VOLUME ONE OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Paul M. Burch, Circuit Court Judge

MARION ALEXANDER LINDSEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001271

APPENDIX

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APPLICANT'S EXHIBIT #27 (PHOTOGRAPH)

APPLICANT'S EXHIBIT #28 (PHOTOGRAPH)

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	Case No(s).: 02-GS-42-0453
State of South Carolina Plaintiff, -VS- Marion Lindsey Defendant.	TRANSCRIPT OF RECORD **VOLUME 1 OF 4**

May 17, 2004
Spartanburg, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

A P P E A R A N C E S:

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Attorney for the Defendant

TERESA B. JOHNSON
OFFICIAL REPORTER

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S-3	9 mm casing	1486	1592,1742
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S-5	Beretta 9 mm	1486	1570,1742
S-6	Black clip	1486	1570,1742
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S-24	Photo	1486	1530,1742
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S-26	Photo	1486	1530,1742
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S-38	Photo	1486	1594,1742
S-39	Photo	1486	1594,1742
S-40	Photo	1486	1594,1742
S-41	Photo	1486	
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No exhibits offered.

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P R O C E E D I N G S

THE COURT: All right. Ladies and gentlemen, again, my name is John Few. I'm from Greenville. I'm going to be able to work with you all for this term of court which is probably going to last us into next week. We don't know exactly how long yet, but it probably will go through the weekend and into next week.

Let me take this opportunity to thank you all for being here. We really appreciate the way in which you all have worked with us since March when we sent out the original summons for you all to be here in April. Then we had to, of course, move the trial to today. And you all have been cooperative. And we certainly do appreciate that. It gives us a lot of hope to look forward to working with you all this week, these next two weeks. I think it's going to be a good term of court for us.

Now, those of us who are a part of this system permanently who work here, of course, we have to be here all the time. We realize this is an imposition on you to bring you out of your homes and bring you out of your jobs to come up here and to serve as members of the jury panel for this term of court. We're going to do our best to streamline this process

as much as we can to make it run as efficiently as we can for you all, to minimize the amount of time that you have to spend up here.

But this is a several day process that we're going to go through in qualifying the jury. There will be times that each of you is asked to come back. I think that we will all be here this morning until at least lunchtime. And then hopefully, we will be able to break you down into groups after that and ask you to come back. We again ask you to continue the level of cooperation that you have shown us so far and to be prompt when we ask you to come back. That will help us out considerably.

The process of qualifying the jury is basically a three-step process. In just a second, the Clerk of Court or the Deputy Clerk of Court is going to call the roll. After that, the second step is I will ask you some questions as a group and get your answers as a group or individuals. And we will be able to do that before lunch. And the third step is going to take several days. That's when we're going to break you down into panels and give you a set time to come back.

When we have gotten far enough along that we have enough jurors that have been qualified, then we will

be ready to begin the trial that I'm going to talk to you about in just a few more minutes. So now, before we have the Clerk call the roll, I'm going to have the Clerk administer to you an oath. And I want you to keep in mind that this oath will apply to the information that you give us when we call the roll which is really just your name.

But it also applies to the questions that I'm going to ask you this morning as a group. And it will also apply to the questions that I will ask you and that the lawyers will ask you when we break you down into panels and bring you back in groups. So for the next several days, everything you tell me and everything you tell this court will be subject to the oath that you are about to take now.

Would you go ahead and administer the oath?

THE CLERK: Ladies and gentlemen of the jury, please stand and raise your right hand.

(WHEREUPON, all jurors comply.)

THE CLERK: Do each of you solemnly swear or affirm that the answers you are about to give the Court are the whole truth and nothing but the truth so help you God?

(WHEREUPON, all jurors respond affirmatively.)

THE COURT: All right. Now, ladies and gentlemen,

because there are so many of you, it is obviously impossible for us to be able to tell whether each one of you accepted that oath. So I'm going to ask you this question now, is there any member of the jury panel who did not accept the oath that we just administered to you? If you did not accept the oath, please stand.

(WHEREUPON, there was no response.)

THE COURT: And ma'am, I see you're standing, but you did accept the oath, didn't you?

POTENTIAL JUROR: Yes.

THE COURT: All right. Call the roll.

When your name is called, please stand. There's a lot of you. This is a big room. I'm used to making my voice project into all corners of the room. Some of you may not be used to having to speak quite that loud. When your name is called, please repeat your -- stand and repeat your name for us. Tell us your mileage one way here to the courthouse from your home.

Background noise makes it difficult for us to hear. We have a court reporter up here who is taking down everything that is said. So please try to minimize the moving around and shuffling and coughing and other things that are going to create background noise that make it difficult for us to hear.

Go ahead.

THE CLERK: Number 3, Shannon G. Arrington.

POTENTIAL JUROR: You want my name?

THE CLERK: Name, your occupation --

THE COURT: Well, we're just going to get the name and the mileage in order to move it along more quickly.

THE CLERK: All right.

POTENTIAL JUROR: My name is Shannon Arrington. A-r-r-i-n-g-t-o-n. And I live approximately 30 miles from here.

THE CLERK: Thank you.

Number 4, William D. Atkins.

POTENTIAL JUROR: William Atkins. It's approximately four miles.

THE CLERK: Number 6, Michael W. Ausberry, Junior.

POTENTIAL JUROR: Michael Ausberry, Junior. Approximately 30 miles.

THE CLERK: Number 8, Steve D. Babb.

POTENTIAL JUROR: Steve Babb. 25 miles.

THE CLERK: Number 9, Pamela C. Bagwell.

POTENTIAL JUROR: Pam Bagwell. Ten miles.

THE CLERK: Number 10, Dena G. Bailey.

POTENTIAL JUROR: Dena Bailey. Approximately

eight miles.

THE CLERK: Number 13, Donald L. Banks.

POTENTIAL JUROR: Donald Banks. 20 miles.

THE CLERK: Number 14, Jackie D. Barham.

POTENTIAL JUROR: Jackie Barham. Six miles.

THE CLERK: Number 15, Samuel K. Bagwell. Barnwell, I'm sorry. Barnwell.

POTENTIAL JUROR: Samuel K. Barnwell. 25 miles.

THE CLERK: Number 18, Thaddeus A. Beck.

POTENTIAL JUROR: Thaddeus Beck. 13 miles.

THE CLERK: Number 19, Lori S. Bedillion.

POTENTIAL JUROR: Lori Bedillion. Five miles.

THE CLERK: Number 20, Joseph N. Bennett.

POTENTIAL JUROR: Joseph N. Bennett. 15 miles.

THE CLERK: Number 21, Joshua R. Bennett.

POTENTIAL JUROR: Joshua Bennett. 15 miles.

THE CLERK: Number 22, Kimberly A. Berry.

POTENTIAL JUROR: Kimberly A. Berry. I was told to come in this morning. I can't serve this jury.

THE COURT: I will talk to you about that as soon as I can, Mrs. Berry. But for now, if you would just give us your mileage, then we will get to you. It will be a little bit longer. But I've got to go ahead and go through the roll call. And then I will talk to you. What's your mileage?

POTENTIAL JUROR: About eight miles.

THE CLERK: Number 27, Don J. Boyce.

POTENTIAL JUROR: Don J. Boyce. Approximately seven miles.

THE CLERK: Number 28, Sandra L. Brady.

POTENTIAL JUROR: Sandra Brady. Eight miles.

THE CLERK: Number 29, Timothy R. Brewton.

POTENTIAL JUROR: Timothy Brewton. 18 miles.

THE CLERK: Number 32, Joseph -- Joshua L. Brock.

POTENTIAL JUROR: Joshua Brock. Approximately 20 miles.

THE CLERK: Number 35, Tommy D. Brown.

POTENTIAL JUROR: Tommy D. Brown. 15 miles.

THE CLERK: Number 37, Carol S. Burdette.

POTENTIAL JUROR: Carol Burdette. Seven miles.

THE CLERK: Number 39, Lori J. Burnett.

POTENTIAL JUROR: Lori Burnett. 18 miles.

THE CLERK: Number 40, Samantha Butler.

POTENTIAL JUROR: Samantha Butler. Ten miles.

THE CLERK: Number 44, Barrie L. Calderone.

POTENTIAL JUROR: Barrie Calderone. Seven miles.

THE CLERK: Number 45, Otis D. Campbell.

POTENTIAL JUROR: Otis D. Campbell. Twelve miles.

THE CLERK: Number 48, Kimberly M. Carpenter.

POTENTIAL JUROR: Kim Carpenter. Approximately 15 miles.

THE CLERK: Number 49, Kevin O. Cartledge.

POTENTIAL JUROR: Kevin Cartledge. Ten miles.

THE CLERK: Number 50, Candace D. Cathcart.

POTENTIAL JUROR: Candace Cathcart. Ten miles.

THE CLERK: Number 51, Alicia M. Center.

POTENTIAL JUROR: Alicia Center. Ten miles.

THE CLERK: Number 52, Betty L. Cochran.

POTENTIAL JUROR: Betty L. Cochran. 20 miles.

THE CLERK: Number 53, Leonard F. Cogdill.

POTENTIAL JUROR: Leonard Cogdill. Four miles.

THE CLERK: Number 57, Clara V. Cope.

POTENTIAL JUROR: Clara V. Cope. 15 miles.

THE CLERK: Number 59, James R. Cottrell.

POTENTIAL JUROR: James R. Cottrell. Ten miles.

THE CLERK: Number 60, James E. Creel.

POTENTIAL JUROR: James Creel, 15.

THE CLERK: Number 61, Travis K. Cromer.

POTENTIAL JUROR: Travis Cromer. Five miles.

THE CLERK: Number 63, Sheril H. Cudd.

POTENTIAL JUROR: Sheril Cudd. Eight miles.

THE CLERK: Number 65, Luther M. Culpepper.

POTENTIAL JUROR: Luther Culpepper. 17 miles.

THE CLERK: Number 66, Harold L. Daniels.

POTENTIAL JUROR: Harold L. Daniels. Five miles.

THE CLERK: Number 68, Michael T. Dawson.

POTENTIAL JUROR: Michael Dawson. 15 miles.

THE CLERK: Number 71, James S. Dodd.

POTENTIAL JUROR: James S. Dodd, 25.

THE CLERK: Number 72, Elizabeth M. Donald.

POTENTIAL JUROR: Elizabeth Donald. Twelve miles.

THE CLERK: Number 74, Cheryl L. Dotson.

POTENTIAL JUROR: Cheryl Dotson. 18 miles.

THE CLERK: Number 77, Ashley D. Driscoll.

POTENTIAL JUROR: Ashley Driscoll. Approximately three miles.

THE CLERK: Number 81, Emma G. Ellis.

POTENTIAL JUROR: Emma Ellis. 25 miles.

THE CLERK: Number 82, Frank L. Elmore.

POTENTIAL JUROR: Frank L. Elmore. 25 miles.

THE CLERK: Number 84, Dewey L. Ferrell, Jr.

(WHEREUPON, there was no response.)

THE CLERK: That juror is on the list to be checked.

Number 85, Stanley F. Fields.

POTENTIAL JUROR: Stanley Fields. 15 miles.

THE CLERK: Number 86, Kenneth J. Fields, Jr. is on the list to be checked.

87, Wendy K. Fincher.

(WHEREUPON, there was no response.)

THE CLERK: On the list to be checked.

89, Joseph H. Floyd.

POTENTIAL JUROR: Joseph H. Floyd. I would say approximately ten miles.

THE CLERK: Number 90, Judy D. Folk.

POTENTIAL JUROR: Judy Folk. 15 miles.

THE CLERK: Number 92, Candy C. Fowler.

POTENTIAL JUROR: Candy C. Fowler. Approximately 15.

THE CLERK: Number 93, Gail L. Fowler.

POTENTIAL JUROR: Gail Fowler. Six miles.

THE CLERK: Number 95, Linda J. Fuller.

POTENTIAL JUROR: Linda Fuller. 18 miles.

THE CLERK: Number 96, Robin D. Gallman.

POTENTIAL JUROR: Robin Gallman. Nine miles.

THE CLERK: Number 97, Pam L. Gardner.

POTENTIAL JUROR: Pam Gardner. Ten miles.

THE CLERK: Number 100, James B. Gedroic.

POTENTIAL JUROR: James Gedroic. 30 miles.

THE CLERK: Number 101, James T. Gentry.

POTENTIAL JUROR: James T. Gentry. A mile and a half.

THE CLERK: 102, Sarah H. Gibson.

POTENTIAL JUROR: My name has been changed. It's

Sarah Gibson Simms. And approximately seven miles.

THE CLERK: Number 103, Teresa R. Gilbert.

POTENTIAL JUROR: Teresa Gilbert. Approximately 10.

THE CLERK: Number 106, Danny S. Gomes.

POTENTIAL JUROR: Danny Gomes. Five miles.

THE CLERK: Number 109, Melva Graham Martin.

POTENTIAL JUROR: Melva Martin. About 15 miles.

THE CLERK: Number 112, Brandon J. Greenway.

POTENTIAL JUROR: Brandon Greenway. 15 miles.

THE CLERK: Number 113, Catherine A. Grubbs.

POTENTIAL JUROR: Catherine A. Grubbs. 20 miles.

THE CLERK: Number 115, Angela M. Haley.

POTENTIAL JUROR: Angela Haley. Five miles.

THE CLERK: Number 117, Amanda J. Hamby.

POTENTIAL JUROR: I recently moved to address. Would you like my mileage on the new one?

THE CLERK: (Nods head affirmatively.)

POTENTIAL JUROR: I'm Amanda Hamby. About 35 miles per hour.

THE CLERK: Number 118, Rosa L. Hammitt.

POTENTIAL JUROR: Rosa Hammitt. Approximately ten miles.

THE CLERK: Number 122, Robert D. Hensley.

POTENTIAL JUROR: Robert Hensley. About ten

miles.

THE CLERK: Number 123, Leon G. Hicks.

POTENTIAL JUROR: Leon Hicks. 21 miles.

THE CLERK: Number 125, Carole E. Hill.

POTENTIAL JUROR: Carole Hill. 28 miles.

THE CLERK: Number 126, Elizabeth A. Hill

POTENTIAL JUROR: I am Elizabeth Hill. Approximately 25 miles.

THE CLERK: Number 127, Todd C. Hillstock.

POTENTIAL JUROR: Todd Hillstock. One mile.

THE CLERK: How many miles, sir?

POTENTIAL JUROR: One.

THE CLERK: Number 130, Tracy L. Hollingsworth.

POTENTIAL JUROR: Tracy Hollingsworth. About seven or eight miles.

THE CLERK: Number 133, John P. Hoversrud.

POTENTIAL JUROR: John Hoversrud. Ten miles.

THE CLERK: Number 134, Karla S. Howell.

(WHEREUPON, there was no response.)

THE CLERK: She's on the list to be checked. Number 135, Donna J. Hughes.

POTENTIAL JUROR: Donna Hughes. Eight miles.

THE CLERK: Number 137, Kylie L. Hyder.

POTENTIAL JUROR: Kylie Hyder. 30 miles.

THE CLERK: Number 138, Dean T. Israel.

POTENTIAL JUROR: Dean T. Israel. Seven miles.

THE CLERK: Number 146, Ricky L. Johnson.

POTENTIAL JUROR: Ricky Johnson. 15 miles.

THE COURT: What was the number? 146?

THE CLERK: 146.

Number 147, Sophia M. Johnson.

POTENTIAL JUROR: Sophia Johnson. Ten miles.

THE CLERK: Number 148, Linda K. Jones.

POTENTIAL JUROR: Linda Jones. Eleven miles.

THE CLERK: Number 151, Matt Kern.

POTENTIAL JUROR: Matt Kern. Seven miles.

THE CLERK: Number 153, Jon C. Krisher.

POTENTIAL JUROR: Jon Krisher. 16 miles.

THE CLERK: Number 155, Dorthy Landrum.

POTENTIAL JUROR: Dorthy Landrum. One mile.

THE CLERK: Number 157, Wilma S. Langford.

POTENTIAL JUROR: Wilma Langford. About 20 miles.

THE CLERK: Number 160, Mackenzie A. Leake.

POTENTIAL JUROR: Mackenzie Leake. 25 miles.

THE CLERK: Number 161, Elaine J. Lee.

POTENTIAL JUROR: Elaine Lee. Six miles.

THE CLERK: Number 162, Rick J. Lee.

POTENTIAL JUROR: Rick Lee. Twelve miles.

THE CLERK: Number 171, Donald L. Malone.

POTENTIAL JUROR: Donald Malone. Ten miles.

THE CLERK: Number 173, Harold T. Marcum, Jr.

POTENTIAL JUROR: Harold Marcum. Eight miles.

THE CLERK: Number 175, Joyce P. Martin.

POTENTIAL JUROR: Joyce P. Martin. 17 miles.

THE CLERK: Number 176, Miguel A. Martinez.

POTENTIAL JUROR: Miguel A. Martinez. About eight miles.

THE CLERK: Number 178, Michael E. Mathis.

POTENTIAL JUROR: Michael Mathis. Five miles

THE CLERK: Number 179, Larry A. Mauldin.

POTENTIAL JUROR: Larry A. Mauldin. 15 miles.

THE CLERK: Number 185, Shirley McDowell.

POTENTIAL JUROR: Shirley McDowell. Five miles.

THE CLERK: Number 187, Gary S. McHam.

POTENTIAL JUROR: Gary McHam. Three miles.

THE CLERK: Number 189, Brent W. McKinney.

POTENTIAL JUROR: Brent W. McKinney. 15 miles.

THE CLERK: Number 191, John D. Medford.

POTENTIAL JUROR: John D. Medford. Seven miles.

THE CLERK: Number 192, Dana A. Melton.

POTENTIAL JUROR: Dana Melton. Five miles.

THE CLERK: Number 194, Jerlyn M. Miller.

POTENTIAL JUROR: Jerlyn Miller. One mile.

THE CLERK: Number 195, Kathleen C. Miller.

POTENTIAL JUROR: Kathleen Miller. 30 miles.

THE CLERK: Number 196, Lewis J. Miller.

POTENTIAL JUROR: Lewis J. Miller. About eight miles.

THE CLERK: Number 197, Aletha M. Misenheimer.

POTENTIAL JUROR: Aletha Misenheimer. Ten miles.

THE CLERK: Number 199, Laurence D. Morda.

POTENTIAL JUROR: Laurence Morda. About 25 miles.

THE CLERK: Number 200, Lynne L. Morgan.

POTENTIAL JUROR: Lynne L. Morgan. Five miles.

THE CLERK: Number 202, Amanda E. Morton.

POTENTIAL JUROR: Amanda Morton. 15 miles.

THE CLERK: Number 203, Brock T. Muenzer.

POTENTIAL JUROR: Brock Muenzer. About 29 miles.

THE CLERK: Number 204, Theresa M. Nason.

POTENTIAL JUROR: Therea Nason. 21 miles.

THE CLERK: Number 205, Joann T. Netherton.

POTENTIAL JUROR: Joann Netherton. 15 miles.

THE CLERK: Number 206, Deborah W. Newman.

POTENTIAL JUROR: Deborah Newman. 12 miles.

THE CLERK: Number 208, Thomas N. Oliver.

POTENTIAL JUROR: Thomas Oliver. Five miles.

THE CLERK: Number 211, Brenda B. Pair.

POTENTIAL JUROR: Brenda Pair. 10 miles.

THE CLERK: Number 212, William D. Parnell.

POTENTIAL JUROR: William Parnell. 18 miles.

THE CLERK: Number 213, Rodney Petty.

POTENTIAL JUROR: Rodney Petty. Eight miles.

THE CLERK: Number 214, Timothy K. Pitts.

POTENTIAL JUROR: Timothy Pitts. Eight miles.

THE CLERK: Number 215, John S. Poole.

POTENTIAL JUROR: John Poole. Four and a half miles.

THE CLERK: Number 216, Angela A. Porter.

POTENTIAL JUROR: Angela Porter. One mile.

THE CLERK: Number 218, Janet Prasanlack.

POTENTIAL JUROR: Janet Prasanlack. 15 miles.

THE CLERK: Number 221, Jamie A. Puckett.

POTENTIAL JUROR: Jamie Puckett. Ten miles.

THE CLERK: Number 222, Tammy Queen.

POTENTIAL JUROR: Tammy Queen. Four miles.

THE CLERK: Number 223, Donald E. Ray.

POTENTIAL JUROR: Donald Ray. Two miles.

THE CLERK: Number 224, Kenneth J. Reese.

POTENTIAL JUROR: Kenneth Reese. 14 miles.

THE CLERK: Number 225, Jeffrey A. Rhineberger.

POTENTIAL JUROR: Jeffrey Rhineberger. 18.

THE CLERK: Number 226, Melody M. Riddle.

POTENTIAL JUROR: Melody Riddle. About eight.

THE CLERK: Number 227, Ronnie H. Ridings.

POTENTIAL JUROR: Ronnie Ridings. Eight miles.

THE CLERK: Number 228, Timothy J. Roberts.

POTENTIAL JUROR: Timothy Roberts. 14 miles.

THE CLERK: Number 229, Regina E. Robertson.

POTENTIAL JUROR: Regina Robertson. 12 miles.

THE CLERK: Number 230, Alonzo M. Robinson.

POTENTIAL JUROR: Alonzo Robinson. Ten miles.

THE CLERK: Number 231, Donnie Rogers.

(WHEREUPON, there was no response.)

THE CLERK: Donnie Rogers, that's a juror to be checked on.

232, Kim Rogers.

POTENTIAL JUROR: Kim Rogers. 12 miles.

THE CLERK: Number 233, Danny R. Rollins.

POTENTIAL JUROR: Danny Rollins. Twelve miles.

THE CLERK: Number 235, Iva A. Ross.

POTENTIAL JUROR: Iva Ross. Approximately 20 miles.

THE CLERK: Number 236, Craig C. Ruff.

POTENTIAL JUROR: Craig Ruff. 23 miles.

THE CLERK: Number 240, Martha J. Sallis.

POTENTIAL JUROR: Martha Sallis. Ten miles.

THE CLERK: Number 241, Shannon D. Sanders.

POTENTIAL JUROR: Shannon Sanders. About 25 miles.

THE CLERK: Number 243, Lady N. Sartor.

POTENTIAL JUROR: Lady Sartor. Ten miles.

THE CLERK: Number 247, Jeffrey D. Seay.

POTENTIAL JUROR: Jeffrey Seay. 14 miles.

THE CLERK: Number 250, Mark P. Simmons.

POTENTIAL JUROR: Mark Simmons. About twelve miles.

THE CLERK: Number 253, Brenda M. Smith.

POTENTIAL JUROR: Brenda Smith. Eight miles.

THE CLERK: Number 254, Latrice V. Smith.

POTENTIAL JUROR: Latrice Smith. Three miles.

THE CLERK: Number 255, Marvin Smith.

POTENTIAL JUROR: Marvin Smith. 15 miles.

THE CLERK: Number 256, Matthew S. Smith.

POTENTIAL JUROR: Matthew Smith. Five miles.

THE CLERK: Number 257, Richard K. Smith.

POTENTIAL JUROR: Richard Smith. Four miles.

THE CLERK: Number 258, Toni D. Smith.

POTENTIAL JUROR: Toni Smith. Six miles.

THE CLERK: Number 260, Ryan Snapp.

POTENTIAL JUROR: Ryan Snapp. About 18 miles.

THE CLERK: Number 261, Heather L. Snite.

POTENTIAL JUROR: Heather Snite. Five miles.

THE CLERK: Number 267, Tameka D. Stephen

POTENTIAL JUROR: Tameka Stephen. Two miles.

THE CLERK: Number 268, Jami L. Sturgeon.

POTENTIAL JUROR: Jami Sturgeon. Two miles.

THE CLERK: Number 269, Tracey A. Surrett.

POTENTIAL JUROR: Tracey Surrett. 28 miles.

THE CLERK: Number 270, Lori L. Tallent.

POTENTIAL JUROR: Lori Tallent. 12 miles.

THE CLERK: Number 271, Michael D. Taylor.

POTENTIAL JUROR: Michael Taylor. Uh, 25 miles.

THE CLERK: Number 272, Ramniklal P. Thakrar.

POTENTIAL JUROR: Ramniklal Thakrar. Eight miles.

THE CLERK: Number 273, Patricia A. Thomas.

POTENTIAL JUROR: Patricia Ann Thomas. I'm not really sure. I think about five miles.

THE CLERK: Number 274, Darcy J. Thompson.

POTENTIAL JUROR: Darcy Thompson. Two miles.

THE CLERK: Number 277, Dorothy Tiner.

POTENTIAL JUROR: Tiner. It's 15 miles.

THE CLERK: Number 279, Gary G. Tucker.

POTENTIAL JUROR: Gary Tucker. 25 miles.

THE CLERK: Number 281, Jane V. Vellines.

POTENTIAL JUROR: Jane Vellines. Approximately five miles.

THE CLERK: Number 282, Sheila M. Vlieg.

POTENTIAL JUROR: Sheila Vlieg. Roughly nine miles.

THE CLERK: Number 285, Michael D. Weeks.

POTENTIAL JUROR: Michael Weeks. About 7 miles.

THE CLERK: Number 287, Tracy Whitaker.

POTENTIAL JUROR: Tracy Whitaker. Five miles.

THE CLERK: Number 288, Junie White.

POTENTIAL JUROR: Junie White. Two miles.

THE CLERK: Number 291, Sherba J. Wilkins.

POTENTIAL JUROR: Sherba Wilkins. Four miles.

THE CLERK: Number 293, Hollie R. Williams.

POTENTIAL JUROR: Hollie Williams. One mile.

THE CLERK: Number 294, Isabell Williams.

POTENTIAL JUROR: Isabell Williams. Two miles.

THE CLERK: Number 295, Jeffrey W. Williams.

POTENTIAL JUROR: Jeffrey Williams. Ten miles.

THE CLERK: Number 297, Thomas A. Williams.

POTENTIAL JUROR: Thomas Williams. Seven miles.

THE CLERK: Is any juror present in the courtroom whose name I did not call?

Juror number 134, Karla S. Howell.

POTENTIAL JUROR: Yes, sir.

THE CLERK: Is that your name? Go ahead and repeat your name.

POTENTIAL JUROR: Karla S. Howell.

THE CLERK: How many miles did you have?

POTENTIAL JUROR: I'm sorry.

THE CLERK: How many miles to the courthouse this

morning?

POTENTIAL JUROR: Approximately about 15 miles.

THE CLERK: Thank you.

THE CLERK: Now, ladies and gentlemen, as I said a minute ago, I have a list of questions that I have to ask you now. This list of questions is set forth in the South Carolina Statutes. And I'm required to ask you each one of these questions. Some of these questions might call for personal information from you. We don't want any one of you to suffer any embarrassment at all.

If I ask you a question and you're going to have to answer that question and you don't want to answer the question out loud in front of the rest of the jurors, then you can just tell me that. And I will give you a chance at the end to come down front and answer the question privately with me and with the Clerk of Court. We don't want anybody to suffer any embarrassment.

Please listen very carefully to the questions that I ask you. It is very important that if you have any information that is responsive to a question that I ask that you give me that information this morning. If I ask a question and you have some information that you need to provide, please stand. I will recognize

you. Give me your name and then tell me your information.

Now, if you don't want to do it out loud, you can tell me that then or you can just remain quiet. You can remain seated. And at the end, you can come down front and give me the information that you did not want to give out loud in front of the rest of the jury panel.

There are two types of questions that I'm going to ask you. The first type of question or the first group of questions relates directly to your qualification to serve as jurors in South Carolina. The second group of questions relate to what we call exemptions. Even though you may be qualified to serve, you may be exempt for one reason or the other. The first group of questions that I'm going to ask you relate directly to your qualification. Is there any member of the jury panel who is not a citizen of the United States? If not, please stand.

(WHEREUPON, there was no response.)

THE COURT: Is there any member of the jury panel who is not a citizen and resident of Spartanburg County, South Carolina? If not, please stand.

Tell me your name, ma'am.

POTENTIAL JUROR: Alicia Center.

THE COURT: Ms. Center?

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: What county do you live in?

POTENTIAL JUROR: Greenville County.

THE COURT: What's your address?

POTENTIAL JUROR: Greenville, South Carolina.

THE COURT:

POTENTIAL JUROR: Yes.

THE COURT: Have you moved recently?

POTENTIAL JUROR: Yes, sir. December of '03.

THE COURT: All right. Thank you, Ms. Center. Your name, ma'am?

POTENTIAL JUROR: Amanda Hamby, 117.

THE COURT: Where do you live, ma'am?

POTENTIAL JUROR: I live at in Campobello.

THE COURT: And is that in Greenville?

POTENTIAL JUROR: No.

THE COURT: What county is that in?

POTENTIAL JUROR: It's in Inman.

THE COURT: Is it in Spartanburg County?

POTENTIAL JUROR: I'm not sure. I just moved there.

THE COURT: Okay. I think that's in Spartanburg

County.

POTENTIAL JUROR: Okay. I'm sorry.

THE COURT: That's all right.

Yes, ma'am. Tell me your name.

POTENTIAL JUROR: Kylie Hyder.

THE COURT: All right. Ma'am, where do you live?

POTENTIAL JUROR: I live in Greenville County.

THE COURT:

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: That might be North Carolina. You sure that's in South Carolina? Have you moved recently, Ms. Hyder?

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: And that's in Greenville County?

POTENTIAL JUROR: Uh-huh (affirmative). It's right outside.

THE COURT: Thank you, Ms. Hyder. All right.

Nobody else is standing. Is there any member of the jury panel who is unable to read, write, speak or understand the English language? If you are unable to do either one of those things, please stand.

Tell me your name, sir.

POTENTIAL JUROR: Lewis James Miller.

THE COURT: Mr. Miller. All right. Mr. Miller,

you want to talk to me about that now or you want to speak to me privately in a few minutes?

POTENTIAL JUROR: Well, I went to the 10th grade. I ain't all that smart or anything like that there. I do the best I can, you know.

THE COURT: Do you work, Mr. Miller?

POTENTIAL JUROR: Yeah.

THE COURT: How long have you held your job?

POTENTIAL JUROR: I been on this job now about seven months.

THE COURT: And you answered the question because you don't read all that well?

POTENTIAL JUROR: I can't read too good. Can't read too good.

THE COURT: You can read some but not to well?

POTENTIAL JUROR: Not to good.

THE COURT: Mr. Miller, I'll tell you what, at the end, when I get all the jurors to come up and speak to me individually, why don't you come up and talk to me a little bit more in detail then. Okay? Thank you, sir.

Your name, sir?

POTENTIAL JUROR: Michael Mathis.

THE COURT: Mr. Mathis?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. You want to speak to me now or you want to speak to me privately in a few minutes?

POTENTIAL JUROR: Speak to you now.

THE COURT: All right. Go ahead.

POTENTIAL JUROR: I went to the fourth grade in school. I can't read and write.

THE COURT: Can you read at all?

POTENTIAL JUROR: Barely.

THE COURT: What kind of job do you have?

POTENTIAL JUROR: I move furniture now. But I'm on disability.

THE COURT: All right. Do you, uh, when you manage your money, do you have a checkbook that you use?

POTENTIAL JUROR: No.

THE COURT: Who handles your money?

POTENTIAL JUROR: My daughter does.

THE COURT: Is that because you are unable to handle a checkbook?

POTENTIAL JUROR: Yes.

THE COURT: All right. Thank you, Mr. Mathis. We'll get back to you in a few minutes.

Yes, ma'am.

POTENTIAL JUROR: My name is Dorthy Landrum. And

I can't read.

THE COURT: Mrs. Landrum?

POTENTIAL JUROR: Yes.

THE COURT: All right. Ma'am, do you work?

POTENTIAL JUROR: No, disability.

THE COURT: Ma'am?

POTENTIAL JUROR: Disability.

THE COURT: How long have you been on disability?

POTENTIAL JUROR: Twenty something years.

THE COURT: Can you read at all or just not to well?

POTENTIAL JUROR: I can't read at all.

THE COURT: All right. We'll get back to you in a few minutes, Ms. Landrum.

Nobody else is standing. Does any member of the jury panel have less than a six grade education? If so, please stand.

Mr. Mathis, you don't need to stand again.

POTENTIAL JUROR: Sir?

THE COURT: You don't need to stand again, sir.

(WHEREUPON, there was no response.)

THE COURT: Nobody is standing. Is there any member of the jury panel who is unable to serve on the jury duty this week because of a medical condition, either a mental or a physical condition? Anyone who

is unable to serve on jury duty this week because of a medical condition, please stand.

All right. Tell me your name, ma'am.

POTENTIAL JUROR: Kim Berry.

THE COURT: Ms. Berry.

Now, let me say this to each one of you who are standing now in response to the question about a medical condition. I'm going to have to have some sort of documentation from a physician in order to excuse you from jury service. So if you have that, you can present it to me now.

If you don't have that, then we will have a little bit of time this afternoon and tomorrow for you to try to get that. So if you don't have it, still I want you to tell me your name. But understand that I'm not going to be able to excuse you until I have seen some documentation from a physician.

All right. Ms. Berry.

POTENTIAL JUROR: I would have brought it. I'm seeing a doctor for a nerve in my back. I can't sit. That's why I've been standing. I didn't get notice until Friday in my mailbox that I was suppose to be here Monday morning. When I called, she said I have to show up to see the judge. There was no way to do that at 5 o'clock Friday. I can get you several

doctors.

THE COURT: Is this a problem that you've had for a long time or something that has come up recently?

POTENTIAL JUROR: In the last month.

THE COURT: Do you work?

POTENTIAL JUROR: No.

THE COURT: How long has it been since you've worked?

POTENTIAL JUROR: Seven years, eight years.

THE COURT: All right. Let me see the lawyers up here for a second please.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: All right. What I'm going to do, it looks like there's about ten to twelve of you all standing that want to talk to me about medical problems. Instead of doing that one at a time now, I'm going to ask you all when I meet with the jurors individually in about 20 or 30 minutes, I want you to come down and speak to me then.

But you have to understand that I do not have the power to excuse you from jury service for a medical condition unless you have documentation from a physician. It may be that you need to go and try to get that this afternoon when we have a little time off

and then bring it to me as soon as you can. But if you want to come on up and tell me about it, it may be that we can, depending on your situation, we might can resolve it without an excuse, but I kind of doubt it. So when I ask the jurors to come speak to me individually in a few minutes, just come and get in that line and I will speak to you then. So you all can have a seat.

Is there any member of the jury panel who has ever been convicted of a crime whose maximum punishment could have been more than one year in prison? Now, there are several ways that you can be convicted. Perhaps you pled guilty before a judge or you might have been found guilty before a judge or before a jury and you were convicted in that way.

And it does not matter what sentence you actually got. What is important is what sentence you could have gotten. And if you have been convicted of a crime where the sentence that you could have gotten is more than one year in jail, please stand now and tell me about it. Or if you choose, you can come speak to me about it privately in a few minutes.

Tell me your name, sir.

POTENTIAL JUROR: Robert Hensley. Can I speak with you privately please.

THE COURT: All right.

Ma'am?

POTENTIAL JUROR: I'll come --

THE COURT: If you want to speak to me privately, you don't have to tell me that right now.

Your name, sir?

POTENTIAL JUROR: Travis Cromer. I was convicted of strong arm robbery.

THE COURT: Is that here in Spartanburg?

POTENTIAL JUROR: Yes, sir. It is.

THE COURT: All right. Mr. Cromer, we'll be back with you in a few minutes.

Yes, sir.

POTENTIAL JUROR: John Medford. I would like to speak to you in private, please.

THE COURT: All right, Mr. Medford.

Your name, sir?

POTENTIAL JUROR: Ryan Snapp.

THE COURT: What was your last name?

POTENTIAL JUROR: Snapp.

THE COURT: All right. You want to tell me about it now?

POTENTIAL JUROR: No, sir.

THE COURT: All right.

POTENTIAL JUROR: Michael Mathis.

THE COURT: Mr. Mathis.

POTENTIAL JUROR: I was convicted of three counts of grand larceny. I was sentenced to eight years. And I could have got 30.

THE COURT: Three counts of grand larceny. Thank you, Mr. Mathis.

Your name, sir?

POTENTIAL JUROR: Frank Elmore.

THE COURT: Yes, sir.

POTENTIAL JUROR: Speak to you privately.

THE COURT: All right.

POTENTIAL JUROR: Joseph Floyd. I'd like to speak to you later.

THE COURT: All right.

Ma'am?

POTENTIAL JUROR: Tracey Surrett. Voluntary manslaughter.

THE COURT: We'll get back to you shortly, Ms. Surrett.

Nobody else is standing. Is there any member of the jury panel who is a Clerk or Deputy Clerk of Court, a constable, sheriff or other commissioned law enforcement officer, a probate judge, county commissioner, magistrate or other county officer or any person employed within the walls of any

courthouse? If so, please stand.

Tell me your name, ma'am.

POTENTIAL JUROR: Elizabeth Donald. Elizabeth Donald.

THE COURT: All right. Tell me about your situation.

POTENTIAL JUROR: I work with the county auditor.

THE COURT: And where is your office?

POTENTIAL JUROR: It's up the street in the administrative building.

THE COURT: In the administrative building. What is your position?

POTENTIAL JUROR: Tax clerk.

THE COURT: Tax clerk?

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: All right. I don't think that disqualifies you but I will have to check.

Your name, sir?

POTENTIAL JUROR: I work for the county of Lyman.

THE COURT: What do you do for Lyman?

POTENTIAL JUROR: I'm a lab technician for the water plant.

THE COURT: And your office is at the water plant?

POTENTIAL JUROR: It's in the Town Hall.

THE COURT: In the Town Hall. Tell me your name

again.

POTENTIAL JUROR: William Atkins, Juror number 4.

THE COURT: All right, sir. I don't think that disqualifies you but I'll have to check, Mr. Atkins.

Is there any member of the jury panel who has already served as a juror or on jury duty in circuit court during this year, 2004? If so, please stand.

Yes, sir.

POTENTIAL JUROR: I served before but not on this side.

THE COURT: In this building?

POTENTIAL JUROR: Yes, sir.

THE COURT: But over in the basement on the other side?

POTENTIAL JUROR: Yes, sir.

THE COURT: And tell me your name.

POTENTIAL JUROR: Shannon Arrington.

THE COURT: Ms. Arrington?

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: That was in magistrate's court. That would not disqualify you.

Is there any member of the jury panel who has served as a member of the Spartanburg County Grand Jury in the last several years? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: Is there any member of the jury panel who is employed as a guard with the South Carolina Department of Corrections? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: All right. Now, I'm going to move on to the second group of questions that relate to exemptions. The first exemption is for jurors who are 65 or older. If you are age 65 or older and you do not want to serve as a juror during this term of court, then I will excuse you.

Now let me make it clear that you certainly are free to serve. These exemptions, any exemption that might apply to you, you are free to serve if you choose to. And we will certainly love to have you stick around and serve. But if you are 65 or older and you don't want to serve, please stand and tell me your name, now.

POTENTIAL JUROR: Junie White.

THE COURT: Mr. White, you don't want to serve, sir?

POTENTIAL JUROR: No, sir.

THE COURT: Mr. White, we'll be back in touch with you very shortly.

POTENTIAL JUROR: Iva Ross.

THE COURT: Ma'am?

POTENTIAL JUROR: Iva Ross.

THE COURT: You don't want to serve, ma'am?

POTENTIAL JUROR: Huh-uh (negative.)

THE COURT: All right. Mrs. Ross, I'll be in touch with you shortly.

Nobody else. The next exemption applies to anybody who might have served on jury duty in circuit court during the years 2002 or 2003. If you served as a juror in circuit during either of those years and you don't want to serve now, please stand.

(WHEREUPON, there was no response.)

THE COURT: Nobody is standing. The next exemption deals with those of you who have small children. There are several parts to this exemption. All of these parts must apply to you before you can be exempted.

If you have a child that is under the age of 7 and you have custody of that child and you are the person who is responsible for the care of that child during the day or during the time that court will be running and if you have attempted to make other arrangements for the care of that child but you have been unable to do so, then I can transfer you to a different term of court or excuse you. If you want to take advantage of this exemption, please stand.

All right. There are four of you who are standing. I'm going to ask you in a few minutes when I talk to the jurors -- five of you -- individually to come down front and speak to the Clerk of Court. The Clerk of Court will have an affidavit that you will have to fill out. And if you fill that affidavit out, it will be given to me. And I will see whether or not I can excuse you. All right.

Is there any member of the jury panel who is a full-time student, school teacher, school crossing guard, bus driver or who serves in any other school related function who is unable to serve on jury duty this week because of that school related activity? If you will stand now, then I can transfer you to a different term of court. I can not excuse you, but I can transfer you.

Ma'am?

POTENTIAL JUROR: I'm a summer student at Spartanburg Tech.

THE COURT: Are you working also?

POTENTIAL JUROR: Yes, I am.

THE COURT: When does summer school start?

POTENTIAL JUROR: From 8:00 to 10:45 in the morning.

THE COURT: But what --

POTENTIAL JUROR: It starts today.

THE COURT: All right. You are Ms. Hill?

POTENTIAL JUROR: Yes.

THE COURT: Ms. Hill, I will need to see something. It's not that I don't believe you. It's just that the legislature put in the statute that I've got to see something that shows that you are enrolled as a student.

POTENTIAL JUROR: I have an itinerary with me.

THE COURT: All right. If you will bring that down when I ask to speak to the jurors individually, then I will look at it then. Thank you, Ms. Hill.

Yes, ma'am.

POTENTIAL JUROR: I have a disabled child at home.

THE COURT: How old is the child?

POTENTIAL JUROR: She's eleven. She has --

THE COURT: Okay. I can talk to you about that later. But that would not fit under this particular exemption. If the child is over seven --

POTENTIAL JUROR: I was wondering --

THE COURT: Right.

Your name, ma'am?

POTENTIAL JUROR: Janie Sturgeon. I am a teacher at Spartanburg School District 6.

THE COURT: Okay.

POTENTIAL JUROR: They have made arrangements for me to be out if necessary but it is the last two weeks of school.

THE COURT: Well, you may want to be out the last two weeks of school.

POTENTIAL JUROR: I'm fine with staying if that's okay with you.

THE COURT: In order for that exemption to kick in, you have to ask me to excuse you. I haven't heard you do that yet.

All right. Nobody else is standing.

Now, ladies and gentlemen, in just a second, I'm going to speak to those of you who want to talk to me privately. I expect that there probably will be a fairly large number of you who want to speak to me privately. Normally, I probably have about 15 to 20 percent of the jurors who want to speak privately. This is a very large group of jurors. We will probably end up with about 45 to 50 people who want to speak to me. So it's going to take a little while. I'm going to let you all take a break while I do this.

There are several other things that I'm going to have go on. First of all, let me explain to you that we realize as I said earlier that jury service is inconvenient for you. But there's not a whole lot

that I can do about that. Jury service is mandatory. And for most of you, unless you fit into one of the categories that I just went over with those questions, then you are required to stay. But if you have something that is going on with you these two weeks that just makes this a really bad time for you to serve and if that situation is not going to exist during some other term of court, then I can talk to you about that. I might can transfer you to a different term of court.

So if you want to talk to me about being transferred to a different term of court because service this term is an extreme hardship on you, then I will do that. But you have to keep in mind that I can't let you go just because your child has a baseball game today like my son does that I'm going to be missing and other things like that. If this is just a particularly bad week, and I think the standard is that if service on the jury this week would constitute an extreme hardship for you, then I can transfer you.

Or if you want to talk to me about any other question that I've already asked and you haven't answered it yet, some of you have already told me that you have answers that you want to speak to me

privately about and some of you haven't mentioned it yet. So if there's anything that I asked you about that you have not already told me about, then I'm going to ask you to form a line in just a second. I'll tell you where that is. And you can speak to me privately.

Now, there are two things I want you all to do while I'm talking to these jurors individually. First of all, you can take a break. After you have spoken to him, you can go out in the hall. You can go to the restroom, get something to drink or whatever.

During that break again, you may not discuss this case. Don't discuss any cases that might be up for trial. Don't discuss what I've talked to you about this morning. Talk about the weather. Talk about baseball, fishing, whatever it is you want to talk about, but don't talk about court. And if you need to speak to me privately, then come down front and speak to me before you take your break.

And the other thing that I want you to do is each one of you filled out a questionnaire. It's now been a couple of months since you did that. Maybe you've had a chance to think back over what you put in that questionnaire. And if there's anything that you feel like you need to add to your questionnaire or if

there's anything you think you need to change about the answers that you put in your questionnaire, then I want you to come down front. While I'm talking to individual jurors, I want you to speak to one of these four ladies who are sitting right here at this bench in front of me and tell them that you want to change your answer or amend your answer. And they will give you a chance to do that.

There's some chance that we can get this done in 25 minutes. So I want everybody to get back in their seats by noon. If you need to speak to me privately, come and speak to me now before you take your break. Hold on just one second. Let's form a line starting between these two tables right over here. Then bend it around this way and head it back out towards the door where Mr. Nesbitt is standing.

(WHEREUPON, the Court held conferences with individual jurors at approximately 11:35 a.m.)

(WHEREUPON, the Court resumes at approximately 1:00 p.m.)

THE COURT: All right. We're going to take a lunch break. I need for you all to come back at 2 o'clock and I will resume talking to you. We just have a few of you left. But we have a couple of things that just has to be done now. There's nothing

we can do about it. All of you come back at 2 o'clock and we'll speak with you individually then.

(WHEREUPON, a lunch recess was taken at approximately 1:01 p.m.)

(WHEREUPON, the Court resumed at approximately 2:11 p.m.)

(WHEREUPON, the Court held individual conferences with jurors.)

(WHEREUPON, the resumed at approximately 3:00 p.m.)

THE COURT: You know how as you go through life, you have to kind of start to come to grips with all of your character flaws. And if you are able to do that, it helps you to get through life. And one of my character flaws is the inability to predict how long it's going to take to do something.

I hope that that doesn't become a bigger problem for us as we go through this week. But I really thought we could get through that more quickly than we did. But we are finish with it. We're ready to move on to the next step. If you all will kindly permit it, those of us who have been at it since 2 o'clock are going to take a short break. Then we'll be back to have a discussion with you that is going to get us a little bit farther along.

Before we break, let me repeat and I have had

this conversation with many of you individually and I've also mentioned it to all of you. There are some of you out there who have heard about the primary case that we are here to try and have maybe read something about it. Maybe you've seen something on TV or heard people talking about it.

I'm going to talk to you in more detail about that in a few minutes. But I am again instructing each of you to not discuss anything that relates to any case that you might have heard or understood that we're going to be dealing with this week. So, is there anybody who doesn't understand that? You can talk about anything you want to except for a case, any case that's pending before this court.

We'll take a short break. I'm anticipating about ten minutes. That's probably barely enough time for each of you to get up, go to the bathroom and come back. So if you don't need to do that, try to hold on. Once we get started -- there I was about to do it again. I was about to predict how long it's going to take in the next step. But I'm not even going to take a shot at it. If you need to take a break, go ahead and take it. We'll try to get started again at ten minutes after 3:00.

(WHEREUPON, a short recess was taken at approximately

3:02 p.m.)

(WHEREUPON, the Court resumed at approximately 3:25 p.m.)

THE COURT: Have you all had a chance to go over each other's questions?

MR. BARTOSH: Yes, Your Honor.

MR. GOWDY: Yes.

THE COURT: Is there any objection?

MR. BARTOSH: No, sir.

MR. GOWDY: Your Honor, we have no objection. We think 3 and 6 are duplicitous, but we don't have an objection to it.

THE COURT: All right. One of the last things that I mentioned to you all before I started talking to jurors individually was to ask you if you had anything to add or change to the juror questionnaire that you returned to us back in March to come up front and to see the Clerk of Court about doing that. Is there anybody who is on the jury panel who needs to add or change anything on their juror questionnaire who has not already done so today? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: All right. Ladies and gentlemen, we are here for this term of court primarily for the

trial of the case of the State versus Marion Alexander Lindsey. Mr. Lindsey has been indicted in Indictment number 2002-GS-42-4753 for murder. In that indictment, it is alleged that the defendant, Marion Alexander Lindsey, did in Spartanburg County on or about September the 18th, 2002, feloniously, willfully and with malice aforethought kill one Ruby Lindsey by shooting the victim with a gun. And the victim died as a proximate result thereof. All in violation of Section 16-3-10 and 20 of the South Carolina Code of Laws.

Now, I tell you that to begin to give you some background as to what we're doing here and what the allegations are in this case. But I want to make sure you understand that what I just read to you out of the indictment is simply allegation. It's not fact. It's not evidence. It's just allegation. The indictment is simply the document that processes this case and brings it into this court for trial.

Mr. Lindsey has pled not guilty to the indictment that I just read to you. That plea casts the burden on the State to prove the defendant guilty beyond a reasonable doubt. A defendant in a criminal trial no matter what the seriousness of the crime against him, charged against him may be is always

presumed to be innocent of the crime with which he has been charged unless and until his guilt has been proven by evidence satisfying the jury of that guilt beyond a reasonable doubt.

This presumption of innocence is a very important part of the law of this country. The presumption of innocence stays with him from the time he is charged throughout the trial and even into the jury room when the jury begins deliberations. And it will remain with him unless and until the jury finds him guilty beyond a reasonable doubt.

Now, in this particular case, the State is seeking the death penalty against Mr. Lindsey as the penalty that he faces for this crime. And because of that, the trial is going to be broken down or divided into two phases. You may have heard or you may hear that this is referred to as a bifurcated trial. That's simply a big word that means divided in two. The first phase of the trial is the guilt phase. The second phase of the trial is the sentencing phase.

I'm telling you all this just to give you some background as to what the procedure is over the next few days that we will go through. I want to talk to you a little bit more about that now. I do want to make it very clear that I, as the circuit judge, and

you, as potential members of the jury, and those of you who will ultimately end up on the jury have very different roles to play. I am not permitted under South Carolina Law to have any opinion as to whether Mr. Lindsey is guilty or as to what the sentence should be. That is exclusively the responsibility of the jury in a case like this.

The members of the jury will determine whether or not the State has proven Mr. Lindsey guilty of murder beyond a reasonable doubt. That is the guilt phase. At the end of the guilt phase, if the jury finds Mr. Lindsey guilty of murder, then we move into the sentencing phase. If the jury finds Mr. Lindsey not guilty of murder, than the case is over. But if the jury finds Mr. Lindsey guilty of murder, then we move into the sentencing phase.

In the sentencing phase, the State would seek to prove the existence of an aggravating circumstance. And if the State proves beyond a reasonable doubt the existence of an aggravating circumstance, then it becomes the responsibility of the jury to determine whether or not Mr. Lindsey would receive the penalty of life in prison or the death penalty.

I do want to stress to you again that the fact that I am mentioning to you what the penalty could

possibly be is in no way an indication of anything other than to simply explain to you what this process involves. Over the next several days, we're going to be talking to you individually about that issue.

Now, let me tell you one more thing about the procedure that we will be following during or over the next several days. We're going to have some time in the next little while here. The Clerk of Court will be drawing your names randomly and putting you into groups of six people. We will then bring those groups of six people back to the courthouse. Everybody else can go free for a little while. And we will bring groups of six people back to the courthouse about every two hours. We will speak to you individually.

Once we get enough jurors who qualify to serve on the jury, then we will move into the last phase of jury selection. And that is to actually strike the jury. We will have 40 people, maybe 40 prospective jurors. And we will get them back into what will eventually be half of this courtroom. You probably have noticed it's like a convention center. Back in that little closet is a wall that pulls out. I'm sitting right in the middle of the wall.

By the time you get here tomorrow, the wall will probably be back in place. And we will be over here

in this side of the courtroom. We will bring those 40 jurors in here. We will pick a jury and begin the actual trial. I don't know whether or not this is going to happen yet but we might do what is called sequester the jury. I haven't made that decision yet.

