

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to Calhoun County

Honorable Kristi F. Curtis, Circuit Court Judge  
—————

HERMAN HUGHES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001415  
—————

APPENDIX  
—————

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1 IN PRISON, IT'S LIFE IN PRISON. IF THE JURY DECIDES  
2 THE DEATH PENALTY, THEN THAT DEFENDANT ACTUALLY IS  
3 EXECUTED BASED ON THAT JURY'S DECISION. SO YOU  
4 UNDERSTAND THE PROCESS, BASICALLY?

5 JURY VENIRE MEMBER: YES, SIR.

6 MR. BAILEY: ALL RIGHT. MR. WADFORD, IF  
7 YOU WERE SELECTED ON A JURY LIKE THIS AND YOU AND THE  
8 OTHER JURORS AFTER HEARING ALL OF THE TESTIMONY AND  
9 EVIDENCE AND JUDGE'S INSTRUCTIONS CONSIDER THOSE TWO  
10 CHARGES AND DECIDE FOR THAT PARTICULAR DEFENDANT,  
11 THAT PARTICULAR CRIME, THE DEATH PENALTY WAS THE  
12 APPROPRIATE SENTENCE, COULD YOU THEN SIGN YOUR NAME  
13 ALONG WITH THE OTHER ELEVEN JURORS TO A DEATH VERDICT  
14 FORM, KNOWING THAT WOULD RESULT IN THAT DEFENDANT'S  
15 EXECUTION?

16 JURY VENIRE MEMBER: I'M NOT SURE.

17 MR. BAILEY: OKAY. LET ME ASK YOU THIS,  
18 THEN. AND PLEASE DON'T INTERPRET MY QUESTIONS TO --  
19 I'M NOT ASKING YOU TO PREDICT WHAT YOU WOULD DO IN  
20 THIS CASE BECAUSE YOU HAVEN'T HEARD THE EVIDENCE.  
21 WE'RE JUST TALKING GENERALLY RIGHT NOW. AND MY  
22 QUESTION IS, IF THE CASE WAS BAD ENOUGH AND YOU VOTED  
23 FOR THE DEATH PENALTY ALONG WITH THE OTHER ELEVEN  
24 JURORS, IS THERE ANYTHING ABOUT SIGNING THAT PAPER  
25 THAT WOULD CAUSE YOU ANY GREATER PROBLEMS THAN THE

1 ACTUAL VOTE FOR THE DEATH PENALTY?

2 JURY VENIRE MEMBER: I DON'T QUITE FOLL  
3 YOU.

4 MR. BAILEY: OKAY. I'M --

5 THE COURT: LET ME EXPLAIN. I'M -- I  
6 DON'T THINK HE'S UNDERSTANDING WHAT YOU'RE SAYING.  
7 LET ME SAY THIS TO YOU. YOU UNDERSTAND THE FIRST  
8 PHASE WHERE IF YOU FOUND HIM GUILTY, THE SECOND PHASE  
9 IS THE SENTENCING?

10 JURY VENIRE MEMBER: YES, SIR.

11 THE COURT: NOW, UNDER OUR LAW, YOU WOULD  
12 BE LISTENING TO TESTIMONY AS TO WHY THE DEATH PENALTY  
13 SHOULD BE IMPOSED, AND YOU WOULD EQUALLY BE LISTENING  
14 TO TESTIMONY AS TO WHY LIFE SENTENCE SHOULD BE  
15 IMPOSED. YOU UNDERSTAND?

16 JURY VENIRE MEMBER: YES, SIR.

17 THE COURT: AS I UNDERSTAND YOUR TESTIMONY  
18 THUS FAR, YOU HAVE SAID THAT YOU ARE WILLING TO  
19 LISTEN TO BOTH SIDES AND THEN WOULD MAKE UP YOUR  
20 MIND. YOU COULD IMPOSE THE DEATH PENALTY AND YOU  
21 COULD IMPOSE LIFE IMPRISONMENT; IS THAT RIGHT? IS  
22 THAT WHAT YOU'RE SAYING?

23 JURY VENIRE MEMBER: I THINK THAT'S WHAT  
24 I'M SAYING, YES, SIR.

25 THE COURT: WELL, IS THAT WHAT YOU

1 BELIEVE?

2 JURY VENIRE MEMBER: I MIGHT -- I MIGHT  
3 STILL -- I MIGHT BE HESITANT ON THE DEATH PENALTY.

4 THE COURT: I UNDERSTAND THAT, AND ANYBODY  
5 WOULD. BUT UNDER SUFFICIENT CIRCUMSTANCES, ARE THERE  
6 ANY CIRCUMSTANCES UNDER WHICH YOU COULD IMPOSE THE  
7 DEATH PENALTY? OR ARE YOU SAYING YOU CAN NEVER DO  
8 IT? AND THE DECISION IS YOURS.

9 JURY VENIRE MEMBER: I DON'T THINK I COULD  
10 SAY I COULD NEVER DO IT. I THINK IT WOULD BE --  
11 AGAIN, IT WOULD BE CIRCUMSTANTIAL.

12 THE COURT: YOU ARE SAYING THAT THERE ARE  
13 -- IT WOULD BE A TOUGH QUESTION, BUT YOU ARE SAYING  
14 THERE ARE SOME CIRCUMSTANCES UNDER WHICH YOU COULD  
15 IMPOSE IT? IS THAT WHAT -- I DON'T WANT TO PUT WORDS  
16 IN YOUR MOUTH.

17 JURY VENIRE MEMBER: I BELIEVE THAT'S WHAT  
18 I'M TRYING TO SAY.

19 THE COURT: OKAY. ALL RIGHT. LET ME GO  
20 ONE FURTHER STEP. ASSUMING -- AND I'M JUST ASSUMING,  
21 YOU UNDERSTAND. ASSUMING THAT YOU AND THE JURY,  
22 BASED ON THE TESTIMONY THAT YOU HEARD, HAVE DECIDED  
23 UNANIMOUSLY THAT DEATH IS THE APPROPRIATE PUNISHMENT,  
24 ASSUMING THAT, OUR LAW SAYS THAT YOU MUST SIGN A  
25 FORM. YOU AND THE FOREMAN, ALL TWELVE OF YOU, MUST

1 SIGN A FORM THAT SAYS AS FOLLOWS, WE THE JURY IN THE  
2 ABOVE-ENTITLED CASE UNANIMOUSLY RECOMMEND THAT THE  
3 DEFENDANT BE SENTENCED TO DEATH. IF YOU DETERMINED  
4 THAT DEATH WAS THE APPROPRIATE SENTENCE, CAN YOU SIGN  
5 SUCH A FORM?

6 JURY VENIRE MEMBER: YES, SIR, I THINK SO.

7 THE COURT: ALL RIGHT.

8 MR. BAILEY: MR. WADFORD, THAT FORM USES  
9 THE WORD RECOMMENDATION, BUT IT REALLY ISN'T A  
10 RECOMMENDATION. IT'S WHAT'S GOING TO HAPPEN. NOW,  
11 IS YOUR ANSWER STILL THE SAME, THAT YOU COULD SIGN  
12 THE FORM?

13 JURY VENIRE MEMBER: IF THAT'S WHAT I  
14 DECIDED, YES.

15 MR. BAILEY: OKAY. AND COULD YOU COME OUT  
16 INTO OPEN COURT AND ANNOUNCE THAT VERDICT IN FRONT OF  
17 THE DEFENDANT AND HIS ATTORNEY AND HIS FAMILY AND WHO  
18 EVER ELSE MIGHT BE OUT HERE? EACH JUROR'S NAME WILL  
19 BE CALLED INDIVIDUALLY. YOU WOULD HAVE TO STAND UP  
20 AND YOU WOULD BE ASKED BY MR. WANNAMAKER OR THE JUDGE  
21 IF THAT'S YOUR VERDICT AND YOU ASSENT TO IT. COULD  
22 YOU DO THAT?

23 JURY VENIRE MEMBER: I DON'T KNOW.

24 MR. BAILEY: I'M SORRY?

25 JURY VENIRE MEMBER: I DON'T KNOW.

1 MR. BAILEY: OKAY. WE'RE TALKING ABOUT IF  
2 YOU VOTED ON THE DEATH PENALTY AND THEN YOU SIGNED  
3 THE DEATH VERDICT FORM, COULD YOU THEN COME BACK AND  
4 STAND UP AND ANNOUNCE THE VERDICT IN OPEN COURT?

5 JURY VENIRE MEMBER: I DON'T KNOW IF I  
6 COULD DO THAT.

7 MR. BAILEY: OKAY. AND THERE ARE NO RIGHT  
8 OR WRONG ANSWERS, MR. WADFORD. WE'RE JUST HERE TO  
9 KNOW HOW YOU REALLY THINK. IN THIS PARTICULAR CASE,  
10 THE DEFENDANT IS NOW 18 YEARS OLD. IN MARCH OF 1994,  
11 WHEN THE STATE ALLEGES THIS MURDER WAS COMMITTED, HE  
12 WAS 16. IF THE CASE IS BAD ENOUGH, COULD YOU IMPOSE  
13 THE DEATH PENALTY ON A PERSON WHO WAS 16 YEARS OLD AT  
14 THE TIME HE COMMITTED THE MURDER?

15 JURY VENIRE MEMBER: I DON'T BELIEVE SO.

16 MR. BAILEY: OKAY. DO YOU THINK THAT YOUR  
17 FEELINGS ABOUT IMPOSING THE DEATH PENALTY ON A PERSON  
18 WHO WAS 16 WOULD SUBSTANTIALLY IMPAIR YOUR ABILITY TO  
19 SIT AS A FAIR AND IMPARTIAL JUROR IF WE GOT INTO THE  
20 SECOND PHASE OF THIS TRIAL?

21 JURY VENIRE MEMBER: IF THEY WERE 16?

22 MR. BAILEY: YEAH.

23 JURY VENIRE MEMBER: PROBABLY.

24 MR. BAILEY: OKAY, SIR. THAT'S ALL I  
25 HAVE. THANK YOU.

1 MR. NEWSOME: JUST A COUPLE OF POINTS I  
2 NEED TO ADDRESS WITH YOU. I BELIEVE YOU SAID THAT  
3 YOU WOULD HAVE RESERVATIONS ABOUT DELIVERING A DEATH  
4 PENALTY SENTENCE. BUT IF YOU THOUGHT IT WAS  
5 APPROPRIATE, YOU COULD; IS THAT NOT CORRECT?

6 JURY VENIRE MEMBER: YES, SIR.

7 MR. NEWSOME: OKAY. AND EVEN GIVEN THOSE  
8 RESERVATIONS -- I APPRECIATE -- RESPECT THOSE  
9 RESERVATIONS. IF YOU RETURNED A DEATH SENTENCE, YOU  
10 AND THE OTHER MEMBERS OF THE JURY PANEL WOULD COME  
11 OUT HERE AND YOU WOULD BE POLLED. IT'S CALLED  
12 POLLING. OKAY? AND YOU WOULD BE ASKED IF THAT'S  
13 YOUR VERDICT. DO YOU UNDERSTAND THAT?

14 JURY VENIRE MEMBER: YES, SIR.

15 MR. NEWSOME: AND WHAT YOU BELIEVED IN IN  
16 THAT PARTICULAR CASE WITH THOSE PARTICULAR FACTS IS  
17 THAT THE DEATH PENALTY WAS APPROPRIATE, YOU COULD --  
18 COULD YOU COME OUT AND BE POLLED AND STILL SAY YES,  
19 THAT'S WHAT I BELIEVE IN?

20 JURY VENIRE MEMBER: THAT WOULD BE TO BE  
21 -- TO BE EXPOSED, THAT WOULD BE DIFFICULT.

22 MR. NEWSOME: I UNDERSTAND YOUR  
23 DIFFICULTY. I'M NOT ASKING IF IT'S DIFFICULT. I  
24 REALIZE IT WOULD BE DIFFICULT. I'M ASKING YOU IF YOU  
25 COULD IF THAT'S HOW YOU FELT.

1 JURY VENIRE MEMBER: IF -- IF THAT'S WHAT  
2 I DECIDED, I --

3 MR. NEWSOME: OKAY.

4 JURY VENIRE MEMBER: I GUESS I COULD.

5 MR. NEWSOME: ALL RIGHT, SIR. GIVEN THE  
6 AGE OF THE 16 YEAR OLD -- AND I GATHERED THAT YOU HAD  
7 GREAT RESERVATIONS ABOUT A 16 YEAR OLD BEING  
8 SENTENCED TO DIE. IF THE PERSON WERE NOW 18, WOULD  
9 IT MAKE IT POSSIBLE IF THE FACTS CALLED FOR IT FOR  
10 YOU TO DELIVER A DEATH SENTENCE? WE'RE NOT ASKING  
11 YOU WHAT YOU WOULD DO IN THIS PARTICULAR CASE, JUST  
12 WHETHER IT'S POSSIBLE.

3 JURY VENIRE MEMBER: I'M NOT SURE.

14 MR. NEWSOME: ALL RIGHT. NOT SURE. DOES  
15 THAT MEAN YOU COULD NOT OR IT'S POSSIBLE BUT PROBABLY  
16 NOT?

17 JURY VENIRE MEMBER: I THINK IT WOULD HAVE  
18 -- IT WOULD MEAN -- IT WOULD MEAN I HAVE RESERVATIONS  
19 ABOUT DOING IT.

20 MR. NEWSOME: ALL RIGHT. YOU WOULD HAVE  
21 RESERVATIONS, BUT YOU COULD POSSIBLY. IS THAT WHAT  
22 YOU'RE SAYING? AND AGAIN, NOBODY IS FAULTING YOU FOR  
23 WHATEVER BELIEF YOU HAVE HERE. IT'S JUST ABOUT --  
24 HAVING RESERVATIONS IS FINE. IT'S JUST A MATTER OF  
25 WHETHER IT'S POSSIBLE. HAVING RESERVATIONS DOES NOT

1 MEAN YOU COULD NOT. OKAY. AND IS IT POSSIBLE THAT  
2 YOU COULD IF THE SITUATION CALLED FOR IT?

3 JURY VENIRE MEMBER: I GUESS ANYTHING IS  
4 POSSIBLE.

5 MR. NEWSOME: ALL RIGHT, SIR. SO IT IS  
6 POSSIBLE. THAT'S YOUR ANSWER, YES OR NO? IT HAS TO  
7 BE A YES OR NO.

8 JURY VENIRE MEMBER: I THINK.

9 MR. NEWSOME: AND AGAIN, WE'RE NOT ASKING  
10 YOU --

11 JURY VENIRE MEMBER: I THINK I'M GOING TO  
12 HAVE TO SAY NO.

13 MR. NEWSOME: NO, IT'S NOT POSSIBLE?

14 JURY VENIRE MEMBER: I MEAN, ANYTHING IS  
15 POSSIBLE, BUT I DON'T -- I DON'T THINK -- I THINK I'M  
16 GOING TO HAVE TO SAY NO. I PROBABLY COULDN'T DO IT.

17 MR. NEWSOME: OKAY. IF IT WERE ON A SCALE  
18 OF 1 TO 100, YOU'RE SAYING 98 PERCENT WOULD BE NO OR  
19 ARE YOU SAYING 100 PERCENT?

20 JURY VENIRE MEMBER: 100 PERCENT.

21 MR. NEWSOME: 100 PERCENT, NO. OKAY. I  
22 HAVE NO FURTHER QUESTIONS.

23 THE COURT: HAVE HIM STEP OUTSIDE.

24 (JUROR NUMBER 271 IS DISMISSED  
25 FROM THE COURTROOM.)

1 MR. BAILEY: THE STATE WOULD SAY THAT MR.  
2 WADFORD IS NOT QUALIFIED UNDER THE LONGWORTH  
3 DECISION. HE'S SAID 100 PERSON NO, HE COULD NOT  
4 IMPOSE THE DEATH PENALTY.

5 MR. NEWSOME: I CAN'T DISAGREE WITH WHAT I  
6 HEARD, YOUR HONOR.

7 THE COURT: SIR?

8 MR. NEWSOME: I CAN'T DIS--- I THOUGHT HE  
9 WAS WITH ME THERE FOR A SECOND, BUT THEN I THINK HIS  
10 LAST FEW ANSWERS --

11 THE COURT: CLEARLY DEFINED HIS POSITION?

12 MR. NEWSOME: YES, SIR.

13 (JUROR NUMBER 271 ENTERS THE  
14 COURTROOM.)

15 THE COURT: MR. JUROR, WE APPRECIATE YOUR  
16 ATTENDANCE HERE TODAY, AND I'M PARTICULARLY  
17 APPRECIATIVE OF THE HEARTFELT RESPONSE TO THIS. IT'S  
18 A DIFFICULT QUESTION. WE WILL EXCUSE YOU FROM  
19 FURTHER PARTICIPATION. THANK YOU SO MUCH.

20 JURY VENIRE MEMBER: OKAY.

21 THE COURT: IT'S A TOUGH QUESTION TO  
22 ANSWER.

23 JURY VENIRE MEMBER: YES, SIR.

24 THE COURT: IT REALLY, REALLY IS.

25 (JUROR NUMBER 271 IS DISMISSED

1 FROM THE COURTROOM.)

2 THE COURT: BRING THE NEXT JUROR IN.

3 (JUROR NUMBER 295, A WHITE  
4 FEMALE, ENTERS THE COURTROOM.)

5 THE CLERK: COME AROUND. PLACE YOUR LEFT  
6 HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT HAND.  
7 PLEASE STATE YOUR NAME FOR THE RECORD.

8 JURY VENIRE MEMBER: PATRICIA WISE.

9 (JUROR NUMBER 295, HAVING BEEN FIRST DULY SWORN  
10 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

11 THE CLERK: PLEASE COME AROUND AND HAVE A  
12 SEAT.

13 THE COURT: MS. WISE, GOOD MORNING.

14 JURY VENIRE MEMBER: GOOD MORNING, SIR.

15 THE COURT: I KNOW YOU'RE GETTING TIRED OF  
16 WAITING BACK THERE, BUT THIS IS JUST A SLOW PROCESS.

17 JURY VENIRE MEMBER: YES, SIR.

18 THE COURT: MS. WISE, I NOTE THAT YOU ARE  
19 A SECRETARY AT ALADDIN'S GARAGE IN CHARGE OF THE  
20 BOOKKEEPING AND THAT SORT OF THING. YESTERDAY, YOU  
21 INDICATED THAT YOU MAY HAVE HEARD SOMETHING ABOUT  
22 THIS CASE. WOULD YOU ELABORATE ON THAT FOR ME?

23 JURY VENIRE MEMBER: YES, SIR. JUST WHAT  
24 I READ IN THE NEWSPAPER.

25 THE COURT: AND THAT WAS WHAT, A COUPLE OF

1 YEARS AGO OR WHATEVER?

2 JURY VENIRE MEMBER: YES, SIR, WHENEVER  
3 THE INCIDENT OCCURRED.

4 THE COURT: HAVE YOU DISCUSSED THE CASE  
5 WITH ANYONE SINCE THEN?

6 JURY VENIRE MEMBER: NO, SIR.

7 THE COURT: HAVE YOU FORMED ANY OPINION AS  
8 TO THE GUILT OR INNOCENCE OF ANYBODY?

9 JURY VENIRE MEMBER: NO, SIR.

10 THE COURT: CAN YOU -- IF SELECTED ON THE  
11 JURY, CAN YOU DISMISS WHAT YOU READ FROM THE  
12 NEWSPAPERS AND BASE YOUR DECISION ON WHAT YOU HEAR IN  
13 THIS COURTROOM?

14 JURY VENIRE MEMBER: YES, SIR.

15 THE COURT: DID YOU HAVE A CHANCE TO  
16 REVIEW THAT LETTER THAT --

17 JURY VENIRE MEMBER: YES, SIR.

18 THE COURT: DO YOU UNDERSTAND THAT IN THE  
19 CASE WHERE THE STATE SEEKS THE DEATH PENALTY, THERE'S  
20 TWO PARTS. THE FIRST PART, YOU DETERMINE THE GUILT  
21 OR INNOCENCE.

22 JURY VENIRE MEMBER: YES, SIR.

23 MR. NEWSOME: IF HE'S FOUND GUILTY, ONLY  
24 THEN DO YOU GO TO THE SECOND PART.

25 JURY VENIRE MEMBER: YES, SIR.

1 MR. NEWSOME: AND THE SECOND PART, THE  
2 JURY DECIDES WHAT SENTENCE IS APPROPRIATE, BE IT  
3 DEATH OR LIFE. YOU UNDERSTAND THAT?

4 JURY VENIRE MEMBER: YES, SIR.

5 MR. NEWSOME: YOU KNOW THERE'S THREE  
6 GROUPS OF PEOPLE THAT HAVE THREE DIFFERENT THOUGHTS,  
7 AND THERE'S NO RIGHT OR WRONG ANSWER. DIFFERENT  
8 PEOPLE FEEL DIFFERENT WAYS.

9 JURY VENIRE MEMBER: YES, SIR.

10 THE COURT: WOULD YOU BE IN THE FIRST,  
11 SECOND OR THIRD GROUP?

12 JURY VENIRE MEMBER: THIRD GROUP.

13 THE COURT: THIRD GROUP?

14 JURY VENIRE MEMBER: YES, SIR.

15 THE COURT: WHAT IS YOUR UNDERSTANDING OF  
16 THE THIRD GROUP?

17 JURY VENIRE MEMBER: THAT YOU WOULD MAKE  
18 YOUR DECISION AFTER YOU HEARD ALL OF THE --  
19 EVERYTHING THAT EVERYBODY HAD TO SAY.

20 THE COURT: THAT'S RIGHT.

21 JURY VENIRE MEMBER: THEN YOU WOULD  
22 DECIDE.

23 THE COURT: YES, SIR.

24 MR. BAILEY: I'M WALTER BAILEY. I WANT TO  
25 ASK YOU A COUPLE OF MORE QUESTIONS.

1 JURY VENIRE MEMBER: YES, SIR.

2 MR. BAILEY: IF WE REACH THE SECOND PHASE  
3 OF THIS TRIAL, WHICH MEANS THAT THIS JURY FINDS THE  
4 DEFENDANT GUILTY OF MURDER IN THE FIRST PART --

5 JURY VENIRE MEMBER: YES.

6 MR. BAILEY: -- THEN YOU UNDERSTAND THAT  
7 WHATEVER THE JURY DECIDES THE PENALTY SHOULD BE, THAT  
8 IS LIFE IMPRISONMENT OR THE DEATH PENALTY, THAT'S  
9 WHAT WILL HAPPEN. THE JURY MAKES THAT DECISION, NOT  
10 THE JUDGE.

11 JURY VENIRE MEMBER: YES, SIR.

12 MR. BAILEY: IF YOU WERE ON A JURY IN A  
13 CASE LIKE THIS, AND YOU AND THE OTHER ELEVEN JURORS,  
14 AFTER HEARING ALL OF THE EVIDENCE AND THE JUDGE TOLD  
15 YOU WHAT THE LAW IS, IF YOU DECIDED BETWEEN THOSE TWO  
16 CHOICES ON THE DEATH PENALTY, THEN EACH JUROR WOULD  
17 BE ASKED TO SIGN THEIR NAME TO A DEATH VERDICT FORM.  
18 THE RESULT OF SIGNING THAT PAPER WOULD BE THAT THAT  
19 DEFENDANT WOULD ACTUALLY BE PUT TO DEATH. COULD YOU  
20 SIGN THAT FORM?

21 JURY VENIRE MEMBER: YES, SIR.

22 MR. BAILEY: IF YOU HAD ALREADY VOTED WITH  
23 THE OTHER JURORS.

24 JURY VENIRE MEMBER: YES, SIR.

25 MR. BAILEY: AND COULD YOU COME OUT IN THE

1 COURT AND ANNOUNCE THAT VERDICT?

2 JURY VENIRE MEMBER: YES, SIR.

3 MR. BAILEY: IN FRONT OF WHOEVER WAS OUT  
4 IN THE COURTROOM?

5 JURY VENIRE MEMBER: ME PERSONALLY?

6 MR. BAILEY: WELL, NOT YOU BY YOURSELF,  
7 BUT EACH OF THE TWELVE JURORS NAMES WOULD BE CALLED  
8 INDIVIDUALLY.

9 JURY VENIRE MEMBER: YES, SIR.

10 MR. BAILEY: ALL RIGHT. NOW, IN THIS  
11 PARTICULAR CASE, THE DEFENDANT OBVIOUSLY IS A YOUNG  
12 BLACK MALE.

13 JURY VENIRE MEMBER: YES, SIR.

14 MR. BAILEY: THE VICTIM OF THE SHOOTING  
15 THAT DIED IS A YOUNG WHITE MALE. THERE'S A YOUNG  
16 WHITE FEMALE WHO WAS SHOT BUT SURVIVED HER GUNSHOTS.  
17 WOULD THE FACT THAT YOU'VE GOT WHITE VICTIMS AND A  
18 BLACK DEFENDANT CAUSE YOU TO VIEW THE CASE ANY  
19 DIFFERENTLY THAN IF THE CASE WERE REVERSED?

20 JURY VENIRE MEMBER: NO, SIR.

21 MR. BAILEY: OKAY. I NOTICE FROM YOUR  
22 QUESTIONNAIRE THAT YOU HAVE A SON WHO'S 17 NOW.

23 JURY VENIRE MEMBER: YES, SIR.

24 MR. BAILEY: ALL RIGHT. IN THIS  
25 PARTICULAR CASE, THE DEFENDANT IS 18. AT THE TIME

1 THE STATE ALLEGES THE MURDER OCCURRED, HE WAS 16.  
2 AND YOU UNDERSTAND THAT YOU WOULD HAVE TO BASE YOUR  
3 DECISION IN THE GUILT PHASE AND THE PENALTY PHASE  
4 SOLELY ON THE LAW THE JUDGE GIVES YOU AND THE SWORN  
5 TESTIMONY AND EVIDENCE THAT COMES IN?

6 JURY VENIRE MEMBER: YES, SIR.

7 MR. BAILEY: COULD YOU PUT ASIDE THE FACT  
8 THAT YOU'VE GOT A SON THAT'S ABOUT HIS AGE AND IF THE  
9 CASE WAS BAD ENOUGH IMPOSE THE DEATH PENALTY?

10 JURY VENIRE MEMBER: YES, SIR.

11 MR. BAILEY: ON A PERSON WHO WAS 16 AT THE  
12 TIME THEY COMMITTED THE MURDER AND 18 AT THE TIME OF  
13 TRIAL?

14 JURY VENIRE MEMBER: YES, SIR.

15 MR. BAILEY: THAT'S ALL I HAVE. THANK YOU  
16 VERY MUCH.

17 JURY VENIRE MEMBER: YES, SIR.

18 MR. NEWSOME: MS. WISE, I NOTICE THAT YOU  
19 ATTEND THE FIRST BAPTIST CHURCH?

20 JURY VENIRE MEMBER: YES, SIR.

21 MR. NEWSOME: DOES YOUR CHURCH HAVE A  
22 STATED POSITION OR PREFERENCE ON THE DEATH PENALTY?

23 JURY VENIRE MEMBER: IF THEY DO, I'M NOT  
24 -- I DON'T KNOW.

25 MR. NEWSOME: OKAY. AND WHAT WOULD YOUR

1 VIEWS GENERALLY BE ABOUT THE DEATH PENALTY?

2 JURY VENIRE MEMBER: I THINK IT ALL  
3 DEPENDS ON THE CASE, ON WHAT HAPPENED, YOU KNOW.

4 MR. NEWSOME: OKAY. SO YOU THINK THAT  
5 THERE ARE SOME CASES WHERE FOLKS HAVE BEEN CONVICTED  
6 OF MURDER AND A LIFE SENTENCE WOULD BE APPROPRIATE?

7 JURY VENIRE MEMBER: YES, SIR.

8 MR. NEWSOME: ALL RIGHT. DO YOU CONSIDER  
9 THAT TEENAGERS WHO COMMIT CRIMES ARE AS ACCOUNTABLE  
10 AS ADULTS?

11 JURY VENIRE MEMBER: YES, SIR.

12 MR. NEWSOME: OKAY. DO YOU THINK THERE IS  
13 EVER ANY DIFFERENCE IN AGE THAT WOULD CAUSE YOU TO  
14 GIVE DIFFERENT ACCOUNTABILITY?

15 JURY VENIRE MEMBER: NO, SIR.

16 MR. NEWSOME: OKAY. SO IF A FIVE YEAR OLD  
17 COMMITTED A CRIME, THEY SHOULD BE PUNISHED?

18 JURY VENIRE MEMBER: I DIDN'T REALIZE YOU  
19 MEANT THAT YOUNG NOW. OF COURSE, THAT MIGHT BE  
20 DIFFERENT.

21 MR. NEWSOME: SO THERE IS SOME AGE  
22 DIFFERENTIAL YOU WOULD CONSIDER?

23 JURY VENIRE MEMBER: YEAH.

24 MR. NEWSOME: BUT YOU DON'T KNOW WHAT AGE  
25 THAT MIGHT BE?

1 MR. BAILEY: YOUR HONOR, I --

2 THE COURT: I SUSTAIN THAT. THAT'S KIND  
3 OF A NEBULOUS SORT OF QUESTION.

4 MR. NEWSOME: ARE THERE -- WHAT OTHER  
5 THINGS DO YOU THINK YOU WOULD CONSIDER THAT YOU WOULD  
6 TAKE INTO ACCOUNT AS FAR AS MAKING A DECISION? WHAT  
7 ARE THE IMPORTANT --

8 MR. BAILEY: YOUR HONOR, I DIDN'T -- I  
9 DON'T THINK I HEARD THE QUESTION. IF I HEARD IT  
10 RIGHT, I OBJECT TO IT.

11 THE COURT: REPHRASE THAT QUESTION.

12 MR. NEWSOME: ALL RIGHT.

13 THE COURT: SHE WOULD TAKE INTO ACCOUNT  
14 THE FACTS AND CIRCUMSTANCES ARISING IN THE INCIDENT.

15 MR. NEWSOME: WHAT OTHER CIRCUMSTANCES DO  
16 YOU THINK ARE SIGNIFICANT, MULTIPLE MURDER OR --

17 MR. BAILEY: OBJECTION. OBJECTION.  
18 STATING IT AROUND HYPOTHETICALS.

19 THE COURT: REPHRASE THE QUESTION.

20 MR. NEWSOME: WHAT ARE THE CIRCUMSTANCES  
21 THAT YOU THINK ARE IMPORTANT IN MAKING A DECISION AS  
22 TO WHETHER YOU WOULD CONSIDER LIFE OR DEATH?

23 MR. BAILEY: YOUR HONOR, I -- I WOULD  
24 OBJECT TO THAT. IT'S JUST AN OPEN-ENDED HYPOTHETICAL  
25 QUESTION WHERE HE'S STATING AROUND POSSIBLE

1 MITIGATION.

2 THE COURT: ASK SPECIFICALLY WHAT  
3 CIRCUMSTANCES YOU ARE REFERRING TO. THAT WAY --

4 MR. NEWSOME: IF SOMEONE WERE UNDER THE,  
5 YOU KNOW, INFLUENCE OF ALCOHOL AND A KILLING TOOK  
6 PLACE, WOULD YOU TAKE THAT INTO ACCOUNT IN  
7 CONSIDERING PUNISHMENT?

8 JURY VENIRE MEMBER: YES, SIR.

9 MR. NEWSOME: ALL RIGHT. I HAVE NO  
10 FURTHER QUESTIONS.

11 THE COURT: ASK HER TO STEP OUT.

12 (JUROR NUMBER 295 IS DISMISSED  
13 FROM THE COURTROOM.)

14 MR. BAILEY: QUALIFIED, YOUR HONOR.

15 MR. NEWSOME: QUALIFIED, YOUR HONOR.

16 THE COURT: MR. NEWSOME.

17 MR. NEWSOME: YES, SIR.

18 THE COURT: I DON'T WANT TO RESTRICT YOU  
19 IN ANY WAY, AND I HAVE NOT OR WOULD NOT, BUT WHEN YOU  
20 ASK AN OPEN-ENDED QUESTION, SHE'S JUST FURTHER AWAY  
21 FROM WHAT YOU MEAN. I HAVE NO PROBLEM WITH YOU  
22 ASKING SPECIFIC QUESTIONS LIKE ALCOHOL, AGE, MENTAL  
23 CAPACITY, THAT SORT OF THING, BECAUSE THOSE ARE  
24 THINGS THAT WILL BE IN THE TRIAL OF THIS CASE. SO  
25 LET -- I DON'T WANT TO LIMIT YOU. YOU UNDERSTAND

1 MR. NEWSOME: YES, SIR.

2 THE COURT: AND I WOULD NOT DO THAT.

3 MR. NEWSOME: RIGHT. I WOULD JUST POINT  
4 OUT THAT I'VE ALLOWED THE SOLICITOR TO ASK OPEN-ENDED  
5 QUESTIONS ON A SOMEWHAT INNOCUOUS BASIS, BUT I GUESS  
6 WE CAN BOTH DO THE SAME THING FROM NOW ON.

7 THE COURT: WELL, YOU CAN. WHAT'S FAIR  
8 FOR ONE IS FAIR FOR EVERYONE, SO IF HE OPEN ENDS, I  
9 WILL LET YOU OPEN END TOO, BUT WHEN YOU ASK ANY  
10 CIRCUMSTANCE, THAT'S DIFFICULT FOR HER. SHE'S  
11 QUALIFIED.

12 (JUROR NUMBER 295 ENTERS THE  
13 COURTROOM.)

14 THE COURT: MADAM JUROR, THANK YOU SO MUCH  
15 FOR YOUR ANSWERS TODAY AND ALL, IN CANDOR, AND  
16 EVERYBODY APPRECIATES IT. WE ARE QUALIFYING 35  
17 JURORS FROM WHICH 12 WILL BE SELECTED, PLUS 2  
18 ALTERNATES. YOU HAVE BEEN FOUND TO HAVE BEEN ONE OF  
19 THE 35 QUALIFIED JURORS, SO I WANT YOU TO PACK SUCH  
20 PERSONAL BELONGINGS AS YOU WILL NEED IN THE EVENT YOU  
21 ARE SELECTED FOR ONE OF THE 14. I WOULD RESPECTFULLY  
22 REQUEST THAT YOU REPORT ACROSS THE STREET TOMORROW  
23 AFTERNOON AT 2:30 WITH YOUR BAGS. AND VERY SHORTLY  
24 THEREAFTER, YOU WILL KNOW WHETHER YOU ARE OR ARE NOT  
5 ONE OF THE 14.

1 JURY VENIRE MEMBER: ALL RIGHT, SIR.

2 THE COURT: DO NOT DISCUSS THIS CASE. T

3 NO ONE DISCUSS IT WITH YOU. DON'T DISCUSS THE  
4 QUESTIONS AND ANSWERS THAT WENT ON IN HERE. SO I'LL  
5 SEE YOU TOMORROW AFTERNOON AT 2:30.

6 JURY VENIRE MEMBER: OKAY. THANK YOU.

7 THE COURT: THANK YOU SO MUCH.

8 (JUROR NUMBER 295 IS DISMISSED  
9 FROM THE COURTROOM.)

10 THE COURT: GENTLEMEN, COME FORWARD.

11 (WHEREUPON, COUNSEL APPROACHED  
12 THE BENCH FOR AN OFF-THE-RECORD  
13 DISCUSSION.)

14 THE COURT: OKAY. CALL THE NEXT ONE.

15 (JUROR NUMBER 179, A WHITE  
16 FEMALE, ENTERS THE COURTROOM.)

17 THE CLERK: IF YOU WOULD, PLEASE COME AND  
18 PLACE YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR  
19 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

20 JURY VENIRE MEMBER: NATALIE MCVICKER.

21 (JUROR NUMBER 179, HAVING BEEN FIRST DULY SWORN  
22 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

23 THE CLERK: PLEASE COME AROUND AND HAVE A  
24 SEAT.

25 THE COURT: GOOD MORNING, MS. MCVICKER.

1 JURY VENIRE MEMBER: GOOD MORNING.

2 THE COURT: WE WANT TO ASK OF YOU SOME  
3 QUESTIONS. WE WANT TO APOLOGIZE FOR KEEPING YOU  
4 LOCKED UP BACK THERE. IS IT MCVICKER?

5 JURY VENIRE MEMBER: YES, SIR.

6 THE COURT: MS. MCVICKER, DID YOU HAVE THE  
7 OPPORTUNITY TO READ THE LETTER THAT DESCRIBES THE  
8 THREE TYPES OF JURORS IN A CASE OF THIS KIND?

9 JURY VENIRE MEMBER: YES, SIR.

10 THE COURT: YOU WOULD UNDERSTAND THAT THIS  
11 CASE COULD BE A TWO-PART TRIAL. THE FIRST PART IS TO  
12 DETERMINE THE GUILT OR INNOCENCE, YOU UNDERSTAND. IF  
13 HE'S FOUND NOT GUILTY, WE STOP THERE. IF THE JURY  
14 HAS FOUND HIM GUILTY UNANIMOUSLY BEYOND A REASONABLE  
15 DOUBT, THEN UNDER OUR PROCEDURE, THE JURY ITSELF WILL  
16 CONSIDER WHAT PENALTY TO GIVE. IN THAT PROCEEDING,  
17 THE JURY WILL LISTEN TO WITNESSES FROM THE STATE  
18 URGING THAT HE BE GIVEN THE APPROPRIATE SENTENCE OF  
19 DEATH. EQUALLY, THE DEFENDANT WILL BE ISSUED --  
20 GIVING TESTIMONY SHOWING THAT HE SHOULD BE GIVEN AN  
21 APPROPRIATE SENTENCE OF LIFE, YOU UNDERSTAND. THE  
22 JURY WOULD DETERMINE WHETHER LIFE IMPRISONMENT IS THE  
23 APPROPRIATE SENTENCE OR DEATH IS THE APPROPRIATE  
24 SENTENCE. THE JURY WOULD MAKE THAT RECOMMENDATION.  
25 AND WHATEVER THE RECOMMENDATION IS, THIS JUDGE WILL

1 GIVE IT. YOU UNDERSTAND THAT?

2 JURY VENIRE MEMBER: YES, SIR.

3 THE COURT: NOW, IN CONSIDERATION OF THAT  
4 ISSUE, THERE ARE THREE TYPES OF JURORS. AND THERE'S  
5 NO RIGHT OR WRONG ANSWERS. ONE TYPE OF JUROR SAYS  
6 HAVING FOUND THE DEFENDANT GUILTY OF MURDER, I WILL  
7 ALWAYS VOTE FOR THE DEATH PENALTY. A SECOND GROUP OF  
8 PEOPLE WHO SAY FOR GOOD REASON TO THEM, EVEN THOUGH  
9 WE FOUND HIM GUILTY OF MURDER, I WILL NEVER VOTE FOR  
10 THE DEATH PENALTY. THERE IS A THIRD GROUP WHO SAY WE  
11 FIND HIM GUILTY OF MURDER. I NOW AM WILLING TO  
12 LISTEN TO THE FACTS WHICH SUGGEST THAT DEATH IS THE  
13 APPROPRIATE SENTENCE. EQUALLY IMPORTANT, I WILL  
14 LISTEN TO THE FACTS WHICH SUGGEST THAT LIFE IS THE  
15 APPROPRIATE SENTENCE AND I CAN IMPOSE DEATH OR LIFE  
16 DEPENDING ON HOW I FEEL. WOULD YOU BE ONE, TWO OR  
17 THREE?

18 JURY VENIRE MEMBER: THREE.

19 THE COURT: MA'AM?

20 JURY VENIRE MEMBER: THREE.

21 THE COURT: AND TELL ME WHAT YOU THINK  
22 THREE SAYS, PLEASE.

23 JURY VENIRE MEMBER: THREE?

24 THE COURT: THREE.

25 JURY VENIRE MEMBER: I HAVE TO LISTEN T

1 WHAT'S SAID IN ORDER TO MAKE UP MY OWN MIND AND MAKE  
2 A DECISION.

3 THE COURT: AND YOU CAN DO EITHER ONE ON  
4 WHAT YOUR MIND TELLS YOU TO DO?

5 JURY VENIRE MEMBER: ON WHAT I HEAR. ON  
6 WHAT I HEAR.

7 THE COURT: NOW, YOU UNDERSTAND -- AND LET  
8 ME SAY THIS TO YOU. UNDER OUR PROCEDURE, IF A JURY  
9 IN THE JURY ROOM, IN THE PRIVACY OF THE JURY ROOM,  
10 RECOMMENDS THE DEATH PENALTY, OUR SYSTEM PROVIDES  
11 THAT THAT FOREMAN AND EACH MEMBER OF THE JURY WILL  
12 SIGN A FORM TO THAT EFFECT. DO YOU UNDERSTAND THAT?

13 JURY VENIRE MEMBER: YES, SIR.

14 THE COURT: AND COULD YOU, IF THE JURY IN  
15 THE CONFINES OF THEIR JURY ROOM, UNANIMOUSLY  
16 RECOMMEND DEATH, CAN YOU SIGN SUCH A FORM?

17 JURY VENIRE MEMBER: IF THAT'S WHAT I  
18 DECIDED.

19 THE COURT: YES, IF -- ONLY IF, NOW.

20 JURY VENIRE MEMBER: IF THAT'S WHAT I  
21 DECIDED, YES, I COULD SIGN IT.

22 THE COURT: NO, I WOULDN'T WANT YOU TO  
23 SIGN IT UNLESS THAT'S YOUR RECOMMENDATION.

24 JURY VENIRE MEMBER: YES. THAT'S WHAT I  
25 UNDERSTOOD. I COULD SIGN IT.

1 THE COURT: GO AHEAD.

2 MR. BAILEY: I WANT TO ASK A COUPLE OF  
3 FOLLOW-UP QUESTIONS. THE NEXT THING THAT WOULD  
4 HAPPEN IF YOU WERE ON A JURY AND YOU VOTED FOR THE  
5 DEATH PENALTY AND YOU SIGNED THE FORM ALONG WITH THE  
6 OTHER JURORS WOULD BE THAT YOU WOULD HAVE TO COME OUT  
7 IN OPEN COURT AND ANNOUNCE THAT DECISION. EACH  
8 JUROR'S NAME WOULD BE CALLED SEPARATELY BY MR.  
9 WANNAMAKER OR THE JUDGE. COULD YOU ANNOUNCE YOUR  
10 DECISION IN OPEN COURT IF THAT WAS YOUR DECISION?

11 JURY VENIRE MEMBER: WELL, LIKE I SAID, I  
12 MEAN, IF THAT'S THE DECISION I MAKE, I'VE GOT TO  
13 STAND BY WHATEVER I CHOOSE. I MEAN, I HAVE TO STAND  
14 UP FOR WHAT I DECIDE.

15 MR. BAILEY: AND YOU UNDERSTAND THAT THE  
16 JURY'S DECISION IS JUST WHAT IT SAYS. IT IS A  
17 DECISION AND NOT A RECOMMENDATION.

18 JURY VENIRE MEMBER: RIGHT.

19 MR. BAILEY: IN THIS PARTICULAR CASE, THE  
20 DEFENDANT IS OBVIOUSLY A YOUNG BLACK MALE. THE  
21 EVIDENCE WOULD BE THAT THE VICTIM THAT WAS KILLED WAS  
22 A YOUNG WHITE MALE. THERE IS ALSO A YOUNG WHITE  
23 WOMAN WHO WAS SHOT THAT SURVIVED. WOULD THE FACT  
24 THAT THERE IS A DIFFERENCE IN THE RACES BETWEEN THE  
25 VICTIM AND THE DEFENDANT CAUSE YOU TO THINK ANY

1 DIFFERENT THAN IF IT WAS THE REVERSE SITUATION?

2 JURY VENIRE MEMBER: I FEEL THAT A BLACK  
3 PERSON IS JUST AS EQUAL AS I AM.

4 MR. BAILEY: SO IT WON'T MAKE A  
5 DIFFERENCE?

6 JURY VENIRE MEMBER: THEY ARE JUST AS  
7 EQUAL AS I AM. HUH-UH.

8 MR. BAILEY: THE STATE ALLEGES THAT AT THE  
9 TIME THE DEFENDANT COMMITTED THE MURDER, HE WAS 16.  
10 HE'S NOW 18. IF THE CASE IS BAD ENOUGH, COULD YOU AS  
11 A JUROR IMPOSE THE DEATH PENALTY ON A PERSON WHO IS  
12 18 AT THE TIME OF TRIAL, BUT 16 AT THE TIME HE  
13 COMMITTED THE MURDER?

14 JURY VENIRE MEMBER: COULD YOU REPEAT THAT  
15 AGAIN FOR ME.

16 MR. BAILEY: OKAY.

17 JURY VENIRE MEMBER: I MEAN, I THINK I  
18 UNDERSTAND WHAT YOU'RE SAYING. LIKE I SAID EARLIER,  
19 I HAVE TO JUST LISTEN TO EVERYTHING THAT'S SAID, AND  
20 I CAN'T SAY ONE WAY OR THE OTHER, BUT I WOULD JUST  
21 HAVE TO -- AND PLEASE UNDERSTAND ME. I'M NOT TRYING  
22 TO BE DIFFICULT.

23 MR. BAILEY: NO, NO. I MIGHT NOT BE  
24 ASKING THE QUESTIONS THE RIGHT WAY. BUT WHAT I'M  
25 TRYING TO GET AT -- AND THERE ARE NO RIGHT OR WRONG

1 ANSWERS.

2 JURY VENIRE MEMBER: RIGHT.

3 MR. BAILEY: AND I'M NOT TRYING TO GET YOU  
4 TO TELL ME WHAT YOU WOULD DO IN THIS CASE.

5 JURY VENIRE MEMBER: THAT'S WHAT I MEAN.  
6 I CAN'T.

7 MR. BAILEY: YOU HAVEN'T HEARD THE FACTS.

8 JURY VENIRE MEMBER: RIGHT.

9 MR. BAILEY: BUT IF THOSE FACTS WERE BAD  
10 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY ON  
11 SOMEBODY WHO WAS 16 AT THE TIME THEY COMMITTED THE  
12 MURDER?

13 JURY VENIRE MEMBER: IF I LISTENED TO THE  
14 EVIDENCE AND I THOUGHT HE WAS GUILTY -- I MEAN, I  
15 CAN'T SIT HERE AND SAY WHAT I WOULD DO IN A  
16 CIRCUMSTANCE I'VE NEVER BEEN IN BEFORE. I WOULD HAVE  
17 TO WAIT UNTIL I GOT TO THAT POINT TO ANSWER IT.  
18 OKAY? HONESTLY, I CAN'T SIT HERE AND SAY. YOU KNOW,  
19 I'VE NEVER BEEN IN THAT SITUATION. I DON'T KNOW.

20 MR. BAILEY: ALL RIGHT.

21 JURY VENIRE MEMBER: IF I MAKE A DECISION  
22 ON SOMETHING, I WILL STAND UP FOR WHAT I'VE DECIDED,  
23 YOU KNOW, BUT --

24 MR. BAILEY: I'M JUST TRYING TO FIND OUT  
25 WHETHER OR NOT THE DEFENDANT'S AGE WOULD ABSOLUTEI

1 PROHIBIT YOU FROM --

2 JURY VENIRE MEMBER: NO. AGE -- AGE DON'T  
3 -- NO.

4 MR. BAILEY: OKAY.

5 JURY VENIRE MEMBER: HUH-UH. IN MY  
6 OPINION, AGE GOES LIKE THE RACE DOES. THERE'S NO --  
7 I MEAN, IT MIGHT HAVE BEARINGS ON, YOU KNOW, HIM.

8 MR. BAILEY: RIGHT.

9 JURY VENIRE MEMBER: BUT AS FAR AS THE  
10 CRIME ITSELF, I DON'T SEE WHERE AGE HAD ANYTHING TO  
11 DO WITH THE CRIME ITSELF.

12 MR. BAILEY: OKAY.

13 JURY VENIRE MEMBER: REALLY, I CAN'T SIT  
14 HERE AND SAY WHAT I WOULD DO BECAUSE I DON'T KNOW.

15 MR. BAILEY: RIGHT. ABSOLUTELY. NOW,  
16 THAT SECOND PHASE OF THE TRIAL IS THE PART OF THE  
17 TRIAL WHERE I WOULD BE PUTTING UP EVIDENCE IN  
18 AGGRAVATION TO CONVINCING YOU AS A JUROR TO BRING BACK  
19 THE DEATH PENALTY. THE DEFENSE COULD BRING UP  
20 EVIDENCE IN MITIGATION TO TRY TO CONVINCING YOU TO  
21 BRING BACK A LIFE SENTENCE. IF ONE OF THOSE AREAS OF  
22 MITIGATION CONCERNED AGE, WOULD YOU CONSIDER THE AGE  
23 OF THE DEFENDANT?

24 JURY VENIRE MEMBER: I DON'T KNOW.

5 MR. BAILEY: OKAY.

1 JURY VENIRE MEMBER: I REALLY DON'T -- I  
2 DON'T KNOW. I HAVEN'T THOUGHT ABOUT IT ENOUGH TO

3 MR. BAILEY: ALL RIGHT.

4 JURY VENIRE MEMBER: I JUST DON'T KNOW.

5 MR. BAILEY: ALL RIGHT.

6 JURY VENIRE MEMBER: I WOULD HAVE TO HEAR  
7 ALL OF THE OTHER FACTS LEADING INTO IT REALLY -- I  
8 JUST CANNOT SIT HERE AND SAY -- I DON'T KNOW ANYTHING  
9 ABOUT IT. YOU KNOW, I CAN'T --

10 MR. BAILEY: WOULD YOU LISTEN TO  
11 EVERYTHING THAT CAME OUT?

12 JURY VENIRE MEMBER: I WOULD HAVE TO IN  
13 ORDER TO MAKE A DECISION. I WOULD HAVE TO.

14 MR. BAILEY: ALL RIGHT. THAT'S ALL I  
15 HAVE.

16 JURY VENIRE MEMBER: OKAY. I'M SORRY.

17 MR. NEWSOME: HOW LONG HAVE YOU LIVED IN  
18 ST. MATTHEWS?

19 JURY VENIRE MEMBER: ALMOST 12 YEARS.

20 MR. NEWSOME: ALMOST 12 YEARS?

21 JURY VENIRE MEMBER: YES.

22 MR. NEWSOME: ARE YOU FROM THIS AREA  
23 ORIGINALLY?

24 JURY VENIRE MEMBER: YES, SIR.

25 MR. NEWSOME: WHERE DID YOU GROW UP?

1 JURY VENIRE MEMBER: CHARLESTON.

2 MR. NEWSOME: I NOTICE YOU HAVE CHILDREN.

3 WHERE DO THEY GO TO SCHOOL?

4 JURY VENIRE MEMBER: GUINYARD --

5 MR. NEWSOME: OKAY.

6 JURY VENIRE MEMBER: -- ELEMENTARY HERE IN  
7 ST. MATTHEWS.

8 MR. NEWSOME: YOU ATTEND CONGAREE BAPTIST  
9 CHURCH. DOES YOUR CHURCH HAVE ANY PREFERENCE IN THE  
10 DIRECTION OF THE DEATH PENALTY, EITHER FOR OR  
11 AGAINST?

12 JURY VENIRE MEMBER: OKAY. I REALLY DON'T  
13 KNOW. I DO NOT GO THAT OFTEN BECAUSE I WORK SIX AND  
14 SEVEN DAYS A WEEK, BUT I MAKE SURE MY CHILDREN ARE IN  
15 CHURCH, SO --

16 MR. NEWSOME: THANK YOU. I HAVE NO  
17 FURTHER QUESTIONS.

18 THE COURT: STEP OUTSIDE.

19 (JUROR NUMBER 179 IS DISMISSED  
20 FROM THE COURTROOM.)

21 MR. BAILEY: QUALIFIED, YOUR HONOR.

22 MR. NEWSOME: QUALIFIED, YOUR HONOR.

23 (JUROR NUMBER 179 ENTERS THE  
24 COURTROOM.)

25 THE COURT: MADAM JUROR, WE ARE SELECTING

1 QUALIFIED JURORS, AND YOU HAVE BEEN FOUND QUALIFIED  
2 BY THE LAWYERS AND THIS COURT. FROM THAT NUMBER, WE  
3 WILL BE TAKING 12 AND 2 ALTERNATES, SO 14. YOU MAY  
4 OR MAY NOT BE INCLUDED IN THAT, BUT YOU ARE CERTAINLY  
5 FOUND TO BE QUALIFIED TO SERVE. I WANT YOU TO PACK  
6 YOUR BAGS AND BE BACK ACROSS THE STREET AT THE ANNEX  
7 TOMORROW AFTERNOON AT 2:30, AND WE WILL DECIDE VERY  
8 QUICKLY WHETHER YOU WILL BE ONE OF THE 14 OR NOT.

9 JURY VENIRE MEMBER: OKAY.

10 THE COURT: SO DO NOT DISCUSS ANY ASPECT  
11 OF THIS CASE, AND DO NOT DISCUSS THE QUESTIONS AND  
12 ANSWERS HERE. JUST BE READY TO GO AND READY TO SERVE  
13 IF SELECTED.

14 JURY VENIRE MEMBER: OKAY.

15 THE COURT: THANK YOU SO MUCH.

16 JURY VENIRE MEMBER: THANK YOU.

17 (JUROR NUMBER 179 IS DISMISSED  
18 FROM THE COURTROOM.)

19 (JUROR NUMBER 92, A WHITE  
20 FEMALE, ENTERS THE COURTROOM.)

21 THE CLERK: PLEASE COME AROUND, PLACE YOUR  
22 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.  
23 PLEASE STATE YOUR NAME FOR THE RECORD.

24 JURY VENIRE MEMBER: SHANNON HARDWICK.

25 (JUROR NUMBER 92, HAVING BEEN FIRST DULY SWORN

1 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

2 THE CLERK: PLEASE HAVE A SEAT IN THE  
3 WITNESS BOX.

4 THE COURT: MS. HARDWICK.

5 JURY VENIRE MEMBER: UH-HUH.

6 THE COURT: STILL MORNING, ALTHOUGH I KNOW  
7 IT SEEMS LIKE FOREVER AFTER YOU SITTING BACK THERE IN  
8 THE JURY ROOM. MS. HARDWICK, I AS THE JUDGE AND  
9 THESE ATTORNEYS WOULD UNDERSTAND THAT THIS COURTROOM  
10 IS NEW TO YOU, AND WE WOULD UNDERSTAND THAT YOU'RE  
11 PROBABLY NERVOUS. IF THEY SENT ME IN TO WHERE YOU  
12 WORKED WITH NOBODY AND NO FRIENDS, I WOULD BE NERVOUS  
13 TOO. SO TO THE EXTENT YOU CAN, I WANT YOU TO SIT  
14 BACK, RELAX. I WANT YOU TO UNDERSTAND THAT NOBODY  
15 HERE WOULD ASK YOU ANYTHING THAT WOULD INVADE YOUR  
16 PRIVACY. YOU UNDERSTAND THAT.

17 YOU DO NEED TO UNDERSTAND, THOUGH, THAT IN A  
18 CASE SUCH AS THIS WHERE THE STATE SEEKS THE PENALTY  
19 OF DEATH, IF, AND ONLY IF, THE JURY FINDS HIM GUILTY  
20 BEYOND A REASONABLE DOUBT, WE MUST INQUIRE INTO YOUR  
21 VIEWS ABOUT THE IMPOSITION OF THE DEATH PENALTY. DO  
22 YOU UNDERSTAND THAT?

23 JURY VENIRE MEMBER: UH-HUH. YES, SIR.

24 THE COURT: NOW, FIRST, LET ME SAY THAT  
25 UNLESS THE JURY FINDS HIM GUILTY BEYOND A REASONABLE

1 DOUBT, YOU DON'T EVEN GET INTO THAT. YOU UNDERSTAND?  
2 IF -- AND I USE THE WORD ADVISEDLY -- IF THE JURY  
3 UNANIMOUSLY, ALL TWELVE, FIND HIM GUILTY OF MURDER  
4 BEYOND A REASONABLE DOUBT, WE THEN GO INTO THE PHASE  
5 THAT'S THE PUNISHMENT PHASE. IN THE PUNISHMENT  
6 PHASE, THE JURY WILL LISTEN TO CIRCUMSTANCES OF  
7 AGGRAVATION WHERE THE STATE WOULD ATTEMPT TO CONVINC  
8 YOU THAT DEATH IS THE APPROPRIATE PUNISHMENT. IN  
9 THAT PHASE, EQUALLY IMPORTANT, THE DEFENSE WILL BE  
10 INTRODUCING TESTIMONY IN MITIGATION HOPING TO  
11 CONVINC YOU THAT EVEN THOUGH HE'S CONVICTED OF  
12 MURDER, THAT LIFE IMPRISONMENT IS THE APPROPRIATE  
13 PUNISHMENT. NOW, DO YOU UNDERSTAND ME SO FAR?

14 JURY VENIRE MEMBER: YES, SIR.

15 THE COURT: ALL RIGHT. I DO NOT ASK YOU  
16 WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T  
17 HEARD THE FACTS. BUT IN EVERY CASE, THERE ARE JURORS  
18 WHO GENERALLY FALL INTO THREE CATEGORIES IN THIS  
19 ISSUE. THERE ARE JURORS WHO SAY HAVING CONVICTED OF  
20 MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY.  
21 THERE ARE JURORS WHO SAY EVEN THOUGH WE FOUND HIM  
22 GUILTY OF MURDER, I CAN NEVER BE FOR THE DEATH  
23 PENALTY, EVER. THERE ARE JURORS WHO SAY WE CONVICTED  
24 HIM OF MURDER. I'M GOING TO LISTEN TO THE FACTS ON  
25 BOTH SIDES AND THEN I WILL MAKE UP MY MIND. WOULD

1 YOU WILL FALL INTO THE FIRST, SECOND OR THIRD GROUP?

2 JURY VENIRE MEMBER: THE FIRST.

3 THE COURT: THE FIRST. AND THE FIRST  
4 GROUP NOW SAYS IF WE FIND HIM GUILTY OF MURDER, WE'LL  
5 ALWAYS BE FOR THE DEATH PENALTY. IS THAT WHAT YOU'RE  
6 SAYING?

7 JURY VENIRE MEMBER: YES, SIR.

8 THE COURT: YOU ARE SAYING THAT YOU WOULD  
9 NOT -- AND PLEASE, THAT'S YOUR VIEWS AND YOU'RE  
10 ENTITLED TO THEM. ARE YOU SAYING TO ME THAT IF WE  
11 FIND HIM GUILTY OF MURDER, HE SHOULD BE SENTENCED TO  
12 DEATH? IS THAT WHAT YOU'RE SAYING?

13 JURY VENIRE MEMBER: YES, SIR.

14 THE COURT: REGARDLESS OF HIS AGE OR  
15 WHATEVER?

16 JURY VENIRE MEMBER: IF HE WAS OLD ENOUGH  
17 TO COMMIT THE CRIME.

18 THE COURT: CERTAINLY ENTITLED TO YOUR  
19 VIEWS.

20 MR. BAILEY: JUST VERY BRIEFLY. MS.  
21 HARDWICK, I WANT TO MAKE SURE I UNDERSTAND WHAT YOUR  
22 POSITION IS, AND THERE ARE NO RIGHT OR WRONG ANSWERS.  
23 YOU UNDERSTAND THAT WE WOULD NOT EVEN BE DEALING WITH  
24 THE PENALTY UNLESS THE DEFENDANT IS FOUND GUILTY OF  
5 MURDER IN THE FIRST PART OF THE TRIAL. AND THE

1 PURPOSE OF THE SECOND PART OF THE TRIAL IS TO BRING  
2 OUT ADDITIONAL EVIDENCE TO HELP THE JURY DECIDE AN  
3 APPROPRIATE PUNISHMENT. SO ARE YOU SAYING THAT YOU  
4 WOULD HAVE YOUR MIND MADE UP AFTER THE FIRST TRIAL?

5 JURY VENIRE MEMBER: YES, SIR.

6 MR. BAILEY: SO IT WOULDN'T MATTER WHAT  
7 HAPPENED THE SECOND TIME AROUND, YOU WOULD ALWAYS  
8 COME BACK WITH THE DEATH PENALTY?

9 JURY VENIRE MEMBER: (NO VERBAL RESPONSE.)

10 MR. BAILEY: YOU'RE NODDING YOUR HEAD.

11 JURY VENIRE MEMBER: YES, SIR.

12 MR. BAILEY: OKAY. THANK YOU.

13 THE COURT: DO YOU CARE TO CROSS-EXAMINE

14 MR. NEWSOME: NO, SIR.

15 (JUROR NUMBER 92 IS DISMISSED  
16 FROM THE COURTROOM.)

17 THE COURT: MR. BAILEY?

18 MR. BAILEY: NOT QUALIFIED.

19 MR. NEWSOME: NOT QUALIFIED, YOUR HONOR.

20 THE COURT: BRING HER IN.

21 (JUROR NUMBER 92 ENTERS THE  
22 COURTROOM.)

23 THE COURT: MADAM JUROR, WE APOLOGIZE FOR  
24 THE INCONVENIENCE OF HAVING YOU HERE FOR TWO DAYS.

25 WE THANK YOU SO MUCH FOR YOUR CANDOR AND TRUTHFULNESS

1 ON THE STAND. WE ARE EXCUSING YOU FROM FURTHER  
2 SERVICE. THANK YOU.

3 JURY VENIRE MEMBER: THANK YOU.

4 (JUROR NUMBER 92 IS DISMISSED  
5 FROM THE COURTROOM.)

6 (JUROR NUMBER 208, A WHITE  
7 FEMALE, ENTERS THE COURTROOM.)

8 THE CLERK: PLEASE STATE YOUR NAME FOR THE  
9 RECORD.

10 JURY VENIRE MEMBER: JUDITH RAST.

11 (JUROR NUMBER 208, HAVING BEEN FIRST DULY SWORN  
12 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

13 THE CLERK: PLEASE COME AROUND HERE.

14 THE COURT: MS. RAST, GOOD MORNING.

15 JURY VENIRE MEMBER: GOOD MORNING.

16 THE COURT: MS. RAST, WE UNDERSTAND HERE  
17 THAT WE'VE KEPT YOU LOCKED UP BACK THERE AND  
18 INCONVENIENCING YOU, AND THESE ARE SORT OF STRANGE  
19 PROCEEDINGS FOR YOU. I JUST WANT YOU TO RELAX AND  
20 UNDERSTAND THAT NOBODY WOULD ASK YOU A QUESTION THAT  
21 WOULD EMBARRASS YOU IN ANY WAY. YOU UNDERSTAND THAT?

22 JURY VENIRE MEMBER: YES, SIR.

23 THE COURT: YOU HAD INDICATED YESTERDAY  
24 THAT YOU MAY HAVE HEARD OR READ SOMETHING ABOUT THAT.  
25 CAN YOU EXPAND ON THAT FOR ME?

1 JURY VENIRE MEMBER: I REMEMBER BEING IN A  
2 RESTAURANT AND JUST HEARING THAT A MURDER HAD BEEN  
3 COMMITTED AND WHERE, BUT THAT'S ALL I'VE HEARD.

4 THE COURT: THAT'S ALL. SO YOU WOULD NOT  
5 HAVE FORMED OR EXPRESSED ANY KIND OF OPINIONS ABOUT  
6 IT?

7 JURY VENIRE MEMBER: NO.

8 THE COURT: YOU'RE WILLING TO LISTEN TO  
9 THE EVIDENCE IN THIS CASE AND MAKE YOUR DECISION?

10 JURY VENIRE MEMBER: YES.

11 THE COURT: NOW, DO YOU UNDERSTAND THAT IN  
12 THIS CASE, THE STATE OF SOUTH CAROLINA SEEKS THE  
13 PENALTY OF DEATH? DO YOU UNDERSTAND THAT?

14 JURY VENIRE MEMBER: YES, SIR.

15 THE COURT: IN A TYPE OF PROCEEDING LIKE  
16 THAT, THERE ARE TWO TRIALS. THE FIRST DETERMINES THE  
17 GUILT OR INNOCENCE. IF THE JURY FINDS HIM NOT  
18 GUILTY, WE STOP THERE. YOU UNDERSTAND?

19 JURY VENIRE MEMBER: YEAH.

20 THE COURT: AND -- AND I USE THE WORD  
21 ADVISEDLY, IF TWELVE JURORS FIND HIM GUILTY OF MURDER  
22 WITH MALICE AFORETHOUGHT, WE THEN GO, AND ONLY THEN,  
23 TO THE SECOND TRIAL. NOW, IN THE SECOND TRIAL, THE  
24 JURY'S DECISION OR QUESTION IS THIS. HAVING FOUND  
25 HIM GUILTY OF MURDER, WHAT SHALL THE PUNISHMENT BE.

1 SHALL IT BE THE PUNISHMENT OF DEATH OR SHALL IT BE  
2 LIFE IMPRISONMENT? IN THAT PROCEEDING, THE STATE OF  
3 SOUTH CAROLINA, THROUGH ITS SOLICITOR, WILL INTRODUCE  
4 TESTIMONY HOPING TO CONVINCING YOU THAT DEATH IS THE  
5 APPROPRIATE SENTENCE. YOU UNDERSTAND?

6 JURY VENIRE MEMBER: YEAH.

7 THE COURT: EQUALLY IMPORTANT, THE  
8 DEFENDANT WILL BE INTRODUCING ON YOUR -- HIS BEHALF,  
9 MITIGATING CIRCUMSTANCES HOPING TO CONVINCING YOU THAT  
10 LIFE IMPRISONMENT IS THE APPROPRIATE SENTENCE. DO  
11 YOU UNDERSTAND THAT?

12 JURY VENIRE MEMBER: YES, SIR.

13 THE COURT: NOW, IN THIS DECISION PROCESS  
14 IN THE SECOND PHASE, THERE ARE GENERAL REALLY THREE  
15 GROUPS OF PEOPLE. THERE ARE A GROUP OF PEOPLE THAT  
16 SAY HAVING FOUND HIM GUILTY OF MURDER, I WILL ALWAYS  
17 BE FOR THE DEATH PENALTY. THERE IS A SECOND GROUP OF  
18 PEOPLE THAT SAY WE FOUND HIM GUILTY OF MURDER, BUT  
19 I'LL NEVER VOTE FOR THE PENALTY OF DEATH. I JUST  
20 DON'T BELIEVE IN IT. THERE IS A THIRD GROUP THAT SAY  
21 I WILL CONSIDER ALL OF THE FACTS ABOUT THE DEATH  
22 PENALTY AND I WILL CONSIDER THE FACTS ABOUT LIFE  
23 IMPRISONMENT AND THEN I'LL MAKE UP MY MIND BASED ON  
24 THE FACTS THAT I FOUND THEM THEN. WOULD YOU BE IN  
5 THE FIRST, SECOND OR THIRD?

1 JURY VENIRE MEMBER: THIRD.

2 THE COURT: ALL RIGHT. YOU MAY QUESTION.

3 MR. BAILEY: THANK YOU, YOUR HONOR. MS.

4 RAST, I'M WALTER BAILEY. I'VE GOT A FEW QUESTIONS I  
5 WOULD LIKE TO ASK YOU. JUDGE COTTINGHAM EXPLAINED TO  
6 YOU ABOUT THE TWO-PART PROCESS WE GO THROUGH IN SOUTH  
7 CAROLINA IN DEATH PENALTY TRIALS WHERE YOU HAVE THE  
8 GUILT PHASE, WHICH IS LIKE ANY OTHER CRIMINAL TRIAL,  
9 AND THE PENALTY PHASE, WHICH WE WOULD ONLY GET INTO  
10 IF THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE  
11 FIRST PART. DO YOU UNDERSTAND THAT?

12 JURY VENIRE MEMBER: YES.

13 MR. BAILEY: IT'S A TWO-PART PROCESS THAT  
14 WE GO THROUGH. AND YOU ALSO UNDERSTAND THAT IN SOUTH  
15 CAROLINA, THE JURY DECIDES WHAT THE PUNISHMENT IS,  
16 NOT THE JUDGE.

17 JURY VENIRE MEMBER: YES.

18 MR. BAILEY: WE MIGHT USE THE WORD  
19 RECOMMEND -- RECOMMENDATION, BUT IT REALLY ISN'T A  
20 RECOMMENDATION. IT'S WHAT'S GOING TO REALLY HAPPEN.  
21 IF THE JURY SAYS LIFE IN PRISON, THE JUDGE WOULD  
22 SENTENCE THE DEFENDANT TO LIFE IN PRISON. IF THE  
23 JURY SAID DEATH PENALTY, THEN THAT DEFENDANT WOULD  
24 ACTUALLY BE EXECUTED.

25 JURY VENIRE MEMBER: YES.

1 MR. BAILEY: NOW, IF YOU WERE ON A CASE  
2 LIKE THIS AND YOU GOT TO THAT SECOND PHASE, THE  
3 PENALTY PHASE, AND YOU AND THE OTHER ELEVEN JURORS  
4 AFTER HEARING ALL OF THE TESTIMONY VOTE FOR THE DEATH  
5 PENALTY WHICH WOULD BE THE MOST APPROPRIATE  
6 PUNISHMENT, THEN THE NEXT THING THAT HAPPENS IS THERE  
7 IS A DEATH VERDICT FORM THAT EVERYONE WOULD BE ASKED  
8 TO SIGN. AND THE RESULT OF SIGNING THAT, AFTER ALL  
9 TWELVE SIGN IT, WOULD BE THAT THE DEFENDANT WOULD BE  
10 EXECUTED. COULD YOU SIGN YOUR NAME TO A VERDICT LIKE  
11 THAT?

12 JURY VENIRE MEMBER: YES.

13 MR. BAILEY: COULD YOU GET UP HERE IN OPEN  
14 COURT AND ANNOUNCE IT?

15 JURY VENIRE MEMBER: YES.

16 MR. BAILEY: NOW, THERE'S A DIFFERENCE IN  
17 THE RACE IN THE VICTIMS AND THE DEFENDANT. THE  
18 VICTIMS WERE WHITE AND THE DEFENDANT OBVIOUSLY IS A  
19 YOUNG BLACK MALE. WOULD IT MAKE ANY DIFFERENCE TO  
20 YOU IF THE SITUATION WERE REVERSED, IF YOU HAD A  
21 WHITE VICTIM OR IF YOU HAD A BLACK VICTIM AND A WHITE  
22 DEFENDANT?

23 JURY VENIRE MEMBER: NO.

24 MR. BAILEY: OKAY. THE STATE ALLEGES AND  
25 THE EVIDENCE WILL BE IN THIS TRIAL THAT THE MURDER

1 TOOK PLACE IN MARCH OF 1994. AT THIS TIME OF -- AT  
2 THAT TIME, THIS DEFENDANT WAS 16 YEARS OLD. HE'S NOW  
3 18. IF THE CASE WAS BAD ENOUGH, COULD YOU IMPOSE THE  
4 DEATH PENALTY ON A PERSON WHO WAS 16 AT THE TIME HE  
5 COMMITTED THE MURDER?

6 JURY VENIRE MEMBER: YES.

7 MR. BAILEY: MS. RAST, THAT'S ALL I HAVE.  
8 THANK YOU VERY MUCH.

9 MR. NEWSOME: MS. RAST, I NOTICE THAT YOU  
10 ARE A MEMBER OF CONGAREE BAPTIST CHURCH.

11 JURY VENIRE MEMBER: YES.

12 MR. NEWSOME: ARE YOU AWARE OF WHETHER OR  
13 NOT YOUR CHURCH HAS ANY PREFERENCE OR STATED POSITION  
14 ON THE DEATH PENALTY?

15 JURY VENIRE MEMBER: NO, I DON'T.

16 MR. NEWSOME: DO YOU THINK, MS. RAST, THAT  
17 ALL MURDERS SHOULD RESULT IN THE DEATH PENALTY IF  
18 THERE'S SUFFICIENT GUILT AND THEY ARE BAD ENOUGH?

19 JURY VENIRE MEMBER: IF THEY ARE BAD  
20 ENOUGH. IT WOULD DEPEND ON THE CIRCUMSTANCES.

21 MR. NEWSOME: OKAY. DO YOU THINK THAT  
22 THERE ARE THINGS ABOUT THE DEFENDANT THAT MIGHT CAUSE  
23 YOU TO CONSIDER A PUNISHMENT OF LIFE BEING  
24 APPROPRIATE?

25 JURY VENIRE MEMBER: EXCUSE ME?

1 MR. NEWSOME: DO YOU THINK THERE IS  
2 ANYTHING ABOUT THE DEFENDANT WHO IS CHARGED IN A  
3 MURDER CASE THAT WOULD CAUSE YOU TO CONSIDER LIFE  
4 IMPRISONMENT?

5 JURY VENIRE MEMBER: YES, SIR.

6 MR. NEWSOME: OKAY. DO YOU THINK THAT AGE  
7 AT THE TIME OF THE CRIME IS POSSIBLE CONSIDERATION AS  
8 FAR AS MITIGATING PUNISHMENT?

9 JURY VENIRE MEMBER: COULD BE.

10 MR. NEWSOME: OKAY. DO YOU THINK THAT IF  
11 SOMEBODY WAS UNDER THE INFLUENCE OF ALCOHOL WHEN THEY  
12 COMMITTED A CRIME, THAT THAT IS SOME CONSIDERATION?

13 JURY VENIRE MEMBER: IT COULD.

14 MR. NEWSOME: OKAY. ALL RIGHT. IF YOU  
15 HAD A PREFERENCE FOR DEATH PENALTY VERSUS LIFE, WHICH  
16 WAY WOULD YOU LEAN?

17 MR. BAILEY: OBJECTION. HE'S ASKING HER  
18 WHAT SHE WOULD DO AND SHE DOESN'T KNOW THE FACTS YET.

19 THE COURT: HE'S JUST ASKING GENERALLY FOR  
20 A PREFERENCE.

21 MR. NEWSOME: YES, SIR.

22 THE COURT: I'LL LET HER ANSWER THAT  
23 QUESTION. YES. WE'RE NOT ASKING WHAT YOU WOULD DO  
24 IN THIS CASE, NOW.

\* 5 JURY VENIRE MEMBER: RIGHT.

1 THE COURT: BECAUSE YOU'VE SAID, AND  
2 PROPERLY SO, THAT YOU WANT TO LISTEN TO THE FACTS.

3 JURY VENIRE MEMBER: RIGHT.

4 THE COURT: HE'S JUST ASKING YOU HERE  
5 WHICH WAY WOULD YOU GENERALLY LEAN, AND I'M GOING TO  
6 LET HIM ASK THAT. IS THAT A FAIR --

7 MR. NEWSOME: YES.

8 THE COURT: CAN YOU TELL HIM?

9 JURY VENIRE MEMBER: NO, I CAN'T. IT  
10 WOULD DEPEND ON CIRCUMSTANCES.

11 MR. NEWSOME: THANK YOU VERY MUCH. THAT'S  
12 WHAT I WAS ASKING.

13 THE COURT: PLEASE STEP OUT JUST A MOMENT  
14 AND I'LL CALL YOU RIGHT BACK.

15 (JUROR NUMBER 208 IS DISMISSED  
16 FROM THE COURTROOM.)

17 THE COURT: THE QUESTION BORDERS ON THE  
18 JURY PROFILE, BUT I'LL PERMIT IT. WHAT DO YOU SAY  
19 ABOUT THIS WITNESS?

20 MR. BAILEY: QUALIFIED.

21 THE COURT: WHAT DO YOU SAY?

22 MR. NEWSOME: QUALIFIED, YOUR HONOR.

23 (JUROR NUMBER 208 ENTERS THE  
24 COURTROOM.)

25 THE COURT: MADAM JUROR, WE ARE QUALIFYING

1 JURORS FROM WHICH WE WILL BE SELECTING TWELVE JURORS  
2 AND TWO ALTERNATES. YOU HAVE BEEN FOUND QUALIFIED BY  
3 THE ATTORNEYS AND BY THE COURT AND ARE QUALIFIED TO  
4 SERVE, IF SELECTED.

5 JURY VENIRE MEMBER: YES, SIR.

6 THE COURT: WE WILL BE SELECTING THIS JURY  
7 AT 2:30 TOMORROW AFTERNOON FROM THE 35. I WANT YOU  
8 TO BRING WITH YOU SUCH PERSONAL EFFECTS THAT YOU  
9 WOULD REQUIRE IF SELECTED AND BE ACROSS THE STREET AT  
10 THE ANNEX WITH YOUR PERSONAL EFFECTS AT 2:30.

11 JURY VENIRE MEMBER: OKAY.

12 THE COURT: AND WE'LL BE SELECTING THAT  
13 JURY IMMEDIATELY AT THAT TIME AND START INTO THE  
14 TRIAL OF THIS CASE. ANY QUESTIONS?

15 JURY VENIRE MEMBER: NO.

16 THE COURT: DO NOT DISCUSS ANY ASPECT OF  
17 THIS TRIAL WITH ANYONE.

18 JURY VENIRE MEMBER: I WON'T.

19 THE COURT: THANK YOU.

20 (JUROR NUMBER 208 IS DISMISSED  
21 FROM THE COURTROOM.)

22 THE COURT: NOW, MR. WANNAMAKER.

23 THE CLERK: YES, SIR.

24 THE COURT: I WANT YOU NOW -- WE WANT TO  
25 -- I HOPE TO WORK STRAIGHT THROUGH AND TAKE A SHORT

1 BREAK FOR LUNCH BECAUSE I'VE GOT OTHER PANEL COMING  
2 IN AT 2:00. SO PLEASE MAKE ARRANGEMENTS TO FEED  
3 SANDWICHES TO THE DEFENDANT, HIS ATTORNEY, MY COURT  
4 REPORTER, ME, AND MY STAFF. WHAT DO YOU WANT TO DO  
5 FOR LUNCH ARRANGEMENTS? YOU MAKE THEM INDEPENDENTLY.

6 MR. BAILEY: YES, SIR. WE CAN SEND OUT  
7 FOR SOMETHING.

8 THE COURT: ALL RIGHT. I WANT TO WORK  
9 STRAIGHT ON THROUGH, ONLY TAKE A BREAK. NOW, MR.  
10 WANNAMAKER, I WILL ALSO NEED TO FEED THESE IN THE  
11 PANEL. ANY PROBLEMS?

12 THE CLERK: NO, SIR.

13 THE COURT: CAN WE GET --

14 THE CLERK: THE ONES THAT ARE REMAINING?

15 THE COURT: PARDON ME?

16 THE CLERK: THE ONES THAT ARE REMAINING?

17 THE COURT: THAT'S CORRECT. SO WHAT I'M  
18 GOING TO ASK YOU TO DO IS GO BACK AND SEE -- WHERE IS  
19 THE PLACE WE GOT THEM? ALL RIGHT. BRING THE NEXT  
20 WITNESS IN -- OR JUROR.

21 (JUROR NUMBER 294, A WHITE  
22 FEMALE, ENTERS THE COURTROOM.)

23 THE COURT: ESCORT MS. WISE TO THE FRONT  
24 FOR ME, PLEASE.

25 (JUROR NUMBER 294, HAVING BEEN FIRST DULY SWORN

1 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

2 THE CLERK: PLEASE COME DOWN AND HAVE A  
3 SEAT, MS. WISE.

4 THE COURT: MS. WISE, GOOD MORNING.

5 JURY VENIRE MEMBER: GOOD MORNING.

6 THE COURT: SORRY TO KEEP YOU LOCKED UP  
7 BACK THERE, BUT THESE PROCEEDINGS JUST REQUIRE THIS.  
8 I NOTE FROM YOUR RETURN THAT YOU ARE AN  
9 ADMINISTRATIVE ASSISTANT AT PEPSI COLA.

10 JURY VENIRE MEMBER: YES.

11 THE COURT: WHAT ARE YOUR DUTIES, PLEASE?

12 JURY VENIRE MEMBER: WELL, I HAVE TO  
13 BASICALLY FILL IN WHEN THEY ARE NOT THERE, ANSWER THE  
14 PHONE, TAKE ORDERS FROM CUSTOMERS, TAKE CUSTOMER  
15 COMPLAINTS, DO THE PAYROLL, ACCOUNTS PAYABLES, A  
16 LITTLE BIT OF EVERYTHING.

17 THE COURT: YOU SOUND LIKE MS. MCCALL, MY  
18 ADMINISTRATIVE ASSISTANT, AND WHO I COULD NOT DO  
19 WITHOUT. WE WANT TO ASK YOU SOME QUESTIONS  
20 CONCERNING YOUR VIEWS ON THE DEATH SENTENCE, IF THAT  
21 DECISION BECOMES APPROPRIATE HERE.

22 YOU READ THE LETTER THAT I LEFT BACK THERE  
23 STATING THAT THERE ARE THREE KINDS. NOW, LET ME MAKE  
24 THIS ABUNDANTLY CLEAR. YOU WOULD NEVER EVEN GET INTO  
25 THAT DECISION UNLESS THE JURY FIRST UNANIMOUSLY FOUND

1 HIM GUILTY BEYOND A REASONABLE DOUBT. YOU UNDERSTAND  
2 THAT?

3 JURY VENIRE MEMBER: YES, SIR.

4 THE COURT: IF HE'S FOUND NOT GUILTY, WE  
5 STOP THERE. IF -- AND I USE THE WORD ADVISEDLY -- IF  
6 THE JURORS FIND HIM GUILTY OF MURDER BEYOND A  
7 REASONABLE DOUBT, YOU WOULD THEN CONSIDER THE  
8 APPROPRIATE PUNISHMENT. YOU UNDERSTAND THAT?

9 JURY VENIRE MEMBER: YES, SIR.

10 THE COURT: GENERALLY, IN THAT DECISION --  
11 FIRST LET ME SAY THAT AT THAT STAGE, IF WE GET TO  
12 THAT, YOU WILL HEAR TESTIMONY FROM THE STATE WHO  
13 WOULD SUGGEST THAT DEATH WOULD BE THE APPROPRIATE  
14 PUNISHMENT. EQUALLY IMPORTANT, YOU WOULD HEAR  
15 TESTIMONY FROM THE DEFENSE WHO WOULD SUGGEST THAT  
16 GIVEN ALL OF THE CIRCUMSTANCES, LIFE IMPRISONMENT IS  
17 APPROPRIATE EVEN THOUGH HE'S BEEN CONVICTED OF  
18 MURDER. YOU UNDERSTAND?

19 JURY VENIRE MEMBER: YES, SIR.

20 THE COURT: NOW, IN THAT DECISION-MAKING  
21 PROCESS, JURORS GENERALLY FALL INTO THREE CATEGORIES.  
22 THE ONE CATEGORY SAYS THAT HAVING CONVICTED HIM OF  
23 MURDER, I'LL ALWAYS BE FOR THE DEATH PENALTY. SECOND  
24 GROUP SAYS THAT EVEN THOUGH WE FOUND HIM GUILTY OF  
25 MURDER, I WILL NEVER RECOMMEND THE SENTENCE OF DEATH.

1 THIRD GROUP SAYS I WILL LISTEN TO THE AGGRAVATING  
2 CIRCUMSTANCES. EQUALLY, I WILL LISTEN TO THE  
3 MITIGATING CIRCUMSTANCES AND THEN I WILL DECIDE  
4 WHETHER OR NOT DEATH OR LIFE IS THE APPROPRIATE  
5 PUNISHMENT. DO YOU UNDERSTAND WHAT I'M SAYING?

6 JURY VENIRE MEMBER: I UNDERSTAND.

7 THE COURT: WOULD YOU BE IN THE FIRST THAT  
8 SAYS ALWAYS, THE SECOND THAT SAYS NEVER OR THE THIRD  
9 THAT SAYS IT WOULD DEPEND ON WHAT I FIND TO BE THE  
10 FACTS? WHICH WOULD YOU DO?

11 JURY VENIRE MEMBER: THE THIRD.

12 THE COURT: THE THIRD. THANK YOU. YOU  
13 UNDERSTAND, NOW, NOBODY WANTS TO INTRUDE UPON YOUR  
14 PRIVACY, BUT WE KIND OF NEED TO KNOW WHAT YOUR VIEW  
15 IS IF YOU -- IF YOU ARE CONFRONTED WITH THIS ISSUE.  
16 DO YOU UNDERSTAND?

17 JURY VENIRE MEMBER: YES, SIR.

18 MR. BAILEY: THANK YOU, YOUR HONOR. MS.  
19 WISE, I'M WALTER BAILEY. I'VE GOT A FEW MORE  
20 QUESTIONS I NEED TO ASK YOU. AND THERE ARE NO RIGHT  
21 OR WRONG ANSWERS. I THINK THE JUDGE TOLD YOU THAT.  
22 IT'S ALL ON HOW YOU FEEL. IF WE GOT INTO THE SECOND  
23 PHASE, PENALTY PHASE, YOU UNDERSTAND THAT THE TWO  
24 CHOICES THAT THE JURY IS FACED WITH, THE LIFE  
25 IMPRISONMENT OR THE DEATH PENALTY, THAT WILL BE THE

1 SENTENCE. THE JURY MAKES THAT DECISION, NOT THE  
2 JUDGE.

3 JURY VENIRE MEMBER: RIGHT.

4 MR. BAILEY: AND YOU HAVE GOT TO ASSUME AS  
5 THE JUROR THAT WHATEVER YOU DECIDE IS WHAT'S GOING TO  
6 HAPPEN, THAT IF Y'ALL DECIDE ON THE LIFE SENTENCE,  
7 THE DEFENDANT GETS LIFE. IF Y'ALL WOULD DECIDE ON  
8 THE DEATH SENTENCE, THEN HE ACTUALLY WOULD BE  
9 EXECUTED BASED ON THAT JURY'S DECISION.

10 JURY VENIRE MEMBER: YES.

11 MR. BAILEY: NOW, IF YOU AND THE OTHER  
12 JURORS, IF WE GOT INTO THE SECOND PHASE, AFTER  
13 HEARING ALL OF THE EVIDENCE AND THE JUDGE'S  
14 INSTRUCTION, MADE THAT CHOICE BETWEEN LIFE IN PRISON  
15 AND THE DEATH PENALTY AND YOU DECIDE ON THE DEATH  
16 PENALTY, THEN IN ORDER FOR THAT SENTENCE TO BE  
17 CARRIED OUT, EACH JUROR WOULD BE ASKED TO SIGN THEIR  
18 NAME TO A DEATH VERDICT FORM. COULD YOU DO THAT  
19 ALONG WITH THE OTHER JURORS, IF YOU HAD ALREADY VOTED  
20 FOR THE DEATH PENALTY?

21 JURY VENIRE MEMBER: YES, I COULD.

22 MR. BAILEY: COULD YOU STAND UP IN OPEN  
23 COURT AND ANNOUNCE THAT DECISION TO WHOEVER WAS IN  
24 OPEN COURT?

25 JURY VENIRE MEMBER: YES, I COULD.

1 MR. BAILEY: NOW, OBVIOUSLY IN THIS CASE,  
2 THE DEFENDANT IS A YOUNG BLACK MALE. THE EVIDENCE  
3 WOULD BE THE VICTIMS IN THIS CASE -- THE VICTIM THAT  
4 DIED AND THE VICTIM THAT WAS SHOT BUT DID NOT DIE  
5 WERE WHITE PEOPLE. WOULD YOU VIEW THIS CASE ANY  
6 DIFFERENTLY IF THE RACES WERE REVERSED, IF WE HAD A  
7 WHITE DEFENDANT AND A BLACK VICTIM?

8 JURY VENIRE MEMBER: NO.

9 MR. BAILEY: SO RACE WOULD NOT BE A  
10 FACTOR; IS THAT CORRECT?

11 JURY VENIRE MEMBER: NO.

12 MR. BAILEY: OKAY. THE STATE'S PROOF WILL  
13 BE THAT THIS MURDER OCCURRED IN MARCH OF 1994. AT  
14 THAT TIME, THE DEFENDANT WAS 16 YEARS OLD. HE'S NOW  
15 18. IF THE CASE IS BAD ENOUGH, COULD YOU IMPOSE THE  
16 DEATH PENALTY ON A PERSON THAT WAS 16 AT THE TIME THE  
17 MURDER OCCURRED?

18 JURY VENIRE MEMBER: YES.

19 MR. BAILEY: OKAY. MS. WISE, THAT'S ALL  
20 I'VE GOT. THANK YOU VERY MUCH.

21 MR. NEWSOME: MS. WISE, HAVE YOU OR  
22 ANYBODY IN YOUR FAMILY BEEN A VICTIM OF A VIOLENT  
23 CRIME?

24 JURY VENIRE MEMBER: NO.

25 MR. NEWSOME: NONE. OKAY. MS. WISE, IF

1 YOU WERE CHOSEN TO BE ON THE JURY, EACH VERDICT WOULD  
2 HAVE TO BE UNANIMOUS. WOULD YOU, IF THE -- IF YOUR  
3 DECISION WAS IN THE MINORITY ON THE JURY PANEL, WOULD  
4 YOU BE ABLE TO STAND UP TO THE OTHER JURORS, WHETHER  
5 YOU WERE IN FAVOR OF GUILT OR INNOCENCE, WHICHEVER  
6 WAY IT WORKED, FOR DEATH OR LIFE, IN SPITE OF BEING  
7 IN THE MINORITY?

8 JURY VENIRE MEMBER: YES.

9 MR. NEWSOME: YOU FEEL YOU COULD WITHSTAND  
10 THE PRESSURE OF OTHER JURORS HAVING DIFFERENT  
11 OPINIONS?

12 JURY VENIRE MEMBER: YES.

13 MR. NEWSOME: DO YOU THINK THAT THERE ARE  
14 MITIGATING FACTORS THAT WOULD CAUSE YOU TO CONSIDER A  
15 LIFE SENTENCE VERSUS A DEATH PENALTY?

16 JURY VENIRE MEMBER: I WOULD HAVE TO HEAR  
17 EVERYTHING FIRST BEFORE I WOULD MAKE A DECISION.

18 MR. NEWSOME: OKAY. BUT WOULD THERE BE  
19 SOME FACTORS THAT COULD MITIGATE?

20 JURY VENIRE MEMBER: I DON'T THINK SO.

21 MR. NEWSOME: YOU DON'T THINK SO? ALL  
22 RIGHT. SO YOU'RE SAYING IF THERE IS SOMEBODY WHO IS  
23 GUILTY AND YOU WERE SATISFIED AND CONVINCED BEYOND  
24 ALL DOUBT THAT THEY WERE GUILTY OF MURDER, THAT YOU  
25 WOULD SENTENCE THEM TO DEATH?

1 JURY VENIRE MEMBER: IF IT WAS PROVEN.

2 THE COURT: WHAT WAS YOUR ANSWER, PLEASE?

3 I'M NOT SURE SHE UNDERSTOOD YOU.

4 MR. NEWSOME: OKAY. MY QUESTION WAS --  
5 AND I'VE FORGOTTEN THE EXACT QUESTION, BUT WAS, IF  
6 THERE -- SHE INDICATED THAT SHE WOULD GIVE THE DEATH  
7 SENTENCE IF THEY WERE GUILTY, AND MY QUESTION WAS, IF  
8 YOU WERE SATISFIED BEYOND A REASONABLE DOUBT THAT  
9 SOMEBODY WAS IN FACT GUILTY AFTER ALL OF THE EVIDENCE  
10 WAS IN AND THERE WAS NO DOUBT IN YOUR MIND THAT THEY  
11 WERE GUILTY, YOU WOULD GIVE A DEATH SENTENCE?

12 JURY VENIRE MEMBER: NO, NO. IT WOULD  
13 HAVE TO, YOU KNOW, BE PROVEN. I MEAN, IF HE HAD  
14 OTHER GROUNDS -- IF THERE WERE OTHER GROUNDS. I'M  
15 NOT -- JUST BECAUSE IT'S SAID THAT HE DID IT, YOU  
16 KNOW, IT'S GOT TO BE PROVEN THAT HE DID NOT.

17 MR. NEWSOME: THAT HE DID NOT WHAT? I  
18 DON'T FOLLOW YOUR ANSWER.

19 THE COURT: WELL, I DON'T QUITE  
20 UNDERSTAND.

21 JURY VENIRE MEMBER: I DON'T REALLY KNOW  
22 HOW TO SAY IT.

23 MR. NEWSOME: THAT'S ALL RIGHT. THERE'S  
24 NO WRONG ANSWER. JUST TRY TO SAY IT.

25 JURY VENIRE MEMBER: WELL, I'M NOT GOING

1 TO ASK FOR A DEATH PENALTY JUST BECAUSE OF A MURDER  
2 HAS BEEN COMMITTED.

3 MR. NEWSOME: OKAY. ALL RIGHT. SO THERE  
4 ARE FACTORS YOU WOULD CONSIDER?

5 JURY VENIRE MEMBER: RIGHT.

6 MR. NEWSOME: THAT WOULD -- THAT YOU THINK  
7 A LIFE SENTENCE WOULD BE APPROPRIATE?

8 JURY VENIRE MEMBER: RIGHT.

9 MR. NEWSOME: OKAY. AND THOSE FACTORS,  
10 WOULD THEY TEND TO BE THE -- SOMETHING CONCERNING THE  
11 DEFENDANT OR FACTS OF THE CRIME?

12 JURY VENIRE MEMBER: THE FACTS OF THE  
13 CRIME.

14 MR. NEWSOME: OKAY. SO IS THERE NOTHING  
15 THAT -- ABOUT THE DEFENDANT YOU WOULD TAKE INTO  
16 ACCOUNT IN DECIDING A LIFE SENTENCE?

17 JURY VENIRE MEMBER: NO.

18 MR. NEWSOME: OKAY. AND SO IF -- IN SPITE  
19 OF ANYTHING, YOU WOULD GIVE THE DEATH SENTENCE IF YOU  
20 FOUND THEM GUILTY, THEN, IF IT WAS A CLEAR CASE OF  
21 MURDER?

22 JURY VENIRE MEMBER: I REALLY -- I -- I'M  
23 NOT GOING TO SAY THAT, YEAH, THAT I WOULD ASK FOR THE  
24 DEATH PENALTY. YOU KNOW, I WOULD HAVE TO HEAR  
25 EVERYTHING, TO THE CIRCUMSTANCES, WHAT HAPPENED.

1 MR. NEWSOME: BUT YOUR CONSIDERATION WOULD  
2 BE THOSE OF THE CIRCUMSTANCES OF THE CRIME VERSUS  
3 ANYTHING CONCERNING THE DEFENDANT?

4 JURY VENIRE MEMBER: YES.

5 MR. NEWSOME: OKAY. I HAVE NO FURTHER  
6 QUESTIONS.

7 MR. BAILEY: YOUR HONOR, COULD I HAVE A  
8 COUPLE OF QUESTIONS?

9 THE COURT: ALL RIGHT.

10 MR. BAILEY: MS. WISE, THERE ARE NO RIGHT  
11 OR WRONG ANSWERS. BUT DURING THAT SECOND PHASE, THE  
12 PENALTY PHASE, IF THE JUDGE INSTRUCTED YOU AS A JUROR  
13 TO CONSIDER DIFFERENT ASPECTS, NOT ONLY THE CRIME  
14 ITSELF, BUT THE CHARACTERISTICS OF THE DEFENDANT SUCH  
15 AS AGE OR INTELLIGENCE, IF HE INSTRUCTED YOU TO  
16 LISTEN TO THAT TESTIMONY, WOULD YOU FOLLOW HIS  
17 INSTRUCTION AND LISTEN TO ALL OF THAT?

18 JURY VENIRE MEMBER: YES.

19 MR. BAILEY: SO WOULD YOU NOT ONLY LOOK AT  
20 THE CIRCUMSTANCE OF THE CRIME BUT ALSO  
21 CHARACTERISTICS OF THE DEFENDANT BEFORE YOU MADE YOUR  
22 DECISION?

23 JURY VENIRE MEMBER: YES.

24 MR. BAILEY: THANK YOU.

25 THE COURT: MADAM JUROR, I DON'T WANT YOU

1 TO THINK THAT WE'RE ALL HOUNDING YOU ABOUT THIS  
2 PARTICULAR THING, BUT I WANT YOU TO BE AWARE OF THE  
3 PROCEDURE. IN PREPARATION FOR THE SENTENCING, I  
4 WOULD INSTRUCT YOU THAT THERE ARE AGGRAVATING  
5 CIRCUMSTANCES THAT YOU CAN CONSIDER. BUT EQUALLY  
6 IMPORTANT, I WOULD ASK THAT YOU -- OR TELL YOU THAT  
7 YOU MAY CONSIDER MITIGATING CIRCUMSTANCES --

8 JURY VENIRE MEMBER: UH-HUH.

9 THE COURT: -- SUCH AS THE MENTAL CAPACITY  
10 OF THE DEFENDANT, THE AGE OF THE DEFENDANT. I WOULD  
11 INSTRUCT YOU THAT YOU MAY CONSIDER, IF YOU CHOOSE,  
12 ANY OTHER MITIGATING CIRCUMSTANCES, AND I WOULD  
13 INSTRUCT YOU FURTHER THAT YOU CAN RECOMMEND LIFE  
14 IMPRISONMENT SIMPLY AS AN ACT OF MERCY IF YOU WANTED  
15 TO. DO YOU UNDERSTAND THAT?

16 JURY VENIRE MEMBER: YES, SIR.

17 THE COURT: ARE YOU WILLING -- NOT ACCEPT  
18 THEM, BUT TO CONSIDER THEM?

19 JURY VENIRE MEMBER: YES, SIR.

20 THE COURT: PLEASE STEP OUTSIDE.

21 (JUROR NUMBER 294 IS DISMISSED  
22 FROM THE COURTROOM.)

23 MR. BAILEY: QUALIFIED, YOUR HONOR.

24 MR. NEWSOME: YOUR HONOR, I QUESTION ABOUT  
25 HER BEING QUALIFIED.

1 THE COURT: YES, SIR. I THINK SHE'S  
2 QUALIFIED. SHE CLEARLY SAID THREE DIFFERENT WAYS.  
3 WHAT YOU DON'T UNDERSTAND IS THAT SHE WAS CONFUSED --  
4 YOU WERE ASKING HER TO ACCEPT AS A FACT THAT WHICH  
5 YOU PROPOSED AND SHE'S UNWILLING TO DO THAT. SHE  
6 SAYS SHE'LL LISTEN TO THE FACTS, AND I THINK SHE  
7 WILL.

8 MR. NEWSOME: YOUR HONOR, I THINK SHE TOLD  
9 ME ON TWO DIFFERENT OCCASIONS THAT IT DIDN'T MATTER  
10 ANYTHING ABOUT THE DEFENDANT. THE FACTS SHE WAS  
11 GOING TO LISTEN TO WERE THE FACTS OF THE CRIME.

12 THE COURT: WELL, SHE LATER, THOUGH, SAID,  
13 AND I VERY CLEARLY TOLD HER THAT MENTAL CAPACITY OF  
14 THE DEFENDANT, AGE OF THE DEFENDANT AS TO -- NOT  
15 ACCEPTED, BUT WOULD SHE JUST CONSIDER IT, AND SHE  
16 SAID THAT SHE WOULD. I THINK SHE'S QUALIFIED UNDER  
17 THE TOTALITY OF HER RESPONSE. YOUR POSITION IS NOTED  
18 FOR THE RECORD. BRING HER OUT.

19 (JUROR NUMBER 294 ENTERS THE  
20 COURTROOM.)

21 THE COURT: MADAM JUROR, WE WANT TO THANK  
22 YOU FOR YOUR CANDOR AND YOUR RESPONSES TO US HERE  
23 TODAY. WE ARE QUALIFYING 35 INDIVIDUALS FROM WHICH  
24 WE WILL BE SELECTING 12 JURORS AND 2 ALTERNATES. YOU  
25 ARE QUALIFIED TO SERVE, IF SELECTED, AS ONE OF THE

1 35. DO YOU UNDERSTAND THAT?

2 JURY VENIRE MEMBER: YES, SIR.

3 THE COURT: PLEASE PACK YOUR PERSONAL  
4 BELONGINGS SO THAT YOU WILL BE PREPARED TO STAY WITH  
5 US FOR A FEW DAYS IF YOU ARE SELECTED. REPORT ACROSS  
6 THE STREET TOMORROW AT 2:30 WITHOUT FAIL. WE WILL BE  
7 SELECTING THIS JURY IN JUST A MATTER OF MOMENTS AT  
8 THAT TIME, AND WE WILL START ON THE TRIAL OF THIS  
9 CASE TOMORROW AFTERNOON.

10 JURY VENIRE MEMBER: OKAY.

11 THE COURT: ANY QUESTIONS?

12 JURY VENIRE MEMBER: NO, SIR.

13 THE COURT: DON'T DISCUSS THIS CASE OR  
14 ASPECT OF IT NOR THE QUESTIONS AND ANSWERS HERE  
15 TODAY, AND I LOOK FORWARD TO SEEING YOU TOMORROW AT  
16 2:30. THANK YOU SO MUCH.

17 JURY VENIRE MEMBER: THANK YOU.

18 (JUROR NUMBER 294 IS DISMISSED  
19 FROM THE COURTROOM.)

20 MR. BAILEY: YOUR HONOR, BEFORE WE CALL  
21 THE NEXT ONE, I DO NOT HAVE A COPY OF THIS NEXT ONE.

22 THE COURT: LET'S STOP FOR A MINUTE. YOU  
23 HAD A COMMENT TO MAKE, MR. WANNAMAKER?

24 THE CLERK: WE'RE GOING TO GET LUNCH.

25 THE COURT: IT WILL BE HERE. ARE WE READY

1 TO PROCEED?

2 MR. BAILEY: YES, SIR.

3 MR. NEWSOME: YES, SIR.

4 THE COURT: ALL RIGHT. BRING THE NEXT ONE  
5 IN, PLEASE.

6 (JUROR NUMBER 299, A WHITE  
7 MALE, ENTERS THE COURTROOM.)

8 (JUROR NUMBER 299, HAVING BEEN FIRST DULY SWORN  
9 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

10 THE CLERK: PLEASE COME AROUND AND HAVE A  
11 SEAT. CLIFTON ZEIGLER.

12 THE COURT: MR. ZEIGLER?

13 JURY VENIRE MEMBER: YES, SIR.

14 THE COURT: WE ALL APPRECIATE YOUR  
15 PATIENCE IN WAITING FOR US. THIS IS JUST A SLOW  
16 PROCESS.

17 JURY VENIRE MEMBER: I UNDERSTAND.

18 THE COURT: EQUALLY IMPORTANT, AS YOU  
19 WOULD UNDERSTAND, IT'S AN IMPORTANT PROCESS. I NOTE  
20 THAT YOU ARE EMPLOYED BY CLAVICLE WOODWORKS AS A  
21 SKILLED LABORER. WHAT TYPE OF WORK DO YOU DO OUT  
22 THERE?

23 JURY VENIRE MEMBER: BUILD CUSTOM WINDOWS.

24 THE COURT: SIR?

25 JURY VENIRE MEMBER: BUILD CUSTOM WINDOWS.

1 THE COURT: BUILD CUSTOM WINDOWS?

2 JURY VENIRE MEMBER: YES, SIR.

3 THE COURT: OKAY. YOU INDICATED YESTERDAY  
4 THAT YOU HAD NOT HEARD OR READ OR DIDN'T KNOW  
5 ANYTHING ABOUT THIS CASE. IS THAT STILL YOUR ANSWER?

