

# Appendix

# Appendix A

Trial Court's November 6, 2019 Order



1. The Petitioner's coram nobis claim concerns a constitutional violation, and the Tennessee Supreme Court has concluded the petition for writ of error coram nobis is not proper for resolving constitutional claims. The writ of error coram nobis addresses factual claims of actual innocence, and Mr. Hall's stated claim is not one of actual innocence. As such, the petition for writ of error coram nobis is DISMISSED.
2. The Petitioner's motion to reopen his prior post-conviction proceedings does not state one of the bases for reopening post-conviction proceedings as provided in Tennessee Code Annotated section 40-30-117. The Court is unaware of any authority which would permit a post-conviction court to reopen a prior post-conviction matter on due process grounds. Thus, the motion to reopen is DISMISSED.
3. Tennessee Code Annotated section 40-30-102(c) provides, "This part contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment." The Court acknowledges the Tennessee Supreme Court has concluded the statute of limitations may be waived on due process grounds, but Tennessee's appellate courts have not yet examined a case in which a petitioner seeks to circumvent the statutory one-petition limit on due process grounds. Accordingly, this Court determines a hearing is necessary to focus on the due process issue in greater detail. This hearing shall be held November 14, 2019.

In support of the above, the Court makes the following findings of fact and conclusions of law:

## II. Relevant Procedural History

A Hamilton County jury found Petitioner guilty of one count each of first degree murder and aggravated arson in connection with the Petitioner's killing of his ex-girlfriend, Traci Crozier. The jury sentenced Mr. Hall to death. The Petitioner's convictions and sentences have withstood the three-tier capital review process.<sup>2</sup>

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*State v. Hall*, 958 S.W.2d 679 (Tenn. 1997) (direct appeal); *Leroy Hall, Jr., v. State*, 2005 WL 2008176 (Tenn. Crim. App. Aug. 22, 2005), *perm. app. denied* (Tenn. Dec. 19, 2005) (post-conviction); *Lee Hall, formerly known as Leroy Hall, Jr., v. Ricky Bell, Warden*, No. 2:06-CV-56, 2010 WL 908933 (E.D. Tenn. Mar 12, 2010) (federal district court order denying petition for writ of habeas corpus); *Lee Hall, formerly known as Leroy Hall, Jr., v. Ricky Bell, Warden*, No. 2:06-CV-56 (E.D. Tenn. Sept. 22, 2011) (memorandum and order dismissing coram nobis petition prior to Sixth Circuit review).



### **III. Recent Case Developments**

The Petitioner asserts that in September 2019, post-conviction counsel interviewed one of the jurors from Petitioner's trial, referenced in public pleadings as "Juror A."<sup>3</sup> Shortly before the filing of these petitions, the juror completed an affidavit stating that she was a victim of extensive domestic violence during her first marriage, which ended over a decade before her service on Mr. Hall's jury. On the questionnaire, the victim answered "no" to questions asking whether she had been a victim of a crime and whether she had contacted the police concerning a domestic or criminal matter. During general voir dire, the juror did not answer certain questions which the Petitioner claims would have been reasonably expected to elicit disclosures of the juror's prejudices. The State asserts such questions did not meet this threshold.

In her recent affidavit, Juror A's stated she "could put [her]self in [the victim's] shoes, given what had happened to [the juror]." She also claimed she "hated [Petitioner] for what he did to that girl. It really triggered all the trauma [the juror] had gone through with [her husband] and I was biased against [Petitioner]."

### **IV. Review of Procedural Issues**

As stated above, Petitioner has raised his juror bias claim in three separate filings: A petition for writ of error coram nobis, a motion to reopen his prior post-conviction proceeding, and a successive petition for post-conviction relief. Before this Court can resolve the Petitioner's stated issues, the Court must determine whether any proper vehicle exists for the Court to resolve Petitioner's claims.

#### **A. Writ of Error Coram Nobis**

##### **1. Parties' Arguments**

Petitioner contends his coram nobis petition states a colorable claim for relief and should be considered by this Court. Petitioner asserts he is entitled to due process-based tolling of the one-year limitations period because he was without fault in bringing these claims. Post-conviction counsel assert they exercised reasonable diligence in pursuing these claims and could not have discovered these claims previously because Juror A did not disclose her history of abuse and prejudice toward Mr. Hall before now. Petitioner

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<sup>3</sup> The parties have agreed to withhold the juror's name from public pleadings. The juror's name appears in sealed exhibits to Petitioner's pleadings, including an affidavit from the juror and the juror's questionnaire from the 1992 trial.

asserts his claims constitute newly-discovered evidence relating to matters at trial and would have been admissible at trial. Petitioner acknowledges the writ of error coram nobis is an extraordinary proceeding, but given the constitutional claims involved and the fact that these claims do not fit well into other available procedural remedies, Petitioner argues a coram nobis proceeding is most appropriate to resolve Mr. Hall's stated issues.

The State contends the coram nobis petition must be dismissed because evidence of Juror A's supposed bias does not relate to matters litigated at trial. The State also argues Mr. Hall's petition is impermissibly broad, and because post-conviction counsel did not exercise reasonable diligence in discovering Juror A's disclosures, Mr. Hall is not entitled to due process-based tolling of the coram nobis limitations period.<sup>4</sup>

## 2. Analysis

The writ of error coram nobis is an "extraordinary procedural remedy . . . into which few cases fall." *State v. Mixon*, 983 S.W.2d 661, 672 (Tenn. 1992). To obtain coram nobis relief, the petitioner must show that the newly discovered evidence could not have been obtained before trial by either the petitioner or his counsel exercising reasonable diligence. *State v. Vasques*, 221 S.W.3d 514, 527-28 (Tenn. 2007). The legislature has limited the relief available through the writ:

The relief obtainable by this proceeding shall be obtained to errors [outside] the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly

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<sup>4</sup> The State also contends the coram nobis petition should be dismissed because facts of this case are different from those of *Robert Faulkner v. State*, in which a death row defendant was granted post-conviction relief based on juror bias. This Court will not address this contention in this order because the State's argument relates more to the merits of the petition than the procedural issues which are the focus of this order.

discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different result, had it been presented at the trial.

Tenn. Code Ann. § 40-26-105(b) (2012).

A petition for writ of error coram nobis must be filed within one year of the judgment becoming final in the trial court. *State v. Mixon*, 983 S.W.2d 661, 670 (Tenn. 1990); *Harris v. State*, 301 S.W.3d 141, 144 (Tenn. 2010). The current petition for writ of error coram nobis, filed in October 2019, is clearly untimely, as it was filed over twenty-five years after the order denying Mr. Hall's motion for a new trial. However, in certain instances due process concerns may require tolling of the coram nobis limitations period. *Workman v. State*, 41 S.W.3d 100, 103 (Tenn. 2001). As relevant to this case, the Tennessee Supreme Court has concluded that "newly available" evidence may constitute "newly discovered" evidence for coram nobis purposes in limited circumstances. *See Payne v. State*, 493 S.W.3d 478, 485-86 (Tenn. 2016).

The parties have raised extensive, well-reasoned arguments in support of their contentions, particularly regarding Petitioner's due process-based claims. However, the Court will resolve this issue on grounds not addressed directly by the parties. This Court notes that the Tennessee Supreme Court has limited coram nobis relief to situations involving newly discovered evidence of actual innocence. In a recent opinion, the Supreme Court stated,

The writ [of error coram nobis] is not designed to address *Brady* violations; hence, the statute contains no requirement that the State withheld or suppressed the subsequently or newly discovered evidence. *Brady* violations are constitutional violations; the appropriate remedy is therefore a post-conviction proceeding. . . . As previously noted, matters appropriate for post-conviction relief—such as *Brady* violations—are not appropriate for coram nobis proceedings."

*State v. Nunley*, 552 S.W.3d 800, 819 (Tenn. 2018) (alteration in original) (quoting

*Hershell Lee Kinnaird v. State*, 2001 WL 881371, at \*6 (Tenn. Crim. App. Aug. 7, 2001)).

*Nunley* dealt specifically with a *Brady* violation, but the entirety of the *Nunley* opinion, including the cases cited therein, makes clear to this Court that the *Nunley* holding applies to all constitutional violations. The issues raised by Mr. Hall ultimately are constitutional in nature—Mr. Hall is arguing he was denied his right to a fair and impartial jury and should be granted a new trial because the denial of such right is a structural constitutional error. The *Nunley* opinion, therefore, places Petitioner’s claim beyond the reach of the writ of error coram nobis.

*Nunley* appears to be a logical extension of prior appellate case law limiting the writ of error coram nobis to matters involving evidence of actual innocence. For instance, in *Stephen Lynn Hugueley v. State*, counsel for a death row inmate asserted Mr. Hugueley was entitled to coram nobis relief based on newly-available brain scans which established the petitioner was incompetent at the time of his trial. *Stephen Lynn Hugueley v. State*, 2017 WL 2805204 (Tenn. Crim. App. June 28, 2017), *perm. app. denied* (Tenn. Nov. 17, 2017). The coram nobis court denied relief; on appeal, one of the many reasons cited by the Court of Criminal Appeals in affirming the court below was that Mr. Hugueley did “not have a valid due process claim requiring tolling because he [was] not contending he [was] actually innocent of the crime.” *Id.* at \*13.

In *Joann Rosa v. State*, the petitioner argued she was entitled to due-process based tolling of the limitations period based on what she claimed was the newly-discovered intoxication of the judge who presided over her trial. The Court of Criminal Appeals rejected Ms. Rosa’s claims, stating,

We conclude that the Petitioner has failed to state a cognizable claim for coram nobis relief because she has not presented evidence of actual innocence. Evidence of intoxication and illegal activities surrounding the judge's drug abuse would not have been admissible at her trial because it was not relevant and probative of whether she committed the crime of which she was convicted

*Joann G. Rosa v. State*, 2013 WL 5744781, at \*4 (Tenn. Crim. App. Oct. 21, 2013).

Similarly, Mr. Hall's coram nobis petition does not raise a claim of actual innocence. As stated above, the petition raises a constitutional claim. Thus, Mr. Hall's claims are not cognizable in a coram nobis action. Mr. Hall's coram nobis petition is therefore dismissed.

## **B. Motion to Reopen Post-Conviction Petition**

### **1. Parties' Arguments**

Mr. Hall acknowledges his motion to reopen does not fall into any of the statutory categories which entitle a post-conviction petitioner to reopen his prior post-conviction claim. Petitioner nonetheless argues he is entitled to reopen his prior post-conviction proceedings "in that the facts [alleged in the motion] establish a serious structural error and were not previously ascertained through no fault of the petitioner and through circumstances beyond his control."<sup>5</sup> The State contends the Petitioner's failure to present a claim which qualifies as a ground for reopening post-conviction proceedings is fatal to the motion to reopen.

### **2. Analysis**

A post-conviction petitioner is permitted to reopen his post-conviction proceedings in limited circumstances. The post-conviction statutes limit these circumstances to the

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<sup>5</sup> Motion to reopen at 20.

following:

(1) The claim in the motion is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. Such motion must be filed within one (1) year of the ruling of the highest state appellate court or the United States Supreme Court establishing a constitutional right that was not recognized as existing at the time of trial; or

(2) The claim in the motion is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

(3) The claim in the motion seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the motion must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid;<sup>6</sup> and

(4) It appears that the facts underlying the claim, if true, would establish by clear and convincing evidence that the petitioner is entitled to have the conviction set aside or the sentence reduced.

Tenn. Code Ann. § 40-30-117(a)(1)-(4).

The Petitioner's constitutional claims do not fall into any of the three categories established in Tennessee Code Annotated section 40-30-117(a)(1) through -(3). The Tennessee Supreme Court has limited a petitioner's ability to reopen his post-conviction proceedings strictly to the grounds listed in the statute. *See, e.g., Harris v. State*, 102 S.W.3d 587, 591 (Tenn. 2003) (claim that State withheld exculpatory evidence not cognizable in motion to reopen because "[a] claim that the State suppressed or failed to disclose exculpatory evidence in violation of *Brady* simply is not one of the statutory grounds for reopening a post-conviction proceedings"); *see also id.* at 591 n.6 ("Clearly,

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<sup>6</sup> Petitioner argues the claims raised in his motion to reopen are "most analogous" to this ground. The Court finds this assertion unavailing.

the General Assembly knows how to make exceptions for *Brady* violations. It simply chose not to include such claims in the statute addressing motions to reopen”). This Court is also unaware of any authority which would permit a trial court to reopen a post-conviction proceeding on due process grounds based on a claim which does not qualify under one of the three statutory grounds.

Because Petitioner’s motion to reopen does not fall into one of the categories entitling him to relief, his motion to reopen must be dismissed.

### **C. Successive Post-Conviction Claim**

#### **1. Parties’ Arguments**

The Petitioner acknowledges his second post-conviction petition is both untimely and filed in contravention of the statutory limit to one post-conviction petition. However, post-conviction counsel argue the Petitioner’s due process rights should allow this Court to consider Petitioner’s claims. The State did not address the second post-conviction petition in great detail in its answer; at the November 4 hearing, the State claimed this resulted from the post-conviction statutes’ requirement that this Court file an order stating the petition stated a colorable claim before the State could answer the petition. The State’s answer does note the statutory limit to one post-conviction filing.

#### **2. Analysis**

A petitioner is entitled to post-conviction relief if the petitioner can establish his “conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States.” Tenn. Code Ann. § 40-30-103. The burden in a post-conviction proceeding is on the

petitioner to prove the factual allegations contained in his petition by clear and convincing evidence. *Id.* § 40-30-110(f); *Dellinger v. State*, 279 S.W.3d 282, 296 (Tenn. 2009).

The post-conviction statutes place limits on a petitioner's ability to file a petition for post-conviction relief. Two of those limits are relevant in this case. First, Tennessee Code Annotated section 40-30-102(a) provides that a post-conviction petition must be filed

within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of the petition shall be barred.

Mr. Hall's petition is clearly untimely under this statute.

Tennessee Code Annotated section 40-30-102(c) states,

This part contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed. A petitioner may move to reopen a post-conviction proceeding that has been concluded, under the limited circumstances set out in § 40-30-117.

Mr. Hall has already filed a post-conviction petition that has been fully litigated, and as stated above Petitioner's current claims do not meet the criteria for reopening his prior post-conviction proceedings. Under a strict reading of section 40-30-102, Petitioner's second petition would be dismissed as untimely and as violating the one-petition provision.

However, the Tennessee Supreme Court has established, at least as it relates to the timeliness of a post-conviction petition, that a petitioner may be entitled to have his claims heard on due process grounds. As the Tennessee Supreme Court has stated,



The notion of “due process” is anchored in the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and the “Law of the Land” clause in Article I, Section 8 of the Constitution of Tennessee. Due process “embodies the concepts of fundamental fairness,” justice, and “the community’s sense of fair play and decency” *Whitehead v. State*, 402 S.W.3d 615, 623 (Tenn.2013) (quoting *Seals v. State*, 23 S.W.3d 272, 277 (Tenn.2000); *United States v. Lovasco*, 431 U.S. 783, 790, 97 S. Ct. 2044, 52 L.Ed.2d 752 (1977)). Both this Court and the United States Supreme Court have recognized that due process requires that, once the legislature provides prisoners with a method for obtaining post-conviction relief, prisoners must be afforded an opportunity to seek this relief “at a meaningful time and in a meaningful manner.” *Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992) (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437, 102 S. Ct. 1148, 71 L.Ed.2d 265 (1982)).

We recently clarified Tennessee’s due process tolling standard in *Whitehead v. State*. We held that a post-conviction petitioner is entitled to due process tolling of the one-year statute of limitations upon a showing (1) that he or she has been pursuing his or her rights diligently, and (2) that some extraordinary circumstance stood in his or her way and prevented timely filing. *Whitehead v. State*, 402 S.W.3d at 631 (citing *Holland v. Florida*, 560 U.S. 631, 648–49, 130 S. Ct. 2549, 2562, 177 L.Ed.2d 130 (2010)). This rule applies to all due process tolling claims, not just those that concern alleged attorney misconduct.

We also noted in *Whitehead* that the standard for pursuing one’s rights diligently “does not require a prisoner to undertake repeated exercises in futility or to exhaust every imaginable option, but rather to make reasonable efforts [to pursue his or her claim].” *Whitehead v. State*, 402 S.W.3d at 631 (quoting *Aron v. United States*, 291 F.3d 708, 712 (11th Cir.2002)). However, we emphasized that due process tolling “must be reserved for those rare instances where—due to circumstances external to the party’s own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.” *Whitehead v. State*, 402 S.W.3d at 631–32 (quoting *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir.2000)).

The threshold for triggering this form of relief is “very high, lest the exceptions swallow the rule.” *Whitehead v. State*, 402 S.W.3d at 632 (quoting *United States v. Marcello*, 212 F.3d 1005, 1010 (7th Cir.2000)).

*Bush v. State*, 428 S.W.3d 1, 21-23 (Tenn. 2014) (footnotes omitted).

This Court recognizes that the due process-related post-conviction opinions cited by Petitioner (including the *Whitehead* and *Burford* cases cited above) have concluded only that due process can, in certain cases, excuse the untimeliness of a petitioner’s

claims for relief. This Court is unaware of any authority (statute, court rule, appellate opinion, or otherwise) addressing whether due process concerns may allow a trial court to consider a second or successive post-conviction petition on its merits despite the statutory limit of one post-conviction petition.

This Court has two options before it. On one hand, the Court could determine that expansion of a petitioner's due process rights in post-conviction cases is the exclusive province of the Tennessee Supreme Court and conclude that the Supreme Court's rulings regarding due process apply only to the previously-addressed timeliness issues. If this Court reaches this conclusion, the Petitioner's second post-conviction petition would be dismissed.

On the other hand, this Court could determine that Mr. Hall's due process rights, which are heightened in a death penalty case, should permit this Court to consider the merits of the second post-conviction claim in light of the facts presented in the petition and the Supreme Court's previous due process-based post-conviction jurisprudence. In such an instance, this Court would, on due process grounds, permit the post-conviction petition to proceed consistent with the post-conviction statutes. If procedurally proper, this Court would be inclined to conclude the Petition states a colorable claim—one which still must be proven by Petitioner before he would be entitled to relief—and consider the petition on its merits.

Given the parties' limited focus on the second post-conviction petition in their previous filings, the Court finds it necessary for the parties to present the Court with additional pleadings and argument on this issue before the Court resolves the issue. Such

pleadings and arguments will proceed as detailed below.

## V. Conclusion

For the reasons stated above, Mr. Hall's petition for writ of error coram nobis and motion to reopen his post-conviction proceedings are DISMISSED.

The Court will not rule on whether Petitioner's second post-conviction petition is properly before the Court at this time. The parties shall instead file additional pleadings on whether the second post-conviction petition may be considered on due process grounds. Given the time constraints involved in this case, any pleadings shall be filed no later than the close of business on **Wednesday, November 13, 2019**. No responsive pleadings shall be filed. The parties should be prepared to argue this issue at the hearing set for **Thursday, November 14, 2019**.

At the November 14, hearing, the parties should also be prepared to present evidence on the merits of the claims raised in the post-conviction petition. If the Court concludes the post-conviction claim is properly before the Court, the Court shall issue an order on the merits of the petition based on the proof introduced at the hearing. If the Court concludes due process does not permit the filing of the second petition, the proof presented on the merits shall be considered an offer of proof designed to preserve Petitioner's claims on appellate review.

IT IS SO ORDERED this the 6 day of November, 2019.

Don W. Poole  
Judge

Don W. Poole  
Don W. Poole,

CRIMINAL COURT, DIVISION III

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# Appendix B

Trial Court's November 19, 2019 Order

IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE  
DIVISION III

LEE HALL,	)	
f/k/a Leroy Hall, Jr.,	)	
Petitioner	)	
vs.	)	No. 308968 (Post-Conviction)
	)	
STATE OF TENNESSEE,	)	
Respondent	)	

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**ORDER DISMISSING PETITION FOR POST-CONVICTION RELIEF**

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**I. Introduction**

This matter came before the Court November 14, 2019, for a hearing on the above-referenced petition, filed October 17, 2019, and followed by several responsive pleadings. The Petitioner, Lee Hall, is presently set to be executed on December 5, 2019.

Having conducted a hearing, and in consideration of the relevant authorities and the record as a whole, this Court concludes Petitioner's second post-conviction petition is barred by Tennessee Code Annotated section 40-30-102(c), which limits a petitioner to one post-conviction petition. The Court also concludes due process concerns do not entitle Mr. Hall to have this Court consider the merits of the post-conviction petition, as current appellate case law addressing due process in post-conviction cases has been limited to waiving the statute of limitations. Any expansion of due process principles must be undertaken by the Tennessee Supreme Court. Accordingly, Mr. Hall's second post-conviction petition is DISMISSED.

Given the limited time before Mr. Hall's scheduled execution and the appellate review which will almost certainly ensue, at the November 14 hearing this Court

permitted the Petitioner to present evidence on the issues raised in the post-conviction petition. Based on the proof presented, the Court finds that had this petition been properly before the Court, the evidence presented would not have entitled Mr. Hall to relief on the merits.

## **II. Relevant Procedural History**

### **A. Trial**

The evidence presented at the guilt phase of the trial demonstrated that around midnight on April 16, 1991, the defendant threw gasoline on the victim, Traci Crozier, his ex-girlfriend, as she was lying in the front seat of her car. The victim received third degree burns to more than ninety percent of her body and died several hours later in the hospital. When questioned by police, the defendant initially denied involvement in the offense. Eventually, however, Hall admitted responsibility, but claimed that he did not intend to kill the victim; he intended to burn her car.

*State v. Hall*, 958 S.W.2d 679, 683 (Tenn. 1997).

A Hamilton County jury found Petitioner guilty of one count each of premeditated first degree murder and aggravated arson. The jury sentenced Mr. Hall to death. The trial judge<sup>1</sup> imposed a consecutive twenty-five year sentence for the aggravated arson conviction. The Petitioner's convictions and sentences were affirmed on direct appeal.

*State v. Hall*, 958 S.W.2d 679 (Tenn. 1997).

### **B. Post-Conviction**

Mr. Hall filed a timely petition for post-conviction relief. After the appointment of counsel and a hearing on Petitioner's claims for relief, the post-conviction court denied the post-conviction petition. The Court of Criminal Appeals affirmed the post-conviction court's ruling. *Leroy Hall, Jr., v. State*, No. E2004-01635-CCA-R3-PD, 2005 WL

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<sup>1</sup> The late Judge Stephen M. Bevil presided over Petitioner's trial and post-conviction proceedings.

2008176 (Tenn. Crim. App. Aug. 22, 2005). The Tennessee Supreme Court denied Mr. Hall's application for permission to appeal on December 19, 2005.

### **C. Federal Habeas Corpus**

Mr. Hall filed a timely petition for writ of habeas corpus in the United States District Court for the Eastern District of Tennessee. The district court denied the petition in an order filed in March 2010. *Lee Hall, formerly known as Leroy Hall, Jr., v. Ricky Bell, Warden*, No. 2:06-CV-56, 2010 908933 (E.D. Tenn. Mar 12, 2010). Before the case could proceed to the Sixth Circuit, Mr. Hall filed a motion to dismiss his petition. After a hearing, the district court concluded Mr. Hall was competent to forego his appeal and dismissed the habeas corpus petition. *Lee Hall, formerly known as Leroy Hall, Jr., v. Ricky Bell, Warden*, No. 2:06-CV-56 (E.D. Tenn. Sept. 22, 2011) (memorandum and order dismissing coram nobis petition).

### **D. Current Pleadings**

On October 17, 2019, Mr. Hall filed the current post-conviction petition, along with two other pleadings, a petition for writ of error coram nobis and a motion to reopen his prior post-conviction proceedings. The three pleadings raised identical claims. In his petitions, Mr. Hall alleges he is entitled to a new trial based upon the newly-discovered admissions by one of the jurors who served during Mr. Hall's 1992 trial that (1) the juror was the victim of extensive domestic violence; (2) she did not admit this fact to the parties or the Court in her questionnaire or during voir dire; and (3) she was prejudiced against Mr. Hall, whom the juror hated because he reminded her of her abusive ex-husband. Mr. Hall asserts the prejudiced juror denied him his right to a fair trial under the



state and federal constitutions and constitutes structural error, mandating a new trial. The State and Petitioner subsequently filed additional pleadings.

On November 4, 2019, this Court held an initial hearing on Petitioner's filings. This hearing was limited to the issue of whether Petitioner's pleadings were proper procedurally. After considering the parties' arguments, the Court issued an order on November 6, 2019, concluding Mr. Hall's coram nobis petition and the motion to reopen his prior post-conviction proceedings were procedurally barred. The Petitioner subsequently appealed this Court's rulings. The coram nobis appeal is presently before the Court of the Criminal Appeals. However, the Court of Criminal Appeals dismissed Mr. Hall's application for permission to appeal the motion to reopen ruling on procedural grounds.<sup>2</sup>

This Court's November 6 order did not dispose of the Petitioner's second post-conviction petition. The order acknowledged Tennessee Code Annotated section 40-30-102(c) allows only one post-conviction petition but stated that due process considerations may require this Court to consider the merits of the second post-conviction petition. The Court ordered the parties to file legal memoranda on the due process issue before the November 14 hearing, which the parties did. In its November 6 order, the Court stated the parties would be able to present proof on the merits of the post-conviction petition. The Court informed the parties that if the Court concluded the petition was procedurally proper, the Court would resolve the post-conviction petition on the merits. If the Court concluded that the second petition was barred, the evidence would be considered an offer of proof.

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*See Lee Hall v. State*, No. E2019-01977-CCA-R28-PD (Tenn. Crim. App. Nov. 8, 2019) (order dismissing application for permission to appeal in motion to reopen case).

### III. Findings of Fact: Testimony Presented at November 14 Hearing<sup>3</sup>

#### A. Juror A

##### 1. Her First Marriage

The juror, a woman, lived in Tennessee for most of her life, including the time of the Petitioner's trial. She moved to her current state of residence in 2000.<sup>4</sup>

The juror dated the man who would become her first husband for two years in high school. Juror A intended to go off to college after graduation, but sometime after graduation the man who would become Juror A's first husband raped her, which was the juror's first sexual experience. This rape resulted in a pregnancy; Juror A married her first husband in 1969 and gave birth to their son.

Juror A described the marriage to her first husband as "bad." She said her first husband was a "heavy drinker" who "got mean" when he drank. For most of their marriage, Juror A's first husband did not physically assault her; she said her husband would usually express his anger by putting holes in the wall of their trailer and causing damage to other items in the house. Specifically, Juror A recalled one time her first husband destroyed an aquarium in the residence. Juror A said her husband would often drive drunk, occasionally with their son in the car. The juror recalled on one occasion, her husband took their son with him when he went to a friend's house; the husband left the son in the car while the husband went inside to drink with his friend.

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<sup>3</sup> The Court finds all witnesses to be credible.

<sup>4</sup> Juror A and at least one other witness inadvertently disclosed the juror's current city of residence during the November 14 hearing. For the sake of the juror's privacy, and because her current residence is irrelevant to the issues before the Court, Juror A's place of residence will not be disclosed here.

Juror A also said that when her first husband drank he would impose himself on her sexually. Juror A did not necessarily consent to these encounters but she did not consider herself a rape victim at the time. She said at the time of her first marriage, people generally did not think in terms of spousal rape or spousal sexual abuse.

Juror A recalled her husband was very controlling and very jealous. She stated that during the course of her marriage, she thought of ways to leave her husband. She eventually attended school to become a medical technician. She also maintained a part-time job during her time at school. The juror recalled that her first husband would call her workplace so often she feared she would lose her job over the disruptions. Whenever the juror would leave the house for any period of time, such as when she went to the grocery store, the juror's husband would berate her when she returned, accusing her of seeing other men. She also said her first husband isolated her from her family. During this time the juror's husband told her that if she left him, she would never be able to meet anyone else and he would never leave her alone.

Juror A testified that toward the end of her first marriage, her first husband was arrested for drunk driving. She testified that on one occasion her husband "tore up" their residence and left. Juror A contacted the authorities in Bradley County, where they lived. When the police arrived, Juror A related her concerns, but the local authorities did not pursue the husband. The first husband was arrested on suspicion of drunk driving by another law enforcement agency. Juror A did not recall whether her husband was convicted after this arrest.

