VOLUME TWO 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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RESPONDENT'S EXHIBIT #11 (DISCOVERY FROM SOLICITOR'S OFFICE) 3083

RESPONDENT'S EXHIBIT #12 (JURY PANEL DOCUMENT) 3085

RESPONDENT'S EXHIBIT #13 (EXPERT WITNESS LIST) 3089

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PETITIONER'S POST-TRIAL MEMORANDUM 3284

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RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION TO RECONSIDER, ALTER AND AMEND 3738

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INDICTMENT 3944

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

APPLICANT'S EXHIBIT #26 (AUDIOTAPE)

APPLICANT'S EXHIBIT #27 (PHOTOGRAPH)

APPLICANT'S EXHIBIT #28 (PHOTOGRAPH)

3:25 p.m.)

THE COURT: Any objection?

MR. GOWDY: No, sir.

THE COURT: Bring him back and get the next one ready.

(WHEREUPON, Mr. Martinez enters at approximately 3:25 p.m.)

THE COURT: Mr. Martinez, I find that you are qualified to serve as a juror in this case. Some time around lunchtime tomorrow, we may start putting on that recorded message that you can reach by calling the telephone number that you were given yesterday what our schedule is going to be. So stay in touch with that recorded message by calling that number around lunchtime tomorrow. And then continue to call after that to see what the schedule is going to be and we will also try to stay in touch with you. But mainly you call that number. Yes, sir.

MR. MARTINEZ: How often do I call the number?

THE COURT: If you call it at lunchtime tomorrow and it says that we will not need you until at least Thursday morning, then maybe you call back around 7 o'clock tomorrow night and see what it says then. But if you call and it says we think we're going to need you around 4:00, you might want to call back and

3:00 and see what then says. Okay?

MR. MARTINEZ: All right.

THE COURT: Please remember my instructions not to discuss this case with anybody and not to allow anyone to discuss it with you. Don't read anything about it and don't watch anything about it in the press. Now, particularly with your sister, don't talk to your sister about this case. Don't talk to her about anything that relates to anything in this case including her employment at the Public Defender's office or anything like that. Okay?

MR. MARTINEZ: Yes, sir.

THE COURT: We will talk to you in a day or so.

MR. MARTINEZ: Thank you.

THE COURT: Thank you.

(WHEREUPON, Mr. Martinez exits at approximately 3:27 p.m.)

THE COURT: Bring 'em in.

(WHEREUPON, Martha Sallis, Juror number 240, enters at approximately 3:27 p.m.)

MARTHA SALLIS

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Ms. Sallis?

A Yes, sir.

Q Good afternoon. How are you?

A Great.

Q You remember yesterday that we put you under oath.

A Yes.

Q You do?

A Yes.

Q You are still under oath today. Now since yesterday when you left, has anybody talked to you about this case or have you learned anything about this case from watching the TV or reading the paper or have you talked to anybody about this case?

A No.

Q We're going to need to ask you some questions. We apologize if it seems like we are prying a little bit into your privacy. But we have to do it. There aren't any right or wrong answers to these questions. We just want you to be open and honest with us and tell us how you think and how you feel.

We're going to talk a little bit about a possible sentencing phase. And the fact that we're talking about the sentencing phase or possible sentencing phase doesn't mean anything about this defendant or about this case, it simply means that because we might get to that phase, we

need to ask you some things, some questions about some of the issues that could come up during that phase.

If you are selected as a juror in this case, would you be able to accept and apply the law precisely as I give it to you and render a verdict in this case based solely on the testimony and evidence that you hear here in this courtroom?

A Yes.

Q You understand that in a criminal case such as this, the State has the burden of proof and must prove the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q Now, this is a murder case. Could you, based on the facts and circumstances that are proven and in light of the law as I will give it to 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 Now, if you are on this jury and it moves into the penalty phase after a verdict of guilty if that's what happens, some other issues will come up. And that's what we're going to talk about now. I'm going to tell you about mitigating circumstances and aggravating circumstances.

Aggravating circumstances are facts, incidents or details of an occurrence which the State of South Carolina

said make worse or aggravate the crime of murder. Aggravating circumstances when accompanying a murder increase the enormity of the crime, add to the injury of the crime.

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. And those may be thought of as extenuating or reducing the moral culpability or responsibility for the crime.

If you are on a jury in this case in the penalty phase, you would have two options as to what the sentence could be. The sentence could be a life sentence or the sentence could be a death sentence. Could you, depending on the circumstances and the facts that are proven during the penalty phase of the trial or during the whole trial including consideration of aggravating and mitigating circumstances and the law as I will give it to you, could you impose a life sentence?

A Yes.

Q Could you impose the death penalty?

A If circumstances warrant it.

Q Right, and let me --

A I never done that before.

Q Actually the question is premised on depending on the facts and circumstances that are proven or that you

find and that would include any aggravating circumstances or any mitigating circumstances. And without saying, you're not telling us what you would do. We just want to know if you could do it. You already told us that you could impose a life sentence. That would depend on the circumstances I would assume.

A Yes.

Q Now depending on the circumstances, could you impose the death penalty?

A Yes.

Q All right. Now, if you were seated on the jury in this case and if I sequester the jury or, in other words, if I put you up in an hotel and don't let you go home to your family for a couple of days, five or six days, would that impose a terrible hardship on you?

A No.

Q Have you had a chance to go over the witness list that I gave you?

A Yes.

Q Have you read every name on that list?

A Yes.

Q Is there anybody on that list whom you know or to whom you are related?

A No.

Q Now, ma'am, 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 No.

Q Thank you. I'm going to let the lawyers ask you some questions now and then I'm come back maybe and ask you some more in a few minutes.

EXAMINATION

BY MR. BARTOSH:

Q Good afternoon, Ms. Sallis. My name is Mike Bartosh.

A Good afternoon.

Q Are you a Post Mistress?

A A clerk.

Q A clerk at Star Tech?

A Correct.

Q How long have you been doing that?

A I been with the post office about 24 years. I probably been a clerk for about 21 years.

Q Has it always been in Duncan?

A Except for the first two or three years.

Q Okay. Now, I was going over your questionnaire. You said that your neighbor's common-law husband shot his wife?

A It was actually her husband. It was about 18 years ago or something like that.

Q All right. And you were called as a witness, so you had to give a statement?
A Right.
Q And did you witness the actual event?
A Yes.
Q Okay. Was the lady killed?
A Yes.
Q If this case, -- you also know something about this case.
A Any time it has come up, I don't --
Q Do you know the basic facts of the case?
A I don't know the details.
Q Okay. Would it matter to you if it was a case involving a man charged with shooting his wife?
A No.
Q Having experienced the other one before, would that have an affect on you in trying to decide this case?
A No, sir.
Q You would be able to put that second or that first incident out of your mind?
A Yes.
Q Okay. You also had answered that you or some family member had been arrested by the sheriff's office?
A My son.
Q And what was that charge?

A He had a girlfriend and they had some problems. Nothing was ever, they had only been dating for about five or six weeks. She decided that, she came over to the house. He was going skiing with some of his boys. And she did not want him to go. She went home crying. Of course, her family was upset. I said nothing happened. She was mad cause he was going skiing with some friends.

So she called back and after she got her family upset and they called over to our house to find out what the problem was, she felt kind of bad because she knew nothing had gone on. She was just mad because he was going. She tried to make it sound like he hurt my feelings, we had hurt her feelings. She -- instead of coming back over to the house and saying I don't want you to go or whatever, she had a friend call and ask him to come down to the Harris Teeter which is like a block away.

And I thought, That's really strange. Why don't she just come over here. We were all friends. I didn't understand why he went down there. But he did. So she parked really close to him. He was really, his car was something he really took care of. He spit polished it every day. She hit it on purpose. So he spit on her. She had him arrested for spitting on her.

Q So criminal domestic violence?

A I don't think it came to anything. I think she

went up there and asked them to drop the charges because she was mad at the time. That was not --

Q So that was -- I'm sorry. Go ahead.

A That was not a nice thing to do. And it's not in his character to do that.

Q And would the fact that there are some allegations of criminal domestic violence in this case, would that affect your ability to be fair to both sides?

A No.

Q You also have an affiliation with law enforcement?

A My husband contributes to the people that call and ask for donations to help the victims. We are not actually members but he does contribute.

Q Okay. Now, briefly, you understand how, the judge has gone into it a little bit. You understand how this trial works. It is a two-part procedure. The first part is like a regular trial. The State puts up its evidence. If the jury believes the State has proved its case beyond a reasonable doubt, the jury would find him guilty. If they don't believe it, they would find him not guilty. And, of course, we would all go home.

If they find him guilty, then they go to the second part of the trial which is the penalty phase. That is basically the main thing we're talking about now is how

your views is, how you view capital punishment versus life in prison. What you would be asked to do is there would be aggravators that were presented by the State which would try to show the crime more serious. There would be mitigating factors presented by the defense which would try to mitigate or lessen the culpability or the seriousness of the crime by the defense.

Would you have any problem being able to sit and listen to both sides and to be fair to both sides and to base your decision based upon what you heard from both sides not of any preconceived notion that you may have and not upon an sympathy for one person or upon a desire to punish another person? Would you be able to be completely independent and neutral in being able to evaluate the evidence that would be presented?

A I believe so.

Q Okay. You understand that the two choices, you don't have to give death. There's always the option of life. Life means life without parole. Should you get that far and the jury decides life, Mr. Lindsey would never get out of jail. Of course, the other side of the point is the jury could find for death. Would you have any problem listening to both sides fairly?

A No, sir.

Q And you would not have made up your mind or

anything like that prior to coming to court and the fact that you know something about this would have no affect on your ability to listen to the evidence and follow the judge's instructions?

A No, sir.

Q Now, two quick questions. Everybody has to sign the death sentence. If that's what the jury believes to be the appropriate sentence, all twelve jurors would sign it. If it came down to the point where eleven has signed, and it comes to you, and knowing that when you sign that, you are sentencing Mr. Lindsey to death, could you do it?

A I don't know.

Q Fair to say, you would have to wait and see til you came to that point because you have never had that experience before.

A Yes.

Q Now, the second question I've got to ask is if on the other hand, there were eleven jurors, it has to be unanimous. If these other eleven jurors have decided death would be the appropriate sentence and you believe that life would be the appropriate sentence, would you be able to maintain your position and hold out against the pressures of the other eleven and vote for death?

A Yes, sir. Everybody has an opinion. And if I decide, then I'm going to stick to it.

Q If you believed death was appropriate, if you believed death were appropriate, you could find it and you could sign the sentencing sheet?

A Yes.

MR. BARNETT: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q Ms. Sallis, my name is Barry Barnett. Along with Trey Gowdy and Donnie Willingham, we will be prosecuting this case for the State. Let me ask you a couple of questions. I noticed when he asked you about the death penalty, you said you didn't know. Why did you say you didn't know?

A I never been in that position before. I don't know. I just don't know.

Q About the death, excuse me.

A I never been in that position. I can't say what I would do.

Q Your beliefs on the death penalty or whatever, where would they come from or on what basis would you make a determination about what you believe in the death penalty?

A It has to be religious.

Q You realize and Mr. Bartosh asked you about this, you realize that life means life without parole?

A Yes.

Q And that's always an option. You don't always find death in cases just because they are guilty of murder. Knowing that life without parole is an option, would you ever find somebody guilty of the death penalty in any case?

A Yes.

Q You said it would have to be a cold-blooded situation. Would you consider any other situation?

A I don't know. I would have to listen to the facts.

Q I just have to ask you these questions. You realize we need to find out what kind of juror -- like I said, I know this is the first time you ever --

A Yeah.

Q I'm not trying to pry or whatever but obviously when you're back in the jury room back there trying to reach a verdict, we don't know what you would do at that point. We would try to find out as much as we possibly can now. In the facts and the circumstances that you would be looking at during the case or whatever, would you be most likely to return a life without parole verdict than a death verdict based on what you are observing or based off your beliefs?

A I believe in the death penalty. I don't know what I would have to do. I don't like that part of it but sometimes it's warranted.

Q I know. It's tough.

A It's hard to say. You don't know what you do. I never been at this point.

Q It's just something you haven't looked at in that situation. Like I said, if it came down to where you were the last person that signed the death sentence, could you do that if the case warranted that?

A Yes.

MR. BARNETT: One moment, Your Honor, please.

No further questions of this witness.

THE COURT: All right. Ms. Sallis, why don't you step out in the hall for just one second please, ma'am.

(WHEREUPON, Ms. Sallis exits at approximately 3:49 p.m.)

THE COURT: Any objection to Ms. Sallis?

MR. BARTOSH: No, sir.

MR. BARNETT: None from the State, Your Honor.

THE COURT: All right. Bring her back and get the next juror ready.

(WHEREUPON, Ms. Sallis enters at approximately 3:50 p.m.)

THE COURT: Ms. Sallis, I find that you are qualified to serve as a juror in this case. We're going to be -- we won't need you for another day or so, a day and a half or so. So you can go and be, uh, go on about your life or whatever. Please remember my instructions not to discuss this case with anybody, not to allow anyone to discuss it with you. Don't read about it. Don't watch anything on the TV about it. Don't allow yourself to learn anything about this case until you get back and start learning about it here in the courtroom.

Start checking the recorded message. You were given a phone number yesterday. Start checking that message about lunchtime tomorrow to find out what we think the schedule is going to be. And we will start, when we get close, we will start putting something on there about when we need you come back.

And keep in mind that we may keep you here for five or six days. You will need to pack and bring some stuff with you perhaps when you come. So you can go now. Have a good day today. Tomorrow, we look forward to seeing you soon.

(WHEREUPON, Ms. Sallis exits at approximately 3:50 p.m.)

(WHEREUPON, Danny Gomes, Juror number 106, enters at

approximately 3:50 p.m.)

DANNY GOMES

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Gomes?

A Yes, sir.

Q How are you?

A Pretty good. How are you?

Q I'm doing fine. You remember that we put you under oath yesterday?

A Yes.

Q You are still under oath today.

A Okay.

Q Now, since you left us yesterday, has anybody talked to you about this case or have you learned anything or seen anything about this case by reading the paper or watching TV or anything?

A No, sir.

Q All right. I'm going to ask you some questions and then the lawyers are probably going to ask you some questions. We're not trying to pry into your private life. But we do have to ask you these questions. There are not any correct or incorrect answers to these questions. We just want you to be open and honest with us. Tell us how

you think, tell us how you feel.

We're also going to talk about a possible penalty phase. The fact that we're talking about a possible penalty phase does not mean anything about this defendant or about this case. It simply means that because we might get into the penalty phase, we need to talk to you about some of the issues that might come up.

If you were a juror in this case, could you accept and apply the law as I would give it to you and render a verdict in this case based solely on the testimony and the evidence that you would hear and see here in this courtroom?

A Yes, sir.

Q You could do that?

A Yes, sir.

Q You understand that in a criminal case, the State has the burden of proof?

A Yes, sir.

Q And they must prove 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 and in light of the law as I will 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 If you are on the jury and we go into the penalty phase because the jury has found the defendant guilty, some other issues are going to come up. We're going to talk about those now. Mitigating circumstances and aggravating circumstances. Aggravating circumstances are facts, incidents or details of an occurrence which the State of South Carolina has declared to make worse or to aggravate the crime of murder. Aggravating circumstances when accompanying a murder increase the enormity of and add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are facts, incidents or details of an occurrence which the State of South Carolina have declared to reduce the severity of the crime of murder. Those may be seen to extenuate or to reduce the degree of moral culpability or responsibility.

Now, if you are on the jury and we get into the penalty phase of the trial, you would have two options as to your verdict and your sentence. First, you would have the option of imposing a life sentence. And second, you would have the option of imposing the death penalty. Could you, based on the facts and circumstances that you see and

you find, including consideration of any aggravating or mitigating circumstances and of course in light of the law as I give it to you, could you return a verdict of a life sentence?

A Yes, sir.

Q Could you return a verdict imposing the death penalty?

A Yes, sir.

Q If I were to sequester this jury and you get on the jury, would the fact that you have to be away from your home and your family for five or six days, put up in a hotel here in Spartanburg, would that be 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.

Q Do you know or are you related to anybody on that list?

A No, sir.

Q Do you know of any reason why you could not be a fair and impartial juror in this case and give both the State and the defendant a fair and impartial trial?

A No, sir.

Q Now, I'm going to let the lawyers ask you some questions. Then I may come back and ask you some questions in a few minutes.

MR. BRENNAN: Please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BRENNAN:

Q Mr. Gomes, good afternoon.

A Hello.

Q My name is Doug Brennan. I'm a defense attorney here in Spartanburg. I, myself, Mr. Bartosh and Ms. Quimby have an opportunity to defend Mr. Lindsey in this manner. You attend Walford College, correct?

A Yes, sir.

Q What year are you?

A Excuse me?

Q What year in college are you?

A Sophomore.

Q Sophomore. And your dad either was at one point or either is currently employed with the Spartanburg County Sheriff's Department or the city police?

A He was 20 years ago.

Q He was a long time ago?

A Yes.

Q You and your dad ever talk about law enforcement or that kind of thing?

A No, sir.

Q So your dad's employment as a law enforcement would not affect or cloud your judgment at all?

A No, sir.

Q All right. Do you understand death penalty is never mandatory in South Carolina?

A Yes.

Q Understanding that, there are three kinds of jurors. There is the juror that if the defendant is found guilty, he is always going to vote the death penalty. There is a juror on the other side that if the defendant is found guilty, even though he is found guilty, that juror is going to impose a life sentence. Then there are those in the middle that are willing to listen to the facts from both sides and make a determination based on those facts and those facts only. Which kind of juror are you?

A The one in the middle.

Q Okay. All right. Let's say that there is eleven jurors, you being the twelfth. And those eleven have said death penalty is appropriate, death penalty is appropriate. But you have made a determination. You think the life sentence is the correct sentence. Those twelve people are ready to sign the verdict form. They are just waiting on

you. Could you stand your ground and say no, life is appropriate?

A Yes.

Q You would not be affected by those eleven people?

A No, sir.

Q You understand, I've already mentioned it but do you understand that you will be asked to sign a verdict form? If the verdict was for the death penalty and you were the twelfth juror, could you sign that form?

A I don't understand the question.

Q Eleven people have already signed it.

A Okay.

Q They are waiting on your signature. Your signature is what is going to impose the death penalty, could you sign that form?

A If I believe that.

Q Based on the evidence that you have heard, if you believe that is appropriate, can your signature go on that line? Can you sign it?

A No, sir.

Q You can't sign it?

A (Shakes head negatively.)

Q If you did not understand my question, I would do the best to rephrase it.

A Okay.

Q Eleven other jurors have voted for death and have signed it. You heard the evidence. And in this question, you believe the death penalty is appropriate, can you sign that form?

A Yes, sir.

MR. BRENNAN: One second.

Nothing further, Your Honor. Thank you.

MR. BARNETT: May it please the Court.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q Mr. Gomes, my name is Barry Barnett. I, along with Trey Gowdy and Donnie Willingham, are prosecuting this case for the State. Just answer a few questions. I noticed on your jury information form, you listed a Maryland address. Is that where your parents live?

A Yes, sir.

Q And your father did work for the sheriff's department or city police?

A Yes, sir.

Q What does he do now?

A He is chemist.

Q And what does you mother do?

A She works at the library.

Q Is that the library downtown?

A Yes.

Q And I notice that you go to St. Paul's Catholic Church.

A Yes, sir.

Q How long have you been there, all your life?

A Yes, sir.

Q And does the Catholic, your beliefs on the death penalty, is it affected by anything at the Catholic Church or anything?

A The Catholic Church is against the death penalty, but I am for it.

Q Do you know Mr. Bartosh by chance?

A He looks for familiar.

Q But you don't have any personal relation with him or anything like that?

A No.

Q And you are presently at Wofford right now?

A Yes.

MR. BARNETT: Hold on one moment, Your Honor, please.

Nothing else.

Thank you very much, sir.

THE COURT: Mr. Gomes, let me ask you to step out in the hall for just a second please.

(WHEREUPON, Mr. Gomes exits at approximately

3:59 p.m.)

THE COURT: Any objection to Mr. Gomes?

MR. BRENNAN: Your Honor, we have one question that we might need answered.

(WHEREUPON, there was a pause.)

MR. BRENNAN: No, Your Honor. We have none.

THE COURT: No objection from the defense?

MR. GOWDY: None from the State.

THE COURT: Bring him in.

(WHEREUPON, Mr. Gomes enters at approximately 4:00 p.m.)

THE COURT: Mr. Gomes, you are qualified to serve as a juror in this case. We won't need you for a day or so. So you can go about your business. We will ask you to stay in touch with the recorded number that you were given yesterday, the recorded message. You can get to it by calling the number that you were given yesterday. I'm starting to talk in circles.

So about lunchtime tomorrow, please check with that number and see if there's any information on there about when you should return. It's probably going to be late Wednesday or early Thursday before we need you.

Remember my instructions not to discuss this case. Don't read about it. Don't watch anything on

TV about it. Don't allow anyone to discuss it with you. When you come back, I'm going to ask you like I'm going to ask all the jurors have you learned anything or seen anything or heard anything about this case or have you talked with anybody about it. And I want you to be able to tell me no. All right. You understand?

MR. GOMES: Yes, sir.

THE COURT: All right. You are free to go.

(WHEREUPON, Mr. Gomes exits at approximately 4:01 p.m.)

END OF VOLUME 1

527A

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG State of South Carolina Plaintiff, -VS- Marion Lindsey Defendant.	IN THE COURT OF GENERAL SESSIONS Case No(s).: 02-GS-42-0453 TRANSCRIPT OF RECORD **VOLUME 2 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:

TREY GOWDY, Esquire
Solicitor

BARRY BARNETT, Esquire
Assistant Solicitor

DONNIE WILLINGHAM, Esquire
Assistant Solicitor

MIKE BARTOSH, Esquire
Attorney for the Defendant

DOUG BRENNAN, Esquire
Attorney for the Defendant

KAREN QUIMBY, Esquire
Attorney for the Defendant

TERESA B. JOHNSON
OFFICIAL REPORTER

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P R O C E E D I N G S (con't)

(WHEREUPON, Todd Hillstock, Juror number 127, enters at approximately 4:01 p.m.)

TODD HILLSTOCK

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Hillstock, how are you, sir?

A Fine. And you?

Q I'm doing fine. You remember that we put you under oath yesterday?

A Yes, sir.

Q And you are still under oath today.

A All right.

Q You understand that?

A Yes, sir.

Q Since you left us yesterday, has anybody talked to you about this case, have you learned anything about it, seen anything about it, read anything about it or have you talked to anybody about this case?

A No, sir.

Q We're going to ask you some questions now. I'm going to ask you some and then the lawyers are probably going to ask you some also. We're not trying to pry into your private life. But we do have to ask you these

questions. There are not any right or wrong answers to them. We just want you to be open and honest with us. Tell us what you think and tell us what you feel.

Now, we're going to get into talking about a possible sentencing phase. The fact that we're talking about a sentencing phase doesn't mean anything about this defendant. It simply means that because we might get into a sentencing phase, we need to know how you think and how you feel about some of the issues that will come up or could come up.

If you were 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 evidence that you see here in this courtroom?

A Yes, sir.

Q You understand that in criminal cases, the State has the burden of proof and must prove the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q This is a murder case. Now, depending on the facts and circumstances that are proven, could you find the defendant guilty or not guilty depending on whether you think the State has proven him guilty?

A Yes, sir.

Q And if the jury finds him guilty and if you are

on the jury and this case moves into the penalty phase, then some other issues are going to come up. And we're going to talk about those now.

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 when accompanying a murder increase the enormity of a crime and add to the injury of the crime.

Mitigating circumstances, on the other hand, are facts, incidents, or details of an occurrence that the State has declared to lessen or reduce the severity of the crime. And those may be considered as extenuating or as reducing the degree of moral culpability or responsibility.

Now, if you are on the jury during the penalty phase of this trial, you will have two options as to your verdict, two options as to what the sentence would be. You could impose a life sentence or you could impose the death penalty. Could you, depending on the circumstances and facts that are proven or that you find or that you see and considering any aggravating or mitigating circumstances, certainly in light of the law as I will give it to you, could you impose a life sentence?

A Yes, sir.

Q Could you impose the death penalty?

A Yes, sir.

Q Now, if you were to be on this jury and I were to sequester you, in other words, keep you in a hotel away from your family and your, and everything else for five or six days, 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 Have you read every name on that list?

A Yes, sir.

Q Is there anybody on that list whom you know or to whom you are related?

A No, sir.

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 No, sir.

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

A Okay.

MR. BRENNAN: Please the Court, Your Honor.

EXAMINATION

BY MR. BRENNAN:

Q Mr. Hillstock, my name is Doug Brennan. I'm a defense attorney here in Spartanburg. Mr. Bartosh, the gentleman sitting on the end. That's Ms. Quimby. And we have the opportunity to defend Mr. Lindsey in this matter. Sir, are you related to a Georgette Hillstock?

A (Shakes head negatively.)

Q No?

A I don't know anybody by that name.

Q Okay. Do you know or have you ever heard of Ruby Nell Lindsey?

A No, sir.

Q Okay. You mentioned on your questionnaire that you were or that you had been the victim of a lynching. Is that correct?

A Yes, sir.

Q Could you describe that for me or tell me where it happened.

A I can't remember what street it was on.

Q Was it here in Spartanburg?

A Yes, sir.

Q Okay. Was that crime reported to the police?

A Yes, sir.

Q Was anybody arrested?

A Yes, sir.

Q Okay. Is that case over? Has that person been

punished or were they found not guilty?

A It's over.

Q And what was the outcome of that case? Were they convicted?

A Yes, sir.

Q Okay. As a result of that, of your being a victim, did you ever meet with the Solicitor's office and make a statement or did you meet with the victim's advocate to discuss that case?

A I went to the Solicitor's office.

Q Do you remember who you met with?

A I can't remember his name.

Q Okay. How long ago was that?

A Within the last two years.

Q So relatively recently.

A Yes.

Q Okay. The fact that you had dealings with the Solicitor's office, would that cloud your judgment in this case? Can you put that aside and render a fair and true verdict and sentence in this matter?

A Yes, sir.

Q Okay.

THE COURT: Wait. I didn't understand. Repeat the question and let me hear his answer or tell me what it was.

MR. BRENNAN: I asked him if he could set aside his relationship with the Solicitor's office and render and true and fair verdict and sentence.

THE COURT: All right. And he said yes.

MR. BRENNAN: Yes.

THE COURT: I'm sorry.

MR. BRENNAN: I'm sorry if I --

THE COURT: No problem.

BY MR. BRENNAN:

Q Do you have some current charges pending against you?

A No, sir. They are not pending.

Q You are not awaiting trial or anything at this point in time?

A No, sir.

Q Okay. All right. Do you understand that in South Carolina, the death penalty is never mandatory?

A Yes, sir.

Q You understand that no jury has to sentence somebody to death?

A Yes.

Q Okay. All right. Understanding that, it is said that there are three kinds of jurors. There are those that once the defendant is found guilty, that person, that juror is going to sentence that defendant to death. Then there

are jurors on the other side that when the defendant, if the defendant is found guilty, that set of jurors is going to sentence him to life. And then there is the third set, kind of in the middle. And they are those that listen to the facts and make their own determination. And then based on the facts and what they heard, they would vote life in prison or death. Which kind of juror are you?

A Life in prison or death.

Q I'm sorry.

A The third choice.

Q The third choice, the one that's going to listen to the stuff and then make a decision?

A Yes.

Q Okay. All right. Sir, my last question to you would be if you are on this jury and if the defendant is found guilty and you are in the sentencing phase, in fact, you are making your decision, and eleven of the twelve jurors, you are the twelfth, eleven of them have decided that this defendant needs the death sentence but you have said no, I believe the life sentence is the appropriate sentence. So it's eleven people saying death. You say no, it's life. Can you hold your ground and maintain that life sentence?

A Yes, sir.

Q You can? You won't be swayed by those eleven

people?

A (Shakes head negatively.)

Q That's all. Thank you.

EXAMINATION

BY MR. WILLINGHAM:

Q Mr. Hillstock, going back to your lynching charge here in Spartanburg, you don't know who the prosecutor's name is?

A No.

Q Would have been Bob Coker?

A That's it.

Q Okay. How many times did you meet with him?

A Once or twice.

Q You didn't stand up yesterday when the judge asked you if you knew anybody in the Solicitor's office. Would you tell me why not?

A It slipped my mind.

Q I'm sorry.

A It slipped my mind.

Q It's slipped your memory. Mr. Hillstock, you were charged in Cherokee County back in 2000. Is that right?

A Yes, sir.

Q With grand larceny?

A Yes, sir.

Q Two counts, right?
A Yes, sir.
Q And breaking into a motor vehicle?
A Yes, sir.
Q Who was the prosecutor on that?
A I don't know -- I went to pre-trial.
Q You went to pretrial. Did you ever come to the courthouse for roll call or things like that?
A Twice.
Q Okay. That was when?
A I don't remember.
Q You also have been convicted, this may not be the same person. But it looks like you been in Greenville County for shoplifting.
A Yes, sir.
Q And then in Spartanburg, you were arrested for shoplifting, second offense and malicious injury to personal property.
A Yes, sir.
Q What happened to those charges?
A In Greenville, I paid a fine.
Q Right. How about Spartanburg?
A In Spartanburg, I paid a fine.
Q Okay. Now, on that questionnaire that we had you fill out and I believe the judge gave you an opportunity

yesterday to change anything that needed to be changed, there was a question on here, have you, a family member or a person close to you ever been accused of a crime. You put n/a. I assume that's for non-applicable. Right?

A Right.

Q That ain't exactly so, is it?

A No.

Q Tell me why you didn't answer that question.

A I was tired at the time when I was filling this out.

Q You were tired?

A Tired.

Q Tired at the time that you filled this out. How about yesterday? Were you tired yesterday?

A No, sir.

Q Is there a reason you didn't come forward yesterday and tell the Court that you needed to change that questionnaire?

A I didn't think about it.

Q You didn't think about it yesterday either. I have nothing further.

THE COURT: All right. Mr. Hillstock, please step out in the hall for a moment.

(WHEREUPON, Mr. Hillstock exits at approximately 4:14 p.m.)

THE COURT: Yes, sir.

MR. WILLINGHAM: Judge, I don't think he's qualified. I don't think he's been honest with us, honest with the Court. He's been given every opportunity to change his answers. He did not do it yesterday. It slipped his mind. He was too tired.

THE COURT: Mr. Bartosh or Mr. Brennan.

MR. BRENNAN: Your Honor, I don't believe he is qualified either.

THE COURT: Okay. Bring him out.

(WHEREUPON, Mr. Hillstock enters at approximately 4:14 p.m.)

THE COURT: Mr. Hillstock, we will not need your services anymore in this case. We appreciate you coming. You are free to go.

(WHEREUPON, Mr. Hillstock exits at approximately 4:14 p.m.)

THE COURT: Give us a juror.

(WHEREUPON, Harold Marcum, Jr., Juror number 173 enters at approximately 4:15 p.m.)

HAROLD MARCUM, JR.

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Marcum. Uh, you recall that we put you

under oath yesterday. You are still under oath today.

A Yes, sir.

Q Since you left us yesterday, have you -- has anybody talked to you about this case or have you learned anything about this case whatsoever?

A No, sir. I have not.

Q Have you talked to anybody about the case?

A No, sir. I have not.

Q Now, we're going to ask you some questions about the case. We want you to answer the questions. But there are not any right or wrong answers. We're just trying to figure out what you know. Please just be open and honest with us. Tell us what you think and what you feel about what we ask you.

We're going to have to talk a little bit about a possible penalty phase. And the fact that we're talking about a penalty phase does not mean anything about this defendant or about this case. It simply means that because we might get to the penalty phase, we need to know a little bit about how you think and how you feel.

If you are a juror in this case, could you accept and apply the law exactly as I give it to you and render a verdict based solely on the testimony and evidence that is presented here in this courtroom?

A I believe so, Your Honor.

Q You have any hesitation in telling me that?

A No.

Q You understand in a criminal case, the State has to prove the defendant guilty beyond a reasonable doubt?

A I understand that.

Q This is a murder case. Depending on the facts and circumstances that are proven during this case and in light of the law as I will 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 I believe so, Your Honor.

Q If you are on the jury and the case -- the jury finds him guilty and it moves into the penalty phase, some other issues are going to come up. And let's talk about those now. Aggravating circumstances are facts, incidents or details of an occurrence which the State has declared to make worse or to aggravate a murder. In other words, aggravating circumstances when accompanied by a murder increase the enormity of or add to the injury of a 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 seen to extenuate or to reduce the degree of

moral culpability or responsibility.

If you are on the jury in the death penalty phase -- the penalty phase of a death penalty case, you would have two options as to what your verdict would be, two options as to what the sentence could be. You could impose a life sentence or you could impose a death penalty. Could you, depending on the facts and circumstances that are proven or that you find and also considering any aggravating or mitigating circumstance and certainly in light of the law as I will give it to you, could you impose or return a verdict for a life sentence?

A Yes, sir.

Q Could you impose the death penalty?

A I don't believe so, sir, Your Honor.

Q Why do you say that?

A I just -- I don't believe that it -- I don't think I have it in me to say whether a man should live or die. I just don't believe that I could.

Q All right.

THE COURT: Mr. Bartosh, do you have any questions of this juror?

MR. BARTOSH: No, sir.

THE COURT: Mr. Gowdy?

MR. GOWDY: No, sir.

THE COURT: All right. Mr. Marcum, would

you step in the hall for just one second please.

(WHEREUPON, Mr. Marcum exits at approximately 4:18 p.m.)

THE COURT: You both agree he is not qualified?

MR. BARTOSH: Yes, sir.

MR. BRENNAN: Yes, sir.

THE COURT: All right. Bring him back.

(WHEREUPON, Mr. Marcum enters at approximately 4:18 p.m.)

THE COURT: Mr. Marcum, we certainly do appreciate your being honest with us. Your services will not be needed any longer. You are free to go.

MR. MARCUM: Thank you.

THE COURT: Thank you.

(WHEREUPON, Mr. Marcum exits at approximately 4:18 p.m.)

THE COURT: Okay. Let's take a break. Three minutes.

(WHEREUPON, a short recess was taken at approximately 4:19 p.m.)

(WHEREUPON, the Court resumed at approximately 4:29 p.m.)

(WHEREUPON, Brenda Smith, Juror number 253, enters at approximately 4:29 p.m.)

BRENDA SMITH

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Ms. Smith.

A Good afternoon.

Q How are you?

A Fine.

Q Good. You remember yesterday that we put you understand oath.

A Yes, sir.

Q And you are still under oath today.

A Okay.

Q Since you left us yesterday afternoon, has anybody talked to you about this case?

A No, sir.

Q Have you learned anything about this case from the press, from the newspaper, from the TV, or from anywhere else?

A No, sir.

Q And I assume you have not talked to anybody else about the case?

A No, sir.

Q Now I'm going to ask you some questions. The lawyers might also ask you some questions. We're not trying to pry into your private life. We do have to ask

you these questions though. There are not any right or wrong answers to the questions that we are going to ask you. We just want you to be open and honest with us and tell us how you think and how you feel.

A All right.

Q We're going to talk about a possible penalty phase here. The fact that we are talking about the penalty phase does not mean a thing in terms of this defendant. It simply means that because we might get to the phase, we need to know how you think and how you feel about some of the things that could come up. Could you, if you were a juror in this case, could you accept and apply the law exactly as I will give it to you and render a verdict based solely on the testimony and evidence that you would hear in this courtroom?

A Yes, sir.

Q You understand that in a criminal case, the State has the burden of proof and must meet that burden of proof beyond a reasonable doubt?

A Yes, sir.

Q You know that this is a murder case?

A Yes, sir.

Q Could you, depending on the facts and circumstances that you find to have been proven and of course in light of the law as I will give it to you, could

you find the 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 you are on the jury and we move into penalty phase of the trial, some other issues are going to come up. I'm going to talk to you about those now. Aggravating circumstances are facts, incidences 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 the crime or add to the injury from the crime.

Mitigating circumstances, on other hand, are facts, incidences or details of an occurrence which the State has declared to lessen the severity of a crime of murder. Those may be seen to extenuate or to lessen, to reduce the degree of moral culpability or responsibility.

If you are on the jury in the penalty phase of a death penalty trial such as this, you will have two options as to what your verdict could be. You can vote for a life sentence or you can vote for the death penalty. Could you, depending on the facts and circumstances that you find and considering any aggravating or mitigating circumstances and of course doing so in light of the law as I would give it to you, could you vote to impose a life sentence?

A Yes, sir.

Q Could you vote to impose the death penalty?

A Yes, sir.

Q If you are on the jury and if I sequester the jury and if I were to put you up in hotel and keep you from going home to you family for five or six days, would that impose a tremendous burden on you?

A Yes, sir.

Q Tell me about that.

A Uh, I'll retract that. No, it would not.

Q Do you think that the other members of your family could get by without you and that you will be okay and everything would not just fall apart completely if you were sequestered for five or six days?

A I will depend on them to do the right thing.

Q Ma'am?

A I will depend on them to do the right thing.

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 witness list?

A Yes, sir.

Q Is there anybody on that list whom you know or to whom you are related?

A No, sir.

Q Do you know of any reason why you could not give both the State and the defendant a fair and impartial trial?

A No, sir.

Q Okay. Ma'am, now I'm going to let the lawyers ask you some questions. I may come back and ask you some more questions.

MR. BRENNAN: May it please the Court, Your Honor.

EXAMINATION

BY MR. BRENNAN:

Q Mrs. Smith, my name is Doug Brennan. I'm an attorney here in Spartanburg. This is Mr. Bartosh and Ms. Quimby. We have the opportunity to represent Mr. Lindsey. Right off the bat when you were asked if you knew anybody that was sitting at that table yesterday, you stood up. Was it me that you knew?

A Yes, sir.

Q Okay. Would you tell the Court how you know me.

A I know Mr. Brennan. He was a student at USCS. And he was also an employee as a student there. I knew him when he worked in his family's business also.

Q We never done anything socially or anything like that?

A No, sir.

Q Would your knowledge of me affect your ability to render a fair and impartial decision in this matter?

A No, sir.

Q All right. Do you understand that in South Carolina the death penalty is never mandatory?

A No, I didn't understand.

Q The jury in a sentencing phase has two options if the defendant is found guilty. If the defendant is found guilty, they have the option of life in prison and the death penalty. Okay. So now, do you understand?

A I'm clear on that, yes.

Q All right. It is said that there are three kinds of the jurors. There is the kind of juror that once the defendant is found guilty will always sentence a person to death. There are jurors on the other side that says, that it is said that if the defendant is found guilty, they will always impose the life sentence. And then there is group in the middle that it is their desire to listen to the facts and circumstances in the case and make their decision as to life or death based on what they heard in that trial. Tell me where you fall.

A Based upon the evidence of what I heard at trial, I will make my decision.

Q So you are in that group in the middle. Is that right?

A Yes.

Q Understanding that the death penalty is not mandatory in South Carolina, let's assume for the second that you are on the jury and eleven jurors have decided that the death penalty is the right sentence. But you, the twelfth juror have decided, No, I think the life sentence is appropriate. Can you hold your ground and not be swayed by those eleven jurors?

A I would have to discuss it with all of them and find out.

Q Do you understand it is your decision?

A Yes.

Q Understanding that it is your decision alone, can you not be swayed by those eleven?

A Yes, I can.

Q Okay. Ma'am, all right. I have to ask you some questions. I apologize. I understand that they may be upsetting. It is my understanding that you had someone who may have been very dear to you killed about a year ago?

A Correct.

Q Is it possible for you to set aside those very tender feelings in you and render a fair verdict in this case?

A Those wounds are still strong.

Q I understand that. And I knew this person too.

Does her death weigh too heavily on you to allow you to be fair in this matter?

A I don't think so.

Q Okay.

A No.

Q There was another -- I'm sorry. You said that you didn't think -- on your questionnaire, you said you did not know anything about this case. But yesterday I think you said maybe you did know something about the case. So in March when you filled out the questionnaire, you did not. Did something happen? Did you read something? Did you see something that gave you some knowledge about the case between when you filled out the questionnaire and today?

A Yes.

Q Can you set that stuff -- whatever you read or whatever you heard, can you put that aside and listen only to the evidence that will be presented in this courtroom?

A Yes, sir.

MR. BRENNAN: Nothing further. Thank you, Your Honor.

EXAMINATION

BY MR. WILLINGHAM:

Q Ms. Smith, my name is Donnie Willingham. This is Barry Barnett, Solicitor Gowdy. We are responsible for

prosecuting this case. Just a couple of very quick questions. Mr. Brennan indicated that there was a choice that the jury will have in the sentencing phase between life without parole and death. I want to make sure that you understand that death is never required. Nobody is going to tell you that you have to vote for death.

A Yes, sir. I understand.

Q That means you can give a life sentence for any reason or for no reason at all if that's what you want to do.

A Yes, I understand.

Q Given that opportunity and given that choice between the two, are there circumstances that you think you could impose the death penalty?

A Yes, sir.

Q Okay. And if you decide the death penalty is appropriate and the other eleven jurors agree that the death penalty is appropriate, all twelve of you have to agree, there will be a form that you have to sign. Could you put your name on that form?

A Yes.

Q Could you be the last one to sign that form knowing that without your signature, it would be carried out.

A What did you say?

Q Could you be the last one to put your signature on that form knowing that with your signature, it would be carried out?

A Yes, sir.

Q You hesitated. And that's fine. I'm not here to question your opinions or question your views. But you do hesitate and I'm wondering why.

A I'm the one signing the form, the last person.

Q Right. But that seemed to cause you some hesitation. I don't want to seem like it's a grave concern. But it caused you some --

A It's a hesitation.

Q Could you tell me why you have that hesitation?

A I've never been asked to do that before.

Q Certainly. But you think under proper circumstances, you could do that?

A Yes, sir.

MR. WILLINGHAM: Beg the Court's indulgence.

BY MR. WILLINGHAM:

Q As far as your relationship with Mr. Brennan, I know you said that would not factor into your decision making at all. You would not favor on side over the other?

A Right.

Q If you were to be a juror on this case and you were to vote for death and if you ran into Mr. Brennan in

a social setting afterwards, would that cause you discomfort?

A No, sir.

Q That would not cause you any hesitation at all?

A No, sir.

Q Thank you.

THE COURT: Ms. Smith, let me ask you to step into the hall just one second please, ma'am.

(WHEREUPON, Ms. Smith exits at approximately 4:42 p.m.)

THE COURT: Any objection to Ms. Smith.

MR. BRENNAN: No.

MR. BRENNAN: No, sir.

THE COURT: Bring her back and get us another juror.

(WHEREUPON, Ms. Smith enters at approximately 4:42 p.m.)

THE COURT: Ms. Smith, I find that you are qualified to serve as a juror in this case. It is going to be at least a day or so before we need you back. Please start calling the telephone number you were given yesterday. Call it about lunchtime tomorrow. And when we get close to needing you, we will put something on there about when we think you we're going to need you.

Keep in mind we may sequester, that I may sequester the jury. That means you're going to need to be able to pack up and be here away from home for five or six days. During the time that you are away, don't read anything, don't watch anything about this case, don't talk about the case, don't allow nobody to talk to you about the case.

When you come back, I'm going to ask you whether or not you talked to anybody or learned anything about it. And I'm going to expect you to tell me that you have not. We look forward to seeing you in a day or so.

(WHEREUPON, Ms. Smith exits at approximately 4:44 p.m.)

(WHEREUPON, Lori Burnett, Juror number 39, enters at approximately 4:44 p.m.)

LORI BURNETT

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Ms. Burnett, we've got a Supreme Court Justice in this courthouse who call himself Burnette. But you are Ms. Burnett.

A (Nods head affirmatively.)

Q All right. You recall yesterday that we had put

you under oath and you are under oath again today still?

A Yes.

Q Since you left us yesterday, have you talked to anybody about this case or has anybody talked to you about the case?

A No, sir.

Q Have you have you read anything, seen anything or learned anything about this case?

A No, sir. I'm going to ask you some questions and the lawyers may also ask you some questions about this case. And we're not trying to pry into your private life. We do have to ask you these questions though. There are no right or wrong answers. We just want you to be open with us and honest us and tell us how you feel and how you think.

We're going to get into some questions about a possible penalty phase of this trial. The fact that we're going to talk about a penalty phase does not mean anything about this defendant or about this case. It simply means that we know we might get there. And we need to know some things about how you think and how you feel.

If you were a juror in this 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 and see in this courtroom?

A Yes, sir.

Q You understand in a criminal case, the State has the burden of proof and must meet that burden by proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q You understand that this is a murder case?

A Yes, sir.

Q Could you, based on the facts and circumstances that are proven and in light of the law as I will give it to you, could find a verdict in this case of 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 you are on the jury and the jury reaches a verdict of guilty for murder, you would move into the penalty phase of the trial. There are some issues that are going to come up there that I'm going to talk to you about now.

Aggravating circumstances are facts, incidences or details of the occurrence which the State of South Carolina has declared to make worse or to aggravate the crime of murder. Aggravating circumstances, when accompanied by a murder, increase the enormity of the crime of murder or add to the injury caused by the crime of murder.

Mitigating circumstances, on the other hand, are

facts, incidences or details of an occurrence which the State of South Carolina has declared to reduce the severity of the crime of murder. These may be seen to extenuate or to reduce the moral culpability or responsibility for the crime.

If you on the jury in a penalty phase of a death penalty trial, you would have two options as to what your verdict could be. You could impose a life sentence or you could impose the death penalty. Could you, depending on the facts and circumstances that you find to exist and considering any aggravating or mitigating circumstances and certainly in light of the law as I will give it to, could you vote to impose a life sentence?

A Yes, sir.

Q Could you vote to impose the death penalty?

A No, sir.

Q Why do you say that?

A I am a Christian and I just can't do that. I mean, in the old testimony, it is taught an eye for an eye. But that was under law. And we're under ransom. I can't vote for it.

THE COURT: All right. Mr. Bartosh, do you have any questions of this juror?

MR. BARTOSH: No, sir.

THE COURT: Mr. Gowdy?

MR. BARTOSH: No, sir, Your Honor.

THE COURT: Ma'am, we will not be needing your services anymore. You are free to go. Thank you for being so open and honest with us.

(WHEREUPON, Ms. Burnett exits at approximately 4:48 p.m.)

THE COURT: I assume there is no objection to that.

MR. BARTOSH: No, sir.

MR. GOWDY: No, sir.

THE COURT: Keep the door close.

And let me just clear this up. I think I cleared it up yesterday. But for all of these jurors as to whom I have just asked you do you want to question her, you have the right to question the juror. You are just able to see that that juror is not qualified and you are waiving that right, correct?

MR. BARTOSH: Well, I can see that juror does not want to serve and does not believe in the death penalty.

THE COURT: Right. And so you can see that they are not qualified and you are waiving your right to ask them questions under the statute?

MR. BARTOSH: Yes, sir.

THE COURT: Sir?

MR. BARTOSH: Yes, sir.

THE COURT: And you are satisfied that, when I ask that and you have no questions, is it safe for me to assume that you have no objection to that juror being found unqualified?

MR. BARTOSH: Yes, sir.

THE COURT: All right. Bring us a juror.

(WHEREUPON, Larry Mauldin, Juror number 179, enters at approximately 4:50 p.m.)

LARRY MAULDIN

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right. Mr. Mauldin, how are you this afternoon?

A Doing fine, sir.

Q Good. You recall that we put you under oath yesterday afternoon or yesterday morning?

A Yes, sir.

Q You are still under oath right now. Do you understand that?

A Yes, sir. I certainly do.

Q Since you left us yesterday, have you talked to anybody about this case or has anybody talk to you about this case?

A No, sir.

Q Have you learned anything at all by either hearing somebody talking about it or watching TV or reading the newspaper or anything?

A No, I have not.

Q We're going to ask you some questions. I'm going to start off. And then the lawyers might also ask you some questions. We apologize if it seems a little bit like we're prying into places we should not go. But we have to ask you these questions. There are no right or wrong answers to the questions. We just want you to be open and honest with us and tell you tell us how you think and how you feel.