6 JURY VENIRE MEMBER: YES.

7 THE COURT: MR. ZEIGLER, DID YOU HAVE A  
8 CHANCE TO READ THE THREE TYPES OF JURORS?

9 JURY VENIRE MEMBER: YES, SIR.

10 THE COURT: LET ME REITERATE AGAIN, AS I  
11 DID YESTERDAY, IN A CASE WHERE THE STATE SEEKS THE  
12 PENALTY OF DEATH, THE LAW PROVIDES THAT WE HAVE A  
13 TWO-PART PROCEEDING. YOU UNDERSTAND? THE FIRST PART  
14 IS DEALT SOLELY WITH TESTIMONY CONCERNING THE GUILT  
15 OR INNOCENCE OF THE DEFENDANT. IF IN THAT FIRST  
16 PHASE THE DEFENDANT IS FOUND NOT GUILTY, WE STOP  
17 RIGHT THERE. NOW, IF -- AND I USE THAT WORD  
18 ADVISEDLY -- IF THIS JURY OR A JURY FINDS THE  
19 DEFENDANT GUILTY OF MURDER BEYOND A REASONABLE DOUBT,  
20 YOU THEN GO TO THE SECOND PHASE. NOW, THE QUESTION  
21 OF GUILT IS ALREADY CONCLUDED THEN.

22 IN THE SECOND PHASE, THE JURY SAYS HAVING FOUND  
23 THE DEFENDANT GUILTY OF MURDER, WHAT SHALL THE  
24 SENTENCE -- PUNISHMENT BE? IN THIS SECOND PHASE, YOU  
25 WILL BE HEARING TESTIMONY FROM THE STATE THAT

1 SUGGESTS A PUNISHMENT OF DEATH IS APPROPRIATE.  
2 EQUALLY IMPORTANT, YOU WILL BE HEARING TESTIMONY IN  
3 MITIGATION FROM THE DEFENDANT THAT SAYS EVEN THOUGH  
4 WE FOUND HIM GUILTY OF MURDER, LIFE IMPRISONMENT IS  
5 APPROPRIATE.

6 NOW, IN A CONSIDERATION OF THIS ISSUE, THERE ARE  
7 THE THREE TYPES OF JURORS. THE FIRST GROUP -- AND  
8 THERE'S NO RIGHT OR WRONG ANSWERS. THE FIRST GROUP  
9 SAYS HAVING FOUND HIM GUILTY OF MURDER, I WILL ALWAYS  
10 BE FOR THE PENALTY OF DEATH. THE SECOND GROUP SAYS  
11 EVEN THOUGH I FIND HIM GUILTY OF MURDER, I WILL NEVER  
12 IMPOSE THE DEATH PENALTY. THE THIRD GROUP SAYS I'M  
13 GOING TO LISTEN TO BOTH SIDES OF THIS ISSUE AND THEN  
14 I'LL MAKE UP MY MIND. I CAN IMPOSE DEATH OR I COULD  
15 GIVE LIFE DEPENDING ON HOW -- WHAT I FIND. WOULD YOU  
16 BE FIRST, SECOND OR THIRD?

17 JURY VENIRE MEMBER: THIRD.

18 THE COURT: THIRD.

19 MR. BAILEY: THANK YOU, YOUR HONOR. MR.  
20 ZEIGLER, YOU UNDERSTAND THAT WE WOULD NOT EVEN BE  
21 TALKING ABOUT LIFE IMPRISONMENT OR THE DEATH PENALTY  
22 UNLESS THE DEFENDANT GOT FOUND GUILTY OF MURDER IN  
23 THE FIRST PART OF THE TRIAL?

24 JURY VENIRE MEMBER: YES.

25 MR. BAILEY: OKAY. AND YOU ALSO

1 UNDERSTAND THAT WHEN THE JURY IS CONSIDERING LIFE IN  
2 PRISON OR THE DEATH SENTENCE, WHATEVER THE JURY  
3 DECIDES THE VERDICT OUGHT TO BE, IT WILL BE CARRIED  
4 OUT. IT IS THE SENTENCE OF THE COURT. THE JURY  
5 MAKES THAT DECISION, NOT THE JUDGE.

6 JURY VENIRE MEMBER: RIGHT.

7 THE COURT: SO YOU WOULD HAVE TO ASSUME  
8 THAT IF YOU VOTE FOR LIFE IMPRISONMENT, THE DEFENDANT  
9 WOULD GET LIFE IN PRISON. IF YOU VOTED FOR THE DEATH  
10 PENALTY, THE DEFENDANT ACTUALLY WOULD BE EXECUTED.

11 NOW, IF YOU WERE ON A JURY IN A CASE LIKE THIS  
12 AND AFTER HEARING ALL OF THE FACTS AND THE LAW FROM  
13 THE JUDGE, YOU CONSIDERED BOTH SENTENCES AND YOU AND  
14 THE OTHER JURORS DECIDED ON THE DEATH PENALTY, THEN  
15 IN ORDER FOR THAT SENTENCE TO BE CARRIED OUT, EACH  
16 JUROR WOULD HAVE TO SIGN THEIR NAME TO A DEATH  
17 VERDICT FORM. COULD YOU SIGN YOUR NAME TO A PAPER  
18 LIKE THAT KNOWING THAT IT WOULD RESULT IN THE  
19 EXECUTION OF THAT DEFENDANT?

20 JURY VENIRE MEMBER: (NO VERBAL RESPONSE.)

21 MR. BAILEY: YOU'VE GOT TO ANSWER OUT LOUD  
22 SO HE CAN TAKE IT DOWN.

23 JURY VENIRE MEMBER: YES, SIR.

24 MR. BAILEY: OKAY. AND THE NEXT THING  
25 THAT WOULD HAPPEN IS THAT EACH JUROR WOULD COME OU

1 IN THE COURTROOM AND THEIR NAMES WOULD BE CALLED ONE  
2 AT A TIME AND THEY WOULD BE ASKED IS THAT YOUR  
3 VERDICT. COULD YOU ANNOUNCE THAT VERDICT IN OPEN  
4 COURT --

5 JURY VENIRE MEMBER: YES, I COULD.

6 MR. BAILEY: -- IF IT WAS YOUR VERDICT?  
7 OKAY. IN THIS CASE, THE DEFENDANT OBVIOUSLY IS A  
8 YOUNG BLACK MALE. THE TESTIMONY WILL BE THAT THE  
9 VICTIM THAT DIED AS A RESULT OF THE GUNSHOT WOUND WAS  
10 A YOUNG WHITE MAN. THERE WAS A YOUNG WHITE WOMAN  
11 THAT WAS SHOT WHO SURVIVED HER WOUNDS. WOULD THE  
12 FACT THAT YOU'VE GOT WHITE VICTIMS AND A BLACK  
13 DEFENDANT CAUSE YOU TO VIEW THIS CASE ANY DIFFERENTLY  
14 THAN IF YOU HAD THE FLIP SITUATION WHERE YOU HAD A  
15 WHITE DEFENDANT AND A BLACK VICTIM?

16 JURY VENIRE MEMBER: NO, IT WON'T.

17 MR. BAILEY: SO RACE WOULD NOT BE A  
18 FACTOR?

19 JURY VENIRE MEMBER: NOT A FACTOR.

20 MR. BAILEY: ALL RIGHT, SIR. THE STATE'S  
21 PROOF WILL BE THAT MARCH OF 1994 WHEN WE ALLEGED THIS  
22 -- ALLEGE THIS MURDER TOOK PLACE, THE DEFENDANT WAS  
23 16 YEARS OLD. HE'S NOW 18. IF IT WAS PROVEN TO YOU  
24 AS A JUROR THAT THE CASE WAS BAD ENOUGH, COULD YOU  
25 IMPOSE THE DEATH PENALTY ON A PERSON WHO WAS 16 AT

1 THE TIME THEY COMMITTED A MURDER?

2 JURY VENIRE MEMBER: YES, I COULD.

3 MR. BAILEY: MR. ZEIGLER, THAT'S ALL I'VE  
4 GOT. THANK YOU VERY MUCH.

5 THE COURT: MR. NEWSOME.

6 MR. NEWSOME: MR. ZEIGLER.

7 JURY VENIRE MEMBER: YES, SIR.

8 MR. NEWSOME: BY LAW, THERE ARE SOME  
9 AGGRAVATING FACTORS AND MITIGATING FACTORS THAT YOU  
10 WOULD HAVE TO CONSIDER IF YOU GOT TO THE PENALTY  
11 PHASE. THE JUDGE WOULD EXPLAIN THOSE TO YOU, THE  
12 AGGRAVATING FACTORS. AND THE MITIGATING FACTORS  
13 TYPICALLY CONCERN THE DEFENDANT. WOULD THE AGE OF  
14 THE DEFENDANT GIVE YOU SOME CAUSE TO PAUSE ABOUT  
15 DELIVERING THE DEATH PENALTY?

16 JURY VENIRE MEMBER: NO.

17 MR. NEWSOME: NOT AT ALL? OKAY. HOW  
18 ABOUT IF THERE WAS ANY EVIDENCE OF THE USE OF ALCOHOL  
19 PRIOR TO THE CRIME?

20 JURY VENIRE MEMBER: NO. IF HE'S USING  
21 DRUGS OR ALCOHOL, I MEAN, YOU KNOW, I'VE ALWAYS BEEN  
22 UNDER THE THING, YOU KNOW, IF YOU DO THE CRIME,  
23 YOU'VE GOT TO BE WILLING TO PAY THE TIME, PAY THE  
24 TIME.

25 MR. NEWSOME: OKAY.

1 JURY VENIRE MEMBER: REGARDLESS.

2 MR. NEWSOME: SO YOU THINK PAYMENT FOR  
3 THAT CRIME IS DEATH, THEN?

4 JURY VENIRE MEMBER: WELL, I DON'T SEE IT  
5 AS DEATH. I WOULD HAVE TO HEAR BOTH SIDES OF THE  
6 STORY.

7 MR. NEWSOME: AGAIN, WE'RE NOT TALKING  
8 ABOUT GUILT OR INNOCENCE. OKAY. THE JUDGE WILL TELL  
9 YOU THAT THE USE OF ALCOHOL OR DRUGS IS NOT A DEFENSE  
10 TO A CRIME. BUT A MITIGATING FACTOR AS FAR AS  
11 CONSIDERING THE DEATH PENALTY PHASE, WOULD YOU  
12 CONSIDER THAT AS A FACTOR BEFORE MAKING A DECISION?

13 JURY VENIRE MEMBER: YEAH.

14 MR. NEWSOME: ALL RIGHT. I HAVE NO  
15 FURTHER QUESTIONS, YOUR HONOR.

16 THE COURT: YOU MAY STEP OUT JUST A  
17 MOMENT.

18 (JUROR NUMBER 299 IS DISMISSED  
19 FROM THE COURTROOM.)

20 MR. BAILEY: QUALIFIED.

21 MR. NEWSOME: HE'S QUALIFIED, YOUR HONOR.

22 (JUROR NUMBER 299 ENTERS THE  
23 COURTROOM.)

24 THE COURT: MR. JUROR, WE ARE IN THE  
25 PROCESS OF QUALIFYING 35 JURORS FROM WHICH 12 JURORS

1 AND 2 ALTERNATES WILL BE SELECTED TOMORROW AFTERNOON  
2 AT 2:30. THE ATTORNEY FOR THE STATE, THE ATTORNEY  
3 FOR THE DEFENSE, AND THIS COURT FIND YOU QUALIFIED TO  
4 SERVE, IF SELECTED. I WANT YOU TO PACK YOUR PERSONAL  
5 BELONGINGS AND BE ACROSS THE STREET AT THE ANNEX AT  
6 2:30 TOMORROW AFTERNOON. WE WILL BE SELECTING THIS  
7 JURY IMMEDIATELY TO START THE TRIAL OF THE CASE  
8 TOMORROW. SO PACK YOUR BAGS AND BE WITH US TOMORROW  
9 IN THE EVENT YOU ARE ONE OF THE SELECTED. DON'T  
10 DISCUSS ANY ASPECT OF THIS CASE WITH ANYBODY.

11 JURY VENIRE MEMBER: OKAY.

12 THE COURT: SEE YOU TOMORROW AFTERNOON.

13 JURY VENIRE MEMBER: ALL RIGHT.

14 THE COURT: THANK YOU.

15 JURY VENIRE MEMBER: THANK YOU, SIR.

16 (JUROR NUMBER 299 IS DISMISSED  
17 FROM THE COURTROOM.)

18 (JUROR NUMBER 28, A BLACK  
19 MALE, ENTERS THE COURTROOM.)

20 THE CLERK: PLEASE STATE YOUR NAME FOR THE  
21 RECORD.

22 JURY VENIRE MEMBER: TIMOTHY BUTLER.

23 (JUROR NUMBER 28, HAVING BEEN FIRST DULY SWORN  
24 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

25 THE COURT: MR. BUTLER, GOOD MORNING.

1 JURY VENIRE MEMBER: GOOD MORNING.

2 THE COURT: IS -- WELL, NO, IT'S GOOD  
3 AFTERNOON NOW. I'VE KEPT YOU BACK THERE SINCE 10:00.  
4 ALL OF US WANT TO APOLOGIZE FOR THE INCONVENIENCE,  
5 BUT THIS IS JUST A SLOW PROCESS. IT'S A SERIOUS  
6 MATTER. YOU WILL UNDERSTAND THAT.

7 JURY VENIRE MEMBER: I DO.

8 THE COURT: MR. BUTLER, HAVE YOU EVER BEEN  
9 ON A JURY BEFORE?

10 JURY VENIRE MEMBER: NO, SIR.

11 THE COURT: OKAY. WELL, LET ME TALK TO  
12 YOU A LITTLE BIT ABOUT IT. I NOTICE THAT YOU WORK  
13 FOR UNITED TECHNOLOGY.

14 JURY VENIRE MEMBER: NO, THAT'S MY WIFE.

15 THE COURT: THAT'S YOUR WIFE. OKAY. YOU  
16 WORK FOR KLEIN IRON AND STEEL. IS THAT IN COLUMBIA?

17 JURY VENIRE MEMBER: YES.

18 THE COURT: AND YOU ARE OFF FROM WORK, AND  
19 WE KNOW THAT YOU WOULD RATHER BE THERE THAN HERE. WE  
20 UNDERSTAND THAT. LET ME -- LET ME TALK TO YOU A  
21 LITTLE BIT ABOUT THE PROCESS HERE. THIS YOUNG MAN IS  
22 CHARGED WITH MURDER. YOU UNDERSTAND THAT?

23 JURY VENIRE MEMBER: UH-HUH.

24 THE COURT: TO THIS CHARGE, HE PLEADS NOT  
25 GUILTY. NOW, EVERYBODY, NO MATTER HOW SERIOUS A

1 CHARGE IS, IS ALWAYS PRESUMED INNOCENT UNTIL HE'S  
2 PROVEN GUILTY UNANIMOUSLY BEYOND A REASONABLE DOUBT  
3 DO YOU UNDERSTAND THAT?

4 JURY VENIRE MEMBER: YES, SIR.

5 THE COURT: OKAY. WE WILL HAVE A  
6 TWO-PHASE TRIAL, PERHAPS. THE FIRST PHASE DEALS  
7 SOLELY WITH HIS INNOCENCE OR GUILT, NOT THE  
8 PUNISHMENT, BUT HIS INNOCENCE OR GUILT. IF THE JURY  
9 FINDS THIS YOUNG MAN NOT GUILTY, WE STOP RIGHT THERE.  
10 DO YOU UNDERSTAND THAT?

11 JURY VENIRE MEMBER: YES.

12 THE COURT: OKAY. IF THE JURY AFTER  
13 CONSIDERING ALL OF THE FACTS HAS FOUND HIM GUILTY  
14 BEYOND A REASONABLE DOUBT OF MURDER, WE WOULD THEN GO  
15 TO THE SECOND PART OF IT. DO YOU UNDERSTAND?

16 JURY VENIRE MEMBER: YES, SIR.

17 THE COURT: WE WOULD NEVER GET TO THE  
18 PUNISHMENT PHASE UNLESS HE'S FOUND GUILTY. DO YOU  
19 UNDERSTAND THAT?

20 JURY VENIRE MEMBER: YES, SIR.

21 THE COURT: IN THE SECOND PHASE, THE JURY  
22 MUST ANSWER THE FOLLOWING QUESTION, AND THAT IS THIS:  
23 HAVING FOUND THE DEFENDANT GUILTY OF MURDER BEYOND A  
24 REASONABLE DOUBT, WHAT PUNISHMENT SHALL BE IMPOSED?  
25 SHALL WE IMPOSE THE PUNISHMENT OF DEATH OR SHALL WE

1 IMPOSE THE PUNISHMENT OF LIFE? DO YOU UNDERSTAND  
2 THAT THUS FAR?

3 JURY VENIRE MEMBER: YES, SIR.

4 THE COURT: IN MAKING THAT -- IN MAKING  
5 THAT DECISION, AND IT'S AN ENORMOUS DECISION, THERE  
6 WOULD BE TESTIMONY PRESENTED IN THE SECOND PHASE  
7 WHERE THE STATE WOULD SUGGEST TO YOU THAT DEATH BY  
8 ELECTROCUTION OR INJECTION IS THE APPROPRIATE  
9 SENTENCE. DEFENSE COUNSEL EQUALLY WILL BE PRESENTING  
10 TESTIMONY THAT SAYS EVEN THOUGH YOU FOUND HIM GUILTY  
11 OF MURDER, LIFE IMPRISONMENT IS THE APPROPRIATE  
12 SENTENCE. YOU UNDERSTAND SO FAR?

13 JURY VENIRE MEMBER: YES, SIR.

14 THE COURT: SO YOU WILL BE ASKED, THEN, TO  
15 CONSIDER ALL OF THE ASPECTS OF THE SENTENCE AND  
16 DECIDE WHETHER OR NOT YOU WISH TO IMPOSE DEATH BY  
17 ELECTROCUTION OR LETHAL INJECTION OR LIFE  
18 IMPRISONMENT. DO YOU UNDERSTAND?

19 JURY VENIRE MEMBER: YES.

20 THE COURT: THERE -- AT THIS TIME, NOBODY  
21 IS ASKING YOU NOR COULD THEY ASK YOU WHAT YOU WOULD  
22 DO. THEY ARE JUST SIMPLY SAYING -- TELLING YOU THAT  
23 YOU WOULD CONSIDER THE FACTS AND THEN MAKE UP YOUR  
24 OWN MIND AT THAT TIME. DO YOU UNDERSTAND THAT?

25 JURY VENIRE MEMBER: YES, SIR.

1 THE COURT: NOW, YOU'VE READ THAT LETTER I  
2 LEFT OUT THERE?

3 JURY VENIRE MEMBER: UH-HUH.

4 THE COURT: THERE ARE THREE CLASSES OF  
5 JURORS, AND YOUR ANSWER IS EQUALLY VALID REGARDLESS.  
6 THERE'S NO RIGHT OR WRONG ANSWERS HERE. THERE IS ONE  
7 GROUP OF JURORS WHO SAY ONCE WE FOUND HIM GUILTY OF  
8 MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY.  
9 THERE IS A SECOND GROUP THAT SAYS EVEN THOUGH WE  
10 FOUND HIM GUILTY OF MURDER, I CAN NEVER IMPOSE THE  
11 SENTENCE OF DEATH. THERE IS A THIRD GROUP THAT SAYS  
12 WE FOUND HIM GUILTY OF MURDER, BUT I WANT TO LISTEN  
13 TO THE FACTS ON BOTH SIDES AND DEPENDING ON WHAT I  
14 FIND TO BE, I CAN VOTE FOR THE DEATH PENALTY, BUT  
15 EQUALLY IMPORTANT, I CAN VOTE FOR LIFE. IT DEPENDS  
16 ON WHAT I BELIEVE AND FIND.

17 WOULD YOU BE FOR THE FIRST GROUP THAT SAYS  
18 ALWAYS THAT THEY ARE, THE SECOND GROUP THAT SAYS I'LL  
19 NEVER VOTE FOR THE DEATH PENALTY OR THE THIRD GROUP  
20 THAT SAYS DEPENDING ON WHAT I FIND TO BE THE FACTS, I  
21 COULD OR COULD NOT. WOULD YOU BE FIRST, SECOND OR  
22 THIRD?

23 JURY VENIRE MEMBER: THIRD.

24 THE COURT: THIRD. NOW, UNDER OUR LAW, IF  
25 A JURY HAS FOUND A DEFENDANT GUILTY UNANIMOUSLY AN

1 IF BACK THERE IN THE CONFINES OF THE JURY ROOM THAT  
2 JURY HAS RECOMMENDED UNANIMOUSLY, ALL TWELVE, THAT HE  
3 BE SUBJECTED TO THE PENALTY OF DEATH, OUR LAW  
4 REQUIRES THAT THAT JURY AND THE FOREMAN SIGN A FORM  
5 THAT SAYS WE RECOMMEND DEATH. AND OF COURSE,  
6 WHATEVER THE RECOMMENDATION IS WILL BE ENFORCED. YOU  
7 UNDERSTAND THAT?

8 JURY VENIRE MEMBER: YES, SIR.

9 THE COURT: IF BACK THERE IN THE CONFINES  
10 OF THE PRIVACY OF THE JURY ROOM, YOU AND THE JURY  
11 UNANIMOUSLY FIND THAT DEATH IS THE APPROPRIATE  
12 SENTENCE, CAN YOU SIGN SUCH A FORM?

13 JURY VENIRE MEMBER: YES, SIR.

14 THE COURT: OKAY.

15 MR. BAILEY: THANK YOU, YOUR HONOR.

16 THE COURT: LET ME ASK ONE FURTHER  
17 QUESTION. THIS JUROR INDICATED ON YESTERDAY, AS I  
18 REMEMBER, THAT YOU MAY HAVE HEARD SOMETHING ABOUT  
19 THIS CASE. WAS THAT -- WERE YOU ONE OF THOSE?

20 JURY VENIRE MEMBER: YEAH. I GLANCED AT  
21 IT, BUT I DON'T REALLY READ THE NEWSPAPER. MY WIFE  
22 WAS TELLING ME ABOUT IT. I USUALLY READ THE SPORTS  
23 SECTION.

24 THE COURT: I SEE. I DO TOO. OTHER THAN  
25 THAT, YOU'VE MADE NO DECISION ABOUT IT?

1 JURY VENIRE MEMBER: NO, SIR.

2 THE COURT: YOU'VE MADE NO DECISION ABOUT  
3 WHO MAY BE GUILTY OR NOT?

4 JURY VENIRE MEMBER: NO, SIR.

5 THE COURT: MR. BAILEY. I APOLOGIZE FOR  
6 THE INTERRUPTION.

7 MR. BAILEY: YES, SIR. THAT'S FINE.  
8 THERE WERE A BUNCH OF NAMES READ OUT BY THE JUDGE  
9 YESTERDAY. DID YOU KNOW ANY OF THOSE NAMES?

10 JURY VENIRE MEMBER: NO, SIR, I DIDN'T.

11 MR. BAILEY: I TRIED TO KEEP TRACK OF IT,  
12 BUT IT WENT PRETTY FAST, BUT YOU DON'T KNOW ANYBODY?

13 JURY VENIRE MEMBER: HUH-UH.

14 MR. BAILEY: AND YOU UNDERSTAND WHAT JUDGE  
15 COTTINGHAM SAID IF WE GET TO THE SECOND PHASE OF THE  
16 TRIAL, THE DEFENDANT'S GUILT WILL HAVE ALREADY BEEN  
17 ESTABLISHED, SO YOU WILL HAVE TO BE DEALING WITH A  
18 CONVICTED MURDERER TO EVEN BE IN THAT SECOND PHASE OF  
19 THE TRIAL.

20 JURY VENIRE MEMBER: YES, SIR.

21 MR. BAILEY: AND WHATEVER THE JURY DECIDES  
22 THE PUNISHMENT SHOULD BE, THAT PUNISHMENT WILL BE  
23 CARRIED OUT. IF THE JURY DECIDES ON LIFE  
24 IMPRISONMENT, THE JUDGE WOULD SENTENCE THEM TO LIFE.  
25 IF THE JURY DECIDES THE DEATH PENALTY, THEN THAT

1 DEFENDANT WOULD BE SENTENCED TO DEATH, AND THAT  
2 SENTENCE WOULD BE CARRIED OUT.

3 JURY VENIRE MEMBER: YES, SIR.

4 MR. BAILEY: NOW, YOU'VE INDICATED TO THE  
5 JUDGE THAT YOU COULD SIGN A DEATH VERDICT FORM IF YOU  
6 AND THE OTHER JURORS HAD ALREADY VOTED FOR THE DEATH  
7 PENALTY.

8 JURY VENIRE MEMBER: YES, SIR.

9 MR. BAILEY: COULD YOU COME OUT IN OPEN  
10 COURT AND ANNOUNCE THAT VERDICT?

11 JURY VENIRE MEMBER: EXCUSE ME?

12 MR. BAILEY: COULD YOU COME OUT IN OPEN  
13 COURT AFTER THE VOTE AND WHEN EACH JUROR -- THERE'S A  
14 PROCESS CALLED POLLING THE JURY WHERE EACH JUROR'S  
15 NAME IS CALLED ONE AT A TIME. THEY STAND UP AND THE  
16 CLERK OR THE JUDGE WOULD ASK YOU IF THAT WAS YOUR  
17 VERDICT.

18 JURY VENIRE MEMBER: YES.

19 MR. BAILEY: COULD YOU ANNOUNCE THAT?

20 JURY VENIRE MEMBER: YES.

21 MR. BAILEY: OKAY. IN THIS PARTICULAR  
22 CASE, OBVIOUSLY THE DEFENDANT IS A YOUNG BLACK MAN.  
23 THE TESTIMONY WILL BE THAT THE YOUNG VICTIM THAT WAS  
24 KILLED WAS A YOUNG WHITE MAN. WOULD THE FACT THAT  
25 YOU'VE GOT A DIFFERENCE IN THE RACE BETWEEN THE

1 VICTIM AND THE DEFENDANT MAKE ANY DIFFERENCE TO YOU?

2 JURY VENIRE MEMBER: NO, SIR. A CRIME

3 A CRIME.

4 MR. BAILEY: THIS IS A QUESTION I ASK ALL  
5 POTENTIAL JURORS. IF YOU HAD THE OPPOSITE SITUATION  
6 WHERE YOU HAD A WHITE DEFENDANT AND A BLACK VICTIM,  
7 WOULD YOU LOOK AT IT ANY DIFFERENT?

8 JURY VENIRE MEMBER: NO. A CRIME IS A  
9 CRIME.

10 MR. BAILEY: NOW, THE STATE'S EVIDENCE IS  
11 GOING TO BE IN MARCH OF 1994 WHEN WE ALLEGE THAT THIS  
12 MURDER TOOK PLACE, THE DEFENDANT WAS 16 YEARS OLD.  
13 HE'S NOW 18. IF THE CASE IS BAD ENOUGH, COULD YOU AS  
14 A JUROR IMPOSE THE DEATH PENALTY ON A PERSON THAT WAS  
15 16 AT THE TIME THEY COMMITTED THE MURDER?

16 JURY VENIRE MEMBER: IT ALL DEPENDS --

17 MR. BAILEY: OKAY.

18 JURY VENIRE MEMBER: -- ON THE NATURE OF  
19 THE KILLING. I MEAN, JUST A KILLING, YOU KNOW, FOR  
20 NO REASON, NOBODY WASN'T BOTHERING THAT PERSON, YES,  
21 I COULD.

22 MR. BAILEY: ALL RIGHT. YOU WOULD WANT TO  
23 HEAR ALL OF THE FACTS AND CIRCUMSTANCES --

24 JURY VENIRE MEMBER: ALL OF THE FACTS,  
25 YES.

1 MR. BAILEY: -- OF THE CRIME AND THE  
2 DEFENDANT BEFORE YOU DECIDE?

3 JURY VENIRE MEMBER: YES, SIR.

4 MR. BAILEY: THE FACT THAT YOU HAVE A 16  
5 YEAR OLD WOULDN'T JUST MAKE YOU FLAT OUT SAY, NO WAY,  
6 I WOULDN'T DO THAT?

7 JURY VENIRE MEMBER: I COULD DO IT, YES,  
8 SIR.

9 MR. BAILEY: THAT'S ALL I'VE GOT. THANK  
10 YOU. THAT'S ALL I'VE GOT.

11 MR. NEWSOME: MR. BUTLER, I NOTICE YOU  
12 ATTEND EBENEZER CHURCH.

13 JURY VENIRE MEMBER: YES, SIR.

14 MR. NEWSOME: DOES YOUR CHURCH HAVE A  
15 STATED OPINION?

16 JURY VENIRE MEMBER: YEAH. YOU MEAN WHICH  
17 WE SUPPORT?

18 MR. NEWSOME: SUPPORT OR OPPOSE THE DEATH  
19 PENALTY.

20 JURY VENIRE MEMBER: I DON'T KNOW IF THEY  
21 DO OR NOT.

22 MR. NEWSOME: OKAY. HAVE YOU LIVED IN ST.  
23 MATTHEWS ALL OF YOUR LIFE?

24 JURY VENIRE MEMBER: YES, SIR.

25 MR. NEWSOME: ALL RIGHT. AND YOU DON'T

1 KNOW ANY OF THE VICTIMS OR THE WITNESSES THAT WERE  
2 NAMED?

3 JURY VENIRE MEMBER: NO, SIR.

4 MR. NEWSOME: THANK YOU. I DON'T HAVE ANY  
5 FURTHER QUESTIONS.

6 THE COURT: STEP OUT JUST A MOMENT.

7 (JUROR NUMBER 28 IS DISMISSED  
8 FROM THE COURTROOM.)

9 MR. BAILEY: QUALIFIED.

10 MR. NEWSOME: QUALIFIED.

11 (JUROR NUMBER 28 ENTERS THE  
12 COURTROOM.)

13 THE COURT: MR. JUROR, WE ARE IN THE  
14 PROCESS OF SELECTING 35 QUALIFIED JURORS FROM WHICH  
15 WE WILL BE SELECTING THE JURY OF 12 AND 2 ALTERNATES.

16 JURY VENIRE MEMBER: YES, SIR.

17 THE COURT: YOU HAVE BEEN QUALIFIED TO  
18 SERVE BY THE ATTORNEYS FOR THE STATE AND THE  
19 DEFENDANT AND THIS COURT, IF SELECTED. YOU  
20 UNDERSTAND?

21 JURY VENIRE MEMBER: YES, SIR.

22 THE COURT: SO I WANT YOU TOMORROW TO PACK  
23 YOUR PERSONAL EFFECTS AND REPORT OVER THERE AT THE  
24 ANNEX ACROSS THE STREET AT 2:30. WE ARE GOING TO  
25 START THE -- WE'RE GOING TO SELECT THE JURY IN JUS A

1 MOMENT WHEN WE GET HERE. YOU MAY OR MAY NOT BE  
2 SELECTED. SO COME PREPARED TO SERVE IN THE EVENT YOU  
3 ARE SELECTED.

4 JURY VENIRE MEMBER: OKAY.

5 THE COURT: AND I LOOK FORWARD -- DON'T  
6 DISCUSS ANY ASPECT OF THIS CASE, INCLUDING THESE  
7 QUESTIONS, WITH ANYBODY.

8 JURY VENIRE MEMBER: YES, SIR.

9 THE COURT: SO I'LL SEE YOU AT 2:30  
10 TOMORROW. THANK YOU, SIR.

11 (JUROR NUMBER 28 IS DISMISSED  
12 FROM THE COURTROOM.)

13 (JUROR NUMBER 18, A WHITE  
14 MALE, ENTERS THE COURTROOM.)

15 THE CLERK: PLEASE STATE YOUR NAME FOR THE  
16 RECORD.

17 JURY VENIRE MEMBER: RONALD BOZARD.

18 (JUROR NUMBER 18, HAVING BEEN FIRST DULY SWORN  
19 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

20 THE CLERK: PLEASE COME AROUND.

21 THE COURT: GOOD AFTERNOON, MR. BOZARD.

22 JURY VENIRE MEMBER: HOW ARE YOU DOING?

23 THE COURT: MR. BOZARD, I NOTE THAT YOU  
24 ARE WITH BOZARD BUILDERS.

25 JURY VENIRE MEMBER: YES, SIR.

1 THE COURT: AND WHAT IS YOUR OCCUPATION?

2 JURY VENIRE MEMBER: CARPENTER.

3 THE COURT: CARPENTER. ARE YOU ANY KIND  
4 OF SPECIALTY OR JUST A GENERAL CARPENTER?

5 JURY VENIRE MEMBER: JUST GENERAL  
6 CARPENTER.

7 THE COURT: BOZARD BUILDERS, IS THAT YOUR  
8 BUSINESS?

9 JURY VENIRE MEMBER: WELL, MINE AND MY  
10 FATHER'S.

11 THE COURT: YOU AND YOUR FATHER'S. YOU  
12 LIVE HERE IN CALHOUN COUNTY?

13 JURY VENIRE MEMBER: YES, SIR.

14 THE COURT: AND HAVE FOR A NUMBER OF  
15 YEARS?

16 JURY VENIRE MEMBER: YES, SIR.

17 THE COURT: YOU FINISHED HIGH SCHOOL, I  
18 THINK YOU SAID?

19 JURY VENIRE MEMBER: YES, SIR.

20 THE COURT: MR. BOZARD, WE NEED TO ASK YOU  
21 SOME QUESTIONS ABOUT YOUR THOUGHTS ABOUT THE DEATH  
22 PENALTY CASE. WE DON'T WANT TO IMPOSE ON YOU, BUT  
23 THIS IS THE ONLY OPPORTUNITY WE'LL HAVE TO DO THAT.  
24 YOU UNDERSTAND THAT THIS YOUNG MAN IS CHARGED WITH  
25 MURDER?

1 JURY VENIRE MEMBER: YES, SIR.

2 THE COURT: TO THIS CHARGE, HE'S PLED NOT  
3 GUILTY. NOW, WE'LL HAVE POSSIBLY TWO PHASES. THE  
4 FIRST PHASE CONCERNS ITSELF WITH HIS GUILT OR  
5 INNOCENCE, AS I EXPLAINED YESTERDAY. IF HE'S FOUND  
6 INNOCENT, WE STOP THERE. YOU UNDERSTAND?

7 JURY VENIRE MEMBER: UH-HUH.

8 THE COURT: IF -- AND I USE THAT WORD  
9 ADVISEDLY -- IF THE JURY FINDS HIM GUILTY OF MURDER  
10 BEYOND A REASONABLE DOUBT, IT WOULD BE THEN AND ONLY  
11 THEN THAT WE WOULD GO INTO THE SECOND PHASE. THE  
12 SECOND PHASE IS CALLED THE PUNISHMENT PHASE. YOU  
13 UNDERSTAND THIS?

14 JURY VENIRE MEMBER: UH-HUH.

15 THE COURT: IN THE PUNISHMENT PHASE, WE  
16 WILL BE TAKING ADDITIONAL TESTIMONY WHEREIN THE STATE  
17 WOULD BE INTRODUCING TESTIMONY TO CONVINCING YOU THAT  
18 DEATH BY ELECTROCUTION OR LETHAL INJECTION IS THE  
19 APPROPRIATE PUNISHMENT. YOU UNDERSTAND?

20 JURY VENIRE MEMBER: YES, SIR.

21 THE COURT: EQUALLY IMPORTANT, THE DEFENSE  
22 WILL BE PRESENTING TO YOU TESTIMONY THAT WOULD  
23 INDICATE THAT EVEN THOUGH HE'S BEEN CONVICTED OF  
24 MURDER, THAT LIFE IMPRISONMENT IS THE APPROPRIATE  
25 SENTENCE. YOU UNDERSTAND THAT?

1 JURY VENIRE MEMBER: UH-HUH.

2 THE COURT: NOW, IN THIS CONSIDERATION,  
3 AND IT'S A SERIOUS CONSIDERATION, THERE ARE  
4 GENERALLY, AS THAT LETTER INDICATES, THREE TYPES OF  
5 JURORS.

6 JURY VENIRE MEMBER: UH-HUH.

7 MR. NEWSOME: THERE IS A TYPE OF JUROR --  
8 AND THERE'S NO RIGHT OR WRONG ANSWER. THERE IS THE  
9 TYPE OF JUROR THAT SAYS ONCE I FIND HIM GUILTY OF  
10 MURDER, I'LL ALWAYS BE FOR THE DEATH PENALTY. THERE  
11 IS A SECOND GROUP THAT SAYS EVEN THOUGH WE'VE FOUND  
12 HIM GUILTY OF MURDER, I CAN NEVER INVOKE THE SUPREME  
13 PENALTY OF DEATH. THERE IS A THIRD GROUP OF PEOPLE  
14 WHO SAY I DON'T KNOW WHAT I WOULD DO. I WILL LISTEN  
15 TO THE FACTS IN AGGRAVATION AND I AM LISTENING --  
16 GOING TO LISTEN TO THE FACTS IN MITIGATION AND THEN  
17 I'M GOING TO DECIDE WHETHER OR NOT DEATH OR LIFE IS  
18 THE APPROPRIATE SENTENCE. YOU UNDERSTAND?

19 JURY VENIRE MEMBER: UH-HUH.

20 THE COURT: NOW, THERE IS NOBODY THAT'S  
21 GOING TO ASK YOU WHAT YOU WOULD DO BECAUSE YOU  
22 HAVEN'T HEARD THE FACTS YET.

23 JURY VENIRE MEMBER: RIGHT.

24 THE COURT: HE HASN'T BEEN CONVICTED YET  
25 AND YOU HAVEN'T HEARD THE FACTS. YOU UNDERSTAND?

1 JURY VENIRE MEMBER: UH-HUH.

2 THE COURT: WE WOULD ASK AND ARE ENTITLED  
3 TO ASK YOU GENERALLY, WOULD YOU FIT IN ONE OF THE  
4 THREE CATEGORIES? THERE IS THE ONE THAT SAYS I'LL  
5 ALWAYS BE FOR THE DEATH PENALTY. THE SECOND SAYS  
6 NEVER. THE THIRD SAYS IT'S GOING TO DEPEND ON WHAT I  
7 FIND.

8 JURY VENIRE MEMBER: IT WOULD DEPEND.

9 THE COURT: YOU WOULD PUT YOURSELF IN THAT  
10 THIRD GROUP?

11 JURY VENIRE MEMBER: THIRD GROUP.

12 THE COURT: ALL RIGHT. YOU UNDERSTAND  
13 NOBODY IS ASKING YOU HERE WHAT YOU WILL DO BECAUSE  
14 YOU HAVEN'T HEARD THE FACTS.

15 JURY VENIRE MEMBER: RIGHT.

16 THE COURT: YOU DON'T EVEN KNOW IF HE'S  
17 GUILTY OR NOT. WE ARE JUST ASKING YOU GENERALLY  
18 WHICH GROUP YOU THINK YOU WOULD BE IN.

19 JURY VENIRE MEMBER: UH-HUH.

20 MR. BAILEY: I'M WALTER BAILEY. I WANT TO  
21 ASK YOU A FEW MORE QUESTIONS. AND YOU UNDERSTAND  
22 FROM WHAT JUDGE COTTINGHAM SAID THAT WE WOULDN'T EVEN  
23 BE TALKING ABOUT LIFE IMPRISONMENT OR THE DEATH  
24 PENALTY UNLESS THE DEFENDANT IS FOUND GUILTY OF  
25 MURDER IN THE FIRST STAGE.

1 JURY VENIRE MEMBER: UH-HUH.

2 MR. BAILEY: SO ANY TIME WE'RE TALKING  
3 ABOUT PUNISHMENT, WE'RE DEALING WITH A CONVICTED  
4 MURDERER.

5 JURY VENIRE MEMBER: UH-HUH.

6 MR. BAILEY: AND YOU ALSO UNDERSTAND THAT  
7 IN SOUTH CAROLINA, WHATEVER THE JUDGE DECIDES OUGHT  
8 TO HAPPEN ON THE PENALTY WILL BE THE SENTENCE OF THE  
9 COURT, IT'S NOT A RECOMMENDATION.

10 JURY VENIRE MEMBER: UH-HUH.

11 MR. BAILEY: IF THE JURY AFTER HEARING ALL  
12 OF THAT EVIDENCE SAYS LIFE IN PRISON IS THE  
13 APPROPRIATE PUNISHMENT, THE JUDGE IS GOING TO GIVE  
14 HIM LIFE. IF THE JURY SAYS DEATH PENALTY IS THE  
15 APPROPRIATE PUNISHMENT, THAT DEFENDANT WILL BE  
16 EXECUTED.

17 NOW, IF YOU'RE ON A CASE LIKE THIS AND WE GET TO  
18 THE SECOND PHASE AND YOU AS A JURY HEAR ALL OF THAT  
19 TESTIMONY AND THE JUDGE TELLS YOU WHAT THE LAW IS AND  
20 YOU DECIDE BETWEEN THOSE TWO SENTENCES THAT THE DEATH  
21 PENALTY IS THE APPROPRIATE SENTENCE FOR THAT  
22 DEFENDANT, THEN IN ORDER TO CARRY OUT THAT SENTENCE,  
23 EACH JUROR WOULD HAVE TO SIGN THEIR NAME TO A DEATH  
24 VERDICT FORM AND THE RESULT OF THAT WOULD BE THAT  
25 DEFENDANT WOULD BE EXECUTED. COULD YOU SIGN YOUR

1 NAME, DO YOU THINK, WITH THE OTHER PEOPLE IF THAT WAS  
2 YOUR DECISION?

3 JURY VENIRE MEMBER: I THINK AFTER HEARING  
4 ALL OF THE EVIDENCE, IF I BELIEVED IT TOTALLY, I  
5 COULD SIGN IT.

6 MR. BAILEY: AND COULD YOU COME OUT IN  
7 OPEN COURT AND ANNOUNCE THAT DECISION PUBLICLY WHEN  
8 YOUR NAME WAS CALLED ALONG WITH THE OTHER NAMES?

9 JURY VENIRE MEMBER: I THINK I COULD.

10 MR. BAILEY: IN A PROCESS CALLED POLLING  
11 THE JURY.

12 JURY VENIRE MEMBER: I THINK I COULD.

13 MR. BAILEY: OKAY. IN THIS PARTICULAR  
14 CASE -- AND THIS IS A QUESTION I'VE ASKED ALL OF THE  
15 JURORS. PLEASE DON'T TAKE ANY OFFENSE BY IT. BUT  
16 THE DEFENDANT IN THIS CASE IS A YOUNG BLACK MALE.  
17 THE PROOF IS GOING TO BE THAT THE VICTIM WHO DIED IS  
18 A YOUNG WHITE -- WAS A YOUNG WHITE MALE. THERE WAS  
19 ALSO A WHITE FEMALE WHO WAS SHOT BUT DID NOT DIE FROM  
20 THOSE WOUNDS. WOULD THE FACT THAT YOU'VE GOT WHITE  
21 VICTIMS AND A BLACK DEFENDANT CAUSE YOU AS A JUROR TO  
22 DECIDE THIS CASE ANY DIFFERENT THAN IF YOU HAD THE  
23 OPPOSITE SITUATION?

24 JURY VENIRE MEMBER: NONE AT ALL.

25 MR. BAILEY: OKAY. THE LAST QUESTION IS

1 THAT THE STATE ALLEGES THIS MURDER OCCURRED IN MARCH  
2 OF 1994. AT THAT TIME, THE DEFENDANT WAS 16 YEARS  
3 OLD. HE'S NOW 18. IF IT WAS PROVEN TO YOU AS A  
4 JUROR THAT THE CASE WAS BAD ENOUGH, COULD YOU IMPOSE  
5 THE DEATH PENALTY ON A PERSON WHO WAS 16 AT THE TIME  
6 THAT THEY COMMITTED THE MURDER?

7 JURY VENIRE MEMBER: YES, SIR.

8 MR. BAILEY: THANK YOU. THAT'S ALL THE  
9 QUESTIONS I HAVE, I BELIEVE.

10 THE COURT: MR. NEWSOME.

11 MR. NEWSOME: MR. BOZARD, YOU GO TO  
12 GETHSEMANE BAPTIST CHURCH?

13 JURY VENIRE MEMBER: YES, SIR.

14 MR. NEWSOME: AT THAT CHURCH, DOES YOUR  
15 CHURCH HAVE A STATED PREFERENCE, A STAND EITHER FOR  
16 OR AGAINST THE DEATH PENALTY?

17 JURY VENIRE MEMBER: I'M NOT SURE ON THAT.

18 MR. NEWSOME: YOU'RE NOT SURE? OKAY. DO  
19 YOU THINK THAT THE -- IF IT WAS CLEAR IN YOUR MIND  
20 THAT THE DEFENDANT WAS GUILTY OF MURDER WITHOUT ANY  
21 QUESTION IN YOUR MIND THAT A LIFE SENTENCE COULD BE  
22 APPROPRIATE?

23 JURY VENIRE MEMBER: YEAH.

24 MR. NEWSOME: OKAY. I HAVE NO FURTHER  
25 QUESTIONS.

1 THE COURT: STEP OUTSIDE JUST A MOMENT.

2 (JUROR NUMBER 18 IS DISMISSED  
3 FROM THE COURTROOM.)

4 THE COURT: STATE?

5 MR. BAILEY: QUALIFIED, YOUR HONOR,

6 THE COURT: DEFENSE?

7 MR. NEWSOME: HE'S QUALIFIED.

8 (JUROR NUMBER 18 ENTERS THE  
9 COURTROOM.)

10 THE COURT: MR. JUROR, WE ARE IN THE  
11 PROCESS OF QUALIFYING 35 JURORS FROM WHICH 12 JURORS  
12 AND 2 ALTERNATES WILL BE CHOSEN. YOU HAVE BEEN  
13 SELECTED BY THE ATTORNEYS FOR THE STATE AND THE  
14 DEFENSE AND THE COURT TO BE ONE OF THE QUALIFIED  
15 JURORS. HAVING SAID THAT, YOU MAY OR MAY NOT BE  
16 SELECTED. YOU UNDERSTAND THAT? ALL I'M TELLING YOU  
17 AT THIS TIME IS YOU ARE QUALIFIED TO SERVE.

18 NOW, WE ARE GOING TO SELECT THIS JURY VERY  
19 QUICKLY TOMORROW AT 2:30 AND IMMEDIATELY START THE  
20 TRIAL OF THIS CASE. I WANT YOU TO PACK YOUR BAGS  
21 SUFFICIENT TO STAY WITH US FOR THE SEVERAL DAYS THAT  
22 WE WILL BE REQUIRED IN THE EVENT YOU ARE SELECTED.  
23 SO PLEASE REPORT ACROSS THE STREET AT THE ANNEX  
24 BUILDING TOMORROW AT 2:30. THERE WILL BE PEOPLE  
25 THERE TO SHOW YOU WHERE TO SIT. AT THAT TIME, WE'LL

1 CALL YOU OVER AND SELECT THE JURY. THE REST OF YOU  
2 WILL BE DISCHARGED. ANY QUESTIONS?

3 JURY VENIRE MEMBER: HOW MUCH DO WE MAKE A  
4 DAY?

5 THE COURT: WELL, YOU WILL NEVER MAKE WHAT  
6 YOUR WORK IS WORTH, BUT THAT'S THE PRICE WE PAY FOR  
7 BEING A PART OF THIS.

8 JURY VENIRE MEMBER: UH-HUH.

9 THE COURT: I DON'T KNOW WHAT THE PAY IS  
10 HERE. BUT THERE'S NO -- THERE'S NO AMOUNT OF MONEY  
11 THAT WOULD COMPENSATE YOU FOR THE JOB THAT YOU'VE GOT  
12 TO DO. YOU UNDERSTAND THAT?

13 JURY VENIRE MEMBER: UH-HUH.

14 THE COURT: IT WILL BE VERY NOMINAL. HOW  
15 MUCH -- I'M JUST CURIOUS. HOW MUCH IS THE PAY HERE?

16 THE CLERK: \$15 PER DAY.

17 THE COURT: \$15 PER DAY. NOT MUCH.

18 JURY VENIRE MEMBER: NOT MUCH AT ALL.

19 THE COURT: BUT YOU CAN'T BASE IT ON THAT,  
20 YOU UNDERSTAND. BUT YOU BE HERE READY TO GO.

21 JURY VENIRE MEMBER: ALL RIGHT.

22 THE COURT: I TELL YOU WHAT WE'LL DO,  
23 THOUGH. IT'S OBVIOUS I THINK YOU KNOW NOW THAT WE  
24 UNDERSTAND YOUR INCONVENIENCE, AND WE'RE GOING TO  
25 EXPEDITE IT AND MOVE IT ALONG JUST AS FAST AS WE CAN.

1 YOU UNDERSTAND THAT. THANK YOU. SEE YOU AT 2:30  
2 TOMORROW.

3 JURY VENIRE MEMBER: ALL RIGHT.

4 (JUROR NUMBER 18 IS DISMISSED  
5 FROM THE COURTROOM.)

6 THE COURT: ALL RIGHT. BRING IN THE NEXT  
7 ONE, PLEASE.

8 (JUROR NUMBER 50, A WHITE  
9 MALE, ENTERS THE COURTROOM.)

10 THE CLERK: PLEASE STATE YOUR NAME FOR THE  
11 RECORD.

12 JURY VENIRE MEMBER: RICHARD ALLEN DYKES.

13 (JUROR NUMBER 50, HAVING BEEN FIRST DULY SWORN  
14 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

15 THE CLERK: PLEASE COME AROUND AND HAVE A  
16 SEAT.

17 THE COURT: MR. DYKES.

18 JURY VENIRE MEMBER: YES, SIR.

19 THE COURT: GOOD AFTERNOON. I KNOW YOU'RE  
20 GLAD TO GET OUT OF THE CONFINES OF THAT CLOSED JURY  
21 ROOM.

22 JURY VENIRE MEMBER: THAT, I AM.

23 THE COURT: I NOTE THAT YOU ARE FROM  
24 TYLER, TEXAS ORIGINALLY.

25 JURY VENIRE MEMBER: YES, SIR.

1 THE COURT: YOU'RE A DIRECTOR OF WHAT KIND  
2 OF OPERATION?

3 JURY VENIRE MEMBER: GOLF OPERATION.

4 THE COURT: GOLF OPERATIONS, WHERE,  
5 PLEASE?

6 JURY VENIRE MEMBER: IN SANTEE.

7 THE COURT: AT SANTEE?

8 JURY VENIRE MEMBER: YES, SIR.

9 THE COURT: WELL, I KNOW YOU WOULD RATHER  
10 BE ON THE GOLF COURSE TODAY THAN SITTING WHERE YOU  
11 ARE, BUT AS I INDICATED YESTERDAY, JURY SERVICE IS  
12 SOMETHING THAT COMES ALONG VERY SELDOM COME. MIGHT  
13 NOT COME ALONG AGAIN IN YOUR LIFETIME. YOU WERE  
14 DRAWN AT RANDOM FROM A LIST OF JURORS. AND WE NEED  
15 TO ASK SEVERAL QUESTIONS HERE ABOUT YOUR VIEWS ABOUT  
16 THE DEATH PENALTY IF THAT BECOMES NECESSARY IN THE  
17 TRIAL OF THIS CASE. NONE OF US WISH TO BE INTRUSIVE.  
18 I HOPE YOU UNDERSTAND.

19 JURY VENIRE MEMBER: I UNDERSTAND.

20 THE COURT: BUT WE NEED TO KNOW YOUR VIEWS  
21 ON THE MATTER. NOW, I WANT YOU TO MAKE SURE THAT YOU  
22 UNDERSTAND FIRST --

23 JURY VENIRE MEMBER: OKAY.

24 THE COURT: -- THAT WHILE THIS DEFENDANT  
25 HAS BEEN CHARGED WITH MURDER, HE HAS PLED NOT GUILTY

1 AND HE IS PRESUMED INNOCENT, AND THE STATE THROUGH  
2 THE JURY FIRST MUST PROVE HIM GUILTY IF THEY CAN OF  
3 MURDER BEYOND A REASONABLE DOUBT. YOU UNDERSTAND  
4 THAT?

5 JURY VENIRE MEMBER: YES, SIR.

6 THE COURT: WE'LL HAVE A FIRST PHASE, AND  
7 IF YOU THE JURY FIND HIM NOT GUILTY, WE STOP RIGHT  
8 THERE. NOW, IF -- AND I USE THAT WORD ADVISEDLY --  
9 IF THE JURY UNANIMOUSLY FINDS THIS YOUNG MAN GUILTY  
10 OF MURDER BEYOND A REASONABLE DOUBT, WE WILL THEN GO  
11 INTO THE SECOND PHASE. DO YOU UNDERSTAND THAT?

12 JURY VENIRE MEMBER: YES, SIR.

13 THE COURT: NOW, THE SECOND PHASE IS THE  
14 PUNISHMENT PHASE. AND IN THIS PHASE, THE JURY SAYS  
15 HAVING UNANIMOUSLY FOUND THE DEFENDANT GUILTY BEYOND  
16 A REASONABLE DOUBT, WHAT SENTENCE SHALL WE IMPOSE?  
17 SHALL THE PUNISHMENT BE DEATH BY ELECTROCUTION OR  
18 LETHAL INJECTION OR SHALL THE PUNISHMENT BE LIFE  
19 IMPRISONMENT?

20 AT THE SECOND PHASE, THERE WILL BE TESTIMONY  
21 FROM THE STATE SUGGESTING THAT THE APPROPRIATE  
22 SENTENCE IS DEATH. EQUALLY IMPORTANT, THERE WILL BE  
23 APPROPRIATE TESTIMONY BY THE DEFENSE SUGGESTING THAT  
24 THE APPROPRIATE SENTENCE IS LIFE IMPRISONMENT. DO  
25 YOU UNDERSTAND THAT?

1 JURY VENIRE MEMBER: YES, SIR.

2 THE COURT: JURORS, WHEN CONFRONTED WITH  
3 THOSE CIRCUMSTANCES, GENERALLY FALL INTO THREE GROUPS  
4 AS THAT LETTER SUGGESTS.

5 JURY VENIRE MEMBER: YES, SIR.

6 THE COURT: THE FIRST GROUP SAYS HAVING  
7 FOUND AN INDIVIDUAL GUILTY OF MURDER, I WILL ALWAYS  
8 IMPOSE THE DEATH SENTENCE. THERE'S A SECOND GROUP  
9 THAT SAYS EVEN THOUGH WE'VE FOUND HIM GUILTY OF  
10 MURDER, I WILL NEVER IMPOSE THE DEATH SENTENCE.  
11 THERE'S A THIRD GROUP THAT SAYS RECOGNIZING THAT WE  
12 NOW HAVE FOUND HIM GUILTY OF MURDER AND WE ARE  
13 CONCERNED WITH THE APPROPRIATE PUNISHMENT, I AM GOING  
14 TO LISTEN TO THE AGGRAVATING CIRCUMSTANCES HERE.  
15 EQUALLY IMPORTANT, I'M GOING TO LISTEN TO THE  
16 MITIGATING CIRCUMSTANCES, INCLUDING CIRCUMSTANCES  
17 ABOUT THE DEFENDANT HIMSELF, AND I WILL THEN DECIDE  
18 WHETHER OR NOT TO IMPOSE THE DEATH SENTENCE OR LIFE.  
19 DO YOU UNDERSTAND THAT?

20 JURY VENIRE MEMBER: YES, SIR.

21 THE COURT: NOBODY HERE IS ABOUT -- IS  
22 GOING TO ASK YOU WHAT YOU WILL DO BECAUSE YOU HAVEN'T  
23 EVEN HEARD THE FACTS YET AND HE HASN'T BEEN CONVICTED  
24 YET. YOU UNDERSTAND THAT?

25 JURY VENIRE MEMBER: NO, SIR -- YES, SIR.

1 THE COURT: THE ONLY THING THEY AND WE ARE  
2 ASKING YOU IF YOU CAN TELL US WHICH GROUP YOU THINK  
3 YOU MIGHT BE IN, THE GROUP THAT SAYS ALWAYS FOR THE  
4 DEATH PENALTY, THE GROUP THAT SAYS NEVER, OR THE  
5 GROUP THAT SAYS IT'S GOING TO DEPEND ON THE  
6 CIRCUMSTANCES OF THE CRIME AND OF THE INDIVIDUAL  
7 DEFENDANT. WOULD YOU BE ONE, TWO OR THREE?

8 JURY VENIRE MEMBER: THREE.

9 THE COURT: THREE. OKAY.

10 MR. BAILEY: THANK YOU, YOUR HONOR. MR.  
11 DYKES, I'M WALTER BAILEY. I WANT TO ASK YOU A FEW  
12 MORE QUESTIONS.

13 JURY VENIRE MEMBER: OKAY.

14 MR. BAILEY: AND YOU UNDERSTAND FROM WHAT  
15 JUDGE COTTINGHAM TOLD YOU THAT IN SOUTH CAROLINA, IF  
16 WE REACH THAT SECOND STAGE, THE JURY DECIDES WHAT THE  
17 PENALTY WILL BE, NOT THE JUDGE.

18 JURY VENIRE MEMBER: THAT'S CORRECT.

19 MR. BAILEY: WHATEVER THE JURY DECIDES, IT  
20 WILL HAPPEN.

21 JURY VENIRE MEMBER: I UNDERSTAND.

22 MR. BAILEY: IF THE JURY SAYS LIFE IN  
23 PRISON, HE GETS LIFE. IF THEY SAY DEATH PENALTY,  
24 THAT DEFENDANT ACTUALLY WOULD BE EXECUTED --

25 JURY VENIRE MEMBER: YES, SIR.

1 MR. BAILEY: -- BASED ON THAT JURY'S  
2 DECISION. NOW, IF YOU WERE SELECTED ON A JURY IN  
3 CASE LIKE THIS AND MADE IT TO THE SECOND STAGE IN THE  
4 TRIAL, AND AFTER HEARING ALL OF THE TESTIMONY AND  
5 INSTRUCTIONS FROM THE JURY DECIDED THAT THE DEATH  
6 PENALTY WAS THE APPROPRIATE PUNISHMENT, THEN IN ORDER  
7 TO CARRY THAT SENTENCE -- PUT THAT SENTENCE INTO  
8 EFFECT, EACH JUROR WOULD BE ASKED TO SIGN THEIR NAME  
9 TO A DEATH VERDICT FORM. THE RESULT OF THAT WOULD BE  
10 THAT DEFENDANT WOULD BE EXECUTED AT SOME POINT IN  
11 TIME. COULD YOU SIGN YOUR NAME TO A FORM LIKE THAT?

12 JURY VENIRE MEMBER: YES, SIR.

13 MR. BAILEY: OKAY. AND IF YOU DID VOTE  
14 FOR THE DEATH PENALTY, SIGN YOUR NAME TO THE FORM  
15 ALONG WITH THE OTHER JURORS, COULD YOU THEN COME  
16 RIGHT OUT INTO OPEN COURT AND ANNOUNCE THAT VERDICT?

17 JURY VENIRE MEMBER: YES, SIR.

18 MR. BAILEY: OKAY. AND OBVIOUSLY, IN THIS  
19 CASE, THE DEFENDANT, MR. HUGHES, IS A YOUNG BLACK  
20 MALE. THE TESTIMONY WILL BE THAT THE VICTIMS, THE  
21 VICTIM THAT DIED AND THE VICTIM THAT LIVED, WERE BOTH  
22 WHITE. WOULD YOU VIEW THIS CASE ANY DIFFERENTLY IF  
23 YOU HAD THE REVERSE SITUATION?

24 JURY VENIRE MEMBER: NO, SIR.

25 MR. BAILEY: WHITE DEFENDANT AND BLACK

1 VICTIM?

2 JURY VENIRE MEMBER: NO.

3 MR. BAILEY: OKAY. THE TESTIMONY IN THIS  
4 CASE WILL BE THAT THE MURDER OCCURRED IN MARCH OF  
5 1994, AND AT THAT TIME, THE DEFENDANT WAS 16 YEARS  
6 OLD. HE'S NOW 18. IF IT'S PROVEN TO YOU AS A JUROR  
7 THAT THE CASE IS BAD ENOUGH, COULD YOU IMPOSE THE  
8 DEATH PENALTY ON A PERSON WHO WAS 16 AT THE TIME THEY  
9 COMMITTED THE MURDER?

10 JURY VENIRE MEMBER: IF THE CIRCUMSTANCES  
11 WERE AGGRAVATED ENOUGH TO WHERE I WAS INSTRUCTED TO  
12 DO SO, YES, SIR.

13 MR. BAILEY: YOU UNDERSTAND YOU WOULD  
14 NEVER BE INSTRUCTED TO BRING BACK ONE VERDICT OR THE  
15 OTHER.

16 JURY VENIRE MEMBER: RIGHT.

17 MR. BAILEY: IT WOULD BE PURELY UP TO YOU  
18 AS A JURY.

19 JURY VENIRE MEMBER: RIGHT. I UNDERSTAND  
20 THAT.

21 MR. BAILEY: BUT THE FACT THAT HE'S 16  
22 WOULD NOT BE AN ABSOLUTE BAR TO THE DEATH PENALTY?

23 JURY VENIRE MEMBER: RIGHT. THAT'S  
24 CORRECT.

25 MR. BAILEY: MR. DYKES, THAT'S ALL I'VE

1 GOT. THANK YOU VERY MUCH.

2 THE COURT: LET ME SAY THIS TO YOU. YOU  
3 WOULD BE INSTRUCTED AS FOLLOWS: THAT YOU ARE THE  
4 FINDERS OF THE FACTS. YOU CAN IMPOSE A SENTENCE OF  
5 DEATH. YOU CAN CONSIDER THE MITIGATING CIRCUMSTANCES  
6 AND IMPOSE THE SENTENCE OF LIFE. YOU WOULD BE  
7 FURTHER INSTRUCTED THAT YOU COULD IMPOSE THE SENTENCE  
8 OF LIFE FOR ANY REASON AT ALL, INCLUDING AN ACT OF  
9 MERCY. YOU UNDERSTAND THAT?

10 JURY VENIRE MEMBER: YES.

11 THE COURT: NOBODY WOULD EVER INSTRUCT YOU  
12 THAT YOU MUST IMPOSE THE DEATH PENALTY.

13 JURY VENIRE MEMBER: YEAH.

14 THE COURT: NOBODY WOULD DO THAT. YOU CAN  
15 IMPOSE DEATH OR LIFE FOR ANY REASON AT ALL.

16 JURY VENIRE MEMBER: I MEANT BASED ON THE  
17 EVIDENCE.

18 THE COURT: I UNDERSTAND.

19 MR. NEWSOME: MR. DYKES, WHAT YOU'RE  
20 SAYING IS THAT YOU WOULD TAKE INTO ACCOUNT IN  
21 CONSIDERATION OF THE PENALTY, ASSUMING WE GET THAT  
22 FAR, THE CHARACTERISTICS OF THE DEFENDANT AND THE  
23 TOTALITY OF HIS LIFE AND THE CIRCUMSTANCES  
24 SURROUNDING THE CRIME?

25 JURY VENIRE MEMBER: THAT'S CORRECT.

1 MR. NEWSOME: THANK YOU. I HAVE NO  
2 FURTHER QUESTIONS.

3 THE COURT: ALL RIGHT. STEP OUT.

4 (JUROR NUMBER 50 IS DISMISSED  
5 FROM THE COURTROOM.)

6 MR. BAILEY: QUALIFIED.

7 MR. NEWSOME: QUALIFIED.

8 (JUROR NUMBER 50 ENTERS THE  
9 COURTROOM.)

10 THE COURT: MR. JUROR, WE ARE IN THE  
11 PROCESS OF SELECTING 35 QUALIFIED JURORS FROM WHICH  
12 12 JURORS AND 2 ALTERNATES WOULD BE SELECTED TO BEGIN  
13 THE TRIAL OF THIS CASE PROMPTLY TOMORROW AFTERNOON AT  
14 2:30. YOU HAVE BEEN QUALIFIED BY ALL PARTIES  
15 CONCERNED, AND SO IT IS -- I'M GOING TO ASK YOU THAT  
16 TOMORROW YOU PACK YOUR BAGS SUFFICIENT TO STAY WITH  
17 US IF SELECTED. REPORT ACROSS THE STREET TO THE  
18 ANNEX AT 2:30.

19 JURY VENIRE MEMBER: AT 2:30?

20 THE COURT: AT THAT TIME, WE'RE GOING TO  
21 BE SELECTING THE 14, AND WE'LL START THE TRIAL OF  
22 THIS CASE IMMEDIATELY. NOW, YOU UNDERSTAND THAT WE  
23 UNDERSTAND THAT THERE'S A LOT OF PLACES YOU NEED TO  
24 BE, INCLUDING THAT GOLF COURSE. AND I UNDERSTAND  
25 THAT.

1 JURY VENIRE MEMBER: YES, SIR.

2 THE COURT: BUT I WANT YOU TO KNOW THAT  
3 THIS COURT APPRECIATES THE JUROR SERVICES. WE  
4 UNDERSTAND THAT YOU ARE BACK THERE, AND I'M GOING TO  
5 MOVE THIS CASE EXPEDITIOUSLY. DO YOU UNDERSTAND?

6 JURY VENIRE MEMBER: YES, SIR.

7 THE COURT: YOU BELIEVE THAT JUDGE  
8 COTTINGHAM IS GOING TO MOVE THIS CASE?

9 JURY VENIRE MEMBER: YES, SIR.

10 THE COURT: AND WE ARE GOING TO MOVE IT IN  
11 SUCH A WAY THAT'S FAIR TO THE PEOPLE OF SOUTH  
12 CAROLINA AND THESE VICTIMS AND THEIR FAMILIES AND  
13 EQUALLY FAIR TO THIS DEFENDANT ON TRIAL FOR MURDER.

14 JURY VENIRE MEMBER: YES, SIR.

15 THE COURT: THANK YOU. SEE YOU AT 2:30.

16 JURY VENIRE MEMBER: OKAY.

17 (JUROR NUMBER 50 IS DISMISSED  
18 FROM THE COURTROOM.)

19 (JUROR NUMBER 247, A BLACK  
20 MALE, ENTERS THE COURTROOM.)

21 THE CLERK: MR. SMITH, IF YOU WOULD  
22 PLEASE, COME AROUND FRONT HERE. PLEASE PLACE YOUR  
23 LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR RIGHT  
24 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

25 JURY VENIRE MEMBER: JOSEPH SMITH.

1 (JUROR NUMBER 247, HAVING BEEN FIRST DULY SWORN  
2 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

3 THE CLERK: PLEASE COME AROUND AND HAVE A  
4 SEAT.

5 THE COURT: OKAY. MR. SMITH.

6 JURY VENIRE MEMBER: YES.

7 THE COURT: GOOD AFTERNOON. HOW ARE YOU  
8 DOING?

9 JURY VENIRE MEMBER: FINE.

10 THE COURT: MR. SMITH, WE APOLOGIZE FOR  
11 KEEPING YOU LOCKED UP BACK THERE, BUT IT'S JUST A  
12 SLOW PROCESS. WE'RE MOVING ALONG AS FAST AS WE CAN.  
13 PLEASE BE SEATED.

14 MR. SMITH, WE WANT TO ASK YOU SOME OF YOUR VIEWS  
15 ON THE DEATH PENALTY, AND WE DON'T WANT TO IMPOSE ON  
16 YOUR PRIVACY. I HOPE YOU UNDERSTAND.

17 JURY VENIRE MEMBER: UH-HUH.

18 THE COURT: BUT THIS IS THE TYPE OF CASE  
19 THAT IF IT BECOMES NECESSARY FOR A DECISION, WE NEED  
20 TO KNOW GENERALLY YOUR VIEWS ON IT. YOU UNDERSTAND?

21 JURY VENIRE MEMBER: YES.

22 THE COURT: NOW, AT THE OUTSET, LET ME SAY  
23 THIS TO YOU, THAT NOBODY WOULD ASK YOU WHAT YOU WOULD  
24 DO BECAUSE YOU HAVEN'T HEARD THE TESTIMONY AND THE  
25 EVIDENCE. YOU UNDERSTAND?

1 JURY VENIRE MEMBER: YES.

2 THE COURT: THE ONLY THING WE ARE ASKI  
3 YOU IS YOUR GENERAL VIEWS ABOUT THIS INCIDENT. YOU  
4 UNDERSTAND? NOW, LET ME SAY THIS TO YOU. MR. HERMAN  
5 HUGHES IS CHARGE WITH MURDER. DO YOU UNDERSTAND  
6 THAT?

7 JURY VENIRE MEMBER: YES.

8 THE COURT: THE FIRST -- WE WOULD HAVE --  
9 WHERE THE STATE SEEKS THE PENALTY OF DEATH, AS THEY  
10 DO IN THIS CASE, OUR LAW PROVIDES FOR A TWO-PART  
11 HEARING. THE FIRST PART IS TO DETERMINE MR. HUGHES'  
12 GUILT OR INNOCENCE OF MURDER. YOU UNDERSTAND?

13 JURY VENIRE MEMBER: YES.

14 THE COURT: IF IN THE FIRST PART THE JURY  
15 FINDS HIM NOT GUILTY, WE STOP RIGHT THERE. NOW, IF  
16 -- AND I USE THAT WORD ADVISEDLY -- IF THE JURY FINDS  
17 THAT HERMAN HUGHES COMMITTED THE MURDER WITH MALICE  
18 AFORETHOUGHT, UNANIMOUSLY, BEYOND A REASONABLE DOUBT,  
19 IF THAT JURY MAKES THAT DETERMINATION, WE THEN GO TO  
20 THE PUNISHMENT PHASE. DO YOU UNDERSTAND THAT?

21 JURY VENIRE MEMBER: YES, SIR.

22 THE COURT: NOW, IN THE PUNISHMENT PHASE,  
23 THE JURY SAYS THIS. HAVING FOUND THE DEFENDANT  
24 GUILTY OF MURDER, WHAT PUNISHMENT WILL WE IMPOSE?  
25 WILL WE IMPOSE A PUNISHMENT OF DEATH OR WILL WE

1 IMPOSE A PUNISHMENT OF LIFE IMPRISONMENT? NOW, IN  
2 MAKING THAT DETERMINATION, THERE WILL BE WITNESSES  
3 PRESENTED BY THE STATE WHICH WOULD SUGGEST TO YOU  
4 THAT PUNISHMENT OF DEATH IS APPROPRIATE. EQUALLY  
5 IMPORTANT, THE DEFENDANT WOULD PRESENT TESTIMONY THAT  
6 WOULD SUGGEST TO YOU THAT LIFE IMPRISONMENT IS  
7 APPROPRIATE. DO YOU UNDERSTAND?

8 JURY VENIRE MEMBER: YES.

9 THE COURT: IT WOULD BE YOUR DECISION TO  
10 MAKE WHETHER LIFE OR DEATH IS THE APPROPRIATE  
11 PUNISHMENT. DO YOU UNDERSTAND THAT?

12 JURY VENIRE MEMBER: YES.

13 THE COURT: NOW, IN THE CONSIDERATION OF  
14 THIS VERY SERIOUS ISSUE, AND IT IS EXTREMELY SERIOUS  
15 FOR EVERYBODY CONCERNED, INCLUDING THE DEFENDANT AND  
16 THE JURY AND THE COURT, GENERALLY THERE ARE THREE  
17 GROUPS OF PEOPLE. AND ALL OF THEM HAVE THE RIGHT,  
18 AND BECAUSE IT'S THEIR HEARTFELT BELIEF. THERE IS A  
19 GROUP OF PEOPLE THAT SAYS ONCE A MURDER HAS BEEN  
20 COMMITTED, I'LL ALWAYS IMPOSE THE DEATH PENALTY.  
21 THERE IS A SECOND GROUP THAT SAYS EVEN THOUGH WE FIND  
22 HIM GUILTY OF MURDER, I CAN NEVER IMPOSE THE DEATH  
23 PENALTY. THIS IS A THIRD GROUP THAT SAYS I'M GOING  
24 TO LISTEN TO ALL OF THE AGGRAVATING CIRCUMSTANCES.  
25 I'M GOING TO LISTEN TO THE MITIGATING CIRCUMSTANCES,

1 INCLUDING THE CIRCUMSTANCES OF THE DEFENDANT, AND  
2 THEN I WILL DECIDE WHETHER LIFE IMPRISONMENT OR DEATH  
3 IS THE APPROPRIATE PUNISHMENT. YOU UNDERSTAND THAT?

4 JURY VENIRE MEMBER: YES.

5 THE COURT: NOW, NOBODY, INCLUDING THESE  
6 LAWYERS OR THIS JUDGE, WOULD DARE ASK YOU WHAT YOU  
7 WILL DO BECAUSE YOU DON'T KNOW AND I DON'T KNOW  
8 BECAUSE WE HAVEN'T HEARD THE FACTS. ISN'T THAT TRUE?

9 JURY VENIRE MEMBER: THAT'S RIGHT.

10 THE COURT: THE ONLY THING WE ARE ASKING  
11 YOU IS WHICH CATEGORY DO YOU THINK YOU WOULD FALL  
12 INTO; THE FIRST THAT SAYS ALWAYS, THE SECOND THAT  
13 SAYS NEVER, THE THIRD THAT SAYS IT'S DEPENDING ON  
14 WHAT I FIND TO BE THE FACTS. WHICH WOULD YOU BE?

15 JURY VENIRE MEMBER: I'VE GOT TO FIND OUT  
16 THE FACTS.

17 THE COURT: SIR?

18 JURY VENIRE MEMBER: I'VE GOT TO FIND OUT  
19 THE FACTS, SIR.

20 THE COURT: SO YOU ARE SAYING THAT YOU  
21 COULD UNDER CERTAIN CIRCUMSTANCES IMPOSE DEATH OR  
22 LIFE? IS THAT WHAT YOU'RE SAYING?

23 JURY VENIRE MEMBER: YEAH.

24 MR. BAILEY: THANK YOU, YOUR HONOR. MR.  
25 SMITH, I'M WALTER BAILEY. I'M GOING TO ASK YOU A FEW

1 MORE QUESTIONS. ON YOUR JURY INFORMATION CARD, YOU  
2 INDICATED YOU HAD TWO CHILDREN.

3 JURY VENIRE MEMBER: YES.

4 MR. BAILEY: AND ON THE FORM, THERE'S A  
5 PLACE TO LIST THEIR AGES, BUT THAT WAS LEFT OUT.  
6 COULD YOU TELL US HOW OLD YOUR CHILDREN ARE.

7 JURY VENIRE MEMBER: EIGHT AND TEN.

8 MR. BAILEY: OKAY. BOYS OR GIRLS?

9 JURY VENIRE MEMBER: BOYS.

10 MR. BAILEY: OKAY. ALL RIGHT, SIR. AND  
11 THERE'S ALSO A PLACE FOR YOUR CHURCH AFFILIATION  
12 WHICH IS NOT FILLED OUT IN MY COPY. WHAT CHURCH DO  
13 YOU ATTEND?

14 JURY VENIRE MEMBER: BETHLEHEM.

15 MR. BAILEY: AND HAVE YOU EVER BEEN A  
16 JUROR BEFORE?

17 JURY VENIRE MEMBER: YEAH, BUT THAT WAS IN  
18 MAGISTRATE'S COURT.

19 MR. BAILEY: OKAY. ALL RIGHT. WELL, THE  
20 FIRST PART OF THIS TRIAL WILL BE JUST LIKE WHATEVER  
21 CASE YOU WERE ON IN MAGISTRATE COURT WHERE THE JURY  
22 IS JUST THERE TO DETERMINE GUILT OR INNOCENCE. AND  
23 IF THE DEFENDANT IS FOUND NOT GUILTY, THAT'S THE END  
24 OF IT. IF HE'S FOUND GUILTY, WE THEN MOVE INTO THE  
25 PENALTY PHASE. SO YOU UNDERSTAND WE WOULD NEVER BE

1 TALKING ABOUT LIFE IN PRISON OR THE DEATH PENALTY  
2 UNLESS THAT DEFENDANT WAS FOUND GUILTY OF MURDER IN  
3 THE FIRST PART OF THE TRIAL? YOU UNDERSTAND THAT?

4 JURY VENIRE MEMBER: YES.

5 MR. BAILEY: AND YOU UNDERSTAND THAT IN  
6 SOUTH CAROLINA, THE WAY THE LAW WORKS IS THAT THE  
7 JURY, NOT THE JUDGE, DECIDES WHAT HAPPENS TO THAT  
8 DEFENDANT AS FAR AS PUNISHMENT IF HE'S CONVICTED OF  
9 MURDER. IF THE JURY DECIDES THE DEATH PENALTY IS THE  
10 APPROPRIATE SENTENCE, THAT DEFENDANT WILL ACTUALLY BE  
11 PUT TO DEATH BASED ON THAT JURY'S DECISION.

12 NOW, IF YOU WERE ON A JURY IN A CASE LIKE THIS  
13 AND YOU AND THE OTHER JURORS OUT THERE AFTER HEARING  
14 ALL OF THE TESTIMONY DECIDED FOR THE DEATH PENALTY  
15 INSTEAD OF LIFE IN PRISON, NEXT THING THAT WOULD  
16 HAPPEN IS THERE'S A VERDICT FORM -- A DEATH VERDICT  
17 FORM THAT ALL TWELVE JURORS WOULD HAVE TO SIGN, AND  
18 THE RESULT FROM SIGNING THAT WOULD BE THAT THAT  
19 DEFENDANT WOULD BE EXECUTED. COULD YOU SIGN YOUR  
20 NAME TO A PAPER LIKE THAT IF YOU VOTED FOR THE DEATH  
21 PENALTY KNOWING IT WOULD RESULT IN THAT PERSON'S  
22 EXECUTION?

23 JURY VENIRE MEMBER: LIKE I SAY, LIKE THE  
24 JUDGE SAID, I'VE GOT TO --

25 MR. BAILEY: TALK A LITTLE BIT LOUDER.

1 JURY VENIRE MEMBER: LIKE THE JUDGE SAID,  
2 I'VE GOT TO HEAR EVERYTHING BEFORE I MAKE A DECISION  
3 OR ALL OF US MAKE A DECISION ON IT.

4 MR. BAILEY: ALL RIGHT, SIR. BUT IF YOU  
5 DID HEAR IT AND YOU DID MAKE A DECISION FOR THE DEATH  
6 PENALTY, COULD YOU SIGN THE PAPER?

7 JURY VENIRE MEMBER: YEAH.

8 MR. BAILEY: COULD YOU COME OUT IN COURT  
9 AND ANNOUNCE THAT THAT WAS YOUR DECISION?

10 JURY VENIRE MEMBER: YES.

11 MR. BAILEY: WHEN YOUR NAME WAS CALLED  
12 ALONG WITH ALL OF THE OTHER JURORS?

13 JURY VENIRE MEMBER: YEAH.

14 MR. BAILEY: THE NEXT QUESTION, PLEASE  
15 DON'T TAKE ANY OFFENSE TO THIS, BECAUSE I'VE ASKED  
16 EVERY JUROR THIS THAT I'VE TALKED TO THE TODAY AND  
17 YESTERDAY. THE DEFENDANT IN THIS CASE OBVIOUSLY IS A  
18 YOUNG BLACK MALE. THE EVIDENCE WILL ALSO SHOW THAT  
19 THE VICTIM WHO THE STATE ALLEGES WAS MURDERED BACK IN  
20 1994 WAS A YOUNG WHITE MALE. WOULD THE DIFFERENCE IN  
21 THE RACES BETWEEN THE DEFENDANT AND THE VICTIM CAUSE  
22 YOU TO VIEW THIS CASE ANY DIFFERENTLY THAN IF WE HAD  
23 THE REVERSED SITUATION?

24 JURY VENIRE MEMBER: NO.

25 MR. BAILEY: SO IF WE HAD A WHITE

1 DEFENDANT SITTING HERE AND A BLACK VICTIM, YOU WOULD  
2 LOOK AT IT THE SAME; RACE WOULD NOT BE A FACTOR?

3 JURY VENIRE MEMBER: I WOULD LOOK AT IT  
4 THE SAME.

5 MR. BAILEY: MR. SMITH, THE DEFENDANT IN  
6 THIS CASE IS NOW 18 YEARS OLD. AT THE TIME THE STATE  
7 ALLEGES HE COMMITTED THE MURDER, HE WAS 16. IF IT  
8 WAS PROVEN TO YOU AS A JUROR THE CASE WAS BAD ENOUGH,  
9 COULD YOU IMPOSE THE DEATH PENALTY ON A PERSON WHO  
10 WAS 16 AT THE TIME THEY COMMITTED THE MURDER?

11 JURY VENIRE MEMBER: YES. IT DEPENDS ON  
12 -- IT DEPENDS ON THE CIRCUMSTANCES.

13 MR. BAILEY: OKAY. ALL RIGHT. MR. SMITH,  
14 THAT'S ALL I'VE GOT. THANK YOU VERY MUCH.

15 MR. NEWSOME: MR. SMITH, OUR LAW PROVIDES  
16 THAT THERE ARE THE CERTAIN MITIGATING FACTORS IF WE  
17 GET TO THE PENALTY PHASE THAT YOU MUST CONSIDER. AND  
18 YOU DON'T HAVE TO ACCEPT THEM, BUT YOU MUST CONSIDER  
19 THEM. ONE OF THEM IS THE AGE OF THE DEFENDANT BEING  
20 UNDER 18. WOULD YOU CONSIDER THAT IF IT GOT TO THE  
21 PENALTY PHASE AND YOU WERE A JUROR, BEFORE YOU MADE A  
22 DECISION OF WHAT THE PENALTY WOULD BE?

23 JURY VENIRE MEMBER: IT -- AT ALL DEPENDS  
24 ON THE CIRCUMSTANCES.

25 MR. NEWSOME: ALL RIGHT. THE

1 CIRCUMSTANCES. WHAT CIRCUMSTANCES ARE WE TALKING  
2 ABOUT, OF THE CRIME OR CIRCUMSTANCES OF THE  
3 DEFENDANT?

4 JURY VENIRE MEMBER: CIRCUMSTANCES OF THE  
5 CRIME AND THE DEFENDANT.

6 MR. NEWSOME: OKAY.

7 JURY VENIRE MEMBER: IT WOULD HAVE TO BE  
8 PROVEN.

9 MR. NEWSOME: SO YOU WOULD CONSIDER BOTH  
10 THE CIRCUMSTANCES OF THE CRIME AND THE DEFENDANT.  
11 ALL RIGHT. THANK YOU VERY MUCH.

12 THE COURT: STEP OUT JUST A MOMENT,  
13 PLEASE.

14 (JUROR NUMBER 247 IS DISMISSED  
15 FROM THE COURTROOM.)

16 MR. BAILEY: QUALIFIED, YOUR HONOR.

17 MR. NEWSOME: QUALIFIED, YOUR HONOR.

18 THE COURT: OKAY.

19 (JUROR NUMBER 247 ENTERS THE  
20 COURTROOM.)

21 THE COURT: MR. JUROR, WE ARE IN THE  
22 PROCESS OF SELECTING 35 QUALIFIED JURORS. WE HAVE  
23 NOW SELECTED 28. FROM THAT 35, WE WILL BE SELECTING  
24 12 JURORS TOMORROW AFTERNOON AT 2:30, AND 2 MORE.  
25 YOU HAVE BEEN QUALIFIED FOR ALL CONCERNED, INCLUDING

1 THIS JUDGE, TO BE A JUROR, IF SELECTED. I WANT YOU  
2 TO PACK YOUR PERSONAL BELONGINGS AND BE PREPARED TO  
3 STAY WITH US IN THE EVENT YOU ARE ONE OF THE 14. YOU  
4 UNDERSTAND. PLEASE REPORT TOMORROW AT 2:30 WITH YOUR  
5 PERSONAL BELONGINGS AT THE ANNEX BUILDING.

6 JURY VENIRE MEMBER: OKAY.

7 THE COURT: WE'LL SELECT THE 14 AND START  
8 THE TRIAL OF THIS CASE IMMEDIATELY. I UNDERSTAND  
9 WE'RE KEEPING YOU AWAY FROM WORK AND YOUR HOME, AND I  
10 WANT YOU TO KNOW THAT ONCE WE GET STARTED, WE'LL MOVE  
11 QUICKLY AND EXPEDITIOUSLY. YOU UNDERSTAND?

12 JURY VENIRE MEMBER: YES.

13 THE COURT: LOOK FORWARD TO SEEING YOU  
14 TOMORROW AT 2:30. THANK YOU.

15 (JUROR NUMBER 247 IS DISMISSED  
16 FROM THE COURTROOM.)

17 THE COURT: OKAY. LET'S BREAK FOR LUNCH  
18 AND TELL THE JURORS THAT WE'LL BE GETTING TO THEM  
19 VERY SHORTLY. LET'S BREAK FOR LUNCH.

20 (WHEREUPON, A LUNCH BREAK WAS  
21 TAKEN FROM THE PROCEEDINGS.)

22 (END OF VOLUME THREE)

23

24

25

## 1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF FLORENCE

5

6 I, MARK W. HAGOOD, REGISTERED PROFESSIONAL  
7 REPORTER, (RPR), COURT REPORTER FOR THE STATE OF  
8 SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY  
9 CERTIFY THAT THE FOREGOING PROCEEDINGS IS A  
10 STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH  
11 COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING  
12 TRANSCRIPT CONTAINS A TRUE RECORD OF THE  
13 PROCEEDINGS.

14 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR  
15 COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF  
16 THE PARTIES CONNECTED TO THE ACTION, NOR AM I  
17 FINANCIALLY INTERESTED IN THE ACTION.

18 WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA,  
19 THIS 3<sup>rd</sup> DAY OF April, 1996.

20

21

22

23

4

25

  
MARK W. HAGOOD, RPR

1 STATE OF SOUTH CAROLINA IN GENERAL SESSIONS COURT  
 2 COUNTY OF CALHOUN

3  
 4 STATE OF SOUTH CAROLINA 94-GS-09-153  
 5 94-GS-09-154  
 6 V. 94-GS-09-155  
 7 94-GS-09-156  
 8 HERMAN LEE HUGHES, JR.

8 VOLUME FOUR

9 - - -  
 10 THE TRIAL PROCEEDINGS HAD  
 11 IN THE ABOVE-STYLED CAUSE  
 12 - - -

13 WEDNESDAY, SEPTEMBER 6, 1995  
 14 ST. MATTHEWS, SOUTH CAROLINA

15 BEFORE: HONORABLE EDWARD B. COTTINGHAM,  
 16 CIRCUIT COURT JUDGE

17 A P P E A R A N C E S

18 FOR THE STATE: WALTER M. BAILEY, JR., SOLICITOR

19 FOR THE DEFENDANT: PHILLIP F. NEWSOME, ESQUIRE  
 20  
 21  
 22  
 23  
 24  
 25

1	I N D E X	
2	VOLUME ONE	
3	VOIR DIRE OF ENTIRE JURY PANEL	11
4	VOLUME TWO	
5	INDIVIDUAL VOIR DIRE OF JURY PANEL	176
6	VOLUME THREE	
7	INDIVIDUAL VOIR DIRE OF JURY PANEL	408
8	VOLUME FOUR	
9	INDIVIDUAL VOIR DIRE OF JURY PANEL	605
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11	SELECTION OF JURY MEMBERS	757
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13	OPENING STATEMENT BY MR. BAILEY	796
14	OPENING STATEMENT BY MR. NEWSOME	807
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16	LYNELL WILLIAMSON	
	DIRECT BY MR. BAILEY	810
17	JUDY OSBOURNE	
	DIRECT BY MR. BAILEY	815
18	CROSS BY MR. NEWSOME	818
	HENRY DANIEL OWENS	
19	DIRECT BY MR. BAILEY	821
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22	DIRECT BY MR. BAILEY	881
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23	DIRECT BY MR. BAILEY	884
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24	DIRECT BY MR. BAILEY	887
	CROSS BY MR. NEWSOME	902
25		

1 IMPOSE A PUNISHMENT OF LIFE IMPRISONMENT? NOW, IN  
2 MAKING THAT DETERMINATION, THERE WILL BE WITNESSES  
3 PRESENTED BY THE STATE WHICH WOULD SUGGEST TO YOU  
4 THAT PUNISHMENT OF DEATH IS APPROPRIATE. EQUALLY  
5 IMPORTANT, THE DEFENDANT WOULD PRESENT TESTIMONY THAT  
6 WOULD SUGGEST TO YOU THAT LIFE IMPRISONMENT IS  
7 APPROPRIATE. DO YOU UNDERSTAND?

8 JURY VENIRE MEMBER: YES.

9 THE COURT: IT WOULD BE YOUR DECISION TO  
10 MAKE WHETHER LIFE OR DEATH IS THE APPROPRIATE  
11 PUNISHMENT. DO YOU UNDERSTAND THAT?

12 JURY VENIRE MEMBER: YES.

13 THE COURT: NOW, IN THE CONSIDERATION OF  
14 THIS VERY SERIOUS ISSUE, AND IT IS EXTREMELY SERIOUS  
15 FOR EVERYBODY CONCERNED, INCLUDING THE DEFENDANT AND  
16 THE JURY AND THE COURT, GENERALLY THERE ARE THREE  
17 GROUPS OF PEOPLE. AND ALL OF THEM HAVE THE RIGHT,  
18 AND BECAUSE IT'S THEIR HEARTFELT BELIEF. THERE IS A  
19 GROUP OF PEOPLE THAT SAYS ONCE A MURDER HAS BEEN  
20 COMMITTED, I'LL ALWAYS IMPOSE THE DEATH PENALTY.  
21 THERE IS A SECOND GROUP THAT SAYS EVEN THOUGH WE FIND  
22 HIM GUILTY OF MURDER, I CAN NEVER IMPOSE THE DEATH  
23 PENALTY. THIS IS A THIRD GROUP THAT SAYS I'M GOING  
24 TO LISTEN TO ALL OF THE AGGRAVATING CIRCUMSTANCES.  
25 I'M GOING TO LISTEN TO THE MITIGATING CIRCUMSTANCES,

1 INCLUDING THE CIRCUMSTANCES OF THE DEFENDANT, AND  
2 THEN I WILL DECIDE WHETHER LIFE IMPRISONMENT OR DEATH  
3 IS THE APPROPRIATE PUNISHMENT. YOU UNDERSTAND THAT?

4 JURY VENIRE MEMBER: YES.

5 THE COURT: NOW, NOBODY, INCLUDING THESE  
6 LAWYERS OR THIS JUDGE, WOULD DARE ASK YOU WHAT YOU  
7 WILL DO BECAUSE YOU DON'T KNOW AND I DON'T KNOW  
8 BECAUSE WE HAVEN'T HEARD THE FACTS. ISN'T THAT TRUE?

9 JURY VENIRE MEMBER: THAT'S RIGHT.

10 THE COURT: THE ONLY THING WE ARE ASKING  
11 YOU IS WHICH CATEGORY DO YOU THINK YOU WOULD FALL  
12 INTO; THE FIRST THAT SAYS ALWAYS, THE SECOND THAT  
13 SAYS NEVER, THE THIRD THAT SAYS IT'S DEPENDING ON  
14 WHAT I FIND TO BE THE FACTS. WHICH WOULD YOU BE?

15 JURY VENIRE MEMBER: I'VE GOT TO FIND OUT  
16 THE FACTS.

17 THE COURT: SIR?

18 JURY VENIRE MEMBER: I'VE GOT TO FIND OUT  
19 THE FACTS, SIR.

20 THE COURT: SO YOU ARE SAYING THAT YOU  
21 COULD UNDER CERTAIN CIRCUMSTANCES IMPOSE DEATH OR  
22 LIFE? IS THAT WHAT YOU'RE SAYING?

23 JURY VENIRE MEMBER: YEAH.

24 MR. BAILEY: THANK YOU, YOUR HONOR. MR.  
25 SMITH, I'M WALTER BAILEY. I'M GOING TO ASK YOU A FEW

1 MORE QUESTIONS. ON YOUR JURY INFORMATION CARD, YOU  
2 INDICATED YOU HAD TWO CHILDREN.

3 JURY VENIRE MEMBER: YES.

4 MR. BAILEY: AND ON THE FORM, THERE'S A  
5 PLACE TO LIST THEIR AGES, BUT THAT WAS LEFT OUT.  
6 COULD YOU TELL US HOW OLD YOUR CHILDREN ARE.

7 JURY VENIRE MEMBER: EIGHT AND TEN.

8 MR. BAILEY: OKAY. BOYS OR GIRLS?

9 JURY VENIRE MEMBER: BOYS.

10 MR. BAILEY: OKAY. ALL RIGHT, SIR. AND  
11 THERE'S ALSO A PLACE FOR YOUR CHURCH AFFILIATION  
12 WHICH IS NOT FILLED OUT IN MY COPY. WHAT CHURCH DO  
13 YOU ATTEND?

14 JURY VENIRE MEMBER: BETHLEHEM.

15 MR. BAILEY: AND HAVE YOU EVER BEEN A  
16 JUROR BEFORE?

17 JURY VENIRE MEMBER: YEAH, BUT THAT WAS IN  
18 MAGISTRATE'S COURT.

19 MR. BAILEY: OKAY. ALL RIGHT. WELL, THE  
20 FIRST PART OF THIS TRIAL WILL BE JUST LIKE WHATEVER  
21 CASE YOU WERE ON IN MAGISTRATE COURT WHERE THE JURY  
22 IS JUST THERE TO DETERMINE GUILT OR INNOCENCE. AND  
23 IF THE DEFENDANT IS FOUND NOT GUILTY, THAT'S THE END  
24 OF IT. IF HE'S FOUND GUILTY, WE THEN MOVE INTO THE  
25 PENALTY PHASE. SO YOU UNDERSTAND WE WOULD NEVER BE

1 TALKING ABOUT LIFE IN PRISON OR THE DEATH PENALTY  
2 UNLESS THAT DEFENDANT WAS FOUND GUILTY OF MURDER IN  
3 THE FIRST PART OF THE TRIAL? YOU UNDERSTAND THAT?

4 JURY VENIRE MEMBER: YES.

5 MR. BAILEY: AND YOU UNDERSTAND THAT IN  
6 SOUTH CAROLINA, THE WAY THE LAW WORKS IS THAT THE  
7 JURY, NOT THE JUDGE, DECIDES WHAT HAPPENS TO THAT  
8 DEFENDANT AS FAR AS PUNISHMENT IF HE'S CONVICTED OF  
9 MURDER. IF THE JURY DECIDES THE DEATH PENALTY IS THE  
10 APPROPRIATE SENTENCE, THAT DEFENDANT WILL ACTUALLY BE  
11 PUT TO DEATH BASED ON THAT JURY'S DECISION.

12 NOW, IF YOU WERE ON A JURY IN A CASE LIKE THIS  
13 AND YOU AND THE OTHER JURORS OUT THERE AFTER HEARING  
14 ALL OF THE TESTIMONY DECIDED FOR THE DEATH PENALTY  
15 INSTEAD OF LIFE IN PRISON, NEXT THING THAT WOULD  
16 HAPPEN IS THERE'S A VERDICT FORM -- A DEATH VERDICT  
17 FORM THAT ALL TWELVE JURORS WOULD HAVE TO SIGN, AND  
18 THE RESULT FROM SIGNING THAT WOULD BE THAT THAT  
19 DEFENDANT WOULD BE EXECUTED. COULD YOU SIGN YOUR  
20 NAME TO A PAPER LIKE THAT IF YOU VOTED FOR THE DEATH  
21 PENALTY KNOWING IT WOULD RESULT IN THAT PERSON'S  
22 EXECUTION?

23 JURY VENIRE MEMBER: LIKE I SAY, LIKE THE  
24 JUDGE SAID, I'VE GOT TO --

25 MR. BAILEY: TALK A LITTLE BIT LOUDER.

1 JURY VENIRE MEMBER: LIKE THE JUDGE SAID,  
2 I'VE GOT TO HEAR EVERYTHING BEFORE I MAKE A DECISION  
3 OR ALL OF US MAKE A DECISION ON IT.

4 MR. BAILEY: ALL RIGHT, SIR. BUT IF YOU  
5 DID HEAR IT AND YOU DID MAKE A DECISION FOR THE DEATH  
6 PENALTY, COULD YOU SIGN THE PAPER?

7 JURY VENIRE MEMBER: YEAH.

8 MR. BAILEY: COULD YOU COME OUT IN COURT  
9 AND ANNOUNCE THAT THAT WAS YOUR DECISION?

10 JURY VENIRE MEMBER: YES.

11 MR. BAILEY: WHEN YOUR NAME WAS CALLED  
12 ALONG WITH ALL OF THE OTHER JURORS?

13 JURY VENIRE MEMBER: YEAH.

14 MR. BAILEY: THE NEXT QUESTION, PLEASE  
15 DON'T TAKE ANY OFFENSE TO THIS, BECAUSE I'VE ASKED  
16 EVERY JUROR THIS THAT I'VE TALKED TO THE TODAY AND  
17 YESTERDAY. THE DEFENDANT IN THIS CASE OBVIOUSLY IS A  
18 YOUNG BLACK MALE. THE EVIDENCE WILL ALSO SHOW THAT  
19 THE VICTIM WHO THE STATE ALLEGES WAS MURDERED BACK IN  
20 1994 WAS A YOUNG WHITE MALE. WOULD THE DIFFERENCE IN  
21 THE RACES BETWEEN THE DEFENDANT AND THE VICTIM CAUSE  
22 YOU TO VIEW THIS CASE ANY DIFFERENTLY THAN IF WE HAD  
23 THE REVERSED SITUATION?

24 JURY VENIRE MEMBER: NO.

25 MR. BAILEY: SO IF WE HAD A WHITE

1 DEFENDANT SITTING HERE AND A BLACK VICTIM, YOU WOULD  
2 LOOK AT IT THE SAME; RACE WOULD NOT BE A FACTOR?

3 JURY VENIRE MEMBER: I WOULD LOOK AT IT  
4 THE SAME.

5 MR. BAILEY: MR. SMITH, THE DEFENDANT IN  
6 THIS CASE IS NOW 18 YEARS OLD. AT THE TIME THE STATE  
7 ALLEGES HE COMMITTED THE MURDER, HE WAS 16. IF IT  
8 WAS PROVEN TO YOU AS A JUROR THE CASE WAS BAD ENOUGH,  
9 COULD YOU IMPOSE THE DEATH PENALTY ON A PERSON WHO  
10 WAS 16 AT THE TIME THEY COMMITTED THE MURDER?

11 JURY VENIRE MEMBER: YES. IT DEPENDS ON  
12 -- IT DEPENDS ON THE CIRCUMSTANCES.

13 MR. BAILEY: OKAY. ALL RIGHT. MR. SMITH,  
14 THAT'S ALL I'VE GOT. THANK YOU VERY MUCH.

15 MR. NEWSOME: MR. SMITH, OUR LAW PROVIDES  
16 THAT THERE ARE THE CERTAIN MITIGATING FACTORS IF WE  
17 GET TO THE PENALTY PHASE THAT YOU MUST CONSIDER. AND  
18 YOU DON'T HAVE TO ACCEPT THEM, BUT YOU MUST CONSIDER  
19 THEM. ONE OF THEM IS THE AGE OF THE DEFENDANT BEING  
20 UNDER 18. WOULD YOU CONSIDER THAT IF IT GOT TO THE  
21 PENALTY PHASE AND YOU WERE A JUROR, BEFORE YOU MADE A  
22 DECISION OF WHAT THE PENALTY WOULD BE?

23 JURY VENIRE MEMBER: IT -- AT ALL DEPENDS  
24 ON THE CIRCUMSTANCES.

25 MR. NEWSOME: ALL RIGHT. THE

1 CIRCUMSTANCES. WHAT CIRCUMSTANCES ARE WE TALKING  
2 ABOUT, OF THE CRIME OR CIRCUMSTANCES OF THE  
3 DEFENDANT?

4 JURY VENIRE MEMBER: CIRCUMSTANCES OF THE  
5 CRIME AND THE DEFENDANT.

6 MR. NEWSOME: OKAY.

7 JURY VENIRE MEMBER: IT WOULD HAVE TO BE  
8 PROVEN.

9 MR. NEWSOME: SO YOU WOULD CONSIDER BOTH  
10 THE CIRCUMSTANCES OF THE CRIME AND THE DEFENDANT.  
11 ALL RIGHT. THANK YOU VERY MUCH.

12 THE COURT: STEP OUT JUST A MOMENT,  
13 PLEASE.

14 (JUROR NUMBER 247 IS DISMISSED  
15 FROM THE COURTROOM.)

16 MR. BAILEY: QUALIFIED, YOUR HONOR.

17 MR. NEWSOME: QUALIFIED, YOUR HONOR.

18 THE COURT: OKAY.

19 (JUROR NUMBER 247 ENTERS THE  
20 COURTROOM.)

21 THE COURT: MR. JUROR, WE ARE IN THE  
22 PROCESS OF SELECTING 35 QUALIFIED JURORS. WE HAVE  
23 NOW SELECTED 28. FROM THAT 35, WE WILL BE SELECTING  
24 12 JURORS TOMORROW AFTERNOON AT 2:30, AND 2 MORE.

25 YOU HAVE BEEN QUALIFIED FOR ALL CONCERNED, INCLUDING

1 THIS JUDGE, TO BE A JUROR, IF SELECTED. I WANT YOU  
2 TO PACK YOUR PERSONAL BELONGINGS AND BE PREPARED TO  
3 STAY WITH US IN THE EVENT YOU ARE ONE OF THE 14. YOU  
4 UNDERSTAND. PLEASE REPORT TOMORROW AT 2:30 WITH YOUR  
5 PERSONAL BELONGINGS AT THE ANNEX BUILDING.

6 JURY VENIRE MEMBER: OKAY.

7 THE COURT: WE'LL SELECT THE 14 AND START  
8 THE TRIAL OF THIS CASE IMMEDIATELY. I UNDERSTAND  
9 WE'RE KEEPING YOU AWAY FROM WORK AND YOUR HOME, AND I  
10 WANT YOU TO KNOW THAT ONCE WE GET STARTED, WE'LL MOVE  
11 QUICKLY AND EXPEDITIOUSLY. YOU UNDERSTAND?

12 JURY VENIRE MEMBER: YES.

13 THE COURT: LOOK FORWARD TO SEEING YOU  
14 TOMORROW AT 2:30. THANK YOU.

15 (JUROR NUMBER 247 IS DISMISSED  
16 FROM THE COURTROOM.)

17 THE COURT: OKAY. LET'S BREAK FOR LUNCH  
18 AND TELL THE JURORS THAT WE'LL BE GETTING TO THEM  
19 VERY SHORTLY. LET'S BREAK FOR LUNCH.

20 (WHEREUPON, A LUNCH BREAK WAS  
21 TAKEN FROM THE PROCEEDINGS.)

22 (END OF VOLUME THREE)

23

24

25

## 1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF FLORENCE

5

6 I, MARK W. HAGOOD, REGISTERED PROFESSIONAL  
7 REPORTER, (RPR), COURT REPORTER FOR THE STATE OF  
8 SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY  
9 CERTIFY THAT THE FOREGOING PROCEEDINGS IS A  
10 STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH  
11 COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING  
12 TRANSCRIPT CONTAINS A TRUE RECORD OF THE  
13 PROCEEDINGS.

14 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR  
15 COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF  
16 THE PARTIES CONNECTED TO THE ACTION, NOR AM I  
17 FINANCIALLY INTERESTED IN THE ACTION.

