

1 break. We'll do that at the break.

2 MS. COOPER: Okay.

3 THE COURT: We're going to go ahead and
4 put the evidence on now and opening
5 statements and closing statements, and then
6 we'll do the jury instructions.

7 MS. COOPER: Okay, that will be fine.

8 THE COURT: Everybody in agreement,
9 then? All right. Bring our jury out.

10 [THE JURY WAS RETURNED TO THE OPEN
11 COURTROOM, AND THE PROCEEDINGS CONTINUED AS
12 FOLLOWS IN THE PRESENCE OF THE JURY.]

13 THE COURT: For the jury, we'll now
14 begin the sentencing phase of the trial. And
15 this will be conducted in a very similar way
16 as the regular phase.

17 All right. The State may give your
18 opening statement.

19

20 OPENING STATEMENT BY THE STATE OF MISSISSIPPI

21

22 BY MR. McDONALD:

23 Now that we've completed the first phase of
24 the case, in the second phase of the case the State
25 will reintroduce the evidence that you heard in the
26 previous case. That's a formality. And basically,
27 what that means is that in this section of the case,
28 by reference we will -- you won't have to hear all
29 the witnesses again, but by reference we introduce

1 all the evidence that has come up in the first part
2 of the case.

3 And at that point -- and possibly some
4 additional evidence -- but at that point, then we
5 will rest, and the defense will have an opportunity
6 to present evidence of any mitigating factors,
7 factors that would tend to show that the death
8 penalty should not be imposed on the defendant.
9 Then, at the conclusion of that, there will be brief
10 closing arguments again, and you'll retire to
11 consider what the penalty will be with respect to the
12 conviction. Thank you.

13 THE COURT: All right. Defense may give
14 their opening statement.

15 *****

16 OPENING STATEMENT BY THE DEFENDANT

17
18 BY MS. COOPER:

19 It's the same evidence. It's the same case.
20 Don't sentence Cory to death. He's not a criminal,
21 he was not a criminal, he didn't have a criminal
22 background, he had a family and friends to live for.
23 The same things remain. Nothing's changed. Nothing
24 has changed.

25 THE COURT: All right. Who will you --

26 MR. McDONALD: We have to approach the
27 bench a minute.

28 THE COURT: All right.

29 [BENCH CONFERENCE AS FOLLOWS]

1 **MR. McDONALD:** We still need to figure
2 out what the procedure is on this victim
3 impact stuff. I assume that we --

4 **THE COURT:** That will depend on what she
5 puts on.

6 **MR. McDONALD:** Well, that's my point.

7 **THE COURT:** You can't put anything on in
8 direct.

9 **MR. McDONALD:** That's my question. We
10 don't do it in direct, we wait to see what
11 she does.

12 **THE COURT:** That's right.

13 **[BENCH CONFERENCE CONCLUDED]**

14 **MR. McDONALD:** Judge, at this point, for
15 the record, the State would reintroduce all
16 the evidence, testimony, and documents, and
17 photographs admitted into evidence at the
18 prior trial in the guilt phase of the case.

19 **THE COURT:** All right. That may be
20 formally readmitted in this phase of the case
21 and accepted by the jury just as it was in
22 the other phase of the case.

23 **MR. McDONALD:** And the State would rest.

24 **THE COURT:** Okay. State rests.

25 **[STATE OF MISSISSIPPI RESTS ON**
26 **SENTENCING PHASE]**

27 **THE COURT:** All right. Is the defense
28 ready to proceed?

29 **MS. COOPER:** Yes, Your Honor. We call

1 Mrs. Mavis Brown.

2 THE COURT: All right.

3

4 MAVIS BROWN,

5 called as a witness by the Defendant, after having
6 been first duly sworn, testified as follows:

7

8 DIRECT EXAMINATION

9

10 BY MS. COOPER:

11 Q. Mrs. Brown, will you state for the record
12 your full name, please.

13 A. Mavis Brown.

14 Q. And where do you live, Mrs. Brown?

15 A. I live at Silver Creek, 2744 Highway 84.

16 Q. And what is your relationship to Cory Maye?

17 A. That is my grandson.

18 Q. And do you have other grandchildren, Mrs.
19 Brown?

20 A. Yes, I have other grandchildren.

21 Q. Well, what makes Cory special to you?

22 A. Well, I helped raise Cory. And we carried
23 him to church, we done our part by him. You know, I
24 helped raise him.

25 Q. And when did you learn or when did you know
26 about this incident that happened? That that we are
27 here about, when did you learn about that?

28 A. Well, I heard it the next morning, that this
29 had happened. And the way I heard it, that somebody

1 come and knocked his door down. The man that knocked
2 his door down, I would've done the same thing. If
3 he'd come to my house and tried to get in and didn't,
4 you know, make no explanation who he was, I would've
5 done just what my grandson done.

6 You know, I don't want to hurt nobody. I got
7 -- I'm the mother of nine children, and I never been
8 in no kind of trouble, and I hope I won't. But, you
9 know, when you're at home, you think you safe. But
10 when you is not at home, anything can happen. But
11 when you lay down in your bed, if anybody comes, he
12 should've said, well, I'm the police, not knock his
13 door down.

14 Q. Now, you --

15 A. One more thing.

16 Q. Yes, ma'am?

17 A. God is able to solve all problems. You put
18 God first, he will solve everything. I know he will
19 because I done been through a lot. Not through
20 nothing like that this, but I have been through a
21 lot. God brought me this far, and I believe he's
22 going to take me home. Just keep on praying. Prayer
23 will change things.