Toward the end of her marriage, Juror A was physically assaulted by her first husband twice. The juror did not recall the details of the first assault. Regarding the second assault, the juror recalled she and her husband went out for a night of drinking; at

the end of the night, the two got into an argument, which ended with the juror's first husband assaulting her. The assault left her with a bloody nose and a black eye. This led to Juror A deciding she would divorce her first husband, though she told her husband she would wait until Christmas to leave her husband for the sake of their son.

Juror A described her first husband's further decline following her telling him she was leaving. In one incident, the juror left their residence and returned to find several holes had been shot in the ceiling. Juror A also said that after the second incident of abuse, her husband drove to Florida before returning. Upon his return, he was "different." Juror A described her husband as "solemn," and he was not eating and drinking. The juror said that at a family gathering held Christmas Eve, 1975, her first husband said goodbye to everyone gathered. The next day, without warning, at another family gathering the juror's first husband went to a room away from everyone else and fatally shot himself in the head. Juror A said that during her first marriage she suspected her husband had mental health issues but she did not suspect he would kill himself.

Juror A did not tell many people about her abuse during her first marriage. She said she did tell her first husband's grandmother, who the juror said provided emotional support and food for Juror A's family when the family ran out of money. She also said that after the second incident of abuse, she told her father about the incident. After her first husband's death Juror A told a friend about her experiences during the marriage, but she told nobody else about what happened until engaging in therapy, as described below. She also said she told the Bradley County Health Department about her husband's mental health issues, but the agency only recommended marital counseling.

## **2. Her Second Marriage**

After her first husband's death, Juror A completed her medical technician training. In the course of her work, she met her second husband, a Hamilton County physician. They married in 1981 and remained married until his death in 2007. Juror A went into great detail about her marriage, which was very happy and fulfilling for her. She explained that she and her second husband went on many trips together around the world and across North America. At some point in the 1990s, the couple began splitting their time between Arizona and Hamilton County; at the time of Petitioner's trial, Juror A still considered Tennessee her state of permanent residence. After the trial, the juror and her second husband moved to Arizona full-time before moving to the state of Juror A's current residence in 2000. Juror A said she never told her second husband about her first husband's actions.

## **3. Her Jury Service**

Juror A said that when she reported for jury service in Petitioner's trial, she overheard other prospective jurors say the case on trial was a murder case. She did not know at that time that the case involved allegations of domestic violence. All prospective jurors in Mr. Hall's case completed a questionnaire before voir dire. Question 38 asked, "Have you ever been a victim o[f] a crime? If yes, please explain." Question 41 asked, "Have you or any member of your family had occasion to call the police concerning any problem, domestic or criminal?" Juror A answered "no" to both questions. The juror testified she answered question 38 as she did because she did not think of herself as a crime victim at the time she completed the questionnaire, as at the time there were "no such crimes" as date rape and spousal rape. She answered "no" to question 41 because

she had put the episode in which she called the police on her first husband “out of her mind” at the time of Petitioner’s trial.

Question 40 on the questionnaire asked, “Have you, your spouse, friend or relative or any family member ever been charged with or convicted of a criminal offense?” She answered “no” to this question; as with question 41 above, she replied that she had put memories of her first husband’s drunk driving arrest “out of her mind” at the time of the trial.

Juror A did not recall using the word “bias” in describing her feelings toward the Petitioner. She said that during voir dire and Petitioner’s trial she did not think of herself as biased against Mr. Hall based on her past experiences. At the time of Petitioner’s trial, she viewed her past experiences as “something that just happened.” She also did not recall being asked any questions about domestic violence during voir dire. Juror A said her past experiences did not affect her answers during voir dire, and she added she was not biased against Petitioner except during Mr. Hall’s testimony, as described below. The juror said she answered all voir dire questions truthfully and did not attempt to mislead the Court or attorneys.

The juror testified that her past experiences did not affect her jury service until Petitioner testified at trial. At that point, Mr. Hall’s recounting his stalking and threats toward Ms. Crozier reminded Petitioner of her husband. Juror A testified at one point during Petitioner’s testimony, the juror “hated” Mr. Hall, but the juror described these feelings as “fleeting.”<sup>5</sup>

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<sup>5</sup> Juror A testified her past experiences did not affect her deliberations. However, the Court concludes such testimony is inadmissible per Tennessee Rule of Evidence 606(b). *See Walsh v. State*, 166 S.W.3d 641, 649 (Tenn. 2005). Thus, while the Court notes juror A’s testimony for the record, the Court shall not consider the juror’s testimony regarding her deliberations in disposing of the current petition.

#### **4. Her Subsequent Disclosures**

Juror A did not recall exactly when she first met with Petitioner's post-conviction attorneys. She testified that had she been contacted between 1998 and 2003, she probably would not have said anything about her experiences during her first marriage. The juror recalled meeting with investigators from the Post-Conviction Defender's Office in 2014, but she did not recall whether she was asked about domestic violence. She also said that had she been asked about her past abuse during the 2014 interview, she was unsure whether she would have disclosed anything. As explained below, however, she had begun disclosing incidents regarding her first marriage to counselors before 2014. Juror A said she never tried to hide from anyone following the Petitioner's trial; she said that during the period of Mr. Hall's initial post-conviction proceedings she and her second husband traveled extensively and may well have been out of the country if Petitioner's attorneys attempted to contact her between 1998 and 2003. Juror A said that she brought up the incidences of domestic violence when she spoke with Petitioner's post-conviction attorneys and investigator in 2019.

Juror A testified that after her husband died in 2007, she began grief counseling. Her grief counselor referred her to another counselor who treated her for post-traumatic stress disorder (PTSD) In the course of that treatment, she began discussing issues surrounding her first marriage. Juror A said her counseling ended around 2009.

#### **B. Tammy Kennedy, Kathryn Tate, and Larry Gidcomb**

##### **1. Investigating Jurors, Generally**

Ms. Kennedy, Ms. Tate, and Mr. Gidcomb all formerly served as investigators with the Tennessee Post-Conviction Defender's Office. Ms. Tate and Ms. Kennedy

worked on the Petitioner's case during his original post-conviction proceedings, which lasted from 1998 to 2003. Mr. Gidcomb testified about a meeting he and a former attorney with the Post-Conviction Defender, Sophia Bernhardt, had with Juror A in 2014. Ms. Bernhardt was unable to appear at this hearing, as she is an attorney in New York and was, as of this hearing, seven months pregnant.

Ms. Kennedy and Ms. Tate testified regarding their investigations into the jurors who served at Petitioner's trial. Both investigators stated trial jurors are routinely interviewed as part of the post-conviction investigation because occasionally jurors disclose information which could lead to claims for relief. A copy of the Post-Conviction Defender's investigative file on the jurors in Mr. Hall's case was introduced into evidence at this hearing. The file contained copies of the juror list, all peremptory challenges used by both sides during voir dire, and information particular to each juror. The investigators stated that before attempting to contact each juror, they reviewed the voir dire testimony and juror questionnaires for each juror. Those documents appeared in the investigative file for each juror in this case, including Juror A.

As the investigators attempted to contact each juror, an information sheet for each juror containing the juror's potential contact information was developed, along with printed directions to each juror's residence as listed on Mapquest.com. Ms. Kennedy and Ms. Tate stated that during the initial post-conviction proceedings, the office had no access to GPS units in their vehicles or on their mobile phones. All three investigators said that at the time of the initial post-conviction proceedings, the office used a computer program called "Faces of the Nation" in an attempt to locate jurors' current addresses. The investigators stated the program was not as good as providing addresses as current programs or information available through a routine internet search which can be



conducted today. The investigators said that during the period of Mr. Hall's first post-conviction proceeding, resources were limited, and out-of-state travel to investigate jurors was rare.

All three investigators stated that the office usually attempted to meet with jurors in person without advance warning instead of sending letters, phone calls, or emails. The investigators said generally, jurors who serve on death penalty cases are reluctant to speak about their experiences. The investigators said that emails and letters can be ignored, and if a juror refuses to speak to an investigator over the phone, all other potential lines of communication are usually foreclosed. The investigators stated that jurors may be more willing to talk if an investigator shows up on the juror's front porch. If a juror in Mr. Hall's case was interviewed, the investigator's notes from the interview and a memorandum detailing the interview also appeared in the file.

## **2. The Investigators' Failure to Meet with Juror A between 1998 and 2003**

The Post-Conviction Defender's investigative file for Juror A contains, in addition to the transcript of her individual voir dire and her jury questionnaire, only two items: a cover sheet listing a particular Hamilton County residential address but no phone number, and a Faces of the Nation printout listing a residential address in Arizona and a Post Office Box in Hamilton County. There are no other documents in the file suggesting the investigators were able to contact the juror during the first post-conviction proceeding, and in her testimony Ms. Kennedy confirmed that she did not interview Juror A between 1998 and 2003. Ms. Kennedy acknowledged the investigators did not attempt to send letters to the juror's addresses for the reasons stated above, nor did the investigators attempt to gain information on the juror through other means, such as contacting

authorities in Arizona or reviewing a city directory in the juror's home town. Ms. Kennedy did not recall whether she asked for money to travel to Arizona in an attempt to meet with Juror A.

The two attorneys who represented Mr. Hall in the initial post-conviction proceeding, Don Dawson and Paul Morrow, did not testify at this hearing. Mr. Dawson was out of state, but current post-conviction counsel asserted Mr. Dawson had no independent recollection of the office's juror investigation in Mr. Hall's case. Current counsel informed the Court Mr. Morrow died three days before this hearing began (November 11, 2019).

### **3. Post-Conviction Defender's Meeting with Juror A in 2014**

Mr. Gidcomb testified he and Ms. Bernhardt met with Juror A at her residence in 2014. Mr. Gidcomb recalled he and Ms. Bernhardt showed up unannounced at the juror's residence and asked to speak with the juror, who obliged. Mr. Gidcomb testified that during his interview with Juror A, she did not bring up the abuse which she disclosed to Petitioner's attorneys in 2019. Mr. Gidcomb's testimony suggests that had Juror A mentioned the abuse, such abuse would have been recounted in the memorandum detailing the interview. In a declaration admitted into evidence, Ms. Bernhardt stated she did not recall whether she asked Juror A about domestic violence during the 2014 interview.

## **IV. Review of Procedural Issues**

### **A. Parties' Arguments**

Petitioner argues he was without fault in raising his juror bias claim before now, as Juror A did not disclose her abusive first marriage and alleged bias toward Petitioner until post-conviction counsel interviewed the juror in 2019. While a second post-conviction petition is barred by statute, Petitioner argues he should be permitted to present this claim based on existing due process principles that have been applied to post-conviction claims previously or other equitable principles such as the Open Courts provision of the Tennessee Constitution. The State counters that due process principles do not provide Petitioner relief, as no authority exists which would permit Petitioner to excuse the one-petition rule or allow him to reopen his current post-conviction proceedings based on grounds not established by statute.

#### **B. Second Petition Barred by Statute**

Tennessee Code Annotated section 40-30-102(c) provides,

This part contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed. A petitioner may move to reopen a post-conviction proceeding that has been concluded, under the limited circumstances set out in § 40-30-117.

As outlined above, Petitioner has already filed a post-conviction petition that was fully litigated. And as explained in this Court's November 6 order, none of the statutory provisions for reopening a post-conviction petition apply to Petitioner's current claims. Thus, Petitioner's second post-conviction petition is barred by statute.

#### **C. Due Process in Post-Conviction Cases**

One of the first major opinions of the Tennessee Supreme Court to consider the application of due process principles in light of post-conviction procedural limitations was *Burford v. State*, 845 S.W.2d 204 (Tenn. 1992). At that time, the post-conviction statutes did not contain an explicit bar to successive post-conviction claims. If anything, then-existing case law suggested a successive post-conviction claim could be brought if the claim had not been waived or previously determined. *See, e.g., Swanson v. State*, 749 S.W.2d 731, 735 (Tenn. 1988) (petitioner could bring successive claim if he could “show that no knowing and understanding waiver of a ground for relief was made, or that the claim was not previously determined, or that it was unavailable at the time of any prior proceeding”). Thus, it is logical that the one-petition limit was not addressed in *Burford*. The one-petition statutory limit was not enacted until 1995.

In *Burford*, a Trousdale County petitioner filed a post-conviction petition in 1990 seeking relief from his 50-year sentence as a persistent offender, imposed in 1985. *Burford* based his claim upon the 1988 reversal of the Wilson County convictions on which the Trousdale County persistent offender status had been based. *Burford*, 845 S.W.2d at 206. The Trousdale County post-conviction court concluded the three-year statute of limitations had expired and dismissed the petition as untimely. *Id.* On appeal, the Tennessee Supreme Court concluded the three-year statute of limitations was reasonable but concluded *Burford* was entitled to have his claims adjudicated by the post-conviction court on due process grounds.

In examining *Burford*'s claims, the Tennessee Supreme Court first stated,

[I]t is clear that the State has a legitimate interest in preventing the litigation of stale or fraudulent claims. *Jimenez v. Weinberger*, 417 U.S. 628, 636, 94 S. Ct. 2496, 2501, 41 L.Ed.2d 363, 370 (1974). It is also clear that a state may erect reasonable procedural requirements for triggering the right to an

adjudication, *such as* statutes of limitations, and a state may terminate a claim for failure to comply with a reasonable procedural rule without violating due process rights. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437, 102 S. Ct. 1148, 1158, 71 L.Ed.2d 265, 279 (1982).

However, before a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner. *Id.*, 455 U.S. at 437, 102 S. Ct. at 1158–59, 71 L.Ed.2d at 279. The question, then, is “whether the state’s policy reflected in the statute affords a fair and reasonable opportunity for . . . bringing . . . suit.” *Pickett v. Brown*, 638 S.W.2d 369, 376 (Tenn.1982), *rev’d on equal protection grounds* 462 U.S. 1, 103 S. Ct. 2199, 76 L.Ed.2d 372 (1983). In other words, the test is whether the time period provides an applicant a reasonable opportunity to have the claimed issue heard and determined. *Michel v. Louisiana*, 350 U.S. 91, 93, 76 S. Ct. 158, 160, 100 L.Ed. 83, 89 (1955).

*Burford*, 845 S.W.2d at 208 (emphasis added).

The Court in *Burford* concluded,

As stated previously, identification of the precise dictates of due process requires consideration of the governmental and private interests involved. *Fusari v. Steinberg*, *supra*, 419 U.S. at 389, 95 S. Ct. at 539, 42 L.Ed.2d at 529. While the State has a legitimate interest in preventing the litigation of stale and fraudulent claims, *Jimenez v. Weinberger*, *supra*, 417 U.S. at 636, 94 S. Ct. at 2501, 41 L.Ed.2d at 370, we find that application of the statute of limitations to *Burford*’s petition fails to serve that interest.

There is nothing stale or fraudulent about the petitioner’s claim. Although he filed his petition outside the time limits provided by the statute of limitations, there is no difficulty here with the availability of witnesses or the memories of witnesses. Nor is there a problem with respect to a groundless claim generating excessive costs. It is abundantly clear that the petitioner has a valid claim to have his sentence reduced, and all the Trousdale County court will have to do is examine the record of the Wilson County proceedings. The Trousdale County court can then resentence *Burford* using the appropriate considerations set forth in the Criminal Sentencing Reform Act. Tenn. Code Ann. §§ 40–35–101 to –35–504 (1990 & Supp.1991). Accordingly, we find that the governmental interest represented by Tenn. Code Ann. § 40–30–102 is not served by applying the statute to bar *Burford*’s petition.

Moreover, although the Post–Conviction Procedure Act only provides an opportunity to litigate constitutional attacks upon prior convictions, which we have already determined is not a fundamental right, application of the statute to bar *Burford*’s petition in this case will deny him of a fundamental right. If

consideration of the petition is barred, Burford will be forced to serve a persistent offender sentence that was enhanced by previous convictions that no longer stand. As a result, Burford will be forced to serve an excessive sentence in violation of his rights under the Eighth Amendment to the U.S. Constitution, and Article I, § 16 of the Tennessee Constitution, which, by definition, are fundamental rights entitled to heightened protection.

Given that the governmental interest in preventing the litigation of stale or fraudulent claims is not served by applying the statute to bar consideration of Burford's petition, we find that the only other governmental interest served by application of the statute in this case is the administrative efficiency and economy provided by a time bar. Clearly, as stated earlier, this governmental interest is insufficient to override Burford's interest against serving an excessive sentence in violation of his rights under the Eighth Amendment to the U.S. Constitution and Article I, § 16 of the Tennessee Constitution. In criminal litigation, where an alleged infringement of a constitutional right often affects life or liberty, conventional notions of finality associated with civil litigation have less importance, *Sanders v. United States*, 373 U.S. 1, 8, 83 S. Ct. 1068, 1073, 10 L.Ed.2d 148, 157 (1963), and "the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution." *I.N.S. v. Chadha*, 462 U.S. 919, 944, 103 S. Ct. 2764, 2781, 77 L.Ed.2d 317, 340 (1983).

*Burford*, 845 S.W.2d at 208-09.

While some language of *Burford* suggests due process considerations may not necessary be limited to the statute of limitations, *Burford* and the Tennessee Supreme Court's opinions addressing due process concerns in post-conviction cases as applied to the post-1995 statute—including *Seals v. State*, 23 S.W.3d 272 (Tenn. 2000), *Williams v. State*, 44 S.W.3d 464 (Tenn. 2001), *Smith v. State*, 357 S.W.3d 322 (Tenn. 2011), *Whitehead v. State*, 23 S.W.2d 272 (Tenn. 2000), and *Bush v. State*, 428 S.W.3d 1 (Tenn. 2014)—have exclusively addressed due process-based tolling of the statutory post-conviction limitations period. In this Court's view, the Tennessee Supreme Court's narrowed focus on the limitations period means that this Court cannot expand the due process-based principles of *Burford* and its progeny to the procedural issues presented in

Mr. Hall's case. Any expansion of a post-conviction petitioner's due process rights must be granted by the Tennessee Supreme Court.

A Tennessee Supreme Court opinion in another death penalty case supports this Court's conclusion. Before the Tennessee Supreme Court issued a later opinion concluding he was entitled to raise claims he was intellectually disabled and ineligible for the death penalty,<sup>6</sup> death row inmate Heck Van Tran filed a post-conviction petition in Shelby County alleging he was not competent to be executed. *Van Tran v. State*, 6 S.W.3d 257, 261 (Tenn. 1999). The Tennessee Supreme Court affirmed the trial court's dismissal of the petition, though on different grounds.<sup>7</sup> The Tennessee Supreme Court focused on the procedural aspects of Van Tran's claim. The Court noted no statute, post-conviction or otherwise, permitted a petitioner to challenge his competency to be executed. *Id.* at 263. Specifically, the Court noted that "the one-year statute of limitations for actions under the Post-Conviction Act . . . indicates that the General Assembly did not contemplate that post-conviction relief would be available in this circumstance." *Id.* (alteration added). The Court also noted a competency to be executed claim did not satisfy the criteria for reopening a post-conviction petition, adding, "That the Post-Conviction Act is such an ineffective and incomplete means to protect the insane from execution indicates that the General Assembly never intended for the Act to serve this purpose." *Id.* at 264. Accordingly, the Court concluded a post-conviction claim was "not

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<sup>6</sup> *Van Tran v. State*, 66 S.W.3d 790 (Tenn. 2001).

<sup>7</sup> The Shelby County Criminal Court's order dismissing Van Tran's post-conviction petition concluded that even if Van Tran's mental state precluded him from being executed, the claim was not cognizable for post-conviction relief because the claim would not have rendered the verdict and judgment "void or voidable as a result of a constitutional claim." *Id.* at 261. Unlike the first Van Tran case, Mr. Hall's claims of juror bias would be cognizable in a properly-brought post-conviction proceeding.

the appropriate avenue for litigating the issue of competency to be executed.” *Id.* The Court also concluded other statutory claims, such as the writ of error coram nobis, would not provide an avenue for relief. *Id.*

However, the Supreme Court concluded it had the authority to create procedures to resolve certain claims where no such procedural avenues existed previously:

Our conclusion that no existing statute provides a procedure for litigating the issue of competency to be executed does not end the inquiry, however. It has long been recognized and widely accepted that *the Tennessee Supreme Court* is the repository of the inherent power of the judiciary in this State. *Petition of Burson*, 909 S.W.2d 768, 772 (Tenn. 1995) (citing cases). Indeed, Tenn. Code Ann. §§ 16-3-503 and -504 (1994) broadly confer upon *this Court* all discretionary and inherent powers existing at common law at the time of the adoption of the state constitution. *Id.* We have also recognized that *this Court* has not only the power, but the duty, to consider, adapt, and modify common law rules. *State v. Rogers*, 992 S.W.2d 393, 400 (Tenn.1999); *Cary v. Cary*, 937 S.W.2d 777, 781 (Tenn.1996) (citing cases). Finally, we have recently held in the context of a capital case that Tennessee courts have inherent power to adopt appropriate rules of criminal procedure when an issue arises for which no procedure is otherwise specifically prescribed. *State v. Reid*, 981 S.W.2d 166, 170 (Tenn.1998).

*Van Tran*, 6 S.W.3d at 264-65 (emphasis added). The Court outlined a procedure for bringing a competency to be executed claim then dismissed Van Tran’s competency claim because his execution was not “imminent.” *Id.* at 265-74.

*Van Tran* makes clear to this Court that if any expansion of the Tennessee Supreme Court’s due-process based holdings in post-conviction cases is to occur, such expansion must be undertaken by the Tennessee Supreme Court, not this Court. This Court must follow the Tennessee Supreme Court’s precedent in *Burford* and its progeny strictly. Thus, because the Tennessee Supreme Court has not concluded that due process principles permit a petitioner to bring successive post-conviction petitions or permit a petitioner to reopen his post-conviction petition based on grounds not enumerated in the



post-conviction statute, this Court is constrained to conclude due process principles do not permit the Court to review review Mr. Hall's second post-conviction petition.

### **C. Open Courts Clause and Other Claims**

The Petitioner argues dismissing his petition without giving him an opportunity to resolve the claims contained therein would violate his rights under the state and federal constitutions, particularly the "Open Courts Clause" contained in Article I, section 17 of the Tennessee Constitution. This Court disagrees. This Court notes that in an appeal involving another death row inmate, the Tennessee Court of Criminal Appeals concluded the petitioner could not use the Open Courts Clause to raise his procedurally-barred intellectual disability claims:

Article I, section 17 of the Tennessee Constitution provides: "That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay." In interpreting this provision, our supreme court has stated:

The obvious meaning of this is that there shall be established courts proceeding according to the course of the common law, or some system of well established judicature, to which all of the citizens of the state may resort for the enforcement of rights denied, or redress of wrongs done them.

*Staples v. Brown*, 85 S.W. 254, 255 (Tenn.1905); see *State ex rel. Herbert S. Moncier v. Nancy S. Jones*, No. M2012-01429-COA-R3-CV, 2013 WL 2492648, at \*6 (Tenn. App. June 6, 2013), perm. app. denied (Tenn. Nov. 13, 2013). This provision "does not create a right but, rather, requires a mechanism by which a citizen may redress grievances." *State ex rel. Herbert S. Moncier*, 2013 WL 2492648, at \*6. Accordingly, Article I, section 17 does not create a substantive cause of action to enforce other constitutional provisions or laws. *Id.* The Petitioner may not rely upon the Open Courts Clause as a means to obtain a hearing on his intellectual disability and double jeopardy claims.

*James Dellinger v. State*, 2015 WL 4931576, at \*\*15-16 (Tenn. Crim. App. Aug. 18, 2015), *perm. app. denied*, (Tenn. May 6, 2016). The Open Courts Clause does not entitle Petitioner to relief.

#### **D. Dismissal of Petition on Procedural Grounds**

Because there is no basis—procedural, due process-based, or otherwise—upon which the Petitioner may bring the claims raised in the second post-conviction petition, the petition is hereby DISMISSED. Although the Court is dismissing Petitioner’s claims on procedural grounds, the Court will examine the merits of Petitioner’s claims to facilitate appellate review.

#### **V. Petitioner’s Juror Bias Claims**

##### **A. Relevant Case Law: The Right to a Fair and Impartial Jury**

“Both the United States Constitution and the Tennessee Constitution guarantee a criminal defendant the right to trial by an impartial jury.” *State v. Odom*, 336 S.W.3d 541, 556 (Tenn. 2011) (citing U.S. Const. amend. VI and Tenn. Const. art. I, § 9. “Because the right to an impartial jury is a fundamental aspect of a fair trial, the infraction of that right can never be treated as harmless error.” *Odom*, 336 S.W.3d at 556 (internal quotations omitted; citing *Gray v. Mississippi*, 481 U.S. 648, 668 (1987) and *State v. Bobo*, 814 S.W.2d 353, 358 (Tenn. 1991)).

The Court of Criminal Appeals has explained,

The jury selection process must be carefully guarded to ensure that each defendant has a fair trial and that the verdict is determined by an impartial trier of fact. The Tennessee Constitution guarantees every accused “a trial by a jury free of . . . disqualification on account of some bias or partiality toward one side or the

other of the litigation". *Toombs v. State*, 197 Tenn. 229, 270 S.W.2d 649, 650 (1954).

Bias in a juror is a "leaning of the mind; propensity or prepossession towards an object or view, not leaving the mind indifferent; [a] bent; [for] inclination." *Durham v. State*, 182 Tenn. 577, 188 S.W.2d 555, 559 (1945). Jurors who have prejudged certain issues or who have had life experiences or associations which have swayed them "in response to those natural and human instincts common to mankind," *id.* 188 S.W.2d at 559, interfere with the underpinnings of our justice system.

The essential function of voir dire is to allow for the impaneling of a fair and impartial jury through questions which permit the intelligent exercise of challenges by counsel. 47 Am.Jur.2d, Jury § 195 (1969). [. . .] Since full knowledge of the facts which might bear upon a juror's qualifications is essential to the intelligent exercise of peremptory and cause challenges, jurors are obligated to make "full and truthful answers ... neither falsely stating any fact nor concealing any material matter." 47 Am.Jur.2d, Jury § 208 (1969).

Tennessee follows the common-law rule by which challenges of juror qualifications fall within two distinct classes. Those challenges based on defects in qualifications such as alienage or statutory requirements are called propter defectum, which, literally translated means "on account of defect." See Black's Law Dictionary 1098 (5th ed.1979). The other class of challenges, propter affectum ("on account of prejudice"), *id.*, is based on bias or prejudice "actually shown to exist or presumed to exist from circumstances." *Durham v. State*, 188 S.W.2d 555, 559 (Tenn.1945) (quoting 1 Bouvier's Law Dictionary 451 (Rawle's 3d rev. 8th ed. (1914))). Propter defectum challenges must be made prior to verdict, but propter affectum challenges may be made after verdict. *State v. Furlough*, 797 S.W.2d 631, 652 (Tenn. Crim. App.), *perm. to appeal denied*, (Tenn.1990) [. . .]

After establishing that the challenge may be maintained, a defendant bears the burden of providing a prima facie case of bias or partiality. See *State v. Taylor*, 669 S.W.2d 694, 700 (Tenn.Crim.App.1983), *perm. to appeal denied*, (Tenn.1984). When a juror willfully conceals (or fails to disclose) information on voir dire which reflects on the juror's lack of impartiality, a presumption of prejudice arises. *Durham v. State*, 188 S.W.2d 555, 559 (Tenn.1945). Silence on the juror's part when asked a question reasonably calculated to produce an answer is tantamount to a negative answer. 47 Am.Jur.2d § 208 (1969) (counsel has right to rely on silence as negative answer); see *Hyatt v. State*, 430 S.W.2d 129, 130 (Tenn.1967) ("[j]uror . . . by his silence . . . acknowledged"). Therefore, failure to disclose information in the face of a material question reasonably calculated to produce the answer or false disclosures give rise to a presumption of bias and partiality, *Hyatt v. State*, 430 S.W.2d 129 (Tenn.1967); *Toombs v. State*, 270

S.W.2d 649 (Tenn.1954); *Durham v. State*, 188 S.W.2d 555 (Tenn.1945), “the theory being that a prejudicial bias has been implanted in the mind which will probably influence the judgment.” 188 S.W.2d at 558.

[...]

[W]hen a juror’s response to relevant, direct voir dire questioning, whether put to that juror in particular or to the venire in general, does not fully and fairly inform counsel of the matters which reflect on a potential juror’s possible bias, a presumption of bias arises. While that presumption may be rebutted by an absence of actual prejudice, the court must view the totality of the circumstances, and not merely the juror’s self-serving claim of lack of partiality, to determine whether the presumption is overcome. Moreover, when the presumed bias is confirmed by the challenged juror’s conduct during jury deliberations which gives rise to the possibility that improper extraneous information was provided to the jury, actual prejudice has been demonstrated.

