

NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NOS. 97 CrS 39580  
97 CrS 23654  
98 CrS 23485

STATE OF NORTH CAROLINA )  
 )  
 v. )  
 )  
RONNIE LEE KIMBLE, )  
 )  
 Defendant. )

VOLUME XVII  
TRIAL TRANSCRIPT

Transcript of proceedings taken in the General Court of Justice, Superior Court Division, Guilford County, Greensboro, North Carolina, on the 3rd day of September, 1998, at the August 3, 1998, Regular Criminal Session, before the Honorable C. Preston Cornelius, Judge Presiding.

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SEVENTEENTH DAY

September 3, 1998

(Met, pursuant to evening recess of September 2, 1998, at 9:15 a.m.)

MR. PANOSH: Your Honor, I --

THE COURT: Need to get the defendant in here first.

MR. LLOYD: Your Honor, if I may approach?

THE COURT: Yes.

(Defendant present)

THE COURT: Okay. At this point, let the record show the defendant is present with counsel and the State is represented by Mr. Panosh. And the Court at this point is involved in the formulation of issues that should be submitted to the jury at the sentencing phase.

I believe we agreed that there are two statutory aggravating factors the State would be submitting to the jury. Is that correct for the State?

MR. PANOSH: Yes.

THE COURT: The defendant; is that correct? Does the defendant understand what the State proposes?

MR. LLOYD: Yes, sir, Your Honor. We understand.

THE COURT: I believe there's no objection to those two being submitted; is that correct?

MR. LLOYD: Well, Your Honor, I raised a formal objection but did not ask to be heard. I don't have any case law of anything.

THE COURT: The defendant has submitted what the Court is going to mark as Court Exhibit number -- what is this? 4?

THE CLERK: 5, Your Honor.

THE COURT: 5. Proposed mitigating factors. Defendant is proposing three statutory mitigating factors: Ronnie Kimble has no significant history of prior criminal activity. And I believe the Court has indicated it would grant that statutory mitigating factor and would in fact give a peremptory instruction that the jurors should answer that issue "yes" in his favor. There's no evidence to the contrary of that. The second statutory mitigating factor is Ronnie Kimble acted under the domination of his brother Ted. And the third statutory mitigating factor that Ronnie Kimble's age at the time he committed this crime was 23. That this is a mitigating factor. That being the statutory mitigating factors (f)(1), (f)(5), and (f)(7).

State wish to be heard on those statutory mitigating factors?

MR. PANOSH: No, Your Honor.

THE COURT: The defendant has also submitted

mitigating factors of a nonstatutory nature but which the evidence would show could be submitted to the jury.

No. 4, Ronnie Kimble served his country as a corporal in the United States Marine Corps and was an active marine.

State wish to be heard on that? I think the evidence shows that.

MR. PANOSH: Do not wish to be heard, Your Honor.

THE COURT: Ronnie Kimble taught Sunday school at his father's church on Monnett Road and was a positive influence on younger children in the church.

State wish to be heard on that?

MR. PANOSH: No, Your Honor.

THE COURT: Court will submit that one.

Ronnie Kimble showed initiative in his youth by starting his own lawn care business.

State wish to be heard?

MR. PANOSH: No, Your Honor.

THE COURT: Court will submit that.

Ronnie Kimble showed diligence as a good and hard worker from an early age.

State wish to be heard on that?

MR. PANOSH: No, Your Honor.

THE COURT: Court will submit that.

No. 8, Ronnie Kimble did a good job in the chaplain's office in the Marine Corps.

State wish to be heard?

MR. PANOSH: No, Your Honor.

THE COURT: Court will submit that as a mitigating factor.

No. 9, Ronnie Kimble was responsible for James -- how does he pronounce that?

MR. HATFIELD: Dziadaszek?

THE COURT: Dziadaszek.

MR. HATFIELD: Starts with a J in pronouncing it.

THE COURT: Ronnie Kimble was responsible for James Dziadaszek quitting drinking and becoming more active in the church.

State wish to be heard?

MR. PANOSH: No, Your Honor.

THE COURT: Court will grant that request.

No. 10, Ronnie Kimble was deprived of an active and normal father in his formative years due to his father's alcoholism and absence from the home.

State wish to be heard?

MR. PANOSH: No, Your Honor.

THE COURT: Court will grant the request.

No. 11, Ronnie Kimble had learning problems and

was placed in learning disabled classes in school.

State wish to be heard?

MR. PANOSH: I don't remember any evidence of that. I remember evidence that he was held back on at least one occasion, perhaps two.

THE COURT: Court will submit that one. I think there is some evidence of that.

Ronnie Kimble's mother was 18 and his father 20 when he was born and their youth made his upbringing not as effective as it would have been had his parents been older and more mature.

State wish to be heard?

MR. PANOSH: Pure speculation. We submit it should not go to the jury.

THE COURT: I think there's evidence of that. The Court is going to allow it.

Ronnie Kimble was an active and willing participant in his church.

State wish to be heard?

MR. PANOSH: No. Thank you.

THE COURT: Granted.

Ronnie Kimble was honest in his work dealings with those he worked for.

State wish to be heard?

MR. PANOSH: I think there should be a time



frame placed on that.

No, Your Honor. We don't want to be heard.

Thank you.

THE COURT: I'm going to grant that one also.

Are there any other mitigating factors other than catch-all?

MR. LLOYD: Other than catch-all, no, sir, Your Honor.

THE COURT: Okay. Court will submit those as -- have each of you had an opportunity to review the Issues and Recommendation as to Punishment sheet?

MR. LLOYD: Yes, sir, Your Honor.

THE COURT: Did you find any errors or corrections that need to be made?

MR. LLOYD: Your Honor, I didn't find any. I must admit that I -- Mr. Panosh's format is different. I noticed he does his issues and answers off a computer and I'm going by the old pattern jury typewritten instructions. But I'm assuming that insofar as these track, they're the same as the ones in the notebook. I don't -- nothing jumps out at me, Your Honor.

THE COURT: Okay. Are there any other matters we need to take care of in regard to the proposed instructions the Court will be submitting to the jury?

MR. PANOSH: Your Honor, at -- unfortunately

it's not numbered. On the fifth full page of the paragraph that deals with the defendant acted in an -- under dominance of another person, the pattern requires that the dominance be described. And the pattern suggested, for example, that the defendant was in love with another person.

THE COURT: Right.

MR. PANOSH: I think Your Honor has to come up with some appropriate language to fit this specific case.

THE COURT: Well, let's see if we can agree upon that language at this time so there won't be any question about it.

MR. LLOYD: Your Honor, this just -- well, it's just my suggestion. I think the simpler we make it, probably the better. I thought of something along the lines: Defendant was dominated by his older brother Ted.

Throughout his life, I think Mr. Hatfield --

THE COURT: What, sir?

MR. LLOYD: Defendant was dominated by his older brother Ted throughout his life.

THE COURT: Is that the instruction you would request the Court to define for dominance?

MR. LLOYD: Yes, sir.

THE COURT: State have any objection to that?

MR. PANOSH: No, Your Honor. We just need to make it clear so the court reporter can get it typed in there.

THE COURT: That would read as follows: You will find this mitigating circumstance if you find that the defendant was dominated by his older brother Ted throughout his life. And would do anything to -- and that -- strike that. Throughout his life. And that as a result, the defendant was under the domination of another person when he killed the victim.

MR. LLOYD: Yes, sir.

THE COURT: Ted. Any problem with that?

MR. LLOYD: No, sir, Your Honor.

THE COURT: For the State?

MR. PANOSH: No, Your Honor.

THE COURT: Okay. Any other questions about the instructions the Court will give to the jury?

MR. PANOSH: Your Honor, on that same page, A. First, I put in there the fact that his father abused him. I take it they are not submitting that?

THE COURT: Wait a minute. Which one, sir?

MR. PANOSH: That same page, last paragraph begins with A. First, consider whether the defendant was abused by his father.

MR. LLOYD: We're not maintaining that, Your Honor.

THE COURT: You're not asking for that?

MR. LLOYD: No, sir.

THE COURT: Then we will insert the nonstatutory mitigating factors at that point; is that correct?

MR. PANOSH: Yes, sir.

MR. LLOYD: Yes, sir, Your Honor.

THE COURT: I believe there are 11 in number, nonstatutory; is that right?

MR. LLOYD: Yes, sir.

THE COURT: Any other questions about the instruction the Court will give to the jury?

Your arguments -- have you decided how you intend to do those, Gentlemen?

MR. LLOYD: Yes, sir, Your Honor. I will tell the Court I don't think my argument will be over thirty minutes. And we'd like for Mr. Panosh to go first and then Mr. Hatfield and then I will go.

THE COURT: Okay. So the State would have the opening.

MR. PANOSH: Yes, sir. I'd like to have the finalized factors in front of me when I argue.

THE COURT: Okay. If we can let the -- who's going to do that? The court reporter or the clerk?

MR. PANOSH: I believe --

THE COURT: She's familiar with your --

MR. PANOSH: Your Honor, the last thing that we have is a motion in limine the State filed. I believe it's on your calendar there.

THE COURT: Gentlemen, do you have a copy of it? I think that's correct. I think that is the law. The jury has spoken. I think you have to honor that in your arguments.

MR. HATFIELD: May I address the Court?

THE COURT: Yes, sir.

MR. HATFIELD: Your Honor, we understand that it will not be submitted as a nonstatutory mitigating factor, but we are in a delicate position, because we do have a duty to talk about the evidence in the case and to try to draw from the evidence the inferences that would favor life as opposed to the alternative. And while I would not quarrel with the jury's verdict, I still think that we should be free of unnecessary interruptions as we try to make a good faith effort to draw the inferences that we think are appropriate. I can assure the Court that both Mr. Lloyd and I have thought a great deal about what we have to do today ever since we left court yesterday afternoon, and we know that the jury's decision of yesterday is not subject to

review at this time, but this is a complex case in which there's still ways of looking at various significant pieces of evidence.

THE COURT: What do you have in mind, Mr. Hatfield? What do you have in mind that you'd like to talk to the jury about?

MR. HATFIELD: Well --

THE COURT: From that standpoint?

MR. HATFIELD: -- I think that some of the events of the visit to Lynchburg, Virginia, have a bearing on sentencing. I think that quite a bit of the statements and comments of Ted Kimble which came into evidence without cross-examination but were obviously considered by the jury are subject to some review. We were forced by the circumstances of our defense of this case to pursue the fact that we did not believe based on everything that we had heard about the boys that there was a close relationship to the brothers. On the other hand, we are fully satisfied that there is adequate evidence to talk about this domination factor. And I don't think --

THE COURT: You certainly may talk about that.

MR. HATFIELD: Yes, sir. And I don't think there's anything exclusive --

THE COURT: I think what the motion says is that

you can't comment on there being any doubt about the jury's verdict. The jury has spoken. Found that he is in fact the killer of Patricia. And you can't second-guess anyone. You may talk about the dominance and Ted is more guilty than this defendant, stuff like that, then that's proper. That is a dominance issue to be submitted to the jury.

MR. HATFIELD: Well, there's also the question of the meaning of the occurrences in Lynchburg.

THE COURT: The what?

MR. HATFIELD: The meaning of what happened in Lynchburg without -- without challenging the jury's conclusion on that point. I think it's important to allow us to talk about it. I have always understood --

THE COURT: You may talk about his state of mind and that type stuff.

MR. HATFIELD: I just always understood that --

THE COURT: At this point -- excuse me.

MR. HATFIELD: I'm sorry. I didn't mean to talk through the Court either but --

THE COURT: No. Go ahead.