24 Q. How old are you, Mrs. Brown?

25 A. I'm 74.

26 Q. Now, you do understand that right now this
27 jury has the decision-making power to sentence Cory
28 to death. What would you ask of them now?

29 A. I say this. Everybody have children, and I

1 know the man that lost his child, I know he love him
2 like I love mine. But if it's in the hands of the
3 Lord, I hope they will forgive him, if they give him
4 some years and not sentence him to death.

5 Q. And I just want the jury to understand, in
6 your raising Cory, did you have any problems with
7 him?

8 A. He never been in no kind of trouble that I
9 knows of.

10 Q. And you've been with him all of the 21 years
11 before this?

12 A. Right. Never had no kind of problem. And
13 anybody that want him sentenced to death, they ain't
14 got no heart.

15 MS. COOPER: Mrs. Brown, the prosecution
16 is going to ask you some questions now, okay?
17 This lawyer here might ask you some
18 questions. This man right here. No, don't
19 leave just yet, okay?

20 *****

21 CROSS-EXAMINATION

22
23 BY MR. McDONALD:

24 Q. Mrs. Brown, did Cory live with you?

25 A. He lived between me and his daddy and his
26 mother.

27 Q. And did he live with you up until the time he
28 moved to Prentiss?

29 A. He lived with us. He went back to his

1 mother, and then he went to Prentiss and, you know,
2 he was on his own then. He was a young man.

3 Q. He wasn't using marijuana or anything when he
4 was living with you.

5 A. Not as I never heard.

6 Q. Or not with his dad or his mom that you know.

7 A. That's right.

8 Q. Okay. Do you believe you know everything
9 about him? Do you believe you know everything about
10 him?

11 A. Well, I thought I did.

12 MR. McDONALD: That's all the questions
13 we have.

14 THE COURT: Any redirect? All right.
15 You may step down.

16 MS. COOPER: Excuse me. I'm sorry, Your
17 Honor, moving a little slow this afternoon.

18 *****

19 REDIRECT EXAMINATION

20
21 BY MS. COOPER:

22 Q. Now, you said you thought you knew everything
23 about him. What do you mean by that, Mrs. Brown?

24 MR. McDONALD: I think that's
25 self-explanatory.

26 THE COURT: She may ask it.

27 A. What I mean, he was a good boy. He went to
28 church, he were raised up in church. You know, when
29 children get grown, they gets on their own. Yeah.

1 And he had left us, and then he went to his mother
2 and went on to Prentiss.

3 MS. COOPER: Okay. Thank you.

4 THE COURT: You may step down.

5 (WITNESS EXCUSED)

6 *****

7 MS. COOPER: Your Honor, we call Mrs.
8 Dorothy Funchess.

9 THE COURT: All right.

10 [BENCH CONFERENCE AS FOLLOWS]

11 MR. McDONALD: It's okay with me if we
12 do away with the rule of sequestration about
13 these witnesses, but I'm going to go ahead
14 and bring in one of my witnesses now, too,
15 since the mother was in the courtroom. Is
16 that okay with you? You called this witness.
17 She was in the courtroom during the last
18 witness' testimony.

19 MS. COOPER: Okay.

20 MR. McDONALD: And what I'm saying is
21 that I would like to waive the rule so that
22 his mother can be in there. She may be one
23 of my witnesses.

24 MS. COOPER: That's fine. Okay.

25 THE COURT: Okay.

26 [BENCH CONFERENCE CONCLUDED]

27

28 DOROTHY MAYE FUNCHESS,

29 called as a witness by the Defendant, after having

1 been first duly sworn, testified as follows:

2

3

DIRECT EXAMINATION

4

5 BY MS. COOPER:

6

Q. Mrs. Funchess, will you state your full name
7 for the ladies and gentlemen of this jury?

8

A. Dorothy Maye Funchess.

9

Q. And what is your relationship to Cory Maye?

10

A. He's my son.

11

Q. Where do you live, Mrs. Funchess?

12

A. 26 Emmanuel Peyton Lane, Monticello,

13

Mississippi.

14

Q. And how many children do you have?

15

A. Seven.

16

Q. And where does Cory fall in there?

17

A. He's my baby.

18

Q. Now, as Cory was growing up in your home, did
19 you work?

20

A. Yes.

21

Q. Well, tell the ladies and gentlemen, as a
22 child how was Corey?

23

A. Very active, outgoing. No matter what was
24 going on, he always had a smile. You couldn't kill
25 that smile. Always had a smile. I never had any
26 trouble out of him.

27

Q. What did you think when he told you that he
28 wanted to stop going to school?

29

A. I didn't like it, but I knew that he had a

1 lot of other skills, and I went along with it at the
2 time because he wanted to go into the Navy and I was
3 afraid and I talked him out of it.

4 Q. Okay. Now, how long had Cory been away from
5 you -- this incident occurred in December 2001. How
6 long had it been since he had been in your home?

7 A. Well, on and off, you know, most of his life.
8 He would go stay with his dad a little while, and
9 then he would come back. And then he'd go to his
10 grandmother, as far as I could get him to go because
11 he was always clinging.

12 Q. Okay. Okay. Well, what did you think about
13 his decision to move to Prentiss?

14 A. At the time, the reason that he wanted to go,
15 I went along with it because I wanted -- I told him,
16 I said, "Well it's time." Everybody else had left
17 home, and I said, "It's time that you leave." He
18 really didn't want to go, but I knew he loved that
19 baby and he was going to follow that baby.