What sequester the jury means is that you will report to the courthouse for jury selection. And if you are put on that jury then you stay with us until the trial is concluded. That means that you spend the night at our expense in your new fine Marriott Hotel right across the street. You will be fed at county expense as a group. And your activities and who you can talk to and what you can do is somewhat controlled.

Ladies and gentlemen, don't be alarmed by that. This is a process that we have been following in South Carolina for many years. We have experienced people who will be handling the sequestration process if we got that route. And they are very capable of making the process as smooth and efficient as possible and so that it's not too big of a burden on you all.

All right. I'm going to ask you all some questions now. I'm not really going to be looking for any detailed answers to these questions. We kind of want to know who has answers to some of these

questions. Then as we get into the process of talking to you individually, we will explore your answers to these questions.

So what I'm going to do first is to have everybody who's going to be involved in this case to introduce themselves to you. And then you listen very carefully as to who those people are. Then I'm going to ask you whether or not you know or are related to any of the people who will be introducing themselves to you.

Now, give me short answers when you answer that question. For example, at some point, I'm going to be asking you if you know anything about this case. And some of you have already talked to me about that. If you know anything or have heard anything or have read anything about what is alleged to have happened here, all I want you to do is tell me Yes, I do.

Then, when we're all in private and it's just you, you can say anything you want to, anything you heard and you won't be -- there won't be other jurors in there for you to -- to hear you. Then you can tell us all about it. But for now, just give us a short answer. And we will come back to the detailed answers in a little bit.

Mr. Gowdy, would you please introduce yourself

and those who will be involved in assisting you in the trial of this case to the jury panel.

MR. GOWDY: Thank you, Your Honor.

My name is Trey Gowdy. I'm the Solicitor for the Seventh Judicial Circuit which includes Spartanburg and Cherokee counties. Barry Barnett is my principal Deputy Solicitor. To his left is Donnie Willingham who is also a Deputy Solicitor.

THE COURT: All right. Ladies and gentlemen, I just want to have yes or no answers. Is there any member of the jury panel who is related by blood or marriage to Mr. Gowdy or to Mr. Barnett or to Mr. Willingham? Or do you know either of the three of them in any way? If so, please stand.

All right. Ma'am, over here to my left, tell me your name please.

POTENTIAL JUROR: Amanda Hamby. I know --

THE COURT: That's all right. We'll get into the details in a little bit, Ms. Hamby. Thank you.

Ma'am.

POTENTIAL JUROR: Tammy Queen.

THE COURT: Ms. Queen?

POTENTIAL JUROR: Yes.

THE COURT: All right. Ms. Queen.

Mr. McHam?

POTENTIAL JUROR: Yes.

THE COURT: All right.

POTENTIAL JUROR: John Poole.

THE COURT: Mr. Poole?

POTENTIAL JUROR: Yes.

THE COURT: All right. Thank you.

Mr. Bartosh, would you please introduce yourself and your co-counsel and your client to the jury.

MR. BARTOSH: Thank you, Your Honor.

My name is Mike Bartosh. I'm a lawyer here in Spartanburg. Helping me is Doug Brennan. Doug is also an attorney here in Spartanburg. It's our pleasure to represent Marion Lindsey. He's the gentleman sitting next to Mr. Brennan. And on the end is Karen Quimby.

THE COURT: Is there any member of the jury panel who is related by blood or marriage to Mr. Bartosh, to Mr. Brennan, to Ms. Quimby or to Mr. Lindsey? Or do you know either of them in any way? If so, please stand.

All right. Over here to my left, ma'am, tell me your name.

POTENTIAL JUROR: Emma Ellis.

THE COURT: Ms. Ellis, Thank you.

And you are Ms. Hamby. All right. You may be

seated.

Your name, sir?

POTENTIAL JUROR: Donnie Malone.

THE COURT: Mr. Malone.

Your name, ma'am?

POTENTIAL JUROR: Brenda Smith.

THE COURT: Ms. Brenda Smith.

Your name, sir?

POTENTIAL JUROR: Craig Ruff.

THE COURT: Ruff?

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: Thank you. You can be seated.

Ms. Queen.

Your name, ma'am?

POTENTIAL JUROR: Teresa Gilbert.

THE COURT: Ms. Gilbert.

POTENTIAL JUROR: Otis Campbell.

THE COURT: Mr. Campbell.

POTENTIAL JUROR: Gary Tucker.

THE COURT: Mr. Tucker.

POTENTIAL JUROR: Jeff Rhineberger.

THE COURT: Mr. Rhineberger.

POTENTIAL JUROR: James Gedroic.

THE COURT: What was your last name, sir?

POTENTIAL JUROR: Gedroic.

THE COURT: Gedroic?

POTENTIAL JUROR: Yes.

THE COURT: With a G?

POTENTIAL JUROR: Yes.

THE COURT: Thank you.

POTENTIAL JUROR: Betty Cochran.

THE COURT: Ms. Cochran.

POTENTIAL JUROR: Linda Jones.

THE COURT: And Ms. Jones.

All right. Let me see Mr. Bartosh and Mr. Gowdy for one second, please.

(WHEREUPON, there was a bench conference off the record.)

THE COURT: All right. A couple of follow up questions to that. Mr. Gowdy has as Solicitor a staff of lawyers and non-lawyers herein Spartanburg County and also in Cherokee County who assist him in prosecuting cases. Is there any member of the jury panel who is related by blood or marriage to anybody who works in the Seventh Circuit Solicitor's Office? Or do you know anybody who works in the Seventh Circuit Solicitor's Office? If so, please stand.

Ms. Donald. That's correct?

POTENTIAL JUROR: Right.

THE COURT: All right. Thank you, ma'am.

Ms. Hamby?

POTENTIAL JUROR: Yes.

THE COURT: And your name, ma'am?

POTENTIAL JUROR: Dena Bailey.

THE COURT: Ms. Bailey.

POTENTIAL JUROR: Matt Kern.

THE COURT: Kern?

POTENTIAL JUROR: Yes, sir.

THE COURT: K-e-r-n?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. Thank you, Mr. Kern.

POTENTIAL JUROR: Otis Campbell.

THE COURT: Mr. Otis Campbell.

Mr. McHam?

POTENTIAL JUROR: Yes.

THE COURT: Thank you.

Likewise, Mr. Bartosh has a group of people who assist him. And these other lawyers have staff who assist them in doing their work as lawyers here in Spartanburg County. Is there any member of the jury panel who is related by blood or marriage to anybody who works for any of the lawyers on the defense side, Mr. Bartosh, Mr. Brennan or Ms. Quimby? Or do you know any of them in any way? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: You heard me read in the indictment that the alleged victim of this crime is Ruby Lindsey. Is there any member of the jury panel who was related by blood or marriage to Ruby Lindsey or did you know her in any way? If so, please stand.

Ms. Queen?

POTENTIAL JUROR: Yes.

THE COURT: All right.

MR. GOWDY: Your Honor, could I approach for one moment?

THE COURT: Yes, sir.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: All right. Let me make myself more clear. It has been pointed out to me that Mrs. Lindsey actually went by the name of Nell. Her name was Ruby Nell Lindsey. She went by the name of Nell Lindsey. Is there any member of the jury panel who was related by blood or marriage to Ruby Nell Lindsey? Or did you know her in any way? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: Some of you, I may be mistaken about this. But I believe that some of you told me during the individual questioning that we had that you knew of or knew Ms. Lindsey. I need you to tell me that

again now, if you don't mind please.

POTENTIAL JUROR: If I understand you correctly, I knew of.

THE COURT: You knew of Mrs. Lindsey?

POTENTIAL JUROR: Yes, sir.

THE COURT: And you are Ms. Bagwell?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. Thank you, ma'am.

Now, ladies and gentlemen, let me follow up again a little bit on the, whether or not you know or are related to the defendant Marion Alexander Lindsey or the alleged victim Ruby Nell Lindsey. Do you know anyone in their family? Or do you, like Ms. Bagwell said, she knew of Ruby Nell Lindsey.

Is there anybody who knows somebody in their families or who knows of them in any way? Now, let me do this. If you heard something about this case, let's just wait a minute before we talk about that. Let's talk about whether or not you knew their families or know their families or know of them independent of this case.

Ms. -- all right. She's going to wait a minute. Your name please.

POTENTIAL JUROR: Candace Cathcart.

THE COURT: Ms. Cathcart. All right. Thank you,

Ms. Cathcart.

Your name, Mr. --

POTENTIAL JUROR: Joe Floyd. Floyd.

THE COURT: Floyd. All right. Thank you.

POTENTIAL JUROR: I'm not really sure.

THE COURT: Tell us your name, ma'am. And I appreciate that. I understand how there probably are a number of you who might be sitting out there thinking Well, you know, that sounds kind of familiar but I'm not sure. If you're not sure, tell us that now. So that way, you will have a day or so to think about it. And when we get around to questioning you individually, we can explore exactly what you do know.

So tell me your name, ma'am.

POTENTIAL JUROR: Sarah Simms.

THE COURT: Mrs. Simms?

POTENTIAL JUROR: Uh-huh (affirmative).

POTENTIAL JUROR: Clara Cope.

THE COURT: Mrs. Cope?

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: Thank you. Both of you, thank you.

Your name, sir?

POTENTIAL JUROR: Timothy Pitts.

THE COURT: Mr. Pitts.

All right. I'm going to again follow up, this

time relating to the lawyers. Now, some of these lawyers might not always have been in the jobs that they are in right now. You might have had some relationship with them. Maybe they represented you. Is there any member of the jury panel who has ever been represented by any of the lawyers who have been introduced to you? If so, please stand.

Ms. Hamby. All right. Thank you, Ms. Hamby.

All right. Mr. Bartosh and Ms. Quimby are employees of the Spartanburg Public Defender's Office. Mr. Bartosh is the Spartanburg County Public Defender. So I'm going to ask you a few questions about the Public Defender's Office here in Spartanburg County. Is there any member of the jury panel who knows or who is related to anybody who works in the Spartanburg County Public Defender's Office or might have worked in the Spartanburg County Public Defender's Office recently? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: Is there any member of the jury panel who is represented by any lawyer in the Spartanburg County Public Defender's Office or do you know anybody who is represented by a lawyer in the Spartanburg County Public Defender's Office? If so, please stand.

Tell me your name, ma'am.

POTENTIAL JUROR: Emma Ellis.

THE COURT: Ms. Ellis.

All right. Ladies and gentlemen, let me, uh, is there any member of the jury panel or a member of the jury who has an immediate family member who fits this description? Is there any member of the jury panel or any member of your immediate family who has ever been arrested for or charged with or convicted of any crime involving criminal domestic violence, pointing a firearm, assault with a firearm or assault and battery? If so, please stand.

And y'all are doing a good job. I do want everybody to stand. And then I will identify you one at a time to get your name.

Is this Ms. Lee?

POTENTIAL JUROR: Yes.

THE COURT: All right. Ms. Lee, you can be seated.

Tell me your name again, ma'am.

POTENTIAL JUROR: Lori Burnett.

THE COURT: Mr. Burnett. Thank you very much.

Ms. Hamby?

POTENTIAL JUROR: Yes.

THE COURT: Ms. Cathcart?

POTENTIAL JUROR: Yes.

THE COURT: Ms. --

POTENTIAL JUROR: Cope.

THE COURT: Ms. Cope. Ms. Cope. All right. Thank you, ma'am.

Let me back up over here. Your name, ma'am?

POTENTIAL JUROR: Carol Burdette.

THE COURT: Carol Burnette. Burdette?

POTENTIAL JUROR: Burdette.

THE COURT: Burdette.

Your name, sir?

POTENTIAL JUROR: James Gentry.

THE COURT: James Gentry.

Okay. I'm going to take a break and make sure everybody's got a chance to catch up writing down names.

Your name, sir?

POTENTIAL JUROR: Tom Brown.

THE COURT: Brown?

POTENTIAL JUROR: Yeah.

THE COURT: All right. Mr. Brown.

POTENTIAL JUROR: James Cottrell.

THE COURT: Cottrell?

POTENTIAL JUROR: Cottrell.

THE COURT: James Cottrell.

Mr. Floyd.

And your name, ma'am?

POTENTIAL JUROR: Karla Howell.

THE COURT: H-o-w-e-l-l?

POTENTIAL JUROR: That's correct.

THE COURT: All right. Your name, ma'am?

POTENTIAL JUROR: Lori Tallent.

THE COURT: Lori Tallent.

POTENTIAL JUROR: What if it was dropped?

THE COURT: You still need to tell me about it. Tell me your name.

POTENTIAL JUROR: Tracy Hollingsworth. I was --

THE COURT: I don't want any details, ma'am. When we get around to talking to you individually, I will ask you, we'll ask you about the details then.

POTENTIAL JUROR: Okay.

THE COURT: All right. Thank you.

And your name was Lori?

POTENTIAL JUROR: Betty Cochran.

THE COURT: Ms. Cothran?

POTENTIAL JUROR: Cochran.

THE COURT: Cochran.

Let me back up one. Your name, the lady who just stood, what's your name again?

POTENTIAL JUROR: Tracy Hollingsworth.

THE COURT: And your name, ma'am?

POTENTIAL JUROR: Tracy Brock.

THE COURT: Ms. Brock.

POTENTIAL JUROR: Would you repeat that?

THE COURT: I will be glad to repeat it. The question is is there any member of the jury panel or any member of your immediate family who has ever been arrested for, charged with or convicted of any crime involving criminal domestic violence, pointing a firearm, assault with a firearm or assault and battery? If so, please stand. And your name is?

POTENTIAL JUROR: Ellis. Emma Ellis.

THE COURT: Ms. Ellis. I'm going to get you from now on. I'm not going to have to ask you that any more.

Anybody else?

What was your name, ma'am?

POTENTIAL JUROR: Tracy Whitaker.

THE COURT: Ms. Whitaker. All right. Thank you.

All right. Let me just explain that last question just a little bit to include close personal friends. I will just repeat it again. Is there any member of the jury panel or any member of your immediate family or anyone who has a close personal friend who has ever been arrested for, charged with or convicted of any crime involving domestic violence,

pointing a firearm, assault with a firearm or assault and battery? If you have not already told me about it, please stand.

Your name, sir?

POTENTIAL JUROR: Marvin Smith.

THE COURT: Marcus Smith?

POTENTIAL JUROR: Marvin Smith.

THE COURT: Marvin Smith.

Your name, sir?

POTENTIAL JUROR: Harold Marcum.

THE COURT: Harold?

POTENTIAL JUROR: Marcum.

THE COURT: Mr. Marcum. Okay.

Your name, sir?

POTENTIAL JUROR: Hollie Williams.

THE COURT: Reeves?

POTENTIAL JUROR: Hollie Williams.

THE COURT: I'm sorry.

POTENTIAL JUROR: Williams.

THE COURT: Williams?

POTENTIAL JUROR: Yes.

THE COURT: And what was your first name?

POTENTIAL JUROR: Hollie.

THE COURT: Hollie Williams. Okay. Hold on just one second. All right. Thank you, Mr. Williams.

Your name, sir?

POTENTIAL JUROR: Harold Daniels.

THE COURT: Mr. Daniels?

POTENTIAL JUROR: Yes.

THE COURT: Ma'am?

POTENTIAL JUROR: Isabell Williams.

THE COURT: And Pitt?

POTENTIAL JUROR: Timothy Pitts.

THE COURT: Mr. Pitts. All right.

Your name, sir?

POTENTIAL JUROR: Alonzo Robinson.

THE COURT: Mr. Robinson.

POTENTIAL JUROR: Tracy Whitaker.

THE COURT: Ms. Whitaker.

POTENTIAL JUROR: Martha Sallis.

THE COURT: Ms. Sallis.

Your name, sir?

POTENTIAL JUROR: Richard Smith.

THE COURT: Richard Smith.

All right. Let me, let me pause. We are not in any big hurry. We all want to get done. But this is very, very, very important. Sometimes what happens is we go through this process. And this is all new to a lot of y'all. You're not used to having to dash back through your life's history and recall everything that

ever happened to you. And it's quite natural that you might not immediately remember something that I'm asking you about.

You may go home tonight and you may say I forgot that my best friend was charged with criminal domestic violence. And I forgot to tell that judge about it. And what I don't want to happen is that I don't want you to then say, Well, oh, my God, if I tell him about it now, he's going to put me in jail. I want you, if you go home and you remember something, please come back and tell us about it.

It's very important that you all dig deep into your memory and come up with any information that I am asking you for. And just like I said, if you remember it later, tell us about it. It's when you don't tell me about it that like I said earlier, it puts me in difficult position. So please think deep. Take your time. If you remember something later, come back and tell me.

POTENTIAL JUROR: Sir.

THE COURT: Yes, sir.

POTENTIAL JUROR: John Boyce.

THE COURT: Mr. Boyce?

POTENTIAL JUROR: Yes.

THE COURT: All right. Mr. Boyce, I guess

because we're doing this thing without giving any details, I need you to tell me which question you are telling me about.

POTENTIAL JUROR: Your last one.

THE COURT: The last one?

POTENTIAL JUROR: Yes.

THE COURT: Friends or relatives who have been involved in crimes like we discussed.

POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you, Mr. Boyce.

Yes, ma'am.

POTENTIAL JUROR: I know somebody. The answer to your last question.

THE COURT: And your name is?

POTENTIAL JUROR: Wilma Langford.

THE COURT: Ms. Langford. Thank you very much, Ms. Langford.

POTENTIAL JUROR: I do too, Your Honor. Otis Campbell.

THE COURT: Mr. Otis Campbell. Okay.

I do too. But I don't have to tell y'all about it.

Yes, sir.

POTENTIAL JUROR: Ronnie Ridings.

THE COURT: Ridings?

POTENTIAL JUROR: Ridings.

THE COURT: All right. R-i-d-i-g-s?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right.

POTENTIAL JUROR: Can I ask you a question? Does suicide fall in that category?

THE COURT: Well, we will put it in that category. We will talk to you about it. That's Mr. McHam.

And tell me your name again.

POTENTIAL JUROR: Tracy Brock.

THE COURT: Ms. Brock.

POTENTIAL JUROR: I know Trey Gowdy.

THE COURT: Okay. Thank you, Ms. Brock.

Ms. Hammitt?

POTENTIAL JUROR: Yes.

THE COURT: Thank you.

POTENTIAL JUROR: Creel. C-r-e-e-l.

THE COURT: C-r-e-e-l. Mr. Creel. Okay.

We're making progress. Okay. Is there any member of the jury panel or any member of your immediate family who is currently being prosecuted for any crime by the Seventh Circuit Solicitor's Office? If so, please stand. We have Ms. Hamby and Mr. Campbell.

And your name is?

POTENTIAL JUROR: James Cottrell.

THE COURT: Mr. Cottrell. Okay.

All right. Now, you know, I guess it's always, it's important that all of these questions have an out for you all. So I'm including your immediate family members in all of these questions. So if you stand and give me your name, we're naturally going to assume that it's your immediate family member and not you who are answering the questions.

Is there any member of the jury panel or any member of your immediate family who has ever been arrested by the Spartanburg County Sheriff's Office or the Inman Police Department? If so, please stand. Now, if I get a 50 percent or better rate of identifying correctly the names of those of you who have already stood once or more, then I get to take a break in just a few minutes. If I fall below 50 percent, we're going to be here a while.

You are Ms. Burdette.

And your name, sir?

POTENTIAL JUROR: Jon Krisher.

THE COURT: Krisher?

POTENTIAL JUROR: K-r-i-s-h-e-r.

THE COURT: K-r-i-s-h-e-r?

POTENTIAL JUROR: Yes.

THE COURT: Okay. Your name, ma'am?

POTENTIAL JUROR: Catherine Grubbs.

THE COURT: Grubbs.

POTENTIAL JUROR: G-r-u-b-b-s.

THE COURT: Okay. I'm about to buck. Tell me your name.

POTENTIAL JUROR: Lori Burnette.

THE COURT: Burnette.

And here is where I'm going to blow it. You're going to tell me. What's your name?

POTENTIAL JUROR: Emma Ellis.

THE COURT: Ellis. All right. I'm sorry, Ms. Ellis.

POTENTIAL JUROR: Latrice Smith.

THE COURT: Ms., what was your first name?

POTENTIAL JUROR: Latrice.

THE COURT: Latrice Smith. And your name, sir?

POTENTIAL JUROR: Rick Lee.

THE COURT: Mr. Lee.

That's Ms. Hamby.

POTENTIAL JUROR: Yes.

THE COURT: I'm right at 50 percent so far. Your name, sir?

POTENTIAL JUROR: Marvin Smith.

THE COURT: Oh, yeah.

POTENTIAL JUROR: Pam Gardner.

THE COURT: Ms. Gardner.

And your name, ma'am?

POTENTIAL JUROR: Joyce Martin.

THE COURT: Ms. Martin, Joyce Martin?

POTENTIAL JUROR: Uh-huh (affirmative). Martin.

THE COURT: M-a-r-t-i-n?

POTENTIAL JUROR: Yes.

THE COURT: All right.

Ms. Wilkins?

POTENTIAL JUROR: Yes.

THE COURT: All right.

POTENTIAL JUROR: Sheila Vlieg.

THE COURT: Sheila Vlieg.

Your name?

POTENTIAL JUROR: Janet Prasanlack.

THE COURT: Ms. Prasanlack?

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: Okay. Thank you.

Your name, sir?

POTENTIAL JUROR: Mark Simmons.

THE COURT: Mr. Simmons. All right.

You are Ms. Cope.

You are Mr. Boyce.

What's your name, ma'am?

POTENTIAL JUROR: Heather Snite.

THE COURT: Stite.

POTENTIAL JUROR: Snite. S-n-i-t-e.

THE COURT: All right. And your name, sir?

POTENTIAL JUROR: Tom Brown.

THE COURT: Mr. Brown. I'm close.

Your name, sir?

POTENTIAL JUROR: Jeff Williams.

THE COURT: Mr. Williams.

And you are Mr. Hollie Williams.

And you are Mr. -- what's your name?

POTENTIAL JUROR: Daniels.

THE COURT: Daniels.

POTENTIAL JUROR: Isabell Williams.

THE COURT: Isabell Williams.

POTENTIAL JUROR: Candy Fowler.

THE COURT: Ms. Fowler.

Mr. Cottrell.

Mr. Hipp.

POTENTIAL JUROR: Pitts.

THE COURT: Pitts.

I'm going too fast? Sorry. You got everybody?

MR. GOWDY: So far, yes, sir.

THE COURT: You need me to back up and go through it again?

MR. GOWDY: No, sir.

THE COURT: You're sure?

MR. BARTOSH: Yes, sir.

THE COURT: Mr. Bartosh, are we going too fast for your side?

MR. BARTOSH: No, sir.

POTENTIAL JUROR: Ronnie Ridings.

THE COURT: Mr. Ridings.

Mr. Campbell.

Mr. Floyd.

Ms. Howell.

Ms. Sallis.

Your name, sir?

POTENTIAL JUROR: Stan Fields.

THE COURT: Mr. Fields.

Your name, sir?

POTENTIAL JUROR: Thaddeus Beck.

THE COURT: Thaddeus Beck.

And you are Mr. Robinson. All right.

POTENTIAL JUROR: Donald Ray.

THE COURT: What was your last name?

POTENTIAL JUROR: Ray. R-a-y.

THE COURT: Ray. Okay.

POTENTIAL JUROR: Joann Netherton.

THE COURT: Ms. Netherton.

POTENTIAL JUROR: Tracy Hollingsworth.

THE COURT: Ms. Hollingsworth.

Ms. Cochran.

POTENTIAL JUROR: Kevin Cartledge.

THE COURT: Carter?

POTENTIAL JUROR: Cartledge.

THE COURT: I'm sorry. Say it again.

POTENTIAL JUROR: Cartledge.

THE COURT: Mr. Cartledge. Okay.

And you are Ms. Boyce?

POTENTIAL JUROR: Brock.

THE COURT: Brock. I knew that.

POTENTIAL JUROR: Michael Weeks.

THE COURT: Mr. Weeks.

Your name, sir?

POTENTIAL JUROR: Jeff Rhineberger.

THE COURT: Mr. Rhineberger.

POTENTIAL JUROR: Lori Tallent.

THE COURT: I didn't hear you, ma'am.

POTENTIAL JUROR: Lori Tallent.

THE COURT: Ms. Tallent. Okay.

I don't think I got 50 percent.

POTENTIAL JUROR: Could I get you to repeat the question again?

THE COURT: Yes, ma'am. The question is is any

member of the jury panel or any member of your immediate family ever been arrested by the Spartanburg County Sheriff's Office or the Inman Police Department? If so, please stand.

POTENTIAL JUROR: My immediate family.

THE COURT: All right. You're Ms. Whitaker?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. We will talk to you about that Ms. Whitaker.

He says I was one over 50 percent. Y'all want me to take a break now or keep on going for a few more minutes? Keep on going? All right. I'll tell you what, you all are doing a very, I really do seriously appreciate the serious way you all are approaching this.

I really don't think that I have ever sat through -- we call this process voir dire where I ask you all questions about the case and about the people and the questions are designed to kind of find out a little bit about you. I don't think I've ever been through a voir dire process where the jurors have sat as quietly and as attentively as you all have. I really do appreciate it.

Is there any member of the jury panel or any member of your immediate family who has ever been a

victim of a crime involving domestic violence, assault and battery, pointing of a firearm or assault of a firearm? And it doesn't make any difference for purposes of answering this question whether or not that incident ever became the subject of a prosecution.

In other words, perhaps you or your family member for whatever reason never reported this incident to law enforcement but if you or a member of your immediate family has ever been the victim of a crime involving domestic violence or the pointing of a firearm or assault and battery or assault with a firearm, please stand.

Ms. Whitaker, right?

POTENTIAL JUROR: Yes.

THE COURT: Your name, sir?

POTENTIAL JUROR: Stan Fields.

THE COURT: Mr. Fields.

Mr. Beck.

What's your name, sir?

POTENTIAL JUROR: Tim Brewton.

THE COURT: Brewton. Mr. Brewton.

Mr. Floyd.

Your name, sir?

POTENTIAL JUROR: Donald Ray.

THE COURT: Mr. Ray.

And your name, sir?

POTENTIAL JUROR: Todd Hillstock.

THE COURT: Is it Hillstock?

POTENTIAL JUROR: Hillstock.

THE COURT: Hillstock. All right. Your name again?

POTENTIAL JUROR: Tracy Hollingsworth.

THE COURT: Ms. Hollingsworth.

Ms. Cochran.

Ms. Brock.

And Mr. Ridings?

POTENTIAL JUROR: Rhineberger.

THE COURT: Rhineberger.

You're Mr. Ridings.

POTENTIAL JUROR: Joyce Tallent.

THE COURT: Ms. Tallent.

POTENTIAL JUROR: Richard Smith.

POTENTIAL JUROR: Rodney Petty.

THE COURT: Rodney Petty?

POTENTIAL JUROR: Yes, sir.

THE COURT: And the previous Mr. Smith was Richard Smith?

POTENTIAL JUROR: Yes, sir.

THE COURT: We had a lot of Smiths.

Mr. Daniels.

And your name, ma'am?

POTENTIAL JUROR: Sheril Cudd.

THE COURT: Ms. Cudd.

And your name, please, ma'am?

POTENTIAL JUROR: Gail Fowler.

THE COURT: Ms. Fowler.

POTENTIAL JUROR: Wilma Langford.

THE COURT: Ms. Langford.

Mr. Bagwell.

Mr. Cottrell.

Mr. Pitts.

Mr. Ridings.

Please, your name.

POTENTIAL JUROR: Angela Haley.

THE COURT: Ms. Haley. All right. Thank you, Ms. Haley.

Your name, sir?

POTENTIAL JUROR: Donnie Malone.

THE COURT: Mr. Malone.

POTENTIAL JUROR: Melva Martin.

THE COURT: Melva?

POTENTIAL JUROR: Martin.

THE COURT: Martin. All right. Thank you very much.

POTENTIAL JUROR: Patricia Thomas.

THE COURT: Ms. Thomas.

POTENTIAL JUROR: Candace Cathcart.

THE COURT: Ms. Cathcart.

Ms. Cope.

Mr. Boyce.

Mr. -- Mrs. Snite.

And your name?

POTENTIAL JUROR: Toni Smith.

THE COURT: Toni Smith?

POTENTIAL JUROR: Yes.

THE COURT: All right. Mr. Brown.

And your name?

POTENTIAL JUROR: Brent McKinney.

THE COURT: Mr. McKinney.

POTENTIAL JUROR: Rosa Hammitt.

THE COURT: And Ms. Hammitt. All right. I might be ahead of everybody.

Y'all got it all written down?

Mr. Burdette.

Tell me your name again, sir.

POTENTIAL JUROR: Jon Krisher.

THE COURT: Mr. Fraiser.

POTENTIAL JUROR: Krisher.

THE COURT: Krisher. Okay.

Ms. Lee.

It is Burnette?

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: Ms. Burnette.

Ms. Ellis.

POTENTIAL JUROR: Cheryl Dotson.

THE COURT: Ms. Dotson.

POTENTIAL JUROR: Lee.

THE COURT: Mr. Lee.

Ms. Hamby.

Mr. Martin?

POTENTIAL JUROR: Marvin Smith.

THE COURT: Marvin Smith. I'm sorry. Marvin Smith.

POTENTIAL JUROR: Miguel Martinez.

THE COURT: Mr. Martinez.

POTENTIAL JUROR: Joyce Martin.

THE COURT: Ms. Martin. Okay.

Now, let me make that last question just a little bit broader. Maybe this will include somebody who didn't answer before. It really doesn't make any difference if you knew who did it or not. Or maybe it didn't happen. You just thought it happened. Any member of the jury panel or any member of your immediate family -- now by saying, I really did not

mean for that to be funny. That was perceived by some of you as being funny. I didn't mean it that way.

I'm sitting here imagining several different ways in which somebody could think that they were the victim of one of those crimes that I went over when in fact they were not. And perhaps after they thought it back over, it turns out that it was not what they thought. So, is there any member of the jury panel or any member of your immediate family who has ever been the victim of a crime such as domestic violence, pointing of a firearm, assault and battery and assault with a firearm whether they knew who did or whether they maybe even later decided that it hadn't happened as they thought it had. If you haven't already answered that question, please do so now by standing and I will get your name.

Tell me your name.

POTENTIAL JUROR: Danny Rollins.

THE COURT: Mr. Rollins.

POTENTIAL JUROR: Right.

THE COURT: All right. Mr. Rollins, we will talk to you about that when we get around to speaking to you individually. Okay?

POTENTIAL JUROR: Okay.

THE COURT: Okay. Ladies and gentlemen, this next

question is designed to see whether any of you have any kind of affiliation with or involvement with any organization that has as its object or as its goal the promotion of victim's rights or the advocacy of criminal penalties, different criminal penalties, stiffer criminal penalties.

And some of those organizations might include Mothers Against Drunk Drivers otherwise known as MADD. There is a group called SADD. There is a group called CAV which I believe is a group called Citizens Against Violence or something like that. There are various law enforcement organizations such as the South Carolina Troopers Association, South Carolina Police -- what do they call that? Fraternal Order of Police or something like that. Any organization that deals with law enforcement in that way.

There is another group of victims advocates called the State Office of Victims Assistance. The Victims Assistance, the South Carolina Victims Assistance Network. There are a number of organizations that have as their object or goal the advocacy of criminal penalties or the promotion of victims rights. If you have ever been a member of or a contributor to or in any other way involved with any of those victims organizations or organizations that

are involved in dealing with criminal penalties, please stand.

All right. Ms. Sallis.

Ms. Whitaker.

Ms. Cochran.

POTENTIAL JUROR: John Poole.

THE COURT: Mr. Poole.

Mr. Atkins.

Mr. Cottrell.

Ms. Bagwell.

POTENTIAL JUROR: Langford.

THE COURT: Ms. Langford.

POTENTIAL JUROR: Vellines.

THE COURT: Ms. Vellines.

Mr. McHam.

Your name, ma'am?

POTENTIAL JUROR: Haley.

THE COURT: Ms. Haley.

Your name, ma'am?

POTENTIAL JUROR: Shirley McDowell.

THE COURT: Ms. McDowell.

POTENTIAL JUROR: Aletha Meisenheimer.

THE COURT: Okay. I didn't catch your last name, ma'am.

POTENTIAL JUROR: Misenheimer.

THE COURT: Misenheimer. Mrs. Misenheimer. Okay. Number 197.

Your name, sir?

POTENTIAL JUROR: Laurence Morda.

THE COURT: Morton?

POTENTIAL JUROR: Morda. M-o-r-d-a.

THE COURT: Mr. Morda.

And your name, ma'am?

POTENTIAL JUROR: Pam Gardner.

THE COURT: Ms. Gardner.

And your name?

POTENTIAL JUROR: Does it include like if a trooper calls and asks for a donation on the telephone?

THE COURT: Well, if you hung up the phone on him, it probably wouldn't include it. If you gave it to him, it would. Why don't you tell us your name.

POTENTIAL JUROR: Sarah Simms.

THE COURT: Ms. Simms. Okay.

Is there any member of the jury panel or any member of your immediate family who has ever been employed with any law enforcement agency whether that be a city police department, a county sheriff's department, a state law enforcement office such as the State Law Enforcement Division, any federal law

enforcement agency such as the FBI, the drug enforcement administration or agency. Anybody who has themselves or who has a family member who has ever been involved in law enforcement by, who has ever worked for a law enforcement agency, please stand.

Ms. Howell.

Mr. Robinson.

Mr. Beck.

Ms. Whitaker.

POTENTIAL JUROR: Does that include a cousin?

THE COURT: We will say it does.

POTENTIAL JUROR: Donald Banks.

THE COURT: Mr. Banks.

Ms. Cochran.

Mr. -- I've got it close but I don't have it all the way. What's your name, sir?

POTENTIAL JUROR: Rhineberger.

THE COURT: Rhineberger.

Mr. Floyd.

Tell me your name again, sir.

POTENTIAL JUROR: Tim Brewton.

THE COURT: Mr. Brewton.

Ms. Tallent.

Mr. Atkins.

POTENTIAL JUROR: Richard Smith.

THE COURT: Mr. Richard Smith.

POTENTIAL JUROR: Rodney Petty.

THE COURT: Mr. Petty.

All right. Mr. Daniels.

I'm sorry, ma'am. What's your name?

POTENTIAL JUROR: Gail Fowler.

THE COURT: Ms. Fowler.

Okay. Your name, ma'am?

POTENTIAL JUROR: Sandra Brady.

THE COURT: Ms. Brady.

Mr. Pitts.

POTENTIAL JUROR: Teresa Gilbert.

THE COURT: Ms. Gilbert.

POTENTIAL JUROR: Michael Dawson.

THE COURT: Mr. Dawson.

Mr. Campbell.

Ms. Haley.

Hold on a second. Your name, sir?

POTENTIAL JUROR: Larry Mauldin.

THE COURT: Say it again.

POTENTIAL JUROR: Mauldin.

THE COURT: Mauldin. All right. Thank you, Mr. Mauldin.

Your name?

POTENTIAL JUROR: Creel.

THE COURT: Mr. Creel.

POTENTIAL JUROR: Toni Smith.

THE COURT: Ms. Toni Smith.

POTENTIAL JUROR: Brenda Smith.

THE COURT: Ms. Brenda Smith.

POTENTIAL JUROR: Brent McKinney.

THE COURT: Mr. McKinney.

Your name, sir?

POTENTIAL JUROR: Matt Kern.

THE COURT: Mr. Kern. All right. Your name, ma'am?

POTENTIAL JUROR: Ms. Bedillion.

THE COURT: Ms. Bedillion.

POTENTIAL JUROR: Grubbs. Catherine Grubbs.

THE COURT: Catherine Grubbs.

Ms. Burdette.

Tell me your name again, ma'am.

POTENTIAL JUROR: Elizabeth Donald.

THE COURT: Ms. Donald.

Okay. Your name, ma'am?

POTENTIAL JUROR: Shirley McDowell.

THE COURT: Ms. McDowell.

You're Mr. Lee.

All right. On my left, your name?

POTENTIAL JUROR: Jami Sturgeon.

THE COURT: Ms. Sturgeon.

Mr. Hernandez?

POTENTIAL JUROR: Martinez.

THE COURT: Terrible, terrible, terrible. I'm sorry.

POTENTIAL JUROR: Ms. Gardner.

THE COURT: Ms. Gardner.

POTENTIAL JUROR: Bailey. Dena Bailey.

THE COURT: Ms. Bailey.

POTENTIAL JUROR: Sheila Vlieg.

THE COURT: Sheila what?

POTENTIAL JUROR: Vlieg.

POTENTIAL JUROR: Sherba Wilkins.

THE COURT: Ms. Wilkins and Ms. Martin.

Is there any member of the jury panel or any member of your immediate family who is currently or formerly a victim or a witness in any case that has been prosecuted by the Seventh Circuit Solicitor's Office. If so, please stand.

Ms. Hamby.

All right. Is there any member of the jury panel who knows about or who has ever used or who is in any way familiar with any particular organization that provides shelter to the victims of domestic or family violence? If you know anything particular about a

particular place, please stand.

Ms. Bagwell.

Mr. Pitts.

Mr. McHam.

Ms. Martin.

Ms. Howell.

Mr. Floyd.

Ms. Whitaker.

Ms. Hollingsworth.

What's your name?

POTENTIAL JUROR: Netherton. Joann Netherton.

THE COURT: Netherton. Okay.

Your name, ma'am?

POTENTIAL JUROR: Elizabeth Morton.

THE COURT: Morton?

POTENTIAL JUROR: Yes.

THE COURT: Ms. Morton.

Ms. Tallent.

Mr. Atkins.

Mr. Richard Smith.

Ms. Brock?

POTENTIAL JUROR: Yes.

THE COURT: Mr. Poole.

And Ms. Cochran.

POTENTIAL JUROR: Yes.

THE COURT: I definitely get a break after that. All right. Is there any member of the jury panel who is a member of any organization or do you have a close family member who is a member of any organization where that organization officially refuses to recognize the government of the State of South Carolina or the United States of America? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: All right. Now, I'm going to ask one more question, then we're going to take a break. Let me make sure I'm right about that. All right. Ladies and gentlemen, I'm going to talk to you now about those -- I want to know, and we're going to talk about this. Who knows -- and don't answer it right yet. Who knows anything or who has heard anything about this case?

Now, before I get you to answer, let me tell you something. When we get around to seating a jury int his case, I'm going to tell that jury that it's your responsibility under the oath that you will take as jurors to listen carefully and attentively to the evidence that will be presented here in this courtroom and to render a verdict based on that evidence and in light of the law as I will give it to you. It will

not be proper for members of the jury in any way to base their verdict on something that they may have learned or heard anywhere other than right here in this courtroom under my supervision.

Now, we know that this case has gotten some publicity. We can't hide from that. I know that there are people out there, a lot of you who have read stuff or seen news reports, read news reports about this case. That's not necessarily a problem. But nevertheless, I want each of you to think hard about whether or not you have heard anything about this case. And if you have, I want you to tell me about that.

Over the next few days, we will talk to you about it. Even if you don't remember it now but you go home tonight and you think I believe I did hear something about that case, then I want you to tell me about it when you come back. Is there any member of the jury panel who has heard anything about this case, who has seen any kind of news report about this case, who knows anything about this case other than my having read you the indictment this morning?

Any member of the jury panel who knows or has heard anything about State versus Marion Alexander Lindsey and what Mr. Lindsey is accused of having

done, please stand. All right. I'm going to go slow. I'm going to try to call your names as I can. But I'm going to make sure that the lawyers and my staff has time to write down everybody's name.

So tell me your name, ma'am.

POTENTIAL JUROR: Aleta Misenheimer.

THE COURT: Mrs. Misenheimer. Okay.

Your name.

POTENTIAL JUROR: Timothy Roberts.

THE COURT: Mr. Roberts.

You are Ms. Lee.

You are Ms. Burnette.

You are Ms. Donald.

Your name, ma'am?

POTENTIAL JUROR: Kim Rogers.

THE COURT: Ms. Rogers.

And you are Ms. Wilkins.

And you are Ms. Martin.

And what's your name?

POTENTIAL JUROR: Linda Fuller.

THE COURT: Ms. Fuller.

What's your name?

POTENTIAL JUROR: Donnie Malone.

THE COURT: Mr. Malone.

You are Ms. Cathcart.

POTENTIAL JUROR: Linda Jones.

THE COURT: Ms. Jones.

Mr. Boyce.

Ms. Snite.

Mr. Creel.

Ms. Smith. Tell me your first name.

POTENTIAL JUROR: Brenda.

THE COURT: Ms. Brenda Smith.

POTENTIAL JUROR: Gentry.

THE COURT: Mr. Gentry.

POTENTIAL JUROR: Rosa Hammitt.

THE COURT: Ms. Mammitt.

Tell me.

POTENTIAL JUROR: Matt Kern.

THE COURT: Mr. Kern. Okay.

Mr. Daniels.

Mr. Williams. Tell me your first name.

POTENTIAL JUROR: Hollie.

THE COURT: Hollie Williams.

POTENTIAL JUROR: Craig Ruff.

THE COURT: Mr. Ruff.

All right. Tell me your name again, ma'am.

POTENTIAL JUROR: Sarah Simms.

THE COURT: Ms. Simms.

POTENTIAL JUROR: Isabell Williams.

THE COURT: Isabell Williams.

POTENTIAL JUROR: Sheril Cudd.

THE COURT: Ms. Cudd.

POTENTIAL JUROR: Queen.

THE COURT: Ms. Queen.

Ms. Bagwell.

POTENTIAL JUROR: Langford.

THE COURT: Ms. Langford.

Ms. Vines?

POTENTIAL JUROR: Vellines.

THE COURT: Vellines. I'm getting too bold.

All right. Tell me your name, ma'am.

POTENTIAL JUROR: Carole Hill.

THE COURT: Ms. Hill.

Mr. Pitts.

POTENTIAL JUROR: Teresa Gilbert.

THE COURT: Ms. Gilbert.

Tell me your name, sir.

POTENTIAL JUROR: Michael Dawson.

THE COURT: Mr. Dawson.

Mr. McHam.

POTENTIAL JUROR: Judy Folk.

THE COURT: Folk?

POTENTIAL JUROR: Yes.

THE COURT: Ms. Folk.

Mr. Campbell.

POTENTIAL JUROR: Jeff Seay.

THE COURT: Mr. Seay?

POTENTIAL JUROR: Yes.

POTENTIAL JUROR: Melody Riddle.

THE COURT: Ms. Riddle.

POTENTIAL JUROR: Matthew Smith.

THE COURT: Mr. Matthew Smith.

POTENTIAL JUROR: Dean Israel. Dean Israel.

THE COURT: Mr. Israel.

Ms. Sallis.

Ms. Whitaker.

Mr. Beck.

Tell me your name.

POTENTIAL JUROR: Tim Brewton.

THE COURT: Mr. Brewton.

Mr. Floyd.

All right. And your name, ma'am?

POTENTIAL JUROR: Lynne Morgan.

THE COURT: Ms. Morgan.

I had it close. But I'm not so bold.

POTENTIAL JUROR: Joann Netherton.

THE COURT: Netherton. I was right.

Ms. Cochran.

Mr. Poole.

Ms. Brock.

And your name, sir?

POTENTIAL JUROR: Gedroic.

THE COURT: Gedroic.

POTENTIAL JUROR: With a G.

THE COURT: All right. Ms. Tallent.

And your name, sir?

POTENTIAL JUROR: Jackie Barham.

THE COURT: Barham?

POTENTIAL JUROR: That's correct.

THE COURT: B-a-r-h-a-m?

POTENTIAL JUROR: Correct.

THE COURT: All right. Mr. Atkins.

And your name again?

POTENTIAL JUROR: Rodney Petty.

THE COURT: Mr. Petty.

Anybody else?

(WHEREUPON, there was no response.)

THE COURT: Now, ladies and gentlemen, this is very important. This is perhaps the most important question that I have asked you. I -- over the next several days, I want you to think deep about this. If you decide that you have heard something, you must tell me about it. You must.

Now, we're going to take a break. It's also

very, very important that from this point forward you do not learn anything about this case except what you learn in this courtroom under my supervision. So do not discuss this case. I hate to sound like I'm talking down to y'all, but it's just very important. And my experience tells me that people will. Some of you are going to talk about this case. And when I find out about it, I'm going to put you in jail. That's the only choice I have.

So please understand why I'm so adamant about this. And please just be vigorous in trying to obey my instruction not to talk about the case. And please be vigorous not to let anybody talk to you about the case.

Now, during your break, I can tell you, I've already told you there was an article about this case in the newspaper this morning. There will very well perhaps be an article in the newspaper about this case tomorrow morning. There could very well be an article in the newspaper about this case every day until it's over.

We haven't had any cameras in the courtroom yet. But there will be. And you probably saw some out in the hall. There is going to be a lot of publicity surrounding this case. Please be very careful to help

me and don't allow yourself to become exposed to any press or publicity about this case.

Now, during this break, and this could take a little while. During this break, the Clerk of Court is going to be taking your names and randomly putting them in groups of six. And then we will give you a time to come back. Some of you, it will be today.

Most of you, it will be either tomorrow or Wednesday. Some of you, we will give you a time and we won't ever reach you. We will get enough jurors before we get to you. But we don't know how far out that is. It is conceivable that we could be at this until Thursday or Friday and still not have a jury.

If we give you a time and it's inconvenient, many of you have said you've got something you need to do today or tomorrow. We can adjust that. That's no problem. We can put you in a different group to accommodate any scheduling concern that you have over the next couple of days. So don't hesitate if you have a scheduling problem to tell us about your scheduling problem. But do hesitate to be anywhere but right here at your appointed time. We really need for you to come back on time as we instruct you do.

So we're going to take a break. While we are doing this now, remember, you can be free. You can go

to the restroom. You can go get a drink. You can walk outside and smoke. You can anything you want to as long as you stay here at the courthouse and don't talk about the case.

And if you see somebody talking about -- now, as you move around here, keep these juror tags on your shirt. There are people around this courthouse who are interested in this case. And there might be two people standing out in the hall talking about the case and they don't realize that you are coming up.

If you hear somebody talking about the State versus Marion Lindsey, if you hear somebody talking about a murder case, if you hear somebody talking about a death penalty case, stop them. Say Wait a minute, I'm a juror, I want you to understand that you can't talk about that case in front of me. Please help me out. Be very careful to let's make sure that you don't learn anything about this case except right here under my supervision.

How long is it going to take you?

Let me see Mr. Bartosh and Mr. Gowdy at the desk. I'm going to walk out and come over there.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: All right. It is 25, 23 minutes until

5 o'clock. I'm going to ask you to be back in your seats at five minutes after 5 o'clock. Now, at that point, it will move pretty quickly. We're going to call the names, give you a panel, give you a time and you will be -- most of you will be able to leave then. We're going to keep at least one panel of you for tonight.

But most of you will be able to leave and you will come back in the morning starting at 9:00. So you can have your break now. Be back in your chair at five minutes after 5:00.

(WHEREUPON, a short recess was taken at approximately 4:37 p.m.)

(WHEREUPON, the Court resumed in camera at approximately 4:50 p.m.)

THE COURT: All right. Everybody here?

MR. GOWDY: Yes, sir.

MR. BARTOSH: Yes, sir.

THE COURT: Dr. Narayan, how are you?

THE WITNESS: Fine. Thank you.

PRATAP NARAYAN

having first being duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. WILLINGHAM:

Q All right. You are a forensic psychiatrist?

A That's correct.

Q What type of educational background or training have you had to allow you to perform your duties?

A I have completed medical school and obtained a Post-Graduate Doctoral Degree in Psychiatry. Following which, I did a residency in Psychiatry and a fellowship in Forensic Psychiatry in the University of Florida. I am board certified in General Psychiatry and Forensic Psychiatry.

Q And part of your job at William S. Hall is to conduct an evaluation to determine competency and criminal responsibility?

A That's correct.

Q How many times have you done that?

MR. BARTOSH: Your Honor, we would stipulate to Dr. Narayan as an expert in the field of forensic psychiatry.

THE COURT: All right. And you are also satisfied that he's competent and capable of testifying as to his opinion on that subject here in this court and that his opinion would be admissible?

MR. BARTOSH: Yes, sir. Dr. Narayan has testified in many competency hearings that I've held with him.

THE COURT: All right. Before we go any farther,

let's put this on the record. We have taken this matter outside of the courtroom. We are now in a jury room back behind the courtroom. The court reporter of course is in here. Everybody agrees to do it this way.

Correct, Mr. Bartosh?

MR. BARTOSH: Correct, Your Honor.

MR. WILLINGHAM: Yes, sir.

THE COURT: All right. The Clerk of Court is in the courtroom now drawing the panel. And there are some jurors in there. So we wanted to come out here so we can do this hearing outside the presence of any jurors. All right.

You may proceed.

MR. BARNETT: Thank you, Your Honor.

BY MR. WILLINGHAM:

Q Dr. Narayan, did you evaluate Marion Lindsey as a result of a court order?

A Yes, I did.

Q And the purpose of evaluating him was to determine initially if he was competent to stand trial?

A That's correct.

Q And what did you do to determine whether he was competent?

A We reviewed a number of documents that were

provided to us. I was present for two clinical interviews with Mr. Lindsey. And I also had the benefit of Dr. Musick's evaluation. Dr. Musick is a clinical psychologist. And he evaluated Mr. Lindsey also at my request. The list of documents that I reviewed is outlined in the report that I submitted to the Court. Would you like for me to go over those?

Q I don't believe that is necessary. During your evaluation, does he understand the charge against him?

A I believe he does.

Q You believe he understands the possible verdicts?

A Yes.

Q He understands the roles of the different court officers, the judge, the jury, the Solicitor and the defense lawyers?

A Yes, he did.

Q Was he able to communicate with his counsel?

A We only had Mr. Bartosh present when I interviewed Mr. Lindsey this morning. He obviously appeared to be able to communicate adequately with Mr. Bartosh and --

Q Was he able to communicate with you?

A I'm sorry.

Q Was he able to adequately communicate with you?

A Yes, he was.

Q Do you believe that anything would prevent him from being able to assist his own defense?

A At this point in time, I had the opportunity to talk to Mr. Lindsey this morning. He did express that he was undergoing some discomfort or distress consequences as to the trial, which would be an appropriate response given the circumstances. He is, I believe, on some type of drug medications. And as long as the medications could address the potential effects of the stress, I believe he would be able to assist the defense in his trial.

Q To a reasonable degree of medical certainty, do you have an opinion as to whether or not he is competent to stand trial?

A I do.

Q What is that opinion?

A It is that Mr. Lindsey does have the mental capacity to stand trial.

Q You also, after you determined he was competent, made a determination as to whether he could differentiate right and wrong?

A We did interview Mr. Lindsey on the previous two occasions with respect to the alleged events. Based on the number of responses he gave, as well as the number of records we were able to review, it is our opinion that he was or did have the ability to understand the difference

between right and wrong.

Q Did he likewise have the capacity to conform his conduct to the requirements of the law?

A We believe he did.

Q And Doctor, I believe you prepared a report. It appears to be a 7-page report plus a cover letter. I'll show you a copy of that and see if you recognize it.

A Yes, I do. This is a copy of the report that we submitted as a consequence of the evaluation.

Q Does that accurately reflect what you testified to today and what you did in preparation for the Court?

A Yes.

MR. WILLINGHAM: Your Honor, at this time, I move this, it's a Court's Exhibit. It's an evaluation. It's about eight pages.

THE COURT: Without objection, it's admitted for purposes of this hearing.

(WHEREUPON, State's Exhibit 1 was admitted into evidence.)

MR. BARNETT: Thank you, Doctor. If you would answer any questions the defense may have for you.

CROSS-EXAMINATION

BY MR. BARTOSH:

Q Dr. Narayan, Mr. Lindsey was seen on two different occasions?

A By me, yes, sir.

Q Okay. And was there any difference between him or his mental outlook or his affect between the first interview and the second?

A When you're talking about his affect, I didn't quite understand, sir.

Q Did he appear to be the same, did he exhibit the same sort of affect the second time as the first time that you saw him?