*State v. Akins*, 867 S.W.2d 350, 354-57 (Tenn. Crim. App. 1993) (omissions added; footnotes omitted).

A “material question” is “one to which counsel would reasonably be expected to give substantial weight. Insignificant nondisclosures will not give rise to a presumption of prejudice.” *Akins*, 867 S.W.2d at 356 n.12. In determining whether a material question is “reasonably calculated to produce an answer,” the court in *Akins* stated, “The test is whether a reasonable, impartial person would have believed the question, as asked, called for juror response under the circumstances.” *Id.* at 356 n.13.

## **B. Transcripts of Voir Dire**

Counsel for the Petitioner introduced into evidence the entire appellate record from Petitioner’s trial, including the transcript of voir dire, at the November 4 hearing. The transcript of Juror A’s individual voir dire was also introduced as part of the Post-Conviction Defender’s investigative files at the November 14 hearing. The record reflects

the juror was not asked any questions about domestic violence during individual voir dire.

During general voir dire, before Juror A was called into the jury box, Judge Bevil made the following statements during his overview of the general voir dire process:

Now we're going to ask you some questions as a group, and if any of these things apply to you, then raise your hand. This is our time to talk together as far as talking with the Court or with the attorneys. If any of these questions apply to you, please let us know and please be frank in your answers, as you have done the last couple of days. And, as we said earlier, ladies and gentlemen, it's not an attempt in any way to embarrass you, to delve into your personal lives, but to find out if there is anything that would influence your thinking, because what we need in this case, ladies and gentlemen, is a jury that will be only influenced by what you hear in this courtroom throughout the trial of the case. If there is a question that's asked of you and you would like to respond, but you feel that the question—it may be somewhat embarrassing for you to answer that question in front of all the other jurors, if you'll just raise your hand, if you'll let the Court know, then we will take that up outside the presence of the other jurors. Sometimes that happens in which we're trying cases involving sexual assault or sometimes in homicide cases. So please let the Court know.

Trial trans. Vol. 5, at 608.

Judge Bevil also told the panel the following:

Also, I'm going to ask you—the questions this will be directed primarily to those of you seated in the jury box and in front of the jury box, but they will also apply to you all, so please listen carefully, because if some of these people are excused and you step into the jury box, then those same questions will apply to you, and hopefully we won't have to repeat anything. So be thinking about them, and when you're called into the jury box I'll ask you if any of those questions apply to you.

*Id.* at 609.

During his initial questioning of prospective jurors, before the juror at issue was brought into the box, defense trial counsel William Heck asked the following question:

Now, another thing that I need to ask about—and I'm not asking for a response right now. Of course, I'm addressing this only to you ladies and gentlemen here. One of the things that I'm curious about—and if there is something in your background or someone close to you in that background that you are aware of that would in any way possibly affect you, I'd ask you just to raise your hand, and we'll take it up at a later time. *That has to do with domestic*

*violence*. Has anyone on this prospective jury had any kind of occasion or experience with domestic violence, either with a spouse, a girlfriend, a boyfriend, or anything of that nature *that would in any way possibly affect or influence you to the point where it would maybe compromise you to be able to render a fair and impartial verdict?* If there's anyone like that, please let me know by showing a hand and we can talk about that at some other time. Okay.

*Id.* at 673-74 (emphasis added).

When the juror at issue was called into the box, Judge Bevil asked the following questions:

Okay, those of you seated in front of the jury box, did you hear the questions that were asked either by the Court or counsel for either side? Would your answers be any different from any of those given previously or do any of those questions apply to you in particular, such as you'd have some response?

....

Did all of you hear the questions that were asked earlier of the prospective jurors? Do any of those things apply particularly to you, do you have any comments or anything that you need to say about any of those things? Do you know any reason why you cannot listen to the evidence in this case and apply it to the law and upon the evidence and the law, and only the evidence and the law, arrive at a verdict that would be fair and impartial to both the state and the defense in this case?

*Id.* at 720, 731-32.

Juror A did not respond to either of the judge's questions.

### **C. Application to Current Case**

This Court concludes the Petitioner has failed to establish Juror A was prejudiced against him at the time of trial. While Juror A did not disclose the domestic violence she suffered before and during her first marriage, that failure to disclose did not result from the juror's intentional nondisclosure or attempt to deceive the Court or attorneys. Rather, this Court accredits Juror A's November 14 testimony in which she stated she did not

think of herself as a victim at the time of Petitioner's trial and that her past experiences did not render her prejudiced against Mr. Hall at the time of jury selection. Furthermore, the Court finds that the questions asked of Juror A during voir dire may not have been reasonably calculated to elicit an answer in which the juror would have disclosed her past abuse. The most relevant question asked during general voir dire, as cited by Petitioner's attorneys, concerned whether any juror's past exposure to domestic violence "would in any way possibly affect or influence you to the point where it would maybe compromise you to be able to render a fair and impartial verdict[.]" Based on the juror's testimony at this hearing, Juror A answered this question truthfully, as while she may have encountered domestic violence before Petitioner's trial, it did not appear to leave the juror unable to render a fair and impartial verdict as of the time the question was asked. Juror A was involved in a happy and fulfilling marriage at that point, which helped her overcome any feelings she may have had about her first marriage.

Even if somehow the juror's past abuse creates a presumption of prejudice under *Akins* and its progeny, the entirety of Juror A's testimony regarding her abuse and the relatively small impact it had on her ability to serve as a juror is sufficient for the State to have rebutted such a presumption. Petitioner points to Juror A's supposed "hatred" of the Petitioner, but the testimony presented at this hearing regarding such hatred was unavailing to the Petitioner. Juror A testified she did not feel any hatred, bias, or prejudice toward the Petitioner until she heard the Petitioner testify at trial. While the testimony about Petitioner's actions may have reminded Juror A about the stalking and other abuse she suffered at the hands of her first husband, Juror A stated any "hatred" she may have had toward the Petitioner was fleeting and did not affect her going forward.

Petitioner argues this case is little different than *Robert Faulkner v. State*, a post-

conviction case in which a death row inmate convicted of killing his wife was granted a new trial after the jury foreperson testified at the post-conviction proceeding about being the victim of domestic violence. But important distinctions can be drawn between the *Faulkner* case and Mr. Hall's case. For instance, the juror in *Faulkner* was asked directly on the questionnaire whether she or anyone she knew had been the victim of domestic violence, and she was also asked during voir dire whether she had any prior experience with domestic violence. *Robert Faulkner v. State*, 2014 WL 4267460, at \*\*65-66 (Tenn. Crim. App. Aug. 29, 2014). She answered "no" to these questions. *Id.*, \*66. The Faulkner juror claimed her answers were inadvertent, as she must have rushed through the questionnaire, but the post-conviction court did not accredit this testimony. *Id.*, \*78. Furthermore, the juror in *Faulkner* had criminal record, including a conviction for driving under the influence, two warrants for violating probation, and an arrest for theft of property, though the juror was not charged. *Id.*, \*66.

Conversely, in Mr. Hall's case this Court fully accredits Juror A's testimony. No evidence has been put before the Court of any criminal record or anything else which would call Juror A's credibility into question. While the *Faulkner* juror was asked directly on voir dire whether she had any experience with domestic violence, Juror A was only asked whether such exposure would have affected her ability to serve on this jury. Juror A did not indicate that she would have been so affected, a response which appears truthful in light of her testimony at this hearing. Juror A testified her past experiences did not affect her at the time of trial and she did not harbor any bias toward Petitioner as of jury selection.

Finally, the Court of Criminal Appeals' opinion in *Faulkner* suggests the juror in that case offered only brief testimony. The appellate court's opinion stated only that the



juror testified she had not answered certain questions truthfully, that she was a domestic violence victim, and—in testimony found inadmissible—that her experience did not affect her verdict. Thus, it appears the State presented no evidence in *Faulkner* which could have rebutted the presumption of prejudice created by the juror's admissions. Conversely, in this case Juror A testified extensively about the nature of her past abuse, how she was unaffected by such abuse at trial based in large part on the happy and fulfilling marriage in which she had been involved over a decade as of trial, and the fact that any prejudice or hatred she may have felt toward the Petitioner was fleeting at best. Thus, any presumption of prejudice which may have resulted in the current proceedings was rebutted by the entirety of Juror A's testimony.

In conclusion, Petitioner fails to establish Juror A was prejudiced against him. Were Petitioner's post-conviction petition properly before the Court, he would not be entitled to relief on the juror bias claim raised therein.

## **VI. Conclusion**

For the reasons stated above, the Court concludes Juror A's second post-conviction petition is procedurally barred. Furthermore, even if this Court could consider the post-conviction petition, the Court would conclude Petitioner has not established he was denied the right to a fair trial based on Juror A's service on his jury.

Mr. Hall's petition for post-conviction relief is DISMISSED. Petitioner is indigent, so costs are taxed to the State.

IT IS SO ORDERED this the 19 day of November, 2019.



DON W. POOLE, JUDGE  
DIVISION III  
CRIMINAL COURT  
HAMILTON COUNTY, TENNESSEE

IMMEDIATE COPY TO:

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Neil Pinkston  
District Attorney General  
State of Tennessee  
Hamilton County, Tennessee

NOV 19 8 56 AM '02  
CLERK OF COURT  
HAMILTON COUNTY, TENNESSEE

# Appendix C

Trial Court's November 26, 2019 Order

IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE  
DIVISION III

LEE HALL,	)	
f/k/a Leroy Hall, Jr.,	)	
Petitioner	)	No. 308968
vs.	)	(Post-Conviction)
	)	Execution Date 12/5/2019
STATE OF TENNESSEE,	)	
Respondent	)	

---

**ORDER DISMISSING PETITIONER'S MOTION TO RECONSIDER**

---

The Petitioner, who is set to be executed December 5, 2019, filed this motion following the Court's November 19, 2019 order dismissing Mr. Hall's second petition for post-conviction relief. The Court concludes the motion is not well-taken; therefore, the motion is DISMISSED. The Court reaches this conclusion for two reasons.

First, "neither a motion to rehear nor a motion to reconsider is authorized by the Tennessee Rules of Criminal Procedure, the Tennessee Rules of Post-Conviction Procedure,<sup>1</sup> or the Tennessee Rules of Appellate Procedure." *Tony Craig Woods v. State*, 1997 WL 602865, at \*2 (Tenn. Crim. App. Sept. 30, 1997) (citing *State v. Burrow*, 769 S.W.2d 510, 511 (Tenn. Crim. App. 1989) and *State v. Ryan*, 756 S.W.2d 284, 285 n.2 (Tenn. Crim. App. 1988)). Nor are such motions recognized in the statutes governing post-conviction proceedings. See Tenn. Code Ann. §§ 40-30-111 (addressing final disposition of petitions) and -116 (addressing appeal of final judgment; neither section contemplates a motion such as the one filed by Mr. Hall). Thus, this Court "is under no obligation" to review Mr. Hall's motion. *Antonio Kendrick v. State*, 1999 WL 1531345,

---

<sup>1</sup> These Rules are codified in Tennessee Supreme Court Rule 28,

at \*3 (Tenn. Crim. App. Dec. 27, 1999). Any review of this Court's post-conviction rulings must occur in the appellate courts.

Furthermore, this Court's November 19 order concluded the Petitioner's second post-conviction petition was not properly before the Court. This procedural ruling prevents the Court from considering, as substantive evidence, the declaration attached to the motion to reconsider. The declaration shall be considered an offer of proof for the appellate courts to consider on appeal.

Accordingly, the motion is DISMISSED. Mr. Hall is indigent, so all costs associated with this matter are assessed to the State.

IT IS SO ORDERED this 26 day of November, 2019



Don W. Poole, Judge  
Criminal Court, Division III

*Immediate copy to:  
Attorneys for the Petitioner  
District Attorney for Hamilton County*

# Appendix D

Partial Transcript of November 14, 2019 Hearing

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IN THE CRIMINAL COURT OF TENNESSEE AT CHATTANOOGA  
THE ELEVENTH JUDICIAL DISTRICT

-----  
LEE HALL, JR.

vs.

STATE OF TENNESSEE  
-----

:  
:  
:  
: NO. 308968  
:  
:  
:

SECOND PETITION FOR POST-CONVICTION RELIEF

NOVEMBER 14, 2019

BEFORE THE HONORABLE DON W. POOLE, JUDGE

FOR THE STATE:

Neal Pinkston  
Hamilton County District Attorney General  
New Courts Building  
600 Market Street  
Chattanooga, Tennessee

FOR THE DEFENDANT:

Kelly A. Gleason, Esquire  
Jonathan King, Esquire  
Assistant Post-Conviction Defenders  
404 James Robertson Parkway  
Suite 1100  
Nashville, Tennessee

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P R O C E E D I N G S

1  
2  
3 THE COURT: Let me, before I call the case,  
4 let me make some general statements. Now, the hearing  
5 that will be conducted today will be an open hearing,  
6 so, people, everything that happens will be in open  
7 court. But let me remind the media of a couple of  
8 things, and certainly applies to the TV stations. I  
9 think something was mentioned some coverage and things  
10 of this nature. For the most part, that's going to be  
11 allowed, but let me read you -- and I think the media,  
12 TV stations, radio, newspapers, are aware of this.  
13 Rule of Supreme Court. Jury selection: Media coverage  
14 of jury selection is prohibited. The next section,  
15 media coverage of jurors during the judicial  
16 proceedings is also prohibited.

17 Part of the case, or the hearing, that will  
18 be conducted today concerns the presentation of a  
19 juror. So the request has been made, and we will  
20 follow the Supreme Court rule, there will be no  
21 streaming of that juror. Now, guys, understand me,  
22 this is important: No streaming of that juror, no  
23 pictures of the juror. And this applies to cell phone  
24 and everything else. Nothing to show an image of that  
25 juror in any way. I think this is prohibited and we're

1 going to follow the Supreme Court rule. So part of  
2 what we're hearing today concerns a juror, so I think  
3 Supreme Court rule covers that, that no streaming of  
4 that.

5 Now, as far as the rest of the proof,  
6 you'll be allowed to stream. I think that, lawyers, is  
7 what was said.

8 And so everybody knows, we sometimes have  
9 in-chambers meetings, not for secrecy, but that was the  
10 purpose of what that meeting was for, just to make  
11 clear that part of the hearing today will be in regard  
12 to a juror selection process and what may or may not  
13 have occurred. So no streaming, no photographing, no  
14 imaging whatsoever of that juror.

15 Now, let me ask the petitioner attorneys,  
16 does that cover at least -- does that satisfy the rule  
17 as far as it petitioner is concerned?

18 MS. GLEASON: Yes, it does, Your Honor, in  
19 regard to the media; however, I would also ask the  
20 Court to advise members of the gallery, who are  
21 non-media, that they are also not allowed to take  
22 photographs.

23 THE COURT: I think I mentioned that, but  
24 I'll mention it again. That includes everybody in the  
25 courtroom. Everybody. Now, that would be contemptuous

1 if that is violated. But no pictures, no cell phone,  
2 no photographs, no nothing. Everybody understand?

3 Okay. The camera people back here seem to understand.

4 All right. So the case then of Leroy Hall,  
5 Jr., or also known as Lee Hall, versus State of  
6 Tennessee will now be called. Lee Hall, Leroy Hall, is  
7 represented by Ms. Kelly Gleason and Mr. Jonathan King.  
8 State of Tennessee is represented by Mr. Neal Pinkston.

9 Couple of things that covers -- we have an  
10 affidavit and a waiver - and I'll let y'all make any  
11 statements you want to make in just a second - an  
12 affidavit and a waiver from the petitioner, that is  
13 incarcerated, and he has waived his appearance in  
14 regard to this hearing this morning. It does appear,  
15 based upon vision problems and medical problems, that  
16 the waiver is appropriate and we will sustain his  
17 waiver of his presence in court.

18 Several weeks ago, the petitioner filed  
19 three separate petitions that came before the Court.

20 MR. PINKSTON: Judge, could I interrupt?

21 THE COURT: These petitions were writ of  
22 error coram nobis, a motion to reopen for  
23 post-conviction relief, and a second petition for  
24 post-conviction relief. The State of Tennessee filed a  
25 complete response to that. The Court has issued an

1 order concerning the two first things, the writ of  
2 error coram nobis and the motion to reopen for  
3 post-conviction relief, and the Court basically has  
4 ruled this: These are all statutory remedies, every  
5 one of them are statutory. Our lawmakers --

6 BAILIFF BENDER: We've got a problem,  
7 Judge, this young man needs to leave the courtroom,  
8 wants to interrupt everything.

9 THE COURT: He can have a seat. Sir, if  
10 you'll be seated and follow the directions of the  
11 Court, I'll let you sit there.

12 MR. MARCEAUX, SR.: I just got one second  
13 to say to you.

14 THE COURT: You got a statement to make  
15 about this case, sir?

16 MR. MARCEAUX, SR.: I think so. I saw you  
17 before. I told you things I want. No one knows it.

18 THE COURT: Have a seat, sir. You can sit  
19 down or you can leave. Okay? Now, I don't want to bar  
20 the court to anybody, but have a seat.

21 MR. MARCEAUX, SR.: You wouldn't let come  
22 forward and read this law? I have a slip law that  
23 allows me to walk in.

24 THE COURT: You can walk in, you can sit  
25 down. Okay? Sit down. Okay?

1 MR. MARCEAUX, SR.: This is slip law from  
2 the federal government.

3 THE COURT: One more word, sir, I'm going  
4 to have you leave. Okay? Have a seat.

5 Once again, the three things filed by the  
6 petitioner, all statutory, certainly courts have  
7 interpreted those statutes. But the Court has issued  
8 an order dismissing the writ of error coram nobis and  
9 the motion to reopen for post-conviction relief, for  
10 the reasons that the Court was of the opinion, based  
11 upon the law, the statutes, and the cases interpreted,  
12 that those matters are not properly here, there's no  
13 grounds for those matters to be looked into or further  
14 proceedings had.

15 The second petition for post-conviction  
16 relief is here before the Court today and the Court is  
17 going to allow proof to be presented concerning this.  
18 The State filed a response - and once again, I  
19 appreciate all the attorneys and their good work in  
20 what they've done - indicating that there is no basis  
21 in the law for a second petition, which is exactly  
22 true, but there is law to the effect that in certain  
23 circumstances, due process would allow certain things  
24 to be presented to the Court. And for that reason, I  
25 have allowed this second petition for post-conviction

1 relief to go forward. So it's encompassed within the  
2 order that the Court has filed, but for the purposes in  
3 that order, this will go forward, understanding that  
4 statutorily there is no basis for a second petition for  
5 post-conviction relief to be filed.

6 All right now, we're prepared to go  
7 forward. Petitioner's attorneys have anything else?  
8 Have we covered everything preliminarily that we need  
9 to cover?

10 MS. GLEASON: Yes, Your Honor.

11 THE COURT: And once again, media,  
12 everybody in the courtroom now, it's extremely  
13 important that that Rule 30 be followed because that's  
14 the law. So no coverage, no photographing, cell  
15 phones, live streaming, anything concerning this juror.  
16 And I think will be enumerated as Juror A, is that  
17 correct?

18 MS. GLEASON: Yes, Your Honor.

19 THE COURT: All right. Preliminary  
20 statements then.

21 MS. GLEASON: Yes, your Honor, we would  
22 call as our first witness Juror A.

23 THE COURT: All right. And Mr. Pinkston,  
24 anything else, sir, that I haven't covered?

25 MR. PINKSTON: No, Your Honor.

JUROR A - DIRECT/GLEASON

1 THE COURT: All right. Thank you. All  
2 right. Juror A will be covered. No live coverage, no  
3 photographs, of this juror.

4 JUROR A,

5 called as a witness, having been first duly sworn,  
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. GLEASON:

9 Q Good morning, Juror A.

10 A Good morning.

11 Q The Court has ordered that we will refer to  
12 you today as Juror A, so it is important to remember  
13 that as you answer my questions and Mr. Pinkston's for  
14 the State.

15 THE COURT: Get a little closer to the mike  
16 now. This courtroom, it's hard to hear you sometimes.

17 Q Juror A, do you currently live in Tennessee  
18 or another state?

19 A Another state.

20 Q And when did you move to your current  
21 state?

22 A 2000.

23 Q Did you live in Tennessee prior to living  
24 in your current state?

25 A No, we lived in Arizona for seven years.

JUROR A - DIRECT/GLEASON

1 Q And do you remember meeting with me and  
2 Investigator Jeff Vittatoe from our office this year?

3 A Yes.

4 Q Do you also recall meeting with Justyna  
5 Scalpone from my office and Jeff Vittatoe in October of  
6 2019?

7 A Yes.

8 Q If I may hand you something. I'll  
9 approach.

10 THE COURT: That's fine.

11 Q And Juror A, this is a document which is  
12 under seal, so I would not want you to reference any  
13 identifying information that is within it. Do you  
14 recognize this as a four-page document with your  
15 initials and signature as a declaration you provided to  
16 Justyna Scalpone and Jeff Vittatoe on October 7th,  
17 2019?

18 A Yes.

19 Q Were you one of the jurors in Lee Hall's  
20 case in 1992?

21 A Yes.

22 Q Do you recall that it was a capital trial  
23 involving allegations that Lee Hall abused his  
24 girlfriend and killed her when she left him?

25 A Yes. Can I answer that different? I



JUROR A - DIRECT/GLEASON

1 actually had no idea it was about abusing, I just knew  
2 it was a murder case.

3 Q Is that when you first were selected as a  
4 juror?

5 A Well, I really, I heard somebody talking  
6 that it was a murder case while we were filling out our  
7 form, before jury selection. So all I knew was a  
8 murder case.

9 Q And in your declaration, did you discuss  
10 your first marriage?

11 A Yes.

12 Q And please refer to it if you need to while  
13 I'm asking you questions. Do you recall what years you  
14 were married to your first husband?

15 A Yeah, from 1969 to 1975.

16 Q In your declaration, do you talk about how  
17 you came to be married to your first husband?

18 A Yes.

19 Q And could you describe that?

20 A Well, we had been dating for two years and  
21 I had fought him off. I graduated from high school,  
22 was getting ready to go to college. I was still a  
23 virgin and he decided he didn't want that to stay that  
24 way, so he forced himself on me and a pregnancy  
25 resulted from that.

JUROR A - DIRECT/GLEASON

1 Q And as a result of that pregnancy, what  
2 happened?

3 A I married him.

4 Q And what was your first marriage like?

5 A It was bad. I never -- I would have never  
6 married him otherwise. He was a heavy drinker. While  
7 we were dating, it wasn't a problem, but after we were  
8 married, he got mean when he was drinking.

9 Q And when you say he got mean, can you  
10 provide a description of what that was like?

11 A He would go out drinking with a buddy. He  
12 would make up an excuse for why he had to leave and go  
13 get drunk and come home 2 or 3:00 in the morning and  
14 wake me up and start being mean. But he never hit me  
15 for the first few years, but he would put holes in the  
16 wall and threaten. Threw something at our fish tank  
17 one time and busted it and I'd have to clean the mess  
18 up.

19 Q Would you describe it as a trusting  
20 relationship?

21 A No.

22 Q How so?

23 A Well, I had already decided I wasn't going  
24 to stay married to him, so I was already figuring out  
25 how I could support myself and my child. And was going

JUROR A - DIRECT/GLEASON

1 to school and working part-time and just planning on  
2 how I was going to eventually extricate myself from the  
3 marriage. And he was, he would threaten things like,  
4 If you ever leave me, I'll never let you see another  
5 person, another man. It was just an unhappy marriage  
6 altogether.

7 Q And did he do other things to indicate a  
8 lack of trust in you?

9 A I'm not sure what you mean.

10 Q Did you ever run into issues with him if  
11 you weren't home by a certain time?

12 A Oh gosh, yes, he kept up with everywhere I  
13 went. He called me constantly at work. I eventually  
14 got a job as a med tech at a hospital and he was  
15 jealous, always thought I was going to run around on  
16 him. Kept account of, you know -- now I know that this  
17 is the usual thing, but he would isolate me from my  
18 family and try to accuse me of all kinds of fooling  
19 around. I'd go to the grocery store for an hour and  
20 come back with groceries and he'd claim I'd been out  
21 fooling around.

22 Q And was this something that you talked with  
23 your family about at the time?

24 A No, not at all, ever.

25 Q Did he ever physically assault you?

JUROR A - DIRECT/GLEASON

1           A        A couple of times, when he was really  
2 drunk. And I probably instigated it some because I was  
3 fighting with him. And that was sort of the last  
4 straw, I decided I was going to leave him after that.  
5 About two incidences that had happened.

6           Q        Let's talk about the first incident.

7           A        Oh gosh, it was my birthday and we'd gone  
8 out to celebrate and we'd both been drinking and he  
9 started getting very mean. And I was fighting with him  
10 and he ended up socking me in the eye, black eye and  
11 bloody nose. And I called my dad for the first time,  
12 first time ever. I let him know that something had  
13 been going on. That was probably the second time. I  
14 think there was one other time when he had not hit me  
15 as hard, but -- mostly, his violence was towards  
16 objects, throwing things and breaking up stuff and  
17 taking off drunk in our car. He'd gotten caught once  
18 for drunk driving.

19          Q        How did he get caught for drunk driving?

20          A        Oh, he was on the interstate heading to  
21 Chattanooga and got caught for speeding and they  
22 realized he was drunk.

23          Q        Was he arrested?

24          A        Yes, he ended up having to have special  
25 insurance to cover him and -- because of his -- he was

JUROR A - DIRECT/GLEASON

1 allowed to drive but he was restricted some, I think,  
2 to where he could drive. And cost us a lot of money.  
3 We had to borrow money to pay the lawyer.

4 Q Did you have much money at the time to  
5 spend on something like that?

6 A No, we were living from paycheck to  
7 paycheck.

8 Q Were there any people other than your  
9 family that you turned to when you were having problems  
10 with your first husband?

11 A His grandmother knew what was going on,  
12 because I would escape sometimes to her house.

13 Q Did she help emotionally support you?

14 A Oh yes.

15 Q Did she help financially support you by  
16 providing food or anything?

17 A Food. Sometimes we didn't have any money  
18 left to buy groceries before the next paycheck was due,  
19 because I wasn't working then, I was going to school.

20 Q Why did you leave your job?

21 A Oh, I didn't have a job by then, I was  
22 still going to school trying to become a med tech.

23 Q And in the incident with the drunk driving,  
24 was your first husband convicted?

25 A I guess. I'm not sure. There wasn't a

JUROR A - DIRECT/GLEASON  
1 court trial or anything.

2 Q But he was certainly charged?

3 A Yes.

4 Q So you said there were two incidents?

5 A I don't remember details about the second  
6 one, it's mostly the -- well, the second one was the  
7 one I remember the most. I know there was an incident  
8 before, but I don't remember anything. I tried to  
9 block out a lot of that stuff.

10 Q Can you tell us the first incident, the  
11 most violent incident?

12 A Like I said, we were celebrating my  
13 birthday and we'd both been drinking too much and he  
14 started this fight. And when I called my dad, he came  
15 and got me, because they were already babysitting our  
16 son and I went -- the next day, we were planning to go  
17 to a UT football game, so I just went with my family  
18 and didn't know what had happened to Mike. Turns out,  
19 he had gotten in the car and driven, tried to get to  
20 Florida, where he had relatives.

21 Q Were you living in a house or in a trailer  
22 at that time?

23 A Trailer.

24 Q Was there a gun in the trailer at the time  
25 this happened?

JUROR A - DIRECT/GLEASON

1           A       Yes, I had a .22 rifle that I'd had since I  
2 was a kid. Kept it hid up in a -- because we got a  
3 young child, I kept the rifle up in the closet and one  
4 in the trailer and the ammunitions in another end. And  
5 that night, he did -- I didn't know it. It was when I  
6 got home the next day that I went in and he had gotten  
7 the gun out and loaded it, but there were bullets  
8 everywhere and he had poked holes in the ceiling with  
9 it and bent it in half.

10           Q       Meaning what bent in half?

11           A       The gun, the rifle, the barrel. And which  
12 I figured he probably had planned to shoot me and  
13 himself, but I don't know that because I was gone by  
14 then, so he might have been just planning on shooting  
15 himself. He was so drunk, he didn't know what he was  
16 doing.