MR. HATFIELD: Well, I thought that in the penalty phase that the defense lawyers could virtually argue anything that was not disrespectful of the jury and the Court and that was reasonably relevant.

THE COURT: You can do that. But what I'm saying is you can't cast doubt on the jury's verdict. They've spoken that he is in fact guilty at this point of the event and can't second-guess them.

MR. HATFIELD: Well, I would ask the Court to give some latitude in that area and not --

THE COURT: I'm not going to let you speculate about the jury's verdict or second-guess them.

MR. HATFIELD: Right. But I think I should be able to complete a few sentences and a few thoughts without the pattern of excessive interruption that has taken place in the rest of this trial. I think we ought to be allowed to talk about this case. It's hard enough --

THE COURT: That's what I'm asking. What are you going to be saying, so we don't get into that having to be interrupted and stopped?

MR. HATFIELD: Well --

THE COURT: I don't want -- I just want you to realize that you can't question the jury's verdict. You can't say that somebody else did it. You can't say that there may be other suspects or this type stuff. You may talk to the jury about Ted and his relationship with his brother and his dominance, he may be more culpable, that type stuff, from the standpoint of setting it all in



motion. But you can't second-guess this jury as to what they've already found.

MR. HATFIELD: The way I read the motion in limine is it says that residual doubt is not a nonstatutory mitigating factor. To that proposition we concur. But if the motion in limine is intended as some sort of warning shot over the bow that we can't talk about this case --

THE COURT: Well, don't retry the case in the sentencing phase is what I'm saying to you. Guilt phase -- I mean guilt/innocence in the sentencing phase. That's basically what the cases are saying.

MR. HATFIELD: Well, I just -- I agree with the basic time frame that the Court is looking for today. But I think it would be better for all concerned if we had a minimum of interruptions and if we could give --

THE COURT: I hope you-all would do that. I think in fairness of the arguments that you be allowed to make your argument without interruption. But of course you have a responsibility to protect the record, make sure that nothing goes to the jury that shouldn't go there, and that's your obligation and duty to make sure that doesn't happen. And the Court is here to rule on it.

But what I'm saying to you is don't try to -- in

your arguments to cast doubt about the jury's verdict or to point a finger at someone else, and this type stuff, at this stage. You can't retry the guilt phase in the sentencing phase. They've spoken. They found that he's guilty of first-degree murder, and that's a finding that shouldn't be contested at this point before this jury. But you certainly may talk about the dominance and other people involved and how they affected this defendant.

MR. HATFIELD: And about his state of mind --

THE COURT: I think you can talk about that.

MR. HATFIELD: -- at various times?

THE COURT: I think you can talk about his state of mind. There is evidence -- the jury can judge his state of mind by his own statements and his own actions.

Anything else?

Well, this jury is due in at ten, and the court reporter is going to have to get these 15 verdict sheets or 15 recommendation sheets, instruction sheets, available so they can be passed out. Hopefully, we'll be in a position to begin at 10 a.m. for the jury arguments.

We'll stand at ease until then.

(Court at ease)

THE COURT: Got 15?

THE CLERK: Yes, sir.

THE COURT: Okay. Now, ready to bring the jury in?

Does anyone need a break before we begin?

Okay. Bring them in, please.

(Jury present)

THE COURT: Pleased to have the jury panel back this morning.

Ms. Caldwell, how is your foot?

JUROR CALDWELL: It's fine. Thank you.

THE COURT: Doing okay?

JUROR CALDWELL: Yes, sir.

THE COURT: We've reached the point, members of the jury, where the attorneys are going to be making their final arguments as to this sentencing phase. Please give them your full and complete attention as they make these final arguments. Please again remember that you should -- if they misstate a portion of the evidence or if your recollection is different from theirs, then the Court will instruct you that you should not be bound by what they say but take your own recollection of the evidence when you begin your deliberation as to this phase of the case. Mr. Panosh will have the opening argument, then the final two arguments will be made by counsel for the defendant.

Mr. Panosh, you may address the jury.

MR. PANOSH: It is now my responsibility to stand before you and ask each of you to impose the death penalty in this case. It is my responsibility because the law requires it. As I told each and every one of you at jury selection, this is not a matter of personal preference. I stand before you not because I want to but because the law requires me to. You must follow the law also. It is your responsibility to determine what punishment is appropriate in this case, not upon personal preference, not upon your feelings, but solely upon the evidence you hear in this second phase.

Ronnie Kimble's guilt has been established. He has been found guilty of first-degree murder beyond a reasonable doubt. That job is over. It is finished. It is completed. This is not the time that you are required to go back and revisit or reexamine that evidence. You may, however, consider the evidence from that first phase in determining whether or not there are aggravating and mitigating factors. You may consider that evidence to determine if it supports aggravating and mitigating factors.

As I said to you in jury selection, the law is very specific. It talks about aggravating and mitigating factors. As a representative of the State, there are eleven aggravating factors in the law that

applies to every murder case. In this particular case, there are only two aggravating factors that I can talk to you about. Because in this argument in this phase of the case I can only talk to you about the aggravating factors.

I cannot go on at length and tell you what a wonderful person Patricia was, about her accomplishments in the church, her accomplishments in life, because the law presumes that every victim is equal. I cannot tell you that the defendant is deserving of the death penalty because she went out and preached the word of God. That's not an issue. The law presumes that every victim is the same. You may only pass upon the aggravating and mitigating factors that apply to her death.

Ladies and gentlemen of the jury, as I told you in jury selection, the first thing that you must consider is whether or not there are at least one aggravating factor, and you must find beyond a reasonable doubt the existence of one of those aggravating factors. If you should find there are no aggravating factors, you would skip the rest of this and vote for life.

Life would mean that the defendant would go to prison; that he would be in prison without parole for the rest of his life. And the State would do everything

in its power to keep him in prison.

MR. LLOYD: Well, objection, Your Honor.

THE COURT: Overruled.

MR. PANOSH: In that prison, he would have the privileges of every other prisoner: recreational facilities, gymnasiums, television, adequate food, mental -- medical and dental care. And that would indeed be punishment. But I submit and contend to you that when you look at the facts in this case, the way Patricia died, when you look at the aggravating factors in this case, life imprisonment with those benefits is not appropriate.

The State is submitting two aggravating factors. The first aggravating factor is that at the time that the defendant killed Patricia and in that course of conduct he committed an arson. Arson is a serious felony. It is not just a felony against the property that is burned. It is a felony -- a serious crime against our society. Because anytime a dwelling, a house, is set on fire, there are well-meaning professional people who come there and risk their lives just like Mr. Faulk, Mr. Vickery, and Mr. Fields.

Remember what they told you? They got there, and that the fire was so intense they had to strap on backpacks and masks. The fire was so intense that they

entered that kitchen door -- the heat was so intense, excuse me, they were forced to leave. I believe it was Mr. Fields who said that even though it was so intense and he couldn't see anything, he went to that back window and broke out that window and crawled in as far as he could to try to find the victim. Well-meaning, professional people. Like all these firemen you see in this photograph put their lives in danger. Because Ronnie Kimble decided that he would burn up the evidence of his crime. That's an aggravating factor.

That aggravating factor by itself is sufficient to call for the death penalty in this case. Because he had no regard for the lives of these people who he knew would come; we all know are going to come. When there's a fire, the fire people will come, the rescue people will come. And they will put on those backpacks and their equipment, and they'll go into heat that you cannot imagine and put their lives on the line. And that's an aggravating factor that calls for the death penalty in this case.

Find that aggravating factor, ladies and gentlemen of the jury, because it exists.

The second aggravating factor is pecuniary gain. As I told you in jury selection, a murder is committed for pecuniary gain if the defendant when he commits it

has obtained or intends or expects to obtain money or some other thing that can be valued in money either as compensation for committing it or as a result of the victim's death.

Ronnie Kimble decided that he would end this woman's life, not for money but for the promise of money. And I don't care if it was \$2, \$2,000, \$200,000 or 30 pieces of silver, that is an aggravating factor that calls for the imposition of the death penalty in this case.

How can you value a human being's life? What value do you put on your life? Any man who decides that he will end someone's life for filthy money deserves the death penalty. Our law requires it. Each of you in your own mind knows that that circumstance in itself requires that he die.

And this is not a matter of personal preference on your part or my part. The law requires it. When our society comes to the point when someone can put money on our heads and our lives are worth a stack of green bills, we're in trouble. We cannot allow that to happen.

Those are the two aggravating factors, ladies and gentlemen of the jury, borne out by the evidence and I submit you should find. I submit that when you find



them, you must then go on and consider whether there are mitigating factors.

There are two phases to the mitigating factors. First, you must find the mitigating factor exists and then you must weigh it against the aggravating factors and determine whether the mitigating factors outweigh the aggravating factors or if in fact the aggravating factors are sufficient to outweigh the mitigating factors.

You'll be told that the defendant has no prior criminal history, and you must find that because that is conclusively shown. He has no prior criminal history. So there will be at least one mitigating factor that you must find. And that means that you will have to go on to this third step and weigh the aggravating and mitigating factors.

As I said to you before, you must find that statutory mitigating factor that he has no significant history. And then later on you must weigh it.

Ask yourself -- this man went to this woman's house. To Patricia's house. He faked a burglary. He hid in a bathroom. He hid in that bathroom with this deadly weapon. He had to be there for some period of time. He had to be there sitting waiting for Patricia to come home. And when she came home, he focused that

beam on her head. He sent that bullet crashing through her skull. Took her life.

This fifty cent piece of metal killed her instantly. Ask yourself does it matter that he has no criminal history? Is that sufficient to outweigh that aggravating factor that he did this for money? Is that sufficient to outweigh that aggravating factor that he did it placing those firemen's lives in jeopardy committing that arson? And I submit and contend to you when you weigh those factors, you'll find that it is not sufficient. And although you must find that mitigating factor that he has no prior criminal history, that's insufficient to outweigh the aggravating factors.

You must consider the mitigating factor that Ronnie Kimble acted under the domination of his brother Ted.

They are submitting to you that Ronnie Kimble acted under the domination of his brother Ted. Should you find that? I think you should, because that is exactly what happened. We all know that's what happened. Ronnie was the man that was going to get the money. Ronnie is -- excuse me. Ted was the man who was going to get the money. He was convincing Ronnie to do it.

But remember, ladies and gentlemen of the jury,

the defendant took that witness stand and for about a day and a half he said I am not close to my brother. When I finally asked him, I said do you believe your brother is responsible for this crime, he said I have my suspicions. And when I tried to pin him down, he said no, my brother is not responsible for this crime. So they want you to find that this is a mitigating factor, but the defendant takes the stand and denies it.

Should you find it, find it. It is consistent with the evidence. But then weigh it. Weigh it against the fact that he sat there in her home in ambush waiting for her to come home. That he cold-bloodedly killed her. And then he doused gasoline on her and her possessions and set them on fire. Weigh it against the fact that this was a plan that existed for probably weeks and months with his brother. Weigh it against the fact that he put those firemen in danger when he committed that arson. And weigh it against the fact that this was done for money. The promise of money. And I submit to you that mitigating factor is insufficient to outweigh those aggravating factors.

Next, they're going to ask you to find that he served his country as a corporal in the Marine Corps and was an excellent marine. And in fact there was testimony by at least one person, I believe two, that

said he was an excellent marine.

But ask yourself, ladies and gentlemen of the jury, have you seen the paperwork? Normally, when a marine comes out of the Marine Corps, he's got separation papers, he's got medals and ribbons and awards, things to say he was an excellent marine. Have you seen that?

