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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County
Capital Action
Honorable R. Keith Kelly, Circuit Court Judge

JAMES ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000505

**APPENDIX
VOLUME 3 OF 14
(PAGES 1001-1500)**

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1 FOUND GUILTY OR NOT GUILTY OF MURDER. IF HE'S
2 FOUND NOT GUILTY, THE CASE WOULD THEN END. IF
3 HE'S FOUND GUILTY, THEN THE CASE WOULD MOVE INTO
4 THE SECOND PHASE. HE WOULD HAVE TO BE FOUND
5 GUILTY BEYOND A REASONABLE DOUBT BY A UNANIMOUS
6 VERDICT OF A JURY.

7 HE IS PRESUMED INNOCENT OF THESE CHARGES UNTIL
8 THAT JURY, IF IT DID, WERE TO RETURN A VERDICT
9 OF GUILTY.

10 SO, WE ARE TALKING ABOUT SOMETHING THAT MAY
11 NEVER OCCUR, THE SECOND PHASE, BUT WE HAVE TO
12 TALK ABOUT IT AT THIS TIME. DO YOU UNDERSTAND
13 THAT?

14 A. YES, SIR.

15 Q. IN REVIEWING THESE TYPES OF JURORS, DID YOU FIND
16 YOURSELF TO BE ONE OF THOSE TYPES?

17 A. THE THIRD ONE.

18 Q. IN THAT TYPE I USED WORDS LIKE AGGRAVATION AND
19 MITIGATION AND BY THOSE WORDS I MEAN AGGRAVATING
20 CIRCUMSTANCES BEING CIRCUMSTANCES WHICH ARE
21 ATTENDANT TO A CRIMINAL OFFENSE WHICH INCREASE
22 ITS ENORMITY OR ADDS TO ITS INJURIOUS
23 CONSEQUENCE. THESE ARE THINGS THAT ARE ABOVE
24 AND BEYOND JUST THE ESSENTIAL ELEMENTS OF THE
25 CHARGE OF THE CRIME ITSELF.

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1 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH
2 DO NOT CONSTITUTE A JUSTIFICATION OR AN EXCUSE
3 FOR THE COMMISSION OF AN OFFENSE BUT ARE THINGS
4 WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS
5 EXTENUATING OR REDUCING THE DEGREE OF ONE'S
6 MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. NOW THIS THIRD TYPE JUROR ON THIS LIST IS ONE
9 WHO WOULD, IN SPITE OF THE FACT THAT A JURY HAD
10 DETERMINED MR. ROBERTSON TO BE GUILTY OF MURDER,
11 WOULD, WHEN MOVING INTO THAT SECOND PART, NOT
12 HAVE MADE UP THEIR MIND IN ADVANCE CONCERNING
13 THE PUNISHMENT BUT WOULD RATHER BE OPEN-MINDED.
14 IS THAT THE TYPE JUROR YOU ARE?

15 A. YES, SIR.

16 Q. THIS TYPE JUROR WOULD WANT TO HEAR THE FACTS AND
17 CIRCUMSTANCES IN AGGRAVATION AND MITIGATION,
18 HEAR THE JUDGE'S CHARGE ON THE LAW AND THEN AND
19 ONLY THEN MAKE A DETERMINATION AS TO WHAT
20 DECISION SHOULD BE MADE REGARDING THE
21 PUNISHMENT. IS THAT THE TYPE JUROR YOU CONSIDER
22 YOURSELF?

23 A. YES, SIR.

24 Q. IF YOU WERE A JUROR AND THE FACTS WERE PRESENTED
25 AT THAT SECOND PHASE AND YOU FELT LIKE THE FACTS

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1 WERE SUCH THAT THE APPROPRIATE PENALTY WAS THAT
2 OF LIFE IMPRISONMENT, COULD YOU IMPOSE A VERDICT
3 OF LIFE IMPRISONMENT?

4 A. YES, SIR.

5 Q. IF YOU FELT IN THAT EVENT THAT THE FACTS SO
6 PRESENTED WARRANTED A VERDICT OF THE DEATH
7 PENALTY, COULD YOU RETURN A PENALTY OF DEATH?

8 A. YES, SIR.

9 Q. ALL RIGHT. ANSWER ANY QUESTIONS THE ATTORNEYS
10 MIGHT HAVE.

11 QUESTIONS BY MR. POPE:

12 Q. MR. GUFFEY, MY NAME IS TOMMY POPE; I'M THE
13 SOLICITOR HERE IN YORK COUNTY. SEATED AT MY
14 TABLE IS KEVIN BRACKETT, THE DEPUTY SOLICITOR.
15 WE ARE THE PROSECUTORS IN THIS CASE.

16 HAVE YOU EVER BEEN IN A SITUATION LIKE THIS
17 BEFORE, QUESTIONED LIKE THIS?

18 A. NO, SIR.

19 Q. WELL, I'LL TELL YOU, ONE ADVANTAGE YOU HAVE IS
20 YOU CAN'T GIVE A WRONG ANSWER BECAUSE THIS IS
21 JUST HOW CLIFTON GUFFEY FEELS. SO IF YOU FEEL
22 LIKE WE'RE GOING TO DROP THE LIGHTS DOWN ON YOU
23 AND START INTERROGATING YOU, THAT'S NOT THE
24 CASE. BUT I'LL HAVE SOME QUESTIONS FOR YOU JUST
25 LIKE THE JUDGE DID AND THEN THE DEFENSE WILL.

1 AND THE BIGGEST THING IS JUST MAKING SURE THAT
2 YOU SPEAK YOUR MIND AND SPEAK YOUR HEART, YOU
3 KNOW, AND TELL US HOW YOU FEEL.

4 FIRST, YOU NOTED TO THE JUDGE THAT YOU'RE THE
5 TYPE OF FELLOW THAT BASICALLY COMES IN WITH A
6 BLANK SLATE. YOU HAVEN'T DECIDED HE'S GUILTY,
7 NOT GUILTY BECAUSE YOU HAVEN'T HEARD THE FACTS
8 YET. IS THAT A FAIR STATEMENT?

9 A. YES, SIR.

10 Q. OKAY. AND IF YOU WERE CHOSEN AS A JUROR, YOU
11 WOULD BE WILLING TO SIT AND HEAR ANYTHING THE
12 STATE PUT FORWARD AND, AGAIN, YOU UNDERSTAND
13 HE'S INNOCENT UNTIL PROVEN GUILTY BEYOND A
14 REASONABLE DOUBT; YOU UNDERSTAND THAT?

15 A. YES, SIR.

16 Q. AND SO WE HAVE TO CARRY THE BURDEN OF PROOF. YOU
17 WOULDN'T COME IN AUTOMATICALLY THINKING HE HAD
18 TO PROVE ANYTHING, RIGHT?

19 A. NO. I UNDERSTAND THAT HE'S INNOCENT UNTIL
20 PROVEN GUILTY.

21 Q. OKAY. NOW, THEY CAN PUT UP EVIDENCE, YOU KNOW,
22 BUT HE DOESN'T HAVE TO. YOU UNDERSTAND IT'S
23 ALWAYS OUR JOB, IN BOTH PHASES, TO BRING THINGS
24 FORWARD. YOU UNDERSTAND THAT AND YOU WOULDN'T
25 REQUIRE HIM TO DO ANYTHING. IS THAT A FAIR

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1 STATEMENT?

2 A. YES, SIR.

3 Q. OKAY. IN THE GUILT PHASE WE'RE TALKING ABOUT
4 JUST THAT. THIS IS A LITTLE DIFFERENT THAN A
5 NORMAL TRIAL. HAD YOU BEEN ON A JURY BEFORE?

6 A. NO.

7 Q. OKAY, OKAY. IN A NORMAL TRIAL THE JURY DECIDES,
8 TWELVE JURORS HAVE GOT TO BE UNANIMOUS, AND
9 THEY'LL DECIDE THEIR VERDICT AND THEN THE JUDGE
10 WOULD DO THE SENTENCING.

11 WELL, WHAT'S DIFFERENT IN THIS CASE IS THE JURY
12 ALSO DOES THE SENTENCING BUT IN A SEPARATE
13 PHASE. IN OTHER WORDS, THE FIRST CASE YOU HEAR
14 IS ABOUT GUILT, ABOUT THE STATE TRYING TO PROVE
15 IT BEYOND A REASONABLE DOUBT.

16 THE SECOND PHASE YOU WOULD HEAR WOULD BE
17 EVIDENCE THAT MAY, YOU KNOW, ENTAIL THE FIRST
18 THING BUT REALLY MORE ABOUT THE CRIME. WE DO
19 WHAT'S CALLED EVIDENCE IN AGGRAVATION. WE DO
20 EVIDENCE OF THINGS OF WHY -- YOU KNOW, WE WOULD
21 SHOW WHY THE DEATH PENALTY SHOULD BE THE CHOICE.
22 BECAUSE BY THE TIME YOU GET TO THE SECOND PHASE
23 THERE ARE TWO OPTIONS, LIFE AND DEATH.

24 SO, THE STATE WOULD PUT UP EVIDENCE AS FAR AS
25 AGGRAVATION. THE DEFENSE WOULD, BUT THEY NEVER

1 HAVE TO, COULD PUT UP EVIDENCE IN MITIGATION
2 WHICH IS JUST THE OPPOSITE, THE REASONS TO SHOW
3 THAT THERE MAY BE EXPLANATIONS OR REASONS THERE
4 SHOULD BE A LESSER PENALTY, THAT IT SHOULD BE A
5 LIFE SENTENCE.

6 DO YOU UNDERSTAND THAT?

7 A. UH HUH.

8 Q. OKAY, AND BASED ON WHAT I HEARD YOU TELL THE
9 JUDGE, YOU'RE THE TYPE OF FELLOW THAT JUST
10 BECAUSE HE'S CONVICTED OF MURDER, YOU'RE NOT
11 GOING TO FOLD YOUR ARMS UP AND SAY WELL I'M NOT
12 LISTENING, I'VE ALREADY DECIDED. YOU'RE GOING TO
13 WEIGH ANYTHING WE PUT FORWARD AND ANYTHING THEY
14 BRING FORWARD. IS THAT A FAIR STATEMENT?

15 A. YES, SIR.

16 Q. OKAY. AND AGAIN REALIZING IN THAT PHASE THEY
17 NEVER HAVE TO PROVE ANYTHING, SO JUST BECAUSE HE
18 WAS CONVICTED AND WE SHOWED EVIDENCE DOESN'T
19 MEAN YOU'RE AUTOMATICALLY GOING TO VOTE DEATH.
20 YOU'D JUST HAVE TO WAIT AND HEAR EVERYTHING AND
21 THEN DECIDE. IS THAT CLINTON GUFFEY?

22 A. YES.

23 Q. AND AGAIN I WANT TO MAKE THE POINT, YOU KNOW,
24 I'M HITTING A LOT OF LAW AND STUFF, BUT IF
25 YOU'RE A JUROR, THE JUDGE WILL INSTRUCT YOU ON

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1 THE LAW. YOU KNOW, ULTIMATELY HE WILL GIVE YOU
2 THE TOOLS TO DO WHAT YOU NEED TO DO BUT SOME
3 BASIC THINGS YOU NEED TO KNOW IS, OF COURSE,
4 INNOCENT UNTIL PROVEN GUILTY IN THE FIRST STAGE
5 AND ALWAYS THEY NEVER HAVE TO PROVE ANYTHING;
6 THE JOB IS ON US TO BRING IT FORTH.

7 NOW, BEFORE I GET FURTHER INTO THAT, I WANT TO
8 GO BACK. YOU WERE TALKING ABOUT KNOWING RAY
9 LONG, I BELIEVE?

10 A. UH HUH.

11 Q. AND YOU SAID THAT BASICALLY YOU COULD PUT THAT -
12 - YOU LOOKED AT THE WHOLE LIST AND THAT WAS THE
13 ONLY PERSON YOU KNEW, IS THAT RIGHT?

14 A. NO, I KNOW SOME NAMES ON THERE; I'M NOT SURE IF
15 IT'S THE ONES I KNOW OR NOT BUT I KNOW OF SOME
16 OTHERS. I'M ONLY PERSONAL FRIENDS WITH RAY
17 LONG.

18 Q. I'VE GOT YOU. AND YOU TOLD THE JUDGE THOUGH
19 THAT YOU COULD DO FAIR BY THE STATE AND FAIR BY
20 THE DEFENSE INDEPENDENT OF KNOWING RAY LONG.
21 YOU WOULDN'T AUTOMATICALLY JUST SAY, WELL,
22 THAT'S RAY LONG SO WHATEVER HE SAYS IS WHAT I'M
23 GOING TO BELIEVE AND I'M NOT GOING TO LISTEN OR
24 JUDGE ANY OTHER WITNESSES. YOU WOULDN'T
25 AUTOMATICALLY BELIEVE HIM OVER ANYBODY ELSE JUST

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1 BECAUSE YOU KNOW HIM, WOULD YOU? I MEAN I'M NOT
2 SAYING HE'S NOT CREDIBLE, I'M JUST SAYING THAT
3 WOULD BE FOR YOU TO JUDGE AND YOU WOULD JUDGE
4 EACH ONE INDIVIDUALLY. IS THAT RIGHT?

5 A. OH, YES.

6 Q. GOING BACK NOW AGAIN TO THE PENALTY PHASE.
7 YOU'RE THE TYPE OF JUROR, AS I UNDERSTAND, THAT
8 YOU WOULD WANT TO HEAR EVERYTHING. AND IF AFTER
9 YOU HEARD ANYTHING, ANYTHING WE PUT UP AND THEY
10 MAY PUT UP SOMETHING, THEY MAY NOT, IF YOU
11 THOUGHT, BASED ON WHAT THE LAW WAS THAT YOU
12 HEARD AND YOU APPLIED IT -- WHEN I SAY THE LAW,
13 OF COURSE, YOU GET TO ALWAYS DECIDE, LAW IS
14 NEVER GOING TO MAKE YOU SAY LIFE, LAW IS NEVER
15 GOING TO MAKE YOU SAY DEATH, YOU KNOW WHAT I
16 MEAN, IT'S WHAT YOU DECIDE -- AFTER YOU HEARD
17 EVERYTHING IN THIS PARTICULAR CASE IF YOU
18 THOUGHT THE RIGHT SENTENCE WAS LIFE, YOU COULD
19 SAY SO?

20 A. YES, SIR.

21 Q. AND LIKEWISE, AFTER HEARING EVERYTHING, IF YOU
22 FELT THAT THE APPROPRIATE SENTENCE WAS DEATH,
23 TAKING EVERYTHING INTO CONSIDERATION, YOU COULD
24 GIVE A DEATH PENALTY?

25 A. YES, SIR.

1011

1 Q. AND, AGAIN, I KNOW WE RUN THROUGH WORDS, IT
2 SEEMS LIKE I'M JUST GOING LIKE THIS. I KNOW IT
3 WOULD TAKE SOME THOUGHT, BUT YOU COULD GIVE
4 EITHER ONE, BUT YOU WOULD HAVE TO WAIT AND HEAR
5 IT. IS THAT FAIR?

6 A. BASICALLY, YES, SIR.

7 Q. THE FINAL THING I WANT TO TOUCH BASE WITH YOU ON
8 IS THE DEATH PENALTY IS A LITTLE BIT DIFFERENT.
9 YOU KNOW, I TALKED ABOUT A JURY AND THEY VOTE
10 AND THEN THE FOREPERSON, WHOEVER WOULD BE THE
11 SPOKESMAN FOR THE JURY, WOULD SIGN AND SAY, YOU
12 KNOW, HERE'S THE VERDICT, HERE'S WHAT WE
13 DECIDED.

14 IN A DEATH PENALTY, IN THE PENALTY PHASE -- NOW,
15 OF COURSE, IN THE PENALTY PHASE HE'S ALREADY
16 BEEN CONVICTED OF KILLING HIS PARENTS -- OF
17 COURSE, NOT NOW, BUT YOU UNDERSTANDING WE'RE NOW
18 SUPPOSING WE'RE IN THE PENALTY PHASE.

19 A. RIGHT.

20 Q. OKAY. HE'S ALREADY BEEN CONVICTED OF KILLING
21 HIS PARENTS. YOU'RE STILL WILLING TO THINK
22 LIFE, THINK DEATH, YOU JUST DON'T KNOW YET. IS
23 THAT RIGHT?

24 A. UH HUH.

25 Q. OKAY. WELL, WHEN YOU GO BACK AND VOTE NOW IF

1 ALL TWELVE VOTE, AND IT'S GOT TO BE UNANIMOUS
2 ONE WAY OR THE OTHER, IF ALL TWELVE VOTE LIFE,
3 THEN JUST THE FOREPERSON WOULD SIGN. YOU KNOW,
4 THEY WOULD SAY WE'VE ALL VOTED, WE VOTE LIFE.
5 BUT IF THEY VOTE DEATH, IT'S DIFFERENT AGAIN.
6 IF ALL TWELVE VOTE DEATH, THEN EACH INDIVIDUAL
7 PERSON WOULD HAVE TO SIGN THEIR NAME. AND, OF
8 COURSE, YOU WOULD SIGN IT BASED ON YOUR OWN
9 DECISION, YOUR OWN CONSCIENCE. YOU KNOW, YOU
10 WOULDN'T GIVE IN BECAUSE ELEVEN OTHERS SAID DO
11 IT. YOU KNOW, YOU WOULD LISTEN BOTH WAYS BUT
12 YOU WOULD ULTIMATELY MAKE THE DECISION. IF YOU
13 HEARD THE FACTS AND YOU FELT THE APPROPRIATE
14 PENALTY WAS DEATH, COULD YOU SIGN CLIFTON GUFFEY
15 TO A FORM THAT WOULD TAKE THIS MAN'S LIFE?

16 A. YOU MAKE IT SOUND HARSH, BUT IF I FELT THAT THAT
17 WAS THE JUST PUNISHMENT, YES.

18 Q. AND YOU KNOW IT IS A DIFFICULT SITUATION. YOU
19 SAY I MAKE IT SOUND HARSH, BUT IF YOU THOUGHT
20 THAT WAS RIGHT, YOU COULD PUT YOUR NAME ON IT?

21 A. YES, SIR.

22 Q. OKAY. I BEG THE COURT'S INDULGENCE.

23 (AFTER A BRIEF PAUSE.)

24 Q. MR. GUFFEY, I THINK YOU'VE ANSWERED THIS FOR ME
25 BUT I'VE BEEN TRYING TO WRITE AND TALK. I

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1 REALIZE I'M DOING MOST OF THE TALKING, BUT JUST
2 BECAUSE HE WAS CONVICTED OF KILLING HIS PARENTS
3 WITHOUT HEARING EVERYTHING FURTHER, YOU WOULDN'T
4 AUTOMATICALLY THINK HE GETS DEATH OR HE GETS
5 LIFE. YOU WOULD WANT TO WAIT AND HEAR EVERYTHING
6 BEFORE YOU DECIDE?

7 A. YES, SIR.

8 Q. OKAY. AND YOU COULD DECIDE ONE WAY OR ANOTHER
9 ACCORDING TO WHAT YOU HEARD?

10 A. YES, SIR.

11 Q. THANK YOU. I APPRECIATE IT.

12 QUESTIONS BY MR. HANCOCK:

13 Q. MR. GUFFEY, I'M BILL HANCOCK. I'M THE ATTORNEY
14 FOR JIMMY ROBERTSON SEATED RIGHT HERE AND THIS
15 IS MR. BOYD WHO IS CO-COUNSEL IN THIS MATTER.
16 WE'RE COMING AT YOU IN WAVES, I REALIZE THAT.
17 YOU'VE HAD THE JUDGE, NOW THE SOLICITOR AND NOW
18 I'M BEFORE YOU.

19 THIS IS AN UNUSUAL SITUATION. IT'S A TIME THAT
20 WE HAVE TO LISTEN TO YOU AND LISTEN TO YOUR
21 ANSWERS, RESPECT YOUR ANSWERS AND THEN DEAL WITH
22 THEM AS WE MAY IN THIS COURTROOM.

23 AND I'M JUST TRYING TO CLARIFY WHAT I MAY HAVE
24 ALREADY HEARD. SO, I AM GOING TO ASK YOU SOME
25 QUESTIONS. IT MAY SEEM TO BE REPETITIVE, BUT I

1 NEED TO LISTEN TO THEM, OKAY?

2 A. OKAY.

3 Q. THAT'S ALL RIGHT WITH YOU?

4 A. YES, SIR.

5 Q. OKAY. NOW, YOU'VE INDICATED THAT YOU UNDERSTAND
6 THAT THIS IS A DEATH PENALTY CASE. YOU'VE ALSO
7 INDICATED THAT THERE HAS BEEN NO ADJUDICATION OF
8 GUILT OR LACK OF GUILT IN THIS CASE. WE HAVE
9 PUT THE CART BEFORE THE HORSE AND WE'VE GONE
10 FURTHER AND SAID, OKAY, NOW WE'RE TALKING ABOUT
11 THE SECOND PHASE OF THE TRIAL WHICH IS THE DEATH
12 PENALTY PHASE.

13 A. YES, SIR.

14 Q. AND YOU UNDERSTAND, DO YOU KNOW, THAT IN THAT
15 PHASE OF THE TRIAL THERE ARE ONLY TWO DECISIONS
16 A JURY CAN MAKE. DEATH OR LIFE IN PRISON. AND
17 IF YOU FIND GUILT, THEN WE WOULD MOVE TO THAT
18 PHASE AND THAT WOULD BE YOUR DECISION. IS THAT
19 CORRECT? YOU UNDERSTAND THAT, SIR?

20 A. YES, SIR.

21 Q. AND IN THAT VEIN, IF I HAVE LISTENED TO YOU
22 CORRECTLY, HAVE YOU SAID THAT YOU COULD CONSIDER
23 BOTH AGGRAVATING CIRCUMSTANCES WHICH WOULD MAKE
24 THE CRIME EVEN WORSE THAT WOULD BE PRESENTED BY
25 THE SOLICITOR AND IF THEY WERE PROVED, YOU COULD

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1 CONSIDER THOSE IN GIVING THE DEATH PENALTY. IS
2 THAT CORRECT?

3 A. COULD YOU EXPLAIN THAT ONE THOUGH. WHAT DO YOU
4 MEAN BY MAKE IT WORSE?

5 Q. WELL, THE CRIME BEGINS AS HE IS CHARGED WITH TWO
6 HOMICIDES.

7 A. OKAY.

8 Q. THE KILLING OF HIS MOTHER AND HIS FATHER. IF
9 THAT IS PROVEN BEYOND A REASONABLE DOUBT, THEN
10 WE WOULD GO TO THE SECOND PHASE.

11 THAT IS THE PHASE IN WHICH YOU WILL DECIDE
12 EITHER DEATH PENALTY OR LIFE.

13 A. OKAY.

14 Q. THE STATE MAY PUT ON WHAT ARE CALLED AGGRAVATING
15 CIRCUMSTANCES. THOSE ARE CIRCUMSTANCES THAT
16 WOULD GO EVEN BEYOND JUST THE KILLING OF HIS TWO
17 PARENTS AND TEND TO MAKE THE CRIME EVEN WORSE.
18 THOSE ARE AGGRAVATING CIRCUMSTANCES. AND YOU
19 HAVE INDICATED THAT YOU COULD CONSIDER THOSE.
20 IS THAT CORRECT?

21 A. YES, SIR.

22 Q. AND YOU WOULD CONSIDER THOSE IN GIVING THE DEATH
23 PENALTY. IS THAT ALSO CORRECT?

24 A. YES, SIR.

25 Q. WOULD YOU START WITH THE BASIC PREMISE THAT IF

1 SOMEONE HAD KILLED THEIR PARENTS, THEN THEY
2 SHOULD GET THE DEATH PENALTY?

3 A. NOT NECESSARILY.

4 Q. NOT NECESSARILY. YOU WOULD LISTEN TO
5 AGGRAVATING CIRCUMSTANCES?

6 A. YES, SIR.

7 Q. WOULD YOU ALSO LISTEN TO WHAT WE CALL MITIGATING
8 CIRCUMSTANCES THAT COULD BE PRESENTED BY MR.
9 BOYD AND MYSELF ON BEHALF OF JIMMY. MITIGATING
10 CIRCUMSTANCES MEANING THAT THOSE ARE
11 CIRCUMSTANCES THAT WOULD TEND TO LESSEN HIS
12 MORAL CULPABILITY. NOT HIS MORAL
13 RESPONSIBILITY, BUT HIS MORAL CULPABILITY FOR
14 THIS PARTICULAR CRIME. COULD YOU LISTEN TO
15 THOSE THAT WOULD LESSEN THAT AND CONSIDER THEM
16 AND POSSIBLY VOTE FOR LIFE IN JAIL?

17 A. YES, SIR.

18 Q. YOU COULD DO THAT?

19 A. YES, SIR.

20 Q. NOW, YOU HAVE INDICATED AND I THINK FURTHER TO
21 THE SOLICITOR THAT YOU HAVE -- YOU'RE A PERSON
22 OF FAIRLY STRONG OPINIONS. THAT IF YOU HAD THE
23 OPINION THAT HE SHOULD RECEIVE LIFE IN JAIL,
24 THEN YOU COULD STAND BY THAT OPINION AND VOTE
25 FOR LIFE IMPRISONMENT. IS THAT CORRECT?

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1 A. YES, SIR.

2 Q. NOW, WOULD YOU CHANGE THAT OPINION JUST TO ENTER
3 THE MAJORITY? SAY IF THE MAJORITY OF THE JURORS
4 IN THAT ROOM IN THERE SAID WE WANT THE DEATH
5 PENALTY, WOULD YOU CHANGE JUST TO BE WITH THOSE
6 PEOPLE?

7 A. NO, SIR.

8 Q. YOU THINK THAT YOUR OPINION WOULD BE STRONG
9 ENOUGH THAT YOU COULD HOLD YOUR OPINION. IS
10 THAT WHAT YOU'RE TELLING ME, SIR?

11 A. I TRUST MY OPINION; YES, SIR.

12 Q. NOW YOU HAVE TOLD ME THAT YOU KNOW MAGISTRATE
13 RAY VAUGHN WHO IS IN THE COURTROOM HERE. IS
14 THAT CORRECT, SIR?

15 A. YES, SIR.

16 Q. WAS HE THE PASTOR AT YOUR CHURCH FOR SOME TIME?

17 A. YES, SIR.

18 Q. OKAY. AND YOU'VE INDICATED THAT YOU WENT TO
19 CHURCH UP TO, SAY, THREE TIMES A WEEK?

20 A. YES, SIR.

21 Q. AND IN LISTENING TO HIM DID YOU PAY HOMAGE --
22 NOT HOMAGE BUT PAY RESPECT TO WHAT HE SAID
23 REGARDING YOUR RELIGION AND HIS TEACHINGS TO
24 YOU?

25 A. I TRUSTED HIS JUDGMENT AND THE WAY HE SEEN IT,

1 BUT I ALSO WENT BY MY JUDGMENT AND THE WAY I
2 SEEN IT.

3 Q. OKAY, YOU TRUSTED HIS JUDGMENT BUT HE WAS IN
4 FACT YOUR MINISTER AND YOUR TEACHER FOR QUITE
5 SOME TIME. IS THAT CORRECT?

6 A. YES, SIR.

7 Q. AND THAT WOULD CAUSE YOU TO PAY MORE RESPECT TO
8 HIS OPINION AS OPPOSED TO SOMEONE ELSE'S OPINION
9 THAT YOU DIDN'T KNOW WOULD IT NOT, SIR?

10 A. I WOULDN'T SAY THAT. I'M THE TYPE PERSON THAT I
11 KNOW HE'S GOING TO HAVE HIS OWN OPINIONS. AND,
12 THEREFORE, I RESPECT HIM FOR HIS OPINIONS, BUT I
13 ALSO KNOW THAT I HAVE MY OWN OPINIONS, TOO. I
14 DON'T JUST ACCEPT WHAT HE SAYS TO BE THE WAY IT
15 IS.

16 Q. YOU WOULD BELIEVE HIM OVER SOMEBODY ELSE THAT
17 SAID SOMETHING THAT MAY NOT BE CORRECT WITH HIM.
18 IS THAT CORRECT OR INCORRECT, SIR?

19 A. I DON'T KNOW IF I'M UNDERSTANDING THAT EXACTLY
20 RIGHT.

21 Q. ALL RIGHT. IF MR. LONG TESTIFIED TO SOMETHING
22 AND SOMEONE ELSE TESTIFIED TO SOMETHING
23 DIFFERENT, YOU WOULD BE MORE INCLINED TO BELIEVE
24 MR. LONG; IS THAT NOT CORRECT?

25 A. WELL, BEING THAT I KNOW HIM, YES, I WOULD BE

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1 MORE INCLINED TO BELIEVE HIM, BUT NOT DISBELIEVE
2 THE OTHER ONE THOUGH; I'M NOT SAYING THAT.

3 Q. YES, SIR. THANK YOU, SIR; I HAVE NO FURTHER
4 QUESTIONS.

5 THE COURT: I NEED YOU TO STEP RIGHT OUTSIDE THE
6 DOOR, PLEASE.

7 (THE JUROR LEFT THE COURTROOM.)

8 THE COURT: WHAT SAYS THE STATE?

9 MR. POPE: YOUR HONOR, I WOULD SUBMIT THAT HE IS
10 QUALIFIED. ALSO ON THE RAY LONG ISSUE, HE'S MADE IT CLEAR
11 THAT HE COULD LISTEN TO THE OTHER JURORS. I THINK FROM THE
12 TOTALITY -- THE OTHER THING I WILL SAY, RAY LONG'S NAME IS
13 ON THERE BECAUSE HE MAY HAVE BEEN THE JUDGE WHO -- WE PUT
14 LYNN BENFIELD'S NAME ON THERE BECAUSE THEY MAY HAVE SIGNED
15 ONE OF THE WARRANTS. THE ONLY TIME RAY LONG -- HE WOULD
16 NEVER TESTIFY IN FRONT OF THE JURY, HE WOULD ONLY TESTIFY
17 IN AN IN CAMERA HEARING CONCERNING THE SEARCH WARRANT.

18 THE COURT: WHAT SAYS THE DEFENSE?

19 MR. HANCOCK: YOUR HONOR, AS OTHER WITNESSES HAVE
20 SAID, HE WOULD BELIEVE ONE WITNESS OVER OTHER WITNESSES.

21 THE COURT: HOW ABOUT WITHERSPOON, DEATH PENALTY
22 QUALIFIED?

23 MR. HANCOCK: WITHERSPOON QUALIFIED.

24 THE COURT: I FIND THAT HE IS QUALIFIED. I DO
25 NOT FIND THAT HIS RESPONSES WERE SUCH THAT HE WOULD BE

1 IMPARTIAL. HE WAS VERY CLEAR, I THINK. ALL RIGHT, BRING
2 HIM IN.

3 (THE JUROR RETURNED TO THE COURTROOM.)

4 THE COURT: MR. GUFFEY, YOU ARE GOING TO BE IN
5 THE POOL FROM WHICH THE JURY IS DRAWN. THAT DOES NOT MEAN
6 THAT YOU WILL ULTIMATELY BE ON THE JURY.

7 YOU ARE TO CALL BACK TONIGHT AFTER 6:00 AND
8 RECEIVE FURTHER INSTRUCTIONS.

9 WHEN YOU COME, COME PREPARED TO STAY FOR AN
10 EXTENDED PERIOD, A WEEK OR SO BECAUSE THAT'S ABOUT HOW LONG
11 WE THINK THIS CASE WILL TAKE.

12 DON'T DISCUSS THE CASE AMONG ANYBODY. DON'T LET
13 ANYBODY DISCUSS THE CASE WITH YOU. AND DON'T READ ANYTHING
14 ABOUT IT; DON'T LISTEN TO ANYTHING ABOUT IT; DON'T RECEIVE
15 ANY INFORMATION ABOUT IT.

16 IF ANYBODY DOES TRY TO DISCUSS THE CASE WITH YOU,
17 TELL THEM THAT YOU CANNOT AS YOU ARE SERVING ON THE JURY.

18 LIKE I SAY, DON'T DISCUSS THE CASE; DON'T RECEIVE
19 ANY PUBLICITY ABOUT IT, IF THERE IS ANY. AND REPORT BACK
20 -- CALL TONIGHT AFTER 6:00. THANK YOU.

21 THE JUROR: THANK YOU.

22 (THE JUROR LEFT THE COURTROOM.)

23 THE COURT: I DON'T WANT TO APPEAR RUDE, BUT
24 COULD I ASK THAT PEOPLE BE QUIET WHEN I'M TALKING TO THESE
25 INDIVIDUALS? THIS IS VERY DISTRACTING. AND I TRY NOT TO

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1 SPEAK WHEN Y'ALL ARE SPEAKING. ALL RIGHT, BRING IN SUSAN
2 COCHRAN, NUMBER 53.

3 SUSAN D. COCHRAN, JUROR NUMBER 53, WHITE FEMALE,
4 WAS QUESTIONED AS FOLLOWS:

5 QUESTIONS BY THE COURT:

6 Q. MS. COCHRAN, IF YOU WOULD COME UP HERE AND HAVE
7 A SEAT PLEASE, MA'AM. I'M JOHN HAYES, AND I'M
8 THE JUDGE ASSIGNED TO THIS CASE. AND YOU'RE
9 STILL UNDER OATH FROM MONDAY.

10 IF YOU ARE CHOSEN AS A JUROR ON THIS CASE, YOU
11 WILL PERHAPS SEE CAMERAS IN THE COURTROOM. THE
12 PRESS IS ALLOWED TO COVER A CASE, ANY CASE, BUT
13 THEY CAN'T PUBLICIZE, TALK ABOUT BY NAME OR
14 PHOTOGRAPH THE JURY. SO, DON'T BE DISTRACTED BY
15 THAT IF THAT OCCURS.

16 NOW, YOU HAVE GIVEN US THE QUESTIONNAIRE. IS IT
17 OKAY OR DO YOU NEED TO MAKE SOME CORRECTIONS?

18 A. NO, IT'S ALL RIGHT.

19 Q. DID YOU REVIEW THE LIST OF WITNESSES OUT THERE?

20 A. YES, I DID.

21 Q. IS THERE ANYBODY ON THERE TO WHOM YOU ARE
22 RELATED BY BLOOD OR MARRIAGE OR WHO YOU KNOW OR
23 A PERSONAL FRIEND OR ACQUAINTANCE?

24 A. NO, SIR. I RECOGNIZED THE NAME DOUG MANNING, BUT
25 THE DOUG MANNING I KNOW IS IN NASHVILLE,

1 TENNESSEE. I DON'T THINK IT'S THE SAME ONE.

2 Q. ALL RIGHT. BEFORE COMING HERE AND BEING TOLD
3 ABOUT THIS CASE ON MONDAY, HAD YOU HEARD ABOUT
4 IT FROM ANY SOURCE WHATSOEVER, READ ABOUT IT,
5 TALKED ABOUT IT, FORMED AN OPINION ABOUT IT OR
6 DISCUSSED IT IN ANY WAY?

7 A. I HAVE READ ONE ARTICLE IN THE SUNDAY PAPER.

8 Q. WOULD THE FACT THAT YOU HAVE READ THAT ARTICLE
9 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN
10 THE TRIAL OF THIS CASE?

11 A. NO, SIR.

12 Q. WOULD YOU BE ABLE TO BASE YOUR VERDICT IN THIS
13 CASE SOLELY ON WHAT YOU HEAR IN THIS COURTROOM
14 AS FAR AS THE LAW AND THE EVIDENCE AND DISREGARD
15 WHAT YOU HAD HEARD OR READ PRIOR TO COMING HERE?

16 A. YES, SIR.

17 Q. THIS TYPE CASE TAKES PLACE IN TWO PARTS. THE
18 FIRST DEALING WITH WHETHER OR NOT MR. ROBERTSON
19 IS GUILTY OR NOT OF THE CRIMES OF MURDER. IF
20 HE'S FOUND NOT GUILTY, THE CASE WOULD END.
21 IF HE'S FOUND GUILTY, THE CASE WOULD MOVE
22 FURTHER INTO A SECOND PHASE CALLED THE PENALTY
23 PHASE.

24 WE'RE TALKING ABOUT THAT SECOND PHASE BUT THAT
25 DOES NOT PRESUPPOSE HIS GUILT. WE MAY NOT EVER

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1 GET TO THE SECOND PHASE. IF HE'S FOUND NOT
2 GUILTY, AS I SAY, THE CASE ENDS.

3 HE IS PRESUMED INNOCENT OF THESE CHARGES AND IS
4 SO PRESUMED UNTIL A JURY WERE CONVINCED
5 UNANIMOUSLY BEYOND A REASONABLE DOUBT OF HIS
6 GUILT. THEN AND ONLY THEN WOULD WE MOVE INTO
7 THIS SECOND PHASE. BUT BECAUSE OF THE NATURE OF
8 THE CASE, WE HAVE TO TALK ABOUT THAT SECOND
9 PHASE NOW.

10 DID YOU HAVE A CHANCE TO REVIEW THE JUROR TYPES
11 THAT WERE SET FORTH ON A SHEET OF PAPER IN THE
12 JURY ROOM?

13 A. YES.

14 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

15 A. YES.

16 Q. WHICH TYPE?

17 A. THE THIRD TYPE.

18 Q. IN THAT THIRD TYPE I USED THE WORDS AGGRAVATION
19 AND MITIGATION. AND BY THOSE WORDS I WANT YOU
20 TO UNDERSTAND THAT WE'RE TALKING ABOUT
21 AGGRAVATING CIRCUMSTANCES BEING THOSE THINGS
22 THAT MIGHT ATTEND A CRIME WHICH WOULD INCREASE
23 THE ENORMITY OR ADD TO ITS INJURIOUS
24 CONSEQUENCE. THEY ARE THINGS THAT ARE ABOVE AND
25 BEYOND JUST THE ESSENTIAL ELEMENTS OF THE CRIME

1 ITSELF.

2 AND MITIGATING CIRCUMSTANCES ARE THINGS THAT
3 WHILE NOT CONSTITUTING JUSTIFICATION OR EXCUSE
4 ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE
5 CONSIDERED AS EXTENUATING OR REDUCING ONE'S
6 DEGREE OF MORAL CULPABILITY. DO YOU UNDERSTAND
7 THOSE TERMS?

8 A. YES, SIR.

9 Q. SO YOU ARE TELLING ME THAT IF YOU WERE ON THE
10 JURY AND THE JURY HAD DETERMINED THAT MR.
11 ROBERTSON WAS GUILTY OF MURDER AND WE WENT INTO
12 THAT SECOND PHASE, THAT AS WE ENTERED THAT
13 SECOND PHASE YOU WOULD NOT HAVE MADE UP YOUR
14 MIND IN ADVANCE CONCERNING WHAT PUNISHMENT WOULD
15 BE APPROPRIATE. IS THAT CORRECT?

16 A. YES, SIR.

17 Q. AND AS I UNDERSTAND IT, YOU WOULD WISH TO HEAR
18 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
19 MITIGATION AND WOULD WANT TO LISTEN AND FOLLOW
20 THE LAW AS IT'S CHARGED TO YOU AND THEN AND ONLY
21 THEN MAKE A DECISION CONCERNING PUNISHMENT. IS
22 THAT CORRECT?

23 A. YES, SIR.

24 Q. IF AT THAT TIME THE FACTS PRESENTED WARRANTED
25 IT, COULD YOU RETURN A VERDICT OF LIFE

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1 IMPRISONMENT AGAINST MR. ROBERTSON?

2 A. YES, SIR.

3 Q. COULD YOU, IF YOU FELT THE FACTS PRESENTED SO
4 WARRANTED, RETURN A VERDICT IMPOSING THE PENALTY
5 OF DEATH?

6 A. YES, SIR.

7 Q. ALL RIGHT. ANSWER ANY QUESTIONS THESE ATTORNEYS
8 MAY HAVE.

9 QUESTIONS BY MR. BOYD:

10 Q. GOOD MORNING, MS. COCHRAN, HOW ARE YOU DOING?

11 A. FINE, THANK YOU.

12 Q. I KNOW YOU'RE PROBABLY NOT USED TO SITTING IN A
13 WITNESS CHAIR ANSWERING QUESTIONS. LET ME
14 ASSURE YOU, THIS IS NOT CROSS EXAMINATION. WE
15 JUST WANT YOU TO ANSWER THE QUESTIONS HOW YOU
16 FEEL BECAUSE YOU'RE NOT IN TROUBLE NO MATTER HOW
17 YOU ANSWER THESE QUESTIONS.

18 I WANT TO FOLLOW UP ON A FEW THINGS THE JUDGE
19 ASKED YOU ABOUT.

20 NOW, YOU UNDERSTAND IN THIS TRIAL OR A TRIAL OF
21 THIS NATURE THERE ARE TWO PHASES OF THE TRIAL
22 POTENTIALLY. THE FIRST PHASE IS IN WHICH THE
23 JURY DETERMINES WHETHER OR NOT JIMMY ROBERTSON
24 WILL BE FOUND GUILTY OR NOT GUILTY OF MURDER.
25 YOU UNDERSTAND?

1 A. YES, SIR.

2 Q. YOU UNDERSTAND HE IS CHARGED WITH KILLING BOTH
3 OF HIS PARENTS?

4 A. YES, SIR.

5 Q. THAT'S THE CHARGE. AND IF HE'S FOUND GUILTY IN
6 THE FIRST PHASE, THEN IT GOES TO A SENTENCING
7 PHASE OF THE TRIAL. AND IN THAT PHASE OF THE
8 TRIAL THE JURY IS ASKED TO DETERMINE WHETHER HE
9 WILL RECEIVE A LIFE SENTENCE IN PRISON OR
10 WHETHER HE WILL RECEIVE THE DEATH PENALTY.

11 NOW, I DON'T WANT TO INTIMATE TO YOU BY ASKING
12 ABOUT THE SENTENCING PORTION OF IT THAT I THINK
13 HE IS GOING TO GET TO THAT POINT, BUT I HAVE TO
14 ASK THESE QUESTIONS NOW BECAUSE THIS IS THE ONLY
15 TIME I GET TO ASK THEM.

16 NOW, ASSUMING THAT WE'RE TO THE POINT THAT IT IS
17 IN THE SENTENCING PHASE OF THE TRIAL AND THAT HE
18 HAS BEEN FOUND GUILTY OF MURDERING HIS PARENTS,
19 OF COURSE, AT THAT POINT HIS GUILT HAS BEEN
20 DETERMINED. THERE'S NO QUESTION ABOUT IT WAS
21 JUSTIFIED OR IT WAS SELF-DEFENSE OR IT WAS
22 ACCIDENT OR ANYTHING, THAT HE'S BEEN CONVICTED
23 OF DELIBERATELY KILLING HIS PARENTS.

24 WOULD THE FACT THAT HE HAS BEEN CONVICTED OF
25 DELIBERATELY KILLING HIS PARENTS, WOULD YOU

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1 ASSUME FROM THAT THAT THE DEATH PENALTY IS THE
2 APPROPRIATE SENTENCE?

3 A. I THINK THERE WOULD BE OTHER FACTORS THAT I
4 WOULD HAVE TO HEAR.

5 Q. OKAY.

6 A. OTHER EVIDENCE THAT I WOULD HAVE TO HEAR BEFORE
7 HANDING DOWN A DEATH SENTENCE.

8 Q. OKAY, SO YOU WOULD WANT TO HEAR ALL THE
9 EVIDENCE?

10 A. YES, SIR.

11 Q. AND IN THAT PHASE OF THE TRIAL THE STATE COULD
12 PRESENT WHAT'S CALLED AGGRAVATING CIRCUMSTANCES
13 WHICH MEANS THINGS THAT MAKE THE MURDER WORSE.
14 AND WE COULD PRESENT -- WE DON'T HAVE TO PRESENT
15 ANYTHING, BUT WE COULD PRESENT WHAT ARE CALLED
16 MITIGATING FACTORS. THAT IS THINGS THAT ARE NOT
17 AN EXCUSE BUT MAY LESSEN THE MORAL CULPABILITY.
18 MY QUESTION TO YOU NOW IS WOULD YOU BE WILLING
19 TO OPENLY LISTEN TO AND CONSIDER THESE
20 MITIGATING CIRCUMSTANCES IN PASSING SENTENCE?

21 A. YES, SIR.

22 Q. SO, YOU WOULDN'T AUTOMATICALLY THINK THAT THE
23 DEATH PENALTY IS THE CORRECT WAY TO GO?

24 A. NO.

25 Q. OKAY. NOW, IF YOU ARE SEATED ON THE JURY AND IF

1 THE JURY DOES DETERMINE THAT DEATH IS THE
2 APPROPRIATE SENTENCE, IN MOST CASES JUST THE
3 FOREMAN SIGNS THE INDICTMENT SAYING, OR THE
4 VERDICT FORM SAYING WHAT THE VERDICT IS. THAT'S
5 IN A REGULAR CASE AND EVEN IN THIS CASE IF A
6 LIFE SENTENCE IS PASSED DOWN. BUT BECAUSE OF
7 THE SERIOUS NATURE OF THIS KIND OF CASE IF THERE
8 IS A DEATH SENTENCE, ALL TWELVE OF THE JURORS
9 HAVE TO SIGN THE FORM STATING THAT THEY AGREE
10 WITH THE DEATH SENTENCE. THAT'S JUST AN EXTRA
11 PROTECTION TO MAKE SURE ALL THE JURORS AGREE.
12 DO YOU UNDERSTAND THAT?

13 A. YES.

14 Q. AND IF YOU HAVE CONSIDERED THE EVIDENCE AND IF
15 YOU THOUGHT THAT THE DEATH PENALTY WAS
16 APPROPRIATE AND HAD VOTED FOR THE DEATH PENALTY,
17 COULD YOU SIGN YOUR NAME THERE KNOWING THAT THAT
18 SENTENCE WOULD BE CARRIED OUT BY THE JUDGE?

19 A. YES, I COULD.

20 Q. OKAY. AND LET ME ASK YOU A FEW OTHER QUESTIONS
21 AND I'LL BE THROUGH. YOU UNDERSTAND, OF COURSE,
22 WHEN YOU'RE SITTING IN A JURY ROOM THAT
23 DIFFERENT JURORS HAVE DIFFERENT OPINIONS ABOUT
24 THINGS.

25 A. YES.

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1 Q. AND, OF COURSE, YOU ARE ENTITLED TO HAVE YOUR
2 OPINION RESPECTED BY ALL THE OTHER JURORS. YOU
3 UNDERSTAND THAT.

4 A. YES, SIR.

5 Q. OKAY. AND LIKEWISE, YOU ARE REQUIRED TO RESPECT
6 THE OPINION OF OTHER JURORS. DO YOU UNDERSTAND
7 THAT?

8 A. YES, SIR.

9 Q. AND IF YOU WERE ON THE JURY, AND OF COURSE THIS
10 MAY BE A LONG PROCESS OF DELIBERATION AND
11 HEARING EVIDENCE, WOULD YOU BE WILLING -- I KNOW
12 YOU HAVE TO LISTEN TO OTHER PEOPLE AND THAT TYPE
13 OF THING, BUT ONCE YOU HAVE REACHED YOUR
14 DECISION ON HOW TO VOTE, WOULD YOU BE WILLING TO
15 CHANGE YOUR VOTE JUST TO GET IN THE MAJORITY?

16 A. NO, SIR.

17 Q. OKAY. SO, EVEN IF THERE WAS ELEVEN PEOPLE, SAY,
18 VOTING FOR DEATH AND YOU WERE THE ONLY PERSON
19 WHO WANTED TO VOTE FOR LIFE, YOU WOULDN'T CHANGE
20 YOUR MIND JUST TO BE WITH THE MAJORITY AND GET
21 IT OVER WITH?

22 A. NO.

23 Q. AND, OF COURSE, YOU WOULD UNDERSTAND THAT YOU
24 WOULD RESPECT OTHER JURORS' OPINIONS AND THEY
25 WOULD HAVE TO RESPECT YOUR'S?

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1 A. YES, SIR.

2 Q. AND THE FACT THAT THIS CASE MAY -- WELL, IT WILL
3 IF YOU ARE SELECTED AS A JUROR, REQUIRE YOU BY
4 LAW TO BE SEQUESTERED. YOU'D BE AWAY FROM YOUR
5 HOME. WOULD YOU BE INCLINED TO REACH A SPEEDY
6 VERDICT TO GET OUT OF HERE AND GET BACK HOME?

7 A. WELL, THERE IS A CIRCUMSTANCE. I DON'T KNOW IF
8 I CAN SPEAK ABOUT THAT NOW OR NOT.

9 Q. WELL, WHY DON'T YOU GO AHEAD AND TELL US WHAT
10 THAT CIRCUMSTANCE IS.

11 A. I HAVE A TRIP PLANNED TO EUROPE LEAVING APRIL
12 1ST.

13 Q. OKAY. WELL, I THINK YOU'LL BE OUT OF HERE BY
14 APRIL 1ST. I CERTAINLY HOPE THAT I'M GOING TO BE
15 OUT OF HERE BY APRIL 1ST AND I HOPE YOU WILL BE,
16 TOO.

17 A. GOOD.

18 Q. THANK YOU. THAT'S ALL THE QUESTIONS.

19 QUESTIONS BY MR. POPE:

20 Q. MS. COCHRAN, IF WE'RE HERE ON APRIL 1ST, WE'RE
21 ALL IN TROUBLE.

22 Q. I'M TOMMY POPE; I'M THE SOLICITOR HERE IN YORK
23 COUNTY. THIS IS KEVIN BRACKETT. WE ARE THE
24 PROSECUTORS FOR THE STATE. I'M THE SOLICITOR; I
25 THINK IN TENNESSEE YOU PROBABLY CALL THEM

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1 DISTRICT ATTORNEYS I BELIEVE; IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. YOU SAID YOU'D NEVER BEEN IN THIS SITUATION
4 WHERE YOU HAVE BASICALLY THREE LAWYERS GOING
5 THROUGH THE SAME QUESTIONS. WELL, ONE ADVANTAGE
6 YOU HAVE IS YOU CAN'T GIVE A WRONG ANSWER
7 BECAUSE WE'RE JUST TRYING TO FIND OUT A LITTLE
8 BIT ABOUT YOU AND HOW YOU FEEL. AND I'M
9 PROBABLY GOING TO BE REAL BRIEF WITH YOU BASED
10 ON WHAT I'VE ALREADY HEARD.

11 BASICALLY SUSAN COCHRAN IS THE KIND OF PERSON
12 THAT'S GOING TO KEEP AN OPEN MIND UNTIL YOU HEAR
13 THE FACTS AND THEN MAKE A DECISION. IS THAT A
14 FAIR STATEMENT?

15 A. YES.

16 Q. OKAY. AND YOU KNOW THE DEFENDANT IS INNOCENT
17 UNTIL PROVEN GUILTY AND THAT WE HAVE TO PROVE
18 THE CASE. YOU UNDERSTAND THAT?

19 A. THAT'S CORRECT; YES, SIR.

20 Q. AND YOU WOULD NEVER HOLD THE DEFENDANT TO THE
21 BURDEN OF PROVING ANYTHING. YOU KNOW WHAT I
22 MEAN, HE DOESN'T HAVE TO COME AND PROVE -- HE'S
23 INNOCENT AND WE HAVE TO PROVE IT.

24 A. UH HUH.

25 Q. AND LIKEWISE WHEN WE GET TO THE PENALTY, YOU'RE

1 NOT PREDISPOSED -- AS A MATTER OF FACT YOU SAID,
2 I'D HAVE TO HEAR ALL OF THE OTHER FACTORS BEFORE
3 I HANDED IN A DEATH SENTENCE. YOU WOULD HAVE TO
4 HEAR EVERYTHING BOTH WAYS, RIGHT?

5 A. RIGHT.

6 Q. OKAY. AND AGAIN KNOWING, AND I THINK I'M
7 BELABORING THE POINT, BUT YOU KNOW EVEN IN THE
8 SECOND PHASE, THE PENALTY PHASE, HE DOESN'T HAVE
9 TO PUT UP ANYTHING. YOU UNDERSTAND THAT?

10 A. RIGHT.

11 Q. BUT YOU'RE THE TYPE OF JUROR THAT YOU WOULD HEAR
12 WHATEVER WE PUT UP WHICH IS CALLED EVIDENCE IN
13 AGGRAVATION WHICH IS THE BAD THINGS OR THE
14 THINGS THAT WOULD MAKE IT EVEN WORSE. OF
15 COURSE, AT THAT POINT HE WOULD HAVE BEEN
16 CONVICTED OF KILLING HIS PARENTS.

17 A. RIGHT.

18 Q. BUT YOU WOULD HEAR THINGS ABOUT THE CRIME OR
19 THINGS THAT MAY MAKE IT WORSE THAT THE STATE
20 WOULD PROVE THAT WOULD TEND TO SAY IT OUGHT TO
21 BE A DEATH PENALTY. AND LIKEWISE, IF THEY
22 CHOSE, YOU'D HEAR MITIGATION, THINGS THAT THEY
23 SAY MAY EXPLAIN WHY IT SHOULD BE A LIFE
24 SENTENCE. AND FROM WHAT YOU'RE TELLING ME,
25 YOU'RE THE TYPE THAT COULD HEAR BOTH. AND AS

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1 SOON AS YOU GET IN THERE YOU'RE NOT SAYING, I'M
2 LOOKING OUT THE WINDOW, I'M VOTING LIFE OR I'M
3 VOTING DEATH. YOU'D HEAR EVERYTHING, IS THAT
4 RIGHT?

5 A. YES.

6 Q. OKAY. AND LIKEWISE, AS FAR AS BEING ON THE
7 JURY, YOU'RE NOT GOING TO FLIP ONE WAY OR THE
8 OTHER JUST TO BE IN THE MAJORITY BUT YOU'RE
9 GOING TO HAVE OPEN DISCOURSE -- IN OTHER WORDS,
10 YOU'RE GOING TO TALK TO PEOPLE AND, YOU KNOW,
11 THEY MIGHT POINT OUT SOMETHING YOU DIDN'T
12 REMEMBER; YOU MIGHT POINT OUT SOMETHING THEY
13 DIDN'T THINK OF. IN OTHER WORDS, YOU WOULD COME
14 TO A CONCLUSION BASED ON BEING FAIR TO BOTH
15 SIDES. IS THAT RIGHT?

16 A. YES.

17 Q. OKAY. FINALLY, AS MR. BOYD EXPLAINED TO YOU, IN
18 A DEATH PENALTY CASE IF THE VERDICT IS LIFE, THE
19 FOREPERSON SIGNS. IF THE VERDICT IS DEATH AND,
20 AGAIN, THIS IS AFTER ALL THIS DELIBERATION,
21 AFTER ALL OF THIS CONSIDERATION.

22 A. UH HUH.

23 Q. IF THE VERDICT IS DEATH, EACH AND EVERY JUROR
24 HAS TO SIGN THE DOCUMENT. AND OF COURSE,
25 OBVIOUSLY, IT'S A DIFFICULT DECISION REGARDLESS

1 OF WHICH WAY YOU DECIDE, BUT PAST THAT THE LAW
2 REQUIRES THAT THE JURORS SIGN THEIR NAME TO THE
3 VERDICT FORM. AND THE COURT'S GOING TO DO
4 WHATEVER YOU SAY. YOU KNOW, IF YOU SAY LIFE,
5 THAT'S WHAT IT WILL BE. WHEN I SAY YOU, THE
6 UNANIMOUS JURY. IF YOU SAY DEATH, THAT'S WHAT
7 IT'S GOING TO BE.

8 IF YOU THOUGHT, AFTER HEARING IT, THAT DEATH WAS
9 APPROPRIATE, COULD YOU SIGN SUSAN COCHRAN TO A
10 DOCUMENT KNOWING IT WOULD GIVE THIS MAN DEATH?

11 A. YES.

12 Q. THANK YOU, MA'AM.

13 THE COURT: I'M GOING TO LET YOU STEP OUTSIDE THE
14 DOOR JUST A MOMENT, MS. COCHRAN.
15 (THE JUROR LEFT THE COURTROOM.)

16 THE COURT: WHAT SAYS THE DEFENSE?

17 MR. BOYD: SHE'S QUALIFIED, YOUR HONOR.

18 THE COURT: WHAT SAYS THE STATE?

19 MR. POPE: I SUBMIT SHE'S QUALIFIED, YOUR HONOR.

20 THE COURT: I FIND SHE'S QUALIFIED. HAVE HER
21 COME BACK IN.

22 (THE JUROR RETURNED TO THE COURTROOM.)

23 THE COURT: MS. COCHRAN, WE'RE GOING TO INCLUDE
24 YOU IN THE POOL FROM WHICH THE JURY WILL BE DRAWN. THAT
25 DOES NOT MEAN THAT YOU WILL AUTOMATICALLY BE ON IT BUT YOU

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1 WILL BE A POSSIBLE JUROR.

2 DON'T DISCUSS THIS CASE WITH ANYONE AT ALL. IF
3 ANYONE TRIES TO DISCUSS THIS CASE WITH YOU, TELL THEM YOU
4 CAN'T AND REPORT THAT BACK TO ME IF THEY DO.

5 DON'T LET YOURSELF BE EXPOSED TO ANY NEWS
6 COVERAGE. DON'T READ ABOUT IT, LISTEN TO IT OR ANYTHING.

7 PLEASE CALL BACK TONIGHT AFTER 6:00 AND YOU WILL
8 BE TOLD YOUR INSTRUCTIONS.

9 NOW, I'VE BEEN ASKING THE OTHER INDIVIDUALS ABOUT
10 ANY EXTENUATING CIRCUMSTANCES AND YOU'VE ALREADY TOLD ME
11 WHAT YOUR'S WAS. IS THERE ANY OTHER, OTHER THAN THE APRIL
12 1ST?

13 THE JUROR: NO, SIR.

14 THE COURT: I DON'T BELIEVE WE WILL HAVE TO DEAL
15 WITH THAT, BUT I APPRECIATE YOU CALLING THAT TO OUR
16 ATTENTION.

17 SO, CALL BACK TONIGHT AFTER 6:00. THANK YOU.
18 (THE JUROR LEFT THE COURTROOM.)

19 THE COURT: ALL RIGHT, ALTA VANDERGRIFT.

20 ALTA M. VANDERGRIFT, JUROR NUMBER 279, WHITE
21 FEMALE, WAS QUESTIONED AS FOLLOWS:

22 Q. MR. VANDERGRIFT, YOU CAN HAVE A SEAT UP HERE
23 PLEASE, MA'AM. AND I'M GOING TO INTRODUCE
24 MYSELF. I'M JOHN HAYES; I'M THE JUDGE WHO IS
25 ASSIGNED TO PRESIDE OVER THIS TRIAL. AND YOU'RE

1 STILL UNDER OATH, OKAY?

2 AND YOU MAY NOTICE AT SOME POINT IF YOU END UP
3 SITTING ON THIS TRIAL PHOTOGRAPHERS OR CAMERAS
4 HERE IN THE COURTROOM. THEY ARE BY LAW ALLOWED
5 IN THE COURTROOM, BUT THEY ARE NOT ALLOWED TO
6 TAKE PICTURES OF THE JURY. DO YOU UNDERSTAND
7 THAT?

8 A. YES, SIR.

9 Q. SO, DON'T BE DISTRACTED BY ANY OF THAT IF THERE
10 IS ANY. THERE IS ONE HERE NOW BUT IT'S NOT ON.
11 THE QUESTIONNAIRE THAT YOU SENT IN, DO YOU FEEL
12 THAT IT'S ACCURATE OR DO YOU NEED TO MAKE ANY
13 CHANGES TO IT?

14 A. NO, IT'S RIGHT.

15 Q. DID YOU HAVE A CHANCE IN THE JURY ROOM TO VIEW
16 THE LIST OF WITNESSES?

17 A. YES.

18 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE TO ANY OF
19 THEM OR ARE ANY OF THOSE INDIVIDUALS CLOSE
20 PERSONAL FRIENDS OR ACQUAINTANCES OF YOUR'S?

21 A. NO. MY NAME WAS MOON BEFORE I WAS MARRIED, BUT
22 I DON'T THINK THERE IS ANY CONNECTION BECAUSE
23 I'M FROM MARYLAND.

24 Q. ALL RIGHT.

25 A. SO I DON'T THINK THERE IS ANY CONNECTION.

1037

1 Q. PRIOR TO YOUR HAVING THIS CASE DEFINED FOR YOU
2 OR OUTLINED FOR YOU MONDAY, THE INDICTMENTS
3 READ, HAD YOU HEARD ANYTHING ABOUT IT, TALKED
4 ABOUT IT, FORMED AN OPINION ABOUT IT OR HEARD
5 ANYTHING ABOUT IT FROM ANY SOURCE WHATSOEVER?

6 A. ONLY JUST A FEW THINGS THAT I HAD READ IN THE
7 PAPER. THAT'S ALL.

8 Q. WOULD WHAT YOU HAD READ IN THE PAPER AFFECT YOUR
9 ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF
10 THIS CASE?

11 A. YES.

12 Q. IT WOULD?

13 A. IF I HAD READ ABOUT IT?

14 Q. NO, LET ME ASK IT AGAIN. WOULD THE THINGS IN
15 THE PAPER PREVENT YOU, WHAT YOU HAD ALREADY
16 READ, WOULD THAT PREVENT YOU FROM BEING FAIR?

17 A. I'M NOT SURE I UNDERSTAND WHAT YOU MEAN.

18 Q. IF YOU SIT ON THIS JURY, YOU MUST BASE YOUR
19 VERDICT ON THE LAW AND THE EVIDENCE THAT COMES
20 IN HERE IN THIS COURTROOM.

21 A. UH HUH.

22 Q. AND NOT CONSIDER ANYTHING THAT YOU'VE HEARD
23 ABOUT THIS CASE BEFORE YOU CAME IN. COULD YOU
24 DO THAT?

25 A. YES, I'D LISTEN TO WHAT I HEARD IN THE COURTROOM

1 AND NOT WHAT I'VE READ.

2 Q. OKAY. NOW, A CASE OF THIS TYPE PROCEEDS THROUGH
3 TWO STAGES OR POSSIBLY PROCEEDS THROUGH TWO
4 STAGES. THE FIRST BEING ONE DEALING WITH
5 WHETHER OR NOT MR. ROBERTSON IS GUILTY OF THE
6 OFFENSE OF MURDER. IF HE WERE TO BE FOUND NOT
7 GUILTY, THE CASE WOULD THERE END.

8 IF HE WERE FOUND GUILTY BY THE JURY BY A
9 UNANIMOUS VERDICT, A FINDING BEYOND A REASONABLE
10 DOUBT OF HIS GUILT, THEN THE CASE WOULD GO INTO
11 A SECOND PHASE.

12 HE IS PRESUMED INNOCENT OF THESE CHARGES UNTIL
13 SUCH TIME AS A JURY WERE TO FIND HIM GUILTY, IF
14 THEY DID.

15 AND THE FACT THAT WE'RE TALKING ABOUT THIS
16 SECOND PHASE, WHAT IS CALLED THE PENALTY PHASE,
17 IS NOT TO PRESUPPOSE THAT WE WOULD GET THERE.
18 BUT WE'VE GOT TO TALK ABOUT IT AT THIS POINT.
19 DO YOU UNDERSTAND THAT?

20 A. YES.

21 Q. IN THE JURY ROOM THERE WERE THREE JUROR TYPES
22 SET FORTH ON A PIECE OF PAPER. DID YOU HAVE A
23 CHANCE TO REVIEW THAT?

24 A. YES.

25 Q. DID YOU CONSIDER YOURSELF TO BE ONE OF THOSE

1039

1 TYPES OF JURORS?

2 A. YES, I THINK SO.

3 Q. WHICH ONE?

4 A. I THINK I WOULD HAVE TO GO WITH NUMBER THREE.

5 Q. ALL RIGHT. THE THIRD TYPE JUROR WOULD BE ONE
6 WHO EVEN THOUGH MR. ROBERTSON HAD BEEN FOUND
7 GUILTY OF MURDER, THIS JUROR WOULD NOT GO INTO
8 THAT PENALTY PHASE PREDISPOSED AS TO WHAT THE
9 PENALTY WOULD BE, BUT WOULD RATHER HAVE AN OPEN
10 MIND AS TO WHAT PENALTY SHOULD BE IMPOSED. IS
11 THAT THE TYPE JUROR YOU ARE?

12 A. YES.

13 Q. THIS TYPE JUROR WOULD WANT TO HEAR THE FACTS AND
14 CIRCUMSTANCES IN BOTH AGGRAVATION AND
15 MITIGATION.

16 AND THOSE TERMS, AGGRAVATION BASICALLY MEANS
17 CIRCUMSTANCES THAT ATTEND A CRIME WHICH INCREASE
18 ITS ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCE
19 BUT WHICH ARE THINGS THAT ARE ABOVE AND BEYOND
20 JUST THE ELEMENTS OF THE CRIME ITSELF.

21 MITIGATING CIRCUMSTANCES ARE THOSE THINGS THAT
22 WHILE NOT BEING SUFFICIENT FOR A JUSTIFICATION
23 OR EXCUSE FOR THE COMMISSION OF THE CRIME, THEY
24 ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE
25 CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE

1 OF MORAL CULPABILITY OF AN INDIVIDUAL. SO, YOU
2 ARE TELLING ME THAT YOU'RE THE TYPE WHO WOULD
3 WANT TO HEAR THAT TYPE INFORMATION AND THE LAW
4 BEFORE MAKING ANY DECISION AS TO PUNISHMENT?

5 A. YES.

6 Q. IF FACTS PRESENTED AT THAT TIME WARRANTED IT,
7 COULD YOU RETURN A VERDICT OF LIFE IMPRISONMENT
8 FOR MR. ROBERTSON IF WE GET TO THAT STAGE?

9 A. YES.

10 Q. COULD YOU ON THE OTHER HAND, IF YOU THOUGHT THE
11 EVIDENCE PRESENTED SO WARRANTED, RETURN A
12 VERDICT FOR THE DEATH PENALTY?

13 A. YES, IF I HEARD ENOUGH AND THOUGHT SO.

14 Q. ALL RIGHT. LET ME LET YOU ANSWER ANY QUESTIONS
15 THAT COUNSEL MAY HAVE.

16 QUESTIONS BY MR. BRACKETT:

17 Q. GOOD MORNING, MS. VANDERGRIFT.

18 A. GOOD MORNING.

19 Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY
20 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT.
21 SOLICITOR IS WHAT THEY CALL DISTRICT ATTORNEY UP
22 IN MARYLAND, I THINK, IS WHAT THEY CALL IT.
23 SEATED OVER AT COUNSEL TABLE WITH ME IS THE
24 SOLICITOR, TOMMY POPE. HE AND I ARE PROSECUTING
25 THIS CASE TOGETHER.

1041

1 I'M JUST GOING TO ASK YOU A FEW QUESTIONS, KIND
2 OF GO BACK OVER IN A LITTLE MORE DETAIL ON SOME
3 POINTS, THE SAME KIND OF THINGS THE JUDGE HAS
4 BEEN ASKING YOU.

5 A. OKAY.

6 Q. AND I WANT TO REITERATE AT THE OUTSET THAT THERE
7 ARE NO WRONG ANSWERS. THIS ISN'T A QUIZ, WE'RE
8 NOT GRADING YOU; WE'RE NOT GOING TO ALL SIT
9 AROUND AND COMPARE NOTES ON WHAT WE THOUGHT OF
10 YOUR OPINIONS. YOU'RE ENTITLED TO YOUR OPINIONS
11 JUST LIKE ANYBODY ELSE. WE JUST NEED TO KNOW
12 WHAT THOSE ARE SO THAT WE CAN DO OUR JOB
13 PROPERLY.

14 AS THE JUDGE HAS TOLD YOU, THIS IS A TWO PART
15 TRIAL. AND THE FIRST PART IS JUST LIKE A
16 REGULAR TRIAL EXCEPT BASICALLY WHAT WE ARE
17 TRYING TO DO IS WE'RE TRYING TO PROVE OR DECIDE
18 WHETHER OR NOT MR. ROBERTSON IS GUILTY OF THESE
19 CHARGES OR NOT. AND IN THAT FIRST PART OF THE
20 TRIAL, SOLICITOR POPE AND I HAVE THE
21 RESPONSIBILITY OF BRINGING FORWARD THE EVIDENCE
22 THAT SHOWS THAT HE IS GUILTY.

23 BUT YOU UNDERSTAND AS HE SITS THERE RIGHT NOW,
24 HE'S PRESUMED INNOCENT?

25 A. YES.

1 Q. AND WE HAVE TO PROVE THAT HE'S GUILTY.

2 A. YES.

3 Q. OKAY. AND IN THAT FIRST PART OF THE TRIAL WE'RE
4 NOT CONCERNED WITH ANY ISSUES OF WHETHER OR NOT,
5 WHAT THE PENALTY SHOULD BE, BECAUSE UNTIL HE'S
6 PROVED GUILTY, THERE IS NO PENALTY. YOU
7 UNDERSTAND THAT?

8 A. YES.

9 Q. AND YOU UNDERSTAND THAT HE'S PRESUMED INNOCENT
10 AND HE HAS NO BURDEN WHATSOEVER IN THIS
11 COURTROOM?

12 A. YES.

13 Q. HE DOES NOT HAVE TO PRESENT ANY EVIDENCE. HE
14 MAY CHOOSE TO REMAIN SILENT AND YOU COULDN'T
15 HOLD THAT AGAINST HIM. THAT'S HIS
16 CONSTITUTIONAL RIGHT. AND YOU UNDERSTAND THAT?

17 A. YES.

18 Q. AND YOU'RE SAYING IN THAT FIRST PHASE YOU COULD
19 COME INTO THIS COURTROOM AND YOU COULD HEAR THE
20 EVIDENCE AND YOU DON'T HAVE ANY CONCEPTION ONE
21 WAY OR THE OTHER WHAT THE VERDICT IS GOING TO
22 BE. YOU DON'T KNOW YET BECAUSE YOU HAVEN'T
23 HEARD THE EVIDENCE, BUT YOU WOULD GIVE IT A FAIR
24 HEARING AND THEN BASED ON THE EVIDENCE YOU WOULD
25 MAKE YOUR DECISION.

1043

1 A. I THINK HE DESERVES A FAIR HEARING.

2 Q. YES, MA'AM. ONLY IF THAT FIRST PHASE RESULTS IN
3 GUILTY VERDICTS DO WE GO TO THE SECOND PHASE.
4 IF HE'S FOUND GUILTY OF THE MURDERS, THEN WE GO
5 INTO THE SECOND PHASE OF THE TRIAL.

6 IN THAT PHASE OF THE TRIAL WE ARE CONCERNED WITH
7 THE PENALTY. AND THAT KIND OF COMES BACK TO
8 WHAT THE JUDGE WAS ASKING YOU.

9 WHAT I UNDERSTOOD YOU TO TELL THE JUDGE WAS YOU
10 WOULD GO INTO THAT SECOND PHASE KIND OF LIKE YOU
11 WENT INTO THE FIRST, AN OPEN MIND. YOU WOULDN'T
12 HAVE ANY PREDISPOSITION ONE WAY OR THE OTHER
13 WHAT THE PENALTY SHOULD BE. AND YOU UNDERSTAND
14 IT REALLY IS ONE WAY OR THE OTHER BECAUSE THERE
15 ARE ONLY TWO CHOICES, LIFE OR DEATH. YOU
16 UNDERSTAND THAT?

17 A. YES.

18 Q. OKAY. BUT WHEN YOU WENT INTO THAT SECOND PHASE,
19 EVEN THOUGH HE HAD BEEN FOUND GUILTY OF
20 MURDERING HIS PARENTS, ASSUMING THAT HE IS FOUND
21 GUILTY, EVEN THE FACT THAT IT WAS HIS PARENTS
22 THAT HE KILLED, THAT WOULDN'T AUTOMATICALLY
23 PREDISPOSE YOU TOWARD ONE OR THE OTHER, DEATH OR
24 LIFE? YOU WOULD STILL WANT TO HEAR THE
25 EVIDENCE.

1 A. I WOULD STILL WANT TO HEAR THE EVIDENCE.

2 Q. OKAY. AND THE SECOND PHASE IS KIND OF LIKE THE
3 FIRST PHASE, THE SAME SORT OF DEAL, THE STATE
4 HAS TO PROVE WHAT ARE CALLED AGGRAVATING
5 CIRCUMSTANCES. WE HAVE TO PROVE THAT IT'S NOT
6 JUST A REGULAR MURDER, IF THERE IS SUCH A THING
7 AS A REGULAR MURDER, IT'S NOT JUST A REGULAR
8 MURDER, IT IS AN AGGRAVATED MURDER. THAT THERE
9 ARE CIRCUMSTANCES SURROUNDING THIS MURDER WHICH
10 MAKE IT AGGRAVATED IN THE EYES OF THE LAW AND
11 THE JUDGE IS GOING TO INSTRUCT YOU; YOU DON'T
12 NEED TO BE AN EXPERT ON THE LAW, HE'S GOING TO
13 TELL YOU WHAT THE LAW IS. BUT IN THE EYES OF
14 THE LAW, IT MAKES IT AGGRAVATED.
15 YOU UNDERSTAND THAT THAT, AGAIN, IS OUR BURDEN
16 AND THE DEFENDANT DOESN'T HAVE TO PROVE ANYTHING
17 IN THE SECOND PHASE, JUST LIKE IN THE FIRST.
18 YOU UNDERSTAND THAT?

19 A. YES.

20 Q. NOW, IF THE DEFENDANT CHOOSES TO, HE CAN PRESENT
21 WHAT'S CALLED MITIGATING EVIDENCE WHICH KIND OF
22 LESSENS, EVIDENCE WHICH WOULD TEND TO LESSEN OR
23 TRY TO SHOW A LESSER INVOLVEMENT OR A LESSER
24 MORAL CULPABILITY IN THE CRIME. DO YOU
25 UNDERSTAND THAT?

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1 A. YES.

2 Q. NOW, IF YOU CHOSE TO PUT THAT SORT OF EVIDENCE
3 UP, ARE YOU THE KIND OF JUROR THAT WOULD LISTEN
4 TO THAT?

5 A. YES.

6 Q. OKAY. SO, AFTER THE STATE PUT ITS EVIDENCE UP
7 YOU WOULDN'T AUTOMATICALLY MAKE YOUR MIND UP,
8 OKAY, THIS IS IT, YOU'D WAIT TO SEE WHAT THE
9 DEFENSE HAD TO SAY, RIGHT?

10 A. YES.

11 Q. AND THEN THE JUDGE WOULD CHARGE YOU ON WHAT THE
12 LAW IS. THAT'S WHEN HE WOULD EDUCATE YOU AS TO
13 WHAT THE LAW SAYS ABOUT THESE MATTERS. AND
14 BASED ON WHAT YOU HEARD IN THIS COURTROOM,
15 AGGRAVATING CIRCUMSTANCES, MITIGATING
16 CIRCUMSTANCES AND THE JUDGE'S CHARGE, YOU WOULD
17 THEN RETIRE WITH THE OTHER JURORS BACK TO THE
18 JURY ROOM TO DECIDE ON WHAT THE PENALTY SHOULD
19 BE FOR THESE MURDERS. THEN YOU CAN START
20 THINKING ABOUT WHAT THE PENALTY SHOULD BE. AND
21 YOU COULD DO THAT, RIGHT?

22 A. RIGHT.

23 Q. AS YOU WENT BACK INTO THE JURY ROOM WITH YOUR
24 OTHER JURORS, YOU'RE THE KIND OF JUROR, YOU TOLD
25 THE JUDGE, AT THAT POINT YOU MIGHT FIND THAT THE

1 DEFENDANT DESERVED LIFE IN PRISON DEPENDING ON
2 HOW YOU FELT.

3 A. YES.

4 Q. BUT YOU COULD ALSO, BASED ON HOW YOU FELT AND
5 THE EVIDENCE, YOU COULD ALSO CONCLUDE THAT THE
6 DEFENDANT DESERVED DEATH; IS THAT RIGHT?

7 A. RIGHT.

8 Q. ONE UNIQUE RESPONSIBILITY THAT A DEATH PENALTY
9 JUROR HAS THAT IS DIFFERENT FROM ANY OTHER CASE
10 IN THE LAW IS THAT IF THE JURY -- WELL, IN ANY
11 OTHER CASE WHEN THE JURY HAS IT'S VERDICT, THE
12 ONLY PERSON THAT HAS TO SIGN ANYTHING AT ALL IS
13 THE FOREPERSON OF THE JURY. HAVE YOU EVER BEEN
14 ON THE JURY BEFORE?

15 A. NO.

16 Q. YOU HAVE NOT.

17 A. NO.

18 Q. OKAY. WELL, THE JUDGE IS GOING TO APPOINT ONE
19 PERSON TO BE THE FOREPERSON, FORELADY, FOREMAN.
20 THEY ARE GOING TO BE KIND OF LIKE THE LIAISON
21 BETWEEN THE COURT AND THE REST OF THE JURY.
22 THEY KIND OF ACT AS THE POINT PERSON FOR THE
23 JURY. NOW, IN A TYPICAL CASE THE ONLY PERSON
24 WHO HAS TO SIGN ANYTHING SAYING WHAT THE VERDICT
25 IS IS THE FOREPERSON. THEY WRITE GUILTY OR NOT

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1 GUILTY AND THEY SIGN IT AND THAT'S THE END OF
2 THE MATTER.

3 BUT IN A DEATH PENALTY CASE BECAUSE WE HAVE THAT
4 SECOND PHASE, THERE IS A SECOND VERDICT TO SIGN.

5 IF THE VERDICT IS LIFE, AGAIN THE ONLY PERSON
6 THAT HAS TO SIGN ANYTHING IS THE FOREPERSON,
7 THEY WRITE LIFE, THEY SIGN THEIR NAME, IT'S
8 DONE.

9 IF, HOWEVER, THE VERDICT OF THE JURY IS DEATH,
10 EACH AND EVERY JUROR HAS TO TAKE THE PEN AND
11 SIGN THEIR NAME ON THE VERDICT SHEET SAYING THAT
12 THIS MAN SHOULD BE SENTENCED TO DEATH. OKAY?

13 ARE YOU SAYING YOU'RE THE KIND OF JUROR THAT IF
14 YOU HEARD ALL OF THE AGGRAVATING CIRCUMSTANCES
15 AND ALL THE MITIGATING CIRCUMSTANCES THAT YOU
16 COULD TAKE THIS PEN AND SIGN YOUR NAME ALTA
17 VANDERGRIFT ON THAT PIECE OF PAPER SENDING THIS
18 MAN TO HIS DEATH IF YOU THOUGHT THAT WAS RIGHT?

19 A. THAT'S A HARD QUESTION.

20 Q. SURE. YOU'VE NEVER BEEN ASKED THIS BEFORE,
21 RIGHT?

22 A. NO.

23 Q. OKAY. TAKE YOUR TIME AND THINK ABOUT IT
24 BECAUSE, AGAIN, IT'S IMPORTANT THAT WE KNOW
25 THESE THINGS NOW BEFORE YOU GET IN THE JURY BOX.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) IN COURT OF GENERAL SESSIONS

THE STATE,)
PLAINTIFF,)
VS.)
JAMES DEJARNETTE)
ROBERTSON,)
DEFENDANT.)

INDICTMENT NOS. 98-GS-46-1020
1021, 1022, 1023

TRANSCRIPT OF TRIAL AND
PRE-TRIAL MOTIONS (7-17-98,
9-22-98, 9-25-98, 11-2-98,
AND 12-4-98)
MARCH 15, 1999
YORK, SOUTH CAROLINA

VOLUME V

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1 WE NEED TO KNOW HOW YOU FEEL NOW BECAUSE ONCE
2 YOU'RE IN THERE, IT'S TOO LATE AND SAY, UH OH, I
3 CAN'T DO THIS. SO, WE NEED TO KNOW HOW YOU FEEL
4 ABOUT THIS AT THIS POINT IN TIME, BUT TAKE YOUR
5 TIME TO THINK ABOUT IT. NOBODY IS RUSHING YOU.

6 A. I FEEL THAT IF THE CRIME IS SEVERE AND WHATEVER,
7 AND THAT'S WHAT I FEEL IN MY HEART THAT SHOULD
8 HAPPEN, I BELIEVE I COULD.

9 Q. ALL RIGHT. THANK YOU, MS. VANDERGRIFT. PLEASE
10 ANSWER ANY QUESTIONS DEFENSE COUNSEL MAY HAVE.

11 QUESTIONS BY MR. HANCOCK:

12 Q. MS. VANDERGRIFT, WE'RE IN THE PORTION OF THIS
13 TRIAL THAT WE CALL VOIR DIRE AND I'M THE LAST
14 ONE YOU'LL SEE, THE LAST ONE TO QUESTION YOU IN
15 THIS PARTICULAR PHASE BEFORE WE GET TO THE
16 TRIAL. AND IN THAT VEIN I HAVE BEEN LISTENING
17 TO YOUR ANSWERS AND I HAVE BEEN CONSIDERING
18 THEM, BUT I NEED TO SIT HERE AND ASK YOU SOME
19 OTHER QUESTIONS THAT MAY BE SOMEWHAT REPETITIVE
20 BUT IN A MANNER THAT I FIND OUT AND UNDERSTAND
21 WHAT I NEED TO UNDERSTAND.

22 AND I WANT TO TELL YOU THAT THERE IS NO RIGHT OR
23 WRONG ANSWER, JUST LIKE EVERYONE ELSE HAS SAID.

24 IT'S JUST THAT WE'RE TRYING TO FIND OUT WHAT
25 YOUR FEELINGS ARE AND WHERE YOU STAND IN THIS

1 PARTICULAR MATTER AND NOT ALL OTHER MATTERS, BUT
2 IN THIS PARTICULAR MATTER.

3 AND IN THAT VEIN I BELIEVE THAT YOU HAVE
4 EXPLAINED TO BOTH THE JUDGE AND TO THE SOLICITOR
5 THAT YOU UNDERSTAND THAT THIS IS A MURDER TRIAL
6 AND IT'S THE MURDER TRIAL OF JIMMY ROBERTSON
7 SEATED RIGHT HERE. I AM HIS DEFENSE COUNSEL;
8 MR. BOYD SEATED HERE IS ALSO HIS DEFENSE
9 COUNSEL.

10 AND YOU ARE IN A SITUATION THAT YOU HAVE SAID IS
11 UNUSUAL; YOU HAVE NEVER BEEN HERE BEFORE?

12 A. NO.

13 Q. AND SO IN THAT VEIN YOU HAVE INDICATED THAT YOU
14 COULD RENDER A FAIR AND JUST AND IMPARTIAL
15 VERDICT IN THIS TRIAL. IS THAT CORRECT?

16 A. YES.

17 Q. AND IF I UNDERSTAND YOU CORRECTLY YOU SAID THAT
18 YOU HAD READ SOMETHING IN THE PAPER BUT THAT YOU
19 COULD PUT THAT ASIDE AND LISTEN TO THE EVIDENCE
20 IN THIS COURTROOM AND LET THE EVIDENCE CONVINCE
21 YOU OF EITHER GUILT OR LACK OF GUILT, OF THE
22 DEATH PENALTY OR LIFE. YOU COULD DO THAT?

23 A. YES.

24 Q. THE NEWSPAPER IS NOT GOING TO INFLUENCE YOU IN
25 ANY WAY WHATSOEVER, IS THAT CORRECT?

1050

1 A. THAT'S RIGHT.

2 Q. NOW, YOU UNDERSTAND, AND YOU FOUND OUT YESTERDAY
3 OR THE DAY BEFORE YESTERDAY THAT JIMMY IS
4 CHARGED WITH KILLING BOTH OF HIS PARENTS?

5 A. YES.

6 Q. AND YOU JUST INDICATED THAT IF THE CRIME WAS
7 SEVERE ENOUGH, THEN YOU COULD SIGN YOUR NAME TO
8 A DOCUMENT THAT SAID THAT JIMMY WOULD GET THE
9 DEATH PENALTY. IS THAT CORRECT?

10 A. I FEEL IF THE EVIDENCE PROVED IT THAT WAY.

11 Q. IF THE EVIDENCE PROVED IT.

12 A. IF THE EVIDENCE PROVED IT.

13 Q. NOW YOU HAVE ALSO BEEN EXPLAINED THAT THERE ARE
14 CERTAIN AGGRAVATING AND CERTAIN MITIGATING
15 CIRCUMSTANCES THAT MAY BE PRESENTED TO YOU.

16 NOW, AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
17 THE STATE WOULD PRESENT TO YOU TO MAKE THE CRIME
18 EVEN WORSE THAN HIM JUST KILLING HIS PARENTS.

19 WOULD YOU CONSIDER THAT SEVERE ENOUGH THAT YOU
20 WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY?

21 A. NO.

22 MR. BRACKETT: YOUR HONOR, I OBJECT. I DON'T
23 THINK THAT'S A PROPER QUESTION.

24 THE COURT: SHE ANSWERED IT. GO AHEAD.

25 Q. AND THEN AM I TO UNDERSTAND YOU AND YOU'RE

1 TELLING ME THAT EVEN THOUGH YOU HAVE A CRIME
2 THAT MAY BE OF THAT NATURE AND MAY BE
3 AGGRAVATED, THAT YOU CAN CONSIDER MITIGATING
4 CIRCUMSTANCES, CIRCUMSTANCES THAT MAY LESSEN HIS
5 DEGREE OF MORAL CULPABILITY BEFORE YOU DECIDE ON
6 DEATH OR LIFE. IS THAT WHAT YOU'RE TELLING ME?

7 A. YOU'RE ASKING ME SOME QUESTIONS I DON'T
8 UNDERSTAND.

9 Q. OKAY, IF YOU DON'T UNDERSTAND, TELL ME YOU DON'T
10 UNDERSTAND. WE'LL BACK UP AND WE'LL GET TO IT,
11 OKAY?

12 A. I WOULD HAVE TO HEAR BOTH SIDES OF THE TRIAL
13 BEFORE I WOULD MAKE UP MY MIND.

14 Q. SO WHAT YOU ARE TELLING ME IS THAT YOU COULD
15 LISTEN TO THE DEFENDANT'S MITIGATING
16 CIRCUMSTANCES, SHOULD WE PUT THOSE UP, BEFORE
17 YOU DECIDE ON EITHER LIFE OR THE DEATH PENALTY.
18 IS THAT CORRECT, MA'AM?

19 A. ARE YOU SAYING WOULD I MAKE MY DECISION ON WHAT
20 HE SAYS?

21 Q. YES, MA'AM.

22 A. NO, I WOULD HAVE TO LISTEN TO BOTH SIDES BEFORE
23 I COULD MAKE MY DECISION.

24 Q. SO YOU WOULD LISTEN TO THE DEFENSE AND WHAT THEY
25 PUT UP ALSO?

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1 A. THE DEFENSE AND YOUR SIDE, TOO, YES, BEFORE I
2 MADE MY DECISION.

3 Q. AND IF YOU WERE TO DECIDE, SAY, ON LIFE AS
4 OPPOSED TO THE DEATH PENALTY, AND THOSE WOULD BE
5 YOUR ONLY TWO CHOICES, THEN YOU WOULD HAVE TO
6 MAKE THE DECISION FOR ONE OR THE OTHER -- LET ME
7 BACK UP.

8 IN ORDER TO COME TO A DECISION, IT TAKES TWELVE
9 PEOPLE.

10 A. RIGHT.

11 Q. WE'VE GOT A JURY AND YOU WOULD BE ONE OR A
12 MEMBER OF THOSE TWELVE PEOPLE. AND IN THE
13 PENALTY PHASE THE SOLICITOR HAS INDICATED TO YOU
14 THAT YOU MAY HAVE TO SIGN A PIECE OF PAPER THAT
15 SAID THAT HE WOULD GET DEATH.

16 ON THE OTHER HAND, YOU HAVE INDICATED THAT YOU
17 COULD VOTE, IF YOU CONSIDERED ALL THE FACTORS
18 THAT WE WOULD PRESENT AND OTHERWISE, THAT YOU
19 WOULD CONSIDER LIFE IMPRISONMENT. IS THAT
20 CORRECT?

21 A. RIGHT.

22 Q. IF THAT WERE YOUR DECISION, LIFE IMPRISONMENT,
23 THEN WOULD YOU CHANGE THAT DECISION JUST BECAUSE
24 THE MAJORITY OF THE JURY WANTED TO VOTE FOR THE
25 DEATH PENALTY?

1 A. NO, I WOULD VOTE THE WAY I FELT, THE WAY I SAW
2 THE EVIDENCE AND THE TESTIMONY.

3 Q. YES, MA'AM. THANK YOU VERY MUCH.

4 THE COURT: I'LL LET YOU STEP OUTSIDE, MS.
5 VANDERGRIFF, FOR JUST A MOMENT.

6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: WHAT SAYS THE STATE?

8 MR. BRACKETT: WE SUBMIT SHE'S QUALIFIED, YOUR
9 HONOR.

10 THE COURT: WHAT SAYS THE DEFENSE?

11 MR. HANCOCK: SHE'S QUALIFIED, YOUR HONOR.

12 THE COURT: I FIND THAT SHE IS QUALIFIED. BRING
13 HER BACK IN.

14 (THE JUROR RETURNED TO THE COURTROOM.)

15 THE COURT: MS. VANDERGRIFF, YOU'RE GOING TO BE
16 A PART OF THE POOL FROM WHICH THE JURY IS SELECTED. CALL
17 BACK TONIGHT AFTER 6:00 AND YOU WILL BE INSTRUCTED ABOUT
18 WHEN TO COME.

19 WHEN YOU DO COME, BRING YOUR BELONGINGS SO THAT
20 YOU CAN HAVE CLOTHING, TOILETRY ITEMS TO STAY FOR A WEEK OR
21 SO.

22 DON'T BE DISCUSSING THIS CASE WITH ANYONE. DON'T
23 READ ABOUT IT, DON'T LISTEN TO ANY NEWS ARTICLES. IF
24 ANYONE TRIES TO DISCUSS THIS CASE WITH YOU, REPORT THEM
25 BACK TO ME.

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1 NOW, I'LL ASK, ARE THERE ANY EXTENUATING
2 CIRCUMSTANCES WE NEED TO KNOW ABOUT CONCERNING YOUR BEING
3 SEQUESTERED?

4 THE JUROR: NO, SIR.

5 THE COURT: ALL RIGHT, CALL BACK TONIGHT AFTER
6 6:00. THANK YOU.
7 (THE JUROR LEFT THE COURTROOM.)

8 THE COURT: NEXT IS NUMBER 180, BARNEY MELTON.

9 BARNEY R. MELTON, JUROR NUMBER 180, WHITE MALE,
10 WAS QUESTIONED AS FOLLOWS:

11 QUESTIONS BY THE COURT:

12 Q. JUST COME ON UP HERE AND HAVE A SEAT PLEASE,
13 SIR. HOW ARE YOU THIS MORNING?

14 A. JUST FINE; HOW ARE YOU, SIR?

15 Q. GOOD. I'M GOING TO REINTRODUCE MYSELF; I'M JOHN
16 HAYES; I'M THE JUDGE WHO HAS BEEN ASSIGNED TO
17 PRESIDE OVER THIS CASE. AND I WANT TO REMIND
18 YOU THAT YOU ARE UNDER OATH.

19 A. YES, SIR.

20 Q. IF YOU ARE CHOSEN TO SIT ON THIS JURY, YOU WILL
21 PERHAPS SEE CAMERAS. THERE'S ONE IN THE
22 COURTROOM NOW, BUT IT'S NOT ON. BUT YOU MIGHT
23 SEE CAMERAS AND PHOTOGRAPHERS IN THE COURTROOM,
24 BUT THEY ARE NOT ALLOWED TO TAKE YOUR PICTURE OR
25 REPORT ABOUT YOU, SO DON'T BE DISTRACTED IF

1 THERE ARE.

2 A. OKAY.

3 Q. YOU HANDED UP A QUESTIONNAIRE THAT YOU HAD
4 FILLED OUT. IS IT ACCURATE OR DO YOU NEED TO
5 MAKE ANY CHANGES TO IT?

6 A. NOT AS I KNOW OF.

7 Q. DID YOU HAVE A CHANCE TO REVIEW THAT LIST OF
8 WITNESSES BACK IN THE BACK?

9 A. YES, SIR.

10 Q. ANYBODY ON THERE THAT YOU'RE RELATED TO BY BLOOD
11 OR MARRIAGE OR ANYBODY YOU KNOW?

12 A. NOT RELATED, BUT PERSONALLY KNOW.

13 Q. ALL RIGHT, WHO IS THAT?

14 (A PAPER WAS GIVEN TO THE COURT)

15 Q. ALL RIGHT, CHARLENE BLACKWELDER, JOE ALLEN AND
16 MAGISTRATE RAY LONG. WOULD THE FACT THAT THEY
17 ARE POSSIBLE WITNESSES IN THE CASE, WOULD THAT
18 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO
19 THE STATE AND THE DEFENDANT IN THE TRIAL OF THIS
20 CASE?

21 A. NO, SIR, IT WOULDN'T.

22 Q. HAVE YOU HEARD ABOUT THIS CASE PRIOR TO COMING
23 HERE, HEARD ABOUT IT FROM ANY SOURCE WHATSOEVER,
24 DISCUSSED IT WITH ANYBODY, INFORMED AN OPINION
25 OR RECEIVED ANY INFORMATION ABOUT THIS CASE

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1 BEFORE YOU CAME HERE?

2 A. NOTHING EXCEPT THE NEWSPAPER AND OVER THE RADIO.

3 Q. ALL RIGHT. WHAT YOU HEARD ON THE RADIO AND IN
4 THE NEWSPAPER, WOULD THAT AFFECT YOUR ABILITY TO
5 BE FAIR AND IMPARTIAL IF YOU WERE ON THE JURY?

6 A. NO, SIR, IT WOULDN'T.

7 Q. WOULD YOU BE ABLE TO DISREGARD WHAT YOU HAD
8 HEARD ON THE RADIO OR SEEN IN THE NEWSPAPER AND
9 BASE YOUR VERDICT SOLELY ON WHAT YOU HEAR AND
10 SEE HERE IN THIS COURTROOM?

11 A. YES, SIR, I COULD.

12 Q. THIS TYPE CASE TAKES PLACE IN TWO STAGES. ONE
13 DEALING WITH WHETHER OR NOT AN INDIVIDUAL IS
14 GUILTY AND IF THEY ARE NOT GUILTY, IF THEY ARE
15 SO FOUND, THEN THE CASE WOULD NOT PROCEED ANY
16 FURTHER.

17 IF THEY ARE FOUND GUILTY, THEN WE GO INTO WHAT'S
18 CALLED A PENALTY PHASE.

19 BUT THE DEFENDANT HERE, MR. ROBERTSON, IS
20 PRESUMED INNOCENT AND IS SO PRESUMED UNTIL SUCH
21 TIME AS THE STATE WERE TO BE ABLE TO PROVE TO A
22 JURY HIS GUILT BEYOND A REASONABLE DOUBT. AND
23 UNLESS A JURY RETURNS A VERDICT UNANIMOUSLY SO
24 FINDING, HE IS PRESUMED INNOCENT.

25 BUT IF HE WERE TO BE FOUND GUILTY, WE WOULD MOVE

1 INTO THAT SECOND PHASE. AND THE FACT THAT WE
2 ARE TALKING ABOUT THE SECOND PHASE IS NOT TO
3 PRESUPPOSE THAT WE WOULD GET THERE BUT JUST
4 BECAUSE OF THE NATURE OF THESE PROCEEDINGS WE
5 HAVE TO TALK ABOUT THE SECOND PHASE NOW. DO YOU
6 UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. IN THE ROOM WERE THREE JUROR TYPES SET FORTH ON
9 A PIECE OF PAPER. DID YOU REVIEW IT?

10 A. YES, SIR, I DID.

11 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE JUROR
12 TYPES?

13 A. THE THIRD ONE.

14 Q. ALL RIGHT. IN THAT DEFINITION I USED WORDS
15 AGGRAVATION AND MITIGATION AND THOSE WORDS
16 AGGRAVATION, IN ESSENCE, ARE CIRCUMSTANCES THAT
17 ATTEND THE COMMISSION OF A CRIME WHICH ADD TO
18 ITS ENORMITY OR INJURIOUS AFFECT. THEY ARE
19 THINGS THAT ARE ABOVE AND BEYOND JUST THE CRIME
20 OR THE ELEMENTS OF THE CRIME ITSELF.

21 MITIGATING CIRCUMSTANCES ARE THINGS THAT DO NOT
22 CONSTITUTE A JUSTIFICATION OR AN EXCUSE FOR A
23 CRIME BUT ARE THINGS WHICH IN FAIRNESS AND MERCY
24 MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE
25 DEGREE OF ONE'S MORAL CULPABILITY. DO YOU

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1 UNDERSTAND THAT?

2 A. YES, SIR.

3 Q. SO, YOU ARE TELLING ME THAT IF YOU WERE ON THIS
4 JURY AND THE JURY HAD UNANIMOUSLY DETERMINED
5 BEYOND A REASONABLE DOUBT THAT MR. ROBERTSON WAS
6 GUILTY OF MURDER WHEN MOVING INTO THAT SECOND
7 PHASE YOU WOULD NOT HAVE AT THAT TIME MADE UP
8 YOUR MIND CONCERNING PUNISHMENT. IS THAT
9 CORRECT?

10 A. THAT'S RIGHT.

11 Q. ARE YOU TELLING ME THAT BEFORE YOU MAKE UP YOUR
12 MIND THAT YOU WOULD WANT TO HEAR THE FACTS AND
13 CIRCUMSTANCES IN AGGRAVATION AND MITIGATION,
14 LISTEN TO AND FOLLOW THE JUDGE'S INSTRUCTIONS
15 AND THEN AND ONLY THEN DETERMINE AND MAKE A
16 DECISION AS TO WHAT WOULD BE THE APPROPRIATE
17 PUNISHMENT. IS THAT WHAT YOU ARE TELLING ME?

18 A. YES, SIR.

19 Q. IF YOU FELT THAT THE FACTS WARRANTED A VERDICT
20 OF LIFE IMPRISONMENT, COULD YOU RETURN A VERDICT
21 OF LIFE IMPRISONMENT?

22 A. YES, SIR.

23 Q. IF YOU FELT THE FACTS PRESENTED WARRANTED A
24 VERDICT IMPOSING THE DEATH PENALTY, COULD YOU
25 RETURN A VERDICT FOR THE DEATH PENALTY?

1 A. YES, I COULD.

2 Q. ALL RIGHT. ANSWER ANY QUESTIONS THE ATTORNEYS
3 MAY HAVE.

4 QUESTIONS BY MR. BOYD:

5 Q. GOOD MORNING, MR. MELTON.

6 A. GOOD MORNING; HOW ARE YOU, SIR?

7 Q. I'M DOING FINE. I KNOW YOU'RE PROBABLY NOT USED
8 TO SITTING IN A WITNESS CHAIR.

9 A. NO.

10 Q. WELL, LET ME TELL YOU, DON'T WORRY, THERE ARE NO
11 RIGHT OR WRONG ANSWERS ABOUT THESE QUESTIONS.
12 I'M JUST GOING TO FOLLOW UP TO A FEW OF THE
13 QUESTIONS THE JUDGE HAD WITH YOU.

14 A. OKAY.

15 Q. I'M JIM BOYD; I REPRESENT JIMMY ROBERTSON WHO IS
16 SEATED OVER THERE.

17 A. OKAY.

18 Q. AND MY CO-COUNSEL IS BILL HANCOCK, AND HE'S
19 SEATED AT THE END OF THE TABLE.

20 Q. I WANTED TO JUST FOLLOW UP ON A FEW OF THE
21 QUESTIONS THE JUDGE ASKED YOU ABOUT THE DEATH
22 PENALTY. HE TOLD YOU, AND YOU UNDERSTAND THAT
23 IN A TRIAL LIKE THIS THERE ARE TWO PARTS TO THE
24 TRIAL.

25 IN THE FIRST PART THE JURY IS JUST ASKED TO

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1 DETERMINE WHETHER THE PERSON ACCUSED, JIMMY
2 ROBERTSON IN THIS CASE, IS GUILTY OR NOT GUILTY.

3 A. RIGHT.

4 Q. OF COURSE IF IT'S NOT GUILTY, THERE'S NOT EVEN A
5 SECOND PHASE OF THE TRIAL. BUT THIS IS THE ONLY
6 OPPORTUNITY I HAVE TO ASK YOU ABOUT THE PENALTY
7 PHASE OF IT. SO, WE ARE JUST GOING TO ASSUME
8 FOR THE PURPOSES OF MY QUESTIONS THAT WE'VE
9 MOVED INTO THAT PHASE OF THE TRIAL.

10 A. YES, SIR.

11 Q. OF COURSE, YOU ARE AWARE THAT HE IS CHARGED WITH
12 MURDER; IS THAT CORRECT?

13 A. RIGHT.

14 Q. AND YOU'RE AWARE THAT HE IS CHARGED WITH
15 MURDERING BOTH OF HIS PARENTS?

16 A. YES.

17 Q. NOW, OF COURSE IF HE IS CONVICTED OF MURDER AND
18 WE MOVE INTO THAT SECOND PHASE OF THE TRIAL,
19 IT'S NOT A QUESTION OF WHETHER HE'S GUILTY OR
20 NOT AT THAT POINT.

21 A. NO.

22 Q. IT'S NOT A QUESTION OF WHETHER IT WAS AN
23 ACCIDENT OR SELF-DEFENSE, IT WOULD BE A
24 DELIBERATE MURDER AT THAT POINT.

25 A. YES, SIR.

1 Q. KNOWING THAT HE'S BEEN CONVICTED AT THAT POINT
2 OF KILLING BOTH OF HIS PARENTS, CAN YOU STILL
3 CONSIDER A LIFE SENTENCE FOR HIM?

4 A. YES.

5 Q. AS OPPOSED TO THE DEATH PENALTY. YOU'RE NOT
6 GOING TO AUTOMATICALLY VOTE FOR THE DEATH
7 PENALTY BECAUSE HE HAS BEEN CONVICTED OF
8 MURDERING BOTH OF HIS PARENTS?

9 A. NO, SIR.

10 Q. OKAY. ALSO YOU WOULD BE ABLE TO HEAR EVIDENCE
11 ON AGGRAVATING CIRCUMSTANCES THAT THE STATE
12 WOULD PRESENT YOU. THAT'S THINGS THAT MAKE IT
13 WORSE THAN A NORMAL MURDER. YOU WOULD ALSO BE
14 ABLE TO HEAR, IF WE CHOOSE TO, TO PRESENT
15 MITIGATING CIRCUMSTANCES. THAT IS,
16 CIRCUMSTANCES THAT MAKE IT LESS LIKELY THAT HE
17 SHOULDN'T GET THE DEATH PENALTY, THAT WOULD
18 LESSEN HIS MORAL RESPONSIBILITY, THAT TYPE OF
19 THING. DO YOU UNDERSTAND?

20 A. YES, SIR.

21 Q. WOULD YOU BE WILLING TO LISTEN TO THAT EVIDENCE?

22 A. I SURE WOULD.

23 Q. I NOTICED ON YOUR APPLICATION FORM THAT YOU WENT
24 TO COLLEGE, YOU WERE MAJORING IN RELIGION. IS
25 THAT CORRECT?

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1 A. YES.

2 Q. WERE YOU PLANNING ON BECOMING A MINISTER AT ONE
3 POINT?

4 A. WELL, I AM.

5 Q. YOU ARE?

6 A. YES, SIR, I AM SUPPOSED TO PREACH SUNDAY.

7 Q. OKAY, WHAT CHURCH ARE YOU A MINISTER OF?

8 A. GLENROCK BAPTIST CHURCH IN FORT MILL, SOUTH
9 CAROLINA.

10 Q. IS THAT A SOUTHERN BAPTIST CHURCH?

11 A. YES, IT IS.

12 Q. OKAY. AND LET ME ASK YOU, IS THAT YOUR FULL
13 TIME JOB OR IS IT PART TIME?

14 A. NO, SIR, IT ISN'T. I WORK FOR DUFF NORTON
15 COMPANY IN CHARLOTTE AND I'M A PASTOR, TOO.

16 Q. YOU'RE A BUSY FELLOW THEN, AREN'T YOU?

17 A. I KEEP PRETTY BUSY. I ENJOY IT.

18 Q. JUST FOLLOWING UP ON THAT, IS THERE ANYTHING
19 ABOUT YOUR STUDIES OF RELIGION OR YOUR BEING A
20 MINISTER THAT WOULD AFFECT YOUR ABILITY ONE WAY
21 OR ANOTHER ABOUT THE DEATH PENALTY IN THIS CASE,
22 NOT TO REACH A VERDICT ONE WAY OR ANOTHER?

23 A. NO, SIR, NOT THAT I KNOW OF. I THINK EVERY MAN
24 DESERVES JUSTICE.

25 Q. NOW LET ME ASK YOU, OF COURSE IF YOU'RE CALLED

1 ON THE JURY IN THIS CASE THERE ARE, OF COURSE,
2 OFTENTIMES DIFFERING OPINIONS AMONG JURORS. YOU
3 UNDERSTAND THAT?

4 A. RIGHT.

5 Q. AND, OF COURSE, EVERY JUROR WOULD BE ENTITLED TO
6 THEIR OPINION; YOU UNDERSTAND THAT?

7 A. THAT'S THE ONLY WAY.

8 Q. AND, OF COURSE, IF YOU HAVE AN OPINION, YOU'RE
9 ENTITLED TO HAVE YOUR OPINION RESPECTED BY THE
10 OTHER JURORS.

11 A. YES, SIR.

12 Q. AND LIKEWISE, THOUGH YOU MAY DISAGREE, YOU WOULD
13 HAVE TO RESPECT THEIR OPINIONS ALSO.

14 A. YES, I WOULD.

15 Q. YOU SAID YOU KNEW CHARLENE BLACKWELDER, JOE
16 ALLEN AND RAY LONG; IS THAT CORRECT?

17 A. YES, SIR.

18 Q. DO YOU KNOW THESE PEOPLE WELL?

19 A. YES, I DO. I MARRIED CHARLENE AND HER HUSBAND;
20 AND RAY LONG, IF IT'S WHO I THINK IT IS, IS A
21 MINISTER, TOO.

22 Q. RIGHT. OKAY. AND SO YOU MARRIED CHARLENE?

23 A. THAT'S CORRECT. AND JOE ALLEN, IS THAT THE
24 WRECKER SERVICE, IS THAT WHO THAT IS?

25 Q. I THINK, YES, SIR.

1 A. OKAY.

2 Q. IF ANY OF THESE PEOPLE TESTIFIED, WOULD YOU BE
3 MORE INCLINED TO BELIEVE THEM, KNOWING THEM,
4 THAN YOU WOULD SOMEBODY THAT YOU DIDN'T KNOW?

5 A. NO, SIR. I'D JUST LISTEN FOR THE FACTS.

6 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.
7 THANK YOU VERY MUCH.

8 QUESTIONS BY MR. BRACKETT:

9 Q. GOOD AFTERNOON, MR. MELTON.

10 A. GOOD AFTERNOON; HOW ARE YOU TODAY?

11 Q. FINE, THANK YOU. MY NAME IS KEVIN BRACKETT; I'M
12 THE DEPUTY SOLICITOR HERE IN THE SIXTEENTH
13 CIRCUIT. I WORK FOR TOMMY POPE OVER HERE; HE AND
14 I ARE THE PROSECUTORS IN THIS CASE.

15 A. YES, SIR.

16 Q. WE ARE THE ONES RESPONSIBLE FOR BEARING THE
17 BURDEN OF PROOF AND PROVING THAT THE DEFENDANT
18 SEATED OVER HERE, JIMMY ROBERTSON, IS GUILTY OF
19 THESE CHARGES.

20 A. RIGHT.

21 Q. YOU UNDERSTAND THAT'S OUR RESPONSIBILITY?

22 A. YES, SIR.

23 Q. HE IS PRESUMED INNOCENT.

24 A. YES, SIR.

25 Q. WE HAVE TO PROVE HE'S GUILTY.

1 A. THAT'S RIGHT.

2 Q. IF HE'S FOUND GUILTY IN THE FIRST PHASE, ONLY
3 THEN DO WE GO TO THE SECOND PHASE.

4 A. RIGHT.

5 Q. IN THAT PHASE WE HAVE TWO CONSIDERATIONS, LIFE
6 OR DEATH.

7 A. RIGHT.

8 Q. HE'S BEEN FOUND GUILTY. WHAT YOU'RE SAYING IS
9 THAT YOU COULD LISTEN TO THE AGGRAVATING
10 CIRCUMSTANCES AND YOU WOULDN'T MAKE UP YOUR MIND
11 AFTER YOU HEARD THOSE, YOU'D LISTEN TO WHATEVER
12 MITIGATION THEY DECIDED TO PUT UP.

13 A. YES, SIR.

14 Q. AND YOU WOULDN'T MAKE YOUR MIND UP THEN, YOU
15 WOULD LISTEN TO THE CHARGE THAT THE JUDGE GAVE
16 YOU BECAUSE YOU DON'T KNOW MUCH ABOUT THE LAW,
17 DO YOU?

18 A. NO, SIR, I DON'T.

19 Q. NO TRAINING IN THE LAW?

20 A. NO, I HAVEN'T.

21 Q. OKAY, WELL, YOU DON'T HAVE TO HAVE ANY TO BE A
22 GOOD JUROR BECAUSE THE JUDGE IS GOING TO TELL
23 YOU EVERYTHING YOU NEED TO KNOW ABOUT THE LAW IN
24 ORDER TO MAKE A DECISION IN THIS CASE. BUT
25 YOU'D LISTEN TO THE JUDGE'S INSTRUCTIONS?

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1 A. YES, I WOULD.

2 Q. AND THEN BASED ON ALL THAT YOU HEARD, YOU COULD
3 RETIRE BACK TO THE JURY ROOM AND DELIBERATE WITH
4 YOUR FELLOW JURORS?

5 A. YES, I COULD.

6 Q. YOU COULD TALK TO THEM; YOU'D LISTEN TO THEIR
7 VIEWPOINTS AND IF THEY MADE GOOD POINTS, YOU
8 MIGHT CHANGE YOUR MIND?

9 A. NO.

10 Q. WELL, IF THEY POINTED OUT SOMETHING TO YOU THAT
11 YOU HADN'T THOUGHT OF AND YOU SAID, WELL, NOW,
12 YOU MIGHT HAVE SOMETHING THERE, WOULD YOU LISTEN
13 TO THEM?

