

1 parties wishes to make before I poll the jury? 2 MR. LIVERGOOD: No, Your Honor. 3 MR. KENYON: No, Your Honor. 4 THE COURT: All right, ladies and gentlemen. 5 Again, as you know from before — I believe we polled you 6 before -- I'm just going to ask you by number, "Is the 7 verdict I've just read your verdict." 8 (Each juror was polled individually and 9 answered in the affirmative.) 10 THE COURT: So sayeth the jury. The verdict 11 is in the proper form and acted upon accordingly. 12 Mr. Steele and Mr. Kenyon, are you asking for 13 the additional time in which to file post-trial motions? 14 MR. KENYON: Yes, Your Honor. 15 THE COURT: All right. The Court will find 16 there is good cause, due to the complexity of the matter, to 17 grant that time, and we'll set the date for filing 18 post-trial motions on October -- someone will have to do a 19 memo to this effect — October 27. And then the sentencing 20 would on November the 3rd, at least tentatively. That's a 21 Friday. Defendant's bond will be set at 1 million dollars 22 cash only. 23 And you can remove the defendant. 24 Ladies and gentlemen, this has been a long 25 two weeks. The only thing left is to discharge you.	2001 1 reviewed the materials, and, in particular, my thinking is 2 that if there's a difference between the Supreme Court 3 instructions which emanate from the Supreme Court rules, and 4 the statutes have been in effect, it's my thinking that the 5 procedural matters will be governed by the instructions 6 because they are authorized by the Supreme Court rules. 7 So technically they're not Supreme Court 8 rules, but they're authorized by the Supreme Court rules. 9 So the procedural matters, which we're talking about in 10 regards to the aggravating circumstances and how the second 11 stage is carried out, the Supreme Court, I believe, says 12 they are procedural matters. And the Missouri Supreme Court 13 has made it clear that the Supreme Court rules take 14 precedence over the statutes to the extent there are 15 conflicts in those matters. 16 It's true that the instructions are not 17 exactly Supreme Court rules, but they serve the same 18 purpose. They are authorized by the Supreme Court and 19 approved by the Supreme Court. And so I think in these 20 matters, they would take precedence over any conflict with 21 the statute. I know it's a big point raised in this case. 22 However, beyond that, I really don't think 23 there is a conflict because I think the way the statute is 24 applied in determining the aggravators and the mitigators 25 and so on, the way that it's applied is it's applied through
2002 1 (The jury was discharged by the Court.) 2 NOVEMBER 3, 2006 3 SENTENCING 4 o o o 5 THE COURT: We're here on State of Missouri 6 vs. Scott A. McLaughlin. This is 03CR-5745. 7 Mr. McLaughlin, did you want to come up, sir. 8 The record should reflect that Mr. McLaughlin 9 was found guilty by the jury of the crimes of armed criminal 10 action and forcible rape and murder in the first degree. 11 The sentence was deferred until today's date so that the 12 Court could consider the appropriate sentencing in the 13 case. 14 We've also received a motion for new trial 15 and for judgment of acquittal filed on behalf of Mr. 16 McLaughlin. David Kenyon and Robert Steele are present with 17 Mr. McLaughlin, and Rob Livergood and David Truman are 18 present representing the State of Missouri. 19 I've reviewed the materials, the defendant's 20 materials thoroughly, and I've seen the State's materials 21 this morning. We've gone over them. 22 And is there any new reason or legal reason 23 to not proceed with sentencing at this time? 24 MR. STEELE: No, sir. 25 THE COURT: And then, as I stated, I	2002 1 the rules, and when that's done in a constitutional fashion 2 to apply the rules to the statute. So I think in the 3 overall scheme of things, that's the constitutional 4 application of these laws and statutes and rules. 5 The Court finds that the findings made by the 6 jury in the second stage of the sentencing stage, in 7 particular, the depravity of mind, by repeated and excessive 8 acts of physical abuse encompassing beating, stabbing, and 9 sexual intercourse on a continuous basis, and are a part of 10 the murder, the Court finds that particular aggravating 11 circumstance and concurs with that and with the jury's 12 findings in that regard. 