18 WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA,  
19 THIS 3<sup>rd</sup> DAY OF April, 1996.

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MARK W. HAGOOD, RPR

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Handwritten signature and scribbles.

THIS IS TO CERTIFY THAT THE ABOVE NAMED PERSON HAS BEEN RECEIVED AT THE OFFICE OF THE DIRECTOR OF THE BUREAU OF PRISONS AND IS BEING HELD IN CONFINEMENT.

THE ABOVE NAMED PERSON IS BEING HELD IN CONFINEMENT AT THE BUREAU OF PRISONS, PHOENIX, ARIZONA.

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THE ABOVE NAMED PERSON IS BEING HELD IN CONFINEMENT AT THE BUREAU OF PRISONS, PHOENIX, ARIZONA.

1 STATE OF SOUTH CAROLINA IN GENERAL SESSIONS COURT  
 2 COUNTY OF CALHOUN

3  
 4 STATE OF SOUTH CAROLINA 94-GS-09-153  
 5 V. 94-GS-09-154  
 6 HERMAN LEE HUGHES, JR. 94-GS-09-155  
 7 94-GS-09-156

8 VOLUME FOUR

9 - - -  
 10 THE TRIAL PROCEEDINGS HAD  
 11 IN THE ABOVE-STYLED CAUSE  
 12 - - -

13 WEDNESDAY, SEPTEMBER 6, 1995  
 14 ST. MATTHEWS, SOUTH CAROLINA

15 BEFORE: HONORABLE EDWARD B. COTTINGHAM,  
 16 CIRCUIT COURT JUDGE

17 A P P E A R A N C E S

18 FOR THE STATE: WALTER M. BAILEY, JR., SOLICITOR

19 FOR THE DEFENDANT: PHILLIP F. NEWSOME, ESQUIRE  
 20  
 21  
 22  
 23  
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 25

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22	DIRECT BY MR. BAILEY	881
	DONALD GILBERT, M.D.	
23	DIRECT BY MR. BAILEY	884
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24	DIRECT BY MR. BAILEY	887
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	DIRECT BY MR. BAILEY	910
3	CROSS BY MR. NEWSOME	916
	HENRY OWENS	
4	DIRECT BY MR. BAILEY	917
	CROSS BY MR. NEWSOME	924
5	ROBERT SHIRE	
	DIRECT BY MR. BAILEY	926
6	CROSS BY MR. NEWSOME	932
	PAT THORNAL	
7	DIRECT BY MR. BAILEY	934
	CROSS BY MR. NEWSOME	940
8	KENNETH HASTY	
	DIRECT BY MR. BAILEY	942
9	JAMES GREEN	
	DIRECT BY MR. BAILEY	946
10	CROSS BY MR. NEWSOME	949
	REDIRECT BY MR. BAILEY	951
11	MICHAEL HOLBERT	
	DIRECT BY MR. BAILEY	952
12	DAVID PHILLIPS	
	DIRECT BY MR. BAILEY	960
13	CROSS BY MR. NEWSOME	963
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14	DIRECT BY MR. BAILEY	966
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15	DIRECT BY MR. BAILEY	971
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	DIRECT BY MR. BAILEY	1012
18	GREGORY SEXTON, M.D.	
	DIRECT BY MR. BAILEY	1017
19	BARBARA JOHNSON	
	DIRECT BY MR. BAILEY	1020
20	CROSS BY MR. NEWSOME	1028
	REDIRECT BY MR. BAILEY	1030
21	JAMES S. GREEN	
	DIRECT BY MR. BAILEY	1032
22	GERALD DAVID CARTER	
	DIRECT BY MR. BAILEY	1036
23	STEVEN M. DERRICK (RECALL)	
	DIRECT BY MR. BAILEY	1037
24	PHILLIP WRIGHT	
	DIRECT BY MR. BAILEY	1041
25	CROSS BY MR. NEWSOME	1051

1	VOLUME SIX CONTINUED	
2	WILBUR LEE KIMSON, JR.	
	DIRECT BY MR. BAILEY	1055
3	CROSS BY MR. NEWSOME	1064
	CHRISTOPHER C. DOZIER	
4	DIRECT BY MR. BAILEY	1066
	CROSS BY MR. NEWSOME	1069
5	BETTY SPAGNER	
	DIRECT BY MR. BAILEY	1070
6	THOMAS WADE FLEMING	
	DIRECT BY MR. BAILEY	1074
7	EARL RHUDY	
	DIRECT BY MR. BAILEY	1077
8	CROSS BY MR. NEWSOME	1084
	REDIRECT BY MR. BAILEY	1109
9	W. D. KIRKLAND	
	DIRECT BY MR. BAILEY	1110
10	CROSS BY MR. NEWSOME	1115
	EARL RHUDY (RECALL)	
11	DIRECT BY MR. BAILEY	1118
	STEVEN M. DERRICK (RECALL)	
12	DIRECT BY MR. BAILEY	1122
	CROSS BY MR. NEWSOME	1130
13	REDIRECT BY MR. BAILEY	1133
	VELLO PAAVEL	
14	DIRECT BY MR. BAILEY	1135
	CROSS BY MR. NEWSOME	1143
15	EARL RHUDY (RECALL)	
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18	DIRECT BY MR. BAILEY	1162
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14	DIRECT BY MR. BAILEY	1338
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17	DIRECT BY MR. BAILEY	1348
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	CAPERS WANNAMAKER	
19	DIRECT BY MR. BAILEY	1354
	CROSS BY MR. NEWSOME	1358
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	ANTHONY BROWN	
21	DIRECT BY MR. BAILEY	1362
	CROSS BY MR. NEWSOME	1364
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23	DIRECT BY MR. BAILEY	1366
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	DIRECT BY MR. NEWSOME	1518
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## E X H I B I T S

2	NUMBER	DESCRIPTION	I.D.	EVD.
3	STATE'S 1	PHOTO OF MAZDA	814	814
	STATE'S 2	PHOTO OF TAG	814	814
4	STATE'S 3	.380 PISTOL	843	1207
	STATE'S 4	CHART	893	893
5	STATE'S 5	PHOTO OF SPENT BULLET	901	901
	STATE'S 6	SPENT BULLET	901	901
6	STATE'S 7	PHOTO OF AUTOPSY	909	1380
	STATE'S 8	PHOTO OF AUTOPSY	909	1380
7	STATE'S 9	PHOTO OF AUTOPSY	909	1380
	STATE'S 10	CRIME SCENE LIST	930	930
8	STATE'S 11	BLOWUP	975	975
	STATE'S 12	PHOTO - CRIME SCENE	978	978
9	STATE'S 13	" " "	978	978
	STATE'S 14	" " "	978	978
10	STATE'S 15	" " "	978	978
	STATE'S 16	" " "	978	978
11	STATE'S 17	" " "	978	978
	STATE'S 18	" " "	978	978
12	STATE'S 19	" " "	978	978
	STATE'S 20	" " "	978	978
13	STATE'S 21	CARTRIDGES	982	982
	STATE'S 22	" " "	982	982
14	STATE'S 23	" " "	982	982
	STATE'S 24	" " "	982	982
15	STATE'S 25	" " "	983	983
	STATE'S 26	" " "	983	983
16	STATE'S 27	FINGERPRINT CARDS	986	1207
	STATE'S 28	" " "	1040	1207
17	STATE'S 29	" " "	1040	1207
	STATE'S 30	10 FINGERPRINT CARD	1076	1207
18	STATE'S 31	FINGERPRINT - LEFT PALM	1076	1207
	STATE'S 32	FINGERPRINT - RIGHT PALM	1076	1207
19	STATE'S 33	STATEMENT - OWENS	1078	1078
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20	STATE'S 35	PRINT CARD	1122	1122
	STATE'S 36	PRINT CARD - HUGHES	1128	1128
21	STATE'S 37	LINE-UP PHOTOS	1149	1149
	STATE'S 38	GILFORD STATEMENT	1218	1218
22	STATE'S 39	SCHOOL RECORDS	1335	1335
	STATE'S 40	CHART	1336	1336
23	STATE'S 41	CHART	1336	1336
	STATE'S 42	CHART	1336	1336
24	STATE'S 43	CHART	1336	1336
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25	STATE'S 45	CHART - SCHOOL REPORT	1341	1341
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## E X H I B I T S - C O N T I N U E D

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	STATE'S 48	FAMILY PHOTO	1381	1381
4	STATE'S 49	FAMILY PHOTO	1381	1381
	STATE'S 50	PHOTO - CRIME SCENE	1377	1377
5	STATE'S 51	" " "	1377	1377
	STATE'S 52	" " "	1377	1377
6	STATE'S 53	" " "	1377	1377
	STATE'S 54	" " "	1377	1377
7	STATE'S 55	" " "	1377	1377
	STATE'S 56	" " "	1377	1377
8	STATE'S 57	PHOTO - FAMILY	1381	1381
	STATE'S 58	PHOTO - KEN PRESLEY	1381	1381
9	STATE'S 59	I.D. (WITHDRAWN)	1381	
	STATE'S 60	PHOTO - FAMILY	1381	1381
10	STATE'S 61	PHOTO - KEN PRESLEY	1381	1381
	STATE'S 62	PHOTO - FAMILY	1381	1381
11	STATE'S 63	PHOTO - KEN PRESLEY	1381	1381
	STATE'S 64	PHOTO - KEN PRESLEY	1381	1381
12	STATE'S 65	LETTER	1381	1381
	STATE'S 66	LETTER	1381	1381
13	STATE'S 67	LETTER	1381	1381
	STATE'S 68	LETTER	1381	1381
14	STATE'S 69	LETTER	1381	1381
	STATE'S 70	POSTCARD	1381	1381
15	STATE'S 71	LETTER FROM NAVY	1381	1381
	STATE'S 72	SAILOR AWARD	1381	1381

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21	DEFENDANT'S 7	AUDIOTAPE OF INTERVIEW OF KELLY HOFFMAN	1189	1189
22	DEFENDANT'S 8	SCHLOSSON I.Q. TEST OF HERMAN HUGHES	1344	1344

23

25



1

(BEGINNING OF VOLUME FOUR)

2

THE COURT: GENTLEMEN, WE HAVE 28. WE'LL

3

MOVE ALONG.

4

(JUROR NUMBER 199, A WHITE

5

FEMALE, ENTERS THE COURTROOM.)

6

THE CLERK: PLEASE STATE YOUR NAME FOR THE

7

RECORD.

8

JURY VENIRE MEMBER: ELIZABETH PETERKIN.

9

(JUROR NUMBER 199, HAVING BEEN FIRST DULY SWORN

10

BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

11

THE CLERK: COME AND HAVE A SEAT, PLEASE,

12

MA'AM.

13

THE COURT: GOOD AFTERNOON.

14

JURY VENIRE MEMBER: GOOD AFTERNOON.

15

THE COURT: DID THEY GET A SANDWICH FOR

16

YOU?

17

JURY VENIRE MEMBER: YES, SIR.

18

THE COURT: WE'LL MOVE ALONG AS

19

EXPEDITIOUSLY AS WE CAN. MS. PETERKIN, YESTERDAY,

20

WHEN I MADE INQUIRY, YOU INDICATED THAT MAYBE YOU

21

HAVE HEARD OR KNEW SOMETHING ABOUT THIS INCIDENT.

22

JURY VENIRE MEMBER: YES, SIR.

23

THE COURT: WHAT HAVE YOU HEARD?

24

JURY VENIRE MEMBER: JUST THAT IT

25

HAPPENED.

1 THE COURT: JUST THAT IT HAPPENED. HAVE  
2 YOU FORMED ANY OPINION AS TO THE GUILT OR INNOCENCE  
3 OF ANYBODY?

4 JURY VENIRE MEMBER: NO. HUH-UH.

5 THE COURT: WELL, THAT'S FINE. AND YOU'RE  
6 TELLING ME THAT THOUGH YOU MAY HAVE HEARD SOMETHING  
7 ABOUT IT, IF YOU ARE A JUROR, YOU WILL BASE YOUR  
8 VERDICT ON WHAT YOU HEAR IN THIS COURTROOM?

9 JURY VENIRE MEMBER: YES, SIR.

10 THE COURT: GOOD. I JUST WANT TO MAKE  
11 SURE THAT WHAT YOU MAY HAVE HEARD WOULD NOT INFLUENCE  
12 YOUR DECISION.

13 JURY VENIRE MEMBER: I JUST -- I READ THE  
14 PAPER EVERY DAY.

15 THE COURT: UH-HUH.

16 JURY VENIRE MEMBER: AND I JUST THINK THAT  
17 WHAT I -- I JUST REMEMBER THAT IT HAPPENED.

18 THE COURT: OKAY. WELL, THAT'S FINE. DID  
19 YOU HAVE AN OPPORTUNITY TO READ THE LETTER BACK THERE  
20 ABOUT THE THREE TYPES OF JURORS?

21 JURY VENIRE MEMBER: YES, SIR.

22 THE COURT: WOULD YOU BE THE FIRST ONE,  
23 TWO OR THREE?

24 JURY VENIRE MEMBER: I CAN'T REMEMBER  
25 EXACTLY WHICH ORDER THEY CAME, BUT I BELIEVE THAT

1 WOULD BE A JUROR THAT WOULD FORM MY OPINION IN THIS  
2 COURTROOM AND THAT IT -- I WOULDN'T -- I WOULDN'T  
3 HAVE A PROBLEM WITH CAPITAL PUNISHMENT BECAUSE I  
4 BELIEVE IN IT, BUT I BELIEVE THAT THERE ARE  
5 CIRCUMSTANCES THAT NECESSITATE THAT PENALTY AND  
6 CIRCUMSTANCES THAT DON'T NECESSITATE THAT PENALTY.

7 THE COURT: GOOD. YOU ARE SAYING, THEN,  
8 THAT YOU WOULD BE WILLING TO LISTEN TO THE FACTS ON  
9 BOTH SIDES OF THE ISSUE?

10 JURY VENIRE MEMBER: YES, SIR.

11 THE COURT: AND THEN MAKE YOUR  
12 DETERMINATION?

13 JURY VENIRE MEMBER: YES, SIR.

14 THE COURT: YOU UNDERSTAND THAT THIS COULD  
15 POSSIBLY BE A TWO-PHASE TRIAL. THE FIRST PHASE IS TO  
16 DETERMINE WHETHER OR NOT THE DEFENDANT IS INNOCENT OR  
17 GUILTY. IF HE'S FOUND GUILTY -- INNOCENT, YOU STOP.

18 JURY VENIRE MEMBER: YES, SIR.

19 THE COURT: IF HE'S FOUND GUILTY, YOU THEN  
20 DETERMINE THE PUNISHMENT PHASE.

21 JURY VENIRE MEMBER: YES, SIR.

22 THE COURT: THAT'S FINE. WE DON'T WANT TO  
23 INVADE THE PRIVACY. THERE'S NO RIGHT OR WRONG  
24 ANSWERS IN THIS MATTER. YOU KNOW, THERE ARE GROUPS  
25 IN ALL THREE OF THEM, AND YOU ARE BASICALLY SAYING

1 THAT IF WE FOUND HIM GUILTY OF MURDER, I'M GOING TO  
2 CONSIDER ALL OF THE FACTS ON BOTH SIDES OF THE ISSUE  
3 AND THEN I WILL DECIDE WHETHER OR NOT I CAN IMPOSE  
4 THE PENALTY OF DEATH OR LIFE IMPRISONMENT. THAT'S  
5 WHAT I THINK I'M HEARING YOU SAY.

6 JURY VENIRE MEMBER: YES, SIR.

7 THE COURT: OKAY. THAT'S FINE.

8 MR. BAILEY: THANK YOU, YOUR HONOR,

9 THE COURT: THANK YOU SO MUCH.

10 MR. BAILEY: I WANT TO ASK YOU A FEW MORE  
11 QUESTIONS. YOU UNDERSTAND FROM WHAT JUDGE COTTINGHAM  
12 TOLD YOU THAT WE WOULD NOT EVEN BE IN THIS SECOND  
13 PHASE OF THE TRIAL UNLESS THE DEFENDANT WAS FOUND  
14 GUILTY OF MURDER IN THE FIRST PART.

15 JURY VENIRE MEMBER: RIGHT.

16 MR. BAILEY: AND THAT WHATEVER THE JURY  
17 DECIDES THE PUNISHMENT OUGHT TO BE IF WE GET INTO  
18 THAT SECOND PHASE IS WHAT'S GOING TO HAPPEN. IF THE  
19 JURY DECIDES ON LIFE IMPRISONMENT, THE JUDGE WOULD  
20 SENTENCE THE DEFENDANT TO LIFE. IF THE JURY DECIDED  
21 THE DEATH PENALTY, THAT DEFENDANT WOULD ACTUALLY BE  
22 EXECUTED.

23 JURY VENIRE MEMBER: RIGHT.

24 MR. BAILEY: IN OTHER WORDS, THE JURY'S  
25 RECOMMENDATION ISN'T REALLY A RECOMMENDATION. IT

1 WOULD BE THE SENTENCE OF THE COURT. IF YOU WERE  
2 SELECTED ON A JURY IN A CASE LIKE THIS AND YOU AND  
3 THE OTHER JURORS HEARD ALL OF THE EVIDENCE THAT CAME  
4 OUT AND MADE THAT LIFE AND DEATH CHOICE IN DECIDING  
5 THE DEATH PENALTY, IN ORDER TO PUT THAT SENTENCE INTO  
6 EFFECT, EACH JUROR WOULD BE ASKED TO SIGN THEIR NAME  
7 TO A DEATH VERDICT FORM.

8 JURY VENIRE MEMBER: UH-HUH.

9 MR. BAILEY: THE RESULT OF THAT WOULD BE  
10 THAT THE SENTENCE WOULD BE IMPOSED ON THE DEFENDANT.

11 JURY VENIRE MEMBER: UH-HUH.

12 MR. BAILEY: COULD YOU SIGN THAT FORM  
13 KNOWING WHAT THE RESULT WOULD BE?

14 JURY VENIRE MEMBER: I FEEL LIKE IF I  
15 BELIEVE IN CAPITAL PUNISHMENT, I HAVE TO BE WILLING  
16 TO SIGN THAT FORM.

17 MR. BAILEY: OKAY.

18 JURY VENIRE MEMBER: AND I BELIEVE IN  
19 CAPITAL PUNISHMENT.

20 MR. BAILEY: YOU INDICATED THAT YOU  
21 BELIEVE IN IT BUT NOT IN EVERY CASE.

22 JURY VENIRE MEMBER: RIGHT.

23 MR. BAILEY: THAT YOU WOULD WANT TO HEAR  
24 ALL OF THE FACTS AND CIRCUMSTANCES ABOUT THE  
25 DEFENDANT AND THE CRIME BEFORE YOU DECIDE.

1 JURY VENIRE MEMBER: RIGHT.

2 MR. BAILEY: OKAY. AND THE LAST THING  
3 THAT WOULD HAPPEN WOULD BE THAT ALL OF THE JURORS  
4 WOULD HAVE TO COME OUT INTO OPEN COURT AND THEIR  
5 NAMES WOULD BE CALLED ONE AT A TIME. YOU WOULD HAVE  
6 TO INDIVIDUALLY ANNOUNCE THAT VERDICT PUBLICLY.

7 JURY VENIRE MEMBER: UH-HUH.

8 MR. BAILEY: COULD YOU DO THAT IF THAT WAS  
9 YOUR VERDICT?

10 JURY VENIRE MEMBER: UH-HUH.

11 MR. BAILEY: OKAY. NOW, IN THIS CASE,  
12 OBVIOUSLY THE DEFENDANT IS A YOUNG BLACK MAN.

13 JURY VENIRE MEMBER: UH-HUH.

14 MR. BAILEY: THE EVIDENCE WOULD BE THAT  
15 THE VICTIMS IN THIS CASE, THE VICTIM THAT DIED AND  
16 THE YOUNG WOMAN WHO WAS SHOT BUT DID NOT DIE, WERE  
17 BOTH WHITE.

18 JURY VENIRE MEMBER: UH-HUH.

19 MR. BAILEY: WOULD RACE ENTER INTO YOUR  
20 DECISION ONE WAY OR THE OTHER?

21 JURY VENIRE MEMBER: I DON'T THINK.

22 MR. BAILEY: OR WOULD YOU LOOK AT THIS THE  
23 SAME AS IF YOU HAD A WHITE DEFENDANT AND A BLACK  
24 VICTIM?

25 JURY VENIRE MEMBER: I DON'T THINK RACE IS

1. AN ISSUE.

2 MR. BAILEY: OKAY. AND THE LAST QUESTION,  
3 MS. PETERKIN, THE STATE ALLEGES THAT THIS CRIME  
4 OCCURRED IN MARCH OF 1994.

5 JURY VENIRE MEMBER: UH-HUH.

6 MR. BAILEY: AT THAT TIME, THE DEFENDANT  
7 WAS 16 YEARS OLD, AND HE'S NOW 18.

8 JURY VENIRE MEMBER: UH-HUH.

9 MR. BAILEY: IF THE CASE IS BAD ENOUGH,  
10 COULD YOU AS A JUROR IMPOSE THE DEATH PENALTY ON A 16  
11 YEAR OLD OR SOMEONE WHO WAS 16 AT THE TIME THEY  
12 COMMITTED THE MURDER?

13 JURY VENIRE MEMBER: I SUPPOSE I WOULD  
14 HAVE TO.

15 MR. BAILEY: WELL, YOU WOULDN'T HAVE TO DO  
16 ANYTHING.

17 JURY VENIRE MEMBER: NO, I -- THAT'S A  
18 TOUGH QUESTION.

19 MR. BAILEY: I KNOW. WELL, IF YOU NEED  
20 TIME TO THINK ABOUT IT. AND PLEASE KEEP IN MIND THAT  
21 THE JURY WOULD BE GIVEN, YOU KNOW, GUIDELINES BY THE  
22 JUDGE ON WHAT TO CONSIDER, BUT NO JURY IS EVER GOING  
23 TO BE TOLD WHAT THEY SHOULD DO. I MEAN, IT WOULD BE  
24 PRETTY MUCH -- IF I --

25 JURY VENIRE MEMBER: NO. I MEAN -- I

1 MEAN, IF I BELIEVE IN CAPITAL PUNISHMENT, THEN IT  
2 WOULD HAVE TO COME FROM WITHIN ME. I DON'T MEAN TH  
3 Y'ALL WOULD TELL ME WHAT I WOULD HAVE TO DO.

4 MR. BAILEY: OKAY.

5 JURY VENIRE MEMBER: IF THE -- IF AFTER WE  
6 DECIDED GUILT OR INNOCENCE, THAT NEXT PHASE,  
7 MITIGATING OR WHATEVER YOU CALL THOSE  
8 CIRCUMSTANCES --

9 MR. BAILEY: AGGRAVATING AND MITIGATING.

10 JURY VENIRE MEMBER: -- AGGRAVATING AND  
11 MITIGATING, IF THEY WERE BAD ENOUGH, THEN I WOULD SAY  
12 I WOULD HAVE TO IMPOSE THE DEATH PENALTY REGARDLESS  
13 OF AGE.

14 MR. BAILEY: OKAY. IF THE JUDGE TOLD YOU  
15 TO CONSIDER THE AGE ALONG WITH THE MENTALITY OF THE  
16 DEFENDANT AND CERTAIN OTHER THINGS, WOULD YOU FOLLOW  
17 THE JUDGE'S INSTRUCTIONS AND CONSIDER ALL ASPECTS OF  
18 THE CASE AND OF THE DEFENDANT?

19 JURY VENIRE MEMBER: THAT'S WHAT I'M  
20 SUPPOSED TO DO.

21 MR. BAILEY: BUT --

22 JURY VENIRE MEMBER: I WOULD DO IT.

23 MR. BAILEY: OKAY. ALL RIGHT. MS.

24 PETERKIN, THAT'S ALL I'VE GOT. THANK YOU VERY MUCH.

25 JURY VENIRE MEMBER: THANK YOU.

1 MR. NEWSOME: MS. PETERKIN, WHAT CHURCH DO  
2 YOU GO TO? I NOTICE YOU MENTION YOU'RE EPISCOPAL.

3 JURY VENIRE MEMBER: UH-HUH.

4 MR. NEWSOME: WHICH CHURCH?

5 JURY VENIRE MEMBER: I GO TO THE ONE IN  
6 FORT MOTTE.

7 MR. NEWSOME: DOES YOUR CHURCH HAVE A  
8 STATED POSITION ON HOW THEY FEEL ABOUT THE DEATH  
9 PENALTY?

10 JURY VENIRE MEMBER: NOT THAT I KNOW OF.

11 MR. NEWSOME: OKAY. ALL RIGHT. SO WHAT  
12 YOU'RE TELLING US IS THAT YOU WOULD LISTEN TO THE  
13 INSTRUCTIONS THAT THE JUDGE GAVE YOU ABOUT WHAT YOU  
14 WERE TO CONSIDER, THE AGGRAVATING CIRCUMSTANCES AND  
15 THE CIRCUMSTANCES IN MITIGATION, BEFORE YOU DECIDED  
16 UPON A PENALTY?

17 JURY VENIRE MEMBER: YES.

18 MR. NEWSOME: DO YOU THINK THAT -- WELL,  
19 YOU DON'T THINK THAT THE DEATH PENALTY IS REQUIRED IN  
20 EVERY MURDER. IS THAT WHAT YOU'RE SAYING?

21 JURY VENIRE MEMBER: RIGHT.

22 MR. NEWSOME: THANK YOU. I HAVE NO  
23 FURTHER QUESTIONS.

24 THE COURT: STEP OUT JUST A MOMENT. WE'LL  
25 CALL YOU RIGHT BACK.

1 (JUROR NUMBER 199 IS DISMISSED  
2 FROM THE COURTROOM.)

3 THE COURT: MR. BAILEY?

4 MR. BAILEY: QUALIFIED.

5 MR. NEWSOME: QUALIFIED.

6 (JUROR NUMBER 199 ENTERS THE  
7 COURTROOM.)

8 THE COURT: MADAM JUROR, WE ARE IN THE  
9 PROCESS OF QUALIFYING 35 JURORS FROM WHICH NUMBER WE  
10 WILL SELECT 12 JURORS AND 2 ALTERNATES.

11 JURY VENIRE MEMBER: YES, SIR.

12 THE COURT: YOU ARE AMONG THOSE THAT ARE  
13 QUALIFIED TO SERVE.

14 JURY VENIRE MEMBER: YES, SIR.

15 THE COURT: SO I'M GOING TO ASK, PLEASE,  
16 THAT YOU PACK YOUR PERSONAL BELONGINGS AND REPORT  
17 ACROSS THE STREET TOMORROW AFTERNOON AT 2:30. BE  
18 PREPARED TO STAY WITH US IN THE EVENT THAT YOU ARE  
19 SELECTED. WE WILL START AT -- IT WILL BE JUST A FEW  
20 MINUTES, AND WE'LL HAVE A JURY, AND WE'LL START THE  
21 TRIAL OF THIS CASE THEN.

22 JURY VENIRE MEMBER: OKAY. THANK YOU.

23 THE COURT: THANK YOU SO MUCH. PLEASE  
24 DON'T DISCUSS ANY ASPECT OF THIS CASE WITH ANYONE OR  
25 LET NO ONE DISCUSS IT WITH YOU.

1 JURY VENIRE MEMBER: YES, SIR. YES, SIR.

2 (JUROR NUMBER 199 IS DISMISSED  
3 FROM THE COURTROOM.)

4 (JUROR NUMBER 111, A WHITE  
5 FEMALE, ENTERS THE COURTROOM.)

6 THE CLERK: PLEASE STATE YOUR NAME FOR THE  
7 RECORD.

8 JURY VENIRE MEMBER: GWEN HUFFMAN.

9 (JUROR NUMBER 111, HAVING BEEN FIRST DULY SWORN  
10 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

11 THE CLERK: PLEASE COME AROUND.

12 THE COURT: GOOD AFTERNOON.

13 JURY VENIRE MEMBER: HI.

14 THE COURT: YOU ARE THE LAST OF YOUR  
15 PANEL, AS I UNDERSTAND IT.

16 JURY VENIRE MEMBER: YES, THAT'S RIGHT.

17 THE COURT: LET ME ASK YOU SOMETHING. WE  
18 HAD ASKED THAT ALL JURORS RETURN THIS TWO-PAGE FORM.  
19 I DON'T SEE YOURS. DID YOU RETURN ONE?

20 JURY VENIRE MEMBER: YES, SIR.

21 THE COURT: YOU DID?

22 MR. NEWSOME: I'M SORRY. I JUST DON'T  
23 HAVE IT, YOUR HONOR.

24 THE COURT: THAT'S FINE. YOUR NAME IS MS.  
25 COLLINS?

1 JURY VENIRE MEMBER: NO.

2 THE COURT: HUFFMAN.

3 JURY VENIRE MEMBER: HUFFMAN.

4 THE COURT: OH, EXCUSE ME. OKAY. LET'S  
5 SEE. MS. HUFFMAN, YOU ARE EMPLOYED AS A SECRETARY IN  
6 THE SCHOOL DISTRICT; IS THAT CORRECT?

7 JURY VENIRE MEMBER: ORANGEBURG SCHOOL  
8 DISTRICT, YES, THAT'S CORRECT.

9 THE COURT: ORANGEBURG SCHOOL DISTRICT.  
10 ALL RIGHT. YOU WERE BORN IN 1935?

11 JURY VENIRE MEMBER: NO, SIR. NO, SIR.

12 THE COURT: MAY I ASK, WHEN WERE YOU BORN?

13 JURY VENIRE MEMBER: YOU MAY. JULY 1ST,  
14 1941, HERE IN CALHOUN COUNTY.

15 THE COURT: HAVE YOU LIVED HERE ALL OF  
16 YOUR LIFE?

17 JURY VENIRE MEMBER: YES, SIR.

18 THE COURT: HOW MANY CHILDREN DO YOU HAVE?

19 JURY VENIRE MEMBER: ONE.

20 THE COURT: MAY I INQUIRE WHAT AGE HE IS?

21 JURY VENIRE MEMBER: 21.

22 THE COURT: BOY OR GIRL?

23 JURY VENIRE MEMBER: SON.

24 THE COURT: HAVE YOU EVER BEEN ON JURY  
25 SERVICE BEFORE?

1 JURY VENIRE MEMBER: YES, I HAVE.

2 THE COURT: WHEN WAS THAT?

3 JURY VENIRE MEMBER: THIS WAS IN THE LATE  
4 '60'S OR EARLY '70'S.

5 THE COURT: CRIMINAL OR CIVIL?

6 JURY VENIRE MEMBER: CRIMINAL. IT WAS  
7 DRUNK DRIVING.

8 THE COURT: HERE OR -- IN THE MAGISTRATE'S  
9 COURT OR STATE?

10 JURY VENIRE MEMBER: HERE IN THIS  
11 COURTROOM.

12 THE COURT: HOW LONG HAVE YOU BEEN WITH  
13 YOUR PRESENT EMPLOYER?

14 JURY VENIRE MEMBER: WITH MY PRESENT  
15 EMPLOYER, I'VE BEEN FOUR YEARS, BUT MUCH LONGER THAN  
16 THAT TOTAL.

17 THE COURT: OKAY. YOUR HUSBAND, WHAT KIND  
18 OF WORK DOES HE DO?

19 JURY VENIRE MEMBER: HE'S AN ENGINEER AT  
20 AMERICAN YARN PRODUCTS IN ORANGEBURG.

21 THE COURT: AGAIN, WE ALL WANT TO  
22 APOLOGIZE FOR THE INCONVENIENCE THAT WE'VE CAUSED  
23 YOU, BUT WE ARE MOVING JUST AS EXPEDITIOUSLY AS WE  
24 CAN. DID YOU HAVE A CHANCE TO READ THE THREE  
25 DIFFERENT VIEWS THAT PEOPLE MIGHT HAVE IN

1 CONSIDERATION OF THE DEATH PENALTY?

2 JURY VENIRE MEMBER: YES, SIR.

3 THE COURT: YOU WOULD UNDERSTAND THAT THIS  
4 YOUNG MAN WHO IS BEING TRIED FOR MURDER, HE HAS PLED  
5 NOT GUILTY AND IS PRESUMED INNOCENT. WE WOULD HAVE A  
6 TWO-PART TRIAL, PERHAPS. THE FIRST PART WOULD  
7 CONCERN HIS GUILT OR INNOCENCE. IF HE'S FOUND  
8 INNOCENT, WE STOP THERE.

9 JURY VENIRE MEMBER: UH-HUH.

10 THE COURT: IF HE'S FOUND GUILTY,  
11 UNANIMOUSLY, BEYOND A REASONABLE DOUBT, WE WOULD THEN  
12 AND ONLY THEN GO TO THE SECOND PHASE, WHICH IS THE  
13 SENTENCING PHASE. YOU UNDERSTAND?

14 JURY VENIRE MEMBER: YES, SIR.

15 THE COURT: NOW, IN A SENTENCING PHASE,  
16 THE JURY'S QUESTION IS THIS. HAVING NOW FOUND THE  
17 DEFENDANT GUILTY OF MURDER BEYOND A REASONABLE DOUBT,  
18 WHAT PUNISHMENT SHALL WE IMPOSE? WILL IT BE DEATH BY  
19 ELECTROCUTION OR LETHAL INJECTION OR WILL THE  
20 PUNISHMENT BE LIFE IMPRISONMENT? NOW, IN HELPING YOU  
21 TO MAKE THAT DECISION EITHER WAY, THE STATE OF SOUTH  
22 CAROLINA WILL OFFER AGGRAVATING CIRCUMSTANCES FOR  
23 YOUR CONSIDERATION. EQUALLY IMPORTANT, THE DEFENDANT  
24 WILL OFFER FOR YOUR CONTRIBUTION MITIGATING  
25 CIRCUMSTANCES TO HELP YOU DECIDE THE APPROPRIATE

1 SENTENCE. NOW, NOBODY IS GOING TO ASK YOU WHAT YOUR  
2 DECISION WOULD BE BECAUSE OBVIOUSLY YOU'VE HEARD  
3 NOTHING. HE'S NOT EVEN CONVICTED. BUT WE WANT TO  
4 GET GENERAL VIEWS OF YOUR VIEW ON THE DEATH PENALTY.

5 THAT LETTER INDICATES THAT GENERALLY THERE'S  
6 THREE GROUPS OF PEOPLE. AND THERE IS NO RIGHT OR  
7 WRONG ANSWER. EVERYBODY JUST BY THEIR OWN PERSONAL  
8 OR RELIGIOUS CONVICTION FALLS INTO ONE GROUP OR  
9 ANOTHER GENERALLY. THERE'S A FIRST GROUP THAT SAYS  
10 HAVING FOUND HIM GUILTY OF MURDER, I WILL ALWAYS  
11 IMPOSE THE DEATH. AND THEN THERE'S A SECOND GROUP  
12 THAT SAYS EVEN THOUGH WE'VE FOUND HIM GUILTY OF  
13 MURDER, I CAN NEVER EVER IMPOSE THE DEATH PENALTY.  
14 THERE IS A THIRD GROUP THAT SAYS WE HAVE NOW FOUND  
15 YOU GUILTY OF MURDER AND I NOW WILL DECIDE THE  
16 APPROPRIATE PUNISHMENT, BE IT DEATH OR LIFE, AND I  
17 WILL LISTEN TO THE AGGRAVATING CIRCUMSTANCES, LISTEN  
18 AND CONSIDER THE MITIGATING CIRCUMSTANCES, AND THEN I  
19 WILL DECIDE. WOULD YOU BE IN THE GROUP THAT SAYS  
20 ALWAYS, NEVER OR IT WILL DEPEND ON THE FACTS?

21 JURY VENIRE MEMBER: IT WILL DEPEND ON THE  
22 FACTS.

23 THE COURT: OKAY.

24 MR. BAILEY: THANK YOU, YOUR HONOR. MS.  
25 HUFFMAN, I'M WALTER BAILEY. I WANT TO ASK YOU A FEW

1 MORE QUESTIONS.

2 JURY VENIRE MEMBER: ALL RIGHT, SIR.

3 MR. BAILEY: IN REGARD TO THE DEATH  
4 PENALTY, PRIMARILY. WHEN YOU WERE ON JURY SERVICE  
5 20-SOMETHING YEARS AGO, DO YOU RECALL WHAT TYPE OF  
6 CASE IT WAS?

7 JURY VENIRE MEMBER: YES. IT WAS A THIRD  
8 OFFENSE DRUNK DRIVING.

9 MR. BAILEY: OKAY. WELL, THE FIRST PHASE  
10 OF THIS TRIAL WOULD BE SORT OF LIKE THAT CASE.  
11 OBVIOUSLY IT'S A MORE SERIOUS CHARGE, BUT THE JURY IS  
12 JUST CONCERNED WITH GUILT OR INNOCENCE, AND WE  
13 WOULDN'T EVEN BE TALKING ABOUT PENALTY, LIFE IN  
14 PRISON OR THE DEATH PENALTY, UNLESS THAT DEFENDANT IS  
15 FOUND GUILTY OF MURDER IN THE FIRST PHASE. AND YOU  
16 UNDERSTAND THAT THE WAY IT WORKS IS THAT THE JURY  
17 SETS THE PUNISHMENT IF WE REACH THAT POINT, NOT THE  
18 JUDGE.

19 JURY VENIRE MEMBER: THAT'S RIGHT.

20 MR. BAILEY: WHATEVER THE JURY SAYS OUGHT  
21 TO HAPPEN WILL HAPPEN. IF THE JURY SAYS LIFE IN  
22 PRISON, THAT WILL BE THE JUDGE'S SENTENCE. IF THE  
23 JURY SAYS OUT OF THOSE TWO CHOICES, THE DEATH PENALTY  
24 IS THE APPROPRIATE CHOICE IN THIS CASE, THAT  
25 DEFENDANT WOULD BE ACTUALLY PUT TO DEATH. YOU

1 UNDERSTAND THAT?

2 JURY VENIRE MEMBER: I UNDERSTAND THAT.

3 MR. BAILEY: AND IF YOU ARE SELECTED ON A  
4 JURY OF THIS TYPE AND YOU REACH THE SECOND STAGE OF  
5 THE TRIAL AND YOU HEARD ALL OF THE EVIDENCE IN  
6 AGGRAVATION AND MITIGATION AND YOU HEARD INSTRUCTIONS  
7 FROM THE JUDGE AND YOU ALONG WITH THE OTHER JURORS  
8 DECIDE ON THE DEATH PENALTY, THEN EACH JUROR WOULD  
9 ASK -- WOULD BE ASKED TO SIGN THEIR NAMES TO A DEATH  
10 VERDICT FORM WHICH WOULD EVENTUALLY RESULT IN THAT  
11 DEFENDANT'S EXECUTION. COULD YOU SIGN YOUR NAME TO A  
12 PAPER LIKE THAT IF YOU HAD ALREADY REACHED THAT  
13 DECISION BY YOUR VOTE?

14 JURY VENIRE MEMBER: IF THAT WAS MY  
15 DECISION, I COULD BACK IT WITH MY SIGNATURE.

16 MR. BAILEY: COULD YOU THEN COME IN OPEN  
17 COURT AND ANNOUNCE THAT DECISION IN OPEN COURT?

18 JURY VENIRE MEMBER: YES, I COULD. YES, I  
19 COULD.

20 MR. BAILEY: NOW, IN THIS PARTICULAR CASE,  
21 OBVIOUSLY THE DEFENDANT IS A YOUNG BLACK MALE. THE  
22 EVIDENCE WOULD BE THAT THE VICTIM THAT DIED WAS A  
23 YOUNG WHITE MALE.

24 JURY VENIRE MEMBER: UH-HUH.

25 MR. BAILEY: THERE WILL ALSO BE EVIDENCE

1 THAT A YOUNG WOMAN WAS SHOT BUT DID NOT DIE FROM  
2 THOSE WOUNDS. WOULD THE FACT THAT YOU ARE DEALING  
3 THIS CASE WITH A BLACK DEFENDANT AND WHITE VICTIMS  
4 CAUSE YOU TO VIEW THAT CASE ANY DIFFERENTLY THAN IF  
5 YOU HAD THE OPPOSITE SITUATION?

6 JURY VENIRE MEMBER: NO.

7 MR. BAILEY: IF YOU HAD A WHITE DEFENDANT  
8 AND A BLACK VICTIM?

9 JURY VENIRE MEMBER: NO.

10 MR. BAILEY: OKAY. AND I'M SURE YOU KNOW  
11 FROM WHAT JUDGE COTTINGHAM TOLD YOU THAT A JURY HAS  
12 TO MAKE UP THEIR MIND IN THE FIRST PHASE ON GUILT OR  
13 INNOCENCE, ON THE SWORN TESTIMONY, AND IN THE PENALTY  
14 PHASE, THE SAME THING, THE SWORN TESTIMONY, AND  
15 EXCLUDE ANY OUTSIDE INFLUENCE. I NOTICE THAT YOU'VE  
16 GOT A SON WHO IS 21 YEARS OLD.

17 JURY VENIRE MEMBER: UH-HUH.

18 MR. BAILEY: THE DEFENDANT IN THIS CASE  
19 RIGHT NOW IS 18 YEARS OLD. AT THE TIME THE STATE  
20 ALLEGES HE COMMITTED THE MURDER, HE WAS 16. THAT WAS  
21 BACK IN MARCH OF 1994. COULD YOU PUT ASIDE THE FACT  
22 THAT YOU'VE GOT A SON ABOUT THE DEFENDANT'S AGE --

23 JURY VENIRE MEMBER: YES.

24 MR. BAILEY: -- AND JUDGE -- JUDGE THIS  
25 DEFENDANT ON THE EVIDENCE IN THIS CASE?

1 JURY VENIRE MEMBER: YES.

2 MR. BAILEY: AND IF THE CASE WERE BAD  
3 ENOUGH, COULD YOU IMPOSE THE DEATH PENALTY ON A  
4 PERSON THAT WAS 16 AT THE TIME HE COMMITTED THE  
5 MURDER?

6 JURY VENIRE MEMBER: WOULD YOU REPEAT  
7 THAT, PLEASE?

8 MR. BAILEY: IF THE FACTS OF THE CASE WERE  
9 BAD ENOUGH, COULD YOU AS A JUROR IMPOSE THE DEATH  
10 PENALTY ON A PERSON WHO WAS 16 YEARS OLD AT THE TIME  
11 HE COMMITTED THE MURDER?

12 JURY VENIRE MEMBER: I THINK -- IF THE  
13 FACTS WERE BAD ENOUGH, YES.

14 MR. BAILEY: I BELIEVE THAT'S ALL I'VE  
15 GOT. THANK YOU.

16 JURY VENIRE MEMBER: OKAY. OKAY.

17 MR. NEWSOME: MS. HUFFMAN, I NOTICED YOU  
18 HESITATED ON THAT.

19 JURY VENIRE MEMBER: YES, SIR.

20 MR. NEWSOME: AS A MATTER OF FACT, WOULD  
21 THE POTENTIAL YOUTH OF THE DEFENDANT'S AGE BE ONE OF  
22 THOSE FACTORS YOU WOULD CONSIDER BEFORE MAKING A  
23 DECISION?

24 JURY VENIRE MEMBER: NO, I DON'T THINK SO.  
25 I DIDN'T UNDERSTAND THE QUESTION EXACTLY THE FIRST

1 TIME, AND I WANTED TO MAKE SURE I UNDERSTOOD IT.

2 MR. NEWSOME: OKAY.

3 JURY VENIRE MEMBER: MAY I ELABORATE A  
4 MINUTE?

5 MR. NEWSOME: YES.

6 JURY VENIRE MEMBER: IF SOMEONE COMMITS  
7 THE CRIME, THEY HAVE TO TAKE THE CONSEQUENCES. IF  
8 THEY ARE NOT GUILTY, THEN THEY ARE FREED. SO --

9 MR. NEWSOME: OF COURSE. BUT IF WE WERE  
10 IN THE PENALTY PHASE, IT WOULDN'T BE A MATTER OF  
11 WHETHER THEY WERE GUILTY OR NOT GUILTY. BUT ASSUMING  
12 THAT SOMEBODY IS CONVICTED AND YOU'RE MAKING THE  
13 DECISION --

14 JURY VENIRE MEMBER: AGE WOULD NOT MAKE A  
15 DIFFERENCE IF THAT'S WHAT YOU'RE ASKING ME.

16 MR. NEWSOME: IT WOULD NOT MAKE A  
17 DIFFERENCE?

18 JURY VENIRE MEMBER: NO.

19 MR. NEWSOME: OKAY. IF THE JUDGE  
20 INSTRUCTED YOU THAT THAT WAS ONE OF THE MITIGATING  
21 CIRCUMSTANCES THAT YOU HAD TO CONSIDER BY LAW --

22 THE COURT: I WOULDN'T SAY HAD TO  
23 CONSIDER. I WOULD SAY COULD CONSIDER.

24 JURY VENIRE MEMBER: I WOULD CONSIDER ALL  
25 OF THE FACTS, MITIGATING AND AGGRAVATING BOTH, AND

1 MAKE MY DECISION FROM THAT.

2 MR. NEWSOME: WHAT FACTS DO YOU THINK ARE  
3 MITIGATING FACTS?

4 MR. BAILEY: JUDGE, I WOULD OBJECT TO --

5 THE COURT: NO. I THINK THAT WOULD BE TOO  
6 OVERLY BROAD. YOU CAN GET SPECIFIC IF YOU CARE TO.

7 MR. NEWSOME: DO YOU THINK IF SOMEONE DOES  
8 SOMETHING UNDER THE INFLUENCE OF ALCOHOL, WOULD THAT  
9 BE A MITIGATING FACTOR FOR PUNISHMENT?

10 JURY VENIRE MEMBER: NO.

11 MR. NEWSOME: NO? DO YOU THINK IF  
12 SOMEBODY SUFFERED FROM MENTAL IMPAIRMENT AND  
13 COMMITTED A CRIME --

14 JURY VENIRE MEMBER: IT'S NOT TOTALLY  
15 MITIGATING, NO. I WOULD CONSIDER THEIR MENTAL STATE  
16 IF IT WERE A MENTAL STATE FROM BIRTH OR SOMETHING.  
17 IF IT WERE A MENTAL STATE CHANGED BY A DRUG OR BY  
18 ALCOHOL, THEN THEY BROUGHT IT ON THEMSELVES. THEY  
19 PUT THEM THEMSELVES IN THAT MENTAL STATE.

20 MR. NEWSOME: THANK YOU. I HAVE NO  
21 FURTHER QUESTIONS.

22 THE COURT: STEP OUTSIDE.

23 MR. BAILEY: YOUR HONOR, COULD I HAVE A  
24 COUPLE OF MORE?

25 THE COURT: YES, SIR.

1 MR. BAILEY: VERY BRIEFLY. MS. HUFFMAN,  
2 WE ARE ASKING YOU ABOUT AGGRAVATING CIRCUMSTANCES AND  
3 MITIGATING CIRCUMSTANCES THAT YOU HAVE NOT HEARD YET,  
4 SO I UNDERSTAND IT'S HARD FOR YOU TO ANSWER THESE  
5 QUESTIONS.

6 JURY VENIRE MEMBER: RIGHT.

7 MR. BAILEY: BUT WITHOUT GOING INTO  
8 SPECIFICS, IF THE JUDGE INSTRUCTED YOU TO CONSIDER  
9 CERTAIN AGGRAVATING CIRCUMSTANCES AND CERTAIN  
10 MITIGATING CIRCUMSTANCES, WOULD YOU CONSIDER ALL OF  
11 THOSE THINGS BEFORE YOU REACHED YOUR DECISION?

12 JURY VENIRE MEMBER: YES. YES.

13 MR. BAILEY: OKAY. AND IF THOSE  
14 AGGRAVATING -- EXCUSE ME -- IF SOME OF THOSE  
15 MITIGATING CIRCUMSTANCES SURROUNDED MENTAL CAPACITY,  
16 AGE, MENTAL CONDITIONS, WOULD YOU CONSIDER THOSE IF  
17 THE JUDGE INSTRUCTED YOU TO?

18 JURY VENIRE MEMBER: IF HE INSTRUCTED ME  
19 TO CONSIDER THEM, YES, SIR, I WOULD.

20 MR. BAILEY: THANK YOU. THAT'S ALL I HAVE  
21 TO SAY.

22 THE COURT: LET ME EXPLAIN TO YOU, MADAM  
23 JUROR, UNDER NO CIRCUMSTANCES WOULD THIS JUDGE TELL  
24 YOU WHAT TO DO.

25 JURY VENIRE MEMBER: I KNOW.

1 THE COURT: HERE'S WHAT I WOULD TELL YOU.  
2 I WOULD SAY THAT YOU MAY CONSIDER THE AGGRAVATING  
3 CIRCUMSTANCES IF YOU CHOOSE AND GIVE IT SUCH WEIGHT  
4 AS YOU DETERMINE. I WOULD TELL YOU IN DETERMINING  
5 WHETHER OR NOT LIFE IMPRISONMENT IS APPROPRIATE YOU  
6 MAY CONSIDER CERTAIN MITIGATING CIRCUMSTANCES. AND  
7 THE LAW, IF THE EVIDENCE SUGGESTS, HAS MITIGATING  
8 CIRCUMSTANCES SUCH AS THE AGE OF THE DEFENDANT, THE  
9 MENTAL CAPACITY OF THE DEFENDANT AND OTHERS. IN  
10 ADDITION TO TELLING YOU YOU MAY CONSIDER THESE, I  
11 WOULD ALSO ADVISE YOU THAT YOU MAY CONSIDER IN THE  
12 IMPOSITION OF LIFE ANY OTHER MITIGATING  
13 CIRCUMSTANCES. AND I WOULD TELL YOU THAT YOU CAN  
14 GIVE LIFE IMPRISONMENT SIMPLY AS AN ACT OF MERCY IF  
15 YOU CHOSE TO. YOU UNDERSTAND THAT?

16 JURY VENIRE MEMBER: YES, SIR.

17 THE COURT: AND THE ONLY THING I'M ASKING  
18 YOU, WOULD YOU CONSIDER BOTH SIDES OF EVERYTHING?

19 JURY VENIRE MEMBER: YES, SIR, I WOULD.

20 THE COURT: OKAY. PLEASE STEP OUT JUST A  
21 MOMENT.

22 (JUROR NUMBER 111 IS DISMISSED  
23 FROM THE COURTROOM.)

24 MR. BAILEY: QUALIFIED, YOUR HONOR.

25 MR. NEWSOME: QUALIFIED, YOUR HONOR.

1 THE COURT: BRING THE JUROR BACK.

2 (JUROR NUMBER 111 ENTERS THE  
3 COURTROOM.)

4 THE COURT: MADAM JUROR, WE ARE IN THE  
5 PROCESS OF SELECTING 35 QUALIFIED JURORS, AND  
6 EVERYBODY, INCLUDING THIS JUDGE, HAS FOUND YOU  
7 QUALIFIED TO SERVE, IF SELECTED. TOMORROW AFTERNOON,  
8 AT 2:30 WE WILL BE SELECTING 12 JURORS AND 2  
9 ALTERNATES FROM AMONG THE QUALIFIED GROUP. YOU MAY  
10 OR MAY NOT BE AMONG THAT GROUP.

11 PLEASE REPORT BACK ACROSS THE STREET TO THE  
12 ANNEX AT 2:30 TOMORROW AFTERNOON. BRING WITH YOU  
13 YOUR CLOTHING AND PERSONAL EFFECTS SO THAT YOU CAN  
14 STAY WITH US IN THE EVENT YOU ARE SELECTED. WE  
15 PROPOSE TO START THE TRIAL OF THIS CASE IMMEDIATELY  
16 TOMORROW AFTERNOON. WE LOOK FORWARD TO SEEING YOU  
17 THEN. THANK YOU.

18 (JUROR NUMBER 111 IS DISMISSED  
19 FROM THE COURTROOM.)

20 THE COURT: GENTLEMEN, I'M PLEASED TO  
21 ANNOUNCE THAT WE ARE EXACTLY BACK ON SCHEDULE. WE  
22 HAVE COMPLETED PANEL NUMBER 3 AND PANEL NUMBER 4 IS  
23 TO REPORT AT 2:00, AND IT'S EXACTLY 2:00.  
24 CONGRATULATIONS.

25 IS THE FIRST JUROR THERE?

1 THE CLERK: LET ME CHECK.

2 THE COURT: MAKE SURE.

3 (JUROR NUMBER 178, A WHITE  
4 FEMALE, ENTERS THE COURTROOM.)

5 THE CLERK: PLEASE PLACE YOUR LEFT HAND ON  
6 THE BIBLE. PLEASE RAISE YOUR RIGHT HAND. STATE YOUR  
7 NAME FOR THE RECORD.

8 JURY VENIRE MEMBER: LUCILE S. MCLAUCHLIN.

9 (JUROR NUMBER 178, HAVING BEEN FIRST DULY SWORN  
10 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

11 THE CLERK: PLEASE COME AROUND AND HAVE A  
12 SEAT BACK THERE.

13 THE COURT: GOOD AFTERNOON, MS.  
14 MCLAUCHLIN.

15 JURY VENIRE MEMBER: GOOD AFTERNOON.

16 THE COURT: YOU MAY REMAIN SEATED. MS.  
17 MCLAUCHLIN, I NOTE HERE THAT YOU WERE BORN ON  
18 SEPTEMBER THE 23RD, 1907; IS THAT CORRECT?

19 JURY VENIRE MEMBER: YES, SIR.

20 THE COURT: AND THAT WOULD THEN MAKE YOUR  
21 AGE -- MAY I STATE YOUR AGE?

22 JURY VENIRE MEMBER: SIR?

23 THE COURT: YOUR AGE IS NOW EIGHTY --

24 JURY VENIRE MEMBER: 88.

25 THE COURT: MS. MCLAUCHLIN, DID YOU HAVE A

1 CHANCE TO READ THAT LETTER THAT I PUT BACK THERE A  
2 MOMENT AGO?

3 JURY VENIRE MEMBER: YES, SIR. I READ IT.  
4 JUST FINISHED IT.

5 THE COURT: DO YOU UNDERSTAND THAT THIS  
6 DEFENDANT IS CHARGED WITH MURDER?

7 JURY VENIRE MEMBER: YES, SIR.

8 THE COURT: AND DO YOU UNDERSTAND THAT WE  
9 WOULD HAVE A TWO -- POSSIBLY A TWO-PHASE TRIAL. THE  
10 FIRST TRIAL WOULD BE TO DETERMINE HIS GUILT OR  
11 INNOCENCE. DO YOU UNDERSTAND THAT?

12 JURY VENIRE MEMBER: YES, SIR.

13 THE COURT: NOW, IF HE'S FOUND INNOCENT  
14 WE WOULD STOP RIGHT THERE. IF THE JURY FINDS HIM  
15 GUILTY BEYOND A REASONABLE DOUBT, WE WOULD THEN GO TO  
16 THE SECOND PHASE. DO YOU UNDERSTAND THAT?

17 JURY VENIRE MEMBER: NO, SIR, NOT EXACTLY.

18 THE COURT: WHAT IS IT YOU DON'T  
19 UNDERSTAND?

20 JURY VENIRE MEMBER: YOU SAID WE GO INTO  
21 WHAT NOW, THE SECOND PHRASE?

22 THE COURT: SECOND PART OF THE TRIAL.

23 JURY VENIRE MEMBER: YES, SIR.

24 THE COURT: THE SECOND PART. WE WOULD  
25 ONLY GO TO THE SECOND PART IF YOU FOUND HIM GUILTY.

1 JURY VENIRE MEMBER: YES, SIR.

2 THE COURT: NOW, THE SECOND PART, YOU  
3 WOULD HAVE TO DECIDE WHETHER YOU WANTED TO PUT HIM IN  
4 THE ELECTRIC CHAIR, DEATH BY ELECTROCUTION, OR LETHAL  
5 INJECTION OR LIFE IMPRISONMENT. DO YOU UNDERSTAND  
6 THAT WOULD BE YOUR DECISION?

7 JURY VENIRE MEMBER: YES, SIR. YES, SIR.

8 THE COURT: ARE YOU PREPARED TO MAKE SUCH  
9 A DECISION LIKE THAT?

10 JURY VENIRE MEMBER: YES, I THINK SO.

11 THE COURT: WHAT -- YOU READ THAT LETTER  
12 BACK THERE. THERE ARE THREE GROUPS OF PEOPLE. ONE  
13 WHO SAYS I WILL ALWAYS IMPOSE DEATH. THE SECOND ONE  
14 SAYS I WILL NEVER DO THAT. AND THE THIRD ONE SAYS,  
15 WELL, I COULD DEPENDING ON THE FACTS. WHICH WOULD  
16 YOU BE? THERE'S NO RIGHT OR WRONG ANSWER.

17 JURY VENIRE MEMBER: I WOULD DEPENDING ON  
18 THE FACTS.

19 THE COURT: YOU ARE SAYING THAT YOU COULD  
20 IMPOSE THE SENTENCE OF DEATH? NOT THAT YOU WOULD,  
21 NOW, BUT COULD YOU DO IT?

22 JURY VENIRE MEMBER: I DON'T -- I DON'T --  
23 YES, I COULD.

24 THE COURT: YOU COULD DO IT?

25 JURY VENIRE MEMBER: IF -- IF IT WAS

1     FACTS.

2                   THE COURT:   MA'AM?

3                   JURY VENIRE MEMBER:   FACTS.

4                   THE COURT:   WELL, BASED ON THE FACTS.   ALL  
5     RIGHT.   I'LL LET YOU GENTLEMEN EXPLORE THIS.

6                   MR. BAILEY:   MS. MCLAUCHLIN, I'M WALTER  
7     BAILEY.   I WANT TO ASK YOU A FEW MORE QUESTIONS ON  
8     THE LINE OF WHAT JUDGE COTTINGHAM ASKED YOU.

9                   JURY VENIRE MEMBER:   YOU WANT ME TO COME  
10    DOWN THERE?

11                   MR. BAILEY:   NO, MA'AM.   NO, MA'AM.

12                   THE COURT:   THAT'S FINE.   I'LL COME UP HERE A LITTLE BIT CLOSER.  
13    DID YOU UNDERSTAND WHAT THE JUDGE TOLD YOU ABOUT THIS  
14    MAY BE A TWO-PART PROCESS?

15                   JURY VENIRE MEMBER:   YES, SIR.

16                   MR. BAILEY:   WHERE WE WOULD HAVE A GUILT  
17    PHASE AND THEN A PENALTY PHASE?

18                   JURY VENIRE MEMBER:   YES, SIR.

19                   MR. BAILEY:   AND IF WE GOT INTO THE  
20    PENALTY PHASE, THAT WOULD MEAN THE DEFENDANT HAD BEEN  
21    FOUND GUILTY OF MURDER IN THE FIRST PART OF THE  
22    TRIAL.

23                   JURY VENIRE MEMBER:   YES, SIR.

24                   MR. BAILEY:   AND THE JURY IS JUST THERE TO  
25    TRY TO DETERMINE THE PUNISHMENT, LIFE IN PRISON OF

1 THE DEATH PENALTY.

2 JURY VENIRE MEMBER: YES, SIR.

3 MR. BAILEY: OKAY. AND YOU UNDERSTAND  
4 WHATEVER THE JURY DECIDED IN THAT SECOND PHASE WOULD  
5 BE THE SENTENCE THE JUDGE WOULD HAND DOWN?

6 JURY VENIRE MEMBER: YES, SIR.

7 MR. BAILEY: THAT IF THE JUDGE DECIDED ON  
8 LIFE IN PRISON, THE JUDGE WOULD SENTENCE HIM TO LIFE.  
9 IF THE JURY DECIDED ON THE DEATH PENALTY, THEN THAT  
10 DEFENDANT WOULD BE ACTUALLY EXECUTED.

11 JURY VENIRE MEMBER: UH-HUH.

12 MR. BAILEY: OKAY?

13 JURY VENIRE MEMBER: YES, SIR.

14 MR. BAILEY: NOW, IF YOU WERE ON A JURY  
15 LIKE THAT AND YOU GOT TO THE SECOND PHASE OF THE  
16 TRIAL, AND AFTER HEARING ALL OF THE EVIDENCE THAT  
17 CAME OUT IN COURT, YOU AND THE OTHER JURORS DECIDED  
18 ON THE DEATH PENALTY, THEN EACH JUROR WOULD NEED TO  
19 SIGN THEIR NAME TO A PIECE OF PAPER THAT --

20 THE COURT: LET THIS JUROR GO OUTSIDE JUST  
21 A MOMENT, PLEASE.

22 (JUROR NUMBER 178 IS DISMISSED  
23 FROM THE COURTROOM.)

24 THE COURT: MR. BAILEY, I APOLOGIZE FOR  
25 INTERRUPTING YOU. BY AGREEMENT OF COUNSEL, COUNSEL

1 FOR THE DEFENSE TOO HAS AGREED TO EXCUSE THIS JUROR.  
2 SHE'S A LOVELY PERSON, BUT SHE'S OBVIOUSLY CAN'T  
3 HEAR.

4 MR. BAILEY: OKAY.

5 THE COURT: AND SHE'S 88 YEARS OLD AND SHE  
6 WANTED TO SERVE AND I ADMIRE HER FOR THAT, BUT SHE'S  
7 GOT SOME PHYSICAL PROBLEMS. LET THE RECORD SHOW THAT  
8 WITH THE AGREEMENT OF THE SOLICITOR AND THE DEFENSE  
9 COUNSEL, WE ARE EXCUSING THIS JUROR. SHE SIMPLY  
10 MEDICALLY CAN'T HEAR.

11 (JUROR NUMBER 178 ENTERS THE  
12 COURTROOM.)

13 THE COURT: MADAM JUROR, WE WANT TO --  
14 HOLD ON A MINUTE. WE WANT TO THANK YOU FOR YOUR  
15 SERVICES, BUT WE WILL EXCUSE YOU FROM FURTHER  
16 PARTICIPATION. THANK YOU SO MUCH FOR COMING.

17 JURY VENIRE MEMBER: ALL RIGHT.

18 THE COURT: THANK YOU. I DO APPRECIATE  
19 IT.

20 JURY VENIRE MEMBER: THANK YOU.

21 (JUROR NUMBER 178 IS DISMISSED  
22 FROM THE COURTROOM.)

23 THE COURT: ALL RIGHT. NEXT ONE, PLEASE.  
24 THANK YOU, GENTLEMEN.

25 (JUROR NUMBER 244, A WHITE

1 FEMALE, ENTERS THE COURTROOM.)

2 THE CLERK: MS. SMITH, IF YOU WOULD,  
3 PLEASE COME AROUND FRONT RIGHT HERE. PLEASE PLACE  
4 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR  
5 RIGHT HAND. PLEASE RAISE YOUR RIGHT HAND. PLEASE  
6 STATE YOUR NAME FOR THE RECORD.

7 JURY VENIRE MEMBER: I'M DEBRA SMITH.

8 (JUROR NUMBER 244, HAVING BEEN FIRST DULY SWORN  
9 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

10 THE CLERK: YOU CAN TAKE THIS WITH YOU AND  
11 JUST HAVE A SEAT RIGHT AROUND THERE.

12 THE COURT: GOOD AFTERNOON.

13 JURY VENIRE MEMBER: GOOD AFTERNOON.

14 THE COURT: THAT IS A POCKETBOOK OR A  
15 CAMERA?

16 JURY VENIRE MEMBER: YES, SIR. THE THING  
17 IS JUST OFF THE BOTTOM, AND IT WON'T STAY -- WON'T  
18 STAY CLOSED, SO I HAVE TO HOLD IT AND TOTE IT LIKE  
19 THAT.

20 THE COURT: MS. SMITH, WE APPRECIATE YOU  
21 COMING BACK AND JOINING US THIS AFTERNOON. DID YOU  
22 HAVE A CHANCE TO READ THAT DESCRIPTION OF THE THREE  
23 TYPES OF JURORS OUT THERE A MOMENT AGO?

24 JURY VENIRE MEMBER: YES, SIR.

25 THE COURT: YOU UNDERSTAND THAT UNLESS AND

1 UNTIL THE JURY FOUND THE DEFENDANT GUILTY, YOU WOULD  
2 NOT EVEN CONSIDER THE PUNISHMENT. YOU UNDERSTAND  
3 THAT?

4 JURY VENIRE MEMBER: YES, SIR.

5 THE COURT: WE WOULD HAVE TWO TRIALS,  
6 PERHAPS. THE FIRST TRIAL WOULD DETERMINE HIS GUILT  
7 OR INNOCENCE. IF THE JURY FOUND HIM INNOCENT, WE  
8 WOULD STOP THERE. IF THE JURY FINDS THIS DEFENDANT  
9 GUILTY, THEN WE GO TO THE PUNISHMENT STAGE. YOU  
10 UNDERSTAND THAT?

11 JURY VENIRE MEMBER: YES, SIR.

12 THE COURT: IN THE PUNISHMENT STAGE, THE  
13 JURY WOULD DETERMINE WHETHER OR NOT DEATH BY  
14 ELECTROCUTION OR LETHAL INJECTION IS APPROPRIATE OR  
15 WHETHER OR NOT LIFE IMPRISONMENT. THE JURY WOULD  
16 HAVE ALREADY DECIDED HIS GUILT. THE QUESTION WOULD  
17 BE DEATH OR LIFE IMPRISONMENT. DO YOU UNDERSTAND  
18 THAT?

19 JURY VENIRE MEMBER: YES, SIR.

20 THE COURT: NOW, IN THAT CONNECTION, IN  
21 CONSIDERING THAT ISSUE, THERE ARE GENERALLY THREE  
22 TYPES OF JURORS, AS THAT LETTER INDICATED. THE FIRST  
23 GROUP SAYS HAVING FOUND SOMEONE GUILTY OF MURDER, I  
24 WILL ALWAYS IMPOSE THE DEATH PENALTY. THE SECOND  
25 GROUP SAYS REGARDLESS OF WHAT HE DID, I WILL NEVER

1 IMPOSE THE DEATH PENALTY. AND THE THIRD SAID IT  
2 MIGHT BE APPROPRIATE IN CERTAIN CIRCUMSTANCES AND  
3 LIFE MIGHT BE APPROPRIATE. I WANT TO LISTEN TO ALL  
4 OF THE FACTS AND THEN DECIDE WHAT I WOULD WANT TO DO.

5 NOW, NOBODY IS GOING TO ASK YOU WHAT YOU WOULD  
6 DO BECAUSE YOU HAVEN'T HEARD ANYTHING. THE ONLY  
7 THING WE WANT TO KNOW IS WHICH GROUP WOULD YOU COME  
8 IN, THAT YOU WOULD ALWAYS, NEVER OR WOULD LISTEN TO  
9 THE FACTS. WHICH WOULD YOU DO?

10 JURY VENIRE MEMBER: THE THIRD ONE.

11 THE COURT: THE THIRD.

12 JURY VENIRE MEMBER: I WOULD LISTEN TO  
13 FACTS AND SEE EVERYTHING.

14 THE COURT: YOU SAY YOU COULD IMPOSE THE  
15 SENTENCE OF DEATH IF YOU WANTED TO AND THOUGHT IT WAS  
16 RIGHT?

17 JURY VENIRE MEMBER: OR LIFE IMPRISONMENT.

18 THE COURT: WHATEVER YOU THOUGHT?

19 JURY VENIRE MEMBER: AFTER EVERYTHING  
20 COMES OUT.

21 THE COURT: THANK YOU SO MUCH.

22 MR. BAILEY: MS. SMITH, I'M WALTER BAILEY.

23 I'M THE SOLICITOR. I WANT TO ASK YOU A FEW MORE  
24 QUESTIONS, AND I PROMISE NOT TO TAKE TOO LONG.

25 JURY VENIRE MEMBER: OH, THAT'S ALL RIGHT.

1 MR. BAILEY: MS. SMITH, JUDGE COTTINGHAM  
2 TOLD YOU ABOUT THE TWO-PART PROCESS THAT WE GO  
3 THROUGH HERE TODAY WHERE WE'VE GOT A GUILT PHASE  
4 WHICH IS LIKE ANY OTHER CRIMINAL TRIAL WHERE THE JURY  
5 IS JUST THERE TO DECIDE GUILT OR INNOCENCE. IF THE  
6 DEFENDANT IS FOUND NOT GUILTY, THAT'S THE END OF IT,  
7 HE GOES HOME. IF THE DEFENDANT IS FOUND GUILTY  
8 BEYOND A REASONABLE DOUBT, THEN WE MOVE INTO THAT  
9 SECOND PART OF THE TRIAL WHERE THE JURY DETERMINES  
10 THE PUNISHMENT. AND SO YOU UNDERSTAND THAT EVERY  
11 TIME WE GO INTO THAT PENALTY PHASE, WE'RE DEALING  
12 WITH A CONVICTED MURDERER. AND THE JURY'S DECISION,  
13 IT'S WHAT WILL BE THE DECISION OF THE COURT. IF THE  
14 JURY SAYS WE THINK THE DEFENDANT SHOULD GET LIFE IN  
15 PRISON, THAT WILL BE THE JUDGE'S SENTENCE. IF THE  
16 JURY, AFTER HEARING ALL OF THE FACTS, SAYS THAT WE  
17 THINK THAT THIS DEFENDANT SHOULD BE EXECUTED, THEN HE  
18 WILL BE EXECUTED.

19 NOW, IF YOU WERE ON A JURY LIKE THAT AND YOU AND  
20 THE OTHER JURORS, AFTER HEARING ALL OF THE EVIDENCE,  
21 VOTED FOR THE DEATH PENALTY AND IN ORDER FOR THAT  
22 SENTENCE TO BE CARRIED OUT, EACH ONE OF YOU WOULD  
23 HAVE TO SIGN YOUR NAME TO A PIECE OF PAPER THAT WOULD  
24 RESULT IN THAT DEFENDANT'S EXECUTION, COULD YOU SIGN  
25 THAT PAPER IF YOU HAD ALREADY VOTED ON THE DEATH

1 PENALTY?

2 JURY VENIRE MEMBER: YES, SIR, IF  
3 EVERYBODY ELSE AND ALL THE REST OF THE JURORS HAD TO  
4 SIGN THEIR NAMES, THEN I WOULD SIGN MINE TOO.

5 MR. BAILEY: ALL RIGHT. AND COULD YOU  
6 COME OUT INTO THE OPEN COURT AND ANNOUNCE YOUR  
7 VERDICT? IF MR. WANNAMAKER OR THE JUDGE CALLED EACH  
8 JUROR'S NAME OUT SEPARATELY, COULD YOU STAND UP HERE  
9 AND ANNOUNCE THAT AS BEING YOUR VERDICT?

10 JURY VENIRE MEMBER: YES, SIR.

11 MR. BAILEY: OKAY. NOW, OBVIOUSLY IN THIS  
12 CASE, THE DEFENDANT IS A YOUNG BLACK MAN. THE  
13 TESTIMONY IS GOING TO BE THAT THE VICTIM THAT THE  
14 STATE ALLEGES WAS MURDERED BACK IN MARCH OF 1994 WAS  
15 A YOUNG WHITE MAN. THERE WAS A YOUNG WHITE WOMAN WHO  
16 WAS SHOT BUT WHO DID NOT DIE. NOW, WOULD THE  
17 DIFFERENCE IN THE RACES BETWEEN VICTIMS AND THE  
18 DEFENDANT CAUSE YOU TO VIEW THIS CASE ANY DIFFERENTLY  
19 THAN IF YOU HAD A WHITE DEFENDANT AND A BLACK VICTIM?

20 JURY VENIRE MEMBER: NO, SIR.

21 MR. BAILEY: SO RACE WOULD NOT BE A  
22 FACTOR?

23 JURY VENIRE MEMBER: NO, SIR.

24 MR. BAILEY: ALL RIGHT. MY LAST QUESTION,  
25 MS. SMITH. THIS DEFENDANT IS NOW 18 YEARS OLD. IN

1 MARCH OF '94, HE WAS 16. IF YOU WERE ON A JURY --  
2 I'M NOT TALKING ABOUT THIS CASE BECAUSE YOU HAVEN'T  
3 HEARD THE FACTS, BUT IF YOU WERE ON A JURY AND THE  
4 FACTS WERE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH  
5 PENALTY FOR A PERSON THAT WAS 16 AT THE TIME THEY  
6 COMMITTED THE MURDER?

7 JURY VENIRE MEMBER: WELL, IF IT -- AFTER  
8 THE TRIAL, AFTER THE EVIDENCE AND STUFF, IF -- IF IT  
9 PROVES BEYOND A DOUBT, YOU KNOW -- IT COULD BE VOTING  
10 FOR THE DEATH PENALTY, BUT NOT -- NOT -- WITHOUT THE  
11 TRIAL AND THE EVIDENCE TO SAY OR TO PROVE THAT WAS  
12 IT, YOU KNOW, AT A YOUNG AGE, BUT IT COULD BE  
13 IMPOSED, YOU KNOW.

14 MR. BAILEY: OKAY. AGAIN, I'M NOT ASKING  
15 YOU WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU  
16 HAVEN'T HEARD THE FACTS.

17 JURY VENIRE MEMBER: UH-HUH.

18 MR. BAILEY: WHAT I'M ASKING YOU IS, IF  
19 THE CASE WAS BAD ENOUGH, COULD YOU IMPOSE THE DEATH  
20 PENALTY ON SOMEONE WHO WAS 16?

21 JURY VENIRE MEMBER: YES.

22 MR. BAILEY: MS. SMITH, THAT'S ALL I'VE  
23 GOT. THANK YOU VERY MUCH.

24 MR. NEWSOME: MS. SMITH, WOULD YOU  
25 CONSIDER THE EVIDENCE OF MITIGATING CIRCUMSTANCES

1 THAT THE COURT WOULD INSTRUCT YOU IN THE PENALTY  
2 PHASE BEFORE YOU DECIDED WHAT THE PENALTY WAS? DO  
3 YOU UNDERSTAND WHAT MITIGATING IS?

4 JURY VENIRE MEMBER: THAT'S WHAT I WAS  
5 GOING TO ASK. WHAT'S MITIGATING?

6 MR. NEWSOME: IN THE TRIAL -- IN THE  
7 PENALTY PHASE, MA'AM --

8 JURY VENIRE MEMBER: UH-HUH.

9 MR. NEWSOME: -- THE JUDGE WOULD GIVE YOU  
10 SOME INSTRUCTIONS. THERE'S SOME AGGRAVATING  
11 CIRCUMSTANCE THAT YOU MUST FIND, NOT JUST A MURDER,  
12 BUT A MURDER THAT WAS COMMITTED UNDER CERTAIN  
13 CIRCUMSTANCES, AND HE WILL GIVE YOU A LIST OF THAT.

14 JURY VENIRE MEMBER: OH, YEAH.

15 MR. NEWSOME: HE WILL ALSO GIVE YOU A LIST  
16 OF MITIGATING CIRCUMSTANCES THAT YOU CAN CONSIDER.  
17 MY QUESTION TO YOU IS, WOULD YOU CONSIDER NOT ONLY  
18 THE AGGRAVATING CIRCUMSTANCES BUT ALSO THE MITIGATING  
19 CIRCUMSTANCES BEFORE YOU DECIDED WHAT THE PENALTY  
20 SHOULD BE?

21 JURY VENIRE MEMBER: YES, SIR.

22 MR. NEWSOME: SO YOU THINK IF SOMEBODY IS  
23 GUILTY OF MURDER AND YOU'RE 100 PERCENT SURE THAT  
24 THEY ARE GUILTY OF MURDER, THAT THE DEATH PENALTY IS  
25 THE APPROPRIATE SENTENCE?

1 JURY VENIRE MEMBER: IF YOU'RE 100 PERCENT  
2 AND YOU'RE --

3 MR. NEWSOME: THERE'S NO DOUBT IN YOUR  
4 MIND THAT SOMEONE IS GUILTY OF MURDER, DO YOU THINK  
5 THAT THE DEATH PENALTY IS THE APPROPRIATE SENTENCE?

6 JURY VENIRE MEMBER: WELL, SOMETIMES IT'S  
7 -- IT IS APPROPRIATE AND SOMETIMES LIFE IN PRISON IS.

8 MR. NEWSOME: THANK YOU. THAT'S ALL I  
9 NEED TO KNOW.

10 THE COURT: YOU MAY STEP OUT JUST A  
11 MINUTE.

12 (JUROR NUMBER 244 IS DISMISSED  
13 FROM THE COURTROOM.)

14 MR. BAILEY: QUALIFIED.

15 MR. NEWSOME: QUALIFIED, YOUR HONOR.

16 THE COURT: BRING THE JUROR BACK.

17 (JUROR NUMBER 244 ENTERS THE  
18 COURTROOM.)

19 THE COURT: MS. SMITH, WE ARE SELECTING 35  
20 QUALIFIED JURORS, AND EVERYONE HAS FOUND YOU  
21 QUALIFIED TO SERVE, IF SELECTED. FROM THE 35  
22 TOMORROW AT 2:30 WE WILL BE SELECTING 12 JURORS AND 2  
23 ALTERNATES. YOU MAY OR MAY NOT BE SELECTED. YOU'RE  
24 CERTAINLY QUALIFIED TO SERVE. SO PLEASE BRING YOUR  
25 PERSONAL CLOTHING WITH YOU TOMORROW IN THE EVENT

1 ARE SELECTED. WE WILL START THE TRIAL TOMORROW  
2 AFTERNOON.

3 JURY VENIRE MEMBER: TOMORROW AFTERNOON?

4 THE COURT: PLEASE REPORT ACROSS THE  
5 STREET TO THE ANNEX BUILDING AT 2:30.

6 JURY VENIRE MEMBER: 2:30?

7 THE COURT: YES, ACROSS THE STREET. AND  
8 BRING YOUR CLOTHES. THANK YOU SO MUCH.

9 JURY VENIRE MEMBER: OKAY. THANKS.

10 MR. BAILEY: YOUR HONOR?

11 THE COURT: YES, SIR. ONE MINUTE.

12 MR. BAILEY: I'LL WAIT UNTIL THE DOOR  
13 SHUTS.

14 (JUROR NUMBER 244 IS DISMISSED  
15 FROM THE COURTROOM.)

16 THE COURT: SIR?

17 MR. BAILEY: THE SHERIFF BROUGHT TO MY  
18 ATTENTION A SITUATION REGARDING ONE OF THE JURORS  
19 THAT I THINK HE NEEDS TO BRING BEFORE THE COURT.

20 THE COURT: COME FORWARD AND LET'S GET IT  
21 ON THE RECORD. WHAT IS IT?

22 THE SHERIFF: SOMEBODY SAID THERE'S GOING  
23 TO BE SOME TROUBLE IN THE COURTHOUSE AND ALL AND  
24 SHE'S SCARED AND SHE WANTED TO TALK TO YOU.

25 THE COURT: SAID WHAT?

1 THE SHERIFF: SOMEBODY HAS TOLD HER THAT  
2 THIS TRIAL, IF SHE'S ON THE JURY, THAT THE KLAN IS  
3 COMING AND THERE'S GOING TO BE A SHOOTING AND ALL OF  
4 THAT IN THE COURTHOUSE AND SHE'S SCARED.

5 THE COURT: BRING HER IN. IS SHE ALREADY  
6 QUALIFIED?

7 THE SHERIFF: YES, SIR.

8 THE COURT: COME IN. GENTLEMEN, WHILE  
9 WE'RE DOING THAT, CONSIDER THE RETURN OF THE NEXT  
10 POTENTIAL JUROR. BOTH OF YOU LOOKED AT THAT UNDER  
11 THE EXPLANATION?

12 MR. BAILEY: MS. MCKENZIE?

13 (JUROR NUMBER 241 ENTERS THE  
14 COURTROOM.)

15 THE COURT: COME AROUND, PLEASE. GOOD  
16 AFTERNOON.

17 JURY VENIRE MEMBER: HI.

18 THE COURT: I BELIEVE YOU WERE WITH US  
19 THIS MORNING, WERE YOU NOT?

20 JURY VENIRE MEMBER: NO, YESTERDAY.

21 THE COURT: YESTERDAY. AND WHAT IS YOUR  
22 NAME?

23 JURY VENIRE MEMBER: IRENE.

24 THE COURT: WHO?

25 JURY VENIRE MEMBER: IRENE.

1 THE COURT: IRENE WHAT, PLEASE?

2 JURY VENIRE MEMBER: RICHARDSON.

3 THE COURT: OKAY. SIT BACK, PLEASE. I  
4 KNOW YOU'RE PROBABLY NERVOUS, BUT WE'RE TRYING NOT --  
5 YOU HAD INDICATED TO THE SHERIFF OR SOMEBODY THAT YOU  
6 WERE CONCERNED ABOUT SOMETHING?

7 JURY VENIRE MEMBER: UH-HUH.

8 THE COURT: WHAT ARE YOU CONCERNED ABOUT?

9 JURY VENIRE MEMBER: ABOUT TOMORROW.

10 THE COURT: WHAT ARE YOU CONCERNED ABOUT  
11 TOMORROW?

12 JURY VENIRE MEMBER: I DON'T KNOW.

13 THE COURT: HUH?

14 JURY VENIRE MEMBER: I DON'T KNOW. THEY  
15 SAY SOMETHING IS GOING TO HAPPEN.

16 THE COURT: WHAT MAKES YOU THINK SOMETHING  
17 IS GOING TO HAPPEN? DID SOMEBODY TALK TO YOU?

18 JURY VENIRE MEMBER: UH-HUH.

19 THE COURT: WHO TALKED TO YOU?

20 JURY VENIRE MEMBER: WELL --

21 THE COURT: NO. YOU'VE GOT TO TELL ME,  
22 NOW. WHO TALKED TO YOU?

23 JURY VENIRE MEMBER: WELL, THEY HEARD  
24 THAT.

25 THE COURT: WHO?

1 JURY VENIRE MEMBER: SOMEBODY ELSE TOLD  
2 THEM ABOUT IT.

3 THE COURT: WHO HAS -- SOMEBODY HAS TALKED  
4 TO YOU?

5 JURY VENIRE MEMBER: MY SISTERS.

6 THE COURT: THAT'S GOT YOU SCARED?

7 JURY VENIRE MEMBER: MY SISTERS, MY TWO  
8 SISTERS.

9 THE COURT: WHAT DID YOUR SISTERS SAY TO  
10 YOU?

11 JURY VENIRE MEMBER: THEY TOLD ME WHAT THE  
12 PERSON TOLD THEM. THAT'S ALL.

13 THE COURT: WHAT DID THE PERSON TELL THEM?

14 JURY VENIRE MEMBER: THAT YOU GOT A LETTER  
15 AND THERE WILL BE A SHOOTOUT DOWN HERE TOMORROW AND  
16 THE KU KLUX KLAN IS COMING.

17 THE COURT: AND THE WHAT?

18 JURY VENIRE MEMBER: THE KU KLUX KLAN IS  
19 COMING.

20 THE COURT: YOUR SISTER TOLD YOU THIS?

21 JURY VENIRE MEMBER: YEAH. TOLD ME WHAT  
22 SOMEBODY ELSE TOLD THEM.

23 THE COURT: WHO WAS IT THAT TOLD THEM  
24 THAT?

25 JURY VENIRE MEMBER: I DON'T KNOW.

1 THE COURT: WELL, WHY WOULD YOU BELIEVE  
2 SUCH --- SOMETHING FOOLISH LIKE THAT? - I CAN TELL YOU  
3 -- I WANT TO KNOW WHO IS YOUR SISTER. WHAT IS HER  
4 NAME?

5 JURY VENIRE MEMBER: GLORIA AND GINA  
6 POINDEXTER.

7 THE COURT: GLORIA AND WHO?

8 JURY VENIRE MEMBER: GINA POINDEXTER.

9 THE COURT: COME HERE, SHERIFF. LET ME  
10 ASK YOU THIS. WHEN WAS IT THEY TOLD YOU THIS? YOU  
11 NEED TO TELL ME, NOW. YOU ARE UNDER OATH. YOU'RE A  
12 GOOD CITIZEN IN THIS COUNTY.

13 JURY VENIRE MEMBER: BUT WILL THAT GET  
14 THEM IN TROUBLE?

15 THE COURT: I WANT TO FIND OUT WHERE THEY  
16 GOT THAT INFORMATION. WHOEVER TOLD THEM THAT MAY BE  
17 IN TROUBLE, YOU UNDERSTAND. ALL I WANT TO GET IS THE  
18 TRUTH. IF SOMEBODY HAD HAS MADE AN ASSERTION LIKE  
19 THAT, I WANT TO FIND OUT WHO IT IS, BECAUSE I'M GOING  
20 TO DEAL WITH IT. THERE JUST CANNOT BE ANY TRUTH IN  
21 SOMETHING LIKE THAT. DO YOU KNOW WHO TOLD THEM THAT?

22 JURY VENIRE MEMBER: NO, I DON'T KNOW.

23 THE COURT: WHEN DID THEY COME TO SEE YOU?  
24 DO YOU LIVE WITH THEM?

25 JURY VENIRE MEMBER: NO. I STAY IN

1 SWANSEA.

2 THE COURT: YOU STAY IN SWANSEA?

3 JURY VENIRE MEMBER: UH-HUH.

4 THE COURT: IS SWANSEA IN THIS COUNTY?

5 JURY VENIRE MEMBER: UH-HUH, CALHOUN

6 COUNTY.

7 THE SHERIFF: SOME PARTS.

8 THE COURT: DID THEY COME TO YOUR HOUSE?

9 JURY VENIRE MEMBER: NO. I'M DOWN HERE  
10 UNTIL TOMORROW.

11 THE COURT: WERE YOU STAYING WITH THEM  
12 LAST NIGHT?

13 JURY VENIRE MEMBER: NO.

14 THE COURT: WHERE WERE YOU STAYING?

15 JURY VENIRE MEMBER: WITH MY AUNT.

16 THE COURT: OKAY. DID THEY COME TO YOUR  
17 HOUSE?

18 JURY VENIRE MEMBER: NO. I WENT THERE.

19 THE COURT: YOU WENT TO THEIR HOUSE?

20 JURY VENIRE MEMBER: UH-HUH.

21 THE COURT: DO BOTH OF THEM LIVE AT THE  
22 SAME HOUSE?

23 JURY VENIRE MEMBER: UH-HUH.

24 THE COURT: AND THEY STARTED TALKING TO  
25 YOU ABOUT THIS TRIAL?

1 JURY VENIRE MEMBER: YEAH. THEY SAID THEY  
2 HEARD PEOPLE ON THE STREET TALKING ABOUT IT. YOU  
3 KNOW, I'M THE BABY SISTER, AND THEY PROBABLY WANT ME  
4 TO BE CAREFUL. THAT'S ALL.

5 THE COURT: WANT YOU TO BE CAREFUL. AND  
6 TELL ME AGAIN WHAT THEY TOLD YOU, NOW. I'M NOT  
7 INTERESTED IN GETTING ANYBODY IN TROUBLE. I'M JUST  
8 INTERESTED IN MAKING SURE THAT YOU KNOW THAT THERE'S  
9 NOTHING TO THIS.

10 JURY VENIRE MEMBER: THEY HEARD IT ON THE  
11 STREET AROUND THE COURTHOUSE THAT SOMEONE SENT YOU A  
12 LETTER.

13 THE COURT: SENT ME A LETTER?

14 JURY VENIRE MEMBER: YEAH. AND THEY HAD  
15 TOLD ME THEY'RE GOING TO WORRY ABOUT IT.

16 THE COURT: SOMEBODY SENT ME A LETTER?  
17 WOULD YOU BELIEVE ME IF I TELL YOU THAT'S SIMPLY NOT  
18 TRUE?

19 JURY VENIRE MEMBER: YES, SIR.

20 THE COURT: PARDON?

21 JURY VENIRE MEMBER: YES, SIR. I BELIEVE  
22 YOU.

23 THE COURT: SOMEBODY WOULD MAKE A BAD  
24 MISTAKE IF THEY SENT ME A LETTER LIKE THAT. YOU  
25 BELIEVE THAT, DON'T YOU?

1 JURY VENIRE MEMBER: YES, SIR.

2 THE COURT: LET ME TELL YOU THAT THERE'S  
3 -- I DON'T KNOW WHERE THEY WOULD HAVE GOTTEN THAT  
4 INFORMATION. DO YOU KNOW WHO THEY ARE?

5 THE SHERIFF: I CAN FIND THEM.

6 THE COURT: I WANT YOU TO FIND THEM. IT'S  
7 JUST IDLE GOSSIP ON THE STREET, I SUSPECT. BUT IF  
8 ANYBODY HAS INDICATED THAT TO THEM, I WANT YOU TO  
9 INVESTIGATE IT, FIND OUT, GIVE ME THE NAMES OF WHO  
10 DID IT, AND I'LL DECIDE WHAT TO DO NEXT. IF SOMEBODY  
11 -- YOUR SISTER IS TELLING YOU THAT SOMEBODY ON THE  
12 STREET SAID SOMEBODY SENT ME A LETTER?

13 JURY VENIRE MEMBER: NO, NO. THEY SAID  
14 PEOPLE ON THE STREET WERE TALKING ABOUT IT. THEY  
15 DON'T KNOW WHO THE PEOPLE WERE.

16 THE COURT: WHAT WAS THE LETTER TO ME  
17 SUPPOSED TO HAVE SAID?

18 JURY VENIRE MEMBER: I DON'T KNOW.

19 THE COURT: HUH?

20 JURY VENIRE MEMBER: I DON'T KNOW.

21 THE COURT: THE ONLY LETTER WE'RE TALKING  
22 ABOUT IS THAT DESCRIPTION THAT YOU READ YESTERDAY.  
23 YOU UNDERSTAND?

24 JURY VENIRE MEMBER: UH-HUH.

25 THE COURT: NOW, WILL YOU BELIEVE ME WH

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CALHOUN COUNTY  
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

HERMAN LEE HUGHES, JR.,

APPELLANT.

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1 I TELL THAT YOU NOBODY HAS SENT ME A LETTER, AND I  
2 CAN ASSURE YOU THAT THE KU KLUX KLAN OR NOBODY ELSE  
3 IS GOING TO BE AROUND BOTHERING ANYBODY?

4 JURY VENIRE MEMBER: YES, SIR.

5 THE COURT: YOU UNDERSTAND THAT?

6 JURY VENIRE MEMBER: UH-HUH.

7 THE COURT: IF THEY BOTHER YOU, THEY  
8 BETTER GET READY TO BOTHER ME, AND I DON'T THINK  
9 THAT'S GOING TO HAPPEN. NOW, I WANT TO ASSURE YOU  
10 THAT THERE'S ABSOLUTELY NOTHING TO THAT. AND NOBODY  
11 SENT ME ANY KIND OF LETTER. DO YOU UNDERSTAND THAT?

12 JURY VENIRE MEMBER: YES, SIR.

13 THE COURT: ARE YOU STILL WILLING TO SERVE  
14 ON THIS JURY?

15 JURY VENIRE MEMBER: UH-HUH.

16 THE COURT: YOU STILL WILLING TO DO WHAT'S  
17 RIGHT?

18 JURY VENIRE MEMBER: YES, SIR.

19 THE COURT: ARE YOUR ANSWERS TO INQUIRIES  
20 YESTERDAY STILL YOUR ANSWER?

21 JURY VENIRE MEMBER: YES, SIR.

22 THE COURT: WOULD YOU LIKE TO EXAMINE THIS  
23 WITNESS ANY FURTHER?

24 MR. BAILEY: JUST A COUPLE OF QUESTIONS,  
25 YOUR HONOR, TO CLARIFY.

1 THE COURT: YES, SIR. AND THEN I'LL  
2 PERMIT YOU TO DO THE SAME THING. SHERIFF -- LET ME  
3 ASK YOU, WHERE ARE YOUR SISTERS THIS AFTERNOON?

4 JURY VENIRE MEMBER: AT HOME.

5 THE SHERIFF: WHERE DO THEY LIVE?

6 THE COURT: WHERE DO THEY LIVE?

7 JURY VENIRE MEMBER: MACK HILL.

8 THE SHERIFF: WHAT'S THEIR NAMES?

9 JURY VENIRE MEMBER: GLORIA AND GINA  
10 POINDEXTER.

11 THE COURT: WE'RE NOT GOING TO GET THEM IN  
12 TROUBLE. I JUST WANT TO MAKE SURE THAT THEY ARE --  
13 THEY AREN'T WORRIED. DO YOU UNDERSTAND?

14 SHERIFF, FIND OUT FOR ME. AND IF NECESSARY,  
15 BRING THEM UP HERE. YES, SIR.

16 MR. BAILEY: I THINK WHAT ALL OF US WANT  
17 TO KNOW HERE IS WHETHER OR NOT THIS EXPERIENCE THAT  
18 YOU'VE BEEN THROUGH -- OBVIOUSLY, YOU ARE PRETTY  
19 UPSET ABOUT IT, AND NOBODY BLAMES YOU FOR THAT. BUT  
20 DO YOU STILL THINK THAT YOU CAN BE A FAIR AND  
21 IMPARTIAL JUROR BOTH TO THE DEFENDANT AND THE STATE  
22 AFTER WHAT YOU'VE WHEN THROUGH?

23 JURY VENIRE MEMBER: YES, SIR.

24 MR. BAILEY: AND CAN BASE YOUR DECISION ON  
25 THE EVIDENCE AND NOTHING ELSE?

1 JURY VENIRE MEMBER: YES, SIR.

2 MR. BAILEY: NOTHING OUTSIDE OF THE COURT?

3 JURY VENIRE MEMBER: YES, SIR.

4 MR. BAILEY: THAT'S ALL I HAVE. THANK  
5 YOU.

6 MR. NEWSOME: AND YOU WOULDN'T BE AFRAID  
7 TO DO WHAT YOU THOUGHT WHEN YOU WERE BACK THERE IN  
8 THE JURY ROOM?

9 JURY VENIRE MEMBER: NO, SIR.

10 MR. NEWSOME: THESE POTENTIAL THREATS THAT  
11 HOPEFULLY ARE NOT TRUE AT ALL, THAT DOESN'T MAKE YOU  
12 AFRAID TO DO WHAT YOU THINK IS RIGHT BASED ON WHAT  
13 YOU HEAR?

14 JURY VENIRE MEMBER: NO, SIR.

15 MR. NEWSOME: THANK YOU.

16 THE COURT: MADAM JUROR, I WANT TO THANK  
17 YOU PERSONALLY FOR COMING FORWARD. THIS IS A SIGN OF  
18 A GOOD JUROR AND THE SIGN OF A GOOD CITIZEN.

19 JURY VENIRE MEMBER: YES, SIR.

20 THE COURT: IF ANYBODY HAS ANY CONCERNS  
21 ABOUT THE LAW IN THIS STATE, THEY NEED TO COME TO THE  
22 SHERIFF, AS YOU HAVE DONE, WHO IS A GOOD SHERIFF, AND  
23 YOU OBVIOUSLY HAVE FULL CONFIDENCE IN HIM, AND YOU  
24 SHOULD. AND YOU SHOULD COME TO THE JUDGE.

25 JURY VENIRE MEMBER: YES, SIR.

1 THE COURT: NOW, DO YOU HAVE ANY QUESTIONS  
2 ABOUT ANYTHING ANYBODY SAID?

3 JURY VENIRE MEMBER: NO. BUT SEE, MY TWO  
4 SISTERS, THEY DIDN'T SAY IT, NOW. THEY ONLY SAID  
5 WHAT THEY HEARD.

6 THE COURT: I UNDERSTAND.

7 JURY VENIRE MEMBER: DON'T GET THEM IN  
8 TROUBLE.

9 THE COURT: YOUR SISTERS ARE NOT GOING TO  
10 GET INTO TROUBLE, BUT IF SOMEBODY TOLD THEM THAT TO  
11 SCARE YOU, I WANT TO KNOW ABOUT IT.

12 JURY VENIRE MEMBER: THEY WERE JUST  
13 WORRIED ABOUT ME.

14 THE COURT: HUH?

15 JURY VENIRE MEMBER: THEY WERE WORRIED  
16 ABOUT ME.

17 THE COURT: YOU GO TELL THEM THAT WE'RE  
18 GOING TO TAKE CARE OF YOU, AND THERE'S JUST NOTHING  
19 TO THAT. YOU KNOW, AROUND THE COURTHOUSE, PEOPLE  
20 LIKE TO TALK SOMETIMES, AND THEY DON'T KNOW WHAT  
21 THEY'RE TALKING ABOUT. BUT YOU BE HERE -- YOU KNOW  
22 YOU'RE SUPPOSED TO BE HERE TOMORROW AT 2:30, DON'T  
23 YOU?

24 JURY VENIRE MEMBER: YES.

25 THE COURT: YOU BE OVER THERE. YOU ARE

1 ONE OF OUR QUALIFIED JURORS, AND IF SELECTED, WE  
2 WOULD BE GLAD TO HAVE YOU.

3 JURY VENIRE MEMBER: YES, SIR.

4 THE COURT: THANK YOU.

5 JURY VENIRE MEMBER: THANK YOU.

6 THE COURT: THANK YOU.

7 (JUROR NUMBER 241 IS DISMISSED  
8 FROM THE COURTROOM.)

9 THE COURT: BEFORE WE PULL -- COME  
10 FORWARD, GENTLEMEN, AND LET ME TALK TO YOU.

11 (WHEREUPON, COUNSEL APPROACHED  
12 THE BENCH FOR AN OFF-THE-RECORD  
13 DISCUSSION.)

14 THE COURT: ALL RIGHT. LET'S GO AHEAD  
15 WITH THE NEXT ONE. ALL RIGHT.

16 (JUROR NUMBER 175, A BLACK  
17 FEMALE, ENTERS THE COURTROOM.)

18 THE CLERK: MS. MCKENZIE, IF YOU WOULD,  
19 JUST COME AROUND FRONT HERE. PLEASE PLACE YOUR LEFT  
20 HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND. PLEASE  
21 STATE YOUR NAME FOR THE RECORD.

22 JURY VENIRE MEMBER: CORINE W. MCKENZIE.

23 (JUROR NUMBER 175, HAVING BEEN FIRST DULY SWORN  
24 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

25 THE CLERK: PLEASE COME AROUND THIS SIDE.

1 HAVE A SEAT, MA'AM.

2 THE COURT: GOOD AFTERNOON, MS. MCKENZIE.

3 JURY VENIRE MEMBER: GOOD AFTERNOON.

4 THE COURT: MS. MCKENZIE, YOUR REPORT

5 INDICATES THAT -- WHERE IS IT YOU WORK, PLEASE?

6 JURY VENIRE MEMBER: FOR THE GROBESSETTE

7 CENTER.

8 THE COURT: AND WHAT KIND OF WORK DO YOU

9 DO?

10 JURY VENIRE MEMBER: I TRAIN MENTALLY

11 RETARDED CLIENTS.

12 THE COURT: PRESENT OCCUPATION, MENTAL

13 RETARDATION SPECIALIST, IS THAT WHAT YOU DO?

14 JURY VENIRE MEMBER: YES.

15 THE COURT: DID YOU HAVE A CHANCE TO READ

16 THAT DESCRIPTION OF THE THREE DIFFERENT GROUPS OF

17 PEOPLE WHO MIGHT BE INVOLVED IN A DECISION OF LIFE OR

18 DEATH?

19 JURY VENIRE MEMBER: YES.

20 THE COURT: DID YOU READ THAT?

21 JURY VENIRE MEMBER: YES.

22 THE COURT: DO YOU UNDERSTAND THAT IN A

23 CASE OF THIS KIND WHERE THE STATE SEEKS THE PENALTY

24 OF DEATH, THERE WILL BE A TWO-PART TRIAL? DO YOU

25 UNDERSTAND THAT?

1 JURY VENIRE MEMBER: YES.

2 THE COURT: THE FIRST PART DEALS WITH THE  
3 GUILT OR INNOCENCE OF THE DEFENDANT. IF HE'S FOUND  
4 INNOCENT, WE STOP RIGHT THERE. IF HE'S FOUND GUILTY  
5 BEYOND A REASONABLE DOUBT, THEN THE JURY WILL  
6 CONSIDER WHETHER OR NOT THE APPROPRIATE PUNISHMENT IS  
7 DEATH OR LIFE IMPRISONMENT. DO YOU UNDERSTAND?

8 JURY VENIRE MEMBER: YES.

9 THE COURT: IF YOU GET TO THE PUNISHMENT  
10 STAGE, THE STATE WILL BE PRESENTING AGGRAVATING  
11 CIRCUMSTANCES. THE DEFENSE WILL BE PRESENTING  
12 MITIGATING CIRCUMSTANCES OR CIRCUMSTANCES WHICH THEY  
13 SAY WOULD JUSTIFY YOU IN GIVING A LIFE SENTENCE. YOU  
14 UNDERSTAND THAT?

15 JURY VENIRE MEMBER: YES.

16 THE COURT: I AND THESE ATTORNEYS WILL BE  
17 ASKING YOU SEVERAL QUESTIONS. WE ARE NOT ASKING YOU  
18 WHAT YOU WILL DO BECAUSE YOU DON'T KNOW. YOU HAVEN'T  
19 HEARD THE FACTS IN THE CASE. YOU UNDERSTAND THAT?

20 JURY VENIRE MEMBER: YES.

21 THE COURT: THEY ARE ONLY ASKING YOU WHICH  
22 GROUP ARE YOU IN? THERE ARE THREE GROUPS USUALLY.  
23 AND THERE'S NO RIGHT OR WRONG ANSWER. ONE GROUP SAYS  
24 ONCE HE'S FOUND GUILTY OF MURDER, I WILL ALWAYS  
25 IMPOSE THE DEATH PENALTY. THE SECOND GROUP SAYS EVEN

1     THOUGH WE FOUND HIM GUILTY OF MURDER, I CAN NEVER  
2     IMPOSE THE DEATH PENALTY.   THE THIRD GROUP SAYS I  
3     WILL LISTEN TO ALL OF THE FACTS IN THE CASE, I WILL  
4     CONSIDER ALL OF THE AGGRAVATING AND MITIGATING  
5     CIRCUMSTANCES.   I CAN VOTE FOR THE DEATH PENALTY, BUT  
6     I CAN ALSO VOTE FOR LIFE IMPRISONMENT.   WOULD YOU BE  
7     THE ONE THAT SAYS ALWAYS, NEVER OR IT WOULD DEPEND ON  
8     THE FACTS?

9                   JURY VENIRE MEMBER:   IT WOULD DEPEND ON  
10    THE FACTS.

11                   THE COURT:   IT WOULD DEPEND -- AND YOU'RE  
12    WILLING TO LISTEN TO BOTH SIDES?

13                   JURY VENIRE MEMBER:   YES.

14                   THE COURT:   BUT YOU COULD IMPOSE THE DEATH  
15    PENALTY?

16                   JURY VENIRE MEMBER:   YES.

17                   THE COURT:   AND YOU CAN GIVE HIM LIFE  
18    IMPRISONMENT?

19                   JURY VENIRE MEMBER:   YES.

20                   THE COURT:   THANK YOU.

21                   MR. BAILEY:   MS. MCKENZIE, I'M WALTER  
22    BAILEY.   I NEED TO ASK YOU A FEW QUESTIONS.   I THINK  
23    YOU WERE ONE OF THOSE JURORS YESTERDAY WHO SAID YOU  
24    KNEW SOMETHING ABOUT THE HUGHES FAMILY.