14 A. YES, I WOULD.

15 Q. SO YOU COULD SIT BACK THERE AND DELIBERATE WITH
16 THE OTHER JURORS?

17 A. YES, I COULD.

18 Q. AND REACH A DECISION?

19 A. RIGHT.

20 Q. AND THAT DECISION MIGHT BE LIFE IN PRISON?

21 A. RIGHT.

22 Q. AND THAT DECISION MIGHT BE DEATH?

23 A. YES.

24 Q. ALL RIGHT, SIR. NOW, ONE OF THE REQUIREMENTS
25 THAT IS UNIQUE IN A DEATH PENALTY CASE FROM ANY

1 OTHER CASE -- HAVE YOU EVER SERVED ON A JURY
2 BEFORE, SIR?

3 A. NO, I HAVEN'T.

4 Q. OKAY.

5 A. NOT ON THIS KIND.

6 Q. HAVE YOU SERVED ON ANY JURY?

7 A. YES.

8 Q. WERE YOU THE FOREPERSON BY ANY CHANCE?

9 A. NO, I WASN'T.

10 Q. YOU KNOW THE FOREMAN HAS A RESPONSIBILITY THAT'S
11 DIFFERENT FROM THE OTHER JURORS?

12 A. YES.

13 Q. THEY HAVE TO SIGN THE VERDICT SAYING THIS IS
14 WHAT THE VERDICT OF THE JURY IS AND THEY SIGN
15 THEIR NAME AND WRITE THE VERDICT?

16 A. RIGHT.

17 Q. OKAY. IN EVERY OTHER CRIMINAL CASE, ONLY THE
18 FOREPERSON HAS TO SIGN WHAT THE VERDICT IS.

19 A. RIGHT.

20 Q. IF THE JURY IN THIS CASE LISTENS TO EVERYTHING,
21 THEY RETIRE, THEY DELIBERATE, THEY DECIDE LIFE,
22 AGAIN ONLY THE FOREPERSON HAS TO SIGN.

23 A. RIGHT.

24 Q. THEY WRITE LIFE, AND THEY SIGN THEIR NAME.

25 A. RIGHT.

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1 Q. IF IT'S DEATH, HOWEVER, IT'S A DIFFERENT
2 SITUATION. IF THE VERDICT OF THE JURY IS DEATH,
3 EACH JUROR HAS TO TAKE THE PEN AND SIGN THEIR
4 NAME ON THE VERDICT SHEET INDICATING THAT THIS
5 MAN SHOULD BE PUT TO DEATH.

6 A. YES.

7 Q. OKAY, SIR. IF THE PEN COMES AROUND THE ROOM AND
8 YOU'VE DECIDED -- YOU'VE HEARD THE EVIDENCE AND
9 YOU'VE DECIDED THAT DEATH IS THE APPROPRIATE
10 VERDICT, COULD YOU TAKE THIS PEN AND SIGN YOUR
11 NAME BARNEY MELTON ON THAT SHEET SENDING THIS
12 MAN TO HIS DEATH?

13 A. YES, I COULD.

14 Q. THANK YOU VERY MUCH, MR. MELTON.

15 A. THANK YOU.

16 THE COURT: I'M GOING TO LET YOU STEP OUT FOR
17 JUST A MINUTE.

18 (THE JUROR LEFT THE COURTROOM.)

19 THE COURT: WHAT SAYS THE STATE?

20 MR. BRACKETT: WE SUBMIT HE'S QUALIFIED.

21 THE COURT: THE DEFENSE?

22 MR. BOYD: HE'S QUALIFIED, YOUR HONOR.

23 THE COURT: I FIND HE IS QUALIFIED. BRING MR.
24 MELTON BACK IN.

25 (THE JUROR RETURNED TO THE COURTROOM.)

1 THE COURT: MR. MELTON, WE'RE GOING TO INCLUDE
2 YOU IN THE PANEL FROM WHICH THE JURY WILL BE DRAWN. THAT
3 DOES NOT MEAN THAT YOU WILL NECESSARILY BE ON THE JURY, BUT
4 ON THE PANEL.

5 CALL BACK TONIGHT AFTER 6:00 AND THEY WILL TELL
6 YOU WHEN TO RETURN. WHEN YOU DO RETURN, BRING WITH YOU
7 ENOUGH BELONGINGS TO STAY A WEEK. AND I KNOW YOU HAVE ONE
8 EXTENUATING CIRCUMSTANCE AND THAT IS YOU'RE SUPPOSED TO
9 PREACH ON SUNDAY, BUT OTHER THAN THAT DO YOU HAVE ANYTHING
10 ELSE?

11 THE JUROR: NO, SIR, I DON'T.

12 THE COURT: OKAY.

13 THE JUROR: IF I SHOULD BE CHOSEN, COULD I HAVE
14 SOMEONE GO TO THE CHURCH WITH ME AND LET ME PREACH AND COME
15 BACK?

16 THE COURT: WELL, WE'LL SEE. I'LL TELL YOU
17 PROBABLY NOT, BUT WE'LL SEE ABOUT THAT.

18 THE JUROR: THERE'S NOBODY ELSE TO PREACH THAT
19 SUNDAY, SIR.

20 THE COURT: WELL, I DON'T KNOW EXACTLY HOW WE
21 COULD DEAL WITH THAT. I DOUBT THAT WE CAN ALLOW YOU TO DO
22 THAT BUT YOU MIGHT SEE IF YOU CAN GET ONE OF THE LAYMEN OR
23 SOMEBODY TO -- THEY HAVE EVEN LET ME READ SERMONS AT MY
24 CHURCH, SO IF THEY LET ME DO IT, THEN YOU MIGHT CAN FIND
25 SOMEBODY THAT CAN DO IT AT YOUR CHURCH.

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1 NOW, DON'T LET YOURSELF BE EXPOSED TO ANY
2 PUBLICITY ABOUT THE CASE. DON'T READ ABOUT IT, DON'T
3 LISTEN TO THE NEWS; DON'T DISCUSS IT WITH ANYONE. IF
4 ANYONE TRIES TO DISCUSS IT WITH YOU, TELL THEM YOU CANNOT
5 AS YOU WILL POSSIBLY BE A JUROR.

6 SO, I'LL ALLOW YOU TO LEAVE, AND CALL BACK
7 TONIGHT AFTER 6:00 O'CLOCK.

8 THE JUROR: ALL RIGHT. THANK YOU, SIR.

9 THE COURT: THANK YOU.

10 (THE JUROR LEFT THE COURTROOM.)

11 THE COURT: LET'S TAKE ABOUT A THREE MINUTE BREAK
12 -- IS THAT WHAT YOU WERE GOING TO ASK FOR?

13 MR. BOYD: YES, SIR.

14 THE COURT: OKAY. WE'LL TAKE A REAL QUICK BREAK.
15 AFTER THE RECESS:

16 THE COURT: ALL RIGHT, WE HAVE THREE MORE ON THIS
17 PANEL AND IT'S ALREADY 12:30. WE HAD THE OTHER PANEL HERE
18 AT 12:00, BUT I AM GOING TO RELEASE THEM UNTIL -- I'LL SAY
19 2:30. THREE WILL TAKE US UNTIL PROBABLY 1:30 OR SO. SO,
20 I'M GOING TO HAVE THEM COME BACK IN AT 2:30. WE WILL HAVE
21 PANEL "L" COME BACK IN AT 2:30.

22 ALL RIGHT, THE NEXT IS TERRY DUNLAP.

23 TERRY DUNLAP, JUROR NUMBER 76, BLACK FEMALE, WAS
24 QUESTIONED AS FOLLOWS:

25 QUESTIONS BY THE COURT:

1 Q. GOOD MORNING.

2 A. GOOD MORNING.

3 Q. GOOD AFTERNOON I GUESS; I'M SORRY. I'M JOHN
4 HAYES; I'M THE JUDGE WHO HAS BEEN ASSIGNED THIS
5 CASE TO PRESIDE OVER IT. I'M GOING TO REMIND
6 YOU THAT YOU ARE STILL UNDER OATH.

7 A. YES, SIR.

8 Q. IF YOU ARE CHOSEN ON THIS CASE, YOU MAY SEE
9 CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM, BUT I
10 DON'T WANT YOU TO BE DISTRACTED BY THEM. THEY
11 CAN'T FILM YOU OR TAKE PICTURES OF YOU OR REPORT
12 ON YOU. SO, DON'T BE DISTRACTED IF YOU SEE
13 CAMERAS. THERE'S ON HERE NOW BUT I DON'T
14 BELIEVE THEY ARE FILMING ANYTHING TODAY.
15 YOU TURNED IN A QUESTIONNAIRE TO US. IS THAT
16 QUESTIONNAIRE CORRECT OR DO YOU NEED TO MAKE ANY
17 CORRECTIONS TO IT?

18 A. IT'S CORRECT.

19 Q. HAVE YOU HAD A CHANCE TO REVIEW THAT LIST OF
20 WITNESSES?

21 A. YES.

22 Q. IS THERE ANYBODY ON THERE THAT YOU WERE RELATED
23 TO BY BLOOD OR MARRIAGE OR ANYBODY THAT YOU
24 KNEW?

25 A. I KNOW A COUPLE OF THEM.

1 Q. WHO DO YOU KNOW?

2 A. KERRY SPITZENBERGER; THAT'S ONLY BECAUSE SHE
3 WORKS AT THE HOSPITAL. I DON'T KNOW HER
4 PERSONALLY, BUT I KNOW HER WHEN I SEE HER. AND
5 DENNIS CHISOLM WHO WORKS AT THE SHERIFF'S
6 OFFICE. HIS MOTHER LIVES NEAR MY MOTHER.

7 Q. LIVES WITH YOUR MOTHER?

8 A. LIVES NEAR MY MOTHER.

9 Q. OKAY. WOULD THE FACT THAT THOSE INDIVIDUALS ARE
10 POSSIBLE WITNESSES IN THIS CASE, WOULD THAT
11 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN
12 THIS TRIAL?

13 A. NO, SIR.

14 Q. HAD YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
15 YOU CAME, FORMED ANY OPINION, EXPRESSED ANY
16 OPINION OR READ ABOUT IT OR HEARD ABOUT IT IN
17 ANY WAY WHATSOEVER?

18 A. JUST WHEN IT FIRST HAPPENED. I DON'T TAKE THE
19 PAPER, SO I DON'T KEEP UP ON IT.

20 Q. ALL RIGHT, WELL WHAT YOU DID HEAR, WOULD THAT
21 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN
22 THE TRIAL OF THIS CASE?

23 A. NO, SIR.

24 Q. COULD YOU DISREGARD ANYTHING THAT YOU HEARD
25 BEFORE YOU CAME AND BASE YOUR VERDICT SOLELY ON

1 WHAT YOU HEAR HERE IN THE COURTROOM?

2 A. YES, SIR.

3 Q. IN A TRIAL LIKE THIS, THERE ARE TWO PARTS TO IT.
4 ONE WOULD BE A TRIAL AS TO WHETHER OR NOT MR.
5 ROBERTSON IS OR IS NOT GUILTY OF THE CHARGE OF
6 MURDER.

7 IF HE'S FOUND NOT GUILTY, THE CASE WOULD BE
8 OVER. IF HE'S FOUND GUILTY, THE CASE WOULD
9 PROCEED INTO WHAT'S CALLED THE SECOND PHASE.
10 THAT IS, WITH THE JURY DETERMINING WHAT PENALTY
11 TO BE IMPOSED.

12 HE IS PRESUMED INNOCENT OF THE CHARGES AND IS SO
13 PRESUMED UNTIL SUCH TIME AS A JURY WERE TO
14 RETURN A UNANIMOUS VERDICT FINDING BEYOND A
15 REASONABLE DOUBT THAT HE IS GUILTY OF MURDER.

16 SO, WE'RE TALKING ABOUT THE SECOND PART OF THE
17 TRIAL BUT THAT DOESN'T PRESUPPOSE THAT WE'LL
18 EVER GET THERE. WE WOULD ONLY GET THERE IF HE
19 IS FOUND GUILTY. DO YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. DID YOU HAVE A CHANCE TO REVIEW IN THE JURY ROOM
22 THOSE JUROR TYPES?

23 A. YES.

24 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

25 A. NUMBER THREE.

1 Q. IN NUMBER THREE I USED WORDS AGGRAVATION AND
2 MITIGATION IN TALKING ABOUT CIRCUMSTANCES.

3 IN USING THOSE WORDS, AGGRAVATION BASICALLY IS
4 ADDRESSED TO CIRCUMSTANCES THAT ATTEND THE
5 COMMISSION OF A CRIME WHICH INCREASE IT'S
6 ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCE BUT
7 THEY ARE THINGS WHICH ARE OVER AND ABOVE THE
8 ACTUAL ELEMENTS OF THE CHARGE ITSELF OR THE
9 CRIME ITSELF.

10 MITIGATING CIRCUMSTANCES ARE THINGS THAT ARE NOT
11 JUSTIFICATION OR EXCUSE FOR THE COMMISSION OF A
12 CRIME BUT ARE THINGS WHICH IN FAIRNESS AND MERCY
13 MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE
14 DEGREE OF ONE'S MORAL CULPABILITY. DO YOU
15 UNDERSTAND THAT?

16 A. YES.

17 Q. NOW YOU'RE TELLING ME THEN THAT IF YOU ARE THIS
18 TYPE OF JUROR, THAT IF YOU WERE ON THE JURY AND
19 YOU WENT INTO THE SECOND PART OF THIS TRIAL;
20 THAT IS THE PENALTY PHASE, THAT YOU WOULD GO IN
21 WITH AN OPEN MIND; THAT IS, WITH NO PREDISPOSED
22 IDEA OR DETERMINATION AS TO WHAT PENALTY SHOULD
23 BE IMPOSED. IS THAT CORRECT?

24 A. YES, SIR.

25 Q. AND YOU'RE TELLING ME THAT YOU WOULD WANT TO

1 HEAR THE EVIDENCE AND THE JUDGE'S CHARGE ON THE
2 LAW AND ANY MITIGATING AND AGGRAVATING
3 CIRCUMSTANCES AND THEN AND ONLY THEN DECIDE WHAT
4 PENALTY WOULD BE APPROPRIATE. IS THAT CORRECT?

5 A. YES, SIR.

6 Q. AND WOULD YOU, IF AFTER HEARING ALL THAT, IF YOU
7 DETERMINED THAT THE APPROPRIATE PENALTY WAS LIFE
8 IMPRISONMENT, COULD YOU IMPOSE THAT PENALTY?

9 A. YES, SIR.

10 Q. IF YOU FELT THAT THE APPROPRIATE PENALTY WAS THE
11 PENALTY OF DEATH, COULD YOU IMPOSE THAT PENALTY?

12 A. YES, SIR.

13 Q. ALL RIGHT, ANSWER ANY QUESTIONS THAT COUNSEL
14 MIGHT HAVE.

15 QUESTIONS BY MR. POPE:

16 Q. MS. DUNLAP, I'M TOMMY POPE; I'M THE SOLICITOR
17 HERE IN YORK COUNTY. THIS IS KEVIN BRACKETT, MY
18 DEPUTY SOLICITOR, AND WE'RE THE PROSECUTORS FOR
19 THE STATE IN THIS CASE.

20 LET ME ASK YOU, HAVE YOU EVER BEEN ON JURY DUTY
21 BEFORE?

22 A. NO, SIR.

23 Q. HAVE YOU EVER HAD TO SIT DOWN AND ANSWER
24 QUESTIONS LIKE THIS?

25 A. NO, SIR.

1 Q. YOU KIND OF FEEL LIKE YOU'RE ON TRIAL A LITTLE
2 BIT?

3 A. YES.

4 Q. WELL, LET ME TELL YOU ONE THING YOU'RE LUCKY AT
5 IS YOU CAN'T GIVE A WRONG ANSWER BECAUSE WHAT WE
6 ARE TRYING TO LEARN, THE JUDGE IS TRYING TO FIND
7 OUT, THE DEFENSE AND US IS HOW TERRY DUNLAP
8 FEELS ABOUT DIFFERENT THINGS.

9 WE'RE NOT GOING TO PUT YOU UNDER A MICROSCOPE OR
10 ANYTHING BUT THERE ARE JUST DIFFERENT LITTLE
11 QUESTIONS WE ASK AND, YOU KNOW, THE QUESTIONS
12 THE JUDGE ASKED, YOU'LL BE WORN OUT. TIME I GET
13 THROUGH TALKING, ANOTHER LAWYER IS GOING TO
14 TALK. BUT IF YOU WILL JUST BEAR WITH ME, I WANT
15 TO TRY TO GET TO SOME OF THE POINTS.

16 NOW ONE THING I'LL TELL YOU IS THE JUDGE, HE
17 WILL ALWAYS TELL YOU THE LAW. YOU KNOW, PEOPLE
18 DON'T HAVE TO BE TRAINED SPECIALLY TO BE JURORS.

19 YOU KNOW, YOU COME IN, YOU WORRY THAT YOU'RE NOT
20 ANSWERING THE RIGHT THINGS AND DON'T KNOW, YOU
21 KNOW, WHAT THE REQUIREMENTS ARE. HE WILL ALWAYS
22 TELL YOU, IF YOU WERE CHOSEN TO BE ONE OF THE
23 JURORS, HE WOULD TELL YOU, YOU KNOW, WHAT LAW TO
24 APPLY AND THINGS OF THAT NATURE. SO, YOU DON'T
25 HAVE TO WORRY THAT, YOU KNOW, THAT WAS ONE OF

1 THE CLASSES THAT YOU DIDN'T TAKE IN HIGH SCHOOL
2 OR SOMETHING.

3 IN THE FIRST PHASE, AND AGAIN YOU UNDERSTAND
4 THAT THIS IS A LITTLE DIFFERENT THAN A TRIAL YOU
5 MIGHT SEE ON T.V. OR SOMETHING. THIS IS A TWO
6 PART TRIAL. YOU KNOW, A NORMAL TRIAL, THEY TRY
7 IT AND THEY DECIDE A VERDICT AND IF IT'S GUILTY,
8 THEN THE JUDGE WOULD DO A SENTENCE. YOU KNOW,
9 HE'D SAY THIS IS THE SENTENCE. AND THE JURY
10 WOULD JUST SAY GUILTY OR NOT GUILTY.

11 IN THIS TRIAL IT'S TWO PART IN THAT THE JURY
12 DETERMINES GUILTY OR NOT GUILTY. OF COURSE, IF
13 THE MAN'S NOT GUILTY, THAT'S THE END OF IT.

14 IF HE SAYS GUILTY -- I MEAN IF THE JURY SAYS
15 GUILTY, THEN YOU WOULD GO TO THE SECOND PHASE
16 AND HEAR DIFFERENT OTHER EVIDENCE ON WHETHER THE
17 PUNISHMENT SHOULD BE LIFE OR BE DEATH. DO YOU
18 UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. OKAY. LET'S TALK ABOUT THE FIRST PHASE. OKAY,
21 AND THAT'S MORE LIKE A REGULAR TRIAL. IN THE
22 FIRST PHASE YOU UNDERSTAND THIS DEFENDANT, HE'S
23 INNOCENT UNTIL PROVEN GUILTY. DO YOU UNDERSTAND
24 THAT?

25 A. YES, SIR.

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1 Q. AND YOU UNDERSTAND THAT WE, THE STATE, HAVE TO
2 PROVE IT. YOU KNOW WHAT I MEAN, HE DOESN'T HAVE
3 TO PROVE ANYTHING, HE DOESN'T HAVE TO SAY
4 ANYTHING. CONSTITUTIONAL RIGHTS PROVIDE HIM
5 THAT HE DOESN'T HAVE TO PROVE ANYTHING TO US OR
6 YOU OR ANYBODY. DO YOU UNDERSTAND THAT?

7 A. YES.

8 Q. AND THAT'S IN THE FIRST PHASE. OKAY, IF WE
9 PROVE OUR CASE BEYOND A REASONABLE DOUBT AND THE
10 JUDGE WILL EXPLAIN ALL OF THAT TO YOU, BUT IF WE
11 PROVE OUR CASE AND HE WAS FOUND GUILTY BY THE
12 TWELVE JURORS, THEN AND ONLY THEN WOULD WE GO TO
13 THE SECOND PHASE. DO YOU UNDERSTAND THAT?

14 A. YES.

15 Q. OKAY. IN THE SECOND PHASE AND, OF COURSE, TODAY
16 HE STANDS INNOCENT UNTIL PROVEN GUILTY BUT JUST
17 SO WE CAN TALK ABOUT THE SECOND PHASE, I'M GOING
18 TO SAY NOW IN ORDER TO GET TO THE SECOND PHASE,
19 HE'S BEEN CONVICTED, AND HE'S BEEN CONVICTED OF
20 KILLING BOTH OF HIS PARENTS. YOU KNOW, IF WE
21 ARE NOW IN THAT PHASE.

22 A. UH HUH.

23 Q. OKAY. DO I UNDERSTAND THAT TERRY DUNLAP IS THE
24 TYPE JUROR THAT ONCE YOU GET TO THAT PHASE,
25 WOULD YOU HAVE ALREADY MADE UP YOUR MIND THAT HE

1 SHOULD GET LIFE OR DEATH?

2 A. NO.

3 Q. OKAY. BECAUSE YOU WOULDN'T KNOW -- I MEAN YOU'D
4 KNOW THAT HE WAS CONVICTED.

5 A. UH HUH.

6 Q. BUT YOU WOULDN'T KNOW THE FACTS IN THE SECOND
7 PHASE; IS THAT RIGHT?

8 A. UH HUH.

9 Q. SO YOU WOULD HAVE TO WAIT AND HEAR THEM?

10 A. YES.

11 Q. OKAY. LET ME TELL YOU, IN THE SECOND PHASE THE
12 EVIDENCE YOU'LL HEAR, AND THE JUDGE EXPLAINED TO
13 YOU A MINUTE AGO, WHAT THE STATE WOULD PUT
14 FORWARD IS CALLED EVIDENCE IN AGGRAVATION.

15 FOR LACK OF A BETTER TERM, WHAT THAT IS IS
16 EVIDENCE THAT WOULD MAKE THE CASE SEEM EVEN
17 WORSE. YOU KNOW, OBVIOUSLY THERE ARE NO NORMAL
18 AVERAGE MURDERS BUT, YOU KNOW, IT WOULD BE --
19 YOU KNOW, TWO PARENTS HAD BEEN KILLED BUT HERE'S
20 MORE INFORMATION, HERE'S MORE THINGS THAT MAKE
21 IT WORSE, THINGS THAT WE WOULD PUT FORTH TO
22 THINK IT SHOULD MAKE IT A DEATH PENALTY.

23 NOW, THE DEFENSE COULD, BUT AGAIN WOULDN'T HAVE
24 TO, BUT IF THEY WANTED TO THEY COULD PUT UP
25 EVIDENCE CALLED EVIDENCE IN MITIGATION AND

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1 THAT'S KIND OF OPPOSITE OF AGGRAVATION.
2 MITIGATION IS TRYING TO SAY THIS IS REASONS IT
3 OUGHT TO COME DOWN AND BE A LIFE SENTENCE. YOU
4 KNOW, THIS IS REASONS, YOU KNOW, THIS IS BEHIND
5 THE STORY OR SOMETHING, YOU KNOW, THIS IS WHY IT
6 WOULD BE A LIFE SENTENCE.

7 NOW ARE YOU THE TYPE, WOULD YOU MAKE UP YOUR
8 MIND AFTER JUST HEARING ONE OR WOULD YOU WANT TO
9 HEAR ---

10 A. I'D WANT TO HEAR BOTH SIDES.

11 Q. OKAY. AND SO JUST BECAUSE YOU HEARD OUR SIDE,
12 YOU WOULDN'T AUTOMATICALLY VOTE DEATH. JUST
13 BECAUSE YOU HEARD THEIR SIDE, YOU WOULDN'T
14 AUTOMATICALLY VOTE LIFE. YOU'D HAVE TO LISTEN TO
15 EVERYTHING?

16 A. EVERYTHING.

17 Q. OKAY. NOW IN THE JURY ROOM, AND YOU SAID THAT
18 YOU HAVE NOT BEEN ON A JURY, RIGHT?

19 A. NO.

20 Q. IN THE JURY ROOM, OF COURSE, THERE ARE TWELVE
21 JURORS AND THE VERDICT OF LIFE OR DEATH, IN
22 ORDER FOR A JURY TO RETURN THAT VERDICT, IT
23 WOULD HAVE TO BE UNANIMOUS, MEANING ALL TWELVE.
24 BUT, OF COURSE, WHEN YOU GET BACK TO THE JURY
25 ROOM YOU HAVE THE EVIDENCE AND YOU START

1 DELIBERATING. YOU KNOW, YOU GIVE YOUR OPINION
2 AND YOUR OPINION WOULD BE RESPECTED. AND THE
3 OTHER JURORS WOULD GIVE THEIR OPINION.

4 ARE YOU THE TYPE JUROR, COULD YOU LISTEN TO
5 OTHER PEOPLE'S OPINIONS?

6 A. YES.

7 Q. COULD YOU GIVE YOUR OPINION?

8 A. YES.

9 Q. OKAY. IF YOU THOUGHT YOUR OPINION WAS RIGHT,
10 WOULD YOU STICK WITH IT AND NOT JUST JOIN THE
11 OTHERS JUST BECAUSE THERE WERE ELEVEN OF THEM?

12 A. WELL, AFTER TALKING AND, YOU KNOW, GETTING WHAT
13 EVERYBODY HAS TO SAY AND GOING BACK OVER WHAT'S
14 BEEN SAID ALREADY AND THINKING ABOUT IT, I MAY
15 CHANGE.

16 Q. BUT YOU WOULD CHANGE NOT JUST BECAUSE WELL
17 ELEVEN SAY THIS, SO I'M GOING TO GO WITH THEM.

18 A. NO.

19 Q. YOU'D HAVE TO DO SOMETHING TO MAKE YOU
20 COMFORTABLE?

21 A. YES.

22 Q. BUT, AGAIN, YOU'RE THE TYPE OF PERSON YOU'RE NOT
23 GOING TO GO IN THERE AND FOLD UP YOUR ARMS AND
24 SAY I'VE DECIDED, I'M NOT LISTENING, I WON'T
25 HEAR WHAT YOU'VE GOT TO SAY?

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1 A. NO.

2 Q. OKAY. AND SO WHEN YOU GET BACK THERE, AFTER
3 HEARING IT, AGAIN, YOU DON'T KNOW YET BECAUSE
4 YOU HAVEN'T HEARD THE EVIDENCE, RIGHT? BUT WHEN
5 YOU GET BACK THERE, ACCORDING TO THE EVIDENCE,
6 YOU COULD VOTE LIFE. ACCORDING TO WHAT YOU
7 HEARD. YOU DON'T KNOW YET, BUT IF THE EVIDENCE
8 WAS SUCH YOU FELT YOU COULD VOTE LIFE IF YOU
9 THOUGHT THAT WAS RIGHT?

10 A. UH HUH.

11 Q. OKAY, IF THE JURY VOTES LIFE AND THERE ARE
12 TWELVE JURORS AND SAY THEY GO AROUND THE ROOM
13 AND EVERYBODY RAISES THEIR HAND AND YOU SAY ALL
14 RIGHT, WE VOTE LIFE. THEN ONLY THE FOREPERSON,
15 THE FOREMAN, YOU KNOW LIKE ON T.V., ONE PERSON
16 KIND OF SPEAKS TO THE JUDGE FOR THE JURY, ONLY
17 THE FOREMAN OR FORELADY WOULD ACTUALLY HAVE TO
18 SIGN IT. AND THEY WOULD SAY, YOU KNOW, BECAUSE
19 IT'S A SECRET DELIBERATION, THEY'D SAY, YOU
20 KNOW, WE VOTED AND WE VOTE LIFE, AND THAT ONE
21 PERSON WOULD SIGN IT.

22 OF COURSE THE JUDGE IS GOING TO DO WHATEVER YOU
23 SAY. IF YOU SAY LIFE, HE'S GOING TO DO IT. IF
24 YOU SAY DEATH, HE'S GOING TO DO IT.

25 LIKEWISE, YOU TOLD ME THAT YOU'RE THE TYPE OF

JUROR THAT AFTER HEARING THE EVIDENCE, JUST
ACCORDING TO WHAT YOU HEARD, YOU MAY BE ABLE TO
VOTE DEATH. IS THAT RIGHT?

A. YES, SIR.

Q. THE DIFFERENCE IN A DEATH PENALTY CASE IS THAT
IF EVERYBODY VOTES FOR DEATH, OF COURSE IT HAS
TO BE UNANIMOUS, BUT IF EVERYBODY VOTES FOR
DEATH, EACH INDIVIDUAL JUROR HAS TO SIGN THEIR
NAME AND SIGN THEIR NAME TO GIVE THE INDIVIDUAL
DEATH.

IF YOU HAD HEARD THE FACTS AND TERRY DUNLAP
THOUGHT THAT DEATH WAS THE RIGHT VERDICT -- YOU
KNOW, LIKE YOU SAY, AFTER TALKING AND HEARING
EVERYTHING, COULD YOU SIGN YOUR NAME TO THE
DOCUMENT TERRY DUNLAP THAT GIVES THIS MAN DEATH?

A. IF I VOTED FOR IT, YES.

Q. THANK YOU, MS. DUNLAP.

A. YOU'RE WELCOME.

QUESTIONS BY MR. HANCOCK:

Q. MS. DUNALP, I'M BILL HANCOCK; I REPRESENT JIMMY
ROBERTSON, THE DEFENDANT IN THIS CASE WHO IS
SEATED RIGHT HERE. AND THIS IS CO-COUNSEL, MR.
JIM BOYD.

I'M THE LAST ONE THAT'S GOING TO GET TO QUESTION
YOU TODAY.

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1 A. OKAY.

2 Q. NOW, YOU HAVE ANSWERED MANY QUESTIONS AND I'M
3 JUST GOING TO ASK A FEW. YOU'VE BEEN TOLD THAT
4 THERE IS NO RIGHT OR WRONG ANSWER. THAT WE'RE
5 LISTENING AND WE'RE RESPECTING WHAT YOU SAY SO
6 THAT WE CAN HOPEFULLY ARRIVE AT SOME PROPER
7 DECISIONS IN THIS CASE, ALL OF US.

8 NOW, YOU HAVE INDICATED THAT YOU KNOW CERTAIN
9 PEOPLE, DENNIS CHISOLM AND KERRY SPITZENBERGER;
10 IS THAT CORRECT?

11 A. YES, SIR.

12 Q. AND HAVE YOU INDICATED THAT YOU'RE NOT REAL
13 CLOSE FRIENDS WITH THEM, YOU'RE JUST
14 ACQUAINTANCES?

15 A. NOT REALLY CLOSE FRIENDS, I JUST KNOW HER. SHE
16 DOESN'T KNOW ME. I JUST KNOW HER BECAUSE SHE'S
17 THE DIRECTOR OVER THE MEDICAL RECORDS
18 DEPARTMENT. AND I JUST KNOW DENNIS BECAUSE HE
19 GREW UP CLOSE TO MY MOTHER.

20 Q. AND SO YOU STATED THAT THEY WOULD HAVE NO AFFECT
21 ON YOUR UNDERSTANDING AND RULING ON THIS CASE.
22 IS THAT CORRECT, MY UNDERSTANDING OF THAT?

23 A. THAT'S CORRECT.

24 Q. AND I HAVE UNDERSTOOD THAT YOU IN THIS CASE
25 COULD LISTEN TO ALL OF THE EVIDENCE AND ARRIVE

1 AT A PROPER DECISION THAT WOULD BE YOUR
2 DECISION. IS THAT CORRECT?

3 A. CORRECT.

4 Q. NOW, YOU KNOW WE'RE STARTING WITH -- AND WE'RE
5 JUST ASSUMING THAT JIMMY HAS BEEN CONVICTED OF
6 KILLING HIS PARENTS, ONE OR BOTH; YOU UNDERSTAND
7 THAT?

8 A. YES.

9 Q. AND JUST THE FACT THAT HE KILLED HIS PARENTS,
10 WOULD THAT CAUSE YOU TO VOTE FOR THE DEATH
11 PENALTY?

12 A. NO, NOT JUST THAT FACT ALONE.

13 Q. YOU HAVE TOLD THE SOLICITOR THAT YOU WOULD
14 LISTEN TO THE AGGRAVATING CIRCUMSTANCES, AND YOU
15 UNDERSTAND WHAT THOSE ARE?

16 A. YES.

17 Q. AND YOU WOULD UNDERSTAND AND LISTEN TO THE
18 MITIGATING CIRCUMSTANCES IF WE WERE TO PUT ON
19 MITIGATING CIRCUMSTANCES? AND YOU WOULD LISTEN
20 TO ALL OF THOSE WITH AN OPEN MIND BEFORE YOU
21 ARRIVED AT A DECISION?

22 A. YES.

23 Q. YOU UNDERSTAND THAT SHOULD WE GET TO THAT POINT
24 THAT THERE WOULD BE ONLY TWO DECISIONS. ONE
25 WOULD BE TO VOTE FOR THE DEATH PENALTY. TWO

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1 WOULD BE TO VOTE FOR LIFE IN PRISON. THAT WOULD
2 BE YOUR ONLY TWO CHOICES. AND YOU'VE INDICATED
3 THAT YOU COULD AFTER LISTENING TO CIRCUMSTANCES,
4 POSSIBLY IN AGGRAVATION AND MITIGATION, THAT YOU
5 COULD VOTE FOR LIFE IMPRISONMENT. IS THAT
6 CORRECT?

7 A. YES.

8 Q. AND HAVE I HEARD YOU CORRECTLY WHEN YOU SAID
9 THAT YOU COULD HOLD THAT OPINION AGAINST ALL
10 OTHERS. THAT IF ELEVEN PEOPLE ON A TWELVE
11 PEOPLE JURY YOU WERE THE ONLY ONE THAT WANTED TO
12 VOTE FOR LIFE, THEN YOU WOULDN'T CHANGE YOUR
13 OPINION JUST TO BE WITH THE MAJORITY?

14 A. NO, NOT TO -- UH UH.

15 Q. SO, I UNDERSTOOD YOU CORRECTLY?

16 A. YES.

17 Q. I HAVE NO FURTHER QUESTIONS.

18 THE COURT: I'M GOING TO ASK YOU JUST TO STEP
19 OUTSIDE. LET ME ASK YOU ONE THING. I NOTICED THAT YOU
20 HAVE SOME YOUNG CHILDREN. IF YOU SERVE ON THIS JURY, IS
21 SOMEBODY GOING TO BE ABLE TO TAKE CARE OF THOSE CHILDREN?

22 THE JUROR: WELL, BASICALLY MY HUSBAND AND
23 GRANDMOTHER KEEPS THEM AT NIGHT ANYWAY, BUT LIKE I TAKE
24 THEM TO SCHOOL AND PICK THEM UP.

25 THE COURT: COULD SOMEBODY DO THAT FOR YOU?

1 THE JUROR: YES.

2 THE COURT: OKAY. JUST STEP RIGHT OUTSIDE.

3 (THE JUROR LEFT THE COURTROOM.)

4 THE COURT: WHAT SAYS THE STATE?

5 MR. POPE: WE SUBMIT SHE'S QUALIFIED.

6 THE COURT: THE DEFENSE?

7 MR. HANCOCK: QUALIFIED, YOUR HONOR.

8 THE COURT: ALL RIGHT, I FIND THAT SHE IS
9 QUALIFIED. BRING HER BACK IN.

10 (THE JUROR RETURN TO THE COURTROOM.)

11 THE COURT: MS. DUNLAP, WE'RE GOING TO HAVE YOU
12 ON THE POOL FROM WHICH THE JURY IS DRAWN. THAT DOES NOT
13 MEAN THAT YOU WILL AUTOMATICALLY BE ON THE JURY, BUT YOU
14 WILL BE ON THE POOL THAT WILL BE DRAWN.

15 THE JUROR: OKAY.

16 THE COURT: DON'T BE DISCUSSING THE CASE WITH
17 ANYONE. DON'T LET YOURSELF READ ABOUT IT IN THE PAPER OR
18 BE EXPOSED TO ANY NEWS COVERAGE ABOUT THE CASE.

19 WHEN YOU CALL BACK -- CALL BACK TONIGHT AFTER
20 6:00 AND THEY WILL TELL YOU WHAT TIME TO REPORT. AND WHEN
21 YOU REPORT, BRING THINGS YOU NEED TO STAY FOR A WEEK OR SO
22 BECAUSE THAT'S ABOUT HOW LONG WE ANTICIPATE THIS CASE WILL
23 TAKE.

24 SO, CALL BACK TONIGHT AFTER 6:00.

25 THE JUROR: OKAY. THANK YOU.

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1 (THE JUROR LEFT THE COURTROOM.)

2 THE COURT: ALL RIGHT, CHRISTOPHER JAMES.

3 CHRISTOPHER M. JAMES, JUROR NUMBER 131, WHITE
4 MALE, WAS QUESTIONED AS FOLLOWS:

5 QUESTIONS BY THE COURT:

6 Q. I'LL REMIND YOU THAT I'M JOHN HAYES, THE JUDGE
7 WHO IS ASSIGNED THIS CASE. AND YOU'RE UNDER
8 OATH.

9 THERE'S A T.V. CAMERA IN HERE NOW THAT'S NOT
10 OPERATING, BUT IF YOU ARE ON THE JURY PANEL YOU
11 WILL SEE PERHAPS T.V. CAMERAS OR PHOTOGRAPHERS,
12 BUT THEY CAN'T TAKE YOUR PICTURE OR REPORT ABOUT

13 YOU. YOU ARE ON THE JURY AND THEY ARE
14 PROHIBITED BY LAW FROM REPORTING ANY OF THAT.

15 YOU HANDED TO US AT AN EARLIER TIME A
16 QUESTIONNAIRE. IS IT ACCURATE OR IS THERE
17 ANYTHING ON THERE YOU NEED TO CHANGE?

18 A. EVERYTHING IS ACCURATE.

19 Q. ALL RIGHT. DID YOU HAVE A CHANCE TO REVIEW THAT
20 LIST OF WITNESSES IN THE JURY ROOM?

21 A. YES, SIR.

22 Q. WAS THERE ANYBODY THEREON WHO YOU KNEW?

23 A. KEN FIELDS AND ANN HOWE.

24 Q. WOULD THE FACT THAT YOU KNOW THEM AFFECT YOUR
25 ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE

1 AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

2 A. NO, SIR.

3 Q. HAVE YOU BEFORE COMING TO THIS COURT THIS WEEK
4 HEARD ANYTHING ABOUT THE CASE? READ ABOUT IT,
5 FORMED AN OPINION ABOUT IT, TALKED ABOUT IT OR
6 GOTTEN ANY INFORMATION ABOUT IT FROM ANY SOURCE
7 WHATSOEVER?

8 A. I HEARD WHAT MY GRANDMA WAS TALKING ABOUT IT; IT
9 WAS IN THE PAPER.

10 Q. WOULD THAT FACT AFFECT YOUR ABILITY TO BE FAIR
11 AND IMPARTIAL TO THE STATE AND THE DEFENDANT
12 DURING THE TRIAL?

13 A. NO, SIR.

14 Q. COULD YOU SORT OF ERASE FROM YOUR MIND AND NOT
15 FACTOR INTO YOUR CONSIDERATION ANYTHING YOU
16 HEARD PRIOR TO COMING HERE AND BASE YOUR VERDICT
17 SOLELY ON THE INFORMATION THAT YOU RECEIVED IN
18 THE TRIAL? COULD YOU DO THAT?

19 A. YES, SIR.

20 Q. THE CASE WE'RE IN WOULD POSSIBLY BE IN TWO
21 PARTS. ONE DEALING WITH WHETHER OR NOT MR.
22 ROBERTSON IS GUILTY OF THE OFFENSE OF MURDER.
23 IF HE'S FOUND NOT GUILTY, THAT WOULD BE THE END
24 OF THE CASE.

25 IF HE'S FOUND BEYOND A REASONABLE DOUBT

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1 UNANIMOUS BY A JURY TO BE GUILTY, THEN WE WOULD
2 MOVE INTO A SECOND PHASE.

3 WE'RE GOING TO BE TALKING ABOUT THE SECOND PHASE
4 BUT BECAUSE WE'RE TALKING ABOUT IT, THAT DOESN'T
5 PRESUPPOSE THAT WE WILL REACH THERE. THE JURY
6 MAY FIND HIM NOT GUILTY AND, OF COURSE, WE WOULD
7 GO NO FURTHER. HE IS PRESUMED INNOCENT UNTIL HE
8 IS FOUND GUILTY IF HE IS. DO YOU UNDERSTAND
9 THAT?

10 A. YES, SIR.

11 Q. DID YOU IN THE JURY ROOM HAVE AN OPPORTUNITY TO
12 GO OVER THAT LIST OF JUROR TYPES?

13 A. UH ---

14 Q. THE THREE TYPES OF JURORS?

15 A. OH, YES, SIR.

16 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

17 A. UH, WELL, JUST THE FIRST ONE, I RECKON.

18 Q. ALL RIGHT. THE FIRST TYPE JUROR IS SOMEONE WHO
19 WHEN A PERSON HAS BEEN FOUND GUILTY OF MURDER
20 AND YOU'RE CONSIDERING PUNISHMENT THAT YOU FEEL
21 THAT YOU WOULD BE REQUIRED IN EVERY CASE TO
22 IMPOSE THE DEATH PENALTY. THAT IS, ARE YOU
23 TELLING ME THAT SIMPLY BECAUSE ONE HAS COMMITTED
24 A MURDER THAT IT IS YOUR OPINION AND THAT YOU
25 WOULD FIND THAT THE DEATH PENALTY IS THE

1 APPROPRIATE PUNISHMENT NO MATTER WHAT THE
2 CIRCUMSTANCES ARE?

3 A. THAT'S THE WAY I FEEL. I MEAN IF SOMEBODY, YOU
4 KNOW, HURTS SOMEBODY, YOU KNOW, REAL BAD, EVEN
5 KILL THEM OR WHATEVER, YOU KNOW, IT OUGHT TO BE
6 THE SAME THING DONE TO THEM.

7 Q. YOU BELIEVE THAT ONE WHO COMMITS MURDER SHOULD
8 AUTOMATICALLY GET THE DEATH PENALTY?

9 A. YEAH, I MEAN IF THEY DONE IT.

10 Q. ALL RIGHT, LET ME LET YOU ANSWER QUESTIONS BY
11 COUNSEL.

12 QUESTIONS BY MR. BOYD:

13 Q. GOOD AFTERNOON, MR. JAMES. I'M JIM BOYD; I
14 REPRESENT JIMMY ROBERTSON WHO IS SEATED HERE.
15 AND THAT'S MY CO-COUNSEL, BILL HANCOCK, AT THE
16 END OF THE TABLE.

17 I WANTED TO JUST ASK YOU A FEW THINGS TO FOLLOW
18 UP ON THE JUDGE'S QUESTIONS TO YOU. AND THERE'S
19 NO RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. I
20 KNOW YOU'RE NOT USED TO SITTING IN A WITNESS BOX
21 ANSWERING QUESTIONS. YOU PROBABLY FEEL LIKE
22 YOU'RE ON THE SPOT PROBABLY BUT THERE'S NO RIGHT
23 OR WRONG ANSWERS. WE JUST NEED TO KNOW HOW YOU
24 TRULY FEEL.

25 IN ANSWER TO THE JUDGE'S QUESTION YOU SAID THAT

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1 YOU BELIEVE BASICALLY THAT IF SOMEONE IS GUILTY
2 OF MURDER, KILLS SOMEBODY, THE SAME THING SHOULD
3 HAPPEN TO THEM. IS THAT CORRECT?

4 A. RIGHT.

5 Q. AND IS THAT A PRETTY FIRM BELIEF ON YOUR PART?

6 A. THAT'S HOW I'VE ALWAYS BEEN, YOU KNOW.

7 Q. AND IN A PARTICULAR CASE, A CASE OF NOT JUST
8 MURDER BUT A MURDER WITH AGGRAVATING
9 CIRCUMSTANCES; THAT IS, WORSE THAN AN ORDINARY
10 MURDER, YOU WOULD BE EVEN MORE INCLINED TO GIVE
11 THE DEATH PENALTY UNDER THOSE CIRCUMSTANCES.

12 WOULD THAT BE A FAIR STATEMENT?

13 A. YEAH. I MEAN I REALLY DIDN'T UNDERSTAND WHAT YOU
14 WERE SAYING.

15 Q. OKAY. LET ME EXPLAIN THIS TO YOU. THERE ARE TWO
16 PHASES TO A TRIAL OF THIS NATURE.

17 A. OKAY.

18 Q. IN ONE PHASE THE JURY DETERMINES WHETHER JIMMY
19 ROBERTSON IS GUILTY OR NOT GUILTY.

20 A. RIGHT.

21 Q. ONCE HE IS DETERMINED TO BE GUILTY, IT GOES INTO
22 A SECOND PHASE OF THE TRIAL IN WHICH THE JURY IS
23 ASKED TO GIVE A SENTENCE OF EITHER LIFE
24 IMPRISONMENT OR DEATH.

25 A. YEAH, I UNDERSTAND.

1 Q. AND IN THAT SECOND PHASE OF THE TRIAL THE STATE,
2 THE PROSECUTORS, COULD PRESENT EVIDENCE WHAT'S
3 CALLED IN AGGRAVATION. THAT IS, THINGS THAT MAKE
4 THE MURDER EVEN WORSE. DO YOU UNDERSTAND?

5 A. YES, SIR.

6 Q. THE DEFENDANT COULD PRESENT EVIDENCE OF
7 MITIGATION. THAT IS THINGS THAT WOULD SORT OF
8 LESSEN THE DEFENDANT'S MORAL CULPABILITY. DO
9 YOU SEE WHAT I'M SAYING?

10 A. UH HUH.

11 Q. MY UNDERSTANDING IS BASICALLY IN SUCH A CASE YOU
12 WOULD BE NOT INCLINED TO CONSIDER EVIDENCE IN
13 MITIGATION ONCE IT'S BEEN PROVEN THAT HE HAD
14 COMMITTED THE MURDERS. THAT IS, I'M NOT TALKING
15 ABOUT SELF-DEFENSE OR ACCIDENT OR ANYTHING. BUT
16 ONCE HE IS CONVICTED OF MURDER; THAT IS, HE HAS
17 DELIBERATELY KILLED, IN THIS CASE TWO PEOPLE,
18 HIS PARENTS, THAT YOU WOULD FAVOR THE DEATH
19 PENALTY IN THAT CASE.

20 A. YES, SIR.

21 Q. AND YOU WOULDN'T BE INCLINED TO CONSIDER MUCH OF
22 ANYTHING ELSE ONCE THAT'S BEEN PROVEN?

23 A. RIGHT.

24 Q. OKAY. AND IS THAT OPINION OF YOUR'S PRETTY
25 FIRM?

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1 A. YEAH, I MEAN IT'S FIRM, YOU KNOW, IF SOMEBODY
2 DONE IT, YOU KNOW, THAT'S WHAT I WOULD CHOOSE.

3 Q. ALL RIGHT. ONCE SOMEBODY HAS BEEN CONVICTED OF
4 MURDER, EVEN IF THERE WAS SOME OTHER
5 CIRCUMSTANCES, YOU WOULD START FROM THE
6 ASSUMPTION THAT THEY SHOULD GET THE DEATH
7 PENALTY; IS THAT CORRECT?

8 A. IF THEY DID IT.

9 Q. THAT'S WHAT I MEAN, ONCE IT'S PROVEN THAT THEY
10 DID IT.

11 A. RIGHT.

12 Q. ONCE IT'S PROVEN THEY DID IT, YOU START FROM
13 THAT ASSUMPTION; IS THAT CORRECT?

14 A. RIGHT.

15 Q. AND EVEN IF YOUR MIND COULD BE CHANGED WHICH YOU
16 HAVE INDICATED IT COULDN'T, BUT IF IT COULD BE
17 CHANGED IT WOULD TAKE PRETTY STRONG EVIDENCE ---

18 A. RIGHT.

19 Q. --- TO CHANGE YOUR MIND ABOUT THAT. IS THAT
20 CORRECT?

21 A. RIGHT. IF THEY DID, YOU KNOW, THEY DID. OR IF
22 THEY DIDN'T, THEY DIDN'T, YOU KNOW.

23 Q. ALL RIGHT, I UNDERSTAND. ONCE THEY DID IT, THEY
24 DESERVE THE DEATH PENALTY?

25 A. RIGHT.

1 Q. I UNDERSTAND. NOW, I JUST WANT TO ASK YOU A FEW
2 OTHER QUESTIONS. IF YOU ARE SELECTED ON THE
3 JURY, YOU KNOW DIFFERENT JURORS HAVE DIFFERENT
4 OPINIONS; YOU UNDERSTAND THAT?

5 A. RIGHT.

6 Q. AND YOU'RE ENTITLED TO HAVE YOUR OPINION
7 RESPECTED BY THE OTHER JURORS. YOU UNDERSTAND
8 THAT?

9 A. RIGHT.

10 Q. AND LIKEWISE, YOU HAVE TO RESPECT THE OPINION OF
11 OTHER JURORS WHO HAVE A DIFFERENT OPINION THAN
12 YOUR'S. DO YOU UNDERSTAND THAT?

13 A. UH HUH.

14 Q. THANK YOU. I APPRECIATE YOUR HONESTY.
15 QUESTIONS BY MR. POPE:

16 Q. MR. JAMES, MY NAME IS TOMMY POPE; I'M THE
17 SOLICITOR HERE. THIS IS KEVIN BRACKETT, MY
18 DEPUTY SOLICITOR. I'VE JUST GOT A FEW QUESTIONS
19 TO FOLLOW UP WITH YOU.

20 DO YOU UNDERSTAND THIS IS A LITTLE BIT DIFFERENT
21 THAN A REGULAR TRIAL. THE FIRST STAGE IS JUST
22 ABOUT GUILT AND THEN THE SECOND STAGE GETS INTO
23 PENALTY. DO YOU UNDERSTAND THAT?

24 A. YES.

25 Q. OKAY. AND YOU UNDERSTAND IN THE FIRST STAGE

1 THAT THIS DEFENDANT IS INNOCENT UNTIL PROVEN
2 GUILTY?

3 A. RIGHT.

4 Q. OKAY. AND YOU UNDERSTAND THAT WE'VE GOT TO
5 PROVE THE CASE. THEY DON'T HAVE TO PROVE
6 ANYTHING; WE'VE GOT TO PROVE IT. YOU UNDERSTAND
7 THAT?

8 A. UH HUH.

9 Q. COULD YOU BE A FAIR JUROR IN THAT STAGE OF THE
10 TRIAL, BECAUSE YOU DON'T KNOW ABOUT THE CASE
11 YET, YOU SAID.

12 A. RIGHT.

13 Q. SO, I MEAN YOU COULD BE FAIR AND IF WE PROVED
14 THE CASE, YOU COULD SAY GUILTY; AND IF WE DIDN'T
15 PROVE THE CASE, YOU COULD SAY NOT GUILTY?

16 A. YES, SIR.

17 Q. OKAY. NOW, WHEN WE GET TO THE SECOND STAGE OF
18 THE TRIAL, OF COURSE THEN THE TWO CHOICES -- AND
19 LIKE YOU SAY, HE WOULD HAVE THEN BEEN FOUND
20 GUILTY.

21 A. UH HUH.

22 Q. AND HE WOULD HAVE BEEN FOUND GUILTY IN THIS CASE
23 OF KILLING HIS PARENTS. I JUST WANT TO MAKE
24 SURE I UNDERSTAND. IN THAT SITUATION THERE IS A
25 SECOND PHASE IN WHICH WE PUT UP WHAT'S CALLED

1 AGGRAVATION. WE PUT THE BAD STUFF, THE THINGS -
2 - OF COURSE, YOU KNOW, YOU'VE ALREADY HEARD, YOU
3 KNOW, THERE WERE TWO MURDERS.

4 A. YEAH.

5 Q. BUT THINGS THAT WOULD MAKE IT WORSE, THINGS THAT
6 OUGHT TO MAKE IT A DEATH PENALTY.
7 AND THEY WOULD PUT UP, THEY DON'T HAVE TO, THEY
8 WOULD PUT UP WHAT'S CALLED MITIGATION, THINGS
9 THAT MAY EXPLAIN, YOU KNOW, THIS IS WHY IT
10 HAPPENED, YOU KNOW, WHATEVER THEY WOULD CHOOSE
11 TO EXPLAIN.

12 DO I UNDERSTAND THAT YOU'RE THE TYPE JUROR THAT
13 ONCE THE VERDICT HAD BEEN HAD, YOU'RE FOLDING UP
14 YOUR ARMS AND YOU'RE JUST AUTOMATICALLY SAYING
15 DEATH PENALTY, YOU'RE NOT EVEN GOING TO LISTEN
16 TO WHAT ELSE IS BEING SAID. IS THAT RIGHT?

17 A. WELL, THE WAY I FEEL IS IF YOU'VE DONE SOMETHING
18 LIKE THAT TO SOME, YOU KNOW, TO A HUMAN, THE
19 SAME THING OUGHT TO HAPPEN TO YOU.

20 Q. RIGHT. AND, AGAIN, I WANT TO MAKE IT CLEAR ---

21 A. NO MATTER WHAT, YOU KNOW.

22 Q. RIGHT. AND LET ME TELL YOU, THIS IS YOUR
23 ANSWER. WHATEVER YOU FEEL, THAT'S EXACTLY WHAT
24 I'M WANTING TO FIND OUT.

25 SO, WHAT YOU'RE TELLING ME IS THAT IF SOMEBODY

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1 KILLED SOMEBODY AND THEY'RE CONVICTED, YOU COULD
2 BE A JUROR ON THAT PART.

3 A. RIGHT.

4 Q. BUT ONCE THEY ARE CONVICTED YOU REALLY, BASED ON
5 YOUR VIEWS, YOU CAN'T GIVE THEM A FAIR HEARING
6 IN THE SECOND PHASE BECAUSE YOU'VE ALREADY
7 DECIDED WHAT THEIR PUNISHMENT OUGHT TO BE, IS
8 THAT RIGHT?

9 A. RIGHT, YOU KNOW, YEAH.

10 Q. I MEAN IF THAT'S YOUR VIEW.

11 A. YEAH, MY VIEW IS IF SOMEBODY HAS MURDERED
12 SOMEBODY AND IT'S A KNOWN FACT, THE SAME THING
13 OUGHT TO HAPPEN TO THEM.

14 Q. KIND OF AN EYE FOR AN EYE KIND OF THING.

15 A. RIGHT, AN EYE FOR AN EYE, LIKE THAT.

16 Q. OKAY.

17 A. NO MATTER WHAT, I MEAN IF THEY WERE DRUNK OR
18 WHATEVER.

19 Q. IT DOESN'T MATTER?

20 A. IT DOESN'T MATTER.

21 Q. OKAY AND THERE'S NO SITUATION THAT'S GOING TO
22 CHANGE -- AND, AGAIN, I'M NOT TRYING TO CHANGE
23 YOU, I'M JUST TRYING TO UNDERSTAND.

24 A. YEAH, THAT'S IT.

25 Q. THAT'S YOUR VIEW, THAT ONCE THEY ARE CONVICTED,

1 THAT THAT'S IT?

2 A. UH HUH.

3 Q. OKAY, I APPRECIATE IT. THANK YOU.

4 THE COURT: MR. JAMES, JUST STEP OUTSIDE FOR JUST
5 ONE MINUTE.

6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: WHAT SAYS THE DEFENSE?

8 MR. BOYD: NOT QUALIFIED, YOUR HONOR.

9 THE COURT: WHAT SAYS THE STATE?

10 MR. POPE: I DON'T BELIEVE HE'S QUALIFIED, YOUR
11 HONOR.

12 THE COURT: I FIND HE'S NOT QUALIFIED. BRING HIM
13 BACK IN.

14 (THE JUROR RETURNED TO THE COURTROOM.)

15 THE COURT: MR. JAMES, WE'RE GOING TO EXCUSE YOU
16 FROM ANY FURTHER SERVICE. WE APPRECIATE YOUR TIME AND YOUR
17 CANDOR. YOU CAN FEEL FREE TO LEAVE. THANK YOU A LOT.

18 (THE JUROR LEFT THE COURTROOM.)

19 THE COURT: NELL SMART.

20 NELL Q. SMART, JUROR NUMBER 244, WHITE FEMALE,
21 WAS QUESTIONED AS FOLLOWS:

22 QUESTIONS BY THE COURT:

23 Q. MS. SMART, I KNOW YOU WEAR A HEARING AID AND
24 YOU'VE INDICATED IN YOUR QUESTIONNAIRE THAT YOU
25 DO HAVE TROUBLE HEARING.

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- 1 A. I DO.
- 2 Q. WOULD YOU CALL IT SUBSTANTIAL?
- 3 A. IT'S REALLY BAD. I CAN HEAR SOUNDS, BUT -- I
- 4 HEAR THE END OF A WORD, BUT IF IT SOUNDS LIKE
- 5 SOMETHING ELSE, I PUT THE FIRST -- YOU KNOW,
- 6 LIKE MOON AND KOON, I'M LIABLE TO THINK LIKE
- 7 THAT. I JUST DON'T HEAR WELL AT ALL.
- 8 Q. DO YOU THINK YOU WOULD BE ABLE TO HEAR WITNESSES
- 9 AND ATTORNEYS AND UNDERSTAND WHAT ---
- 10 A. I DON'T THINK SO; I REALLY DON'T THINK SO.
- 11 Q. IF YOU ARE LISTENING TO TELEVISION, ARE YOU ABLE
- 12 TO HEAR AND UNDERSTAND EVERYTHING THAT'S SAID ON
- 13 T.V.?
- 14 A. NO, NOT EVEN IF I TURN THE VOLUME UP REAL LOUD,
- 15 I STILL DON'T UNDERSTAND ALL THE WORDS. I CAN
- 16 HEAR THE NOISE, BUT I DON'T UNDERSTAND THE
- 17 WORDS.
- 18 Q. I NOTICE YOU WEAR A HEAR AID IN BOTH EARS?
- 19 A. YES, SIR.
- 20 Q. HOW LONG HAVE YOU WORN THEM?
- 21 A. SINCE I WAS ABOUT 25.
- 22 Q. SO, THAT'S BEEN ABOUT TWO YEARS, HUH?
- 23 A. OH, YEAH.
- 24 Q. ALL RIGHT, LET ME LET YOU STEP OUT JUST A
- 25 MINUTE.

1 (THE JUROR LEFT THE COURTROOM)

2 THE COURT: WE CAN GO FURTHER. SHE ADDED AN
3 ADDITION TO HER SHEET INDICATING JUST WHAT SHE'S TOLD ME.
4 I DON'T HAVE A DOCTOR'S EXCUSE, BUT SHE DOES HAVE TWO
5 HEARING AIDS AND TO ME SHE IS A BELIEVABLE INDIVIDUAL.

6 DOES THE STATE HAVE ANY COMMENT ON WHETHER SHE
7 SHOULD BE EXCUSED OR NOT?

8 MR. BRACKETT: THE STATE WOULD HAVE NO OBJECTION
9 TO EXCUSING HER.

10 MR. HANCOCK: NO OBJECTION, YOUR HONOR.

11 THE COURT: ALL RIGHT. HAVE HER COME BACK IN.

12 MR. BRACKETT: NOR DO WE WISH TO QUESTION HER.

13 THE COURT: DO YOU WISH TO QUESTION HER?

14 MR. HANCOCK: NOR DO WE WISH TO, YOUR HONOR.

15 (THE JUROR RETURNED TO THE COURTROOM.)

16 THE COURT: BECAUSE OF YOUR HEARING, WE ARE GOING
17 TO EXCUSE YOU FROM SERVING. WE APPRECIATE YOU COMING AND
18 GIVING US YOUR TIME AND YOUR CANDOR, BUT WE ARE GOING TO
19 NOT INCLUDE YOU ON THE PANEL. SO YOU CAN FEEL FREE TO
20 LEAVE AND WE THANK YOU FOR YOUR TIME.

21 THE JUROR: THANK YOU.

22 (THE JUROR LEFT THE COURTROOM.)

23 THE COURT: IT'S 1:00 O'CLOCK AND WE'VE GOT THE
24 NEXT PANEL COMING IN AT 2:30 I BELIEVE. WHAT I WOULD LIKE
25 TO DO IS BREAK FOR LUNCH AND THEN RECONVENE AROUND 2:00.

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1 THAT WILL GIVE US A HALF AN HOUR FOR ME TO DEAL WITH THE
2 CHAIN OF CUSTODY MOTION THAT'S OUTSTANDING, LOOK AT
3 SCHEDULING.

4 I BELIEVE -- WELL, I KNOW THAT WE ARE GOING TO
5 GET THE JURY TODAY IF WE HAVE TO STAY HERE UNTIL MIDNIGHT,
6 BUT WE'LL GET THE JURY AND FIVE MORE WOULD BE MINIMALLY
7 ENOUGH. I WOULD LIKE TO GET A COUPLE OF MORE AND I'LL TELL
8 YOU THAT'S PARTLY BECAUSE OF QUESTIONS THAT I AM GOING TO
9 ASK ABOUT WHAT OCCURRED ON MONDAY AS FAR AS DISCUSSIONS IN
10 THE JURY ROOM. IF I HAVE TO LET SOMEBODY -- I DON'T WANT
11 TO HAVE 35 HERE AND END UP FOR SOME REASON LETTING ONE OR
12 TWO GO. I DON'T KNOW THAT THAT WILL HAPPEN, BUT I WOULD
13 FEEL SAFER IF WE GET A COUPLE MORE AND I THINK THAT WILL BE
14 ENOUGH.

15 SO, LET'S COME BACK AT -- WE'LL SAY 2:15 AND THEN
16 WE CAN DISPOSE OF THE MOTION. IS THERE ANYTHING ELSE WE
17 CAN BE DOING?

18 MR. POPE: YOUR HONOR, JUST FOR A KIND OF GENERAL
19 UNDERSTANDING, I KNOW WE'RE GOING TO TALK ABOUT IT AT 2:15,
20 BUT WE WERE GOING TO TRY TO CALL SOME WITNESSES DURING THE
21 BREAK.

22 ARE WE THINKING WE WILL GET THE POOL COMPLETED
23 TODAY, BRING THEM IN IN THE MORNING AND DRAW THEM AND BEGIN
24 THE CASE?

25 THE COURT: I'D LIKE TO GET THEM HERE BY 9:30 OR

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1 10:00 AND I HAVEN'T DECIDED WHICH. I'M GOING TO GIVE THEM
2 A LITTLE MORE TIME IN THE MORNING THAN 9:00 BECAUSE THEY DO
3 NEED TO BRING THEIR CLOTHING AND STUFF. I'LL PROBABLY SAY
4 9:30 AND I FIGURE IT WILL TAKE ABOUT AN HOUR TO DRAW THE
5 JURY. SO, I GUESS THAT WE WILL BE DOING -- IT MIGHT NOT
6 EVEN TAKE AN HOUR.

7 MR. POPE: REALISTICALLY, AS FAR AS WITNESSES, WE
8 COULD START WITNESSES PROBABLY AFTER THE LUNCH BREAK?

9 THE COURT: I HOPE WE CAN START ONE OR TWO BEFORE
10 LUNCH BUT IT MIGHT BE -- WE'LL HAVE OPENING STATEMENTS AND
11 I WILL HAVE MAYBE A LITTLE BIT LONGER THAN USUAL OPENING
12 STATEMENT OF MY OWN. AND I WOULD LIKE TO HAVE ONE OR TWO
13 WITNESSES, PERHAPS SHORT ONES IF WE COULD BEFORE LUNCH.

14 MR. POPE: WE'LL HAVE THEM READY.

15 THE COURT: ALL RIGHT. WE WILL BE AT EASE UNTIL
16 2:15.

17 AFTER THE LUNCHEON RECESS:

18 THE COURT: I APOLOGIZE FOR BEING A COUPLE OF
19 MINUTES LATE BUT I HAD A TELEPHONE CALL JUST AS I WAS
20 GETTING READY TO COME IN.

21 THE PANEL WILL BE HERE AT 2:30. I EARLIER HANDED
22 A COPY OF A LIST OF THINGS THAT I WAS GOING TO HAVE THE
23 CLERK TELL THE JURORS TO NOT BRING WITH THEM. THEY WOULD
24 INCLUDE RADIOS, TAPE PLAYERS, CERTAIN TYPES OF READING
25 MATERIALS. COMPUTERS CAN BE BROUGHT BUT KEPT WITH SLED AND

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1 USED IN THE COMMON ROOM. AND I'M GOING TO ADD TO THAT NO
2 GAMES OF VIOLENCE. ALCOHOLIC BEVERAGES, ILLEGAL DRUGS,
3 WEAPONS, CELL PHONES AND BEEPERS.

4 CAN THE STATE THINK OF ANYTHING ELSE THAT SHOULD
5 BE ON THERE?

6 MR. POPE: I DID NOTE YOU SAID COMPUTERS, I
7 ASSUME TO USE FOR WORK, BUT WHATEVER REASON ---

8 THE COURT: WE'VE HAD ONE REQUEST ALREADY. WE
9 DON'T KNOW IF THAT PERSON WILL BE ON THE JURY BECAUSE WE
10 HAVEN'T DRAWN IT, BUT I HAVE ALREADY HEARD THROUGH THE
11 BAILIFFS, I GUESS, OR SOMEBODY SAID THAT ONE PERSON HAD
12 INQUIRED AS TO WHETHER THEY COULD BRING A COMPUTER TO DO
13 SOME WORK. I DON'T SEE WHY THEY COULDN'T IF THEY DO IT IN
14 THE COMMON AREA.

15 MR. POPE: THE ONLY CONCERN IS THE OPPORTUNITY TO
16 RUN ACROSS THE MEDIA, BUT OTHER THAN THAT THE STATE WOULD
17 HAVE NO OBJECTION.

18 THE COURT: WELL, I'LL TELL SLED NOT TO LET THEM
19 USE INTERNET. ANYTHING FROM THE DEFENSE?

20 MR. HANCOCK: NOTHING, YOUR HONOR.

21 THE COURT: OKAY. AND MS. ZAPATA, IF Y'ALL
22 REMEMBER, DOES HER HUSBAND'S PAYROLL AND THOSE SORT OF
23 THINGS. IF SHE IS CHOSEN, I'M PROPOSING AND Y'ALL CAN TALK
24 ABOUT IT AND LET ME KNOW LATER, WE DON'T HAVE TO MAKE A
25 DECISION, THAT SHE BE ALLOWED TO HAVE SOMEBODY FROM HER

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1 BUSINESS BRING HER THAT MATERIAL, EXCHANGE IT IN THE
2 PRESENCE OF SLED AND LET HER DO THAT PAYROLL OR WHATEVER,
3 BILLING, IN THE COMMON AREA OR MAYBE EVEN IN HER ROOM, BUT
4 AT ANY RATE LET IT BE BROUGHT WITH SLED BEING INVOLVED.

5 MR. POPE: THE STATE HAS NO OBJECTION TO THAT,
6 YOUR HONOR.

7 MR. HANCOCK: WE HAVE NO OBJECTION, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. POPE: YOUR HONOR, THE ONLY OTHER ISSUE OF
10 THAT NATURE THAT MAY COME UP IS MS. GWINN IS GOING TO BE IN
11 THE 3:00 O'CLOCK PANEL WHOSE HUSBAND HAS ALREADY BEEN
12 QUALIFIED. WE REALLY HAVEN'T DISCUSSED THAT. IT MAY BE A
13 NON-ISSUE, BUT JUST FOR THE COURT TO START THINKING ABOUT
14 IT.

15 THE COURT: WELL, THAT DOES PRESENT A DILEMMA
16 BECAUSE IF SHE'S QUALIFIED, SHE'S QUALIFIED, BUT I DON'T
17 THINK I CAN TAKE TWO PEOPLE AWAY FROM THEIR FAMILY. BUT I
18 CAN'T DECIDE FOR Y'ALL WHICH ONE OUGHT TO BE ON THE PANEL.
19 SO, I THINK IF SHE'S QUALIFIED, SHE'LL BE QUALIFIED AND
20 THIS MAY BE ANOTHER REASON TO GET A COUPLE OF EXTRA ONES.
21 BUT IF ONE OF THEM IS SEATED, I WILL PROBABLY AT THAT TIME
22 EXCUSE THE OTHER.

23 ANY PROBLEM WITH THAT FROM THE STATE?

24 MR. POPE: NO, SIR, YOUR HONOR.

25 THE COURT: FROM THE DEFENSE?

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1 MR. HANCOCK: NO, SIR.

2 THE COURT: NOW, ONCE AGAIN TELL ME EXACTLY, FOR
3 ABOUT THE FIFTH TIME BECAUSE I KEEP FORGETTING TO WRITE IT
4 DOWN, THE ITEMS THAT ARE THE SUBJECT OF THE MOTION
5 REGARDING THE CHAIN OF EVIDENCE.

6 MR. POPE: YOUR HONOR, I APOLOGIZE. I WOULD EVEN
7 HAVE STATE'S EXHIBIT NUMBERS FOR YOU, BUT I DON'T HAVE THAT
8 FILE WITH ME. THE ITEMS WOULD BE -- I'LL BE HONEST WITH
9 YOU, I'LL HAVE DIFFICULTY QUOTING IT WITHOUT MY LIST. THE
10 ITEMS WOULD BE THE TO DO LIST THAT WAS RECOVERED IN THE
11 CAR, IT WAS WRITTEN ON THE BACK OF THE MANUAL FROM THE
12 CLASS. WE'VE HAD A HANDWRITING ISSUE INVOLVED IN THAT. A
13 RECEIPT FROM THE CAR THAT IS A DUPLICATE RECEIPT TO THE
14 LADYSMITH RECEIPT THAT WAS RECOVERED AND THE HANDWRITING
15 HAS BEEN MATCHED ON THAT. AND THE THIRD WOULD BE SOME
16 CHECKS, IT'S EITHER CHECKS OR I THINK IT'S ACTUALLY CHECK
17 DUPLICATES, THE CARBON COPIES OF CHECKS THAT CAME OUT OF
18 THE MOTHER'S CHECKBOOK THAT WAS RECOVERED IN THE CAR.
19 THOSE WOULD BE THE THREE ITEMS.

20 THE COURT: ALL THREE WERE RECOVERED IN THE CAR?

21 MR. POPE: BY AN AGENT OF THE SOUTH CAROLINA LAW
22 ENFORCEMENT DIVISION AT ---

23 THE COURT: HOW WAS THE CAR IDENTIFIED?

24 MR. POPE: HOW WAS THE CAR IDENTIFIED? BY TAG
25 NUMBER AND DESCRIPTION. IS THAT WHAT YOU'RE SAYING?

1 THE COURT: YES.

2 MR. POPE: BY THE TAG NUMBER AND DESCRIPTION --
3 IN THE AFFIDAVIT FOR THE SEARCH WARRANT YOU'RE TALKING
4 ABOUT?

5 THE COURT: NO, NO, NO, I MEAN ---

6 MR. POPE: HOW DID WE KNOW HIS CAR FROM ANY OTHER
7 CAR?

8 THE COURT: YES.

9 MR. POPE: IT WAS THE CAR THAT WAS RECOVERED THAT
10 THE DEFENDANT WAS IN THAT MATCHED THE TAG THAT WAS KNOWN
11 FROM HERE, YOU KNOW, THE TAG THEY WERE LOOKING FOR.

12 THE COURT: WILL THE TESTIMONY BE THAT THE
13 DEFENDANT WAS ACTUALLY IN THE CAR AT THE TIME IT WAS ---

14 MR. POPE: YES, SIR.

15 THE COURT: ALL RIGHT, LET ME HEAR WHAT THE
16 POSITION IS FROM THE DEFENSE.

17 MR. HANCOCK: YOUR HONOR, IT IS GOING TO BE UP TO
18 THE COURT. I DON'T THINK WE'RE IN A POSITION TO STIPULATE
19 TO THE CHAIN OF CUSTODY, ESPECIALLY UNDER THESE
20 CIRCUMSTANCES WHERE THIS EVIDENCE COULD BE VERY, VERY
21 DAMAGING. SO, WE CAN'T STIPULATE TO IT.

22 THE COURT: WELL, I AM GOING TO ALLOW IT IN IF
23 THE STATE CAN LAY THE PREDICATE SET FORTH IN STATE VERSUS
24 GLENN HEADNOTE 1. THEY ALLOWED THE ADMISSION ON THE BASIS
25 OF THE TESTIMONY THAT THE ITEM IS THE ONE IN QUESTION AND

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1 IS IN A SUBSTANTIALLY UNCHANGED CONDITION. SO, IF YOU CAN
2 MEET THAT REQUIREMENT, MY FINDING IS THAT THAT WOULD
3 SATISFY THE NECESSARY -- REQUIREMENTS NECESSARY FOR IT TO
4 BE ADMITTED INTO EVIDENCE AND THAT THESE ARE THE TYPE ITEMS
5 THAT WOULD NOT REQUIRE -- THEY ARE NOT FUNGIBLE AND ARE NOT
6 THE TYPE THAT WOULD REQUIRE A COMPLETE CHAIN OF CUSTODY.
7 ALL YOU WOULD NEED TO DO WOULD BE TO SATISFY THE COURT WITH
8 THE CRITERIA SET FORTH IN GLENN.

9 ALL RIGHT, LET'S SEE, JOSEPH COOK, NUMBER 59.

10 MR. POPE: YOUR HONOR, WE HAD THE ISSUE OF THE
11 CO-DEFENDANT AND SCHEDULING THAT AS FAR AS TOMORROW. THE
12 CO-DEFENDANT WILL BE ENTERING A PLEA PRIOR TO THE TRIAL AND
13 WILL BE SENTENCED AFTER THE TRIAL AND I'M JUST TRYING TO
14 DETERMINE FOR SCHEDULING PURPOSES HOW THE COURT WANTS TO
15 DEAL WITH THAT.

16 THE COURT: 9:00 O'CLOCK AND WE'LL HAVE THE JURY
17 REPORT EITHER AT 9:30 OR 10:00, PROBABLY 9:30. LET'S GO
18 AHEAD AND SAY WE WILL HAVE THAT AT 9:00. THAT WON'T TAKE
19 OVER A HALF AN HOUR WILL IT?

20 MR. BRACKETT: I DON'T KNOW HOW MUCH MITIGATION
21 MR. DEST IS PLANNING, BUT HE IS REPRESENTING THE CO-
22 DEFENDANT.

23 MR. DEST: YOUR HONOR, AT THAT TIME WE DON'T PLAN
24 TO INTRODUCE ANY MITIGATION, I THINK IT'S JUST FOR THE
25 QUALIFICATION OF THE PLEA ITSELF.

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1 THE COURT: NO SENTENCING?

2 MR. BRACKETT: THAT'S CORRECT. I'M SORRY, I
3 FORGOT; THERE WILL BE NO MITIGATION AT THAT TIME.

4 THE COURT: OKAY, 9:00 O'CLOCK FOR THE MOON PLEA
5 AND 9:30 WE'LL HAVE THE JURY.

6 ALL RIGHT, JOSEPH COOK.

7 THE BAILIFF: HE NEEDS A COUPLE OF MINUTES, SIR;
8 HE'S LOOKING OVER THE LISTS.

9 THE COURT: ALL RIGHT, THAT'S FINE.

10 MR. HANCOCK: YOUR HONOR, SINCE WE HAVE A COUPLE
11 OF MINUTES?

12 THE COURT: YES, SIR.

13 MR. HANCOCK: THERE ARE JUST SOME HOUSEKEEPING
14 THINGS. HOW ARE WE GOING TO WORK THE OPENING AND CLOSING
15 ARGUMENTS IN EACH PHASE, ARE WE GOING TO DIVIDE IT UP, WHAT
16 ARE WE GOING TO BE ABLE TO DO?

17 THE COURT: WELL, LET'S DON'T TALK ABOUT CLOSING
18 ARGUMENTS YET. I THINK THAT THE DEFENSE HAS THE RIGHT TO
19 CLOSING ARGUMENTS, I'LL HAVE TO LOOK BACK AT THE STATUTE,
20 BUT I THINK THE DEFENSE HAS THE RIGHT, THE DEFENSE AND THE
21 DEFENDANT.

22 AND AS FAR AS OPENING STATEMENTS, I WOULD THINK
23 WE WOULD DO JUST GENERAL OPENING STATEMENTS WITH THE STATE
24 AND THEN THE DEFENSE UNLESS SOMEBODY TELLS ME THERE IS SOME
25 OTHER PROCEDURE THAT'S CORRECT.

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1 MR. HANCOCK: WELL, ARE WE GOING TO HAVE AN
2 OPENING STATEMENT PRIOR TO THE GUILT PHASE AND THEN OPENING
3 STATEMENTS PRIOR TO THE PENALTY PHASE?

4 THE COURT: YES, I PLAN TO ALLOW, UNLESS YOU HAVE
5 SOME OBJECTION TO THAT ---

6 MR. HANCOCK: NO, SIR.

7 THE COURT: I WAS THINKING AT THE PENALTY PHASE,
8 IF WE GET TO THE PENALTY PHASE, THAT I WOULD HAVE SOME
9 OPENING REMARKS TO THE JURY. I WON'T GO BACK OVER
10 EVERYTHING I ALREADY HAD GONE OVER, BUT EXPLAIN TO THEM A
11 LITTLE BIT BECAUSE WE WILL BE DEALING WITH DIFFERENT
12 MATTERS. AND ALLOW OPENING STATEMENTS.

13 MR. HANCOCK: AND THAT WOULD BE ONE EACH?

14 THE COURT: YES, SIR.

15 MR. POPE: THE STATE'S INTENTION, OF COURSE, IN
16 OPENING WOULD BE ONE AND ONE. IN CLOSING THE STATE WOULD
17 CLOSE AND THEN THE DEFENSE. OF COURSE, WE WOULD HAVE TO
18 ADDRESS THE ISSUE PRIOR TO THAT OF THE DEFENDANT HAVING THE
19 OPPORTUNITY, HE AND HIS ATTORNEYS TO CLOSE, EACH PHASE.
20 SO, WE WILL HAVE TO DEAL WITH THAT.

21 THE COURT: ALL RIGHT. COME ON UP AND HAVE A
22 SEAT, MR. COOK.

23 JOSEPH H. COOK, JR., JUROR NUMBER 59, WHITE MALE,
24 WAS QUESTIONED AS FOLLOWS:

25 QUESTIONS BY THE COURT:

1 Q. MR. COOK, I WILL REMIND YOU THAT I'M JOHN HAYES
2 AND I'M THE JUDGE WHO HAS BEEN ASSIGNED TO
3 PRESIDE OVER THE TRIAL OF THIS PARTICULAR CASE.
4 YOU'RE UNDER OATH, WE SWORE YOU IN ON MONDAY.
5 I WILL TELL YOU IN ADVANCE THAT IF YOU END UP
6 SITTING ON THE JURY, YOU MAY SEE CAMERAS OR
7 PHOTOGRAPHERS IN THE COURTROOM. THEY ARE BY LAW
8 ALLOWED IN THE COURTROOM, BUT THEY ARE NOT
9 ALLOWED TO FILM ANYTHING ABOUT JURORS OR DISCUSS
10 ANYTHING ABOUT JURORS. SO, DON'T BE DISTRACTED
11 BY THAT.

12 A. OKAY.

13 Q. YOU HANDED IN A QUESTIONNAIRE. DO YOU THINK
14 THERE IS ANYTHING THAT NEEDS TO BE CHANGED ON
15 THERE?

16 A. I DON'T THINK SO. IT'S BEEN A WHILE SINCE I
17 FILLED IT OUT, BUT I THINK IT'S ACCURATE.

18 Q. ALL RIGHT. DID YOU HAVE A CHANCE TO GO OVER
19 THAT LIST OF WITNESSES?

20 A. YES, I DID.

21 Q. ANYBODY ON THERE THAT YOU'RE RELATED TO BY BLOOD
22 OR MARRIAGE OR ANYBODY ON THERE YOU KNOW?

23 A. YES, I THINK SO. MACK AND JULIE MCLAUGHLIN, I
24 BELIEVE, ARE MY NEIGHBORS, IF IT'S THE SAME
25 FOLKS.

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1 Q. I'M SURE IT IS, AND THEY DO LIVE IN YOUR
2 NEIGHBORHOOD. WOULD THE FACT THAT THEY ARE
3 POSSIBLE WITNESSES, WOULD THAT AFFECT YOUR
4 ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE
5 AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

6 A. NO. THERE WAS ONE OTHER NAME ON THE LIST, JOHN
7 ARANTS. IT'S A FAMILIAR NAME AND I'M NOT SURE
8 WHETHER IT'S JUST A COINCIDENCE OR WHETHER IT'S
9 SOMEBODY I ACTUALLY KNOW, POSSIBLY FROM WORK.

10 Q. WHAT DOES MR. ARANTS DO, IS HE A POLICE OFFICER?

11 MR. BRACKETT: PHARMACIST FROM C.V.S. PHARMACY.

12 A. THAT'S WHERE I RECOGNIZED THE NAME.

13 Q. ALL RIGHT, WOULD THE FACT THAT HE MAY BE A
14 WITNESS, WOULD THAT AFFECT YOUR ABILITY TO BE
15 FAIR AND IMPARTIAL TO THE STATE AND THE
16 DEFENDANT IN THE TRIAL OF THIS CASE?

17 A. NO. THERE WAS ONE OTHER POSSIBILITY, THE NAME
18 IS NOT GIVEN, BUT THE WESTMINSTER CATAWBA SCHOOL
19 KEEPER OF RECORDS, MY SON ATTENDED THERE SEVERAL
20 YEARS AGO; HE'S NOT CURRENTLY A STUDENT, AND I
21 PROBABLY DON'T KNOW THIS PERSON BUT IT'S A
22 POSSIBILITY.

23 Q. WELL, IF IT IS SOMEBODY THAT YOU KNOW, HERE
24 AGAIN, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR
25 AND IMPARTIAL TO THE STATE AND THE DEFENDANT?

1 A. NO.

2 Q. PRIOR TO YOUR ARRIVING MONDAY -- WELL, PRIOR TO
3 NOW, HAVE YOU HEARD ANYTHING ABOUT THIS CASE
4 OTHER THAN WHAT WAS ANNOUNCED MONDAY? HAVE YOU
5 FORMED AN OPINION, EXPRESSED AN OPINION OR KNOW
6 ANYTHING ABOUT THIS CASE FROM ANY SOURCE
7 WHATSOEVER?

8 A. YES, SIR, THERE WAS AN ARTICLE IN THE SUNDAY
9 PAPER, THE YORK OBSERVER HAD AN ARTICLE ABOUT
10 THE CASE. AND I RECALL READING THAT ARTICLE
11 WHEN THE INCIDENT HAPPENED. I COULDN'T PUT MUCH
12 OF IT TOGETHER, BUT I DID READ IT.

13 Q. WOULD THE FACT THAT YOU HAD READ THAT, WOULD
14 THAT AFFECT YOUR ABILITY TO BE FAIR AND
15 IMPARTIAL; THAT IS, COULD YOU IN SPITE OF THAT
16 COME INTO COURT AND RENDER YOUR VERDICT SOLELY
17 ON THE LAW AND THE EVIDENCE IN THE TRIAL?

18 A. I THINK SO.

19 Q. WELL, COULD YOU DISREGARD WHAT HAS BEEN REPORTED
20 IN THE PAPER? COULD YOU DO THAT?

21 A. YES.

22 Q. AND BASE YOUR VERDICT ON THE EVIDENCE RECEIVED
23 AT THE TRIAL?

24 A. YES.

25 Q. OKAY. NOW, THESE TYPE CASES PROCEED IN TWO

1114

1 PHASES, ONE BEING A TRIAL JUST AS ANY OTHER
2 TRIAL TO DETERMINE WHETHER AN INDIVIDUAL IS
3 GUILTY OR NOT. AND IF MR. ROBERTSON WERE FOUND
4 NOT GUILTY, THE CASE WOULD END.

5 IF HE WERE TO BE FOUND UNANIMOUSLY BEYOND A
6 REASONABLE DOUBT GUILTY OF THE OFFENSE OF
7 MURDER, THEN THE CASE WOULD MOVE INTO THE SECOND
8 PART WHICH WOULD BE THE PENALTY PHASE.

9 HE IS PRESUMED INNOCENT AND THE FACT THAT WE ARE
10 TALKING ABOUT THE POSSIBLE PENALTY PHASE IS NOT
11 TO PRESUPPOSE THAT WE WOULD EVEN EVER GET THERE.

12 HE WOULD HAVE TO BE FOUND GUILTY FIRST. BUT
13 BECAUSE OF THE NATURE OF THESE PROCEEDINGS, WE
14 HAVE TO GO AHEAD AND TALK ABOUT THAT PART NOW.

15 DO YOU UNDERSTAND THAT?

16 A. YES.

17 Q. DID YOU HAVE A CHANCE TO REVIEW THE LIST OF
18 TYPES OF JURORS?

19 A. I DID.

20 Q. ARE YOU ONE OF THOSE TYPES, AND IF SO, WHICH
21 ONE?

22 A. I THINK THE THIRD JUROR CATEGORY WOULD MOST
23 APPROPRIATELY DESCRIBE HOW I WOULD DO IT.

24 Q. ALL RIGHT. IN THERE I USED THE WORDS
25 AGGRAVATION AND MITIGATION WHEN I REFERRED TO

1 CIRCUMSTANCES.

2 AGGRAVATING CIRCUMSTANCES ARE THOSE
3 CIRCUMSTANCES THAT ATTEND THE COMMISSION OF A
4 CRIME WHICH ADD TO ITS ENORMITY OR ADD TO ITS
5 INJURIOUS CONSEQUENCE, THAT IS THINGS THAT ARE
6 NOT ESSENTIAL ELEMENTS OF THE CHARGE BUT SORT OF
7 OVER AND ABOVE THAT.

8 MITIGATING CIRCUMSTANCES ARE THINGS THAT WHILE
9 THEY DO NOT CONSTITUTE A JUSTIFICATION OR AN
10 EXCUSE FOR THE OFFENSE ARE THINGS WHICH IN
11 FAIRNESS AND MERCY MAY BE CONSIDERED AS
12 EXTENUATING OR REDUCING ONE'S DEGREE OF MORAL
13 CULPABILITY. DO YOU UNDERSTAND THAT?

14 A. YES.

15 Q. SO, AS A TYPE THREE JUROR YOU ARE TELLING ME
16 THAT WERE YOU TO BE SEATED ON THIS JURY AND IF
17 THAT JURY RETURNED A VERDICT OF GUILTY OF
18 MURDER, THAT WHEN YOU STARTED INTO THAT SECOND
19 PHASE YOU WOULD NOT HAVE A PREDISPOSITION TOWARD
20 PENALTY BUT WOULD RATHER MAKE UP YOUR MIND ON
21 THAT EVIDENCE PRESENTED IN THE SECOND PART. ARE
22 YOU TELLING ME THAT?

23 A. YES.

24 Q. ARE YOU TELLING ME THEN THAT YOU WOULD WANT TO
25 HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION

1116

1 AND MITIGATION IN THAT SECOND PHASE AND HEAR AND
2 LISTEN TO AND FOLLOW THE LAW AS I AS TRIAL JUDGE
3 WOULD CHARGE YOU AND ONLY THEN MAKE A DECISION
4 AS TO PENALTY, IS THAT WHAT YOU'RE TELLING ME?

5 A. THAT'S RIGHT.

6 Q. IF THE FACTS AT THAT STAGE OF THE TRIAL
7 WARRANTED, COULD YOU RETURN A VERDICT IF YOU
8 THOUGHT IT APPROPRIATE OF LIFE IMPRISONMENT?

9 A. I COULD.

10 Q. COULD YOU AT THAT POINT IF YOU THOUGHT THE FACTS
11 PRESENTED WARRANTED IT RETURN A VERDICT IMPOSING
12 THE PENALTY OF DEATH?

13 A. YES.

14 Q. ALL RIGHT, ANSWER ANY QUESTIONS THE ATTORNEYS
15 MAY HAVE.

16 A. YOUR HONOR, I WONDER IF I MIGHT ASK YOU A
17 QUESTION?

18 Q. CERTAINLY.

19 A. I'M A LITTLE BIT CONCERNED ABOUT IF I'M SELECTED
20 FOR THIS JURY, WOULD I HAVE AN OPPORTUNITY IN
21 THE EVENINGS AFTER COURT IS OVER TO STAY IN
22 TOUCH WITH WORK BY CHECKING MESSAGES AND
23 RETURNING CALLS AND SENDING AND RECEIVING ANY
24 PAPERWORK THAT MIGHT HELP ME KEEP IN TOUCH?

25 Q. WELL, WE MIGHT BE ABLE TO WORK IT OUT. WHAT

1 SORT OF WORK DO YOU DO?

2 A. I'M AN ENGINEER WITH CLARIANT IN CHARLOTTE.

3 Q. I'LL DISCUSS THAT WITH THE ATTORNEYS. THERE
4 WILL BE SOME TIME IN THE EVENINGS -- WE DO HAVE
5 TO HAVE ANYTHING THAT'S BROUGHT IN MONITORED.

6 A. THAT WOULD BE FINE.

7 Q. THAT IS, SLED WOULD HAVE TO LOOK AT IT. AND
8 TELEPHONE CALLS ARE GENERALLY RESTRICTED TO YOUR
9 FAMILY, BUT WE MIGHT BE ABLE TO WORK SOMETHING
10 OUT. WE WILL CERTAINLY SEE. I CAN'T MAKE THAT
11 PROMISE RIGHT NOW BUT WE WILL CERTAINLY TAKE
12 THAT INTO CONSIDERATION.

13 A. ALL RIGHT

14 QUESTIONS BY MR. POPE:

15 Q. MR. COOK, MY NAME IS TOMMY POPE; I'M THE
16 SOLICITOR HERE IN YORK COUNTY. THIS IS MY
17 DEPUTY SOLICITOR, KEVIN BRACKETT. WE REPRESENT
18 THE STATE IN THIS CASE.

19 HAVE YOU EVER BEEN IN THIS TYPE OF SITUATION
20 BEFORE?

21 A. NO, I HAVEN'T.

22 Q. DO YOU FEEL LIKE YOU'RE KIND OF BEING
23 INTERROGATED YOURSELF?

24 A. A LITTLE BIT.

25 Q. WELL, YOU'RE GOING TO HEAR SOME QUESTIONS FROM

1118

1 ME AND THEN YOU'LL HEAR SOME QUESTIONS FROM THE
2 DEFENSE AND YOU'RE GOING TO QUICKLY FIND OUT
3 THAT IT LOOKS LIKE ALL WE'RE DOING IS DOING
4 LAWYER TALK, REPEATING IT AND CHANGING IT. BUT
5 THE BOTTOM LINE IS REALLY THAT YOU CAN'T GIVE A
6 WRONG ANSWER FROM THE STANDPOINT OF WHAT WE ARE
7 TRYING TO FIND OUT IS HOW JOSEPH COOK FEELS, YOU
8 KNOW, ABOUT DIFFERENT ISSUES AND WHAT YOUR
9 POSITION IS.

10 SO, AGAIN, I WANT YOU TO PUT THOUGHT INTO YOUR
11 ANSWERS BUT, YOU KNOW, YOU CAN'T GIVE US -- I'M
12 NOT TAKING YOU ONE WAY OR ANOTHER, YOU KNOW,
13 YOUR ANSWER IS THE RIGHT ANSWER, WHATEVER YOU
14 GIVE ME.

15 DO YOU UNDERSTAND IN TALKING TO THE JUDGE THAT
16 THIS CASE IS A LITTLE BIT DIFFERENT, IT'S CALLED
17 A BIFURCATED OR A TWO PART TRIAL. DO YOU
18 UNDERSTAND THAT?

19 A. DO YOU MEAN THAT THERE WILL BE A PHASE WHERE YOU
20 DETERMINE GUILT OR INNOCENCE AND THEN A PHASE
21 WHERE YOU DETERMINE THE SENTENCE?

22 Q. THAT IS EXACTLY CORRECT.

23 A. I UNDERSTAND.

24 Q. THAT IS EXACTLY CORRECT. AND YOU UNDERSTAND
25 THAT THE DEFENDANT IS INNOCENT UNTIL PROVEN

1 GUILTY IN THE FIRST PHASE?

2 A. YES.

3 Q. AND YOU UNDERSTAND THAT THE DEFENDANT DOESN'T
4 HAVE TO PROVE ANYTHING, THEY HAVE NO BURDEN
5 WHATSOEVER; THAT IT IS MY BURDEN, THE STATE'S
6 BURDEN TO PROVE THE CASE BEYOND A REASONABLE
7 DOUBT. DO YOU UNDERSTAND THAT?

8 A. YES.

9 Q. AND SO WHEN WE TALK ABOUT THIS SECOND PHASE,
10 I'VE GOT TO CARRY MY BURDEN IN THE FIRST PHASE
11 BEFORE WE EVEN GET TO THE SECOND PHASE. DO YOU
12 UNDERSTAND THAT?

13 A. RIGHT.

14 Q. BECAUSE CERTAINLY IF A DEFENDANT IS FOUND NOT
15 GUILTY IF I DON'T PROVE IT BEYOND A REASONABLE
16 DOUBT, THEN WE NEVER HAVE A PENALTY PHASE.

17 A. RIGHT.

18 Q. OKAY. NOW, AS I UNDERSTAND WHAT YOU TOLD THE
19 JUDGE, YOU'RE THE TYPE OF JUROR THAT IN THE
20 FIRST PHASE -- YOU KNOW, YOU'VE HEARD SOME STUFF
21 IN THE PAPER AND I THINK YOU SAID YOU KNEW A FEW
22 PEOPLE BUT YOU COULD SET THAT ASIDE AND
23 BASICALLY COME IN HERE WITH A BLANK SLATE AND
24 HEAR WHATEVER COMES FROM THAT WITNESS STAND AND
25 WHATEVER COMES BY WAY OF EVIDENCE AND MAKE YOUR

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1 DETERMINATION ONLY AFTER HEARING ALL OF THAT.

2 IS THAT A FAIR STATEMENT?

3 A. COMING IN AS A BLANK SLATE IS MAYBE A DIFFICULT
4 THING FOR ME TO THINK OF RIGHT NOW. I'VE READ A
5 LITTLE BIT; I DON'T THINK I HAVE FORMED AN
6 OPINION COMPLETELY, BUT YOU CAN'T HELP BUT BE
7 INFLUENCED A LITTLE BIT BY WHAT YOU'VE READ.

8 Q. RIGHT.

9 A. BUT I THINK I COULD TRY TO SET THAT ASIDE AND BE
10 IMPARTIAL.

11 Q. AND I THINK THAT'S THE ISSUE. WE'RE ALL HUMAN,
12 YOU KNOW, WE READ THINGS OR SEE THINGS EVERY
13 DAY. THE ISSUE IS AS THE JUDGE DISCUSSED IT
14 WITH YOU, EVEN IF IT'S THERE YOU'VE GOT TO MAKE
15 THAT INTERNAL DECISION THAT IF IT DIDN'T COME
16 FROM HERE OR DIDN'T COME FROM THE EVIDENCE, YOU
17 KNOW, IF THE JUDGE SAYS IT'S NOT SOMETHING YOU
18 CAN CONSIDER, DO YOU THINK YOU'RE THE TYPE THAT
19 YOU COULD SET THAT ASIDE?

20 A. I THINK SO.

21 Q. OKAY. AND SO WE GET IN THAT FIRST STAGE AND, OF
22 COURSE, THE STATE SHOWS THE EVIDENCE AND IF WE
23 GET TO THE SECOND PHASE -- AND, OF COURSE NOW
24 THE SECOND PHASE IS A LITTLE BIT DIFFERENT IN
25 THAT AT THAT JUNCTURE THE DEFENDANT IS PROVED

1 GUILTY BEYOND A REASONABLE DOUBT. SO AT THAT
2 JUNCTURE IN THIS CASE THE DEFENDANT WOULD HAVE
3 BEEN PROVED GUILTY OF KILLING HIS PARENTS.

4 AT THAT POINT, LIKE YOU SAID, THERE WOULD BE THE
5 SECOND TRIAL IN WHICH THE STATE WOULD BRING
6 FORWARD EVIDENCE CALLED EVIDENCE IN AGGRAVATION.

7 AND EVIDENCE OF AGGRAVATION IS THINGS, FOR LACK
8 OF A BETTER TERM, THINGS THAT WOULD SHOW WHY THE
9 CRIME IS MORE WORTHY OF THE DEATH PENALTY OR,
10 YOU KNOW, MORE HEINOUS OR, YOU KNOW, WHATEVER,
11 MORE AGGRAVATED FOR LACK OF A BETTER TERM.

12 THE DEFENSE COULD, BUT AGAIN THEY NEVER HAVE TO,
13 COULD BRING FORTH EVIDENCE IF THEY CHOSE TO
14 CALLED EVIDENCE IN MITIGATION WHICH OBVIOUSLY IS
15 JUST OPPOSITE OF AGGRAVATION SHOWING WHY IT
16 SHOULD BE MORE TOWARD LIFE.

17 AND, OF COURSE, YOU UNDERSTAND THAT THE DEFENSE
18 NEVER HAS TO BRING FORTH ANYTHING. YOU KNOW,
19 AGAIN, IT'S OUR JOB TO BRING FORTH THE EVIDENCE
20 IN AGGRAVATION. THEY CAN ALWAYS DO IT BUT THEY
21 DON'T HAVE TO. DO YOU UNDERSTAND THAT?

22 A. YES.

23 Q. IF WE GET TO THE STAGE AND, AGAIN, I WANT YOU TO
24 TELL ME. IF THE DEFENDANT IS CONVICTED AND
25 WE'RE AT THE STAGE NOW, THE PENALTY STAGE,

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1 YOU'RE THE TYPE OF JUROR THAT WOULD WANT TO HEAR
2 EVERYTHING BEFORE YOU DECIDED?

3 A. YES.

4 Q. OKAY. AND, AGAIN, YOUR TWO CHOICES WOULD BE
5 LIFE OR DEATH. AND JUST BECAUSE THE MAN HAD
6 BEEN CONVICTED OF TWO MURDERS, DO YOU
7 AUTOMATICALLY SAY HE OUGHT TO GET DEATH OR DO
8 YOU WANT TO WAIT AND HEAR EVERYTHING?

9 A. I THINK EVERYBODY HAS THE RIGHT TO HAVE ALL THE
10 CIRCUMSTANCES BROUGHT OUT. THE TYPE OF CRIME
11 THAT WAS COMMITTED, THOUGH, SEEMS TO BE PRETTY
12 HEINOUS.

13 Q. OKAY.

14 A. IT'S HARD SOMETIMES TO SEPARATE YOUR PERSONAL
15 FEELINGS FROM WHAT YOU DO IN A TRIAL. I GO BACK
16 TO WHAT THE CLERK TOLD US OR MAYBE IT WAS YOU OR
17 POSSIBLY THE JUDGE TOLD US HOW YOU WANT TO ACT
18 AS A JUROR. IF YOU HAD A LOVED ONE UP THERE,
19 HOW WOULD YOU WANT TO ACT AS A JUROR. AND
20 THAT'S THE WAY WE SHOULD ACT THIS WAY. SO, I
21 FEEL BOUND BY THAT RESPONSIBILITY TO GIVE THE
22 BENEFIT OF THE DOUBT. BUT I'D HAVE TO ADMIT
23 THAT, YOU KNOW, I MIGHT HAVE SOME INTERNAL BONDS
24 THAT I'D HAVE TO SET ASIDE TO BE FAIR.

25 Q. OKAY. AND I THINK YOU'VE GOT AS GOOD A GRASP AS

1 ANYONE OF THE JURY SYSTEM. WE'VE GOT TO LOOK
2 AND SEE CAN YOU TAKE THESE BIASES AND SET THEM
3 ASIDE BECAUSE, AGAIN, OF COURSE ONCE HE'S
4 CONVICTED THE STATE IS GOING TO BRING FORTH
5 EVIDENCE TO SHOW, YOU KNOW, THE AGGRAVATION AS
6 MUCH AS IS THERE.

7 AND LIKEWISE, THE DEFENSE MAY SHOW YOU REASONS,
8 AGAIN NOT TO BELABOR THE POINT, BUT WHY IT
9 SHOULD BE A LIFE SENTENCE.

10 A. UH HUH.

11 Q. ARE YOU TELLING ME THAT YOU'RE THE TYPE JUROR
12 THAT UNDER YOUR OBLIGATION AS A JUROR YOU WOULD
13 SET ASIDE EVERYTHING AND TAKE YOUR DECISION BOTH
14 IN GUILT AND PENALTY FROM WHAT YOU HEAR RIGHT
15 HERE?

16 A. THAT'S WHAT I WOULD TRY TO DO.

17 Q. OKAY. AND, OF COURSE, YOU MAY ONCE YOU HEAR THE
18 EVIDENCE HAVE STRONG FEELINGS EITHER WAY. YOU
19 KNOW WHAT I'M SAYING, ONCE YOU HEAR IT. BUT
20 YOU'RE NOT GOING TO COME IN -- JUST BECAUSE HE'S
21 CONVICTED OR JUST BECAUSE HE'S CHARGED, YOU'RE
22 NOT GOING TO SAY OH, HE'S GUILTY OR OH, HE GETS
23 DEATH OR OH, HE GETS LIFE. YOU'RE GOING TO WAIT
24 AND HEAR IT ALL OUT. IS THAT FAIR?

25 A. YES.

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1 Q. OKAY. NOW, YOU HAD ALSO INDICATED, I THINK,
2 THAT THE MCLAUGHLINS LIVE IN YOUR NEIGHBORHOOD?

3 A. YES.

4 Q. IF THEY WOULD COME AND TESTIFY -- HOW WELL DO
5 YOU KNOW THEM?

6 A. NOT EXTREMELY WELL. THEY ARE A BIT MORE ACTIVE
7 IN OUR NEIGHBORHOOD HOMEOWNER'S ASSOCIATION,
8 THAN WE ARE. THAT'S BASICALLY HOW WE KNOW THEM.
9 WE GOT TO KNOW THEM EARLY ON WHEN WE BUILT A
10 HOUSE IN THE NEIGHBORHOOD. IT'S MORE OF A
11 CASUAL ACQUAINTANCE, I GUESS.

12 Q. AND THE FACT THAT YOU KNOW THEM -- OF COURSE YOU
13 SAW THE LIST OF 200 WITNESSES AND, OF COURSE,
14 YOU WON'T HEAR FROM ALL THE WITNESSES, BUT THE
15 FACT THAT YOU KNOW THEM, CAN YOU JUDGE THEM
16 FAIRLY JUST LIKE YOU WOULD EVERY OTHER WITNESS,
17 NOT GIVE ANY MORE WEIGHT OR ANY LESS WEIGHT? IN
18 OTHER WORDS, WOULD YOU TAKE EVERYBODY JUST AS
19 THEY COME AND EVALUATE THEM IN THE JURY BOX?

20 A. YES, I THINK SO.

21 Q. AND SO THE FACT THAT YOU KNOW THEM AND I SAY
22 FRIENDSHIP, A NEIGHBORHOOD FRIENDSHIP WOULDN'T
23 MAKE YOU BELIEVE THEM ANY MORE OR LESS, YOU'D
24 TAKE IT INTO CONSIDERATION WITH EVERYTHING?

25 A. THAT'S RIGHT.

1 Q. OKAY. I JUST HAVE ABOUT TWO MORE QUESTIONS, MR.
2 COOK. ONE, AGAIN AS A GENERAL QUESTION, YOU
3 UNDERSTAND THAT IT'S GOING TO BE WORK TO DO IT,
4 BUT YOU'RE GOING TO SET ASIDE EVERYTHING AND
5 DECIDE GUILT AND YOU'RE GOING TO SET ASIDE
6 EVERYTHING AND YOU'RE NOT GOING TO MAKE A
7 DECISION OF LIFE OR DEATH UNTIL AFTER YOU'VE
8 HEARD EVERYTHING THERE IS TO HEAR WHEN YOU GO IN
9 THAT JURY ROOM. IS THAT THE TYPE JUROR YOU
10 WOULD BE?

11 A. THAT'S RIGHT.

12 Q. THANK YOU, SIR. ONE FINAL EXPLANATION LET ME
13 GIVE YOU AND, AGAIN, I WANT TO TELL YOU THE
14 JUDGE WILL ALWAYS BE THE ONE THAT REALLY
15 INSTRUCTS YOU ON THE LAW. YOU KNOW, I'M HITTING
16 ON A LITTLE DIFFERENT PRINCIPLES OF LAW, BUT YOU
17 DON'T HAVE TO COME PRE-ARMED, HE'S GOING TO TELL
18 YOU WHAT THE LAW IS AND WHAT TO REQUIRE. BUT
19 ONE OF THE REQUIREMENTS IN A NORMAL CASE IS THAT
20 IF EVERYBODY VOTES FOR LIFE, THEN ONLY THE
21 FOREPERSON HAS TO SIGN. YOU KNOW, THE FOREMAN,
22 FORELADY, WHOEVER IS KIND OF ACTING AS THE
23 LIAISON WITH THE JUDGE, THEY ARE THE ONLY ONES
24 THAT HAVE TO SIGN. BUT IF EVERYONE VOTES FOR
25 DEATH, AND OF COURSE AGAIN AFTER DUE

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1 DELIBERATION ON BOTH COUNTS, BUT AFTER DUE
2 DELIBERATION IF EVERYBODY VOTES FOR DEATH, THEN
3 EACH INDIVIDUAL JUROR HAS TO SIGN THE DOCUMENT
4 THAT ACTUALLY -- OF COURSE THE COURT'S GOING TO
5 DO WHAT YOU SAY. IF YOU SAY LIFE, THAT'S WHAT
6 THE SENTENCE WILL BE OR IF YOU SAY DEATH -- BUT
7 EACH INDIVIDUAL JUROR HAS TO SIGN THE DOCUMENT;
8 THOSE TWELVE JURORS SIGN THE DOCUMENT THAT GIVES
9 DEATH.

10 IF YOU THOUGHT DEATH WAS APPROPRIATE, COULD YOU
11 TAKE PEN IN HAND AND SIGN JOSEPH COOK KNOWING
12 THAT IT WOULD GIVE THIS MAN DEATH?

13 A. YES, I COULD.

14 Q. THANK YOU, SIR.

15 QUESTIONS BY MR. HANCOCK;

16 Q. MR. COOK, I'M BILL HANCOCK; I REPRESENT JIMMY
17 ROBERTSON SITTING RIGHT HERE. THIS IS CO-
18 COUNSEL, MR. JIM BOYD SITTING BESIDE HIM.

19 AGAIN I WANT TO EMPHASIZE TO YOU THAT THE
20 ANSWERS YOU GIVE TO ME, THERE IS NO RIGHT, THERE
21 IS NO WRONG ANSWER, IT'S JUST TO BE CONSIDERED
22 AS YOUR ANSWER AND UNIQUE TO YOU AND WE'LL
23 CONSIDER IT AS WE MAY.

24 YOU SEEM TO UNDERSTAND THE SYSTEM THAT WE'RE
25 WORKING UNDER HERE, THE BIFURCATED TRIAL SYSTEM

1 PRETTY WELL; YOU'VE DESCRIBED IT WELL.

2 A. OKAY.

3 Q. I WANT TO ASK YOU SOMETHING AND GO BACK TO YOUR
4 READING. YOU INDICATED IN THE BEGINNING IN
5 TALKING TO THE JUDGE THAT YOU MAY HAVE BEEN
6 INFLUENCED BY WHAT YOU HAVE READ. IS THAT
7 CORRECT, SIR?

8 A. I CAN'T PUT IT OUT OF MY MIND, I CAN'T FORGET
9 IT, SO IT IS SOMETHING THAT I KNOW.

10 Q. OKAY. AND WHAT HAVE YOU READ?

11 A. I READ THE ARTICLE THAT WAS IN THE YORK OBSERVER
12 SUNDAY, AND I SAW IN TODAY'S PAPER, THE SAME
13 PAPER THE HEADLINE, JUST THE LITTLE SMALL
14 HEADLINE THAT THERE WERE SO MANY JURORS PICKED
15 FOR THE CASE AND THE JUDGE WAS LOOKING FOR SO
16 MANY MORE, AND I REALIZED THAT IT WAS THIS CASE
17 AND I STOPPED READING.

18 Q. ALL RIGHT, SIR. AND YOU'VE INDICATED THAT YOU
19 MAY HAVE FORMED AN OPINION IN THIS CASE. IN
20 WHAT MATTERS OF THE CASE WOULD YOU HAVE FORMED
21 AN OPINION?

22 A. WHETHER IT'S A HARD OPINION OR JUST THE THOUGHT
23 PROCESS THAT GOES ALONG WITH READING AN ARTICLE,
24 IT SEEMS THAT THE CRIME THAT WAS COMMITTED WAS A
25 PRETTY HEINOUS CRIME. THE ARTICLE IN THE PAPER

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1 MENTIONED CIRCUMSTANTIAL EVIDENCE AND ---

2 Q. WHAT CIRCUMSTANTIAL EVIDENCE DID IT MENTION?

3 A. IT MENTIONED THAT THE MOTHER HAD INDICATED THAT
4 SHE HAD REASON TO BELIEVE SHE MIGHT EXPECT
5 SOMETHING BAD TO HAPPEN FROM HER SON. I
6 REMEMBER THAT HE WAS APPREHENDED WITH SOME
7 CREDIT CARDS OF HIS FATHER'S.

8 Q. DO YOU REMEMBER WHERE HE WAS APPREHENDED?

9 A. NO.

10 Q. AND HAVE YOU SEEN ANYTHING ON T.V. CONCERNING
11 THIS?

12 A. NO.

13 Q. AND YOU'VE INDICATED THAT YOU'VE ALREADY
14 CATEGORIZED THIS AS A HEINOUS CRIME BEFORE WE
15 BEGIN; IS THAT CORRECT?

16 A. WELL, FOR SOMEONE TO BE BEATEN TO DEATH AND
17 SOMEONE ELSE TO BE STABBED TO DEATH, IF THAT IS
18 ACCURATE, THAT SEEMS TO ME TO BE PRETTY ---

19 Q. YOU FORMED THAT THOUGH FROM YOUR READING AND THE
20 MATERIAL THAT YOU HAVE HAD UP TO THIS POINT. IS
21 THAT CORRECT, SIR?