20 So Chenteal, she kept after him because he
21 always said he wasn't going to ever leave home. I
22 said, "Son, you got to leave someday." So he said,
23 "No, I'm going to get married and we going to stay
24 here and we going to add on to the house." I said,
25 "No, your wife may not want to live here." He said,
26 "Yes, she will." He always say Chenteal. He said,
27 "Chenteal will." I said, "You got to check with
28 Chenteal."

29 So I said, well, he want to go stay with his

1 baby. You know, that's good. And he went. But
2 after he got there, about the same week up to when
3 this happened that Sunday, and he was on my mind and
4 he went to the pay phone and he called me to come
5 pick him up. And I did. Me and his son, we went to
6 get him. And he told me, he said, "Mama," he said,
7 "I don't know anybody over here." He said, "I'm
8 coming back home." I said, "Son, you just left.
9 Stay a little longer." He said, "No." He said, "I
10 can't sleep and all over here." He said, "I'm coming
11 back home."

12 So he stayed until that Tuesday, and I went
13 to work. So Chenteal came and begged him to come
14 back. So on that Tuesday he was still on my mind
15 because when I got home he wasn't there. And so at
16 the time, my husband -- I got in the bed and I
17 couldn't sleep. And so I got up and I said. "I got
18 to go see my baby." So he said, "Well, we'll wait
19 till tomorrow." I said, "No, I got to go. I got
20 this feeling something going to happen." And I
21 always been that way.

22 So he got up against his best wishes and we
23 went there. And I knocked and I knocked and I
24 knocked. He didn't come to the door. So we left,
25 and I told him, I said, "Well, if he's asleep, we not
26 going to ever get him up," I said, because I always
27 told them they slept like dead people. I hope that
28 the house never caught fire because they slept so
29 sound.

1 And so I went back. So the next day I went
2 shopping, and I had that gift. And I told my
3 husband, I said, "I can't rest." I said, "I need to
4 go see my baby." He said, "Oh, he's grown, you know,
5 let him go." But he had come to the house but I was
6 gone. And so the next call I got -- well, when I
7 heard the phone ring, I told my husband, I said,
8 "This is bad news." I said, "You got to answer that
9 phone." And so he did.

10 And we got up and so we went to Prentiss.
11 And when we got there, I went in and Chenteal and her
12 mother, they met us at the courthouse. And so we
13 went in and we asked for him, and didn't nobody know
14 who he was. So we repeatedly asked for him, and they
15 kept telling me they did not have Cory Maye. And so
16 Chenteal mother said, "Yes, you have him," said,
17 "because someone brought me the baby and said that
18 the police had him."

19 So we asked about four or five times and
20 nobody knew who we was talking about. So by that
21 time Sheriff McCullum came from the backside, and he
22 asked Chenteal mother, which is Melissa Longino, who
23 she was there looking for. And so she told him she
24 were looking for Cory Maye. And he said, "I don't
25 think we have a Cory Maye here," he said, "but we got
26 somebody back there. I'll go back there and see."

27 So he went back there, and he came back and
28 that's when he said, "Well, he's back there, but you
29 all can't see him." And that's when she told him who

1 I was.

2 Q. How long had you been there?

3 A. We had been there about 15 minutes or so.

4 Q. Now, Mrs. Funchess, you've told the jury, you
5 know, that you have these feelings. And can you tell
6 them whether or not you think that's because Cory is
7 your youngest child?

8 A. No, I just -- I just been like that all my
9 life.

10 Q. Okay. But when you have those feelings, or
11 premonitions I think they are called, they've been
12 correct.

13 A. Right.

14 Q. What do you think about all of this? This is
15 your son. This is your youngest child. What do you
16 think about it?

17 A. I know within my heart without any doubt that
18 he wouldn't have never did this without the reason
19 that he said. I'm not saying this because he's my
20 child, I'm saying this because I know Cory. And he
21 loved that baby. And I know if I had raised him
22 different than I did -- I thought I did a good job by
23 being a single parent and I was proud of that.

24 So now I'm told that I didn't do a good job
25 because you all want to take his life from me. And
26 we all made it this far because we had each other if
27 we didn't have nothing else. It was just me and my
28 children. And that's why they didn't want me out of
29 their sight five minutes because they would call all

1 the time because I would tell them, It's not like I'm
2 not coming back, just give me a while. And that's
3 the way I always been.

4 So since he's been gone I can't tell you how
5 much I miss him because when I'm sick, that's who
6 took care of me. That's who cooked me three meals a
7 day, washed my clothes. And when he had to go off,
8 he would call me all through the day until he got
9 back to see if I need anything, to see if I was okay.
10 And I been putting my feelings on hold because I'm
11 trying to see about my child.

12 And now what do I do? I did all I know to
13 do. I can't do anything else. It's in your hands.
14 We all have children. Things happen for a reason.
15 We may not understand it, but it's God's will, and
16 God do not make mistakes. Cory may have fired that
17 bullet, but it was God's will to take him home. I
18 can't take that bullet back. Cory can't take it
19 back. So by taking his life, it's not going to bring
20 anybody back.

21 He have babies of his own that need him. So
22 what do I tell those babies? That your daddy will
23 never come home because 12 people don't know you the
24 way that we know you. That 12 people say that you
25 not worth a second chance and that you would never be
26 a father.

27 I know Ron parents might say, Well, Ron would
28 never be a father, but that's not my will. That was
29 God's will. They may say that, Well, what if? We

1 all can say what if. But we can't change what God
2 have in store for us, no matter how we go around it.
3 We can analyze it all day long, but what's meant to
4 be will be.