17           Q       Did you later find out why he fled the  
18 state at that point?

19           A       Oh yes, he wanted to go visit his aunt in  
20 Florida. And he got as far as Dalton, Georgia, and  
21 wrecked the car and then called his aunt and got bus  
22 fare and took a bus all the way to Florida.

23           Q       Did he come back from Florida?

24           A       Yes.

25           Q       What was it like when he come back from

JUROR A - DIRECT/GLEASON  
1 Florida?

2 A He was a different person. He was solemn  
3 and had quit eating or drinking anything, he just sat,  
4 because I had told him I was done, I was leaving him.  
5 He begged me to wait until Christmas, for our son's  
6 sake.

7 Q Was there any point where you thought that  
8 he might have mental or emotional problems that  
9 required treatment?

10 A Oh yes, I knew he was crazy. That's all I  
11 knew was he's crazy, because he was irrational, he was  
12 paranoid, he was always looking for listening devices  
13 in our trailer. It was like why would anybody bother,  
14 you know.

15 Q Did you seek help for him for that?

16 A I did. I talked him into going to the  
17 county health department. And all they wanted to do  
18 was do marital counseling and I was trying to convince  
19 them no, that's not the problem, you know, he's crazy.

20 Q So when he got back from Florida and you  
21 told him that you wanted the marriage to end, what  
22 happened after that?

23 A Nothing. I mean he just sat around until  
24 Christmas. I don't think he had eaten or drank a  
25 thing. He almost looked gray. But I was mad, I was



JUROR A - DIRECT/GLEASON

1 furious, because I was just like do something, get up,  
2 eat. And, you know, 20/20 hindsight, I realize what he  
3 was thinking about.

4 Q Did anything unusual happen on Christmas  
5 Eve or Christmas Day?

6 A On Christmas Eve, we did our usual, going  
7 up to his grandmother's, and he went around and said  
8 goodbye to everybody; to his mother, his father, his  
9 sister, his grandmother. And I just thought it was  
10 because we were going home. Of course, I realized  
11 later why he was doing that.

12 Q And did anything unusual happen on  
13 Christmas Day?

14 A Yes, we went over to my parent's house and  
15 he went upstairs to my brother's room, loaded a shotgun  
16 and blew his brains out, without, you know, saying  
17 anything or giving me -- I had no idea that he was  
18 suicidal.

19 Q That must have been extremely difficult for  
20 you. Could you describe what your emotions were at  
21 that point?

22 A Well, every negative emotion that's  
23 possible for a human being to have, I think I had that  
24 then: Horror, anger, fear, disbelief. I mean you can  
25 just name it and that's what I was feeling.

JUROR A - DIRECT/GLEASON

1 Q And what year was that?

2 A 1975.

3 Q And when did you marry -- did you marry  
4 again?

5 A Yes, in 1981.

6 Q And was he someone who was about your age?

7 A No, he was 25 years older than me.

8 Q How did you come to be married?

9 A Well, he was a pathologist, I was a med  
10 tech. I met him through a mutual friend. And I was  
11 shocked when he asked me to go on a date. So we  
12 started dating and he got serious and I started falling  
13 for him and when he asked me to marry him, I said yes.

14 Q Did he offer any conditions to the  
15 marriage?

16 A Yeah. I like to say he made me an offer I  
17 couldn't refuse. He said, I'll send your son to the  
18 best private school, I'll let you quit work, you can go  
19 back to school, get another degree and we're going to  
20 retire early and we're going to travel around the  
21 world. And I was going, Wow. And yeah.

22 Q Did you in fact travel around the world  
23 with your second husband?

24 A Yes, we did, twice.

25 Q And were you married to your second husband

JUROR A - DIRECT/GLEASON  
1 in 1992 when you were selected as a juror in Mr. Hall's  
2 trial?

3 A Yes.

4 Q Did you ever tell your second husband about  
5 the details of your first marriage?

6 A No.

7 Q At the beginning of -- well, first, tell us  
8 what you remember about how you first learned that you  
9 might be a potential juror in a murder trial.

10 A Well, we'd been gone out of town for quite  
11 a while and I had came back and we picked up a load of  
12 mail and I found the jury notice and it was coming up  
13 like in a few days. So I had never been called to jury  
14 duty before, so I came to the courthouse and there was  
15 a huge number of people. So I had no idea that that  
16 wasn't normal. And it was while I was filling out this  
17 form that somebody sitting next to me mentioned that it  
18 was a murder trial.

19 Q I just handed you a form, does that -- do  
20 you know what that form is?

21 A Yes, this was the questionnaire that I  
22 filled out.

23 Q And do you recognize your handwriting?

24 A Yes.

25 Q Do you remember filling out the answers?

JUROR A - DIRECT/GLEASON

1 A Not specific individual answers.

2 Q If you could flip to -- and I should let  
3 you know that this questionnaire has also currently  
4 been filed under seal. If you could look at question  
5 38, do you remember why you said no to that answer?

6 A Well, "Have you ever been a victim of a  
7 crime," I did not consider I was ever a victim of a  
8 crime. And in 1969, there was really no such thing,  
9 that I knew of, of date rape, especially since I'd been  
10 dating him for so long. And I didn't consider -- I  
11 didn't even know the term "domestic abuse" at the time.  
12 So I really thought it was not -- I mean, I never  
13 thought of it as a crime. I had no notion that I had  
14 ever been a victim of a crime.

15 Q And on question 40, do you recall why you  
16 answered no on that one?

17 A I had totally forgot. I mean this was out  
18 of my mind. I had not, I mean I don't even remember  
19 thinking about my first husband when I was filling this  
20 out, at all. It had been years and I had put it out of  
21 my mind.

22 Q If you could look at question 41, do you  
23 recall why you said no?

24 A Oh gosh, that was another answer where I  
25 had totally forgotten. I mean I really, seriously, had

JUROR A - DIRECT/GLEASON  
1 put it away.

2 Q Do you remember that you were asked about  
3 domestic violence by a lawyer or a judge during the  
4 jury selection?

5 A I don't remember that.

6 MS. GLEASON: Your Honor, we would move to  
7 introduce the questionnaires as an exhibit at this time  
8 and request that it be filed under seal.

9 THE COURT: Mr. Pinkston, any objections?

10 MR. PINKSTON: No, Your Honor.

11 THE COURT: Let that be introduced then,  
12 under seal. Would that be Exhibit 2?

13 MS. GLEASON: That would be Exhibit 1. We  
14 have not yet introduced the declaration.

15 (Thereupon, the document was  
16 marked Exhibit No. 1 and  
17 received in evidence, to be filed  
18 under seal.)

18 Q (By Ms. Gleason) And if we could return,  
19 Juror A, to the declaration, was there anything about  
20 Lee Hall that reminded you of your first husband?

21 A Not until he got on the stand and started  
22 testifying and admitting everything. He did remind me  
23 of my first husband, but -- it was kind of a surprise.  
24 It was bringing up memories I had buried.

25 Q Do you remember specifically what it was

JUROR A - DIRECT/GLEASON  
1 about him that reminded you of your first husband?

2 A Well, I think it was when he was describing  
3 how he was stalking his ex-girlfriend and I know that  
4 my first husband had threatened to follow me and never  
5 leave me alone, but at the time, there was no such word  
6 that I knew as stalking. I thought I was the only  
7 person in the world that had ever been married to  
8 somebody that mean.

9 Q And do you recall when Mr. Vittatoe and I  
10 first met with you, and then later on, describing  
11 yourself as biased against Lee Hall?

12 A I don't think I ever used the word biased.

13 Q If it appears in the declaration?

14 A Did I? I know during the trial I never  
15 thought of myself as biased because of what had  
16 happened previously. It was something that was just,  
17 you know, a fact of life that had happened to me way in  
18 the past.

19 Q Do you recall using the term that you hated  
20 Lee Hall?

21 A That was during his testimony when he was  
22 talking about stalking her. I remember thinking, oh,  
23 that's what my first husband had threatened to do. So  
24 that was a bad thought, and it was a fleeting thought.  
25 I mean it wasn't like I let it -- I wasn't dwelling on

JUROR A - DIRECT/GLEASON

1 it or anything, it was a life experience that came up.

2 Q And you indicated earlier that you'd never  
3 told your second husband about your first marriage,  
4 when did you begin to share those memories with anyone?

5 A I had shared what had happened to me with a  
6 friend not long after my first husband's death. It was  
7 a guy I worked with and he listened and I talked. But  
8 I didn't share it much with anybody else.

9 Q Was there a time that you came to talk to a  
10 professional person about it?

11 A Yes.

12 Q When was that?

13 A Oh, after my second husband died, I went  
14 through grief counseling and a lot of other stuff came  
15 out, that I had never dealt with. So I was in two  
16 years of grief counseling first time I ever dealt with  
17 the death of my first husband.

18 Q Do you remember what year that was?

19 A In 2000-- well, my husband died in 2007 and  
20 I started grief counseling right away, so it was in  
21 2007 through '8.

22 Q Do you remember how the circumstances of  
23 your first marriage came up with the grief counselor?

24 A Oh, I was just telling him -- it came up I  
25 had been widowed twice and he talked with me and

JUROR A - DIRECT/GLEASON

1 realized that I was in pretty bad shape. So he

2 recommended I go for PTSD therapy, which I did for

3 maybe six months and then I went back to him.

4 Q And how many years were you in grief  
5 counseling?

6 A Two.

7 Q So that would have ended around 1999?

8 A Yes.

9 Q You said, I believe, earlier, that you  
10 recalled, when we first met in September or 2019 with  
11 Mr. Vittatoc, you did speak with us about your first  
12 marriage.

13 A Yes, and I'm not even sure why it came out.  
14 I think it was just after all these years and all the  
15 grief counseling, I was ready to acknowledge to myself  
16 what had happened, because I never acknowledged to  
17 myself that I was an abused victim. I mean I didn't  
18 think of myself that way. I didn't, you know, even --  
19 like I said, I'd totally blocked out all that previous.

20 Q Would you say you had a lot of happy years  
21 with your second marriage?

22 A Oh gosh, yes, 25 years. Well, the last  
23 five, he was sick, and I was determined to be the best  
24 caregiver I could possibly be. We traveled around the  
25 world, traveled everywhere.



JUROR A - DIRECT/GLEASON

1 Q How many continents?

2 A Huh?

3 Q How many continents?

4 A Oh, mostly the tropics because he was into  
5 tropical medicine. I didn't count continents.

6 Q Did you go to Africa?

7 A Yeah, we lived in Nairobi by a while,  
8 Kenya.

9 Q Did you go to Asia?

10 A India. We spent like six months traveling  
11 around India.

12 Q Australia?

13 A Yes, went to Australia twice.

14 Q Did you travel within the United States as  
15 well?

16 A Oh yes, we got an RV and went all over,  
17 anywhere we wanted to go; Canada, went to Alaska, went  
18 all the way as far north as you can go, and Canada.  
19 Just went everywhere we wanted to go, or he wanted to  
20 go. I was on his bucket list, traveling with him on  
21 his bucket list. Once we had been everywhere he wanted  
22 to go, we sold the RV.

23 Q So after '92, were you traveling a lot?

24 A Yes.

25 Q And if anyone from our office had contacted

JUROR A - DIRECT/GLEASON

1 you about your jury service in the years of 1998 to  
2 2003, would you have told them about your first  
3 marriage?

4 A Probably not.

5 Q Is that the same case for 2014?

6 A I don't know, I don't remember. I don't  
7 even remember why I started talking about it with you.

8 Q Do you remember a couple of people from our  
9 office coming to see you around 2014?

10 A Yes.

11 Q Do you recall talking with them for some  
12 length?

13 A Yes, I can't remember exactly what we  
14 talked about. I mean, it was a shock, because I hadn't  
15 really thought about the trial in a long time.

16 MS. GLEASON: Your Honor, at this point we  
17 would move to introduce the declaration into evidence.  
18 It is the original and we would ask that it be placed  
19 under seal.

20 THE COURT: The declaration that she gave  
21 earlier?

22 MS. GLEASON: The declaration she provided  
23 in October 7th, 2019. The declaration she's been  
24 referring to and that was filed under seal earlier.

25 THE COURT: Mr. Pinkston, any objection to

1 JUROR A - DIRECT/GLEASON  
that?

2 MR. PINKSTON: Well, Judge --

3 THE COURT: This is just a prior statement,  
4 is it not, Ms. Gleason?

5 MS. GLEASON: It's a prior statement but  
6 it's a direct statement from the witness as opposed to,  
7 say, work product.

8 THE COURT: You've got the witness here on  
9 the stand, you could ask her anything you want, but  
10 prior statements typically would not be introduced,  
11 would they? Mr. Pinkston?

12 MR. PINKSTON: No, they would not and  
13 that's what the State would object to.

14 THE COURT: You can ask the witness  
15 anything you would like.

16 Q Juror A, would you take a moment to review  
17 the declaration? It will take a few minutes. Have you  
18 had time to review it?

19 A Yes.

20 Q Is there anything in that declaration that  
21 is untrue?

22 A No.

23 Q If I were to ask you a single question  
24 about everything on that declaration, would you answer  
25 the same way that you did in the declaration?

JUROR A - DIRECT/GLEASON

1           A       As close as possible. I might not use the  
2 exact same words.

3                   MS. GLEASON: Your Honor, we would move to  
4 admit the declaration.

5                   THE COURT: Any objection?

6                   MR. PINKSTON: The previous objection  
7 stated.

8                   THE COURT: Are you finished examining her  
9 at this time?

10                  MS. GLEASON: I have a couple of more  
11 questions.

12                  THE COURT: Go ahead and ask her that and  
13 we'll rule on your request, okay?

14                  Q       (By Ms. Gleason) I was a little unclear  
15 earlier, Juror A, did you ever call the police on your  
16 first husband?

17                  A       Yes.

18                  Q       And was that the incident that resulted in  
19 his arrest?

20                  A       No, that was when he got caught drunk  
21 driving by the State. This was he had just torn the  
22 house up really bad and I was worried that he was out  
23 drunk driving. But they never arrested him for that.  
24 It was the local police.

25                  Q       Did you ever call the police on him?

JUROR A - DIRECT/GLEASON

1           A       I did call that time and they came to the  
2 house, but they didn't go try to find him or anything,  
3 and they never even suggested I charge him with, you  
4 know -- I don't think the police at that time even  
5 considered domestic a violence -- domestic abuse.

6           Q       What was the state of your house when the  
7 police arrived?

8           A       Well, the aquarium was busted and several  
9 blinds were busted because he'd been throwing things  
10 around. I wasn't injured then.

11          Q       Had he been drinking at the time?

12          A       Oh yes.

13          Q       And was that something you reported to the  
14 police?

15          A       Yes.

16          Q       You had indicated earlier about back then,  
17 in the sixties, there wasn't really, society may not  
18 have considered forced consensual -- forced  
19 un-consensual intercourse, as a rape?

20          A       Not -- especially if the girl had been  
21 dating the guy for a while. There was no  
22 consideration, that I can remember, of any mention of  
23 date rape. It was basically if you dated the guy, you  
24 were consensual.

25          Q       During your marriage, your first marriage,

JUROR A - DIRECT/GLEASON  
1 was there ever forced non-consensual sexual  
2 intercourse?

3 A Yeah, a few times when he'd come home after  
4 drinking. This always happened when he was drinking.  
5 It was also something I totally didn't think about  
6 being a rape at the time. There wasn't -- a marital  
7 rape wasn't considered, at least in my mind, I didn't  
8 think anybody would ever consider marital rape being a  
9 crime.

10 MS. GLEASON: And, Your Honor, I would  
11 renew my motion to --

12 THE COURT: Let me ask you -- what is the  
13 basis for introducing her prior statement?

14 MS. GLEASON: It is to reflect that she  
15 provided a true and accurate account of information she  
16 shared with us during that interview, that she  
17 continues to endorse on the stand. And I could go  
18 through every single question.

19 THE COURT: Well, she's on the stand, I  
20 think it more appropriate to ask her what you want to  
21 ask her, rather than presenting a prior statement.  
22 Okay?

23 MS. GLEASON: Okay. If I can have a moment  
24 to make sure I've covered everything.

25 THE COURT: That's fine.

JUROR A - DIRECT/GLEASON

1 Q (By Ms. Gleason) Juror A, were you married  
2 to your first husband for about six years?

3 A Yes.

4 Q Was he a very abusive husband?

5 A He was abusive while and when he was  
6 drinking.

7 Q Did your first husband ever threaten to not  
8 let you leave, say he would find you and harass you and  
9 take your son away?

10 A Yes, but I don't think he said he wouldn't  
11 let me leave, but he wouldn't leave me alone if I'd  
12 left him.

13 Q Did your first husband -- you described  
14 some of this, but did your first husband ever call you  
15 at work?

16 A Oh, he would call a lot, almost threaten --  
17 I mean my boss, I was afraid I was going to lose my job  
18 because he was calling me so often.

19 Q To your knowledge, did your first husband  
20 ever drive your young son in the vehicle while he was  
21 intoxicated?

22 A Yes, I took a job on second shift in a lab  
23 and I counted on him to be babysitting, you know, while  
24 I was working, and then I found out while I was at  
25 work, he was taking him to his drinking buddy's house

1 JUROR A - DIRECT/GLEASON  
and drinking and leaving him in the car. I quit my job  
2 right away when I found that out.

3 Q You spoke about when Mr. Hall testified at  
4 trial, do you recall who the victim was in the Lee Hall  
5 trial?

6 A Yes.

7 Q What is the name?

8 A Oh gosh, I'm seriously having a senior  
9 moment.

10 Q If the record reflected her name was Traci  
11 Crozier, does that refresh your recollection?

12 A Yes, that's who it was. I'm sorry, I was  
13 just --

14 Q Was there ever a time where you could  
15 identify with her?

16 A Yes, when I heard him talking about  
17 stalking her, it just brought back that my first  
18 husband had threatened to do that to me.

19 Q Do you have a clear memory of whether in  
20 2014 the folks that came to speak to you at your home  
21 specifically asked about domestic violence?

22 A I don't remember.

23 MS. GLEASON: Nothing further, Your Honor.

24 CROSS EXAMINATION

25 BY MR. PINKSTON:



JUROR A - CROSS/PINKSTON

1 Q Good morning, ma'am. My name is Neal  
2 Pinkston, I'm the district attorney in Hamilton County.  
3 I wasn't at that time, obviously. I'll ask you a  
4 series of questions, and I'm not trying to make you  
5 feel uncomfortable, just to ask you questions based  
6 upon your direct testimony. And if I could, you were  
7 born in this area?

8 A Yes.

9 Q And you lived in this area with your first  
10 husband?

11 A Yes, in Bradley County.

12 Q In Bradley County. So somewhat different.  
13 Bradley County at that time was different  
14 than Chattanooga?

15 A Yeah, much smaller.

16 Q So when your first husband committed  
17 suicide, you were living in Bradley County?

18 A Yes.

19 Q At some point, you moved to Chattanooga?

20 A When I married my second husband.

21 Q So you stayed in Bradley County until about  
22 1981?

23 A Yes.

24 Q And then you moved here to Chattanooga?

25 A Yes.

JUROR A - CROSS/PINKSTON

1 Q And you stay in Chattanooga until when?

2 A Well, we bought a place in Arizona and for  
3 a while we lived in both.

4 Q When you say lived in both, meaning  
5 Chattanooga and Arizona?

6 A Yes, we had two residences and we would  
7 drive back and forth.

8 Q Do you remember in '98 if that was the  
9 case, both?

10 A I don't think so, I think it was later, but  
11 I'm not sure of the time line. We still lived in a  
12 condo here until we sold it and lived permanently in  
13 Arizona, but I'm not sure about the years.

14 Q And if I could, when you lived in a condo  
15 here in Chattanooga, was you and your husband's name,  
16 your second husband, were they published, like through  
17 the phone book?

18 A Oh yes.

19 Q Phone numbers?

20 A Yes.

21 Q Address?

22 A Yes.

23 Q Would the same have been true in the state  
24 of Arizona?

25 A No. For a while when we were in Arizona,

JUROR A - CROSS/PINKSTON

1 we used Chattanooga as our main residence, so we still  
2 had Tennessee tags on our car. And when we sold our  
3 place in Chattanooga, then we were registered.

4 Q So even if you weren't registered in  
5 Arizona, even though living there during that time  
6 period, you were identified by a Chattanooga address,  
7 phone number, license plate?

8 A A P.O. Box.

9 Q And then at some point when you fully move  
10 to Arizona, do you establish a new mailing address,  
11 phone number and things of that nature?

12 A Yes.

13 Q And those were public record?

14 A Yes.

15 Q Now, at the time, in 1981, when you married  
16 again, had you traveled much as you did compared to  
17 later?

18 A No.

19 Q All right. Had you traveled any outside of  
20 Tennessee?

21 A I'd been to Florida a few times. Well,  
22 when I was a child, with my parents, we traveled across  
23 country, when I was like 14.

24 Q And I'm not trying to make light of this at  
25 all, just questions. You've mentioned on direct you

JUROR A - CROSS/PINKSTON  
1 were unaware of any claim of spousal rape or domestic  
2 violence or anything of that nature when it happened to  
3 you?

4 A Right.

5 Q And so that was you in '69 to '75?

6 A Yes.

7 Q Now, 1981 forward, you began, I guess, to  
8 see more of the world?

9 A Oh yes.

10 Q And does your, Juror A's, perspective and  
11 understanding of things change during that time period  
12 compared to when you stayed in Bradley County?

13 A Yes.

14 Q In what ways?

15 A Well, I was happily married, going to  
16 school, my son was in a private school. You know,  
17 everything was great.

18 Q And I guess during that time, as we often  
19 do as individuals, as we grow older and/or travel, our  
20 intelligence about the world increases, probably, would  
21 that be fair to say?

22 A Yes.

23 Q And you traveled around the world twice?

24 A Yes.

25 Q Now, at some point in your life, do you

JUROR A - CROSS/PINKSTON  
1 become aware of the term domestic violence?

2 A Yes, it was probably before I married the  
3 second time. I just remember they started talking  
4 about it like on talk shows on TV, like Phil Donahue  
5 would start, and that's the first time I'd even heard  
6 the term.

7 Q But when you filled out the questionnaire,  
8 you weren't even thinking of yourself as a victim?

9 A No, I wasn't, at all. I never really  
10 considered myself a victim.

11 Q And were you trying to mislead anybody at  
12 all with your answers?

13 A No, not at all.

14 Q It's just your understanding at that time  
15 was those were your truthful and honest answers?

16 A At the time, yes. I don't even remember  
17 answering them that way, but I can understand why.

18 Q You can understand now why you answered  
19 that way?

20 A Exactly, because I never considered myself  
21 a victim. I just wasn't of that mindset.

22 Q Sure. And you mentioned, I think, in  
23 direct, that during the trial, you were not biased  
24 against Mr. Hall?

25 A No.

JUROR A - CROSS/PINKSTON

1 Q All right.

2 A Well, just during his testimony when some  
3 memories started coming back. I mean I don't consider  
4 that biased, I think that was just my life experience.

5 Q I mean it's fair to say that the facts you  
6 heard him testify to were troubling, despite your prior  
7 experience?

8 A Right.

9 Q The case itself?

10 A Was very troubling.

11 Q Despite what you may have went through in  
12 your life?

13 A Exactly.

14 Q And if I don't ask this correctly, I  
15 apologize, but there was the written questionnaire that  
16 you filled out and then there were oral questions that  
17 the attorneys asked you?

18 A Yes, and I don't remember what any of those  
19 were.

20 Q Do you remember about anything influencing  
21 you?

22 A No.

23 Q Okay. During your deliberations, did your  
24 experiences during your first marriage have any  
25 influence upon your deliberations?

JUROR A - CROSS/PINKSTON

1 A No.

2 Q And why is that?

3 MS. GLEASON: Your Honor, we object for the  
4 record, based on Walsh versus State. That is  
5 inadmissible testimony and we move to strike it from  
6 the record.

7 THE COURT: I'm going to let her answer. I  
8 understand what you're saying, but I'm going to let her  
9 answer that, based upon what the circumstances of the  
10 petition's based on.

11 A Ask again.

12 Q During your deliberations in '92, did  
13 anything you experienced in your first marriage have  
14 any influence upon you as you deliberated through the  
15 facts and the law of evidence?

16 A I don't think so. I really don't believe  
17 so. Of course, we had two deliberations.

18 Q Sure, the guilt phase and then the penalty  
19 phase.

20 A The guilt phase, no, because he had gotten  
21 on the stand and admitted what he'd done. And then the  
22 punishment phase, I was in agreement with everybody  
23 that if we had been able to give him life without  
24 parole, that's what we would have done. We just didn't  
25 think that he would ever --

JUROR A - CROSS/PINKSTON

1 THE COURT: I think that's enough. The  
2 objection was made and I'll sustain it from this point  
3 on.

4 Q If I could fast-forward a little bit, and  
5 if you recall, 1998, you don't know if you were living  
6 in Arizona exclusively or Chattanooga and Arizona?

7 A I don't remember.

8 Q Okay. Did anybody from Mr. Hall's defense  
9 team, be it attorney, paralegal, investigator, support  
10 staff or otherwise, ever contact you?

11 A No, and some of that time, we were out of  
12 the country.

13 Q And I believe you answered earlier you  
14 don't know if you would have answered questions about  
15 domestic violence in 1998?

16 A No, I don't think I would have.

17 Q You don't think you would have. But,  
18 nonetheless, they were never asked of you in 1998?

19 A I don't recall, but I don't think so.

20 Q And that was the same thing in 2014 as  
21 well?

22 A I think -- I don't remember. I may have  
23 brought it up myself.

24 Q You don't remember if that  
25 attorney/investigator asked you anything about domestic



1 JUROR A - CROSS/PINKSTON  
violence or otherwise?

2 A I don't think they asked me, I may have  
3 just started talking about it.

4 Q Now, was that in '14 or '19?

5 A '19.

6 Q But not in '14?

7 A No.

8 Q But based upon, I guess, the therapy you  
9 went through was in 2007 and after?

10 A Yes.

11 Q And that's when you began to talk more  
12 about this?

13 A To my therapist, yes. And we discussed  
14 even my father's death, that I'd never grieved over.

15 Q And how was it, I guess, in 2019 that it  
16 was so apparent to discuss?

17 A I don't recall why, I don't know why I  
18 started talking about it.

19 Q And this may sound odd, but have your  
20 views, political or otherwise, changed from when you  
21 lived in Bradley County versus where you live now?

22 A Yes.

23 Q In what way?

24 A I've changed political parties several  
25 times over the years, just gotten wiser and more at

JUROR A - CROSS/PINKSTON  
1 ease with talking about my past.

2 Q I guess world views change, would that be  
3 fair to say?

4 A Yes.

5 Q Influenced by your travel and your new life  
6 experiences?

7 A Yes.

8 Q And so Juror A's perspective in 2019, of  
9 your past, would be different than Juror A in 1992,  
10 maybe even 1998?

11 A Probably, yes.

12 Q And would it be fair to say that maybe you  
13 can identify things now about your past that you were  
14 unaware of then?

15 A Yes.

16 Q And that's not -- none of that was to  
17 intentionally deceive anyone?

18 A No, I was just burying it.

19 Q Excuse me?

20 A I just buried it.

21 Q Sure.

22 A Once I was remarried, I didn't think about  
23 it.

24 Q And I guess didn't until you had to deal  
25 with grief counseling?

JUROR A - CROSS/PINKSTON

1 A Yes.

2 Q All right. Do you recall the circumstances  
3 in 2014 how you were located?

4 A I just had a knock at the door one day and  
5 there were two people and they introduced themselves.  
6 And I was not a hundred percent surprised. I mean I  
7 was surprised, but I was thinking some day they might  
8 try to contact me.

9 Q And during all that time, you've never  
10 hidden or tried to change your identity or anything  
11 where nobody could --

12 A Oh heavens no. And there were times when  
13 nobody knew where we were, because we were traveling  
14 and we didn't even know what our plans were.

15 Q But you maintained physical addresses or a  
16 P.O. Box?

17 A Yes.

18 Q And I assume you maintained some type of  
19 phone number?

20 A Yes.

21 Q Thank you.

22 THE COURT: Ms. Gleason, any redirect,  
23 ma'am?

24 REDIRECT EXAMINATION

25 BY MS. GLEASON:

JUROR A: - REDIRECT/GLEASON

1 Q If I'm understanding correct, Juror A, in  
2 2014, when two people arrived, you did not have a phone  
3 call ahead of time to let you know?