22 A. THAT'S RIGHT.

23 Q. AND YOU'RE INDICATING, AND I'M NOT TRYING TO PUT
24 WORDS IN YOUR MOUTH, I'M JUST LISTENING TO YOU,
25 AND YOU HAVE INDICATED THAT IT WOULD BE

1 DIFFICULT TO PUT THAT OUT OF YOUR MIND BEFORE WE
2 BEGIN DELIBERATIONS ON THIS; ISN'T THAT CORRECT,
3 SIR?

4 A. WELL, YOU CAN'T FORGET WHAT YOU KNOW BUT WITH
5 THE RESPONSIBILITY THAT A JUROR WOULD HAVE, YOU
6 WOULD HAVE TO SET THAT ASIDE AND LISTEN TO THE
7 TESTIMONY IN COURT AND LET THE STATE PROVE THEIR
8 CASE.

9 Q. NOW YOU INDICATED THAT YOU COULD -- I AM TRYING
10 TO DETERMINE HERE. YOU HAVE SAID THAT YOU WERE
11 INFLUENCED BY WHAT YOU HAVE READ AND YOU
12 CATEGORIZED THE CRIME AS HEINOUS BUT YOU COULD
13 SET THAT ASIDE AND LISTEN TO ALL OF THE
14 EVIDENCE. IS THAT WHAT YOU'RE SAYING, SIR?

15 A. YES, I THINK SO.

16 Q. NOW YOU SAY YOU THINK SO. NOW ARE YOU CERTAIN
17 OF THAT FACT?

18 (AFTER A PAUSE.)

19 Q. AS YOU HESITATE, YOU'RE REALLY NOT CERTAIN ARE
20 YOU, SIR?

21 A. WELL, I TAKE VERY SERIOUSLY THE OBLIGATION AS A
22 JUROR BUT AT THE SAME TIME, I CAN'T FORGET WHAT
23 I'VE READ. I GUESS THERE MIGHT BE SOME DOUBT.

24 Q. I HAVE NO FURTHER QUESTIONS.

25 THE COURT: I'M GOING TO LET YOU STEP OUT JUST A

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1 MINUTE.

2 (THE JUROR LEFT THE COURTROOM.)

3 THE COURT: WHAT SAYS THE STATE?

4 MR. POPE: YOUR HONOR, I SUBMIT THAT HE IS
5 CLEARLY QUALIFIED TAKING HIS ANSWERS IN TOTALITY. HE HAS
6 MADE CLEAR THAT THERE ARE THINGS THAT HE CAN'T FORGET, BUT
7 HE UNDERSTANDS HIS OBLIGATION AS A JUROR. AND THAT IS
8 PARAMOUNT HERE THAT HE UNDERSTANDS HIS OBLIGATION AND CAN
9 SET THOSE THINGS ASIDE AND MAKE A FAIR AND IMPARTIAL
10 DETERMINATION OF THIS CASE IN BOTH AS TO GUILT AND THE
11 PENALTY. HE HAS INDICATED CLEARLY THAT HE COULD, THAT HE
12 COULD SET THEM ASIDE AND MAKE THAT DETERMINATION. HE TAKES
13 VERY SERIOUSLY HIS OBLIGATION AS A JUROR HE INDICATED. AND
14 UNDERSTANDS THE RULES AND THE FACT THAT THE STATE WOULD
15 HAVE TO PROVE THE CASE.

16 THE COURT: WHAT SAYS THE DEFENSE?

17 MR. HANCOCK: YOUR HONOR, WE WOULD INDICATE HE'S
18 NOT QUALIFIED. I BELIEVE HIS ANSWERS WERE THAT HE HAD
19 ALREADY BEEN INFLUENCED BY WHAT HE HAS READ, AND THAT HE
20 HAD FORMED THE OPINION THAT THIS WAS A HEINOUS CRIME AND
21 THAT HE WAS NOT CERTAIN THAT HE COULD SET ALL OF THIS ASIDE
22 IN ARRIVING AT A VERDICT. I BELIEVE IN FINALITY THOSE WERE
23 HIS ANSWERS, YOUR HONOR. AND I WOULD SAY THAT HE IS NOT
24 QUALIFIED.

25 MR. POPE: MAY I DRAW A CASE TO THE COURT'S

1 ATTENTION, YOUR HONOR?

2 THE COURT: PLEASE.

3 MR. POPE: STATE V. CALDWELL, STATE V. SPANN ---

4 THE COURT: LET ME SEE THEM.

5 MR. POPE: I WOULD HAVE TO PULL THEM, YOUR HONOR.

6 SPANN SAYS EVEN A JUROR WHO HAS FORMED AN OPINION PRIOR TO
7 THE CASE CAN STILL BE QUALIFIED WHEN HE STATES HE CAN BE
8 FAIR AND IMPARTIAL.

9 CALDWELL STATES THAT A JUROR HAD FORMED AN
10 OPINION THAT THE DEFENDANT WAS PROBABLY GUILTY, CHANGED HIS
11 MIND WHEN HE WAS SUMMONED TO JURY DUTY. A SECOND JUROR HAD
12 READ AN ARTICLE AND FORMED AN OPINION, BUT STATED HE WOULD
13 HAVE TO HEAR ALL THE EVIDENCE BEFORE HE COULD REACH A
14 CONCLUSION.

15 YOUR HONOR, THIS IS THE ONLY COPY I HAVE, BUT
16 I'LL HAND IT UP TO THE COURT. THIS IS CALDWELL, YOUR
17 HONOR.

18 (AFTER A LONG PAUSE.)

19 THE COURT: HAVE THE JUROR COME BACK IN FOR JUST
20 A MOMENT.

21 (THE JUROR RETURNED TO THE COURTROOM.)

22 THE COURT: I DON'T WANT TO BE CONTINUING TO GO
23 OVER THINGS, BUT JUST LET ME ASK ONE MORE TIME. FIRST, DO
24 YOU FEEL LIKE YOU COULD IF YOU SERVED AS A JUROR, IN SPITE
25 OF HAVING READ THOSE ARTICLES, COULD YOU BE FAIR AND

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1 IMPARTIAL TO THE STATE AND THE DEFENDANT?

2 THE JUROR: YES, SIR.

3 THE COURT: COULD YOU IF THE EVIDENCE WARRANTED
4 IT, FIND A VERDICT OF NOT GUILTY IF THE STATE DID NOT CARRY
5 ITS BURDEN OF PROOF OF PROVING MR. ROBERTSON'S GUILT BEYOND
6 A REASONABLE DOUBT?

7 THE JUROR: YES.

8 THE COURT: COULD YOU RETURN A VERDICT OF GUILTY
9 IF THEY DID CARRY THAT BURDEN OF PROOF?

10 THE JUROR: YES.

11 THE COURT: COULD YOU RETURN A VERDICT IN THE
12 PENALTY PHASE IF YOU THOUGHT IT WAS APPROPRIATE BASED ON
13 THE EVIDENCE PRESENTED AT THAT TIME, OF LIFE IMPRISONMENT?

14 THE JUROR: YES.

15 THE COURT: COULD YOU AT THE SECOND PHASE IF YOU
16 FELT IT APPROPRIATE, RETURN A VERDICT OF THE DEATH PENALTY
17 IF YOU THOUGHT THAT WAS APPROPRIATE?

18 THE JUROR: YES.

19 THE COURT: COULD YOU BASE YOUR VERDICT THEN IN
20 ALL OF THOSE INSTANCES SOLELY ON THE EVIDENCE PRESENTED AT
21 TRIAL UNINFLUENCED BY WHAT YOU HAD PREVIOUSLY READ, EVEN
22 THOUGH I KNOW YOU SAID YOU CAN'T WIPE IT FROM YOUR MIND,
23 BUT COULD YOU DISREGARD THAT AND CONCENTRATE AND BASE YOUR
24 VERDICT ON WHAT TRANSPIRES HERE IN THE COURTROOM?

25 THE JUROR: YES, YOUR HONOR. WHILE I WAS

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1 STANDING OUTSIDE I HAD A CHANCE TO THINK ABOUT COULD I
2 SEPARATE IT, AND I CAN.

3 THE COURT: OKAY, LET ME LET YOU STEP OUTSIDE
4 JUST ONE MINUTE.

5 (THE JUROR LEFT THE COURTROOM.)

6 THE COURT: ANYTHING FURTHER FROM THE STATE?

7 MR. POPE: NO, SIR, YOUR HONOR.

8 THE COURT: THE DEFENSE?

9 MR. HANCOCK: YOUR HONOR, I AM GOING TO OBJECT.
10 I DON'T MEAN TO ANGER THE COURT BUT I'M GOING TO OBJECT
11 BECAUSE IN THIS SITUATION -- I KNOW THE COURT HAS TO GO
12 THROUGH ALL THE INFORMATION AND GIVE EVERY JUROR A CHANCE,
13 BUT, YOUR HONOR, THIS WAS ALMOST IN REHABILITATION OF THE
14 WITNESS, AS WE SEE IT ---

15 THE COURT: HE'S NOT A WITNESS.

16 MR. HANCOCK: I MEAN THE JUROR, A POTENTIAL
17 JUROR. HE WAS NEVER ASKED ABOUT -- I DIDN'T HEAR HIM ASKED
18 OR GONE INTO THE SAME QUESTION CONCERNING THE PUBLICITY
19 WHICH IS THE CRUX OF THIS MATTER.

20 THE COURT: I WAS NOT ATTEMPTING TO REHABILITATE
21 HIM BECAUSE THAT'S NOT MY JOB. I WAS HANDED THE CASE OF
22 CALDWELL AND I WAS FOLLOWING ALMOST VERBATIM THE LANGUAGE
23 THEREIN. AND ONE REASON I WANTED TO DO THAT WAS BECAUSE,
24 IN ALL DEFERENCE TO MR. POPE, I DIDN'T READ IT QUITE TO SAY
25 EXACTLY WHAT MR. POPE DID BECAUSE IN THIS CASE THEY ALLOWED

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1 THE JURORS TO SIT BECAUSE THEY INDICATED THEY COULD DECIDE
2 THE CASE BASED ONLY ON EVIDENCE PRESENTED AT THE TRIAL AND
3 COULD DISREGARD ANYTHING THEY HAD READ OR HEARD ABOUT THE
4 CASE.

5 AND THAT'S WHAT I WANTED TO DETERMINE, WHETHER HE
6 COULD IN FACT DO THAT. AND HE HAS CONVINCED ME HE CAN, SO
7 I FIND HE IS QUALIFIED.

8 BUT I WAS NOT MAKING AN ATTEMPT TO REHABILITATE
9 HIM. I WAS MAKING SURE UNDER THE CASE THAT I HAD COVERED
10 HIM -- YOU KNOW, WE ARE IN THE AGE OF BATSON WHERE NOT
11 ONLY ARE WE LOOKING -- WELL, WE ARE LOOKING AT JURORS IN A
12 DIFFERENT LIGHT TO SOME DEGREE AND JURORS HAVE A RIGHT TO
13 SERVE IF THEY ARE QUALIFIED. AND I BELIEVE HE IS
14 QUALIFIED.

15 AGAIN, IT IS NOT MY POSITION TO REHABILITATE HIM,
16 BUT IT IS MY POSITION AND MY JOB TO MAKE SURE THAT I
17 UNDERSTAND AND FEEL COMFORTABLE WITH WHAT HIS POSITION IS.

18 BRING MR. COOK BACK IN.

19 (THE JUROR RETURNED TO THE COURTROOM.)

20 THE COURT: MR. COOK, YOU ARE QUALIFIED FOR THE
21 POOL, AND IF YOU WILL CALL BACK AFTER 6:00 TONIGHT, THEY
22 WILL GIVE YOU FURTHER INSTRUCTIONS.

23 DON'T READ ANYTHING ABOUT THE CASE OR WATCH
24 ANYTHING ABOUT IT. DON'T DISCUSS IT.

25 YOU'VE ALREADY TOLD ME YOU HAVE SOME EXTENUATING

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1 CIRCUMSTANCES AND IF YOU'RE CHOSEN ON THE PANEL, WE WILL
2 SEE WHAT WE CAN DO ABOUT THAT.

3 BUT CALL BACK TONIGHT AFTER 6:00 AND YOU WILL
4 RECEIVE INSTRUCTIONS ABOUT WHAT TO BRING, WHAT TIME TO COME
5 AND THOSE SORT OF THINGS.

6 THE JUROR: OKAY.

7 THE COURT: BUT DON'T DISCUSS THE CASE; DON'T LET
8 ANYBODY DISCUSS IT WITH YOU, AND IF THEY TRY, SOMEBODY
9 TRIES, REPORT THAT BACK TO ME. THANK YOU, SIR.
10 (THE JUROR LEFT THE COURTROOM.)

11 THE COURT: KELLY HOPE, 119.

12 KELLY F. HOPE, JUROR NUMBER 119, WHITE FEMALE,
13 WAS QUESTIONED AS FOLLOWS:

14 QUESTIONS BY THE COURT:

15 Q. COME UP AND HAVE A SEAT RIGHT HERE, PLEASE. AS
16 I TOLD YOU EARLIER, I'M JOHN HAYES AND I HAVE
17 BEEN ASSIGNED TO PRESIDE OVER THE TRIAL OF THIS
18 CASE. I WANT TO REMIND YOU FIRST THAT YOU ARE
19 STILL UNDER OATH IN REGARDS TO RESPONDING TO
20 THIS QUESTIONS. DO YOU UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. IF YOU ARE CHOSEN ON THIS JURY, YOU MAY SEE IN
23 THE COURTROOM PHOTOGRAPHERS OR T.V. CAMERAS. I
24 DON'T WANT YOU TO BE DISTRACTED BY THEM BECAUSE
25 THEY CAN'T SHOW YOU ON T.V. OR PHOTOGRAPH YOU

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1 AND RUN YOUR PICTURE IN THE PAPER, EVEN YOUR
2 NAME. SO, DON'T BE DISTRACTED BY THAT.

3 YOU HANDED UP A QUESTIONNAIRE. IT'S BEEN A
4 LITTLE WHILE, BUT TO YOUR KNOWLEDGE IS IT AN
5 ACCURATE QUESTIONNAIRE OR IS THERE ANYTHING THAT
6 YOU FEEL LIKE YOU NEED TO CHANGE?

7 A. IT'S ACCURATE.

8 Q. DID YOU HAVE AN OPPORTUNITY TO REVIEW IN THE
9 JURY ROOM THE WITNESS LIST?

10 A. YES, SIR.

11 Q. WAS THERE ANYBODY ON THERE THAT YOU'RE RELATED
12 TO BY BLOOD OR MARRIAGE?

13 A. NO, SIR.

14 Q. IS THERE ANYBODY ON THERE YOU KNOW?

15 A. NO, SIR.

16 Q. PRIOR TO YOUR APPEARING HERE WITH US, HAD YOU
17 HEARD, OTHER THAN THE INDICTMENT THAT WAS READ
18 TO YOU MONDAY WHEN I ANNOUNCED THE CASE, HAD YOU
19 READ ANYTHING ABOUT THIS CASE, HEARD ANYTHING
20 ABOUT IT, DISCUSSED IT, FORMED AN OPINION OR
21 EXPRESSED AN OPINION ABOUT THE CASE?

22 A. NO, SIR.

23 Q. IN THE JURY ROOM THERE WERE SOME JUROR TYPES AND
24 WE'RE GOING TO TALK ABOUT THAT IN JUST A MOMENT.
25 THESE TYPE CASES ARE TRIED IN TWO PHASES. ONE

1 DEALING WITH WHETHER OR NOT THE PERSON CHARGED
2 IS GUILTY OR NOT GUILTY.

3 MR. ROBERTSON IS PRESUMED INNOCENT OF THE
4 CHARGES AGAINST HIM AND IS SO PRESUMED UNTIL
5 SUCH TIME AS A JURY WERE TO FIND HIM UNANIMOUSLY
6 GUILTY BEYOND A REASONABLE DOUBT IF THEY DID.

7 IF THEY FOUND HIM NOT GUILTY, THE CASE WOULD GO
8 NO FURTHER. IF THEY FOUND HIM GUILTY, THE CASE
9 WOULD PROCEED INTO A SECOND PHASE WHICH WOULD BE
10 THE PENALTY PHASE.

11 WE ARE TALKING NOW ABOUT THAT SECOND PHASE, BUT
12 THAT'S NOT TO PRESUPPOSE THAT WE WOULD GET THERE
13 BECAUSE WE'VE GOT TO GET PAST THE GUILTY PART
14 FIRST BUT WE HAVE TO TALK OUT OF NECESSITY ABOUT
15 THIS SECOND PART BECAUSE OF THE NATURE OF THESE
16 PROCEEDINGS. DO YOU UNDERSTAND ALL OF THAT?

17 A. YES, SIR.

18 Q. IN THE JURY ROOM WERE THREE JUROR TYPES SET
19 FORTH ON A SHEET OF PAPER. DID YOU HAVE A
20 CHANCE TO REVIEW THOSE?

21 A. YES, SIR.

22 Q. DO YOU FIND YOURSELF TO BE ONE OF THOSE TYPES OF
23 JURORS?

24 A. THE THIRD PERSON.

25 Q. THE THIRD?

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1 A. UH HUH.

2 Q. IN THAT OUTLINE OF THAT TYPE JUROR I USED THE
3 WORDS AGGRAVATING AND MITIGATING CIRCUMSTANCES
4 OR AGGRAVATION AND MITIGATION.

5 THERE I'M TALKING ABOUT AGGRAVATING
6 CIRCUMSTANCES, THINGS THAT ARE ATTENDANT TO THE
7 COMMISSION OF A CRIME WHICH INCREASE ITS
8 ENORMITY OR ADDS TO ITS INJURIOUS CONSEQUENCE
9 BUT ARE THINGS THAT ARE ABOVE AND BEYOND THE
10 CRIME ITSELF, ABOVE AND BEYOND THE ELEMENTS OF
11 THE CRIME.

12 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH
13 WHILE THEY WOULD NOT CONSTITUTE JUSTIFICATION OR
14 EXCUSE FOR THE CRIME, THEY ARE THINGS WHICH IN
15 ALL FAIRNESS AND MERCY MAY BE CONSIDERED AS
16 EXTENUATING OR REDUCING THE DEGREE OF ONE'S
17 MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

18 A. YES, SIR.

19 Q. SO, ARE YOU TELLING ME THAT YOU ARE THE TYPE
20 JUROR THAT WERE THIS CASE TO CONTINUE INTO ITS
21 SECOND PHASE; THAT IS, IF YOU WERE ON THE JURY
22 AND MR. ROBERTSON HAD BEEN FOUND GUILTY OF
23 MURDER, THAT YOU WOULD -- WHEN WE STARTED INTO
24 THAT SECOND PHASE, YOU WOULD NOT HAVE ALREADY
25 MADE UP YOUR MIND AS TO THE APPROPRIATE

1 PUNISHMENT TO IMPOSE?

2 A. THAT'S CORRECT.

3 Q. YOU ARE TELLING ME THEN THAT YOU WOULD WANT TO
4 LISTEN TO THE FACTS AND CIRCUMSTANCES IN
5 AGGRAVATION AND MITIGATION, HEAR THE LAW AS THE
6 JUDGE CHARGES IT TO YOU AND ONLY AFTER YOU HAVE
7 ALL OF THAT INFORMATION, THEN AND ONLY THEN MAKE
8 A DECISION REGARDING THE APPROPRIATE PUNISHMENT.
9 IS THAT CORRECT?

10 A. YES, SIR.

11 Q. IF YOU FELT THAT THE APPROPRIATE PUNISHMENT
12 BASED ON ALL OF THAT WAS LIFE IMPRISONMENT,
13 COULD YOU IMPOSE LIFE IMPRISONMENT AS A
14 PUNISHMENT?

15 A. YES, SIR.

16 Q. COULD YOU, IF YOU, AFTER HEARING ALL THAT
17 EVIDENCE, IF YOU FELT THAT THE VERDICT OF DEATH
18 WAS APPROPRIATE, COULD YOU RETURN A PENALTY OF
19 DEATH?

20 A. YES, SIR.

21 Q. ALL RIGHT, ANSWER ANY QUESTIONS THESE ATTORNEYS
22 MAY HAVE.

23 QUESTIONS BY MR. BOYD:

24 Q. GOOD AFTERNOON, MS. COOK.

25 A. HELLO.

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1 Q. I'M JIM BOYD; I REPRESENT JIMMY ROBERTSON WHO IS
2 SEATED OVER HERE AND MY CO-COUNSEL IS BILL
3 HANCOCK WHO IS SEATED HERE.

4 I JUST HAVE A FEW QUESTIONS TO ASK YOU TO FOLLOW
5 UP ON WHAT THE JUDGE ASKED YOU ABOUT. I KNOW IT
6 PROBABLY FEELS UNCOMFORTABLE TO BE IN THE
7 WITNESS CHAIR. YOU ARE PROBABLY NOT USED TO
8 THAT.

9 A. NO.

10 Q. BUT THERE ARE NO RIGHT OR WRONG ANSWER TO WHAT
11 I'M GOING TO ASK YOU; SO, JUST ANSWER THE
12 QUESTIONS AS OPENLY AND HONESTLY AS YOU CAN.
13 ALL RIGHT?

14 A. YES, SIR.

15 Q. NOW I NOTICED YOU SAID YOU DO HAVE A FAMILY
16 MEMBER WHO IS EMPLOYED IN LAW ENFORCEMENT?

17 A. YES, SIR.

18 Q. RUSTY HORN AND HE IS A SHERIFF'S DEPUTY?

19 A. CORRECT.

20 Q. IS HE A FIRST COUSIN?

21 A. HE'S A SECOND COUSIN.

22 Q. DO YOU SEE HIM OFTEN?

23 A. ONLY AT FAMILY REUNIONS, USUALLY ONCE A WEEK.

24 Q. YOU DON'T SEE HIM ON A REGULAR BASIS?

25 A. YES, SIR.

1 Q. DOES THAT AFFECT -- DO YOU THINK THAT WOULD
2 AFFECT YOUR ABILITY TO BE A JUROR ON THIS CASE?

3 A. I DON'T THINK SO; NO, SIR.

4 Q. EVEN IF SOME OF THE WITNESSES ARE MEMBERS OF THE
5 SHERIFF'S DEPARTMENT?

6 A. NO, SIR.

7 Q. I'M GOING TO FOLLOW UP WITH YOU ON A COUPLE OF
8 THE QUESTIONS THAT THE JUDGE ASKED YOU
9 CONCERNING THE DEATH PENALTY.

10 YOU UNDERSTAND THAT THIS TRIAL IS POTENTIALLY A
11 TWO PHASE TRIAL. IN THE FIRST PHASE OF THE
12 TRIAL THE JURORS WOULD HEAR EVIDENCE ON WHETHER
13 OR NOT JIMMY ROBERTSON SHOULD BE FOUND GUILTY OR
14 NOT GUILTY OF THESE CHARGES.

15 AND THEN IF THE JURY FINDS HIM NOT GUILTY,
16 THERE'S NOT A SECOND PHASE.

17 A. UH HUH.

18 Q. BUT IF THE JURY DOES FIND HIM GUILTY, THEN THERE
19 IS A SECOND PHASE IN WHICH THE JURY DETERMINES
20 WHETHER HE RECEIVES LIFE IMPRISONMENT OR WHETHER
21 HE RECEIVES THE DEATH SENTENCE. DO YOU
22 UNDERSTAND?

23 A. YES, SIR.

24 Q. AND FOR PURPOSE OF THESE QUESTIONS, I JUST HAVE
25 TO ASSUME THAT WE'VE ALREADY GONE INTO THAT

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1 SECOND PHASE BECAUSE THIS IS THE ONLY TIME I
2 WILL GET TO QUESTION YOU ABOUT THAT.

3 NOW IN THAT CASE YOU HAVE INDICATED THAT YOU
4 COULD HEAR EVIDENCE IN THAT PHASE OF THE TRIAL
5 AND YOU COULD VOTE EITHER WAY DEPENDING ON THE
6 EVIDENCE THAT YOU HEARD?

7 A. YES, SIR.

8 Q. SO, DO YOU HAVE ANY PREDISPOSITION TO GO ONE WAY
9 OR THE OTHER?

10 A. NO, SIR.

11 Q. NOW, IF WE GET TO THAT PHASE, THE STATE WILL BE
12 INTRODUCING EVIDENCE IN WHAT'S CALLED
13 AGGRAVATION OF THE CRIME WHICH MEANS THAT IT'S
14 EVIDENCE THAT MAKES THE CRIME WORSE. DO YOU
15 UNDERSTAND?

16 A. UH HUH.

17 Q. OR THE MURDER WORSE. AND YOU UNDERSTAND ALSO
18 THAT THE DEFENSE WILL HAVE AN OPPORTUNITY TO
19 PRESENT WHAT'S CALLED MITIGATING EVIDENCE. AND
20 THAT'S EVIDENCE, WHILE NOT EXCUSING THE MURDER
21 AT ALL, WILL BE EVIDENCE THAT BEARS ON THE
22 DEFENDANT'S MORAL CULPABILITY AND LESSENS, NOT
23 THE GUILT, BUT LESSENS HIS DEGREE OF
24 RESPONSIBILITY. DO YOU UNDERSTAND?

25 A. YES, SIR.

1 Q. AND IN THAT CASE, KNOWING THAT JIMMY ROBERTSON
2 IS ACCUSED OF KILLING BOTH OF HIS PARENTS, CAN
3 YOU CONSIDER A LIFE SENTENCE FOR THAT AS OPPOSED
4 TO A DEATH SENTENCE, EVEN KNOWING THAT'S WHAT HE
5 IS CHARGED WITH?

6 A. AGAIN, I WOULD PROBABLY HAVE TO HEAR THE REASONS
7 WHY.

8 Q. OKAY.

9 A. I DON'T KNOW RIGHT NOW.

10 Q. YOU WOULD HAVE TO HEAR THE EVIDENCE?

11 A. RIGHT.

12 Q. AND I AM ASSUMING FOR PURPOSES OF THESE
13 QUESTIONS THAT HE HAS BEEN CONVICTED AND, OF
14 COURSE, IT'S NOT SELF-DEFENSE OR ACCIDENT OR
15 ANYTHING LIKE THAT.

16 A. UH HUH.

17 Q. AT THIS POINT GUILT HAS BEEN DETERMINED.

18 A. UH HUH.

19 Q. SO, YOU CAN CONSIDER A SENTENCE OTHER THAN A
20 DEATH SENTENCE IN THAT CASE?

21 A. YES, SIR.

22 Q. LET ME ASK YOU THIS, AND I JUST WANT YOU TO BE
23 HONEST ABOUT THIS. WOULD YOU START WITH THE
24 PREDISPOSITION THAT IT SHOULD BE A DEATH
25 SENTENCE AND SOMETHING NEEDS TO BE INTRODUCED TO

1144

1 SHOW YOU OTHERWISE OR ARE YOU COMPLETELY OPEN AT
2 THE START?

3 A. I'M OPEN.

4 Q. YOU'RE COMPLETELY OPEN ON IT?

5 A. YES, SIR.

6 Q. OKAY. NOW, I'VE GOT A FEW OTHER QUESTIONS AND
7 I'LL LEAVE YOU ALONE. IN THE JURY ROOM, YOU
8 UNDERSTAND, DIFFERENT JURORS HAVE DIFFERENT
9 OPINIONS.

10 A. UH HUH.

11 Q. JUST LIKE EVERYTHING ELSE. AND, OF COURSE, YOU
12 AS A JUROR HAVE A RIGHT TO HAVE YOUR OPINION
13 RESPECTED BY THE OTHER JURORS, BY THE COURT, BY
14 EVERYBODY INVOLVED IN THE PROCEEDING. DO YOU
15 UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. I MEAN BASICALLY IF YOU REACH AN OPINION
18 HONESTLY AFTER THOUGHT, NOBODY CAN CRITICIZE YOU
19 FOR THAT OPINION. YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND LIKEWISE, THE OTHER JURORS WHO MAY HAVE
22 DIFFERING OPINIONS THAN YOUR'S HAVE A RIGHT TO
23 HAVE THEIR OPINION RESPECTED BY YOU. DO YOU
24 UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. OKAY. AND LET ME ASK YOU, ARE YOU WILLING TO BE
2 RESPECTFUL OF THE OTHER JURORS' OPINIONS JUST
3 LIKE THEY ARE SUPPOSED TO BE RESPECTFUL OF
4 YOUR'S?

5 A. YES, SIR.

6 Q. AND MY FINAL QUESTION IS IF YOU WERE ON THE JURY
7 AND AFTER DUE DELIBERATION YOU DECIDED THAT A
8 LIFE SENTENCE WAS APPROPRIATE, AND THE MAJORITY
9 OF THE JURORS, MAYBE EVEN ELEVEN JURORS, DECIDED
10 THEY DISAGREED WITH YOU AND IT SHOULD BE THE
11 DEATH SENTENCE AND YOU'RE THE ONLY JUROR OUT
12 THERE LEFT, COULD YOU STILL VOTE YOUR CONSCIENCE
13 AND STAND UP TO THE OTHER ELEVEN JURORS?

14 A. I WOULD.

15 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.
16 QUESTIONS BY MR. POPE:

17 Q. I WAS ABOUT TO CALL YOU MS. KELLY, IT'S MS.
18 HOPE, IS THAT RIGHT?

19 A. YES, SIR.

20 Q. I'M TOMMY POPE AND I'M THE SOLICITOR HERE IN
21 YORK COUNTY. THIS IS KEVIN BRACKETT, MY DEPUTY
22 SOLICITOR, AND WE REPRESENT THE STATE AND I'LL
23 BE THE THIRD LAWYER NOW THAT'S GOING TO ASK YOU
24 SOME QUESTIONS AND I'M GOING TO TRY TO BE A
25 LITTLE BIT BRIEF WITH YOU. I'VE HEARD THE

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1 ANSWERS THAT YOU GAVE TO THE JUDGE AND THAT YOU
2 GAVE TO MR. BOYD.
3 JUST A COUPLE OF THINGS. YOU UNDERSTAND THIS IS
4 A TWO PART TRIAL.

5 A. UH HUH.

6 Q. OKAY, AND THAT'S A LITTLE BIT DIFFERENT THAN
7 NORMAL. THE FIRST IS JUST ABOUT GUILT, YOU
8 DON'T EVEN THINK ABOUT PENALTY. DO YOU
9 UNDERSTAND THAT?

10 A. UH HUH.

11 Q. AND, OF COURSE, YOU UNDERSTAND THAT WE HAVE THE
12 BURDEN OF PROOF; THE STATE HAS TO PROVE
13 EVERYTHING; THE DEFENDANT DOESN'T HAVE TO PROVE
14 ANYTHING.

15 A. YES, SIR.

16 Q. YOU UNDERSTAND THAT.

17 A. UH HUH.

18 Q. AND ONLY IF WE CARRY THAT BURDEN AND GET TO THE
19 SECOND PHASE WOULD WE BE IN A SITUATION THAT YOU
20 WOULD ACTUALLY GET TO DETERMINING THE PENALTY.
21 DO YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. OKAY. AND AS I UNDERSTOOD FROM WHAT I HEARD YOU
24 SAY, YOU'RE THE TYPE OF PERSON THAT YOU'RE NOT
25 GOING TO COME ROLLING IN AS SOON AS YOU HEAR

1 SOMETHING AND SAY HE'S GUILTY OR NOT GUILTY;
2 YOU'RE GOING TO WAIT AND HEAR THE EVIDENCE?

3 A. CORRECT.

4 Q. AND YOU'RE GOING TO BASE IT IF YOU'RE SITTING ON
5 THE JURY FROM WHAT YOU HEAR FROM HERE AND THE
6 PHYSICAL EVIDENCE, RIGHT?

7 A. YES, SIR.

8 Q. AND IF YOU HEARD IT AND YOU THOUGHT WE'D CARRIED
9 OUR BURDEN OF PROOF, THEN -- OF COURSE, WHEN I
10 SAY BURDEN OF PROOF, THE JUDGE WILL INSTRUCT YOU
11 ALL ABOUT THE LAW AND HOW WE HAVE TO PROVE IT
12 AND ALL OF THAT STUFF, BUT IF YOU THOUGHT WE HAD
13 DONE OUR JOB, YOU'D SAY HE WAS GUILTY; IF YOU
14 THOUGHT WE HADN'T, YOU COULD SAY HE'S NOT
15 GUILTY?

16 A. YES, SIR.

17 Q. OKAY. THEN WHEN WE GET TO THE SECOND STAGE,
18 AGAIN IT'S SIMILAR AND YOU WILL BE, YOU KNOW,
19 YOU CAN CONSIDER ALL OF THE EVIDENCE THAT YOU
20 HEARD IN THAT FIRST STAGE, BUT THERE WILL BE
21 OTHER EVIDENCE. WE'LL DO EVIDENCE THAT'S CALLED
22 EVIDENCE IN AGGRAVATION. OF COURSE LIKE YOU
23 SAID AND MR. BOYD SAID, AT THAT POINT THE
24 DEFENDANT WILL STAND CONVICTED OF KILLING HIS
25 PARENTS.

1 A. UH HUH.

2 Q. BUT THERE ARE OTHER THINGS CALLED EVIDENCE IN
3 AGGRAVATION THAT WE WOULD BRING FORTH TO SHOW
4 EVEN MORE SO WHY IT OUGHT TO BE A DEATH PENALTY.

5 A. UH HUH.

6 Q. THE DEFENSE WOULD, BUT THEY DON'T HAVE TO, WOULD
7 BRING FORTH EVIDENCE IN MITIGATION. AND
8 MITIGATION IS JUST THE OPPOSITE OF AGGRAVATION,
9 THEY ARE SHOWING WHY IT SHOULDN'T BE A DEATH
10 PENALTY. THINGS THAT YOU MIGHT NOT KNOW THAT
11 MIGHT, SAY, BRING YOU BACK TOWARD A LIFE
12 SENTENCE. FROM WHAT I HEARD YOU TELL BOTH OF
13 THESE GENTLEMEN, YOU'RE THE TYPE JUROR THAT YOU
14 WOULD AUTOMATICALLY, AS SOON AS YOU HEAR OUR
15 CASE, YOU WOULDN'T SAY DEATH; OR AS SOON AS YOU
16 HEARD THEIR CASE, YOU WOULDN'T SAY LIFE. YOU'D
17 HAVE TO WAIT AND HEAR BOTH SIDES BEFORE YOU
18 COULD DECIDE.

19 A. CORRECT.

20 Q. SO, BASICALLY YOU WOULD NOT MAKE A DECISION IN
21 EITHER PHASE UNTIL YOU HEARD EVERYTHING AND THE
22 JUDGE INSTRUCTS YOU AND YOU GO BACK TO
23 DELIBERATE, YOU WOULDN'T MAKE UP YOUR MIND ONE
24 WAY OR THE OTHER.

25 A. CORRECT.

1 Q. OKAY, OKAY. AND YOU TOLD MR. BOYD THAT IF IT
2 WARRANTED, YOU COULD GIVE LIFE AND IF IT
3 WARRANTED, YOU COULD GIVE DEATH. IS THAT RIGHT?

4 A. THAT'S RIGHT.

5 Q. AND HE WAS TALKING ABOUT THE JURY ROOM AND OF
6 COURSE -- HAVE YOU EVER BEEN ON A JURY BEFORE?

7 A. NO, SIR.

8 Q. YOU'VE PROBABLY SEEN ON T.V. OR SOMETHING, YOU
9 KNOW, TWELVE PEOPLE ARE SITTING AROUND AND
10 YOU'VE HEARD ALL THE EVIDENCE AND YOU DISCUSS
11 YOUR VIEWS AND LIKE HE SAID, EVERYBODY RESPECTS
12 EACH OTHER'S VIEWS.

13 A. UH HUH.

14 Q. ARE YOU THE TYPE PERSON THAT YOU COULD STAND UP
15 AND STATE YOUR VIEWS BASED ON WHAT YOU SAW?

16 A. YES, SIR.

17 Q. BY THE SAY TOKEN, AND I KEEP DOING THIS, YOU
18 WOULDN'T BE THE TYPE AS SOON AS YOU DECIDED,
19 YOU'D BE UNWILLING, YOU'D SAY I'M NOT GOING TO
20 LISTEN TO ANYBODY ELSE. WOULD YOU BE WILLING TO
21 LISTEN BACK AND FORTH OR ARE YOU GOING TO MAKE
22 UP YOUR MIND WITHOUT -- YOU KNOW, SAY IF THEY
23 MADE A POINT THAT YOU DIDN'T THINK ABOUT.

24 A. UH HUH.

25 Q. WOULD YOU LISTEN TO IT?

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1 A. YES.

2 Q. SO, YOU'RE GOING TO BE A TRUE JUROR. YOU'RE
3 GOING TO GIVE AND TAKE, GIVE THEM YOUR IDEAS AND
4 VISE VERSA AND THEN AND ONLY THEN COME TO A
5 DECISION.

6 A. YES, SIR.

7 Q. IN A DEATH PENALTY CASE IT'S A LITTLE BIT
8 DIFFERENT. IN A NORMAL JURY WHEN YOU GET TO THE
9 POINT OF GUILTY, LIKE YOU SAID, THEN THE JUDGE
10 DECIDES THE SENTENCE.

11 A. UH HUH.

12 Q. IN THIS CASE THE JURY WILL BE DECIDING. SO IN
13 THAT SECOND PHASE AFTER THEY GO TO DELIBERATE
14 AND YOU DISCUSS THE CASE IF EVERYBODY VOTES
15 LIFE, RAISE YOUR HAND OR CHECK A SHEET OR
16 HOWEVER THEY DO IT, IF EVERYBODY VOTES LIFE,
17 THEN JUST THE FOREPERSON, IT WOULD BE THE
18 FOREMAN OR FORELADY OF THE JURY WOULD SIGN THE
19 VERDICT FORM. THEY WOULD SAY JUDGE, YOU KNOW,
20 WE'VE VOTED AND WE UNANIMOUSLY SAY BASED ON
21 EVERYTHING IT OUGHT TO BE LIFE.

22 BUT IN A DEATH PENALTY CASE IF THE JURY AFTER
23 HEARING EVERYTHING DETERMINES THAT DEATH IS
24 APPROPRIATE, IT'S A LITTLE BIT DIFFERENT AND
25 IT'S BECAUSE OF THE SERIOUS NATURE OF, YOU KNOW,

1 A DEATH PENALTY CASE.

2 A. UH HUH.

3 Q. EACH OF THE TWELVE JURORS HAVE TO SIGN THEIR
4 NAME. AND, OF COURSE, THE SYSTEM AND THE COURT
5 IS GOING TO DO WHATEVER YOU TWELVE JURORS SAY.
6 IF YOU SAY LIFE, THEY ARE GOING TO DO LIFE. IF
7 YOU SAY DEATH, THEY ARE GOING TO DO DEATH. YOUR
8 VERDICT IS WHAT IT'S GOING TO BE.

9 IF YOU HEARD THE EVIDENCE AND YOU FELT THAT
10 DEATH WAS APPROPRIATE -- AND, AGAIN, IN FAIRNESS
11 TO YOU, YOU DON'T KNOW THE EVIDENCE YET -- BUT
12 IF YOU THOUGHT DEATH WAS APPROPRIATE, AND THIS
13 IS WHERE I NEED TO KNOW, YOU KNOW, WHAT KELLY
14 HOPE REALLY FEELS.

15 A. UH HUH.

16 Q. IF YOU HEARD AND THOUGHT DEATH WAS APPROPRIATE
17 AND THE SIGNATURES WERE THERE AND IT WAS YOUR
18 TURN TO TAKE THE SIGNATURE, YOU KNOW, TO SIGN.
19 AND YOUR SIGNATURE IS GOING TO GIVE THIS MAN
20 DEATH, BASED ON WHAT YOU'VE HEARD, COULD YOU
21 SIGN KELLY HOPE KNOWING THAT IT WOULD GIVE THIS
22 MAN DEATH?

23 A. I THINK SO.

24 Q. IT'S NOT AN EASY DECISION.

25 A. NO.

1152

1 Q. OKAY. FINALLY I WAS GOING TO ASK, I WAS LOOKING
2 -- OF COURSE, WE HAVE A COPY OF YOUR
3 QUESTIONNAIRE.

4 A. UH HUH.

5 Q. AND I SAW YOU'VE BEEN, IT LOOKS LIKE ALL OVER
6 THE PLACE, PARTICULARLY YOU'VE BEEN TO AFRICA,
7 TOO; IS THAT RIGHT?

8 A. YES, SIR.

9 Q. WAS THAT AS A MISSIONARY SITUATION?

10 A. MY PARENTS WERE MISSIONARIES OVER THERE FOR TWO
11 YEARS.

12 Q. OKAY AND AS A MATTER OF FACT, I THINK STARTING
13 DOWN IN LIKE PENSACOLA, YOU'VE BEEN RAISED
14 PRETTY STRONGLY IN A CHRISTIAN BACKGROUND; IS
15 THAT TRUE?

16 A. THAT'S CORRECT.

17 Q. WITHOUT GETTING DIRECTLY INTO YOUR BELIEFS, IS
18 THERE ANYTHING ABOUT YOUR BACKGROUND THAT'S
19 GOING TO KEEP YOU FROM BEING A FAIR AND
20 IMPARTIAL JUROR EITHER IN THE GUILT PHASE OR IN
21 THE PENALTY PHASE?

22 A. I DON'T THINK SO.

23 Q. ALL RIGHT; THANK YOU, MA'AM.

24 THE COURT: YOU CAN STEP OUT FOR A MINUTE.

25 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: WHAT SAYS THE STATE?

2 MR. POPE: I SUBMIT SHE'S QUALIFIED, YOUR HONOR.

3 THE COURT: THE DEFENSE?

4 MR. BOYD: SHE'S QUALIFIED, YOUR HONOR.

5 THE COURT: I FIND THAT SHE IS QUALIFIED. BRING
6 HER BACK IN.

7 (THE JUROR RETURNED TO THE COURTROOM.)

8 THE COURT: MS. HOPE, YOU WILL BE PART OF THE
9 POOL FROM WHICH THE JURY IS DRAWN. THAT DOESN'T
10 NECESSARILY MEAN THAT YOU WILL ACTUALLY BE ON THE JURY BUT
11 YOU WILL BE AVAILABLE TO BE DRAWN.

12 FIRST I WANT YOU TO CALL TONIGHT AND THEY WILL
13 TELL YOU WHAT TIME TO REPORT AND WHAT YOU CAN AND CANNOT
14 BRING. AND, OF COURSE, BRING YOUR CLOTHING AND STUFF TO
15 STAY A WEEK OR SO.

16 ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT
17 WOULD INTERFERE WITH YOUR STAYING FOR THAT PERIOD OF TIME?

18 THE JUROR: AS LONG AS IT'S NOT PAST THE TWO
19 WEEKS.

20 THE COURT: IT WON'T BE, I CAN ALMOST GUARANTEE
21 THAT. DON'T DISCUSS THE CASE WITH ANYONE. IF ANYONE TRIES
22 TO DISCUSS IT, TELL THEM YOU CANNOT AS YOU ARE A JUROR.

23 DON'T LET YOURSELF BE EXPOSED TO ANY NEWS
24 COVERAGE ABOUT IT EITHER .

25 CALL BACK AFTER 6:00 TONIGHT. THANK YOU.

1154

1 (THE JUROR LEFT THE COURTROOM.)

2 THE COURT: 190, SUE MOORE.

3 MR. HANCOCK: YOUR HONOR, BEFORE WE CALL THE NEXT
4 JUROR, COULD WE APPROACH THE BENCH?

5 THE COURT: YEAH. I DON'T WANT A LOT OF BENCH
6 CONFERENCES.

7 MR. HANCOCK: NO, SIR, WE CAN GO ON THE RECORD
8 ABOUT WHAT IT IS, I JUST WANT TO ---

9 THE COURT: OKAY.

10 (COUNSEL APPROACHED THE BENCH AND HAD A CONFERENCE WITH THE
11 COURT OFF THE RECORD.)

12 THE COURT: WE WERE DISCUSSING, FOR THE LACK OF
13 A BETTER WORD, A RAP SHEET THAT HAS COME BACK ON ONE OF THE
14 JURORS, MR. COOK. IT MOST PROBABLY IS NOT ON HIM, BUT WE
15 WANT TO VERIFY THAT SO THAT WE WILL KNOW BUT IT HAS A
16 DIFFERENT BIRTH DATE ON IT; IT'S FROM AN AREA WHICH IS NOT
17 REFLECTED ON ANY OF HIS QUESTIONNAIRE AS TO WHERE HE HAS
18 LIVED. BUT WE ARE GOING TO CHECK ON IT.

19 ARE WE READY FOR MS. MOORE?

20 MR. POPE: LET ME JUST TELL HER TO GET HIS SOCIAL
21 SECURITY NUMBER.

22 MR. HANCOCK: THE SOCIAL SECURITY NUMBER IS NOT
23 ON HERE.

24 THE COURT: ON THE N.C.I.C. IT DOESN'T HAVE A
25 SOCIAL SECURITY NUMBER?

1155

1 MR. BRACKETT: NO, SIR. IT'S GOT HIS BIRTH PLACE
2 AS VIRGINIA AS WELL. I MEAN ON THE RAP SHEET.

3 THE COURT: THIS INDIVIDUAL WAS BORN IN
4 GREENVILLE, SOUTH CAROLINA AND WAS BORN ON 6-17-54.

5 MR. POPE: I ALSO NOTE THIS SAYS SIX FOOT TALL.
6 I DON'T KNOW HOW TALL MR. IVEY IS, BUT THIS GENTLEMAN WAS
7 A LITTLE BIT SHORTER THAN MR. IVEY. HOW TALL ARE YOU?

8 THE BAILIFF: FIVE EIGHT.

9 THE COURT: ALL RIGHT, WE WILL CONTINUE TO CHECK
10 ON IT, BUT IT DOES NOT APPEAR TO BE THE SAME INDIVIDUAL.
11 HIS SOCIAL SECURITY NUMBER, OF COURSE, IS ON THIS SHEET OF
12 PAPER.

13 MR. HANCOCK: YES, SIR.

14 MR. POPE: THE STATE'S READY, YOUR HONOR.

15 THE COURT: ALL RIGHT, SUE MOORE, PLEASE.

16 SUE M. MOORE, JUROR NUMBER 190, WHITE FEMALE, WAS
17 QUESTIONED AS FOLLOWS:

18 QUESTIONS BY THE COURT:

19 Q. MS. MOORE, PLEASE COME UP HERE AND HAVE A SEAT
20 RIGHT HERE BETWEEN THIS LADY AND I. MS. MOORE,
21 I'M JOHN HAYES AND I'M THE JUDGE THAT'S BEEN
22 ASSIGNED TO THIS CASE AND I'M GOING TO REMIND
23 YOU THAT YOU'RE UNDER OATH. YOU'VE GOT TO
24 ANSWER WITH WORDS SO THAT WE CAN HEAR YOU.

25 A. YES.

1156

1 Q. AND YOU MAY IF YOU ARE SEATED ON THIS JURY, YOU
2 MAY SEE CAMERAS OR PHOTOGRAPHERS IN THE
3 COURTROOM. DON'T BE DISTRACTED BY THEM. THEY
4 CAN'T TAKE YOUR PICTURE, AND THEY CAN'T REPORT
5 ANYTHING ABOUT YOU, BUT THEY HAVE A RIGHT TO BE
6 HERE.

7 A. OKAY.

8 Q. WE HAVE YOUR QUESTIONNAIRE. DO YOU THINK IT
9 NEEDS ANY CHANGES OR DO YOU THINK IT'S ACCURATE?

10 A. I THINK IT'S ACCURATE.

11 Q. DID YOU REVIEW THAT LIST OF WITNESSES IN THE
12 JURY ROOM?

13 A. YES, I DID.

14 Q. WERE YOU RELATED BY BLOOD OR MARRIAGE TO ANYONE
15 SET FORTH THEREON OR DO YOU KNOW ANY OF THOSE
16 PEOPLE?

17 A. NO, I DO NOT.

18 Q. PRIOR TO YOUR COMING HERE, OF COURSE, WE
19 ANNOUNCED THE CASE ON MONDAY AND THE INDICTMENTS
20 WERE READ AND THE PARTIES WERE INTRODUCED TO
21 YOU. DO YOU, OTHER THAN THAT, HAVE ANY
22 KNOWLEDGE ABOUT THIS CASE FROM ANY SOURCE
23 WHATSOEVER?

24 A. I JUST REMEMBER HEARING ABOUT IT WHEN IT
25 HAPPENED, BUT THAT'S ALL. JUST THAT THERE WAS A

1 MURDER, THAT'S ALL THAT I REMEMBER.

2 Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION OR
3 DISCUSSED THIS WITH ANYBODY?

4 A. NO.

5 Q. THE FACT THAT YOU READ SOMETHING ABOUT IT AT ONE
6 TIME, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR
7 AND IMPARTIAL IN THE TRIAL OF THIS CASE?

8 A. NO.

9 Q. IT WOULD NOT AFFECT IT?

10 A. NO, IT WOULD NOT.

11 Q. SO, YOU COULD BE FAIR AND IMPARTIAL?

12 A. YES, I COULD.

13 Q. AND COULD YOU DISREGARD ANYTHING THAT YOU HAD
14 READ?

15 A. YES.

16 Q. A CASE OF THIS TYPE GOES IN TWO STAGES, THE
17 FIRST DEALING WITH WHETHER OR NOT THE PERSON
18 CHARGED HERE, MR. ROBERTSON, IS GUILTY OR NOT
19 GUILTY. IF HE'S FOUND NOT GUILTY OF THE
20 CHARGES, THEN, OF COURSE, THE CASE IS OVER. BUT
21 IF HE IS FOUND GUILTY BEYOND A REASONABLE DOUBT
22 UNANIMOUSLY BY A JURY, THEN THE CASE GOES INTO A
23 SECOND PHASE.

24 NOW HE IS PRESUMED INNOCENT OF THE CHARGES UNTIL
25 A JURY WERE TO FIND HIM GUILTY AND WE'RE TALKING

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1 ABOUT THIS SECOND STAGE BUT WE ARE NOT
2 PRESUPPOSING HIS GUILT, BUT WE HAVE TO TALK
3 ABOUT IT BECAUSE OF THE NATURE OF THESE
4 PROCEEDINGS. DO YOU UNDERSTAND THAT?

5 A. YES, SIR.

6 Q. YOU HAD A CHANCE, I HOPE, TO READ THAT LIST OF
7 THREE JUROR TYPES?

8 A. YES, SIR.

9 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

10 A. THREE, THE THIRD ONE.

11 Q. THE THIRD TYPE, WHEN I WROTE THAT OUT, I USED
12 WORDS OF AGGRAVATION AND MITIGATION TALKING
13 ABOUT CIRCUMSTANCES.

14 AND AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
15 THAT ATTEND THE CRIME THAT INCREASE ITS ENORMITY
16 OR ADD TO ITS INJURIOUS CONSEQUENCE. THAT IS,
17 THINGS WHICH ARE OVER AND ABOVE THE CRIME
18 ITSELF.

19 AND MITIGATING CIRCUMSTANCES ARE THINGS THAT DO
20 NOT CONSTITUTE JUSTIFICATION OR EXCUSE BUT THEY
21 ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE
22 CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE
23 OF ONE'S MORAL CULPABILITY IN REGARD TO A CRIME.

24 DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. SO, YOU ARE TELLING ME THAT AS A TYPE THREE
2 JUROR YOU'RE ONE WHO AFTER THE JURY HAD, IF IT
3 DID, FIND MR. ROBERTSON GUILTY AND WE WENT INTO
4 THIS SECOND PHASE, YOU WOULD NOT HAVE ANY
5 PRECONCEIVED IDEA OR WOULD NOT HAVE MADE UP YOUR
6 MIND AS TO WHAT PENALTY SHOULD BE IMPOSED AT
7 THAT POINT?

8 A. THAT'S CORRECT.

9 Q. AND YOU'RE A JUROR THEN, I UNDERSTAND, WHO WOULD
10 WANT TO HEAR THE EVIDENCE AND THE LAW, THE
11 MITIGATING CIRCUMSTANCES AND THE AGGRAVATING
12 CIRCUMSTANCES AND THEN AND ONLY THEN DETERMINE
13 WHAT THE APPROPRIATE PUNISHMENT SHOULD BE. IS
14 THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND YOU COULD, AS I UNDERSTAND THIS TYPE JUROR,
17 RETURN A VERDICT OF LIFE IMPRISONMENT IF YOU
18 FELT THAT WAS APPROPRIATE.

19 A. YES.

20 Q. AND YOU COULD RETURN A VERDICT OF THE DEATH
21 PENALTY IF YOU FELT THAT WAS APPROPRIATE?

22 A. YES.

23 Q. ALL RIGHT, ANSWER ANY QUESTIONS THE ATTORNEYS
24 MAY HAVE.

25 QUESTIONS BY MR. BRACKETT:

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1 Q. GOOD AFTERNOON, MS. MOORE, HOW ARE YOU DOING?

2 A. FINE.

3 Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY
4 SOLICITOR IN THE SIXTEENTH CIRCUIT. SEATED AT
5 COUNSEL WITH ME OVER THERE IS TOMMY POPE. HE'S
6 THE SOLICITOR. HE AND I ARE THE DISTRICT
7 ATTORNEYS, THE SOLICITORS, THE PROSECUTORS IN
8 THIS CASE. IT'S OUR JOB TO PROVE THAT MR.
9 ROBERTSON IS GUILTY OF THE CRIMES WITH WHICH HE
10 IS CHARGED.

11 AT THE OUTSET LET ME SAY A COUPLE OF THINGS.
12 ARE YOU A LITTLE BIT NERVOUS? YOU HAVEN'T BEEN
13 IN A SITUATION LIKE THIS BEFORE, HAVE YOU?

14 A. I'VE NEVER BEEN IN A COURTROOM LIKE THIS BEFORE,
15 NO.

16 Q. SURE. WELL, I WANT YOU TO UNDERSTAND THAT YOU
17 CAN RELAX. NOBODY IS GRADING YOU OR JUDGING
18 YOU. WE JUST NEED TO KNOW A LITTLE BIT ABOUT
19 HOW YOU FEEL SO THAT WE CAN DO OUR JOBS
20 PROPERLY. SO, I JUST WANT TO KIND OF GO BACK
21 OVER A COUPLE OF THINGS THAT THE JUDGE ASKED YOU
22 QUESTIONS ABOUT AND KIND OF TOUCH ON A FEW MORE
23 THINGS MAYBE IN A LITTLE MORE DEPTH, BUT THERE
24 ARE NO RIGHT OR WRONG ANSWERS. YOU'RE JUST
25 TELLING US HOW YOU FEEL AND GIVING US YOUR

1 OPINIONS SO THAT, LIKE I SAID, SO THAT WE CAN DO
2 OUR JOB.

3 AS THE JUDGE EXPLAINED TO YOU, THIS IS A TWO
4 PART TRIAL.

5 A. UH HUH.

6 Q. THE FIRST PART ONLY INVOLVES ISSUES OF GUILT,
7 WHETHER OR NOT THE DEFENDANT IS GUILTY OF THE
8 CHARGES THAT HE'S GOT AGAINST HIM HERE.

9 AS A CRIMINAL DEFENDANT IN THIS COURTROOM, MR.
10 ROBERTSON HAS THE RIGHT TO REMAIN SILENT. YOU
11 UNDERSTAND THAT.

12 A. UH HUH.

13 Q. HE DOESN'T HAVE TO BRING FORWARD ANY EVIDENCE,
14 HE'S PRESUMED INNOCENT IN THE EYES OF THE LAW
15 UNTIL SUCH TIME AS SOLICITOR POPE AND MYSELF
16 PRESENT EVIDENCE TO A JURY TO PROVE HIS GUILT
17 BEYOND A REASONABLE DOUBT. ONLY WHEN THAT
18 HAPPENS DOES THAT PRESUMPTION OF INNOCENCE LEAVE
19 HIM AND HE BECOMES GUILTY. UNTIL THAT TIME HE
20 IS INNOCENT. YOU UNDERSTAND THAT?

21 A. YES.

22 Q. NOW, YOU CAN -- IF YOU WERE A JUROR, YOU COULD
23 DECIDE THIS CASE AGREEING AND ACCEPTING THAT AS
24 A FACT, COULD YOU NOT?

25 A. YES, I COULD.

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1 Q. AND YOU WOULD MAKE US CARRY OUR BURDEN OF PROOF
2 AND SHOW YOU THAT HE WAS GUILTY.

3 A. THAT'S THE WAY I FEEL. IF YOU CAN PROVE IT BY
4 THE SHADOW OF A DOUBT SOMEONE IS GUILTY, YES.

5 Q. YOU UNDERSTAND THE BURDEN OF PROOF, AND THIS
6 WILL BE EXPLAINED TO YOU BY THE JUDGE. YOU
7 HAVEN'T HAD ANY FORMAL TRAINING IN THE LAW HAVE
8 YOU, MS. MOORE?

9 A. NO.

10 Q. WELL, YOU DON'T NEED TO COME -- YOU COME ARMED
11 TO THIS COURTROOM WITH YOUR MOST VALUABLE TOOL,
12 COMMON SENSE. THAT'S WHAT YOU BRING TO THE
13 DANCE.
14 THE JUDGE IS THE LAST WORD ON THE LAW. HE IS
15 THE ONE WHO IS GOING TO TELL YOU WHAT THE LAW IS
16 AND HE'LL EXPLAIN EVERYTHING YOU NEED TO KNOW
17 ABOUT THE LAW SO THAT YOU CAN DO YOUR JOB AS A
18 JUROR. BUT HE'S GOING TO EXPLAIN THAT WE NEED
19 TO PROVE OUR CASE BEYOND A REASONABLE DOUBT.
20 VERY FEW THINGS IN THIS WORLD CAN BE PROVED IN
21 THIS WORLD BY A SHADOW OF A DOUBT.

22 A. YES, THAT'S TRUE.

23 Q. BUT BEYOND A REASONABLE DOUBT. ONCE WE'VE
24 PROVED THAT BEYOND A REASONABLE DOUBT THAT HE'S
25 GUILTY OF THESE CHARGES, WHAT WE DO THEN IS WE

1 GO TO THE SECOND PHASE OF THE TRIAL.

2 WE DON'T GO TO THE SECOND PHASE UNLESS HE'S
3 PROVED GUILTY BECAUSE, OBVIOUSLY, IF YOU AREN'T
4 GUILTY OF SOMETHING, YOU CAN'T BE PUNISHED.
5 RIGHT?

6 A. RIGHT.

7 Q. SO IN THE SECOND PHASE IF HE'S PROVED GUILTY, WE
8 GOT TO THE PUNISHMENT PHASE, THE PENALTY PHASE
9 IT'S CALLED. AND IN THAT PHASE THERE'S ONLY TWO
10 OPTIONS AVAILABLE TO THE JURY.

11 A. UH HUH.

12 Q. LIFE IN PRISON OR DEATH.

13 A. UH HUH.

14 Q. OKAY. IN THAT PHASE, AGAIN, SOLICITOR POPE AND
15 I BEAR THE BURDEN OF PROOF. WE HAVE TO PROVE AN
16 AGGRAVATING CIRCUMSTANCE. AND THE JUDGE WILL
17 EXPLAIN WHAT AN AGGRAVATING CIRCUMSTANCE IS, AND
18 HE HAS BRIEFLY ALREADY. HE WILL EXPLAIN IT IN
19 MUCH MORE DETAIL. BUT BASICALLY, FOR WHAT OUR
20 PURPOSE IS NOW, WHAT YOU NEED TO UNDERSTAND IS
21 THAT AN AGGRAVATING CIRCUMSTANCE IS SOMETHING
22 THAT MAKES IT MORE THAN JUST A REGULAR MURDER,
23 IF THERE IS SUCH A THING AS A REGULAR MURDER.
24 IT MAKES IT EVEN MORE SERIOUS, EVEN MORE HEINOUS
25 THAN A REGULAR MURDER; IT AGGRAVATES THE CRIME

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1 OF MURDER IN SOME RESPECT. AND YOU'LL HEAR MORE
2 ABOUT THAT LATER.

3 THE DEFENSE, IF THEY CHOOSE, THEY DON'T HAVE TO
4 DO ANYTHING IN THE PENALTY PHASE EITHER, BUT IF
5 THEY CHOOSE TO, THEY CAN PUT UP WHAT'S CALLED
6 MITIGATING EVIDENCE WHICH LESSENS THE
7 DEFENDANT'S CULPABILITY, LESSENS HIS INVOLVEMENT
8 OR EXPLAINS TO SOME DEGREE THE CIRCUMSTANCES
9 SURROUNDING THE CRIME IN A MANNER FAVORABLE TO
10 HIM. DO YOU UNDERSTAND THAT?

11 A. YES.

12 Q. WHAT YOU'RE SAYING IS THAT WHEN YOU GO INTO THAT
13 SECOND PHASE, HE'S BEEN FOUND GUILTY FOR THE
14 SAKE OF ARGUMENT. HE'S BEEN FOUND GUILTY, WE'RE
15 GOING INTO THE SECOND PHASE. YOU'RE GOING TO GO
16 IN WITH AN OPEN MIND; IS THAT RIGHT?

17 A. YES.

18 Q. YOU'RE NOT GOING TO HAVE A DECISION -- EVEN
19 THOUGH, FOR EXAMPLE, HE HAS BEEN FOUND GUILTY OF
20 KILLING BOTH OF HIS PARENTS, ASSUME THAT'S THE
21 CASE, EVEN THOUGH THAT'S THE CASE, YOU'RE NOT
22 GOING TO GO IN THERE WITH THE PREDISPOSITION
23 THAT HE SHOULD GET DEATH; HE DID A TERRIBLE
24 THING, I'M GOING TO ASSUME THAT HE SHOULD GET
25 DEATH UNLESS SOMEBODY CAN PROVE OTHERWISE.

1 A. NO.

2 Q. YOU'RE GOING TO HAVE AN OPEN MIND?

3 A. YES, SURE.

4 Q. AND YOU'RE GOING TO LISTEN TO WHAT THE STATE HAS
5 TO SAY?

6 A. YES.

7 Q. AND THEN ANYTHING THE DEFENSE MAY CARE TO SAY?

8 A. YES.

9 Q. OKAY. AND THEN WHAT THE JUDGE CHARGES YOU ON
10 THE LAW?

11 A. YES.

12 Q. AND THEN YOU'LL MAKE YOUR DECISION?

13 A. YES.

14 Q. AND YOUR DECISION COULD BE LIFE?

15 A. YES.

16 Q. AND IT COULD BE DEATH?

17 A. YES.

18 Q. OKAY. ONE OF THE RESPONSIBILITIES THAT A JUROR
19 IN A DEATH PENALTY CASE HAS IS DIFFERENT FROM
20 ANY OTHER CASE. IN A REGULAR CASE THE ONLY
21 PERSON THAT HAS TO SIGN WHAT THE VERDICT IS IS
22 THE FOREPERSON. AND YOU'VE NEVER BEEN IN A
23 COURTROOM BEFORE, SO YOU'VE NEVER BEEN ON A JURY
24 BEFORE; IS THAT RIGHT?

25 A. I HAVE, BUT JUST IN CITY COURT.

1166

1 Q. OKAY, YOU'VE NEVER BEEN IN CIRCUIT COURT?

2 A. NO, NO.

3 Q. WERE YOU THE FOREPERSON ON THE JURY IN CITY
4 COURT?

5 A. NO.

6 Q. DO YOU REMEMBER THAT THE FOREPERSON HAD TO KIND
7 OF BE IN CHARGE OF THINGS?

8 A. YES.

9 Q. AND AT THE END OF THE CASE THE FOREPERSON WROTE
10 DOWN WHAT THE VERDICT WAS AND SIGNED THEIR NAME?

11 A. YES.

12 Q. WELL, IF THE JURY IN THIS CASE AFTER HEARING ALL
13 THE EVIDENCE DECIDES THAT MR. ROBERTSON SHOULD
14 GET LIFE, THEN THE ONLY PERSON WHO HAS TO SIGN
15 ANYTHING IS THE FOREPERSON. THEY TAKE THE PEN,
16 WRITES LIFE, AND SIGNS THEIR NAME AND THAT'S THE
17 END OF THE MATTER.

18 A. UH HUH.

19 Q. IF, HOWEVER, THE VERDICT OF THE JURY IN THIS
20 CASE IN THE PENALTY PHASE IS DEATH, A VERDICT
21 FORM IS PASSED AROUND THE JURY ROOM AND EACH
22 INDIVIDUAL JUROR HAS TO TAKE THE PEN AND WRITE
23 THEIR NAME INDICATING THAT THEY HAVE VOTED FOR
24 DEATH. EACH ONE HAS TO SIGN THEIR NAME SENDING
25 THIS MAN TO HIS DEATH.

1 Q. AND YOU HAVE TO UNDERSTAND THAT WHATEVER YOUR
2 VERDICT IS IS WHAT HE'S GOING TO GET.

3 A. RIGHT.

4 Q. THE JUDGE DOESN'T HAVE ANY CHOICE TO CHANGE IT;
5 HE'S GOING TO FOLLOW THE JURY'S RECOMMENDATION.

6 A. RIGHT.

7 Q. THE QUESTION IS, IF THAT PEN COMES AROUND THE
8 ROOM AND IT'S PUT IN YOUR HAND, YOU'VE LISTENED
9 TO THE EVIDENCE AND FOUND THAT DEATH IS THE
10 APPROPRIATE SENTENCE IN THIS CASE, COULD YOU
11 TAKE THE PEN AND WRITE YOUR NAME SUE MOORE ON
12 THAT PAGE SENDING MR. ROBERTSON TO HIS DEATH?

13 A. YES.

14 Q. ON YOUR QUESTIONNAIRE THAT YOU FILLED OUT, AND I
15 DON'T MEAN TO PRY, BUT AGAIN THESE ARE THE KIND
16 OF THINGS THAT WE NEED TO KNOW SO THAT WE CAN DO
17 OUR JOB, YOU HAD WRITTEN THAT YOU KNEW SOMEBODY
18 WHO HAD BEEN THE VICTIM OF A HOMICIDE OR A
19 SERIOUS ACT OF VIOLENCE.

20 A. YES.

21 Q. WHO WAS THAT?

22 A. I HAD AN AUNT WHO WAS RAPED WHEN I WAS -- I WAS
23 A LITTLE GIRL. AND IT WOULDN'T FORM AN OPINION
24 BECAUSE I WAS SO YOUNG, I JUST REMEMBER THAT IT
25 HAPPENED.

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1 Q. YOU'VE ANTICIPATED MY NEXT QUESTION. THE FACT
2 THAT YOU KNOW ABOUT THAT, YOU UNDERSTAND THAT IS
3 A DIFFERENT CASE FROM THIS ONE.

4 A. OH, YES.

5 Q. IT DOESN'T HAVE ANYTHING TO DO WITH THIS CASE.

6 A. NO, AND I WAS VERY YOUNG.

7 Q. SO, IT WOULDN'T AFFECT YOUR ABILITY TO BE A
8 JUROR IN THIS CASE?

9 A. NO, I DON'T THINK SO. NO, UH UH.

10 Q. OKAY, THANK YOU VERY MUCH, MS. MOORE. PLEASE
11 ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

12 QUESTIONS BY MR. HANCOCK:

13 Q. MS. MOORE, I'M BILL HANCOCK. I'M THE ATTORNEY
14 FOR JIMMY ROBERTSON SITTING RIGHT HERE. MR. JIM
15 BOYD SEATED BESIDE HIM IS ALSO HIS ATTORNEY IN
16 THIS MATTER.

17 YOU HAVE HEARD DOWNSTAIRS ON MONDAY THAT HE IS
18 CHARGED WITH KILLING BOTH OF HIS PARENTS.

19 A. YES.

20 Q. AND YOU KNOW THAT WE'RE ASSUMING THAT WE HAVE
21 GONE PAST HIM BEING FOUND GUILTY OF KILLING BOTH
22 OF HIS PARENTS TO A POINT THAT IF YOU WERE
23 SITTING ON THE JURY YOU WOULD HAVE TO DECIDE ONE
24 OF TWO THINGS, WHETHER HE GETS THE DEATH PENALTY
25 OR LIFE IN PRISON.

1 AND IN THAT VEIN WHEN I ASK YOU THESE QUESTIONS,
2 THERE'S NO RIGHT OR WRONG ANSWER, WE'RE JUST
3 LISTENING TO WHAT YOU'RE SAYING AND I'M TRYING
4 TO DEFINE WHAT YOU'RE SAYING BECAUSE I KNOW --
5 I'VE LISTENED TO WHAT YOU SAID TO SOLICITOR
6 BRACKETT AND TO THE JUDGE. I JUST WANT TO MAKE
7 SURE IN THIS PARTICULAR INSTANCE.

8 YOU HAVE INDICATED THAT SHOULD YOU SIT ON THE
9 JURY, YOU COULD LISTEN TO ALL OF THE FACTS AND
10 CIRCUMSTANCES AVAILABLE IN THIS CASE. IS THAT
11 CORRECT?

12 A. THAT'S CORRECT.

13 Q. YOU HAVE NO PRECONCEIVED OPINION OF WHAT THE
14 VERDICT SHOULD BE, EVEN IN THE GUILTY OR NOT
15 GUILTY PHASE?

16 A. THAT'S CORRECT.

17 Q. AND YOU HAVE NO PRECONCEIVED OPINION OF WHAT THE
18 VERDICT SHOULD BE IN THE DEATH PENALTY PHASE,
19 WHETHER IT SHOULD BE DEATH OR LIFE. IS THAT
20 WHAT YOU'RE TELLING ME?

21 A. YES, SIR.

22 Q. AND YOU HAVE INDICATED, I BELIEVE TO THE
23 SOLICITOR AND TO THE JUDGE, THAT YOU COULD
24 CONSIDER BOTH AGGRAVATING CIRCUMSTANCES WHICH
25 WOULD MAKE THE CRIME EVEN WORSE --

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1 A. I DID.

2 Q. -- THAN JUST THE KILLING OF ONE'S PARENTS. THAT
3 YOU COULD CONSIDER THOSE CIRCUMSTANCES. AND IF
4 THEY WERE PROVEN TO YOU, THAT YOU COULD DELIVER
5 THE SENTENCE OF DEATH. IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. EVEN TO THE POINT OF SIGNING YOUR NAME ON A
8 PIECE OF PAPER THAT SAID JIMMY WOULD BE GIVEN
9 THE DEATH PENALTY. IS THAT CORRECT, MA'AM,
10 THAT'S WHAT YOU SAID?

11 A. THAT'S CORRECT.

12 Q. AND IF I LISTENED CORRECTLY, CORRECT ME IF I'M
13 WRONG, YOU ALSO INDICATED THAT YOU COULD LISTEN
14 TO MITIGATING CIRCUMSTANCES WHICH ARE
15 CIRCUMSTANCES THAT COULD BE CONSIDERED IN
16 FAIRNESS AND MERCY IN THIS PARTICULAR CASE. IS
17 THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. SO, YOU ARE INDICATING THAT YOU COULD EXTEND
20 MERCY IF IT WERE APPROPRIATE TO JIMMY ROBERTSON
21 IN THIS CASE. IS THAT CORRECT, MA'AM?

22 A. YES.

23 Q. EVEN THOUGH HE HAD KILLED AND IT WOULD HAVE BEEN
24 PROVEN THAT HE HAD KILLED BOTH OF HIS PARENTS?

25 A. IT WOULD DEPEND ON HEARING EVERYTHING. YOU'D

1 HAVE TO HEAR EVERYTHING BEFORE YOU COULD MAKE A
2 DECISION. MAYBE I DON'T UNDERSTAND WHAT YOU'RE
3 TRYING TO ASK ME.

4 Q. NO, MA'AM, YOU'RE ANSWERING; I'M JUST LISTENING.

5 A. I WOULD HAVE TO HEAR EVERYTHING BEFORE I MAKE A
6 DEFINITE DECISION.

7 Q. BUT, AGAIN, YOU HAVE INDICATED THAT YOU COULD
8 GIVE DEATH, BUT YOU COULD ALSO CONSIDER THE
9 CIRCUMSTANCES IN MITIGATION IN FAIRNESS AND
10 MERCY TOWARD MR. ROBERTSON?

11 A. YES.

12 Q. AND YOU UNDERSTAND THAT THE DEFENSE HAS NOTHING
13 TO PROVE TO YOU, YOU WOULD ONLY HAVE TO CONSIDER
14 THOSE CIRCUMSTANCES.

15 A. THAT'S TRUE.

16 Q. AND IF THEY WEIGHED ON YOUR OPINION, YOU COULD
17 DELIVER MERCY TO MR. ROBERTSON.

18 A. AFTER HEARING EVERYTHING, YES.

19 Q. AND YOU'VE INDICATED THAT YOU HAVE A FAIRLY
20 STRONG OPINION THAT SHOULD YOU DECIDE TO VOTE
21 FOR MERCY FOR LIFE IN PRISON, THAT IF THAT WAS
22 YOUR VERDICT, THEN COULD YOU SUSTAIN THAT
23 VERDICT AGAINST, SAY, THE OTHER ELEVEN PEOPLE ON
24 THE JURY IF IT WERE YOUR HEARTFELT
25 CONSIDERATION?

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1 A. REPEAT THAT?

2 Q. I'LL REPEAT IT. IF YOU HAVE DECIDED TO VOTE FOR
3 LIFE IN PRISON.

4 A. UH HUH.

5 Q. WOULD YOU CHANGE THAT OPINION JUST TO GO ALONG
6 WITH THE MAJORITY OF THE JURY IF THEY WANTED TO
7 VOTE FOR DEATH?

8 A. NO. I THINK YOU SHOULD USE YOUR OWN DECISION.
9 I THINK YOU SHOULD DO WHAT YOU THINK.

10 Q. I HAVE NO FURTHER QUESTIONS.

11 THE COURT: I'M GOING TO LET YOU STEP OUTSIDE THE
12 DOOR FOR JUST A MOMENT.
13 (THE JUROR LEFT THE COURTROOM.)

14 THE COURT: WHAT SAYS THE STATE?

15 MR. BRACKETT: I SUBMIT SHE'S QUALIFIED, YOUR
16 HONOR.

17 THE COURT: WHAT SAYS THE DEFENSE?

18 MR. HANCOCK: QUALIFIED, YOUR HONOR.

19 THE COURT: I FIND SHE IS QUALIFIED. WOULD YOU
20 BRING HER BACK IN, MR. IVEY?

21 (THE JUROR RETURNED TO THE COURTROOM.)

22 THE COURT: MS. MOORE, WE ARE GOING TO INCLUDE
23 YOU ON THE POOL FROM WHICH THE JURY WILL BE DRAWN. CALL
24 BACK TONIGHT AFTER 6:00 AND THEY WILL TELL YOU WHEN TO
25 REPORT AND WHAT TO BRING. YOU WILL BRING, OF COURSE,

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1 CLOTHING AND TOILETRY ITEMS FOR APPROXIMATELY A WEEK'S
2 STAY. THEY WILL TELL YOU SOME THINGS PERHAPS NOT TO BRING.

3 ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT WE
4 NEED TO KNOW ABOUT THAT WOULD INTERFERE WITH YOUR SERVICE?

5 THE JUROR: NO.

6 THE COURT: EVEN THOUGH YOU'RE NOT ON THE JURY,
7 YOU POSSIBLY WILL BE. YOU'RE A POTENTIAL JUROR, SO YOU
8 STILL CAN'T DISCUSS THIS CASE WITH ANYONE AND IF ANYONE
9 TRIES TO DISCUSS THE CASE WITH YOU, TELL THEM YOU CANNOT,
10 AND REPORT BACK TO ME IF THEY DO.

11 AND YOU CAN'T LET YOURSELF BE EXPOSED, AS I
12 BELIEVE I TOLD EVERYBODY EARLIER IN THE JURY ROOM
13 DOWNSTAIRS, DON'T READ ABOUT IT, WATCH IT OR LISTEN TO IT.
14 YOU'VE GOT TO MAKE YOUR DECISION ON WHAT YOU HEAR IN HERE,
15 SO DON'T LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE OR
16 ANY CONVERSATION ABOUT THE CASE. AND CALL BACK TONIGHT
17 AFTER 6:00. THANK YOU.

18 (THE JUROR LEFT THE COURTROOM.)

19 THE COURT: MR. GOFF, JAMES GOFF.

20 JAMES G. GOFF, JUROR NUMBER 94, WHITE MALE, WAS
21 QUESTIONED AS FOLLOWS:

22 QUESTIONS BY THE COURT:

23 Q. MR. GOFF, JUST COME ON UP HERE AND HAVE A SEAT
24 PLEASE, SIR. MR. GOFF, I'M JOHN HAYES AND I'M
25 THE JUDGE THAT HAS BEEN ASSIGNED TO PRESIDE OVER

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1 THIS TRIAL. AND I WANT TO REMIND YOU THAT YOU
2 ARE STILL UNDER OATH, OKAY?

3 A. YES, SIR.

4 Q. DURING THE COURSE OF THE TRIAL IF YOU SIT ON THE
5 TRIAL, YOU MAY NOTICE CAMERAS OR PHOTOGRAPHERS
6 IN THE COURTROOM. THEY ARE ALLOWED BY LAW TO BE
7 HERE BUT THEY CANNOT FILM YOU OR THE JURY AND
8 THEY CAN'T REPORT ANYTHING ABOUT YOU, SO I DON'T
9 WANT YOU TO BE DISTRACTED BY THAT.

10 YOU HANDED US A QUESTIONNAIRE, DO YOU NEED TO
11 MAKE ANY CHANGES TO IT OR DO YOU RECALL IT BEING
12 CORRECT?

13 A. I THINK IT'S CORRECT NOW.

14 Q. DID YOU HAVE A CHANCE TO REVIEW THE WITNESS LIST
15 IN THE JURY ROOM?

16 A. YES, I DON'T KNOW ANYBODY. I JUST MOVED HERE A
17 COUPLE OF YEARS AGO.

18 Q. YOU DIDN'T KNOW ANYBODY AND ARE NOT RELATED TO
19 ANYBODY?

20 A. NO.

21 Q. PRIOR TO YOUR COMING HERE AND, OF COURSE, YOU
22 HAVE BEEN TOLD MONDAY THE NAME OF THE DEFENDANT
23 AND THE TYPE OF CASES THAT ARE BEING TRIED,
24 OTHER THAN THAT HAVE YOU HEARD ANYTHING ABOUT
25 THIS CASE, EXPRESSED AN OPINION ABOUT IT, FORMED

1 AN OPINION OR READ ANYTHING IN THE PAPER OR SEEN
2 ANYTHING ON T.V.?

3 A. NO, SIR.

4 Q. THIS CASE WOULD GO FORWARD IN TWO SEPARATE
5 SEGMENTS OR COULD. THE FIRST HAS TO DO WITH
6 WHETHER OR NOT A JURY WERE TO FIND MR. ROBERTSON
7 GUILTY UNANIMOUSLY BEYOND A REASONABLE DOUBT OF
8 MURDER. IF THE JURY FOUND NOT GUILTY, THEN THE
9 CASE WOULD BE OVER.

10 AND MR. ROBERTSON IS PRESUMED INNOCENT OF THESE
11 CHARGES UNTIL SUCH TIME AS A JURY WERE
12 CONVICTED.

13 IF THE JURY DID CONVICT HIM, WE WOULD MOVE INTO
14 A SECOND PART OR A SECOND PHASE WHICH WOULD BE
15 THE PENALTY PHASE WHEREIN THE ISSUE WOULD BE
16 WHAT PENALTY WOULD BE THE APPROPRIATE PENALTY TO
17 BE IMPOSED ON HIM, HAVING ALREADY BEEN FOUND
18 GUILTY OF MURDER. DO YOU UNDERSTAND THAT?

19 A. UH HUH.

20 Q. I WANT YOU TO UNDERSTAND THAT WHILE WE ARE
21 TALKING ABOUT THIS SECOND PHASE, THAT DOESN'T
22 PRESUPPOSE THAT WE WILL EVER GET THERE. WE JUST
23 HAVE TO TALK ABOUT IT NOW BECAUSE OF THE NATURE
24 OF THE PROCEEDINGS. YOU UNDERSTAND THAT?

25 A. YES.

1 Q. DID YOU FIND ON THAT LIST OF JUROR TYPES ANY OF
2 THOSE THAT WOULD APPLY TO YOU AS THE TYPE JUROR
3 YOU THINK YOU MAY BE?

4 A. TYPE THREE.

5 Q. IN TYPE THREE I HAD USED WORDS AGGRAVATING AND
6 MITIGATING WHEN TALKING ABOUT THE FACTS AND
7 CIRCUMSTANCES.

8 AGGRAVATING CIRCUMSTANCES ARE THOSE WHICH ATTEND
9 THE COMMISSION OF A CRIME WHICH ADD TO ITS
10 ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCE.
11 THEY ARE THINGS OVER AND ABOVE JUST THE ELEMENTS
12 OF THE CRIME ITSELF.

13 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH
14 WOULD NOT CONSTITUTE JUSTIFICATION OR EXCUSE BUT
15 ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE
16 CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE
17 OF ONE'S MORAL CULPABILITY. DO YOU UNDERSTAND
18 THAT?

19 A. YES, SIR.

20 Q. SO, YOU'RE TELLING ME THAT AS JUROR TYPE THREE,
21 YOU WOULD BE THE TYPE OF JUROR WHO EVEN THOUGH
22 MR. ROBERTSON WOULD HAVE AT THAT POINT BEEN
23 FOUND GUILTY, YOU WOULD NOT HAVE MADE UP YOUR
24 MIND AT THAT POINT CONCERNING WHAT THE
25 APPROPRIATE PUNISHMENT WOULD BE. IS THAT

1 CORRECT?

2 A. YES, SIR.

3 Q. YOU'RE TELLING ME THAT DURING THAT SECOND PART
4 YOU WOULD WANT TO HEAR THE FACTS AND
5 CIRCUMSTANCES IN AGGRAVATION AND MITIGATION, THE
6 JUDGE'S CHARGE ON THE LAW AND ONLY AFTER HEARING
7 ALL THAT WOULD YOU DETERMINE WHAT WOULD BE THE
8 APPROPRIATE PENALTY. IS THAT THE TYPE JUROR YOU
9 ARE?

10 A. YES, SIR.

11 Q. AND WHEN YOU REACHED THAT POINT IF YOU FELT THAT
12 THE FACTS WARRANTED IT, COULD YOU RETURN A
13 VERDICT OF LIFE IN PRISON?

14 A. I COULD.

15 Q. COULD YOU IF YOU FELT THE FACTS WARRANTED IT,
16 BRING IN AND RETURN A VERDICT OF THE DEATH
17 PENALTY?

18 A. I COULD.

19 Q. ALL RIGHT, ANSWER ANY QUESTIONS THAT THEY MAY
20 HAVE.

21 QUESTIONS BY MR. BOYD:

22 Q. GOOD AFTERNOON, MR. GOFF; HOW ARE YOU?

23 A. FINE; HOW ARE YOU?

24 A. JUST FINE. I'M JIM BOYD AND I REPRESENT JIMMY
25 ROBERTSON IN THIS CASE. THAT'S HIM SEATED OVER

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1 THERE AT THE END OF THAT TABLE, AND THAT'S MY
2 CO-COUNSEL, BILL HANCOCK, SITTING THERE.

3 I NEED TO FOLLOW UP WITH YOU ON A FEW QUESTIONS
4 THE JUDGE ASKED YOU. FIRST I WANT TO TELL YOU,
5 HE EXPLAINED TO YOU THAT THIS IS POTENTIALLY A
6 TWO PHASE TRIAL. IN THE FIRST PHASE IF YOU'RE
7 SITTING AS A JUROR, YOU WOULD BE DETERMINING
8 WHETHER OR NOT JIMMY ROBERTSON SHOULD BE FOUND
9 GUILTY OR NOT GUILTY OF THE CRIME. DO YOU
10 UNDERSTAND THAT?

11 A. YES.

12 Q. AND, OF COURSE, IF HE IS FOUND NOT GUILTY, THEN
13 IT DOESN'T EVEN GO INTO A SECOND PHASE OF THE
14 TRIAL.

15 A. RIGHT.

16 Q. YOU UNDERSTAND THAT?

17 A. UH HUH.

18 Q. AND YOU UNDERSTAND THAT IT IS THE DUTY OF THE
19 STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT
20 IN THE FIRST PHASE OF THE TRIAL.

21 A. THAT'S RIGHT.

22 Q. BECAUSE EVEN INNOCENT PEOPLE CAN BE MISTAKENLY
23 CHARGED FOR A CRIME. YOU UNDERSTAND THAT?

24 A. RIGHT.

25 Q. OKAY. NOW, IN THE SECOND PHASE OF THE TRIAL IF

1 IT GETS TO THAT POINT, I'M GOING TO ASK YOU A
2 FEW QUESTIONS ABOUT THAT. AND BY ASKING YOU
3 THOSE QUESTIONS -- FOR PURPOSES OF THESE
4 QUESTIONS, YOU'RE ASSUMING THAT WE'VE GOT TO
5 THAT POINT, BUT I DON'T WANT TO IMPLY THAT WE
6 ARE GOING TO GET TO THAT POINT JUST BY ME ASKING
7 YOU THESE QUESTIONS.

8 A. I UNDERSTAND.

9 Q. THIS IS JUST THE ONLY CHANCE THAT I GET TO ASK
10 THAT. OKAY?

11 A. RIGHT.

12 Q. NOW, LET'S ASSUME THAT JIMMY ROBERTSON HAS BEEN
13 FOUND GUILTY OF MURDER. AND DO YOU UNDERSTAND
14 WHAT HE'S CHARGED WITH AS FAR AS HE IS CHARGED
15 WITH KILLING HIS MOTHER AND HIS FATHER.

16 A. OKAY.

17 Q. DID YOU KNOW THAT?

18 A. NO, I DIDN'T KNOW THAT.

19 Q. WELL, THAT IS WHAT HE IS CHARGED WITH DOING.

20 A. OKAY.

21 Q. KNOWING THAT, KNOWING THAT HE'S CHARGED WITH
22 KILLING HIS MOTHER AND HIS FATHER, CAN YOU STILL
23 CONSIDER A LIFE SENTENCE AS OPPOSED TO A DEATH
24 SENTENCE KNOWING THAT?

25 A. YES.

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1 Q. AND IF IT GETS TO THAT PENALTY PHASE, THE STATE
2 WILL PRESENT EVIDENCE IN WHAT'S CALLED
3 AGGRAVATION ABOUT THE CRIME. THAT'S THINGS THAT
4 MAKE THE MURDERS WORSE. DO YOU SEE WHAT I'M
5 TALKING ABOUT?

6 A. YES.

7 Q. THEY CAN GO INTO DIFFERENT THINGS ABOUT IT THAT
8 MAKE IT WORSE. WE ON THE OTHER HAND, IF WE WANT
9 TO, WE DON'T HAVE TO, BUT WE CAN PRESENT
10 EVIDENCE IN WHAT'S CALLED MITIGATION. AND YOU
11 UNDERSTAND, MITIGATION IS NOT A DEFENSE TO WHAT
12 HE WOULD HAVE BEEN CONVICTED OF, IT DOESN'T
13 EXCUSE WHAT HE DID, BUT IT WOULD BE THINGS
14 POTENTIALLY ABOUT HIM OR ABOUT THE SURROUNDING
15 CIRCUMSTANCES THAT MAY MAKE HIM LESS CULPABLE.
16 DO YOU SEE WHAT I'M SAYING?

17 A. UH HUH.

18 Q. OKAY. AND IN THAT EVENT WOULD YOU BE WILLING TO
19 CONSIDER THE MATTERS THAT WE WOULD PRESENT IN
20 MITIGATION?

21 A. YES.

22 Q. YOU WOULD CONSIDER THOSE THINGS, IS THAT
23 CORRECT?

24 A. YES.

25 Q. SO YOU WOULDN'T AUTOMATICALLY, JUST BECAUSE HE'S

1 BEEN CONVICTED OF MURDERING BOTH OF HIS PARENTS,
2 ASSUME THAT A DEATH SENTENCE IS THE APPROPRIATE
3 PUNISHMENT?

4 A. NO.

5 Q. OKAY. SO, YOU COULD GO EITHER WAY DEPENDING ON
6 OTHER EVIDENCE YOU HEAR IN THE CASE?

7 A. YES.

8 Q. OKAY. THERE ARE A FEW OTHER THINGS I WANT TO
9 ASK YOU AND I'LL LEAVE YOU ALONE. ONE THING I
10 WANT YOU TO REMEMBER AND, OF COURSE, YOU KNOW AS
11 A JUROR YOU'LL HAVE AN OPINION, OTHER JURORS MAY
12 HAVE DIFFERING OPINIONS. YOU UNDERSTAND THAT.

13 A. THAT'S RIGHT.

14 Q. OKAY. AND YOU'RE ENTITLED TO HAVE YOUR OPINION
15 RESPECTED BY THE OTHER JURORS. YOU UNDERSTAND
16 THAT.

17 A. THAT'S RIGHT.

18 Q. ON THE OTHER HAND, YOU HAVE AN OBLIGATION TO
19 RESPECT THE OTHER JUROR'S OPINIONS, TOO.

20 A. UH HUH, YES.

21 Q. IF AFTER DUE DELIBERATION AND AFTER LISTENING TO
22 ALL OF THE EVIDENCE AND WHAT THE OTHER JURORS
23 HAD TO SAY, YOU WERE CONVINCED, LET'S JUST GIVE
24 AN EXAMPLE, YOU WERE CONVINCED THAT IT SHOULD BE
25 LIFE IN PRISON AND THE OTHER JURORS, EVEN ELEVEN

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1 OF THEM, SAID THAT WE THINK IT SHOULD BE DEATH.
2 WOULD YOU CHANGE YOUR VOTE TO BE IN THE MAJORITY
3 BECAUSE THE OTHER ELEVEN WAS AGAINST YOU?

4 A. IF I KNEW -- I DON'T KNOW. I DON'T KNOW HOW TO
5 ANSWER THAT.

6 Q. WHAT I GUESS I MEANT IS WOULD YOU CHANGE YOUR
7 VOTE SO THAT YOU COULD GET A VERDICT AND GET OUT
8 OF THERE?

9 A. NO, NO, I WOULDN'T DO THAT.

10 Q. OKAY. EVEN IF THE OTHERS WERE AGAINST YOU. AND
11 I UNDERSTAND YOU CAN LISTEN TO THEM ---

12 A. YEAH, YEAH.

13 Q. --- AND CONSIDER WHAT THEY ARE SAYING. BUT
14 UNLESS YOU WERE CONVINCED IN YOUR MIND THAT IT
15 WAS THE RIGHT THING TO DO, WOULD YOU CHANGE YOUR
16 MIND?

17 A. NO.

18 Q. OKAY, THANK YOU; THAT'S ALL THE QUESTIONS I
19 HAVE.

20 QUESTIONS BY MR. BRACKETT:

21 Q. GOOD AFTERNOON, MR. GOFF.

22 A. GOOD AFTERNOON.

23 Q. MY NAME IS KEVIN BRACKETT, AND I'M WITH THE
24 SOLICITOR'S OFFICE. SEATED OVER AT COUNSEL
25 TABLE WITH ME IS TOMMY POPE. SOLICITOR POPE AND

1 I WILL BE PROSECUTING MR. ROBERTSON FOR THESE
2 CHARGES AND I JUST WANT TO KIND OF FOLLOW UP
3 WITH A FEW BRIEF QUESTIONS ALONG THE SAME LINES.

4 A. OKAY.

5 Q. AS I UNDERSTAND IT, YOU KNOW THIS IS A TWO PART
6 TRIAL.

7 A. YES.

8 Q. THE FIRST PART IS GUILT OR INNOCENCE; IT DOESN'T
9 HAVE ANYTHING TO DO WITH THE DEATH PENALTY, JUST
10 WHETHER OR NOT HE DID IT. AND YOU DON'T HAVE
11 ANY IDEAS ONE WAY OR ANOTHER BECAUSE YOU HAVEN'T
12 HEARD ANY EVIDENCE. IS THAT RIGHT?

13 A. THAT'S RIGHT.

14 Q. AND YOU COULD BE FAIR AND IMPARTIAL, LISTEN TO
15 THE EVIDENCE. IF HE'S GUILTY, YOU'LL VOTE
16 GUILTY; IF HE'S NOT, YOU'LL VOTE NOT.

17 A. THAT'S RIGHT.

18 Q. OKAY. AND THEN WE GO TO THE SECOND PHASE. IN
19 THE SECOND PHASE THERE WE ARE EXCLUSIVELY
20 CONCERNED WITH PUNISHMENT AND THE OPTIONS ARE
21 LIFE AND DEATH. AND WHAT YOU'VE SAID IS THAT IF
22 YOU FIND THAT THE DEFENDANT DESERVES LIFE
23 IMPRISONMENT AFTER LISTENING TO THE EVIDENCE
24 FROM THE STATE AND FROM THE DEFENSE, ANYTHING
25 THEY CHOOSE TO PUT UP, IF YOU THINK THAT THE

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1 SENTENCE SHOULD BE LIFE, YOU COULD VOTE FOR LIFE
2 IN PRISON?

3 A. I COULD.

4 Q. AND IF YOU THINK THAT AFTER HEARING ALL OF THE
5 EVIDENCE IT SHOULD BE DEATH, YOU COULD VOTE FOR
6 DEATH AS WELL?

7 A. I COULD.

8 Q. OKAY. ONE OF THE REQUIREMENTS IN A CAPITAL
9 MURDER CASE -- AND YOU'VE SERVED ON A JURY
10 BEFORE I SAW ON YOUR QUESTIONNAIRE; IS THAT
11 RIGHT?

12 A. YES, IT WAS JUST A CIVIL CASE.

13 Q. AND HOW LONG AGO WAS THAT?

14 A. I THINK IT'S BEEN ABOUT EIGHT YEARS.

15 Q. WERE YOU THE FOREMAN BY ANY CHANCE?

16 A. NO.

17 Q. WELL, YOU KNOW THE RESPONSIBILITIES OF A FOREMAN
18 EVEN IN A CIVIL CASE IT'S THE SAME
19 RESPONSIBILITIES, THE FOREMAN, FOREPERSON,
20 FORELADY IF IT'S A WOMAN REPORTS THE VERDICT OF
21 THE JURY.

22 A. YES.

23 Q. IN ALMOST EVERY TYPE OF CASE, CIVIL OR CRIMINAL,
24 THEY REPORT THE VERDICT OF THE JURY. AND THEY
25 DO THAT BY WRITING WHAT THEIR VERDICT IS, AND

1 THEN SIGNING THEIR NAME UNDERNEATH.

2 A. RIGHT.

3 Q. AND THAT'S THE SAME IN MOST EVERY CRIMINAL CASE
4 INCLUDING THIS ONE IN THE FIRST PART. THE ONLY
5 PERSON THAT HAS TO SIGN IS THE FOREPERSON.
6 IN THE SECOND PART OF THE TRIAL, LIFE OR DEATH,
7 IF THE JURY DECIDES THAT THE VERDICT IS LIFE,
8 AGAIN THE ONLY PERSON THAT HAS TO WRITE THAT IS
9 THE FOREPERSON; WRITES LIFE, SIGNS THEIR NAME,
10 THAT'S THE END OF THE MATTER.

11 IF, HOWEVER, THE VERDICT IS DEATH AND THE JURY
12 DECIDES THAT THIS DEFENDANT SHOULD BE SENTENCED
13 TO DEATH, THEN EACH AND EVERY JUROR ON THAT JURY
14 HAS TO SIGN THE VERDICT SHEET INDICATING THAT
15 THEY WANT TO SEND THIS MAN TO DEATH.

16 IF IT BECAME, AFTER LISTENING TO THE EVIDENCE IN
17 AGGRAVATION, THE EVIDENCE IN MITIGATION, HEARING
18 THE JUDGE EXPLAIN WHAT THE LAW IS, IF AFTER
19 HEARING ALL OF THAT AND DELIBERATING WITH THE
20 OTHER JURORS YOU DECIDED THAT THE VERDICT SHOULD
21 BE DEATH, COULD YOU TAKE A PEN IN YOUR HAND AND
22 SIGN JAMES GOFF ON A SHEET SENTENCING AND
23 SENDING THIS MAN TO DEATH?

24 A. YES.

25 Q. OKAY, SIR. ONE FINAL QUESTION. THE DEFENSE

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1 ASKED YOU A COUPLE OF QUESTIONS ABOUT YOUR
2 INTERACTION WITH OTHER JURORS AND WOULD YOU
3 CHANGE YOUR MIND JUST TO SUIT THE OTHER JURORS.
4 YOU'D STICK TO YOUR CONVICTIONS IF THEY WERE
5 HEARTFELT?

6 A. THAT'S RIGHT.

7 Q. BUT THAT DOESN'T MEAN YOU WOULDN'T LISTEN TO THE
8 OTHER JURORS, WOULD IT?

9 A. NO.

10 Q. OF COURSE, YOU'RE GOING TO DELIBERATE WITH THEM,
11 TALK TO THEM, KEEP YOUR MIND OPEN. IF THEY
12 POINT OUT SOMETHING YOU HADN'T THOUGHT OF, YOU
13 MIGHT CHANGE YOUR MIND IF IT'S A GOOD ENOUGH
14 REASON, RIGHT?

15 A. THAT'S RIGHT.

16 Q. THANK YOU VERY MUCH, MR. GOFF.

17 THE COURT: MR. GOFF, IF YOU WOULD JUST STEP
18 RIGHT OUTSIDE THE DOOR FOR JUST A MOMENT.
19 (THE JUROR LEFT THE COURTROOM.)

20 THE COURT: WHAT SAYS THE STATE?

21 MR. BRACKETT: I SUBMIT HE'S QUALIFIED.

22 THE COURT: WHAT SAYS THE STATE?

23 MR. BOYD: HE'S QUALIFIED, YOUR HONOR.

24 THE COURT: I FIND THAT HE IS QUALIFIED. ALL
25 RIGHT, BRING HIM BACK IN.

1 (THE JUROR RETURNED TO THE COURTROOM.)

2 THE COURT: MR. GOFF, WE'RE GOING TO INCLUDE YOU
3 IN THE POOL FROM WHICH THE JURY WILL BE DRAWN. THAT DOES
4 NOT NECESSARILY MEAN THAT YOU ACTUALLY WILL BE ON THE JURY
5 BECAUSE WE WILL TAKE A GROUP AND COMPRESS IT DOWN.

6 PLEASE CALL BACK TONIGHT AFTER 6:00 AND YOU WILL
7 RECEIVE INSTRUCTIONS. AND THEY WILL INCLUDE WHAT TO BRING.
8 OF COURSE, BRING CLOTHING AND TOILETRY ITEMS TO PLAN ON
9 STAYING A WEEK, I THINK IT WILL BE ABOUT THAT LONG.

10 ARE THERE ANY EXTENUATING CIRCUMSTANCES
11 CONCERNING YOUR SERVICE THAT WE NEED TO BE AWARE OF?

12 THE JUROR: NO, SIR.

13 THE COURT: DON'T TALK ABOUT THE CASE TO ANYONE.
14 IF ANYONE TRIES TO DISCUSS THIS CASE WITH YOU, TELL THEM
15 YOU CANNOT, THAT YOU ARE A JUROR. AND REPORT BACK TO ME IF
16 ANYBODY TRIES TO TALK TO YOU ABOUT IT.

17 AND DON'T LET YOURSELF BE EXPOSED TO ANY NEWS
18 COVERAGE IF THERE IS ANYTHING THAT EVEN REMOTELY LOOKS LIKE
19 IT COULD DEAL WITH THIS CASE, PLEASE DON'T PAY ANY
20 ATTENTION TO IT, OKAY?

21 THE JUROR: OKAY.

22 THE COURT: CALL BACK AFTER 6:00 TONIGHT.

23 THE JUROR: OKAY.

24 (THE JUROR LEFT THE COURTROOM.)

25 THE COURT: MY COUNT IS 34, DOES THAT JIVE WITH

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1 Y'ALL?

2 MR. BRACKETT: YES, SIR, YOUR HONOR.

3 THE COURT: ALL RIGHT, CHRISTOPHER WILSON.

4 CHRISTOPHER J. WILSON, JUROR NUMBER 291, WHITE
5 MALE, WAS QUESTIONED AS FOLLOWS:

6 QUESTIONS BY THE COURT:

7 Q. COME UP HERE AND HAVE A SEAT PLEASE, SIR. MR.
8 WILSON, I'M JOHN HAYES AND I'M THE JUDGE
9 ASSIGNED TO PRESIDE OVER THIS CASE AND I WANT TO
10 REMIND YOU THAT YOU'RE UNDER OATH. DO YOU
11 UNDERSTAND THAT?

12 A. YES, SIR.

13 Q. NOW, IF YOU ARE SEATED ON THIS JURY, YOU WILL
14 PERHAPS SEE PHOTOGRAPHERS OR CAMERAS HERE IN THE
15 COURTROOM. DON'T LET THAT INTIMIDATE YOU OR
16 DON'T BE DISTRACTED BY IT BECAUSE THEY CANNOT
17 SHOW YOU, THEY CANNOT FILM THE JURORS OR REPORT
18 ABOUT THE JURORS. OKAY?

19 A. OKAY.

20 Q. YOU HAVE TURNED IN A JUROR INFORMATION CARD AND
21 A QUESTIONNAIRE AND SOME INFORMATION ON IT. IS
22 THAT CORRECT OR DO YOU NEED TO MAKE ANY CHANGES
23 TO IT?

24 A. NO, SIR.

25 Q. IT'S CORRECT?

1 A. IT'S CORRECT.

2 Q. DID YOU GET A CHANCE TO REVIEW THE WITNESS LIST
3 BACK THERE IN THE JURY ROOM?

4 A. YES, SIR.

5 Q. WAS ANYBODY ON THERE TO WHOM YOU ARE RELATED BY
6 BLOOD OR MARRIAGE?

7 A. NO, SIR.

8 Q. ANYBODY ON THERE YOU KNEW?

9 A. NO, SIR.

10 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
11 YOU GOT HERE? I KNOW MONDAY I HAD THE
12 INDICTMENTS READ AND INTRODUCED YOU TO THE
13 PEOPLE INVOLVED, BUT HAVE YOU RECEIVED ANY
14 INFORMATION OTHER THAN THAT REGARDING THIS
15 TRIAL, HAVE YOU FORMED AN OPINION OR DISCUSSED
16 THE CASE OR READ OR HEARD ABOUT IT?

17 A. NO, SIR.

18 Q. THIS CASE WILL PROCEED IN TWO PARTS. THE FIRST
19 DEALING WITH WHETHER OR NOT A JURY WOULD FIND
20 MR. ROBERTSON GUILTY OF MURDER. THEY WOULD HAVE
21 TO FIND HIM GUILTY OF MURDER BEYOND A REASONABLE
22 DOUBT BY A UNANIMOUS VERDICT.
23 HE IS PRESUMED INNOCENT UNTIL THAT WERE TO
24 OCCUR. IF HE WERE FOUND NOT GUILTY, THE CASE
25 WOULD END. IF HE WERE FOUND GUILTY, THE CASE

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1 WOULD PROCEED INTO WHAT'S CALLED THE PENALTY
2 PHASE.

3 WE'RE TALKING ABOUT THAT SECOND PART EVEN THOUGH
4 WE ARE NOT SURE WE WILL GET THERE BECAUSE WE
5 WILL NOT GET THERE UNLESS HE IS FOUND GUILTY.
6 DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. DID YOU REVIEW THE JUROR TYPES THAT WERE SET
9 FORTH ON THAT LIST IN THE JURY ROOM?

10 A. YES, SIR.

11 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

12 A. YES, SIR.

13 Q. WHICH ONE?

14 A. THE SECOND ONE.

15 Q. ALL RIGHT, THE SECOND, THAT IS THE TYPE OF JUROR
16 WHO EVEN THOUGH ONE HAS BEEN FOUND GUILTY OF
17 MURDER WOULD UNDER NO CIRCUMSTANCES GIVE THE
18 DEATH PENALTY. THAT IS, SOMEONE WHO REGARDLESS
19 OF WHAT WAS PRESENTED IN THE PENALTY PHASE AS
20 FAR AS CIRCUMSTANCES OF AGGRAVATION, THIS JUROR,
21 YOU'RE TELLING ME YOU'RE THIS TYPE, WOULD HAVE
22 YOUR MIND MADE UP CONCERNING PUNISHMENT AND
23 WOULD NOT GIVE THE DEATH PENALTY NO MATTER WHAT
24 YOU HEARD AT THAT SECOND PHASE. IS THAT
25 CORRECT?

1 A. YES, SIR.

2 Q. ALL RIGHT, ANSWER ANY QUESTIONS THE ATTORNEYS
3 MAY HAVE.

4 QUESTIONS BY MR. POPE:

5 Q. MR. WILSON, I'M TOMMY POPE; I'M THE SOLICITOR
6 HERE IN YORK COUNTY. MR. KEVIN BRACKETT IS MY
7 DEPUTY SOLICITOR, AND WE REPRESENT THE STATE.
8 HAVE YOU EVER BEEN IN A SITUATION LIKE THIS
9 BEFORE WHERE YOU HAD TO BE QUESTIONED LIKE THIS?

10 A. NO, SIR.

11 Q. OKAY. WELL, LET ME TELL YOU ONE THING OFF THE
12 BAT, YOU CAN'T GIVE A WRONG ANSWER. YOU KNOW,
13 YOU'RE UP HERE AND WE'VE SWORN YOU IN AND
14 EVERYBODY IS AROUND. WHATEVER CHRIS WILSON
15 THINKS, THAT'S WHAT WE WANT TO KNOW ABOUT. YOU
16 KNOW, JUST LIKE YOU'RE TELLING THE JUDGE ABOUT
17 WHAT CATEGORY YOU'RE IN AND STUFF LIKE THAT, YOU
18 CAN'T GIVE A WRONG ANSWER.

19 SO, I DON'T WANT YOU TO FEEL LIKE YOU'RE GETTING
20 INTERROGATED BECAUSE AFTER THE JUDGE GETS
21 THROUGH, I GET THROUGH, THEN THEY ARE GOING TO
22 ASK YOU SOME QUESTIONS, TOO. BUT I JUST WANT TO
23 KIND OF HELP YOU BE AT EASE A LITTLE BIT.

24 HAVE YOU EVER SERVED ON A JURY BEFORE?

25 A. NO, SIR.

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1 Q. SO, THIS WHOLE SHOOTING MATCH IS A NEW
2 EXPERIENCE FOR YOU, IS THAT RIGHT?

3 A. YES, SIR.

4 Q. OKAY. WELL, AGAIN I'LL TELL YOU THAT WHATEVER
5 YOUR ANSWERS ARE OR WHAT YOU'RE TELLING US FROM
6 YOUR HEART AND YOUR MIND IS THE WAY YOU FEEL.
7 AND I'M GOING TO GO RIGHT TO IT. YOU HAD SAID
8 THAT YOU WERE THE TYPE OF JUROR THAT WOULD JUST
9 NEVER GIVE THE DEATH PENALTY. IS THAT RIGHT?

10 A. THAT'S RIGHT.

11 Q. OKAY. AND IS THIS A -- I GUESS YOU -- AGAIN,
12 YOU HAVEN'T SAT IN A CHAIR AND HAD TO THINK
13 ABOUT IT BEFORE LIKE THIS, BUT IS THIS SOMETHING
14 YOU'VE THOUGHT ABOUT OR HAD A CHANCE TO THINK
15 ABOUT SINCE READING THAT OR HAVE YOU FELT LIKE
16 THIS A LONG TIME IN YOUR LIFE?

17 A. I'M CATHOLIC AND I DON'T BELIEVE IN THE DEATH
18 PENALTY.

19 Q. OKAY. AND AGAIN THAT'S YOUR ANSWER. I'M NOT
20 TRYING TO CHANGE YOUR ANSWER, I'M JUST TRYING TO
21 UNDERSTAND A LITTLE BIT MORE ABOUT IT.

22 Q. CHRIS, IS THERE ANY CIRCUMSTANCE -- WHAT YOU'RE
23 TELLING ME IS JUST BASED ON YOUR RELIGIOUS VIEWS
24 NO MATTER WHAT THE CASE -- AND, OF COURSE, YOU
25 DON'T KNOW ANYTHING ABOUT THE FACTS OF THIS CASE

1 ANYWAY, BUT YOU'RE TELLING ME NO MATTER WHAT THE
2 CASE -- SOLICITOR, YOU CAN BRING THE WORSE THING
3 IN THE WORLD, JUST THE WAY CHRIS WILSON FEELS,
4 HE'S NOT GOING TO GIVE THE DEATH PENALTY. IS
5 THAT A FAIR STATEMENT?

6 A. YES, SIR.

7 Q. AND, AGAIN, YOU KNOW, WE WILL SHOW WHAT'S CALLED
8 EVIDENCE IN AGGRAVATION, YOU KNOW, WE SHOW BAD
9 THINGS ABOUT THE CASE. OF COURSE, THEY WOULD
10 SHOW THINGS IN MITIGATION. I COULD BRING IT IN
11 BY THE TRUCK LOAD AND JUST BASED ON YOUR VIEWS
12 AND YOUR CATHOLIC VIEWS, I'M NOT GOING TO CHANGE
13 YOU NO MATTER IF I SHOW YOU ONE DAY'S WORTH OF
14 TESTIMONY OR A HUNDRED DAYS BECAUSE THAT'S JUST
15 THE WAY YOU FEEL. IS THAT A FAIR STATEMENT?

16 A. YES, SIR.

17 Q. LET ME ASK YOU ANOTHER QUESTION. PART OF THE
18 DEATH PENALTY, AND OF COURSE YOU REALIZE THAT
19 THIS MAN IS INNOCENT UNTIL PROVEN GUILTY AND
20 WE'VE GOT TO PROVE THAT FIRST. YOU UNDERSTAND
21 THAT FROM WHAT THE JUDGE SAID, RIGHT?

22 A. YES, SIR.

23 Q. WELL, AS PART OF THE SECOND PHASE -- SAY WE DO
24 GET HIM CONVICTED, WE PROVED THE CASE AND GET TO
25 THE SECOND PHASE, THAT'S WHEN YOU DECIDE LIFE OR

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1 DEATH. AND THAT'S WHEN YOU SAY EVERY TIME YOU'D
2 VOTE LIFE NO MATTER WHAT. RIGHT?