We are going to talk about a possible penalty phase of this trial. The fact that we're talking about the penalty phase does not mean anything about this defendant or about this case. It simply means that because we might get to the penalty phase, we need to know some things about how you feel and how you think on certain some issues.

If you are a juror in this case, can you accept and apply the law exactly as I give it to you and render a verdict based solely on the testimony and the evidence that you will hear in this courtroom?

A Yes, I can.

Q You understand that in a criminal case, the State

has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, I do.

Q You understand that this is a murder case?

A Yes, I do.

Q Could you, based on the facts and circumstances that you find to have been proven and in light of the law as I will give it to you, could you find the defendant either guilty or not guilty depending on whether or not you think the State has met its burden of proof?

A Yes, I can.

Q If you are on the jury and you find the defendant guilty, we would move into the penalty phase where some issues are going to come up. And I'm going to talk to you a little bit about that now. Aggravating circumstances are facts, incidences or details of an occurrence that the South Carolina has declared to make worse or to aggravate the crime of murder. Aggravating circumstances when accompanying a murder increase the enormity of the crime or add to the injury caused by the crime.

Mitigating circumstances, on the other hand, are the facts, incidences or details of an occurrence which the State of South Carolina have declared to reduce the severity of the crime of murder. Mitigating circumstances may be considered as extenuating or as reducing the moral

culpability or responsibility for the crime.

If you are on the jury during the death penalty -- during the penalty phase of the death penalty case, you will have two options as to what your verdict could be. You could impose a life sentence or you could impose the death penalty. Could you, based on the facts and circumstances that you find to exist after listening to all of the testimony and evidence and considering any aggravating or mitigating circumstances and of course in light of the law as I give it to you, could you vote for a life sentence?

A Yes, I could.

Q Could you vote to impose the death penalty?

A Yes, I could.

Q If you are on this jury and if I sequester the jury and order that you be put up in hotel and not allowed to go home for five or six days, is that going to impose a terrible burden on you?

A No, it would not.

Q Have you had a chance to go over the witness list that I gave you?

A Yes, I did.

Q Did you read every name on that list?

A Yes, I did.

Q Do you know anybody or are you related to anybody

on that list?

A I do know two people on there.

Q Please tell me who you know.

A Jason Hilton who is the Sheriff's Deputy who I have not seen in a few years. I had forgotten about him. And Freddy Thompson who is over 911.

Q What about Mr. Thompson? What is your recent relationship with him?

A The recent relationship is I was employed with BellSouth. I maintained 911 equipment. And I had direct contact with Mr. Thompson.

Q Are you still employed with BellSouth?

A No, sir. I retired four years ago.

Q During the last four years, have you had any contact with Mr. Thompson?

A No, I have not.

Q Would the fact that you know -- what's the first man's name?

A Uh, the first one? Jason Hilton.

Q Would the fact that you know Mr. Hilton and know Mr. Thompson, would that interfere in any way with either your ability willingness and your ability to give both the State and the defendant a fair and impartial trial in this case?

A Absolutely not.

Q Do you know of any reason why you could not give both the State and the defendant a fair and impartial trial?

A No, I do not.

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

MR. BRENNAN: May it please the Court, Your Honor.

EXAMINATION

BY MR. BRENNAN:

Q Mr. Mauldin, how are you, sir?

A I'm doing fine.

Q My name is Doug Brennan. I'm an attorney here in Spartanburg. Myself, Mr. Bartosh and Ms. Quimby are representing Marion Lindsey in this matter. You mentioned on your questionnaire that your home, actually, your studio at one point had been broken into, is that correct?

A Yes. That is correct.

Q Were you there when the incident occurred?

A No, sir. I was at work.

Q You did not see whoever it was that broke in there?

A No.

Q Was anyone ever arrested?

A No.

Q So there really has been no resolution to that matter?

A No.

Q How long ago was that?

A About eight years ago.

Q Would you be able to set aside the anxiety and maybe the feelings caused by that break in and focus and render a true and fair decision in this matter?

A Most definitely.

Q All right. Sir, do you understand that the death penalty is never mandatory in South Carolina?

A Yes.

Q Okay. It has been written and it has been said that there are three kinds of jurors. There are those jurors that if defendant is found guilty will always impose the death penalty. There are those jurors that if the defendant is found guilty will always impose a life sentence.

Then there are those jurors that insist on listening to the facts at the guilt phase. And based on what they hear at the guilt phase, will render, will make their decision as to whether it should be the death penalty or life in prison. I need to know which one of those three you are.

A The third.

Q Okay. All right. If you are seated on this jury and you are in deliberation after the sentencing phase and eleven jurors have made the decision that the death penalty is proper. But based on what you heard, your decision is that life is the proper sentence. Can you stand by your decision in spite of those eleven jurors and continue to hold your ground on that life sentence?

A Yes.

Q You will not be swayed by those eleven people?

A No. If I feel, if I feel truthfully that the information has been given and I truthfully feel that life is, then I will have to go with life.

Q Okay. You were in the Navy?

A Yes, sir.

Q Did you retire from the Navy?

A No, sir.

Q All right. Your brother is a police chief?

A He was the police chief. He was there approximately six months. He left there and went with the federal government investigating corrupt police forces around the world. So he was only there six months.

Q How often do you see your brother?

A Maybe once a year. He lives in Key West now. I don't see him that much.

Q How often do you talk to him?
A I talk to him once every three months.
Q Do the two of you ever talk about law enforcement?
A No.
Q Does your relationship with your brother enter into your opinions on the death penalty?
A No.
Q Thank you. That's all, sir. Thank you.
MR. BARNETT: May it please the Court.
THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q My name is Barry Barnett. I will be prosecuting the case along with Trey Gowdy and Donnie Willingham. We will be representing the State. You worked for BellSouth. Is that right?
A I did. I'm retired.
Q You're retired. And you been retired four years?
A Right.
Q And your wife, is she is still a teacher's aide?
A That's correct.
Q How long has she worked there?
A She's been there two going on 22 years.
Q Thank you very much.

THE COURT: Mr. Mauldin, step in the hall for just a second please.

(WHEREUPON, Mr. Mauldin exits at approximately 5:00 p.m.)

THE COURT: All right, sir. Any objection to his qualifications?

MR. BRENNAN: None, Your Honor.

MR. BARNETT: None from the State.

THE COURT: All right. Bring him back please. Give us another juror.

(WHEREUPON, Mr. Mauldin enters at approximately 5:00 p.m.)

THE COURT: I find that you are qualified to serve as a juror on this case. It is going to be a day or so before we need you. Some time about lunchtime tomorrow, please start calling the telephone number that you were given yesterday. We will, when we get ready, when we get close to needing you, we will put information on there about when we think we are going to need you back.

You keep in mind please that if I sequester the jury. You are going to be needing to have some stuff packed and ready to be with us for five or six days. Obviously, don't talk about the case. Don't allow anybody to talk to you about the case. Don't read

anything or watch anything that concern this case.

When you come back, I'm going to ask all the jurors have you watched anything or learned anything or talked about the case or anything. And I'm going to expect you to be able to tell me no, that you have not. All right. We look forward to seeing you in a day or so. Thank you.

(WHEREUPON, Mr. Mauldin exits at approximately 5:00 p.m.)

(WHEREUPON, Isabell Williams, Juror number 294, enters at approximately 5:00 p.m.)

ISABELL WILLIAMS

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Ms. Williams.

A Good afternoon.

Q How are you?

A Fine.

Q You recall that I put you under oath yesterday, I suppose. And you're still under oath today.

A Yes, sir.

Q Since you left us yesterday, have you talked to anybody or has anybody talked with you about this case?

A No, sir.

Q Have you learned anything, read anything or seen anything about this case?

A No, sir.

Q I'm going to ask you some questions now and probably the lawyers are also going to ask you some questions in a few minutes. We're not trying to pry into your private life but we need to talk to you about these things.

A Okay.

Q There are no right or wrong answers to these questions. We just want you to be open and honest with us and tell us how you think and tell us how you feel.

A Okay.

Q We are going to talk about a possible penalty phase. But the fact that we're talking about a possible penalty phase does not mean anything about the defendant or about this case. It simply means that because we might get to the penalty phase, we need to ask you some questions about some issues that might come up or will come up in that phase. We want to know how you think and how you feel about those issues.

A All right.

Q If you are a juror in this case, will you be able to accept and apply the law precisely as I will give it to you and render a verdict based solely on the testimony and

evidence that you see and hear in this courtroom?

A Yes, sir.

Q You understand that in a criminal case, the State has to prove the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q You understand this is a murder case?

A Yes, sir.

Q Could you, depending on the facts and circumstances that are proven to you and in light of the law as I will 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 beyond a reasonable doubt?

A Yes, sir.

Q Now we're going to talk a little bit about possible sentencing phase issues. I'm going to tell you about aggravating and mitigating circumstances. 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. Aggravating circumstances when accompanying a murder increase the enormity of the crime or add to the injury from the crime.

Mitigating circumstances, on the other hand, are facts

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 moral culpability or responsibility for the crime.

If you are on the jury in the penalty phase of a death penalty case such as this, you would have two options as to what your verdict could be. You could impose a life sentence or you could impose the death penalty. Could you depending on the facts and circumstances that you find to exist including any aggravating or mitigating circumstances and of course in light of the law as I will give it to you, could you impose a life sentence?

A Yes, sir.

Q Could you impose the death penalty?

A Yes, sir.

Q If you get on this jury and if the jury is sequestered and required to stay in a hotel and be away from your family for five or six days, is that going to impose a terrible burden on you?

A No, sir.

Q Have you had a chance to go over that 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 Ma'am, do you know of any reason why you cannot both the State and the Defendant a fair and impartial trial in this case

A No, sir.

Q I'm going to let the lawyers ask you some questions now. And then I might come back and ask you some more in a few minutes.

A Okay.

EXAMINATION

BY MR. BRENNAN:

Q Ms. Williams, how are you this afternoon?

A I'm fine.

Q Good. Thank you. My name is Doug Brennan. I'm an attorney here in Spartanburg. Myself, Mr. Bartosh and Ms. Quimby have the opportunity to represent Mr. Lindsey in this matter. Yesterday during some of the general questions when the big group was here, you were asked if you knew anything about this case. And you stood up.

A Uh-huh (affirmative).

Q Can you tell me what you know about this case?

A Just what I seen in 2002. That's it.

Q And what you seen, do you mean what you saw in the newspaper and saw on TV?

A Yeah.

Q Based on what you saw and what you read, ma'am, have you formed an opinion in this matter?

A No, because really I forgot all about it until he came up yesterday.

Q Okay. So you would be able to set aside or forget those things that you read about and maybe seen on TV and limit your consideration to just the stuff that comes from the witness stand?

A Yes, I could.

Q Okay. All right. Where do you work now?

A At the Death and Blind School.

Q How long have you been there?

A Five years.

Q Where did you work before that?

A At McDonald's.

Q McDonald's, which one?

A That was in Florida.

Q In Florida, okay. Have ever you ever worked in a nursing home in Spartanburg County?

A No.

Q You ever worked in a textile mill in Spartanburg County?

A No.

Q Okay. Yesterday again in those general questions, you said that somebody in your family had been arrested, someone in your family or close relations had been arrested for CDV or assault or assault and battery?

A Uh-huh (affirmative).

Q Can you tell me about that?

A It was my cousin.

Q Okay.

A He was arrested for assault.

Q For assault?

A Uh-huh (affirmative).

A Did your cousin go to jail?

A Yes, he went to jail. But he didn't make time. He just got out.

Q How long ago was that?

A Three or four years ago.

Q Was that here in Spartanburg?

A Yes.

Q Were you asked to make a statement or anything in relation to that case?

A No.

Q You never had the opportunity or were called by the solicitor's office to make a statement or any kind of criminal investigation or anything like that?

A No.

Q Would that affect your decision-making ability in this case, that arrest?

A No.

Q You also stood -- this may be the same thing. But you stood when the question was asked have you or anybody in your family been arrested by the Spartanburg County Sheriff's Department or the Inman Police Department?

A Uh-huh (Affirmative).

Q Was that the same incident?

A Same incident.

Q So it wasn't you?

A No.

Q Ma'am, do you understand that in South Carolina, a jury in a death penalty case never has to impose the death penalty?

A Uh-huh (Affirmative).

Q Okay. So you do understand that the jury can impose life?

A Yeah.

A With that understanding, ma'am, it is said that there are three kinds of jurors. There are those jurors that if the defendant is found guilty will always impose the death penalty. There are those jurors on the other side that if the jury is found guilty in a capital case

will always vote for life in prison. Then there are those jurors that want to, before they make that decision, hear all the evidence in the sentencing phase and then make their decision.

A Uh-huh (affirmative).

Q Where do you fall?

A I want to hear all the evidence and then make a decision.

Q So you are not leaning towards the death penalty or towards life in prison?

A I want to hear it all first.

Q Just a couple more questions, ma'am. If you are seated on this jury and if we get to the sentencing phase and you are in the deliberation room and there are eleven jurors and they have already said death penalty. Eleven of them have already said death penalty. But you think it is the other way. You think that it should be the life sentence but you know those eleven people are saying the other thing, can you stand your ground?

A Yeah, I can.

Q Can you hold your ground against those eleven people?

A I could.

Q All right. Last question. Ma'am, when it comes time for a verdict form, twelve people have to sign that

page. Now can you sign as the last juror knowing that that signature would be what sends the man to the death penalty?

A Can I sign?

Q Yes.

A Yes, I can.

MR. BRENNAN: Nothing further. Thank you, Your Honor.

MR. BARNETT: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q Hi, Ms. Williams.

A Hi. How are you doing?

Q I'm fine. How are you?

A All right.

Q My name is Barry Barnett. Along with Solicitor Trey Gowdy and Donnie Willingham, we will be representing the State and prosecuting cases. I notice that you go to Majority Church. Is that right?

A Yes.

Q Is Reverend Stiney the preacher there?

A Reverend Hillstock.

Q Hillstock, I'm sorry. And you work at the Deaf and Blind School. Is that right?

A Uh-huh (affirmative).
Q Have you thought much about the death penalty before this trial?
A No, I have not.
Q Where does your belief or your feelings about the death penalty come from?
A What do you mean?
Q Have you ever thought about the death penalty before this?
A No.
Q What are your feelings about the death penalty? What would help form your opinion about the death penalty?
A If I had to do it, I would do it.
Q Would that be based off your background or education, what you know? How would you form your opinion about the death penalty? I'm not trying to ask a trick question. I'm just trying to find out. Like I said, this is the first time you and me met.
A Uh-huh (affirmative).
Q And I'm just trying to find out how you think about the death penalty?
A I guess I have none.
Q Would you speak a little bit louder?
A I don't have no opinion either way.
Q In looking at the case and everything, looking at

the facts or whatever, you're going to be hearing the case if you're on the jury. What would you base a death penalty verdict on? Would you base it off your personal opinion? Would you base it off, what would you base it off of? The reason I am prying in there is because we just need to know. Obviously, once you're in the jury room, after the evidence has been heard, we cannot talk about it then.

A It would be my personal opinion.

Q Yes, ma'am. What is your personal opinion?

A I can't describe it right now.

Q I'm sorry. Could you talk a little bit louder.

A I just can't describe it right now.

Q Do you know what it is?

A Yes. Well, I don't know. But it is like if someone kill someone or murder someone, put it like that is what I'm saying.

Q You realize that once a person is found guilty of murder in these type cases, there are two verdicts, life without parole or the death penalty?

A Yes.

Q In looking at those two verdicts, if you knew life without parole was an option and the option will always be there, do you think that you could ever find anybody guilty of the death penalty?

A Yes, I could.

Q Would that be -- what would that be based on, ma'am?

A My opinion. If they were found guilty. That's what I'm saying, you know.

Q Uh-huh (Affirmative). If they are found guilty, you realize there are two options. I think the Judge has described those to you?

A Yeah.

Q Would factors -- I guess, what is -- just in your personal view of the death penalty, what would be your view of the death penalty?

A I have no idea.

Q So you don't have any idea what it would be?

A No.

Q Is there a anything that would lead you to say that you don't know? We are just wondering about, I know you are trying to answer it. But without that answer, we don't know, either side doesn't know. What makes you say you don't know?

A I'm just saying I don't know. That's it.

Q And you don't know what you would do?

A If I have to, I would do the death penalty if I had to.

Q Okay. When you say if you have to, you realize that on a jury you don't have to do anything?

A From my opinion.

Q Uh-huh (affirmative). Yes, ma'am. And when you have to, what would make you have to?

A Just when I hear all the evidence and everything.

Q But you really don't know what, don't know anything about it, is that right?

A Uh-huh (Affirmative).

MR. BARNETT: One moment, Your Honor.

BY MR. BARNETT:

Q I apologize for asking these questions, under what circumstances would you think the death penalty is appropriate?

A Like murder. Is that what you're talking about?

Q What types or what type situation?

A I don't know.

THE COURT: Let's move on. She's having trouble thinking of circumstances that would justify the death penalty. You have asked her the question. She's tried to think of them. And she has not been able to think of any.

MR. BARNETT: Yes, sir.

BY MR. BARNETT:

Q I think Mr. Brennan asked you about this. I wanted to check back with you. Have you heard about this

case through the TV or through the Newspaper?

A Like I told you, it was 2 years when I heard about it. That was the only time that I had heard about it was two years ago.

Q And two years ago, that's when you saw, that's the last time you heard about it. Is that right?

A Right.

Q Who was your cousin that was charged?

A Deadra Willis.

Q Would that have any influence on any decision you make here in court?

A No.

MR. BARNETT: One moment, Your Honor, please.

BY MR. BARNETT:

Q I just want to make sure that you understood, and I know we talked about this before. But you realize you never have to give the death penalty?

A Yeah.

Q You always have those two options if we get in the sentencing phase. That will be that you give life without parole or the death penalty. Do you understand that?

A Yes.

Q Could you consider both of those options or do you feel like you have to do something in that situation?

A I would consider both of them.

Q Would that be based on the facts that you saw in the case?

A Yes.

Q You don't know what factors you would consider?

A No.

Q Thank you, ma'am. I'm sorry for having to ask you those questions.

THE COURT: Ma'am, would you mind stepping into the hall for just a second please.

(WHEREUPON, Ms. Williams exits at approximately 5:15 p.m.)

THE COURT: Any Objection?

MR. BARNETT: Yes, sir. The problem I have got -- and it's a difficult situation questioning her. And I appreciate Your Honor stepping in, but she has no idea what she would do. She don't even have a belief or can't tell a basis for that belief.

I don't know what kind of juror she is. I know that answering those questions that she twice just said basically I don't know. She would nod and kind of shake her head. And she just didn't want to answer the questions. I don't know if she could answer the questions to be honest with you. You really could not tell type juror she is. Based on that and the

inconsistent answers she gave, I think under State versus Tyler she is not qualified.

THE COURT: Under State versus Tyler?

MR. BARNETT: Or any kind of case that would talk about inconsistent statements. She is very consistent. You don't know where she stands in looking at the answers she gave. I tried to go back into it a couple of times. She would never give that answer. I think talking about beliefs and the death penalty is a very key pertinent issue to talk about or look at.

THE COURT: Mr. Bartosh.

MR. BRENNAN: Your Honor, we believe that she is qualified. And quite to the contrary, we believe that she was consistent with her answers always stating that she could impose the death penalty. It wasn't until the questions became more specific asked by Mr. Barnett that she had trouble, Your Honor. And I can understand not knowing a specific set of circumstances upon which I would vote to send someone to death. But she was consistent with her answers that she could impose a death sentence. Therefore, I believe she is qualified.

MR. BARNETT: Your Honor, if I get a chance, I would like to reply to that for a second.

THE COURT: All right.

MR. GOWDY: The other thing is she wouldn't even say if she would apply it to a 9/11 situation or a child molester. We didn't get that. I did not get specific enough because she couldn't not give me an answer to it. We just do not know where she stands with that. That is the problem I got with her answers.

I don't know if she knows what the death penalty involves or stands for. I know she's being exposed to it for the first time. She could not even give me that. If we don't have that information, I mean, without that information, you can't be a qualified juror.

THE COURT: All right. Well, I think she is qualified but based on that last thing that you said I'm going to ask her a few more questions to confirm that or to see whether or not I am incorrect.

Bring her out please.

(WHEREUPON, Ms. Williams enters at approximately 5:17 p.m.)

BY THE COURT:

Q Ms. Williams, let me ask you a few questions if you don't mind. You have told us that you are the type kind of juror who would wait to see what the facts and

circumstances are before you will decide whether to vote to impose a life sentence or impose the death penalty, correct?

A Yes, sir.

Q Does that would mean that you -- do you have any opposition to the death penalty?

A What do you mean by that?

Q Are you opposed to the death penalty?

A No.

Q Are you -- so you and I realize you said you don't support the death penalty in every case. But you do support the death penalty as a concept in general?

A Yes, sir.

Q Is there anything more than what I just said that you are not opposed to the death penalty. You do support the death penalty. Anything more to your view on the death penalty that you can think of that you might want to tell me?

A No, sir.

Q Can you think of anything that would get in the way of your imposing the death penalty if you felt the circumstances were appropriate?

A No, sir.

Q Let me make sure you -- I just want to talk to you a little bit to make absolutely sure that you

understand what I'm talking about when I say the death penalty. If this case gets pass the guilt phase, in other words, if the jury in this case finds the defendant guilty of murder, then we would move into the sentencing phase.

If the jury finds that the State has proven beyond a reasonable doubt the existence of at least one -- and there will only be one -- aggravating circumstance, then -- so first of all, the jury's got to find the defendant guilty of murder. Then the jury has got to find the existence of an aggravating circumstance. Both of those have to be found beyond a reasonable doubt. The State has to prove them beyond a reasonable doubt.

If you get to that point as a member of the jury, then the jury has the choice between a sentence of life in prison. And that will mean of course that the defendant will stay in jail and stay in prison for the rest of his life and that he would actually die in prison at whatever time.

On the other hand, the jury would have an option of imposing the death penalty. What that means, of course, is the State either by electrocuting the defendant in the electric chair or by giving the defendant a lethal injection of some type of drug that would kill him, that the State would kill the defendant. That is what we call the death penalty. You understand all of that?

A Yes.

Q Do you believe after hearing all of that if you found the circumstances were right that you could vote to impose a sentence on the defendant that would result in his death because of electrocution or because of lethal injection?

A Yes, sir.

Q You could do that. You have any hesitation in that?

A No, sir.

Q Ms. Williams, I appreciate your answers. Let me get you to stand back in the hall one more second please. I will have you right back in here.

(WHEREUPON, Ms. Williams exits at approximately 5:21 p.m.)

THE COURT: Anything else?

MR. BARNETT: Nothing from the State.

MR. BRENNAN: Nothing.

THE COURT: All right. I think she is qualified.

Bring her in.

(WHEREUPON, Ms. Williams enters at approximately 5:23 p.m.)

THE COURT: Ms. Williams, I find that you are qualified to serve as a juror in this case. It is

going to be a day or so before we need you to come back. So when you leave here now, you can be free and do whatever you want to do at least for most of the day tomorrow maybe all day tomorrow.

Please about lunchtime tomorrow start calling the telephone number that you were given yesterday morning. And as soon as we know something about when we are going to need you back, we will put some information on there that will kind of guide you about when we need you to come back.

MS. WILLIAMS: Okay.

THE COURT: Keep in mind that you may have to stay with us for five or six days. So you may need to pack some clothes and get ready to do that.

MS. WILLIAMS: All right.

THE COURT: And during the time that you are away, don't talk to anybody about this case. Don't allow anybody to talk you about this case. Don't read anything. And don't watch anything about this case. When you come back, just like with all the jurors, I'm going to ask you whether or not you had done that. I'm going to expect that you will be able to tell me no, that you have not talked to anybody and you have not learned anything about the case.

MS. WILLIAMS: All right, sir.

THE COURT: Have a good day and we look forward to seeing you in a day or so.

MS. WILLIAMS: Thank you. You, too.

(WHEREUPON, Ms. Williams exits at approximately 5:28 p.m.)

THE COURT: Bring us a juror.

(WHEREUPON, Mackenzie Leake, Juror number 160, enters at approximately 5:28 p.m.)

MACKENZIE LEAKE

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Ms. Leake, good afternoon to you, ma'am.

A Good afternoon.

Q You recall that we put you under oath yesterday afternoon. And you are still under oath this morning, I mean, this afternoon. It seems to me like this morning. But it is this afternoon. And it's late.

A It is.

Q You understand you are still under oath?

A Yes.

Q Since you left us yesterday, have you talked to anybody about this case or has anybody talked to you about this case?

A No.

Q Have you learned anything about the case or read anything or watched or seen anything?

A No.

Q Ma'am, we're going to ask you some questions. We don't mean to be prying into your private life. These are questions that we have to ask you. There are no 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're going to talk a little bit about a possible penalty phase. And the fact that we're talking about the penalty phase does not mean anything about this defendant or about this case. It simply means that because we know we might get to a penalty phase, we need to ask you some questions about how you think and how you feel on certain issues.

If you are a juror in this case, could you accept and apply the law exactly as I would give it to you and render a verdict based solely on the testimony and evidence that you would hear in this courtroom?

A I guess I could.

Q Ma'am?

A I guess so.

Q You think you could?

A I think I could.

Q All right. You realize in a criminal case, the State has the burden of proof and they must prove the defendant guilty beyond a reasonable doubt. You understand that?

A Yes.

Q This is a murder case. You understand that?

A Yes.

Q Could you, based on the facts and circumstances that you find to be proven and in light of the law as I will 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 beyond a reasonable doubt?

A Yes.

Q If the jury finds the defendant guilty or murder, then we would move into the penalty phase of the trial. So I'm going to talk to you a little bit now about penalty phase issues. I'm going to tell you about mitigating circumstances and aggravating 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 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 these serve to extenuate or to reduce the degree of moral culpability or responsibility.

Now, if you are on the jury in a penalty phase of a death penalty case like this, then you would have two options as to what your verdict could be. You could impose a life sentence or you could impose the death penalty. Could you, depending on the facts and circumstances that you find to exist and considering any aggravating or mitigating circumstances and certainly in light of the law as I will give it to you, could you impose a life sentence?

A Yes, sir.

Q Could you impose the death penalty?

A No, sir.

Q You could not?

A No.

Q Are you sure about that?

A Yes.

THE COURT: All right. Any questions you want to ask this juror?

MR. BRENNAN: None, Your Honor.

MR. BARNETT: Not from the State, Your Honor.

THE COURT: All right. Ma'am, we will no longer

need your services in this case. We appreciate you coming. You are free to go.

(WHEREUPON, Ms. Leake exits at approximately 5:32 p.m.)

THE COURT: One more. If y'all be quick, we might actually be on schedule in a minute.

(WHEREUPON, Wilma Langford, Juror number 157, enters at approximately 5:32 p.m.)

WILMA LANGFORD

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q How are you, Ms. Langford?

A All right.

Q You recall that we put you under oath yesterday afternoon?

A Yes, sir.

Q Yesterday morning actually.

A Yes, sir.

Q And you are still under oath now.

A Uh-huh (affirmative).

Q Since you left us yesterday afternoon, have you talked to anybody about this case or has anybody talked to you about this case?

A No, sir.

Q Have you learned anything about the case?

A No. I don't watch the news.

Q You said you haven't watched the news or read the paper or anything about the case?

A Not since I left here.

Q Well, thank you, ma'am. We're going to ask you some questions now. We don't mean to be prying into your private life. But we do have to ask you these questions. These questions don't have right or wrong answers. We just want you to listen carefully and be open and honest with us and tell us what you think and what you feel.

A Okay.

Q We're going to talk about possible penalty phase or sentencing phase of this case. And just because we're talking about the sentencing phase doesn't mean anything about this defendant or about this case. It simply means that because we might get to that phase, we need to ask you some questions about some issues that might come up and see how you think and how you feel about those issues.

If you are a juror in this case, could you accept and apply the law precisely as I would give it to you and find a verdict based solely on the testimony and evidence that you would find and see and hear in this courtroom?

A Yes.

Q You understand that in a criminal case, the State

has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes.

Q And you understand this is a murder case?

A Yes.

Q Could you, depending on the facts and circumstances that you find to be 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 met its burden of proof?

A Yes.

Q Now, if you are on the jury and the jury finds the defendant guilty of murder, we would move into the penalty phase or the sentencing phase. So I'm going to talk to you a little bit about some things that might come up.

Aggravating circumstances are facts, incidences 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 the crime or -- excuse me -- add to the injury of the crime of murder.

Mitigating circumstances, on the other hand, are facts, incidents or details of an occurrence which South Carolina has declared to reduce the severity of the crime

of murder. And these may be seen to extenuate or to reduce the degree of moral culpability or responsibility for the crime.

If you are on the jury in a penalty phase of a death penalty case such as this one, you would have two options as to what your verdict could be, two options as to what the sentence could be. You could impose a life sentence or you could impose the death penalty. Could you, depending on the facts and circumstances that you find to exist and considering any aggravating or mitigating circumstances and considering the law as I will give it to you, could you vote to impose a life sentence?

A Yes.

Q Could you vote to impose the death penalty?

A Yes.

Q Now, ma'am, if you were sequestered on a jury and if I asked you to stay with us over here in a hotel for five or six days and you weren't allowed to go home to your family, would that impose a terrible hardship on you?

A It would right now.

Q Tell me why.

A I have a 12-year old great granddaughter that lives with me and I have custody of her. I carry her to school and back. And I don't really know -- her parents don't live in Gre -- you know, close to me. They live

somewhere else. One in Spartanburg, one in Pickens. I mean, you know.

Q Is there anyone else that lives in the house with y'all?

A No, we live there by ourselves. We been there for about five years by our self.

Q Do you have legal custody of that child?

A Yes. And school is going on right now.

Q And who helps the child with homework and all that stuff?

A I do.

Q Now, just to think about what the possibilities are, if I did it anyway and put you on the jury and sequestered you, who would take care of the child?

A Right now, right this minute, I don't know. I would have to get somebody. I would have to.

Q You don't think either one of the parents will come over here and take care of her?

A I know the father wouldn't because he's never seen her. And the mother lives in Spartanburg, works the night shift. So I don't know.

Q The mother is your daughter?

A No, granddaughter. This is my great granddaughter I'm raising.

Q Oh, yeah, yeah, yeah. Okay. All right. Ma'am,

why don't you step out in the hall for just one second please.

A Okay.

(WHEREUPON, Ms. Langford exits at approximately 5:38 p.m.)

THE COURT: We have an equivalent of a request to be excused.

MR. BRENNAN: We would have no objection.

THE COURT: All right. Bring her in.

Doggone, we are about a minute and 45 seconds behind schedule. I am so embarrassed.

(WHEREUPON, Ms. Langford enters at approximately 5:39 p.m.)

THE COURT: Ms. Langford, you probably are qualified to serve. We really hadn't gotten finish with you yet.

MS. LANGFORD: Okay.

THE COURT: But because of your situation with your granddaughter, your great granddaughter and because of the possibility of me sequestering the jury and understanding what a difficult situation that would create for you, I'm going to excuse you.

MS. LANGFORD: Okay.

THE COURT: So you are free to go.

MS. LANGFORD: Thank you.

THE COURT: The problem is we don't have time for a break. So bring us another juror. I'm just kidding. When we finished the last group, we were 45 minutes behind. We took a 10 minute break.

Why don't you go ahead and call the jurors back that are in the seventh panel and tell them to come on in at 7:30. We will go ahead and deal with them tonight.

(WHEREUPON, a short recess was taken at approximately 5:40 p.m.)

(WHEREUPON, the Court resumed at approximately 5:51 p.m.)

(WHEREUPON, Gary McHam, Juror number 187, enters at approximately 5:51 p.m.)

GARY McHAM

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Mr. McHam.

A Good afternoon.

Q How are you?

A Okay. Thank you.

Q The stock market do okay today?

A It did better.

Q Better?

A Better. Thank you.

Q Well, it doesn't really affect me anyway. I just like to know how everybody else in the world is doing. You recall that we put you under oath yesterday?

A Yes, sir.

Q And you are still under oath today. You understand that?

A I do.

Q Since yesterday when you left us, have you talked to anybody about this case or has anybody talked to you about this case?

A No.

Q Have you read anything or heard anything about this case?

A No.

Q We're going to ask you some questions now. We don't want to pry too deep into your private life. But I hope you understand that we do have 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 and tell us how you think and how you feel.

A Okay.

Q If you -- and we're also going to talk about a possible 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 simply means that because we might get to a penalty phase, we have some questions that we need to ask you about some issues to know how you feel and how you think on those issues.

If you are a juror in this case, would you be able to accept and apply the law precisely as I give it to you and render a verdict based solely on the testimony and the evidence that you see and hear right here in this courtroom?

A I think.

Q Is there some reason why you have a hesitation about that?

A Because I'm from Inman. I grew up in Inman. I followed the case in the papers.

Q All right. I'll tell you what, if it's just that, we're going to explore that in detail in just a minute. So let's just do it now.

A It's not just that.

Q All right. Apart from the fact that you have heard stuff about this case and that you followed the case as you say, is there anything else that causes you hesitation in saying whether or not you could render a verdict based solely on the testimony and the evidence that you hear in the courtroom?

A I debated the capital punishment in undergraduate

school. The question was whether or not capital punishment was a deterrent. And I did at that time form a very strong opinion which I have held since then.

Q And what is that opinion?

A That I am in favor of it.

Q You are in favor of capital punishment?

A Yes.

Q All right. Well, let's do this then, I'm going to keep on going sort of through my progression of questions. And we're going to come to all of that.

A Okay.

Q And we will talk about it when we get to it. But since you raised this point about you being from Inman and you followed the case, let me talk about that.

A Okay.

Q If you were seated as a juror in this case, then I would instruct you as I will the jury that your responsibility is to set aside anything that you might have learned or heard about the case before the trial began. And you are to listen very carefully to the testimony and the evidence that you will see and hear in the courtroom and that you are to render a verdict based solely on that testimony and that evidence that is presented to you in the courtroom.

Now, for some people, they have become so intertwined

with the case and they perhaps have learned so much about it and perhaps because you lived there, maybe you have been emotionally affected by it that you can't do that. Do you think, based on what you have heard and what you learned in the time in which you followed the case that you could do what I say and that is to set aside anything that you might have learned about the case and render your verdict based solely on the testimony and evidence that is presented to you in the courtroom, do you think you can do that?

A I don't know.

Q All right. Well, let's explore that answer a little bit. Maybe this is a tough one. I'm not sure what questions to ask you. Why is that? That is not to put you on the spot or challenge your answer because I do appreciate your being candid with me. Tell me, if you can, what it is that gives you the uncertainty as to whether or not you can do that?

A You asked, so...

Q Please.

A The fact that the person was shot in front of other people including children, the fact that the accused is willing to bring those children through this ordeal of a trial, I just think it's despicable. I understand the rights of being, you are supposed to say you are not guilty but I just think it is despicable.

Q All right, sir. Let's jump ahead just a little bit then.

A Okay.

Q Let's say that just for the sake of this question that in terms of deciding the guilt or innocence of the defendant that you could be impartial and base your decision based solely on what you hear in the courtroom and that you were seated on this jury and you got past the guilt phase because the jury found the defendant guilty of murder. Now we are in the sentencing phase and you've got two options.

Let me tell you a little bit about that. You have some things to consider. 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.

A Can you say that again please?

Q I said aggravating circumstances is anything, a fact, an incident that has occurred in the past or details of this incident or details of some other incident that the State has said aggravate the crime of murder or make it worse.

A Okay.

Q There's a list of them in the statute. I will

give you the ones that are appropriate. An aggravating circumstance, when it is accompanied with a murder, increases the enormity of the crime and adds to the injury that results from the crime. A mitigating circumstance, on the other hand, is a fact, incident or circumstance that lessons the severity of the crime of murder. The State has said that this, a mitigating circumstance might extenuate or reduce the moral culpability or responsibility for the crime.

A The State has said that.

Q There is a statute that says that. There is a list of mitigating circumstances, a list of aggravating circumstances and then you, as a member of the jury, may come up with additional mitigating circumstances. You might find something in this case that is not listed in the statute that causes you to consider that as a mitigating circumstance. If you are on that jury, you got two options in the sentencing phase, life in prison and the death penalty. Could you vote to impose a life sentence?

A I don't know how else to answer it other than I don't know. It would have to be one heck of circumstances.

Q One heck of a lot of what? Mitigating circumstances?

A Yes.

Q Let me get you to step in the hall just a second,

Mr. McHam.

(WHEREFORE, Mr. McHam exits at approximately 6:00 p.m.)

THE COURT: I hate to say that Mr. McHam has figured out how not to be away from his stock brokerage business for the next couple of weeks. But I don't believe he is much qualified. Any opposition to that?

MR. BARTOSH: No, sir. He can't get beyond the --

THE COURT: Let me just see if the State has any opposition to it.

MR. WILLINGHAM: No, sir.

THE COURT: All right.

MR. BARTOSH: He can not get beyond the presumption of innocence.

THE COURT: Right.

Bring him in.

Or the right to remain silent.

(WHEREUPON, Mr. McHam enters at approximately 6:01 p.m.)

THE COURT: Mr. McHam, we appreciate you being open with us. Because of your views, I think you're not qualified to serve as a juror in this case. So I'm going to excuse you. We will not need you any

more. Thank you very much, sir.

(WHEREUPON, Mr. McHam exits at approximately 6:01 p.m.)

THE COURT: Bring them in.

(WHEREFORE, Jerlyn Miller, Juror number 194, enters at approximately 6:02 p.m.)

JERLYN MILLER

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q How you, ma'am?

A Fine.

Q Ms. Miller?

A Yes.

Q How are you this afternoon?

A All right. How are you?

Q You recall that yesterday that we put you under oath?

A Yes.

Q You understand you are still under oath today?

A Yes, sir.

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 heard anything or otherwise learned anything about this case?

A No, sir.

Q We're going to ask you some questions now. We don't mean to invade too much into your private life, but we do have to ask you these questions. There are no right or wrong answers to these questions. We just want you to be open and honest with us and to tell us how you think and how you feel.

We are going to talk about a possible penalty phase in this trial. The fact that we are talking about a possible penalty phase does not mean anything about this defendant or about this case. It simply means that because we realize that we might get there, we need to talk to you about some of the issues that will come up and see how you think and how you feel about those issues.

If you are a juror on this case, will you be able to 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 inside of this courtroom?

A Yes, sir.

Q Do you understand that the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q You understand that this is a murder case?

A Yes, sir.

Q If you are seated on the jury, could you, depending on the facts and circumstances that are proven to you and in light of the law as I will 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 beyond a reasonable doubt?

A Yes, sir.

Q If you are on the jury and the jury finds the defendant guilty, we will move into the sentencing phase or the penalty phase of the trial. I'm going to talk to you about that for a little bit. Aggravating circumstances are facts, incidences or occurrences which the State of South Carolina has declared to make worse or to mitigate -- I'm sorry, to 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, incidences or details of an occurrence that the State of South Carolina has declared to lessen the severity of the crime of murder. Those may serve to extenuate or to reduce the moral culpability or responsibility for the crime.

If you are on the jury in the sentencing phase of a

death penalty trial like this one, you would have two options as to what your verdict could be. You could vote to impose a life sentence or you could vote to the impose the death penalty. Could you, based on the facts and circumstances that you find to be proven or to exist and considering any aggravating and mitigating circumstances and in light of the law as I will give it to you, could you impose a life sentence?

A Yes.

Q Could you impose a death penalty?

A No, sir.

Q Let me why that is.

A I would say at one point in time when a person go through a situation like this, they probably don't know what they're doing until it is all over with.

Q Now, ma'am, under any circumstances, are you telling me that you would not be able to impose the death penalty under any circumstances?

A No, sir.

Q Is that what you're telling me?

A Yes, sir.

THE COURT: All right. Do you want to ask this juror any questions, Mr. Bartosh?

MR. BARTOSH: No, Your Honor.

THE COURT: Solicitor?

MR. GOWDY: No, sir.

THE COURT: All right, ma'am. We will not be needing your services in this case. You are free to go.

MS. MILLER: Thank you.

(WHEREUPON, Ms. Miller exits at approximately 6:07 p.m.)

(WHEREUPON, Richard Smith, Juror number 257, enters at approximately 6:07 p.m.)

RICHARD SMITH

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Smith, good afternoon. How are you?

A Doing fine, Your Honor.

Q You recall that yesterday we put you under oath?

A Yes, sir.

Q You understand you are still under oath today?

A Yes, sir.

Q Since you left us yesterday afternoon, has anybody talked to you about this case?

A No, sir.

Q Have you talked to anybody about it?

A No, sir.

Q Have you read anything or heard anything or

otherwised learned anything about this case?

A No, sir.

Q Mr. Smith, we have some questions to ask you now. We apologize if it seems like it is an invasion into your privacy. But we do have to ask you these questions.

A Yes, sir.

Q There are no right or wrong answers to these questions. But we just want you to be open and honest with us and to tell us how you think and how you feel.

A Yes, sir.

Q We are going to talk about a possible sentencing phase. But because we're talking about a sentencing phase, that doesn't mean anything about this defendant or about this case. It simply means that because we might get there, we need to ask you some questions about some issues to see how you think and how you feel on those issues.

A Yes, sir.

Q If you are a juror in this case, would you be able to, would you be able to 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 see and hear in this courtroom?

A Yes, sir.

Q You understand the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q And you understand this is a murder case?

A Yes, sir.

Q Could you, depending on the facts and circumstances that you find to be 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 If you are on the jury and the jury finds him guilty of murder, we will move into the sentencing phase of the trial. So now I'm going to talk to you a little bit about some issues that will come up during that phase. Aggravating circumstances are facts, incidences or details of an occurrence that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances when accompanying a murder increase the enormity of the crime or add to the injury caused by the crime.

Mitigating circumstances, on the other hand, include facts, incidences or details of an occurrence that the State of South Carolina has declared to reduce the severity of the crime of murder. These serve to extenuate or to reduce the degree of moral culpability or responsibility.

If you are on the jury in the penalty phase of a death penalty case such as this, you would have two options as to what your verdict should be or could be as to the penalty. You could impose a life sentence or you could impose the death penalty. Could you, depending on the facts and circumstances that you find to exist, considering any aggravating or mitigating circumstances and in light of the law as I will give it to you, could you impose or vote to impose a life sentence?

A Yes, sir.

Q Could you vote to impose the death penalty?

A Yes, sir.

Q If you get on this jury and if I order that the jury be sequestered and if you are required to stay in a hotel with us and not see your family and not go home for five or six days, is that going to impose a terrible burden on you?

A No, sir.

Q Have you had a chance to read over the witness list that I gave you?

A Yes, I have.

Q Have you read every name on that list?

A Yes, sir.

Q Is there anybody whose name is on that list that you have either know or are related to?

A Yes, sir.

Q Who is it?

A Witness number 6, Sergeant Doug Bishop; Witness number 9, Investigator Randy Bogen; Witness number 43, Sharon Diane Copeland; Witness 62, Lieutenant Brian Duncan; and witness 78, Eric Wade Elder.

Q All right. Let me ask you about each one of those people.

A Yes, sir.

Q Uh, tell me how you know these people.

A Sergeant Bishop, when I graduated from high school, was working in the grocery business at that time. He was employed at a drug store right next door to the grocery store I was working at. We would talk and socialize some outside of working hours, you know, like high school and college kids would. We would play football or, you know, just socialize a little bit in that manner. We stayed in touch over the years.

Q Okay.

A Investigator Bowen grew up right down the road from me. Did not know him that well. Knew him well enough to say hello. We would speak. And we would probably play a little neighborhood football back when we were in elementary and junior high school.

Witness 43, Mrs. Copeland, I've known her and her

husband for several years. In fact, I was an usher in her wedding. Witness 62, Lieutenant Duncan, I know him through speaking with him socially at church. We attend the same church. And witness 78, Eric Wade Elder is Mrs. Copeland's son. And I know him in that manner, you know, from visiting her home and he's there. And we've had several occasions to talk.

Q All right. Now, considering that you know these people, do you know of any reason why you cannot be a fair and impartial juror in this case?

A No, sir.

Q Would the fact that you know these witnesses 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, sir. It would not.

Q I'm going to let the lawyers ask you some questions now. Then I might come back and ask you some more questions in a few minutes.

MR. BRENNAN: Please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BRENNAN:

Q Mr. Smith, how are you doing today?

A Doing fine, sir.

Q Good. My name is Doug Brennan. I'm an attorney from here in Spartanburg. Myself, Mr. Bartosh and Ms. Quimby have the opportunity to defend Mr. Marion Lindsey in this matter. Sir, you mentioned five witnesses that you knew or have acquaintances with.

A Yes, sir.

Q Uh, the fact that you know these people, would you be more inclined to assume that their credibility was -- do you believe their credibility -- does your relationship bolster their credibility?

A By me knowing them, yes, sir, I believe it does. Because I know them well enough to believe they would tell the truth. Yes, sir.

Q Okay. You are -- it's my understanding you are the nephew of a gentleman named Wallace Dickerson?

A Yes, sir.

Q Did you know that he was a judge?

A Yes, sir.

Q All right. Did you ever have the opportunity to speak with your uncle about courtroom procedure and prosecuting cases and stuff like that?

A No, sir. I have not. I've seen him down here a few times in the course of other business, but I have not gone into any details about particulars about his job.

Q So never at Thanksgiving or anything did you talk

about his work?

A No, sir.

Q All right. So your relationship in your with your uncle would not affect your ability to serve in any way?

A No, sir.

Q Are you still undergoing any treatments or medications for some emotional difficulties?

A No, sir.

Q You mentioned on your questionnaire some information about the relationship between you and a former girlfriend.

A Yes, sir.

Q How long ago was that?

A That was, let's see. '93 would have been 11 years ago.

Q So you are beyond that?

A Yes, sir.

Q All right.

A Yes, sir.

Q Can you tell me a little bit about the break up of that relationship.

A We started dating in January of that year. We did some things socially took some trips and all of that. We were not as compatible as we initially thought we were.

Our educational levels were similar but I think the impression I got was she was wanting things to proceed a little bit faster than I was willing to proceed.

Q Okay.

A We mentioned that during the course of the therapy sections or whatever you call them.

Q So you took counseling sessions after you broke up, is that right?

A No, sir. That was before.

Q Okay. All right. Were there any disputes or any incidences between the two of you after you were split up?

A No, sir.

Q So that break up with your girlfriend would not cause you any problems in this jury service?

A No, sir. No, sir.

Q Yesterday during the general questioning, you were asked if you know someone who had been arrested for CDV, assault and battery or a couple of other crimes. And you stood.

A Or if I remember the question, if a family member had been the victim of that.

Q There are actually two questions.

A Okay.

Q There was did you know anybody, have you or anyone you knew ever been arrested before for criminal

domestic violence, assault and battery, assault with a weapon or carrying a pistol. Those were the four questions. And you stood for that.

A I might have misunderstood and I apologize to the Court if I did. I did have a family member, my mother was a victim of a mugging back in about 1987. I believe there was an assault charge that came out of that. But nobody in my family has been arrested or convicted.

Q So nobody that you know, you or nobody that you know of have been arrested and charged with criminal domestic violence?

A No, sir.

Q But your mother was the victim?

A Yes, sir.

Q Was there any arrest made as a result of that?

A I believe there was. The only result that I know of that was that restitution was ordered.

Q Were you asked to make a statement in that case?

A No, I was not.

Q Were you a witness in that?

A No, I was not.

Q And you would be able to set aside the pain caused by your mother as it relates to you in this jury service?

A Yes, sir.

Q Okay. All right. You also stood when asked the question if you knew someone or had any ties to Safe Homes or some other organization of that nature.

A Yes, sir. I attend First Baptist North Spartanburg. I believe one of our ministries is the support of Safe Homes here in Spartanburg. We do donations and occasional projects with them. I have made over the years a couple donations to them.

Q You have actually made donations directly to Safe Homes?

A Yes, sir.

Q Do you know what Safe Homes does?

A My understanding is I believe women and children who are in abusive situations and they need to get out of their homes in a hurry and they need to place to stay, that's where they can be referred to is Safe Homes.