A Well, during both times, there was some signs of depressive symptoms.

Q Okay.

A And that was pretty evident on both occasions. He also obviously was preoccupied with the circumstances of, I don't think we saw anything substantially different between the two interviews that we had.

Q Okay. And so you felt that on both occasions, he was competent and also criminally responsible?

A We didn't address all the issues in both the occasions. The purpose of the second interview was to complete what we couldn't finish on the first occasion. So on the second occasion, we had Mr. Lindsey answer a written questionnaire of the issues pertaining to competence. And according to Dr. Musick who scored the test, he appeared to maintain an adequate knowledge of the

court system and the functions of the various participates.

Q All right. Were there any neurological test that were given to Mr. Lindsey?

A We did not give any neurological test.

Q Were there any imaging tests that were done?

A We did not do any imaging. We did not find any clinical indications for neurological lines of inquiry.

Q So you saw no evidence of any kind of neurological damage that Mr. Lindsey may have suffered?

A It's possible that Mr. Lindsey may have suffered damage in the past. However, a review of record from the Spartanburg Regional Medical Center which was the hospital he was submitted to apparently right on the day of the alleged offense, his neurological exam was normal. His imaging studies were normal too. So we did not pursue that.

Q So you had the benefit of reviewing those medical records?

A Yes, we did. That's correct.

Q Okay. I think the diagnosis what your report indicates was malingering and also borderline intellectual functioning?

A That's correct.

Q Can you describe for us what borderline intellectual functioning means?

A Borderline intellectual functioning is a diagnosis that is used to characterize people that have their IQ's just about a cut off for retardation. In other words, borderline intellectual functioning is subnormal but does not meet the criteria for mental retardation.

Q So it's on the cusp basically?

A Pretty much. Pretty much. Actually, if I could be a little more specific, mental retardation, the cut off for IQ is 70. And from my, from our psychologist evaluation, he scored a 76.

Q So that would put his six points above --

A That's correct.

Q -- retardation?

A That's correct.

Q And with folks that would have this intellectual or this IQ, would they have trouble handling stress on the normal day-to-day problems that people encounter?

A Not necessarily just because of the intellectual functioning. The intellectual functioning could certainly contribute to somebody's impairment. But even people who don't have intellectual impairment could still have problems with stress --

Q Okay.

A -- without actually having made a diagnosis.

Q Okay. But it's possible that the borderline

intellectual functioning could have been a stresser for, would have aggravated the stress?

A Again, it's hard for me to say what effect borderline intellectual functioning has in Mr. Lindsey's case simply because from an assessment of this adoptive level of functioning, it does not appear to have interfered much throughout his life. He's been able to hold a job. He's been able to interact appropriate, have relationships, maintain contact with his children and so on and so forth.

However, since I believe, I don't know if Mr. Lindsey has ever been through this kind of a legal proceeding. There is certainly a chance that the intellectual functioning impairment could potentially compromise his ability to understand things as quickly or as readily as someone with a normal intelligence score. So in other words, if somebody took the trouble to make sure that Mr. Lindsey understood what was going on, I don't believe it should necessarily lead to any stress on his own accord.

Q So it would just take him a little longer to process things?

A Yeah. Especially if he expresses difficulty understanding.

Q And were you told or had Mr. Lindsey indicated to you that he had had a history of head trauma from early childhood up until the incident we're talking about today?

A We did get a history of some previous head trauma especially from his family. I believe we had an episode of head injury at age 1 or so and then again when he was about 16 or 17 years old. We did get a history of that. I believe the first time he was run over by an automobile or something like that. And the second time, he was in an automobile accident and suffered injuries to his eye.

Q And the second time, the second automobile accident, that required reconstructive surgery on the side of his face?

A I was not aware of that.

Q Okay. That's all I have.

THE COURT: Anything in reply?

MR. WILLINGHAM: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. WILLINGHAM:

Q Just so I'm clear, this defendant does not fall in the category of mental retardation?

A No, sir.

Q You also diagnosed him with malingering?

A Yes, sir.

Q Why is that?

A Well, during both of our interviews that we had with Mr. Lindsey as well as his interview with Dr. Musick, Mr. Lindsey reported certain symptoms that would

typically be considered in the realm of psychotic symptoms. The only thing with Mr. Lindsey's reporting was, his symptom description was very atypical. And over the course of time after discussion with Mr. Lindsey, we came to the conclusion that he was fabricating these symptoms and he did appear to have some secondary gain motive for this.

Q And you met with him on April the 14th, 2003 and June the 2nd, 2003 and then again today?

A That's correct.

Q And you are basing your evaluation of him, this morning I believe as of 9 o'clock, your opinion has not changed?

A We didn't find any evidence of his malingering symptoms today. There's no evidence of that. But we did find evidence of that on the three occasions that Mr. Lindsey came to our institution.

Q But as far as his competency to stand trial, nothing has changed.

A Nothing has changed.

Q Thank you.

RECROSS-EXAMINATION

BY MR. BARTOSH:

Q And did --

MR. BARTOSH: Just briefly, Your Honor.

BY MR. BARTOSH:

Q Doctor, did Mr. Lindsey ever describe motorcycle accidents and other head trauma that he had suffered as a teenager to you?

A Let me check and tell you very quickly. I don't believe he did.

Q And when you were --

A I take that back. He did report of surgeries to his knee in 1986, leg in 2000. Fractured right arm requiring surgery. Head trauma several times. He said he went in the hospital for getting stitches and lost consciousness on one occasion for about 30 minutes back in '89 or '90. Admitted to the East Spartanburg Regional Medical Center for two weeks. That's what I've got.

Q And when you would question him about the various roles of people and he didn't seem to understand it, would you then instruct him as to what they were and then ask back?

A Yes. That's correct.

Q That's all I have.

THE COURT: Any further from the State?

MR. WILLINGHAM: That would be the State's showing.

THE COURT: Anything from the defendant?

MR. BARTOSH: No, sir.

THE COURT: Mr. Bartosh, apart from what has been

put forth here, do you have any reason to suspect that your client is not competent to stand trial?

MR. BARTOSH: No, sir.

THE COURT: Mr. Brennan?

MR. BRENNAN: No, sir.

THE COURT: Ms. Quimby?

MS. QUIMBY: No, sir.

THE COURT: Well, I see no reason to suspect that he is not competent. He appears to me to have the sufficient present ability to consult with his lawyer to a reasonable degree of rational understanding. And he appears to have a rational as well as factual understanding of the proceedings against him at least as far as what's been put before me. So I find him competent.

MR. BARTOSH: Thank you, Your Honor.

MR. BRENNAN: Your Honor, we do have some motions that deal with the jury. When would the Court like to hear those motions?

THE COURT: Just tell me what they are.

MR. BRENNAN: Your Honor, it's actually, it's in written form. It's four motions. One is a request that the jury not be sequestered.

THE COURT: Yeah.

MR. BRENNAN: Two is that the jury not be guarded

by S.L.E.D. agents or local law enforcement officers.

THE COURT: You mean if they are sequestered?

MR. BRENNAN: If, well, even if they are not. We would like then to be managed if you will, if not sequestered, by the bailiffs.

THE COURT: All right.

MR. BRENNAN: We would ask the Court to allow the jury itself to pick its foreman. And lastly, Your Honor, we would ask that defense counsel be seated at the table nearest the juror, jurors or in the alternative that we be allowed to rotate.

THE COURT: All right.

THE WITNESS: Your Honor, may I be excused?

THE COURT: Yes, sir.

All right. Let me cover a couple of things. I will decide shortly when I'm going to hear those motions. Are there any objections to anything that has happened so far? Anything that I have failed to do or anything that I have done improperly so far?

MR. BARTOSH: Not so far, no, sir.

THE COURT: We had a discussion in the courtroom a minute ago about exactly how the Clerk was going to go about selecting the panels to question further. That of course determines the order for how the jurors get put into the panel that we will ultimately pick the

jury from. There may be some slight variations as to that procedure from what is set forth in the statute.

Mr. Bartosh, are you familiar with exactly how the Clerk was going to go about doing what I just said?

MR. BARTOSH: Yes, sir. And I explained to Mr. Lindsey that the statute requires that the individual slips of paper be placed in capsules and then removed. That way, I explained to him what the Clerk was going to do. They were going to place the individual slips of paper with the individual jurors' names and number on those slips of paper into a small drum. The drum would be, would then be turned and the Clerk would remove the individual slips out. Mr. Lindsey has no objection to that, Your Honor. He understands fully what the procedure is going to be.

THE COURT: All right. Well, without having to actually define the entire procedure right here, this is not the first death penalty case that you tried here in Spartanburg County. You are certainly familiar with how Spartanburg County draws jurors.

MR. BARTOSH: Yes, sir.

THE COURT: Assuming that you know the process that is going to be followed, do you have any objections?

MR. BARTOSH: No, sir. I do not.

THE COURT: And you say that after consulting with Mr. Lindsey?

MR. BARTOSH: I say that after consulting with Mr. Lindsey.

THE COURT: Okay. Since we have Mr. Lindsey in here, we also have representatives of the jail in here. Does everybody have an understanding of how Mr. Lindsey is going to be moved around the courthouse during the trial?

MR. BARTOSH: I would leave that to Captain Freeman. But my understanding is Mr. Lindsey is going to be placed in the courtroom approximately a half an hour before the jury arrives. No one is going to be admitted into the courtroom until 9 o'clock so that every effort is going to be made that no one would see Mr. Lindsey being taken from the old jail, up the corridor and into here.

Matter of fact, I think they're going to bring them in through the side door. So that there should be no opportunity for a juror to see Mr. Lindsey prior to the voir dire.

DETENTION OFFICER: Which courtroom would we be using?

THE COURT: We're going to use the one on the left

hand side. The one that Judge Cole usually uses. I don't know if it's West A or B.

DETENTION OFFICER: That's West A.

THE COURT: The one at the end of the hall.

DETENTION OFFICER: The only problem with that is we will have to transport him from the jail room down the hall because we don't have an access door like we do in West B.

THE COURT: Right. Well, --

DETENTION OFFICER: First of all, my plan was to have him up here no later than 8:15 in the morning. I've instructed the people on the door not to open the doors until I confirm that he's in the jail room. Once we get in the jail room, then the building is open to the public. Now, when we get ready to go into the courtroom, we're going to have to clear the hallway to get him down.

THE COURT: The public hallway?

DETENTION OFFICER: Yes, sir. The public hallway down to West A courtroom. We don't have an access door like we got in West B.

THE COURT: Any problem with that?

MR. BARTOSH: No, sir.

THE COURT: Y'all rather use West B?

DETENTION OFFICER: The only problem with West B

is that the jury --

THE COURT: Goes through that same door. It's really probably easier to use West A, isn't it?

DETENTION OFFICER: Yes, sir. It would be a lot easier. We could clear that hall out like I said.

THE COURT: When you walk him down the hall, he's not going to be wearing any restraints?

DETENTION OFFICER: The only thing I will do is cuff him behind his back. Once I get him in the courtroom --

THE COURT: And you are not going to do that until you know where all the jurors are?

DETENTION OFFICER: Absolutely.

THE COURT: And you've done this a number of times before. I'm quite confident that you all can keep him from being seen by the jury.

DETENTION OFFICER: Yes, sir. Like I said, I'll get him up here in the morning between 8:00 and 8:15 and the doors will be locked to the public until the officers on the door --

THE COURT: You'll drive him in where nobody can see him walking across that hallway on this floor. And all that will happen and he will be secured before the jury is even allowed in the building?

DETENTION OFFICER: We're looking at about 8:15.

More than likely, I will have him in. Lunch will be provided in the jail room. He will have no reason to leave.

THE COURT: All right. You satisfied with all that, Mr. Bartosh?

MR. BARTOSH: Yes, sir. The only question I have is where do you want his clothes?

DETENTION OFFICER: To the jail.

MR. BARTOSH: Up here to the jail.

DETENTION OFFICER: Yeah. We'll change him out in there and put him in civilian clothes. Once we move him, we make sure that it's completely clear. We have an officer to come down the hall and check to make sure.

THE COURT: Okay.

MR. BARTOSH: And you'll leave his clothes here so we can pick them up tomorrow?

DETENTION OFFICER: That's correct.

MR. BARTOSH: So we can swap them out.

THE COURT: Okay. I'm satisfied with that. Now, apart from the questions that relate to the witnesses, I'm talking about voir dire, apart from the questions that relate to witnesses and who might know or who might be related to any of the witnesses and apart from that three or four questions that are set forth

in the statute about whether or not they've made up their mind or formed any opinion or have any bias or prejudice or know of any reason why they can't be fair, which I elected to save until just before we picked the jury because I'm going to have to re-ask that question anyway. Or do you want me to ask those questions now?

I have to ask them again. I'll have to ask them again. Can't ask about the witnesses. We agreed. That we were going to give the jurors as the panels come in a list of witnesses and ask them to review that. At the beginning of each individual, we ask them if they know or are related to any witnesses. Have I left out any voir dire that anybody asked me to present before the jury?

MR. BARTOSH: Not -- from earlier?

THE COURT: Yes.

MR. BARTOSH: No, sir.

MR. BRENNAN: Your Honor, you asked specifically if anybody knew or was related to Ruby Nell Lindsey. But the question about Marion Alexander Lindsey was kind of buried between Mike Bartosh, Doug Brennan and Karen Quimby. I don't have a problem with the way it was asked. But you had Ruby Nell singled out. And Mr. Lindsey was grouped with his attorneys when asked

if you were related by blood or marriage or knew anybody sitting at our table. If I didn't bring it up, you wouldn't have a concern about it. I don't know if it needs to be asked singularly like Ruby Nell was.

THE COURT: I'm not worried about it unless y'all are.

MR. BARTOSH: I'll leave it up to you.

MR. BRENNAN: No, Your Honor, nobody stood up. I'm going to say it was okay. I just wanted --

THE COURT: I went back and asked them each about their families. I asked them if they knew anything about the case. I asked them if they knew anything about their families apart from the case. And then I asked them if they knew anything about the case.

MR. BARTOSH: I think too whether they knew them or not will probably come out in individual voir dire anyway.

THE COURT: All right. Now, as far as the qualification of the jury, I ruled on every issue that came up except for Ms. Donald. We've got to address whether or not she counts as a person employed within the walls of any courthouse. Is it correct that I have ruled on every juror except for her on statutory qualifications?

MR. BARTOSH: The only three we have left over was the lady that said she lived in Greenville. She's been excused. The police officer. That was Mr. Brock, I think. So she's the only one left.

THE COURT: All right. Good. Let's go back to the courtroom.

(WHEREUPON, the in camera testimony ended at approximately 5:24 p.m.)

(WHEREUPON, the Court resumed at approximately 5:30 p.m.)

THE COURT: All right. We are ready now to announce the names that have been randomly put into the different panels. We will -- you all agree that two hours per panel is appropriate?

MR. GOWDY: Yes, sir. Two hours is a gracious amount of time. We may can do it in an hour and a half. Two hours would be clearly enough, I think. Panels of six, Your Honor?

THE COURT: Yeah. And if we have a little extra time, we will be able to take a breath between panels.

MR. GOWDY: Yes.

THE COURT: All right. That won't hurt us. All right. So we're going to --

If you go ahead and call the panels and stop after each one, I'll give them a time.

THE CLERK: Please stand as I call your name. This is panel number 1. Number 213, Rodney C. Petty; Number 133, John P. Hovelsrud; Number 63, Sheril Cudd; Number 77, Ashley D. Driscoll; Number 162, Rick J. Lee; Number 134, Carla S. Howell.

THE COURT: All right. You folks, we're going to talk to you all tonight. Is there anybody among you six who can't stick around here tonight for two hours for us to talk to you tonight?

(WHEREUPON, there was no response.)

THE COURT: All right. Let me get each of you six to come over here and we will seat you in the jury box.

THE BAILIFF: We'll take them to the jury room.

THE COURT: Okay. Let me remind you all, and the bailiffs will be keeping track of you, do not discuss anything regarding this case.

THE CLERK: This is Panel number 2. Number 218, Janet Prasanlack; Number 22, Tammy C. Queen; Number 65, Luther M. Culpepper; Number 153, Jon C. Krisher; Number 115, Angela M. Haley; Number 274, Darcy J. Thompson.

THE COURT: All right. You folks are Panel 2. And you will report tomorrow morning at 9 o'clock. Now, remember your panel number, okay? You are Panel

number 2. This won't apply to this particular panel. But the rest of you, we're going to talk to you about a telephone number that you will need to call at a different time to check on the status of your schedule.

You want to go ahead and take them now and show them where they will report in the morning?

THE BAILIFF: Come this way please.

THE COURT: 9 o'clock tomorrow morning. Remember my instructions now. Do not discuss this case. Hold on just a second now. And this is for all of you. You all are leaving tonight before we get a chance to talk to you. TV, news, newspaper in the morning, be very careful. Don't read the paper in the morning without if you've determined to -- I enjoy reading the paper in the morning -- get somebody to go through the paper for you. Take out the articles or take out the section that there might be about this case.

We will be asking in the morning whether or not you read anything about the case. And you will be giving us a truthful answer. I will be expecting you to follow my instructions. All right. We look forward to seeing you in the morning. 9 o'clock.

THE CLERK: Panel number 3. Number 35, Tommy D. Brown, Number 100, James B. Gedroic; Number 205,

Joann C. Netherton; Number 103, Teresa R. Gilbert; Number 81, Emma D. Ellis; Number 185, Shirley McDowell.

THE COURT: All right. Now, is there any of you all who can't be here tomorrow morning at 10:45 and expect to stay here for approximately two hours? Any one of you who can't be here tomorrow morning at 10:45?

(WHEREUPON, there was no response.)

THE COURT: All right. We're going to -- I'm going to ask you all to be here tomorrow morning at 10:45.

Let me see Mr. Bartosh and Mr. Gowdy before we get any farther.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: All right. Ladies and gentlemen, -- You're going to show them where to go?

THE BAILIFF: Yes, sir.

THE COURT: Be here tomorrow morning before 10:45. Now, you heard me say we were allowing two hours. I am going to ask you to be here just a little bit earlier. You may have to wait around a few minutes before we get to you. But hopefully, we'll be able to get to you as soon as you get here. We look forward

to seeing you all tomorrow morning at 10:45.

THE BAILIFF: Come this way, please.

THE CLERK: This is Panel 4. Number 60, James E. Creel; Number 176, Miquel A. Martinez; Number 240, Martha Sallis; Number 106, Danny Gomes; Number 127; Todd Hillstock; Number 173, Harold T. Marcum, Jr.

THE BAILIFF: Come on out please.

THE COURT: Hold on. I want you all to be here tomorrow at 2 o'clock. We will -- they are going to show you where to come. Be here at 2 o'clock. We look forward to seeing you then. Anybody who can't be here at 2 o'clock tomorrow and stay for two hours?

(WHEREUPON, there was no response.)

THE COURT: All right. We'll see you, Panel 4, at 2 o'clock.

THE CLERK: This is Panel Number 5. Number 253, Brenda M. Smith; Number 39, Lori J. Burnett; Number 179, Larry A. Mauldin. 179, Larry A. Mauldin; Number 294, Isabell Williams; Number 160, Mackenzie A. Leake; Number 157, Wilma S. Langford. 157, Wilma S. Langford.

THE COURT: All right. I'm going to ask you folks to be here tomorrow afternoon at 3:30. Now, here is where we're going to kick in the recordings. If you want to -- I don't think we're going to go any faster

than that. We're not going to ask you to be here any earlier than 3:30. But if we're running behind, we will put an announcement on there. So remember your panel number. This is number what?

THE CLERK: 5.

THE COURT: Panel number 5. If you want to check on that recording tomorrow say after, between 12:00 and 2:00 to see if there's a message that might delay you a little bit, you are welcome to do that. But unless there is something on that recorder that says anything other than 3:30, please be here tomorrow at 3:30. We will look forward to seeing you then. They are going to show you where to go.

THE BAILIFF: Come this way, please.

THE CLERK: This is Panel 6. Number 187, Gary S. McHam; Number 194, Jerlyn M. Miller; Number 257, Richard K. Smith; Number 223, Donald Ray; Number 215, John S. Poole; Number 138, Dean T. Israel.

THE COURT: All right. Is there any one of you who are Panel 6 who can not be here tomorrow afternoon at 5:30 with the expectation of being here for two hours?

(WHEREUPON, there was no response.)

THE COURT: All right. We'll see you tomorrow afternoon at 5:30. You also are welcome to check the

recording to see if we changed your appointed time. But I don't think that's going to happen. I've given myself two hours in hopes that we can have a little break before we get to you all at 5:30.

THE BAILIFF: Right this way please.

THE COURT: Let me see Mr. Gowdy and Mr. Bartosh before we call the next panel.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: Go ahead.

THE CLERK: This is Panel 7. Number 225, Jeffrey A. Rhineberger; Number 232, Kim Rogers; Number 224, Kenneth J. Reese; Number 49, Kevin O. Cartledge, Number 29, Timothy R. Brewton, Number 197, Aletha M. Misenheimer.

THE COURT: All right. You all are Panel 7. That's going to make it real easy for you. I'm going to ask you to be here tomorrow night at 7:00. Anybody who can't be here tomorrow night at 7:00 and expect to stay two hours?

(WHEREUPON, there was no response.)

THE COURT: Really, I don't want to start y'all off at 7 o'clock tomorrow night. And I might not do it. I'm going to reserve the possibility, the significant possibility that instead of you coming

tomorrow night at 7:00, you will come Wednesday morning at 9:00. So anybody who can't be here Wednesday morning at 9:00?

(WHEREUPON, there was no response.)

THE COURT: For now, you be here tomorrow night at 7 o'clock but check that recording some time around 5:00 to 5:30 and see what it says. We will either see you tomorrow night at 7:00 or we will see you Wednesday morning at 9:00.

THE BAILIFF: Come on out, please.

THE CLERK: This is Panel Number 8. Number 15, Samuel K. Barnwell; Number 268, Jami Sturgeon; Number 256, Matthew S. Smith; Number 89, Joseph H. Floyd, Number 95, Linda J. Fuller; Number 4, William T. Atkins.

THE COURT: Are we missing somebody?

MR. GOWDY: Did Mr. Atkins stand up?

THE COURT: Yeah, he's back there.

THE CLERK: Samuel Barnwell, Jami Sturgeon, Matthew Smith, Joseph Floyd, Linda Fuller, William Atkins.

THE COURT: All right. We got them now. You all are Panel 8. I'm not going to give you a specific time. I want to see how quickly things go tomorrow. You can tell you are either going to be 9 o'clock

Wednesday morning or say 10:30 Wednesday morning. But you definitely call the recording tomorrow night after 7:00. There will be a message on there telling you what time to be here on Wednesday. You are Panel Number 8.

Now, listen, ladies and gentlemen, I don't want this to get too complicated. If it was me, I would go home and I would say What panel they said I was on. I can't remember. It's your responsibility to remember what panel you are on. And if you forget, call the Clerk's office. Give them your name and they will tell you what panel you are on. They will show you where to come on Wednesday morning. Come with them now. We look forward to seeing you all Wednesday morning.

THE CLERK: This is Panel Number 9. Number 255, Marvin Smith; Number 59, James R. Cottrell; Number 261, Heather L. Snite; Number 19, Lori Bedillion; Number 68, Michael T. Dawson; Number 97, Pam L. Gardner.

THE COURT: All right. You all are Panel 9. You will be here some time midmorning to lunchtime on Wednesday. Call the recording tomorrow night after 7 o'clock for specific instructions about when to be here. We look forward to seeing you all midmorning to

lunchtime on Wednesday.

THE CLERK: This is Panel Number 10. Number 14, Jackie D. Barham; Number 90, Judy D. Folk; Number 273, Patricia A. Thomas; Number 297, Thomas A. Williams; Number 117, Amanda J. Hamby; Number 85, Stanley F. Fields.

THE COURT: All right. This is 10?

THE CLERK: Yes, sir.

THE COURT: This is Panel Number 10. Sometime midday Wednesday is when we expect to get to you all. But you need to call the recording, I would say definitely call tomorrow night after 7:00. But we're going to try to keep this thing updated so that we move it as efficiently as we can. We got a lot of work to do. We want to do it as quickly as we can without killing anybody.

We don't want y'all to sit around and wait when you don't need to. We certainly don't want you to be late when we need you up here. So not only should you all check the recording tomorrow night after 7:00, but I would check the recording again Wednesday morning between 10:00 and 11:00, between 10:30 and 11:30 or something like that. Just check it. It won't take you but a minute. Just check it and see what it says. You are Panel 10. We'll see y'all some time

Wednesday.

THE BAILIFF: This way please.

THE CLERK: This is Panel 11. Number 247, Jeffrey D. Seay; Number 230, Alonzo M. Robinson, Number 226, Melody M. Riddle, Number 175, Joyce P. Martin; Number 287, Tracy D. Whitaker; Number 102, Sarah H. Gibson-Simms.

THE COURT: All right. You are Panel 11. We expect to get to you all some time Wednesday afternoon. You can call Tuesday night but certainly you need to call Wednesday between 11:00 and 12:00 to get a better idea about when your schedule is. I'm going to try to get, I think we're going to be on track. But if you call Wednesday morning, Wednesday at 11:00 and your schedule says come at 2:00, call again at 1:00 to make sure that it's going to be ready at 2:00.

We'll try to keep the schedule updated as much as we can. You are Panel 11. If you need that number, if you are like me and you are not confident that you are going to be able to remember the number 11, one of the bailiffs will write it down for you on your way out. We'll see you Wednesday afternoon.

THE BAILIFF: Right this way.

THE CLERK: This is Panel Number 12. Number 212,

William D. Parnell; Number 130, Tracy S. Hollingsworth; Number 112, Brandon J. Greenway; Number 21, Joshua R. Bennett; Number 203, Traci T. Muenger-Brock, Number 125, Carole E. Hill.

THE COURT: All right. You are Panel 12. We expect to get to you all some time mid to late afternoon Wednesday. Call the recording during the course of the day on Wednesday and make sure that you know your precise time to be here. We'll see you Wednesday afternoon.

THE CLERK: This is Panel Number 13. Number 148, Linda K. Jones; Number 281, Jane V. Vellines; Number 151, Matt Kern; Number 18, Thaddeus A. Beck; Number 45, Otis Campbell; Number 101, James T. Gentry.

THE COURT: All right. You all are Panel 13. Hopefully, we'll get to you all Wednesday evening. Call the recording during the course of the day Wednesday to find out your precise schedule. We look forward to seeing you all Wednesday late afternoon or evening.

THE BAILIFF: Right this way, please.

THE CLERK: This is Panel Number 14. Number 9, Pamela C. Bagwell; Number 57, Clara V. Cope; Number 208, Thomas N. Oliver; Number 53, Leonard F.

Cogdill; Number 285, Michael D. Weeks; Number 202, Amanda E. Morton.

THE COURT: All right. Y'all are Panel Number 14. Hopefully we'll get to you Wednesday. It's a little too early to tell. Call during the course of the day on Wednesday to see what your schedule is. We look forward to hopefully seeing you Wednesday. I suppose there is some possibility that we might not get to you all until Thursday morning.

THE BAILIFF: Right this way, please.

THE CLERK: This is Panel Number 15. Number 72, Elizabeth M. Donald; Number 50, Candace D. Cathcart; Number 37, Carole S. Burdette; Number 236, Craig C. Ruff; Number 195, Kathleen C. Miller; Number 214, Timothy K. Pitts.

THE COURT: All right. This is 15 or 14?

THE CLERK: 15.

THE COURT: They are Panel 15?

THE CLERK: Yes, sir.

THE COURT: All right. We don't know when we're going to get to you. There's some chance we can get to you Wednesday afternoon. I suppose it's a little more likely that it will be Thursday. We do expect to get to you all. I can see the looks on your faces. You're thinking, Hot dog, they're not going to get to

me. We're far enough down the line. Don't count on it. I promise you we will get to Panel 15.

So check the recording throughout the course of the day on Wednesday to make sure that you know your precise time for being here. We will see you sometime Wednesday or Thursday.

THE BAILIFF: Right this way, please.

THE CLERK: This is Panel Number 16. Number 10, Dena G. Bailey; Number 6, Michael W. Ausberry, Jr., Number 146, Ricky T. Johnson; Number 52, Betty S. Cochran; Number 283, Sheila M. Vlieg; Number 221, Jamie A. Puckett.

THE COURT: All right. Y'all are Panel 16. Call the recording throughout the course of the day Wednesday and if necessary into Thursday morning to find out the time that you will need to be here. Come on back this way. The bailiffs will show you where to go when you get here whenever your appointed time ends up being.

Now, before you all leave the room, this is Panel 16, right?

THE CLERK: Yes.

THE COURT: Don't let the passage of time cause the memory of the forcefulness of my instructions to you about reading the newspaper and watching the TV

fade. Keep that present at the tip of your mind. Stay out of the newspaper and out of the TV news. Come back in here Thursday with a clean slate in your head. We will see you Thursday.

THE CLERK: This is Panel Number 17. Number 189, Brent W. McKinney; Number 293, Hollie R. Williams, Number 113, Catherine A. Grubbs, Number 171, Donald L. Malone, Number 109, Melva D. Graham-Martin; Number 200, Lynne L. Morgan.

THE COURT: All right. This is 17?

THE CLERK: Yes, sir.

THE COURT: Y'all are Panel 17. You need to check during the course of the day Wednesday and also into Thursday morning to see what your schedule is. We'll see you when we get to you.

THE BAILIFF: Come on out please.

THE CLERK: This is Panel Number 18. Number 66, Harold L. Daniels; Number 295, Jeffrey W. Williams; Number 254, Latrice V. Smith; Number 258, Toni D. Smith; Number 279, Gary G. Tucker; Number 161, Elaine J. Lee.

THE COURT: 18?

THE CLERK: Yes, sir.

THE COURT: All right. Pay attention Wednesday afternoon and into the day on Thursday to make sure

you know what your schedule is. We will see you at the time that we give you. It's certainly possible that we might not get to you all until Thursday afternoon. So keep checking until it's right before you're supposed to come and make sure you know precisely when you are to come. We will see you then.

THE BAILIFF: Come on out please.

THE CLERK: This is Panel Number 19. Number 13, Donald Banks; Number 199, Laurence D. Morda; Number 227, Ronnie H. Ridings; Number 93, Gail Fowler; Number 27, Don J. Boyce; Number 118, Rosa Hammitt; Number 271, Michael D. Taylor.

MR. GOWDY: That's seven.

THE COURT: We got seven in the last two panels.

MR. GOWDY: Oh, I'm sorry.

THE COURT: Y'all -- this is 20?

THE CLERK: 19.

THE COURT: 19. Okay. Y'all are Panel number 19. You need to pay attention Wednesday afternoon and into the day on Thursday by calling the recorded number and see what your schedule is. We look forward to seeing you all probably some time Thursday.

THE BAILIFF: Come on out please.

THE CLERK: This is Panel Number 20. Number 74, Cheryl Dotson; Number 192, Dana C. Melton; Number

233, Danny R. Rollins; Number 270, Lori Talbert -- Tallent; Number 228, Timothy J. Roberts; Number 28, Sandra Brady; Number 250, Mark P. Simmons.

THE COURT: Go ahead and put Ms. Wilkins in that last panel.

Ms. Wilkins.

All right. You all are Panel 20. If we get to you, it will be Thursday at the earliest I predict. But we may catch fire. Y'all need to check with us Wednesday afternoon and make sure that you're not up for Wednesday. Certainly, you will know what the schedule is for Thursday. Remember not to be reading the paper and watching the television. And we will see you all probably some time Thursday.

THE BAILIFF: Come on out please.

THE COURT: All right. Y'all got it all?

MR. BARNETT: Think so.

MR. GOWDY: Yes, sir.

THE COURT: Mr. Bartosh?

MR. BARTOSH: Yes, sir.

THE COURT: You ready to proceed in a few minutes?

MR. BARTOSH: I'm ready now, Your Honor.

THE COURT: Well, give me a minute. Is there anything that either side anticipates in way of voir dire that you might have an objection to that we could

go ahead and look at now? I know y'all just went through a trial together recently right?

MR. GOWDY: No, I did not.

THE COURT: Who tried that case?

MS. QUIMBY: I did, Your Honor.

MR. GOWDY: Ms. Quimby, Clay Allen and Roger Poole.

THE COURT: Y'all had one before, hadn't you?

MR. GOWDY: I don't believe Mr. Bartosh and I had although we have had trials.

THE COURT: All right. Well, I mean, I just wonder if there is anything y'all anticipate in terms of each other's voir dire that you might want to address now.

MR. GOWDY: There's an issue that may come up if Mr. Bartosh don't mind me saying it. The court reporter can hear. It ain't a whole lot of people in here. I don't have any idea, heck, I don't know what neurology reports they have. I certainly don't know what defense they have. To the extent that there's going to be allegations of marital infidelity, I would think it's appropriate to ask jurors, Do you carve out an exception for South Carolina's murder statute for a wife who a husband suspects is being unfaithful?

In other words, despite what the law says about

not being able to kill them, do you have your own rule that you would follow. It doesn't have anything to do with the punishment. It has to do with whether or not you think as it is in Brazil and other countries, it's okay to shoot your wife if you suspect that she's seeing somebody else.

Now, if they tell me that is not going to be part of their defense or any line of questioning, there's no need for me to ask any potential jurors about that. But if it is, then I need to know whether there's a juror out there that even at the mere suggestion that a wife may be seeing somebody else thinks its okay to shoot them.

MR. BARTOSH: As I understand it in 25 words or less, if you catch your wife fooling around it's okay to shoot them.

MR. GOWDY: I don't think so. I'm not advocating that.

MR. BARTOSH: I understand that. But that's the question to the jurors?

MR. GOWDY: Yeah, but I wouldn't ask it like that. I would say here is the law in South Carolina, murder is the unlawful killing of another person with malice aforethought. Do you within the context of a marriage of a husband and wife, do you think that

there are certain circumstances where it is okay for one to take the life of another?

MR. BARTOSH: I can't imagine that coming up, Your Honor.

MR. GOWDY: You can't imagine it coming up in your defense?

MR. BARTOSH: I can't imagine that coming up as to say that that's an excuse for killing somebody.

MR. GOWDY: How about as an excuse for saving somebody's life in the sentencing part?

MR. BARTOSH: If you are saying that he was justified for shooting her --

THE COURT: This is -- let me cut right to it.

MR. BARTOSH: Please.

THE COURT: Solicitor Gowdy wants to ask the jurors questions about whether or not they think it is important in either the guilt or sentencing phase of a capital trial that the victim might be accused of marital infidelity in terms of whether or not it would justify the killing or affect the sentence. Do you have an objection to him asking that line of questioning during voir dire?

MR. BARTOSH: Let me see how I could put this. We do not intend to offer the defense of he was justified for killing his wife because she was engaged

in an extramarital affair. Now that does not preclude us from going into the fact that there were many separations during their marriage. And during those separations, she was engaged in a marital affair, extramarital affair. But as far as that being an excuse for his actions, no.

THE COURT: No. Wait a minute. Do you have an objection to Solicitor Gowdy engaging in voir dire that is along the lines that he illustrated? Yes or no.

MR. BARTOSH: Well, I'm confused. If he's saying that that's an excuse for killing somebody, then I object to it.

MS. QUIMBY: What is --

THE COURT: No. Look. I'm a little less formal than some other judges might be. But I don't want y'all asking each other questions during the course of a legal argument.

Regardless to how he intends to use the evidence or the information that he might get from a question like that, do you object to him asking those questions during voir dire?

MR. BARTOSH: Once again, Your Honor, I'm unclear as to the question he's going to ask. Is he going to ask that the fact that a wife is engaged in

an extramarital affair with a juror see that as mitigation to a husband committing a murder?

THE COURT: That would have to be a question. I'm not going to let anybody make an argument that marital infidelity justifies murder. And I'm not going to let Solicitor Gowdy ask somebody if they are so bold and brazen as to come in here and think that they can disobey my instructions on the law of what is murder. But the law does allow the jury to consider mitigating circumstances, mitigating facts that are not necessarily listed in the statute, correct?

MR. BARTOSH: Correct.

THE COURT: And I think what Mr. Gowdy is getting at is he wants to know if there's anybody on the jury who thinks that it might mitigate what Mr. Lindsey is accused of doing in terms of affecting himself if he suspected that his wife was engaged in an extramarital affair. And he wants to ask questions to identify, see if he can identify who those jurors might be.

Did I get it right?

MR. GOWDY: Yes, sir. Perfect. And just so the Court understands, I'm asking these questions in vacuum. The evidence, whether or not we put it in or not, I'm not certain. But the evidence is just after Mr. Lindsey shot his wife, he began to tell anybody

who would listen that she was seeing somebody else. And I've heard today from questions by Mr. Bartosh of the psychiatrist about stress and whether stress would trigger somebody who had borderline intelligence. And what I'm trying to figure out is is that stress going to be the notion that his wife was going to leave him for somebody else.

And you are exactly right. Is that a mitigator? I'm not concerned that somebody is going to disavow the law and say it's okay although it does raise another point. There is a lot of cases that would tend to reduce murder to manslaughter provided the passion was sufficient or the provocation was sufficient enough. I don't have any idea of whether they are going here or not. I don't know what their defense is.

THE COURT: All right. Well, you know, I don't think that either side is really going to be able to get into during voir dire addressing each juror's opinion about individual, mitigating factors, whether they are listed in the statute or not. There are cases on that. But nevertheless, and I'm not ruling. I'm just saying that's what he wants to do. Do you have an objection?

You know, and again, you don't have to raise the

objection now. I'm just simply giving you an opportunity, both of you, to address the objections that you anticipate so we could address -- I'll tell you what let's do. You don't seem to be ready to answer the question right now. Why don't let's just skip the subject. We'll see what if any questions he ask, if you have an objection, you raise it.

MR. BARTOSH: I will be fair. Truthfully, Your Honor, I don't understand the question. But if he's saying that somebody is willing to excuse a murder because of infidelity on the part of the wife, I can't imagine that subject coming up. But let's just go ahead and start the voir dire and then --

THE COURT: I guess another thing that Mr. Gowdy has got to think about before he starts asking questions like that of every juror as to whether or not he really wants to drill that subject into the head of all these jurors before he knows whether or not evidence of marital infidelity could ever even come into court. I don't know.

MR. GOWDY: Well, Your Honor, I would love to file a motion in limine and hash that out prior to jury qualifications but I don't think that's an option. That's been a concern frankly of the prosecution from day one that this was going to turn

into a side trial about whether or not the victim was leaving him or was she seeing somebody else despite the fact that he's been seeing somebody else for two years. I don't want it to turn into Family Court. But if it's going to, I think I have a right to know whether or not somebody is going to say if your wife's seeing somebody else, the law be damned, you can shoot them or murder them.

THE COURT: Why don't we do this? You don't have to answer this question but I think you already answered it. Do you intend to introduce into evidence during the guilt phase of this trial any evidence that Mrs. Lindsey was seeing somebody, having an extramarital affair or whatever at the time shortly preceding the alleged crime that we're dealing with in this case during the guilt phase?

MR. BARTOSH: Your Honor, I don't think we are required to answer that question.

THE COURT: Right. You are not. Okay.

MR. GOWDY: Your Honor, with all due respect, there would be a question after that. As I understand state law, it's not enough for somebody to be willing --

MR. BARTOSH: Your Honor, let him ask the question. Let him ask the question. Let him ask

whatever questions he wants to ask on murder, on infidelity, on extramarital affairs. We don't care.

MR. GOWDY: Okay.

THE COURT: Well, as I'm sitting up here thinking about it, I think there is a substantial question as to whether or not that evidence could, and I don't know a whole lot about this case yet. But I don't know that there's a real possibility that that evidence is admissible during the guilt phase.

And as far as the sentencing phase is concerned, I understand your willingness to let him ask those questions. But I don't want this to -- this is not going to turn into an exercise of inquiring into each individual juror's views about every mitigating circumstance that might become relevant in this case. I've got a responsibility to the jurors to make sure that their private lives and private values are not completely exposed unnecessarily during the voir dire process of this case. Correct?

MR. GOWDY: Yes, sir.

THE COURT: Correct?

MR. BARTOSH: Yes, sir.

THE COURT: All right. And so I am, uh, we'll let it go. We'll see how it goes with the first few jurors. But you know, for example, a question like if

that were alleged, would you think that sufficient to justify a life sentence as opposed to the death penalty? I don't think that's a proper question.

MR. BARTOSH: No, sir.

MR. GOWDY: I don't think it's proper either. But I also think this, it's not enough merely that you be able to consider death, you have to impose it. And if somebody has an automatic rule such as in the Morgan case, we asked every juror, the law says you can put somebody to death starting at age 16. Do you have a rule that you would superimpose on that law? And a good number of jurors said yes, I do. I wouldn't put anybody to death under age 20 or under age 18.

Well, the only way we would know that would be if we would be able to ask it on voir dire which we did over defense objections I might add. The judge allowed us to do that. So we were able to ask jurors in a round about way are you willing to follow the law. Now, if a juror has an automatic no, I would not consider or impose the death penalty if a husband thinks his wife is seeing somebody else, that proves he is not qualified to serve. That is not a specific mitigator. That goes to your qualification to be a juror in this case.

THE COURT: Yeah. Well --

MR. BARTOSH: Your Honor, I don't believe he is comparing apples to apples. In the Morgan case, he harped on a statutory mitigator which was someone under the age of 17.

MR. GOWDY: I beg to differ. It had nothing to do with mitigation. It had to do with the right to follow the law which said 16, you are eligible.

MR. BARTOSH: Your Honor --

THE COURT: That's a fine line. You can say that about any mitigating circumstance. Under that theory, you could ask each juror questions about each listed mitigator and each potential mitigator. Do you have an automatic rule that you would not execute somebody who had -- who killed his wife of having marital infidelity. Let's just get into it. And let's see how it goes.

You need a few minutes to think about whether you want to get into it or are you ready to roll?

MR. GOWDY: I'm ready to roll.

THE COURT: All right. Give me a few minutes to get ready. And we will -- I'm going to give Teresa a chance to shift to this side of the courtroom. And then we will get right to it.

MR. BARTOSH: Your Honor, may I have about 15

minutes or is that too long?

THE COURT: I think it would take about 15 minutes.

MR. BARTOSH: All right. Thank you.

(WHEREUPON, a short recess was taken at approximately 6:32 p.m.)

(WHEREUPON, the Court resumed at approximately 6:50 p.m.)

THE COURT: Bring us our first juror.

(WHEREUPON, Rodney Petty, Juror number 213, entered at approximately 6:50 p.m.)

RODNEY PETTY

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right. You're Mr. Rodney Petty?

A Yes, sir.

Q Well, Mr. Petty, you recall that I put you under oath and you are still under oath. Do you acknowledge that?

A Yes, sir.

Q Now, Mr. Petty, you haven't had much of a chance to hear or see anything since you left the courtroom. I'm assuming you haven't heard any news or talked to anybody or learned anything about this case since you left the

courtroom?

A No, sir. There's one thing I want to tell you so that there are no questions asked.

Q All right.

A There was a legal pad left on the desk in there where we were seated. It had some, a little bit of information. I saw that.

Q What information was on there?

A It was just --

Q He will get the pad. And then we will come back and take a look at it. Now, we're going to ask you some questions. We hope this won't take all that long. We're going to just kind of relax. And you relax also.

A I'll try.

Q And we will try not to pry too deep. But this is a very important matter and we need to ask you some questions. I hope you don't have any objection to that. We want you to listen very carefully to the questions. I'm going to start off asking you some questions. Then Mr. Bartosh is going to ask you some questions. Then Mr. Gowdy is going to ask you some questions.

Listen very carefully to those questions. Answer them very truthfully. There's no correct answer. There's nothing that's right or wrong. We just want the truth. We want you to be candid with us and open with us. And we

certainly are confident that you will. And we appreciate that you will.

We are going to talk about the penalty phase of this trial. That's not to indicate anything about the defendant. You've got to understand that the defendant is presumed innocent. And we won't even get to discussing the penalty unless the jury finds him guilty. But because that is a possibility, we're going to talk to you a little bit about what your views are on the different penalties that would be available.

Now, as a juror in a criminal case, I will instruct you that you must listen to the law as I give it to you. You must accept the law as I give it to you and that you must base your verdict on the testimony and evidence that you hear in this courtroom in light of the law as I state it to you. Do you believe you are able to do that?

A Yes, sir.

(WHEREUPON, the bailiff handed a legal pad to the Court.)

BY THE COURT:

Q Is this the pad?

A Yes, sir. I believe it is.

Q All right. Show it to him without letting him get close enough to read it.

Did you read any of the information on there?

A I saw some of the information. I didn't read the whole thing.

Q Does that look like the right pad?

A That's it.

Q All right. Let me have that sheet of paper. How many jurors saw that pad?

A I don't believe nobody did. I sat down in the only chair that was like this. And it was right there in front of me. I didn't say anything to anybody. When I realized what it was, I was going to wait until one of those came back in and just say something.

Q So you think you are the only juror who saw this?

A I really do. I believe I was the only one that could have.

Q Now, this -- did you look behind the first sheet?

A No, sir. I did not pick the tab up.

Q I'm taking the first sheet off. And we'll mark it as an exhibit. There is a yellow sticky note in the middle of the sheet. Did you move or look under that sticky note?

A Did not touch that pad or sheet.

Q All right. Did you look at it closely enough to see anything that was written on the pad?

A Yes, sir. I did.

Q Tell me what you saw.

A About IQ.
Q What about IQ?
A Uh --
Q Please don't be bashful.
A I'm not. I want to be completely honest with you. I saw about a score of 76.
Q Yes.
A And where a level was of 70.
Q Right. All right.
A And that's all that I can really say that I saw period, and actually comprehended what I seen.
Q Do you know what that means?
A (No response).
Q Do you know what that 76 was?
A Yes, sir. I did see that.
Q What was that?
A The way I read it was the score of Mr. Lindsey.
Q All right. Did you see anything else on there?
A No, sir. Those are the only two items I saw.
Q All right.
A When I read that second part, that's when I said, Oops, I shouldn't be seeing this.
Q Okay. Now, let me tell you a couple of things. First of all, this is not evidence. You don't have any idea who wrote this. You don't know anything about who

wrote it, what it meant, what they knew or anything like that.

A No, sir.

Q Do you believe that you would be able to sit as an impartial juror and make your decision in this case based on the testimony and evidence that you hear in the courtroom and not consider anything that you may have learned off this sheet of paper?

A I believe I would be able to do that.

Q Do you have any hesitation in telling me that?

A I don't think so. Like you said, I don't know who wrote that. That could have been written by anybody.

THE COURT: All right. I'm going to mark this as an exhibit, as a Court's Exhibit. And you folks are free to look at it and to ask him any follow up questions that you want to ask him about it when the time comes. And if you want to come get it now and look at it while I'm asking him questions, you can.

MR. BARTOSH: I would like to.

(WHEREUPON, page of legal pad was marked for identification as Court's Exhibit 1.)

BY THE COURT:

Q Mr. Petty, we appreciate you being open with us about what you saw on that pad. Okay?

A Yes, sir.

Q We appreciate that very much. In a criminal case, the State, as I told you earlier, has the burden of proof and must prove the defendant guilty beyond a reasonable doubt. I will give you some more detailed instructions about what that means when it becomes time. But do you understand what I'm telling you?

A Yes, sir.

Q And do you think you can follow that instruction?

A Yes, sir.

Q All right. Now, do you believe that based on the facts and the evidence and under the law as I will give it to you, could you find a defendant in a murder case either guilty or not guilty depending on the evidence that you hear?

A Yes, sir.

Q If you were a juror in a death penalty case and if the jury had found the defendant guilty of murder, you would then move to the sentencing phase of the trial. You understand that?

A Yes, sir.

Q And I'm going to tell you a little bit about what aggravating circumstances and mitigating circumstances are. Aggravating circumstances are facts or incidents or details of an occurrence which the legislature, the General Assembly of our state has declared by statute would make

worse, that is, to aggravate a murder. In other words, the aggravating circumstance which accompanying a murder increases in the enormity or adds to the injury of the crime of murder if it is committed in the commission of a crime.

Now, mitigating circumstances are incidents, details, or occurrences which the General Assembly has declared by statute to reduce the severity of the offense of murder and may be considered as extenuating or as reducing the degree of moral culpability or responsibility. Do you understand all of that?

A Aggravating, explain that one more time to me.

Q An aggravating circumstance is something that the General Assembly has decided makes a murder worse than another murder. And a mitigating circumstance is something that the General Assembly has decided makes it not as bad. And there may be mitigating circumstances that you would come up with that are not listed by the General Assembly. You understand all of that?

A Yes, sir.

Q Now, if you were a juror in a case such as this in the sentencing phase, could you, depending on the particular facts and circumstances of this case, including the consideration of aggravating and mitigating circumstances and the law that I give you, could you return

a sentence for someone convicted of murder of life in prison if you were given a choice of either life or death? Could you return a sentence of life?

A Life in prison?

Q Yes, sir.

A Yes, sir.

Q All right. Now, if you were a juror in that situation and again depending on the circumstances and the particular facts including the consideration of aggravating and mitigating circumstances and in light of the law as I will give it to you, could you return a sentence of death if you were given a choice of a life sentence or a death sentence?

A I would have a hard time doing that.

Q You would?

A Yes, sir.

Q Now, is this something that you thought about before?

A I have not put a lot of deep thought into it. I have this afternoon since all of this became known to me. I'm really not sure. It depends on how the circumstances would, I guess what the case would show.

Q So it does depend on the circumstances?

A On the case, on what the case would show. I could tell you this, would be hard for me to take a man's

life.

Q Now, you heard me mention the possibility of the jury being sequestered, in other words, kept in a hotel and kept away from your family, your job for several days. Say we start a case Thursday or Friday. It could go into Monday or Tuesday or Wednesday of next week. And we would go through the weekend. Is that going to pose a problem for you?

A I will do whatever I need to do.

Q All right. I'm going to let the lawyers ask you some questions. Then I may come back and ask you some more in just a few minutes.

THE COURT: Mr. Bartosh.

MR. BARTOSH: Thank you, Your Honor.

EXAMINATION

BY MR. BARTOSH:

Q Mr. Pitts, as Your Honor said, I'm Mike Bartosh. I represent Marion Lindsey. One of the things that struck me is you said that you would have a hard time putting someone to death?

A Yes, sir.

Q I would hope that there's never anyone who would enjoy doing such a thing. It would be a very difficult thing to do. However, given the right set of circumstances, you could after hearing all the evidence

presented in the penalty phase, and that's assuming we're getting to the penalty phase. Because as you know, this is in two different phases. The first phase is like a regular trial. The jury hears the evidence and decide whether or not the State has proven beyond a reasonable doubt that a person is guilty of a crime. If they haven't proved it, we all go home. It's over with.

But if they have proved it, it goes into the second phase, the penalty phase where the decision is life or death. And what we're looking for are jurors who are willing to listen to facts, who don't always give the death penalty and don't never give the death penalty. But people who could sit and listen in fairness and hear the testimony and hear the facts and then decide based on that whether life or death. Do you believe you can do that?

A Like I said a while ago, I would have a hard time with death. Under the circumstances, depending on what was brought out, --

Q So you --

A -- I feel like I could do the right thing. Yes, sir.

Q But it would depend upon the circumstances?

A Yes, sir.

Q And if you felt it was an appropriate punishment, you could vote that?

A Yes, sir.
Q Based upon the circumstances, right?
A Yes.
Q All right. Now, you said in the -- on the general questioning that the judge gave you that you knew something about this case. Can you tell us what you know and what the source of your information was?
A Mostly the paper. I pretty much read the paper every morning when I get up like 90 percent of us do. And when the name start coming up, you start remembering a little bit. Just the paper mostly.
Q And did you see the article this morning?
A I saw the highlighter of it.
Q You also said, Mr. Petty, that you had a -- in your profession, you had a customer that was killed in an armed robbery. There was a death penalty trial about a couple of months ago.
A No, this had been several years ago.
Q So that was not the same one. Are you related to Stephanie Petty?
A I don't think so.
Q You been a victim of an assault or gun or CDV?
A I was in an armed robbery.
Q All right. While you were --
A I was working.