3 A. YES, SIR.

4 Q. IF YOU'RE ON THE JURY AND THE TWELVE JURORS VOTE
5 FOR LIFE, THEN JUST THE FOREPERSON, ONE OF THE
6 TWELVE THAT KIND OF REPRESENTS THE JURY, WOULD
7 SIGN THEIR NAME. AND THEY WOULD SIGN THEIR NAME
8 SAYING WE VOTED AND EVERYBODY VOTED LIFE. AND
9 OF COURSE IF YOU'RE ON THE JURY, YOU COULD VOTE
10 FOR LIFE, COULDN'T YOU?

11 A. YES, SIR.

12 Q. OKAY. BUT NOW IF THEY VOTE FOR DEATH, AND OF
13 COURSE YOU TOLD ME, AND I'M NOT TRYING TO RUN IT
14 IN THE GROUND, BUT YOU TOLD ME THAT YOU WOULD
15 NOT VOTE FOR DEATH, BUT IF EVERYBODY VOTED FOR
16 DEATH, THEN EACH INDIVIDUAL JUROR WOULD HAVE TO
17 SIGN THEIR NAME. AND WHATEVER THE JURY SAID,
18 THE JUDGE WOULD DO. IF YOU SAID LIFE, THAT'S
19 WHAT HE WOULD DO; IF YOU SAID DEATH, THAT'S WHAT
20 HE'D DO. WHAT YOU'RE TELLING ME IS THAT THERE
21 IS NO WAY, NO SET OF CIRCUMSTANCES THAT CHRIS
22 WILSON IS GOING TO SIGN HIS NAME TO GIVE THIS
23 MAN THE DEATH PENALTY. IS THAT RIGHT?

24 A. THAT'S RIGHT.

25 Q. OKAY. EVEN THE FACT THAT HE KILLED -- AND, OF

1 COURSE, AT THAT POINT HE WOULD HAVE BEEN
2 CONVICTED OF KILLING HIS PARENTS. WHAT YOU ARE
3 TELLING ME IS THAT THAT JUST AIN'T FOR YOU.
4 YOU'RE NOT GOING TO SIGN YOUR NAME, NO MATTER
5 WHAT, I COULD GRAB YOUR ARM, BUT YOU'RE NOT
6 GOING TO SIGN YOUR NAME TO GIVE THE MAN THE
7 DEATH PENALTY. IS THAT A FAIR STATEMENT?

8 A. YES, I WOULD NOT.

9 Q. MR. WILSON, THANK YOU. I APPRECIATE YOU BEING
10 HONEST WITH ME.

11 QUESTIONS BY MR. HANCOCK:

12 Q. MR. WILSON, I AM JIMMY ROBERTSON'S ATTORNEY,
13 BILL HANCOCK. THIS IS JIMMY SEATED HERE, HE IS
14 THE DEFENDANT IN THIS CASE. AND THIS IS CO-
15 COUNSEL, MR. JIM BOYD SEATED BESIDE HIM.

16 AGAIN, THERE ARE NO RIGHT AND WRONG ANSWERS. I
17 JUST WANT TO CLARIFY WHAT YOU'VE SAID AND MAKE
18 SURE THAT I UNDERSTAND IT. OKAY, SIR?

19 A. OKAY.

20 Q. NOW, YOU HAVE INDICATED THAT YOU HAVE RELIGIOUS
21 VIEWS CONCERNING THE DEATH PENALTY. IS THAT
22 CORRECT, SIR?

23 A. YES, SIR.

24 Q. AND THOSE RELIGIOUS VIEWS WOULD NOT IN ANY
25 CIRCUMSTANCE ALLOW YOU TO VOTE FOR THE PENALTY

1 OF DEATH?

2 A. THAT'S RIGHT.

3 Q. THAT'S CORRECT?

4 A. YES, SIR.

5 Q. WOULD THAT BE ALSO IF YOU WERE SEATED ON A JURY
6 THAT THE JUDGE TOLD YOU THAT YOU HAD TO CONSIDER
7 MITIGATING CIRCUMSTANCES, THAT YOU HAD TO
8 CONSIDER AGGRAVATING CIRCUMSTANCES AND THAT IN
9 CONSIDERATION OF THOSE IF YOU FIND THOSE, YOU
10 COULD FIND THE PENALTY OF DEATH. YOU STILL
11 COULDN'T DO IT EVEN IF THE JUDGE INSTRUCTED YOU
12 THAT ---

13 MR. POPE: YOUR HONOR, I'M GOING TO OBJECT. HE'S
14 MAKING IT SOUND LIKE YOU WILL INSTRUCT HIM TO HAVE TO FIND
15 DEATH.

16 THE COURT: REPHRASE THE QUESTION. THAT
17 PRESUPPOSES SOMETHING THAT'S NOT GOING TO HAPPEN.

18 Q. YES, SIR. YOU COULD NOT DO THAT?

19 A. NO, SIR.

20 Q. YOU COULD NOT IN ANY SITUATION OR CIRCUMSTANCE,
21 NO MATTER HOW BAD, VOTE FOR THE DEATH PENALTY?

22 A. THAT'S RIGHT.

23 Q. OKAY, I'M NOT GOING TO TRY TO BROWBEAT YOU, BUT
24 YOU UNDERSTAND THAT MR. ROBERTSON IS ACCUSED OF
25 KILLING BOTH OF HIS PARENTS. IS THAT CORRECT?

1 A. YES, SIR.

2 Q. AND THAT HE COULD POSSIBLY BE CONVICTED OF THAT
3 AND THEN THERE COULD BE EVEN WORSE CIRCUMSTANCES
4 PRESENTED TO YOU WERE YOU A JUROR, AND YOU WOULD
5 HAVE TO CONSIDER THOSE. AND IF IT WAS EVEN
6 WORSE THAN KILLING BOTH OF HIS PARENTS, THERE
7 WERE AGGRAVATING CIRCUMSTANCES AVAILABLE EVEN
8 AFTER THAT, IF THOSE WERE PRESENTED TO YOU AND
9 YOU WERE ON THE JURY, YOU COULD NOT SAY HE
10 SHOULD BE GIVEN THE DEATH PENALTY. IS THAT WHAT
11 I'M HEARING?

12 A. THAT'S RIGHT.

13 Q. I HAVE NO FURTHER QUESTIONS.

14 THE COURT: I'M GOING TO ASK YOU TO STEP OUTSIDE
15 THE DOOR FOR JUST ONE MINUTE.

16 (THE JUROR LEFT THE COURTROOM.)

17 THE COURT: WHAT'S THE STATE'S POSITION?

18 MR. POPE: HE IS CLEARLY UNQUALIFIED, YOUR HONOR.

19 MR. HANCOCK: I CAN'T ARGUE WITH THAT, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT, BRING HIM IN.

22 (THE JUROR RETURNED TO THE COURTROOM.)

23 THE COURT: MR. WILSON, WE APPRECIATE YOUR TIME
24 AND YOUR CANDOR, AND WE'RE GOING TO EXCUSE YOU. YOU CAN BE
25 EXCUSED FROM THIS JURY PANEL. THANK YOU A LOT.

1 (THE JUROR LEFT THE COURTROOM.)

2 THE COURT: BRING IN MR. TERLINDE.

3 MICHAEL S. TERLINDE, JUROR NUMBER 268, WHITE
4 MALE, WAS QUESTIONED AS FOLLOWS:

5 QUESTIONS BY THE COURT:

6 Q. JUST HAVE A SEAT. MR. TERLINDE, I'M JOHN HAYES,
7 I'M THE JUDGE THAT HAS BEEN ASSIGNED TO PRESIDE
8 OVER THIS CASE AND I WANT TO REMIND YOU THAT YOU
9 ARE UNDER OATH. DO YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. DURING THE TRIAL OF THIS CASE YOU MAY SEE
12 PHOTOGRAPHERS OR T. V. CAMERAS IN THE COURTROOM.
13 DON'T BE DISTRACTED BY THEM, THEY CAN'T FILM
14 YOU; THEY ARE FORBIDDEN BY LAW TO FILM JURORS OR
15 TO REPORT ON JURORS.

16 YOU HANDED IN A QUESTIONNAIRE AT AN EARLIER
17 TIME. IS IT ACCURATE OR DO YOU NEED TO MAKE ANY
18 CHANGES TO IT?

19 A. AS FAR AS MY KNOWLEDGE, IT'S PRETTY ACCURATE.

20 Q. YOU HAD A CHANCE TO REVIEW A LIST OF WITNESSES;
21 DID YOU FIND ANYBODY ON THERE TO WHOM YOU WERE
22 RELATED BY BLOOD OR MARRIAGE OR WHO WAS A CLOSE
23 PERSONAL FRIEND OR ACQUAINTANCE OF YOUR'S?

24 A. NOT CLOSE PERSONAL FRIENDS, BUT I HAD A COUPLE
25 OF EMPLOYEES ON THERE THAT USED TO WORK FOR ME.

1 Q. WHO IS THAT?

2 A. THERE WAS A CHARLENE AMANDA HILL AND A MARIE ANN
3 HILL. THEY USED TO WORK FOR ME AT A SUBWAY. I
4 USED TO BE A MANAGER THERE. AND THERE'S THREE
5 OTHER NAMES ON THERE THAT I BELIEVE WERE FRIENDS
6 OF MY YOUNGER SISTER THAT HAVE BEEN AT MY HOUSE
7 BEFORE. I'M NOT CLOSE PERSONAL FRIENDS OF THEM,
8 BUT I KNOW OF THESE PEOPLE.

9 Q. WHO WOULD THAT BE?

10 A. IT'S KELLY BIGHAM, KATIE MARTIN AND CLAY
11 ROBINSON.

12 Q. WOULD THE FACT THAT YOU KNOW THOSE INDIVIDUALS
13 OR PERHAPS KNOW THEM EITHER THROUGH WORK OR
14 THROUGH YOUR SISTER, WOULD THAT IN ANY WAY
15 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO
16 THE STATE AND THE DEFENDANT IN THE TRIAL OF THIS
17 CASE?

18 A. NO, SIR.

19 Q. HAD YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
20 YOU GOT HERE? HEARD ABOUT IT, FORMED AN
21 OPINION, EXPRESSED AN OPINION, READ ABOUT IT OR
22 ANYTHING?

23 A. NO, SIR. I HAD NO IDEA -- I MEAN, I HEARD ABOUT
24 IT AT ONE TIME, BUT I DID NOT KEEP UP WITH IT.
25 I JUST DIDN'T KNOW ANYTHING ABOUT IT UNTIL I GOT

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1 HERE.

2 Q. ALL RIGHT. WOULD THE FACT THAT YOU HAD AT LEAST
3 HEARD A LITTLE BIT ABOUT IT, THAT'S MY WORD, NOT
4 YOUR'S, BUT THAT YOU HAD AT SOME POINT, LET'S
5 SAY, HEARD ABOUT IT, WOULD THAT AFFECT YOUR
6 ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE
7 AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

8 A. NO, SIR.

9 Q. COULD YOU BASE YOUR VERDICT IN THIS TRIAL ON
10 WHAT YOU HEAR IN THIS COURTROOM AND NOT ON WHAT
11 YOU HAD PREVIOUSLY HEARD?

12 A. WOULD YOU REPEAT THAT AGAIN?

13 Q. COULD YOU BASE YOUR VERDICT IN THIS CASE ON WHAT
14 YOU HEAR HERE IN THIS COURTROOM AND NOT WHAT YOU
15 HAD HEARD AT SOME OTHER TIME?

16 A. YES, SIR, ON WHAT I HEAR IN THIS COURTROOM.

17 Q. THIS CASE WOULD PROCEED IN TWO PARTS. THE FIRST
18 PART WOULD DEAL WITH THE QUESTION OF WHETHER OR
19 NOT MR. ROBERTSON WERE TO BE FOUND GUILTY OR NOT
20 GUILTY OF MURDER. IF HE'S FOUND NOT GUILTY, THE
21 CASE IS OVER.

22 HE IS PRESUMED INNOCENT OF THE CHARGES AND WOULD
23 BE SO PRESUMED UNTIL SUCH TIME AS A JURY, IF IT
24 WERE TO DO SO, WERE TO FIND HIM GUILTY
25 UNANIMOUSLY BEYOND A REASONABLE DOUBT.

1 SO, WE'RE TALKING ABOUT THE SECOND PART OF THE
2 TRIAL BUT THAT'S NOT TO PRESUPPOSE OR BE ANY
3 INDICATION OF ANY GUILT. WE JUST SIMPLY MUST AT
4 THIS POINT TALK ABOUT THAT. DO YOU UNDERSTAND
5 THAT?

6 A. YES, SIR.

7 Q. DID YOU HAVE A CHANCE TO REVIEW THE JUROR TYPES
8 THAT WERE SET FORTH ON A LIST IN THERE?

9 A. YES, SIR.

10 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

11 A. YES, SIR.

12 Q. WHICH ONE?

13 A. THE THIRD ONE.

14 Q. IN THAT LANGUAGE I USED THE WORDS AGGRAVATION
15 AND MITIGATION IN REGARD TO CIRCUMSTANCES. AND
16 BY THAT THESE ARE THINGS IN AGGRAVATION, THOSE
17 WOULD BE THINGS THAT ATTENDED THE COMMISSION OF
18 A CRIME THAT ADDED TO ITS ENORMITY OR INCREASED
19 ITS INJURIOUS CONSEQUENCE. THAT IS, THEY ARE
20 THINGS OVER AND ABOVE THE CRIME ITSELF.

21 MITIGATING CIRCUMSTANCES ARE THINGS THAT WOULD
22 NOT CONSTITUTE OR JUSTIFY AN EXCUSE FOR A CRIME,
23 BUT WOULD BE THINGS WHICH IN FAIRNESS AND MERCY
24 COULD BE CONSIDERED AS EXTENUATING OR REDUCING
25 ONE'S DEGREE OF MORAL CULPABILITY. DO YOU

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1 UNDERSTAND THAT?

2 A. YES, SIR.

3 Q. YOU ARE TELLING ME YOU'RE THIS THIRD TYPE JUROR.
4 BY THAT I UNDERSTAND THAT YOU'RE SAYING THAT YOU
5 ARE A JUROR WHO IF YOU WERE ON THE JURY AND THE
6 CASE WENT INTO THE SECOND PART, THE PENALTY
7 PHASE, THAT WHEN THAT PART STARTED YOU WOULD NOT
8 HAVE ALREADY MADE UP YOUR MIND IN ADVANCE
9 CONCERNING WHAT THE APPROPRIATE PUNISHMENT WOULD
10 BE. IS THAT CORRECT?

11 A. THAT'S CORRECT.

12 Q. YOU'RE TELLING ME THAT AT THAT POINT YOU WOULD
13 WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN
14 AGGRAVATION AND MITIGATION AND YOU WOULD WANT TO
15 LISTEN TO AND FOLLOW THE LAW THAT THE JUDGE
16 CHARGES YOU AND THEN AND ONLY THEN MAKE A
17 DECISION ON PUNISHMENT. IS THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. IF YOU FELT THAT THE FACTS SUPPORTED IT AND
20 WARRANTED IT, COULD YOU RETURN A VERDICT OF LIFE
21 IMPRISONMENT?

22 A. COULD I?

23 Q. YEAH, AFTER YOU HEARD ALL THE FACTS AND THE LAW
24 AND YOU FELT THAT WAS APPROPRIATE, COULD YOU
25 RETURN A VERDICT OF LIFE IMPRISONMENT?

1 A. I COULD. IT'S JUST THE WAY, I MEAN I CAN'T
2 JUDGE, I MEAN I'D HAVE TO KNOW -- I CAN'T TELL
3 YOU ---

4 Q. WELL, I'M ASKING AFTER YOU'VE HEARD ALL THAT ---

5 A. YEAH, I MEAN I COULD.

6 Q. --- WOULD THAT BE A POSSIBILITY THAT YOU COULD
7 RETURN A VERDICT OF LIFE IMPRISONMENT?

8 A. YEAH, IT COULD BE A POSSIBILITY.

9 Q. WOULD IT ALSO BE A POSSIBILITY THAT IF THE FACTS
10 WERE SUCH THAT YOU WERE CONVINCED THAT DEATH WAS
11 THE APPROPRIATE PENALTY COULD YOU, IF YOU
12 THOUGHT THE FACTS WARRANTED IT, COULD YOU RETURN
13 A VERDICT OF THE DEATH PENALTY?

14 A. IT COULD BE A DEATH PENALTY.

15 Q. SO, YOU'RE TELLING ME THAT YOU COULD CONSIDER
16 AND RETURN A VERDICT OF EITHER LIFE IMPRISONMENT
17 OR DEATH BUT YOU WOULD HAVE TO WAIT UNTIL SUCH
18 TIME AS YOU HAVE HEARD EVERYTHING. IS THAT WHAT
19 YOU'RE TELLING ME?

20 A. THAT'S CORRECT.

21 Q. ALL RIGHT. ANSWER ANY QUESTIONS THAT THE
22 ATTORNEYS MAY HAVE.

23 QUESTIONS BY MR. BOYD:

24 Q. HOW ARE YOU THIS AFTERNOON?

25 A. I'M OKAY.

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1 Q. I'M JIM BOYD; I REPRESENT JIMMY ROBERTSON WHO IS
2 SEATED OVER HERE. AND THAT'S BILL HANCOCK, MY
3 CO-COUNSEL THERE. I JUST WANT TO FOLLOW UP WITH
4 YOU ON A FEW QUESTIONS CONCERNING THIS.

5 YOU HAD STATED THAT YOU KNEW SOME PEOPLE THAT
6 ARE ON THE WITNESS LIST. AND WOULD YOUR
7 KNOWLEDGE OF THESE PEOPLE -- I THINK THE JUDGE
8 HAS ALREADY ASKED YOU THIS BUT I WANTED TO ASK
9 YOU, WOULD IT AFFECT YOUR ABILITY TO JUDGE THIS
10 CASE IF YOU'RE A JUROR?

11 A. NO, SIR, IT WOULDN'T AFFECT ME.

12 Q. AND ALSO YOU HAVE ANSWERED A FEW QUESTIONS ABOUT
13 THE DEATH PENALTY AND THAT TYPE OF THING. MY
14 UNDERSTANDING IS, DEPENDING ON THE CIRCUMSTANCES
15 OF THE CASE, YOU COULD EITHER VOTE FOR EITHER
16 LIFE IMPRISONMENT OR THE DEATH PENALTY DEPENDING
17 ON THE CIRCUMSTANCES. IS THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. AND IF YOU -- YOU UNDERSTAND THIS IS POTENTIALLY
20 A TWO PHASE TRIAL. THE FIRST PHASE WOULD BE
21 DETERMINING WHETHER JIMMY IS GUILTY OR NOT
22 GUILTY OF THESE CHARGES. DO YOU UNDERSTAND
23 THAT?

24 A. YES, SIR.

25 Q. AND THEN IN THE SECOND PHASE YOU WOULD BE

1 DETERMINING WHETHER OR NOT A LIFE SENTENCE OR
2 THE DEATH PENALTY SHOULD BE IMPOSED. AND YOU
3 COULD VOTE EITHER WAY; IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. THE STATE WOULD INTRODUCE EVIDENCE IN
6 AGGRAVATION TO SHOW THE CRIME IS WORSE. AND WE
7 WOULD ATTEMPT, POSSIBLY, WE DON'T HAVE TO, BUT
8 WE COULD INTRODUCE WHAT'S CALLED MITIGATING
9 CIRCUMSTANCES, THINGS THAT MAKE IT LESS MORALLY
10 CULPABLE. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. AND YOU WOULD BE WILLING TO CONSIDER THE
13 MITIGATING CIRCUMSTANCES THAT WE WOULD
14 INTRODUCE?

15 A. IS WHAT YOU'RE SAYING -- YOU'RE SAYING -- WOULD
16 YOU REPHRASE THAT AGAIN?

17 Q. OKAY. YOU KNOW, WE'RE IN THE PENALTY PHASE NOW
18 FOR THE PURPOSES OF MY QUESTION. NOT REALLY
19 THOUGH.

20 A. UH HUH.

21 Q. AND WE ARE -- HE HAS ALREADY BEEN FOUND GUILTY
22 AT THIS POINT. YOU UNDERSTAND THAT HE IS
23 CHARGED WITH MURDERING BOTH OF HIS PARENTS?

24 A. YES, SIR.

25 Q. SO, THE POINT OF WHETHER HE IS GUILTY OR NOT

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1 GUILTY IS OVER. HE'S BEEN FOUND GUILTY, AND
2 WE'RE ONLY TALKING ABOUT SENTENCE. AND WE WOULD
3 TRY TO INTRODUCE THINGS MAYBE ABOUT HIM OR ABOUT
4 THE SURROUNDING CIRCUMSTANCES THAT WOULD TRY TO
5 CONVINCE YOU THAT HE SHOULD GET A LIFE SENTENCE
6 INSTEAD OF A DEATH SENTENCE. WHAT I'M ASKING
7 YOU IS WOULD YOU BE WILLING TO CONSIDER THOSE,
8 NOT JUST LISTEN TO US, BUT ALSO CONSIDER THOSE
9 THINGS IN REACHING A SENTENCE?

10 A. THAT'S CORRECT.

11 Q. OKAY. AND I JUST HAVE A FEW OTHER QUESTIONS I
12 WANT TO ASK YOU AND I'LL LEAVE YOU ALONE. YOU
13 KNOW ON A JURY YOU MAY HAVE YOUR OPINION, OTHER
14 JURORS WOULD HAVE THEIR OPINION. DO YOU
15 UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. AND YOU'RE ENTITLED TO HAVE YOUR OPINION
18 RESPECTED BY EVERY OTHER JUROR, EVEN IF THEY
19 DISAGREED WITH YOU. AND LIKEWISE, YOU HAVE TO
20 RESPECT OTHER JURORS' OPINIONS EVEN IF THEY
21 DISAGREED WITH YOU. DO YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. AND LET ME ASK YOU THIS. AND I'M SORT OF ASKING
24 YOU A HYPOTHETICAL QUESTION, NOT REALLY THOUGH.
25 IF YOU WERE ON THE JURY AND YOU WERE CONVINCED -

1 - YOU HAD MADE YOUR MIND UP AFTER HEARING ALL OF
2 THE EVIDENCE AND AFTER DISCUSSING THE CASE WITH
3 THE OTHER JURORS THAT THE SENTENCE SHOULD BE
4 LIFE IMPRISONMENT, YET ALL THE OTHER JURORS WERE
5 VOTING FOR DEATH, WOULD YOU CHANGE YOUR
6 CONVICTIONS JUST BECAUSE YOU WERE IN THE
7 MINORITY?

8 A. NO, SIR. I WOULD DO WHAT I BELIEVED OR WHAT I
9 THOUGHT WAS RIGHT. I MEAN I WOULDN'T CHANGE FOR
10 NOBODY ELSE, I'D DO IT FOR MYSELF, I WOULDN'T DO
11 IT FOR THE OTHER PEOPLE ON THERE.

12 Q. YOU REALIZE THAT IN THIS CASE IF YOU'RE SELECTED
13 AS A JUROR, YOU WILL BE SEQUESTERED BY LAW.
14 THAT IS, YOU WILL BE KEPT IN A MOTEL ROOM,
15 BROUGHT BACK AND FORTH TO COURT AND ALL OF THAT
16 WITH THE OTHER JURORS. WOULD YOU BE LIKELY TO
17 TRY TO REACH A QUICK VERDICT JUST TO GET OUT OF
18 THERE?

19 A. I WOULD DO WHAT I BELIEVED IN, I WOULDN'T LET
20 ANYBODY ELSE CHANGE MY MIND FOR ME. I MEAN
21 THAT'S JUST THE WAY I AM. I AM GOING TO DO WHAT
22 I WANT TO DO, NOT WHAT NOBODY ELSE TELLS ME TO
23 DO JUST TO TRY TO GET OUT.

24 Q. THAT'S ALL WE'RE ASKING YOU TO DO. THANK YOU.

25 QUESTIONS BY MR. POPE:

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1 Q. YOU'RE MR. TERLINDE; IS THAT CORRECT?

2 A. YES, SIR.

3 Q. I'M TOMMY POPE; I'M THE SOLICITOR HERE IN YORK
4 COUNTY. THIS IS KEVIN BRACKETT, MY DEPUTY
5 SOLICITOR, AND WE REPRESENT THE STATE IN THIS
6 CASE. I'VE GOT JUST A FEW QUESTIONS I'M GOING
7 TO ASK YOU. I KNOW WE'RE ABOUT TO WEAR YOU DOWN
8 AFTER THE JUDGE AND THE DEFENSE, SO I'M GOING TO
9 BE FAIRLY BRIEF.

10 THERE ARE A COUPLE OF THINGS I WANT TO HIT ON.
11 YOU UNDERSTAND IT'S A TWO PART TRIAL AND THE
12 FIRST PART IS JUST ABOUT GUILT, AND YOU'RE THE
13 TYPE JUROR THAT YOU WOULD KEEP YOUR MIND OPEN
14 AND, YOU KNOW, WE'VE GOT TO PROVE THE CASE AND
15 YOU'D MAKE US PROVE THE CASE; IF WE DIDN'T HE'D
16 BE NOT GUILTY; IS THAT RIGHT?

17 A. THAT'S CORRECT.

18 Q. AND YOU WOULDN'T MAKE A DECISION UNTIL AFTER YOU
19 HEARD ALL OF THE EVIDENCE BECAUSE RIGHT NOW YOU
20 DON'T KNOW WHAT THE EVIDENCE IS?

21 A. THAT'S CORRECT.

22 Q. LIKEWISE, IN THE PENALTY PHASE, AND OF COURSE
23 OBVIOUSLY IF WE GET TO THE PENALTY PHASE, IT
24 WOULD BE BECAUSE HE WAS CONVICTED. IF HE'S NOT
25 GUILTY, THERE WOULDN'T BE A PENALTY PHASE.

1 ONCE WE GET TO THE PENALTY PHASE, YOU'RE THE
2 TYPE GUY THAT'S GOING TO LISTEN TO EVERYTHING,
3 WAIT UNTIL THE END, HEAR THE BAD WE MAY BRING
4 FORTH, THE GOOD THEY MAY BRING FORTH, WHATEVER
5 MIXTURE OF AGGRAVATION AND MITIGATION, YOU'RE
6 GOING TO HEAR THE WHOLE THING BEFORE YOU MAKE A
7 DECISION. IS THAT RIGHT?

8 A. THAT'S CORRECT.

9 Q. OKAY. AND MR. BOYD WAS TALKING ABOUT GOING BACK
10 INTO THE JURY ROOM. AS I UNDERSTAND WHAT YOU
11 SAID, YOU'RE THE TYPE GUY THAT YOU'RE GOING TO
12 LISTEN TO THE EVIDENCE, YOU'RE GOING TO BE YOUR
13 OWN MAN, YOU'RE GOING TO MAKE YOUR OWN DECISION,
14 RIGHT?

15 A. THAT'S CORRECT.

16 Q. LET ME ASK YOU THIS, AND THIS IS JUST A
17 VARIATION ON IT -- HAVE YOU EVER BEEN ON JURY
18 DUTY BEFORE?

19 A. YES, SIR.

20 Q. OKAY, SO YOU KNOW HOW YOU GO BACK AND EVERYBODY
21 TELLS THEIR SIDE AND SO ON AND SO FORTH. ARE
22 YOU THE TYPE, WOULD YOU BE WILLING TO LISTEN TO
23 OTHER PEOPLE'S OPINIONS AND SHARE YOUR OPINIONS
24 OR ARE YOU JUST GOING TO DECIDE WHAT YOU'RE
25 GOING TO DECIDE AND FOLD YOUR ARMS UP?

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1 A. PEOPLE ARE PROBABLY GOING TO TALK, BUT I'M GOING
2 TO DECIDE WHAT I'M GOING TO DECIDE ON; I'M NOT
3 GOING TO LET SOMEBODY ELSE DECIDE FOR ME. WHAT
4 I FEEL, NOBODY ELSE CAN CHANGE THAT.

5 Q. OKAY. LET ME ASK YOU THIS. WHEN YOU SAY NOBODY
6 ELSE CAN CHANGE IT. WHAT IF SOMEBODY BRINGS UP
7 SOMETHING THAT YOU HADN'T THOUGHT ABOUT. ARE
8 YOU WILLING TO LISTEN TO THAT TYPE STUFF?

9 A. I'M JUST GOING TO LISTEN TO WHAT'S IN THIS
10 COURTROOM, I MEAN WHAT GOES ON IN HERE.

11 Q. OKAY. YOU WERE MENTIONING A COUPLE OF PEOPLE,
12 AND I APOLOGIZE, I'M JUMPING AROUND A LITTLE
13 BIT, A COUPLE OF DIFFERENT PEOPLE YOU KNEW, A
14 COUPLE FROM WORK AND A COUPLE OF PEOPLE THAT
15 WERE LIKE YOUR SISTER'S FRIENDS, I THINK YOU
16 SAID CHARLENE AND MARIE HILL YOU KNEW FROM WORK?

17 A. YES, THEY WERE EMPLOYEES. I WAS A MANAGER OF A
18 SUBWAY IN ROCK HILL AND THEY WERE BOTH EMPLOYED
19 BY ME.

20 Q. OKAY. SO, THAT'S HOW YOU KNEW THEM?

21 A. YES, SIR. AS FAR AS MANAGER, WE KIND OF ALL
22 HUNG TOGETHER, YOU KNOW.

23 Q. BUT YOU TOLD THE JUDGE THAT YOU COULD BASICALLY
24 SET THAT ASIDE AND ASSIGN WHATEVER WEIGHT TO
25 THEIR TESTIMONY JUST LIKE YOU'D JUDGE EVERYBODY

1 ELSE'S TESTIMONY. IS THAT RIGHT?

2 A. YES, SIR. BECAUSE I HAVEN'T SEEN NONE OF THOSE
3 PEOPLE IN FOUR OR FIVE YEARS.

4 Q. THE OTHER PEOPLE YOU WERE SAYING AS FAR AS YOUR
5 SISTER'S FRIENDS LIKE KELLY BIGHAM AND IT WAS
6 ANOTHER GIRL, I THINK?

7 A. I THINK IT WAS CLAY ROBINSON AND KATIE MARTIN.
8 THE NAMES SOUND FAMILIAR. I THINK THEY'VE BEEN
9 TO MY HOUSE.

10 Q. LIKE HOW MUCH YOUNGER IS YOUR SISTER THAN YOU?

11 A. SHE'S 21, SHE JUST TURNED 21.

12 Q. AND HOW OLD ARE YOU NOW?

13 A. I'M 27

14 Q. SO, YOU DIDN'T REALLY NECESSARILY HANG WITH
15 THEM.

16 A. NO, SIR.

17 Q. YOU JUST KNOW THEM FROM THE NAME AND THEY MIGHT
18 HAVE BEEN ---

19 A. TO MY HOUSE.

20 Q. I GOT YOU, I GOT YOU. ALL RIGHT, LET ME TAKE
21 YOU BACK TO ONE FINAL THING ON THE DEATH
22 PENALTY. YOU KNOW WHEN YOU WERE ON JURY DUTY
23 BEFORE AND Y'ALL VOTED, YOU KNOW IT'S GOT TO BE
24 A UNANIMOUS VERDICT, YOU KNOW, GUILTY OR NOT
25 GUILTY. AND Y'ALL VOTED AND THEN THE FOREPERSON

1212

1 -- WERE YOU THE FOREMAN ON YOUR JURY?

2 A. NO, SIR.

3 Q. WELL, YOU KNOW HOW THEY HAD A FOREPERSON, THAT'S
4 KIND OF LIKE A LIAISON TO THE COURT, AND YOU
5 PROBABLY KNOW MORE ABOUT JURY DUTY THAN I DO
6 BECAUSE I'VE NEVER BEEN IN THE JURY ROOM BUT YOU
7 VOTE, YOU KNOW, YOU TALK ABOUT THE EVIDENCE, YOU
8 VOTE AND EVERYBODY VOTES AND DECIDES AND THE
9 FOREPERSON WROTE, LIKE IN THAT CASE, WROTE NOT
10 GUILTY AND TURNED IT IN.

11 IN A DEATH PENALTY CASE IT'S A LITTLE BIT
12 DIFFERENT. IN THE PENALTY PHASE WHEN YOU GET IN
13 AND EVERYBODY VOTES AND, OF COURSE, IT'S GOT TO
14 BE UNANIMOUS, IF EVERYBODY VOTES FOR LIFE, THEN
15 ONLY THE FOREPERSON SIGNS, JUST LIKE IN THE CASE
16 YOU WERE IN.

17 IF EVERYBODY VOTES FOR DEATH AND BECAUSE IT'S
18 SUCH A SERIOUS DECISION, EACH INDIVIDUAL JUROR
19 HAS TO SIGN THEIR OWN NAME. AND THEY SIGN THEIR
20 NAME TO THE DOCUMENT. OF COURSE THE COURT'S
21 GOING TO DO WHAT YOU SAY. IF YOU SAY LIFE,
22 THAT'S WHAT THE COURT WILL DO. IF YOU SAY
23 DEATH, THAT'S WHAT THE COURT WILL DO. IF THE
24 VERDICT IS DEATH, EACH INDIVIDUAL JUROR SIGNS
25 THEIR NAME. IN ESSENCE, YOU'RE SIGNING YOUR

1 NAME TO A DOCUMENT THAT WOULD TAKE THIS MAN'S
2 LIFE.

3 A. UH HUH.

4 Q. IF YOU HEARD THE EVIDENCE AND YOU THOUGHT THAT
5 TO YOU THE APPROPRIATE VERDICT WAS DEATH, COULD
6 YOU WRITE MICHAEL TERLINDE ON A DOCUMENT THAT'S
7 GOING TO TAKE THIS MAN'S LIFE?

8 A. I COULD IF THAT PERSON COMMITTED A CRIME, I MEAN
9 I COULD. I MEAN I COULD WRITE MY NAME. IF IT
10 COMES TO IT AND I KNEW ALL THE FACTS AND THAT
11 WAS WHAT HE DESERVED, I COULD DO IT. I COULD
12 PUT MY NAME ON IT.

13 Q. LET ME ASK YOU ANOTHER WAY. IF YOU FELT STRONG
14 ENOUGH THAT DEATH WAS THE RIGHT VERDICT, I THINK
15 THAT'S WHAT YOU'RE TELLING ME, IF YOU'D HEARD
16 EVERYTHING AND YOU THOUGHT DEATH WAS WHAT HE
17 OUGHT TO GET, THEN YOU WOULDN'T HAVE A PROBLEM
18 WITH PUTTING YOUR NAME ON IT AND SAYING SO. IS
19 THAT RIGHT?

20 A. NO, SIR, I SURE WOULDN'T.

21 Q. THANK YOU, SIR. I APPRECIATE IT.

22 THE COURT: IF YOU WILL STEP OUT FOR JUST A
23 MINUTE.

24 (THE JUROR LEFT THE COURTROOM.)

25 THE COURT: WHAT SAYS THE DEFENSE?

1214

1 MR. BOYD: I BELIEVE HE'S QUALIFIED.

2 THE COURT: THE STATE?

3 MR. POPE: I SUBMIT HE'S QUALIFIED, YOUR HONOR.

4 THE COURT: ALL RIGHT, BRING HIM BACK IN.

5 (THE JUROR RETURNED TO THE COURTROOM.)

6 THE COURT: MR. TERLINDE, YOU'RE GOING TO BE A
7 PART OF THE POOL FROM WHICH THE JURY WILL BE DRAWN. CALL
8 BACK TONIGHT AFTER 6:00 AND THEY WILL TELL YOU WHEN TO
9 REPORT.

10 THEY WILL TELL YOU WHAT TO BRING AND WHAT NOT TO
11 BRING. COME PREPARED TO STAY FOR A WEEK.

12 ARE THERE ANY EXTENUATING CIRCUMSTANCES IN YOUR
13 LIFE?

14 THE JUROR: NO, SIR.

15 THE COURT: OKAY. DON'T TALK ABOUT THE CASE TO
16 ANYONE. IF ANYONE TRIES TO DISCUSS THIS CASE WITH YOU,
17 TELL THEM YOU CANNOT. AND DON'T LET YOURSELF BE EXPOSED TO
18 ANY NEWS COVERAGE OF THE CASE. OKAY?

19 THE JUROR: YES, SIR.

20 THE COURT: ALL RIGHT, THANK YOU A LOT.

21 (THE JUROR LEFT THE COURTROOM.)

22 THE COURT: ALL RIGHT, LET'S TAKE A SHORT BREAK
23 BEFORE WE GET INTO THE NEXT. WE'VE GOT 35, I WOULD LIKE TO
24 GET TWO MORE. AND I HAVE MADE A FINAL CUT OF WHAT I AM
25 GOING TO HAVE PUT ON THE ANSWERING MACHINE AS TO THE TIME

1215

1 TO REPORT AND, OF COURSE, I'VE ALREADY TOLD THEM TO BRING
2 STUFF TO STAY FOR AROUND A WEEK. THIS TELLS THEM SOME
3 THINGS NOT TO BRING. I'VE CHANGED IT A LITTLE BIT, SO ON
4 THIS BREAK IF YOU WOULD LOOK AT ALL OF THIS AND MAKE SURE
5 IT'S OKAY, THEN I'LL GO AHEAD AND TURN IT OVER AND LET THEM
6 START GETTING THAT TAKEN CARE OF.

7 AFTER THE RECESS:

8 THE COURT: DID YOU GET A COPY OF WHAT I'M GOING
9 TO HAVE PUT ON THE MACHINE?

10 MR. POPE: YOUR HONOR, I DID NOT GET A COPY OF
11 IT.

12 MR. HANCOCK: I DIDN'T EITHER, YOUR HONOR.

13 MR. POPE: YOU TOLD US AND WE DIDN'T DO IT, BUT
14 I'M SURE IT WILL BE FINE, YOUR HONOR.

15 THE COURT: WELL, TAKE A SECOND AND LOOK AT IT.
16 (AFTER A PAUSE.)

17 MR. POPE: NO OBJECTION, YOUR HONOR.

18 THE COURT: THE DEFENSE?

19 MR. HANCOCK: NO OBJECTION.

20 MR. BOYD: NO OBJECTION.

21 THE COURT: ALL RIGHT, I AM GOING TO GIVE THIS TO
22 THE CLERK, AND WE'LL MAKE THIS ONE A COURT'S EXHIBIT.

23 (THE INSTRUCTIONS TO PROSPECTIVE JURORS WAS MARKED COURT'S
24 EXHIBIT 7.)

25 THE COURT: ALL RIGHT, AND WE'RE READY FOR WILTON

1216

1 MCALLISTER.

2 THE COURT REPORTER: JUDGE, DID YOU WANT TO MAKE
3 THIS A COURT'S EXHIBIT, TOO?

4 THE COURT: YES. I CAN'T REMEMBER WHOSE IT WAS.

5 THE COURT REPORTER: WELL, I'VE GOT ANOTHER ONE
6 AND THERE'S NO NAME ON IT EITHER.

7 THE COURT: WELL, I SHOULD HAVE WRITTEN THE NAME
8 ON IT, BUT IT WILL BE IN THE RECORD WHEN WE QUESTIONED THE
9 JUROR IF IT SHOULD COME UP ON APPEAL.

10 (A LIST OF KNOWN WITNESSES FROM A JUROR WAS MARKED AS
11 COURT'S EXHIBIT 6)

12 MR. HANCOCK: YOUR HONOR, IF IT PLEASE THE COURT,
13 WE ALSO HAD THE MATTER OF THE RAP SHEET AND IT HAS BEEN RUN
14 AND THE MANNER IN WHICH IT HAS BEEN DESCRIBED IS THAT IT'S
15 RUN, THERE WAS NO RAP SHEET FOUND ON HIM AND WHAT WE WERE
16 ACTUALLY READING WAS THE RAP SHEET OF ANOTHER INDIVIDUAL
17 WITH A DIFFERENT SOCIAL SECURITY NUMBER, DIFFERENT BIRTH
18 DATE, AND DIFFERENT SIZE.

19 THE COURT: SO, THE ONE WE HAVE DOES NOT HAVE A
20 RECORD?

21 MR. HANCOCK: DOES NOT HAVE A RECORD, YOUR HONOR.
22 WE ARE CONVINCED OF THAT.

23 THE COURT: ALL RIGHT, BRING THE JUROR IN PLEASE.

24 WILTON MCALLISTER, JUROR NUMBER 167, WHITE MALE,
25 WAS QUESTIONED AS FOLLOWS:

1 QUESTIONS BY THE COURT:

2 Q. MR. MCALLISTER, JUST COME ON OVER HERE AND HAVE
3 A SEAT. WE APPRECIATE YOUR PATIENCE.

4 A. CERTAINLY.

5 Q. I'M JOHN HAYES, AND I'M THE JUDGE ASSIGNED TO
6 PRESIDE OVER THIS TRIAL. AND I WANT TO REMIND
7 YOU NOW THAT YOU'RE UNDER OATH. OKAY?

8 A. YES, SIR.

9 Q. DURING THE TRIAL OF THIS CASE IF YOU'RE ON THE
10 JURY, YOU MAY SEE CAMERAS OR PHOTOGRAPHERS IN
11 THE COURTROOM AND BY LAW THEY ARE ALLOWED TO BE
12 HERE. BUT THEY ARE NOT ALLOWED TO TAKE PICTURES
13 OR REPORT ABOUT JURORS. SO, DON'T BE DISTRACTED
14 OR BE CONCERNED IF YOU SEE CAMERAS.

15 YOU TURNED IN A QUESTIONNAIRE. DO YOU BELIEVE
16 THERE IS ANYTHING YOU NEED TO CHANGE ON IT OR DO
17 YOU FEEL LIKE IT'S ACCURATE?

18 A. THE BEST I REMEMBER, SIR, IT IS ACCURATE.

19 Q. OKAY. I HAD IN THE JURY ROOM A LIST OF POTENTIAL
20 WITNESSES. HAVE YOU REVIEWED IT?

21 A. YES, SIR.

22 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE OR ARE YOU
23 A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF
24 ANYBODY ON THE LIST?

25 A. I'M AN ACQUAINTANCE OF MR. BRYANT.

1218

1 Q. SHERIFF BRYANT?

2 A. YES.

3 Q. WOULD THAT FACT AFFECT YOUR ABILITY TO BE FAIR
4 AND IMPARTIAL TO THE STATE AND MR. ROBERTSON IN
5 THE TRIAL OF THIS PARTICULAR CASE?

6 A. NO, YOUR HONOR.

7 Q. PRIOR TO YOUR COMING HERE, AND OF COURSE MONDAY
8 WE DID TELL YOU THE NAME OF THE DEFENDANT AND WE
9 DID TELL YOU THE CHARGES, BUT PRIOR TO RECEIVING
10 THAT INFORMATION, HAD YOU HEARD ABOUT THIS CASE,
11 FORMED AN OPINION, EXPRESSED AN OPINION OR READ
12 ABOUT IT OR HEARD ABOUT IT FROM ANY SOURCE
13 WHATSOEVER?

14 A. I HEARD ABOUT IT WHEN IT OCCURRED.

15 Q. WOULD THE FACT THAT YOU HAD HEARD ABOUT IT WHEN
16 IT OCCURRED AFFECT YOUR ABILITY TO BE FAIR AND
17 IMPARTIAL IN THE TRIAL OF MR. ROBERTSON?

18 A. NO, SIR, I DON'T THINK SO.

19 Q. WELL, WOULD YOU BE ABLE -- YOU SAID YOU DON'T
20 THINK SO -- WOULD YOU BE ABLE TO DISASSOCIATE
21 WHAT YOU HAD LEARNED EARLIER AND BASE YOUR
22 VERDICT SOLELY ON THE EVIDENCE AND THE LAW
23 THAT'S PRESENTED IN THE COURTROOM DURING THE
24 TRIAL?

25 A. YES, SIR.

1 Q. THIS CASE WOULD PROCEED IN TWO PARTS, POSSIBLY.
2 THE FIRST PART BEING THAT TO DETERMINE WHETHER
3 OR NOT A JURY WOULD BE CONVINCED FROM THE
4 STATE'S EVIDENCE THAT MR. ROBERTSON WAS GUILTY
5 UNANIMOUSLY BEYOND A REASONABLE DOUBT OF MURDER.
6 IF HE'S FOUND NOT GUILTY, THE CASE WOULD END.
7 HE'S PRESUMED INNOCENT OF THESE CHARGES AND IS
8 SO PRESUMED UNTIL A JURY WERE TO FIND HIM
9 GUILTY.
10 IF A JURY DID FIND HIM GUILTY, WE WOULD MOVE
11 INTO A SECOND PART OF THE TRIAL OR THE SECOND
12 PHASE WHICH WOULD DEAL WITH WHAT WOULD BE THE
13 APPROPRIATE PENALTY, FOR A JURY TO DECIDE WHAT
14 WOULD BE THE APPROPRIATE PENALTY TO RECOMMEND AS
15 PUNISHMENT.
16 WE'RE TALKING ABOUT THAT SECOND PART BUT THAT'S
17 NOT TO PRESUPPOSE THAT WE WOULD GET THERE
18 BECAUSE IF HE'S FOUND NOT GUILTY, OF COURSE, THE
19 CASE WOULD END. BUT WE HAVE TO, DUE TO THE
20 NATURE OF THE PROCEEDINGS, TALK ABOUT THAT
21 SECOND PART AT THIS POINT. DO YOU UNDERSTAND
22 THAT?

23 A. YES, SIR.

24 Q. IN THE JURY ROOM THERE WAS A PIECE OF PAPER WITH
25 THREE JUROR TYPES ON IT. DID YOU READ IT?

1220

1 A. YES, SIR.

2 Q. DID YOU CONSIDER YOURSELF TO BE ON OF THOSE
3 TYPES?

4 A. MAY I ASK A QUESTION, SIR?

5 Q. YES, SIR.

6 A. WOULD YOU GIVE ME A DEFINITION OF MURDER?

7 Q. ALL RIGHT. WELL, LET ME PULL MY DEFINITION SO
8 THAT I CAN MAKE SURE I GIVE IT TO YOU CORRECTLY.

9 I JUST WANT TO MAKE SURE THAT I CHARGE IT IN THE
10 LANGUAGE THAT YOU WILL BE HEARING IT LATER IF
11 YOU SERVE ON THE JURY, THAT'S MY CONCERN.

12 (AFTER A BRIEF PAUSE.)

13 Q. IN THIS CASE THE JURY THAT SITS AND DECIDES THE
14 QUESTION OF GUILT OR NOT WOULD HEAR THIS DEFINITION:
15 "MURDER IS DEFINED AS THE WILFUL, FELONIOUS KILLING OF A
16 HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT.
17 MALICE IS A WORD SUGGESTING WICKEDNESS, HATRED AND A
18 DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG WITHOUT JUST
19 CAUSE OR EXCUSE OR LEGAL PROVOCATION. MALICE NEED NOT BE
20 IN THE MIND OF THE ONE DOING THE KILLING ANY PARTICULAR
21 LENGTH OF TIME BEFORE THE ACT OF KILLING TO RENDER THE
22 KILLING MURDER. IF MALICE IS PRESENT IN THE MIND OF THE
23 ONE DOING THE KILLING FOR ANY LENGTH OF TIME BEFORE THE
24 ACT, IT WOULD BE AFORETHOUGHT AND THEN IT'S PRESENCE WOULD
25 BE SUFFICIENT TO RENDER THE KILLING MURDER."

1 THAT'S THE DEFINITION.

2 A. I TEND TOWARD THE DEFINITION ONE.

3 Q. ALL RIGHT. THAT'S THE TYPE OF JUROR WHO WOULD
4 FEEL THAT ONCE A MURDER HAS BEEN COMMITTED, THEN
5 THE DEATH PENALTY WOULD BE THE MOST APPROPRIATE
6 PUNISHMENT, NO MATTER THE CIRCUMSTANCES OF THE
7 CASE. IS THAT WHAT YOU'RE TELLING ME?

8 A. YES, SIR. I SEE DOUBLE MEANINGS IN THESE
9 PARAGRAPHS, BUT BASICALLY, YES SIR. BECAUSE IF
10 IT'S MITIGATING CIRCUMSTANCES, YOU KNOW, THAT'S
11 DIFFERENT. IF A PERSON SHOULD MAKE ANOTHER
12 PERSON VERY ANGRY FOR WHATEVER REASON.

13 Q. WELL, MITIGATING CIRCUMSTANCES WOULD BE
14 CIRCUMSTANCES THAT WOULD NOT JUSTIFY OR EXCUSE A
15 KILLING, BUT THEY WOULD BE THINGS TO SORT OF
16 DIMINISH OR REDUCE ITS -- WELL, LET ME TELL YOU
17 WHAT I HAVE BEEN TELLING PEOPLE MITIGATING
18 CIRCUMSTANCES ARE.

19 MITIGATING CIRCUMSTANCES ARE THINGS THAT DO NOT
20 JUSTIFY OR EXCUSE THE OFFENSE IN QUESTION. THEY
21 ARE MATTERS WHICH IN FAIRNESS AND MERCY MAY BE
22 CONSIDERED BY A JURY AS EXTENUATING OR REDUCING
23 THE DEGREE OF MORAL CULPABILITY. THAT WOULD BE
24 FACTORS THAT DON'T JUSTIFY ONE TAKING ANOTHER'S
25 LIFE. THAT IS, THERE ARE JUSTIFIABLE HOMICIDES,

1222

1 BUT WE'RE NOT TALKING ABOUT THAT. WE'RE TALKING
2 ABOUT MURDER WHICH I HAVE DEFINED FOR YOU. BUT
3 THESE ARE THINGS THAT ARE NOT JUSTIFICATION OR
4 EXCUSE, BUT ARE THINGS WHICH WOULD GIVE REASONS
5 FOR WHAT HAPPENED HAVING HAPPENED, EVEN THOUGH
6 THEY ARE NOT AN EXCUSE FOR WHAT HAPPENED.

7 NOW HAVING SAID THAT, DO YOU FEEL THAT IF MR.
8 ROBERTSON WERE FOUND GUILTY OF MURDER, THAT THAT
9 IN AND OF ITSELF WOULD BE ENOUGH FOR YOU TO
10 DETERMINE THAT THE MOST APPROPRIATE PUNISHMENT
11 WOULD BE THE DEATH PENALTY, EVEN IF YOU LATER
12 HEARD CIRCUMSTANCES IN MITIGATION. WOULD YOU
13 STILL BELIEVE THAT THE APPROPRIATE PUNISHMENT
14 WOULD BE DEATH?

15 A. PROBABLY NOT IN SOME CIRCUMSTANCES.

16 Q. WELL, YOU SOUND TO ME LIKE YOU WOULD BE MORE OF
17 A TYPE THREE. LET ME RUN THROUGH THAT FOR JUST
18 A MOMENT. I TOLD YOU WHAT MITIGATING
19 CIRCUMSTANCES WERE. AGGRAVATING CIRCUMSTANCES
20 ARE CIRCUMSTANCES THAT ATTEND THE COMMISSION OF
21 A CRIME WHICH ADD TO ITS INJURIOUS CONSEQUENCE
22 OR ADD TO ITS ENORMITY. THEY ARE ABOVE AND
23 BEYOND THE ESSENTIAL ELEMENTS OF THE CRIME OF
24 MURDER ITSELF.

25 WOULD YOU AS A JUROR BE ABLE IN THE PENALTY

1 PHASE TO LISTEN TO THE EVIDENCE, LISTEN TO ANY
2 AGGRAVATING OR MITIGATING FACTS, IF ANY, WHICH
3 ARE PRESENTED, THEN LISTEN TO THE LAW THAT THE
4 JUDGE CHARGES YOU AND THEN DETERMINE WHAT WOULD
5 BE THE APPROPRIATE PUNISHMENT. COULD YOU DO
6 THAT?

7 A. YES, SIR.

8 Q. IF WHEN YOU HEARD THOSE MATTERS, COULD YOU BRING
9 IN A VERDICT IF YOU THOUGHT THAT BASED ON THE
10 CIRCUMSTANCES THAT WERE BROUGHT TO YOUR
11 ATTENTION IN THE SECOND PHASE, IF YOU THOUGHT
12 LIFE IMPRISONMENT WAS THE APPROPRIATE VERDICT,
13 COULD YOU RETURN A VERDICT OF LIFE IMPRISONMENT
14 FOR MURDER?

15 A. YES, SIR.

16 Q. COULD YOU, IF YOU FELT THAT THE CIRCUMSTANCES
17 WERE SUCH THAT THE APPROPRIATE PENALTY WOULD BE
18 THAT OF THE DEATH PENALTY, WOULD YOU IN THAT
19 EVENT BRING IN THE PENALTY OF DEATH?

20 A. YES, SIR.

21 Q. ALL RIGHT, LET ME LET YOU ANSWER QUESTIONS ---

22 A. MAY I PRESENT THIS TO YOU WITH YOUR PERMISSION,
23 SIR?

24 THE COURT: YES, SIR.

25 A. AND ALSO I WOULD LIKE TO REMIND YOU THAT I HAVE

1224

1 A SON THAT'S ALREADY BEEN TOLD TO PACK HIS BAG.

2 THE COURT: OKAY.

3 A. IF THAT MAKES ANY DIFFERENCE, AND I'M NOT SURE
4 THAT IT DOES.

5 THE COURT: I WILL TELL YOU IN ADVANCE THAT I DO
6 NOT THINK THIS WOULD INTERFERE, THIS BEING MARCH 27TH WHEN
7 YOU'RE SUPPOSED TO BE THERE.

8 A. YES, SIR. OKAY.

9 THE COURT: I DON'T THINK THAT WE'RE GOING TO GO
10 THAT FAR. AND THE FACT THAT YOUR SON IS COMING BACK IS NOT
11 OF ANY SIGNIFICANCE IN REGARD TO WHETHER YOU WOULD BE
12 CALLED BACK OR NOT. BUT I APPRECIATE YOU CALLING THOSE
13 THINGS TO MY ATTENTION.

14 AND WHAT HE SHOWED ME, FOR THE RECORD, MR.
15 MCALLISTER HAS A NOTE FROM THE SOUTH CAROLINA FIRE ACADEMY
16 IN COLUMBIA WHICH SAYS THAT HE HAS BEEN ACCEPTED AND
17 REGISTERED AND PAID TO ATTEND A COURSE AT 9:00 A.M. MARCH
18 27TH, 1999 AT THE SOUTHEASTERN FIRE SCHOOL. AND THAT'S
19 WHAT HE WAS CONCERNED ABOUT. IF ANY OF YOU WANT TO ASK ANY
20 QUESTIONS ABOUT THAT.

21 THANK YOU, MR. MCALLISTER, I'M GOING TO LET THE
22 ATTORNEYS TALK TO YOU FOR A MINUTE.

23 QUESTIONS BY MR. BRACKETT:

24 Q. GOOD AFTERNOON, MR. MCALLISTER; HOW ARE YOU
25 TODAY?

1 A. I'M FINE, SIR.

2 Q. MY NAME IS KEVIN BRACKETT, I'M WITH THE
3 SOLICITOR'S OFFICE. SEATED OVER AT COUNSEL
4 TABLE HERE WITH ME IS TOMMY POPE, HE'S THE
5 SOLICITOR, AND HE AND I ARE PROSECUTING THIS
6 CASE ON BEHALF OF THE SOLICITOR'S OFFICE.

7 OVER THERE AT COUNSEL TABLE FOR THE DEFENSE ARE
8 MR. HANCOCK, MR. BOYD AND THE DEFENDANT, JIMMY
9 ROBERTSON, WHO IS CHARGED IN THIS CASE WITH TWO
10 COUNTS OF MURDER, ONE COUNT OF ARMED ROBBERY AND
11 ONE COUNT OF FINANCIAL TRANSACTION CARD FRAUD.

12 I'M GOING TO ASK YOU A FEW QUESTIONS AND KIND OF
13 DELVE A LITTLE MORE IN DETAIL TO WHAT THE JUDGE
14 WAS ASKING YOU TO KIND OF REFINE MY
15 UNDERSTANDING OF HOW YOU THINK ON THESE
16 SUBJECTS.

17 BUT I DON'T WANT YOU TO THINK I'M LEADING YOU
18 ANY WAY SHAPE OR FORM. YOU SEEM TO HAVE YOUR
19 OWN OPINIONS AND KNOW YOUR MIND. SO, IF I
20 MISUNDERSTAND IN ANY WAY, PLEASE INTERRUPT ME
21 AND TELL ME THAT THIS IS NOT THE WAY YOU FEEL.

22 FEEL FREE TO TELL ME HOW YOU THINK; IT'S
23 IMPORTANT THAT WE KNOW THAT SO THAT WE CAN DO
24 OUR JOBS PROPERLY.

25 NOW, AS I UNDERSTOOD IT, YOU HAD HEARD SOMETHING

1226

1 ABOUT THIS CASE?

2 A. YES, SIR, THE NEWS WHEN IT HAPPENED.

3 Q. BUT WHAT YOU HEARD, YOU'RE ABLE TO PUT THAT OUT
4 OF YOUR MIND ---

5 A. YES, SIR.

6 Q. --- AND DECIDE THIS CASE BASED ON THE EVIDENCE
7 THAT COMES FROM THAT WITNESS STAND AND THE
8 EVIDENCE THAT SOLICITOR POPE AND I PUT IN, ANY
9 PHYSICAL EVIDENCE WE MIGHT PUT IN. IS THAT
10 RIGHT?

11 A. YES, SIR.

12 Q. OKAY. YOU UNDERSTAND THE IMPORTANCE OF HAVING
13 IMPARTIAL OPEN-MINDED FAIR JURORS IN ANY
14 CRIMINAL CASE, NOT JUST THIS ONE, BUT ANYONE.

15 A. YES, SIR.

16 Q. ANYONE WHO IS BEING JUDGED AS MR. ROBERTSON IS
17 SHOULDN'T BE JUDGED ON HEARSAY FROM THE
18 NEWSPAPERS OR WORD OF MOUTH ON THE STREET, BUT
19 ONLY ON COMPETENT EVIDENCE THAT THIS JUDGE
20 DECIDES THAT THE JURY SHOULD BE ALLOWED TO HEAR.

21 A. YES, SIR.

22 Q. YOU AGREE WITH THAT PRINCIPLE, DON'T YOU?

23 A. YES, SIR.

24 Q. ALL RIGHT, SIR. AND YOU DON'T EVEN KNOW IF WHAT
25 YOU HEARD IS CORRECT, DO YOU?

1 A. NO, SIR.

2 Q. OKAY. SO, THE ONLY EVIDENCE YOU WOULD CONSIDER
3 AS A FAIR JUROR IS THE EVIDENCE THAT COMES FROM
4 THIS WITNESS STAND AND THE EVIDENCE THAT IS
5 ALLOWED TO BE PUT IN, THE PHYSICAL EVIDENCE?

6 A. YES, SIR.

7 Q. AND YOU COULD LISTEN TO THE EVIDENCE THAT WE PUT
8 IN AND THROUGHOUT THE TIME THAT WE'RE PUTTING IN
9 THE EVIDENCE, YOU UNDERSTAND THAT MR. ROBERTSON
10 IS INNOCENT AS HE SITS THERE. HE IS PRESUMED
11 INNOCENT IN THE EYES OF THE LAW?

12 A. YES, SIR.

13 Q. YOU CAN AGREE WITH THAT PRINCIPLE AS WELL?

14 A. YES, SIR.

15 Q. AND YOU WOULD NOT EXPECT HIM TO HAVE TO PROVE
16 ANYTHING IN EITHER PHASE OF THE TRIAL. HE HAS
17 NO BURDEN OF PROOF. THE BURDEN OF PROOF IS
18 EXCLUSIVELY SOLICITOR POPE'S AND MINE IN THIS
19 CASE. WE HAVE TO PROVE TO YOU THAT HE'S GUILTY,
20 HE DOESN'T HAVE TO PROVE HE'S INNOCENT.

21 A. YES, SIR.

22 Q. OKAY. YOU'RE SAYING THAT IN THAT FIRST PHASE
23 THAT YOU, SIR, MR. MCALLISTER, YOU COULD SIT AS
24 A JUROR IN THIS CASE, TOTALLY ERASE YOUR MIND OF
25 THE SIGNIFICANCE OF ANYTHING YOU HEARD, AND

1228

1 DECIDE THIS CASE BASED ONLY ON THE EVIDENCE THAT
2 YOU HEARD IN THIS COURTROOM.

3 A. SIR, I DON'T THINK YOU CAN EVER TOTALLY ERASE
4 SOMETHING THAT YOU'VE HEARD.

5 Q. YES, SIR, BUT YOU COULD PUT IT OUT OF YOUR MIND?

6 A. TRY MY BEST TO, YES, SIR.

7 Q. OKAY, SIR. THE QUESTION IS COULD YOU TAKE ONLY
8 THE EVIDENCE THAT YOU HEARD IN THIS CASE, ONLY
9 THE EVIDENCE THAT YOU HEARD IN THIS COURTROOM
10 RATHER, AND DECIDE THIS CASE BASED ON THAT?
11 BECAUSE AS YOU INDICATED EARLIER, YOU DON'T EVEN
12 KNOW IF THE OTHER STUFF IS TRUE.

13 A. THAT'S RIGHT.

14 Q. SO, YOU WOULD DECIDE THIS CASE BASED ON THE
15 EVIDENCE YOU HEARD HERE?

16 A. YES, SIR. I WOULD TRY MY BEST TO.

17 Q. OKAY, SIR. NOW, ASSUMING THAT WE BEAR OUR
18 BURDEN OF PROOF. ASSUME THAT WE PRESENT
19 EVIDENCE TO YOU THAT SATISFIES YOU BEYOND A
20 REASONABLE DOUBT THAT HE'S GUILTY OF THESE
21 MURDERS AND SATISFIES THE OTHER JURORS THAT HE'S
22 GUILTY OF THESE MURDERS, WE THEN MOVE INTO THE
23 SECOND PHASE OF THE TRIAL.

24 IN THE SECOND PHASE OF THE TRIAL, WE'RE PAST
25 GUILT, WE NOW HAVE ESTABLISHED GUILT, WE ARE

1 ONLY CONCERNED WITH THE PENALTY FOR THE CRIME.
2 AND THERE ARE TWO OPTIONS IN THE SECOND PHASE.
3 THOSE OPTIONS ARE LIFE AND DEATH.
4 AND YOU HAVE INDICATED TO JUDGE HAYES THAT
5 YOU'RE THE TYPE OF JUROR THAT COULD CONSIDER
6 BOTH A SENTENCE OF LIFE AND A SENTENCE OF DEATH.
7 IS THAT CORRECT?

8 A. YES, SIR.

9 Q. YOU CAN UNDERSTAND, JUST AS IN THE FIRST PHASE
10 HOW WE NEEDED AN IMPARTIAL OPEN-MINDED JUROR TO
11 HEAR THE EVIDENCE TO DECIDE GUILT, WE LIKEWISE
12 NEED AN OPEN-MINDED IMPARTIAL JUROR TO DECIDE
13 WHAT THE PENALTY SHOULD BE. AND YOU COULD BE
14 THAT JUROR; IS THAT CORRECT?

15 A. YES.

16 Q. OKAY. IT WOULDN'T MATTER TO YOU THE FACT THAT
17 HE HAD BEEN FOUND GUILTY OF KILLING HIS PARENTS,
18 YOU WOULDN'T GO INTO THE PENALTY PHASE, THE
19 SECOND PART OF THE TRIAL WITH ANY PRECONCEIVED
20 NOTION OF WHAT THE PENALTY SHOULD BE, WOULD YOU?
21 YOU WOULDN'T HAVE, FOR EXAMPLE, YOU WOULDN'T GO
22 INTO THE PENALTY PHASE THINKING HE NEEDS TO DIE
23 FOR THIS. YOU WOULD WANT TO HEAR THE
24 AGGRAVATING EVIDENCE, AND THE JUDGE EXPLAINED
25 THAT BRIEFLY. WOULD YOU LIKE FOR ME TO EXPLAIN

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1 IT IN A LITTLE MORE DETAIL WHAT AGGRAVATING AND
2 MITIGATING EVIDENCE IS?

3 MR. HANCOCK: YOUR HONOR, I WOULD JUST ASK THAT
4 HE BE ALLOWED TO ANSWER THE QUESTIONS BEFORE ---

5 THE COURT: I AGREE. JUST ASK QUESTIONS, PLEASE.

6 Q. DO YOU UNDERSTAND THE CONCEPT OF AGGRAVATING AND
7 MITIGATING EVIDENCE?

8 A. YES.

9 Q. OKAY, YOU UNDERSTAND THAT AS THE STATE WE HAVE
10 TO PROVE THAT IT'S NOT JUST A MURDER BUT THERE
11 ARE WHAT ARE CALLED AGGRAVATING CIRCUMSTANCES IN
12 THE EYES OF THE LAW THAT MAKE THE MURDER MORE
13 SEVERE, MORE HEINOUS. DO YOU UNDERSTAND THAT?

14 A. YES.

15 Q. AND THE DEFENSE IN THAT PHASE, THEY ARE LIKEWISE
16 AFFORDED THE OPPORTUNITY, BUT THEY DON'T HAVE
17 TO, PRESENT EVIDENCE OF MITIGATION WHICH TENDS
18 TO LESSEN THE DEFENDANT'S RESPONSIBILITY. IS
19 THAT CORRECT?

20 A. YES, SIR.

21 Q. ALL RIGHT, SIR. GOING INTO THAT SECOND PHASE,
22 ARE YOU THE KIND OF JUROR THAT WOULD GO INTO
23 THAT SECOND PHASE WITH YOUR MIND MADE UP ONE WAY
24 OR THE OTHER AS TO WHAT THE PENALTY SHOULD BE?

25 A. NO.

1 Q. OKAY. AS YOU WENT INTO THE SECOND PHASE OF THE
2 TRIAL, ASSUMING HE HAD BEEN CONVICTED OF KILLING
3 BOTH OF HIS PARENTS, ASSUME THAT AS TRUE, AS YOU
4 GO INTO THE SECOND PHASE OF THE TRIAL, ARE YOU
5 DISPOSED ONE WAY OR THE OTHER AS TO WHAT HIS
6 PENALTY SHOULD BE, LIFE OR DEATH?

7 A. NO.

8 Q. ALL RIGHT, SIR. COULD YOU LISTEN TO THE
9 EVIDENCE THAT THE STATE PRESENTED?

10 A. YES, SIR.

11 Q. AND WOULD YOU LISTEN TO ANY EVIDENCE THAT THE
12 DEFENDANT CHOSE TO PRESENT?

13 A. YES.

14 Q. AND AT THAT POINT -- HAVE YOU HAD ANY FORMAL
15 TRAINING IN THE LAW, SIR?

16 A. NO, SIR.

17 Q. OKAY. YOU DON'T KNOW THE LAW IN THIS STATE ON
18 THESE ISSUES, DO YOU?

19 A. NO, SIR.

20 Q. OKAY. WELL, YOU DON'T HAVE TO, THAT'S THE GOOD
21 NEWS. YOU DON'T NEED ANY EXPERIENCE IN THE LAW
22 AT ALL. JUDGE HAYES IS GOING TO EDUCATE YOU AND
23 TELL YOU EVERYTHING YOU NEED TO KNOW ABOUT THE
24 LAW SO THAT YOU CAN MAKE A PROPER DECISION UNDER
25 THE LAW.

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1 WOULD YOU AGREE THAT YOU COULDN'T REALLY MAKE A
2 DECISION ABOUT WHETHER OR NOT THE SENTENCE
3 SHOULD BE LIFE OR DEATH UNTIL YOU'D HEARD THE
4 LAW?

5 A. YES, THAT'S RIGHT.

6 Q. SO, WOULD IT BE FAIR TO SAY THAT YOU WOULD WAIT
7 UNTIL THE JUDGE HAD TOLD YOU WHAT THE LAW IS
8 BEFORE YOU MADE YOUR MIND UP WHETHER THE
9 SENTENCE SHOULD BE LIFE OR DEATH?

10 A. YES.

11 Q. OKAY. SO, YOU WOULD WAIT UNTIL THE STATE HAD
12 THE OPPORTUNITY TO PRESENT ITS EVIDENCE, THE
13 DEFENSE HAD THE OPPORTUNITY TO PRESENT ANY
14 EVIDENCE THEY WANTED, AND THEN THE JUDGE CHARGED
15 YOU BEFORE YOU WOULD START THINKING IN YOUR OWN
16 MIND WHAT THE PENALTY SHOULD BE?

17 A. YES.

18 Q. OKAY, SIR. AND I BELIEVE YOUR TESTIMONY WAS,
19 SIR, THAT AFTER ALL OF THAT AND AFTER THE JUDGE
20 TOLD YOU WHAT THE LAW WAS, YOU COULD DECIDE
21 UNDER CERTAIN CIRCUMSTANCES IF THE CIRCUMSTANCES
22 WERE RIGHT, THAT THIS DEFENDANT SHOULD BE
23 SENTENCED TO LIFE IN PRISON?

24 A. YES.

25 Q. AND THEN IF THE CIRCUMSTANCES WERE RIGHT AND

1 SEVERE ENOUGH, YOU WOULD ALSO DECIDE THAT THIS
2 DEFENDANT SHOULD BE SENTENCED TO DEATH?

3 A. YES.

4 Q. ALL RIGHT, SIR. THE LAST THING I'M GOING TO ASK
5 YOU, SIR, IS HAVE YOU SERVED ON A JURY BEFORE?

6 A. NO, SIR.

7 Q. THAT'S THE SECOND TO THE LAST THING I'M GOING TO
8 ASK YOU. THE LAST THING I'M GOING TO ASK YOU IS
9 COULD YOU IF YOU WERE SERVING AS A JUROR AND YOU
10 DECIDED THAT THIS DEFENDANT SHOULD BE SENTENCED
11 TO DEATH, IT WOULD BE NECESSARY UNDER THE LAW
12 FOR EACH JUROR TO SIGN THEIR NAME ON THE VERDICT
13 SHEET. IT'S THE ONLY TYPE OF CASE WHERE EACH
14 JUROR HAS TO SIGN. IF THE JURY DECIDES TO
15 SENTENCE HIM TO DEATH, EACH JUROR IS REQUIRED TO
16 TAKE A PEN, TAKE THE VERDICT SHEET IN HAND AND
17 SIGN THEIR NAME SAYING THAT THEY ARE SENDING
18 THIS MAN TO DEATH.

19 COULD YOU IF THE CIRCUMSTANCES WERE RIGHT UNDER
20 THE LAW AS THE JUDGE TELLS YOU, SIGN ON A SHEET
21 OF PAPER WILTON MCALLISTER SENDING JIMMY
22 ROBERTSON TO HIS DEATH?

23 A. YES.

24 Q. THANK YOU, SIR.

25 QUESTIONS BY MR. HANCOCK:

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1 Q. MR. MCALLISTER, I'M BILL HANCOCK. I'M THE
2 ATTORNEY FOR JIMMY ROBERTSON WHO IS SEATED HERE.
3 THIS IS MR. JIM BOYD WHO IS CO-COUNSEL IN THIS
4 CASE.

5 A. COULD YOU SPEAK UP JUST A LITTLE BIT, PLEASE?

6 Q. YES, SIR, I WILL. I'M BILL HANCOCK.

7 A. OKAY.

8 Q. THIS IS THE DEFENDANT JIMMY ROBERTSON.

9 A. OKAY.

10 Q. I REPRESENT JIMMY AND SO DOES MR. BOYD SEATED
11 RIGHT HERE.

12 A. RIGHT.

13 Q. AS WE BEGAN THIS QUESTIONING, YOU TOLD THE JUDGE
14 THAT YOU WERE JUROR TYPE ONE; ISN'T THAT
15 CORRECT, SIR?

16 A. YES.

17 Q. AND DID YOU UNDERSTAND THAT JUROR TYPE TO BE A
18 TYPE THAT NO MATTER WHAT THE CIRCUMSTANCES WERE,
19 YOU WOULD VOTE FOR THE DEATH PENALTY?

20 A. THAT'S WHY I ASKED THE QUESTION OF THE JUDGE,
21 THE DEFINITIONS. I SAID I LEAN TOWARD THAT.
22 HOWEVER, UNDER THE DEFINITIONS BY HIM AND AS
23 EXPLAINED BY HIM, I BELIEVE I'M THREE.

24 Q. YOU'RE FREE?

25 A. I AM THREE.

1 Q. THREE.

2 A. TYPE THREE.

3 Q. ALL RIGHT. WELL, YOU WERE READ THE DEFINITION
4 OF MURDER AND YOU KNOW THAT IT IS THE UNLAWFUL
5 KILLING OF ANOTHER HUMAN BEING WITH MALICE
6 AFORETHOUGHT.

7 A. YES, SIR.

8 Q. WITH A WICKED, EVIL AND DEPRAVED PURPOSE AND
9 HEART. YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. AND THAT IF YOU GOT TO THE POINT OF JUDGING
12 WHETHER IT'S THE DEATH PENALTY OR LIFE, THAT
13 WOULD HAVE ALREADY BEEN PROVEN TO YOU, SIR. IS
14 THAT CORRECT?

15 A. YES, SIR.

16 Q. YOU UNDERSTAND THAT?

17 A. RIGHT.

18 Q. AND KNOWING THAT, YOU ARE INDICATING THAT YOU
19 HAVE NO PRECONCEIVED OPINION AS TO WHETHER HE
20 SHOULD RECEIVE LIFE OR DEATH?

21 A. NO, SIR, I DO NOT.

22 Q. WELL, WHEN YOU SAID THAT YOU WERE NUMBER ONE,
23 THEN YOU JUST DIDN'T KNOW WHAT MURDER WAS. IS
24 THAT CORRECT, SIR?

25 A. THAT IS CORRECT. THAT'S WHY I ASKED THE JUDGE

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1 THE QUESTION.

2 Q. WHEN YOU VOTED NUMBER ONE, WHAT DID YOU THINK
3 MURDER WAS?

4 A. I THOUGHT MURDER WAS KILLING ANOTHER HUMAN
5 BEING, MEANING TO DO IT -- BETTER YET, I THOUGHT
6 MANSLAUGHTER -- THE CHARGE OF MANSLAUGHTER,
7 THERE MIGHT BE SOME MITIGATING CIRCUMSTANCES AND
8 REASONS FOR DOING IT.

9 Q. WHEN YOU VOTED NUMBER ONE, YOU INDICATED -- YOU
10 THOUGHT MURDER WAS KILLING ANOTHER HUMAN BEING
11 AND MEANING TO DO IT?

12 A. YES, SIR.

13 Q. AND IF YOU HAD SOMEBODY THAT KILLED ANOTHER
14 HUMAN BEING AND MEANT TO DO IT, THEN THEY SHOULD
15 GET THE DEATH PENALTY. ISN'T THAT RIGHT, SIR?

16 A. IF IT WASN'T SELF-DEFENSE OR PROTECTING SOMEONE
17 ELSE.

18 Q. AND YOU STILL STAND BY THAT DO YOU NOT, SIR?

19 A. YES, SIR.

20 Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

21 THE COURT: YOU CAN STEP OUTSIDE JUST A MOMENT.

22 (THE JUROR LEFT THE COURTROOM.)

23 THE COURT: WHAT SAYS THE STATE?

24 MR. BRACKETT: YOUR HONOR, I SUBMIT AFTER HE WAS
25 EDUCATED AND CERTAIN THINGS WERE EXPLAINED TO HIM, HE

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1 CLARIFIED HIS POSITION AND HE CLEARLY ANSWERED YOUR
2 QUESTIONS AND MY QUESTIONS BOTH AND SAID THAT THE COULD
3 FIND FOR LIFE, HE COULD FIND FOR DEATH, HE COULD WAIT UNTIL
4 THE LAW HAD BEEN EXPLAINED TO HIM. HE UNDERSTOOD AND HE IS
5 CLEARLY QUALIFIED UNDER THE TOTALITY OF THE CIRCUMSTANCES.

6 THE COURT: WHAT SAYS THE DEFENSE?

7 MR. HANCOCK: YOUR HONOR, UNDER YOUR DEFINITION
8 HE THOUGHT THAT THERE WERE CIRCUMSTANCES OF SELF-DEFENSE,
9 MANSLAUGHTER OR OTHERWISE. I ASKED HIM WHAT WAS HIS
10 DEFINITION OF MURDER AND HE SAID THAT HE SHOULD GET THE
11 DEATH PENALTY.

12 THE COURT: I FIND HE'S NOT QUALIFIED. AS CLEAR
13 AS IT IS TO MR. BRACKETT, I FIND THAT HE'S NOT QUALIFIED.
14 ALL RIGHT, BRING HIM IN.

15 (THE JUROR RETURNED TO THE COURTROOM.)

16 THE COURT: MR. MCALLISTER, WE'RE GOING TO EXCUSE
17 YOU FROM FURTHER SERVICE. I'M GOING TO ASK THE BAILIFF TO
18 HAND YOU YOUR RECEIPT FOR ATTENDING YOUR SCHOOL.

19 THE JUROR: ALL RIGHT.

20 THE COURT: AND YOU ARE TO FEEL FREE TO LEAVE. WE
21 APPRECIATE YOUR CANDOR AND YOUR TIME.

22 THE JUROR: THANK YOU, SIR.

23 (THE JUROR LEFT THE COURTROOM.)

24 THE COURT: ALL RIGHT, THE NEXT IS CHARLES
25 MILBURY.

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1 CHARLES E. MILBURY, JUROR NUMBER 184, WHITE MALE,
2 WAS QUESTIONED AS FOLLOWS:

3 QUESTIONS BY THE COURT:

4 Q. COME ON UP HERE AND HAVE A SEAT PLEASE, SIR.

5 MR. MILBURY, I'M JOHN HAYES, THE JUDGE WHO HAS
6 BEEN ASSIGNED THIS CASE, AND I'LL BE PRESIDING
7 AND I WANT TO REMIND YOU THAT YOU'RE UNDER OATH.
8 YOU REMEMBER THAT?

9 A. YES.

10 Q. AND I WANT YOU TO KNOW THAT DURING THE TRIAL OF
11 THIS CASE IF YOU ARE ON THE JURY, YOU WILL
12 PERHAPS SEE TELEVISION CAMERAS OR PHOTOGRAPHERS
13 IN THE COURTROOM. DON'T BE DISTRACTED BY THEM.

14 THEY ARE ALLOWED TO BE HERE, BUT THEY ARE NOT
15 ALLOWED TO SHOW JURORS OR REPORT ABOUT JURORS.
16 NOW, YOU HAD TURNED IN A QUESTIONNAIRE. DO YOU
17 BELIEVE THAT QUESTIONNAIRE IS ACCURATE OR DO YOU
18 NEED TO MAKE SOME CHANGES TO IT?

19 A. I BELIEVE IT'S ACCURATE, YOUR HONOR.

20 Q. DID YOU HAVE AN OPPORTUNITY TO REVIEW THAT LIST
21 OF WITNESSES THAT WAS IN THAT JURY ROOM?

22 A. YES, YOUR HONOR.

23 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE OR ARE YOU
24 A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF ANY
25 OF THOSE INDIVIDUALS?

1 A. NO, YOUR HONOR.

2 Q. HAVE YOU PRIOR TO YOUR COMING HERE, OF COURSE,
3 WE DID ANNOUNCE THE CASE ON MONDAY AND THE
4 INDICTMENTS WERE READ, PRIOR TO THAT TIME AND
5 PRIOR TO NOW, OTHER THAN THAT, HAVE YOU HEARD
6 ANYTHING ABOUT THIS CASE, READ ABOUT IT, FORMED
7 AN OPINION ABOUT IT OR EXPRESSED AN OPINION
8 ABOUT IT?

9 A. NO, YOUR HONOR.

10 Q. IN THE JURY ROOM THERE WAS A LIST INVOLVING
11 JUROR TYPES. IN A CASE SUCH AS THIS THERE ARE
12 TWO PARTS TO A TRIAL. THAT WOULD BE A FIRST
13 PART DEALING WITH WHETHER OR NOT THE STATE WERE
14 TO PROVE TO A JURY'S SATISFACTION BEYOND A
15 REASONABLE DOUBT UNANIMOUSLY THAT MR. ROBERTSON
16 WERE GUILTY OF MURDER. IF THAT JURY WERE TO
17 FIND HIM NOT GUILTY, THE CASE WOULD END THERE.
18 AND HE IS, OF COURSE, PRESUMED INNOCENT UNTIL
19 SUCH TIME AS A JURY WERE TO FIND HIM GUILTY.
20 BUT IF THE JURY WERE TO BE CONVINCED BEYOND A
21 REASONABLE DOUBT AND UNANIMOUSLY FIND HIM
22 GUILTY, WE WOULD MOVE TO A SECOND PART OF THE
23 TRIAL DEALING WITH WHAT PENALTY WOULD BE
24 APPROPRIATE. DO YOU UNDERSTAND THAT?

25 A. YES, YOUR HONOR.

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1 Q. HAVE YOU LOOKED AT THOSE TYPES OF JURORS?

2 A. I HAVE, YOUR HONOR.

3 Q. DO YOU FIND YOURSELF TO BE IN ONE OF THOSE
4 TYPES?

5 A. THE LAST GROUP, SIR.

6 Q. OKAY. THAT THIRD TYPE IS THE TYPE THAT I TALKED
7 IN THERE OR I SET FORTH LANGUAGE DEALING WITH
8 WHAT ARE CALLED AGGRAVATING AND MITIGATING
9 CIRCUMSTANCES.

10 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
11 WHICH ATTEND THE COMMISSION OF A CRIME WHICH ADD
12 TO ITS ENORMITY OR ADD TO ITS INJURIOUS
13 CONSEQUENCES. THAT IS, THEY ARE THINGS ABOVE
14 AND BEYOND JUST THE ESSENTIAL ELEMENTS OF THE
15 ACT ITSELF.

16 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH
17 DO NOT CONSTITUTE JUSTIFICATION OR EXCUSE FOR
18 THE COMMISSION OF A CRIME, BUT ARE THINGS WHICH
19 IN FAIRNESS AND MERCY MAY BE CONSIDERED AS
20 EXTENUATING OR REDUCING ONE'S DEGREE OF MORAL
21 CULPABILITY FOR AN OFFENSE. DO YOU UNDERSTAND
22 THAT?

23 A. I DO, YOUR HONOR.

24 Q. SO, TYPE THREE JUROR, YOU'RE TELLING ME THAT
25 ONCE GUILT HAD BEEN ESTABLISHED AND WE WENT INTO

1 THE SECOND PHASE OF THE TRIAL, YOU WOULD NOT
2 HAVE MADE UP YOUR MIND AT THAT POINT AS TO WHAT
3 WOULD BE THE APPROPRIATE PUNISHMENT. IS THAT
4 CORRECT?

5 A. YES, YOUR HONOR.

6 Q. YOU ARE TELLING ME THAT YOU WOULD NEED TO HEAR
7 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
8 MITIGATION AND WOULD WANT TO LISTEN TO AND
9 FOLLOW THE LAW AS THE JUDGE CHARGES YOU AND THEN
10 AND ONLY THEN MAKE UP YOUR MIND AND MAKE A
11 DECISION AS TO WHAT PUNISHMENT WOULD BE
12 APPROPRIATE. IS THAT CORRECT?

13 A. YES, YOUR HONOR.

14 Q. AND AT THAT TIME IF YOU ARE CONVINCED AND FEEL
15 THAT THE FACTS WARRANTED A VERDICT OF LIFE
16 IMPRISONMENT, COULD YOU RETURN A VERDICT OF LIFE
17 IMPRISONMENT?

18 A. YES, YOUR HONOR.

19 Q. IF AT THAT TIME YOU FELT THAT THE FACTS
20 WARRANTED A VERDICT OF THE DEATH PENALTY, COULD
21 YOU RETURN A VERDICT IMPOSING THE DEATH PENALTY
22 ON MR. ROBERTSON?

23 A. YES, YOUR HONOR.

24 Q. ANSWER ANY QUESTIONS THAT THE ATTORNEYS MAY
25 HAVE.

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1 Q. YES, YOUR HONOR.

2 QUESTIONS BY MR. BOYD:

3 Q. GOOD AFTERNOON, MR. MILBURY.

4 A. GOOD AFTERNOON.

5 Q. MY NAME IS JIM BOYD; I REPRESENT JIMMY ROBERTSON
6 IN THIS CASE, HE'S SEATED OVER THERE. AND BILL
7 HANCOCK IS MY CO-COUNSEL, HE'S SEATED THERE AT
8 THE END OF THE TABLE.

9 I JUST WANT TO ASK YOU A FEW QUESTIONS ABOUT THE
10 JUROR INFORMATION FORM YOU FILLED OUT AND ALSO
11 TO FOLLOW-UP ON A FEW QUESTIONS THAT THE JUDGE
12 ASKED YOU.

13 NOW, I NOTICED ON YOUR JURY INFORMATION FORM YOU
14 PUT DOWN THAT YOU ARE AN I.R.A. MEMBER. WHAT IS
15 THAT?

16 A. THAT IS THE LEGAL SIDE OF THE NATIONAL RIFLE
17 ASSOCIATION.

18 Q. OKAY. I WANTED TO MAKE SURE IT WASN'T THE IRISH
19 REPUBLICAN ARMY.

20 A. NO.

21 Q. OKAY. SO, YOU'RE A MEMBER OF THE ---

22 A. NATIONAL RIFLE ASSOCIATION.

23 Q. AND I.R.A. IS THEIR LEGAL ARM?

24 A. CORRECT.

25 Q. YOU INDICATED ALSO ON YOUR FORM, YOU WERE IN THE

1 Q. AIR FORCE, IS THAT CORRECT?

2 A. CORRECT.

3 Q. AND YOU WERE PART OF THE MILITARY POLICE IN THE
4 AIR FORCE?

5 A. CORRECT.

6 Q. DO YOU HAVE ANY LAW ENFORCEMENT EXPERIENCE
7 OUTSIDE OF BEING IN THE AIR FORCE?

8 A. NO, SIR.

9 Q. NOW, IN THIS CASE THIS CASE IS A TWO PHASE
10 TRIAL. IN THE FIRST PHASE OF THE TRIAL, THE
11 JURORS ARE ASKED TO DETERMINE IF JIMMY ROBERTSON
12 WOULD BE FOUND GUILTY OR NOT GUILTY OF THE
13 CHARGES.

14 OF COURSE, IF HE'S FOUND NOT GUILTY, THAT ENDS
15 THE CASE, THERE IS NO PUNISHMENT FOR SOMEONE WHO
16 IS NOT GUILTY. AND THE QUESTIONS I'M GOING TO
17 ASK YOU GO TO WHAT HAPPENS IN THE PENALTY PHASE
18 OF THE TRIAL IF THERE IS ONE. NOW, I DON'T WANT
19 TO ASSUME THAT THERE IS GOING TO BE ONE JUST BY
20 ASKING THESE QUESTIONS.

21 BUT IN A PENALTY PHASE OF THE TRIAL JURORS HEAR
22 EVIDENCE ON AGGRAVATION ON BEHALF OF THE STATE.
23 THAT IS, THINGS THAT MAKE THE MURDER WORSE,
24 WORSE THAN EVEN AN ORDINARY MURDER. DO YOU SEE
25 WHAT I'M SAYING?

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1 A. YES.

2 Q. AND THEN THEY ALSO CAN HEAR INFORMATION
3 CONCERNING MITIGATING FACTORS. THAT IS, THINGS
4 THAT DON'T EXCUSE THE MURDER, BUT MAY MAKE THE
5 PERSON LESS MORALLY CULPABLE, BASICALLY. THINGS
6 ABOUT THE PERSON, OR THE SURROUNDING
7 CIRCUMSTANCES, THAT TYPE OF THING.
8 NOW, KNOWING THAT -- I DON'T KNOW IF YOU DO KNOW
9 THIS. YOU KNOW THAT JIMMY ROBERTSON IS CHARGED
10 WITH MURDERING BOTH OF HIS PARENTS?

11 A. CORRECT.

12 Q. AND KNOWING THAT, AND KNOWING THAT MURDER IS THE
13 KILLING OF ANOTHER PERSON WITH MALICE
14 AFORETHOUGHT AND THAT IT'S A DELIBERATE ACT AND
15 ALL OF THAT, ASSUMING WE'RE IN THE PENALTY PHASE
16 OF THE TRIAL AND HE'S BEEN CONVICTED OF THAT AND
17 THERE'S NO SELF-DEFENSE OR ACCIDENT OR ANYTHING
18 OF THAT NATURE, ASSUMING THOSE CIRCUMSTANCES,
19 CAN YOU STILL CONSIDER A SENTENCE OF LIFE AS
20 OPPOSED TO DEATH UNDER THOSE CIRCUMSTANCES?

21 A. YES.

22 Q. SO, WOULD YOU BE WILLING TO LISTEN TO, AND NOT
23 JUST LISTEN TO, BUT CONSIDER MITIGATING
24 CIRCUMSTANCES WE MAY WANT TO PRESENT IN HIS
25 BEHALF IN THAT PHASE OF THE TRIAL?

1 A. I'M GOING TO BE FORCED TO LISTEN TO WHATEVER YOU
2 SAY.

3 Q. WELL, THERE'S A DIFFERENCE BETWEEN LISTENING --
4 I CAN LISTEN TO WHAT ANYBODY SAYS, BUT REALLY
5 CONSIDERING SOMETHING IS ANOTHER MATTER. AND
6 WHAT I'M ASKING YOU ARE YOU WILLING TO CONSIDER
7 IT, NOT JUST LISTEN TO IT?

8 A. TO MITIGATING CIRCUMSTANCES?

9 Q. YES, SIR.

10 A. YES.

11 Q. A FEW OTHER QUESTIONS I WANT TO ASK YOU. WOULD
12 YOU START FROM A PRESUMPTION OR AN INFERENCE OR
13 ANYTHING THAT THE CORRECT PUNISHMENT SHOULD BE
14 DEATH UNLESS YOU ARE CONVINCED OTHERWISE, OR DO
15 YOU START FROM A BLANK SLATE?

16 A. I'D START FROM A BLANK SLATE.

17 Q. NOW UNDERSTANDING IF YOU'RE ON A JURY OF COURSE
18 YOU HAVE YOUR OPINION, OTHER JURORS MAY HAVE
19 THEIR OPINION. YOU UNDERSTAND THAT, OF COURSE.
20 AND YOU'RE ENTITLED TO HAVE YOUR OPINION
21 RESPECTED BY ALL THE OTHER MEMBERS OF THE JURY.
22 YOU UNDERSTAND THAT?

23 A. UH HUH.

24 Q. AND LIKEWISE, JURORS WHO MAY DISAGREE WITH YOUR
25 OPINION HAVE THE RIGHT TO HAVE THEIR OPINION

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1 RESPECTED BY YOU. YOU UNDERSTAND THAT?

2 A. UH HUH.

3 Q. AND, OF COURSE, YOU HAVE A DUTY TO DISCUSS AND
4 DELIBERATE BUT NOBODY CAN FORCE THEIR OPINION ON
5 ANOTHER PERSON; YOU UNDERSTAND THAT?

6 A. YES.

7 Q. I THINK THAT'S ALL THE QUESTIONS I HAVE. THANK
8 YOU.

9 QUESTIONS BY MR. BRACKETT:

10 Q. GOOD AFTERNOON, MR. MILBURY.

11 A. GOOD AFTERNOON, SIR.

12 Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY
13 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. SEATED
14 OVER HERE AT COUNSEL TABLE WITH ME IS TOMMY
15 POPE. SOLICITOR POPE AND I ARE PROSECUTING THIS
16 CASE ON BEHALF OF THE STATE OF SOUTH CAROLINA.
17 AND IT'S MR. JIMMY ROBERTSON OVER THERE WHO IS
18 CHARGED WITH TWO COUNTS OF MURDER, ONE COUNT OF
19 ARMED ROBBERY AND ONE COUNT OF FINANCIAL
20 TRANSACTION CARD FRAUD.

21 AS I UNDERSTAND IT, YOU ARE SAYING YOU COULD BE
22 A FAIR JUROR IN THE FIRST PHASE OF THE TRIAL.
23 IS THAT CORRECT?

24 A. YES, SIR.

25 Q. OKAY. IN THE FIRST PHASE, OF COURSE, WE ARE

1 ONLY CONCERNED WITH GUILT OR INNOCENCE.

2 A. CORRECT.

3 Q. AND ONLY IF WE FIND HIM GUILTY IN THE FIRST
4 PHASE -- ONLY IF WE PROVE HIM GUILTY -- YOU
5 UNDERSTAND THE BURDEN IS OUR'S?

6 A. UH HUH.

7 Q. HE SITS THERE INNOCENT, PRESUMED INNOCENT IN THE
8 EYES OF THE LAW.

9 A. CORRECT.

10 Q. UNTIL WE PROVE HE'S GUILTY BEYOND A REASONABLE
11 DOUBT.

12 A. UH HUH.

13 Q. AND YOU COULD SIT -- YOU HAVE NO PRECONCEIVED
14 NOTIONS BECAUSE YOU'VE NOT HEARD ANYTHING ABOUT
15 THIS CASE?

16 A. NO, SIR.

17 Q. SO, YOU'LL TAKE THIS CASE AS WE PRESENT IT TO
18 YOU AND THE EVIDENCE THAT WE PRESENT, ANY
19 EVIDENCE THEY CHOOSE TO PRESENT AND YOU WILL
20 MAKE A FAIR DECISION?

21 A. CORRECT.

22 Q. IF THE JURY FINDS THAT HE IS GUILTY IN THE FIRST
23 PHASE, THEN WE PROCEED TO THE SECOND PHASE.
24 JUST KIND OF RECAPPING WHAT HAS ALREADY BEEN
25 ASKED OF YOU A NUMBER OF TIMES.

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1 A. CORRECT.

2 Q. I'M JUST GOING TO GO THROUGH IT REAL QUICK. IN
3 THE SECOND PHASE YOU WOULD GO IN AGAIN WITH AN
4 OPEN MIND; YOU COULD GIVE LIFE, YOU COULD GIVE
5 DEATH. AND YOU WOULD HEAR WHAT WE PRESENTED.
6 AGAIN, WE BEAR THE RESPONSIBILITY OF SHOWING
7 AGGRAVATING CIRCUMSTANCES, MAKING THIS MORE OF A
8 HEINOUS MURDER.

9 A. UH HUH.

10 Q. MORE THAN JUST A, NOT TO SAY THAT THERE EVER IS
11 A GARDEN VARIETY, BUT MORE THAN A REGULAR
12 MURDER, AGGRAVATING CIRCUMSTANCES SHOWING WHY IT
13 IS MORE SEVERE.

14 A. UH HUH.

15 Q. THE DEFENSE, AGAIN, HAS THE OPPORTUNITY TO
16 PRESENT EVIDENCE IN THIS PHASE. THEY DON'T HAVE
17 TO, BUT THEY CAN PRESENT EVIDENCE IN WHAT'S
18 CALLED MITIGATION, LESSENING THE DEFENDANT'S
19 CULPABILITY.

20 A. UH HUH.

21 Q. AND YOU COULD LISTEN TO ALL OF THAT; TAKE IT ALL
22 IN; LISTEN TO WHAT THE JUDGE HAS TO SAY ---

23 A. UH HUH.

24 Q. AND THEN YOU WOULD RETIRE WITH THE JURY TO
25 DELIBERATE, DECIDE WHETHER OR NOT HE SHOULD

1 RECEIVE LIFE.

2 A. UH HUH.

3 Q. WHICH IS A POSSIBILITY IN YOUR MIND, DEPENDING
4 ON THE CIRCUMSTANCES.

5 A. UH HUH.

6 Q. OR DEATH, AND THAT'S A POSSIBILITY IN YOUR MIND,
7 AGAIN.

8 A. WELL, AS I UNDERSTAND IT, SIR, YOU ARE SEEKING
9 THE DEATH PENALTY?

10 Q. YES, SIR, WE'RE SEEKING ---

11 A. BUT YOU ARE SEEKING IT ONLY?

12 Q. I'M SORRY?

13 A. I MEAN YOU'RE SEEKING THE DEATH PENALTY, BUT IT
14 DOESN'T NECESSARILY MANDATE UPON A CONVICTION OF
15 GUILTY THAT IT IS AUTOMATICALLY A DEATH PENALTY.

16 CORRECT?

17 Q. THAT'S ABSOLUTELY CORRECT.

18 A. THAT IS YOUR GOAL, IS TO SEEK THE DEATH PENALTY.

19 Q. THAT IS OUR RESPONSIBILITY, TO SHOW EVIDENCE IN
20 AGGRAVATION WHICH ALLOWS -- IF THERE IS NO
21 AGGRAVATING EVIDENCE, THERE CAN BE NO DEATH
22 PENALTY.

23 A. UH HUH.

24 Q. SO, WE HAVE TO SHOW THE AGGRAVATING EVIDENCE.

25 A. UH HUH.

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1 Q. AND THEN THEY CAN SHOW THE MITIGATING EVIDENCE,
2 AND YOU CAN DECIDE FOR YOURSELF WHETHER OR NOT
3 HE SHOULD RECEIVE LIFE OR DEATH.

4 A. UH HUH.

5 Q. AND YOU LISTEN TO ALL OF THE EVIDENCE AND MAKE A
6 DECISION ON THAT.

7 A. UH HUH.

8 Q. AND THE JUDGE WILL CHARGE YOU, YOU CAN GIVE HIM
9 LIFE FOR NO REASON AT ALL.

10 A. UH HUH.

11 Q. OR ANY REASON.

12 A. UH HUH.

13 Q. SO, WHAT YOU'RE SAYING IS THAT YOU COULD LISTEN
14 TO ALL OF THAT AND YOU COULD GIVE HIM LIFE.

15 A. UH HUH.

16 Q. AND YOU COULD ALSO GIVE HIM DEATH.

17 A. YES.

18 Q. OKAY. ONE OF THE RESPONSIBILITIES -- HAVE YOU
19 SERVED ON A JURY BEFORE, SIR?

20 A. NO, SIR.

21 Q. ONE OF THE RESPONSIBILITIES IS KIND OF DIFFERENT
22 FROM ANY OTHER CRIMINAL CASE OR ANY OTHER CIVIL
23 CASE. ON MOST JURIES ONCE THE JURY RETIRES AND
24 DELIBERATES AND COMES UP WITH A VERDICT, THE
25 FOREPERSON OF THE JURY WHICH WILL BE APPOINTED

1 BY THE JUDGE ---

2 A. THE CHAIRMAN OF THE BOARD.

3 Q. EXACTLY, KIND OF THE LEAD MAN FOR THE JURY.

4 A. UH HUH.

5 Q. WILL DESIGNATE WHAT THE VERDICT IS ON A VERDICT
6 SHEET.

7 A. UH HUH.

8 Q. AND THEN SIGN THEIR NAME ATTESTING THAT THIS WAS
9 THE VERDICT OF THE JURY AND SIGN THEIR NAME.

10 A. UH HUH.

11 Q. IF THE VERDICT OF THE JURY IN THE SECOND PHASE
12 IS LIFE, THEN THAT'S THE SAME PROCEDURE. ONLY
13 THE FOREPERSON WILL SIGN AND THAT'S IT.

14 A. UH HUH.

15 Q. IF, HOWEVER, THE VERDICT OF THE JURY IS DEATH,
16 THERE WILL BE A SENTENCING SHEET PASSED AROUND
17 THE JURY ROOM.

18 A. UH HUH.

19 Q. AND EACH JUROR WILL BE REQUIRED TO SIGN THEIR
20 NAME INDICATING THAT THEY VOTED FOR DEATH.

21 A. UH HUH.

22 Q. NOW, IF THE CIRCUMSTANCES WARRANTED IT AND IT
23 WAS PROPER UNDER THE LAW AS THE JUDGE CHARGED
24 IT, COULD YOU TAKE THE PEN IN YOUR HAND, UNDER
25 THE RIGHT CIRCUMSTANCES, AND SIGN YOUR NAME,

1252

1 CHARLES MILBURY, SENDING THIS MAN OVER HERE TO
2 HIS DEATH?

3 A. YES, SIR.

4 Q. OKAY, SIR. THANK YOU VERY MUCH, MR. MILBURY.

5 THE COURT: IF YOU WOULD JUST STEP OUTSIDE FOR
6 JUST A MOMENT.

7 (THE JUROR LEFT THE COURTROOM.)

8 THE COURT: WHAT SAYS THE STATE?

9 MR. BRACKETT: I SUBMIT HE'S QUALIFIED.

10 THE COURT: THE DEFENSE?

11 MR. BOYD: I AGREE, YOUR HONOR.

12 THE COURT: BEFORE I CALL HIM BACK IN, I'M GOING
13 TO HAVE TO GIVE HIM ONE OF THOSE SHEETS THAT SHOW WHAT HE
14 CAN AND CANNOT BRING. DID Y'ALL GIVE THEM BACK?

15 MR. BOYD: NO, SIR.

16 THE COURT: ALL RIGHT, LET ME GIVE HIM ONE AND
17 LET ME TAKE YOUR'S AND HAVE A COPY MADE SO Y'ALL CAN EACH
18 HAVE ONE FOR YOUR FILE. BRING HIM BACK IN.

19 (THE JUROR RETURNED TO THE COURTROOM.)

20 THE COURT: MR. MILBURY, YOU CAN STOP RIGHT
21 THERE. YOU HAVE BEEN CHOSEN TO BE IN THE POOL. THAT DOES
22 NOT MEAN THAT YOU WILL END UP ON THE JURY PANEL ITSELF, BUT
23 YOU WILL BE CONSIDERED.

24 YOU ARE NOT TO DISCUSS THE CASE WITH ANYBODY.
25 YOU ARE NOT TO LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE

1253

1 ABOUT THE CASE. YOU ARE TO REPORT AT 9:30 IN THE MORNING
2 TO THE JURY ASSEMBLY ROOM DOWNSTAIRS.

3 AND BE PREPARED TO STAY FOR A WEEK OR SO. ARE
4 THERE ANY EXTENUATING CIRCUMSTANCES WE NEED TO KNOW ABOUT?

5 THE JUROR: THE ONLY THING IS, YOUR HONOR, I RUN
6 A CORPORATION, A U. S. SUBSIDIARY -- A GERMAN CORPORATION.
7 SO THAT THE OFFICE IS GOING TO BE MORE OR LESS CLOSED FOR
8 A WEEK. BUT THAT'S MY PROBLEM.

9 THE COURT: OKAY. MR. IVEY IS GOING TO HAND YOU
10 A SHEET THAT'S GOT A LITTLE BIT OF INSTRUCTIONS ON IT. AT
11 THE TOP IT SAYS WHAT TIME AND AT THE TOP IT SAYS WHERE TO
12 REPORT WHICH IS 9:30 DOWNSTAIRS AND THEN IT'S GOT SOME
13 ITEMS THAT WE DON'T WANT YOU TO BRING. SOME OF THEM ARE
14 PROBABLY PRETTY OBVIOUS WHY WE DON'T WANT YOU TO BRING
15 THEM.

16 BUT REPORT DOWNSTAIRS AT 9:30 TOMORROW MORNING.

17 THE JUROR: YES, YOUR HONOR.

18 THE COURT: AND DON'T DISCUSS THE CASE OR LET
19 YOURSELF BE EXPOSED TO ANY NEWS COVERAGE.

20 THE JUROR: YES, SIR.

21 THE COURT: THANK YOU.

22 THE JUROR: THANK YOU, SIR.

23 (THE JUROR LEFT THE COURTROOM.)

24 THE COURT: ALL RIGHT, ROBERT THURMAN, NUMBER
25 272.

1254

1 ROBERT W. THURMAN, JUROR NUMBER 272, WHITE MALE,
2 WAS QUESTIONED AS FOLLOWS:

3 QUESTIONS BY THE COURT:

4 Q. MR. THURMAN, IF YOU WILL COME OVER HERE AND HAVE
5 A SEAT. MR. THURMAN, I'M JOHN HAYES AND I'VE
6 BEEN ASSIGNED TO PRESIDE OVER THIS TRIAL. AND I
7 WANT TO REMIND YOU THAT YOU'RE UNDER OATH.

8 A. YES, SIR.

9 Q. IF YOU ARE PICKED TO BE ON THIS JURY, YOU MAY
10 SEE IN THE COURTROOM A CAMERA OR T.V. CAMERAS.
11 DON'T PAY ANY ATTENTION TO THEM AND DON'T BE
12 DISTRACTED BY THEM. THEY CAN COVER THE CASE BUT
13 THEY CAN'T SHOW THE JURORS OR REPORT ABOUT THE
14 JURORS.

15 YOU SENT IN A QUESTIONNAIRE. DO YOU BELIEVE
16 IT'S ACCURATE OR IS THERE SOMETHING ON THERE
17 THAT YOU WANT TO CHANGE?

18 A. WELL, I SENT IT IN IN DECEMBER. I KIND OF
19 FILLED IT OUT REAL QUICK TO BE HONEST WITH YOU.
20 I DON'T EVEN KNOW WHAT'S ON IT.

21 Q. BUT YOU DID FILL IT OUT ACCURATELY AT THAT TIME?

22 A. YES, SIR, TO THE BEST OF MY KNOWLEDGE.

23 Q. OKAY. DID YOU REVIEW THE LIST OF WITNESSES THAT
24 WAS IN THE JURY ROOM?

25 A. YES.

1 Q. ON THERE WAS THERE ANYONE TO WHOM YOU ARE
2 RELATED BY BLOOD OR MARRIAGE?

3 A. NO.

4 Q. WAS THERE ANYBODY ON THERE WHO IS A CLOSE
5 PERSONAL FRIEND OR ACQUAINTANCE OF YOUR'S?

6 A. NO, SIR.

7 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
8 YOU GOT HERE?

9 A. NO, SIR, I HAD NEVER EVEN HEARD OF THE CASE WHEN
10 I GOT HERE MONDAY. THAT WAS THE FIRST TIME I'D
11 EVER HEARD OF IT.

12 Q. ALL RIGHT. SO, YOU HAVEN'T FORMED OR EXPRESSED
13 ANY OPINION ABOUT THE CASE?

14 A. NO, SIR.

15 Q. THIS CASE WILL TAKE PLACE IN TWO PARTS. ONE
16 DEALING WITH A DETERMINATION OF WHETHER OR NOT
17 MR. ROBERTSON WAS GUILTY OF THESE CHARGES, AND
18 HE IS PRESUMED INNOCENT OF THESE CHARGES. HE
19 WILL BE DETERMINED TO BE GUILTY ONLY IF THE
20 STATE WERE TO CONVINCE A JURY UNANIMOUSLY OF HIS
21 GUILT BEYOND A REASONABLE DOUBT.

22 IF THE JURY FOUND HIM NOT GUILTY, THE CASE WOULD
23 BE OVER. IF THEY FOUND HIM GUILTY, WE WOULD
24 MOVE INTO A SECOND PHASE, THE PENALTY PHASE. WE
25 ARE NOT PRESUPPOSING THAT WE WILL GET THERE, BUT

1256

1 WE HAVE TO TALK ABOUT THAT AT THIS POINT.

2 IN THE JURY ROOM THERE WAS A PIECE OF PAPER WITH
3 THREE TYPES OF JURORS ON IT. DID YOU HAVE A
4 CHANCE TO REVIEW IT?

5 A. YES, SIR.

6 Q. DID YOU FIND YOURSELF TO BE IN ONE OF THOSE
7 CATEGORIES?

8 A. YES, SIR.

9 Q. WHICH ONE?

10 A. I WAS THE THIRD ONE.

11 Q. THIS TYPE JUROR, IN EXPLAINING IT, I SET OUT THE
12 WORDS AGGRAVATION AND MITIGATION REGARDING
13 CIRCUMSTANCES.

14 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
15 WHICH WOULD ATTEND THE COMMISSION OF THE CRIME
16 WHICH INCREASE ITS ENORMITY OR ADD TO ITS
17 INJURIOUS CONSEQUENCES. THAT IS, THINGS THAT
18 ARE ABOVE AND BEYOND THE ESSENTIAL ELEMENTS OF
19 THE OFFENSE ITSELF.

20 MITIGATING CIRCUMSTANCES ARE THINGS WHICH ARE
21 NOT JUSTIFICATION OR EXCUSE FOR THE CRIME BEING
22 COMMITTED, BUT THEY ARE THINGS WHICH IN FAIRNESS
23 AND MERCY MAY BE CONSIDERED BY A JURY AS
24 EXTENUATING OR REDUCING ONE'S DEGREE OF MORAL
25 CULPABILITY. DO YOU UNDERSTAND THAT?

1 A. RIGHT.

2 Q. SO YOU ARE TELLING ME THAT IF YOU WERE ON THIS
3 JURY AND MR. ROBERTSON HAD BEEN FOUND BY THAT
4 JURY GUILTY OF MURDER, YOU WOULD NOT GO INTO
5 THAT SECOND PHASE WITH YOUR MIND MADE UP IN
6 ADVANCE CONCERNING WHAT PUNISHMENT WOULD BE
7 APPROPRIATE?

8 A. NO.

9 Q. YOU'RE TELLING ME THAT YOU WOULD WANT TO HEAR
10 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
11 MITIGATION AND THAT YOU WOULD WANT TO LISTEN AND
12 FOLLOW THE LAW CHARGED BY THE JUDGE AND THEN AND
13 ONLY THEN WOULD YOU BE ABLE TO -- LET ME REPEAT
14 THAT, I GOT TONGUE-TIED. YOU ARE TELLING ME, IF
15 I UNDERSTAND IT, THAT YOU WOULD WANT TO HEAR THE
16 FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
17 MITIGATION, HEAR THE JUDGE'S CHARGE ON THE LAW
18 AND THEN AND ONLY THEN DETERMINE WHAT WOULD BE
19 THE APPROPRIATE PUNISHMENT. IS THAT CORRECT?

20 A. YES, SIR, THAT IS CORRECT.

21 Q. IF AT THAT POINT YOU FELT THE APPROPRIATE
22 PUNISHMENT WAS LIFE IMPRISONMENT, COULD YOU
23 RETURN A VERDICT IMPOSING LIFE IMPRISONMENT?

24 A. I DID NOT HEAR THE WHOLE QUESTION.

25 Q. IF AT THAT POINT YOU DETERMINED THAT BASED ON

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1 THOSE FACTS AND CIRCUMSTANCES AND THE LAW THAT
2 THE JUDGE CHARGES YOU, YOU DETERMINED THAT LIFE
3 IMPRISONMENT WAS THE APPROPRIATE PUNISHMENT FOR
4 THE OFFENSE, COULD YOU RETURN A VERDICT OF LIFE
5 IN PRISON?

6 A. YES, SIR.

7 Q. IF YOU FELT UNDER THOSE CIRCUMSTANCES THAT THE
8 APPROPRIATE VERDICT WAS THAT FOR THE DEATH
9 PENALTY, COULD YOU RETURN A DEATH PENALTY ?