Q Okay. If there was evidence that came forward in this matter that related to Safe Homes and their endeavors or if there was evidence that implicated Safe Homes, not that Safe Homes did anything wrong, but that Safe Homes was contacted --

MR. BARNETT: I'm going to object at this point because we are getting into facts of the case. That is not what we are here for.

THE COURT: Can we let him finish the question?

MR. BARNETT: He can, Your Honor, but he said something about contacting Safe Homes. That is not a proper question.

THE COURT: All right. Sustained if that was the question. Rephrase the question.

MR. BARNETT: Thank you, Your Honor.

BY MR. BRENNAN:

Q If Safe Homes plays a role in this case, because you made donations and made and done benefits for them, can you set aside your relationship with Safe Homes in this matter?

A Yes, I can.

Q Do you understand that in South Carolina, the death penalty is not mandatory?

A Yes, I do.

Q Are you prepared to listen to the facts from the witness stand as they come from the witnesses and the evidence presented before you and make your decision as to guilt in this case?

A Yes, I am.

Q If the decision should be unanimous with the jury that the defendant is guilty and we get to a sentencing phase, are you again willing to wait and listen to the aggravators and mitigating circumstances before you make a decision as to life or death?

A Yes, I am.

Q You do not have an opinion at this time as to life or death in this situation?

A No, I do not.

Q Do you have any knowledge about this case from any source at this time?

A No, I do not.

Q One moment. Nothing further. Thank you.

MR. BARNETT: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q Mr. Smith, I am Barry Barnett. Along with Trey Gowdy and Donnie Willingham, we will be representing the State in this case. I just want to ask you a few follow up questions, okay?

A Sure.

Q You realize the judge will give you instructions about credibility of witnesses and you would weigh and determine the evidence based on what you thought was true and not true. You understand?

A Correct. Yes, sir.

Q And you wouldn't -- basically you would look at each witness and you would weigh their credibility and you

would look at that?

A Yes, sir.

Q And you wouldn't give one witness more deference over another?

A That, I would not.

Q And are you a computer operator?

A Yes, sir.

Q And your wife works at Greer Heating and Air?

A Yes, sir.

Q And she's been there six years?

A Yes, sir.

MR. BARNETT: One moment, Your Honor, please.

I have no further questions of this witness, Your Honor.

THE COURT: Mr. Smith, would you step in the hall for just a second please.

(WHEREUPON, Mr. Smith exits at approximately 6:25 p.m.)

THE COURT: Any objection to his qualifications?

MR. BRENNAN: Yes, Your Honor. I believe that because he testified that because of his knowledge or his relationship with those several witnesses that their credibility would be bolstered or he would take more heavily what they would have to say from the witness stand. I believe that that should disqualify

this witness, Your Honor.

MR. BARNETT: Your Honor, I disagree. I think that in talking to him later on, he said he would listen to you, Your Honor, and would not weigh one witness over another and would listen and follow the instructions you gave him.

THE COURT: Let me ask y'all this. The witnesses that he named, of the witnesses that he named, which, if any, are going to be witnesses whose credibility are going to heavily come into play during the course of this trial?

MR. GOWDY: Your Honor, Bogan and Bishop are evidence collectors. Brian Duncan is on a sentencing matter if we make it that far. And I would ask the Court given the fact that I think Mr. Brennan had a wonderful opportunity to follow up on that but he neglected to do so. Mr. Barnett did.

I would invite the Court to consider clearing this matter up as to whether this witness would give any more credence to those witnesses that he knows. I think clearly the answer is no. But if Mr. Brennan has concern about that, I think the Court could address it in about 45 seconds.

THE COURT: Bring him in.

(WHEREUPON, Mr. Smith enters at approximately

6:26 p.m.)

EXAMINATION

BY THE COURT:

Q All right. Mr. Smith, let me follow up and ask you a few questions. I want to talk to you about some of these potential witnesses that you know.

A Yes, sir.

Q Now, as a member of the jury, your responsibility just like the responsibility of everybody else on the jury is to evaluate the credibility of the witnesses based on what you see and what you hear in the courtroom.

A Yes, sir.

Q So that if one of these people that you know was testifying, as a member of the jury, you should look at, you should watch that witness' testimony and listen to that witness' testimony, observe his or her demeanor on the witness stand, observe how he responds to questions. Are his answers consistent or inconsistent? Does he appear to have any motive to say something that would not be true? Does he appear to be biased or prejudiced either for or against the State or the defendant and to evaluate those criteria and others in deciding whether or not you believe that witness?

All of that comes to you as you sit here in this courtroom over there in that jury box. Now, that is the

appropriate way to evaluate the credibility of witnesses. But you have known some of these people for a good while.

A Yes, sir.

Q And so, and you've got relationships with them?

A Yes, sir.

Q And so if you are out in a casual conversation with them, you talked to them and you believe them based on what you see and -- I mean based on what you know about them. But as a juror, it would not be proper for you to come in here and say okay, I know this man, I know Officer Duncan or I know Officer Bishop. And because I know him, I'm going to accept his testimony as true and I'm not going to consider the other factors that I'm supposed to consider that relate to credibility. Now, will you be able to evaluate the credibility of these witnesses that you know based on what you see and hear in the courtroom?

A To be honest, Your Honor, since I know some of them as long as I have, I do not believe that I could do it solely on what I see or here in this courtroom. I believe past relationships would come into effect at some point, yes, sir. And I'm just being open and honest about that.

Q All right. If you were a member of the jury and you are observing one of these witnesses that you know testify and you see something or hear something that you think would cause you concern about the credibility of that

witness, would you still believe their testimony just because you know them and just because you previously thought them to be a credible person?

A No, sir. I would bring it up in deliberation and say this happened or I observed something that makes me wonder about the credibility of that witness.

Q All right. Mr. Smith, let me ask you please to step back into the hall. I will be back with you in just a second.

(WHEREUPON, Mr. Smith exits at approximately 6:33 p.m.)

THE COURT: Did I cover everything that I needed to cover?

MR. GOWDY: Yes, sir.

MR. BRENNAN: Yes, sir.

THE COURT: All right. What do you say now, Mr. Barnett?

MR. BARNETT: Your Honor, I understand what he said but when he gave the answers that he gave, that's all I can say from that standpoint. The thing is I think he would follow what the Court said and he would follow or disregard it from that standpoint. We would argue that he is qualified.

THE COURT: Yeah.

MR. BARTOSH: Your Honor, he said he would give

more credence to the folks that he knew because he knew them.

THE COURT: Well, --

MR. BARTOSH: He would believe them over other witnesses because he knew them.

THE COURT: Mr. Bartosh, that is not what he said. That is not what he said. He said that he does not believe that he would be able to completely set aside the fact that he knows these witnesses. He did not say that he would believe them more, did he?

MR. BARTOSH: Yes, sir. I believe he did.

THE COURT: I'm going to get the transcript and I'm going to read it. And I'm going to figure out what the law is on it. And I will rule when I get ready.

MR. BARTOSH: Thank you.

THE COURT: Bring him in.

(WHEREUPON, Mr. Smith enters at approximately 6:35 p.m.)

THE COURT: Mr. Smith, I'm going to have to reserve my ruling on whether or not you are qualified to serve as a juror. So for now, I'm going to treat you as a qualified juror. And I'm going to instruct you that you should continue to not discuss this case. Don't read anything about it. Don't listen to

anything about it. Don't let anybody talk to you about it. And don't talk to anybody else about it. Certainly don't talk to any of these witnesses whom you know.

MR. SMITH: Yes, sir.

THE COURT: It's going to take us another day or so to get through and get ready to be -- to actually get back together. Somebody will be in touch with you over that next day or so. So we will call you and let you know what to do next.

MR. SMITH: I don't need to call the message line or anything?

THE COURT: Well, it won't hurt you to call the message line. If you call the message line, it will tell you when -- it might tell you when we kind of want the jury to come back. But because I have not ruled on your qualifications, I will make sure that somebody calls you personally.

MR. SMITH: Yes, sir.

THE COURT: And will they be able to reach you at one of these numbers that you have given us? Your home number and your business?

MR. SMITH: Yes, sir. Home number will be best right now. I'm on, I guess you can say, leave from work because of the uncertainty as to how long this

process would take.

THE COURT: Let me ask you this. Don't tell me what it is. But do you have a cell phone number?

MR. SMITH: Yes, sir.

THE COURT: You don't have to give it to me. But if you want me to, I will give you this sheet. This is a copy of your juror information card. You can write it down on the sheet. Nobody will know it except me and my staff. And we will use it to contact you when we need to. It will not become known to anybody else in this courtroom.

MR. SMITH: That will be fine, sir.

THE COURT: Pass that to him and let him write his cell phone inside the red circle that I've drawn.

MR. SMITH: Yes, sir.

(WHEREUPON, the juror complies.)

THE COURT: Thank you, Mr. Smith. We will be in touch with you shortly.

MR. SMITH: May I ask you a question, Your Honor?

THE COURT: Yes, sir.

MR. SMITH: I know you said don't read any TV, newspaper accounts or anything like that.

THE COURT: Uh-huh (affirmative).

MR. SMITH: And this may seem like a ridiculous question but as far as other forms of media, would

observing shows like Law & Order or Perry Mason be considered influential or anything like that? Maybe it's not. I just wanted to be sure.

THE COURT: That's not a ridiculous question at all. There's nothing -- there's no reason why you should not watch any show you want to watch as long as it does not relate directly to this case or relate to this case.

MR. SMITH: Okay.

THE COURT: All right?

MR. SMITH: Thank you, Your Honor.

(WHEREUPON, Mr. Smith exits at approximately 6:35 p.m.)

THE COURT: Mr. Gowdy.

MR. GOWDY: Yes, sir.

THE COURT: When you were looking up duplicitous in the dictionary, you didn't happen to find tangentially, did you? I want to actually make sure it's a word before I make much use out of it.

MR. GOWDY: Your Honor, it is a word. I can vouch for that. And you used it correctly.

THE COURT: All right.

MR. GOWDY: I am not convinced 100 percent that duplicitous is not a word.

THE COURT: Let's talk about Mr. Smith for a

second while he is fresh on our mind. I don't believe, I believe that all he said was that he would not be able to ignore the fact that he knows these witnesses and has had an opinion about their credibility in the past. But if ya'll got a talented pool of legal researchers that is unparalleled by my observation in the State of South Carolina.

So please don't make me go out and figure all of this out by myself, get somebody to figure that out so that I can at least have at my fingertips the correct version of the law and that my overworked and underpaid self and staff will not have to go out and do it ourselves beginning at 9 o'clock tonight when we get off duty.

Bring us a juror.

MR. BARTOSH: We'll put the research department on it. We'll have something for you in the morning.

(WHEREUPON, Donald Ray, Juror number 223, enters at approximately 6:36 p.m.)

DONALD RAY

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right. Mr. Ray, how are you this afternoon?

A All right. How are you doing?

Q Mr. Ray, you recall that we put you under oath yesterday afternoon?

A Yes, sir.

Q You understand that you are still under oath this afternoon?

A Yes, sir.

Q Actually, we put you under oath yesterday morning. That is a minor detail. Since you left us yesterday afternoon, have you talked to anybody about this case or had anybody talked to you about this case?

A No, sir.

Q Have you read anything or seen anything or heard anything about this case?

A This morning about 8 o'clock, it came on 92.5 and I turned as soon as I heard name Lindsey.

Q As soon as you heard the name?

A Lindsey.

Q Well, that was a good move. Tell me what you heard except for the name Lindsey. Anything?

A No, sir. I tried to turn it without even thinking about it.

Q Did you hear any facts or stories or opinions about the case?

A No, sir.

Q All right. The lawyers may want to follow-up

with you a little about that. I'm going to ask you some more questions now. I'm not trying to pry into your private life. But we do need to have answers. There are no right or wrong answers. I just want you to be open and honest with us and to tell us how you feel and how you think.

We are going to talk about a possible sentencing phase. The fact that we're talking about a possible sentencing phase does not mean anything about this defendant. It does not mean anything about this case. It just means that we realize we might get to a sentencing phase. We need to ask you some questions about some issues that will come up in the sentencing phase if we get there so we know how you think and how you feel.

If you are a juror on this case, will you be able to accept and apply the law as I will give it to you and to render a verdict in this case based solely on the testimony and evidence that is presented to you here in this courtroom.

A Yes, sir.

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

A Yes, sir.

Q You understand this is a murder case?

A Yes, sir.

Q Could you, based on the facts and circumstances that you find to be proven and in light of the law as I will give it to you, can 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 If you are on the jury and if you get, if the jury reaches a verdict of guilty as to murder, then you would move on into the sentencing phase or the penalty phase of the trial. Now I'm going to talk to you a little bit about some of the things that's going to come up.

Aggravating circumstances are facts, incidences or details of an occurrence that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances when accompanying a murder increase the enormity of the crime or the injury of that results from the crime.

Mitigating circumstances, on the other hand, are facts incidences or details about an occurrence that the State of South Carolina has declared to lessen the severity of the crime. And they serve to extenuate or to reduce the moral culpability or responsibility for the crime.

If you are on a jury in a death penalty case in the sentencing phase, you would have two options as to what

your verdict could be. Your verdict, as to what your vote be. Your verdict could be for a life sentence or your verdict could be for the death penalty. Could you, depending on the particular facts and circumstances of the case including the consideration of any aggravating and mitigating circumstances and considering the law as I will give it to you, could you return, could you vote to return a verdict for a life sentence?

A Yes, sir.

Q Could you vote to return a verdict for the death penalty?

A Yes, sir.

Q If you are on this jury and if I sequester the jury and if you are required to spend several days, five or six days in a hotel away from your home, could you do that without it being any terrible burden on you?

A Yes, 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.

Q Do you know anybody or are you related to anybody on the list?

A When it says representative of the BMW, I know

someone that works at BMW.

THE COURT: Okay. Well that's probably just going to be somebody to produce records, right?

MR. BARNETT: That's correct, Your Honor.

BY THE COURT:

Q So we don't know who that's going to be. Even if they do testify, their credibility is not really going to be an issue. So anybody else?

A No, sir.

Q Do you know of any reason why you cannot give both the State and the defendant a fair and impartial trial?

A No, sir.

Q You don't?

A No, sir.

Q I'm going to let the lawyers ask you some questions now. Then I'm going to perhaps come back and ask you some more questions in a few minutes.

A All right.

MR. BRENNAN: May it please the Court, Your Honor.

EXAMINATION

BY MR. BRENNAN:

Q You have two kids, four and two.

A That's correct.

Q Do you have any information on this case? Have you received any information newspaper, TV or anything?

A No, sir.

Q You attempted to tell the judge, and he said we would come back to it later, that you may have heard something since yesterday?

A Yeah. I heard, on the radio, I heard his name come up about the case of the accused, I mean Mr. Lindsey. And then I turned it off.

Q That was all you heard was the name?

A That was all I heard.

Q Based on what you heard, have you formed an opinion this matter?

A No, sir.

Q Okay. All right. On your questionnaire, on this jury questionnaire here, you said that, you left blank or said no to have anyone in your family, you or anyone in your family been arrested by the Spartanburg County Sheriff's Department or the Inman Police Department. But then yesterday when that question was asked, you stood up.

A Yes, because my sister, when she was in high school, she got arrested for intoxication for being at a basketball game. It caught my attention.

Q But it was not you, it was your sister?

A Right.

Q Is that the only person you know that's been arrested by the sheriff's department?

A I think my dad was arrested when I was younger. I don't know for sure but I think he has. I'm not absolutely positive.

Q But you have never been arrested by the sheriff's department?

A No, sir.

Q Have you been ever been arrested by the Inman Police Department?

A No, sir.

Q When your sister was arrested, were you asked to make a statement or anything like that?

A No.

Q So you never had the opportunity to work with the Inman Sheriff, excuse me, the Spartanburg Sheriff's Department in any form?

A Huh-uh (negative).

Q Okay. Thank you. All right. Sir, it is said -- first off, do you understand that in South Carolina, the death penalty is never mandatory?

A Right.

Q The jury always has the option of life in prison which means life until you are dead in prison or the death penalty. You understand that?

A Yes.

Q With that in mind, it is said that there are three kinds of jurors. Once the decision for guilt is made, that juror is always going to vote to impose the death penalty. There are jurors on the other side that once the decision of guilt is made, those jurors are always going to vote to impose life in prison. Then there is a section in the middle. Those are the jurors that don't know if it should be life or death until they hear the testimony from the witness stand. Tell me which juror you are.

A I'm in the, the third one.

Q You are in the third group?

A Yeah.

Q You don't have an opinion yet as to life or death in this matter?

A No.

Q All right. I want to ask you one more question. If you are on the jury and if we get past the guilt phase and we are in the sentencing phase, you are back in the jury room. There are twelve jurors. Eleven of them have made the decision for the death penalty. But you, based on what you heard, have decided that life is the proper sentence to impose. Can you stand your ground or will you be swayed by those eleven jurors?

A I will give my opinion. I'll stand my ground. That is what I would do. I would stand my ground.

Q Nothing any of those eleven jurors could say would change your mind?

A It would change my mind if they could -- it probably would change mind.

Q So you would be affected by those eleven jurors?

A Yes, sir.

MR. BRENNAN: Nothing further, Your Honor.

MR. BARNETT: May it please the Court, Your Honor.

EXAMINATION

BY MR. BARNETT:

Q My name is Barry Barnett. I am prosecuting the case along with Trey Gowdy and Donnie Willingham. We will be representing the State. Just follow up to Mr. Brennan's question. I want to make sure you understood the question --

A Okay.

Q -- and make sure from there. If I understood right, he was asking you if eleven people voted for the death penalty and you were the one holding out for life, would you stand by your convictions or would you listen to the other jurors and hear what they had to say also?

A Exactly. I would listen to what they had to say.

They may persuade me I guess. Hearing what they say to me may make me understand I guess. I might have to go with them.

Q But you wouldn't automatically go with them just because all eleven voted the death penalty penalty?

A Right. I would have to hear what they had to say about it first.

Q You would do the same thing -- if all eleven of them voted for life and you were voting for death, would you do same thing?

A Yes, sir.

Q So you would obviously part of the jury -- have you ever been on jury duty before?

A I am come through it to be picked I guess. And they sent me home and told me to call the number. And I kept calling back. And they dismissed it.

Q So you would listen to what the judge said to you. You would listen to the instructions he give you?

A Yes, sir.

Q Just like you did a little bit ago. If he instructed you that you must listen to all the evidence and make the decision based on what you understand, you would do that?

A Yes, sir.

Q Also he would tell, possibly he would tell the

jurors that you obviously have to come to a unanimous agreement. And possibly you would have to talk to each other in order to decide which point of view and decide on those. Is that what you were talking about?

A Yes, sir.

Q Obviously, if your point of view was one way and some of the other jurors were another way, you would listen to what they had to say.

A Right.

Q And would you express your views also?

A Exactly.

Q So you would communicate between two of you, between the twelve of you and hopefully come to a consensus?

A Right.

Q And you understand that as part of being a juror --

A Right.

Q -- is to talk and discuss the evidence and that sought of thing?

A Uh-huh (affirmative).

Q I want to ask you, I think you said your dad was arrested possibly. I hate prying and asking these type questions. But that just came up during Mr. Brennan's questions. What was he arrested for? Do you know?

A I think it was like assault and battery. But I'm not sure.

Q Was that involving a family member or somebody else?

A I think it was somebody else.

Q It was a long time ago?

A Yeah.

MR. BARNETT: One moment, Your Honor, please.

No further questions, Your Honor.

Thank you, sir.

THE COURT: All right.

MR. RAY: Thank you.

EXAMINATION

BY THE COURT:

Q Mr. Ray, let me ask you a follow up question. Let's put you back in this situation where you are in the sentencing phase of this trial. And you have come to the conclusion based on your discussions with everybody, you are listening to the evidence, you have come to the conclusion that you believe a life sentence is appropriate. All right.

A Okay.

Q We're going to make that assumption. But the other eleven members of the jury have come to the conclusion that the death penalty is appropriate. Now, we

understand there's going to be continued discussion and that you are going to be open-minded to what they have to say. And you are going to listen to what they have to say about whether or not you should change your mind just like you expect them to listen to you about whether or not they should change their mind. Right?

A Right.

Q That's what you're going to do. Now, at the end -- tell me what your answer to that is.

A I feel like --

Q Well, hold on. I just said you are going to continue into that discussion, right?

A (No response.)

Q Right?

A Right.

Q All right. Now, at the end of that discussion, at the end of all the discussion that you think y'all could possibly have about whether or not you are going to change your vote, would you change your vote just because eleven people of the jury are going to vote for the death penalty and you are the only one standing on life or would you hold firm?

A I would hold firm.

Q All right. So if your opinion stayed life, you would hold firm?

A I would hold firm.

Q Right?

A Right.

Q But if they convinced you that death was appropriate, you would change your vote?

A If they convinced me, yes, sir.

Q All right, sir. Step out in the hall for just one second please.

(WHEREUPON, Mr. Ray exits at approximately 6:51 p.m.)

THE COURT: Any objection?

MR. BRENNAN: Yes, Your Honor. Based on State v. Bennett, I understand that he answered your question differently than he answered my question.

THE COURT: No, he didn't. He got caught up in what my old boss Judge Anderson used to call legal gotcha. You decided you didn't want that juror, so you tried to box him into a hole that he didn't know how to get out of. You didn't ask him, you did not ask him would he vote for the death penalty just because he's the only one who held the opinion of life.

And I read State versus Bennett. And that is what that case is about. State versus Bennett contemplates that someone who is the only person who believes in the appropriateness of a life sentence who

would give up their position simply because they are the only person or simply because they are in the minority is not a qualified juror. But somebody who would continue to engage in discussion and who would, if not persuaded, change their vote is a qualified juror. Anything you got to say?

MR. BARNETT: I agree, Your Honor. I feel like he answered my questions that way and your questions to. And that is basically, that's the same as being a juror, you got to listen to all sides.

THE COURT: All right. He's qualified.

Bring him in.

(WHEREUPON, Mr. Ray enters at approximately 6:52 p.m.)

THE COURT: All right. Mr. Ray, I find that you are a qualified juror. It's going to be a day or so before we need you to come back. Please stay in touch with us by calling the telephone number that you were given yesterday morning. Hopefully some time around lunchtime tomorrow, we'll be able to put some information on that recording as to when we will need you back.

Now, in the meantime, do just like you did when the radio came on this morning. Don't let yourself be exposed to any information about this case. Don't

read anything about it in the paper. Don't watch anything about it on TV or listen to anything about it on the radio. And if anybody tries to talk to you about the case, don't let them do it.

Remember that if I sequester the jury, it's going to require that you be away from your home for five or six days perhaps. And you would need to be prepared to pack some things that would last you that long. All right?

MR. RAY: All right.

THE COURT: We will see you in a day or so.

MR. RAY: All right. Thank you.

(WHEREUPON, Mr. Ray exits at approximately 6:53 p.m.)

THE COURT: Let's walk down the hall and take a short break. Something along the lines of those three minutes that I was talking about a minute ago. We've only got two more to go.

MR. GOWDY: The question that the Court had with regard to Mr. Smith, if you want us to print up some information tonight, I think I am prepared to speak on it. If you want to, we can wait until tomorrow morning. I think I know what the analytical framework needs to be.

THE COURT: Well, tell me. Save me the suspense of waiting around to hear what you have to say.

MR. GOWDY: I think a couple of things. You clearly can not ask would you believe law enforcement testimony over lay testimony. You clearly can not ask would you believe an expert over a non-expert. You can not do those things. I do think that it is proper to ask when the issue is one of personal relationship, I do think it is proper to ask would you view that witness' credibility or testimony in a different light than you would other peoples. Now having said that, I think Mr. Smith gave mixed answers.

I think in light of that framework, if the Court wanted to, I think the question for Mr. Smith is accepting the fact that you have a relationship with those people, we're not asking you because it would be ridiculous to assume that you could put that relationship aside for all accounts. But the issue is would you judge their testimony by a different standard than you would other peoples. If the answer is yes, I think he is not qualified. If the answer is no, I think he is qualified.

THE COURT: I don't -- I mean, that sounds mighty good but I don't agree with that. And just having fun thinking over it intellectually, in a lot of towns in this state, you could have a trial where the, a prominent citizen was a witness. And it would be

literally impossible, literally impossible to find a juror, to find twelve jurors who did not have some opinion about that witness.

Let's say for example that you went to -- had a case down in Edgefield about ten years ago. It was an automobile accident that occurred while Strom Thurmond was home from Washington. And Strom Thurmond had witnessed the accident. Now, what's the likelihood that you could find twelve jurors, residents of Edgefield County who did not hold Strom Thurmond in such high regard that they would consider his stature as a statesman in deciding whether or not to believe his testimony. It is impossible.

And you can't expect people who know someone to completely set that aside. Now, if what you're saying is yeah, they can acknowledge that, they know that person and they can be unable to take that out of their mind and yet use the same procedure of evaluating credibility that they would for another witness, then you may be right.

But that's what I asked him. And I think what he said was he would consider all of the things that I will tell him and that his life experience would tell him or criteria to judge the credibility of another person even when he is judging his friend who is

sitting up there on the bench. But he could not exclude from the analysis the fact that he knows him and has previously known him to be a credible person.

In my view, that does -- in my, this is not a ruling. This is what I think, but I don't think that disqualifies him. But I will -- when I get, after I have heard from the legal research department and the public defender's office, I will rule. Okay. Short break.

(WHEREUPON, a short recess was taken at approximately 7:00 p.m.)

(WHEREUPON, the Court resumed at approximately 7:06 p.m.)

THE COURT: All right. I'm ready when y'all are. Bring us a juror.

(WHEREUPON, John Poole, Juror number 215, enters at approximately 7:06 p.m.)

JOHN POOLE

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q How are you this afternoon, Mr. Poole?

A I am fine, sir. I hope you are.

Q I'm doing all right.

A You had a long day.

Q Ah, it's nothing. We're just getting started. You recall that we put you under oath yesterday. Somebody's turned the microphones up.

THE COURT: Did y'all just do that? Aren't I sounding louder all of a sudden?

THE BAILIFF: Your usual tone of voice, sir.

BY THE COURT:

Q You recall that, uh --

THE COURT: Has it been like that all day?

MR. GOWDY: I don't hear any difference.

MR. BARNETT: I don't hear any difference.

THE COURT: All right. Maybe it has been a long day.

BY THE COURT:

Q Mr. Poole, you recall we put you under oath yesterday morning.

A Yes, sir.

Q You understand you are still under oath right now.

A Yes, sir.

Q Since you left yesterday afternoon, has anybody talked to you about this case or have you talked to anybody about the case?

A No, sir.

Q Have you heard anything or read anything or seen

anything about this case?

A No, sir.

Q Now, we have some questions we're going to ask you and we don't want to pry too deeply into your private life. But we do have to ask you these questions.

A Not a problem.

Q 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 think or how you feel.

A Yes, sir.

Q We're going to talk about a possible sentencing phase. But because we are talking about a possible sentencing phase, that does not mean anything about this case or about this defendant. It just means that we recognize that we might have to go into a sentencing phase. We want to ask you some questions about some issues that will come up if we get there to know how you think and how you feel.

A I understand, sir.

Q If you are a juror in this 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 right here in this courtroom?

A I would certainly attempt to do so, yes, sir.

Q Do you think you can?

A Yes, sir.

Q All right. Now, you understand that in a criminal case the burden of proof is on the State to prove the defendant guilty beyond a reasonable doubt. Do you understand that?

A Yes, sir. I understand that.

Q You understand that this is a murder case?

A Yes, sir. I understand that.

Q Could you, based on the facts and circumstances that you find to be proven and in light of the law as I will give it to you, can you find a verdict of either guilty or not guilty depending on whether or not you think the State has proven the defendant guilty beyond a reasonable doubt?

A I don't know how to answer that. I guess my response has to be I would attempt to do so. Yes, sir.

Q Let me break it down a little bit more.

A I gave a lot of information I read prior to yesterday about these particular issues. It would be difficult but, yes, sir, I would attempt to do so.

Q Why don't you, uh, when we asked you that question yesterday, unless I am mistaken, you did not tell us that you knew anything about this case. Maybe you realized since then that this is a case that you know about.

A I probably did not understand the question if you asked about prior knowledge. I thought you asked about knowledge since we came into the courtroom.

Q I see. But you have heard some things about this case and you do believe that you know some things about this case?

A I know what I read in the newspaper. But I would not say that I know things about the case but what I read in the newspaper.

Q I'm going to let the lawyers follow up a good bit on that. I'm going to tell you a few things. And then ask you some questions.

A Yes, sir.

Q If you are a member of the jury in this case, I will instruct you that it is your responsibility to set aside anything that you might know about this case, anything you might have heard about this case before the trial started.

A Yes, sir.

Q And that it would be your responsibility to come into this courtroom with an open mind and with a clean slate in terms of this case.

A Yes, sir.

Q And it is your responsibility to listen very carefully to the testimony that is put before you and to

observe very carefully the evidence that is put before you and in light of the law as I will explain it to you to render a verdict based solely on that testimony and evidence that is presented to you in this courtroom.

A Yes, sir.

Q Now we understand that there are some people who for whatever reason have become so intertwined with a case or who have learned so much about a case or who have developed opinions about a case they cannot separate themselves. They can't set that aside. Do you believe that you will be able to set aside anything that you might have learned or read about this case and any opinions that you may have developed about this case and do as I direct and render a verdict based solely on the testimony and evidence that you would hear in this courtroom.

A Yes, sir.

Q Now, going back to question that I asked you a minute ago, if you are on the jury and we get into the trial, into the guilt phase, I will instruct you that the defendant, and I'm instructing you now that the defendant is presumed innocent. Can you accept that presumption of innocence?

A Yes, sir.

Q I would then tell you about the burden of proof, explain it in a little more detail, define murder for you,

explain to you what the elements of murder are and explain to you any other aspect of the law that might become relevant during the course of the trial. And then I would tell you that in order to convict the defendant of murder, in order for you to find the defendant guilty of murder, you must find that the State has proven each and every element of the crime of murder beyond a reasonable doubt. If you found as a member of the jury that the State has failed to prove one of the elements of murder beyond a reasonable doubt, would you find the defendant not guilty?

A Yes, sir.

Q Sir?

A Yes, sir.

Q If you found that the State proved each and every element of the crime of murder beyond a reasonable doubt, would you find the defendant guilty?

A Yes, sir.

Q All right. Now if you are on the jury and the jury finds the defendant guilty of murder, we would move into the sentencing phase. Now, I'm going to discuss with you some of the issues that would become relevant during the sentencing phase. I'm going to talk to you about aggravating circumstances and mitigating circumstances.

Aggravating circumstances are facts, incidents, details of an occurrence the State of South Carolina has

declared to aggravate or to make worse the crime of murder. In other words, aggravating circumstance when accompanied by a murder increase the enormity of the crime, add to the injury caused by the crime.

Mitigating circumstances, on the other hand, are facts, incidences or details of an occurrence that the State of South Carolina has declared to lessen the severity of the crime of murder. And they serve to extenuate or to reduce the moral culpability or responsibility of the crime.

If you are on the jury and we get into the penalty phase of the trial, you would have two options as to what the sentence would be, as to what your verdict would be. You can find that the defendant should receive a life sentence or you can find that defendant should receive the death penalty.

Could you, as an individual juror, depending on the particular facts and circumstances that you find to exist including consideration of any aggravating or mitigating circumstances and certainly in light of the law as I will give it to you, could you return a verdict or vote to return a verdict for a life sentence?

A Yes, sir.

Q Could you vote to return a verdict to impose the death penalty?

A Absolutely.

Q Now, if you are on this jury and if I decide to sequester the jury and to put you up in a hotel and prevent you from going home for about five or six days or some period of time, would that impose a terrible hardship on you?

A I have a 22-year-old severely retarded son that functions at a six-month old level. Yes, sir. It would be difficult.

Q Do you have other members of your family who could step in and take care of him?

A I do have a wife.

Q Do you -- in your business, are you normally away for several days?

A Not for that length of time, no, sir.

Q I'm sensitive to this. I want to know do you believe that you could be sequestered as a jury for five or six days?

A If that was your will, yes, sir, I would do.

Q If I decide to do that, that is what would take. But the question will then be whether or not you are on the jury. Do you think you could do that?

A If that is your will, yes, sir.

Q All right. Have you had a chance to read over the witness list I gave you?

A Yes, sir.

Q Did you read every name on that list?

A Yes, sir.

Q Do you know anybody or are you related to anybody whose names is on that list?

A I'm not related to any that I am aware of. But I do know a few.

Q Could you tell me who you know.

A Benji Stephens, Rod Tillus. I know both of them. I know a Bill Burton. I don't know if that's the same one. But I do know a Bill Burton.

THE COURT: Do someone want to tell me something a little bit more about Bill Burton?

MR. BARTOSH: Yes, sir, Your Honor. Bill Burton is a, his father is a controller of Milliken. He is the, he is a vice president or president of a chemical company. He lives in Macon.

THE COURT: Macon, Georgia?

MR. POOLE: That's not the Bill Burton that I know.

BY THE COURT:

Q All right. Now, you said Rod Tillus and Benji Stephens.

A Benji Stephens.

Q Tell us very briefly, well I'm going to let the

lawyers go into that. Apart from what you just mentioned about maybe knowing these people, do you know of any other reason why you cannot be a fair and impartial juror and give both 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. Then I'm going to come back and ask you some more.

A Yes, sir.

EXAMINATION

BY MR. BARTOSH:

Q Mr. Poole, I am Mark Bartosh. Along with Doug Brennan and Karen Quimby, we represent Marion Lindsey in this case. When you first -- first of all, let me ask you this, you stated that you knew something of this case?

A Yes, sir.

Q Can you tell me what it is you know about it.

A Basically what I read in the Herald Journal.

Q Just tell me.

A As I understood from Herald Journal, the gentleman over here is being accused of shooting his wife. She was on her way to the police station in Inman to try to report that there had been some problem. And he found her either in the parking lot there or somewhere, I don't know

exactly, and shot her, allegedly shot her with maybe some other people, maybe some children that were witnesses or something like that.

Q Okay. So you pretty much know all of the facts?

A I don't know that those are accurate. But that's what I remember reading in the Herald Journal.

Q When you first started answering Judge Few's questions about whether or not you could be fair or whether or not you could find a person guilty or not guilty, you hesitated.

A Yes, sir. I don't mean to be difficult. But I think all of us bring prejudices in life to everything that we do. Sometimes that makes it difficult for us to make the appropriate decision.

Q That is what we are interested in is your prejudices and your experiences in life. Is there something about the facts of the case as you understand them to be that would prevent you from being fair to both sides and that would prevent you from finding if the State has failed to carry its burden of finding Mr. Lindsey not guilty?

A I can only respond, being totally honest with you. I hope not. I would do my absolute best to try to be impartial. But we all bring prejudices in life to everything that we do.

Q All right. Well, to me, that would indicate that you have, that there is something about the case that bothers you.

A Basically what I read the newspaper.

Q Yeah. But something about it that bothers you to a certain extent that it would affect your judgment or your ability to listen to both sides and to render a fair and just verdict?

A No, sir. I will do everything in my power to do what the judge has asked me to do.

Q Now, you say everything in your power, what I'm saying is you can't make a total commitment that you will follow the judge's instructions to the letter?

A I will make a total commitment to try to do that.

Q To try to do that?

A Yes, sir.

Q But you would still have to try to do that. You couldn't do it?

MR. GOWDY: Your Honor --

MR. POOLE: I can't answer that question.

THE COURT: Sustained.

MR. GOWDY: That's mis-characterizing of Mr. Poole's testimony.

THE COURT: Sustain the objection.

BY MR. BARTOSH:

Q You understand too that either with what you read and as Mr. Lindsey sits there today, he is presumed innocent?

A Yes, sir. I understand that.

Q Do you accept that fact?

A Yes, sir. I do.

Q And if you were told that by the judge that under the law, every person accused of crime no matter what that crime is is presumed to be innocent, would you accept that without reservation?

A Yes, sir.

Q Okay. And it would only be up until you believe or until the jury decided that Mr. Lindsey was no longer entitled to that presumption?

A Yes, sir.

Q But that can only happen if the State had proven beyond a reasonable doubt that Mr. Lindsey was not entitled to that presumption.

A I have never been involved in a case before. So proven beyond a reasonable doubt or whatever the terminology you just used, I am not familiar with that. But I would certainly hope so.

Q The judge will define what a reasonable doubt is.

A I understand.

Q Generally, one definition I have heard of a

reasonable doubt is that it is a doubt that a reasonable person, that would cause a reasonable person to hesitate to act. That is the standard that the State is held to. Now, would you be able to follow the standard without reservation?

A I don't know how to respond to that question. I certainly will do my best.

Q Well, in cases like this with all respect, Mr. Poole, it is not I will do my best. It is whether or not you would or you wouldn't. So what I'm asking you is and if you don't know the answer to it, that's fine.

THE COURT: Let me intercede for a minute with your permission.

MR. BARTOSH: Yes, sir.

THE COURT: If you would take a seat and let me see if I can't make it a little more clear to Mr. Poole.

Mr. Poole, we understand that all you can do, all any of us can do is to do your best. So we certainly appreciate that. Nobody is trying, nobody is going try to get you to guarantee that you can do any one thing or another thing. We have discussed some issues with you, some prior knowledge and some things that you read about this case, perhaps some conclusions that you have reached.

The question that we need you to help us with is whether or not you think that your prior knowledge, the things you read, the conclusions that you might have reached are going to interfere with your ability to do your best and recognizing and observing the presumption of innocence, the burden of proof, the need and the requirement that you render a verdict based solely on the testimony and evidence in this case.

So we accept that you are going to do your best. We are satisfied with that. Do you believe that these other things that we talked about are going to interfere with your ability to do this?

MR. POOLE: I have to be honest and say yes, sir. I think they might.

THE COURT: All right.

MR. POOLE: And I hate to be difficult I realize that --

THE COURT: That's not being difficult. We appreciate you --

MR. POOLE: I've got to be honest with you.

THE COURT: So you think --

Any further voir dire, Mr. Bartosh?

MR. BARTOSH: No, sir. We would thank you for your honesty.

THE COURT: Anything from the State?

MR. GOWDY: Your Honor, could I ask Mr. Poole just a couple of questions?

THE COURT: Absolutely.

MR. GOWDY: Thank you, Your Honor.

EXAMINATION

BY MR. GOWDY:

Q Mr. Poole, you and I know each other. For purposes of this, I'm going to call you Mr. Poole. Okay?

A That's quite all right, Mr. Gowdy.

Q Let me ask you this. We all come into situations with preconceived notions and prejudices, if you will, particularly when we have heard something about a matter. In your line of work, I imagine that you have learned to not believe everything that you have read in the Spartanburg Herald Journal. Is that fair?

A Absolutely, sir.

Q Is it also fair that you would not believe everything that you saw on Channel 7?

A Without a shadow of a doubt, sir.

Q So the fact that you have been exposed to information ahead of time based on your experience and background, there is absolutely no guarantee as to the reliability of the information that you read or seen?

A I agree with that, yes, sir.

Q Do you believe that if His Honor, Judge Few, told you, Mr. Poole, regardless of whether or not you think it is the law, this defendant is presumed innocent, could you follow what the judge said?

A Yes.

Q If His Honor told you that regardless of what your personal beliefs are that the State had to prove its case beyond a reasonable doubt even if you thought that standard was too high or even if you did not agree with that standard, if he told you I had to prove that defendant's guilt beyond a reasonable doubt, would you follow what the Court told you to do?

A He is the judge, yes, sir.

Q So you would follow the Court's instructions?

A I would follow the judge's instructions absolutely.

Q And again, as the Court said, there is absolutely now way anybody with any credibility can guarantee or verify that they are going to do any one thing other than their dead level best. What I hear you saying, Mr. Poole, is that you would and you have proven to be an extraordinarily conscientious prospective juror with your answers, you would do your dead level best to follow everything that this court told you to do in your function as a juror?

A Yes, sir.

Q Thank you, Mr. Poole.

MR. BARTOSH: Your Honor, with all due respect both to Mr. Poole and the Solicitor and the Judge --

THE COURT: You are entitled to ask some more questions if you want to. Then we will have argument.

MR. BARTOSH: Your Honor, I did not hear --

THE COURT: I don't argument right now.

MR. BARTOSH: Well, I have no more questions.

THE COURT: Mr. Poole, step into the hall just for a second please.

(WHEREUPON, Mr. Poole exits at approximately 7:35 p.m.)

THE COURT: Now I want argument.

MR. BARTOSH: Your Honor, what I heard Mr. Poole tell the Court was that because of what he knew about the case from whatever source that it would interfere with his ability to be fair and impartial in this case. And whether or not he believes what he reads in the paper or whether or not he believes what he hears on the television or sees on television, he said, he told the Court that he believe that what he knew about the case would impair his ability to be fair and impartial in the case. Your Honor, we would suggest that that would render him that he would not

be qualified. And I believe that was at the Court's, that was at the Court's inquiry, Your Honor.

MR. GOWDY: I don't want to speak out of turn, Your Honor. Your Honor, with the State versus Ricky Caldwell where a prospective juror not only knew something about the case but came into the courtroom with a preconceived opinion about it. There are other cases, uh, that are similar in its holding.

And I've got to say this, Your Honor, with all due respect to Mr. Bartosh, when he stood up and questioned this juror, he was trying to disqualify him from the moment he stood up. This juror is as thoughtful and conscientious as any juror we have had for the past few days. He has struggled to provide truthful answers to this court.

And the answers that I got from him were it is fair to question the reliability of any information that he has received outside this courtroom. And if this court told him to do something that he would follow your instructions. That excludes what he thought the law ought to be or what the law might be. He would follow your instructions.

So the fact that he has already formed an opinion prior to coming in here, if he is able to disabuse his mind of that opinion and be a fair and thoughtful

juror, which he told me he could be, then he is qualified.

MR. BARTOSH: Your Honor, the reason that I believe Mr. Poole to have some issues with this case were both his misdemeanor, his demeanor on the witness stand and also his answers to you during your colloquy in the beginning. He seemed to hesitate. He seemed to think. And then he would make an answer. It was not straightforward.

THE COURT: Let me take that off the table. I believe that I agree with Mr. Gowdy that this prospective juror has gone, has displayed more sincere credibility than any juror than I have had. And it is -- this is not a ruling. We're going to get back to discussing whether or not he was qualified. But I believe what he says. And I believe that he has struggled to be honest.

And it is almost like you get an almost honest juror up here who wants to deal straight with us and tell us what he really thinks and acknowledge just like everybody knows that there are four walls to this courthouse and a roof overhead that people bring prejudices into the courtroom. And they can't completely disabuse themselves of their -- I'm not finish -- of their prejudices and the facts that they

might have learned beforehand.

He acknowledged that and he acknowledged that honestly. And it's almost like anybody who's got the gall to come in here and acknowledge that obvious fact is a disqualified juror. So, I don't believe that he attempted to in any way fool me or to trick me or to trick this court or anything like that. I think, when he hesitated, I believe he hesitated because he wanted to give us an honest and sincere answer.

MR. BARTOSH: Your Honor, if you take by my remarks that I am saying that he was in any way trying to perpetrate a fraud or dissemble or anything like that about what, I think you're exactly right. I think what he was doing when he was answering those questions is he was taking time to run those thoughts through his mind and to try to explain what it was that bothered him about the case.

Had he wanted to, he could have said no, there's nothing in the world that bothers me about this case. I could be fair. I could do everything. He did not do that. He sat and he went through his conscience, he went over the things that he felt that were problems to him. He wanted the Court to know what those problems were. I believe that's the reason that he hesitated. And I believe that's the reason

why he sat and thought before he answered the Court.

I, in no way, and I don't know how anybody and if they did take it could take from my remarks that I think that he was trying to lie or trying to pull a fraud on anybody. I think to take that from my remarks, that is the farthest thing from the truth. And I think you are right. He is probably the most honest juror that we've had in here. That is shown by his, I won't say it's almost like torture going through and rolling through these things in his mind to try to tell the truth, to try to give his feelings. I think that is what he did.

There are things that he knows that are bothering him and that he is trying to decide and to be honest with everybody whether or not he can put those things beyond the pail, I guess, if you want to call it and be fair in this case. That is what this is all about. For whatever reason, Mr. Poole was exposed to some facts.

THE COURT: All right. Bring him back in here please.

(WHEREUPON, Mr. Poole enters at approximately 7:37 p.m.)

EXAMINATION

BY THE COURT:

Q Mr. Poole, let me ask you a couple more questions.

A Yes, sir.

Q Again we do appreciate your honesty with us. We really do. Now I want to go back to the last question that I asked. Then Mr. Gowdy followed up with that. We will get into that in a little bit. I told you that the important thing is for me, maybe I did not say it exactly like this.

But I have got to evaluate with, based on what you tell me, whether or not what you knew before this trial began, what conclusions you might have reached before this trial began, whether or not those things are going to interfere with your ability to do your best as an impartial juror and to make your decision based on what you hear in the courtroom.

After that, I believe you told me, I can't remember your exact words. But I think you told me you thought it would or you thought it might. Then Mr. Gowdy went back and pointed out that the things that you learned came from a source that perhaps you have come to know is unreliable. Like we all suspect the press sometimes of reporting things that are not necessarily wrong but they just report what is said.

In the Court, we've got rules of evidence. We have

things that, nothing comes before the jury unless it comes by me first. If there is an objection, I rule on it and some evidence that is sought to be put in does not come in. So you might come into the case as a juror and go through the whole trial and not hear some fact or some statement or some opinion that you read in the paper.

Now, is -- and so I'm going to come back to the question that I asked you a minute ago. We appreciate the fact that you have said you would do your best just like is all any of us can do. But I am very interested in your own view of whether or not you and your ability to do your best would be interfered with by what you have learned and what you have known and the conclusions that you might have reached before this trial began. So talk to me about that.

A Yes, Your Honor. I'm a very honest person probably to a fault. Because of that, I'm trying to be as honest with you as I possibly can be. I've also been in the banking business for almost 30 years. I've dealt with a lot of different situations. I know that prejudices enter into decisions that all of us make including decisions that I would make.

And as hard as I would try to do my absolute best to do what you asked me to do and I understand the importance, the absolute major importance of this whole case, I can not sit here and tell you 100 percent that some prejudices

wouldn't enter into my mind.

Q Let me explore that just a little bit. What we are talking about now is what you have learned about this case and what you might have concluded from what you learned.

A Yes, sir.

Q Now, you might call that prejudices but let's call that something like information. Okay?

A And as you pointed out and I agree with you completely, very possibly incorrect information.

Q Yeah. Let's say that you are sitting there in the jury room and you are deliberating with other members of the jury based on the evidence that you have heard in the courtroom. And all of a sudden you realize in your mind that there is something either additional to what you heard in the courtroom or something different that you heard in the courtroom that you read about or heard about on the news or heard about in some conversation.

Would you be able to, at that point in time, as you are sitting there in the jury room, would you be able to take that little piece of information back out of your mind because it was not admitted into evidence in this case? Or would you, do you think that you would be influenced in your deliberations and your thoughts in the jury room by what you remember hearing or seeing before the case began?

A I understand your question absolutely and completely. But I don't know the answer to that question, Your Honor.

Q All right.

A Again, I apologize for appearing to be evasive but I have to be honest with you.

Q Yeah. Okay. Let me get you to step back out in the hall.

A Yes, sir.

(WHEREUPON, Mr. Poole exits at approximately 7:42 p.m.)

THE COURT: He's not qualified. Bring him back.

(WHEREUPON, Mr. Poole enters at approximately 7:42 p.m.)

THE COURT: Mr. Poole, we appreciate your honesty with us. We appreciate you taking so much time to explain your situation.

MR. POOLE: Well, I apologize for taking so much of the Court's time.

THE COURT: No, no, no, no, no, no. You're not taking up time. But we, I have decided that you will no longer be needed as a juror in this case. So I'm excusing you. I appreciate you coming. I appreciate your honesty.

MR. POOLE: Yes, sir.

THE COURT: And I hope to see you under some different circumstances some other time.

MR. POOLE: Yes, sir.

THE COURT: Bring us a juror.

(WHEREUPON, Mr. Poole exits at approximately 7:43 p.m.)

(WHEREUPON, Dean Israel, Juror number 138, enters at approximately 7:43 p.m.)