25                   JURY VENIRE MEMBER:   MY SISTER LIVES

1 ACROSS THE STREET FROM HIS FAMILY.

2 MR. BAILEY: OKAY.

3 JURY VENIRE MEMBER: FROM HIS GRANDMOTHER.

4 MR. BAILEY: ALL RIGHT. AND DO YOU VISIT  
5 WITH YOUR SISTER OFTEN AND SEE MRS. HUGHES?

6 JURY VENIRE MEMBER: I DON'T -- I DON'T  
7 SEE -- I SEE HER SITTING ON THE PORCH, BUT AS FAR AS  
8 COMMUNICATING WITH HER, I DO NOT. AS FAR AS WAVING,  
9 AND THAT'S THE ONLY THING I DO.

10 MR. BAILEY: OKAY. DID YOU SAY YESTERDAY  
11 THAT YOU WORKED WITH HIS MOTHER?

12 JURY VENIRE MEMBER: SHE WAS A COWORKER OF  
13 MINE ABOUT -- I DON'T KNOW, ABOUT MAYBE FIVE YEARS  
14 AGO.

15 MR. BAILEY: OKAY.

16 JURY VENIRE MEMBER: AND SHE WAS EMPLOYED  
17 BY THE CENTER AS A PART-TIME NURSE, BUT I DON'T GET  
18 TO SEE HER.

19 MR. BAILEY: SO YOU LIVE NEXT DOOR TO HIS  
20 MOTHER AND YOU HAVE WORKED WITH HER?

21 JURY VENIRE MEMBER: NO. MY SISTER.

22 MR. BAILEY: YOUR SISTER LIVES NEXT DOOR?

23 JURY VENIRE MEMBER: YEAH, TO HIS  
24 GRANDMOTHER.

25 MR. BAILEY: OKAY. THAT'S LUCILLE HUGHES?

1 JURY VENIRE MEMBER: YES.

2 MR. BAILEY: OKAY. HOW ABOUT MIRANDA  
3 HUGHES, HIS MOTHER, DO YOU KNOW HER?

4 JURY VENIRE MEMBER: YEAH. SHE WAS A  
5 COWORKER ABOUT FIVE YEARS AGO.

6 MR. BAILEY: ALL RIGHT. I GOT YOU. AND  
7 AS FAR AS HERMAN HUGHES, DO YOU KNOW HIM?

8 JURY VENIRE MEMBER: FROM SCHOOL.

9 MR. BAILEY: ALL RIGHT.

10 JURY VENIRE MEMBER: I USED TO WORK IN THE  
11 PUBLIC SCHOOL.

12 MR. BAILEY: OKAY. AND WHAT DID YOU DO  
13 FOR THE PUBLIC SCHOOL SYSTEM WHEN YOU KNEW HERMAN  
14 HUGHES?

15 JURY VENIRE MEMBER: IT WAS A SCHOOL. I  
16 USED TO BE A TEACHER'S AIDE AT FIRST, AND THEN I  
17 WORKED AS AN IN-SCHOOL SUSPENSION PROGRAM.

18 MR. BAILEY: OKAY. AND IN WHAT CAPACITY  
19 DID YOU WORK WITH HERMAN HUGHES?

20 JURY VENIRE MEMBER: I MEAN, I WOULD SEE  
21 HIM INTERACTING, YOU KNOW, IN THE BUILDING, BUT I  
22 CANNOT REMEMBER WAS HE AT JOB FOR AT THE TIME I WAS  
23 THERE OR NOT.

24 MR. BAILEY: WELL, WHILE HE WAS THERE AT  
25 SCHOOL, DID YOU INTERACT WITH HIM? DID HE SPEAK WITH

1 YOU? DID YOU SPEAK WITH HIM? DID HE KNOW WHO YOU  
2 WERE?

3 JURY VENIRE MEMBER: I THINK HE KNEW WHO I  
4 AM, BUT I HAD NO COMMUNICATION WITH HIM AS I CAN  
5 REMEMBER.

6 MR. BAILEY: ALL RIGHT. MS. MCKENZIE, YOU  
7 UNDERSTAND THAT TO SIT ON ANY JURY, A JUROR HAS TO BE  
8 ABLE TO MAKE A DECISION, GUILTY OR INNOCENT OR  
9 PUNISHMENT, WHATEVER THE CASE MAY BE, BASED STRICTLY  
10 ON THE EVIDENCE IN THAT CASE AND PUTTING ASIDE ANY  
11 OUTSIDE INFLUENCE. DO YOU THINK THAT WOULD CREATE A  
12 PROBLEM WITH YOU, THE FACT THAT YOU KNOW THE  
13 GRANDMOTHER, YOU KNOW THE MOTHER, THAT YOU KNOW  
14 HERMAN HUGHES? DO YOU THINK THAT YOU COULD TOTALLY  
15 PUT THAT OUT OF YOUR MIND OR WOULD THAT PERHAPS  
16 AFFECT YOUR DECISION?

17 JURY VENIRE MEMBER: I COULD PUT THAT OUT  
18 OF MY MIND THAT I KNOW HIS FAMILY AND KNOW HIM.

19 MR. BAILEY: OKAY. DO YOU KNOW A YOUNG  
20 MAN NAMED KELSEY PEARCE?

21 JURY VENIRE MEMBER: FROM SCHOOL, YES.

22 MR. BAILEY: OKAY. AND HOW DO YOU KNOW  
23 MR. PEARCE?

24 JURY VENIRE MEMBER: HE WENT TO JOBFORD AT  
25 THE TIME I WORKED THERE.

1 MR. BAILEY: OKAY. NOW, KELSEY PEARCE IS  
2 ALSO CHARGED IN THIS CASE. DID YOU KNOW THAT?

3 JURY VENIRE MEMBER: YES, FROM READING THE  
4 PAPERS.

5 MR. BAILEY: OKAY. HOW ABOUT DANIEL  
6 OWENS, DO YOU KNOW HIM?

7 JURY VENIRE MEMBER: ALSO FROM WORKING AT  
8 THE SCHOOL DOING -- IN THE SCHOOL SYSTEM.

9 MR. BAILEY: AND DANIEL OWENS IS ALSO  
10 CHARGED IN THIS CASE. DID YOU KNOW THAT ALSO?

11 JURY VENIRE MEMBER: YES.

12 MR. BAILEY: AND WHAT OTHER SOURCES OF  
13 INFORMATION DID YOU HAVE ABOUT THIS CASE BESIDES  
14 READING THE NEWSPAPER?

15 JURY VENIRE MEMBER: I JUST READ THE  
16 PAPER, AND I -- WHEN IT FIRST HAPPENED, I DIDN'T  
17 KNOW, YOU KNOW, WHO IT WAS, AND WHEN I GOT THE PAPER  
18 TO SEE WHAT WAS GOING ON, SMALL TOWN, THAT'S NORMALLY  
19 WHAT YOU DO.

20 MR. BAILEY: RIGHT.

21 JURY VENIRE MEMBER: AND I WORK -- I GO TO  
22 WORK AT 4:00 IN THE AFTERNOON, AND I DON'T HAVE TIME  
23 TO COMMUNICATE WITH ANYBODY DURING THE DAY BECAUSE  
24 MOST EVERYBODY ELSE IS WORKING.

25 MR. BAILEY: WELL, HAVE YOU EVER TALKED TO

1 ANYBODY ABOUT WHAT HAPPENED AT THE BLUE DIAMOND?

2 JURY VENIRE MEMBER: JUST MY HUSBAND.

3 MR. BAILEY: OKAY.

4 JURY VENIRE MEMBER: AND MAYBE DISCUSSED  
5 WITH SEVERAL OF MY SISTERS WHEN IT FIRST HAPPENED.

6 MR. BAILEY: OKAY. AND WOULD THIS BE THE  
7 SAME SISTER THAT LIVES NEXT DOOR TO MRS. HUGHES?

8 JURY VENIRE MEMBER: YES.

9 MR. BAILEY: OKAY. AND YOU DID DISCUSS  
10 THEIR VERSION, ANYWAY, OF WHAT HAPPENED?

11 JURY VENIRE MEMBER: NO. I DIDN'T KNOW  
12 WHAT HAPPENED.

13 MR. BAILEY: OKAY.

14 JURY VENIRE MEMBER: I JUST DISCUSSED WHAT  
15 WE READ IN THE PAPER BECAUSE WE DON'T KNOW WHAT  
16 HAPPENED.

17 MR. BAILEY: ALL RIGHT. AND MS. MCKENZIE,  
18 DO YOU HONESTLY FEEL WITH ALL OF THE CONTACTS YOU'VE  
19 HAD WITH THE THREE PEOPLE CHARGED IN THIS CASE AND  
20 THE RELATIVES OF HERMAN HUGHES THAT YOU COULD PUT ALL  
21 OF THAT ASIDE AND BASE YOUR DECISION IN THE DEATH  
22 PENALTY CASE BASED SOLELY ON THE EVIDENCE?

23 JURY VENIRE MEMBER: YES, I COULD, BECAUSE  
24 I FEEL LIKE THIS -- ST. MATTHEWS IS A SMALL TOWN, AND  
25 I HAVE CONTACT WITH A LOT OF STUDENTS BECAUSE I HAVE

1 WORKED IN THE SCHOOL SYSTEM FOR ABOUT 12 YEARS BEFORE  
2 I WORKED FOR THE GROBESSETTE CENTER, AND I JUST HAD  
3 CONTACT WITH A LOT OF PEOPLE.

4 MR. BAILEY: YOU WORK AS A MENTAL  
5 RETARDATION SPECIALIST?

6 JURY VENIRE MEMBER: YES. I HAVE DONE  
7 THAT FOR THE LAST EIGHT YEARS.

8 MR. BAILEY: YOU INDICATED ALSO, I THINK,  
9 THAT YOU HAD A PROBLEM WITH BABY-SITTING WITH  
10 GRANDCHILDREN.

11 JURY VENIRE MEMBER: YEAH, BUT THE JUDGE  
12 MADE ME REALIZE THAT'S HER MOTHER'S RESPONSIBILITY.

13 MR. BAILEY: SO YOU CAN PUT THAT ASIDE  
14 ALSO?

15 JURY VENIRE MEMBER: YES.

16 MR. BAILEY: HOW ABOUT DUANE GILMORE AND  
17 RONNIE GILMORE, DO YOU KNOW THEM?

18 JURY VENIRE MEMBER: I MAY KNOW THEIR  
19 FACES, BUT BY NAME, I DO NOT KNOW THEM.

20 MR. BAILEY: OKAY. DO YOU KNOW BETTY  
21 SPAGNER?

22 JURY VENIRE MEMBER: NO.

23 MR. BAILEY: PHILLIP WRIGHT.

24 JURY VENIRE MEMBER: NO. OH, PHILLIP  
25 WRIGHT?

1 MR. BAILEY: YEAH.

2 JURY VENIRE MEMBER: HE'S RELATED TO  
3 LUCILLE.

4 MR. BAILEY: YEAH.

5 JURY VENIRE MEMBER: HER GRANDSON, IF  
6 THAT'S THE --

7 MR. BAILEY: KIND OF HEAVYSET FELLOW IN  
8 HIS EARLY 20'S.

9 JURY VENIRE MEMBER: IS THAT THE PHILLIP  
10 WRIGHT, I THINK, FROM -- HE LIVES ON THE STREET WITH  
11 HIS GRANDMOTHER.

12 MR. BAILEY: OKAY. LET ME TALK TO YOU  
13 ABOUT SORT OF ALONG THE LINE OF WHAT JUDGE COTTINGHAM  
14 HAD TALKED TO YOU ABOUT EARLIER ABOUT DEATH -- YOU  
15 UNDERSTAND ABOUT THE TWO-PART PROCESS THAT WE GO  
16 THROUGH HERE WHERE YOU'VE GOT A GUILT PHASE THAT'S  
17 JUST LIKE ANY OTHER TRIAL WHERE THE JURY IS JUST  
18 THERE TO DECIDE GUILT OR INNOCENCE?

19 JURY VENIRE MEMBER: YES.

20 MR. BAILEY: AND IF THE DEFENDANT IS FOUND  
21 GUILTY, THEN WE MOVE INTO THAT SECOND PHASE AND THE  
22 JURY HAS TO CONSIDER ONE OF THE TWO CHOICES, LIFE IN  
23 PRISON OR THE DEATH PENALTY. AND WHATEVER THE JURY  
24 DECIDES SHOULD HAPPEN WILL HAPPEN. IF THEY DECIDE ON  
25 THE DEATH PENALTY, THE DEFENDANT WOULD BE EXECUTED.

1 YOU UNDERSTAND THAT?

2 JURY VENIRE MEMBER: YES.

3 MR. BAILEY: OKAY. AND IF YOU WERE ON A  
4 JURY IN A CASE LIKE THIS AND AFTER HEARING ALL OF THE  
5 EVIDENCE, YOU AND THE OTHER JURORS DECIDED THE DEATH  
6 PENALTY WAS THE APPROPRIATE PUNISHMENT, COULD YOU  
7 SIGN YOUR NAME TO A PIECE OF PAPER THAT WOULD RESULT  
8 IN THAT PERSON BEING EXECUTED?

9 JURY VENIRE MEMBER: YES, I COULD. I --  
10 YOU KNOW, IF -- LIKE I SAY, IF I HELD THE EVIDENCE  
11 AND WE AS A JURY COME TO THAT CONCLUSION.

12 MR. BAILEY: COULD YOU COME INTO OPEN  
13 COURT AND ANNOUNCE THAT DECISION IN FRONT OF ANYBODY  
14 THAT WAS IN COURT?

15 JURY VENIRE MEMBER: YES.

16 MR. BAILEY: OKAY. AND IN THIS CASE,  
17 OBVIOUSLY THE DEFENDANT IS A BLACK MALE. AND THE  
18 VICTIM IN THIS CASE WAS A WHITE MALE. WOULD THE  
19 DIFFERENCES IN RACE MAKE ANY DIFFERENCE TO YOU?

20 JURY VENIRE MEMBER: NO.

21 MR. BAILEY: AND HERMAN HUGHES AT THIS  
22 TIME IS 18 YEARS OLD. IN MARCH OF '94, HE WAS 16.  
23 COULD YOU IMPOSE THE DEATH PENALTY ON A PERSON WHO  
24 WAS 16 YEARS OLD AT THE TIME THEY COMMITTED A MURDER?

25 JURY VENIRE MEMBER: YES.

1 MR. BAILEY: OKAY. DO YOU FEEL LIKE, MS.  
2 MCKENZIE, IN ALL HONESTY, WITH YOUR CONTACT WITH SO  
3 MANY PEOPLE INVOLVED IN THIS CASE, THAT IF YOU DID  
4 BRING BACK THE DEATH PENALTY, YOU WOULD BE CRITICIZED  
5 IN THE COMMUNITY AMONG THE PEOPLE YOU KNOW?

6 JURY VENIRE MEMBER: IT WOULD NOT BOTHER  
7 ME KNOWING ALL OF THE EVIDENCE AND THE FACT THAT I  
8 CAME TO THAT -- THAT WE AS A JURY CAME TO THAT  
9 CONCLUSION.

10 MR. BAILEY: YOU DON'T THINK THAT WOULD  
11 WEIGH ON YOUR MIND WHILE YOU WERE DELIBERATING?

12 JURY VENIRE MEMBER: NO.

13 MR. BAILEY: HAVE YOU EVER EXPRESSED ANY  
14 OPINION ON WHAT SHOULD HAPPEN TO HERMAN HUGHES IN  
15 THIS CASE TO ANYBODY ELSE?

16 JURY VENIRE MEMBER: NO.

17 MR. BAILEY: HAS ANYBODY EXPRESSED ANY  
18 OPINION TO YOU ABOUT WHAT THEY THINK SHOULD HAPPEN  
19 WITH HIM?

20 JURY VENIRE MEMBER: NO.

21 MR. BAILEY: HAS THERE BEEN ANY CONTACT  
22 WITH HERMAN HUGHES' FAMILY IN REGARD TO THIS CASE?

23 JURY VENIRE MEMBER: NO.

24 MR. BAILEY: BEAR WITH ME ONE SECOND,  
25 PLEASE. MS. MCKENZIE, DO YOU WORK FOR THE

1 GROBESSETTE CENTER?

2 JURY VENIRE MEMBER: YES, SIR.

3 MR. BAILEY: OKAY. WAS THERE A SITUATION  
4 RECENTLY INVOLVING CONFLICT BETWEEN GROBESSETTE  
5 CENTER EMPLOYEES AND THE POLICE DEPARTMENT?

6 JURY VENIRE MEMBER: I MEAN, ONLY WHAT I  
7 SEEN IN THE NEWSPAPER AND ON TELEVISION. I DO NOT  
8 KNOW THE CIRCUMSTANCES. I JUST KNOW WHAT I HEAR. WE  
9 NEVER DISCUSS IT.

10 MR. BAILEY: THERE WAS SOME PICKETING  
11 INVOLVED OF THE POLICE STATION, I THINK. WERE YOU  
12 INVOLVED IN THAT?

13 JURY VENIRE MEMBER: NO.

14 MR. BAILEY: THAT'S ALL I HAVE. THANK  
15 YOU.

16 MR. NEWSOME: I'M GOING TO TRY TO BE  
17 BRIEF. I NOTICE IN YOUR RECORD THAT YOU SAY THAT YOU  
18 ARE A MEMBER OF FIRST BAPTIST CHURCH?

19 JURY VENIRE MEMBER: YES.

20 MR. NEWSOME: DOES YOUR CHURCH HAVE A  
21 STATED OPINION ON WHETHER THE DEATH PENALTY IS  
22 APPROPRIATE?

23 JURY VENIRE MEMBER: NO.

24 MR. NEWSOME: THANK YOU. I HAVE NO  
25 FURTHER QUESTIONS.

1 THE COURT: YOU MAY STEP OUT.

2 (JUROR NUMBER 175 IS DISMISSED  
3 FROM THE COURTROOM.)

4 THE COURT: ALL RIGHT.

5 MR. BAILEY: BEAR WITH ME ONE SECOND,  
6 PLEASE. COULD I ASK MR. FLOYD SOMETHING?

7 THE COURT: YES.

8 MR. BAILEY: YOUR HONOR, I WOULD MOVE TO  
9 DISQUALIFY --

10 THE COURT: SIR?

11 MR. BAILEY: I WOULD MOVE TO DISQUALIFY  
12 HER FOR CAUSE, AND I WOULD CONCEDE SHE DID ANSWER ALL  
13 OF THE QUESTIONS THE WAY THAT SHE SHOULD HAVE  
14 ANSWERED THEM TO BECOME QUALIFIED, BUT I JUST THINK  
15 THE NUMEROUS CONTACTS THAT SHE'S HAD WITH THE THREE  
16 YOUNG MEN THAT HAVE CHARGES PENDING AGAINST THEM,  
17 MOTHER OF THE DEFENDANT, GRANDMOTHER OF THE  
18 DEFENDANT, THE COMBINATION OF ALL OF THAT IS JUST  
19 CONTAINED.

20 THE COURT: SOLICITOR, THAT WOULD BE A  
21 BASIS THAT YOU MIGHT CONSIDER FOR STRIKING HER, BUT  
22 THAT WOULD NOT BE A BASIS FOR CAUSE.

23 MR. BAILEY: YES, SIR.

24 THE COURT: AND OF COURSE, THAT WOULD --  
25 OBVIOUSLY, UNDER BATSON, YOU WOULD HAVE GOOD REASON

1 TO STRIKE HER IF YOU CHOOSE TO.

2 MR. BAILEY: YES.

3 THE COURT: I WOULD NOT THINK THAT I COULD  
4 STRIKE HER FOR CAUSE. WHAT SAYS THE DEFENSE AS TO  
5 THE QUALIFICATION?

6 MR. NEWSOME: I THINK SHE'S QUALIFIED,  
7 YOUR HONOR.

8 THE COURT: YES, SIR. I DO TOO.

9 MR. NEWSOME: YOUR HONOR, I -- AFTER, I  
10 NEED TO PUT SOMETHING ON THE RECORD.

11 (JUROR NUMBER 175 ENTERS THE  
12 COURTROOM.)

13 THE COURT: MS. MCKENZIE, WE ARE  
14 QUALIFYING 35 INDIVIDUALS FROM WHICH 12 JURORS AND 2  
15 ALTERNATES WILL BE SELECTED TOMORROW AFTERNOON AT  
16 2:30. ALL OF THE PEOPLE IN THIS COURTROOM HAVE FOUND  
17 YOU QUALIFIED, IF YOU ARE CHOSEN OF ONE OF THE 14.  
18 SO TOMORROW AFTERNOON AT 2:30, I WANT YOU TO REPORT  
19 ACROSS THE STREET AT THE ANNEX BUILDING. PLEASE  
20 BRING YOUR CLOTHES WITH YOU SO THAT IF YOU ARE  
21 SELECTED, YOU WILL BE IN A POSITION TO STAY WITH US  
22 TO START THE TRIAL OF THE CASE.

23 JURY VENIRE MEMBER: OKAY. THANK YOU.

24 THE COURT: ANY QUESTIONS?

25 JURY VENIRE MEMBER: NO, SIR.

1 THE COURT: ALL RIGHT. DON'T DISCUSS  
2 ANYTHING ABOUT THIS CASE, NOW, WITH ANYBODY, PLEASE.

3 JURY VENIRE MEMBER: OKAY. THANKS.

4 THE COURT: SEE YOU OVER THERE AT 2:30.

5 (JUROR NUMBER 175 IS DISMISSED  
6 FROM THE COURTROOM.)

7 THE COURT: YES, SIR.

8 MR. NEWSOME: YOUR HONOR, AND I DO THIS  
9 RELUCTANTLY, BUT I THINK I HAVE TO PUT ON THE RECORD,  
10 THE SOLICITOR -- THIS OBVIOUSLY WAS A BLACK JUROR,  
11 AND THIS IS THE FIRST -- AND SHE IS NOT THE FIRST  
12 POTENTIAL JUROR WHO HAS MENTIONED HAVING CONTACT WITH  
13 SOMEBODY EITHER FROM THE STATE'S WITNESS OR THE  
14 DEFENSE WITNESS. THIS, QUITE FRANKLY, IS THE LONGEST  
15 QUESTIONING HE MADE OF ANY JUROR. THERE WAS --  
16 OBVIOUSLY EVERY ANSWER THAT SHE GAVE WAS WITHIN THE  
17 PARAMETERS OF BEING QUALIFIED, AND YET HE CONTINUED,  
18 AND THEN ASKED TO HAVE HER REMOVED FOR CAUSE. HE HAS  
19 PURSUED THIS QUALIFICATION FOR NEARLY EVERY BLACK  
20 JUROR. I DON'T WANT THIS TO BE A RACIAL SITUATION.

21 THE COURT: NO, SIR. THERE'S NOTHING  
22 RACIAL IN HIS COMMENTS AT ALL THAT I ENVISION.

23 MR. NEWSOME: BUT --

24 THE COURT: LET ME SAY THIS. THIS JUROR  
25 CLEARLY SAID EVEN YESTERDAY THAT SHE KNEW ABOUT THIS

1 CASE, KNEW PEOPLE INVOLVED IN IT.

2 MR. NEWSOME: I UNDERSTAND, JUDGE. BUT  
3 THERE WERE WHITE JURORS WHO HAVE MENTIONED THIS. MS.  
4 KOLBERG. HE JUST GLANCED OVER THAT. I THINK HE -- I  
5 THINK THAT THERE COULD BE A SITUATION IF WE COME UP  
6 WITH HIM STRIKING ALL OF THE POTENTIAL BLACK JURORS  
7 THAT I MAY HAVE TO STATE AN OBJECTION AND MOVE TO  
8 QUASH THE JURY PANEL. I DON'T WANT TO HAVE TO DO  
9 THAT, YOUR HONOR.

10 THE COURT: WELL, YOU DO WHAT YOU HAVE TO  
11 DO. IT'S CLEARLY FROM HER KNOWLEDGE OF THE FACTS IN  
12 THE CASE, KNOWLEDGE OF ALL OF THESE INDIVIDUALS  
13 INVOLVED, THE FACT THAT HER SISTER LIVES ACROSS THE  
14 STREET FROM THE GRANDMOTHER OF THE DEFENDANT WOULD  
15 GIVE ANY ATTORNEY CAUSE BEFORE HE ACCEPTED HER.

16 MR. NEWSOME: I'M NOT QUESTIONING THAT.

17 THE COURT: I'M NOT SAYING FAILURE TO  
18 STRIKE HER OR NOT STRIKE HER.

19 MR. NEWSOME: I'M NOT STAYING THAT AS FAR  
20 AS CAUSE TO USE THE STRIKE, THE ATTEMPT TO DISQUALIFY  
21 HER FOR CAUSE. WE HAD A JUROR WHO WAS PRESENT WITH  
22 THE DECEASED SISTER WHENEVER NOTIFICATION OF THE  
23 DEATH WAS MADE.

24 THE COURT: WHAT POINT ARE YOU MAKING --  
25 MOTION ARE YOU MAKING?

1 MR. NEWSOME: I'M NOT MAKING A MOTION AT  
2 THIS TIME. I JUST WANT TO PUT ON THE RECORD, YOUR  
3 HONOR, THAT I'M STARTING TO WORRY THAT IT'S --  
4 OBVIOUSLY, WE ONLY HAVE A HANDFUL OF BLACK JURORS WHO  
5 HAVE BEEN QUALIFIED.

6 THE COURT: WELL, THAT'S BECAUSE OF THE  
7 RANDOM SELECTION PROCESS OUT OF THE HAT.

8 MR. NEWSOME: I UNDERSTAND THAT. I JUST  
9 DON'T WANT TO GET TO THE POINT THAT I HAVE TO SMART  
10 MAKING OBJECTIONS WITH BATSON.

11 THE COURT: I CAN TELL YOU EMPHATICALLY  
12 FOR THE RECORD THAT THERE ARE ABSOLUTELY NO RACIAL  
13 OVERTONES IN THIS TRIAL, AND THERE WILL NOT BE.

14 MR. NEWSOME: I'M NOT SAYING ANYTHING FROM  
15 THE COURT, YOUR HONOR. I WAS SOMEWHAT SURPRISED THAT  
16 HE PURSUED THIS PARTICULAR --

17 THE COURT: IT DOESN'T SURPRISE ME BASED  
18 ON HER KNOWLEDGE OF EVERYBODY INVOLVED.

19 MR. NEWSOME: THE MOTION FOR CAUSE. HE  
20 KNOWS HE HAS A STRIKE. THERE ARE OTHER JURORS THAT I  
21 INTEND TO STRIKE FROM THEIR FIRST TWO OR THREE  
22 ANSWERS.

23 THE COURT: WELL, I'M NOT GOING TO TELL  
24 YOU GENTLEMEN HOW TO PRACTICE LAW. YOU DO WHAT YOU  
25 ARE COMPELLED TO DO IN REPRESENTING YOUR RESPECTIVE

1 POSITION.

2 MR. NEWSOME: YES, SIR.

3 THE COURT: ALL RIGHT. ARE WE READY TO  
4 PROCEED?

5 MR. NEWSOME: YES, SIR.

6 THE COURT: ALL RIGHT. BRING THE JURY IN.  
7 SOLICITOR, DO YOU HAVE ANY STATEMENTS YOU CARE TO  
8 MAKE?

9 MR. BAILEY: YOUR HONOR, YEAH.

10 THE COURT: IT'S NOT NECESSARY.

11 MR. BAILEY: I KNOW IT ISN'T NECESSARY,  
12 BUT JUST FOR THE RECORD, I THINK I'VE ASKED BASICALLY  
13 THE SAME CORE OF QUESTIONS TO EVERY SINGLE JUROR  
14 UNLESS THEY EXPRESS SOME INVOLVEMENT IN THE CASE THAT  
15 I THOUGHT NEEDED FURTHER EXPLORATION. THIS JUROR HAD  
16 MORE CONTACTS WITH THE DEFENDANT, OTHER DEFENDANTS,  
17 THEIR FAMILY MEMBERS, AND ALL OF THAT, AND I FELT IT  
18 WAS MY DUTY TO EXPLORE THAT. THE JURORS THAT HAD  
19 CONTACTS WITH THE VICTIM'S FAMILY, I WANT THEM ON THE  
20 JURY. THAT'S WHY I DIDN'T EXPLORE IT. MR. NEWSOME  
21 IS THE ONE WHO NEEDS TO BE EXPLORING THOSE KIND OF  
22 JURORS, NOT ME.

23 THE COURT: THUS FAR, BOTH OF YOU HAVE  
24 CONDUCTED YOURSELF IN AN EXEMPLARY AND PROFESSIONAL  
25 MANNER, AND I CONGRATULATE YOU. LET IT BE KNOWN FROM

1 THE STANDPOINT OF THE PROSECUTION OR THE DEFENSE, I  
2 DON'T SUGGEST FOR A MOMENT THAT RACE WILL ENTER INTO  
3 THIS TRIAL, BUT I TELL YOU WITH CERTAINTY THAT THIS  
4 JUDGE WOULD NOT PERMIT IT.

5 WHILE WE'RE TALKING, I NEED THAT PROPOSED ORDER  
6 ON THE BLAIR HEARING THAT WE HAD. I HAVE NOT SIGNED  
7 IT YET.

8 MR. BAILEY: YES, SIR. MY SECRETARY IS  
9 TYPING IT. I'LL GET IT.

10 (JUROR NUMBER 63, A WHITE  
11 MALE, ENTERS THE COURTROOM.)

12 THE CLERK: PLEASE PLACE YOUR LEFT HAND ON  
13 THE BIBLE AND RAISE YOUR RIGHT HAND. PLEASE STATE  
14 YOUR NAME FOR THE RECORD.

15 JURY VENIRE MEMBER: I'M ROBERT K.  
16 FREDERICK.

17 (JUROR NUMBER 63, HAVING BEEN FIRST DULY SWORN  
18 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

19 THE CLERK: PLEASE COME AROUND.

20 THE COURT: REVEREND.

21 JURY VENIRE MEMBER: YES, SIR.

22 THE COURT: HAVE A SEAT. I APOLOGIZE FOR  
23 KEEPING YOU BACK THERE.

24 JURY VENIRE MEMBER: THAT'S OKAY.

25 THE COURT: FINE. I NOTE -- AND I WANT TO

1 ASK YOU WHETHER OR NOT YOU FEEL THAT YOU SHOULD SERVE  
2 ON THIS JURY, AND I WILL ABIDE BY YOUR DECISION. I  
3 NOTE HERE THAT YOU SAY BY WAY OF EXPLANATION, "I FEAR  
4 THE POSSIBILITY THAT THIS COULD HAVE AN ADVERSE  
5 EFFECT ON MY DUTIES AS PASTOR OF THE GETHSEMANE" --

6 JURY VENIRE MEMBER: GETHSEMANE.

7 THE COURT: -- "GETHSEMANE SHOULD FAMILY  
8 OR FRIENDS BE INVOLVED." IS THAT RIGHT?

9 JURY VENIRE MEMBER: YES, SIR.

10 THE COURT: DO YOU STILL FEEL THAT WAY?

11 JURY VENIRE MEMBER: WELL, I STILL FEEL  
12 THAT WAY, BUT I DON'T KNOW OF ANY THAT ARE INVOLVED.

13 THE COURT: OKAY. LET ME ASK YOU THIS.  
14 DO YOU UNDERSTAND THAT IN THE TRIAL OF THIS CASE,  
15 THIS DEFENDANT IS CHARGED WITH MURDER?

16 JURY VENIRE MEMBER: YES, I DO.

17 THE COURT: AND DO YOU UNDERSTAND THAT HE  
18 IS PRESUMED INNOCENT AND THE STATE MUST PROVE HIM  
19 GUILTY BEYOND A REASONABLE DOUBT?

20 JURY VENIRE MEMBER: YES, SIR.

21 THE COURT: THAT WOULD BE THE FIRST PHASE  
22 OF THIS TRIAL. NOW, IF HE IS FOUND INNOCENT, WE  
23 WOULD STOP THERE. DO YOU UNDERSTAND THAT?

24 JURY VENIRE MEMBER: YES, SIR.

25 THE COURT: IF HE'S FOUND GUILTY BEYOND A

1 REASONABLE DOUBT AND THERE'S NO QUESTION ABOUT IT, WE  
2 WOULD THEN GO TO THE SENTENCING PHASE. YOU  
3 UNDERSTAND THAT?

4 JURY VENIRE MEMBER: YES, SIR.

5 MR. BAILEY: YOU READ THAT PAPER THAT I  
6 HAD BACK THERE?

7 JURY VENIRE MEMBER: I DID, SIR. YES,  
8 SIR.

9 THE COURT: YOU UNDERSTAND THERE ARE THREE  
10 CATEGORIES?

11 JURY VENIRE MEMBER: YES, SIR.

12 THE COURT: WOULD YOU BE IN THE FIRST,  
13 SECOND OR THIRD?

14 JURY VENIRE MEMBER: I WOULD BE IN THE  
15 THIRD.

16 THE COURT: IN THE THIRD. AND WHAT IS  
17 YOUR VIEW OF THE THIRD?

18 JURY VENIRE MEMBER: THAT IF HE WERE FOUND  
19 GUILTY, THEN WE WOULD HAVE AN OPTION BASED ON  
20 EVIDENCE PRESENTED IN THIS COURT TO DETERMINE WHETHER  
21 HE WOULD BE GIVEN A LIFE SENTENCE OR A DEATH  
22 SENTENCE.

23 THE COURT: AND YOU COULD -- IF -- I'M NOT  
24 ASKING YOU WHAT YOU WOULD DO. I WOULD NOT DO THAT.  
25 BUT AFTER HEARING ALL OF THE AGGRAVATING AND

1 MITIGATING CIRCUMSTANCES, DO I HEAR YOU SAY THAT  
2 DEPENDING ON HOW YOU FELT AND BELIEVED, YOU COULD  
3 IMPOSE THE SENTENCE OF DEATH?

4 JURY VENIRE MEMBER: I DO, SIR.

5 THE COURT: AND YOU COULD EQUALLY GIVE  
6 LIFE IMPRISONMENT?

7 JURY VENIRE MEMBER: I DO, SIR.

8 THE COURT: AND EVEN THOUGH, YOU WOULD NOT  
9 HAVE ANY RELIGIOUS CONVICTION ONE WAY OR THE OTHER  
10 CONCERNING THAT ISSUE?

11 JURY VENIRE MEMBER: I HAVE RELIGIOUS  
12 CONVICTION, BUT IT ALLOWS ME TO MAKE THE DECISION  
13 BASED UPON EVIDENCE PRESENTED IN COURT.

14 THE COURT: OBVIOUSLY YOU HAVE RELIGIOUS  
15 CONVICTIONS AND DEEP RELIGIOUS CONVICTIONS.

16 JURY VENIRE MEMBER: YES, SIR.

17 THE COURT: THERE IS NOTHING IN YOUR  
18 RELIGIOUS CONVICTIONS THAT WOULD PROHIBIT YOU FROM  
19 GIVING THE DEATH PENALTY IF YOU THOUGHT IT WAS  
20 APPROPRIATE?

21 JURY VENIRE MEMBER: NO, I WOULD NOT.

22 MR. BAILEY: THANK YOU.

23 JURY VENIRE MEMBER: YES, SIR.

24 MR. BAILEY: I'M WALTER BAILEY. I'VE GOT  
25 A FEW MORE QUESTIONS TO ASK YOU.

1 JURY VENIRE MEMBER: YES, SIR.

2 MR. BAILEY: I NOTICE THAT YOU'VE BEEN A  
3 WITNESS IN A CRIMINAL CASE BEFORE.

4 JURY VENIRE MEMBER: YES, I HAVE.

5 MR. BAILEY: CAN YOU TELL US ABOUT THAT,  
6 THE KIND OF CASE IT WAS.

7 JURY VENIRE MEMBER: WELL, IT WAS -- IT  
8 WAS A MURDER CASE THAT WAS BROUGHT. IT TURNED OUT TO  
9 BE A MANSLAUGHTER CONVICTION.

10 MR. BAILEY: AND DID YOU TESTIFY FOR THE  
11 PROSECUTION OR FOR THE DEFENSE OR --

12 JURY VENIRE MEMBER: FOR THE DEFENSE.

13 MR. BAILEY: OKAY. AND WHAT WAS YOUR --  
14 WERE YOU A CHARACTER WITNESS OR --

15 JURY VENIRE MEMBER: YES, SIR.

16 MR. BAILEY: ALL RIGHT. WAS THAT A MEMBER  
17 OF YOUR CONGREGATION?

18 JURY VENIRE MEMBER: NO, SIR.

19 MR. BAILEY: OKAY. ALL RIGHT. I ALSO  
20 NOTICE THAT YOUR FATHER-IN-LAW IS THE DEPUTY SHERIFF  
21 FOR DORCHESTER COUNTY.

22 JURY VENIRE MEMBER: HE'S RETIRED.

23 THE COURT: OKAY. WHAT'S HIS NAME?

24 JURY VENIRE MEMBER: LAWTON SCHYLER. HE  
25 WAS ACTUALLY THE JAILER.

1 MR. BAILEY: EXCUSE ME?

2 JURY VENIRE MEMBER: HE WAS THE JAILER.

3 MR. BAILEY: RIGHT. I KNEW HIM -- KNOW  
4 HIM.

5 JURY VENIRE MEMBER: RIGHT.

6 MR. BAILEY: YOU UNDERSTAND ABOUT THE  
7 TWO-PART PROCESS THAT WE GO THROUGH HERE?

8 JURY VENIRE MEMBER: YES, SIR.

9 MR. BAILEY: THE FIRST PART IS THE GUILT  
10 PHASE JUST LIKE ANY OTHER CRIMINAL TRIAL WHERE THE  
11 JURY IS JUST THERE TO DETERMINE GUILT OR INNOCENCE.

12 JURY VENIRE MEMBER: YES, SIR.

13 MR. BAILEY: IF I'M UNABLE TO CONVINC  
14 THAT JURY BEYOND A REASONABLE DOUBT OF THE  
15 DEFENDANT'S GUILT, HE GOES HOME, IT'S OVER WITH.

16 JURY VENIRE MEMBER: YES, I DO.

17 MR. BAILEY: IF, ON THE OTHER HAND, I CAN  
18 CONVINC THE JURY OF THE DEFENDANT'S GUILT OF MURDER  
19 BEYOND A REASONABLE DOUBT, WE THEN MOVE INTO THE  
20 PENALTY PHASE.

21 JURY VENIRE MEMBER: I UNDERSTAND THAT,  
22 SIR.

23 MR. BAILEY: AND AT THAT POINT, THE JURY  
24 COULD HEAR ADDITIONAL TESTIMONY FROM BOTH SIDES TO  
25 HELP THEM DETERMINE THE APPROPRIATE PUNISHMENT,

1 EITHER LIFE IMPRISONMENT OR THE DEATH PENALTY.

2 JURY VENIRE MEMBER: YES, SIR.

3 MR. BAILEY: AND YOU UNDERSTAND THAT  
4 WHATEVER THE JURY DECIDES IN THAT PENALTY PHASE IS  
5 WHAT WILL HAPPEN. THE JURY SETS THE SENTENCE AND THE  
6 JUDGE REALLY HAS NO DISCRETION IN THAT MATTER.

7 JURY VENIRE MEMBER: UH-HUH. I  
8 UNDERSTAND.

9 MR. BAILEY: AND IF YOU WERE IN A CASE  
10 LIKE THIS IN THE PENALTY PHASE OF A DEATH PENALTY  
11 TRIAL, AND AFTER HEARING ALL OF THE EVIDENCE, YOU AND  
12 THE OTHER JURORS UNANIMOUSLY VOTED FOR THE DEATH  
13 PENALTY, IN ORDER FOR THAT PENALTY TO BE PUT INTO  
14 EFFECT ON THAT DEFENDANT, EACH JUROR WOULD BE  
15 REQUIRED TO SIGN THEIR NAMES TO A PIECE OF PAPER, A  
16 DEATH VERDICT FORM --

17 JURY VENIRE MEMBER: UH-HUH.

18 MR. BAILEY: -- WHICH WOULD RESULT IN THAT  
19 DEFENDANT'S EXECUTION. COULD YOU SIGN THAT PAPER IF  
20 THAT WAS YOUR DECISION?

21 JURY VENIRE MEMBER: IF WE REACH THAT  
22 POINT, I COULD, SIR.

23 MR. BAILEY: AND COULD YOU COME OUT IN  
24 OPEN COURT AND ANNOUNCE THAT DECISION IF IT WAS YOUR  
25 DECISION?

1 JURY VENIRE MEMBER: I COULD, SIR.

2 MR. BAILEY: IN THIS PARTICULAR CASE, THE  
3 DEFENDANT OBVIOUSLY IS A YOUNG BLACK MALE.

4 JURY VENIRE MEMBER: YES.

5 MR. BAILEY: THE EVIDENCE WOULD BE THAT  
6 THE VICTIM WAS A YOUNG WHITE MALE. WOULD THE  
7 DIFFERENCE IN THE RACES MAKE ANY DIFFERENCE TO YOU?

8 JURY VENIRE MEMBER: NO, IT WOULD NOT,  
9 SIR.

10 MR. BAILEY: AS FAR AS THE WAY YOU VIEWED  
11 THIS CASE?

12 JURY VENIRE MEMBER: NONE WHATSOEVER.

13 MR. BAILEY: IF WE HAD THE FLIP SIDE WHERE  
14 WE HAD A WHITE DEFENDANT AND A BLACK VICTIM, WOULD  
15 YOU LOOK AT IT THE SAME?

16 JURY VENIRE MEMBER: I WOULD NOT, SIR.

17 MR. BAILEY: RACE WOULD NOT BE A FACTOR?

18 JURY VENIRE MEMBER: RACE WILL NOT BE A  
19 FACTOR.

20 MR. BAILEY: ALL RIGHT, SIR. ALSO IN THIS  
21 CASE, THE DEFENDANT AT THIS TIME IS 18 YEARS OLD. AT  
22 THE TIME THE STATE ALLEGES HE COMMITTED THE MURDER,  
23 HE WAS 16. IF THE CASE WAS BAD ENOUGH, COULD YOU AS  
24 A JUROR IMPOSE THE DEATH PENALTY ON A PERSON WHO WAS  
25 16 AT THE TIME HE COMMITTED THE MURDER?

1 JURY VENIRE MEMBER: IF THE CASE IS BAD  
2 ENOUGH.

3 MR. BAILEY: ALL RIGHT, SIR. I BELIEVE  
4 THAT'S ALL I HAVE. I THANK YOU VERY MUCH.

5 THE COURT: ALL RIGHT.

6 MR. NEWSOME: DOES YOUR CHURCH HAVE A  
7 STATED POSITION ON HOW IT VIEWS THE DEATH PENALTY?

8 JURY VENIRE MEMBER: MY CHURCH DOES NOT,  
9 NO.

10 MR. NEWSOME: OKAY. YOU'VE NEVER PREACHED  
11 ON THIS IN THE PULPIT?

12 JURY VENIRE MEMBER: I CAN'T SAY NEVER. I  
13 MAY HAVE. I DON'T RECALL.

14 MR. NEWSOME: OKAY. WOULD IT NOT BE --  
15 ARE YOU SAYING YOU NEVER HAVE OR THAT YOU HAVE?

16 JURY VENIRE MEMBER: NO, SIR. I CAN'T  
17 SAY. I SAY THERE'S A POSSIBILITY. I DON'T RECALL  
18 EVER HAVING PREACHED ON IT.

19 MR. NEWSOME: DO YOU UNDERSTAND THAT AT  
20 THE CONCLUSION OF THE GUILT AND INNOCENCE PHASE,  
21 ASSUMING WE ALL GET THAT FAR, YOU ALL FIND THE  
22 DEFENDANT GUILTY, YOU WILL BE DECIDING WHETHER HE IS  
23 TO SERVE LIFE OR --

24 JURY VENIRE MEMBER: I UNDERSTAND THAT,  
25 SIR.

1 MR. NEWSOME: AND THERE WILL BE CERTAIN  
2 CIRCUMSTANCES OF AGGRAVATION THAT YOU WILL BE GIVEN  
3 BY LAW TO LOOK AT AND TO CONSIDER. YOU WILL HAVE TO  
4 MAKE A DETERMINATION. THERE WILL ALSO BE  
5 CIRCUMSTANCES IN MITIGATION THAT ARE STATUTORY THAT  
6 YOU ARE TO CONSIDER.

7 JURY VENIRE MEMBER: UH-HUH.

8 MR. NEWSOME: WOULD YOU LOOK AT ALL OF  
9 THOSE FACTORS BEFORE YOU DECIDED?

10 JURY VENIRE MEMBER: I CERTAINLY WOULD,  
11 SIR.

12 MR. NEWSOME: I ASK YOU THIS, SIR. IF IN  
13 YOUR OPINION, WHICHEVER IT WOULD BE, GUILT AND  
14 INNOCENCE PHASE OR IN THE PENALTY PHASE, IF YOUR  
15 VIEWS WERE DIFFERENT FROM THE MAJORITY OF THE JURY,  
16 COULD YOU FEEL STRONG ENOUGH ABOUT YOUR VIEWS TO HOLD  
17 OUT FOR WHATEVER IS RIGHT?

18 JURY VENIRE MEMBER: I THINK I COULD, SIR.

19 MR. NEWSOME: THANK YOU. I HAVE NO  
20 FURTHER QUESTIONS.

21 THE COURT: STEP OUTSIDE JUST A MOMENT,  
22 REVEREND, PLEASE.

23 (JUROR NUMBER 63 IS DISMISSED  
24 FROM THE COURTROOM.)

25 THE COURT: MR. BAILEY?

1 MR. BAILEY: QUALIFIED, YOUR HONOR.

2 MR. NEWSOME: HE'S QUALIFIED, YOUR HONOR.

3 (JUROR NUMBER 63 ENTERS THE  
4 COURTROOM.)

5 THE COURT: PASTOR, YOU HAVE BEEN SELECTED  
6 AS ONE OF THE 35 QUALIFIED JURORS. AND FROM THAT  
7 NUMBER TOMORROW AT 2:30, WE WILL BE SELECTING 12  
8 JURORS AND 2 ALTERNATES FOR A TOTAL OF 14. SO I  
9 RESPECTFULLY REQUEST THAT YOU REPORT BACK TOMORROW  
10 AFTERNOON AT 2:30 AT THE ANNEX RIGHT ACROSS THE  
11 STREET HERE. BRING WITH YOU SUCH PERSONAL EFFECTS AS  
12 YOU WILL NEED TO STAY IN THE MOTEL IN THE EVENT THAT  
13 YOU ARE SELECTED AS A JUROR.

14 JURY VENIRE MEMBER: OKAY.

15 THE COURT: ALL RIGHT? THANK YOU SO MUCH.

16 JURY VENIRE MEMBER: BE HERE AT 2:30?

17 THE COURT: 2:30 RIGHT ACROSS THE STREET.  
18 THANK YOU, SIR.

19 (JUROR NUMBER 63 IS DISMISSED  
20 FROM THE COURTROOM.)

21 (JUROR NUMBER 38, A WHITE  
22 FEMALE, ENTERS THE COURTROOM.)

23 THE CLERK: IF YOU WOULD, PLEASE, COME ON  
24 AROUND FRONT HERE AND PLEASE PLACE YOUR LEFT HAND ON  
25 THE BIBLE AND PLEASE RAISE YOUR RIGHT HAND. PLEASE

1 STATE YOUR NAME FOR THE RECORD.

2 JURY VENIRE MEMBER: DAITHY COLLINS.

3 (JUROR NUMBER 38, HAVING BEEN FIRST DULY SWORN  
4 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

5 THE CLERK: PLEASE COME AROUND AND HAVE A  
6 SEAT RIGHT THERE.

7 THE COURT: GOOD AFTERNOON, MS. COLLINS.

8 JURY VENIRE MEMBER: GOOD AFTERNOON.

9 THE COURT: MS. COLLINS, YESTERDAY, YOU  
10 INDICATED THAT YOU MAY HAVE READ OR HEARD ABOUT SOME  
11 ISSUE IN THE CASE. CAN YOU ELABORATE ON THAT FOR ME.

12 JURY VENIRE MEMBER: YES, SIR. IT WAS IN  
13 OUR PAPER AND I READ IT, BUT I DON'T REMEMBER MUCH  
14 ABOUT IT.

15 THE COURT: I SEE.

16 JURY VENIRE MEMBER: BECAUSE, YOU KNOW,  
17 IT'S BEEN A YEAR AGO. AND ALSO I NEED TO TELL YOU  
18 THIS. THE LITTLE GIRL, KELLY, SHE DID COME TO OUR  
19 CHURCH, BUT WE JUST PRAYED WITH HER. AND I -- YOU  
20 KNOW, I DON'T KNOW HER PERSONALLY OTHER THAN JUST  
21 SOMEONE COMING TO OUR CHURCH.

22 THE COURT: I SEE.

23 JURY VENIRE MEMBER: BUT I DID NEED TO  
24 TELL YOU THAT.

25 THE COURT: NO. I APPRECIATE IT VERY

1 MUCH.

2 JURY VENIRE MEMBER: BECAUSE YESTERDAY YOU  
3 ASKED IF THEY WERE A GOOD FRIEND OR IF THEY -- YOU  
4 DIDN'T SAY IF YOU KNEW THEM. YOU SAID IF THEY WERE A  
5 GOOD FRIEND OR IF YOU WERE KIN, AND I WASN'T A GOOD  
6 FRIEND AND I WASN'T KIN.

7 THE COURT: LET ME ASK YOU THIS. WOULD  
8 THAT RELATIONSHIP, IN YOUR VIEW, IMPAIR YOUR ABILITY  
9 TO BE A FAIR AND IMPARTIAL JUROR?

10 JURY VENIRE MEMBER: NO, SIR.

11 THE COURT: CAN YOU TELL ME THAT WHATEVER  
12 YOUR VERDICT WOULD BE, WOULD BE BASED ON THE LAW AND  
13 THE EVIDENCE IN THIS CASE?

14 JURY VENIRE MEMBER: YES, SIR. YES, SIR.

15 THE COURT: THIS STATE AND THIS DEFENDANT  
16 IS ENTITLED TO A FAIR, IMPARTIAL AND UNBIASED JURY.

17 JURY VENIRE MEMBER: YES.

18 THE COURT: A JURY WHO SAYS I WILL LISTEN  
19 TO THE LAW AND THE EVIDENCE AND I WILL BASE A VERDICT  
20 BASED ON WHAT I HEAR IN THIS COURTROOM AND FROM NO  
21 OTHER PLACE.

22 JURY VENIRE MEMBER: THAT'S CORRECT.

23 THE COURT: AND YOU CAN PROMISE ME THAT?

24 JURY VENIRE MEMBER: YES, SIR.

25 THE COURT: I THINK THAT YOU CAN TOO. YOU

1 WOULD UNDERSTAND THAT, AS I TOLD YOU YESTERDAY, THIS  
2 DEFENDANT IS CHARGED WITH MURDER. HE HAS PLED NOT  
3 GUILTY. IN THIS STATE, EVERYBODY IS PRESUMED  
4 INNOCENT UNTIL HIS PROOF HAS BEEN -- UNTIL HIS GUILT  
5 HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. YOU  
6 UNDERSTAND THAT?

7 JURY VENIRE MEMBER: YES, SIR.

8 THE COURT: THE MANNER -- WHERE THE STATE  
9 SEEKS THE PENALTY OF DEATH, AS THEY DO IN THIS CASE,  
10 OUR SYSTEM PROVIDES FOR TWO PARTS TO TRY HIM. THE  
11 FIRST PART IS TO DETERMINE THE GUILT OR INNOCENCE.  
12 THAT'S ALL WE'RE CONCERNED WITH. YOU UNDERSTAND  
13 THAT?

14 JURY VENIRE MEMBER: YES, SIR. I  
15 UNDERSTAND THAT.

16 THE COURT: AT THE END OF THE FIRST PART,  
17 IF THE JURY FINDS HIM NOT GUILTY, OBVIOUSLY, WE WOULD  
18 STOP THERE. IF -- AND THAT'S ADVISEDLY -- IF THE  
19 JURY FINDS HIM GUILTY OF MURDER WITH MALICE  
20 AFORETHOUGHT BEYOND A REASONABLE DOUBT, WE WOULD THEN  
21 GO INTO THE SECOND PART. DO YOU UNDERSTAND THAT?

22 JURY VENIRE MEMBER: YES, SIR.

23 THE COURT: ALL RIGHT. NOW, IN THE SECOND  
24 PART, YOU WOULD NOT BE CONCERNED WITH HIS GUILT OR  
25 INNOCENCE. YOU WOULD HAVE ALREADY FOUND THAT

1 UNANIMOUSLY. SO IN THE SECOND PART, THE QUESTION IS,  
2 WE THE JURY, HAVING FOUND THE DEFENDANT GUILTY OF  
3 MURDER, WHAT WILL THE SENTENCE BE, DEATH BY  
4 ELECTROCUTION OR LETHAL INJECTION OR LIFE  
5 IMPRISONMENT? DO YOU UNDERSTAND THAT?

6 JURY VENIRE MEMBER: YES, SIR.

7 THE COURT: IN THE SECOND PHASE, THERE  
8 WILL BE TESTIMONY BY THE STATE SUGGESTING THAT DEATH  
9 IS THE APPROPRIATE SENTENCE. WITH EQUAL IMPORTANCE,  
10 THERE WILL BE TESTIMONY BY THE DEFENSE SUGGESTING  
11 THAT THERE ARE MITIGATING CIRCUMSTANCES WHEREIN LIFE  
12 IMPRISONMENT WOULD BE THE APPROPRIATE SENTENCE. YOU  
13 UNDERSTAND THAT?

14 JURY VENIRE MEMBER: YES, SIR.

15 THE COURT: YOU WOULD LISTEN TO THAT  
16 TESTIMONY AND THEN MAKE YOUR DECISION?

17 JURY VENIRE MEMBER: YES, SIR.

18 THE COURT: NOW, NOBODY, INCLUDING ME, IS  
19 GOING TO ASK YOU WHAT YOUR DECISION IS BECAUSE  
20 OBVIOUSLY YOU HAVEN'T HEARD THE TESTIMONY AND YOU  
21 WOULD NOT HAVE HEARD IT.

22 JURY VENIRE MEMBER: NO, SIR.

23 THE COURT: BUT I AM PERMITTED TO ASK YOU  
24 THIS. THAT LETTER THAT YOU JUST READ SUGGESTS THREE  
25 DIFFERENT TYPES OF JURORS, ALL OF WHOM ARE RIGHT.

1 THERE ARE NO WRONG ANSWERS. THE FIRST TYPE SAYS THAT  
2 WHERE WE FOUND ONE GUILTY OF MURDER, I'LL ALWAYS  
3 IMPOSE THE PUNISHMENT OF DEATH. THE SECOND GROUP OF  
4 JURORS SAY THAT EVEN THOUGH WE FOUND HIM GUILTY OF  
5 MURDER, I CAN NEVER IMPOSE DEATH. THE THIRD GROUP  
6 SAYS I WILL LISTEN TO ALL OF THE FACTS AND THEN I  
7 WILL DECIDE WHETHER I WILL IMPOSE DEATH OR LIFE. I  
8 COULD DO EITHER ONE DEPENDING ON THE FACTS OF THE  
9 CASE. WOULD YOU BE ONE THAT SAYS ALWAYS, TWO NEVER,  
10 OR THREE, I'M GOING TO DECIDE AFTER THE FACTS?

11 JURY VENIRE MEMBER: NUMBER THREE, THAT I  
12 WOULD DECIDE AFTER I HEARD ALL OF THE FACTS OF THE  
13 CASE.

14 THE COURT: YOU COULD DO EITHER ONE?

15 JURY VENIRE MEMBER: YES, SIR.

16 THE COURT: DEPENDING ON --

17 JURY VENIRE MEMBER: WHATEVER -- WHATEVER  
18 WAS PRESENTED IN THE CASE.

19 THE COURT: OKAY.

20 MR. BAILEY: THANK YOU, YOUR HONOR. MS.  
21 COLLINS, YOU UNDERSTAND THAT WE WOULD NOT EVEN BE  
22 TALKING ABOUT THAT LIFE AND DEATH CHOICE UNLESS THE  
23 DEFENDANT HAD BEEN FOUND GUILTY OF MURDER IN THE  
24 FIRST PHASE.

25 JURY VENIRE MEMBER: I UNDERSTAND THAT,

1 SIR.

2 MR. BAILEY: SO EACH AND EVERY CASE WHERE  
3 WE'RE IN THE PENALTY PHASE, WE'RE DEALING WITH A  
4 CONVICTED MURDERER, AND YOU UNDERSTAND THAT WHATEVER  
5 THE JURY DECIDES SHOULD HAPPEN WILL HAPPEN. THE JURY  
6 IMPOSES THE SENTENCE AND NOT THE JUDGE.

7 JURY VENIRE MEMBER: YES, SIR.

8 MR. BAILEY: AND IF YOU WERE ON A JURY IN  
9 A CASE LIKE THIS AND WE GOT TO THE PENALTY PHASE AND  
10 YOU -- YOU AND THE OTHER JURORS HEARD ALL OF THAT  
11 ADDITIONAL TESTIMONY THAT CAME UP IN THE SECOND PART  
12 OF THE TRIAL AND DECIDED THAT OF THOSE TWO CHOICES,  
13 THE MOST APPROPRIATE PUNISHMENT FOR THAT PARTICULAR  
14 DEFENDANT AND THAT CRIME WAS THE DEATH PENALTY, EACH  
15 JUROR WOULD HAVE TO SIGN THEIR NAME TO A DEATH  
16 VERDICT FORM WHICH WOULD RESULT EVENTUALLY IN THAT  
17 DEFENDANT'S EXECUTION. COULD YOU SIGN A FORM LIKE  
18 THAT IF YOU HAD ALREADY VOTED FOR THE DEATH PENALTY?

19 JURY VENIRE MEMBER: YES, SIR, I COULD.

20 MR. BAILEY: COULD YOU COME OUT IN OPEN  
21 COURT AND ANNOUNCE THAT DECISION IF -- WHEN YOUR NAME  
22 IS CALLED UP ALONG WITH THE OTHER JURORS?

23 JURY VENIRE MEMBER: YES, SIR.

24 MR. BAILEY: OBVIOUSLY, IN THIS CASE, THE  
25 DEFENDANT'S A YOUNG BLACK MALE. THE EVIDENCE FROM

1 THE STATE WILL SHOW THAT THE VICTIM, ONE OF THE  
2 VICTIMS, WAS A YOUNG WHITE MALE WHO DIED. AND THERE  
3 WAS A YOUNG WHITE FEMALE WHO WAS SHOT AND DID NOT  
4 DIE. WOULD THE FACT THAT YOU'VE GOT A DIFFERENCE  
5 BETWEEN THE RACES IN THE VICTIM AND THE DEFENDANT  
6 ENTER INTO YOUR DELIBERATION IN ANY WAY?

7 JURY VENIRE MEMBER: NO, SIR.

8 MR. BAILEY: IF WE HAD THE OPPOSITE  
9 SITUATION WHERE YOU HAD A WHITE DEFENDANT AND A BLACK  
10 VICTIM, WOULD YOU LOOK AT IT THE SAME WAY?

11 JURY VENIRE MEMBER: YES, THE PREJUDICED  
12 -- I WOULD NOT BE PREJUDICED.

13 MR. BAILEY: ALL RIGHT. MS. COLLINS, IN  
14 THIS PARTICULAR CASE, THE DEFENDANT IS 18 YEARS OLD  
15 NOW. AND IN MARCH OF 1994 WHEN THE STATE ALLEGES  
16 THAT HE COMMITTED THIS MURDER, HE WAS 16. IF YOU  
17 WERE ON A JURY IN A DEATH PENALTY CASE AND THE CASE  
18 WAS BAD ENOUGH, COULD YOU IMPOSE THE DEATH PENALTY ON  
19 A PERSON WHO WAS 16 AT THE TIME HE COMMITTED THE  
20 MURDER?

21 JURY VENIRE MEMBER: YES, SIR.

22 MR. BAILEY: MS. COLLINS, THANK YOU VERY  
23 MUCH.

24 MR. NEWSOME: MS. COLLINS, YOU SAID KELLY  
25 OFTEN CAME TO YOUR CHURCH AND YOU ALL PRAYED WITH

1 HER?

2 JURY VENIRE MEMBER: YES, SIR.

3 MR. NEWSOME: WAS THIS AFTER?

4 JURY VENIRE MEMBER: THIS WAS AFTER IT  
5 HAPPENED, BUT SHE HAD ALREADY ALSO COME THERE BEFORE  
6 AND --

7 MR. NEWSOME: I UNDERSTAND.

8 JURY VENIRE MEMBER: SHE HAD VISITED OUR  
9 CHURCH. SHE WAS A YOUNG PERSON THAT WAS IN AND OUT  
10 WITH OUR KIDS THAT WERE AT THE CHURCH, AND WE JUST  
11 PRAYED WITH HER WHEN SHE WAS HURT.

12 MR. NEWSOME: AND YOU WERE PRAYING FOR HER  
13 HEALING AT THAT TIME?

14 JURY VENIRE MEMBER: YES, SIR, WE DID.

15 MR. NEWSOME: DO YOU THINK BEING INVOLVED  
16 WITH SUCH AN INTIMATE THING AS A PERSONAL PRAYER WITH  
17 SOMEBODY OVER AN INJURY WOULD MAKE IT DIFFICULT FOR  
18 YOU TO MAKE A DECISION ABOUT THE PERSON WHO WAS  
19 ACCUSED OF CAUSING THOSE INJURIES?

20 JURY VENIRE MEMBER: NO, SIR.

21 MR. NEWSOME: I HAVE NO FURTHER QUESTIONS.

22 (JUROR NUMBER 38 IS DISMISSED  
23 FROM THE COURTROOM.)

24 MR. BAILEY: QUALIFIED.

25 MR. NEWSOME: SHE'S QUALIFIED, YOUR HONOR.

1 THE COURT: OKAY.

2 (JUROR NUMBER 38 ENTERS THE  
3 COURTROOM.)

4 THE COURT: YOU HAVE BEEN SELECTED AS ONE  
5 OF THE 30 QUALIFIED -- 35 QUALIFIED JURORS. YOU  
6 HAVEN'T BEEN SELECTED ON THE JURY.

7 JURY VENIRE MEMBER: I KNOW.

8 THE COURT: BUT YOU ARE CERTAINLY  
9 QUALIFIED TO SERVE. WE ARE ASKING ALL OF THE 35  
10 QUALIFIED JURORS TO REPORT TOMORROW AFTERNOON IN THE  
11 JURY ROOM AT 2:30. FROM THAT NUMBER, WE WILL SELECT  
12 12 JURORS AND 2 ALTERNATES.

13 JURY VENIRE MEMBER: YES, SIR.

14 THE COURT: YOU MAY OR MAY NOT BE CHOSEN,  
15 BUT YOU ARE CERTAINLY QUALIFIED. SO I'M GOING TO ASK  
16 THAT YOU BRING YOUR PERSONAL EFFECTS WITH YOU  
17 TOMORROW SUCH THAT YOU CAN STAY WITH US IF YOU ARE  
18 SELECTED.

19 JURY VENIRE MEMBER: OKAY.

20 THE COURT: DO YOU HAVE ANY QUESTIONS?

21 JURY VENIRE MEMBER: NO, SIR. ONLY ONE.

22 THE COURT: WHAT IS THAT?

23 JURY VENIRE MEMBER: IF WE WOULD HAVE TO  
24 ROOM WITH SOMEONE. IF I AM CHOSEN, WOULD I HAVE -- I  
25 WOULDN'T HAVE TO HAVE SMOKING IN MY ROOM, WOULD I?

1 THE COURT: YOU ROOM BY YOURSELF OR WITH  
2 SOMEBODY.

3 JURY VENIRE MEMBER: OKAY.

4 THE COURT: I TELL YOU THAT. DON'T YOU  
5 WORRY ABOUT IT.

6 JURY VENIRE MEMBER: BECAUSE THAT'S KIND  
7 OF HARD TO DEAL WITH FOR A GOOD WHILE.

8 THE COURT: DON'T YOU WORRY ABOUT IT.  
9 WE'LL TAKE GOOD CARE OF YOU. THERE WILL BE FEMALE  
10 PEOPLE OF SLED HERE AND MALE, AND YOU TELL THEM WHAT  
11 YOU WANT, WHAT KIND OF ACCOMMODATIONS AND WHAT YOU  
12 WANT TO EAT, AND IF YOU ARE SELECTED, YOU PICK THE  
13 BEST MEAL IN THE HOUSE. AND SEND ME THE BILL SO I  
14 CAN SEND IT TO CALHOUN COUNTY. SEE YOU TOMORROW AT  
15 2:30.

16 (JUROR NUMBER 38 IS DISMISSED  
17 FROM THE COURTROOM.)

18 THE COURT: MAKE SURE SHE UNDERSTANDS  
19 2:30, NOW.

20 MR. NEWSOME: CAN WE TAKE A BREAK AT THIS  
21 TIME, YOUR HONOR?

22 THE COURT: YES, SIR. WE'LL TAKE A SHORT  
23 ONE.

24 (WHEREUPON, A BREAK WAS TAKEN  
25 FROM THE PROCEEDINGS.)

1 (JUROR NUMBER 187, A BLACK  
2 MALE, ENTERS THE COURTROOM.)

3 THE CLERK: PLEASE STATE YOUR NAME FOR THE  
4 RECORD.

5 JURY VENIRE MEMBER: CALVIN MURPH.

6 (JUROR NUMBER 187, HAVING BEEN FIRST DULY SWORN  
7 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

8 THE CLERK: COME ON AROUND THERE AND HAVE  
9 A SEAT.

10 THE COURT: GOOD AFTERNOON, MR. MURPH.

11 JURY VENIRE MEMBER: HOW ARE YOU DOING,  
12 SIR?

13 THE COURT: HOW ARE YOU DOING?

14 JURY VENIRE MEMBER: OKAY.

15 THE COURT: MR. MURPHY, I NOTE HERE FROM  
16 YOUR RETURN THAT YOU SENT THAT YOU ARE A TRUCK  
17 DRIVER; IS THAT CORRECT?

18 JURY VENIRE MEMBER: YES, SIR.

19 THE COURT: YOU WORK FOR MURPHY TRANSPORT?

20 JURY VENIRE MEMBER: YES, SIR.

21 THE COURT: YOU'RE GOING TO HAVE TO TALK A  
22 LITTLE LOUDER SO WE CAN ALL HEAR YOU.

23 JURY VENIRE MEMBER: YES, SIR.

24 THE COURT: OKAY. YOU GRADUATED FROM HIGH  
25 SCHOOL IN QUEENS, NEW YORK; IS THAT CORRECT?

1 JURY VENIRE MEMBER: YES, SIR.

2 THE COURT: ALL RIGHT. NOW, HAVE YOU HAD  
3 A CHANCE TO READ THAT STATEMENT OR THAT LETTER THAT I  
4 PUT OUT THERE A WHILE AGO?

5 JURY VENIRE MEMBER: YES, SIR.

6 THE COURT: DO YOU UNDERSTAND -- AND LET  
7 ME GO THROUGH THIS WITH YOU VERY CAREFULLY. DO YOU  
8 UNDERSTAND THAT THIS YOUNG MAN HERE, MR. HUGHES, IS  
9 CHARGED WITH THE OFFENSES OF BURGLARY AND MURDER?

10 JURY VENIRE MEMBER: YES, SIR.

11 THE COURT: DO YOU UNDERSTAND THAT? IS  
12 THERE ANY QUESTION?

13 JURY VENIRE MEMBER: NO.

14 THE COURT: OKAY. NOW, DO YOU UNDERSTAND  
15 THE PROCEDURE THAT WE WOULD GO THROUGH IN THE TRIAL  
16 OF THIS CASE? YOU KNOW, I TALKED TO YOU YESTERDAY  
17 ABOUT A TWO-PART TRIAL?

18 JURY VENIRE MEMBER: YES, SIR.

19 THE COURT: YOU UNDERSTAND WHAT I'M  
20 SAYING?

21 JURY VENIRE MEMBER: I UNDERSTAND.

22 THE COURT: OKAY. IF YOU WERE ON THE  
23 JURY, THE FIRST PART OF THE TRIAL WOULD BE TO DECIDE  
24 WHETHER HE'S INNOCENT OR GUILTY. DO YOU UNDERSTAND  
25 THAT?

1 JURY VENIRE MEMBER: YES, SIR.

2 THE COURT: NOW, IF THE JURY FOUND HIM NO  
3 GUILTY, YOU WOULD STOP RIGHT THERE. IF THE JURY  
4 FOUND HIM GUILTY BEYOND A REASONABLE DOUBT, YOU WOULD  
5 THEN CONSIDER THE SENTENCING OR THE PUNISHMENT. DO  
6 YOU UNDERSTAND THAT?

7 JURY VENIRE MEMBER: YES, SIR. I  
8 UNDERSTAND THAT TOO.

9 THE COURT: HAVE YOU READ THAT LETTER OUT  
10 THERE?

11 JURY VENIRE MEMBER: YEAH, I READ IT.

12 THE COURT: THAT DESCRIBES THREE TYPES OF  
13 JURORS, AND I WANT YOU TO HONESTLY TELL ME WHICH TYPE  
14 YOU ARE. THERE'S NO RIGHT OR WRONG ANSWER, NOW.  
15 EVERYBODY HAS THEIR VIEW ON IT. YOU UNDERSTAND?

16 JURY VENIRE MEMBER: RIGHT.

17 THE COURT: THERE'S ONE GROUP OF JURORS  
18 THAT SAY, WELL, WHERE WE HAVE CONVICTED SOMEBODY OF  
19 MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY. THE  
20 SECOND GROUP SAYS I CAN NEVER BE FOR THE DEATH  
21 PENALTY. THE THIRD GROUP SAYS, WELL, I WILL LISTEN  
22 TO THE EVIDENCE AND I WILL THEN DECIDE -- I CAN BE  
23 FOR THE DEATH PENALTY, BUT I COULD BE FOR LIFE  
24 IMPRISONMENT. WOULD YOU BE IN THE GROUP THAT SAYS I  
25 WILL ALWAYS BE FOR THE DEATH PENALTY OR I CAN NEVER

1 BE FOR THE DEATH PENALTY OR IT WOULD DEPEND? WHICH  
2 WOULD YOU BE?

3 JURY VENIRE MEMBER: WELL, I COULDN'T BE  
4 FOR THE --

5 THE COURT: PARDON ME?

6 JURY VENIRE MEMBER: I COULD NOT BE FOR  
7 THE DEATH PENALTY.

8 THE COURT: YOU CAN'T BE FOR THE DEATH  
9 PENALTY?

10 JURY VENIRE MEMBER: NO.

11 THE COURT: NO MATTER HOW BAD IT IS, YOU  
12 JUST FEEL LIKE YOU CAN'T DO THAT?

13 JURY VENIRE MEMBER: THAT'S RIGHT.

14 THE COURT: OKAY.

15 MR. BAILEY: THANK YOU, YOUR HONOR. MR.  
16 MURPH, I JUST HAVE A COUPLE OF QUESTIONS. AND LIKE  
17 THE JUDGE SAID, THERE ARE NO RIGHT OR WRONG ANSWERS.  
18 WE JUST NEED TO KNOW HOW YOU FEEL.

19 AS I UNDERSTAND, YOU TOLD THE JUDGE YOU'RE ONE  
20 OF THOSE JURORS THAT DOESN'T BELIEVE IN THE DEATH  
21 PENALTY NO MATTER HOW BAD THE CASE IS, NO MATTER HOW  
22 BAD THE DEFENDANT IS; IS THAT CORRECT?

23 JURY VENIRE MEMBER: THAT'S CORRECT.

24 MR. BAILEY: WOULD YOU CONSIDER IT IN ANY  
25 CASE?

1 JURY VENIRE MEMBER: NO. I JUST DON'T  
2 BELIEVE IN THAT.

3 MR. BAILEY: SO YOU WOULD NEVER IMPOSE THE  
4 DEATH PENALTY ON ANOTHER HUMAN BEING?

5 JURY VENIRE MEMBER: NO.

6 MR. BAILEY: THANK YOU.

7 MR. NEWSOME: MR. MURPH, I PROBABLY ONLY  
8 HAVE ONE OR TWO QUESTIONS. I THINK YOU STATED YOUR  
9 POSITION CLEARLY. IT'S NOT WHETHER YOU WOULD OR NOT  
10 GIVE THE DEATH PENALTY IN A PARTICULAR CASE, IT'S  
11 WHETHER YOU -- IT'S WHETHER YOU COULD POSSIBLY.

12 JURY VENIRE MEMBER: I'M GOING TO TELL YOU  
13 THE TRUTH. I -- I MEAN, I'M A CHURCH-GOING PERSON.

14 MR. NEWSOME: YES, SIR.

15 JURY VENIRE MEMBER: AND I JUST DON'T  
16 BELIEVE IN THAT.

17 MR. NEWSOME: YOU DON'T BELIEVE IN THE  
18 DEATH PENALTY IN ANY CIRCUMSTANCE?

19 JURY VENIRE MEMBER: SEE, I READ MY BIBLE,  
20 AND THAT'S WHAT MY BIBLE TELLS ME.

21 MR. NEWSOME: ALL RIGHT. I RESPECT THAT,  
22 SIR. THANK YOU.

23 THE COURT: PLEASE STEP OUTSIDE JUST A  
24 MOMENT.

25 (JUROR NUMBER 187 IS DISMISSED

1 FROM THE COURTROOM.)

2 THE COURT: WHAT SAYS THE STATE?

3 MR. BAILEY: NOT QUALIFIED.

4 THE COURT: WHAT SAYS THE DEFENDANT?

5 MR. NEWSOME: NOT QUALIFIED, YOUR HONOR.

6 (JUROR NUMBER 187 ENTERS THE

7 COURTROOM.)

8 THE COURT: MR. JUROR, I AND THE ATTORNEYS

9 APPRECIATE YOUR HEARTFELT POSITION ON THIS MATTER.

10 YOU UNDERSTAND THAT?

11 JURY VENIRE MEMBER: YEAH.

12 THE COURT: THERE'S NO RIGHT OR WRONG

13 ANSWERS. A LOT OF PEOPLE FEEL AS DO YOU; SOME PEOPLE

14 FEEL IN THE OTHER WAY. SO DON'T BE WORRIED ABOUT

15 THAT. YOUR REASONING IS JUST AS GOOD AS MINE OR

16 ANYBODY ELSE'S. I AM GOING TO EXCUSE YOU FROM

17 FURTHER PARTICIPATION IN THIS TRIAL. AND I KNOW THAT

18 WILL BE A RELIEF TO YOU, WON'T IT?

19 JURY VENIRE MEMBER: YEAH, I GUESS IT

20 WOULD.

21 THE COURT: SO YOU ARE EXCUSED.

22 JURY VENIRE MEMBER: ALL RIGHT. THANK

23 YOU, SIR.

24 (JUROR NUMBER 187 IS DISMISSED

25 FROM THE COURTROOM.)

1 THE COURT: BEFORE WE GO, I ASKED THE  
2 DEPUTY. HE MADE INQUIRY, AND AS WE THOUGHT, THERE  
3 WAS ABSOLUTELY NOTHING TO THAT. HE TOLD YOU THAT,  
4 DIDN'T HE?

5 MR. NEWSOME: YES, SIR, HE TOLD ME.

6 THE COURT: I MEAN, I KNEW THERE WASN'T  
7 ANYTHING TO THAT, JUST IDLE SCUTTLEBUTT, SOMEBODY  
8 TALKING ABOUT SOMETHING THEY DIDN'T KNOW ANYTHING  
9 ABOUT. AND THERE'S NO SUGGESTION OR INFERENCE OF ANY  
10 KIND THAT ANYTHING CLOSE LIKE THAT HAPPENED, AND I  
11 DON'T THINK IT DID ANYWAY.

12 MR. BAILEY: MY UNDERSTANDING WAS THIS WAS  
13 AN INCIDENT THAT OCCURRED LIKE FIVE YEARS AGO AND  
14 THAT SOMEBODY WAS SPECULATING ABOUT THAT.

15 THE COURT: CORRECT. THAT'S RIGHT. IT'S  
16 TWO SISTERS THAT WAS SPECULATING BECAUSE SOMETHING  
17 HAPPENED FIVE YEARS AGO, SAID IT MIGHT OCCUR AGAIN,  
18 AND THERE'S JUST ABSOLUTELY NOTHING TO IT.

19 MR. NEWSOME: AND JUST AGAIN, FOR THE  
20 RECORD, THE DEPUTY POINTED OUT THAT IT APPARENTLY WAS  
21 REMARKS THAT HAD NOTHING TO DO WITH A TRIAL THAT  
22 OCCURRED FIVE YEARS AGO EITHER. THERE'S ABSOLUTELY  
23 NO CONNECTION AT ALL.

24 THE COURT: I UNDERSTAND. ALL RIGHT.  
25 BRING THE NEXT ONE IN, PLEASE.

1 (JUROR NUMBER 115, A WHITE  
2 FEMALE, ENTERS THE COURTROOM.)

3 THE CLERK: PLEASE PLACE YOUR LEFT HAND ON  
4 THE BIBLE. PLEASE RAISE YOUR RIGHT HAND. PLEASE  
5 STATE YOUR NAME FOR THE RECORD.

6 JURY VENIRE MEMBER: GWEN INABINET.

7 (JUROR NUMBER 115, HAVING BEEN FIRST DULY SWORN  
8 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

9 THE CLERK: PLEASE COME AROUND AND HAVE A  
10 SEAT HERE.

11 THE COURT: GOOD AFTERNOON, MS. INABINET.

12 JURY VENIRE MEMBER: GOOD AFTERNOON.

13 THE COURT: I APOLOGIZE FOR KEEPING YOU  
14 BACK THERE. THIS IS JUST A SLOW PROCESS.

15 JURY VENIRE MEMBER: THAT'S ALL RIGHT.

16 THE COURT: AS YOU WOULD UNDERSTAND IN  
17 THIS CASE, HERMAN HUGHES, THE DEFENDANT, IS CHARGED  
18 WITH MURDER, AND THE STATE SEEKS UPON HIS CONVICTION,  
19 IF THEY CAN CONVICT HIM, A PENALTY OF THE SENTENCE OF  
20 DEATH. NOW, THERE WOULD BE POSSIBLY TWO TRIALS, AS I  
21 INDICATED YESTERDAY. WHERE THE STATE SEEKS THE DEATH  
22 PENALTY, THE FIRST PART OF A TRIAL IS THE INNOCENCE  
23 OR GUILT. IF THE JURY FINDS HIM INNOCENT, WE STOP  
24 THERE. IF -- AND THAT'S ADVISEDLY -- IF THE JURY  
25 FINDS HIM GUILTY BEYOND A REASONABLE DOUBT OF MURDER

1 WITH MALICE AFORETHOUGHT, THEN AND ONLY THEN, YOU  
2 WOULD GO TO THE SECOND PHASE, WHICH IS THE SENTENCING  
3 PHASE. DO YOU UNDERSTAND THAT THUS FAR?

4 JURY VENIRE MEMBER: YES.

5 THE COURT: NOW, IN THE SENTENCING PHASE,  
6 THE JURY WILL HAVE TO DECIDE THE PUNISHMENT, EITHER  
7 DEATH BY ELECTROCUTION OR LETHAL INJECTION OR LIFE  
8 IMPRISONMENT. IN THAT SENTENCING PHASE, THE STATE  
9 WILL BE INTRODUCING EVIDENCE WHICH THEY SAY SUGGESTS  
10 THAT THE PROPER PUNISHMENT IS DEATH. THE DEFENDANT,  
11 EQUALLY, WILL BE INTRODUCING TESTIMONY FOR YOUR  
12 CONSIDERATION THAT EVEN THOUGH THERE HAS BEEN A  
13 MURDER COMMITTED, THE PROPER SENTENCE UNDER ALL OF  
14 THE CIRCUMSTANCES IS LIFE IMPRISONMENT. YOU  
15 UNDERSTAND THAT?

16 JURY VENIRE MEMBER: YES.

17 THE COURT: NOW, AS THAT DOCUMENT THAT YOU  
18 JUST READ INDICATES, WHEN CONFRONTED WITH AN ISSUE OF  
19 THIS KIND -- AND IT IS A SERIOUS ISSUE. YOU WOULD  
20 UNDERSTAND THAT?

21 JURY VENIRE MEMBER: YES, SIR.

22 THE COURT: THERE ARE THREE TYPES OF  
23 JURORS. NOW, NOBODY WOULD DARE ASK YOU WHAT YOU ARE  
24 GOING TO DO BECAUSE YOU HAVEN'T HEARD THE FACTS. WE  
25 ARE PERMITTED TO ASK YOU WHICH CLASSIFICATION YOU

1 THINK YOU MIGHT COME IN. THE FIRST CLASSIFICATION  
2 SAYS HAVING CONVICTED THIS INDIVIDUAL OF MURDER, I'LL  
3 ALWAYS IMPOSE THE DEATH PENALTY. THERE'S A SECOND  
4 GROUP OF PEOPLE -- AND THERE'S NO RIGHT OR WRONG  
5 ANSWERS. THE SECOND GROUP WHO SAYS EVEN THOUGH ONE  
6 HAS BEEN CONVICTED BEYOND A REASONABLE DOUBT OF  
7 MURDER, I CAN NEVER IMPOSE THE DEATH PENALTY. THERE  
8 IS A THIRD GROUP WHO SAY WE HAVE NOW CONVICTED HIM OF  
9 MURDER, BUT I WANT TO LISTEN TO OTHER AGGRAVATING AND  
10 MITIGATING CIRCUMSTANCES. I WANT TO CONSIDER  
11 EVERYTHING AND THEN I WILL DECIDE WHETHER OR NOT  
12 DEATH OR LIFE IMPRISONMENT IS THE APPROPRIATE  
13 SENTENCE.

14 CAN YOU TELL US -- I'M NOT ASKING YOU FOR A  
15 MOMENT WHAT YOU WOULD DO. BUT CAN YOU TELL US  
16 WHETHER OR NOT YOU WOULD FALL IN GROUP ONE WHICH SAYS  
17 ALWAYS THE DEATH PENALTY, TWO WHICH SAID NEVER, OR  
18 THREE WHICH SAYS IT WOULD DEPENDING ON THE FACTS IN  
19 THE CASE. WHICH WOULD YOU BE?

20 JURY VENIRE MEMBER: THE THIRD ONE.

21 THE COURT: THE THIRD ONE. ALL RIGHT.

22 THANK YOU.

23 MR. BAILEY: I'M WALTER BAILEY. I WANT TO  
24 ASK YOU A FEW MORE QUESTIONS. AND YOU UNDERSTAND  
25 FROM WHAT JUDGE COTTINGHAM TOLD YOU, WE WOULDN'T EVEN

1 BE TALKING ABOUT THE PUNISHMENT UNLESS THE DEFENDANT  
2 HAD BEEN FOUND GUILTY OF MURDER IN THE FIRST PART OF  
3 THE TRIAL, BECAUSE IF HE'S FOUND NOT GUILTY, HE GOES  
4 HOME, AND THAT'S THE END OF IT. SO ANY TIME WE'RE IN  
5 THE PENALTY PHASE, WE'RE DEALING WITH A CONVICTED  
6 MURDERER. AND IN SOUTH CAROLINA, THE JURY DECIDES  
7 WHAT THE PUNISHMENT IS, NOT THE JUDGE. AND IF THE  
8 JURY DECIDES ON LIFE IMPRISONMENT, THAT WOULD BE THE  
9 JUDGE'S SENTENCE. IF THE JURY DECIDES ON THE DEATH  
10 PENALTY, THEN THAT DEFENDANT WOULD BE PUT TO DEATH.

11 NOW, IF YOU WERE ON A JURY IN A CASE LIKE THIS  
12 AND WE REACHED THAT SECOND STAGE, AND AFTER HEARING  
13 ALL OF THE TESTIMONY IN BOTH PHASES OF THE TRIAL, YOU  
14 AND THE OTHER JURORS DECIDED BETWEEN THOSE TWO  
15 CHOICES THAT THAT DEFENDANT SHOULD BE SENTENCED TO  
16 DEATH, THEN EACH JUROR WOULD HAVE TO SIGN THEIR NAME  
17 TO A DEATH VERDICT FORM WHICH WOULD EVENTUALLY RESULT  
18 IN THAT DEFENDANT'S EXECUTION. COULD YOU SIGN YOUR  
19 NAME TO A PAPER LIKE THAT KNOWING THAT IT WOULD  
20 RESULT IN AN EXECUTION AT SOME POINT?

21 JURY VENIRE MEMBER: NO.

22 MR. BAILEY: YOU COULD NOT SIGN?

23 JURY VENIRE MEMBER: NO.

24 MR. BAILEY: SO EVEN THOUGH YOU COULD VOTE  
25 FOR THE DEATH PENALTY, YOU COULDN'T SIGN A PAPER

1 KNOWING THAT WOULD RESULT IN THE EXECUTION?

2 JURY VENIRE MEMBER: NO.

3 MR. BAILEY: WOULD YOU THEN BE MORE OF A  
4 NUMBER TWO JUROR THAN A NUMBER THREE JUROR? THE  
5 NUMBER TWO JUROR IS THE JUROR THAT WOULD ALWAYS VOTE  
6 FOR LIFE IMPRISONMENT.

7 JURY VENIRE MEMBER: YES, I THINK.

8 MR. BAILEY: AND I REALIZE THIS IS KIND OF  
9 NEW TO MOST PEOPLE, BUT IS THE DEATH PENALTY  
10 SOMETHING YOU'VE EVER THOUGHT ABOUT IN THE PAST IN  
11 GENERAL BEFORE YOU FOUND OUT THAT YOU MIGHT BE ON A  
12 JURY LIKE THIS?

13 JURY VENIRE MEMBER: NO. I NEVER THOUGHT  
14 ABOUT IT A WHOLE LOT.

15 MR. BAILEY: OKAY. BUT NOW THAT YOU'VE  
16 HAD A CHANCE TO REALLY THINK ABOUT THE CONSEQUENCES  
17 OF WHAT A JURY DOES IN A DEATH PENALTY TRIAL, YOU ARE  
18 PRETTY WELL THE NUMBER TWO TYPE JUROR?

19 JURY VENIRE MEMBER: I THINK SO.

20 MR. BAILEY: THAT WOULD ALWAYS COME BACK  
21 WITH A LIFE SENTENCE?

22 JURY VENIRE MEMBER: UH-HUH. UH-HUH.

23 MR. BAILEY: ALL RIGHT. THAT'S ALL I HAVE  
24 RIGHT NOW. THANK YOU VERY MUCH.

25 MR. NEWSOME: YOU UNDERSTAND WE ARE NOT

1 ASKING YOU WHAT YOU WOULD DO IN ANY ONE PARTICULAR  
2 CASE, WHETHER THIS ONE OR ANOTHER ONE. THE  
3 INFORMATION WE NEED TO KNOW IS WHETHER IT IS POSSIBLE  
4 THAT YOU COULD GIVE A DEATH SENTENCE.

5 JURY VENIRE MEMBER: I DON'T THINK SO.

6 MR. NEWSOME: OKAY. I HAVE NO FURTHER  
7 QUESTIONS.

8 THE COURT: WHAT WAS THAT QUESTION?

9 MR. NEWSOME: I ASKED HER IF IT WAS  
10 POSSIBLE THAT SHE COULD GIVE A DEATH SENTENCE AND SHE  
11 SAID SHE DIDN'T THINK SO.

12 THE COURT: PLEASE STEP OUTSIDE.

13 JURY VENIRE MEMBER: STEP OUTSIDE? OKAY.

14 (JUROR NUMBER 115 IS DISMISSED  
15 FROM THE COURTROOM.)

16 MR. BAILEY: NOT QUALIFIED, YOUR HONOR.

17 MR. NEWSOME: NOT QUALIFIED.

18 (JUROR NUMBER 115 ENTERS THE  
19 COURTROOM.)

20 THE COURT: WE WANT TO THANK YOU FOR YOUR  
21 ATTENDANCE HERE THIS AFTERNOON. I WILL EXCUSE YOU  
22 FROM FURTHER PARTICIPATION. THANK YOU SO MUCH.

23 JURY VENIRE MEMBER: THANK YOU.

24 (JUROR NUMBER 115 IS DISMISSED  
25 FROM THE COURTROOM.)

1 (JUROR NUMBER 261, A WHITE  
2 MALE, ENTERS THE COURTROOM.)

3 THE CLERK: PLEASE PLACE YOUR LEFT HAND ON  
4 THE BIBLE AND RAISE YOUR RIGHT HAND AND STATE YOUR  
5 NAME FOR THE RECORD.

6 JURY VENIRE MEMBER: JOHN W. SWICEGOOD,  
7 III.

8 (JUROR NUMBER 261, HAVING BEEN FIRST DULY SWORN  
9 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

10 THE CLERK: PLEASE COME AND HAVE A SEAT  
11 AROUND HERE.

12 THE COURT: GOOD AFTERNOON, SIR.

13 JURY VENIRE MEMBER: HOW ARE YOU DOING?

14 THE COURT: FINE. WE WANT TO ASK YOU A  
15 FEW QUESTIONS, IF WE CAN. WE WOULD NEVER INVADE YOUR  
16 PRIVACY. AS YOU UNDERSTAND IN THIS CASE, THE  
17 DEFENDANT IS CHARGED WITH MURDER. YOU UNDERSTAND  
18 THAT?

19 JURY VENIRE MEMBER: YES, SIR.

20 THE COURT: THE STATE, IF THEY CONVICT  
21 HIM, SEEKS THE PENALTY OF DEATH. NOW, IN THIS CASE,  
22 THE FIRST CONSIDERATION FOR THE JURY WOULD BE TO  
23 DECIDE WHETHER OR NOT THE DEFENDANT HUGHES IS GUILTY  
24 OF MURDER. YOU UNDERSTAND THAT?

25 JURY VENIRE MEMBER: YES, SIR.

1 THE COURT: IF THEY FOUND HIM NOT GUILTY,  
2 WE STOP RIGHT THERE. IF THE JURY FINDS HIM GUILTY OF  
3 MURDER WITH MALICE AFORETHOUGHT BEYOND A REASONABLE  
4 DOUBT, AND THAT'S IF, THEN AND ONLY THEN WOULD THE  
5 JURY CONSIDER THE APPROPRIATE PUNISHMENT. DO YOU  
6 UNDERSTAND THAT?

7 JURY VENIRE MEMBER: YES.

8 THE COURT: AT THAT STAGE, THE JURY'S  
9 CONSIDERATION WOULD BE AS FOLLOWS: WE THE JURY  
10 HAVING FOUND THE DEFENDANT GUILTY OF MURDER SHALL BY  
11 WAY OF PUNISHMENT WE IMPOSE THE SENTENCE OF DEATH OR  
12 LIFE IMPRISONMENT? DO YOU UNDERSTAND THAT?

13 JURY VENIRE MEMBER: YES.

14 THE COURT: IN CONSIDERING THAT, THERE  
15 WILL BE EVIDENCE INTRODUCED BY THE STATE WHERE THEY  
16 THEN SUGGEST THAT HE SHOULD GET THE DEATH SENTENCE.  
17 EQUALLY IMPORTANT, THE DEFENDANT AND HIS ATTORNEY  
18 MANY BE INTRODUCING EVIDENCE TO INDICATE THAT THOUGH  
19 MURDER HAS BEEN COMMITTED, THE APPROPRIATE SENTENCE  
20 IS LIFE IMPRISONMENT. YOU UNDERSTAND THAT?

21 JURY VENIRE MEMBER: YES.

22 THE COURT: NOW, IN CONSIDERATION OF THE  
23 PROPER PUNISHMENT, GENERALLY, PEOPLE FALL INTO ONE OF  
24 THREE GROUPS AS THAT DOCUMENT SUGGESTS. AND THERE'S  
25 NO RIGHT OR WRONG ANSWERS HERE. NOW, REMEMBER,

1 NOBODY IS GOING TO ASK YOU WHAT YOU WOULD DO. THEY  
2 ARE NOT ENTITLED TO DO THAT. YOU HAVEN'T HEARD THE  
3 TESTIMONY OR THE EVIDENCE. WE WANT TO KNOW, THOUGH,  
4 WHICH GROUP WOULD YOU BE IN, FIRST, SECOND OR THIRD?  
5 DO YOU REMEMBER THE GROUPS? I'LL DESCRIBE THEM FOR  
6 YOU.

7 JURY VENIRE MEMBER: I REMEMBER THEM.

8 THE COURT: WHICH GROUP WOULD YOU BE IN?

9 JURY VENIRE MEMBER: I WOULD HAVE TO SAY  
10 THE THIRD.

11 THE COURT: WHAT IS YOUR DEFINITION OF THE  
12 THIRD, PLEASE?

13 JURY VENIRE MEMBER: I WOULD BASICALLY  
14 HAVE TO HEAR ABOUT MR. HUGHES' LIFE, WHAT HE'S DONE  
15 IN HIS LIFE, IS THERE A CHANCE THAT, YOU KNOW, HE  
16 COULD MAYBE TURN HIS LIFE AROUND, ALBEIT STILL IN  
17 JAIL FOR LIFE, OR WHATEVER, YOU KNOW. I DON'T -- I  
18 DON'T THINK I COULD -- I COULD FALL IN ONE OF THE  
19 FIRST TWO, SO THE THIRD WOULD HAVE TO BE MY --

20 THE COURT: YOU'RE ARE WILLING TO CONSIDER  
21 BOTH PROSPECTS BASED ON THE LAW?

22 JURY VENIRE MEMBER: YES.

23 THE COURT: AND YOU REALIZE NOBODY IS  
24 ASKING YOU WHAT YOU WOULD DO?

25 JURY VENIRE MEMBER: YES.

1 THE COURT: YES, SIR.

2 MR. BAILEY: THANK YOU, YOUR HONOR. MR.  
3 SWICEGOOD, I'M WALTER BAILEY, THE SOLICITOR. I WANT  
4 TO ASK YOU A FEW IMPORTANT QUESTIONS. I NOTICE IN  
5 YOUR QUESTIONNAIRE THAT YOU'VE HAD SOME CRIMINAL JURY  
6 SERVICE BACK IN 1986.

7 JURY VENIRE MEMBER: YES, SIR.

8 MR. BAILEY: WAS THAT HERE OR IN  
9 DORCHESTER COUNTY?

10 JURY VENIRE MEMBER: ORANGEBURG COUNTY.

11 MR. BAILEY: ORANGEBURG COUNTY. OKAY.  
12 AND DO YOU RECALL WHAT KIND OF CASE THAT WAS THAT YOU  
13 SAT ON?

14 JURY VENIRE MEMBER: IT WAS SOME -- SOME  
15 TYPE OF ASSAULT -- I THINK ASSAULT AND BATTERY OR  
16 SOMETHING -- SOMETHING ALONG THAT LINE.

17 MR. BAILEY: OKAY. WELL, THE FIRST PART  
18 OF THIS TRIAL WILL BE BASICALLY LIKE THAT TRIAL YOU  
19 SAT ON OR ANY OTHER TRIAL. THE JURY IS JUST HERE TO  
20 DETERMINE GUILT OR INNOCENCE. IF I CAN'T CONVINC  
21 THE JURY BEYOND A REASONABLE DOUBT OF THE DEFENDANT'S  
22 GUILT, THAT'S THE END OF IT. BUT ON THE OTHER HAND,  
23 IF I CAN CONVINC THE JURY BEYOND A REASONABLE DOUBT  
24 THAT THE DEFENDANT IS GUILTY OF MURDER, WE THEN GO  
25 INTO THE PENALTY PHASE. SO WE WOULD NEVER EVEN GET

1 INTO THE PENALTY PHASE UNLESS WE WERE DEALING WITH A  
2 CONVICTED MURDERER. AND THE PURPOSE OF THAT PENALTY  
3 PHASE IS TO HEAR ADDITIONAL TESTIMONY THAT MAY NOT  
4 HAVE COME OUT IN THE FIRST PART TO HELP THE JURY  
5 DECIDE ON LIFE IN PRISON OR THE DEATH PENALTY. AND  
6 YOU KNOW FROM WHAT JUDGE COTTINGHAM TOLD YOU THAT  
7 WHATEVER THE JURY DECIDES IN THE PENALTY PHASE IS  
8 WHAT WOULD HAPPEN. IF THE JURY DECIDES ON LIFE  
9 IMPRISONMENT, THAT'S WHAT THE JUDGE WOULD ORDER. IF  
10 THE JURY DECIDES ON THE DEATH PENALTY, THAT DEFENDANT  
11 WOULD ACTUALLY BE EXECUTED.

12 NOW, IF YOU WERE ON A JURY IN A CASE LIKE THIS  
13 AND YOU HEARD ALL OF THE TESTIMONY AND YOU AND THE  
14 OTHER JURORS DECIDED THAT THE DEATH PENALTY WAS THE  
15 APPROPRIATE SENTENCE, THEN EACH JUROR WOULD BE ASKED  
16 TO SIGN THEIR NAME TO A DEATH VERDICT FORM WHICH  
17 WOULD EVENTUALLY RESULT IN THAT DEFENDANT'S  
18 EXECUTION. COULD YOU SIGN A FORM LIKE THAT ALONG  
19 WITH THE OTHER JURORS IF YOU HAD ALREADY VOTED ON THE  
20 DEATH PENALTY?

21 JURY VENIRE MEMBER: I WOULD HAVE TO SLEEP  
22 ON IT.

23 MR. BAILEY: IS THERE ANYTHING ABOUT THE  
24 PHYSICAL ACT OF SIGNING THAT FORM AS OPPOSED TO  
25 VOTING FOR THE DEATH PENALTY THAT WOULD CAUSE YOU TO

1 KIND OF HANG UP, YOU THINK?

2 JURY VENIRE MEMBER: NO, SIR, BUT I  
3 BELIEVE IT'S A BIG DECISION, AND I DON'T LIKE TO RUSH  
4 BIG DECISIONS.

5 MR. BAILEY: SO YOU WOULD WANT TO HEAR  
6 EVERYTHING, BOTH SIDES, AND REFLECT ON IT AS LONG AS  
7 IT TOOK; IS THAT RIGHT?

8 JURY VENIRE MEMBER: PRETTY MUCH.

9 MR. BAILEY: AND IF YOU DID SIT ON A JURY  
10 LIKE THIS AND YOU VOTED FOR THE DEATH PENALTY AND YOU  
11 SIGNED THE DEATH VERDICT FORM, THE LAST THING THAT  
12 WOULD HAPPEN WOULD BE THAT EACH JUROR WOULD COME OUT  
13 IN OPEN COURT AND BE ASKED TO STATE INDIVIDUALLY IF  
14 THAT WAS THEIR SENTENCE. COULD YOU DO THAT? YOU  
15 NEED TO ANSWER OUT LOUD. HE'S TAKING IT DOWN.

16 JURY VENIRE MEMBER: YES, SIR.

17 MR. BAILEY: OKAY. NOW, IN THIS CASE, THE  
18 DEFENDANT IS A YOUNG BLACK MALE. THE VICTIM WAS A  
19 YOUNG WHITE MALE. WOULD THE DIFFERENCE IN THE RACES  
20 BETWEEN THE DEFENDANT AND THE VICTIM CAUSE YOU TO  
21 VIEW THIS CASE ANY DIFFERENTLY THAN IF WE HAD A WHITE  
22 DEFENDANT AND A BLACK VICTIM?

23 JURY VENIRE MEMBER: I DON'T BELIEVE SO.

24 MR. BAILEY: OKAY. THE DEFENDANT AT THIS  
25 TIME IS 18 YEARS OLD. IN MARCH OF 1994 WHEN WE

1 ALLEGE THAT HE COMMITTED THIS MURDER, HE WAS 16. IF  
2 THE FACTS OF THIS CASE WERE BAD ENOUGH, COULD YOU  
3 VOTE TO IMPOSE THE DEATH PENALTY ON SOMEONE WHO WAS  
4 16 AT THE TIME THEY COMMITTED THE MURDER?

5 JURY VENIRE MEMBER: I DON'T KNOW.

6 MR. BAILEY: AGAIN, I'M NOT ASKING YOU  
7 WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T  
8 HEARD THE FACTS. I'M ASKING LIKE IN THE ABSTRACT.

9 JURY VENIRE MEMBER: COULD I?

10 MR. BAILEY: COULD YOU OR WOULD YOU  
11 CONSIDER THE AGE OF 16 TO BE A COMPLETE BAR TO THE  
12 IMPOSITION OF THE DEATH PENALTY?

13 JURY VENIRE MEMBER: I SUPPOSE I COULD,  
14 BUT LIKE I SAY, YOU KNOW, IT'S -- IT'S POSSIBLE.

15 MR. BAILEY: OKAY. I THINK THAT'S ALL  
16 I'VE GOT. THANK YOU VERY MUCH.

17 MR. NEWSOME: MR. SWICEGOOD, I NOTICE THAT  
18 YOU'RE A MEMBER OF THE CAMERON BAPTIST CHURCH.

19 JURY VENIRE MEMBER: YES, SIR.

20 MR. NEWSOME: DOES YOUR CHURCH HAVE A  
21 STATED POSITION FOR OR AGAINST THE DEATH PENALTY?

22 JURY VENIRE MEMBER: I'M NOT AWARE OF ANY.

23 MR. NEWSOME: AND WHAT YOU'RE SAYING IS  
24 THAT YOU COULD, AFTER MUCH DELIBERATION, RETURN A  
25 VERDICT OF THE DEATH SENTENCE, IF YOU THOUGHT IT WAS

1 WARRANTED?

2 JURY VENIRE MEMBER: POSSIBLE.

3 MR. NEWSOME: THANK YOU. I HAVE NO  
4 FURTHER QUESTIONS.

5 THE COURT: STEP OUT JUST A MOMENT,  
6 PLEASE, SIR.

7 (JUROR NUMBER 261 IS DISMISSED  
8 FROM THE COURTROOM.)

9 THE COURT: YES, SIR.

10 MR. BAILEY: QUALIFIED, YOUR HONOR.

11 THE COURT: YES, SIR.

12 MR. NEWSOME: QUALIFIED.

13 (JUROR NUMBER 261 ENTERS THE  
14 COURTROOM.)

15 THE COURT: MR. JUROR, YOU ARE THE 35TH  
16 JUROR THAT WE HAVE QUALIFIED TO SERVE, IF SELECTED.  
17 FROM THAT 35 NUMBER TOMORROW AT 2:30, WE WILL BE  
18 SELECTING 12 JURORS AND 2 ALTERNATES FOR A TOTAL OF  
19 14. THE REST WILL BE PERMITTED TO GO HOME. SO I  
20 WANT YOU TO PACK YOUR BAGS PLANNING ON STAYING IF  
21 SELECTED. BE HERE AT 2:30 RIGHT ACROSS THE STREET.  
22 WE'LL BE SELECTING THAT JURY IMMEDIATELY AND START  
23 THE TRIAL OF THIS CASE. IT WON'T TAKE TEN MINUTES TO  
24 SELECT THE JURY. SO DO YOU HAVE ANY QUESTIONS?

25 JURY VENIRE MEMBER: 2:30 TOMORROW?

1 THE COURT: YES, SIR. DON'T TALK ABOUT  
2 ANY ASPECT OF THIS CASE.

3 JURY VENIRE MEMBER: YES, SIR.

4 THE COURT: ALL RIGHT. THANK YOU.

5 (JUROR NUMBER 261 IS DISMISSED  
6 FROM THE COURTROOM.)