Q Where you injured in that?
A Scared to death.
Q Thank you very much, Mr. Petty.
A Thank you.
MR. GOWDY: May it please the Court, Your Honor?
THE COURT: Yes, sir.

EXAMINATION

BY MR. GOWDY:

Q Good evening, Mr. Petty. How are you?
A Fine, sir. How are you?
Q I'm doing good. Thanks. My name is Trey Gowdy. I'm with the Solicitor's office here. That's Donnie Willingham on your left. Barry Barnett in the middle. Together, we're going to be prosecuting this case on behalf of the State.
A Yes, sir.
Q I want to tell you first off, there are no right answers. There are no wrong answers. There are just your answers. Nobody is going to cross-examine you on what your personal beliefs are. What they are is what they are. We're just trying to figure what they are. I understand this is a difficult issue. You mentioned that you thought about it this afternoon. There's no reason to think about it unless something like this comes up. But it is

important. So I'm going to have to ask you a few more followup questions.

You mentioned, and I put quotes around it because I think these were your exact words. You said that if circumstances were right, you would do the right thing. I want to make sure that you understand that under South Carolina Law, you don't ever have to impose the death penalty. You understand that?

A I didn't until just then.

Q Okay. You never have to impose the death penalty. You always have the option of life without parole. Now, accepting that, that the law never requires you to impose the death penalty, you always have the option of life, can you still tell me that you would vote and put a man to death without the law requiring you to and with life in prison always being an option?

A I'm going to be totally up-front with you.

Q That's what I want you to be, Mr. Petty.

A Not to bring religion into it, but I'm a Christian. And I have strong beliefs about what I believe in. There again, very few circumstances I believe I could see myself voting for the death penalty.

Q All right. And I'm going to tell you again like I did up front. Nobody is going to question or second guess or challenge any of your beliefs whether they be

religious political or otherwise. But you said there is a certain category of crimes that you could consider. And what I'm trying to ask you, I'm not going to give you the facts of this case. I can't do that.

A I understand that.

Q Are you saying if it's your family member, you can vote for the death penalty, but if it's not, you wouldn't? Or if it was a mass murderer, you would? I mean, I've got to figure out whether your few circumstances are so limited that in reality, your beliefs substantially impair your ability to give a death penalty.

If it's such a limited number of times as to be, you know, for all practical purposes, you don't believe in the death penalty, then you can understand, we've got a right to know that. What do you mean when you say a few instances? Are you talking about Osama Bin Laden?

A I'm talking about, uh, somebody that would do something to a child. Somebody that would stalk or make plans and then stalk and just really brutalized murder. Things of that nature.

Q You mean premeditated?

A Basically.

Q It would have to be premeditated?

A Yes, sir.

Q Is it fair to say that if the murder were not

premeditated, you would not be able to impose the death penalty?

A Yes, sir. I would say that.

Q Is it fair to say that if the murder did not involve a child that you would either not be able to impose the death penalty or have substantial difficulty imposing the death penalty?

A A handicapped person or something to that effect.

Q Someone that needs special protection?

A Right.

Q And again, there's nothing wrong with that position. I've just got to know what it is. If the killing wasn't premeditated and didn't involve somebody that needed special protection because they were elderly or a child or mentally handicapped, are you telling me that you would not be able to impose the death penalty on that defendant?

A Probably not.

MR. GOWDY: Your Honor, those are all the questions I have for Mr. Petty.

Thank you very much for answering these difficult questions.

EXAMINATION

BY THE COURT:

Q All right. Mr. Petty, you've been very

forthright with us. And we certainly do appreciate that. Let me kind of follow up a little bit to the questions that the lawyers asked you about whether or not you could bring yourself to vote to impose the death penalty. And if you did, could sign your name to the verdict form that would impose the death penalty.

You mentioned some Christian views, religious beliefs. And I believe you characterized those as strong beliefs. Would those beliefs interfere with your ability to impose the death penalty?

A No, sir. I do not think they would. Under the right circumstances, they would strengthen that belief.

Q I see. Would -- do you believe that you would be able to enter into this trial open-minded and to be able to look at the circumstances of this case objectively and after hearing all the evidence and the arguments that the lawyers would make, do you believe that you would be able to objectively evaluate the question as to whether or not, if we get to that point, the defendant should receive a life sentence or the death penalty?

A Yes, sir. It would be purely my -- my specu -- the way I look at it which is what you're asking me which I think I would.

Q Right. Now, you told us initially, I believe the very first thing you told us is you would have a difficult

time imposing the death penalty.

A Yes, I would.

Q Now, we don't want to impose the death penalty every time somebody is charged with a crime or certainly every time they are charged with murder. But do you believe you would be able to look at the facts of this case objectively and make a decision based on those facts that are not interfered with by your own personal views, religious views or your own reluctance to impose a death penalty?

A Well, that question, my religious views without a doubt will play into who I am.

Q Yes, sir.

A So it might be hard for me to do exactly what you just said unless those circumstances that I mentioned to Mr. Gowdy were there.

Q Okay. Now, I don't mean to -- again, this is -- there is no specific correct or incorrect answers. I'm a little bit concerned that we might be getting inconsistent answers. And that's okay. Mr. Gowdy mentioned some specific circumstances to you. Are those the only circumstances in which you would impose the death penalty or are you open minded to hearing all circumstances and would consider those and consider the facts of each case as to whether or not you would impose the death penalty?

A I would use my owe mind if that's what you're asking me. Yes, sir. It would take into my religious feelings. But if I were convinced that that was the right thing to do, I will do it.

Q All right. Mr. Petty, I'm going to ask you to step out in the hall for just a minute. And then we will be in touch with you in just a second. All right.

A Yes, sir.

(WHEREUPON, the juror exits at approximately 7:15 p.m.)

THE COURT: Any argument?

MR. GOWDY: Yes, sir. Your Honor, clearly he is not death penalty qualified. There are cases that if you have a particular set of circumstances under which you could give a death penalty, for instance, there's a South Carolina case where a juror said I can give the death penalty if it involved my family member. Well, that person is not qualified to serve on a death penalty case. Or I could give the death penalty if I happen to witness the crime. Obviously, that person is not qualified to serve in a death penalty case.

This gentleman was very forthright. He was very honest. But the truth is if it is not premeditated, which is not an element of murder, but if it's not

premeditated, if it doesn't evolve somebody who is in a protective or vulnerable class, he can't give the death penalty. He's not qualified.

THE COURT: Mr. Bartosh.

MR. BARTOSH: Your Honor, I think his responses to your questions in the very end indicated that he felt if the facts were there and they warranted the death penalty, he could give it.

THE COURT: Uh-huh (affirmative).

MR. BARTOSH: There were no kind of conditions put upon whether they were -- whether it was premeditated or whether it was a child. He just said if they ask me that, I could do it and if the circumstances were there.

MR. GOWDY: Your Honor, you can't consider the answers to the last question in a vacuum.

THE COURT: I realize that. I -- when Mr. Petty -- actually it wasn't even a question that he answered. I haven't even gotten to the point of asking him about his willingness to impose the death penalty, I think. He said he would have a hard time imposing the death penalty. He followed with that. He first started to, I thought even farther down the road of being unable to. He then came back and appeared to me for a little bit to be able to be

pretty impartial. He went back the other way and came back this way.

Now, one of the problems that I have with reading the cases that South Carolina Supreme Court has decided is that -- well, and I mean I'm not being critical at all. But sometimes the facts aren't spelled out in all that much detail. There's a recent Fourth Circuit opinion, U.S. versus Tippin where there was three jurors. And they were kind of like this guy. They were back and forth. And it leaves me in a situation where I've got to kind of predict where he's going to land.

My impression is that this man has substantial hesitation in imposing the death sentence. And those arise from his religious beliefs. He was very careful to point that out in the beginning. And he characterized those as strong. He later then said that under the right circumstances, his religious beliefs would actually fortify his ability to impose the death penalty.

So I am left with the situation of deciding whether or not this man's beliefs or this man's values would substantially impair his ability to follow the law and to consider openly and objectively whether or not to impose the death penalty.

Correctly stated, Mr. Bartosh?

MR. BARTOSH: Yes, sir.

THE COURT: And Mr. Gowdy?

MR. GOWDY: Correctly stated with this one exception, Your Honor. I do take exception to Your Honor's classification of this juror's testimony. When I asked him give me the circumstances under which you could give the death penalty, he said premeditation or involving the child. That is not -- I mean --

THE COURT: I heard him say that. But those were in response to specific questions that you asked him.

MR. GOWDY: I can't go through every -- I can't give him the facts of this case. But the truth of the matter is, it's impossible to listen to this juror and not conclude that his religious views substantially impair his ability to give the death penalty which is the standard. Not prevent but substantially impair.

THE COURT: Did -- I'm sorry. But were you not just listening when that's exactly what I said a second ago?

MR. GOWDY: Yes, sir. I was.

THE COURT: Let me get something cleared up. I've got to rule. I do agree that this particular juror's

beliefs and values would substantially impair his ability to impose the death penalty objectively under South Carolina Law. Now, that is based primarily on the fact that he jumped out of the box to say that after having thought about it during the course of the afternoon after he learned about what was going on here, he jumped right out of the box and said that I want to make one thing clear before we go any farther. I would have a hard time imposing the death penalty.

Now, in response to questions that I asked him and Mr. Bartosh asked him and Mr. Gowdy asked him, it got less and less clear. It didn't move any direction necessarily. It just got less and less clear.

So being left with the responsibility of making a judgment as to whether or not his values and beliefs would impair, substantially impair his ability to follow the law and impose the sentence that is appropriate, it is my belief that his views would substantially impair the performances of his duties and his ability to act in accordance with the instructions and to consider open-mindedly the various aggravating or mitigating circumstances and impose the sentence that is -- that he would think is appropriate. And I believe that he would be unable to

be objective. And that's my ruling on that juror.

MR. GOWDY: Thank you, Your Honor.

THE COURT: All right. Bring in the next juror.

MR. BRENNAN: Your Honor, one thing came up. We had our witness list made out. And Ms. Quimby was unable to get hers until we went upstairs and got them. I don't know if you want to see the witness list before they came in.

THE COURT: Are both sets ready now?

MS. QUIMBY: Yes, sir. I fixed mine so it's attached to the Solicitor's with no indication of any --

THE COURT: Give me five of those. This is what I'm going to do. I'm going to send -- I'm going to send four of them back and ask you to tell the jurors back there to look that witness list over carefully and be ready to tell me whether or not they know or are related to any of the people listed on that list when they come out here in a few minutes.

The next juror is John Hovelsrud. And I'm going to talk to him. Mr. Petty doesn't need a witness list.

(WHEREUPON, Mr. Petty enters at approximately 7:21 p.m.)

THE COURT: All right. Mr. Petty, we have -- we

have, uh, completed our questioning of you. And you are free to go. Your services will no longer be needed in this case. Appreciate you coming and appreciate you being open and honest with us.

(WHEREUPON, Mr. Petty exits at approximately 7:21 p.m.)

THE COURT: Before we bring the next juror in, let me say this. As part of my -- I actually meant to say this a minute ago. As part of my analysis of Mr. Petty, I'm concerned about his having seen the pad that was in the jury room. He latched right onto the IQ level that had been written down there for Mr. Lindsey.

I understand that that's probably all going to come out in the sentencing phase. But whether it does or not, that is a small factor in how I looked at his qualification to serve. It did not enter into my evaluation of whether or not he could be a fair and impartial juror from the standpoint of his willingness to impose the death penalty.

All right. Bring him in.

All right. What I propose to do with Mr. Hovelsrud is if we find him to be --

Give him a witness list and let him look at it.

(WHEREUPON, John Hovelsrud, Juror number 133, entered

approximately 7:25 p.m.)

JOHN HOVELSRUD

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Let me make sure I'm pronouncing your name correctly. Your last name.

A Give it a shot.

Q Is it Howelsrud?

A Hovelsrud.

Q Hovelsrud. All right. Mr. Hovelsrud, you understand that you are still under oath from the oath that I gave you this morning, correct?

A Yes, sir.

Q All right. Now, has anybody been back there in the back talking about this case?

A No.

Q Since I told you not to pay any attention to news reports and all that stuff, have you learned anything about this case?

A No.

Q Okay. Now, there was some discussion about there being a pad back there on the table in the jury room. Did you see the pad about this case?

A I saw a legal pad on the table but I didn't look

at it.

Q Were you able to read anything on it?

A (Shakes head negatively.)

Q Okay. And I will need you to say yes or no.

A No, I couldn't read anything.

Q You couldn't read anything on it. Okay. All right. Now, we're going to ask you some questions. We don't mean to be invading your privacy. I'm going to start off asking you questions and then I'm going to turn it over to the lawyers and they will. There aren't any right or wrong answers to these questions. We just want to see what you think. We want your truthful answers and your truthful opinions.

We're going to be talking a little bit about penalty. That doesn't imply anything. The defendant has pled not guilty. And we may never get around to considering the penalty if the jury finds him not guilty of the crime he's charged with.

Do you believe that if you are a juror in a criminal case such as this that you could look into the law as I give it to you and accept the law as I give it to you and to base your decision in this case solely on the testimony and evidence that you hear in the courtroom and in light of the law as I give it to you. Do you believe you could do that?

A Yes, sir.

Q You understand the State has the burden of proof and they must prove the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q Could you, depending on the facts and the circumstances and the law as I give it to you in a murder case, find the defendant either guilty or not guilty depending on whether or not you feel the State has proven him guilty beyond a reasonable doubt?

A Yes.

Q Now, I'm going to tell you a little bit about aggravating circumstances and mitigating circumstances. Aggravating circumstances are facts, incidents or details of an occurrence that the General Assembly of our state has declared to make worse, that is, to aggravate a murder. In other words, the aggravating circumstances which accompany a murder increase the enormity or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, is an incident or detail or an occurrence with the General Assembly has declared by statute to reduce the severity of an offense of murder and may be considered as extenuating or reducing the degree of moral culpability or responsibility.

If you are a juror in the sentencing phase of a death penalty case such as this, do you think that depending on the particular facts and circumstances of that case including the consideration of aggravating circumstances and mitigating circumstances and the law as I will give it to you, could you return a verdict of life in prison if you were given the option of either a life sentence or the death penalty?

A Based on what I've heard, yeah, I could probably make a decision on that.

Q Could you also, if you were given both the option of life in prison or the death penalty, could you impose a death sentence depending on the facts and circumstances?

A I guess based on what I heard, I could.

Q All right. Now, if you are imposed -- if you are sequestered, as we call it, with a jury and put into a hotel away from your family and your work for five or six or seven or eight days, hopefully it won't be that long but it could be three to five days easily. Would that impose an undue hardship on you?

A Uh, this weekend and next weekend, yes. I play in a band on the weekends.

Q Yes, sir.

A And we contracted to do some weddings. On such short notice, I don't know how I would be able to.

Q Well, of course, we understand the difficulty of that. And you might have to lose some work. But is there anything that would, other than just missing some work, is there anything that being sequestered in the jury would do to you?

A No. Huh-uh (negative.)

Q I'm going to let the attorneys ask you some questions and then I may come back and ask you some more.

THE COURT: Mr. Bartosh.

MR. BARTOSH: Thank you, Your Honor.

EXAMINATION

BY MR. BARTOSH:

Q Let me make sure I say your name correctly. Is it Hovelsrud?

A That's good.

Q Folks have trouble with my name to. You put on your jury questionnaire that you have been a victim of a robbery?

A Yes.

Q Can you describe the circumstances of that?

A Someone broke into -- I have a room on the side of my carport. Someone broke in there and stole all of my tools.

Q You yourself were not present?

A No, I just found them missing.

Q It was basically a burglary with a larceny?
A I guess.
Q But you have never been the victim of a robbery where someone has taken something from your person?
A I have had stuff busted in my car. No one pulled a gun on me or anything like that.
Q When you told the judge it would be based upon what you were told or what you heard, you are talking about as the trial unfolded and you heard the evidence that is what you would base your decision on, correct?
A Yes.
Q Okay. As you know, this is a two-part procedure. The first part is just like a regular trial where the State presents evidence and the jury has to decide beyond a reasonable doubt that the State has carried its burden of proving to each and every one that the defendant is guilty beyond a reasonable doubt. It is only then that it moves on to the penalty phase where the decision is life or death. You understand that part about it?
A Yes.
Q You could listen to all of the evidence both presented by the State and the evidence presented at the penalty phase. And based upon that evidence, you can decide whether to vote for a life sentence or whether to vote for a death sentence. Is that fair enough?

A That is what I said. You got to remember, I never done this before. When you put me in a room and ask me that question, I may feel differently. I'm trying to answer the question the best I can.

Q I understand that. As it stands right now, you can do it?

A Yes, sir.

Q You understand that the way the system works is that every member of the jury has got to sign a sentencing sheet in the guilt -- in the penalty phase. They have to sign their name. If it is for life, you have to sign your name for life. If it is for death, you sign your name for death. Nobody enjoys doing that. We hope they would not. But could you do that?

A Yes.

Q That's all I have.

THE COURT: Solicitor.

MR. GOWDY: May it please the Court.

EXAMINATION

BY MR. GOWDY:

Q Good evening, Mr. Howelsrud. How are you doing?

A Good.

Q My name is Trey Gowdy. I'm with the Solicitor's Office here in Spartanburg. To your left is Donnie Willingham. And in the middle is Trey Barnett. The three

of us will be representing the State of South Carolina in this case. You work with Mr. Painter?

A Yes.

Q How long have you been there?

A Nine years.

Q Let me start off by telling you this, there are no right answers. No wrong answers. Whatever your beliefs are, your beliefs are. Nobody is going to challenge you. But given the fact that this is a capital case, I have to ask you some questions I would not ordinarily ask you if I just bumped into you on the street. What are your general beliefs, views on capital punishment?

A I guess in some cases, it is warranted. I guess in some cases, it isn't.

Q What would determine whether it was warranted or not?

A I don't track the judicial system like you folks do. But some of the stuff that I read and some of the things that been done wrong, things like that. You read about the DNA cases.

Q Sure.

A I feel a little apprehensive about that.

Q When you say apprehensive, you mean apprehensive about the notion that there may be somebody wrongfully accused or wrongfully convicted that is facing the death

penalty?

A Exactly.

Q It is obviously a fair concern. You would not want anybody convicted much less subject to the death penalty. Under South Carolina Law, death is never required. No matter how heinous a set of facts, life in prison is always an option if you as a juror choose to vote for life. Accepting and understanding that life in prison is always an option, do you still believe that you would vote for death if you thought the circumstances warranted it?

A Like I said, I have to wait til I get there. I have never done this before.

Q I can appreciate it. I can appreciate the fact that you got a stranger up here asking you about it. But waiting til you get into the jury room, you can appreciate it's too late for me?

A I understand that. I'm trying to be honest with you.

Q I want you to be honest. You told the Court and I think you told Mr. Bartosh and I think you also told me that, Yes, in the proper circumstance, you did think you would be able to impose the death penalty?

A Yes.

Q What I'm asking you is that life in prison is

always an option. Life without ever getting out of prison. Accepting that that is always an option, do you still think there are circumstances out there where you would vote for death?

A Phrased like that, yes.

Q Okay. In any capital case where a jury imposes the death sentence, it has to be unanimous. All twelve will have to vote for it and have to sign their name to it. Would you be able to sign your name to a death form if you thought that that was the proper judgment?

A If that is what I felt, Yes.

MR. GOWDY: One second, Your Honor.

Thank you. I have no further questions. Thank you for answering my questions.

THE COURT: Mr. Hovelsrud, I'm going to ask you to step in the hall for just one second. And I will get you right back in here.

(WHEREUPON, Mr. Hovelsrud exited at approximately 7:37 p.m.)

THE COURT: Any argument?

MR. BARTOSH: (Shakes head negatively.)

THE COURT: You think he's qualified?

MR. BARTOSH: Yes, sir.

THE COURT: You?

MR. GOWDY: Yes, sir.

THE COURT: Bring him in.

(WHEREUPON, Mr. Hovelsrud entered at approximately 7:37 p.m.)

THE COURT: Mr. Hovelsrud, we appreciate you answering these questions. We find that -- I find that you are qualified. We are going to have you in the panel that ultimately will become subject to being placed on this a jury. Let me remind you that you should not -- I believe you said you read the paper.

MR. HOVELSRUD: I read everything.

THE COURT: Don't read everything for the next few days. You got somebody in your family you can get to go through the paper for you.

MR. HOVELSRUD: I don't read the newspaper.

THE COURT: Oh, you don't read the newspaper?

MR. HOVELSRUD: Huh-uh (negative).

THE COURT: Well.

MR. HOVELSRUD: I get all my news over the Internet. It is quicker.

THE COURT: Don't read anything that relates to this case. Don't watch any news reports that relates to this case. When you come back I'm going to ask you, because I have to, whether or not you have. And I want you to be able to tell me that you have not.

So, you will need to be in touch by checking on that recording to find out when to report. We will also be in touch with you giving you information about when to report. Keep in mind that the jury might be sequestered. You might need to bring some clothes and some things to keep you going for four or five days, okay?

MR. HOVELSRUD: Can I play this weekend?

THE COURT: If you to get on the jury, you will not be able to play this weekend.

MR. HOVELSRUD: All right.

THE COURT: All right. Thank you, Mr. Hovelsrud. We will be in touch.

(WHEREUPON, Mr. Hovelsud exits at approximately 7:39 p.m.)

THE COURT: Oh, yeah. Hold on just one second. Bring him back in here.

(WHEREUPON, Mr. Hovelsrud enters at approximately 7:39 p.m.)

THE COURT: Mr. Hovelsrud, I forgot one thing. Because we're getting started with this at the beginning, we normally would have had this to you before we talked to you. I need you to take this witness list. It's got about 134 names on it. I want you to go back and look at it right now. Then

I'm going to get you back in here and ask you whether or not you know or are related to anybody on this list. Okay?

MR. HOVELSRUD: Okay.

THE COURT: Don't take him in there with other jurors. Take him to somewhere else.

Bring in the next juror and have that juror at the door waiting so we can get him in here.

(WHEREUPON, Mr. Hovelsrud exited at approximately 7:40 p.m.)

MR. BARNETT: You can hear through that door. You may not want them that close. They can hear through that door.

THE COURT: Whoever the next juror is just make sure they are ready but not there sitting right outside the door.

(WHEREUPON, Sheril Cudd, Juror number 63, entered at approximately 7:40 p.m.)

THE BAILIFF: They are sitting right outside the jury door.

THE COURT: Sir?

THE BAILIFF: They are sitting right outside the jury door. You want them closer than that?

THE COURT: No, that is fine. That's good. That way they can't hear what is going on in here.

THE BAILIFF: Yes, sir.

SHERIL CUDD

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Okay. Ms. Cudd?

A Yes, sir.

Q How are you?

A Fine.

Q You remember you are still under oath from the oath that I gave you this morning?

A Yes.

Q Now, we are going to ask you some questions about different things. We're not trying to pry into your private life, but we do need ask you about some subjects that may be difficult subjects. But we are going to have ask you.

We're going to talk about penalty. But the fact that we are talking about penalty, it does not mean anything. It just simply means that because this might come up, we need talk about it. These questions we ask you, they are not any right answers or wrong answers. We just want to know what your answers are. We want you to tell us openly and honestly how you feel. Do you understand me?

A Yes.

Q Do you think that as a juror in a criminal case, that you can listen to the law and accept and apply the law as I instruct you to do and that you can render a verdict based on the facts and the circumstances and the evidence that you hear in the courtroom in light of the law as I give it to you. Do you think that you can do that?

A Yes, sir.

Q In a criminal case such as this, the State has the burden of proof and must prove the defendant guilty beyond a reasonable doubt. I will explain that in more detail when it comes time for me to give you a full charge on the law. But you understand what I'm talking about?

A Yes, sir.

Q Depending on the facts and circumstances and the evidence that you hear in the trial, do you believe that you could find the defendant either guilty or not guilty of murder based on your view of the evidence and the law as I state it to you?

A Yes, sir.

Q I'm going to talk to you just a little bit about aggravating circumstance and mitigating circumstances. Aggravating circumstances are facts or details or instances or some occurrence that the General Assembly has declared by statute to make worse or to aggravate the crime of murder. In other words, an aggravating circumstance when

accompanying a murder increases the enormity or adds to the injury of the crime of murder.

A mitigating circumstance, on the other hand, is a detail or an incident or a fact or occurrence that the General Assembly has declared by statute to reduce the severity of the crime of murder. You may consider that as a juror as extenuating or as reducing the degree of moral culpability or responsibility.

If you were a juror in the sentencing phase of a trial such as this, could you, depending on the facts and circumstances of that particular case including the consideration of any aggravating or mitigating circumstances and the law as I would give it you at the end of the case, could you, if you were given an option of returning either a sentence of life in prison or the death penalty, could you return a sentence of life in prison?

A Yes, sir.

Q Could you return a sentence of the death penalty?

A Yes, sir.

Q If you were required to be sequestered or held in a group and denied the right to go home to your family at night, we will put you up in a nice hotel and everything and take care of you for four or five days. Could you do that or would that cause any terrible burden on you or your family?

A No burden.
Q I'm going to let the lawyers ask you a few questions. Let me do this. Do you know of any reason why you cannot be a fair and impartial juror in this case?
A Such as?
Q Any reason that you might have.
A I read the newspaper.
Q The lawyers are going to ask you a little bit about that. Is that going to inhibit your ability to be a fair and impartial juror?
A I don't know.
Q Okay. I am going to let them talk to you about that. Did you get a chance to go over this list of witnesses?
A Uh-huh (affirmative).
Q Did you make it through the entire list?
A Uh-huh (affirmative).
Q You need to tell me yes or no.
A Yes.
Q Did you -- were you able to read all of the names?
A Yes.
Q Do you know anybody or are you related to anybody on that list?
A No.

THE COURT: Thank you.

Mr. Bartosh.

EXAMINATION

BY MR. BARTOSH:

Q I am Mike Bartosh. I practice law here in Spartanburg. This is kind of uncomfortable because of the kinds of questions that we have the tendency to ask. I appreciate your honesty. And I appreciate your working with us. You noted on your jury questionnaire that you were the victim of either an assault or of a gun or CDV or criminal domestic violence?

A Grandparent abuse.

Q You were a victim of abuse by?

A It is my mother-in-law. So it would be mother-in-law abuse, I guess, from a teenager.

Q Did it go on over a long period of time?

A It is still going on.

Q Okay. If it turned out that there was some allegations of domestic abuse in this particular case and you were to get on the jury, would your experience as being the victim of domestic abuse, does that have an effect on you as far as your ability to be fair and impartial to both sides?

A Truthfully?

Q Yes, ma'am.

A Probably.
Q I notice you hesitated before you answered?
A You just have to go with the reasoning. There is always two sides to a story. You know, you've got to see what the pros and cons are, you know.
Q The reason for the domestic abuse would matter to you?
A It could.
Q But the fact that you have been the victim of domestic abuse would affect your ability to be fair in this case?
A Probably.
Q Okay. Also you marked that you knew something about the case?
A Yes.
Q Could you tell us what you know or what the source is?
A Newspaper, TV and friends in Inman.
Q Let's start with the newspaper. There was an article this morning in the paper, did -- you didn't see it?
A (Shakes head negatively.)
Q When was the last time you read any article in the newspaper about this particular case?
A Probably when it happened or when the write-ups

were.

Q That would have been in September of 2002, something like that?

A Uh-huh (affirmative).

Q You said you also talked to people in Inman?

A Uh-huh (affirmative).

Q Did they discuss the details of what happened?

A Mostly.

Q As to what, who were involved and what had happened and everything about the case?

A Yes.

Q Fair to say you know all about it?

A I know a lot of hearsay. I don't know facts. I wasn't there to see so --

Q You have been told about it?

A I have been told.

Q Would you be able to put that aside, what you have been told, and to listen to the facts?

A Probably.

Q It has to be little bit more than probably. Could you put that aside and render a fair and just verdict based upon what you hear from the witness stand and from no other source?

A Yes.

Q You could do that?

A Maybe. I'm sorry, sir. I don't know.
Q As we said, there are no right answers or wrong answers. We're just trying to determine.
A I'm trying to you know.
Q Fair to say you can't really say?
A In other words, there will always be hearsay that you heard popping back into your brain like okay.
Q That could have happened or if you hear one version and then you said well I heard this other thing. If it is in conflict, it could different.
A It is always there. You're always going to think about what you have heard before.
Q Have you been exposed to this hearsay even up until today?
A No.
Q When was last time you had any conversations concerning this case?
A Several months.
Q I keep saying fair to say. But what you are saying is you cannot say definitely that I can put that out of my mind and based my decision solely on what I heard from the witness stand?
A It will always be there in your mind.
Q That's right. Okay.
A I mean --

Q I understand. Now, the way this works is it is a two-part trial. The first part of the trial is the State puts up their evidence. If the jury decides after hearing the evidence that the State has carried its burden of proving the defendant guilty of the crime he is charged with beyond a reasonable doubt to all twelve jurors, okay?

If the jury decides that they haven't, we all go home. If they decide that they have proved beyond a reasonable doubt that the defendant is guilty of what he is charged with, then it goes into a second phase. In that phase, that is where the jury determines what the penalty should be.

There are two possible penalties. There is death. And there is life without parole, meaning that the person will never ever get out of prison. Now, could you, hearing all the circumstances and hearing all the facts, putting aside all of the hearsay that you have heard, everything you've read in the newspaper -- could you be fair and listen to both sides and give a life sentence?

A Yes.

Q Could you also having heard all of the evidence, could you give a death sentence?

A Yes.

Q You understand everybody signs the --

A Yeah.

Q Did you know that before?

A Yes.

Q Tell me how you knew that?

A From TV.

Q Okay. But, once again, I want to go back. You would have a hard time putting aside the hearsay?

A Probably because it will always be there.

Q All right.

A In other words, you know, when you have heard something, you know, and they start talking about that, it is always going to be there.

Q Okay.

A You are always going to wonder and weigh the both of them out.

Q All right. That is all I have.

MR. WILLINGHAM: Please the Court.

EXAMINATION

BY MR. WILLINGHAM:

Q My name is Donnie Willingham. Solicitor Trey Gowdy and Solicitor Barry Barnett are going to be prosecuting this case. I want to ask you a few more questions. I want reiterate again that there are no right or wrong answers. It is your answers which you know what they are. You said what you know -- excuse me for a

second.

A All right.

Q Would you agree with me that not everything in the paper is true?

A Right.

Q Not everything on TV is true?

A Right.

Q Would you -- you watched enough shows to know that in a death penalty case, the jury verdict has to be unanimous. Everybody has to sign it. You also watched enough shows to know that the hearsay is generally not admissible in court?

A Right.

Q The reason it is not admissible is because sometimes it is not reliable?

A Yes.

Q You said you heard a lot of hearsay in this case?

A A lot.

Q Tell me what you heard.

A (No response).

Q It's okay. There are no other jurors in here. I want to know what you heard about this case.

A Well, like there was abuse. She was trying to get help. She went to the police for protection. He followed her and that it was at the police department.

Q I am not able to comment on whether those things are true or not. The judge will tell you though that the only thing as a juror that you can consider are the exhibits that are introduced and the testimony that comes from that witness stand. Anything that has been heard outside of this courtroom that you read or heard or seen has to be disregarded. And only a verdict based on what you hear in this courtroom can be rendered. Can you do that?

A I don't know, sir. With our abuse that we have now, we have tried to get help. And we cannot get help from the police department.

Q Who have you talked to?

A Spartanburg County.

Q The sheriff's office?

A It's juvenile and they won't help us. It has been going on the two years. That's why I said. We have been through abuse and we can't get help. So I don't know.

Q Let me ask this, as far as that abuse is concerned, how would that sway on your thoughts. We have Sheriff's Deputies testifying in this case. Would you hold that against the Sheriff's Department or would you hold that against someone who may have abused someone else? How does that -- does that hurt or help as far as -- I may

not have asked that question very well. You said the Sheriff's Office has not done anything --

A Right.

Q -- to help your situation with your mother-in-law. Would you hold that against the sheriff's deputies who testify in this case?

A I don't know.

Q Sometimes when you deal with law enforcement agencies and they don't do what you think they should be doing --

A You blame them.

Q -- that leaves a bad taste in your mouth.

A Right. You blame them.

Q Right. Do you think that would happen in this case with you?

A I don't know,, sir.

MR. WILLINGHAM: I beg the Court's indulgence.

BY MR. WILLINGHAM:

Q Mrs. Cudd?

A Uh-huh (affirmative).

Q One last series of questions. Based on what you have heard, based on the hearsay, you already have your mind made up on what you think ought to happen in this case?

A Like, what do you mean?

Q Have you made your mind up on verdict already?

A Okay. If -- can I say what I want?

Q Yes, ma'am.

A If you were abused and you go for help and you are at the police department trying to get help, and they come to follow you and you are trying to get help and they end it there, I am sorry. To me, that is almost point-blank you know.

Q There's nothing for you to apologize for?

A I am sorry. You know, if you end it there, that is almost as much as saying I am guilty.

Q By the same code, do you have your mind made up on what you think the sentence ought to be?

A The sentence is not as much as being guilty, you know.

Q Again, like I said, there are no right and wrong answers. They are just your answers.

A If you just end it there and you are at the police department, you are guilty. The sentence is just minor. It is just the point of innocence or guilty.

Q All right. Thank you. I appreciate it.

THE COURT: Let me get you to step out in the hall for just a few minutes.

MRS. CUDD: This is the list that they gave to me earlier.

THE COURT: You can leave it there.

MRS. CUDD: Okay.

(WHEREUPON, Mrs. Cudd exits at approximately 8:00 p.m.)

MR. WILLINGHAM: I don't think she is qualified, Judge.

MR. BARTOSH: No, sir.

THE COURT: Bring her back.

(WHEREUPON, Mrs. Cudd enters at approximately 8:00 p.m.)

THE COURT: We certainly do appreciate your honesty with us and your sharing your true feelings. You're not going to need -- we're not going to need you any more. You are free to go.

MRS. CUDD: Okay. Thank you.

(WHEREUPON, Mrs. Cudd exits at approximately 8:00 p.m.)

THE COURT: Let's take a short break.

(WHEREUPON, a short recess was taken at approximately 8:00 p.m.)

(WHEREUPON, the Court resumed at approximately 8:06 p.m.)

(WHEREUPON, Mr. Hovelsrud, Juror number 133, entered at approximately 8:06 p.m.)

THE COURT: All right. Mr. Howelsrud, did

you get a chance to go over that witness list?

MR. HOVELSRUD: Yes.

THE COURT: Do you know anybody on that list or are you related to anybody on that list?

MR. HOVELSRUD: No. But I can't speak for 91, 92, 110 through 113. I think you have several duplicates on the last page.

THE COURT: That's very possible.

MR. HOVELSRUD: Unless they don't have a middle initial. It's just that some of them have the same names.

THE COURT: Very possible that we have duplicates. So you don't know anybody and you are not related to anybody on that list?

MR. HOVELSRUD: No.

THE COURT: Sir?

MR. HOVELSRUD: No.

THE COURT: All right. Thank you very much. We appreciate you looking at it. We will be in touch with you about when to come back.

MR. HOVELSRUD: I've got to call this thing on the --

THE COURT: Call the recording. Probably not right away but over the next few days, it will start giving you an idea of when we think you might need to

come back.

MR. HOVELSRUD: Okay. I've got to make alternative arrangements for somebody to take my place which is tough to do on short notice.

THE COURT: This doesn't mean you're going to be on the jury. It just means you're in the pool.

MR. HOVELSRUD: I can't take that chance.

THE COURT: That's fine.

MR. HOVELSRUD: I don't want to ruin somebody's wedding.

THE COURT: You will have to, I suppose, then make other arrangements to get somebody to take your place. I'm sorry.

MR. HOVELSRUD: Yeah. I know.

THE COURT: All right. Thank you very much, sir.

MR. HOVELSRUD: I can go now?

THE COURT: Yes, sir.

MR. HOVELSRUD: I can work tomorrow then, right?

THE COURT: You can work tomorrow. You won't need to be here until at least Wednesday afternoon.

MR. HOVELSRUD: Can I work Wednesday? I go in 4 o'clock in the morning and work 4:00 to 4:00.

THE COURT: In town? Why don't you just check around noon on Wednesday. And if the recording says anything about the possibility of us being ready on

Wednesday, then you might need to come on in.

MR. HOVELSRUD: Okay.

THE COURT: All right. Thank you.

MR. HOVELSRUD: Thank you.

(WHEREUPON, Mr. Hovelsrud exits at approximately 8:09 p.m.)

THE COURT: We got somebody? Bring them in.

(WHEREUPON, Ashley Driscoll, Juror number 77, entered at approximately 8:09 p.m.)

ASHLEY DRISCOLL

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Ms. Driscoll, how are you?

A I'm good. How are you?

Q I'm doing fine.

A A little bit hungry but that's okay.

Q Me too. I'm hungry too. You recall that I put you under oath or the Clerk put you under oath. And you are still under oath. Do you understand that?

A Yes, sir.

Q Has anybody been talking to you about the case in the jury room where you were?

A No.

Q We're going to ask you some questions. We don't

want to invade your privacy but there are some questions that we are going to perhaps get into some subjects that you don't want to talk about. And we hope you bear with us. There are not any right or wrong answers to these questions. We just want to know how you think or how you feel about these subjects.

We're going to talk about penalty. But talking about penalty does not really mean anything. It just means that because we might have to get into the penalty in this case, we want to know your feelings and your thoughts about certain subjects, okay?

A Okay.

Q If you were a juror in a criminal case, would you be able to listen to the law and accept and apply the law as I give it to you and render a verdict based solely on the testimony and evidence that you hear in the courtroom in light of the law as I give it to you?

A Yes, sir.

Q If you are a juror in a criminal case or a murder case such as this, of course, you understand that the State has the burden of proof and they have to prove the defendant guilty beyond a reasonable doubt. Do you understand that?

A Yes, sir.

Q If you are a juror in a murder case, do you

believe that you would be able to find the defendant either guilty or not guilty depending on your view of the evidence and in light of the law as I give it to you?

A Yes, sir.

Q If we moved on to the sentencing phase of this trial, let me explain what aggravating circumstances and mitigating circumstances are. Aggravating circumstances are facts or incidents or details of an occurrence that the General Assembly of our state has declared by statute to make worse or to aggravate the offense of murder. In other words, aggravating circumstance when accompanying a murder increases the enormity or add to the injury of the crime.

A mitigating circumstance, on the other hand, is an incident or a fact or a detail or an occurrence that the General Assembly has declared by statute to reduce the severity of the offense of murder. It may be considered as an extenuating circumstance or to reduce the degree of moral culpability or responsibility.

If you are a juror in a sentencing phase of a murder case such as this, could you, depending on the particular facts and circumstances of that case including the consideration of aggravating and mitigating circumstances and the law as I will give it to you and if you were given the option of either a life sentence or the death penalty,

could you impose a life sentence?

A I could.

Q Could you impose the death penalty?

A I could depending on the circumstances of course.

Q Depending on the circumstances. If you were required to be housed in a hotel and sequestered from your family and your job and your friends, could you do that or would that be a terrible burden on you and your family?

A That will be fine. I'm a full-time student. And I'm out of school.

Q I'm going to let the lawyers ask you -- did you get chance to go over that witness list?

A Yes.

Q Did you know anybody or are you related to anybody on that list?

A No, sir.

Q Do you know of any reason why you cannot be a fair and impartial juror on this case?

A No, sir.

Q Thank you very much.

THE COURT: Mr. Bartosh.

MR. BRENNAN: Please the Court, Your Honor.

THE COURT: Mr. Brennan.

EXAMINATION

BY MR. BRENNAN:

Q My name is Doug Brennan. I'm a local attorney here. This is Mr. Bartosh and Ms. Quimby. We are defending Mr. Lindsey. We thank you for your patience dealing with us today. As you have been told by the Judge, there are no right or wrong answers here. There is just your answers.

A Okay.

Q Ms. Driscoll, you said that given certain circumstances that you could impose the death penalty?

A Uh-huh (affirmative).

Q Would you please tell me what those circumstances might be.

A Well, I'm sure that if it were a serial murder case or something like that, I would be more inclined to impose the death penalty. And impose a life sentence just if it was one murder maybe. I would have to see the evidence of course. But I think that it -- I would be more inclined to impose a life sentence rather than a death penalty just because not that I don't believe in the death penalty but because I think that life in prison, a life of reflection, would give a person in chance for reconciliation or thought or whoever they see fit with their God.

Q Okay. Thank you. On your questionnaire that you mailed back in, you mentioned that you have in the past

have suffered from depression, is that correct?

A Yes, sir.

Q Would service on this jury or potential service affect that situation?

A No, sir.

Q You said that you would probably be inclined to impose a life sentence over a death sentence.

A Yes, sir.

Q If you were on the jury and there were eleven people in the jury room that were voting for a death sentence, could you stand your ground and maintain life if you felt that was what was proper?

A Most definitely.

MR. BRENNAN: I have nothing further, Your Honor.

MR. GOWDY: May it please the Court, Your Honor.

EXAMINATION

BY MR. GOWDY:

Q Good evening, Ms. Driscoll. My name is Trey Gowdy. I'm in the Solicitor's Office here in Spartanburg. That's Donnie Willingham on your left and Barry Barnett in the center. Given the hour of the night, I'm going to shorten my questions to the extent I can and tell you up front that these are not questions that I would never ask

you if I ran into you on the street or the church or the shopping center. I have no choice but to ask them to you. I will start off with an easy one. Do you live at River Falls?

A Actually my family lives in River Falls. I live in an apartment by myself.

Q Okay. When Judge Few asked you whether or not you can impose a death sentence, I noticed that you looked up in a way of reflection and you said you thought you could?

A Uh-huh (affirmative).

Q Then when Mr. Brennan asked you about it, he just asked flat out what circumstances could you envision yourself giving the death penalty. You mentioned a serial killer?

A Uh-huh (affirmative).

Q If I'm wrong one this, you tell me I'm wrong?

A Uh-huh (affirmative).

Q I think you then followed that up by saying you would be reluctant give it to somebody who just took one life?

A Uh-huh (affirmative).

Q What I have to ask you, Ms. Driscoll, are your views on the death penalty such -- and whatever your views are, they are. I am not trying to change your mind about

any aspect of your political, social, religious, any other kind of position. I just got to figure out what they are. Do you have a set of rules internally that are such that if they are not a serial murderer, you would not be able to impose the death penalty?

A I don't have any strong views about that because I never sat on a jury before. I have obviously never sentenced anybody or known anybody to be sentenced like that. I believe that I could be very impartial to what the sentencing would be. Of course, I would not be inclined to move my decision depending on the other jurors. I am going to stand my ground. But let me elaborate on my death penalty opinion.

Q Okay.

A It is my belief that the death penalty should come to people who prove nonfunctional in society, they can not get away from violence and they are a threat to society. And the reason that the death penalty is here is to prevent anything from happening to anybody else. With serial murders, it is usually random people with fetishes or stuff like that.

But the reason why I said if it's just one murder or one death, there are usually circumstances surrounding that that would make me think he wouldn't -- he or she would not do it again to another random person. There are

circumstances surrounding a case that would make me think or make me believe that this murder was a one-time thing.

Q All right. I think understand your answer at least enough to an ask you this follow-up question. Some murders are random. Such as, the most recent serial killer would be John Muhammad up in D.C. Those were random killings. Are your views on the death penalty such that if it were not a random killing or if it were the murder of -- let's assumed it's a female defendant hypothetically.

A Uh-huh (affirmative).

Q If she murdered somebody that she did know, --

A Uh-huh (affirmative).

Q -- would that change your views on the death penalty? Are you unable to consider the death penalty if the defendant knew the victim, if it weren't random?

A Uh-huh (affirmative). Uh, I understand that I would have to know a lot more about the case. I am not very well educated about why the death penalty is issued.

Q I think you are well educated about it. But I've also got to tell you that this trial is not going to be a debate about the merits of the death penalty. In fact, you will never be required to impose the death penalty on somebody. Life in prison will always be an option.

A Uh-huh (affirmative).

Q It does not matter how heinous the crime. It

does not matter how premeditated. It doesn't matter anything.

A Uh-huh (affirmative).

Q If I heard you correctly when you were talking to Mr. Brennan, you said that you were going to be more inclined to impose life. What I want to make sure you understand is not only can you be inclined to impose life, you always have the option of life. And understanding that you do always have that option, tell me what circumstances you can envision yourself actually choosing death?

A Actually choosing death. Mental illness perhaps. As I said, a complete disregard for the care of people's lives. Complete destruction, like I said, normally with serial killers. You think they are unpredictable. They just don't seem to have a definite pattern.

Q Why would life in prison not work for serial killer? If they were in prison for the rest of their lives, they are not going to kill anybody else.

A Because they seem to have it more trained into their mind the ways of violence. If they are imprisoned, I'm sure that they are going to be putting up some kind of fight or something like that.

Q Let's get away from the serial killer for a second. Are you telling me -- let me ask you this way,

can we -- do you see yourself -- is there a set of facts where you can impose the death penalty on someone who was not a serial killer and did not kill a stranger?

A You know what? I am not really sure. It would just, it would weigh more on the brutality of the killing. I just cannot tell you for sure.

Q Are you telling me that --

A In most cases though, if I had to decide all of the cases in the world imposing the death penalty, I would generally impose life, a life sentence in prison every day.

Q That is fair. And that is wonderful. That is your opinion, and nobody is trying to change that. But what I'm trying to get at is that not all the other cases in the world, --

A Uh-huh (affirmative).

Q -- but the case that you may sit on, are you going to be able to impose death in a case that does not involve a serial killer?

A Uh-huh (affirmative).

Q I'm going to ask that question first. It does not involve a serial killer. Are you going to be able to impose death?

A I would be able to do it if I thought it was the right thing to do.

Q Would you be able to impose death in a case that

did not involve a stranger killing? The wild abandonment of a stranger killing, put that out of your mind. The victim and the defendant knew each other.

A Right.

Q Are you going to be able to impose the death penalty if you think that was the proper thing to do?

A If I thought that was the proper thing to do, I would do it.

Q So if the fact that there was not a one-person killing and that there is no stranger involved, that is not going to prevent you from imposing the death penalty?

A No.

Q Again, you always have life as an option.

A Yes.

Q There is no law in this state that says, Ms. Driscoll, you have got to impose the death penalty.

A Of course.

Q You always got life.

A Yes.

Q Are you saying that you're going to still impose death even with the understanding that you could impose life?

A I could if I thought that they deserved it. If I honestly thought that they deserved it and under due process of law that they deserved it.

Q Okay. One more question. And again this is not something that is any of my business and it is not something I would ever ask you outside of this setting?

A Right.

Q I read your questionnaire like Mr. Brennan did.

A Yes.

Q Do you believe people that are seeking any kind of psychological, psychiatric assistance that that is -- would excuse a crime?

A It would have to depend on the severity of psychological assistance. It would have to depend on the severity of the problem. If it is obvious that insanity is a problem, then, of course, there might be some kind of leniency with the sentence or just excuse the people who have real severe problems diagnosed by a real doctors. Yes, I believe that that imposes a less penalty.

MR. GOWDY: One second, Your Honor.

BY MR. GOWDY:

Q One final question. What formed your views on the death penalty? Is it a result of your studies, is it a religious belief, is it a result of your parents put on you?

A It is something that I discussed with my parents. I discussed it with friends. It is not a religious belief. It is just a personal belief. My influence is

not necessarily from other people as much as it is from me and from what I believe to be right and fair and lawful.

Q Thank you for answering these difficult questions.

THE COURT: Ms. Driscoll, let me get you to step in the hall for just a second. We will be right back in touch with you.

(WHEREUPON, Ms. Driscoll exited at approximately 8:27 p.m.)

THE COURT: Any argument?

MR. GOWDY: I believe she's qualified, Your Honor.

MR. BRENNAN: I believe she's qualified, Your Honor.

THE COURT: Bring her back.

(WHEREUPON, Ms. Driscoll enters at approximately 8:27 p.m.)

THE COURT: Ms. Driscoll, you are -- I find that you are qualified. And we will be in touch with you over the next several days as to when we need you back.

MS. DRISCOLL: Okay.

THE COURT: Probably around midday Wednesday, let's say late tomorrow or Wednesday to be optimistic, you start checking the voice recorder to see if

there's anything on there about when you need to come back.

MS. DRISCOLL: Okay.

THE COURT: Understanding that we might sequester you and put you up in a hotel. So you might want to get your bags packed. Okay?

MS. DRISCOLL: Okay.

THE COURT: Let me remind you now. Don't let yourself be confronted with any news reports. Don't watch the TV news. Don't read the newspaper if you can help it.

MS. DRISCOLL: I haven't yet. I don't know anything about this case.

THE COURT: When you come back, I will have to ask you whether or not anybody has talked to you about it or whether or you have read or heard anything about. And I really want you to be able to tell me, No, that they have not. Okay?

MS. DRISCOLL: Okay. Yes, sir.

THE COURT: I really look forward to seeing you Wednesday or so.

MS. DRISCOLL: Thank you.

(WHEREUPON, Ms. Driscoll exits at approximately 8:28 p.m.)

THE COURT: Next.

(WHEREUPON, Rick Lee, Juror number 162, enters at approximately 8:28 p.m.)

RICK LEE

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Lee?

A Yes, sir.

Q Let me remind you that you are under oath from the oath that the Clerk administered to you this morning. Do you understand that?

A Yes, sir.

Q Has anybody talked to you back in the back about this case or since I instructed you not to discuss the case, has anybody talked to you about the case?

A No, sir.

Q All right. We're going to ask you a few questions. I'm going to ask some and the lawyers are going to ask some. There are not any right or wrong answers to these question. We just want to know what your answers are. So please be very open and candid with us, okay?

A (No response).

Q Is that fine, Mr. Lee?

A Yes, sir.

Q We are going to talk a little bit about penalty. But the fact that we are talking about penalty does not mean anything about the defendant or about this case. We may not get to this point, okay?

A Okay.

Q If you are a juror in a criminal case, could you accept and apply the law as I give it to you and render a verdict based solely on the testimony and evidence that you hear in the courtroom?

A Yes, sir.

Q You understand that the State has the burden of proof that requires the State to prove the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q I will explain that to you in more detail if you get onto this jury. In a murder case such as this, do you believe that you can find the defendant either guilty or not guilty depending on the facts and circumstances that come out during the evidence in the case and in light of the law as I give it to you?

A Yes, sir.

Q Now, if we were to make it into the penalty phase, I'm going to ask you some questions about that. I'm going to tell you about aggravating and mitigating circumstances. Aggravating circumstances are facts or

incidents or details of an occurrence which the General Assembly of our state has declared by statute to make worse or to aggravate the crime of murder. In other words, aggravating circumstances when accompanying a murder increase the enormity of or add to the injury of the crime of murder.

A mitigating circumstance, on the other hand, is an incident or a fact or a detail of an occurrence which the General Assembly has declared to reduce the severity of the crime of murder and may be considered as extenuating or as reducing the degree of moral culpability or responsibility.

If you were a juror in the sentencing phase of a murder case, depending on the, could you, depending on the facts and circumstances of that particular case included the consideration of aggravating and mitigating circumstances and the law as I would instruct you, could you return -- let me back up. If you were given the option of either a life sentence or the death penalty, could you return a verdict for a life sentence?

A Yes, sir.

Q Could you return a verdict for the death penalty?

A Yes, sir.

Q If you were sequestered as a juror for several days and not allowed to go home to your family, would that impose a terrible burden on you?