DEAN ISRAEL

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Israel, how are you, sir?

A Fine. Can I say something?

Q Yes, sir. That's what we are here for to hear what you have to say.

A When you asked us all those questions the other day, --

Q Uh-huh (affirmative).

A -- my wife has been arrested.

Q Okay. And you forgot to tell us about that.

A Yes, sir.

Q All right. The lawyers will explore that with you in just a minute. We appreciate very much your coming in here just like I invited you to and supplementing your

answers to the questions that I had asked you before. Thank you.

A Uh-huh (affirmative).

Q Now, you recall that we put you under oath yesterday. And you understand you are still under oath now?

A Yes, sir.

Q Since yesterday, have you talked to anybody about this case or have anybody talked to you about the case?

A No, sir.

Q Sir?

A No, sir.

Q Have you read or heard or seen anything about the case?

A No.

Q Now, I'm going to ask you some questions. And then the lawyers are going to ask you some questions. We apologize if these intrude too much into your privacy but we do have to ask these questions. There are no right or wrong answers. We just want you to be open and honest with us and tell us how you think and how you feel.

We are going to get into a discussion of a possible sentencing phase. The fact that we're getting into that discussion about sentencing does not mean anything about this defendant or about this case. It simply means that

we realize that we might get into a sentencing phase. We want to ask you some questions about some things that will come up so we can learn how you think and how you feel about those subjects.

If you are a juror in this case, would you be able to accept and apply the law precisely as I will state it to you and to render a verdict based solely on the testimony and the evidence that is introduced before you in this courtroom?

A Yes, sir.

Q Do you understand that in a criminal case such as this, the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q Do you understand this is a murder case?

A Yes, sir.

Q And do you understand -- I'm sorry. Let me back up. Wrong question. Could you, depending on the facts and circumstances that you find to have been proven and in light of the law as I will give it to you, could you find a verdict of either guilty or not guilty depending on your view of whether or not the State has proven a defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q If you were on the jury in this case and if the

jury finds the defendant guilty of murder, we would move into the sentencing phase of the trial. I'm going to talk to you now about some issues that will come up during sentencing if we get there. I'm going to talk to you about aggravating circumstances and mitigating circumstances.

Aggravating circumstances are facts, incidents or details of an occurrence that the State of South Carolina has declared to aggravate or make worse the crime of murder. Aggravating circumstance when accompanied by a murder increased the enormity of the crime or add to the injury caused by the crime.

Mitigating circumstances, on the other hand, are facts or incidents or details of an occurrence that the State of South Carolina has declared to lessen the severity of the crime of murder. And they may be considered to extenuate or to reduce the degree of moral culpability or responsibility.

If you are on the jury during the sentencing phase of a death penalty, you would have two options as to what your verdict could be. Your verdict can be for a life sentence or your verdict could be for a death penalty. Could you, as a member of that jury, depending on the particular facts and circumstances that you find to exist and considering any aggravating or mitigating circumstances and considering the law as I would give it to you, could you return a

verdict voting for a life sentence?

A Yes.

Q Could you vote to return a verdict for the death penalty?

A Yes.

Q Now, if you are on the jury in this case and if I sequester the jury, would the fact that you have to be away from your home for five or six days staying in a hotel with us, would that put a tremendous burden on you?

A No.

Q And you had a chance to go over the witness list that I gave you earlier?

A Yes, sir.

Q Have you read every name on that list?

A Yes, sir.

Q Is there anybody on that list who you know or to whom you are related?

A No, sir.

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 No, sir.

Q I'm going to let the lawyers ask you some questions now. Then I may ask you some more questions later.

MR. BRENNAN: Please the Court.

EXAMINATION

BY MR. BRENNAN:

Q Mr. Israel, how are you doing this evening?

A Fine. Thank you.

Q Thank you for your patience. My name is Doug Brennan. I'm an attorney here in Spartanburg myself. Mr. Bartosh and Ms. Quimby have the opportunity to represent Mr. Lindsey in this matter. Sir, yesterday when you were asked if you knew anything about this case and when all the group was here, you stood up.

A Yes, sir.

Q Can you tell us what it was?

A Just what I read in the newspaper. I didn't know any details.

Q Can you tell me what you do know?

A I read it about a month or so ago. There was a write-up in the paper about three death penalties.

Q So it was an article about three different cases?

A Yes.

Q Okay. Based on the portion of that article that referred to my client, have you formed an opinion in this matter?

A No.

Q Will you be able to forgot or wipe away the

information that you learned in that article about this case, relating to this case and make your decision based solely on what you hear from that witness stand and those pieces of paper and other documents?

THE COURT: Let me ask him that.

I did not realize, Mr. Israel, that you had answered that question that you knew something about the case. That is my fault. I have been meaning to ask that question of all the people who indicated they knew something about the case.

If you get on the jury in this case, I will instruct you that your responsibility is to set aside any knowledge that you may have about what happened or anything that you may have read about what happened and to come into this courtroom with an open mind and a clean slate in your mind and to render, to listen very carefully to the testimony in evidence that is presented here, listen to the law that I give you and to render a verdict based solely on the testimony and evidence that you have presented to you in this courtroom under my supervision. Of course, that will be done in light of the law as I give it to you.

Now, do you believe that you will be able to do that, to take those things that you might have heard before the trial began out of your mind and to render

a verdict based on just what you hear and see in this courtroom?

MR. ISRAEL: Yeah.

THE COURT: All right. You can follow up on that if you want to.

MR. BRENNAN: Thank you, Your Honor.

BY MR. BRENNAN:

Q I do have one follow-up question. If you make this jury and you are seated on this jury and you're in the jury box and you -- in a criminal trial, the State goes first. So you will have this information in your mind. Will the evidence presented by the State be adding to the information that you already have or will you be able to set that aside and start at zero, start with a clean slate?

A I believe so. I feel like I know nothing about this trial.

Q Thank you, sir. That is fine. Sir, you mentioned on your questionnaire that you were the victim of breaking into motor vehicles. Did someone break into your car?

A Yeah.

Q How long ago was that?

A Maybe about 10 months or so ago.

Q Was anybody arrested?

A No.

Q Was it reported to the police?

A Yes.

Q Does the fact that you were violated in that form and that your car was broken into, does that affect your ability to render a fair judgment in this matter?

A No.

Q Okay. All right. Do you understand, sir, that in South Carolina the death penalty is not mandatory?

A No.

Q In South Carolina, if someone is convicted, if someone is found guilty of murder, the jury then has the choice of the death penalty or life. Do you understand that you do not have to impose that?

A Yes, sir. I understand.

Q With that in mind, sir, it is said that there are three kinds of jurors. There are those that if the defendant is convicted will always impose the death penalty. There are those that if the defendant is convicted will always impose a life sentence. Then there is the group in the middle that says I want to wait and hear the specific facts of the case before I say death penalty or life sentence. Are you an always death, an always life or are you in the middle?

A I'm probably in the middle.

Q Okay. Sir, my last question. For a moment,

assume that you're on the jury. You are in deliberations in the sentencing phase. You are back in the jury room. Eleven jurors have made a decision that the proper sentence is the death penalty. But based on what you heard here in this courtroom, your decision is life is proper. You've got eleven that have said death, you're the one that said life. Would you be swayed by the fact that they have made a decision for death or will you be able to stand your ground and maintain your decision that life is proper?

A If that is what I believe, that's what I'll do.

Q You will not be swayed by their decision?

A (Shakes head negatively).

MR. BARNETT: Nothing further. Thank you, Your Honor.

MR. GOWDY: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. GOWDY:

Q Good evening.

A Good evening.

Q My name is Trey Gowdy. I'm with the solicitor's office. That's Donnie Willingham to your left. Barry Barnett in the middle. Together, the three of us will be prosecuting this case in behalf of the State of South

Carolina. The hour is late, so my questions will be brief. You were good enough, first of all, to fill out this question which contains a lot of personal information.

I believe when you walked in tonight, you might have also volunteered an additional piece of personal information which I'm not going to go into other to ask this, which agency was involved with the incident that you cited to the Court when you walked in? Which law enforcement agency?

A Spartanburg County.

Q How long ago did that take place?

A 8 or 10 years.

Q Do you believe that you and your family were treated fairly by the Spartanburg County Sheriff's Department?

A Yes.

Q The fact that they may be involved in the investigation in this case would not would not affect you?

A No.

Q Okay. Final question, if I understood what you told His Honor, if you were selected for service of this jury and after hearing all of the evidence, you thought life was proper punishment, that's what you will vote for?

A Yes, sir.

Q If you thought death was the proper punishment,

that is what you will vote for?

A Yes.

Q You could do either one depending on what you thought was right?

A Absolutely.

Q Based on what you thought was right, you would sign your name to that verdict form and pass it up to the judge?

A Yes, sir.

Q Thank you, Mr. Israel. I appreciate you answering my questions. Have a good evening.

THE COURT: Mr. Israel, please step out in the hall for just a few seconds please.

(WHEREFORE, Mr. Isreal exits at approximately 8:01 p.m.)

THE COURT: Any objections to his qualifications?

MR. BRENNAN: None, Your Honor.

MR. GOWDY: None from the State, Your Honor

THE COURT: None from either side.

Bring him back.

(WHEREFORE, Mr. Israel enters at approximately 8:01 p.m.)

THE COURT: Mr. Israel, I find that you are a qualified juror in this case. It is going to be a day or so before we are ready to begin. So I want you

to stay in touch with us by calling the telephone number that you were given yesterday morning. Some time around lunch or maybe in the afternoon tomorrow, we will start putting some information on that number, on that recording as to what, when we think we will be ready for you to come back. So keep checking it and we will also try to stay in touch with you if we need to. Your primary source of information is to call that recorded number.

During the next day or so before you come back, please do not discuss this case with anyone. Don't allow anyone to discuss it with you. Don't read anything, watch anything or listen to anything about this case. When you come back, I'm going to ask you and all of the jurors if you have been able to keep yourself from any discussions about the case and from learning anything about the case. I want you to be able to tell me that you have. All right. We will see you in a couple of days.

(WHEREUPON, Mr. Israel exits at approximately 8:02 p.m.)

THE COURT: All right. Anything else you want to take up now before we go home?

MR. GOWDY: Nothing from the State, your Honor.

MR. BARTOSH: I would like to see you, Your

Honor.

THE COURT: All right, sir. I will be back in my office.

We will resume tomorrow morning with Panel 7 at 9 o'clock. We have got either 18 or 19 jurors.

MR. GOWDY: (Nods head affirmatively.)

THE COURT: How many do you think we need?

MR. BARTOSH: 41.

MR. GOWDY: 37.

MR. BARNETT: 37.

MR. BARTOSH: 12 plus 10 is 22 plus 5 is 27. Usually, they go with three alternates.

THE COURT: If we go with three, that means we need 39 people.

MR. BARTOSH: It is two a piece. That is six. Plus one a piece --

MR. GOWDY: You get two. I get one. That's three for every alternate we get.

THE COURT: Four for every alternate.

MR. GOWDY: So that's 18.

THE COURT: You have got to count the one that's not chosen.

MR. GOWDY: 39

THE COURT: 39 is the minimum if we're going to get three alternates.

MR. BARTOSH: Yes, sir.

MR. GOWDY: And we're sitting on 18 or 19 depending on Mr. Smith.

THE COURT: Right. So unless the panels tomorrow are just overflowing with quickly qualified jurors, we probably are going to be engaged in this process on Thursday morning. Okay. It is not too late ask me anything. It is going to take me another 15 minutes to get up the strength to get out of this chair unless some of y'all want to come up here and help me get up.

MR. GOWDY: I'll be delighted to, Your Honor

THE COURT: Okay. Brooke just gave me sufficient motivation to get out of the chair.

MR. GOWDY: I won't ask what she said.

THE COURT: We'll go off the record.

(WHEREUPON, the Court adjourned at approximately 8:15 p.m.)

(WHEREUPON, the Court resumed on May 19, 2004 at approximately 9:15 a.m.)

THE COURT: Before we get started with jurors, as you all know, we had I think four jurors who were summoned, who returned questionnaires, right, who didn't show up on Monday. Four out of about how many, a hundred and sixty something?

THE CLERK: 161.

THE COURT: 161 did show up. Four did not show up. By the way, we reported that to the Guinness Book of World Records as the highest percentage of juror attendance on the first day of a term of court in the history of the western world. But what do we do about those four is the next question. We've had -- the Clerk's office has been calling them. Sheriff's deputies have been sent out to try to retrieve them. We have one on the building right now. And we haven't heard from the other three?

THE CLERK: We can't find two. But one has been calling all week.

THE COURT: I told them to keep trying to get them. I figure we can still qualify -- we can still easily go through the initial qualification and then go through this process if y'all want to.

MR. GOWDY: They are not part of the panels that exist now?

THE COURT: That is correct. They have not been put into the panels that we are talking to now.

MR. GOWDY: They would be added to the very end. I can not imagine a scenario where we would get to the very end of these panels.

MR. BARTOSH: I agree, Your Honor. We're going to have a jury before we get to the end of these

panels.

THE COURT: Do you consent to let those jurors be transferred to a different term of Court or something like that?

MR. BARTOSH: Yes, sir.

THE COURT: All right. Transfer them to a different term of court. Let me ask this question, Ashley. How did this message from Richard Smith come to your possession?

THE CLERK: He called me.

THE COURT: He talked to you?

THE CLERK: Yes.

THE COURT: And tell me what he told you.

THE CLERK: He told me that he did not know if that would matter or not in his qualification process. He knew of a murder in 1977. That's what he told me.

THE COURT: Knew the family?

THE CLERK: Yes. The lady went to prison for it. He didn't give any details or anything.

THE COURT: All right. So -- thank you.

Either side would have the opportunity if you wanted to to question Mr. Smith about that if I rule him qualified based on what we already know.

There is a TV camera in the courtroom that has been pointed out by defense counsel back in chambers.

And apparently there is some desire to discuss how if at all we deal with that during the rest of the jury qualifications. Right?

MR. BARTOSH: Yes, sir. Uh, my understanding is that after discussing the matter with you and with the Solicitor that the Court intends to inform the jurors that the equipment is not operative, is not turned on and that at no time during any part of this proceeding will their images be broadcasted.

THE COURT: I don't want to make a big deal out of this. Why don't we just turn the camera to the side and have nobody standing over there so that anybody in their right mind can tell that it's not filming them.

MR. BARTOSH: I would have no objection to that.

THE COURT: All right. Does anybody feel comfortable going over there and manipulating that complicated looking device or should we get the cameraman to do it?

MR. GOWDY: Judge, I think they are standing right --

THE COURT: Okay.

(WHEREUPON, there was a pause.)

THE COURT: How about just turn it to the side. It still looks like it's pointing at us. Yeah. That

looks good. Thank you.

Okay. Newton's Laws are hard at work with me this morning. Things at rest tend to remain at rest until acted on by a superior force. And I just need some motivation to go ahead and get that first juror in here.

MR. GOWDY: Your Honor, we are almost half way home.

THE COURT: Well, bring him in then since we are almost half way.

I don't mean to suggest that I'm not enjoying this. It is not unenjoyable. We had a long day yesterday. All right.

(WHEREUPON, Jeffrey Rhineberger, Juror number 225, enters at approximately 9:25 a.m.)

JEFFREY RHINEBERGER

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Rhineberger, good morning, sir.

A Good morning.

Q How are you?

A Great.

Q You recall that we put you under oath Monday morning.

A (No response.)
Q You do?
A Yes.
Q And you understand you are still under oath today?
A Yes, sir.
Q Since you left us Monday afternoon, 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 or read anything or heard anything about this case?
A No, sir.
Q We're going to ask you some questions now. We don't intend to invade your privacy but it is necessary for us to ask 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 think, tell us how you feel.

We are going to talk a little bit about a possible sentencing phase. But just because we're talking about a sentencing phase, that doesn't mean anything about this case or about this defendant. It simply means that we recognize we might get to that phase. And we have some questions we need to ask you that relate to some of the

issues that will come up if we get there. If you are a juror in this case, can you accept and apply the law precisely as I will give it to you and render a verdict in this case based solely on the testimony and evidence that you see and hear in this courtroom?

A Yes, sir.

Q You understand that the State has the burden of proof in a criminal case and they must meet that burden beyond a reasonable doubt?

A Yes, sir.

Q You understand this is a murder case?

A Yes, sir.

Q Can you, depending on the facts and the evidence that you find to be proven in light of the law as I will give it to you, can you find a verdict of 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 reaches a verdict of guilty on murder, then we will move into the sentencing phase. I'm going to talk to you a little bit about that. During the sentencing phase, we would have some evidence regarding aggravating circumstances and mitigating circumstances.

Aggravating circumstances are facts or incidents or details of an occurrence that the State of South Carolina

has declared to aggravate or to make worse 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 that the State of South Carolina has declared to lessen the severity of the crime of murder. They serve to extenuate or reduce the moral culpability or responsibility for the crime.

If you are a juror in a death penalty case in the penalty phase, you would have two options as to what your verdict could be. Your verdict could be for a life sentence or your verdict could be for the death penalty. Could you, sitting as a juror, considering the facts and circumstances that you find to exist or that have been proven including any aggravating or mitigating circumstances and in light of the law as I will give it to you, could you return a verdict voting for -- I'm sorry. Could you vote to return a verdict for a life sentence?

A Yes.

Q Could you vote to return a verdict for the death penalty?

A Yes.

Q If I sequestered this jury and require you to be put up in a hotel for five or six days, would that impose a

terrible burden on your family?

A No.

Q Have you read over the witness list that I gave you this morning when you came in?

A Yes, sir.

Q Have you read every name on that witness list?

A Yes, sir.

Q Is there anyone on that list whom you know or to whom you are related?

A No, sir.

Q Is there any reason that you know of why you cannot give both the State and the defendant a fair and impartial trial?

A No.

Q All right. Mr. Rhineberger, I'm going to allow the lawyers to ask you a few questions. Then I may come back and ask you a few more in a few minutes.

THE COURT: Mr. Bartosh.

MR. BARTOSH: Thank you, Your Honor.

EXAMINATION

BY MR. BARTOSH:

Q Good morning, Mr. Rhineberger.

A Good morning, sir.

Q I am Mike Bartosh. I am a lawyer here in Spartanburg. Along with Doug Brandon and Karen Quimby, we

are representing Marion Lindsey in this case. There are a couple of questions that I would like to ask you that you filled out on your application. Monday I guess it was, you indicated that you knew someone in our office?

A Yes, sir.

Q Can you tell us who that is.

A I know Karen.

Q Have long have you been, are you friends over a long period of time?

A I would say it has been six years since we talked. We were friends like I said several years ago. Six or seven years.

Q You lost contact?

A Yes, sir.

Q And it's been about five or six years since you had any contact with her?

A Yes, sir.

Q Also you noted that your mother had been robbed.

A Yes.

Q Was it an armed robbery? Was it a weapon?

A No.

Q Can you describe the circumstances?

A Basically she had come home from lunch and somebody was in the house rummaging through the stuff. She thought was it me home from college and kind of called

my name. And when nobody answered she went back to check and the guy busted through and ran out of the door.

Q Was she injured?

A No.

Q Was the person ever arrested?

A Yes.

Q He was prosecuted?

A Yes.

Q You also said that you or a family member had been arrested by the sheriff's department and the police department?

A Yes, sir.

Q Can you tell me about that?

A Yes, I have a younger brother who was arrested for DUI.

Q And that has been resolved?

A Yes, sir.

Q Now, also you said that a family member had been the victim of an assault or CDV, are you referring to your mother?

A Yes.

Q Is there anyone else in your family who had been a victim of an assault or criminal domestic violence?

A Yes.

Q Can you tell me about that?

A My brother was also held up by gunpoint and robbed. His buddy's car was taken from him.

Q You had two family members who had been victims of a robbery?

A Yes.

Q One was an armed robbery?

A Right.

Q I think you said your father had been employed in the Greenville County Detention facility?

A That's correct.

Q Is he employed there now?

A No, sir.

Q How long ago, how long has it been since he was left there?

A I would say it's probably been three or four years.

Q Okay. You have any other family members that are employed in law enforcement?

A No, sir.

Q Now the judge has described basically the, how this thing is going to work. What we're trying to do is we are trying to sort of get an idea about your thoughts about the death penalty and your thoughts about life and death and things like that.

As His Honor said, this is a two part system. The

first part is just like a regular trial. If you are picked for this jury, you will sit over there in the jury box. The State will present its evidence just like it normally would. They would have to convince all twelve of the folks on the jury that Mr. Lindsey is guilty of murder. And they would have to prove that beyond a reasonable doubt.

If the jury does not believe that, if they do not believe that Mr. Lindsey, that the State has met its burden, then we all go home okay. If they do carry their burden in the opinion of the jury, then it moves into a second phase. In that phase as the judge has told you, they will be presenting some aggravating circumstances by the State presented to convince you that the death penalty is an appropriate punishment. We will be presenting mitigating circumstances which we hope will convince the jury that life is the appropriate punishment.

Now life means life. Mr. Lindsey, if he receives life, if it goes that far and he receives life, he would never get out of jail. He would die in the Department of Corrections. Could you keep an open mind and listen to both sides and be fair to the State in their presentation of the aggravating circumstance and be fair to the defense in their presentation of the mitigating circumstances? Could you be fair and listen to both sides?

A Yes, sir.
Q Are you predisposed to either side?
A No, sir.
Q You are willing to listen to both sides with an open mind?
A Yes, sir.
Q The judge is going to tell you when we start out that Mr. Lindsey even as he sits there now is presumed innocent. That is not a legal fiction. That is a real substantial right. And should you be picked for the jury, you would take an oath and swear to accept the law as to judge gives it to you. So would you be able to accept the fact that Mr. Lindsey even now is presumed to be innocent.
A Yes, sir.
Q Okay. Do you know anything about this case at all?
A No, sir.
Q You have not been exposed to any media or anything like that?
A No, sir.
Q Okay. Now, there is a form, a sentencing sheet if it does go to a penalty phase and the jury decides upon the appropriate punishment, there's a form that every juror has to sign. And of course if it is death, then every

juror has to sign for death. It has got to be unanimous. If it turned out that the jury decided that it was the death penalty and all eleven jurors had signed the form and it came time that it was passed around to you and it came time for you to sign that form and knowing that by signing that form you were committing Mr. Lindsey to death, could you do that?

A If I believed that the case was strong enough, I could.

Q You would have to wait and hear what the facts were and that is what you would base your decision on?

A Yes, sir.

Q Thank you.

MR. GOWDY: May it please the Court.

THE COURT: Yes, sir.

EXAMINATION

BY MR. GOWDY:

Q Good morning.

A Good morning.

Q My name is Trey Gowdy. I'm with the Solicitor's office along with Donnie Willingham to your left, Barry Barnett in the center. We are what they call the prosecutors. We work on behalf of the State of South Carolina and the prosecution of this case.

I just have a couple questions because the judge did a

very nice job of asking you questions that I would ordinarily ask. You were good enough on Monday and again today to tell us that you knew one of the defense attorneys. The last thing in the world I want to do given the fact that I just met you is ask you any personal questions.

But having said that, what both sides are looking for are twelve folks that could be fair and listen to evidence and make up their mind based on what happened in this courtroom as opposed to any friendships or what have you outside the courtroom. I feel certain you can appreciate that. So, having said that, how long have you known Ms. Quimby and can you tell me the nature of your relationship? Did you go to school together, did you work together?

A It has been probably six years. I thought about it Monday trying to figure it out. Friends of friends. Right after school basically. I'd say we were acquainted for 6 months to a year. And I have not talked to her after six years.

Q Okay. I know you can appreciate that in the limited time you and I will have this morning, I've got to make up, I've got to make a decision. And I have no reason to believe that you are going to be anything other than fair but I have to ask. Are you satisfied that if you were seated on this jury that whatever friendship you had with

her in the past you could set that aside and be fair to the folks sitting at the table and base your decision just on what happens in this courtroom and not on anything that happened in the past?

A Absolutely.

Q Thank you. A couple more quick questions. I notice that you work for a company ECMD, Incorporated?

A Yes, sir.

Q What do y'all do?

A We manufacture building materials. I'm a regional sales manager for the doors and window department.

Q Is that an industry that's located in Woodruff?

A No, the company itself is out of North Carolina. I am a sales rep that covers the upstate South Carolina and Georgia.

Q Okay. My final question to you, Mr. Rhineberger, and I appreciate your patience. If you were seated on this jury and if you thought that life was the proper punishment, that is what you would vote for. Is that right?

A Yes.

Q If you thought that death was the proper punishment, that is what you would vote for?

A Yes.

Q You would base that on what happened in this

courtroom and whether or not the State has proven its case to you beyond a reasonable doubt?

A Yes.

Q I appreciate you answering my questions. Thank you very much.

THE COURT: Mr. Rhineberger, do you mind stepping in the hall for just a second please.

(WHEREUPON, Mr. Rhineberger exits at approximately 9:48 a.m.)

THE COURT: Any objection to his qualifications?

MR. BARTOSH: No, sir.

MR. GOWDY: No, sir.

THE COURT: Bring him in and get us another juror.

(WHEREUPON, Mr. Rhineberger enters at approximately 9:48 a.m.)

THE COURT: Mr. Rhineberger, I find that you are a qualified juror to serve in this case. It is going to be at least late today probably tomorrow before we get to you. So I'm going to let you go now. Stay in touch with us by calling the telephone number that you were given on Monday morning. There will be a recorded message on that line that will tell you about our progress and will tell you when we will expect to need you back.

When you come back, you need to bring or be ready to bring at least some clothes and whatever you will need to be put in hotel for five or six days. Continue to not talk about the case. Do not allow anyone to talk to you about the case. Don't read, listen to or watch anything about this case. We will see you either late today or hopefully some time tomorrow.

MR. RHINEBERGER: Yes, sir.

THE COURT: Have a good day.

(WHEREUPON, Mr. Rhineberger exits at approximately 9:49 a.m.)

(WHEREUPON, Kim Rogers, Juror number 232, enters at approximately 9:49 a.m.)

KIM ROGERS

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good morning, Ms. Rogers?

A Good morning.

Q How are you?

A Fine. How are you?

Q You -- I'm doing fine. You recall that on Monday morning we put you under oath?

A Yes.

Q You are still under oath right now. Since we let you go Monday afternoon, have you talked to anybody about this case or has anybody talked to you about this case?

A No.

Q Have you read or seen or heard anything about this case since then?

A No.

Q We're going to ask you some questions. We don't mean to pry too deep into your private life. But we do need to ask you these questions. These questions don't have right or wrong answers. We just want to know how you think or how you feel.

We're going to talk a little bit about a possible sentencing phase. The fact that we're talking about a sentencing phase does not mean anything about this defendant or about this case. It simply means that we recognize that we might get to a sentencing phase. We need to ask you some questions about some of the issues that will come up so that we know how you think and how you feel.

If you are juror in this case, can you accept and apply the law precisely as I give it to you and render a verdict based on the testimony and evidence that you hear in this courtroom and disregard anything you may have known

about this case before the trial started?

A Yes.

Q You understand that in a criminal case such as this, the State has the burden of proof and must prove the defendant guilty beyond a reasonable doubt?

A Yes.

Q You understand this is a murder case?

A Yes.

Q Can you or could you find, depending on the facts and circumstances that you find to be proven and in light of the law as I will give it to you, could you find the defendant guilty or not guilty depending on whether or not you think the State has met its burden of proof?

A Yes.

Q If the jury were to find the defendant guilty of murder, we will move into second phase or the penalty phase of the trial. There are several things that will come up at that the phase. I'm going to talk to you a little bit about those now. Aggravating circumstances. Aggravating circumstances are facts or incidents or details of an occurrence that the State of South Carolina have declared to aggravate or make worse the crime of murder. Aggravating circumstances increase the enormity of the crime of murder or add to the injury resulting from the crime.

Mitigating circumstances, on the other hand, are facts instances or details of occurrence that the State has declared to lessen the severity of the crime of murder. They serve to extenuate or reduce the moral culpability or responsibility for the crime.

If you are a juror in the sentencing phase of a death penalty case such as this, you would have two options as to what your verdict could be. It could be you could vote for a life sentence or you could vote for a death of the death penalty. Could you, depending on what you found to have been proven and the facts and circumstances that you find to exist considering any aggravating or mitigating circumstances and considering the law that I will give to you, could you vote to impose a life sentence?

A Yes.

Q Could you vote to impose the death sentence?

A Yes.

Q If I make you or if you become a member of this jury and if I sequester the jury and you are required to stay in the hotel for five or six days, is that going to impose a terrible hardship on you?

A No.

Q Have you had a chance to go over the witness list that I gave you a few minutes ago?

A Yes.

Q Have you read any name on that list?

A Yes.

Q Is there any name on that list whom you know or to whom you are related?

A One person, Celeste Nesbitt.

Q Celeste Nesbitt. Do you mind telling me how you know Ms. Nesbett or are you related to her?

A I worked with her at BMG Distribution.

Q You work with her now?

A No.

Q How long ago did you work with her?

A About three years ago.

Q Three years. In the three years since then, have you had any contact with Ms. Nesbett?

A No.

Q Do you know of any reason why you cannot be a fair and impartial juror and give both the State and the defendant a fair and impartial trial?

A No.

Q Ma'am, I'm going to let the lawyers ask you some questions now. Then I'm going to come back in a few minutes and ask you some more.

MR. BRENNAN: Please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BRENNAN:

Q Good morning, Ms. Rogers.

A Good morning.

Q My name is Doug Brennan. I'm an attorney from here in Spartanburg. Myself, Mr. Bartosh and Ms. Quimby have the opportunity to represent Mr. Lindsey in this matter. I apologize that there are some questions that I have to ask. We don't mean to pry. We just need to know. On your questionnaire, you listed or stated that it was your uncle that had been murdered, your mother's brother?

A Yes.

Q Can you tell me when that was?

A Probably about 15 years ago.

Q Okay. Were you close to that gentleman?

A Yes.

Q Okay. Was anyone ever arrested for that?

A Yes.

Q And did that person -- is that person now in jail?

A Yes.

Q Did the fact that your uncle or your mother's brother was murdered, did that have an affect on the formation of your opinion as to the death penalty?

A No.

Q It did not?

A No.

Q Would you be able to set aside your feelings for your uncle and what happened to him and render a decision based solely on the evidence that is presented here today or here in this trial?

A Yes.

Q Okay. You also said that somebody that you knew was accused of shoplifting?

A Yes.

Q And were you asked to make a statement about that?

A No.

Q No? Have you ever made a statement concerning any shoplifting or perhaps your uncle's death to the law enforcement officers?

A No.

Q No. On your questionnaire, you said that, you told the Court that you didn't know anything about this matter. But then on Monday when the group was asked if you had any knowledge about this case, you stood up. Can you tell me what you heard and where you heard it.

A All I know is from the newspaper and Channel 7.

Q And based on what you've read in the newspaper and heard on Channel 7, have you formed an opinion of this matter?

A No.

Q Will what you know about this matter have any affect on your ability to render a fair decision?

A No.

Q You previously served on a jury, is that right?

A Yes.

Q It was a civil case. All right. You understand this is going to be quite a bit different than that?

A Yes.

Q This case will be divided into two forms, you understand that?

A Yes.

Q Now, ma'am, do you realize that in South Carolina the death penalty is never mandatory?

A Yes.

Q Do you have a preconceived opinion as to the death penalty?

A No.

Q Okay. Is there any time that you would always vote for a death penalty?

A No.

Q Is there any time that you would always vote for a life sentence?

A No.

Q All right. One last question, ma'am, if you are

seated on this jury and if the defendant is found guilty, you are in a sentencing phase. If there are eleven jurors, you being the twelve, eleven jurors who have decided that the death penalty is proper. But based on what you heard in this courtroom, your decision is that the proper sentence should be life in prison. Can you stand your ground and stay with that decision for life or would you be swayed by the mere fact that those other eleven have voted for death?

A I would have to stay with my opinion.

Q Thank you, ma'am.

MR. GOWDY: May it please the Court?

THE COURT: Yes, sir.

EXAMINATION

BY MR. GOWDY:

Q Good morning, Ms. Rogers.

A Morning.

Q How are you?

A Fine.

Q My name is Trey Gowdy. I'm with the Solicitor's office here in Spartanburg. That is Donnie Willingham to your left and Barry Barnett in the center. We are what they call prosecutors. We will be prosecuting this case on behalf of the State. I, too, want to thank you for filling out the jury questionnaire. I know it asked a lot of

questions that we are not usually used to answering and strangers don't usually ask one another. I'm going to be as brief as I can. You mentioned that you used to work with Celeste.

A Yes.

Q Do you mind if I ask you did y'all work closely together. Do you consider yourself to be a friend of hers?

A Well, we didn't work close together. It was two different departments. We might have went over every like three months to help out on certain projects.

Q This was at BMG?

A Yes.

Q She is going to be a witness in this case. Is there anything that arose as a result of y'alls working relationship that would tend to make you view her testimony differently than you would anybody else's?

A No.

Q Do you still have any contact with her?

A No.

Q Okay. What are your views or opinions on the death penalty?

A I mean, you just have to take the case and view and go from there.

Q Is it fair to say that based on religion or politics or morality you are not automatically opposed to

it?

A Right.

Q And it is also fair to say that you don't—automatically like the old testaments says, an eye for an eye and a tooth for a tooth. Every murder doesn't deserve the death penalty.

A No.

Q Can you imagine that there are some murders that do warrant the death penalty?

A Yes.

Q And if the State were able to prove to you that this is one of those cases, would you be able to vote for death?

A Yes.

Q And sign your name to a document and pass it up to the judge saying that's what your position is?

A Yes.

Q I think Mr. Brennan asked you this question. If he did, I apologize for asking again. I was trying to write and think at the same time. I don't do that very well sometimes. I have a note that you stood up and said you had some prior knowledge of the case.

A Yes. Through the newspaper and Channel 7.

Q But whatever that prior knowledge was, you can separate yourself from that and be a fair and unbiased

juror if you were picked in this case?

A Yes.

Q Thank you, Ms. Rogers. I appreciate you answering my questions.

THE COURT: Ms. Rogers, would you mind stepping in the hall for just a minute please, ma'am?

(WHEREUPON, Ms. Rogers exits at approximately 10:08 a.m.)

THE COURT: Any objection to her qualifications?

MR. BRENNAN: No, Your Honor.

MR. GOWDY: No, sir.

THE COURT: Bring her back in.

(WHEREUPON, Ms. Rogers enters at approximately 10:05 a.m.)

THE COURT: Ms. Rogers, I find that you are a qualified juror to serve in this case. It's going to be at least this afternoon possibly if not probably tomorrow before we get ready for you to come back. Please stay in touch with us by calling the telephone number that you were given Monday morning. Some time around lunchtime, we'll start putting some information on there about when we think we're going to need you back.

Keep in mind that I may sequester the jury in which case, you will need to be ready to bring

clothing or whatever else you need for five or six days to stay in a hotel. Continue to avoid talking to anybody about this case or reading or hearing or watching anything about this case. We look forward to seeing you back here either this afternoon but probably tomorrow. All right. Thank you, ma'am.

(WHEREUPON, Ms. Rogers exits at approximately 10:05 a.m)

MR. WILLINGHAM: Your Honor, we have a matter we need to take up before the next juror.

THE COURT: All right. Go ahead.

MR. WILLINGHAM: Your Honor, I was looking through the information and everything. I realize the RAP sheet. This gentleman coming up has an active warrant on him from Georgia. And I just verified that.

THE COURT: How do you -- do you propose that we get Jack to come up here and put him in handcuffs and take him on off to the detention center or what?

MR. WILLINGHAM: I don't know. Let me speak with defense counsel real quick.

(WHEREUPON, there was a pause.)

THE COURT: That's going to be a shock to him.

MR. WILLINGHAM: That's why I'm bringing it up now.

THE COURT: What do you say, Mr. Bartosh?

MR. BARTOSH: Well, I don't know what to say, Your Honor. This is the first time anything like this has ever come up. The guy's got an active warrant and he's on the jury.

THE COURT: Well, setting aside for a moment the interesting question of whether or not we either allow or direct the warrant to be served, do we consider putting him on the jury?

MR. BARTOSH: They may not come and get him. That's the other thing. It's an identity charge.

MR. WILLINGHAM: It's an identity charge, whatever that is, in Georgia. I don't know if that's false information. I don't know what an equivalent would be in our state.

THE COURT: I don't think it makes any difference what it is. If he's not convicted of it, he is, as we have been repeatedly asking everybody to recognize, presumed innocent. But the question is, we are fixing to put him on a jury. And law enforcement has got something of a responsibility to serve on him a warrant that they know to exist. In which case, he would no longer be able to serve on a jury if he is in custody. There's a hold on him right or what is it?

MR. WILLINGHAM: It's just on NCIC as an active warrant from Georgia.

THE COURT: So how would y'all normally handle that, Jack? You've got somebody who comes in as a juror with an active warrant. You serve the warrant, don't you?

THE DEPUTY: We've got to get the warrant and serve it on him.

THE COURT: So you wouldn't do anything about it right now?

THE DEPUTY: Put him in custody.

THE COURT: Huh?

THE DEPUTY: Yes, sir. Put him in custody and get a warrant and serve it on him.

THE COURT: Normally, you would take him into custody right now?

THE DEPUTY: Right, if they'll extradite him.

MR. BARTOSH: See that's --

THE DEPUTY: I can verify that within our department. I can check and verify that he's got to.

MR. BARTOSH: Could we do that, Your Honor, and see if Georgia has any intention of coming to get him if he is in custody?

THE COURT: How quickly can you verify that?

THE DEPUTY: In a minute.

THE COURT: All right. Why don't we just get the next juror then.

THE BAILIFF: So Your Honor, you want to skip this juror?

THE COURT: We will go to Kevin Cartledge if that suits you all.

MR. BARTOSH: Yes, sir.

MR. GOWDY: Your Honor, with Mr. Bartosh's permission, can I pass up two letters that Former Solicitor Gossett handed me in connection with jurors coming up this afternoon? There are letters from doctors that he wanted me to make available to the Court.

THE COURT: I prefer to see them when they come up. You've shown them to him?

MR. GOWDY: He knows about them.

THE COURT: All right.

(WHEREUPON, Kevin Cartledge, Juror number 49, enters at approximately 10:09 a.m.)

KEVIN CARTLEDGE

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Cartledge?

A Yes, sir.

Q Good morning.

A How are you doing?

Q How are you doing?
A All right.
Q Did you, uh, did you put that shirt in the wash with something that faded on it? Those shirts are not normally brown. Are they?
A No, sir.
Q I'm just kidding you. You recall that we put you under oath Monday morning?
A Yes, sir.
Q You understand you are still under oath right now?
A Yes, sir.
Q Since you left us Monday afternoon, has anyone talked to you about this case or have you talked to anybody about this case?
A No, sir.
Q Have you learned or heard or listened to or watched anything about this case?
A No, sir.
Q We're going to ask you some questions now. We don't mean to try to pry too deep in your private life but we do have to ask you these questions. These questions don't have right or wrong answers. We just want you to be open and honest with us and tell us how you think and how you feel.

We going to talk about a possible sentencing phase. The fact that we're going to talk about a sentencing phase does not mean anything about this defendant or about this case. It just means that we recognize that we might get to the sentencing phase and we need to ask you some questions about some issues that will come up so we know how you think and how you feel.

If you are a juror in this case, can 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 hear in this courtroom disregarding anything that you may have known or heard before you got here?

A Yes, sir.

Q You understand that in a criminal case, the State has the burden of proof and must prove the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q You understand that this is a murder case?

A Yes, sir.

Q Could you, depending on the facts and circumstances you find to have been proven and in light of the law as I will give it to you, could you find the defendant either guilty or not guilty depending on whether or not you think the State has met its burden of proof?

A Yes, sir. I can.

Q If you are a juror in this case and the jury finds the defendant guilty of murder, we will move into a sentencing phase. In the sentencing phase, some other issues are going to come up. I'm going to talk to you about those now.

Aggravating circumstances are facts, incidences or details of an occurrence that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the enormity of the crime or add to the injury that is caused by the crime.

Mitigating circumstances, on the other hand, are facts, incidences or details of an occurrence that the State of South Carolina has declared to reduce the severity of the crime of murder. They serve to extenuate or to reduce the moral culpability or responsibility for the crime.

Could you, well, hold on a second. If you are a juror in the sentencing phase of this case, you would have two options as to what your verdict could be. You could have a verdict for the life sentence. Or you can have a verdict for the death penalty. Could you, depending on the facts and circumstances that you find to exist considering any aggravating or mitigating circumstances and considering the law as I give it to you, could you vote to

impose a life sentence?

A Yes, sir.

Q Could you vote to impose the death penalty?

A Yes, sir.

Q If you are a juror in this case and I sequester the jury and put you in a hotel for five or six days, is that going to impose a terrible hardship on you?

A No, sir.

Q Have you had a chance to go over the witness list that I gave you this morning?

A Yes.

Q Do you know anybody or are related to anybody on that list?

A No.

Q Do you know of any reason why you cannot be a fair and impartial juror in this case?

A I went to school with --

Q With the defendant?

A Yes.

Q With Mr. Lindsey?

A Yes, sir.

Q Tell me about that. Well, I'll tell you what, is there any other reason other than that?

A No, sir.

Q I'm going to let the lawyers ask you about that.

I'm going to let them ask you those and some other questions right now. All right, sir.

MR. BRENNAN: May it please the Court, Your Honor.

EXAMINATION

BY MR. BRENNAN:

Q Mr. Cartledge, how are you doing this morning?

A All right.

Q My name is Doug Brennan. I am an attorney from here in Spartanburg. Myself, Mr. Mike Bartosh and Ms. Quimby have the opportunity to represent Mr. Lindsey. You mentioned that you went to school with Mr. Lindsey at some point?

A Yes, sir.

Q Would you tell us where.

A Junior High.

Q You remember what grade? How long of a period of time?

A We had our 10-year anniversary, I mean my 10-year class reunion this year.

Q Okay.

A It was about seventh or eighth-grade.

Q Do you remember when you were in the 7th or 8th grade spending time with Mr. Lindsey?

A No.

Q You spent time with him?
A No, just his face and name.
Q The fact that you knew him back then, would that affect your ability to render a fair decision in this manner?
A No.
Q You remember anything in particular about Mr. Lindsey from the 7th or 8th grade?
A No.
Q On your questionnaire, there was some questions about have you or any family members ever being arrested by the Spartanburg County Department or the Inman Police Department. You put no on the questionnaire. But then when asked that question Monday in the general pool, you stood up?
A Right.
Q I'm sure that you just thought of something since you filled that out. And that's fine. But can you tell me who it was that was arrested and by which department?
A Spartanburg County. My uncle has been and my dad has been.
Q How long ago has those arrest been?
A It has been a while.
Q Because your dad and your cousin have been arrested by the Sheriff's Department has that biased your

opinion maybe against the State?

A No.

Q You can put that aside and still be fair and listen to the evidence that is presented here in court?

A Yes.

Q You put that you get your news from the upstate. Was that the upstate section of the Spartanburg Herald? What does the upstate mean?

A On the computer.

Q Upstate.com?

A Yes.

Q Gotcha. How long have you served in the army?

A Six years.

Q Do you have an opinion about the death penalty?

A No.

Q So you weren't -- you haven't -- did your service in the army affect your thinking on the death penalty?

A No.

Q You understand that in South Carolina the death penalty is never mandatory?

A Yes, I understand.

Q Will you be able to sit in the jury box if you should be seated in the jury and listen to the evidence presented by both the State and the defense and make your decision should we get to the sentencing phase as to life

or death?

A Yes.

Q Is there a case that you will always vote for death?

A No.

Q Is there a case that you will always vote for life?

A No.

Q My last question is, if you were on the jury and we were on the sentencing phase and you were in the jury room deliberating, the other eleven jurors have all made their decision. And their decision is the death penalty is proper. But based on what you have heard, you decided that life was proper. Can you stand your ground and maintain your vote of life and not be swayed by the mere fact that those other eleven have voted for death?

A Yes.

Q You can stand your ground?

A Yes.

Q Nothing further.

MR. WILLINGHAM: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. WILLINGHAM:

Q Mr. Cartledge, my name is Donnie Willingham. This is Barry Barnett. This is Mr. Gowdy. We will be the prosecutors on this case. I want to follow-up a little bit about, you said you have family members that have been arrested by the Sheriff's office?

A Yes.

Q You said your dad and the uncle?

A Yes.

Q What were they arrested for?

A My dad, assault with his hands.

Q Were those things that were prosecuted in magistrate's court or did they come to big court, do you know?

A I am not sure.

Q As far as you know, were they treated fairly by the sheriff's office?

A Yes.

Q If a prosecutor was involved, they were treated fairly?

A Yes, sir. That I know of.

Q I just want to make sure. We've got sheriff's deputies that are going to be testifying in this case. I just want to know if they were treated fairly and if they didn't leave a bad taste in your mouth based on that experience.

A Yes.

Q And you could be fair?

A Yes, I can be.

Q I also want to ask about your relationship with Mr. Lindsey. You said you went to school with him?

A Just passing.

Q Did you have classes together?

A No.

Q Now, if we get to the penalty phase, the State is going to be asking the jury to put Marion Lindsey to death as the appropriate punishment. Do you realistically think that you can sit in judgment of somebody that you knew before you came in here today?

A Yes.

Q You would not hold that against us the fact that you knew him?

A No.

Q You would not hold it against him?

A No.

Q I understood in your questions earlier that you could vote for life or death either way depending on the circumstances?

A Yes.

Q There is going to be a form that you are going to have to sign at the end of the phase. You are going to

have to put your name down on a piece of paper saying that you believe that the death sentence would be appropriate. Could you sign your name on that form?

A Yes.

Q I believe Mr. Brennan asked you what your opinion on the death penalty was and I don't know if I remember or heard your answer. What was your answer?

A If it is applicable, yes.

Q You understand the death penalty is never going to be required?

A Right.

Q The judge would never tell you you have to impose the death penalty. No other juror will tell you you have to impose the death penalty. You will always have a choice between life without parole and death. Now understanding you have that choice, could you still impose the death penalty in certain circumstances?

A Yes.

Q Where do your views on the death penalty come form?

A Where my --

Q Is it church or is it life experience? Where does it come from?

A Just life experiences.

Q Have you thought about it much before you came in

this court?

A No.

Q Have you talked to your friends or family members about it?

A Yeah, in conversation.

Q What has been the topic of that conversation that had taken place?

A If the situation is for it, yes. That wasn't my decision at the time. But if I had to make the decision, yes.

Q I don't think I understand that answer. I may just be slow. But tell me what you mean by that. At the time, that was not your decision but now?

A In general conversation.

Q Okay.

A Not this case. Certain other cases.

Q Okay.

A If it was applicable to it, yes.

Q You think you can do it?

A Yes.

Q Thank you.

THE COURT: Mr. Cartledge, do you mind stepping out in the hall for just a second please.

(WHEREUPON, Mr. Cartledge exits at approximately 10:22 a.m.)

THE COURT: Any objection to his qualifications?

MR. BRENNAN: None, Your Honor.

MR. WILLINGHAM: No, sir.

THE COURT: Bring him in please.

(WHEREUPON, Mr. Cartledge enters at approximately 10:22 a.m.)

THE COURT: I find that you are qualified to serve as a juror in this case. We will not need you to come back until at least this afternoon, possibly tomorrow. Please stay in touch with us by calling the telephone number that you were given on Monday morning. Beginning sometime after lunch today or shortly after lunch, we will start putting some information on that recording as to when we would need you back.

Remember you may be sequestered. You may need to be ready to bring clothes for five or six days so that you can stay in hotel. You will not be allowed to stay home. Remember not to discuss the case with anyone, not to allow anyone to discuss the case with you. Do not read, listen to or watch anything about this case. We look forward to seeing you either this afternoon or tomorrow. Have a good day.

(WHEREUPON, Mr. Cartledge exits at approximately

10:23 a.m.)

MR. BARNETTE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. BARNETTE: On Mr. Reese, Your Honor, the jail was nice enough to inform us that they would not extradite on that charge.

THE COURT: So that means they will not pick him up?

MR. BARNETTE: They will not pick him up. Yes, sir.

