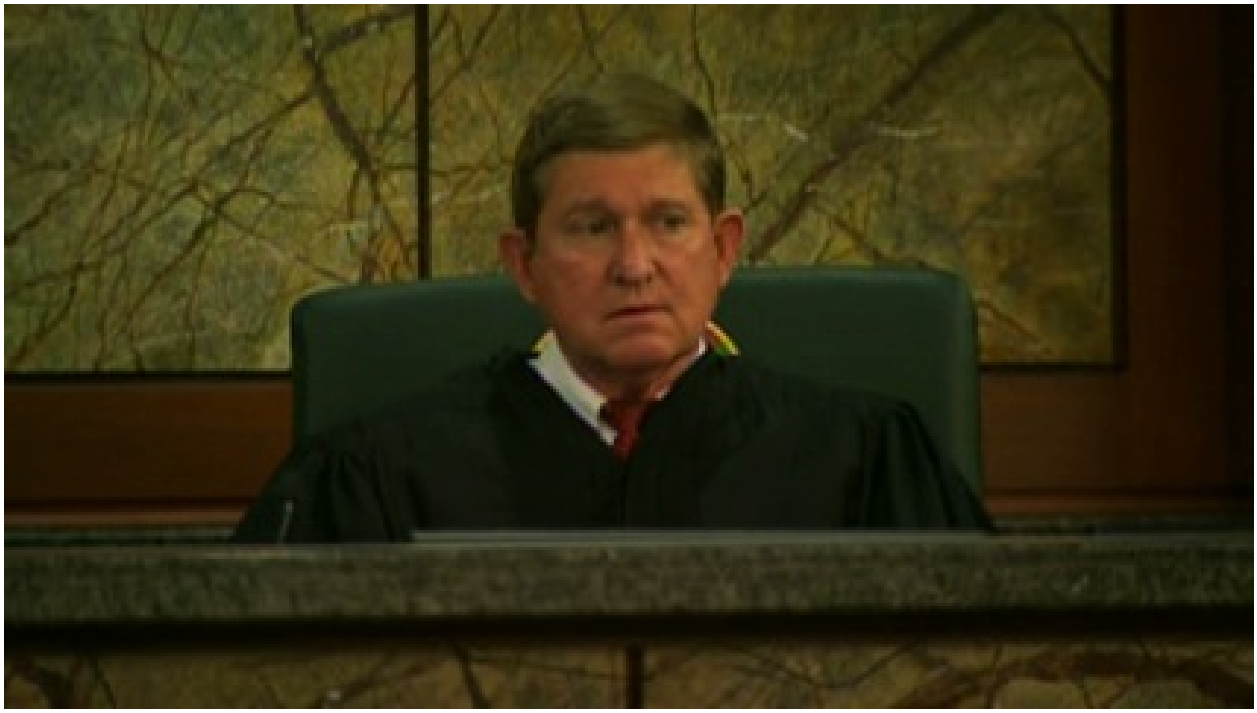
NO. 12



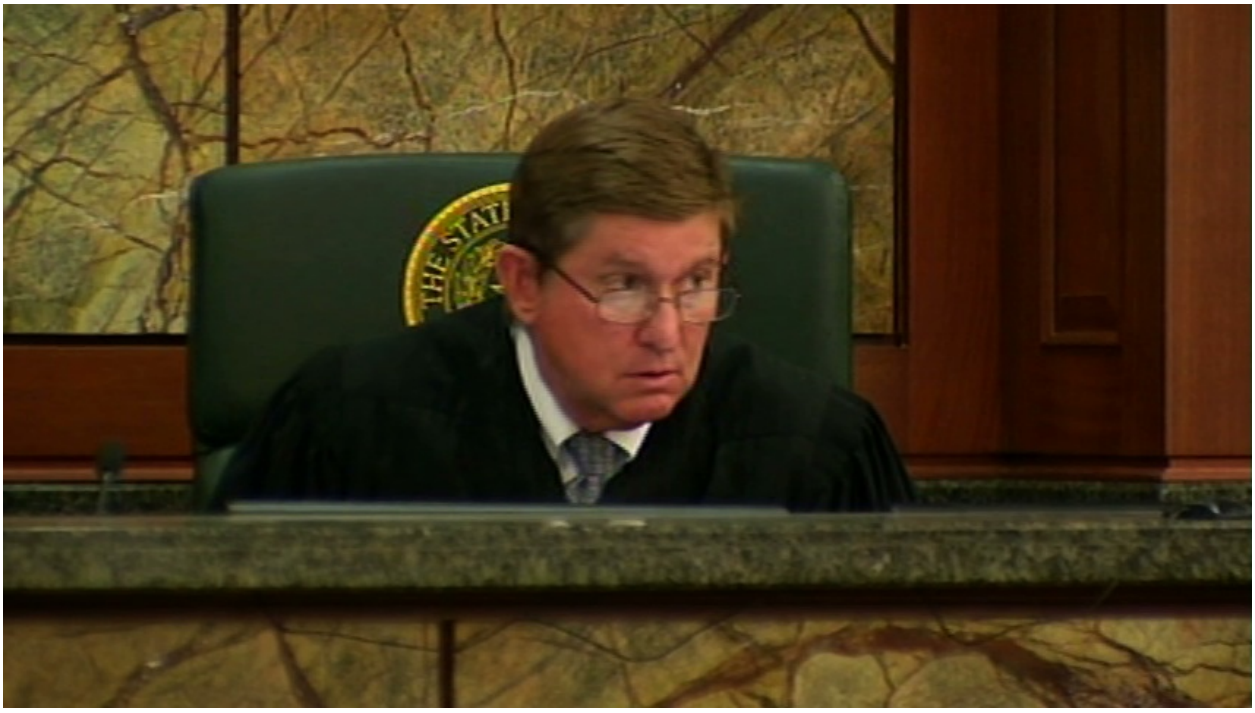
NO. 13



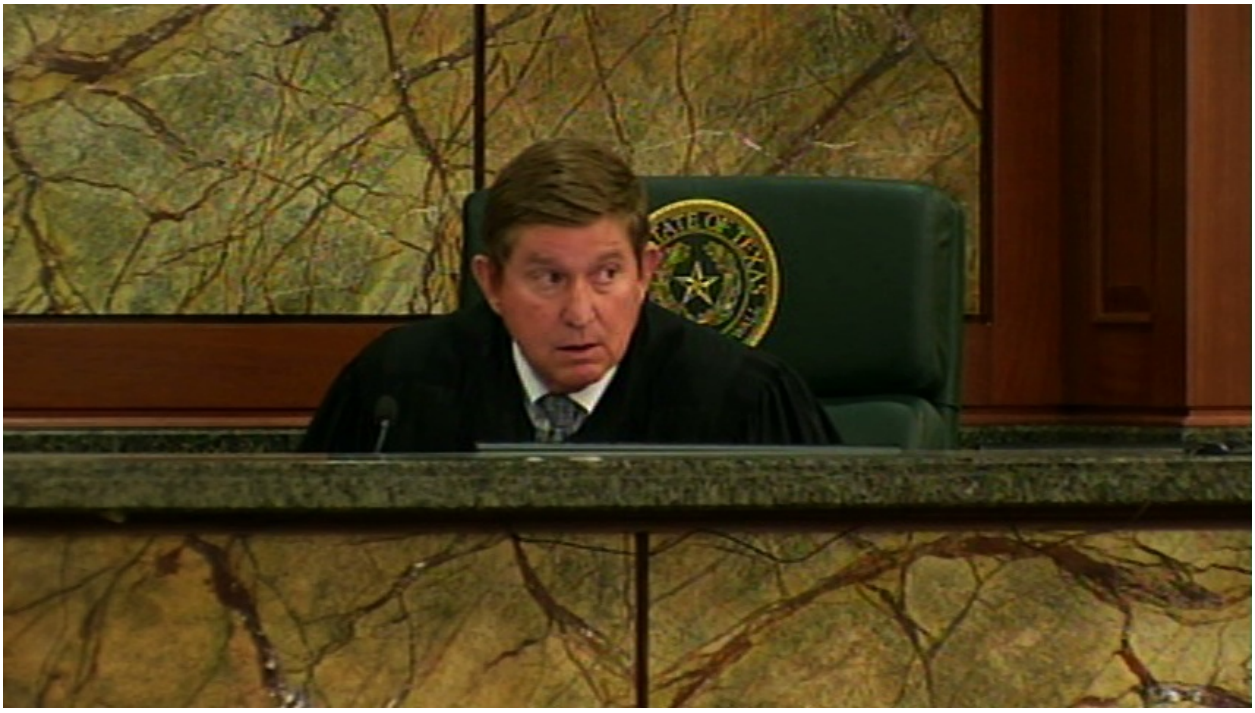
NO. 14



NO. 15

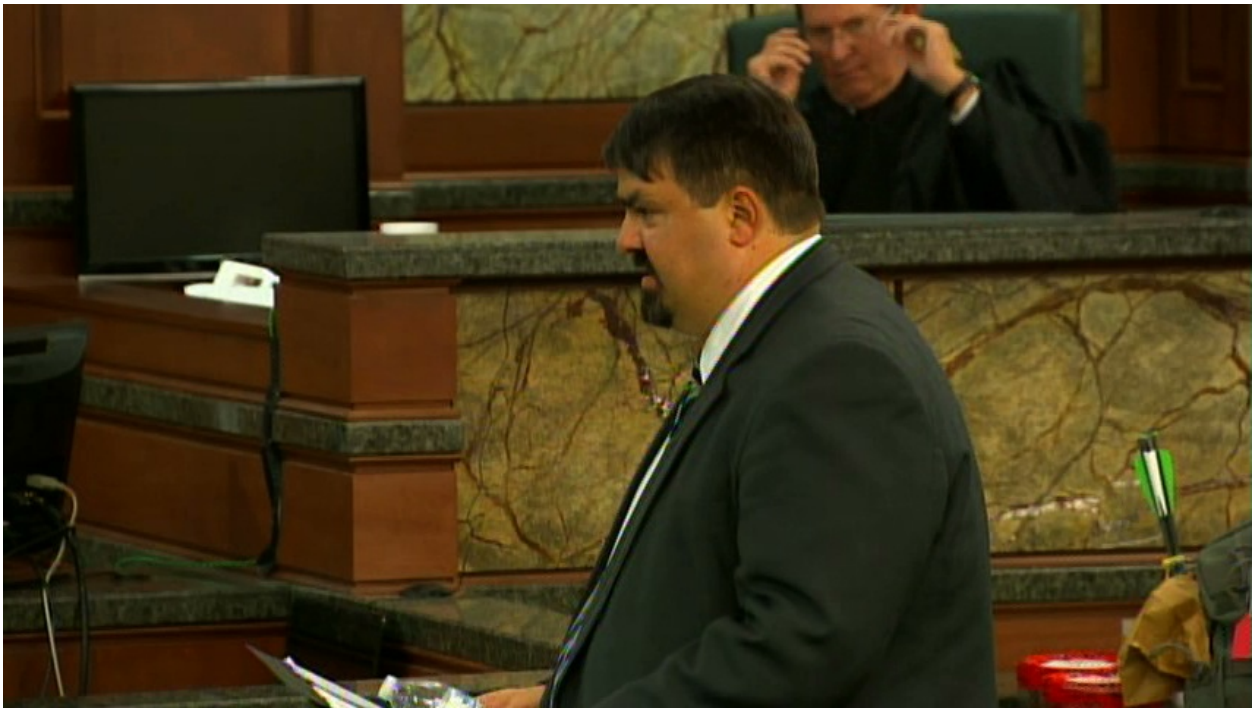


NO. 16

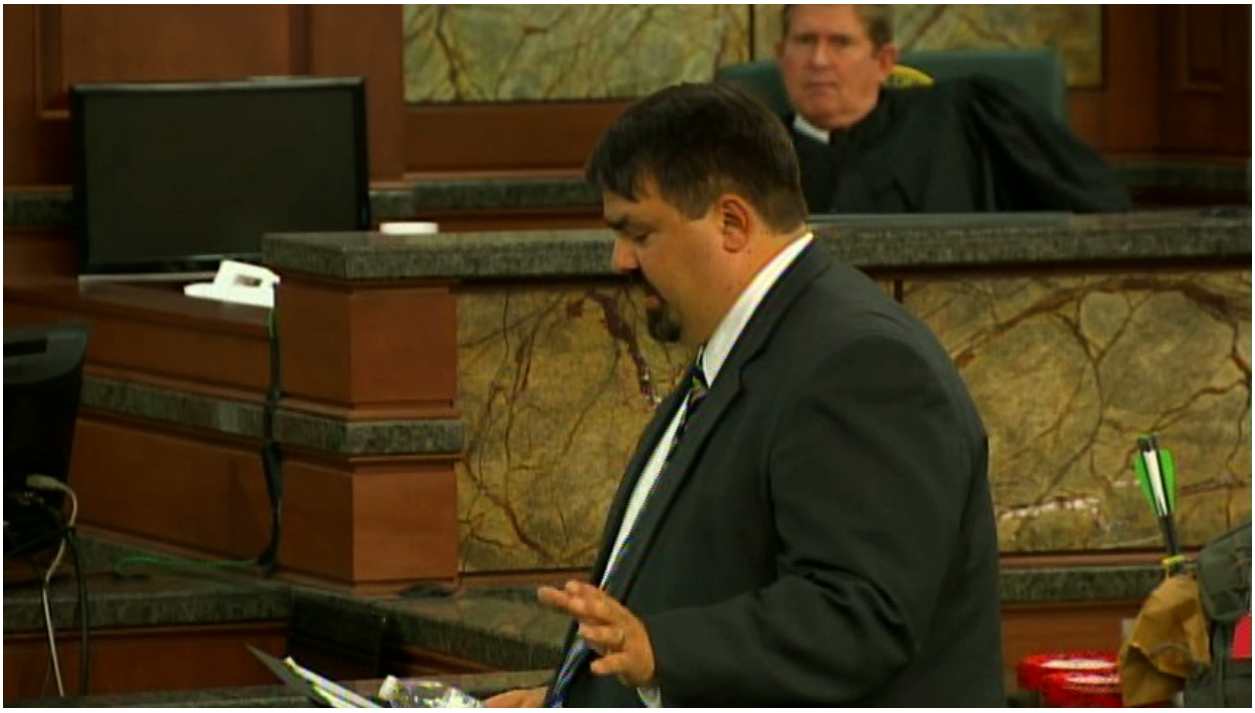


NO. 17