10 A. I BELIEVE I COULD. I'VE NEVER BEEN IN THAT
11 SITUATION, BUT I BELIEVE, YES, I COULD.

12 Q. ALL RIGHT, THANK YOU. ANSWER ANY QUESTIONS THAT
13 COUNSEL MIGHT HAVE.

14 QUESTIONS BY MR. POPE:

15 Q. MR. THURMAN, I'M THE SOLICITOR HERE, DISTRICT
16 ATTORNEY HERE IN YORK COUNTY. THIS IS MR. KEVIN
17 BRACKETT, MY DEPUTY SOLICITOR AND, OF COURSE, WE
18 REPRESENT THE STATE IN THIS CASE.

19 I THINK YOUR LAST ANSWER PRETTY MUCH HIT MY
20 FIRST QUESTION. HAVE YOU EVER BEEN IN A
21 SITUATION LIKE THIS BEFORE?

22 A. NO, I HAVEN'T.

23 Q. HAVE YOU EVER HAD TO BE BROUGHT IN AND
24 QUESTIONED ABOUT ALL OF YOUR DIFFERENT VIEWS AND
25 ALL THAT STUFF BEFORE?

1 A. NO, I HAVE NOT.

2 Q. I SAW YOU HAD SERVED, I THINK, ON A CIVIL CASE
3 BEFORE?

4 A. YES, ON A LIABILITY CASE.

5 Q. BUT IT'S NOTHING LIKE THIS?

6 A. NO, SIR.

7 Q. AND ALSO I THINK I SAW THAT YOUR SISTER IS AN
8 ATTORNEY?

9 A. NO, SHE'S A THIRD YEAR LAW STUDENT.

10 Q. WHEN WE'RE THIRD YEAR LAW STUDENTS WE THINK
11 WE'RE ATTORNEYS ALREADY.

12 A. RIGHT, SHE GRADUATES IN MAY.

13 Q. HAVE YOU DISCUSSED THESE TYPE ISSUES WITH HER
14 BEFORE?

15 A. NO, I ONLY TOLD MY MOM I WAS ON JURY DUTY.

16 Q. I GOT YOU. WELL, LET ME TELL YOU, ONE THING
17 THAT YOU'RE IN A GOOD POSITION IS THAT ROBERT
18 THURMAN CAN'T GIVE A WRONG ANSWER BECAUSE THIS
19 IS WHAT, YOU KNOW WHAT I MEAN, IT'S NOT LIKE A
20 QUIZ, THIS IS WHAT YOU'RE ABOUT. THIS IS JUST
21 US TRYING TO FIND OUT A LITTLE BIT ABOUT YOU,
22 YOU KNOW, TO HELP US MAKE YOUR DECISION.

23 AND ONE THING I'LL TELL YOU AND YOU PROBABLY
24 LEARNED WHEN YOU WERE ON THAT FIRST CASE. THE
25 JUDGE IS ALWAYS GOING TO INSTRUCT YOU WHAT THE

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1 LAW IS. YOU KNOW, I'M GOING TO TOUCH ON IT A
2 LITTLE BIT, THE JUDGE HAS TOUCHED ON IT AND, OF
3 COURSE, MR. HANCOCK OR MR. BOYD WILL TOUCH ON
4 IT, TOO. BUT IF YOU WERE CHOSEN TO BE A JUROR,
5 YOU UNDERSTAND THAT YOU JUDGE THE FACTS AND THE
6 JUDGE WILL TELL YOU WHAT THE LAW IS. DO YOU
7 UNDERSTAND THAT?

8 A. YES, SIR.

9 Q. AND DO YOU UNDERSTAND THAT THIS IS, AS THE JUDGE
10 EXPLAINED, IS A TWO PART TRIAL. DO YOU
11 UNDERSTAND WHAT THAT MEANS?

12 A. RIGHT, YES.

13 Q. SO IT'S DIFFERENT, YOU KNOW, IN THE CASE YOU
14 WERE ON Y'ALL RENDERED THE VERDICT AND THEN THE
15 JUDGE WOULD GIVE WHATEVER SENTENCE. OF COURSE,
16 I SAW IT WAS LIABILITY, BUT YOU KNOW WHAT I'M
17 SAYING?

18 A. YES.

19 Q. WELL, IN OUR SITUATION YOU WOULD RENDER THE
20 VERDICT AND THEN YOU WOULD DECIDE THE PENALTY IN
21 A SEPARATE PROCEEDING. AND THERE WOULD BE
22 EVIDENCE IN THE FIRST PROCEEDING AND, OF COURSE,
23 YOU COULD CONSIDER THAT IN THE SECOND
24 PROCEEDING, BUT THERE WOULD ALSO BE OTHER
25 EVIDENCE YOU WOULD HEAR IN THE SECOND

1 PROCEEDING. DO YOU UNDERSTAND THAT?

2 A. RIGHT.

3 Q. OKAY. THE FIRST PROCEEDING IS JUST ABOUT GUILT.
4 IT'S JUST LIKE A NORMAL CRIMINAL TRIAL AND THIS
5 DEFENDANT IS INNOCENT UNTIL PROVEN GUILTY AND
6 IT'S OUR BURDEN AS THE STATE TO PROVE IT BEYOND
7 A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

8 A. YES, SIR.

9 Q. IN OTHER WORDS, HE DOESN'T HAVE TO PROVE
10 ANYTHING; HE DOESN'T HAVE TO PUT UP WITNESSES;
11 HE DOESN'T HAVE TO SAY ANYTHING; HE HAS THE
12 RIGHT TO NOT DO ANY OF THAT. WE'VE GOT TO PROVE
13 IT. DO YOU UNDERSTAND THAT?

14 A. UH HUH.

15 Q. AND FROM WHAT I HEARD YOU TELL THE JUDGE, YOU'RE
16 THE TYPE JUROR THAT YOU CAN ACCEPT THAT, HOLD US
17 TO OUR BURDEN TO PROVE THE CASE. IS THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. AND YOU WOULD KEEP AN OPEN MIND -- AS YOU SIT
20 RIGHT NOW, I THINK YOU SAID YOU HADN'T HEARD
21 HARDLY ANYTHING ABOUT THE CASE TO START WITH.

22 A. NO. WHEN I CAME IN MONDAY, I THOUGHT I WAS IN
23 CIVIL COURT.

24 Q. KIND OF A RUDE AWAKENING I GUESS.

25 A. YES, IT WAS.

1262

1 Q. SO, WHAT YOU KNOW AT ALL ABOUT IT IS JUST WHAT
2 YOU HEARD WHEN THE JUDGE TALKED TO YOU?

3 A. YES, THAT'S ALL I KNOW.

4 Q. OKAY. WELL, IN THE FIRST PHASE, OBVIOUSLY, IT'S
5 A CASE WITH TWO COUNTS OF MURDER, AND A COUNT OF
6 ARMED ROBBERY, AND A COUNT OF FINANCIAL
7 TRANSACTION CARD FRAUD AND WE'VE GOT TO PROVE
8 THE CASE.

9 ON THE FIRST SITUATION YOU'D COME IN, YOU'D WAIT
10 AND HEAR THE EVIDENCE; IF WE PROVED IT, YOU'D
11 VOTE GUILTY; IF WE DIDN'T PROVE IT, YOU'D VOTE
12 NOT GUILTY. IS THAT RIGHT?

13 A. RIGHT.

14 Q. OKAY. IF WE GET TO THE SECOND PHASE AND, OF
15 COURSE, THAT WOULD PRESUPPOSE THAT HE WAS FOUND
16 GUILTY, THEN THE DECISION IS DIFFERENT. IT'S
17 NOT ABOUT GUILTY AND NOT GUILTY BECAUSE HE WOULD
18 HAVE ALREADY BEEN FOUND GUILTY AT THAT POINT.

19 A. UH HUH.

20 Q. THE ISSUE THEN IS LIFE OR DEATH. AND, AGAIN,
21 THE STATE WOULD BRING FORWARD WHAT'S CALLED
22 EVIDENCE IN AGGRAVATION. AND THESE ARE ALL
23 TERMS OF ART, BUT THE BEST WAY TO EXPLAIN IT IS
24 THE STATE WOULD BRING FORTH THE THINGS THAT SHOW
25 WHY IT SHOULD BE A DEATH PENALTY CASE. YOU

1 KNOW, YOU ALREADY KNEW HE HAD BEEN CONVICTED OF
2 KILLING HIS PARENTS. NOW YOU WOULD HEAR OTHER
3 THINGS THAT THE STATE WOULD PUT FORWARD TO SAY
4 THAT THIS IS WORSE AND IT SHOULD BE A DEATH
5 PENALTY CASE.

6 THE DEFENSE WOULD BUT THEY DON'T HAVE TO, COULD
7 BRING FORWARD EVIDENCE IN MITIGATION WHICH IS
8 JUST THE OPPOSITE, TO SHOW SOMETHING OR SHOW
9 SOME EXPLANATION OR SHOW SOMETHING WHY IT SHOULD
10 BE LIFE INSTEAD OF DEATH. AND YOU UNDERSTAND
11 THAT?

12 A. RIGHT.

13 Q. AND AS I UNDERSTAND, YOU'RE THE TYPE OF JUROR
14 JUST BECAUSE HE'S CONVICTED, AND HE'D BE
15 CONVICTED OF KILLING HIS PARENTS, YOU COULDN'T
16 TELL ME IF YOU'RE GOING TO GIVE LIFE OR DEATH
17 BECAUSE YOU HADN'T HEARD ALL THE FACTS YET. IS
18 THAT RIGHT?

19 A. THAT'S CORRECT.

20 Q. OKAY. AND YOU UNDERSTAND THAT YOU COULD NEVER
21 HOLD HIM TO THE BURDEN OF PROVING ANYTHING TO
22 YOU. YOU KNOW, YOU COULDN'T SAY ROBERT THURMAN
23 IS NOT GOING TO LISTEN TO ANYTHING UNLESS THEY
24 PROVE TO ME TO GIVE LIFE. YOU CAN GIVE LIFE FOR
25 ANY REASON AT ALL. DO YOU UNDERSTAND THAT?

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1 A. WELL, I'M NOT SURE I UNDERSTAND.

2 Q. WELL, LET ME SAY THAT AGAIN. THE JUDGE WILL
3 INSTRUCT YOU THAT YOU CAN GIVE LIFE FOR ANY
4 REASON AT ALL.

5 A. OH, OKAY.

6 Q. OF COURSE, THE JUDGE WILL INSTRUCT YOU BUT THE
7 BOTTOM LINE IN ITS SIMPLEST FORM, A LIFE OR
8 DEATH DECISION IF YOU'RE IN THAT SITUATION, IS
9 YOUR DECISION. YOU KNOW, THE JUDGE WILL INSTRUCT
10 YOU WHEN YOU CAN GIVE IT OR WHEN YOU CAN'T, BUT
11 YOU'LL NEVER BE MADE TO GIVE IT, YOU KNOW,
12 EITHER WAY. YOU HAVE TO DECIDE.

13 SO, YOU'RE TELLING ME THAT YOU'RE THE TYPE JUROR
14 THAT YOU COULD GET THERE AND YOU REALLY COULDN'T
15 MAKE A DECISION UNTIL AFTER YOU HEARD WHATEVER
16 WE SAID AND WHATEVER THEY SAID IF THEY WANTED
17 TO. AND THE TRUTH OF THE MATTER, UNTIL THE
18 JUDGE GAVE YOU WHAT THE LAW IS. YOU'RE THE TYPE
19 YOU'RE GOING TO KEEP AN OPEN MIND AND HEAR IT
20 ALL. IS THAT RIGHT?

21 A. YES, I HAVE TO AGREE TO SOMETHING, I DON'T TAKE
22 SOMEONE'S WORD.

23 Q. AND LET ME ASK YOU, IN ACTUALLY SERVING, AND
24 AGAIN YOU'VE BEEN ON JURY BEFORE, YOU KNOW HOW
25 IT IS, YOU GO BACK THERE AND I'VE HEARD PART OF

1 IT AND YOU'VE HEARD PART OF AND YOU TALK ABOUT
2 IT AND -- I SAY PART OF IT, WE ALL HEARD IT ALL
3 BUT I REMEMBER ONE THING. ARE YOU THE TYPE OF
4 JUROR, COULD YOU TALK IT OUT WITH ALL THE OTHER
5 JURORS AND LISTEN TO WHAT THEY HAVE TO SAY AND
6 YOU TELL THEM WHAT YOU HAVE TO SAY?

7 A. YES, SIR.

8 Q. AND, OF COURSE, YOU ALWAYS GO BY YOUR CONVICTION
9 IN YOUR HEART AND YOUR BELIEF, BUT ARE YOU
10 WILLING TO HEAR, AGAIN, WHAT THEY HAVE TO SAY.
11 AGAIN, I USE THE EXAMPLE, YOU KNOW, I'VE HEARD
12 THE TRIAL, I'M GOING IN THERE, I'M GOING TO LOOK
13 OUT OF THE WINDOW, I DON'T EVEN WANT TO TALK TO
14 Y'ALL BECAUSE I'VE DECIDED. ARE YOU THAT TYPE
15 PERSON OR ARE YOU WILLING TO TALK ---

16 A. I DON'T BELIEVE I AM. I KNOW THAT IN MOST
17 THINGS IN MY LIFE I LOOK AT BOTH SIDES.

18 Q. AND THAT'S EXACTLY, YOU KNOW JUROR-WISE, WHAT
19 WE'RE LOOKING AT. AND, AGAIN, I KNOW YOU FEEL
20 LIKE I'M INTERROGATING YOU BUT, AGAIN, IT'S JUST
21 FOR ME TO UNDERSTAND WHAT YOU'RE ABOUT.

22 FINALLY, I'LL TELL YOU -- THE LAST THING I'M
23 GOING TO TELL YOU ON THIS ISSUE, AND THAT'S
24 ALWAYS COMFORTING TO HEAR ME SAY IT'S THE LAST
25 THING, BUT IN A DEATH PENALTY CASE IT'S A LITTLE

1266

1 DIFFERENT THAN IN A NORMAL CASE.

2 IF YOU'LL REMEMBER IN A NORMAL CASE THE
3 FOREPERSON OF THE JURY SIGNS THE VERDICT. YOU
4 KNOW, SAID WE FOUND LIABILITY OR NOT LIABILITY.
5 WELL, IN A DEATH PENALTY CASE IF YOU GET BACK
6 THERE AND, OF COURSE, IT HAS TO BE UNANIMOUS, IF
7 THE VERDICT IS LIFE, YOU KNOW, YOU GO AROUND THE
8 ROOM, ALL TWELVE VOTE AND EVERYBODY SAYS LIFE,
9 THEN ONLY THE FOREPERSON SIGNS.

10 BUT IF THE VERDICT IS DEATH -- YOU KNOW, YOU
11 TOLD US EARLIER YOU BELIEVED YOU COULD VOTE FOR
12 DEATH, IT'S A SERIOUS DECISION.

13 A. RIGHT.

14 Q. BUT BECAUSE IT'S A SERIOUS DECISION, THE LAW
15 REQUIRES SOMETHING A LITTLE DIFFERENT. IF IT'S
16 DEATH AND ALL TWELVE HAVE HEARD EVERYTHING AND
17 DETERMINED THAT IT'S DEATH, THEN EACH INDIVIDUAL
18 JUROR HAS TO SIGN.

19 AND, OF COURSE, THE LAW AND THE COURT IS GOING
20 TO DO WHATEVER Y'ALL SAY, AND IT WILL TRULY BE
21 IN YOUR HANDS. IF YOU SAY LIFE, THEY'RE GOING
22 TO GIVE LIFE; IF YOU SAY DEATH, THEY'RE GOING TO
23 GIVE DEATH. IF YOU HEARD THE FACTS AND EVIDENCE
24 AND THE FORM WAS PASSED AROUND AND IT CAME TO
25 YOUR HANDS AND YOU TOOK PEN IN HAND IF YOU

1 THOUGHT DEATH WAS APPROPRIATE, COULD YOU SIGN
2 ROBERT THURMAN TO A DOCUMENT THAT WOULD TAKE
3 THIS MAN'S LIFE IF YOU THOUGHT THAT WAS
4 APPROPRIATE?

5 A. I BELIEVE I COULD IF IT WARRANTED THAT. AGAIN,
6 I HAVEN'T HEARD THE CASE.

7 Q. BUT IF YOU THOUGHT IT DID, YOU COULD, AND IF YOU
8 THOUGHT IT DIDN'T, YOU'D PUT THE PEN DOWN?

9 A. RIGHT.

10 Q. FAIR ENOUGH. THANK YOU, SIR.

11 QUESTIONS BY MR. HANCOCK:

12 Q. MR. THURMAN, I'M BILL HANCOCK. I REPRESENT
13 JIMMY ROBERTSON WHO IS SEATED HERE, AND THIS IS
14 MR. BOYD WHO IS CO-COUNSEL IN THIS CASE.

15 I HAVE LISTENED CLOSELY TO YOUR ANSWERS AND I'M
16 JUST GOING TO ASK YOU A FEW QUESTIONS TO MAKE
17 SURE THAT I HEARD WHAT YOU SAID AND I HEARD IT
18 CORRECTLY.

19 A. OKAY.

20 Q. AGAIN, THERE'S NO RIGHT ANSWER, THERE'S NO WRONG
21 ANSWER, IT'S JUST YOUR ANSWER. ALL RIGHT, SIR?

22 A. OKAY.

23 Q. NOW I NOTICED ON YOUR QUESTIONNAIRE YOU INDICATE
24 THAT YOU KNEW SOMEONE WHO HAD LOST A LOVED ONE
25 TO A HOMICIDE.

1268

1 A. YES, I DO.

2 Q. WHO WAS THAT, SIR?

3 A. THIS WAS BACK WHEN I WAS IN HIGH SCHOOL, A
4 NEIGHBOR ACROSS THE STREET, HER SON WAS SHOT IN
5 FLORIDA.

6 Q. WOULD THAT IN ANY WAY AFFECT YOUR OPINION
7 REGARDING THIS CASE?

8 A. NO, THAT WOULDN'T AFFECT MY OPINION AT ALL.

9 Q. AND HOW OLD WERE YOU WHEN THAT TOOK PLACE, SIR?

10 A. 16.

11 Q. WERE YOU INVOLVED IN EITHER THE PROSECUTION OR
12 THE DEFENSE OF THAT CASE IN ANY WAY?

13 A. NO. WE LIVED IN MARYLAND, WE WEREN'T INVOLVED
14 IN IT.

15 Q. THANK YOU, SIR. NOW, YOU'VE INDICATED THAT YOU
16 CAN LISTEN TO THE FACTS AND CIRCUMSTANCES IN THE
17 CASE AND GIVE A FAIR AND JUST VERDICT. IS THAT
18 CORRECT, SIR?

19 A. YES, SIR.

20 Q. THAT'S WHAT WE'RE ALL LOOKING FOR, ISN'T THAT
21 RIGHT?

22 A. YES, SIR.

23 Q. AND YOU KNOW THAT JIMMY IS CHARGED WITH KILLING
24 BOTH OF HIS PARENTS?

25 A. YES, SIR.

1 Q. AND THAT'S KILLING THEM WITHOUT JUST CAUSE OR
2 EXCUSE, IT'S CALLED MURDER.

3 A. THAT'S THE FIRST TIME I'VE HEARD IT PUT THAT
4 WAY, BUT YES.

5 Q. AND YOU KNOW THAT THE STATE IS SEEKING THE DEATH
6 PENALTY?

7 A. YES, SIR.

8 Q. AND THE SOLICITOR AND THE JUDGE DISCUSSED WITH
9 YOU THAT THAT WOULD BE IN A SECOND TRIAL. WE
10 ARE NOT ASSUMING -- WE ARE ASSUMING THAT HE'S
11 GUILTY FOR PURPOSES OF QUESTIONING, BUT HE HAS
12 NOT BEEN FOUND GUILTY. THAT WOULD BE PART OF
13 YOUR DUTY.

14 A. RIGHT.

15 Q. DO YOU UNDERSTAND THAT?

16 A. UH HUH.

17 Q. AND YOU HAVE INDICATED ALSO THAT YOU COULD
18 CONSIDER WHAT WE CALL MITIGATING FACTS AND
19 CIRCUMSTANCES IN THIS CASE. DO YOU KNOW WHAT
20 THOSE ARE?

21 A. WELL, I HAVEN'T HEARD THE CASE, SO I DON'T KNOW
22 WHAT THEY ARE.

23 Q. YOU HAVEN'T HEARD THE CASE, BUT YOU COULD LISTEN
24 TO SOMETHING -- ARE YOU TELLING THIS COURT AND
25 ARE YOU TELLING ME THAT YOU COULD LISTEN TO

1270

1 THINGS THAT WOULD LESSEN THE MORAL CULPABILITY
2 OF JIMMY?

3 A. YES.

4 Q. AND THAT, YOU KNOW, IN FAIRNESS AND MERCY YOU
5 COULD LISTEN TO THOSE THINGS AND POSSIBLY ARRIVE
6 AT A SENTENCE OF DEATH -- EXCUSE ME, A SENTENCE
7 OF LIFE. IS THAT CORRECT, SIR?

8 A. YES, SIR.

9 Q. NOW, YOU DON'T START WITH ANY PRECONCEIVED
10 OPINION THAT SOMEONE CONVICTED OF MURDER SHOULD
11 GET THE DEATH PENALTY; IS THAT RIGHT, SIR?

12 A. THAT IS CORRECT.

13 Q. AND IF YOU ARRIVED AT THE DECISION THAT YOUR
14 VERDICT WOULD BE LIFE IN PRISON RATHER THAN
15 DEATH, WOULD YOU CHANGE THAT OPINION JUST TO BE
16 IN THE MAJORITY OF JURORS SHOULD THEY SAY THAT
17 THEY WANTED THE DEATH PENALTY?

18 YOU FEEL LIKE YOU ARE AN INDEPENDENT GENTLEMAN
19 AND CAN ---

20 A. I'VE ALWAYS KIND OF DONE MY OWN THING.

21 Q. THANK YOU, SIR.

22 THE COURT: I'M GOING TO LET YOU STEP OUTSIDE FOR
23 JUST A MINUTE, MR. THURMAN.

24 (THE JUROR LEFT THE COURTROOM.)

25 THE COURT: WHAT SAYS THE STATE?

1271

1 MR. POPE: I SUBMIT HE'S QUALIFIED, YOUR HONOR.

2 THE COURT: WHAT SAYS THE DEFENSE?

3 MR. HANCOCK: QUALIFIED, YOUR HONOR.

4 THE COURT: I FIND HE IS QUALIFIED. HAVE HIM
5 COME IN.

6 (THE JUROR RETURNED TO THE COURTROOM.)

7 THE COURT: MR. THURMAN, YOU'RE GOING TO BE ON
8 THE POOL FROM WHICH THE JURY IS DRAWN. PLEASE REPORT AT
9 9:30 IN THE MORNING AND I'M GOING TO HAVE THE BAILIFF IN
10 JUST A SECOND GIVE YOU A LITTLE SHEET OF SOME INSTRUCTIONS.

11 DON'T TALK ABOUT THIS CASE WITH ANYONE. IF
12 ANYONE TRIES TO DISCUSS THE CASE WITH YOU, TELL THEM YOU
13 CANNOT AS YOU ARE A POTENTIAL JUROR.

14 DO NOT LET YOURSELF BE EXPOSED TO ANY NEWS
15 COVERAGE, IF THERE IS ANY, IN ANY FASHION WHATSOEVER.

16 NOW, COME PREPARED TO BE LODGED BY THE COUNTY FOR
17 ABOUT A WEEK DURING THE TRIAL OF THIS CASE.

18 ARE THERE ANY EXTENUATING CIRCUMSTANCES WE NEED
19 TO KNOW ABOUT?

20 THE JUROR: NONE THAT I CAN THINK OF.

21 THE COURT: OKAY. WELL, I'M GOING TO LET THE
22 BAILIFF GIVE YOU THIS LIST AND IT'S BASICALLY A LIST OF
23 THINGS YOU CANNOT BRING. AND IT TELLS YOU AT THE TOP THAT
24 YOU ARE TO REPORT AT 9:30 IN THE MORNING TO THE JURY
25 ASSEMBLY ROOM DOWNSTAIRS. THANK YOU A LOT. WE'LL SEE YOU

1272

1 IN THE MORNING.

2 (THE JUROR LEFT THE COURTROOM.)

3 THE COURT: BY MY COUNT THAT'S 37. DOES ANYBODY
4 DIFFER WITH ME?

5 ALL RIGHT, LET'S JUST GO OVER IT REAL QUICK.
6 I'VE GOT 206, DONNA PARLER; 158, DONA LOWDER; 165, FRANCIS
7 MATTHEWS; 293, PAMELA WITHERSPOON; 152, LISA LILLY; 238,
8 FRED SHELLEY; 231, STEVEN SAMIOS; 144, LESTER LANDRUM; 166,
9 TIMOTHY MCALLISTER; 93, MICHAEL GOELLER; 258, ROGER
10 STIKELEATHER; 205, ROBIN PARKER; 101, JERRY GWINN; 241,
11 LORRIE SIGLER; 232, YANCEY SANDERS; 73, FRANK O. DEATON;
12 296, BARBARA WRIGHT; 153, ROBERT LONCARIC; 48, BETTE
13 CHRISTENSEN; 249, TORRENCE SMITH; 300, BETTY ZAPATA; 175,
14 PAUL MCGUIRT; 123, RUSSELL HOVIS; 237, CHARLES SHAW; 64,
15 TINO CHRISTINA; 100, CLIFTON GUFFEY; 53, SUSAN COCHRAN;
16 279, ALTA VANDERGRIFF; 180, BARNEY MELTON; 76, TERRY
17 DUNLAP; 59, JOSEPH COOK; 119, KELLY HOPE; 190, SUE MOORE;
18 94, JAMES GOFF; 268 MICHAEL TERLINDE; 184, CHARLES MILBURY;
19 272, ROBERT THURMAN.

20 MR. HANCOCK: YOUR HONOR, IF I MAY, START WITH
21 THE FIRST PANEL AND ABOUT THE FIRST FOUR TO 293, I WASN'T
22 ABLE TO GET TO MY LIST BEFORE YOU GOT THERE.

23 THE COURT: PAMELA WITHERSPOON?

24 MR. HANCOCK: THAT'S THE FIRST ONE I'VE GOTTEN,
25 THE ONES BEFORE THAT.

1 THE COURT: OH, 206, DONNA PARLER, THE VERY FIRST
2 ONE, AND THE SECOND ONE, DONA LOWDER. AND THEN THE ONE
3 BEFORE MS. WITHERSPOON, FRANCIS MATTHEWS.

4 MR. HANCOCK: THANK YOU, SIR.

5 THE COURT: NOW, WE CAN IN JUST A MINUTE LET THE
6 REST OF THE PANEL GO. THE CLERK WILL TELL ON THE TELEPHONE
7 TO LET THE REST GO. I'VE GOT EXTRA COPIES OF THAT LITTLE
8 SHEET CONCERNING THE JURY THAT EACH OF YOU CAN HAVE.

9 WE HAVE PENDING A MOTION BY THE DEFENDANT FOR A
10 CHANGE OF VENUE BASED ON PRE-TRIAL PUBLICITY. WOULD YOU
11 LIKE TO ARGUE THAT AT THIS TIME, MR. BOYD AND MR. HANCOCK?

12 MR. BOYD: YES, SIR. YOUR HONOR, WE STILL WOULD
13 MAKE THAT MOTION. THE ACTUAL MOTION IS TO SELECT A JURY
14 FROM ANOTHER COUNTY.

15 I REALIZE THAT INDIVIDUALLY THE JURORS HAVE BEEN
16 QUESTIONED AND SAID THAT THEY COULD GIVE THIS DEFENDANT A
17 FAIR TRIAL. I WOULD POINT OUT, HOWEVER, YOUR HONOR, THAT
18 THE JUROR -- MOST OF THE JURORS HAVE HEARD SOMETHING ABOUT
19 THIS CASE, READ SOMETHING ABOUT THIS CASE. ALSO, MANY OF
20 THE JURORS KNOW ONE OR MORE WITNESSES THAT ARE GOING TO
21 TESTIFY IN THE CASE.

22 INDIVIDUALLY THAT MAY NOT DISQUALIFY ANY
23 PARTICULAR JUROR, BUT WHEN YOU TAKE THE PANEL AS A WHOLE,
24 THE FACT THAT SO MANY OF THE JURORS HAVE HEARD ABOUT THIS
25 CASE, READ ABOUT THIS CASE AND ALSO THE FACT THAT SO MANY

1274

1 OF THE JURORS KNOW WITNESSES IN THE CASE, I THINK IN THE
2 TOTALITY OF THE CIRCUMSTANCES CERTAINLY SHOW THERE IS THE
3 POTENTIAL FOR PREJUDICE HERE AND IT IS PREJUDICE THAT COULD
4 BE CURED BY DRAWING THIS JURY FROM ANOTHER COUNTY.

5 THE CASE IS NOT SUCH THAT WE COULDN'T FIND JURORS
6 IN ANOTHER COUNTY WHO HAVE HEARD NOTHING AT ALL ABOUT THIS
7 CASE, KNOW NOTHING ABOUT THE WITNESSES AT ALL. AND FOR
8 THOSE REASONS, WE WOULD STILL MAKE THAT MOTION.

9 THE COURT: ALL RIGHT, BEFORE I HEAR FROM THE
10 STATE, I BELIEVE, AND I'LL ASK COUNSEL FOR THE DEFENSE, I
11 ONLY EXCUSED THE FOLLOWING PEOPLE BASED ON THEIR INABILITY
12 TO -- I KNOW A LOT SAID THEY DID HEAR, BUT ONLY RELEASED
13 THE FOLLOWING PEOPLE BECAUSE THEY HAD SUCH PRECONCEIVED
14 IDEAS THAT THEY COULD NOT BE FAIR AND IMPARTIAL:

15 THAT WAS 138, DAVID KAYLOR; 230, ROSEMARY ROZSAK,
16 AND SHE WAS NOT DEATH PENALTY QUALIFIED ANYWAY BUT I ALSO
17 PUT HER DOWN AS SAYING SHE WAS AFFECTED BY PRE-TRIAL
18 PUBLICITY; 155, JOHNNY LOVE; AND I BELIEVE 63, JAMES
19 CRAWFORD.

20 THAT'S ONLY FOUR PEOPLE OUT OF 75 WHICH SAID THEY
21 COULD NOT SET ASIDE WHAT THEY HAD HEARD AND RENDER A FAIR
22 AND IMPARTIAL VERDICT.

23 THE OTHER 71 SAID THEY COULD -- WELL, I BETTER
24 TAKE THAT BACK. SOME WERE EXCUSED BEFORE WE EVEN GOT INTO
25 THOSE SORT OF QUESTIONS BECAUSE OF CRIMINAL RECORDS AND

1 BEING ARRESTED ON THE SPOT.

2 BUT I DENY THAT MOTION. THE PROOF OF THE PUDDING
3 IS IN THE EATING, AS THEY SAY, AND WE WERE ABLE TO GET 37
4 JURORS OUT OF THAT PANEL. SO, THAT MOTION IS DENIED.

5 ARE THERE ANY OTHER PENDING MOTIONS THAT WE NEED
6 TO DISPOSE OF AT THIS POINT. I KNOW WE HAVE SOME THAT WE
7 HAVE TO TAKE UP AS WE GO ALONG PERHAPS LIKE JACKSON VERSUS
8 DENNO, THE PHOTOGRAPHS, BUT I BELIEVE EVERYTHING ELSE HAS
9 BEEN DISPOSED OF. IS THERE ANYTHING ELSE FROM THE STATE?

10 MR. POPE: YOUR HONOR, AS FAR AS THE COURT
11 ELABORATING ON THE EVIDENCE IN AGGRAVATION, MR. BRACKETT
12 HAD SPOKEN BRIEFLY WITH MR. HANCOCK, I BELIEVE IT WAS AT
13 THE CLOSE YESTERDAY. WE HAVE BEEN COORDINATING WITH THEM
14 FOR A TIME TO SIT DOWN AND LOOK FURTHER AT OUR WITNESS
15 LIST.

16 YOUR HONOR, AS FAR AS JACKSON VERSUS DENNO, MR.
17 MISLE IS BACK PRESENT AND I'LL HAVE HIM HERE IN THE MORNING
18 BUT WE'LL DEAL WITH IT WHENEVER THE COURT DEEMS IT
19 APPROPRIATE.

20 THE COURT: IT'S 5:41, I'D RATHER WE STOP FOR THE
21 DAY. IT'S BEEN A PRETTY LONG DAY FOR EVERYBODY.

22 MR. POPE: I MEANT HE WAS PRESENT IN YORK COUNTY;
23 I DON'T MEAN THAT HE'S HERE.

24 THE COURT: OH, OKAY.

25 MR. POPE: SO, WE WILL BE PREPARED TO DEAL WITH

1276

1 THAT. YOUR HONOR, AT SOME POINT, I KNOW WE'RE STARTING AT
2 9:00, I'VE TOLD THE COURT REPORTER THAT WE WILL GET WITH
3 THE DEFENSE AND PRE-MARK AS MANY EXHIBITS AS POSSIBLE. I
4 WILL HAVE THE EVIDENCE CUSTODIAN TO -- WHAT WE HAVE
5 ARRANGED IS FOR THE ITEMS WE DIDN'T PRE-MARK, TO HAVE THEM
6 SECURED IN THE CLERK'S EVIDENCE ROOM SO THAT IF THE DEFENSE
7 NEEDS ACCESS OR THERE WERE OTHER ITEMS THAT WE DIDN'T PRE-
8 MARK IF NEEDED, THEY WILL BE READILY AVAILABLE. WE'VE
9 ADDRESSED THAT AND WE WILL COORDINATE THAT WITH THE CLERK.

10 THE COURT: WELL, WE'VE GOT THE JURY COMING BACK
11 AT 9:30. WE PROBABLY WON'T GET STARTED UNTIL CLOSER TO
12 10:00 BECAUSE WE WILL HAVE SOME MATTERS -- WE HAVE TO SWEAR
13 THE SLED SECURITY INDIVIDUALS IN; THE CLERK WILL HAVE TO
14 ADMINISTER THE OATH FOR THEM TO BE CUSTODIANS OF THE JURY.

15 THERE ARE ALWAYS LITTLE ODDS AND ENDS THAT COME
16 UP THAT WE HAVE TO DISPOSE OF. SO, DON'T FEEL PUSHED TO
17 INVITE THE JURY UP. SOME OF THEM MAY RUN A LITTLE LATE;
18 THEY'VE GOT LUGGAGE. IF WE DON'T START UNTIL CLOSE TO
19 10:00 I'M NOT GOING TO BE REAL UPSET, BUT I WOULD LIKE TO
20 START NO LATER THAN 10:00 AND I WOULD LIKE TO START AS
21 CLOSE TO 9:30 AS WE CAN.

22 MR. POPE: AND I'LL CALL THE COURT'S ATTENTION --
23 IF NEED BE, IT MAY EVEN BE THAT I CAN USE THE ITEMS THAT
24 WE'LL NEED WITH THE FIRST COUPLE OF WITNESSES TO GET US TO
25 LUNCH. OF COURSE, I KNOW EVERYBODY NEEDS LUNCH, BUT WE CAN

1 COORDINATE SOMETHING.

2 ANOTHER THING I HAVE SPOKEN WITH DEFENSE ABOUT
3 AND THIS IS SOMETHING THAT WE WILL DEAL WITH AS IT COMES,
4 THERE'S A TREMENDOUS VOLUME -- WE CUT DOWN PROBABLY 170
5 ITEMS TO 100 ITEMS AS IT IS AND, OF COURSE, THAT DOESN'T
6 EVEN BEGIN TO INCLUDE PICTURES OR ANYTHING YET. ONE THING
7 WE'RE GOING TO TRY TO DO AS BEST AS POSSIBLE IS ALL THE
8 DIFFERENT EXPERTS LIKE FROM SLED -- I MEAN I MIGHT BE
9 ASKING THE COURT AT SOME POINT TO HAVE A BREAK, LET THEM GO
10 THROUGH ALL THE ITEMS SO WE DON'T SPEND TIME WITH THE JURY
11 SITTING IN HERE FOR AN OFFICER TO LOOK AT 100 ITEMS AND
12 SAY, YES, I BROUGHT THIS, YES, I BROUGHT THAT.

13 I WILL DO IT IN THE RECORD ULTIMATELY, BUT HAVE
14 THE OPPORTUNITY WITH THE JURY OUTSIDE, AND I WILL TRY TO
15 BRING ALL EXPERTS SO THAT WE CAN DO THAT AT ONE TIME.

16 THE COURT: ALL RIGHT, ANYTHING ELSE FOR THIS
17 EVENING?

18 MR. HANCOCK: ONE THING, YOUR HONOR. JUST TO
19 CLARIFY HOW WE'RE GOING TO DRAW THE JURY. ARE WE GOING TO
20 DRAW THEM AS THEY HAVE BEEN PRESENTED, ONE, TWO, THREE ---

21 THE COURT: NO, THEY ARE GOING TO PUT 37 IN THE
22 CANISTER, SPIN IT AROUND, CALL THEM UP AND LET THEM STAND
23 UP HERE AND WHAT SAYS THE STATE, EITHER PRESENT THEM OR
24 EXCUSE THEM -- WE'RE GOING TO DO IT THE OLD FASHION WAY.
25 IS THERE ANY OBJECTION TO THAT FROM THE STATE?

1278

1 MR. POPE: I DON'T THINK I HAVE STANDING TO
2 OBJECT. EITHER WAY SUITS THE STATE, I'VE DONE IT BOTH
3 WAYS. WHATEVER SUITS THE COURT.

4 THE COURT: ANY OBJECTION BY THE DEFENSE?

5 MR. HANCOCK: NO OBJECTION, YOUR HONOR.

6 THE COURT: ALL RIGHT. I APPRECIATE EVERYBODY'S
7 PATIENCE, THE STAFF AND EVERYONE. THANK YOU A LOT. WE CAN
8 LET THE REST OF THE JURY PANEL GO. THE OTHERS WHO ARE
9 CALLING IN ARE DISMISSED. AND WE WILL SEE YOU HERE AT 9:00
10 ON MS. MOON AND BACK ON MR. ROBERTSON'S CASE AT 9:30.

11 MARCH 18, 1999:

12 (THE GUILTY PLEA WAS TENDERED IN THE CO-DEFENDANT, MEREDITH
13 MOON, CASE.)

14 THE COURT: LET'S ESTABLISH THAT FOR THE RECORD
15 THE STRIKES WOULD BE FIVE FOR THE STATE, TEN FOR THE
16 DEFENSE. AS FOR THE ALTERNATES, ONE FOR THE STATE, TWO FOR
17 THE DEFENSE. DOES THE STATE AGREE?

18 MR. POPE: YES, SIR, YOUR HONOR.

19 THE COURT: THE DEFENSE?

20 MR. BOYD: YES, SIR.

21 THE COURT: DO BOTH SIDES CONSENT TO THE CLERK
22 DRAWING THE JURY? DOES THE STATE?

23 MR. POPE: THE STATE CONSENTS, YOUR HONOR.

24 THE COURT: THE DEFENSE?

25 MR. BOYD: THE DEFENSE CONSENTS, YOUR HONOR.

1 THE COURT: ALL RIGHT, AT THIS POINT I SEE THAT
2 THE SLED AGENTS ARE PRESENT. I AM GOING TO ASK THAT THEY
3 COME FORWARD AND HAVE THEM SWORN IN. I KNOW MOST OF THEM
4 AND HAVE ALL OF THEIR NAMES, BUT WHAT I'M GOING TO DO IS
5 I'M GOING TO ASK EACH OF YOU TO COME FORWARD, TURN AROUND
6 AND FACE COUNSEL TABLE SO THAT THE ATTORNEYS CAN KNOW YOUR
7 NAMES AND, COUNSEL, I'M GOING TO RUN EACH OF YOU A COPY OF
8 MY LIST. BUT I JUST WANT TO KNOW THAT WHEN YOU SEE THESE
9 INDIVIDUALS, WHO THEY ARE AND WHY THEY ARE AROUND,
10 PARTICULARLY WHEN YOU SEE THEM WITH THE JURY.

11 ALL RIGHT, MS. CORLEY, YOU CAN START.

12 A. I'M ELIZABETH CORLEY,

13 A. RUSSELL, FEASTER.

14 A. NATALIE TALBERT.

15 A. ROBBIE HENDRIX.

16 A. JOHN FRADELLA.

17 A. RICK MCCLOUD.

18 A. FRANK THOMAS.

19 THE COURT: I'M GOING TO ASK THE CLERK TO
20 ADMINISTER THE OATH.

21 THE CLERK: EACH OF YOU SWEAR THAT YOU WILL KEEP
22 THE JURORS IN YOUR CARE SO LONG AS ORDERED BY THE COURT;
23 THAT YOU WILL SUFFER NO PERSON TO SPEAK TO THEM NOR SPEAK
24 TO THEM YOURSELVES WITHOUT SUCH LEAVE; THAT YOU WILL SEE
25 THAT THEY CARRY OUT ALL ORDERS OF THE COURT AND YOU WILL

1280

1 CARRY OUT ALL ORDER OF THIS COURT PERTAINING TO YOUR
2 RESPONSIBILITIES TO THE COURT IN THIS CASE, SO HELP YOU
3 GOD.

4 (ALL ANSWERED IN THE AFFIRMATIVE.)

5 THE COURT: YOU MAY HAVE A SEAT. THANK YOU. I
6 APPRECIATE YOUR HELP. ARE THERE ANY MOTIONS FROM THE STATE
7 THAT NEED TO BE DISPOSED OF PRIOR TO US GETTING THE JURY UP
8 HERE?

9 MR. POPE: NO, SIR, YOUR HONOR. WE HAVE THE
10 PENDING DENNO MOTION THAT WE WILL PROBABLY NOT REACH UNTIL
11 SOMETIME AFTER LUNCH, THE ACTUAL TESTIMONY. I JUST CALL
12 THAT TO THE COURT'S ATTENTION.

13 THE COURT: IS THERE ANY MATTER WHATSOEVER THAT
14 WE NEED TO PUT ON THE RECORD?

15 MR. BOYD: NO, SIR, YOUR HONOR.

16 THE COURT: ANY MOTIONS THAT YOU WANT TO RESTATE
17 OR PLACE ON THE RECORD CONCERNING THE METHOD OF DRAWING THE
18 JURY TO THIS POINT? AND I'LL START BY SAYING THAT I AM
19 GOING TO GO INTO -- MAYBE I OUGHT TO DO THIS FIRST. I'M
20 GOING TO GIVE A BRIEF ANOTHER VOIR DIRE. WE'VE DONE THE
21 GENERAL VOIR DIRE AND WE'VE DONE THE SPECIFIC.

22 I AM GOING TO ASK AGAIN IF THEY HAVE, SINCE THEY
23 HAVE BEEN ADMONISHED NOT TO, HEARD ANYTHING ABOUT THE CASE
24 OR BEEN EXPOSED TO IT IN ANY WAY.

25 I AM GOING TO TELL THEM, UNLESS BOTH SIDES AGREE

1281

1 THAT I SHOULD NOT, THAT IT HAS BEEN BROUGHT TO MY ATTENTION
2 THAT THERE WAS SOME DISCUSSION IN THE JURY ROOM ON MONDAY.
3 I AM GOING TO TELL THEM WHAT I UNDERSTOOD THOSE DISCUSSIONS
4 CONCERNED, BASICALLY PENNSYLVANIA WITNESSES, VICTIMS MALE
5 AND FEMALE, AND HOW THE ARMED ROBBERY CAME ABOUT. AND I'M
6 GOING TO ASK IF THAT INFLUENCED -- ALONG THE LINES OF
7 WHETHER THAT WOULD HAVE ANY AFFECT ON THEIR ABILITY TO BE
8 FAIR AND IMPARTIAL.

9 DOES THE STATE HAVE ANY PROBLEM WITH THAT?

10 MR. POPE: NO OBJECTION, YOUR HONOR.

11 THE COURT: THE DEFENSE?

12 MR. HANCOCK: NO OBJECTION, YOUR HONOR.

13 THE COURT: DOES THE DEFENSE HAVE ANYTHING
14 FURTHER THEY WANT ME TO COVER -- WELL, LET ME ASK THIS.
15 DOES THE STATE HAVE ANY FURTHER QUESTIONS ON SORT OF A
16 FINAL VOIR DIRE?

17 MR. POPE: NO, SIR, YOUR HONOR.

18 THE COURT: DOES THE DEFENSE?

19 MR. HANCOCK: NONE, YOUR HONOR.

20 THE COURT: ALL RIGHT, THEN I BELIEVE WE ARE
21 READY. TO THE MEDIA, OF COURSE, THE JURORS CANNOT BE
22 FILMED, PHOTOGRAPHED IN ANY WAY OR SKETCHED OR ANYTHING
23 LIKE THAT.

24 ALL RIGHT, IS THE STATE READY FOR THE JURY?

25 MR. POPE: THE STATE'S READY, YOUR HONOR.

1282

1 THE COURT: IS THE DEFENSE READY?

2 MR. BOYD: THE DEFENSE IS READY, YOUR HONOR.

3 THE COURT: ALL RIGHT, LET'S BRING UP THE PANEL.

4 (THE JURY PANEL WAS BROUGHT INTO THE COURTROOM.)

5 THE COURT: HAS A ROLL CALL BEEN TAKEN?

6 THE CLERK: YES, SIR.

7 THE COURT: AND ALL 37 ARE PRESENT?

8 THE CLERK: MELISSA, OUR JURY COORDINATOR, HAS
9 VERIFIED THAT ALL JURORS ARE PRESENT.

10 THE COURT: MEMBERS OF THE JURY PANEL, AGAIN I'M
11 JOHN HAYES, AND I KNOW Y'ALL ARE PROBABLY TIRED OF HEARING
12 ME SAY THAT.

13 FIRST, I WANT TO REMIND YOU THAT YOU ARE STILL
14 UNDER OATH AND THOSE OF YOU WHO ARE ACTUALLY CHOSEN WILL BE
15 PLACED UNDER ANOTHER OATH BY THE CLERK AT THAT TIME.

16 FIRST, I HAVE ASKED YOU QUITE A FEW QUESTIONS
17 OVER THE LAST FEW DAYS. DOES ANYBODY AT THIS POINT NEED TO
18 CHANGE ANYTHING THEY HAVE TOLD ME OR ANYTHING ABOUT THEIR
19 QUESTIONNAIRE AT THIS TIME?

20 (A JUROR STOOD.)

21 THE COURT: YES, SIR?

22 THE JUROR: MONDAY WHEN YOU ASKED ME IF I KNEW
23 ANYBODY, FAMILY OR ANYTHING LIKE THAT AND I SAID, NO, I
24 DIDN'T KNOW ANYBODY. AND MONDAY NIGHT GOING HOME I STOPPED
25 AT A RESTAURANT ON MT. GALLANT ROAD AND I RAN INTO A FRIEND

1 OF MINE WHO HAPPENS TO KNOW THE DEFENDANT'S FAMILY ---

2 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
3 THIS MIGHT BE APPROPRIATE TO TAKE ON THE RECORD OUTSIDE THE
4 PRESENCE OF THE WHOLE JURY. I THINK IT WOULD BE MORE
5 APPROPRIATE ON THIS ISSUE.

6 THE COURT: YOU'RE JUST SAYING NOW THAT YOU FEEL
7 LIKE YOU KNOW SOMEBODY WHO KNOWS THE DEFENDANT?

8 THE JUROR: WELL, YES, I DO AND ---

9 THE COURT: DON'T GO INTO DETAILS. WOULD THAT
10 FACT -- YOUR NAME AGAIN?

11 THE JUROR: STEVEN SAMIOS.

12 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY
13 TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

14 THE JUROR: IT COULD POSSIBLY.

15 THE COURT: ALL RIGHT, WELL LET ME LET THE REST
16 OF THE JURY GO OUT INTO THE HALL THEN. Y'ALL KEEP THE JURY
17 TOGETHER, AND I'LL BRING MR. SAMIOS UP HERE.

18 IN CAMERA:

19 THE COURT: ALL RIGHT, TELL ME ABOUT WHAT
20 HAPPENED NOW?

21 THE JUROR: WHEN I LEFT HERE MONDAY EVENING AT
22 6:30 OR 7:00 O'CLOCK I STOPPED IN AT THE -- IT'S CALLED THE
23 LAKESIDE BAR AND GRILL, IT'S OVER ON MT. GALLANT ROAD AND
24 INDIA HOOK, AND I STOPPED IN TO GET SOME DINNER AND I
25 HAPPENED TO RUN INTO A FRIEND OF MINE. HE'S AN

1284

1 ACQUAINTANCE, YOU KNOW, NOT A GREAT FRIEND BUT HE'S AN
2 ACQUAINTANCE, I'VE HUNG WITH HIM FOR QUITE A WHILE, YOU
3 KNOW, QUITE A FEW TIMES WE'VE BEEN TOGETHER. AND SOME WAY
4 OR ANOTHER IT JUST CAME UP, YOU KNOW, TALKING ABOUT JURY
5 DUTY AND THAT I HAD JUST CAME BACK FROM THAT AND EVERYBODY
6 SEEMED TO KNOW WHAT THE CASE WAS. IT'S NOT A SECRET, I
7 FOUND THAT OUT. A LOT OF PEOPLE -- IT WAS A PRETTY BIG
8 WELL PUBLICIZED CASE. AND HE TOLD ME THAT HE HAD KNOWN THE
9 DEFENDANT AND HIS FAMILY. AND IT SEEMS LIKE EVERYBODY
10 PRETTY MUCH HAS THEIR MIND MADE UP ON CERTAIN DECISIONS
11 THAT KIND OF MAKES ME FEEL UNEASY ABOUT IT.

12 THE COURT: WELL, OF COURSE, I HAD ASKED YOU NOT
13 TO DISCUSS THE CASE AND NOT TO LET ANYBODY DISCUSS IT WITH
14 YOU.

15 THE JUROR: WELL, I DIDN'T DISCUSS THE CASE WITH
16 HIM AT ALL. HE JUST HAPPENED TO BRING IT UP, AND I JUST
17 FIGURED I'D BRING IT TO YOUR ATTENTION THAT NOW I DO KNOW
18 SOMEBODY. AND I DON'T KNOW IF HE WOULD BE ON THAT WITNESS
19 LIST OR NOT. I NEVER ASKED HIM. I DON'T KNOW HIS LAST
20 NAME.

21 THE COURT: WELL, WOULD THE FACT THAT YOU HAD
22 THAT DISCUSSION, WOULD THAT CHANGE YOUR ABILITY TO BE FAIR
23 AND IMPARTIAL TO THE STATE AND THE DEFENDANT IN THE TRIAL
24 OF THIS CASE OR WOULD YOU STILL BE ABLE TO BASE YOUR
25 VERDICT ON WHAT YOU HEAR IN ---

1 THE JUROR: IT KIND OF MADE ME FEEL A LITTLE
2 DIFFERENT, NOW KNOWING THAT SOMEBODY KNOWS THAT I'M HERE.
3 AND I LIVE IN THE COMMUNITY -- I THINK IT WOULD CHANGE MY
4 POINT OF VIEW A LITTLE BIT.

5 THE COURT: WELL, LET ME LET YOU STEP OUTSIDE THE
6 COURTROOM THERE.

7 (THE JUROR LEFT THE COURTROOM.)

8 THE COURT: ANY COMMENT BY THE STATE?

9 MR. POPE: YOUR HONOR, IT APPEARS WITH A LITTLE
10 MORE PROBING, HE MAY HAVE IN FACT VIOLATED THE OATH THAT
11 YOU GAVE HIM.

12 THE COURT: WELL, I'LL TAKE CARE OF THAT LATER.
13 I JUST WANT TO MOVE ON WITH THE JURY. I CAN DEAL WITH MR.
14 SAMIOS AT A LATER TIME IF NEED BE.

15 MR. POPE: I THINK OUT OF AN ABUNDANCE OF
16 CAUTION, HE PROBABLY NEEDS TO BE EXCUSED.

17 THE COURT: WHAT SAYS THE DEFENSE?

18 MR. BOYD: WE AGREE, YOUR HONOR.

19 THE COURT: BRING HIM BACK IN PLEASE.

20 (THE JUROR RETURNED TO THE COURTROOM.)

21 THE COURT: MR. SAMIOS, BASED ON WHAT YOU'VE TOLD
22 ME, AND I APPRECIATE YOUR CANDOR IN TELLING ME THAT, WE'RE
23 GOING TO EXCUSE YOU FROM ANY FURTHER SERVICE.

24 IT MAY BE THAT I'LL HAVE TO TALK TO YOU AT A
25 LATER TIME AND FOLLOW UP ON SOME OF THIS BUT WE ARE NOT

1286

1 GOING TO TAKE THE TIME TO DO THAT AT THIS TIME. SO, DON'T
2 BE SURPRISED IF YOU HEAR FROM ME AGAIN, BUT I'M GOING TO
3 EXCUSE YOU AT THIS TIME AND LET YOU LEAVE THROUGH THE BACK
4 INSTEAD OF THROUGH THE FRONT.

5 THE JUROR: OKAY. THANK YOU.

6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: ANYTHING FOR THE RECORD FROM THE
8 STATE?

9 MR. POPE: NO, SIR, YOUR HONOR.

10 THE COURT: THE DEFENSE?

11 MR. BOYD: NO, SIR.

12 THE COURT: BRING IN THE JURY.

13 IN THE PRESENCE OF THE JURY:

14 THE COURT: I HAVE EXCUSED MR. SAMIOS BECAUSE OF
15 AN OCCURRENCE, INADVERTENT, IT WAS NOT INTENTIONAL, BUT I
16 FELT WE NEEDED TO DO IT UNDER THE CIRCUMSTANCES.

17 NO ONE ELSE RAISED THEIR HAND WHEN I ASKED THAT
18 QUESTION. SO, I'LL ASK AGAIN, DOES ANYBODY HAVE ANYTHING
19 -- HAVE YOU BEEN ABLE TO ABIDE BY MY INSTRUCTIONS AND STAY
20 AWAY FROM INFORMATION ABOUT THE CASE? IF NOT, RAISE YOUR
21 HAND. NO ONE RAISES THEIR HAND.

22 NOW, IT WAS BROUGHT TO MY ATTENTION AT SOME POINT
23 ON MONDAY THAT SOME OF THE GROUP THAT WERE IN THE JURY ROOM
24 HAD SOME DISCUSSIONS ABOUT SOME ASPECTS OF THE CASE.

25 ONCE WE FOUND OUT ABOUT IT, WE CHATTED WITH EACH

1287

1 JUROR THEREAFTER ABOUT WHETHER OR NOT THAT WOULD HAVE AN
2 AFFECT AND WE TOOK CARE OF THAT.

3 BUT WHAT I UNDERSTAND IS THAT THE GROUP THAT WAS
4 IN THERE MONDAY AFTERNOON DISCUSSED OR AT LEAST IT CAME UP,
5 WHAT I'VE GOT IS THREE SORT OF SEPARATE ISSUES. ONE,
6 SOMEONE ASKED WHY THERE WERE PENNSYLVANIA WITNESSES LISTED
7 AND AS I UNDERSTAND, THAT WAS ANSWERED SOMETHING TO THE
8 EFFECT THAT SOME COURSE OF EVENTS THAT MAY UNFOLD IN THIS
9 TRIAL HAD SOMETHING TO DO WITH PENNSYLVANIA. IT WAS ALSO
10 ASKED WHETHER THE VICTIMS WERE MALE AND FEMALE. AND THE
11 ANSWER TO THAT, OF COURSE, WAS YES BECAUSE THE INDICTMENTS
12 WERE READ AND I BELIEVE MOST OF YOU HEARD AND WERE ASKED
13 WHEN YOU WERE IN HERE AND WERE ADVISED THAT THIS INVOLVED
14 MR. ROBERTSON'S MOTHER AND FATHER.

15 THE THIRD THING THAT I HEARD WAS THAT SOMEONE
16 INQUIRED AS TO HOW AN ARMED ROBBERY CAME INTO THE ISSUES,
17 AND IT WAS RELATED -- THAT WAS RESPONDED TO BY SOMEONE
18 SAYING THAT PERHAPS IT HAD SOMETHING TO DO WITH THE
19 PENNSYLVANIA CONNECTION TO THE CASE.

20 FIRST, IF THAT DOES NOT INCLUDE, FOR ANY OF YOU
21 THAT WERE PRIVY TO ANY OF THOSE CONVERSATIONS, IF THAT DOES
22 NOT INCLUDE THE TOTALITY OF THE MATTERS THAT WERE BROUGHT
23 UP, SOMEBODY PLEASE RAISE YOUR HAND AND LET ME KNOW.
24 NOBODY RAISES THEIR HAND.

25 TO THOSE OF YOU WHO WERE PRESENT WHEN THOSE

1288

1 DISCUSSIONS TOOK PLACE, I WANT TO KNOW IF THAT WOULD AFFECT
2 ANY OF YOUR ABILITIES TO REMAIN, AS YOU TOLD ME YOU WOULD
3 BE, FAIR AND IMPARTIAL. THAT IS, COULD ANY OF YOU THAT
4 HEARD THOSE COMMENTS, COULD ANY OF YOU NOT STILL REMAIN
5 FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE. IF SO,
6 PLEASE STAND.

7 (NO ONE STOOD.)

8 IF ANY OF YOU WOULD BE UNABLE TO DISASSOCIATE
9 THOSE REMARKS FROM THE TRIAL OF THE CASE AND BASE YOUR
10 VERDICT SOLELY ON THE LAW AND THE EVIDENCE, PLEASE STAND.
11 NO ONE STANDS.

12 I ASK AGAIN IF ANY OF YOU ARE AWARE OF ANY BIAS
13 OR PREJUDICE THAT YOU WOULD HAVE THAT WOULD AFFECT YOUR
14 ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND TO MR.
15 ROBERTSON ON THE ISSUES INVOLVED IN THIS CASE. IF SO,
16 PLEASE STAND. NO ONE STANDS.

17 ARE THERE ANY FURTHER QUESTIONS BY THE STATE?

18 MR. POPE: NO, SIR, YOUR HONOR.

19 THE COURT: THE DEFENSE?

20 MR. HANCOCK: NO, SIR.

21 THE COURT: MEMBERS OF THE JURY PANEL, THE WAY WE
22 WILL DRAW THE JURY AT THIS TIME WILL BE AS FOLLOWS. EACH
23 OF YOUR NAMES HAVE BEEN PLACED ON A LITTLE PIECE OF PAPER
24 SORT OF LIKE THE PAPER YOU FIND IN A FORTUNE COOKIE AND
25 THAT HAS BEEN PLACED INSIDE A CAPSULE, OPAQUE CAPSULE WHICH

1 CANNOT BE SEEN INTO, AND PLACED INTO THIS BRASS DRUM WHICH
2 WILL BE SPUN. AND THEN YOUR NAMES WILL BE DRAWN AT RANDOM.
3 IF YOU HEAR YOUR NAME CALLED, THE BAILIFF WILL BE STANDING
4 SORT OF OUT HERE IN THE MIDDLE, I'LL ASK YOU TO COME
5 FORWARD AND STAND BY THE BAILIFF.

6 WHEN YOU GET HERE, YOU WILL FACE FIRST THE TABLE
7 TO WHAT WILL THEN BE TO YOUR LEFT, WHERE MR. POPE AND MR.
8 BRACKETT ARE SEATED AND ONE OF THEM WILL SAY EITHER PRESENT
9 THE JUROR OR EXCUSE THE JUROR. IF YOU HEAR THE WORDS
10 EXCUSE THE JUROR, PLEASE RETURN TO YOUR SEAT. DON'T LEAVE,
11 JUST RETURN TO YOUR SEAT.

12 IF YOU HEAR THE WORDS PRESENT THE JUROR, THEN
13 PLEASE TURN AND FACE THE TABLE WHERE MR. ROBERTSON AND HIS
14 COUNSEL, MR. BOYD AND MR. HANCOCK, ARE SEATED. AND ONE OF
15 THOSE ATTORNEYS WILL SAY EITHER EXCUSE THE JUROR, WHICH
16 AGAIN MEANS, YOU KNOW, YOU MAY RETURN TO YOUR SEAT, OR
17 SWEAR THE JUROR. IF YOU HEAR THE WORDS SWEAR THE JUROR,
18 YOU WILL BE PLACED IN THE JURY BOX.

19 MADAM CLERK?

20 THE CLERK: NUMBER 241, LORRIE A. SIGLER (WHITE
21 FEMALE). WHAT SAY YOU FOR THE STATE?

22 MR. POPE: PLEASE EXCUSE MS. SIGLER.

23 THE CLERK: YOU'RE EXCUSED IN THIS CASE, MA'AM.
24 NUMBER 206, DONNA J. PARLER (WHITE FEMALE). WHAT SAY YOU
25 FOR THE STATE?

1290

1 MR. POPE: PRESENT MS. PARLER.

2 THE CLERK: AND THE DEFENSE?

3 MR. BOYD: SWEAR THE JUROR.

4 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
5 MA'AM. NUMBER 272, ROBERT W. THURMAN (WHITE MALE). WHAT
6 SAY YOU FOR THE STATE?

7 MR. POPE: PRESENT MR. THURMAN.

8 THE COURT: AND THE DEFENSE?

9 MR. BOYD: SWEAR THE JUROR.

10 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE.
11 NUMBER 166, TIMOTHY J. MCALLISTER (WHITE MALE). WHAT SAY
12 YOU FOR THE STATE?

13 MR. POPE: PRESENT MR. MCALLISTER.

14 THE CLERK: AND THE DEFENSE?

15 MR. BOYD: EXCUSE THE JUROR.

16 THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR.
17 JUROR NUMBER 190, SUE M. MOORE (WHITE FEMALE). WHAT SAY
18 YOU FOR THE STATE?

19 MR. POPE: PRESENT MS. MOORE.

20 THE COURT: AND THE DEFENSE?

21 MR. BOYD: SWEAR THE JUROR.

22 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
23 MA'AM. NUMBER 268, MICHAEL TERLINDE (WHITE MALE). WHAT
24 SAY YOU FOR THE STATE?

25 MR. POPE: PRESENT MR. TERLINDE.

1 THE COURT: THE DEFENSE?

2 MR. BOYD: SWEAR THE JUROR.

3 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
4 SIR. JUROR NUMBER 73, FRANK O. DEATON (WHITE MALE). WHAT
5 SAY YOU FOR THE STATE?

6 MR. POPE: PRESENT MR. DEATON.

7 THE COURT: AND THE DEFENSE?

8 MR. BOYD: EXCUSE THE JUROR.

9 THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR.
10 NUMBER 180, BARNEY R. MELTON (WHITE MALE). WHAT SAY YOU
11 FOR THE STATE?

12 MR. POPE: PRESENT MR. MELTON.

13 THE COURT: AND THE DEFENSE?

14 MR. BOYD: EXCUSE THE JUROR.

15 THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR.
16 AND THIS IS MR. SAMIOS WHO WAS EXCUSED BY THE COURT.
17 NUMBER 232, YANCEY V. SANDERS (BLACK MALE). WHAT SAY YOU
18 FOR THE STATE?

19 MR. POPE: PRESENT MR. SANDERS.

20 THE CLERK: AND THE DEFENSE?

21 MR. BOYD: EXCUSE THE JUROR.

22 THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR.
23 NUMBER 100, CLIFTON P. GUFFY (WHITE MALE). WHAT SAY YOU
24 FOR THE STATE?

25 MR. POPE: PRESENT MR. GUFFY.

1292

1 THE COURT: AND THE DEFENSE?

2 MR. BOYD: EXCUSE THE JUROR.

3 THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR.
4 NUMBER 300, BETTY D. ZAPATA (WHITE FEMALE). WHAT SAY YOU
5 FOR THE STATE?

6 MR. POPE: PRESENT MS. ZAPATA.

7 THE COURT: THE DEFENSE?

8 MR. BOYD: SWEAR THE JUROR.

9 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
10 MA'AM. NUMBER 53, SUSAN D. COCHRAN (WHITE FEMALE). WHAT
11 SAY YOU FOR THE STATE?

12 MR. POPE: PRESENT THE MS. COCHRAN.

13 THE COURT: AND THE DEFENSE?

14 MR. BOYD: SWEAR THE JUROR.

15 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
16 MA'AM. NUMBER 101, JERRY D. GWINN (BLACK MALE). WHAT SAY
17 YOU FOR THE STATE?

18 MR. POPE: PRESENT MR. GWINN.

19 THE COURT: AND THE DEFENSE?

20 MR. BOYD: SWEAR THE JUROR.

21 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
22 SIR. NUMBER 165, FRANCES C. MATTHEWS (WHITE FEMALE). WHAT
23 SAY YOU FOR THE STATE?

24 MR. POPE: PRESENT MS. MATTHEWS.

25 THE COURT: AND THE DEFENSE?

1 MR. BOYD: EXCUSE THE JUROR.

2 THE CLERK: YOU'RE EXCUSED FROM THIS CASE, MA'AM.
3 NUMBER 93, MICHAEL D. GOELLER (WHITE MALE). WHAT SAY YOU
4 FOR THE STATE?

5 MR. POPE: PLEASE EXCUSE MR. GOELLER.

6 THE CLERK: NUMBER 153, ROBERT B. LONCARIC (WHITE
7 MALE). WHAT SAY YOU FOR THE STATE?

8 MR. POPE: PRESENT MR. LONCARIC.

9 THE COURT: AND THE DEFENSE?

10 MR. BOYD: SWEAR THE JUROR.

11 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
12 SIR. NUMBER 59, JOSEPH H. COOK, JR. (WHITE MALE). WHAT
13 SAY YOU FOR THE STATE?

14 MR. POPE: PRESENT MR. COOK.

15 THE COURT: AND THE DEFENSE?

16 MR. BOYD: EXCUSE THE JUROR.

17 THE CLERK: YOU'RE EXCUSED IN THIS CASE.

18 MR. HANCOCK: MADAM CLERK, JUST FOR RECORD
19 KEEPING, DO YOU HAVE THE STRIKES?

20 THE CLERK: YES, SIR, I DO.

21 MR. HANCOCK: HOW MANY FOR THE STATE?

22 THE CLERK: TWO. NUMBER 152, LISA M. LILLY
23 (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

24 MR. POPE: PRESENT MS. LILLY.

25 THE COURT: AND THE DEFENSE?

1294

1 MR. BOYD: SWEAR THE JUROR.

2 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
3 MA'AM. NUMBER 64, TINO CRISTINA (WHITE MALE). WHAT SAY
4 YOU FOR THE STATE?

5 MR. POPE: PRESENT MR. CRISTINA.

6 THE COURT: AND THE DEFENSE?

7 MR. BOYD: EXCUSE THE JUROR.

8 THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR.
9 NUMBER 249, TORRENCE W. SMITH (WHITE MALE). WHAT SAY YOU
10 FOR THE STATE?

11 MR. POPE: PRESENT MR. SMITH.

12 THE COURT: AND THE DEFENSE?

13 MR. BOYD: SWEAR THE JUROR.

14 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
15 SIR. NUMBER 258, ROGER D. STIKELEATHER (WHITE MALE). WHAT
16 SAY YOU FOR THE STATE?

17 MR. POPE: PRESENT MR. STIKELEATHER.

18 THE CLERK: AND THE DEFENSE?

19 MR. BOYD: SWEAR THE JUROR.

20 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
21 SIR. NUMBER 119, KELLY F. HOPE (WHITE FEMALE). WHAT SAY
22 YOU FOR THE STATE?

23 MR. POPE: PRESENT MS. HOPE.

24 THE CLERK: AND THE DEFENSE?

25 MR. BOYD: SWEAR THE JUROR.

1 MR. POPE: HAVE A SEAT IN THE JURY BOX PLEASE,
2 MA'AM.

3 THE COURT: ALTERNATE STRIKES. THE FIRST
4 ALTERNATE THE STRIKES WILL BE ONE AND TWO.

5 THE CLERK: NUMBER 238, FRED W. SHELLEY (WHITE
6 MALE). WHAT SAY YOU FOR THE STATE?

7 MR. POPE: PRESENT MR. SHELLEY.

8 THE COURT: AND THE DEFENSE?

9 MR. BOYD: EXCUSE THE JUROR.

10 THE CLERK: YOU'RE EXCUSED, SIR. NUMBER 48,
11 BETTE CHRISTENSEN (WHITE FEMALE). WHAT SAY YOU FOR THE
12 STATE?

13 MR. POPE: PRESENT MS. CHRISTENSEN.

14 THE COURT: AND THE DEFENSE?

15 MR. BOYD: SWEAR THE JUROR.

16 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
17 MA'AM.

18 THE COURT: THE STRIKES ON THE NEXT ALTERNATE
19 WILL ALSO BE ONE AND TWO.

20 THE CLERK: NUMBER 296, BARBARA E. WRIGHT (WHITE
21 FEMALE). WHAT SAY YOU FOR THE STATE?

22 MR. POPE: PRESENT MS. WRIGHT.

23 THE COURT: AND THE DEFENSE?

24 MR. BOYD: SWEAR THE JUROR.

25 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,

1 MA'AM.

2 THE COURT: ANYTHING FROM THE STATE DEALING WITH
3 THE DRAWING AND THE COMPOSITION OF THE JURY?

4 MR. POPE: I BEG THE COURT'S INDULGENCE?
5 (AFTER A BRIEF PAUSE.)

6 MR. POPE: NO, SIR, YOUR HONOR.

7 THE COURT: ANYTHING ON THESE ISSUES FROM THE
8 DEFENSE?

9 MR. BOYD: NO, SIR, YOUR HONOR.

10 THE COURT: ALL RIGHT, THOSE OF YOU WHO WERE NOT
11 CHOSEN, I'M GOING TO ASK YOU TO RETURN BACK DOWNSTAIRS TO
12 THE JURY ASSEMBLY ROOM AND YOU WILL RECEIVE SOME
13 INSTRUCTIONS DOWN THERE I BELIEVE. EVERYONE ELSE REMAIN
14 SEATED.

15 (AFTER THE JURY VENIRE LEFT)

16 THE COURT: MEMBERS OF THE JURY, I'M GOING TO LET
17 YOU, ONE MORE TIME, GO TO THE JURY ROOM AND WHEN YOU COME
18 BACK OUT, I'M GOING TO TELL YOU WHO IS GOING TO BE THE
19 FOREPERSON. THAT PERSON THAT IS APPOINTED WILL SIT WHERE
20 MS. ZAPATA IS NOW SEATED.

21 THE TWO ALTERNATES, Y'ALL WILL ALWAYS SIT IN
22 THOSE TWO SEATS. THE REST OF YOU, THERE IS NO ASSIGNED
23 SEATING. IT'S SORT OF FIRST COME FIRST SERVED. I FIND THAT
24 A TRIAL THAT TAKES SEVERAL DAYS, MOST PEOPLE SORT OF FIND
25 A SEAT AND GET COMFORTABLE TO IT, BUT YOU DON'T HAVE TO SIT

1 ANY PARTICULAR WHERE OTHER THAN THE FOREPERSON AND THE TWO
2 ALTERNATES.

3 MS. ZAPATA, YOU HAD INDICATED SOME CONCERN ABOUT
4 TAKING CARE OF YOUR FAMILY BUSINESS' PAYROLL, AND I THINK
5 I'VE WORKED THAT OUT SO THAT WE CAN HAVE YOU HOPEFULLY DO
6 THAT WITHOUT INTERFERING WITH YOUR SERVICE. WE CAN'T LET
7 YOU GO TO YOUR JOB, BUT YOU CAN HOPEFULLY BE ABLE TO DO
8 THAT.

9 NOW, WHEN YOU GO INTO THE JURY ROOM -- WHEN YOU
10 COME BACK OUT, I'M GOING TO HAVE A LITTLE BIT OF A TALK TO
11 GIVE TO YOU.

12 YOU'RE ON THE JURY NOW. I'M GOING TO HAVE THE
13 CLERK ADMINISTER THE OATH IN JUST A MINUTE BEFORE YOU GO
14 BACK IN THERE. DON'T DISCUSS THIS CASE NOW OR AT ANY TIME.
15 DON'T DISCUSS IT AMONG YOURSELVES UNTIL WE REACH THE POINT
16 OF THE TRIAL WHERE I TELL YOU TO JOINTLY DELIBERATE AND
17 RETURN A UNANIMOUS VERDICT. FIRST ON THAT PART WE'VE
18 TALKED ABOUT SO MUCH, THE GUILT PHASE.

19 DON'T DISCUSS A THING ABOUT THIS CASE, GUILT OR
20 PENALTY. DON'T DISCUSS ANYTHING UNTIL YOU HEAR ME TELL YOU
21 TO GO INTO THE JURY ROOM, JOINTLY DELIBERATE AND RETURN A
22 UNANIMOUS VERDICT.

23 DON'T EVEN TRY TO MAKE UP YOUR MIND ABOUT THE
24 CASE UNTIL WE REACH THAT POINT. PRIOR TO THAT TIME, PRIOR
25 TO ME TELLING YOU THAT, YOU WON'T HAVE ALL THE TOOLS YOU

1298

1 NEED TO MAKE A FAIR AND REASONED DECISION BECAUSE YOU WOULD
2 NOT HAVE HEARD ALL OF THE EVIDENCE. YOU WOULD NOT HAVE
3 HEARD THE ATTORNEYS' ARGUMENTS AND YOU WOULD NOT HAVE HEARD
4 MY CHARGE TO YOU ON THE LAW. SO, YOU WON'T BE EQUIPPED TO
5 MAKE UP YOUR MIND AND MAKE A FAIR AND REASONED DECISION
6 UNTIL WE REACH THAT POINT.

7 SO, LET ME LET YOU GO TO THE JURY ROOM FOR A FEW
8 MINUTES AFTER THE OATH IS ADMINISTERED AND WHEN YOU COME
9 BACK IN, I WILL CHAT WITH YOU FOR A WHILE AND THEN THE
10 ATTORNEYS WILL HAVE THE RIGHT TO MAKE OPENING STATEMENTS.
11 MADAM CLERK?

12 (THE JURY WAS SWORN BY THE CLERK)

13 THE COURT: BEFORE YOU SIT DOWN, IF YOU'LL JUST
14 FOLLOW THE BAILIFF. GO AHEAD AND GET REFRESHED AND WE'LL
15 SEE YOU IN JUST A FEW MINUTES.

16 IN CAMERA:

17 THE COURT: IS THERE ANYTHING AT THIS STAGE FROM
18 THE DEFENSE BEFORE WE TAKE A REAL SHORT BREAK -- I MEAN
19 FROM THE STATE?

20 MR. POPE: NO, SIR, YOUR HONOR, DURING THE BREAK
21 I'LL TRY TO GET THE EVIDENCE IN THE COURTROOM.

22 THE COURT: ANYTHING FROM THE DEFENSE?

23 MR. BOYD: NO, SIR, YOUR HONOR.

24 THE COURT: ALL RIGHT, WOULD YOU DO THAT AND LET
25 ME KNOW WHEN YOU'RE READY.

1299

1 MR. POPE: YES, SIR, YOUR HONOR. WHAT I'LL DO,
2 LIKE I SAID, UNTIL I TRANSFER IT, PETE MITCHUM IS CUSTODIAN
3 OF THE EVIDENCE AND HE WILL REMAIN IN THE COURTROOM. HE IS
4 JUST A CHAIN WITNESS AND HE WILL REMAIN WITH THE EVIDENCE
5 UNTIL WE CAN GET IT TRANSFERRED OVER IF THE DEFENSE DOES
6 NOT HAVE AN OBJECTION.

7 MR. BOYD: NO OBJECTION.

8 THE COURT: ALL RIGHT, WE WILL BE AT EASE FOR A
9 FEW MINUTES.

10 AFTER THE BREAK:

11 THE COURT: ALL RIGHT, WE HAVE A COUPLE OF THINGS
12 WE WANT TO PUT ON THE RECORD INVOLVING INDIVIDUALS WHO ARE
13 IN THE COURTROOM. SHERIFF BRYANT WHO WAS LISTED AS A
14 WITNESS, BY AGREEMENT, IS GOING TO BE ALLOWED TO STAY IN
15 THE COURTROOM. AND THERE ARE TWO MEMBERS OF TERRY
16 ROBERTSON'S FAMILY, I BELIEVE, AUNTS OR COUSINS, WHO ARE
17 POSSIBLE LISTED WITNESSES WHO I FIND QUALIFY UNDER THE
18 VICTIM'S RIGHTS ACT TO REMAIN IN THE COURTROOM. SO, I'M
19 GOING TO LET THE SOLICITOR TELL US ABOUT THAT AND THEN LET
20 DEFENSE COMMENT.

21 MR. POPE: IF YOU WOULD, STAND, STATE YOUR NAME
22 FOR THE COURT REPORTER AND TELL WHAT YOUR RELATION IS TO
23 TERRY ROBERTSON PLEASE.

24 A. I'M MARGARET ANN BRENNER, TERRY WAS MY NIECE, MY
25 SISTER'S DAUGHTER. MY LAST NAME IS BRENNER, B-

STATE OF SOUTH CAROLINA	)	
	)	IN COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	
THE STATE,	)	INDICTMENT NOS. 98-GS-46-1020
	)	1021, 1022, 1023
PLAINTIFF,	)	
	)	
VS.	)	TRANSCRIPT OF TRIAL AND
	)	PRE-TRIAL MOTIONS (7-17-98,
JAMES DEJARNETTE	)	9-22-98, 9-25-98, 11-2-98,
ROBERTSON,	)	AND 12-4-98)
	)	MARCH 15, 1999
DEFENDANT.	)	YORK, SOUTH CAROLINA

VOLUME VI

OPENING STATEMENT BY THE COURT

1300

1 R-E-N-N-E-R.

2 THE COURT: THANK YOU.

3 A. MELISSA GRIFFITH, AND I WAS TERRY'S COUSIN, G-R-
4 I-F-F-I-T-H.

5 THE COURT: ALL RIGHT THANK YOU. NOW, ANY
6 COMMENT FROM THE DEFENSE?

7 MR. HANCOCK: YOUR HONOR, I DEFER TO THE COURT
8 UNDER THE JUDGMENT OF THE STATUTE, BUT I WILL POINT OUT
9 THAT WE DO OBJECT BECAUSE THEY ARE POTENTIAL PAINE
10 WITNESSES AS WE UNDERSTAND IT AT THIS TIME.

11 THE COURT: ALL RIGHT, THANK YOU.

12 MR. POPE: YOUR HONOR, AS FAR AS THE
13 SEQUESTRATION ORDER, AND WE DID NOT ADDRESS THIS, BUT I
14 THINK THE DEFENSE KNOWS IT, IT WOULD BE RECIPROCAL, IS THAT
15 CORRECT?

16 THE COURT: YES. ALL RIGHT, LET'S BRING IN THE
17 JURY.

18 IN THE PRESENCE OF THE JURY:

19 THE COURT: MEMBERS OF THE JURY PANEL, FIRST I
20 HAVE APPOINTED MR. GWINN AS FOREMAN OF THIS JURY PANEL. HE
21 WILL BE THE LIAISON BETWEEN MYSELF AND YOU AS JURY MEMBERS.
22 HE WILL PRESIDE OVER YOUR DELIBERATIONS AND HE WILL, IN THE
23 GUILT PHASE OF THIS TRIAL WHICH WE HAVE TALKED ABOUT, SIGN
24 THE VERDICT ON YOUR BEHALF.

25 AND I AM GOING TO BE TALKING NOW, AND THE

OPENING STATEMENT BY THE COURT 1301

1 ATTORNEYS WILL IN JUST A MOMENT, ABOUT THAT FIRST PART THAT
2 WE HAVE DISCUSSED SO MUCH OVER THE LAST COUPLE OF DAYS.

3 AT THE LUNCH HOUR, WHICH WE ARE HAVING LUNCH
4 BROUGHT IN TODAY AND WE'RE GOING TO TRY TO DO THAT PROBABLY
5 MOST DAYS BECAUSE IT WOULD HELP US WITH TIME, WE'LL TRY TO
6 GET IT HERE AROUND 12:30. I'M GOING TO ADD A LITTLE BIT OF
7 EXTRA TIME TODAY FOR THE SECURITY PEOPLE WHO WILL BE
8 ACCOMPANYING YOU WHO HAVE NO CONNECTION WITH THIS CASE, I'M
9 GOING TO LET THEM ORIENT YOU TO HOW THEY ARE GOING TO BE
10 HANDLING YOUR LODGING AND YOUR LUGGAGE AND YOUR TELEPHONE
11 CALLS AND YOUR LAUNDRY, IF NEED BE, MEDIAL ATTENTION IF
12 NEED BE, AND ALL OF THOSE THINGS.

13 NOW I'M GOING TO TELL YOU NOW, THEY ARE SWORN,
14 WHICH WAS OUTSIDE YOUR PRESENCE, BUT THEY HAVE BEEN SWORN
15 NOT TO TALK TO YOU ABOUT ANYTHING ABOUT THIS CASE. I DON'T
16 THINK YOU WOULD, BUT PLEASE BE CAUTIOUS AND DON'T TALK TO
17 THEM ABOUT ANYTHING THAT COULD REMOTELY DEAL WITH THIS
18 CASE. BECAUSE THEY, AND NOT BEING RUDE IN DOING IT, BUT
19 JUST TELL YOU I CAN'T TALK TO YOU ABOUT THAT. SO, JUST
20 STAY AWAY FROM THAT.

21 THERE ARE OTHER SUBJECTS THAT YOU CAN DISCUSS AND
22 OF COURSE OBVIOUSLY IN MAKING CHOICES ABOUT PERHAPS WHERE
23 TO GO EAT BECAUSE THERE ARE SEVERAL OPTIONS, TELEPHONE
24 CALLS AND LOGISTICAL TYPE THINGS, BUT STAY AWAY FROM
25 ANYTHING THAT HAS TO DO WITH THIS TRIAL AND THE MERITS OF

OPENING STATEMENT BY THE COURT

1302

1 IT.

2 MR. ROBERTSON WHO YOU MET IS, I'LL REMIND YOU,
3 REPRESENTED BY MR. HANCOCK AND MR. BOYD AND THE STATE WILL
4 BE PRESENTING ITS CASE THROUGH THE SOLICITOR, MR. POPE, AND
5 HIS DEPUTY, MR. BRACKETT.

6 MR. ROBERTSON IS CHARGED IN FOUR SEPARATE
7 INDICTMENTS. HIS NAME IS JAMES DEJARNETTE ROBERTSON. I
8 THINK HE HAS BEEN REFERRED TO AS JAMES AND JIMMY OVER THE
9 LAST COUPLE OF DAYS.

10 ALL FOUR OF THESE INDICTMENTS HAVE BEEN PUBLISHED
11 TO YOU BUT I WILL REMIND YOU THAT THEY ALLEGE OCCURRENCES
12 HERE IN YORK COUNTY ON NOVEMBER 25TH, 1997. THEY ALLEGE
13 THAT AT THAT TIME WITH MALICE AFORETHOUGHT MR. ROBERTSON
14 DID KILL TERRY ROBERTSON BY MEANS OF BEATING AND/OR
15 STABBING HER AND THAT SHE DIED AS A RESULT THEREOF. AND
16 EARL ROBERTSON, SR. BY BEATING AND/OR STABBING AND HE DIED
17 THEREOF.

18 HE IS ALLEGED ALSO TO HAVE AT THAT TIME WILFULLY
19 AND UNLAWFULLY WITH INTENT TO DEFRAUD USED A VISA CARD
20 ISSUED TO EARL ROBERTSON, SR. TO OBTAIN GOODS, MONIES OR
21 SERVICES OR OTHER THINGS OF VALUE BY PRESENTING THAT CARD
22 WITHOUT THE AUTHORIZATION OR PERMISSION OF MR. ROBERTSON IN
23 VIOLATION OF STATE LAW.

24 IT IS ALSO ALLEGED THAT AT THAT TIME WHILE ARMED
25 WITH A DEADLY WEAPON HE FELONIOUSLY TOOK FROM EARL

OPENING STATEMENT BY THE COURT 1303

1 ROBERTSON, SR. GOODS OR MONIES OF MR. ROBERTSON IN
2 VIOLATION OF STATE LAW.

3 TO EACH OF THESE INDICTMENTS MR. ROBERTSON HAS
4 ENTERED PLEAS OF NOT GUILTY. THESE PLEAS OF NOT GUILTY
5 PLACE ON THE STATE OF SOUTH CAROLINA AND THE PROSECUTION
6 THE BURDEN OF PROOF. THAT IS, THE BURDEN OF PROVING EACH
7 ESSENTIAL ELEMENT OF EACH OF THESE OFFENSES BEFORE AS TO AN
8 OFFENSE YOU COULD FIND MR. ROBERTSON GUILTY. THEY MUST
9 PROVE THESE ESSENTIAL ELEMENTS BEYOND A REASONABLE DOUBT.

10 THE INDICTMENTS WHICH I HAVE READ TO YOU ARE NOT
11 EVIDENTIARY, THEY ARE NOT PART OF THE EVIDENCE IN THE
12 TRIAL. THEY ARE THE CHARGING PAPERS, THE PAPERWORK BY WAY
13 OF WHICH THIS CASE WAS PROCESSED THROUGH OUR COURT SYSTEM.
14 THEY ARE WHERE YOU, MR. GWINN, WILL ULTIMATELY SIGN THE
15 VERDICTS IN THIS STAGE OF THE TRIAL THEREON, AND THEY WILL
16 BE PERMANENT RECORDS OF THIS TRIAL.

17 I USE THE WORD REASONABLE DOUBT OR PHRASE AND I
18 WILL CHARGE YOU AT THE END OF THE CASE THAT A REASONABLE
19 DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE
20 PERSON TO HESITATE TO ACT.

21 NOW IT IS YOUR DUTY AS JURORS TO LISTEN. I AM
22 GOING TO ASK YOU FIRST NOT TO TAKE NOTES. I AM GOING TO ASK
23 YOU TO USE YOUR COLLECTIVE MINDS TO LISTEN ATTENTIVELY AND
24 WHEN WE'VE REACHED THE STAGE FOR DELIBERATION TO -- WHAT
25 DO WE NEED?

OPENING STATEMENT BY THE COURT

1304

1 THE BAILIFF: NOTHING, SIR.

2 THE COURT: THE STATE HAS THE BURDEN OF PROVING
3 THE CHARGES BEYOND A REASONABLE DOUBT, AS I HAVE SAID. MR.
4 ROBERTSON HAS ENTERED PLEAS OF NOT GUILTY TO EACH OF THESE
5 CHARGES. HE IS PRESUMED INNOCENT OF EACH OF THESE CHARGES
6 AND IS SO PRESUMED UNTIL SUCH TIME AS THE STATE, IF IT WERE
7 ABLE TO, HAS CONVINCED YOU OF HIS GUILT BEYOND A REASONABLE
8 DOUBT.

9 NOW, I HAVE THREE PRIMARY JOBS IN THIS TRIAL.
10 THE FIRST IS WHAT I SOMETIMES REFER TO A BEING THE WAGON
11 MASTER; THAT IS, THE LOGISTICS PERSON; I MAKE SURE WE TAKE
12 BREAKS; I MAKE SURE ONLY ONE PERSON IS SPEAKING AT A TIME.
13 I DO THOSE MECHANICAL THINGS. THE SECOND IS THAT I RULE ON
14 QUESTIONS OF ADMISSIBILITY OF EVIDENCE. IF ONE SIDE
15 BELIEVES CERTAIN EVIDENCE SHOULD COME INTO THE RECORD FOR
16 YOUR REVIEW AND THE OTHER BELIEVES IT SHOULD NOT, IT IS UP
17 TO ME TO MAKE A DETERMINATION. WHEN I HAVE RULED, THAT
18 RULE IS BINDING ON THE WITNESSES, THE ATTORNEYS AND ON YOU.

19 IF AT ANY TIME YOU HEAR TESTIMONY OR SEE EVIDENCE
20 AND I THEREAFTER TELL YOU TO DISREGARD IT, THEN YOU MUST
21 DISREGARD IT. YOU CAN ONLY UTILIZE FACTORS IN YOUR
22 CONSIDERATION THAT EVIDENCE WHICH IS ALLOWED INTO EVIDENCE.

23 ALONG THAT LINE YOU MAY HEAR AN ATTORNEY OBJECT;
24 THAT IS, STAND UP AND SAY I OBJECT, YOUR HONOR. DON'T HOLD
25 THAT AGAINST THE ATTORNEY, THEY'RE DOING THEIR JOB; THAT'S

OPENING STATEMENT BY THE COURT

1305

1 WHAT THEY ARE SUPPOSED TO DO IF THEY BELIEVE SOME EVIDENCE
2 SHOULD NOT COME IN.

3 IT MAY BE THAT I CAN RULE WITHOUT LETTING YOU GO
4 TO THE JURY ROOM, IT MAY BE SOMETHING THAT I CAN RULE ON IN
5 A SNAP, IT MAY NOT. IT MAY BE SOMETHING THAT I WILL HAVE
6 TO ALLOW YOU TO LEAVE THE ROOM AND DISCUSS WITH THE
7 ATTORNEYS AND MAKE A RULING. BUT DON'T BE OFFENDED AND
8 DON'T TAKE ANY -- DON'T HOLD AGAINST ANY ATTORNEY THE FACT
9 THAT THEY MAY OBJECT.

10 MY THIRD JOB AND DUTY IN THIS CASE IS I AM THE
11 SOLE JUDGE OF THE LAW. YOU AS THE JURY MUST TAKE, ACCEPT
12 AND APPLY THE LAW AS I CHARGE IT TO YOU, EVEN IF YOU THINK
13 WHAT I TELL YOU IS TOLD TO YOU IN ERROR OR EVEN IF YOU
14 THINK THE LAW SHOULD BE DIFFERENT, YOU MUST TAKE, ACCEPT
15 AND APPLY THE LAW JUST AS I CHARGE IT TO YOU.

16 I AM GIVING YOU SOME LEGAL PRINCIPLES NOW.
17 THROUGHOUT THE TRIAL I WILL PERHAPS GIVE YOU SOME. AT THE
18 END OF THE TRIAL I WILL GIVE YOU A CONCISE, COMPREHENSIVE
19 CHARGE ON THE LAW THAT YOU ARE TO APPLY TO THE FACTS AS YOU
20 DETERMINE THE FACTS TO BE.

21 YOU ARE THE SOLE JUDGE OF THE FACTS. I JUST TOLD
22 YOU THAT YOU CANNOT DIFFER WITH ME ON WHAT I TELL YOU THE
23 LEGAL PRINCIPLES IN THIS CASE ARE, AND I CANNOT DIFFER WITH
24 YOU AS TO THE FACTS. A TRIAL JUDGE IS NOT ALLOWED TO FORM
25 OR EXPRESS TO A JURY AN OPINION ON THE FACTS. THAT IS YOUR

OPENING STATEMENT BY THE COURT

1306

1 JOB. DO NOT INFER FROM ANYTHING I SAY AT ANY TIME OR
2 ANYTHING I DO AT ANY TIME AS BEING INDICATIVE OF AN OPINION
3 OF MINE ON THE FACTS. YOU WOULD BE WRONG IN MAKING THAT
4 INFERENCE. I WILL NOT CONVEY TO YOU NOR FORMULATE AN
5 OPINION ON THE FACTS. THAT IS YOUR JOB.

6 AS JUDGES OF THE FACTS, IT IS SOLELY UP TO YOU TO
7 EXAMINE THE EVIDENCE AND GIVE TO IT THE EFFECT, THE VALUE,
8 THE WEIGHT AND THE TRUTH YOU BELIEVE IT SHOULD HAVE. USE
9 YOUR COMMON SENSE, YOUR SENSE OF LOGIC, YOUR EXPERIENCES IN
10 LIFE, YOUR SENSE OF REASON. YOU MAY BELIEVE ONE WITNESS AS
11 OPPOSED TO SEVERAL, SEVERAL AS OPPOSED TO ONE. YOU MAY
12 BELIEVE ALL, PART OR NONE OF A WITNESS' TESTIMONY.

13 AS JUDGES OF THE FACTS, YOU OF NECESSITY MUST
14 JUDGE THE CREDIBILITY OF THE WITNESSES WHO TESTIFY; THAT
15 IS, THE BELIEVABILITY. IN LAW WE USE THE WORD CREDIBILITY.
16 IN ASSESSING BELIEVABILITY AND CREDIBILITY, YOU CAN USE
17 THOSE THINGS I'VE JUST DISCUSSED. YOU CAN USE THOSE THINGS
18 THAT YOU FIND IN YOUR DAY TO DAY LIFE AS BEING INDICATIVE
19 OF TRUTHFULNESS.

20 WHAT WE WANT YOU TO DO IS TO EXAMINE THE EVIDENCE
21 AND RETURN A VERDICT THAT SPEAKS THE TRUTH BASED ON THE
22 TRUE FACTS.

23 NOW, DURING THIS CASE YOU MAY HEAR SOME
24 TESTIMONY, IN FACT I ANTICIPATE THAT YOU WILL, FROM
25 INDIVIDUALS WHO WE QUALIFY AS EXPERTS. I TELL YOU FIRST

OPENING STATEMENT BY THE COURT

1307

1 THAT GENERALLY A WITNESS CAN ONLY TESTIFY AS TO SOMETHING
2 THEY HAVE OBSERVED WITH ONE OF THEIR FIVE SENSES. THEY'VE
3 SEEN SOMETHING, TASTED IT, FELT IT, HEARD IT OR SMELLED IT.
4 THEY CAN TESTIFY TO THOSE SORT OF THINGS, BUT THEY CAN'T
5 REACH OPINIONS AS TO WHAT THOSE FACTS MEAN AND CANNOT
6 RENDER OPINIONS. HOWEVER, WHERE AN INDIVIDUAL HAS CERTAIN
7 SKILL, TRAINING, KNOWLEDGE OR EXPERIENCE IN A CERTAIN AREA
8 AND I FIND THAT THEY CAN TESTIFY AS AN EXPERT IN THAT AREA,
9 THEY CAN GIVE OPINIONS ON ISSUES.

10 LET ME GIVE YOU AN EXAMPLE. THIS WOULD BE AN
11 EXAMPLE THAT PROBABLY WON'T ARISE IN THIS CASE, BUT LET ME
12 GIVE YOU AN EXAMPLE OF WHAT I'M TALKING ABOUT. IF I HAD A
13 YOUNG CHILD AND THAT CHILD WAS FEVERISH, COMPLAINING OF A
14 TUMMY ACHE, SHIVERING ONE MINUTE AND PERSPIRING THE NEXT,
15 I COULD TAKE THEIR TEMPERATURE AND SEE AND READ THE
16 THERMOMETER, IT MAY READ A HUNDRED. THE CHILD MAY BE
17 THROWING UP. I CAN SEE ALL THOSE THINGS AND I COULD COME
18 INTO COURT AND TESTIFY TO EVERY ONE OF THOSE THINGS BECAUSE
19 I HAD EYE WITNESSED THEM, SO TO SPEAK. BUT I COULD NOT,
20 BECAUSE I AM NOT A PHYSICIAN, I DON'T HAVE THE EXPERIENCE,
21 THE TRAINING OR THE KNOWLEDGE, I COULD NOT GIVE YOU AN
22 OPINION OF WHAT WAS WRONG WITH THAT CHILD. I COULD TAKE A
23 GUESS, BUT THAT IS ALL IT WOULD BE. IT WOULDN'T EVEN BE AN
24 EDUCATED GUESS.

25 SO, I COULD NOT GIVE YOU AN OPINION OF WHAT WAS

OPENING STATEMENT BY THE COURT

1308

1 WRONG WITH THAT CHILD. HOWEVER, I COULD TAKE THAT CHILD TO
2 A PHYSICIAN AND THAT PHYSICIAN COULD OBSERVE EXACTLY WHAT
3 I OBSERVED AND BECAUSE OF THAT PHYSICIAN'S EXPERTISE, THEIR
4 TRAINING, THEIR KNOWLEDGE, THEIR EXPERIENCE, THEY COULD
5 RENDER AN OPINION. IN MEDICINE IT'S OFTEN CALLED A
6 DIAGNOSIS, BUT THEY COULD RENDER AN OPINION AS TO WHAT
7 THOSE SYMPTOMS MEAN. THAT IS, IT'S THE FLU OR IT'S A VIRUS
8 OR BRONCHITIS.

9 THAT'S WHAT THE DIFFERENCE IS IN SORT OF EYE
10 WITNESS AND LAY TESTIMONY AND EXPERT OPINION TESTIMONY.

11 SO, DURING THE TRIAL I ANTICIPATE WE WILL HAVE
12 THAT, AND I WILL TELL YOU HOW YOU ANALYZE THAT TYPE
13 EVIDENCE AT THE END OF THE TRIAL AND BASICALLY IT'S JUST
14 LIKE YOU ANALYZE OTHER EVIDENCE IN THE TRIAL.

15 NOW, YOU ARE GOING TO NOT BE EXPOSED TO ANYTHING
16 ABOUT THIS CASE. WE ARE GOING TO MAKE SURE THAT YOU ARE
17 NOT ALLOWED TO SEE ANYTHING ON TELEVISION ABOUT IT, HEAR
18 ANYTHING ON THE RADIO ABOUT IT OR READ ANYTHING ABOUT IT.

19 IF FOR SOME REASON SOMETHING POPS UP THAT APPEARS
20 TO DEAL WITH THIS CASE, DON'T LET YOURSELF BE EXPOSED TO
21 IT. YOU MUST BASE YOUR VERDICT ON WHAT HAPPENS HERE IN THE
22 COURTROOM.

23 DON'T DISCUSS THE CASE AMONG YOURSELVES UNTIL I
24 INSTRUCT YOU TO JOINTLY DELIBERATE AND RETURN A UNANIMOUS
25 VERDICT. DON'T, AS I THINK I HAVE ALREADY TOLD YOU, EVEN

OPENING STATEMENT BY THE COURT

1309

1 TRY TO MAKE UP YOUR OWN MIND UNTIL WE'VE REACHED THAT POINT
2 BECAUSE YOU DO NOT HAVE ALL THE TOOLS YOU NEED.

3 AS I TOLD YOU, YOU DO NOT NEED TO TAKE NOTES. WE
4 WILL RELY ON EVERYBODY'S COLLECTIVE RECOLLECTIONS.

5 IN JUST A MOMENT I WILL ALLOW THE ATTORNEYS AN
6 OPPORTUNITY TO STAND BEFORE YOU AND MAKE OPENING
7 STATEMENTS. THESE ARE NOT ARGUMENTS. AT A LATER TIME THE
8 ATTORNEYS WILL BE ALLOWED TO SUM UP THEIR CASE AND GIVE YOU
9 ARGUMENTS AS TO WHY YOUR VERDICT SHOULD BE A CERTAIN WAY.
10 THAT'S NOT WHAT THEY ARE DOING NOW. THEY ARE SIMPLY GIVING
11 YOU A ROAD MAP OR A BLUEPRINT OF THE TRIAL AND THE ISSUES
12 IN THE TRIAL. THEY ARE ALSO NOT TO GIVE YOU TESTIMONY
13 BECAUSE THEY ARE NOT WITNESSES. IF THEY WERE WITNESSES,
14 THEY COULDN'T BE THE ATTORNEYS IN THE TRIAL. SO, WHAT THEY
15 SAY IS NOT EVIDENCE. EVIDENCE WILL COME IN THROUGH
16 WITNESSES WHO TESTIFY UNDER OATH JUST WHERE Y'ALL HAVE BEEN
17 SEATED EARLIER THIS WEEK AND THROUGH PHYSICAL EXHIBITS,
18 THINGS YOU CAN ACTUALLY HOLD IN YOUR HAND AND TAKE WITH YOU
19 INTO THE JURY ROOM WHEN YOU DELIBERATE. BUT THEY DO HAVE
20 THE RIGHT TO MAKE AN OPENING STATEMENT, BOTH THE STATE AND
21 THE DEFENSE. BUT THERE IS NO OBLIGATION ON THE DEFENSE TO
22 MAKE A STATEMENT, BUT THEY HAVE THE RIGHT TO DO THAT AND I
23 ASK YOU TO GIVE THEM THE ATTENTION YOU HAVE BEEN GIVING ME
24 WHEN THEY DO THAT.

25 NOW, WE WILL TRY TO RUN COURT FROM ABOUT 9:00 OR

OPENING STATEMENT BY THE COURT

1310

1 9:30 UNTIL 5:00 OR 5:30 IN THE AFTERNOON. WE CAN'T ALWAYS
2 DO THAT. SOMETIMES WE HAVE MATTERS TO TAKE UP OUTSIDE YOUR
3 PRESENCE AND WHEN WE DO THAT WE DO IT FOR SORT OF TWO
4 REASONS. ONE, BECAUSE THE LAW REQUIRES IT. AND THE OTHER
5 IS BECAUSE WE CAN USUALLY MAKE DECISIONS ON MATTERS OUTSIDE
6 YOUR PRESENCE THAT HELP SPEED THE TRIAL ALONG AND MAKE IT
7 A MORE EFFICIENT PRESENTATION FOR YOU WHEN YOU ARE HERE IN
8 THE COURTROOM.

9 WE WILL TRY TO BREAK AROUND 12:30 OR 1:00. I
10 THINK WE ARE GOING TO TRY TO BRING IN LUNCH MUST DAYS.
11 THAT JUST CUTS DOWN ON THE TIME BECAUSE OF TRANSPORTATION
12 AND ALSO THAT WILL GIVE YOU SOME COMFORT TIME.

13 WE WILL ALLOW PEOPLE WHO SMOKE TO GO OUTSIDE AND
14 SMOKE. AND THOSE OF YOU WHO DON'T SMOKE, THAT DOESN'T MEAN
15 YOU CAN'T GO OUT. IF YOU WILL RECALL OUTSIDE THE JURY
16 ASSEMBLY ROOM THERE IS A PATIO AREA AND I CERTAINLY THINK
17 WE CAN MAKE ARRANGEMENTS FOR THOSE OF YOU WHO WISH TO GO
18 OUT THERE AND JUST SIT WHEN WE HAVE A BREAK AND GET SOME
19 FRESH AIR, WE CAN ALLOW YOU TO DO THAT.

20 BUT, AGAIN, WE WILL GO FROM SAY 9:00 OR 9:30 IN
21 THE MORNING TO 5:30 OR 6:00 IN THE EVENING AND WE WILL
22 BREAK FOR LUNCH AROUND 12:30 OR 1:00.

23 WE ALSO TRY TO TAKE BREAKS ABOUT EVERY HOUR AND
24 A HALF. I KNOW EVERYBODY'S COMFORT LEVEL IS DIFFERENT.
25 IT'S HARD TO PAY ATTENTION IF YOU'RE NOT COMFORTABLE. SO,

OPENING STATEMENT BY THE COURT

1311

1 I INVITE ANYBODY WHO NEEDS A BREAK TO LET ME KNOW. I
2 ASSURE YOU THAT IF I WANT TO TAKE A BREAK, I'M GOING TO DO
3 IT. WELL, I'M GOING TO GIVE YOU THE SAME PREROGATIVE. IF
4 YOU NEED A BREAK FOR ANY REASON WHATSOEVER, I DO NOT WANT
5 ANYBODY TO SIT THERE AND BE UNCOMFORTABLE. IF YOU NEED A
6 BREAK, JUST RAISE YOUR HAND AND WITH NO QUESTIONS ASKED,
7 WE'LL TAKE A BREAK. AND I EXTEND THAT TO COUNSEL AND MR.
8 ROBERTSON.

9 WE WANT TO MOVE THIS CASE ALONG, BUT WE ARE NOT
10 IN SUCH A HURRY THAT WE WANT ANYONE TO NOT BE ABLE TO PAY
11 ATTENTION. SO, WE WILL TAKE BREAKS AS NECESSARY.

12 NOW, IS THERE ANYTHING ELSE THAT THE STATE WISHES
13 ME TO COVER AT THIS TIME?

14 MR. POPE: NO, SIR, YOUR HONOR.

15 THE COURT: THE DEFENSE?

16 MR. HANCOCK: NOTHING, YOUR HONOR.

17 THE COURT: ALL RIGHT, MR. SOLICITOR?

18 OPENING STATEMENT BY MR. POPE:

19 LADIES AND GENTLEMEN OF THE JURY, ON AUGUST 19TH,
20 1983 TERRY DEJARNETTE ROBERTSON AND EARL LAMAR ROBERTSON
21 EXECUTED THEIR LAST WILL AND TESTAMENT. THEIR LAST WILL
22 AND TESTAMENT LEFT THEIR ESTATE TO THEIR TWO SONS. AND
23 THEIR ESTATE WAS VALUED AT A LITTLE OVER TWO MILLION
24 DOLLARS.

25 ON NOVEMBER 25TH OF 1997 ONE OF THEIR SONS, JAMES

OPENING STATEMENT BY MR. POPE

1312

1 ROBERTSON, EXECUTED TERRY AND EARL IN ORDER THAT HE COULD
2 RECEIVE THE BENEFITS OF THAT TWO MILLION DOLLAR ESTATE.

3 LADIES AND GENTLEMEN, YOU HAVE ALREADY BEEN
4 THROUGH A DIFFICULT PROCESS AND I'LL BE HONEST WITH YOU,
5 IT'S JUST BEGINNING. I WANT TO APOLOGIZE IN ADVANCE FOR
6 THE CASE YOU'RE ABOUT TO SEE, BUT THE STATE DOES INTEND TO
7 BEAR ITS BURDEN, AND THE STATE DOES INTEND TO BRING THE
8 EVIDENCE FORWARD TO YOU IN THIS PARTICULAR CASE.

9 AS YOU RECALL FROM ALL THE DISCUSSIONS WE HAD
10 HERE AND ALL THE DISCUSSIONS THE JUDGE GAVE YOU, WE ARE NOW
11 IN THE GUILT PHASE. PENALTY HAS NO PLACE IN YOUR
12 CONSIDERATION. AS THE JUDGE SAID, YOU'RE NOT EVEN TO
13 CONSIDER GUILT OR PENALTY UNTIL HE INSTRUCTS YOU.

14 SO NOW THE ISSUE THAT YOU HAVE BEFORE YOU IS CAN
15 THE STATE PROVE BEYOND A REASONABLE DOUBT THAT THIS
16 DEFENDANT MURDERED BOTH OF HIS PARENTS. THAT HE TOOK A
17 CREDIT CARD FROM HIS FATHER'S WALLET AND OTHER ITEMS OF
18 PERSONAL PROPERTY, WENT AND USED THAT CREDIT CARD AS PART
19 OF FACILITATING HIS ESCAPE AND IN ACTUALITY OF FACILITATING
20 HIS ALIBI.

21 BECAUSE WHAT YOU WILL DISCOVER AND YOU WILL AGAIN
22 GET THIS FROM THE EVIDENCE THAT WILL BE PRESENTED AND FROM
23 THE WITNESSES HERE IS THAT EARLY ON THAT TUESDAY MORNING
24 RIGHT BEFORE THANKSGIVING, TUESDAY THE 25TH, TERRY
25 DEJARNETTE ROBERTSON WHO HAD A NUMBER OF CLOSE FRIENDS WAS

OPENING STATEMENT BY MR. POPE

1313

1 SUPPOSED TO BE CERTAIN PLACES AT CERTAIN TIMES. SUPPOSED TO
2 PICK UP A CAKE; SUPPOSED TO GO TO AN APPOINTMENT. YOU WILL
3 HEAR TESTIMONY FROM THOSE FRIENDS THAT SHE DIDN'T COME AND
4 THEY GOT TO MISSING HER.

5 YOU WILL HEAR TESTIMONY FROM CO-WORKERS OF EARL
6 ROBERTSON WHO WORKED DOWN AT SPRINGS DOWN IN LANCASTER, HE
7 WAS ALWAYS THERE, AND ALWAYS ON TIME. AND IF HE CALLED A
8 MEETING, HE WAS GOING TO BE THERE. AND YOU WILL HEAR THAT
9 EARL DIDN'T SHOW UP. AND THIS IS REALLY THE FIRST PROBLEM
10 WITH JIM'S PLAN BECAUSE THE PLAN WAS A BURGLARY THAT TAKES
11 BOTH THE PARENTS' LIVES, THE GLASS IS BROKE OUT OF THE BACK
12 OF THE HOUSE. JIM, MEREDITH MOON AND THE OTHER BROTHER,
13 CHIP, COME BACK FROM PHILADELPHIA WHERE CHIP'S IN SCHOOL
14 AND WHAT DO THEY FIND WHEN THEY GET HOME? SOMEBODY BROKE
15 IN AND KILLED MOM AND DAD.

16 WHAT THEY DIDN'T COUNT ON WAS TERRY AND EARL HAD
17 SO MANY CLOSE FRIENDS THAT NOT AN HOUR, TWO HOURS AFTER THE
18 CRIME HAD TAKEN PLACE WHEN THEY'RE AT THE PEACH STAND USING
19 THE CREDIT CARD AND HEADING ON UP THE INTERSTATE, THESE
20 FRIENDS ARE CALLING THE POLICE; THESE FRIENDS ARE CALLING
21 EACH OTHER. AND THEY'RE SAYING SOMEBODY HAS GOT TO GO TO
22 THE HOUSE. IF TERRY'S NOT SHOWING UP, IF EARL'S NOT AT
23 WORK, SOMETHING IS WRONG.

24 AND YOU WILL HEAR FROM THE WITNESS STAND THE
25 WITNESSES THAT CAME THERE. YOU WILL HEAR ABOUT THE FRIEND

OPENING STATEMENT BY MR. POPE

1314

1 THAT FOUND THEM. YOU'LL HEAR ABOUT THE POLICE OFFICER WHO
2 WENT THERE. AND YOU WILL HEAR THE INVESTIGATION THAT
3 BEGAN.

4 WE WILL BRING TO YOU THE INVESTIGATION THAT BEGAN
5 AT THAT HOUSE AND BASICALLY TRACES HIS RIDE FROM THE HOUSE
6 TO THE PEACH STAND OVER IN FORT MILL USING HIS DADDY'S
7 CREDIT CARD, UP THE ROAD TO LADYSMITH, VIRGINIA AND UP TO
8 PENNSYLVANIA WHERE THEY ARRESTED HIM.