THE COURT: Well, y'all want to go ahead and qualify him or seek to.

MR. GOWDY: Did he represent on his questionnaire that he had a pending warrant, Your Honor?

THE COURT: He may not know.

MR. GOWDY: I can see why not with this RAP sheet. I'm sure it gets confusing.

THE COURT: Does he have a long RAP sheet?

MR. GOWDY: As many charges as he's got.

THE COURT: He doesn't have anything that disqualifies him though, does he? Any convictions?

MR. BARNETTE: May we approach the bench?

THE COURT: Yes, but let's keep it on the

record.

MR. BARNETTE: Yes, sir. I just need to show you the RAP sheet and then we'll put it on the record.

THE COURT: Okay.

MR. BARNETTE: On his questionnaire, he admitted to CDV, DUI and DUS, Your Honor. But he also has, in Florida, he has a cocaine charge that was not mentioned. He had been arrested for it. He had never been charged.

THE COURT: Was he convicted of it?

MR. BARNETTE: It does not show disposition.

THE COURT: Did we talk to him about this on Monday?

THE CLERK: Cartledge?

THE COURT: No, not Cartledge, Reese.

THE CLERK: No.

MR. BARNETT: Let me double check. I don't think he stood up.

THE CLERK: He never.

MR. WILLINGHAM: No, he didn't. I rechecked that.

THE COURT: Didn't stand up about what?

MR. BARNETTE: When you asked the question about being charged before with anything. He did admit to DUI, DUS, and CDV on his questionnaire. He did not

mention anything about the cocaine charge in Florida, obviously not the one in Georgia.

THE COURT: Are any of those convictions?

MR. GOWDY: The Georgia one is not. The one in Florida does not show a conviction.

MR. BARTOSH: We can ask him. Perhaps he thought it was convictions.

THE COURT: Huh?

MR. BARTOSH: Perhaps he thought it was convictions.

THE COURT: All right. I'm just going to go ahead and go through it normal. And let you do what you want to do.

MR. BARTOSH: Thank you.

MR. BARNETTE: Thank you, Your Honor.

THE COURT: Bring him in.

(WHEREUPON, Kenneth Reese, Juror number 224, enters at approximately 10:26 a.m.)

KENNETH REESE

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Reese, good morning.

A Good morning.

Q You recall that we put you under oath on Monday

morning?

A Yes, sir.

Q And you are still under oath right now. You understand that?

A Yes, sir.

Q Have you talked to anybody about this case or has anybody talked to you about this case since Monday afternoon?

A No, sir. I have not.

Q Have you learned anything or read anything or watched anything or heard anything about this case?

A No, sir.

Q We're going to ask you some questions now. These questions don't have right or wrong answers. We just want you to be open and honest with us and tell us how you think or how you feel. We going to talk about a possible penalty phase. But because we're talking about that, does not mean anything about this defendant or about this case. It just means that we may get to that phase. And we need to ask you some questions about some issues that may come up if we do.

A Yes, sir.

Q If you are a juror in this case, can 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 see and hear in this courtroom disregarding anything that you learned or heard or seen before the trial started?

A Yes, sir.

Q You understand that in a criminal case such as this the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q You understand this is a murder case?

A Yes, sir.

Q Can you, depending on the facts and circumstances that you find to have been proven and in light of the law as I will give it to you, can you vote, can you find the 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 this case gets into a sentencing phase, there are some other issues that will come up. I will talk to you about those now. Aggravating circumstances are facts, incidents or circumstances that the State has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the enormity of the crime of murder and add to the injury from the crime.

Mitigating circumstances, on the other hand, are facts instances or details of an occurrence that the State of South Carolina has declared to lessen the severity of the

crime of murder. They may be considered as extenuating or as reducing the degree of moral culpability or responsibility for the crime. If you are a juror in the sentencing phase of a death penalty phase, you will have two options is what your verdict could be. Your verdict can be for a life sentence, or the verdict can be for the death penalty.

Could you, depending on the facts and circumstances that you find to exist, considering any aggravating or mitigating circumstances, considering the law that I will give to you, could you vote to impose a life sentence?

A Yes, sir.

Q Could you vote to impose the death penalty?

A Yes, sir.

Q If you are on this jury and if I sequestered the jury and if I put you up in hotel and don't let you go home for five or six days, is that going to impose a terrible burden on you?

A No, sir.

Q Have you had a chance to go over the witness list that I gave to you?

A Yes, sir.

Q Do you know anybody or are you related to anybody on that list?

A No, sir. Not by name.

Q You don't recognize any one of those?
A No, sir.
Q Do you know of any reason why you could not give the State and the defendant a fair and impartial trial?
A No, sir.
Q All right. I'm going to let the lawyers ask you some questions. I may ask you some more in a minute.

EXAMINATION

BY MR. BARTOSH:

Q Mr. Reese, I'm Mike Bartosh from the Public Defender's office. And along with Karen Quimby and Doug Brennan, we represent Marion Lindsey in this case today. There are just a few questions I would like to ask you from the answers you gave us on the questionnaire.
A Okay.
Q You are working now?
A Yes, sir.
Q You do contracting work?
A I'm a carpenter. Yes, sir.
Q You work for yourself?
A Yes, sir.
Q You do subcontracting?
A Uh-huh (affirmative).
Q You say you have a six grade education?
A Yes, sir.

Q Can you read and write?
A Very well.
Q Since you are in the contracting business, you frame houses?
A Yes.
Q You able to make due with that?
A Yes, sir.
Q You have no trouble with that?
A No.
Q Do you know or have you heard anything about this particular case?
A No, I have not.
Q You know nothing about it?
A No.
Q The one thing you did put on your application too is that you have a hearing problem.
A It was when I was a child. I had surgery.
Q It has corrected it?
A It is well taken care of.
Q You don't have any problems with that?
A No, sir.
Q Just a few more questions, Mr. Reese. You get your news mostly from Channel 7?
A When I watch it, yes, sir. I hardly do.
Q All right. Now as the judge explained to you,

this is going to be a, if it goes all the way, it is going to be two-part process. The first part is just like a normal trial. The jurors will sit there. The State will present evidence. And it has the burden of convincing all twelve jurors beyond a reasonable doubt that Mr. Lindsey is guilty of murder. If they do not carry the burden or if the jury does not believe that they carried the burden and they find Mr. Lindsey is not guilty of murder, we all go home, okay.

However if it does, if the jury does find that the State has met its burden beyond a reasonable doubt, then we move into the second phase. In that phase, that is to decide what the penalty should be. There are only two penalties. There's life in prison. When we say life in prison now in this state, we means life in prison. He would die in the Department of Corrections. No parole.

Or death. Of course, death will either be by lethal injection or electrocution. But those are the two possibilities. However, there never has to be -- death is never mandated. You always have the option of choosing life. Okay?

A Uh-huh (affirmative).

Q What the State will do is they will present what they consider to be aggravating circumstances. Circumstances that make the murder worse. Of course they

will be doing that to try to convince the jury that the death penalty is the appropriate penalty. Of course what we are going to be doing is we're going to be presenting mitigating circumstances or circumstances we feel mitigate or lessen the culpability of Mr. Lindsey in this matter.

If you're chosen, you're going to be sitting over there listening to all of that testimony both from the State and from the defense. Would you be able to keep an open mind during the entire process, even all the way through from the trial, from the guilt phase to the penalty phase, and just base your decision on what you hear in this courtroom and what you hear from that witness box.

A Yes, sir.

Q Would you be able to do that?

A Yes, sir.

Q Would you be fair to both sides?

A Very fair.

Q As you know under our system of the laws and it is not just the legal fiction, it is a real and substantial right that everybody enjoys no matter what they are charged with. As Mr. Lindsey sits there, he is presumed innocent of this crime.

A Yes, sir.

Q He is entitled to the presumption until the jury decides he is no longer entitled to it. Would you accept

that?

A Yes, sir.

Q Okay. If we go to a guilt phase, if it comes time and the decision is death, everyone on the jury is going to have to sign the sentencing sheet. Let's suppose that all eleven that signed the sheet voted for death. They passed the sheet to you. You are going to be the last, the 12th juror that signs, knowing that once you put your name to that, you have condemned Mr. Lindsey to death. Could you do that?

A Yes, sir.

Q Okay. Do you believe that you are -- what are your views on the death penalty? Let me ask you that.

A I never really thought about it much. I thought it all depends on the nature of the crime and things of that nature. Personally you don't want to put anybody to death. But if that is what it comes down to and that's the way I feel about it, that's the way I'll pick.

Q If you feel the case warrants it, you would do it?

A Yes, sir.

Q If you don't feel the case, the facts and circumstances warrant the death penalty, you will vote for life?

A (Nods head affirmatively.)

Q But you will base it up what you hear?

A The facts.

MR. BARTOSH: That's all I have.

MR. BARNETT: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q Mr. Reese, my name is Barry Barnett. Along with Trey Gowdy and Donnie Willingham, we are prosecuting this case for the State. I just want to follow up on some questions that Mr. Bartosh asked you. You said, I don't want to put anybody to death. What's the basis of your view on that or the basis for that statement?

A The basis for that statement is no man wants to kill anybody. You know what I mean?

Q Uh-huh (affirmative).

A Like you said, if the facts show that that's what it is, then that's what it is.

Q Let me ask you this. If you came and there was eleven people that were going to vote for death and they signed what they call the end of the case and what we call the death penalty, and you are the twelfth name and you've got to sign that form knowing that you're going to be the twelfth person signing it and then handing it to the Judge.

The Judge doesn't have anything to do with the sentencing phase. It would have to be the jury. Based on what you feel like, do you feel like you can sign that under those circumstances?

A Yes, sir. If I thought the facts were leading to that and that's what it was, that's what I would vote for.

Q Let me ask you this. I was going through your form and everything. I noticed Mr. Bartosh asked you about your, is it your left ear?

A Yes, sir.

Q Are you still having trouble hearing out of that?

A No, sir.

Q I know you wrote it down on your questionnaire. And you been working at the time this was filled out, working construction --

A Yes, sir.

Q -- at the time you filled this out. Are you still working for them?

A No, sir. We finished the house last week.

Q Okay. Where do you live at Mr. Reese?

A In Pacolet.

Q In Pacolet. What other places have you lived before that?

A I traveled with a carnival for a lot of my life.

Q You lived with a carnival. So you went through

different stages.

A That's right.

Q You ever been to Florida?

A Yes, sir. I have.

Q And I think you were born in Memphis, is that right?

A Yes, sir.

Q And the judge asked a question about if you been convicted or whatever or been charged before or whatever. I noticed you didn't stand up.

A No.

Q And you have been charged with offenses, isn't that correct?

A Yes, but not for over a year. It's never been for anything more than a year.

Q You remember the judge specifically asking questions about CDV?

A Yes, sir.

Q About all of that. You didn't stand up at that time, did you?

A No.

Q But you had been convicted of those offenses.

A One CDV, yes.

Q And you've been convicted of Driving under the Influence and Driving under Suspension. Is that right?

A Uh-huh (affirmative).
Q And in Florida, you've been charged with cocaine?
A Yes, sir.
Q Why didn't you put that on your form or why didn't you inform the Judge of that on Monday?
A Well, he was potentially going towards family and friends and such. I didn't know it was directly towards individuals.
Q You realize your questionnaire said you.
A Uh-huh (affirmative).
Q And family and friends, you would think that would also apply to you, isn't it? But you didn't stand up.
A Uh-huh (affirmative).
Q Is there any other offenses that you've been charged with that you didn't tell the Court about?
A Not that I know of, sir. I mean, I traveled a lot and done a lot of things.
Q You been charged with simple assault before?
A Assault and battery, yes.
Q And you didn't put that on your application, I mean, on your questionnaire, did you?
A I don't guess.
Q You didn't inform the Court about that either, did you?

A (Shakes head negatively.)

Q Thank you, Mr. Reese, for answering my questions.

MR. BARNETT: Thank you, Your Honor.

THE COURT: Mr. Reese, let me get you to step out in the hall for just a second please.

(WHEREUPON, Mr. Reese exits at approximately 10:41 a.m.)

THE COURT: I noticed on his form, he said he did not make it pass the sixth grade. Did we ask him about that?

MR. BARTOSH: I asked him in the --

THE COURT: Just now?

MR. BARTOSH: Just now.

THE COURT: He said he finished the sixth grade.

MR. BARTOSH: He said he finished the sixth grade if I remember correctly, Your Honor. He said he could read and write very well.

THE COURT: I heard that.

MR. BARNETT: Your Honor, he didn't put that on his application.

MR. BARTOSH: He did or did not?

MR. BARNETT: Did not.

MR. BARTOSH: We have it on our --

THE COURT: It's on his juror information card.

What's the -- what's the -- I think I know the State's position.

MR. BARNETT: Yes, sir. I mean, he had --

THE COURT: What's the defendant's position?

MR. BARTOSH: Your Honor, he's qualified.

MR. BARNETT: No, sir. He's not. Here he's lied. He said he made it -- he said I did not make it past the sixth grade. That's on his form. That's been pointed out. He told Mr. Bartosh he did make it past the sixth grade. He did not stand up during your question. His conviction in Florida --

THE COURT: We don't know if it is a conviction, do we?

MR. BARNETT: A charge alone on top of that. He did not stand up during your questioning about CDV specifically on Monday.

THE COURT: Before -- there's no doubt in my mind after watching him and listening to him and talking to him today that he concealed information not accidentally. You are saying that that disqualifies him?

MR. BARNETT: Yes, sir. Cause he has to follow your instructions. I don't think he has.

THE COURT: Let's see if we can't avoid making up any law and let's see if we can't find some law that

says that misrepresenting some fact during jury qualification is grounds for disqualification of a juror.

MR. BARNETT: Yes, sir. Your Honor, the other thing too is if he's being dishonest on this, how do we know he's honest on the rest of his answers. That's the problem with qualifying him as a juror. We have to have honest answers, just like we had the juror yesterday, Mr. Poole.

THE COURT: I fully understand all of that. I've got this disability that I operate under most of the time. That is, I want to know what the law is before I rule.

MR. BARNETT: Yes, sir.

THE COURT: And I can see how the law ought to be that if he lies, he ought to be disqualified. But I want to see it on paper.

MR. BARNETT: Yes, sir.

MR. GOWDY: You want a case that it is not an abuse of your discretion to disqualify a juror for misrepresentation during the voir dire process?

THE COURT: Well --

MR. GOWDY: I think the standard is clearly it's within your discretion as to whether or not -- I mean, inconsistent answers alone is a basis for Your

Honor to disqualify a juror. That alone.

THE COURT: No, that's not correct. Inconsistent answers when they relate to a subject that is such that it might cause me to question whether his belief will substantially interfere with his ability to carry forth my instructions as a juror, that disqualifies him.

But if he says something like I have a hearing problem in my left ear, but it was taken care of in an operation many years ago, but now I hear crying, but only two months ago, he wrote on his application, on his questionnaire that he can't hear out of his left ear, that is not an inconsistency that is going to by itself disqualify him. It is perhaps evidence of dishonesty. Then the dishonesty might disqualify him. That's what I want to explore.

MR. GOWDY: Well, I was incorrect to use the word inconsistency when I should have used the word dishonesty. That is in fact what we are talking about.

THE COURT: Okay. All right.

MR. BRENNAN: Your Honor, I believe it's going to be State versus Kelly. Both the trial judge must ask the potential juror whether a biased opinion against any party is expected and required of the

juror. When answered truthfully that they would expose in general questioning any matters that could potentially disqualify them from the case for any reason, it is therefore imperative that the juror's answers be truthful and complete.

THE COURT: Let me see that. You've got a copy of the case or is that just --

MR. BRENNAN: We've got a --

THE COURT: I can tell you that I'm very concerned about his credibility. I'm particularly concerned about the fact that he didn't reveal that cocaine charge down in Florida. That is an important fact that both sides would want in evaluating whether or not they should exercise peremptory challenge. And the fact that he didn't disclose that and that he was inconsistent in his answers about his hearing problem which also is a fact that both sides would want to know.

I'm a little concerned about the hearing problem, that maybe he really doesn't hear out of one ear. But then once he got in here, he decided that he wanted to be on this jury. And so he's trying to take away anything that might cause somebody to strike him. So now, he does hear out of both ears.

Mr. Barnett questioned him about the charge down

in Florida. And then, set him up, very properly by asking him are there any other charges that you haven't told us about. He said not that I know of. And of course, Mr. Barnett knew there was an assault and battery charge from Florida. So Mr. Barnett asked him about that. He said, Oh, yeah. I do have an assault and battery. Did I get that wrong, Mr. Barnett?

MR. BARNETT: No, sir. You are correct.

MR. GOWDY: And the domestic violence. He has a conviction.

MR. BARTOSH: He revealed that though.

MR. GOWDY: Not yesterday, not Monday, he didn't.

MR. BARTOSH: It's in his --

THE COURT: It's in his form.

MR. BARNETT: It's in his form.

MR. BARTOSH: Yeah, as Mr. Gowdy pointed out when we were discussing the question about the arrest, with a RAP sheet like that, perhaps it does get confusing. I know what my view of the facts and evidence are. I just want to see the law before I rule.

MR. BRENNAN: Yes, sir. State versus Kelly.

THE COURT: Do you know Mr. Kelly?

MR. BARTOSH: Very well.

THE COURT: Should we call him and consult him about the facts and the legal conclusions in the opinion?

MR. BARTOSH: The facts in that case, Your Honor, was that the foreman of the jury had failed to disclose that when he was a student in Winthrop, he had chartered a bus to go down to a Roaches execution. There was a photograph in the paper where he was holding up a paper saying "CCI Where Roaches Check In but Don't Check Out".

THE COURT: Okay.

MR. BARTOSH: I know Mr. Kelly --

THE COURT: I am going to take a break and go and read this case.

MR. BARTOSH: I know Mr. Kelly very well.

THE COURT: Thank y'all.

(WHEREUPON, a short recess was taken at approximately 10:47 a.m.)

(WHEREUPON, the Court resumed at approximately 10:56 a.m.)

THE COURT: All right. You know, Kelly and Gulledge are cases where the situation arose after the jury had been seated and the State -- or in that case or in those two cases, the defendant had missed their

opportunity to exercise peremptory challenges based on a complete set of information. Now, I think that is a significant distinction to this situation.

What the Supreme Court says in Kelly is that the Court's inquiry, and this was afterwards, focuses on the type of information that was concealed not on the fact that the information was concealed. So it might be kind of like a Brady violation. If it comes up before trial, there's no harm. If it comes up after trial, then you have to go through this analysis to see whether it was prejudicial to the defendant.

At this point, at least you think you know everything he did not say. It is true there maybe other stuff out there that he had not told you that he was supposed to tell you. I don't know. I am concerned that I don't have the authority to disqualify him for lying. So I am not going to do that until I'm satisfied that I can.

MR. BARNETT: The only thing I would ask, he is under oath, if he is lying, he committed a perjury. To me, there is no question that he should be disqualified based on that.

MR. GOWDY: Your Honor, not only do I think you have the authority to disqualify him, I think you have to power to order him in contempt of court.

THE COURT: That's another thing I thought of a minute ago. I can certainly disqualify him by putting him in the detention center for about 60 days, then he cannot serve. But let's just -- we're not in any hurry. We don't have to decide is right now, do we?

MR. GOWDY: No, sir.

MR. BARNETT: No, sir.

THE COURT: All right. I would like an opportunity to read this case more thoroughly.

MR. BARNETT: Your Honor, we would like an opportunity to look up more cases.

THE COURT: This other cases cited in here State versus Gulledge came up on a mistrial question during the trial. The information, I don't find a distinction between the type of information in Kelly and the type of information here. There's no distinction. This is a concealment of an arrest and a charge of cocaine that would be a felony if it would result in a conviction. That is information that is crucial to both sides in deciding whether or not they would like to exercise a peremptory challenge.

MR. GOWDY: In Kelly, I don't have Kelly before me. But was this prospective juror affirmatively asked questions that had he been

truthful that information would have been revealed, or was that PCR a situation in which the attorneys were not effective for asking?

THE COURT: It is a direct appeal I believe. But here is the only distinction that I see between Kelly and where we are right now. The only distinction that I see is that the question comes up in our case before you would exercise your peremptory challenges. The question came up in Kelly after the trial.

The defense had been denied the opportunity to exercise its peremptory challenge based on a complete set of information. The defense in Kelly clearly is prejudiced by not being able to exercise peremptory challenge. My question that I don't know the answer to yet is are you prejudiced or the defense prejudiced in this case because now you do have the information that you could use in deciding whether or not to exercise peremptory challenge.

MR. GOWDY: Your Honor, if this juror had answered in a certain way, we wouldn't be talking about peremptory challenges because they would just flat-out not qualified.

THE COURT: How was that?

MR. GOWDY: How do we know that his answers to

any other questions are truthful in light of the fact that he has been so dishonest --

THE COURT: We don't know. But there's nothing that he lied about so to speak the truth of would disqualify him that we know about.

MR. GOWDY: I do not think or I cannot find a rule that suggest that so long as you lie to the Court about things that are actually material, you can serve on a jury if you lie about other things.

THE COURT: It is material. I am saying that it is material. What he a lied about is material. What you are saying or what I think you are trying to say is there should be no distinction when the juror's lie is uncovered before jury selection from when the juror's lie is uncovered after jury selection. That is why I am.

MR. GOWDY: That's part of what I'm saying. But what I'm saying is Kelly would have been a flat-out qualifier. The answers to the questions were they flat-out disqualifiers or was it just information that Mr. Bartosh or the defense attorneys would want to have and exercise their peremptory challenges. What I'm saying here is lying to a court, failure to stand up in response to questions, failure to be candid until you are confronted with your record is a lie.

And that disqualifies that person for jury service and it could in theory put them on California Avenue.

THE COURT: You might be right.

Bring him in.

I've got a couple of more questions I want to ask him.

Mr. Bartosh, you never asked him about exactly how far he went in school on voir dire?

MR. BARTOSH: I asked him. He said he went as far as the sixth grade.

(WHEREUPON, Mr. Reese enters at approximately 11:04 a.m.)

EXAMINATION

BY THE COURT:

Q All right. Mr. Reese.

A Yes, sir.

Q Let me follow-up a little bit on a few things. How far did you go in school?

A Seventh-grade.

Q Did you finish the six grade?

A Yes, sir.

Q All right. Now this thing down in Florida, you were charged with possession of cocaine?

A Yes, sir. I was 17 at the time.

Q What happened to that charge?

A I was under age. I worked for a carnival. There was nothing they could really do with me, you know, because I was underage. I never been in trouble before that so they let me go.

Q Did they take you to the Juvenile Court and the Juvenile Court let you go?

A No, sir. There was no courts in involved.

Q They just dropped the charge?

A (Nods head affirmatively.)

Q Sir?

A Yes, sir.

Q What had you done?

A Purchased some cocaine from an undercover. That is about what it amounts to.

Q Okay. Now, the other, you got in some trouble in Georgia, right?

A For drunken charges?

Q I'm asking you.

A I honestly cannot recall. I'd say yeah. I been to jail in Georgia. I remember that much.

Q What have you been to jail in Georgia for?

A It had to be over drinking.

Q Where was the assault that you mentioned?

A Here about 7 or 8 months ago.

Q Is that still pending?

A No, sir. It has all been taken care of.

Q All right. I am going to have to do some thinking about whether or not you are qualified and about what to do here. I'm going to let the bailiff take you back and put you in a different jury room. We will try to get your situation resolved as quickly as we can. They're going to put you into a --

THE COURT: You've got another room you can put him in back there.

THE BAILIFF: Yeah. We'll take care of it.

THE COURT: All right. We will see you in a few minutes. Sir? Oh, okay.

(WHEREFORE, Mr. Reese exits at approximately 11:06 a.m.)

THE COURT: Okay. Let's get the next juror out here.

You know, I might ought to just let him go. I don't think I'm going to have time over the next couple of hours to address this. Any objection to that?

MR. GOWDY: Not from the State.

(WHEREUPON, Timothy Brewton, Juror number 29, enters at approximately 11:06 a.m.)

THE COURT: Any objection from the defense?

MR. BARTOSH: Yes, sir. Oh, you mean not to

disqualify him but to let him --

THE COURT: Right. Just to let him be on his own while I --

We're not talking about you, Mr. Brewton. We're talking about somebody else.

THE COURT: Just to let him be on his own while I make up my mind.

MR. BARTOSH: Yes, sir. I have no objection.

THE COURT: All right. Go and get that, is he still down here.

THE BAILIFF: He's down the hall.

THE COURT: Can you bring him back in here?

Mr. Brewton, let me let you just stand in the hall for a second.

(WHEREUPON, Mr. Bruton exits at approximately 11:06 a.m.)

(WHEREUPON, Mr. Reese enters at approximately 11:06 a.m.)

THE COURT: Mr. Reese, it is probably going to take me a little while to make up my mind on this. I might have to do a little work. I am going to let you go on and go back to your job or whatever you do. Don't discuss this case with anybody just like from yesterday. Don't discuss the case with anybody. Don't let them discuss the case with you. Don't read

anything or listen to anything or watch anything about this case. All right?

MR. REESE: Yes, sir.

THE COURT: Do you have -- we've got a home and business telephone numbers. We will be able to reach you at one of those numbers?

MR. REESE: Yes, sir.

THE COURT: Where were you in the seventh grade?

MR. REESE: Where was I?

THE COURT: Yeah.

MR. REESE: Ellisville, Mississippi.

THE COURT: All right. Okay. We will see you, we will talk to you in a little bit.

(WHEREUPON, Mr. Reese exits at approximately 11:07 a.m.)

THE COURT: Bring in Mr. Brewton.

(WHEREUPON, Mr. Brewton enters at approximately 11:07 a.m.)

TIMOTHY BREWTON

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good morning, sir.

A How are you doing?

Q I'm doing fine. We put you under oath on Monday

morning. You recall that?

A Yes, sir.

Q You understand that you're still under oath right now?

A Yes, sir.

Q Have you talked to anybody about this case or has anybody talk to you about the case?

A No, sir.

Q Have you learned anything or heard anything or read anything or seen anything about this case since Monday?

A No, sir.

Q We're going to ask you some questions about some different things. We don't mean to invade into your privacy, but we do have to ask you these questions. The questions don't have right or wrong answers. We just want you to be open and honest with us and tell us how you think or how you feel about these subjects.

We're going to talk about a possible penalty phase. The fact that we're talking about that does not mean anything about this defendant. It doesn't mean anything about this case. It just means that we realize we may have to get into this phase. And we want to ask you some questions about some things that might come up.

If you are juror in this case, can you accept and

apply the law precisely as I will give it to you and render a verdict based solely on the testimony and evidence that you hear in this courtroom disregarding anything that you may have learned or seen before the trial started?

A I will try.

Q What gives you hesitation?

A Because I've seen some stuff about it before this happened.

Q Before when? When did you see something?

A A long time ago back what it happened. I remembered it and I've seen it.

Q Do you remember a lot about what you saw? Just tell me yes or no.

A Yes.

Q You do?

A (Nods head affirmatively.)

Q You remember the details about what you saw?

A Yeah.

Q All right. Now let me tell you what your obligations would be as a juror if you were drawn, if you are selected to serve. Your obligation would be listen very carefully to what you hear and what you see in this courtroom, to watch very carefully what you see in this courtroom and to listen to the law as I will give it to you.

What I will do is I will explain to you that the defendant is presumed innocent. Right now, the defendant is innocent. The State has the burden of proof and must meet that burden of proof beyond a reasonable doubt. I will explain to you the elements of the crime of murder. I will explain to you any other issues that come up, legal issues that come up that would relate to the defendant's guilt. And then explain to you that the State has got to prove all of the elements of murder in this courtroom beyond a reasonable doubt.

Then after you have heard all of the testimony and evidence and heard the law and heard the arguments of the lawyers, you would be expected to go back into the jury room and render a verdict based solely on the testimony and evidence that you heard and saw in the courtroom. You will be expected to set aside anything that you may have heard or learned before the trial began.

Some people cannot do that because perhaps they have become so intertwined with the case before the trial started. They have learned so much. Maybe they have drawn conclusions they can not get rid of. Some people cannot render a verdict just on what they hear in the courtroom. Do you think that you will be able to render a verdict based solely on what you hear and see in the courtroom and in light of the law as I will give it to you?

A I'm not 100 percent sure that I could.

Q I don't know that we expect 100 percent certainty. Are you confident that you can do that?

A (No response).

Q Let me turn the question around a different way. Do you believe that what you saw and what you heard before now would interfere with your ability to render a verdict based solely on what you see and hear in the courtroom?

A I cannot be for sure. I'm being honest. You asked me to be honest.

Q Right, and I appreciate it. I certainly do.

A I mean, how can I make that assumption?

Q Let me let you stand in the hall for just a second.

A Okay.

(WHEREUPON, Mr. Brewton exits at approximately 11:15 a.m.)

THE COURT: Do y'all want to voir dire him? Do you want me to keep going? Do you want to stop?

MR. BARTOSH: Your Honor, I think it is clear from his reactions and also from his answers to your questions and that he's agonizing over those questions that --

THE COURT: In the interest of time, I just want to know -- I don't want argument. I just want to know

if you are ready to quit now or do you want me to keep going?

MR. BARTOSH: I'm ready to quit.

MR. BARNETT: I would like to ask a few questions, Your Honor, if given the chance.

THE COURT: What I will do because both sides are entitled to have voir dire. I'm going to go ahead and finish my questions and then turn it over to y'all.

(WHEREUPON, Mr. Brewton enters at approximately 11:15 a.m.)

BY THE COURT:

Q Mr. Brewton, I'll ask you a few more questions then I'm going to let the lawyers ask you some questions.

A Okay.

Q If you were on the jury in this case and the jury found the defendant guilty of murder, you will move into the sentencing phase of the trial. In the sentencing phase, you would consider aggravating circumstances and mitigating circumstances. Aggravating circumstances are facts, incidences or details of an occurrence that South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the enormity of the crime and add to the injury that results from the crime.

Mitigating circumstances, on the other hand, are facts, incidences or details of an occurrence that the State has declared to reduce or lessen the severity of the crime of murder. Mitigating circumstances may be considered as extenuating or as reducing the moral culpability or responsibility for the crime.

If you are on the jury in the sentencing phase of a death penalty case, you will have two options as to your verdict, life sentence or death penalty. Could you, depending on the facts and circumstances that you find to exist, considering any aggravating or mitigating circumstances and considering the law as I give it to you, could you find or vote to impose a life sentence?

A If I found him guilty?

Q Yes.

A No.

Q Now when you say, that does that mean that if the defendant was found guilty, you would automatically impose the death penalty?

A If he is guilty, he is guilty.

Q Under South Carolina Law, just because he's guilty does not mean that he gets the death penalty. He is entitled to have a fair and impartial juror listen to the testimony that I will allow in during the sentencing phase and to exercise discretion and decide fairly and

objectively whether or not he should get the death penalty. Would you be willing to do that?

A Yeah. I can do that.

Q I'm going to let the lawyers follow up with you about that. I'm going to stop there and let them ask you some questions.

THE COURT: Mr. Bartosh.

MR. BARTOSH: Thank you, Your Honor.

EXAMINATION

BY MR. BARTOSH:

Q Mr. Brewton, I'm Mike Bartosh. I practice law here. Along with Doug Brennan and Karen Quimby, we represent Mr. Lindsey. The first thing I would like to say is I appreciate your honesty. This is a very difficult thing to have to go through. And these are very serious matters. I appreciate your honesty. What we are trying to do is to qualify jurors as best we can. And we know it is not possible to get 100 percent blank slate, --

A All right.

Q -- but as close to a blank slate as we can. We want people who can be fair and impartial because they know nothing of the case. They are not taking anything into the case with them because they have no idea of what is involved, who the personalities are or anything like that. That is what this is all about. Okay?

A (Nods head affirmatively.)

Q Now, as the judge told you, he's going to instruct you at the very beginning of the case, should you be selected as a juror, that Mr. Lindsey is under our law -- and it is not a legal fiction, it is a real and substantial right -- is presumed to be innocent. Were you to be selected as a juror, you would take an oath that you would accept that. You would view him as he sits there as being innocent. He would remain innocent. He would remain with that presumption only up until all twelve folks of the jury decide that he is no longer entitled to it. Now could you do that?

A I'm not sure.

Q Okay.

A I'm being honest. I don't know.

Q Once again, I want to thank you for your honesty. I understand nobody likes to sit and talk about being on the death penalty juror. It is something that nobody likes. I appreciate it. I guess what my real question is is do you have knowledge of the case?

A Yes.

Q Has that knowledge caused you to form an opinion of what should happen?

A It has caused me to form an opinion.

Q Would you tell us what that opinion is.

A From what I heard, it seems like he has done it.
Q So you believe as he sits there, he is guilty?
A From what I know right now of my knowledge.
Q Okay. Of your knowledge, he is guilty?
A (Nods head affirmatively.)
Q You consider him to be guilty?
A From what I know. I don't know the other side, but yes.
Q Okay. What I am saying is from what you know he is guilty?
A Yes.
Q Would you be able to put that opinion aside during the trial?
A That is what I am not sure about.
Q Do you think it will cause you to look at things differently? Would it affect your ability to render a fair and impartial verdict? When we say impartial, what we mean is we mean that the only things you can consider.
A I would try. You asked me the same thing a while ago. I will try. I don't know until I'm there. There's no way from me to answer that.
Q Okay, but it is possible that you could do it?
A It is possible. I don't know. I know something about the case.
Q That has affected you?

A That has affected my judgment. Yeah.

Q Okay. That's all I have.

THE COURT: Let me ask you another question if the State does not mind.

MR. BARNETT: Yes, sir.

MR. BREWTON: Okay.

EXAMINATION

BY THE COURT:

Q You say -- the question is could you consider giving a life sentence if he is convicted for murder?

A Yeah, I could consider it.

Q The last question was, I believe your last answer was that it is possible that you would automatically impose a death penalty. Is that what you said?

A Yeah. I mean, once you find him guilty --

Q We're not asking you if it is possible that you would impose the death penalty. We want you to consider that option.

A Right.

Q We just want to make that if you get on that jury, you're willing, honestly, seriously willing to consider imposing a life sentence. Are you?

A Yeah, I can do that.

Q You can consider imposing the life sentence?

A (Nods head affirmatively.)

Q Sir?

A Yes, sir.

Q All right. So the question is would you automatically impose the death penalty upon the conviction of the defendant for murder. What is your answer?

A No.

THE COURT: All right. Mr. Bartosh, I will let you retain the floor if you would like to follow up on that.

MR. BARTOSH: Just one question.

EXAMINATION

BY MR. BARTOSH:

Q I am talking about in the guilt phase.

A Right.

Q Would you automatically or would you have a tough time giving a fair and impartial hearing to the evidence or are you --

MR. BARNETT: Your Honor, I'm going to object to that because he's trying to box him because he said automatic or tough time or whatever. I think he needs to rephrase it.

MR. BREWTON: I have already given my answer.

THE COURT: Hold on, sir. Hold on just a second.

MR. BREWTON: Okay.

THE COURT: Let us work out this little -- why don't you step in the hall for just one second.

THE WITNESS: Okay.

(WHEREUPON, Mr. Brewton exits at approximately 11:24 a.m.)

THE COURT: What page do y'all think that's on? It looks like about page 17 or 18.

MR. BARTOSH: 18, Your Honor.

THE COURT: Yes, sir. What are you --

MR. BARTOSH: What I'm trying to saying is and I'm sure I am doing it inartfully. But I'm not so concerned about the penalty phase, I think what he is saying is that from what he knows, he has formed an opinion as to the guilt of Mr. Lindsey and that he would have --

THE COURT: All right. Well, let's let the State ask a few questions. Then we will see where we go from there. Do you still want to?

MR. BARNETT: Yes, sir, I do.

THE COURT: Bring him in.

(WHEREUPON, Mr. Reese enters at approximately 11:25 a.m.)

THE COURT: Mr. Barnett is going to ask you a few questions.

MR. BREWTON: All right.

MR. BARNETT: Thank you, Your Honor. May it please the Court.

EXAMINATION

BY MR. BARNETT:

Q My name is Barry Barnett. Myself, Trey Gowdy and Donnie Willingham, who stepped out for a little bit, is going to be prosecuting for the State. I know it is a tough question. I know you are very conscientious but you thinking through every question. We appreciate that. But you do not believe everything you read in the newspaper, do you?

A No.

Q You don't believe everything you see on Channel 7 or Channel 4, do you?

A Not everything.

Q Not everything. Yes, sir. And you understand that that is not evidence what you have seen. I think everybody forms opinions like when we see polls on presidential races or the governor's race. We've got opinions but they don't always turn out that way. Elections don't always go the way polls say they were going to go. So you understand -- would you follow what the judge and what the evidence shows here in court, what you actually saw happen, is that what you will follow?

A I will try my best. I can not say for a fact that

that would not still be in my mind. I know I need to put it completely out what I've heard from the news or whatever. But I cannot say for sure that I can. I'm just being totally honest. I would want someone to be honest with me.

Q I understand but you would want them to listen to both sides before you could make a decision. And like I said both sides will get to speak --

A Right. News is always one-sided. That is what I told him.

Q So you would listen to both sides before you reach a verdict?

A I would try.

Q And you would try to do your best. That's all we can ask. Is that correct?

A That is all anybody can do.

Q And you would listen to the evidence here. I notice you just thinking and agonizing. You were trying to be as honest as you can.

THE COURT: Mr. Barnett, with your permission, may I slightly redirect your question away from the jurors consideration of listening to both sides?

MR. BARNETT: Yes, sir.

THE COURT: Because the defendant has the right to remain silent and does not have to present any

evidence. What he has to do is listen to all of the evidence and consider objectively the question of whether or not the State has met its burden of proving the defendant guilty beyond a reasonable doubt. I think it would be, before this gets too far down the road, it is not correct to ask him if he would listen to both sides.

MR. GOWDY: Yes, sir, and I appreciate you pointing that out.

THE COURT: You understand that distinction, Mr. Brewton?

MR. BREWTON: Yes, sir.

THE COURT: All right.

BY MR. BARNETT:

Q You understand the State has the burden of proof. We have to prove the defendant guilty beyond a reasonable doubt. The defendant never has to prove anything, does not have to present any evidence. You understand that?

A Yes, sir.

Q You would have to base it off the evidence that is presented in here in court today. And that evidence has to prove the defendant's guilt beyond a reasonable doubt. You understand that?

A Yes.

Q And would you follow that instruction from the

judge?

A Yes.

Q And you realize he is presumed innocent until we prove his guilt beyond a reasonable doubt. You understand that?

A Yes.

Q Would you follow the judge's instruction regarding that?

A I would try to do my best at it.

Q I know you keep saying try. You always try to do your best. That is the way you treat life, is that correct?

A Yes.

Q And obviously you have never been in this situation before. Have you ever been in jury service before?

A Yes.

Q So you understand the different ways of looking at things?

A Yes.

Q And when you go in as a juror, you have information that other jurors may not have?

A Right.

Q But you will judge based on what you see here in court today, is that correct?

A I will do what I could do, yes.

Q And you would try to do your best on that?

A Yes.

MR. BARNETT: One moment, Your Honor, please.

BY MR. BARNETT:

Q You realize you have life experiences that other people don't have?

A Yes.

Q But would you base your verdict or base what you heard in this courtroom over the next several days or whatever, would you base your verdict on that instead of information that you received outside?

A Yes, but I don't know if the information I received outside would not influence it some. I don't know that. I can't say that. He asked me and you asked me. Both of you asked me the same questions three or four different times different phrases.

Q What I'm trying to do --

A And I'm going to give you the same answer every time.

THE COURT: All right, sir. Mr. Brewton, we're going to let you step outside in the hall for just second.

MR. BARNETT: Thank you, Mr. Brewton.

(WHEREUPON, Mr. Brewton exits at approximately

11:30 a.m.)

THE COURT: I've got the kill sign from both sides, I think. So there's agreement that he is disqualified?

MR. BARTOSH: Yes, sir.

MR. BARNETT: Yes, sir.

THE COURT: All right. Bring him in.

(WHEREUPON, Mr. Brewton enters at approximately 11:30 a.m.)

THE COURT: Mr. Brewton, we appreciate your honesty with us. We appreciate you coming. We are not going to need your services as a juror in this case. So you are free to go.

MR. BREWTON: All right. Thank you, sir.

THE COURT: Thank you.

(WHEREUPON, Mr. Brewton exits at approximately 11:31 a.m.)

THE COURT: Bring us a juror.

(WHEREUPON, Aletha Misenheimer, Juror number 197, enters at approximately 11:31 a.m.)

ALETHA MISENHEIMER

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Ms. Misenheimer?

A Yes, sir.
Q Did I pronounce it correctly?
A Yes, you did.
Q Good morning.
A Good morning.
Q You recall that we put you under oath Monday morning?
A Yes, sir.
Q You understand you are still under oath today, this morning?
A Yes, sir.
Q Since you left us Monday afternoon, have you talked to anybody about this case or anybody talk to you about this case?
A They tried to.
Q They have?
A Yes.
Q Have they been successful?
A No.
Q Who have tried to?
A People I work with.
Q They just wanted to know what you were doing?
A Uh-huh (affirmative).
Q And you told them you could not talk about it?
A Uh-huh (affirmative).

Q Did they tell you anything about the case?
A They started to. I just told them I could not talk about it.
Q Okay. I appreciate you doing that. I'm not trying to imply that you did anything you should not have done. You did exactly what you should have done. When they tried, did they get anything out? Did they say anything about the case that you can tell me?
A They started to talk about the case and where it happened.
Q Okay.
A Like it happened in Inman.
Q So somebody said something to you about where it happened?
A Uh-huh (affirmative).
Q And they said it happened in Inman?
A Uh-huh (affirmative).
Q Did they say anything else about where it happened?
A No.
Q They didn't tell you where in Inman it happened?
A No.
Q Did anybody saying anything to you about what happened?
A There was a killing.

Q Somebody told you that there was a killing?
A Right.
Q In Inman?
A Uh-huh (affirmative).
Q Okay. Other than someone saying to you that there was a killing in Inman, did anybody say anything else about what happened?
A Not that I recall.
Q Or anything else about this case?
A No.
Q All right. Now, have you read anything or seen anything on the news about the case?
A Yes, I have.
Q Tell me what -- that's since Monday?
A No, before.
Q Before. Okay. Now, we're going to ask you some questions. We don't want to pry too deeply into your private life. But we do have to ask you these questions. All we want you to do is be open and honest with us and tell us what you think and what you feel.

We are going to talk about a possible sentencing phase. The fact that we're doing that does not mean anything about this defendant. It does not mean anything about this case. It just means that we might get to the sentencing phase. And we need to ask you some questions

about some things that might come up.

If you are a juror in this case, would you be able to accept and apply the law that I give to you and render a verdict based solely on what you hear and see in this courtroom, disregarding anything that you may have read or heard or been told up until right now?

A No, I don't think I could.

Q Now why is that?

A I think I know too much about the case from hearing about it.

Q Now if I were to tell you that your responsibility as a juror is to disregard anything that you may have heard about the case and if I wanted to, I could explain to you that you, what you heard was not necessarily reliable or true. If I instructed you as a juror to disregard anything that you have heard or seen about this case before the trial began and put you on that jury, could you do that?

A I don't think I could.

Q All right. Let me let you step into the hall please, ma'am.

(WHEREUPON, Ms. Misenheimer exits at approximately 11:35 a.m.)

THE COURT: Does either side want to voir dire this juror?

MR. BARTOSH: No, sir.

MR. GOWDY: No, sir.

THE COURT: Bring her in.

(WHEREUPON, Ms. Misenheimer enters at approximately 11:35 a.m.)

THE COURT: Ms. Misenheimer, we thank you for coming. Thank you for being honest with us. We're not going to need your services as a juror in this. You are free to go.

(WHEREUPON, Ms. Misenheimer exits at approximately 11:35 a.m.)

THE COURT: All right. Y'all want to take a short break?

MR. GOWDY: Yes, sir.

MR. BARTOSH: Yes, sir.

THE COURT: Let me see y'all right up here.

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

THE COURT: Let's put that on the record. Mr. Gowdy's remarks appropriately, I believe, is that what has happened with the last two jurors illustrates the need for honesty from jurors. You don't need to convince me of that. You don't need to make a policy argument that I should have the authority to disqualify a juror or strike a juror for cause because

they have been dishonest with the Court. I am simply going to make sure that I am not making a mistake concluding that I have the authority to do that before I do it.

MR. GOWDY: I don't even know that the defense contests your authority as a judge --

THE COURT: Do you?

MR. BARTOSH: Your Honor, hopefully, when this PCR comes through, I'll be just about ready to retire. And I don't want to have to sit up there and say --

THE COURT: This is off the record.

(WHEREUPON, the bench conference was continued off the record at approximately 11:36 a.m.)

(WHEREUPON, the record resumed at approximately 11:37 a.m.)

MR. GOWDY: Your Honor, with respect to juror number 224, I believe his name was Mr. Reese. The State would move to strike this juror for cause because of a series of what from our vantage point was dishonest answers not just today but also Monday during general voir dire. It was a failure to disclose what I consider to be crucial information to both sides. Only when confronted with the reality of his RAP sheet did he come around. We're talking about with arrest and convictions.

I think that this court has the power to strike the prospective juror who is dishonest with the Court on Monday, dishonest with the parties today, dishonest on his questionnaire. And only when confronted with the reality of his record decides that his memory is improved. I think the Court has the power to strike that juror for cause.

I think if nothing else that we've learned from the last two jurors, it would be absolute necessity of honesty from jurors in all regards. We have seen two jurors essentially disqualify themselves because of their admitted inability to do as Mr. Bartosh says, come to court with a clean slate with respect to this case. And both of those jurors are properly disqualified.

And I think that even though this juror may meet the analysis, we can have no confidence in the answers to those questions because he hasn't told the truth of almost anything else. I would also bring to the Court's attention State versus Woods which is a South Carolina Supreme Court case from 2001.

THE COURT: All right. Well, I think I might just -- any argument you want to present on that subject? I think I may rule.

MR. BARTOSH: No argument.

THE COURT: I think it's -- it's kind of like, you know, what used to frustrate me a lot of time is that, when I was a young lawyer, it became my responsibility to write a brief. And you've got some point of law that has become central to the case. But it is so obvious. It is such an obvious point of law.

It is what we call "black letter law". It's been so obvious and so well known and so well established for so long that nobody writes about it anymore. And you can't find a citation. You can't find any authority. You can't find a case that says that the rule is whatever. That used to frustrate me. And this may be kind of like that.

I, uh, the integrity of an individual called into this court to serve as a juror is such a fundamental requirement for the service as a juror that it is almost like somebody reading this transcript is going to suspend me. The Supreme Court is liable to turn me over to the, maybe not the grievance committee, but the standards committee or something because I had trouble recognizing the concept that a juror needs to be honest before they can be seated. And I've actually been thinking about it as we went through these next couple of jurors.

And I recall when Mr. Reese was answering my

questions about whether or not he could impose a life sentence or the death penalty. And I remember thinking to myself at that time that he seemed a little eager to tell me that he could impose the death sentence. And so I figured y'all were going to follow up on that. And without meaning to characterize how y'all handled the thing, it's almost like you got cast into one side of the question and you stayed stuck in that side. But I was concerned at the time that Mr. Reese might be trying to position himself into this jury so that he could vote for the death penalty.

That illustrates why it is that I've got to have confidence in the integrity and honesty of that juror before I allow him to get on the jury. It doesn't really matter whether he has positioned himself one way or the other. But he -- I've already said this. There is no way that he could have as clearly recalled the details of the drug charge in Florida when I asked him about it five minutes after he denied it unless he deliberately denied it knowing that it was true.

The same with the thing in Georgia. I said, you've got trouble -- Mr. Barnett asked him about the Florida charge. He said, oh, yeah. I had that. Then he said do you have any other charges. And he, probably fearing that Mr. Barnett had him cornered,

said not that I can recall, giving himself a little way out.

Then Mr. Barnett says what about this assault. And he said I've got an assault and battery. Then I asked him about the thing in Georgia. He said I can't recall but I know I spent time in jail in Georgia. There is just no way. There is no way that he can have that clear a memory of what jail he served and not have had the same clarity or similar clarity three minutes before when somebody else was asking him those questions. That causes me to conclude that he deliberately misled the Court.