5 Cory never bother anybody. Never. And if I
6 felt like this was just, I would be the first one to
7 say, no matter how I love my child, if he was a bad
8 child, I would be the first one to say yes, take his
9 life, put him away for life, because it's no help.
10 But I know different. So it's up to you 12 people to
11 determine my baby's life. And whatever decision you
12 make, I got to tell those grandbabies that you all
13 feel like their father is not worth saving just
14 because someone else lost their life. And I feel
15 like those babies deserve better than that.

16 And I got to tell his daughter that they feel
17 like you deserve to die because he was trying to
18 protect you. We don't know. All we know is what we
19 been told. But we can sit here and we can say, well,
20 we know this and we know that, and we all know that
21 the truth can be distorted.

22 We got to come together as human beings and
23 do the right thing regardless of how we look or how
24 different we may be. If you feel like you could
25 sleep at night, do what you have to do, but God knows
26 best.

27 Q. Anything else, Mrs. Funchess?

28 A. Unh-unh [negative].

29 Q. You okay?

1 A. I'm okay.

2 MS. COOPER: The prosecution may ask you
3 some questions.

4 *****

5 CROSS-EXAMINATION

6

7 BY MR. McDONALD:

8 Q. I only have two questions, Mrs. Funchess.
9 One is, do you know who lives at Route 2, Box 188-P,
10 Monticello?

11 A. It's 26 Emmanuel Peyton Lane.

12 Q. Is that the same address? Is that your
13 address now?

14 A. Yeah, that's the 911 address, the 26.

15 Q. And how many children does Cory have?

16 A. Two.

17 Q. And that's the child that --

18 A. He has a son and he has a daughter.

19 Q. -- he was living with in Prentiss? And how
20 old is his son?

21 A. He will be four the first of next month.

22 Q. And where does he live?

23 A. He live with his mother.

24 Q. And where is that?

25 A. Monticello.

26 MR. McDONALD: That's all the questions
27 I have. Thank you.

28 [WITNESS EXCUSED]

29 *****

1 **MS. COOPER:** Nothing further from the
2 State -- excuse me. Oh, God, nothing further
3 from the defense, Your Honor.

4 **[DEFENDANT RESTS ON SENTENCING PHASE]**

5 **THE COURT:** All right. Any rebuttal
6 for the State?

7 **MR. McDONALD:** Yes, sir. Did you want
8 to discuss the --

9 **THE COURT:** Yeah, maybe we ought to do
10 that, then.

11 **[BENCH CONFERENCE AS FOLLOWS]**

12 **MR. McDONALD:** My understanding is that
13 I can put on a witness from his family to
14 talk about what he was like and what the loss
15 was to them.

16 **MS. COOPER:** You're talking about Ron's
17 family.

18 **MR. McDONALD:** Right. They're not going
19 to say anything bad about him. And my
20 understanding is they're not allowed to say
21 what kind of sentence they think he should
22 get, but just so that the jury understands
23 their loss as part of the victim's impact.

24 **MS. COOPER:** So the rebuttal in this
25 phase defeats the mitigation? Maybe I'm a
26 little lost on that.

27 **THE COURT:** Yeah.

28 **MR. McDONALD:** Well, have you read this
29 yet?

1 THE COURT: Yeah.

2 MR. McDONALD: Have you read this?

3 MS. COOPER: No.

4 MR. McDONALD: That's what that says, it
5 rebuts the mitigating.

6 [PAUSE IN THE PROCEEDINGS]

7 MS. COOPER: That's not what I
8 understood.

9 MR. McDONALD: Well, what do you think
10 of that? I mean, I'm reading here and it
11 says the State may --

12 THE COURT: Where did this come from?

13 MR. McDONALD: This came from
14 Mississippi court cases, some federal court
15 cases.

16 THE COURT: I know, but where did this
17 come from? Did this come from the attorney
18 general's office?

19 MR. McDONALD: I had them send it to me
20 so I'd understand what the law is and do it
21 right.

22 THE COURT: Okay. Everything they're
23 basing it on is Payne v. Tennessee. There's
24 not been a Mississippi case where that was
25 allowed, as I understand it.

26 MR. McDONALD: Well, let's take a recess
27 and check on that.

28 THE COURT: All right.

29 [BENCH CONFERENCE CONCLUDED]

1 **THE COURT:** Okay. We've got a legal
2 issue we need to resolve at this point. I'm
3 going to excuse the jury to the jury room.

4 **[THE JURY WAS EXCUSED AT 2:48 P.M., AND**
5 **THE PROCEEDINGS CONTINUED AS FOLLOWS OUTSIDE**
6 **THE PRESENCE OF THE JURY.]**

7 **THE COURT:** Are we going to need to do
8 something on the record? Were you looking
9 for something?

10 **MR. McDONALD:** Well, I was going to give
11 you --

12 **THE COURT:** I've read that. That's all
13 I've read.

14 **MR. McDONALD:** It says here, a
15 Mississippi 2001 case, "In this case Bobby
16 Glenn Wilshire killed Kathy Bell Moore by
17 stabbing her 15 times. The jury was entitled
18 to know exactly who she was and what impact
19 her death had. This information was relevant
20 to the circumstances of the crime."

21 **THE COURT:** Circumstances of the crime.
22 Is that being used in the sentencing phase?

23 **MR. McDONALD:** Apparently, that's what
24 the attorney general's office thinks.