You've heard the testimony of Father Soutiere who was obviously his friend, his mentor, and who liked him a lot, who said he was a good marine. And Natalie Kelly who said that I considered -- I was kind of a mother figure to him. And she felt that he was an excellent marine.

If you want to find it, find it. But what does that mean? Do you think it means one bit of difference to Patricia Kimble as that bullet was crashing through her skull that the man who was firing it was an excellent marine?

Weigh it. Dismiss it. It's not sufficient to meet the test of outweighing the aggravating factors.

Ronnie Kimble -- you'll be told that this is a mitigating factor. Ronnie Kimble taught Sunday school and was a positive influence on younger children in that church.

There's testimony, so probably you should find

it. But have you seen one child that came in here and said Ronnie Kimble helped me in my life? Ronnie Kimble was a good teacher. Ronnie Kimble was a good role model for me. The people that testified to that were his father's friends. And, of course, they have some direct knowledge. And those folks are good folks. Hardworking people. And they earnestly believe in Ronnie. But don't forget, they also earnestly believed in Ted.

Ted and Ronnie fooled those people. Ted and Ronnie were killers, our killers. Just because they could fool those older women at that church doesn't mean it's a mitigating factor that can support life imprisonment without parole.

If you find it necessary to find that mitigating factor, then find it. But in the weighing process, it means nothing.

Ronnie Kimble initiated in his youth -- had shown initiative in his youth by starting his own lawn care business.

Find it. Again, what difference did it make? At some point after he had that lawn care business, he decided to take a woman's life for filthy money. How could that possibly -- how could the fact that he had a lawn care service at one time, how could that outweigh that aggravator? It cannot. It should not. And if you

find it, find that it has no weight.

Ronnie Kimble did a good job in the chaplain's office.

Well, that's the same evidence. If you decide to find it, find it. Give it no weight. Because it means nothing to Patricia. It means nothing to Patricia's family. It means nothing to this crime. It does not outweigh those aggravating factors.

You'll be told to find or determine whether he was responsible for James Dziadszek quitting drinking and becoming a more active member of the church.

Well, if you think that's appropriate, find it.

But what does that have to do with this case? Does that outweigh the aggravating factors you've heard? Because you must find that the mitigating factors outweigh the aggravating factors if you're to impose life imprisonment without parole. And if you find that the mitigating factors are insufficient to outweigh the aggravating factors, then you would go on to this fourth step and consider death.

You'll be told to determine whether or not Ronnie Kimble was deprived of an active and normal father in his early formative years due to his father's alcoholism and absence from school -- from home. Excuse me.

I guess there's evidence to that. But does that justify his conduct? Does that justify what he did? Is that the kind of mitigating factor that outweighs the aggravating factors of the arson and the murder-for-hire?

If you have to find it, find it. But it has no weight.

Ronnie Kimble had learning problems.

I don't doubt that. There are thousands of children -- millions of children who have learning problems. Do they commit murders? Do they kill someone for money?

If you think there's evidence to support that factor, find it. But in the weighing process, it means nothing to this case.

Ronnie Kimble's mother was 18 and his father was 20 when he was born and their youth made his upbringing not as effective as it would have been had his parents been older and more mature.

I submit to you there's no such evidence. Yes, they were married in their early age. Yes, they had those children in their early age. But you heard Mr. Kimble say I brought them up in the church. I sent them to Christian schools. I taught them right from wrong. I certainly taught them they could not murder

someone.

I submit that factor is not worth finding.

Ronnie Kimble was an active and willing participant in his church.

Well, at some point he was, and if you need to find that, find it. But again in the weighing process, it means nothing when it's compared to the aggravating factors.

Ronnie Kimble was honest in his work dealings with those he worked for.

I agree there's evidence to that. That when he was young doing his lawn care service, doing his yard service, he was honest. But weigh that against the aggravating factors and it means nothing.

Remember, a mitigating circumstance is a fact or group of facts which do not constitute justification or excuse for a killing or reduce it to a lesser degree of crime than first-degree murder but which may be considered as extenuating or reducing the moral culpability of the killing and making it less deserving of the extreme punishment that other first-degree murderers receive.

For these mitigating factors that they have submitted to you to have any weight at all, you must find that it reduces his moral culpability. That these



mitigating factors somehow say it just isn't as serious a crime because these things existed.

MR. LLOYD: Well, objection, Your Honor. That's not what the instruction says.

THE COURT: Take your own recollection of the instructions, members of the jury, when the Court gives them to you.

MR. PANOSH: Considered as extenuating or reducing the moral culpability of the killing. These mitigating factors, if you find them, do not reduce his moral culpability.

Ladies and gentlemen of the jury, as I said to you before, I cannot talk to you about how precious Patricia's life was, because you must base your decision based upon these two aggravating factors. The defense, though, they can come up and say to you that Ronnie Kimble's life is precious. They can ask you to spare his life. And if they do that, if they tell you that life is precious and that Ronnie's life is precious and if they beg you to spare his life, then I want to remember you -- remind you that Patricia's life was precious too. She wanted to live and breathe and be with her family and preach the word. Her life was precious too. And that man sat there in her home waiting for her as the seconds ticked by; as the minutes

ticked by. If life was precious, that was the time for him to remember it. That was the time for him to put that gun away and save her life.

They can argue to you that Ronnie's life is precious. They can argue to you that you should not send him to the death penalty. They can tell you all about how horrible it's going to be when they scrap him to a gurney and put a needle into his arm and inject him. They can tell you all those things to try and convince you not to kill him. But I submit and contend to you he signed his own death warrant when he accepted that money or accepted the promise for that money. He signed his own death warrant when he took this gun, this gun that Ted always carried, and took it to Patricia's house. He signed his own death warrant when he decided to fake that burglary and he lay there waiting for her. He signed his own death warrant when he put that bullet through her skull and ended her life. He signed his own death warrant when he burned her body in the evidence.

You are here to enforce the law. Ronnie Kimble chose to commit those murders -- commit that murder, commit that arson, and in doing that he forced you to be here and you must now follow the law.

Because when you follow the law, I submit and contend to you, you will, you must find that those two

aggravating factors completely and totally outweigh any mitigating factors. And you must go on to this last phase, and you must find beyond a reasonable doubt that the aggravating circumstances you found are sufficiently substantial to call for the imposition of the death penalty when considered with the mitigating factors found by any one of you. Even if just one of the 12 of you finds one mitigating factor, you must consider that mitigating factor in this final weighing phase, and you must decide that the aggravating factors are sufficiently substantial to call for the imposition of the death penalty.

I speak now for Patricia. Because she cannot speak for herself. I tell you that any living human being who could take this woman and purposely and intentionally for the promise of money turn her into this must die. He must die. Because the aggravating factors say he must die. Because the mitigating factors cannot outweigh what he did.

This is not a matter of personal preference. You must follow the law. You must listen to the evidence. You must find those two aggravating factors. And he must die because we cannot allow people to take any of our lives for money.

THE COURT: At this point, members of the jury,

we'll take about a ten-minute recess to kind of let you refresh yourselves before the final two arguments. Please again remember not to discuss this case among yourselves or allow anyone to talk to you about the case or talk about the case in your presence.

(Jury absent)

THE COURT: Court will be in recess ten minutes, Sheriff.

(Recess)

MR. HATFIELD: Your Honor, may I take the exhibits down?

THE COURT: Yes.

(Defendant present)

(All jurors present)

THE COURT: At this point, members of the jury, Mr. Hatfield will have the opening argument on behalf of the defendant. Please extend to him the same courtesy that you extended to Mr. Panosh.

You may address the jury.

MR. HATFIELD: Thank you, Your Honor. May it please the Court, Mr. Panosh, Mr. Lloyd, ladies and gentlemen:

The bond that we share that holds us together is our reverence for life and it is our reverence for life that requires that murder be punished. We believe this.

It is part of our Judeo-Christian tradition. It's what links us, whether we be Catholics, Baptists, or whatever denomination. It is the thing that makes our society whole that we respect life.

For Ronnie Kimble, I apologize to Patricia Blakely's family. To the members of the jury, I apologize for a life cut short. All of our lives are short. Many of us have lived most of our lives. We know the value of life. We're not here to debate the value of life. We're here to find a way to go on.

You have decided based upon a tremendous amount of evidence that Ronnie Kimble will spend the rest of his life in prison. He will spend the rest of his life in prison regardless of the decision you make today. It will either be a very, very long time, or a not so long time.

I don't have the privilege of telling you how he feels about that. But I can tell you this: It is a harder thing to live a long life in total confinement and to have to remember every day of your life and perhaps even every hour of your life why your life is not like free people's lives.

And so everything that was said to you a little while ago about the outrageousness of deliberate murder is certainly true. But if you want to punish a

deliberate murderer, then let him live his four score and think about what he did every day and every hour of that time.

Now, ladies and gentlemen, you have been told about the aggravating factors and the mitigating factors. But let's remember you've heard this evidence, and you thought about everything that you learned in this trial, including the things that the lawyers had to say about the evidence. You found Ronnie Kimble guilty of deliberate first-degree murder. Guilty of felony murder. Guilty of arson. Guilty of conspiracy. You have spoken.

I can tell you that it's not easy for me to address you, because I was just addressing you a day or so ago and you rejected the things I said. Now I have to come back and try to talk about the case bearing in mind that you did not see it as I saw it and as I hoped you'd see it. But for just a minute -- and I am well-aware of how much time you've put in, and I don't want to belabor this. And I also understand that you don't need me to tell you what to do. I really understand that. But I am a lawyer and so I'll probably run on at the mouth for a few minutes anyhow.

I'd like to ask you to remove from this equation Mr. Mitch Whidden. Obviously, he's the good guy from

whom you received evidence in this trial.

THE COURT: Objection sustained. There's no good or bad guys in this trial, members of the jury, from the standpoint of the evidence.

MR. HATFIELD: Obviously, Mitch Whidden's testimony had more credibility and you accepted that.

You also heard from Ronnie Kimble, and to some extent you couldn't credit everything he said, obviously by your judgment. And you heard from Ted Kimble, but you never got to see him. You never got to hear him answer any questions. But he has been the largest force and the greatest presence in this trial. Indeed, for the first five days of these proceedings, we hardly heard Ronnie Kimble's name. It was all about Ted Kimble. And in the second week of these proceedings, there was still a great deal about Ted Kimble. Yet, he hasn't been here to answer questions to tell you anything about what went on. He was the biggest thing in the trial and none of us has laid eyes on him.

Ladies and gentlemen, it is safe to say that were it not for Ted Kimble, Patricia Kimble would be alive today. And were it not for Ted Kimble, Ronnie Kimble wouldn't be here. The reason this crime occurred belongs to Ted Kimble. And as was demonstrated to you in these proceedings, it is possible that Ted Kimble

actually went shopping --

MR. PANOSH: We object.

THE COURT: Sustained.

MR. HATFIELD: I beg your pardon?

THE COURT: Disregard that part. Proceed.

MR. HATFIELD: May I talk about the evidence?

THE COURT: You may talk about the evidence as it relates to sentencing, mitigating and aggravating factors, unless it's in.

MR. HATFIELD: Ted Kimble needed a wife to buy a business. And he apparently didn't much care who that wife was. He asked two or three different women to marry him. And he found one who would. And that's why we're here. Perhaps he formed the intent to do harm to her before he ever even married her.

I would say to you, ladies and gentlemen, without any of us being psychologists or experts, that Ted Kimble is a psychopath. He is a murderer. And the force of his personality and the intensity of his goals and objectives is so powerful that he can influence many people and deceive many people. He deceived Patricia to her tragic demise.