4 A No, I didn't. And I asked them how did you  
5 find me, which I was pretty easy to find.

6 Q By that time?

7 A Yeah, you could Google me and I would show  
8 up, because I was a member of several things in  
9 Nashville.

10 Q And you do not recall whether domestic  
11 violence was discussed at that interview or not?

12 A I don't think so. I'm pretty sure not.

13 Q Do you recall whether you were the person  
14 to bring it up when Mr. Vittatoe and I were there?

15 A I believe so.

16 Q In trying to remember exactly when you had  
17 completely left Chattanooga for Arizona, have you ever  
18 created a timeline of your travels?

19 A Yes.

20 Q If your timeline indicated that in 1995 you  
21 had some sort of rental truck and went to Arizona --

22 A That would be when we moved permanently,  
23 because we had sold our condo here.

24 Q Nothing further, thank you.

25 THE COURT: And Mr. Pinkston, any recross?

JUROR A - RE CROSS/PINKSTON  
RE CROSS EXAMINATION

1  
2 BY MR. PINKSTON:

3 Q So in '98, you would have been -- Google  
4 didn't exist then, I don't think, but your identity,  
5 address, phone number, where it was, available in 1998,  
6 if you lived there full time in Arizona?

7 A Yes.

8 THE COURT: Anything else? All right. May  
9 Juror A be excused?

10 MS. GLEASON: Yes, Your Honor.

11 (Witness excused.)

12 (Thereupon, court was in recess.)

13 TAMMY KENNEDY,

14 called as a witness, having been first duly sworn,  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KING:

18 Q Good morning, Ms. Kennedy.

19 A Good morning.

20 Q Could you please state and spell your name  
21 for the record?

22 A Tammy Kennedy, T-A-M-M-Y, K-E-N-N-E-D-Y.

23 Q And what is your connection to Lee Hall's  
24 appellate case?

25 A I investigated Lee Hall's case at the

KENNEDY - DIRECT/KING  
1 post-conviction defender's office. It was my first  
2 case as the main investigator.

3 Q And when did you begin at the  
4 post-conviction defender's office?

5 A 1996.

6 Q And do you recall when you were assigned to  
7 Lee Hall's case as the primary investigator, I believe  
8 you said?

9 A '97 or '98.

10 Q And as the primary investigator on the  
11 case, were you in charge of overseeing and preparing  
12 the juror interviews?

13 A Yes.

14 Q Do you recognize the documents in the red  
15 well in front of you?

16 A Yes, I do.

17 Q And can you describe, generally, what they  
18 are?

19 A They are juror folders I prepared.

20 Q And are those the original folders that  
21 someone prepared?

22 A Yes.

23 Q And who was it that prepared them?

24 A I prepared them.

25 Q And Ms. Kennedy, I have here a color copy

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1 of those documents. I believe some of them are printed  
2 in legal paper format and some of the ones I have have  
3 been reduced to eight and a half by eleven. My copy,  
4 the color copy, is Bate stamped, which I hope to enter  
5 into the record and having the Bate stamps for just the  
6 appellate record purposes.

7 Have you had an opportunity to look at  
8 these color copies I have here in front of me?

9 A Yes.

10 Q And when you reviewed these color copies,  
11 do they accurately reflect the originals you have in  
12 front of you?

13 A Yes.

14 Q If we could go through some of the records,  
15 I believe there are a number of file folders within the  
16 red well, is that correct?

17 A Yes.

18 Q And some of the file folders, I have placed  
19 tabs with numbers on them?

20 A Yes.

21 Q And those file folders, what do they relate  
22 to?

23 A The different jurors.

24 Q The different jurors. And in the original  
25 copies, do the folders have the jurors' names?

KENNEDY - DIRECT/KING

1 A Yes.

2 Q I will be referring to the folders by  
3 number and referencing the Bate number, but not  
4 referencing the juror names, out of concern for juror  
5 anonymity and privacy.

6 The first folder in the red well in front  
7 of you, can you describe it to me?

8 A Do you mean what it contains?

9 Q What it contains. I believe it's a manila  
10 folder with a yellow label?

11 A Oh, the first. Yes.

12 Q What is this folder titled?

13 A Juror list.

14 Q And inside the folder, can you describe the  
15 contents?

16 A It's a list of the different jurors and  
17 information about them.

18 Q So I am turning a few pages in. I see a  
19 page with pink or purple handwritten notes?

20 A Those are my notes.

21 Q And can you describe the notes?

22 A It's the different jurors, where they were  
23 employed at the time.

24 Q Would you have made this document prior to  
25 going out and conducting juror interviews?



KENNEDY - DIRECT/KING

1 A Yes.

2 Q And the next page, do you recognize the  
3 handwriting on that page, it is Bate No. 006, for the  
4 record.

5 A My handwriting or the typed-written one?

6 Q Yes, I believe it's just a few lines, again  
7 in pink or purple pen.

8 A Yes, it's a juror information list.

9 Q And what is the next folder in the red  
10 well, what color is it?

11 A It's red.

12 Q And what is it titled?

13 A Peremptory jury challenges.

14 Q Would you take a moment to flip through it  
15 and then I'll ask you to describe its contents.

16 MR. KING: Your Honor, I have before me the  
17 copy we intend to introduce into evidence. I don't  
18 know if the Court --

19 THE COURT: Now, are these what you're  
20 asking Ms. Kennedy right now?

21 MR. KING: Yes, Your Honor.

22 THE COURT: And you've shown those to the  
23 State?

24 MR. KING: Yes, Your Honor.

25 THE COURT: If there's no objections, let

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1 those be entered -- you're asking to introduce them?

2 MR. KING: Not yet, Your Honor, I was going  
3 to see if the Court wanted a copy in front of it.

4 THE COURT: That will be fine, if you have  
5 a copy. That's for the Court then?

6 MR. KING: Yes, Your Honor.

7 THE COURT: Thank you, sir.

8 Q (By Mr. King) Have you had a moment to  
9 review this folder?

10 A Yes.

11 Q And what does it contain?

12 A It's the peremptory jury challenges.

13 Q I see that it appears to end on Bate No.  
14 84; however, that's sort of hard to see because it's  
15 dark black at the bottom.

16 The next folder, can you describe the color  
17 of the folder?

18 A Purple.

19 Q And without stating the juror's name, is  
20 there anything else on the folder's label?

21 A It would be the juror's name and the date  
22 that the information probably was ran.

23 Q And flipping a few pages into the folder, I  
24 see a document titled witness interview, can you  
25 describe this document for the Court? Generally, what

KENNEDY - DIRECT/KING

1 was it, who conducted it, on what date was it  
2 conducted? This is Bate No. 87, for the record.

3 A It's witness interview.

4 Q And on what date was it?

5 A On December 17th, 1998.

6 Q And this witness interview is five pages?

7 A Yes.

8 Q And the next pages in the folder, these  
9 begin on Bate No. 92, do you recognize this document?

10 A Yes, this is the juror being questioned by  
11 the Court.

12 Q Would that perhaps be during voir dire?

13 A Yes, voir dire.

14 Q And you would have prepared this document,  
15 included this document prior to attempting to interview  
16 this juror?

17 A Yes.

18 Q The following pages, Bate No. 98 through  
19 104, I see handwritten notes in green ink, do you  
20 recognize that handwriting?

21 A Yes, that's my handwriting.

22 Q And how have these notes been produced?

23 A I'm sorry?

24 Q In what context would you have made these  
25 notes?

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1 A During the interview with the juror.

2 Q And after the handwritten notes, I see a  
3 page that says intake form, Bate No. 105, do you  
4 recognize this handwriting?

5 A That's my handwriting.

6 Q And what is an intake form?

7 A It's a form that our office used for  
8 information regarding jurors and, you know, such as  
9 addresses, et cetera, that we would find.

10 Q I see some comments on the bottom of the  
11 intake form, that's also in your handwriting?

12 A Yes.

13 Q Would you have prepared this form before or  
14 after attempting to interview a juror?

15 A Before.

16 Q The following page, Bate No. 106, I see a  
17 printout with an individual's name, do you have any  
18 idea what this might be?

19 A I think it's -- it came from the clerk's  
20 office.

21 Q And would that be the clerk's office here  
22 in Hamilton County?

23 A In Hamilton County.

24 Q Was it a regular part of your practice to  
25 obtain this information from the clerk's office in

KENNEDY - DIRECT/KING  
1 preparation of juror interviews?

2 A Yes.

3 Q And I see on the following page, and this  
4 page is Bate No. 107, a similar form, does it have the  
5 same name as the page on Bate No. 106?

6 A Yes.

7 Q Is the address different?

8 A The address has been changed. Those are my  
9 notes and I probably ran her name through whatever  
10 program we were using at the time and got a different  
11 address, a newer address, for this particular person.

12 Q On the following page, and this is Bate  
13 No., for the record, 108. It appears to be a printout  
14 from the internet, why is this in the folder?

15 A It would be directions to a juror's home.

16 Q And at this time, and the folder, it looks  
17 like it's noted 1998, did you have GPS devices to  
18 assist you in finding jurors?

19 A No.

20 Q The following page, Bate No. 109, can you  
21 describe this document?

22 A A juror questionnaire.

23 Q And would this have been in the folder  
24 before you attempted to interview this juror?

25 A Yes.

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1 Q Would you have this folder with you while  
2 you were out on an investigative trip attempting to  
3 interview?

4 A Yes.

5 Q Ms. Kennedy, I'm not going to go through  
6 all of these page by page, but there are a few places  
7 I'd like to direct your attention to. The next file  
8 folder, I believe it is tabbed number 2, it appears to  
9 be a juror folder, is there a date on it?

10 A Yes, December 17th, 1998.

11 Q And on page Bate number, the first page in  
12 that folder, Bate No. 119, what is that on that page?

13 A That's my business card at the time.

14 Q And does it appear there's any writing on  
15 the business card?

16 A Yes, it's a signature.

17 Q Whose signature might that be?

18 A It's the juror's signature, I asked the  
19 juror to sign my card.

20 Q Why would you do that?

21 A To make sure they knew who I was and there  
22 was no mistake between prosecution or defense.

23 Q And the following page is Bate No. 120, for  
24 the record, is this another witness interview?

25 A Yes, it is.

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1 Q And again, on two pages later, Bate No.  
2 122, is this that particular juror's individual voir  
3 dire?

4 A Yes, it is.

5 Q Skipping ahead a few pages, I see some more  
6 handwritten notes in green ink on lined paper, page  
7 number 131 for the record. Is there a date in the  
8 upper right corner?

9 A December 17th, 1998.

10 Q And what do these appear to be to you?

11 A These are my handwritten notes from  
12 interview with the juror.

13 Q And if you would quickly look through the  
14 rest of the folder, would it be accurate to say it  
15 contains that juror's questionnaire and individual  
16 profile similar to the one you said you believed was  
17 obtained from the Hamilton County clerk's office, that  
18 would be page 134?

19 A Yes.

20 Q Mitigation, witness intake form?

21 A Yes.

22 Q That would be page 135 and the  
23 questionnaire begins on page 136, is that correct?

24 A Yes.

25 Q The next juror folder, I have it tabbed as

KENNEDY - DIRECT/KING

1 number 3, is there a date on that folder, on the tab?

2 A December 17th, 1998.

3 Q And the first document within that folder,  
4 what is that?

5 A That's the typed interview with the juror.

6 Q And Ms. Kennedy, this was an interview you  
7 conducted, is that correct?

8 A Yes.

9 Q I see that it says from Tammy Lewis, that  
10 would be your name at that time?

11 A At that time, that was my name.

12 Q And I see more handwritten notes in green  
13 ink on lined paper, are those your notes?

14 A Yes.

15 Q And then page, Bate No. 156, that appears  
16 to be more voir dire transcripts, is that correct?

17 A Yes.

18 Q In the interest of time, you've reviewed  
19 these folders more than once in the past week, is that  
20 correct?

21 A Yes.

22 Q And in your review of those folders, would  
23 you say that any of the handwritten notes in green ink  
24 would belong to you?

25 A Yes.



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1 Q On lined paper?

2 A Yes.

3 Q What other colors ink did you like to write  
4 in?

5 A Pink, purple. I get tired of blue and  
6 black when you write a lot, so I would color it up.

7 Q And if there is an interview memo in a  
8 folder that is from Tammy Lewis, that would be written  
9 by you, and the note, corresponding notes, would be  
10 notes you took during your jury interview, correct?

11 A Yes, correct.

12 Q So I'm looking at juror folder tab number  
13 four, I believe it has a date of 12/16/1998. For the  
14 record, the Bate No. is 174. It's easier to read on  
15 the subsequent page, 175, it's a witness interview. If  
16 you'll flip past the witness interview, I see some more  
17 green handwritten notes, and on Bate No. 179, that  
18 would be the first page of the green handwritten notes.  
19 In your folder, I see you have an X through those, do  
20 you recall why you might have made that X as you were  
21 preparing the interview memo?

22 A Well, it would be after the memo. And as I  
23 typed up the memo, most of the time I put an X on the  
24 page of notes. That way I know I've typed it up if I  
25 don't get to do the whole memo in one sitting.

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1           Q       The X would reflect the notes that you have  
2 taken from your handwritten notes and transferred into  
3 a typewritten memo?

4           A       Yes.

5           Q       If I could ask you to flip a little further  
6 in this folder, and this is Bate No. 205, I see what  
7 appears to be a yellow page. Well, let me step back a  
8 moment. Do you know what happened to these records  
9 after they left the post-conviction defender's office?

10          A       No.

11          Q       Would it surprise you to learn that they  
12 were sent to successor counsel at the federal defenders  
13 east?

14          A       No.

15          Q       Let's move on to folder tab number five.  
16 For the record, that is Bate No. 211. The first page  
17 in that folder, Bate No. 212, can you describe what you  
18 see to me?

19          A       Yes, it looks like whatever -- again,  
20 whatever program we were using at the time to look up  
21 people, try to locate them.

22          Q       Are we on the folder tabbed number 5?

23          A       Yeah, Faces of the Nation.

24          Q       Can you tell me the initials of the juror  
25 on the front of this folder?

KENNEDY - DIRECT/KING

1 A D.R.

2 Q And when you said Faces of the Nation  
3 within the folder tabbed 5 of the initials D.R., thank  
4 you, I've located the page you're describing. It is  
5 Bate No. 219, for the record. What was Faces of the  
6 Nation?

7 A Well, I think it was AutoTrack that we used  
8 at the time, which was a program to help locate people,  
9 the latest addresses, and we would use that before  
10 going out on an investigative trip.

11 Q And did you continue to work as an  
12 investigator both in the office of the post-conviction  
13 defender and outside of the office of post-conviction  
14 defender in your career?

15 A Yes.

16 Q And have you continued to use software or  
17 services such as this to help you locate witnesses?

18 A Yes.

19 Q What other types of software have you used,  
20 after Faces of the Nation, both within the office or  
21 outside of the office?

22 A AutoTrack, AcuAt, TLO, LexisNexis.

23 Q How would Faces of the Nation -- it appears  
24 that this was run, perhaps, around the year 2000, based  
25 on the notes at the, what looks like a web link?

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1 A Yes.

2 Q How would that compare to software you have  
3 used recently, as far as its accuracy, information,  
4 level of detail it provides for locating witnesses?

5 A Well, programs have gotten better  
6 throughout the years.

7 Q Moving on to the next folder, folder tabbed  
8 6, I see a page, Intake Form Mitigation Potential  
9 Witness, is this your handwriting?

10 A Yes.

11 Q And does this folder, is it the folder for  
12 Juror A, who testified earlier today in court?

13 A Yes.

14 THE COURT: And Mr. King, what number is  
15 that?

16 MR. KING: This is Bate No. 230. And  
17 again, they're hard to see on the folder pages, but  
18 you'll see 231. And the first page I'm going to ask  
19 Ms. Kennedy about is Bate No. --

20 THE COURT: But Juror A was interviewed by  
21 Ms. Kennedy, correct?

22 MR. KING: No, Your Honor.

23 THE COURT: Oh, I see. Thought this was  
24 you were talking about interviewing that juror.

25 MR. KING: I'm going to be asking Ms.

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1 Kennedy about her efforts to locate that juror.

2 THE COURT: That's fine. Go ahead.

3 Q I see a page labeled Intake Form Mitigation  
4 Potential Witness, Bate No. 232, can you describe --  
5 and there's a number of fields, one of them is an  
6 address field. Without giving the street address, can  
7 you say what city that address is in?

8 A Chattanooga.

9 Q And then I see at the bottom of that page -  
10 again, we're on page Bate 232 - some handwritten notes,  
11 are those your notes?

12 A Yes.

13 Q And you would have made this form,  
14 completed this form, made these notes, before  
15 attempting to contact the juror?

16 A Yes.

17 Q The following page, Bate 233, does this  
18 appear to be the individual voir dire of the juror?

19 A Yes.

20 Q Moving past that, and now we're on Bate No.  
21 242, I see another Faces of the Nation printout?

22 A Yes.

23 Q This printout, there is a name listed and  
24 then it says SSN. And I'm not going to read that out  
25 in court and I don't want to read the name listed, but

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1 I will ask is it the female juror's name that is  
2 listed?

3 A No.

4 Q Is it a male name with the same last name  
5 as the juror?

6 A Yes.

7 Q Does this -- flipping back, I'm sorry to  
8 make you go back and forth out of order. Where do you  
9 think you would have found that name, that male name,  
10 to search for?

11 A In her question, juror questionnaire.

12 Q And would that be the very next page, Bate  
13 No. 243 for the record?

14 A Yes.

15 Q Does this folder contain any of the  
16 documents you described earlier as printouts you  
17 believe came from the Hamilton County courthouse?  
18 Please take a moment to review.

19 A I don't see it, the page like you're  
20 asking.

21 Q I believe I referenced that earlier in the  
22 folder tabbed 1, and that would be Bate No. 106 for the  
23 record, and again in another place that I don't have in  
24 front of me. When you went to the courthouse and  
25 requested the information for the jurors in this case,

KENNEDY - DIRECT/KING

1 would you have prepared, in advance of requesting the  
2 information from the court clerk, the information  
3 contained on Bate No. 2, individual juror information?

4 A Yes.

5 Q And would you have requested the address or  
6 locate that came from the courthouse for all of the  
7 jurors?

8 A Yes.

9 Q And if that document is not contained in a  
10 particular juror's folder, what does that indicate to  
11 you?

12 A That the clerk did not have a copy.

13 Q In going back to Bate No. 242, you searched  
14 for the juror's husband's name?

15 A Correct.

16 Q And I see that there are two addresses  
17 listed on this page?

18 A Yes, one in Chattanooga and one in Arizona.

19 Q The Chattanooga address, is it a  
20 residential street address?

21 A No, it a P.O. Box.

22 Q Would a P.O. Box assist you in locating a  
23 juror's house or telephone number?

24 A No.

25 Q Was it your practice to mail letters to

KENNEDY - DIRECT/KING  
1 prospective witnesses?

2 A No.

3 Q Why not?

4 A Because the practice was the knock on the  
5 door, and because if you knock on someone's door, it's  
6 most likely that they're going to refuse to talk to you  
7 about a trial or something like that.

8 Q And would this apply to witnesses generally  
9 with which you had no connection through, perhaps your  
10 client's family, other types of witnesses; would you  
11 call them in advance or send them a letter?

12 A I'm sorry?

13 Q Non-juror witnesses. Did you ever  
14 interview witnesses who were not jurors?

15 A Yes. No, I did not call unless they were  
16 family members or school teachers, things of that  
17 nature.

18 Q Why might you call a schoolteacher or  
19 family member but not another type of witness?

20 A Because they're friendly witnesses.

21 Q What do you mean by friendly witnesses?

22 A Well, normally a client's family likes the  
23 client. Jurors, I don't know what goes on in their  
24 mind, or other witnesses, guilt/innocence witnesses,  
25 things of that nature, you're not going to call ahead.



KENNEDY - DIRECT/KING

1 Q What was the practice for witnesses like  
2 jurors or, as you say, guilt/innocence witnesses?

3 A To locate their address and show up and  
4 knock on the door.

5 Q You've practiced as an investigator for a  
6 number of years, roughly how many?

7 A 22.

8 Q And for witnesses such as jurors or, as  
9 you've described, non-friendly witnesses, is it or has  
10 it been your practice to call them or mail them  
11 letters?

12 A No.

13 Q Going back to the Faces of the Nation page,  
14 again, that's Bate 242, you described a P.O. Box in  
15 Chattanooga, Tennessee, is there another address listed  
16 on that page?

17 A Yes, one in Arizona.

18 Q And is there a phone number provided?

19 A No.

20 Q Had there been a phone number, would you  
21 have called this witness in order to schedule on  
22 interview?

23 A That would be something that I would have  
24 discussed with the attorneys and they would make that  
25 call, make the decision.

KENNEDY - DIRECT/KING

1 Q At that time, in the office, did you  
2 frequently travel out of state to Arizona to speak to a  
3 single witness?

4 A No.

5 Q For juror interviews, did you typically  
6 interview the jurors alone?

7 A No, it was our practice to always have two  
8 people, another investigator.

9 Q And that was the practice as long as you  
10 were in the office?

11 A Yes.

12 Q And the office of post-conviction defender,  
13 you started in what year?

14 A 1996.

15 Q Do you know when the office was founded?

16 A 1995.

17 Q Do you recall roughly how many employees  
18 there were at the time?

19 A Nine.

20 Q Did the office have a large budget for  
21 travel?

22 A No.

23 Q Would an out-of-state trip have required  
24 special approval?

25 A Yes.

KENNEDY - DIRECT/KING

1 Q Would it have required special approval for  
2 both, if it was a juror interview, for both you and  
3 another employee?

4 A Yes.

5 Q I see a handwritten note on this page, 242,  
6 is that your handwriting?

7 A Yes.

8 Q And what does it say?

9 A Arizona.

10 Q Do you know why you wrote that?

11 A I believed this particular person to live  
12 in Arizona.

13 Q Might you have tried the Chattanooga  
14 address as well?

15 A Not the P.O. Box. If I'd had the street  
16 address, I'd have tried that.

17 Q But the trip would have required special  
18 approval?

19 A Yes.

20 Q And who would have provided that special  
21 approval? What would the process have been to get it  
22 in the office?

23 A Well, Mr. Dawson would have to approve it,  
24 at the time.

25 Q Who is Mr. Dawson?

KENNEDY - DIRECT/KING

1           A       Mr. Dawson was the post-conviction defender  
2 at the time.

3           Q       Moving to the next page in the folder, page  
4 243, can you describe what this document is?

5           A       Juror questionnaire.

6           Q       And are there any other documents in the  
7 folder, apart from the voir dire, the Faces of the  
8 Nation locate, and the juror questionnaire?

9           A       No.

10          Q       If we move on to the next folder, tabbed  
11 number 7, Bate No. 252, there's a date on the top of  
12 this tab. What is that date?

13          A       February 19th, 2000.

14          Q       Is this a different date than is on the top  
15 of the tab of folder number 1?

16          A       Yes.

17          Q       Is it a different date that is on the top  
18 of the tab of folder number 3?

19          A       Yes.

20          Q       Is it also different than the tab on folder  
21 number 2?

22          A       Yes.

23          Q       I see within this folder a document titled  
24 Witness Interview, is this another witness interview  
25 written by you?

KENNEDY - DIRECT/KING

1 A Yes.

2 Q And the date of this witness interview,  
3 when is it?

4 A February 19th, 2000.

5 Q And without making you get the folder back  
6 open, folder number 1, if the date on that witness  
7 interview, Bate No. 87, for the record, is December  
8 17th, 1998, that would reflect the date you had the  
9 interview with the witness?

10 A Yes.

11 Q And the date of the witness interview on  
12 Bate No. 254 is -- I'm sorry, will you repeat the date  
13 it occurred again?

14 A February 19th, 2000.

15 Q Would that have been a separate trip to  
16 interview jurors in this case?

17 A Yes.

18 Q And within this folder, after the Witness  
19 Interview, is there a Mitigation Potential Witness  
20 Intake Form with your purple handwriting?

21 A Yes.

22 Q Is there also a juror questionnaire?

23 A Yes.

24 Q I'm sorry, voir dire, beginning on Bate No.  
25 258?

KENNEDY - DIRECT/KING

1 A Yes.

2 Q Flipping past that, Bate No. 265, is this a  
3 document titled Individual Profile that you received  
4 from the Hamilton County clerk?

5 A Yes.

6 Q And is that your handwriting in green ink  
7 on the bottom of that?

8 A Yes.

9 Q And the next page looks like another  
10 MapQuest page, is that correct?

11 A Correct.

12 Q And the rest of the folder consists of this  
13 juror's juror questionnaire, is that correct?

14 A Correct.

15 Q The next folder, is there a date listed on  
16 this folder? This is folder number 8, for the record,  
17 Bate No. 276.

18 A I don't see a date on the folder.

19 Q Flipping into the folder, is there an  
20 intake form for a mitigation witness filled out in your  
21 handwriting?

22 A Yes.

23 Q On the first page of what appears to be the  
24 voir dire transcripts, Bate No. 279, is there a  
25 highlighting on this page?

KENNEDY - DIRECT/KING

1 A Yes.

2 Q Is that highlighting you would have done?

3 A Yes.

4 Q Flipping forward past the voir dire, we're  
5 on Bate No. 295, this is another Faces of the Nation  
6 search, is that correct?

7 A Correct.

8 Q And the two following pages are pages from  
9 the clerk's office with this juror's potential  
10 addresses, correct?

11 A Correct.

12 Q And then I see on page, a few pages  
13 forward, directly after the page which appears to be a  
14 MapQuest printout, Bate No. 299, some handwritten  
15 notes, is that correct? Please let me know if I'm  
16 moving too fast.

17 A I just don't see the handwritten notes.

18 Q Okay. Do you see a MapQuest page?

19 A I do.

20 Q Is there anything on the back of that  
21 MapQuest page?

22 A Oh, the handwritten notes.

23 Q Might those notes have been made in the  
24 process of attempting to locate this juror?

25 A Correct.

KENNEDY - DIRECT/KING

1 Q Moving on to the next folder, folder tabbed  
2 9, for the record, it is Bate No. 309, few pages in, I  
3 see another mitigation intake form, is that your  
4 handwriting?

5 A Yes.

6 Q And is that your highlighting on the voir  
7 dire transcript pages?

8 A Yes.

9 Q And that folder also contains a juror  
10 questionnaire?

11 A Yes.

12 Q The next folder, folder tabbed 10, is there  
13 a date on the top of this folder tab?

14 A There is, January 1, 2011.

15 Q And the first document in the folder is a  
16 juror interview, what is the date on the juror  
17 interview?

18 A January 4th, 2001.

19 Q Is that the same date that appeared on the  
20 last folder with the date on it? Give me one moment.  
21 That would be folder number 7, which appears to have  
22 the date--

23 A No, it's a different day.

24 Q And the date on folder 7 is February 19th,  
25 2000?



KENNEDY - DIRECT/KING

1 A Yes.

2 Q Would this indicate a third trip in  
3 attempts to locate these jurors?

4 A Correct.

5 Q Were you accompanied by any other people on  
6 this trip? You could refer to --

7 A Each trip, I was accompanied by someone.

8 Q And on this trip, I'm looking at Bate No.  
9 331, the first page of the juror interview, who wrote  
10 this juror interview?

11 A Kate Pryce.

12 Q And flipping ahead a few pages after the  
13 interview, this is your handwriting in purple on the  
14 Mitigation Potential Witness Form?

15 A Yes.

16 Q And again, would you have had these folders  
17 with you while out on the road in investigation?

18 A Yes.

19 Q Does this folder also contain the voir dire  
20 transcripts, a Faces of the Nation printout, a MapQuest  
21 locate, and the juror questionnaire?

22 A Yes.

23 Q The next folder, folder 11, the first page  
24 appears produced by the office, and this is Bate No.  
25 358, for the record. The folder begins at Bate No.

KENNEDY - DIRECT/KING

1 356. Is that your handwriting on the intake form?

2 A It is.

3 Q And your highlighting on the voir dire  
4 transcripts?

5 A It is.

6 Q And as you flip past the voir dire, on page  
7 366, the Faces of the Nation, would you have run that?

8 A Yes.

9 Q And then there's a MapQuest page, looks  
10 like there's a couple of them. Would you have used  
11 those to assist you in locating this juror?