A No, sir.
Q Have you been over the witness list that I gave you?
A Yes, sir.
Q Do you know anybody or are you related to anybody on the witness list?
A I think there was two. Number 52.
Q 52 is Sergeant Raymond Gist.
A I am not sure if he was a police officer in my town or not. I think he is.
Q All right. Do you know him well?
A No, sir.
Q Would the fact that you know Sergeant Gist, if you know him, would that interfere in any way with your willingness or your ability to give both the State and the defendant a fair and impartial trial in this case?
A No, sir.
Q Is there another witness you thought you knew?
A The attorney, the last one, 134.
Q Rod Tusk?
A No, sir. The very last one.
Q Benjamin Stephens.
A Yes, sir. I used him once.
Q How long ago was that?
A Three years.

Q If Mr. Stephens were to testify in this case, do you think his testimony will interfere in any with either your willingness or your ability to give the State and the defendant a fair and impartial trial?

A No, sir.

Q All right, sir. Do you know any reason why you cannot give both the State and the defendant a fair and impartial trial in this case?

A I don't see any reason.

Q I'm going to let the lawyers talk to you for a few minutes then I may come back and ask you some other questions.

MR. BRENNAN: May it please the Court, Your Honor?

THE COURT: Yes, sir.

EXAMINATION

BY MR. BRENNAN:

Q Mr. Lee, my name is Doug Brennan. I'm an attorney here in Spartanburg. This is Mike Bartosh, Public Defender, and Karen Quimby who is also with the Public Defender's Office. We represent Marion Lindsey. Based on Judge Few's questions, you said you could impose a life sentence but you also can also impose a death sentence?

A Yes, sir.

Q What would sway you from a life sentence to a

death sentence?

A If I had doubts on circumstantial evidence or something to that nature.

Q If you have doubt as to some of evidence, wouldn't you find him not guilty?

A I assume.

Q So if for a moment you place yourself in a sentencing phase where the question is life or death, what piece of evidence or what set of facts or circumstances would take you from life to death?

MR. BARNETT: Your Honor, I'm going to object at this point. He's starting to stake the witness out based on certain circumstances and whatever. I understand general questions, but we're getting to the point where we're starting to stake jurors out.

THE COURT: Rephrase the question.

BY MR. BRENNAN:

Q I'll ask the first question again. You told the Judge that you could impose a life sentence and you could impose a death sentence. My question is, what would sway you from a life sentence to a death sentence?

MR. BARNETT: Objection, Your Honor. He's going to basically starting to stake out the juror on what situations or whatever.

THE COURT: Mr. Lee, let me get you to step

out in the hall for just one second please.

MR. LEE: Sure.

(WHEREUPON, Mr. Lee exits at approximately 8:38 p.m.)

THE COURT: That's what y'all all been doing the whole time we've been in here.

MR. BARNETT: Your Honor, we're asking any circumstances. He's not giving any situations or whatever.

THE COURT: The last juror, and I don't even remember which one of you it was. But one of you said what would be a circumstance when you would impose the death penalty. And she said if it was a serial killer. And for the next ten minutes, y'all tried to either pin her down as someone who would not impose the death penalty unless it was a serial killer.

And the other side was trying to pin her down as someone who would impose a death penalty for a much wider variety of circumstances. And then the question Mr. Gowdy asked the last time is what is the basis of your views on the death penalty. What's the difference between those two questions?

MR. BARNETT: Basically you're trying to find out the beliefs of what they are doing from their backgrounds.

THE COURT: Yeah.

MR. BARNETT: Here we're asking about certain circumstances. What circumstances would make you swing to the death penalty.

THE COURT: Yeah.

MR. BARNETT: And that is not what we're looking at. I think you are staking out a juror because you are trying to say when you are looking at beliefs religious beliefs that is different. He's looking at specific circumstances and trying to stake that juror out for that.

THE COURT: I do think that the question is designed to sort of stake the juror out. But I don't think that distinguishes that question from half the questions that have been asked so far.

MR. GOWDY: Your Honor, I will concede the question that Mr. Brennan asked of Ms. Driscoll was an objectionable question. Now, I concede that. And I should have objected to it.

THE COURT: Was he the one that asked the question about the serial about killer?

MR. GOWDY: Well, Your Honor, her answer was a serial killer. That's why I had to go into it. I concede fully the question was objectionable. Tell me what circumstances you would give somebody the death penalty. That is the one thing you cannot do is

stake out somebody to try to figure out would this evidence appeal to him, would that evidence appeal to them.

When you say what will take you from life to death or death to life, that is exactly what you are not to suppose to ask. I should've objected that. The Court is correct. I should have.

THE COURT: All right. I will see if I cannot fashion an appropriate remedy to punish you for not objecting when you should have.

MR. GOWDY: Well --

THE COURT: I am kidding.

Mr. Brennan, anything you want to say in response to that?

MR. BRENNAN: Well, I did not question the first three witnesses.

THE COURT: Let's just focus where we are right now.

MR. BRENNAN: Every witness has been asked under what circumstances would you fashion a death penalty. And that's all I'm asking this gentleman.

THE COURT: Mr. Bartosh, you have anything you want to say?

MR. BARTOSH: No, sir.

THE COURT: Well, I think that I want you to.

We need to decide whether or not it is going to be appropriate for both sides to ask questions like that. You are basically putting the witness in a position, I mean the juror in a position not knowing really what the aggravating circumstance is here, not knowing what the details of the case are, of kind of shooting blind to come up with something that would justify the death penalty. Do you think it is an appropriate question?

MR. BARTOSH: No, sir. Not what would it take to swing you from life to death.

THE COURT: Well, we'll, uh --

MR. BRENNAN: I will withdraw the question, Your Honor.

THE COURT: We would go with that. And ask Mr. Lee to come back in here. And we will sustain the objection. I will sustain the objection.

MR. BARNETT: Thank you, Your Honor.

THE COURT: Bring him in.

(WHEREUPON, Mr. Lee enters at approximately 8:40 p.m.)

BY MR. BRENNAN:

Q Mr. Lee, again I thank you for your patience. In your questionnaire that you mailed back in, you mentioned that you have a cousin that is a guard at Dutchman Corrections?

A He used to be. He has since quit his job last month.

Q Okay. While he was employed there at Dutchman, did you have frequent conversations with him?

A About once a month.

Q Did he ever talk about his job?

A Not much. It was not very interesting to me.

Q Would the fact that you did have conversations at some point with him affect your ability to serve in this jury?

A No. No, sir.

Q Okay. You also mentioned in your questionnaire that you had a cousin that was convicted of a crime?

A Yes, sir.

Q Is that cousin serving time in prison?

A Yes, sir.

Q Okay. Would his relationship, would your relationship with this cousin and the fact that he is serving or has served time, would that affect your ability to render a judgment in this manner?

A No, sir.

Q Okay. You also mentioned in your questionnaire that you had in the past or maybe still suffer from depression, is that correct?

A Yes, sir.

Q Would service on this jury cause that problem to get worse or come back or affect you in any way?

A No, sir. That's all in the past. It was from a previous marriage.

Q Okay. Thank you. Last question when the judge asked you back when all of the jurors were in here if you had any knowledge about this case, you stood up?

A No, sir.

Q So you have no knowledge about this case whatsoever?

A I have no idea whatsoever.

Q I'm sorry. I wrote your name down. I had it wrong.

MR. BRENNAN: No further questions, Your Honor.

MR. BARNETT: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q Mr. Lee, I'm Barry Barnett. I am one of the deputy solicitors along with Trey Gowdy, the Solicitor, and Donnie Willingham another Deputy Solicitor. I'm going to be asking you some questions and going to be talking to you. I'm going to have to ask you some tough questions. I hate to ask you those. That's just something -- we're

trying to find out information as we go. This is the first time you and me met was right here?

A Yes, sir.

Q One thing I noticed when you were answering questions with the Judge or whatever, have you been arrested by the sheriff's office or the police department?

A No, sir.

Q I guess I was mistaken.

A I've never been arrested whatsoever.

Q You work for the Town of Packard, is that right?

A Yes, sir.

Q You are a truck driver down there?

A Yes, sir.

Q You know Judge Henson down there?

A Yes, sir.

Q You went to Athens High School?

A Yes.

Q Are you from up here or from down there originally?

A I am from up here. My father was a traveler.

Q You traveled through there and so forth. You understand the judge will be giving you instructions. Will you be able to follow the instructions?

A Yes, sir.

Q Based on those instructions, you would be able to

look at the facts of this case and make your decision based off those facts?

A Absolutely.

Q You realize at the end of this case if it does get through the guilt phase and it does get to the sentencing phase that at the end of it, all twelve jurors have to agree on the verdict?

A Yes, sir.

Q If all twelve of you agree that it would be death, you will have to sign a sentencing sheet?

A Yes, sir.

Q Could you sign a sentencing sheet?

A Yes, sir.

Q And based on the evidence, you would determine if it would be life or death based on that?

A Yes, sir.

MR. BARNETT: One moment, Your Honor, please. I have no further questions of this witness.

THE COURT: Mr. Lee, let me get you to step back into the hall for just a second please.

(WHEREUPON, Mr. Lee exits at approximately 8:42 p.m.)

THE COURT: Any objection to Mr. Lee?

MR. BARNETT: We think he is qualified, Your Honor.

MR. BRENNAN: Your Honor, he appeared a little

anxious to me to say Yes, sir, I could sign that and Yes, sir, I could impose the death sentence. For those reasons, I would argue that he is not qualified, Your Honor.

THE COURT: I think he is qualified. I think that he was clear that he could impose the death penalty. He was also clear that he could impose a life sentence. I got from Mr. Lee a very clear indication that he would be an objective juror who would listen to the evidence and impose the verdict, the sentence that he thought was the appropriate sentence under the circumstances. I think he is clearly qualified.

Bring him in.

(WHEREUPON, Mr. Lee enters at approximately 8:43 p.m.)

THE COURT: I find that you are qualified. We will be in touch with you over the next couple of days. You may want to stay in touch with that recording that you heard me discussing earlier. And maybe some time around Wednesday morning, you start checking that recording to see what it says about when you need to come back.

We will try to stay in touch with you. You heard me say that you might be sequestered. So you may want

to pack some clothes and be ready to spend as much as four or five days with us. Let me remind you not to allow yourself to be exposed to any press coverage about this case. Do not allow anybody to talk to you about this case and do not talk about it yourself. Do you understand?

MR. LEE: Yes, sir.

THE COURT: When you come back, I will be forced to ask you whether or not you discussed the case or whether anybody discussed it with you. I want you to be able to tell me that the answer to that question is no.

MR. LEE: Absolutely.

THE COURT: All right. You are free to go.

MR. LEE: Thank you, sir.

(WHEREUPON, Mr. Lee exits at approximately 8:44 p.m.)

THE COURT: All right. Give us a juror.

(WHEREUPON, Carla Howell, Juror number 134, enters at approximately 8:45 p.m.)

CARLA HOWELL

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Ms. Howell, good evening.

A Fine. Thank you.

Q I'm sorry we had to keep you here so late. You will you forgive me?

A Yes, sir.

Q Ms. Howell, you recall that you are still under oath from the oath that the Clerk gave you this morning?

A Yes, sir.

Q Has anyone talked to you about the case since I instructed you not to allow that to happen?

A No, sir.

Q Now, we're going to ask you some questions. I'm going to ask you some questions. And then the lawyers are going to ask you some questions. We don't mean to pry too deep in your privacy but we do need to have these questions answered. There aren't any right or wrong answers. We just want to know what your answers are. So please be open and honest with us and tell us what's on your mind, okay?

A Okay.

Q We are going to talk about penalty. But I want you to understand that that really doesn't mean anything. It is just that because there is a possibility that we would get to the penalty phase of the trial, we are going to talk to you about some of your views. The defendant is presumed innocent. We may not ever even get to the penalty phase of this trial. You understand that?

A Yes, sir.

Q If you were a juror in a criminal case such as this, would you be able to accept and apply the law precisely as I state it to you in light of the facts and circumstances that are proven and the evidence of this case?

A Yes, sir.

Q Could you make that decision based solely on the testimony and evidence that you hear in this courtroom?

A Yes, sir.

Q And in light of the law as I give it to you?

A Yes, sir.

Q You understand that in a criminal case, the State has to prove the defendant's guilt beyond a reasonable doubt?

A Yeah.

Q Ma'am?

A Yes, sir.

Q In a murder case such as this, could you, depending on the facts and circumstances and the law as I state it to you, could you find the defendant either guilty or not guilty based on your view of the evidence and whether or not the State has proven their case?

A Yes, sir.

Q If we were to move into the penalty phase of the case, I'm going to talk to your little bit about your views

there. Let me explain to you what aggravating circumstances are and what mitigating circumstances are. Aggravating circumstances are facts or incidents or details of an occurrence which the General Assembly of our state has declared to make worse or to aggravate the crime of murder. In other words, aggravating circumstances when accompanying a murder increase the enormity or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are incidents or details or facts of an occurrence which the General Assembly has declared to reduce the severity of the events of the crime of murder. And they maybe considered as extenuating or as reducing the degree of culpability or responsibility.

If you were a juror in the sentencing phase of a murder trial, could you, depending on the particular facts and circumstances of that case including the consideration of aggravating circumstances and mitigating circumstances, could you -- and if you were given the option of either a sentence of life in prison or the death penalty, could you impose a life sentence?

A Depending on the facts and what was stated to me --

Q Yes, ma'am.

A -- and depending on the degree, --

Q Yes, ma'am.

A -- then yes, sir, I would make a decision on that based on what you said the facts were on either/or, on the substantial or what have you. That will be part of my jury duty in carrying out a decision.

Q So you believe that under the right circumstances, you could impose a life sentence?

A Yes, sir.

Q Could you impose the death penalty if you thought that was the right thing to do?

A Yes, sir.

Q Now if the jury is sequestered and you are required to be put up in a hotel for several days is that going to impose a terrible burden on you and your family or could you do that?

A I could do that. I was in the military for some time.

Q Did you get a chance to go over that witness list that I gave you?

A Yes, sir. I sure did.

Q Did you know anybody or are you related to anybody that on that list?

A No, sir, I'm not.

Q Do you know of any reason why you cannot be a fair and impartial juror in this case?

A No, sir.

Q I'm going to let the lawyers ask you a few questions. Then I may come back and ask you some more.

A Okay.

EXAMINATION

BY MR. BARTOSH:

Q Good evening, Ms. Howell. Like everybody else, you are about ready to go home. We appreciate your patience. I will just try to be brief. I was going over your juror information sheet. You indicated that you have a sister who is a criminal attorney?

A Yes, sir.

Q Is she here in Spartanburg?

A All of my family reside in Florida.

Q What kind of law does she practice?

A Criminal law.

Q Defense or does she also work for the prosecution?

A Defense.

Q Do you have much contact with her?

A Yes.

Q What you think about her practicing criminal?

A I think is great. She loves to argue to much and she likes to win.

Q The best of both worlds. You also said you have

a brother-in-law who is a police officer?

A My uncle was Chief of Police.

Q In Florida also?

A Yes. My brother-in-law was also an officer and I have two cousins that branched off in the divisions of law-enforcement.

Q Once again in Florida?

A Yes, sir.

Q Are you and I don't mean to pry but all of your family is in Florida. You are here in Spartanburg County pretty much on your own?

A Yes.

Q Also you said that you or a member of your family was accused of criminal domestic violence?

A Yes, sir.

Q Could you tell me about that?

A Sure. My ex-boyfriend and I got into a dispute. And we had some pushing and shoving. I have gotten one night a week for classes. And his is still pending.

Q So you been to court on the charge?

A Yes, sir.

Q Also said that you've been arrested by the Sheriff's Department. I assume that was the Sheriff's Department?

A Yes, sir.

Q And that was that charge?

A Correct.

Q Now, the judge has gone over how the trial will proceed. This is a special kind of trial where it is well composed of two parts. The first part is just like a regular trial where the jury sits and listens to all the evidence against the defendant. They decide whether or not the State has proven beyond a reasonable doubt that the defendant is guilty of what he is charged with. If they haven't, if they don't prove it, we all go home.

If they do prove it and jury believes they have carried their burden unanimously, then we move to the second phase. Some people call it the penalty phase. Some people refer to it as the sentencing phase. Basically what it is is the jury decides life or death. It is the jury's decision. Now, if this case were to involve -- and you don't know anything about the case, is that correct?

A That's correct.

Q If this case were to involve criminal domestic violence, --

A Uh-huh (affirmative).

Q -- would that make a difference to you in any way?

A Depending on the situation and the extent of the

criminal domestic violence. I am a firm believer in law. And everybody should obey it including myself. I believe punishment should be bought down or everything situated occurs on that basis.

Q Would the fact that there was domestic violence involved, let's say it had been over a long period of time. Would that affect your ability to, would that be a factor to consider in what penalty you would feel would be appropriate?

A I would treat it just like I would in anything that comes up. This is a separate issue.

Q You understand this is a murder trial?

A Correct.

Q What the jury will have to decide if we get that far is whether Marion Lindsey is going to spend the rest of his life in jail. And life means life. So life without parole or whether he will receive the death sentence. Would you be able, based on everything that you know, would you under those circumstances be able to impose the death penalty?

A Depending on the case and what I find out and what the other jurors and I decide upon, yes.

Q Let me ask you about that. Supposed the other jurors felt death was appropriate and it was 11. And you felt that it was inappropriate and you said it was life?

A I would state my opinion.

Q Would the fact that the eleven voted for death, would you be able to stand your ground and say I don't believe this is a death penalty case, I believe it is life?

A Yes, sir.

Q Would you go along with the rest of them?

A No, sir. I meant for us to be able to make a decision together. But I do stand up for what I believe in.

Q You would stake out your own position?

A Yes, sir.

Q So fair enough to say, you would have to listen to both sides?

A Very fair, yes, sir.

Q And be true to your oath as a juror?

A I feel that is what a juror is for.

Q Okay. And as far as criminal domestic violence, that would be a factor you would consider?

A Yes, sir. Depending on the situation, I would say so.

Q Would it be an important factor?

MR. BARNETT: Objection, Your Honor. This has been asked and answered about four or five times.

THE COURT: I will allow it.

MS. HOWELL: I'm trying to be as clear and

precise as I can. What I'm saying is I think there's law. And the laws are there for these reasons. And whether I broke part of it or whatnot have you, I still think that is what the law is for. It is carried out regardless. Do you know what I'm saying? If I am caught speeding, then by all means I should get a ticket.

BY MR. BARTOSH:

Q What I'm saying is, the law, of course, we are asking you would that affect your ability to consider both sides and to say I think that this is a life sentence or I think this should be death or would one been precluded by the criminal domestic violence?

MR. BARNETT: Objection, Your Honor. I think now he is staking out.

MR. BARTOSH: I just think -- Your Honor, she's talked about her views on criminal domestic violence. I think I am entitled to ask her that.

THE COURT: Let me hear you repeat the question.

MR. BARTOSH: The question is would the fact that she has been the victim of criminal domestic violence, would that preclude her ability to give a life sentence.

THE COURT: I think that it is a fair

question.

MS. HOWELL: I do too.

MR. BARNETT: No objection to that question, Your Honor.

THE COURT: All right.

BY MR. BARTOSH:

Q I --

A I am neutral. Do you understand? I'm trying to be fair. And I'm going to listen to both. And I'm going to gather every little bit of information. And all of that I feel is going to depend on not just one separate issue. It's not going to persuade me either way.

Q Fair to say, you would look at the whole picture?

A Correct.

MR. BARTOSH: That is all I have.

THE COURT: Mr. Barnett.

MR. BARNETT: Just a couple questions.

EXAMINATION

BY MR. BARNETT:

Q I'm Barry Barnett. Along with me are Donnie Willingham and Trey Gowdy. We are prosecuting this case together. I'm going to ask you a few questions. I know it is kind of late and everything. I'm sorry about asking these questions. I normally would not be asking these type questions except under these type settings. The CDV case

that you are talking about.

A Uh-huh (affirmative).

Q Who prosecuted that case?

A Magistrate.

Q Was it downstairs?

A Yes.

Q Do you know what whether it was a solicitor or a police officer?

A I believe it was a police officer.

Q Did you go in -- did you plead guilty to it?

A Yes. We both did.

Q Do you feel that you were treated fairly in that situation?

A I think they had made a good decision based on the information they were given. It was really their choice. I stated simply the facts. And they made that decision and they carried it out. And I accepted that.

Q Did you have a bench trial or did you go in front of jurors?

A No, right in front of the magistrate.

Q Right in front of the magistrate. And he or she made the decision?

A Correct. He stated he would take it off my record if I went to class. That was it.

Q Did he actually hear evidence or did you just

plead guilty?

A He listened to the evidence too. Because like I said, the second part of it, the other gentleman involved, it is still pending.

Q Do you know any police officers here in Spartanburg or is that just in Florida?

A I do know some police officers here also.

Q And you were in the Navy, is that correct?

A That is correct.

Q Your view on the death penalty. Do you feel like you would listen to both sides and be fair about it? What in specific are your views on the death penalty?

A Depending on the situation and what has occurred. I can't make a decision based on something I do not know.

Q That is, what you've learned about the case and hear the evidence that is presented in the case?

A Yes, sir.

Q You would listen to the judge and apply the law according to the way he asks you to apply it, is that correct?

A That is correct.

Q I know you know very little about the case such as the parties and so forth. But you would listen to the evidence and make a decision based on that?

A That is correct.

MR. BARNETT: One moment, Your Honor.

No further questions, Your Honor.

THE COURT: Ms. Howell, let me get you to step into the hall for just one second. We will get right back to you.

MS. HOWELL: Sure.

(WHEREUPON, Ms. Howell exits at approximately 9:01 p.m.)

THE COURT: Any objection?

MR. BARTOSH: No, sir. Anybody ask her if she recognized anybody?

MR. GOWDY: Yes.

MR. BARTOSH: She said she cannot recognize anybody?

MR. GOWDY: Right.

MR. BARTOSH: No objection.

MR. BARNETT: No objection, Your Honor.

THE COURT: All right. Bring her back.

(WHEREUPON, Ms. Howell enters at approximately 9:02 p.m.)

THE COURT: Ms. Howell, I find that you are qualified to serve as a juror in this case. It is going to be several days before we will be ready for you to come back. What I would like for you to do is sometime mid-morning Wednesday start checking the

recorder. At some point -- I don't know if it would be that quick. But at some point, we will give you some information about when you need to be back. We will also be in touch with you to make sure that you're getting that information.

Let me remind you about not letting yourself be exposed to newspaper or TV accounts. There will be some. Be very careful not to allow yourself to be exposed to those. If anyone tries to talk to you about this case, tell them they can not do it. Don't you talk to anybody about this case. And when you come back, I will have to ask you about whether or not you talked to anybody about the case and whether or not anybody has talked to you. I want you to be able to tell me that the answer to that is no.

MS. HOWELL: Yes, sir.

THE COURT: You heard me say that the jury might be sequestered. So you might want to think about starting to get your stuff packed and be ready to spend four or five days in a hotel. Okay?

MS. HOWELL: Okay.

THE COURT: We look forward to seeing you on Wednesday, maybe as late as Thursday. All right. Bye-bye.

(WHEREUPON, Ms. Howell exits at approximately

9:03 p.m.)

THE COURT: All right. Anything y'all want to put on the record now before we quit?

MR. GOWDY: Your Honor, it is almost nine o'clock. I'm reluctant to ask about any print sketch or anything else that might be available for us to get our experts to look at based on the cross-examination of the psychiatrist today. Mr. Bartosh tells me it does not exist. I believe him, but of course --

THE COURT: Hold on. When are you going to give him whatever it is that you are going to give him?

MR. BARTOSH: My understanding is that everything is being Fed Ex'ed tomorrow.

THE COURT: It should be here tomorrow.

MR. BARTOSH: It should be. If not tomorrow, on Wednesday at the latest.

THE COURT: Am I not entitled to a straight answer about that?

MR. BARTOSH: Well, Your Honor --

THE COURT: When is it going to be delivered?

MR. BARTOSH: We're telling them to send it one-day.

THE COURT: Did she send it today?

MR. BARTOSH: She is sending it tomorrow.

THE COURT: Sending it tomorrow.

Mr. Gowdy, he's offering to deliver that stuff to you on Wednesday.

MR. GOWDY: I will do my best not to delay the trial while I have find an expert to look at whatever they've got.

MR. BARTOSH: Your Honor, I suspect to have an expert in the week.

THE COURT: Are you satisfied with that answer?

MR. GOWDY: I have to ignore that answer because he doesn't have any idea whether I've got an expert in the week or not.

THE COURT: I'm not talking about that answer. I'm talking about the answer of Wednesday.

MR. GOWDY: I don't have any choice but to be satisfied with it. I'm sure Mr. Bartosh will get it to me as quickly as he can. The trial has started. We have asked for it for weeks and weeks and weeks. I'm sure he had not had it for weeks and weeks and weeks or he would've given to me.

But I noticed a mitigation expert on their witness list. I haven't seen anything she relied upon. I've seen neurologist. I haven't seen anything she relied upon. I've seen a psychologist. I haven't

seen anything that she is relying upon. And we are two or three days into starting the trial.

THE COURT: All right. I mean, what do you want me to do?

MR. GOWDY: There is nothing you can do. I can tell you as the prosecution I know what the remedy would be. But because it is the defense, we can't have that remedy. I would just ask that we get it as quickly as we can with the Court's understanding that we have our expert to look at whatever it is that they come up with.

THE COURT: We will start -- wasn't there something else we needed to do in the morning?

MR. BARNETT: Your Honor, there is one other thing. Mr. Anthony left me a message about the pro bono information. Whenever the Court sees an appropriate time, during the break or whatever, we can just call him. And I think we can take care of that shortly and very quickly.

THE COURT: Just have him come over here. Have him come over here whenever he wants to in the morning. When he gets to here, at the end of the next juror, we'll stop and see if we can deal with it right then.

MR. GOWDY: Are you going to want us to have

the personal representative of Nell's estate here? That will be her father Stanley Staggs. I think the Court's had more experience with privilege information than -- certainly than I have. I do not know whether the attorney/client privilege belongs to the personal representative.

THE COURT: I think -- I believe -- and I should be more reluctant than I am to say things when I am not sure that I'm right. I believe that the attorney-client privilege is no longer around upon the death of the client.

Let's go home.

MR. GOWDY: Can I speak to you about a matter that is unrelated to this?

THE COURT: Yes. And then I would like to speak to you two about a -- just very casually and off the record and anybody else also about a matter that is related to the jury selection.

(WHEREUPON, the Court recessed at approximately 9:15 p.m.)

(WHEREUPON, the Court resumed on May 18, 2004 at approximately 9:11 a.m.)

THE COURT: Everybody ready?

MR. GOWDY: The State is ready, Your Honor.

MR. BARTOSH: Yes, sir.

THE COURT: All right. Bring us a juror.

We've got Mr. Culpepper from yesterday whom you may recall said, I think he was the one that said the grandmother was sick. He's got a medical excuse. Not much detail. We'll look at it and we will address it when he comes out.

(WHEREUPON, Janet Prasanlack, Juror number 218 enters at approximately 9:11 a.m.)

JANET PRASANLACK

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good morning.

A Good morning.

Q Ms. Prasanlack?

A Uh-huh (affirmative).

Q Ms. Prasanlack, let me remind you that you are still under oath from yesterday.

A Okay.

Q Now, have you been exposed to any information about this case since I instructed you not to discuss it or not to see any press reports or read the newspaper?

A No, sir.

Q Have you learned anything about this case since you left here yesterday?

A Huh-uh (negative.)

Q Ma'am?

A No, sir. Sorry.

Q That's all right. Now, we're going to ask you a few questions. We don't want to invade your privacy. But this is an important matter. We need to just inquire into a few things. There are no right or wrong answers to any of the questions that we ask you. We just want you to be open and honest with us and tell us how you feel and how you think. Okay?

A Okay.

Q We're going to talk about the penalty phase. But the fact that we're going to be talking about the penalty phase doesn't mean anything except that because we might get there, we need to know how you feel about that. Okay?

A Okay.

Q If you were a juror in a criminal case, would you be able to accept and apply the law precisely as I would state it to you and to render a verdict based solely on the testimony and evidence that you hear in the courtroom and in light of the law as I give it to you?

A Yes.

Q In a criminal case, you understand that the State has the burden of proof and must prove the defendant guilty beyond a reasonable doubt. Do you understand that?

A Yes, sir.

Q In a murder case, could you, depending on the facts and the evidence and in light of the law as I give it to you, could you find the defendant either guilty or not guilty depending on whether or not you believe the State has met its burden of proof?

A Yes, sir.

Q If the jury were to find the defendant guilty and we were to move into the sentencing phase, now we're going to talk to you a little bit about some issues that will come up in the sentencing phase.

A Okay.

Q First of all, let me explain to you about aggravating circumstances and mitigating circumstances. Aggravating circumstances are facts or incidents or details of an occurrence that the legislator of our state have deemed to make worse or to aggravate the crime of murder. In other words, aggravating circumstances when accompanying a murder increase the enormity of or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are incidents or facts or details of an occurrence which the legislature have deemed to reduce the severity of the crime of murder and may be considered as extenuating or as reducing the degree of moral culpability or responsibility.

Now if you were a juror in the sentencing phase of the death penalty trial, depending on the particular facts and circumstances of that case and considering aggravating and mitigating circumstances and considering the law as I will instruct you, if you were given the choice of either a sentence of life in prison or the death penalty, could you impose a sentence of life in prison?

A Yes.

Q Could you impose the death penalty?

A Yes.

Q Now, if you were to be sequestered as I mentioned as a possibility yesterday and put up in a hotel where you cannot go home to your family for four or five days, would that pose a terrible problem for you?

A No.

Q Have you gone over the witness list that was given to you this morning?

A Yes.

Q Have you had time -- you are the first juror this morning. Have you had plenty of time to go over that list?

A Yes.

Q Did you recognize any names on there?

A No.

Q Do you know anybody or are you related to anybody whose name is on that witness list?

A No.

Q Do you know of any reason why you cannot give both the State and the defendant a fair and impartial trial in this case?

A No.

Q I'm going to let the lawyers ask you some questions. And I may come back and ask you some more myself.

A Okay.

THE COURT: Mr. Bartosh.

MR. BARTOSH: Thank you, Your Honor.

EXAMINATION

BY MR. BARTOSH:

Q Mrs. Prasanlack, did I say it correctly?

A That's fine.

Q Uh, you have -- I have been going over your jury questionnaire. You have one child?

A Yes.

Q Are you the custodial parent for the trial?

A Yes.

Q That child is four years old now?

A Yes, sir.

Q Is he or she in day care now?

A No, he stays with my mother.

Q You live with your mother?

A Yes.
Q You are a full-time student also?
A I'm not going through the summer.
Q Okay. You intend to enroll back?
A During the fall, yes.
Q During the fall. Okay. Uh, also on your application, you talk about a brother had been questioned by the police?
A Yes.
Q You don't recall what that was about?
A He has been in jail before for grand larceny.
Q Okay. You believe that was what it was about?
A Yes.
Q When he was questioned, was he arrested?
A Yes.
Q He was charged with a charge?
A Uh-huh (affirmative).
Q You gave a statement in that case to the police?
A No.
Q You did not?
A No, this is when I was younger.
Q About how long ago?
A Maybe probably 9 or 10. I can't remember.
Q As a child?
A Yes.

Q This is your older brother?
A Yes, it is.
Q Okay. Also in response to some questions we had yesterday, you said you been arrested by either the Sheriff's Department or the police department?
A Not me, I thought he was saying a family member.
Q Okay.
A I was referring to my brother.
Q You were referring to your brother. You never had any experience with law-enforcement?
A No.
Q Other than through your brother?
A Yes.
Q What year were you in college?
A This is my third semester.
Q Okay. So sophomore?
A Uh-huh (affirmative).
Q As the judge told you, this is a split trial, I guess, if you want to call it.
A Uh-huh (affirmative).
Q At the beginning of the trial or the first part of the trial is just like a regular trial. The jury sits in the jury box over there. They will listen to the evidence that the State will produce. They will decide based upon that evidence whether the State had bore its

burden of proving the defendant's guilt beyond a reasonable doubt. Okay?

A Uh-huh (affirmative).

Q Should the jury decide that it is not proven beyond a reasonable doubt the defendant's guilt as to what he was charged to, we will all go home. Okay?

A Okay.

Q If they do prove to all twelve of the jurors' satisfaction beyond a reasonable doubt that the defendant was guilty, then we will go into a second phase. As the judge told you, in the second phase, there will be evidence presented both by the State and by the defense. Of course, the State is presenting evidence to try to convince the jury that the death penalty would be an appropriate punishment.

As the judge said, those are, those are aggravating circumstances. Those are circumstances which the State would present in hopes of persuading the jury to impose the death penalty in Mr. Lindsey's case. Okay?

A Okay.

Q Also in that portion, the defense has the opportunity to present mitigating circumstances. That is something that would lessen the severity of the crime.

A Uh-huh (affirmative).

Q Of course, that would be an effort to convince

the jury that death is not appropriate and that life would be appropriate punishment. Of course, in this state, life is life without parole. All right?

A Okay.

Q Were Mr. Lindsey to be given life, he would never get out of jail.

A Okay.

Q Would you be willing to listen to both the defense's arguments as to why Mr. Lindsey should be given the death penalty and the defense's arguments as to why he should not be given the death penalty, and would you make your decision based on what you heard in this courtroom and not on anything else?

A Yes.

Q That would be the sole decision-maker in your mind as to what you heard in here and how you felt about the circumstances and how you felt about the way the case was presented and the issues in the case?

A Uh-huh (affirmative).

Q There would be no other extraneous outside of that. You have no feelings one way or the other as to whether the death penalty should always be imposed or whether it should never be imposed?

A Of course.

Q I mean you do not?

A No.
Q Correct?
A Uh-huh (affirmative).
Q You look at how it is?
A Uh-huh (affirmative).
Q You look at the circumstances and then make your decision?
A Uh-huh (affirmative).
Q Let me ask you this. Let's say of the twelve people on the jury, eleven voted for death. And you felt that life was appropriate. Would you be able to stick by your guns against those eleven people and go with your conscience rather than cave in on the 11?
A Yes.
Q You would?
A Yes.
Q Have you thought much about this?
A Yeah, I have.
Q You knew when you were coming in here that this was going to be a capital case, right?
A Yes.
Q How much have you thought about it? It is not something that you want to think about. How much have you thought about it?
A I thought about the questions you asked me. If

it did come down to 11 to 1 or 1 to 10. And I feel like --

Q Right?

A I have my opinion about it and I should just state how I felt no matter if the other ten felt differently.

Q So, of course, you know not to belabor the point but should it be death or should it be life, --

A Uh-huh (affirmative).

Q -- every juror has to sign to the indictment form or the sentencing form?

A Yeah.

Q Either way you will be able to do it?

A Yes.

Q Thank you.

A Uh-huh (affirmative).

MR. WILLINGHAM May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. WILLINGHAM:

Q Mrs. Prasanlack, my name is Donnie Willingham. This is Barry Barnett. And this is Trey Gowdy. We are prosecuting this case for the State. I just want to make sure you understand. I think you do. You always have a choice between life and death.

A Uh-huh (affirmative).

Q Death is never going to be required.

A Uh-huh (affirmative).

Q The judge is not going to tell you and the jurors are not going to tell you got vote death. It is not required. Given a choice, knowing that you always have a choice between life and death, would you be more inclined to vote one way versus the other?

A I don't quite understand. Am I more --

Q I will rephrase the question.

A Okay.

Q There's some jurors that say no matter what, when given a choice between life and death, I'm going to choose life. There are other jurors that say no matter what I hear, if I was given a choice between life and death, I'm going to choose death. There's the third type of juror that says if I'm given the choice, I'm going to consider both life or death.

A Yeah.

Q How would you fall in that category?

A I will consider both.

Q The third category?

A Yes.

Q Mr. Bartosh asked you about your brother. You said he had gone to jail for grand larceny. Was that here

in Spartanburg?

A Yes. I believe that's where. I can't -- well, then again, I don't know.

Q How old is your brother?

A He is probably 28.

Q How old was he when it happened? How old was he when it happened?

A When he --

Q When he was arrested for grand larceny?

A Like I said, probably when I was 9 or 10.

Q He was how old?

A I am 23 now. So that would make it 14. When I was 14.

Q He was probably, if it happened in Spartanburg County, prosecuted by the solicitor's office, the same office that is prosecuting Mr. Lindsey. Would that enter into your consideration or would that influence you? Would you hold that again us is what I'm asking?

A No. I did not know. Honestly, I did not know what was going on. I did not even go to court. I do not what was going on at that point.

Q Okay. You were going to Spartanburg Technical College?

A Uh-huh (affirmative).

Q What were you majoring?

A Accounting and trying to get a major in Business Management.

Q How much longer you have to go?

A I have about a year and a half.

Q Thank you.

THE COURT: Mrs. Prasanlack, I'm going to ask you to step out into the hall for just a second. And we will be right back with you.

MRS. PRASANLACK: Uh-huh (affirmative). Okay.

(WHEREUPON, Mrs. Prasanlack exits at approximately 9:26 a.m.)

THE COURT: Any objection to Mrs. Prasanlack?

MR. BARTOSH: No, sir.

MR. BARNETT: No, sir.

THE COURT: Bring her in.

(WHEREUPON, Mrs. Prasanlack enters at approximately 9:26 a.m.)

THE COURT: You are qualified. And we are going to keep you in the panel for this case. We hope to be able to get around to picking a jury sometime late Wednesday or early Thursday.

MRS. PRASANLACK: Okay.

THE COURT: Please stay in touch by calling that recorded number -- that telephone number that you were given. There will be a message on there.

Maybe some time Wednesday, we will start putting on there something about when you need to come back. We will also try to stay in touch with you. But you stay in touch through that telephone number.

MRS. PRASANLACK: I will.

THE COURT: As we get close to Wednesday afternoon, as I mentioned to you, you might be sequestered. So you need to start thinking about putting some clothing together that would last you four or five days.

MRS. PRASANLACK: Okay.

THE COURT: All right?

MRS. PRASANLACK: All right. Thank you.

THE COURT: Ma'am, remember my instructions not to allow yourself to be exposed to any news reports about this case. And don't talk to anybody about this case. And don't allow anyone to talk to you about this case. Do you understand that?

MRS. PRASANLACK: Yes.

THE COURT: Thank you very much.

MRS. PRASANLACK: Thank you.

THE COURT: When you come back, I'm going to ask you about whether or not you complied with my instructions just like I'm going to ask all the jurors. I want you to be able to tell me that you have

complied with it and you have not learned anything about this case since we have last talked.

MRS. PRASANLACK: All right.

THE COURT: Thank you.

(WHEREUPON, Mrs. Prasanlack exits at approximately 9:27 a.m.)

THE COURT: All right. Give us a juror. Hold them at the door for a second. I'm going to talk to the lawyers.

Is it suitable to you all if you have any objection to the qualifications of the jurors. I'm just going to say Any objections. If you have an objection, you argue it then. If you say no objection, I'm assuming that you agree that the juror is qualified.

MR. BARTOSH: Yes, sir.

THE COURT: Is that fair?

MR. BARTOSH: Yes, sir.

THE COURT: All right. Bring him in.

(WHEREUPON, Tammy Queen, Juror number 222, enters at approximately 9:28 a.m.)

TAMMY QUEEN

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good morning, Ms. Queen.
A Good morning.
Q How are you?
A Fine.
Q You recall that I put you under oath yesterday. You are still under oath.
A Yes, sir.
Q Since we left yesterday, has anyone talked to you about this case or have you seen any news reports about this case?
A No, sir.
Q Or learned anything about this case since yesterday?
A No, sir.
Q Ma'am, we are going to you talk to you now and ask you some questions. We don't want to really invade your privacy but these are going to be some interesting questions that you probably have not been asked before. There are not any right or wrong answers to these questions. We just want you to be open and honest with us and tell us how you feel and tell us how you think.

We are going to talk about penalty and the penalty phase of this case if we ever get to the penalty phase. The fact that we're talking about it does not mean anything. We may never get there. You understand that?

A Yes, sir.

Q In a criminal case, if you were a juror in a criminal case, could you accept and apply the law precisely as I will give it to you and render a verdict based solely on the testimony and the evidence that you will hear in this courtroom and in light of the law as I have given it to you?

A Yes, sir.

Q You understand the State has the burden of proving a criminal case and must prove the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q. If you were a juror in a criminal case, in a murder case such as this, depending on the facts and the circumstances and the law as I give it to you, could you return a verdict of either guilty or not guilty depending on whether or not you believe the State has met its burden of proof?

A Yes, sir.

Q Now, if a guilty verdict is found, we would move into the penalty phase. So let's talk a little bit about that. Let me tell you what aggravating circumstances and mitigating circumstances are. Aggravating circumstances are facts, incidents or details of an occurrence which the State of South Carolina has deemed to make worse or to

aggravate the crime of murder. In other words, aggravating circumstances when accompanying a murder increase the enormity or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are incidents or facts or details of an occurrence which the State of South Carolina have deemed to reduce the severity of the crime of murder. Mitigating circumstances may be considered as extenuating or as reducing the degree of moral culpability or responsibility.

Now, if you were a juror in the sentencing phase of a murder trial, could you, depending on the facts and the circumstances that were proven in the case including the consideration of any aggravating or mitigating circumstances and if you were -- and in light of the law as I give it to you and if you were given the choice of either a life sentence or the death penalty, could you impose a life sentence?

A Sure.

Q Could you -- ma'am?

A Yes, sir.

Q Could you impose the death penalty?

A Yes, sir.

Q Now, ma'am, if you are chosen as a juror in this case and if I choose to sequester you, is that going to

impose a hardship on you?

A I am a single parent.

Q Do you have somebody who can take care of your children?

A Yes, sir.

Q You do?

A Uh-huh (affirmative).

Q All right. Now, have you been over the witness list?

A Yes, sir.

Q Do you know anybody or are you related to somebody on that list?

A I know somebody.

Q Would you tell me who that is please.

A That will be Officer Godfrey.

Q Officer Godfrey. And do you know the number offhand on that list?

A I think it is number four.

Q Number four. Officer Harvey Godfrey of the Inman Police Department. How you know him?

A He dated my sister and I been doing his income taxes for over ten years.

Q Did you do his income taxes for this year?

A Uh-huh (affirmative).

Q For 2003?

A Yes, sir.

Q And you've been doing that for ten years. Is that your business to do people's income taxes or do you do it on the side?

A No. That is what I do.

Q Is he still dating your sister?

A No.

Q All right. If Officer Godfrey were to testify in this case, do you feel that judging his credibility would put you in an uncomfortable position?

A No.

Q You don't think so.

A No.

Q Would the fact that Officer Godfrey might be a witness in this case interfere in any way with either your willingness or your ability to give both the State and the defendant a fair and impartial trial?

A As far as Officer Godfrey, no.

Q All right. Let me explore that just a little bit. Is there anything about Officer Godfrey, whether you like him, dislike him, trust him, don't trust him or whatever that would interfere -- if he testifies that would interfere with your ability and your willingness to give a fair trial to the State and a fair trial to the defendant?

A As far as Officer Godfrey, no.

Q I want to know what would. Something hesitated you right there. Something caused you to --

A I know the defendant and I know the victim.

Q All right. We will talk about that in just a few minutes. But just as far as Officer Godfrey is concerned, nothing will interfere with your ability to give a fair trial?

A No.

Q All right. I'm going to -- you've mentioned that you know the victim and that you know the defendant. That is obviously something that you have been thinking about. I am going to let the lawyers talk to you for a few minutes about that and I'm going to maybe come back and ask you some more questions.

A Okay.

Q Other than the fact that you know the defendant and that you knew the victim, do you know of any reason why you cannot give both the State and the defendant a fair and impartial trial?

A Other than just those circumstances.

Q I'm not suggesting that that's would prevent you. I'm just going to let the lawyers talk to you about that subject. But other than that subject, is there any reason why you cannot give a trial to both sides?

A No, sir.

Q All right. Thank you.

THE COURT: Mr. Bartosh.

MR. BARTOSH: Thank you.

EXAMINATION

BY MR. BARTOSH:

Q Ms. Queen, when we had the general questioning yesterday, you indicated that you knew someone in the solicitor -- it is too early in the morning -- in Solicitor Gowdy's office?

A Yes, sir.

Q Who do you know?

A I went to school with Mr. Gowdy.

Q All right. Would that fact affect your ability to give both sides a fair trial?

A No.

Q What school is that?

A Spartanburg High.

Q Say it again.

A Spartanburg High.

Q Did you graduate?

A Yes.

Q You also said you knew some folks in our office?

A Actually, the defendant. Not anyone in your office.

Q You say that you met Marion Lindsey?

A Yes.
Q How long have you known Mr. Lindsey?
A I've only had an occasion of meeting him twice.
Q Was it through his wife?
A He was with her at the time, yes.
Q You said you knew her?
A Yes.
Q How do you know her, you knew Mrs. Lindsey?
A My best friend's daughter was a good friend of Nell's.
Q How long had you known Mrs. Lindsey?
A Five years.
Q Were you social friends?
A Actually, maybe longer than that.
Q Were you social friends with her?
A Not really. No, sir.
Q Would you visit?
A When she would be at Christy's mother's house. That's where we would have baby showers and stuff.
Q You would visit her --
A Sure.
Q -- on social occasions?
A Yes, sir.
Q Okay. You know, you also know Mr. Godfrey?
A Yes, sir.

Q Officer Godfrey was the investigating officer of this case or one of the investigating officers. Did you have conversations with Officer Godfrey concerning this case?

A No.

Q You never discussed it with him at all?

A No, sir.

Q How do you know about the case?

A Only from when it originally happened. Of course, it was published and knowing Nell and Mr. Godfrey.

Q Okay.

A When I filled out the paperwork when the original paperwork was sent to me, I did not know who Marion Lindsey was.

Q You knew him as Myron?

A I know him as Myron. It wasn't until the case was actually delayed that someone called me and said, cause we didn't know who Marion Lindsey was.

Q Right.

A And they said you do know who that is too. And then they said it was Myron. And of course, I do know Myron. And I called immediately said I knew him by that name.

Q So somebody called you?

A Yes.

Q To discuss the case?

A Only to tell me that I did know who Marion Lindsey was.

Q You've been talking to people before?

A Only to the fact that I had been called for Marion Lindsey. And we did not know who it was.

Q You know the facts?

A Yes.

Q And you got those facts from newspapers -- you got those facts from when you talked with different people?

A Yes, sir.

Q You got those facts from Mrs. Lindsey's family?

A It would only have been secondhand.

Q I understand that. But --

A Like I said, my best friend's daughter was a very close friend with Nell. I'm sure she was in contact with the family.

Q Your best friend's daughter would have told you all about the facts?

A Yes.

Q Have you formed an opinion about the case?

A Probably.

Q Well --

A I know that is not really an answer but --

Q You have made up your mind?

A Basically, yes.

Q And you have made up your mind that Mr. Lindsey is guilty?

A Do I have to say?

A Yes please.

A In my honest opinion, yes, sir.

Q Is that your opinion that he is guilty?

A (No response).

THE COURT: Let me, if you don't mind, stop you right there and ask you and a representative of the solicitor's office to come over here for one second and speak to me.

(WHEREFORE, a bench conference was held off the record.)

THE COURT: Ms. Queen, let me ask if you don't mind please to step out for just a minute. We will come back and resume your questioning a minute.

MS. QUEEN: Okay.

(WHEREUPON, Ms. Queen exited at approximately 9:40 a.m.)

THE COURT: Now what I said at the sidebar conference was to raise the question as to whether or not it would be appropriate now at this point in the questioning for me to take a minute to explain to the juror what the juror's obligations are in terms of the

presumption of innocence coming into this court with an open mind, rendering a verdict based solely on the testimony and the evidence that they hear in the courtroom and not based on anything that they may have learned before they came in here and to do that in light of the law as I give it to them.

And then to ask them whether they can do that or do they feel that the information that they gained prior to coming to trial would interfere with their ability to do that. And then turn it over to you to let you explore that rather than boxing her in to answer when she doesn't even understand yet what her obligations are and what her oath as a juror would entail. Would it not be appropriate for me to do that, then we see how it goes?

There are a lot of jurors. It comes up all the time where jurors will say Yeah, I know the answer to this question. Then you tell them that is not what you are here for. You are here for what you hear and then make a decision as to what the answer to this question is. And they say, Yeah, I can do that.

MR. BARTOSH: My only concern, Your Honor, is there is a thin line between trying to rehabilitate a witness.

THE COURT: I realize that. With this

particular juror, as far as the questioning went, it might be that it is over. But in the future, I don't think, I got my doubts as to whether or not it is appropriate for you to have an opportunity to pin her down like that without me explaining to her what her obligations are first.

MR. WILLINGHAM: Judge, what I would suggest, and I mean seeing it happen before, is that those few jurors or several jurors had prior knowledge of the case. If the Court has a list of those, would you question them additionally if they have prior knowledge initially before either of us ask questions, you go ahead and ask if that will have an influence on whether they can be fair and impartial?

THE COURT: Any objection to that?

MR. BARTOSH: No, sir. But I will tell you there are fifty some-odd jurors in this pool who indicated that they have knowledge.

MR. WILLINGHAM: In the alternative, if Mr. Bartosh gets them there --

THE COURT: Yeah.

MR. WILLINGHAM: -- and we have an opportunity to rehabilitate then you again will decide.

THE COURT: With this particular juror, there is tremendous potential for confusion. I have

already asked her could you come in here as a juror in this case and listen to the law as I give it to you and render a verdict based solely on the testimony and the evidence that you hear in this courtroom. She said yes. In response to your question, she said she made up her mind because of what she knows. Those are conflicting answers. The question I asked is more general. The question you asked is more specific.

Let's figure out what to do here in this situation. The next time it comes up I will go ahead and ask that question a little more explicitly before you start. You want to make a motion to excuse her for cause right now?

MR. BARTOSH: Yes, sir.

THE COURT: Or do you want me to bring her back in here and ask her, explain to her her responsibility.

MR. BARTOSH: Like I say, Your Honor, I believe given enough time, she could be brought around to just about anything. But I think by her body language on the stand when she hesitated --

THE COURT: Okay. Motion to excuse for cause now. How do you respond?

MR. WILLINGHAM: Just, I would like to have an opportunity to see if she sticks by that or if she

goes back to what she told you originally. I don't have any real hope that she will be able to do that.

THE COURT: All right. Let's bring her in. You may very well be right. But I think at this point, I've got to do what I suggested.

MR. BARTOSH: And just so that we understand too, Your Honor, you are going to accept -- and we have no objection to Mr. Willingham's suggestion that folks who have said --

THE COURT: I'm going to do that. My staff is over here right now making up a list of the questions that they've answered and raised a hand to give me as each juror comes up. What happens though is just glancing over that after I finish, I'm going to tell them that if they answered the question that they knew about the case to kind of pop me in the side of the head with the questionnaire as I'm finishing so that I know to ask that question.

MR. BARTOSH: As I said, Your Honor, I think there is a substantial amount of people --

THE COURT: Right.

MR. BARTOSH: Maybe over half.

THE COURT: Right. And let's do this. If you find that I miss somebody, you just say, it doesn't have to be anything, just stand up and kind of look at

me or something.

(WHEREUPON, Ms. Queen enters at approximately 9:46 a.m.)

EXAMINATION

BY THE COURT:

Q Ms. Queen.

A Yes, sir.

Q Let me take a minute to just talk to you. Then I'm going to ask you a question. And then the lawyers are going to resume. You have told us very candidly, we certainly appreciate your candor. You told us that you learned a good deal about this case before when it happened and over the course of several months after that even up as recently as March, I believe it was, when you had a conversation with somebody who reminded you that Marion Lindsey was Myron Lindsey.

A Yes, sir.

Q And then you recalled that you knew about the case. Now, we've acknowledged that there has been a fair amount of press coverage about this case. And there are a lot of people in this jury pool who have learned about the case either through the press or just by hearing about it.

A Okay.