25 **THE COURT:** You can put on the fact that
26 the deceased was a police officer. I think
27 that's relevant to the issue. And I think
28 you can rebut anything that they put on
29 concerning his character, the defendant's

1 character.

2 MS. COOPER: I think my understanding is
3 that they --

4 THE COURT: They said this about the
5 victim's impact statement. They did not
6 qualify that for this phase of the trial.

7 MR. McDONALD: Is relevant to the jury
8 decision as to whether or not the death
9 penalty should be imposed. And that's the
10 sentencing phase of the trial. That's a
11 United States Supreme Court case.

12 THE COURT: That's a Tennessee case.

13 MR. McDONALD: It's a United States
14 Supreme Court case.

15 THE COURT: I understand that, but it's
16 also got a different statute in Tennessee
17 than what we have in Mississippi. Now, if
18 that statute's the same, then we could follow
19 Payne, but I don't think it is. That may be.
20 If we need to recess to get some cases, then
21 we'll do that.

22 MR. McDONALD: I think we should.

23 THE COURT: All right. We'll recess to
24 look at the law.

25 [COURT WAS PLACED IN RECESS AT 2:50 P.M.
26 COURT WAS RECONVENED IN THE OPEN COURTROOM AT
27 4:05 P.M., THE JURY WAS RETURNED, AND THE
28 PROCEEDINGS CONTINUED AS FOLLOWS IN THE
29 PRESENCE OF THE JURY.]

1 **THE COURT:** State have anything further
2 they wish to offer?

3 **MR. McDONALD:** We have nothing in
4 rebuttal to the grandmother and the mother's
5 testimony, Your Honor.

6 **[STATE OF MISSISSIPPI RESTS FINALLY ON**
7 **SENTENCING PHASE.]**

8 **THE COURT:** All right. All parties,
9 then, have rested on the evidence that you'll
10 have for the sentencing phase. These are the
11 instructions that you'll have. I'll read
12 them to you just as before, and then you'll
13 take them back to review if you need to.

14 **[JURY INSTRUCTIONS ON THE SENTENCING**
15 **PHASE WERE READ BY THE COURT]**

16 **THE COURT:** That concludes the
17 instructions of this phase. I'll let the
18 attorneys give their summations.

19 **MR. McDONALD:** Judge, we'd like to
20 divide our time in half.

21 **THE COURT:** All right.

22 **MR. MILLER:** How long do I have, Your
23 Honor?

24 **THE COURT:** Ten minutes.

25 **MR. MILLER:** Would you tell me when I
26 have two minutes?

27 **THE COURT:** Okay. You want a warning
28 at --

29 **MR. MILLER:** Yes, sir, two-minute

1 warning.

2 THE COURT: -- two minutes. Okay.

3 MR. MILLER: May I proceed, Your Honor?

4 THE COURT: You may.

5

6 CLOSING ARGUMENT BY THE STATE OF MISSISSIPPI

7

8 BY MR. MILLER:

9 The judge told you this is the sentencing
10 portion. Got some instructions here that are going
11 to be a little different than before. On this,
12 you've got a list of things listed on here I want to
13 go over with you. The judge told you to reach your
14 decision, you objectively consider the detailed
15 circumstance of the offense for which the defendant
16 was convicted. The character, record, the defendant
17 himself. You should consider and weigh any
18 mitigating circumstances as set forth later in this
19 instruction, but you are cautioned not to be swayed
20 by sentiment, conjecture, sympathy, passion,
21 prejudice, public opinion or public feeling.

22 Under section A it's got some items listed
23 there. To return the death penalty in this case, you
24 must first unanimously find from the evidence beyond
25 a reasonable doubt that one or more of the following
26 facts existed. One of these three things you have to
27 find.

28 One: The defendant actually killed Ronald W.
29 Jones. Does the evidence show that?

1 Two: The defendant intended the killing of
2 Ronald W. Jones take place.

3 Three: The defendant contemplated that
4 lethal force would be employed.

5 You must consider those three things in your
6 deliberations. And if you find that any of those
7 three things exist, you continue.

8 Next, you go to section B, after you find
9 which one, two, or three of those existed.

10 Next, to return the death penalty, you must
11 find that the mitigating circumstances, those which
12 tend to warrant the less severe penalty of life
13 imprisonment without parole, do not outweigh the
14 aggravating circumstances.

15 Once you consider -- consider only the
16 elements of aggravation to determine if the death
17 penalty should be imposed.

18 One: Whether the capital offense was
19 committed to disrupt or hinder the lawful exercise of
20 any government function or the enforcement of laws.
21 Was this offense done to disrupt or hinder the lawful
22 exercise of government function or enforcement of
23 laws? What did it do? Yes, it hindered the
24 enforcement of search warrant, which is the
25 enforcement of government laws. That's the one you
26 have to look at. You must unanimously find beyond a
27 reasonable doubt that the preceding aggravating
28 circumstance exists in this case to return a death
29 penalty.

1 If you don't find that aggravating
2 circumstance to exist, you may not impose the death
3 penalty. You should write the following verdict on a
4 separate sheet of paper. We, the jury, find that the
5 defendant should be sentenced to life imprisonment
6 without parole.