7 THE COURT: ALL RIGHT. CLOSE THAT DOOR.  
8 GENTLEMEN, FOR THE RECORD, WE NOW HAVE SELECTED 35  
9 JURORS WHICH WILL TAKE CARE OF THE TEN STRIKES  
10 PERMITTED TO THE DEFENSE AND FIVE STRIKES PERMITTED  
11 TO THE STATE AND THE TWO AND ONE STRIKES PERMITTED  
12 FOR EACH OF THE TWO ALTERNATES.

13 NOW, I'M CONSIDERING QUALIFYING MAYBE TWO MORE  
14 JURORS WITH THIS UNDERSTANDING. THE FIRST 27  
15 QUALIFIED JURORS WHO COME TO COURT WILL BE THE JURORS  
16 FROM WHICH THE JURY IS SELECTED. YOU UNDERSTAND  
17 THAT?

18 MR. NEWSOME: YES, SIR.

19 THE COURT: IF ONE GOES OUT, WE JUST SLIDE  
20 UP. SO I WANT IT CLEAR AS I SELECT THE TWO IN CASE  
21 SOME -- IN CASE, FOR INSTANCE, JUROR 9 DOESN'T SHOW  
22 FOR SOME REASON, WE JUST MOVE EVERYBODY UP, AND THE  
23 FIRST 27 QUALIFIED APPEARING JURORS WILL BE THE LIST.  
24 THEN IF IT DOESN'T TAKE 27, THE NEXT APPEARING NAMES  
25 WILL CONSTITUTE THOSE FROM WHICH WE WILL SELECT THE

1 ALTERNATES LIST. YOU UNDERSTAND THAT? WE JUST DON'T  
2 GO TO THE BOTTOM. WE'RE GOING TO USE UP THE NAMES OF  
3 THOSE WHO APPEAR IN THAT ORDER.

4 YOU AGREE WITH THAT, SOLICITOR?

5 MR. BAILEY: YES, SIR.

6 THE COURT: YOU AGREE WITH THAT?

7 MR. NEWSOME: YES, SIR. THAT'S MY  
8 UNDERSTANDING.

9 THE COURT: ALL RIGHT. LET ME ASK YOU  
10 THIS. IN THE MORNING, IN THE SELECTION PROCESS, THE  
11 JURORS ARE OVER THERE WITH THEIR PERSONAL BELONGINGS.  
12 DO YOU WANT TO JUST GO AHEAD AND STRIKE FROM THE LIST  
13 TOMORROW OR DO YOU WANT THE JURORS TO PERSONALLY  
14 APPEAR IN THE COURTROOM?

15 MR. BAILEY: I WOULD RATHER STRIKE FROM  
16 THE LIST IN CASE THERE'S A BATSON PROBLEM. I DON'T  
17 ANTICIPATE ONE.

18 THE COURT: THAT WOULD BE -- I SEE NO  
19 REASON NOT TO JUST STRIKE FROM THE LIST.

20 MR. NEWSOME: YOUR HONOR, I -- I WOULD  
21 LIKE TO HAVE ONE LAST LOOK AT THE JURORS. MY  
22 PREFERENCE WOULD BE.

23 THE COURT: WELL, IF THAT'S WHAT YOU WANT,  
24 THAT'S WHAT WE'LL DO.

25 MR. BAILEY: YOUR HONOR, COULD WE DO KIND

1 OF A COMBINATION OF BOTH, TO LOOK AT THE JUROR, HAVE  
2 THEM COME OUT ONE AT A TIME, BUT NOT STRIKE THEM IN  
3 THEIR PRESENCE. IN CASE THERE IS A BATSON PROBLEM,  
4 WE DON'T TAINT THE ENTIRE PANEL.

5 THE COURT: DO WHAT, NOW?

6 MR. BAILEY: IF HE WANTS TO LOOK AT THEM,  
7 THAT'S FINE, BUT I JUST DIDN'T WANT TO GET IN A  
8 POSITION WHERE WE'RE STRIKING THE JURORS IN THEIR  
9 PRESENCE LIKE WE WOULD IN A REGULAR CASE BECAUSE IF  
10 THERE IS A BATSON PROBLEM, THEN --

11 THE COURT: HERE'S WHAT I WILL DO. I WILL  
12 PRESENT -- HAVE THE JUROR COME FORWARD, GIVE HIS NAME  
13 AND WALK RIGHT BACK OUT, AND THEN YOU CAN STRIKE HIM.  
14 IS THAT WHAT YOU WANT?

15 MR. NEWSOME: YEAH, WITH HIM OUT -- I  
16 DON'T MIND STRIKING WITH THEM NOT HERE, BUT I WOULD  
17 JUST LIKE TO HAVE ONE MORE LOOK.

18 THE COURT: I'LL DO THAT. OKAY. BUT  
19 ACCOMMODATION WISE, I DON'T KNOW HOW YOU'RE GOING TO  
20 HANDLE IT. YOU'RE TALKING ABOUT 37 PEOPLE, 35.

21 THE CLERK: WE HAVE HAD THEM GO RIGHT ON  
22 THROUGH LIKE THEY DID.

23 THE COURT: CAN WE HANDLE THAT MANY BACK  
24 THERE TEMPORARILY?

25 MR. BAILEY: IT WON'T TAKE TEN MINUTES.

1 MR. NEWSOME: IT'S NOT GOING TO TAKE THAT  
2 LONG.

3 THE CLERK: AND WHAT I'M SAYING IS WHEN  
4 THEY --

5 THE COURT: YEAH. WE CAN DO IT THIS WAY.  
6 YEAH. WE'LL HAVE THEM HERE AND STAND RIGHT OUTSIDE  
7 THAT DOOR, AND IF THEY ARE SELECTED GO ON INTO THE  
8 JURY ROOM. IF THEY'RE NOT, I'LL HAVE MY LAW CLERK  
9 SEND THEM ON DOWN OR BRING THEM BACK OUT AND I'LL  
10 EXCUSE THEM.

11 THE CLERK: RIGHT. THAT'S WHAT I WAS  
12 SAYING.

13 THE COURT: HERE'S WHAT WE'LL DO. WE'LL  
14 BRING THEM IN. I'LL HAVE THEM SITTING RIGHT OUT  
15 THERE. I WILL CALL THEM BY NAME. THEY WILL COME  
16 FORWARD, THEN I'LL ASK THEM TO GO OUTSIDE THAT DOOR  
17 AND YOU CAN STRIKE THEM OR NOT. RIGHT?

18 MR. NEWSOME: I THINK HIS OBJECTION IS HE  
19 DOESN'T WANT THE REST OF THE JURY PANEL TO BE OUT  
20 THERE.

21 MR. BAILEY: YEAH. I JUST DIDN'T WANT ANY  
22 OF THE JURORS TO KNOW WHO WAS STRUCK UNTIL WE'RE SURE  
23 WE'VE GOT A PANEL, A JURY, AND THEY ARE SWORN. YOU  
24 KNOW, IF ALL OF THEM CAN BE OUT IN THE HALLWAY --

25 THE COURT: IS THERE ROOM BACK THERE IN

1 THE HALL?

2 THE CLERK: YES, SIR. WE'VE DONE THIS  
3 BEFORE.

4 THE COURT: THAT'S FINE. WHAT WE'LL DO IS  
5 PUT THEM ALL OUT THERE, BRING THEM IN ONE AT A TIME,  
6 TAKE THEM TO THAT DOOR. IF YOU ACCEPT THEM, THEY GO  
7 IN THE JURY ROOM. IF NOT, MY LAW CLERK -- I'LL BRING  
8 THEM BACK OUT AND TELL THEM TO GO OUT THE BACK DOOR.  
9 ALL RIGHT. THEN LET'S GO AHEAD AND QUALIFY TWO MORE.

10 (JUROR NUMBER 264, A BLACK  
11 FEMALE, ENTERS THE COURTROOM.)

12 THE CLERK: MS. THOMAS, IF YOU WOULD,  
13 PLEASE PLACE YOUR LEFT HAND ON THE BIBLE. PLEASE  
14 RAISE YOUR RIGHT HAND. PLEASE STATE YOUR NAME FOR  
15 THE RECORD.

16 JURY VENIRE MEMBER: RUTH THOMAS.

17 (JUROR NUMBER 264, HAVING BEEN FIRST DULY SWORN  
18 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

19 THE COURT: MS. THOMAS, GOOD AFTERNOON.

20 JURY VENIRE MEMBER: GOOD AFTERNOON.

21 THE COURT: HOW ARE YOU?

22 JURY VENIRE MEMBER: I'M FINE, SIR.

23 THE COURT: I'M GOING TO ASK THAT YOU  
24 PLEASE TALK LOUD ENOUGH FOR THOSE PEOPLE TO HEAR YOU.  
25 I CAN HEAR YOU WELL, BUT I'M AFRAID THEY CAN'T. MS.

1 THOMAS, I NOTE THAT YOU ARE -- YOU ARE A NURSE'S  
2 AIDE; IS THAT CORRECT?

3 JURY VENIRE MEMBER: YES, SIR.

4 THE COURT: OKAY. DID SHE INDICATE THAT  
5 SHE KNEW -- HAVE YOU READ OR HEARD ANYTHING ABOUT  
6 THIS CASE?

7 JURY VENIRE MEMBER: NO, I HAVEN'T.

8 THE COURT: OKAY. DID YOU HAVE A CHANCE  
9 TO READ THAT DOCUMENT OR LETTER THAT I PUT OUT IN THE  
10 HALL?

11 JURY VENIRE MEMBER: YES, I HAVE.

12 THE COURT: AND YOU KNOW THAT DESCRIBES  
13 THREE TYPES OF JURORS IN CASES OF THIS KIND AND YOU  
14 UNDERSTAND THAT?

15 JURY VENIRE MEMBER: YES, I HAVE.

16 THE COURT: WOULD YOU BE THE JUROR WHO  
17 SAYS -- FIRST LET ME EXPLAIN THIS TO YOU. THE FIRST  
18 PART OF THIS TRIAL WOULD BE TO DETERMINE WHETHER OR  
19 NOT HE IS GUILTY OR INNOCENT. DO YOU UNDERSTAND  
20 THAT?

21 JURY VENIRE MEMBER: YES, SIR.

22 THE COURT: IF YOU FOUND HIM NOT GUILTY,  
23 WE STOP THERE. IF THE JURY FINDS HIM GUILTY BEYOND A  
24 REASONABLE DOUBT, THEN THE JURY WOULD HAVE TO DECIDE  
25 WHETHER THE PENALTY WOULD BE DEATH BY ELECTROCUTION

1 OR LETHAL INJECTION OR LIFE IMPRISONMENT. IT WOULD  
2 BE UP TO THE JURY TO DECIDE. DO YOU UNDERSTAND THAT?

3 JURY VENIRE MEMBER: YES, I DO.

4 THE COURT: NOW, THERE ARE THREE TYPES OF  
5 JURORS, AND ALL OF THEM ARE CORRECT. NO RIGHT OR  
6 WRONG ANSWERS. ONE GROUP OF JURORS SAYS ONCE WE  
7 FOUND SOMEBODY GUILTY OF MURDER, I WILL ALWAYS BE FOR  
8 THE DEATH PENALTY. THERE IS A SECOND GROUP OF PEOPLE  
9 WHO SAY I CAN NEVER BE FOR THE DEATH PENALTY. I'M  
10 JUST NOT GOING TO PUT SOMEBODY TO DEATH. THERE'S A  
11 THIRD GROUP WHO SAY I WILL LISTEN TO THE FACTS AND IT  
12 DEPENDS. I CAN IMPOSE DEATH OR COULD IMPOSE LIFE.  
13 WOULD YOU BE IN THE FIRST GROUP THAT SAYS YOU WOULD  
14 ALWAYS GIVE THE DEATH PENALTY, THE SECOND GROUP THAT  
15 SAYS I CAN NEVER GIVE THE DEATH PENALTY, OR THE THIRD  
16 GROUP THAT SAYS IT WOULD DEPEND ON THE FACTS? WHICH  
17 WOULD YOU BE IN?

18 JURY VENIRE MEMBER: IN THE SECOND GROUP.

19 THE COURT: SECOND GROUP?

20 JURY VENIRE MEMBER: YES.

21 THE COURT: YOU HAVE THE CONVICTIONS, I  
22 TAKE IT -- AND THAT'S YOUR CONVICTION AND YOU'RE  
23 ENTITLED TO IT -- THAT YOU COULD NEVER EVER IMPOSE  
24 THE DEATH PENALTY?

25 JURY VENIRE MEMBER: NO, I CAN'T.

1 THE COURT: YOU CAN'T. IS THAT A  
2 RELIGIOUS CONVICTION, PERSONAL CONVICTION OR BOTH?

3 JURY VENIRE MEMBER: BOTH.

4 THE COURT: BOTH?

5 JURY VENIRE MEMBER: YES.

6 THE COURT: HAVE YOU -- AND MAY I ASK YOU  
7 THIS. HAVE YOU HAD THAT CONVICTION FOR A LONG PERIOD  
8 OF TIME?

9 JURY VENIRE MEMBER: YES, I HAVE.

10 THE COURT: OKAY. YOU MAY INQUIRE.

11 MR. BAILEY: NO QUESTIONS, YOUR HONOR.

12 MR. NEWSOME: NO QUESTIONS.

13 THE COURT: ALL RIGHT. YOU MAY STEP  
14 OUTSIDE.

15 (JUROR NUMBER 264 IS DISMISSED  
16 FROM THE COURTROOM.)

17 THE COURT: THANK YOU. FOR THE RECORD.

18 MR. BAILEY: NOT QUALIFIED, YOUR HONOR.

19 MR. NEWSOME: NOT QUALIFIED, YOUR HONOR.

20 (JUROR NUMBER 264 ENTERS THE  
21 COURTROOM.)

22 THE COURT: I'M GOING TO EXCUSE YOU FROM  
23 FURTHER PARTICIPATION, AND I THANK YOU FOR YOUR  
24 SERVICES. THANK YOU. OKAY.

25 (JUROR NUMBER 264 IS DISMISSED

1 FROM THE COURTROOM.)

2 THE COURT: THE NEXT ONE.

3 (JUROR NUMBER 255, A BLACK  
4 FEMALE, ENTERS THE COURTROOM.)

5 THE CLERK: IF YOU WOULD, PLEASE COME  
6 AROUND AND PLEASE PLACE YOUR LEFT HAND ON THE BIBLE  
7 AND PLEASE RAISE YOUR RIGHT HAND. PLEASE STATE YOUR  
8 NAME FOR THE RECORD.

9 JURY VENIRE MEMBER: LOIS STEWART.

10 (JUROR NUMBER 255, HAVING BEEN FIRST DULY SWORN  
11 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

12 THE CLERK: PLEASE COME AROUND AND HAVE A  
13 SEAT.

14 THE COURT: GOOD AFTERNOON, MS. STEWART.

15 JURY VENIRE MEMBER: HELLO.

16 THE COURT: FINE. I WOULD LIKE TO ASK YOU  
17 JUST A FEW QUESTIONS, IF I CAN. YOU ARE EMPLOYED AS  
18 A SEWING MACHINE OPERATOR?

19 JURY VENIRE MEMBER: YES, SIR, I AM.

20 THE COURT: AND I BELIEVE YOU HAVE A HIGH  
21 SCHOOL EDUCATION. HOW MANY CHILDREN DO YOU HAVE?

22 JURY VENIRE MEMBER: THREE.

23 THE COURT: THREE. AND WHAT AGES ARE  
24 THEY.

25 JURY VENIRE MEMBER: 28, 29 AND 23.

1 THE COURT: OKAY. I'M GOING TO ASK YOU,  
2 PLEASE, TO TALK A LITTLE LOUDER. I CAN HEAR YOU, BUT  
3 WE NEED TO LET THESE PEOPLE OUT HERE HEAR YOU. DID  
4 YOU HAVE A CHANCE TO READ THAT DOCUMENT BACK THERE A  
5 MOMENT AGO?

6 JURY VENIRE MEMBER: YES, I DID.

7 THE COURT: AND DO YOU UNDERSTAND THAT IN  
8 CASES OF THIS KIND, JURORS GENERALLY FALL INTO THREE  
9 CLASSES? DO YOU UNDERSTAND THAT?

10 JURY VENIRE MEMBER: YES.

11 THE COURT: ONCE AN INDIVIDUAL -- AND I  
12 USE THAT ADVISEDLY -- IN A CASE LIKE THIS, THE STATE  
13 OF SOUTH CAROLINA SEEKS THE PENALTY OF DEATH. DO YOU  
14 UNDERSTAND THAT?

15 JURY VENIRE MEMBER: UH-HUH.

16 THE COURT: NOW, THE FIRST PART OF THIS  
17 TRIAL WOULD BE TO DETERMINE THE INNOCENCE OR GUILT OF  
18 THE DEFENDANT. IF HE'S FOUND INNOCENT, WE STOP RIGHT  
19 THERE. IF HE'S FOUND GUILTY OF MURDER BEYOND A  
20 REASONABLE DOUBT, THEN THE JURY WOULD HAVE TO DECIDE  
21 THE PUNISHMENT. DO YOU UNDERSTAND THAT?

22 JURY VENIRE MEMBER: UH-HUH.

23 THE COURT: IN DECISIONS OF THIS KIND,  
24 THERE ARE GENERALLY THREE TYPES OF JURORS. AND  
25 THERE'S NO RIGHT OR WRONG ANSWERS. IT'S JUST HOW YOU

1 FEEL ABOUT IT. NUMBER ONE GROUP SAYS I WOULD ALWAYS  
2 IMPOSE THE PENALTY OF DEATH WHERE A MURDER HAS BEEN  
3 COMMITTED. THE SECOND GROUP SAYS I CAN NEVER GIVE  
4 THE PENALTY OF DEATH EVEN THOUGH MURDER HAS BEEN  
5 COMMITTED. THE THIRD GROUP SAYS I WILL LISTEN TO THE  
6 LAW AND THE EVIDENCE AND THEN I WILL DECIDE. THAT  
7 THIRD GROUP SAYS DEPENDING ON THE FACTS, I CAN IMPOSE  
8 DEATH OR I CAN IMPOSE LIFE. WOULD YOU BE IN THE  
9 FIRST GROUP THAT SAYS I WILL ALWAYS GIVE DEATH OR THE  
10 SECOND GROUP THAT SAYS I CAN NEVER GIVE DEATH OR THE  
11 THIRD GROUP?

12 JURY VENIRE MEMBER: NUMBER TWO.

13 THE COURT: YOU ARE TWO. IS IT YOUR VIEW  
14 THAT YOU COULD NEVER IMPOSE THE DEATH PENALTY ON  
15 ANOTHER HUMAN BEING?

16 JURY VENIRE MEMBER: THAT'S CORRECT.

17 THE COURT: IS THAT A HEART -- IS THAT A  
18 RELIGIOUS OR PERSONAL CONVICTION OR BOTH?

19 JURY VENIRE MEMBER: BOTH.

20 THE COURT: AND HOW LONG HAVE YOU HAD THAT  
21 CONVICTION, PLEASE, MA'AM?

22 JURY VENIRE MEMBER: ABOUT AS LONG AS I  
23 CAN REMEMBER.

24 THE COURT: OKAY. YES, SIR.

25 MR. BAILEY: NO QUESTIONS, YOUR HONOR.

1 THE COURT: NO QUESTIONS BY THE STATE. NO  
2 QUESTIONS FOR THE DEFENSE. PLEASE STEP OUTSIDE.

3 (JUROR NUMBER 255 IS DISMISSED  
4 FROM THE COURTROOM.)

5 MR. BAILEY: NOT QUALIFIED, YOUR HONOR.

6 MR. NEWSOME: NOT QUALIFIED, YOUR HONOR.

7 (JUROR NUMBER 255 ENTERS THE  
8 COURTROOM.)

9 THE COURT: MS. STEWART, THANK YOU SO  
10 MUCH. I'M GOING -- IN A POSITION WHERE I CAN EXCUSE  
11 YOU FROM FURTHER PARTICIPATION, BUT WE THANK YOU SO  
12 MUCH.

13 JURY VENIRE MEMBER: OKAY.

14 (JUROR NUMBER 255 IS DISMISSED  
15 FROM THE COURTROOM.)

16 (JUROR NUMBER 35, A WHITE  
17 MALE, ENTERS THE COURTROOM.)

18 THE CLERK: PLEASE STATE YOUR NAME FOR THE  
19 RECORD.

20 JURY VENIRE MEMBER: GARY W. CLARK.

21 (JUROR NUMBER 35, HAVING BEEN FIRST DULY SWORN  
22 BY THE CLERK OF COURT, TESTIFIED AS FOLLOWS:)

23 THE CLERK: PLEASE COME AROUND AND HAVE A  
24 SEAT.

25 THE COURT: GOOD AFTERNOON, MR. CLARK.

1 JURY VENIRE MEMBER: GOOD AFTERNOON, SIR.

2 THE COURT: MR. CLARK, I HAVE YOUR RETURN  
3 HERE. I NOTE THAT YOU WERE BORN IN PATTERSON, NEW  
4 JERSEY. YOUR PRESENT OCCUPATION IS A MANAGER OF  
5 WHAT, PLEASE?

6 JURY VENIRE MEMBER: MANAGER OF A NIGHT  
7 CLUB.

8 THE COURT: NIGHT CLUB. AND WHAT IS IT  
9 YOUR WIFE DOES, SPOUSE'S OCCUPATION?

10 JURY VENIRE MEMBER: PROFESSOR AT THE  
11 UNIVERSITY.

12 THE COURT: IN WHAT AREA IS SHE A  
13 PROFESSOR?

14 JURY VENIRE MEMBER: ORANGEBURG.

15 THE COURT: WHAT AREA?

16 JURY VENIRE MEMBER: OH, SPEECH  
17 COMMUNICATION.

18 THE COURT: DO YOU UNDERSTAND IN THIS CASE  
19 THE DEFENDANT IS CHARGED WITH MURDER?

20 JURY VENIRE MEMBER: YES, SIR.

21 THE COURT: AND DO YOU UNDERSTAND THAT IF  
22 THE STATE CONVICTS HIM, AS A PENALTY THE STATE SEEKS  
23 THE PENALTY OF DEATH? DO YOU UNDERSTAND THAT?

24 JURY VENIRE MEMBER: YES, SIR.

25 THE COURT: NOW, DO YOU UNDERSTAND THAT

1 THE FIRST CONSIDERATION THE JURY WOULD DETERMINE IS  
2 GUILT OR INNOCENCE?

3 JURY VENIRE MEMBER: YES, SIR.

4 THE COURT: IF HE'S FOUND INNOCENT, WE  
5 STOP THERE. IF HE'S FOUND GUILTY -- IF, THEN YOU  
6 WOULD GO TO THE SECOND PHASE, WHICH IS THE SENTENCING  
7 PHASE. YOU UNDERSTAND THAT?

8 JURY VENIRE MEMBER: YES, SIR.

9 THE COURT: YOU WOULD THEN HAVE TO  
10 DETERMINE, SINCE YOU FOUND HIM GUILTY OF MURDER,  
11 WHETHER THE APPROPRIATE PUNISHMENT WOULD BE DEATH BY  
12 ELECTROCUTION OR LETHAL INJECTION OR LIFE  
13 IMPRISONMENT. DO YOU UNDERSTAND?

14 JURY VENIRE MEMBER: YES, SIR.

15 THE COURT: THAT DOCUMENT THAT YOU JUST  
16 READ DESCRIBES GENERALLY THREE DIFFERENT TYPES OF  
17 JURORS. YOU UNDERSTAND THAT?

18 JURY VENIRE MEMBER: YES, SIR.

19 THE COURT: I'M NOT ASKING YOU WHAT YOU  
20 WOULD DO IN THIS CASE BECAUSE OBVIOUSLY YOU DON'T  
21 KNOW ANYTHING ABOUT IT AND HAVEN'T HEARD THE FACTS.  
22 I AM ASKING YOU, THOUGH, GENERALLY, WHAT GROUP WOULD  
23 YOU BE IN, THE FIRST GROUP THAT SAYS I WOULD ALWAYS  
24 IMPOSE DEATH WHERE MURDER HAS BEEN COMMITTED, I CAN  
25 NEVER IMPOSE DEATH, OR THE THIRD GROUP THAT SAYS I

1 WILL LISTEN TO THE FACTS ON BOTH SIDES AND THEN  
2 DECIDE EITHER DEATH OR LIFE? WOULD YOU BE ONE, TWO  
3 OR THREE?

4 JURY VENIRE MEMBER: I WOULD BE THREE.

5 THE COURT: THREE. ALL RIGHT. YOU MAY  
6 EXAMINE.

7 MR. BAILEY: I'M WALTER BAILEY. I WANTED  
8 TO ASK YOU A FEW QUESTIONS HERE. FIRST OF ALL, WITH  
9 REGARD TO WHAT THE JUDGE ASKED YOU ABOUT THE DEATH  
10 PENALTY, HAVE YOU EVER HAD OCCASION TO THINK ABOUT  
11 THE DEATH PENALTY BEFORE YOU GOT YOUR JURY SUMMONS?

12 JURY VENIRE MEMBER: NO.

13 MR. BAILEY: OKAY. NOW THAT YOU'VE GOTTEN  
14 YOUR SUMMONS, HAVE YOU HAD AN ADEQUATE LENGTH OF TIME  
15 TO THINK ABOUT IT?

16 JURY VENIRE MEMBER: SURE. I THOUGHT  
17 ABOUT IT ALL NIGHT.

18 MR. BAILEY: AND YOU UNDERSTAND THE  
19 TWO-PART PROCESS WE WOULD BE GOING THROUGH HERE?

20 JURY VENIRE MEMBER: YES, SIR.

21 MR. BAILEY: POTENTIALLY. THE FIRST PART  
22 IS THE GUILT PHASE LIKE ANY OTHER TRIAL.

23 JURY VENIRE MEMBER: YES, SIR.

24 MR. BAILEY: THE SECOND PART, IF THE  
25 DEFENDANT IS FOUND GUILTY OF MURDER, THEN THE JURY

1 WOULD DECIDE WHAT PUNISHMENT TO IMPOSE.

2 JURY VENIRE MEMBER: YES, SIR.

3 MR. BAILEY: LIFE IMPRISONMENT OR THE  
4 DEATH PENALTY.

5 JURY VENIRE MEMBER: RIGHT.

6 MR. BAILEY: AND YOU UNDERSTAND THAT  
7 WHATEVER THE JURY DECIDES IN THAT SECOND PHASE WILL  
8 BE THE SENTENCE OF THE COURT. IT'S NOT A  
9 RECOMMENDATION, IT IS WHAT WOULD BE CARRIED OUT.

10 JURY VENIRE MEMBER: RIGHT.

11 MR. BAILEY: AND IF YOU WERE ON A JURY IN  
12 A CASE OF THIS NATURE AND YOU HEARD ALL OF THE  
13 TESTIMONY IN BOTH PARTS OF THE TRIAL AND YOU AND THE  
14 OTHER JURORS DETERMINED THAT THE DEATH PENALTY WAS  
15 THE APPROPRIATE PUNISHMENT, THE NEXT THING THAT WOULD  
16 HAPPEN WOULD BE EACH JUROR WOULD BE ASKED TO SIGN  
17 THEIR NAME TO A DEATH VERDICT FORM WHICH WOULD RESULT  
18 IN THE EXECUTION OF THAT DEFENDANT. COULD YOU SIGN  
19 YOUR NAME TO A FORM LIKE THAT KNOWING IT WOULD RESULT  
20 IN AN EXECUTION?

21 JURY VENIRE MEMBER: IF I HAD MADE THAT  
22 DECISION, YES, SIR.

23 MR. BAILEY: AND COULD YOU COME OUT INTO  
24 OPEN COURT AND ANNOUNCE THAT DECISION IN FRONT OF  
25 EVERYBODY?

1 JURY VENIRE MEMBER: YES.

2 MR. BAILEY: IF THAT WAS YOUR DECISION.

3 JURY VENIRE MEMBER: IF THAT WAS MY  
4 DECISION, YES, SIR.

5 MR. BAILEY: ALL RIGHT. MR. CLARK, IN  
6 THIS PARTICULAR CASE, THE DEFENDANT IS A YOUNG BLACK  
7 MALE. THE VICTIM WAS A YOUNG WHITE MALE. WOULD THE  
8 DIFFERENCE IN THE RACES OF THE VICTIM AND THE  
9 DEFENDANT HAVE ANY BEARING ON YOUR DECISION?

10 JURY VENIRE MEMBER: NO.

11 MR. BAILEY: ALSO, THE DEFENDANT AT THIS  
12 TIME IS 18 YEARS OLD. IN MARCH OF 1994 WHEN THE  
13 STATE ALLEGES HE COMMITTED THIS MURDER, HE WAS 16.  
14 COULD YOU AS A JUROR IF THE CASE WAS BAD ENOUGH  
15 IMPOSE THE DEATH PENALTY ON SOMEONE WHO WAS 16 AT THE  
16 TIME HE COMMITTED THE MURDER?

17 JURY VENIRE MEMBER: I'M NOT SURE I CAN DO  
18 THAT. I'M SURE THAT'S SOMETHING WE WOULD DELIBERATE.  
19 I'M NOT SURE I COULD ANSWER THAT.

20 MR. BAILEY: ALL RIGHT. I'M NOT ASKING  
21 YOU IF YOU WOULD DO IT IN THIS CASE BECAUSE YOU  
22 HAVEN'T HEARD THE FACTS.

23 JURY VENIRE MEMBER: RIGHT.

24 MR. BAILEY: I'M JUST ASKING YOU AS AN  
25 ABSTRACT CONCEPT WHETHER OR NOT YOU WOULD CONSIDER

1 THAT YOUNG AGE AS AN ABSOLUTE BAR TO THE DEATH  
2 PENALTY OR WOULD YOU CONSIDER IT ANY WAY?

3 JURY VENIRE MEMBER: I DON'T THINK SO.

4 MR. BAILEY: YOU COULD NOT CONSIDER IT?

5 JURY VENIRE MEMBER: I DON'T KNOW. I

6 DON'T THINK SO.

7 MR. BAILEY: OKAY. YOU JUST THINK 16

8 WOULD BE TOO YOUNG TO IMPOSE THE DEATH PENALTY?

9 JURY VENIRE MEMBER: YES, SIR.

10 MR. BAILEY: OKAY. MR. CLARK, I THINK

11 THAT'S ALL I'VE GOT. THANK YOU VERY MUCH.

12 MR. NEWSOME: MR. CLARK, YOU SAID YOU  
13 DON'T THINK SO. DOES THAT MEAN DEFINITELY YOU WOULD

14 NOT OR YOU WOULD HAVE A DIFFICULT TIME DOING IT?

15 JURY VENIRE MEMBER: I WOULD HAVE TO  
16 DELIBERATE IT -- I WOULD HAVE TO THINK ABOUT IT.

17 MR. NEWSOME: SO --

18 JURY VENIRE MEMBER: AND DISCUSS IT.

19 MR. NEWSOME: SO YOU WOULD CONSIDER IT,  
20 THEN, IS WHAT YOU'RE SAYING?

21 JURY VENIRE MEMBER: YES.

22 MR. NEWSOME: THANK YOU.

23 THE COURT: PLEASE STEP OUT JUST A MOMENT.  
24 I'LL CALL YOU.

25 (JUROR NUMBER 35 IS DISMISSED

1 FROM THE COURTROOM.)

2 THE COURT: FOR THE RECORD?

3 MR. BAILEY: I GUESS MR. NEWSOME  
4 REHABILITATED HIM. I GUESS HE WOULD BE QUALIFIED.

5 THE COURT: YES, HE'S QUALIFIED. WHAT WAS  
6 YOUR POSITION? WHAT DID YOU SAY?

7 MR. BAILEY: I'M CONCEDING THAT HE IS  
8 QUALIFIED, YOUR HONOR.

9 MR. NEWSOME: I THINK HE'S QUALIFIED.

10 THE COURT: ALL RIGHT.

11 (JUROR NUMBER 35 ENTERS THE  
12 COURTROOM.)

13 THE COURT: MR. JUROR, YOU HAVE BEEN FOUND  
14 TO BE ONE OF THE QUALIFIED JURORS. YOU MAY OR MAY  
15 NOT BE SELECTED. TOMORROW AT 2:30, WE ARE GOING TO  
16 SELECT 12 JURORS AND 2 ALTERNATES. EVERYBODY FINDS  
17 YOU QUALIFIED TO SERVE, IF SELECTED. WE WANT YOU TO  
18 BRING YOUR PERSONAL EFFECTS WITH YOU SO IN THE EVENT  
19 YOU ARE ONE OF THE 14, YOU CAN STAY WITH US. WE'RE  
20 GOING TO START THE TRIAL OF THIS CASE.

21 JURY VENIRE MEMBER: YES, SIR.

22 THE COURT: REPORT BACK PROMPTLY AT 2:30.  
23 BE THERE ACROSS THE STREET IN THE ANNEX AT 2:30 WITH  
24 YOUR PERSONAL EFFECTS.

25 JURY VENIRE MEMBER: OKAY. YOU'RE TALKING

1 ABOUT THAT BUILDING?

2 THE COURT: YEAH, THE BUILDING RIGHT  
3 THERE. YOU MAY BE NOT BE SELECTED, BUT BE READY TO  
4 GO IF SELECTED.

5 JURY VENIRE MEMBER: YES, SIR.

6 (JUROR NUMBER 35 IS DISMISSED  
7 FROM THE COURTROOM.)

8 MR. NEWSOME: YOUR HONOR, MAY WE APPROACH  
9 BRIEFLY?

10 THE COURT: YES, SIR.

11 (WHEREUPON, COUNSEL APPROACHED  
12 THE BENCH FOR AN OFF-THE-RECORD  
13 DISCUSSION.)

14 THE COURT: BRING THE LAST THREE IN HERE,  
15 PLEASE. KIT, YOU MAY WANT TO GO GET THEM FOR ME.  
16 YOU CAN COME IN THIS WAY, IF YOU WOULD.

17 (WHEREUPON, THE REMAINING THREE  
18 JURORS OF PANEL NUMBER 4 ENTER  
19 COURTROOM.)

20 THE CLERK: JUST HOLD ON. RIGHT THERE IS  
21 FINE.

22 THE COURT: LADIES AND GENTLEMEN, YOU ARE  
23 OBVIOUSLY THE LAST THREE REMAINING. UNDER OUR  
24 SYSTEM, WE QUALIFY 35 JURORS FROM WHICH NUMBER 12 ARE  
25 CHOSEN AND THEN TWO ARE SELECTED AS ALTERNATES, SO

1 FROM 35, WE CAN GET TO 14. IN AN ABUNDANCE OF  
2 PRECAUTION, WE HAVE QUALIFIED 36 IN CASE ONE OF THE  
3 35 GET SICK OR WHATEVER. IN A FURTHER ABUNDANCE OF  
4 PRECAUTION, THOUGH, I DON'T THINK YOU WILL BE NEEDED,  
5 BUT IF -- IF TWO OR THREE DROP OUT, I MIGHT NEED YOU.  
6 SO I'M NOT GOING TO GO INTO ANY FURTHER THINGS AT  
7 THIS TIME, BUT I WILL ASK THAT YOU THREE REPORT ALONG  
8 WITH THE 36 QUALIFIED ACROSS THE STREET TOMORROW.  
9 NOW, YOU DON'T NEED TO BRING YOUR CLOTHES AS I HAVE  
10 TOLD ALL OF THE REST OF THEM BECAUSE I DON'T THINK  
11 I'M GOING TO NEED YOU. BUT I'VE GOT TO HAVE YOU  
12 STANDING BY FOR ABOUT 20 MINUTES TOMORROW AFTERNOON  
13 IN CASE THAT WOULD HAPPEN. DO YOU UNDERSTAND?

14 JURY VENIRE MEMBERS: YES.

15 THE COURT: THE REASON I'M DOING IT THIS  
16 WAY, I DON'T WANT TO KEEP YOU HERE THE REST OF THE  
17 AFTERNOON AND BRING YOU BACK IN THE MORNING BECAUSE I  
18 UNDERSTAND THAT YOU'VE GOT PLACES TO BE. BUT CAN YOU  
19 BE BACK AT THE ANNEX AT 2:30 TOMORROW AFTERNOON?

20 JURY VENIRE MEMBERS: YES, YOUR HONOR.

21 THE COURT: NOW, THIS IS IMPORTANT. DO  
22 NOT DISCUSS THIS CASE WITH ANYONE. PERMIT NO ONE TO  
23 DISCUSS IT WITH YOU. UNDER NO CIRCUMSTANCES DISCUSS  
24 ANY ASPECTS OF THIS CASE WITH THOSE FELLOW JURORS  
25 OVER THERE. MAKE SURE THAT THEY DON'T TALK TO YOU

1 ABOUT ANY ASPECT OF IT, INCLUDING ANY INQUIRIES THAT  
2 WE MIGHT MAKE. IT WOULD BE IMPROPER FOR YOU TO DO  
3 THAT.

4 NOW, I FULLY EXPECT THAT FROM THE 36 THAT ARE  
5 QUALIFIED, WE WILL GET THE 14. BUT IF SOMETHING  
6 HAPPENS AND FOUR OR FIVE OF THEM DROP OUT FOR SOME  
7 REASON -- THEY ARE NOT GOING TO DROP OUT UNLESS I SEE  
8 THEM IN THE OBITUARY COLUMN OR SOMETHING -- BUT IF  
9 THAT WERE TO HAPPEN, THEN WE MIGHT NEED YOU, AND SO I  
10 WANT YOU TO COME BACK FOR A SHORT PERIOD OF TIME  
11 TOMORROW. ANY QUESTIONS ABOUT THAT?

12 JURY VENIRE MEMBER: 2:30 TOMORROW?

13 THE COURT: ACROSS THE STREET. NOW, YOU  
14 WON'T NEED TO BRING YOUR CLOTHES BECAUSE I DON'T  
15 REALLY THINK I NEED YOU, BUT I NEED YOU HERE IN CASE  
16 THAT EVENTUALITY HAPPENS.

17 SO I'LL EXCUSE YOU NOW, AND I'LL SEE YOU  
18 TOMORROW AT 2:30. THANK YOU, GENTLEMEN, AND THANK  
19 YOU, LADIES. YOU MAY PROCEED OUT THE BACK.

20 (WHEREUPON, THE JURY PANEL WAS  
21 EXCUSED.)

22 THE COURT: ALL RIGHT. IS THERE ANYTHING  
23 FURTHER?

24 MR. BAILEY: NO, SIR.

25 THE COURT: JUST REMEMBER THAT THE LIST,

1 IF ANYBODY DROPS OUT, THE LIST JUST MOVES UP. YOU  
2 STILL -- PROCEDURALLY, NOW, WE'RE GOING TO BRING THEM  
3 IN HERE. THE JUROR WILL WALK DOWN. I'LL CALL THE  
4 NAME OF THE JUROR, HAVE THEM FACE YOU, AND ASK THEM  
5 TO GO OUT THAT DOOR.

6 MR. NEWSOME: OKAY.

7 THE COURT: YOU WILL STRIKE OR PUT IN THE  
8 BOX AT THAT TIME. THE JUROR SELECTED WILL GO IN THE  
9 JURY ROOM. THE JUROR NOT SELECTED, I'LL SEND HIM ON  
10 DOWNSTAIRS IN CASE WE HAVE A BATSON PROBLEM.

11 MR. WANNAMAKER, HAVE YOU GOT SOME PLACE  
12 DOWNSTAIRS THE JURORS NOT SELECTED CAN STAND FOR  
13 ABOUT FIVE MINUTES?

14 THE CLERK: YES, SIR. I THINK WHAT WE'RE  
15 GOING TO HAVE TO DO IS COORDINATE WITH SLED AND THE  
16 SHERIFF'S DEPUTIES AND JUST HAVE SOMEBODY WITH --  
17 WITH THE JURY POOL ALL OF THE TIME.

18 THE COURT: OH, YEAH, BUT YOU UNDERSTAND  
19 WE'RE GOING TO MOVE THEM HERE?

20 THE CLERK: BUT THEY CAN WALK OUTSIDE OR,  
21 YOU KNOW --

22 THE COURT: WELL, THE GROUP NOT SELECTED,  
23 I JUST DON'T WANT THEM TO LEAVE THE COURTHOUSE  
24 BECAUSE I DON'T ANTICIPATE A BATSON PROBLEM BUT THERE  
25 COULD BE ONE.

1 THE CLERK: YES, SIR.

2 THE COURT: GENTLEMEN, IS THERE ANYTHING  
3 ELSE?

4 MR. BAILEY: NO, SIR.

5 MR. NEWSOME: JUDGE, A COUPLE OF THINGS.

6 THE COURT: I CONGRATULATE BOTH OF YOU ON  
7 THE EXPEDITIOUS AND THOROUGH WAY THIS VOIR DIRE HAS  
8 BEEN CONDUCTED.

9 MR. NEWSOME: A COUPLE OF THINGS, YOUR  
10 HONOR.

11 THE COURT: ALL RIGHT.

12 MR. NEWSOME: TOMORROW, COULD I HAVE MY  
13 CLIENT ARRANGED TO BE BROUGHT OVER HERE BY 1:00  
14 BECAUSE I WOULD NEED TO SPEND SOME TIME WITH HIM  
15 PRIOR TO --

16 THE COURT: YES. WHERE IS THE SHERIFF?  
17 COME HERE. SHERIFF, JUST -- THIS CASE WILL NOT START  
18 -- IS THAT SUFFICIENT TIME, NOW?

19 MR. NEWSOME: YES, SIR, I THINK SO.

20 THE COURT: WOULD YOU MAKE ARRANGEMENTS TO  
21 HAVE THE DEFENDANT HERE AT 1:00?

22 THE SHERIFF: YES, SIR.

23 THE COURT: ALL RIGHT.

24 MR. NEWSOME: THE OTHER THING IS, YOUR  
25 HONOR, WE HAVE SUBPOENAED KELSEY PEARCE AS AN ADVERS

1 WITNESS UNDER RULE 611C OF THE FEDERAL RULES THAT  
2 COME INTO EFFECT THIS WEEK.

3 THE COURT: WHICH RULE IS THAT?

4 MR. NEWSOME: A HOSTILE WITNESS, AN  
5 ADVERSE WITNESS. THIS IS THE MAN WHO NEGOTIATED WITH  
6 THE SOLICITOR'S OFFICE TESTIFYING AGAINST MY CLIENT.

7 THE COURT: THAT NEW RULE WOULD JUST  
8 PERMIT YOU TO ATTACK HIS CREDIBILITY, DOESN'T IT?

9 MR. NEWSOME: NO, SIR. UNDER RULE 611C,  
10 I'M ALLOWED TO CALL HIM AS AN ADVERSE WITNESS.

11 THE COURT: LET ME SEE THAT RULE. THAT'S  
12 A NEW RULE THAT WENT INTO EFFECT SEPTEMBER THE 3RD.  
13 ARE YOU FAMILIAR WITH THAT RULE?

14 MR. BAILEY: I'M FAMILIAR WITH IT, YES,  
15 SIR. THIS PERSON HAS NOT AGREED TO TESTIFY FOR THE  
16 STATE. THERE'S ANOTHER, OWENS HAS, BUT NOT MR.  
17 PEARCE.

18 MR. NEWSOME: I UNDERSTAND THAT.

19 THE COURT: LET ME SEE THE RULE ANYWAY.  
20 WE HAVEN'T ADOPTED ALL THE FEDERAL RULES NOW.

21 MR. NEWSOME: IF THE COURT WILL BEAR WITH  
22 ME, I'LL FIND IT.

23 THE COURT: YES, SIR. I WANT TO SEE WHAT  
24 RULE YOU'RE TALKING ABOUT, NOW. THE NEW RULE ADOPTED  
25 BY THE STATE PERMITS YOU TO ATTACK THE CREDIBILITY.

1 MR. BAILEY: 607.

2 MR. NEWSOME: 607 IS ALSO INVOLVED BUT 61  
3 ALLOWS ME TO LEAD AN ADVERSE WITNESS, YOUR HONOR.

4 THE COURT: HAVE YOU GOT IT UNDER THE NEW  
5 RULE?

6 MR. BAILEY: YES, SIR. I CONCEDE THAT'S  
7 WHAT THE RULE SAYS. HE DON'T NEED TO VOUCH FOR THE  
8 CREDIBILITY OF THE WITNESS.

9 THE COURT: I UNDERSTAND THAT, BUT I'M NOT  
10 SURE IT SAYS THAT HE JUST MAY CALL AT RANDOM ANY  
11 WITNESS HE WANTS AND HAVE THE LIBERTY TO  
12 CROSS-EXAMINE HIM. DO YOU HAVE THE NEW SOUTH  
13 CAROLINA RULES?

14 MR. BAILEY: YES, SIR.

15 THE COURT: LET ME SEE THEM, PLEASE. I  
16 DIDN'T BRING MY COPY WITH ME. THIS INDICATES UNDER  
17 B, SCOPE OF CROSS-EXAMINATION, A WITNESS MAY BE  
18 CROSS-EXAMINED ON ANY MATTER RELEVANT TO ANY ISSUE IN  
19 THE CASE INCLUDING CREDIBILITY. BUT DOES THAT REFER  
20 TO YOUR OWN WITNESS? WHAT DO YOU SAY ABOUT THAT?

21 MR. BAILEY: YOUR HONOR, I AGREE WITH HIM  
22 THE RULE SAYS HE DOESN'T HAVE TO VOUCH FOR THE  
23 CREDIBILITY. HE CAN CROSS-EXAMINE.

24 THE COURT: WHICH WITNESS? OF COURSE,  
25 IT'S STILL UNDER SOME CONTROL. WHICH WITNESS IS IT

1 YOU SAY IS HIS WITNESS?

2 MR. NEWSOME: KELSEY PEARCE IS THE  
3 CO-DEFENDANT IN THIS CASE, YOUR HONOR.

4 MR. BAILEY: YOUR HONOR, KELSEY PEARCE IS  
5 A DEFENDANT, BUT NOT A CO-DEFENDANT IN THIS CASE.  
6 HE'S NOT BEING TRIED WITH THIS MAN. THERE'S NO PLEA  
7 AGREEMENT. HE'S NOT GOING TO TESTIFY FOR THE STATE.  
8 HE'S REPRESENTED BY TWO OTHER LAWYERS OUT OF  
9 COLUMBIA, AND I'M SURE HE'LL TAKE THE FIFTH  
10 AMENDMENT.

11 THE COURT: HE SAYS HE WILL NOT BE CALLED  
12 UPON, NOT --

13 MR. NEWSOME: I UNDERSTAND THAT HE'S NOT  
14 BEING CALLED, YOUR HONOR. THAT WAS WHY -- THERE'S  
15 SOME QUESTIONS I FEEL IN ORDER TO EFFECTIVELY  
16 REPRESENT MY CLIENT --

17 THE COURT: WHERE IS KELSEY PEARCE AT THIS  
18 TIME?

19 MR. NEWSOME: HE'S IN THE ORANGEBURG JAIL.

20 THE COURT: SIR?

21 MR. BAILEY: HE'S IN JAIL IN ORANGEBURG.

22 MR. NEWSOME: HE'S BEEN SUBPOENAED.

23 THE COURT: NOTIFY HIS ATTORNEYS TO BE  
24 HERE SO THAT THEY CAN MAKE A DETERMINATION AS TO  
25 WHATEVER IS PROPER FOR THEIR CLIENT, AND I'LL LEAVE

1 THAT TO THEM. THEY MAY HAVE SOME AMENDMENT RIGHTS  
2 NOT TO TESTIFY.

3 MR. BAILEY: I DON'T HAVE ANY IDEA -- WE  
4 WOULD GET INTO HIS CASE TOMORROW, SO IT WOULD  
5 PROBABLY BE LATE FRIDAY.

6 MR. NEWSOME: WHAT IS THE PURPOSE OF THAT,  
7 YOUR HONOR?

8 THE COURT: WELL, HOW ABOUT YOU DOING THIS  
9 TOO. DO YOU KNOW WHO THE ATTORNEYS REPRESENTING HIM  
10 ARE?

11 MR. NEWSOME: YES, SIR. JONATHAN HARVEY  
12 IS ONE. I INFORMED HIM LAST WEEK.

13 THE COURT: WELL, INFORM HIM AS TO WHEN  
14 YOU PROPOSE TO CALL HIM AND AVAIL HIM OF THE  
15 OPPORTUNITY TO BE HERE BECAUSE THE DEFENDANT HAS SOME  
16 CONSTITUTIONAL RIGHTS WITH REGARD TO INCRIMINATING  
17 HIMSELF. ALL RIGHT. WHAT ELSE DO YOU HAVE?

18 MR. NEWSOME: THAT'S IT.

19 THE COURT: OKAY.

20 MR. BAILEY: YOUR HONOR, ONE OTHER THING.  
21 HOW LATE DO YOU PLAN ON WORKING TOMORROW SO I CAN  
22 MAKE SURE I'VE GOT ENOUGH WITNESSES HERE?

23 THE COURT: WELL, I WOULD LIKE TO GO TO  
24 THE END OF THE STATE'S CASE IF IT LOOKS LIKE WE CAN  
25 GET THERE.

1 MR. BAILEY: TOMORROW?

2 THE COURT: YES, SIR.

3 MR. NEWSOME: PROBABLY SAFER TO SAY YOU  
4 WOULD --

5 THE COURT: SIR?

6 MR. NEWSOME: I THINK IT WOULD PROBABLY  
7 TAKE IT INTO FRIDAY MORNING.

8 MR. BAILEY: YEAH. I THINK,  
9 REALISTICALLY, UNLESS YOU WANTED TO WORK UNTIL LIKE  
10 MIDNIGHT --

11 THE COURT: OH, NO, NO. I WOULD LIKE TO  
12 WORK TO 6:00, 6:30, IF WE CAN. AND THE REASON I SAY  
13 THAT IS, YOU KNOW, JURORS HAVE BEEN HUNG UP IN  
14 DIFFERENT CASES ALL OVER THIS COUNTRY, AND I WANT  
15 THEM TO KNOW THAT WE DON'T DO THAT WAY IN SOUTH  
16 CAROLINA AND NOT GOING TO DO IT. THIS BUSINESS OF  
17 STARTING AT 10:00 AND QUITTING AT 2:00, WE DON'T DO  
18 IT.

19 MR. BAILEY: I'LL HAVE 20 WITNESSES HERE  
20 TOMORROW AT 2:30.

21 THE COURT: THAT'S FINE. WELL, THAT WILL  
22 BE GOOD. ALL RIGHT. THANK YOU SO MUCH. ALL RIGHT.  
23 WE'RE IN RECESS NOW UNTIL 2:30 TOMORROW.

24 (WHEREUPON, THE FOREGOING  
25 PROCEEDINGS WERE CONCLUDED AT  
4:30 P.M.)  
(END OF VOLUME FOUR)

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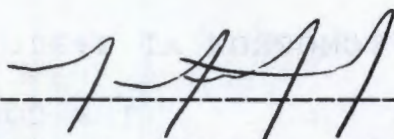
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

I, MARK W. HAGOOD, REGISTERED PROFESSIONAL  
REPORTER, (RPR), COURT REPORTER FOR THE STATE OF  
SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY  
CERTIFY THAT THE FOREGOING PROCEEDINGS IS A  
STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH  
COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING  
TRANSCRIPT CONTAINS A TRUE RECORD OF THE  
PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR  
COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF  
THE PARTIES CONNECTED TO THE ACTION, NOR AM I  
FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA,  
THIS 3<sup>rd</sup> DAY OF April, 1996.

  
\_\_\_\_\_  
MARK W. HAGOOD, RPR

1 STATE OF SOUTH CAROLINA IN GENERAL SESSIONS COURT  
 2 COUNTY OF CALHOUN

3

4 STATE OF SOUTH CAROLINA

94-GS-09-153

5

94-GS-09-154

V.

94-GS-09-155

6

94-GS-09-156

HERMAN LEE HUGHES, JR.

7

8

VOLUME FIVE

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- - -  
 THE TRIAL PROCEEDINGS HAD  
 IN THE ABOVE-STYLED CAUSE  
 - - -

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THURSDAY, SEPTEMBER 7, 1995  
 ST. MATTHEWS, SOUTH CAROLINA

12

13

BEFORE: HONORABLE EDWARD B. COTTINGHAM,  
 CIRCUIT COURT JUDGE

14

15

A P P E A R A N C E S

16

17

FOR THE STATE: WALTER M. BAILEY, JR., SOLICITOR

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FOR THE DEFENDANT: PHILLIP F. NEWSOME, ESQUIRE

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10	STATE'S	15 " " "	978	978
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4	STATE'S 49	FAMILY PHOTO	1381	1381	
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5	STATE'S 51	" " " "	1377	1377	
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7	STATE'S 55	" " " "	1377	1377	
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1 (WHEREUPON, ON THURSDAY,  
2 SEPTEMBER, 7, 1995, BEGINNING AT  
3 10:20 A.M., THE FOLLOWING  
4 PROCEEDINGS WERE HAD.)

5 THE COURT: HAVE THE BAILIFFS COME AROUND,  
6 PLEASE. PLEASE TAKE THE POSITION SO THAT WE CAN  
7 SWEAR THE BAILIFFS AT THIS TIME.

8 MR. WANNAMAKER, WOULD YOU PLEASE PROCEED TO  
9 SWEAR THE BAILIFFS.

10 THE CLERK: IF EACH OF YOU WOULD PLEASE  
11 RAISE YOUR RIGHT HANDS AND PLEASE STATE YOUR NAMES  
12 FOR THE RECORD.

13 THE BAILIFF: MARION F. REILLY, JR.

14 THE BAILIFF: VINCE PAGGETT.

15 THE BAILIFF: TRENT KENNEDY.

16 THE CLERK: DO EACH OF YOU SWEAR THAT YOU  
17 WILL KEEP THE JURORS SWORN IN THE TRIAL OF THIS CASE  
18 AT THE PLACE AND PLACES DESIGNATED BY THE COURT  
19 WITHOUT FOOD OR DRINK UNLESS AUTHORIZED BY THE COURT  
20 UNTIL THEY HAVE AGREED UPON THEIR VERDICT OR YOU ARE  
21 OTHERWISE OFFICIALLY RELIEVED; THAT YOU WILL NOT  
22 ALLOW ANY PERSON TO SPEAK TO THEM NOR ANY OF THEM  
23 WITHOUT LEAVE OF THE COURT; AND THAT YOU WILL NOT  
24 SPEAK TO THEM OR ANY OF THEM YOURSELF WITHOUT SUCH  
25 LEAVE, SO HELP YOU GOD?

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THE BAILIFFS: YES, SIR.

THE COURT: THANK YOU, GENTLEMEN. NOW, SO THAT YOU WILL KNOW, LET'S -- MR. PATRICK, I WANT TO RECAPITULATE WHAT WE SAID BEFORE. PROCEDURALLY, WE'RE GOING TO BRING THE VENIRE OVER TO THE ANTEROOM. WE WILL BE CALLING THEM ONE AT A TIME IN THE ORDER THAT THEY HAVE BEEN QUALIFIED. THEY WILL TURN AROUND. I WILL EXPLAIN TO THEM THAT THE ATTORNEYS WANTED ONE LAST LOOK. THAT JUROR WILL THEN GO OUTSIDE.

THE ATTORNEYS WILL STRIKE AT THAT TIME. PLEASE HAVE ONE OF THE BAILIFFS OUT THERE SO THAT THOSE JURORS WHO ARE ACCEPTED WILL IMMEDIATELY BE USHERED INTO THE JURY ROOM. THOSE JURORS WHO ARE NOT ACCEPTED WILL GO DOWNSTAIRS, AND YOU CAN TAKE THEM BACK OUTSIDE TO THE ANTEROOM THERE.

I WANT TO HOLD THOSE WHO ARE REJECTED IN THE EVENT THAT WE HAVE A BATSON ISSUE THAT WOULD REQUIRE REDRAWING. I WOULD NOT ANTICIPATE THAT. SO IS THERE ANY QUESTION PROCEDURALLY?

THE BAILIFFS: NO, SIR.

THE COURT: JUST MAKE SURE THAT EVERY JUROR IS EITHER IN THE JURY ROOM OR IN YOUR CUSTODY SOMEWHERE.

I LOOK FORWARD TO WORKING WITH ALL OF YOU

1 GENTLEMEN, AND I DEEPLY APPRECIATE YOUR PRESENCE.

2 THE BAILIFF: THANK YOU, YOUR HONOR.

3 THE COURT: MY EXPERIENCE HAS BEEN WITH  
4 SLED OVER THE YEARS IN CASES OF THIS KIND HAS BEEN  
5 EXCELLENT, AND WE COULDN'T DO WITHOUT YOU.

6 THE BAILIFF: THANK YOU, YOUR HONOR. I  
7 MIGHT REMIND THE COURT, YOUR HONOR, THAT MS. DUKES,  
8 MS. IRENE DUKES, IS DUE TO COME AT SOMETIME SHORTLY.

9 THE CLERK: SHE'S HERE. SHE WAS BACK  
10 THERE. SHE WAS DOWN THERE.

11 THE COURT: MR. WANNAMAKER, AT THE  
12 APPROPRIATE TIME, MAKE SURE SHE'S SWORN.

13 THE CLERK: YES, SIR.

14 THE COURT: THANK YOU. DID YOU FIND OUT  
15 ABOUT THAT ONE JUROR?

16 THE CLERK: SOMEBODY IS CHECKING ON THAT  
17 NOW, YOUR HONOR. WE'LL FIND OUT.

18 THE COURT: OKAY. ALL RIGHT. NOW, LET  
19 NOW THE RECORD REFLECT THAT THE COURT IS IN SESSION  
20 PURSUANT TO MY UNDERSTANDING OF YESTERDAY WHEN WE  
21 RECESSED. LET THE RECORD REFLECT THAT THE DEFENDANT  
22 IS IN COURT ACCOMPANIED BY HIS ATTORNEY, AS IS  
23 SOLICITOR BAILEY AND HIS STAFF.

24 GENTLEMEN, WE HAVE QUALIFIED THE JURY AND ARE  
25 NOW READY TO SELECT. AS YOU UNDERSTAND, THE JURY

1 WILL BE THOSE APPEARING AS THEY APPEAR BY THAT  
2 NUMBER. AND THE STATE WILL HAVE FIVE STRIKES. THE  
3 DEFENDANT WILL HAVE TEN STRIKES. WITH REGARDS TO THE  
4 ALTERNATE, AS TO EACH ALTERNATE, THE STATE WOULD HAVE  
5 ONE STRIKE AND THE DEFENDANT TWO STRIKES. ARE THERE  
6 ANY QUESTIONS ABOUT THAT?

7 MR. BAILEY: NO, SIR, YOUR HONOR.

8 THE COURT: ANY QUESTIONS?

9 MR. NEWSOME: NO, SIR, YOUR HONOR.

10 THE COURT: I UNDERSTAND YOU MIGHT HAVE  
11 SOME MOTIONS BEFORE WE PROCEED.

12 MR. NEWSOME: YES, SIR, YOUR HONOR, I DO.  
13 THE FIRST, WHICH I NEED TO REGISTER OUR ATTENTION TO  
14 THE JURISDICTION OF THE COURT UNDER THIS MATTER. ON  
15 BEHALF OF THE HEEDING CASE, THE UNITED STATES SUPREME  
16 COURT HAS DECIDED, YOUR HONOR, IN A CASE I'M SURE  
17 YOU'RE FAMILIAR WITH THE ORDER THAT THE JUDGE SIGNED,  
18 AS I HAVE REVIEWED IT CAREFULLY, WENT OVER A NUMBER  
19 OF THE CRITERIA ESPOUSED IN THE CASE. THERE ARE TWO  
20 AREAS THAT IT DID NOT ADDRESS EITHER IN THE EVIDENCE  
21 OR IN HIS ORDER THAT DEALT WITH THE BACKGROUND, THE  
22 EXTENSIVE BACKGROUND, THE COMPLETE INVESTIGATION OF  
23 THE BACKGROUND AND THE LIFE OF HERMAN HUGHES.

24 THERE WERE NO INTERVIEWS OF THE WITNESSES FROM  
25 THE FAMILY OR NO EVALUATION DONE BY D.Y.S. AND ANYONE

1 ELSE, AND FOR THAT REASON, WE FEEL THAT THE ORDER WAS  
2 IN ERROR, AND WE WOULD OBJECT TO THE JURISDICTION OF  
3 THE COURT.

4 THE COURT: I HAVE REVIEWED IN DETAIL AND  
5 IN DEPTH THE ORDER OF JUDGE WATSON DATED APRIL THE  
6 28TH, 1994, AND HEREWITH MAKE A COPY OF THAT ORDER A  
7 PART OF THIS RECORD.

8 (COURT'S EXHIBIT NUMBER 3 MARKED  
9 FOR IDENTIFICATION.)

10 THE COURT: AND CONCLUDE THAT JUDGE WATSON  
11 MET THE STATUTORY REQUIREMENTS AND THAT UNDER THAT  
12 ORDER AND UNDER HIS FINDINGS, IT IS APPROPRIATE AND  
13 WAS APPROPRIATE THAT THIS COURT NOW HAVE JURISDICTION  
14 OF THE DEFENDANT HERMAN HUGHES. YOUR MOTION IS  
15 RESPECTFULLY DENIED.

16 MR. NEWSOME: THANK YOU, YOUR HONOR.

17 THE COURT: I WILL PROVIDE A CERTIFIED  
18 TRUE COPY OF THAT ORDER.

19 YES, SIR.

20 MR. NEWSOME: YOUR HONOR, AT THIS TIME, I  
21 NEED TO INFORM THE COURT THAT I THINK THE COURT NEEDS  
22 TO INQUIRE OF MY CLIENT -- BEFORE THE OPENING  
23 STATEMENTS THAT I MAKE TO THE JURY -- IT IS OUR  
24 INTENTION TO INFORM THE JURY AT THE OUTSET OF THE  
25 OPENING STATEMENT THAT WE DO NOT DENY THOSE CHARGES

1 THAT ARE PLACED AGAINST HIM. WE ARE ADMITTING HIS  
2 INVOLVEMENT IN THOSE CHARGES, AND THE REASON WE ARE  
3 HERE IS TO ALLOW THE JURY TO MAKE THE DECISION ON THE  
4 PENALTY PHASE INSTEAD OF THE COURT AS THE LAW  
5 PROVIDES.

6 I DO NOT AGREE WITH THE LAW, BUT IT'S THE LAW OF  
7 OUR STATE. WE WOULD HAVE PLED GUILTY A LONG TIME AGO  
8 IF THE STATE WERE NOT SEEKING THE DEATH PENALTY. BUT  
9 BECAUSE IT SEEKS THE DEATH PENALTY, WE WISH TO  
10 PREVAIL OURSELVES OF THE RIGHT TO A JURY TO MAKE THE  
11 DECISION ON THE PENALTY.

12 THE COURT: AS I UNDERSTAND IT, YOU  
13 PROPOSE TO ADMIT TO THE JURY IN YOUR OPENING  
14 STATEMENT --

15 MR. NEWSOME: -- HIS INVOLVEMENT IN THIS  
16 CRIME, THAT'S RIGHT, YOUR HONOR.

17 THE COURT: -- THAT THIS DEFENDANT IS  
18 GUILTY OF THE CHARGE OF ASSAULT AND BATTERY WITH  
19 INTENT TO KILL UPON ONE KELLY HOFFMAN? IS THAT WHAT  
20 I UNDERSTAND?

21 MR. NEWSOME: YES, SIR.

22 THE COURT: AND --

23 MR. NEWSOME: I WILL NOT SAY IN SO MANY  
24 WORDS PLEADING GUILTY BECAUSE I THINK THAT WOULD BE  
25 IMPROPER. I WILL TELL THEM HIS INVOLVEMENT. WE

1 ADMIT AND DO NOT DENY HIS INVOLVEMENT. THERE ARE  
2 FOUR CHARGES. ONE IS THE GRAND LARCENY. I MAY LATER  
3 OBJECT TO THAT CHARGE, AND I'LL ASK THE SOLICITOR TO  
4 ELECT. I THINK IT'S DOUBLE CHARGING. YOU MAY NOT  
5 ACCEPT THAT.

6 THE COURT: WELL, I'LL HEAR THE EVIDENCE  
7 AND THEN WE'LL DECIDE ON THAT.

8 MR. NEWSOME: YES, SIR, BUT I DO INTEND TO  
9 INFORM THEM THAT MY CLIENT ADMITS HIS INVOLVEMENT IN  
10 THIS SITUATION, AND THEN WE'LL PROCEED WITH THE TRIAL  
11 AS THE LAW PROVIDES.

12 THE COURT: AND FOR THE RECORD, NOW, YOU  
13 AND I WILL UNDERSTAND, OF COURSE, DOWN THE ROAD WHAT  
14 POST-CONVICTION RELIEF APPLIES. FOR THE RECORD, YOU  
15 ARE TELLING ME THAT THIS OPENING STATEMENT IS A PART  
16 OF THE TOTALITY OF YOUR TRIAL STRATEGY AS IT EMBRACES  
17 BOTH PHASES OF THIS CASE.

18 MR. NEWSOME: YES, YOUR HONOR.

19 THE COURT: YOU ARE TELLING ME THAT YOU  
20 HAVE DISCUSSED THIS TRIAL STRATEGY WITH THE DEFENDANT  
21 AND WITH HIS FAMILY, TOO?

22 MR. NEWSOME: YES, YOUR HONOR. I'VE  
23 TALKED TO THEM ABOUT THIS, AND MY CLIENT.

24 THE COURT: DO THEY AGREE AND CONCUR?

25 MR. NEWSOME: I BELIEVE THEY DO.

1 THE COURT: MR. HUGHES, PLEASE STAND. MR.  
2 HUGHES, YOU ARE IN COURT AND YOU'VE HEARD WHAT YOUR  
3 ATTORNEY HAS SAID TO ME?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: ORDINARILY, AN ATTORNEY FOR A  
6 DEFENDANT IN HIS OPENING STATEMENT TAKES THE POSITION  
7 THAT HIS CLIENT IS INNOCENT, AND HE'S GOING TO PROVE  
8 HE'S INNOCENT. YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: YOUR ATTORNEY -- YOU ARE  
11 PRESUMED INNOCENT EVEN AS YOU STAND HERE. YOU  
12 UNDERSTAND THAT?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: AND THE STATE MUST PROVE YOU  
15 GUILTY BEYOND A REASONABLE DOUBT. YOU UNDERSTAND  
16 THAT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: YOU WOULD HAVE A RIGHT TO  
19 REMAIN ABSOLUTELY SILENT. YOU DON'T HAVE TO SAY A  
20 THING, AND THE STATE -- AND I WOULD -- IF YOU REMAIN  
21 SILENT, I WOULD EXPLAIN TO THE JURY THAT YOUR SILENCE  
22 DOES NOT CONSTITUTE ANY EVIDENCE AGAINST YOU  
23 WHATSOEVER, CAN'T BE USED IN ANY WAY AGAINST YOU.  
24 YOU UNDERSTAND THAT?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: YOUR ATTORNEY, CONTRARY TO THE  
2 USUAL PROCEDURE, AND I UNDERSTAND HIS TRIAL STRATEGY,  
3 IS INDICATING TO ME THAT HE IS GOING TO TELL THIS  
4 JURY QUITE CANDIDLY OF YOUR INVOLVEMENT IN THIS  
5 AFFAIR. YOU UNDERSTAND THAT?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: AND THE INVOLVEMENT INVOLVES  
8 THE GRAND LARCENY OF A VEHICLE, ARMED ROBBERY,  
9 ASSAULT AND BATTERY UPON ONE KELLY HOFFMAN AND THE  
10 MURDER OF A YOUNG MAN. YOU UNDERSTAND WHAT HE'S  
11 SAYING?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: HE'S GOING TO SAY THAT YOU  
14 WERE IN, AROUND, UPON AND A PART OF IT. DO YOU  
15 UNDERSTAND THAT?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: YOU AGREE WITH THAT?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: YOU UNDERSTAND THAT THIS --  
20 THAT'S DIFFERENT FROM ORDINARILY WHEN YOU SAY I  
21 DIDN'T EVEN DO IT. YOU UNDERSTAND THAT?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: HE SAYS -- AND IT'S HIS  
24 STRATEGY, NOT MINE. I'M NOT PERMITTED TO COMMENT ON  
25 THAT ONE WAY OR THE OTHER. HE SAYS THIS IS HIS

1 STRATEGY, SO THAT HE WOULD HAVE THIS AVAILABLE TO HIM  
2 AS POSSIBLY A MITIGATING CIRCUMSTANCE IN THE SECOND  
3 PHASE IF WE GET THERE. DO YOU UNDERSTAND THAT?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: IS THERE ANY QUESTION THAT YOU  
6 HAVE ABOUT WHAT HE HAS SAID OR WHAT I'M TELLING YOU?

7 THE DEFENDANT: NO, SIR.

8 THE COURT: ALL RIGHT, SIR. YOU MAY BE  
9 SEATED.

10 DO YOU HAVE ANY COMMENTS ON THAT CONNECTION, MR.  
11 BAILEY?

12 MR. BAILEY: NOT ON THAT, YOUR HONOR, NO.

13 THE COURT: ALL RIGHT, SIR. MR. NEWSOME,  
14 ARE THERE ANY OTHER MOTIONS?

15 MR. NEWSOME: NOT AT THIS TIME, YOUR  
16 HONOR.

17 THE COURT: ALL RIGHT, SIR. MR. BAILEY.

18 MR. BAILEY: YOUR HONOR, THE ONLY THING I  
19 WANTED TO BRING TO THE COURT'S ATTENTION IS THE COURT  
20 INTERVIEWED TWO WITNESSES -- TWO JURORS IN CHAMBERS  
21 WITH THE DEFENDANT AND HIS ATTORNEY PRESENT. I DON'T  
22 BELIEVE THE COURT REPORTER WAS IN THERE AND THERE WAS  
23 NO RECORD OF THAT, AND I THOUGHT PERHAPS THAT SHOULD  
24 -- WHAT HAPPENED IN CHAMBERS SHOULD BE PUT ON THE  
25 RECORD.

1 THE COURT: ALL RIGHT. THE TWO JURORS,  
2 WHAT WERE THEIR NAMES?

3 MR. BAILEY: KAIGLER AND --

4 MR. NEWSOME: VERNON.

5 MR. BAILEY: -- VERNON.

6 THE COURT: THESE TWO JURORS COMMUNICATED  
7 TO THE SHERIFF'S DEPARTMENT THAT THEY DESIRED TO SEE  
8 ME ABOUT A MATTER. AT THAT TIME, I ASKED THAT THE  
9 STATE'S ATTORNEY AND THE DEFENDANT'S ATTORNEY COME  
10 INTO CHAMBERS, ACCOMPANIED BY THE DEFENDANT. BOTH  
11 JURORS IN ALL OF OUR PRESENCE INDICATED THAT HAVING  
12 THOUGHT THROUGH THE NIGHT ABOUT THE DIFFERENT  
13 RAMIFICATIONS OF THIS TRIAL, CAME TO THE CONCLUSION  
14 THAT ONE KNEW THE GRANDFATHER -- THE GRAND -- WHO WAS  
15 IT, THE GRANDMOTHER OF THE VICTIM?

16 MR. BAILEY: YES, SIR.

17 MR. NEWSOME: I THOUGHT IT WAS THE MOTHER  
18 OF THE STEPFATHER OF ONE OF THE VICTIMS, BUT  
19 SOMEWHERE IN THAT.

20 MR. BAILEY: THAT WAS MY UNDERSTANDING,  
21 THAT IT WAS NOT A DIRECT BLOOD RELATIVE OF THE  
22 VICTIM, BUT --

23 THE COURT: BUT FELT LIKE THAT  
24 RELATIONSHIP OR KNOWLEDGE WOULD IN NO WAY IMPAIR HIS  
25 ABILITY TO BE FAIR AND IMPARTIAL, WANTED TO CALL IT

1 TO THE ATTENTION OF THE COURT. THE DEFENSE ATTORNEY  
2 WAS GIVEN THE OPPORTUNITY TO CROSS-EXAMINE ON THAT  
3 ISSUE, AND I BELIEVE YOU HAD NO OBJECTION TO HIM  
4 REMAINING ON THE PROPOSED PANEL; IS THAT RIGHT?

5 MR. NEWSOME: AFTER QUESTIONING HIM, YOUR  
6 HONOR, I HAVE NO OBJECTION.

7 THE COURT: OKAY. AND THE SECOND JUROR,  
8 MR. BAILEY, WHAT WAS HIS POSITION?

9 MR. BAILEY: BASICALLY THE SAME THING,  
10 YOUR HONOR, THAT HE'S NOT RELATED TO ANYBODY, BUT  
11 THAT HE LIVED CLOSE TO SOME RELATIVE OF ONE OF THE  
12 VICTIMS.

13 THE COURT: HE AGAIN STATED THAT THAT  
14 CONNECTION OF HAVING LIVED DOWN THE STREET FROM SOME  
15 RELATIVE WOULD IN NO WAY IMPAIR HIS ABILITY TO BE  
16 FAIR AND IMPARTIAL TO ALL PARTIES CONCERNED, BUT  
17 AGAIN DESIRED TO CALL IT TO MY ATTENTION. COUNSEL  
18 FOR THE DEFENSE THEN AGAIN WAS AFFORDED THE  
19 OPPORTUNITY TO EXAMINE THIS WITNESS -- JUROR, AND DID  
20 SO, AND POSED NO PROBLEMS WITH HIM REMAINING ON THE  
21 PANEL. IS THAT CORRECT, MR. NEWSOME?

22 MR. NEWSOME: THAT'S CORRECT, YOUR HONOR.

23 THE COURT: THAT'S APPROPRIATE. I THANK  
24 YOU FOR CALLING THAT TO MY ATTENTION.

25 DID YOU GET THAT OTHER ONE?

1 THE CLERK: YES. ALL OF THEM ARE THERE.  
2 ALL OF THEM ARE READY TO COME OVER. WE HAVE OUR LAST  
3 SLED AGENT HERE NOW.

4 THE COURT: GOOD TO SEE YOU.

5 THE BAILIFF: GOOD TO SEE YOU AGAIN,  
6 JUDGE.

7 THE COURT: I BELIEVE YOU WORKED WITH ME  
8 BEFORE.

9 THE BAILIFF: YES, SIR. IT'S MY PLEASURE  
10 TO SEE YOU.

11 THE COURT: RAISE YOUR RIGHT HAND AND  
12 PLEASE STATE YOUR NAME FOR THE RECORD.

13 THE BAILIFF: IRENE DUKES.

14 THE CLERK: DO YOU SWEAR THAT YOU WILL  
15 KEEP THE JURORS SWORN IN THE TRIAL OF THIS CASE AT  
16 THE PLACE OR PLACES DESIGNATED BY THE COURT WITHOUT  
17 FOOD OR DRINK UNLESS AUTHORIZED BY THE COURT UNTIL  
18 THEY SHALL AGREE UPON THEIR VERDICT OR YOU ARE  
19 OTHERWISE OFFICIALLY RELIEVED; THAT YOU WILL NOT  
20 ALLOW ANY PERSON TO SPEAK TO THEM NOR ANY OF THEM  
21 WITHOUT LEAVE OF THE COURT; AND THAT YOU WILL NOT  
22 SPEAK TO THEM OR ANY OF THEM YOURSELF WITHOUT SUCH  
23 LEAVE, SO HELP YOU GOD?

24 THE BAILIFF: YES, I WILL.

25 THE COURT: THANK YOU. CAN YOU CALL OVER?

1 ARE THEY ON THEIR WAY?

2 THE CLERK: YES.

3 MR. BAILEY: YOUR HONOR, MY FIRST WITNESS  
4 IS IN THE COURTROOM, AND THERE'S ONE OTHER WITNESS,  
5 KELLY HOFFMAN, WHO IS PRESENT, AND I UNDERSTAND SHE  
6 WOULD BE SUBJECT TO THE SEQUESTRATION ORDER. IS IT  
7 ALL RIGHT IF SHE REMAINS IN FOR THE OPENING  
8 STATEMENTS AND GOES BACK IN THE ROOM AFTER THAT?

9 THE COURT: YES, SIR. I WILL PERMIT IT  
10 FOR OPENING STATEMENTS, AND I WILL DO THE SAME FOR  
11 YOU, MR. NEWSOME. JUST MAKE SURE THAT THAT'S DONE AT  
12 THAT TIME. THE WITNESSES UPON TESTIFYING CAN REMAIN  
13 IN THE COURTROOM. AND OF COURSE, WHOEVER IS YOUR  
14 CHIEF INVESTIGATING OFFICER IS PERMITTED TO REMAIN.  
15 YOU WOULD UNDERSTAND THAT?

16 MR. BAILEY: YES, SIR. THAT WOULD BE  
17 SHERIFF JONES, YOUR HONOR.

18 THE COURT: ALL RIGHT, SIR.

19 THE CLERK: WE'RE READY, YOUR HONOR.

20 THE COURT: ALL RIGHT. HAVE THE JUROR  
21 BRENDA WISE COME OVER, PLEASE.

22 (JUROR NUMBER 293, A WHITE  
23 FEMALE, WAS CALLED.)

24 THE CLERK: IF YOU WOULD, JUST PLEASE COME  
25 FORWARD.

1 THE COURT: YES. GOOD AFTERNOON, MS.  
2 WISE.

3 JURY VENIRE MEMBER: GOOD AFTERNOON.

4 THE COURT: MS. WISE, WE ARE GETTING READY  
5 TO SELECT A JURY OF 14 INDIVIDUALS, AND THE LAWYERS  
6 WANTED TO HAVE ONE LAST LOOK AT THE JURORS, AND THEN  
7 WE'LL BE SELECTING IN JUST A MOMENT. WOULD YOU  
8 PLEASE TURN AROUND AND FACE THE AUDIENCE. THANK YOU  
9 SO MUCH, MS. WISE. IF YOU WILL PROCEED TO GO THIS  
10 WAY HERE NOW. WE WILL GIVE YOU FURTHER INSTRUCTIONS  
11 IN JUST A MOMENT. THANK YOU SO MUCH.

12 (JUROR 293 OUT OF COURTROOM.)

13 THE COURT: CLOSE THAT DOOR FOR ME,  
14 PLEASE.

15 WHAT SAYS THE STATE?

16 MR. BAILEY: PRESENT THE JUROR.

17 THE COURT: WHAT SAYS THE DEFENSE?

18 MR. NEWSOME: PLEASE SWEAR HER.

19 THE COURT: BRING THE NEXT ONE IN, PLEASE.  
20 JERRY CROWE.

21 (JUROR NUMBER 41, A WHITE MALE,  
22 WAS CALLED.)

23 THE COURT: GOOD AFTERNOON, MR. CROWE.  
24 PLEASE TURN AROUND AND FACE THE ATTORNEYS FOR ME.  
25 THEY WANT ONE LAST LOOK BEFORE THEY MAKE THEIR FINAL

1 SELECTION. ALL RIGHT, MR. CROWE, THANK YOU. IF YOU  
2 WILL STEP OUTSIDE, WE'LL LET YOU KNOW IN JUST A  
3 MOMENT WHAT YOUR PREFERRED STATUS IS. I APPRECIATE  
4 YOUR ATTENDANCE. THANK YOU.

5 (JUROR 41 OUT OF COURTROOM.)

6 THE COURT: WHAT SAYS THE STATE?

7 MR. BAILEY: PRESENT THE JUROR.

8 THE COURT: WHAT SAYS THE DEFENSE?

9 MR. NEWSOME: PLEASE EXCUSE THIS JUROR.

10 THE COURT: ALL RIGHT.

11 THE BAILIFF: ERNEST VERNON.

12 (JUROR NUMBER 269, A WHITE MALE,  
13 WAS CALLED.)

14 THE COURT: GOOD AFTERNOON.

15 JURY VENIRE MEMBER: GOOD AFTERNOON, SIR.

16 THE COURT: PLEASE TURN AND FACE THE  
17 COUNSEL TABLE FOR ME, SIR. ALL RIGHT. THANK YOU.  
18 IF YOU WILL PLEASE STEP OUTSIDE, WE'LL GIVE -- HAVE  
19 FURTHER INSTRUCTIONS FOR YOU IN JUST A MOMENT.

20 (JUROR 269 OUT OF COURTROOM.)

21 THE COURT: WHAT SAYS THE STATE?

22 MR. BAILEY: PRESENT THE JUROR.

23 THE COURT: WHAT SAYS THE DEFENSE?

24 MR. NEWSOME: PLEASE SWEAR HIM.

25 (JUROR NUMBER 2, A WHITE MALE,

1 WAS CALLED.)

2 THE COURT: GOOD AFTERNOON, MR. ATKINS.  
3 PLEASE COME FORWARD AND TURN AND FACE THE ATTORNEYS  
4 FOR ME, IF YOU WILL. ALL RIGHT. THANK YOU, MR.  
5 ATKINS. IF YOU WILL JUST STEP OUT HERE, WE'LL GIVE  
6 YOU FURTHER INSTRUCTIONS IN JUST A MOMENT. JUST STEP  
7 OUT THIS DOOR FOR ME, PLEASE. AND GOOD AFTERNOON TO  
8 YOU.

9 JURY VENIRE MEMBER: GOOD AFTERNOON.

10 (JUROR 2 OUT OF COURTROOM.)

11 THE COURT: WHAT SAYS THE STATE?

12 MR. BAILEY: PRESENT THE JUROR.

13 THE COURT: WHAT SAYS THE DEFENSE?

14 MR. NEWSOME: PLEASE SWEAR HIM.

15 THE BAILIFF: IRENE RICHARDSON.

16 (JUROR NUMBER 241, A BLACK  
17 FEMALE, WAS CALLED.)

18 THE COURT: MS. RICHARDSON, GOOD  
19 AFTERNOON. PLEASE FACE THE JURY FOR ME.

20 THE CLERK: WHAT SAYS THE STATE?

21 MR. NEWSOME: SHE'S BEEN EXCUSED, YOUR  
22 HONOR.

23 THE COURT: MS. RICHARDSON, YOU MAY COME  
24 AROUND. THANK YOU.

25 (JUROR 241 OUT OF COURTROOM.)

1 THE COURT: ALL RIGHT. NEXT JUROR.

2 MR. BAILEY: EXCUSE THE JUROR.

3 THE COURT: SIR?

4 MR. BAILEY: EXCUSE MS. RICHARDSON,  
5 PLEASE. EXCUSE THE JUROR.

6 THE COURT: THAT JUROR WILL BE EXCUSED.  
7 THANK YOU.

8 THE BAILIFF: ANNA EDWARDS.

9 (JUROR NUMBER 52, A WHITE  
10 FEMALE, WAS CALLED.)

11 THE COURT: GOOD AFTERNOON. PLEASE TURN  
12 AND FACE THE COUNSEL TABLE FOR ME, IF YOU WOULD. ALL  
13 RIGHT. MS. EDWARDS, IF YOU WILL STEP THROUGH THIS  
14 BACK DOOR HERE, WE'LL GIVE YOU FURTHER INSTRUCTION IN  
15 JUST A MOMENT.

16 (JUROR 52 OUT OF COURTROOM.)

17 MR. BAILEY: PRESENT THE JUROR.

18 MR. NEWSOME: PLEASE SWEAR HER.

19 THE BAILIFF: WILLIAM BARRON.

20 (JUROR NUMBER 7, A WHITE MALE,  
21 WAS CALLED.)

22 THE COURT: GOOD AFTERNOON, MR. BARRON.

23 JURY VENIRE MEMBER: GOOD AFTERNOON, YOUR  
24 HONOR.

25 THE COURT: PLEASE TURN AND FACE THE PANEY

1 FOR A MOMENT. THANK YOU. MR. BARRON, WE'LL HAVE  
2 INSTRUCTION FOR YOU IN JUST A MINUTE. IF YOU WILL  
3 STEP THROUGH THIS DOOR.

4 (JUROR 7 OUT OF COURTROOM.)

5 MR. BAILEY: PRESENT THE JUROR.

6 MR. NEWSOME: PLEASE SWEAR HIM.

7 THE BAILIFF: TED AYER.

8 (JUROR NUMBER 3, A WHITE MALE,  
9 WAS CALLED.)

10 THE COURT: MR. AYER.

11 JURY VENIRE MEMBER: YES, SIR.

12 THE COURT: GOOD AFTERNOON. PLEASE TURN  
13 AND FACE COUNSEL TABLE FOR ME. ALL RIGHT. MR. AYER,  
14 IF YOU WILL PLEASE STEP THROUGH THIS DOOR HERE, WE'LL  
15 HAVE FURTHER INSTRUCTION FOR YOU IN JUST A MOMENT.

16 (JUROR 3 OUT OF COURTROOM.)

17 MR. BAILEY: EXCUSE THE JUROR.

18 THE BAILIFF: JOAN MARTIN.

19 (JUROR NUMBER 161, A WHITE  
20 FEMALE, WAS CALLED.)

21 THE COURT: HELLO.

22 JURY VENIRE MEMBER: HELLO THERE.

23 THE COURT: PLEASE TURN AND FACE COUNSEL  
24 TABLE FOR ME, PLEASE, MS. MARTIN. THANK YOU. MS.  
25 MARTIN, IF YOU WILL FOLLOW US THROUGH THIS DOOR HERE

1 TO THE RIGHT, WE'LL HAVE ADDITIONAL INSTRUCTIONS FOR  
2 YOU IN JUST A MOMENT. THANK YOU SO MUCH.

3 (JUROR 161 OUT OF COURTROOM.)

4 MR. BAILEY: PRESENT THE JUROR.

5 MR. NEWSOME: PLEASE EXCUSE THIS JUROR.

6 THE BAILIFF: SONYA PARNELL.

7 (JUROR NUMBER 197, A WHITE  
8 FEMALE, WAS CALLED.)

9 THE COURT: ALL RIGHT. MS. PARNELL,  
10 PLEASE FOLLOW THIS GENTLEMAN HERE, AND WE'LL HAVE  
11 ADDITIONAL INSTRUCTIONS FOR YOU IN JUST A MOMENT.  
12 THANK YOU.

13 (JUROR 197 OUT OF COURTROOM.)

14 MR. BAILEY: PRESENT THE JUROR.

15 MR. NEWSOME: PLEASE EXCUSE THE JUROR.

16 THE BAILIFF: GENE PLATT.

17 (JUROR NUMBER 204, A WHITE MALE,  
18 WAS CALLED.)

19 THE COURT: GOOD AFTERNOON.

20 JURY VENIRE MEMBER: HOW ARE YOU DOING,  
21 YOUR HONOR?

22 THE COURT: MR. PLATT.

23 JURY VENIRE MEMBER: YES, SIR.

24 THE COURT: PLEASE TURN AND FACE COUNSEL  
25 TABLE FOR ME, AND THEN IF YOU PLEASE WILL FOLLOW THIS

1 GENTLEMAN OUT THE DOOR TO MY RIGHT, AND WE'LL HAVE  
2 ADDITIONAL INSTRUCTIONS FOR YOU IN JUST A MOMENT.  
3 YOU MAY LEAVE OUT THE DOOR HERE, PLEASE. AND THANK  
4 YOU SO MUCH.

5 JURY VENIRE MEMBER: THANK YOU.

6 (JUROR 204 OUT OF COURTROOM.)

7 MR. BAILEY: PRESENT THE JUROR.

8 MR. NEWSOME: PLEASE EXCUSE HIM.

9 THE BAILIFF: MARCIA KOLBERG.

10 (JUROR NUMBER 147, A WHITE  
11 FEMALE, WAS CALLED.)

12 THE COURT: MS. KOLBERG, GOOD AFTERNOON.

13 JURY VENIRE MEMBER: GOOD AFTERNOON.

14 THE COURT: PLEASE TURN AND FACE THE  
15 COUNSEL TABLE FOR ME. THANK YOU. MS. KOLBERG, IF  
16 YOU WILL TURN TO YOUR RIGHT, PLEASE, AND FOLLOW OUT  
17 THIS DOOR, WE WILL HAVE ADDITIONAL INSTRUCTIONS FOR  
18 YOU IN JUST A MOMENT.

19 (JUROR 147 OUT OF COURTROOM.)

20 MR. BAILEY: PRESENT THE JUROR.

21 MR. NEWSOME: PLEASE EXCUSE THE JUROR.

22 THE BAILIFF: CARROLL HUDSON.

23 (JUROR NUMBER 110, A WHITE MALE,  
24 WAS CALLED.)

25 THE COURT: GOOD AFTERNOON, MR. HUDSON.

1 JURY VENIRE MEMBER: HOW DO YOU DO, SIR?

2 THE COURT: PLEASE TURN AND FACE THE  
3 COUNSEL TABLE FOR A MOMENT. THANK YOU, MR. HUDSON.  
4 NOW, IF YOU WILL TURN TO YOUR RIGHT, PLEASE, AND  
5 FOLLOW THIS GENTLEMAN OUTSIDE, I'LL HAVE ADDITIONAL  
6 INSTRUCTIONS FOR YOU IN JUST A MOMENT. THANK YOU.

7 (JUROR 110 OUT OF COURTROOM.)

8 MR. BAILEY: PRESENT THE JUROR.

9 MR. NEWSOME: PLEASE SWEAR HIM.

10 THE BAILIFF: TEDDY POUND.

11 (JUROR NUMBER 205, A WHITE MALE,  
12 WAS CALLED.)

13 THE COURT: MR. POUND, GOOD AFTERNOON.

14 JURY VENIRE MEMBER: GOOD AFTERNOON.

15 THE COURT: PLEASE TURN AND FACE THE  
16 ATTORNEYS FOR ME. THANK YOU, MR. POUND. IF YOU WILL  
17 TURN TO YOUR RIGHT, PLEASE, HERE, AND YOU MAY GO OUT,  
18 AND WE'LL HAVE ADDITIONAL INSTRUCTIONS IN JUST A  
19 MINUTE. THANK YOU FOR YOUR ATTENDANCE HERE TODAY.

20 JURY VENIRE MEMBER: YES, SIR.

21 (JUROR 205 OUT OF COURTROOM.)

22 MR. BAILEY: PRESENT THE JUROR.

23 MR. NEWSOME: PLEASE SWEAR THIS JUROR.

24 THE BAILIFF: JACQUELINE DYCHES.

25 (JUROR NUMBER 49, A WHITE

1 FEMALE, WAS CALLED.)

2 THE COURT: MS. HUDSON, GOOD AFTERNOON.  
3 MS. HUDSON, PLEASE TURN AND FACE THE COUNSEL TABLE  
4 FOR ME. MS. HUDSON, IF YOU WILL TURN AND FOLLOW THIS  
5 GENTLEMAN OUTSIDE, WE'LL HAVE ADDITIONAL INSTRUCTIONS  
6 FOR YOU IN JUST A MINUTE.

7 THE CLERK: THAT'S MS. DYCHES.

8 THE COURT: MS. DYCHES. EXCUSE ME, MS.  
9 DYCHES.

10 (JUROR 49 OUT OF COURTROOM.)

11 MR. BAILEY: PRESENT THE JUROR.

12 MR. NEWSOME: PLEASE EXCUSE HER.

13 THE BAILIFF: JOHN KAIGLER.

14 (JUROR NUMBER 137, A WHITE MALE,  
15 WAS CALLED.)

16 THE COURT: GOOD AFTERNOON, MR. KAIGLER.

17 JURY VENIRE MEMBER: HOW ARE YOU DOING?

18 THE COURT: PLEASE TURN AND FACE COUNSEL  
19 TABLE FOR ME, MR. KAIGLER. IF YOU WILL PLEASE TURN,  
20 NOW, AND FOLLOW THIS GENTLEMAN TO THE RIGHT, WE'LL  
21 HAVE ADDITIONAL INSTRUCTIONS FOR YOU IN JUST A  
22 MOMENT.

23 (JUROR 137 OUT OF COURTROOM.)

24 MR. BAILEY: PRESENT THE JUROR.

25 MR. NEWSOME: PLEASE EXCUSE HIM.

1 THE COURT: THE JUROR IS EXCUSED.

2 THE BAILIFF: MARY GUNTER.

3 THE COURT: STRIKES ARE SHOWING TWO AND  
4 SEVEN. MR. NEWSOME? MR. NEWSOME, YOU SHOW SEVEN.

5 MR. NEWSOME: I THOUGHT I HAD SIX. I HAD  
6 COUNTED -- I HAD SEVEN, YES, SIR.

7 (JUROR NUMBER 88, A WHITE  
8 FEMALE, WAS CALLED.)

9 THE COURT: MS. GUNTER, GOOD AFTERNOON.

10 JURY VENIRE MEMBER: HELLO.

11 THE COURT: GLAD TO SEE YOU AGAIN.

12 JURY VENIRE MEMBER: THANK YOU.

13 THE COURT: PLEASE TURN AND FACE COUNSEL  
14 TABLE FOR ME. THANK YOU, MS. GUNTER. MS. GUNTER, IF  
15 YOU WILL PLEASE NOW GO TO YOUR RIGHT, I'LL HAVE SOME  
16 ADDITIONAL INSTRUCTIONS FOR YOU IN JUST A MOMENT.

17 (JUROR 88 OUT OF COURTROOM.)

18 MR. BAILEY: PRESENT THE JUROR.

19 MR. NEWSOME: PLEASE SWEAR HER.

20 THE BAILIFF: KATHY CHEESEBORO.

21 (JUROR NUMBER 34, A BLACK  
22 FEMALE, WAS CALLED.)

23 THE COURT: GOOD AFTERNOON, MS.

24 CHEESEBORO.

25 JURY VENIRE MEMBER: GOOD AFTERNOON.

1 THE COURT: PLEASE TURN AND FACE COUNSEL  
2 TABLE FOR ME. THANK YOU. OKAY. MS. CHEESEBORO, IF  
3 YOU WILL NOW PLEASE FOLLOW THIS GENTLEMAN THROUGH  
4 THIS DOOR, I'LL HAVE SOME ADDITIONAL INSTRUCTIONS FOR  
5 YOU. THANK YOU SO MUCH FOR YOUR ATTENDANCE HERE  
6 TODAY.

7 (JUROR 34 OUT OF COURTROOM.)

8 MR. BAILEY: PRESENT THE JUROR.

9 MR. NEWSOME: PLEASE SWEAR HER.

10 THE BAILIFF: ROBIN WILLIAMS.

11 (JUROR NUMBER 290, A WHITE BLACK  
12 FEMALE, WAS CALLED.)

13 THE COURT: GOOD AFTERNOON.

14 JURY VENIRE MEMBER: HEY. HOW ARE YOU?

15 THE COURT: PLEASE TURN AND FACE THE  
16 COUNSEL TABLE FOR ME. THANK YOU, MA'AM. MS.  
17 WILLIAMS, IF YOU NOW -- IS THIS MS. ROBIN WILLIAMS?

18 JURY VENIRE MEMBER: YES.

19 THE COURT: IF YOU WILL NOW FOLLOW THIS  
20 GENTLEMAN FOR ME, AND I'LL HAVE SOME ADDITIONAL  
21 INSTRUCTIONS FOR YOU IN JUST A MOMENT. THANK YOU SO  
22 MUCH.

23 (JUROR 290 OUT OF COURTROOM.)

24 MR. BAILEY: PRESENT THE JUROR.

25 MR. NEWSOME: PLEASE SWEAR HER.

1 THE BAILIFF: PATRICIA WISE.

2 (JUROR NUMBER 295, A WHITE  
3 FEMALE, WAS CALLED.)

4 JURY VENIRE MEMBER: HI.

5 THE COURT: GOOD AFTERNOON. PLEASE TURN  
6 AND FACE THE COUNSEL TABLE FOR ME, MS. -- IS THIS MS.  
7 WISE?

8 JURY VENIRE MEMBER: YES, SIR.

9 THE COURT: MS. WISE, IF YOU WILL FOLLOW  
10 -- TURN AROUND, PLEASE, MA'AM, AND FOLLOW THIS  
11 GENTLEMAN HERE, AND I'LL HAVE SOME ADDITIONAL  
12 INSTRUCTIONS IN JUST A MOMENT.

13 (JUROR 295 OUT OF COURTROOM.)

14 MR. BAILEY: PRESENT THE JUROR.

15 MR. NEWSOME: PLEASE SWEAR HER.

16 THE BAILIFF: NATALIE MCVICKER.

17 (JUROR NUMBER 179, A WHITE  
18 FEMALE, WAS CALLED.)

19 THE COURT: GOOD AFTERNOON, MA'AM.

20 JURY VENIRE MEMBER: HEY.

21 THE COURT: TURN AND FACE THE PANEL FOR  
22 ME, PLEASE, MS. MCVICKER. MS. MCVICKER, IF YOU WILL  
23 TURN AND FOLLOW THIS GENTLEMAN. I'LL HAVE SOME  
24 ADDITIONAL INSTRUCTIONS FOR YOU IN A MOMENT. THANK  
25 YOU.

1 (JUROR 179 OUT OF COURTROOM.)

2 MR. BAILEY: PRESENT THE JUROR.

3 MR. NEWSOME: SWEAR HER.

4 THE COURT: ALL RIGHT. ACCORDING TO MY  
5 THINKING NOW, THAT WOULD CONSTITUTE THE JURY.

6 MR. BAILEY: YES, SIR.

7 THE COURT: YOU CONCUR IN THAT?

8 MR. BAILEY: YES, SIR.

9 THE COURT: YOU CONCUR IN THAT?

10 MR. NEWSOME: YES, SIR.

11 THE COURT: WE'LL NOW MOVE TO THE FIRST  
12 ALTERNATE. THE STATE WILL HAVE ONE STRIKE; THE  
13 DEFENSE WILL HAVE TWO. BRING THE NEXT JUROR IN HERE.

14 THE BAILIFF: JUDITH RAST.

15 (JUROR NUMBER 208, A WHITE  
16 FEMALE, WAS CALLED.)

17 THE COURT: GOOD AFTERNOON. PLEASE TURN  
18 AND FACE THE COUNSEL TABLE FOR ME. THANK YOU. NOW,  
19 IF YOU WOULD, MA'AM, FOLLOW THIS GENTLEMAN OUTSIDE,  
20 AND I'LL HAVE ADDITIONAL INSTRUCTIONS FOR YOU IN JUST  
21 A MOMENT. THANK YOU FOR YOUR ATTENDANCE HERE THIS  
22 AFTERNOON.

23 (JUROR 208 OUT OF COURTROOM.)

24 MR. BAILEY: PRESENT THE JUROR.

25 MR. NEWSOME: PLEASE SWEAR HER.

1 THE COURT: ALTERNATE NUMBER ONE.

2 THE BAILIFF: MARY H. WISE.

3 (JUROR NUMBER 294, A WHITE  
4 FEMALE, WAS CALLED.)

5 THE COURT: IF YOU WILL TURN AND PLEASE  
6 FACE THE ATTORNEYS FOR ME. ALL RIGHT. MS. WISE,  
7 WOULD YOU PLEASE NOW COME AROUND AND FOLLOW THE  
8 GENTLEMAN HERE? THANK YOU. WE'LL HAVE ADDITIONAL  
9 INSTRUCTIONS. THANK YOU.

10 (JUROR 294 OUT OF COURTROOM.)

11 MR. BAILEY: PRESENT THE JUROR.

12 MR. NEWSOME: PLEASE EXCUSE HER.

13 THE BAILIFF: CLIFTON ZEIGLER.

14 (JUROR NUMBER 299, A WHITE MALE,  
15 WAS CALLED.)

16 THE COURT: MR. ZEIGLER, GOOD AFTERNOON.

17 JURY VENIRE MEMBER: YES, SIR. GOOD  
18 AFTERNOON.

19 THE COURT: PLEASE TURN AND FACE THE  
20 ATTORNEYS FOR ME. NOW, MR. ZEIGLER, IF YOU WILL  
21 KINDLY PLEASE STEP TO YOUR RIGHT AND FOLLOW THIS  
22 GENTLEMAN, I'LL HAVE SOME ADDITIONAL INSTRUCTION IN  
23 JUST A MOMENT.

24 (JUROR 299 OUT OF COURTROOM.)

25 MR. BAILEY: PRESENT THE JUROR.

1 MR. NEWSOME: PLEASE EXCUSE HIM.

2 THE BAILIFF: TIMOTHY BUTLER.

3 (JUROR NUMBER 28, A BLACK MALE,

4 WAS CALLED.)

5 THE COURT: PLEASE TURN AND FACE THE

6 ATTORNEYS. ALL RIGHT, SIR. WILL YOU COME AROUND,

7 PLEASE? THANK YOU, SIR.

8 (JUROR 28 OUT OF COURTROOM.)

9 MR. BAILEY: PRESENT THE JUROR.

10 MR. NEWSOME: PLEASE SWEAR HIM.

11 THE COURT: SWEAR THE JUROR. ALL RIGHT,

12 SIR. MR. CLERK, SO THAT THERE WILL BE NO QUESTION

13 ABOUT IT, NOW, PLEASE CALL THE NAMES OF THE WHOLE

14 CONSTITUTION THE JURY.

15 THE CLERK: OKAY. THOSE WOULD BE BRENDA

16 WISE, ERNEST VERNON, EVERETTE ATKINS, ANNA EDWARDS,

17 WILLIAM BARRON, CARROLL HUDSON, TEDDY POUND, MARY

18 GUNTER, KATHY CHEESEBORO, ROBIN WILLIAMS, PATRICIA

19 WISE AND NATALIE MCVICKER.

20 THE COURT: DO YOU AGREE WITH THAT, MR.

21 BAILEY?

22 MR. BAILEY: YES, SIR.

23 MR. NEWSOME: YES, SIR.

24 THE COURT: ALL RIGHT. CALL THE

25 ALTERNATES, PLEASE.

1 THE CLERK: FIRST ALTERNATE, JUDITH RAST.  
2 SECOND ALTERNATE, TIMOTHY BUTLER.

3 THE COURT: I'M GOING TO DESIGNATE MR.  
4 WILLIAM BARRON AS THE FOREPERSON OF THIS JURY. MR.  
5 BARRON. OKAY. NOW, THE JURY AT THIS TIME STILL  
6 REMAINS UNSWORN. IS THERE ANY MOTION RELATIVE TO THE  
7 COMPOSITION OF THE JURY PANEL? WHAT SAY THE STATE?

8 MR. BAILEY: NOT FROM THE STATE, YOUR  
9 HONOR.

10 THE COURT: SIR?

11 MR. NEWSOME: NOT FROM THE DEFENDANT.

12 THE COURT: ALL RIGHT, SIR. THEN THE  
13 RECORD WILL REFLECT THAT THERE ARE NO BATSON ISSUES.

14 MR. NEWSOME: NO, SIR.

15 THE COURT: ALL RIGHT. NOW, MR. BAILIFF,  
16 MAKE SURE I'VE GOT 14 JURORS BACK THERE.

17 THE CLERK: YOU WANT ME TO MAKE SURE THAT  
18 THEY ARE -- CHECK THE ROLL?

19 THE COURT: YES. YOU MAY CALL THE ROLL OF  
20 THE JURORS, AND THEN TELL MR. BARRON HE'S THE  
21 FOREMAN.

22 GENTLEMEN, I'M READY TO BRING THE JURY OUT. ARE  
23 YOU READY?

24 MR. BAILEY: YES, SIR.

25 MR. NEWSOME: YES, SIR. WE'RE READY.

1 THE COURT: YOU CAN INFORM MR. BARRON HE  
2 WILL BE THE FOREMAN. WHERE IS THE REST -- ARE THEY  
3 BRINGING THE REST OF THEM?