12 A Yes.

13 Q After the MapQuest pages, the rest of the  
14 folder contains only the juror questionnaire, is that  
15 correct?

16 A Correct.

17 Q Next folder, folder 12. We've only got  
18 three more after this. We are getting close. This  
19 folder is page 378, for the record. That is your  
20 handwriting on the Mitigation Potential Witness Intake  
21 Form on Bate No. 380?

22 A It is.

23 Q And your highlighting on the voir dire  
24 beginning on Bate No. 381?

25 A Correct.

KENNEDY - DIRECT/KING

1 Q And you would have run the Faces of the  
2 Nation and the MapQuest on page 392, 392, respectively?

3 A Yes.

4 Q And the rest of the folder contains only  
5 the juror's questionnaire, is that correct?

6 A Correct.

7 Q The next folder, folder 13, is there a date  
8 on the tab of this folder?

9 A Yes, January 3rd, 2001.

10 Q And the first document in the folder,  
11 produced by the office, is a juror interview memo, is  
12 that correct?

13 A Correct.

14 Q And this interview would have occurred on  
15 the same trip the last interview we discussed was on,  
16 but that would be your third trip trying to locate  
17 jurors, is that correct?

18 A Yeah, third or fourth.

19 Q The next folder, and this is Bate No. 419,  
20 for the record, is there a date on the top of the  
21 folder tab above the juror's name, folder 14?

22 A No.

23 Q The first document in the folder, is that  
24 the juror questionnaire?

25 A It is.

KENNEDY - DIRECT/KING

1 Q The next document in the folder, Bate No.  
2 430, is this an intake form?

3 A It is.

4 Q And is that your handwriting?

5 A It is.

6 Q Can you read what it says in the upper  
7 right-hand corner?

8 A Alternate.

9 Q What does that mean?

10 A This individual was an alternate juror.

11 Q Why would you interview alternate jurors if  
12 they didn't sit in deliberation and judgment of Mr.  
13 Hall?

14 A Well, they sat through the trial and they  
15 could have been called, so we always wanted to get the  
16 alternate's mindset as well, because they went through  
17 the same process as the jurors.

18 Q Would you say your went through a similar  
19 amount of effort to contact and locate the alternate  
20 jurors on the case?

21 A Yes.

22 Q Following, Bate No. 431, is that your  
23 highlighting on the voir dire?

24 A Yes.

25 Q And I see there are some notes on page 438,

KENNEDY - DIRECT/KING

1 I don't believe that is your handwriting, but correct  
2 me if I'm wrong.

3 A It's not.

4 Q The following page, Bate No. 439, a Faces  
5 of the Nation search?

6 A Yes.

7 Q Followed by two pages of MapQuest?

8 A Yes.

9 Q And that is the entirety of the contents of  
10 that folder for an alternate juror?

11 A Yes.

12 Q This folder, titled 13, is it the last  
13 juror folder in your box of the front of your  
14 originals?

15 A Yes.

16 Q Is there a date on this folder?

17 A January 3rd, 2001.

18 Q For the record, this is Bate No. 442.  
19 Flipping in a few pages, Bate No. 444, is this another  
20 interview memo conducted by the office of the  
21 post-conviction defender?

22 A Yes.

23 Q The page after the interview memo, is that  
24 your handwriting, those handwritten notes?

25 A Yes.

KENNEDY - DIRECT/KING

1 Q Can you describe this page to me?

2 A It's a people finder page and the  
3 handwritten notes are directions on how to get to the  
4 address.

5 Q So in the upper right-hand corner of the  
6 page, I see it says Powered by AnyWho, what is AnyWho?

7 A AnyWho is one of the people finder search  
8 engines on the internet.

9 Q Moving on to the next page, Bate No. 448,  
10 that appears to be transcripts of individual voir dire?

11 A Yes.

12 Q And the first page has your highlighting on  
13 it?

14 A Correct.

15 Q Bate No. 457, again we have pink pen on an  
16 intake form, that would be your handwriting?

17 A Yes.

18 Q And the remainder of the folder consists of  
19 this juror's juror questionnaire, is that correct?

20 A Correct.

21 Q Are there any more documents or folders in  
22 the box in front of you?

23 A No.

24 Q Those records reflect the work that you did  
25 on Mr. Hall's case attempting to locate jurors?

KENNEDY - DIRECT/KING

1 A Yes.

2 MR. KING: Your Honor, if I may have a  
3 moment.

4 (Brief pause.)

5 MR. KING: If I may, I'd move to introduce  
6 the photo color copy of this into evidence.

7 THE COURT: You're talking about the whole,  
8 all of it, right?

9 MR. KING: Yes, Your Honor. And for the  
10 Court's convenience, I've also placed it on a CD-rom.

11 THE COURT: Mr. Pinkston, any objection to  
12 that?

13 MR. PINKSTON: No, Your Honor, except, I  
14 think it should be under seal or some form of  
15 redactions.

16 MR. KING: I agree.

17 MR. PINKSTON: Since it reveals Juror A's  
18 identity.

19 MR. KING: As well as other jurors' Social  
20 Security number.

21 THE COURT: So under seal then, okay. Let  
22 me ask you this, certainly you've gone through with  
23 this witness the talking to different jurors and all  
24 this, but also have statements from some jurors, is  
25 this relevant in regard to the proceedings which we're

1 KENNEDY - DIRECT/KING  
having?

2 MR. KING: Well, Your Honor, I appreciate  
3 the Court's patience, I believe --

4 THE COURT: No, I want you to put on  
5 everything you can, I'm just wondering, this witness  
6 has talked to the jurors and taken statements from  
7 them?

8 MR. KING: That is correct, Your Honor.

9 THE COURT: What's the relevance in regard  
10 to this case?

11 MR. KING: I would say the relevance in  
12 regard to this case is the efforts undertaken by the  
13 office of the post-conviction defender --

14 THE COURT: Understanding, but talking to  
15 the jurors themselves, is that relevant? That's what  
16 I'm talking -- I understand the questionnaires, the  
17 efforts made and so forth, but then she took statements  
18 from the different jurors.

19 MR. KING: I believe I can address that.

20 THE COURT: I'm just asking. If there is  
21 no objection, I'll let it come in. That's fine.

22 Q (By Mr. King) Ms. Kennedy, in your  
23 understanding, were these verbatim statements taken  
24 from the jurors that they signed for you?

25 A No.



KENNEDY - DIRECT/KING

1 Q The interview memos contained within this  
2 record?

3 A No.

4 Q Whenever you were able to interview a  
5 juror, would you produce an interview memo?

6 A Yes.

7 Q What is your understanding of the purpose  
8 of that?

9 A The purpose was to give the information to  
10 the attorneys handling the case and allowing them to  
11 review it to see if it was pertinent information that  
12 they felt was necessary and that we need to go and  
13 perhaps get an affidavit from a juror witness.

14 Q And while I recognize you are not an  
15 attorney, you certainly have experience interviewing  
16 capital jurors, can you provide some examples of the  
17 types of information that the attorneys might be  
18 excited to hear about?

19 A That the case was discussed outside of  
20 deliberations, you know, perhaps over dinner, between a  
21 couple of jurors. Jurors that perhaps did not disclose  
22 that they might have known the victims or be related to  
23 someone in the case.

24 Q Are you familiar with any capital cases in  
25 Tennessee, either cases you worked on or did not work

KENNEDY - CROSS/PINKSTON  
1 on, where information from a juror resulted in a court  
2 granting the once-defendant/then-petitioner some type  
3 of relief?

4 A I know I've heard of that, I can't --

5 Q That's okay.

6 THE COURT: That's fine.

7 MR. KING: And so I would move this in  
8 under seal. Thank you, Your Honor.

9 THE COURT: And this will be under seal  
10 based upon all the questions, right?

11 MR. KING: Yes, Your Honor.

12 THE COURT: Let that be done as the  
13 next-numbered exhibit, okay?

14 (Thereupon, the CD of files was  
15 marked Exhibit No. 2 and  
16 received in evidence, to be filed  
17 under seal.)

18 THE COURT: Cross examination.

19 CROSS EXAMINATION

20 BY MR. PINKSTON:

21 Q Ma'am, what were the years that you were an  
22 investigator in the post-conviction defender's office?

23 A 1996 to 2012.

24 Q I thought you testified earlier you were  
25 there for 22 years?

A No, I said I've been an investigator for

1 KENNEDY - CROSS/PINKSTON  
that long.

2 Q What kind of background did you have, and  
3 experience, before you went with the post-conviction  
4 defender's office?

5 A I had a paralegal degree, I had been a  
6 legal secretary, a paralegal, an office manager. I  
7 attended Belmont University, majoring in criminal  
8 justice, minoring in sociology and had less than 19  
9 credits before I graduated.

10 Q Prior to coming to the post-conviction  
11 defender's office, was that a paralegal or legal  
12 secretary in the private practice of law or was that  
13 under a public office?

14 A Private sector.

15 Q Had you ever searched for people in that  
16 role?

17 A I don't think so.

18 Q Never served subpoenas for somebody or went  
19 and found someone and served one a subpoena?

20 A Served subpoenas, yes.

21 Q How would you know where to go serve the  
22 subpoena?

23 A That information might have already been  
24 given to me at that point.

25 Q Okay. So you'd had a few years of legal

KENNEDY - CROSS/PINKSTON  
1 experience when you came to work for the  
2 post-conviction defender's office?

3 A I started in the legal field when I was 25.  
4 I believe I was 32 or 34 when I started --

5 Q So during your 16 years at the  
6 post-conviction defender's office, how many  
7 investigators other than yourself were there?

8 A I think we always had three when I was  
9 there.

10 Q All right. And if I could take your  
11 attention to Bate stamps 230 to 240, or excuse me, 251.

12 A Oh, mine aren't Bate stamped.

13 Q It's the folder dealing with Juror A, if  
14 that helps.

15 MR. KING: That would be folder tabbed  
16 number 6.

17 A Okay.

18 Q My Bate stamp 230 would be the, I guess,  
19 rows outside folder of Juror A, the name?

20 MR. PINKSTON: If I may approach, Your  
21 Honor.

22 THE COURT: You may.

23 A Oh, okay. Yeah, that's the folder.

24 Q There's not a date next to her name like  
25 there are on other jurors?

KENNEDY - CROSS/PINKSTON

1 A No, not on the folder.

2 Q What would the reason for that be?

3 A Because she was not interviewed by me.

4 Q Do you know if she was interviewed by  
5 anyone else?

6 A Not at that time.

7 Q What time was she interviewed?

8 A In 2019.

9 Q Did you recall any other time she was  
10 interviewed?

11 A I think 2014.

12 Q Okay. All right now, if we flip over --  
13 MR. PINKSTON: Your Honor, may I approach  
14 for one moment?

15 THE COURT: You may.

16 Q Ma'am, Batestamp 242, this document here?

17 A Yes.

18 Q Do you know when you ran this Faces of the  
19 Nation?

20 A It looks like December 28th, 2000.

21 Q And did it reveal a P.O. Box, or it  
22 revealed a name and then a P.O. Box in Chattanooga?

23 A Yes.

24 Q With a date out from that P.O. Box?

25 A Yes.

KENNEDY - CROSS/PINKSTON

1 Q What date was that?

2 A The date is April 1996.

3 Q And what is the significance of that date?

4 A That would be when they lived at the  
5 address, but it's not an actual address.

6 Q Right, but there is a date associated with  
7 that P.O. Box?

8 A Correct.

9 Q And you have a name that matches the juror  
10 questionnaire, someone listed in that questionnaire?

11 A Yes.

12 Q And then you actually have a physical  
13 address in the state of Arizona?

14 A Correct.

15 Q With a date as well, correct?

16 A Correct.

17 Q And what date was that?

18 A April 1996.

19 Q All right. Now, you mentioned it wasn't  
20 your practice to send letters?

21 A I'm sorry?

22 Q I think, and correct me if I'm wrong, but  
23 on direct examination, you indicated it was not your  
24 practice to send letters to jurors?

25 A Correct.

KENNEDY - CROSS/PINKSTON

1 Q You would agree that sending letters is a  
2 form of, or attempted form of, communication?

3 A Correct.

4 Q And a letter could have been sent to the  
5 P.O. Box of Chattanooga?

6 A Correct.

7 Q And the letter could have been sent to the  
8 address in Arizona?

9 A Correct.

10 Q Now, in your time of the defender's office,  
11 you'd mentioned a moment ago several different, I guess  
12 we would call it now search engines, to look for  
13 individuals?

14 A Correct.

15 Q And you named two or three of them, I  
16 think?

17 A Correct.

18 Q Did you ever cross reference, say, Faces of  
19 the Nation with another one?

20 A I don't know if we had that ability to do  
21 that back then. I mean this was our only people  
22 locator program that we had in August.

23 Q Was there any way back then in, I think you  
24 said you ran this in 2000, correct?

25 A Yes.

KENNEDY - CROSS/PINKSTON

1 Q Was there any way back in 2000 to run  
2 potential phone numbers based off of physical  
3 addresses?

4 A Probably. I can't say for sure.

5 Q Do you know if you undertook any steps in  
6 that regard as to this Juror A?

7 A Phone numbers?

8 Q Did you run any potential phone numbers?

9 A No.

10 Q Did you search any city directories with  
11 Juror A's name or anybody associated with her?

12 A We did search city directories, so I  
13 probably did.

14 Q Which city directory?

15 A It would have been Hamilton County.

16 Q So nothing related to the physical address  
17 in Arizona?

18 A No.

19 Q So other than printing off my Bates 242,  
20 the Faces of the Nation page, in 2000 in regard to  
21 Juror A, what did you do in 2000 about contacting her?

22 A I can't honestly tell you what I did,  
23 because I'm not sure. We probably went to her old  
24 address in Chattanooga.

25 Q But the old address is a P.O. Box.



KENNEDY - CROSS/PINKSTON

1 A Well, not on her questionnaire.

2 Q But you had a Faces of the Nation that  
3 didn't reflect that address from the questionnaire?

4 A No.

5 Q But you had a new physical address in the  
6 state of Arizona?

7 A Yes.

8 Q Did you make any attempt to travel there to  
9 speak with her?

10 A To Arizona?

11 Q Yes.

12 A No.

13 Q But you were aware at that time in 2000  
14 that an address associated with her and/or the male's  
15 name came back to you?

16 A Came back to?

17 Q Meaning that you had a record of a  
18 potential physical address for Juror A?

19 A Yes.

20 Q And you didn't undertake any steps to send  
21 her a letter?

22 A No.

23 Q And you made no steps to contact her via  
24 telephone?

25 A No, I did not have a telephone number.

KENNEDY - CROSS/PINKSTON

1 Q Nor did you search for one?

2 A I'm not sure.

3 Q Now, is it ever, in your time with the  
4 post-conviction defender's office, that say someone,  
5 say Juror B, C, however you wanted to characterize  
6 them, lives in another state, do you ever contact a  
7 defender's office in that state asking for assistance  
8 to locate somebody?

9 A Not jurors, I haven't, myself.

10 Q You haven't, but has anybody in your office  
11 at the time you worked there?

12 A I can't speak for other people, I don't  
13 know if they did or not.

14 Q What was the practice of your office at the  
15 time you were there, from '96 to --

16 A We did not do that.

17 Q Okay. So other than running this page, the  
18 Faces of the Nation page, in 2000, until your time  
19 ended in 2012, correct?

20 A Correct.

21 Q What did you yourself do in regard to  
22 finding Juror A, sending her a letter, phoning her, or  
23 interviewing her?

24 A I did not send her a letter and I did not  
25 have a phone number for her, but once we have the

KENNEDY - CROSS/PINKSTON  
1 post-conviction hearing, then it moves on, I move onto  
2 other cases.

3 Q I understand that, but other than running  
4 this page in the time 12 years after -- you were there  
5 from 2000 to 2012, the only thing you really did to  
6 locate Juror A was run off this page of Faces of the  
7 Nation?

8 A And probably we went by her Chattanooga  
9 residence?

10 Q Was anybody there?

11 A Obviously not.

12 Q Do you know of anybody in your office that  
13 would have, between 2000 and 2012, attempted to locate  
14 Juror A?

15 A I don't know the answer to that.

16 Q Obviously, this is a death penalty case?

17 A Yes.

18 Q Why wouldn't you ask for approval to travel  
19 to Arizona to contact Juror A?

20 A I might have. I don't know that I didn't  
21 ask that. I just don't recall. But I know that at  
22 that point in time, our budget was very limited as to  
23 what our -- travel budget and everything.

24 Q Do you remember in 2000 where you traveled  
25 to other than locally in the State of Tennessee?

KENNEDY - REDIRECT/KING

1 A I do not.

2 Q But it wasn't your practice to travel out  
3 of state?

4 A Not back then. We didn't have the money.

5 Q So would you have asked to travel out of  
6 state if you'd known that that request was going to be  
7 denied?

8 A Yes.

9 Q But you don't recall if you requested in  
10 this instance?

11 A I can't. I don't recall.

12 Q Now, have you searched any other notes that  
13 you've -- what did you review prior to today?

14 A Everything in this folder.

15 Q Any other notes, in whatever ink color  
16 there was, that indicate any efforts to contact Juror A  
17 and interview her?

18 A I have not seen any.

19 MR. PINKSTON: Thank you.

20 THE COURT: Redirect, Mr. King?

21 MR. KING: Just a few questions.

22 REDIRECT EXAMINATION

23 BY MR. KING:

24 Q I believe the general asked you on  
25 cross-examination whether you mailed a letter to this

KENNEDY - REDIRECT/KING

1 Arizona address or attempted to find a phone number  
2 associated with the address?

3 A Correct.

4 Q I believe he also asked whether in a  
5 different capacity working in the legal field you had  
6 ever served a subpoena?

7 A Yes.

8 Q In your mind, having had experienced both,  
9 is there a difference between serving a witness a  
10 subpoena and conducting an interview about someone's  
11 experience sentencing someone to death?

12 A Yes, a subpoena is issued by the Court and  
13 someone is required to serve it.

14 Q What is the process of service like?

15 A Process of service is you get a subpoena  
16 from the Court for whatever witness you're trying to  
17 locate and you want at your trial, hearing, whatever  
18 court procedure, and you have an address and that goes  
19 on the subpoena and then someone attempts to find this  
20 particular person and serve the subpoena.

21 Q If the person you are serving the subpoena  
22 to answers the door but does not want to talk to you or  
23 physically accept the subpoena, is that still  
24 considered service, if you have knowledge?

25 A I believe today it is considered service.

KENNEDY - REDIRECT/KING

1 Q How long do you typically spend speaking  
2 with someone you serve a subpoena to?

3 A Not very long.

4 Q And how long would you say, generally,  
5 having just reviewed the interview memos in this  
6 folder, these various folders of varying length, if you  
7 had to guess, how long would those interviews have  
8 lasted?

9 A An hour or more.

10 Q In your experience interviewing capital  
11 jurors, have you found that they are excited to talk  
12 about their experience?

13 A No.

14 Q How would you describe their feelings about  
15 discussing their work on the case?

16 A Most of them don't want to talk about  
17 serving on a capital jury because they sentenced  
18 someone to death.

19 Q Have you ever knocked on someone's door,  
20 introduced yourself, explained why you wanted to speak  
21 with a formal capital juror and have them refuse to  
22 speak to you?

23 A Yes.

24 Q Has that occurred on more than one  
25 occasion?

KENNEDY - REDIRECT/KING

1 A Yes.

2 Q How, on a case with 15 jurors such as this,  
3 how much would you expect, how frequently would you  
4 expect that to occur?

5 A Very frequently.

6 Q Is the refusal at the door -- is a juror's,  
7 a formal capital juror's, disinclination to speak with  
8 you, does that guide how you initially contact that  
9 juror; to be clear, whether you call them, send them a  
10 letter or show up at their door?

11 A No, you only show up at the door.

12 Q Why wouldn't you just call or send them a  
13 letter?

14 A Because more than likely you're going to be  
15 turned down for the interview.

16 Q Have you ever, perhaps in a non-juror  
17 situation, called a witness in a case and had that  
18 witness want to conduct the interview on the phone?

19 A Yes.

20 Q Do you see a difference between sitting  
21 down with a witness face-to-face and conducting a phone  
22 interview?

23 A Absolutely.

24 Q Can you tell me a little about that  
25 difference?

KENNEDY - REDIRECT/KING

1           A       Well, over the phone, you can't see the  
2 expressions on their face when they're giving you  
3 information, you can't pick up on cues. You actually,  
4 you need to do it in person.

5           Q       Sometimes witnesses in capital cases  
6 discuss very difficult things, is that correct?

7           A       Yes.

8           Q       Sometimes family member witnesses of a  
9 client, have they ever discussed difficult things with  
10 you?

11          A       Absolutely.

12          Q       Can you give me an example of those  
13 difficult things?

14          A       I've had family members tell me, you know,  
15 their deepest darkest secrets in the family; of abuse,  
16 grown up poor, uneducated, mental illness.

17          Q       While I don't mean to suggest at all that a  
18 family member's history of abuse is equivalent to jury  
19 service, I believe you stated that many jurors do not  
20 feel readily comfortable talking about their jury  
21 service?

22          A       Correct.

23          Q       Would you describe that discussion as  
24 sometimes a difficult thing?

25          A       Yes.



KENNEDY - RECROSS/FURTHER RD

1 Q And that is why you knock on their doors  
2 rather than call or mail them?

3 A Correct.

4 MR. KING: No further questions, Your  
5 Honor.

6 THE COURT: Any recross?

7 MR. PINKSTON: Just one question.

8 RECROSS EXAMINATION

9 BY MR. PINKSTON:

10 Q From '98 to 2012, are you aware of any  
11 efforts of your office to contact Juror A?

12 A Not to my knowledge, I don't.

13 MR. KING: And one more.

14 THE COURT: As it relates to that question,  
15 I'll let you ask another question.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. KING:

18 Q Do you know when the post-conviction  
19 hearing was in Mr. Hall's case?

20 A I don't recall what year it was.

21 Q If the record reflected that it was a  
22 bifurcated hearing and the second hearing occurred in  
23 2003, would you defer to that?

24 A Yes.

25 Q While I recognize that you are not an

1 TATE - DIRECT/KING  
2 attorney, in your experience as an investigator, were  
3 you conducting juror interviews, interviews with other  
4 witnesses, to develop proof after a post-conviction  
5 hearing had already occurred?

6 A No.

7 Q Why not?

8 A My job was done at that point; the hearing  
9 had taken place and the rest was left up to attorneys,  
10 with appeals or whatnot.

11 Q Is it your understanding that after a  
12 hearing, the proof is closed, as far as evidence, and  
13 the appellate courts consider only the record put on in  
14 the post-conviction?

15 A Yes.

16 MR. KING: Thank you.

17 THE COURT: Can this witness be excused?

18 MR. KING: Yes, Your Honor.

19 (Witness excused.)

20 (Thereupon, court was in recess.)

21 KATHRYN TATE,

22 called as a witness, having been first duly sworn,  
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. KING:

Q Good afternoon, Ms. Tate.

TATE - DIRECT/KING

1 A Afternoon.

2 Q Would you say and spell your complete name  
3 for the record?

4 A It's actually Katherine Tate,  
5 K-A-T-H-R-Y-N, Tate, T-A-T-E.

6 Q And how are you currently employed, Ms.  
7 Tate?

8 A I'm an investigator with the federal public  
9 defender's capital habeas unit.

10 Q And before that, where were you employed?

11 A The post-conviction defender's office in  
12 Tennessee.

13 Q And did you participate in any of the juror  
14 interviews on this case?

15 A Yes, I did.

16 Q Before you started at the post-conviction  
17 defender's office, what were you doing?

18 A I was studying for a law degree in England.  
19 I came over in the summer of '98 and the summer of '99  
20 to do an internship related to American legal practice  
21 and they offered me a position. I came back over  
22 November 1st of 2000.

23 Q And I believe you have the original files  
24 up there near you. Again, I have tabbed the different  
25 folders --

TATE - DIRECT/KING

1 THE COURT: Ma'am, before you do that, give  
2 me your last name again.

3 THE WITNESS: Tate, T-A-T-E.

4 THE COURT: Not as hard as it sounds like.  
5 Okay.

6 Q If I could direct your attention to the  
7 first folder in the red well, can you please describe  
8 the label on the folder?

9 A Juror list.

10 Q And the contents? The first page would be  
11 my Bate No. 2 and the first page inside the folder.

12 A It's a list of the juror's names, number  
13 and brief information.

14 Q And how many jurors are listed on this  
15 page?

16 A Twelve are listed on the first one, which  
17 would be the actual jurors that sat through the whole,  
18 the deliberations.

19 Q And if I could have you flip a few pages  
20 forward, I believe two pages, this is Bate No. 4, it  
21 appears to be the same list with some handwritten notes  
22 in blue on it.

23 A Yes.

24 Q If I could direct your attention to the  
25 notes right under number 12, what -- can you describe

1 TATE - DIRECT/KING  
what you see there?

2 A I see two more names, which are, I presume,  
3 the alternates.

4 Q Would that have been standard practice to  
5 try to speak to all 12 jurors as well as the  
6 alternates?

7 A Yes.

8 Q And why is that?

9 A You might not get the same information from  
10 every person and you might want to corroborate what  
11 people tell you to get the best picture, the fuller  
12 picture.

13 Q And you did not participate in all of the  
14 jury interviews in Mr. Hall's case, is that correct?

15 A That's correct.

16 Q Do you remember about what time your  
17 participation began?

18 A I believe it was around January of 2001.

19 Q If I could direct you to the folder tabbed  
20 number 10, it has a juror's name and a date above that.  
21 Could you please read the date?

22 A 01/01/2001.

23 Q And for the record, this is Bate No. 329.  
24 If you open the folder, Bate No. 330, I see a sheet  
25 that says Scan-It Prep Sheet, do you know what this is?

TATE - DIRECT/KING

1 A That's not from the original file, it's  
2 probably where a subsequent law office scanned the  
3 file.

4 Q So that would not have been included in the  
5 post-conviction defender's file?

6 A No, I don't think so.

7 Q And what is your understanding of the --  
8 who handled Mr. Hall's case after the post-conviction  
9 defender's office?

10 A I believe he went to the East Tennessee  
11 Federal Defender's office.

12 Q So this sheet might have been added by them  
13 in scanning of their file?

14 A Yes.

15 Q If I could direct you to the next page,  
16 Bate 331, this appears to be a juror interview memo?

17 A Yes.

18 Q Who completed this memo?

19 A That was me, that was my maiden name,  
20 Pryce, P-R-Y-C-E. I accompanied Tammy Kennedy.

21 Q And while you were out doing juror  
22 interviews, would you have had the folder you are  
23 holding with you, or similar contents, on the road?

24 A Yes.

25 Q And why would you want to bring that?

TATE - DIRECT/KING

1           A        You kind of MapQuest at that time where the  
2 jurors live and then you would go around and try and  
3 catch people at home. And each time you went to a new  
4 door, you'd have to refer back and remind yourself  
5 which person this was and the information about them.

6           Q        And why, specifically, would you include  
7 the individual voir dire and the juror questionnaires  
8 in that folder?

9           A        Because that gives you the background that  
10 you need to begin an interview.

11          Q        And the next folder, tabbed 11, this is  
12 Bate No. 356, do you see a date listed at the top of  
13 this folder? On the red folder's tab, I see a juror's  
14 name, is there a date above that?

15          A        Not that I see. On 11, no.

16          Q        Opening the folder, after the scanned  
17 sheet, I'm looking at Bate 358, Mitigation Potential  
18 Witness, this form would have been in the folder?

19          A        Yes.

20          Q        And flipping through the folder, I see the  
21 voir dire transcripts. And then after those, on Bate  
22 366, a Faces of the Nation page?

23          A        Yes.

24          Q        What is Faces of the Nation?

25          A        It was part of AutoTrack, which was the

1 TATE - DIRECT/KING  
software we used to look up information on individuals.

2 Q And that was used at the time in the  
3 office?

4 A Yes.

5 Q When did you leave the post-conviction  
6 defender's office?

7 A October of 2008.

8 Q And do you recall if you continued using  
9 Faces of the Nation your entire time while you were at  
10 the office?

11 A I believe we switched to Clear at some  
12 point, and LexisNexis, but I think we may have had  
13 Accurate at some point.

14 Q In your assessment, how did those locate  
15 products compare to Faces of the Nation?

16 A Over time, every system got better. I  
17 don't think this is still in existence. But every  
18 system got better records from more diverse sources.  
19 Particularly, now that people use internet more and  
20 there's more online presence, it would pull things that  
21 you wouldn't have gotten from this service.