Again and again, when people talked about Ted Kimble, they talked in terms of fear. Rob Nichols said that he could only explain his stealing, his going out,



leaving his wife at home and abandoning his senior year at UNCG to go out in the middle of the night and steal building materials, he says because he was afraid of Ted Kimble. He was asked why didn't you stop that stuff. Because of fear. Ted Kimble. Because Ted had a high-powered gun that would enable him to kill at a great distance. Because Ted carried this pistol or one just like it almost everywhere he went. Because Ted Kimble would pull people into his orb of criminality and deceit, and they couldn't get away. That's what Nichols told you.

Patrick Pardee, who appears in the wedding picture, the same wedding picture that Ronnie Kimble appears in, pulled into this web of criminality and deceit by Ted Kimble. Pulled into this fear.

These men told you, both of them, that they couldn't go to Detective Church and report what they knew and what they feared they knew and what they feared was going to happen because they were afraid of Ted Kimble.

Rodney Woodberry -- a very troubled young man. Think of what he reported to you about the nature of Ted Kimble. He told you that on several occasions he had observed Ted and Patricia interacting and that Ted would throw temper tantrums to the effect I wish I had never

married that woman. I wish I could strangle her. I wish she were dead.

Why didn't Rodney Woodberry tell Patricia? He was her friend. He had been to her house. Perhaps it was fear. He said it was fear.

Ted asked Rodney Woodberry if he could help him find a hit man. Why didn't Rodney do something? Was it fear?

Ladies and gentlemen, Ted Kimble exercised a very real power over other people that we can't understand because we've not laid eyes on him, and we've not heard him answer questions.

What was the power that he may have had over his brother? We don't know. The State says in its case they were very close. But many, many people who know Ronnie Kimble say they weren't close. Is there some way that this inconsistency can be understood? Is it possible that two brothers could be not very close but still in a dominant and a dependent relationship of some kind? Is that possible? Do we know?

It is not in the nature of trials of this kind - for the defendant to be able to open every door and to prove every proposition. He has a right to ask you to find him not guilty and to shape his case accordingly. We can't hear from every witness on earth, ladies and

gentlemen. We heard from more than 80 witnesses in the course of these proceedings. That was probably too many. And yet, in some ways it also wasn't enough. Because there's so many things we don't know. So many things that we really ought to know.

I think that the State is right. I think Ted Kimble's capacity to dominate and to create a sense of fear and apprehension in people that he was dealing with is very real. And thus, I think it's possible that he could have corrupted his brother in such a way that his brother lost all sense of right and wrong and did this crime.

And ladies and gentlemen, I'm not saying that in any way, shape, or form that Ronnie Kimble has a diminished capacity or lacked the ability to discern right from wrong. I'm not saying that. I'm saying that his ability to do what's right and to resist some kind of a command to do the wrong thing wasn't enough.

I'm not asking for you to acquit him. That's behind us. I'm not asking you to forgive him. That's for his God. He will, regardless of what you decide, serve the rest of his life in prison without any possibility of release ever. Cold steel bars; toilets without seats. Don't think it's any kind of picnic, ladies and gentlemen. And appropriately so that it is

not.

Now, because there wasn't very much real evidence about the relationship between Ted and Ronnie, and because there wasn't very much real evidence about what happened, no witness told you that he had ever heard those two young men plot to do anything, much less murder. You had to infer it from the facts, and it must not have been easy. And I know, because I know that you are all good people. I know you struggled with that decision. And you made it based upon what you knew.

But let's face it. We don't know the nature of the relationship. There is not any evidence of this filthy money that you talk about.

Ladies and gentlemen, you were satisfied that first-degree murder was appropriate and you so found. So I'm not saying that he's not guilty of murder. I'm saying that you were somehow able to look at this evidence and find that he was guilty of murder without there being any evidence that he was ever paid anything or promised anything or expected anything. It's just not there.

How much are we going to infer? How much are we going to just take on faith? Because it is impossible for decent people to understand murder. That's always the case.

You will go home and after this day is over with, you'll be released from your duties, and you can talk to your friends and your lovers and spouses and companions, and whoever you want to. The media. Anybody you choose about this case. And for a little while, you'll think it was an extraordinary unique case until you maybe run into somebody else that served as a juror on a murder case. And then you'll see that we can never understand murder. And it is always horrible and it is always inexcusable. Always. And you found it. And the appropriate punishment is inevitable.

But where is this business about pecuniary gain? You don't have to believe pecuniary gain. You've already found that Ronnie is guilty of first-degree murder. Look at the facts. There isn't any money involved in this case. It would be even worse to commit a crime for money than it would be to commit a crime out of some sort of intense passion. Although, how can we make distinctions like that?

Does it matter whether someone kills you because they're mad at you or because they're jealous of you or because they want your money? It doesn't make any difference. Your life is over with the same. And you have so found.

I say to you please, ladies and gentlemen, you

have drawn so many inferences from what you've heard during this four weeks, I ask you not to draw another inference when there's no evidence to support it. Don't believe that Ronnie Kimble participated in this thing for pecuniary gain, because it doesn't tell the truth. It's not the answer.

Ladies and gentlemen, when we have a trial like this and you have to make choices, then at some point it looks like you're unable to believe certain witnesses. Or that you placed more value in some testimony than in others. And indeed, that's your job, and you were charged to do that, and you did it. But I ask you when you look back over the evidence in this case to think about what we really know about Ronnie Kimble.

Okay. Number one, we know he committed first-degree murder. And that is totally and completely inexcusable. But why and how?

This kid wasn't a bad kid. He was only 23 years of age when this happened. And at that point in time he was a good marine. You want medals to show he was a good marine, or do you want the people who knew him? He was a good marine. It doesn't help us to understand it at all, but let's face it, he was a good marine.

Those ladies and gentlemen who largely belong to Monnett Road came in here and talked about him. In

glowing terms. They're not liars. They're not. Just like you're not. They didn't come here to deceive you. They didn't come here to get you to abandon your principles and lighten up. They came here because they love that boy. And I can tell you, ladies and gentlemen, you will never forget this month you've spent in Superior Court in Greensboro, and the case you had to judge, and those people will never forget it either. And it will either be a very long time or never until any of us understands how a crime like this could happen and a boy like that be an integral part of it.

This case is hard. It would be easy if you had somebody with no value as a human being who had done this horrible crime. But you don't have the luxury of that. We have a far more troubling thing to think about. How could a kid who was a good role model for younger kids, a kid who was ambitious and energetic, how could he do a thing like this?

So, ladies and gentlemen, the -- some of these mitigating factors that Mr. Lloyd and I have asked you to consider and that the Judge will allow you to consider maybe do have some bearing.

I remember when Ronnie Kimble was being questioned about his military record and whether or not he was trying to get them to give him some kind of

disability or to get out of the military. And he was reading some of this stuff. Did you see the way he had to mouth the words? Did you see the way his eyes moved staccato from word to word? That's not the normal way that experienced adults read.

You don't have to have a -- you don't have to have a psychologist in here or a bunch of test results to know that it's true that he has some sort of learning disability. You don't need anybody to prove that to you.

It doesn't excuse murder in any way, shape, or form, but it may lend a little bit of believability to the possibility that he's got an impulsive side to his nature, or that he really does have a little bit of trouble foreseeing the consequences of things. Because how else could a nice young man who had never committed a crime in his life do this horrible crime? What power did the person who wanted this crime done have over the guy that you have determined did it? I don't know. Because I was focusing on something else. And it's too late. I've made my pitch.

Ladies and gentlemen, when you were being chosen for this job, each of you said that you would -- there could be circumstances where you would impose the death penalty. But there would also be circumstances where



you would not. And you knew and you said, each of you, that every crime can be different and the punishment is something to be determined by the jury after all of the evidence is heard. And there is no crime that requires the imposition of the death penalty, nor is there a situation where the death penalty can't be imposed. It has to just be rationally considered.

So there is some order of magnitude in these things. And in the order of magnitude, we have a very good example of somebody who is worse than Ronnie Kimble.

MR. PANOSH: We object.

MR. HATFIELD: And the --

THE COURT: Sustained.

MR. HATFIELD: -- facts that you have before you of the motive for the crime -- because ladies and gentlemen, a crime begins with an idea. An evil and unacceptable and immoral idea. And in this case, the idea began with Ted. He is the one who loaded up his spouse with insurance benefits that he thought would accrue to him. He married a woman who already owned a house and then did everything he could to increase the insurance coverage on that house. She already had life insurance, and he did everything he could to get her to take more life insurance.

Not only did Ronnie Kimble tell you that he knew nothing about his sister-in-law and his brother's business affairs and investments and life insurance commitments, but there's also no proof that he knew anything about that stuff. That was Ted's doing. It was Ted who had the weapons. It was Ted who had the silencers in his office. It was Ted who collected the literature about that kind of thing. It was Ted who has demonstrated to the whole world that he will steal, if necessary, to make money, and intimidate his cohorts, if necessary, to try to discourage them from telling the police the truth. In the order of magnitude, Ted Kimble is more responsible --

MR. PANOSH: We object.

THE COURT: Sustained. Disregard that, members of the jury.

MR. HATFIELD: But for -- but for Ted Kimble, Patricia Kimble would be alive today.

Ladies and gentlemen, these things that are called nonstatutory mitigating factors that you're going to be allowed to think about tell a story, and it's a very troubling story. Because what they show is that based upon the evidence in this case, there are a dozen or more aspects of Ronnie Kimble's life which would have made anyone conclude that he was a worthwhile person.

But still this crime occurred. So you've been told that yes, you should consider each of those mitigating factors, but that when you weigh them you should disregard them.

I say to you that you should just do the opposite. You should consider them and you should weigh them and you should find that, as imperfect and regrettable as this life is -- and by that, as I point over my shoulder, of course, I mean Ronnie Kimble -- that our reverence for life and our abhorrence of deliberate murder, whether it be done by the State or by an individual, justifies his living the remainder of his days in a masonry and steel box somewhere in this state where he can think about what he did, but where he can also face his God as he understands his God to be, and to try to work this thing out. He's just a kid. If he's strapped in that gurney that was mentioned to you a few minutes ago in another two or three years after his appeals have run, he won't know what's going on. He won't have had time to be like some of us and ponder these things more profoundly.

We don't excuse it. We condemn it. But we also love life. And we hope that such crimes as this will never happen again. Although, our experience tells us that they probably will and that other juries will have

to sit at other times. A jury will have to sit upon Ted's case at some point, and hopefully they will do whatever the right thing is based upon their perception of the evidence at that time. I dare say their job will not be harder than yours, ladies and gentlemen, because I think it will be easier for them to decide what to do.

Thank you very much.

THE COURT: You may stand and stretch a moment if you'd like.

Mr. Lloyd, do you need more than 30 minutes? Are you going to have --

MR. LLOYD: Your Honor, I will try to limit myself to 30 minutes.

THE COURT: I don't mind you going over. If it was going to go over long, we would go ahead and take lunch.

MR. LLOYD: No, sir. I don't think it will go over long. I did want to go and address the jury before lunch.

You have set before you this day life or death. A blessing or a cursing. Therefore, choose life.

That simple verse from Deuteronomy proclaims an affirmation of life and therefore speaks to us all, Protestant and Catholic, Jew and Gentile, Buddhist, Moslem, and agnostic. And it tells of forgiveness for

Ronnie Kimble. Not revenge. Redemption and not retribution. Reconciliation and not retaliation. And finally, it speaks for mercy for Ronnie Kimble.

Now, the role of weighing and deciding and finally judging this case does not rest on that table, does not rest on the defense table, and it does not rest on the bench. It rests in your heart and in yours and in yours. It rests with each of you individually and collectively, because I tell you that unless your verdict is unanimous, the death penalty cannot be imposed against Ronnie Kimble. And unless each and every one of you agree individually that the death penalty is the appropriate punishment in this case, the death sentence cannot be imposed and Ronnie will not be executed.