4 THE BAILIFF: YES, SIR. THEY ARE COMING  
5 AROUND.

6 (THE REMAINING JURY PANEL, MINUS  
7 THE SELECTED JURORS AND TWO  
8 ALTERNATES, ENTER THE  
9 COURTROOM.)

10 THE COURT: LADIES AND GENTLEMEN OF THE  
11 JURY VENIRE, AS YOU WELL KNOW, YOU WERE QUALIFIED TO  
12 SIT AS JURORS NOT ONLY BY THE ATTORNEY FOR THE STATE  
13 OF SOUTH CAROLINA BUT BY THE DEFENDANT. AND BY THAT,  
14 THEY MEANT THAT EACH ONE OF THEM WOULD HAVE BEEN  
15 DELIGHTED TO HAVE HAD YOUR SERVICES, THE STATE AND  
16 THE DEFENDANT BELIEVING THAT EACH AND EVERY ONE OF  
17 YOU WOULD HAVE GIVEN THE STATE OF SOUTH CAROLINA, THE  
18 PEOPLE OF CALHOUN COUNTY AND THIS DEFENDANT A FAIR  
19 AND IMPARTIAL TRIAL.

20 I'VE OBSERVED ALL OF YOU DURING THE LAST THREE  
21 DAYS, AND I WANT TO TELL YOU THAT YOU'VE BEEN -- THIS  
22 IS ABOUT THE FIFTEENTH DEATH PENALTY CASE I'VE BEEN  
23 INVOLVED IN, AND YOU WERE AN EXCEPTIONALLY NICE  
24 PANEL, VERY PATIENT WITH OUR PROCEEDINGS AND VERY  
25 CORDIAL, AND I WISH TO EXTEND TO ALL OF YOU MY

1 DEEPEST APPRECIATION. I WISH WE COULD HAVE KEPT ALL  
2 OF YOU. I WOULD HAVE LIKED TO HAVE 35, ALL 35 OF  
3 YOU, BUT OUR SYSTEM PERMITS 12 PLUS THE TWO  
4 ALTERNATES. SO WE'VE GOTTEN THE 12, AND THEREFORE,  
5 YOUR SERVICE WILL NOT BE REQUIRED FOR THE REST OF THE  
6 DAY AND FOR THE REST OF THE WEEK, AND I AM IN A  
7 POSITION TO DISCHARGE YOU.

8 HOWEVER, I TELL YOU THAT YOU'VE BEEN HERE WITH  
9 ME FOR TWO-AND-A-HALF DAYS, AND I WOULD BE DELIGHTED  
10 TO HAVE ANY OF YOU STAY FOR AS LONG OF THESE  
11 PROCEEDINGS AS YOU CARE TO. AS I INDICATED EARLIER,  
12 THIS COULD WELL BE A TWO-PHASE HEARING, TWO-PHASE  
13 TRIAL. THE FIRST PHASE IS GOING TO START IN ABOUT  
14 THREE MINUTES. AND I WOULD THINK BASED ON  
15 PREDICTIONS OF COUNSEL THAT THE FIRST PHASE WILL BE  
16 CONCLUDED SOMETIME TOMORROW AFTERNOON.

17 IF, AND I USE THE WORD ADVISEDLY, IF THAT FIRST  
18 PHASE RESULTS IN A PLEA OF GUILTY, WE WILL START THE  
19 SECOND PHASE ON MONDAY MORNING. YOU MAY MENTION TO  
20 ME WHY MONDAY MORNING? OUR LAW PROVIDES THAT FROM  
21 THE FIRST -- AND THIS IS IF, IF THERE IS A GUILTY  
22 PLEA, WE MUST WAIT FOR 24 HOURS, AND I JUST DO NOT  
23 HOLD COURT ON SUNDAY, NOT ONLY FOR MY BENEFIT BUT FOR  
24 THE BENEFIT OF THE JURORS.

25 I WANT TO AGAIN THANK YOU. I KNOW YOU FEEL LIKE

1 THAT PERHAPS WE'VE WASTED SOME TIME HERE. THERE ARE  
2 CERTAIN STATES WITH WHICH YOU ARE FAMILIAR, THIS  
3 PROCESS THAT WE'VE ENGAGED IN IN TWO DAYS WOULD HAVE  
4 TAKEN TWO MONTHS. IN CALIFORNIA, WE WOULD HAVE BEEN  
5 IN DECEMBER GETTING A JURY. AND WE FEEL LIKE UNDER  
6 OUR PROCESS WE CAN GET 12 JURORS FREE AND IMPARTIAL  
7 JUST AS QUICK AS THEY CAN, JUST AS GOOD AS THEY CAN  
8 AND MAYBE BETTER.

9 SO I WANT TO THANK ALL OF YOU. THOSE WHO CARE  
10 TO GO CAN DO SO. THOSE WHO CARE TO STAY ARE  
11 CERTAINLY WELCOME TO DO SO. BUT IF YOU NEED TO GO,  
12 YOU ARE EXCUSED TO DO SO AT THIS TIME. THANK YOU SO  
13 MUCH.

14 ALL RIGHT. BRING THE JURY IN, PLEASE.

15 (WHEREUPON, THE JURY WAS  
16 RETURNED TO THE COURTROOM AND  
17 THE FOLLOWING PROCEEDINGS WERE  
18 COMMENCED IN OPEN COURT.)

19 THE COURT: THIS WILL BE THE FOREPERSON,  
20 NOW. I WANT HIM TO TAKE THE FOREPERSON'S CHAIR.

21 OKAY. SWEAR THE JURY FOR ME, PLEASE.

22 THE CLERK: MR. FOREMAN AND LADIES AND  
23 GENTLEMEN OF THE JURY, IF YOU WOULD PLEASE STAND AND  
24 RAISE YOUR RIGHT HAND TO BE SWORN.

25 YOU SHALL WELL AND TRULY TRY AND TRUE

1 DELIVERANCE MAKE BETWEEN THE STATE OF SOUTH CAROLINA  
2 AND THE DEFENDANT AT THE BAR WHOM YOU SHALL HAVE IN  
3 CHARGE AND A TRUE VERDICT GIVE ACCORDING TO THE LAW  
4 AND THE EVIDENCE, SO HELP YOU GOD.

5 THE JURORS: I DO.

6 THE COURT: BE SEATED. MR. BARRON, I HAVE  
7 DESIGNATED YOU AS THE FOREPERSON OF THIS JURY. YOUR  
8 JOB WILL BE TO PRESIDE DURING THE DELIBERATIONS IN  
9 THE JURY ROOM AND TO BE THE JURY SPOKESMAN IN THE  
10 COURTROOM. BE ASSURED, NOW, THAT YOU AND THE JURY  
11 WILL BE FULLY ADVISED BY ME AS WE GO ALONG TO ALL  
12 PROCEDURES AND TO YOUR DUTIES.

13 I WOULD UNDERSTAND THAT FOR MOST OF YOU THIS IS  
14 THE FIRST OPPORTUNITY THAT YOU WOULD HAVE HAD TO  
15 SERVE AS A JUROR IN A CRIMINAL CASE. AND I SUSPECT  
16 IT IS THE FIRST TIME THAT ANY OF YOU WOULD HAVE  
17 SERVED ON A CASE WHERE, AS IN THIS CASE, THE CHARGE  
18 IS MURDER AND THE STATE SEEKS THE PENALTY OF DEATH.

19 YOU TWO ON THE BACK ARE THE ALTERNATES, MS. RAST  
20 AND MR. BUTLER. YOU WILL SIT THERE AT ALL TIMES, AND  
21 YOU ALTERNATES WILL SIT THERE, AND THE REST OF YOU  
22 MAY SIT AS YOU CHOOSE.

23 NOW, AS TO THE ALTERNATES, IT'S VERY IMPORTANT  
24 THAT YOU LISTEN ATTENTIVELY IN THE SAME MANNER THAT  
25 ALL OF THE REGULAR JURORS WILL DO BECAUSE IN THE

1 EVENT OF DISABILITY OR UNABLE TO CONTINUE, ONE OF YOU  
2 WILL BE TAKING THE PLACE OF ONE OF THE JURORS. SO  
3 YOU MUST BE FULLY INFORMED AT ALL TIMES AS TO THE  
4 PROCEDURE TO FOLLOW.

5 NOW, I TOLD YOU SEVERAL TIMES DURING THE INITIAL  
6 EXAMINATION THAT THIS WOULD BE A BIFURCATED OR  
7 TWO-PART TRIAL. UNDER THE LAWS OF SOUTH CAROLINA  
8 WHERE THE STATE SEEKS THE DEATH PENALTY, AS IT DOES  
9 HERE, THEN THE TRIAL IS A BIFURCATED ONE, THAT IS, IT  
10 IS A TRIAL WHICH IS HELD IN TWO PARTS. AND THIS IS  
11 IMPORTANT FOR YOU TO REMEMBER. FIRST, A TRIAL IS  
12 HELD BEFORE A JURY TO DETERMINE THE GUILT OR  
13 INNOCENCE OF THIS DEFENDANT HERE ON TRIAL FOR THE  
14 VARIOUS OFFENSES THAT I HAVE PREVIOUSLY READ TO YOU.

15 TO THESE CHARGES, THIS DEFENDANT HAS PLED NOT  
16 GUILTY. THEREFORE, FIRST, A TRIAL IS HELD BEFORE A  
17 JURY TO DETERMINE THE GUILT OR INNOCENCE OF THIS  
18 DEFENDANT. THAT IS THE FIRST PHASE OF THE TRIAL THAT  
19 WE ARE GETTING READY TO HOLD AT THIS MINUTE.

20 AT THE CONCLUSION OF THE FIRST TRIAL, SHOULD THE  
21 VERDICT -- AND I USE THE WORD ADVISEDLY -- SHOULD THE  
22 VERDICT OF THE JURY BE GUILTY -- AND I MAKE NO  
23 RECOMMENDATIONS TO YOU CONCERNING THE VERDICT -- IF  
24 THE DEFENDANT IS CONVICTED OF THE CRIME OF MURDER,  
25 THEN AND ONLY THEN, A SECOND PROCEEDING WILL BE HELD.

1           THIS SECOND PROCEEDING IS A SENTENCING  
2       PROCEEDING AT WHICH EXTENUATING, AGGRAVATING AND  
3       MITIGATING CIRCUMSTANCES MAY BE INTRODUCED INTO  
4       EVIDENCE TO BE CONSIDERED BY YOU THE JURY. SHOULD  
5       SUCH A PROCEEDING BE NECESSARY, I WILL FURTHER  
6       INSTRUCT YOU AT THAT TIME.

7           NOW, LADIES AND GENTLEMEN, IT IS IMPORTANT THAT  
8       YOU DERIVE NO INFERENCE WHATSOEVER FROM WHAT I HAVE  
9       JUST TOLD YOU AS TO WHAT YOUR VERDICT SHOULD BE IN  
10      THIS FIRST PHASE. THE PURPOSE OF MY TELLING YOU THIS  
11      IS TO EMPHASIZE THAT YOU ARE NOT TO CONSIDER  
12      PUNISHMENT OR SENTENCE IN THIS THE FIRST PHASE OF THE  
13      CASE. YOUR DUTY IS ONLY TO DETERMINE THE INNOCENCE  
14      OR GUILT OF THIS DEFENDANT BASED UPON THE EVIDENCE  
15      THAT WILL BE INTRODUCED INTO THE TRIAL OF THIS CASE.

16           NOW, WHAT I HAVE SAID AND WILL SAY AT THIS  
17      MOMENT IS INTENDED TO SERVE AS AN INTRODUCTION ONLY  
18      TO THE TRIAL OF THIS CASE. IT IS NOT A SUBSTITUTE  
19      FOR THE DETAILED INSTRUCTIONS OF THE LAW WHICH I WILL  
20      GIVE TO YOU AT THE CLOSE OF THE CASE AND BEFORE YOU  
21      RETIRE TO CONSIDER YOUR VERDICT IN THIS, THE FIRST  
22      PHASE.

23           THIS IS A CRIMINAL CASE COMMENCED BY THE STATE  
24      OF SOUTH CAROLINA, WHICH I SOMETIMES REFER TO AS THE  
25      PROSECUTION, AGAINST HERMAN HUGHES. THIS CASE HAS

1 BEEN BASED UPON THE INDICTMENTS THAT I HOLD IN MY  
2 HAND WHICH THE SOLICITOR WILL READ TO YOU OR EXPLAIN  
3 TO YOU. I THINK IN THE FIRST PROCESS, I READ THESE  
4 INDICTMENTS TO YOU AS A GROUP. I TOLD YOU THEN AND I  
5 EMPHASIZE NOW, YOU MUST DISTINCTLY UNDERSTAND THAT  
6 THESE INDICTMENTS ARE SIMPLY CHARGES AND THEY ARE NOT  
7 IN ANY SENSE EVIDENCE OF THE ALLEGATIONS IT CONTAINS.

8 ONE INDICTMENT CHARGES THE DEFENDANT WITH MURDER  
9 IN THAT IT ALLEGES THAT HE DID WITH A PISTOL WITH  
10 MALICE AFORETHOUGHT KILL ONE KENNETH PRESLEY, TO  
11 WHICH HE PLEADS NOT GUILTY.

12 THE NEXT INDICTMENT IS ARMED ROBBERY, AND IT  
13 SAYS THAT HE STOLE WITH A PISTOL FELONIOUSLY CERTAIN  
14 MONIES FROM ONE KENNETH PRESLEY AND KELLY HOFFMAN  
15 AND/OR THE BLUE DIAMOND CASINO, AND HE PLEADS NOT  
16 GUILTY.

17 THE THIRD CHARGE IS THE GRAND LARCENY OF A  
18 VEHICLE, LARCENY IN THE LAW MEANING STEALING. IT  
19 HAVING BEEN ALLEGED THAT HE DID FELONIOUSLY TAKE AND  
20 CARRY AWAY THE PERSONAL PROPERTY OF ONE KENNETH  
21 PRESLEY, TO WIT, A 1985 MAZDA, TO WHICH INDICTMENT HE  
22 PLEADS NOT GUILTY.

23 AND THE LAST INDICTMENT IS ONE OF ASSAULT AND  
24 BATTERY WITH INTENT TO KILL, IT BEING ALLEGED THAT  
25 HERMAN HUGHES DID IN CALHOUN COUNTY ON OR ABOUT MARCH

1 THE 15TH, 1994, WITH MALICE AFORETHOUGHT, COMMIT AN  
2 ASSAULT AND BATTERY UPON ONE KELLY HOFFMAN WITH THE  
3 INTENT TO KILL SAID VICTIM, TO WIT, BY SHOOTING HER  
4 IN THE FACE WITH A PISTOL, TO WHICH INDICTMENT HE HAS  
5 PLED NOT GUILTY.

6 THE DEFENDANT HAS PLED NOT GUILTY TO THE  
7 INDICTMENT. THEREFORE, THE STATE HAS THE BURDEN OF  
8 PROVING EACH OF THE ESSENTIAL ELEMENTS OF THESE  
9 INDICTMENTS BEYOND A REASONABLE DOUBT. THE PURPOSE  
10 OF THE TRIAL IS TO DETERMINE WHETHER THE STATE HAS  
11 MET THAT BURDEN. YOUR PURPOSE AS JURORS IS TO FIND  
12 AND DETERMINE THE FACTS. UNDER OUR SYSTEM OF  
13 CRIMINAL PROCEDURE, YOU ARE THE SOLE AND ONLY JUDGES  
14 OF THE FACTS IN THE CASE.

15 AND I EMPHASIZE TO YOU THAT IF AT ANY TIME, ANY  
16 WORD, RULING, MANNERISM OF MINE MIGHT TEND TO  
17 INDICATE TO YOU HOW I FEEL ABOUT ANY FACTUAL  
18 SITUATION, PLEASE DISMISS THAT FROM YOUR MIND. I AM  
19 NOT ENTITLED TO A FACTUAL OPINION, AND I HAVE NONE.  
20 FROM THIS MOMENT ON, THERE IS NOBODY IN THIS WIDE  
21 WORLD THAT CAN TELL YOU 12 WHAT THE FACTS ARE. YOU  
22 AND YOU ALONE ARE THE SOLE AND ONLY FINDERS OF THE  
23 FACTS IN THIS CASE.

24 IT IS ESPECIALLY IMPORTANT THAT YOU PERFORM YOUR  
25 DUTY OF DETERMINING THE FACTS DILIGENTLY AND

1 CONSCIENTIOUSLY. FOR ORDINARILY, THERE IS NO MEANS  
2 OF CORRECTING AN ERRONEOUS DETERMINATION OF FACTS BY  
3 A JURY.

4 NOW, ON THE OTHER HAND, AND WITH EQUAL EMPHASIS,  
5 I INSTRUCT YOU NOW AND WILL LATER IN THE TRIAL OF  
6 THIS CASE THAT THE LAW AS GIVEN BY THIS COURT  
7 CONSTITUTES THE ONLY LAW FOR YOUR GUIDANCE. AND IT  
8 IS YOUR DUTY UNDER YOUR OATH TO ACCEPT AND FOLLOW THE  
9 LAW AS I GIVE IT TO YOU. IT IS YOUR DUTY TO FOLLOW  
10 THE LAW AS I GIVE IT TO YOU EVEN THOUGH YOU OR I MAY  
11 DISAGREE WITH WHAT THE LAW IS OR OUGHT TO BE,  
12 REMEMBERING, HOWEVER, THAT IT IS YOUR RESPONSIBILITY  
13 TO APPLY THE FACTS AS YOU FIND THEM TO THE LAW AS I  
14 CHARGE IT TO YOU.

15 YOU ARE TO DETERMINE THE FACTS FROM THE  
16 TESTIMONY YOU HEAR AND THE OTHER EVIDENCE INTRODUCED  
17 IN COURT. IT IS UP TO YOU 12 TO DETERMINE THE  
18 INFERENCES WHICH YOU FEEL MAY BE PROPERLY DRAWN FROM  
19 THE EVIDENCE. AND I TELL YOU NOW AND INSTRUCT YOU,  
20 YOU MUST NOT CONSIDER ANYTHING YOU MAY HAVE HEARD OR  
21 READ ABOUT THIS CASE ON THE OUTSIDE OF THE COURTROOM,  
22 WHETHER BEFORE OR DURING THE TRIAL. THIS CASE AND  
23 ALL ISSUES MUST BE ADDRESSED BY YOU BASED ON THE  
24 TESTIMONY AND EVIDENCE PRESENTED IN THE TRIAL OF THIS  
25 CASE IN THIS COURTROOM AND FROM NO OTHER SOURCE.

1 UNTIL THIS CASE IS SUBMITTED TO YOU, YOU MUST  
2 NOT DISCUSS IT WITH ANYONE, EVEN YOUR FELLOW JURORS.  
3 AFTER IT IS SUBMITTED TO YOU, YOU MUST DISCUSS IT  
4 ONLY IN THE JURY ROOM WITH YOUR FELLOW JURORS. IT IS  
5 IMPORTANT THAT ALL OF YOU KEEP AN OPEN MIND AND NOT  
6 DECIDE ANY ISSUE IN THE CASE UNTIL THE ENTIRE CASE  
7 HAS BEEN SUBMITTED TO YOU UNDER THE INSTRUCTIONS OF  
8 THE COURT.

9 NOW, MR. FOREMAN, MAKE SURE -- THE STATE AND THE  
10 DEFENSE BEFORE YOU DECIDE THE CASE IN THIS CASE OR  
11 ANY FACTS, THEY ARE ENTITLED TO PRESENT THE WHOLE  
12 CASE TO YOU, TO HAVE THE FINAL ARGUMENTS AND  
13 SUMMATION. SO IT IS IMPROPER TO HAVE ANY DISCUSSION  
14 IN THE JURY ROOM ON ANY ISSUE IN THIS CASE UNTIL I  
15 HAVE SAID, "MR. FOREMAN AND LADIES AND GENTLEMEN,  
16 RETIRE TO THE JURY ROOM AND GIVE US A VERDICT." AND  
17 THE REASON IS OBVIOUS. YOU SHOULDN'T MAKE UP YOUR  
18 MIND UNTIL YOU'VE HEARD ALL OF THE EVIDENCE FROM  
19 EVERYBODY ON BOTH SIDES.

20 ALL RIGHT, SIR. YOU MAY HAVE OPENING STATEMENT.

21 MR. BAILEY: PLEASE THE COURT? LADIES AND  
22 GENTLEMEN, I THINK I INTRODUCED MYSELF TO YOU. I'M  
23 WALTER BAILEY, THE SOLICITOR OF THE FIRST CIRCUIT,  
24 JUDICIAL CIRCUIT WHICH ENCOMPASSES ORANGEBURG,  
25 CALHOUN AND DORCHESTER COUNTIES. ALONG WITH ME IS

1 JOEL FLOYD WHO WILL BE HELPING ME THROUGHOUT THIS  
2 TRIAL.

3 ALL OF YOU KNOW BY NOW WHAT THIS CASE IS ABOUT.  
4 SOME OF YOU MIGHT HAVE BEEN ON JURY SERVICE BEFORE IN  
5 A CRIMINAL CASE OR CIVIL CASE, BUT I CAN ASSURE YOU  
6 THAT THIS CASE IS THE MOST IMPORTANT CASE THAT ANY OF  
7 Y'ALL HAVE SAT AS JURORS ON OR EVER WILL. SO I JOIN  
8 JUDGE COTTINGHAM IN ASKING FOR YOUR COMPLETE  
9 ATTENTION THROUGHOUT THE ENTIRE TRIAL, THE TESTIMONY,  
10 INSTRUCTIONS ON THE LAW, AND THE WHOLE TRIAL.

11 WHAT I HOLD IN MY HAND HERE, AS JUDGE COTTINGHAM  
12 SAID, ARE THE INDICTMENTS. AND THE INDICTMENTS ARE  
13 NOT EVIDENCE. INDICTMENTS ARE THE LEGAL, FORMAL  
14 PAPERS THAT BRING SOMEBODY INTO CRIMINAL COURT TO  
15 FACE THE CHARGES. AND WE'VE ACTUALLY GOT FOUR  
16 SEPARATE CASES THAT ARE BEING CONSOLIDATED OR  
17 COMBINED INTO ONE TRIAL HERE BECAUSE THEY ARE  
18 RELATED.

19 THE INDICTMENT FOR GRAND LARCENY OF A VEHICLE  
20 STATES THAT HERMAN HUGHES DID IN CALHOUN COUNTY ON OR  
21 ABOUT MARCH 18TH, 1994, FELONIOUSLY TAKE AND CARRY  
22 AWAY THE PERSONAL PROPERTY OF ONE KENNETH PRESLEY, A  
23 1985 MAZDA, THE VALUE OF MORE THAN A THOUSAND  
24 DOLLARS, WITH INTENT TO DEPRIVE THE OWNER PERMANENTLY  
25 OF SUCH PROPERTY.

1 THE SECOND INDICTMENT CHARGES HERMAN HUGHES WITH  
2 ARMED ROBBERY. THAT INDICTMENT STATES THAT HERMAN  
3 HUGHES DID IN CALHOUN COUNTY ON OR ABOUT MARCH 18TH,  
4 1994, WHILE ARMED WITH A DEADLY WEAPON, TO WIT, A  
5 PISTOL, FELONIOUSLY TAKE FROM THE PERSON OR PRESENCE  
6 OF THE VICTIMS KENNETH PRESLEY, KELLY HOFFMAN, AND  
7 THE BLUE MOON CASINO BY FORCE OR INTIMIDATION GOODS  
8 OR MONEY FROM SUCH VICTIM, SUCH GOODS OR MONEY AS  
9 FOLLOWS: MONEY FROM THE CASH REGISTER AND KEYS TO A  
10 1985 MAZDA THAT BELONGS TO KENNETH PRESLEY WITH  
11 INTENT TO DEPRIVE THE OWNER PERMANENTLY OF SUCH GOODS  
12 OR MONEY.

13 THE THIRD INDICTMENT THAT Y'ALL WILL HAVE TO  
14 CONSIDER CHARGES HERMAN HUGHES WITH ASSAULT AND  
15 BATTERY WITH INTENT TO KILL. THAT INDICTMENT STATES  
16 THAT HERMAN HUGHES DID IN CALHOUN COUNTY ON OR ABOUT  
17 MARCH 18, 1994, WITH MALICE AFORETHOUGHT COMMIT AN  
18 ASSAULT AND BATTERY UPON ONE KELLY HOFFMAN WITH THE  
19 INTENT TO KILL SAID VICTIM BY SHOOTING HER IN THE  
20 CHEST AND FACE WITH A PISTOL.

21 THE FINAL INDICTMENT CHARGES HERMAN HUGHES WITH  
22 MURDER. IT STATES THAT HERMAN HUGHES DID IN CALHOUN  
23 COUNTY ON OR ABOUT MARCH 18, 1994, FELONIOUSLY,  
24 WILLFULLY AND WITH MALICE AFORETHOUGHT KILL ONE  
25 KENNETH PRESLEY BY MEANS OF SHOOTING HIM WITH A

1 PISTOL AT OR NEAR THE BLUE DIAMOND CASINO IN CALHOUN  
2 COUNTY AND THAT SAID KENNETH PRESLEY DID DIE IN  
3 ORANGEBURG COUNTY AS A PROXIMATE RESULT THEREOF ON OR  
4 ABOUT THE 18TH OF MARCH, 1994.

5 NOW, THE TRIAL PROCEDURE IN -- IN THIS TRIAL AND  
6 ANY OTHER CRIMINAL TRIAL IS BASICALLY DIVIDED INTO  
7 FIVE PARTS. FIRST OF ALL, WE'RE STARTING OFF WITH  
8 THE OPENING STATEMENTS. WHAT I'M TELLING Y'ALL NOW  
9 IS NOT EVIDENCE. INDICTMENTS ARE NOT EVIDENCE. WHAT  
10 I'M DOING NOW IS GIVING YOU A PREVIEW OF WHERE I  
11 EXPECT OUR CASE TO GO. I'M GOING TO LIGHTLY TOUCH ON  
12 THE LAW THAT THE JUDGE WILL INSTRUCT YOU ABOUT WITH  
13 GREAT DETAIL AT THE END OF THE CASE, AND BASICALLY  
14 JUST SUMMARIZE THE FACTS THAT I EXPECT THE STATE'S  
15 CASE TO PROVE.

16 ONCE YOU HEAR THE OPENING STATEMENTS, THEN YOU  
17 WILL GET INTO THE TRIAL ITSELF, THE SWORN TESTIMONY.  
18 I'LL CALL A SERIES OF WITNESSES HERE. THEY WILL BE  
19 SWORN TO TELL THE TRUTH. THEY WILL TESTIFY HERE.  
20 THEY WILL BE SUBJECT TO CROSS-EXAMINATION. VARIOUS  
21 WITNESSES ARE GOING TO INTRODUCE DIFFERENT EXHIBITS  
22 INTO EVIDENCE THAT YOU WILL HAVE TO CONSIDER.

23 ONCE YOU'VE HEARD ALL OF THE TESTIMONY AND HAVE  
24 HAD ALL OF THE TESTIMONY SUBMITTED, THEN THE LAWYERS  
25 GET A FINAL OPPORTUNITY TO GET UP HERE AND MAKE A

1 CLOSING STATEMENT, WHICH IS A SUMMARY OR WRAPUP OF  
2 WHAT WE THINK WE'VE PROVEN IN OUR CASE. AND LIKE THE  
3 OPENING STATEMENT, THE CLOSING STATEMENT IS NOT  
4 EVIDENCE.

5 AFTER THAT, JUDGE COTTINGHAM WILL CHARGE YOU OR  
6 INSTRUCT YOU ON THE LAW. HE WILL TELL YOU ALL THE  
7 LAW YOU NEED TO KNOW ABOUT BURDEN OF PROOF,  
8 PRESUMPTION OF INNOCENCE, THE LAW REGARDING THE  
9 DIFFERENT CHARGES WE HAVE HERE. AND AS HE SAID, IT  
10 WILL THEN BE YOUR DUTY TO GO INTO THE FINAL STEP OF  
11 THE TRIAL, THE DELIBERATIONS. YOU WILL GO BACK IN  
12 YOUR JURY ROOM. YOU WILL TAKE THE FACTS AS YOU FIND  
13 THEM FROM THE SWORN TESTIMONY, APPLY THAT TO THE LAW  
14 THE JUDGE GIVES YOU, WHETHER YOU THINK THE LAW SHOULD  
15 BE SOMETHING DIFFERENT OR WHETHER YOU THOUGHT IT WAS  
16 DIFFERENT WHEN YOU CAME INTO COURT, YOU TAKE THE LAW  
17 AS HE GIVES IT TO YOU, APPLY IT TO THE FACTS AS YOU  
18 FIND THOSE FACTS, AND COME BACK WITH A JUST AND TRUE  
19 VERDICT AS TO EACH OF THESE FOUR INDICTMENTS.

20 NOW, JUST VERY BRIEFLY, AS TO THE INDICTMENT OF  
21 MURDER, MURDER IS THE UNLAWFUL KILLING OF A HUMAN  
22 BEING WITH MALICE AFORETHOUGHT. AND MALICE  
23 AFORETHOUGHT, THE JUDGE WILL INSTRUCT YOU LATER, IS  
24 THE INTENTIONAL DOING OF A WRONGFUL ACT.  
25 AFORETHOUGHT MEANS THAT MALICIOUS STATE OF MIND HAS

1 TO OCCUR AT SOME POINT IN TIME PRIOR TO THE ACTUAL  
2 ACT OF KILLING. DOESN'T HAVE TO BE A LONG PERIOD OF  
3 PREMEDITATION. A SPLIT SECOND WILL BE ENOUGH, BUT  
4 THE INTENT -- THE MALICIOUS INTENT HAS TO OCCUR  
5 BEFORE THE ACTUAL ACT. THAT'S MALICE AFORETHOUGHT.

6 THAT MALICE CAN BY EXPRESSED MALICE OR IMPLIED  
7 MALICE. ONE EXAMPLE OF IMPLIED MALICE WILL BE IF YOU  
8 KILL SOMEONE WITH A DEADLY WEAPON SUCH AS A PISTOL,  
9 YOU THE JURY CAN INFER MALICE FROM THE USE OF THAT  
10 DEADLY WEAPON.

11 ROBBERY IS STEALING. THAT'S THE TAKING OF A  
12 PERSON'S PROPERTY BY PUTTING THEM IN FEAR THROUGH  
13 FORCE OR INTIMIDATION. ARMED ROBBERY IS ROBBERY WITH  
14 THE AID OF A DEADLY WEAPON TO PUT THAT PERSON IN FEAR  
15 OF HIS LIFE OR SAFETY IN ORDER TO EFFECT THAT  
16 ROBBERY. GRAND LARCENY IS STEALING PROPERTY OR MONEY  
17 WORTH OVER A THOUSAND DOLLARS. ASSAULT AND BATTERY  
18 WITH INTENT TO KILL IS AN UNSUCCESSFUL ATTEMPT TO  
19 COMMIT A MURDER, AND THAT'S BASICALLY A REAL BASIC  
20 DEFINITION OF THE CHARGES WE'VE GOT HERE.

21 NOW, EVERYBODY IN THIS COURTROOM HAS THEIR JOBS  
22 TO DO. MY JOB IS TO PRESENT EVIDENCE ON BEHALF OF  
23 THE STATE OF SOUTH CAROLINA TO CONVINCING YOU THE JURY  
24 BEYOND A REASONABLE DOUBT THAT HERMAN HUGHES  
25 COMMITTED THESE FOUR OFFENSES THAT THE STATE OF SOUTH

1 CAROLINA CHARGES HIM WITH.

2 THE DEFENSE ATTORNEY, MR. NEWSOME, REPRESENTS  
3 HERMAN HUGHES. JUDGE COTTINGHAM PRESIDES OVER THE  
4 TRIAL. HE MAY BREAK THROUGHOUT THE TRIAL TO TAKE UP  
5 LEGAL MATTERS. I MAY SAY, YOUR HONOR, I OBJECT, OR I  
6 MAY SAY, YOUR HONOR, I HAVE A MATTER OF LAW TO TAKE  
7 UP, AND YOU MAY BE ASKED TO GO TO YOUR JURY ROOM.  
8 PLEASE DON'T HOLD THAT AGAINST THE STATE OF SOUTH  
9 CAROLINA. THAT'S NOT TO PREVENT THE JURY FROM  
10 LEARNING SOMETHING THEY SHOULD KNOW. THAT'S BECAUSE  
11 WE'RE DEALING WITH MATTERS OF LAW, AND YOU DEAL WITH  
12 MATTERS OF FACT. AND AT THE END OF THE TRIAL, ALL  
13 THE LAW YOU NEED TO KNOW WILL BE GIVEN TO YOU BY THE  
14 JUDGE.

15 YOUR JOB, LADIES AND GENTLEMEN, IS THE MOST  
16 IMPORTANT JOB OF ANYBODY IN THE COURTROOM. IT'S MORE  
17 IMPORTANT THAN MY JOB, MR. NEWSOME'S JOB. IT'S MORE  
18 IMPORTANT THAN JUDGE COTTINGHAM'S JOB BECAUSE YOU ARE  
19 JUDGES ALSO. YOU ARE THE JUDGES OF THE FACTS OF THIS  
20 CASE. YOU AND ONLY YOU CAN DETERMINE WHAT THOSE TRUE  
21 FACTS ARE, AND JUDGE COTTINGHAM IS THE JUDGE OF THE  
22 LAW. YOU TAKE THE LAW AS HE GIVES IT TO YOU, APPLY  
23 TO IT THE FACTS AS YOU FIND IT FROM THE SWORN  
24 TESTIMONY, DELIBERATE AND COME BACK WITH A JUST AND  
25 TRUE VERDICT.

1           AND THE WAY YOU DO THAT, LADIES AND GENTLEMEN,  
2           IS YOU JUDGE THE WITNESSES. . YOU JUDGE THEIR  
3           CREDIBILITY OR BELIEVABILITY. YOU LOOK THEM IN THE  
4           EYE. YOU DECIDE IS THAT PERSON COMING CLEAN WITH ME?  
5           IS HE TELLING ME THE TRUTH? THE SAME WAY YOU JUDGE  
6           PEOPLE IN YOUR EVERYDAY LIVES, USING YOUR GOOD,  
7           EVERYDAY COMMON SENSE.

8           NOW, WHAT I TELL YOU IS NOT EVIDENCE. WHAT I'M  
9           GOING TO DO IS JUST PREVIEW FOR YOU WHAT I EXPECT THE  
10          STATE'S EVIDENCE TO BE IN ABOUT FIVE MINUTES.

11          THE CASE I'M GOING TO SHOW WILL START ON FRIDAY  
12          NIGHT, MARCH 18TH, 1994. KENNETH PRESLEY, WHO WAS A  
13          YOUNG MAN, 20 YEARS OLD, WHO HAD JUST GOTTEN OUT OF  
14          THE NAVY, HAD A PART-TIME JOB AT THE BLUE DIAMOND  
15          CASINO. THAT WAS A LITTLE VIDEO POKER PLACE ON  
16          HIGHWAY 601 JUST OUTSIDE OF THE CITY LIMITS. I THINK  
17          IT'S NOW A CHINESE RESTAURANT OF SOME TYPE. BUT IT'S  
18          JUST OUTSIDE THE CITY LIMITS OF CALHOUN COUNTY.

19          THAT NIGHT, SOMETIME SHORTLY AFTER 8:00, KEN  
20          PRESLEY WENT TO WORK. HE HAD HIS GIRLFRIEND, KELLY  
21          HOFFMAN, WITH HIM. SHE WAS AT THAT TIME 17 YEARS  
22          OLD. THEY HAD BEEN UP THERE TO MCDONALD'S, GOT SOME  
23          HAMBURGERS AND FRENCH FRIES, AND WERE GOING TO EAT  
24          SUPPER THERE AS HE WORKED.

25          SHORTLY AFTER 8:00 THAT EVENING, HERMAN HUGHES

1 ENTERED THE BLUE DIAMOND CASINO AND ASKED KEN PRESLEY  
2 HOW DO YOU USE THESE POKER MACHINES? AND KEN PRESLEY  
3 GAVE HIM A QUICK DEMONSTRATION OF HOW TO USE THE  
4 MACHINES. THE EVIDENCE WILL THEN BE HERMAN HUGHES  
5 WENT OUTSIDE. HE SAID, "I'LL BE BACK IN A FEW  
6 MINUTES. I'M GOING TO GET MY MONEY."

7 SO FIVE MINUTES OR SO LATER, HE COMES BACK INTO  
8 THE BLUE DIAMOND AND HAS A 50 DOLLAR BILL, AND HE  
9 SAYS TO KEN PRESLEY, "GIVE ME CHANGE FOR THIS 50."  
10 SO MR. PRESLEY GOES TO THE CASH DRAWER TO OPEN THAT  
11 UP AND GET HIM THE CHANGE. AT THAT POINT, HERMAN  
12 HUGHES PULLS OUT A .380 SEMI-AUTOMATIC LARSON PISTOL.  
13 AND KELLY HOFFMAN WAS SITTING DOWN EATING A HAMBURGER  
14 ON THE TELEPHONE WITH SOMEBODY. HE TOLD HER TO GET  
15 OFF THE TELEPHONE. SHE HUNG UP. SO HE SAYS, "GIVE  
16 ME THE MONEY OUT OF THE CASH REGISTER." MR. PRESLEY  
17 SAYS, "SURE, NO PROBLEM." OPENS THE DRAWER, STARTS  
18 HANDING HERMAN HUGHES THE MONEY.

19 HERMAN HUGHES THEN SAYS, "GIVE ME YOUR CAR  
20 KEYS." "SURE, HERE ARE THE CAR KEYS." WHEN THAT  
21 HAPPENS, HERMAN HUGHES SHOT HIM IN THE HEAD,  
22 RIGHT-HAND SIDE OF THE HEAD. HE FELL TO THE FLOOR.  
23 HE THEN TURNED TO KELLY HOFFMAN, WHO WAS SITTING IN  
24 THE CHAIR, AND SHOT HER IN HER LEFT CHEST UNDER THE  
25 CLAVICLE. HE THEN TURNED BACK TO KEN PRESLEY WHO WA

1 BY THAT TIME LAYING ON THE FLOOR, SHOT HIM IN THE  
2 HEAD A SECOND TIME, TURNED BACK TO KELLY HOFFMAN,  
3 SHOT HER IN THE FACE BENEATH HER EYE, TURNED BACK TO  
4 MR. PRESLEY, SHOT HIM FOR THE FOURTH -- THIRD TIME IN  
5 THE HEAD. HE GRABBED THE MONEY, GRABBED THE KEYS AND  
6 LEFT.

7 KELLY HOFFMAN REMAINED CONSCIOUS. SHE PUNCHED  
8 THE ALARM BUTTON. SHE CALLED 911. THE POLICE  
9 ARRIVED. THE AMBULANCE GOT THERE, AND MIRACULOUSLY,  
10 SHE LIVED, AND SHE WILL TESTIFY FOR THE STATE OF  
11 SOUTH CAROLINA.

12 AFTER THE SHOOTING TOOK PLACE, HERMAN HUGHES AND  
13 ANOTHER GUY NAMED KELSEY PEARCE TOOK THE CAR, THE  
14 MAZDA RX THAT KEN PRESLEY OWNED, DROVE IT TO A GUY  
15 NAMED OWENS' HOUSE WHO LIVES WITHIN ALMOST EYESIGHT  
16 OF THE BLUE DIAMOND ACROSS THE RAILROAD TRACKS OFF OF  
17 JIM GLOVER ROAD, PARKED THE CAR THERE FOR A FEW  
18 MINUTES. THEN THEY DROVE TO A BEER JOINT IN  
19 ORANGEBURG WHERE THE CAR WAS FOUND THE NEXT DAY.

20 THAT'S BASICALLY WHAT THE TESTIMONY IS GOING TO  
21 BE. YOU'RE GOING TO HEAR FROM A SERIES OF WITNESSES.  
22 THIS CASE WILL NOT BE AN EXCEPTIONALLY LONG CASE.  
23 THERE ARE A GOOD NUMBER OF WITNESSES THAT YOU WILL  
24 HEAR FROM THAT WILL BE FAIRLY SHORT WITNESSES.  
25 PLEASE DON'T TAKE THE SHORT LENGTH OF THIS TRIAL AS

1 ANY INDICATION THE TRIAL IS NOT IMPORTANT BECAUSE I  
2 PROMISE YOU YOU'LL GET EVERY BIT OF EVIDENCE YOU NEED  
3 TO GET TO MAKE YOUR DECISION.

4 YOU'RE GOING TO HEAR FROM A LOT OF LAW  
5 ENFORCEMENT OFFICERS. YOU'RE GOING TO HEAR FROM  
6 MEDICAL PERSONNEL, EMS ATTENDANTS THAT WILL TELL YOU  
7 ABOUT THE INJURIES THAT THESE TWO PEOPLE SUFFERED.  
8 YOU WILL HEAR FROM A SLED BALLISTICS EXPERT. YOU  
9 WILL HEAR FROM A SLED FINGERPRINT EXPERT. YOU WILL  
10 HEAR FROM PRIVATE CITIZENS WHO HAVE SOME KNOWLEDGE OF  
11 WHAT HAPPENED ON MARCH 18TH, 1994.

12 AND I'M CONFIDENT THAT WHEN YOU'VE HEARD THE  
13 STATE'S CASE, YOU WILL FIND WE'VE PROVEN THE CASE,  
14 ALL FOUR CASES, GUILT BEYOND A REASONABLE DOUBT. AND  
15 GUILT OR INNOCENCE IS ALL WE ARE CONCERNED ABOUT AT  
16 THIS POINT. DID HE DO IT IS THE ONLY ISSUE WE'RE  
17 CONCERNED WITH HERE.

18 THIS TRIAL IS NOT GOING TO BE LIKE ON  
19 TELEVISION. IT'S NOT GOING TO BE OVER IN HALF AN  
20 HOUR, AN HOUR. I REALISTICALLY EXPECT IF WE WORK  
21 FAIRLY LATE INTO THE EVENING, WE SHOULD FINISH THE  
22 STATE'S PORTION OF THE TRIAL BY ROUGHLY NOON  
23 TOMORROW.

24 EACH WITNESS HAS SOMETHING TO SAY. WHAT A  
25 WITNESS IS SAYING MAY NOT SEEM THAT SIGNIFICANT BY

1 ITSELF, BUT YOU HAVE TO TAKE ALL OF IT TOGETHER AND  
2 CONSIDER ALL OF THE EVIDENCE. THAT'S WHY THE JUDGE  
3 SAYS DON'T MAKE UP YOUR MIND UNTIL YOU'VE HEARD ALL  
4 OF THE TESTIMONY AND PUT IT ALL TOGETHER AND MAKE A  
5 DECISION FROM THE SUM TOTAL OF ALL OF THE EVIDENCE.

6 AGAIN, YOUR JOB, LADIES AND GENTLEMEN, IT'S NOT  
7 ANY BIG SECRET, IT'S NOT DIFFICULT. YOU SIMPLY USE  
8 YOUR EVERYDAY GOOD COMMON SENSE TO JUDGE THE  
9 CREDIBILITY OF THESE WITNESSES, TO DETERMINE WHAT THE  
10 TRUE FACTS ARE IN THIS CASE, AND THEN YOU RENDER A  
11 JUST AND TRUE VERDICT AS TO EACH INDICTMENT. THANK  
12 YOU.

13 THE COURT: THANK YOU, MR. BAILEY. MR.  
14 NEWSOME, YOU MAY PROCEED.

15 MR. NEWSOME: PLEASE THE COURT? MR.  
16 FOREMAN, LADIES AND GENTLEMEN OF THE JURY, THIS CASE  
17 WILL BE UNUSUAL FOR A NUMBER OF REASONS. I NEED TO  
18 COVER WITH YOU HOW THE LAW WORKS IN THE STATE OF  
19 SOUTH CAROLINA. HE HAS TWO CHOICES. HE CAN PLEAD  
20 GUILTY OR NOT GUILTY. SOME OF YOU HAVE BEEN IN COURT  
21 BEFORE, AND YOU'VE SEEN FOLKS ENTER PLEAS OF GUILTY  
22 AND THEY WERE SENTENCED BY THE JUDGE. IF YOU PLEAD  
23 NOT GUILTY, THEN YOU HAVE A TRIAL, AND YOU'RE  
24 SENTENCED BY THE JUDGE.

25 IT'S NOT TRUE WHEN THE STATE SEEKS THE DEATH

1 PENALTY. IN OUR STATE, IN ORDER TO HAVE AN  
2 OPPORTUNITY TO HAVE A JURY, BECAUSE IN A DEATH  
3 PENALTY CASE, JURORS DECIDE NOT ONLY GUILT OR  
4 INNOCENCE, BUT YOU DECIDE THE PENALTY, YOU HAVE TO  
5 PLEAD NOT GUILTY. I TELL YOU THIS TODAY, LADIES AND  
6 GENTLEMEN, BEFORE WE START THIS CASE, MR. HUGHES DOES  
7 NOT DENY HIS INVOLVEMENT.

8 YOU WILL HEAR THE EVIDENCE, AND WE DO NOT AGREE  
9 WITH THE FACTS AS THE SOLICITOR RENDERED TO YOU.  
10 YOU'RE GOING TO HEAR OTHER EVIDENCE, ADDITIONAL  
11 EVIDENCE THAT THERE WERE TWO OTHER INDIVIDUALS  
12 INVOLVED. YOU'RE GOING TO HEAR EVIDENCE THAT MR.  
13 HUGHES WAS 16 YEARS OLD, THAT HE AND A YOUNG MAN  
14 NAMED KELSEY PEARCE, WHO WAS 18 YEARS OLD AT THE  
15 TIME, WENT HERE IN YOUR COMMUNITY AND BOUGHT BEER AT  
16 ONE OF YOUR LOCAL STORES. NOW, THIS WILL COME FROM  
17 THE STATE'S OWN WITNESS.

18 AND AFTER BUYING BEER, THEY WENT OVER TO AN  
19 OLDER MAN'S HOUSE, MR. DANIEL OWENS, AND YOU WILL  
20 HEAR FROM MR. OWENS. MR. OWENS WILL GET ON THIS  
21 STAND. HE'S A STATE'S WITNESS. AND AFTER CONSUMING  
22 15 BEERS BETWEEN THEM, HE GIVES THEM A GUN, AND THEY  
23 GO TO THE BLUE DIAMOND CASINO, AND THE YOUNG MAN WAS  
24 SHOT AND KILLED AND A YOUNG GIRL WAS SHOT.

25 AND AFTER LEAVING IN A CAR THAT THIS YOUNG MAN,

1 THE TESTIMONY WILL BE, COULDN'T EVEN DRIVE, KELSEY  
2 PEARCE DROVE THE CAR, AND THEY GO BACK TO HIS  
3 COUSIN'S, A 22-YEAR-OLD MAN THAT YOU WILL HEAR FROM  
4 THAT THE STATE MADE A DEAL WITH, AND HE SPLIT THE  
5 MONEY WITH THEM. AND THEN THEY ALL THREE GO TO  
6 ORANGEBURG. THE TWO DRUNK TEENAGERS AND THE SOBER  
7 ADULT WHO SUPPLIED THE GUN, GOT PART OF THE MONEY AND  
8 HAS A DEAL WHERE HE LOOKS AT TEN YEARS AT MOST IN  
9 PRISON.

10 THIS YOUNG MAN, YOU WILL FIND THE EVIDENCE, IS  
11 INVOLVED. HIS GUILT UNDER THE LAW -- YOU'LL HEAR  
12 ABOUT THE FELONY MURDER RULE. HIS GUILT IS CLEAR.  
13 IT DOES NOT MATTER WHO HAD THE GUN. IT DOES NOT  
14 MATTER WHO PULLED THE TRIGGER. IF YOU COMBINE TO  
15 COMMIT A CRIME AND PEOPLE'S LIVES ARE TAKEN, YOU'RE  
16 GUILTY.

17 NOW, IN OUR STATE, WE HAVE TO PLEAD NOT GUILTY  
18 TO GET HERE BECAUSE YOU ALL WILL DECIDE THE FATE. WE  
19 ASK THAT YOU LISTEN TO ALL OF THE EVIDENCE BOTH IN  
20 THIS PHASE, AND WE'LL GO THE PENALTY PHASE, LADIES  
21 AND GENTLEMEN. WE WANT YOU TO LISTEN TO ALL OF THE  
22 EVIDENCE AND SEE THE INVOLVEMENT OF THOSE THREE  
23 INDIVIDUALS. AND AFTER YOU'VE HEARD ALL OF THE  
24 TESTIMONY ABOUT THE INVOLVEMENT, YOU WILL MAKE A  
25 DECISION THEN.

1 HIS HONOR WILL CHARGE YOU THE LAW. WHAT I SAY  
2 HERE AND WHAT I HAVE SAID HERE JUST NOW IS NOT  
3 EVIDENCE, JUST AS THE SOLICITOR HAS SAID. BUT THERE  
4 ARE TWO SIDES TO EVERYTHING. JUST BECAUSE SOMEONE IS  
5 GUILTY DOESN'T MEAN THAT OTHERS AREN'T ALSO. YOU  
6 WILL HEAR INCONSISTENT TESTIMONY, STATEMENTS GIVEN BY  
7 THE STATE'S WITNESSES. LISTEN TO ALL OF IT, BOTH  
8 SIDES, TO MAKE YOUR DECISION. THANK YOU.

9 THE COURT: THANK YOU, GENTLEMEN. CALL  
10 YOUR FIRST WITNESS.

11 MR. BAILEY: LYNELL WILLIAMSON.

12 THE CLERK: PLEASE STATE YOUR NAME FOR THE  
13 RECORD.

14 THE WITNESS: LYNELL WILLIAMSON.

15 THE CLERK: WOULD YOU SPELL THAT FIRST  
16 NAME, PLEASE.

17 THE WITNESS: L-Y-N-E-L-L.

18 LYNELL WILLIAMSON,  
19 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
20 TESTIFIED AS FOLLOWS:

21 THE CLERK: PLEASE HAVE A SEAT.

22 D I R E C T E X A M I N A T I O N  
23 BY MR. BAILEY:

24 Q. MS. WILLIAMSON, WOULD YOU TELL THE JURY  
25 WHERE YOU LIVE, PLEASE?

1           A.       I LIVE IN SANDY RUN, CALHOUN COUNTY. IT'S  
2       -- THE ACTUAL ADDRESS IS BOX 100 AB IN SWANSEA.

3           Q.       ALL RIGHT. AND WHO DO YOU LIVE WITH IN  
4       SANDY RUN?

5           A.       MY HUSBAND.

6           Q.       OKAY. NOW, WOULD YOU STATE WHETHER OR NOT  
7       KEN PRESLEY WAS YOUR SON?

8           A.       YES, SIR, HE IS.

9           Q.       ALL RIGHT. IN MARCH OF 1994, HOW OLD WAS  
10      KEN?

11          A.       HE WAS 20.

12          Q.       TWENTY? ALL RIGHT. NOW, HAD HE RECENTLY  
13      GOTTEN OUT OF THE NAVY?

14          A.       YES, SIR. HE WAS DISCHARGED DECEMBER  
15      31ST, 1993.

16          Q.       ALL RIGHT. NOW, WOULD YOU STATE WHETHER  
17      OR NOT HE PURCHASED AN AUTOMOBILE OR WHETHER YOU  
18      HELPED HIM BUY AN AUTOMOBILE WHILE HE WAS IN THE  
19      NAVY?

20          A.       YES, SIR. HE WAS SAVING FOR A CAR. HE  
21      CAME HOME ON A WEEKEND LEAVE. IT WAS IN JULY OF '93,  
22      AND HE HAD FOUND A CAR THAT HE WANTED TO PURCHASE.

23          Q.       ALL RIGHT. AND DID YOU HELP HIM OUT BY  
24      PUTTING THAT CAR IN YOUR NAME AND TITLE IN YOUR NAME?

25          A.       YES, SIR. HE HAD SAVED 1,600 DOLLARS, AND

1 THE CAR WAS 2,200, SO I LOANED HIM 600 DOLLARS AT THE  
2 TIME.

3 Q. OKAY. WHAT'S THE DATE THAT HE PURCHASED  
4 THE CAR?

5 A. IT WAS JULY OF '93. I DON'T REMEMBER THE  
6 EXACT DAY.

7 Q. ALL RIGHT. NOW -- AND WHAT WAS THE TOTAL  
8 PURCHASE PRICE WHEN HE BOUGHT IT?

9 A. 2,200.

10 Q. ALL RIGHT. IN MARCH OF 1994, WHAT  
11 CONDITION WAS THE CAR IN COMPARED TO WHEN YOU GOT IT?

12 A. EXCELLENT. IT WAS THE SAME AS WHEN HE  
13 PURCHASED IT. IT HAD NOT BEEN USED MUCH. HE HAD  
14 LEFT IT AT OUR HOME. HE WAS STATIONED IN NORFOLK,  
15 VIRGINIA.

16 Q. ALL RIGHT. NOW, ALTHOUGH THE TITLE WAS IN  
17 YOUR NAME, WAS THE CAR CONSIDERED KEN'S CAR?

18 A. YES, IT WAS KEN'S CAR.

19 Q. AND DID HE HAVE PERMISSION TO USE THE CAR  
20 ON MARCH 18, 1994?

21 A. HE DIDN'T NEED MY PERMISSION; IT WAS HIS,  
22 BUT YES, SIR.

23 Q. AND WHAT IS YOUR BEST ESTIMATE OF THE FAIR  
24 MARKET VALUE OF THE CAR IN MARCH OF 1994?

25 A. WELL, SINCE IT WAS PURCHASED IN JULY OF

1 '93, I WOULD IMAGINE YOU MIGHT MARK A COUPLE HUNDRED  
2 OFF OF IT. THAT WOULD MAKE IT 2,000.

3 Q. ALL RIGHT. DID YOUR SON HAVE A JOB IN  
4 MARCH OF 1994?

5 A. HE HAD A PART-TIME JOB, YES, SIR.

6 Q. OKAY. WHAT WERE HIS PLANS FOR THAT FALL  
7 OR FOR LATER ON THAT YEAR?

8 A. HE WAS GOING TO ENROLL IN SCHOOL TO STUDY  
9 ELECTRICAL ENGINEERING. HE HAD -- THAT WAS THE  
10 REASON HE WENT INTO THE NAVY, SO HE COULD AFFORD  
11 SCHOOL.

12 Q. ALL RIGHT. NOW, HE WORKED PART-TIME AT  
13 THE BLUE DIAMOND CASINO?

14 A. YES, SIR.

15 Q. OKAY. NOW, LET ME HAND YOU TWO  
16 PHOTOGRAPHS, ONE OF AN AUTOMOBILE AND ONE OF THE  
17 LICENSE TAG, AND ASK IF YOU CAN IDENTIFY THAT FOR ME.

18 A. YES, SIR. THAT'S HIS CAR.

19 Q. OKAY. AND IS THIS TAG PGA 311?

20 A. YES, SIR.

21 Q. AND THAT WAS TITLED IN YOUR NAME?

22 A. YES, SIR.

23 MR. BAILEY: YOUR HONOR, I WOULD OFFER  
24 THESE.

25 MR. NEWSOME: WITHOUT OBJECTION, YOUR

1 HONOR.

2 THE COURT: ALL RIGHT.

3 (STATE'S EXHIBITS NUMBERS 1 AND  
4 2 MARKED FOR IDENTIFICATION AND  
5 ADMITTED INTO EVIDENCE.)

6 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS  
7 MR. NEWSOME MIGHT HAVE FOR YOU.

8 MR. NEWSOME: I HAVE NO QUESTIONS FOR THIS  
9 WITNESS.

10 MR. BAILEY: JUDY OSBORNE.

11 THE COURT: YOU MAY COME DOWN. THANK YOU  
12 SO MUCH.

13 JUDY OSBORNE.

14 JUDY OSBORNE,  
15 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
16 TESTIFIED AS FOLLOWS:

17 THE CLERK: PLEASE STATE YOUR NAME FOR THE  
18 RECORD.

19 THE WITNESS: MY NAME IS JUDY OSBORNE.

20 THE CLERK: COULD YOU SPELL YOUR LAST  
21 NAME, PLEASE.

22 THE WITNESS: O-S-B-O-R-N-E.

23 THE CLERK: PLEASE COME AROUND AND HAVE A  
24 SEAT.

25 DIRECT EXAMINATION

1 BY MR. BAILEY:

2 Q. YOU'RE JUDY OSBORNE?

3 A. YES, SIR.

4 Q. OKAY. MS. OSBORNE, WHERE DO YOU LIVE NOW?

5 A. I LIVE IN ELLOREE.

6 Q. OKAY. NOW, BACK IN MARCH OF 1994, DID YOU  
7 WORK AT THE BLUE DIAMOND?

8 A. YES, I DID.

9 Q. ALL RIGHT. AND JUST FOR THE JURY, WHAT  
10 TYPE OF PLACE WAS THE BLUE DIAMOND?

11 A. VIDEO POKER.

12 Q. OKAY. AND WHAT HOURS DID YOU WORK IN  
13 MARCH OF LAST YEAR?

14 A. FROM NOON UNTIL 8:00.

15 Q. ALL RIGHT. AND IN MARCH OF 1994, WHO WAS  
16 YOUR RELIEF? WHEN YOU WOULD GO OFF OF WORK AT 8:00,  
17 WHO WOULD COME ON?

18 A. KENNETH PRESLEY WAS RELIEVING ME THAT  
19 NIGHT.

20 Q. OKAY. ON THE NIGHT OF MARCH 18TH?

21 A. YES.

22 Q. DO YOU RECALL WHAT TIME YOU LEFT THE BLUE  
23 DIAMOND THAT NIGHT?

24 A. APPROXIMATELY FIVE AFTER EIGHT.

25 Q. OKAY. AND DURING THE AFTERNOON WHEN YOU

1 WORKED, DID ANYBODY COME IN THERE THAT YOU RECOGNIZE  
2 NOW?

3 A. YES, SIR.

4 Q. OKAY. ABOUT WHAT TIME DID THIS PERSON  
5 COME IN -- OR THESE PEOPLE?

6 A. APPROXIMATELY 7:30.

7 Q. P.M.?

8 A. YES, SIR.

9 Q. OKAY. WOULD YOU DESCRIBE THE PERSON OR  
10 PERSONS THAT CAME INTO THE BLUE DIAMOND ABOUT 7:30?

11 A. THE MAN THAT'S SITTING OVER THERE, AND  
12 ANOTHER -- ANOTHER FELLOW CAME IN WITH HIM.

13 Q. OKAY. WHEN YOU SAY THE MAN SITTING OVER  
14 THERE, ARE YOU REFERRING TO THE DEFENDANT WITH THE  
15 TAN COAT AND THE BLUE SHIRT?

16 A. YES, SIR.

17 MR. BAILEY: AND THE RECORD WOULD INDICATE  
18 THAT MS. OSBORNE HAS REFERRED TO THE DEFENDANT.

19 BY MR. BAILEY:

20 Q. NOW, YOU SAID THERE WAS A SECOND PERSON  
21 WITH HIM; IS THAT CORRECT?

22 A. YES, SIR.

23 Q. OKAY. AND COULD YOU DESCRIBE THE SECOND  
24 PERSON?

25 A. WELL, HE WAS FAIRLY TALL. HE HAD -- HE

1 HAD COME IN THE BLUE DIAMOND A COUPLE OF OTHER TIMES.

2 Q. OKAY.

3 A. HE HAD A LOT OF JEWELRY ON.

4 Q. ALL RIGHT.

5 A. YOU KNOW, I COULDN'T TELL YOU WHAT HE WAS  
6 WEARING. I DON'T REMEMBER THAT.

7 Q. OKAY. HAD YOU EVER SEEN HERMAN HUGHES,  
8 THE MAN YOU IDENTIFIED AS BEING IN THERE AT 7:30,  
9 PRIOR TO THAT OCCASION?

10 A. NO.

11 Q. OKAY. HOW LONG WAS HE IN THE BLUE  
12 DIAMOND?

13 A. OH, ABOUT 15 TO 20 MINUTES.

14 Q. ALL RIGHT. AND WHAT, IF ANYTHING, WAS HE  
15 DOING IN THERE?

16 A. HE WAS WATCHING THE OTHER FELLOW PLAY A  
17 MACHINE.

18 Q. ALL RIGHT. AND HAVE YOU IN YOUR LIFETIME  
19 OBSERVED PEOPLE THAT HAVE BEEN DRINKING AND HAVE  
20 BECOME INTOXICATED?

21 A. YES, SIR.

22 Q. WHAT DO YOU RECALL, IF ANYTHING, ABOUT HIS  
23 APPARENT SOBRIETY? WHEN I SAY "HIM," I MEAN HERMAN  
24 HUGHES.

25 A. I DON'T BELIEVE HE WAS INEBRIATED.

1 Q. WHAT ABOUT THE OTHER YOUNG MAN?

2 A. THE OTHER FELLOW WAS VERY MUCH SO.

3 Q. VERY MUCH SO WHAT?

4 A. VERY -- TO ME, APPEARED DRUNK.

5 Q. OKAY. BUT YOUR TESTIMONY IS THAT HERMAN  
6 HUGHES DID NOT APPEAR TO BE DRUNK --

7 A. NO.

8 Q. -- AT 7:30? OKAY. NOW, WHEN YOU LEFT THE  
9 BLUE DIAMOND THAT NIGHT AT AROUND 8:00 --

10 A. UH-HUH.

11 Q. -- WOULD YOU STATE WHETHER OR NOT THERE  
12 WAS MONEY IN THE CASH DRAWER?

13 A. YES, SIR, THERE WAS.

14 Q. COULD YOU TELL THE JURY APPROXIMATELY HOW  
15 MUCH MONEY WAS THERE WHEN YOU LEFT?

16 A. IT WAS ABOUT 400.

17 MR. BAILEY: OKAY. PLEASE ANSWER ANY  
18 QUESTIONS MR. NEWSOME MAY HAVE.

19 C R O S S - E X A M I N A T I O N

20 BY MR. NEWSOME:

21 Q. YOU'RE SAYING THE OTHER GENTLEMAN WAS  
22 TALLER THAN MY CLIENT?

23 A. YES, SIR.

24 Q. AND WHAT DO YOU MEAN BY HE WAS VERY DRUNK?

25 A. HE WAS --

1 Q. LOUD?

2 A. HE WAS DRUNK.

3 Q. WELL, I MEAN --

4 A. WELL, HE WAS PLAYING THE MACHINE, AND YOUR  
5 CLIENT ASKED -- WAS SITTING THERE WATCHING HIM PLAY,  
6 OKAY?

7 Q. HE WAS SITTING THERE QUIETLY?

8 A. YEAH. WELL, THEY WERE TALKING BACK AND  
9 FORTH. I COULD HEAR A LITTLE BIT OF THE  
10 CONVERSATION --

11 Q. UH-HUH.

12 A. -- FROM WHERE I WAS SITTING. AND THE  
13 TALLER FELLOW ASKED WHERE HIS -- ASKED HIM WHERE HIS  
14 BOTTLE WAS, AND HE SAID, WELL, YOU DRANK IT ALL, YOU  
15 KNOW.

16 Q. UH-HUH. WHAT DID THE OTHER FELLOW DO THAT  
17 SHOWED YOU HE WAS DRUNK? DID HE STUMBLE? DID HE  
18 SLUR HIS WORDS?

19 A. YEAH. HE WAS SLURRING. HE WAS A LITTLE  
20 AGGRESSIVE, I WOULD SAY. AND I WAS KIND OF SCARED.

21 Q. UH-HUH.

22 A. YOU KNOW, THAT'S WHY I REMEMBERED IT.

23 Q. AND WHAT ELSE ABOUT HIS Demeanor INDICATED  
24 TO YOU THAT HE WAS INTOXICATED?

25 A. WHEN HE WALKED, HE DID KIND OF STAGGER.

1 Q. OKAY.

2 A. AND HE SLURRED HIS WORDS, AND HE WAS LOUD.  
3 YOU KNOW, NOT REAL LOUD, BUT IT WAS JUST ENOUGH FOR  
4 ME TO KIND OF WONDER IF -- YOU KNOW, IF THEY WERE ALL  
5 RIGHT IN THERE. I WAS GOING TO ASK THEM TO LEAVE.  
6 AND I THOUGHT, WELL, THERE WASN'T ANYBODY ELSE IN  
7 THERE, AND THEY WEREN'T CAUSING ANY TROUBLE, SO I  
8 JUST LET THEM GO.

9 Q. OKAY. BUT YOU'RE SAYING THAT MR. HUGHES  
10 WAS SOMEWHAT QUIETER?

11 A. YEAH. THEY WERE JUST TALKING AMONGST  
12 THEMSELVES WHILE THE OTHER FELLOW WAS PLAYING THE  
13 MACHINE.

14 Q. COULD IT BE POSSIBLE THAT MR. HUGHES MAY  
15 HAVE BEEN DRINKING AND YOU DID NOT KNOW HOW MUCH  
16 BECAUSE HE WASN'T SAYING MUCH?

17 A. IT'S POSSIBLE.

18 MR. NEWSOME: OKAY. THANK YOU.

19 MR. BAILEY: NO REDIRECT, YOUR HONOR.

20 THE COURT: YOU MAY COME DOWN. THANK YOU.

21 MR. BAILEY: DANIEL OWENS.

22 THE CLERK: IF YOU WILL COME FORWARD AND  
23 PLEASE PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE  
24 YOUR RIGHT HAND. STATE YOUR NAME.

25 THE WITNESS: HENRY DANIEL OWENS, JUNIOR.

1 HENRY DANIEL OWENS, JR.,  
2 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
3 TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION  
5 BY MR. BAILEY:

6 Q. MR. OWENS, HOW ABOUT GIVE US YOUR FULL  
7 NAME AGAIN, PLEASE.

8 A. HENRY DANIEL OWENS, JUNIOR.

9 Q. OKAY. AND HOW OLD ARE YOU?

10 A. TWENTY-THREE.

11 Q. IN MARCH OF 1994, HOW OLD WERE YOU?

12 A. TWENTY-TWO.

13 Q. OKAY. ARE YOU EMPLOYED?

14 A. YES, SIR.

15 Q. WHERE DO YOU WORK?

16 A. I WORK AT BABCOCK HOME FURNISHINGS AND  
17 U.P.S.

18 Q. WHAT DO YOU DO FOR U.P.S.?

19 A. I'M A MATERIALS HANDLER.

20 Q. OKAY. AND HOW LONG HAVE YOU WORKED FOR  
21 U.P.S.?

22 A. I WORK EVERY NIGHT.

23 Q. AND IN MARCH OF 1994, WHERE DID YOU LIVE?

24 A. 632 HUFF DRIVE.

25 Q. OKAY. AND WHERE IS HUFF DRIVE LOCATED?

1           A.       THIS STREET THAT RUNS RIGHT IN FRONT OF  
2 THE COURTHOUSE.

3           Q.       OKAY.   RIGHT OFF THE STREET THAT PARALLELS  
4 THE RAILROAD TRACKS?

5           A.       YES, SIR.

6           Q.       OKAY.   AND DID YOU LIVE THERE BY YOURSELF  
7 OR WITH SOMEBODY ELSE?

8           A.       ME AND MY BROTHER.

9           Q.       OKAY.   NOW, IS THAT A HOUSE OR A HOUSE  
10 TRAILER?

11          A.       A HOUSE.

12          Q.       OKAY.   AND WHERE DID YOUR FATHER LIVE BACK  
13 THEN?

14          A.       RIGHT NEXT DOOR.

15          Q.       OKAY.   AND IF YOU LEFT THE COURTHOUSE AND  
16 WALKED RIGHT DOWN THERE, WOULD YOU COME TO YOUR HOUSE  
17 AND THEN YOUR FATHER'S TRAILER?

18          A.       YES, SIR.

19          Q.       IS IT RIGHT BESIDE YOU?

20          A.       YES, SIR.

21          Q.       OKAY.   NOW, AT THAT TIME, BACK IN MARCH OF  
22 1994, DID YOU KNOW HERMAN HUGHES?

23          A.       YES, SIR.

24          Q.       WOULD YOU POINT HIM OUT?

25          A.       (INDICATING.)

1 Q. YOU'RE POINTING AT THE DEFENDANT?

2 A. THE DEFENDANT.

3 Q. AND HOW DID YOU KNOW HERMAN HUGHES?

4 A. THROUGH MY NEPHEW, KELSEY PEARCE.

5 Q. OKAY. YOU KNEW HIM THROUGH KELSEY PEARCE?

6 A. AND SEEING HIM AT -- SEEING HIM AROUND.

7 Q. OKAY. AND KELSEY PEARCE IS WHAT RELATION  
8 TO YOU EXACTLY?

9 A. MY NEPHEW.

10 Q. OKAY. AND WHERE IS YOUR HOUSE LOCATED IN  
11 RELATION TO WHERE THE BLUE DIAMOND WAS?

12 A. ACROSS THE STREET, TRACK -- TWO ROADS AND  
13 THE RAILROAD TRACK.

14 Q. OKAY. NOW, YOU HAVE CHARGES PENDING  
15 AGAINST YOU IN THIS CASE; IS THAT CORRECT?

16 A. YES, SIR.

17 Q. WOULD YOU TELL THE JURY WHAT YOUR CHARGES  
18 ARE?

19 A. MISPRISON OF A FELONY, ACCESSORY BEFORE  
20 THE FACT OF MURDER, AND ACCESSORY BEFORE THE FACT OF  
21 ARMED ROBBERY.

22 Q. AND YOU HAVE A PLEA AGREEMENT WORKED OUT  
23 WITH THE STATE OF SOUTH CAROLINA THROUGH YOUR  
24 ATTORNEY?

25 A. YES, SIR.

1 Q. WOULD YOU TELL THE JURY WHAT THAT PLEA  
2 AGREEMENT IS?

3 A. I PLEAD GUILTY TO MISPRISON, AND THEY  
4 WON'T CHARGE ME WITH THE ACCESSORY CHARGES.

5 Q. ALL RIGHT. AND DO YOU KNOW HOW MUCH TIME  
6 YOU'RE FACING ON THE MISPRISON CHARGE?

7 A. UP TO 15.

8 Q. OKAY. NOW, IN EXCHANGE FOR YOUR --  
9 LETTING YOU PLEAD TO MISPRISON OF A FELONY, WHAT IS  
10 YOUR PART OF WHAT YOU'RE SUPPOSED TO BE DOING?

11 A. SIR?

12 Q. WHAT ARE YOU SUPPOSED TO BE DOING AS FAR  
13 AS YOUR PART OF THAT PLEA AGREEMENT?

14 A. GIVING TESTIMONY.

15 Q. I'M SORRY?

16 A. GIVING TESTIMONY.

17 Q. OKAY. WHAT KIND OF TESTIMONY?

18 A. THE TRUTH.

19 Q. ALL RIGHT. NOW, YOU'RE HERE TODAY TO TELL  
20 THE TRUTH?

21 A. YES, SIR.

22 Q. NOW, FRIDAY EVENING, MARCH THE 18TH, DO  
23 YOU RECALL THAT DAY?

24 A. YES, SIR.

25 Q. WERE YOU AT HOME THEN?

1 Q. ALL RIGHT. WELL, AT SOME POINT DURING THE  
2 NIGHT, DID HE HAVE A HAT ON?

3 A. YES, SIR.

4 Q. WHAT KIND OF HAT DID HE PUT ON?

5 A. GEORGETOWN HAT. THE ONE I GAVE HIM.

6 Q. OKAY. CAN YOU DESCRIBE THAT HAT AS FAR AS  
7 THE COLOR OF IT?

8 A. IT WAS DARK BLUE HAT TOP WITH A  
9 LIGHT-COLORED BILL.

10 Q. OKAY. DARK BLUE HAT WITH A LIGHT-COLORED  
11 BILL, AND YOU GAVE IT TO HIM THAT NIGHT?

12 A. YES.

13 Q. OKAY. DID YOU HAVE ANY PLANS FOR THAT  
14 EVENING, LATER ON THAT NIGHT?

15 A. YES, SIR.

16 Q. OKAY. WHAT WERE YOUR PLANS?

17 A. ME AND MY NEPHEW HAD ALREADY PLANNED TO GO  
18 TO THE EBONY LOUNGE THAT NIGHT.

19 Q. OKAY. WHEN YOU SAY YOUR NEPHEW, YOU'RE  
20 TALKING ABOUT KELSEY PEARCE?

21 A. KELSEY PEARCE, YEAH.

22 Q. DID YOU KNOW BEFORE THAT NIGHT -- DID YOU  
23 KNOW WHEN YOU MADE THE PLANS WITH KELSEY PEARCE  
24 WHETHER OR NOT HERMAN HUGHES WOULD BE GOING TOO?

25 A. NO, SIR.

1 Q. DID YOU KNOW BEFORE HERMAN HUGHES GOT TO  
2 YOUR HOUSE THAT HE WAS COMING TO YOUR HOUSE?

3 A. NO, SIR.

4 Q. OKAY. HAVE YOU EVER SEEN THIS PISTOL  
5 BEFORE?

6 A. YES, SIR.

7 Q. OKAY. DID YOU AT ONE TIME OWN THAT  
8 PISTOL?

9 A. YES, SIR.

10 Q. OKAY. WHAT KIND OF GUN IS THAT?

11 A. A .380 LARSON.

12 Q. OKAY. NOW, THE NIGHT OF MARCH THE 18TH,  
13 1994, WHERE WAS THAT GUN LOCATED?

14 A. IN MY TRUNK.

15 Q. OKAY. AND WAS THERE A CLIP FOR THE GUN?

16 A. YES, SIR.

17 Q. OKAY. WERE THERE ANY BULLETS IN THE CLIP?

18 A. YES, SIR.

19 Q. DO YOU RECALL HOW MANY?

20 A. NO, SIR.

21 Q. DO YOU KNOW HOW MANY BULLETS THE CLIP  
22 HOLDS?

23 A. SEVEN.

24 Q. OKAY. WAS THE CLIP FULL?

25 A. NO, SIR.

1 A. YES, SIR.

2 Q. I WANT TO CALL YOUR ATTENTION TO AROUND  
3 5:30 P.M. TO 6:00 P.M. WERE YOU HOME THEN?

4 A. YES, SIR.

5 Q. AND WOULD YOU STATE WHETHER OR NOT YOU SAW  
6 HERMAN HUGHES AND KELSEY PEARCE?

7 A. YES, SIR.

8 Q. AND WHERE DID YOU SEE THEM?

9 A. THEY CAME TO MY HOUSE.

10 Q. ALL RIGHT. AND WHEN THEY CAME TO YOUR  
11 HOUSE, WHAT DID THEY DO?

12 A. WE SAT DOWN AND TALKED. I WAS ALREADY  
13 WATCHING T.V.

14 Q. OKAY.

15 A. SO WE JUST SAT DOWN AND TALKED.

16 Q. ALL RIGHT. WOULD YOU STATE WHETHER OR NOT  
17 THEY WENT ANYWHERE?

18 A. YES, SIR.

19 Q. AFTER A WHILE?

20 A. AFTER A LITTLE WHILE, THEY WENT UPTOWN.

21 Q. ALL RIGHT. HOW LONG WERE THEY GONE?

22 A. MAYBE TEN, FIFTEEN MINUTES.

23 Q. DO YOU KNOW HOW THEY GOT UPTOWN?

24 A. NO, SIR.

25 Q. DO YOU KNOW HOW THEY GOT TO YOUR HOUSE?

1 A. NO, SIR.

2 Q. OKAY. WHEN THEY CAME BACK TEN OR FIFTEEN  
3 MINUTES LATER, DID THEY HAVE ANYTHING WITH THEM?

4 A. THEY HAD SOME BEER WITH THEM.

5 Q. OKAY. DO YOU RECALL WHAT KIND OF BEER AND  
6 HOW MUCH BEER?

7 A. 15-PACK OF BULL.

8 Q. 15-PACK OF BULL. AND WHEN THEY CAME BACK  
9 TO YOUR HOUSE WITH A 15-PACK OF BULL, WHAT, IF  
10 ANYTHING, DID Y'ALL DO WITH THAT BEER?

11 A. WELL, WE DRANK IT.

12 Q. OKAY. WHO DRANK IT? ALL THREE OF YOU?

13 A. YES.

14 Q. AND DURING THE COURSE OF THE EVENING, AS  
15 LONG AS YOU WERE THERE, HOW MUCH OF THE BEER DID  
16 Y'ALL DRINK?

17 A. WE DRANK IT ALL.

18 Q. OKAY. NOW, DO YOU RECALL HOW HERMAN  
19 HUGHES WAS DRESSED THAT NIGHT?

20 A. WELL, HE HAD ON A SHIRT AND SOME BAGGY  
21 PANTS.

22 Q. OKAY. HOW ABOUT A HAT? WAS HE WEARING A  
23 HAT?

24 A. I CAN'T REMEMBER WHETHER HE HAD ON ONE  
25 WHEN HE CAME OR NOT.

1 Q. THERE WERE BULLETS IN THERE, BUT IT WASN'T  
2 FULL, AND YOU DON'T KNOW EXACTLY HOW MANY WERE IN  
3 THERE?

4 A. YES, SIR.

5 Q. AND WOULD YOU STATE WHETHER OR NOT THE  
6 TOPIC OF THAT GUN CAME UP AT THE TIME KELSEY PEARCE  
7 AND HERMAN HUGHES WERE AT YOUR HOUSE?

8 A. YES, SIR.

9 Q. OKAY. WHO WAS THE FIRST PERSON WHO  
10 MENTIONED A GUN THAT NIGHT?

11 A. THAT NIGHT?

12 Q. UH-HUH.

13 A. HERMAN.

14 Q. AND WHAT, IF ANYTHING, DID HERMAN SAY  
15 ABOUT A GUN THAT NIGHT?

16 A. THAT HE WANTED TO GET IT.

17 Q. OKAY. WHEN HE SAID HE WANTED TO GET IT,  
18 ARE YOU REFERRING TO THE GUN?

19 A. YES, SIR.

20 Q. OKAY. AND DID YOU TALK ABOUT A PRICE WITH  
21 HIM?

22 A. I SAID I WOULD GIVE IT TO HIM.

23 Q. OKAY. GO AHEAD AND JUST TELL THE JURY  
24 WHAT HERMAN SAID ABOUT THE GUN AND WHAT YOU SAID.

25 A. I SAID I WOULD HAVE GIVEN IT TO HIM IF HE

1 WANTED IT.

2 Q. ALL RIGHT. AND WHAT, IF ANYTHING, DID HE  
3 SAY WHEN YOU SAID THAT?

4 A. HE DIDN'T SAY ANYTHING.

5 Q. OKAY. DID ANYBODY ELSE SAY ANYTHING?

6 A. KELSEY SAID A PRICE.

7 Q. KELSEY?

8 A. KELSEY SAID DO NOT -- WELL, IT COST TOO  
9 MUCH ON THE STREET. IT COST TOO MUCH, SO GIVE HIM A  
10 PRICE.

11 Q. ALL RIGHT. AND DID YOU ARRIVE AT A PRICE  
12 WITH HERMAN HUGHES TO SELL HIM THE GUN?

13 A. YES, SIR.

14 Q. OKAY. AND DID YOU SELL THE GUN TO HIM?

15 A. YES, SIR.

16 Q. AND WHAT WAS THE AGREED UPON PRICE?

17 A. FIFTY.

18 Q. OKAY. DID HE GIVE YOU THE 50 DOLLARS  
19 RIGHT OFF THE BAT?

20 A. NO, SIR.

21 Q. OKAY. AFTER YOU NEGOTIATED THE SALE OF  
22 THE GUN, WHAT HAPPENED TO IT?

23 A. WHAT HAPPENED TO THE GUN?

24 Q. YEAH.

25 A. I DON'T KNOW. I JUST -- I GAVE KELSEY THE

1 KEY, AND THEY WENT OUT.

2 Q. WHERE WAS THE GUN LOCATED?

3 A. IT WAS IN THE TRUNK.

4 Q. OKAY. AND YOU GAVE KELSEY THE KEY TO THE  
5 TRUNK AFTER YOU AND HERMAN NEGOTIATED THE SALE?

6 A. YES, SIR. YES, SIR.

7 Q. NOW, AFTER HERMAN AND KELSEY GOT THE GUN,  
8 WHAT HAPPENED NEXT? WHAT DID Y'ALL DO?

9 A. WE SAT DOWN AND TALKED FOR A LITTLE WHILE,  
10 DRANK SOME BEER AND WATCHED SOME T.V.

11 Q. AT ANY POINT IN TIME, DID HERMAN HUGHES  
12 AND KELSEY PEARCE LEAVE YOUR HOUSE?

13 A. YES, SIR.

14 Q. ABOUT HOW LONG WERE THEY GONE?

15 A. ABOUT HALF AN HOUR TO 45 MINUTES.

16 Q. DO YOU KNOW ABOUT WHAT TIME IT WAS WHEN  
17 THEY LEFT FOR HALF AN HOUR OR SO?

18 A. NO, SIR.

19 Q. OKAY. WAS IT DARK?

20 A. YES, SIR.

21 Q. OKAY. NOW, AFTER THEY LEFT FOR HALF AN  
22 HOUR OR SO, DID THEY COME BACK TO YOUR HOUSE?

23 A. YES, SIR.

24 Q. AND WHAT OCCURRED WHEN THEY GOT BACK?

25 A. THEY WENT IN MY BROTHER'S ROOM.

1 Q. OKAY.

2 A. AND THEN THEY CALLED ME IN.

3 Q. NOW, WHEN YOU SAY "THEY," FOR THE RECORD,

4 YOU NEED TO GIVE NAMES.

5 A. HERMAN AND KELSEY.

6 Q. OKAY.

7 A. WE WENT IN THE ROOM AND SPLIT THE MONEY.

8 Q. SPLIT THE MONEY WITH WHO?

9 A. BETWEEN US.

10 Q. OKAY. AND CAN YOU TELL US ANYTHING ABOUT  
11 THE MONEY, HOW MUCH MONEY IT WAS, WHAT DENOMINATION?

12 A. I DID NOT COUNT IT, SIR.

13 Q. YOU NEED TO TALK UP LOUD ENOUGH FOR --

14 A. I DID NOT COUNT IT, SIR.

15 Q. BUT YOU GOT SOME MONEY; RIGHT?

16 A. YES.

17 Q. WHO ELSE GOT MONEY?

18 A. KELSEY AND HERMAN.

19 Q. KELSEY AND HERMAN. AFTER Y'ALL SPLIT THIS  
20 MONEY UP, WHAT DID YOU DO THEN?

21 A. THAT'S WHEN WE LEFT TO GO TO THE -- TO THE  
22 CLUB.

23 Q. OKAY. AND WHO LEFT FIRST?

24 A. I LEFT FIRST.

25 Q. OKAY. AND DO YOU KNOW WHERE KELSEY AND

1 HERMAN WERE WHEN YOU LEFT?

2 A. I LEFT THEM IN THE HOUSE.

3 Q. OKAY. WHAT KIND OF CAR DO YOU DRIVE OR  
4 DID YOU DRIVE BACK THEN?

5 A. I WAS DRIVING AN '87 TOYOTA COROLLA SR5,  
6 BURGUNDY IN COLOR.

7 Q. OKAY. NOW, YOU MIGHT HAVE TOLD US THIS  
8 BEFORE. WHERE IS THE EBONY CLUB? IS THAT IN  
9 ORANGEBURG?

10 A. YES, SIR.

11 Q. AND HOW DO YOU GET FROM YOUR HOUSE TO GET  
12 TO THE EBONY CLUB?

13 A. FROM MY HOUSE, YOU MAKE A RIGHT, CROSS THE  
14 RAILROAD TRACK AND MAKE ANOTHER RIGHT AND STRETCH  
15 OUT.

16 Q. OKAY.

17 A. IT'S ON 601.

18 Q. YOU GO OUT YOUR DRIVEWAY AND TAKE A RIGHT  
19 ON JIM GLOVER ROAD, AND TAKE A LEFT ACROSS THE  
20 RAILROAD TRACK, AND ON 601, YOU TAKE A RIGHT TO  
21 ORANGEBURG?

22 A. YES.

23 Q. NOW, WHAT, IF ANYTHING, OCCURRED WHEN YOU  
24 PULLED OUT OF YOUR DRIVEWAY AND GOT ONTO 601?

25 A. WHEN I PULLED OUT, I HEARD A RATTLING

1 UNDER MY HOOD, SO I PULLED INTO THE LITTLE PART ON  
2 THE SIDE OF 601 RIGHT BETWEEN THE RAILROAD TRACK AND  
3 601.

4 Q. ALL RIGHT. DID YOU TURN YOUR LIGHTS ON OR  
5 WERE THEY OFF?

6 A. I ALREADY HAD MY LIGHTS ON ALREADY.

7 Q. OKAY. WHAT DIRECTION IS YOUR CAR POINTED  
8 AT?

9 A. TOWARDS THE ROAD.

10 Q. TOWARD 601?

11 A. YES, SIR.

12 Q. ALL RIGHT. NOW, AFTER YOU STOPPED, WHAT  
13 DID YOU DO?

14 A. I PULLED UP THE HOOD.

15 Q. AND DID YOU FIND OUT WHAT WAS MAKING A  
16 RATTLING NOISE?

17 A. YES, SIR.

18 Q. OKAY. AND WHAT WAS IT?

19 A. MY OIL TOP WAS OFF.

20 Q. ALL RIGHT. AND WHILE YOU WERE STOPPED,  
21 DID YOU OBSERVE ANYTHING?

22 A. YES, SIR. I OBSERVED A POLICE COMING UP  
23 THE HILL FROM ORANGEBURG DIRECTION.

24 THE COURT: YOU NEED TO TALK A LITTLE  
25 LOUDER, PLEASE. I WANT TO MAKE SURE EVERYBODY CAN

1 HEAR YOU.

2 THE WITNESS: OKAY. I SAW A POLICE  
3 OFFICER COMING UP THE HILL FROM THE ORANGEBURG  
4 DIRECTION, AND I SAW A BLUE -- A BLUE CAR, A GRAY  
5 CAR, AND A GREEN PICKUP TRUCK.

6 BY MR. BAILEY:

7 Q. ALL RIGHT. NOW, THE GRAY CAR, WHAT KIND  
8 OF CAR WAS IT?

9 A. IT WAS A MAZDA.

10 Q. OKAY. AND COULD YOU TELL WHO WAS IN THE  
11 CAR?

12 A. I COULDN'T TELL WHO WAS IN THE CAR.

13 Q. ALL RIGHT.

14 A. BUT I KNOW IT WAS TWO BLACK MALES.

15 Q. ALL RIGHT. AND HOW DO YOU KNOW IT WAS TWO  
16 BLACK MALES?

17 A. BECAUSE YOU COULDN'T SEE -- WHEN IT'S DARK  
18 AND BLACK ON BLACK, DARKNESS ON DARKNESS.

19 Q. DID YOU RECOGNIZE ANYTHING ABOUT EITHER  
20 ONE OF THE TWO BLACK MALES YOU SAW IN THE MAZDA?

21 A. A DARK-COLORED HAT WITH A LIGHT-COLORED  
22 BILL.

23 Q. DID YOU RECOGNIZE THE HAT?

24 A. I RECOGNIZED THE COLORS.

25 Q. OKAY. AND WHAT -- WHAT -- WHAT DID YOU

1 RECOGNIZE ABOUT THE COLORS?

2 A. BECAUSE I HAD JUST GIVEN -- GIVEN ONE  
3 AWAY.

4 Q. OKAY. WHO DID YOU GIVE THE HAT TO?

5 A. TO HERMAN.

6 Q. OKAY. AND WAS THAT THE SAME HAT YOU GAVE  
7 TO HERMAN THAT YOU SAW ON THE GUY IN THE CAR?

8 A. I DON'T KNOW EXACTLY IF THAT'S THE SAME  
9 HAT OR NOT.

10 Q. OKAY. SAME KIND OF HAT?

11 A. YEAH. SAME COLOR.

12 Q. OKAY. IF I SHOWED YOU A PICTURE OF THE  
13 CAR, WOULD YOU RECOGNIZE IT?

14 A. YES, SIR.

15 Q. THE GRAY CAR. I'LL SHOW YOU STATE'S  
16 EXHIBIT NUMBER 1.

17 THE COURT: LET ME SEE THAT FIRST, PLEASE.

18 BY MR. BAILEY:

19 Q. DO YOU RECOGNIZE THAT, STATE'S 1?

20 A. YES.

21 Q. OKAY. TELL THE JURY WHAT THAT IS.

22 A. THIS IS A GRAY MAZDA RX7.

23 Q. IS THAT THE CAR YOU SAW PASSING YOU WHILE  
24 YOU WERE IN THE LITTLE PARKED AREA BY 601?

25 A. YES, SIR.

1 Q. AFTER YOU PUT YOUR OIL CAP BACK ON, WHAT  
2 DID YOU DO?

3 A. I WENT ON TO ORANGEBURG.

4 Q. OKAY. NOW, ON YOUR WAY TO ORANGEBURG, DID  
5 YOU MAKE ANY OBSERVATIONS OF ANY TRAFFIC ON THE WAY?

6 A. I SAW AN AMBULANCE GOING TOWARDS ST.  
7 MATTHEWS.

8 Q. OKAY.

9 A. BEFORE I GOT TO 26.

10 Q. GOING BASICALLY THE SAME DIRECTION YOU  
11 WERE COMING FROM, HEADED TOWARDS ST. MATTHEWS?

12 A. YES, SIR.

13 Q. AND DID YOU GO TO THE EBONY CLUB?

14 A. YES, SIR.

15 Q. AND YOU WERE BY YOURSELF IN YOUR BURGUNDY  
16 CAR; IS THAT RIGHT?

17 A. YES, SIR.

18 Q. ALL RIGHT. WHEN YOU GOT TO THE EBONY  
19 CLUB, WHAT DID YOU SEE?

20 A. KELSEY AND HERMAN STANDING BY THAT CAR.

21 Q. WHEN YOU SAY THAT CAR, ARE YOU REFERRING  
22 TO THE MAZDA THAT'S IN THAT PICTURE AS STATE'S 1?

23 A. YES, SIR.

24 Q. AND YOU SAW HERMAN HUGHES RIGHT HERE AND  
25 KELSEY PEARCE STANDING BESIDE THE CAR. WERE THE CAR

1 DOORS OPEN OR SHUT?

2 A. OPEN.

3 Q. AND WHAT, IF ANYTHING, DID YOU SEE THEM DO  
4 BY THAT CAR?

5 A. STANDING AND CLOSING THE DOOR.

6 Q. OKAY. WHAT DID YOU DO NEXT?

7 A. WE WENT TO KELSEY'S AUNT'S HOUSE.

8 Q. AND DO YOU KNOW HER NAME OR WHERE SHE  
9 LIVES?

10 A. SHE -- HER NAME IS NANA JOHNSON.

11 Q. SO Y'ALL WENT TO NANA JOHNSON'S HOUSE?

12 A. YES.

13 Q. WHOSE CAR DID YOU GO TO NANA JOHNSON'S  
14 HOUSE IN?

15 A. MY CAR.

16 Q. YOUR CAR?

17 A. YES.

18 Q. WHERE DID THEY LEAVE THE MAZDA?

19 A. IN THE PARKING LOT AT THE CLUB.

20 Q. ALL RIGHT. NOW, WHEN Y'ALL GOT TO NANA  
21 JOHNSON'S HOUSE IN ORANGEBURG, WHAT DID YOU DO THERE?

22 A. TALKED, SAT AROUND, JOKED. AND THEN SHE  
23 WANTED ME TO RUN A FEW ERRANDS FOR HER WHILE WE WERE  
24 WAITING ON THE GIRLS TO GET DRESSED.

25 Q. OKAY. WHAT KIND OF ERRAND DID YOU RUN?

- 1 A. GET SOME FOOD, GO TO THE GROCERY STORE.
- 2 Q. OKAY. AND WHERE DID YOU GO TO GET FOOD?
- 3 A. BURGER KING.
- 4 Q. NOW, ON THE WAY FROM MS. JOHNSON'S HOUSE
- 5 TO BURGER KING, WHO WAS IN THE CAR WITH YOU WHEN YOU
- 6 WENT TO BURGER KING?
- 7 A. ME, HERMAN, KELSEY AND BARBARA JOHNSON.
- 8 Q. OKAY. AND WHO WAS DRIVING YOUR CAR?
- 9 A. I WAS DRIVING.
- 10 Q. OKAY. AND WHO WAS SITTING IN THE
- 11 PASSENGER SEAT?
- 12 A. KELSEY WAS.
- 13 Q. OKAY. AND WHAT -- WHAT CONDITION WAS
- 14 KELSEY IN AT THAT TIME?
- 15 A. HE WAS OUT, SLEEPING.
- 16 Q. OUT ASLEEP IN THE FRONT SEAT OF YOUR CAR?
- 17 A. YES, SIR.
- 18 Q. WHERE WAS HERMAN HUGHES SITTING?
- 19 A. SITTING BEHIND ME.
- 20 Q. OKAY.
- 21 A. IN THE BACK SEAT.
- 22 Q. ALL RIGHT. IN WHAT CONDITION WAS HE IN AS
- 23 FAR AS SOBRIETY?
- 24 A. HE WAS PRETTY NORMAL.
- 25 Q. PRETTY NORMAL? OKAY. AND WHERE WAS

1 BARBARA JOHNSON SITTING?

2 A. BEHIND KELSEY.

3 Q. OKAY. AND DID ANYTHING UNUSUAL HAPPEN

4 WHEN Y'ALL DROVE TO THE BURGER KING?

5 A. HERMAN SHOT OUT THE WINDOW.

6 Q. HERMAN SHOT WHAT OUT THE WINDOW?

7 A. SHOT THE GUN OUT THE WINDOW.

8 Q. WHEN YOU SAY THE GUN, ARE YOU REFERRING TO

9 THIS SAME GUN HERE?

10 A. YEAH.

11 Q. THAT YOU IDENTIFIED AS BEING THE ONE YOU

12 GAVE TO HERMAN HUGHES?

13 A. YEAH.

14 Q. OKAY. HOW DO YOU KNOW IT WAS HERMAN THAT

15 SHOT THE GUN OUT YOUR WINDOW?

16 A. BECAUSE IT CAME BY MY EAR.

17 Q. OKAY.

18 A. A BULLET CAME BY MY EAR.

19 Q. ALL RIGHT. AND DID HE SAY ANYTHING EITHER

20 BEFORE OR AFTER HE SHOT THE GUN OUT YOUR WINDOW?

21 A. NO.

22 Q. DID YOU SAY ANYTHING TO HIM?

23 A. I TOLD HIM TO PUT THE GUN DOWN.

24 Q. OKAY. AND DID HE PUT THE GUN DOWN?

25 A. YES, SIR.

- 1 Q. THIS WAS ON THE WAY TO BURGER KING; RIGHT?
- 2 A. YES, SIR.
- 3 Q. OKAY. AFTER YOU GOT TO BURGER KING AND
- 4 GOT THE HAMBURGERS, WHERE DID YOU GO?
- 5 A. WE WENT BACK TO NANA'S HOUSE.
- 6 Q. OKAY. AND WHAT DID YOU DO WHEN YOU GOT
- 7 BACK?
- 8 A. THE GIRLS WERE ABOUT READY THEN, SO WE --
- 9 WE LEFT.
- 10 Q. OKAY.
- 11 A. AND WENT TO THE CLUB.
- 12 Q. WHEN YOU SAY YOU WENT TO THE CLUB, DID YOU
- 13 GO BACK TO THE EBONY CLUB?
- 14 A. BACK TO THE EBONY CLUB.
- 15 Q. THE SAME PLACE THEY HAD LEFT THAT MAZDA?
- 16 A. YES, SIR.
- 17 Q. OKAY. WHEN YOU GOT BACK TO THE EBONY
- 18 CLUB, WHAT TIME WAS IT, ROUGHLY?
- 19 A. BETWEEN TEN AND ELEVEN.
- 20 Q. WHO WENT TO THE EBONY CLUB? WHO WENT?
- 21 WHO WAS IN THE CAR WITH YOU WHEN Y'ALL WENT BACK?
- 22 A. IT WAS ME, HERMAN, KELSEY, BARBARA AND HER
- 23 SISTER.
- 24 Q. OKAY. HOW LONG WERE Y'ALL OUT AT THE
- 25 EBONY CLUB?

1 A. UNTIL ABOUT 4:00.

2 Q. ALL RIGHT. NOW, DURING THAT PERIOD OF  
3 TIME WHEN YOU WERE AT THE EBONY CLUB, WOULD YOU STATE  
4 WHETHER OR NOT YOU HAD ANY CONVERSATION WITH EITHER  
5 KELSEY PEARCE OR HERMAN HUGHES CONCERNING THE BLUE  
6 DIAMOND?

7 A. I HAD A CONVERSATION WITH BOTH OF THEM.

8 Q. OKAY. AND WHERE DID THAT CONVERSATION  
9 TAKE PLACE?

10 A. OUTSIDE BY MY CAR.

11 Q. ALL RIGHT. WAS ANYBODY ELSE OUT THERE  
12 BESIDE THE THREE OF Y'ALL?

13 A. WELL, THERE WERE OTHER PEOPLE OUTSIDE, BUT  
14 NOT IN THE CLOSE VICINITY.

15 Q. ALL RIGHT. AND HOW CLOSE WERE Y'ALL TO  
16 EACH OTHER WHEN THE BLUE DIAMOND TOPIC CAME UP?

17 A. IN A LITTLE SMALL CIRCLE.

18 Q. WHEN I WALK TOWARDS YOU, YOU TELL ME TO  
19 STOP WHEN I GET AS CLOSE AS THE NEAREST ONE WAS TO  
20 YOU.

21 A. ABOUT RIGHT THERE.

22 Q. AND WAS THE OTHER FELLOW ABOUT THAT CLOSE  
23 TOO?

24 A. YES, SIR.

25 MR. BAILEY: AND YOUR HONOR, LET ME GO

1 AHEAD AND MARK THIS FOR IDENTIFICATION AT THIS TIME,  
2 IF I COULD.

3 THE COURT: ALL RIGHT, SIR.

4 (STATE'S EXHIBIT NUMBER 3 MARKED  
5 FOR IDENTIFICATION.)

6 THE COURT: OKAY.

7 BY MR. BAILEY:

8 Q. SIR, YOU, HERMAN HUGHES AND KELSEY PEARCE  
9 WERE IN KIND OF A TIGHT CIRCLE OUTSIDE OF THE EBONY  
10 LOUNGE; RIGHT?

11 A. YES.

12 Q. TALKING ABOUT THE BLUE DIAMOND?

13 A. YES, SIR.

14 Q. AND WHO STARTED DOING THE TALKING ABOUT  
15 THE BLUE DIAMOND?

16 A. I DON'T KNOW WHO STARTED THE EXACT  
17 CONVERSATION SUBJECT.

18 Q. OKAY. DID KELSEY PEARCE SAY ANYTHING  
19 ABOUT THE BLUE DIAMOND?

20 A. YES, SIR.

21 Q. OKAY. AND HOW FAR AWAY FROM HIM WAS  
22 HERMAN HUGHES WHEN HE STARTED TALKING?

23 A. RIGHT NEXT TO HIM.

24 Q. OKAY. AND WAS HE TALKING LOUD ENOUGH  
25 WHERE YOU COULD HEAR HIM?

1 A. YES, SIR.

2 Q. AND WAS HE TALKING LOUD ENOUGH WHERE  
3 HERMAN COULD HEAR HIM?

4 A. YES, SIR.

5 Q. OKAY. WOULD YOU TELL THE JURY WHAT KELSEY  
6 PEARCE SAID.

7 MR. NEWSOME: OBJECTION. HEARSAY, YOUR  
8 HONOR.

9 MR. BAILEY: YOUR HONOR, I'VE GOT A POINT  
10 OF LAW REGARDING THAT.

11 THE COURT: ONE MOMENT. IS KELSEY PEARCE  
12 GOING TO BE A WITNESS?

13 MR. BAILEY: NO, SIR, HE'S NOT, YOUR  
14 HONOR.

15 THE COURT: WE NEED TO TAKE A SHORT BREAK.  
16 THE JURY HAS BEEN HERE SINCE 2:30. LET'S GO TO THE  
17 JURY ROOM JUST A MINUTE, RELAX JUST A SECOND, AND LET  
18 ME HEAR THIS, AND I'LL CALL YOU RIGHT BACK OUT.

19 (WHEREUPON, THE JURY WAS REMOVED  
20 FROM THE COURTROOM AND THE  
21 FOLLOWING PROCEEDINGS COMMENCED  
22 IN OPEN COURT.)

23 THE COURT: SOLICITOR, WAS THE STATEMENT  
24 THAT YOU PROPOSE TO INTRODUCE MADE IN THE PRESENCE OF  
25 THE DEFENDANT?

1 MR. BAILEY: YES, SIR, IT WAS.

2 THE COURT: YES, SIR. IT'S ADMISSIBLE.

3 MR. NEWSOME: HE'S GOING TO INTRODUCE THE  
4 STATEMENT IN?

5 THE COURT: NO, SIR. THIS IS A  
6 CONVERSATION THAT HE HAD. YOU WANT HIM TO --

7 MR. BAILEY: YES, SIR. YOUR HONOR, I  
8 WOULD LIKE THIS WITNESS -- THIS WITNESS WOULD BE  
9 RELATING A CONVERSATION -- A THREE-WAY CONVERSATION.

10 THE COURT: IN THE --

11 MR. BAILEY: IN WHICH HE SPOKE, KELSEY  
12 PEARCE SPOKE, AND --

13 THE COURT: YES, SIR. THAT'S CLEARLY  
14 ADMISSIBLE. CONVERSATION BY A THIRD PARTY IS  
15 ADMISSIBLE IF MADE IN THE PRESENCE OF THE DEFENDANT.

16 MR. NEWSOME: AND HE DOES NOT INTEND TO  
17 INTRODUCE THE STATEMENT?

18 THE COURT: I'M NOT ASKING HIM THAT. I'M  
19 JUST RULING ON THE THREE-WAY CONVERSATION.

20 MR. NEWSOME: THAT'S FINE BECAUSE I WAS  
21 PROBABLY GOING TO CROSS-EXAMINE HIM ON THAT STATEMENT  
22 AND PUT IT IN EVIDENCE ANYHOW.

23 THE COURT: WELL, I'M NOT GOING TO TELL  
24 YOU HOW TO TRY YOUR CASE.

25 MR. BAILEY: THIS IS NOT A WRITTEN

1 STATEMENT. THIS IS A CONVERSATION THAT THREE PEOPLE  
2 HAD.

3 THE COURT: AS I UNDERSTAND IT, THE ONLY  
4 THING I'M RULING ON IS THAT IF THE CONVERSATION OF A  
5 THIRD PARTY THAT HE PURPORTS TO TESTIFY TO WAS MADE  
6 IN THE PRESENCE OF THIS DEFENDANT, THAT STATEMENT IS  
7 ADMISSIBLE. DO I NEED TO CITE YOU A NUMBER OF CASES  
8 ON THAT ISSUE?