9 BUT YOU WILL ALSO HEAR ABOUT THE STOP THEY MADE
10 IN MARYLAND. WHEN I SAY "THEY" NOW, I'M TALKING ABOUT THIS
11 DEFENDANT AND MEREDITH MOON. THEY STOPPED IN MARYLAND AND
12 PUT AN ODD ASSORTMENT OF ITEMS IN A DUMPSTER. ONE WAS A
13 BASEBALL BAT; ONE WAS A CLAW HAMMER; ONE WAS A KNIFE; SOME
14 OF THE CHECK ITEMS WERE IN THERE; THERE WERE BLOODY
15 CLOTHES; THERE WERE SOCKS THAT WERE WORN OVER THE HANDS TO
16 PREVENT FINGERPRINTS. AND ALL THAT EVIDENCE WAS IN A
17 DUMPSTER IN MARYLAND.

18 AND THE TRUTH BE KNOWN, IF MEREDITH MOON HAD NOT
19 TOLD THE POLICE WHEN THEY GOT TO PHILADELPHIA, WHEN THEY
20 WERE ARRESTED IN PHILADELPHIA, THAT EVIDENCE WOULD HAVE
21 NEVER BEEN RECOVERED.

22 BUT YOU WILL HEAR ABOUT THE EVIDENCE THAT WAS
23 RECOVERED; YOU WILL HEAR ABOUT THE TESTIMONY FROM THE
24 VARIOUS EXPERTS, WHAT THEY DISCOVERED; YOU WILL HAVE DNA
25 TESTING; YOU WILL HAVE HAIR AND FIBER TESTING. YOU WILL

OPENING STATEMENT BY MR. POPE

1315

1 HAVE ALL OF THE EVIDENCE THAT CONNECTS THIS MAN TO THE
2 CRIME YOU'LL SEE AND HIS TRAIL OF HEADING TOWARD HIS ALIBI
3 ALL THE WAY UP TO PHILADELPHIA.

4 AGAIN, LADIES AND GENTLEMEN, WE WILL BRING THE
5 OFFICERS, WE WILL BRING THE INVESTIGATORS, WE WILL BRING
6 THE EXPERTS, WE WILL PROVE THIS CASE TO YOU BEYOND A
7 REASONABLE DOUBT. WE WILL PROVE GUILT BEYOND A REASONABLE
8 DOUBT AT THIS POINT. AND THAT IS YOUR SOLE FOCUS AT THIS
9 TIME.

10 MR. BRACKETT AND I WILL BRING THE CASE FORWARD IN
11 A FASHION SUFFICIENT TO RECOGNIZE YOUR SENSIBILITIES. AND
12 AS I SAID EARLIER, IT WILL BE SUFFICIENT TO PROVE OUR CASE.

13 YOU WILL NOW HEAR FROM THE DEFENSE ATTORNEYS AND
14 ONCE YOU DO, YOU WILL HEAR FROM CISSY GEORGE THAT WILL
15 DESCRIBE HOW SHE WAS SUPPOSED TO MEET TERRY THAT FIRST
16 MORNING.

17 I KNOW IT'S GOING TO BE A LONG WEEK. I APPRECIATE
18 YOUR ATTENTION. I APPRECIATE YOUR COOPERATION AND WE LOOK
19 FORWARD TO PRESENTING THE CASE TO YOU. THANK YOU.

20 OPENING STATEMENT BY MR. HANCOCK:

21 LADIES AND GENTLEMEN OF THE JURY, I'M BILL
22 HANCOCK. WE HAVE MET ON VOIR DIRE WHICH IS UNIQUE TO THIS
23 CASE WHICH IS A DEATH PENALTY CASE. MANY OF YOU MET MR.
24 BOYD AND THIS IS THE DEFENDANT, JIMMY ROBERTSON, SEATED
25 HERE.

OPENING STATEMENT BY MR. HANCOCK

1316

1 I AM GOING TO REITERATE MUCH OF WHAT THE JUDGE
2 SAID AND REFLECT ON WHAT THE SOLICITOR HAS SAID.

3 I WILL REMIND YOU AS WE ARE HERE THAT WHAT I SAY
4 TO YOU IS NOT EVIDENCE. I ONLY REFLECT ON THE EVIDENCE AND
5 ASK YOU TO REFLECT ON THE EVIDENCE IN A PARTICULAR WAY.

6 AS WE COURSE THROUGH THIS TRIAL, THE WAY IT TAKES
7 PLACE IS THAT THE SOLICITOR PRESENTS HIS CASE, PRESENTS HIS
8 WITNESSES AND WE ARE ALLOWED TO CROSS EXAMINE AND TEST THE
9 CREDIBILITY OR TRUTHFULNESS OF THOSE WITNESSES.

10 THE JUDGE HAS TOLD YOU HE IS THE SOLE AUTHORITY
11 OF THE LAW. YOU ARE TO TAKE THE LAW AS HE GIVES IT TO YOU.

12 YOU ARE THE SOLE FINDERS OF THE FACTS. AND
13 EVENTUALLY YOU WILL FIND THE FACTS, THE JUDGE WILL GIVE YOU
14 THE LAW AND YOU WILL ARRIVE AT A VERDICT IN THIS CASE THAT
15 SPEAKS THE TRUTH.

16 WE ARE NOW SOLELY IN THE GUILT PHASE OF THIS
17 CASE. AND AS WE GO ALONG, IT IS THE BURDEN OF THE STATE OF
18 SOUTH CAROLINA TO PROVE IT'S CASE BEYOND A REASONABLE
19 DOUBT.

20 THE JUDGE WILL INSTRUCT YOU AS TO WHAT A
21 REASONABLE DOUBT IS. HE HAS ALREADY MOVED TOWARD THAT AND
22 SAID IT'S A DOUBT FOR WHICH A REASONABLE JUROR WOULD
23 HESITATE TO ACT, ANY REASON. IF THAT IS SO, THEN YOU MUST
24 FIND NOT GUILTY IF THAT IS INTERJECTED INTO YOUR
25 DELIBERATION.

OPENING STATEMENT BY MR. HANCOCK

1317

1 I WILL REMIND YOU THAT DURING THE COURSE OF THE
2 TRIAL THE JUDGE HAS SAID THAT THERE WILL BE TIMES WHERE
3 THERE WILL BE OBJECTIONS. AND THERE WILL BE. WE HAVE
4 RULES, WE HAVE LAWS, WE HAVE COURT PROCEDURES IN ORDER TO
5 ARRIVE AT A FAIR TRIAL FOR THE STATE OF SOUTH CAROLINA AND
6 FOR JIMMY ROBERTSON SEATED HERE.

7 IN ORDER TO ENSURE THAT, IT IS MY JOB, IT IS MR.
8 BOYD'S JOB, AT TIMES IF WE DO NOT THINK THOSE RULES AND/OR
9 LAWS ARE BEING FOLLOWED, THEN WE STAND AND WE SAY I OBJECT.
10 THAT IS JUST TO SAY, YOUR HONOR, WE NEED TO LOOK AT THIS.
11 IT IS NOT IN ANY WAY TO HIDE EVIDENCE FROM YOU, BUT IT IS
12 TO SAY, YOUR HONOR, WE NEED TO TALK ABOUT THIS. THAT'S
13 WHAT AN OBJECTION IS.

14 YOU CAN PUT ASIDE EVERYTHING YOU'VE SEEN IN L.A.
15 LAW; YOU CAN PUT ASIDE EVERYTHING YOU'VE EVER SEEN ON T.V.;
16 WE'RE IN SOUTH CAROLINA; WE'RE TRYING A DEATH PENALTY CASE.
17 AND WE DO IT WELL, AND WE DO IT BY THE RULES, AND BY THE
18 LAWS OF THIS STATE.

19 SO, THAT'S WHAT I'M CHARGED TO DO. WHEN I SAY
20 THAT, AS THE JUDGE SAID, HE MAY RULE ON THAT OBJECTION FROM
21 THE BENCH RIGHT HERE WITH YOU SITTING HERE. IN ORDER FOR
22 YOU NOT TO HEAR THINGS THAT MIGHT MAKE THE TRIAL UNFAIR,
23 THERE MAY BE TIMES THAT YOU ARE REMOVED TO THE JURY ROOM
24 AND THEN WE ARGUE OUR POINT. AND THE JUDGE THEN TELLS US,
25 HE SAYS I'M THE AUTHORITY ON THE LAW, GENTLEMEN, YOU MAY

OPENING STATEMENT BY MR. HANCOCK

1318

1 DO IT THIS WAY, THIS IS THE WAY IT IS. AND WE SAY YES,
2 SIR.

3 SO, DON'T HOLD ANY OF THOSE OBJECTIONS AGAINST
4 JIMMY ROBERTSON SITTING HERE BECAUSE WE ARE CHARGED WITH
5 GIVING A FAIR TRIAL IN THIS CASE.

6 AS WE COURSE THROUGH, THERE WILL BE MUCH EVIDENCE
7 PRESENTED TO YOU. THE ONLY EVIDENCE THAT YOU CONSIDER IS
8 EVIDENCE THAT COMES FROM THAT WITNESS STAND. AS I SAID,
9 THE SOLICITOR'S OPENING ARGUMENT, THE SOLICITOR'S CLOSING
10 ARGUMENT, MY OPENING ARGUMENT, MY CLOSING ARGUMENT, THEY
11 ARE NOT EVIDENCE. THE EVIDENCE COMES FROM THIS WITNESS
12 STAND.

13 I THANK YOU VERY MUCH FOR BEING HERE. WE HAVE
14 GONE THROUGH A RIGOROUS PROCESS OF YOUR SELECTION. YOU ARE
15 UNIQUELY QUALIFIED IN A VERY UNIQUE CASE, IT'S A DEATH
16 PENALTY CASE.

17 WE HAVE SPOKEN WITH EACH OF YOU. WE HAVE
18 DETERMINED THAT YOU ARE FAIR AND JUST AND WILL BE FAIR AND
19 JUST IN THE JUDGMENT OF THIS CASE. AND THAT IS ALL THAT WE
20 CAN ASK. MR. BOYD AND MYSELF, THAT'S ALL WE CAN ASK OF
21 YOU. THAT YOU CONSIDER THE EVIDENCE, THAT YOU LISTEN TO
22 THE EVIDENCE AND YOU ARRIVE EVENTUALLY AFTER PUTTING THE
23 EVIDENCE AND THE LAW INTO EFFECT, THAT YOU ARRIVE AT A
24 VERDICT THAT SPEAKS THE TRUTH. AND WHEN YOU DO THAT, THEN
25 WE WILL HAVE ALL ACCOUNTED OURSELVES ADMIRABLY, AND WE WILL

MARTHA CISSY GEORGE - DIRECT BY MR. POPE

1319

1 HAVE DONE OUR JOBS IN THIS CASE.

2 BUT THAT'S ALL THAT THE DEFENSE ASKS IN THIS CASE
3 IS THAT YOU TWELVE PEOPLE ARRIVE AT A VERDICT THAT SPEAKS
4 THE TRUTH. THANK YOU.

5 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
6 THE STATE WILL CALL MARTHA CISSY GEORGE TO THE STAND.

7 MARTHA CISSY GEORGE, BEING FIRST DULY SWORN,
8 TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

9
10 MR. POPE:

11 Q. MS. GEORGE IF YOU WOULD, STATE YOUR NAME AND
12 SPELL YOUR LAST NAME FOR THE COURT REPORTER,
13 PLEASE.

14 A. MY LEGAL NAME IS MARTHA CLARK GEORGE, G-E-O-R-G-
15 E, AND MOST PEOPLE CALL ME CISSY.

16 Q. DO YOU MIND IF I CALL YOU CISSY?

17 A. THAT'S FINE.

18 Q. HOW LONG HAVE YOU RESIDED HERE IN YORK COUNTY?

19 A. PROBABLY ABOUT 35 YEARS.

20 Q. WHERE ARE YOU FROM ORIGINALLY?

21 A. I'M ORIGINALLY FROM MILLEDGEVILLE, GEORGIA.

22 Q. AND DID YOU KNOW TERRY AND EARL ROBERTSON?

23 A. YES, I MET TERRY WHEN I WAS IN HIGH SCHOOL.

24 Q. AND WOULD YOU TELL THE JURY HOW YOU CAME TO BE
25 IN ROCK HILL AND HOW THEY CAME TO BE IN ROCK

MARTHA CISSY GEORGE - DIRECT BY MR. POPE

1320

1 HILL?

2 A. WHEN WE WERE FIRST MARRIED AND LOOKING TO BUILD
3 A HOUSE, WE DECIDED THAT WE WANTED TO LIVE
4 OUTSIDE OF CHARLOTTE WHERE WE WERE WORKING, AND
5 EARL HELPED US FIND A LOT DOWN IN FORT MILL.

6 Q. AND CAN YOU JUST TELL THE JURY BRIEFLY WHAT TYPE
7 RELATIONSHIP YOU AND YOUR HUSBAND HAD WITH TERRY
8 AND EARL?

9 A. WE WERE FRIENDS AS COUPLES. TERRY AND I HAD
10 BEEN FRIENDS, LIKE I SAID, SINCE HIGH SCHOOL.
11 SHE WAS LIKE A SISTER TO ME.

12 Q. CAN YOU TELL THE JURY, DO YOU REMEMBER THE LAST
13 TIME YOU ACTUALLY SPOKE WITH TERRY?

14 A. THE LAST TIME I TALKED TO HER WAS THE NIGHT OF
15 NOVEMBER 24TH. WE WERE TALKING ABOUT MEETING
16 THE NEXT MORNING. I HAD HAD A COCONUT CAKE MADE
17 FOR HER, A HOMEMADE COCONUT CAKE FOR
18 THANKSGIVING AND SHE WAS GOING TO MEET ME ON THE
19 MORNING OF THE 25TH TO PICK IT UP.

20 Q. THE 24TH WOULD HAVE BEEN LIKE ON A MONDAY
21 EVENING, IS THAT RIGHT?

22 A. THAT'S CORRECT.

23 Q. AND SO THE NEXT MORNING -- COULD YOU TELL THE
24 JURY, WHERE WERE YOU SUPPOSED TO MEET HER THE
25 NEXT MORNING TO DELIVER THE COCONUT CAKE?

MARTHA CISSY GEORGE - DIRECT BY MR. POPE

1321

1 A. WE WERE GOING TO MEET IN A PARKING LOT ON MAIN
2 STREET ACROSS FROM YORK NATURAL GAS AT ABOUT
3 8:15.

4 Q. COULD YOU TELL THE JURY APPROXIMATELY WHAT TIME
5 YOU GOT THERE?

6 A. I GOT THERE ABOUT FIVE OR SEVEN MINUTES AFTER
7 8:00 O'CLOCK.

8 Q. AND DID TERRY EVER SHOW UP TO PICK UP THE CAKE?

9 A. TERRY WASN'T THERE. SHE DIDN'T COME, AND ABOUT
10 8:25 I WENT ON BECAUSE I HAD TO GET TO WORK.

11 Q. AND WHAT HAPPENED THEN; WHAT DID YOU DO AFTER
12 YOU GOT TO WORK?

13 A. WHEN I GOT TO WORK I CONTINUED TO CALL TO GET
14 HER BECAUSE COCONUT SPOILS, FRESH COCONUT, AND I
15 DIDN'T WANT IT TO BE SPOILED, I WANTED HER TO
16 HAVE IT. SO, I CALLED UNTIL ALMOST 9:00 AND I
17 HAVE CLIENTS COMING IN FROM 9:00 UNTIL LUNCH.
18 SO THEN WHEN SHE DIDN'T SHOW UP I CALLED LINDA
19 WEAVER TO SEE IF SHE COULD GET IN TOUCH WITH
20 HER.

21 Q. OKAY, AND YOU SAID YOU CALLED. WHERE DID YOU TRY
22 TO CALL?

23 A. I CALLED HER AT HER HOME, 2506 WESTMINSTER DRIVE
24 IN ROCK HILL.

25 Q. AND WHAT WAS HAPPENING WHEN YOU WOULD CALL HER?

MARTHA CISSY GEORGE - DIRECT BY MR. POPE

1322

1 A. I WOULD GET THE ANSWERING, THE CALL SERVICE.

2 Q. THE VOICE MAIL TYPE?

3 A. THE VOICE MAIL.

4 Q. OKAY. AND SO YOU SAID AT SOME POINT YOU CALLED
5 LINDA WEAVER. WOULD YOU TELL THE JURY, WHO IS
6 LINDA WEAVER?

7 A. LINDA WEAVER IS ANOTHER GOOD FRIEND OF TERRY'S
8 AND MINE; WE'VE BEEN FRIENDS FOR OVER 30 YEARS.

9 Q. AND AFTER TALKING TO LINDA, WHAT DID YOU DO
10 THEN?

11 A. THEN I JUST MET WITH MY CLIENTS AND STAYED AT
12 WORK UNTIL MRS. WEAVER AND HER HUSBAND CAME TO
13 GET ME TO TELL ME ABOUT THE DEATH OF TERRY AND
14 EARL.

15 Q. IF YOU WOULD, ANSWER ANY QUESTIONS THE DEFENSE
16 MAY HAVE, PLEASE.

17 MR. BOYD: NO QUESTIONS, YOUR HONOR.

18 THE COURT: THANK YOU. WE APPRECIATE YOUR TIME;
19 YOU MAY STEP DOWN.

20 MR. POPE: THE STATE WOULD CALL LINDA WEAVER,
21 YOUR HONOR.

22 THE COURT: MRS. GEORGE, YOU MAY BE EXCUSED IF
23 YOU WISH.

24 MR. POPE: COME ON UP HERE AND BE SWORN, MRS.
25 WEAVER.

1323

1 LINDA WEAVER, BEING FIRST DULY SWORN, TESTIFIED
2 AS FOLLOWS:

3 DIRECT EXAMINATION BY

4 MR. POPE:

5 Q. MRS. WEAVER, IF YOU WOULD, STATE YOUR NAME AND
6 SPELL YOUR LAST NAME FOR THE COURT REPORTER.

7 A. LINDA WEAVER, W-E-A-V-E-R.

8 Q. MRS. WEAVER, WOULD YOU TELL THE JURY, WHERE DO
9 YOU RESIDE?

10 A. AT 105 HILTON HEAD COURT IN FORT MILL.

11 Q. AND COULD YOU TELL THE JURY, DID YOU KNOW TERRY
12 AND EARL ROBERTSON?

13 A. YES, I DID.

14 Q. EXPLAIN TO THEM HOW YOU KNEW TERRY AND EARL.

15 A. I MET TERRY AND EARL BEFORE THEY WERE MARRIED.
16 EARL CAME TO INTERVIEW WITH SPRINGS WHERE MY
17 HUSBAND WORKS PROBABLY ABOUT 27 YEARS AGO.

18 Q. COULD YOU TELL THE JURY JUST A LITTLE BIT ABOUT
19 WHAT KIND OF RELATIONSHIP YOU AND YOUR HUSBAND
20 HAD WITH TERRY AND EARL?

21 A. WELL, WE DID ALL THE NORMAL THINGS LIKE GOING
22 OUT TO EAT, BALL GAMES. TERRY AND I HAD LUNCH.
23 SHE WAS MORE LIKE A SISTER TO ME AND SHE WAS MY
24 FRIEND BUT SHE WAS MY SISTER, TOO. I DIDN'T
25 HAVE ANY SISTERS. WE JUST DID ALL THE NORMAL

LINDA WEAVER - DIRECT BY MR. POPE

1324

1 THINGS THAT, YOU KNOW, COUPLES DO.

2 Q. CAN YOU TELL THE JURY TO THE BEST OF YOUR
3 RECOLLECTION WHEN THE LAST TIME YOU WOULD HAVE
4 TALKED TO TERRY?

5 A. I TALKED TO TERRY ABOUT 10:00 O'CLOCK ON
6 NOVEMBER 24TH.

7 Q. THAT WOULD HAVE BEEN MONDAY NIGHT, IS THAT
8 CORRECT?

9 A. YES, SIR.

10 Q. AND WHAT WAS THAT IN REFERENCE TO?

11 A. TERRY HAD CALLED US TO GO TO A PARTY SOMETIME
12 BEFORE CHRISTMAS. I DON'T REMEMBER THE EXACT
13 DATE BUT SHE HAD CALLED AND ASKED US TO GO TO A
14 PARTY WITH THEM THAT NIGHT.

15 Q. SO, THAT WAS THE GIST OF THAT DISCUSSION?

16 A. PRETTY MUCH.

17 Q. BASED ON THAT CONVERSATION, DID YOU HAVE
18 KNOWLEDGE THAT SHE WAS PICKING UP A CAKE FROM
19 CISSY THAT NEXT MORNING?

20 A. YES, SHE HAD MENTIONED TO ME THAT THAT NEXT
21 MORNING ---

22 MR. BOYD: I'M GOING TO OBJECT TO THE HEARSAY.

23 THE COURT: I SUSTAIN THE OBJECTION.

24 Q. AGAIN, DON'T TELL US WHAT TERRY SAID.

25 A. OKAY.

LINDA WEAVER - DIRECT BY MR. POPE

1325

1 Q. BASED ON THAT DID YOU KNOW THAT SHE WAS PICKING
2 UP A CAKE?

3 A. YES.

4 Q. LET ME ASK YOU, IF YOU COULD, WHEN IS THE NEXT
5 TIME YOU HAD ANY PHONE CONVERSATION CONCERNING
6 TERRY?

7 A. CISSY GEORGE CALLED ME THE NEXT MORNING ABOUT
8 8:30 EXPRESSING THAT TERRY HAD NOT SHOWN UP TO
9 PICK UP THE CAKE. CISSY HAD TO GO TO WORK AND
10 ASKED ME IF I WOULD PLEASE SEE IF I COULD GET IN
11 TOUCH WITH TERRY BECAUSE THE CAKE WAS GOING TO
12 SPOIL IN HER CAR.

13 SO, AS SOON AS I HUNG UP THE PHONE WITH CISSY, I
14 STARTED TO CALL HER HOUSE. AND EVERY TIME I
15 CALLED THE VOICE MAIL WOULD PICK UP ON THE FIRST
16 RING.

17 Q. OKAY, SO AFTER CALLING HER HOUSE -- HOW LONG DID
18 YOU CALL HER HOUSE?

19 A. I PROBABLY CALLED UNTIL SOMEWHERE AROUND 10:00
20 O'CLOCK AND EVERY TIME I CALLED, THE VOICE MAIL
21 PICKED UP ON THE FIRST RING.

22 Q. OKAY, SO WHAT DID YOU DO THEN?

23 A. I THEN REMEMBERED THAT TERRY HAD AN APPOINTMENT
24 WITH SKIP MEYER THAT MORNING AT SOME POINT, I
25 COULDN'T REMEMBER WHAT TIME. SO, I CALLED HIS

LINDA WEAVER - DIRECT BY MR. POPE

1326

1 OFFICE AND TALKED TO DEBBIE BRISSON AND TOLD
2 DEBBIE THAT I KNEW THAT TERRY WOULD PROBABLY RUN
3 IN LATE IN A FEW MINUTES AND WOULD SHE JUST CALL
4 ME AND LET ME KNOW IF TERRY WAS ALL RIGHT. THAT
5 WAS PROBABLY ABOUT 10:00 O'CLOCK.

6 Q. AND WHAT WAS THE NEXT THING YOU HEARD CONCERNING
7 TERRY?

8 A. DEBBIE CALLED ME BACK SOMEWHERE I THINK CLOSE TO
9 11:00 O'CLOCK AND SAID THAT ---

10 MR. BOYD: I OBJECT TO HEARSAY.

11 THE COURT: DON'T GO INTO WHAT WAS SAID. I
12 SUSTAIN THE OBJECTION.

13 Q. BASED ON THAT CALL, DID YOU THEN KNOW SOMETHING
14 WAS WRONG?

15 A. YES, I DID KNOW SOMETHING WAS WRONG.

16 Q. AND ULTIMATELY DID YOU GO TO THE RESIDENCE?

17 A. FIRST I WENT TO CAROLINA COUNSELING AND THEN I
18 WENT TO WESTMINSTER DRIVE.

19 Q. WERE THERE POLICE THERE?

20 A. YES, THERE WAS A POLICE BARRICADE. WE COULD
21 ONLY GET TO, I GUESS MAYBE TWO HOUSES CLOSE TO
22 TERRY AND EARL'S HOUSE.

23 Q. SO, YOU NEVER WENT IN THE HOUSE?

24 A. NO, SIR.

25 Q. OKAY, ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

1327

CROSS EXAMINATION BY

MR. HANCOCK:

Q. MRS. WEAVER, YOU EVENTUALLY CALLED CAROLINA COUNSELING, IS THAT RIGHT, LOOKING FOR TERRY ROBERTSON?

A. YES, SIR.

Q. AND YOU WERE AWARE THAT SHE WAS RECEIVING COUNSELING FROM SKIP MEYER?

A. YES, SIR.

Q. ARE YOU AWARE OF HOW MANY TIMES SHE HAD ACTUALLY SEEN MR. MEYER, SAY OVER THE PAST SIX MONTHS OR YEAR OR ANYTHING OF THAT NATURE. YOU WOULD BE PRIVY TO THAT INFORMATION?

A. NO.

Q. ARE YOU AWARE IN ANY WAY THAT SHE MIGHT HAVE BEEN AN EMPLOYEE OF CAROLINA COUNSELING AND MR. MEYER?

A. I THINK SHE DID SOME VOLUNTEER WORK THERE.

Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: REDIRECT?

MR. POPE: NO, SIR, YOUR HONOR. I WOULD ASK THAT THIS WITNESS BE EXCUSED.

THE COURT: THANK YOU, MRS. WEAVER. WE APPRECIATE YOUR TIME, AND YOU CAN BE EXCUSED. CALL YOUR NEXT WITNESS.

MARGIE JORDAN - DIRECT BY MR. BOYD

1328

1 MR. POPE: THE STATE WOULD CALL MARGIE JORDAN TO
2 THE STAND, YOUR HONOR.

3 MARGIE JORDAN, BEING FIRST DULY SWORN, TESTIFIED
4 AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

7 Q. MS. JORDAN, IF YOU WILL, STATE YOUR NAME AND
8 SPELL YOUR LAST NAME FOR THE COURT REPORTER
9 PLEASE, MA'AM.

10 A. MARGIE JORDAN, J-O-R-D-A-N.

11 Q. MS. JORDAN, COULD YOU TELL THE JURY WHERE YOU
12 ARE EMPLOYED?

13 A. I'M EMPLOYED AT SPRINGS INDUSTRIES AT
14 FABRICATION SERVICES IN LANCASTER.

15 Q. COULD YOU TELL US HOW LONG YOU'VE BEEN THERE?

16 A. I'VE BEEN WITH SPRINGS FOR 34 YEARS.

17 Q. AND BACK IN 1997 YOU WERE WITH SPRINGS, TOO?

18 A. YES, SIR.

19 Q. WOULD YOU TELL THE JURY WHAT YOUR OCCUPATION WAS
20 BACK IN 1997 AS FAR AS YOUR DUTIES WITH SPRINGS?

21 A. I WAS SECRETARY FOR EARL ROBERTSON.

22 Q. HOW LONG DID YOU ACTUALLY WORK WITH EARL? DID
23 YOU WORK WITH HIM MORE THAN ONCE?

24 A. YES, SIR. I WORKED FOR EARL FROM 1983 UNTIL
25 1994, AND THEN HE LEFT AND WENT TO ANOTHER AREA

MARGIE JORDAN - DIRECT BY MR. BOYD

1329

1 OF THE COMPANY AND I CAME BACK TO WORK FOR HIM
2 IN 1997.

3 Q. COULD YOU TELL THE JURY AS HIS PERSONAL
4 SECRETARY WHAT TYPE OF DUTIES YOU HAD OR YOU
5 PERFORMED FOR MR. ROBERTSON?

6 A. I HANDLED ALL OF HIS CORRESPONDENCE, HIS INTER-
7 COMPANY MEMOS, HIS TRAVEL; I ARRANGED TRAVEL
8 TRIPS, HE DID A LOT OF TRIPS TO MEXICO; FILING.
9 YOU KNOW, ARRANGED MEETINGS AND JUST BASICALLY
10 KEPT UP WITH HIS DAY TO DAY ROUTINE.

11 Q. AS FAR AS KEEPING UP WITH WHERE HE'S GOING, THE
12 NATURE OF HIS BUSINESS, DID YOU KEEP TABS ON HIM
13 SO TO SPEAK?

14 A. YES, SIR. MR. ROBERTSON WAS VERY GOOD ABOUT
15 ALWAYS LETTING ME KNOW WHERE HE WAS. IF HE WAS
16 IN A BUILDING AND HE WOULD GO FROM ONE MEETING
17 TO ANOTHER, HE WOULD CALL ME AND LET ME KNOW
18 WHAT ROOM HE WAS IN JUST IN CASE SOMEBODY NEEDED
19 HIM, I COULD ALWAYS FIND HIM.

20 Q. COULD YOU TELL THE JURY WHEN THE LAST TIME WAS
21 THAT YOU SPOKE TO EARL?

22 A. I SPOKE TO HIM ON MONDAY AFTERNOON, A LITTLE
23 AFTER 5:00 O'CLOCK.

24 Q. AND WHAT WAS THE NATURE OF THAT CONVERSATION?

25 A. WE WERE DISCUSSING A SHANCO PROJECT AND SHANCO

MARGIE JORDAN - DIRECT BY MR. BOYD

1330

1 IS OUR MEXICAN AFFILIATE.

2 Q. WHEN YOU LEFT THAT DAY, WERE YOU AWARE OF ANY
3 MEETINGS THAT EARL HAD SCHEDULED FOR THE NEXT
4 MORNING?

5 A. YES, SIR. HE HAD SCHEDULED A PACER MEETING AT
6 THE CUSTOMER SERVICE CENTER WHICH IS RIGHT
7 ACROSS THE STREET FROM WHERE WE ARE AT 8:30 THE
8 NEXT MORNING. HE HAD ABOUT 10 PEOPLE THAT HE
9 WANTED TO MEET WITH AND HE HAD CALLED THE
10 MEETING. IT WAS HIS MEETING.

11 Q. AND WHAT TIME DID YOU ARRIVE THE NEXT MORNING,
12 THAT WOULD HAVE BEEN TUESDAY THE 25TH, IS THAT
13 RIGHT?

14 A. YES, SIR.

15 Q. TELL THE JURY WHAT TIME YOU ARRIVED THAT
16 MORNING.

17 A. I USUALLY GET TO WORK ABOUT 10 TILL 8:00.

18 Q. AND DID YOU SEE EARL THAT MORNING?

19 A. NO, SIR, I DIDN'T.

20 Q. AND IN REGARDS TO HIS MEETING, YOU SAID THAT HE
21 SCHEDULED THE MEETING?

22 A. WELL, HE ASKED ME TO CALL THE PEOPLE.

23 Q. I MEAN IT WAS AT HIS DIRECTION?

24 A. YES, SIR.

25 Q. OKAY. AND DID MR. ROBERTSON ATTEND THAT

MARGIE JORDAN - DIRECT BY MR. BOYD

1331

1 MEETING?

2 A. NO, SIR. ABOUT 15 TILL 9:00 ONE OF THE LADIES
3 THAT WAS WAITING IN THE MEETING CALLED ME AND
4 ASKED ME WHERE EARL WAS AND I SAID, WELL, I
5 THOUGHT HE WAS THERE, YOU KNOW, HE WAS SUPPOSED
6 TO BE THERE THIS MORNING. AND I SAID, I'LL CALL
7 HOME AND SEE IF HE'S HAD CAR TROUBLE.

8 Q. OKAY AND WHAT DID YOU ACTUALLY DO THEN?

9 A. I CALLED THE HOUSE AND THE PHONE JUST DID A
10 BRIEF RING AND ROLLED RIGHT OVER TO VOICE MAIL
11 AND I SAID TERRY, THIS IS MARGIE, I'M LOOKING
12 FOR EARL. I SAID CALL AND LET ME KNOW IF HE'S
13 HAD CAR TROUBLE OR, YOU KNOW, IF SOMETHING ELSE
14 IS THE MATTER, GIVE ME A CALL.

15 Q. DID YOU DO ANYTHING ELSE AS FAR AS TRYING TO
16 LOCATE EARL AT THAT TIME?

17 A. NO, SIR. I CALLED BACK OVER TO THE CUSTOMER
18 SERVICE CENTER AND TOLD THEM THAT -- WHAT I DID,
19 I HAD CALLED A COUPLE OF LADIES OVER AT THE
20 CUSTOMER SERVICE CENTER THAT I KNEW CAME DOWN
21 THE SAME ROADS THAT EARL CAME DOWN EVERY MORNING
22 AND ASKED THEM DID THEY SEE HIM STOPPED ON THE
23 SIDE OF THE ROAD TO SEE IF HE HAD HAD CAR
24 TROUBLE OR ANYTHING. AND THEY TOLD ME, NO, THEY
25 HADN'T SEEN EARL ON THE SIDE OF THE ROAD

MARGIE JORDAN - DIRECT BY MR. BOYD

1332

1 ANYWHERE.

2 Q. AFTER MAKING THE CALL TO THE HOUSE AND CHECKING
3 WITH THE PEOPLE WHO HAD COME FROM ROCK HILL
4 WHAT, IF ANYTHING, DID YOU DO NEXT?

5 A. WELL, I CALLED BACK OVER TO THE CUSTOMER SERVICE
6 CENTER AND TOLD THE PEOPLE IN THE MEETING TO
7 JUST GO AHEAD AND LEAVE AND THAT I WOULD
8 RESCHEDULE THE MEETING AT A LATER TIME.

9 Q. AND WHAT DID YOU DO AFTER THAT?

10 A. I GUESS ABOUT 9:15 WE HAD GOTTEN REAL CONCERNED
11 AND I CALLED THE POLICE DEPARTMENT IN ROCK HILL.

12 Q. YOU SAY YOU HAD GOTTEN CONCERNED, WHAT WAS THE
13 BASIS OF YOUR CONCERN? WHY WERE YOU CONCERNED?

14 A. WELL, IT WAS JUST VERY UNCHARACTERISTIC OF EARL
15 NOT TO LET ME KNOW WHERE HE WAS, YOU KNOW, OR
16 TERRY NOT TO CALL ME BACK.

17 Q. SO AT THAT POINT YOU CALLED THE SHERIFF'S
18 DEPARTMENT OVER HERE?

19 A. YES, SIR.

20 Q. DO YOU RECALL WHO YOU TALKED TO?

21 A. I TALKED TO A DISPATCHER TO START WITH.

22 Q. OKAY. WHEN YOU SAY TO START WITH, WHAT ACTUALLY
23 OCCURRED. COULD YOU TELL THEM WHAT YOU TOLD
24 THEM AND WHAT TOOK PLACE?

25 A. I ASKED THE DISPATCHER COULD THEY SEND SOMEONE

MARGIE JORDAN - DIRECT BY MR. BOYD

1333

1 OUT TO EARL'S HOUSE TO SEE IF THERE WAS ANYTHING
2 WRONG BECAUSE I HADN'T BEEN ABLE TO REACH TERRY.
3 I HAD CALLED THE HOUSE A COUPLE OF TIMES AND THE
4 PHONE JUST KEPT GOING TO VOICE MAIL.

5 I ASKED THEM COULD THEY JUST PLEASE GO OUT THERE
6 AND LOOK TO SEE IF ANYTHING WAS WRONG AND TO LET
7 ME KNOW.

8 AND SO THE DISPATCHER TOLD ME THAT SHE WOULD
9 SEND SOMEONE OUT THERE.

10 Q. OKAY. NOW, DID YOU HAVE ANY MORE CONVERSATION
11 WITH LAW ENFORCEMENT AFTER THAT INITIAL
12 CONVERSATION?

13 A. YES, SIR. THE DISPATCHER CALLED ME BACK AND
14 SAID THAT THEY HAD SENT A DEPUTY OUT THERE ---

15 MR. BOYD: YOUR HONOR, I OBJECT.

16 THE COURT: I SUSTAIN THE OBJECTION.

17 MR. POPE: YOUR HONOR, I WOULD SUBMIT THAT THESE
18 ARE WORDS OF INFORMATION, BUT I'LL GO FORWARD.

19 THE COURT: WELL, IT PROBABLY DOESN'T GO TO THE
20 TRUTH OF THE MATTER ASSERTED, BUT I'LL SUSTAIN THE
21 OBJECTION.

22 Q. YOU RECEIVED A CALL BACK?

23 A. YES, SIR.

24 Q. AND OTHER THAN THE DISPATCHER, DID YOU
25 ULTIMATELY TALK TO SOMEBODY WITH REFERENCE TO

MARGIE JORDAN - DIRECT BY MR. BOYD

1334

1 THE SITUATION IN THE HOUSE?

2 A. YES, SIR.

3 Q. AND WHO WAS THAT?

4 A. A DEPUTY GREG MAGGART.

5 Q. AND BASED ON THOSE DISCUSSIONS, WHAT DID YOU
6 TELL DEPUTY MAGGART?

7 A. HE TOLD ME THAT EVERYTHING SEEMED TO BE OKAY
8 NOW, AND I TRIED TO IMPRESS UPON HIM THAT IT WAS
9 UNCHARACTERISTIC FOR MY BOSS NOT TO LET ME KNOW
10 WHERE HE WAS, AND WOULD HE PLEASE GO BACK AND
11 LOOK AGAIN.

12 Q. DID YOU ULTIMATELY CONVINCE HIM TO GO BACK?

13 A. YES, SIR.

14 Q. AFTER THAT POINT DID YOU HAVE ANY MORE CONTACT
15 WITH LAW ENFORCEMENT?

16 A. YES, SIR. THE DEPUTY CALLED ME BACK.

17 Q. AND THAT WAS IN REFERENCE TO WHAT HAD BEEN
18 DISCOVERED AT THE HOUSE?

19 A. HE CALLED ME BACK TWICE. THE FIRST TIME HE
20 SEEMED TO THINK EVERYTHING WAS OKAY AND I ASKED
21 HIM COULD THEY GO INSIDE AND LOOK, AND HE SAID
22 HE WOULD HAVE TO HAVE SOMEBODY HIGHER UP TO GIVE
23 HIM THAT AUTHORITY.

24 Q. AND THEN DID HE ALSO CALL YOU BACK AND YOU
25 DISCUSSED WHAT HAD OCCURRED?

MARGIE JORDAN - CROSS BY MR. BOYD

1335

1 A. HE JUST TOLD ME THAT THERE WAS A PROBLEM THERE
2 AND THAT HE COULDN'T TELL ME WHAT IT WAS, BUT
3 THEY WOULD GET BACK IN TOUCH WITH US.

4 Q. THANK YOU, MA'AM. ANSWER ANY QUESTIONS THE
5 DEFENSE MAY HAVE.

6 CROSS EXAMINATION BY

7 MR. BOYD:

8 Q. MS. JORDAN, HOW LONG DID YOU WORK AS MR.
9 ROBERTSON'S SECRETARY?

10 A. THE FIRST TIME THAT I WORKED FOR EARL, I THINK
11 IT WAS ABOUT 11 YEARS. AND THEN THE LAST TIME I
12 CAME TO WORK FOR HIM IN MARCH OF 1997.

13 Q. '97?

14 A. YES, SIR.

15 Q. OKAY, AND WHEN WAS THE TIME YOU FIRST STARTED
16 WORKING FOR HIM?

17 A. IN 1983.

18 Q. 1983?

19 A. YES, SIR, UNTIL 1994.

20 Q. AND DID HE WORK IN THE LANCASTER OFFICE OR THE
21 FORT MILL OFFICE?

22 A. HE WORKED IN THE LANCASTER OFFICE.

23 Q. THE LANCASTER OFFICE?

24 A. YES, SIR.

25 Q. GENERALLY WHAT TIME DID HE GET TO WORK IN THE

MARGIE JORDAN - CROSS BY MR. BOYD

1336

1 MORNING?

2 A. HE USUALLY GOT THERE PRETTY EARLY. HE WAS
3 USUALLY THERE WHEN I'D GET THERE EVERY MORNING.

4 Q. AND WHAT TIME DID YOU USUALLY GET THERE?

5 A. I WAS USUALLY THERE BEFORE 8:00 O'CLOCK.

6 Q. BEFORE 8:00?

7 A. YES, SIR.

8 Q. AND HE WAS USUALLY THERE BEFORE YOU WOULD GET
9 THERE; IS THAT CORRECT?

10 A. YES, SIR.

11 Q. AND DO YOU KNOW WHAT TIME HE GENERALLY CAME IN
12 THEN IN THE MORNINGS?

13 A. I GUESS IT ALL DEPENDED ON HIS WORK SCHEDULE FOR
14 THAT DAY. IF HE HAD MEETINGS OR SOMETHING, HE
15 MAY COME IN A LITTLE EARLIER TO GO OVER WHAT HE
16 WAS TO HAVE AT THE MEETING; MAKE SURE EVERYTHING
17 WAS READY.

18 Q. AND WHAT TIME DID HE GENERALLY LEAVE THE OFFICE
19 IN THE AFTERNOON?

20 A. MOST OF THE TIME HE WAS STILL THERE WHEN I LEFT.

21 Q. AND WHAT TIME ---

22 A. IT WOULD BE AFTER 5:00 O'CLOCK.

23 Q. SO, YOU LEFT AT 5:00 OR AFTER, IS THAT CORRECT?

24 A. YES, SIR.

25 Q. AND HE WOULD STAY AFTER THAT?

MARGIE JORDAN - CROSS BY MR. BOYD

1337

1 A. YES, SIR.

2 Q. AND YOU DON'T KNOW HOW LATE -- DO YOU KNOW HOW
3 LATE HE WOULD GENERALLY STAY?

4 A. I WOULD SAY MAYBE UNTIL 5:30, MAYBE 6:00 O'CLOCK
5 SOME DAYS.

6 Q. AND DO YOU KNOW HOW -- DID HE KEEP THAT BASIC
7 SCHEDULE THE ENTIRE TIME THAT YOU WORKED FOR HIM
8 AS A SECRETARY?

9 A. YES, SIR.

10 Q. EVEN THE FIRST TIME?

11 A. YES, SIR.

12 Q. THANK YOU; THAT'S ALL I HAVE.

13 THE COURT: REDIRECT?

14 MR. POPE: NO, SIR, YOUR HONOR. I WOULD ASK THAT
15 THIS WITNESS BE EXCUSED.

16 THE COURT: YOU CAN STEP DOWN. WE APPRECIATE
17 YOUR TIME, AND YOU CAN BE EXCUSED.

18 MR. POPE: THE STATE WOULD CALL OFFICER GREG
19 MAGGART.

20 ALSO, YOUR HONOR, I'M GOING TO ASK THE COURT'S
21 INDULGENCE, I'M GOING TO -- WE'VE GOT AN EASEL FOR THE
22 EXHIBITS THAT MR. MAGGART WILL BE REFERRING TO, AND I'M
23 GOING TO RETRIEVE THAT, PLEASE.

24 THE COURT: CERTAINLY.

25 (AFTER A BRIEF PAUSE.)

1 GREGORY S. MAGGART, BEING FIRST DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY

4 MR. POPE:

5 Q. DEPUTY MAGGART, IF YOU WOULD, STATE YOUR NAME
6 AND SPELL YOUR LAST NAME FOR THE COURT REPORTER
7 PLEASE, SIR.

8 A. MY NAME IS GREGORY SCOTT MAGGART; MY LAST NAME
9 IS SPELLED M-A-G-G-A-R-T.

10 Q. DEPUTY MAGGART, WOULD YOU TELL THE JURY YOUR
11 OCCUPATION AND HOW LONG YOU HAVE BEEN EMPLOYED?

12 A. CURRENTLY I'M A DETECTIVE WITH THE YORK COUNTY
13 SHERIFF'S DEPARTMENT. I'VE BEEN EMPLOYED THERE
14 SINCE 1990 AND THREE YEARS WITH THE CITY OF YORK
15 PRIOR TO THAT.

16 Q. OKAY AND I'M GOING TO CALL YOUR ATTENTION BACK
17 TO NOVEMBER 25TH OF 1997, WERE YOU EMPLOYED WITH
18 THE SHERIFF'S DEPARTMENT THEN?

19 A. YES, I WAS.

20 Q. AND WHAT WERE YOUR DUTIES THEN?

21 A. I WAS A DEPUTY AT THAT TIME AND MY DUTIES WERE
22 PATROL, ANSWERING CALLS.

23 Q. SO YOU WERE ACTUALLY A UNIFORMED OFFICER AT THAT
24 POINT?

25 A. THAT'S CORRECT, I WAS IN UNIFORM AT THAT TIME.

GREGORY S. MAGGART - DIRECT BY MR. POPE 1339

1 Q. CALLING YOUR ATTENTION BACK TO NOVEMBER 25TH,
2 1997 AT APPROXIMATELY 10 A.M., DID YOU HAVE AN
3 OPPORTUNITY TO RESPOND TO A CALL AT 2506
4 WESTMINSTER DRIVE IN ROCK HILL?

5 A. YES, I DID. I WAS CALLED THERE TO A CHECK ON
6 THE WELL-BEING WHICH IS SOMEONE CALLED CONCERNED
7 ABOUT SOMEONE'S WELL-BEING AND I WAS SENT THERE
8 TO CHECK TO SEE IF EVERYTHING WAS OKAY WITH THAT
9 PERSON.

10 Q. AND DID YOU IN FACT GO TO THAT ADDRESS?

11 A. YES, I DID.

12 Q. WOULD YOU JUST DESCRIBE GENERALLY TO THE JURY
13 WHERE THAT'S LOCATED, WHERE WESTMINSTER DRIVE
14 IS?

15 A. IT'S ON INDIA HOOK ROAD BEHIND CATAWBA SCHOOL,
16 I'M GOING TO SAY THE SECOND ROAD TO THE RIGHT
17 BEHIND THE SCHOOL.

18 Q. AND IS THAT LOCATION THAT YOU RESPONDED TO,
19 OBVIOUSLY YOU'RE A YORK COUNTY OFFICER, IS THAT
20 LOCATED IN YORK COUNTY?

21 A. YES IT IS, IN ROCK HILL.

22 Q. CAN YOU TELL THE JURY WHAT YOU ACTUALLY DID WHEN
23 YOU ARRIVED, WHAT YOU OBSERVED AND WHAT YOU DID?

24 A. YES, I PULLED INTO THE DRIVEWAY OF THE
25 RESIDENCE. I WENT UP TO THE FRONT DOOR AND RANG

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1 THE DOORBELL AND WAITED THERE FOR A FEW MINUTES
2 AND THERE WAS NO RESPONSE.

3 I WENT OUT TO THE SIDE OF THE HOUSE WHERE
4 THERE'S A GARAGE. I WENT UP INTO THE GARAGE,
5 THERE'S A DOOR THERE. I RANG THAT DOOR BELL AND
6 HAD NO RESPONSE.

7 AND I SAW A NEIGHBOR OUT IN HIS YARD NEXT DOOR
8 TO THE RIGHT OF THE HOUSE I WAS AT, SO I WALKED
9 OVER AND ASKED HIM IF HE WAS AWARE OF WHERE HIS
10 NEIGHBOR WAS BECAUSE NO ONE CAME TO THE DOOR AND
11 SOMEONE HAD CALLED FOR US TO GO OUT THERE. HE
12 TOLD ME THEN THAT ---

13 MR. BOYD: OBJECTION.

14 THE COURT: I SUSTAIN THE OBJECTION.

15 MR. POPE: YOUR HONOR, AGAIN, THIS MIGHT BE A
16 MATTER OF LAW. THIS IS NOT FOR THE TRUTH OF THE MATTER
17 ASSERTED, IT'S INFORMATION TO EXPLAIN WHY HE GOES AND DOES
18 WHAT HE DOES.

19 THE COURT: WELL, I'M GOING TO HAVE TO HEAR THE
20 ANSWER, SO I'M GOING TO HAVE TO LET THE JURY GO TO THE JURY
21 ROOM.

22 Y'ALL GO TO THE JURY ROOM WHILE WE TAKE UP THIS
23 MATTER.

24 IN CAMERA:

25 THE COURT: YES, SIR.

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1 Q. OFFICER MAGGART, DID YOU TALK TO THE NEIGHBOR,
2 IS THAT CORRECT?

3 A. YES, I DID.

4 Q. AND IN YOUR DISCUSSION WHAT DID HE RELATE TO
5 YOU?

6 A. HE TOLD ME THAT MR. ROBERTSON DROVE THE RED CAR
7 AND IF THE RED CAR WAS NOT AT HOME, HE WAS AT
8 WORK. THAT MR. ROBERTSON LEFT EARLY FOR WORK,
9 APPROXIMATELY 6:30 IN THE MORNING AND DIDN'T GET
10 HOME UNTIL AFTER DARK AT NIGHT AND USUALLY HE
11 ONLY SAW HIM ON THE WEEKENDS BECAUSE HE WORKED
12 SO MUCH DURING THE WEEK.

13 MR. POPE: YOUR HONOR, ALL WE WOULD TENDER IS
14 ACTUALLY THE FIRST SENTENCE REGARDING IF THE RED CAR WAS
15 NOT AT HOME, HE WASN'T AT HOME.

16 THE COURT: ANY OBJECTION?

17 MR. BOYD: YOUR HONOR, BASED ON WHAT THE ANSWER
18 IS, WE DON'T HAVE ANY OBJECTION TO THE WHOLE TESTIMONY.

19 THE COURT: BRING THE JURY BACK. WHILE THEY ARE
20 GOING FOR THE JURY, LET ME JUST ASK THAT ALL PEOPLE
21 INVOLVED TELL ANYONE ASSOCIATED WITH THEM TO TRY NOT TO BE
22 COMING THROUGH THE DOOR OVER HERE. THIS IS FOR THE
23 BAILIFFS. ON BREAKS, OF COURSE, COUNSEL CAN GO OUT AND IN
24 IT, BUT IT IS VERY DISTRACTING WHEN SOMEONE OPENS THE DOOR
25 TO SEE WHAT'S GOING ON. THEY OUGHT TO KNOW WHAT'S GOING

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1 ON.

2 IN THE PRESENCE OF THE JURY:

3 THE COURT: I HAD CONCERN ABOUT THE TEMPERATURE
4 FROM ONE OF THE JURORS, IT SAYS A LITTLE WARM. LET ME TELL
5 YOU AND IT MIGHT BE TOO LATE SINCE YOU HAVE ALREADY PACKED,
6 WHAT I USUALLY TELL JURORS IN THESE PUBLIC BUILDINGS, THE
7 TEMPERATURE IS HARD TO REGULATE; THE BEST WAY TO COMBAT
8 THAT IS TO WEAR SHORT SLEEVES AND BRING A SWEATER.

9 UNFORTUNATELY, YOU'VE PROBABLY ALREADY PACKED,
10 BUT WE'LL TRY TO ACCOMMODATE YOU. I GET WARM MYSELF, I CAN
11 ASSURE YOU. BUT WE'LL TRY TO GET THE TEMPERATURE COOLED
12 OFF A LITTLE BIT.

13 CONTINUED DIRECT OF DETECTIVE MAGGART BY MR. POPE:

14 Q. DETECTIVE MAGGART, I WAS ASKING YOU WHEN YOU
15 WENT TO THE RESIDENCE, YOU SAID THAT ULTIMATELY
16 YOU TALKED TO A NEIGHBOR?

17 A. YES, I DID.

18 Q. AND WHAT WAS THE GIST OF THE CONVERSATION WITH
19 THAT NEIGHBOR?

20 A. I ASKED THE NEIGHBOR HAD HE SEEN MR. ROBERTSON
21 WHO I WAS THERE TO CHECK ON AND HE LOOKED OVER
22 AND SAW THAT THE RED CAR WAS NOT THERE AND HE
23 SAID IF THE RED CAR IS NOT THERE, HE'S AT WORK.
24 HE SAID HE USUALLY LEAVES EARLY IN THE MORNING
25 FOR WORK.

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1 Q. HAD YOU ACTUALLY GONE AROUND THE RESIDENCE OR
2 HAD YOU JUST GONE TO THE FRONT DOOR AND THE
3 CARPORT?

4 A. JUST TO THE FRONT AND TO THE RIGHT SIDE, THE
5 CARPORT.

6 Q. AND BASED ON THAT, AFTER TALKING TO THE
7 NEIGHBOR, WHAT DID YOU DO THEN?

8 A. I GOT BACK IN MY PATROL CAR AND LEFT AND
9 BASICALLY CLEARED UP FROM THAT CALL.

10 Q. OKAY. DID YOU ULTIMATELY RECEIVE A CALL FROM
11 DISPATCH CONCERNING A FURTHER INVESTIGATION OF
12 THIS?

13 A. THAT'S CORRECT.

14 Q. AND BASED ON THAT, WHAT DID YOU DO?

15 A. I MADE A TELEPHONE CALL AND TALKED TO A MS.
16 JORDAN.

17 Q. THAT WAS EARL'S SECRETARY, MARGIE JORDAN?

18 A. THAT'S CORRECT.

19 Q. AND BASED ON THAT CONVERSATION, WHAT DID YOU DO?

20 A. WENT BACK TO THE RESIDENCE TO CHECK AGAIN.

21 Q. AND COMING BACK TO THE RESIDENCE -- EITHER TIME
22 COMING TO THE RESIDENCE, DID YOU NOTICE ANY
23 VEHICLES AT OR NEAR THE HOUSE?

24 A. YES, THERE WAS A VEHICLE PARKED ON THE SIDE OF
25 THE ROAD JUST BEFORE THE HOUSE ON THE LEFT-HAND

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1 SIDE OF THE ROAD.

2 Q. OKAY, AND WHEN YOU'RE COMING BACK THE SECOND
3 TIME WHAT, IF ANYTHING, DID YOU DO IN REFERENCE
4 TO THE VEHICLE?

5 A. WHEN I CAME BACK THE SECOND TIME, THE VEHICLE
6 WAS ON THE LEFT SIDE OF THE ROAD GOING AGAINST
7 TRAFFIC, SO AS I APPROACHED I CAME UP BEHIND IT
8 SO THAT I COULD SEE THE LICENSE PLATE, AND I RAN
9 THE TAG.

10 Q. DID YOU GIVE THAT INFORMATION TO INVESTIGATORS
11 IN THIS CASE?

12 A. YES, I DID.

13 Q. WHEN YOU RETURNED TO THE HOUSE WHAT, IF
14 ANYTHING, DID YOU SEE DIFFERENT THAN YOU SAW THE
15 FIRST TIME WHEN YOU WERE THERE?

16 A. WHEN I RETURNED -- THE FIRST TIME I WENT TO THE
17 HOUSE THERE WAS A CADILLAC THAT WAS PARKED IN
18 THE GARAGE AREA AND A VAN IN THE DRIVEWAY. WHEN
19 I RETURNED THE SECOND TIME, THERE WAS ANOTHER
20 CAR PARKED IN THE DRIVEWAY THAT WASN'T THERE THE
21 FIRST TIME.

22 Q. DO YOU KNOW ROUGHLY HOW LONG YOU HAD BEEN GONE?

23 A. APPROXIMATELY 10 OR 15 MINUTES.

24 Q. AND SO WHEN YOU CAME BACK AND THERE IS NOW A CAR
25 IN THE DRIVEWAY, TELL THE JURY WHAT TOOK PLACE

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1 THEN, WHAT DID YOU DO THEN?

2 A. I GOT OUT OF MY CAR, I WAS WALKING UP TO THE
3 GARAGE AREA AGAIN AND I COULD SEE A WOMAN IN THE
4 DOORWAY. THE DOOR IN THE GARAGE WAS BASICALLY
5 HALF WOOD AND THE TOP PART WAS A SOLID PANE OF
6 GLASS AND THERE WAS A WOMAN STANDING IN THE
7 DOORWAY LOOKING OUT.

8 Q. AND TELL THE JURY WHAT YOU -- CAN YOU DESCRIBE
9 HER DEMEANOR OR APPEARANCE?

10 A. WELL, I REALLY DIDN'T NOTICE UNTIL I GOT UP TO
11 THE DOOR AND THEN SHE SEEMED EXTREMELY UPSET, TO
12 THE POINT OF EVEN BEING FRIGHTENED.

13 SHE WAS TRYING TO GET OUT OF THE DOOR AND SHE
14 WAS SAYING THAT THE DOOR WAS LOCKED. AND WHEN I
15 LOOKED INTO THE GLASS, BECAUSE IT WAS SUCH A BIG
16 AREA OF GLASS, YOU COULD SEE THAT IT WAS A DEAD
17 BOLT LOCK THAT KEYED ON BOTH SIDES AND
18 APPARENTLY IT WAS LOCKED AND SHE DIDN'T HAVE A
19 KEY AND SHE COULDN'T GET OUT.

20 THERE WAS A DOOR BEHIND HER IN LIKE A LAUNDRY
21 ROOM AND I ASKED HER TO GO TO THAT DOOR. I CAME
22 OUT OF THE GARAGE AND WENT AROUND TO THAT DOOR
23 AND THAT DOOR ALSO WAS LOCKED; SHE COULDN'T GET
24 OUT OF THAT DOOR.

25 SO, I TOLD HER TO GO TO THE WINDOW IN THE

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1 KITCHEN AND PUT THE WINDOW UP WHICH SHE DID AND
2 SHE CAME OUT OF THE WINDOW.

3 Q. SO, SHE CAME OUT OF THE WINDOW TO YOU?

4 A. YES, SHE DID.

5 Q. OKAY. AND WHAT WAS HER CONDITION PHYSICALLY AND
6 EMOTIONALLY AS YOU OBSERVED HER WHEN SHE CAME
7 OUT OF THE WINDOW?

8 A. SHE BASICALLY DOVE OUT THE WINDOW ON TOP OF ME
9 EXTREMELY UPSET, SHAKING.

10 Q. AND WHAT, IF ANYTHING, DID SHE TELL YOU AT THAT
11 TIME?

12 A. AT THAT POINT SHE SAID THAT EARL WAS DEAD.

13 Q. BASED ON THAT -- DID YOU KNOW WHO THAT
14 INDIVIDUAL WAS?

15 A. NOT ---

16 Q. DID YOU ULTIMATELY DETERMINE HER IDENTITY?

17 A. NO, I DIDN'T. NOT AT THAT POINT I DIDN'T.

18 Q. RIGHT, BUT LATER DID YOU DETERMINE WHO IT WAS?

19 A. RIGHT.

20 Q. AND WHO WAS THAT?

21 A. IT WAS MRS. BRISSON, I THINK IS HOW YOU
22 PRONOUNCE HER NAME.

23 Q. SO, WHAT DID YOU DO. ONCE YOU HELPED HER ESCAPE
24 OUT OF THE WINDOW, WHAT DID YOU DO WITH HER?

25 A. I WALKED HER OVER TO MY PATROL CAR AND PLACED

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1 HER IN THE BACK SEAT. I ASKED HER HOW SHE GOT
2 INTO THE HOUSE BECAUSE SHE COULDN'T GET OUT AND
3 SHE SAID THAT THE BASEMENT DOOR AT THE BACK, THE
4 BOTTOM SIDE OF THE HOUSE, THE DOOR WAS OPEN.

5 I PLACED HER IN THE CAR AND LOCKED THE DOOR --
6 OR SHUT THE DOOR. THE DOORS DON'T OPEN FROM THE
7 INSIDE IN THE BACK SEAT, SHE WAS BASICALLY
8 LOCKED IN AND I WENT BACK AND WENT INTO THE
9 HOUSE.

10 Q. COULD YOU TELL THE JURY WHEN YOU WENT TO THE
11 BACK AND WENT IN THE HOUSE, IF YOU COULD
12 DESCRIBE FOR THEM FIRST AT THE BACK, WHAT IT IS
13 THAT YOU ACTUALLY SAW.

14 A. THERE WAS A WOODEN DOOR AND STORM DOOR. THE
15 STORM DOOR HAD BROKEN GLASS; THERE WAS GLASS ON
16 THE GROUND AND SOME RIGHT INSIDE THE WOODEN DOOR
17 WHICH WAS THE EXTERIOR DOOR GOING INTO THE HOUSE
18 WAS OPEN AND SOME GLASS WAS INSIDE.

19 Q. SO, THERE WAS GLASS OUTSIDE AND GLASS INSIDE?

20 A. THAT'S CORRECT.

21 Q. WAS ANYBODY WITH YOU AT THIS TIME?

22 A. YES, MY LIEUTENANT, GARY ROLLINS, WAS WITH ME AT
23 THE TIME.

24 Q. AND TELL THE JURY WHAT YOU DID AS FAR AS
25 ENTERING THE HOUSE, HOW YOU WERE EQUIPPED AND

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1 WHAT YOU DID.

2 A. BECAUSE OF HER STATING THAT SOMEONE WAS DEAD IN
3 THE HOUSE, WE ENTERED IT AS A CRIME SCENE OR
4 POSSIBLE CRIME IN PROGRESS, SO WE HAD OUR
5 WEAPONS DRAWN AND I HAD A FLASHLIGHT BECAUSE IT
6 WAS SOMEWHAT DARK, DIMLY LIT IN THE HOUSE. BUT
7 WEAPONS WERE DRAWN; MY SERVICE PISTOL WAS DRAWN
8 FOR MY OWN PROTECTION.

9 Q. AND ULTIMATELY DID YOU -- YOU WERE DOING WHAT'S
10 CALLED CLEARING, IS THAT RIGHT?

11 A. YES.

12 Q. WHAT DOES THAT MEAN?

13 A. CLEARING, BASICALLY LOOKING FOR EITHER VICTIMS
14 OR SUSPECTS OF A CRIME.

15 Q. AND IN DOING THAT DID YOU GO THROUGH THE
16 ENTIRETY OF THE HOUSE, UPSTAIRS AND DOWN?

17 A. YES, I DID.

18 Q. DETECTIVE MAGGART, I'LL ASK YOU TO LOOK AT
19 STATE'S EXHIBIT 101 AND 102 FOR IDENTIFICATION.
20 HAVE YOU HAD A CHANCE TO LOOK AT THESE PRIOR TO
21 TESTIFYING TODAY?

22 A. YES, I HAVE.

23 Q. AND BASED ON YOUR ENTRY AND PASSING THROUGH THE
24 HOUSE, DO THEY ACCURATELY REPRESENT THE LAYOUT
25 OF THE HOUSE, BOTH UPSTAIRS AND DOWN?

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1 A. YES, SIR, THEY DO.

2 Q. AND WOULD THEY ASSIST YOU IN EXPLAINING YOUR
3 MOTIONS IN THE HOUSE TO THE JURY?

4 A. YES.

5 MR. POPE: YOUR HONOR, AT THIS TIME I WOULD MOVE
6 STATE'S EXHIBIT 101 AND 102 FOR IDENTIFICATION INTO
7 EVIDENCE.

8 MR. BOYD: NO OBJECTION.

9 THE COURT: THEY WILL BE RECEIVED WITHOUT
10 OBJECTION.

11 (A DIAGRAM OF THE DOWNSTAIRS WAS MARKED IN EVIDENCE AS
12 STATE'S EXHIBIT 101 AND A DIAGRAM OF UPSTAIRS WAS MARKED IN
13 EVIDENCE AS STATE'S EXHIBIT 102 WITHOUT OBJECTION.)

14 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
15 I'M GOING TO ASK THE DEPUTY TO STEP DOWN.

16 THE COURT: THAT WILL BE FINE.

17 Q. DEPUTY, DID YOU ALSO HAVE THE OPPORTUNITY TO
18 REVIEW A NUMBER OF PHOTOS THAT INCLUDE THE
19 OUTSIDE OF THE HOUSE AND SOME AREAS ON THE
20 INSIDE OF THE HOUSE?

21 A. YES, I DID.

22 Q. AND DO THEY ACCURATELY DEPICT THE HOUSE AS YOU
23 OBSERVED IT THAT DAY?

24 A. THEY DO.

25 Q. YOUR HONOR, I WILL HAVE TO GET THE NUMBERS

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1 ADDRESSED, BUT WE WOULD MOVE STATE'S EXHIBITS --
2 IT APPEARS TO BE 103 THROUGH 122 INTO EVIDENCE.

3 MR. BOYD: NO OBJECTION.

4 THE COURT: PHOTOGRAPHS?

5 MR. POPE: YES, SIR, YOUR HONOR.

6 THE COURT: THEY ARE RECEIVED WITHOUT OBJECTION.

7 Q. DEPUTY FIRST IF YOU WOULD -- I AM GOING TO HAVE
8 YOU REFER TO THE DIAGRAM BUT I AM ALSO GOING TO
9 SEE IF WE CAN USE THE PICTURES WITHOUT LOSING
10 THE LIGHT.

11 I'LL SHOW YOU STATE'S EXHIBIT 103 AND SEE IF YOU
12 CAN RELATE TO THE JURY WHAT THAT INDICATES?

13 A. THAT WOULD BE THE FRONT OF THE HOUSE.

14 Q. AND AS YOU OBSERVED THE FRONT OF THE HOUSE, YOU
15 HAD INDICATED EARLIER -- CLERK, IF WE COULD CUT
16 SOME OF THE LIGHTS, MAYBE JUST THE ONES ON THAT
17 SIDE.

18 (THE MAJORITY OF THE LIGHTS WERE TURNED OFF IN THE
19 COURTROOM)

20 Q. IF YOU COULD RELATE TO THE JURY HOW THAT'S
21 LOCATED AND WHAT THAT EXHIBIT SHOWS -- THAT'S
22 THE FRONT OF THE HOUSE?

23 A. YES, IT IS.

24 Q. OKAY, AND YOU HAD INDICATED THAT YOU WENT TO A
25 DOOR AT THE HOUSE, WHAT DOOR INITIALLY DID YOU

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1 GO TO?

2 A. THAT WOULD BE THE FRONT DOOR RIGHT HERE. I
3 PARKED MY VEHICLE ON HERE, THE DRIVEWAY IS ON
4 THE SIDE AND THERE'S A SIDEWALK, AND I WALKED UP
5 TO THIS DOOR RIGHT HERE.

6 Q. I'LL SHOW YOU NOW WHAT'S BEEN MARKED AS STATE'S
7 EXHIBIT 104, AND ASK IF YOU CAN RELATE TO THE
8 JURY WHAT THAT INDICATES.

9 A. THAT'S THE RIGHT SIDE OF THE HOUSE; I PARKED MY
10 VEHICLE RIGHT IN HERE AND WALKED -- THIS IS THE
11 FRONT DOOR. AFTER I WENT TO THE FRONT DOOR, I
12 CAME BACK AND HERE'S THE GARAGE AREA.

13 Q. I'LL CALL YOUR ATTENTION NOW TO WHAT WOULD BE
14 STATE'S EXHIBIT 109. DESCRIBE TO THE JURY WHAT
15 THAT IS AND WHAT OCCURRED THERE.

16 A. THIS IS THE DOOR -- YOU COME IN THE GARAGE FROM
17 THIS AREA. THIS IS THE DOOR IN THE GARAGE THAT
18 I CAME TO, I RANG AND KNOCKED ON THE DOOR AND
19 WENT TO THE NEIGHBOR'S.

20 WHEN I CAME BACK THE SECOND TIME, THIS IS THE
21 AREA WHERE MS. BRISSON WAS STANDING.

22 Q. OKAY. AND SHOWING STATE'S EXHIBIT 102, CAN YOU
23 GIVE THE JURY A ROUGH IDEA OF WHERE THAT
24 LOCATION IS ALSO?

25 A. THAT WOULD BE -- THIS IS WHERE I PARKED; THIS

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1 WOULD BE THE DOOR RIGHT HERE. COMING IN THIS
2 WAY, IT WOULD BE RIGHT HERE.

3 Q. AND YOU HAD INDICATED THAT ULTIMATELY YOU
4 DIRECTED HER TO THE BACKSIDE OF THE HOUSE WHERE
5 SHE CAME OUT OF A WINDOW, IS THAT CORRECT?

6 A. RIGHT. FROM HERE I ASKED HER TO COME TO THIS
7 DOOR. IT WAS LOCKED ALSO. SHE WENT BACK AND
8 CAME OUT THIS WINDOW RIGHT HERE.

9 Q. AND I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S
10 EXHIBIT 110, CAN YOU DESCRIBE TO THE JURY WHAT
11 THAT INDICATES?

12 A. THIS WOULD BE THE DOOR, THE SECOND DOOR SHE
13 ATTEMPTED TO GET OUT OF. ALSO IT WAS LOCKED,
14 AND SHE WENT OVER TO THIS WINDOW AND OPENED IT
15 AND CAME OUT RIGHT THERE. I WAS STANDING ON THE
16 GROUND HERE WHEN SHE CAME OUT.

17 Q. AND ONCE SHE WAS PLACED IN YOUR VEHICLE, IF YOU
18 COULD DESCRIBE ON STATE'S EXHIBITS 101 AND 102
19 WHERE YOU WENT FROM THERE WITH LIEUTENANT
20 ROLLINS, WHERE YOU WENT AS FAR AS THE ENTRY.

21 A. OKAY. WE CAME AROUND TO THE BACKSIDE OF THE
22 HOUSE. THE DOOR IS HERE. THIS IS THE DOOR THAT
23 WAS BROKEN. WE ENTERED RIGHT HERE AND CLEARED
24 THIS WHOLE FLOOR, GOING INTO EVERY ROOM.

25 Q. IF YOU WOULD, IF YOU COULD STEP AWAY JUST A

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1 LITTLE BIT TO MAKE SURE THAT THE JURY CAN SEE.

2 THE COURT: ANYBODY ON THE JURY ON THE BACK ROW
3 IF YOU NEED TO STAND, FEEL FREE TO DO IT SO THAT YOU CAN
4 SEE.

5 MR. POPE: YOUR HONOR, PERHAPS ALSO NEXT TIME
6 THEY COME IN THEY COULD SIT SEVEN AND SEVEN AND THAT WOULD
7 BRING THEM IN ON THIS SIDE.

8 THE COURT: ALL RIGHT.

9 Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
10 108 AND ASK YOU TO INDICATE TO THE JURY, GET
11 THEM ORIENTED AS TO WHAT THAT INDICATES.

12 A. ALL RIGHT, THIS AREA RIGHT HERE, IT'S A LITTLE
13 HARD TO SEE BUT RIGHT HERE IS THE DOOR. RIGHT
14 BEHIND IT IS THE WINDOW SHE CAME OUT, AND THIS
15 IS THE DOOR THAT WE ENTERED RIGHT HERE.

16 Q. STATE'S EXHIBIT 107?

17 A. ALSO THE SAME. THIS IS THE DOOR THAT WE WENT
18 IN. IT WAS OPEN.

19 Q. I'LL SHOW YOU STATE'S EXHIBIT 111.

20 A. THAT'S THE AREA THAT WE ENTERED THE HOUSE, AND
21 BASICALLY THE WAY IT WAS WHEN WE FOUND IT WITH
22 THE GLASS ON THE GROUND.

23 Q. IF YOU WOULD USING AGAIN 101 AND 102, IF YOU
24 COULD DESCRIBE TO THE JURY WHERE YOU ENTERED
25 AGAIN AND SHOW THEM HOW YOU WENT THROUGH THE

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1 HOUSE.

2 A. WE CAME IN THIS DOOR HERE AND BASICALLY CLEARED
3 THE AREA AS WE COME TO IT. THIS WAS AN OPEN
4 ROOM, ALL OF THIS IS OPEN, THERE IS A SOFA AND
5 STUFF HERE AND YOU CAN SEE ALL THE WAY THROUGH
6 IT, SO WE CLEARED THAT ROOM BY ENTERING THIS
7 ROOM. AND THEN WE WENT THROUGH AND CLEARED EACH
8 OF THESE ROOMS AND THEN THE STAIRS, WE STARTED
9 UP THE STAIRS TO GO TO THE UPSTAIRS.

10 Q. I'M GOING TO SHOW YOU NOW WHAT'S BEEN MARKED
11 STATE'S EXHIBIT 116. DESCRIBE TO THE JURY WHAT
12 THIS PICTURE DEPICTS.

13 A. THAT'S THE STAIRWAY FROM THE BOTTOM FLOOR TO THE
14 TOP FLOOR.

15 Q. CAN YOU TELL THE JURY, IF YOU COULD, ONCE YOU
16 ARRIVED AT THE TOP OF THE STAIRS -- SHOW FIRST
17 ON THE DIAGRAM AND TELL THEM WHAT, IF ANYTHING,
18 YOU ENCOUNTERED THERE.

19 A. WHEN YOU GO UP THE STAIRS, YOU COME UP RIGHT
20 HERE AND YOU COME TO A HALLWAY, A BATHROOM AREA
21 AND HALLWAY RIGHT HERE. WHEN WE COME AROUND
22 RIGHT IN THIS AREA HERE, I ENCOUNTERED A BODY.

23 Q. IF YOU COULD, DESCRIBE IN DETAIL WHAT YOU
24 OBSERVED TO THE JURY.

25 A. THERE APPEARED TO BE A MALE LAYING ON HIS

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1 STOMACH. THE ONLY THING HE HAD ON WAS
2 UNDERWEAR, A LARGE AMOUNT OF BLOOD SURROUNDING
3 THE BODY; IT WAS ON THE WALLS AND THE CEILING
4 SURROUNDING THE BODY.

5 Q. AFTER THAT OBSERVATION, WHAT DID YOU DO THEN?

6 A. OKAY, WE WERE GOING UP TO CLEAR THIS PART OF THE
7 HOUSE, SO LIEUTENANT ROLLINS STAYED AT THIS AREA
8 AND I STEPPED OVER THE BODY TO GO TO THIS AREA
9 CLEARING THESE ROOMS, SO HE WAS BASICALLY
10 WATCHING MY BACK ON THIS SIDE OF THE HOUSE AND I
11 WENT DOWN AND CLEARED THESE ROOMS.

12 I WENT INTO THIS BEDROOM, ENTERED THIS BEDROOM
13 AND FOUND A BODY BESIDE THE BED IN THIS AREA
14 RIGHT HERE.

15 Q. IF YOU COULD, DESCRIBE FOR THE JURY THE
16 CONDITION OF THAT BODY.

17 A. IT APPEARED TO BE A FEMALE. SHE WAS OFF THE BED
18 HERE, SOME OF THE SHEETS WERE PULLED OFF ON TOP
19 OF HER, BUT I COULD SEE SEVERAL LARGE SEVERE
20 LACERATIONS AND A LOT OF BLOOD AROUND HER ALSO.

21 Q. AFTER DISCOVERING THE TWO BODIES, DID YOU
22 ULTIMATELY CLEAR THE REST OF THE HOUSE?

23 A. THAT'S CORRECT. LIKE I SAID, ALL THESE ROOMS
24 WERE CLEARED AND THEN WE CAME INTO THIS PART OF
25 THE HOUSE, NOT THE GARAGE, BUT THE LIVING ROOM

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1 DEN AND THE KITCHEN, ALL THE WAY UP INTO HERE.
2 THEN WE SAW THERE WAS NOBODY ELSE OR NOTHING
3 ELSE IN THE RESIDENCE, NO ONE AT ALL. WE WENT
4 BACK DOWN THE STAIRS, AND WE WENT OUT THE SAME
5 DOOR.

6 Q. AND YOU SAID YOU WENT IN, I BELIEVE, THE LIVING
7 ROOM AND YOU ALSO WENT IN THE DEN AREA HERE, IS
8 THAT CORRECT?

9 A. YES.

10 Q. NOW WHICH WAY DID YOU ENTER THE DEN AREA?

11 A. FROM BACK -- I CAME BACK DOWN THE HALL AND CAME
12 IN THIS WAY AROUND LIKE THIS.

13 Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S
14 EXHIBIT 118, THIS WOULD HAVE BEEN THE DOOR THAT
15 YOU WERE COMING IN THROUGH COMING INTO THAT DEN;
16 WOULD THAT BE CORRECT?

17 A. RIGHT, THIS WOULD BE THE HALLWAY HERE AND THIS
18 IS COMING INTO THE DEN FROM THIS AREA RIGHT
19 HERE. THAT PICTURE IS LOOKING AT THIS PART
20 RIGHT HERE.

21 Q. WOULD YOU TELL THE JURY IN THIS PHOTO WHERE
22 EARL'S BODY WOULD HAVE BEEN?

23 A. JUST BEHIND THIS DOORWAY ACTUALLY, IN THE
24 HALLWAY.

25 Q. AND COMING THAT WAY, YOU ULTIMATELY CAME AND

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1 CAME OUT OF THE OTHER SIDE OF THAT ROOM AND WENT
2 INTO THE KITCHEN ALSO?

3 A. RIGHT, THAT'S GOING INTO THE KITCHEN WHICH WOULD
4 BE LOOKING THIS WAY, COMING TO HERE.

5 Q. FINALLY I SHOW YOU WHAT'S BEEN MARKED AS STATE'S
6 EXHIBIT 120, THAT WOULD BE COMING INTO THE
7 KITCHEN; IS THAT CORRECT?

8 A. CORRECT. THIS IS THE DOOR IN THE GARAGE HERE
9 AND THIS WOULD BE THE LAUNDRY ROOM. RIGHT IN
10 THIS AREA WOULD BE THE WINDOW THAT MS. BRISSON
11 COME OUT OF.

12 Q. AND DID YOU DETERMINE, STATE'S EXHIBIT 122, THAT
13 IT WAS A KEY DEAD BOLT LOCK?

14 A. YES, SIR.

15 MR. HANCOCK: YOUR HONOR, I'M GOING TO OBJECT.
16 THE SOLICITOR IS LEADING WITH EACH QUESTION.

17 THE COURT: I SUSTAIN THE OBJECTION. REPHRASE
18 YOUR QUESTION.

19 Q. WOULD YOU TELL US WHAT STATE'S EXHIBIT 122
20 DEPICTS PLEASE?

21 A. THE INSIDE DEAD BOLT WHERE IT'S KEYED AND
22 LOCKED.

23 Q. CAN YOU TELL US WHAT STATE'S EXHIBIT 121
24 DEPICTS?

25 A. THAT'S THE OTHER VIEW OF THE DOOR LOOKING FROM

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1358

1 THIS AREA BACK TOWARD THE DOOR HERE.

2 Q. I BELIEVE YOU CAN HAVE A SEAT.

3 (THE WITNESS RESUMED THE WITNESS STAND.)

4 Q. MR. MAGGART, YOU ALSO INDICATED -- YOU SAID YOU
5 Cleared the house and other than the two
6 decedents and, of course, MS. BRISSON WHO YOU
7 first encountered, there was no one else in the
8 house?

9 A. NO, SIR.

10 Q. CAN YOU TELL THE JURY, AFTER YOU DID THAT AND
11 secured the house, what did you do?

12 A. AT THAT POINT WE WENT OUT, MYSELF AND LIEUTENANT
13 ROLLINS, WE TOOK EVIDENCE TAPE AND TAPED OFF THE
14 WHOLE CURTILAGE, THE WHOLE YARD, HOUSE,
15 RESIDENCE. WE GOT MS. BRISSON, IDENTIFIED HER,
16 GOT HER VEHICLE OUT OF THE DRIVEWAY AND BACKED
17 MY VEHICLE UP ONTO THE STREET AND PUT TAPE
18 AROUND THE WHOLE CRIME SCENE.

19 Q. WAS ANYONE FROM YOUR DEPARTMENT CONTACTED TO
20 further the investigation?

21 A. RIGHT, THE DETECTIVES WERE CALLED.

22 Q. AND FINALLY, YOU HAD INDICATED EARLIER THAT YOU
23 HAD CALLED IN THE TAG OF THE CAR YOU SAW AT THE
24 RESIDENCE. I'LL SHOW YOU STATE'S EXHIBITS 112,
25 113, 114 AND 115, MY UNDERSTANDING ALL OF WHICH

1359

1 ARE IN EVIDENCE. IF YOU COULD LOOK AND TELL ME
2 IF YOU CAN IDENTIFY THAT PICTURE.

3 A. YES, THAT'S THE VEHICLE THAT I RAN THE TAG ON
4 THAT WAS PARKED OUT ON THE STREET.

5 Q. OKAY, I NOTICE IN SOME OF THOSE PHOTOS THERE'S
6 LIKE A YELLOW STRIP. COULD YOU EXPLAIN TO THE
7 JURY WHAT THAT IS?

8 A. THAT'S THE EVIDENCE TAPE. YOU CAN ALSO SEE IT
9 AROUND THE YARD AND THERE WAS SOME PLACED AROUND
10 THE CAR TO SECURE THE CRIME SCENE, TO KEEP OTHER
11 PEOPLE OUT.

12 Q. AFTER SECURING THE CRIME SCENE AND OFFICERS
13 COMING, DID YOU HAVE ANY FURTHER INVOLVEMENT IN
14 THE INVESTIGATION?

15 A. NOT IN THE INVESTIGATION. THE ONLY THING I DID
16 AFTER THAT WAS STAND AT THE ENTRANCE TO THE
17 CRIME SCENE AND LOG DOWN ANYONE THAT ENTERED IT.

18 Q. OKAY. IF YOU WOULD, ANSWER ANY QUESTIONS THAT
19 THE DEFENSE WOULD HAVE.

20 A. CERTAINLY.

21 MR. BOYD: NO QUESTIONS, YOUR HONOR.

22 THE COURT: YOU MAY STEP DOWN. THANK YOU.

23 MR. POPE: I WOULD ASK THAT THIS WITNESS BE
24 EXCUSED, YOUR HONOR.

25 THE COURT: YOU MAY BE EXCUSED. IT'S QUARTER

1 AFTER, LUNCH WILL BE HERE AT 12:30, DO YOU HAVE ANOTHER
2 WITNESS WE CAN TAKE?

3 MR. POPE: YES, SIR.

4 THE COURT: ALL RIGHT, LET'S DO THAT.

5 MR. POPE: THE STATE WOULD CALL DEBBIE BRISSON TO
6 THE STAND, YOUR HONOR.

7 DEBBIE BRISSON, BEING FIRST DULY SWORN, TESTIFIED
8 AS FOLLOWS:

9 DIRECT EXAMINATION BY

10 MR. POPE:

11 Q. MS. BRISSON, IF YOU WOULD, STATE YOUR NAME AND
12 SPELL YOUR LAST NAME FOR THE COURT REPORTER
13 PLEASE, MA'AM.

14 A. DEBBIE BRISSON, B-R-I-S-S-O-N.

15 Q. MS. BRISSON, WE'VE GOT A LOT OF STUFF IN HERE,
16 YOU MAY NEED TO SPEAK UP JUST A LITTLE BIT
17 PLEASE, MA'AM.

18 A. OKAY.

19 Q. COULD YOU TELL THE JURY WHAT YOUR OCCUPATION IS?

20 A. I'M AN OFFICE MANAGER AT A COUNSELING CENTER.

21 Q. AND YOU RESIDE HERE IN YORK COUNTY?

22 A. YES, I DO.

23 Q. WOULD YOU TELL THE JURY, DID YOU KNOW TERRY AND
24 EARL ROBERTSON?

25 A. YES, I DID.

DEBBIE BRISSON - DIRECT BY MR. POPE

1361

1 Q. COULD YOU TELL THEM APPROXIMATELY HOW LONG OR
2 HOW YOU CAME TO KNOW THEM?

3 A. FOR ABOUT A YEAR AND A HALF, AND I KNEW TERRY
4 FROM WORK, FROM WORKING WITH HER AND WE JUST
5 BECAME GOOD FRIENDS AND DID THINGS TOGETHER,
6 TALKED ON THE PHONE ALMOST EVERY DAY WHEN WE
7 DIDN'T SEE EACH OTHER.

8 THE SUMMER BEFORE HER DEATH, MY DAUGHTER WAS
9 GRADUATING HIGH SCHOOL AND GETTING READY TO GO
10 OFF TO COLLEGE AND SHE HELPED ME A LOT WITH THAT
11 KIND OF STUFF. AND WE JUST KIND OF DID THINGS
12 TOGETHER AS FRIENDS AND WERE AT EACH OTHER'S
13 HOMES AND THAT KIND OF STUFF.

14 Q. SO YOU WERE CO-WORKERS AND FRIENDS, BASICALLY?

15 A. YES.

16 Q. LET ME CALL YOUR ATTENTION BACK TO TUESDAY,
17 NOVEMBER 25TH, 1997 AT APPROXIMATELY 10:00
18 O'CLOCK IN THE MORNING. DID YOU HAVE AN
19 OPPORTUNITY TO RECEIVE A CALL FROM LINDA WEAVER
20 CONCERNING TERRY?

21 A. YES, I DID.

22 Q. COULD YOU RELATE TO THE JURY, BASED ON THAT
23 CONVERSATION, WHAT YOU DID?

24 A. WELL, I HAD ALSO BEFORE LINDA CALLED ME BEEN
25 TRYING TO CALL TERRY AND REALIZED HER PHONE WAS

DEBBIE BRISSON - DIRECT BY MR. POPE

1362

1 OFF THE HOOK BECAUSE SHE HAD CALLED ME AT HOME
2 THE PREVIOUS NIGHT ABOUT 11:00 O'CLOCK AND LEFT
3 ME A MESSAGE.

4 Q. WHEN YOU REALIZED HER PHONE WAS OFF THE HOOK,
5 WHAT DO YOU MEAN BY THAT?

6 A. WELL, SHE HAD THE TELEPHONE VOICE MAIL, SO WHEN
7 IT RINGS ONE TIME IT IMMEDIATELY CLICKS OVER TO
8 VOICE MAIL AND YOU KNOW THEY'RE EITHER ON THE
9 PHONE OR THE PHONE IS OFF THE HOOK. BUT I HAD
10 CALLED SO MANY TIMES THAT I HAD JUST DETERMINED
11 THAT IT WAS PROBABLY OFF THE HOOK AT THAT POINT.

12 Q. AND AFTER MAKING THOSE CALLS WHAT, IF ANYTHING,
13 DID YOU DO?

14 A. AND THEN AFTER MRS. WEAVER CALLED AND HAD ALSO
15 BEEN CALLING HER AND WAS CONCERNED, I WENT TO GO
16 TO HER HOME TO CHECK ON HER AND SEE HOW SHE WAS
17 AND GET HER UP OR WHATEVER.

18 Q. COULD YOU TELL THE JURY WHAT YOU OBSERVED WHEN
19 YOU FIRST GOT THERE AS FAR AS WHAT YOU ACTUALLY
20 DID WHEN YOU GOT THERE AT THE RESIDENCE?

21 A. WELL, WHEN I FIRST GOT THERE, TERRY'S CAR WAS IN
22 THE GARAGE LIKE NORMAL. THE VAN WAS PARKED ON
23 THE SIDE LIKE NORMAL, AND EARL'S CAR WAS GONE.
24 SO, I JUST THOUGHT THAT TERRY HAD OVERSLEPT OR
25 SOMETHING.

DEBBIE BRISSON - DIRECT BY MR. POPE

1363

1 Q. YOU SAY EARL'S CAR, WHAT CAR WAS IT THAT EARL
2 DROVE?

3 A. THE RED CAR.

4 Q. AT THAT POINT DID YOU GO TO ANY PARTICULAR DOOR?
5 WHAT DOOR DID YOU GO TO?

6 A. WELL, I ALWAYS WENT TO THE CARPORT DOOR, THE ONE
7 THAT LED INTO THE KITCHEN. SO, I WENT THERE AND
8 KNOCKED AND RANG THE DOORBELL. AND SHE NEVER
9 CAME TO THE DOOR. SO, I KNOCKED A COUPLE OF MORE
10 TIMES AND SHE NEVER CAME TO THE DOOR.

11 ON A PRIOR OCCASION -- I JUST KNEW FROM A PRIOR
12 OCCASION OF TALKING WITH HER, HER BASEMENT DOOR
13 WAS DIRECTLY ABOVE HER BEDROOM, SO I JUST WENT
14 AROUND THE HOUSE AND WENT TO THE BASEMENT DOOR
15 TO KNOCK ON THE BASEMENT DOOR.

16 Q. AND WHAT WAS THE PURPOSE OF KNOCKING ON THE
17 BASEMENT DOOR?

18 A. SO THAT SHE COULD HEAR ME.

19 Q. AND IF YOU WOULD, WHEN YOU GOT AROUND TO THE
20 BACKSIDE OF THE HOUSE, WHAT DID YOU OBSERVE,
21 WHAT DID YOU ENCOUNTER THERE?

22 A. WELL, THE BASEMENT DOOR IS AT THE OPPOSITE END
23 FROM WHERE I ROUNDED THE HOUSE, SO IT TAKES YOU
24 A WHILE TO GET OVER TO IT. WHEN I GOT CLOSER TO
25 IT, I NOTICED THAT THE GLASS WAS BUSTED OUT OF

DEBBIE BRISSON - DIRECT BY MR. POPE

1364

1 THE STORM DOOR, BUT THE OTHER DOOR WAS SHUT. AND
2 SO I JUST OPENED THE DOOR AND WENT IN AND WENT
3 UP THE STAIRS.

4 Q. OKAY. AND SO YOU WENT IN THROUGH THE DOWNSTAIRS
5 AND WENT UP TO THE TOP OF THE STAIRS GOING INTO
6 THE UPPER LIVING PART, IS THAT CORRECT?

7 A. UH HUH.

8 Q. IF YOU COULD, WHEN YOU GOT TO THE TOP OF THE
9 STAIRS, IF YOU COULD, RELATE TO THE JURY WHAT
10 YOU OBSERVED.

11 A. WELL, IT WAS FAIRLY DARK GOING UP THE STEPS
12 BECAUSE I DIDN'T TURN ON ANY LIGHTS OR ANYTHING,
13 IT WAS JUST THE DAYLIGHT SHINING THROUGH THE
14 WINDOW. SO WHEN I GOT TO THE TOP OF THE STEPS
15 AND OPENED THE BASEMENT DOOR -- THE BASEMENT
16 DOOR OPENS BACK AGAINST THE BATHROOM WHICH KEPT
17 ANY LIGHT FROM COMING OUT OF THERE, SO IT WAS
18 STILL KIND OF DARK. I MEAN I WAS JUST GOING
19 AROUND THE CORNER TO HEAD TO TERRY'S BEDROOM.

20 Q. AND WHAT WAS YOUR PURPOSE IN GOING TO TERRY'S
21 BEDROOM?

22 A. TO WAKE HER UP.

23 Q. OKAY.

24 A. AND WHEN I OPENED THE BASEMENT DOOR AND JUST
25 STARTED TO STEP FORWARD, I STUMBLED ONTO

DEBBIE BRISSON - DIRECT BY MR. POPE

1365

1 SOMETHING. AND WHEN I LOOKED DOWN, IT WAS A
2 MALE BODY LAYING THERE WITH JUST UNDERWEAR ON,
3 LAYING FACE DOWN ON THE FLOOR.

4 Q. DID YOU RECOGNIZE THE MALE AT THAT TIME?

5 A. I WOULDN'T SAY THAT I ACTUALLY RECOGNIZED -- I
6 MEAN AT THAT POINT I GUESS I WAS JUST IN SHOCK,
7 SO I'M NOT SURE. I MEAN I GUESS I ASSUMED THAT
8 IT WAS EARL, BUT I DIDN'T INVESTIGATE TO FIGURE
9 OUT IF IT WAS EARL OR NOT.

10 Q. ALL RIGHT. WELL, BASED ON THAT, AFTER
11 ENCOUNTERING HIS BODY, WHAT DID YOU DO THEN?

12 A. I KNEW WHERE THE CLOSEST PHONE WAS, SO I HAD TO
13 LIKE STEP OVER HIS BODY TO GO INTO THE DEN TO GO
14 TO THE PHONE AND WHEN I REACHED THE DEN WHICH
15 WAS JUST AROUND THE CORNER, THE KITCHEN PHONE
16 WAS STRETCHED -- IT HAS A LONG CORD, AND IT WAS
17 STRETCHED OUT AND IT WAS LIKE LAYING UNDER THE
18 COUCH CUSHION OR ON THE COUCH WITH THE CUSHION
19 OVER IT OR SOMETHING, SO I JUST PICKED UP THE
20 PHONE, WENT TO THE WALL AROUND THE CORNER AND
21 TRIED TO GET THE PHONE TO START BACK, YOU KNOW,
22 IT HAD BEEN OFF THE HOOK, SO IT WASN'T
23 IMMEDIATELY GIVING A DIAL TONE. SO, I WAS JUST
24 TRYING TO GET THE PHONE TO WORK AT THAT POINT.

25 Q. OKAY. LET ME GO BACK, WHEN YOU STEPPED AROUND

DEBBIE BRISSON - DIRECT BY MR. POPE

1366

1 AND CAME INTO THE DEN, THE PHONE ACTUALLY IS
2 HOOKED IN THE KITCHEN ---

3 A. IT'S A WALL PHONE; YES, SIR.

4 Q. BUT YOU'RE SAYING IT WAS STRETCHED INTO THE DEN
5 AND ONTO THE COUCH?

6 A. RIGHT, THE RECEIVER PART.

7 Q. I'LL SHOW YOU STATE'S EXHIBIT 119 AND ASK YOU IF
8 YOU COULD LOOK AT THAT AND TELL ME WHAT THAT
9 REPRESENTS?

10 A. IT'S STANDING IN THE KITCHEN WHERE THE PHONE IS
11 ON THE WALL LOOKING INTO THE DEN AT THE SOFA
12 WHERE I FOUND THE BODY.

13 Q. SO, THAT'S THE ROOM THAT YOU CAME IN THROUGH?

14 A. YES.

15 Q. AND I'LL SHOW YOU STATE'S EXHIBIT 117 AND ASK IF
16 YOU COULD IDENTIFY THAT?

17 A. THAT'S COMING FROM THE WAY I CAME AND THE CORD
18 WAS COMING THROUGH THIS DOOR AND WAS ON THIS
19 SOFA.

20 Q. FINALLY I'LL ASK YOU, STATE'S EXHIBIT 121, CAN
21 YOU TELL ME WHAT THAT DEPICTS?

22 A. THAT'S LOOKING BACK FROM THE LAUNDRY ROOM TO THE
23 KITCHEN TABLE GOING BACK TO WHERE THE PHONE IS
24 ON THE WALL TO THE CARPORT DOOR THAT I FIRST
25 WENT TO.

DEBBIE BRISSON - DIRECT BY MR. POPE

1367

1 Q. OKAY, AND ONE MORE. STATE'S EXHIBIT 118, IF YOU
2 WOULD LOOK AT THAT.

3 A. THAT'S THE DOOR THAT I ENTERED THROUGH TO GO
4 INTO THE DEN.

5 Q. OKAY. AND ON 118, WHERE WOULD EARL HAVE BEEN IN
6 THAT?

7 A. JUST RIGHT AROUND THAT CORNER. LIKE THE
8 BASEMENT DOOR, THAT DOOR AND THE HALLWAY ALL
9 CONNECT TOGETHER.

10 Q. OKAY. YOU WERE TELLING THE JURY, ONCE YOU GOT
11 TO THE PHONE, YOU SAID IT WAS ON THE COUCH AND
12 YOU TRIED TO GET A DIAL TONE, WHAT DID YOU DO
13 THEN?

14 A. I CALLED BACK TO MY WORK TO TELL THEM, I MEAN,
15 YOU KNOW, I DON'T KNOW EXACTLY WHY -- I MEAN,
16 YOU'RE IN SHOCK AND YOU DON'T KNOW, BUT I JUST
17 IMMEDIATELY CALLED BACK TO MY WORK TO TELL THEM
18 THAT SOMEBODY NEEDED TO COME OVER THERE AND GET
19 ME. AND SO THEY TOLD ME TO CALL 911.

20 WHILE I WAS TALKING ON THE PHONE TO THEM, I WAS
21 TRYING TO SEE IF I COULD GET THE DOOR OPEN
22 BECAUSE ALL I WANTED TO DO WAS JUST GET OUT OF
23 THE HOUSE TO OUTSIDE. AND THE DOOR WOULDN'T
24 OPEN.

25 THEY TOLD ME TO CALL 911, SO I HUNG UP THE PHONE

DEBBIE BRISSON - DIRECT BY MR. POPE

1368

1 AND WAS GOING TO CALL 911. I TRIED THE DOOR
2 AGAIN AND THEN THAT'S WHEN A DETECTIVE WAS
3 WALKING UP -- I MEAN I SAW THE DETECTIVE CAR, A
4 POLICE CAR PULL UP AND A DETECTIVE WAS GETTING
5 OUT OF THE CAR.

6 SO THEN I DIDN'T CALL 911, I WAITED FOR HIM TO
7 GET TO THE DOOR AND THEN I TOLD HIM THAT I COULD
8 NOT GET OUT.

9 Q. AND THEN WHAT DID YOU DO?

10 A. HE SAW THROUGH TO THE LAUNDRY ROOM DOOR AND SAW
11 THAT THERE WAS ANOTHER OUTSIDE ENTRANCE DOOR, SO
12 HE MOTIONED FOR ME TO GO AROUND TO THAT DOOR.
13 SO, I WENT AROUND TO THAT DOOR, AND HE PROCEEDED
14 AROUND TO THAT DOOR. HE GOT TO THAT DOOR AND I
15 GOT TO THAT DOOR, AND WE COULDN'T -- IT WOULDN'T
16 OPEN EITHER. WE COULDN'T GET THEM OPEN BECAUSE
17 THEY WERE DEAD BOLTS WITH THE KEY FOR THE INSIDE
18 AND THERE WAS NO KEY. SO, I WAS STUCK IN THERE.
19 AND SO THEN HE MOTIONED TO THE WINDOW BEHIND THE
20 KITCHEN TABLE, AND FINALLY I GOT THE WINDOW
21 OPEN, AND I PRETTY MUCH DOVE OUT ONTO HIM.

22 Q. WHEN YOU DOVE OUT THE WINDOW, WHY DIDN'T YOU
23 JUST GO BACK THE WAY THAT YOU CAME IN?

24 A. BECAUSE I COULDN'T -- I MEAN I WOULD HAVE HAD TO
25 GO BACK BY THE BODY AND I COULD NOT DO THAT.

DEBBIE BRISSON - DIRECT BY MR. POPE 1369

1 Q. LET ME ASK YOU, THE TIME THAT YOU WERE IN THE
2 HOUSE, OTHER THAN THE STUMBLING INTO THE BODY,
3 DID YOU EVER TOUCH OR CHANGE EARL'S BODY OR DO
4 ANYTHING TO EARL'S BODY?

5 A. NO, SIR.

6 Q. DURING THE TIME YOU WERE IN THE HOUSE, DID YOU
7 EVER ENCOUNTER TERRY AT ALL?

8 A. NO, SIR.

9 Q. DID YOU EVER TOUCH TERRY OR HER BODY IN ANY WAY?

10 A. NO, SIR.

11 Q. IF YOU WOULD PLEASE, MA'AM, ANSWER ANY QUESTIONS
12 THE DEFENSE MIGHT HAVE.

13 CROSS EXAMINATION BY

14 MR. HANCOCK:

15 Q. MS. BRISSON, I ONLY HAVE A FEW QUESTIONS. YOU
16 WERE THE OFFICE MANAGER FOR WHOM, FOR CAROLINA
17 COUNSELING, IS THAT THE NAME?

18 A. YES, SIR.

19 Q. AND HOW LONG WERE YOU THEIR OFFICE MANAGER?

20 A. FIVE OR SIX YEARS.

21 Q. AND DID YOU WRITE THE PAYCHECKS?

22 A. NO, SIR.

23 Q. DID YOU HANDLE ANY OF THE FINANCES OF THE
24 BUSINESS?

25 A. I MEAN I GOT THE STUFF READY FOR EVERYTHING, BUT

DEBBIE BRISSON - CROSS BY MR. HANCOCK

1370

1 I DIDN'T ACTUALLY SIGN ANY CHECKS.

2 Q. AND DID YOU SUBMIT INSURANCE CLAIM FORMS FOR THE
3 PATIENTS OR DO ANYTHING LIKE THAT?

4 A. WELL, WHEN I FIRST WORKED THERE I DID, BUT THEN
5 WE CONTRACTED A BILLING SERVICE LATER BECAUSE IT
6 WAS JUST -- I MEAN I WAS THE ONLY -- WHEN I
7 FIRST STARTED, I WAS THE ONLY OFFICE STAFF
8 PERSON, SO IT BECAME TOO MUCH FOR ME TO DO, SO
9 WE HIRED A BILLING SERVICE.

10 Q. WAS TERRY ROBERTSON AN EMPLOYEE OF CAROLINA
11 COUNSELING?

12 A. NOT WHEN I FIRST CAME TO KNOW HER.

13 Q. DID SHE EVER BECOME AN EMPLOYEE?

14 A. YES, LATER ON.

15 Q. AND WAS SHE PAID THROUGH CAROLINA COUNSELING OR
16 DO YOU KNOW?

17 A. I THINK SO.

18 Q. WAS SHE A PATIENT OF DR. MCMEEKIN'S, ARE YOU
19 AWARE OF THAT?

20 A. YES, SIR.

21 Q. AND SHE WAS ALSO BEING COUNSELED EXTENSIVELY BY
22 SKIP MEYER; IS THAT CORRECT?

23 A. YES, SIR.

24 Q. DO YOU KNOW HOW MANY TIMES SHE WAS IN THERE AND
25 HAD COUNSELING SESSIONS WITH MR. MEYER OVER A

DEBBIE BRISSON - CROSS BY MR. HANCOCK

1371

1 PERIOD OF, SAY, A YEAR?

2 A. IN MY OFFICE?

3 Q. YES.

4 A. HARDLY NEVER ---

5 MR. POPE: YOUR HONOR, I'M GOING TO OBJECT TO THE
6 RELEVANCE OF THIS. I UNDERSTAND THE OCCUPATIONAL THING,
7 BUT WHAT BEARING THIS HAS ON THE GUILT PHASE OF THIS CASE,
8 I DON'T UNDERSTAND. I OBJECT TO THE RELEVANCE.

9 THE COURT: I SUSTAIN THE OBJECTION.

10 Q. YOU INDICATED THAT YOU CALLED AND YOU LATER WENT
11 TO THE HOUSE AND WENT DOWNSTAIRS BECAUSE TERRY
12 HAD NOT WAKED UP; IS THAT CORRECT?

13 A. WELL, SHE WASN'T ANSWERING THE PHONE.

14 Q. SHE WASN'T ANSWERING THE PHONE. YOU FIGURED
15 THAT SHE JUST HAD OVERSLEPT?

16 A. UH HUH.

17 Q. WAS SHE NORMALLY DIFFICULT TO WAKE UP?

18 A. NO, NOT UNLESS SHE HAD BEEN UP HALF THE NIGHT
19 FOR SOME REASON. I MEAN I HAD TALKED TO HER LATE
20 AT NIGHT BEFORE BECAUSE SHE WAS UPSET ABOUT
21 THINGS THAT HER SONS HAD DONE OR SOMETHING, AND
22 SHE WOULD BE UP AND I KNEW THAT ONE OF HER SONS
23 HAD JUST COME BACK HOME ---

24 Q. EXCUSE ME. I'LL ASK YOU TO ANSWER MY QUESTION.
25 MY QUESTION WAS, WAS IT OFTEN DIFFICULT FOR HER

DEBBIE BRISSON - CROSS BY MR. HANCOCK

1372

1 TO WAKE UP AND YOU WOULD WAKE HER UP?

2 A. NOT PARTICULARLY. I MEAN MAYBE ON OCCASION.

3 Q. I HAVE NOTHING FURTHER.

4 MR. POPE: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: YOU CAN STEP DOWN AND BE EXCUSED, WE
6 APPRECIATE YOUR TIME.

7 MEMBERS OF THE JURY PANEL, IT'S TIME FOR US TO
8 TAKE OUR LUNCH BREAK AND WHAT WE'RE GOING TO TRY TO DO IS
9 TAKE ABOUT AN HOUR.

10 DURING THIS LUNCH BREAK I'M GOING TO LET THE
11 SECURITY PEOPLE WHO ARE GOING TO BE WORKING WITH YOU GIVE
12 YOU A LITTLE ORIENTATION ABOUT THINGS. SO, IF YOU NEED A
13 LITTLE MORE THAN AN HOUR, THAT WILL BE FINE. I'LL CHECK IN
14 AN HOUR AND IF YOU'RE NOT READY, AND YOU STILL NEED A
15 LITTLE MORE TIME, LET ME KNOW. BUT SINCE WE'RE HAVING
16 LUNCH BROUGHT IN, I THINK THAT WE CAN USUALLY STICK TO 45
17 MINUTES OR AN HOUR TO HELP US MOVE ALONG.

18 SO, JUST GO INTO THE JURY ROOM; FOLLOW THE
19 BAILIFF'S; HAVE YOUR LUNCH; GET YOUR ORIENTATION AND WE'LL
20 START BACK AS CLOSE TO 1:30 AS PRACTICAL.

21 IN CAMERA:

22 THE COURT: MR. HANCOCK, I SUSTAINED THAT
23 OBJECTION AND I'M SURE MS. BRISSON IS AROUND. I SHOULD
24 HAVE GIVEN YOU THE OPPORTUNITY TO MAKE A PROFFER IF YOU
25 WISH. DO YOU WISH TO GET HER BACK IN HERE AND MAKE A

DEBBIE BRISSON - CROSS BY MR. HANCOCK

1373

1 PROFFER?

2 MR. HANCOCK: I DON'T THINK WE NEED TO, YOUR
3 HONOR.

4 THE COURT: ALL RIGHT. PLEASE BE READY AT 1:30.
5 AFTER THE LUNCHEON RECESS IN CAMERA:

6 THE COURT: IS THE STATE READY TO PROCEED?

7 MR. POPE: YOUR HONOR, DO YOU WANT TO TAKE UP THE
8 DENNO MATTER NOW?

9 THE COURT: IS THE DEFENSE READY TO PROCEED?

10 MR. HANCOCK: YES, SIR, YOUR HONOR.

11 THE COURT: ALL RIGHT, WHY DON'T WE GO AHEAD AND
12 DO THAT?

13 MR. POPE: THE STATE WOULD CALL RALPH MISLE TO
14 THE STAND.

15 RALPH MISLE, BEING FIRST DULY SWORN, TESTIFIED AS
16 FOLLOWS:

DIRECT EXAMINATION BY

17
18 MR. POPE:

19 Q. DETECTIVE MISLE, IF YOU WOULD, STATE YOUR NAME
20 AND OCCUPATION TO THE COURT, PLEASE.

21 A. YES, MY NAME IS RALPH MISLE. I AM PRESENTLY A
22 CAPTAIN WITH THE YORK COUNTY SHERIFF'S
23 DEPARTMENT.

24 Q. WOULD YOU TELL THE COURT HOW LONG YOU'VE BEEN
25 WITH THE SHERIFF'S DEPARTMENT?

RALPH MISLE - DIRECT BY MR. POPE

1374

1 A. I'VE BEEN WITH THE SHERIFF'S DEPARTMENT FOR 10
2 YEARS, YOUR HONOR.

3 Q. I CALL YOUR ATTENTION BACK TO NOVEMBER OF 1997,
4 IN WHAT CAPACITY WERE YOU WITH THE SHERIFF'S
5 DEPARTMENT AT THAT TIME?

6 A. I WAS AN INVESTIGATOR IN THE CRIMINAL
7 INVESTIGATION DIVISION, CRIMES AGAINST PERSONS.

8 Q. IN PARTICULAR, DID YOU HAVE AN OPPORTUNITY TO
9 INVESTIGATE THE CRIME CONCERNING TERRY AND EARL
10 ROBERTSON?

11 A. YES, SIR, I DID.

12 Q. AS PART OF YOUR DUTIES, DID YOU HAVE THE
13 OPPORTUNITY TO TRAVEL WITH BOBBY BROWN FROM
14 SLED, DID YOU GO UP TO PHILADELPHIA TO FURTHER
15 THE INVESTIGATION?

16 A. YES, ON NOVEMBER 26TH, WEDNESDAY DAY OF THE
17 WEEK, 1997.

18 Q. AND IN GOING UP THERE, DID YOU HAVE AN
19 OPPORTUNITY TO TALK TO THE DEFENDANT, JAMES
20 ROBERTSON?

21 A. YES, SIR, I DID.

22 Q. DO YOU SEE HIM HERE IN THE COURTROOM TODAY?

23 A. YES, HE'S SITTING AT THE DEFENSE TABLE.

24 Q. AND WHEN YOU TALKED TO HIM, THAT WAS IN THE
25 COURSE OF THE INVESTIGATION CONCERNING HIS

RALPH MISLE - DIRECT BY MR. POPE

1375

1 PARENTS' DEATH?

2 A. THAT'S CORRECT.

3 Q. DID YOU HAVE AN OPPORTUNITY TO READ HIM HIS
4 RIGHTS AT THAT TIME?

5 A. I DID.

6 Q. OKAY, AND WHAT MANNER DID YOU -- WHAT DID YOU
7 USE, A CARD OR A FORM OR ---

8 A. NO, WE HAD A FORM THAT WE USE, IT'S A STATE LAW
9 ENFORCEMENT DIVISION FORM.

10 Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
11 125 FOR IDENTIFICATION AND ASK IF YOU WOULD TAKE
12 A LOOK AT THAT AND TELL ME IF YOU CAN IDENTIFY
13 IT.

14 A. YES, SIR, MR. POPE, THIS IS THE FORM THAT I USED
15 AND READ TO MR. ROBERTSON, COMMONLY REFERRED TO
16 AS MIRANDA RIGHTS.

17 Q. I'M NOT GOING TO ASK YOU TO READ IT VERBATIM BUT
18 IF YOU WOULD, PASS IT UP TO THE COURT, PLEASE.

19 (THE CARD WAS GIVEN TO THE COURT)

20 Q. DETECTIVE MISLE, WHO WAS PRESENT WHEN YOU READ
21 THE RIGHTS TO JAMES ROBERTSON?

22 A. SPECIAL AGENT BOBBY BROWN WITH THE SOUTH
23 CAROLINA LAW ENFORCEMENT DIVISION.

24 Q. AND WHERE DID THIS TAKE PLACE?

25 A. THIS TOOK PLACE IN THE PHILADELPHIA POLICE

RALPH MISLE - DIRECT BY MR. POPE

1376

1 STATION.

2 Q. AND DID YOU RELAY EACH OF THOSE RIGHTS TO HIM
3 THAT'S LISTED ON THAT STATE'S EXHIBIT?

4 A. YES, SIR, I DID.

5 Q. DID HE INDICATE TO YOU THAT HE UNDERSTOOD THOSE
6 RIGHTS?

7 A. YES, SIR, HE DID.

8 Q. DID HE INDICATE BY SIGNATURE AND ORALLY THAT HE
9 INTENDED TO WAIVE HIS RIGHTS?

10 A. THAT'S CORRECT; YES, SIR.

11 Q. OKAY. COULD YOU TELL THE COURT ---

12 THE COURT: BEFORE WE GO ANY FURTHER, I NOTICE
13 THAT MR. HANCOCK IS NOT HERE.

14 MR. BOYD: YOUR HONOR, HE WENT OUT TO GET
15 SOMETHING. I CAN TAKE CARE OF WHAT'S GOING ON.

16 THE COURT: OKAY; GO AHEAD.

17 Q. WHEN HE WAIVED THESE RIGHTS TO YOU, DID YOU HAVE
18 A CHANCE TO OBSERVE HIS DEMEANOR?

19 A. YES, SIR, I DID. HE WAS IN FULL CONTROL OF HIS
20 FACULTIES, HE WAS ALERT. AS A MATTER OF FACT,
21 HE WAS VERY RELAXED SITTING IN A RELAXED MODE,
22 SLUMPED BACK IN HIS CHAIR, HIS FEET WERE OUT IN
23 FRONT OF HIM.