So it is an individual decision. And it cannot be based on these gruesome and terrible photographs we have seen. It cannot be based on the terrible wound that fell Patricia. And the fiery burning after that. You cannot be blinded by your natural revulsion of what Ronnie Kimble did to her. But you must look beyond what we have shown you in this courtroom and picture what we could not show you.

We don't have gruesome, gut wrenching photographs that the State has shown you in this case.

We have no pictures, no photographs of the other side of Ronnie Kimble. The good and positive side. Those happier days when Ronnie and his wife-to-be were young, and they were still sweethearts, and they were in the backyard playing ball with Kim's father who was later to become Ronnie's father-in-law. We don't have pictures of those happier days when Ronnie was teaching Sunday school.

We accept your verdict. We know that you labored long and hard. We know it was not easy. But remember this: If you give Ronnie Kimble the death penalty, that decision is final and irrevocable. And his death is final and irrevocable. There will be no time to reconsider. No time to say I was wrong. It is final and forever. And you must be sure. And from this point on, I will speak to you as though his guilt were fact, because I accept your decision, as I must. But once again, it is you who must be sure, who must be certain there was no mistake.

And again, we have no pictures to show you of those happier days of Ronnie that our witnesses came in to court and spoke about so briefly, so plainly, so simply sometimes. And we can present only a shadow, a dim projection of what Ronnie's life was really like through this pale, dry testimony from the witness stand.

Testimony of these good people who knew Ronnie. The testimony of these good people who talked about that other side of Ronnie. Testimony of Beverly Wharf who talked about a son she never had. Who talked about that other Ronnie that went to dinner with her in his marine uniform. The testimony of Helen Williams who told you about her relationship with Ronnie and what a striking contrast to the Ronnie that his deeds that had been shown in this courtroom present. But we have no pictures to show you to counteract that. All we have is that plain, simple testimony you heard from this witness stand here.

Now, are we to kill just to show that killing is wrong, because that is precisely what the State asks of you, and just as surely the answer must be no. It is self-evident that hatred only breeds hatred. Violence only begets violence. And that cruelty only brings more cruelty. And I am asking you for Ronnie Kimble what that twisted side of him would not let his other side give Patricia. She had a right to live. There is no doubt of that. But there is nothing that you can do, including killing Ronnie Kimble, that would bring her back.

These terrible pictures of her charred remains will pain her family for ages and ages. And we can only

hope that time with its soothing balm will somehow cleanse those wounds, somehow heal that pain, and that goodness and kindness will come in and help that family. If killing Ronnie would heal those wounds, if killing Ronnie would bring her back, if killing Ronnie would make any difference at all to the pain and suffering of Patricia's family, then your moral task would be far easier. But that is not the case.

You have the power to spare Ronnie's life. It is your decision. And if any one of you says no, then his life will be spared. For your decision must be unanimous. And again, we are talking about a terribly real decision, a decision of life and death. And we are talking about a real person. We're not talking about someone on TV or someone in the newspaper. We're talking about that young man right there. And we're talking about each of you. You and he are the players on this final stage.

And I ask you to look deep into those eyes. Are you prepared to say that there is no hope, there is no chance of redemption, that there is no humanity?

You have found Ronnie Kimble guilty of first-degree murder and guilty of murder by premeditation and deliberation. But there is no other death that could occur with more premeditation and



deliberation --

MR. PANOSH: We object.

THE COURT: Sustained.

MR. LLOYD: -- than that which the State asks  
you --

MR. PANOSH: We object.

THE COURT: Disregard that, members of the jury.

MR. LLOYD: -- to impose.

Life in prison for every day of your waking life  
upon this earth is punishment almost as bad as the gas  
chamber. Almost.

Now, let me talk to you for just a moment about  
what your real job is here. It is not, as the  
prosecution would have you believe, that justice and  
society demands that you impose the death penalty. If  
that were so, there would be no reason for you to be  
sitting here weighing and deciding this case. If that  
were so, every time we had a horrible murder like this,  
the defendant was found guilty of first-degree murder,  
then there would be nothing left for you to do. Nothing  
left to weigh or to consider. And the officers would  
just take him off and execute him. But that is not what  
the law requires.

Each of you told us in jury selection that you  
would -- you could and would consider both life

imprisonment and the death penalty in this case. And each of you, although you told me that you felt that the death penalty was appropriate in some cases, you said that if the State had not proved to you beyond a reasonable doubt that the death penalty was the appropriate punishment in this case, then you would come back into this courtroom and announce your decision for life imprisonment. And I'd argue to you that what the law says to you in this case is not easy. The path that the prosecutor would have you take is one of vengeance and retribution.

MR. PANOSH: Object.

THE COURT: Sustained. Disregard that, members of the jury.

MR. LLOYD: The path that we urge you to follow is the path of the law and it leads directly to life imprisonment.

Now, let me talk to you just a moment about what the law says about how you're to decide this issue of life and death. And the instructions, though they're long, I think after you've dissected them, you'll see that they're relatively simple. And obviously, as we've gone over, we will present to you mitigating circumstances. And I want to read to you what the Judge, Judge Cornelius, is going to instruct you on as

the definition of mitigating circumstances. Mr. Panosh earlier read to you part of that instruction. I am going to read it all to you.

A mitigating circumstance is a fact or group of facts which do not constitute justification or excuse for a killing -- the mitigating circumstances that we submit to you are not a justification, are not an excuse -- or reduce it to a lesser degree of crime than first-degree murder, but which may be considered as extenuating or reducing the moral culpability of killing -- of the killing or making it less deserving of the extreme punishment -- of extreme punishment than other first-degree murders.

Our law identifies several possible mitigating circumstances. However, in considering Issue Two, it would be your duty to consider as a mitigating circumstance any aspect of the defendant's character or record or any other factor that the defendant contends is a basis for a sentence of less than death, and any other circumstance or circumstances arising from the evidence which you deem to have mitigating value.

Do we contend to you because of the 14-odd mitigating circumstances that we have submitted on that sheet of paper that those justify what Ronnie -- what you have found Ronnie Kimble guilty of doing? No. But

as the law says, these are things, these are part of his character that you should consider before imposing this most extreme of punishments.

Now, we, of course, have asked you to find these mitigating circumstances. The State has asked you to find the two aggravating circumstances that Mr. Panosh has talked about. And I won't go into a great deal of detail about that. Mr. Panosh has obviously covered the aggravating circumstances and Mr. Hatfield has covered -- talked to you some about the aggravating circumstances and talked to you some about our mitigating circumstances. But let me point out just a couple of differences in how you look at the mitigating and aggravating circumstances.

First of all, the big difference, the critical difference between aggravating circumstances, which the State submits, and our mitigating circumstances is that you must find the existence of aggravating circumstances unanimously. That is, that all 12 of you must agree before you can find the existence of an aggravating circumstance. So that if one does not agree and it is not unanimous, then you would not find that aggravating circumstance.

Now, the mitigating circumstances, on the other hand, can be found by any one of you. And they are not

limited to those circumstances that we have submitted on the sheet. And that is another primary difference. The aggravating circumstances, the only two that you can consider in this Court by law, are the two that were submitted to you and the two that Mr. Hatfield and Mr. Panosh have already talked to you about. But the mitigating circumstances are anything that you find from the evidence that you deem to have mitigating value. That is, make this case less deserving of the death penalty. And it doesn't make any difference whether we have submitted it on the sheet and the Judge reads it to you. If you remember it from the evidence, and one of you, a single one of you, decides that it has mitigating value, then the last mitigating factor is what we commonly call the catch-all. And you will be instructed on that by Judge Cornelius. And it essentially says, as I have just outlined to you, that it is anything from the -- arising from the evidence that you deem to have mitigating value. That any one of you deems to have mitigating value. So if one of you finds it and you discuss it with the others and they say well, we don't see that that has mitigating value but you feel that it does, that should weigh in your decision as to whether or not you ultimately impose the death penalty on this case.

Now, this may seem like a small distinction, but the aggravating factors, by law, must be found not only unanimously but they must be found beyond a reasonable doubt. And that is the standard you apply. The mitigating factors, on the other hand, they arise from the evidence, and one individual juror alone must be satisfied of their existence and that it has mitigating value. And that's the difference. There is a different standard here. Mitigating values that any one of you applies or just to your satisfaction or by the preponderance of the evidence.

Now, as Mr. Panosh has already talked to you about the charge, I'll skip over the first two issues. They require that you apply the law as I've just talked about and determine whether or not there are aggravating factors and whether or not there are mitigating factors.

Then you will come to Issue Number Three. And it reads: Do you unanimously find beyond a reasonable doubt that the mitigating circumstances found by any one of you are insufficient to outweigh the aggravating circumstances found by you?

Now, that is a long legalistic way of saying in essence that you weigh the aggravating and mitigating circumstances. But once again, I want to point out to you that you must find -- you must answer that issue

that the mitigating circumstances are insufficient to outweigh the aggravating circumstances unanimously. If you cannot decide that unanimously, you can't move from Issue Three to Issue Four.

Now, Issue Four, you will be asked do you unanimously find -- find beyond a reasonable doubt that the aggravating circumstances are sufficiently substantial to call for the imposition of the death penalty when considered with the mitigating circumstances?

Again, before you can answer this question, you must find it unanimously. That is, that you all must agree before you can mark this issue and determine the death penalty that in fact the aggravating circumstances are sufficiently substantial to call for the death penalty when considered together with the mitigating circumstances. So that you must find that unanimously. If you do not find it unanimously, you cannot mark that issue and you cannot make that final recommendation of death. And if you are not convinced beyond a reasonable doubt of that issue, then you would mark that issue no, and it would be your duty at that point to enter a sentence of life imprisonment.

Now, this is obviously a balancing formula. This whole process. And you are the sole judges in

determining the weight to give each factor, be it mitigating or be it aggravating. We've already talked some about that. But let's talk about the first mitigating factor that you will be submitted. That is, that Ronnie has no significant history of criminal activity. And you will be required to find that mitigating factor, because in fact that -- a legal determination has been made on that.

And let me point out one other thing about that particular factor. That is a statutory mitigating factor. And our legislature has determined that that factor has mitigating value. Our legislature determined that that was important. That that was the kind of thing that set off one case from another case that was deserving of the death penalty.

Now, the other mitigating factor that I'd like to talk to you about, and I'll be brief about it, because Mr. Hatfield has talked to you very eloquently about it, that is, basically that Ronnie was acting under the domination of Ted -- his brother Ted. And the fact of the matter is, ladies and gentlemen, this is part and parcel of the State's entire presentation to you. And if you think about the testimony of the witnesses that the State presented in this case -- Patrick Pardee, Rob Nichols, and then even Rodney



Woodberry -- the underlying theme there was that Ted was very dominating, that he was very intimidating, that there was this fear factor, and that he got those people to do what he wanted them to do because of that ability to dominate and to intimidate. And the State can't get away from that, because that is one of the underlying themes of their whole presentation to you in the guilt phase.

And think about how Ronnie's own father told you about the relationship between the two of them. That it went all the way back to when they were young. That Ronnie was -- that Ted was two years old, that he was bigger, he was physically more dominating. But more than that, he was mentally and emotionally more dominating.

Now, I won't go into the individual mitigating factors, Mr. Hatfield has touched on that, and you will be given those that we have submitted. I would like to stress to you again that the final mitigating factor, the catch-all mitigating factor, is that you are empowered and indeed it is your duty to go back and look at all the evidence and decide from that evidence anything that you deem to have mitigating value. It doesn't have to be something that we submitted. It doesn't have to be something that the legislature

thought of. But anything that you deem to have mitigating value. And if you deem it, it is a mitigating factor.

