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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.

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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

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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

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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

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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

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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.

# 2007 **REPORTER'S CERTIFICATE**

1 I, Melissa A. Schardan, a Certified Court  
 2 Reporter, hereby certify that I was the official court  
 3 reporter for Division 12 of the Circuit Court of the County  
 4 of St. Louis, State of Missouri; that on the 5th of  
 5 December, 2005, and September 20th through September 22nd,  
 6 and September 25th through September 30th and October 2nd,  
 7 2006, I was present and reported all the proceedings had in  
 8 the case of STATE OF MISSOURI, Plaintiff, vs. SCOTT A.  
 9 MCLAUGHLIN, cause No. 03CR-5745; and I further certify that  
 10 the foregoing pages contain a true and accurate reproduction  
 11 of the proceedings had on that date.

*Melissa A. Schardan*  
 Melissa A. Schardan, OCR #0743  
 Official Court Reporter  
 Twenty-first Judicial Circuit  
 (314) 613-8078