7 If you find that existed, you go down to the
8 next thing. The aggravating circumstance is found to
9 exist beyond a reasonable doubt. Each of you must
10 consider whether the mitigating circumstances
11 outweigh the aggravating circumstances. You consider
12 the following elements of mitigation whether the
13 death penalty should be imposed: The defendant has
14 no significant history of prior criminal activity,
15 age of the defendant at the time of the crime, and
16 any other matter, any other aspects of the
17 defendant's character or any other circumstance of
18 the offense brought to you during the trial of this
19 cause which you, the jury, deem to be mitigating on
20 behalf of the defendant. That's the mitigating
21 circumstances you look at.

22 You individually look at that and see whether
23 you consider the mitigating outweigh the aggravating.
24 After you do that, if you find that the aggravating
25 do not outweigh the mitigating, your verdict should
26 be in this form. It's under section C. And you
27 write this on a separate sheet of paper. We, the
28 jury, unanimously find from the evidence beyond a
29 reasonable doubt that the following facts existed at

1 the time of the commission of capital murder. And
2 there you list the things under section A, the ones
3 you find. That the defendant actually killed Ronald
4 W. Jones, that the defendant intended the killing of
5 Ronald W. Jones take place, or that the defendant
6 contemplated that lethal force would be employed.
7 You write whichever of the three you find under that.

8 Next, if you find the following aggravating
9 circumstance of, and that's under section B, whether
10 the capital offense was committed to disrupt or
11 hinder the lawful exercise of any government function
12 or enforcement of laws. That would go on your next
13 line. If you find that exists beyond a reasonable
14 doubt sufficient to impose the death penalty and
15 there are sufficient mitigating circumstances that
16 outweigh aggravating, you further find the defendant
17 should suffer death. The foreman signs that verdict,
18 and you turn it in.

19 If you don't find that, the 12 of you agree,
20 we, the jury, find the defendant should be sentenced
21 to life imprisonment without parole, you put that on
22 a separate sheet of paper. Foreman signs that and
23 turns it in.

24 If the 12 of you are not able to agree on the
25 verdict, we, the jury, are unable to unanimously
26 agree on punishment. Sign that and turn it in.

27 And in doing this, you don't just look at the
28 circumstances and count them up. The Court instructs
29 that it's not a mere counting process. You don't say

1 there's this many aggravating, this many mitigating.
2 You look at them and weigh them against each other
3 in your determination in deciding what the sentence
4 should be in this case. I ask you to carefully
5 consider your verdict.

6 Look at the evidence that was given in this
7 case. What was the testimony that was given in this
8 case? All 12 of you must agree on the verdict to
9 bring back the verdict. I think if you look at the
10 aggravating circumstances and mitigating
11 circumstances, you'll bring back a just verdict.

12 Thank you.

13 THE COURT: Ms. Cooper.

14 MS. COOPER: Yes, sir.

15 *****

16 CLOSING ARGUMENT BY THE DEFENDANT

17

18 BY MS. COOPER:

19 Well, I'm standing here, whereas on Tuesday,
20 when we started, I stood here and I said, "I don't
21 want to be over here." But I'm over here
22 nonetheless. And I guess, you know, my question has
23 been answered. What now? What next? But then we've
24 got a little way to go. We've got just a little way
25 to go.

26 But I'm not giving up because what I do know,
27 as I knew earlier and I shared with you earlier,
28 December 26, 2004, is going to come. And for those
29 of us who will celebrate that day after Christmas,

1 we're going to experience this together here in this
2 place today. And I said that it was a mighty, mighty
3 big challenge, but it's not going to end here. It's
4 not going to end here if you make the decision in 20
5 minutes because December 26th is about 11 months from
6 now.

7 And that's a mighty, mighty long time. I
8 mean, it's going by pretty fast. We're in 2004, and
9 Cory's life has passed two years incarcerated. Ron
10 Jones has been dead for two years. But when
11 December 26, 2004, rolls around, how will you have
12 been changed? Will you have a merry Christmas? Will
13 you give much thought and consideration to Ron Jones
14 and his family? Will you think about Cory and his
15 family? Will you think about where is Cory and what
16 have I done in this process? Participating in the
17 process that decided Cory's fate and future. That's
18 a mighty, mighty big challenge.

19 And most of us like to sleep well at night.
20 And most of us can sleep well at night when we have
21 done a job well. But we can't be motivated by
22 anything but fairness, justice, and what's right.
23 And I don't know who wants to play other than who you
24 are, but I am asking you, and I pled with you this
25 morning, and I will continue on, Cory and I, on this
26 path. But I'm simply asking you do not, based on the
27 evidence that was presented to you this week, do not
28 sentence him to death.

29 I've done what I was asked to do, what I was

1 called to do. I've shown up, and I've done it. And
2 one of the reasons I'm going to sleep well tonight is
3 because I am tired. But when I awake in the morning,
4 I will feel then just as I feel now, that I did what
5 I knew was right because Cory told me, Agent Jones,
6 and you the truth.

7 December 26, 2004, that's 11 months from now.
8 Lot of other things are going to happen. But how
9 will you have been changed on that date based on the
10 decision that you make here in this place and at this
11 time?

12 THE COURT: Mr. McDonald?

13 MR. McDONALD: Judge, let me know when I
14 have two minutes left.

15 THE COURT: All right.

16 *****

17 CLOSING ARGUMENT BY THE STATE OF MISSISSIPPI

18
19 BY MR. McDONALD:

20 You know, at the beginning of the sentencing
21 instructions, the Court said you should consider and
22 weigh any mitigating circumstances as set forth in
23 the instruction, but you are cautioned not to be
24 swayed by mere sentiment, conjecture, sympathy,
25 passion, prejudice, public opinion.