And I submit to you that -- and you're not required to list those in form. You will get a verdict sheet and it will have -- you will have issues and answers. And these go through all the mitigating factors that we have submitted. And then the last one: Any other circumstance or circumstances arising from the evidence which one or more of you deem to have mitigating value. And then you just make a check on that. You don't have to be unanimous about it. You don't have to list all of those. But I encourage you to go back in the evidence and look at that and think about that and share that with the other jurors. But regardless of what they think about it, if it has mitigating value, then you keep it in your mind and you weigh it in your deliberations.

Now, the fact of the matter is that in this weighing process, each of you must delve deeply in your hearts and souls to determine what weight to give these factors. And each of you must balance those individually in your hearts and minds, because this decision, for good or ill, will lie with you for the rest of your lives. And if you choose death, it is

final and absolute. It cannot be taken back. It is a decision that allows no redemption, no repentance for Ronnie Kimble or for you.

MR. PANOSH: We object to that.

THE COURT: Sustained. Disregard it, members of the jury.

MR. LLOYD: You cannot say I am sorry a year from now or two years from now, or ten years from now. And through us, you have heard Ronnie Kimble's plea. Sadly, it will not bring Patricia back. Will you put yourself on his level?

MR. PANOSH: Objection.

THE COURT: Sustained. Disregard that, members of the jury.

MR. LLOYD: Kill him now and then decide years later that you were sorry.

MR. PANOSH: Objection.

THE COURT: Sustained. Disregard it, members of the jury.

MR. LLOYD: When it is too late.

There was a time, and you have heard it from the evidence in this trial, when Ronnie Kimble showed remorse for what he had done when he spoke to Mitch Whidden. When he talked to Mitch Whidden of suicide. Spare his life. Grant him the mercy that his bent and

twisted side would not let his other side give to Patricia on that day back in October three years ago.

We cannot breathe life into Patricia. But just as surely, killing Ronnie won't bring her back. And killing him won't break the circle of violence. Killing him won't break the circle of grief. And I ask you to show love and redemption where none was shown before on that day some three years ago.

I do not argue philosophically with you against the death penalty. You've all said that you can consider it. But I do argue against it in this case. I know that this is a horrible crime. And I know that you want to punish Ronnie Kimble. And I know that you want to protect society. But life imprisonment is a terrible punishment. Think of the deprivation. Separated from any friends; unable to enjoy the smallest pleasures that we all take for granted; never to take a walk on a brisk fall day; never to work or play or even to do those simple things; to walk down to the end of the driveway and get the morning paper. No chance to become a father; no chance to hold your baby in your arms; never to steal quietly upstairs and to watch her gentle sleep, and tuck her in, and breathe a kiss upon her brow.

Life imprisonment is not letting Ronnie Kimble off for the crime you found him guilty of. It is a

substantial penalty. For if you grant him life, death will ultimately come to him as it will to all of us, and he will die a lonely man. His family dead; away from any friends that might care for him; no home or heart; no loved ones. Is that not punishment enough?

Show him mercy. But remember that here mercy is hard. Let your decision be an affirmation of life; an affirmation of courage and bravery. And when you leave this courthouse for the final time, I want you to be able to hold your heads high and proclaim that I was brave. Today I had a chance to kill.

MR. PANOSH: We object.

THE COURT: Sustained.

MR. LLOYD: But instead I spared a life.

MR. PANOSH: We'd ask that be stricken.

THE COURT: Disregard that, members of the jury.

MR. LLOYD: I ask you to judge a fellow human being, not in coldness or in hardness of heart, but by taking into account all you know of human frailty, of human sickness, of human disease, of the mind and the soul, spirit in the heart.

You have, each and every one of you, set before you this day life and death. A blessing or a cursing. Therefore, choose life.

THE COURT: Please remember, ladies and

gentlemen of the jury, that these arguments by the attorneys are not evidence. They are merely contentions of things the attorneys contend that you should discuss and talk about once you begin the sentencing phase.

Due to the time, the Court will not instruct you as to the law that you should apply at this phase until after the lunch break. You need to be back at 2:00.

It's very important that you not discuss this case among yourselves, with your family or friends, or anyone you come in contact with. Neither should you let anyone talk to you about the case or talk about this case in your presence. Do not read, watch, listen to any news or media accounts. And do not attempt to do any investigation or research on your own.

Have a nice lunch. I'll see you at two. Please report to the jury room at 2 o'clock.

(Jury absent)

THE COURT: While the jurors are clearing the elevators, I want to compliment the attorneys. I thought those were very excellent arguments and you're to be commended for your professionalism in making those arguments. I wish every citizen in the state had an opportunity to hear those arguments. Maybe we wouldn't be here as often as we are on these type of cases. So you can take professional pride in the job that you've

done. All three of you.

Cleared?

Okay. Those of you who are here watching this case or have an interest in this case, we're going to begin -- the Court is going to begin its charge as to the law at 2 p.m. You need to be in the courtroom and in your seats. The charge will take about 15 to 20 minutes. You will not be allowed to leave when that charge is going on. I want to caution you -- admonish you not to approach any of the jurors or have any contact with them or say anything to them or approach them in any way during the lunch break. The jurors will be back at two. The Court will be back at two. You may now take a recess until 2:00, Sheriff.

(Luncheon recess)

AFTERNOON SESSION

THE COURT: Are there any matters we need to take care of before we bring the jury in?

MR. PANOSH: No, Your Honor.

MR. LLOYD: No, Your Honor.

THE COURT: Bring them in. -

(Jury present)

THE COURT: Everybody okay? Any problems?

I'm about to begin the charge as to the law that you should apply in the sentencing phase. If I speak

too fast and not clear enough, just raise your hand and I'll be glad to slow down and go back over that portion of the charge with you.

Now, members of the jury, having found the defendant guilty of murder in the first degree, it is now your duty to recommend to the Court whether the defendant should be sentenced to death or life imprisonment. Your recommendation will be binding upon the Court. If you unanimously recommend that the defendant be sentenced to death, the Court will impose that sentence of death. If you unanimously recommend a sentence of life imprisonment, the Court will impose a sentence of life imprisonment without parole.

There is no requirement to resubmit during the sentencing proceeding any evidence which was submitted during the guilt phase of this trial. All the evidence that you hear in both phases of the case is competent for your consideration in recommending the punishment.

It is now your duty to decide from all the evidence presented in both phases -- the guilt/innocence phase and the sentencing phase -- what the facts are. You must then apply the law which I'm about to give to you concerning punishment to those facts. It is absolutely necessary that you understand and apply the law as I give it to you and not as you think it is or as



you might like for it to be. Now, this is important because justice requires that everyone who is sentenced for first-degree murder have the sentence recommendation determined in the same manner and have the same law applied to him.

You are the sole judges of the credibility of each witness. You must decide for yourselves whether to believe the testimony of any witness. You may believe all, or any part, or none of what a witness has said on the witness stand.

In determining whether to believe any witness, you should apply the same tests of truthfulness which you apply in your everyday affairs. As applied to this trial, these tests may include the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness has testified; the manner and appearance of the witness; any interest, bias, or prejudice the witness may have; the apparent understanding and fairness of the witness; and whether the testimony of the witness is reasonable; and whether his or her testimony is consistent with the other believable evidence in the case.

You are the sole judges of the weight to be given any evidence. By this I mean if you decide that certain evidence is believable, you must then determine

the importance of that evidence in light of all the other evidence in the case.

So I charge that for you to recommend that the defendant be sentenced to death, the State of North Carolina must prove three things beyond a reasonable doubt. A reasonable doubt is a doubt based on reason and common sense arising out of some or all the evidence that has been presented or the lack or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you -- each of you of the following things:

First, that one or more aggravating circumstances existed.

Second, that the mitigating circumstances are insufficient to outweigh any aggravating circumstances you have found.

And third, that any aggravating circumstances you have found are sufficiently substantial to call for the imposition of the death penalty when considered with any mitigating circumstances.

If you unanimously find all three of these things beyond a reasonable doubt, it would be your duty to recommend that the defendant be sentenced to death. On the other hand, if you unanimously find that one or

more of these things -- these three things has not been proven beyond a reasonable doubt, then it would be your duty to recommend that the defendant be sentenced to life imprisonment.

Now, when you retire to deliberate your recommendations as to punishment, you will take with you a form entitled "Issues and Recommendation as to Punishment." This form contains a written list of four issues relating to aggravating and mitigating circumstances. I will now take up these four issues with you in greater detail one by one. To enable you to follow me more easily, the bailiff will now give each of you a copy of the form entitled "Issues and Recommendation as to Punishment," which you will take with you when you retire to deliberate. Do not read ahead on this form, but refer to it as I instruct you on the law. Your answers to issues one, three and four, either "yes" or "no," must be unanimous.

Okay. If the court officer will pass those to the jury, please.

(Complied)

THE COURT: Issue Number One: Do you unanimously find from the evidence beyond a reasonable doubt the existence of one or more of the following aggravating circumstances? There are two possible

aggravating circumstances listed on the form. You should consider each of these before you answer Issue Number One.

The State must prove beyond a reasonable doubt -- from the evidence beyond a reasonable doubt the existence of any aggravating circumstance, and before you may find any aggravating circumstance, you must agree unanimously that it has been so proven. An aggravating circumstance is a fact or group of facts which tend to make a specific murder particularly deserving of the maximum punishment prescribed by law. Our law identifies the aggravating circumstances which might justify a sentence of death. Only those circumstances identified by statute may be considered by you as aggravating circumstances. Under the evidence in this case, two possible aggravating circumstances may be considered.

The following are the aggravating circumstances which might be applicable to this case:

First, was this murder committed by the defendant while the defendant was engaged in the commission of first-degree arson? First-degree arson is the burning of a building which was a dwelling house of someone other than the defendant which is occupied when the defendant burned it; that is, that some person was

physically present in the house at 2104 Brandon Station Court at the time of the burning. For you to find that the dwelling house was occupied, you must find that the murder and arson were so joined by time and circumstances as to be part of one continuous transaction, and that the defendant burned said dwelling maliciously, that is, that he intentionally without justification or excuse burned the dwelling.

So I charge that if you find from the evidence beyond a reasonable doubt that on or about October 9, 1995, the defendant burned a house located at 2104 Brandon Station Court, and that this house was a dwelling house, that is, it was a dwelling house of some person other than the defendant, that someone was physically present in the house located at 2104 Brandon Station Court when the defendant burned it, it would be your duty to find aggravating -- to find this aggravating circumstance and would so indicate by having your foreperson write "yes" in the space after this aggravating circumstance on the Issues and Recommendation form. If you do not so find or if you have a reasonable doubt as to one or more of these things, you will not find this aggravating circumstance and will so indicate by having your foreperson write "no" in that space.

Second, was this murder committed for pecuniary gain? A murder is committed for pecuniary gain if the defendant when he commits it has obtained or intends or expects to obtain money or some other thing which can be valued to money either as compensation for committing it or as a result of the death of the victim. If you find from the evidence beyond a reasonable doubt that when the defendant killed the victim, the defendant expected to obtain money from his brother as a result of this murder, you would find this aggravating circumstance and would so indicate by having your foreperson write "yes" in the space after this aggravating circumstance on the Issues and Recommendation form. If you do not so find or if you have a reasonable doubt as to one or more of these things, you will not find this aggravating circumstance and will so indicate by having your foreperson write "no" in that space.