Q What the juror's responsibility is and what your responsibility as a juror would be if you were placed on

this jury is to put all of that aside and to come in here with an open mind and a clean slate and to listen to the law as I give it to you and listen to the evidence that is presented before you in this courtroom under my supervision. And when the time comes, to deliberate over the evidence that you have heard in this courtroom and to render a verdict based solely on that testimony and evidence.

Now, that is your responsibility. But there are some people who have become so intertwined with a situation that they can't do that. That's what I want to know from you now. Do you feel that you can come in here and follow my instruction and render a verdict based solely on the testimony and the evidence here in this courtroom understanding that the defendant is presumed innocent and that he is not guilty unless and until the jury finds that the State has proven him guilty beyond a reasonable doubt? Could you accept that presumption of innocence based on what you know and what you had learned about this case or what you heard about this case?

A In theory, yes, sir. I'm not sure emotionally that I can.

Q All right. So do you then believe that your previous involvement with hearing about this case, your relationship, with your sister's -- with your best friend's

daughter and what she knew about the case, do you believe that that would interfere with your ability to be a fair and impartial juror in this case?

A Yes, sir.

Q Do you believe -- so you don't believe that you would be able to render a verdict based solely on the testimony and evidence that you hear in the courtroom?

A I don't know that I could honestly -- and it's not necessarily the event that occurred that this case is about but other things that had occurred beforehand.

Q Like what?

A I just know things that went on with Nell with Myron earlier.

Q All right. You're telling me and you are being very candid and I appreciate that. Are you telling me that you don't think you will be able to set that information aside?

A I don't think so.

Q All right. Ms. Queen, again, I'm going to ask you to step in the hall just a second. And I will be right back with you.

(WHEREUPON, Ms. Queen exits at approximately 9:49 a.m.)

THE COURT: All right. Before I bring her back, let me ask you this, anything overbearing or improper

about the way that I went about trying to explain that to her? Do you feel that I was going -- I was trying not to falsely rehabilitate her. Was I too strong in it? Did I do anything, cause that's the way I'm going to handle it unless you tell me you think that's a problem the next time it comes up.

MR. BARTOSH: In her case, Your Honor, I don't believe that she could have been rehabilitated.

THE COURT: Right.

Bring her back in.

(WHEREUPON, Ms. Queen enters at approximately 9:50 a.m.)

THE COURT: All right. Ms. Queen, again, we appreciate your candor. Because of your involvement, we don't believe you are qualified as a juror in this case. So we're going to excuse you.

(WHEREUPON, Ms. Queen exits at approximately 9:51 a.m.)

THE COURT: Come up here and look at these.

Hold him right there for a second.

(WHEREUPON, a bench conference was held off the record.)

THE BAILIFF: Yes, sir.

THE COURT: All right. Mr. Culpepper is the juror who told us yesterday that his grandmother is in

the hospital. The doctors have called the family in. And he is concerned about his involvement in the case this week and wants to be excused. He's got an excuse from a Doctor Steven E. Freeman saying that Mr. Culpepper's grandmother is gravely ill at Easley Hospital. And both sides have agreed to excuse him based on that family issue.

MR. GOWDY: That's correct, Your Honor. The State has.

THE COURT: Mr. Bartosh?

MR. BARTOSH: No objection, Your Honor.

THE COURT: All right. Bring him in.

(WHEREUPON, Luther Culpepper, Juror number 65, entered at approximately 9:51 a.m.)

THE COURT: All right. Mr. Culpepper, you, uh, your grandmother is ill?

MR. CULPEPPER: Yes, sir.

THE COURT: And you went to check on her and she's still not doing well. The family is very concerned about how far she is going to make it?

MR. CULPEPPER: Yes, sir. They're saying she isn't going to pull through.

THE COURT: All right. We've got your note here from the doctor. We certainly sympathize with you and the family and hope that it goes as well as it can.

We're going to excuse you from this case because of that situation.

MR. CULPEPPER: Okay.

THE COURT: And wish you the best.

MR. CULPEPPER: Thank you, sir.

THE COURT: You're welcome.

(WHEREUPON, Mr. Culpepper exits at approximately 9:52 a.m.)

(WHEREUPON, Jon Krisher, Juror number 153, enters at approximately 9:53 a.m.)

JON KRISHER

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Krisher.

A Yes, sir.

Q Did I pronounce it correctly?

A Yes, you did.

Q You recall that you are -- that I put you under oath yesterday. And you are still under oath.

A (Nods head affirmatively.)

Q And you will have to answer all of my questions out loud so that my court reporter can take it down. You understand that you are still under oath?

A Yes, sir.

Q All right. Now, since we left yesterday, has anybody talked to you about this case or have you talked to anybody about the case or have you learned anything about the case or any press reports or news reports?

A Nope.

Q We're going to ask you some questions that we don't intend to be an invasion of your privacy. But we do have to ask these questions. There are not any right or wrong answers to these questions. We just want to know -- we want you to be open and honest with us and tell us what your feelings are and your thoughts are. Okay?

A Yes, sir.

Q We're going to talk about the penalty phase. The fact that we're talking about the penalty phase doesn't mean anything other than that we might get there. And since we might get there, we need to know how you feel about it. If you are a juror in a criminal case, in a murder case, could you accept the law and apply the law precisely as I give it to you and render a verdict based solely on the testimony and evidence in this case and in light of the law as I give it to you?

A Yes.

Q Based solely on the testimony and evidence that you heard in the courtroom?

A Yes.

Q You understand in a criminal case, the State has the burden of proof and must met that burden of proof beyond a reasonable doubt?

A Yes, sir.

Q Now, if you were a juror in a murder case such as this, could you, depending on the facts and the circumstances that are proven during the trial, could you render a verdict of either guilty or not guilty depending on whether or not you think the State has met its burden of proof?

A I believe so.

Q You have any hesitation about that?

A Kind of.

Q What's your hesitation?

A Obviously, if they have enough evidence and I thought it was exactly what everybody was thinking.

Q Say that again please.

A If there was enough evidence to where I thought for sure.

Q Right. Let me back up just a little bit. As I said, the State has the burden of proof. And the burden of proof is beyond a reasonable doubt. Could you, and you are sitting there as a juror, listen to the testimony and the evidence that is presented during the trial and listen to the law as I give it to you and render a verdict of either

guilty or not guilty depending on whether you think the State has proven the defendant guilty beyond a reasonable doubt?

A Yes.

Q You could do either one of those depending on your view of the evidence?

A Yes.

Q Now, if that happened, we're going to now talk about the penalty phase. Let me explain something to you. If the defendant is found guilty, we'll be talking about mitigating circumstances and aggravating circumstances. Aggravating circumstances are facts and incidents and details of an occurrence which the State of South Carolina has deemed to make worse or to aggravate the crime of murder. In other words, aggravating circumstances which accompany a murder increase the enormity or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are facts or details or incidents or an occurrence which the State has declared to reduce the severity of the crime of murder and may be considered as extenuating or as reducing the degree of moral culpability or responsibility.

Now, if you were a juror in the sentencing phase of a murder case, could you, depending on the facts and the circumstances that are proven including the consideration

of any aggravating or mitigating circumstances, and if you were given the choice of either the life sentence or the death penalty, could you impose a life sentence?

A Yes.

Q Could you impose the death penalty?

A I don't know. I really don't know if I could or not.

Q You don't know if you could or not. Well, that's -- I appreciate the honesty of your answer. Now, if you were on this jury and if you -- if I sequester the jury and put you up in a hotel so you can't go home to your family for five or six days, is that going to impose a terrible burden on you?

A Not terrible, but it would be a burden.

Q Well, it's going to be a burden on anybody. But you could do it?

A Yeah.

Q Now, you've been given a copy of that witness list?

A Yes.

Q Have you had a chance to go over it in detail?

A Yes.

Q Is there anybody on that witness list who you know or who you are related to?

A Nobody sounds familiar by name.

Q All right.

THE COURT: All right. Mr. Bartosh.

MR. BARTOSH: Thank you, Your Honor.

EXAMINATION

BY MR. BARTOSH:

Q Krisher, is that --

A Krisher.

THE COURT: Krisher, he says.

BY MR. BARTOSH:

Q Good morning. I'm Mike Bartosh with the Public Defender's office. And we represent Marion Lindsey. There's just a few questions that I would like to ask you. In going over your juror questionnaire, there are a couple of things that I would like to kind of expand on. You had marked down that a family member had been killed by a drunk driver?

A No.

Q You did not?

A No.

Q Have you been arrested by either the sheriff's office or --

A Oh, wait. I take that back. The questionnaire that everybody filled out.

Q Yes.

A I had a cousin, a distance cousin, years ago, I

never knew him, that was killed. He was drunk himself.

Q No one close or anything recent?

A No, sir.

Q You also said that you were arrested by the Spartanburg County Sheriff's office or the Inman Police Department?

A Spartanburg County.

Q Was that the DUI?

A No. I got arrested for possession at one time and I was driving while my license was suspended.

Q Possession of marijuana?

A Yeah.

Q Okay. Also and I don't mean to thrive on this either, but you indicated that your father was abusive when you were growing up and you were a victim of domestic violence?

A Yes.

Q And you grew up with your father, that's correct?

A Yes, sir.

Q How long did this abuse go on?

A It wasn't me that was abused. It was more verbal abuse most of the time.

Q Okay. Did that have a great affect on you?

A Not really. It did when I was younger. But it's good now.

Q Okay. Now, as the Judge told you, this trial is going to be two different sections. The first section is going to be dealing with the guilt phase. It will be just like a regular trial where the jury will sit and listen to the evidence presented by the State. If all twelve jurors believe the State has carried their burden of proving the defendant guilty beyond a reasonable doubt, then we go into the second phase.

If they don't, if the jury doesn't believe that they have, then we all go home. Now, if we do go into a second phase, sometimes it is known as a sentencing phase, sometimes known as a penalty phase. Basically that is to determine what the appropriate penalty is going to be and it is different in a way because in these type cases, the penalty is the jury's decision. Okay?

A (Nods head affirmatively.)

Q As the judge says what happens is the solicitor or the prosecutor will stand up, and he will present as much aggravating circumstances as he possibly can to convince all twelve folks to put Mr. Lindsey to death. Of course, what we would do is as our time comes, we will put up as much mitigating circumstances the try to convince the jury that Mr. Lindsey does not deserve to die and that life would be an appropriate response or appropriate penalty.

Now two questions. The first one will be, there are

going to be some allegations of domestic abuse in this case. Would that affect your ability to give either side a fair trial?

A No, sir.

Q Would that affect your ability -- in the penalty phase, would that influence your decision as to whether or not life or death would be appropriate?

A I don't know, sir.

Q In other words, and I don't want to put words in your mouth, but as I understand what you are saying is you will be able to listen to both sides in the penalty phase and render what you feel to be the most appropriate penalty whether it be life or whether it be death?

A Right.

Q You will be able if you felt death was appropriate, you would be able to impose the death penalty?

A Yes.

Q If you felt it was appropriate?

A Yes.

Q Likewise if you believe it was appropriate, if you believe that life was appropriate, you be able to impose that?

A Yes, sir.

Q One other question, well two. Let's say the jury is 11 to 1 for death. It must be unanimous. Would you be

able, if you believe that life was appropriate, would you be able to hold out and go with your beliefs against the other eleven?

A Yes, if that's what I think.

Q The other thing about it is, of course, life is always an option. You do not have to give the death penalty. Life is always an option. You are not required to give the death penalty not unless you feel it is appropriate. If you do feel it is appropriate, every juror -- like I said, it has got to be unanimous either way. Life or death.

Every juror has to sign the sentencing document. And if it meant, clearly put if you were the last one, all eleven jurors had signed before you and you felt death was appropriate, would you sign your name to that document?

A If I felt that way.

Q If you felt that death was appropriate?

A Yes.

Q That is all I have.

MR. BARNETT: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q My name is Barry Barnett. Mr. Willingham and

Mr. Gowdy will be prosecuting the case. I noticed when you have been answering the Judge's questions and Mr. Bartosh questions, it seemed like you were kind of emotional a little bit. Does this affect you or are you just thinking real long about it?

A I'm just thinking about it.

Q Now you realize that death, it is not automatically death if we get to the sentencing phase. That is not automatic sentence. Life without parole is always an option.

A Uh-huh (affirmative).

Q You understand that?

A Yes.

Q Knowing that, and I noticed in your questions to the Judge, you were hesitant about the death penalty. You just did not know about it?

A Right.

Q You know life without parole is an option. He would never get out if he gets life without parole. With death being an option to you, would you ever give death in a case?

A Most of the time I feel it is a better punishment to be in prison for life. I believe that death is not as big of a punishment as going to prison for life and having to stay in prison for the rest of your life.

Q You feel life without parole would be a better sentence?

A Yes, for something that is -- I believe that is worse than the death penalty.

Q So that would be the better option to you between the two?

A Yeah.

Q Would that be the option you would give the most cases or all cases?

A I am not positive. I don't know for sure.

Q You don't know what you would do?

A Right, exactly.

Q Your belief is that life without parole is a more serious punishment than the death penalty?

A Yes.

Q That would be the option you would choose?

A Not necessarily but most likely.

Q Most likely you would do that?

A Yes.

Q So substantially that will be your view concerning the case no matter what the facts would be, that would be your view?

A Yes.

Q I notice you were also hesitate in talking about the burden of proof. You said you believed so. Then you

were hesitant to the Judge's questions. Is that something you would look at, the burden of proof? I just want to explore that.

A What do you mean?

Q When he was talking to you about the burden of prove and so forth, you were a little hesitant about that. I did not know if that was from your personal views or if that was just not understanding the judge's questions at first?

A Probably did not understand.

Q Okay. I notice you have been arrested by the Inman Police Department and the Sheriff's Department, is that correct?

A Uh-huh (affirmative).

Q Is that the Spartanburg County Sheriff's Department?

A Spartanburg County.

Q What were you arrested for, sir?

A Possession one time. And also I was arrested for driving with my license suspended.

Q You were arrested here in Spartanburg County for that?

A Yes.

Q Would knowing that the Spartanburg County Sheriff's Department were involved in this case, would

that affect your views on this case?

A No, sir.

Q I noticed in your questionnaire you did not list a religion or affiliation or anything?

A I don't really have a religion.

Q What were you raised in? Were you raised in a religion?

A Yes, I was raised as a Baptist. I was going with my mother's church until I was 18. I really just don't have a belief.

Q I'm sorry about these questions. We're just trying to get -- usually when we ask this question --

A I understand that.

Q And I notice you did have a prior record. You listed that on here for driving under the influence or DWI. Does that affect your ability having been incarcerated before?

A No, sir.

MR. BARNETT: One moment, Your Honor.

Your Honor, I don't have any other questions.

MR. BARTOSH: May I have one quick follow up?

THE COURT: Any objection?

I'm going to allow it. Go ahead.

EXAMINATION

BY MR. BARTOSH:

Q Mr. Krisher, I just -- on Mr. Barnett's question, just so that everybody understands. You feel when given the choice between which would be worse, life in prison without parole or death, you feel that life is a worse punishment?

A I believe so, yes.

Q However, just so that I understand, if you felt death was appropriate in a case, you could give it?

A Yes, I could.

Q Thank you.

MR. BARNETT: Your Honor, may I have a follow up question?

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q If I understood when we were talking or whatever, you wouldn't basically look at the facts of the case, you would look at life without parole being the worse punishment of the two based on your beliefs, is that right, sir?

A Yes.

MR. BARNETT: Thank you, Your Honor.

THE COURT: All right. Mr. Krisher, let me get you to step in the hall for just one second please.

(WHEREUPON, Mr. Krisher exits at approximately 10:13

a.m.)

MR. BARNETT: Your Honor, the problem with his answer was based on -- I asked him a question. Obviously, he feels life without parole is a more serious punishment for this. He would not look at the facts of the case. He would go off his personal belief of life without parole. And he would choose that over death based on his personal belief not looking at the facts of the case. I think he should be disqualified based on that.

MR. BARTOSH: Your Honor, the question I asked him was did he consider life without parole to be a worse punishment than death. And he said yes. I said if you felt that death was appropriate, could you give it. And he said yes.

THE COURT: Well, doesn't that raise a right interesting question? Isn't it just -- isn't it true that under South Carolina law, the death penalty is reserved for the most serious and egregious murders. And the death penalty is clearly a more severe punishment than a life sentence under South Carolina law?

MR. BARTOSH: Your Honor, I would respectfully disagree with that. I think that you could find many people who would believe that the death penalty is a

blessing in comparing --

THE COURT: But I very, very carefully, perhaps inartfully but vigorously tried to phrase my question as being a question about the law of the State of South Carolina and not the content of the mind of some person out there on the street. Isn't it true that the law of the State of South Carolina is that the death penalty is reserved for the most egregious murders and is a more severe penalty than the life sentence?

MR. BARTOSH: I don't -- I agree that it is reserved for the most egregious. But I don't know that it goes so far to say that it is the worse.

THE COURT: Here we've got a guy that says that he's going to, that under his view of the difference between the life sentence and the death penalty, he's going to impose the death penalty for the less severe murders and impose the life sentence for the more severe murders. Isn't that turning the whole sentencing scheme that is set up on South Carolina law on its head?

Based on what he said, is he not going to sit in there and say I find the mitigating factors outweigh the aggravating factors. So that's why I'm going to impose the death penalty because it's not as a bad as

the murder that I think the guy --

MR. BARTOSH: Or he can say I find the aggravating factors worse than the mitigating factors so I'm going to impose death because I think it is a worse punishment.

THE COURT: That is not what he said. He thinks life is worse.

MR. BARTOSH: That's what I mean. And I am going to go with the aggravating because I think death -- now I'm all confused. I think life is a worse punishment than death.

THE COURT: So we are putting the jury, if he is on a jury in a situation of let's say the State comes in here and proves to everybody's satisfaction hypothetically that this is the worst murder that ever occurred in the State of South Carolina, this the PeeWee Gaskins of the 22nd century or first century or whatever century we are in. And then under these jurors' views, because they all agree it is the worst murder that have occurred, you've got eleven people standing firm for the death penalty and one person standing firm for the life sentence based on his views.

MR. BARTOSH: That happens all the time.

THE COURT: I know.

MR. BARTOSH: They can impose whatever they do for no reason at all.

MR. BARNETT: If I can be heard, I asked him twice, two different times. My first time on my first question and my second question I asked him the same question. If he had a choice between life and he said he would look at the facts. He wouldn't even look at the facts. It's based on his personal belief. Obviously, that puts him in the juror of a life juror. He is not the third class juror. There's no question about it.

He gave inconsistent answers. The reason I follow up is because he was very hesitate about the life sentence. If I remember he was hesitate about the burden of proof. He was hesitate about the death penalty. He said he didn't know. Then Mr. Bartosh got up and tried to talk to him and tried to rehabilitate him. I asked him a question and he plainly said that life without parole is a better option. He went beyond that and said he wouldn't even listen to the facts. He would look at that.

His inconsistent answers are based on State versus Tyler. It would be a situation where it's definitely inconsistent answers between the questions that has been asked. I think he would be

disqualified based on that. He's not a qualified juror. He is not a third class juror.

THE COURT: I have got two concerns about Mr. Krisher. First of all, and I'm not sure exactly how this plays out. But in my view, the way that the whole sentencing scheme is set up is that the death penalty is the worst penalty for a murder under South Carolina Law. That is just obvious.

Under the law, if we get into the penalty phase, there has to be a unanimous verdict for death. It does not necessarily have to be unanimous for life. To get a verdict of a life, it has to be unanimous. But if there's a mistrial, a failure to reach a verdict in the penalty phase, it is a life sentence. We don't go at it again, right?

MR. BARTOSH: Correct.

THE COURT: The one thing that Mr. Krisher was very clear about was his belief that a life sentence was worse than the death penalty because it would put a person in prison for life so they can sit around and think about what they did and have to live with what they did. I am concerned that that is an opinion that is contrary to South Carolina law and that it is an opinion that would substantially impair his ability to follow my instructions in fairly and objectively

deliberating as to what the sentence ought to be. That is one thing.

The other thing is that the very first question I asked him, could you impose the death penalty, he took a very a deep breath and exhaled and said something and I thought I -- I didn't write down exactly what it was. But it was something like I don't know if I could do that. And then when Mr. Barnett came back to begin asking him the questions, he did the exact same thing.

Something like would you ever give the death penalty. He took a very big deep and exhaled as if he were very uncertain as to whether or not he could do that. And then he said Yes, but most of time I feel life would be appropriate.

So from watching him and watching his response to all of the questions and also from listening to his responses which in my view as Mr. Barnett pointed out fairly inconsistent, I am convinced that this is a juror that -- whose views about the death penalty particularly his views that the death penalty is not as severe a punishment as the life sentence that those would substantially impair his ability to follow the law as I instructed.

And that he would be unable -- it would

substantially impair the performance of his duties as a juror in deliberating over what the penalties should be. And so I'm going to find him disqualified.

Bring him in.

(WHEREUPON, Mr. Krisher enters at approximately 10:22 a.m.)

THE COURT: Mr. Krisher, I have thought carefully over your answers. And I am finding that you're not qualified as a juror in this case. We're not going to need your services anymore. So you are free to go.

MR. KRISHER: Thank you, sir.

THE COURT: Bring us a juror.

(WHEREUPON, Angela Haley, Juror number 115, enters at approximately 10:23 a.m.)

ANGELA HALEY

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good morning, Ms. Haley.

A Good morning.

Q How are you?

A Fine.

Q You remember yesterday that we put you under oath and you are still under oath this morning?

A Yes.

Q Since you left us yesterday, has anybody talk to you about this case or have you talked to anybody about the case?

A No, sir.

Q Have you learned anything about the case from the press or TV or newspaper reports?

A No, sir. But I do have the Spartanburg Herald Journal in my car. And when I am dismissed or after this trial is over, I intend to read about it after that.

Q All right. But you have not read about it?

A I've not read anything.

Q You are not going do anything until --

A I'm not going to do anything.

Q All right. I'm going to -- you are very eager to answer my questions. And I'm sure you're very eager to answer them candidly. But I'm going to ask you to make sure I'm finished with my question before you begin to answer. We do have some questions. We're not going to try to invade your privacy but we have to get answers to these questions. There are not any right or wrong answers. We just want you to be open and honest with us and tell us how you think and tell us how you feel. Does that suit you?

A Certainly.

Q We're going to talk about the penalty phase but

the fact that we're talking about the penalty phase does not mean anything about the defendant. It just means that because we might get to the penalty phase, we need to know how you think and how you feel about the issues that will come up.

If you are a juror in a criminal case, could you accept and apply the law precisely as I state it to you and render a verdict based solely on the testimony and the evidence that you hear in the courtroom and in light of the law as I have given it to you? Could you do that?

A In this case particularly or in any case?

Q Well, let's -- since you -- in any case to start with. In any case, can you listen to the law as I give it to you and render a verdict based solely on the testimony and evidence that you hear in the courtroom?

A Yes.

Q All right. Now, you understand that the State has the burden of proof?

A Yes.

Q The State has to prove the Defendant's guilt beyond a reasonable doubt?

A Yes.

Q That means that the Defendant is presumed innocent. You understand what that means?

A Yes, I do.

Q Now, you have raised a question about this particular case. You have mentioned perhaps a difference between this particular case. So let me take a moment to explain to you what your responsibilities are as a juror.

Your responsibilities are to come in here and if you know anything about this case or if you have heard anything about this case, your responsibility is to set that aside and to listen to the testimony and the evidence that is presented here and to render a verdict based solely on the testimony and evidence that you hear right here in this courtroom in light of the law as I give it to you. Could you do that in this case?

A Probably not in this case, no.

Q Tell me why that is.

A First of all, I don't know anything about this case. I don't where I've been, but I am one of the few people apparently who doesn't know anything. However, just from what was brought up yesterday that you asked us, apparently there was domestic abuse. I feel very strongly about that.

I also as a public school teacher feel that if the Spartanburg County Investigators feel that this man is guilty of something, though I know this sounds very harsh but this is just the way I feel, then that is probably good enough for me. And if the Solicitor's Office is also

planning on wanting to pursue the death penalty, that means they must have a very strong case and have very strong feelings. And I don't know than I could set that aside. I think I would prejudice the jury in that way.

I would try of course. I have been on several other juries. And I have always gone exactly by what the Judge has put forth as the law. But in this case, I think that I would be prejudiced against that.

Q You mentioned that the case involves domestic violence.

A I think. I don't know.

Q Well, it does. It involves allegations of domestic violence. We can talk more about that if we need to. But you also mentioned two things that concern me. I want to make sure that I straighten you out. We may not get any farther than this but I want to make sure you understand something. The defendant is presumed innocent. The opinion of a sheriff's deputy, the opinion of a police officer is irrelevant. The opinion of the solicitor is irrelevant.

If you are a school teacher, then you probably have studied enough to realize that we operate under a government of laws here. And we do not just make our own laws. The law of this country is that the verdict in a criminal case is based on facts, testimony and evidence

that is presented in a courtroom. The solicitor's opinion, law enforcement opinion is not a fact.

Now, as a member of the jury, you would be obligated to follow that law, to not consider opinions of law enforcement, not consider the opinions of the Solicitor. Could you do that?

A No. And if I may say something, it is paramount that this man, this man has rights under the constitution. It is paramount that the presumption of innocence is there. I'm saying that because of my background that I personally, as harsh as it sounds, I am presuming that because these people that I have trusted and voted for are doing what they feel is right. Naturally, as harsh as it may sound, I don't feel that I need to say that again. I think that naturally it should go towards the prosecution.

Q Okay. Well, why don't you step in the hall for just a second. And we will get right back to you.

(WHEREUPON, Ms. Haley, exits at approximately 10:39 a.m.)

THE COURT: I'm assuming that there's no objection to disqualifying this juror? Is there any objection to me giving her a civics lesson and requiring her to sit and watch the entire rest of the proceedings of this case?

MR. GOWDY: As long as you don't tell her

again the Solicitor's opinion is irrelevant.

THE COURT: I believe, my opinion is that somebody had explained to her how to get out of jury service. And so I am going to give her a civics lesson. She's going to sit and watch the rest of this case.

THE CLERK: Your Honor, her questionnaire says that she watches COURT TV.

THE COURT: Bring her in.

(WHEREUPON, Ms. Haley enters at approximately 10:30 a.m.)

THE COURT: Ms. Haley, because of your views that you have candidly shared with us, you are not qualified to serve as a juror. Because I think you would enjoy staying with us and watching how things proceed and perhaps that you would learn a little bit from it, I'm going to ask that you stay with us until this case is concluded. You can have a seat right out there in the audience. I'm going to instruct you though, ma'am, do not discuss this case with anybody period.

MS. HALEY: Okay.

THE COURT: Don't discuss it especially with a juror and don't discuss it with anybody that might be involved in this case.

MS. HALEY: You want me to take this off?

THE COURT: Yes, ma'am.

All right. Bring us another juror.

(WHEREUPON, Ms. Haley takes a seat in the audience.)

THE BAILIFF: She had to go to the restroom, Your Honor.

THE COURT: I want Mr. Darcy Thompson. Where is she?

THE BAILIFF: She's in the restroom. She's the last one on number 2.

THE COURT: Why don't we just take a break now. And we will just have a seven person panel next time. Does that suit y'all?

MR. BARTOSH: Yes, sir.

THE COURT: Seven minutes.

(WHEREUPON, a short recess was taken at approximately 10:31 a.m.)

(WHEREUPON, the Court resumed at approximately 10:40 a.m.)

THE COURT: Bring in the juror.

(WHEREUPON, Darcy Thompson, Juror number 274, enters at approximately 10:40 a.m.)

DARCY THOMPSON

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good morning, Ms. Thompson.
A All right. How are you doing?
Q Just fine. How are you doing?
A All right.
Q You remember that you are still under oath from yesterday?
A Yes.
Q Now, since yesterday when I dismissed you, have you learned anything about this case or talked to anybody about this case or had anybody talked to you about the case?
A No, sir.
Q Now, we're going to ask you some questions. And, uh, we don't mean to pry into your privacy but we do have to ask these questions. So I hope you will bear with us. There are not any right or wrong answers to these questions. We just want you to be open and honest with us. Tell us how you think and tell us how you feel. Okay?
A All right.
Q We are going to be talking about the penalty phase. But the fact that we're talking about the penalty phase doesn't mean anything about the defendant in this case. It just means that because we might get there, we need to know how you think and how you feel. If you were a juror in a criminal case, could you accept and apply the

law precisely as I give it to you and render a verdict based solely on the testimony and evidence that you hear in this courtroom in this case?

A Yes.

Q You could?

A (No response).

Q I didn't understand you.

A Oh, yes.

Q You understand in a criminal case that the State has the burden of proof and must prove the defendant guilty beyond a reasonable doubt?

A Yes.

Q In a murder cases such as this, could you depending on the facts and circumstances that are proven in the case could you render a verdict of either guilty or not guilty depending on whether or not you think the State has met its burden of proof?

A Well, I would say guilty.

Q How do you know? Don't you have to listen to the evidence first?

A Yeah. I would have to listen to the evidence.

Q You have to listen to the evidence. If you don't think the State has proven somebody guilty, would you find them guilty anyway?

A Well, no.

Q You would have to listen to the evidence?

A Yes.

Q That is all I want to know. If you sat as a juror in a criminal case, in a murder case, would you be able to listen to the evidence and in light of the law as I give it to you find the defendant either guilty or not guilty depending on whether or not you think the State has met is burden of proof?

A Yes, I would have to listen to evidence.

Q If in a murder case such as this the jury found the defendant guilty and you move into the penalty phase, we're going to talk a little bit about that. Let me tell you what aggravating circumstances and mitigating circumstances are.

Aggravating circumstances are facts, incidents or details of an occurrence that the State of South Carolina has declared to make worse or to aggravate the crime of murder. In other words, aggravating circumstances when accompanying a murder increase the enormity of or add to the injury of a murder.

Mitigating circumstances, on the other hand, are facts or details or incidents of an occurrence, details of an occurrence that the State has declared to reduce the severity of a crime of murder. They may be considered as extenuating or as reducing the degree of moral culpability

or responsibility.

If you were a juror in the sentencing phase of a death penalty case such as this, could you, depending on the particular facts and circumstances of the case including the consideration of aggravating and mitigating circumstances, in light of the law as I give it to you and if you had the option of either a life sentence or the death penalty, could you vote for a life sentence?

A Yes.

Q Could you vote to impose the death penalty?

A Yes.

Q If you were sequestered as a member of the jury and not allowed to go home to your family for five or six days and put up in a nice hotel and taken care of, would that impose a terrible burden on you?

A No, sir.

Q Have you had a chance to go over the witness list that I gave you?

A Yes.

Q Do you know anybody or are you related to anybody on that list?

A I am not related to anybody on that list. And I don't think I know too many people on there.

Q If you do know somebody, I need to know who it is.

A I don't know anybody.

Q Have you had a chance to go over it in detail and read each name on the list?

A Yes.

Q You don't know anybody?

A No.

Q Do you know of any reason why you can't give both the State and the defendant fair and impartial trial?

A No.

Q Thank you, ma'am. I'm going to let the lawyers ask you some questions then I may come back and ask you some more questions myself.

THE COURT: Mr. Brennan.

EXAMINATION

BY MR. BRENNAN:

Q Ms. Thompson, my name is Doug Brennan. I'm an attorney here in Spartanburg. I'm working with Mr. Bartosh and Ms. Quimby of the Public Defender's Office to defend Mr. Lindsey. Thank you for your time today.

Ma'am, let's suppose for just a moment that we get into a sentencing phase in this case. That means that all twelve jurors including the two alternates, as well as the two alternates, listened to the evidence and you are deliberating. And eleven people have voted or decided that the death penalty is proper, but you believe otherwise.

You believe that a sentence of life is proper. If those eleven people are saying death, can you stand your ground? Can you stand your convictions and say no, life is proper?

A For right now, I would say I don't know because the case hasn't started.

Q All right. If those eleven people tried to convince you to vote the other way, could you stand your ground and stay with your vote or your position of life in prison?

A Yes.

Q Okay. All right. Based on your own experiences, do you have an opinion as to the death penalty?

A In certain cases, if they, you know, you know, in the jury room or punishment.

Q Let me -- there are certain people that in a trial, a capital trial who will always vote for the death penalty. And there are certain people who will always vote for a life penalty. And then there are some that don't know which way they will vote. Which one of those categories do you fit into?

A I would say life.

Q You would say life. But if the facts supported it, could you vote for death?

A Yes.

Q All right. Now, your opinions as to the death

penalty, are they based on your experiences in life? Are they based on your religious views? What gave you or what helped you create that opinion as to the death penalty?

A Well, I would say my religion.

Q Ma'am, do you know anything about this case?

A No, sir.

Q Have you ever seen Marion Lindsey before?

A No, I don't know him.

Q Okay. One second.

MR. BRENNAN: Nothing further. Thank you, Your Honor.

Thank you, ma'am.

EXAMINATION

BY MR. WILLINGHAM:

Q Ms. Thompson, my name is Donnie Willingham. This is Barry Barnett. We will be prosecuting this case along with Solicitor Gowdy. I want you to understand there are no right answers, no wrong answers.

A Right.

Q Only your answers. Okay? I think I understood when you were talking to Mr. Brennan, when you are given a choice between life or death, you told him you would go with life?

A Yes.

Q You understand you will never be required to

impose the death penalty?

A No.

Q The judge will not tell you that you have to impose the death penalty. You understand?

A Yes.

Q Other jurors can't tell you you've got to impose the death penalty. There's always a choice between life without parole and death. You understand?

A Yes.

Q As I understood you correctly, you told me that -- you told me and you told Mr. Brennan and you told me just now that given the choice between the two, you would always go with life?

A Yes, that's what I told myself. It depends on the case and the facts on whether the case is a life or death penalty.

Q I understand. You come from a religion. I see that you go to Metropolitan AME Zion Church. Is that where you --

A Yes.

Q All right. And you think the life sentence is probably more appropriate?

A Like I say, it depends on the case or the punishment of the case.

Q I understand. I think I understand.

A It's about justice.

Q Yes, ma'am. That's what we're about here this week.

MR. WILLINGHAM: Beg the Court's indulgence.

BY MR. WILLINGHAM:

Q I may be accused of beating a dead horse. And you may want me to sit down. But I'm want to ask you one more time. There are three types of jurors. There is one type of juror that says when given a choice between life or death, I'm always choosing life.

Another juror that says when given the choice between life and death, I am always choosing death. And there is a third type of juror that says between life and death, I'm going to choose either one. If I understood you correctly, you told Mr. Brennan and you told me that you fit in that first category.

A Yes, I said it depends on the case, the killing or depending on what is the punishment.

Q Ms. Thompson, could you ever see, and then again there's no right or wrong answer. Is there ever a situation where you could see yourself actually imposing the death sentence?

A The death sentence? Well, like I said, it depends on the case.

Q Ms. Thompson, I understand that and I'm not

asking if you could consider the death penalty. I'm asking if you could take it a step further and actually impose it as a juror?

A Yes.

Q There is a form that has to be signed by every juror in order for a death verdict to be granted. With your signature, a death sentence is going to be carried out. You understand?

A Yes.

Q Could you put your name for all the whole world to see on that death verdict?

A Like I said, it depends on, I haven't heard the case.

Q And I understand that and I can't tell you at this point about the case. But I'm just asking you in general terms, can you ever really realistically see yourself imposing the death penalty?

A For right now, no. I have to sit on the jury to review and see the case.

Q Ms. Thompson, I understand that and I appreciate it. And it's hard for us to ask questions in a vacuum. It's hard for you to answer questions in a vacuum. But if I wait until you hear all the evidence and then you decide that there is never a time that I would impose the death penalty, it's too late for me to ask you about that.

A I know.

Q If you can't, that's fine.

A Uh-huh (affirmative).

Q But if you can, I need to know about that. Do you think you could impose a death penalty?

A Not right now.

THE COURT: Let me ask you a few questions, Ms. Thompson. Now, we realize that you haven't heard the case yet.

MS. THOMPSON: Yeah, that's true.

THE COURT: The lawyer's are not asking you would you impose the death penalty in this case. That is not a fair question cause you don't know anything about it yet.

MS. THOMPSON: Sure don't.

THE COURT: We're not asking you what's going to be your verdict in this case. We're just asking you is there a case that you could sit on a jury and look at it and say this is bad and this is bad enough for the death penalty. Could you get to that point? Could you imagine a case where you could impose the death penalty?

MS. THOMPSON: Yes. Like you say, this case is determined by the citizens that hear about the case.

THE COURT: Yeah.

MS. THOMPSON: Only the jury can hear about that. Right now, I can't.

THE COURT: We're not asking you to do it right now. But let me ask you another way. I think you answered it. I'm satisfied with your answer. Let me ask you a different way. A juror who is always going to impose a life sentence is not qualified to serve as a juror in this case. Are you the kind of juror who is always going to look at a case and say, no, this is bad but I'm not going to consider the death penalty. I'm going to impose a life sentence. Are you that kind of juror?

MS. THOMPSON: Well, like I said, for right now, yes.

THE COURT: Ma'am?

MS. THOMPSON: Yes, for right now.

THE COURT: Now I'm not talking about this case. When you think generally about the concept of the death penalty, are you opposed to the death penalty?

MS. THOMPSON: No, sir.

THE COURT: Ma'am?

MS. THOMPSON: No.

THE COURT: Do you support it?

MS. THOMPSON: If it is a bad case, you know, if it is needed for the death penalty.

THE COURT: All right.

MS. THOMPSON: I will consider it.

THE COURT: If you consider it and if you decide that it was appropriate, if, if you did that, if in this case or in any case you got to the point where you had decided the death penalty was appropriate, could you vote to impose the death penalty?

MS. THOMPSON: Yes, in some cases.

THE COURT: Let me ask you to step out in the hall for just a second and we will get back with you.

MS. THOMPSON: Thank you, sir.

(WHEREUPON, Ms. Thompson exits at approximately 10:57 a.m.)

THE COURT: Any objections?

MR. BARTOSH: No, sir. I think her responses to your questions indicate that she is qualified.

MR. WILLINGHAM: Judge, I can't get over the fact that she answered Mr. Brennan's questions and my questions that she would always choose life over death. I don't think she is qualified.

THE COURT: I don't think that is what her answer was. My initial impression about this juror is that she was open-minded and willing to consider both the life sentence and the death penalty. It is

my very clear impression that when you all asked her those questions, she was thinking that y'all were asking her what was going to be her verdict in this case. Her answer to you was, I have not heard the case yet, so I am not going to impose the death penalty because I have not heard the case.

I think she cleared that up when I asked her the follow-up questions. I am not sure that maybe she is not the sharpest juror in the pool. I hate to say that, but I think it is important that I say that in order to clarify my ruling. I don't think she understood the two questions that she answered when she said, No, I can't impose the death penalty. I think she thought y'all were asking her what was going to be her verdict in this case. So I think she is qualified.

Bring her in.

(WHEREUPON, Ms. Thompson enters at approximately 10:58 a.m.)

THE COURT: Ms. Thompson, I find that you are qualified to serve as a juror in this case. We are going to let you go now but we will be back with you in a couple of days. Starting at about midmorning to late morning tomorrow, I want you to check the telephone number that you were given. There will be

a recording on there. When we get close to needing you, we will put on the recording when we think you are going to need to come back in.

MS. THOMPSON: All right.

THE COURT: From now until then, do not read the newspaper about this case. Don't watch any TV news. Don't talk to anybody about this case. Don't allow anybody to talk to you about this case.

MS. THOMPSON: All right.

THE COURT: Can you do that?

MS. THOMPSON: Yes, sir.

THE COURT: Okay. Now, ma'am, that is very important. And I, of course, am saying that to every juror.

MS. THOMPSON: Yeah. I understand.

THE COURT: And when you come back, I'm going to ask you whether or not you have been able to do that. I am going to expect that you are going to say yes, I have not learned, I mean, no, I have not learned anything about this case, I have not talked to anybody about this case. Okay?

MS. THOMPSON: All right. Yes, sir.

THE COURT: We may sequester the juror. You might think about getting some things together that will last you for five or six days if that's what I

do. Okay.

MS. THOMPSON: All right. Thank you.

THE COURT: Thank you, Ms. Thompson. We will see you in a few days.

MS. THOMPSON: All right. Bye.

(WHEREUPON, Tommy Brown, Juror number 35, enters at approximately 10:40 a.m.)

TOMMY BROWN

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Brown?

A Yes, sir.

Q Good morning.

A Good morning.

Q You remember that you're still under oath from yesterday?

A Yes, sir.

Q Now, Mr. Brown, since you left us yesterday has anyone talked to you about this case or have you talked to anybody about the case?

A No, sir.

Q Have you learned anything about the case from the news or TV or the newspaper?

A No, sir.

Q We're going to ask you some questions that we don't intend to impose on your privacy. But we do need to ask these questions. Now there are not any right or wrong answers to these questions. But we just want you to be open and honest with us and tell us how you feel and what you think.

Some of these questions are going to relate to the penalty phase or the possibility of the penalty phase. That does not mean we're going to get there. That does not mean anything about this defendant. That just means that because we might get there, we need to know how you think and how you feel. If you are a juror in a criminal case, can you accept and apply the law as I give it to you and render a verdict based solely on the testimony and the evidence that you hear in this courtroom?

A Yes, sir.

Q Now you understand in a criminal case, the State has the burden of proof?

A Yes, sir.

Q And must prove the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q In a murder case such as this, depending on the facts and circumstances that are proven in the courtroom and in light of the law as I give it to you, could you find

a defendant either guilty or not guilty depending on whether or not you think the State has met its burden of proof?

A Yes, sir.

Q If the jury were to find the defendant guilty and we were to move into the penalty phase, let me tell you a few things and then I'm going to ask you some questions. We going to talk about aggravating circumstances and mitigating circumstances. Aggravating circumstances are facts or incidents or details of an occurrence that the State of South Carolina has deemed to make worse or to aggravate the crime of murder. Aggravating circumstances when accompanying a murder increase the enormity or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are facts or incidents or details of an occurrence which the State of South Carolina has declared to reduce the severity of the crime of murder. Mitigating circumstances may be considered as extenuating or as reducing the degree of moral culpability or responsibility.

If you are a juror in the sentencing phase of a death penalty trial such as this, could you, based on the facts and circumstances that are proven and considering the existence of aggravating or mitigating circumstances, considering the law as I give it to you and if you had the

option of imposing a life sentence or the death penalty, could you vote to impose a life sentence?

A Yes, sir.

Q Could you vote to impose the death penalty?

A Honestly, no, sir.

Q You could not?

A I don't believe in the death penalty.

Q You don't believe in death penalty?

A No, sir.

Q Let me ask you this question just to clarify and follow up on what you said. We look at three types of jurors. One juror is somebody who is going to come in and in every case no matter what they are going to impose the death penalty for the crime of murder. Another type of juror, in every case no matter what, they're going to impose the life sentence for the crime of murder.

The third type of juror is one that will come and listen to the case and listen to the facts and circumstances and be open open-minded as to whether or not that a life sentence or whether the death penalty should be imposed. Are you in one of those three categories?

A Number three.

Q Number three?

A If the trial is over and I understand that what happened should not have happened and there was another way

to do it, then yes, I could do it. If it was self-defense, that is one thing.

Q Let me continue to kind of try to follow-up on that. Self-defense is a defense.

A Yes, sir.

Q If self-defense is an issue, if -- let me back up a little bit farther. If self-defense becomes an issue in the case, then the State has the burden of disproving self-defense. If the State fails to disprove self-defense, then you would find the defendant not guilty. And you would never get to the sentencing phase of the case. Does that clear up a little bit?

A Yes, sir.

Q If you get to the sentencing phase of the case that means that self-defense has been disproven by the State beyond a reasonable doubt. So, now you are in the sentencing phase of the case and I am asking you if you are one of the three types of jurors. Are you the type juror who will always impose the death penalty? Are you type juror who would never impose the death penalty and always impose a life sentence? Or are you the type juror that will consider the facts and circumstances that are proven and be open-minded as to what the sentence should be?

A I would be open-minded.

Q A minute ago you told me you don't believe in the

death penalty.

A I don't believe in it. But if I go down the street and I kill you for no reason --

Q Well, you're going to get the death penalty.

A Or if it was -- that was one thing. If me and you got into an argument and it was an accident, that's something else. I would have to see what the evidence is. I can't say that he should spend life in prison or he should get the death penalty one way or the other until I find out what exactly did happen.

Q All right. Let me ask you to step out in the hall for just a second. We will get right back with you.

A Okay.

(WHEREUPON, Mr. Brown exits at approximately 11:07 a.m.)

THE COURT: All right. I am listening.

MR. BARNETT: The first thing he said is I don't believe in the death penalty. Definitely, he's a number two juror. He said he would give life under any circumstances. The other thing that's got me concerned is he just brings up out the blue self-defense and all these other issues and we have not gotten in the case yet. He has already started talking about different things.

THE COURT: I guess the reason I took a break

was to see if there was a motion to disqualify him at this point.

MR. BARNETT: There is.

THE COURT: Is there a response?

MR. BRENNAN: I believe he was confused by the questions. I wrote down his quote I can't vote for the death penalty. But when given an opportunity explain, he said would listen to the facts and his opinion towards the death penalty would then be based on the facts of the case.

THE COURT: Okay. That is enough. I am going to bring him back in and let the defense voir dire them as they're entitled to do under the statute. Then I will let the State respond. And if necessary, I will follow-up and then I will rule.

Bring him in.

(WHEREUPON, Mr. Brown enters at approximately 11:08 a.m.)

BY THE COURT:

Q Mr. Brown, let me ask you a couple more questions then I'm going to turn it over to the lawyers and let them ask you some questions. If you were sequestered as a member of the jury and required to stay with us and not allowed to go home to your family for four or five days, would that impose a terrible burden on you?

A No, sir.

Q Have you had a chance to go over the witness list that I gave you?

A Yes, sir.

Q Did you get to look at every name on it?

A Yes, sir.

Q Do you know anybody or are you related to anybody on that list?

A The only name that stuck out was number one. I don't know if that's the same person or not. But it if is, I went to school with him about 20 years ago.

Q Jason Yown?

A Yown.

Q Yown. In the last 20 years, have you had much interaction with -- that's Investigator Yown right there.

A I am not even sure to tell you the truth.

Q All right.

A If I could ask him one question.

Q No, you can not ask him any questions. When do you think you went to school with him?

A In the mid-80's.

Q Where?

A Woodruff High School.

THE COURT: You went to school with him?

INVESTIGATOR YOWN: I did go with him, sir.

THE COURT: Did when did you finish?

INVESTIGATOR YOWN: '88.

BY THE COURT:

Q Is that about when you were there?

A Yes, sir.

Q All right. So let's assume that this is the same Jason Yown that you went to school with. Have you had any interaction with him over the last 16 years?

A This is actually the first time that I've seen him.

Q Would the fact that he might be a witness in this case interfere in any way with either your willingness or your ability to be a fair and impartial juror?

A No, sir.

Q Okay. All right.

THE COURT: Mr. Bartosh.

Mr. Brennan. Excuse me.

EXAMINATION

BY MR. BRENNAN:

Q Mr. Brown, my name is Doug Brennan. I'm an attorney here in Spartanburg. And I'm working with Mr. Bartosh and Ms. Quimby. And we have the opportunity to defend Marion Lindsey in this matter. I have your questionnaire. Then I have some notes from the questions that you answered or responded to yesterday.

On your questionnaire, you said that you had no experience with crime. In other words, you have not witnessed a crime or been a victim of a crime. But then yesterday when asked if you or your family have ever been arrested, charged, convicted or accused of CDV, pointing a gun, assault and battery or assault and battery with a gun, you stood up?

A Yes, sir.

Q Would you clarify that for me please?

A When I filled out that questionnaire, I wasn't sure what kind of crimes you were talking about.

Q Okay. For clarification, was it you that was arrested, charge, convicted?

A No, sir.

Q Who was it?

A My wife.

Q Was she convicted of a crime?

A She was charged. But the way it turned out the judge give her an opportunity to go through pretrial or go to a marriage counselor with anger management.

Q Was that criminal domestic violence?

A Yes, sir.

Q Were you the victim?

A Yes, sir.

Q The other question that was asked was if you or

any other family member been arrested by the Spartanburg County Sheriff's Department or the Inman Police Department. Was your wife -- was the answer to that question also the same as your answer to the question about a crime?

A Yes.

Q Have you ever been arrested by the Spartanburg County Sheriff's Department?

A No, sir.

Q Or the Inman Police Department?

A No.

Q Okay. And then the victim, you would have been the victim to the CDV?

A Yes, sir.

Q So all of them would have been associated with that one incident, that one criminal domestic violence?

A Yes.

Q Okay. If criminal domestic violence were to become an issue in this case, would that have an affect on your ultimate decision in guilt and in the penalty phase?

A No, sir.

Q You are able to set aside the fact that you are a victim of criminal domestic violence and render a verdict and a decision in the guilty phase solely on the evidence presented from the witness stand?

A Yes, sir.

Q Okay. All right. The judge has already asked you the question about the three types of jurors. If you were to sit on this jury -- and let's for a moment assume we are in the sentencing phase and the guilt has already been determined. If there were eleven jurors in the jury room that had made a decision and those eleven people believed that the death sentence was the proper sentence but you number twelve thought that life was the proper sentence. Could you stand your ground and maintain that decision for life in opposition to those other eleven jurors or would you be swayed by those eleven jurors?

A I would not be swayed.

Q You said that you were opposed to the death sentence?

A Yes, sir.

Q But then upon some further questioning by the Judge, you kind of backed off of that. Are you able to listen to the facts in this case and render a decision if we should get to the sentencing phase as to life in prison or death?

A According to what the evidence is.

Q Are you capable if the evidence convinces you to issue a sentence of death?

A Yes.

MR. BRENNAN: I have nothing further, Your

Honor.

MR. BARNETT: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q Mr. Brown, my name is Barry Barnett. Along with Donnie Willingham and Trey Gowdy, we will be prosecuting this case.

A Yes, sir.

Q You, what makes the basis of your belief that you don't favor the death penalty? What is your basis for that?

A If somebody takes somebody's life, to me, that is a sin. What gives us -- if it was you and you were laying on the table and I am the executioner which nobody who knows who that is and I am the one who pulls the switch. Me killing you, what difference is that from you killing somebody else? It is still murder any way it goes.

Q So is it a religious belief?

A Yes.

Q What church do you go to, sir?

A I don't currently attend one.

Q Where you were a child, where did you go?

A I was raised a Baptist.

Q You believe that the executioner taking the life of any individual, that is also a sin?

A I believe that is something that, it is a job they have to do and something they would have to live with. I would not personally want the job.

Q Under what situation do you feel that the death penalty is appropriate?

A Something like 9/11. Innocent people died. And the ones who are responsible for it, they deserve the same thing.

Q But just one on one, you understand in any situation, these cases, death is not automatic if you are found guilty of murder. Life without parole is always a possibility.

A Yes.

Q You understand that? In this case, that would always be a possibility or any type case like this.

A (Nods head affirmatively.)

Q And you realize if you had that option that he could serve life without parole for the rest of his life, could you ever give a death sentence?

A Yes, sir, if what the evidence in the case says, then I can do it.

Q The only evidence you compare it to is the 9/11 situation?

A On what trials I heard of in the past, which I never been on a jury so I'm not sure exactly how all of it works.

Q You realize that from Mr. Brennan's questions and so forth, criminal domestic violence is going to be discussed in this trial?

A Yes, sir.

Q I know you had some family history. Would that affect you one way or another?

A No, sir, because I know how mine turned out.

Q You understand that other cases don't always turn out the way your case had?

A Exactly.

Q Is your belief against the death penalty so strong that you know that life without parole being an option that you could ever vote for death?

A I could.

Q And I noticed in the answering the Judge's questions, you talked about self-defense or whatever.

A Yes, sir.

Q What made you bring that up from the situation?

A If I am standing on a street and somebody drives by and shoots me, that is one thing. If I am in a fight with somebody and I accidently get stabbed and killed or accidentally get shot, that would be a different story.