24 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF
25 ALCOHOL OR DRUGS?

RALPH MISLE - DIRECT BY MR. POPE

1377

1 A. NO, SIR, HE DID NOT.

2 Q. BASED ON YOUR INVESTIGATION AT THAT TIME, DID
3 YOU HAVE ANY KNOWLEDGE OF ANY PRIOR INVOLVEMENT
4 THAT HE HAD HAD WITH THE LAW?

5 A. YES, I HAD.

6 Q. AT THE TIME THAT YOU WERE TALKING TO HIM AND
7 READING HIM HIS RIGHTS, DID YOU OR OFFICER BROWN
8 PROMISE HIM ANYTHING OR THREATEN HIM IN ANY
9 MANNER OF LENIENCY OR ANYTHING OF THAT NATURE?

10 A. NO, SIR, THAT WAS NOT AN ISSUE.

11 Q. OKAY. AND BASED ON THAT AND BASED ON THE WAIVER
12 OF RIGHTS AND FROM WHAT YOU OBSERVED DID THIS
13 STATEMENT HE GAVE YOU APPEAR TO BE FREE AND
14 VOLUNTARY?

15 A. YES, SIR, IT WAS.

16 Q. WOULD YOU RELATE TO THE COURT THE SUBSTANCE OF
17 WHAT HE TOLD YOU AT THAT TIME?

18 A. AT THAT TIME HE TOLD ME THAT WHEN HE LEFT ROCK
19 HILL THAT HIS PARENTS WERE ALIVE.

20 MR. POPE: YOUR HONOR, AS TO THAT HEARING, THAT
21 WOULD BE THE ONLY STATEMENT THAT WILL BE TENDERED. AT THAT
22 POINT THE DEFENDANT ASSERTED HIS RIGHTS. I HAVE INSTRUCTED
23 THE OFFICER THAT THAT WILL NOT BE MENTIONED IN FRONT OF THE
24 JURY, THAT HE WOULD JUST MERELY RELATE WHAT THE STATEMENT
25 WAS. THAT WOULD BE AS TO THE FIRST STATEMENT, YOUR HONOR.

RALPH MISLE - DIRECT BY MR. POPE

1378

1 THE STATEMENT THAT WE INTEND TO INTRODUCE THROUGH DETECTIVE
2 MISLE'S TESTIMONY.

3 AS I INDICATED, AND I CAN DO IT ONE OF TWO WAYS,
4 THERE IS A SECOND STATEMENT BUT IN AN ABUNDANCE OF CAUTION
5 I WILL NOT USE IT IN THE CASE IN CHIEF. I THINK IT WOULD
6 BE PROPERLY ADMISSIBLE; HOWEVER, DUE TO THE CONCERN ABOUT
7 THE ATTORNEY BEING APPOINTED FOR THE EXTRADITION
8 PROCEEDINGS, IN AN ABUNDANCE OF CAUTION I WILL NOT GO
9 THERE. HOWEVER, IT WOULD BE SUBJECT TO USE AS CROSS
10 EXAMINATION SHOULD THE DEFENDANT TESTIFY TO THE CONTRARY IF
11 THE COURT DETERMINES IT'S A VOLUNTARY STATEMENT.

12 SO, AT THE APPROPRIATE TIME, WHETHER NOW OR AFTER
13 CROSS ON THE FIRST STATEMENT, I WILL BE GLAD TO GO ALSO
14 THROUGH THE SECOND STATEMENT, YOUR HONOR.

15 THE COURT: ANY CROSS EXAMINATION?

16 CROSS EXAMINATION BY

17 MR. BOYD:

18 Q. WHEN DID YOU TALK TO MR. ROBERTSON ON THAT
19 OCCASION?

20 A. IT WAS ON NOVEMBER 26TH, 1997, THE TIME WAS
21 APPROXIMATELY 6:45 P.M.

22 Q. 6:45 P.M.?

23 A. YES, SIR.

24 Q. AT THAT TIME DO YOU KNOW HOW LONG HE HAD ALREADY
25 BEEN IN CUSTODY OF LAW ENFORCEMENT?

RALPH MISLE - CROSS BY MR. BOYD

1379

1 A. HE WAS APPREHENDED ON THE 25TH AT APPROXIMATELY
2 8:30 P.M.

3 Q. 8:30 P.M.?

4 A. YES, SIR.

5 Q. SO, HE HAD BEEN IN CUSTODY APPROXIMATELY 22
6 HOURS?

7 A. YES, SIR.

8 Q. OKAY. DO YOU KNOW IF ANY OTHER LAW ENFORCEMENT
9 OFFICERS HAD TALKED TO HIM BEFORE THAT TIME?

10 A. YES, SIR, THE PHILADELPHIA POLICE DEPARTMENT HAD
11 TO SPEAK TO HIM.

12 Q. OF COURSE, YOU WEREN'T PRESENT DURING THOSE
13 CONVERSATIONS WERE YOU?

14 A. NO, SIR.

15 Q. DO YOU KNOW WHETHER OR NOT HE HAD SAID ANYTHING
16 ABOUT WANTING AN ATTORNEY TO THOSE OFFICERS?

17 A. I DON'T RECALL, SIR.

18 Q. YOU DON'T RECALL?

19 A. I DON'T RECALL. I'D HAVE TO REFRESH MY MEMORY
20 FROM MY NOTES, BUT JUST SITTING HERE THINKING
21 ABOUT IT, I CAN'T SAY.

22 Q. WELL, YOU WEREN'T THERE.

23 A. NO, I WASN'T THERE.

24 Q. SO, YOU DON'T KNOW WHAT TRANSPIRED ---

25 A. NO, AND IF THEY TOLD ME, I'VE FORGOTTEN WHAT WAS

RALPH MISLE - CROSS BY MR. BOYD

1380

1 SAID.

2 Q. THANK YOU. THAT'S ALL I HAVE.

3 MR. POPE: MAY IT PLEASE THE COURT, DO YOU WANT
4 TO ---

5 THE COURT: DO YOU WANT TO DO THAT NOW OR WAIT
6 UNTIL WE ---

7 MR. POPE: WE CAN WAIT UNTIL SOME LATER TIME,
8 YOUR HONOR, AND IF IT COMES UP, DO IT THEN.

9 THE COURT: I'D RATHER TAKE IT ONE AT A TIME.
10 LET'S JUST WAIT AND SEE IF AND WHEN THAT COMES UP, AND WE
11 WILL DEAL WITH IT AT THAT TIME.

12 MR. POPE: YOUR HONOR, IT WOULD COME UP, IF AT
13 ANY TIME, IT WOULD BE THE CROSS EXAMINATION OF THE
14 DEFENDANT.

15 THE COURT: ALL RIGHT. IF THAT'S THE CASE, WE
16 BETTER GO AHEAD AND DO IT NOW THEN. NO ONE ASKED TO SEE
17 THIS ON BEHALF OF THE DEFENSE, IT'S NUMBER 125 FOR I.D.,
18 I'M PLACING IT IN THE RECORD AS A COURT'S EXHIBIT FOR
19 PURPOSES OF THIS HEARING. IT'S THE SOUTH CAROLINA LAW
20 ENFORCEMENT DIVISION'S YOUR RIGHTS. DO YOU WANT TO SEE IT?

21 MR. BOYD: I'VE ALREADY SEEN IT, YOUR HONOR.

22 THE COURT: ALL RIGHT, LET'S GO INTO THE SECOND
23 ONE.

24 MR. POPE: YOUR HONOR, ALSO FOR THE SECOND ONE,
25 I'LL SHOW THE DEFENSE, I BELIEVE THEY HAVE A COPY OF THESE.

1381

REDIRECT EXAMINATION BY

MR. POPE:

Q. DETECTIVE MISLE, DID YOU ALSO ALONG WITH INVESTIGATOR TIM HAGER HAVE AN OPPORTUNITY TO TALK TO THE DEFENDANT AFTER HE ARRIVED HERE FROM EXTRADITION HERE AT YORK COUNTY?

A. YES, SIR, WE DID.

Q. AND IN DISCUSSING -- YOU HAD AN OPPORTUNITY TO APPROACH HIM AND DISCUSS THE CASE WITH HIM AT THAT TIME?

A. YES, SIR.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 126 FOR IDENTIFICATION AND ASK YOU TO TAKE A LOOK AT THAT AND TELL ME WHAT THAT IS.

A. THIS IS A WAIVER OF RIGHTS FORM THAT IS IN MY HANDWRITING AND IT WAS PRESENTED TO MR. ROBERTSON AT THE DETENTION CENTER ON THE SECOND DAY OF MARCH, 1998 AT APPROXIMATELY 8:30 IN THE MORNING -- 8:35 IN THE MORNING.

Q. OKAY. AND WHAT WAS THE CIRCUMSTANCES UNDER WHICH HE WAS APPROACHED AT THIS TIME?

A. LIEUTENANT HAGER AND MYSELF WANTED TO APPROACH MR. ROBERTSON WITH SOME INVESTIGATORY QUESTIONS IN RELATION TO THE CASE.

Q. AND WHERE DID THIS ACTUALLY TAKE PLACE?

RALPH MISLE - REDIRECT BY MR. POPE

1382

1 A. THIS TOOK PLACE IN AN INTERVIEW ROOM IN THE
2 DETENTION CENTER NEAR THE BOOKING AREA.

3 Q. IN THIS CASE HE WAS CLEARLY IN CUSTODY AS HE WAS
4 IN THE FIRST INSTANCE?

5 A. THAT'S CORRECT, HE WAS.

6 Q. AND WHO WAS PRESENT WHEN HE WAS READ THESE
7 RIGHTS?

8 A. MYSELF AND LIEUTENANT HAGER.

9 Q. DID YOU OR LIEUTENANT HAGER THREATEN HIM OR
10 PROMISE HIM ANYTHING OR GIVE HIM A HOPE OF
11 REWARD IF HE WOULD COOPERATE?

12 A. NO, SIR.

13 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF
14 ALCOHOL OR DRUGS OR ANYTHING OF THAT NATURE?

15 A. NO, SIR.

16 Q. THE RIGHTS THAT YOU READ TO HIM, DID HE APPEAR
17 TO UNDERSTAND THEM?

18 A. YES, SIR. I ROUTINELY READ EACH ONE
19 INDIVIDUALLY AND I ASK FOR ACKNOWLEDGEMENT FOR
20 AN UNDERSTANDING OF EACH.

21 Q. AND DID HE SIGN ON THERE THAT HE UNDERSTOOD
22 THOSE RIGHTS?

23 A. YES, SIR, HE DID.

24 Q. AND DID HE WAIVE THOSE RIGHTS TO YOU?

25 A. YES, SIR, HE DID.

RALPH MISLE - REDIRECT BY MR. POPE

1383

1 Q. NOW THERE IS A PLACE FOR A WRITTEN STATEMENT,
2 DID HE GIVE YOU A WRITTEN STATEMENT?

3 A. NO, HE DID NOT GIVE US A WRITTEN STATEMENT.

4 Q. I'LL HAND THIS UP TO THE COURT, IT WILL BE
5 STATE'S EXHIBIT 126. DETECTIVE MISLE, IF YOU
6 COULD, RELATE TO THE COURT THE SUBSTANCE OF THE
7 CONVERSATION THAT WAS HAD WITH THE DEFENDANT.

8 A. I'LL READ FROM THIS FOLLOW-UP, MR. POPE.
9 SUBJECT ROBERTSON WAS AT YORK COUNTY DETENTION
10 CENTER WHEN HE WAS INTERVIEWED BY LIEUTENANT
11 HAGER AND DETECTIVE MISLE. SUBJECT WAS ADVISED
12 OF HIS RIGHTS AND STATED TO OFFICERS THAT HE
13 WOULD TALK WITH US BUT THERE WERE CERTAIN
14 ASPECTS OF THE CASE THAT HE WOULD NOT DISCUSS.
15 WE COVERED ALL ASPECTS OF HIS PRIOR
16 INCARCERATION, HABITS IN REFERENCE TO THE USE OF
17 ALCOHOL AND DRUGS AND TO THE RELATIONSHIP WITH
18 HIS PARENTS. HE STATED TO US THAT DURING HIS
19 TIME IN PRISON HIS MOM WOULD COME TO SEE HIM
20 OFTEN AND WOULD SEND HIM ITEMS VIA THE MAIL
21 SYSTEM. THESE ITEMS WOULD CONSIST OF WRITING
22 PADS AND PENS. HE STATED THAT HIS MOM WOULD
23 VISIT ON A REGULAR BASIS AND THAT THEIR
24 RELATIONSHIP WAS PRETTY GOOD. HE STATED THAT HE
25 AND HIS FATHER DID NOT GET ALONG VERY WELL BUT

RALPH MISLE - REDIRECT BY MR. POPE

1384

1 SEEMED TO HAVE WORKED OUT A SOLUTION TO THEIR
2 RELATIONSHIP. HE STATED THAT HE WAS LOOKING
3 FORWARD TO MOVING IN WITH HIS PARENTS AND THAT
4 THINGS WERE WORKING OUT BETWEEN THEM. HE WOULD
5 NOT TALK ABOUT THE INVESTIGATION EXCEPT TO SAY
6 THAT THERE WERE ONLY TWO PEOPLE IN THE WORLD
7 THAT KNEW WHAT WENT ON IN THE HOUSE ON THAT
8 MORNING AND THAT WAS MEREDITH MOON AND HIMSELF.
9 HE STATED THE REAL TRUTH OF THE NIGHT WOULD COME
10 OUT AT THE RIGHT TIME.

11 AND THERE IS A FOLLOW-UP STATEMENT ALSO PREPARED
12 STEMMING FROM THE SAME INTERVIEW. DURING OUR
13 CONVERSATION WITH MR. ROBERTSON THE QUESTION WAS
14 ASKED OF HIM HOW HE FELT THE ITEMS FROM HIS HOME
15 HAD COME TO BE FOUND AT A DUMPSTER AT A MARYLAND
16 REST AREA. ROBERTSON STATED TO OFFICERS THAT HE
17 DID NOT KNOW WHAT WAS IN THE BAG. THAT MEREDITH
18 HAD JUST TOLD HIM TO GET THE BAG OUT OF THE
19 TRUNK OF THE CAR AND THROW IT AWAY. HE STATED
20 THAT IT WAS A PLASTIC BAG AND THAT WAS ALL HE
21 KNEW ABOUT IT. HE DID NOT KNOW HOW OR WHY IT
22 GOT INTO THE TRUNK OF THE CAR.

23 Q. I NOTICE THAT SECOND MEMORANDUM OF THE INTERVIEW
24 WAS DATED 3-28, THE FIRST DATED 3-2. WAS THIS
25 TWO DIFFERENT INTERVIEWS?

RALPH MISLE - REDIRECT BY MR. POPE

1385

1 A. NO, SIR, THAT'S A TYPO. IF YOU NOTICE, THE TIME
2 IS IDENTICAL, BOTH TIMES ARE 08:35 IN THE
3 MORNING. IT'S JUST A TYPO.

4 Q. SO, IT'S THE SAME DATE AS THE EXHIBIT THE COURT
5 HAS?

6 A. YES, SIR. WE RAN OUT OF SPACE ON THIS ONE AND I
7 CONTINUED ON THE OTHER PAGE.

8 Q. AGAIN, DID YOU THREATEN THE DEFENDANT OR PROMISE
9 HIM ANY HOPE OF REWARD FOR HIM TO GIVE YOU THIS
10 STATEMENT?

11 A. NO, SIR.

12 Q. YOUR HONOR, THAT WOULD BE THE PROFFER AS FAR AS
13 THIS GOES. BUT IT IS THE STATE'S INTENT TO
14 INTRODUCE THE FIRST ONE AND NOT TO GO INTO THE
15 SECOND ONE IN THIS PHASE.

16 THE COURT: ALL RIGHT, THE SECOND ONE IS SUPPOSED
17 TO BE DATED 3-22?

18 A. THESE STATEMENTS HERE, YOUR HONOR?

19 THE COURT: WELL, I DON'T HAVE THE STATEMENTS,
20 I'VE JUST GOT HIS MIRANDA FORM.

21 A. THE MIRANDA RIGHTS HAS THE RIGHT DATE, 3-2-98;
22 THAT IS THE CORRECT DATE.

23 THE COURT: OKAY. ANY QUESTIONS BY MR. BOYD?

24 MR. BOYD: IF THE STATE IS NOT SEEKING TO
25 INTRODUCE THOSE STATEMENTS, I HAVE NO QUESTIONS.

1 THE COURT: WELL, TO BE CLEAR, THEY MAY AT SOME
2 POINT WISH TO USE THEM IN CROSS EXAMINATION.

3 MR. BOYD: I UNDERSTAND THAT.

4 THE COURT: YOU DO? ALL RIGHT. YOU MAY STEP
5 DOWN. I DON'T WANT TO PUT A SIGN ON THIS DOOR SAYING DO
6 NOT ENTER BUT I THINK JUST ABOUT EVERYBODY IN THIS BUILDING
7 KNOWS THAT THERE IS A TRIAL GOING ON IN HERE. AND I DON'T
8 KNOW WHO THEY ARE IDENTIFIED WITH, BUT IF I FIND PEOPLE
9 COMING IN AND OUT OF THAT DOOR AND THEY KNOW THAT THE TRIAL
10 IS GOING ON, I'M GOING TO DO SOMETHING ABOUT IT. SO, IF
11 ANYBODY IS CONNECTED WITH EITHER SIDE, PLEASE LET THEM KNOW
12 IF THEY HAVE TO COME IN AND OUT DURING THE TRIAL TO USE
13 THAT BACK DOOR. IT IS EXTREMELY DISTRACTING.

14 ALL RIGHT, AS TO THE FIRST ---

15 MR. BOYD: YOUR HONOR, ARE YOU MAKING A RULING?

16 THE COURT: OH, NO, GO AHEAD, DO YOU HAVE ANY
17 WITNESSES YOU WANT TO PUT UP?

18 MR. BOYD: CAN I CONFER WITH MR. HANCOCK AND MY
19 CLIENT FOR JUST A SECOND?

20 THE COURT: CERTAINLY.

21 MR. BOYD: YOUR HONOR AT THIS TIME FOR PURPOSES
22 OF THE DENNO HEARING, I WOULD LIKE TO CALL MR. ROBERTSON TO
23 THE WITNESS STAND FOR THAT LIMITED PURPOSE.

24 THE COURT: MR. ROBERTSON, BEFORE YOU DO THAT, I
25 WANT TO ADVISE YOU THAT YOU, OF COURSE, HAVE A RIGHT TO

1387

1 REMAIN SILENT. THAT IS, YOU HAVE A RIGHT NOT TO MAKE ANY
2 STATEMENT OR TESTIFY ABOUT THIS MATTER TO ANYONE. YOU HAVE
3 AN ABSOLUTE CONSTITUTIONAL RIGHT TO REMAIN SILENT.

4 IF YOU WAIVE THAT RIGHT AND IF YOU TESTIFY, THEN
5 WHATEVER YOU SAY CAN AND WILL BE USED AGAINST YOU IN A
6 TRIAL INVOLVING THESE ISSUES. DO YOU UNDERSTAND THAT?
7 (AFTER A BRIEF PAUSE WHILE THE DEFENDANT CONFERRED WITH
8 COUNSEL.)

9 MR. ROBERTSON: I UNDERSTAND, YOUR HONOR.

10 THE COURT: I WILL TELL YOU THAT I AM GOING TO
11 RESTRICT ANY CROSS EXAMINATION AT THIS POINT ONLY TO ISSUES
12 THAT ARE RAISED IN THIS STATEMENT. I'LL TELL YOU THAT.
13 BUT I WANT YOU TO BE WELL AWARE THAT IF YOU WAIVE THAT
14 RIGHT TO TESTIFY -- THE RIGHT TO REMAIN SILENT AND TESTIFY,
15 YOU WILL BE SUBJECT TO CROSS EXAMINATION BY THE STATE AND
16 WHATEVER YOU SAY CAN BE USED AGAINST YOU IN THIS TRIAL. DO
17 YOU UNDERSTAND THAT?

18 MR. ROBERTSON: I UNDERSTAND, YOUR HONOR.

19 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT ANY
20 OF THAT?

21 MR. ROBERTSON: NO, YOUR HONOR.

22 THE COURT: MR. BOYD, MR. HANCOCK, DO YOU BELIEVE
23 HE UNDERSTANDS IT?

24 MR. BOYD: YES, SIR.

25 MR. HANCOCK: YES, SIR.

1 THE COURT: YOU MAY PROCEED.

2 JAMES D. ROBERTSON, BEING FIRST DULY SWORN,
3 TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY

5 MR. BOYD:

6 Q. STATE YOUR NAME, PLEASE.

7 A. JAMES DEJARNETTE ROBERTSON.

8 Q. NOW, I WANT TO TAKE YOU BACK TO THE TIME WHEN
9 YOU WERE ARRESTED IN PHILADELPHIA AND THE TIME
10 BEFORE CAPTAIN MISLE QUESTIONED YOU, OKAY?

11 A. ALL RIGHT.

12 Q. AT THAT POINT WERE YOU ASKED ANY QUESTIONS BY
13 ANY LAW ENFORCEMENT IN PHILADELPHIA?

14 A. YES, I WAS.

15 Q. AT ANY POINT DURING THE QUESTIONING BY THE
16 PHILADELPHIA OFFICERS, DID YOU SAY ANYTHING
17 ABOUT WANTING AN ATTORNEY?

18 A. I RESPONDED TO A QUESTION BY SAYING I WOULD NOT
19 ANSWER ANY MORE QUESTIONS WITHOUT REPRESENTATION
20 OF AN ATTORNEY.

21 Q. THANK YOU, THAT'S ALL THE -- WAIT, LET ME ASK
22 YOU ONE MORE QUESTION. WAS THAT BEFORE CAPTAIN
23 MISLE QUESTIONED YOU?

24 A. YES, IT WAS.

25 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

1389

THE COURT: CROSS EXAMINATION?

CROSS EXAMINATION BY

MR. POPE:

Q. MR. ROBERTSON, WHO WAS THE OFFICER THAT DID THE QUESTIONING?

A. THE PHILADELPHIA OFFICER?

Q. YES, SIR.

A. I DON'T KNOW HIS NAME.

Q. DID HE READ YOU YOUR RIGHTS?

A. YES, HE DID.

Q. WHEN DID THIS ACTUALLY TAKE PLACE?

A. WITHIN A COUPLE OF HOURS OF BEING ARRESTED.

Q. AND WHERE WERE YOU AT WHEN THIS TOOK PLACE?

A. AT THE LOCAL PRECINCT, HOMICIDE DIVISION.

Q. AND YOU SAID THAT YOU TOLD HIM THAT YOU DIDN'T WANT TO ANSWER ANY MORE QUESTIONS UNTIL YOU GOT A LAWYER, IS THAT -- I DON'T WANT TO PUT WORDS IN YOUR MOUTH, IS THAT WHAT YOU SAID?

A. I TOLD HIM THAT I UNDERSTOOD MY RIGHTS AND THAT I WOULD ANSWER ANY QUESTIONS THAT I WANTED TO ANSWER AND I ANSWERED A FEW QUESTIONS AND WHEN I GOT TO A POINT WHERE I WANTED TO BE REPRESENTED BY AN ATTORNEY, I SIMPLY TOLD HIM THAT I WAS GOING TO STOP ANSWERING QUESTIONS UNTIL I WAS REPRESENTED.

JAMES D. ROBERTSON - CROSS BY MR. POPE

1390

- 1 Q. OKAY AND WHAT QUESTIONS DID YOU ANSWER TO HIM?
- 2 A. BASIC QUESTIONS. WHERE DO YOU LIVE; WHERE DID
- 3 YOU COME FROM; JUST BASIC STUFF.
- 4 Q. DID YOU ANSWER ANY QUESTIONS CONCERNING THIS
- 5 CASE?
- 6 A. NOT THAT I REMEMBER, BASIC STUFF, MY PARENTS'
- 7 NAMES.
- 8 Q. DID YOU TELL THEM ANYTHING ABOUT DRIVING UP TO
- 9 PHILADELPHIA?
- 10 A. I MIGHT HAVE, BUT NOT THAT I REMEMBER.
- 11 Q. DID YOU TELL THEM ANYTHING ABOUT THE MARYLAND
- 12 DUMPSTER?
- 13 A. NO, SIR.
- 14 Q. DID YOU TELL THEM ANYTHING ABOUT USING THE
- 15 CREDIT CARD BACK AT THE PEACH STAND?
- 16 A. I DON'T BELIEVE SO.
- 17 Q. DID YOU TELL THEM THAT YOUR PARENTS WERE ALIVE
- 18 WHEN YOU LEFT THE HOUSE?
- 19 A. I'M NOT SURE.
- 20 Q. SHOW ME THE INDIVIDUAL -- WAS THERE ONE
- 21 INDIVIDUAL OR MORE THAN ONE INDIVIDUAL THAT READ
- 22 YOU YOUR RIGHTS AND QUESTIONED YOU?
- 23 A. I WAS QUESTIONED BY A MINIMUM OF THREE HOMICIDE
- 24 DETECTIVES.
- 25 Q. OKAY. CAN YOU GIVE ME A PHYSICAL DESCRIPTION OF

1391

1 WHAT THEY LOOKED LIKE?

2 A. NO, I CAN'T.

3 Q. WERE THEY TALL OR SHORT?

4 A. I CAN'T REMEMBER, IT'S BEEN 15 MONTHS AGO.

5 Q. BLACK OR WHITE?

6 A. WHITE, I BELIEVE.

7 Q. YOU BELIEVE?

8 A. LIKE I SAID, IT'S BEEN A LONG TIME.

9 Q. I BEG THE COURT'S INDULGENCE?

10 (AFTER A BRIEF PAUSE.)

11 Q. NO FURTHER QUESTIONS.

12 THE COURT: ANYTHING ELSE?

13 MR. BOYD: YOU MAY COME DOWN.

14 THE COURT: YOU MAY STEP DOWN. ARGUMENTS ON
15 BEHALF OF THE STATE?

16 MR. POPE: YOUR HONOR, WE'VE GOT NO INDICATION
17 FROM THE FILE THAT I'M AWARE OF OF ANY PRIOR QUESTIONING,
18 ANY QUESTIONING OF THIS DEFENDANT OTHER THAN WHAT I BROUGHT
19 FORTH TO THE COURT TODAY. THERE IS NO WAY OF FOLLOWING UP
20 ON THAT BASED ON THE DESCRIPTION OR LACK OF DESCRIPTION OF
21 THEM.

22 THE COURT: THE DEFENSE?

23 MR. BOYD: YOUR HONOR, IT'S UNCONTRADICTED
24 TESTIMONY THAT MR. ROBERTSON INVOKED HIS RIGHT TO COUNSEL.
25 OF COURSE, UNDER ARIZONA VERSUS EDWARDS THIS STATEMENT

1 CANNOT COME INTO EVIDENCE.

2 THE COURT: I DO FIND THAT UNDER EDWARDS VERSUS
3 ARIZONA THAT MR. ROBERTSON, PRIOR TO THE INTERVIEW OF
4 OFFICER MISLE, DID ASSERT HIS RIGHT TO COUNSEL AND THAT
5 THEREAFTER ONLY INSTANCES IN WHICH HE, THAT IS MR.
6 ROBERTSON, INITIATED A CONVERSATION OR COMMUNICATION WAS
7 THAT REQUEST WAIVEABLE. AND I FIND THAT THERE IS NO
8 EVIDENCE THAT THAT OCCURRED. SO, I WILL NOT ALLOW EITHER
9 OF THE EXHIBITS IN -- EITHER OF THE STATEMENTS.

10 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
11 WE WILL OBVIOUSLY HAVE THE PHILADELPHIA OFFICERS THAT WE
12 KNOW WERE TRULY INVOLVED IN THIS CASE. WOULD I BE ALLOWED
13 TO PURSUE THAT WITH THEM AT THE APPROPRIATE TIME AS TO
14 WHETHER THEY HAD ACTUALLY DONE ANY QUESTIONING OF HIM?

15 THE COURT: WE'LL HAVE TO CROSS THAT BRIDGE IF WE
16 GET TO IT.

17 MR. POPE: I WOULD JUST RESERVE THAT OPPORTUNITY,
18 YOUR HONOR.

19 THE COURT: ALL RIGHT. ANYTHING ELSE BEFORE WE
20 GET THE JURY IN?

21 MR. POPE: YOUR HONOR, WE HAVE PRE-MARKED A
22 NUMBER OF ITEMS AND THERE WERE SOME THAT PHILADELPHIA HAD
23 THAT THEY HAD NOT SEEN AND I'VE SHOWN THEM TO MR. HANCOCK
24 AND WE'RE GOING TO HAVE THEM PRE-MARKED ALSO.

25 THE COURT: OKAY. BRIEFLY, THE SLED DID THEIR

1393

1 ORIENTATION OVER LUNCH AND THERE ARE A COUPLE OF ITEMS TO
2 DISCUSS AND MR. FRADELA CAN HELP ME IF I OVERLOOK ONE.
3 BUT, ONE, THERE WAS A REQUEST BY SOMEONE WHETHER OR NOT AS
4 READING MATERIAL THEY COULD HAVE THEIR BIBLE. IS THERE ANY
5 OBJECTION TO THAT FROM THE STATE?

6 MR. POPE: IT'S MY UNDERSTANDING THAT WE'VE NO
7 PROBLEM WITH THAT OTHER THAN IN THE JURY ROOM DURING
8 DELIBERATION.

9 THE COURT: ANY FROM THE DEFENSE?

10 MR. BOYD: NO OBJECTION.

11 THE COURT: ALL RIGHT, THERE WAS A REQUEST OF
12 WHAT TYPE READING MATERIAL OTHER THAN THAT THEY COULD HAVE.
13 I WAS TOLD THAT SLED SUGGESTED SOMETHING LIKE REDBOOK, AND
14 THAT DID NOT GET A VERY RESOUNDING RESPONSE FROM THE MALE
15 POPULATION. IS THERE ANY OBJECTION TO SUCH THINGS AS, NOT
16 TIME, NOT NEWSWEEK, NOT U.S. WORLD REPORTS, BUT SUCH THINGS
17 AS SPORTS ILLUSTRATED, FIELD AND STREAM, REDBOOK, MCCALL'S,
18 IF THAT'S STILL PUBLISHED, THOSE TYPE BOOKS AFTER HAVING
19 BEEN CENSORED BY SLED AND REMOVAL OF ANYTHING THAT MAY
20 PERTAIN TO ISSUES THAT WOULD BE DEVELOPED IN THIS TRIAL?

21 ANY OBJECTION FROM THE STATE?

22 MR. POPE: NO, SIR, YOUR HONOR. AS A MATTER OF
23 FACT, EVEN AS TO OTHER MAGAZINES AS LONG AS SLED WOULD
24 REVIEW THEM FOR MATTERS THAT MIGHT PERTAIN TO THIS CASE, I
25 DON'T HAVE ANY OBJECTION TO ANY.

1 THE COURT: THE DEFENSE?

2 MR. BOYD: NO OBJECTION.

3 THE COURT: WE'VE HAD ALSO THE USUAL QUESTION
4 ABOUT RELIGIOUS SERVICES ON SUNDAY. IN THE PAST WHAT WE
5 HAVE DONE ON SUNDAY MORNING IS TO ALLOW A DEVOTIONAL OF
6 SOME TYPE, OF COURSE MONITORED BY SLED, BUT USUALLY PUT ON
7 BY THE JURORS WHO WISH TO PARTICIPATE. IS THERE ANY
8 OBJECTION TO THAT FROM THE STATE?

9 MR. POPE: NO OBJECTION FROM THE STATE.

10 THE COURT: THE DEFENSE?

11 MR. BOYD: NO OBJECTION.

12 THE COURT: AND FINALLY, AND I WILL DO THE SAME,
13 I DON'T WANT TO BE ACCUSED OF BEING A SEXIST AND I WILL
14 CERTAINLY DO THE SAME IF WE GET SOME SIMILAR TYPE REQUEST
15 FROM FEMALE JURORS, BUT SOME OF THE MALE JURORS HAVE
16 REQUESTED THE RIGHT TO WATCH THE NCAA TOURNAMENT.

17 THE ONLY CONCERN THAT SLED HAD AND THAT I HAVE IS
18 THAT IT IS ON A LOCAL STATION AND OCCASIONALLY THEY DO HAVE
19 TUNE IN AT 11:00 FOR NEWS.

20 I HAVE SUGGESTED, AND I THINK WE CAN HANDLE THAT
21 BY ALLOWING THEM TO WATCH THESE GAMES AS LONG AS IT IS
22 MONITORED BY SOMEONE FROM SLED AND AT ANY TIME WHEN IT'S
23 OBVIOUS WHEN IT COMES ON THAT THEY ARE GETTING READY TO
24 TELL US ABOUT NEWS AT 11:00 THAT IT BE MUTED.

25 ANY PROBLEM WITH THAT FROM THE STATE?

1395

1 MR. POPE: NO OBJECTION, YOUR HONOR. YOU'RE
2 TALKING ABOUT THE LEAD INTO THE NEWS AS OPPOSED TO ---

3 THE COURT: WELL, USUALLY THEY SHOW A LITTLE
4 THING -- THEY USUALLY HAVE SOME CATCH PHRASE TO CATCH
5 EVERYBODY'S ATTENTION AND THEN THEY SAY SORT OF FILM AT
6 11:00 SORT OF THING.

7 MR. POPE: NO OBJECTION.

8 MR. BOYD: NO OBJECTION.

9 THE COURT: DOES THAT COVER IT?

10 AGENT FRADELLA: YES, SIR. THANK YOU, YOUR
11 HONOR.

12 THE COURT: THANK YOU. ALL RIGHT, BRING IN THE
13 JURY.

14 IN THE PRESENCE OF THE JURY:

15 THE COURT: MEMBERS OF THE JURY PANEL, WELCOME
16 BACK. WE HAVE DISCUSSED SOME OF THE ISSUES THAT CAME UP
17 DURING YOUR SECURITY PEOPLE ORIENTATION. I THINK WE ARE
18 ABLE TO ADDRESS POSITIVELY EACH OF THOSE. THEY CAN TELL
19 YOU MORE ABOUT THAT WHEN THEY MEET WITH YOU. I WON'T TAKE
20 UP OUR TIME GOING OVER IT, BUT WE HAVE TALKED ABOUT IT; I
21 HAVE TALKED ABOUT IT WITH THE ATTORNEYS AND WE THINK WE
22 WILL SMOOTH SOME THINGS OUT FOR YOU.

23 NOW, CALL YOUR NEXT WITNESS.

24 MR. POPE: THE STATE WOULD CALL CORONER DOUG
25 MCKOWN.

DOUGLAS P. MCKOWN - DIRECT BY MR. POPE

1396

THE COURT: COME AROUND AND BE SWORN, PLEASE.

DOUGLAS P. MCKOWN, BEING FIRST DULY SWORN,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. MR. MCKOWN, IF YOU COULD, STATE YOUR NAME AND
SPELL YOUR LAST NAME FOR THE COURT REPORTER,
PLEASE.

A. DOUGLAS PAUL MCKOWN, M-C-K-O-W-N.

Q. COULD YOU TELL THE JURY YOUR OCCUPATION PLEASE,
SIR?

A. I'M THE ELECTED COUNTY CORONER FOR THE COUNTY OF
YORK, SOUTH CAROLINA.

Q. CAN YOU TELL THEM EXACTLY WHAT IT IS YOU DO FROM
DAY TO DAY, WHAT YOUR JOB DUTIES ARE?

A. YES, SIR. OUR JOB INVOLVES THE INVESTIGATION OF
SUSPICIOUS OR OTHERWISE UNATTENDED DEATHS THAT
OCCUR THROUGHOUT THE COUNTY AND THAT IS PROVIDED
BY THE LAWS AND THE STATUTES OF THE STATE OF
SOUTH CAROLINA.

Q. I'M GOING TO CALL YOUR ATTENTION BACK TO
NOVEMBER 25TH OF 1997. WERE YOU THE CORONER AT
THAT TIME?

A. YES, SIR, I WAS.

Q. DID YOU HAVE THE OPPORTUNITY TO GO TO 2506

DOUGLAS P. MCKOWN - DIRECT BY MR. POPE

1397

1 WESTMINSTER DRIVE IN ROCK HILL HERE IN YORK
2 COUNTY?

3 A. YES, SIR, I DID.

4 Q. COULD YOU TELL THE JURY WHAT THE PURPOSE OF YOU
5 GOING THERE WAS?

6 A. WE HAD RECEIVED A CALL THAT THERE HAD BEEN SOME
7 SORT OF UNNATURAL DEATH AT THAT RESIDENCE. I
8 RESPONDED TO THAT RESIDENCE IN MY CAPACITY AS
9 CORONER.

10 Q. COULD YOU TELL THE JURY APPROXIMATELY WHAT TIME
11 YOU ARRIVED?

12 A. I HAVEN'T COMMITTED IT TO MY MEMORY; IT WAS
13 SOMEWHERE AROUND 11:20 OR 11:30, SOMEWHERE
14 AROUND THERE.

15 Q. AND THIS IS IN THE MORNING HOURS?

16 A. IN THE MORNING HOURS, YES, SIR.

17 Q. COULD YOU RELATE TO THE JURY WHAT YOU DID WHEN
18 YOU GOT THERE?

19 A. WHEN I GOT THERE, I WAS INITIALLY MET BY THE
20 OFFICER THAT WAS PATROLLING THE SCENE THERE. WE
21 WAITED MAYBE A LITTLE WHILE. I WANTED TO
22 ASCERTAIN AS TO WHETHER THERE HAD BEEN
23 PARAMEDICS ON THE SCENE THAT COULD PLACE CARDIAC
24 MONITOR ON THE DECEASED VICTIMS TO DETERMINE IF
25 THEY WERE DEAD ON PARAMEDIC ARRIVAL. THAT HAD

DOUGLAS P. MCKOWN - DIRECT BY MR. POPE

1398

1 NOT HAPPENED. SO, THEREFORE, IT WAS OUR POLICY
2 THAT WE WANTED TO ENSURE THAT BOTH OF THE
3 VICTIMS WERE DEAD SO AT THAT TIME I MADE ENTRY
4 INTO THE RESIDENCE, CHECKED IN WITH THE CRIME
5 SCENE TECHNICIAN THAT HAD THE LOG AND I ENTERED
6 THE RESIDENCE AT THAT TIME.

7 Q. OKAY. AND HOW DID YOU ENTER THE RESIDENCE?

8 A. WE ENTERED THROUGH THE BACK, THE LOWER LEVEL OF
9 THE HOUSE.

10 Q. DID YOU ULTIMATELY GO UPSTAIRS WHERE THE BODIES
11 WERE LOCATED?

12 A. YES, SIR.

13 Q. RELATE TO THE JURY, IF YOU COULD FIRST WHAT YOU
14 ENCOUNTERED IN THE HALL AS FAR AS MR. ROBERTSON.

15 A. WHEN WE CAME OUT OF THE DOOR, I BELIEVE IT CAME
16 UP THE STAIRS. IT CAME INITIALLY TO THE HALLWAY
17 RIGHT WHERE MR. ROBERTSON WAS. HE WAS LYING
18 FACE DOWN THERE IN THE HALLWAY.

19 Q. IF YOU COULD DESCRIBE TO THE JURY AND TELL US
20 WHAT YOU ACTUALLY DID AS PART OF YOUR OFFICIAL
21 TYPE DUTIES.

22 A. IT WAS VERY EVIDENT AT THE TIME OF ENTERING THE
23 HALLWAY THAT MR. ROBERTSON WAS DEAD. AT THAT
24 TIME I WANTED TO TRY TO GET SOME FEEL FOR WHAT
25 HAD HAPPENED. IT WAS VERY EVIDENT THAT IT WAS A

DOUGLAS P. MCKOWN - DIRECT BY MR. POPE

1399

1 TRAUMATIC DEATH. AND, BASICALLY, I JUST MADE A
2 FEW CHECKS FOR SIGNS OF LIFE. THERE WERE NONE.
3 I CHECKED FOR HEAT AND COOLNESS OF THE BODY.
4 THE BODY WAS COOL TO THE TOUCH ON THE BACK AND
5 HIS BODY WAS SOMEWHAT WARM UNDERNEATH. AND I
6 CHECKED THE RIGIDITY OF HIS LEGS AND THEY WERE
7 STILL SOMEWHAT FLEXIBLE.

8 Q. WHEN YOU OBSERVED HIM, EXPLAIN TO THE JURY WHAT
9 WAS HIS PHYSICAL POSITION AND CONDITION AS YOU
10 OBSERVED IT?

11 A. AS I OBSERVED IT, HE WAS SOMEWHAT FACE DOWN WITH
12 HIS HANDS, I BELIEVE, UP BY HIS HEAD. THERE WAS
13 A TREMENDOUS AMOUNT OF BLOOD ABOUT THE RESIDENCE
14 ON THE WALLS. I REMEMBER THAT. THERE WAS A
15 TREMENDOUS POOL OF BLOOD AROUND HIS HEAD. I WAS
16 TRYING TO BE CAREFUL NOT TO STEP IN THOSE TO
17 CONTAMINATE THE CRIME SCENE. AND, YOU KNOW, I
18 JUST NOTICED THE BLOOD SPLATTER ON THE WALLS AND
19 ON THE CEILING.

20 Q. OKAY. DID THERE COME A TIME WHEN YOU FINISHED
21 WITH HIM AND YOU PROCEEDED ON INTO THE BEDROOM
22 WHERE TERRY ROBERTSON WAS LOCATED?

23 A. YES. I HAD TO STEP OVER HIS HEAD TO MAKE MY WAY
24 DOWN THE HALLWAY. HIS HEAD WAS FACING THE
25 ENTRANCE TO WHERE THE SECOND VICTIM WAS, MRS.

DOUGLAS P. MCKOWN - DIRECT BY MR. POPE

1400

1 ROBERTSON. I HAD TO STEP OVER HIM AND PROCEED
2 TO THE BACK BEDROOM WHERE WE FOUND HER.

3 Q. AND CAN YOU DESCRIBE HER CONDITION AND
4 APPEARANCE WHEN YOU ARRIVED THERE?

5 A. MUCH AS WITH THE FIRST VICTIM, IT WAS A VERY --
6 I COULD TELL RIGHT AWAY IT WAS A VERY TRAUMATIC
7 DEATH DUE TO THE INJURIES THAT WERE ON THE
8 VICTIM, THE AMOUNT OF BLOOD THAT WAS PRESENT. I
9 BELIEVE THERE WAS A BROKEN KNIFE LAYING THERE ON
10 THE BED. AND, YOU KNOW, MY MAIN CONCERN WAS
11 THAT WE HAD A LOT OF WORK AHEAD OF US. WE DIDN'T
12 WANT TO CONTAMINATE THE SCENE, SO I WANTED TO DO
13 INITIAL CHECKS TO MAKE SURE THAT INDEED BOTH OF
14 THE VICTIMS WERE DEAD.

15 HAVING DONE THAT, YOU KNOW, MY BEST INTEREST WAS
16 TO BACK OUT OF THE SCENE SO THAT I DID NOT
17 CONTAMINATE OR INTERFERE WITH ANYTHING THAT LAW
18 ENFORCEMENT WOULD HAVE TO DO TO TRY TO FIND OUT
19 WHAT HAD HAPPENED.

20 Q. AND IN YOUR OFFICIAL CAPACITY, DID YOU DETERMINE
21 SIGNS OF LIFE IN EITHER EARL OR TERRY?

22 A. I DID, AND THERE WAS NONE ON EITHER ONE OF THEM.

23 Q. THANK YOU, SIR. ANSWER ANY QUESTIONS THE
24 DEFENSE MAY HAVE.

25 MR. HANCOCK: WE HAVE NO QUESTIONS, YOUR HONOR.

1401

1 THE COURT: YOU CAN STEP DOWN. THANK YOU; WE
2 APPRECIATE YOUR TIME, AND YOU CAN FEEL FREE TO LEAVE.

3 MR. POPE: WE WOULD ASK THAT THIS WITNESS BE
4 EXCUSED, YOUR HONOR.

5 THE COURT: YOU CAN BE EXCUSED. CALL YOUR NEXT
6 WITNESS.

7 MR. POPE: THE STATE WOULD CALL CAPTAIN RALPH
8 MISLE TO THE STAND.

9 RALPH MISLE, BEING FIRST DULY SWORN, TESTIFIED AS
10 FOLLOWS:

11 DIRECT EXAMINATION BY

12 MR. POPE:

13 Q. CAPTAIN MISLE, IF YOU WOULD, STATE YOUR NAME AND
14 OCCUPATION TO THE JURY PLEASE, SIR.

15 A. YES, SIR. MY NAME IS RALPH MISLE; I'M A CAPTAIN
16 WITH THE YORK COUNTY SHERIFF'S DEPARTMENT
17 DETENTION DIVISION.

18 Q. AND COULD YOU SPELL YOUR LAST NAME FOR THE COURT
19 REPORTER PLEASE, SIR?

20 A. M-I-S-L-E.

21 Q. CAPTAIN MISLE, HOW LONG HAVE YOU BEEN WITH THE
22 SHERIFF'S DEPARTMENT?

23 A. I'VE BEEN WITH THE SHERIFF'S DEPARTMENT FOR LIKE
24 10 YEARS, AND 25 YEARS TOTAL IN LAW ENFORCEMENT.

25 Q. AND HOW LONG HAVE YOU BEEN IN YOUR CURRENT

RALPH MISLE - DIRECT BY MR. POPE

1402

1 CAPACITY AS CAPTAIN OVER THE DETENTION CENTER?

2 A. SINCE MAY OF 1998, MAY 1ST.

3 Q. I'LL CALL YOUR ATTENTION BACK TO NOVEMBER 25TH,
4 1997. COULD YOU TELL THE JURY WHAT YOUR DUTIES
5 WERE THEN?

6 A. I WAS ASSIGNED TO THE CRIMINAL INVESTIGATION
7 DIVISION OF THE YORK COUNTY SHERIFF'S
8 DEPARTMENT, CRIMES AGAINST PERSONS.

9 Q. AND DID YOU HAVE A PARTNER YOU WORKED WITH IN
10 THAT DIVISION?

11 A. YES. WELL, IT WAS SEVERAL; LIEUTENANT HAGER WAS
12 AND STILL IS THE COMMANDING OFFICER OVER THAT
13 UNIT, ALONG WITH DETECTIVE HOWE, DETECTIVE
14 CHISOLM AND MYSELF.

15 Q. SO, Y'ALL WORKED IN CONJUNCTION ON THIS CASE?

16 A. THAT'S CORRECT.

17 Q. DID YOU HAVE THE OPPORTUNITY TO PHYSICALLY GO TO
18 2506 WESTMINSTER DRIVE AROUND NOON THAT DAY?

19 A. YES, SIR. THAT WAS TUESDAY, NOVEMBER 25TH, 1997
20 AT APPROXIMATELY THE NOON TIME HOUR I RESPONDED
21 TO THE LOCATION. I WAS DISPATCHED TO THE SCENE
22 OF A DOUBLE HOMICIDE.

23 A. UPON ARRIVING THERE, I ASSESSED THE SITUATION,
24 MADE SURE THE CRIME SCENE WAS SECURED ALTHOUGH I
25 DID NOT ENTER THE CRIME SCENE MYSELF ---

RALPH MISLE - DIRECT BY MR. POPE

1403

1 Q. WHEN YOU SAY CRIME SCENE SECURED, COULD YOU TELL
2 THE JURY WHAT THAT MEANS?

3 A. TYPICALLY WHEN THERE IS A CRIME, WHETHER IT'S IN
4 AN INSIDE LOCATION OR OUTSIDE LOCATION, THERE IS
5 CERTAIN EVIDENCE THAT NEEDS TO BE PRESERVED FOR
6 EXAMINATION BY SPECIALISTS AND IN THOSE
7 INSTANCES, THE AREA IS CORDONED OFF WITH
8 TYPICALLY YELLOW TAPE, BARRIER TYPE TAPE. AND
9 NO ONE IS ALLOWED TO CROSS THAT BARRIER.

10 Q. WHEN YOU ARRIVED, WAS THERE SUCH TAPE THERE?

11 A. YES, THERE WAS.

12 Q. AT THE TIME YOU ARRIVED, LIEUTENANT HAGER, WAS
13 HE THERE?

14 A. NO, HE HAD NOT ARRIVED THERE YET.

15 Q. DID YOU ASSUME RESPONSIBILITY FOR DELEGATION OF
16 VARIOUS DUTIES AND THINGS OF THAT NATURE?

17 A. YES, SIR, I DID. INITIALLY I ASCERTAINED THAT
18 SOUTH CAROLINA LAW ENFORCEMENT DIVISION,
19 NORMALLY REFERRED TO AS SLED, THAT THEY HAD BEEN
20 NOTIFIED. WE USE THEM AS WELL AS OTHER
21 JURISDICTIONS OF THIS STATE FOR ASSISTANCE FOR
22 INVESTIGATION AND FOR THEIR EXPERTISE IN CRIME
23 SCENES AND THEIR FORENSIC SERVICES. AND THEY
24 HAD BEEN NOTIFIED AND THEY WERE ON THEIR WAY.

25 Q. SO, SLED WAS GOING TO COME AND PROCESS THE

RALPH MISLE - DIRECT BY MR. POPE

1404

1 SCENE?

2 A. THAT'S CORRECT.

3 Q. AS FAR AS INVESTIGATION TO DETERMINE WHAT
4 HAPPENED, WHAT TYPE THINGS DID YOU AND THE OTHER
5 INVESTIGATORS DO TO DETERMINE WHAT HAD ACTUALLY
6 OCCURRED OUTSIDE OF THE RESIDENCE?

7 A. INITIALLY WHAT WE DID WAS WE ESTABLISHED A
8 CANVAS OF THE PERIMETER BEING THE ADJACENT
9 HOUSES, LEFT AND RIGHT ACROSS THE STREET, WE
10 CORDONED OFF AN AREA THAT WE CONCENTRATED ON.
11 AND THERE WAS ALSO A VEHICLE THAT NEEDED TO BE
12 IDENTIFIED. THERE WERE SOME OTHER THINGS THAT
13 OTHER OFFICERS WERE SENT TO INVESTIGATE OUT OF
14 THAT IMMEDIATE AREA AND THOSE WERE ALL DONE
15 PROBABLY WITHIN A HALF HOUR TO 45 MINUTES AFTER
16 MY ARRIVAL.

17 Q. YOU TALKED ABOUT A VEHICLE TO BE IDENTIFIED.
18 WAS ONE OF THEM THE VEHICLE THAT WAS PRESENT OUT
19 IN FRONT OF THE RESIDENCE WHEN YOU ARRIVED?

20 A. THAT'S CORRECT. IF YOU LOOK AT THE RESIDENCE,
21 TO THE LEFT OF THE RESIDENCE ON THE ROAD,
22 APPROXIMATELY AT THE LEFT SIDE BOUNDARY LINE,
23 PROPERTY LINE, THERE WAS A BLUE HONDA PARKED
24 THERE ON THE SHOULDER OF THE ROAD.

25 Q. OKAY AND DID YOU RECEIVE INFORMATION CONCERNING

RALPH MISLE - DIRECT BY MR. POPE 1405

1 THAT HONDA AS PART OF THE INVESTIGATION, THE TAG
2 NUMBER AND SO FORTH AS THAT?

3 A. YES, SIR. EVENTUALLY WE DID IDENTIFY THAT
4 VEHICLE.

5 Q. I BEG THE COURT'S INDULGENCE.
6 (AFTER A BRIEF PAUSE)

7 Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S
8 EXHIBIT 115 AND ASK IF YOU CAN LOOK AND IDENTIFY
9 THAT?

10 A. YES, THIS IS THE VEHICLE THAT WAS OBSERVED THERE
11 THAT MORNING OR THAT AFTERNOON.

12 Q. AGAIN, WHERE IS THAT IN RELATION TO THE HOUSE?

13 A. IT'S AT THE -- IF YOU'RE LOOKING AT THE HOUSE
14 DIRECTLY, IT'S TO THE LEFT, I WOULD IMAGINE THE
15 LEFT SIDE PROPERTY LINE, I'M GUESSING, OR THE
16 TREE LINE BASICALLY.

17 Q. OKAY. DID YOU HAVE AN OPPORTUNITY TO DETERMINE
18 THE OWNERSHIP OF THAT VEHICLE AS PART OF THE
19 INVESTIGATION?

20 A. YES, A CHECK WAS MADE WITH THE DEPARTMENT OF
21 MOTOR VEHICLES ON THE LICENSE TAG AND IT CAME
22 BACK TO DOUGLAS MOON.

23 Q. BASED ON YOUR CANVASSING, WERE YOU ALSO LOOKING
24 FOR A SECOND VEHICLE IN THIS CASE?

25 A. YES, THROUGH THE INVESTIGATION AND SPEAKING TO A

RALPH MISLE - DIRECT BY MR. POPE

1406

1 NEIGHBOR, IT WAS DETERMINED THAT HE HAD SEEN ---

2 MR. BOYD: YOUR HONOR, I OBJECT TO HEARSAY.

3 THE COURT: I SUSTAIN THE OBJECTION.

4 A. INVESTIGATION REVEALED THAT THERE WAS ANOTHER
5 VEHICLE ---

6 MR. BOYD: YOUR HONOR, THAT'S STILL ---

7 THE COURT: I SUSTAIN THE OBJECTION. LET HIM ASK
8 YOU ANOTHER QUESTION.

9 A. I'M SORRY.

10 THE COURT: HE'LL ASK YOU A QUESTION.

11 Q. BASED ON THE CANVASSING OF THE NEIGHBORHOOD WERE
12 YOU AS PART OF YOUR INVESTIGATION LOOKING FOR A
13 SECOND VEHICLE?

14 A. YES, WE WERE.

15 Q. AND WHAT WAS THE DESCRIPTION OF THAT VEHICLE?

16 A. IT WAS A ---

17 MR. BOYD: YOUR HONOR, I WOULD OBJECT; THAT'S
18 STILL HEARSAY.

19 THE COURT: I SUSTAIN THE OBJECTION.

20 MR. POPE: YOUR HONOR, THIS NOW GOES AGAIN TO
21 EXPLAIN WHY THEY ARE DOING WHAT THEY ARE DOING, WHAT
22 INFORMATION THEY ARE LOOKING FOR. IT'S NOT ---

23 THE COURT: LET ME LET THE JURY GO TO THE JURY
24 ROOM AND WE'LL DISCUSS THIS.

25 IN CAMERA:

RALPH MISLE - DIRECT BY MR. POPE

1407

1 THE COURT: BEFORE WE GET INTO THIS, AND I HATE
2 TO SOUND LIKE I'M MICKEY MOUSE ABOUT THIS, BUT WE JUST HAD
3 ANOTHER PERSON OPEN THE DOOR AND ACTUALLY HOLD IT FOR THE
4 JURY TO COME IN, SOMEBODY ASSOCIATED WITH ONE OF THE
5 PARTIES IN THIS CASE.

6 I'M GOING TO PUT A NOTE ON THIS DOOR BACK HERE
7 THAT SAYS RESTRICTED ENTRY; UNLESS YOU HAVE BEEN GRANTED
8 PERMISSION BY JUDGE HAYES DO NOT OPEN THIS DOOR UNDER
9 PENALTY OF CONTEMPT OF COURT. PEOPLE WHO HAVE PERMISSION
10 INCLUDE PERSONNEL, MR. BRACKETT, MR. POPE, MR. BOYD AND MR.
11 HANCOCK AND STATE LAW ENFORCEMENT AND THE BAILIFFS.

12 I ALSO, AND I DON'T KNOW THAT YOU CAN HEAR IT OR
13 THE JURY CAN HEAR IT, BUT THERE ARE PEOPLE WALKING UP AND
14 DOWN THIS HALL TALKING ALL THE TIME. I'M GOING TO PUT
15 ANOTHER SIGN AT THE END OF EACH HALL AND I'M GOING TO ASK
16 MS. CARROLL TO DO THIS, SAYING NO TALKING ON THIS HALLWAY
17 WHILE COURT IS IN SESSION. IF YOU'RE NOT SURE IF COURT IS
18 OR IS NOT IN SESSION, DO NOT TALK.

19 AND THE NEXT PERSON THAT COMES IN THAT DOOR WHO
20 IS NOT SUPPOSED TO, IS GOING IN THAT DOOR. SO, ANYBODY
21 Y'ALL ARE ASSOCIATED WITH, PLEASE TELL THEM.

22 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
23 FOR THE RECORD I HAVE ALREADY INFORMED MY STAFF OF THAT
24 DURING THE LUNCH BREAK.

25 THE COURT: ALL RIGHT, NOW YOU MAY GO AHEAD.

RALPH MISLE - DIRECT BY MR. POPE

1408

1 MR. POPE: YOUR HONOR, WITHOUT BELABORING THAT
2 ANY FURTHER, IT'S MY UNDERSTANDING THAT IT'S THE DEFENSE
3 INVESTIGATOR WHO WAS ACTUALLY HOLDING THE DOOR OPEN FOR THE
4 JURY AND ---

5 THE COURT: WELL, I'M NOT GOING INTO THAT.

6 MR. POPE: BUT WITH ALL DUE RESPECT, YOUR HONOR

7 ---

8 THE COURT: I KNOW WHO IT WAS AND I'M PUTTING ON
9 THE RECORD THAT IT WASN'T ANY OF YOUR PEOPLE. HOW ABOUT
10 THAT?

11 MR. POPE: THAT'S NOT THE POINT I'M MAKING, YOUR
12 HONOR. THE POINT I'M MAKING IS THAT THE DEFENSE
13 INVESTIGATOR SHOULD NOT HAVE THAT CLOSE CONTACT WITH THE
14 JURY, FORGETTING THE DOOR ISSUE.

15 THE COURT: ALL RIGHT.

16 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
17 AS TO THIS TESTIMONY, THIS WITNESS WILL EXPLAIN THE COURSE
18 THAT THE INVESTIGATION TOOK, WHY THEY DID CERTAIN ACTIONS.
19 I THINK HE CAN CLEARLY TESTIFY TO THAT WITHOUT SAYING WHO
20 TOLD HIM WHAT.

21 SECONDARILY, I WOULD SAY THAT EACH WITNESS --
22 ONE, I'M NOT GOING TO ELICIT HEARSAY, SECONDLY I'LL SAY
23 THAT EACH WITNESS WILL ACTUALLY COME AND TESTIFY, WILL BE
24 PRESENT FOR CROSS EXAMINATION. SO EVEN IF HE DID SAY
25 WITNESS SO AND SO SAID THIS, I SUBMIT IT'S STILL

RALPH MISLE - DIRECT BY MR. POPE

1409

1 APPROPRIATE, WOULD NOT BE HEARSAY BECAUSE THEY ARE SUBJECT
2 FOR CROSS EXAMINATION.

3 THE COURT: ANYTHING ELSE ON THAT, MR. BOYD?

4 MR. BOYD: NO, SIR.

5 THE COURT: SUBJECT TO IT BEING CONNECTED UP, I
6 WILL ALLOW IT. BRING THE JURY BACK IN.

7 IN THE PRESENCE OF THE JURY:

8 THE COURT: YOU MAY PROCEED.

9 CONTINUED DIRECT EXAMINATION OF WITNESS MISLE:

10 Q. DETECTIVE MISLE, WHEN THE JURY LEFT I WAS ASKING
11 YOU, BASED ON YOUR INVESTIGATION WAS THERE
12 ANOTHER VEHICLE THAT YOU WERE LOOKING FOR?

13 A. YES, SIR, THERE WAS. IT WAS A RED MAZDA PROTEGE
14 WITH SOUTH CAROLINA TAGS YJM-502 AND THAT WAS
15 REGISTERED TO EARL ROBERTSON, JR.

16 Q. AND BASED ON THE INVESTIGATION, DID YOU
17 DETERMINE WHERE YOU MAY ATTEMPT TO LOCATE THAT
18 VEHICLE.

19 MR. BOYD: YOUR HONOR, I AM GOING TO OBJECT TO
20 THAT.

21 THE COURT: I OVERRULE THE OBJECTION, AS LONG AS
22 IT IS GOING TO BE CONNECTED UP.

23 MR. POPE: YES, SIR.

24 A. YES, SIR. FURTHER INVESTIGATION AND CANVASSING
25 REVEALED THAT EARL ROBERTSON, JR. WAS A STUDENT

RALPH MISLE - DIRECT BY MR. POPE

1410

1 AT WHARTON'S SCHOOL OF BUSINESS AT THE
2 UNIVERSITY OF PENNSYLVANIA IN PHILADELPHIA. AND
3 I DETERMINED THROUGH SOME RECORDS CHECK THAT HE
4 WAS PRESENTLY THERE AS A STUDENT AND HAD AN OFF
5 CAMPUS APARTMENT.

6 Q. AND SO BASED ON THE INVESTIGATION, WHAT IF ANY
7 INFORMATION DID YOU SEND OUT TO OTHER AGENCIES.
8 WHO WERE YOU LOOKING FOR AND WHERE?

9 A. THERE WAS A POINT IN TIME WHERE ENOUGH
10 INFORMATION WAS GATHERED AS FAR AS SUSPECTS AND
11 VEHICLES AND LOCATIONS, SUSPECTED LOCATIONS
12 WHERE THE SUSPECTS MIGHT BE HEADING, I COMPOSED
13 WHAT IS COMMONLY REFERRED TO AS A BOLO, BE ON
14 THE LOOKOUT FOR AND I LISTED THE DEFENDANTS BY
15 NAME, DESCRIPTION, AGE; ALSO THE DESCRIPTION OF
16 THE VEHICLE THAT WE FELT THAT THEY MAY BE
17 TRAVELING IN, AND POSSIBLY THE DESTINATION OF
18 TRAVEL.

19 Q. WAS THERE ANY INFORMATION THAT WAS RECOVERED IN
20 THE CRIME SCENE IN THE HOUSE THAT AIDED IN YOUR
21 DETERMINATION OF WHERE TO BEGIN LOOKING?

22 A. YES, THERE WAS A NOTE THAT WAS LEFT THERE, A
23 BRIEF NOTE, HANDWRITTEN NOTE SAYING THAT JAMES
24 ROBERTSON WAS ON THE WAY TO PHILADELPHIA TO PICK
25 UP HIS BROTHER, CHIP.

RALPH MISLE - DIRECT BY MR. POPE

1411

1 Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
2 149 FOR IDENTIFICATION AND ASK IF YOU COULD LOOK
3 AT THAT AND IDENTIFY THAT?

4 A. YES, SIR, THIS IS THE NOTE I WAS REFERRING TO.

5 Q. AND IS THAT PART OF WHAT YOU USED IN DETERMINING
6 TO BEGIN LOOKING TO PHILADELPHIA FOR THE CAR AND
7 THE DEFENDANT?

8 A. THAT'S CORRECT.

9 THE COURT: DO YOU WANT THE LIGHTS DOWN?

10 MR. POPE: YOUR HONOR, I'LL TRY TO DO IT WITHOUT
11 IT.

12 Q. DETECTIVE MISLE, COULD YOU RELATE TO THE JURY,
13 BASED ON THE TOTALITY OF THE INVESTIGATION THERE
14 AT THE HOUSE AND THE CANVASSING, THE RECORDS
15 CHECK, TELL THE JURY AT THAT POINT WHAT
16 INFORMATION YOU WERE RELAYING TO OTHER AGENCIES
17 AS FAR AS BOLO?

18 A. LIKE I STATED PREVIOUSLY, A DESCRIPTION OF THE
19 SUSPECTS BY NAME, BY DATE OF BIRTH IF I REMEMBER
20 CORRECTLY, ALSO THE VEHICLE WITH THE LICENSE
21 PLATE NUMBER THAT THEY WERE TRAVELING IN,
22 DESCRIPTION OF VEHICLE BY MAKE AND TAG NUMBER;
23 AND ALSO THE FACT THAT THEY COULD BE ARMED AND
24 DANGEROUS AND CAUTION SHOULD BE USED. AND THAT
25 WAS A REGIONAL AND EVENTUALLY WENT TO A

RALPH MISLE - DIRECT BY MR. POPE

1412

1 NATIONWIDE BOLO.

2 Q. DID YOU ULTIMATELY HAVE DIRECT CONTACT WITH THE
3 OFFICERS IN PHILADELPHIA, PENNSYLVANIA?

4 A. YES, SIR, I DID. PRIOR TO THAT I HAD, THROUGH
5 INVESTIGATION, DISCOVERED THAT A CREDIT CARD
6 BELONGING TO EARL ROBERTSON, SR. HAD BEEN USED
7 AT ---

8 MR. BOYD: YOUR HONOR, I AM GOING TO OBJECT TO
9 THIS, THAT IS CLEAR HEARSAY.

10 MR. POPE: AGAIN, THERE WILL BE A WITNESS WHO
11 WILL TESTIFY TO THESE MATTERS AND THIS IS, AGAIN, TO
12 EXPLAIN HOW HE WAS ABLE TO TRACK THEM, YOUR HONOR.

13 THE COURT: SUBJECT TO IT'S BEING TIED IN, I'LL
14 OVERRULE YOUR OBJECTION.

15 A. AT THAT POINT I CONTACTED, I BELIEVE IT WAS
16 NATIONS BANK, THE ISSUING BANK. THE INFORMATION
17 WAS THAT THE CREDIT CARD WAS USED AT THE FORT
18 MILL PEACH STAND AT APPROXIMATELY 8:32 IN THE
19 MORNING, TUESDAY, JANUARY 25TH TO PURCHASE
20 VARIOUS SUNDRY ITEMS, AND ALSO DETERMINED THAT A
21 VIDEO HAD BEEN EMPLOYED AT THE CASH REGISTER.
22 THAT VIDEO WAS RETRIEVED BY INVESTIGATORS.
23 FURTHERMORE, THE CREDIT CARD WAS AGAIN USED AT A
24 LOCATION IN VIRGINIA, LADYSMITH, VIRGINIA,
25 APPROXIMATELY 2:19 IN THE AFTERNOON. SOME

RALPH MISLE - DIRECT BY MR. POPE

1413

1 GASOLINE, I THINK, WAS PURCHASED ON THAT CREDIT
2 CARD.

3 AND BASED ON THE INFORMATION GATHERED
4 BEFOREHAND, WE DETERMINED THAT IN FACT IT
5 APPEARED THAT HE WAS TRAVELING NORTHBOUND TO THE
6 PHILADELPHIA LOCATION.

7 Q. DID YOU MAKE ARRANGEMENTS FOR THE PHILADELPHIA
8 AUTHORITIES TO TRY TO INTERCEPT HE AND MEREDITH
9 MOON IN PHILADELPHIA?

10 A. WELL, AT THAT POINT WHAT I DID IS I CONTACTED
11 THE FUGITIVE SQUAD OF THE PHILADELPHIA POLICE
12 DEPARTMENT SOMETIME AROUND 3:00 O'CLOCK IN THE
13 AFTERNOON. I MADE THEM AWARE OF OUR SITUATION
14 HERE IN ROCK HILL, EXPLAINED THE CIRCUMSTANCES
15 OF THE CASE, AND GAVE THEM A FULL DESCRIPTION OF
16 THE SUSPECTS AND THEIR VEHICLE AND SUCH, AND
17 EXPLAINED TO THEM THE FACT THAT CHIP ROBERTSON
18 WAS A STUDENT AT THE UNIVERSITY OF PENNSYLVANIA.
19 AND THROUGH THEIR ASSISTANCE THEY WERE ABLE TO
20 LOCATE A RESIDENCE FOR CHIP ROBERTSON.
21 THEY RESPONDED TO THAT LOCATION. HE WAS NOT
22 PRESENT AT THAT TIME, BUT ---

23 MR. BOYD: YOUR HONOR, I AM GOING TO OBJECT TO
24 HEARSAY.

25 THE COURT: YES, I DO SUSTAIN THE OBJECTION ON

RALPH MISLE - DIRECT BY MR. POPE

1414

1 THAT.

2 Q. GOING BACK TO THE INITIAL QUESTION, YOU ASKED
3 THAT THEY SET UP SURVEILLANCE?

4 A. THAT'S CORRECT.

5 Q. AND SUBSEQUENTLY, DO YOU KNOW, WERE THE
6 DEFENDANT AND MEREDITH MOON ARRESTED?

7 A. THEY WERE PARKING THE VEHICLE OPPOSITE ---

8 MR. BOYD: YOUR HONOR, I OBJECT ---

9 THE COURT: I SUSTAIN THE OBJECTION.

10 Q. IF YOU WILL JUST ANSWER THE QUESTION. NOT THE
11 DESCRIPTION OF HOW IT TOOK PLACE. OF YOUR OWN
12 KNOWLEDGE DO YOU KNOW WERE THEY ARRESTED?

13 A. WERE THEY ARRESTED? I'M SORRY, I THOUGHT YOU
14 SAID WHERE. YES, THEY WERE ARRESTED AT 8:32 IN
15 THE EVENING.

16 MR. BOYD: YOUR HONOR, I OBJECT.

17 THE COURT: DISREGARD THE TIME OF THE ARREST.

18 THE QUESTION WAS WERE, W-E-R-E-, THEY ARRESTED AND THE
19 ANSWER IS, AS I UNDERSTAND IT, YES.

20 Q. YES, SIR, AND AGAIN THE ARRESTING OFFICER WILL
21 BE PRESENT.

22 THE COURT: DISREGARD THE REST OF THE ANSWER, ON
23 THAT ANSWER.

24 Q. BASED ON THAT INFORMATION, DID YOU HAVE THE
25 OPPORTUNITY WITH SLED AGENT BOBBY BROWN TO GO TO

RALPH MISLE - DIRECT BY MR. POPE

1415

1 PHILADELPHIA THE FOLLOWING DAY?

2 A. THAT'S CORRECT. WE LEFT ROCK HILL IN THE EARLY
3 MORNING HOURS OF THE FOLLOWING DAY AND FLEW INTO
4 PHILADELPHIA AND WE WERE TAKEN TO THE STATION
5 HOUSE THERE.

6 Q. AND WHILE YOU WERE THERE DID YOU HAVE THE
7 OPPORTUNITY TO TALK TO MEREDITH MOON, THE CO-
8 DEFENDANT IN THIS CASE?

9 A. YES, I DID.

10 MR. HANCOCK: YOUR HONOR, HE IS LEADING WITH
11 EVERY QUESTION. I DON'T MIND SOME LEADING, BUT EVERY
12 QUESTION IS LEADING.

13 THE COURT: WELL, I DON'T FIND ANY PROBLEM WITH
14 LEADING ON THIS QUESTION, BUT DO BE CAUTIOUS ABOUT YOUR
15 LEADING QUESTIONS.

16 Q. DETECTIVE MISLE, DID YOU HAVE AN OPPORTUNITY TO
17 TALK TO MEREDITH MOON, THE CO-DEFENDANT, YOU
18 WERE LOOKING FOR IN PHILADELPHIA?

19 A. YES, I DID.

20 Q. AND BASED ON THAT CONVERSATION -- I DON'T WANT
21 YOU TO GET INTO WHAT SHE SAID -- BASED ON THE
22 CONVERSATION, WHAT IF ANY OTHER INSTRUCTIONS DID
23 YOU GIVE TO LAW ENFORCEMENT ANYWHERE UP AND DOWN
24 THE EAST COAST?

25 A. I REQUEST WAS MADE ---

RALPH MISLE - DIRECT BY MR. POPE

1416

1 MR. BOYD: YOUR HONOR, I'M GOING TO OBJECT TO
2 THAT. THAT IMPLIES THAT MEREDITH MOON TOLD HIM SOMETHING.

3 THE COURT: YES, I SUSTAIN THE OBJECTION.

4 MR. POPE: YOUR HONOR, I BELIEVE I'VE GOT A
5 MATTER OF LAW.

6 THE COURT: ALL RIGHT, I'LL LET THE JURY GO TO
7 THE JURY ROOM.

8 IN CAMERA:

9 THE COURT: LET ME JUST START BY AN OBSERVATION.
10 IT APPEARS TO ME THAT THIS IS HEARSAY ON HEARSAY, SO LET'S
11 START WITH THAT PREMISE, UNLESS I'M WRONG.

12 MR. POPE: YOUR HONOR, I'M NOT ASKING WHAT WAS
13 SAID, I'M ASKING WHAT WAS DID -- WHAT DID HE DO. HE CALLED
14 THE MARYLAND AUTHORITIES AND ASKED THEM TO GO SEARCH AN
15 AREA. I THINK THAT'S CLEARLY APPROPRIATE, INDEPENDENT OF
16 WHETHER MEREDITH MOON IS GOING TO TESTIFY OR NOT. IT'S
17 WHAT HE DID AND WHAT HE SAID. IT'S NOT FOR THE TRUTH OF
18 THE MATTER ASSERTED. IT'S WHAT HE SAID HE DID, THE
19 COMMANDS -- CERTAINLY IT DID COME FROM MEREDITH MOON. THE
20 TRUTH OF THE MATTER IS HE COULD SAY MEREDITH MOON TOLD ME
21 TO GO LOOK IN THE DUMPSTER. BUT CLEARLY I REALIZE I CAN'T
22 SAY THAT. AND, OF COURSE, I WOULD SUBMIT I COULD SAY THAT,
23 YOUR HONOR.

24 THE COURT: WHAT SAYS THE DEFENSE?

25 MR. BOYD: YOUR HONOR, THE TESTIMONY WOULD BE

RALPH MISLE - DIRECT BY MR. POPE

1417

1 CLEARLY IMPLICATION THAT MEREDITH MOON TOLD HIM SOMETHING
2 PERTINENT TO THE CASE AND AS A RESULT OF THAT HE'S LOOKING
3 -- I DON'T KNOW WHAT HE WAS GOING TO SAY, BUT I ASSUME HE
4 WAS GOING TO SAY HE WAS LOOKING FOR A BAG AT THAT POINT IN
5 A DUMPSTER. I THINK THAT'S CLEARLY HEARSAY, THAT SHE TOLD
6 HIM THAT. THERE IS NO OTHER IMPLICATION.

7 THE COURT: WELL, UNFORTUNATELY SOMETIMES WE DO
8 HAVE THOSE IMPLICATIONS, BUT HE CAN CERTAINLY TESTIFY TO
9 WHAT HE DID. IT MAY BE THAT IT SHOULDN'T BE COUCHED IN AS
10 A RESULT OF, DASH, I DID THIS. BUT IT WOULD CERTAINLY BE
11 APPROPRIATE TO SAY WHAT DID YOU NEXT DO. AND HE COULD THEN
12 CERTAINLY TESTIFY THAT I ALERTED SO AND SO TO DO SO AND SO.

13 THE SAME IMPLICATION MAY LIE, THAT MAY BE
14 SPLITTING HAIRS, BUT HE CAN CERTAINLY TESTIFY TO WHAT HE
15 DID. AND IF HE CALLED SOMEBODY AND TOLD THEM TO LOOK FOR
16 SOMETHING. YOU CAN CERTAINLY CROSS EXAMINE HIM TO
17 UNDERMINE WHY HE DID THAT. BUT HE CAN TESTIFY TO WHAT HE
18 DID. AND IF HE CALLED SOMEBODY AND SAID GO LOOK IN A
19 DUMPSTER AT A CERTAIN PLACE, HE CAN TESTIFY TO THAT.

20 MR. BOYD: BUT THE OBJECTION THOUGH WAS THE WAY
21 THE QUESTION WAS ASKED ---

22 THE COURT: I UNDERSTAND, AND I'M AGREEING WITH
23 YOU THERE. AS A RESULT OF SO AND SO SAYING X, WHAT DID YOU
24 DO. I'M NOT SURE YOU CAN COUCH IT THAT WAY BECAUSE THAT
25 RELATES IT TO A SOURCE. THAT RELATES IT THAT SOMEBODY SAID

RALPH MISLE - DIRECT BY MR. POPE

1418

1 THIS. I KNOW THAT SOUNDS VERY ARTIFICIAL AND SOMETIMES IN
2 LAW WE ARE. MR. BRACKETT, YOU'RE POISED READY TO POUNCE.

3 MR. POPE: YOUR HONOR, STATE V. BROWN, I BELIEVE
4 IT WAS, IT SAYS A THIRD PARTY'S STATEMENTS, AND OF COURSE
5 I'M NOT EVEN TRYING TO GET INTO MOON'S STATEMENT, BUT IT
6 SAYS THIRD PARTY STATEMENT HE HAS A GUN AND HE'S GOING TO
7 KILL MY SISTER TO SHOW WHY THE INVESTIGATION WAS UNDERTAKEN
8 OR WHY AN OFFICER WAS IN THE AREA, TO SHOW THE
9 REASONABLENESS OF THE INVESTIGATION -- AGAIN, THIS IS JUST
10 WORDS OF INFORMATION TO EXPLAIN -- IT'S NOT EVEN HEARSAY,
11 BUT AGAIN I WILL STEER CLEAR OF EVEN SAYING WHAT SHE SAID.

12 OTHERWISE, WHAT YOU HAVE -- THEY WOULD OBJECT IF
13 I BROUGHT THE GUY FROM MARYLAND TO SAY DID YOU HAVE A
14 REASON TO GO LOOK IN THE DUMPSTER. SO THEN WHAT YOU HAVE
15 IS THIS GUY GOES UP BUT HE CAN'T TELL ANYTHING, THEN IN
16 MARYLAND THEY JUST HAPPENED TO WALK OUT AND FIND SOMETHING
17 IN A DUMPSTER.

18 THE COURT: WELL, ONE REASON WE CAN ALLOW
19 TESTIMONY ALONG THE LINES OF WHAT I SAID EARLIER IS THAT
20 SOMEBODY IS GOING TO CONNECT IT UP.

21 I UNDERSTAND THAT MS. MOON IS GOING TO TESTIFY.

22 MR. POPE: YES, SIR.

23 THE COURT: SHE CAN TESTIFY THAT SHE TOLD THE
24 OFFICER. AND THEN THE OFFICER CAN TESTIFY THAT HE TOLD
25 OFFICER MISLE.

RALPH MISLE - DIRECT BY MR. POPE

1419

1 WE DON'T ALWAYS REQUIRE THAT BECAUSE WE'D HAVE
2 WITNESSES GETTING UP AND DOWN, UP AND DOWN, AND UP AND
3 DOWN. SO, IF THE STATE ASSURES ME THAT IT'S GOING TO BE
4 TIED TOGETHER, IT CAN COME IN OF COURSE; I'VE ALREADY RULED
5 THAT.

6 BUT THIS WITNESS CAN TESTIFY TO WHAT HE DID. AND
7 IF HE CALLED AND SAID GO LOOK IN THIS DUMPSTER, OBVIOUSLY
8 THE IMPLICATION IS THAT THE INFORMATION CAME FROM
9 SOMEWHERE, BUT HE CAN STILL TESTIFY AS TO WHAT HE DID. AND
10 I DO SEE A LITTLE DIFFERENCE IN THE EXIGENCIES OF THE CASE,
11 AND I HAVEN'T READ IT, WHERE SOMEBODY IS OUT THERE WITH A
12 GUN LOOKING FOR SOMEBODY AS OPPOSED TO SOMETHING THAT
13 DOESN'T HAVE THE URGENCY THAT THAT MIGHT HAVE.

14 I DON'T KNOW IF THAT'S NUANCE OR NOT; I HAVEN'T
15 READ THAT CASE.

16 MR. POPE: YOUR HONOR, AGAIN, WITH NOT SPLITTING
17 HAIRS ON THAT CASE, I WOULD SUBMIT THAT THE ITEMS THAT WERE
18 RECOVERED FROM THIS DUMPSTER DO HAVE THE URGENCY OF THE
19 ITEMS MENTIONED. BUT, AGAIN, I'M NOT SPLITTING HAIRS ON
20 THAT MATTER.

21 YOUR HONOR, EVEN THOUGH I THINK HE COULD TELL US
22 WHAT MEREDITH MOON SAID, I'M GOING TO STEER CLEAR OF IT.
23 I UNDERSTAND THEIR RIGHT TO OBJECT. THE SITUATION -- HE'S
24 GOING TO TELL WHAT HE DID AND WHAT HE TOLD PEOPLE.

25 THE COURT: THAT'S FINE. BRING IN THE JURY.

RALPH MISLE - DIRECT BY MR. POPE

1420

IN THE PRESENCE OF THE JURY:

THE COURT: YOU MAY PROCEED, SOLICITOR

CONTINUED DIRECT EXAMINATION OF CAPTAIN MISLE:

Q. DETECTIVE MISLE, YOU ACTUALLY PHYSICALLY WENT TO
PHILADELPHIA THE DAY AFTER THE MURDER; IS THAT
CORRECT?

A. YES, SIR, I DID.

Q. OKAY. AND YOU HAD THE OPPORTUNITY TO TALK TO
MS. MOON?

A. YES, SIR, I DID.

Q. AFTER THAT, BASED ON YOUR INVESTIGATION, DID YOU
ALSO HAVE THE OPPORTUNITY TO CONTACT OTHER
OFFICERS ALONG THE EAST COAST?

A. YES, SIR. MARYLAND STATE POLICE WERE CONTACTED
AND ASKED TO GO TO A CERTAIN LOCATION ON A
MARYLAND TURNPIKE TO A MEDIAN SERVICE AREA AND
ASKED TO LOOK IN THE DUMPSTERS AT THOSE TWO
LOCATIONS BECAUSE WE WEREN'T SURE EXACTLY WHICH
ONE.

AND THEY RESPONDED TO OUR REQUEST AND THEY FOUND
A PLASTIC BAG ---

MR. HANCOCK: I'M GOING TO OBJECT.

THE COURT: I SUSTAIN THE OBJECTION.

Q. YOU ASKED MARYLAND POLICE TO GO LOOK FOR ITEMS
OF EVIDENCE?

RALPH MISLE - DIRECT BY MR. POPE

1421

1 A. YES, SIR, I DID.

2 Q. AFTER ASKING THEM TO DO THAT -- THAT WAS FROM
3 PHILADELPHIA THAT YOU MADE THAT REQUEST; IS THAT
4 CORRECT?

5 A. FROM PHILADELPHIA, YES.

6 Q. DID YOU ALSO HAVE THE OPPORTUNITY TO BRING BACK
7 SOME EVIDENCE, YOU AND BOBBY BROWN I BELIEVE,
8 RECEIVED SOME EVIDENCE FROM PHILADELPHIA AND
9 BROUGHT THAT BACK ALSO?

10 A. YES, SIR. WE BROUGHT BACK THE PROPERTY
11 BELONGING TO JAMES ROBERTSON. IT WAS A
12 BILLFOLD, CREDIT CARD AND PURCHASE RECEIPT WITH
13 A VISA CARD FROM THE PEACH STAND AS I REMEMBER.

14 Q. I'LL SHOW YOU STATE'S EXHIBIT 88 FOR
15 IDENTIFICATION AND ASK IF YOU COULD TAKE A LOOK
16 AT THAT?

17 A. YES SIR, THIS IS THE BILLFOLD THAT WE BROUGHT
18 BACK.

19 Q. YOU ALSO INDICATED TWO OTHER ITEMS, WHAT WERE
20 THOSE TWO ITEMS?

21 A. IT WAS A NATIONS BANK VISA CREDIT CARD; EARL L.
22 ROBERTSON'S NAME APPEARS ON IT. ALSO THERE IS A
23 RECEIPT FOR PURCHASE -- JUST A SECOND -- AT THE
24 PEACH STAND AT 1365 WEST HIGHWAY 160, FORT MILL,
25 SOUTH CAROLINA AND IT IS FOR THIRTY DOLLARS AND

RALPH MISLE - DIRECT BY MR. POPE

1422

1 TWENTY-TWO CENTS. BASICALLY IT STATES
2 GROCERIES. IT DOESN'T STATE BY ITEM, IT'S JUST
3 A GENERAL GROCERIES WITH THE PRICES DATED 11-25-
4 97 AT 08:36 WHICH WOULD BE 8:36 A.M.

5 I THINK THE QUESTION WAS WHAT ELSE DID WE BRING
6 BACK. WE BROUGHT BACK CLOTHING BELONGING TO CO-
7 DEFENDANT, MEREDITH MOON. WE BROUGHT BACK A
8 SWEATER, I THINK, AND SOME SHOES.

9 Q. I'LL SHOW YOU STATE'S EXHIBIT 87 FOR
10 IDENTIFICATION AND ASK IF YOU COULD IDENTIFY
11 THAT?

12 A. YES, SIR, I BELIEVE THIS WAS THE SWEATER.

13 Q. YOU'VE INDICATED THAT YOU ALSO BROUGHT BACK SOME
14 SHOES. THEY WERE NOT CONTAINED IN THIS ITEM?

15 A. NO, THEY WERE NOT CONTAINED IN THIS.

16 Q. CAPTAIN MISLE, OTHER THAN BRINGING THAT ITEM
17 BACK AND THE OTHER ITEMS YOU'VE RELATED, DID YOU
18 HAVE ANY FURTHER INVOLVEMENT IN THE CASE OTHER
19 THAN FOLLOW-UP?

20 A. YES, SIR. ON JANUARY, I BELIEVE IT WAS THE 9TH
21 OF 1998, MYSELF AND SLED AGENT ALICE SHEALEY
22 WENT TO PHILADELPHIA TO BRING BACK MEREDITH
23 MOON. WE DROVE BACK IN A VEHICLE.

24 Q. THANK YOU, SIR. I BEG THE COURT'S INDULGENCE.
25 (AFTER A BRIEF PAUSE.)

RALPH MISLE - DIRECT BY MR. POPE

1423

1 Q. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

2 MR. HANCOCK: WE HAVE NO QUESTIONS, YOUR HONOR.

3 THE COURT: YOU MAY STEP DOWN. WE APPRECIATE
4 YOUR TIME; YOU MAY BE EXCUSED. CALL YOUR NEXT WITNESS.

5 MR. BRACKETT: THE STATE CALLS WAYNE LANGLEY.

6 WAYNE SCOTT LANGLEY, SR., BEING FIRST DULY SWORN,
7 TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY

9 MR. BRACKETT:

10 Q. SIR, WOULD YOU PLEASE STATE YOUR FULL NAME AND
11 SPELL YOUR LAST FOR THE COURT REPORTER?

12 A. WAYNE SCOTT LANGLEY, SR.

13 Q. AND HOW DO YOU SPELL YOUR LAST NAME?

14 A. L-A-N-G-L-E-Y.

15 Q. ALL RIGHT, THANK YOU, SIR. WHERE DO YOU LIVE?

16 A. 2485 WESTMINSTER DRIVE.

17 Q. ALL RIGHT, SIR. IS THAT IN THE CITY OF ROCK
18 HILL?

19 A. IT IS.

20 Q. WHAT DO YOU DO FOR A LIVING, SIR?

21 A. I'M A SALESMAN.

22 Q. ARE YOU MARRIED?

23 A. YES, SIR.

24 Q. DO YOU HAVE ANY KIDS?

25 A. THREE.

WAYNE S. LANGLEY, SR. - DIRECT BY MR. BRACKETT

1424

- 1 Q. WHAT'S YOUR WIFE'S NAME?
- 2 A. JANE.
- 3 Q. AND YOUR KIDS?
- 4 A. SCOTT, WAYNE, JR. IS THE OLDEST FOLLOWED BY BETH
- 5 AND THEN JOSHUA.
- 6 Q. HOW LONG HAVE YOU LIVED OVER AT 2485 WESTMINSTER
- 7 DRIVE?
- 8 A. SINCE JULY OF '82.
- 9 Q. DO YOU KNOW THIS INDIVIDUAL SEATED RIGHT OVER
- 10 HERE AT COUNSEL TABLE?
- 11 A. YES, SIR, I DO.
- 12 Q. WHO IS THAT?
- 13 A. JIMMY ROBERTSON.
- 14 Q. HOW DO YOU KNOW HIM, SIR?
- 15 A. HE'S BEEN MY NEIGHBOR SINCE WE MOVED IN OVER
- 16 THERE. HE CAME OVER RIGHT AFTER WE MOVED IN AND
- 17 INTRODUCED HIMSELF.
- 18 Q. NOW, DID YOU KNOW HIS PARENTS AS WELL?
- 19 A. YES.
- 20 Q. TERRY AND EARL. DID YOU KNOW THEM AS NEIGHBORS?
- 21 A. OH, YES.
- 22 Q. ALL RIGHT, SIR. TURNING YOUR ATTENTION TO
- 23 TUESDAY NOVEMBER 25TH OF 1997, WHAT TIME DID YOU
- 24 LEAVE THE HOUSE THAT MORNING?
- 25 A. I TOOK MY DAUGHTER TO WORK FOUR OR FIVE MINUTES

WAYNE S. LANGLEY, SR. - DIRECT BY MR. BRACKETT

1425

1 BEFORE 8:00. SHE WORKS AT A DAY CARE ON INDIA
2 HOOK WHICH IS ONLY A COUPLE OF MINUTES FROM THE
3 HOUSE SO, THEREFORE, WE LEFT -- SHE HAD TO BE
4 THERE AT 8:00 AND WE DIDN'T LEAVE UNTIL FOUR OR
5 FIVE MINUTES TILL.

6 Q. OKAY, WHERE DID YOU GO AFTER YOU DROPPED HER
7 OFF?

8 A. NOWHERE, I CAME STRAIGHT BACK HOME.

9 Q. OKAY. WHEN YOU LEFT OUT OF THE HOUSE, DID YOU
10 OBSERVE ANYTHING UNUSUAL ACROSS THE STREET?

11 A. THERE WAS A SMALL DARK CAR SITTING ON THE WRONG
12 SIDE OF THE ROAD. AS WE WERE HEADED OUT
13 WESTMINSTER TOWARD INDIA HOOK, THE CAR WAS
14 FACING US BUT IT WAS ON THE RIGHT-HAND SIDE.

15 Q. HAD YOU SEEN THAT CAR THERE BEFORE?

16 A. NOT TO MY RECOLLECTION, NO.

17 Q. DID YOU KNOW WHO THAT CAR BELONGED TO?

18 A. NO.

19 Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
20 115 IN EVIDENCE. DO YOU RECOGNIZE THE CAR IN
21 THAT PHOTOGRAPH?

22 A. YES.

23 Q. TELL THE JURY WHAT THAT IS.

24 A. THAT'S THE CAR THAT WAS SITTING THERE THAT
25 MORNING WHEN I TOOK MY DAUGHTER TO WORK.

WAYNE S. LANGLEY, SR. - DIRECT BY MR. BRACKETT

1426

1 Q. OKAY, SIR. COULD YOU TELL BY LOOKING AT IT HOW
2 LONG THAT CAR HAD BEEN THERE?

3 A. IT HAD BEEN THERE FOR QUITE SOME TIME. THERE
4 WAS LIGHT FROST THAT NIGHT AND THE WINDSHIELD
5 WAS COVERED AND YOU COULD SEE THE TRACKS WHERE
6 WHEN IT WAS DRIVEN UP, IT WAS PULLED OFF THE
7 SIDE OF THE ROAD INTO THE GRASS AND IT HAD LEFT
8 DISTINCT TRACKS.

9 Q. THIS WAS WHEN YOU WERE LEAVING?

10 A. THAT WAS WHEN I WAS LEAVING.

11 Q. ALL RIGHT, SIR. ON YOUR WAY BACK DID YOU SEE
12 ANYTHING UNUSUAL ACROSS THE STREET?

13 A. JIMMY WAS STANDING NEXT TO A CAR PUTTING
14 SOMETHING INTO THE CAR, AND THERE WAS A YOUNG
15 LADY STANDING AT THE BACK OF THE TRUNK, THE CAR.
16 THE TRUNK WAS UP AND SHE WAS PLACING SOMETHING
17 IN THE BACK OF THE CAR.

18 WHEN I CAME BY I SLOWED DOWN TO GO INTO MY
19 DRIVEWAY WHICH IS DIRECTLY ACROSS FROM THEIR
20 DRIVEWAY AND I LOOKED OVER THERE AT THEM AND
21 JIMMY STOOD UP OUT OF THE CAR WHICH HE WAS
22 LEANING INTO AND WAVED AT ME AND THE YOUNG LADY
23 AT THE BACK STOOD UP AND TURNED AROUND AND WAVED
24 ALSO. I DIDN'T KNOW HER AT THE TIME.

25 Q. OKAY, SIR. WHAT CAR, CAN YOU DESCRIBE THE CAR?

WAYNE S. LANGLEY, SR. - DIRECT BY MR. BRACKETT

1427

1 A. IT WAS A SMALL REDDISH CAR.

2 Q. AND DO YOU REMEMBER WHICH SIDE JIMMY WAS LEANING
3 INTO?

4 A. TO THE DRIVER'S SIDE.

5 Q. WAS IT AT THE DRIVER'S SEAT OR IN THE PASSENGER,
6 THE BACK SEAT?

7 A. I'M NOT CERTAIN OF THAT. HE WAS LEANING INTO
8 THE DRIVER'S SIDE OF THE CAR.

9 Q. WHERE DID YOU GO AFTER THAT?

10 A. I WENT INTO THE HOUSE AND READ MY BIBLE A WHILE,
11 READ THE NEWSPAPER AND WENT TO WORK.

12 Q. OKAY, SIR. WHEN YOU LEFT FOR WORK -- HOW LONG
13 AFTER YOU PULLED BACK INTO YOUR DRIVEWAY DID YOU
14 LEAVE FOR WORK?

15 A. PROBABLY AN HOUR AND 20 MINUTES, APPROXIMATELY,
16 AN HOUR THIRTY.

17 Q. WHEN YOU DID THAT, WAS THE RED CAR ACROSS THE
18 STREET?

19 A. NO, SIR.

20 Q. DID YOU SPEAK TO ANY LAW ENFORCEMENT OFFICERS
21 LATER THAT DAY?

22 A. YES, I DID.

23 Q. AND WHAT DID YOU TELL THEM?

24 A. WHEN I CAME HOME, THE PLACE WAS COVERED WITH LAW
25 ENFORCEMENT AND NEWS MEDIA AND STUFF, AND I

WAYNE S. LANGLEY, SR. - DIRECT BY MR. BRACKETT

1428

1 FORGET THE NAME OF THE OFFICER WHO ASKED IF I
2 HAD SEEN ANYTHING THAT MORNING AND I TOLD HIM
3 THAT I HAD SEEN JIMMY AND A YOUNG LADY LOADING
4 STUFF INTO A CAR.

5 Q. DID YOU TELL THEM WHICH CAR?

6 A. YES.

7 Q. THE DESCRIPTION AND THAT SORT OF THING?

8 A. I DID.

9 Q. DID YOU SEE JIMMY ROBERTSON AGAIN THAT DAY?

10 A. NO, I DID NOT.

11 Q. THANK YOU VERY MUCH, SIR. PLEASE ANSWER ANY
12 QUESTIONS THAT DEFENSE COUNSEL MIGHT HAVE.

13 A. YES, SIR.

14 MR. HANCOCK: WE HAVE NO QUESTIONS.

15 THE COURT: MR. LANGLEY, WE APPRECIATE YOUR TIME,
16 YOU CAN STEP DOWN AND BE EXCUSED. CALL YOUR NEXT WITNESS.

17 MR. BRACKETT: THE STATE CALLS GLENDA JOHNSON.

18 GLENDA JOHNSON, BEING FIRST DULY SWORN, TESTIFIED
19 AS FOLLOWS:

20 DIRECT EXAMINATION BY

21 MR. BRACKETT:

22 Q. MA'AM, WOULD YOU PLEASE STATE YOUR FULL NAME?

23 A. GLENDA JOHNSON.

24 Q. AND CAN YOU TELL US WHERE YOU'RE EMPLOYED?

25 A. I WORK FOR THE PEACH STAND IN FORT MILL.

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GLEND A JOHNSON - DIRECT BY MR. BRACKETT

1429

1 Q. HOW LONG HAVE YOU WORKED THERE?

2 A. ABOUT SEVEN YEARS.

3 Q. WHAT DO YOU DO FOR THE PEACH STAND?

4 A. I'M A CASHIER.

5 Q. OKAY, MA'AM. WHEN DO YOU USUALLY COME TO WORK?

6 A. I COME TO WORK ABOUT TEN TO SIX EVERY MORNING.

7 Q. AND CAN YOU BRIEFLY DESCRIBE WHAT YOUR ROUTINE
8 IS IN THE MORNINGS?

9 A. WELL, I JUST HAVE TO GET THE MONEY, TAKE CARE OF
10 ALL THAT, PUT IT IN THE CASH REGISTER, GET
11 EVERYTHING, YOU KNOW, READY; CHECK IN THE BACK
12 TO SEE IF EVERYBODY IS READY TO OPEN. IT TAKES
13 A LITTLE WHILE.

14 Q. AND WHERE DO YOU TYPICALLY STAND WHEN YOU'RE
15 WORKING, WHERE IS YOUR POST?

16 A. WELL, IN THE FRONT OF THE STORE; RIGHT IN FRONT
17 OF THE STORE.

18 Q. AND THEY SELL OTHER THINGS AT THE PEACH STAND.

19 A. YES.

20 Q. DO THEY HAVE A MEAT COUNTER AND THAT SORT OF
21 THING?

22 A. UH HUH.

23 Q. WHAT TIME DID YOU GET THERE ON NOVEMBER 25TH,
24 1997?

25 A. PROBABLY AROUND TEN TO SIX LIKE ALWAYS.

GLENDIA JOHNSON - DIRECT BY MR. BRACKETT

1430

1 Q. AND WHEN DOES THE STORE ACTUALLY OPEN?

2 A. AT 6:30.

3 Q. DID THE STORE OPEN ON TIME THAT DAY?

4 A. YES, SIR.

5 Q. DO YOU RECALL ANY CUSTOMERS COMING IN, A MAN AND
6 A WOMAN, AT APPROXIMATELY 8:30 OR WAS THERE
7 ANYTHING UNUSUAL ABOUT THEIR COMING?

8 MR. BOYD: I OBJECT TO THE LEADING.

9 THE COURT: I SUSTAIN THE OBJECTION. REPHRASE
10 YOUR QUESTION.

11 Q. I BEG THE COURT'S INDULGENCE FOR ONE MINUTE.
12 (AFTER A BRIEF PAUSE.)

13 Q. WHEN IS THE RUSH AT THE STORE IN THE MORNINGS?

14 A. IT'S BETWEEN FIFTEEN TO 8:00 UNTIL ABOUT 8:15,
15 SCHOOL KIDS AND ALL THOSE ARE COMING THROUGH.

16 Q. AND DO YOU HAVE REGULARS WHO COME IN THERE?

17 A. YES, SIR. EVERY DAY; YES, SIR.

18 Q. DO YOU REMEMBER ANY PEOPLE COMING TO THE STORE
19 THAT MORNING WHO WERE NOT REGULARS?

20 A. YES, SIR, I DO.

21 Q. DID YOU HAVE AN OCCASION LATER THAT EVENING OR
22 THE NEXT DAY TO SPEAK WITH LAW ENFORCEMENT
23 REGARDING ANY OF YOUR CUSTOMERS THAT MORNING?

24 A. MY STORE MANAGER CALLED ME AND TOLD ME WHAT HAD
25 HAPPENED ---

GLEND A JOHNSON - DIRECT BY MR. BRACKETT

1431

1 MR. BOYD: OBJECTION.

2 THE COURT: I SUSTAIN THE OBJECTION.

3 Q. NOT WHAT ANYBODY SAID, BUT YOUR STORE MANAGER
4 CALLED YOU?

5 A. YES, SIR.

6 Q. OKAY. AND AS A RESULT OF THAT CALL, DID YOU
7 SPEAK TO LAW ENFORCEMENT?

8 A. YES, SIR.

9 Q. AND WHAT WERE THEY INQUIRING ABOUT?

10 A. ABOUT SOME PEOPLE THAT COME IN THE STORE; ABOUT
11 A GIRL AND A BOY THAT COME IN THE STORE.

12 Q. DO YOU REMEMBER THE PEOPLE THAT THEY WERE
13 TALKING ABOUT?

14 A. YES, SIR, I DO.

15 Q. DID YOU REMEMBER THOSE PEOPLE AT THAT TIME?

16 A. YES, SIR, I DID.

17 Q. APPROXIMATELY WHAT TIME DID THESE PEOPLE COME
18 INTO THE STORE?

19 A. IT WAS ABOUT 8:50.

20 Q. 8:50?

21 A. SOMETHING LIKE THAT; YES, SIR.

22 Q. NOW, ARE THERE ANY CAMERAS IN YOUR STORE?

23 A. YES, SIR. AT THAT TIME THERE WAS FOUR.

24 Q. AND WHERE ARE THOSE LOCATED?

25 A. ONE'S OVER THE BOX; ONE'S AT THE RESTAURANT;

GLEND A JOHNSON - DIRECT BY MR. BRACKETT

1432

ONE'S IN THE BACK AND ONE'S IN THE PRODUCE.

Q. DOES ONE MONITOR YOUR WORK AREA?

A. YES, SIR. RIGHT OVER ME; YES, SIR.

Q. OKAY. CAN YOU DESCRIBE THE TWO PEOPLE THAT YOU REMEMBER COMING IN AT THAT TIME?

A. YES, SIR. THE GIRL CAME IN FIRST. SHE WAS KIND OF TALL AND REAL HEAVYSET.

Q. OKAY.

A. AND THE GUY WAS PUMPING GAS. AND JUST A FEW MINUTES LATER, HE CAME IN. HE WAS A LITTLE SHORTER THAN HER, IT SEEMED LIKE TO ME. THEY JUST KIND OF LOOKED MISMATCHED.

Q. OKAY. NOW, HOW LONG DID THEY SPEND IN THE STORE?

A. MAYBE FIVE MINUTES. SHE WAS IN THERE FIRST AND THEN HE CAME IN.

Q. OKAY. DID THEY PURCHASE ANY ITEMS?

A. YES, SIR.

Q. DO YOU RECALL WHAT THEY PURCHASED?

A. I RECALL SHE GOT CIGARETTES, DRINK AND CHIPS. SHE BOUGHT A MAP AND THE GAS.

Q. IS THAT ALL THEY BOUGHT OR IS THAT ALL YOU REMEMBER?

A. NO, SIR, THAT'S ALL I REMEMBER.

Q. OKAY. HOW DID THEY APPEAR? WHAT WAS THEIR

GLEND A JOHNSON - DIRECT BY MR. BRACKETT

1433

1 DEMEANOR WHEN THEY WERE IN THE STORE?

2 A. THEY WERE REALLY PLEASANT; YOU KNOW, THEY JUST
3 TALKED TO ME AND THEY WERE REAL PLEASANT.

4 Q. DO YOU REMEMBER WHAT THE GENTLEMAN, THE MAN, DO
5 YOU REMEMBER WHAT HE TOLD YOU?

6 A. SHE, THE GIRL SAID FIRST, YOU KNOW, SHE WAS
7 TALKING AND I HAD ASKED THEM FOR AN I.D. FOR THE
8 CIGARETTES AND SHE SAID THAT THEY WERE TRAVELING
9 AND SAID THAT THEY WERE GOING TO PENNSYLVANIA.
10 AND I SAID WELL, THAT'S A LONG TRIP FOR THIS
11 HOLIDAY, WITH THE HOLIDAY SEASON COMING UP. AND
12 SHE SAID THAT THEY WERE GOING TO GET THE BROTHER
13 AND BRING HIM BACK FOR THE HOLIDAY.
14 AND THEN HE CAME IN AND THEY WERE JUST, YOU
15 KNOW, TALKING TO EACH OTHER. AND HE SAID ---

16 MR. BOYD: OBJECTION.

17 THE COURT: DON'T TELL US WHAT SHE SAID; YOU CAN
18 TELL US WHAT HE SAID.

19 A. OKAY. HE SAID THAT THEY WERE GOING TO GET THE
20 BROTHER IN PENNSYLVANIA FOR THE HOLIDAY AND
21 BRING HIM BACK. AND I SAID DOES HE KNOW YOU'RE
22 COMING. AND HE SAID NO, MA'AM, IT'S A SURPRISE.
23 AND THEN THEY, YOU KNOW, GRINNED AND I SAID HAVE
24 A SAFE TRIP. AND THEY LEFT.

25 Q. OKAY. HOW DID THEY PAY?

GLENDIA JOHNSON - DIRECT BY MR. BRACKETT

1434

1 A. HE PAID WITH A CREDIT CARD.

2 Q. HE PAID?

3 A. YES.

4 Q. DID HE HAVE THE CREDIT CARD?

5 A. YES, SIR.

6 Q. OKAY. LATER ON -- COURT'S INDULGENCE FOR A
7 MOMENT.

8 (AFTER A BRIEF PAUSE.)

9 Q. MA'AM, I SHOW YOU WHAT'S BEEN MARKED STATE'S
10 EXHIBIT 90 FOR IDENTIFICATION.

11 A. YES, SIR.

12 Q. COULD YOU TAKE A LOOK AT THAT ENVELOPE AND TELL
13 ME IF YOU RECOGNIZE WHAT'S INSIDE OF IT?

14 A. YES, SIR, THAT'S THE RECEIPT I GAVE THEM.

15 Q. IS THAT THE RECEIPT, DO YOU RECALL?

16 A. YES, SIR, IT'S THE ORIGINAL.

17 Q. WHAT'S THE TOTAL ON IT?

18 A. THIRTY TWENTY-ONE.

19 Q. AND WHAT'S THE TIME ON THE RECEIPT?

20 A. 8:36.

21 Q. OKAY. THAT'S THE RECEIPT YOU GAVE LAW
22 ENFORCEMENT?

23 A. YES, SIR.

24 Q. YOUR HONOR, AT THIS TIME I WOULD MOVE STATE'S
25 EXHIBIT 90 FOR IDENTIFICATION INTO EVIDENCE.

GLEND A JOHNSON - DIRECT BY MR. BRACKETT

1435

1 MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

2 THE COURT: IT'S RECEIVED WITHOUT OBJECTION.

3 (THE CREDIT CARD RECEIPT WAS MARKED IN EVIDENCE AS STATE'S
4 EXHIBIT 90 WITHOUT OBJECTION.)

5 Q. MA'AM, HAVE YOU HAD OCCASION TO REVIEW THE VIDEO
6 TAPES ON THE SURVEILLANCE CAMERAS THAT DAY?

7 A. YES, SIR.

8 Q. OKAY. I'LL SHOW YOU WHAT'S BEEN MARKED AS
9 STATE'S EXHIBIT 89 FOR IDENTIFICATION. HAVE YOU
10 HAD A CHANCE TO VIEW THAT VIDEO TAPE?

11 A. YES, SIR.

12 Q. DOES THIS VIDEO TAPE ACCURATELY REFLECT WHAT
13 TOOK PLACE AT THE PAY OUT COUNTER AT THE PEACH
14 STAND DURING YOUR CONVERSATION WITH THOSE TWO
15 INDIVIDUALS?

16 A. YES, SIR.

17 Q. YOUR HONOR, I WOULD MOVE STATE'S EXHIBIT 89 FOR
18 IDENTIFICATION INTO EVIDENCE AT THIS TIME.

19 MR. HANCOCK: WE AT LEAST NEED SOME CHAIN OF
20 CUSTODY OF THIS ITEM AT THIS TIME. I MEAN HOW CAN SHE
21 IDENTIFY IT. I THINK THE ---

22 MR. BRACKETT: I DON'T BELIEVE SO, YOUR HONOR.
23 SHE HAS TESTIFIED THAT THIS ACCURATELY REPRESENTS IT AS IT
24 OCCURRED. SHE WAS A PARTY AND SHE'S DEPICTED ON THE VIDEO
25 TAPE. I THINK SHE CAN AUTHENTICATE THIS JUST WITH HER OWN

GLEND A JOHNSON - DIRECT BY MR. BRACKETT

1436

1 TESTIMONY.

2 THE COURT: LET ME LET YOU GO TO THE JURY ROOM
3 FOR JUST A MINUTE.

4 IN CAMERA:

5 THE COURT: I SUGGEST THAT IT BE PLAYED AND SEE
6 IF SHE CAN IDENTIFY IT.

7 MR. BRACKETT: YES, SIR.

8 MR. HANCOCK: YOUR HONOR, IF I MAY. IN THE
9 INTEREST OF TIME, WHAT WE'RE LOOKING FOR IS -- AND NOT TO
10 DO THE SOLICITOR'S JOB, BUT THAT IT WAS REMOVED. THAT
11 THAT'S THE TAPE THAT WAS REMOVED AND GIVEN TO LAW
12 ENFORCEMENT.

13 THE COURT: WELL, SHE'S GOING TO WATCH IT AND
14 SHE'S GOING TO TELL US. THAT'S WHAT YOU ASKED FOR.

15 MR. HANCOCK: I THINK SHE CAN TESTIFY TO THAT
16 FROM THE TAPE ITSELF. WE HAVE VIEWED THE TAPE, WE HAVE
17 BEEN ALLOWED THE TAPE.

18 THE COURT: WELL, I KNOW, BUT SHE IDENTIFIED IT
19 AND THEN Y'ALL OBJECTED. SHE IDENTIFIED IT AND YOU SAID
20 YOU NEEDED BETTER IDENTIFICATION THAN THAT. SO, THAT'S
21 WHAT WE'RE DOING.

22 MR. HANCOCK: OKAY.

23 THE COURT: I AGREE, SHE HAS IDENTIFIED IT AND
24 THAT SHOULD BE ENOUGH, BUT I WANT TO BE ON THE SAFE SIDE.
25 (AT THIS TIME THE VIDEO TAPE WAS PLAYED.)