You are instructed that the same evidence cannot be used as the basis for finding more than one aggravating factor. If you unanimously find from the evidence beyond a reasonable doubt that one or more of these aggravating circumstances existed and have so indicated by writing "yes" in the space after one or more of them on the Issues and Recommendation form, you would answer Issue Number One "yes." On the other hand,

if you unanimously find from the evidence that none of the aggravating circumstances existed, and if you have so indicated by writing "no" in the space after every one of them on that form, you would answer Issue Number One "no." If you answer Issue Number One "no," you would skip Issues Two, Three and Four, and you must recommend that the defendant be sentenced to life imprisonment. If you answer Issue Number One "yes," then you would consider Issue Number Two.

Issue Number Two is: Do you find from the evidence the existence of one or more of the following mitigating circumstances. Fourteen possible mitigating circumstances are listed on the form and you should consider each of them before answering Issue Number Two.

A mitigating circumstance is a fact or group of facts which do not constitute a justification or excuse for a killing or reduce it to a lesser degree of crime than first-degree murder but which may be considered as extenuating or reducing the moral culpability of the killing or making it less deserving of extreme punishment than other first-degree murders. Our law identifies several possible mitigating circumstances. However, in considering Issue Number Two, it would be your duty to consider as a mitigating circumstance any aspect of the defendant's character or record or any

other factor that the defendant contends is a basis for a sentence less than death, and any circumstances arising from the evidence which you deem to have mitigating value.

The defendant has the burden of persuading you that a given mitigating circumstance exists. The existence of any mitigating circumstance must be established by a preponderance of the evidence. That is, that the evidence taken as a whole must satisfy you not beyond a reasonable doubt but simply satisfy you that any mitigating circumstance exists. If the evidence satisfies any of you that a mitigating circumstance exists, you would then indicate that finding on the Issues and Recommendation form. A juror may find that any mitigating circumstance exists by a preponderance of the evidence whether or not that circumstance was found to exist by all the jurors. In any event, you would move on to consider the other mitigating circumstances and continue in a like manner until you have considered all the mitigating circumstances listed on the form and any others which you deem to have mitigating value.

It is your duty to consider the following mitigating circumstances and any others which you find from the evidence:



First, consider whether the defendant has no significant history of prior criminal activity before the date of the murder. All of the evidence, if believed, tends to show that this particular mitigating circumstance does exist, and the defendant is entitled to a peremptory instruction. Therefore, the foreman of the jury should write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form.

Second, consider whether the defendant acted under the domination of another person. A defendant acts under the domination of another person if he acts at the command or under the control of the other person or in response to the assertion of any authority to which the defendant believes he is bound to submit or which the defendant did not have sufficient will to resist.

You would find this mitigating circumstance if you find that the defendant was dominated by his older brother Ted throughout his life and that as a result the defendant was unable under the domination of another person when -- person when he killed the victim. If one or more of you finds by a preponderance of the evidence that the circumstance exists, you would so indicate by having your foreman write "yes" in the space provided

after this mitigating circumstance on the Issues and Recommendation form. If none of you find this circumstance to exist, you would so indicate by having your foreperson write "no" in that space.

Third, consider whether the age of the defendant at the time of this murder is a mitigating factor. The mitigating effect of the age of the defendant is for you to determine from all the facts and circumstances which you find from the evidence. Age is a flexible and relative concept. The chronological age of a defendant is not always the determinative factor. If one or more of you finds by a preponderance of the evidence that the circumstance exists, you would so indicate by having your foreperson write "yes" in the space provided after that mitigating circumstance on the Issues and Recommendation form. If none of you finds this circumstance to exist, you would so indicate by having your foreperson write "no" in that space.

You should also consider the following circumstances arising from the evidence which you find to have mitigating value. If one or more of you find by a preponderance of the evidence that any of the following circumstances exist and also are deemed by you to have mitigating value, you would so indicate by having your foreperson write "yes" in the space

provided. If none of you find the circumstance to exist and if none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space. And there are a list of these. I'm going to go through them one at a time.

Number Four, consider whether Rodney Kimble served his country as a corporal in the United States Marine Corps and was an excellent marine and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble did serve his country as a corporal in the United States Marine Corps and was an excellent marine and that this circumstance has mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and also deemed to -- is also deemed mitigating, you would so indicate by having your foreperson write "yes" on the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you find this circumstance to exist or none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Fifth, consider whether Ronnie Kimble taught Sunday school at his father's church on Monnett Road and was a positive influence on younger children in the

church and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble taught Sunday school at his father's church on Monnett Road and was a positive influence on younger children in the church and that this circumstance has mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and also is deemed mitigating, you would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you find the circumstance to exist or none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Sixth, consider whether Ronnie Kimble showed initiative in his youth by starting his own lawn care business and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble showed initiative and started -- as a youth started his own lawn care business -- and if you find that this circumstance has mitigating value. If one or more of you -- if one or more of you find by a preponderance of the evidence that this circumstance exists and also is deemed mitigating, you

would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you find this circumstance to exist or if none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Seven, consider whether Ronnie Kimble showed diligence as a good and hard worker from an early age and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble showed diligence as a good and hard worker at an early age and if you find that circumstance to have mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and is also deemed mitigating, you would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you find this -- find the circumstance to exist or if none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space. -

Number eight, consider whether Ronnie Kimble did a good job in the chaplain's office in the Marine Corps and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that

Ronnie Kimble did a good job in the chaplain's office while in the Marine Corps and that this circumstance has mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and also is deemed mitigating, you would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you finds the circumstance -- if none of you find the circumstance to exist or if none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Number nine, consider whether Ronnie Kimble was responsible for James Dziadaszek quitting drinking and becoming more active in the church and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble was responsible for James Dziadaszek quitting drinking and becoming more active in the church and that this circumstance has mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and also is deemed mitigating, you would so indicate by having your foreperson write "yes" in the space provided on -- after the mitigating circumstance on the Issues and Recommendation form. If

none of you find the circumstance to exist or if none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Number ten, consider whether Ronnie Kimble was deprived of an active and normal father in his early formative years due to his father's alcoholism and absence from the home and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble was deprived of an active and normal father in his early formative years due to his father's alcoholism and absence from the home and that this circumstance has mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and also is deemed mitigating, you would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you find the circumstance to exist or none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Eleven, consider whether Ronnie Kimble has learning problems and was placed in learning disabled classes in school and whether you deem this to have

mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble did experience learning problems and was placed in a learning disabled school along in school -- class while in school and that this circumstance has mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and also is deemed mitigating, you would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you find this circumstance to exist or if none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Number twelve, consider whether Ronnie Kimble's mother was 18 and his father 20 when he was born and that their youth made his upbringing not as effective as it might have been had his parents been older and more mature and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble's parents did marry at an early age, that his mother was 18, his father was 20 when he was born and that his youth -- that their youth made his upbringing not as effective as it would have been had his parents been older and more mature and that



this circumstance has mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and also is deemed mitigating, you would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you find the circumstance to exist or if none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Number thirteen, consider whether Ronnie Kimble was an active and willing participant in his church and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble was an active and willing participant in his church and that this circumstance has mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and also is deemed mitigating, you would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you find the circumstance to exist or if none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Fourteen, consider whether Ronnie Kimble was honest in his work dealings with those he worked for and whether you deem this to have mitigating value. You would find this mitigating circumstance if you find that Ronnie Kimble was honest in his work dealings with those he worked for and that this circumstance has mitigating value. If one or more of you finds by a preponderance of the evidence that this circumstance exists and also is deemed mitigating, you would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you finds the circumstance to exist or if none of you deem it to have mitigating value, you would so indicate by having your foreperson write "no" in that space.

Number fifteen, finally, you may consider any other circumstance or circumstances arising from the evidence which one or more of you deem to have mitigating value. If one or more of you so find by a preponderance of the evidence, you would so indicate by having your foreperson write "yes" in the space provided after this mitigating circumstance on the Issues and Recommendation form. If none of you finds any such circumstance to exist you would so indicate by having your foreperson write "no" in that space.

Now, if one or more of you finds by a preponderance of the evidence one or more mitigating circumstances and have so indicated by writing "yes" in the space provided after this mitigating circumstance on the Issue and Recommendation form, you would answer Issue Number Two "yes." If none of you find any other mitigating circumstance to exist and have so indicated by writing "no" in the space after every one of them on that form, you would answer Issue Number Two "no." If you answer Issue Number Two "yes," you must consider Issue Number Three. If you answer Issue Number Two "no," do not answer Issue Three. Instead, skip Issue Three and answer Issue four.

Issue three is: Do you unanimously find beyond a reasonable doubt that the mitigating circumstance or circumstances found is or are insufficient to outweigh the aggravating circumstance or circumstances found by you?

If you find from the evidence one or more mitigating circumstances, you must weigh the aggravating circumstances against the mitigating circumstances. When deciding this issue, each juror may consider any mitigating circumstance or circumstances that the juror determined to exist by a preponderance of the evidence in Issue Two. In doing so, you are the sole judges of

the weight to be given to any individual circumstance which you find, whether aggravating or mitigating. You should not merely add up the number of aggravating circumstances and mitigating circumstances, but you must decide from all the evidence what value to give to each circumstance and then weigh the aggravating circumstances so valued against the mitigating circumstances so valued, and finally determine whether the mitigating circumstances are insufficient to outweigh the aggravating circumstances.

If you unanimously find beyond a reasonable doubt that the mitigating circumstances found are insufficient to outweigh the aggravating circumstances found, you would answer Issue Number Three "yes." If you unanimously fail to so find, you would answer Issue Number Three "no." If you answer Issue Number Three "yes" -- "no," it would be your duty to recommend that the defendant be sentenced to life imprisonment. If you answer Issue Number Three "yes," then you must consider Issue Number Four.

Issue Number Four is: Do you unanimously find beyond a reasonable doubt that the aggravating circumstance or circumstances you found is or are sufficiently substantial to call for the imposition of the death penalty when considered with the mitigating

circumstance or circumstances found by one or more of you?

In deciding this issue, you're not to consider the aggravating circumstances standing alone. You must consider them in connection with any mitigating circumstances found by one or more of you. When making this comparison, each juror may consider any mitigating circumstance or circumstances that juror determined to exist by a preponderance of the evidence. After considering the totality of the aggravating and mitigating circumstances, each of you must be convinced beyond a reasonable doubt that the imposition of the death penalty is justified and appropriate in this case before you can answer the issue "yes." In so doing -- in so doing, you are not applying a mathematical formula. For example, three circumstances of one kind do not automatically out of necessity outweigh one circumstance of another kind. You may -- you may very properly give more weight to one circumstance than another. You must consider the relative substantiality and persuasiveness of the existing aggravating and mitigating circumstances in making this determination. You, the jury, must determine how compelling and how persuasive the totality of the aggravating circumstances are when compared with the totality of the mitigating

circumstances. After doing so, if you find beyond a reasonable doubt that the aggravating circumstances found by you are sufficiently substantial to call for the death penalty when considered with mitigating circumstances found by one or more of you, it would be your duty to answer this issue "yes." If you unanimously fail to so find, then it would be your duty to answer this issue "no."

In the event you do not find the existence of any mitigating circumstances, you must still answer this issue. In such case, you must determine whether the aggravating circumstances found by you are of such value, weight, importance, consequence, or significance as to be sufficiently substantial to call for the imposition of the death penalty.

Substantial means having substance or weight, important, significant or momentous. Aggravating circumstances may exist in a particular case and still not be sufficiently substantial to call for the death penalty. Therefore, it is not enough that the State -- for the State to prove that the evidence -- prove the evidence beyond a reasonable doubt the existence of one or more aggravating circumstances. It must also prove beyond a reasonable doubt that such aggravating circumstances are sufficiently substantial to call for

the death penalty. And before you may answer Issue Number Four "yes," you must agree unanimously that they are.