13 The Court concurs with that finding. And the 14 Court further concurs with the jury that there's not -- no 15 substantive mitigating circumstances to outweigh the 16 aggravating circumstances. 17 By mitigating circumstances, I know it's been 18 brought up that it's not clear from the instructions as to 19 what was considered, but certainly what was considered would 20 be evidence that we've heard throughout the trial and 21 certainly have considered the mental condition of Mr. 22 McLaughlin as well as his relationship and the volatility of 23 the relationship between him and Beverly Guenther as well as 24 anything that would be mitigating that was brought up on his 25 behalf, and I agree with the findings of the jury that they

2003 1 don't outweigh the aggravating circumstance that was found. 2 So I concur in all this. And I thought about 3 the statement of Mr. Kenyon is there any legal reason to not 4 impose the death sentence? Some factor? And after thinking 5 about it thoroughly, I just -- I'm not able to come up with 6 something I think is strong enough to not impose it. So I 7 think that Beverly, from the evidence, I think that Beverly 8 Guenther lived at the end a tortured life, and she died a 9 tortured death, and this was at your hands, Mr. 10 McLaughlin. And you made her worst fears come true when you 11 killed her. That's what she was most afraid of. 12 And that was what was argued in closing 13 arguments is depravity of mind really comes from the 14 condition, not just the assaults themselves, but the nature 15 of the assaults in the form of sexual intercourse with the 16 body. That's depravity of mind. It would encompass 17 repeated physical assaults. That's just a terrible crime. 18 So on that basis, hearing no legal cause or 19 reason why I should not proceed with sentencing, it will be 20 the judgment and sentence of the Court that Mr. McLaughlin 21 be sentenced to death for the murder and consecutive life 22 sentences for the rape and armed criminal action. Court 23 costs will be assessed against the State of Missouri. 24 I'll direct the public defender to the 25 appropriate office to make the notice of appeal. When the	2005 1 2 3 4 I, Melissa A. Schardan, a Certified Court 5 reporter, hereby certify that I was the official court 6 reporter for Division 12 of the Circuit Court of the County 7 of St. Louis, State of Missouri; that on the 5th of 8 December, 2005, and September 20th through September 22nd, 9 and September 25th through September 30th and October 2nd, 10 2006, I was present and reported all the proceedings had in 11 the case of STATE OF MISSOURI, Plaintiff, vs. SCOTT A. 12 MCLAUGHLIN, cause No. 03CR-5745; and I further certify that 13 the foregoing pages contain a true and accurate reproduction 14 of the proceedings had on that date. 15 16 17 18 19 20 21 22 23 24 25 Melissa A. Schardan, CCR #0748 Official Court Reporter Twenty-first Judicial Circuit (314) 615-8078
2006 1 case is appealed, if you lose, Mr. McLaughlin, you'll have 2 90 days from the day of the main date that would come down 3 to file your post conviction relief, which I'm sure will be 4 done for you in a serious case like this. I don't think 5 that time standard will be a problem. 6 And I'm not going to go into the PCR 7 questions. I kind of asked you that before. In this type 8 of case, I don't think it's necessarily appropriate to go 9 through all of that at this time unless the lawyers want me 10 to. I feel sorry for this whole incident, and it's a 11 terrible tragedy, and I'm handing out what I think is a 12 sentence that dictates the jury's finding and what I think 13 is appropriate. That will complete the record. 14 MR. KENYON: One final thing, Judge: Your 15 sentence implies a ruling on the second motion that we 16 filed. 17 THE COURT: The motion is denied for new 18 trial. 19 MR. KENYON: The defendant's motion for 20 imposition of life. 21 THE COURT: I'll deny that motion and deny 22 the motion for new trial and for judgment of acquittal. 23 I'll ask the State to write up a memo to those effects. So 24 that will complete the record. 25 Thank you gentlemen.	2006 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25