Here is another thing. On his juror information card, he writes in I also did not make it pass the sixth grade. Now, his answer to me was, how far did you go in school, seventh grade. That was in Mississippi. I understood he had school problems. But isn't the seventh grade after the sixth grade in Mississippi? I'm going to take judicial notice that it probably is.

So, I think that there is a substantial probability if not certainty that he figured out at some point yesterday morning, Monday morning that he had to have made it pass the sixth grade in order to get on this jury, so he changed his answer. And so

finding as I do that this juror has a fundamental unfamiliarity with the concept of the truth and that he has deliberately misled this court in answering questions, I am granting the motion to strike him for cause with confidence that any Supreme Court that reverses me on that needs to reexamine it.

MR. GOWDY: Thank you, Your Honor.

THE COURT: And with recognition that I run my mouth too much sometimes about the appellate courts.

(WHEREUPON, a short recess was taken at approximately 11:52 a.m.)

(WHEREUPON, the Court resumed at approximately 12:04 p.m.)

THE COURT: Give us a juror.

(WHEREUPON, Samuel Barnwell, Juror number 15, enters at approximately 12:04 p.m.)

SAMUEL BARNWELL

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q I was hoping to have the opportunity to say good morning to about six more jurors. But you are the last juror of the day that I'm going to be able to say good morning to. So good morning.

A Good morning, sir.

Q You recall that we put you under oath on Monday?
A That's correct.
Q And you would understand you are still under oath right now?
A Yes, sir.
Q Has anyone talked to you or have you talked to anybody about this case since you left us Monday afternoon?
A No, sir. I have not.
Q Have you seen anything or read anything or heard anything about this case since Monday?
A No, sir.
Q I'm going to ask you some questions. The lawyers also are going to ask you some questions. We don't want to get too deep in your private life. But we do have to ask you these questions. There are no right or wrong answers. We just want you to be open and honest with us and tell us how you think and how you feel.

We are going to talk about a possible sentencing phase. That is not because we know we're going to get there. And the fact that we're talking about it does not mean anything about this defendant. It just means that because we might get there, we need to ask you about some issues that will come up during the sentencing phase.

If you are a juror in this case, will you be able to accept and apply the law precisely as I give it to you and

render a verdict based solely on the testimony and the evidence that you hear in this courtroom setting aside anything that you might have heard or seen before the trial began?

A Yes, sir.

Q Do you understand that in a criminal case such as this, the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir. I do.

Q And you understand that that is a murder case?

A Yes, sir.

Q Could you, depending on the facts and circumstances that you find to have been proven and in light of the law as I will give it to you, could you find 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 If you are on the jury and the jury finds the defendant guilty of murder, we would move into the sentencing phase of the trial. Some new issues are going to come up. And I'm going to talk to you about those now.

Aggravating circumstances are facts, incidents or details of an occurrence that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the enormity of

the crime of murder or add to the injury resulting from the crime.

Mitigating circumstances, on the other hand, are facts, incidents or details of an occurrence that the State of South Carolina has declared to lessen or reduce the severity of the crime of murder. And they serve to extenuate or to reduce the moral culpability or responsibility for the crime.

If you are on the jury in the sentencing phase of a death penalty trial such as this, you would have two options for verdicts. One is a verdict for a life sentence. The other is a verdict for the death penalty. Could you, depending on the facts and circumstances that you find to exist, considering aggravating or circumstances and considering the law as I give it to you, could you return a verdict imposing the life sentence?

A Yes.

Q A life sentence.

A Yes, sir.

Q Sir?

A Yes, sir.

Q Could you vote to return a verdict imposing the death penalty?

A Yes, sir.

Q If you are on the jury and I sequester the jury

and you are required to be away from your home for five or six days, is that going to impose a terrible burden on you?

A I wouldn't like it but no, sir.

Q Have you been over the witness list that I gave you?

A Yes, sir. I read it.

Q Have you read every name on that list?

A I went over them. Yes, sir.

Q Did you read every name on that list?

A Yes.

Q Is there anybody on that list to whom you know or to whom you are related?

A None that I know of, sir.

Q Do you know of any reason why you cannot give both the State and the defendant a fair and impartial trial?

A No reason. No, sir.

Q I'm going to let the lawyers ask you some questions. Then I will be back in touch with you in a few minutes.

MR. BRENNAN: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BRENNAN:

Q Afternoon, Mr. Barnwell. How are you today?

A Fine, sir.

A Good. My name is Doug Brennan. I'm an attorney from here in Spartanburg. Mr. Bartosh, Ms. Quimby and I have the opportunity to represent Mr. Lindsey in this matter. Sir, I noticed that your wife works at the Opie Elementary School.

A That's correct, sir.

Q That's in Landrum?

A Yes, sir.

Q What does she do there?

A She is a lunch room manager.

Q And you live in Campobello, is that correct?

A That's correct.

Q As a result of living in Campobello, have you ever had the opportunity, or have you had any relationship with any Inman city police officers?

A No, sir.

Q How long have you been at Coble?

A 22 years, sir.

Q Sir, many years ago, I believe that you been at Coble, there was an incident where maybe a former employee of Coble came into the plant and shot somebody. Do you remember that?

A I remember somebody shooting out in the parking

lot or someone a couple of years ago. I cannot remember somebody coming into the plant and shooting someone. No, sir.

Q Your remembrance of, you vague remembrance of those facts, has that in any way help shape your opinion as to the death penalty?

A Not that I can say. No, sir.

Q Okay. All right. Sir, do you have an opinion as to the death penalty?

A Do I have an opinion? Under certain circumstances, I can see the death penalty. In my opinion, there would be certain circumstances.

Q Okay. Do you understand that in South Carolina, the death penalty is never mandatory?

A Yes, sir.

Q All right. There are three kinds of jurors. Three types of jurors. One set of jurors, based on the evidence if convicted of murder, would always impose the death penalty. Another set of jurors, if the defendant is convicted of murder, will always impose a life sentence. Then there are those based on the facts and circumstances presented in the trial of the matter would make their decision for life or for death. Where do you fall?

A I would have to go by the evidence presented.

Q So you did not lean towards the life sentence or

towards a death sentence?

A I would probably lean more towards the life sentence.

Q All right.

A I'm being honest.

Q That's what we want. Thank you for that honesty, sir.

THE COURT: Let me take a moment to clarify what he said. When he said that is what we want, that is simply thanking you for being honest. He is not telling you that you gave the answer that we want.

MR. BARNWELL: I understand that, sir.

THE COURT: All right.

MR. BRENNAN: Forgive me.

THE COURT: That's all right. I just needed to clear it up. I know you didn't mean anything by it.

BY MR. BRENNAN

Q I also see that you served some time in the military?

A Yes, sir.

Q And you indicated you are a Baptist. Is that correct?

A That's correct, sir.

Q Did those influences in your life help create your tendency towards a life sentence?

A No, sir. I would not think so.

Q Sir, I just have one last question. That is this, if you were seated on this jury and we've gotten beyond the guilt phase. We are in the sentencing phase and you are deliberating. And based on the evidence, you have decided that the life sentence is the proper sentence.

But the other eleven jurors have all decided that death is the appropriate sentence, would you be swayed by the fact and the fact only that those eleven jurors have voted for life -- excuse me, for the death penalty. Could you stand your ground and remain steadfast in your belief that life was the proper sentence?

A That would be hard to answer, sir. Depending on the other jurors and all and how strong I felt towards it at the time. I don't know whether that answered your question.

Q Is it possible, sir, that only the fact that those eleven have voted for death might sway you?

A There's a possibility that they could. sir.

MR. BRENNAN: I have nothing further, Your Honor.

THE COURT: Mr. Barnwell, let me ask that similar question. Let's put you in a position that Mr. Brannon just put you in. You are on the jury. The jury is deliberating about what death penalty ought to be. And you have concluded, perhaps

preliminarily, you have concluded that life sentence is appropriate. But the other eleven members of the jury have concluded that the death penalty is appropriate. We understand that you all will continue to discuss that.

MR. BARNWELL: Correct.

THE COURT: And that they would try to convince you to change your mind and vote for the death penalty. You would try to convince them to change their mind and vote for a life sentence. The question is, if you are in that situation and it is 11 to 1 against you, are you going to change your mind just because you are by yourself and because you are the only one, or are you going to change your mind only if you, or change your vote only if you change in mind?

MR. BARNWELL: Only if I change my mind will I change my vote.

THE COURT: Right, so if you continued to believe that the life sentence was the appropriate sentence, you would stand firm on your vote for the life sentence?

MR. BARNWELL: Yes, sir. I would.

THE COURT: All right, sir.

MR. WILLINGHAM: May it please the Court.

EXAMINATION

BY MR. WILLINGHAM:

Q Mr. Barnwell, my name is Donnie Willingham. Along with Barry Barnett and Solicitor Trey Gowdy, we are going to be prosecutors on this case. I appreciate your being honest with us in filling out the questionnaire and answering the judge's questions. I just want to follow that a little bit. When the judge asked if you could impose the death sentence -- when he asked if you could impose the life sentence, you told him you could. When he asked about a death sentence, you hesitated and then said that you could. Tell me the reason for your hesitation.

A There are certain circumstances where I would not have any problem with the death sentence. It would depend on the circumstances involved.

Q Tell me what you mean by that. What circumstances would be okay?

A If the evidence was presented where someone killed and raped and molested a child or something like that, I've got strong beliefs in that. Or a teenager --

MR. BARTOSH: Your Honor, I --

THE COURT: Mr. Willingham, let me ask you to step over this way just so that will cause the witness to -- I'm having a little trouble hearing you. So I want him to get you to turn towards us. Is that what you were going to --

MR. BARNETT: At this point, yes, Your Honor. Thank you.

THE COURT: You can not hear?

MR. BRENNAN: Yeah.

THE COURT: Go ahead.

BY MR. WILLINGHAM:

Q Okay, so you said if it was a murder of a child?

A Something to that effect.

Q Is that the only time you believe you could?

A No, sir.

Q Tell me what else you meant by the answer --

MR. BRENNAN: Your Honor, I object to this form of questioning. I believe he is seeking to stake him out and get him to state a specific set of circumstances.

THE COURT: Uh, --

MR. WILLINGHAM: Your Honor, I'm not asking him about specific aggravators. I'm asking about specific mitigators. He indicated there were certain circumstances where he could and could not impose the death penalty. I think that is proper for me to find out what the circumstances may be.

THE COURT: I am trying to remember exactly what the question was. I was hoping it would pop up on my screen here. But it has not popped up yet. Why

don't you either tell me what the question was or start over.

MR. WILLINGHAM: Your Honor, he asked -- he indicated that there was certain circumstances such as the death of a child or a murder of a child where he can see himself imposing the death penalty. I asked him if that was the only circumstance. He said no. I asked him what other circumstances he could see himself imposing the death penalty.

THE COURT: Mr. Barnwell, let me get you to step in the hall for just one second.

MR. BARNWELL: Yes, sir.

(WHEREUPON, Mr. Barnwell exits at approximately 12:16 p.m.)

THE COURT: How is that any different from the two questions that Solicitor Gowdy so vigorously objected to yesterday?

MR. WILLINGHAM: Judge, I am not asking him about specific mitigators. What I am not asking him, I am trying to determine whether or not he could give death in circumstances outside of a child murder. He has indicated he could do it there. I'm asking him -- this is obviously not about a child murder. I'm asking if him if he could see himself imposing death in other circumstances and if so what those

circumstances are.

MR. BRENNAN: He has already asked in a question. His answer was that depending on the evidence presented in the trial, could he render a decision in favor of the death sentenced. And he said yes. Could he favor a sentencing, impose a sentence for life. And he said yes. I believe that is the question asking him to consider which specific facts or circumstances would require him or would lead him to impose a death sentence. I don't believe that is a proper question.

THE COURT: Well, I'm going to sustain the objection. It is the witness, I mean the juror who started this. I don't mean that in a way of it being his fault. But the juror did, not response to a question, say something about the death or murder of a child.

It is true that Mr. Willingham is entitled to explore that. But I don't believe that you are entitled to explore that by asking him the specific question of what other, what circumstances would you impose the death penalty. And, because you are asking him to speculate just like the defense did the other day. And y'all objected to that. And I sustained it. You can explore it less directly I suppose.

Let me explain why I came in and asked him those questions when you finished. I don't think that you are asking him the question right when you ask him if he -- I mean, you can ask him any question you want to. But you are trying to get him to address what would he do if he found himself 11 to 1. And he is the one in favor of the life sentence.

Perfectly legitimate to try to find that out. But you are posing it to him wrong. You are putting him in a position saying would you let the other eleven try to convince you to change your mind. We want him to let the eleven try to convince him to change his mind.

You asking a question. And the way you are asking it has no basis in the law. It is an irrelevant question the way you are asking it. You are saying, okay, you are down 11 to 1. Are you still going to continue to deliberate or are you going to sit right there and throw up your hands and say you're not participating in this process anymore.

That is not what that case is about. In the Bennett case or whatever it was, the reversal occurred because the juror had said I do not have the personal gumption to stand up to eleven other jurors. I would cave in simply because I'm down 11 to 1. If you get a

juror that says that, we will disqualify him.

If you get a juror that says yes I'm going to fulfill my responsibility under the law as the judge directs me to and I'm going to continue to deliberate openly and honestly and objectively until the jury declares a mistrial or until we get a verdict. That's the question you are asking him. That is why I stepped in there.

Not only do I not want you to ask that question like that anymore. But I don't want you to think that I'm trying to embarrass you in front of the juror or anything. But you are putting it to him in a way that is misleading. That is why I did that. All right.

Ms. Joanne Netherton. I am handed this message. I have no idea who wrote this down, somebody in the Clerk's office. Joanne Netherton has called and asked a question. Wants to talk to her priest about her service as a juror in this case. Can she do it? The answer is no, right? She cannot talk to the priest about the death penalty, right?

MR. BARTOSH: Yes, sir.

THE COURT: Correct?

MR. BARTOSH: You are correct.

THE COURT: How about if I get the Clerk call

Ms. Netherton and ask her to come in now. And let's discuss it with her.

MR. BARTOSH: Yes, sir.

THE COURT: Any objection, Mr. Gowdy?

MR. GOWDY: No objection to that, Your Honor. I think the Court remembers why this is coming up. She is a member of the Catholic Church. I think the question was -- the Catholic Church does have a position on the capital punishment. She, as a Catholic, has a different from position. I'm sure she's conflicted about opposing her Catholic Church.

THE COURT: I don't recall that. Your recall is predictably much better than mine. I remember the young man saying that. But I don't remember Ms. Netherton saying that. She may very well have. But let's do bring her in and we will talk to her and we will see what she has to say.

She is also worried about what might happen after the trial, any kind of harassment or retribution. I will talk to her about that.

At her convenience. Tell her do not talk to the priest. Come in at her convenience this afternoon and we will talk to her.

THE COURT: All right. Mr. Willingham, are you ready to proceed with Mr. Barnwell?

MR. WILLINGHAM: Yes, sir.

THE COURT: Do you understand my ruling?

MR. WILLINGHAM: Yes, Your Honor.

THE COURT: I believe you can open the floor to him maybe. But to ask him specifically to name circumstances in which he would impose a death penalty is the same thing, the same question that was asked before. And I sustain the objection.

Bring him in.

(WHEREUPON, Mr. Barnwell enters at approximately 12:27 p.m.)

THE COURT: Proceed.

BY MR. WILLINGHAM:

Q I appreciate you being patient with us. Tell us what are your views on the death penalty are?

A My views are certain circumstances and all, I do believe that the death penalty would be in for order.

Q Okay. And you indicated earlier that you thought if you were given the choice, you would lead more towards a life sentence?

A In certain circumstances.

Q Tell me why, why you say that?

A It would depend on the crime as I stated earlier where the crime was and what the evidence presented at all whether I would rule on the death penalty or a life

sentence.

Q Where do your views on the death penalty come from Mr. Barnwell?

A What I seen done through the years and just the way I feel on certain crimes and all that I think the death penalty would be -- should be imposed.

Q Mr. Barnwell, I think we mentioned this before. I want to make sure it is clear. When you get to the sentencing phase, the death penalty is not automatic.

A Yeah. I understand.

Q And it is never going to be what we require. The judge will never tell you you've got to find a verdict of death or a sentence of death. No other jurors will tell that you have got to. You always have choice. You can give life for any reason. You can give life for no reason. Given that you always have choice between life and death, can you realistically see yourself ever imposing a death sentence?

A Could I see myself? Yes, sir. I could.

Q And there is a form that the jurors would have to sign if you believe that that is a proper verdict. And you would have to sign it for all the world to see. If all the other jurors are signing it and it is one blank left and without your signature a death sentence would not be imposed, could you see yourself signing that form?

A I could under certain circumstances, yes, sir.

Q Thank you.

THE COURT: Mr. Barnwell, please step back out in the hall. I will be right back with you.

MR. BARNWELL: Yes, sir.

(WHEREUPON, Mr. Barnwell exits at approximately 12:30 p.m.)

THE COURT: Any objections?

MR. BRENNAN: No.

MR. WILLINGHAM: No, sir.

THE COURT: All right.

Bring him in.

(WHEREUPON, Mr. Barnwell enters at approximately 12:30 p.m.)

THE COURT: Mr. Barnwell, I find that you are a qualified juror in this case. It is going to be I believe at least tomorrow morning before we are ready to come back. Start checking the, stay in touch with us by calling on the telephone number you were given Monday morning. Some time this afternoon, we're going to put some information on there about when we need you back.

Remember not to talk about the case with anybody. Don't let anybody talk to you about it. Don't read anything, watch anything or listen to anything about

this case. When you come back, be prepared to spend five or six days with us. So you will need to start getting your clothes together to come up here. So we will see you in a day or so.

MR. BARNWELL: When would you want me to call, sir?

THE COURT: I would start to call by three or four o'clock this afternoon. Maybe five o'clock. It is 12:30 now. So we're not -- it's going to be tomorrow. There is almost no way we are going to be done today. So, uh, it will be tomorrow. You can call tonight or, just call tonight.

MR. BARNWELL: Okay.

THE COURT: You are free to go.

(WHEREUPON, Mr. Barnwell exits at approximately 12:31 p.m.)

THE COURT: Do you want to take a minute to kind of talk about this last objection? The question that I think it is agreed by you all to be objectionable is something along the lines of under what circumstances would you impose the death penalty.

MR. BARTOSH: You mean Mr. Barnwell?

THE COURT: Anybody.

MR. BARTOSH: I mean, that's the -- that question?

THE COURT: That type of question. But the way he came up here, the way it came up here was -- there is nothing improper about it all. He said something about how he would impose the death penalty on the death, on the killing of the child which then raises the question that the only circumstance in which you -- now if that is the question, is that the only circumstance, well, that question has either a yes or a no answer. That is one thing. But if you change the question around and say what other circumstances would you impose a death penalty, then you are back to the original question which is --

MR. GOWDY: The death difficulty comes, Your Honor, from he volunteers that it's got to be death of a child. The next category is it has to be somebody that I know or the next category is it has to be crime that I witnessed. I agree that it should not be an open-ended question. I do think that both sides perhaps ought to be able to ask is 9/11 the only circumstance under which you can see. Or I have asked in the past does it have to be a serial murder.

THE COURT: How about this? How about if he said something like it was the death of a child or a killing of a child, then I could vote for the death penalty. If you wanted to follow up and needed to

follow up and being entitled to follow up, said something like do you have a set of circumstances under which you would impose the death penalty and that you would not consider the death penalty under any other circumstances. If he says yes that means he's already got an answer. You're not asking him to speculate about anything. You can get that answer.

If he says no -- and I'm not telling you. I'm the last person that needs to be telling you how to do it. I'm simply trying to explore what my ruling is going to be if it comes up again. But that points him, I would hope, in the right direction of maybe giving you a comfort level that he does not have some sort of litmus test for the death penalty.

MR. BARTOSH: I think where this thing came up was he said something about the death of a child. Then Mr. Willingham said, well, tell me another circumstance.

THE COURT: Right.

MR. BARTOSH: He could go down that road forever. I think as you say, do you have a set --

THE COURT: What I wanted to do, I am going to be really messing up if I start telling y'all how to do your job. I want to explore how to do my job. Do we agree that an open-ended question like under

what circumstances would you impose the death penalty is not a proper question?

MR. BARTOSH: Yes, sir.

MR. GOWDY: Yes.

THE COURT: All right. Let's go ahead with the next juror.

MR. BRENNAN: May I ask one question in relation to the form of the question that I asked that you didn't approve of? I did actually change the question from yesterday. I believe my language was would the mere fact that those eleven people would have voted for death --

THE COURT: You did say something like that, but you said it was something like would the fact that you are alone only -- I wanted to state it more clearly. The reason I did that I suppose was in the interest of time.

I'm not telling you you can't ask that question. But if I let that go, then maybe the Solicitor feels compelled to spend five minutes on it. I just felt like since I didn't think the question was all that helpful to me in deciding whether not to qualify the juror that I would clear it up for myself before I allow things to go on. Any objection to me doing that when I feel it necessary?

MR. GOWDY: No, sir.

MR. BARTOSH: No, sir.

THE COURT: All right.

(WHEREUPON, Jami Sturgeon, Juror number 268, enters at approximately 12:35 a.m.)

JAMI STURGEON

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Ms. Sturgeon.

A Good afternoon.

Q How are you?

A I'm fine.

Q You recall that yesterday morning, we put you under oath?

A Yes, sir.

Q And you understand you are still under oath right now?

A Yes, sir.

Q Since yesterday afternoon when you left us, have you talked to anybody about this case or has anybody talked to you about the case?

A No, sir.

Q Have you learned anything or read anything or heard anything about the case?

A No, sir.

Q Ms. Sturgeon, we're going to ask you some questions. We hope that these questions will not intrude too much into your private life. But we have to ask you these. All we want you to do is to be open and honest with us and tell us how you think and tell us how you feel.

We're going to talk a little bit about possible penalty phase. The fact that we're talking about the penalty phase does not mean anything about this case or about this defendant. It simply means that we might get to the penalty phase and we need to have some information about some issues that might come up.

If you are a juror in this case, could you accept and apply the law precisely as I give would give it to you and render a verdict based solely on the testimony and the evidence that you hear and see in this courtroom setting aside anything that you might have heard or seen before the trial began?

A Yes, sir.

Q You understand that in a criminal case like this the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q You understand this is a murder case?

A Yes, sir.

Q Could you, depending on the facts and circumstances that you find to have been proven and in light of the law as I will give it to you, could you find a verdict of 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 you are on the jury in this case and the jury finds the defendant guilty of murder, then the case will go into the sentencing phase. There are some issues that are going to come up in sentencing phase that I need to you about.

Aggravating circumstances are facts, incidents or details of an occurrence that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances, when accompanying a murder, increase the enormity of the crime of murder or add to the injury of crime of murder.

Mitigating circumstances, on the other hand, are facts, incidences or details of an occurrence that the State has declared to lessen the severity of the crime of murder. These serve to extenuate or to reduce the moral culpability or responsibility for the crime. If you are on the jury in the sentencing phase of the capital, of a death penalty trial, then you will have two possible verdicts as to the sentence. You could find that the

verdict would be for a life sentence or you could find a verdict for the death penalty.

If you were a juror, could you, depending on the facts and circumstances that you find to exist, depending on the consideration of aggravating and mitigating circumstances, considering the law that I will give you, could you vote to return a verdict for a life sentence?

A Yes, sir.

Q Could you vote to return a verdict for the death penalty?

A Yes, sir.

Q If you are on the jury in this case and I sequester the jury and put you in a hotel for five or six days away from your home or your family, would that impose a terrible burden for you?

A Not as long as I will be allowed to make arrangements for my son.

Q You would have plenty of time to make an arrangements. And I will also point out that this will definitely keep you away from your school responsibilities.

A Yes, sir. I understand that.

Q Have you gone over the witness list?

A Yes, sir. I have.

Q Have you read every name on that list?

A I have.

Q Is there anybody on that list that you know or to whom you are related?

A I'm not positive about one name.

Q Okay. Tell us.

A Number 36 is Linda Lyles. It is a possibility that she was a parent of a former student of mine. I am not positive. I would have to see her to be 100 percent positive. The name just sounds a little familiar to me. But I was not positive about that.

THE COURT: What can we tell Ms. Sturgeon about Linda Lyles?

MR. GOWDY: Your Honor, if it pleases the Court. Ms. Lyles is an employee of the Spartanburg Regional Hospital. She is an African-American lady. I'm not going to give a guess as to her age.

BY THE COURT:

Q Does that sound familiar?

A Yes, sir. I will need to know more about her children in order for me to be able to tell you if that was a possibility.

Q Let's just assume that this is the same Linda Lyles that you know.

A Uh-huh (affirmative).

Q Did you know her well enough that this might cause you a problem for you in being an impartial juror?

A No, sir.

Q Would the fact that you know Ms. Lyles interfere in any way with your willingness or your ability to give both the State and the defendant a fair and impartial trial?

A No, sir.

Q Do you know of any reason why you could not give the State and the defendant a fair and impartial trial?

A No, sir.

Q I'm going to let the lawyers talk to you for a few minutes, ma'am. Then I'll come back maybe and talk to you maybe in a few minutes.

A All right.

EXAMINATION

BY MR. BARTOSH:

Q Let me make sure I pronounce your name correctly, Ms. Sturgeon. I am Mike Bartosh. I am a lawyer here in Spartanburg. Along with Karen Quimby and Doug Brennan, we represent Marion Lindsey in this case. I would like to go a little bit over your questionnaire that you filled out.

A Okay.

Q You are a seventh grade teacher?

A Yes, sir.

Q Have you always been at Woodlock?

A No, sir.

Q Where were you before that?

A Directly before that, I was at C.L. Madden Elementary School. And before that, I was at Cleveland Elementary School. Prior to that, I was a long-term sub at D.R. Hill Middle School.

Q Okay. Do you teach science?

A I do.

Q The Judge has gone over and I don't want to belabor the point. But the Judge has gone over how this process is going to work. If you're selected to be a juror, the first part of the trial or this process is basically just like every, like every trial. The State will put up witnesses.

The jurors will sit over in the jury box and they will listen to the evidence that the State puts up. They have to decide based upon that evidence whether or not they have proved to the satisfaction of each and every one of the jurors beyond a reasonable doubt that Mr. Lindsey is guilty of murder. If they do not prove that to the satisfaction of the jurors, then we all go home.

If they do prove it, then we move into a second phase. It is only if the State carries its burden as to proving Mr. Lindsey guilty of murder that we move into the second phase. I have heard some people say it is a penalty phase. Some people say it is a sentencing phase. But

this is only procedure that I know of where the jury decides the punishment.

What the State would do in that phase is they will present aggravating circumstances, circumstances that they hope will convince you that this is a worse case, that it is an aggravated murder and that the proper punishment is death. What we will be doing is we will be presenting evidence in mitigation to lessen or show the various things in Mr. Lindsey's life that we feel should lessen his culpability or explain some things of what happened.

Of course, we are hoping to convince the jury to come back with death, I apologize, life. In South Carolina now, life is life without parole. If the decision of the jury is life, Mr. Lindsey will die in the Department of Corrections. He would never get out. Now, you worked with children all of your professional life?

A Yes, sir.

Q Would the fact that children may have been involved in that, would that affect your ability to be fair and impartial in deciding this case?

A No, sir.

Q All right. Have you thought much about the death penalty?

A I wouldn't think any more than anyone else had.

Q Have you had any reason?

A No, sir.
Q Usually no one has any reason to do it until a situation like this.
A No, sir.
Q But I guess when you received your questionnaire, did you start?
A No, sir. Honestly, at that point in time, my inferences about what the case was about were totally incorrect based on the questions.
Q Okay. But you've had an opportunity to think about?
A Since we left here on Monday, yes sir.
Q Okay. Where do you get your beliefs. What are the sources of your beliefs on the death penalty?
A I suppose it would relate to my upbringing from my parents which would involve Christianity.
Q Uh-huh (affirmative). Now you've had some relatives that work in the law enforcement?
A Yes, sir.
Q You have an aunt that was working with the Easley Police?
A Yes, sir.
Q Also your uncle work with Greenville City police?
A Yes, he currently does.
Q You also said you have an uncle who is a

constable?

A Yes.

Q Is that --

A That was in the past.

Q That was in Greenville or was it over here?

A I'm really not sure.

Q All right.

A I know it's not in Spartanburg. I can tell you that much. But I don't know if it was in Greenville. They have lived in Greenville most of their life.

Q In a nutshell, what we are looking for are folks that can be fair to both sides, who come in with an open mind, who are willing to listen to both sides and give both sides a fair trial before they decide if we get to the penalty phase what the appropriate punishment will be. Do you believe you can do that?

A Yes, sir.

Q The judge is going to tell you at the beginning of the trial and even as we are talking now that as Mr. Lindsey sits there, he is presumed to be innocent under our law?

A Yes, sir.

Q That is a real and substantial right that every citizen in this country enjoys. It is only until the twelve jurors decides that he is no longer entitled to that

presumption that he loses it. But up until then as he sits there, he is innocent. The judge is going to tell you that now. Can you follow that instruction?

A Yes, sir.

Q All right. Now at the end of the trial, whatever way or at the end of the penalty phase, whatever way it goes, you and -- if you are on the jury, you and your other eleven jurors are going to have to sign a sentencing sheet.

A Okay.

Q It could before for life. It could for death. Death is not mandatory in South Carolina. You are always, you always have the option of choosing life as a punishment over death. So death is not mandatory. But should it be death and should the sentencing sheet as it was passed around, the eleven jurors had signed it. And for whatever reason you turned out to be the last person to sign the sheet. And the sheet was passed over to you. And knowing that when you signed that sheet, you were condemning Mr. Lindsey to death. Could you do it?

A Yes, sir, if that's the way I felt.

Q Would you would be --

A You're asking me -- I'm sorry.

Q Go right ahead.

A Is it appropriate for me ask you a question?

Q Sure.

A Are you asking me if I was the only person who had not signed would I be able to do that if that is what I believed?

Q Yes, ma'am.

A Yes, sir. If I believe that that's the punishment he should get no matter what anyone else had written down, I would pick whatever I felt was appropriate.

Q So if you believed that death was appropriate --

A Uh-huh (affirmative).

Q -- then you would have no trouble signing it?

A No, sir.

Q Likewise if you believed that life was appropriate, you would have no problem signing the sentencing sheet?

A That's correct. Yes, sir.

Q Thank you very much.

MR. GOWDY: May it please the Court?

THE COURT: Yes, sir.

EXAMINATION

BY MR. GOWDY:

Q Good afternoon, Ms. Sturgeon.

A Good afternoon.

Q My name is Trey Gowdy. I, along with Donnie Willingham to your left and Barry Barnett to the center, we work in the solicitor's office. We're going to be

prosecuting this case on behalf of the State. The judge asked you all the questions that I really had to ask you. I just have a couple more.

A Okay.

Q I noticed you are a school teacher. I do not have a child yet that is to the seventh grade, so if this is a dumb question, I apologize to you.

A Uh-huh (affirmative).

Q But as a science teacher in the seventh grade, do you specialize in biology, chemistry, physics or a mixture of all of the sciences?

A Under the current state standards, it is a mixture. But primarily we focus on life science. We do earth science as well as physics.

Q I notice you go to Pastor Anders' Church?

A I do.

Q How long have you gone there?

A About five or six years. Not positive about that.

Q Okay. That is good enough. Last question for you. If I understood you right, you said that after all the evidence is in as a juror, if you thought that life was the proper verdict, that's what you're going to vote for?

A Uh-huh (affirmative).

Q And if you thought that death was the proper

verdict, that is what you're going to vote for?

A Uh-huh (affirmative).

Q And it's based on what happens in this courtroom?

A Uh-huh (affirmative).

Q And it's based on what you believe should happen to him?

A Yes, sir. Uh-huh (affirmative).

Q Thank you very much for answering my questions.

MR. GOWDY: Thank you, Your Honor.

THE COURT: Step out in the hall for just a minute please, Ms. Sturgeon.

(WHEREUPON, Ms. Sturgeon exits at approximately 12:51 p.m.)

THE COURT: Any objection?

MR. BARTOSH: No, sir.

MR. GOWDY: Not from the State.

THE COURT: Bring her in.

(WHEREUPON, Ms. Sturgeon enters at approximately 12:51 p.m.)

THE COURT: Ms. Sturgeon, I find that you are a qualified juror in this case. It is going to be at least tomorrow I believe before we will be ready for you to come back. When you do come back, be prepared to bring enough stuff, clothing and whatever to last you five or six days.

MS. STURGEON: Okay.

THE COURT: Don't talk to anybody about the case. Don't let anybody talk to you. Don't read anything, listen to anything or watch anything about this case. When you come back, I will ask you whether or not you complied with that instruction. I want you to be able to tell me that you had.

MS. STURGEON: Can I ask you a question?

THE COURT: Please.

MS. STURGEON: I'm sorry. When you tell me I need to be prepared to come back, that would be for the weekend as well too?

THE COURT: Yes, ma'am.

MS. STURGEON: So I would need to go ahead and make arrangements just in case for my son to be cared for by somebody else?

THE COURT: Yes, ma'am.

MS. STURGEON: I just wanted to be clear.

THE COURT: All right. We will see you in a day or so.

(WHEREUPON, Ms. Sturgeon exits at approximately 12:51 p.m.)

THE COURT: Give us a juror.

(WHEREUPON, Matthew Smith, Juror number 256, enters at approximately 12:52 p.m.)

MATTHEW SMITH

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Smith, good afternoon, sir.

A Yes, sir.

Q You recall we put you under oath yesterday afternoon, excuse me, Monday morning?

A Yes, sir.

Q You are still under oath now. You understand that?

A Yes.

Q Since you left us Monday afternoon, have you talked to anybody about this case or has anybody talked to you about this case?

A No.

Q Have you watched or heard or read anything about the case?

A No.

Q We're going to ask you some questions. I'm going to start off. The lawyers are going to follow up. We hope we don't get to deep into your private life. We have to ask you these questions. All we want you to do is be open and honest with us, tell us how you think, tell us how you feel and we would appreciate that.

We're going to get into some discussion about the penalty phase. The fact that we get into that discussion doesn't mean anything about this case, about this defendant. It simply means we need ask you some questions about some issues that might come up if we get that far.

If you are a juror in this case, could you accept and apply the law precisely as I will state it to you and render a verdict based solely on the testimony and evidence that you, that is presented to you here in this courtroom, setting aside anything that you may have learned before the trial began?

A Yes.

Q Do you understand that in a criminal case such as this, the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes.

Q You understand this is a murder case?

A Yes.

Q If you are a juror in this case, could you -- hold on just one second. Could you, depending on the facts and circumstances that you find to have been 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 met its burden of proof?

A Yes.

Q If you are a juror in this case and if you get into the, if the jury finds the defendant guilty, we will move into the penalty phase as I said. There will be some other issues that will come up. I will talk to you about those now. Aggravating circumstances are facts, incidences or details of an occurrence that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the enormity of the crime or add to the injury resulting from the crime.

Mitigating circumstances, on the other hand, are facts, incidences or occurrences that the State of South Carolina has declared to lessen the severity of the crime. They may be seen as extenuating or reducing the moral culpability or responsibility for the crime.

If you are on the jury in the penalty phase of a death penalty case such as this, you will have two options as to what your verdict would be. You can have a verdict for a life sentence or you can have a verdict of the death sentence. Could you, depending on the facts and circumstances that you find to exist, considering aggravating and mitigating circumstances and considering the law as I will give it to you, could you vote to impose a life sentence?

A Yes.

Q Could you vote to impose the death penalty?

A No.

Q You're sure about that?

A Yes.

Q Are there any circumstances and don't tell me what they are, but are you telling me that you just are not going to consider the death penalty?

A Yes.

Q You are not going to consider it?

A That is correct.

THE COURT: Do you want to voir dire this witness?

MR. BARTOSH: No, sir.

THE COURT: The State?

MR. GOWDY: No, sir, Your Honor.

THE COURT: All right. Mr. Smith, we are not going to need your services in this case. You are free to go.

(WHEREUPON, Mr. Smith exits at approximately 12:59 p.m.)

(WHEREUPON, Joseph Floyd, Juror number 89, enter at approximately 12:59 p.m.)

JOSEPH FLOYD

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Floyd, afternoon, sir.

A Good afternoon.

Q You recall that we put you under oath Monday morning.

A Yes, sir.

Q You understand you are still under oath right now?

A Yes, sir.

Q Since Monday afternoon when I released you, have you talked to anybody about this case or has anybody tried to talked to you about the case?

A No, sir.

Q Have you heard anything or read anything or seen anything about this case since Monday?

A No, sir.

Q Mr. Floyd, we're going to ask you some questions now. We hope that these questions don't go too deep into your private life. But we have to ask you these questions. There are not any right or wrong answers to these questions. We just want for you to be open and honest with us and tell us how you think and how you feel.

— We are going to get into some questions about a possible penalty phase. But the fact that we're talking

about the penalty phase does not mean anything about this defendant or about this case. It simply means there are some questions about that that we need to talk to you about so we can see how you feel about some issues that might come up at that point in the trial.

If you are a juror in this case, would you be able to accept and apply the law as I will give it to you and render a verdict based solely on the testimony and the evidence that you hear and see in this courtroom?

A (No response.)

Q Let me ask the question again. You told us on Monday that you knew something about the case, right?

A I have been acquainted with persons who -- in my business where I work, I ran up on a person who was discussing the case right after it happened.

Q Uh-huh (affirmative). All right. Well, let me just ask that question again. Okay. If you are a juror in this case, could you accept and apply the law as I will give it to you and set aside anything that you might have learned or heard about this case and render a verdict based solely on the testimony and the evidence that you would hear and see in this courtroom? Could you do that?

A Yes, sir.

Q You understand that in a criminal case such as this the State has the burden of proof and must meet that

burden of proof beyond a reasonable doubt?

A Yes, sir.

Q You understand this is a murder case?

A Yes, sir.

Q Could you, depending on the facts and circumstances that you find to have been proven and in light of the law as I will 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 you are on the jury and the jury finds the defendant guilty, we will move into the penalty phase or the sentencing phase of the trial. I'm going to tell you about some things that will come up, some issues that will come up during that phase of the trial. Aggravating circumstances are facts, incidences or details of an occurrence that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the enormity of the crime of murder and add to the injury of that crime.

Mitigating circumstances, on the other hand, are facts incidences, incidences, incidents -- I'm not saying that right, am I? I need to go back to your school. Incidents or details of an occurrence that the State of South

Carolina has declared to lessen the severity of the crime. They may serve to extenuate or to reduce the moral culpability or responsibility of the crime of murder.

If you are on the jury in the sentencing phase of a death penalty trial, you would have two options as to what your verdict could be. You can have a verdict for a life sentence or you can have a verdict for the death penalty. Could you, depending on the facts and circumstances that you find to exist, considering any aggravating or mitigating circumstances and considering the law as I will give it to you, could you vote to return a sentence of a life sentence, a verdict of a life sentence?

A According to the circumstances, I could.

Q Could you vote to return a verdict for the death penalty?

A Yes, sir.

Q If you are on the jury in the case and if I sequester a jury meaning put you up in a hotel where you can't go home for five or six days, is that going to impose a terrible burden on you?

A I need to inform you that I have two teenage daughters. And my wife left me five weeks ago.

Q Uh-huh (affirmative). Now, of course, if you're on the jury then that's going to mean that you cannot be home supervising and taking care of those two daughters.

And, of course, I know this must be a particularly difficult time since this just came up so recently.

A It is.

Q And you have to tell me how it would affect you. Is there somebody else that might can come and watch those girls while you are serving on a jury?

A Yes, I believe there possibly could be.

Q Do you think that you could do it if you get on the jury and I sequester the jury?

A I could.

Q Have you been over that witness list that I gave you a few minutes ago?

A Yes, sir.

Q Have you read every name on that list?

A Yes, sir.

Q Do you know or are related to anybody whose name is on that list?

A I do not know any of them or am not related any of them.

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 feel I am prejudiced.

Q Why is that?

A I do not have a clear conscious as far as the

judicial system goes because of things that's happened in the past.

Q All right. I tell you what, I'm going to let the lawyers follow-up on that. They will ask you some questions about it. You can talk to them. Okay?

A Okay.

Q Of course, I will be listening too.

THE COURT: Mr. Bartosh.

MR. BARTOSH: Thank you, Your Honor.

EXAMINATION

BY MR. BARTOSH:

Q How are you, Mr. Floyd?

A Just fine. Thank you.

Q My name is Mike Bartosh. I am a lawyer here in Spartanburg. I, along with Doug Brennan and Karen Quimby, are representing Marion Lindsey. Mr. Lindsey is the individual in the white shirt there. One of the things that I wanted to ask you about from the beginning is you listed on your questionnaire that you have poor hearing?

A Yes, sir.

Q How long have you suffered from that condition?

A Since 1972.

Q Is it chronic?

A There's a constant ringing in my ears.

Q Do you believe that that would affect your

ability to perform your duties as a juror?

A Unless I could hear, if I could only hear. Some times I hear the words but I can't make out what is being said.

Q Okay. Well the way you describe that, how often does that happen?

A Constantly.

Q So you may or may not be able to hear what is being said. When a witness testifies, you may or may not be able to hear them. You hear the words, but don't understand?

A That is correct.

Q Okay. Also, when the judge was first talking to you about whether or not you could listen to the evidence and, and if you find that -- based on the evidence, you find that Mr. Lindsey either is innocent or guilty, you had a hesitation?

A Yes, sir.

Q Can you tell me what the cause of that hesitation was.

A The one hesitation you are referring to was the one about -- I hesitated more than once.

Q Yes, sir.

A Was it the one about, what?

A The first one?

Q And the question was -- can you refresh my memory?

A I think his first question was could you listen to the evidence in the first part of the trial and determine and find Mr. Lindsey either guilty or not guilty and follow his instructions.

A And I hesitated?

Q Yes, sir.

A I was just thinking of the words and making sure I understood the question that's the reason I hesitated. I do believe I can do that, perform that duty.

Q Is that generally what you have to do is you have to hear the words first and then you have to think about their meanings before you can respond? Is that a fair statement?

A Not in every case. I was just wanting to be extra careful that I answered correctly.

Q Because this is a serious manner and I appreciate that.

A Yes, sir.

Q Okay. Also there was one part towards the end when you said that you felt he would be prejudiced?

A Yes, sir.

Q Or that you are prejudiced?

A Yes, sir.

Q About -- towards the legal system?
A Yes, sir.
Q Could you describe that prejudice for us?
A If I must.
Q Well yes, sir. We would like for you to.
A I was involved in a case three, maybe four years ago where my daughter, who was 19 or 20 at the time, caused a very bad disturbance in my home. And I was accused of criminal domestic violence and found guilty of it. Because I did not realize the consequences of that sentence, --
Q Yes, sir.
A -- if I had only been wiser, I would have demanded a jury trial instead of a magistrate's trial. So I feel like that I was wrongly convicted because I did not strike my daughter. I did not do anything harmful to her. But the law states, according to what I was told by the magistrate, if she feels like she had been harmed, then I am guilty. So I was found guilty. And so I have this in my heart that says the judicial system has wronged me. Do you understand where I'm coming from?
Q Yes, sir. Fair to say, you felt like you had been falsely accused?
A Yes, sir.
Q It's fair to say that you felt that you had been mistreated by the judicial system?

A Yes, sir. I lost my constitutional rights to to own an arm and to hunt. And so to me, it is a very serious matter although it was a misdemeanor. To me, it damaged me greatly.

Q So then you feel, giving those feelings that you have towards the judicial system, do you feel that you could be fair and impartial to both sides?

A I have a grudge. I will be honest with you.

Q And that grudge would be towards the State?

A Yes, sir.

Q You felt like you had been mistreated by the system?

A Yes sir.

Q Okay. Could you push put that grudge aside and be fair to the State?

A I would have to be because it is such a terrible crime that Mr. Lindsey is accused of.

Q Okay. So you would be able to do that?

A Yes, sir.

Q Okay. Now let's get to the crime that Mr. Lindsey is accused of. I think you indicated Monday that you knew some things about the case?

A Yes, sir.

Q You know some individuals involved in a case?

A No, sir.

Q You have been told things about it?

A I work -- may I tell you what I know?

A Sure.

Q I work as a plumber. I work for this one company where they run sewer lines. It is not a public sewer. It is a private sewer. It is Carolina Water Sewers. I recall right after this incident took place, this crime, that I was working for this lady who had sewer problems in her yard. It was our responsibility to fix it.

I don't remember location. I don't remember the name or anything like that. But I remember her discussing that she knew the person or she was a cousin or a relative or something of that lady who was killed. And it was just a casual conversation but she was very distraught about it. That's all I remember.

Q Did she tell you the details of it?

A Nothing except gun fire was involved and that is all.

Q All right. Did the fact that she told you some of the details, did that cause you to form an opinion as to Mr. Lindsey's guilt or innocence?

A No, I don't think so. Not at that time.

Q How about right now?

A It has been two years ago, if I'm not mistaken. I don't think right now I would not think that it would be

for me to form an opinion one way or the other.

Q So you would not have an opinion either way. The judge is going to tell you, if are chosen as a juror, that as Mr. Lindsey sits there he is innocent. He is presumed to be innocent. And when you take that oath --if you are chosen for the jury, when you take the oath, you accept the fact that he is swear, accept the fact that he is innocent as he sits there. Would you have a problem doing that?

A No, sir.

Q Do you wear any kind of appliances --

A No, sir.

Q -- for your ear? Now one last question that I want to ask you. I don't mean to pry. Well, that is being self-serving, but it is a question that I would like to ask you. I hope you don't take it the wrong way. You just explained to the judge that your wife, you and your wife are separated or she left you about five weeks ago?

A Yes, sir.

Q Is that -- and I'm sure that has affected you in many, many ways?

A It is has made me very apprehensive and worried.

Q Okay. Would that fact and the fact that you may be sequestered which means you won't be home, would that cause you to become distracted or, from being able to give

both sides a fair and impartial hearing and come to a fair and impartial verdict? Would you be able to set aside for that period of time all of these things that have happened to you and devote yourself to this?

A I believe I could. It has not been like it was last week.

Q So as time goes, time's healed the situation. Okay. Now you know if we get to the, we will only get to the penalty phase if the State proves beyond a reasonable doubt that Mr. Lindsey is guilty of murder. If they don't do that, then we all go home. You understand that part?

A Right.

Q If they do prove it to the twelve jurors beyond a reasonable doubt, then we have the sentencing or the penalty phase. This is the only procedure that I know of where the jury decides what the penalty is, okay, whether it's life or whether it's death. If it is life, then life now is life without parole. If Mr. Lindsey was to get life in this case, he would spend the rest of his life in prison. He would die in the Department of Corrections.

If he was to get death, he would either be electrocuted or receive lethal injection. Two things, could you listen to both sides? Because what the State is going to do is they're going to present what they consider to be aggravating circumstances. Things that make this

murder worse.

Of course, what we would be doing is we would be presenting mitigating factors which we believe will lessen the severity of this. Now, could you give both sides a fair and impartial hearing on those matters?

A Yes, sir.

Q And if you felt that death was appropriate, you could vote for death?

A Yes, sir.

Q And if you felt life was appropriate, likewise you would vote for life?

A Yes, sir.

Q And you understand that death is not compulsory?

A Yes, sir.

Q There is always a chance for life.

A (Nods head affirmatively.)

Q And this last question, I appreciate your patience, Mr. Floyd. But I just want to ask you this. If it comes down to death or life for that matter, every juror -- there's a sentencing sheet. And every juror has to sign that sentencing sheet.

And let's say by the luck of the draw, it's death. And you are the last one to sign the sheet after all the other eleven signed and you were the last one to sign it. And you knowing that when you put your signature on sheet

that you are condemning Mr. Lindsey to death, could you do that?

A Could I ask you a question?

Q Please do.

A Why do you say I have to sign that sheet?

Q Well, in order --

A What if I don't?

Q Well, if you are a juror, it is your duty to sign the sheet either way, either for life or for death. It must be unanimous. Now, if you don't feel it's appropriate, you don't have to sign it.