If you answer Issue Number Four "no," you must recommend that the defendant be sentenced to life imprisonment. If you answer Issue Number Four "yes," it would be your duty to recommend that the defendant be sentenced to death.

Now, members of the jury, you've heard the evidence and you've heard the arguments of the attorney for the State and the attorneys for the defendant. The Court has not summarized all the evidence, but it is your duty to remember all the evidence whether it has been called to your attention or not, and if your recollection of the evidence differs from that of the Court or the district attorney or of the defense attorneys, you are to rely solely upon your own recollection of the evidence in your deliberations.

I have not reviewed the contentions of the State or the defendant, but it is your duty not only to consider all of the evidence, but also to consider all the arguments, the contentions and positions urged by the State's attorney and the defendant's attorneys in their speeches to you, and any other contention that arises from the evidence, and to weigh them in the light

of your common sense and as best you can make your recommendation as to punishment.

The law, as indeed it should, requires that the presiding judge is to be impartial. You are not to draw any inference from any ruling I've made, or inflection in my voice or expression on my face, or any question I may have asked a witness or anything else I may have said or done during this trial, that I have an opinion or have intimated an opinion, as to whether any part of the evidence should be believed or disbelieved, as to whether any aggravating or mitigating circumstance has been proved or disproved, or as to what your recommendation ought to be in this matter. It is your exclusive province to find the true facts of the case and to make a recommendation reflecting the truth as you find it.

When you are ready do make a recommendation, have your foreperson write in your recommendations as directed on the Issues and Recommendation form.

At this point, the Court would ask that the three alternate jurors, if you'd go down to the room - that you previously occupied during this trial, please.

(Three alternate jurors absent)

THE COURT: As you retire to the jury room, you should first select one of your members to serve as your



foreperson to lead in your deliberations. Do not begin your deliberations on the issues and recommendation until you receive the original Issues and Recommendation as to punishment form from the bailiff. Proceed immediately with the selection of your foreperson. And then after receiving the original written form, proceed with the deliberations. And when you've reached a decision as to the issues and recommendation and are ready to pronounce them and your foreperson has written the answers on the form, have your foreperson sign and date it, notify the bailiff by knocking on the door to the jury room, and you'll be returned to the courtroom to pronounce your answers to these issues and recommendation.

You may retire to the jury room and select your foreperson.

(Jury absent. 2:35 p.m.)

THE COURT: Before sending the Issues and Recommendation form to the jury and allowing them to begin their deliberations, I will now consider any requests for corrections to the charge to the jury or any additional matters that anyone feels are necessary and appropriate to submit a proper and accurate charge to the jury. Are there any specific requests for corrections or additions to the Court's charge?

MR. PANOSH: No, Your Honor.

MR. LLOYD: No, Your Honor.

THE COURT: Okay.

(Verdict form delivered to the jury. 2:36 p.m.)

THE COURT: All right. Court will stand at ease until the jury returns.

(Court at ease)

THE COURT: Wait just a minute. Don't bring them in just yet.

Ladies and gentlemen, the jury has indicated they've reached a unanimous verdict as to these matters and will be coming in to pronounce that verdict in just a few minutes. Again, I would remind you that if you feel like you cannot control your emotions, you need to leave now. Because once the jury comes in, I will not tolerate any emotional outbursts in the courtroom. And if you do engage in such conduct, then of course the officers have been instructed to identify you and you'll be cited for contempt of court. That means time in jail or money, depending on how bad it is. So if you feel like you cannot control your emotions, I'd ask you to step out. These jurors deserve better than that. They've been here for five weeks. They've been loyal; on time. They deserve better than emotional outbursts in the courtroom. Once the jury leaves the courtroom,

then you may show any emotions you wish to show as long as it's controlled.

Okay. Bring them in, please.

(Jury present. 3:55 p.m.)

THE COURT: Okay. Mr. Lewey, are you still the foreperson of the jury?

JURY FOREPERSON: Yes, sir.

THE COURT: Has the jury reached a unanimous verdict as to the punishment phase?

JURY FOREPERSON: Yes, sir.

THE COURT: Have you signed and dated that verdict sheet, sir?

JURY FOREPERSON: Yes, sir.

THE COURT: Please hand that verdict sheet to the court officer.

(Complied)

THE COURT: Okay. Let the record show that the jury in the case of the State of North Carolina v. Ronnie Lee Kimble has reached a unanimous verdict as to the punishment phase; that Mr. William Steven Lewey is the jury foreperson; that the verdict sheet has been signed and dated; that the State is represented by assistant district attorney Mr. Panosh; that the defendant is present and represented by counsel, Mr. Lloyd and Mr. Hatfield.

Madam Clerk, would you please take this verdict.

THE CLERK: Yes, sir.

Members of the jury, you have agreed upon your answers to the Issues and Recommendation for punishment in the State of North Carolina v. Ronnie Lee Kimble, 97 CrS 39580. As to Issue One, you've answered yes; Issue Two, yes; Issue Three, no. We, the jury, unanimously recommend the defendant, Ronnie Lee Kimble, be sentenced to life imprisonment.

Are these the answers to your Issues and Recommendation for sentencing, so say you-all?

(Affirmative response)

THE COURT: Okay. You'll need to poll the jury.

THE CLERK: Yes, sir.

THE COURT: Individually.

THE CLERK: Yes, sir.

(The jury was polled in open court by the clerk; each juror answered that the verdict returned by the foreperson was his or her verdict and each still assented thereto.)

THE COURT: Any matters before I excuse the jury, Gentlemen?

MR. PANOSH: No, Your Honor.

MR. LLOYD: No, Your Honor.

THE COURT: Members of the jury, at this point,

I want to publicly and on the record thank you for your service in this case. I don't know when I've had a jury that has been more cooperative than you-all. You-all have been on time. It's been a long trial, five weeks. It's hard to keep 13 jurors -- I mean 15 jurors for five weeks. I commend you for that. I know it's been a difficult case for you individually and that you provided a valuable service to your fellow citizens and the people of the State. I want to personally thank you for that. I'll be back to thank you more appropriately in a few minutes. I'd also admonish you it would be improper to say what a fellow juror said or did. You may tell what you thought or how you felt about the case, but be very careful that you do not reveal a fellow juror's thoughts or actions. You understand that?

You have a right to talk with whoever you choose to talk with about the case or you may simply tell them you don't want to discuss it. It's your right, your prerogative, and it's up to you to make that decision.

So if you'll step in the jury room, and the three alternates, if you'll join them back there, and I'll be back there to talk to you about your jury service.

(All jurors absent)

THE COURT: Are there any matters for the record on behalf of the State or the defense?

MR. PANOSH: Not for the State, Your Honor.

MR. LLOYD: No, Your Honor.

THE COURT: As to sentencing, you ready to proceed now? You need additional time? We'll do it in the morning. What do you wish to do?

MR. LLOYD: If we could just have a moment with Mr. Kimble?

THE COURT: The one is automatic, of course, but there are two other offenses that we'll need to sentence on.

MR. LLOYD: We're ready to proceed, Your Honor.

THE COURT: As far as sentencing purposes, the State?

MR. PANOSH: Your Honor, we'll submit a work sheet which indicates defendant is at prior record level one. As to the arson, it's a Class D. You need a -- I believe it's the green one. If I can hand it up?

THE COURT: Please.

It's the blue one, isn't it?

12/1/95. It was October, wasn't it?

MR. PANOSH: I'm sorry. You're right.

THE COURT: Blue sheet. Events occurred prior to December 1st.

MR. PANOSH: Yes, sir.

The arson, as I said, is a Class D. Under 14-2, conspiracy to commit first-degree murder is a B2.

THE COURT: All right. Defense wish to be heard in regard to those two possible sentences?

MR. LLOYD: Your Honor, just very briefly. I don't think there's anything that -- certainly that I could add personally that Your Honor hadn't already seen from the witness stand. I would reiterate the fact that Ronnie has absolutely no record. That is unusual. And we would ask for a sentence in the presumptive range. And if Your Honor would consider it, Your Honor, we would also ask for -- basically for a concurrent sentence. I think a sentence of life without parole is exactly what it says it is, and he's never going to get out, so I don't think it will make any difference.

That's all I have to say. Thank you, Judge.

THE COURT: State wish to be heard on that?

MR. PANOSH: No, Your Honor.

THE COURT: Okay. If you'll stand up,

Mr. Kimble. The defendant, Ronnie Kimble, having been convicted of murder in the first-degree by the unanimous verdict of a duly impaneled jury of Guilford County citizens in this session of Superior Court of Guilford County, and the jury having unanimously recommended life

in prison without the benefit of parole, it is therefore ordered and adjudged that the defendant, Ronnie Lee Kimble, be and is hereby sentenced to life in prison without benefit of parole, and the sheriff of Guilford County, North Carolina, in whose custody the defendant now is, shall forthwith deliver said prisoner to the warden of the state penitentiary in Raleigh, North Carolina, and said warden shall cause the said prisoner to be incarcerated for the rest of his natural life.

As to the offense of first-degree arson, the Court finds this is a Class D felony, he's a level one, and has no prior points, and the Court will sentence him in the presumptive range, making no findings of aggravating or mitigating factors. The judgment of the Court is he be imprisoned assigned to work under the supervision of the State Department of Correction for a minimum period of 55 months and a maximum period of 75 months. This sentence to run at the expiration of the sentence of life imprisonment the Court has previously imposed. Give him credit for any time he's spent in custody awaiting trial.

As to conspiracy to commit murder, Class D2 felony, and again a level one punishment. And the judgment of the Court is he be imprisoned assigned to work under the supervision of the State of Department of



Correction for a minimum period of 135 months and a maximum period of 171 months. This sentence to run at the expiration of that sentence previously imposed with regard to first-degree arson. Again, give him credit for any time he's spent in custody awaiting trial. Court recommends he be placed on suicide watch; that the Department of Correction be placed on notice that he may have those type tendencies and take whatever steps are necessary to see that he is secure and safe. The Court will also notify the Department of Correction that this defendant is manipulative and the image that he presents is sometimes not the person he actually is and the Department of Correction should be on guard and aware that he may exhibit these types of behavior. And be incarcerated for the rest of his life. Take him.

MRS. EDNA KIMBLE: Your Honor, may I hold and kiss him good-bye?

THE COURT: No, ma'am. There will be time for that down at the jail.

MR. HATFIELD: Stand up when you address the Court.

MRS. EDNA KIMBLE: Will they let me see him off?

THE COURT: I'll instruct the officers to give you a chance to talk with him.

MRS. EDNA KIMBLE: Will I be able to hold him?

THE COURT: I doubt that, ma'am. They have rules and regulations. You'll have a chance to confer with him before he's shipped out.

Any other matters for the Court's attention?

MR. PANOSH: No, Your Honor.

MR. LLOYD: No, Your Honor.

THE COURT: Recess.

(Whereupon, the proceedings concluded.)

COURT REPORTER'S CERTIFICATE

I, Patricia Jaeger, RPR, certify that I recorded by stenotype the transcript of proceedings in captioned cause, taken in the General Court of Justice, Superior Court Division, Guilford County, Greensboro, North Carolina, at the August 3, 1998, Regular Criminal Session, before the Honorable Preston Cornelius, Judge Presiding.

I further certify that to the best of my knowledge and belief, the foregoing transcript constitutes a true and correct transcript of the said proceedings.

Given under my hand this 29th day of March, 1999.



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