But if is just that I pull out a gun and shoot you, that is one thing.

Q By one thing, what do you mean, sir?

A That would be murder.

Q What do you think an appropriate sentence would be for murder?

A That kind of murder, death.

Q So you believe that if you were on a jury you would consider the facts of the case and give the appropriate sentence?

A Exactly. I would have to know what the facts are and consider the evidence.

MR. BARNETT: One moment, Your Honor, please.

BY MR. BARNETT:

Q You realize when you are on a jury and they decide to sentence him, you have to sign the sentencing form. And if eleven people sign the form for death and you are the last person that would sign that form, knowing what you beliefs are and everything, could you sign that form?

A If the evidence says, if I see the evidence and I see what the prosecution has to say and I believe that you have proved your case, yes, I could.

Q Do you believe that if you knew your signature was the last one to sign that form and that is the last

thing that stood between the execution of putting him on the table and so forth, would you sign it?

A After I saw the evidence, I would have to go with what my heart says and what not what rest of the jury says.

Q Let me ask you this question, do you think it would be sin if you was the last person to sign that form knowing it will be on your conscious to sign that form?

MR. BRENNAN: I object to that, Your Honor. I don't believe that was a proper question.

THE COURT: Mr. Brown, let me get you to step out in the hall for just one second please.

MR. BROWN: Yes, sir.

(WHEREUPON, Mr. Brown exits at approximately 11:19 a.m.)

THE COURT: Let me tell you how I see where we are. And then you tell me what you say in response to that. He is the one who brought up, the witness, the juror is the one who brought up whether or not it was a sin. He said if the man is laying there on the executioner table and it is time to pull the switch that it is a sin for the executioner to pull the switch. He then said but that is his job. That's what he's got to do.

What Mr. Barnett is trying to illustrate, I believe, and to get this witness, this juror to

acknowledge is that if he is the last person to pull the switch, I mean, to sign the form, he has to sign the form. So it would actually be him who is requiring the executioner to pull the switch. And so he is the one who is making the decision to terminate the life of the defendant. And so I think that it's, I mean, how can he not ask that?

MR. BARTOSH: I understood him to say is that he's saying if he were to sign that form it would be a sin for you.

THE COURT: That is what he said. Hold on a second. Your objection is based on the question being about his religious beliefs.

MR. BARTOSH: Yes, sir. I mean in theological terms. Here he is qualified on the jury and they're saying if you sign this form would you consider that you are committing a sin by signing the form.

THE COURT: Here is my ruling. I am going to let the question go. It is clear that it might, I might look at differently if Mr. Barnett was the one who brought up the religious issue. But the juror is the one who brought it up. And Mr. Barnett I believe is -- just because the juror says I have strong religious beliefs and they would affect my view on executing somebody who committed a murder.

Mr. Barnett is not then prohibited simply because the subject brought up by the juror is religion from trying to explore that. That is all he is trying to do right now is explore that. I think that it would be improper. On the other hand, you know, let's imagine a juror who said my religious views are that it is a sin to not execute someone who committed a murder. Would I be prohibited from allowing you to explore how that affects his ability to follow the law? No. Overruled.

Bring in the jury.

If you have some authority you want me to give me, let me have it now.

MR. BARTOSH: Your Honor, I've been handed this. It says a capital defendant --

THE COURT: Wait. Hold on just a second.

Where is my book?

Page what?

MR. BARTOSH: 6.

THE COURT: 6.

THE COURT: 14. Hold on. Which paragraph?

MR. BARTOSH: Second.

THE COURT: That is not a religious question. That is a hypothetical question. Overruled.

MR. BARNETT: Thank you, Your Honor.

(WHEREUPON, Mr. Brown enters at approximately 11:22 a.m.)

BY MR. BARNETT:

Q Mr. Brown, do you remember the question or do you need me to repeat the question?

A Would you repeat it.

Q Based on your beliefs and everything, if you came down and there was eleven jurors that signed for death and you would be the last person to sign the sentencing sheet, based on what you said about the executioner, do you feel that it would be a sin if you signed as the 12th juror knowing that the juror determines sentencing not the Judge?

A I would not have any problem with it after I saw all the evidence.

Q You understand that the jurors, when we are going through the juror selection, can you be 100 percent sure that you would give the State as well as the defendant a fair trial based off your beliefs that you would you consider death as well as life? Are you 100 percent sure that you can do that based off your beliefs?

A Yes, sir. I believe that church and state should be separate. What happens here, happens here and stays inside this room. My beliefs have to be left at the door. I have to look at the facts.

Q And you would listen to the Judge?

A 100 percent.

Q You would not base your beliefs in any way?

A I would leave them at the front door. I would have to come in here with an open mind.

MR. BARNETT: One moment, Your Honor, please.

BY MR. BARNETT:

Q What is the difference of you as the 12th juror and the executioner?

A He's following -- he is doing his job. He is not the one that has to decide whether the person is innocent or guilty. He just knows what he has to do.

Q Wouldn't the 12th juror's decision be more important than executioner's decision?

A It would be more important because that one person has to decide life or death. The executioner knows his job. That is what he is paid to do.

Q Could you override your belief if you were the 12th juror?

A Yes, I could.

Q Thank you, Mr. Brown.

MR. BRENNAN: Your Honor, can I ask one follow-up question?

EXAMINATION

BY MR. BRENNAN:

Q Mr. Brown, based upon one of Mr. Barnett's

questions, you said if somebody drove up and shot somebody, that is murder and the death penalty's okay in that situation?

A Yes, sir.

Q My question is, is the death penalty appropriate for any intentional killing?

A According to what the circumstances are. Every trial has to be different.

Q Okay. If someone drives up and shoots somebody and you are on that jury, is the death penalty the only sentence that you would consider?

A No, sir.

MR. BRENNAN: Nothing further. Thank you.

THE COURT: Mr. Brown, let me ask you to step back out in the hall for a minute please.

(WHEREUPON, Mr. Brown exits at approximately 11:26 a.m.)

THE COURT: Mr. Brennan.

MR. BRENNAN: I think he is qualified, Your Honor.

MR. BARNETT: I would argue he is not qualified. I originally argued based on his beliefs. The first thing he said was he did not believe the death penalty. I know we went through several questions. He went through his religious beliefs.

He went through saying he could separate the two or whatever. I still don't think he knows what his position is on the death penalty from the standpoint after we kept talking with him. I think that his answers are inconsistent with his other answers. I feel like he is not qualified under our scenario.

THE COURT: I can remember going back over the last several weeks and having a great deal of fun reading all of the cases that could get my hands on where appellate courts have published decisions about the trial judge's ruling to either qualify or to disqualify a juror based on that juror's views on the death penalty. I saw recounted in those opinions some right confusing accounts of what the jurors views were.

And I sort of looked forward to this case and thought well, I'm sure I'm going to see some confusing accounts of what the jurors opinions are too. I never imagined I could have something this confusing. The man starts off and just adamantly, I mean, his first answer was adamant that he was opposed to the death penalty. I really started to be quiet right then. And I probably should have. I probably should have just hushed and let y'all ask whatever questions you wanted to.

He remained adamant. He went even so far as to say that it would be a sin for the executioner to perform the ministerial duty of flipping the switch. To say those two things and then to turn around in response to a question that one of you asked about some sort of drive-by shooting to without any hesitation, no details given about the case, oh, I wrote it down. That kind of murder, death. He said it like that. He was positive the death penalty.

There was no real description. How do you deal with a juror like that? That is that kind of juror that I think the Fourth Circuit struggled with in the US versus Tippin case where frankly I'm a little bit surprised that both of you are not asking me to have him disqualified. I think it was close to it. You almost asked me to have him disqualified. But, uh, --

MR. BRENNAN: Your Honor, may I change my position and state that -- and join in the State's disqualification motion?

THE COURT: Bring him in.

I was just about to rule that. I am convinced that he is not qualified and appreciate you --

(WHEREUPON, Mr. Brown enters at approximately 11:30 a.m.)

THE COURT: Mr. Brown, we appreciate you

coming in here and giving us such candid responses to our questions. We are not going to need you anymore in this case. So you are free to go.

MR. BROWN: Okay. Thank you.

(WHEREUPON, Mr. Brown exits at approximately 11:31 a.m.)

(WHEREUPON, James Gedroic, Juror number 100, enters at approximately 11:31 a.m.)

JAMES GEDROIC

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q I am going to first make sure I am pronouncing your name correctly. So if I'm even slightly off, please correct me. Is it Gedroic?

A Yes, that is correct.

Q All right. Gedroic. So the "O" just kind of disappears into the "I".

A Disappears.

Q Okay. Well, Mr. Gedroic, good morning.

A Good morning.

Q And you recall from yesterday that you are under oath?

A Yes, sir.

Q Since yesterday have you talked to anybody about

this case or learned anything about this case from the TV or the news or anything else?

A No, sir.

Q We're going to ask you some questions about the case. We don't intend to invade your privacy. These are questions that we have to ask. We know that there are no right answers or no wrong answers. We just want you to be open and honest with us and tell us how you are think and how you feel.

We going to talk about the penalty phase. The fact that we're talking about the penalty phase does not mean anything about this case. It is just that because we might get there, we need to know how you think and how you feel. If you were a juror in a criminal case, could you accept and apply the law as I gave it to you and render a verdict based solely on the testimony and evidence that you hear in this courtroom in light of the law as I give it to you?

A Yes, sir.

Q You understand that in a criminal case, the State has the burden of proof?

A Yes.

Q And they must prove the defendant guilty beyond a reasonable doubt?

A Yes.

Q Could you, in a murder case such as this, depending on the facts and circumstances that are proven and in light of the law as I would give it to you, could you find the defendant either guilty or not guilty depending on your view of whether or not the State has proven him guilty?

A Yes, sir.

Q Now, we're going to talk a little bit about sentencing. I'm going to tell you what aggravating circumstances and mitigating circumstances are. Aggravating circumstances are facts or incidents or details of an occurrence which the State has decided make worse or aggravate the crime of murder. Aggravating circumstances when accompanying a murder increase the enormity of the crime or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are facts or incidents or details of an occurrence which the State has deemed to reduce the severity of the crime of murder. And they may be considered to extenuate or reduce the decree of culpability or responsibility.

If you were a juror in the sentencing phase of a death penalty case, could you based on the particular facts and circumstances that are proven including the consideration of aggravating and mitigating circumstances in light of the law as I will give it to you and if you had an option

between a life sentence and the death penalty, could you vote to impose a life sentence?

A Yes.

Q Could you vote to impose the death penalty?

A Yes.

Q If you was sequestered as a member of the jury and if you were required to stay in a hotel with us and not allowed to go home for five or six days, would that impose a terrible burden on you?

A That question which you mentioned yesterday, I thought over. It possibly would impose a burden on my business. Not on me personally, but on my business which is me personally.

Q What is your business?

A I am a builder.

Q Really the sequestration is only going to affect where you are at night. If you are on the jury, you're going to be here during the day any way. You're not going to be going out building houses at night?

A If I can still correspond at night to the people that work for me, that's fine. If I'm sequestered to where I can't talk to anybody --

Q It's not that you cannot talk to anybody. If you have a particular issue such as needing to correspond with your employees, we can work that out. As long as you

are not talking about this case. If we sequester the jury, there will be somebody there listening to make sure you are not talking about this case.

A Right. I understand.

Q We would not be able to let you talk for two or three hours or anything like that. But if you need to check in with them, give some direction about where to go, you can do that. So you can handle being sequestered?

A Yes.

Q Have you had a chance to go over that witness list that I gave you?

A Yes, I did.

Q Did you get a chance to look at every name on the list?

A Every name, yes.

Q Do you know anybody or are you related to anybody on that list?

A No, sir.

Q Do you know of any reason why you can not be a fair and impartial juror to both the State and the defendant in this case?

A No.

Q I'm going to let the lawyers ask you some questions now. I may come back and ask you some questions in a minute.

EXAMINATION

BY MR. BARTOSH:

Q Mr. Gedroic, I'm Mike Bartosh. Mr. Brennan, Ms. Quimby and me are representing Mr. Lindsey in -- sorry. Just a few questions I would like to ask you. First, on the questionnaire form that you filled out and also on some things that you said.

A Yes, sir.

Q Now yesterday you said that you knew someone in our office?

A Yes.

Q Who is that?

A Mr. Brennan.

Q How long have you known Doug?

A Going back probably several years.

Q Do you have close working relation with him?

A No. Friendship relationship. His father had a business and I knew him then.

Q Would the fact that you know him would that influence your ability to favor him?

A No.

Q Or our side over the other side?

A No, sir.

Q Also you indicated that you had heard about the case that you are here on?

A The question was asked yesterday. I read the Spartanburg Herald previously. And vaguely I recall this case. Vaguely the name. This was recent. Probably a week or so ago.

Q Okay. So the last time you heard anything about this case was about a week ago.

A Yes, sir.

Q Do you recall what it was that you read?

A Just that a trial was up and coming. And that was it really. I didn't really go into a whole lot of detail.

Q Nothing about the facts of the case itself?

A No, sir.

Q Is it fair to say you don't know anything about the facts?

A That's fair to say.

Q Other than Mr. Lindsey is charged with murder?

A Yes, sir.

Q Okay. Now, Mr. Gedroic, the judge has already gone in to explain what we are here about. I'm going to try to reiterate it. But in these kind of cases, the trial is in two parts. The first part, of course, is we, it would be like a regular trial. The jury would sit in that box. And the State would bring the evidence against Mr. Lindsey.

If, at the end of the case, if all twelve members of the jury believe that the State had proven its case against Mr. Lindsey to each and every one of the jurors beyond a reasonable doubt, then he would be found guilty. We would move on to the second phase. If they had not done it, then we would be, we would all go home.

Now, in the second phase, if we go to the second phase. That is just saying if we go to the second phase. At that time, what the State is going to do is they're going to present some aggravating circumstances. They are relying on an aggravating circumstance which they feel or they allege makes this murder worse. What they are going to be doing is they are going to be introducing before the jury other aggravators, other facts about Mr. Lindsey which they hope to convince twelve folks that he deserves the death penalty. They are asking them to give Mr. Lindsey the death penalty.

Of course, what we are going to be doing is we are going to be trying to find, to bring to the jury mitigating circumstances, things about Mr. Lindsey and about Mr. Lindsey's life that we feel tend to mitigate the severity of what he is charged with. Now, do you believe that during that period of time that you will be able to keep an open mind and listen to both sides and their presentation should we reach the sentencing phase? Would you be able

to be fair to both sides and to listen to both sides?

A Yes, sir.

Q All right. Would you have a bias towards the death penalty as opposed to life in prison because as I'm sure as the solicitor is going to tell you, you do not have to give that. Life is always an option. Okay?

A Okay.

Q And of course life now means life without parole. If the jury finds life, Mr. Lindsey will never get out of jail. Would you be able to listen to both side and decide the appropriate sentence based upon what you hear in this courtroom and not upon any bias and not upon any extraneous facts that you may or may not know?

A Yes, sir.

Q Okay. And if after hearing all of the evidence, you believe that life is the appropriate sentence and the other jurors, the other eleven jurors believe that death was the appropriate sentence, you understand it has to be unanimous?

A Yes.

Q Whatever it is, it has to be unanimous. Would you be able to sustain your position on life against the other eleven people?

A I believe I would consider enough to consider all the evidence and make my decision fairly.

Q If you believe that, you will be able to withstand the pressure from the other eleven?

A That's a very hard question.

Q It would be tough.

A It will be a hard question for me. It is hard for me to change my mind once I make up my mind to be honest with you.

Q And on the other hand, if you believe that death was the appropriate punishment and there is a form that every juror has to sign, the sentencing sheet. If you were the 12th person to sign that, would you have a problem with doing that?

A It would be a tough decision but I would not have a tough problem doing that.

Q But if you believe that death was appropriate, you would be able to sign --

A Yes, sir.

Q -- knowing that that was condemning Mr. Lindsey to death?

A Yes, sir.

MR. BARTOSH: That's all I have.

MR. BARNETT: May it please the Court.

EXAMINATION

BY MR. BARNETT:

Q Good morning.

A Good morning.

Q My name is Barry Barnett. Along with me is Donnie Willingham and Trey Gowdy who will be prosecuting the case. I just want to ask you a couple questions. I know Mr. Bartosh asked you about Mr. Brennan. Did you know Mr. Brennan or did you know his father?

A Yes, sir.

Q Or do you know both of them?

A Yes, I know both of them.

Q Is that through your business or personal contact?

A Just personal contact.

Q I see you live in Landrum. Is that right?

A Yes.

Q And you realize Mr. Brennan will be working on this case with the defense table?

A Yes.

Q Would that influence any decision you would make in any way?

A No, sir.

Q Would you base it off the facts that you saw in this case?

A By the facts, yes, sir.

Q And if you determine based on the facts -- life without parole like Mr. Bartosh says is always an option.

Could you fairly listen to both sides and give a sentence it would be appropriate for the crime?

A Yes, sir. I believe I can with no problem.

Q And like Mr. Bartosh was asking you on the sentencing sheet, the jury determines the sentence not the judge. If you felt like death was appropriate, is that the way you would vote?

A Yes, sir.

Q Would you be able to put your signature on the sentencing sheet?

A Yes, sir.

MR. BARNETT: One moment, Your Honor. No further questions.

THE COURT: Mr. Gedroic, let me get you to stand into the hall for just a second please.

(WHEREUPON, Mr. Gedroic exits at approximately 11:46 a.m.)

THE COURT: Any objection

MR. BARTOSH: No, sir.

MR. BARNETT: No, sir.

THE COURT: All right. Bring him back.

(WHEREUPON, Mr. Gedroic enters at approximately 11:46 a.m.)

THE COURT: Mr. Gedroic, I find that you are qualified to serve as a juror in this case. I'm

going to let you go now for a day or so. Start checking with us by calling that 800 number some time about midday tomorrow to find out what our schedule is. You may call and there's nothing on there. But when we get close, we're going to put a message on there to tell you when you need to start thinking about being here.

I may sequester the jury. So bring your, or be ready to bring your clothes and enough of whatever you need to be away for four or five maybe six days. Remember my instructions not to discuss the case with anyone or to allow anyone to discuss it with you. Don't read anything about this case. Don't watch any news reports about this case. Don't read anything about this case. We look forward to seeing you in a couple of days.

MR. GEDROIC: Thank you.

THE COURT: Thank you.

(WHEREUPON, Mr. Gedroic exits at approximately 11:46 a.m.)

THE COURT: Are y'all already?

MR. BARTOSH: Yes, sir.

MR. GOWDY: Yes, sir.

THE COURT: Let's take a short break. This is going to be short break.

(WHEREUPON, a short recess was taken at approximately 11:47 a.m.)

(WHEREUPON, the Court resumed at approximately 12:00 p.m.)

(WHEREUPON, Joann Netherton enters at approximately 12:05 p.m.)

JOANN NETHERTON

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good noon, Mrs. Netherton. How are you?

A I'm fine. Thank you.

Q You remember that you are still under oath from yesterday?

A Yes.

Q Since yesterday when you left, have you talked to anybody about this case or has anybody talked to you about this case?

A (Shakes head negatively.)

Q And you will need to answer out loud.

A No, sir.

Q Have you learned anything about the case either by reading the paper or watching TV or listening to anybody or anything?

A I did not.

Q We are going to ask you some questions now. We don't mean to pry. But we do have to ask you these questions. There aren't any right or wrong answers. We just want you to be open and honest with us and tell us how you feel and how you think.

We're going to talk about the sentencing phase. And the fact that we're talking about the sentencing phase doesn't mean anything except that we might get to the sentencing phase. We need to know how you feel about some of the things that might come up. If you were a juror in a criminal case, could you accept and apply the law as I give it to you and render a verdict based entirely and solely on the testimony and evidence that you hear in the courtroom in light of the law as I give it to you?

A Yes, I could.

Q You realize that the State has the burden of proof in a criminal case. And they must meet that burden of proof beyond a reasonable doubt.

A That's correct.

Q In a murder case as this is, could you, depending on the facts and circumstances that are proven and in light of the law as I give it to you, could you find the defendant either guilty or not guilty depending on whether or not you think the State has proven the defendant guilty?

A (No response.)

Q Could you find the defendant either guilty or not guilty depending on whether or not you think that the State proved him guilty or not guilty?

A Yes, I could.

Q If you were a -- we're going to talk a little bit about sentencing phase. Let me tell you something about aggravating circumstances and mitigating circumstances. Aggravating circumstances are facts, incidents or details of an occurrence that the State has declared to to aggravate the crime of murder. Aggravating circumstances which accompany a murder increase the enormity or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are facts incidents or details of an occurrence in which the General Assembly of the State of South Carolina has declared to reduce the severity of the crime of murder and may be considered as extenuating or as reducing the degree of moral culpability or responsibility.

If you are a juror in a sentencing phase of a death penalty case, could you, depending on the particular facts and circumstances of the case, including the consideration of aggravating and mitigating circumstances in light of the law as I give it to you and realizing that you have the option of either a life sentence or the death penalty for the defendant, could you impose a life sentence?

A Yes, I could.
Q Could you impose death?
A Depending on the circumstances, yes, I could.
Q Now, Ms. Netherton, if I were to sequester the jury and require you to be away from your home and your family for four or five days and put up in a nice hotel downtown here, would that be a terrible burden on you?
A Honestly, at this time, yes, it would.
Q And tell me why that is.
A I have a daughter that is graduating. My heart would not be in it. And I do have something else to say too.
Q Tell me.
A When you said yesterday, and I promise you I read about this a long time ago. I live in Inman. And I live right down the door -- three houses down from the chief of police. And if this is the same story, I don't know because I have not looked at the paper. I have not listened to the news.
Q Let me stop you right there. Let me talk to you about this. Okay? And we're going to come back to that. I appreciate you being honest with us and open with us. That's what we want you to continue to do. If you are put on the jury in this case, your responsibility would be to forget about anything that you might have heard or read

about in the past.

A Okay.

Q Your responsibility would be to make a decision, to render a verdict based solely on the testimony and the evidence that would be presented to you here in this courtroom under my supervision.

A Okay.

Q And you would be required to do that in light of the law as I would give it to you.

A Okay.

Q Now, for some people, that is not possible. They becomes so intertwined in a situation. They have read so much about it. They might have already formed an opinion that they can not let go of. And for those people, we want to know about that because they are not qualified to serve. From your standpoint, would you be able to set aside anything that you might have heard about or read about concerning this case and render a verdict based solely on the testimony and evidence that you hear in this courtroom?

A Yes, I could.

Q All right. Now, let's get back to talking about graduation. Okay. We've got a graduation ceremony Tuesday at 6:00.

A That is correct.

Q So we need a couple of hours to attend that,

right?

A That's right.

Q If I were to, if you get on the jury and I were to tell you I'm going to make sure you make it to that graduation, would that solve the problem?

A It would.

Q Or -- is it just the graduation or are there other things going on that you are concerned about?

A No. There are not other things that I'm concerned about. Just the graduation.

Q And if I were to make you that representation, would that get your heart back in it?

A It would.

Q Would your heart --

A I would be able to focus on it.

Q You would be able to focus?

A (Nods head affirmatively.)

Q You are nodding yes.

A Yes, sir.

Q Okay. Have you been over the witness list that I gave you?

A Uh-huh (affirmative).

Q Have you had a chance to look over each of the names on that list?

A I did.

Q Do you know anybody or are you related to anybody on that list?

A I'm not related to anybody on this list. But I may know just by his face and because they patrol my area so much because I do live right down the road from the chief of police. There's Harvey. I may know Harvey Godfrey. I may have talked to him. I just don't know his name at this point. I may know his face but not personally.

Q Would the fact that he might be a witness in this case or that you might know him, would that interfere in any way with either your willingness or your ability to give both the State and the defendant a fair and impartial trial?

A No.

Q Do you know of any reason why you could not give both the State and the defendant a fair and impartial trial?

A Now, I'm willing to look at evidence from both sides. I can only say that I have at this point based on what I read last year and what I heard say that I have formed an opinion but I don't know all of the evidence that is involved with it. So in my occupation and what I do for a living, it is based on facts and background checks before I make my decision. So I would have to look at both sides

to make sure before.

Q Okay. I'm going to let the lawyers ask you some questions and then I may come back and ask you some after that.

EXAMINATION

BY MR. BARTOSH:

Q Good afternoon, Mrs. Netherton. My name is Mike Bartosh. I represent Marion Lindsey along with Doug Brennan and Karen Quimby. And as the judge said, these are questions that ordinarily you would never be asked. Because of the situation we're in right now, it's important to know certain things to determine whether or not you qualify to sit on a death penalty jury.

A I understand.

Q Okay. Now you understand that this is a two-part process, the first part being just like a regular trial. What would happen would be if you were picked to sit on the jury, you would sit in that jury box. You would listen to the evidence that comes through the witness box there. You would have to decide along with the other eleven jurors whether or not the State has presented sufficient evidence to convince each and every one of you beyond a reasonable doubt of Mr. Lindsey's guilt. Okay?

A Uh-huh (affirmative).

Q If, at the end of that trial, the jury would

decide, all twelve would have to decide that all twelve do not believe that the State has carried its burden, then we would all go home. If, however, the jury decided that the State had carried its burden, then we would move into the second phase of the trial. That phase is called the penalty phase or sentencing phase. In that phase, what the State would attempt to do is gather all the bad things together that Mr. Lindsey has done and present them to you as aggravators to show that he deserves the death penalty.

And of course, what we would do would be to gather up all the mitigating circumstances that happened in Mr. Lindsey's life of things that happened to him as a child, things that happened to him as an adult, traumas in his life. And we would present them to you, to the jury. Then the jury would have to make a decision based upon that evidence. All right?

A (Nods head affirmatively.)

Q Do you believe that you can be fair both to Mr. Lindsey and to the State and be able to listen both to the aggravating circumstances and to the mitigating circumstances and base your decision solely on those factors? Not on some reason to punish somebody. Not on some reason to, because you don't like a person but based solely on the evidence that is presented to you in that proceeding?

A That's what my decision would be based on, solely based on the evidence.

Q Now, you told the judge that you formed an opinion concerning this case. And he's explained to you that you can't have an opinion.

A Okay.

Q All right?

A Uh-huh (affirmative).

Q You are going to have to put all of that aside. The only thing you can use to determine what happened and what your decision should be is based upon what you hear in here today. Not on what somebody told you, not what you read in the newspaper, not what you think is right but things that you have heard from that witness box solely. Nothing else.

A Right.

Q Okay. Now, what is your opinion?

A (No response.)

Q What opinion have you formed about this case?

A Do you want to know what I heard? This is what I heard and this is what I am forming my opinion on. If it's the same thing that happened in Inman, South Carolina, she was going in to the sheriff's office or the police office. And she never made it. He gunned her down.

Q Those are your terms "he gunned her down".

That's how you view it?

A That's based on what I read in the newspaper. Solely what I read in the newspaper a year and a half ago and that was it. I don't know anything else about it.

Q Okay. Uh, you formed an opinion?

A Based on what I read in the newspaper.

Q And the opinion is what?

A He gunned her down.

Q Well, what does that make Mr. Lindsey?

A He pulled the trigger. That makes him guilty.

Q You would find him guilty?

A Based on what I read in the newspaper.

Q Right now as you sit in this jury box, you believe him to be guilty?

A No. I don't know all the circumstances around it.

Q Well, you've got me confused because you said you have an opinion.

A I do. It's not that I would go out and tell anybody that I think he's guilty. I wouldn't say that. I don't know the man. I don't know all the background either. I only know what I read in the newspaper.

Q And that information led you to believe he was guilty?

A Well, isn't it a law that you don't shoot

somebody?

Q I didn't ask you that.

A That's what I based my opinion on.

Q Your opinion was based on what you read and what you were told.

A I wasn't told anything. Only what I read.

Q On what you read?

A That's right.

Q And you believe based upon what you read that Mr. Lindsey is guilty?

A If he pulled the trigger, yes, sir.

Q Okay. And you understand that under our system of laws that as he sits there right now, he is innocent?

A That's correct.

Q Okay. Can you accept that?

A I can because I don't know, I don't know the background.

Q You don't know all about what happened, correct?

A What I read, that's what I know.

Q And based upon what you know about what happened, you formed an opinion and that opinion was that he is guilty.

A If he pulled the trigger.

Q If he's the one that pulled the trigger, he is guilty. That's what you would find.

A That's what I would find at this point. Based on the story that was in the newspaper.

THE COURT: Mr. Bartosh.

MR. BARTOSH: Sir?

THE COURT: With your permission, might I explain to her a little bit more about what her role would be as a juror?

MR. BARTOSH: Yes, sir.

THE COURT: All right. Mrs. Netherton, we are not trying to trick you or box you in. I take responsibility for anything, if anything has offended you. But let me explain to you a little bit more in detail how it would go if you were to get on the jury. I would at the end of all the evidence and at the end of the closing arguments give you detailed instructions defining the crimes or the crime that the defendant is charged with.

And there would be certain elements that the State would have to prove to convict the defendant of murder. And you don't know what those elements are. You might have a general idea about what murder is. But I would give you the specific legal definition of murder. And I would tell you the specific elements that the State has to prove each beyond a reasonable doubt before you can find the defendant guilty of

murder.

MRS. NETHERTON: Okay.

THE COURT: And in addition to that, there may be defenses that could be asserted. I don't even know right now as I sit here if there might be defenses. If there are defenses, then the State has to disprove those offenses and they would have to disprove them beyond a reasonable doubt. There might even be what we call lesser included offenses. I don't know. There might be. There might be something less than murder that the defendant could be guilty of.

What I want to know, and then I'm going to turn it back over to Mr. Bartosh, is despite what you have read and despite some conclusion that you may have reached or some opinion that you may hold, could you listen to me when I tell you the specific elements that the State would have to prove in order to convict Mr. Lindsey of murder and could you then decide whether or not based solely on what you hear in this courtroom and see in this courtroom, could you decide whether or not the State has proven the defendant guilty beyond a reasonable doubt in light of the legal instructions that I may give to you setting aside anything that you might have heard or read about before? Could you do that?

MRS. NETHERTON: Yes, I could.

THE COURT: All right. Mr. Bartosh, you are welcome to follow up on that as you see fit.

BY MR. BARTOSH:

Q Now, the Chief of Inman is here. You know him?

A Uh-huh (affirmative). He's my neighbor.

Q Have you and he discussed this?

A No.

Q Never mentioned anything about it?

A No.

Q So what you are telling us today is that although you have formed an opinion about Mr. Lindsey's guilt, you can put that opinion aside, and should it go to a penalty phase wherein you would have to decide whether or not Mr. Lindsey died, was executed, or would spend the rest of his life in jail that you could be fair and you could listen to both sides?

A Yes, I could.

Q Even though you have already formed an opinion, you could set that opinion aside?

A Yes. The opinion is based only on the newspaper.

Q That's all.

EXAMINATION

BY MR. WILLINGHAM:

Q My name is Donnie Willingham. This is Barry

Barnett and Mr. Gowdy. We are the prosecutors in this case. Very briefly. On your questionnaire in response to whether you or a family member had ever been arrested, you stated yes for two white collar crimes. Was that here in Spartanburg?

A Uh, I think one was in Spartanburg and the other was transferred here from, I think, Greenville.

Q Do you know who the prosecutor was?

A Yeah. You mean the judge?

Q No. The prosecutor, the Solicitor.

A Oh, uh, no, sir.

Q If it had been someone in Cherokee or Spartanburg, it would have been probably someone from our office that were the prosecutor. I just want to make sure that you wouldn't hold that against us.

A I don't. To be honest with us, I really don't remember. I don't even know if I could remember his lawyer's name.

Q Would it be fair to say as far as your views on the death penalty that you are not opposed to the death penalty?

A No, I'm not opposed.

Q You believe it is proper in certain circumstances?

A I do.

Q Where do those views come from? Is it religious? I noticed on your questionnaire that you indicated you have a religious affiliation of being Catholic.

A Uh-huh (affirmative).

Q Does that factor into your opinion?

A I guess maybe just based on what I determine for somebody based on the crime.

Q Okay. In order for someone to be sentenced to death, it has to be unanimous. All twelve jurors have to agree that that is the appropriate punishment. Then a form has to be signed by all the jurors. If you were the last one, if the jury believed that death was appropriate and you believed it, without your signature, the death verdict could not be rendered. Could you see yourself actually imposing the death penalty and signing your name to that verdict form?

A Only if I believed everything that was presented to me. I have to believe what was presented was correct.

Q And that's our job. It is our job to present evidence to the jury either by introducing exhibits or testimony from that witness. But our burden is beyond a reasonable doubt. You understand that?

A That's fine.

Q It's not beyond all doubt or beyond any shadow of a doubt, it's beyond a reasonable doubt. I just want you

to know what standard the law requires.

A Okay.

Q You agree that you could follow it beyond a reasonable doubt?

A Explain it again to me.

Q I can not prove something beyond all doubt or beyond any doubt. I can't prove it based on prior experience or pretty good indications. But I can't prove it beyond any doubt. But I can prove it beyond a reasonable doubt. Reasonable things could happen. There are cases after cases of trying to find out exactly what a reasonable doubt is.

The judge will tell you that reasonable doubt is the kind of doubt that causes a reasonable person to hesitate to act. I just want -- I don't want you to think it was going to be a higher standard of beyond all possible doubt or beyond any doubt. I don't want you to raise that bar up any hirer than it already is. It is already up there pretty high. I don't want to make it any higher.

THE COURT: Let me stop you.

Ma'am, when I charge you on the law, I will explain to you exactly what beyond a reasonable doubt means and you don't need to worry about whether somebody thinks that is a high standard or whether somebody doesn't think that's a high standard. You've

been very good to answer our questions very candidly and honestly. And you told me how you would respond to my instructions about the elements of the crime of murder.

Would you have any difficulty listening very carefully to my definition of reasonable doubt and my explanation that the State must prove their case beyond a reasonable doubt and applying the standard of reasonable doubt that I give you?

MRS. NETHERTON: No, sir. I wouldn't. If I had any questions, I would ask you to clarify that.

THE COURT: Thank you very much, ma'am.

BY MR. WILLINGHAM:

Q Mrs. Netherton, I appreciate you answering questions. One last question. You don't know a Jerry Netherton?

A Jerry Netherton?

Q Yes, ma'am. If you don't, that's fine.

A I do not. I don't know all of my husband's relatives.

Q Thank you.

THE COURT: Mrs. Netherton, let me ask you to step in the hall for just a second please.

(WHEREUPON, Mrs. Netherton exits at approximately 12:30 p.m.)

THE COURT: Mr. Bartosh?

MR. BARTOSH: Your Honor, I believe she is unqualified. I do not see how a person can form an opinion as strongly held as she expressed it saying that if he gunned her down, and those were her words, if he gunned her down, then he is guilty. I just don't know how you can unring that bell with any instructions from the bench. I know what she said. But I think it's very clear that she holds that opinion very strongly. It would be very hard for her especially the way she expressed that opinion, it would be very hard for her to step aside that opinion given the facts.

THE COURT: All right. I'm ready. I mean, I don't want to cut you off. But I think that I understand your argument on that point. Is there any other point that you want to make?

MR. BARTOSH: No, sir.

MR. BARNETT: Your Honor, I think she is qualified. I believe that she can impose life and she can impose death.

THE COURT: Mr. Bartosh doesn't object to her standing on the death penalty.

MR. BARNETT: Your Honor, based on State versus Ricky Caldwell, 388 S.E. 2d. 816, I think she is

qualified. She stated she has an opinion. She has prior knowledge. She can put that opinion out of her mind and be fair and impartial to both sides. I think she is qualified.

THE COURT: What was the cite?

MR. BARNETT: It's 388 S.E. 2d. 816, Your Honor.

THE COURT: All right.

(WHEREUPON, there was a pause.)

THE COURT: All right. Bring her back in please.

(WHEREUPON, Mrs. Netherton enters at approximately 12:32 p.m.)

THE COURT: Mrs. Netherton, let me ask you a few more questions if you don't mind.

MRS. NETHERTON: Okay.

THE COURT: As I said to you before, you get on the jury here, I'm going to define a lot for you. I'm going to talk to you a lot about the law. I'm going to tell you that the defendant is presumed innocent. And you've told us that you can accept that, is that correct?

MRS. NETHERTON: Uh-huh (affirmative). That's correct.

THE COURT: You have any problem with presuming the defendant innocent at this point?

MRS. NETHERTON: No.

THE COURT: And I'm also going to tell you that the State has the burden of proof and I'm going to define that burden of proof for you. I'm going to tell you that if the State does not prove the defendant guilty beyond a reasonable doubt, then you must find him not guilty. I'm going to define for you the elements of the crime of murder.

I'm also going to define for you any defenses that might become applicable. At this point, I don't know if there are no defenses. If we get into the trial and there are no defenses, then I'm not going to want you to be influenced by the fact that I mentioned that there might be defenses.

MRS. NETHERTON: Okay.

THE COURT: But if you get into the trial of this case as a juror -- and you have been very honest with us. And I want you to continue to do this. Despite the fact that you learned what you learned and you read what you read and you came to the opinion based on what you read and what you learned that the defendant had gunned down his wife, if the State fails in proving here in this courtroom to prove one of the elements of the crime of murder despite the fact that you had decided before that you thought the defendant had gunned down his wife, could you find the defendant

not guilty?

MRS. NETHERTON: If they failed to met the circumstances --

THE COURT: If they failed -- if the State fails to meet its burden of proof on one of the elements of murder, I will tell you that you must find the defendant not guilty. Could you do that?

MRS. NETHERTON: Yes, I could.

THE COURT: All right. Now, in doing so, in considering the evidence that you will hear in this courtroom, do you believe that you will be able to disregard anything that you might have heard before now about how this happened, who did it, everything, could you disregard what you heard?

MRS. NETHERTON: I could. And if I could say, Your Honor, I -- honestly, it was a year and a half ago. And that was the last time I read anything on it.

THE COURT: Do you remember a whole lot of detail about what you read?

MRS. NETHERTON: Huh-uh (negative.)

THE COURT: You do not?

MRS. NETHERTON: I don't. I have too much going on in my life for me to keep that kind of detailed information.

THE COURT: Would you be willing to follow my instruction as a member of the jury and to listen to all of the evidence and listen to the arguments of both sides and listen to the instructions that I give you on the law, to follow those instructions and render a verdict based solely on the testimony and evidence that you hear and to find the defendant either guilty or not guilty based on whether or not you think the State has proven the defendant guilty beyond a reasonable doubt?

MRS. NETHERTON: I could.

THE COURT: Do you have any hesitation saying that?

MRS. NETHERTON: No, sir.

THE COURT: All right. Step back in the hall for just one second.

(WHEREUPON, Mrs. Netherton exits at approximately 12:39 p.m.)

THE COURT: All right. Mr. Bartosh and, well, everybody, what I just did in my mind was to confirm what I believed I had already heard and that was that she could do the things that she just told me that she could do. I was not trying to rehabilitate her because I didn't think she needed rehabilitating.

I did feel that the one thing that I had not

asked her and that she had not addressed was whether or not she could find the defendant not guilty if the State failed to prove an element of the crime of murder. Had I omitted anything? Is there anything else that I need to talk to her about? Have I misled her? Have I been overbearing in my questioning of her?

MR. BARTOSH: No, sir.

THE COURT: You have any more argument you want to make on whether or not she's qualified?

MR. BARTOSH: She's not qualified, Your Honor.

THE COURT: I believe she's qualified. I'm going to qualify her. Mrs. Netherton was very candid with us about the way that she came into the knowledge that she has about the case. And I have paid close attention to the way that she carried herself during the testimony.

And I don't have any doubt that she's being candid with us when she said that she can set all that stuff aside and find the defendant either not guilty or guilty. And then to address whether if guilty, whether the appropriate sentence is life or death. I don't have any doubt about Mrs. Netherton. She's qualified.

Bring her in.

(WHEREUPON, Mrs. Netherton enters at approximately 12:42 p.m.)

THE COURT: All right. Mrs. Netherton, I find that you are qualified. And we are going to let you go for a day or so, maybe two days. I want you to stay in touch with us on this telephone number that you have been given. It's a 800 number that calls into a recording.

That recording hopefully beginning about mid-day tomorrow will give you some information about when we need you to come back. So if you will start checking that recording about mid-day tomorrow, you will know everything you need to know. It's possible we could need you back up here tomorrow afternoon. So keep that in mind.

MRS. NETHERTON: Okay.

THE COURT: Now over the next several days, do not read anything. Do not watch anything on TV about this case. Do not discuss this case. Do not allow anyone to discuss this case with you. You understand all that?

MRS. NETHERTON: I have not.

THE COURT: And I want you to make sure you don't do it from this point on. Okay?

MRS. NETHERTON: Okay.

THE COURT: And when you come back, I will ask you just like I will ask everybody if you have been able to keep yourself from having any conversations about the case or from reading or watching anything about the case. And I want you to be able to tell me that you have been able to do that.

MRS. NETHERTON: Okay. When I get my instructions, it will give me full details on when I will be going?

THE COURT: Oh, yeah. We will give you detailed instructions about what to do. You don't need to worry about that. Keep in mind that we may sequester the jury and that you may need to pack for several days of lodging with us.

MRS. NETHERTON: That's what I need to know.

THE COURT: That's what you need to know. And you also need to know exactly the arrangements for your child's graduation so we can accommodate that. If you are on the jury, we will accommodate you.

MRS. NETHERTON: Okay.

THE COURT: All right. Thank you.

(WHEREUPON, Mrs. Netherton exits at approximately 12:43 p.m.)

THE COURT: Close the door for a second. One more thing about Mrs. Netherton that

impressed me, she's obviously a bright woman. And after she told us about her child's graduation and she at that point made clear that she really didn't want to take any step that was going to interfere with her ability to attend her child's graduation, I started asking her about her previous views.

I was asking her about graduation. And she said let me tell you one more thing. That is when she first started telling us about what she had learned and the opinion that she had reached. I believe that she is smart enough to figure out that if she held an opinion that she was not willing to give up that she would have had an easy out to go and attend her daughter's graduation.

That is just a small factor that influences me in my conclusion that Ms. Netherton is being honest with us when she answered the question about her willingness to do the things that she said. I just believe her. I believe I her when she says that. I believe she will be able to do it. She will be a good juror.

Bring the next juror in.

(WHEREUPON, Teresa Gilbert, Juror number 103, enters at approximately 12:44 p.m.)

TERESA GILBERT

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mrs. Gilbert, good afternoon, ma'am.

A Good afternoon.

Q You remember that we put you under oath yesterday and you are still under oath today.

A Yes.

Q Since you left us yesterday, has anyone talked to you about this case or have you talked to anybody about the case?

A No, sir.

Q Have you read anything or seen anything or learned anything about this case?

A No, sir.

Q Thank you, Mrs. Gilbert. We're going to ask you some questions now. We don't mean to pry too deeply into your personal affairs but we do need to ask you these questions. There are not any right or wrong answers to these questions. We just want you to be open and honest with us. Tell us how you feel. Tell us how you think.

We will be talking about the possibility of a penalty phase. The fact that we're talking about the possibility of a penalty phase does not mean anything about this defendant. It simply means that we might get there. And

if we do get there, we need to know how you feel and how you think.

If you are a juror in a criminal case such as this, could you accept and apply the law that I give to you and render a verdict in that case based solely on the testimony and evidence that you hear in this courtroom in light of the law as I give it to you?

A No, sir.

Q Ma'am?

A No, sir.

Q You could not do that?

A (Shakes head negatively.)

Q Let me make sure I make my question clear. If I explain the law to you, you are a juror in my case and I explain the law to you, could you take that law and apply the facts that are proven in the courtroom to that law or apply the law to the facts, whichever way you look at it, and render a verdict based solely on the testimony and the evidence that you hear in light of the law as I give it to you?

A Maybe I'm not understanding. But in my mind, I already have my mind made up.

Q About this case?

A Yes.

Q Tell me why that is.

A I just --

Q Do you know something about this case?

A No, sir. Only what -- only what I've seen on TV.

Q What is that?

A When I filled out my questionnaire, I put that I did not know anything about the case because the names did not ring a bell with me. But Friday night on the news, I saw a little clip. And it reminded me when it first was on TV that my husband and I talked about it. I just feel like, I have strong feelings about you should not kill somebody. And at that point, my mind was made up back in the year that it happened.

Q All right. Your mind was made up that what?

A That he was guilty.

Q That he was guilty. All right. Well, let me point out a couple of things to you. And then I will ask you a couple of questions.

A Okay.

Q If you were a juror in this case or any other case, what I will tell you, what any judge would tell you is that your responsibility as a juror is to set aside in your mind anything that you might have learned about the case before the trial began and to start with a clean slate in your mind and to render a verdict in the case based solely on what you hear and what you see in the courtroom.

What you heard on TV might be true. It might not be true. The evidence that you will be required to use in rendering your verdict will be only what comes to you in this courtroom under my supervision.

Some people have become so intertwined with a case, they've learned so much about a case, they arrived at conclusions about a case to the point where they can not do that. Could you do that in this case? Could you set aside what you have learned about the case and the conclusions that you reached about the case? Could you set that aside and render your verdict based solely on what you hear in the courtroom?

A I don't feel that I could.

Q All right. Thank you, ma'am. Let me get you to step out in the hallway. And I will be right back with you.

(WHEREUPON, Mrs. Gilbert exits at approximately 12:49 p.m.)

THE COURT: Mr. Bartosh, you want to voir dire this juror.

MR. BARTOSH: No, sir. I don't believe she is qualified.

THE COURT: Does the State want to voir dire her?

MR. GOWDY: No, sir.

THE COURT: All right. She is not qualified. Bring her in.

(WHEREUPON, Mrs. Gilbert enters at approximately 12:49 p.m.)

THE COURT: Ms. Gilbert, you are not qualified to serve as a juror in this case so I'm going to excuse you. You are free to go.

MRS. GILBERT: Thank you.

THE COURT: Bring us another juror.

(WHEREUPON, Emma Ellis, Juror number 81, enters at approximately 12:50 p.m.)

EMMA ELLIS

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Mrs. Ellis.

A Hello.

Q How are you?

A Fine, and you?

Q I'm doing fine. You remember that you are still under oath from yesterday?

A Yes, sir.

Q Since you left us yesterday, have you learned anything about this case?

A No, sir. I haven't.

Q Has anybody talked to you about the case?

A No, sir.

Q And you haven't talked to anybody about it?

A No, sir. I haven't.

Q You seen any press reports or TV stories or newspaper articles about this case?

A No, sir.

Q I'm going to ask you some questions. And then lawyers are probably going to ask you some questions in a few minutes. We are not trying to pry into your privacy or into your personal life but we need to ask you some questions. There are not any right or wrong answers to these questions. We just want you to be open and honest with us. Tell us how you think and how you feel.

We are going to talk about the penalty phase. And the fact that we're talking about the penalty phase does not mean anything in terms of this defendant or this case. It just means that because we might get there, we need to know how you think and how you feel about those issues.

A Okay.

Q If you are a juror in this case, could you accept and apply the law as I give it to you and render a verdict based solely on the testimony and the evidence that you hear in this courtroom?

A Yes, sir. I could.

Q If you, understanding of course that this, now you understand that the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q This is a murder case. Could you depending on the facts and circumstances that are proven find the defendant either guilty or not guilty depending on whether or not you think the State has met that burden of proof?

A Yes, sir.

Q If the jury finds the defendant guilty, then we're going to move into a sentencing phase. I'm going to talk to you a little bit about that now. In the sentencing phase, you will consider aggravating circumstances and mitigating circumstances. Aggravating circumstances are facts, incidents or details of an occurrence that the State has declared to make worse or to aggravate the crime of murder. In other words, aggravating circumstances to a murder increase the enormity of the murder or add to the injury caused by the murder.

Mitigating circumstances, on the other hand, are facts or incidents or details of an occurrence which the State has declared to lessen or reduce the severity of the crime of murder. They may be considered to extenuate or to reduce the degree of moral culpability or responsibility.

In the sentencing phase of a murder case such as this,

a death penalty case -- I've got something in my mouth. I think I've got it now. You would have two options as far as the sentence, a life sentence or the death penalty. If you were a juror in the sentencing phase, could you, depending on the circumstances and the facts that are proven including the consideration of any aggravating or mitigating circumstances and after considering the law as I give it to you could you return a sentence of life in prison?

A Yes, sir.

Q Could you return a sentence of the death penalty?

A Yes, sir.

Q Now if I were to sequester you as a jury and put you up in hotel for five or six days away from your family and your home, would that impose a terrible burden on you?

A No, sir. It would not.

Q Have you had a chance to go over the witness list that I gave you?

A Yes, sir.

Q Have you read every name on that list?

A Yes, sir.

Q Do you know anybody or are you related to anybody on that list?

A No, sir.

Q Is there any reason that you know of why you can

not give the State and the defendant a fair and impartial trial?

A No, sir.

Q I'm going to let the lawyers ask you some questions now. Then I may come back and ask you some more in a few minutes.

A Okay.

MR. BRENNAN: Please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BRENNAN:

Q Mrs. Ellis, my name is Doug Brennan. I am an attorney from here in Spartanburg. Myself and Mr. Bartosh and Ms. Quimby have the opportunity to defend Mr. Lindsey in this matter. From your questionnaire, I was able to find that you are currently taking classes at Greenville Tech. Is that correct?

A I was but I'm not now. I work third shift.

Q So you are out for the summer or are you just not going to school?

A I'm not going to school.

Q So you are no longer pursuing that educational avenue, is that correct?

A Yes, sir.

Q You work at BMW?

A Yes, sir.

Q You mentioned yesterday or actually you stood up at some point yesterday when you were asked if you knew anybody that was sitting at our table?

A Yes, sir.

Q That would have been myself, Ms. Quimby, Mr. Lindsey or Mr. Bartosh. Could you identify who it was that you knew?

A Mr. Bartosh.

Q How do you know Mr. Bartosh?

A At one time, he was going to represent my uncle.

Q He was going to represent your uncle?

A Uh-huh (affirmative).

Q Did you ever have a detailed personal conversation with Mr. Bartosh?

A No, sir. When he was going to represent my uncle, he was telling us the stuff that could go wrong. But he got somebody else to represent him.

Q Would the fact that you had a conversation with Mr. Bartosh or at one point Mr. Bartosh may have represented your uncle, would that affect your ability to be impartial in this matter?

A No, sir.

Q It would not make you lean more toward our side or more toward the State? You can be right in the middle?

A Yes, sir.

Q You mentioned on the questionnaire that you had a cousin that was robbed?

A No, he robbed somebody. Did I write that wrong?

Q Maybe I wrote it wrong. I don't know. But you had a cousin who -- did that cousin go to prison?

A Yes, sir. He is in jail now.

Q Based on your relationship with your cousin and his criminal activities, would that sway your opinion as to guilt or innocence or to a sentence in this matter?

A No, sir.

Q Are you real familiar with the details of your cousin's crime?

A No, sir.

Q Okay. All right. You also stood when asked if you or a family member ever been arrested by the Spartanburg County Sheriff's Department or the Inman Police Department.

A Uh-huh (affirmative).

Q Was that you or was that your cousin?

A My cousin.

Q Your cousin?

A Uh-huh (affirmative).

Q All right. I understand. Now there was another question. That was that you or a family member had been

arrested for assault, CDV, pointing a weapon or assault with a weapon?

A Uh-huh (affirmative).

Q Who were you identifying or were you identifying the person that made you stand?

A My brother for CDV.

Q Your brother for CDV. Now if the facts or the circumstances of this matter brought into play criminal domestic violence, would that have an impact on your decision as to guilt or as to a sentence?

A No, sir.

Q Do you think about the issue of criminal domestic violence?

A Towards myself, you mean?

Q Yes.

A Yes.

Q Does that way heavily on your mind?

A No, sir.

Q Okay. You also stood for a family member having been a victim of an assault or something?

A Yes, sir.

Q Who was that?

A I have two aunts.