26 Now, ladies and gentlemen, we didn't call any
27 rebuttal witnesses to the witnesses that testified
28 for the defense in mitigation. And the reason is
29 that I truly believe that Mr. Maye's grandmother and

1 his mother love him. I believe that there are
2 aspects about Mr. Maye that they don't know. I
3 believe that they would do whatever they could to
4 help Mr. Maye, just as any mother or grandmother
5 would.

6 But there are some things that we have to
7 consider here, and we have to weigh these aggravating
8 and mitigating circumstances. Not out of sympathy,
9 not to lay a guilt trip on you about rendering a
10 verdict, not worrying about what -- not causing you
11 to try and second-guess or worry how you're going to
12 feel about it later, but based on the evidence and
13 based on the facts and not about sympathy.

14 Now, there's a couple of things that I want
15 to address. One is the things that came out in
16 closing and the things that came out in the testimony
17 on behalf of the mitigating. And I mean no
18 disrespect, but there are a few things that I would
19 like to say.

20 One, I think there were two things brought
21 out during that mitigating circumstance to try and
22 cause you maybe to rethink whether you were right on
23 your prior decision, and that was the defendant's
24 demeanor, about, well, he smiles all the time and
25 what you may have seen in this courtroom this week.
26 And also, he's a heavy sleeper; he probably really
27 didn't hear the door knocking or the people calling.
28 And I think those things were intentionally brought
29 out by those witnesses.

1 I think that there was an intentional effort
2 in the argument to try to make you feel responsible
3 for what is going to happen to Cory Maye. This goes
4 back to the initial position of the defense in that
5 everything is somebody else's fault. It's the fault
6 of Ron Jones for being incompetent. It's the fault
7 of the Purvis police, Prentiss police. It's the
8 fault of the system. It's the fault of society.
9 It's you. You're going to make a decision. It's
10 God's will that Ron Jones is dead.

11 I know that God's will plays a part in my
12 life, but I also know that the thing that makes me a
13 man and the thing that makes you a man or a woman and
14 human is that God gave us free will. God gave us
15 free will, and that's the difference between man and
16 animals and everybody else. He gave us the
17 opportunity to choose between right and wrong,
18 between good and evil.

19 God does not wish us to commit evil. God
20 does not wish us to commit murder. It is not God's
21 will that people be murdered. It's not God's fault
22 that Ron Jones is dead.

23 **MS. COOPER:** Objection, Your Honor. May
24 we approach, please?

25 **THE COURT:** All right.

26 **[BENCH CONFERENCE AS FOLLOWS]**

27 **MS. COOPER:** I don't have any case law
28 to support this at this time, but I was under
29 the impression that references to God or the

1 Deity was improper. And I'm stating my
2 objection for the record based on that.

3 **MR. McDONALD:** And I'm making a comment
4 on the testimony elicited by the defense
5 witness.

6 **THE COURT:** All right.

7 **MS. COOPER:** Thank you.

8 **[BENCH CONFERENCE CONCLUDED]**

9 **MR. McDONALD:** May I proceed, Your
10 Honor?

11 **THE COURT:** You may.

12 **BY MR. McDONALD:**

13 I'm sorry that Mr. Maye's children are in the
14 position that they're in. But who put Mr. Maye's
15 children in the position that they're in? Mr. Maye
16 got the gun. Mr. Maye loaded the gun. Mr. Maye
17 aimed the gun. And Mr. Maye pulled the trigger. Mr.
18 Maye put his children in the position that they're in
19 today.

20 I'm sorry for his family, but Mr. Maye got
21 the gun. Mr. Maye loaded the gun. Mr. Maye shot Ron
22 Jones. And Mr. Maye put Mr. Maye in the position
23 he's in today.

24 You are not responsible for what happens to
25 Mr. Maye. The facts are responsible for -- the facts
26 will result in what happens to Mr. Maye today. He
27 was the master of his fate with respect to this. He
28 chose to get a gun. He chose to load the gun. He
29 chose to cock the gun. He chose to shoot the police

1 officer.

2 Now, there are several ways -- there are a
3 lot of murders you can't get the death penalty for in
4 Mississippi. There are a few things you can do and
5 get the death penalty, and one of those is if you
6 kill a law enforcement officer while they're in the
7 performance of their duty. The reason for that is
8 pure, plain, and clear and is fundamental for the
9 proper operation of society. These law enforcement
10 officers protect society and protect the people in
11 society. They have to be protected.

12 In the event that you kill one -- they
13 operate on their own many times, by themselves, but
14 they operate in harm's way every day. They need the
15 extra protection of individuals knowing that if you
16 choose to get a gun, if you choose to load the gun,
17 if you choose to cock the gun, and if you choose to
18 point that gun and shoot a law enforcement officer,
19 you're facing the death penalty. It has to be in
20 order to protect our society.

21 Now, you're to consider the aggravating
22 factor, which is the fact that Ron Jones was carrying
23 out a governmental function and the enforcement of
24 laws which, in essence, you've already found by
25 finding the man guilty because he was a law
26 enforcement officer and he was on duty and carrying
27 out his duties.

28 Think of any of these mitigating factors,
29 think of any other mitigating factor, any other one

1 that you want, but singly or altogether, if any of
2 them -- if any of them outweigh the seriousness and
3 the aggravation of what Mr. Maye has done when Mr.
4 Maye, of his own free will, chose to get a gun, load
5 the gun, point the gun, shoot and murder a police
6 officer. And we submit to you that it does not.