A That's only for death?

Q For life. If you didn't feel life was appropriate.

A What if everybody says we want to give him life and I want to give him death and I say I'm not signing that.

Q That's your prerogative. It has to be unanimous.

A You don't sign something on the life stage?

Q Yes, on both. It's the sentencing sheet.

A So they both have to be unanimous?

Q They both have to be unanimous. It has to be unanimous for life or it has to be unanimous for death.

A If we reach a unanimous decision, I could sign it.

Q Thank you.

MR. WILLINGHAM: Please the Court.

EXAMINATION

BY MR. WILLINGHAM:

Q Mr. Floyd, my name is Donnie Willingham. This is Barry Barnett. We are the prosecutors on this case. I want to thank you for being candid with us. I hate you had an experience where you felt you were wrongly accused. I need to talk to you about that. Who arrested you?

A I do not remember.

Q You know what agency it was?

A County.

Q Okay. And the fact that we are going to have county deputies testify in this case, is it my understanding that you think that based on your prior experience you may be prejudiced against some of the things they say?

A I would be lying if I didn't tell you so.

Q Again, I want to tell you that there are no right answers or wrong answers. They are just your answers. I appreciate your candor and your honesty with us. When you went to magistrate court, was there a prosecutor there?

A No, sir.

Q Okay. Would that prejudice be such that you would not give those officers the same credibility as you

would any other person who testified?

A No, sir.

Q Tell me how your prejudice may affect this trial.

A It would probably not affect it in any physical way. It would only be an emotional prejudice.

Q Okay. Tell me what you mean by that if you would.

A See, most police officers, they act puffed up and they point at you like a dog. Like yesterday, during our pre -- whatever we were doing yesterday. They would point at you like you were a bird dog and say come here. They don't respect -- they don't treat you with any kindness. I have that feeling. Why do they treat people in such a disdainful, hateful, mean-spirited way.

And I would have commend you, Your Honor, for you are a man of gentle ways. And you act respectful towards all people.

But that's the reason I have this disdain for them because of the way they talk to you. One bailiff says you can't read that book. And there was a lady sitting right there reading a book. And a man sitting over there reading a book. I said why do you have to act so hateful and mean spirited. Why not use kindness towards people? I get riled up about it.

Q Okay. I want to ask you a few more questions.

Unless the Court --

THE COURT: Do you have any more questions?

MR. WILLINGHAM: Yes, I do. You looked like you were wanting to say something.

BY MR. WILLINGHAM:

Q You said you have two daughters at home. One who is 17 and I think 14?

A Yes, sir.

Q On the questionnaire -- if you were being selected and the jury sequestered, you would be here with us day and night and weekends for the next five to seven days. Would you be so worried about your daughters and whether they were being taken care of what they were doing that that would distract you from this case?

A No, sir. My two daughters that you are speaking of are very trustworthy young ladies.

Q I want to ask you a little bit about the death penalty. What are your views on the death penalty?

A My views are sometimes it's appropriate and sometimes it's not.

Q What do you mean by that?

A It's all according to the circumstances.

Q Where do your views on the death penalty come from?

A A lot of it comes from my upbringing and my home

from what my parents have taught me or from what I have read and experiences in life.

Q Okay. I'm going to ask you about your hearing. Do you believe that would prevent you from being able to actively participate in this trial?

A If I have permission when I am sitting over there to say I can't hear you, it will not prevent it. But if I don't have permission to say speak up, please, it would be very difficult.

Q During these past two days of jury qualifications, has there been a time that you have not been able to understand what was going on or hear?

A No, sir.

Q Give me one second. Mr. Floyd, you said you have ringing in your ears constantly?

A Constantly.

Q Is it safe to say that you are pretty good at watching my lips pretty close? You are pretty good at reading lips?

A It helps.

Q Okay. Now, if we have a witness that's talking to the judge or talking to somebody else and is not looking at the jury, do you think that's going to cause any concern or any trouble?

A If they would speak in a good firm voice, I could

hear. I must concentrate on what they are saying. I can't be distracted by another sound in the room or someone talking over there. That's not the case in a courtroom.

Q A few more questions then I'm going to sit down. Your CDV experience. There may be allegations of domestic abuse in this case. The fact that you've had that prior experience, is that going to prevent you from fairly looking at both the defense and the prosecution?

A No, sir.

Q Okay. And back to your experiences concerning police officers both during your CDV arrest and apparently yesterday in court, do you have a feeling that all law enforcement are acting either puffed up or arrogant or too authoritative?

A All, you used the word "all". There was one gentleman who talked to me. I don't remember his name. I was very impressed by his demeanor, his kindness.

Q Mr. Floyd, what I want to make sure is because you've had bad experiences with law enforcement and with the justice system. I don't want to be left in that category. And I don't want the prosecution or any of these officers that are going to testify to be left in that same category with the ones that you had bad experiences with.

I guess what I want is some assurance that you wouldn't do that. But are there times that you've had

experiences with peoples or agencies or law enforcement that just leave such a bad taste in your mouth that you just can't get it out and I've been there. I understand that. If that's the case, I need to know that now.

A Just like a child. When a child gets bit by a big brown dog, a child is going to be afraid of a big brown dog. When you become a man, you put aside all of that stuff. And you consider that some brown dogs aren't going to bite you.

Q You think you can put that aside in this case?

A Yes.

Q And give me a fair shake as well as the other side?

A Yes, sir.

Q Excuse me. Thank you.

THE COURT: Mr. Floyd, step out in the hall for just one second.

MR. BARTOSH: May I ask him one quick question?

THE COURT: Yes, sir. Let him ask a follow up question.

BY MR. BARTOSH:

Q Mr. Floyd, you taught in District 7?

A Pardon me.

Q You taught school in District 7?

A Yes, sir.

Q Where did you teach?

A Daniel Morgan Vocational School.

Q Thank you.

THE COURT: All right. Step out in the hall, sir.

(WHEREUPON, Mr. Floyd exits at approximately 1:42 p.m.)

THE COURT: What's your position on this juror?

MR. BARTOSH: I find him fascinating, Your Honor.

THE COURT: He is fascinating.

MR. BARTOSH: I think he is qualified.

THE COURT: I know that Mr. Willingham thinks he is qualified. Otherwise, he would not have spent fifteen minutes trying to rehabilitate him from his obvious disqualification over his prejudice towards law enforcement agents. So y'all believe he is qualified?

MR. WILLINGHAM: Judge, I would agree with you. I am concerned about his theory and his beliefs. But I do think he will be able to up stand and hold.

THE COURT: I find that this juror's experience with law enforcement and his opinion about law enforcement is likely to substantially interfere with his ability to be able to carry out his responsibility as a juror. I have watched him. He was very agitated

and very eager to explain his frustration with the way he perceived that he was treated on Monday.

When the question was finally put to him by Mr. Bartosh appropriately, could you set that aside. He got quiet. He sort of sagged his shoulders and in a fully reluctant voice, he said I can set that aside and be fair. He did the same sort of thing when he went through the brown dog analogy. And when he was talking about the bailiffs and the sheriff's deputies were pointing their fingers at him, and he was shaking his finger vigorously.

I am just, I am convinced that that witness is -- I keep calling them witnesses. That that juror's feelings about law enforcement is going to substantially interfere with his ability to carry out my instructions and to carry out his responsibilities under the law. I find him disqualified. I'm not concerned about his hearing.

MR. BARTOSH: May we object to that, Your Honor.

THE COURT: I think your objection is noted. And I want the record to be clear here that this juror more than any juror we had was animated in his descriptions. And I suppose that -- there's a lot of my finding in what I observed from him from the bench.

But let me go back to Monday. And we can put this on the record if you want to.

But during jury qualification on Monday, when the whole panel was in here, a couple of law enforcement agents and bailiffs, and I don't remember who they were, we can find out, came to me and told me that they were having difficulty with Mr. Floyd because they were trying to get him to do one thing or not do one thing and that he was smarting off to them. And he was saying things to them that I felt were inappropriate.

That is the way I have always asked the bailiffs and the courtroom security deputies to communicate with me about what is going on out there in the jury panel. So they did what I had asked them to do in helping me to fulfill my responsibilities to maintain order in the courtroom.

When that was reported to me, it was right before we broke for lunch I believe. And I said let him go. It wasn't like they had him in custody. But I said let's just don't do anything about it right now and see if it kind of blows over. And I believe nothing else was said to me during the course of the afternoon. So that enters into my evaluation and my findings.

Frankly, I forgot about that until he started mentioning how the bailiffs were telling him that he could not read a book when someone else was reading a book and how they were pointing their fingers at him and they were demonstrating, he was demonstrating how they did that. And that is what reminded me that we had had that, that I had had that report on Monday.

So based on all of that and particularly based on my observation of him in the courtroom, I find that he is not qualified. That is because his opinion about law enforcement, his experience with Spartanburg County Sheriff's Office in that criminal domestic violence case, the consequences of his criminal domestic violence conviction that he did not understand apparently at the time he entered the, or went before the magistrate on the CDV, all of that is going to substantially interfere with his ability to carry out my instructions to be fair and impartial juror.

MR. BARNETT: One other thing too I noticed was he would have to constantly interrupt everybody. You asked the question the first time we were sitting here for almost a minute or two you had to repeat your question. He would interrupt saying that, he would have to interrupt and say you would have to talk loud

or whatever if he was on the jury.

THE COURT: That is not a part of my ruling. I am satisfied that he and I in working together that I can keep my eye on him and he could let me know. In whatever way, we could arrive at that he was having trouble hearing. And I could take care of that. I am not concerned about his hearing.

MR. BARTOSH: I am assuming that by just our entering our objection that we are protected on the record or do we need to put the basis for our objection?

THE COURT: Mr. Bartosh, I'm going to have to say that not only do I not know the answer to that question but I don't believe that it would be proper for me to give you an opinion on it even if I did know it.

MR. BARTOSH: Your Honor, I think out of abundance of caution we need to put the basis of our objection. As I understand it, the Court is disqualifying him because of his attitude towards law enforcement, his experience with the bailiffs and law enforcement on Monday and that you don't believe you can follow his instructions. I think what he testified to was in every case he said he could follow the instructions.

He also told that story about the brown bear or the brown dog. He said when you are a child, you are afraid of all dogs. But as you become a man, you discover that not on brown dogs are bad. I think that indicated to me he could follow your instructions and that he did not share that opinion of all police officers. So I think that he indicated that he could follow instructions. That is the basis of our objection.

THE COURT: And my ruling is not he did not indicate that. It is that I don't buy it. It is my finding that his attitude and his, not so much as attitude as if that is improper, but his feelings about law enforcement, his feelings about the case that he had is going to substantially interfere with his ability to carry out his responsibilities under the laws of jurors.

Bring him in.

(WHEREUPON, Mr. Floyd enters at approximately 1:48 p.m.)

THE COURT: Mr. Floyd, we appreciate you coming and talking to us about all the things that you talked to us about. We're not going to need your services in this case and you are free to go.

MR. FLOYD: Thank you.

(WHEREUPON, Mr. Floyd exits at approximately 1:48 p.m.)

THE COURT: All right. Let's take a break. We will call this a lunch break although in reality it will end up being one of the most pathetic lunch breaks you have ever seen because it just will not do the dignity of lunch justice cause it will be short. So let's say we will be back at two o'clock.

(WHEREUPON, a lunch recess was taken at approximately 1:49 p.m.)

(WHEREUPON, the Court resumed at approximately 2:10 p.m.)

THE BAILIFF: She's here.

THE COURT: Don't bring her in.

Let me see you two for a second. Y'all can come too.

(WHEREUPON, the attorneys approach the bench.)

THE COURT: I just want to let you know that Court TV asked --

This is off the record.

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

THE COURT: All right. Ms. Netherton is here. I'm going to bring her in here and talk to her. And we will see what happens.

Bring her in.

(WHEREUPON, Joann Netherton, Juror number 205, enters at approximately 2:15 p.m.)

MS. NETHERTON: Hi.

JOANN NETHERTON

having previously been sworn, testified as follows:

THE COURT: Hello, Ms. Netherton. I understand that you have asked a question about or you want to ask a question about talking to your priest.

MS. NETHERTON: Uh-huh (affirmative).

THE COURT: Okay. Ma'am, I don't want to interfere with your communication with your priest or in any of your activities with your church. But I am assuming that you might have wanted to discuss with him something that is related to this case and that that is why you brought it to my attention before you did it.

MS. NETHERTON: That is correct.

THE COURT: So I respectfully do not want you to discuss anything that relates to this case with anybody just as I have instructed you already. You know, you are in this jury pool because you as a citizen of Spartanburg County carry your share of the role load of representing Spartanburg County.

MS. NETHERTON: Right.

THE COURT: If you go out and talk to somebody else and bring on their views, that skews your representation of Spartanburg County.

MS. NETHERTON: Okay.

THE COURT: We want your views. We want you in here as a juror. We don't want that priest in here.

MS. NETHERTON: I understand.

THE COURT: I want to be very careful about telling you not to talk to your preacher. But I'm just going to ask you to remember the general instruction that I gave you not to discuss this case with anybody. Since this case is a case in which the State is seeking the death penalty, if you were to talk to your preacher about the death penalty, you would be talking about this case. So I'm going to ask you not to talk about this case.

MS. NETHERTON: Okay.

THE COURT: You understand why my answer is that?

MS. NETHERTON: Yes, I do.

THE COURT: You want me to follow-up in any way? Is there any way I can answer that question? You have any other questions?

MS. NETHERTON: I do. I have a question.

THE COURT: Okay.

MS. NETHERTON: I am not prejudging anything. I started thinking last night because the solicitor's office did bring to my attention my religion. It is my religion that we do not believe in capital punishment. I believe there are politics in every religion. I don't normally go by -- I usually go on my beliefs. I believe in God. I was born a Catholic.

I just don't want to be sitting in the hotel room like you said yesterday and get to a certain point and not be able to go further without some kind of counseling or maybe I misunderstand the law. Is there a certain criteria that designates life in prison or the death penalty? Is there a criteria that somebody must meet up to? At that point, where does the decision -- is it based on just the jurors? Or is it based on the criteria, the evidence?

THE COURT: Before the jury can consider the possibility of the death penalty. The jury would have to find that the State has proven beyond a reasonable doubt not only that the defendant is guilty of murder but that the State has proven beyond a reasonable doubt the existence of at least one aggravating circumstance. You recall that we talked

about aggravating circumstance?

MS. NETHERTON: Uh-huh (affirmative).

THE COURT: Those are the State, in the statute. I'm not going to tell you what those all are. But the State is going to have to prove beyond a reasonable doubt the existence of one aggravating circumstance. If that occurs, then the decision as to what the penalty will be is completely up to the judgment of the jury.

Now, balancing the aggravating circumstances, there are mitigating circumstances that the jury can take into consideration. Of course, all of the evidence that will be before you, the jury can take that into consideration. Does that answer your question?

MS. NETHERTON: Yes and no. Until I -- it does. I would assume that there would be counseling from you based on the laws.

THE COURT: Yes, ma'am. I will tell you all of the law. But I can't tell you how to exercise your judgment. As a member of the jury, you will be called upon or you would be called upon to exercise your judgment. That is why we asked you those questions yesterday. I believe you were in here yesterday.

MS. NETHERTON: Uh-huh (affirmative).

THE COURT: We want to make sure that you are open-minded in your willingness to exercise your judgment.

MS. NETHERTON: Okay.

THE COURT: Since you are here and you raise these concerns, do you still believe that if you are a juror in this case that you can vote either guilty or not guilty based on whether or not you believe that the State has met its burden of proving the defendant guilty beyond a reasonable doubt?

MS. NETHERTON: I could.

THE COURT: Do you still believe that you could vote in favor of returning a life sentence if the jury gets to that point?

MS. NETHERTON: I could.

THE COURT: Do you still believe that you could vote in favor of the death penalty? That is not to say that you would do it but that you could do it. Do you feel that you could vote to turn a verdict for the death penalty?

MS. NETHERTON: I hesitate to say I could simply because I don't know all of the circumstances and the evidence.

THE COURT: Right. I believe we, you and I

kind of got to this hurdle yesterday in your discussion. I'm not asking you to tell me what your vote would what your vote would be. But if, depending on the facts and circumstances and depending on your consideration of aggravating and mitigating circumstances, and of course considering the law that will give you, are you open-minded to the possibility that under the right circumstances you could vote to impose the death penalty?

MS. NETHERTON: I could.

THE COURT: Well, ma'am, I will tell you what we will do, we will, if you have any more concerns about it, we still got at least the rest of today, probably a fair amount of tomorrow before we get around to actually deciding who is going to be on the jury.

MS. NETHERTON: Okay.

THE COURT: If you have any further concerns about that or anything else, bring them to my attention when you come back here some time tomorrow.

MS. NETHERTON: I will.

THE COURT: I suspect it will be some time tomorrow. Now you also, I believe, asked questions about security after a verdict and are you protected and are you safe and do you have to get double bolt

locks on all the door.

MS. NETHERTON: You don't hear about all these things after it has happened. I do work in a public place of employment. There is not a security door to get to me. No matter what the verdict is, there are two families here and somebody is not going to be happy. So I am very, I am out in the public all the time.

THE COURT: Uh-huh (affirmative). Well, ma'am, we don't have any mechanism for providing you protection unless we think there is a reason to. If something were to come up where I believed or where law enforcement believed there's a reason to provide you protection then we could that. But I have been involved in the legal system now for a number of years. And I have been a judge for right at four years.

I never known of a situation in South Carolina where a juror was legitimately threatened. So it is an everyday occurrence in South Carolina --

MS. NETHERTON: Right.

THE COURT: -- that jurors in various every serious cases go about their lives, go on about their business, work in the public, see people at grocery stores and malls and don't have any problems.

MS. NETHERTON: Okay.

THE COURT: I have no reason to suspect that this case will be any different. I've not seen anything about this case that would lead me to be concerned that it would be any different. The participants in this case have behaved themselves well during the course of this case from my observation. I see no reason for you to be concerned.

MS. NETHERTON: Okay.

THE COURT: I know why you are concerned. I have the same concerns when I go to a grocery store. I'm looking into the eyes of the people I see. Is that somebody whose son I just put in jail?

MS. NETHERTON: Right.

THE COURT: So does that give you some comfort about that question that you raised?

MS. NETHERTON: I have to cover my basis.

THE COURT: Yes, ma'am. All right. We will hopefully see you some time tomorrow.

MS. NETHERTON: Okay.

THE COURT: You have a nice rest of the day and evening. If you have any other concerns bring them to my attention when you get here tomorrow is what I hope.

MS. NETHERTON: Okay. I just had to ask the

question.

THE COURT: That is no problem.

MS. NETHERTON: Okay.

THE COURT: Would you let her just stand in the hall for just one second and let me make sure that I maybe did not leave something unsaid.

Let me speak to the lawyers and I will probably just let you go. Okay?

MS. NETHERTON: Okay. Thank you.

(WHEREUPON, Ms. Netherton exits at approximately 2:27 p.m.)

THE COURT: Any objection to my comments?

MR. BARTOSH: No objection, Your Honor. I got the impression from what she said was that at some point during the deliberation, she was sort of expecting somebody to come and talk to her about what they were going to do. What I would ask the Court to consider would be just a short instruction saying that she understands that the penalty is going to be decided by the twelve folks, should we can get that far, by the twelve folks on the jury who through their collective process will arrive at a verdict of either life or death. They and they alone will be the ones to decide that.

MR. WILLINGHAM: I don't have any objection to

what the Court instructed her about. I would like to ask her three questions if that's okay. I think what she demonstrated to the Court was she believes that under certain circumstances uh, then it almost sounds like death would be mandatory. And that if it's mandatory, she could do that. I want to make sure that she understands that it is not.

Then I want to find out if she would be able to put her beliefs aside and go to priest every Sunday after this is over with good conscience. The question -- those questions I think may not materially affect whether she is qualified or not. But would affect us knowing whether or not she would be a juror to be selected. And it may disqualify her based on her answer.

THE COURT: I am inclined to allow either side some additional voir dire. I am not sure whether now is the time to do it. I have invited her to continue thinking about it over the next day or so. It may be that the more appropriate time and the more useful time to do so from your standpoint is to do it when we bring the jury back. What do you say about that?

MR. GOWDY: No objection to that, Your Honor.

MR. BARTOSH: No objection.

THE COURT: I do think that perhaps Mr.

Bartosh suggestion is a good one that I might have misled her into affirming her suspicion that someone will come up to the hotel and counsel them about what they are supposed to do. So let me just get her back out here for a second and go at the process one more time.

MR. BARTOSH: Thank you, Your Honor

(WHEREUPON, Ms. Netherton enters at approximately 2:27 p.m.)

THE COURT: Okay. Ms. Netherton, I want to make sure that I did not answer your question in such a way that might have misled you. So I'm going to kind of try at it again. If you are on the jury and if the jury finds the defendant guilty of murder, then we go into the penalty phase of the trial. During the penalty phase, each side has an opportunity to present additional evidence. But they don't have a duty to present additional evidence, they have the opportunity.

MS. NETHERTON: Uh-huh (affirmative).

THE COURT: After all of that is done, the lawyer will have a chance to argue to you again and make closing arguments again. And the defendant has an opportunity to make a closing argument again. I would then instruct you about the law. And I will

tell you everything that is, that the law is. Okay?

MS. NETHERTON: Okay.

THE COURT: Then I will put you all in the jury room and y'all start deliberating.

MS. NETHERTON: Okay.

THE COURT: Y'all decide what the verdict is going to be, life or death. But I'm not in a position to counsel you about how you would exercise your judgment. There's not going to be anybody else except for other members of the jury --

MS. NETHERTON: Right.

THE COURT: -- to counsel you about how to exercise your judgment. The one thing I guess that gave me some concern is you said, you asked is somebody going to come over to the hotel and counsel us.

MS. NETHERTON: No, I just wanted to know was there a certain criteria that says it is this or this.

THE COURT: No, ma'am. But whatever the law is that has to be told to you, I will tell you that. I will tell all of it. You will take what I give you, what I tell you and you will go deliberate.

Once I have done that and once the jury has found the existence of an aggravating circumstance beyond a reasonable doubt, from that point on the question of

what the sentence is going to be either a life or the death penalty is completely within the judgment and discretion of the jury. Nobody's going to tell you how to exercise that discretion. Nobody's going to tell you how to exercise that judgment. The jury has got to do it.

MS. NETHERTON: I understood that.

THE COURT: Okay. Good. We will see you tomorrow.

MS. NETHERTON: Okay. Thank you.

(WHEREUPON, Ms. Netherton exits at approximately 2:30 p.m.)

THE COURT: Any objection?

MR. BARTOSH: No, sir.

THE COURT: From the State?

MR. GOWDY: No, sir.

THE COURT: All right. Remind me tomorrow or whenever and I will either do that myself or give you a chance to do it. I don't mind giving y'all a chance to do it.

Give us a juror.

(WHEREUPON, Linda Fuller, Juror number 95 enters at approximately 2:32 p.m.)

LINDA FULLER

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Ms. Fuller.

A Hi.

Q I hope we didn't mess up your lunch. I know we're running a little bit behind, actually, a good bit behind.

A That's okay. I had some candy.

Q All right.

A It gave me some energy.

Q We messed up our lunch. And all these people out here, that's why all these security officers are in here because I have to keep them from getting on me for messing up their lunch.

A That's okay.

Q I'm just kidding. All right. You recall that we put you under oath yesterday, on Monday morning?

A Yes, sir.

Q Do you -- hold on just one second. All right. Since yesterday or Monday when you left us, has anyone talked to you about this case or have you talked to anybody about this case?

A No, sir.

Q Have you heard anything or read anything or seen anything about this case?

A No, sir.

Q We're going to ask you some questions. I'm going to start off. The lawyers will follow up about some things that relate to this case. We don't really mean to pry too deeply into your private life but we do have to ask you these questions. There are no correct answers or incorrect 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 a little about the possibility of a sentencing phase. That does not tell you anything about this defendant or about this case. That just means that we know we might get to the penalty phase and there are some issues that may come up that we need to ask you about.

Could you, if you were a juror in this case, accept and apply the law precisely as I will state it to you and ignoring anything that you might have heard or learned before the case began, render a verdict based solely on the testimony evidence that you hear and see in this courtroom, could you do that?

A Yes, sir.

Q Do you understand in a criminal case like this, the State bears the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q You understand this is a murder case?

A Yes, sir.

Q Could you, depending on the facts and circumstances that you find to that have been proven, find the defendant either guilty or not guilty depending on whether you believe the State has met its burden of proof?

A Could you ask that me that again?

Q Yes, ma'am. Could you, depending on the facts and circumstances that you find to have been proven in this courtroom, 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 you are a juror in a death penalty case -- or in a death penalty case, certain issues will come up in the penalty phase. I will talk to you about those now. Aggravating circumstances are facts, incidents or details of an occurrence which South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstance increase the enormity of the crime and add to the injury caused by the crime.

Mitigating circumstances, on the other hand, are facts, incidents or details of an occurrence that South Carolina has declared to lessen the severity of the crime of murder and they serve to extenuate or to reduce the moral culpability or responsibility for the crime.

If you are a juror in a death penalty case such as

this in the penalty face, you will have two options as to what the verdict can be. The verdict can be for a life sentence or the verdict could be for the death penalty. Could you, depending on the circumstances and the facts that you find to exist consider any aggravating or mitigating circumstances and considering the law as I will give it to you, could you vote to impose a life sentence?

A Yes. I guess.

Q Could you vote to impose the death penalty?

A It would have to be very clear and beyond a shadow doubt.

Q Ma'am, I will instruct you that the phrase "beyond a shadow of the doubt" is not the law. The law is that the State would have to prove the defendant guilty of murder beyond a reasonable doubt. Having done that, the State would have to prove the existence of an aggravating circumstance beyond a reasonable doubt. If they do both of those things, then the jury has got to exercise its judgment as to whether or not to give the death penalty.

Now, you might have been telling me that you would have to be sure in your own mind beyond a shadow of a doubt that the death penalty was what you felt was the appropriate sentence. But the State does not have to prove guilt beyond as a shadow of a doubt. Do you understand that?

A Yes, sir.

Q So could you, in light of what I said, vote to impose the death penalty in this case if the circumstances you felt warranted it?

A I wish I could answer that yes, but I'm not sure.

Q Okay. Sometimes this question gets misinterpreted as asking you what your vote is going to be. We don't know that. We don't want you to tell us that because we don't want you to even be close to making up your mind now. We want you to remain open-minded and go all the way through the trial.

What we want to know -- I suppose another way the question is asked is there might be three different ways of looking at a juror in a death penalty case. Some jurors always are going to give a life sentence no matter what. Some jurors are always going to give the death penalty no matter what. Other jurors are going to listen to the testimony, listen to the facts and the evidence, evaluate the case and decide using their discretion, use their judgment to decide whether a life sentence is appropriate or the death penalty is appropriate. Which of those three types of jurors are you?

A I will probably be whether the death penalty was appropriate?

Q So you believe that you would probably wait and

decide which of those two sentences was appropriate?

A After the trial and after I've heard all the evidence.

Q Okay. We probably going to end up spending a good little while talking about that here. I'm going to turn it over in just a second to the lawyers and let them ask you some questions about that. So let me just do that now. Let me let the lawyers ask you some questions now.

MR. BRENNAN: May it please the Court, Your Honor?

THE COURT: Yes.

EXAMINATION

BY MR. BRENNAN:

Q Ms. Fuller, how are you today?

A I have been better.

A My name is Doug Brennon. I'm a defense attorney from here in Spartanburg. Myself, Mr. Bartosh and Ms. Quimby are lawyers here. We have the opportunity to represent Mr. Lindsey. Just for clarification, the Judge just asked you the three categories. Was your answer, not to put words in your mouth, was that you would be in that third category that wanted to listen to the evidence before you made a decision as to life or death?

A Uh-huh (affirmative).

Q So you're in that third category. Now on your

questionnaire and then again Monday when asked if you knew anything about this case, you said yes.

A Right.

Q What do you know about this case?

A I don't know if it was about the case but I had heard about the incident as far as what happened before ever getting a summons for jury duty.

Q How did you find out about it?

A In my place of employment, some of the people there were talking about it after it happened. They live in the same town and basically knew all about it.

Q And they told you?

A Uh-huh (affirmative). And it was just the topic of the conversation in the branch that day.

Q So they were just talking and you heard them?

A Right.

Q Did you look anything up on the Internet?

A No, I did not, but one of the other co-workers did. And I was in office when she had it on the Internet.

Q On your questionnaire, it said have you formed an opinion based on your knowledge. And you said you did not know yet. You were not sure.

A Right, because you can't listen to everything you read or hear other people say without the facts.

Q Okay. So since March when you filled the

questionnaire out, had you formed an opinion?

A No.

Q Would you be able to take the information that you heard, that stuff that you heard, could you set that aside and base your decision on the evidence that is presented in court and only the evidence that is presented in court?

A I would try.

Q And I appreciate that, ma'am. But I need to know if you could.

A I don't know. To be honest, I might not be able to.

Q All right. Now you actually wrote a little bit of a letter to the Clerk of Court.

A Uh-huh (affirmative).

Q I'm going to quote you. It says "I am upset. Because of people like Mr. Lindsey, I may have to cancel my vacation."

A Right.

Q Do you still harbor that anger? Do you still carry that?

A No, because as it turned out, of course, it was canceled for that week. And I had went to my the vice president and asked him if do I do have to go and is it all right. I know we are short-handed, but is it alright if I

just changed my vacation. And he agreed that if I had to come, then yes I could.

Q Okay.

A You know, a lot of times -- when I looked at the summons, I did not look at a name before I started filling this out.

Q But you think that that anger is passed or that resentment has passed?

A Oh, yeah.

Q Do you understand, ma'am, that the death penalty is never mandatory in South Carolina?

A No.

Q Do you believe that if the State proves X, Y and Z that you have to impose the death penalty?

A I don't know. I don't know what the law is about that.

MR. BARNETT: Your Honor, I'm going to object to the last question. X, Y, Z that is kind of putting it in a category or whatever. I don't think that is a proper question.

THE COURT: Ma'am, let me just tell you that just like he said, you don't have to impose the death penalty. You have to decide. You understand?

MS. FULLER: Yes.

THE COURT: Nobody is going to tell you that you

have to impose the death penalty.

MS. FULLER: ok.

MR. BRENNAN: I apologize if it was an improper question, Your Honor.

BY MR. BRENNAN:

Q Understanding that, ma'am, that you never have to impose the death penalty, could you still impose a death penalty?

A Yes.

Q Okay. I know that you have heard this through TV and other sources. But the defendant in this case, Mr. Lindsey, is presumed innocent. As he sits there today, he is an innocent man. Based on the information that you gathered from your coworkers and so on and so forth, do you believe that sitting in that chair today that he is an innocent man?

A I believe that it should be proven. But I don't know.

Q Okay. All right. Last question. If the defendant is found guilty, ma'am, and they go into the sentencing phase and you are on the jury, there is a form that have to be signed by the jurors. It has to be unanimous. It has to be life or death and each juror has to sign their name. If eleven people have signed that form for death and you are the last one, and you know that

if you sign it Mr. Lindsey will be put to death, are you still capable of signing that form?

A I'm not comfortable with that, no.

Q I have nothing further at this time.

THE COURT: Do you have any questions at this time?

MR. BARNETT: Not at this time, Your Honor.

THE COURT: Ma'am, would you step out in the hall just for a second.

MS. FULLER: Sure.

(WHEREUPON, Ms. Fuller exits at approximately 2:46 p.m.)

THE COURT: What is your position, Mr. Brennan?

MR. BRENNAN: I don't believe she is qualified, Your Honor.

MR. BARNETT: We would agree.

THE COURT: All right. Bring her in.

THE BAILIFF: She went to the restroom.

THE COURT: All right. Well, bring us the next juror.

THE BAILIFF: Okay.

THE COURT: Bring us the next juror.

We will take her off. Any objection to me telling her she is not qualified? I will inform her of that ruling after we talk to the next juror.

(WHEREUPON, William Atkins enters at approximately 2:47 p.m.)

THE COURT: Mr. Brennan -- All right. Go ahead.

Have a seat.

Never mind. No problem. Yes, sir. What you got?

WILLIAM ATKINS

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Atkins.

A Yes, sir.

Q How are you?

A Pretty good. A little tired.

Q No kidding. Well, let me ask you some questions. You recall that on Monday we put you under oath?

A Yes, sir.

Q You are still under oath now. You understand that?

A Yes, sir.

Q Have you talked to anybody about this case or anybody talk to you about this case?

A No, sir.

Q Mr. Atkins, you wrote on your, in response to

your questionnaire, I have read all that the newspapers have printed and the TV news shows have had. And in response to the question of whether or not you made up your mind, sort of. You said I think he is guilty.

A Just from the stuff I read about, knowing what I read and saw on TV.

Q So apparently you paid a good bit of attention to it at the time.

A I think I did.

Q If you were on the jury, what I'm going to tell you is your responsibility is it's your responsibility to set aside in your mind anything that you might have read or heard or learned before now. And if you have drawn any conclusions, then you need to set those aside also.

You need to come into this courtroom with an open mind and listen very carefully to the testimony and the evidence and render a verdict based solely on the testimony and evidence that you see and hear in the courtroom. Of course, you would do that in light of the law as I will explain it to you. Could you do that?

A I think so.

Q All right I'm going to ask you some more questions. There aren't any right or wrong answers to these questions. We just want you to be open and honest with us. Tell us how you feel and what you think. Okay?

A Okay.

Q We're going to talk a little bit about a possible penalty phase. That does not mean anything about this case or about this defendant. It simply means that because we might get to a penalty phase, we need to talk to you about some of the issues that will come up if we do.

If you are a juror in this case, you already told me you that could set aside anything you might have heard, accept the law and apply the law as I give it to you and render a verdict based solely on the testimony and evidence that you see and hear in this courtroom. You can do that?

A I think so.

Q Are you confident that you can do that?

A I usually go pretty well with what I see and read. You know, I drew my conclusions from that. If I hear stuff that is contradictory to what I already read or heard, I would go from what I hear in the courtroom.

Q So does that mean that you are able to set aside --

A Yeah, I think I can.

Q -- and not consider the things that you may have read and the conclusions that you may have reached in the past?

A I would hope I could.

Q Well, let's, uh, I would hope you could too. But

sometimes people get really involved in a situation and they might get -- well, they just get really involved in it. And maybe those people can not set aside what they've already learned and set aside the conclusions that they have already reached. Or maybe they are not confident that they can do that.

Are you confident that you can set aside what you learned before now and the conclusions that you reached before now and be a fair and an impartial and open-minded and objective juror and give a fair and impartial trial to both the State and the defendant and render a verdict that considers only what you have seen and heard in this courtroom and not what you read about before. Could you do that?

A Yes, sir.

Q Could you do that?

A Yes, sir.

Q Are you confident that you can do that?

A Yes, sir.

Q You understand in a criminal case the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q Of course, you know this is a murder case.

A Oh, okay.

Q Could you, sir, based on the facts and circumstances that you determine to have been proven and in light of the law as I will give it to you, render a verdict of either guilty or not guilty depending on whether you believe the State has met its burden of proof?

A Yes, I could do that.

Q You can do that? If that happens and if you are on the jury, if the verdict is guilty and you are on the jury, then we move into the second phase or the penalty phase or the sentencing phase of this trial. Several things are going to come up in that phase that I'm going to talk to you about.

Aggravating circumstances are facts, incidents or details of an occurrence that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the enormity of the crime of murder and add to the injury resulting from the crime.

Mitigating circumstances, on the other hand, are facts, incidents or details of an occurrence that the State has declared to lessen the severity of the crime. They serve to extenuate or to reduce the degree of moral culpability or responsibility for the crime.

If you are a juror in the penalty phase of a death penalty case, you will have two options as to what your

verdict could be. Your verdict can be either the life sentence or it could be the death penalty. Could you, depending on the facts and circumstances that you find to exist and considering any aggravating and mitigating circumstances and considering the law as I will give it to you, could you vote to return a verdict for a life sentence?

A Yeah, I can do that.

Q Could you vote to return a verdict for the death penalty?

A I don't think I could do that.

Q You don't think you could do it.

A No, sir. I never have believed in the death penalty.

Q Are you the kind of juror that no matter what the circumstances of the crime would always vote to impose a life sentence in the event of a murder?

A Yes, sir.

Q You don't see any circumstance in which you could impose a death penalty?

A No, I don't think so.

THE COURT: All right. Does either side want to voir dire this juror?

MR. BARTOSH: No, sir.

MR. BARNETT: No, sir.

THE COURT: Mr. Atkins, we appreciate you coming. We won't need your service in this case. You are free to go.

And bring in --

Wait a minute. What did we decide about her?

MR. BRENNAN: She was excused, but she apparently had to go to the restroom.

MR. BARNETT: Ms. Fuller? She could not answer the question about signing the form.

MR. GOWDY: By consent of both parties, she is disqualified.

MR. BARTOSH: She is disqualified, yes.

THE COURT: Bring her in.

Very quick recognition of where I am, Mr. Gowdy. Nowhere.

(WHEREUPON, Ms. Fuller enters at approximately 2:55 p.m.)

THE COURT: Ms. Fuller, we will not be needing your services in this case. We appreciate you coming and you're free to go.

MS. FULLER: Okay. Thank you.

(WHEREUPON, Ms. Fuller exits at approximately 2:56 p.m.)

THE COURT: Can you bring me a juror and arrange for me to have another one of those caffeine bombs

brought to me?

THE BAILIFF: Yes, sir.

(WHEREUPON, Marvin Smith, Juror number 255, enters at approximately 2:56 p.m.)

MARVIN SMITH

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Smith?

A Yes, sir.

Q How are you?

A All right.

Q Good. You recall that on Monday morning we put you under oath?

A Yes, sir.

Q You understand you are still under oath now?

A Yes, sir.

Q Since Monday afternoon when you left us, has anyone talked to you about this case or have you talked to anybody about this case?

A No, sir.

Q Have you seen or read or heard anything about this case?

A No, sir.

Q We're going to ask you some questions now. And I

hope we don't pry too deep into your private life. But we've got to ask you these questions.

A Okay.

Q The questions don't have right or wrong answers. We just want you to be open and honest with us. Tell us what you think and how you feel.

A Okay.

Q We're going to talk about the possibility of a penalty phase. But that does not mean anything about this case or about this defendant. It simply means that because we might get to that phase, we need to ask you some questions about some issues that will come up so we know how you think and how you feel about those issues.

A Okay.

Q Could you, if you were a juror in this case accept and apply the law as I will give it to you and ignore anything that you might have heard or read or seen before you came into this trial and render a verdict that is based solely on the testimony and evidence that you see and hear in this courtroom?

A Yes, sir.

Q You realize that in a criminal case, the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes.

Q And you do know that this is a murder case?

A Yes.

Q Could you, depending on the facts and circumstances that you find to have been proven and in light of the law as I will give it to you, could you return a verdict of either guilty or not guilty depending on whether you believe the State has met its burden of proof?

A Yes, sir.

Q Now, if the jury finds the defendant guilty, we're going to get to the penalty phase. I'm going to talk to you now about some issues that will come up. Aggravating circumstances are facts, incidents or details of occurrences that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the enormity of the crime of murder or add to the injury resulting from the crime.

Mitigating circumstances, on the other hand, are facts, incidents or occurrences that the State of South Carolina has declared to lessen the severity of the crime of murder. And they serve to extenuate or to reduce the moral culpability or the responsibility of the crime.

If you are a juror in the penalty phase of a death penalty trial, you would have two options is what the verdict could be. The verdict could be a life sentence or

it could be the death penalty. Could you, depending on the circumstances and facts that you find to exist and considering any aggravating or mitigating circumstances and considering the law that I will give to you, could you return a verdict or vote to return a verdict for a life sentence?

A Yes.

Q Could you vote to return a verdict for a death penalty?

A Yes, sir.

Q Now, if I -- if you are on this jury and if I sequester the jury and require you to stay with us in a hotel for five or six days away from your family, is that going to impose a tremendous burden on you?

A No, sir.

Q Have you had a chance to go over that witness list 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 I know Raymond Gist.

Q Raymond Gist?

A Yes.

Q Tell me how you know him please.
A One of his cousins I used to go up to his house with one of his cousins.
Q You used to go up to his house with one of his cousins?
A Yes, when he was living with his mother.
Q How long has it been since you did that?
A It has been about 15 years or something.
Q Would the fact that you know Mr. Gist 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, sir.
Q Do you know of any reason why you cannot give both 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 minute.

EXAMINATION

BY MR. BRENNAN:

Q Good afternoon, Mr. Smith.
A Good afternoon.
Q My name is Doug Brennan. I'm an attorney from

here in Spartanburg. Myself, Mr. Bartosh and Ms. Quimby have the opportunity to represent Mr. Lindsey in this matter. Do you have any prior knowledge concerning this case whatsoever?

A Not prior knowledge.

Q Do you have any knowledge at all?

A I really don't know. I really don't read that part of the paper. They've been talking about that stuff at work though.

Q You heard about it at work?

A I probably did.

Q Can you be a little bit more specific with what you might have heard.

A This the one that, is this the case that is supposed to be shot at the police station?

Q You heard that at work?

A Yeah.

Q Based on what you've heard at work, have you formed an opinion as to guilt or innocence on this matter?

A No, sir.

Q Would you be to set aside the information that you heard at work and render a fair verdict?

A Yes, sir.

Q Okay. On Monday during the questions where you were asked to stand up, you stood up when the question was

asked if you or someone you know been arrested and charged with assault and battery, criminal domestic violence, assault with a pistol or a pistol charge, do you remember that question?

A Yes.

Q You stood up?

A Yes.

Q Who was it that was arrested and charged with one of those crimes?

A Uh, my cousin.

Q I'm sorry. What was the crime specifically?

A He stabbed somebody.

Q Okay, all right. Was your cousin prosecuted? In other words, did he go to jail or was there a sentence rendered?

A No, he did not go to jail.

Q All right. As a result of that, were you ever asked to make a statement to law enforcement at any time or anything like that? Were you a witness to that case?

A No, sir.

Q Another question was has anybody in your family been arrested by the Spartanburg Sheriff's Department or the Inman Police Department. You stood up for that?

A Yes, sir.

Q Was that the same incident or was there others?

A That's the same incident.

Q I wish I could help you there. There is a fly bothering him.

THE COURT: I'm not much of a judge, but I'm no flycatcher at all.

BY MR. BRENNAN:

Q Sir, again, on the standup questions, the question was has anyone in your family been a victim of a CDV or an assault or those other charges. And you stood up for that.

A Yes.

Q Who in your family was a victim of one of those crimes?

A One of my cousins stabbed my other cousin.

Q The incident got all of it.

A Yes.

Q How long ago was that incident?

A Maybe four years ago. Three to four years ago.

Q Are you able to put that incident aside and not let that affect your decision based on evidence that's presented here in court?

A Yes.

Q All right. I don't mean to be confusing. But on your questionnaire, you put for question number 16 that somebody cut somebody. Is that the same incident?

A Yes, it's the same incident.

Q Thank you very much. Sir, it is said that there are three types of jurors. If the jury finds the defendant guilty of, in this case, murder, you then go to the sentencing phase. There is a group of jurors that, if they find him guilty, will always impose a life sentence. No matter what, it's life.

Then there's a group of jurors on the other side that if they find him guilty will always impose a death sentence. Then there's a group in the middle that says I'm going to wait to hear what is told from the witness stand and whatever evidence is presented. And then I'm going to make my decision on whether it should be life or death. Which kind of juror are you?

A I'll wait to hear the facts of the case and stuff.

Q All right. My last question would be if we are in the sentencing phase and you are in fact on the jury, there is a form. It is the sentencing form. It requires all twelve jurors' signatures either for life or for death. The decision must be unanimous. If that form was passed to you and all eleven jurors other than you have signed to sentence Mr. Lindsey to death, can you, knowing that once you sign your name that he would be sentenced to death, can you still sign that form?

A If the facts prove that it is that, I will.

Q Thank you for your time, sir.

MR. GOWDY: May it please the Court, Your Honor?

THE COURT: Yes, sir.

EXAMINATION

BY MR. GOWDY:

Q Good afternoon, Mr. Smith. How are you doing?

A Fine.

Q My name is Trey Gowdy. I'm with the Solicitor's office. That is Donnie Willingham to your left. That's Barry Barnett in the middle. Together, the three of us are prosecuting this case on behalf of the State. If that fly shows up again, I'm going to swat it with this manilla folder, all right?

A All right.

Q I want to first thank you for answering the Court's questions, Mr. Brennan's questions and especially for filling out the voir dire cause I know it asks questions that we don't ordinarily ask people we don't know too terribly well. They can be personal. It can be intrusive. That is not my intention. But I think you can appreciate the severity of this case and the fact that both sides want jurors that can be open-minded and fair.

A Yes, sir.

Q And from what I heard you tell the Court so far, you fall into that category. Let me ask you a couple more questions. I noticed on your questionnaire that you had previous service on a jury.

A Yes.

Q I believe, if I had not read it incorrectly, it was a criminal jury?

A Yes.

Q I believe again, if my eyes aren't deceiving me, that the verdict might have been not guilty.

A Yes, sir.

Q Can you tell me what the basis of the not guilty verdict was? Can you tell me a little something about the case and why the jury reached the conclusion that it was not guilty?

A It was domestic. The father hit the child.

Q Domestic violence.

A Domestic violence. Okay. But they didn't have no, the little girl didn't have any injuries. They did not show any injuries. And there was really no proof on what he had done.

Q So the prosecution did not prove the case?

A Right.

Q And y'all voted not guilty because that's what you were supposed to do?

A Yes.

Q Do you recall if that case was upstairs in one of these courtrooms or downstairs in magistrate court?

A It was in Pacolet.

Q Pacolet Municipal Court?

A Yes.

Q So there probably was not a prosecutor. It was probably a police officer who was prosecuting the case against an individual.

A Yes.

Q Is that right?

A Yes.

Q You live in Pacolet?

A Yes.

Q You know the chief there, Tim Schultz?

A Yes.

Q There goes that fly again.

A Yeah.

Q I'm trying to get him without getting you. There. We'll get him to go over there with Mr. Barnett or Mr. Willingham for a second. What is the basis of your opinion or belief on capital punishment or the death penalty?

A Basically, if somebody did it out of malicious or somebody who can't defend themselves, I believe that's --

Q It could be the appropriate punishment?

A Yes.

Q And again I know you know this, Mr. Smith. But I have got to ask you anyway as my responsibility as a Solicitor. Sometimes we sit around the dinner table and talk about capital punishment or in classrooms, we might discuss it. But this is not a theoretic or academic exercise. This is real life. At some point, a prosecutor may stand up and ask you to put a another human being to death.

A Yes.

Q Are you satisfied that if you are convinced that is the right thing to do that you can do that?

A Yes, I believe I can.

Q Okay. When was the last time, and this was a kind of crazy question. If you can't answer it, I'm not sure I can answer it if you asked me. But when was the last time you recall having discussion with a friend or family member or about the death penalty or about capital punishment?

A We may have talked about it at work a couple of times.

Q Where do you work? I know you put that down there.

A Honeywell.

Q What do you at Honeywell?
A Make the shell for a spark plug.
Q You lived in Pacolet all your life?
A Yes, sir.
Q You went to school there?
A Yes, sir.
Q What year did you finish?
A '84.
Q A little younger than me. Last question. And I'm going to start off again by telling you that I may very well be wrong. My experience with computers has been either I don't know how to use them or the information doesn't always spit out right. But I believe that unless they are wrong, way back a long time ago, you might have either pleaded guilty or paid a fine in connection to a relatively minor offense. Maybe breach of peace or fighting or something like that. I may have the wrong gentleman. It looks like it maybe 1987.
A In Union County?
Q You know what? Yes, Union County.
A Yes, sir.
Q It looks to me like that was simply taken care of with about $100 dollar fine, is that correct?
A Yes, sir.
Q I'm not asking you about it to go into that. I

want to make sure that you during that part of your life, which again is coming up on 20 years ago, that nothing happened from the law enforcement or prosecutorial standpoint that you thought was unfair. In other words, you feel like you were treated fairly during that process.

A Yes, sir.

A You believe you were?