Q You have two aunts that have been assaulted?

A Yes, sir.

Q Were those considered criminal domestic violence or were those considered assault and battery? Let me clarify. Were they assaulted by a family member of theirs or were they assaulted by a stranger?

A Husbands.

Q So those would have been criminal domestic violence incidences, is that correct?

A Yeah. But they didn't go to court about it or anything.

Q Okay. So your brother has committed criminal domestic violence.

A Uh-huh (affirmative).

Q And you have two aunts that were victims of criminal domestic violence.

A Yes, sir.

Q Considering all of that, you could still leave that aside in this and render a true and fair verdict?

A Yes, sir. Because you have to listen to the evidence that someone is giving out.

Q In a capital case, it is said that there are three kinds of jurors. There are those jurors that if the defendant is found guilty then he has got to be put to death. There are those that decide, that have the mind set that even though the defendant has been found guilty, he should serve life in prison. And then there are those that

don't know. They listen to the facts and they make their decision based on the facts. Which one of those categories would you fall into?

A Listen to the facts and then make a decision.

Q All right. Do you understand that although the State of South Carolina provides for the death penalty to be imposed, it is never mandatory?

A Okay.

Q There is no one thing that if you hear it, you automatically have to impose a death penalty. Do you understand that?

A Okay.

Q Now, understanding that if you are on the jury and there are eleven jurors who have all made the decision that the death penalty is proper but you on the other hand has said I think life in prison is proper, can you stand your ground and say, No, my vote is life and I'm going to stay there? Can you stand your ground?

A Yes, sir. I could.

Q You would not be swayed by those eleven jurors?

A No, sir.

Q And if those eleven people have signed that verdict form and you are the 12th and you are the one they are waiting on to sign that verdict form, if your decision was life, you can say no I'm not going to sign it?

A Yes, sir.

MR. BRENNAN: Beg the Court's indulgence. Nothing further. Thank you.

MR. GOWDY: May it please the Court.

THE COURT: Yes, sir.

EXAMINATION

BY MR. GOWDY:

Q Good afternoon, Mrs. Ellis.

A Good afternoon.

Q My name is Trey Gowdy. I'm with the Solicitor's Office. That is Donnie Willingham to your left and Barry Barnett in the middle. Together, the three of us are going to be representing the State of South Carolina in this case. I want to start off by thanking you for filling out that questionnaire. I know we asked some personal questions. Yesterday was long and here you are again today answering questions. So on behalf of all of us, we appreciate that.

A Okay.

Q I got a few more then we're going to let you go. Can you tell me what your general views on capital punishment are?

A Well, as far as capital punishment, I would have to be fair and honest. I can't go by personal relationships or my personal feelings. I would not do that

because I wouldn't want anybody to do that to me.

Q Is it fair to say that you're not automatically opposed to the death penalty?

A No, sir.

Q Is the death penalty something you thought about a lot? Did you discuss it? And you are a lot younger than I am. But when you were in school, was it something you discussed in school? Have you talked about it recently with family and friends?

A No, sir.

Q Prior to today or yesterday, have you ever given any serious thought to your position on capital punishment?

A No, sir.

Q What makes you so certain today given the fact that you have not thought about it in the past that you could in fact vote for death on somebody if you thought that was the right thing to do?

A You listen to the evidence. Somebody has to represent something to you and make it fairly and clearly before you can do that. I don't think it's right to go through life thinking about the death penalty and wishing to do something about the death penalty. I think something would have to be presented to you.

Q I know that His Honor explained this very, very clearly but I'm going to ask you one more time just because

I may not have understood it right. In South Carolina, you always have the option of life. The judge would never tell you have to vote for death. I can not stand up here in front of you and say you have to vote for death.

You always have the option of life. That is, life without parole. That means they ain't never getting out of prison. Accepting the fact that that is the law in South Carolina, that life without parole is always an option, do you still think there are circumstances where you could vote to sentence somebody to death?

A Yes.

Q There are?

A Uh-huh (affirmative).

Q These questions I'm fixing to ask you are questions I would never ask you if I just met you. But I've got to ask you for this case. You mentioned your uncle.

A Uh-huh (affirmative).

Q What is your uncle's name?

A Jimmy Drummond.

Q Jimmy Drummond?

A Yes.

Q Again, I'm not trying to pry into your life. The three of us are prosecutors and for all I know one of us may have prosecuted your uncle. I don't know. I don't

know when it happened. When was he being represented by Mr. Bartosh?

A I think earlier this year, either late last year or earlier this year.

Q Do you recall what the charge was?

A I want to say that it murder on a child. But he took a polygraph test twice and he passed it.

Q So is it the situation in Greer?

A Yes, sir.

Q The fact that my office is prosecuting that case, does that have any impact on you? Is that something that you would factor into this trial, the fact that the same three guys that are sitting over here at this jury table may or may not prosecute your uncle?

A No, sir, because I did not know that your company was representing the case. But he does not have to go to trial anymore.

Q Okay. So you could put that out of your mind the fact that one of the three of us may at some point have been involved in your uncle's case?

A Uh-huh (affirmative).

Q How about the fact that Mr. Bartosh who represented your uncle is going to be standing in front of you asking you to spare that man's life? Could you put the fact that you know Mr. Bartosh or talked to him, could you

put that out of the equation and be fair to us?

A Yes, because I didn't have a long conversation with him. I just met him. We were out together in the hallway. I just recognized his face.

Q Believe me, I appreciate you, I had your name written under several questions. I think you stood up several times.

A Uh-huh (affirmative).

Q And all of us appreciate you doing it because we have no way of knowing if you hadn't done it. I think you stood up on whether or not you knew anybody at the defense table. I think you stood up on this issue of representation. I'm assuming that that was the same, you stood twice on the same thing with Mr. Bartosh.

A Uh-huh (affirmative).

Q I think you stood up because maybe a family member or somebody may have been the victim of a crime?

A CDV.

Q A CDV.

A Uh-huh (affirmative).

Q Not you?

A No, sir.

Q And I think you were candid enough to tell us that maybe another family member had been charged with something?

A Uh-huh (affirmative).

Q Do you know how that case turned out, your other family member that was charged?

A No, sir, because he is still in Spartanburg County.

Q I have to ask you to same question again. That is what the three of us do for a living. Our job is to prosecute cases that happen in this county. We would also be the prosecutor on your relative's case that is at the detention center right now. If you are picked for this jury and you come in here the day after today and sit 10 feet from the prosecutor's table, is that something that is going to weigh on you that those are the same guys that are prosecuting my cousin, my uncle or somebody else?

A Uh-huh (affirmative).

Q Is that something that is going to bother you?

A No, sir.

Q Are you sure?

A Yes, sir. I'm am not cold and anything but you have to put your personal life to the side.

Q I respect that greatly. I know you can appreciate both sides want juries that are going to be fair and make their decision based only on what happens in this courtroom and not on anything else that may be going on.

A Uh-huh (affirmative).

Q And if I hear you right, you are telling me that, and I believe that, you could be fair?

A Yes, sir.

Q Okay. One more question then I am going to leave this whole area. Your uncle in Greer with the homicide by child abuse case, did you go to the bond hearing when he originally sought bond in the case?

A What do you mean?

Q Bond is when you're trying to get out of jail. You are in jail and you go before the Judge to ask for bond.

A Oh, no, sir. Not in front of a Judge, no, sir.

Q Pardon me?

A Not in front of a judge, no, sir.

Q When you came and met Mr. Bartosh, it was not in connection with a court appearance. It was at Mr. Bartosh's office?

A It was out in the hallway.

Q But you do not remember going in front of a judge for a bond hearing in that case?

A No, sir.

Q The only reason I ask you that is because Mr. Barnett actually was involved in that a little bit. And I didn't know whether you happened to be in the courtroom when the bond hearing was going on.

A No, sir.

Q Thank you very much for answering the questions for us.

A You're welcome.

THE COURT: Ms. Ellis, would you step in the hallway for just a second please.

MRS. ELLIS: Uh-huh (affirmative).

(WHEREUPON, Mrs. Ellis exits at approximately 1:18 a.m.)

MR. GOWDY: Your Honor, can me and Mr. Bartosh approach please?

THE COURT: Yes.

(WHEREFORE, a bench conference was held off the record.)

THE COURT: Let's put the subject of this discussion on the record.

MR. GOWDY: She's not outside?

THE COURT: It has been brought to my attention that this potential juror has or that at least the NCIC report for this potential juror has on it two convictions for driving under suspension, one conviction for fraudulent check.

MR. GOWDY: That's correct, Your Honor.

THE COURT: On her questionnaire, it says have you, a family member or a person close to you ever

been convicted of a crime. She says yes. And then when it says explain, she just says cousin comma robbery. She also said that that same cousin was the victim of a robbery in a couple of questions before.

It is very likely that there is some confusion about it. The lawyers did not know exactly how to handle it. So they have asked for my guidance. And what I suggest is that I tell her, don't identify either side, but just tell her that at my direction or that I came across the knowledge that this was on her report. And I want her to clear it up for me, see what she says. And we will take it from there.

MR. GOWDY: I appreciate Your Honor handling it that way. Obviously, we have no objection to it. I would bring to the Court's attention, in addition, on her juror information form which is a separate document, when it asked have you ever been convicted of a crime other than a minor traffic offense, she again said no. Is DUS a minor traffic offense? I don't know. Fraudulent check is a tougher argument to make.

MR. BRENNAN: What are the dates on those convictions?

MR. GOWDY: One is fairly recent.

THE COURT: Bring her in, please.

MR. BRENNAN: Your Honor, can we have just one second?

MR. GOWDY: She had a '91 DUS, '91 DUS, '02 fraudulent check.

THE COURT: Just put it on the record.

MR. BRENNAN: Your Honor, my concern is if this is not going to exclude her as a juror, we are potentially qualifying a juror who was going to be mad at somebody in this courtroom for asking her about these criminal offenses. I would like to think that it would not be this table but it could be.

My question to the Court is is the Court inclined to exclude her as a juror. If so, then we don't need to ask her the questions, just exclude her. If the Court is not inclined to exclude her, then I think asking the questions causes problems. We all know about it and then we could us that to strike her if we choose to do so. I am concerned that --

THE COURT: I have the impression that Ms. Ellis has been open with us and straightforward with us. I'm not inclined to strike her or to find her disqualified unless in the course of questioning her about it I conclude that she deliberately lied about it. So if somebody wants me to question her, then I will. If neither side wants me to question her, I

won't.

What's the State's position?

MR. GOWDY: I would like you to question her.

THE COURT: Bring her in.

You have any opposition that, Mr. Brennan?

MR. BARTOSH: No, Your Honor.

(WHEREUPON, Mrs. Ellis enters at approximately 1:19 p.m.)

THE COURT: Mrs. Ellis, let me ask you some questions about one subject. I certainly don't mean to embarrass you about anything. As part of what we do to get ready, as part of what I do to get ready for this, we run background checks on each individual juror. And your background check came up to show that you have a couple of incidents of driving under suspension.

MRS. ELLIS: Yes, sir.

THE COURT: And a fraudulent check.

MRS. ELLIS: Yes, sir.

THE COURT: You did not list those on your juror questionnaire. And you did not mention on your juror card that you ever been convicted of a crime. Do you -- is there any reason why you did not list those?

MRS. ELLIS: Because I thought like that was

misdemeanor and I thought crime was like being sentenced to prison.

THE COURT: Okay. It is not a clear question. And that is a sufficient explanation. I appreciate it. Again, I'm not trying to embarrass you.

MRS. ELLIS: No problem.

THE COURT: I appreciate your explanation for that. Let me get you to step back out in the hall. I will be right back with you.

MRS. ELLIS: Okay.

(WHEREUPON, Mrs. Ellis exits at approximately 1:20 p.m.)

THE COURT: Any further questioning that either side want you wants to do or that you want me to do for this juror?

MR. GOWDY: Not from the State.

MR. BRENNAN: Nothing.

THE COURT: Any opposition to her qualifications?

MR. GOWDY: She is qualified.

MR. BRENNAN: She's qualified, Your Honor.

THE COURT: Bring her in.

(WHEREUPON, Mrs. Ellis enters at approximately 1:20 p.m.)

THE COURT: All right, Mrs. Ellis, you are

qualified. I find that you are qualified. It is going to be several days, maybe tomorrow afternoon before we get to you. Stay in touch with us by checking the 800 number that we, that was given to you yesterday. Some time about midday tomorrow, we might start putting something on there about when we will need you back. When we do, I may sequester you. So be ready to spend four or five days with us, maybe six days. I don't know exactly how long it will take.

And over the next few days until you get back, don't discuss this case with anybody. Don't allow anybody to discuss the case with you. Do not read the newspaper about this case. Do not watch any TV news about the case. You understand?

MRS. ELLIS: Yes, sir.

THE COURT: When you come back, I'm going to ask you just like I am going to ask all of the jurors whether or not you talked to anybody about the case or learned anything about the case through the press. I'm going to expect that you'll be able to tell me no, that you have not done that.

MRS. ELLIS: Yes, sir.

THE COURT: All right. You are free to go.

MRS. ELLIS: Thank you.

(WHEREUPON, Mrs. Ellis exits at approximately

1:22 p.m.)

MR. BRENNAN: Your Honor, could we have five minutes?

THE COURT: No, we're going to do one more juror. Then we are going to take a lunch break.

Bring him in.

(WHEREUPON, Shirley McDowell, Juror number 185 enters at approximately 1:22 p.m.)

SHIRLEY McDOWELL

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q How are you, Ms. McDowell?

A I'm fine. How are you?

Q I'm doing fine. Ms. McDowell, you remember that you -- we put you under oath yesterday.

A Yes.

Q You are still under oath today.

A I know.

Q Since you left us yesterday, has anybody talked to you about this case or have you learned anything about this case from anybody other than, well, anybody?

A No. But yesterday when I said I hadn't heard anything about it, I have -- remembered seeing a little something on TV. But I did not really remember what was

about. I was working so I really didn't --

Q But now you recall that you had seen something about it?

A Something about it.

Q All right. Let --

A But I don't remember the details.

Q We'll talk to you about that in a few minutes. So since yesterday, you have not talked to anybody or learned anything about this case?

A No, sir.

Q We have some questions that we're going to ask you. And we don't mean to be prying into your private life, but we do have to ask you these questions. There are not any right or wrong answers to the questions. We just want you to be open and honest with us and tell us what you think and what you feel.

A Okay.

Q We may get -- we're going to talk about penalty phase. The fact that we're going to talk about a possible penalty phase does not mean anything about this defendant or about this case. It just means that since we might get to the penalty phase, we want to know what you think and what you feel about some of the issues that will come up.

A Okay.

Q If you were a juror in this case, would you be

able to listen to the law and apply the law as I give it to you and render a verdict in this case based solely on the testimony and evidence that you hear in this courtroom? Would you?

A Yes, but --

Q Is there a but?

A There is a but.

Q Well, you want to go ahead and tell me with what the but is?

A Uh, I would have a hard time struggling with making a decision.

Q Making a decision?

A About someone else's fate, yes.

Q All right. Let's -- let me just move on and we will get to that question in just a minute. Okay?

A Okay.

Q You understand that the State has the burden of proof and they must prove the defendant guilty beyond a reasonable doubt. You understand that?

A I do.

Q This is a murder case. Could you, in this case or in any murder case, depending on the facts and circumstances that are proven and in light of the law that I tell you, could you find the defendant either guilty or not guilty depending on whether you think the State has met

its burden of proof?

A (No response).

Q Could you find the defendant guilty or not guilty depending on whether or not you think he was proven guilty?

A If I had to, but it will be a problem for me to make that decision.

Q It would be a problem for you to make the decision as to whether -- as to find someone either guilty or not guilty?

A All depending on if he was guilty or not, you know.

Q All right. Well, what I would tell you then is I would define for you the crime of murder.

A Uh-huh (affirmative).

Q And I would tell you what the elements are to prove the crime of murder and tell you exactly what the State would have to prove. I would tell you the standard of proof or the burden of proof as being beyond a reasonable doubt.

A Uh-huh (affirmative).

Q If I tell you all of that and then you listen to the evidence or you have already listened to the evidence, could you decide whether or not the defendant should be found guilty or not guilty based on whether or not you think the State has proven the defendant guilty?

A Yes, I could.

Q So if you found that the State has proven that defendant guilty beyond a reasonable doubt, could you find the defendant guilty?

A Yes, I could.

Q If you find the State has not proven the defendant guilty beyond a reasonable doubt, could you find that defendant not guilty?

A Yes.

Q If you were on the jury, uh, that got, that found a defendant guilty in a case like this, a death penalty case, you would move into the sentencing phase. Let me talk to you a little bit about that. There are what we call aggravating circumstances and mitigating circumstances. Aggravating circumstances are facts or incidents or details of an occurrence that the State has declared to make worse or to aggravate the crime of murder. In other words, aggravating circumstances when they are present in a murder increase the enormity of the crime or add to the injury that results from the crime.

Mitigating circumstances, on the other hand, are facts or incidents or details of an occurrence in which the State has declared to reduce the severity of the crime of murder. They may be considered to extenuate or to reduce the degree of moral culpability or responsibility.

Now if you are on the jury in a death penalty case such as this in the sentencing phase, you would have two options for sentence, either a life sentence or the death penalty. Could you, depending on the particular facts and circumstances that are proven including the consideration of aggravating and mitigating circumstances, and of course I would tell you all of the law that is applicable to this case, could you impose a life sentence?

A Life, yes.

Q Could you impose the death penalty?

A I would have a problem with that.

Q Now tell me about that.

A Uh, --

Q Do you think you can do it?

A If I had to but I really would not want to be in that position to do that.

Q You really wouldn't?

A I see good in everybody, I guess. I think people should be punished for their crimes if they are found guilty but I wouldn't want to be the one to make that decision.

Q Let me stop right there. I'm going to let the lawyers ask you any questions if they choose to. Then I may come back and ask you a few more in a minute, okay?

A Okay.

THE COURT: Mr. Bartosh, you want to ask this juror any questions?

MR. BARTOSH: No, sir.

THE COURT: Mr. Gowdy?

MR. GOWDY: No, sir.

THE COURT: Ma'am, why don't you step in the hall for just a second. And I will be back in touch with you in a little bit.

MS. McDOWELL: Okay.

THE COURT: And I will be back in touch with you in just a second.

(WHEREUPON, Ms. McDowell exits at approximately 1:30 p.m.)

THE COURT: Mr. Bartosh.

MR. BARTOSH: She is not qualified, Your Honor.

THE COURT: All right. You agree with that, Mr. Gowdy?

MR. GOWDY: I do, Your Honor.

THE COURT: All right. Bring her in.

(WHEREUPON, Ms. McDowell enters at approximately 1:30 p.m.)

THE COURT: Ms. McDowell, we certainly do appreciate your being candid with us. We are not going to need you as a juror in the case. So you are free to go.

MS. McDOWELL: Okay.

THE COURT: Thank you for coming back, ma'am.

(WHEREUPON, Ms. McDowell exits at approximately 1:30 p.m.)

THE COURT: We will take a lunch break. And we will resume at 2 o'clock with the next panel.

(WHEREUPON, a lunch recess was taken at approximately 1:30 p.m.)

(WHEREUPON, the Court resumed at approximately 2:34 p.m.)

JAMES CREEL

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Creel, good afternoon, sir.

A Noon, sir.

Q You recall that we put you under oath yesterday and you are still under oath now?

A Uh-huh (affirmative).

Q Since you left us yesterday, has anybody talked to you about this case or have you seen or heard anything about this case?

A Uh, --

Q Have you talked to anybody about this case?

A My family asked me and I said I can't talk.

Q All right. Good job. We're going to ask you some questions now that we hope will not too much invade your privacy. But we have to ask these questions. These questions don't have any right or wrong answers. We just want you to be open and honest with us and tell us how you feel and how you think.

We will talk about the penalty phase. And the fact that we're going to talk about the penalty phase does not mean anything in terms of this defendant or this case. It just simply means that because we might get to the penalty phase, we need to know how you feel and how you think about some of the issues that will come up in that phase.

If you were selected as a juror in this case, could you accept and apply the law as I will give it to you and render a verdict in this case based solely on the testimony and evidence that will be presented here in this courtroom?

A Yes, sir.

Q You realize in a criminal case, the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes.

Q Now, this is a murder case. And do you think -- could you, depending on the facts and circumstances that are proven in this case, could you find the defendant either guilty or not guilty depending on whether or not you

think the State has proven him guilty beyond a reasonable doubt?

A Yes.

Q You could find him either guilty or not guilty?

A Yes.

Q Now, if the jury find the defendant guilty, we will move into the sentencing phase of the trial. I'm going to talk to you a little bit about some of the issues that will come up during that trial, during that phase. Aggravating circumstances are facts, incidents or details of an occurrence that the State of South Carolina has declared to make worse or to aggravate the crime of murder. In other words, aggravating circumstances when accompanying a murder increase the enormity of the crime or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are facts, incidents or details of an occurrence that the State of South Carolina has declared to reduce the severity of the crime of murder. And they may be considered as extenuating or as reducing the degree of moral culpability or responsibility.

Now, in the penalty phase of a trial, you would have two options as to sentence, either a life sentence or the death penalty. Could you, depending on the particular facts and circumstances proven in this case and including

the consideration of aggravating and mitigating circumstances and the law as I will give it to you, could you return a sentence of life in prison?

A Life in prison, yes.

Q Could you return a sentence of the death penalty?

A I would have issues with the death penalty. I possibly could if I felt like a person had a background. I'm not sure in a case that you could give all the background of a person's life. But if I felt like a person's background was such that he was brought up in a way that he didn't have a care about you or anybody, didn't care about morals, could easily kill somebody, another person or another person, I could easily say yes to that. But if a person has done something one time and it was out of a situation that just happened to occur out of anger, I would have to punish him for that.

Q All right. Let me ask if you if it would be correct to sum up your answer to that last question by saying that whether or not you could impose the death penalty would depend on the facts and circumstances that were proven to you during the course of the penalty phase of a trial?

A That's true.

Q Now, you heard me say that we might sequester this jury. And we would put you in a hotel for four or

five days as a group and not allow you to go home to your family. Would impose a tremendous burden on you?

A No.

Q Have you had a chance to go over the witness list that I gave you?

A I saw one name on there that I might would know.

Q Let me ask you this question. You did go over the witness list?

A Yes, sir.

Q You did look at every name on that list?

A Yes, sir.

Q Do you know anybody or are you related to anybody whose name is on that list?

A I saw one name, number 82. That is a person by name that I went to church with possibly.

Q Number 82. That is Carol Wright.

A That's a common name so that might not be the same person.

Q From Inman. Okay. Uh, --

A That's been 20 years.

THE COURT: Does anybody have on the tip of their mind some more information about Carol Wright?

MR. GOWDY: Would it have been in Kingstree or in Spartanburg, Your Honor? Ms. Wright has always been in Spartanburg?

THE WITNESS: You're asking that because I'm from Kingstree?

BY THE COURT:

Q Did you know her here in Spartanburg?

A No, I knew her in Greer.

Q In Greer?

A She went to the same church I was in in Greer.

MR. GOWDY: She's in here most of the time, Your Honor. She's the victim's mother. She's an African-American lady. Is that?

THE WITNESS: No, that's not the same.

BY THE COURT:

Q All right. So that's apparently not the same person?

A No.

Q Do you know of any reason why you could not give both the State and the defendant a fair and impartial trial in this case?

A I am somewhat familiar with the case. I read about it in the papers right after it occurred. I recall that part of the events.

Q All right. Let me ask you this question then. As a member of the jury, I would instruct you that your responsibility is to set aside anything that you might have known or learned about this case before the trial began and

to listen to the testimony and evidence that is presented to you here in this courtroom under my supervision and to render a verdict based solely on that testimony and evidence that you hear in this courtroom and in light of the law as I give it to you setting aside anything that you may have heard or learned outside of the courtroom. Would you be able to do that?

A Yes.

Q You have any hesitation in saying that?

A No.

Q All right, sir. Now, having answered that question, do you know of any reason why you could not give both the State and the defendant a fair and impartial trial?

A No.

Q All right. Now, I see in your -- you wrote, in response to the question, Have you formed an opinion so that it would affect your ability to be fair and impartial if selected as a juror, and I believe yesterday -- was it yesterday? Yesterday. Gosh, it seems like we've been here a month already. Yesterday, you wrote possibly so. That's right?

A Based on my background of knowing what was in the papers is why I said that.

Q Let me explain a few more things to you. As we

get into the trial -- and I've said this already. I will say it again. The defendant is presumed innocent. And just like I accept that presumption of innocence, you must accept that presumption of innocence. I will tell you that very clearly again if you are seated as a juror in this case.

You will then listen to all the testimony and evidence that you will hear or that either side puts up. I will then explain to you the law that is applicable to the case. I will explain to you the burden of proof, explain to you the presumption of innocence, explain to you that the State has to prove the defendant guilty beyond a reasonable doubt.

I will explain to you the elements of the crime of murder, tell you that the State has to prove every one of those elements beyond a reasonable doubt. Anything else that may become relevant to Mr. Lindsey's guilt, I will explain that.

Now, then would you be able to take the facts and the testimony and the evidence that is presented to you here in the courtroom and go back in the jury room with the other members of the jury and setting aside anything that you may have learned, setting aside any conclusions that you may have reached before you went to trial, would you be able to render a fair and impartial verdict based on that testimony

and evidence that you heard in the courtroom and in light of the law as I gave it to you?

A Yes.

Q And do you think that the fact that you possibly reached a conclusion about the case, would that interfere with your ability to do what I just said?

A I guess I can say I'm only human but I don't think so.

Q All right.

A I think I can take the facts that you give.

Q I'm going to let the lawyers ask you some questions now. Then I may come back and ask you a few more in a minute.

EXAMINATION

BY MS. QUIMBY:

Q Hi, Mr. Creel.

A Hi.

Q My name is Karen Quimby. And I, along with Mike Bartosh and Doug Brennan, are the attorneys representing Marion Lindsey sitting at the counsel table. We appreciate your being here and allowing us to put you in the hot seat and ask you questions. Have you ever testified before or been in a situation like this?

A No.

Q I don't want to make you feel uncomfortable.

A That's all right. I already am.

Q Okay. I will try to limit that. Uh, it is important for you to feel comfortable. And it is important for us to be able to find out your views on several different things. Mainly, well, we need to make sure that no matter what, Marion Lindsey gets a fair trial. And the way that we do that is by making sure that we seat jurors who will be able to put aside things that they may or may not know about the case, put aside whatever personal beliefs they may have and listen, have open eyes to every bit of testimony and all the evidence and instructions from the judge on the law and will go back to the jury room and follow the law according to the facts as the jury finds it.

So, having said that, we need to know what your views are. We're not trying to be nosy or anything like that. And you are entitled to any view that you might have. We just need to know what it is. Do you have any particular view of -- about the death penalty? I know that you said it would be a tough decision. Could you expand on that a little bit?

A Okay.

THE COURT: Mr. Creel, would you mind taking that microphone and pulling it a little bit closer to you?

THE WITNESS: Is that good?

THE COURT: That's better. Thank you.

THE WITNESS: Okay. I don't think I have or any person has the right to choose abortion other than God.

BY MS. QUIMBY:

Q So do you take that view, we are not here to talk about abortions but does that have a basis for --

A That's my religious belief on that. God has the authority to choose stuff like that.

Q So just as you applying that religious belief to the abortion issue, you are applying it in the same way to the issue about the death penalty?

A The death penalty is wishy-washy. For example, do you remember the case Pee Wee Gaskins?

Q (No response.)

A I'm sure you remember that. To me, that guy --

THE COURT: She doesn't remember it but everybody else in here have.

THE WITNESS: There was no choice about him in my mind. Even after he got in prison, he still committed murder. He was a person that I think really had no feelings or obligations to people. I think that he did not belong.

BY MS. QUIMBY:

Q Let me see if I can rephrase that. I don't want to put words in your mouth. So if I understate it, please

let me know.

A Okay.

Q Did you come to that belief because of the circumstances of what you believe that he did?

A I believe that he didn't value the life of other people.

Q Okay. In this trial, we're only going to be concerned with what the State just said that Marion Lindsey has done. The indictment only -- there is only one victim in this case. There's only one person. So it's not really the same type factual situation as Pee Wee Gaskins.

A That's why I say I would get to the point where it would be a difficult decision if the person has done something one time and it was in a moment of anger as opposed to if there was a history that led up to it. In my mind, the person really had a chance to think about it and make other alternative avenues as opposed to murder. If a person does something out of anger, there's a possibility in my mind that I would not be able to impose the death penalty to that person. I would have to give them a life sentence.

Q Okay. So again if I understand you correctly, you hold your beliefs pretty strongly. Is your decision based more on only the background of the defendant or do you also consider along with that the facts and

circumstances of the specific incident?

A Uh, --

Q I don't know if that means since --

A When you say the background of the defendant, --

Q I don't want to define, I don't want to put limits on your definition. I understood you to say that you would have to look at his background or the background.

A If I knew the background of the person, if the person had just -- you said it is only one case. If a person had a background where he killed other people or was a very threatening type person, then that would be a type background that would lead towards a path that shows a person really didn't care.

Q Let me change gears for just a second. Before you could even get to thinking about death penalty or life in prison, you would first have to be able to keep an open mind and listen to the facts about the crime in the trial part of it. So even with the possibility of the death penalty being an option for sentencing, he's got to be found guilty first.

You understand that in a trial like, this is separated into two different parts or phases. And the first phase of the trial is just like any other trial. Only if he is convicted of murder would we then move to a sentencing phase. So regarding the first phase, the trial, do you

have any reason that you know about that you would not be able to objectively listen to all the testimony and consider all the evidence and follow the law that the judge give you during the trial phase?

A I don't know of any reason why I couldn't listen to the facts and weigh the facts and figure out what's right and find him guilty or not guilty.

Q Okay. And the fact that you have read anything any time between then and now, does that have any affect on how you are going to weigh anything that you hear?

A I guess my assumption of what I read in the paper is probably going to be the same that is going to be presented into court. What I would have to do is weigh what you say to what --

Q I'm not going to go into the instructions on the law. But I will say that the judge will tell you that anything you read previously, you never read it. Anything you hear in here, it's got to be like the first time you ever read it. Are you able to do that?

A Yes.

Q Okay. So you did not form any opinion about whether you think Mr. Lindsey is guilty or not guilty or anything like that?

A I would say that based on what I read in the paper, I would assume that he has been charged with

something. And my recollection from a year and a half ago was he was seen at the police station and he was shot by a policeman in the car. What the judge is telling me is I can't weigh anything that I read before. I have to listen in here. That's what I have to do.

Q That's correct.

A I think I can do that.

Q Okay. Set aside any preliminary decisions you may have come to or assumptions. Okay. I also noticed that you amended your questionnaire. We appreciate your candor in letting us know anything that you thought of since you first filled it out that might help us in this process. You have a nephew that works for the Camden Police Department?

A Yes.

Q How old is your nephew?

A 27, I'm guessing.

Q And are you close with him?

A I haven't seen him for about a year and a half. He's my nephew-in-law.

Q Okay. Does the fact that your nephew-in-law works for a police department, does that factor in any way your thoughts about serving on a jury?

A No.

Q You also include the fact that your sister-in-law

is an administrative assistant in a law office in Charlotte. What kind of law do they practice?

A They do tax.

Q Okay. Way above my head. I also notice that you read the Herald Journal and get news from the Internet. Is the Herald Journal where you remember reading about this case?

A Yes.

Q On the section of the questionnaire discussing prior experiences with crimes relating to yourself or to anyone else, you included a couple of things. I believe it was your brother that was robbed in his pharmacy?

A Yes.

Q Do you remember if anybody was ever arrested for that or charged?

A The person served time.

Q Okay. Sorry to bring this up. You said a friend of yours in high school, his father was murdered at some point.

A His father was murdered. He worked at a furniture store. And someone came and shot him and left him for dead.

Q Do you still have contact with that friend?

A (Shakes head negatively.)

Q No?

A (Shakes head negatively.)

Q Okay. Did either of those incidents, have any of those incidents even though they were a long time ago, have either of those incidents or any other incident made you feel a certain way or another? You may have had a different view before.

A Probably with my friend in high school. This was a family of three sisters. Their daughter died while they were all still in high school. I think it was that side I saw of her along with losing their father.

Q Okay. And yesterday when Judge Few was asking the panel to stand up for different types of situations and if you know certain people or if you had contact with law enforcement or anything like that, you indicated that you knew someone at the Solicitor's office. I just wanted to check and see whether that is a family member?

A I don't think so.

Q Okay. So you don't know anyone that works in the office of the prosecution?

A (Shakes head negatively.)

Q Okay. It said family member that is employed by a law enforcement agency. Is that you or is there anybody else?

A Some time ago, my cousin.

Q Okay. You understand that if we get to the point

of discussing the death penalty, you will never be required to recommend the death penalty. It is always an option. You can always choose life or you can always choose death.

A Explain that a little more.

Q Okay. The final decision about whether you vote life or whether you vote for the death penalty, that is your decision. You can only get to that by first finding an aggravating circumstance. If you find him guilty of murder, it takes us to the sentencing phase. In the sentencing phase, you will be able to consider things that make it worse according to the State and things that you need to weigh along with the bad, things like his background or anything.

A Okay.

Q You would have to find an aggravating circumstance before any of the jurors could ever start talking about the death penalty. Would you -- if we got to that phase, it is said that there are three types of jurors. There is the juror who will no matter what, if they have found an aggravating circumstance, they are always going to vote death. Then we have jurors who just will not do death. They are always going to vote life.

Then you've got jurors who are going to consider both the aggravating circumstances that they have already found and any mitigating circumstances to see if they found any

of those. And then the final decision you've got to make for yourself. Do you have any leaning one way or the other or would you be able to consider both options in light of whatever facts you find?

A That would be to listen to both sides and then make a decision.

Q Okay. Thank you very much.

MR. GOWDY: May it please the Court?

THE COURT: Yes, sir.

EXAMINATION

BY MR. GOWDY:

Q Good afternoon, Mr. Creel. How are you?

A Good.

Q My name is Trey Gowdy. I'm with the Solicitor's officer here in Spartanburg. This is Donnie Willingham to your left and Barry Barnett in the middle. Together, we're going to be prosecuting this case on behalf of the State. You mentioned Pee Wee Gaskins. I think he was from Johnsonville, wasn't here?

A Down around near Lake City.

Q Round Lake City.

A That's where my mom and dad are from. I don't think either one of them are related. I don't think I'm related to him.

Q You mentioned Pee Wee Gaskins cause he was one of

the most notorious criminals in the history of South Carolina. He, of course, killed more than one person.

A Right.

Q As I understood you explain your answer later, you don't have a rule that you have to kill more than one person before you are death penalty eligible. Is that fair?

A That's true.

Q Okay. You also were good enough or candid enough with us to discuss your views relative to the sanctity of law. And you voiced your views on the issue of abortion and similarly on the issue of capital punishment. But while the sanctity of life on the issue of abortion, you do not foreclose death being an option on the other end of the spectrum. Is that correct?

A (Nods head affirmatively.)

Q And if you had the choice between life and death, you wouldn't always pick either one. Is that fair?

A Say it again.

Q If you had the choice between life and death, you wouldn't always pick life and you wouldn't always pick death?

A That's right.

Q It would depend upon what else you heard in that case. Is that fair?

A Yes.

Q If you did decide that death was proper, would you be able to sign your name to a document and hand it up to the judge and say that's what you thought the proper verdict was?

A If I made the decision, yes.

Q Mr. Creel, these are very serious issues. I would be surprised if anybody was excited at the idea of sentencing somebody to death. But these are very serious, important issues. But nevertheless, it's also important for the State to have a jury that is fair and that can not only consider life and death but actually impose it if they thought that it was proper.

All we've got to go on as the defense and the prosecution are your candid answers to our questions. And I think you can appreciate the importance of having jurors in this box that we can rely on and be fair. So when you tell me that if you think death is appropriate that you are going to vote for that, I've got to be able to rely upon that. Is that what you're telling me?

A That's true.

Q And that you don't have any special rule that it has to be a serial killer before you will consider that.

A Right.

Q Okay. I think that's all I have, Mr. Creel.

Just give me one second. Okay.

A Okay.

Q Mr. Creel, thank you for answering these questions.

THE COURT: Mr. Creel, would you step in the hall for a second please.

(WHEREUPON, Mr. Creel exits at approximately 2:54 p.m.)

THE COURT: Any objections to this juror?

MR. GOWDY: No.

MS. QUIMBY: No, Your Honor. I don't have any objections. I think he's qualified.

THE COURT: Objections from the State?

MR. GOWDY: No, sir. He's qualified.

THE COURT: Bring him in.

(WHEREUPON, Mr. Creel enters at approximately 2:54 p.m.)

THE COURT: Mr. Creel, I find that you are qualified as a juror in this case. It is going to be at least tomorrow afternoon, probably Thursday morning before we need you. Sometime before lunch tomorrow, start checking that 800 number that you were given yesterday to see if there's any information on the recorded message about when you need to come back.

You will need to think about the fact that you

might have to spend four or five or six days with us in a hotel away from your family. So think about packing and that kind of thing. From now until the time you get back, really until the end of the trial or until you are released, please do not talk to anybody about this case.

Do not allow anyone to talk to you about this case. Do not read or watch anything on the news or in the paper about this case. Thank you. You are free to go.

MR. CREEL: Would you repeat when I should check the message again.

THE COURT: Some time before lunch tomorrow.

(WHEREUPON, Mr. Creel exits at approximately 2:55 p.m.)

THE COURT: All right. I'm going to take a very short break. I would like to see two people in my office, Mr. Gowdy and Mr. Bartosh.

(WHEREUPON, a short recess was taken at approximately 2:55 p.m.)

(WHEREUPON, the Court resumed at approximately 3:04 p.m.)

THE COURT: All right. Give us a juror.

MIGUEL MARTINEZ

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Martinez?

A Yes, sir.

Q How are you, sir?

A Fine. How are you?

Q I'm doing fine. You recall that we put you under oath yesterday. You are still under oath today.

A Okay.

Q Since you left us yesterday, has anybody talked to about this case?

A No, sir.

Q Have you talked to anybody about the case or have you learned anything either by reading the paper or looking at the news or listening or overhearing anybody?

A No, sir.

Q I and the lawyers are going to ask you some questions. We apologize if this seems like we are intruding into your privacy but we have to ask you these questions. There are not any right or wrong answers. We just want you to be open and honest with us and to tell us how you think and how you feel.

A I will do it.

Q We are going to talk about the penalty phase. And that is not because -- by talking about the penalty

phase, we are not saying anything about this defendant or about this trial. We are simply acknowledging that because we might get into the penalty phase, we need to talk about some of the issues that could come up during that phase of the trial.

A Okay.

Q If you are a juror in this case, will you be able to listen to the law as I give it to you and accept that law and render a verdict based solely on the testimony and the evidence that you hear in this courtroom and in light of the law as I give it to you?

A Yes, sir.

Q You understand that the State has the burden of proof?

A I do.

Q And they must prove the defendant guilty beyond a reasonable doubt?

A I do.

Q Now, this is a murder case. Could you, depending on the facts and circumstances that are proven and in light of the law as I give it to you, could you find the defendant either guilty or not guilty depending on whether or not you think the State has proven him guilty beyond a reasonable doubt?

A Yes, sir.

Q Now, if we move from the guilt phase on a finding of guilty into the penalty phase, some other issues are going to come up. We're going to talk about those right now.

A All right.

Q We have -- I'm going to talk to you about aggravating circumstances and mitigating circumstances. Aggravating circumstances are facts, incidents or details of an occurrence which the State has declared to make worse or to aggravate the crime of murder. Aggravating circumstances when accompanying a murder increase the enormity of or add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are facts, incidents or details of an occurrence that the State has declared to reduce the severity of the crime of murder. Those may be considered as extenuating or reducing the degree of moral culpability or responsibility.

Now, if you get into the penalty phase of a death penalty trial like this, you, as a juror, would have two options for a sentence, life sentence and the death penalty. Could you, depending on the particular facts and circumstances of the case including the consideration of aggravating and mitigating circumstances and considering the law as I will give it to you, could you impose a life sentence?

A Yes, I could.

Q Could you impose the death penalty?

A Yes, I could.

Q Now, if you are chosen to be on the jury, I might sequester the jury and put you up in a hotel for five or six days to be away from your family and your job. Would that impose a tremendous burden on you?

A No, sir.

Q Have you had a chance to go over the witness list that I gave you?

A Yes, sir.

Q Did you read every name on that list?

A Yes, sir. I did.

Q Is there anybody on that list who you recognize?

A Yes, sir.

Q Did you know -- tell me who you know or who you are related to from that list.

A Number 63, Rachel Martinez. She is my sister.

Q That's your sister. If your sister was called as a witness in this case to testify, would that put you in an uncomfortable position?

A No, sir.

Q The fact that your sister is a witness in the case -- and she is a law enforcement officer, correct?

A Yes, sir.

Q If she testified on behalf of the State, would you still be able to give both the State and the defendant a fair and impartial trial in this case?

A I think I can. Yes, sir. I believe I can.

Q All right.

A I need some time to think about it. But I'm pretty sure I could.

Q All right. Tell you what.

A All right.

Q Let me ask you step in the hall just one second. And I'm going to find out a little something before we go forward. All right?

A All right.

(WHEREUPON, Mr. Martinez exits at approximately 3:12 p.m.)

THE COURT: What's her involvement in the case?

MR. GOWDY: Your Honor, she is likely not going to be called. I believe she took some pictures in a prior domestic violence. We may not go into it at all.

THE COURT: But even if she does testify, it's just going to be to authenticate the pictures, won't it?

MR. GOWDY: Yes, sir.

THE COURT: Her credibility is not going to become

an issue?

MR. GOWDY: Only if something about the camera were at issue. I think the chances of her being called to testify are 1 in 100 right now.

THE COURT: Do you mind if I tell him that? Or, I can either tell him that now and see what he says or we can just set that aside and address that during voir dire after we qualify the jury if he gets qualified?

MR. BARTOSH: There is one other issue.

THE COURT: Well, if I hadn't gotten to it yet, you want to tell me what it is.

MR. BARTOSH: It involves the sister.

THE COURT: Okay. What is it?

MR. BARTOSH: May we approach? I'll leave it up to you.

THE COURT: All right. You think we ought to put it on the record?

MR. BARTOSH: Well, I'd rather talk to you about it.

THE COURT: We will go off the record for a minute.

(WHEREUPON, a bench conference was held off of the record.)

THE COURT: All right. Bring him in.

(WHEREUPON, Mr. Martinez enters at approximately 3:16 p.m.)

BY THE COURT:

Q All right. Mr. Martinez, let me ask you a couple of more questions about your sister. And then we will move on.

A All right..

Q It is -- I have inquired a little bit more about what your sister's involvement is.

A Okay.

Q And she is really not in the center piece of this investigation. So we may come back to that in a few minutes.

A Okay.

Q Are you familiar -- are you and your sister real close?

A I think we are. But with her working shift --

Q Are you familiar with her work history?

A Yes.

Q Are you aware of the fact that she used to work for the Public Defender's office?

A Yes, I do.

Q All right. Do you know about how her employment went there?

A No. I just know that she wasn't happy. That's

all I remember.

Q Do you know why?

A I think it was from working in law enforcement. She wasn't happy being on the other side.

Q Okay. How long ago has it been since she left the Public Defender's office?

A I don't remember. Five or six years.

Q Okay. Are you aware -- and I don't know that I'm not aware. I just want to know do you know under what circumstances she left?

A It wasn't good, but I don't know the details. She didn't elaborate. And I was too embarrassed for her to ask.

Q Do you know if she quit or if she was fired?

A I think she was let go.

Q Do you know why?

A I'm not real sure, no. I don't think she ever said. And I never pushed it.

Q Okay.

A She was just unhappy.

Q Okay. Now, obviously Mr. Bartosh and Ms. Quimby work for the Public Defender's office.

A Right.

Q I told you that yesterday.

A Uh-huh (affirmative).

Q Would the fact that your sister worked there and worked for Mr. Bartosh although at that time, he was not the Public Defender. He was the deputy I believe.

A Yes, sir.

Q And that she left under unpleasant circumstances whatever those are -- and I'm not telling you that. I'm basing that on what you said cause I don't know. But based on your impression, she left under unpleasant circumstances. Would that interfere, any of that interfere in any way with your willingness or your ability to give the State and the defendant a fair and impartial trial?

A It wouldn't interfere. I didn't even know Mr. Bartosh's name or who he was until this week.

Q And technically, Mr. Bartosh work for the same person that your sister worked for.

A Okay.

Q Who was Charlie Sanders? He was the Public Defender then, right?

A I didn't know that.

Q Okay. Do you see that that poses you any problem?

A Not at all. That's just business.

Q Other than the things that we discussed and the lawyers may follow up a little bit with you on that, do you know of any reason why you could not be a fair and

impartial juror in this case?

A Other than being a human being, no, I do not.

MR. GOWDY: We will not be calling Deputy Martinez, Your Honor.

THE COURT: All right.

BY THE COURT:

Q Your sister's involvement is limited. And she is apparently not going to be called as a witness. It's possible that she might but I don't think her credibility is going to come into play in the case. So understanding that, is -- does that put you in an uncomfortable position?

A I don't see how.

Q Does it interfere in any way with your ability to give both sides to this case a fair and impartial trial?

A No.

Q Okay. Let me let the -- let me let the lawyers ask you some questions. Then I may ask you some more.

MR. BARTOSH: Thank you, Your Honor.

EXAMINATION

BY MR. BARTOSH:

Q Mr. Martinez, does your sister know that you are in this jury pool?

A I think I told her I was selected for a jury trial.

Q Have you discussed it with her?

A No.
Q I mean, have you discussed that I'm in this pool?
A I didn't know who you were until Wednesday.
Q Not me. What I'm saying is have you told her that you were in a pool that could possibly be selected for a death penalty case?
A No, sir.
Q So she is not aware of that?
A As far as I know, no, sir.
Q Okay. And you don't foresee any problems with when you tell her, should you be selected, that you are sitting on a jury panel with a client who is represented by the Public Defender's office?
A I don't have a problem with that. I don't think she would have a problem with it. If she does, she will let me know.
Q If she let's you know that she has a problem with it, would that affect you?
A No, sir. I don't think so.
Q All right. Now, on your questionnaire, you first put down that you were the victim of an armed robbery?
A No. Well, yes and no.
Q Okay.
A I have to explain it.
Q If you would.

A The fellow who came into where I was working said he had a gun. He never showed it. I asked him whether it was really true that he ever had one. And he said would you like to see it. And I just took his word for it that he had one.

Q So you assumed that he had one?

A Yes, sir. I did.

Q And so he took something of value from you?

A Yes, sir.

Q Is that the only armed robbery you ever been a victim of?

A Yes, sir.

Q And also you had something on your sheet that I wasn't really sure about. I need you to explain it to me. My brother's brother-in-law had lost an uncle and a father in a robbery.

A Yes, sir.

Q So your brother --

A My brother's --

Q That's what I'm unsure of.

A Okay. My brother is married to this lady. This lady has got a sister. That sister has got a husband. That husband's father was killed in an armed robbery and I believe her uncle, that same person's uncle if you can follow that path.

Q So you had two that was a double --
A That's my understanding, yes, sir.
Q It was a double murder?
A No, it was two separate incidences.
Q So two people have been killed in an armed robbery?
A That's correct.
Q How long ago was that?
A The father, I don't -- I'm not good with time. It's been a while. And the uncle was fairly recent. I would say within the last two years.
Q Would that have any affect on you as far as having the ability to sit and listen to facts and be impartial and be fair and follow the judge?
A I will do what the judge tells me to do.
Q And you would be able to put all of that out of your mind?
A It will be in my mind, sure. I'm just a human being. But I'm not going to put another human being to death just because of what happened to someone else. If the evidence showed by the State that this fellow did do it, if he did, then I would have to do what I have to do following his instructions.
Q Okay. Well, let's ask about that. If the State -- you understand that this is a two-part --

A Yes, sir.

Q -- operation. The first part is the State puts up its evidence and has to prove to all twelve jurors beyond a reasonable doubt that Mr. Lindsey is guilty of murder. If the jury does not believe that, then we all go home.

A That's right.

Q Okay. If on the other hand, and this is a suppose, the jury is convinced beyond a reasonable doubt that the State has carried its burden, then we go to the penalty phase. In the penalty phase, what the State is going to try to do is, they are going to try to take all the evidence that they could find, aggravators, and make Mr. Lindsey look as bad as possible.

MR. GOWDY: Your Honor, I object to that characterization. That is an unfair, inaccurate characterization.

THE COURT: I will tell you what, I really do think that I gave an a sufficient explanation of aggravating and mitigating circumstances to carry us forward.

MR. BARTOSH: I apologize, Your Honor.

BY MR. BARTOSH:

Q In any event, in your consideration of those two factors, both aggravating and mitigating, would you have

any problem being able to focus on those two items having had these events happen in your life?

A If he's innocent, he's innocent. If he's not, he's not. As far as the sentencing part, I have to just see.

Q I'm talking right now about the sentencing.

A Right.

Q Okay. Should we get to the sentencing part, would the fact that you had these experiences, would that in any way prevent you from being fair in considering both the aggravators and the mitigating facts?

A I believe I can be fair.

Q And you understand that life is always an option.

A Right.

Q You don't have to put somebody to death.

A Yes, I understand that.

Q And if it's life, it's life without parole. He would never get out of jail. Of course, if it's death, then death is death. And it's your decision, it's the jury's decision as to whether the penalty should be life or the penalty should be death. Could you make that decision after weighing all the facts?

A I think I can, yes, sir.

Q Okay. Let me ask you this.

A Okay.

Q If it's death, I'm going to ask you two questions. The first part, if eleven people on the jury say we believe the proper punishment is death and you believe it is life, would you be able to hold your ground?

A I'm pretty stubborn.

Q Okay.

A Once I make a decision, it's pretty hard to shake.

Q And the second thing would be, if it was death, would you be able to sign your name? Every juror has to sign on the sentencing sheet for death.

A If it comes to that, yeah. If I believe that that is what is required. I would do it. I would do what needs to be done.

Q If you believed that death was appropriate, --

A Yes, sir.

Q -- you would sign?

A Yes, sir.

Q That's all I have.

MR. GOWDY: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. GOWDY:

Q Good afternoon, Mr. Martinez.

A Good afternoon.

Q My name is Trey Gowdy. That is Donnie Willingham to your left and Barry Barnett in the middle. We work in the Solicitor's office.

A Yes, sir.

Q In the interest of time, I'm going to kind of shorten up the number of questions I normally ask. I'm just going to ask you two.

A All right.

Q First of all, from a housekeeping standpoint, I think that this is a coincidence. There is a gentleman with your exact same name and your exact same birth date who used to live in California and Florida. But I don't believe you have ever lived outside of South Carolina.

A Yes, sir. I have. I've lived in Florida. I was just a kid. I think I went there from the first or second, well, that's really kind of scary.

Q Well, you know how computers are. Computers ain't always right.

A Wait a minute now. I'm a computer guy.

Q Well, I take that back. Computers are always right. My reading them is not always right.

A Okay. There you go.

Q Maybe I should say that.

THE COURT: Let's go back to computers aren't

always right.

BY MR. GOWDY:

Q I was mistaken about that. I think it is clearly different.

A Yes.

Q If I understood you correctly, Mr. Martinez, you would be a fair, open-minded juror?

A I believe I would, yes, sir.

Q And if you thought that life was appropriate after listening to everything that was presented to you, you would vote for life?

A Yes, sir.

Q And if you thought that death was appropriate after listening to everything, that is what you would vote for?

A Yes, sir.

Q You could do either one and it would just have to be based on what the evidence was?

A Yes, sir.

Q Fair enough. Thank you for answering my questions.

A You are welcome.

THE COURT: If you would step out in the hall for just a second.

(WHEREUPON, Mr. Martinez exits at approximately