

1 office that, again, would indicate many things that occurred
2 between the deceased and the defendant Mrs. Owens that relate
3 to her state of mind in regard to this murder case that are
4 extremely important to the development, number one, of her
5 mental state and, number two, to any development of
6 mitigating circumstances in the event of a conviction of
7 murder in the first degree.

8 THE COURT: State?

9 MR. STROTNER: Your Honor, I think that we are
10 required, and as we have done, show them--you know, we talk
11 about items coming from the house. To the best of my
12 knowledge, we have shown them every single scintilla of
13 evidence which we have seized and which we have that came
14 from the house. Anything that is in the possession of any
15 law enforcement agency we have and we have shown to counsel
16 for the defense.

17 As to any other information that could be
18 developed, then I think we might be, if we have such
19 information, required to furnish them the names and addresses
20 of any individuals who can shed any light on it. And I will
21 be happy to do that if--and I think it has in fact been done.

22 THE COURT: Mr. Emmons, who made--who allegedly
23 made the search at the personal property at the office?

24 MR. EMMONS: Your Honor, I'm not sure. I'm not
25 sure if it was police officers or if it was simply hospital

1 personnel cleaning out his--or if it were in fact relatives
2 of the family.

3 I believe probably--and this is just a guess based
4 on what information I have--that it was maybe hospital
5 personnel and relatives of the family, and thus, would not
6 involve police officers, but I don't know that for a fact.

7 Now, the point I want to stress to the court is
8 that assuming the State exercised a search warrant and seized
9 only certain items, we have no doubt but they would furnish
10 us with everything they seized. But there was a housefull of
11 stuff there. There was an office full of stuff that are not
12 in our possession that are in somebody's possession.

13 THE COURT: You claim they're in the State's
14 possession?

15 MR. EMMONS: I claim that they could be. I claim
16 that the State has the power and the authority to get those
17 items that we don't have the power and the authority to get.
18 And if we have--In other words, here we have got a situation
19 where names, addresses, letters, notes, all sorts of things
20 we believe to be that relate to the extramarital affairs of
21 the deceased and the strange sexual proclivities are in the
22 possession of somebody, and we have--

23 THE COURT: Well, unless they're in the possession
24 of the State, the court has no jurisdiction to order somebody
25 to turn them over.

1 MR. EMMONS: I understand that, but I believe the
2 State has the power to reach those items.

3 THE COURT: Court not going to order any something
4 such as that. If they don't have them, the court is not
5 going to order them to go out and get them. You have the
6 same authority.

7 MR. EMMONS: I don't believe so, Your Honor. I
8 believe Mr. Strother--

9 THE COURT: Well, what power to get a search that
10 you don't have that the State has?

11 MR. EMMONS: Well, I'll just put it this way,
12 Judge, and I've been prosecutor for six or seven years as the
13 court knows and defense lawyer for that long, and if as a
14 defense lawyer today I go pick up a phone and call the
15 administrator of the Baptist hospital or the family and say,
16 look, we'd like all that stuff that came out of the office,
17 they're going to say, Ha, ha, or whatever they might say.

18 If Mr. Strother calls them, they're going to
19 listen to them. He's the prosecutor, he's the district
20 attorney--assistant district attorney. He has the inherent
21 power--He's the prosecutor of this case. He has inherent
22 power to gather and collect evidence.

23 THE COURT: He don't have--he don't have the power
24 to just go out and get it without a search warrant if he's
25 going to search an office.

1 Now, what authority does he have just simply
2 because he's assistant district attorney?

3 MR. EMMONS: I'm talking about the power of the
4 office, Your Honor.

5 THE COURT: Well, now you--

6 MR. EMMONS: Not the statutory--I'm not talking
7 about the highly--the high technicalities of the law that
8 many times we can flee to in order to find a simple and safe
9 answer, and that's a simple and safe answer.

10 But I'm saying you're talking about a death
11 penalty case where we're appointed counsel working under time
12 restraints. We've got information out here that we need in
13 order to properly prepare this case and go to the mental--

14 THE COURT: You got the power of subpoena?

15 MR. EMMONS: Yes, sir.

16 THE COURT: You got the power of duces tecum?

17 MR. EMMONS: Yes, sir.

18 THE COURT: Then what else you need?

19 MR. EMMONS: But what good is going to do us,
20 Judge, to subpoena duces tecum at the time of trial and
21 discover it right in the middle of trial we've got all of
22 these witnesses we should have talked to because we've now
23 used duces tecum to get them here? That doesn't do us any
24 good.

25 THE COURT: What prevents you to go out and talk

1 to witnesses now?

2 MR. EMMONS: Well, nothing to prevent us from
3 talking to witnesses, but to get these physical items of
4 evidence that we think can be important, there would be--

5 THE COURT: Well, don't you think, number one,
6 that you ought to verify whether or not they exist?

7 MR. EMMONS: Oh, yes, sir.

8 THE COURT: Well, I would suggest that you do
9 that.

10 MR. EMMONS: Well, I would think, too, that--

11 THE COURT: I'm not going to order the State to go
12 do it for you.

13 MR. EMMONS: Well, we would ask this--Mr. Marty's
14 reminded me of this--that if the district attorney has in his
15 possession any of these items that came from the search of
16 the house or the inventory or--not search of the office but
17 the inventory of his office, then we feel like under this
18 authority we have a right to that now.

19 I assume--

20 THE COURT: Do you have an inventory of the
21 office, Mr. Strother?

22 MR. STROTHER: Excuse me?

23 THE COURT: Do you have an inventory of items in
24 his office?

25 MR. STROTHER: Not that I am aware of, Your Honor.

1 Everything we have in the way of any kind of piece
2 of physical evidence, any piece of paper, any notebook,
3 any--anything along those lines, letters and etcetera that we
4 have, we have made available to them. The names of any
5 people who we know who would know anything about this and the
6 addresses of those individuals, I think likewise we have
7 provided them with.

8 That's the only thing I know to say.

9 MR. EMMONS: Well, I certainly accept that. I've
10 got no reason not to. And I just further say--and I'm
11 pushing on the court--the idea that the State has a positive
12 responsibility to go beyond what they have.

13 The same argument I'm making in regard to the
14 records. We are not asking for impossible things. All
15 they've got to do is make a phone call or two.

16 And we believe that they have given us everything
17 they have, but we believe that the law--the spirit of the law
18 requires that they make available to us things that are
19 within their power to make available to us that might be
20 exculpatory.

21 In the alternative, Your Honor, if the court rules
22 against us on that, which I think it likely, then I'd like to
23 add this to my reason for a continuance motion that we filed
24 with the court. I think the court's right. There might be
25 ways we can get to this information but it might require