22 Q And you continue using online locate tools  
23 in your current position at the federal public  
24 defender?

25 A Yes.



TATE - DIRECT/KING

1 Q Which ones do you use?

2 A Accurate, and we also have Clear sometimes.  
3 We also do criminal record searches of different court  
4 systems online.

5 Q And would you say today, or, well, let's  
6 say in 2014, would you say the tools available to you  
7 at that time and the tools available to, I guess,  
8 anyone who wants to pay for them, were they better or  
9 worse than Faces of the Nation for finding potential  
10 witnesses?

11 A Better. Everything, technology wise, is  
12 better. We didn't have GPS, we didn't have cell  
13 phones, we were basically working from pay phones on  
14 the road. So it's primitive compared to now.

15 Q And turning to the next page, Bate No. 367,  
16 it appears to be a MapQuest page and it looks like  
17 there's a Post-it note on it. And I think the next  
18 page is actually the same page without the Post-it  
19 notes. It appears there's writing on the MapQuest page  
20 and also a Post-it, do you recognize any of that  
21 handwriting?

22 A Yes, that's mine.

23 Q And could you read the Post-it note for me?

24 A It says, "Called several times between  
25 01/02/2001 and 01/05/2001. Excuses, then mother

TATE - DIRECT/KING  
1 informed us she would not talk with us."

2 Q So you ended up calling this juror?

3 A We went to the address, because I have the  
4 directions here and when we came back to the address,  
5 so I think my reference to "called" is my way of saying  
6 we went there.

7 Q I see. And on the following page, I see  
8 some notes, this is Bate No. 368, do you recognize that  
9 handwriting?

10 A Sorry, which?

11 Q The following page, 368?

12 A Yeah, that's my handwriting.

13 Q And looking at those notations, what does  
14 it indicate to you?

15 A That we went there, that they said to come  
16 back at 11/12 on Wednesday.

17 Q Reviewing the rest of the folder, am I  
18 correct that the only other contents are the juror  
19 questionnaire?

20 A Yeah.

21 Q Apart from your handwritten notes on the  
22 MapQuest pages, Faces of the Nation, and the voir dire,  
23 mitigation intake form, there are no notes indicating a  
24 conversation with this juror?

25 A No.

TATE - DIRECT/KING

1 Q There's no memo that would document a  
2 conversation with the juror?

3 A No, my Post-it note says that her mother  
4 said she would not speak to us.

5 Q In your practice and experience  
6 interviewing capital jurors, is it uncommon for jurors  
7 to speak to you?

8 A No, it's not uncommon, but it's less common  
9 than you would presume if you turn up on their door.

10 Q Why do you turn up on their door?

11 A It's harder for someone to refuse if you're  
12 there and they haven't had the time to think about it  
13 or to find excuses. You get to see them in person and  
14 you can maybe strike up some common ground or, you  
15 know, conversation. They might stay on the door for  
16 ten minutes telling you no and then finally invite you  
17 in.

18 Q Are you familiar with the phrase "getting  
19 your foot in the door"?

20 A Yes.

21 Q Is that ever used in the context of your  
22 work as an investigator?

23 A Yes.

24 Q And what does that mean in that context?

25 A Establishing that contact with them to get

1 TATE - DIRECT/KING  
2 them more agreeable to talk with you. So that's  
3 usually done on the doorstep and then getting in the  
4 door.

5 Q Have you ever had conversations through the  
6 door, perhaps a glass door or a screen door?

7 A Yes.

8 Q And have some of those conversations lasted  
9 more than a matter of minutes?

10 A Yes.

11 Q And have you ever discovered information  
12 that went into an interview memo because you thought  
13 the attorneys for the case would be interested in that  
14 information gleaned through the door?

15 A Yes.

16 Q If I could direct your attention to the  
17 next folder, folder 12, is there a date on the top of  
18 this folder, above the juror's name?

19 A No.

20 Q And after the scanned page, I see an intake  
21 form. After that, is it correct that it is the voir  
22 dire for this juror?

23 A Yes.

24 Q And then after the voir dire, and looking  
25 at page, Bate page 390, for the record, it appears to  
be two handwritten notes, do you recognize the

1 TATE - DIRECT/KING  
handwriting?

2 A Yes, that's mine.

3 Q What were you trying to document?

4 A That I visited several times over three  
5 days and mail was piling up and didn't seem like anyone  
6 was there, that they were out of town.

7 Q Why is it important to put that information  
8 in a note?

9 A So that we would -- I might mix up the  
10 jurors. I want to know where I've been, what the  
11 situation was, and then, you know, that they didn't  
12 refuse but maybe I can go back another time.

13 Q And the second note, it looks like a yellow  
14 Post-it note, is that also your handwriting?

15 A Yes.

16 Q And what does it indicate?

17 A The same thing: "Out of town? Visited  
18 several times."

19 Q And what date range did you attempt to  
20 interview this juror?

21 A January 2nd through January 5th, 2001.

22 Q Following pages, I see Bate No. 391,  
23 another Faces of the Nation search?

24 A Yeah.

25 Q This page indicates a number of addresses,

1 TATE - DIRECT/KING  
correct?

2 A Yes.

3 Q One of them is an out-of-state address, in  
4 fact?

5 A Yes.

6 Q What city and state is that address?

7 A Atlanta, Georgia.

8 Q Would you have required special approval to  
9 travel to Atlanta, Georgia?

10 A Probably not, because you could drive  
11 there, and it would be similar to driving to Memphis,  
12 which we did a lot, just maybe an hour more.

13 Q But it would not require a plane flight?

14 A Right.

15 Q I see another MapQuest page and then the  
16 juror questionnaire, Bate No. 393, do you recognize any  
17 of the handwriting on this page?

18 A No.

19 Q After the juror questionnaire, is there any  
20 more information in the folder?

21 A No.

22 Q So the only documentation made by you is  
23 the multiple attempts to contact this juror over what  
24 appears to be a four-day period?

25 A Yes.

TATE - DIRECT/KING

1 Q Moving on to the folder tabbed 13, Bate No.  
2 402, is there a date on this folder, above the juror's  
3 name?

4 A 01/03/2001.

5 Q And is one of the early documents in the  
6 folder a juror interview memo?

7 A Yes.

8 Q And this was completed by you?

9 A Yes.

10 Q Would you take a moment to review this  
11 memo?

12 A Yes.

13 Q And how long is the memo?

14 A Two pages.

15 Q In your review of these files, not today  
16 but recently, are you aware that there are longer memos  
17 in the file?

18 A Likely, yes.

19 Q Why might --

20 A This was an alternate, so he didn't have  
21 anything to say about the deliberations process.

22 Q He was an alternate but you still  
23 interviewed him anyway?

24 A Yes.

25 Q And what is your understanding of why you

TATE - DIRECT/KING

1 want to interview alternate jurors?

2 A They can actually be useful in terms of  
3 they're not as invested in the sentence. They may be  
4 more willing to tell you about things that went along  
5 before that stage that would be of interest; you know,  
6 if other jurors were drinking or falling asleep in  
7 court or if they witnessed something that maybe other  
8 jurors wouldn't be as open to talking about.

9 Q So it sounds like the process -- you can't  
10 interview all the jurors at one time and you are  
11 tracking what they have to say about other jurors in  
12 the case?

13 A Uh-huh.

14 Q And how would that inform how you might  
15 prioritize finding a difficult-to-reach juror; be it  
16 because you don't have an address, because they live  
17 far away, because maybe they're dodging you?

18 A We have limited time and resources, we  
19 always have a post-conviction hearing that we're  
20 working towards. The jurors were one part of that and  
21 there were 14, sometimes 15, of those. So we would  
22 have to prioritize, looking to getting as many as we  
23 could in a short amount of time. So we would talk to  
24 the jurors closest first, and then if they gave us  
25 grounds or anything to suspect that we needed to really



TATE - DIRECT/KING

1 really make an effort for someone that was far away,  
2 then we would proceed with that.

3 Q So if there were a juror living in the  
4 southwest, as there was in this case, what  
5 circumstances would have merited a trip, a plane  
6 flight, to interview this juror, for two employees?

7 A If another juror, say, shared a room with  
8 them and said that they told them something, or that  
9 they did something that could affect the trial, such  
10 as, you know, they looked up the case in the newspapers  
11 or they told me that their brother had been killed or,  
12 you know, something that they hadn't disclosed. If  
13 things were pointing towards maybe this person being  
14 key, then we would make the extra effort. But we  
15 couldn't just fly out there without having, I don't  
16 think, further info.

17 Q In your review of these files recently, is  
18 there anything that indicates that the Juror A in  
19 Arizona was, I guess as you said, a key juror?

20 A No.

21 Q You worked on more than one case at a time?

22 A Yes.

23 Q And the office handled more than one case  
24 at a time?

25 A Yes.

TATE - DIRECT/KING

1 Q And the investigation happened before the  
2 post-conviction hearing?

3 A Yes.

4 Q Would it be fair to say there's a finite  
5 amount of time of person hours within the office to be  
6 devoted to investigation of jurors?

7 A Yes.

8 Q Would it be fair to say that there was a  
9 finite amount of financial resources that could be  
10 devoted to investigation of jurors?

11 A Yes.

12 Q Moving on to the next folder, I believe  
13 tabbed 14, for the record is 419, is there a date on  
14 this folder?

15 A No, there isn't.

16 Q What is the first item in the folder after  
17 the scan page?

18 A The juror questionnaire.

19 Q And if you flip past the juror  
20 questionnaire, you see a juror intake form, Bate No.  
21 430. What does it indicate in the upper right-hand  
22 corner?

23 A Alternate.

24 Q And the next item in the folder appears to  
25 be the voir dire of this juror, is that correct?

TATE - DIRECT/KING

1 A That's correct.

2 Q And moving past that, on Bate No. 438, what  
3 do you see there?

4 A Yes, my handwritten notes.

5 Q And on the next page, what do you see? I'm  
6 sorry, the following page, Faces of the Nation?

7 A Faces of the Nation then MapQuest is in my  
8 folder here.

9 Q And again, going back to Bate 438, your  
10 handwritten notes, the bottom sticky note, can you read  
11 that to me?

12 A The directions?

13 Q Below the directions.

14 A "Alternate. No time to see us when we  
15 called."

16 Q What is your understanding of "called" in  
17 that context?

18 A That was my English way of saying that we  
19 went there.

20 Q Final folder, tabbed 15, is there a date on  
21 this folder above the juror's name? And for the  
22 record, that is Bate 442.

23 A Date is 01/03/2001.

24 Q And does this folder contain a juror  
25 interview memo?

TATE - DIRECT/KING

1 A Yes.

2 Q Did you write this memo?

3 A Yes.

4 Q Ms. Tate, you did juror interviews on a  
5 number of cases while you worked at the post-conviction  
6 defender's office, is that correct?

7 A Yes.

8 Q Do you recall doing juror interviews on  
9 Robert Faulkner's case?

10 A Yes.

11 Q Do you recall whether or not one of those  
12 interviews led to something of significance?

13 A Yes, one juror that we spoke to told us  
14 about physical abuse that she had suffered in the  
15 relationship, and it led to an overturn of his case.

16 Q Were you present for that interview?

17 A Yes.

18 Q Do you remember who was asking the  
19 questions to the juror about her history of trauma and  
20 abuse?

21 A I did.

22 Q Can you recall whether or not you showed up  
23 at that juror's door or did you mail them a letter or  
24 call them on the telephone to schedule an interview?

25 A We showed up at the door.

TATE - CROSS/PINKSTON

1 Q And how can you be certain of that?

2 A It's what we've always done. And I

3 remember.

4 MR. KING: If I may have just one moment.

5 (Brief pause.)

6 MR. KING: Thank you.

7 THE COURT: Cross examination of Ms. Tate?

8 MR. PINKSTON: Briefly, Your Honor.

9 CROSS EXAMINATION

10 BY MR. PINKSTON:

11 Q Ma'am, Bates 242.

12 A I don't have Bates numbers.

13 Q I think it's tabbed 10, is that correct?

14 MR. KING: Tab 10?

15 MR. PINKSTON: Juror A?

16 MR. KING: Juror A would be tab 6.

17 Q Excuse me, tab 6.

18 MR. PINKSTON: And if I may approach the  
19 witness, Your Honor?

20 THE COURT: You may.

21 Q Did you find that page?

22 A I did.

23 Q Faces of the Nation. From 2000 until 2008,  
24 when you left -- I understand you left the office in  
25 2008?

TATE - CROSS/PINKSTON

1 A Uh-huh.

2 Q What search engines or technology was  
3 available that was better than Faces of the Nation,  
4 during that time?

5 A Towards the latter part of my time, I  
6 believe we were using Clear.

7 Q And what was Clear?

8 A It was an extension of this program, just  
9 better, I think. They changed hands the whole time.  
10 LexisNexis may have owned one or merged some things.

11 Q Clear, does it contain physical addresses?

12 A Yes, if they find the person.

13 Q If they find a person, does it just  
14 highlight the current address or does it go back a  
15 number of years?

16 A It was similar, I believe, to the system I  
17 use now I'm most familiar with, is Accurate, and they  
18 list all addresses that they have associated with that  
19 person. And then often they'll have a date next to it,  
20 which is the dates that they have records that they may  
21 have been at the address.

22 Q So, say, for instance, somebody lived  
23 somewhere in '96 or '97, if the records exist, you  
24 could possibly find that, if you searched in 2012, by  
25 matching up addresses?

TATE - CROSS/PINKSTON

1 A Yes.

2 Q Does Clear provide telephone numbers?

3 A It depends if they have them available for  
4 the person.

5 Q If that person is available, would it list  
6 a phone number?

7 A I believe so, but it's been a long time  
8 since I've used Clear.

9 Q And if available, would it list an email  
10 address?

11 A Not back then, I don't believe.

12 Q Not back then, okay.

13 A Well, I didn't get my first email address  
14 until '98.

15 Q Previous testimony shows this Faces of the  
16 Nation was ran in 2000?

17 A Yeah.

18 Q So it could have been there if that  
19 information was available?

20 A I don't believe so.

21 Q All right. Did you do any duties in your  
22 time there about locating or interviewing Juror A?

23 A Yes. Juror A? Sorry, I thought you said  
24 just jurors.

25 Q Juror A?

TATE - CROSS/PINKSTON

1 A No, I did not.

2 Q Now, showing up in person is not the only  
3 way you contacted people, is that correct?

4 A People in general, no, there are other  
5 ways, but that's preferred.

6 MR. PINKSTON: If I may approach?

7 THE COURT: You may approach.

8 Q I think this was under tab 11, there's a  
9 MapQuest page with a Post-it note?

10 A Yes.

11 Q You recall that?

12 A Yes.

13 Q And you called that individual several  
14 times, didn't you?

15 A When I said "called," it could be that I  
16 went to their house, I called at their house. It's an  
17 English phrase.

18 Q I got you. Do you remember in this  
19 instance if it was a telephone call or a personal  
20 visit?

21 A If it was a call, it would have been,  
22 usually, when we go to the house and they're not home  
23 and like if the wife might say here's his number. At  
24 that point, we're kind of in a bind that they've given  
25 us a number, so we'd have to try and call them, or



TATE - CROSS/PINKSTON  
1 we'll just go back around.

2 Q And then on the Post-it note, you wrote,  
3 "Then mother informed us she would not talk with us"?

4 A Yes.

5 Q How did you get that information?

6 A I would have -- the mother would have  
7 spoken to me, probably in person.

8 Q But it requires you to take some  
9 affirmative step to find out that information?

10 A Yes, I'd been to the house several times.

11 Q Or communicate somehow?

12 A Yes.

13 Q Back to the Faces of the Nation page, you  
14 couldn't glean the information you got on this Post-it  
15 note just by this Faces of the Nation page, could you?

16 A That the mother said no?

17 Q I guess, and maybe it's the wrong question,  
18 I'm sorry, but do you have that information here about  
19 'she wouldn't talk to us'?

20 A Yeah.

21 Q Unless you make some affirmative step, you  
22 couldn't find out that information, for instance, just  
23 by Faces of the Nation?

24 A No.

25 Q You've got to actually do something?

TATE - CROSS/PINKSTON

1 A Yes.

2 Q In your time at the federal defender's  
3 office, if I may, I believe at some point Mr. Hall had  
4 federal pleadings, is that correct?

5 A He was with the eastern district, I'm with  
6 the middle district.

7 Q All right. Have you ever made yourself  
8 aware of the pleadings in those filings?

9 A No, I have not contacted the eastern  
10 district.

11 Q Just out of choice or they don't talk to  
12 you or how does that work?

13 A We're not assigned to that case, so I've  
14 never had interaction with them on that.

15 Q In your time in -- the middle district, is  
16 that correct?

17 A Yes.

18 Q Have you performed juror interviews in  
19 regard to death penalty cases?

20 A Yes.

21 Q Do you know if that's the practice for  
22 other districts?

23 A Yes.

24 Q Do you all ever share information?

25 A About jurors that we're looking for?

TATE - REDIRECT/KING

1 Q And/or interviews, contents of interviews?

2 A No, we're not working together, but we  
3 wouldn't -- I don't think we would be assigned to the  
4 same person. We might have co-defendants.

5 Q Might have co-defendants. Okay. And what  
6 did you review before today?

7 A This, the purple juror files.

8 Q Anything in there indicated that -- when I  
9 say "your office," the state post-conviction defender  
10 office, ever reached out via letter, phone, in person,  
11 to Juror A?

12 A No.

13 Q Thank you.

14 THE COURT: And then redirect of Ms. Tate,  
15 anything?

16 MR. KING: Just a few questions.

17 REDIRECT EXAMINATION

18 BY MR. KING:

19 Q Forgive me if I missed a question you've  
20 already answered, I'm not having you repeat yourself.  
21 In your current practice at the Middle District Federal  
22 Public Defender, do you call or send letters to jurors  
23 as a way to get ahold of them?

24 A No.

25 Q How would you describe the resources

TATE - REDIRECT/KING

1 available to you at the middle district versus the  
2 resources available to you at the time you were working  
3 on Mr. Hall's case?

4 A Night and day, it's much greater resources.

5 Q And give me a little more context.

6 A A lot of my time at post-conviction  
7 defender's office, a lot of our time was spent trying  
8 to justify expenses to the court for experts; they  
9 would have to be within 250 miles of Memphis, if that  
10 was where the case was. We didn't have our own expert  
11 budget. And then like our travel budget, we had to  
12 spread it out through the year and sometimes we didn't  
13 have enough to last us right through.

14 Q So the travel budget was more limited at  
15 the post-conviction defender's office in that time  
16 period?

17 A Yes.

18 Q Are there other differences in resources  
19 that come to mind in your work as an investigator  
20 during the time period that you worked on Mr. Hall's  
21 trial and post-conviction and your work as an  
22 investigator now?

23 A We didn't have the staffing level, we were  
24 overworked, we couldn't hire more people to help.

25 Q And I believe it came up on

TATE - REDIRECT/KING  
1 cross-examination the access to different types of  
2 location databases. When you were at the  
3 post-conviction defender's office, were you able to use  
4 whatever database you wanted to use?

5 A We had to have a contract, you know,  
6 because it had to be paid for, and so I think that was  
7 why we were with the one we were.

8 Q Did you decide who that contract was with?

9 A No.

10 Q Is it your understanding that the office's  
11 limited resources would be a factor in determining what  
12 types of contracts to get; for location services, for  
13 example?

14 A Yes.

15 Q In your work, both, I guess, at the  
16 post-conviction defender's office and at the federal  
17 public defender, and perhaps, I don't know what English  
18 law is like, are you familiar with an ineffective  
19 assistance of counsel claim?

20 A Yes.

21 Q Is it your understanding that there can be  
22 an ineffective assistance of an investigator?

23 A Yes.

24 Q Would that be through counsel because they  
25 have the duty to oversee the investigation?

TATE - REDIRECT/KING

1           A       Yes. Yeah, we usually find that for the  
2 trial level, we're looking back.

3           Q       So, primarily, ineffective assistance of  
4 counsel claims, even in your federal practice, are  
5 looking at the trial practice?

6           A       (Moved head affirmatively.)

7           Q       Do those claims on the cases you've worked  
8 on, both in post-conviction and at the federal public  
9 defender, ever relate to the trial defense team's  
10 investigation of the case?

11          A       Yes, heavily. We look at their  
12 ineffectiveness, and part of that is not reaching out  
13 for in-person interviews with people.

14          Q       Are you familiar specifically with cases in  
15 which it was alleged trial counsel were ineffective for  
16 letting their investigators merely call or send letters  
17 to potential witnesses?

18          A       Yes.

19          Q       And why, in your understanding, would that  
20 be, would a post-conviction petitioner make a claim of  
21 ineffective assistance of counsel because of that  
22 allegedly ineffective investigation?

23          A       Because they missed out on a wealth of  
24 information. So we would show that they only did, you  
25 know, a cursory call. And then we would have to go and

TATE - REDIRECT/KING

1 do the work ourselves and show if they'd gone in person  
2 and approached this person the right way, they could  
3 have gotten this much more information. And then put  
4 that in there to support the claim.

5 Q Has it occurred more than once, where you  
6 were able to speak with a witness, perhaps a juror,  
7 perhaps a different type of witness, because you tried  
8 in person and that witness had been contacted by trial  
9 counsel either by phone or letter?

10 A Yes.

11 Q Ballpark number of times, perhaps?

12 A I'd say hundreds of times.

13 Q And have you attended trainings on capital  
14 investigation?

15 A Yes.

16 Q What types of training?

17 A Now it's more federal habeas conferences.  
18 I've also done, you know, the State ones when I was  
19 with the State. Numerous ones on different forensics  
20 or mitigation or guilt/innocence issues.

21 Q Are some of these conferences national  
22 conferences attended by investigators practicing  
23 capital work from around the country?

24 A Yes.

25 Q In any of these trainings, has it been

TATE - REDIRECT/KING  
1 discussed, talked, discussed amongst other

2 investigators, the practice of trial counsel merely  
3 calling or mailing a letter to a potential witness?

4 A Yes, that's the way I learned it since I  
5 came over in '98.

6 Q And what would you say is the prevailing  
7 professional norm of how you contact a witness in a  
8 capital case?

9 A You approach them personally, in person.

10 Q Are you familiar with any training  
11 materials such as, perhaps, Tools for the Ultimate  
12 Trial? What was that?

13 A It's a three-volume manual that we kept in  
14 the office that was produced -- it was  
15 Tennessee-specific, I believe. Tennessee Tools for the  
16 Ultimate Trial. That was what I was given to study  
17 when I first interned at the office and it has best  
18 practices for approaching a death penalty case.

19 Q Do some of those practices involve  
20 investigation?

21 A Yes.

22 Q And witness interviews?

23 A Yes.

24 Q And juror interviews?

25 A Yes.



TATE - RE CROSS/PINKSTON

1 Q I believe you said it was called Tools for  
2 the Ultimate Trial, is it subsequently known by another  
3 name?

4 A I'm not sure of the name now.

5 Q Might it be The Capital Case Handbook?

6 A There you go.

7 Q So there have been multiple editions of  
8 this training volume published throughout the years?

9 A Yes.

10 Q And it is Tennessee-specific but  
11 incorporating the best practices and norms?

12 A Right, had national case law and what had  
13 been successful and what issues to look out for.

14 Q Ms. Tate, I've asked you a number of  
15 questions, I don't know if there is anything else you'd  
16 like to share with the Court?

17 A I don't think so.

18 Q Thank you.

19 RE CROSS EXAMINATION

20 BY MR. PINKSTON:

21 Q Ma'am, anywhere in your time, has Mr. Hall  
22 ever claimed ineffectiveness based upon an  
23 investigator's lack thereof, or efforts?

24 A I was the second person on these juror  
25 interviews, he was not my client, I did not work on any

TATE - RE CROSS/PINKSTON  
1 other aspect of the case.

2 Q So you don't know?

3 A No.

4 Q Okay. And maybe I'm struggling with this,  
5 but what is the purpose for interviewing jurors?

6 A The purpose?

7 Q Yes.

8 A Cases have been overturned on jury issues.

9 Q So if you don't call and you don't send  
10 letters, but you have an address, how do you -- is the  
11 better practice just to ignore that juror?

12 A If I can get to them, I'll get to them.

13 Q So there are a multiple number of ways to  
14 get to a juror?

15 A There are a number of ways, but the  
16 preferred way -- and then, you know, if you're in a bad  
17 situation, you might have to resort to the others.

18 Q Are you saying, though, if there's a  
19 preferred way that's not available, you just don't act,  
20 even though there might be another avenue?

21 A Ideally, we would get to the point where we  
22 could go see them and follow up every last lead, but  
23 we're always working towards a hearing date and other  
24 cases and caseloads. So it might fall through the  
25 cracks if you have 1 witness out of 14 that's out of

TATE - RECROSS/PINKSTON

1 state and you don't have any indication that they could  
2 be key.

3 Q Have you done that before, printed off a  
4 Faces of the Nation page, just stuck it in the folder  
5 and made no other efforts to contact that person?

6 A I would certainly hope to follow up with  
7 that person, but I can't say I haven't done that.

8 Q How would you try to follow up with that  
9 person?

10 A I would try to find the time to get to  
11 wherever they were, but if I didn't have the time and  
12 the resources, then they might fall through the cracks.

13 Q So I guess Mr. Hall should somehow get  
14 relief based upon not interviewing a juror, is that  
15 what I'm hearing?

16 A That's not for me to say.

17 Q But without recourses, you're kind of  
18 indicating that stuff just falls through the cracks?

19 A Well, there's instances where, yes, things  
20 get missed because you just can't get to it in time.

21 Q Have you ever worked in a government  
22 agency, state or otherwise, that wasn't limited in  
23 resources and people?

24 A I've only ever worked for the state  
25 post-conviction defender's office and the federal.

TATE - FURTHER REDIRECT/KING

1 Q Right, but everybody is limited by  
2 resources; money, people, right?

3 A To different degrees, I'm sure.

4 Q Thank you.

5 THE COURT: All right. Mr. King, you have  
6 another question?

7 MR. KING: Just one, Your Honor.

8 THE COURT: Just one question. Okay. I  
9 think we're repeating a lot of stuff, so just one  
10 question. And I don't want to cut you short, but I'll  
11 let you ask one question. Go ahead.

12 MR. KING: It is directly responsive to the  
13 cross.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. KING:

16 Q I believe you have stated that in certain  
17 instances if you make contact with a person at the  
18 witness's house and you've given them your card, your  
19 approach might change. Help me understand that.

20 A Well, if, say, the wife had given you a  
21 card, given you the phone number, and then you have to,  
22 you know, follow that lead, so you ...

23 Q If you were to call a witness and speak  
24 with them and they said absolutely no, I don't want to  
25 talk to you, would you then be in a good position to

1 TATE - FURTHER REDIRECT/KING  
show up on their doorstep?

2 A No.

3 Q Why?

4 THE COURT: That's three questions.

5 Answer the question.

6 A They've already shut you down for that  
7 avenue, so I would try to avoid calling, for that  
8 reason.

9 Q Are you familiar with the phrase "burning a  
10 witness"?

11 A Yes.

12 THE COURT: Do you have one question, Mr.  
13 Pinkston?

14 MR. PINKSTON: Your Honor, I have three,  
15 but I'll pass.

16 THE COURT: Thank you, ma'am, you're  
17 excused.

18 (Witness excused.)

19 THE COURT: Petitioner may call its next  
20 witness.

21 MR. KING: Petitioner will call Larry  
22 Gidcomb.

23 LARRY GIDCOMB,

24 called as a witness, having been first duly sworn,  
25 testified as follows:

GIDCOMB - DIRECT/KING  
DIRECT EXAMINATION

1  
2 BY MR. KING:

3 Q Mr. Gidcomb, can you state and spell your  
4 name for the record?

5 A Larry, L-A-R-R-Y, Gidcomb, G-I-D-C-O-M-B.

6 Q Thank you. What is your relation to Lee  
7 Hall's case?

8 A I worked in the office of the  
9 post-conviction defender from January of 2000 through  
10 the summer of 2017 and there was an instance in 2000  
11 when I accompanied Ms. Kennedy to Chattanooga on the  
12 Hall case to try to find potential jurors, which I  
13 don't think we found any on that trip. And I also  
14 happened to be with Sophia Bernhardt in 2014 when she  
15 interviewed Juror A in Ashville.