7 We submit to you that there are vital
8 societal reasons for the death penalty for the murder
9 of law enforcement officers, and we submit to you
10 that we believe that the evidence and the aggravating
11 circumstance outweighs any possible mitigating
12 circumstances, and we would ask you to return a
13 verdict of death in this case.

14 And come Christmas this year, next year, or
15 any other time, there is no guilt trip on you. You
16 have done what is your obligation to do as jurors.
17 Mr. Maye has already made his decisions and
18 obligations. His punishment, whatever it might be,
19 rests based on his decisions, his actions and what he
20 did.

21 The position he's in, his family's in, his
22 children are in is solely and completely based on
23 what he chose to do.

24 **THE COURT:** All right. During this
25 phase, it is required that you have a
26 foreman. And one of you will have to be the
27 foreman, and that person will write down the
28 verdict and sign it. It has to be signed by
29 you on a separate sheet of paper.

1 It does take all 12 of you again. And
2 if you need something, be sure to knock and
3 let the bailiff know that. When you've
4 reached your verdict, knock and let the
5 bailiff know that.

6 The jury may retire to consider their
7 verdict.

8 **[THE JURY RETIRED FOR DELIBERATIONS AT
9 4:35 P.M.]**

10 **THE COURT:** We'll stand in recess on
11 this case, and I've got some other matters I
12 guess I need to take up. We'll take those
13 up.

14 **[COURT WAS PLACED IN RECESS. COURT WAS
15 RECONVENED IN THE OPEN COURTROOM AT SIX
16 O'CLOCK P.M.]**

17 **THE COURT:** Are we ready? They have a
18 verdict?

19 **THE BAILIFF:** Yes, sir.

20 **THE COURT:** All right. Again, I want to
21 caution everybody about saying anything, any
22 outburst or anything in the courtroom. And
23 everybody remain seated until the jury has
24 actually cleared the courtroom. All right.
25 You may bring the jury out.

26 **[THE JURY WAS RETURNED TO THE OPEN
27 COURTROOM WITH ITS VERDICT, AND THE
28 PROCEEDINGS CONTINUED AS FOLLOWS IN THE
29 PRESENCE OF THE JURY.]**

1 **THE COURT:** All right. Have you reached
2 a verdict?

3 **JUROR DONALD W. STURDIVANT:** We have,
4 Your Honor.

5 **THE COURT:** And all of you agree on that
6 as the verdict of the jury.

7 **[AFFIRMATIVE RESPONSES FROM JURORS]**

8 **THE COURT:** Hand it to the bailiff.

9 **[PAUSE IN THE PROCEEDINGS]**

10 **THE COURT:** All right. And the clerk
11 will read the verdict.

12 **THE CLERK:** "We, the jury, unanimously
13 find from the evidence beyond a reasonable
14 doubt that the following facts existed at the
15 time of the commission of a capital murder.
16 That the defendant actually killed Ronald W.
17 Jones. That the defendant intended the
18 killing of Ronald W. Jones take place. That
19 he contemplated that lethal force would be
20 employed.

21 "Next, we, the jury, unanimously find
22 that the aggravating circumstances of the
23 capital offense was committed to disrupt or
24 hinder the lawful exercise of any government
25 function or the enforcement of laws and is
26 sufficient to impose the death penalty and
27 that there are insufficient mitigating
28 circumstances to outweigh the aggravating
29 circumstances.

1 "And we further find unanimously that
2 the defendant should suffer death."

3 **THE COURT:** That's signed by the
4 foreman?

5 **THE CLERK:** Signed by the foreman.

6 **THE COURT:** All right. That will
7 conclude your service at this time. We will
8 finally excuse you. We do thank you for your
9 service. Hate we kept you this time, but
10 there are the difficult cases that have to be
11 resolved, and we do appreciate you doing your
12 service.

13 All right. The jury may be discharged.
14 Everybody else remain seated. And if anybody
15 about the press wants to talk to you, just
16 tell them that you can't talk to them at my
17 instructions.

18 **[THE JURY WAS FINALLY DISCHARGED]**

19 **THE COURT:** All right. I do need to
20 impose sentence at some time. We'll recess a
21 few minutes, then, and I'll go ahead and
22 impose the sentence after that. We'll take
23 about a ten-minute recess.

24 **[COURT WAS PLACED IN RECESS AT 6:04 P.M.**
25 **COURT WAS RECONVENED IN THE OPEN COURTROOM AT**
26 **6:25 P.M., AND THE PROCEEDINGS CONTINUED AS**
27 **FOLLOWS.]**

28 **THE COURT:** Stand here in front of this
29 microphone with your counsel.

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[THE DEFENDANT AND MS. COOPER BEFORE THE BENCH]

THE COURT: All right. You're Cory Jermaine Maye?

THE DEFENDANT: Yes, sir.

THE COURT: And a jury of your peers has convicted you of the charge of capital murder. The case then went to the sentencing phase, and they ordered that you be sentenced to suffer death.

Is there anything you want to say before sentencing?

THE DEFENDANT: No, sir.

THE COURT: All right. Then based upon the jury's verdict, I will sentence you to suffer death by lethal injection. All right. That will be the sentence of the Court.

MS. COOPER: Judge, will we get a copy of that order now?

THE COURT: Yes. Is there anything further for our record?

MS. COOPER: No, sir.

THE COURT: All right. Y'all may be excused. We'll stand adjourned.

[THE RECORD WAS CLOSED, AND COURT WAS ADJOURNED AT 6:27 P.M. ON FRIDAY, JANUARY 23, 2004.]