A Yes, sir.

Q Final question. If I hear you right, you're telling me that if you were a juror, you will sit in this courtroom and you will listen to the evidence that came from that witness stand or the exhibits. And if you thought he was guilty, you would vote guilty. And if you thought that I have not proven to you he was guilty, you will vote not guilty?

A Yes.

Q And if we got to that next stage, if you thought death was the right punishment for the crime that he committed and the aggravating circumstance that you would vote for death.

A Yes, sir.

Q And if you thought life was appropriate, you would vote for life?

A Yes, sir.

Q You could be fair to both sides?

A Yes, sir.

Q Mr. Smith, I appreciate you for answering these personal questions. And I appreciate your time.

MR. BRENNAN: Your Honor, may I have a follow up question?

THE COURT: Yes, sir.

EXAMINATION

BY MR. BRENNAN:

Q Mr. Smith, you said that if you believe that it was malicious, you could vote for the death penalty.

A Yes.

Q Would you explain that to me, sir.

A Well, ain't got no, didn't have no self-defense or just walk up and kill somebody. Something like that.

Q So, sir, if there was enough circumstances, you could vote for the death penalty, is that correct?

A Yes, sir.

Q But not in every instance, would you vote for the death penalty?

A I can't say. I probably would.

Q So if it is a murder, you would vote for the death penalty?

A Not any murder. Not any murder.

MR. BRENNAN: One second, Your Honor.

BY MR. BRENNAN:

Q Sir, if it was a murder and there was no self-defense and it was in your opinion malicious, would you vote for a death penalty every time?

A Yes.

MR. BRENNAN: Thank you, Your Honor.

MR. GOWDY: Your Honor, can I?

EXAMINATION

BY MR. GOWDY:

Q Mr. Smith, I hate to have to keep standing up.

A Okay.

Q But I notice you go to New Jerusaleum Baptist Church or Jerusaleum Baptist Church?

A Jerusaleum Baptist Church.

Q Jerusaleum Baptist Church. I'm sorry. I want to see if you agree with this proposition. All killings are not the same.

A No.

Q You agree with that?

A Yes, sir.

Q In the Old Testament, Moses killed a man. He did not get the death penalty. David killed a man. He did not get the death penalty.

MR. BARTOSH: Your Honor, we would object to that as being improper argument.

MR. GOWDY: I'm not arguing. I'm asking a

question.

THE COURT: I will direct you to, uh --

Mr. Smith, let me get you to step in the hall just a second please.

MR. SMITH: Okay.

(WHEREUPON, Mr. Smith exits at approximately 3:14 p.m.)

THE COURT: All right. What is the basis of the objection?

MR. BARTOSH: I used the wrong word argument. But he is basing things, he is engaging in a religious colloquy with Mr. Smith.

THE COURT: Okay.

MR. BARTOSH: And I do not believe that that is proper.

THE COURT: You know, the reason you used the wrong word argument is because you're probably in a wrong chapter of that little blue book over there. You might be referring in your mind to closing argument cases. Let's don't get into any kind of theological exercise.

But the use of examples to illustrate the question that all killings are not the same, I don't really see any objection to that. I don't really see any problem with that. I don't want a sermon. And I

don't think I'm fixing to hear one.

MR. GOWDY: Frankly, Your Honor, those are the only two stories I can remember from the Bible.

THE COURT: I don't believe that for a minute.

MR. GOWDY: I have exhausted my knowledge. But my point as the Court correctly noted was to see if I can get him to agree with me that all killings are not the same. Now that I have exhausted my knowledge, I was going to move on to another question.

THE COURT: You and I both learned about legal gotcha from the same source.

MR. GOWDY: Yes, sir.

THE COURT: That is, y'all are, and I don't find fault in it. But this what is going on and this why, this is what makes it fun for me. Y'all are both sitting back and waiting on somebody to give an answer that you can jump on with all four feet and just blah, blah, blah, raise cane with them and beat the tar out of the juror. And then come up here and say that juror is disqualified because they happened to say the wrong thing.

So Mr. Gowdy asked a question, what is your view on the death penalty. He said if it's malicious, they ought to get the death penalty. That's about all we've been doing for the last ten minutes is trying to

either cover that up a little bit or try to bring it back up into the fore of my mind. I am satisfied. But I'm ready for the, uh, y'all can go ahead and complete this. And then I will rule.

MR. GOWDY: Yes, sir.

THE COURT: Bring him out.

(WHEREUPON, Mr. Smith enters at approximately 3:18 p.m.)

THE COURT: All right. Mr. Gowdy.

MR. GOWDY: May it please the Court.

BY MR. GOWDY:

Q Mr. Smith, thank you for your patience. You used the word "malicious". If the judge were to instruct you on the definition of malice, the legal definition of malice, would you accept that definition?

A Yes.

Q Even if it was different from what your version of malicious what was?

A Yes, sir.

Q And I think you have already agreed with the proposition that all killings are not the same?

A Yes, sir.

Q I'm going to ask you again because I think I had the answer and then Mr. Brennon stood up and I wasn't sure anymore. If you think an intentional killing warrants the

death penalty, you will vote for death, right?

A Yes

Q If you think an intentional killing warrants life based on any reason or no reason, you will vote for life, is that fair?

A Yes, sir.

Q Thank you, Mr. Smith

THE COURT: Let me ask you a couple questions, Mr. Smith. And I do that because that because this word "malicious" has come up. Okay?

MR. SMITH: Okay.

THE COURT: If you are on the jury, you would learn that the term the term "malice" is actually an element of the crime of murder. So killing cannot be murder unless the State has proven the existence of malice beyond a reasonable doubt. So in that sense, somebody might say that all murders are malicious using the definition of malice to make it a murder. A murder is a unlawful killing with malice aforethought.

Now what we want to make sure, what I want to make sure is that you are not telling me that every time somebody is found guilty of murder because it requires malice that you would impose the death penalty, is that true?

MR. SMITH: No, sir.

THE COURT: All right. So if somebody is found guilty of murder understanding that malice is an element of murder then you would sit as a juror during the penalty phase of that trial and be open-minded and consider whether you should impose a life sentence or the death penalty?

MR. SMITH: Yes, sir.

THE COURT: All right. Either side want to follow up?

MR. GOWDY: Nothing from the State, Your Honor.

MR. BRENNAN: I have one question, Your Honor.

THE COURT: All right.

EXAMINATION

BY MR. BRENNAN:

Q Sir, if it is a killing where there is no self-defense, would you always impose the death penalty?

A No, sir.

Q That's all. Thank you.

THE COURT: Mr. Smith, you are a qualified juror in this case. I am going to ask you to use that telephone number that you were given Monday morning. Stay in touch with us by calling that number. And some time late this afternoon or tonight, we will put a message on there that would give you

some indication of what time we are going to need you tomorrow.

Do not discuss this case with anyone. Do not allow anyone to discuss the case with you. When you come hopefully tomorrow, be prepared to stay for five or six days and be ready to have all of your stuff packed and, uh,.to come on up here. All right?

MR. SMITH: Okay.

THE COURT: We'll see you hopefully tomorrow.

MR. SMITH: All right.

(WHEREUPON, Mr. Smith exits at approximately 3:21 p.m.)

(WHEREUPON, James Cottrell, Juror number 59, enters at approximately 3:21 p.m.)

JAMES COTTRELL

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Mr. Cottrell.

A Good afternoon.

Q You recall that we put you under oath yesterday, I mean, Monday morning?

A Yes, sir.

Q And you understand you are still under oath right now?

A Yes, sir.

Q Have you talked to anybody about this case or anybody talked to you about this case since you left on Monday afternoon?

A No, sir.

Q Have you learned or heard or learned or seen anything since you heard about this case on Monday afternoon?

A No, sir.

Q We're going to ask you some questions right now. I'm going to start off. And the lawyer's are probably going to follow-up. And then, and these are going to be a little bit personal questions. We don't want to get too far in your private life but we do have to ask these questions. We want you to be open and honest with us tell us what you think and tell us how you feel.

We're going to talk a little bit about a possible penalty phase. But because we're doing that, that does not mean anything about this case or about this defendant. It simply means that we realize we might get into a penalty phase. And we want to see how you feel about some of the issues that might come up.

If you are a juror in this case, can you accept and apply the law precisely as I will give it to you? Can you set aside anything that you might have heard or seen before

the trial began and render a verdict that is based on the testimony and the evidence that you hear and see in this courtroom?

A I do not know.

Q Why not you be able to do that?

A Until I face the problem, I don't know how I will react to it.

Q Do you know anything about this case?

A I do not know. I probably heard something. But I don't remember any names. I forget names.

Q So if you have heard something, you've forgotten it.

A I probably heard about the case and will remember something if it comes up. But I can not remember names.

Q As you sit here now, you don't remember anything about this case?

A Huh-uh (negative).

Q Now what I want to do is make sure you understand that your responsibility as a juror would be to come in here with an open mind and to set aside anything that you might have learned about the case beforehand and listen to the evidence and observe the witnesses and judge their credibility, listen to the arguments of the lawyers, listen to me tell you what the law is and then render a verdict that is based only on what you heard and what you saw in

the courtroom, not based on something else. Could you do that?

A As I said, I'm not sure.

Q What else would you base it on?

A Until I face the problem, I can't be sure. I can't give a definite answer until I know what I'm faced with.

Q All right. Okay. When you face the problem, and let's just say you face it in this courtroom, okay?

A (Nods head affirmatively.)

Q Are you going to make your decision or make your judgment based on what you see when you are in here facing the problem?

A I have a tendency to get overemotional.

Q So you have doubts as to whether or not you can be a fair and impartial juror?

A Yes.

THE COURT: All right. Does either side want to voir dire this juror?

MR. BARTOSH: No.

MR. GOWDY: Not from the State.

THE COURT: Mr. Cottrell, I don't believe we'll need your services. And you are free to go.

MR. COTTRELL: All right, sir.

MR. GOWDY: Your Honor, unless I have

transcribed something I think Ms. Snite may be next.

MR. BARTOSH: Yes.

THE COURT: Yes, sir.

MR. GOWDY: At this point, if the Court will allow me, I would like to pass up a letter from her counselor and from this physician that speak of her inability to handle this kind of a situation. And at the risk of speaking out of turn or saying something improper, Mr. Brennan and I --

THE COURT: How did you get this stuff?

MR. GOWDY: Gossett gave it to me. She is not living at home. She's living with a friend of Solicitor Gossett's named Paula Pickens.

THE COURT: Whose son is her boyfriend according to what she told us on Monday.

MR. GOWDY: Okay. I did not go that far with the Solicitor. But there are genuine concerns about her ability to handle this. Mr. Brennan and I, I believe, have agreed to disqualify her. Or not disqualify her, but to exempt her based on those letters. We don't want to do so if the Court has a contrary opinion.

THE COURT: Is that what you --

MR. BRENNAN: That is correct, Your Honor.

THE COURT: All right. I will hand you -- let's

go ahead and make these letters part of the record. And then we will -- it is a letter May 18, 2004 from David Cox and May 18, 2004 from Edward Cathgard. Both are doctors.

Bring her in.

(WHEREUPON, Heather Snite, Juror number 261, enters at approximately 3:25 p.m.)

THE COURT: Ms. Snite.

MS. SNIKE: Uh-huh (affirmative).

THE COURT: All right. Let me take a look at it.

(WHEREUPON, the Court reviewed the documents.)

THE COURT: All right, Ms. Snite.

MS. SNIKE: Yes, sir.

THE COURT: Based on what you have given me, I'm going to excuse you as a juror in this case. Okay?

MS. SNIKE: Thank you.

THE COURT: You are welcome. And good luck with your moving. I know you're moving this week, right?

MS. SNIKE: Yes, sir.

THE COURT: Good luck to you. Here, you can have these back.

MS. SNIKE: Thank you.

THE COURT: Bring us a juror.

THE CLERK: Mrs. Bedillion is in the hospital.

She is not here.

THE COURT: I did not know that. They say next juror, Laurie Bedillion is in the hospital.

How did you get that information?

THE CLERK: Her husband called into the Clerk of Court.

THE COURT: Did somebody tell me that? Seem like she did tell me that.

Bailiff, go check with -- Ashley is the one that told us that. Just tell her we need some type of documentation. Not necessarily right this second. But we will need something. All right. Then, bring us Mr. Dawson.

(WHEREUPON, Mr. Michael Dawson, Juror number 68, enters at approximately 3:29 p.m.)

MICHAEL DAWSON

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Mr. Dawson.

A How are you today?

Q I'm good. How are you?

A Fine.

Q You recall that on Monday morning, we put you under oath?

A Yes, sir.

Q And you are still under oath right now. Do you understand that?

A Yes, sir.

Q Since Monday afternoon when you left us, have you talked to anybody about this case or has anyone talked to you about this case?

A No, sir.

Q Have you read or seen or heard anything about this case?

A No, sir.

Q We are going to ask you some questions now. We hope these questions don't go too deeply into your private life but we have to ask them. We just want you to be open and honest with us and to tell us how you feel and what you think.

A Okay.

Q We are going to talk about a possible sentencing phase. That is not mean anything about this defendant or about this case. It simply means that because we might get to that phase. We need to know how you think and feel about some issues that will come up if we do.

A Okay.

Q If you are a juror in this case and if you, I am sorry. If you are a juror in this case, would you, could

you accept and apply the law precisely as I would give it to you, set aside anything that you might have known about or heard before you came here and render a verdict that is based solely on the testimony and evidence that you hear and see in this courtroom?

A Yes, sir.

Q You understand in a criminal case like this one, the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q You know this is a murder case?

A Yes.

Q Could you, based on the facts and circumstances that you find to have been proven and in light of the law as I will give it to you, could you vote for a guilty or not guilty verdict depending on whether you think the State has met its burden of proof?

A Yes, sir.

Q If the jury finds the defendant guilty murder, we will get into the penalty phase. There are some issues that will come up in the penalty phase that I would like to discuss with you. Aggravating circumstances are facts, incidents and details of occurrences that the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase

the enormity of the crime and add to the injury that results from the crime.

Mitigating circumstances, on the other hand, are facts incidents and circumstances that the State of South Carolina has declared to lessen the severity of the crime of murder. They serve to extenuate or to reduce the moral culpability or responsibility for the crime.

If you are a juror in a death penalty case in the penalty phase, you will have two options as to what you verdict could be. One option is for a life sentence. And the other option is for a death penalty. Could you, based on all of the facts and circumstances that you find to exist, considering any aggravating or mitigating circumstances and considering the law as I will give it to you, could you vote to impose a life sentence?

A Yes, sir.

Q Could you vote to impose the death penalty?

A Yes, sir.

Q If I were to sequester this jury and you are on the jury and you are required to stay into the hotel for five or six days away from your family and your home, would that impose a terrible burden on you?

A Slightly yes, sir.

Q Could you do it?

A Could if I had to.

Q Well, that is a possibility at this point. If you don't think that you can do that, you need to tell me at.

A I would just rather not. I am self-employed. I do work most of the time. I work six or seven days a week. So yes, it would impose a burden but it can be done.

Q Have you went over the witness list that I gave you earlier?

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 Not that I can recognize by name. No, sir.

Q Do you know of any reason why you could not give both the State and the defendant a fair and impartial trial?

A No, sir.

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

EXAMINATION

BY MR. BARTOSH:

Q Good afternoon, Mr. Dawson. I'm Mike Bartosh. I'm a lawyer here in Spartanburg. Doug Brennan, Karen

Quimby and I are representing Marion Lindsey in this situation. There are a couple of questions I got from your brochure or from your questionnaire that you filled out before you came into court. On your brochure, you say you don't know anything about the case?

A No, sir.

Q We have it in our notes that on Monday when people were asked to stand if they knew anything about the case, that you did.

A The only thing I remember is seeing it on the news two years ago. I remember something vaguely, but I have no idea of the details.

Q So you don't remember any of the details?

A No. I heard of it.

Q As to what happened, you have no idea of that?

A No, there's so much on the news. It's hard to keep up with it.

Q Okay. Your apartment was broken into?

A Yes, sir.

Q Did you go to court over that?

A Yes, sir.

Q You testified?

A Yes.

Q Was the person convicted?

A Yes.

Q Okay. Now just so you understand how this thing works and the judge has already gone over it with you. But this is a two-part process. Depending on what happens in the first part, we don't know whether or not we're going to go to the second. The first part of it is that it's a regular trial. The State presents its evidence to twelve folks sitting there. They have to decide whether the State has carried its burden beyond a reasonable doubt and proven Marion guilty of murder beyond a reasonable doubt to all twelve folks.

If they have not carried their burden, then we all go home. If they have carried their burden, then we move on to a second phase which is penalty or sentencing case. What that is is twelve folks on the jury sit and listen to two types of evidence. They will hear evidence from the State of aggravating circumstances which the State believes makes this a more serious crime. And then, of course, they are trying to convince a jury that the death penalty is appropriate.

And what you will hear from us is some mitigating circumstances which would tend to lessen the severity of the crime. Of course, we hoping to convince all twelve folks for a life sentence. The death penalty is never mandatory in South Carolina. There's always the option of life. So having said all of that, could you sit, first of

all, and listen to the first part of it and be fair to both sides and render what you consider to be a just verdict?

A Sure.

Q Of course, if we go to the second phase, would you be able to listen to both sides, be fair about it, give each side an opportunity and then decide based upon what you hear decide whether death is appropriate or whether life is appropriate?

A Sure

Q You understand if it is life, it is life. It is life without parole. Mr. Lindsey will die at the Department of Corrections if he is found guilty and receives life.

A I don't agree with life in prison. I would rather the death penalty because I think it is a waste of tax payer's money.

Q So are you saying that you would always give the death penalty?

A Yes, sir, instead of life in prison. To me, it's the same difference.

Q You can't think of any circumstance under which you would give the --

A It is the same.

Q Give life.

A Life in prison or the death penalty, he's going

to die in jail or not.

MR. BARTOSH: That's all I have, Your Honor.

MR. BARNETT: May I have a follow up question?

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q My name is Barry Barnett. Along with Donnie Willingham and Trey Gowdy, we will be representing the State in this case. Now you listened to the judge here. Would you listen to the judge's instructions concerning the case?

A Yes.

Q You realize life without parole and the death penalty would be an option?

A Yes.

Q Would you look at those mitigating factors as well as aggravating factors to make a determination of which would be the most appropriate sentence in that case?

A Sure.

Q Would you agree with me that all murderers, all of them do not deserve the death penalty and not all deserve the life sentence?

A I would agree.

Q And would you look at the evidence and evidence based off this case on what you saw in court concerning the

guilt phase and we've got the sentencing phase, look at both sides and listen to both sides?

A Sure.

Q And would you weigh -- if you thought life without parole was a fair sentence in that case, is that the sentence you would give?

A I would rather not. I would rather the death penalty. Life without parole is paying for 40 years worth of taxpayers money.

Q But you understand --

A And --

Q I'm sorry.

A Go ahead.

Q You understand that those are the two sentences that are available?

A Yes, sir.

Q And the judge will instruct you on the aggravating circumstance as well as mitigating circumstances?

A Yes, sir.

Q And you understand that those two options are available and those two options will be the two that you could take, I mean the two that the jury would take a look at?

A Yes, sir.

Q And if you think that the death penalty was not the one, you would not be looking at the cost or benefits or anything like that. You would be looking at those two sentences?

A Right.

Q Is that what you would consider when you listen to the judge and would consider this case?

A Yes, sir.

Q And you realize the sentence would be sentence all twelve of you agree on?

A Yes, sir.

Q And if all twelve of you agreed on life, would you give a life without parole sentence?

A Yes, sir. If we all agree, yes, sir.

Q And if all twelve agreed on the death sentence, would you give the death sentence?

A Yes, sir.

Q And you would listen to the judge's instructions and would you follow those instructions?

A Yes, sir.

Q And based off that, would you still be able to give either sentence after you listen to all the evidence and talked to the other jurors?

A Yes, sir.

MR. BARNETT: One moment, Your Honor, please.

THE COURT: Mr. Dawson, while they are conferring, let me mention a couple of things to you and ask you a question or two. You mentioned that you had some concerns about whether a life sentence might be a waste of money. Now let me take that off of your plate. You as a businessman and perhaps a family man and a prospective juror in this case, you have got a good bit to concern yourself with. You do not need to concern yourself with how much it cost to put somebody in prison for the rest of their life.

MR. DAWSON: I understand that.

THE COURT: Just like you do not need to concern yourself with how much it might cost to give somebody the death penalty.

MR. DAWSON: Yes, sir.

THE COURT: As a member of the jury, that is none of your business. You, as a member of the jury, would simply be directed to decide which is the appropriate punishment.

MR. DAWSON: Yes, sir.

THE COURT: It will be up to other departments of government --

MR. DAWSON: I understand.

THE COURT: -- to decide about cost and that kind of stuff.

MR. DAWSON: I understand that.

THE COURT: Can you accept that?

MR. DAWSON: Yes, sir.

THE COURT: If we take this question of the cost of a life sentence off the table you and put you back to where you are sitting in a jury room and you've listened to all the testimony and the evidence and you've listened to me instruct you on the law and you listen to the lawyers argue to you as to which way you should go, are you open minded to giving either a life sentence or a death penalty depending on which one you think is appropriate?

MR. DAWSON: Yes, sir.

THE COURT: Okay. All right. Any follow up from either side?

MR. BARTOSH: Yes, sir.

EXAMINATION

BY MR. BARTOSH:

Q Now, Mr. Dawson, I may be mistaken but I thought I heard you say in the beginning when I was talking to you that you will always give the death penalty?

A That may be what I said but I also just agreed that I could be open-minded.

Q Well, what brought about that changed?

A Well, like you said, if you take the cost and

everything out, you're just weighing one sentence versus the other. I could be open-minded. I would be. I would listen.

Q And just totally put the cost out of your mind?

A Sure.

Q How long have you thought about the death penalty? How long have you thought about it?

A I don't understand your question.

Q You obviously have thought about it?

A Sure.

Q Has the cost always been a concern?

A Yeah. I mean, to me, yeah. It doesn't make any sense to me to have someone sit there all that time.

Q Okay. And you realize, of course, if it's life, they're going to sit there all that time?

A Sure.

Q And you will be able to put aside what I took to be a fairly strongly view that --

MR. BARNETT: Objection, Your Honor. I think we are getting into personalities here. If you would like to as a question or whatever, I think it is improper at this point to interject his personal opinion.

THE COURT: I sustain the objection as to you telling him what your opinion is as to what he said.

You can ask him what him said and clarify that. But don't give him your opinion about what he said.

BY MR. BARTOSH:

Q You said from what I understood that you would always give the death penalty?

A That is what I said.

Q But you don't believe that anymore?

A No, sir. I can be open minded.

Q Okay.

MR. BARNETT: No further questions of Mr. Dawson.

THE COURT: Mr. Dawson, this is very important. And I know that you have been straightforward with us. And we appreciate that. You did make a comment that you were concerned about the cost of putting somebody in jail for life and that being a burden on the State as being too much, too expensive. And I told you and that's not really -- when I said that's none of your business, of course, that is your business as a taxpayer and as a citizen. You have the perfect right to think about that, to have an opinion about that and to express the opinion.

So let me clarify that. When you are sitting in a jury box, your limitation is to consider the evidence in the courtroom, the evidence that I have

allowed in. And then you use your life experiences and your opinions to evaluate that evidence. There's not going to be any evidence about how expensive it is to put somebody in jail for life. There's not going to be any evidence about how expensive it is to give somebody the death penalty. So in your role as a juror, you should not consider that. And you told me that you accept that?

MR. DAWSON: I understand. Yes, sir.

THE COURT: So you tell me, okay, did we just get sidetracked a little bit on the question of putting somebody in jail or is this really going to weigh in your deliberations if you are on this jury?

MR. DAWSON: No, I think I can be open minded about it.

THE COURT: Do you think that you'll be able to go through the deliberation process as a member of this jury and deliberate and discuss and decide with the other members of the jury what should be the appropriate penalty and that you will not let your view on cost enter into those deliberations or enter into your thinking? Do you honestly think that?

MR. DAWSON: Yes, sir.

THE COURT: I'm going to let you step out in the hall in just a second. I will be right back with you.

(WHEREUPON, Mr. Dawson exits at approximately 3:47 p.m.)

MR. BARTOSH: Your Honor, I don't believe he is qualified. When we were discussing the life and the death, I made no mention of cost. He brought it up. So obviously he had been thinking about a long time. And it is a strongly held belief of his that it's better to put folks to death than it is to give them life. For him to go from the strongly held belief to well I can be fair, I can think about it in about two or three minutes I think is incredible.

I think he has recognized that this is a way to get on the jury. And then once I get on the jury, then I can give him death. I just don't -- I think that it boggles the imagination to think that a man who would spontaneously say I don't want to keep him in prison because it costs too much money, I would give him the death penalty every time, to go from that opinion over in about three minutes.

And I respect Mr. Barnett's ability as an advocate and as a persuader, but I just don't believe that he could convince him that quickly that, no, I won't consider cost. He obviously has been considering cost. He has been considering cost for a while because he brought it up. Your Honor, he was

pretty swift about the value of human life. You know, why should we pay all that money to keep somebody up when we can just kill them. I don't think he is qualified, Your Honor.

THE COURT: Mr. Barnett.

MR. BARNETT: Your Honor, I would argue that he is qualified. In State versus Ricky George, it's a 476 S.E. 903, 1996, they held a juror was properly qualified even though he initially thought that he could not vote for life if he found an aggravating circumstance. Your Honor, basically, he said he would listen to the Court. And that's when I went back and talked to him.

He could have initially said, no, I'm going to vote death penalty period. No, that's not what he did. Your Honor, Mr. Bartosh's questions which he asked him questions concerning that, he made the comment about cost. Once he was explained that, then he understood that that was not their realm. Their realm is to deal with what happened here in court here today. I went through that with him. Your Honor went through that with him.

He understood that. And once he understood that, he knew he was going to go looking at all the aggravating circumstances or the mitigating

circumstances in the sentencing phase. He understands that he needs to listen to the judge. Your Honor went through some very similar questions with him yourself. He answered those questions. He said he could be open-minded.

I believe he is qualified under our laws based on that. This case said initially, initially he said that. Once he was explained what he would have to consider in court in the next five or six days then he could be fair and open-minded concerning that. He would consider all the evidence. He would consider a life sentence as well as the death sentence. And I believe he is qualified.

MR. BARTOSH: Just briefly, Your Honor. I will say that was in response to a question. This was in response to no question. He volunteered it. I think you just don't volunteer that type of information if it is not a strongly held belief.

MR. BARNETT: Your Honor, I would say that it was in response to a question. He asked about his feelings on the death penalty. I ask the Court to look at what State versus Georgia says if you get a chance. I don't have -- we may have a case for you here in a second.

THE COURT: I don't think the case is going to

help me. I mean, I know the law. I've read the cases.

MR. BARNETT: Yes, sir.

MR. BARTOSH: Maybe not in the last ten minutes. But I've looked at it. And I'm not -- I think this is a -- the only -- that lasted -- he walked in here 21 minutes ago and we started. So we been discussing this in the way of argument with him out of the courtroom for about 3 minutes. So that leaves us about 18 minutes that he was in here. I've been writing down the times just to kind of access how long it takes to do this.

Apart from that 60-second maybe period of time in which he was talking about cost of giving somebody a life sentence, I had absolutely no doubt that he was a perfectly qualified juror when he answered my questions in the beginning and when he answered my questions in the end. And when he answered y'alls questions after I spoke to him, after he said something about the cost of the life sentence, I had no doubt that he was qualified as a juror, open-minded, willing to consider a life sentence, willing to consider the death penalty.

It is my impression that there was a moment there when he got agitated. I don't know exactly what it was, but something triggered a little sort of almost

angry or frustrated response in him. And I also believe that that is consistent with his demeanor as he expressed that opinion about cost. I'm not really sure what to do about that.

I'm a little concerned about the fact that he had that agitated or frustrated response. But I am convinced that it is, that that is what it was. In reality, he is a qualified juror. I'm going to go back and think about that for a minute. I'm going to -- it is not a terrible time to take a short break. And so I'm going to do that. I'll be right back.

(WHEREUPON, a short recess was taken at approximately 3:38 p.m.)

(WHEREUPON, the Court resumed at approximately 4:01 p.m.)

THE COURT: The law is not in dispute. We know what the law is. I've got to make a judgment as to whether or not this juror's views on whatever they are substantially impair or prevent him from exercising the responsibilities and following the guidance and instructions that I give. I asked him, you know, I specifically said, this little business about the cost of prison, is that something we just got sidetracked on. And he said yes.

I am -- we have had several other jurors, in

fact, the first juror whose name Petty, I think. The very first juror we talked to. He had inconsistent answers. This guy has got inconsistent answers. But the difference is that Petty's inconsistent answers led me to conclude that his situation would substantially interfere. Dawson's inconsistent answers lead me to conclude that we got sidetracked for a minute.

I think it is like someone who initially says yeah, I'm going to vote for a life sentence no matter what. But then after they are given some more information and some more explanation, they say, well, under those circumstances, I believe I can vote either way depending on what the circumstances are.

I am not required to disqualify somebody just because they gave an inconsistent answer. I have got the responsibility of evaluating these people, evaluating their demeanor, their credibility, considering the entire voir dire and making a judgment based on what I see as to whether or not their views will substantially impair their ability to follow the law and carry out their responsibilities as a juror.

And so having done that, I find that Mr. Dawson is qualified, that the statement about the cost being the reason that he would impose a life sentence, of

course, is something that he can't consider. And when I told him that, he accepted it. And I'm convinced that he accepted it. And I don't see that he was trying to figure out a way to get on the jury.

In fact, I thought -- I think that maybe for a second he looked at that -- he might have looked at that life thing as -- I don't know. Something frustrated him. I mean that cost of a life sentence. But, anyway, I am convinced that he's qualified.

MR. BARTOSH: Your Honor, since you are finding him qualified, we would like to put on the record our objection to that qualification. I think it is clear that those are his beliefs. The statement was not made in response to any of my questioning.

In fact, I have intended -- before he said that, I intended to move on to ask him about whether or not the fact that he was away from his business would cause him problems being sequestered and listening to the jury. I think -- I don't think we got sidetracked. It was not in response to any question. He brought it up. Since he brought it up, I don't think it was a question of being sidetracked.

THE COURT: Bring him out. I'm going to ask him one more follow-up question.

(WHEREUPON, Mr. Dawson enters at approximately

4:07 p.m.)

THE COURT: Mr. Dawson, let me just go back to this one more time. I know in the last few minutes while you were sitting out in the hallway, you've probably had a chance to think about the conversation that you and I had and that you had with these other lawyers. I want to go back to the question of whether or not you are open-minded to considering the possibility of the life sentence or the death penalty.

MR. DAWSON: Yes, sir.

THE COURT: Are you?

MR. DAWSON: Yes, sir.

THE COURT: Now, this business about the cost of a life sentence, are you confident that you can take that and recognize it as something that you are not supposed to consider and put it out of your mind while you are in here deliberating to determine what the sentence ought to be in the case?

MR. DAWSON: Yes, sir.

THE COURT: You have any doubt about it?

MR. DAWSON: No, sir.

THE COURT: All right, sir. I find that you are a qualified juror. And we expect to be ready to begin with the actual jury selection some time around lunchtime tomorrow. So about 11:00, let's say 10

o'clock, start checking in with us by calling the number that you were given on Monday. There will be a recorded message on there that gives you our best information about when you should be here.

Now, keep in mind, you will need to bring enough clothing and whatever you need to keep you going in a hotel for five or six days. Don't talk to anybody about this case. Don't let anybody talk to you about the case. Don't read anything. Don't watch anything. Don't listen to anything about this case.

When you come back in here tomorrow, I'm going to ask you and all the jurors if you followed my instructions not to listen and not to talk about it and not to learn anything about the case. I want you to be able to tell me that you have followed my instructions. All right, sir?

MR. DAWSON: (Nods head affirmatively.)

THE COURT: You are free to go for now. Plan to be up here around lunchtime tomorrow. Call that number for specific instructions about when to come and where to park and all of that stuff.

MR. DAWSON: So call that number tomorrow after 10:00?

THE COURT: Call it around, yeah. Between 10:00 and 11:00. We will put something on there between

10:00 and 11:00.

MR. DAWSON: But plan to be here tomorrow around lunch anyway?

THE COURT: We won't get to you before noon, but we could get to you as early as noon.

MR. DAWSON: Okay. So I've got one question.

THE COURT: Yes, sir.

MR. DAWSON: Am I on the jury or am I just qualified to be -- you are still qualifying?

THE COURT: We are still qualifying. We've got --

MR. DAWSON: So I need to bring clothes tomorrow?

THE COURT: Right. We don't know if you're going to be on the jury. But you are the 25th juror, I believe. And we need about 40. So we've got a ways to go. So we will be at it for a while tonight yet.

MR. DAWSON: Okay.

THE COURT: And once we get the proper number of jurors, enough jurors, then we go through a different process where we choose who is actually going to be on the jury.

MR. DAWSON: Okay.

THE COURT: All right, sir.

MR. DAWSON: Okay. Thank you.

(WHEREUPON, Mr. Dawson exits at approximately 4:14 p.m.)

THE COURT: Bring us a juror.

(WHEREUPON, Pam Gardner, Juror number 97, enters at approximately 4:14 p.m.)

PAM GARDNER

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Ms. Gardner?

A Yes.

Q How are you this afternoon?

A I'm pretty good.

Q Good. Ms. Gardner, you recall that Monday morning, we put you under oath?

A Yes, sir.

Q And you are still under oath right now. You understand that?

A Yes, sir.

Q Since Monday afternoon when you left, have you talked to anybody about this case or has anybody talked to you about the case?

A No, sir.

Q Have you read or seen or heard anything about this case?

A Since I came Monday?

Q Since Monday afternoon.

A No.

Q I'm going to ask you some questions now. And after I do that, the lawyers will probably ask you some questions. We don't mean to pry too deep into your private life. But we do have to ask you these questions. We just want you to be open and honest with us. Tell us what you think and how you feel.

A Yes, sir.

Q We're going to have to talk about a possible sentencing phase. But because we are talking about that, that does not mean anything about this defendant or anything about this case. It just means that because we might get to that phase, we need to ask you some questions about some things that will come up and how you feel about those things.

If you were a juror in this case, could you accept and apply the law precisely as I would give it to you and set aside anything that you might have heard or learned before the case began and render a verdict based solely on the testimony and the evidence that you hear and see in this courtroom?

A Yes, sir.

Q You could?

A Yes, sir.

Q You understand in a criminal case like this, the

State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q And you know this is a murder case?

A Yes, sir.

Q Could you, based on the facts and circumstances that you find to have been proven and in light of the law as I would give it to you render a verdict of either guilty or not guilty depending on whether you think the State has met its burden of proof?

A Yes, sir.

Q You could?

A Uh-huh (affirmative).

Q Now, if you are on the jury in this case and the jury finds the defendant guilty of murder, we would move into the second phase, what's called a penalty phase or the sentencing phase. And there will be some issues that will come up then that I will need to discuss with you now.

Aggravating circumstances are facts, incidents or occurrences that the State has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the magnitude of the crime, the enormity of the crime of murder. They add to the injury that is caused by the crime.

Mitigating circumstances, on the other hand, are

facts, incidences or details of occurrences that the State has declared to lessen the severity of the crime of murder. They serve to extenuate or to reduce the moral culpability or responsibility for the crime of murder.

If you are a juror in a death penalty case in the sentencing phase, you would have two options as to what your verdict could be. You could have a verdict of life in prison or you could have the verdict of the death penalty. Could you, depending on the facts and circumstances that you find to exist, considering any aggravating circumstances or mitigating circumstances and considering the law as I will give it to you, could you return a verdict or vote to return a verdict for a life sentence?

A Yes, sir.

Q You could?

A Uh-huh (affirmative).

Q Could you vote to return a verdict for the death penalty?

A Yes.

Q You could?

A Yes.

Q Your voice is soft and I'm having to ask you to repeat your answer.

A Yes, sir.

Q All right. Thank you. Now, ma'am, the jury

might be sequestered, that means, put up in a hotel and not allowed to go home for five or six days. If I did that, would that impose a terrible burden on you?

A No, sir.

Q Have you read over that witness list that I gave you a little while ago?

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 I don't know anybody but one person I might have went to high school with.

Q All right. Tell me who that is.

A I think it is 31, Freddy Thompson.

Q Freddy Thompson?

A And I'm not even sure if that's the same Freddy Thompson. It's been a long time ago.

THE COURT: What do we know about Freddy Thompson?

MR. GOWDY: He's a lot older than this juror, Your Honor.

THE COURT: So somewhere in his mid to upper 30's?

MR. GOWDY: Yes, sir, Your Honor. Is he from Spartanburg?

MR. WILLINGHAM: He works for 911. He works for the emergency department.

THE COURT: Okay.

BY THE COURT:

Q Let's assume that this is the same Freddy Thompson that you know. Do you think the fact that you know Freddy Thompson would 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. I'm sure he don't remember me probably.

Q Okay. Do you know of any reason why you could not give both the State and the defendant a fair and impartial trial?

A No, sir.

Q Okay. Ma'am, I'm going to let the lawyers ask you a few questions now. Then I may come back and ask you some myself again in just a minute.

MR. BRENNAN: Please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BRENNAN:

Q Ms. Gardner, how are you this afternoon?

A Good.

Q Okay. My name is Doug Brennan. I'm an attorney from here in Spartanburg. Myself, Mr. Bartosh and Ms.

Karen Quimby have an opportunity to represent Marion Lindsey in this matter. Ma'am, on Monday, the whole group of jurors was asked to stand up in response to certain questions.

A Uh-huh (affirmative).

Q And you did stand up or told the Court through your questionnaire that you were the victim of a home invasion some time ago?

A I don't remember if it was Monday. I don't believe that come up Monday.

Q That was actually on your questionnaire.

A Yes.

Q Where you there when the home was broken into?

A No.

Q Was anyone ever arrested as a result of that?

A No, sir.

Q Were you ever asked to make a statement or anything like that?

A Just when the police came out and asked us what was taken.

Q And do you remember, not the name of the officer, but do you remember if it was a Spartanburg County Sheriff's Deputy or a city police officer?

A I think it was city police. It was in Cowpens.

Q Okay. So it would have been Cowpen City?

A Uh-huh (affirmative).
Q Okay. All right. How long ago was that, ma'am?
A At least 25 years.
Q Okay. You also mentioned that you knew somebody that had been killed by a drunk driver?
A Yeah, a friend of mine's parent.
Q And how long ago was that?
A A couple of years.
Q Have you and your friend spoken about the tragic lost of her parents?
A Yes.
Q And have those conversations, would they have clouded your judgment so that you could not render a fair verdict in this trial?
A No, sir.
Q Okay. You said that was a couple of years ago?
A Yes.
Q Okay. And the last question was had somebody in your family been accused of a crime. And you put, yes, stealing.
A Yes, sir.
Q Who was that?
A One of my sisters.
Q How long ago was that?
A About eight years.

Q Were you a witness or did you have anything to do with that case?

A No, nothing came up about the case or anything.

Q All right. Now, ma'am, you also told the Court that you belong to a Right to Life Organization. Is that correct?

A Uh-huh (affirmative).

Q Does that mean you make donations?

A Yeah, donations.

Q All right. Ma'am, you understand that in South Carolina, the death penalty is never mandatory?

A Yes, sir.

Q With that understanding, there are three kinds of jurors. There are those jurors that if the defendant is found guilty of murder will always impose a life sentence. There are those jurors that once the defendant is found guilty will always impose the death penalty. And then there are those in the middle that don't know which we they are going to go until the case is over. Can you tell me which type you are?

A I would wait until the case is over.

Q Okay. You have been a teacher's assistant for quite a while?

A Uh-huh (affirmative).

Q But you also said you had worked at Doctor's

Memorial at some point.

A Uh-huh (affirmative).

Q Was that before you became a teacher's assistant?

A Yes.

Q So it was --

A A long time ago.

Q A long time ago?

A Uh-huh (affirmative).

Q Okay. All right. And you don't have any knowledge of this case at all?

A No, sir. I mean, I read the paper. I don't know anything about the case. I am thinking it might be something I read a good while back.

Q And that stuff, that information that you gained from reading the paper, have you formed an opinion as to the guilt of Mr. Lindsey at this point?

A No.

Q And you be able to put that information that you gained from the newspaper aside in making your decision here?

A Yes, sir. It's real vague. I don't even really know what the case is. I was just thinking when I heard that name that I recognized that name.

Q Okay. My last question, ma'am, is this, let's suppose for a second that you have been placed on the jury.

We've been through the guilt phase and the jury has come back with a guilty verdict. We're now in the sentencing phase. And you are actually in the jury room deliberating.

There is a form, a sentencing form. All twelve jurors have to sign for life in prison or death. And it has to be unanimous. All twelve have to sign one or the other. Let's say that it's passed to you. All eleven jurors have already signed it. They have signed for the death penalty. Understanding that by signing your name as the twelfth juror, Mr. Lindsey would be sentenced to death, could you still sign that document?

A Yes, sir.

Q Thank you. No further questions.

MR. BARNETT: May it please the Court, Your Honor.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARNETT:

Q Ms. Gardner, my name is Barry Barnett. I, myself, Trey Gowdy and Donnie Willingham are prosecuting this case for the State. We appreciate you coming. I know this is hard and everything to answer these questions. This is the only time we'll get to really talk to each other a little bit. Your husband is Willie Gardner, is that correct?

A Uh-huh (affirmative).

Q And he does front end alignment?

A Yes.

Q And you attend a Baptist Church?

A Uh-huh (affirmative).

Q I appreciate you answering my questions. Thank you.

MR. BARNETT: Thank you, Your Honor.

THE COURT: Ms. Gardner, would you step out in the hall for just one second please, ma'am.

MRS. GARDNER: Okay.

(WHEREUPON, Mrs. Gardner exits at approximately 4:29 p.m.)

THE COURT: Any objection to her qualifications?

MR. BRENNAN: No, Your Honor.

THE COURT: Bring her in.

(WHEREUPON, Ms. Gardner enters at approximately 4:29 p.m.)

THE COURT: Mrs. Gardner, I find that you are a qualified juror in this case. We're going to need you to be ready to come back and join us some time tomorrow. Probably it's going to be right around lunchtime. That is my prediction.

Between now and then, do not discuss this case with anybody. Don't allow anybody to discuss it with

you. Don't read anything, watch anything or listen to anything about this case. When you come back tomorrow, I'm going to ask you and all the other qualified jurors if you had been able to follow my instruction and not talk about the case and not learn anything about the case. And I want you to be able to tell me that you have.

You are going to need to be ready to bring enough clothes and whatever else you need to be put up in a hotel for five or six days. Okay.

MRS. GARDNER: Okay.

THE COURT: And you call tomorrow beginning around 10:00 or 11:00 that number that you were given Monday morning. We will have a recording on there that gives you some more information about when to come, what to bring and where to park and all of that.

MRS. GARDNER: I have to call in the morning?

THE COURT: Call some time after 10:00.

MRS. GARDNER: Okay.

THE COURT: We will try to put something on there tomorrow morning after 10:00 that tells you all of that information, okay?

MRS. GARDNER: Okay.

THE COURT: We will see you tomorrow.

MRS. GARDNER: Okay. Thank you.

(WHEREUPON, Mrs. Gardner exits at approximately 4:30 p.m.)

THE COURT: Hold on just a second.

Y'all probably noticed retired Chief Justice Littlejohn who just was in here for a little while and then left.

MR. GOWDY: Yes, sir.

THE COURT: You know, he loves telling stories. And they are fascinating to hear. But his stories about death penalty jury selection in his day when he was a circuit judge, he said jury selection went like this, is there any member of the jury panel that is connected by blood or marriage to the defendant? If so, please stand. Any member of the jury panel who is connected by blood or marriage to the victim? If so, please stand. Nobody would stand.

Mr. Clerk, give me a jury. And he would tell you that one week in 1951, he tried -- he was holding court. And I can't remember if he said it was in Spartanburg or not. But on Thursday morning, he came and showed up for court. And the Solicitor said, Judge, we've got a murder case to try. He said, All right, let's try it. Thursday afternoon, the jury found him guilty. No recommendation of mercy, sentenced him to death.

Came into the courtroom Friday morning, the Solicitor said Judge we got a murder case to try. The very next day. Started the case that morning. The jury came back that afternoon. No recommendation of mercy. Sentenced him to death. Two death sentences in two days, 1951.

Bring us a juror.

Interesting, isn't it?

(WHEREUPON, Jackie Barham, Juror number 14, enters at approximately 4:31 p.m.)

JACKIE BARHAM

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right, sir. Do you say Barham or Barham?

A It's Barham.

Q Barham.

A Here it's Barham. I think in Mississippi or Virginia, it's Barham.

Q Well, you probably know some Parhams or some Parhams.

A No. I heard the name plenty of times.

Q In Greenville and maybe over here, we've got both Parhams and Parhams spelled both the same way. Anyway, Mr. Barham?

A Correct. Yes, sir.

Q You recall that on Monday morning, we put you under oath?

A Yes.

Q And you understand you are still under oath right now?

A Yes.

Q Since Monday afternoon when you were excused -- hold on just a second. Have you talked to anybody about this case or has anybody talked to you about this case?

A No.

Q Have you read or seen or heard anything about this case?

A No, sir.

Q We're going to ask you some questions. I'm going to start. The lawyers are probably going to follow up. We don't mean to intrude too far into your private life. But we do have to ask you these questions. There are no right or wrong answers. We just want you to be open and honest with us and tell us how you feel and what you think.

We're going to talk a little bit about a possible sentencing phase but that doesn't mean anything about this case. That just means that because we might get to a sentencing phase, we need to ask you some questions about some things that will come up if we do.

If you are a juror in this case, could you accept and apply the law precisely as I give it to you, set aside anything that you might have heard or learned about this case in the past and render a verdict solely, based solely on the testimony and evidence that you hear and see in this courtroom?

A Yes, sir.

Q You understand that in a criminal case like this, the State has the burden of proving the defendant guilty beyond a reasonable doubt?

A Yes, sir.

Q And you understand this is a murder case?

A Yes.

Q Could you, depending on the facts and circumstances that you find to have been proven and in light of the law as I will give it to you, render a verdict in this case that is either guilty or not guilty depending on whether you think the State has met its burden of proof?

A Yes, sir.

Q If you are on the jury in this case and the jury reaches a verdict of guilty on the charge of murder, we would move into the sentencing phase or the guilt phase. And there are some things about that that I want to talk to you about now.

Aggravating circumstances are facts, incidents or

details of an occurrence which the State of South Carolina has declared to aggravate or to make worse the crime of murder. Aggravating circumstances increase the enormity of the crime or add to the injury that results from the crime.

Mitigating circumstances, on the other hand, are facts, incidents or details of an occurrence that the State of South Carolina has declared to lessen the severity of the crime of murder. And they serve to extenuate or to reduce the moral culpability for the crime.

If you are a juror in the penalty phase of a death penalty trial, you would have two options as to what your verdict could be. The verdict could be a life sentence or it could be the death penalty. Could you, depending on the facts and circumstances that you find to exist and considering any aggravating or mitigating circumstances and considering the law that I give to you, could you return a verdict or could you vote to return a verdict for a life sentence?

A Yes, I could.

Q Could you vote to return a verdict for the death penalty?

A Yes, I could.

Q Now, Mr. Barham, if you are on this jury and if I sequester the jury, that would mean that you are put up in a hotel and not allowed to go home for five or six days.

Would that impose a terrible burden on you?

A No, sir.

Q Have you read over the witness list that I gave you a few minutes ago?

A Yes, I have.

Q Do you -- have you read every name on that list?

A Yes.

Q Do you know anybody or are you related to anybody on that list?

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 No.

Q All right, sir. Mr. Barham, the lawyers are going to ask you some questions now. I'm going to come back and ask you a few more later.

EXAMINATION

BY MR. BARTOSH:

Q Good afternoon, Mr. Barham.

A Hi.

Q My name is Mike Bartosh. I'm a lawyer here in Spartanburg. I don't know if we introduced on Monday. It's so far back, I can't remember. But along with Karen Quimby and Doug Brennan, we are representing Marion who is