GLEND A JOHNSON - DIRECT BY MR. BRACKETT

1437

1 Q. MA'AM, HAVE YOU REVIEWED THAT VIDEO TAPE?

2 A. YES, SIR.

3 Q. DOES THAT ACCURATELY DEPICT THE EVENTS THAT
4 OCCURRED THE MORNING OF TUESDAY NOVEMBER 25TH,
5 1997?

6 A. YES, SIR.

7 Q. THAT YOU'VE DESCRIBED HERE IN COURT?

8 A. YES, SIR.

9 THE COURT: ARE YOU OFFERING IT INTO EVIDENCE,
10 STATE'S 89?

11 MR. BRACKETT: YES, SIR.

12 THE COURT: ANY OBJECTION?

13 MR. HANCOCK: NO OBJECTION.

14 THE COURT: IT WILL BE RECEIVED INTO EVIDENCE.

15 (THE VIDEO TAPE WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT
16 89 WITHOUT OBJECTION.

17 THE COURT: BRING THE JURY IN.

18 MR. BOYD: YOUR HONOR, WHEN THE VIDEO TAPE IS
19 BEING PLAYED, I WOULD LIKE PERMISSION TO TAKE MR. ROBERTSON
20 OVER TO WATCH IT ALSO WHEN IT'S BEING PLAYED.

21 THE COURT: WELL, LET ME SUGGEST THIS. HOLD THE
22 JURY JUST A MINUTE. I HAVE FOUND THAT ONE OF THE BEST
23 PLACES TO PLACE STUFF IS ABOUT WHERE THIS BOARD IS. THAT
24 WAY THEY CAN SEE IT, THEY CAN SEE IT, I CAN SEE IT. I
25 CAN'T SEE IT BUT I JUST SAW IT. IS THERE NOT A PLUG UP

GLEND A JOHNSON - DIRECT BY MR. BRACKETT

1438

1 THERE?

2 MR. BRACKETT: YES, SIR. I JUST AUTOMATICALLY
3 PUT IT HERE.

4 THE COURT: WELL, THEY CAN TURN AND I THINK THEY
5 CAN SEE IT JUST AS GOOD FROM THAT ANGLE.

6 MR. BRACKETT: THAT'S FINE.

7 MR. POPE: WE HAVE PRESENTED THIS TO THE DEFENSE
8 NUMEROUS TIMES.

9 THE COURT: I THINK HE HAS THE RIGHT TO SEE IT
10 WHILE IT'S BEING PRESENTED TO THE JURY. CAN YOU SEE IT
11 FROM THERE?

12 MR. ROBERTSON: YES, YOUR HONOR.

13 THE COURT: ALL RIGHT, BRING IN THE JURY.

14 IN THE PRESENCE OF THE JURY:

15 THE COURT: THE JURY IS PRESENT, YOU MAY PROCEED.
16 CONTINUED DIRECT EXAMINATION OF GLEND A JOHNSON:

17 Q. MA'AM, WOULD YOU STEP DOWN OFF THE STAND FOR
18 JUST A SECOND? TAKE A LOOK AT THE TELEVISION
19 MONITOR IF YOU WOULD PLEASE.

20 (THE VIDEO WAS STARTED.)

21 Q. CAN YOU DESCRIBE WHAT IT IS WE'RE SEEING ON THE
22 SCREEN THERE?

23 A. AT THE RIGHT TOP IS THE MEAT DEPARTMENT ---

24 MR. BOYD: YOUR HONOR, WE CAN'T SEE ---

25 THE COURT: THEY CAN'T SEE IF YOU STAND IN THE

GLEND A JOHNSON - DIRECT BY MR. BRACKETT

1439

1 WAY.

2 A. I'M SORRY.

3 Q. STAND OFF TO THE SIDE SO THAT THEY CAN SEE.

4 A. THE RIGHT TOP IS THE MEAT DEPARTMENT. OVER TO
5 THE LEFT ON THE TOP, THAT'S THE OFFICE IN THE
6 UPSTAIRS. THE BOTTOM IS ME IN THE BOX AND THIS
7 ONE IS ME IN THE BOX, THAT'S WHAT WE CALL THE
8 LITTLE PLACE IN THE FRONT.

9 Q. OKAY. AND IS THIS THE VIDEO TAPE THAT DEPICTS -
10 - YOU'VE SEEN THIS VIDEO TAPE?

11 A. YES.

12 Q. AND IT DEPICTS THE EVENTS THAT OCCURRED THAT YOU
13 JUST DESCRIBED?

14 A. YES, SIR.

15 (THE TAPE WAS PLAYED FOR THE JURY.)

16 Q. OKAY, MA'AM, CAN YOU TAKE A LOOK AND TELL ME,
17 CAN YOU SEE THE TWO INDIVIDUALS YOU WERE
18 DESCRIBING ON THERE?

19 A. YES, SIR, IN THE BOTTOM IN THE RIGHT CORNER AND
20 YOU CAN SEE THEM FROM THE BACK HERE, BUT THAT'S
21 THEIR FACE ON THE RIGHT.

22 Q. DO YOU KNOW HOW TO USE THIS? PUSH THE BUTTON
23 AND IT MAKES A RED DOT UP HERE?

24 A. UH HUH.

25 Q. CAN YOU PUT THE DOT ON THE GENTLEMAN. WELL, YOU

GLENDIA JOHNSON - CROSS BY MR. BOYD

1440

1 CAN BACK UP.

2 A. OH, I'M SORRY. I THOUGHT YOU MEANT TO GO UP
3 THERE.

4 Q. IT WILL PROJECT LIKE A FLASHLIGHT. OKAY?

5 A. OKAY. RIGHT HERE.

6 Q. OKAY, YOU CAN HAVE A SEAT.

7 (THE WITNESS RESUMED THE WITNESS STAND.)

8 Q. MA'AM, I'M SHOWING YOU A PIECE OF PAPER THAT
9 COMES OUT OF A BROWN LEATHER WALLET CONTAINED IN
10 WHAT'S MARKED AS STATE'S EXHIBIT 88 FOR
11 IDENTIFICATION AND ASK YOU IF YOU CAN RECOGNIZE
12 WHAT THAT IS?

13 A. YES, SIR. THAT'S THE BOTTOM COPY WE ALWAYS GIVE
14 TO THE CUSTOMER.

15 Q. THANK YOU VERY MUCH, MA'AM. PLEASE ANSWER ANY
16 QUESTIONS THE DEFENSE MIGHT HAVE.

17 A. YES, SIR.

18 CROSS EXAMINATION BY

19 MR. BOYD:

20 Q. HOW ARE YOU DOING, MA'AM?

21 A. FINE.

22 Q. I JUST WANTED TO ASK YOU A FEW QUESTIONS. YOU
23 SAID WHEN THEY CAME IN IT LOOKED LIKE A
24 MISMATCH. WHAT WERE YOU TALKING ABOUT?

25 A. WELL, I DON'T KNOW, SHE'S JUST A LOT, YOU KNOW,

GLEND A JOHNSON - CROSS BY MR. BOYD

1441

1 THEY JUST DIDN'T FIT TOGETHER.

2 Q. ARE YOU TALKING ABOUT THAT SHE WAS A LOT BIGGER
3 THAN HE WAS?

4 A. YES, SHE WAS A REAL HEAVY GIRL; YES, SIR.

5 Q. SHE WAS ALSO TALL WASN'T SHE?

6 A. WELL, NOT A LOT TALLER THAN HIM, BUT SHE WAS
7 JUST BIGGER, YOU KNOW, A LOT BIGGER.

8 Q. OKAY. SO, HE LOOKED SMALL AND THIN BESIDE HER;
9 IS THAT BASICALLY WHAT YOU'RE SAYING?

10 A. YES, SIR.

11 Q. OKAY, THANK YOU. THAT'S ALL THE QUESTIONS I
12 HAVE.

13 MR. BRACKETT: YOUR HONOR, IF I MAY, I'M SORRY
14 BUT I FORGOT TWO ITEMS THAT WE HAD PRE-MARKED AND SHE WAS
15 GOING TO IDENTIFY THOSE AS WELL IF I MAY BE ALLOWED TO.

16 THE COURT: YES, SIR.

17 REDIRECT EXAMINATION BY

18 MR. BRACKETT:

19 Q. MA'AM, I SHOW YOU WHAT'S BEEN MARKED AS STATE'S
20 EXHIBITS 123 AND 124. DO YOU RECOGNIZE THOSE?

21 A. YES, SIR.

22 Q. WHAT ARE THOSE?

23 A. THAT'S ME WAITING ON THE MAN AND THE WOMAN IN
24 THE VIDEO.

25 Q. AND THE NEXT PICTURE?

GLEND A JOHNSON - REDIRECT BY MR. BRACKETT

1442

1 A. THAT'S THE SAME ONE YOU SHOWED ON THE VIDEO.

2 Q. YOUR HONOR, I'D MOVE STATE'S 123 AND 124 INTO
3 EVIDENCE AT THIS TIME.

4 MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

5 THE COURT: IT WILL BE RECEIVED WITHOUT
6 OBJECTION.

7 (THE PHOTOS FROM THE VIDEO WERE MARKED IN EVIDENCE AS
8 STATE'S EXHIBITS 123 AND 124 WITHOUT OBJECTION.)

9 MR. BRACKETT: THANK YOU, YOUR HONOR. NO FURTHER
10 QUESTIONS.

11 THE COURT: ANY RECROSS?

12 MR. BOYD: NO, SIR.

13 THE COURT: MS. JOHNSON, WE APPRECIATE YOUR TIME.
14 YOU CAN FEEL FREE TO LEAVE. THANK YOU A LOT. CALL YOUR
15 NEXT WITNESS.

16 MR. BRACKETT: THE STATE CALLS TROOPER CURTIS
17 RICHARDSON.

18 CURTIS LEE RICHARDSON, BEING FIRST DULY SWORN,
19 TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

20
21 MR. BRACKETT:

22 Q. SIR, WOULD YOU PLEASE STATE YOUR FULL NAME?

23 A. CURTIS LEE RICHARDSON.

24 Q. AND WHERE ARE YOU EMPLOYED, SIR?

25 A. VIRGINIA STATE POLICE.

CURTIS L. RICHARDSON - DIRECT BY MR. BRACKETT

1443

- 1 Q. WHERE DO YOU LIVE?
- 2 A. IN CAROLINA COUNTY IN THE STATE OF VIRGINIA.
- 3 Q. HOW LONG HAVE YOU BEEN WITH THE VIRGINIA STATE
- 4 POLICE?
- 5 A. 12 YEARS.
- 6 Q. AND WHAT ARE YOUR DUTIES WITH THE STATE POLICE
- 7 THERE?
- 8 A. NORMAL PATROL, CRIME INVESTIGATION, ACCIDENT
- 9 INVESTIGATION.
- 10 Q. CAN YOU TELL THE JURY WHERE LADYSMITH, VIRGINIA
- 11 IS?
- 12 A. IT'S GOING TO BE ABOUT 30 MILES NORTH OF
- 13 RICHMOND, VIRGINIA.
- 14 Q. ON NOVEMBER 27TH DID YOU HAVE OCCASION -- FIRST
- 15 LET ME DO THIS. I SHOW YOU WHAT'S BEEN MARKED
- 16 AS STATE'S EXHIBIT 91 FOR IDENTIFICATION. WOULD
- 17 YOU TAKE A LOOK AT THAT AND TELL ME IF YOU
- 18 RECOGNIZE THIS?
- 19 A. YES, SIR, I DO.
- 20 Q. CAN YOU TAKE A LOOK IN THE ENVELOPE?
- 21 A. YES, SIR. IT'S A CREDIT CARD RECEIPT THAT I
- 22 RETRIEVED FROM THE LADYSMITH SHELL STATION.
- 23 Q. AND WHAT DATE DID YOU RETRIEVE THAT ON?
- 24 A. I RETRIEVED THAT ON NOVEMBER 26TH.
- 25 Q. CAN YOU DESCRIBE THE PLACE YOU GOT THAT FROM FOR

CURTIS L. RICHARDSON - DIRECT BY MR. BRACKETT

1444

1 THE JURY?

2 A. IT'S A SHELL GAS STATION WHICH IS RIGHT AT THE
3 INTERSECTION OF I-95 NORTHBOUND AND ROUTE 639 OR
4 LADYSMITH ROAD AND IT'S ABOUT A HUNDRED YARDS
5 OFF THE INTERSTATE ON THE RIGHT-HAND SIDE.

6 Q. HAVE YOU HAD A CHANCE TO EXAMINE THIS RECEIPT?

7 A. YES, SIR.

8 Q. IS IT IN THE SAME CONDITION AS IT WAS WHEN YOU
9 RETRIEVED IT FROM THE SHELL STATION?

10 A. YES.

11 Q. WHAT DID YOU DO WITH IT AFTER YOU RETRIEVED IT?

12 A. AFTER RETRIEVING IT, I CALLED LIEUTENANT HAGER
13 TO VERIFY THAT THE ACTUAL CREDIT CARD NUMBERS
14 WERE THE CORRECT ONES, AND AT THAT POINT I
15 CARRIED IT BACK TO OUR OFFICE AND PUT IT IN THE
16 ENVELOPE AND MAILED IT TO LIEUTENANT HAGER.

17 Q. IS THAT YOUR HANDWRITING THERE?

18 A. YES, SIR, IT IS.

19 Q. ALL RIGHT, SIR. YOUR HONOR, AT THIS TIME I MOVE
20 STATE'S EXHIBIT 91 FOR IDENTIFICATION INTO
21 EVIDENCE.

22 THE COURT: ANY OBJECTION?

23 MR. HANCOCK: YOUR HONOR, WE JUST NEED TO KNOW
24 THE RELEVANCY OF THAT PARTICULAR RECEIPT AT THIS TIME.

25 THE COURT: YOUR ONLY OBJECTION IS RELEVANCY?

CURTIS L. RICHARDSON - DIRECT BY MR. BRACKETT

1445

1 MR. HANCOCK: THE CHAIN OF EVIDENCE ALSO.

2 MR. BRACKETT: YOUR HONOR, FOR THE SAME GROUNDS
3 AS THE VIDEO. HE HAS EXAMINED IT, HE RETRIEVED IT FROM THE
4 SHELL STATION AND IT HASN'T BEEN ALTERED.

5 THE COURT: I OVERRULE THE OBJECTION. IT WILL
6 COME INTO EVIDENCE.

7 (THE CREDIT CARD RECEIPT FROM THE SHELL STATION IN
8 LADYSMITH, VIRGINIA WAS MARKED IN EVIDENCE AS STATE'S
9 EXHIBIT 91 OVER OBJECTION.)

10 Q. THANK YOU TROOPER RICHARDSON. PLEASE ANSWER ANY
11 QUESTIONS THAT COUNSEL FOR THE DEFENSE MAY HAVE.

12 MR. HANCOCK: WE HAVE NO QUESTIONS, YOUR HONOR.

13 THE COURT: YOU MAY STEP DOWN AND BE EXCUSED. WE
14 APPRECIATE YOUR TIME.

15 MEMBERS OF THE JURY, Y'ALL HAVE HAD QUITE A FEW
16 LITTLE BREAKS, WE HAVE NOT; SO, WE ARE GOING TO TAKE ABOUT
17 A 10 MINUTE REFRESHER BREAK SO THAT WE CAN HAVE A BREAK
18 BEFORE WE GO TO THE NEXT WITNESS.

19 AFTER THE BREAK IN CAMERA:

20 MR. POPE: YOUR HONOR, I WOULD CALL TO THE
21 COURT'S ATTENTION -- I HAVE NOT HAD A CHANCE TO STEP OUT
22 AND INVESTIGATE THIS FURTHER, BUT WE HAVE THE PHILADELPHIA
23 OFFICER WHO IS THE LEAD INVESTIGATOR. HE WILL PROBABLY BE
24 FIVE WITNESSES FROM NOW. BUT WE ARE MOVING AT A PRETTY
25 FAST PACE. I JUST WANTED TO TELL YOU THAT AT SOME POINT I

GUY R. COX - DIRECT BY MR. POPE

1446

1 MAY WANT TO ADDRESS THE DENNO ISSUE FURTHER. YOU KNOW,
2 THERE MAY BE LEGAL THINGS WE WANT TO ADDRESS WITH THAT.

3 I'LL BE HONEST, I DIDN'T EVEN GET OUT OF THE
4 COURTROOM TO HAVE A CHANCE TO TALK TO HIM. I JUST CALL
5 THAT TO THE COURT'S ATTENTION.

6 THE COURT: DO YOU NEED A REFRESHER MINUTE? DO
7 YOU NEED A MINUTE?

8 MR. POPE: YOUR HONOR, IT'S ACCORDING TO WHEN
9 YOU'RE GOING TO DEAL WITH THIS; HE IS PROBABLY FIVE
10 WITNESSES DOWN THE ---

11 THE COURT: NO, I MEAN DO YOU NEED TO TAKE A
12 PERSONAL MINUTE OR TWO?

13 MR. POPE: OH, NO, SIR; I'D RATHER KEEP
14 PROSECUTING, YOUR HONOR. I APPRECIATE YOUR CONCERN THOUGH.

15 THE COURT: BRING IN THE JURY.
16 IN THE PRESENCE OF THE JURY:

17 THE COURT: CALL YOUR NEXT WITNESS PLEASE.

18 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
19 THE STATE WOULD CALL TROOPER GUY COX TO THE STAND.

20 GUY R. COX, BEING FIRST DULY SWORN, TESTIFIED AS
21 FOLLOWS:

22 DIRECT EXAMINATION BY

23 MR. POPE:

24 Q. TROOPER COX, IF YOU COULD, STATE YOUR NAME AND
25 SPELL YOUR LAST NAME FOR THE COURT REPORTER

GUY R. COX - DIRECT BY MR. POPE

1447

1 PLEASE.

2 A. MY LAST NAME IS C-O-X. I AM TROOPER FIRST CLASS
3 GUY R. COX.

4 Q. TROOPER COX, COULD YOU TELL THE JURY WHERE YOU
5 ARE EMPLOYED?

6 A. I AM EMPLOYED BY THE MARYLAND STATE POLICE AT
7 THE JFK BARRACK.

8 Q. AND COULD YOU TELL THE JURY HOW LONG YOU HAVE
9 BEEN SO EMPLOYED?

10 A. FOR 21 YEARS.

11 Q. COULD YOU JUST BASICALLY TELL THE JURY WHAT YOUR
12 DUTIES ARE THERE IN MARYLAND AND WHAT YOU DO DAY
13 TO DAY?

14 A. UNIFORMED ROAD PATROL.

15 Q. AND AS PART OF YOUR DUTIES DID YOU HAVE AN
16 OPPORTUNITY TO ASSIST IN THE INVESTIGATION IN
17 THIS CASE BACK IN NOVEMBER 26TH OF 1997?

18 A. YES, I DID.

19 Q. AND PARTICULARLY DID YOU HAVE AN OPPORTUNITY TO
20 ASSIST IN THE SEARCH FOR EVIDENCE THERE IN
21 MARYLAND?

22 A. YES, I DID.

23 Q. COULD YOU TELL THE JURY WHAT YOUR INVOLVEMENT
24 WAS, WHAT YOU WERE ACTUALLY CALLED TO DO, WHAT
25 YOU DID?

GUY R. COX - DIRECT BY MR. POPE

1448

1 A. ON NOVEMBER 26TH, 1997 AT APPROXIMATELY 5:15 IN
2 THE EVENING I WAS WORKING THE LATE SHIFT WHICH
3 IS THE 3:00 O'CLOCK TO 11:00 O'CLOCK SHIFT WHEN
4 I WAS CONTACTED BY OUR DUTY OFFICER AND ADVISED
5 OR INSTRUCTED TO MAKE A SEARCH IN THE DUMPSTER
6 AT THE CHESAPEAKE HOUSE AT THE EXXON STATION FOR
7 POSSIBLE EVIDENCE FROM A HOMICIDE THAT SOUTH
8 CAROLINA AUTHORITIES WERE INVESTIGATING.

9 Q. OKAY. CAN YOU DESCRIBE FOR THE JURY, YOU SAID
10 THE CHESAPEAKE HOUSE, CAN YOU DESCRIBE A LITTLE
11 BIT ABOUT WHAT THAT IS AND WHERE THAT'S LOCATED
12 EXACTLY?

13 A. YES, SIR. THE CHESAPEAKE HOUSE IS A REST AREA
14 ON I-95 IN CECIL COUNTY. IT'S IN THE CENTER OF
15 THE HIGHWAY OF 95. IT CONSISTS OF TWO GAS
16 STATIONS, A SUNNOCO STATION, AN EXXON STATION
17 AND A BUILDING WHERE YOU CAN GET FOOD AT.

18 Q. AND DID YOU ULTIMATELY GO TO THAT LOCATION?

19 A. YES, I DID.

20 Q. AND DID YOU HAVE AN OPPORTUNITY TO SEARCH THE
21 DUMPSTER THERE?

22 A. YES, I DID.

23 Q. CAN YOU RELATE TO THE JURY WHAT, IF ANYTHING,
24 TOOK PLACE? WHAT YOU ACTUALLY DID AND WHAT YOU
25 DISCOVERED?

GUY R. COX - DIRECT BY MR. POPE

1449

1 A. ON THAT DATE AND TIME I WAS INSTRUCTED TO CHECK
2 THE DUMPSTER AT THE EXXON STATION. I WENT TO THE
3 AREA, WENT TO THE DUMPSTER, IT WAS FULL OF
4 TRASH. I STARTED REMOVING TRASH BAGS AND BOXES
5 THAT HAD BEEN DISCARDED INTO THE DUMPSTER.
6 AFTER REMOVING APPROXIMATELY NINE OR TEN ITEMS I
7 DISCOVERED A GREEN TRASH BAG WITH AN ALUMINUM
8 BAT HANDLE STICKING OUT OF THE TOP OF IT.

9 Q. AND ONCE YOU OBSERVED THAT, WHAT DID YOU DO
10 THEN?

11 A. I THEN CONTACTED MY SUPERVISOR, ADVISED HIM THAT
12 I MAY HAVE DISCOVERED THE EVIDENCE I WAS
13 INSTRUCTED TO LOOK FOR. I ADVISED HIM TO
14 CONTACT THE CRIMINAL INVESTIGATOR AND HAVE HIM
15 COME TO THE SCENE.
16 I THEN STAYED ON THE SCENE WITH THE PROPERTY
17 SECURING IT UNTIL I WAS RELIEVED.

18 Q. OKAY. DID YOU ALLOW ANYBODY TO ACCESS THAT
19 DUMPSTER OR CHANGE OR ALTER ANYTHING IN ANY WAY
20 ONCE YOU DISCOVERED THIS ITEM?

21 A. NO, I DID NOT.

22 Q. DID YOU YOURSELF ALTER THE BAG OR EVEN OPEN THE
23 BAG IN ANY WAY?

24 A. I NEVER TOUCHED IT. ONCE I DISCOVERED THE
25 ITEMS, I STOPPED MY SEARCH, DIDN'T ALLOW ANYONE

GUY R. COX - DIRECT BY MR. POPE

1450

1 ELSE TO TOUCH IT AND I DID NOT TOUCH IT MYSELF.

2 Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
3 141, 140 AND 139 FOR IDENTIFICATION. I JUST ASK
4 YOU TO LOOK AT EACH OF THESE AND TELL ME IF YOU
5 RECOGNIZE THESE ITEMS?

6 A. YES, I DO.

7 Q. OKAY. AND PARTICULARLY CONCERNING STATE'S
8 EXHIBIT 139 AND 140, DO THEY ACCURATELY DEPICT
9 THE SCENE AND THE ITEM AS YOU OBSERVED IT THAT
10 NIGHT?

11 A. YES, IT DOES.

12 Q. AND AS TO 141 I REALIZE THIS WAS TAKEN IN THE
13 DAY TIME, BUT IS THIS THE INCIDENT LOCATION?

14 A. YES, THAT IS THE EXXON STATION AT THE CHESAPEAKE
15 HOUSE.

16 Q. THANK YOU, SIR. YOUR HONOR, I MOVE STATE'S
17 EXHIBITS 139, 140 AND 141 INTO EVIDENCE.

18 MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

19 THE COURT: IT WILL BE RECEIVED.

20 (THE PHOTOGRAPHS OF THE DUMPSTER WERE MARKED IN EVIDENCE AS
21 STATE'S EXHIBITS 139, 140 AND 141 WITHOUT OBJECTION.)

22 MR. POPE: MAY IT PLEASE THE COURT, I'M GOING TO
23 ASK THE TROOPER TO STEP DOWN TO BE ABLE TO SEE THE SCREEN.

24 THE COURT: CERTAINLY.

25 Q. IF YOU WOULD, TROOPER, STEP DOWN. AND, MADAM

GUY R. COX - DIRECT BY MR. POPE

1451

1 CLERK, IF YOU COULD GET THE LIGHTS.

2 (THE LIGHTS IN THE COURTROOM WERE DIMMED.)

3 Q. AS I PLACE EACH OF THESE UP I'LL IDENTIFY THE
4 ITEM AND IF YOU COULD JUST INDICATE TO THE JURY
5 WHAT THEY DEPICT PLEASE.

6 A. YES, SIR.

7 Q. THIS WILL BE STATE'S EXHIBIT 141. IF YOU WILL
8 JUST IDENTIFY THAT FOR US PLEASE.

9 A. THIS IS THE NORTHBOUND GAS PUMPS AT THE
10 CHESAPEAKE HOUSE. THE DUMPSTER IS RIGHT WHERE
11 THE RED DOT IS AT. THIS IS THE LOCATION OF THE
12 DUMPSTER THAT I SEARCHED WHERE I FOUND THE
13 EVIDENCE.

14 Q. OKAY, AND I'LL SHOW YOU WHAT'S BEEN MARKED
15 STATE'S EXHIBIT 140.

16 A. AGAIN, THE DUMPSTER THAT I SEARCHED. THESE ARE
17 THE BAGS THAT I TOOK OUT OF THE DUMPSTER UP
18 UNTIL THE TIME THAT I FOUND THE EVIDENCE WHICH
19 WAS STILL INSIDE.

20 ONCE I LOCATED THE PROPERTY, I STOPPED TAKING
21 TRASH OUT OF THE DUMPSTER AND CONTACTED MY
22 SUPERVISOR ABOUT THE RECOVERY.

23 Q. I'M GOING TO SHOW YOU STATE'S EXHIBIT 139.

24 A. OKAY, THIS IS THE TRASH BAG THAT I DISCOVERED
25 AFTER REMOVING SOME TRASH OFF OF IT. ONCE I

GUY R. COX - DIRECT BY MR. POPE

1452

1 REMOVED THE TRASH OFF OF IT AND SAW THE TOP OF
2 THE -- THE BAT STICKING OUT OF THE TOP, I THEN
3 STOPPED REMOVING THE TRASH OUT OF IT. I THEN
4 CONTACTED MY SUPERVISOR FROM THE SCENE ABOUT THE
5 RECOVERY AND I STAYED WITH THE EVIDENCE UNTIL I
6 WAS RELIEVED BY THE CRIMINAL INVESTIGATOR.

7 Q. THANK YOU, SIR. YOU CAN HAVE A SEAT. ANSWER
8 ANY QUESTIONS THE DEFENSE MAY HAVE.

9 MR. BOYD: NO QUESTIONS, YOUR HONOR.

10 THE COURT: ALL RIGHT, YOU MAY STEP DOWN AND BE
11 EXCUSED. WE APPRECIATE YOUR TIME.

12 MR. POPE: YOUR HONOR, I WOULD ASK THAT THIS
13 WITNESS BE EXCUSED. YOU JUST TOOK CARE OF THAT, YOUR
14 HONOR, I APOLOGIZE.

15 YOUR HONOR, THE NEXT OFFICER WILL ALSO BE USING
16 THE OVERHEAD PROJECTOR AND UNLESS WE HAVE A PROBLEM WITH
17 THE JURY SEEING, WE'LL JUST LEAVE THE LIGHTS DOWN.

18 THE COURT: THAT SHOULD BE ALL RIGHT, I THINK.

19 MR. POPE: THE STATE WOULD CALL TROOPER THOMAS
20 BEMAN TO THE STAND.

21 THE COURT: I'M SORRY, WHAT WAS THE LAST NAME
22 AGAIN?

23 MR. POPE: BEMAN, YOUR HONOR.

24 THE COURT: COME ON UP HERE, TROOPER, TO THE
25 CLERK'S DESK AND SHE WILL ADMINISTER THE OATH.

GUY R. COX - DIRECT BY MR. POPE

1453

1 THOMAS S. BEMAN, BEING FIRST DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY

4 MR. POPE:

5 Q. TROOPER BEMAN, IF YOU COULD, STATE YOUR NAME AND
6 SPELL YOUR LAST NAME FOR THE COURT REPORTER
7 PLEASE, SIR.

8 A. THOMAS S. BEMAN, B-E-M-A-N.

9 Q. COULD YOU EXPLAIN TO THE JURY WHAT YOUR
10 OCCUPATION IS PLEASE, SIR?

11 A. I'M A MARYLAND STATE TROOPER CURRENTLY ASSIGNED
12 TO THE CRIME LABORATORY DIVISION OF THE MARYLAND
13 STATE POLICE.

14 Q. SPECIFICALLY WOULD YOU TELL THE JURY, YOU SAY
15 ASSIGNED TO THE CRIME LAB, WHAT ARE YOUR DUTIES
16 DAY TO DAY; WHAT IS IT YOU ACTUALLY DO?

17 A. I PROCESS CRIME SCENES, COLLECT EVIDENCE;
18 ANYTHING TO DEAL WITH EVIDENCE.

19 Q. I CALL YOUR ATTENTION TO WEDNESDAY NOVEMBER 26,
20 1997. DID YOU HAVE AN OPPORTUNITY TO RESPOND TO
21 THE CHESAPEAKE HOUSE THERE IN YOUR JURISDICTION
22 AT APPROXIMATELY 7:23 THAT EVENING?

23 A. YES, SIR, I DID.

24 Q. WOULD YOU EXPLAIN TO THE JURY WHAT THE PURPOSE
25 WAS OF YOU GOING THERE AND WHAT YOU OBSERVED?

THOMAS S. BEMAN - DIRECT BY MR. POPE

1454

1 A. OKAY. UPON ARRIVAL I CONTACTED T.F.C. COX, GUY
2 COX, AND DETECTIVE SERGEANT BARKER WHO WERE
3 ALREADY AT THE SCENE AND THEY HAD SECURED THIS
4 DUMPSTER BY THE NORTHBOUND SIDE OF THIS SERVICE
5 AREA AT WHICH TIME THEY POINTED OUT IN THE
6 DUMPSTER A GARBAGE BAG WITH A BAT STICKING OUT
7 OF IT. IT APPARENTLY HAD SEVERAL OTHER ITEMS IN
8 THERE AND THEY BELIEVED THAT THAT'S WHAT THEY
9 WERE LOOKING FOR IN REFERENCE TO A LOOKOUT FROM
10 SOUTH CAROLINA.

11 Q. DID YOU ACTUALLY YOURSELF PHYSICALLY RECOVER
12 THIS BAG FROM THE DUMPSTER?

13 A. YES, I DID.

14 Q. AND THEN WHAT DID YOU -- DID YOU DO ANYTHING AS
15 FAR AS WHAT WAS IN THE BAG?

16 A. I TOOK DETAILED PHOTOGRAPHS OF THE AREA; I TOOK
17 MEASUREMENTS, THINGS LIKE THAT.

18 Q. OKAY, SO WE'RE ACTUALLY OBSERVING THE
19 PHOTOGRAPHS THAT YOU TOOK?

20 A. YES, SIR.

21 Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S
22 EXHIBITS 142 THROUGH 146 FOR IDENTIFICATION AND
23 ASK IF YOU COULD LOOK AT EACH OF THOSE AND TELL
24 ME IF THEY ACCURATELY DEPICT THE ITEMS THAT YOU
25 RECOVERED.

THOMAS S. BEMAN - DIRECT BY MR. POPE

1455

1 A. THAT'S RIGHT. THOSE ARE THE ITEMS THAT I TOOK
2 OUT OF THE DUMPSTER.

3 Q. ALL RIGHT, THANK YOU, SIR. 142 THROUGH 146 FOR
4 IDENTIFICATION, THE STATE WOULD MOVE INTO
5 EVIDENCE.

6 MR. BOYD: I WOULD OBJECT ON THE GROUND OF
7 RELEVANCY AT THIS TIME.

8 THE COURT: LET ME SEE THEM.
9 (THE PHOTOGRAPHS WERE GIVEN TO THE COURT.)

10 THE COURT: I WILL ALLOW THEM IN EVIDENCE.

11 MR. POPE: THANK YOU.
12 (PHOTOGRAPHS 142 THROUGH 146 WERE MARKED IN EVIDENCE OVER
13 OBJECTION.

14 Q. TROOPER I'M GOING TO ASK YOU IF YOU COULD IF YOU
15 WOULD STEP DOWN RIGHT THIS WAY SO THAT YOU CAN
16 SEE. IF YOU COULD, TELL THE JURY ONCE YOU
17 ACTUALLY RECOVERED THE BAG AND ITEMS, WHAT DID
18 YOU PHYSICALLY DO WITH THOSE ITEMS?

19 A. OKAY. I PICKED THE WHOLE BAG UP WITH THE BAT
20 STICKING OUT OF IT AND BROUGHT IT OUT. I TOOK
21 MEASUREMENTS. I PHOTOGRAPHED WHAT BAGS HAD BEEN
22 TAKEN OUT ON TOP OF IT. I TOOK ADDITIONAL
23 MEASUREMENTS OF WHERE THE POSITION OF THE
24 DUMPSTER WAS IN RELATION TO THE GARAGE ETCETERA.
25 AT THAT TIME I PUT IT IN MY VEHICLE -- PROPERLY

THOMAS S. BEMAN - DIRECT BY MR. POPE

1456

1 BAGGED IT, PUT IT IN MY VEHICLE AND TOOK IT BACK
2 TO MY OFFICE AT STATE POLICE BARRACKS AT WHICH
3 TIME I ROLLED OUT A PIECE OF BROWN PAPER ON THE
4 FLOOR AND TOOK THE ITEMS OUT OF THE BAG
5 INDIVIDUALLY AND LAID THEM OUT UPON THE PAPER IN
6 ORDER FOR THEM TO DRY BECAUSE SOME OF THEM WERE
7 STILL WET WITH BLOOD.

8 Q. FIRST I'LL CALL YOUR ATTENTION BACK AT THE SCENE
9 TO STATE'S EXHIBIT 142 IN EVIDENCE AND SEE IF
10 YOU CAN EXPLAIN WHAT THIS INDICATES.

11 A. I'M SORRY?

12 Q. COULD YOU EXPLAIN TO THE JURY WHAT THIS PICTURE
13 DEPICTS.

14 A. OKAY, THAT'S THE BAG WITH THE BAT STICKING OUT
15 OF IT AND THE MOCCASIN SHOES AND THERE'S PANTS
16 RIGHT THERE, THEY ARE COMING OUT. SOME PART OF
17 THE ITEMS WERE IN ONE BAG AND THEN OTHER ITEMS
18 WERE IN THE OTHER BAG AND THEN THE ONE BAG WAS
19 SOCKS.

20 Q. I'LL SHOW YOU STATE'S EXHIBIT 143 AND AGAIN ASK
21 IF YOU COULD IDENTIFY WHAT THIS DEPICTS PLEASE.

22 A. THESE ARE THE MOCCASIN SHOES THAT WERE TAKEN OUT
23 OF THE BAG. OKAY, THIS IS A BOTTLE OF ZYDOT
24 RIGHT THERE, THE BAT THAT WAS STICKING OUT OF
25 THE BAG; THIS IS A KITCHEN TOWEL; THIS IS A

THOMAS S. BEMAN - DIRECT BY MR. POPE

1457

1 SERRATED WOODEN HANDLED KNIFE; I BELIEVE THESE
2 ARE THE RECEIPTS AND CHECKS WHICH I FOUND IN THE
3 BAG.

4 Q. AND I NOTICE YOU WERE REFERRING -- DID YOU
5 INVENTORY THE ITEMS INDIVIDUALLY, A LIST TO
6 INDICATE EVERYTHING THAT WAS IN FACT RECOVERED
7 FROM THE DUMPSTER?

8 A. YES, I DID.

9 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
10 SEPARATELY AS A TWO PAGE DOCUMENT, STATE'S
11 EXHIBIT 147 AND 148 AND ASK DOES THAT INVENTORY
12 ACCURATELY REPRESENT THE ITEMS THAT YOU
13 RECOVERED IN THE CHAIN OF EVIDENCE?

14 A. YES, IT DOES; IT'S WHAT I TYPED UP.

15 Q. OKAY. WE WOULD OFFER THESE.

16 MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

17 THE COURT: IT WILL BE RECEIVED WITHOUT
18 OBJECTION.

19 (THE INVENTORY OF ITEMS FOUND IN DUMPSTER WERE MARKED
20 STATE'S EXHIBITS 147 AND 148 WITHOUT OBJECTION.)

21 Q. TROOPER FOR THE EASE OF YOUR EXPLANATION I WILL
22 REFER TO STATE'S EXHIBITS WHICH WERE JUST PUT
23 INTO EVIDENCE AND YOU CAN INDICATE WHAT WAS
24 RECOVERED AND THEN WE WILL FOLLOW UP WITH THE
25 PHOTOGRAPHS.

THOMAS S. BEMAN - DIRECT BY MR. POPE

1458

1 A. OKAY.

2 MR. HANCOCK: YOUR HONOR, IF I COULD JUST MAKE AN
3 INQUIRY. IS THAT THE LIST THAT HE HAS IN HIS HAND; IS HE
4 REFRESHING HIS MEMORY FROM THAT LIST OR ---

5 A. THIS IS A COPY OF MY REPORT, ALSO THE SAME AS ON
6 THERE.

7 MR. HANCOCK: ALL RIGHT.

8 Q. THIS WOULD BE STATE'S EXHIBIT 147 AND 148, A TWO
9 PAGE REPORT, WOULD THIS ASSIST YOU IN THE
10 EXPLANATION OF THE ITEMS THAT WERE RECOVERED?

11 A. YES, SIR.

12 Q. IF YOU COULD INDICATE TO THE JURY THE FIRST
13 FOURTEEN ITEMS THAT WERE RECOVERED?

14 A. OKAY. THE FIRST ITEM WAS ITEM NUMBER 1 WHICH
15 WAS ONE BEACH TOWEL WHICH WAS YELLOW, BLUE AND
16 PINK IN COLOR.

17 ITEM NUMBER 2 WAS ONE GRAY T-SHIRT IN
18 CONJUNCTION WITH ANOTHER ONE MAROON SWEATSHIRT;
19 THEY WERE INTERTWINED, SO I KEPT THEM TOGETHER.

20 ITEM NUMBER 3 WAS ONE SMALL ROLL OF TOILET
21 PAPER.

22 ITEM NUMBER 4 WAS ONE WHITE T-SHIRT.

23 ITEM NUMBER 5 WAS A GREEN FLANNEL BOXER SHORTS.

24 ITEM NUMBER 6 WAS A PAIR OF YELLOW UNION BAY
25 PANTS.

THOMAS S. BEMAN - DIRECT BY MR. POPE

1459

1 ITEM NUMBER 7 WAS TWO PRESCRIPTION BOTTLES OF
2 RITALIN WITH THE NAME CHIP ROBERTSON ON IT.

3 ITEM NUMBER 8 WAS ONE SILVER CUP, SMALL SILVER
4 CUP.

5 ITEM NUMBER 9 WAS ONE EMPTY PACK OF MARLBORO
6 LIGHTS MENTHOL.

7 ITEM NUMBER 10 WAS ONE FILE WITH A WOODEN
8 HANDLE.

9 ITEM NUMBER 11 WAS ONE SCALPEL WITH A BLACK
10 PLASTIC HANDLE.

11 ITEM NUMBER 12 WAS ONE CRAFTSMAN CLAW HAMMER,
12 SILVER AND BLACK IN COLOR.

13 ITEM NUMBER 13 WAS NINE SOCKS, THREE WHITE,
14 THREE DARK BLUE, TWO PINK AND ONE TAN.

15 ITEM NUMBER 14 WHICH WAS ONE PLASTIC BAG WHICH
16 HELD ALL OF THE ABOVE ITEMS.

17 Q. I'M GOING TO REFER NOW TO THE SECOND PAGE OF
18 THAT DOCUMENT IF YOU WILL INDICATE THE OTHER
19 ITEMS RECOVERED.

20 A. OKAY. ITEM NUMBER 15 WAS ONE PAIR OF BUCKSKIN
21 MOCCASINS.

22 ITEM NUMBER 16 WAS ONE BOTTLE OF ZYDOT DRY
23 POWDER.

24 NUMBER 17 WAS TWO CHECK RECEIPTS WITH THE NAME
25 ROBERTSON ON THEM; CHECK NUMBER 5219 AND 5220.

THOMAS S. BEMAN - DIRECT BY MR. POPE

1460

1 ITEM NUMBER 18 IS A CHECK RECEIPT AND ONE CHECK
2 WITH ROBERTSON ON IT AND THE CHECK NUMBER WAS
3 6111.

4 NUMBER 19 WAS ONE KITCHEN KNIFE WITH A WOODEN
5 HANDLE WHICH WAS SERRATED.

6 NUMBER 20 WAS A KITCHEN HAND TOWEL, PINK AND
7 WHITE AND BLUE.

8 NUMBER 21 WAS AN ALUMINUM EATON 31 INCH BAT, 25
9 OUNCES, MODEL L-73125.

10 NUMBER 22 WAS A PAPERMATE PEN BLUE AND SILVER IN
11 COLOR.

12 NUMBER 23 WAS ONE BLACK PLASTIC GARBAGE BAG WITH
13 NUMBERED STICKERS ATTACHED.

14 AND ITEM 15 THROUGH 22 WAS CONTAINED IN THE BAG
15 ALONG WITH ITEMS 1 THROUGH 14. AND ITEM NUMBER
16 24 WAS THE 48 PHOTOGRAPHS THAT I TOOK AT THE
17 SCENE. AND ONCE I GOT BACK TO MY OFFICE, I TOOK
18 SPECIFIC INDIVIDUAL DETAILED PHOTOGRAPHS OF EACH
19 ITEM.

20 Q. I'LL SHOW YOU STATE'S EXHIBIT 144 AND IN GENERAL
21 IF YOU COULD INDICATE WHAT THAT DEPICTS.

22 A. THIS LOOKS LIKE THE TOWEL HERE ---

23 MR. HANCOCK: EXCUSE ME. TROOPER, COULD YOU MOVE
24 TO THE SIDE SO THAT WE COULD SEE?

25 A. SURE.

THOMAS A. BEMAN - DIRECT BY MR. POPE

1462

1 Q. AT SOME POINT DID YOU PACKAGE THEM UP TO BE SENT
2 TO SLED, THE STATE LABORATORY HERE?

3 A. YES, SIR. ON 11-28 I RETURNED TO THE SCENE AND
4 TOOK DAYTIME PHOTOGRAPHS IN CASE THE NIGHTTIME
5 PHOTOGRAPHS DID NOT ALL TAKE.

6 ON 11-28 MOST OF THE ITEMS WERE PACKAGED IF THEY
7 WERE DRY. IF THEY WERE NOT DRY, I LEFT THEM IN
8 MY OFFICE AND ON 11-29 I PACKAGED THE REST OF
9 THE ITEMS.

10 ON 11-29 AT 1100 HOURS IN THE MORNING ALL THE
11 ITEMS LISTED WERE TURNED OVER TO DETECTIVE
12 SERGEANT BARKER WHO IN TURN RELAYED THEM TO
13 SLED.

14 Q. DID ANYONE, UNTIL YOU GAVE THEM TO DETECTIVE
15 SERGEANT BARKER, ONCE THEY CAME INTO YOUR
16 CUSTODY DID ANYBODY ELSE HAVE ACCESS TO THESE
17 ITEMS?

18 A. NO, MY OFFICE IS LOCKED BY MYSELF AND I'M THE
19 ONLY ONE THAT HAS A KEY.

20 Q. DID YOU ALTER THEM, CHANGE THEM OR TAMPER WITH
21 THEM IN ANY WAY OTHER THAN PLACE THEM ON THE
22 PAPER AND DRY THEM OUT?

23 A. NO, I DID NOT.

24 Q. TROOPER, DID YOU HAVE AN OPPORTUNITY DURING THE
25 BREAK TO REVIEW STATE'S EXHIBITS 52 THROUGH 85?

THOMAS A. BEMAN - DIRECT BY MR. POPE

1463

1 JUST TAKE A LOOK AND SEE IF YOU HAD AN
2 OPPORTUNITY TO REVIEW THESE ITEMS?

3 A. YES, SIR. THIS IS WHAT WE REVIEWED DURING THE
4 BREAK AND THESE ARE ALL THE ITEMS THAT I
5 COLLECTED OUT OF THE BAGS, INCLUDING THE BAGS.

6 Q. INCLUDING THE BAGS THAT YOU TRANSPORTED THEM IN
7 INITIALLY?

8 A. YES, THE BAGS THAT I PACKAGED THEM IN ARE BACK
9 HERE.

10 Q. AND THE ITEMS THAT ARE IN STATE'S EXHIBITS 52
11 THROUGH 85, DID YOU CONFIRM THAT THOSE ARE THE
12 ITEMS THAT YOU SENT TO SOUTH CAROLINA?

13 A. YES, SIR, THEY ARE.

14 MR. POPE: YOUR HONOR, AT THIS TIME I WOULD MOVE
15 STATE'S 52 THROUGH 85 INTO EVIDENCE.

16 THE COURT: ANY OBJECTION?

17 MR. BOYD: AN OBJECTION ON THE GROUND OF
18 RELEVANCE. THERE HAS BEEN NO CONNECTION OR ANYTHING TYING
19 THESE ITEMS TO THE MURDER OF THE TWO ROBERTSONS AT THIS
20 POINT.

21 THE COURT: THAT'S THE GROUND FOR YOUR OBJECTION?

22 MR. BOYD: YES. THERE'S NO FOUNDATION FOR THIS.

23 THE COURT: THE OBJECTION IS OVERRULED. THEY
24 WILL BE ADMITTED INTO EVIDENCE, 52 THROUGH 85 AS STATE'S
25 EXHIBITS.

THOMAS A. BEMAN - DIRECT BY MR. POPE

1464

(EXHIBITS 52 THROUGH 85 WERE SO MARKED OVER OBJECTION.)

Q. TROOPER IF YOU WOULD, ANSWER ANY QUESTIONS THE
DEFENSE MAY HAVE, PLEASE.

MR. BOYD: NO QUESTIONS, YOUR HONOR.

THE COURT: TROOPER, WE APPRECIATE YOUR TIME.
YOU CAN STEP DOWN, AND FEEL FREE TO LEAVE. CALL YOUR NEXT
WITNESS.

MR. POPE: THE STATE WOULD CALL DETECTIVE
SERGEANT JOSEPH BARKER.

JOSEPH A. BARKER, JR., BEING FIRST DULY SWORN,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. OFFICER BARKER, IF YOU COULD, STATE YOUR NAME
AND OCCUPATION TO THE JURY PLEASE.

A. I'M JOSEPH A. BARKER, JR., MARYLAND STATE
POLICE; I'M A DETECTIVE SERGEANT AT NORTHEAST
BARRACKS, CECIL COUNTY, MARYLAND WHERE I AM IN
CHARGE OF THE CRIMINAL UNIT.

Q. COULD YOU SPELL YOUR LAST NAME FOR THE COURT
REPORTER?

A. B-A-R-K-E-R.

Q. DETECTIVE BARKER, HOW LONG HAVE YOU BEEN
EMPLOYED THERE IN MARYLAND?

A. 16 YEARS.

JOSEPH A. BARKER, JR. - DIRECT BY MR. POPE

1465

1 Q. OKAY, AND COULD YOU TELL THE JURY JUST BASICALLY
2 WHAT YOUR DUTIES ARE?

3 A. MY DUTIES ARE TO BE THE CASE MANAGER OF ANY
4 CRIME THAT THE STATE POLICE INVESTIGATE IN CECIL
5 COUNTY, THE JURISDICTION THAT I'M IN CHARGE OF.

6 Q. NOW, DOES YOUR STATE POLICE HAVE A TRAFFIC
7 DIVISION AND AN INVESTIGATIVE DIVISION IN THE
8 SAME DEPARTMENT?

9 A. YES, SIR. WE HAVE UNIFORMED TROOPERS THAT WORK
10 THE PATROL FUNCTION, AND WE HAVE PLAIN CLOTHES
11 OFFICERS THAT WORK THE CRIMINAL INVESTIGATION
12 SIDE.

13 Q. AND DID YOU HAVE THE OPPORTUNITY TO ASSIST IN
14 THE INVESTIGATION OF THIS CASE BACK ON NOVEMBER
15 26TH OF 1997?

16 A. YES, SIR, I DID.

17 Q. COULD YOU TELL THE JURY HOW YOU WERE INVOLVED IN
18 THIS CASE?

19 A. ON NOVEMBER 26, 1997 AT APPROXIMATELY 5:15 P.M.
20 I WAS NOTIFIED BY THE BARRACK DUTY OFFICER WHO
21 IS THE SHIFT COMMANDER OF THE PATROL FUNCTION
22 ADVISING ME THAT SOUTH CAROLINA ---

23 MR. HANCOCK: YOUR HONOR, I'M GOING TO OBJECT TO
24 THIS AS HEARSAY.

25 THE COURT: YES, DON'T GO INTO ANY HEARSAY.

JOSEPH A. BARKER, JR. - DIRECT BY MR. POPE

1466

1 Q. DID YOU HAVE AN OPPORTUNITY TO GO TO CHESAPEAKE
2 HOUSE?

3 A. YES, SIR, I DID.

4 Q. CAN YOU TELL THE JURY WHAT YOU DID? DID YOU
5 ENCOUNTER TROOPER COX THERE?

6 A. YES, I DID. TROOPER COX WAS SECURING THE CRIME
7 SCENE AT THE CHESAPEAKE HOUSE. AT THAT POINT I
8 JUST SUPERVISED THE CRIME SCENE AND
9 NOTIFICATIONS.

10 Q. SO, YOU WERE PHYSICALLY THERE WHEN THE RECOVERY
11 WAS MADE, DID YOU HAVE ANY HANDLING OF THE
12 EVIDENCE OR ANYTHING OF THAT NATURE OTHER THAN
13 SUPERVISING?

14 A. NO, SIR, I DID NOT.

15 Q. NOW SUBSEQUENTLY ON SATURDAY NOVEMBER 29TH DID
16 YOU HAVE THE OPPORTUNITY TO RECEIVE THE ITEMS OF
17 EVIDENCE THAT YOU RECOVERED FROM TROOPER BEMAN
18 TO BE TURNED OVER TO SLED AGENT BAKER FROM SOUTH
19 CAROLINA?

20 A. YES, SIR, I DID.

21 Q. AND DID YOU IN FACT TAKE THOSE ITEMS, THE ITEMS
22 LISTED IN STATE'S EXHIBITS 148 AND 149, THE TWO
23 PAGE DOCUMENT, ARE THOSE THE ITEMS THAT YOU
24 TRANSFERRED TO BRETT BAKER OF THE SOUTH CAROLINA
25 LAW ENFORCEMENT DIVISION?

JOSEPH A. BARKER, JR. - DIRECT BY MR. POPE

1467

1 A. YES, SIR, I DID. I HAVE CHECK MARKS THAT I
2 PLACED ON ---

3 MR. HANCOCK: YOUR HONOR, AGAIN, I AM GOING TO
4 OBJECT TO LEADING THE WITNESS. THIS IS ASSUMING FACTS NOT
5 EVEN IN EVIDENCE, BRETT BAKER RECEIVING THE ITEMS. AND
6 HE'S TESTIFYING.

7 THE COURT: REPHRASE YOUR QUESTION.

8 Q. DETECTIVE BARKER, LET'S START OVER. DID YOU
9 HAVE AN OPPORTUNITY TO RECEIVE EVIDENCE IN THIS
10 CASE FROM TROOPER BEMAN?

11 A. YES, SIR. I RECEIVED THE EVIDENCE FROM TROOPER
12 BEMAN ON SATURDAY THE 29TH AT 11:00 A. M. IN HIS
13 OFFICE AT THE NORTHEAST BARRACK.

14 Q. COULD YOU TELL THIS JURY WHAT YOU DID WITH THE
15 ITEMS OF EVIDENCE THAT YOU RECEIVED FROM TROOPER
16 BEMAN?

17 A. I TRANSPORTED THOSE TO MY OFFICE AT THE JFK
18 BARRACK AND I GAVE THOSE TO OFFICER BAKER OF THE
19 STATE LAW ENFORCEMENT DIVISION. I HAVE THE
20 CHAIN OF CUSTODY OF EVERY PIECE OF EVIDENCE. WE
21 WENT OVER IT, AND I HAVE ACTUAL CHECK MARKS OF
22 EVERYTHING THAT I TURNED OVER TO HIM WHICH IS ON
23 THE CHAIN OF CUSTODY.

24 Q. SO THE DOCUMENT THAT'S IN EVIDENCE THAT YOU HAVE
25 IN YOUR HAND, THE CHECK MARKS YOU ACTUALLY MADE

JOSEPH A. BARKER, JR. - DIRECT BY MR. POPE

1468

1 AS YOU TURNED OVER THESE ITEMS TO HIM?

2 A. YES, SIR, I DID.

3 Q. AND DURING THE LUNCH BREAK DID YOU HAVE THE
4 OPPORTUNITY TO ALSO REVIEW WITH TROOPER BEMAN
5 STATE'S EXHIBITS 52 THROUGH 85, THE ITEMS THAT
6 WERE RECOVERED. DID YOU HAVE AN OPPORTUNITY TO
7 REVIEW THOSE ITEMS?

8 A. YES, SIR, I DID AND THEY REFLECT WHAT'S ON THE
9 CHAIN OF CUSTODY FORMS.

10 Q. AND ALL THOSE ITEMS, AGAIN, WERE GIVEN TO AGENT
11 BAKER OF SOUTH CAROLINA WHO CAME TO YOUR
12 LOCATION?

13 A. YES, SIR.

14 Q. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE,
15 PLEASE.

16 MR. BOYD: NO QUESTIONS, YOUR HONOR.

17 THE COURT: WE APPRECIATE YOUR TIME. YOU CAN
18 STEP DOWN AND BE EXCUSED. CALL YOUR NEXT WITNESS.

19 MR. POPE: THE STATE WOULD CALL MICHAEL SYLVESTER
20 TO THE STAND.

21 MICHAEL SYLVESTER, BEING FIRST DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY

24 MR. POPE:

25 Q. OFFICER SYLVESTER, IF YOU COULD, STATE YOUR NAME

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1469

1 AND SPELL YOUR LAST NAME FOR THE COURT REPORTER,
2 PLEASE.

3 A. POLICE OFFICER MICHAEL SYLVESTER, S-Y-L-V-E-S-T-
4 E-R, BADGE NUMBER 158.

5 Q. COULD YOU TELL THE JURY WHERE YOU ARE EMPLOYED?

6 A. UNIVERSITY OF PENNSYLVANIA POLICE DEPARTMENT IN
7 THE CITY OF PHILADELPHIA.

8 Q. COULD YOU TELL THEM SPECIFICALLY WHAT YOUR
9 DUTIES ARE WITH THAT DEPARTMENT?

10 A. I WORK WITH A SPECIAL RESPONSE TEAM WHICH IS A
11 PLAIN CLOTHES AND UNIFORMED UNIT.

12 Q. AND WERE YOU SO EMPLOYED BACK IN NOVEMBER 25TH
13 OF 1997?

14 A. YES, I WAS.

15 Q. AND DID YOU HAVE THE OPPORTUNITY TO RESPOND AND
16 ASSIST SOUTH CAROLINA AUTHORITIES IN THE CASE WE
17 HAVE AT HAND?

18 A. YES, I DID.

19 Q. PARTICULARLY, COULD YOU TELL WHAT YOUR
20 INVOLVEMENT WAS, WHAT TOOK PLACE IN YOUR
21 JURISDICTION INVOLVING THIS CASE?

22 A. ON NOVEMBER 25TH, 1997 AT APPROXIMATELY 7:30
23 P.M. MYSELF AND MY PARTNER, POLICE OFFICER TONY
24 RICHEO SET UP A SURVEILLANCE AT 521 SOUTH 41ST
25 STREET AFTER RECEIVING INFORMATION OF TWO

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1470

1 SUSPECTS WANTED IN A POSSIBLE HOMICIDE IN SOUTH
2 CAROLINA.

3 Q. AND WHY DID YOU SET UP AT THIS PARTICULAR
4 LOCATION?

5 A. IT WAS THE RESIDENCE OF THE DEFENDANT'S BROTHER.

6 Q. AND WERE YOU LOOKING FOR A PARTICULAR VEHICLE?

7 A. YES, WE WERE.

8 Q. AND COULD YOU DESCRIBE THAT VEHICLE TO THE JURY?

9 A. IT WAS A RED MAZDA PROTEGE WITH SOUTH CAROLINA
10 TAGS ON IT.

11 Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
12 127 FOR IDENTIFICATION. I'LL ASK YOU TO LOOK
13 AND TELL ME IF YOU CAN IDENTIFY THAT.

14 A. YES, THAT'S THE VEHICLE.

15 Q. OKAY. OFFICER DURING YOUR SURVEILLANCE DID YOU
16 ULTIMATELY SEE ANY ACTIVITY AT THE LOCATION YOU
17 WERE SURVEILLING?

18 A. YES, AT APPROXIMATELY 8:30 THE RED VEHICLE
19 PULLED UP ACROSS THE STREET FROM 525 SOUTH 41ST
20 STREET AND ATTEMPTED TO PARK INTO A PARKING
21 SPOT.

22 Q. AND I'LL SHOW YOU STATE'S EXHIBIT 127. I
23 APOLOGIZE, YOUR HONOR, I CAN'T KEEP UP. STATE'S
24 EXHIBIT 127 FOR IDENTIFICATION I'D MOVE INTO
25 EVIDENCE.

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1471

1 MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

2 THE COURT: IT WILL BE RECEIVED WITHOUT
3 OBJECTION.

4 (THE PHOTOGRAPH OF THE RED MAZDA WAS MARKED IN EVIDENCE AS
5 STATE'S EXHIBIT 127 WITHOUT OBJECTION.)

6 Q. STATE'S EXHIBIT 127, WOULD YOU TELL THE JURY
7 WHAT THIS PARTICULAR ITEM DEPICTS?

8 A. THAT'S A PICTURE OF THE MAZDA.

9 Q. AND IF YOU WOULD, EXPLAIN TO THE JURY EXACTLY
10 WHAT OCCURRED, WHAT YOU OBSERVED AS YOU SAW THE
11 CAR PULL UP.

12 A. IT PULLED UP AND IN THE CITY WE HAVE TO PARALLEL
13 PARK. IF THERE'S A CAR HERE AND A CAR HERE, YOU
14 HAVE TO KIND OF BACK INTO IT. THEY APPEARED TO
15 BE HAVING TROUBLE SO IT KIND OF HELPED US A
16 LITTLE BIT. WE PULLED UP ONTO THE VEHICLE WHILE
17 THEY WERE PARKING.

18 THE OTHER TEAM THAT I WAS WORKING WITH PULLED UP
19 FROM THE REAR OF THEM. AT THAT TIME WE GOT OUT
20 AND ORDERED THEM OUT OF THE VEHICLE.

21 Q. AND COULD YOU TELL THE JURY HOW MANY OCCUPANTS
22 WERE IN THE VEHICLE?

23 A. THERE WERE TWO OCCUPANTS.

24 Q. COULD YOU TELL THE JURY THE DESCRIPTION OF EACH
25 OCCUPANT?

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1472

1 A. YES. THE DRIVER WAS A WHITE MALE, APPEARED TO
2 BE IN HIS EARLY TO MID-TWENTIES AND THE OCCUPANT
3 WAS A WHITE FEMALE, LATE TEENS, EARLY TWENTIES.

4 Q. AND BASED ON THE INFORMATION YOU HAD, WHAT DID
5 YOU DO AT THAT TIME?

6 A. AT THAT TIME THEY WERE PLACED INTO CUSTODY,
7 SEPARATED, PLACED IN SEPARATE VEHICLES, AND
8 TRANSPORTED TO THE HOMICIDE UNIT FOR
9 INVESTIGATION. THAT WOULD BE PHILADELPHIA'S
10 HOMICIDE UNIT.

11 Q. OKAY. DID YOU HAVE AN OPPORTUNITY TO -- DID YOU
12 DEAL WITH THE MALE OR THE FEMALE?

13 A. THE MALE.

14 Q. DID YOU HAVE AN OPPORTUNITY TO DO A SEARCH OF
15 THE MALE AT THAT TIME?

16 A. YES, I DID.

17 Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
18 88 FOR IDENTIFICATION AND ASK YOU TO OPEN IT UP
19 AND TAKE A LOOK AND TELL ME IF YOU CAN IDENTIFY
20 THAT.

21 A. YES, IT'S THE DEFENDANT'S WALLET THAT WAS FOUND
22 IN HIS BACK POCKET.

23 Q. DID YOU RECOVER IT?

24 A. YES, I DID.

25 Q. DID YOU HAVE AN OPPORTUNITY TO LOOK AT THE ITEMS

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1473

1 THEREIN WHEN YOU RECOVERED IT?

2 A. YES.

3 Q. AND HAVE YOU HAD AN OPPORTUNITY DURING THE BREAK
4 TO LOOK AT THIS ITEM ALSO?

5 A. RIGHT.

6 Q. AND DOES IT STILL HAVE THE SAME ITEMS AS WERE
7 THERE WHEN YOU RECOVERED IT?

8 A. YES, IT DOES.

9 Q. AND YOU TOOK THIS OFF THE PERSON OF THE
10 DEFENDANT, IS THAT CORRECT?

11 A. YES.

12 MR. BOYD: YOUR HONOR, PLEASE, WE HAVE A MATTER
13 OF LAW THAT WE NEED TO TAKE UP.

14 THE COURT: I'LL LET THE JURY GO TO THE JURY ROOM
15 JUST FOR A MINUTE.

16 IN CAMERA:

17 THE COURT: YES, SIR?

18 MR. BOYD: YOUR HONOR, AT THIS TIME IT APPEARS
19 THEY ARE GOING INTO CERTAIN ITEMS THAT WERE TAKEN FROM MR.
20 ROBERTSON. WE WOULD OBJECT ON THE GROUNDS THAT POSSIBLE
21 CAUSE TO SEARCH HIM HAS NOT BEEN ESTABLISHED AT THIS TIME.

22 THE COURT: DO YOU WANT TO MAKE A PROFFER?

23 MR. POPE: YES, SIR.

24 CONTINUED DIRECT EXAMINATION OF OFFICER SYLVESTER:

25 Q. OFFICER, IF YOU WOULD, RELATE TO THE COURT, YOU

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1474

1 HAD AN EARLIER HEARING -- I'M SORRY, LIKE A
2 SQUAD MEETING AROUND 7:00 O'CLOCK THAT EVENING
3 BEFORE YOU WENT OUT TO PATROL; IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND COULD YOU RELATE WHAT THE SUBSTANCE OF THAT
6 WAS, OFFICER?

7 A. IT WAS A BULLETIN THAT WAS PUT OVER N.C.I.C.
8 WHICH GAVE A DESCRIPTION OF THE MALE AND FEMALE,
9 NAMES OF THE MALE AND FEMALE AND IT SAID THAT
10 THEY ARE TO BE CONSIDERED ARMED AND DANGEROUS
11 AND THEY WERE WANTED FOR INVESTIGATION OF A
12 HOMICIDE.

13 Q. AND PARTICULARLY, I KNOW I HAVE INSTRUCTED YOU
14 BEFORE THE JURY NOT TO DISCUSS ANY FUGITIVE
15 WARRANT INFORMATION, IS THAT CORRECT?

16 A. CORRECT.

17 Q. BUT DID YOU ALSO HAVE INFORMATION CONCERNING A
18 FUGITIVE WARRANT ON THE DEFENDANT IN THIS CASE?

19 A. YES, WE DID.

20 Q. AGAIN, YOUR HONOR, I KNOW I'M LEADING HIM BUT I
21 HAD INSTRUCTED HIM NOT TO SAY THAT IN FRONT OF
22 THE JURY BASED ON PREVIOUS DISCUSSION WITH THE
23 DEFENSE. BUT IT'S KIND OF A CATCH 22. THEY
24 ARRESTED HIM BASED ON A FUGITIVE WARRANT BUT OUT
25 OF COURTESY TO THE DEFENSE, I CHOSE NOT TO

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1475

1 INTERJECT THAT. SO, THAT'S WHERE WE STAND ON
2 THAT, YOUR HONOR.

3 MR. BOYD: I JUST WANTED TO SEE IF THERE WAS A
4 WARRANT OUT; I JUST WANTED TO ESTABLISH THAT FOR THE
5 RECORD.

6 THE COURT: ALL RIGHT. IS THERE ANY OBJECTION TO
7 IT?

8 MR. HANCOCK: I'M GOING TO FURTHER OBJECT TO ---

9 THE COURT: LET'S TRY TO STICK TO ONE PERSON ON
10 ONE ISSUE, SO TELL MR. BOYD WHAT YOUR OBJECTION IS.

11 MR. BOYD: WE MAY HAVE A CHAIN OF CUSTODY ISSUE
12 ON THE ADMISSION OF IT PERIOD, BUT ON THE ISSUE I RAISED WE
13 HAVE NO OBJECTION.

14 THE COURT: AND THE ISSUE RAISED WAS THE SEARCH
15 ISSUE?

16 MR. BOYD: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: I FIND THAT THEY HAD PROBABLE CAUSE
18 FOR A SEARCH.

19 MR. POPE: YOUR HONOR, JUST FOR SOME
20 CLARIFICATION FROM THE DEFENSE, DO YOU WANT ME TO HAVE HIM
21 SAY THAT THERE WAS A WARRANT AND JUST NOT GET INTO IT? THE
22 DIFFICULTY WE'RE INVOLVED IN IS AT A MINIMUM WHAT THEY ARE
23 PICKING HIM UP FOR IS A FUGITIVE WARRANT FOR A PROBATION
24 VIOLATION.

25 THE COURT: WELL, AS LONG AS I'M ALLOWING IT IN,

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1476

1 I DON'T THINK THE JURY NEEDS TO KNOW THAT.

2 MR. BOYD: I AGREE, YOUR HONOR. OF COURSE, IF WE
3 HADN'T HAD THIS HEARING THE RECORD WOULD BE VOID OF THAT.

4 THE COURT: I UNDERSTAND, BUT I DON'T THINK THAT
5 NEEDS TO COME OUT IN FRONT OF THE JURY.

6 MR. POPE: YES, SIR. OFFICER, AGAIN, I WOULD
7 INSTRUCT YOU NOT TO GET INTO THE SPECIFICS OF THE FUGITIVE
8 WARRANT.

9 ALSO, YOUR HONOR, WHILE THE JURY IS OUT IF THERE
10 IS SOME OBJECTION TO THE ADMISSION OF THIS EXHIBIT ---

11 THE COURT: YES, WHAT IS THAT OBJECTION?

12 MR. HANCOCK: WE'RE TAG TEAMING HERE, YOUR HONOR.
13 THERE HAS BEEN NO CHAIN OF CUSTODY ESTABLISHED. THE CHAIN
14 OF CUSTODY IS THERE TO ENSURE THAT THERE HAS BEEN NO
15 ALTERATION OF THE ITEM. THIS ITEM HAS BEEN THROUGH SEVERAL
16 PLACES, SEVERAL HANDS BACK HERE. THAT HAS NOT BEEN
17 ESTABLISHED AT THIS TIME, YOUR HONOR.

18 THE COURT: WELL I THINK IN LINE WITH THE DAVIS
19 CASE WE'VE ALREADY TALKED ABOUT THE ITEMS AND THERE'S
20 TESTIMONY FROM THIS OFFICER THAT HE TOOK IT OFF OF HIM AND
21 THAT IT WAS HIS WALLET AND THAT THOSE ARE THE ITEMS THAT
22 WERE IN THERE. I'LL LET YOU CROSS EXAMINE HIM ON THAT AT
23 THIS TIME.

24 MR. HANCOCK: OKAY, SIR.

25 MR. POPE: AND, AGAIN, I BELIEVE THE POSITION

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1477

1 WOULD BE IF THERE WERE ANY TESTING DONE. OF COURSE, WE ARE
2 GOING TO PROVE THE CHAIN SUBSEQUENTLY BUT HE IS NOW SAYING
3 THAT THIS IS THE WALLET HE TOOK.

4 THE COURT: YES, YOU KNOW, WE'VE TALKED ABOUT
5 THAT DAVIS CASE -- WELL, LET ME HEAR WHAT YOU WANT TO ASK
6 HIM.

CROSS EXAMINATION (IN CAMERA) BY

8 MR. HANCOCK:

9 Q. YOU HAVE IDENTIFIED THIS AS MR. ROBERTSON'S
10 WALLET, IS THAT CORRECT, SIR, AND I WILL HAND IT
11 TO YOU.

12 A. THAT'S CORRECT.

13 Q. AS YOU LOOK AT THAT WALLET -- DID YOU EXAMINE IT
14 AND GO THROUGH IT WHEN YOU FIRST TOOK IT FROM
15 HIM?

16 A. YES, I DID.

17 Q. AND ARE THERE ANY ITEMS MISSING THAT YOU'RE
18 AWARE OF?

19 A. AS FAR AS I'M AWARE, NO, THERE'S NOT.

20 Q. AND WHAT DO YOU REMEMBER FINDING IN THE WALLET?

21 A. THE CASH, THE BANK CARD, THE VISA, THE DRIVER'S
22 LICENSE AND A RECEIPT FROM A PEACH STAND.

23 Q. HAS ANYTHING IN THERE BEEN SUBSTANTIALLY ALTERED
24 TO YOUR MEMORY, SIR?

25 A. AS FAR AS I CAN RECALL, NO, IT HAS NOT.

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1478

1 Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

2 THE COURT: DOES YOUR OBJECTION CONTINUE?

3 MR. HANCOCK: NO, SIR.

4 THE COURT: ALL RIGHT, BRING IN THE JURY.

5 MR. HANCOCK: I'M SORRY, YOUR HONOR. MY
6 OBJECTION CONTINUES AND I ASK FOR A RULING FROM THE COURT
7 ON THAT MATTER, SIR.

8 THE COURT: ALL RIGHT, AS TO THE ADMISSIBILITY OF
9 THE WALLET?

10 MR. HANCOCK: YES, SIR.

11 THE COURT: I RULE IT'S ADMISSIBLE. BRING IN THE
12 JURY, PLEASE.

13 IN THE PRESENCE OF THE JURY:

14 THE COURT: YOU MAY CONTINUE, SOLICITOR
15 CONTINUED DIRECT EXAMINATION OF OFFICER SYLVESTER:

16 Q. OFFICER SYLVESTER, SUBSEQUENT TO ARRESTING THE
17 DEFENDANT IN PHILADELPHIA, YOU RECOVERED HIS
18 WALLET?

19 A. THAT'S CORRECT.

20 Q. STATE'S EXHIBIT 88?

21 A. CORRECT.

22 Q. AND YOU HAVE HAD AN OPPORTUNITY TO REVIEW THIS
23 WALLET?

24 A. YES, I HAVE.

25 Q. AND IS IT IN SUBSTANTIALLY THE SAME CONDITION

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1479

1 WITH THE SAME ITEMS AS IT WAS WHEN YOU RECOVERED
2 IT?

3 A. YES, IT IS.

4 MR. POPE: YOUR HONOR, I WOULD MOVE STATE'S
5 EXHIBIT 88 FOR IDENTIFICATION INTO EVIDENCE.

6 THE COURT: OVER OBJECTION I WILL ALLOW IT INTO
7 EVIDENCE.

8 (THE WALLET WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT 88
9 OVER OBJECTION.)

10 Q. I WOULD NOW CALL PARTICULAR ATTENTION, AND I
11 WOULD LIKE TO HAVE THESE MARKED AS 88.1, 2 AND 3
12 PLEASE MA'AM.

13 (A S.C. I.D. CARD WAS MARKED 88.1; A VISA CARD WAS MARKED
14 88.2; THE RECEIPT FROM THE PEACH STAND WAS MARKED 88.3.)

15 Q. OFFICER, I'LL SHOW YOU EXHIBITS 88.1, 88.2 AND
16 88.3 THAT ARE ALREADY IN EVIDENCE, THESE ITEMS
17 THAT WERE RECOVERED FROM THE WALLET. PLEASE
18 IDENTIFY EACH ONE OF THOSE BY THE NUMBER, AND
19 TELL THE JURY WHAT IT IS PLEASE, SIR.

20 A. OKAY. 88.1 IS A SOUTH CAROLINA IDENTIFICATION
21 CARD WITH THE NAME OF ROBERTSON, JAMES D.

22 Q. OKAY.

23 A. 88.2 IS A U.S. AIRWAYS NATIONS BANK VISA CARD IN
24 THE NAME OF EARL L. ROBERTSON. AND 88.3 IS A
25 RECEIPT FROM THE PEACH STAND IN FORT MILL, SOUTH

MICHAEL SYLVESTER - DIRECT BY MR. POPE

1480

1 CAROLINA.

2 Q. OFFICER SYLVESTER, ONCE THE DEFENDANT WAS
3 SECURED, WHAT WAS DONE WITH THE VEHICLE, THE RED
4 VEHICLE?

5 A. AT THAT TIME A UNIFORMED OFFICER WAS CALLED ON
6 LOCATION TO GUARD THE VEHICLE UNTIL THE CITY OF
7 PHILADELPHIA COULD HAVE THE VEHICLE TOWED AND
8 TAKEN DOWN TO THE POLICE GARAGE.

9 Q. AND THE POLICE GARAGE, IS THAT WHERE THEY RETAIN
10 VEHICLES TO BE TESTED OR WHATEVER THE CASE MAY
11 BE?

12 A. THAT'S CORRECT, CRIME LAB WILL DO FINGERPRINTS
13 AND COLLECT WHATEVER EVIDENCE THEY CAN.

14 Q. DID YOU ALTER ANY OF THE EVIDENCE IN ANY MANNER
15 ONCE YOU CAME IN CONTACT WITH IT?

16 A. NO, I DID NOT.

17 Q. FINALLY, WHAT DID YOU PHYSICALLY DO WITH THE
18 DEFENDANT ONCE YOU PLACED HIM IN CUSTODY?

19 A. ONCE HE WAS PLACED IN CUSTODY, HE WAS PLACED
20 INTO A POLICE VEHICLE AND HE WAS TRANSPORTED
21 DOWN TO THE HOMICIDE UNIT OF THE PHILADELPHIA
22 POLICE DEPARTMENT.

23 Q. IS JERRY ROBISON A DETECTIVE WITH THE HOMICIDE
24 DIVISION THERE?

25 A. YES, HE IS.

JERRY GERALD ROBISON - DIRECT BY MR. POPE

1481

1 Q. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

2 MR. HANCOCK: NO FURTHER QUESTIONS, YOUR HONOR.

3 THE COURT: YOU MAY STEP DOWN AND BE EXCUSED. WE
4 APPRECIATE YOUR TIME. CALL YOUR NEXT WITNESS.

5 MR. POPE: THE STATE WOULD CALL JERRY ROBISON TO
6 THE STAND.

7 JERRY GERALD ROBISON, BEING FIRST DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY

10 MR. POPE:

11 Q. DETECTIVE ROBISON, IF YOU COULD, STATE YOUR NAME
12 AND SPELL YOUR LAST NAME FOR THE COURT REPORTER,
13 PLEASE.

14 A. DETECTIVE GERALD ROBISON, R-O-B-I-S-O-N, BADGE
15 769, PHILADELPHIA HOMICIDE DIVISION,
16 PHILADELPHIA, PENNSYLVANIA.

17 Q. DETECTIVE, COULD YOU TELL THE JURY HOW LONG
18 YOU'VE BEEN EMPLOYED WITH HOMICIDE DIVISION?

19 A. I'VE BEEN EMPLOYED AS A HOMICIDE DETECTIVE SINCE
20 FEBRUARY, 1989, SO IT'S 10 YEARS; I WAS WITH THE
21 POLICE DEPARTMENT FOR 22.

22 Q. COULD YOU TELL THE JURY JUST BASICALLY WHAT YOUR
23 DAY TO DAY DUTIES ARE THERE IN PHILADELPHIA?

24 A. AT THAT TIME I WAS IN THE FUGITIVE SQUAD,
25 SUPERVISOR. AS AN ASSIGNED DETECTIVE WOULD GET

JERRY GERALD ROBISON - DIRECT BY MR. POPE

1482

1 A WARRANT FOR SOMEBODY IN THE HOMICIDE UNIT,
2 THEY ARE GIVEN FOUR WORKING DAYS TO GET THAT
3 PERSON AND THEN IT'S TURNED OVER TO A SUPERVISOR
4 TO ONE OF THE TEAMS.

5 ALSO WE HANDLE ALL OUTSIDE JURISDICTIONS THAT
6 COME INTO THE CITY LOOKING FOR SOMEBODY
7 CONCERNING HOMICIDES.

8 Q. WERE YOU IN ESSENCE A COORDINATOR OR THE TOUCH
9 POINT FOR THE SOUTH CAROLINA AUTHORITIES AS FAR
10 AS YOUR DEPARTMENT?

11 A. YES.

12 Q. AND DID YOU HAVE THE OPPORTUNITY BACK IN
13 NOVEMBER OF 1997 TO ASSIST DETECTIVE MISLE AND
14 OTHER OFFICERS AS FAR AS THE COORDINATION OF THE
15 INVESTIGATION IN YOUR AREA?

16 A. YES, I WAS.

17 Q. AND PARTICULARLY I WANT TO CALL TO YOUR
18 ATTENTION, WERE YOU INVOLVED THE DAY THAT THE
19 DEFENDANT WAS ACTUALLY ARRESTED AND BROUGHT TO
20 YOUR DEPARTMENT?

21 A. YES, I WAS.

22 Q. IS IT FAIR TO SAY THAT YOU WERE SUPERVISING THE
23 INVESTIGATION FROM YOUR END AT THAT TIME?

24 A. YES, I WAS THE ASSIGN ON THAT PARTICULAR CASE.
25 ANYTHING THAT HAD TO BE DONE, THEY WOULD COME TO

JERRY GERALD ROBISON - DIRECT BY MR. POPE

1483

1 ME AND ASK ME AND I WOULD DIRECT WHICH WAY IT
2 WOULD GO.

3 Q. WERE YOU PRESENT -- AT YOUR DEPARTMENT DID YOU
4 HAVE AN OPPORTUNITY TO COME IN CONTACT WITH THE
5 DEFENDANT WHILE HE WAS THERE?

6 A. YES, I DID.

7 Q. AND ALSO DID YOU HAVE AN OPPORTUNITY TO RECEIVE
8 -- I KNOW YOU'VE HAD AN OPPORTUNITY TO LOOK AT
9 THE EVIDENCE SINCE THE JURY'S BEEN OUT; DID YOU
10 HAVE AN OPPORTUNITY TO LOOK AT THE EVIDENCE
11 DURING THE LUNCH BREAK?

12 A. YES, I DID.

13 Q. STATE'S EXHIBIT 88 THAT IS IN EVIDENCE, DID YOU
14 HAVE AN OPPORTUNITY TO RECEIVE THIS ITEM FROM
15 OFFICER SYLVESTER?

16 A. YES, I DID.

17 Q. COULD YOU TELL THE JURY WHAT YOU SUBSEQUENTLY
18 DID WITH THAT ITEM?

19 A. I ITEMIZED THE OBJECTS THAT WERE IN THE WALLET,
20 PUT IT ON A PROPERTY SHEET, AND IT WAS LATER
21 TURNED OVER TO THE SOUTH CAROLINA AUTHORITIES.

22 Q. LIKEWISE, I'LL SHOW YOU STATE'S EXHIBIT 87 FOR
23 IDENTIFICATION AND ASK YOU TO LOOK AT THAT AND
24 TELL ME IF YOU CAN IDENTIFY THAT?

25 A. THIS IS A SWEATER THAT I HAD TAKEN FROM MEREDITH

JERRY GERALD ROBISON - DIRECT BY MR. POPE

1484

1 MOON AT MY OFFICE AND PLACED ON A PROPERTY SHEET
2 AND AGAIN TURNED OVER TO SOUTH CAROLINA LAW
3 ENFORCEMENT.

4 Q. WERE THERE OTHER CLOTHING ITEMS THAT YOU ALSO
5 SENT TO SOUTH CAROLINA IN ADDITION TO THE
6 SWEATER?

7 A. YES, THERE WAS.

8 Q. WHAT WAS THAT?

9 A. A PAIR OF SHOES AND ONE OTHER ITEM, I THINK
10 ANOTHER PAIR OF SHOES.

11 Q. STATE'S EXHIBIT 87, AGAIN I APOLOGIZE, I KNOW
12 YOU LOOKED AT IT DURING THE BREAK, BUT IS IT IN
13 SUBSTANTIALLY THE SAME CONDITION, OTHER THAN THE
14 TESTING, AS IT WAS WHEN YOU RECEIVED IT?

15 A. YES, SIR.

16 MR. POPE: WE WOULD OFFER EXHIBIT NUMBER 87 FOR
17 IDENTIFICATION INTO EVIDENCE, YOUR HONOR.

18 MR. HANCOCK: WITHOUT OBJECTION.

19 THE COURT: IT WILL BE RECEIVED WITHOUT
20 OBJECTION.

21 (THE MULTI-COLORED SWEATER WAS MARKED IN EVIDENCE AS
22 STATE'S EXHIBIT 87 WITHOUT OBJECTION.)

23 Q. AS PART OF YOUR DUTIES ALSO, COULD YOU EXPLAIN
24 THE POLICE GARAGE, THE AREA THAT'S DEPICTED IN
25 THE PICTURE, STATE'S EXHIBIT 127 -- UNDER YOUR

JERRY GERALD ROBISON - DIRECT BY MR. POPE

1485

1 DIRECTION WAS THE DEFENDANT'S CAR BROUGHT TO
2 THERE FOR LATER PROCESSING BY THE SOUTH CAROLINA
3 AUTHORITIES?

4 A. YES. WHILE I WAS OUT AT 41ST STREET IN
5 PHILADELPHIA WHERE THE CAR WAS LOCATED, I
6 NOTIFIED POLICE GARAGE WHICH TOWS ALL OUR
7 VEHICLES TO THEIR GARAGE AND IT'S HELD THERE
8 UNTIL ANYBODY ELSE WHO HAS TO PROCESS THAT CAR
9 WOULD COME TO THAT GARAGE AND PROCESS THE CAR
10 FOR FINGERPRINTS AND RECOVERY OF EVIDENCE.

11 Q. DID YOU ULTIMATELY AS PART OF YOUR ASSISTANCE IN
12 THE INVESTIGATION ON SATURDAY NOVEMBER 29TH HAVE
13 THE OPPORTUNITY TO AUTHORIZE A SEARCH WARRANT
14 FOR THIS CAR THAT WAS EXECUTED WITH SOUTH
15 CAROLINA AUTHORITIES?

16 A. YES.

17 Q. AND WHO WAS THE AFFIANT ON THE SEARCH WARRANT?

18 A. DETECTIVE WILLIAM COOGAN WHO WORKS WHAT WE CALL
19 OUR LINE SQUAD. THROUGH HIS SUPERVISOR I ASKED
20 HIM TO HAVE A SEARCH WARRANT DRAWN UP FOR THE
21 CAR.

22 Q. BUT AS FAR AS ACTUALLY PHYSICALLY PROCESSING THE
23 CAR, AS FAR AS SEARCHING AND ACTUALLY DOING THE
24 SEARCH, WHO WAS THAT DONE BY?

25 A. DETECTIVE COOGAN DIRECTED THE SLED, THE SOUTH

JERRY GERALD ROBISON - DIRECT BY MR. POPE

1486

CAROLINA PEOPLE WHO PROCESSED THE CAR.

Q. DID YOU ALSO HAVE AN OPPORTUNITY TO ENCOUNTER
THE DEFENDANT AT YOUR DEPARTMENT AFTER HE WAS
ARRESTED?

A. YES, I DID.

Q. I'LL SHOW YOU STATE'S EXHIBIT 138 FOR
IDENTIFICATION AND ASK IF YOU COULD LOOK AT
THOSE ITEMS.

A. YES.

Q. DOES THAT ACCURATELY DEPICT THE WAY HE APPEARED
THAT DAY AS WELL AS ANY PHYSICAL INJURIES THAT
HE HAD WHEN HE CAME INTO YOUR DEPARTMENT?

A. YES.

MR. HANCOCK: AGAIN HE'S LEADING, YOUR HONOR.

THE COURT: I SUSTAIN THE OBJECTION. ASK THE
QUESTION AGAIN; THAT'S A LEADING QUESTION.

Q. OFFICER, COULD YOU TELL THE JURY WHAT THIS
DEPICTS, PLEASE?

A. THIS IS A SET OF PICTURES, FOUR PICTURES OF
JAMES ROBERTSON THAT I DIRECTED OUR PHOTO LAB TO
TAKE AND INJURIES TO HIS BODY ON THE DAY THAT HE
WAS BROUGHT IN.

MR. POPE: YOUR HONOR, THAT WOULD BE STATE'S
EXHIBIT 138 FOR IDENTIFICATION. WE WOULD MOVE IT INTO
EVIDENCE.

JERRY GERALD ROBISON - DIRECT BY MR. POPE

1487

1 MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

2 THE COURT: IT WILL BE RECEIVED.

3 (THE FOUR PHOTOS OF THE DEFENDANT WERE MARKED IN EVIDENCE
4 AS STATE'S EXHIBIT 138 WITHOUT OBJECTION.)

5 Q. I BEG THE COURT'S INDULGENCE?

6 THE COURT: CERTAINLY.

7 (AFTER A BRIEF PAUSE.)

8 Q. DETECTIVE, I ASK YOU ON STATE'S EXHIBIT 88
9 THAT'S IN EVIDENCE, THE WALLET, AGAIN YOU HAD AN
10 OPPORTUNITY TO LOOK AT IT WHILE THE JURY WAS
11 OUTSIDE THE COURTROOM; IS THAT CORRECT?

12 A. THAT'S CORRECT.

13 Q. AND WAS IT IN SUBSTANTIALLY THE SAME CONDITION
14 WHEN YOU TURNED IT OVER TO SOUTH CAROLINA
15 AUTHORITIES?

16 A. YES, IT WAS.

17 Q. DID YOU ALTER OR CHANGE ANYTHING OR ADD OR
18 REMOVE ANYTHING FROM THE CONTENTS?

19 A. NO.

20 MR. POPE: YOUR HONOR, PERMISSION TO PUBLISH
21 STATE'S EXHIBIT 138.

22 THE COURT: CERTAINLY.

23 (THE PHOTOS WERE SHOWN TO THE JURY)

24 Q. DETECTIVE, I KNOW THERE ARE FOUR PICTURES, BUT
25 IF YOU COULD INDICATE WHICH EACH ONE OF THESE

JERRY GERALD ROBISON - DIRECT BY MR. POPE

1488

1 DEPICT.

2 A. IT'S A FRONTAL PICTURE OF MR. ROBERTSON.

3 Q. AND THIS?

4 A. THAT'S HIS ELBOW SHOWING A SCRAPE ON HIS ELBOW
5 AND ABRASION.

6 Q. AND THIS?

7 A. I BELIEVE THAT WAS HIS INDEX FINGER AND, AGAIN,
8 AN INDEX FINGER.

9 Q. ALL RIGHT.

10 A. FOR ABRASIONS AND INJURIES.

11 Q. THANK YOU. ANSWER ANY QUESTIONS THE DEFENSE MAY
12 HAVE, PLEASE.

13 MR. BOYD: NO QUESTIONS, YOUR HONOR.

14 THE COURT: WE APPRECIATE YOUR TIME; THANK YOU.
15 FEEL FREE TO LEAVE, YOU'RE EXCUSED. CALL YOUR NEXT
16 WITNESS.

17 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
18 OUR NEXT WITNESS IS DETECTIVE COOGAN CONCERNING THE SEARCH
19 OF THE VEHICLE.

20 I DON'T KNOW IF THE DEFENSE HAS ANY MOTIONS IN
21 THAT REGARD.

22 MR. BOYD: I THINK WE NEED TO TAKE UP A MATTER.

23 THE COURT: LET ME LET YOU GO TO THE JURY ROOM
24 JUST FOR A FEW MINUTES.

25 IN CAMERA:

1489

1 THE COURT: PLEASE COME UP AND BE SWORN, OFFICER
2 COOGAN.

3 WILLIAM COOGAN, BEING FIRST DULY SWORN, TESTIFIED
4 IN CAMERA AS FOLLOWS:

5 DIRECT EXAMINATION BY

6 MR. POPE:

7 Q. DETECTIVE COOGAN IF YOU COULD FOR THE COURT,
8 STATE YOUR NAME AND OCCUPATION PLEASE, AND SPELL
9 YOUR LAST NAME FOR THE COURT REPORTER.

10 A. DETECTIVE WILLIAM COOGAN, C-O-O-G-A-N, BADGE
11 NUMBER 9086, I'M ASSIGNED TO THE HOMICIDE
12 DIVISION IN PHILADELPHIA.

13 Q. DID YOU HAVE AN OPPORTUNITY TO ASSIST THE STATE
14 OF SOUTH CAROLINA IN THE INVESTIGATION OF THIS
15 CASE THERE IN YOUR JURISDICTION?

16 A. YES, I DID.

17 Q. AS PART OF YOUR DUTIES DID YOU HAVE THE
18 OPPORTUNITY TO RECEIVE INFORMATION FROM SOUTH
19 CAROLINA OFFICERS AND GET A SEARCH WARRANT IN
20 YOUR JURISDICTION TO SEARCH A RED MAZDA THAT WAS
21 IN YOUR POLICE CUSTODY?

22 A. YES, I DID.

23 Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S
24 EXHIBIT 150 FOR IDENTIFICATION AND ASK IF YOU
25 CAN LOOK AT THAT ITEM AND TELL US IF YOU CAN

WILLIAM COOGAN (IN CAMERA) - DIRECT BY MR. POPE

1490

1 IDENTIFY IT?

2 A. IT IS THE WARRANT I OBTAINED ON 11-29-97.

3 Q. AND THE PROBABLE CAUSE YOU HAD FOR THAT WARRANT,
4 HOW DID YOU GAIN THAT PROBABLE CAUSE?

5 A. THAT CAME FROM SPECIAL AGENT BRETT BAKER AND
6 DAVID BLACK.

7 Q. FROM THE SOUTH CAROLINA LAW ENFORCEMENT?

8 A. THAT'S CORRECT.

9 Q. AND BASED ON THAT, YOU ACTUALLY GOT A SEARCH
10 WARRANT IN YOUR JURISDICTION?

11 A. THAT'S CORRECT.

12 Q. DID YOU ACTUALLY EXECUTE THE SEARCH ITSELF OR
13 WHO DID THAT?

14 A. NO, I DIDN'T. MY PARTNER, DETECTIVE RICH BOGA
15 AND DETECTIVE NEBEST.

16 Q. WOULD THEY ACTUALLY HAVE THE SEARCH WARRANT?

17 A. THEY HAD THE SEARCH WARRANT AND THEY WENT WITH
18 BAKER AND BLACK TO PROCESS THE VEHICLE.

19 Q. THANK YOU.

20 (THE SEARCH WARRANT WAS SHOWN TO THE DEFENSE)

21 MR. BOYD: YOUR HONOR, IN THE AFFIDAVIT FOR
22 PROBABLE CAUSE FOR THE SEARCH WARRANT IT REFERS TO A
23 STATEMENT BY MEREDITH MOON AND IN THE MOON STATEMENT IT
24 SAYS SHE INDICATED THAT RELEVANT EVIDENCE OF THE CRIME WAS
25 TRANSPORTED IN THE ABOVE VEHICLE.

1491

1 THERE IS NO SHOWING HERE OF WHAT THE RELEVANT
2 EVIDENCE IS OR REALLY WHAT IT'S BEING SEARCHED FOR. WELL,
3 ACTUALLY I GUESS IT IS, WHAT IT'S BEING SEARCHED FOR, BUT
4 WHAT RELEVANT EVIDENCE -- THERE IS NO INDICATION OF WHAT
5 THE RELEVANT EVIDENCE IS. SO, I WOULD SUBMIT THAT THE
6 WARRANT FAILS TO SHOW PROBABLE CAUSE.

7 THE COURT: LET ME SEE IT.

8 (THE WARRANT WAS GIVEN TO THE COURT.)

9 MR. POPE: YOUR HONOR, AT THE APPROPRIATE TIME I
10 WILL GO INTO THE SPECIFICS OF THE MAGISTRATE AND OBTAINING
11 IT AND ALL.

12 (AFTER A PAUSE.)

13 THE COURT: AND THE MOTION IS WHAT, TO QUASH THE
14 WARRANT?

15 MR. BOYD: YES, SIR, TO QUASH THE SEARCH BASED ON
16 THE FACT THAT THE WARRANT FAILS TO SHOW PROBABLE CAUSE.

17 THE COURT: WELL, I FIND THE WARRANT IS
18 SUFFICIENT. IT DOES SET FORTH THE ITEMS TO BE SEARCHED FOR
19 WITH SPECIFICITY. SO, I DENY THE MOTION.

20 MR. POPE: MAY IT PLEASE THE COURT, AS FAR AS THE
21 MECHANICS OF THE JURY AND THIS WITNESS, ALL I WOULD HAVE
22 THIS WITNESS SAY BEFORE THE JURY IS DID YOU ASSIST IN THE
23 INVESTIGATION, DID YOU OBTAIN A SEARCH WARRANT. THE ACTUAL
24 OFFICER WHO DOES THE SEARCH WILL TESTIFY LATER ON.

25 AGAIN, UNLESS THE COURT WANTS ME TO GET INTO THE

1 SPECIFICS OF THE SEARCH WARRANT, MY ONLY INTENTION IS TO
2 CALL HIM -- I WASN'T GOING TO MOVE THE WARRANT INTO
3 EVIDENCE OR ANYTHING OF THAT NATURE.

4 THE COURT: I DON'T KNOW WHAT YOU'RE ASKING ME.

5 MR. POPE: I'M JUST TELLING THE COURT WHAT I'M
6 GOING TO DO BEFORE IT HAPPENS SO IF THERE IS ANY MOTIONS WE
7 NEED WE CAN DEAL WITH IT BEFOREHAND.

8 MR. BOYD: YOU'RE NOT PLANNING ON PUTTING THE
9 WARRANT INTO EVIDENCE?

10 MR. POPE: NO, SIR.

11 MR. BOYD: I WOULD ASK THAT IT BE MADE A COURT'S
12 EXHIBIT BUT NOT AN EXHIBIT TO GO TO THE JURY.

13 THE COURT: CERTAINLY.

14 MR. POPE: NO OBJECTION TO THAT, YOUR HONOR.

15 (THE WARRANT WAS MARKED COURT'S EXHIBIT NUMBER 10)

16 THE COURT: ARE YOU READY FOR THE JURY?

17 MR. POPE: YES, SIR.

18 THE COURT: BRING IN THE JURY.

19 MR. POPE: YOUR HONOR, THE WITNESSES NEXT ARE A
20 GOOD NUMBER OF CHAIN WITNESSES. I HAVE THEM IN THE HALL.
21 IF I COULD HAVE A FEW MINUTES WHILE THE JURY IS OUT, I
22 COULD PROBABLY GO THROUGH FIVE OR MORE WITNESSES IN RAPID
23 FASHION IF I COULD HAVE JUST A FEW MINUTES TO STEP OUTSIDE.

24 THE COURT: ALL RIGHT.

25 AFTER THE BREAK IN CAMERA:

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1 MR. POPE: YOUR HONOR, THE NEXT SERIES OF
2 WITNESSES WILL BE PRIMARILY CHAIN WITNESSES. WHAT WE HAVE
3 DONE IS WHAT WE'VE DONE WITH THE OTHER EVIDENCE AND I'VE
4 DISCUSSED THIS WITH THE DEFENSE AND MR. HANCOCK SAID IT
5 WOULD BE APPROPRIATE BUT WE WILL PUT IT ON THE RECORD.

6 I'VE HAD EACH WITNESS GO THROUGH THE EVIDENCE AND
7 CONFIRM THAT THAT IS THE EVIDENCE. OF COURSE, I WILL STILL
8 ASK THEM THAT ON THE STAND BUT RATHER THAN HAVE THEM GOING
9 THROUGH EVERY SINGLE ITEM -- PETE MITCHUM WHO IS THE
10 EVIDENCE CUSTODIAN FOR THE SHERIFF'S DEPARTMENT IS GOING TO
11 REMAIN CLOSE AT HAND TO PHYSICALLY RETRIEVE -- WE'VE GOT
12 OVER A HUNDRED ITEMS -- MY INTENTION IS THE DEFENSE HAS
13 SAID THEY WILL GIVE ME A LITTLE LATITUDE IN LEADING TO WORK
14 THROUGH THE ITEMS AND PRIOR TO GETTING TO THAT BEFORE THE
15 JURY THOUGH, WE HAVE TWO SEARCH WARRANTS THAT WILL IMPACT
16 ON THE ITEMS THAT WILL COME IN.

17 THEY HAVE BEEN MARKED AS COURT'S EXHIBITS 10 AND
18 11 ---

19 THE COURT: WELL, YOU'VE STILL GOT OFFICER COOGAN
20 ON THE STAND.

21 MR. POPE: YES, SIR. IF HE COULD BE GIVEN AN
22 OPPORTUNITY TO STEP DOWN JUST LONG ENOUGH FOR THE JURY TO
23 COME BACK, AND THEN WE WILL BEGIN WITH HIM.

24 THE COURT: ALL RIGHT.

25 MR. POPE: BUT I JUST WANTED TO PASS UP, THE

1 DEFENSE HAS ALREADY SEEN THEM, COURT'S EXHIBIT 10 WHICH IS
2 THE SEARCH WARRANT THAT YIELDED THE YARD RAKE. COURT'S
3 EXHIBIT 11 IS THE SEARCH WARRANT THAT RESULTED -- BOTH OF
4 THESE ARE OF THE HOUSE, YOUR HONOR -- THAT RESULTED IN A
5 NUMBER OF ITEMS BEING RECOVERED FROM THE HOUSE INCLUDING
6 SOME MEDICINE BOTTLES AND SOME PAPER ITEMS, ITEMS SUCH AS
7 THAT.

8 I WILL HAND THEM BOTH UP. AGAIN, IT'S COURT'S
9 EXHIBIT 10 AND 11. AND I WILL HAVE THE AFFIANTS, I HAVE
10 THEM HERE READY TO TESTIFY. AND MR. HANCOCK MAY HAVE SOME
11 ISSUES ON THAT.

12 THE COURT: YES, SIR?

13 MR. HANCOCK: YOUR HONOR, JUST TO POINT OUT TO
14 THE COURT THAT THINGS ARE BEING DONE IN THIS MANNER, AND I
15 WANT TO PUT IT ON THE RECORD BECAUSE MY MEMORY IS SHORT AND
16 I MIGHT NOT REMEMBER THIS AT A LATER DATE, THIS IS BEING
17 DONE IN THIS MANNER BECAUSE WE HAVE GONE OVER THIS EVIDENCE
18 ON AT LEAST TWO OCCASIONS WITH THE SOLICITOR. WE HAVE GONE
19 AS FAR AS TO OPEN THE EVIDENCE, REDACT ANYTHING THAT HAS TO
20 BE REDACTED. WE HAVE GONE THROUGH EVERY NUMBERING AND
21 SEQUENCE OF THE EVIDENCE AND SO THAT IS THE REASON THAT WE
22 HAVE DONE THIS.

23 WE HAVE BEEN OVER THE EVIDENCE AND TO EXPEDITE IT
24 FOR THE COURT, RATHER THAN HAVING EACH ITEM HANDED AND THEN
25 THEY HAVE TO UNSEAL IT, INDICATE THAT IT'S THEIR'S. IN

1495

1 ORDER FOR US TO EXAMINE THE EVIDENCE PROPERLY, WE HAVE
2 ALREADY GONE THROUGH THAT PROCESS.

3 THE COURT: ALL RIGHT. WHAT'S THE DEFENSE'S
4 POSITION ON THE SEARCH WARRANT DATED -- LET'S GO FIRST WITH
5 THE ONE DATED 11-26-97. IT DESCRIBES THE PROPERTY SOUGHT
6 AS ONE YARD RAKE. ANY QUESTION CONCERNING THE VALIDITY OF
7 THE SEARCH WARRANT? IT'S BASED ON THE AFFIDAVIT OF -- I
8 CAN'T READ THE NAME.

9 MR. POPE: DETECTIVE HAGER, YOUR HONOR.

10 MR. HANCOCK: YOUR HONOR, NO, SIR, WE DON'T HAVE
11 A CHALLENGE TO THAT.

12 THE COURT: ALL RIGHT, THE SECOND ONE IS DATED,
13 IT LOOKS LIKE NOVEMBER 28, '97 ISSUED BY JUDGE BOULWARE ON
14 THE AFFIDAVIT OF JOHN HOWE DEALING WITH THE SAME PROPERTY
15 AND A NUMBER OF ITEMS. ANY CHALLENGE TO THE VALIDITY OF
16 THIS SEARCH WARRANT?

17 MR. HANCOCK: YOUR HONOR, THE AFFIDAVIT APPEARS
18 ON ITS FACE TO BE SUFFICIENT.

19 THE COURT: WELL, I FIND BOTH OF THESE SEARCH
20 WARRANTS, ONE IS MARKED COURT'S EXHIBIT 11 -- 10 AND 11.
21 I FIND THAT EACH IS VALID AND MEETS THE REQUIREMENTS OF THE
22 LAW FOR ADEQUATE LEGAL SEARCH WARRANTS GRANTING THE RIGHT
23 TO SEARCH THE PREMISES OUTLINED THEREON; BOTH OF THEM BEING
24 THE ROBERTSON HOME AT 2506 WESTMINSTER DRIVE, ROCK HILL,
25 SOUTH CAROLINA.

1496

1 MR. POPE: ALSO AS FAR AS THE CHAIN OF EVIDENCE
2 THAT WE WILL GO THROUGH WITH THE NEXT SEVERAL WITNESSES, I
3 HAVE PROVIDED THE DEFENSE WITH WRITTEN COPIES OF THE CHAIN
4 THAT THEY MAY REFER TO WHILE WE GO THROUGH THE EVIDENCE IF
5 THEY HAVE ANY QUESTIONS ABOUT IT.

6 THE COURT: ALL RIGHT.

7 MR. POPE: WE WILL CALL OFFICER COOGAN WHEN THE
8 JURY COMES BACK.

9 THE COURT: ALL RIGHT, BRING IN THE JURY.
10 OFFICER COOGAN CAN COME ON BACK UP.

11 IN THE PRESENCE OF THE JURY:

12 THE COURT: I KNOW Y'ALL ARE PROBABLY CONVINCED
13 THAT I MISSED THAT CLASS IN KINDERGARTEN WHEN THEY TAUGHT
14 YOU HOW TO TELL TIME, BUT I REALLY DIDN'T. BUT WE TRY
15 OCCASIONALLY WHEN YOU AREN'T IN THE COURTROOM TO DO THINGS
16 THAT WOULD EXPEDITE THE TIME YOU ARE IN HERE. SO, WE
17 DECIDED AT THIS BREAK TO DO A FEW THINGS THAT WOULD SPEED
18 THINGS ALONG. THAT'S WHY WE TOOK A LITTLE LONGER THAN I
19 HAD INDICATED. YOU MAY PROCEED.

20 WILLIAM COOGAN, HAVING PREVIOUSLY BEEN SWORN,
21 TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY

23 MR. POPE:

24 Q. OFFICER COOGAN, I BELIEVE YOU'VE PREVIOUSLY BEEN
25 SWORN BY THE CLERK, IS THAT CORRECT?

WILLIAM COOGAN - DIRECT BY MR. POPE

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1 A. THAT IS CORRECT.

2 Q. COULD YOU STATE YOUR NAME AND OCCUPATION FOR THE
3 JURY PLEASE, SIR?

4 A. DETECTIVE WILLIAM COOGAN, C-O-O-G-A-N, BADGE
5 NUMBER 9086. I'M A DETECTIVE ASSIGNED TO THE
6 HOMICIDE DIVISION IN PHILADELPHIA.

7 Q. ARE YOU IN THE SAME DEPARTMENT AS DETECTIVE
8 ROBISON WHO WAS HERE EARLIER?

9 A. THAT IS CORRECT.

10 Q. AND PURSUANT TO HIS GUIDANCE OF THIS
11 INVESTIGATION, DID YOU HAVE THE OPPORTUNITY ON
12 SATURDAY, I BELIEVE THE 29TH, TO OBTAIN A SEARCH
13 WARRANT FOR THE RED VEHICLE IN QUESTION IN THIS
14 CASE?

15 A. YES, I DID.

16 Q. AND DID YOU OBTAIN THAT SEARCH WARRANT THROUGH
17 YOUR LOCAL JUDGE THERE?

18 A. YES. ACTUALLY I OBTAINED IT THROUGH A BAIL
19 COMMISSIONER WHICH IS THE EQUIVALENT OF A
20 MAGISTRATE IN PHILADELPHIA.

21 Q. OKAY.

22 A. AND HIS NAME IS TIM O'BRIEN.

23 Q. OKAY AND AFTER OBTAINING IT FROM HIM, DID YOU
24 FORWARD IT TO THE OFFICERS THAT ULTIMATELY
25 WORKED WITH THE STATE LAW ENFORCEMENT DIVISION

ROBERT BROWN - DIRECT BY MR. POPE

1498

1 AGENT WHO ACTUALLY SEARCHED THE VEHICLE?

2 A. YES, I DID.

3 Q. OKAY. ANSWER ANY QUESTIONS THE DEFENSE MAY
4 HAVE, PLEASE.

5 MR. BOYD: NO QUESTIONS, YOUR HONOR.

6 THE COURT: THANK YOU, DETECTIVE COOGAN. YOU CAN
7 STEP DOWN AND BE EXCUSED. WE APPRECIATE YOUR TIME. CALL
8 YOUR NEXT WITNESS.

9 MR. POPE: THE STATE WOULD CALL BOBBY BROWN TO
10 THE STAND.

11 ROBERT BROWN, BEING FIRST DULY SWORN, TESTIFIED
12 AS FOLLOWS:

DIRECT EXAMINATION BY

13
14 MR. POPE:

15 Q. AGENT BROWN, IF YOU WOULD, STATE YOUR NAME AND
16 SPELL YOUR LAST NAME FOR THE COURT REPORTER.

17 A. MY NAME IS ROBERT BROWN; THE LAST NAME IS B-R-O-
18 W-N.

19 Q. TELL THE JURY YOUR OCCUPATION.

20 A. I WORK CRIMINAL INVESTIGATIONS FOR THE STATE LAW
21 ENFORCEMENT DIVISION HERE IN SOUTH CAROLINA.

22 Q. HOW LONG HAVE YOU BEEN WITH SLED?

23 A. ALMOST EIGHT YEARS.

24 Q. I CALL YOUR ATTENTION BACK TO NOVEMBER 25TH,
25 1997. DID YOU HAVE THE OPPORTUNITY ON NOVEMBER

ROBERT BROWN - DIRECT BY MR. POPE

1499

1 26TH TO GO UP TO PHILADELPHIA TO ASSIST RALPH
2 MISLE OF THE YORK COUNTY SHERIFF'S DEPARTMENT IN
3 THE INVESTIGATION OF THIS CASE?

4 A. YES, SIR, I DID.

5 Q. PURSUANT TO YOUR DUTIES IN THAT INVESTIGATION
6 DID YOU ALSO HAVE THE OPPORTUNITY TO BRING BACK
7 EVIDENCE FROM PHILADELPHIA AND BRING IT TO THE
8 YORK COUNTY SHERIFF'S DEPARTMENT AND TO THE
9 STATE LAW ENFORCEMENT DIVISION?

10 A. YES, SIR.

11 Q. WHILE THE JURY WAS OUT DID YOU HAVE AN
12 OPPORTUNITY TO ACTUALLY REVIEW THE EVIDENCE?

13 A. YES, SIR.

14 Q. DID IT APPEAR TO BE IN THE SAME CONDITION, OTHER
15 THAN TESTING, AS IT WAS WHEN YOU RETRIEVED IT?

16 A. YES, SIR, THAT'S CORRECT.

17 Q. PARTICULARLY I CALL YOUR ATTENTION TO STATE'S
18 EXHIBIT 88 AND 87 THAT ARE IN EVIDENCE. 87
19 BEING THE MULTI-COLORED SWEATER RECOVERED FROM
20 MEREDITH MOON, 88 BEING THE WALLET RECOVERED
21 FROM THE DEFENDANT. DID YOU TRANSPORT BOTH OF
22 THOSE ITEMS BACK FROM PHILADELPHIA?

23 A. YES, SIR, I DID.

24 Q. AND AS TO STATE'S EXHIBIT 87, THE MULTI-COLORED
25 SWEATER, DID YOU HAVE AN OPPORTUNITY TO TAKE

ROBERT BROWN - DIRECT BY MR. POPE

1500

1 THAT ON TO THE STATE LAW ENFORCEMENT DIVISION
2 FOR TESTING?

3 A. YES, SIR.

4 Q. AND AS TO STATE'S EXHIBIT 88, DID YOU HAVE THE
5 OPPORTUNITY TO TURN THAT INTO THE SHERIFF'S
6 DEPARTMENT HERE AT YORK COUNTY FOR THEIR
7 EVIDENCE CONTROL?

8 A. YES, SIR, THAT'S CORRECT.

9 Q. EITHER ONE OF THESE TWO ITEMS DID YOU ALTER OR
10 CHANGE ANYTHING IN ANY WAY?

11 A. NO, SIR.

12 Q. THANK YOU, SIR. ANSWER ANY QUESTIONS THE
13 DEFENSE HAS.

14 MR. BOYD: NO QUESTIONS, YOUR HONOR.

15 THE COURT: I APPRECIATE YOUR TIME. YOU CAN STEP
16 DOWN AND BE EXCUSED.

17 MR. POPE: THE STATE WOULD CALL JOHN HOWE.
18 (THERE WAS A MALFUNCTION OF THE ELECTRONIC RECORDING DEVICE
19 OF THE COURT REPORTER DURING THE FIRST THREE QUESTIONS OF
20 OFFICER HOWE AND IT WAS STIPULATED BY COUNSEL WHAT THOSE
21 QUESTIONS WERE AND THE STIPULATION WAS MARKED COURT'S
22 EXHIBIT 19.)

23 JOHN HOWE, BEING FIRST DULY SWORN, TESTIFIED AS
24 FOLLOWS:

25 DIRECT EXAMINATION BY