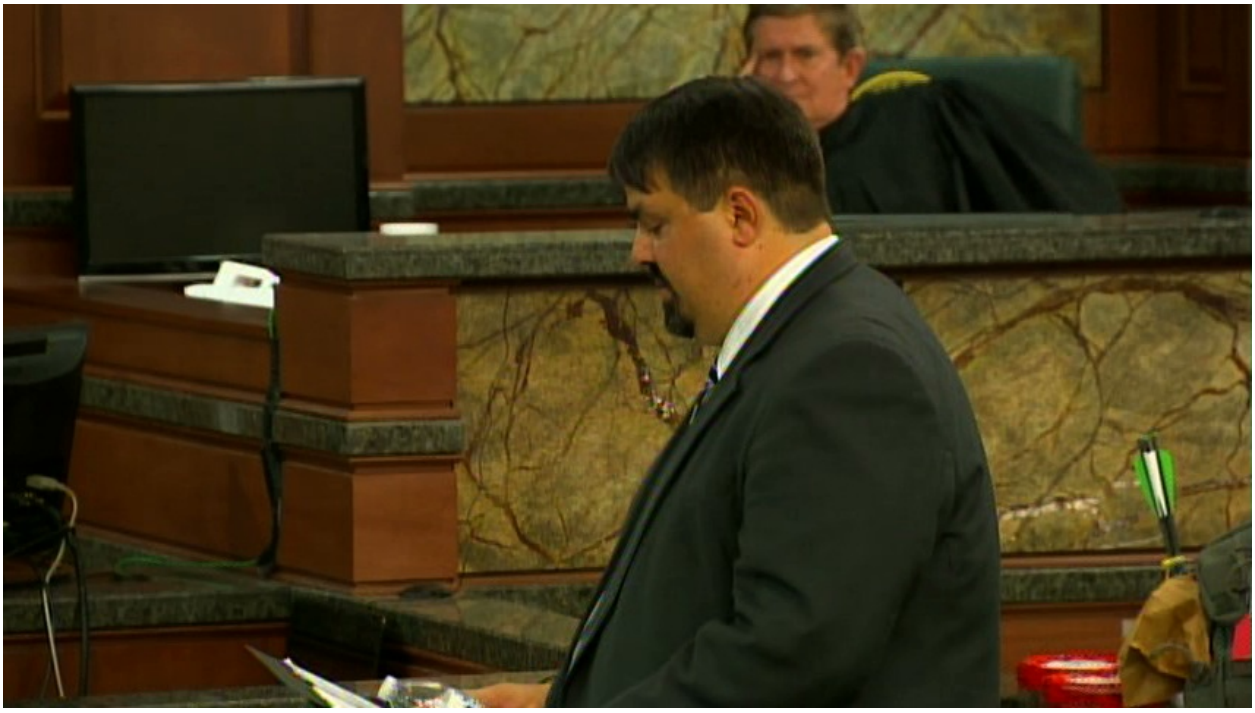
NO. 18



NO. 19



NO. 20



NO. 21

CERTIFICATE OF COMPLIANCE OF WORD COUNT PURSUANT TO APPELLATE RULE OF PROCEDURE 9.4

I certify that this document has words186 pursuant to the definitions of length and content in Rule 9.4. The pictures are in JPEG format.

A. Case Name: Eric Lyle Williams v. State of Texas
B. The Court of Criminal Appeals Case Number: No. AP 77,053
C. The Type of Document: Appellant Brief
D. Party for whom the document is being submitted: Applicant
E. The Word Processing Software and Version Used to Prepare the Appendix:
Word Perfect X7

Copies have been sent to all parties associated with this case.

/s/ John Tatum 4/29/16
(Signature of filing party and date)

John Tatum
990 South Sherman St.
Richardson, Texas 75081
(972) 705-9200
SBOT# 19672500