9 MR. NEWSOME: NO. I'M NOT -- WHAT HE'S  
10 GETTING INTO, THERE IS A WRITTEN STATEMENT THAT THIS  
11 YOUNG MAN MADE THAT APPEARS TO START AT THIS POINT  
12 THAT'S ALREADY BEEN DIFFERENT FROM WHAT HE'S  
13 TESTIFIED TO HERE.

14 THE COURT: IF HE HAS MADE A DIFFERENT  
15 STATEMENT, YOU MAY -- YOU ARE ENTITLED TO IMPEACH HIM  
16 ON THAT. YOU KNOW THAT.

17 MR. NEWSOME: YES, SIR.

18 THE COURT: ALL RIGHT. LET'S TAKE A SHORT  
19 BREAK, AND THEN WE'LL START BACK. THIS WAS A GOOD  
20 TIME FOR THE JURY TO STRETCH ANYWAY. I'M NOT  
21 PRECLUDING YOU FROM -- AS TO HIS CREDIBILITY ON A  
22 PRIOR STATEMENT.

23 (WHEREUPON, A BREAK WAS TAKEN  
24 FROM THE PROCEEDINGS.)

25 THE COURT: MR. WITNESS, SOME OF THE

1 JURORS ARE TELLING ME THEY ARE HAVING DIFFICULTY  
2 HEARING BACK THERE. IT'S MOST IMPORTANT, PLEASE  
3 SPEAK UP.

4 MR. BAILIFF, BRING ME THE JURY, AND HAVE THE  
5 FOREMAN COME IN LAST AND MAKE SURE ALL OF THEM ARE  
6 READY TO RETURN.

7 (WHEREUPON, THE JURY WAS  
8 RETURNED TO THE COURTROOM AND  
9 THE FOLLOWING PROCEEDINGS WERE  
10 COMMENCED IN OPEN COURT.)

11 THE COURT: DURING THE BREAK, LADIES AND  
12 GENTLEMEN, THE BAILIFF INFORMED ME THAT ONE OR  
13 SEVERAL OF THE JURORS WANTED TO KNOW IF THEY COULD  
14 ASK QUESTIONS. WE GENERALLY DO NOT PERMIT  
15 QUESTIONING BY THE JURY UNDER OUR SYSTEM FOR CERTAIN  
16 OBVIOUS REASONS. THE QUESTION MAY NOT BE  
17 APPROPRIATE. THE QUESTION MAY NOT INVOLVE ANY ISSUE  
18 IN THE CASE.

19 AND WE FIND FROM EXPERIENCE, TOO, THAT QUESTIONS  
20 THAT A JUROR MIGHT HAVE AS WE BEGIN A TRIAL ARE  
21 GENERALLY ANSWERED BY FURTHER SUBSEQUENT TESTIMONY.  
22 SO THE ANSWER IS WE JUST DON'T GENERALLY PERMIT OR  
23 ENCOURAGE JURORS TO ASK QUESTIONS IN THE TRIAL OF THE  
24 CASE.

25 YOU MAY PROCEED.

1 MR. BAILEY: THANK YOU, YOUR HONOR.

2 BY MR. BAILEY:

3 Q. MR. OWENS, I WANT YOU TO TRY TO SPEAK UP  
4 AS LOUD AS YOU CAN BECAUSE I'M HAVING TROUBLE  
5 HEARING, AND IF I'M HAVING TROUBLE, I THINK SOME OF  
6 THESE JURORS ON THE END MAY ALSO. SO IF YOU WOULD,  
7 PLEASE LEAN UP AND TALK LOUD ENOUGH THAT WE CAN ALL  
8 HEAR YOU.

9 OKAY. BEFORE WE BROKE, YOU WERE TALKING ABOUT  
10 YOU AND KELSEY PEARCE AND HERMAN HUGHES STANDING IN  
11 SORT OF A LITTLE CIRCLE OUTSIDE OF THE EBONY CLUB AND  
12 SOMEBODY STARTED TALKING ABOUT THE BLUE DIAMOND.

13 A. YES, SIR.

14 Q. DO YOU REMEMBER THAT?

15 A. YES, SIR.

16 Q. AND I THINK YOU SAID THAT KELSEY PEARCE  
17 STARTED TALKING; RIGHT?

18 A. I SAID I DON'T REMEMBER WHO STARTED  
19 TALKING ABOUT --

20 THE COURT: YOU'RE NOT TALKING LOUD  
21 ENOUGH, NOW.

22 THE WITNESS: I SAID I DIDN'T REMEMBER WHO  
23 EXACTLY STARTED THE CONVERSATION ABOUT THE BLUE  
24 DIAMOND.

25 BY MR. BAILEY:

1 Q. ALL RIGHT. WHAT'S THE FIRST THING YOU  
2 REMEMBER BEING SAID AND WHO SAID IT?

3 A. THE FIRST THING I REMEMBER THAT WAS SAID  
4 IS KELSEY SAYING HE DIDN'T GO INTO THE CASINO.

5 Q. HE, MEANING KELSEY, DIDN'T GO IN?

6 A. MEANING HIMSELF.

7 Q. AND WHAT ELSE DID KELSEY SAY?

8 A. HE SAID HERMAN WENT IN, ASKED HOW TO PLAY  
9 THE GAMES. HE CAME BACK OUT AND HE BORROWED SOME  
10 MONEY FROM HIM.

11 Q. FROM WHOM?

12 A. FROM KELSEY.

13 Q. OKAY. HERMAN CAME OUT AND BORROWED MONEY  
14 FROM KELSEY?

15 A. YES, SIR.

16 Q. AND THEN WHAT DID KELSEY SAY HE DID?

17 A. THEN HE WENT BACK IN.

18 Q. WHEN YOU SAY HE --

19 A. HERMAN WENT BACK IN, ASKED FOR CHANGE.

20 Q. ALL RIGHT.

21 A. BECAUSE HE GAVE HIM A 50. ASKED FOR  
22 CHANGE, AND THEN HE PULLED OUT THE GUN.

23 Q. WHO PULLED OUT THE GUN?

24 A. HERMAN.

25 Q. OKAY. NOW, WHERE DID -- HOW DID KELSEY

1 SAY HE KNEW WHAT HERMAN WAS DOING? HOW DID KELSEY  
2 SAY THAT HE KNEW WHAT HERMAN WAS DOING?

3 A. BECAUSE HE WAS LOOKING THROUGH THE WINDOW.

4 Q. ALL RIGHT. AND WHEN KELSEY WAS RELATING  
5 WHAT HAPPENED TO YOU, WHAT WAS HERMAN DOING?

6 A. NOTHING.

7 Q. OKAY. JUST STANDING THERE?

8 A. JUST STANDING THERE.

9 Q. ALL RIGHT. AND WHAT ELSE, IF ANYTHING,  
10 DID KELSEY SAY HAPPENED?

11 A. KELSEY SAID HE ASKED -- HE TOLD KELLY TO  
12 GET OFF THE PHONE, THAT HE COULD CALL WHOEVER --  
13 WHOEVER SHE WAS TALKING TO BACK. THEN HE ASKED FOR  
14 THE KEYS TO THE CAR, AND AS SOON AS THE KEYS HIT THE  
15 FLOOR, HE HEARD GUNSHOTS.

16 Q. WHO HEARD GUNSHOTS?

17 A. KELSEY.

18 Q. OKAY. ALL RIGHT. AND AGAIN, WHEN KELSEY  
19 IS SAYING THIS, IS HERMAN STILL THERE LISTENING?

20 A. HE'S STILL THERE.

21 Q. AND WHAT, IF ANYTHING, IS HE DOING?

22 A. NOTHING.

23 Q. ALL RIGHT. DID KELSEY SAY ANYTHING ELSE?

24 A. HE -- KELSEY SAID WHEN HERMAN CAME OUT THE  
25 DOOR, HE DIDN'T SHUT THE DOOR TO THE CLUB -- TO THE

1 CASINO, SO HE SHUT THE DOOR.

2 Q. HE WHO?

3 A. KELSEY.

4 Q. KELSEY SHUT THE DOOR WHEN HERMAN CAME OUT?

5 A. KELSEY SHUT THE DOOR.

6 Q. ALL RIGHT.

7 A. AND THEN THEY BOTH GOT IN THE CAR.

8 Q. GOT IN WHAT CAR?

9 A. THAT GRAY MAZDA.

10 Q. ALL RIGHT. AND WHEN THEY GOT IN THE CAR,

11 DID THEY SAY WHERE THEY WENT?

12 A. THEY CAME TO MY HOUSE.

13 Q. ALL RIGHT. NOW, DID HERMAN SAY ANYTHING

14 IN THIS CONVERSATION, HERMAN HUGHES?

15 A. HERMAN -- THE ONLY THING HERMAN -- HERMAN

16 AGREED TO THE FIRST PART.

17 Q. HOW DID HE AGREE TO THE FIRST PART?

18 A. HE SHOOK HIS HEAD.

19 Q. HERMAN SHOOK HIS HEAD AS KELSEY WAS

20 TELLING YOU WHAT HAPPENED?

21 A. TO WHERE HE GOT THE MONEY FROM KELSEY.

22 Q. ALL RIGHT. LET'S TAKE IT SLOW, NOW. ARE

23 YOU SAYING THAT KELSEY PEARCE IS RELATING TO YOU

24 ABOUT GETTING THE MONEY, AND HERMAN CAME OUT AND GOT

25 THE MONEY FROM HIM, AND AT THAT POINT HERMAN IS

1 SHAKING HIS HEAD?

2 A. YES, SIR.

3 Q. YOU SAW HIM SHAKING HIS HEAD?

4 A. YES.

5 Q. ALL RIGHT. DID HERMAN SHAKE HIS HEAD AT  
6 ANY OTHER POINT DURING THE TELLING OF THAT STORY?

7 A. HE DIDN'T DO ANYTHING.

8 Q. OKAY. DID HERMAN EVER CONFIRM OR EVER  
9 DENY THAT? DID HE EVER SAY NO, KELSEY, THAT ISN'T  
10 WHAT HAPPENED?

11 A. NO.

12 Q. ALL RIGHT. DID HERMAN HUGHES SAY ANYTHING  
13 DURING THAT CONVERSATION?

14 A. THE ONLY THING HE SAID WAS, "I BUCKED THEM  
15 DOWN."

16 Q. "I BUCKED THEM DOWN"? AND WHO SAID THAT?

17 A. HERMAN.

18 Q. AND WHEN HERMAN SAID, "I BUCKED THEM  
19 DOWN," WHAT DID YOU TAKE THAT TO MEAN?

20 A. MEANING HE SHOT THE GUN.

21 Q. ALL RIGHT. IS THAT THE END OF THE  
22 CONVERSATION?

23 A. END OF THE CONVERSATION.

24 Q. ALL RIGHT. DID HERMAN HUGHES AT ANY POINT  
25 EVER DISPUTE ANYTHING THAT KELSEY PEARCE TOLD YOU HE

1 SAW THROUGH THE WINDOW?

2 A. NOT IN MY PRESENCE.

3 Q. ALL RIGHT. AND THIS WAS OUTSIDE THE CLUB?

4 A. YES, SIR.

5 Q. DID Y'ALL GO BACK IN AFTER THAT, INSIDE  
6 THE CLUB?

7 A. YES, SIR. YES, SIR.

8 Q. AT THE TIME Y'ALL WERE OUT THERE TALKING,  
9 YOU HAD BEEN DRINKING; RIGHT?

10 A. YES, SIR.

11 Q. HERMAN HUGHES HAD BEEN DRINKING?

12 A. YES, SIR.

13 Q. KELSEY PEARCE HAD BEEN DRINKING?

14 A. YES, SIR.

15 Q. WHAT KIND OF SHAPE WERE YOU IN?

16 A. I WAS IN GOOD SHAPE BECAUSE I DIDN'T DRINK  
17 THAT MUCH.

18 Q. HOW ABOUT KELSEY PEARCE? WHAT KIND OF  
19 SHAPE WAS HE IN?

20 A. HE HAD JUST WOKE UP, SO HE HAD SLEPT HIS  
21 OFF.

22 Q. HOW ABOUT HERMAN HUGHES?

23 A. WELL, HE WAS KIND OF SHAKY.

24 Q. KIND OF SHAKY?

25 A. HE WASN'T REAL BAD OFF.

1 Q. ALL RIGHT. WELL, WHEN HERMAN WOULD SAY  
2 SOMETHING, COULD YOU UNDERSTAND IT?

3 A. YES.

4 Q. NOW, WHAT TIME WAS IT YOU SAID Y'ALL LEFT?

5 A. ABOUT 4:00.

6 Q. WHERE DID Y'ALL GO?

7 A. TO THE WAFFLE HOUSE.

8 Q. OKAY. WHEN YOU WENT TO THE WAFFLE HOUSE,  
9 HOW DID YOU GET THERE?

10 A. IN MY CAR.

11 Q. ALL RIGHT. DID YOU GO BY YOURSELF OR DID  
12 SOMEBODY GO WITH YOU?

13 A. NO. I HAD THE GIRLS WITH ME.

14 Q. OKAY. THAT'S BARBARA JOHNSON AND HER  
15 SISTER?

16 A. YES, SIR.

17 Q. WHEN YOU GOT TO THE WAFFLE HOUSE, DID YOU  
18 SEE HERMAN HUGHES AND KELSEY PEARCE THERE?

19 A. YES, SIR.

20 Q. WHEN YOU LEFT THE WAFFLE HOUSE, WHERE DID  
21 YOU GO?

22 A. TO TAKE BARBARA AND HER SISTER BACK TO  
23 THEIR HOUSE.

24 Q. WHERE DID YOU GO THEN?

25 A. THEN I WENT HOME.

1 Q. ALL RIGHT. AND THIS WOULD HAVE BEEN BY  
2 NOW SATURDAY MORNING; RIGHT?

3 A. YES, SIR.

4 Q. OKAY. DID YOU SEE KELSEY PEARCE THAT  
5 MORNING?

6 A. YES, SIR.

7 Q. AFTER YOU GOT HOME?

8 A. YES, SIR.

9 Q. WHERE DID YOU SEE HIM?

10 A. AT MY HOUSE.

11 Q. OKAY. AND HOW DID HE GET TO YOUR HOUSE?

12 A. HE CAME WITH RICARDO GILFORD.

13 Q. RICARDO GILFORD?

14 A. YES, SIR.

15 Q. AND RICARDO GILFORD DROPPED KELSEY PEARCE  
16 OFF AT YOUR HOUSE?

17 A. YES, SIR.

18 THE COURT: CAN YOU HEAR OKAY NOW?

19 BY MR. BAILEY:

20 Q. OKAY. I CALL YOUR ATTENTION TO AROUND  
21 11:00. DID YOU SEE KELSEY PEARCE THEN? I'M TALKING  
22 ABOUT SATURDAY NOW.

23 A. YES, SIR.

24 Q. WHERE DID YOU SEE HIM?

25 A. AT MY HOUSE.

1 Q. DID YOU HAVE A CONVERSATION WITH HIM ABOUT  
2 THE GUN?

3 A. YES, SIR.

4 Q. OKAY. AND BASED ON THE CONVERSATION YOU  
5 HAD WITH HIM, DID YOU GO TO YOUR CAR?

6 A. YES, SIR.

7 Q. OKAY. AND WHAT DID YOU OBSERVE IN THE  
8 CAR?

9 A. THE GUN ON THE FLOOR -- ON THE FLOORBOARD  
10 IN THE BACK.

11 Q. OKAY. THIS IS THE SAME GUN?

12 A. SAME GUN.

13 Q. OKAY. AND IT'S ON THE FLOORBOARD IN THE  
14 BACK?

15 A. BEHIND THE DRIVER'S SEAT.

16 Q. OKAY. WHERE HERMAN HUGHES HAD BEEN  
17 SITTING THE PREVIOUS NIGHT?

18 A. YES, SIR.

19 Q. AND WHAT DID YOU DO WITH THE GUN?

20 A. I TOOK IT OUT, PUT IT IN A TOWEL, PUT IT  
21 IN A BOX OUTSIDE THE HOUSE.

22 Q. OKAY. YOU TOOK IT OUT, PUT IT IN A TOWEL  
23 IN A BOX OUTSIDE YOUR HOUSE?

24 A. YES, SIR.

25 Q. OKAY. I CALL YOUR ATTENTION TO ABOUT

1 2:15, 2:30 THAT AFTERNOON. DID YOU SEE HERMAN  
2 HUGHES?

3 A. YES, SIR.

4 Q. OKAY. WHERE DID YOU SEE HIM?

5 A. AT MY HOUSE.

6 Q. OKAY. DO YOU KNOW HOW HE GOT TO YOUR  
7 HOUSE?

8 A. NO, SIR, BECAUSE I DIDN'T COME OUTSIDE.

9 Q. ALL RIGHT. WHERE DID YOU SEE HIM AT THE  
10 HOUSE IF YOU DIDN'T COME OUTSIDE?

11 A. IN MY HOUSE.

12 Q. ALL RIGHT. HERMAN CAME IN THE HOUSE?

13 A. YES, SIR.

14 Q. BY HIMSELF OR WITH SOMEBODY ELSE?

15 A. BY HIMSELF.

16 Q. ALL RIGHT. AND DID YOU HAVE A  
17 CONVERSATION WITH HIM?

18 A. HE ASKED ME WHERE WAS THE GUN. GIVE HIM  
19 THE GUN.

20 Q. HE ASKED YOU WHERE WAS THE GUN AND YOU  
21 GAVE HIM THE GUN?

22 A. UH-HUH.

23 Q. OKAY. WHEN YOU SAY THE GUN, WE'RE STILL  
24 TALKING ABOUT STATE'S EXHIBIT NUMBER 3 FOR  
25 IDENTIFICATION; RIGHT?

1 A. YES, SIR.

2 Q. SO YOU GAVE HERMAN THE GUN BACK; RIGHT?

3 A. YES, SIR.

4 Q. AND WHAT DID HE DO WITH IT?

5 A. TOOK IT AND LEFT.

6 Q. OKAY. MR. OWENS, HOW COME YOU DIDN'T COME  
7 FORWARD SOONER THAN YOU DID AND TELL THE SHERIFF'S  
8 OFFICE WHAT HAPPENED?

9 A. BECAUSE I WAS SCARED.

10 MR. BAILEY: ANSWER ANY QUESTIONS MR.  
11 NEWSOME MAY HAVE FOR YOU.

12 C R O S S - E X A M I N A T I O N

13 BY MR. NEWSOME:

14 Q. HOW LONG WERE YOU SCARED?

15 A. EVER SINCE I KNEW ABOUT IT.

16 Q. WHEN DID YOU GET OVER THAT FEAR? THIS  
17 WEEK?

18 A. I STILL HAVE IT.

19 Q. STILL HAVE THE FEAR? YOU DIDN'T COME  
20 FORWARD AND TELL THIS STORY AND ADMIT TO DOING THIS  
21 UNTIL THIS WEEK, DID YOU NOT?

22 A. I DID BEFORE.

23 Q. WHEN DID YOU AGREE TO TESTIFY AGAINST MY  
24 CLIENT?

25 A. WHEN DID I AGREE TO TESTIFY?

1 Q. YEAH. WHEN DID YOU MAKE THE AGREEMENT  
2 THAT YOU HAVE THAT YOU'RE TESTIFYING HERE UNDER  
3 TODAY?

4 A. THAT WAS LAST WEEK.

5 Q. LAST FRIDAY? NOW, YOU GAVE A STATEMENT ON  
6 SUNDAY AFTER THIS -- THIS HAPPENED ON FRIDAY NIGHT,  
7 DID IT NOT?

8 A. YES, SIR.

9 Q. AND DO YOU REMEMBER TELLING THEM IN THAT  
10 STATEMENT THAT WHEN YOU WRAPPED THAT GUN UP, YOU DID  
11 IT TO KEEP FROM GETTING YOUR FINGERPRINTS ON IT?

12 A. YES, SIR.

13 Q. OKAY. WHY WERE YOU AFRAID TO GET YOUR  
14 FINGERPRINTS ON IT?

15 A. BECAUSE I DON'T TOUCH NO ONE'S GUN.

16 Q. WHAT WERE YOU AFRAID OF?

17 A. WHAT WAS I AFRAID OF?

18 Q. YEAH. WHAT WERE YOU AFRAID OF?

19 A. BECAUSE I DON'T WANT TO -- I DON'T WANT TO  
20 HAVE TO GO THROUGH BEING ON TRIAL ABOUT ME MURDERING  
21 SOMEBODY.

22 Q. SO YOU DIDN'T WANT TO GET IN TROUBLE;  
23 THAT'S WHY YOU DIDN'T SAY ANYTHING?

24 A. I STILL GOT -- I'M STILL IN TROUBLE.

25 Q. YEAH. BUT THE REASON YOU DIDN'T SAY

1 ANYTHING AND DIDN'T TURN THE GUN IN TO THE POLICE IS  
2 YOU DIDN'T WANT TO GET IN TROUBLE? YOU DIDN'T WANT  
3 TO HAVE TO GO TO TRIAL? YOU DIDN'T WANT TO?

4 A. I DIDN'T WANT TO.

5 Q. IS THAT RIGHT?

6 A. THAT'S RIGHT.

7 Q. OKAY. NOW, DO YOU KNOW WHO GAVE THE GUN  
8 TO THE POLICE?

9 A. NO, SIR.

10 Q. OKAY. I BELIEVE YOUR TESTIMONY WAS THAT  
11 KELSEY IS YOUR NEPHEW?

12 A. YES, SIR.

13 Q. DOESN'T HE SPEND A LOT OF WEEKENDS OVER A  
14 YOUR HOUSE?

15 A. YES.

16 Q. MOST EVERY WEEKEND?

17 A. YES, SIR.

18 Q. AND HOW WELL DID YOU KNOW HERMAN OTHER  
19 THAN JUST SEEING HIM?

20 A. WELL, I KNEW HIM BY SEEING HIM OUT ON THE  
21 STREET.

22 Q. DO YOU KNOW WHAT HIS NICKNAME IS?

23 A. POKEY.

24 Q. POKEY. WHY DO THEY CALL HIM POKEY?

25 A. I HAVE NO IDEA.

1 Q. WERE YOU SCARED RIDING IN THAT CAR WHEN  
2 YOU SAID HERMAN SHOT THE GUN OUT THE WINDOW?

3 A. YES, SIR.

4 Q. HE HAD THE GUN THAT YOU SAY HE ADMITTED  
5 THROUGH KELSEY SHOOTING PEOPLE WITH AND HAD PURCHASED  
6 FROM YOU EARLIER -- YOU WERE GOING TO GIVE HIM THE  
7 GUN EARLIER FOR FREE; RIGHT?

8 A. YES, SIR.

9 Q. HE HAD THE GUN THAT HE SHOT SOMEBODY WITH  
10 AND HE SHOOTS OUT THE WINDOW AND YOU SAY PUT THE GUN  
11 DOWN?

12 A. YES, SIR.

13 Q. HE PUT IT DOWN?

14 A. HE DID.

15 Q. WHO DO YOU THINK WAS IN CHARGE IN THAT  
16 SITUATION, YOU OR HIM?

17 A. HE JUST LISTENED.

18 Q. HE JUST LISTENED. THAT'S RIGHT. AND  
19 HERMAN DOES THAT WELL, DOES HE NOT? HE JUST LISTENS?

20 A. I DON'T KNOW.

21 Q. ISN'T THE TRUTH THAT YOU AND YOUR NEPHEW  
22 AND HERMAN WERE DRINKING BEER OVER THERE, LIKE YOU  
23 SAID?

24 A. YES, SIR.

25 Q. THAT PART IS TRUE, IS IT NOT?

1 A. YES, SIR.

2 Q. AND YOU DIDN'T DRINK MUCH. YOU SAID YOU  
3 DIDN'T DRINK MUCH?

4 A. NO, I DIDN'T DRINK MUCH.

5 Q. AND THEY HAD 15 BEERS, AND THEY DRANK ALL  
6 OF IT?

7 A. YES, SIR.

8 Q. HERMAN IS PRETTY QUIET, IS HE NOT, MOST OF  
9 THE TIME?

10 A. NOT AROUND KELSEY.

11 Q. WHO IS MORE OUTGOING, KELSEY OR HERMAN?

12 A. KELSEY.

13 Q. WHO IS BIGGER, KELSEY OR HERMAN?

14 A. KELSEY IS JUST TALLER.

15 Q. KELSEY IS JUST TALLER. WHO IS OLDER?

16 A. KELSEY.

17 Q. WHO IS OLDER BETWEEN YOU AND KELSEY?

18 A. I AM.

19 Q. YOU'RE 23 YEARS OLD, YOU SAY, OR 24?

20 A. YES, SIR.

21 Q. WHEN WILL YOU BE 24?

22 A. DECEMBER.

23 Q. IT WASN'T HERMAN THAT ASKED FOR THAT GUN  
24 THAT NIGHT, WAS IT?

25 A. YES, IT WAS.

1 Q. IT WAS? AND YOU GAVE A 16 YEAR OLD --

2 A. I DIDN'T GIVE --

3 Q. DRUNK.

4 A. -- IT TO HIM.

5 Q. YOU DIDN'T GIVE IT -- OH, YOU WERE GOING  
6 TO GIVE IT TO HIM. WASN'T THAT YOUR TESTIMONY?

7 A. I DIDN'T GIVE IT TO HIM OUT OF MY HAND.  
8 KELSEY GAVE IT TO HIM BECAUSE HE WENT TO THE CAR.

9 Q. YOU -- YOU SAID, DID YOU NOT, THAT HE  
10 ASKED YOU FOR THE GUN, AND YOU WERE GOING TO GIVE IT  
11 TO HIM FOR FREE?

12 A. YES, SIR.

13 Q. AND THEN HE GETS THE GUN FROM YOU FOR  
14 FREE, USES IT AND ROBS WITH IT, SHOTS PEOPLE WITH  
15 IT, COMES BACK, DRIVES AROUND WITH YOU, SHOTS IT OUT  
16 OF THE CAR; RIGHT?

17 A. YES.

18 Q. AND HE HAS TO COME BACK THE NEXT DAY TO  
19 GET THE GUN FROM YOU?

20 A. YES, SIR.

21 Q. THE TRUTH IS YOU DIDN'T TALK ABOUT BUYING  
22 THAT GUN -- HE DIDN'T TALK ABOUT BUYING THAT GUN  
23 UNTIL LATER ON THAT NIGHT, DID HE?

24 A. NO, SIR.

25 Q. DIDN'T KELSEY AND HERMAN COME TO YOU TO

1 GET THE GUN SO THEY COULD USE IT IN A ROBBERY? ISN'T  
2 THAT THE TRUTH?

3 A. NO, SIR.

4 Q. WHY DID YOU SPLIT THE MONEY WITH THEM,  
5 THEN? WHY WOULD THEY SPLIT MONEY WITH YOU IN A  
6 ROBBERY? YOU SUPPLIED THEM WITH A GUN. THEY WENT  
7 OFF AND USED IT AND ROBBED THE PLACE AND CAME BACK,  
8 AND YOU SPLIT THE MONEY WITH THEM. WHY ELSE WOULD  
9 THEY HAVE SPLIT THE MONEY WITH YOU IF NOT YOU  
10 PROVIDED THE GUN?

11 A. BECAUSE THEY OWED ME.

12 Q. THEY OWED YOU?

13 A. KELSEY OWED ME A LOT OF MONEY.

14 Q. WELL, HERMAN HAS THE GUN.

15 A. KELSEY OWED ME A LOT OF MONEY.

16 Q. WHAT DOES HE OWE YOU A LOT OF MONEY FOR?

17 A. BECAUSE OF THINGS I DO FOR HIM.

18 Q. SUCH AS WHAT?

19 A. GETS HIM OUT OF TROUBLE.

20 Q. WHAT KIND OF TROUBLE?

21 A. GIVE HIM MONEY.

22 Q. KELSEY GETS IN TROUBLE?

23 A. WHEN HE BREAKS WINDOWS AND STUFF LIKE  
24 THAT, I HELP HIM PAY FOR THAT. HIS DADDY DON'T.

25 Q. SO YOU GAVE HIM A GUN SO HE AND HERMAN

1 COULD GO OFF AND ROB A PLACE AND COME BACK AND PAY  
2 YOU BACK?

3 A. NO, SIR.

4 Q. WHERE DID YOU THINK THEY GOT THE MONEY  
5 FROM?

6 A. I DON'T KNOW.

7 Q. ISN'T IT TRUE KELSEY HAD BEEN HURT IN A  
8 CAR WRECK AND HAD A BUNCH OF MONEY IN THE BANK FROM A  
9 SETTLEMENT?

10 A. YES, SIR.

11 Q. THEN WHY DID HE HAVE TO GO TO A STORE TO  
12 ROB A STORE TO PAY YOU BACK?

13 A. BECAUSE HE DIDN'T HAVE ANY MONEY IN HIS  
14 POCKET.

15 Q. HE HAD A 50 DOLLAR BILL ACCORDING TO WHAT  
16 YOU SAID.

17 A. IT WAS GONE.

18 Q. IT WAS GONE. HE HAD A 50 DOLLAR BILL IN  
19 HIS POCKET, ACCORDING TO THE STATEMENT YOU GAVE.

20 A. YES, SIR.

21 Q. RIGHT? OKAY. AND KELSEY TOLD YOU HOW  
22 THIS THING WENT DOWN; RIGHT?

23 A. YES, SIR.

24 Q. HE ALSO TOLD YOU THAT HE HEARD STATEMENTS  
25 THAT WERE MADE IN THERE?

1 A. EXCUSE ME?

2 Q. DIDN'T HE -- WHEN HE WAS TALKING TO YOU,  
3 HE WAS TELLING YOU THINGS THAT HE HEARD THAT WENT ON  
4 INSIDE?

5 A. HE TOLD ME THAT IN THE CLUB.

6 Q. HE TOLD YOU THAT IN THE CLUB. OH, HE TOLD  
7 YOU THAT IN THE CLUB?

8 A. YES, SIR.

9 Q. I THOUGHT HE TOLD YOU OUT BACK WHEN Y'ALL  
10 WERE OUTSIDE BY THE CAR.

11 A. NO. THAT CONVERSATION TOOK PLACE OUTSIDE.

12 Q. WHAT CONVERSATION TOOK PLACE IN THE CLUB  
13 THAT WE HAVEN'T HEARD ABOUT?

14 A. HE TOLD ME THAT HE HEARD THAT THE  
15 DETECTIVE -- NOT DETECTIVE -- DEPUTY WANNAMAKER.

16 Q. UH-HUH.

17 A. THAT HE WAS LOOKING FOR HIM BECAUSE THE  
18 CAR WAS STOLEN.

19 Q. THAT DEPUTY WANNAMAKER WAS LOOKING FOR HIM  
20 BECAUSE THE CAR WAS STOLEN?

21 A. YES, SIR.

22 Q. KELSEY TOLD YOU THAT?

23 A. KELSEY TOLD ME THAT BECAUSE HE HEARD IT  
24 FROM SOMEBODY ELSE.

25 Q. YOU DIDN'T ASK HIM ABOUT WHERE THEY GOT

1 THE MONEY?

2 A. NO, SIR.

3 Q. YOU DIDN'T ASK HIM ABOUT WHERE THEY GOT  
4 THE CAR?

5 A. I DIDN'T SEE THE CAR UNTIL THE CLUB.

6 Q. YOU DIDN'T SEE THE CAR UNTIL THE CLUB?

7 A. WHEN THEY WERE GOING DOWN THE ROAD.

8 Q. DID YOU SEE THE GUN WHEN THEY CAME BACK?

9 A. NO, SIR.

10 Q. DID EITHER ONE OF THEM HAVE ANY BLOOD ON  
11 THEM?

12 A. NO, SIR.

13 Q. AFTER THEY TOLD YOU WHAT HAD HAPPENED, DID  
14 YOU DO ANYTHING TO TRY TO HELP THOSE PEOPLE WHO HAD  
15 BEEN HURT?

16 A. NO, SIR.

17 Q. BESIDES TAKE YOUR FINGERPRINTS OFF THE  
18 GUN?

19 A. NO, SIR.

20 Q. AND YOU TALKED TO THE POLICE THAT SUNDAY,  
21 DID YOU NOT?

22 A. YES, SIR.

23 Q. AND YOU GAVE A STATEMENT, DID YOU NOT?

24 A. YES, SIR.

25 Q. AND DID YOU SWEAR -- DID YOU TAKE AN OATH

1 TO TELL THE TRUTH IN THAT STATEMENT?

2 A. YES, SIR.

3 Q. I WANT TO SHOW YOU THIS, SIR. DID YOU  
4 TELL THE TRUTH IN THAT STATEMENT?

5 A. YES, SIR.

6 Q. IS THAT YOUR SIGNATURE?

7 A. YES, SIR.

8 Q. LOOK AT ALL OF THIS. TAKE YOUR TIME AND  
9 LOOK AT THAT. TAKE ALL OF THE TIME YOU WANT.

10 THE COURT: GO AHEAD AND ASK HIM WHAT YOU  
11 WANT TO.

12 BY MR. NEWSOME:

13 Q. WHILE YOU'RE LOOKING IN THAT THERE, PLEASE  
14 FIND THE PLACE WHERE YOU TOLD THE POLICE THAT YOU  
15 SHARED THE MONEY, SPLIT THE MONEY UP WITH THEM.

16 A. LET ME ANSWER THAT. WHEN I WAS GIVING  
17 THIS STATEMENT, DETECTIVE RHUDY WAS ASKING THE  
18 QUESTIONS. HE ASKED ALL OF THE QUESTIONS. I JUST  
19 GAVE ANSWERS, AND HE WROTE THEM DOWN THIS WAY.

20 Q. AND YOU SIGNED IT?

21 A. AND HE DID NOT ASK ME -- HE DID NOT ASK  
22 ABOUT ANY MONEY, SO I DIDN'T GIVE AN ANSWER ABOUT ANY  
23 MONEY.

24 Q. READ WHAT YOU SIGNED AT THE BOTTOM, THAT  
25 LITTLE TYPED PART, NOT THE PART UP THERE.

1 A. (COMPLIES.)

2 Q. CAN YOU READ THAT OUT LOUD FOR THE JURY?

3 A. "I HAVE READ EACH PAGE OF THIS STATEMENT  
4 CONSISTING OF TEN PAGES, EACH OF WHICH BEARS MY  
5 SIGNATURE AND CORRECTIONS. IF ANY BEAR MY INITIALS,  
6 THEN I CERTIFY THAT THE FACTS CONTAINED HEREIN ARE  
7 TRUE AND CORRECT."

8 Q. EACH OF WHICH CONTAINS YOUR SIGNATURE AND  
9 YOUR CORRECTIONS?

10 A. YES, SIR.

11 Q. THERE'S NOTHING IN THERE THAT SAYS YOU GOT  
12 PART OF THAT MONEY?

13 A. THAT'S RIGHT.

14 Q. WHO WAS DRIVING THE CAR?

15 A. WHICH CAR?

16 Q. KENNETH PRESLEY'S CAR, THE GRAY CAR.

17 A. I SAID KELSEY.

18 Q. DID YOU SEE HERMAN DRIVING THE CAR?

19 A. NO, SIR.

20 Q. SO KELSEY GETS THE CAR. YOU GET THE GUN  
21 BACK AND PART OF THE MONEY; RIGHT? IS THAT TRUE?

22 A. I DIDN'T GET THE GUN BACK, BUT YES.

23 Q. YOU GOT THE GUN. HE HAD TO COME BACK TO  
24 GET IT FROM YOU SATURDAY.

25 A. YES, SIR.

1 Q. ISN'T IT TRUE HE DIDN'T EVEN TALK TO YOU  
2 ABOUT BUYING THAT GUN UNTIL WHEN Y'ALL WERE AT THE  
3 EBONY CLUB?

4 A. NO, SIR.

5 Q. HE'S DRUNK ENOUGH TO SHOOT THE GUN OUT THE  
6 WINDOW RIDING AROUND TOWN; ISN'T THAT TRUE?

7 A. YES, SIR, BUT --

8 Q. YOU TOLD HIM TO PUT IT DOWN.

9 MR. BAILEY: JUDGE, HE'S INTERRUPTING THE  
10 WITNESS WHEN HE'S TRYING TO ANSWER.

11 THE COURT: NO, SIR. THAT'S FINE. HE'S  
12 DOING FINE. THE WITNESS WILL BE GIVEN EVERY  
13 OPPORTUNITY TO RESPOND.

14 BY MR. NEWSOME:

15 Q. HE FIRES IT OUT THE WINDOW; CORRECT?

16 A. YES, SIR.

17 Q. AND HE'S DRUNK WHEN HE DOES THAT; CORRECT?

18 A. SOBER ENOUGH TO KNOW HE'S DOING IT.

19 Q. HE'S BEEN DRINKING?

20 A. YES, SIR.

21 Q. AND YOU TELL HIM TO PUT THE GUN DOWN, AND  
22 HE PUTS IT DOWN?

23 A. YES, SIR.

24 Q. AND THE NEXT TIME HE GOT THAT GUN BACK WAS  
25 THE NEXT AFTERNOON; WAS THAT NOT CORRECT?

1 A. I DON'T KNOW. HE WAS SITTING IN THE BACK.

2 Q. HOW DRUNK WERE YOU WHEN YOU PROVIDED THE  
3 GUN TO THESE TWO TEENAGE BOYS?

4 A. I WAS NOT DRUNK.

5 Q. YOU WERE SOBER?

6 A. YES, SIR.

7 Q. AND HOW DRUNK WERE YOU WHEN YOU TOOK THE  
8 MONEY?

9 A. I WAS NOT DRUNK.

10 Q. WERE YOU DRUNK FROM MARCH OF 1994 UNTIL  
11 LAST WEEK?

12 A. NO, SIR.

13 Q. AND YOU DIDN'T COME FORWARD TO TELL THE  
14 TRUTH ABOUT THE MONEY UNTIL THEN; IS THAT NOT  
15 CORRECT?

16 A. I DID. I TOLD MY LAWYER AND --

17 Q. DID YOU TELL --

18 A. AND THE SHERIFF.

19 Q. AND THE NEXT DAY, YOU, THE SOBER ONE  
20 THROUGHOUT, DIDN'T CALL ANYBODY, THE POLICE, TO TELL  
21 THEM -- GIVE THEM A TIP OR ANYTHING?

22 A. NO, SIR.

23 Q. DID IT BOTHER YOU?

24 A. YES, SIR.

25 MR. NEWSOME: I HAVE NO FURTHER QUESTIONS.

1 MR. BAILEY: NO REDIRECT, YOUR HONOR.

2 THE COURT: YOU MAY COME DOWN. THANK YOU.

3 MR. BAILEY: CAPERS WANNAMAKER.

4 THE CLERK: IF YOU WOULD, PLEASE PLACE  
5 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR  
6 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

7 THE WITNESS: CAPERS WANNAMAKER, JUNIOR.

8 CAPERS WANNAMAKER, JR.,

9 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
10 TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE COME AROUND.

12 D I R E C T E X A M I N A T I O N

13 BY MR. BAILEY:

14 Q. YOU'RE CAPERS WANNAMAKER?

15 A. YES, SIR.

16 Q. SO YOU'RE A DEPUTY SHERIFF WITH CALHOUN  
17 COUNTY; IS THAT CORRECT?

18 A. YES, SIR.

19 Q. AND WERE YOU EMPLOYED AS A DEPUTY SHERIFF  
20 IN MARCH OF LAST YEAR?

21 A. YES, SIR.

22 Q. OKAY. ON THE EVENING OF MARCH 18TH, 1994,  
23 WERE YOU ON DUTY? WERE YOU ON DUTY ON --

24 A. YES, SIR. YES, SIR.

25 Q. ALL RIGHT. NOW, DID YOU HAVE OCCASION TO

1 GO TO THE BLUE DIAMOND CASINO?

2 A. YES, SIR.

3 Q. AND WOULD YOU STATE WHETHER OR NOT THAT  
4 ADDRESS IS LOCATED IN CALHOUN COUNTY?

5 A. IT IS.

6 Q. AND IF YOU WERE TO LEAVE THE COURTHOUSE  
7 AND GO TO THE BLUE DIAMOND, HOW WOULD YOU GET THERE?

8 A. I WOULD GO OUT THERE AND CROSS THE FIRST  
9 BRIDGE THERE AND GO OUT TO 601 AND MAKE A RIGHT TURN  
10 AND GO DOWN, AND IT'S LOCATED APPROXIMATELY I WOULD  
11 SAY A QUARTER OF A MILE DOWN THE ROAD ON THE LEFT.

12 Q. ALL RIGHT. AND WHAT KIND OF BUILDING IS  
13 THAT NOW?

14 A. IT'S A CHINESE RESTAURANT NOW.

15 Q. OKAY. NOW, ABOUT WHAT TIME WERE YOU  
16 DISPATCHED TO GO TO THE BLUE DIAMOND?

17 A. I WOULD SAY SOMETIME BETWEEN 8:00 AND  
18 8:30. IT HAD JUST TURNED DARK.

19 Q. AND WHAT WERE YOU DOING IMMEDIATELY BEFORE  
20 YOU GOT SENT OUT THERE?

21 A. OH, I WAS DOWN HERE ON 601 NORTH AT THE  
22 RESIDENCE RIGHT PAST MCHILL GRILL SERVING A PAPER.

23 Q. OKAY.

24 A. A SUIT PAPER.

25 Q. WERE YOU WITH SOMEBODY ELSE?

1           A.       YES, SIR.   OFFICER KENNETH HASTY AND  
2   OFFICER JAMES GREEN WAS THERE WITH ME.

3           Q.       ALL RIGHT.   AND OFFICER JAMES GREEN IS  
4   WITH THE CITY OF ST. MATTHEWS?

5           A.       YES, SIR.

6           Q.       AND MR. HASTY IS A HIGHWAY PATROLMAN; IS  
7   THAT RIGHT?

8           A.       YES, SIR.

9           Q.       OKAY.   NOW, WHEN YOU RESPONDED TO THE BLUE  
10  DIAMOND, DID THESE OTHER TWO OFFICERS GO WITH YOU?

11          A.       YES.   THEY FOLLOWED ME.

12          Q.       ALL RIGHT.   AND HOW LONG DO YOU THINK IT  
13  TOOK YOU TO GET THERE?

14          A.       NO MORE THAN ABOUT TWO -- ABOUT TWO  
15  MINUTES, I WOULD SAY.

16          Q.       OKAY.

17          A.       TWO OR THREE MINUTES MORE.

18          Q.       NOW, WHEN YOU APPROACHED THE BUILDING,  
19  WHAT DID YOU DO?

20          A.       WHEN I APPROACHED THE BUILDING, THERE WAS  
21  NO VEHICLE THERE, SO I TRIED TO OPEN THE DOOR, THE  
22  FRONT DOOR.   THE DOOR WOULDN'T OPEN, SO I RAN AROUND  
23  TO THE BACK AND TRIED TO OPEN THE BACK.   IT WOULDN'T  
24  OPEN.   I RAN BACK AROUND TO THE FRONT, AND I PEAKED  
25  INTO THE CRACK -- SOME OF THE PAINT WAS COMING OFF

1 THE GLASS, AND THERE WAS A BLIND THERE, AND I PEAKED  
2 IN THERE, AND I SAW A FEMALE SITTING AT THE DESK WITH  
3 HER HEAD DOWN, WHITE FEMALE.

4 Q. DID YOU OBSERVE ANYTHING ABOUT THE WHITE  
5 FEMALE SITTING AT THE DESK?

6 A. I THINK I NOTICED SOME BLOOD WAS ON HER.

7 Q. ALL RIGHT. YOU LOOKED THROUGH THE BLINDS.  
8 YOU SAW -- DID YOU RECOGNIZE WHO SHE WAS?

9 A. YES.

10 Q. OKAY. DID YOU KNOW HER BY NAME?

11 A. YES.

12 Q. OKAY. WHO WAS IT?

13 A. KELLY.

14 Q. OKAY. WAS THAT KELLY HOFFMAN?

15 A. KELLY HOFFMAN. RIGHT.

16 Q. DID YOU EVENTUALLY GET INSIDE THE  
17 BUILDING?

18 A. YES, SIR. WE RAN BACK AROUND TO THE BACK,  
19 AND THE LADY WHO STAYED RIGHT BEHIND THE BLUE  
20 DIAMOND, SHE SAW MY BLUE LIGHTS, AND SHE CAME OUT AND  
21 OPENED THE BACK DOOR FOR ME.

22 Q. ALL RIGHT. SO WHEN YOU WENT INSIDE, DID  
23 THE OTHER OFFICERS GO IN WITH YOU?

24 A. YES.

25 Q. OKAY. AND WOULD YOU TELL THE JURY JUST IN

1 GENERAL TERMS WHAT YOU OBSERVED WHEN YOU GOT INSIDE  
2 THE BLUE DIAMOND?

3 A. OKAY. WHEN I GOT INSIDE, I SAW -- LIKE I  
4 SAY, I SAW THE ONE FEMALE SITTING IN A CHAIR WITH HER  
5 HEAD DOWN ON THE DESK, AND I LOOKED TO MY RIGHT. I  
6 SAW A MALE LAYING ON THE FLOOR BLEEDING FROM THE  
7 HEAD. SO I ASKED -- I TRIED TO MAKE CONTACT WITH  
8 KELLY. I ASKED HER WHAT HAD HAPPENED. AND AT THAT  
9 TIME, SHE TOLD ME -- THAT'S WHO -- I'M NOT GOING TO  
10 SAY WHO.

11 Q. I'M SORRY. I DIDN'T HEAR YOU.

12 A. I ASKED KELLY WHO SHOT HIM, AND SHE TOLD  
13 ME AT THAT TIME THAT SHE DIDN'T KNOW.

14 Q. WHEN YOU FIRST ENTERED THERE AND STARTED  
15 TALKING TO HER, WAS SHE CONSCIOUS?

16 A. SHE WAS SEMI-CONSCIOUS. SHE WAS REALLY  
17 OUT OF IT. I MEAN, SHE ANSWERED THAT QUESTION FOR  
18 ME, BUT I COULDN'T GET ANYTHING ELSE OUT OF HER.

19 Q. OTHER THAN SAYING SHE DIDN'T KNOW WHO SHOT  
20 HER?

21 A. I SAID, "YOU DON'T KNOW WHO SHOT KENNY?"  
22 AND SHE SAID NO.

23 Q. ALL RIGHT. WERE HER EYES OPEN OR SHUT  
24 WHEN YOU WERE TALKING TO HER?

25 A. PARTIALLY OPEN.

1 Q. OKAY. AND AS FAR AS HER PHYSICAL  
2 CONDITION, WHAT DID YOU OBSERVE WHEN YOU GOT UP  
3 CLOSER TO HER?

4 A. WELL, I NOTICED THAT SHE WAS BLEEDING FROM  
5 THE -- IF I'M NOT MISTAKEN, IT WAS THE RIGHT CHEEK, I  
6 THINK. BUT HER -- LIKE I SAY, SHE WAS OUT A LITTLE  
7 BIT. SHE WAS -- SHE WAS JUST -- JUST DEAD STARING.

8 Q. ALL RIGHT. THE YOUNG MAN YOU SAW ON THE  
9 FLOOR, COULD YOU TELL IF HE WAS ALIVE AT THAT TIME?

10 A. YEAH. WHEN I FIRST GOT THERE, HE WAS  
11 ALIVE WHEN I WENT INTO THE BUILDING, BUT HE WAS -- HE  
12 WAS BLEEDING REAL BAD, AND EVERY TIME HE WOULD  
13 BREATHE, YOU KNOW, LIKE BLOOD WOULD JUST GUSH FROM  
14 HIM.

15 Q. FROM WHAT PART OF HIS BODY?

16 A. I THOUGHT IT WAS FROM HIS MOUTH.

17 Q. OKAY. ALL RIGHT. NOW, WHAT DID Y'ALL DO  
18 WHEN YOU OBSERVED THESE INJURIES?

19 A. WELL, I CAN'T REMEMBER -- AFTER THEY HAD  
20 ALREADY CALLED EMS, EMS ARRIVED SHORTLY THEREAFTER,  
21 AND THEY WENT OVER TO ADMINISTER HELP -- MEDICAL  
22 HELP.

23 Q. ALL RIGHT. NOW, WHO TOOK CHARGE OF THE  
24 CRIME SCENE?

25 A. OKAY. AT THAT POINT, WE LEFT -- THE EMS

1 WAS IN THERE. I WENT TO THE FRONT DOOR TO TRY TO  
2 PROTECT THE CRIME SCENE, AND JAMES AND MR. HASTY WERE  
3 AT THE BACK TRYING TO DO THAT.

4 Q. SO JAMES GREEN AND TROOPER HASTY WERE --

5 A. AT THE BACK.

6 Q. AND SO Y'ALL SECURED THE CRIME SCENE?

7 A. RIGHT.

8 Q. AND WHO CAME IN TO TAKE OVER THE  
9 INVESTIGATION?

10 A. THE SHERIFF AND THE -- EARL RHUDY.

11 Q. DID YOU AND THE OTHER TWO OFFICERS TAKE  
12 OVER THE CRIME SCENE AND NOT LET ANYBODY ELSE IN  
13 THERE UNTIL THE SHERIFF AND MR. RHUDY ARRIVED?

14 A. YES, SIR.

15 Q. OTHER THAN MOVING SOME FURNITURE OUT OF  
16 THE WAY TO GET TO MR. PRESLEY FOR THE EMS PEOPLE, WAS  
17 THE CRIME SCENE DISTURBED IN ANY WAY WHILE YOU WERE  
18 IN THERE?

19 A. NO, SIR.

20 Q. DID YOU NOTICE THE CASH DRAWER AT THE DESK  
21 IN THE BLUE DIAMOND WHEN YOU WENT IN?

22 A. YES. IT WAS PARTIALLY OPEN.

23 Q. OKAY. DID YOU OBSERVE WHETHER OR NOT  
24 THERE WAS ANY MONEY IN IT?

25 A. I DIDN'T -- I DIDN'T SEE ANY MONEY.

1 Q. DID Y'ALL DETERMINE WHETHER ANYTHING ELSE  
2 HAD BEEN TAKEN? YOU SAID WHEN YOU ARRIVED, THERE  
3 WERE NO VEHICLES OUTSIDE?

4 A. NO. WE -- ALL WE DETERMINED WAS THAT  
5 MONEY HAD BEEN TAKEN. THAT WAS IT. BECAUSE ONCE I  
6 GOT IN THERE AND I SAW THESE TWO PEOPLE IN THERE, I  
7 WAS -- LIKE I SAID, WE PROTECTED THE CRIME SCENE. WE  
8 WAS MORE INTERESTED IN GETTING THEM MEDICAL HELP THAN  
9 ANYTHING ELSE. BUT LIKE I SAID, THERE WAS NO CAR  
10 THERE WHEN I GOT THERE.

11 MR. BAILEY: ALL RIGHT. PLEASE ANSWER ANY  
12 QUESTIONS MR. NEWSOME MIGHT HAVE FOR YOU.

13 C R O S S - E X A M I N A T I O N

14 BY MR. NEWSOME:

15 Q. WHEN YOU GOT THERE, THE DOOR WAS LOCKED?

16 A. YES, SIR.

17 Q. AND YOU HAD TO GO AROUND -- WHO WENT  
18 AROUND TO GET THE KEYS FROM THE LADY?

19 A. SHE BROUGHT THE KEYS.

20 Q. SHE BROUGHT THE KEYS. ALL RIGHT. SHE WAS  
21 ALREADY THERE AT THE TIME?

22 A. NO, SIR.

23 Q. WHO WAS IT THAT WENT BACK TO GET HER?

24 A. WHAT HAPPENED, I WENT TO THE FRONT DOOR  
25 FIRST. THE FRONT DOOR WAS LOCKED.

1 Q. OKAY.

2 A. I WENT AROUND TO THE BACK TO TRY TO OPEN  
3 THE DOOR, AND AT THAT POINT, SHE SAW MY BLUE LIGHT,  
4 AND SHE CAME OUT WITH THE KEY.

5 Q. OKAY. DID SHE TELL YOU SHE HAD BEEN THERE  
6 FOR A WHILE?

7 A. THE QUESTION I ASKED HER, WAS THE PLACE  
8 OPEN, BECAUSE I THOUGHT MAYBE IT WAS CLOSED, AND SHE  
9 SAID, YEAH, SOMEBODY WAS SUPPOSED TO BE IN THERE.

10 Q. AND YOU SAID YOU LOOKED IN AND YOU SAW  
11 KELLY HOFFMAN?

12 A. YES, SIR.

13 Q. WERE THE LIGHTS ON? WERE THE LIGHTS ON?

14 A. NO, SIR.

15 Q. THE LIGHTS WERE NOT ON?

16 A. IT WAS DARK IN -- I CAN'T BE SURE WHETHER  
17 THE LIGHTS WERE ON, BUT HAD TO BE BECAUSE I COULD SEE  
18 HER, SO THE LIGHT MUST HAVE BEEN ON.

19 MR. NEWSOME: ALL RIGHT. I HAVE NO  
20 FURTHER QUESTIONS. THANK YOU.

21 THE COURT: YOU MAY COME DOWN.

22 MR. BAILEY: NO REDIRECT, YOUR HONOR.  
23 YOUR HONOR, I HAVE SOME PHYSICIANS HERE THAT I WOULD  
24 LIKE TO TAKE OUT OF ORDER. DR. MIMS.

25 THE COURT: DO YOU HAVE ANY --

1 MR. NEWSOME: I HAVE NO OBJECTIONS TO  
2 THAT, YOUR HONOR.

3 THE CLERK: PLEASE PUT YOUR LEFT HAND ON  
4 THE BIBLE. PLEASE STATE YOUR NAME FOR THE RECORD.

5 THE WITNESS: DR. RICHARD MIMS.

6 RICHARD MIMS, M.D.,  
7 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
8 TESTIFIED AS FOLLOWS:

9 THE CLERK: OKAY. COME AROUND AND HAVE A  
10 SEAT.

11 D I R E C T E X A M I N A T I O N  
12 BY MR. BAILEY:

13 Q. STATE YOUR FULL NAME, PLEASE.

14 A. RICHARD MIMS.

15 Q. ALL RIGHT, SIR. AND WHAT IS YOUR  
16 PROFESSION?

17 A. I'M AN ANESTHESIOLOGIST.

18 Q. ALL RIGHT, SIR.

19 MR. BAILEY: AND STIPULATE TO HIS  
20 QUALIFICATIONS?

21 MR. NEWSOME: YES, I'LL STIPULATE.

22 THE COURT: QUALIFICATIONS ARE STIPULATED.  
23 BY MR. BAILEY:

24 Q. DR. MIMS, WHERE DO YOU WORK AS AN  
25 ANESTHESIOLOGIST?

1           A.       AT THE REGIONAL MEDICAL CENTER IN  
2 ORANGEBURG.

3           Q.       ALL RIGHT, SIR.   AND HOW LONG HAVE YOU  
4 WORKED THERE?

5           A.       APPROXIMATELY FIVE YEARS.

6           Q.       AND WERE YOU ON DUTY ON MARCH THE 18TH OF  
7 LAST YEAR?

8           A.       YES, I WAS.

9           Q.       AND WOULD YOU STATE WHETHER OR NOT YOU HAD  
10 ANY INVOLVEMENT IN THE TREATMENT OF KENNETH PRESLEY?

11          A.       I WAS CALLED IN AFTER HE HAD BEEN DECLARED  
12 DEAD TO SERVE LIAISON BETWEEN AN INCOMING ORGAN  
13 DONATION TEAM.

14          Q.       ALL RIGHT, SIR.   AND WHAT WAS YOUR  
15 INVOLVEMENT AS FAR AS THE ORGAN DONATION TEAM?

16          A.       TO BASICALLY FILL OUT THE MEDICAL RECORDS  
17 NECESSARY TO PROVIDE VENTILATION AND PRESSURE SUPPORT  
18 TO THE PATIENT.

19          Q.       ALL RIGHT, SIR.

20          A.       TO KEEP HIS HEART BEATING.

21          Q.       AND TO THE BEST OF YOUR KNOWLEDGE, WHEN  
22 YOU FIRST ARRIVED AT THE HOSPITAL AND MR. PRESLEY WAS  
23 THERE, WAS HE BRAIN DEAD?

24          A.       HE WAS.

25          Q.       ALL RIGHT, SIR.   AND YOUR INVOLVEMENT

1 AGAIN WAS TO KEEP HIM ALIVE FOR A PERIOD OF TIME?

2 A. NOT REALLY ALIVE, BUT TO KEEP HIS HEART  
3 BEATING, ADMINISTER CERTAIN PRESERVATIVES AND OTHER  
4 AGENTS THAT THE -- THAT THE ORGAN PROCUREMENT TEAM  
5 NEEDED.

6 Q. ALL RIGHT, SIR. AND WOULD YOU STATE  
7 WHETHER OR NOT YOU WERE THE PERSON WHO WOULD HAVE  
8 TURNED THE LIFE SUPPORT OFF ONCE THOSE ORGANS WERE  
9 REMOVED?

10 A. YES, I DID.

11 Q. AND DID YOU DO THAT?

12 A. YES, I DID.

13 Q. AND THIS WAS AFTER MR. PRESLEY HAD BEEN  
14 DECLARED BRAIN DEAD BY THE PHYSICIAN?

15 A. YES, SIR.

16 Q. ALL RIGHT, SIR. AND DID THIS TAKE PLACE  
17 AT THE ORANGEBURG HOSPITAL?

18 A. IT DID.

19 Q. JUST TO MAKE SURE IT'S CLEAR IN THE  
20 RECORD, AT THE TIME THAT YOU TURNED OFF LIFE SUPPORT,  
21 MR. PRESLEY PREVIOUSLY HAD BEEN DECLARED BRAIN DEAD  
22 FROM THE GUNSHOT WOUNDS?

23 A. YES. HE HAD BEEN DECLARED BRAIN DEAD  
24 BEFORE THEY ACTUALLY EVEN CALLED ME IN.

25 MR. BAILEY: THANK YOU VERY MUCH. THAT'S

1 ALL I HAVE.

2 MR. NEWSOME: I HAVE NO QUESTIONS.

3 THE COURT: YOU MAY COME DOWN. THANK YOU.

4 YOU MAY BE EXCUSED, SIR.

5 MR. BAILEY: THANK YOU. DR. DONALD

6 GILBERT.

7 THE CLERK: IF YOU WOULD, PLEASE, PLACE

8 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR

9 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

10 THE WITNESS: DONALD GILBERT.

11 DONALD GILBERT, M.D.,

12 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,

13 TESTIFIED AS FOLLOWS:

14 THE CLERK: PLEASE COME AROUND AND HAVE A

15 SEAT.

16 D I R E C T E X A M I N A T I O N

17 BY MR. BAILEY:

18 Q. ARE YOU DR. DONALD GILBERT?

19 A. YES, I AM.

20 Q. WHAT MEDICAL SPECIALTY ARE YOU IN?

21 A. GENERAL SURGERY.

22 Q. ALL RIGHT. AND WHERE IS YOUR PRACTICE?

23 A. SPARTANBURG REGIONAL.

24 Q. OKAY. NOW, IN MARCH OF 1994, WERE YOU

25 EMPLOYED IN GENERAL SURGERY AT SPARTANBURG REGIONAL?

1 A. YES, I WAS.

2 Q. AND WOULD YOU STATE WHETHER OR NOT YOU  
3 WERE INVOLVED WITH THE ORGAN DONOR PROGRAM?

4 A. I WAS, OUT OF CHARLESTON.

5 Q. OKAY. AND ARE YOU STILL INVOLVED IN THAT?

6 A. I'M NO LONGER, NO.

7 Q. BUT AT THAT TIME YOU WERE?

8 A. YES, I WAS.

9 Q. WHAT WAS YOUR ROLE -- WHAT'S THE NAME OF  
10 THE ORGAN DONOR PROGRAM THAT YOU'RE WORKING WITH?

11 A. SCOPA, SOUTH CAROLINA ORGAN PROCUREMENT  
12 ASSOCIATION.

13 Q. OKAY. CALLING YOUR ATTENTION TO MARCH THE  
14 18TH, 1994, DID YOU HAVE OCCASION TO GO TO  
15 ORANGEBURG?

16 A. I DID.

17 Q. AND DID YOUR MEDICAL PROFESSION CAUSE YOU  
18 TO GO TO ORANGEBURG?

19 A. YES.

20 Q. OKAY. AND DID YOU HAVE ANY CONTACT WITH A  
21 YOUNG MAN IDENTIFIED TO YOU AS KENNETH PRESLEY?

22 A. YES, I DID.

23 Q. ALL RIGHT, SIR. AND WHAT WAS YOUR  
24 INVOLVEMENT IN HIS TREATMENT OR THE PROCEDURES USED  
25 ON HIM?

1           A.       WE WERE A PART OF THE HARVEST TEAM. WE  
2       ESSENTIALLY HARVESTED HIS ORGANS FOR TRANSPLANT  
3       ELSEWHERE.

4           Q.       ALL RIGHT. AND YOU PARTICIPATED IN THE  
5       HARVESTING OF THOSE ORGANS?

6           A.       YES, I DID.

7           Q.       WOULD YOU STATE WHETHER OR NOT, TO THE  
8       BEST OF YOUR KNOWLEDGE, MR. PRESLEY HAD BEEN DECLARED  
9       BRAIN DEAD PRIOR TO THAT PROCEDURE?

10          A.       HE DEFINITELY HAD BEEN, YES.

11          Q.       ALL RIGHT, SIR. AND WERE YOU PRESENT WHEN  
12       LIFE SUPPORT WAS CUT OFF?

13          A.       YES, I WAS.

14          Q.       AND AT WHAT POINT IN TIME WERE THE ORGANS  
15       REMOVED?

16          A.       I'M NOT SURE WHAT YOU MEAN.

17          Q.       IN RELATION TO WHEN THE LIFE SUPPORT WAS  
18       CUT OFF, WHEN WERE THE ORGANS REMOVED?

19          A.       IT'S KIND OF A SIMULTANEOUS ACTION. WE --  
20       AFTER DISSECTING THE ORGANS TO WHERE THERE'S JUST THE  
21       PARTICULAR VESSELS THAT FEED THEM, THE RESPIRATOR AND  
22       -- ESSENTIALLY THE RESPIRATOR IS TURNED OFF AT THE  
23       SAME TIME THE MAJOR ORGANS ARE -- AND THE BLOOD IS  
24       LET OUT OF THE BODY, AND THEN SOME COLD FLUID THAT  
25       PUTS ELECTROLYTES AND CLEANSSES THE ORGANS IS INFUSED

1 AT THE SAME TIME. AND THEN AT THAT -- AT THAT SAME  
2 INSTANT, THE CAVITY IS FILLED WITH ICE TO COOL THE  
3 ORGANS.

4 Q. SO TECHNICALLY, THE BODY IS KEPT ALIVE FOR  
5 ORGAN REMOVAL AFTER BEING DECLARED BRAIN DEAD?

6 A. YES.

7 MR. BAILEY: I HAVE NO FURTHER QUESTIONS.  
8 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

9 MR. NEWSOME: I HAVE NO QUESTIONS, YOUR  
10 HONOR.

11 THE COURT: YOU MAY COME DOWN. I WILL  
12 EXCUSE THIS WITNESS.

13 MR. BAILEY: THANK YOU.

14 THE CLERK: PLEASE PLACE YOUR LEFT HAND ON  
15 THE BIBLE. PLEASE STATE YOUR NAME FOR THE RECORD.

16 THE WITNESS: DR. JOEL STEVEN SEXTON.

17 JOEL STEVEN SEXTON, M.D.,

18 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
19 TESTIFIED AS FOLLOWS:

20 THE CLERK: PLEASE COME AROUND.

21 D I R E C T E X A M I N A T I O N

22 BY MR. BAILEY:

23 Q. YOU'RE DR. JOEL SEXTON?

24 A. YES, THAT'S CORRECT.

25 Q. ALL RIGHT, SIR. HOW ARE YOU EMPLOYED, DR.

1 SEXTON?

2 A. I AM A PATHOLOGIST IN PRIVATE PRACTICE.  
3 I'M THE DIRECTOR OF THE LABORATORY FOR THE NEWBERRY  
4 COUNTY HOSPITAL. I'M ALSO A CONSULTING FORENSIC  
5 PATHOLOGIST FOR APPROXIMATELY 36 OF THE 46 COUNTY  
6 CORONERS WHO SEND CASES TO ME AT VARIOUS TIMES OF THE  
7 YEAR TO DO FORENSIC AUTOPSIES, GENERALLY A LITTLE  
8 OVER 400 A YEAR.

9 THE COURT: QUALIFICATIONS ADMITTED AS A  
10 FORENSIC PATHOLOGIST?

11 MR. NEWSOME: YES, YOUR HONOR.

12 MR. BAILEY: YOUR HONOR, I WOULD LIKE TO  
13 ASK HIM JUST A FEW QUESTIONS FOR THE EDIFICATION OF  
14 THE JURY.

15 THE COURT: YES, SIR, YOU MAY.

16 BY MR. BAILEY:

17 Q. WHAT IS A PATHOLOGIST?

18 A. A PATHOLOGIST IS A PHYSICIAN. I ATTENDED  
19 MED SCHOOL, AND I'M LICENSED IN THE STATE TO PRACTICE  
20 MEDICINE. A PATHOLOGIST THEN FURTHER STUDIES THE  
21 STUDY OF DISEASE. SO A PATHOLOGIST IS A PERSON WHO  
22 IN YOUR HOSPITAL EXAMINES TISSUE REMOVED BY YOUR  
23 SURGEON TO DETERMINE WHETHER IT HAS CANCER IN IT OR  
24 WHETHER IT'S GOT SOME OTHER CONDITION AND TO WHAT  
25 DEGREE THE CANCER IS THERE AND WHAT TYPE IT MIGHT BE

1 TO HELP YOUR PHYSICIAN THEN BETTER TREAT YOU IF YOU  
2 HAVE THAT TYPE OF CONDITION.

3 THE PATHOLOGIST ALSO SUPERVISES THE LABORATORY  
4 WHERE VARIOUS TISSUES AND FLUIDS ARE EXAMINED TO  
5 DETERMINE WHETHER THEY HAVE THE NORMAL CONSTITUENTS  
6 IN THEM OR NOT, AND THE MEDICAL TECHNOLOGISTS THAT DO  
7 THAT WORK ARE SUPERVISED BY THE PATHOLOGIST. THE  
8 PATHOLOGIST ALSO HELPS YOUR PHYSICIAN INTERPRET THOSE  
9 RESULTS AS TO WHETHER YOU'RE GETTING BETTER OR WORSE  
10 FROM A PARTICULAR ILLNESS OR DISEASE AND WHAT TYPE OF  
11 ILLNESS AND DISEASE YOU MIGHT HAVE.

12 THE PATHOLOGIST DOES THE AUTOPSIES THAT ARE DONE  
13 IN THE HOSPITAL OF PERSONS DYING NATURAL DEATHS TO  
14 LEARN MORE ABOUT THAT DISEASE SO AS TO HELP  
15 PHYSICIANS BE ABLE TO TREAT OTHERS IN THE FUTURE  
16 BETTER WHO MIGHT HAVE THAT DISEASE.

17 THE AREA OF FORENSIC PATHOLOGY, WHICH IS A THIRD  
18 SPECIALTY THAT I HAVE, WE USE THESE TYPES OF  
19 KNOWLEDGE, THERE'S ANATOMIC PATHOLOGY AND SURGICAL  
20 PATHOLOGY AND CHEMICAL PATHOLOGY, BUT WE'RE ALSO  
21 TRAINED IN TRAUMA PATHOLOGY. I TOOK ADDITIONAL  
22 TRAINING AND HAVE FOR A NUMBER OF YEARS PRACTICED IN  
23 THE AREA OF FORENSIC AND HAVE NATIONAL BOARD  
24 CERTIFICATION IN HOW TO RECOGNIZE WHAT CAUSES VARIOUS  
25 INJURIES THAT ARE SEEN ON THE BODY, AND AS MUCH AS

1 POSSIBLE ABOUT THE CIRCUMSTANCES SURROUNDING A DEATH.

2 WE'RE TRAINED TO EXAMINE SCENES OF DEATH.

3 UNFORTUNATELY, THERE'S ONLY ABOUT 200 OF US IN THE  
4 COUNTRY THAT PRACTICE IT FULL TIME, SO FREQUENTLY WE  
5 DON'T HAVE TIME TO GO TO THE VARIOUS DEATH SCENES,  
6 BUT WE ASK THAT THE BODY BE BROUGHT JUST AS IT'S  
7 FOUND SO WE CAN TRY TO FIND AS MANY FACTS AS WE CAN  
8 FROM THE BODY, NOT ONLY ABOUT THE CAUSE OF DEATH, BUT  
9 THE CIRCUMSTANCES SURROUNDING THE DEATH.

10 IT'S PRETTY OBVIOUS IF SOMEBODY DIED OF A  
11 GUNSHOT WOUND THAT THE GUNSHOT WOUND KILLED THEM.  
12 THE QUESTION IS HOW DID THIS GUNSHOT WOUND OR WOUNDS  
13 OCCUR AND WHAT SORT OF CIRCUMSTANCES MAY HAVE BEEN  
14 THERE AT THE TIME AND WHETHER SOMEBODY HAS BEEN  
15 BEATEN OR WHETHER THEY HAVE BEEN SEXUALLY ASSAULTED  
16 OR OTHER THINGS THAT HAVE TO DO WITH THE  
17 CIRCUMSTANCES OTHER THAN JUST THE CAUSE OF DEATH.

18 SO A FORENSIC PATHOLOGIST IS A PHYSICIAN --  
19 PHYSICIAN WHO HAS AN ADDITIONAL SUBSPECIALTY OF  
20 EXAMINING PERSONS THAT HAVE TRAUMATIC INJURIES OR DIE  
21 SUDDENLY AND HELP UNDERSTAND THE CAUSE AND MANNER OF  
22 DEATH AND THE CIRCUMSTANCES SURROUNDING THAT DEATH.

23 WE'RE, IN ADDITION, TRAINED IN THE AREA OF  
24 TOXICOLOGY, SO WE CAN RECOGNIZE THE EFFECTS OF DRUGS  
25 AND CHEMICALS ON THE BODY.

1 Q. AND DR. SEXTON, APPROXIMATELY HOW MANY  
2 AUTOPSIES HAVE YOU PERFORMED IN YOUR CAREER?

3 A. OVER 8,000.

4 Q. AND APPROXIMATELY HOW MANY TIMES HAVE YOU  
5 TESTIFIED AS AN EXPERT IN THE FIELD OF FORENSIC  
6 PATHOLOGY?

7 A. OVER 500 TIMES.

8 Q. WOULD YOU STATE WHETHER OR NOT, CALLING  
9 YOUR ATTENTION TO MARCH 19TH OF LAST YEAR, WHETHER OR  
10 NOT YOU HAD AN OCCASION TO PERFORM AN AUTOPSY ON A  
11 BODY IDENTIFIED TO YOU AS THAT OF KEN PRESLEY?

12 A. I DID.

13 Q. WHERE DID THAT AUTOPSY TAKE PLACE?

14 A. THAT WAS IN NEWBERRY, AT THE AUTOPSY ROOM  
15 IN NEWBERRY, SOUTH CAROLINA.

16 Q. AND DO YOU RECALL WHETHER DEPUTY EARL  
17 RHUDY WAS PRESENT WHEN THAT AUTOPSY WAS PERFORMED?

18 A. JUST A MOMENT. LET ME LOOK AND SEE WHO  
19 SIGNED THE TRANSFER SHEET. AFTER THE AUTOPSY, WE  
20 TRANSFER EVIDENCE, AND DEPUTY EARL RHUDY WAS THERE  
21 AND DID RECEIVE THE EVIDENCE FROM THE AUTOPSY THAT  
22 COULD THEN BE PROCESSED BY SLED. YES, HE WAS  
23 PRESENT.

24 Q. COULD YOU DESCRIBE JUST IN GENERAL TERMS  
25 THE CONDITION OF MR. PRESLEY'S BODY WHEN IT ARRIVED

1 AT NEWBERRY FOR THE AUTOPSY?

2 A. WHEN HE ARRIVED, HE HAD ALREADY BEEN TO  
3 THE HOSPITAL AND BEEN TREATED THERE, SO WE HAD NO  
4 CLOTHING ON THE BODY. SO ARRIVED NUDE, BUT HE DID  
5 HAVE SOME SURGERY WHERE THEY HAD DONE SOME TRANSPLANT  
6 SURGERY, HAD HARVESTED SOME ORGANS FOR TRANSPLANT  
7 PURPOSES. AND HE HAD INJURIES ON HIM THAT CONSISTED  
8 OF SIMPLY THE GUNSHOT WOUNDS THAT ENTERED THE RIGHT  
9 SIDE OF HIS HEAD. THERE WERE NO OTHER INJURIES  
10 PRESENT OTHER THAN THE SURGICAL PROCEDURES THAT HAD  
11 BEEN DONE.

12 Q. ALL RIGHT, SIR. HOW MANY GUNSHOT WOUNDS  
13 TO THE HEAD DID YOU OBSERVE?

14 A. THERE WERE THREE. ONE ABOVE -- IT'S LIKE  
15 BEHIND THE RIGHT EAR. ONE AT THE CORNER OF THE RIGHT  
16 EYE THAT WENT INTO THE SKIN OF THE EYE. ONE THAT  
17 WENT IN THROUGH THE RIGHT EYE, THROUGH THE GLOBE OF  
18 THE EYE, THROUGH THE LENS. ALL THREE OF THESE EXITED  
19 THE LEFT SIDE OF THE HEAD WITH ONE OF THEM NOT  
20 COMPLETELY EXITING AS THE BULLET WAS FOUND JUST UNDER  
21 THE TEAR IN THE SKIN WHERE THE BULLET HAD TRIED TO  
22 COME THROUGH BUT NOT COMPLETELY COME THROUGH, AND IT  
23 WAS STILL THERE JUST UNDER THE SKIN.

24 Q. DO YOU ROUTINELY PREPARE SKETCHES THAT  
25 SHOW THE EXTERNAL INJURIES?

1 A. I DO.

2 Q. AND I'LL HAND YOU A BLOWUP OF A SKETCH AND  
3 ASK IF YOU PREPARED THIS IN CONNECTION WITH THE  
4 AUTOPSY OF MR. PRESLEY.

5 A. YES. THAT'S A BLOWUP OF THE DIAGRAM I  
6 HAVE HERE THAT I PREPARED AT THE TIME OF AUTOPSY.

7 MR. BAILEY: OKAY. I WOULD LIKE TO MARK  
8 THIS -- INTRODUCE THIS AT THIS TIME.

9 MR. NEWSOME: I HAVE A COPY OF IT, YOUR  
10 HONOR.

11 THE COURT: YOU'RE GOING TO ENTER IT IN  
12 EVIDENCE AT THIS TIME?

13 MR. BAILEY: YES, SIR.

14 THE COURT: AND THE RECORD WOULD REFLECT  
15 THAT YOU'VE BEEN PREVIOUSLY PROVIDED A COPY?

16 MR. NEWSOME: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT, SIR. LADIES AND  
18 GENTLEMEN OF THE JURY, FROM TIME TO TIME I WILL  
19 INTRODUCE -- PERMIT THE INTRODUCTION INTO EVIDENCE OF  
20 CERTAIN ITEMS. THESE ITEMS THAT I INTRODUCE INTO  
21 EVIDENCE WILL BE WITH THE JURY DURING THEIR  
22 DELIBERATION. IN THE MEANTIME, IF THEY CARE TO  
23 PUBLISH THEM, THEY CAN DO SO, BUT THESE MATTERS WILL  
24 BE IN THE JURY ROOM.

25 (STATE'S EXHIBIT NUMBER 4 MARKED

1 FOR IDENTIFICATION AND ENTERED  
2 INTO EVIDENCE.)

3 BY MR. BAILEY:

4 Q. DOCTOR, I'M GOING TO HAND YOU A STYROFOAM  
5 MODEL OF THE HEAD AND ASK IF YOU WILL IDENTIFY THAT.

6 A. THIS IS A STYROFOAM HEAD THAT EARLIER I  
7 DREW THE SAME INJURIES ON THE HEAD SO THAT IT WOULD  
8 SHOW A THREE-DIMENSIONAL EFFECT OF THAT. AND THE  
9 THREE ENTRANCE WOUNDS ARE DRAWN ON THE RIGHT SIDE OF  
10 THE HEAD. THE EAR IS NOT HERE, BUT THE EAR WOULD  
11 NORMALLY BE IN THE LOCATION I'M HOLDING MY FINGERS  
12 DOWN, AND THIS IS ABOVE AND BEHIND THE RIGHT HERE.  
13 THE OTHER ONE IS HERE IN THE EYELID AREA. ONE  
14 THROUGH THE EYE.

15 AND THE REASON WE CAN TELL THESE ARE ENTRANCE  
16 HOLES, WHEN A BULLET STRIKES THE SKIN OF A BODY WITH  
17 THE SKIN HELD TIGHT AGAINST THE BODY, THE BULLET  
18 PASSES THROUGH AND PRODUCES A ROUND TO OVAL HOLE WITH  
19 AN ABRASION AROUND THE EDGE OF THE HOLE, A  
20 CHARACTERISTIC TYPE OF UNIFORM ABRASION ALL THE WAY  
21 AROUND THE EDGE, AND EACH OF THESE EXHIBITED THAT.

22 THE EXIT WOUNDS CONVERSELY HAVE NOT A ROUND,  
23 GENERALLY, BUT AN IRREGULAR, EITHER A CRESCENT SHAPE,  
24 SLIT SHAPE OR APPEARANCE WHERE THEY PUSHED THE SKIN  
25 HARD ENOUGH TO FINALLY RUPTURE THROUGH THE SKIN AS

1 OPPOSED TO CUTTING A HOLE IN THE SKIN. AND THAT'S  
2 WHAT THESE THREE ALL EXHIBITED.

3 IN ADDITION, TWO OF THESE EXHIBITED WHAT WE  
4 REFER TO AS A SHORED EXIT TYPE OF PATTERN. THE FACT  
5 THAT YOU HAVE THE ABRASION CAUGHT ON THE ENTRANCE IS  
6 BECAUSE THE SKIN IS HELD TIGHTLY AGAINST THE RIBS OR  
7 OTHER PARTS OF THE BODY, AND THE BULLET TENDS TO BORE  
8 A HOLE THROUGH IT. THE FACT THAT YOU DON'T HAVE IT  
9 AT EXIT IS BECAUSE IT GENERALLY PUSHES ITS WAY ON  
10 THROUGH, AND THERE'S NOTHING OUTSIDE TO PUSH AGAINST  
11 THE SKIN. BUT IF, IN FACT, SOMETHING IS SHORED UP  
12 AGAINST THE SKIN, THE FLOOR, A WALL, IN SOME PLACES  
13 LIKE IN THIS, MAYBE EVEN GLASSES, SOMETHING TO HOLD  
14 THAT SKIN AGAINST THE BODY, THEN YOU GET AN ABRASION  
15 AT THE POINT OF EXIT, BUT IT'S STILL AN IRREGULAR  
16 TYPE OF WOUND AS OPPOSED TO A REGULAR WOUND.

17 SO THESE ARE CLEARLY THE THREE EXIT WOUNDS, BUT  
18 TWO OF THEM INDICATE THAT SOMETHING WAS AGAINST THE  
19 SKIN AT THE TIME THE BULLET EXITED OR TRIED TO EXIT.  
20 ONE DID NOT QUITE GET THROUGH.

21 Q. ALL RIGHT, SIR. SO, DOCTOR, USING WHAT'S  
22 BEEN MARKED AS STATE'S NUMBER 4 IF YOU NEED TO, WOULD  
23 YOU TELL THE JURY SPECIFICALLY WHAT PORTIONS OF THE  
24 -- WHAT ORGANS THOSE BULLETS PASSED THROUGH.

25 A. YOU WILL NOTICE THAT LOOKING FIRST AT THE

1 LOWER LEFT OF THIS DIAGRAM, YOU CAN SEE THE RIGHT  
2 SIDE OF THE HEAD. THIS ONE WOUND ENTERS ABOVE AND  
3 BEHIND THE RIGHT EAR, AND I'VE DRAWN IN A DOTTED LINE  
4 THE POINT OF EXIT OR WHERE IT ATTEMPTED TO EXIT, AND  
5 THIS DARK AREA IS WHERE THE BULLET WAS LOCATED ON THE  
6 OPPOSITE SIDE, WHICH WOULD BE RIGHT BACK HERE. THAT  
7 WENT THROUGH THE BRAIN ITSELF, THROUGH BOTH OF THE  
8 FRONTAL TEMPORAL REGIONS.

9 IN OTHER WORDS, THE BRAIN IS RIGHT ABOVE YOUR  
10 EYES FROM HERE UP, AND IT'S SHAPED SORT OF LIKE --  
11 AND I'M ILLUSTRATING WITH MY HANDS -- SORT OF LIKE A  
12 COLLAPSED "C", SO THAT THE FRONT PART OF THE BRAIN  
13 PROTRUDES FURTHER THAN THE MIDDLE OR LOWER PART OF  
14 YOUR BRAIN, AND THIS DOES GO THROUGH THAT FRONT PART  
15 OF THE BRAIN, THE AREA THAT HAS TO DO WITH YOUR  
16 COGNITIVE FUNCTIONS AND BEING ABLE TO THINK AND TO  
17 INTERPRET THINGS AS WELL AS SOME OF YOUR COORDINATIVE  
18 FUNCTIONS AS FAR AS THE TEMPORAL LOBE. IT WENT ALL  
19 THE WAY ACROSS SIDE TO SIDE, AND IT WENT THROUGH THAT  
20 PORTION OF THE BRAIN. THAT WAS ARBITRARILY  
21 DESIGNATED AS NUMBER 1 UP HERE AND ALSO NUMBER 1, AND  
22 I SAY THAT'S ARBITRARY BECAUSE I CANNOT TELL THE  
23 ORDER IN WHICH THESE CAME.

24 I CAN SAY THAT THE HEAD WAS AGAINST SOME SURFACE  
25 WHEN TWO OF THEM OCCURRED, INCLUDING THAT NUMBER 1,

1 BECAUSE IT HAD A SHORED EXIT, BUT I DON'T KNOW WHAT  
2 THE SURFACE WAS, SO I DON'T KNOW WHETHER HE WAS LYING  
3 DOWN OR LEANING AGAINST A WALL OR WHETHER HE HAD  
4 GLASSES IN THAT LOCATION. SO I REALLY CAN'T TELL THE  
5 ORDER. THAT'S WHY THEY'RE ARBITRARILY LISTED AS 1, 2  
6 AND 3 FROM THE TOP OF THE HEAD TOWARDS THE BOTTOM OF  
7 THE HEAD.

8 Q. DOCTOR, THAT WOUND THAT YOU DESIGNATED AS  
9 NUMBER 1, WAS THAT A FATAL WOUND?

10 A. YES. IT WOULD BE ONE OF THE TWO FATAL  
11 WOUNDS BECAUSE IT WENT THROUGH THE BRAIN AND CAUSED  
12 HEMORRHAGE, NOT ONLY TO THE FRONTAL AND TEMPORAL  
13 LOBES, WHICH ARE NEAR THE FRONT OF THE BRAIN, BUT  
14 ALSO THERE WAS DAMAGE -- SUPERFICIAL DAMAGE TO THE  
15 BASE OF THE BRAIN WHICH CONTROLS OUR HEARTBEAT AND  
16 RESPIRATION. AND THIS EVENTUALLY IS WHAT WOULD HAVE  
17 BEEN THE MOST PROBABLE CAUSE OF DEATH.

18 ALSO, THE TRAUMA TO BRAIN TISSUE. JUST LIKE  
19 WHEN YOU HIT YOUR THUMB WITH A HAMMER OR SOMETHING  
20 AND IT SORT OF SWELLS UP AND HURTS, THE BRAIN DOES  
21 THE SAME THING. OUR WHOLE BODY DOES THAT. ANY TIME  
22 YOU INJURE ANY PART OF THE BODY, ONE OF THE RESPONSES  
23 IS TO HAVE A LOT OF FLUID COME INTO THAT AREA WITH  
24 SOLDIER CELLS, LITTLE WHITE CELLS AND OTHER CELLS  
25 TRYING TO GET RID OF THE INJURY OR TO GET RID OF THE

1 RED CELLS THAT HAVE BEEN -- THAT HAVE GOTTEN OUT INTO  
2 THE TISSUE AROUND THE CAPILLARIES WHEN THEY ARE  
3 RUPTURED. AND THE BRAIN DOES THE SAME THING. IT  
4 SWELLS. AND THAT SWELLING THEN LEADS TO THE FACT  
5 THAT THE BRAIN, WHICH IS IN AN ENCLOSED VAULT THAT  
6 CANNOT EXPAND. WELL, THE TISSUE EXPANDS AND PUTS  
7 PRESSURE ON THE VITAL AREAS DOWN AROUND THE BASE OF  
8 THE BRAIN OR THE BRAIN STEM AS WE REFER TO IT. AND  
9 NOT ONLY DID THAT HAPPEN, BUT ALSO THE INITIAL TRAUMA  
10 IN THAT AREA IS WHAT CAUSED THE UNCONSCIOUSNESS AND  
11 EVENTUALLY THE DEATH OF THE INDIVIDUAL. SO NUMBER 1  
12 WAS A FATAL WOUND.

13 NUMBER 2 ENTERED THE RIGHT SIDE OF THE EYE, AND  
14 IT PASSED DOWNWARD OR -- ACTUALLY PRETTY WELL  
15 HORIZONTAL ACROSS TO THE OTHER SIDE, AND IT CAME OUT  
16 AT ABOUT THE SAME LOCATION. AND IT WENT THROUGH JUST  
17 THE FRONT EDGE OF THE BRAIN ON THE LEFT SIDE. IN  
18 OTHER WORDS, IT ENTERS IN FRONT OF THE BRAIN AND  
19 BELOW IT OVER HERE, BUT AS IT GOES BACK TO THE LEFT  
20 SIDE, IT GOES JUST BARELY THROUGH THE FRONT OF THE  
21 BRAIN AND DOES ENTER THE CRANIAL VAULT.

22 NUMBER 3 THAT'S ARBITRARILY DESIGNATED IS THE  
23 ONE THAT ENTERED THE RIGHT EYE. THAT'S FURTHER  
24 ANTERIOR. IT COMES OUT AT ABOUT THE SAME LOCATION,  
25 AND IT DOESN'T QUITE GET INTO THE SKULL. IT GOES

1 JUST THROUGH THE BONES OF THE FACE, GOING ACROSS FROM  
2 THIS LOCATION, ACROSS TO THAT LOCATION. IN OTHER  
3 WORDS, IT ACTUALLY JUST GOES ACROSS THE FRONT OF THE  
4 FACE AND DOESN'T GET INTO THE VITAL STRUCTURES OF THE  
5 BRAIN.

6 SO OF THE THREE WOUNDS, 1 AND 2 WERE FATAL.  
7 NUMBER 3 IS A POTENTIALLY FATAL WOUND BECAUSE IT WENT  
8 THROUGH AREAS WHERE IT WOULD CAUSE BLEEDING THAT  
9 MIGHT GET INTO THE AIRWAY DOWN THROUGH THE NASAL  
10 PASSAGES.

11 Q. DID YOU RECOVER A BULLET FROM THE BRAIN  
12 DURING THE COURSE OF YOUR AUTOPSY?

13 A. YES, I DID. IT WAS HERE ON THE LEFT SIDE,  
14 AND IT WAS THE ONE THAT ENTERED IN THE AREA ABOVE AND  
15 BEHIND THE RIGHT EAR. I COULD EASILY PROBE THAT PATH  
16 AND FOLLOW THE HEMORRHAGE THROUGH THE BRAIN TO A  
17 POINT HERE ON THE LEFT SIDE, WHICH WAS THE ONE THAT  
18 WAS MOST POSTERIOR. AND THE BULLET WAS JUST UNDER  
19 THE SKIN IN THAT LOCATION.

20 Q. OKAY. AND DID THE OTHER TWO BULLETS PASS  
21 THROUGH?

22 A. THAT'S CORRECT. THE OTHER -- THE OTHER  
23 TWO PASSED COMPLETELY THROUGH THE SKULL AND WERE NOT  
24 FOUND AT AUTOPSY.

25 Q. I SHOW YOU AN ITEM IN A SEALED ENVELOPE

1 AND ASK YOU IF YOU CAN IDENTIFY THAT AND ALSO A  
2 PHOTOGRAPH AND ASK IF YOU CAN IDENTIFY THAT.

3 A. (WITNESS REVIEWS DOCUMENT.) FIRST, THE  
4 PHOTOGRAPH IS A COPY OF MY TWO-BY-TWO SLIDE THAT I  
5 TOOK. I TAKE SLIDES FOR THE PURPOSE OF HAVING LESS  
6 BULK TO STORE BECAUSE OF THE NUMBER OF CASES I DO.  
7 AND THE SLIDE MATCHES THE PHOTOGRAPH, WHICH IS A  
8 PHOTOGRAPH OF THE BULLET THAT I REMOVED FROM THE LEFT  
9 SIDE OF THE HEAD JUST UNDER THE SKIN THAT ENTERED THE  
10 RIGHT SIDE OF THE HEAD. IT MATCHES THE PHOTOGRAPH,  
11 BEARS MY MARK.

12 AND LET ME SEE ABOUT THE BULLET INSIDE HERE.  
13 THE CONTAINER THAT IT'S IN, THE PLASTIC HEAT-SEALED  
14 BAG IS ONE THAT I WROTE ON. IT'S ALSO MY WRITING AND  
15 INITIALS ON THE PLASTIC VIAL THAT THE BULLET WAS  
16 PLACED IN TO MAKE SURE IT DIDN'T GET DAMAGED. THE  
17 BULLET ALSO MATCHES WHAT I SEE HERE ON THE  
18 PHOTOGRAPH. AND IN OTHER WORDS, THE PHOTOGRAPH IS  
19 IDENTICAL TO THE BULLET THAT I HAVE HERE IN MY HAND,  
20 AND IT ALSO BEARS MY MARK. SO THIS IS THE BULLET  
21 THAT I REMOVED FROM THE HEAD OF KENNETH PRESLEY THAT  
22 ENTERED THE RIGHT SIDE OF THE HEAD AND WAS ONE OF THE  
23 FATAL SHOTS.

24 Q. ALL RIGHT, SIR. AND THIS IS A PHOTOGRAPH  
25 OF THAT SAME BULLET; IS THAT CORRECT?

1           A.        THAT'S CORRECT.  IT'S A PHOTOGRAPH OF THE  
2        BASE OF THE BULLET.  THE BULLET IS A JACKETED BULLET,  
3        AND PART OF THE JACKET HAS BEEN PULLED AWAY.  AND IF  
4        YOU LOOK AT THE BULLET, THE JACKET IS SEPARATE FROM  
5        THE BULLET; WHEREAS IN THE PHOTOGRAPH, IT WAS STILL  
6        ATTACHED.  THE LANDS AND GROOVES AND THE STRIP THAT  
7        ARE EXAMINED TO COMPARE A BULLET WITH A SPECIFIC GUN  
8        ARE ON THAT OUTER COPPER JACKET, AND SOMETIMES IT HAS  
9        TO BE MANIPULATED SLIGHTLY SO AS TO PUT IT INTO A  
10       SCOPE WHERE THEY HAVE TWO DIFFERENT -- COMPARISON  
11       SCOPE WHERE THEY CAN LOOK AT A TEST BULLET AND THIS  
12       BULLET AT THE SAME TIME AND MATCH IT.  SO IT'S NOT  
13       EXACTLY AS YOU SEE HERE.  IT'S BEEN SEPARATED FOR  
14       THAT PURPOSE.  BUT IT IS THE SAME BULLET.

15                   MR. BAILEY:  THANK YOU.  YOUR HONOR, I  
16       WOULD OFFER THE BULLET AND THE PHOTOGRAPH AS STATE'S  
17       NEXT EXHIBIT.

18                   MR. NEWSOME:  WITHOUT OBJECTION.

19                   THE COURT:  ALL RIGHT.

20                                           (STATE'S EXHIBITS NUMBERS 5 AND  
21                                           6 WERE MARKED FOR IDENTIFICATION  
22                                           AND ENTERED INTO EVIDENCE.)

23       BY MR. BAILEY:

24           Q.        DR. SEXTON, I BELIEVE YOU TESTIFIED TO  
25        THIS PREVIOUSLY, BUT TO MAKE SURE IT'S IN THE RECORD

1 YOU GAVE STATE'S EXHIBIT 6, WHICH WAS THE BULLET FROM  
2 MR. PRESLEY'S BRAIN, TO DETECTIVE EARL RHUDY FROM THE  
3 SHERIFF'S DEPARTMENT?

4 A. YES, SIR. THAT'S CORRECT.

5 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS  
6 MR. NEWSOME MAY HAVE FOR YOU.

7 C R O S S - E X A M I N A T I O N

8 BY MR. NEWSOME:

9 Q. DR. SEXTON, I JUST HAVE A FEW QUESTIONS.  
10 YOU'VE DONE A LOT OF THESE AUTOPSIES, HAVE YOU NOT,  
11 SIR?

12 A. YES. THAT'S CORRECT.

13 Q. AND WOULD YOU AGREE WITH ME IF I SAID THAT  
14 YOU CAN'T ALWAYS TELL EVERYTHING IN THESE AUTOPSIES  
15 AS TO EXACTLY WHAT HAPPENED?

16 A. CORRECT. IN OTHER WORDS, WE TRY AS MUCH  
17 AS WE CAN, BUT OBVIOUSLY THERE ARE LIMITS AS TO WHAT  
18 WE CAN DETERMINE.

19 Q. INITIALLY, YOU DESCRIBED IN YOUR REPORT  
20 THAT THE CALIBER OF BULLETS WERE 9 MILLIMETER ON ONE  
21 OF THEM?

22 A. CORRECT. A 9 MILLIMETER -- CALIBER HAS TO  
23 DO WITH THE DIAMETER OF THE BULLET, AND THERE ARE A  
24 NUMBER OF BULLETS THAT ARE 9 MILLIMETERS IN DIAMETER.  
25 THAT COMPARES TO THE SAME CALIBER AS .380. SO THEY

1 BOTH ARE 9 MILLIMETER.

2 Q. CAN YOU TELL IF THESE WOUNDS OR SHOTS WERE  
3 THE RESULT OF ONE SHOOTING WITH THE RIGHT HAND OR  
4 LEFT HAND OR HOW TALL THEY WERE?

5 A. NO, YOU CANNOT.

6 Q. COULD NOT TELL. YOU CAN'T TELL FROM THE  
7 APPEARANCE OF THESE WOUNDS, IN REFERRING TO THE  
8 EXHIBIT SO THE COURT REPORTER WILL KNOW, STATE'S  
9 EXHIBIT NUMBER 4, TWO OF THE WOUNDS APPEAR AT --  
10 NUMBER 1 AND NUMBER 2 APPEAR TO GO DOWNWARD, AND  
11 NUMBER 2 IS SLIGHTLY DOWNWARD I THINK YOU DESCRIBED  
12 IT.

13 A. RIGHT. NEARLY HORIZONTAL, BUT SLIGHTLY  
14 DOWNWARD.

15 Q. AND NUMBER 3 WOULD HAVE BEEN UPWARD; IS  
16 THAT CORRECT?

17 A. SLIGHTLY UPWARD.

18 Q. AND NUMBER 3 IS THE WOUND YOU SAID WAS  
19 POTENTIALLY FATAL?

20 A. CORRECT.

21 Q. OKAY. ALL RIGHT. IN YOUR REPORT, YOU  
22 NOTE THE SIZE OF THE DECEDENT?

23 A. YES, I DO. WHAT WE DO IS WE MEASURE THE  
24 LENGTH OF A BODY, WHICH GENERALLY CORRESPONDS WELL  
25 WITH A HEIGHT OF AN INDIVIDUAL DEPENDING ON WHETHER

1 THEY STAND STRAIGHT DURING LIFE AND WHETHER THEY  
2 MEASURE THEMSELVES WITH SHOES ON OR SHOES OFF. HE  
3 WAS SIX FEET TALL AND ONE-HALF INCH, AND WE ESTIMATED  
4 BASED ON HIS STATURE AND HIS HEIGHT THAT HE WEIGHED  
5 APPROXIMATELY 180 POUNDS.

6 Q. ALL RIGHT. COULD YOU, BASED ON THAT AND  
7 IF IT WERE -- AND THIS IS A HYPOTHETICAL SITUATION --  
8 A PERSON IS STANDING WHEN THE WOUNDS OCCUR, WOULD THE  
9 SHOTS COME FROM ABOVE OR BELOW?

10 A. IT'S DIFFICULT TO SAY IN THAT YOUR HEAD IS  
11 SO MOBILE. IN OTHER WORDS, YOU CAN LOWER YOUR HEAD.  
12 AND OFTENTIMES, IF SOMEBODY REALIZES THEY ARE ABOUT  
13 TO GET SHOT, THE SEQUENCE WE SEE IS THAT THE FIRST  
14 SHOT MAY BE HORIZONTAL. IF THEY DON'T KNOW IT'S  
15 COMING, AS THEY SEE IT'S COMING, THEY TEND TO BEND  
16 FORWARD SO THEY ARE GOING DOWNWARD IN THE FRONT, THEY  
17 TURN, IF THEY'RE STILL MOBILE, AND THEY GO UPWARD IN  
18 THE BACK.

19 BUT THE HEAD IS SUCH THAT YOU CAN MOVE IT IN A  
20 LOT OF DIFFERENT DIRECTIONS. SO DEPENDING ON WHETHER  
21 THE PERSON KNEW THE SHOT WAS COMING AND REFLEXIVELY  
22 BENT DOWNWARD OR THEY HAPPENED TO BE BENT DOWN AT THE  
23 TIME, IT COULD HAVE BEEN A HORIZONTAL SHOT, BUT THE  
24 HEAD COULD HAVE BEEN BENT SUCH THAT IT CAME IN IN  
25 THIS FASHION OR IT COULD HAVE BEEN SOMEBODY AT A

1 HIGHER LEVEL.

2           WHAT I SHOULD SAY IS THAT THE SHOT WAS AT A  
3 DISTANCE, AND THAT MAKES IT EVEN MORE DIFFICULT TO  
4 KNOW. BECAUSE WHEN WE LOOK AT THE GUNSHOT WOUNDS, WE  
5 LOOK NOT ONLY AT THE WOUND BUT WHETHER THERE'S ANY  
6 EVIDENCE THE GUN WAS CLOSE. IF IT'S CLOSE, THAT --  
7 THAT LIMITS THE VARIABILITY TO SOME DEGREE, AND THE  
8 THINGS WE TELL WHETHER IT'S CLOSE OR NOT HAVE TO DO  
9 WITH THE BURNING OF THE EDGE OF THE WOUND, BY THE  
10 FLAMES THAT COME OUT, TATTOOING OR STIPPLING OF THE  
11 SKIN AROUND THE WOUND BY THE POWDER PARTICLES EITHER  
12 BURNING OR NOT BURNING. A TATTOO IS SOMETHING THAT  
13 HAS TO BE REMOVED SURGICALLY JUST LIKE A TATTOO FROM  
14 A TATTOO PARLOR. IT'S A PURPLE SET OF LITTLE MARKS  
15 IN THE SKIN WHERE THE POWDER HAS GONE IN AND  
16 CHEMICALLY BONDED. STIPPLE IS WHERE IT MAKES AN  
17 INDENTATION AND THEN FALLS OUT.

18           AND NONE OF THIS WAS PRESENT IN ADDITION TO NO  
19 SOOT BEING THERE WHERE THE COMPLETELY BURNED POWDER  
20 HITS THE SKIN AND WILL STAY THERE FOR A SHORT TIME  
21 BUT CAN BE WASHED OFF. BUT EVEN AFTER HE HAD BEEN  
22 WASHED, WE WOULD HAVE SEEN TATTOOING OR STIPPLING OR  
23 CHARRING. SO THERE WAS NO EVIDENCE OF ANY CLOSE  
24 RANGE, SO IT HAD TO BE AT SOME DISTANCE, WHICH AGAIN  
25 MAKES IT MORE DIFFICULT TO KNOW WHETHER THE PERSON

1 WAS HIGHER OR LOWER OR ESSENTIALLY THIS PERSON WAS  
2 BENT IN SOME DIRECTION.

3 Q. HOW FAR AWAY WOULD YOU SAY THAT THIS  
4 PERSON HAD TO BE AT LEAST SINCE THERE WERE NO  
5 TATTOOING ISSUES?

6 A. MOST PISTOLS, AND THIS WAS FELT TO BE A  
7 PISTOL WOUND BECAUSE .380'S AND 9 MILLIMETERS ARE  
8 PISTOL ROUNDS, THEY GENERALLY THROW POWDER NO MORE  
9 THAN A FOOT AND A HALF, ON RARE OCCASIONS UP TO  
10 ALMOST TWO FEET. SO ALL I CAN SAY IS THAT THE  
11 ABSENCE OF THIS POWDER INDICATES THAT THE GUN MUZZLE  
12 WAS AT LEAST A FOOT AND A HALF AWAY OR FURTHER.

13 Q. OKAY. AND I'M NOT SURE. I KNOW YOU  
14 EXPLAINED ABOUT HOW YOU MEASURE THE LENGTH OF A  
15 PERSON. HE WAS SIX FOOT ONE AND A HALF INCHES WAS  
16 YOUR MEASUREMENT?

17 A. YES, SIR.

18 MR. NEWSOME: THANK YOU.

19 MR. BAILEY: YOUR HONOR, I HAVE NO FURTHER  
20 QUESTIONS OF DR. SEXTON. I DO HAVE A BRIEF POINT OF  
21 LAW BEFORE DR. SEXTON IS RELEASED.

22 THE COURT: ARE YOU ASKING FOR THE JURY TO  
23 BE EXCUSED FOR JUST A MOMENT?

24 MR. BAILEY: YES, SIR.

25 THE COURT: ALL RIGHT. I'LL LET YOU GO TO

1 THE JURY ROOM. MR. FOREMAN, I'M GOING TO BRING YOU  
2 RIGHT BACK.

3 (WHEREUPON, THE JURY WAS REMOVED  
4 FROM THE COURTROOM AND THE  
5 FOLLOWING PROCEEDINGS COMMENCED  
6 IN OPEN COURT.)

7 THE COURT: CLOSE THAT DOOR, PLEASE. YES,  
8 SIR. WHAT IS YOUR POINT OF LAW, SOLICITOR?

9 MR. BAILEY: YOUR HONOR, IT'S NOT ACTUALLY  
10 A POINT OF LAW. IT'S SOMETHING I WANT TO TAKE UP OUT  
11 OF THE PRESENCE OF THE JURY.

12 DR. SEXTON TOOK SOME PHOTOGRAPHS OF THE BODY  
13 ENTRY WOUNDS AND EXIT WOUNDS THAT I THOUGHT WOULD  
14 PROBABLY BE PREJUDICIAL IN THE GUILT PHASE, BUT NOT  
15 THE PENALTY PHASE. IN LIEU OF HAVING HIM COME BACK  
16 IN THE PENALTY PHASE, I WANTED TO SEE IF WE COULDN'T  
17 GET HIM TO AUTHENTICATE THOSE PHOTOGRAPHS OUT OF THE  
18 PRESENCE OF THE JURY SO THAT I COULD OFFER THEM AT  
19 THAT TIME.