16 Q Who was in charge of preparing for and  
17 directing the interview of Juror A?

18 A Sophia Bernhardt.

19 Q But you were present?

20 A Yes.

21 Q Do you recall who did more of the talking  
22 during the interview with Juror A?

23 A As it wasn't my case and I was just the  
24 second person there and I was actually in town for  
25 another case we were working on, this would have been

GIDCOMB - DIRECT/KING  
1 something that Sophia would have taken the lead on.

2 Q Do you recall who wrote the memo  
3 documenting that interview?

4 A Sophia took the notes and she wrote the  
5 memo.

6 Q Have you reviewed that memo?

7 A I did review it, yes.

8 MR. KING: May I pass it to the witness?

9 Q And you've reviewed the memo recently, Mr.  
10 Gidcomb?

11 A Yes.

12 Q How recently?

13 A Last night.

14 Q Would you say it is still fresh in your  
15 mind?

16 A Yes.

17 Q Does it accurately reflect the interview?

18 A From what I recall, yes.

19 Q Did you ever participate in other  
20 interviews with Ms. Bernhardt?

21 A Yes.

22 Q Did you ever read any of her other  
23 interview memos?

24 A Yes.

25 Q How would you characterize her interview

GIDCOMB - DIRECT/KING  
1 memos?

2 A She was extremely capable and professional  
3 and always prepared.

4 Q Would the information contained in her  
5 memos reflect the substance of the conversation?

6 A Yes.

7 MR. KING: Your Honor, at this point I'd  
8 like to move into evidence the 2014 interview memo and  
9 request that it is placed under seal.

10 THE COURT: This is the 2014 interview of  
11 Juror A?

12 MR. KING: That is correct, Your Honor.

13 THE COURT: Any objections to that?

14 MR. PINKSTON: Judge, on its face, it is  
15 hearsay, in a sense, and then when you couple that with  
16 the affidavit that accompanies it, it can be very  
17 troublesome. And if I may, if you take the memo by  
18 itself and then you take Ms. Bernhardt's affidavit, in  
19 particular paragraph seven, it says in her affidavit,  
20 "I don't specifically recall asking the juror about  
21 exposure to domestic violence or sexual abuse." She  
22 further says, "Had I asked domestic and/or sexual  
23 abuse, I would not have included this question if the  
24 juror's response was not relevant."

25 So it could intimate that Juror A was not



GIDCOMB - DIRECT/KING

1 being truthful today, back in 2014, 2019, whenever, and  
2 I think without that attorney present, and her not even  
3 remembering if that question was asked, it can be  
4 highly misleading.

5 THE COURT: Mr. King, what do you say about  
6 that, is it not hearsay?

7 MR. KING: Your Honor, if I could respond.  
8 To the hearsay issue, I think it may be, in fact;  
9 although, I don't know that it goes directly to the  
10 truth of the matter asserted. However, I can also say  
11 in my practice in capital post-conviction proceedings,  
12 which is different than this proceeding, during  
13 sentencing and in post-conviction, in capital cases,  
14 hearsay testimony is admissible. I can't tell you off  
15 the top of my --

16 THE COURT: Let me ask you this -- and some  
17 things are confusing because the Juror A was here.

18 MR. KING: That's correct.

19 THE COURT: Was anything asked about what  
20 she said in 2014?

21 MR. KING: I believe it was, Your Honor. I  
22 believe that was covered by both the State and the  
23 defense.

24 THE COURT: Would that not be the more  
25 appropriate way to get that testimony in?

GIDCOMB - DIRECT/KING

1 MR. KING: I believe both counsel for Mr.  
2 Hall and the General asked that of Juror A and Juror A  
3 did not have a specific recollection of 2014. And so  
4 Mr. Hall offers this memorandum and Ms. Bernhardt's  
5 affidavit as additional information to consider for  
6 what I believe to be a very important and critical  
7 matter and interview that goes to certainly some of the  
8 claims alleged in the writ of error coram nobis and  
9 whether it constitutes newly-discovered evidence. And  
10 while this Court has ruled on that, I --

11 THE COURT: Well, have you asked this  
12 witness if he knows whether she was asked about any of  
13 the things that you're concerned with now?

14 MR. KING: I intend to ask this witness,  
15 Your Honor.

16 THE COURT: You do intend to ask him?

17 MR. KING: Yes, sir.

18 THE COURT: Why don't you go ahead and do  
19 that.

20 Q (By Mr. King) Mr. Gidcomb, do you have a  
21 recollection of whether in the 2014 interview either  
22 you or Ms. Bernhardt asked Juror A specifically whether  
23 she had a history of domestic assault/sexual violence  
24 against her?

25 A No direct recollection of that.

GIDCOMB - DIRECT/KING

1 Q And you were not responsible for preparing  
2 the interview?

3 A No.

4 Q And is it in the memorandum you reviewed  
5 last night and you have before you, is there any  
6 mention of whether or not -- is there any mention of  
7 Juror A's history of sexual abuse and domestic  
8 violence?

9 A No, no mention of that early part of her  
10 life at all.

11 Q If it had been discussed, if she had  
12 disclosed it in '14, would you expect to see it in the  
13 interview memo?

14 A Yes.

15 Q When practicing, how many juror interviews  
16 have you done in your time at the post-conviction  
17 defender's office?

18 A I've tried to recreate that through  
19 records. Probably between 200 and 250.

20 Q Are there certain types of questions that  
21 you always try to ask if you have the opportunity?

22 A Yes.

23 Q Do some of those questions also depend on  
24 the facts of the underlying case?

25 A Yes.

GIDCOMB - DIRECT/KING

1 Q Are you familiar with Robert Faulkner's  
2 case?

3 A Yes.

4 Q Did you participate in juror interviews on  
5 Mr. Faulkner's case?

6 A Yes, I was the investigator on that case.

7 Q Did you participate in the juror interview  
8 that resulted in the issue going up on appeal?

9 A Yes.

10 Q Do you know off the top of your head when  
11 the Criminal Court of Appeals granted Mr. Faulkner  
12 relief based on that issue?

13 A I believe it would have been prior to 2014,  
14 when we were on the road with this case.

15 Q And that was something you were present for  
16 and discovered as an investigator on the case, along  
17 with Ms. Tate?

18 A Yes.

19 Q Did that case also, Mr. Faulkner's case,  
20 also involve, the facts of the case, involve domestic  
21 violence and/or --

22 A Yes.

23 Q But you have no specific recollection  
24 whether or not you asked the question?

25 A I do not. Under the circumstances of the

GIDCOMB - DIRECT/KING

1 Faulkner case, if that had come up, it would have sent  
2 big red flags up for me.

3 Q If in the question was not asked in 2014,  
4 are you saying you're certain it was not volunteered or  
5 disclosed voluntarily by Juror A?

6 A I do not recall that, and I certainly would  
7 have.

8 Q In looking at the interview memo, is there,  
9 on page two, I believe, it might be page three, is  
10 there any bold text?

11 A Yes.

12 Q In your practice in the office and  
13 the interview memos you're familiar with from Ms.  
14 Bernhardt, why would something be put in bold-face  
15 text?

16 A To highlight it for the attorneys as they  
17 were skimming through, to make sure that they looked at  
18 that section.

19 Q And what does that bold-face text describe?

20 A Well, on page three, it describes an  
21 incident in which the bailiff took the jurors to eat at  
22 a family-style restaurant. And as it goes forward,  
23 Juror A was saying that she was familiar with that area  
24 and thought that -- do you want me to just read it  
25 directly?

GIDCOMB - DIRECT/KING

1 Q I don't have a problem with that as long as  
2 you don't disclose any of the names of the jurors.

3 A "Was familiar with the area and thought the  
4 restaurant was probably just a few blocks from where  
5 the victim was killed. Juror A remembered thinking to  
6 herself that the judge probably wouldn't like it if he  
7 knew that they were so close to the crime scene. She  
8 kept these opinions to herself and she didn't tell any  
9 other jurors how close they were to the scene."

10 Q Do you see any -- reviewing the memo, do  
11 you see any other bold-face texts in it?

12 A Let me go back to page two, I did miss  
13 that. Page two, in bold, was some information about  
14 Juror A and her pathologist husband.

15 Q Without providing -- with providing as few  
16 identifying details as possible, can you either read or  
17 describe that information?

18 A She is saying that she and her husband had  
19 socialized with the doctor who had performed the  
20 autopsy on the victim, and the doctor who performed the  
21 autopsy was never called to testify but he was listed  
22 on the witness list. So prior to being chosen for the  
23 jury, she did recognize that name as someone she knew.  
24 And she also told the Court that she knew him.

25 Q To your knowledge, was that raised as a

GIDCOMB - DIRECT/KING  
1 claim?

2 A I have no knowledge of what was raised as  
3 claims.

4 Q Are you currently aware of where Sophia  
5 Bernhardt is practicing?

6 A I think she's in New York City. That's all  
7 I know.

8 Q Are you aware that she is an attorney?

9 A Yes.

10 Q Are you aware that she is seven months  
11 pregnant?

12 A Yes.

13 Q Are you aware that she indicated to counsel  
14 that she was unavailable to appear here today?

15 A Yes.

16 Q Would it surprise you to learn that in her  
17 affidavit, in paragraph ten, she states, "Should this  
18 Court or the parties wish to address the information  
19 contained within this affidavit, I will make myself  
20 available for a telephonic statement or testimony,  
21 given adequate notice"?

22 A I know she would do whatever she could.

23 Q And are you aware that Mr. Hall has an  
24 execution date set for December 5th?

25 A Yes.

GIDCOMB - DIRECT/KING

1 Q Thank you. No further questions.

2 MR. PINKSTON: State would stand on the  
3 objection.

4 THE COURT: No questions?

5 MR. PINKSTON: We would stand on the  
6 objection as to the admissibility of the memo.

7 THE COURT: I don't know, are you still  
8 moving to introduce the statement?

9 MR. KING: I am, Your Honor.

10 THE COURT: Let me review the statement,  
11 okay? I thought if Mr. Pinkston was going to  
12 cross-examine, I would rule on it then, but let me just  
13 review what you're trying -- my concern is not only the  
14 hearsay aspect, but that the witness actually was  
15 called that gave the statement.

16 MR. PINKSTON: And the State has no  
17 questions of this witness.

18 THE COURT: I understand that.

19 Do you have the proposed statement, sir?

20 MR. KING: (Tendered to the Judge.)

21 THE COURT: Thank you.

22 (Brief pause.)

23 THE COURT: All right. For the purpose of  
24 which it's been mentioned, I'll let this be introduced  
25 into evidence, okay?



GIDCOMB - DIRECT/KING

1 MR. KING: And, Your Honor, I would ask  
2 that to be introduced under seal.

3 THE COURT: That's fine. Under seal.  
4 That's fine.

5 MR. KING: And if the Court would permit,  
6 co-counsel has informed me I neglected to ask two,  
7 maybe three, questions of the witness.

8 THE COURT: Two, maybe three questions.

9 Let this be marked. I'll let this come in.

10 (Thereupon, the document was  
11 marked Exhibit No. 3 and  
12 received in evidence, to be filed  
under seal.)

13 Q (By Mr. King) Mr. Gidcomb, regardless of  
14 when the Court of Criminal Appeals issued the decision  
15 in Faulkner, your interview with the juror in Mr.  
16 Faulkner's case was years before his post-conviction  
17 hearing, is that correct?

18 A Yes, we had already had the hearing and she  
19 had already testified at the hearing.

20 Q I see. So the hearing had occurred prior  
21 to your 2014 interview?

22 A Yes.

23 Q I understand. And moving your attention  
24 back to the 2014 interview, the memo, and your  
25 independent recollection of the interview, did Juror A

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1 ever mention her first husband during the interview?

2 A No.

3 Q Do you have a sense of how long the  
4 interview was, roughly?

5 A Maybe one to two hours. We were spending  
6 the afternoon with her.

7 Q How long was the interview memo?

8 A The interview memo was seven single-spaced  
9 pages.

10 Q In your experience, does the length of an  
11 interview memo correlate/correspond to the length of  
12 time one spends talking to a juror?

13 A Not necessarily, but this one would be  
14 consistent with that amount of time.

15 MR. KING: No further questions.

16 THE COURT: Mr. Pinkston, any questions  
17 now?

18 MR. PINKSTON: (Moved head negatively.)

19 THE COURT: Thank you, sir. You're  
20 excused.

21 (Witness excused.)

22 THE COURT: Petitioner have any other  
23 witnesses?

24 MS. GLEASON: We had a matter that Mr.  
25 Pinkston needed to review, it was motions to continue

1 filed by Mr. Dawson or Mr. Morrow in the 1998 to 2000--

2 THE COURT: I'm not quite understanding.

3 What are you --

4 (Off-the-record discussion among counsel.)

5 MS. GLEASON: Your Honor, we believe we'll  
6 be able to stipulate to the admission of three  
7 different pleadings that are court pleadings in other  
8 cases, not in Mr. Hall's case, that relate to motions  
9 for a continuance filed by Mr. Don Dawson, who was the  
10 post-conviction defender, or Mr. Paul Morrow, who was  
11 the deputy post-conviction defender. These three  
12 motions lay out the office's caseload and problems --

13 THE COURT: These were motions to continue?

14 MS. GLEASON: Different motions to  
15 continue. And all are file-stamped copies from the  
16 court file in those cases. And the stipulation will be  
17 simply to admit them into evidence, but acknowledge  
18 that they are not specific to Mr. Hall's case.

19 THE COURT: Is that understood?

20 MR. PINKSTON: (Moved head affirmatively.)

21 THE COURT: All right. You want those  
22 introduced as exhibits then to this hearing?

23 MS. GLEASON: Yes, Your Honor.

24 THE COURT: Are there three of them?

25 MS. GLEASON: There are three.

1 THE COURT: All right. And these are three  
2 motions to continue in other post-conviction cases,  
3 correct?

4 MS. GLEASON: Yes. I don't know if the  
5 Court prefers that to be a collective exhibit or --

6 THE COURT: Well, I think, there are three,  
7 we'll just let them be marked individually.

8 (Thereupon, the documents were  
9 marked Exhibits No. 4-6 and  
received in evidence.)

10 THE COURT: They're introduced, but how are  
11 they relevant? And there's no objection to the  
12 introduction of them, but as I review them, I want to  
13 make sure I'm looking for something.

14 MS. GLEASON: Correct. The 1998 to 2003  
15 period was a period of -- Mr. Hall filed his pro se  
16 petition in August of '98, our office was appointed  
17 shortly thereafter. The last evidentiary hearing in  
18 the case was March of 2003. So, consistent with some  
19 of the testimony the Court's heard today, there were  
20 issues with office resources and caseload --

21 THE COURT: Oh, I see.

22 MS. GLEASON: And that would go to the  
23 diligence of the office's efforts in the  
24 post-conviction period, despite limitations.

25 THE COURT: I see. And we've had various

1 questions about resources and so forth, I understand  
2 what you're saying.

3 Any other proof to present on behalf of the  
4 petitioner?

5 MS. GLEASON: There were, I believe, two  
6 different items that counsel and the parties discussed  
7 in chambers prior to the beginning of the argument,  
8 specific to what we would like to put on, to introduce  
9 into the record. The first is the affidavit of Sophia  
10 Bernhardt, who is unavailable due to the time frame,  
11 due to her pregnancy, due to her workload.

12 THE COURT: Now, this was the person who  
13 took the statement, correct?

14 MS. GLEASON: Correct, and who drafted the  
15 memo.

16 MR. PINKSTON: Judge, I think it has to be  
17 read in conjunction with the memo the Court has  
18 introduced.

19 THE COURT: And the Court allowed that to  
20 come into evidence, is there some other thing that that  
21 will --

22 MR. PINKSTON: But if you'll note, the  
23 State's hesitancy originally is that it can appear that  
24 Juror A was misleading, based upon the way the  
25 affidavit is drafted.

1 THE COURT: Okay.

2 MR. PINKSTON: But if the Court wants to  
3 examine it, so be it.

4 THE COURT: Well, let me see the affidavit.  
5 And she's indicated why she could not be present, is  
6 that correct?

7 MS. GLEASON: Yes, but she would be willing  
8 to make herself available, if the Court or counsel have  
9 questions, telephonically or in some other manner.

10 THE COURT: And Mr. Pinkston, I think you  
11 directed your objections to one particular thing, what  
12 was that, sir?

13 MR. PINKSTON: I believe it was paragraph  
14 ten, where it talked about the practice was if she had  
15 asked that question and there was no meaningful  
16 response.

17 THE COURT: Well, paragraph ten just says  
18 she'll make herself available.

19 MR. PINKSTON: I'm sorry, it's one or two  
20 before that, where it talked about if there had been an  
21 answer that was irrelevant, she wouldn't have included  
22 that in the memo.

23 THE COURT: Well, paragraph seven says, "I  
24 cannot remember whether I specifically asked the juror  
25 about disclosure."

1 MR. PINKSTON: Yes, sir.

2 MS. GLEASON: And Your Honor, I neglected.  
3 There was an exhibit attached to the declaration. It's  
4 training material.

5 THE COURT: Well, for the purposes of the  
6 fact that she can't be here, I will consider it.

7 Once again, this is a capital punishment  
8 situation, so I will let that come in. Okay?

9 (Thereupon, the document was  
10 marked Exhibit No. 7 and  
received in evidence.)

11 MS. GLEASON: And Your Honor, one more  
12 thing before I would address the last declaration that  
13 we would like to tender. I mentioned it in chambers,  
14 but I was remiss for failing to mention it earlier.  
15 The post-conviction defender during this time period  
16 was Donald Dawson, who was director of the office. We  
17 did reach out to him to check his availability to be  
18 here today. He is in Nebraska visiting a relative and  
19 so is unavailable to us and has no independent memory  
20 of things during this period, so we are not presenting  
21 his testimony, whereas we perhaps might have if we had  
22 additional time.

23 We also had attempted to reach Paul Morrow,  
24 who was counsel for Mr. Hall during this entire period,  
25 and he was a deputy post-conviction director. And we

1 were aware that he had some serious medical issues, had  
2 been in assisted living, had been hospitalized at  
3 various points, but when we were getting ready to reach  
4 out to him over the weekend and into the holiday,  
5 Veteran's Day, Monday, November 11th, we learned that  
6 he had passed away that morning. So he is not  
7 available to us today as well.

8           Finally, Your Honor, as we mentioned in  
9 chambers, if we had had -- once again, thank you for  
10 the opportunity to present a hearing. If we had had  
11 additional time, we would have consulted with a trauma  
12 specialist that could have contextualized Juror A's  
13 life experiences and the reasons she did or did not  
14 disclose certain things over various periods of time in  
15 her life. And I see two ways that that could have been  
16 helpful to the Court: One is for us or for counsel for  
17 the State to have proposed potential people who have  
18 addressed those issues, because certainly the State has  
19 worked with sexual assault and domestic violence  
20 survivors on a regular basis in many cases. And in  
21 capital cases, we have also addressed those issues in  
22 some forms, but Mr. King and I certainly are not  
23 experts. So we thought it would be beneficial to reach  
24 out to someone who is a trauma specialist, who could  
25 help the Court contextualize this particular issue with



1 this victim of domestic violence and sexual assault.

2 We were able to very quickly reach out to  
3 Linda Manning, who is a trauma specialist, who provided  
4 for us a very brief declaration. I believe the State  
5 will have objections to this, but if I could tender to  
6 the Court for consideration.

7 THE COURT: Now, this person did not  
8 examine Juror A?

9 MS. GLEASON: No, Your Honor, she did not  
10 examine Juror A, that would have been something we  
11 would have liked to have done with more time.

12 THE COURT: Mr. Pinkston, you want to be  
13 heard?

14 MR. PINKSTON: I'll just add, Your Honor,  
15 that as the Court examines that affidavit, it would  
16 be -- three situations come to mind. If we're in a DUI  
17 trial and somebody testifies that I understand such and  
18 such person acts this way under the influence of  
19 alcohol, or I understand that such and such person acts  
20 this way under the influence of controlled substance,  
21 or we've had eyewitness experts who indicate that  
22 sometimes witnesses can deal with these types of  
23 issues, with eyewitness testimony, my understanding,  
24 they can only give a general idea of what may or may  
25 not have occurred, unless they have personal knowledge

1 of this individual and how they act in a certain  
2 manner. And I think he can only be viewed in the most  
3 general sense, that this person may have been under  
4 this trauma, that trauma, the other, but without actual  
5 knowledge of that individual, anything specific should  
6 not be considered.

7 THE COURT: Ms. Gleason, anything further?

8 MS. GLEASON: No, Your Honor. Thank you  
9 again for your patience.

10 THE COURT: Well, I want to be very, very  
11 lenient in regard to the admission of evidence, and I  
12 think have been, but it looks like to me that this is  
13 too far afield, as far as introducing it as an exhibit  
14 itself into evidence. So as far as the introduction  
15 into evidence, I will sustain the objections. Okay?

16 MS. GLEASON: Might we tender it as an  
17 offer of proof, Your Honor?

18 THE COURT: That's fine.

19 MS. GLEASON: Thank you, Your Honor.

20 THE COURT: You can make it for  
21 identification purposes. ID purposes only.

22 MS. GLEASON: Thank you.

23 (Thereupon, the document was  
24 marked Exhibit No. 8 for  
identification.)

25 THE COURT: All right. Anything else from

1 the petitioner?

2 MR. KING: No, Your Honor.

3 THE COURT: Does the State have any proof?

4 MR. PINKSTON: (Moved head affirmatively.)

5 THE COURT: Do you want to briefly be  
6 heard? Now, I told you originally I complimented both  
7 sides for the material that you pointed out and the  
8 petitions, the responses, the responses, once again,  
9 that you did on fairly short notice yesterday. So I  
10 have all of your arguments, responses, and law that you  
11 pointed out, but anything that you think is important  
12 enough to bring up again, I'll be glad to hear you. On  
13 behalf of the petitioner? And something you  
14 specifically want to point out to me. This is  
15 important. It's important we act quickly, and I want  
16 to do that, but I'll hear what you say.

17 MS. GLEASON: Just very briefly. We would  
18 direct the Court's attention to the pleading, the brief  
19 we drafted and filed yesterday. It came in late  
20 yesterday. But we believe it's important, both to  
21 contextualize the second post-conviction petition and  
22 then the Court's dismissal of the earlier two  
23 procedural vehicles, and that is the longstanding  
24 notion in Tennessee that there can be no wrong without  
25 a remedy. And that goes back to Bob, the slave, and

1 other case law from the 1800s. It's a very fundamental  
2 principal in Tennessee and it relates to the very  
3 unique open courts clause in Tennessee, which is our  
4 section of the constitution that says the courts will  
5 always be open to citizens to come to the court and  
6 address their grievances.

7 And we spent some time in that pleading  
8 talking about the history of the open courts clause and  
9 then we also just very briefly addressed the due  
10 process considerations again. But, fundamentally,  
11 where we're at, Your Honor, that we'd like you to  
12 consider, is Lee Hall is set for execution seven p.m.  
13 three weeks from today, and he has raised a serious  
14 constitutional error. It is a structural error which  
15 we believe would have required granting of a new trial  
16 had it been raised earlier. It was raised earlier in  
17 Mr. Faulkner's case and he got relief, he got a new  
18 trial, and then he actually passed away of natural  
19 causes before the trial.

20 So he is similarly situated to our office's  
21 previous performance and it was only because Juror A  
22 was not in a place to disclose information when we did  
23 act diligently and attempted to interview her in the  
24 '98 to 2003 period and then again in 2014 after we were  
25 appointed by the Tennessee Supreme Court to take a look

1 at any potential issues in his case when the State had  
2 asked for an execution date. In neither attempts did  
3 we receive the information that we received when myself  
4 and Mr. Vittatoe from our office interviewed Juror A in  
5 September of 2019. And then we acted as diligently as  
6 possible, as soon we had that information, to get  
7 before this Court and hope that this Court would  
8 recognize what a serious error this was. Thank you.

9 THE COURT: Well, thank you.

10 Mr. Pinkston?

11 MR. PINKSTON: Judge, I think the pleadings  
12 from the State are pretty well from our point of view,  
13 as well as the testimony today, and the State thinks  
14 that the hope for a second petition should be dismissed  
15 and would address the Court's attention to Juror A's  
16 testimony about her bias or lack thereof during the  
17 trial, and then the testimony of the investigator, I  
18 believe Kennedy, about the efforts from '98, 2000, to  
19 2012, to locate and interview Juror A, essentially  
20 consisted of printing off a sheet, Faces of the Nation,  
21 with two different addresses, but making no affirmative  
22 steps to touch base with her. I think those highlights  
23 should be considered by the Court.

24 THE COURT: Well, once again, there can be  
25 no more important matter to come before the Court than

1 here. I will say that the petitioner did file three  
2 different petitions; the writ of error, motion to  
3 reopen, a second petition. If you go by one, two,  
4 three, four, five, the law, then I think all of them  
5 are barred, quite frankly. The legislatures have  
6 passed certain laws that says, Judges, this is what you  
7 have to consider.

8 I consider, certainly, the cases that have  
9 interpreted those, and both counsel have pointed out  
10 those cases and how they might apply to Mr. Hall's  
11 case. But it is important. I understand what the  
12 petitioner is saying. I think petitioner basically  
13 argues due process, fairness. The State argues at some  
14 point in time something has to end. And that's where I  
15 said two major things come into conflict with each  
16 other.

17 I will say this: In reviewing the evidence  
18 that I've heard today, the responses that Juror A gave  
19 to the questions that were asked of her today were not  
20 a great deal different than the responses on the other  
21 juror's questions that have been introduced by the  
22 State, as far as there seemed to be no question in any  
23 of the jurors' minds about guilt, that was never an  
24 issue. And that's the thing that the Court did  
25 emphasize in regard to the writ of error: We weren't

1 talking about a state of innocence at all, we were  
2 talking about whether one juror could not fairly  
3 consider the case.

4 I'll look at everything again. I'll look  
5 at the file, the responses, the petition, and enter --  
6 it's important that we all act quickly, and I will  
7 enter an order quickly to do that. Thank you all for  
8 being here and thank you for what you've done. Okay?

9 MR. PINKSTON: May we be excused, Your  
10 Honor?

11 THE COURT: You may, sir.

12 MS. GLEASON: Thank you, Your Honor.

13 MR. KING: Thank you.

14 (Thereupon, this was all the proceedings  
15 had and evidence introduced herein.)  
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25

## REPORTER'S CERTIFICATE

1  
2  
3 I, the undersigned, Lynn S. Woods, Official  
4 Court Reporter for the Eleventh Judicial District of  
5 the State of Tennessee, do hereby certify that the  
6 foregoing is a true, accurate and complete transcript,  
7 to the best of my knowledge and ability, of all the  
8 proceedings had and evidence introduced in the hearing  
9 of the captioned causes in the Criminal Court of  
10 Hamilton County, Tennessee, on the 14th day of  
11 November, 2019.  
12

13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 Lynn S. Woods  
16 Official Court Reporter  
17  
18  
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21  
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25



1 IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

2 ELEVENTH JUDICIAL DISTRICT

3 LEE HALL, JR. )

4 vs. ) Case No. 308968

5 STATE OF TENNESSEE )

7 ORDER APPROVING TRANSCRIPT OF PROCEEDINGS

8 This is to certify that the transcript of  
 9 the proceedings adduced at the hearing of this case has  
 10 been filed with the clerk on \_\_\_\_\_, in  
 11 accordance with the Tennessee Rules of Appellate  
 Procedure. The transcript has been examined by counsel  
 for the Defendant and the State and has been found by  
 both to be a true and accurate record of the  
 proceedings.

12 This is to further certify that the Court  
 13 has examined the transcript of the proceedings and has  
 bound it to be a true and accurate record of the  
 proceedings.

14 THEREFORE, IT IS ORDERED, ADJUDGED, AND  
 15 DECREED, that the transcript of the proceedings is  
 16 hereby approved by the Court and counsel for the  
 Defendant and the State, and the Clerk is hereby  
 ordered to make the transcript of the proceedings part  
 of the Record on Appeal in this case.

17 Entered this \_\_\_\_ day of \_\_\_\_\_, 2019.

18 \_\_\_\_\_  
 19 JUDGE

20 APPROVED:

21 \_\_\_\_\_  
 22 ATTORNEY FOR STATE OF TENNESSEE

23  
 24 \_\_\_\_\_  
 25 ATTORNEY FOR THE DEFENDANT