20 THE COURT: WELL, I'LL RULE ON  
21 ADMISSIBILITY AT THAT TIME, BUT I WILL HAVE THE  
22 AUTHENTICITY AT THIS TIME. YOU HAVE NO OBJECTION TO  
23 THAT, DO YOU?

24 MR. NEWSOME: AS FAR AS THE AUTHENTICITY,  
25 I HAVE NONE, NO.

1 THE COURT: THAT'S WHAT WE'LL DO AT THIS  
2 TIME, AND AS AND IF THAT BECOMES A QUESTION, I'LL  
3 RULE ON THE ADMISSIBILITY THEN. CLEARLY, THEY ARE  
4 NOT ADMISSIBLE IN THE FIRST PHASE, AND HE DOESN'T  
5 INTEND TO DO THAT.

6 BY MR. BAILEY:

7 Q. DOCTOR, LET ME HAND YOU THREE PHOTOGRAPHS.

8 THE COURT: LET ME SEE THEM FIRST, PLEASE.

9 BY MR. BAILEY:

10 Q. DOCTOR, WOULD YOU EXAMINE THOSE THREE  
11 PHOTOGRAPHS AND LET ME KNOW WHETHER OR NOT THESE ARE  
12 PHOTOGRAPHS THAT YOU TOOK DURING THE AUTOPSY OF  
13 KENNETH PRESLEY?

14 A. YES. THESE ARE -- THESE PERFECTLY MATCH  
15 THE -- TWO OF THEM PERFECTLY MATCH THE PHOTOGRAPHS I  
16 TOOK. ONE OF THEM IS SLIGHTLY DIFFERENT IN THAT IT  
17 HAD TO BE -- IN THE PROCESS, IT'S CUT A LITTLE  
18 SHORTER, SO THAT IT'S CROPPED, BUT IT DOES HAVE THE  
19 DETAILS THAT I WAS TRYING TO SHOW IN THE PHOTOGRAPHS.  
20 WHAT HAS BEEN CROPPED OFF IS NOT SIGNIFICANT.

21 THE COURT: WOULD YOU LIKE TO VIEW THEM?

22 MR. NEWSOME: YES, SIR. I'VE SEEN THE  
23 BLACK AND WHITES. I HAVE NOT SEEN THEM.

24 BY MR. BAILEY:

25 Q. AND DO THOSE DEPICT THE BODY EXACTLY THE

1 WAY YOU SAW IT UNALTERED BY DECOMPOSITION OR ANY  
2 OUTSIDE FACTOR?

3 A. YES, THEY DO.

4 MR. BAILEY: ALL RIGHT. THAT'S ALL.

5 THE COURT: DO YOU CARE TO CROSS-EXAMINE?

6 MR. NEWSOME: NO, SIR.

7 THE COURT: ALL RIGHT, SIR. AT THIS TIME,  
8 THEN, WITH THOSE PICTURES HAVING BEEN AUTHENTICATED,  
9 I'M PREPARED TO RELEASE THE DOCTOR SO HE CAN GO BACK  
10 TO NEWBERRY. DO YOU HAVE ANY OBJECTION TO THAT?

11 MR. NEWSOME: TO RELEASE THE DOCTOR, NO.

12 (STATE'S EXHIBITS NUMBER 7, 8 AND 9  
13 MARKED FOR IDENTIFICATION.)

14 THE COURT: GOOD TO SEE YOU, DOCTOR.  
15 WE'LL TAKE JUST A MINUTE'S BREAK HERE, IF YOU CARE  
16 TO. YOU INDICATED YOU NEEDED A SHORT BREAK. WE'LL  
17 START BACK NOW IN JUST ABOUT TWO OR THREE MINUTES.

18 (WHEREUPON, A BREAK WAS TAKEN  
19 FROM THE PROCEEDINGS.)

20 THE COURT: ALL RIGHT. BRING ME THE JURY.  
21 HE'S BRINGING THE JURY OUT RIGHT NOW.

22 (WHEREUPON, THE JURY WAS  
23 RETURNED TO THE COURTROOM AND  
24 THE FOLLOWING PROCEEDINGS WERE  
25 COMMENCED IN OPEN COURT.)

1 THE COURT: ALL RIGHT. CALL YOUR NEXT  
2 WITNESS.

3 MR. BAILEY: SCOTT DANIEL RUSH.

4 THE CLERK: IF YOU WOULD, PLEASE PLACE  
5 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT  
6 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

7 THE WITNESS: DANIEL SCOTT RUSH.

8 DANIEL SCOTT RUSH,  
9 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
10 TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE HAVE A SEAT OVER HERE.

12 D I R E C T E X A M I N A T I O N

13 BY MR. BAILEY:

14 Q. DR. RUSH, WHAT TYPE MEDICAL PRACTICE DO  
15 YOU HAVE?

16 A. I AM A SURGEON. I WORK WITH THE  
17 UNIVERSITY OF SOUTH CAROLINA MEDICAL SCHOOL. I  
18 PRACTICE AT RICHLAND HOSPITAL AND AT THE V.A.  
19 HOSPITAL.

20 Q. ALL RIGHT, SIR. AND BRIEFLY, WHAT IS YOUR  
21 MEDICAL EDUCATION?

22 A. I WENT TO MEDICAL SCHOOL AT THE UNIVERSITY  
23 OF KENTUCKY. I DID MY TRAINING IN SURGERY AT THE  
24 UNIVERSITY OF KENTUCKY. I THEN DID A FELLOWSHIP IN  
25 VASCULAR SURGERY AT THE UNIVERSITY OF CHICAGO.

1 THE COURT: COUNSEL ADMITS THIS DOCTOR'S  
2 QUALIFICATIONS.

3 BY MR. BAILEY:

4 Q. ALL RIGHT. DOCTOR, WHAT IS VASCULAR  
5 SURGERY?

6 A. VASCULAR SURGERY IS THAT SURGICAL  
7 SPECIALTY WHICH PERTAINS TO THE BLOOD VESSELS. IN  
8 THIS CASE, IT IS NOT PERTAINED TO THE HEART, BUT TO  
9 ALL OF THE BLOOD VESSELS THAT COME FROM THE HEART AND  
10 GO BACK TO THE HEART.

11 Q. ALL RIGHT, SIR. CALLING YOUR ATTENTION TO  
12 MARCH OF 1994, DID YOU HAVE AN OCCASION TO PERFORM A  
13 SURGICAL PROCEDURE ON A YOUNG GIRL NAMED KELLY  
14 HOFFMAN?

15 A. YES, I DID.

16 Q. AND WHAT DATE WAS THAT? WHAT DATE DID YOU  
17 SEE HER?

18 A. THAT WAS ON THE 19TH.

19 Q. OKAY. MARCH THE 19TH, 1994?

20 A. YES.

21 Q. AND WHERE DID YOU SEE HER?

22 A. AT THE RICHLAND HOSPITAL.

23 Q. OKAY. AND DO YOU KNOW IF SHE WAS BROUGHT  
24 THERE FROM THE ORANGEBURG HOSPITAL?

25 A. YES. I WAS CALLED BY MY PARTNER, DR.

1 RICHARD BELL, WHO IS THE DIRECTOR OF OUR TRAUMA  
2 SERVICES, THAT THEY HAD RECEIVED THIS PATIENT AND  
3 THAT SHE HAD A VASCULAR INJURY.

4 Q. ALL RIGHT. WHAT TYPE OF VASCULAR INJURY  
5 DID SHE HAVE?

6 A. I WAS NOT INVOLVED IN HER INITIAL CARE  
7 WHEN OUR TRAUMA SERVICE RECEIVED HER. BUT WHAT SHE  
8 HAD WAS AN INJURY TO THE RIGHT SUBCLAVIAN ARTERY,  
9 WHICH IS THE MAIN BLOOD VESSEL THAT GOES TO THE RIGHT  
10 ARM AND PASSES BELOW THE COLLAR BONE, WHICH IS CALLED  
11 THE CLAVICLE. SO IT'S THE ARTERY BELOW THE COLLAR  
12 BONE.

13 Q. OKAY. AND THAT IS A MAJOR ARTERY?

14 A. YES, IT IS.

15 Q. OKAY. AND DID YOU TAKE A HISTORY OR HAVE  
16 A HISTORY AVAILABLE TO YOU AS TO WHAT CAUSED THE  
17 DAMAGE TO THAT ARTERY?

18 A. ALL OF THE HISTORY THAT I HEARD IN THIS  
19 CASE WAS OBTAINED SECONDHAND BECAUSE OF THE PATIENT'S  
20 -- THE SEVERITY OF HER INJURIES, THE FACT THAT SHE  
21 WAS ALREADY UNDER TREATMENT AND RESUSCITATION BY THE  
22 TRAUMA TEAM, AND BY THE TIME THAT I WAS CALLED IN,  
23 THEY HAD ALREADY ESTABLISHED THE TYPE OF INJURY THAT  
24 SHE HAD, AND THEY NEEDED A SPECIALIST TO HELP WITH  
25 THE REPAIR.

1 Q. ALL RIGHT. WAS THIS A GUNSHOT WOUND?

2 A. THIS WAS A GUNSHOT WOUND.

3 Q. ALL RIGHT.

4 A. IT FRACTURED THE COLLAR BONE AND INJURED  
5 THE ARTERY DIRECTLY BENEATH IT.

6 Q. ALL RIGHT, SIR. AND WHAT DID YOU DO TO GO  
7 ABOUT CORRECTING THAT DAMAGE TO THE ARTERY?

8 A. WELL, SHE -- WHEN I ARRIVED THERE, SHE WAS  
9 ALREADY IN THE PROCESS OF BEING PLACED UNDER GENERAL  
10 ANESTHESIA. IN OTHER WORDS, SHE HAD TO BE PUT TO  
11 SLEEP WITH A TUBE DOWN HER WINDPIPE TO MAINTAIN HER  
12 AIRWAY. AND SO SHE WAS ASLEEP. WE HAD TO MAKE AN  
13 INCISION ACROSS THE AREA WHERE THE GUNSHOT WOUND  
14 ENTERED THE UPPER RIGHT PART OF HER CHEST AND  
15 FRACTURED THE BONE. WE THEN HAD TO ACTUALLY REMOVE A  
16 PART OF HER COLLAR BONE SO THAT WE COULD EXPOSE THE  
17 AREA OF THE BLOOD VESSEL THAT WAS INJURED. THE TYPE  
18 OF INJURY WAS WHAT WE CALL A PARTIAL TRANSECTION.  
19 THAT MEANS THAT THE BULLET WENT THROUGH THE BLOOD  
20 VESSEL, AND IN THIS CASE AND -- AND PROBABLY WHAT --  
21 WHAT MAY VERY WELL HAVE SAVED HER LIFE, A BLOOD CLOT  
22 FORMED AT THAT POINT. AND SO WE WERE ABLE TO  
23 ACTUALLY REMOVE THAT SECTION OF THE ARTERY THAT WAS  
24 SO SEVERELY DAMAGED, AND WE REPLACED IT WITH A PIECE  
25 OF VEIN WHICH WE CALL A VEIN GRAFT. WE TOOK THE

1 PIECE OF VEIN FROM HER LEG.

2 Q. ALL RIGHT. SO WAS THIS A LIFE-THREATENING  
3 INJURY, THIS GUNSHOT WOUND TO HER CHEST?

4 A. YES, IT WAS. AND WHAT THEY ACTUALLY FOUND  
5 WHEN SHE FIRST CAME IN WAS THAT SHE HAD A GREAT DEAL  
6 OF BLOOD AROUND HER LEFT LUNG BECAUSE THIS ARTERY  
7 SITS RIGHT ACROSS THE DOME OF THE LUNG. AND SO WHEN  
8 THE ARTERY WAS INJURED, SHE HAD ALSO -- THE BULLET  
9 WENT INTO THE SPACE OCCUPIED BY THE RIGHT LUNG, AND  
10 SO THERE WAS A LOT OF BLEEDING INTO THAT AREA. SO  
11 SHE HAD NOT ONLY A COLLAPSED LUNG, BUT SHE HAD BLOOD  
12 IN THERE, AND THEY HAD TO PLACE A TUBE INTO HER CHEST  
13 IN ORDER TO DRAIN THAT OFF.

14 Q. DO YOU KNOW IF THE BULLET ONCE IT BROKE  
15 THE COLLAR BONE, OR BROKE THE CLAVICLE, WENT THROUGH  
16 THE ARTERY? WHAT WAS THE PROJECTORY?

17 A. OUT THROUGH THE -- OUT THROUGH THE RIGHT  
18 BACK, I UNDERSTAND.

19 Q. OKAY. SO THE BULLET WENT ALL THE WAY  
20 THROUGH HER BODY, HER TORSO?

21 A. YES. YES.

22 Q. ALL RIGHT, SIR. AND DID YOU NOTICE -- I  
23 REALIZE YOU -- MY UNDERSTANDING OF YOUR TESTIMONY IS  
24 YOU JUST WORKED ON THAT GUNSHOT WOUND TO THE CHEST,  
25 BUT DID YOU NOTICE ANY OTHER TRAUMA TO HER BODY?

1 A. EXCUSE ME?

2 Q. DID YOU NOTICE ANY OTHER INJURIES TO HER  
3 BODY?

4 A. YES. SHE ALSO HAD A GUNSHOT WOUND TO THE  
5 LEFT CHEEK WHICH BROKE THE LEFT JAW BONE, AND A  
6 SPECIALIST WAS AGAIN CALLED IN TO HELP -- TO HELP  
7 WITH THE REPAIR OF THAT PARTICULAR INJURY.

8 Q. OKAY.

9 A. THAT WAS --

10 Q. WOULD THAT HAVE BEEN DR. GREGORY SEXTON?

11 A. THAT'S RIGHT.

12 Q. AND WOULD YOU STATE WHETHER OR NOT YOU  
13 PRESCRIBED ANY MEDICATION, PAINKILLERS OR ANYTHING OF  
14 THAT NATURE?

15 A. I KNOW FROM HER MEDICAL RECORD THAT THE  
16 TRAUMA SERVICE DID PRESCRIBE PAIN MEDICATIONS FOR  
17 HER. SINCE WE HAVE A -- WE HAVE A TRAUMA TEAM, MUCH  
18 OF HER CARE, BOTH IN THE TIME BEFORE HER SURGERY AND  
19 AFTER HER SURGERY, WAS MANAGED BY MY PARTNERS WHO ARE  
20 TRAUMA SPECIALISTS.

21 Q. ALL RIGHT, SIR.

22 A. SO MY INVOLVEMENT WAS MORE RELATED TO THE  
23 IDENTIFICATION AND DIRECT REPAIR OF THE BLOOD VESSEL  
24 INJURY.

25 Q. ALL RIGHT, SIR. WOULD YOU CHARACTERIZE

1 THE SURGERY AS EMERGENCY SURGERY?

2 A. THIS WAS EMERGENCY SURGERY.

3 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS  
4 THAT MR. NEWSOME HAS FOR YOU.

5 C R O S S - E X A M I N A T I O N

6 BY MR. NEWSOME:

7 Q. JUST A COUPLE OF QUESTIONS. WHAT TIME DID  
8 YOU FIRST SEE HER? WAS IT MARCH 18TH, THAT EVENING?

9 A. IT WAS IN THE EVENING. I KNOW IT WAS IN  
10 THE LATE EVENING HOURS. I CAN'T GIVE YOU THE EXACT  
11 TIME.

12 Q. HAD THEY TRANSPORTED HER BY HELICOPTER TO  
13 THERE?

14 A. WHEN I WAS CALLED, SHE HAD ALREADY BEEN  
15 TRANSPORTED AND MUCH OF HER RESUSCITATION AND INITIAL  
16 EVALUATION HAD ALREADY BEEN PERFORMED, SO I WAS  
17 CALLED IN AFTER THE DIAGNOSIS OF THE VASCULAR INJURY  
18 HAD ALREADY BEEN MADE.

19 Q. YOU DON'T KNOW HOW SHE WAS TRANSPORTED?

20 A. I DON'T KNOW HOW SHE WAS TRANSPORTED.

21 Q. IS IT COMMON IN THESE TYPES OF INJURIES  
22 THAT YOU DESCRIBE FOR A PERSON TO LOSE CONSCIOUSNESS  
23 WITH THE LOSS OF BLOOD?

24 A. I DON'T KNOW AS TO WHETHER OR NOT THERE  
25 WAS A LOSS OF CONSCIOUSNESS OR NOT. I MEAN, AGAIN

1 WHEN I SAW HER --

2 Q. NO. IS IT COMMON FOR SOMEONE --

3 A. FOR SOMEONE TO --

4 Q. FOR SOMEONE WHO LOSES BLOOD TO LOSE  
5 CONSCIOUSNESS?

6 A. YES.

7 MR. NEWSOME: THANK YOU.

8 MR. BAILEY: MAY HE BE EXCUSED, YOUR  
9 HONOR?

10 THE COURT: YES, SIR. YOU MAY COME DOWN,  
11 AND I'LL EXCUSE YOU. THANK YOU SO MUCH, DOCTOR.

12 MR. BAILEY: HENRY OWENS, SENIOR.

13 THE CLERK: IF YOU WOULD, PLEASE COME  
14 FORWARD. PLEASE PUT YOUR LEFT HAND ON THE BIBLE, AND  
15 PLEASE RAISE YOUR RIGHT HAND. PLEASE STATE YOUR NAME  
16 FOR THE RECORD.

17 THE WITNESS: HENRY OWENS.

18 HENRY OWENS, SR.,

19 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
20 TESTIFIED AS FOLLOWS:

21 THE CLERK: PLEASE COME AROUND AND HAVE A  
22 SEAT.

23 D I R E C T E X A M I N A T I O N

24 BY MR. BAILEY:

25 Q. STATE YOUR FULL NAME, PLEASE.

1 A. HENRY DANIEL OWENS.

2 Q. OKAY. MR. OWENS, YOU'RE THE FATHER OF  
3 HENRY DANIEL OWENS, JR., THAT TESTIFIED EARLIER; IS  
4 THAT CORRECT?

5 A. YES, SIR.

6 Q. MR. OWENS, WHERE DO YOU LIVE?

7 A. 632-A SOUTH F.R. HUFF DRIVE.

8 Q. ALL RIGHT. AND IS THAT OFF OF JIM GLOVER?

9 A. RIGHT OFF OF JIM GLOVER ROAD.

10 Q. THAT PARALLELS THE RAILROAD TRACK AND ALSO  
11 PARALLELS HIGHWAY 601?

12 A. YES, SIR.

13 Q. AND IS WHERE YOU LIVE, IS THAT A MOBILE  
14 HOME?

15 A. I LIVE IN A MOBILE HOME.

16 Q. DID YOU ALSO OWN A HOUSE ON THIS SIDE OF  
17 THE MOBILE HOME?

18 A. YES, SIR, I DO.

19 Q. OKAY. AND BACK IN MARCH OF 1994, DID YOU  
20 LIVE IN THE MOBILE HOME?

21 A. YES, SIR.

22 Q. AND WHO LIVED IN THE HOUSE?

23 A. MY KIDS, MY TWO BOYS, HENRY AND KENNY.

24 Q. ALL RIGHT. AND DO YOU RECALL FRIDAY,  
25 MARCH THE 18TH, 1994?

1 A. I RECALL IT.

2 Q. ALL RIGHT. WERE YOU AT THE HOUSE OR AT  
3 THE TRAILER THAT NIGHT?

4 A. WELL, PART OF THE TIME I WAS AT THE HOUSE,  
5 AND I WAS AT THE TRAILER, BOTH PLACES.

6 Q. OKAY. AND WHO ELSE WAS AT THE HOUSE?

7 A. WELL, KELSEY.

8 Q. IS THAT KELSEY PEARCE?

9 A. THAT'S RIGHT. KELSEY PEARCE, MY SON  
10 HENRY, AND HERMAN.

11 Q. AND YOU ARE INDICATING HERMAN HUGHES, THE  
12 DEFENDANT HERE?

13 A. THAT'S HIM THERE.

14 Q. ALL RIGHT. AND YOU ARE SOME RELATION TO  
15 KELSEY PEARCE; IS THAT RIGHT?

16 A. YES, SIR. I'M HIS GRANDFATHER.

17 Q. YOU'RE HIS WHAT?

18 A. I'M HIS GRANDFATHER.

19 Q. YOU'RE KELSEY PEARCE'S GRANDFATHER?

20 A. YES.

21 Q. OKAY. NOW, AT SOME POINT IN TIME, DID  
22 YOUR SON LEAVE THE HOUSE?

23 A. YES. I COULDN'T GIVE A DEFINITE TIME, BUT  
24 WE -- IT'S AROUND -- I WOULD SAY BETWEEN ABOUT 7:30  
25 OR 8:00, SOMETHING LIKE THAT.

1 Q. ALL RIGHT.

2 A. BUT I -- ME AND HIM WALKED OUT THE FRONT  
3 DOOR TOGETHER.

4 Q. LET ME ASK YOU THIS FIRST. IF YOU WALK  
5 OUT ONTO YOUR FRONT PORCH, NOT THE TRAILER, THE HOUSE  
6 WHERE YOUR TWO BOYS LIVED THERE LAST YEAR, AND IT'S  
7 WINTERTIME, SAY MARCH, COULD YOU SEE THE BLUE  
8 DIAMOND?

9 A. YES, SIR. YOU COULD SEE THE BLUE DIAMOND  
10 FROM THERE.

11 Q. IF YOU WAS STANDING ON YOUR FRONT PORCH?

12 A. IF YOU WERE STANDING ON THE OPPOSITE SIDE  
13 TOWARDS THE TRAILER, YOU COULD SEE THE BLUE DIAMOND.

14 Q. ALL RIGHT. AND IT'S ACROSS THE ROAD AND  
15 ACROSS THE RAILROAD TRACKS?

16 A. YES, SIR. AND 601.

17 Q. ALL RIGHT. NOW, AT THE TIME YOU AND YOUR  
18 SON WALKED OUT ON THE FRONT PORCH, WHAT WAS THE  
19 REASON YOU WALKED OUT THERE?

20 A. NO. HE WAS LEAVING TO GO.

21 Q. DID YOU KNOW WHERE HE WAS GOING?

22 A. WELL, HE SAID HE WAS GOING TO ORANGEBURG  
23 BECAUSE I DEFINITELY TOLD HIM TO BE CAREFUL.

24 Q. OKAY. ALL RIGHT. AND DID YOU SEE HIM  
25 LEAVE?

1 A. YES, SIR.

2 Q. OKAY. AND WHAT CAR DID HE LEAVE IN?

3 A. HE LEFT IN -- I BELIEVE IT WAS AN '87  
4 TOYOTA COROLLA.

5 Q. WHAT COLOR WAS IT?

6 A. BURGUNDY.

7 Q. THAT'S HIS CAR. DID HE LEAVE BY HIMSELF?

8 A. YEAH, HE LEFT BY HIMSELF.

9 Q. WOULD YOU TELL THE JURY WHAT DIRECTION HE  
10 DROVE OFF IN?

11 A. WELL, HE PULLED OFF FROM MY HOUSE FACING  
12 JIM GLOVER, WHICH WAS HUFF DRIVE AND 601. HE TURNED  
13 TO THE RIGHT HEADING TOWARD OR GOING OUT TO THE PARK  
14 TO GO TO ORANGEBURG.

15 Q. ALL RIGHT. AND IS THAT -- JIM GLOVER  
16 ROAD, DOES THAT PARALLEL THE RAILROAD TRACK AND CUT  
17 ACROSS THE TRACK?

18 A. YEAH. THAT'S RIGHT. PARALLEL TO THE  
19 RAILROAD TRACK.

20 Q. NOW, AFTER YOUR SON LEFT, DID YOU OBSERVE  
21 ANYTHING ELSE AS FAR AS THE CAR?

22 A. AFTER MY SON LEFT, I WALKED OUT AND WALKED  
23 TO MY HOUSE. WHEN I WALKED INTO MY BEDROOM, I SAW A  
24 CAR BACKING OUT FROM BEHIND THE HOUSE, AND I WAS  
25 WONDERING WHO IT WAS.

1 Q. COULD YOU TELL WHAT KIND OF CAR IT WAS?

2 A. WELL, BECAUSE IT WAS DARK AND IN A SHADED  
3 AREA, I COULDN'T TELL. I KNEW THE CAR WAS DARK, BUT  
4 WHAT COLOR, I COULDN'T TELL EXACT COLOR.

5 Q. SO THE CAR PULLED OUT FROM THE OPPOSITE  
6 SIDE OF YOUR HOUSE?

7 A. THE OPPOSITE SIDE OF MY PROPERTY THERE.

8 Q. OKAY.

9 A. AND IT WENT ON AROUND.

10 Q. NOW, WHERE DID THAT CAR GO?

11 A. IT HEADED BACK TOWARDS TOWN.

12 Q. OKAY. SO IT WOULD HAVE TAKEN A LEFT ON  
13 JIM GLOVER DRIVE?

14 A. THAT'S RIGHT.

15 Q. OKAY. HOW LONG -- ABOUT HOW LONG AFTER  
16 YOUR SON PULLED OUT DID THIS OTHER CAR PULL OUT?

17 A. WELL, SIR, BETWEEN THREE AND FIVE MINUTES,  
18 SOMEWHERE IN THERE.

19 Q. ALL RIGHT. NOW, WHERE -- WHEN AND WHERE  
20 IS THE LAST PLACE YOU SAW EITHER KELSEY PEARCE OR  
21 HERMAN HUGHES THAT NIGHT?

22 A. WELL, THAT WAS THE LAST PLACE WHERE I SAW  
23 HIM, AT THE HOUSE THERE WHEN I WALKED OUT THE DOOR.

24 Q. OKAY. WHAT WERE HERMAN HUGHES AND KELSEY  
25 PEARCE DOING AT THE TIME YOUR SON LEFT AND YOU WALKED

1 OUT ON THE PORCH WITH HIM?

2 A. THEY WAS SITTING THERE, AND I WAS LOOKING  
3 AT THE T.V. I DON'T KNOW. I DIDN'T PAY ATTENTION TO  
4 SEE WHAT ELSE THEY WERE DOING AFTER I LEFT THE HOUSE  
5 THEY WERE IN.

6 Q. DID YOU OBSERVE ANY OF THESE YOUNG MEN  
7 DRINKING?

8 A. NOT AT THE TIME I WAS THERE.

9 Q. DID YOU HAVE ANY CONVERSATION WITH HERMAN  
10 HUGHES THAT NIGHT?

11 A. I SAID I THINK IT WAS ABOUT TWO OR THREE  
12 WORDS TO HIM.

13 Q. ALL RIGHT. AND COULD YOU TELL WHETHER OR  
14 NOT HERMAN HUGHES WAS INTOXICATED WHEN YOU TALKED TO  
15 HIM?

16 A. WELL, AT THE TIME, HE DIDN'T SEEM  
17 INTOXICATED TO ME.

18 Q. WHAT TIME OF THE EVENING WAS IT WHEN YOU  
19 TALKED TO HERMAN HUGHES?

20 A. WELL, THAT WAS -- I WOULD SAY RIGHT AROUND  
21 7 OR 8 O'CLOCK, SOMEWHERE AROUND THAT TIME.

22 Q. TO THE BEST OF YOUR KNOWLEDGE, HERMAN  
23 HUGHES WAS NOT INTOXICATED AT THAT TIME?

24 A. THAT I DIDN'T SEE, NO.

25 Q. HOW ABOUT KELSEY?

1           A.       KELSEY, I DIDN'T TALK TO HIM TOO MUCH. HE  
2 WAS IN THE OPPOSITE ROOM LOOKING AT THE T.V.

3           MR. BAILEY: PLEASE ANSWER ANY QUESTIONS  
4 MR. NEWSOME MAY HAVE.

5           C R O S S - E X A M I N A T I O N  
6 BY MR. NEWSOME:

7           Q.       I'M A LITTLE BIT CONFUSED. WHEN WAS THE  
8 LAST TIME YOU SAW HERMAN AND KELSEY? WHEN WAS THE  
9 LAST TIME YOU SAW THEM?

10          A.       BETWEEN 7 AND 8 O'CLOCK.

11          Q.       ALL RIGHT.

12          A.       I DON'T KNOW THE EXACT TIME BECAUSE I  
13 DIDN'T HAVE MY WATCH ON.

14          Q.       AND THIS WAS EARLIER BEFORE YOU AND YOUR  
15 SON WALKED OUT ON THE PORCH AND LEFT?

16          A.       JUST BEFORE -- ME AND HIM WALKED OUT RIGHT  
17 AFTER I SAW THEM.

18          Q.       YOU WALKED -- SO YOU LEFT THEM IN THE  
19 HOUSE?

20          A.       THAT'S RIGHT.

21          Q.       THAT'S WHAT YOU'RE SAYING? OKAY. DID YOU  
22 SEE THE GUN THAT YOUR SON HAD GIVEN THEM TO USE IN  
23 THE ARMED ROBBERY?

24          A.       FIRST TIME I'VE SEEN IT.

25          Q.       YOU DIDN'T KNOW YOUR SON HAD THE GUN?

1 A. I DIDN'T KNOW IT.

2 Q. DID YOU SEE THE 15 CANS OF BEER THAT YOUR  
3 SON LET THESE BOYS DRINK IN HIS HOUSE?

4 A. I DIDN'T SEE ANYTHING AT THAT TIME. I  
5 COME IN THROUGH THE FRONT DOOR, AND I DIDN'T SEE  
6 ANYTHING.

7 Q. OKAY. AND KELSEY IS YOUR GRANDSON?

8 A. THAT'S RIGHT.

9 Q. AND DANIEL, JUNIOR, OR HENRY, AS YOU CALL  
10 HIM, IS YOUR SON?

11 A. THAT'S RIGHT.

12 Q. DID YOU SEE THEM DIVIDE UP THE MONEY THEY  
13 TOOK WHEN THEY ROBBED THAT STORE?

14 A. I DIDN'T SEE ANY MONEY INVOLVED AT ALL.

15 Q. BUT THAT WAS BETWEEN SEVEN AND EIGHT, BUT  
16 YOU DON'T KNOW --

17 A. I SAY AROUND THAT TIME. I DIDN'T LOOK AT  
18 MY WATCH, BUT IT WAS GETTING CLOSE TO BE DARK, SO  
19 THAT'S WHY I SAY IT WAS ABOUT THAT TIME.

20 Q. ARE YOU SURE ABOUT THAT?

21 A. IT WAS GETTING TO BE DARK.

22 MR. NEWSOME: THANK YOU. NOTHING FURTHER.

23 THE COURT: YOU MAY COME DOWN. THANK YOU.

24 MR. BAILEY: ROBERT SHIRE.

25 THE CLERK: IF YOU WOULD PLEASE PLACE YOUR

1 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.

2 PLEASE STATE YOUR NAME FOR THE RECORD.

3 THE WITNESS: ROBERT COLTON SHIRE.

4 ROBERT SHIRE,

5 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,

6 TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. BAILEY:

9 Q. MR. SHIRE, BACK IN MARCH OF '94, WHERE  
10 WERE YOU EMPLOYED?

11 A. WITH THE CALHOUN COUNTY SHERIFF'S OFFICE  
12 AS A DEPUTY.

13 Q. ALL RIGHT, SIR. AND WOULD YOU STATE  
14 WHETHER OR NOT YOU HAD OCCASION ON MARCH THE 18TH TO  
15 GO TO THE BLUE DIAMOND CASINO?

16 A. YES, SIR, I DID.

17 Q. ALL RIGHT. WHERE WERE YOU WHEN YOU FOUND  
18 OUT SOMETHING HAD HAPPENED AT THE BLUE DIAMOND?

19 A. I WAS IN THE TOWN LIMITS OF CAMERON ON 176  
20 COMING BACK TOWARDS ST. MATTHEWS --

21 Q. OKAY.

22 A. -- WHEN WE RECEIVED THE CALL.

23 Q. ALL RIGHT. AND WHEN YOU RECEIVED THE  
24 CALL, DID YOU GO IMMEDIATELY TO THE BLUE DIAMOND?

25 A. YES, SIR, I DID.

1 Q. OKAY. AND THAT IS LOCATED IN CALHOUN  
2 COUNTY?

3 A. YES, SIR, IT IS.

4 Q. ALL RIGHT. NOW, WHY WERE YOU DISPATCHED  
5 OR WHAT WAS THE REASON YOU WENT TO THE BLUE DIAMOND?

6 A. WE RECEIVED A CALL FROM A DISPATCHER  
7 STATING THAT THERE HAD BEEN A SHOOTING AT THE BLUE  
8 DIAMOND CASINO.

9 Q. OKAY. NOW, WHEN YOU ARRIVED AT THE BLUE  
10 DIAMOND, WERE THERE OTHER OFFICERS AHEAD OF YOU?

11 A. YES, SIR, THERE WERE.

12 Q. OKAY. WHO GOT THERE FIRST?

13 A. OFFICER JAMES GREEN WITH ST. MATTHEWS,  
14 OFFICER CAPERS WANNAMAKER, WHO IS A SERGEANT WITH  
15 CALHOUN COUNTY, AND TROOPER KEN HASTY.

16 Q. OKAY. WERE THEY INSIDE OR OUTSIDE WHEN  
17 YOU GOT THERE?

18 A. THEY WERE INSIDE.

19 Q. OKAY. AND WHAT DID YOU DO WHEN YOU  
20 ARRIVED?

21 A. WHEN I ARRIVED, I ENTERED THROUGH THE BACK  
22 DOOR WHICH THEY HAD OPENED TO GAIN ENTRY AND WALKED  
23 THROUGH INTO THE CASINO AREA WHERE THE VICTIMS WERE.

24 Q. OKAY. CAN YOU DESCRIBE ABOUT HOW BIG THAT  
25 PLACE IS INSIDE OF IT, IN RELATION, SAY, TO THIS

1 COURTROOM?

2 A. I WOULD SAY IT'S PROBABLY ABOUT AS -- AS  
3 WIDE AS THIS WALL OVER HERE TO THE DOOR AND PROBABLY  
4 ABOUT AS LONG.

5 Q. THIS WALL HERE WHERE THE JURY IS?

6 A. YES, SIR.

7 Q. OVER TO THIS DOOR HERE?

8 A. YES, SIR. TO RIGHT THERE. IT'S ABOUT  
9 THAT SIZE OF THAT AREA RIGHT THERE. MAYBE A LITTLE  
10 BIT MORE BACK THIS WAY.

11 Q. OKAY.

12 A. I DON'T KNOW.

13 Q. SO ABOUT THIS AREA, FROM BETWEEN ME AND  
14 THE JUDGE OVER HERE?

15 A. YES, SIR.

16 Q. IT'S A REAL SMALL PLACE; IS THAT RIGHT?

17 A. YES, SIR. IT'S NOT BIG AT ALL.

18 Q. WHAT DID YOU OBSERVE WHEN YOU WENT INSIDE  
19 THE BLUE DIAMOND?

20 A. WHEN I WALKED INSIDE, I OBSERVED A FEMALE  
21 SITTING IN A CHAIR. AT THAT TIME, I THOUGHT SHE WAS  
22 DECEASED. SHE WAS SITTING IN THE CHAIR, WASN'T  
23 MOVING, AND I COULD SEE WHAT APPEARED TO BE A BULLET  
24 HOLE IN HER FACE. I THEN HEARD HER -- I THOUGHT SHE  
25 WAS DECEASED UNTIL I HEARD HER SAY THAT SHE WANTED

1 HER DADDY, AND AT THAT TIME I REALIZED THAT SHE WAS  
2 STILL ALIVE. AND THEN I HEARD SOME RUCKUS IN THE  
3 BACKGROUND, AND I LOOKED OVER, AND I SAW ANOTHER  
4 VICTIM LAYING ON THE FLOOR BEHIND THE FEMALE.

5 Q. OKAY. NOW, WAS THE PERSON ON THE FLOOR,  
6 AT THE TIME YOU OBSERVED HIM, WAS -- WAS HE ALIVE AT  
7 THAT TIME?

8 A. HE -- AT THAT TIME, HE WAS STILL ALIVE.  
9 HE WAS -- HE WAS TWITCHING AND MAKING A GURGLING  
10 SOUND AT THAT TIME.

11 Q. OKAY. COULD YOU TELL WHAT INJURIES HE  
12 HAD?

13 A. IT APPEARED THAT HE HAD A GUNSHOT WOUND TO  
14 THE HEAD FROM WHAT I COULD SEE.

15 Q. OKAY. NOW, THE YOUNG GIRL THAT YOU SAW  
16 SITTING BEHIND THE DESK, WERE HER EYES OPEN OR SHUT  
17 WHEN YOU WERE IN THERE TALKING TO HER AND SHE SAID,  
18 "I WANT MY DADDY"?

19 A. I BELIEVE HER EYES WERE CLOSED WHEN I CAME  
20 IN.

21 Q. OKAY. NOW, IN THE COURSE OF BEING THERE,  
22 AS PART OF YOUR DUTIES, DID YOU MAKE A LIST OF THE  
23 OTHER LAW ENFORCEMENT OFFICERS THAT WERE PRESENT?

24 A. YES, SIR.

25 Q. AND THE EMS PEOPLE THAT WERE PRESENT?

1 A. YES, SIR.

2 MR. BAILEY: HOLD ON ONE SECOND, PLEASE.

3 BY MR. BAILEY:

4 Q. LET ME HAND YOU A LIST AND ASK YOU IF THIS  
5 IS IN YOUR HANDWRITING AND IF THIS IS A LIST OF THE  
6 PEOPLE THAT WERE PRESENT AT THE BLUE DIAMOND IN THEIR  
7 OFFICIAL CAPACITY?

8 A. YES, SIR. THIS IS THE LIST, AND THIS IS  
9 ALSO MY HANDWRITING.

10 Q. OKAY. AND DID YOU GIVE THIS LIST TO THE  
11 SLED AGENT, MR. DERRICK?

12 A. YES, SIR, I DID.

13 Q. AND WHAT WAS THE REASON THAT YOU MADE A  
14 LIST OF THE PEOPLE THAT WERE PRESENT?

15 A. I WAS ASKED TO MAKE A LIST OF EVERYONE  
16 THAT WAS THERE SO WE COULD KEEP ACCOUNT OF WHO ALL  
17 HAD CAME INTO THE CRIME SCENE.

18 MR. BAILEY: ALL RIGHT, SIR. YOUR HONOR,  
19 I WOULD OFFER THIS.

20 MR. NEWSOME: COULD I SEE IT? WITHOUT  
21 OBJECTION.

22 THE COURT: WITHOUT OBJECTION.

23 (STATE'S EXHIBIT NUMBER 10  
24 MARKED FOR IDENTIFICATION AND  
25 ENTERED INTO EVIDENCE.)

1 BY MR. BAILEY:

2 Q. ALL RIGHT, SIR. OTHER THAN THIS GIRL  
3 SAYING SHE WANTED HER FATHER, WERE YOU ABLE TO ENGAGE  
4 IN ANY KIND OF MEANINGFUL CONVERSATION WITH HER ABOUT  
5 WHAT OCCURRED?

6 A. NO, SIR, I WASN'T. NOT AT THAT TIME.

7 Q. WHO TOOK CHARGE OF THE INVESTIGATION FOR  
8 THE SHERIFF'S DEPARTMENT?

9 A. OFFICER EARL RHUDY WAS OUR INVESTIGATING  
10 OFFICER --

11 Q. OKAY.

12 A. -- AT THAT TIME.

13 Q. WERE YOU ON THE SCENE UNTIL MR. RHUDY  
14 ARRIVED?

15 A. YES, SIR, I WAS.

16 Q. AND WERE YOU ON THE SCENE WHEN EMS GOT  
17 THERE?

18 A. YES, SIR, I WAS.

19 Q. OKAY. AND WAS THE CRIME SCENE SECURE  
20 UNTIL -- UNTIL THE BODY -- THE BODY AND THE YOUNG  
21 WOMAN WERE TAKEN OUT?

22 A. YES, SIR.

23 Q. OKAY.

24 A. THE CRIME SCENE WAS SECURED.

25 Q. IN YOUR PRESENCE, OTHER THAN MOVING

1 FURNITURE TO GET TO THE VICTIMS, WAS THE CRIME SCENE  
2 DISTURBED IN ANY WAY?

3 A. NO, SIR.

4 Q. DID YOU IN THE COURSE OF YOUR DUTIES AS  
5 DEPUTY SHERIFF DETERMINE WHETHER OR NOT ANYTHING HAD  
6 BEEN TAKEN EITHER FROM INSIDE OR OUTSIDE THE BLUE  
7 DIAMOND?

8 A. YES, SIR. WE DETERMINED THAT I THINK SOME  
9 MONEY WAS TAKEN. ALSO A VEHICLE THAT BELONGED TO THE  
10 VICTIM WAS STOLEN DURING THE COURSE OF THE CRIME.

11 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS  
12 DEFENSE MAY HAVE.

13 C R O S S - E X A M I N A T I O N  
14 BY MR. NEWSOME:

15 Q. DEPUTY SHIRE, YOU WERE AT THE SHERIFF'S  
16 DEPARTMENT AND GOT THE CALL OR YOU WERE SOMEWHERE  
17 ELSE?

18 A. NO, SIR. I WAS IN CAMERON, THE TOWN LIMIT  
19 OF CAMERON, WHICH IS ON 176.

20 Q. AND YOU GOT A CALL FROM DISPATCH SAYING TO  
21 GO TO THE BLUE DIAMOND CASINO?

22 A. YES, SIR.

23 Q. HOW LONG WAS IT BEFORE YOU GOT THERE?

24 A. WELL, SIR, I RAN CODE THREE. THAT WOULD  
25 BE A CODE THREE CALL. I RAN CODE THREE. I WOULD SA

1 IT TOOK ME APPROXIMATELY FOUR OR FIVE MINUTES TO BE  
2 ON THE SCENE.

3 Q. DO YOU KNOW ABOUT WHAT TIME THE CALL CAME  
4 IN TO GO TO THE BLUE DIAMOND?

5 A. I BELIEVE IT WAS PROBABLY AROUND 7:30. I  
6 DON'T RECALL EXACTLY, BUT SOMEWHERE AROUND 7:00 OR  
7 7:30.

8 Q. IF I SHOWED YOU A COPY OF Y'ALL'S DISPATCH  
9 LOG, WOULD THAT REFRESH YOUR MEMORY?

10 A. YES, SIR. (WITNESS REVIEWS DOCUMENT.)  
11 OKAY.

12 Q. WHAT TIME WOULD THAT BE, THEN?

13 A. ABOUT 8:18.

14 Q. ABOUT 18 MINUTES AFTER 8:00 THAT NIGHT?

15 A. YES, SIR.

16 Q. AND THAT -- YOU WEREN'T AT THE DISPATCH,  
17 SO YOU DON'T KNOW WHETHER THAT WAS FROM A PHONE CALL  
18 OR THE PANIC BUTTON THAT WAS THERE?

19 A. I WASN'T AT THE DISPATCH. I DON'T KNOW.

20 Q. ALL RIGHT. AND IT TOOK YOU ABOUT FOUR OR  
21 FIVE MINUTES TO GET THERE?

22 A. YES, SIR.

23 MR. NEWSOME: THANK YOU. NO FURTHER  
24 QUESTIONS.

25 THE COURT: YOU NEED ANY REDIRECT?

1 MR. BAILEY: NO, SIR.

2 THE COURT: YOU MAY COME DOWN. THIS  
3 WITNESS MAY BE EXCUSED.

4 MR. BAILEY: PAT THORNAL.

5 THE CLERK: PLEASE PLACE YOUR LEFT HAND ON  
6 THE BIBLE. PLEASE RAISE YOUR RIGHT HAND. PLEASE  
7 STATE YOUR NAME FOR THE RECORD.

8 THE WITNESS: PATRICIA THORNAL.

9 THE CLERK: SPELL THE LAST NAME FOR US,  
10 PLEASE.

11 THE WITNESS: T-H-O-R-N-A-L.

12 PATRICIA THORNAL,  
13 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
14 TESTIFIED AS FOLLOWS:

15 THE CLERK: PLEASE HAVE A SEAT.

16 D I R E C T E X A M I N A T I O N

17 BY MR. BAILEY:

18 Q. MS. THORNAL, WHERE DO YOU LIVE?

19 A. I'M PRESENTLY RESIDING IN SUMMERVILLE.

20 Q. OKAY. AND BACK IN MARCH OF '94, WHERE DID  
21 YOU LIVE?

22 A. I LIVED IN ST. MATTHEWS.

23 Q. WHERE IN ST. MATTHEWS?

24 A. ON HIGHWAY 601 BEHIND THE BLUE DIAMOND  
25 CASINO.

1 Q. AND DID YOU OPERATE THE BLUE DIAMOND  
2 CASINO AT THAT TIME?

3 A. YES, SIR.

4 Q. AND WOULD YOU STATE WHETHER OR NOT KEN  
5 PRESLEY WORKED FOR YOU IN MARCH OF 1994?

6 A. YES, SIR.

7 Q. OKAY. AND WHAT ABOUT MRS. JUDY OSBORNE?  
8 DID SHE ALSO WORK FOR YOU?

9 A. YES, SHE DID. SHE WAS MANAGING THE PLACE  
10 FOR ME THEN.

11 Q. AND HOW MUCH MONEY WAS NORMALLY KEPT ON  
12 HAND THERE TO MAKE CHANGE AND TO RUN THE CASINO?

13 A. ANYWHERE FROM PROBABLY 400 TO 900.

14 Q. OKAY. AND CALLING YOUR ATTENTION TO THE  
15 EVENING OF MARCH 18TH, 1994, DID YOU BECOME AWARE AT  
16 SOME POINT THAT SOMETHING HAD HAPPENED AT THE BLUE  
17 DIAMOND?

18 A. YES, SIR.

19 Q. AND HOW -- HOW FAR IS THE TRAILER THAT YOU  
20 LIVE IN FROM THE ACTUAL BLUE DIAMOND BUILDING?

21 A. I'M NOT VERY GOOD WITH DISTANCE, BUT I  
22 WOULD SAY ABOUT 50 FEET.

23 Q. FIFTY FEET?

24 A. SOMETHING IN THAT NEIGHBORHOOD, YES, SIR.

25 Q. OKAY. ALL RIGHT. AND WHAT DID YOU

1 OBSERVE THAT NIGHT?

2 A. WELL, I DIDN'T KNOW ANYTHING UNTIL I SAW  
3 BLUE LIGHTS, YOU KNOW, REFLECTING IN MY BLINDS, AND I  
4 WENT TO THE DOOR AND -- AND ASKED, YOU KNOW, THE  
5 OFFICERS WHAT WAS WRONG. AND THEY SAID THERE HAD  
6 BEEN A SHOOTING AND THEY COULDN'T GET THE DOOR OPEN.

7 Q. OKAY.

8 A. SO I GOT MY KEY AND WENT AND OPENED THE  
9 DOOR FOR THEM.

10 Q. AND WHEN YOU OPENED THE DOOR FOR THE  
11 OFFICERS, DID YOU GO INSIDE?

12 A. YES, I DID.

13 Q. AND WOULD YOU TELL THE JURY GENERALLY WHAT  
14 YOU OBSERVED WHEN YOU GOT INSIDE?

15 A. KELLY, THE -- THE GIRLFRIEND, WAS SITTING  
16 AT THE DESK, AND THERE WAS A LOT OF BLOOD, YOU KNOW,  
17 ON THE DESK AND ON HER. AND KEN WAS ON THE FLOOR  
18 DIRECTLY SORT OF BESIDE HER, YOU KNOW, A LITTLE BIT  
19 BEHIND -- BACK BESIDE HER, AND HE WAS IN A SLOUCHED  
20 POSITION ON THE FLOOR.

21 Q. ALL RIGHT. WAS THERE BLOOD THERE ALSO?

22 A. YES. A LOT OF BLOOD.

23 Q. AND HOW LONG DID YOU STAY INSIDE THE BLUE  
24 DIAMOND?

25 A. UNTIL THE SLED AGENTS CAME AND TOLD US TO

1 YOU KNOW -- YOU KNOW, TO LEAVE THE AREA.

2 Q. OKAY. WERE YOU PRESENT WHEN THE  
3 AMBULANCES TOOK KEN PRESLEY --

4 A. YES, SIR.

5 Q. -- AND KELLY HOFFMAN OUT?

6 A. YES, SIR.

7 Q. SO YOU WERE THERE THE ENTIRE TIME?

8 A. YES, SIR.

9 Q. THAT THEY -- THAT KELLY HOFFMAN AND KEN  
10 PRESLEY WERE IN THERE?

11 A. RIGHT.

12 Q. WHAT DID YOU DO DURING THE TIME THAT YOU  
13 WERE IN THERE FROM THE TIME YOU OPENED THE DOOR FOR  
14 THE OFFICERS UNTIL THE TIME THE AMBULANCE CAME AND  
15 TOOK KELLY HOFFMAN AND KEN PRESLEY OUT?

16 A. I FOLLOWED THE OFFICERS IN, AND I WENT  
17 DIRECTLY TO KEN ON THE FLOOR, AND I TRIED TO SEE IF  
18 HE HAD A PULSE, AND I -- YOU KNOW, IT WAS HARD TO GET  
19 A PULSE, YOU KNOW. AND I DON'T KNOW IF HE HAD ONE OR  
20 NOT AT THAT TIME. BUT I TRIED TO GET A PULSE. AND  
21 THEN ALL I DID WAS START TALKING TO HIM, YOU KNOW. I  
22 DIDN'T KNOW IF -- IF HE COULD HEAR ME, BUT I JUST,  
23 YOU KNOW, TALKED TO HIM, YOU KNOW.

24 Q. ALL RIGHT.

25 A. AND THEN THE -- I GUESS IT WAS ABOUT A

1 MINUTE PASSED, AND EMS CAME IN, AND THEY TOOK OVER,  
2 AND THEY TOLD ME TO GO TALK TO KELLY, YOU KNOW, WHILE  
3 THEY WERE WORKING ON KEN. SO I WENT OVER AND TRIED  
4 TO CONSOLE HER AND JUST TALK TO HER AND KEEP HER  
5 ALERT, YOU KNOW. AND SO THAT WAS BASICALLY WHAT I  
6 DID THEN FROM THEN ON, JUST STAYED THERE BY KELLY.

7 Q. ALL RIGHT. AND WHERE WAS SHE SEATED, AT  
8 THE DESK --

9 A. SHE WAS SEATED AT THE DESK.

10 Q. -- AT THAT TIME?

11 A. IN THE CHAIR, UH-HUH.

12 Q. AND WAS SHE CONSCIOUS THE ENTIRE TIME YOU  
13 WERE THERE?

14 A. YES, BUT I -- I MEAN, I'M NOT A DOCTOR OR  
15 ANYTHING.

16 Q. UH-HUH.

17 A. BUT I WOULD SAY SHE WAS DEFINITELY IN  
18 SHOCK.

19 Q. OKAY.

20 A. YEAH.

21 Q. WAS SHE COHERENT? COULD YOU TALK TO HER?

22 A. YES, I WAS TALKING TO HER, UH-HUH.

23 Q. AND WERE YOU ABLE TO FIND OUT ANYTHING  
24 FROM HER AS FAR AS WHAT HAPPENED?

25 A. I WOULD ASK HER QUESTIONS, AND SHE WOULD

1 GIVE ME LIKE JUST A BRIEF ONE-WORD ANSWER. YOU KNOW,  
2 I BASICALLY ASKED HER IF SHE SAW WHO DID IT, AND SHE  
3 SAID YES, AND I SAID, DID YOU KNOW HIM, AND SHE SAID  
4 NO, AND THEN I ASKED HER HOW MANY IT WAS, AND SHE  
5 SAID ONE. AND THAT'S BASICALLY -- YOU KNOW, OTHER  
6 THAN THAT, SHE JUST KEPT ASKING ME ABOUT KEN, AND I  
7 WOULD TELL HER, YOU KNOW, THAT THEY WERE WORKING ON  
8 HIM THEN.

9 Q. ALL RIGHT.

10 A. BUT THAT WAS ABOUT ALL THAT SHE SAID --

11 Q. DID YOU EXAMINE --

12 A. -- TO ME.

13 Q. DID YOU EXAMINE -- WHERE WAS THE MONEY  
14 KEPT AT THE BLUE DIAMOND?

15 A. IT WAS IN THE DESK DRAWER. IT WAS A  
16 LOCKED DRAWER THAT WAS KEPT IN THE DESK.

17 Q. CASH DRAWER OF THE DESK?

18 A. UH-HUH.

19 Q. AND DID YOU OBSERVE THE CASH DRAWER EITHER  
20 WHILE YOU WERE IN THERE OR LATER ON THAT NIGHT?

21 A. LATER ON THAT NIGHT, I DID.

22 Q. OKAY. WAS THERE ANY MONEY IN THERE?

23 A. NO, IT WASN'T. IT WAS SOME CHANGE. NOW,  
24 I'LL REPHRASE THAT. IT WAS SOME CHANGE IN THERE,  
25 SOME PENNIES AND NICKELS, AND YOU KNOW, PROBABLY

1 THREE DOLLARS IN CHANGE.

2 Q. OKAY. AND TO THE BEST OF YOUR KNOWLEDGE,  
3 THERE WOULD HAVE BEEN 400 OR 450 IN THE DRAWER  
4 NORMALLY?

5 A. YES, SIR. YES, SIR. WE FIGURED IT UP,  
6 YOU KNOW, BY OUR BOOKS, YOU KNOW, AFTERWARDS, AND IT  
7 WAS -- IT HAD TO BE ESTIMATED, BUT IT WAS BETWEEN 400  
8 AND 450.

9 Q. OKAY. DID -- FROM THE TIME YOU LEFT KEN  
10 PRESLEY UNTIL THE TIME -- TO GO SEE KELLY HOFFMAN  
11 UNTIL THE TIME EMS TOOK HER OFF, DID YOU EVER LEAVE  
12 HER SIDE?

13 A. NO.

14 MR. BAILEY: OKAY. ANSWER ANY QUESTIONS  
15 MR. NEWSOME HAS FOR YOU.

16 C R O S S - E X A M I N A T I O N

17 BY MR. NEWSOME:

18 Q. WERE YOU THE FIRST ONE IN? DID YOU GET  
19 THERE BEFORE THE OFFICERS AND GO INSIDE?

20 A. NO. I OPENED THE DOOR FOR THEM, AND THEN  
21 I FOLLOWED THEM IN. IT WAS TWO OFFICERS. I DON'T  
22 REMEMBER, YOU KNOW, FACES OR ANYTHING HARDLY.

23 Q. SURE.

24 A. BUT I FOLLOWED TWO OFFICERS IN.

25 Q. WERE THE LIGHTS ON OR OFF?

1           A.       THEY WERE ON IN THE FRONT, NOT THE BACK  
2 PART.

3           Q.       NOW, YOU LIVE 50 FEET AWAY?

4           A.       I WOULD SAY APPROXIMATELY 50 FEET.

5           Q.       YOU DIDN'T HEAR ANY GUNSHOTS?

6           A.       NO, I DIDN'T.

7           Q.       IS IT HARD TO HEAR SOUNDS FROM WHERE YOU  
8 LIVE?

9           A.       I HAD THE T.V. ON AND MY MICROWAVE WAS  
10 GOING, SO THAT MOTOR WAS GOING, BUT I DID NOT HEAR  
11 ANY SHOTS.

12          Q.       OKAY.

13          A.       AND YOU HAD THE NORMAL ROAD TRAFFIC, SO  
14 THAT MAY HAVE --

15          Q.       WAS THE ROAD TRAFFIC PRETTY LOUD THERE?

16          A.       AT TIMES, YOU KNOW, TRUCKS AND ALL GOING  
17 BY.

18                   MR. NEWSOME:   THANK YOU.   THAT'S ALL.

19                   MR. BAILEY:   NO REDIRECT, YOUR HONOR.

20                   THE COURT:   YOU MAY COME DOWN.   THANK YOU.

21                   MR. BAILEY:   KENNETH HASTY.

22                   THE CLERK:   IF YOU WOULD, PLEASE PLACE  
23 YOUR LEFT HAND ON THE BIBLE, AND PLEASE RAISE YOUR  
24 RIGHT HAND.   PLEASE STATE YOUR NAME FOR THE RECORD.

25                   THE WITNESS:   KENNETH HASTY.

1 KENNETH HASTY,  
2 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
3 TESTIFIED AS FOLLOWS:

4 THE CLERK: PLEASE COME AROUND.

5 D I R E C T E X A M I N A T I O N  
6 BY MR. BAILEY:

7 Q. MR. HASTY, YOU'RE A TROOPER WITH THE  
8 HIGHWAY PATROL; IS THAT RIGHT?

9 A. YES, SIR.

10 Q. AND ASSIGNED TO CALHOUN COUNTY?

11 A. YES, SIR.

12 Q. AND YOU WERE ASSIGNED THERE BACK IN MARCH  
13 OF 1994?

14 A. YES, SIR.

15 Q. DID YOU HAVE OCCASION TO GO TO THE BLUE  
16 DIAMOND CASINO ON MARCH THE 18TH?

17 A. YES, SIR, I DID.

18 Q. AND WHO WERE YOU WITH?

19 A. OFFICE WANNAMAKER WITH THE SHERIFF'S  
20 DEPARTMENT.

21 Q. THAT'S CAPERS WANNAMAKER?

22 A. YES, SIR.

23 Q. AND WHAT ABOUT JAMES GREEN WITH THE ST.  
24 MATTHEWS POLICE DEPARTMENT?

25 A. YES, SIR. HE ARRIVED LATER.

1 Q. WHEN YOU GOT TO THE BLUE DIAMOND -- WHY  
2 DID YOU GO THERE AS A TROOPER?

3 A. WELL, I WAS TALKING WITH OFFICER  
4 WANNAMAKER WHEN HE GOT THE CALL. WE WERE DOWN THE  
5 ROAD TALKING FOR A WHILE THERE. HE SAID HE HAD A  
6 CALL THERE WERE SOME GUNSHOTS FIRED, AND I WENT WITH  
7 HIM TO ASSIST HIM.

8 Q. ALL RIGHT. WHEN Y'ALL ARRIVED AT THE BLUE  
9 DIAMOND, WERE THERE ANY CARS OUTSIDE IN THE PARKING  
10 AREA?

11 A. NO, SIR. I DON'T RECOLLECT SEEING ANY.

12 Q. WHERE -- WHAT DID YOU DO WHEN YOU ARRIVED?

13 A. OFFICER WANNAMAKER AND I, HE WENT AROUND  
14 TO THE FRONT, PULLED HIS CAR AROUND TO THE FRONT OF  
15 THE PLACE, AND I DROVE AROUND THE BACK, AND WE BOTH  
16 TRIED -- HE TRIED TO GET IN THE FRONT DOOR AND I  
17 TRIED TO GET IN THE BACK DOOR, AND THE DOOR WAS  
18 LOCKED.

19 Q. AND HOW DID YOU GET INSIDE?

20 A. THE LADY FROM THE TRAILER THAT LIVES  
21 BEHIND THE PLACE SAW OUR BLUE LIGHTS OUT THERE, AND  
22 SHE CAME OUT AND USED THE KEY AND OPENED THE DOOR FOR  
23 US AND LET US IN.

24 Q. AND WHAT DID YOU OBSERVE WHEN YOU GOT  
25 INSIDE?

1           A.       WHEN WE GOT INSIDE, WE OBSERVED THE  
2 VICTIM, THE YOUNG LADY, SLUMPED OVER THE DESK THERE,  
3 AND THE OTHER VICTIM, THE YOUNG MAN, LYING ON THE  
4 FLOOR IN A POOL OF BLOOD.

5           Q.       OKAY. AS FAR AS THE YOUNG WOMAN, WHAT  
6 CONDITION WAS SHE IN PHYSICALLY?

7           A.       SHE WAS IN PRETTY BAD CONDITION.  
8 APPARENTLY HAD SOME GUNSHOT WOUNDS TO HER -- HER FACE  
9 AND TO HER CHEST AREA.

10          Q.       ALL RIGHT. WERE YOU ABLE TO COMMUNICATE  
11 WITH HER AT ALL?

12          A.       WE TRIED ASKING HER WHO DID IT, AND SHE  
13 WASN'T ABLE TO TELL US AND DIDN'T KNOW. THAT WAS IT.

14          Q.       ALL RIGHT. AND WHAT ABOUT THE YOUNG MAN  
15 ON THE FLOOR? WHAT WAS HIS CONDITION?

16          A.       HIS CONDITION WAS VERY BAD. HE COULDN'T  
17 EVEN RESPOND TO ANY QUESTIONS THAT WE ASKED HIM.

18          Q.       OKAY. WAS HE STILL ALIVE WHEN YOU GOT  
19 THERE?

20          A.       I REALLY DON'T KNOW. I DON'T BELIEVE SO,  
21 BUT I REALLY DON'T KNOW.

22          Q.       ALL RIGHT. HOW LONG WERE YOU THERE  
23 ALTOGETHER, ROUGHLY?

24          A.       PROBABLY ABOUT AN HOUR AND A HALF  
25 ALTOGETHER.

1 Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT  
2 YOU RAN TAGS ON THE MAZDA RX7?

3 A. YES, SIR. I BELIEVE I DID RUN TAGS ON THE  
4 MAZDA, AND IT CAME BACK TO, I BELIEVE, SOME LADY IN  
5 NORTH OF SWANSEA OR SOME PLACE. I CAN'T RECOLLECT.

6 Q. DO YOU HAVE ANY NOTES SHOWING THE TAG  
7 NUMBER?

8 A. NO, SIR. I DIDN'T MAKE ANY NOTES ON THAT.

9 Q. BUT YOU DID RUN THE TAG ON THE MAZDA RX7?

10 A. YES, SIR. IT WAS A MAZDA RX7.

11 Q. AND THAT WAS DETERMINED TO BE THE STOLEN  
12 CAR?

13 A. YES, SIR.

14 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS  
15 THAT MR. NEWSOME MIGHT HAVE.

16 MR. NEWSOME: I HAVE NO QUESTIONS, YOUR  
17 HONOR.

18 THE COURT: YOU MAY COME DOWN, TROOPER.  
19 THANK YOU.

20 MR. BAILEY: JAMES GREEN.

21 THE CLERK: IF YOU WOULD, PLEASE PLACE  
22 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR  
23 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

24 THE WITNESS: JAMES GREEN.

25 JAMES GREEN,

1 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
2 TESTIFIED AS FOLLOWS:

3 THE CLERK: PLEASE COME AROUND.

4 D I R E C T E X A M I N A T I O N  
5 BY MR. BAILEY:

6 Q. SERGEANT GREEN, YOU'RE EMPLOYED BY THE ST.  
7 MATTHEWS POLICE DEPARTMENT; IS THAT CORRECT?

8 A. YES, SIR, I AM.

9 Q. ALL RIGHT. CALLING YOUR ATTENTION TO  
10 MARCH 1994, WERE YOU EMPLOYED BY ST. MATTHEWS?

11 A. YES, SIR.

12 Q. OKAY. NOW, DID YOU HAVE OCCASION TO GO TO  
13 THE BLUE DIAMOND IN YOUR OFFICIAL CAPACITY AS A  
14 POLICE OFFICER?

15 A. YES, SIR, I DID.

16 Q. OKAY. AND THE BLUE DIAMOND IS SLIGHTLY  
17 OUT OF THE TOWN LIMITS; IS THAT RIGHT?

18 A. YES, SIR.

19 Q. OKAY. ABOUT HOW FAR FROM THE TOWN LINE?

20 A. THE -- A LITTLE LESS THAN A MILE OUT OF  
21 THE CITY LIMITS.

22 Q. OKAY. AND DID YOU HAVE OCCASION -- YOU  
23 WERE NOT ONE OF THE FIRST -- OR YOU WERE ONE OF THE  
24 FIRST GROUP, WERE YOU NOT?

25 A. YES, SIR.

1 Q. WITH SHERIFF WANNAMAKER AND TROOPER HASTY?

2 A. YES, SIR.

3 Q. AND WHAT DID YOU DO WHEN YOU ARRIVED  
4 THERE?

5 A. WELL, WHEN WE FIRST GOT TO THE SCENE, WE  
6 ARRIVED AT THE SAME TIME BECAUSE WE WERE TOGETHER AT  
7 THE TIME THE CALL CAME IN. WHEN I GOT THERE, I  
8 ASSISTED SERGEANT WANNAMAKER BY CHECKING THE BACK  
9 DOOR ALONG WITH TROOPER KENNY HASTY.

10 Q. OKAY. WERE YOU ABLE TO GET IN?

11 A. NO, SIR. THE DOORS WERE LOCKED.

12 Q. OKAY. DID YOU SEE INTO THE BUILDING?

13 A. NO, SIR. SERGEANT WANNAMAKER, WHILE WE  
14 WERE CHECKING THE BUILDING, HE NOTICED THAT THERE WAS  
15 SOME PAINT SCRATCHED ON THE WINDOW, AND HE LOOKED  
16 THROUGH THE AREA THAT THE PAINT WAS SCRATCHED OFF,  
17 AND I NOTICED SOMEONE SITTING INSIDE OF THE -- IN A  
18 CHAIR INSIDE OF THE BUILDING AT THAT TIME, AND WE  
19 WALKED TO THE REAR OF THE DOOR. AND THE MANAGER OF  
20 THE BUILDING, SHE CAME OUT -- SHE SAW THE BLUE  
21 LIGHTS, AND SHE CAME OUT AND OPENED THE DOOR FOR US,  
22 AND WE WENT INSIDE. ONCE WE GOT INSIDE, MS. KELLY  
23 HOFFMAN WAS SITTING IN A CHAIR RIGHT AT THE DESK, AND  
24 MR. PRESLEY WAS LAYING ON THE FLOOR.

25 Q. ALL RIGHT. AND WHAT'S YOUR RECOLLECTION

1 ABOUT KELLY HOFFMAN'S APPEARANCE WHEN YOU SAW HER AT  
2 THE DESK?

3 A. WHEN WE GOT IN THERE, MS. HOFFMAN WAS  
4 SITTING IN A CHAIR, AND SHE WAS SORT OF LIKE IN A  
5 DAZE MAKING SORT OF A DAZED TYPE MOTION WHEN WE GOT  
6 IN THERE.

7 Q. AND JUST FOR THE RECORD, YOU'RE INDICATING  
8 YOUR HEAD KIND OF FLOPPING AROUND?

9 A. YES, SIR.

10 Q. AND DID YOU TRY TO COMMUNICATE WITH HER?

11 A. NO, SIR, I DID NOT.

12 Q. OKAY. WHY WAS THAT?

13 A. BECAUSE I WASN'T THE INITIAL OFFICER  
14 THERE. IT WAS A COUNTY CASE.

15 Q. OKAY. WAS SHE CONSCIOUS?

16 A. SHE APPEARED TO BE IN -- IN BETWEEN. SHE  
17 WASN'T TOTALLY -- DIDN'T APPEAR TO BE TOTALLY. SHE  
18 WAS JUST SORT OF IN BETWEEN.

19 Q. WHAT ABOUT KENNETH PRESLEY?

20 A. HE WAS LAYING ON THE FLOOR MAKING SORT OF  
21 GURGLING-TYPE SOUNDS, AND I DIDN'T GO CLOSE TO THE  
22 BODY AT THAT TIME.

23 MR. BAILEY: YOUR HONOR, THAT'S ALL I HAVE  
24 AT THIS TIME. WE RESERVE THE RIGHT TO RECALL HIM.

25 THE COURT: YOU MAY CROSS-EXAMINE.

1 C R O S S - E X A M I N A T I O N

2 BY MR. NEWSOME:

3 Q. OFFICER GREEN, WHEN YOU GOT THERE, WAS THE  
4 LIGHT ON OR OFF?

5 A. THE LIGHT WAS ON.

6 Q. OKAY. LET ME ASK YOU THIS. IS IT COMMON  
7 IN A SMALL COMMUNITY LIKE THIS IF YOU HAVE AN UNUSUAL  
8 SITUATION LIKE THIS FOR ALL THE POLICE TO RESPOND?

9 A. YES, SIR. USUALLY WE ASSIST EACH OTHER.

10 Q. OKAY. AND YOU ALL COOPERATED THAT NIGHT,  
11 DID YOU NOT?

12 A. YES, SIR.

13 Q. YOU WERE THERE WHEN THE DETERMINATION WAS  
14 MADE THAT A CAR WAS MISSING, WERE YOU NOT?

15 A. YES, SIR.

16 Q. OKAY. WHO WAS THE FIRST SUSPECT ABOUT  
17 THAT CAR?

18 A. KELSEY PEARCE.

19 Q. AND THAT WAS BECAUSE WHY, SIR?

20 A. BECAUSE WE HAD A SERIES OF AUTO THEFTS,  
21 AND HE WAS INDICATED IN SEVERAL.

22 Q. HAD YOU EVER ARRESTED KELSEY PEARCE IN A  
23 REPORTEDLY STOLEN AUTOMOBILE YOURSELF?

24 A. NO, SIR, BUT SOME OF THE OFFICERS WITHIN  
25 OUR DEPARTMENT DID.

1 Q. ALL RIGHT. WERE YOU PRESENT WHEN THEY  
2 QUESTIONED HIM ABOUT THAT?

3 A. ON ONE OCCASION, WITH SERGEANT WANNAMAKER,  
4 FRED WANNAMAKER HAD A CASE OF A STOLEN VEHICLE, I WAS  
5 THERE.

6 Q. OKAY. AND IN THAT CASE, DID THEY NOT TAKE  
7 KELSEY OUT OF THE CAR?

8 A. YES, SIR.

9 Q. AND HE DENIED EVER BEING IN THE CAR?

10 A. YES, SIR. HE DENIED BEING IN THE CAR.

11 Q. KELSEY DOESN'T ADMIT THINGS, DOES HE?

12 A. NO, SIR.

13 Q. LET ME ASK YOU THIS. YOU'RE FAMILIAR WITH  
14 HERMAN HUGHES, ARE YOU NOT?

15 A. YES, SIR.

16 Q. AND HERMAN HUGHES AND KELSEY WERE FRIENDS,  
17 WERE THEY NOT?

18 A. YES, SIR.

19 Q. WOULD YOU DESCRIBE HERMAN OR KELSEY AS THE  
20 LEADER IN THAT FRIENDSHIP?

21 A. WELL, KELSEY WAS MORE THE AGGRESSOR. IN  
22 THE TIMES THAT I SEEN THEM TOGETHER, HERMAN WOULDN'T  
23 EVER SAY MUCH, BUT KELSEY WOULD BE THE ONE THAT  
24 TALKED THE MOST.

25 Q. SO HERMAN WAS THE FOLLOWER?

STATE OF SOUTH CAROLINA

In The Supreme Court

*Zelenka*

APPEAL FROM CALHOUN COUNTY  
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HERMAN LEE HUGHES, JR.,

APPELLANT.

RECORD ON APPEAL

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1 A. YES, SIR.

2 Q. AND YOU'VE HAD SEVERAL CASES WITH KELSEY?

3 A. YES, SIR.

4 Q. AND YOU'VE KNOWN HERMAN FOR A NUMBER OF  
5 YEARS, HAVE YOU NOT?

6 A. YES, SIR.

7 Q. AND YOU'VE ACTUALLY COUNSELED WITH HIM,  
8 HAVE YOU NOT?

9 A. YES, I HAVE.

10 Q. PROBLEMS AT SCHOOL AND HOME AND THAT TYPE  
11 OF THING?

12 A. YES, SIR.

13 MR. NEWSOME: THANK YOU, SIR.

14 R E D I R E C T E X A M I N A T I O N  
15 BY MR. BAILEY:

16 Q. MR. GREEN, YOUR CONTACT WITH HERMAN  
17 HUGHES, HAVE YOU SEEN HIM ON OCCASIONS WHEN KELSEY  
18 PEARCE WAS NOT THERE?

19 A. YES, SIR.

20 Q. DID YOU SEE HIM WITH OTHER YOUNG MEN OTHER  
21 THAN KELSEY PEARCE?

22 A. BASICALLY, EVERY TIME I WOULD SEE HIM HE  
23 WOULD BE PRETTY MUCH EITHER BY HIMSELF OR WITH  
24 KELSEY. I DIDN'T HAVE THE OPPORTUNITY TO SEE HIM  
25 WITH ANYONE ELSE.

1 Q. DID IT APPEAR TO YOU THAT HE WAS FORCED TO  
2 BE WITH KELSEY PEARCE OR THAT HE WANTED TO BE WITH  
3 HIM?

4 A. THERE DIDN'T APPEAR TO BE ANY FORCE.

5 Q. HE CHOSE HIS FRIENDS. HIS FRIEND WAS  
6 KELSEY PEARCE; IS THAT RIGHT?

7 A. YES, SIR.

8 MR. BAILEY: THANK YOU. THAT'S ALL I  
9 HAVE.

10 THE COURT: YOU MAY COME DOWN.

11 MR. BAILEY: MIKE HOLBERT.

12 THE CLERK: IF YOU WOULD, PLEASE PUT YOUR  
13 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.  
14 STATE YOUR NAME FOR THE RECORD.

15 THE WITNESS: MICHAEL B. HOLBERT.

16 THE CLERK: SPELL THE LAST NAME FOR ME.

17 THE WITNESS: H-O-L-B-E-R-T.

18 MICHAEL B. HOLBERT,  
19 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
20 TESTIFIED AS FOLLOWS:

21 THE CLERK: PLEASE BE SEATED.

22 D I R E C T E X A M I N A T I O N  
23 BY MR. BAILEY:

24 Q. MR. HOLBERT, YOU'RE EMPLOYED WITH CALHOUN  
25 COUNTY EMS; IS THAT CORRECT?

1 A. YES, SIR.

2 Q. IN WHAT CAPACITY?

3 A. I'M A PARAMEDIC SHIFT MANAGER.

4 Q. ALL RIGHT, SIR. AND JUST BRIEFLY, WHAT IS  
5 A PARAMEDIC, I MEAN, AS COMPARED TO EMT?

6 A. EMT? WELL, PARAMEDIC TRAINING BASICALLY  
7 TAKES ABOUT A TWO-YEAR PROGRAM WHERE WE ARE TRAINED  
8 TO USE DRUGS AND OTHER INVASIVE PROCEDURES. ADVANCED  
9 LIFE SUPPORT IS PROBABLY THE BEST WORDS THAT WE CAN  
10 USE TO DESCRIBE IT TO SUSTAIN LIFE.

11 Q. AND ON MARCH 18TH, 1994, YOU WERE ON DUTY  
12 AS A PARAMEDIC FOR CALHOUN COUNTY EMS?

13 A. RIGHT. YES, SIR.

14 Q. AND DID YOU HAVE OCCASION TO GO TO THE  
15 BLUE DIAMOND CASINO THAT EVENING?

16 A. YES, SIR.

17 Q. AND DO YOUR RECORDS INDICATE WHAT TIME YOU  
18 ARRIVED THERE?

19 A. WE ARRIVED ON THE SCENE AT 2022, WHICH IS  
20 8:22 FOR CIVILIANS.

21 Q. ALL RIGHT, SIR. AND WHO ELSE WAS WITH  
22 YOU?

23 A. MY PARTNER WHO WAS DRIVING WITH ME WAS  
24 DAVID PHILLIPS, AND BRIAN WHIZNER, HE RESPONDED ON  
25 HIS OWN TO ASSIST US --

1 Q. OKAY.

2 A. -- WITH THE CALL.

3 Q. AND WHO WAS IN CHARGE OF THE GROUP THAT  
4 WENT THERE? WAS THAT YOU?

5 A. YES, SIR. I WAS IN CHARGE. I WAS THE  
6 PRIMARY PARAMEDIC.

7 Q. AND WHEN YOU ARRIVED AT THE BLUE DIAMOND,  
8 WAS ANYBODY ELSE THERE IN LAW ENFORCEMENT AHEAD OF  
9 YOU?

10 A. THERE WAS THREE LAW ENFORCEMENT OFFICIALS.

11 Q. AND WHEN YOU GOT THERE, WHAT DID YOU  
12 OBSERVE INSIDE THE BLUE DIAMOND AS FAR AS INJURED  
13 PEOPLE?

14 A. AS FAR AS INJURED VICTIMS THEMSELVES?

15 Q. YES, SIR.

16 A. WELL, WE WALKED IN THROUGH THE BACK DOOR  
17 AND TURNED TO THE RIGHT. I NOTICED THE YOUNG LADY  
18 SITTING AT A DESK, AND THE PRIMARY PATIENT WAS LAYING  
19 SUPINE -- EXCUSE ME, PRONE ON THE FLOOR WITH HIS HEAD  
20 TO THE RIGHT AND A LARGE AMOUNT OF BLOOD ABOUT THE  
21 HEAD.

22 Q. YOU SAID THE PRIMARY PATIENT?

23 A. YES, SIR.

24 Q. WAS THIS KEN PRESLEY?

25 A. KEN PRESLEY, YES, SIR.

1 Q. THE YOUNG MAN?

2 A. THE MALE, YES, SIR.

3 Q. ALL RIGHT, SIR. AND WERE YOU IN A  
4 POSITION TO ATTEND TO BOTH VICTIMS?

5 A. THE FIRST THING WE DO, WE STOPPED AT THE  
6 YOUNG LADY AT THE DESK AND ASKED HER IF SHE WAS ALL  
7 RIGHT, AND I STARTED WORKING ON HIM, ON THE MAN AFTER  
8 I SAID TO MY PARTNER TO CHECK THE VITAL SIGNS, CHECK  
9 WITH THIS YOUNG LADY. SHE SAID SHE WAS ALL RIGHT.  
10 SHE SAID, "WORK ON HIM BECAUSE I'M WORRIED ABOUT  
11 HIM."

12 Q. SO THEN THE CALHOUN COUNTY CREW WORKED ON  
13 MR. PRESLEY; IS THAT RIGHT?

14 A. YES, SIR. WE FOUND HER TO BE STABLE. I  
15 CHECKED HER RADIAL PULSE IN THE ARM, WHICH WAS GOOD,  
16 WHICH TELLS ME NO -- I'VE GOT A BLOOD PRESSURE OF  
17 ABOVE 100, AND I SAID, "OKAY, JUST SIT THERE AND  
18 DON'T MOVE", AND THEN WE STARTED WORKING ON MR.  
19 PRESLEY.

20 Q. AND WHAT DID YOU DO AS FAR AS MAKING SURE  
21 THAT KELLY HOFFMAN GOT SOME ATTENTION THERE?

22 A. WE HAD ANOTHER FIRST RESPONDER AND STUFF  
23 THAT CAME, AND WHEN BRIAN CAME IN, WHICH HE WAS NOT  
24 TOO FAR BEHIND ME, I SAID, "BRIAN, GET SOME VITAL  
25 SIGNS ON HER," SO HE TOOK HER VITAL SIGNS FIRST, AND

1 HE TOLD ME THEY WERE STABLE, BECAUSE I HAD MY HANDS  
2 BUSY WORKING ON KENNETH.

3 Q. WAS ORANGEBURG EMS CALLED IN TO ASSIST?

4 A. YEAH. WHEN I FOUND OUT WHAT POSITION I  
5 WAS IN WITH THIS PRIMARY PATIENT, I WAS GOING TO HAVE  
6 MY HANDS TIED, I COULDN'T HANDLE TWO PEOPLE AT THE  
7 SAME TIME, AND I CALLED FOR ASSISTANCE.

8 Q. FROM ORANGEBURG?

9 A. FROM ORANGEBURG EMS, AND THEY RESPONDED  
10 WITH A UNIT FOR ME.

11 Q. DID THEY RESPOND WHILE YOU WERE STILL  
12 THERE?

13 A. YES, SIR, WHILE WE WERE STILL THERE.

14 Q. NOW, GOING BACK TO MR. PRESLEY WHO YOU  
15 WERE PRIMARILY TREATING.

16 A. YES, SIR.

17 Q. WOULD YOU DESCRIBE HIS CONDITION AND THE  
18 TREATMENT YOU GAVE HIM?

19 A. WHEN I FIRST WALKED IN, I NOTICED A LARGE  
20 AMOUNT OF BLOOD AND GRAY MATTER WHICH IN LAYMAN'S  
21 TERMS IS PARTS OF THE BRAIN ABOUT THE -- IN THE POOL  
22 OF BLOOD ABOUT THE HEAD AND IN THE HAIR. I GOT DOWN  
23 REAL CLOSE TO HIM. HE WAS HAVING AGONAL BREATHING,  
24 WHICH WAS VERY, VERY PROMINENT OF DEATH WAS REAL  
25 CLOSE BECAUSE HE WAS ONLY BREATHING SIX TO EIGHT

1 TIMES PER MINUTE AS I HAVE NOTED IN MY DHEC FORM.  
2 SO WE STABILIZED THE NECK AND WE ROLLED HIM  
3 OVER. I LOOKED ABOUT THE FACE. WE TRIED TO FIND OUT  
4 WHERE THE BLOOD WAS COMING FROM, AND WE NOTICED -- I  
5 MEAN, RIGHT AWAY I COULD TELL THE BULGING EYES, SO I  
6 ASSUMED AND THEN WE FOUND A LITTLE SMALL PLACE IN THE  
7 CORNER OF THE EYE WHERE THE BULLET HOLE HAD ENTERED.  
8 WE DID NOT FIND AN EXIT WOUND ON THE HEAD, AND WE  
9 LOGROLLED HIM OVER, MAINTAINING HIS SPINE IN A  
10 STRAIGHT LINE, AND WE WERE SUCTIONING -- HAD TO  
11 SUCTION THE AIRWAY. AND AT THE SAME TIME, I ORALLY  
12 INTUBATED THE PATIENT, WHERE YOU TAKE A TUBE AND  
13 INSERT IT INTO THE TRACHEA. THERE'S A CUFF ON THE  
14 END OF IT. WE BLOW UP THAT CUFF. THAT KEEPS BLOOD  
15 FROM GOING INTO THE TRACHEA. AND WE WERE BAGGING HIM  
16 WITH A BAG VAL MASS WHICH WE'RE INDUCING OXYGEN INTO  
17 HIS LUNGS DIRECTLY AS LONG AS -- AS WELL AS TAKING  
18 THE VITAL SIGNS AND GETTING AN IV STARTED TO REPLACE  
19 THE FLUID THAT WAS BEING LOST FROM THE INJURY.

20 Q. WAS HE RESPONSIVE AT ALL?

21 A. HE WOULD RESPOND TO PAINFUL STIMULI. WITH  
22 SOMEONE LIKE THAT, YOU -- THE FIRST THING WE DO IS  
23 TRY TO TALK TO THEM, SAY CAN YOU HEAR ME, YOU KNOW,  
24 ANYTHING. HE DID NOT MOVE THEN. THEN YOU TAKE -- WE  
25 TAKE OUR HAND, TAKE THE KNUCKLES ON OUR HAND AND WE

1 RUB THEM ON THE STERNUM, IT'S CALLED A STERNAL RUB,  
2 TO SEE IF THEY WILL RESPOND TO THAT. AND I DID IT  
3 ONE TIME, AND HE DIDN'T, AND THEN I HAD TO DO IT -- I  
4 DID IT HARDER, MORE FORCEFULLY, AND HE MOANED, AND HE  
5 HAD SOME RETRACTION -- THIS IS EXTENSION. YOU EXTEND  
6 YOUR HAND. RETRACTION IS WHEN YOUR ARMS AND LEGS  
7 PULL TO THE BODY. HE HAD SOME RETRACTION OF THE  
8 UPPER EXTREMITIES, AND THAT'S WHAT I NOTED IN MY --  
9 IN MY REPORT.

10 Q. ALL RIGHT. AFTER YOU STABILIZED HIM, WHAT  
11 DID YOU DO?

12 A. WE -- OKAY. WE GOT THE AIRWAY STABILIZED.  
13 WE HAD A LOT OF DRESSINGS APPLIED TO THE HEAD TO TRY  
14 TO STOP THE BLEEDING, WHAT WE COULD. WE HAD SEVERAL  
15 TOWELS AROUND THE HEAD AS WELL. PUT HIM ON THE  
16 BACKBOARD TO KEEP HIS LINE -- KEEP HIS BODY MIDLINE.  
17 WE DIDN'T WANT ANY SHIFTING BECAUSE IT WAS IN THE  
18 HEAD. YOU WANT TO PROTECT THE CERVICAL SPINE BECAUSE  
19 IF THAT HAPPENS, HE CAN QUIT BREATHING ALTOGETHER.  
20 HE HAD A GOOD BLOOD PRESSURE AND A PULSE RATE ON HIS  
21 OWN, AND WE WERE MOSTLY SUSTAINING HIM WITH THE BAG  
22 VAL MASS TO KEEP HIM BREATHING.

23 WE STRAPPED HIM DOWN WITH THREE STRAPS SO HE  
24 DOESN'T MOVE, AND WE MOVED HIM TO THE AMBULANCE AT  
25 THAT TIME AND WAS WORKING ON FURTHER ADVANCED LIFE

1 SUPPORT PROCEDURES, WHICH WAS THE I.V. MAINTENANCE  
2 AND STUFF TO REPLACE THE FLUID THAT WAS BEING LOST  
3 CONTINUOUSLY COMING FROM THE HEAD. HE HAD -- LIKE I  
4 SAY, WE HAD TOWELS PACKED AROUND IT -- PACKED AROUND  
5 HIS HEAD TO TRY TO KEEP THE BLOOD FROM GOING  
6 EVERYWHERE.

7 Q. WHERE DID YOU TAKE HIM?

8 A. WE TOOK HIM TO A HOSPITAL IN ORANGEBURG,  
9 TRMC.

10 Q. AND TURNED HIM OVER TO THE PHYSICIANS  
11 THERE?

12 A. YES, SIR.

13 Q. WAS HE STILL ALIVE WHEN YOU ARRIVED AT  
14 ORANGEBURG?

15 A. YES, SIR. HE STILL -- THE BLOOD PRESSURE  
16 THAT I HAD WAS 160 OVER 120, AND HIS PULSE RATE WAS  
17 76, AND IT WAS REGULAR. AND AS FAR AS RESPIRATIONS,  
18 I HAVE 24 BECAUSE THAT'S HOW MANY TIMES FOR THAT  
19 MINUTE THAT I WAS SQUEEZING THAT BAG AND GETTING THE  
20 OXYGEN INTO HIM. BUT HE STILL WAS UNRESPONSIVE OTHER  
21 THAN TO THE PAINFUL STIMULI.

22 MR. BAILEY: PLEASE ANSWER ANY QUESTIONS  
23 MR. NEWSOME MAY HAVE.

24 MR. NEWSOME: I HAVE NO QUESTIONS, YOUR  
25 HONOR.

1 THE COURT: YOU CAN COME DOWN. THANK YOU,  
2 SIR.

3 MR. BAILEY: DAVID PHILLIPS.

4 THE CLERK: IF YOU WOULD, PLEASE PUT YOUR  
5 LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR RIGHT  
6 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

7 THE WITNESS: DAVID PHILLIPS.

8 DAVID PHILLIPS,  
9 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
10 TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE HAVE A SEAT OVER HERE.

12 D I R E C T E X A M I N A T I O N

13 BY MR. BAILEY:

14 Q. SIR, YOU'RE DAVID PHILLIPS?

15 A. YES, SIR, I AM.

16 Q. AND YOU'RE EMPLOYED BY CALHOUN COUNTY EMS?

17 A. YES, SIR.

18 Q. ALL RIGHT, SIR. IN WHAT CAPACITY? WHAT'S  
19 YOUR POSITION WITH EMS?

20 A. I'M A BASIC EMERGENCY MEDICAL TECHNICIAN.

21 Q. ALL RIGHT, SIR. AND CALLING YOUR  
22 ATTENTION TO MARCH 18TH, 1994, DID YOU GO TO THE BLUE  
23 DIAMOND?

24 A. YES, SIR, I DID.

25 Q. ALL RIGHT, SIR. DID YOU GO THERE WITH

1 SOMEBODY ELSE?

2 A. I WENT WITH MIKE HOLBERT, WHO'S MY SHIFT  
3 LEADER.

4 Q. ALL RIGHT. Y'ALL WENT IN THE AMBULANCE?

5 A. WE WENT IN THE AMBULANCE, YES.

6 Q. FROM THE MEDICINE QUARTERS OVER HERE?

7 A. YES, SIR.

8 Q. NOW, WHEN YOU ARRIVED AT THE BLUE DIAMOND,  
9 WHAT WERE YOUR GENERAL OBSERVATIONS WHEN YOU ENTERED  
10 THE BUILDING?

11 A. WE ARRIVED. THE BLUE LIGHTS WERE OUTSIDE.  
12 THE POLICE CARS WERE OUTSIDE, AND WE UNDERSTOOD THAT  
13 IT WAS A SIGNAL 15, A SHOOTING. SO WE WENT IN  
14 EXPECTING TO FIND ONE OR MORE PATIENTS SHOT, AND THAT  
15 WAS WHAT WE FOUND WHEN WE ENTERED THE ROOM. WE FOUND  
16 A MALE PATIENT ABOUT 21 YEARS OLD ON THE FLOOR WITH  
17 GUNSHOT WOUNDS TO THE HEAD. WE FOUND A YOUNG GIRL IN  
18 THE CHAIR WITH GUNSHOT WOUNDS TO THE HEAD AND CHEST.  
19 BOTH PATIENT HAD VITAL SIGNS. BOTH PATIENTS WERE  
20 STILL ALIVE AT THE TIME.

21 Q. ALL RIGHT, SIR. DID YOU MAKE A DECISION  
22 WHO WAS IN WORSE SHAPE SO YOU COULD DECIDE WHO TO  
23 DIRECT YOUR ATTENTION TO?

24 A. YES, SIR.

25 Q. AND WHO WAS THAT?

1 A. THE BOY ON THE FLOOR WAS IN WORSE SHAPE.

2 Q. ALL RIGHT. NOW, DID YOU SPEND ANY TIME AT  
3 ALL WITH THE YOUNG GIRL WHO WAS KELLY HOFFMAN?

4 A. WE EXAMINED HER, AND THEN SINCE WE WERE  
5 ONLY ONE CREW AT THAT TIME, WE WORKED ON THE BOY ON  
6 THE FLOOR.

7 Q. ALL RIGHT.

8 A. THE GIRL WAS ABLE TO SPEAK AND WAS  
9 CONSCIOUS, AND THE BOY HAD VITAL SIGNS, AS I SAID,  
10 RESPIRATIONS, PULSE RATE, BUT VERY SEVERE HEAD  
11 INJURIES, SO WE WORKED HIM FIRST.

12 Q. ALL RIGHT. YOU SAID THE GIRL WAS ABLE TO  
13 SPEAK. DID YOU GET ANY INFORMATION OUT OF HER?

14 A. I -- I BELIEVE SHE SAID THAT THE BOY WAS  
15 HURT WORSE, TO WORK ON HIM. AND SHE -- THAT'S ABOUT  
16 ALL I CAN RECALL THAT SHE SAID, THAT I HEARD. I  
17 HEARD SOME WORDS, BUT I DON'T RECALL PRECISELY WHAT  
18 SHE SAID TO ME.

19 Q. ALL RIGHT. AND AFTER YOU HAD THAT BRIEF  
20 ENCOUNTER WITH HER, YOU THEN TURNED BACK TO KENNETH  
21 PRESLEY AND DIRECTED YOUR ATTENTION TO HIM?

22 A. EXACTLY. YES, SIR.

23 Q. OKAY. DO YOU KNOW WHETHER OR NOT ANY OF  
24 THE FURNITURE INSIDE THE CASINO WAS MOVED?

25 A. THE DESK IN FRONT OF THE GIRL, WE ASKED

1 THAT THAT BE MOVED SO THAT WE COULD GET A STRETCHER  
2 IN THERE TO MR. PRESLEY AND TO HER.

3 Q. OKAY.

4 A. THAT WAS A CRIME SCENE AT THAT TIME, AND  
5 THE POLICE OFFICERS WERE STANDING IN A ROW IN FRONT  
6 OF IT, THE DESK, MAKING OBSERVATIONS. AND SO THEY  
7 WERE AT FIRST RELUCTANT TO MOVE THE FURNITURE, BUT  
8 THEY DID MOVE IT FOR US, AND I PRESUME THEY MADE  
9 MENTAL NOTES OF WHERE IT WAS AND THAT SORT OF THING.

10 Q. OTHER THAN MOVING THAT DESK AT YOUR  
11 REQUEST, WAS THE CRIME SCENE DISTURBED IN ANY WAY BY  
12 EMS PEOPLE OR THE POLICE OFFICERS THAT WERE THERE?

13 A. NOT THAT I RECALL.

14 Q. ALL RIGHT, SIR.

15 A. THERE WAS A GOOD DEAL OF BLOOD ON THE  
16 FLOOR, AND SOME OF US DID STEP IN SOME BLOOD FROM MR.  
17 PRESLEY. SO THERE WAS A LITTLE BIT OF TRACKING OF  
18 THAT, BUT NOT VERY MUCH.

19 MR. BAILEY: ALL RIGHT. PLEASE ANSWER ANY  
20 QUESTIONS THAT MR. NEWSOME HAS.

21 C R O S S - E X A M I N A T I O N

22 BY MR. NEWSOME:

23 Q. MR. PHILLIPS?

24 A. YES, SIR.

25 Q. DO YOU REMEMBER WHAT TIME YOU GOT OUT

1 THERE?

2 A. YES, SIR. WE GOT THE CALL ABOUT 18  
3 MINUTES AFTER 8:00 AND RESPONDED WITHIN A COUPLE OF  
4 MINUTES OF THAT TIME.

5 Q. AND YOU SAID THAT MS. HOFFMAN WAS  
6 CONSCIOUS WHEN YOU SAW HER?

7 A. YES, SIR.

8 Q. WAS SHE IN AND OUT OF CONSCIOUSNESS OR WAS  
9 SHE CONSCIOUS?

10 A. I DIDN'T SPEND THAT MUCH TIME WITH HER,  
11 SIR. SHE WAS ABLE TO SPEAK AND SHE HAD SOME  
12 MOVEMENT. SHE HAD -- SHE HAD SOME MOVEMENT IN HER  
13 HANDS AND HER FEET STIRRED A LITTLE BIT, AND SHE WAS  
14 ABLE TO MOVE HER MOUTH, AND ONE ROUND WENT INTO HER  
15 FACE IN THE UPPER PART OF HER -- IN THE CENTER PART  
16 OF HER FACE AND A ROUND THROUGH -- ABOVE HER BREAST,  
17 BETWEEN HER BREAST AND HER CLAVICLE.

18 Q. YES, SIR.

19 A. AND WE KNEW SHE WAS HURT PRETTY BAD, BUT  
20 SHE -- I DIDN'T TALK TO HER. I JUST REMEMBER THAT  
21 SHE --

22 Q. WHEN YOU NOTICED HER, SHE WAS CONSCIOUS AT  
23 THAT TIME?

24 A. SHE WAS CONSCIOUS AT THAT TIME, AND SHE  
25 HAD PULSE AND RESPIRATION.

1 Q. SO YOU COULDN'T SAY WHETHER SHE HAD BEEN  
2 UNCONSCIOUS AND GONE BACK AND FORTH?

3 A. NO, SIR, I COULDN'T.

4 Q. AND YOU WOULDN'T DISAGREE IF OTHERS WHO  
5 HAD SEEN HER PRIOR TO YOU DESCRIBED HER AS BEING AT  
6 VARIOUS STAGES OF CONSCIOUSNESS?

7 A. NO, SIR, I WOULDN'T DISAGREE WITH THAT.  
8 SHE WAS CONSCIOUS WHEN I SAW HER.

9 Q. AND YOU'VE TREATED A LOT OF PEOPLE WITH  
10 WOUNDS AS SEVERE AS HERS?

11 A. YES, SIR. I'M A NAM VET, AND I'VE BEEN IN  
12 THIS BUSINESS FOR A WHILE, AND I'VE SEEN SOME SERIOUS  
13 GUNSHOT WOUNDS.

14 Q. IS IT USUAL IN THESE TYPES OF INJURIES  
15 LIKE MS. HOFFMAN FOR THEM TO COME IN AND OUT OF  
16 CONSCIOUSNESS?

17 A. IT'S NOT UNUSUAL, YES, SIR.

18 MR. BAILEY: NO REDIRECT, YOUR HONOR.

19 THE COURT: YOU MAY COME DOWN. THANK YOU,  
20 SIR. YOU ARE EXCUSED.

21 MR. BAILEY: BILL WILLIAMS.

22 THE CLERK: IF YOU WOULD, PLEASE PLACE  
23 YOUR LEFT HAND ON THE BIBLE AND PLEASE RAISE YOUR  
24 RIGHT HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

25 THE WITNESS: BILL WILLIAMS.

1 BILL WILLIAMS,  
2 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,  
3 TESTIFIED AS FOLLOWS:

4 THE CLERK: PLEASE COME AROUND AND HAVE A  
5 SEAT.

6 DIRECT EXAMINATION  
7 BY MR. BAILEY:

8 Q. SO YOU'RE BILL WILLIAMS?

9 A. YES, SIR.

10 Q. AND YOU ARE EMPLOYED BY ORANGEBURG COUNTY  
11 EMS?

12 A. YES, SIR.

13 Q. AND WHAT'S YOUR POSITION WITH ORANGEBURG  
14 EMS?

15 A. PARAMEDIC.

16 Q. ALL RIGHT. AS A PARAMEDIC, ARE YOU A CREW  
17 CHIEF ALSO?

18 A. SIR?

19 Q. ARE YOU A CREW CHIEF?

20 A. YES, SIR.

21 Q. ARE YOU IN CHARGE?

22 A. YES, SIR.

23 Q. DID YOU HAVE OCCASION TO BE DISPATCHED TO  
24 BLUE DIAMOND IN CALHOUN COUNTY ON MARCH 18TH OF LAST  
25 YEAR?

1 A. YES, SIR.

2 Q. ALL RIGHT. AND IS THAT UNUSUAL IF YOU'RE  
3 IN ORANGEBURG TO HAVE TO GO TO AN ADJOINING COUNTY?

4 A. WE HAVE A MUTUAL AGREEMENT WITH THEM IF  
5 THEY CALL FOR ASSISTANCE, AND THEY REQUESTED AN EXTRA  
6 UNIT THAT NIGHT.

7 Q. DO YOUR RECORDS INDICATE ABOUT WHAT TIME  
8 YOU ARRIVED?

9 A. YES, SIR.

10 Q. AND WHAT TIME WAS THAT?

11 A. I WILL HAVE TO LOOK AT MY --

12 Q. OKAY. I'VE GOT A COPY HERE, IF YOU DON'T.

13 A. ARRIVED ON THE SCENE AT 2036 OR 8:36 P.M.

14 Q. ALL RIGHT, SIR. AND WHO WAS WITH YOU?  
15 WHAT OTHER EMT? WHAT EMT WAS THERE?

16 A. AT THE SCENE?

17 Q. YES, SIR.

18 A. CALHOUN COUNTY'S UNIT WAS AT THE SCENE.  
19 THEY HAD A PATIENT IN THE BACK OF THEIR UNIT. THERE  
20 WAS AN INTERMEDIATE EMT THAT WAS INSIDE WITH THE  
21 OTHER VICTIM.

22 Q. ALL RIGHT. NOW, WHEN YOU ARRIVED AT THE  
23 BLUE DIAMOND, THERE WAS A YOUNG MAN AND A YOUNG WOMAN  
24 WHO HAD BEEN SHOT THAT WERE PRESENT; IS THAT CORRECT?

25 A. AS -- I WASN'T SURE ABOUT WHO THE OTHER

1 WAS. I KNEW IT WAS A YOUNG LADY.

2 Q. SO YOU DIRECTED YOUR ATTENTION TO THE  
3 YOUNG WOMAN?

4 A. YES, SIR.

5 Q. AND IT WAS CALHOUN COUNTY WHO TENDED TO  
6 THE YOUNG MAN ON THE FLOOR?

7 A. THEY ALREADY HAD HIM IN THEIR UNIT, YES,  
8 SIR.

9 Q. ALL RIGHT. SO WHAT WERE YOUR OBSERVATIONS  
10 OF THE YOUNG WOMAN?

11 A. SHE WAS SITTING UPRIGHT IN A CHAIR. SHE  
12 WAS CONSCIOUS. SHE HAD WHAT APPEARED TO BE A GUNSHOT  
13 WOUND TO THE LEFT FACE, A LITTLE BIT TO THE LEFT SIDE  
14 OF THE NOSE AREA, AND A GUNSHOT WOUND TO THE RIGHT  
15 CHEST ABOVE THE BREAST AND APPEARED TO BE AN EXIT  
16 WOUND IN HER BACK.

17 Q. ALL RIGHT, SIR. DID YOU ENGAGE IN ANY  
18 CONVERSATION WITH HER?

19 A. THE ONLY THING SHE TOLD ME WAS THAT SHE  
20 WAS HAVING TROUBLE BREATHING, AND SHE COULDN'T MOVE  
21 HER RIGHT ARM AT THE TIME.

22 Q. ALL RIGHT. DID YOU DO AN EXAMINATION TO  
23 DETERMINE WHAT HER CONDITION WAS?

24 A. TRIED TO GET A BLOOD PRESSURE. COULDN'T  
25 GET A BLOOD PRESSURE AT THAT TIME. WELL, HER BLOOD

1 PRESSURE WAS REAL LOW. SHE WAS REAL COLD AND LIKE  
2 GOING INTO SHOCK, KIND OF CLAMMY LIKE.

3 Q. CAN YOU TALK A LITTLE BIT LOUDER?

4 A. OKAY. SHE WAS A LITTLE BIT COLD AND  
5 CLAMMY AS THEY DO WHEN THEY GO INTO SHOCK. SKIN  
6 COLOR WAS A LITTLE BIT PALE. I COULDN'T FIND A PULSE  
7 ON HER AT ALL AT THAT TIME.

8 Q. NO PULSE AT ALL?

9 A. NO, SIR, BUT SHE WAS CONSCIOUS.

10 Q. WOULD YOU STATE WHETHER OR NOT IN YOUR  
11 OPINION SHE WAS IN CRITICAL CONDITION AT THAT TIME?

12 A. OH, YES, SIR. SHE WAS CRITICAL.

13 Q. AND WHAT WAS HER BLOOD PRESSURE?

14 A. NEVER GOT ONE ON HER AT THE SCENE AT ALL.  
15 PULSE RATE, USUALLY IF A PERSON'S BLOOD PRESSURE GOES  
16 DOWN REAL LOW, YOU WON'T BE ABLE TO PALPATE IT, OR  
17 FEEL IT, PUT IT THAT WAY, OR HEAR IT.

18 Q. AND AS FAR AS HER EMOTIONAL CONDITION,  
19 WHAT WAS YOUR OBSERVATION?

20 A. SCARED, I WOULD SAY.

21 Q. WHAT TREATMENT DID YOU ADMINISTER AT THE  
22 SCENE?

23 A. WE ADMINISTERED OXYGEN TO HER. WE PUT  
24 RECLUSIVE DRESSINGS ON THE CHEST INJURIES TO KEEP AIR  
25 FROM GETTING INTO THE LUNGS AND COLLAPSING ANY